Resolution of disputes related to creditors' claims

Special procedural rules have been introduced for resolving disputes concerning creditors' claims. Previously, if an administrator rejected a creditor's claim, the creditor had to challenge the administrator's decision in the court charged with adjudicating the insolvency proceedings of the debtor. However, the insolvency proceedings are not designed for the resolution of substantive disputes (e.g. as regards the existence or the amount of a creditor's claim), and the only vehicle for the resolution of such disputes under the Latvian Civil Procedure Law is the so-called claim proceedings (proceedings by way of an action). Hence, if the court established that there was a substantive dispute, it merely ordered the creditor to bring a claim into court having jurisdiction over the said dispute, which may or may not have be the same court that hears the insolvency proceedings. It often resulted in a lengthy litigation running alongside insolvency proceedings, procedurally independent and disconnected from them.

Now such disputes will be heard by the same court and in an expedited manner. Namely, the case must be examined in a written procedure within 30 days from the submission of explanations to the claim by other involved parties, while the court ruling may only be appealed once, provided that the specific preconditions for the initiation of appellate proceedings are established by the court of appeal.

In addition, the creditor whose claim has been rejected by the administrator on the grounds of a dispute will be entitled to bring the claim into court for the resolution of a dispute right away, without the need to separately challenge the administrator's decision *per se*.

Italy:
New Code of Company Crisis and Insolvency is close to being approved

On 8 November 8 2018, the Council of Ministers approved the Legislative Decree implementing the Law 155/2017. It consists of 390 articles, divided into four parts:

Part I: Crisis and insolvency Code
Part II: Changes to the Civil Code
Part III: Guarantees for buyers of buildings to be built
Part IV: Final and temporary provisions

The purpose of the Legislative Decree is to reform the insolvency system by providing a systematic and organic framework, thus overcoming the discontinuous and fragmented approaches that had characterised the reforms of the provisions which took place in the last 15 years.

Key points of the reform:

- ✓ The replacement of the term 'bankruptcy' with the expression "judicial liquidation" in accordance with the terminology in other European countries, in order to avoid the social discredit that historically accompanies the term "bankrupt";
- ✓ The priority of dealing with proposals that lead to the overcoming of the crisis by ensuring business continuity;
- ✓ The uniformity and simplification of the legislation of the various special proceedings previously existing on insolvency matters;
- ✓ The reduction of the duration and costs of insolvency proceedings;
- ✓ The establishment, at the Ministry of Justice, of a register of individuals delegated to perform, on behalf of the Court, the functions of management or control in the insolvency proceedings, with an indication of the requisites of professionality and independence necessary for being registered.

Furthermore, the Legislative Decree makes changes to the provisions on alert procedures and assisted settlement of the crisis, i.e. out-of-court procedures aimed at anticipating the appearance of the crisis, thus allowing a fast analysis of its causes. In fact, differently from the previous provisions, the Legislative Decree foresees the possibility for the company concerned to challenge the symptomatic imbalance indices of the "crisis" and significantly modifies the thresholds beyond which the reporting charges are charged to the qualified public creditors.

In addition, the Legislative Decree broadens the obligation of the Public Prosecutor to file an appeal for the opening of the judicial liquidation, providing it in all cases in which the public prosecutor becomes aware of a state of insolvency, differently from the previous provisions, which provided for it only in specific cases. Some changes are also made to the provisions on the composition with creditors, where the independent professional has to certify the truthfulness of the company data declared by the applicant and the feasibility of the proposed plan. This becomes a condition for admission to the composition with the creditors in order to decide upon the business' continuity and the maintenance or re-hiring of a number of employees equal to at least 30% of those employed at the time of filing the plan, for the next two years.

The final wording will depend on any possible amendments made by the Commissions of the competent Ministries where the Legislative Decree is currently analysed. The next step is the approval from the Council of Ministers which, most probably, will happen no later than 13 January 2019. The reform will start with the entry into force of the new Code of the Company Crisis and Insolvency that will represent a real revolution for the Italian bankruptcy law, where some provisions will be effective after 30 days from the publication in the Official Gazette, while the most relevant part will be effective only in 2020. ■

GIORGIO CHERUBINI
Founding Partner, EXPLegal, Rome & Milan (Italy)

GIOVANNA CANALE
Junior Associate, EXPLegal, Rome & Milan (Italy)