

The Baltic Exchange

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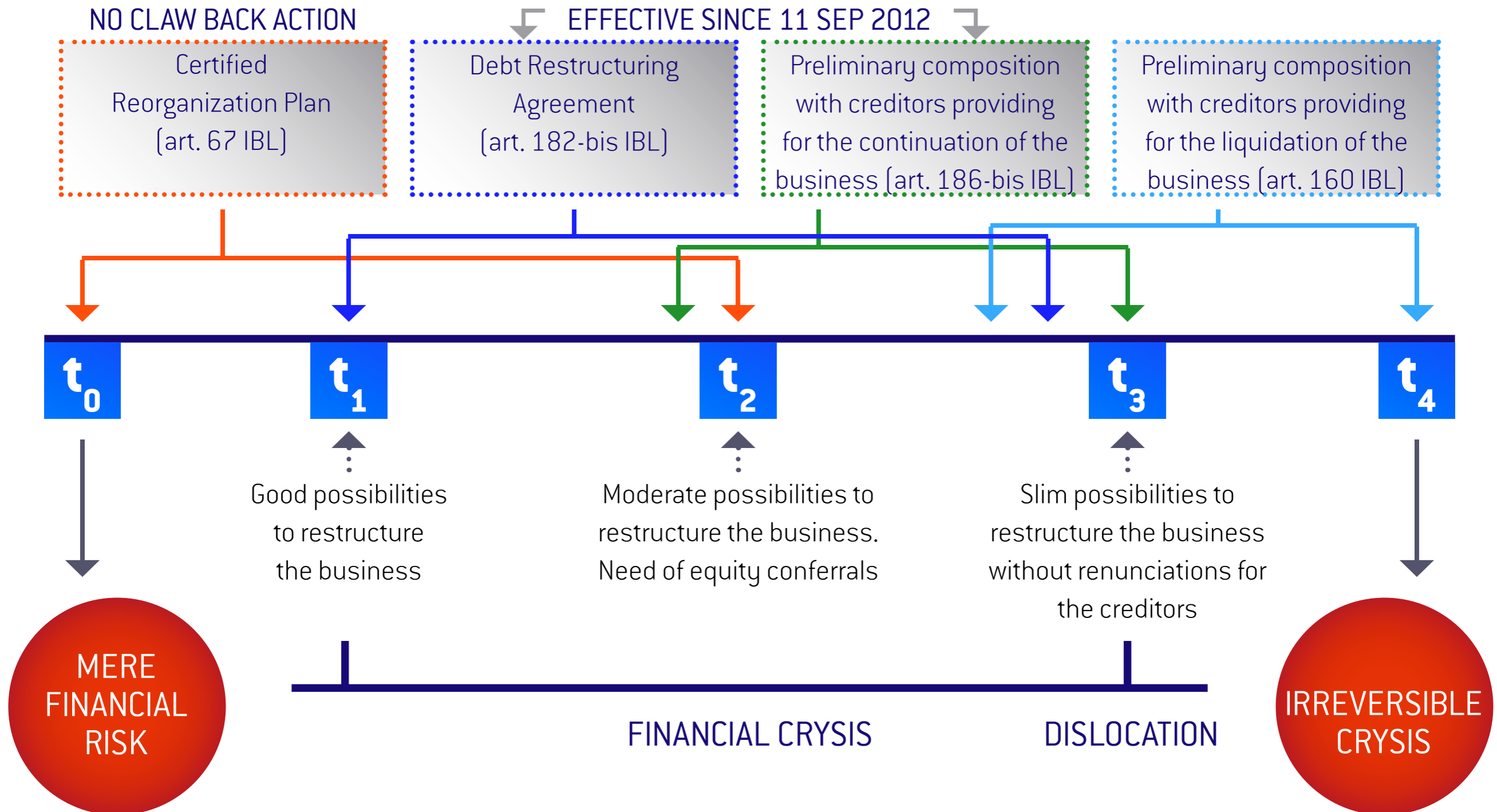
Restructuring Agreements under Italian Law

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Restructuring agreements as one of the IBL instruments to manage companies' financial crisis



Art. 161 paragraph 6 IBL: the “blank” petition for preliminary composition with creditors

The company submits a petition to the court asking for the preliminary composition with creditors attaching just the last three financial statements.

Why a “blank” petition if the aim is to reach a restructuring agreement?

By means of the petition, the company:

protects its assets during the negotiation with creditors, for the period necessary to frame the plan, avoiding the risk of enforcements by creditors (the petition grants the automatic stay of the enforcements and precautionary injunctions / judgements on the debtor's assets)

The “blank” petition as a “fork in the road”

The debtor is given by the court a period between 60-120 days from the blank petition filing to either file a

BLANK PETITION



**PRELIMINARY COMPOSITION
WITH CREDITOR PETITION OR A**



**RESTRUCTURING AGREEMENT
PETITION**

THE RESTRUCTURING AGREEMENTS



Art. 182-bis IBL: Debt Restructuring Agreements (i)

A company in financial crisis may ask for the homologation of a debt restructuring agreement, if it is in compliance with the following requirements:

the agreement shall be entered into by at least 60% of the company's creditors;

the company shall provide all the documents set forth by article 161 IBL (*e.g.* a report on the financial situation of the company, a list of the creditors and the restructuring plan);

the company shall provide a certification set forth by an expert professional ensuring the truthfulness of the business data and the feasibility of the debt restructuring agreement.

The Restructuring Plan may provide *inter alia* for:

- (i) Restructuring of debts and satisfaction of creditors' claims through any technical or legal means, including assumption of debts, mergers or other corporate transactions: in particular, the Plan can allow for the allocation to creditors or classes of creditors, or companies in which they have holdings, of stock / shareholdings, quotas or bonds, including bonds convertible into shares, or other financial instruments and debt instruments;
- (ii) The transfer of the assets / going concern to a white knight;
- (iii) The separation of creditors into classes, according to their legal position and uniform economic interests;
- (iv) different treatment for creditors belonging to different classes. The debtors may be authorized by the bankruptcy court to terminate the executory contracts or to obtain a suspension (of 60-120 days) for performance of the same. Termination clauses triggered by the filing for *concordato preventivo* are void.

Art. 182-bis IBL: Debt Restructuring Agreements (ii)

The restructuring agreement shall grant the entire payment of the creditors that are not part of it, according to the following extensions of time:

within 120 days from the homologation date,
if the credits expired before such date;

within 120 days from the expiry date
of the credits, if they were not expired at the date
of the homologation.

On the contrary, in case of approval of a preliminary composition with creditors, all creditors are satisfied according to the proposal.

Art. 182-bis IBL: Debt Restructuring Agreements (iii)

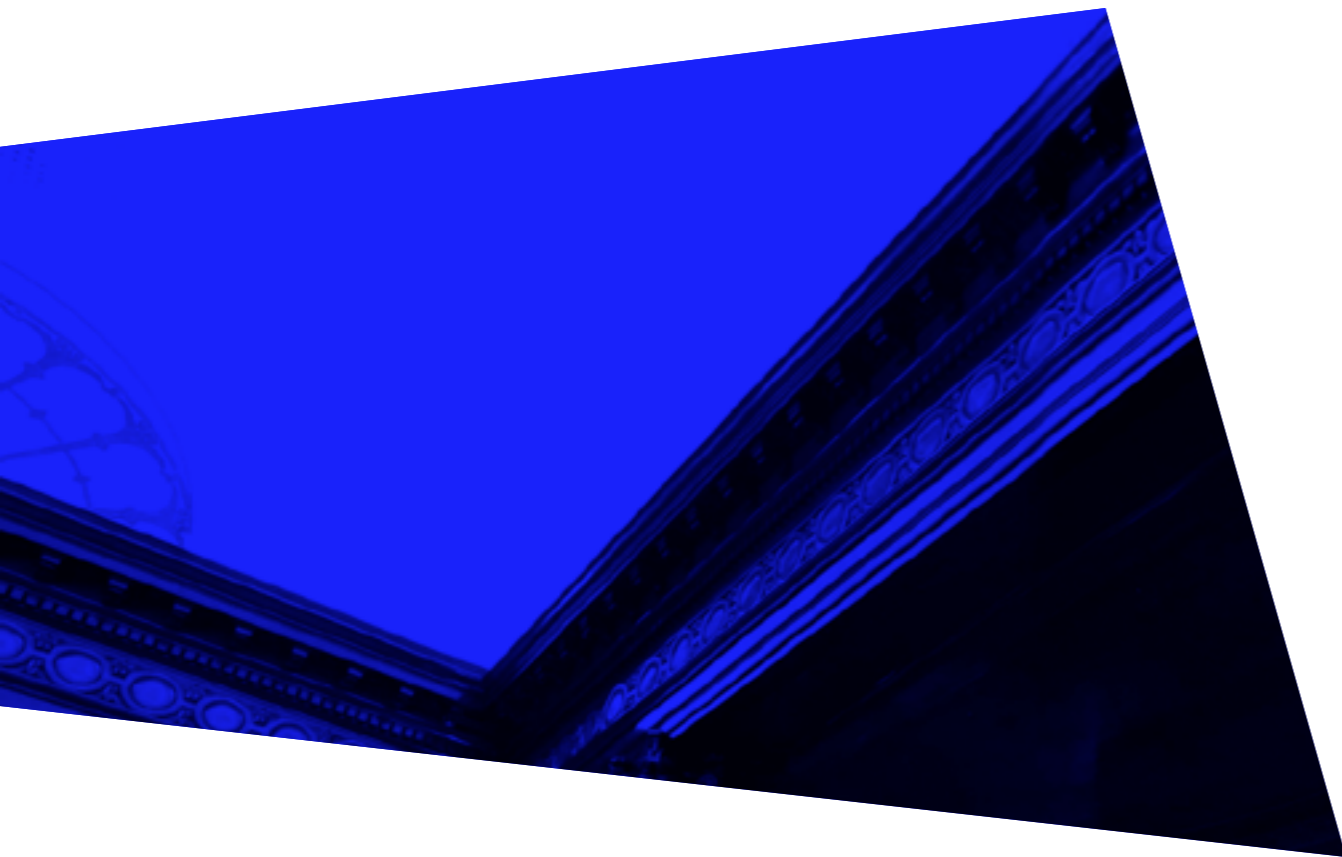
The petition for the homologation of a debt restructuring agreement shall be published in the companies' register and it is binding for the parties from the moment of its publication. After that:

- within 30 days from the publication, creditors may oppose to the request of homologation;

- for 60 days from the publication, creditors are prevented from executing the debtor's assets.

In the case the debt restructuring agreement does not follow a blank petition for preliminary composition with creditors, IBL provides also the possibility for the debtor to ask to the court for the application of this faculty prior to the draft of the agreement, according to the provision of art. 182-bis, paragraph 6 IBL.

GRANTING NEW FINANCE TO THE RESTRUCTURING DEBTOR



Why granting new finance?

The new amendments to Italian Bankruptcy Law are aimed at favouring the position of creditors who dispense new finance.

Those creditors may have priority in case of a subsequent bankruptcy declaration.

Art. 182-quinquies IBL: the “bridge finance” (i)

According to a recent amendment to IBL, a debtor may ask to the court to be authorized to contract facilities before the homologation of the restructuring agreement.

An expert professional shall attest that such facilities are functional to the better satisfaction of the creditors, having verified the overall financial needs of the company until the moment of the homologation of the debt restructuring agreement.

These facilities shall be considered, in the event the debtor should be declared bankrupt, super-priority claims.

Art. 182-quinquies IBL: the new “bridge finance” (ii)

The authorization provided by the judge may concern also facilities specified only in their typology and in their amount that are not still under negotiation.

The tribunal may authorize the debtor to grant pledges or mortgages to secure the above mentioned facilities.

Why art. 182-quinquies IBL?

Art 182-quinquies has been enacted in order to grant the survival of the company's business activity.

In order to ensure the above, art. 182-quinquies enables the debtor to ask the court to authorize the payment of the "strategic" creditors before the homologation of the restructuring agreement.

Comparison of art. 182-quater paragraph 2 IBL and art. 182-quinquies IBL

Rule applicable in the event of granting “bridge finance”:

Before the publication in the companies' register of the petition for preliminary composition with creditors or for the homologation of a debt restructuring agreement:



182-quater, paragraph 2 IBL: the judicial authorization is not required, but the creditor might be subject to the risk of the judicial refusal to homologate the debt restructuring agreement. As a consequence, in this last case, the creditor shall be considered unsecured.



182-quinquies IBL: the judicial authorization is required, but the creditors is not subject to the risk of the lack of homologation of the debt restructuring agreement.

After the publication in the companies' register of the petition for preliminary composition with creditors or for the homologation of a debt restructuring agreement, but before the judicial decree:



Only art. 182-quinquies IBL shall be applicable

Risks for creditors related to their not taking part to the restructuring agreement

In the event of bankruptcy:

- they may be submitted to claw back actions;

- their claims are not considered super-priority (i.e. predeductible);

- they are not exempted from the bankruptcy fraud crime.

The above applies also to creditors who granted “bridge” finance pursuant to art. 182-quater IBL in the event the agreement is not homologated.

Bad outcome of the negotiations

The debtor may:

- file a claim for preliminary composition with creditors;

- file a petition for bankruptcy.

The creditors may file a petition to the relevant court in order to let it declare the debtor's bankruptcy.

Final considerations

A petition for preliminary composition with creditors ex art. 161.6 IBL may be filed only if there have not been other similar petition in the last two years.

If the preliminary composition with creditors is not approved by creditors and the court the company is declared bankrupt.