



Business crisis and negotiated settlement: the role of the expert.

The Decree Law No. 118 of 24 August 2021 introduced the negotiated settlement for the solution of business crisis with the aim of providing companies with a new tool that can be used for restructuring or business recovery and to facilitate access to alternative procedures to bankruptcy.

On the one hand, the entrepreneur could use this tool to avoid going to court and, on the other hand, to solve the economic and financial imbalances in which he finds himself, which are in any case characterised by reversibility conditions.

In the context of this new instrument for the agreed solution of business crisis, which will come into force from 15 November 2021, the figure of the expert plays a role of strategic importance. The expert will have the task of facilitating negotiations between the entrepreneur, creditors and any other interested parties and of identifying, with the entrepreneur, a solution for overcoming the conditions of financial or economic-financial imbalance that make the crisis or insolvency of the commercial and agricultural entrepreneur likely. The expert must meet the requirements set out in Article 2399 of the Civil Code and must not be linked to the company or other parties involved in the reorganisation operation by personal or professional relationships. The professional and the persons with whom he/she may be associated in a professional association must not have worked in the last five years as an employee or self-employed person in favour of the entrepreneur nor have been members of the administrative or control bodies of the undertaking nor have held shares in it.

Appointment as an expert in the negotiated crisis resolution can be made among those who have been registered for at least five years in the register of chartered accountants and accounting experts, lawyers and labour consultants. It is possible to include professionals who are not enrolled in any register but who document previous experience in crisis management, having performed functions of administration, management and control.

The new procedure for the negotiated settlement of the business crisis must be activated on the initiative of the entrepreneur who finds himself in difficulty. The request for the appointment of the expert must be addressed to the chamber of commerce where the company has its registered office.

It is important to note that during the negotiated settlement, the ordinary and extraordinary management of the company remains the responsibility of the entrepreneur, whereas, the expert, as already explained, will act as a facilitator in overcoming the business crisis, offering creditors the guarantee deriving from the experience, skills and professionalism of the appointed expert.

The role of expert therefore represents an interesting activity for professionals dealing with business crises, and a high-level specialised profession could emerge; the instrument of the negotiated settlement, if it is effectively applied in practice, will allow a management of the business crisis that protects the entrepreneur and third parties.

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