

## The Italian liquidazione giudiziale

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On the Italian side, the Code of Business Crisis and Insolvency (*Codice della crisi d'impresa e dell'insolvenza*, CCII), adopted by Legislative Decree No. 14 of 12 January 2019, entered into force definitively on 15 July 2022 after several postponements. It replaced the bankruptcy law of 1942 and its central procedure, the *fallimento*, with the *liquidazione giudiziale* (judicial liquidation), and introduced procedures for the early detection and negotiated settlement of business crises.<sup>1</sup> For Swiss practitioners, the change of name matters because older Swiss decisions and commentaries refer to the *fallimento*. A *liquidazione giudiziale* opened by the Tribunale di Milano is a foreign bankruptcy decree within the meaning of Article 166 PILA, and the *curatore* appointed by the Italian court is the foreign administrator who may apply for recognition in Ticino. Recognition of a Swiss bankruptcy in Italy, in turn, follows the general rules of Law No. 218/1995, since the CCII does not contain a complete code of international insolvency law for third states.<sup>2</sup>

Essentials. Arbitration and insolvency are excluded from the Lugano Convention. Arbitral awards circulate between Switzerland and Italy under the New York Convention of 1958: in Italy they are declared effective by the president of the Corte d'appello under Article 839 c.p.c. Since 1 January 2019, Swiss law recognizes foreign insolvency decrees without reciprocity, accepts the jurisdiction of the state of the debtor's centre of main interests and makes the ancillary Swiss bankruptcy optional in some cases. Since 15 July 2022, the Italian *fallimento* has been replaced by the *liquidazione giudiziale* under the CCII. The Italian *curatore* who wants to reach Lugano accounts must apply for recognition before the Ticino courts.

## 1 Notes

1. Camera dei deputati, Servizio Studi, "Il decreto legislativo n. 14 del 2019", <https://temi.camera.it/leg19/post/il-decreto-legislativo-n-14-del-2019.html>. ↩
2. Law No. 218/1995, Art. 64, at Brocardi.it (above). ↩

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