

Shareholders Rights

Professor Castagnola

BANKRUPTCY

ELIGIBILITY:- INDIVIDUALS RUNNING A BUSINESS

- COMPANIES AND PARTNERSHIPS
- OTHER ASSOCIATIONS RUNNING A BUSINESS

CIVIL DEBTORS NOT ELIGIBLE

EFFECTS OF ADJUDICATION

- INDIVIDUALS: - EFFECTS ON PERSON:- MAIL
- MOVEMENT
- EFFECTS ON ESTATE: - ADMINISTRATION
- DISPOSITION
- PENAL EFFECTS

- BUSINESS ASSOCIATIONS: EFFECTS ON BUSINESS ASSOCIATION ITSELF:
MAIL
EFFECTS ON ESTATE: - ADMINISTRATION
-DISPOSITION
EFFECTS ON CONTRACT
EFFECTS ON ORGANIZATION
EFFECTS ON MANAGERS (MOVEMENT,
PENAL EFFECTS)
- EFFECTS ON SHAREHOLDERS?

MAIN BUSINESS ASSOCIATIONS

- PARTNERSHIPS WITH UNLIMITED PARTNERS
- JOINT STOCK COMPANIES WITH LIMITED SHAREHOLDERS

JOINT STOCK COMPANIES

- NO EFFECTS ON SHAREHOLDERS: - NO PENAL EFFECTS
- NO EFFECTS ON PERSON
 - NO EFFECTS ON ASSETS
 - NO LIABILITY FOR COMPANY'S DEBTS
 - NO ADJUDICATION
 - NO RIGHTS
 - ONLY, IF CONTRIBUTION WAS NOT MADE,
 - LIABILITY FOR THAT

GROUP OF COMPANIES

IF ONE OR MORE COMPANIES BELONGING TO A GROUP
BECOME INSOLVENT, THEY ARE ADJUDGED BANKRUPT

BUT THERE IS NO CONNECTION BETWEEN THE CASES

MANAGERS AND DIRECTORS

IN CASE OF COMPANY WITH LIMITED SHAREHOLDERS,
ADJUDICATION AFFECTS MANAGERS AND DIRECTORS:

- PERSONAL EFFECTS
- PENAL EFFECTS
- MANAGING POWERS
- LIABILITY FOR WRONGFUL ACTS

PARTNERSHIPS

IF A PARTNERSHIP WITH UNLIMITED PARTNERS GOES BANKRUPT, NOT ONLY ARE PARTNERS LIABLE FOR THE PARTNERSHIP'S DEBTS, BUT THEY ARE ADJUDGED BANKRUPT AS A CONSEQUENCE OF THE PARTNERSHIP'S ADJUDICATION

THE CASES ARE CONNECTED:

JUDGE AND TRUSTEE ARE THE SAME, ALTHOUGH CREDITORS AND ESTATES ARE DIFFERENT AND SEPARATE

EFFORTS TO EXTEND SHAREHOLDER'S LIABILITY

1. ADJUDICATION OF SOLE SHAREHOLDER
2. PIERCING THE CORPORATE VEIL (GOING BEYOND LIMITED LIABILITY OF SHAREHOLDER)
3. EXTENSION OF CONTRACTUAL OR TORT LIABILITY OF SHAREHOLDER

ADJUDICATION OF SOLE SHAREHOLDER

THIS IS POSSIBLE ONLY IF THE SHAREHOLDER IS A SOLE SHAREHOLDER:

1. UNDER SOME CIRCUMSTANCES SOLE SHAREHOLDER ACQUIRES UNLIMITED LIABILITY

(NO CONTRIBUTION GIVEN, NO PUBLIC RECORDS)

2. UNLIMITED PARTNERS GO BANKRUPT AS A CONSEQUENCE OF PARTNERSHIP'S ADJUDICATION

3. IF A SOLE SHAREHOLDER HAS NOT GIVEN HIS CONTRIBUTION, AND NO PUBLIC RECORD IS MADE,

HE IS DEEMED TO GO BANKRUPT

AS A CONSEQUENCE OF THE COMPANY'S ADJUDICATION BECAUSE HIS LIABILITY HAS BECOME UNLIMITED

GOING BEYOND LIMITED LIABILITY OF SHAREHOLDER

EXTENSION OF UNLIMITED LIABILITY
TO ALL CASES IN WHICH SHAREHOLDER (EVEN IF NOT SOLE)
HAS ABUSED OF THE CORPORATE VEIL

EXTENSION OF CONTRACT AND TORT LIABILITY

-SHAREHOLDER AS A “MATTER OF FACT” MANAGER

**-SHAREHOLDER LIABLE FOR LEADING MANAGERS TO BREACH
OF THEIR CONTRACTUAL DUTIES**

**- SHAREHOLDER LIABLE FOR CAUSING PREJUDICE TO
CREDITORS**

COMPOSITION BEFORE BANKRUPTCY

- AGREEMENT BETWEEN DEBTOR AND CREDITORS
 - . EXTENSION OF UNSECURED DEBTS, OR
 - . REDUCTION OF UNSECURED DEBTS, OR
 - . EXTENSION AND REDUCTION OF UNSECURED DEBTS
 - . PAYMENT IN FULL OF SECURED DEBTS
 - . DEBTOR IS NOT ADJUDGED BANKRUPT
- COMPANY WITH LIMITED SHAREHOLDERS
 - . COMPOSITION BY COMPANY DOES NOT AFFECT SHAREHOLDER'S POSITION (LIKE IN BANKRUPTCY)
- PARTNERSHIP WITH UNLIMITED PARTNERS
 - . COMPOSITION BY PARTNERSHIP AFFECTS PARTNER'S POSITION BECAUSE PARTNER IS LIABLE FOR PARTNERSHIP'S DEBTS: SO, IF NOT AGREED OTHERWISE, PARTNER IS SUBJECT TO THE NEW AGREEMENT BETWEEN PARTNERSHIP AND CREDITORS
- SOLE SHAREHOLDER
 - . IF HIS LIABILITY BECOMES UNLIMITED AS PREVIOUSLY STATED, HE MAY BE LIABLE FOR THE COMPANY'S DEBTS AND MAY BE AFFECTED BY COMPOSITION BETWEEN COMPANY AND CREDITORS

EXTRAORDINARY ADMINISTRATION OF BIG BUSINESSES IN FINANCIAL DISTRESS

1979: LEGGE PRODI

**ELIGIBILITY: - 300 EMPLOYEES OR WORKERS
40 MILLION EUROS DEBTS
(SUBJECT TO VARIATION EVERY YEAR BY DECREE)
- INSOLVENCY**

**NOT A JUDICIAL PROCEEDING,
BUT AN ADMINISTRATIVE PROCEEDING**

**NOT A LIQUIDATION PROCEEDING,
BUT A REORGANIZATION PROCEEDING**

PROBLEMS OF LEGGE PRODI

- STATE AID

- COST OF REORGANIZATION EFFORT, IF REORGANIZATION DOES NOT SUCCEED, TO BE SUSTAINED BY CREDITORS

NEW EXTRAORDINARY ADMINISTRATION OF BIG INSOLVENT BUSINESSES

**1999: DECRETO LEGISLATIVO N. 270/1999 (SO CALLED
PRODI BIS)**

- ABOLITION OF STATE AID**
- REORGANIZATION EFFORT TO BE MADE
ONLY IF REORGANIZATION IS POSSIBLE**
- COURT TO DECIDE IF REORGANIZATION IS POSSIBLE**

STEPS

- ASSESSMENT OF INSOLVENCY SITUATION BY JUDGMENT
- AUTOMATIC STAY OF CREDITOR ACTIONS
- APPOINTMENT OF JUDICIAL COMMISSIONER

TASKS OF JUDICIAL COMMISSIONER

- KEEP THE BUSINESS AS A GOING CONCERN
(IF DEBTOR IS NOT LEFT IN POSSESSION)
- CHECK WHETHER REORGANIZATION IS POSSIBLE OR NOT,
AND WRITE A REPORT

CHOICE BETWEEN EXTRAORDINARY ADMINISTRATION AND BANKRUPTCY

COURT DECIDES (AFTER COMMISSIONER'S OPINION, AND CREDITORS', DEBTOR'S AND MINISTRY'S OBSERVATIONS) IF REORGANIZATION IS POSSIBLE

- IF IT IS POSSIBLE, OPENING OF EXTRAORDINARY ADMINISTRATION**
 - IF REORGANIZATION IS NOT POSSIBLE, ADJUDICATION**
- BANKRUPTCY**

OF

EXTRAORDINARY ADMINISTRATION PROCEEDING

APPOINTMENT OF AN EXTRAORDINARY COMMISSIONER (OR A PANEL OF THREE) TO REORGANIZE THE BUSINESS THROUGH:

- A PLAN OF ECONOMIC AND FINANCIAL REORGANIZATION (2 YEARS MAXIMUM)**
- LIQUIDATION OF BUSINESS UNITS, ACCORDING TO A PLAN TO KEEP THE BUSINESS AS A GOING CONCERN (1 YEAR MAXIMUM)**

**AFTER EXPIRATION OF THESE TWO TERMS WITHOUT SUCCEEDING IN REORGANIZING,
THE CASE IS CONVERTED TO BANKRUPTCY**

EXTRAORDINARY ADMINISTRATION OF “HUGE” BUSINESSES

2003: LEGGE MARZANO (SO CALLED PRODI TER)

**-DUE TO PARMALAT CRACK, IN ORDER TO AVOID THE RISK OF
BANKRUPTCY: PHOTOGRAPH-LAW**

**- A NEW KIND (OR A DIFFERENT FEATURE) OF EXTRAORDINARY
ADMINISTRATION WAS ESTABLISHED FOR “HUGE” BUSINESSES:**

- . 1000 EMPLOYEES AND WORKERS**
- . 1 BILLION EUROS DEBTS**

- IF A “HUGE” BUSINESS BECOMES INSOLVENT:

- . NO BANKRUPTCY**
- . NO GENERAL EXTRAORDINARY ADMINISTRATION ACCORDING
TO**

PRODI BIS (FOR BUSINESSES THAT ARE JUST “BIG”)

- . SPECIAL EXTRAORDINARY ADMINISTRATION**

FEATURES OF SPECIAL EXTRAORDINARY ADMINISTRATION

-IMMEDIATE OPENING OF EXTRAORDINARY ADMINISTRATION WITH APPOINTMENT OF AN EXTRAORDINARY COMMISSIONER

-OPENING THROUGH A DECREE BY THE GOVERNMENT

-NO PRELIMINARY STAGE OF OBSERVATION TO CHECK IF REORGANIZATION IS POSSIBLE

- EXTRAORDINARY COMMISSIONER TO FILE A PLAN OF ECONOMIC AND FINANCIAL REORGANIZATION, NO POSSIBILITY TO LIQUIDATE

-SHIFTING OF HUGE BUSINESSES' INSOLVENCIES FROM COURT TO MINISTRY

- ONLY DEBTOR MAY FILE, NOT CREDITOR

STEPS

-INSOLVENT HUGE BUSINESS ADMITTED TO EXTRAORDINARY ADMINISTRATION

-AUTOMATIC STAY

-APPOINTMENT OF EXTRAORDINARY COMMISSIONER TO FILE A REORGANIZATION PLAN

-PLAN TO BE AUTHORIZED BY MINISTER

COMPOSITION

EXTRAORDINARY COMMISSIONER
MAY FILE
FOR A COMPOSITION WITH CREDITORS

POSSIBLE CONTENT OF COMPOSITION OFFER

-SUBDIVISION OF CREDITORS INTO CLASSES

-DIFFERENT TREATMENT FOR DIFFERENT CLASSES

**-RESTRUCTURING OF DEBTS AND SATISFACTION OF
CREDITORS
THROUGH EVERY TECHNICAL DEVICE**

POWERS OF EXTRAORDINARY COMMISSIONER

- POWER OF ADMINISTRATION OF ESTATE AND BUSINESS**
- TASK OF FILING A PLAN OF REORGANIZATION**
- AVOIDING POWERS**

PLAN

-REORGANIZATION, NOT LIQUIDATION

-IF AUTHORIZED BY MINISTER, MUST BE ACCOMPLISHED AND SHOULD TAKE TO EFFECTIVE REORGANIZATION

-IF SO, PROCEEDING IS CLOSED

-IF NOT AUTHORIZED OR ACCOMPLISHED, A LIQUIDATING PLAN MUST BE FILED

-IF NOT POSSIBLE, BANKRUPTCY ADJUDICATION

STEPS FOR COMPOSITION

IF COMMISSIONER FILES FOR COMPOSITION,
HIS OFFER MUST BE ACCEPTED BY CREDITORS ALLOWED

COMPOSITION DEEMED ACCEPTED IF THE MAJORITY OF CLAIMS
HAVE ACCEPTED,
BUT A CRAM DOWN BY COURT IS POSSIBLE

CREDITOR IS DEEMED TO HAVE ACCEPTED
UNLESS EXPRESSLY VOTES AGAINST IT

IF COMPOSITION IS ACCEPTED,
AND APPROVED BY COURT THROUGH JUDGMENT,
JUDGMENT IS EXECUTORY
AND, ONCE RES JUDICATA, CASE IS CLOSED

“VOLARE CASE”

2005: VOLARE AIRLINES BECOME INSOLVENT

ELIGIBILITY FOR EXTRAORDINARY ADMINISTRATION INCREASED:

-FROM 1000 EMPLOYEES AND WORKERS TO 500

-FROM 1 BILLION EUROS INDEBTEDNESS TO 300 MILLION EUROS

**-REQUISITES DEEMED EXISTENT WITH REFERENCE TO GROUP
INSTEAD OF SINGLE COMPANY**

PARMALAT CASE

END OF 2003: PARMALAT CRACK DUE TO SEVERE LACK OF CASH

**IN ORDER TO PREVENT BANKRUPTCY RISK ACCORDING TO PRODI BIS
A NEW KIND OF PROCEEDING WAS ESTABLISHED BY URGENT DECREE**

**PARMALAT WAS ADMITTED TO THE NEW EXTRAORDINARY
ADMINISTRATION**

**A MANAGER WAS APPOINTED EXTRAORDINARY COMMISSIONER,
WHO WAS WELL KNOWN FOR HIS RESTRUCTURING AND
REORGANIZATION SKILLS (FERRUZZI-MONTEDISON CRACK)**

**AS PARMALAT WAS PART OF A BIG COMPANY GROUP,
THE EXTRAORDINARY COMMISSIONER FILED FOR ADMISSION TO
EXTRAORDINARY ADMINISTRATION OF MANY OTHER COMPANIES**

GUIDELINES OF REORGANIZATION PLAN

INDUSTRIAL GUIDELINES

GUIDELINES OF RESTRUCTURING OF DEBT

INDUSTRIAL GUIDELINES OF REORGANIZATION PLAN

PRESERVE INTEGRITY OF GROUP

MAKING THE GROUP MORE SIMPLE AND THIN

**INTRODUCE NEW RULES OF CORPORATE GOVERNANCE IN LINE WITH
INTERNATIONAL BEST PRACTICES**

**CONCENTRATE ON CORE BUSINESS, AND ONLY ON MAIN TRADE-
MARKS**

SELL NON-CORE BUSINESSES

GUIDELINES OF RESTRUCTURING OF DEBTS

**STARTING POINT: THE GOING CONCERN WOULD BENEFIT CREDITORS
THE WAY TO SHIFT BENEFIT FROM PROCEEDING TO CREDITORS**

**WAS TO BE THE SWAP OF DEBT AGAINST STOCK NEGOTIABLE IN
STOCK EXCHANGES**

**TECHNICAL INSTRUMENT TO REACH THIS GOAL
WAS THE SPECIAL COMPOSITION PROCEEDING BY LEGGE MARZANO**

**PECULIARITY: MOST UNSECURED CREDITORS WERE BOND-HOLDERS,
OFTEN NOT DEFINED BY NAME**

GROUP COMPOSITION OFFER

FILED IN AUGUST 2004

**ESTABLISHMENT OF A FOUNDATION (FONDAZIONE CREDITORI PARMALAT)
HAVING THE AIM
OF DISTRIBUTING THE SHARES OF ASSUNTORE TO UNSECURED CREDITORS**

**FOUNDATION TO BUY A COMPANY THAT WILL BE ASSUNTORE OF THE
COMPOSITION:
COMPANY READY FOR ADMISSION TO STOCK EXCHANGE MARKETS
(ASSUNTORE IS SOMEONE WHO PAYS THE DEBTOR'S DEBTS, AND RELIEVES HIS
ASSETS)**

**AUTHORITY FROM UNSECURED CREDITORS TO FOUNDATION TO SUBSCRIBE AN
INCREASE OF STOCK CAPITAL OF THE ASSUNTORE,
PROVIDING SET-OFF OF REDUCED CLAIMS WITH SUBSCRIPTION DEBTS**

**DISTRIBUTION OF SHARES OF ASSUNTORE TO ENTITLED UNSECURED
CREDITORS,
ACCORDING TO RECOVERY RATIOS PROVIDED FOR IN OFFER**

ACTORS

FOUNDATION IS CALLED “FONDAZIONE CREDITORI PARMALAT”

ASSUNTORE IS CALLED “PARMALAT S.P.A. – SOCIETÀ PER AZIONI” (SOCIETÀ PER AZIONI=LIMITED COMPANY)

STOCK OF ASSUNTORE: 120.000 EURO ENTIRELY OWNED BY FONDAZIONE, DIVIDED INTO 1 EURO SHARES

EFFECTS OF COMPOSITION

UNSECURED CLAIMS TOWARDS ALL GROUP COMPANIES
ARE REDUCED

ALL ASSETS OF GROUP COMPANIES
PASS TO ASSUNTORE
(I.A. FRAUDULENT ACTS AVOIDANCE SUITS AND TORT SUITS)

ASSUNTORE TO DISTRIBUTE 50% FUTURE EARNINGS
TO CREDITORS (NOW SHAREHOLDERS)
FOR THE FIRST 15 YEARS

COMPANIES OF THE GROUP
DISCHARGED OF ALL THEIR DEBTS

ASSUNTORE TO PAY CASH
PRIORITY CLAIMS
AND SECURED CLAIMS
WITHIN 180 DAYS OF APPROVATION BY COURT

ASSUNTORE TO INCREASE THE STOCK
FOR ALLOWED UNSECURED CREDITORS,
ACCORDING TO RECOVERY RATIOS DIFFERENT FOR EACH COMPANY

ONCE COMPOSITION IS APPROVED,
CREDITORS MAY ASK FOUNDATION FOR ASSIGNMENT OF SHARES ACCORDING
TO RECOVERY RATIOS

SHAREHOLDERS IN EXTRAORDINARY ADMINISTRATION

**NO SPECIAL EFFECT FOR SHAREHOLDERS
IF COMPANY FILES FOR EXTRAORDINARY ADMINISTRATION**

NO SPECIAL EFFECT EVEN IN CASE OF SOLE SHAREHOLDER

IMPORTANT EFFECTS IF ALSO SHAREHOLDER IS INSOLVENT

EFFECTS ON INSOLVENT SHAREHOLDERS

IF SHAREHOLDER IS ALSO INSOLVENT

**IN CASE OF ADJUDICATION OF COMPANY,
HE CAN BE ADJUDGED BANKRUPT,
BUT THE TWO CASES ARE COMPLETELY
DIFFERENT CASES**

**IN CASE OF EXTRAORDINARY ADMINISTRATION
OF COMPANY,
SHAREHOLDER AND COMPANY MAY BE
TREATED AS A GROUP**

SO

**SHAREHOLDER
MAY BE ADMITTED TO EXTRAORDINARY ADMINISTRATION
EVEN IF NOT BIG**

**CASES ARE CONNECTED AS ONE,
WITH ONE COMMISSIONER AND ONE JUDGE IN CHARGE OF THE CASE**

**ONE COMPOSITION MAY BE FILE
FOR SHAREHOLDER AND COMPANY TOGETHER**

TRANSFORMATION OF CREDITORS INTO SHAREHOLDERS

**FOR THE FIRST TIME IN ITALIAN LAW,
LEGGE MARZANO PROVIDES FOR THE TRANSFORMATION OF
CREDITORS INTO SHAREHOLDERS,
THROUGH CONVERSION OF LOAN CAPITAL TO RISK CAPITAL**

**CONSENT OF CREDITORS NOT NEEDED
(ON A MAJORITY BASIS
AND THROUGH CRAM-DOWN)**

ULTIMATE ALLOWANCE OF CLAIMS NOT NEEDED

**NOT NECESSARILY CREDITORS BECOME SHAREHOLDERS OF
DEBTOR COMPANY,
BUT ALSO OF OTHER COMPANIES OF THE GROUP
AND OF COMPANY PROPOSING AS ASSUNTORE**