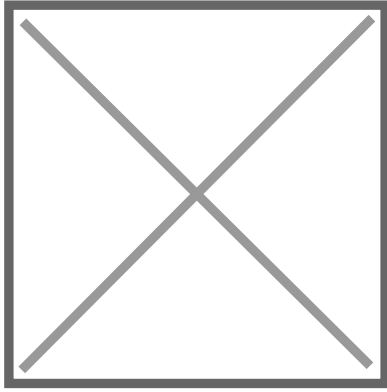




Italy – Shareholder Loans and Intra-Group Financing: Subordination under Article 2467 Civil Code

Descrizione

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Shareholder loans are widely used to finance Italian companies, particularly within closely held businesses and multinational corporate groups. Italian law, however, provides a specific safeguard for creditors: in certain circumstances, shareholder loans may be subordinated to the claims of other creditors.

Recent case law from the Italian Supreme Court (Corte di Cassazione) has clarified the scope of this rule and confirmed that it may also apply to intra-group financing structures.

The Legal Framework

The relevant provision is Article 2467 of the Italian Civil Code, which governs shareholder loans in limited liability companies (S.r.l.).

Under this rule, the repayment of shareholder loans is subordinated to the satisfaction of other creditors where the financing was granted:

- in the presence of an excessive imbalance between debt and equity, or
- in a financial situation in which a capital contribution would have been reasonable instead of debt financing.

The rationale behind the rule is to prevent shareholders from supporting an undercapitalized or financially distressed company through loans rather than equity, thereby shifting the business risk onto external creditors.

Supreme Court Guidance

In Cass. civ., Sez. I, 8 July 2025, no. 18599, the Italian Supreme Court provided important clarification regarding the application of the subordination principle in the context of corporate groups.

The Court confirmed that the rule contained in Article 2467, read together with Article 2497-quinquies of the Civil Code, may apply not only to loans granted directly by shareholders but also to financing arrangements within a corporate group where a company exercises direction and coordination over another entity.

In particular, the Court emphasized that subordination may apply even where the financing is structured through intermediate group entities. In such cases, courts must look beyond the formal structure of the transaction and assess its economic substance, including the role of the controlling company and the financial condition of the subsidiary.

If the financing effectively replaces a capital contribution that should have been made to support the company, the resulting claim may be treated as subordinated.

Practical Implications for Corporate Groups

The decision highlights the need for careful planning of intra-group financing arrangements involving Italian companies.

Parent companies financing subsidiaries in financial difficulty should consider that:

- intra-group loans may be recharacterized as subordinated claims;
- courts will focus on the economic substance of the financing rather than its formal structure;
- channeling financing through intermediate entities will not necessarily prevent the application of the subordination rule.

Where a subsidiary requires financial support in a distressed situation, equity injections may in some cases be more appropriate than shareholder loans.

Conclusion

The recent Supreme Court ruling confirms that Italian courts take a substance-over-form approach when assessing shareholder and intra-group financing.

For corporate groups operating in Italy, the decision serves as a reminder that shareholder loans granted in situations of financial imbalance may be subordinated to external creditors, particularly where the financing effectively replaces equity support.

Careful structuring of shareholder and intra-group funding remains essential to avoid unexpected limitations on repayment.

Tag

1. Foreign companies

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