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Judicial Liquidation of Ceased Entrepreneurs and the Statutory One-Year Time Limit

With Order no. 28458/2026, the Italian Supreme Court of Cassation, Civil Division, reaffirms that the one-year period under Article 33 of the Crisis and Insolvency Code runs strictly from formal deregistration from the Business Register and imposes sanctions for vexatious litigation

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Current Legal Framework as of 13 November 2026: Settled Supreme Court case law consolidates the principle whereby the statutory one-year time limit for opening judicial liquidation proceedings against an individual entrepreneur runs strictly from the date of formal deregistration from the Business Register, excluding any earlier extinguishing effect arising from de facto cessation of operations or transfers of business assets.

ABSTRACT

This article examines the regime governing the computation of the **statutory one-year time limit** for opening judicial liquidation proceedings against a ceased individual entrepreneur, in light of Order no. 28458/2026 of the Italian Supreme Court of Cassation, Civil Division. Maintaining substantive continuity with former Article 10 of the Italian Bankruptcy Law, Article 33 of the Code of Business Crisis and Insolvency anchors the commencement of the time-bar to the formal act of **deregistration from the Business Register**, precluding the debtor from proving an earlier de facto cessation of commercial activity. The analysis explores the underlying rationale of protecting third-party reliance, the constitutional soundness of the **asymmetric evidentiary regime** between debtor and creditors, the irrelevance of partial transfers of business branches where secondary registered activities remain active, and the stringent procedural repercussions concerning **aggravated liability for vexatious litigation** under Article 96 of the Italian Code of Civil Procedure.

Key Takeaways

- **Strict anchoring to the Business Register:** For all registered entrepreneurs, the starting date (*dies a quo*) of the one-year period under Article 33 of the Crisis and Insolvency Code runs exclusively from formal deregistration from the Business Register and admits no evidence of an earlier cessation by conduct (*per facta concludentia*).
- **Irrelevance of partial divestments and administrative licenses:** Neither the transfer of a business branch nor the loss of administrative operating permits triggers the one-year time limit where the enterprise retains additional registered branches or active business classification codes.
- **Inadmissibility filter and sanctions for vexatious litigation:** Persisting in challenging settled nomophylactic principles triggers accelerated dismissal proceedings under Article 380-bis of the Code of Civil Procedure and pecuniary sanctions for aggravated procedural liability under Article 96(3) and (4) of the Code of Civil Procedure.
- **Evidentiary asymmetry protecting third parties:** Whereas the debtor is strictly bound by the declaratory effect of commercial register publicity, petitioning creditors and the public prosecutor retain the right to prove the actual continuation of business operations following formal deregistration.
- **Timeliness of insolvency proceedings and publication date:** The running of the one-year period stops upon the publication of the judgment opening judicial liquidation, rendering irrelevant both the date on which the debtor filed the deregistration application and the date on which the judgment is entered in the register.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Corporate Crisis & Insolvency

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order of 5 April 2022, no. 11002 — Manifest unfoundedness of constitutional c

Legal Principle / Editorial Headnote

With regard to the opening of judicial liquidation proceedings against a ceased individual entrepreneur pursuant to Article 33 of the Code of Business Crisis and Insolvency, the statutory one-year time limit runs exclusively from the date of effective deregistration from the Business Register. Deregistration is a formal act that cannot be accomplished implicitly by conduct (per facta concludentia) nor replaced by the mere loss of administrative operating licenses or by transfers of business assets; the entrepreneur is barred from adducing evidence of an earlier cessation of activity, whereas only petitioning creditors and the public prosecutor are entitled to demonstrate the continuation of business operations subsequent to formal deregistration.

01. STATUTORY FRAMEWORK AND RATIONALE OF COMMENCEMENT FROM THE BUSINESS REGISTER

1.1 — Formalized Commercial Publicity, Protection of Third Parties, and Legal Certainty in Trade

Settled case law of the Italian Supreme Court of Cassation identifies **commercial publicity** as the mandatory cornerstone around which the entire legal regime governing business crisis after the cessation of economic activity revolves. The systematic interplay between **judicial liquidation and the ceased entrepreneur** finds its statutory foundation in Article 33 of the Code of Business Crisis and Insolvency, which expressly provides that collective liquidation proceedings may be opened within one year from the cessation of the debtor's activity, provided that the **state of insolvency** manifested itself prior to such cessation or within the following year. This codified formulation incorporates and refines the framework previously laid down by Article 10 of Royal Decree no. 267 of 1942, firmly linking the extinction of the enterprise to the formal safeguard of **deregistration from the Business Register**.

The rationale behind anchoring the temporal threshold to **statutory publicity** responds to a precise systemic requirement of legal balance: on the one hand, preventing the material dismantling of business assets from causing the abrupt disappearance of the debtor's **general patrimonial liability guarantee** to the detriment of the body of creditors; on the other hand, averting perpetual uncertainty over the stability of subjective legal positions attributable to the economic operator. As clarified in scholarly and judicial analyses concerning the judicial liquidation of companies in voluntary liquidation, preserving **amenability to insolvency proceedings** for a circumscribed period ensures the orderly conduct of commercial dealings, foreclosing asset-stripping practices or transactional maneuvers aimed at circumventing the **principle of collective creditor parity**.

It follows that registration in the **Business Register** does not carry a merely evidentiary or declaratory value of secondary importance, but rises to an essential prerequisite enabling third parties to acquire legal notice of the debtor's exit from the market. Until formal deregistration is completed, creditors' legitimate reliance on the existence and standing of the **sole proprietorship** remains fully deserving of judicial protection, preventing the entrepreneur from evading outstanding obligations merely by disposing of productive equipment or ceasing de facto business operations.

1.2 — The Asymmetric Evidentiary Regime: Preclusion for the Debtor and Prerogatives of Creditors

The mechanism established by paragraphs 2 and 3 of Article 33 of the Crisis and Insolvency Code institutes an **asymmetric statutory presumption**, drawing a sharp distinction between the procedural standing of the debtor and that of third-party creditors or the public prosecutor. For a registered entrepreneur, the cessation of business activity coincides strictly with the entry of **formal deregistration** in the Business Register, with no entitlement whatsoever for the debtor to prove an earlier moment of actual divestment of the enterprise. Conversely, the statute reserves exclusively to the petitioning creditor and the **public prosecutor** the power to demonstrate that the effective termination of economic activity occurred subsequent to formal deregistration, thereby postponing the **starting date (*dies a quo*)** of the one-year time limit.

This differential procedural treatment has withstood constitutional scrutiny and enjoys consistent confirmation in nomophylactic case law, which has ruled out any infringement of Articles 3, 24, and 111 of the Italian Constitution[1]. Such differentiation finds full causal justification in the **principle of legal appearance** and the protection of **third-party reliance**: allowing an entrepreneur to assert an earlier **de facto cessation** brought about implicitly by conduct (*per*

facta concludentia) and devoid of public registration would frustrate the core function of statutory commercial publicity and shift onto creditors the risk of the debtor's inertia or failure to complete formal regularization.

From an operational standpoint, case law specifies that the application of this rule tolerates no exceptions tied to the business owner's subjective conduct: an entrepreneur who has ceased trading in practice while failing to apply promptly for entry of deregistration cannot invoke the vacating of premises or the sale of machinery as an exonerating defense. Accordingly, the **burden of proof** resting on a petitioner acting within one year of deregistration is fully discharged by producing the Chamber of Commerce extract certifying the date on which the extinguishing entry was formalized, establishing an irrebuttable presumption of **amenability to collective insolvency proceedings**.

REGULATORY ASPECT	DEBTOR'S POSITION	CREDITORS' & PUBLIC PROSECUTOR'S POSITION
Commencement date (*dies a quo*)	STRICT FORMAL BINDING Runs mandatorily from the date of deregistration from the Business Register.	ENTITLEMENT TO REBUT Runs from deregistration, subject to proof of subsequent effective continuation.
Proof of earlier cessation	TOTAL PRECLUSION Evidence of de facto termination prior to formal Business Register deregistration is barred.	LACK OF LEGAL INTEREST Creditors have no legal interest in proving an earlier cessation of activity.
Proof of subsequent continuation	PRECLUSION The debtor cannot invoke its own continuation to alter a time limit unfavorable to itself.	FULL ADMISSIBILITY Admissible by any evidentiary means up to complete and absolute economic withdrawal.

02. PROCEDURAL BACKGROUND AND THE RULING OF THE SUPREME COURT

2.1 — Opening of Insolvency Proceedings Against the Sole Proprietorship Dibrani Alji and the Appellant's Defenses

The concrete application of the interpretive coordinates governing the relationship between **judicial liquidation and the ceased entrepreneur** finds an emblematic illustration in the dispute adjudicated by the Italian Supreme Court of Cassation, Civil Division, in Order no. 28458 of 5 November 2026[2]. The litigation originated from a petition brought before the **Court of First Instance of Ancona** by a former employee seeking payment of statutory severance pay accrued under an employment relationship with a sole proprietorship operating in the third-party road freight transport sector. At the outcome of the pre-insolvency investigation, by judgment filed in autumn 2023, the court declared the **opening of judicial liquidation** against the owner of the enterprise.

The debtor challenged the first-instance ruling by lodging a **reclamation appeal (*reclamo*) before the Court of Appeal** pursuant to Article 51 of the Crisis and Insolvency Code, pleading statutory forfeiture (*decadenza*) of the insolvency petition due to expiry of the **one-year time limit** set forth in Article 33(1) of the Code. In support of the

appeal, counsel argued that a **transfer of business agreement** executed in January 2022 had entailed the automatic loss of the **administrative operating licenses** required to carry out road transport, thereby fulfilling the statutory conditions for *ex officio* deregistration from the Business Register under Article 2 of Presidential Decree no. 247 of 2004. Nevertheless, the territorial Court of Appeal of Marche dismissed the challenge by judgment published in February 2024, pointing out that the appellant had neither proved nor timely alleged any completed formal deregistration from the Business Register.

In the ensuing appeal on points of law before the Supreme Court of Cassation, the debtor alleged infringement of Article 33(1) of the Crisis and Insolvency Code on the premise that the statutory wording refers solely to the **cessation of activity** rather than formal deregistration, while further complaining of the lower court's failure to examine the transfer of the business as an extinguishing event. Following chamber proceedings triggered after an **accelerated dismissal proposal** under Article 380-bis of the Code of Civil Procedure, the Supreme Court declared the appeal inadmissible, observing that in the absence of formal deregistration no issue of computing the one-year period even arises. Unlike a **distinct factual configuration** in which all business operations have been wholly discontinued and removed from the register, the continued existence of an active registration for a secondary line of business (construction site preparation) rules out at the root any hypothesis that the entrepreneur had ceased to exist.

03. JUDICIAL LIQUIDATION AND CEASED ENTREPRENEURS: INTERPRETING ARTICLE 33 OF THE CRISIS CODE

3.1 — From the Bankruptcy Law to the Crisis Code: Continuity of the Commercial Publicity Principle

The transition from the former Italian Bankruptcy Law framework to the Code of Business Crisis and Insolvency has left intact the **nomophylactic architecture** consolidated to safeguard legal certainty in commercial transactions. In defining the scope of application of collective liquidation proceedings with respect to a **ceased economic operator**, Article 33 of the Crisis and Insolvency Code substantially reproduces the rules of repealed Article 10 of the Bankruptcy Law, preserving strict interpretive continuity. Completion of **deregistration from the Business Register** carries constitutive value as regards the enforceability of the extinguishing event against third parties, barring the attribution of anticipatory legal effects to purely material conduct or decisions confined within the debtor's internal sphere.

Supreme Court case law has repeatedly clarified that entering deregistration in the Business Register is a **formal act subject to public registration** that admits no functional equivalents inferred by conduct (*per facta concludentia*). Such rigor serves the specific purpose of guaranteeing the stability of **patrimonial debtor liability**, preventing an entrepreneur from evading collective insolvency jurisdiction by alleging *ex post* the discontinuance of productive operations or the closure of commercial premises. Unlike an unregistered enterprise, for a formally registered operator the **protection of legitimate reliance** on the part of the body of creditors prevails unconditionally over de facto business inactivity.

From this perspective, legal scholarship and judicial practice underscore that maintaining **collective insolvency rules** strikes an indispensable balance between the freedom to wind up business assets and creditors' rights. The termination of an enterprise cannot operate to the detriment of parties who extended credit relying on the proprietor's solvency as attested by entries in the **public commercial register**, thereby reaffirming the statutory declaratory effect of both corporate and individual register filings.

3.2 — Business Transfers and the Performance of Winding-Up Acts After Deregistration

The evidentiary bar established by the legal order operates with equal force where the debtor has entered into transactions disposing of the business complex. Settled case law holds that selling or **contributing a business branch** does not bring about the premature extinction of the enterprise whenever the operator retains registered title to other lines of activity. Triggering the one-year grace period requires an **absolute and effective withdrawal** from economic operations, which is lacking whenever the entrepreneur continues to perform even purely winding-up acts causally connected with prior business management[3].

> Formal deregistration from the Business Register marks the impassable boundary of insolvency jurisdiction: the entrepreneur cannot dissolve creditors' patrimonial guarantee by pleading de facto cessation, whereas third parties retain the right to prove continued material operations.

This rule applies uniformly both to sole proprietors and to collective entities or **partnerships**, with respect to which transfers of partnership shares or asset liquidation acts produce no early extinguishing effect in the absence of formal deregistration[4]. Insolvency law rules out any possibility that breaking up business assets may serve as a protective shield against creditors' petitions, harmonizing fully with the principles developed in relation to corporate dissolution and judicial liquidation.

In terms of **litigation and advisory strategy**, counsel advising an entrepreneur must therefore stress that merely selling capital equipment does not insulate the debtor from judicial liquidation where social security or wage liabilities remain unpaid. Winding-up conduct must lead to the formal settlement of open positions and the immediate closure of the Chamber of Commerce registration, since the one-year time-bar provides no shelter while registered operations or pending contractual relationships subsist.

3.3 — Irrelevance of the Filing Date of the Deregistration Application and Timeliness of Insolvency Opening

A matter of primary significance in insolvency litigation concerns the exact temporal determination of both the **starting date (*dies a quo*)** and the final deadline by which the opening judgment must be handed down. Nomophylactic authority establishes that the one-year period runs exclusively from the day on which the Business Register office formally executes the entry of deregistration, rendering wholly irrelevant the earlier date on which the debtor filed the **application for deregistration**[5]. Administrative processing times required by the Registrar of Companies cannot operate to the detriment of third parties, for whom the statutory presumption of legal notice takes effect solely upon actual public registration.

With regard to the timeliness of the judicial ruling, case law identifies the **final date (*dies ad quem*)** as the date of **publication of the judgment** opening collective liquidation proceedings, while the subsequent annotation of that judgment in the Business Register has no bearing on compliance with the time limit. Where expiry of the one-year period is imminent, the insolvency court holds the power to shorten the statutory appearance deadlines set for summoning the debtor, since the urgency of preventing **statutory forfeiture (*decadenza*) of the insolvency action** constitutes valid grounds for compressing pre-insolvency hearing schedules.

A clear operational guideline ensues for any creditor preparing to file a petition for judicial liquidation: continuous monitoring of **Chamber of Commerce extracts** makes it possible to pinpoint the exact running of the three hundred

and sixty-five available days and, where necessary, to request an urgent scheduling of the pre-insolvency hearing lest clerical delays frustrate access to **collective insolvency protection**.

04. OPERATIONAL ISSUES AND PRACTICAL GUIDANCE FOR LEGAL PRACTITIONERS

4.1 — When Exactly Does the One-Year Time Limit Begin to Run for an Underegistered Sole Proprietor?

The statutory one-year time limit for opening judicial liquidation does not begin to run until effective deregistration of the individual entrepreneur from the Business Register has been formally completed. Neither the mere de facto discontinuance of commercial operations nor the loss of administrative operating permits suffices to trigger the running of time under Article 33 of the Code of Business Crisis and Insolvency.

From a **defensive advisory standpoint**, legal assistance provided to a business proprietor must begin with a thorough preliminary inspection of the **historical Business Register extract**. An entrepreneur seeking to circumscribe exposure to collective insolvency risk must attend with the utmost diligence to filing the **deregistration application** and verifying its entry, refraining from relying on any purported extinguishing effect of private transfer agreements or on pending *ex officio* deregistration procedures that have not yet culminated in a final entry. So long as registration subsists even for a secondary activity code, the debtor remains amenable to judicial liquidation without temporal restriction.

As a matter of **procedural strategy**, pleading expiry of a limitation period (*prescrizione*) or statutory forfeiture (*decadenza*) of the insolvency petition on the basis of the physical dismantling of the business amounts to a defense devoid of legal merit. Case law bars the court from conducting a factual inquiry into the cessation of trading at variance with the **formal entries** of the register, placing on debtor's counsel a preliminary duty to verify the regularity of administrative filings before raising procedural objections destined for dismissal.

4.2 — What Evidentiary Burdens Rest on a Creditor Petitioning More Than One Year After Deregistration?

Where a petition to open insolvency proceedings is lodged more than one year after formal deregistration of the enterprise, the **allocation of the burden of proof** shifts entirely onto the petitioning party. Pursuant to Article 33(3) of the Crisis and Insolvency Code, the petitioning creditor or the public prosecutor bears the burden of providing full proof that the **effective cessation of economic activity** took place subsequent to formal registration of deregistration. Such demonstration may be furnished by any evidentiary means, including serious, precise, and concordant **circumstantial presumptions** drawn from commercial reality.

Trial courts attach weight for this purpose to a wide range of factual indicators symptomatic of continued business operations: issuing or settling **commercial invoices**, executing contract renewals with customers, operating **bank accounts held in the firm's name**, maintaining leases on business premises, or pursuing out-of-court collection of trade receivables. As examined in legal scholarship addressing the continuity of patrimonial guarantees and the ascertainment of insolvency[D1], the material continuation of enterprise operations halts the running of the one-year period, enabling creditors to invoke **collective insolvency remedies** effectively.

For the petitioning creditor, preliminary fact-finding must therefore focus on gathering banking, tax, and documentary records evidencing the performance of **acts of economic management** subsequent to the date of deregistration. Failing such rigorous proof, the petition for judicial liquidation will be declared inadmissible due to **statutory forfeiture (*decadenza*) upon expiry of the statutory time-bar**, foreclosing collective liquidation of any residual assets.

05. CONCLUDING REMARKS AND PUNITIVE SANCTIONS FOR VEXATIOUS LITIGATION

The legal framework delineated by the order under review offers clear confirmation of the systemic coherence of Italian insolvency law, reiterating that the intricate relationship between **judicial liquidation and the ceased entrepreneur** leaves no interpretive loopholes open to opportunistic conduct. The formality of **deregistration from the Business Register** stands as an insurmountable bulwark protecting third parties: an economic operator who elects to benefit from registration in the **public commercial register** cannot evade the attendant statutory publicity duties by seeking to backdate the extinguishing effects of business closure on the strength of factual circumstances or material discontinuances unknowable to the general public.

Of particular practical significance is the stern warning addressed by the Supreme Court to legal practitioners regarding **aggravated procedural liability**. Faced with a reasoned accelerated dismissal proposal issued pursuant to Article 380-bis of the Code of Civil Procedure, the debtor's election to request adjudication by a full judicial panel while reasserting defenses manifestly contrary to settled case law triggered statutory sanctions for **vexatious litigation**[2]. Ordering the appellant to pay EUR 10,000 to the respondent insolvency receiver under Article 96(3) of the Code of Civil Procedure, alongside a further pecuniary penalty of EUR 2,500 payable to the **Fine Fund (*Cassa delle ammende*)** under Article 96(4) of the Code of Civil Procedure, underscores the judicial system's zero tolerance toward dilatory appeals aimed at delaying the opening or orderly conduct of collective insolvency proceedings.

Ultimately, the Supreme Court's ruling reinforces the imperative of safeguarding **legal certainty in commercial dealings** and ensuring the expeditious liquidation of insolvent estates. For practitioners entrusted with planning the winding-up of sole proprietorships or debt restructuring transactions, this nomophylactic guidance mandates timely and meticulous execution of every **Business Register filing requirement**, in full awareness that only formal entry of completed deregistration starts the one-year clock capable of permanently shielding the entrepreneur from **collective insolvency proceedings**.

References & Authorities Cited

Statutory Provisions

- Article 33 of Legislative Decree no. 14 of 12 January 2019 (Code of Business Crisis and Insolvency) — Cessation of the entrepreneur's activity and statutory one-year time limit for opening judicial liquidation
- Article 10 of Royal Decree no. 267 of 16 March 1942 (Bankruptcy Law) — Adjudication of bankruptcy of a ceased entrepreneur and commencement of the time limit from formal deregistration
- Article 2193 of the Italian Civil Code — Declaratory effectiveness of statutory commercial publicity and presumption of third-party notice of acts entered in the Business Register
- Article 2495 of the Italian Civil Code — Deregistration of companies from the Business Register and extinguishing effects vis-a-vis third parties

- Article 96 of the Italian Code of Civil Procedure — Aggravated procedural liability for vexatious litigation and pecuniary sanctions

- Article 380-bis of the Italian Code of Civil Procedure — Chamber procedure for the accelerated dismissal of inadmissible appeals before the Supreme Court of Cassation

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1. **Italian Supreme Court of Cassation, Civil Division, Order of 5 April 2022, no. 11002** — Manifest unfoundedness of constitutional challenges against former Article 10 of the Bankruptcy Law protecting third-party reliance, and irrelevance of notices of cessation filed prior to formal Business Register deregistration. Outcome: declared inadmissible. Para.: grounds of appeal.

2. **Italian Supreme Court of Cassation, Civil Division, Order of 5 November 2026, no. 28458** — Requirement of formal deregistration from the Business Register for the commencement of the one-year period under Article 33 of the Crisis and Insolvency Code, preclusion of debtor's evidence of earlier cessation, and sanctions for vexatious litigation. Outcome: declared inadmissible. Para.: sole ground of appeal.

3. **Italian Supreme Court of Cassation, Civil Division, Order of 7 July 2023, no. 19280** — Exclusive commencement of the one-year time limit from Business Register deregistration barring proof of earlier termination by the entrepreneur, alongside creditors' right to prove continued operations up to complete economic withdrawal inclusive of winding-up acts. Outcome: dismissed. Para.: grounds of appeal.

4. **Italian Supreme Court of Cassation, Civil Division, Order of 26 November 2025, no. 30984** — Application of exclusive commencement from formal deregistration to commercial partnerships and companies, and inability of business transfers or assignments of partnership shares to bring about early extinction. Outcome: declared inadmissible. Para.: grounds of appeal.

5. **Italian Supreme Court of Cassation, Civil Division, Order of 14 January 2025, no. 930** — Commencement of the statutory one-year period from the date of entry of deregistration in the Business Register and interruption of the period upon the publication date of the judgment opening liquidation proceedings. Outcome: dismissed. Para.: grounds of appeal.

Legal Scholarship Cited

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