



Law decree No. 59 of 3 May 2016, (hereinafter the **Decree**¹) was published in the Italian Official Journal on the same date and came into force on 4 May 2016.

The Decree introduces urgent measures concerning enforcement proceedings and insolvency procedures, as well as measures in favour of investors of banks under administrative compulsory liquidation.

In addition, the Decree provides for measures for supporting companies and for accelerating the credit collection, introducing significant innovations about security rights in order to facilitate the access to credit for companies.

The Decree shall be converted into law by the Italian Parliament by the 60th day following its publication or it will cease to be effective retroactively.

The legal discipline of the “non-possessory pledge”

Article 1 of the Decree introduces the regulation of the “non-possessory pledge”, which enables the debtor to grant a security on movable assets used for purposes connected with the business without losing the faculty to use it in the production process.

Such provision has modified the previous regulation of pledge over movable assets, according to which the creation of a pledge required the delivery of the asset or of the document that grants the exclusive availability of it (article. 2786 of the Italian civil code).

Pursuant to the new relevant regulation, the creation of the non-possessory pledge requires exclusively the registration in an electronic registry, set up by the Italian Tax Office, named “registry of the non-possessory pledge”; the pledge takes the degree and is enforceable against third parties and in the context of the insolvency procedures from the day of its registration.

The registration lasts ten years and it is renewable by a registration in the relevant registry, to be executed before the expiration of the tenth year².

In addition, article 1 provides that the pledgor is authorised to sell or, in any case, to dispose of the pledged assets and that, in such event, the pledge is transferred respectively over the product resulting from the transformation, or over the purchase consideration paid for the pledged asset replaced with such consideration; all these events do not represent a constitution of a new pledge.

The provision also specifies that in case of any event which enables the enforcement of the pledge, the pledgor is entitled to: (i) sell the pledged assets retaining the consideration to repay the credit; (ii) enforce the pledged credits; (iii) lease the pledged asset, utilising the amounts received under such lease to satisfy its credit to the extent that (a) it is registered with the Company Register and (b) the relevant agreement lists the criteria and methods of evaluation of the rental fee; (iv) appropriate the pledged asset to the extent that (a) it is registered with the Company Register and (b) the relevant agreement lists the criteria and methods of evaluation of the pledged asset and of the secured obligation. The formalities of inscription, creation, amendment, renewal or cancellation in such Register, as well as the access's formalities will be regulated by a Decree of the Ministry of Economics together with the Ministry of Justice, to be adopted by the 30th day following the entry into force of the Law of conversion of the Decree.

The so-called “Patto Marciano” as security for bank loans

Article 2 of the Decree introduces the possibility to secure the obligations arising from any loan agreement entered into by banks or other financial institutions and entrepreneurs through the assignment of a real estate property or of real estate rights owned by the entrepreneur or any third party, subject to the condition precedent of the debtor's default, as defined at paragraph 5 of article 2.

Such provision grants the lending bank a new and efficient security instrument as an alternative to the traditional mortgage and encourages the granting of credit, with the aim to avoid the long timing of the real estate enforcement procedure.

This provision disciplines the so-called “Patto Marciano”, which is an agreement under which a debtor, in order to secure a debt, transfers the ownership of a real estate (owned by him or a third party) subject to the condition precedent represented by the default of the debtor (the **Agreement**).

The Agreement may not relate to any real estate asset, which is used as principal residence by the owner or by spouses and relatives up to the third degree.

In case of default of the debtor as defined in the mentioned paragraph 5, the creditor shall notify to the debtor or (if different) to the owner of the real estate, as well as to those having any right deriving from the registration of a legal title to the real estate asset following the registration of the Agreement, a statement containing his intention to take advantage of the effects of the Agreement.

After sixty days from the notification of such statement, the creditor shall ask to the President of the Tribunal of the place where the asset is located, to appoint an independent expert for the issuance of a sworn evaluation report about the real estate right under the Agreement.

In the event of any dispute on such third party evaluation, the creditor is entitled to obtain the protection set forth by the Agreement in any case and the potential validity of such objections will only affect the amount to be returned by the creditor to the owner of real estate right after having satisfied its credit (if any).

The Decree provides also that the Agreement may be executed as notarial deed, at the time of execution of any new loan agreement or, in case of on-going loan agreements, at the time of the relevant subsequent amendment.

Moreover, if the loan agreement is already secured by mortgage in favour of the creditor, the subsequent registered assignment of the real estate asset pursuant to article 2 will prevail over any transcriptions or inscriptions executed over such asset/right after the registration of the mortgage and prior to the registration of the assignment.

Finally, article 2 clarifies that it is possible to affect the transfer of the real estate asset/right even if such asset/right is levied in execution.

Register of credit enforcement and insolvency procedures.

According to article 3 of the Decree a digital register of credit enforcement and insolvency procedures (the Register) is established with the Ministry of Justice and it is accessible by the Bank of Italy “in the performance of its supervising functions, aiming at ensuring sound and prudent management of financial intermediaries and the overall financial stability” (article 3, paragraph 1).

In particular, the Register includes information and related documentation concerning: (i) the enforcement procedures on real estate asset; (ii) the insolvency procedure, the procedure of Court supervised reorganization, the compulsory administrative liquidation; (iii) the approval procedures of the restructuring agreement and recovery plans to the extent that published in the Company Register; (iv) the extraordinary administration; (v) the restructuring agreement procedures, consumer plan and liquidation of the assets.

The possibility to have access to the information contained in the Register varies in relation to the objective pursued by the Italian legislator: the information referred to the abovementioned procedures, and those regarding the timing and trends, will be public (to be identified with Ministerial Decree) and freely available; on the contrary, the information and the relevant documentation of each of the abovementioned procedures (to be identified with Ministerial Decree) will be included in the limited access section.

Provisions about enforcement proceedings

Article 4 of the Decree amends the content of the seizure, which now must indicate, *inter alia*, the following warning: “pursuant to article 615 paragraph 2, third period, of the Italian Code of Civil Procedure (ICCP), the opposition to the enforcement (i.e. the opposition through which the right of the plaintiff to proceed with the enforcement is challenged) is inadmissible if the sale or the award of the seized asset pursuant to articles 530, 552 and 569 of ICCP, has been ordered, unless the opposition is based on circumstances occurred or the filing subject proves his inability to timely file his opposition for reasons not ascribable to him”.

Second Paragraph of article 615 of ICCP was in fact coordinated with such provision.

The Decree limits to three the number of attempts of sale of the same asset. Should not the asset be sold by the third attempt, the judge must declare the *end of the enforcement proceeding*.

Article 4 provides that the judge has to grant the immediate enforceability of the judicial order to pay (*decreto ingiuntivo*) in relation to the credits that have not been opposed by the debtor.

Amendments to bankruptcy law

Article 6 of the Decree, aiming at the acceleration of the bankruptcy procedures, introduces the possibility to hold creditor meetings and hearings by using telematics means, if the judge deems it appropriate due to the bankruptcy liabilities and the number of creditors involved in the procedure.

Moreover, article 6 provides that the receiver may be dismissed if he is not compliant with the deadlines established for the distribution of the bankruptcy assets pursuant to article 110 of the Italian Bankruptcy Law.

Measures in favour of investors in banks in compulsory liquidation

Articles 8 and followings of the Decree provide for urgent measures for the refunding of investors in subordinated notes of the four banks which entered into administrative compulsory liquidation in November 2015 (i.e. Banca Popolare dell'Etruria e del Lazio, Banca delle Marche, Cassa di Risparmio di Ferrara, Cassa di Risparmio di Chieti)(the **Banks under Liquidation**).

Chapter II of the Decree contains the specific provision that the note holders that bought the subordinated notes in the context of a contractual relationship with the Banks under Liquidation by June, 12th, 2014 – date of publication by European Union institutions in the European official journal of Directive about recovery and resolution of bank crisis (BRRD) - and still held them on the date of the resolution related to the Banks in Liquidation, are entitled to ask for compensation to the Solidarity Fund with direct payment in presence of specific conditions or to have access to the arbitration procedure pursuant article 1, paragraphs from 857 to 860 of Law No. 208 of 2015. On the other hand, those who invested in subordinated notes after June, 12th, 2014 may have access to the arbitration procedure set forth by the so-called Italian Stability Law of 2016.

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