

# New enforcement procedure rules introduced by Law Decree n° 83/2015

Law Decree no. 83/2015 introduces urgent reforms to Insolvency Law, Civil Law, Civil Procedure Law and Court Administration. The reform is intended to boost access to financing for Italian businesses, for example, by streamlining and expediting credit enforcement procedures.

Law Decree 83/2015 (the "Decree") entered into force upon its publication in the Italian *Gazzetta Ufficiale* on 27 June 2015. The Decree introduced significant reforms in several areas including the enforcement procedure rules set forth in the third book of the Italian Code of Civil Procedure, which are discussed in this briefing note.

The reforms introduced by the Decree apply to enforcement procedures involving moveable and immovable property and are intended to streamline procedures for the sale of both types of property.

## Key reforms to enforcement and forced sale procedures

In enacting the recent reforms, the law-makers sought to make the sale procedure less time-consuming and more accessible, to strengthen the public notice requirements, to reduce the length of time required to complete steps within the procedure and to satisfy, also in terms of payment of the price to acquire the attached asset, creditors' claims more quickly to avoid depletion or excessive devaluation of the assets. The Decree amended the Code of Civil Procedure forced sale provisions, and the Civil Code provisions by inserting a new Article 2929 – *bis* to govern the forced sale of assets that are subject to restrictions or unavailability or transfers without consideration.

### ■ Enforcement procedures

- **New rules regarding public notice:** the Decree creates a judicial sales portal on the Ministry of Justice online platform where enforcement orders of interest to the public have to be posted. If the required public notice is not posted on the portal within the timeframe established by the judge, the judge will order, in accordance with the Decree provisions, the termination of the enforcement procedure. The public notice is posted by the professional appointed under the sale procedure or by the Commissioner or, otherwise, by the creditor who filed the petition. The technical procedures will be established by the director of automated information systems at the Ministry of Justice and will be accessible to the public in the "public sales portal" area of the website.
- **expedited enforcement proceedings:** pre-sale formalities will take significantly less time to complete post-reform. The most significant changes are the following:

## Key aspects

- New forms of notice to the public of sales will ensure greater dissemination of information
- Swifter proceedings
- Amended content of payment orders
- Simplified criteria to determine the market value of real estate
- Fewer auctions for the sale of real estate
- Buyers may take possession of the asset by providing a bank guarantee
- New restrictions on whether certain assets can be attached

## 2. New enforcement procedure rules introduced by Law Decree n° 83/2015

| Regulatory reforms   | Pre-Decree regulatory scheme | Post-Decree regulatory scheme |
|--|------------------------------|-------------------------------|
| Expiry of attachment (art. 497 Code of Civil Procedure)  | 90 days                      | 45 days                       |
| Petition for sale (art. 567 Code of Civil Procedure)   | 120 days                     | 60 days                       |
| Order authorising sale (art. 569 Code of Civil Procedure)  | 30 days                      | 15 days                       |
| Last day for a hearing following the issuance of the order authorising sale (art. 569, 1 <sup>st</sup> paragraph, Code of Civil Procedure) | 120 days                     | 90 days                       |

- **Non-compliance with the new requirements applicable to payment orders may result in voidness:** the payment order shall specifically advise debtors that they may, with the assistance of an independent person appointed by the court or a body acting upon its instructions (*organismo di composizione della crisi*), resolve over-indebtedness by entering into creditors' compositions or consumer debt plans.
- **Simplification of criteria to determine the market value of foreclosed real estate:** upon the Decree's entry into force, the enforcement judge may directly establish the value of real estate to be sold having regard to the market value. The market value will be established on the basis of the value per square metre, with appropriate adjustments made depending on the building situation, current use and condition, legal encumbrances, and any unpaid past due condominium payments. The obsolete calculation methods applied under the previous regulatory scheme will no longer be used.
- **Fewer auctions:** under the amended Article 573 of the Code of Civil Procedure, depending on the bids received after the first bidding round in sales without auction (*vendita senza incanto*), the enforcement proceedings judge may call a second bidding round starting with the highest price submitted by the bidders with the intention of maximising the sale profit. If no higher bids are submitted by the bidders the enforcement proceedings judge may award the property to the highest bidder from the first bidding round and therefore avoid having to sell the property by auction (*vendita con incanto*) (with considerable benefits in terms of fewer auctions and less time spent to sell the property). Judges can only award the property to the highest bidder, if they believe no better price will be achieved through a sale by auction.
- **New form of early possession:** buyers of the asset being sold who cannot immediately pay the entire purchase price may seek and obtain authorisation to take advance possession before having paid the entire price, by providing a first demand bank guarantee to secure the subsequent payment.
- **Conversion of the foreclosure "to a payment schedule":** under the Decree the debtor may seek conversion of the foreclosure by substituting the attached assets or receivables with a cash amount, which may also be repaid according to a payment schedule.
- **New restrictions on the garnishment of pensions generally and salaries paid by direct deposit:** under the reform, a new ceiling is introduced on the amount that can be garnished in respect of pensions generally and pensions and salaries paid by direct deposit to a bank account. Under the new Article 545 of the Code of Civil Procedure pensions can only be garnished up to the limit of two times the maximum monthly social security cheque amount while any excess may be garnished up to the limit of one fifth, as provided under the previous rules. With regard to amounts paid by direct deposit (pension or salary or other amounts), the ceiling is three times the social security cheque amount if the deposit is made before the account is garnished. If the deposit is made after the account is garnished, the ceiling is one fifth as provided under the previous rules. Non-compliance with these provisions will render the garnishment partially ineffective and the non-compliance may be raised by the court of its own motion (*ex officio*).

### ■ Forced sale of assets carrying restrictions or unavailability or alienation for no consideration

Under the regulatory scheme introduced by the Decree, creditors who believe they have been prejudiced by a donation or a restriction on use generally, may commence forced sale proceedings without obtaining a judgment declaring the inefficacy of the transfer (claw-back action). Under the new Article 2929-*bis* of the Italian Civil Code, creditors prejudiced by an agreement whereby the debtor restricts availability of, or transfers for no consideration, real estate or movable

### 3. New enforcement procedure rules introduced by Law Decree n° 83/2015

assets registered in public registries after the date the receivable arose, may obtain an enforcement order and initiate a forced sale (even if the creditor has not yet obtained prior judgment declaring the ineffectiveness of the restriction or transfer). In order to do so, the creditor has to register the security interest within one year of the date the agreement giving rise to the alleged detrimental effect was registered. The debtor, a third party subject to a forced sale or any other interested person may raise an objection or defence under Title Five of Book Three of the Code of Civil Procedure.

#### Brief Comparison

The desire of the Italian legislature to replicate legal models previously experimented with in Europe is leading to greater harmonisation with the current provisions of the national legislations of other European countries (such as for example Germany, France or Spain). Most of these countries have put in place systems which are swifter and more certain as regards the satisfaction of creditors and have a clear advantage in the eyes of creditors who will be able to see their claims satisfied within as short a time frame as possible.

Some aspects of the amended legislation applicable to the process of enforcement in Italy seem to be inspired by formulas which been previously tested. Going beyond the analysis of the amendment streamlining the procedure which is essential for bringing Italian procedural law into compliance with the expectations of a reasonable length of trial, consideration should be given to the new practical measures adopted by the Decree including, purely by way of example, the option granted to the debtor to remedy the over-indebtedness through an-out-of-court settlement with creditors or advance transfer of possession to the purchaser without immediate access to liquidity. These new mechanisms replicate procedural schemes already in operation in other countries such as France which has put in place a procedure for a "friendly" sale between debtor and creditor and Germany which for some time now has allowed financially distressed creditors to pay by bankers' draft.

The legislative decisions made when the Decree was in the process of being approved seem inspired by the need to optimise the enforcement procedure with a view to improving its efficiency at national level and also to bring the legislation currently in effect into line with other European legislation.

#### Our comments

- **Fabio Guastadisegni**, Partner and Head of Litigation and Dispute Resolution comments: "*While we wait for the measures introduced by the Decree to become final upon their conversion into Law, we welcome the desire of the legislator to shorten the length of enforcement procedures thereby limiting the risk the attached assets will lose value. Creditors will also benefit from the reform, which will allow more expeditious satisfaction of their claims.*".
- **Tanja Svetina**, Partner, Banking & Finance, observes: "*The new enforcement procedure formula as conceived under the reform is without a doubt a significant step towards facilitating the entry of foreign investors interested in acquiring portfolios of receivables, especially non performing receivables, which can benefit the Italian banking system, and as a consequence the companies financed by it.*".

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