

# Italian Government launches new urgent measures aimed at boosting access to financing for Italian businesses (including a new "Italian floating charge") and improving bankruptcy and enforcement proceedings in Italy

Following the 2015 reforms introducing key amendments to shorten the length of Italian enforcement procedures and other relevant changes to Italian insolvency law, by its press release issued on 29 April 2016, the Italian Government has announced further measures aimed at supporting Italian businesses and reducing the length of time required to satisfy creditors' claims, as well as introducing a new type of "Italian floating charge" and other improvements to Italian insolvency law. Below is a summary of the relevant provisions based on the information available from the press release. Further details will become clearer once the decree approved by the Italian Government is published in the Italian Official Gazette (expected to occur within this week).

## **Changes to bankruptcy law and enforcement proceedings**

Following the measures introduced in 2015, the Italian Government approved further amendments to Italian insolvency law and to the Italian Code of Civil Procedure, to improve the efficiency of insolvency proceedings and to streamline credit enforcements.

In relation to insolvency proceedings, the new measures approved by the Italian Government introduce, *inter alia*, the possibility to (i) manage hearings and creditors meetings (*adunanze dei*

*creditori*) through an online platform (*piattaforma telematica*) instead of scheduling and holding physical meetings and (ii) revoke appointment of judicial commissioners (*curatori fallimentari*) that fail to comply with the mandatory terms set forth by the proceedings.

In relation to enforcement proceedings, the new measures approved by the Italian Government intend to further amend the Italian Code of Civil Procedure by: (i) reducing the procedural term to oppose the validity of enforcement acts (*opposizione agli atti esecutivi*), such as an order to pay (*titolo esecutivo*) or an attachment order (*precetto*), (ii) admitting the partial effectiveness of an injunction order, limited to the portion of the injunction that has not been challenged, including if the opposition has been filed by the debtor, and (iii) allowing the purchaser, in the context of a judicial auction, to obtain the assignment of the relevant asset to a third party named by the same purchaser.

Furthermore, the new measures approved by the Italian Government mandate the creation of a digital registry – held by the Ministry of Justice – whereby each and every insolvency and enforcement proceedings must be tracked and recorded electronically.

### Recognition of the "*Patto Marciano*" in loan transactions

Under Italian law, it is generally prohibited to agree that ownership of a pledged or mortgaged asset will be transferred to a secured creditor upon default of the secured debt. The prohibition known as "*divieto del patto commissorio*" is set forth in Section 2744 of the Italian Civil Code. Breach of the prohibition makes the agreement null and void.

The new measures approved by the Italian Government have expressly introduced the possibility for financial institutions and businesses entering into a facility agreement to agree a so-called "*patto marciano*". According to the "*patto marciano*"<sup>1</sup>, where a facility agreement is secured by real estate assets, the parties may agree (in a transfer agreement) that the transfer of the asset will become effective upon default by the borrower.

The value of the transfer of the assets will need to be determined by a third party, in accordance with a procedure previously agreed between the parties. If the value of the asset at the time of the transfer exceeds the outstanding debt, the creditor must return to the debtor any difference between the value of the secured asset and that of the secured obligations. If the value of the secured asset is lower than that of the outstanding debt, the debtor will no longer owe any amount to the creditor.

In case of a monthly repayment schedule, a default will be deemed to occur if at least three instalments remain unpaid for more than six months.

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<sup>1</sup> The "*patto marciano*" is an agreement, pursuant to which upon default, the secured creditor may acquire the ownership of the pledged asset, provided that: (a) the value of the asset is independently assessed (by means of an expert valuation (*perizia di stima*) or by reference to a published market price (*prezzo di listino*); and (b) the secured creditors returns to the pledgor any excess amount between the value of the pledged asset and the secured obligation.

In case of bullet repayment or non-monthly repayment schedules (for example, quarterly or half-yearly instalments) a default will be deemed to occur if one instalment only remains unpaid for more than six months.

The parties to an existing facility agreement may, if they wish, renegotiate existing arrangements and introduce in the existing facility agreement the "*patto marciano*" as described above.

### New "Italian" floating charge

Italian law generally recognises only certain types of security interest (rights *in rem*) which are expressly contemplated by law. These include pledges (*pegno*) over movable assets and mortgages over immovable assets (*ipoteca*).

General principles governing the granting of a "pledge" under Italian law require that the asset be transferred to the secured creditor and remain in its possession for the purpose of securing the secured debt (so-called "dispossession" principle).

Unless the specific requirements set forth under article 46 of the Italian Banking Act (*Testo Unico Bancario*)<sup>2</sup> had been met, under Italian law it was not considered to be 'commercially practical or acceptable' to take a pledge over movable assets because in order create the pledge, the asset needed to be delivered to the secured creditor and 'taken away' from business operations.

The new measures adopted by the Italian Government have introduced the so-called "*pegno non possessorio*", according to which the debtor will be able to grant a pledge over a movable asset used for the conduct of its business (for example, machinery) without losing possession of the asset.

The "*pegno non possessorio*" will need to be registered with a new "online register" to be kept by the Italian tax authority (*Agenzia delle entrate*), to be called "*Registro dei pegni non possessori*".

### Link to Italian Government's Press Release dated 29 April 2016:

<http://www.governo.it/articolo/comunicato-stampa-del-consiglio-dei-ministri-n-115/4604>

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<sup>2</sup> Article 46 of the Italian Banking Act (*Testo Unico Bancario*) regulates the so-called "*privilegio speciale*". This type of security, unlike the pledge, does not require the delivery of the asset to the secured creditor. It covers (among other things) machinery, equipment, raw materials, stocks and receivables from the sale of those items. The security is only available to banks as security for medium-long term loan transactions and (since 2014) to 'qualified investors' as security for medium-long term bonds (*obbligazioni*) or similar securities (*titoli similari*) issued by Italian corporate entities.

For more details on the 2015 reforms on Italian enforcement procedures and insolvency law, please refer to our Briefing Notes:

["New enforcement procedure rules introduced by Law Decree n° 83/2015"](#) (July 2015)

["The new "Restructuring agreement with financial intermediaries", other changes to pre-bankruptcy creditors' compositions \("\*concordato preventivo\*"\) and other reforms to Italian insolvency law"](#) (July 2015)

["The reform of pre-bankruptcy creditors' compositions, enforcement proceedings and debt restructuring agreements becomes law"](#) (August 2015)

[The reform on enforcement procedures becomes law](#) (September 2015)

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