

# Italy's Non-Possessory Pledge Over Movable Assets Goes Live

February 21, 2023

In 2016, Italy introduced a non-possessory pledge over movable assets (akin to a floating charge) (the "Floating Pledge").

The Floating Pledge was expected to transform commercial finance in Italy by facilitating the provision of asset-based facilities.

However, in order for market participants to create a Floating Pledge certain implementing regulations regarding the operation of a register on which the Floating Pledge could be registered (the "Register") were necessary.

On January 12, 2023, the Italian Inland Revenues Service (*Agenzia delle Entrate*, or IIRS) approved this long-awaited set of technical rules that were missing – which will be effective as from February 7, 2023. Access to the Register is expected to be enabled by the IIRS in the immediate future.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors.

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## Non-possessory pledge over movable assets

Pursuant to a decree-law adopted in 2016,<sup>1</sup> claims (whether owed to banks or other creditors) may be secured by way of a non-possessory pledge over the pledgor's movable assets, whether existing at the time the Floating Pledge is granted or acquired in the future. The assets comprising the collateral may be identified by reference to categories (as opposed to being individually identified) or aggregate values, and the Floating Pledge can extend to further-acquired assets in those categories. Registered movable assets (such as motor vehicles) are excluded from the collateral, however. It remains unclear<sup>2</sup> whether IP rights and share interests (particularly in limited liability companies (*società a responsabilità limitata*) can be encumbered by the Floating Pledge.

The Floating Pledge may secure existing as well as future claims, provided that a maximum secured amount is specified in the documentation.

Unless prohibited by agreement, until enforcement of the Floating Pledge, the pledgor has the right to continue using or disposing of the collateral in the ordinary course of its business. In the event of a disposal, the Floating Pledge extends to the proceeds or products of such disposal.

Creation of the Floating Pledge requires an agreement in writing, indicating, among other things, the identity of the pledgor, the debtor and the creditor.<sup>3</sup>

Perfection of the Floating Pledge requires registration with the Register. Registration may last up to 10 years but may be renewed.

When the Floating Pledge becomes enforceable, secured creditors may, among other things, (a)

dispose of the collateral through a competitive sales process run by an intermediary appointed by the parties (or, in case of disagreement, the court) and apply the proceeds as recovery (and pay any excess amount to the debtor) or (b) foreclose on the collateral up to the secured amount.

Finally, the secured creditor may also enforce the Floating Pledge pending bankruptcy liquidation proceedings (*liquidazione giudiziale*) once its claims have been admitted in the proceedings as secured claims.<sup>4</sup>

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<sup>1</sup> Decree-law No. 59 of May 3, 2016, as amended.

<sup>2</sup> In this respect, on the one hand certain commentators, prior to the latest IIRS implementing regulations, have argued that these should be excluded from the collateral as security thereon is subject to separate, specific registration requirements; on the other hand, the Treasury's regulation dated May 2021, which established the Register (subject to the then missing IIRS implementing regulations), in identifying the contents of the registration petition, makes express reference to IP rights, as well as to "shares or participations".

<sup>3</sup> Based on the letter of the decree, it is unclear how creditors need to be identified in connection with syndicated financings.

<sup>4</sup> On the contrary, the decree does not seem to allow enforcement of the Floating Pledge pending other insolvency or restructuring proceedings (such as *concordato preventivo*, a Court-supervised composition with creditors similar to US Chapter 11 proceedings).