

FINANCE | 9 May 2016

Italian Floating Charge Over Movable Assets

Law Decree No. 59 of 3 May 2016 introduced a new and long-awaited security instrument in the Italian legal framework: a floating charge over movable assets. The new security called “*pegno non possessorio*” is meant to strengthen the ability of Italian companies to get access to financings, introducing a more flexible security over all movable assets of a company.

Scope of the Security

The security can be granted by any company registered with the Italian Companies' Register to secure present or future obligations which are identified or can be identified up to a maximum secured amount.

The security can be provided by the principal debtor or any third party security provider.

All present and future movable assets related to the company's business can be subject to security except for those which need to be registered in a public register (e.g., vehicles). The secured assets must be either specifically identified or may be identified by reference to general assets' categories or aggregate value.

The security provider remains in possession of the secured assets and retains the ability to use, sell, replace or transform such assets. The security will automatically extend to transformed or replacing assets or to the proceeds deriving from disposal of the secured assets.

The security is not enforceable against lenders financing the subsequent acquisition of the secured assets from the security provider, to the extent such lenders benefit from a specific security over such assets (i.e., retention of title or pledge).

Perfection of the Security

In order to be enforceable, the security needs to be implemented through a written agreement and perfected through a filing with an electronic register managed by the Italian Tax Authority (*Agenzia delle Entrate*).

Such register will have to be set up pursuant to a decree to be enacted by the Ministry of Economy and Finance within 30 days from the conversion into law of the Law Decree.

Enforcement

Upon the occurrence of an enforcement event, secured creditors will have the ability to enforce the security in a variety of manners, including:

- sale of the secured assets through a competitive bid process, also using professional advisors;
- collection of the amounts due under the receivables subject to the security;
- lease of the secured assets and discharge of the secured obligations through the corresponding rental payments; and/or

- appropriation of the secured assets.

What's New?

- Improvement of existing security tools with the introduction of a new kind of floating charge security.
- Simplified procedure to identify the assets subject to security.
- Improved flexibility to automatically extend the security over future assets.
- More efficient enforcement routes.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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