



## The Italian floating charge (cont.)..... final Law has been approved

4 July 2016

On 2 July 2016 the law no. 30 June 2016 (hereinafter "**the Law**"), which converted Law Decree no. 59/2016 ("**the Decree**") with amendments, was published in the Italian Official Gazette, entering into force starting from yesterday.

With regard to the provisions concerning the floating charge, the repossession agreement and measures to facilitate credit recovery, the main changes can be summarized as it follows (please refer also to our previous [alert](#)).

(i) **Floating charge** (a new kind of pledge without dispossession of the debtor):

- the floating charge may be created over non registered movable assets - including **intangible assets as well as credits** - which relate to the business activity of the debtor
- the floating charge gives the debtors the possibility to secure existing and future claims granted to them or **to third parties**, to the extent determined or determinable, provided that a maximum amount is fixed
- in case of transformation of the secured assets the floating charge will be automatically created on the transformed asset; **if this is made up of different kinds of assets on which more floating charges had been created, each pledgee can enforce the pledge (i.e. the floating charge); he must then return to the third collateral provider the countervalue of the other kinds of assets forming the transformed asset**
- the floating charge may be enforced not only through the sale, the appropriation or the lease of the secured assets, but also through the enforcement or the **sale** of the credits
- **the debtor and any third collateral provider can file an opposition against the enforcement of the floating charge**
- **the floating charge may be enforced even in case the asset pledged is subject to a different enforcement procedure (the authorisation of the judge is needed)**
- **for matters not expressly provided for in the Law, the rules laid down in the Italian Civil Code for the pledge (art. 2784-2807) are applicable.**

(ii) **Repossession agreements** (executed at the time of the origination of the mortgage loan

or thereafter):

- the repossession will now be triggered in the event of non-payment for a period of **more than nine months** (instead of six), provided that in case of monthly instalment repayment plans the nine months period starts from the non-payment of three (also non consecutive) instalments. If the debtor has already refunded at least the 85% of the loan received at the expiration date of the first of unpaid instalments, the repossession will be triggered **after twelve months** (instead of nine)
- **with respect to third creditors, the repossession agreements have the same legal effect of mortgages.**

(iii) **Enforcement and insolvency procedures.** As briefly explained in our previous [alert](#), the Decree had made some amendments both to the Civil Procedure Code and to the Insolvency Act; the Law has provided for further amendments:

- **the judge can order the debtor to immediate release to the assignee the attached real estate asset with no burdens for the assignee (the order is appealable); therefore, all the movable assets and documentation belonging to the debtors must be removed**
- **the judge can authorize the temporary distribution, even partial, of the amounts obtained by the enforcement procedure to the creditors who don't have an enforceable title yet**
- **there is now the chance for the eviction to be conducted by a judicial custodian – a private professional – instead of a judicial officer; tenants of a house rented by a "rent to buy" contract can be evicted in case they stop pay the monthly rent (as laid down in art. 23, Decree Law no. 133/2014)**
- **within an enforcement proceeding on real estate assets, after that four auctions** (instead of the previous three) **have not taken place** because there were no bidders, the judge shall fix a starting price which can be up to 50% lower than the one of the previous auction

(iv) **Disposal of company credits:** the Law includes an amendment to Law 52/1991 art. 1, concerning the sale of credits related to business activities. Now the purchase of such credits **managed by an ad hoc company may involve:**

- **credits, towards third parties, owned by subjects of the same group**
- **credits, towards subjects of the same group, owned by third parties.**

We are pleased to further discuss with you. If you are interested in obtaining further clarification please contact [Andrea Arosio](#), [Francesco Faldi](#), [Ettore Consalvi](#) or your usual contact at Linklaters.