

**NEWSLETTER N.1/ AUGUST 2016****NON-POSSESSORY PLEDGE, “PATTO MARCIANO” AND BANKS: DEFINITIVE MEASURES TO EASE DEBT RECOVERY.**

Law June 30, 2016, n.119, entered into force last July 2, has converted, with amendments, law decree May 3, 2016, n.59, providing “urgent regulation in regard with executory and insolvency procedures, also in favour of investors of insolvent banks”, finalizing certain innovative measures, introduced by way of urgency in light of the most recent financial news.

Such measures concern the non-possessory pledge on personal property (*pegno mobiliare non possessorio*) and the so called “*patto marciano*”.

The underlying common ratio for both provisions, stated by the Minister of Finance, entails the possibility for banks to “employ simplified and quick procedures to recover sums loaned to third parties in case of missed payment of installments”, in order to create “greater balance margins to grant loans to businesses”.

**THE NON-POSSESSORY PLEDGE**

The **non-possessory pledge** excludes the constitutive requirement of dispossessionment, and allows the debtor to continue to use the asset – for instance, an industrial machinery – for the purpose of its business activity in order to maintain or even increase its revenue, and, therefore, possibly increase the overall guarantee for the benefit of its creditors.

The possibility to employ such kind of guarantee is conditioned on the evidence of specific requirements, both objective and subjective.

In particular, the legislation above mentioned allows “**businesses registered with the companies’ registry**” (not only companies, but also individual businesses) to grant a non-possessory pledge on “**personal property, also intangible property, serving the purposes of their business activity**”, and, thanks to an extension included at the time of conversion of the law decree, also on “**receivables related thereto**”; this, as guarantee of “**the loans granted to the same (businesses), present or future, whether known or unknown, along with a maximum guaranteed amount provision**”.

The lack of dispossessionment is counterbalanced with specific formalities and publicity requirements for the purposes of the valid constitution of the non-possessory pledge.

In respect with the formalities, “**the agreement granting the pledge is deemed void unless agreed upon in writing**, describing the lender/creditor, the debtor and the possible third party granting the pledge, the pledged asset, the obligation guaranteed and the maximum guaranteed amount”. In respect with the publicity requirements, the “non-possessory pledge is granted exclusively by way of registration in the electronic registry” held by the Tax Agency. The registration lasts ten years, and it is renewable at the expiration.

**THE “PATTO MARCIANO”**

The so called “*patto Marciano*”, much as like the non-possessory pledge, represents an innovative kind of guarantee, now regulated by **article 48 of the Consolidated Law on Banking**, defined as “Loans to businesses guaranteed by a conditioned transfer of real estate asset”.

Therefore, today, a “**loan agreement entered into between a business and a bank or other entity** authorized to grant loans to the public **for the purposes of article 106**” of the Consolidated Law on Banking, “**may be guaranteed by the transfer**, in favour of the lender/creditor or of a company controlled or affiliated with the same ..., **of the property of a real estate asset** (save for the so called “main home”) or of any other real estate right of the business or of a third party, conditioned upon a breach of the obligations of the debtor”. In case of breach, the lender/creditor “has the right to execute the agreement for the protection of its rights ..., so long as the difference between the estimated value of the real estate asset and/or related rights and the amount of the outstanding debt plus the transfer cost is returned to the owner”.

The *patto marciano*, ultimately, allows the bank or the financial intermediary thereto to be granted the **assignment, out of court, of the real estate assets pledged as guarantee for the financing**. In accordance with the estimates of the Minister of Finance, the periods for real estate judicial proceedings related to the repossession of an asset would drop from an average of 40 months to only 7/8 months.

The *patto marciano* can be entered into both at the time of a new loan agreement, and in respect with agreements that have already been entered into, **during renegotiation** of the original terms and conditions. For the purposes of protections from third party possible claims, the *patto marciano* shall be registered in the competent real estate registry.