

Italy

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Acquisition of real estate

1 Legal system

How would you explain your jurisdiction's legal system to an investor?

The Italian legal system is based on civil law, judges being only subject to the law and not being bound by any precedent superior court's pronouncement, with the exception of rulings of the Constitutional Court. However, although not binding, certain interpretation of law provisions issued by the Supreme Court have great authority and are rarely disregarded by ordinary judges.

Court disputes involve three levels of jurisdiction: the judgment of a first-instance court (*tribunale di primo grado*) can be appealed at a higher court level (*corte d'appello*), and then up to the Supreme Court, which is only competent to preside over the proper application of the law in the preceding degrees.

Pursuant to article 117 of the Italian constitution, there are two levels of laws in Italy: state and regional. The laws affecting real estate are 'state' if referring to general rules regarding building construction, trade and environmental issues and 'regional' (applicable only in the territory of the region) if referring to town planning matters or if connected to particular local issues.

A party can obtain an injunction only with regard to credit rights and when certain requirements have been fulfilled. In cases of extreme urgency, running the risk of irreparable damages, injunctions may be temporarily issued without any examination of a party.

In Italy, most agreements relating to real estate issues are subject to filing with the Land Register or other authorities, and must therefore be in writing.

2 Recording conveyance documents

What are the legal requirements for recording conveyance documents?

Under Italian Law, contracts whose object is the creation, transfer, amendment or extinction of in rem rights over real estate properties must be in writing. The public deed of transfer, to be executed in front of a notary public, is mandatory, being a requisite for the registration of the property transfer with the Land Register, pursuant to article 2643 of the Italian Civil Code. It is the only document capable of transferring the ownership of real estate assets.

The notary fees are approximately 2 to 3 per cent of the total declared value of the property.

The purchase of an Italian real estate asset is subject to registration tax, cadastral tax, mortgage tax and VAT, which amounts may vary depending on the real estate property and its destination.

3 Foreign investors

What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

Apart from obtaining a tax code, which is a tax identification number necessary for the sale and purchase of real estate properties, there are no legal restrictions on property ownership in Italy.

4 Exchange control

If a non-resident invests in a property in your jurisdiction, are there exchange control issues? What about return of capital?

There are no exchange control issues in Italy. Capital can be repatriated, but the application of Italian taxes to the capital gain resulting from the transfer of the property is possible on the basis of the form of the entities used.

5 Legal liability

What types of liability does an owner of real estate face? Is there a standard of strict liability and can there be liability to subsequent owners? What about tort liability?

From a statutory point of view, the buyer can face town planning liability. In this case, if the property has been constructed without a valid building permit or not in compliance with such, the owner (whoever is the owner at that moment) may be faced with administrative sanctions, such as economic sanctions and, in the most serious cases, demolition orders. Said administrative sanctions entitle the buyer to request from the seller reimbursement of the losses and damages arising from both economic sanctions or demolition orders, whether or not the infringements were perpetrated by the latter. Moreover, the sale and purchase agreement of an unauthorised building is null and void, therefore the buyer is entitled to the reimbursement of the price.

With reference to environmental liability, according to the 'polluter pays' principle, Legislative Decree 152/2006 provides that the polluter is bound to perform the land reclamation of the site at its own expenses. Should the polluter be unknown or should it not carry out the reclamation process, all necessary measures must be undertaken by the municipal or regional authorities; in this case the real estate property is subject to a 'real burden', therefore the owner (whoever is the owner at that moment) is bound to refund the authority that carried out the land reclamation up to the market value of the real estate property; in case of default by the owner, the authority is entitled to order the sale of the property to recover its expenses.

6 Protection against liability

How can owners protect themselves from liability and what types of insurance can they obtain?

In addition to an environmental due diligence performed by an environmental auditing company, the buyer can protect itself by carrying out an investigation on the Regional Environmental Registry Office and on the town planning certificate in order to ascertain whether the area is already involved in a clean-up procedure. Only clean-up procedures that have already been approved by competent authorities are filed in said Regional Registries and in the town planning certificates.

Environmental liability, construction risk coverage and rent loss coverage are available and frequent in Italy, but should the buyer be requested to refund the public authority with regard to clean-up expenses (by virtue of the 'real burden' – see question 5), the buyer will be bound to pay them in advance. The 'polluter pays' and 'real burden' principles are mandatory and cannot be repealed in a contract; as a consequence, the authorities, regardless of the contract provisions, will proceed against the polluter or the owner, who will have to comply personally with authorities' orders. Seller's representation and warranties will operate only between the two parties.

7 Choice of law

How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction?

In the Italian system, rules concerning conflicts of law (private international law) are set forth by Law No. 218 of 1995. With regard to real estate rights, Italian private international law provides the application of the law of the state in which the property is located (*lex rei sitae*).

8 Subject-matter jurisdiction

Does subject matter jurisdiction exist? Who are necessary parties? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

Subject-matter jurisdiction does exist in Italy, although not for real estate issues regarding civil and commercial law; certain issues regarding public law (environmental issues, building construction and town planning) are reserved for courts of special jurisdiction called administrative jurisdiction. The Italian Code of Civil Procedure sets forth the terms governing the participation of the foreign parties in a lawsuit. Pursuant to Italian law, it is not necessary for a party to be qualified to enforce remedies in the Italian jurisdiction.

9 Investment entities

What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

According to Italian corporate law, there are several different types of corporations with different organisational and governance models, which can be divided into two major classes: partnerships and capital-based companies. This second kind of entity is usually used to carry out real estate investments.

The most relevant difference between the two is their legal status, which allows shareholders of capital-based companies to benefit from limited liability. This means that capital based companies are considered autonomous legal entities granted 'full patrimonial

autonomy'. The shareholders' contributions entirely belong to the company, which becomes the legal owner of all the conferred assets (whether contributions in cash or in kind). As a consequence, obligations and liabilities deriving from the relevant business are covered exclusively by the mentioned company's assets, while in principle, shareholders' liability is limited to the contribution made.

Another way to make a real estate investments is through real estate investment funds, investing exclusively or predominantly in real estate immovable assets and equity interest in real estate companies. In this way, the investor does not directly buy real estate but the quotas of real estate investment funds. Under Italian law, investment funds are separate entities, managed by a *società di gestione del risparmio* duly authorised by the Bank of Italy and disciplined by the Regulation governing investors' participation in the fund.

10 Foreign investors

What form of entities do foreign investors customarily use in your jurisdiction?

Italian investors generally use limited liability companies and real estate investment funds. These structures are preferred by foreign investors as well, due to the pass-through aspects as well as liability protection. In particular, the use of real estate investment funds is advisable in connection with the flexibility of this kind of investment.

11 Organisational formalities

What are the organisational formalities of creating the above entities? What requirements does your jurisdiction impose on a foreign entity? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

Italian limited liability companies must be incorporated by means of public deed in front of a notary public. The founding members may either appear in person or (if the founding member is a legal person) by way of its duly authorised representative. Together with the deed of incorporation, the company must adopt articles of association in order to set out the rules for the internal organisation of the company. Within 20 days of the date of incorporation, the company must register the company with the competent Registry of Companies maintained at the local chamber of commerce. With the completion of this formality, the company acquires legal personality. The minimum capital provided by law for the incorporation of a joint stock company is €120,000 and for a limited liability company, €10,000.

The provisions regarding the real estate investment funds are set forth in Decree No. 58/1998. These financial instruments (OICRs – an acronym in Italian for collective managed fund vehicles) are independent assets divided into quotas and managed by an investment entity. The quotas of real estate funds are held by the investors.

Italian limited liability companies are subject to corporate income tax (27.5 per cent calculated on the net profit, adjusted for tax purposes) and regional tax (3.9 per cent, calculated on the gross operative margin). Dividends distributed by Italian companies to a foreign investors are not subject to taxation if the EU Parent Subsidiary Directive applies (where the foreign investor has to be a company, tax-resident in an EU member state and has to own a shareholding uninterruptedly for one year in the Italian company no lower than 25 per cent of its stock capital), otherwise, a withholding tax of 27 per cent applies. Such percentage can be reduced on the basis of the provisions of the tax treaty against double taxation signed by Italy. The sale of the shareholding (lower or equal to 20 per cent of the stock capital) owned by a foreign investor in an Italian liability company is not subject to taxation in Italy provided that the foreign investor is tax-resident in a state included in the White List or which allows an exchange of information. On the other hand, the sale of a

shareholding higher than 20 per cent is subject to corporate income tax (27.5 per cent on the 49.72 per cent of the amount of the capital gain), unless the provisions of the double taxation tax treaty provides that the capital gain is not subject to taxation in Italy.

Real estate investment funds are not subject to corporate income tax and regional tax, with the exceptions of:

- i real estate investment funds not listed, with assets lower than €400 million, whose number of participants is lower than 10 and 50 per cent of the quotas of the fund are not held by:
 - financial institutions;
 - foreign investors;
 - by companies or entrepreneurs; or
 - local authorities; and
- ii real estate investment funds not listed, with asset lower than €400 million, which are classified by Italian law as reserved or speculative, and more than two-thirds of their participants are:
 - individuals related by kin or marriage or affinity;
 - companies, controlled by individuals related by kin or marriage or affinity; or
 - trust, whose beneficiaries are individuals related by kin or marriage or affinity.

Real estate investment funds under (i) and (ii) are subject to a patrimonial tax of 1 per cent of the net accounting value of the fund. Financial income distributed by the funds and capital gains deriving from the sale of the quotas of the funds are not subject to taxation in Italy, provided that the owner of the quotas is a foreign investor, tax-resident in a state included in the White List or which allows an exchange of information with Italy; otherwise financial income are subject to a withholding tax of 20 per cent and capital gains subject to a substitutive tax of 12.5 per cent (20 per cent if quotas of the funds under (i) and (ii)).

12 Documentation

Does your jurisdiction or customs recognise a non-binding form of agreement? Is there a form of non-binding agreement before a contract? Is it customary to take the property off the market while negotiation of a contract is ongoing?

In Italy, non-binding letters of intent are often used as instruments of negotiation. Pursuant to article 1337 of the Italian Civil Code, parties must conduct the negotiations in good faith. Therefore, if one party breaches the provisions contained in the letter of intent, it may encounter pre-contractual liability. Residential real estate transactions often begin with a unilateral binding offer coming from the purchaser which, if accepted by the seller within a certain time frame, bounds both parties in entering into a separate, preliminary sale and purchase agreement. Deposit amounts are usually paid by the purchaser upon execution of both the binding offer and the preliminary agreement; such payments guarantee that the property is not easily taken off the market during negotiations.

13 Contract of sale

What are typical provisions in a contract of sale?

Following the unilateral binding offer mentioned above, the sale of real estate asset in Italy usually starts with the execution of a preliminary agreement, which is a private agreement (it is not executed before a public notary) whereby the purchaser and the seller undertake to sell and to buy the real estate asset.

The preliminary agreement must be in writing and it does not transfer the title of ownership over the asset, as its scope is to oblige the parties to enter into the deed of transfer.

Preliminary agreements contain the following:

- description of the real property to be sold;
- the purchaser's acknowledgement that it has visited the real property and that it met its approval;
- the guarantee that the real property is filed with the cadastre;
- the agreed price and the payment terms;
- the acknowledgement that the transfer of the title of ownership on the property will only occur after the final public deed of transfer;
- guarantees on hidden or latent defects, on the observance of urban rules; and
- the date for the execution of the deed of transfer; and the terms and conditions for the payment of price, the costs and the relevant taxes.

A seller typically makes certain representations and warranties to a purchaser. According to article 1537 of the Civil Code, when a specific real estate property has been sold with the indication of its measurement and for a price established on the basis of a certain sum per unit of measurement, the buyer is entitled to a reduction of the price if the actual measurement is less than indicated in the contract.

In most cases and according to standard practice, preliminary agreements provide that the purchaser pays the seller a guarantee deposit upon the execution of the preliminary agreement. The scope of this deposit is to secure the execution of the final deed of transfer. Therefore, if the purchaser breaches the preliminary agreement by refusing to execute the deed of transfer (without cause), the seller can retain the deposit. However, if the seller refuses to sell the asset, the purchaser is entitled to withdraw from the transaction claiming twice the amount of the deposit paid.

14 Environmental clean-up

Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

According to the 'polluter pays' principle, the polluter, regardless if it is the seller or the buyer, is legally bound to perform the clean-up of the polluted site at its own expense. The buyer may protect itself against environmental risks by obtaining indemnity from the seller or the tenant of the property may do so by addressing the seller or the tenant of the environmental responsibility arising from the activity carried out during the seller's or tenant's possession of the real estate. Alternatively, the buyer may subscribe insurance for the recovery of the clean-up costs, or request the vendor to hold funds in an escrow account or setting forth price adjustment clauses. Purchasing taxes such as registration, cadastral and mortgage taxes are normally paid by the buyer, but the parties can agree differently. The typical tax year begins on 1 January and ends on 31 December. Generally, until the closing date, the risk of loss lies with the seller. The buyer, as a remedy for possible breach of contract, may request the seller to deposit funds in an escrow.

15 Leases

What are typical representations and covenants regarding leases? Do they cover brokerage agreements and do they survive closing? Are estoppel certificates customarily required and can estoppel certificates substitute for representations?

Leases are governed by the provisions contained in articles 1571 to 1614 of the Italian Civil Code and by Laws No. 392/1978 and 431/1998 and several provisions are mandatory.

Generally, the landlord is obliged to guarantee that the premises remain fit for their normal or agreed use, and warrant peaceful enjoyment of the real estate asset for the duration of lease agreement.

With reference to the maintenance of the premises, unless otherwise set forth in the lease agreement, according to Italian law, the tenant is responsible for minor repairs and ordinary maintenance while the landlord is responsible for extraordinary maintenance.

The main obligations of the tenant are to take delivery of the asset and using it by the due diligence of the good pater familias in accordance with the provisions set forth in the lease agreement, pay the rent at the dates agreed in contract, and return the asset to the landlord in the same condition in which the tenant has received the property.

The estoppel certificate is not used in Italy.

16 Leases and mortgages

Is a lease generally subordinate to a mortgage pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a mortgage upon foreclosure? Do lenders typically require subordination and non-disturbance agreements?

Pursuant to the Italian law the position of the tenant is protected. According to article 1599 of the Italian Civil Code, a lease agreement can be opposed to a third person who has acquired the real estate, so long as the lease contract precedes the date of property's sale. In such a case, the lease contract remains valid until the expiration of the relevant term. The protection of the tenant is also expressly recognised by article 2923 of the Italian Civil Code regarding the forced sale of real estate as consequence of the enforcement of a mortgage.

17 Delivery of security deposits

What steps are taken to ensure delivery of security deposits to a buyer? How common is it to get a security deposit under a lease? Do leases customarily have periodic rent resets?

According to Italian law, security deposits shall not exceed three monthly installments. The deposit is returned by the landlord upon termination of the lease, provided that the premises have not been damaged by the tenant and that the latter has duly fulfilled all its obligations under the lease. Cash deposit may be substituted by a first demand bank guarantee.

According to Italian law, the rent may not be reset but may be yearly increased but such increase shall not be higher than 75 per cent of variation in the ISTAT index, which measures increases in living costs.

18 Due diligence

What is the typical method of a title search and is it customary to order searches? Is there something akin to title insurance and opinion letters? Does your jurisdiction provide statutory priority for recorded instruments?

Investor usually carry out technical and legal due diligence on title, building permits, leases and contracts relating to property. In particular the focus of the due diligence activity is on building permits, town planning certificate, seller's title of ownership, cadastral reference and urban planning information. Please also note that the analysis of the above-indicated documents depends on the kind of real estate transaction (sale, purchase or lease).

Title search is mainly carried out by the notary public, in particular by arranging a document (notarial report) that contains the results of the analysis on the Land Register verifying the history of the real estate property, the existence of mortgages and the existence of environmental issues.

Italian jurisdiction provides statutory priority for recorded instruments in establishing priority among creditors or subsequent purchasers. In particular, statutory priority arises from the point of time at which a right regarding the real estate is registered in the Land Register.

19 Reviews

Is it customary to arrange an engineering or an environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

In high-value real estate operations, inspections are normally carried out by environmental and engineering auditing companies on the relevant issues. Environmental inspections regard both documentation as well as material analyses on ground and water samples, in order to detect potential polluting elements. Engineering inspections are performed both on the provided documentation (building permits, town planning provisions, heritage restrictions, etc) as well as by the survey on the premises, in order to ascertain the compliance of the building with the applicable law provisions. Further to said investigations, the auditing companies issue a report aimed at highlighting potential critical issues. Environmental liability coverage is rarely granted by the seller; however, the buyer can ask for damages in the instance that the seller provided incorrect representations.

Environmental insurance is not very common in Italy.

20 Review of leases

Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

In Italian practice, lawyers always review lease contracts, verifying the terms and conditions regarding the duration of the agreements, the termination of the contracts, the maintenance of the real estate, the payment or increase of the rent, the insurance coverage, etc. This is mainly because leases are governed by mandatory provisions of law that can not be changed by the parties (by way of example, annual increases of the rent). Clients are generally pointed out on the different allocation of costs in the management of the property, by accurately breaking down the expenses that have to be borne by the landlord and those that have to be sustained by the tenant.

21 Other agreements

What other agreements does a lawyer customarily review?

Lawyers generally review all contracts related or connected to the sale or to the lease of real estate assets, such as the lease agreement, the guarantee package, possible agency or brokerage commissions, property and asset management agreements, loans and insurance policies.

22 Closing

How does a lawyer customarily prepare for a closing?

In Italy, closing of a real estate transaction occurs by a notary public drafting the public deed, which is the only document capable of transferring title and ownership on real estate. Prior to closing the deal, most of the undertakings in terms of representation and warranties have already be agreed upon in a preliminary agreement. Upon closing, the notary public drafts the deed giving evidence of the outcomes of the title search (notarial report) and verifies powers and authorities of each party signing the deed. If one of the parties is a company, the relevant powers are either provided in the by-laws or resolved in a board meeting and attached to the deed. The relevant powers might also be provided in a proxy. Powers have to be duly notarised and sometimes also apostilled.

Financing

23 Form of lien

What is the method of creating and perfecting liens?

When buying a real estate property, it is very common to secure the loan by means of a mortgage in favour of the bank. Mortgage loan agreements are drafted by the notary public since they must be filed with the local land register. Mortgagors and pledgors are preferred to other creditors and therefore paid beforehand.

24 Legal requirements

What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

In Italy, an authorisation is needed to grant loans to third parties. If the entity wants to be recognised as a bank, the Bank of Italy must give such banking licence. If the entity wants to be recognised as non-bank lending entity (that is of mezzanine or junior loans) than another kind of licence (pursuant to article 106 of the Italian Banking Act) is needed. In both cases, articles of associations must expressly include the facility of granting loans.

Loans granted by Italian banks (and only by banks, not also '106 vehicles') benefit from a favourable tax regime as they are subject to substitute tax, an umbrella tax levied at 25bps calculated on the secured amounts that covers any other tax applicable to loans and relevant security packages, should other conditions apply.

An ordinary security package usually includes mortgage over the property, pledge over shares, pledge over bank accounts, and a loss payee clause on insurance payments.

If the loan or the lending entity does not meet the requirements for the application of the substitute tax, mortgage registration tax is very expensive (2.5 per cent of the secured amount).

25 Interest

Is interest charged on a spread over LIBOR, Euribor or an equivalent? What rate of interest is unreasonably high in your jurisdiction and what are the consequences if a loan exceeds the reasonable rate?

Generally, spread is calculated over Euribor but really depends on the kind of loan (secured, unsecured, etc). For a mortgage loan granted by an Italian Bank the current average rate is Euribor +170. If the cap thresholds are exceeded, there might be an infringement of Italian law on usury (Law No. 108/1996), which may cause (also) the interest provision that is in excess of the legal maximum applicable interest amount to be null and void.

26 Enforcement

How are remedies enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding?

Pursuant to Italian law the enforcement of remedies goes necessarily through a judicial procedure, started by the holder of a 'writ of execution'. Pursuant to article 474 of the Italian Code of Civil Procedure, writs are, for example, a judgment, a promissory note or a public deed.

The enforcement is divided in several phases: notification of the deed directly enforceable, distraint of goods, seizure of real estate or seizure of other goods, compulsory sale and division of the proceeds of the compulsory sale among the creditors.

A creditor can realise all its collateral with one single judicial action. The creditors' rights generally become barred by statute after

10 years. The procedure can begin in the case of non-fulfilment of the debtor and such non-fulfilment must generally be assessed in a sentence issued by a judge.

27 Protection of collateral

What actions can a lender take to protect its collateral until it has possession of the property?

Under certain circumstances, the lender may ask the judge for specific conservative seizures that basically prevent the assets from being sold or otherwise disposed of by the debtor.

28 Recourse

Do the security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy filing?

It really depends on the type of security issued; some specific security documents, such as the mortgage loans, provide for recourse only on certain assets of the borrower.

29 Cash management systems

Is it typical to require a cash management system and do lenders typically take reserves?

Cash management systems are always required.

30 Credit enhancements

What other types of credit enhancements are common? What about forms of guarantee?

It depends on the kind of transaction and on the set of legal documents and in accordance with the requirements of each bank.

31 Covenants

What are commonly used covenants in loan documents? What is the difference depending on asset classes?

The loan contract is normally structured in two parts: in the first part (particular conditions to the contract), in addition to the description of the goods or financial services, all economic and financial data are indicated, including interest for late payment; in the second part (general conditions of the contract), the contractual clauses that discipline the entire loan relationship are indicated. In case of 'oppressive provision' clauses, which depart from the general principles of legal ordinance, they require specific written approval, which is obtained through a second subscription of the loan.

Other clauses usually inserted in a loan contract are the beginning of the budget plan for repayment, the method in which the funds are given, provisions relative to interest, the destination or use of the borrowed sum, in case the loan contract is for a sum of money destined for the purchase of a specific asset, the means of payment of the amount due, the expenses, taxes, interest for late payments, the early handover of the loan, the resolution of the contract and the jurisdiction and applicable laws.

32 Financial covenants

What are typical financial covenants?

All measures mentioned (LTV, debt and equity) and also other financial covenants are typical for real estate transactions, as are periodic financial reporting and periodic (annual) updated appraisals.

33 Bankruptcy

Briefly describe the bankruptcy system in your jurisdiction?

The general rules governing bankruptcy are set forth in Royal Decree No. 247/1942, the Bankruptcy Act, which was modified by Legislative Decrees No. 5 of 2006 and 169/2007.

The requirements for a declaration of bankruptcy are essentially the entrepreneurial nature of the debtor (a private commercial entrepreneur and not a small one) and the existence of insolvency status.

Pursuant to article 5 of the Bankruptcy Act, an insolvent entrepreneur, that is, an entrepreneur that is no longer in a position to duly comply with the obligations undertaken, shall be declared bankrupt. Insolvency is legally material only where it becomes manifest, which mainly happens in the event of repeated defaults that are objectively a serious sign of the entrepreneur's financial difficulties.

In accordance with articles 6 and 7 of the Bankruptcy Act, a declaration of bankruptcy may be applied for by one or more creditors, giving evidence of the debtor's insolvency, by the debtor or by the prosecuting attorney.

A court ascertaining the existence of the prerequisites set forth by the law shall deliver a decision declaring bankruptcy.

All creditors are entitled to take part in the distribution of the money collected from the liquidation of the bankrupt's property, according to the amount of the credit at the time of the declaration of bankruptcy. The rule of equality of creditors results in the prohibition for individual creditors to take individual enforcement actions against the bankrupt's property. Such rule of equality of creditors applies to unsecured creditors only and therefore does not apply to creditors whose credit is secured by any mortgage, pledge or lien.

34 Secured assets

What are the requirements of creation and perfection of a security interest? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

It depends on a case-by-case basis in accordance with the kind of security.

Update and trends

The last significant development was the introduction – duly completed at the beginning of 2008 – of a new vehicle for real estate investments, the listed real estate investment company (SIIQ).

The new vehicle is based on a favourable tax regime, partially reproducing institutions already adopted in other countries such as the REITS (the real estate investment trust, already existing in US and in Great Britain, and the SIIC adopted in France).

The special tax regime may only be adopted by Italian companies whose securities are listed on the Italian Stock Exchange, and able to demonstrate that they have fulfilled certain requirements provided for in law.

By end of 2008 there was only one SIIQ in Italy.

35 Single-purpose entity (SPE)

Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy filing, has the concept been upheld?

In Italy, usually lenders do not require that borrowers be SPEs. However, this type of entity is sometimes established to protect lenders on large, complex projects, when the lender has to be paid solely or almost exclusively out of the money generated when the project becomes operational. In this way, the lenders have additional protection because there are fewer creditors to compete for the money generated by the project. In the Italian scenario, lenders do not require that an independent director be appointed.



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