Renato Mangano[[1]](#footnote-1)

THE ITALIAN PARLIAMENT INTRODUCED A NON-POSSESSORY PLEDGE

The Italian Parliament passed Act of 30 June 2016 No 119 which contains both urgent prescriptions concerning individual and insolvency proceedings, and prescriptions in favour of savers having invested their money in banks which are now in liquidation (Disposizioni urgenti in materia di procedure esecutive e concorsuali, nonché a favore degli investitori in banche in liquidazione; http://www.normattiva.it). This statute, converting Law-Decree of 3 May 2016 No 59 with some changes, unpacked the contents of the much more ambitious project endorsed by the ‘Rordorf Commission’, and only introduced into Italian jurisdiction a form of non-possessory pledge which allows the pledger of some assets to maintain possession of them.

In particular, Act 119/2016 lays down that a businessman who is registered in the firm register may grant a non-possessory pledge in order to secure both his obligation and a third party obligation; that the secured claim may be both existing and future, both determined and determinable, provided that this claim refers to the grantors’ business and that the pledge agreement provides a cap on the maximum amount guaranteed (Art. 1.1). The pledge agreement must be concluded in writing (Art. 1.3); the pledge right may encumber both movables, even intangibles, referring to the grantor’s business, and claims either deriving from the grantor’s business or related to it. The encumbered assets may be both existing and future, both determined and determinable by reference to one or more product categories or to a total value (Art. 1.2). Act 119/2016 moreover establishes that, unless otherwise provided, the debtor or that third party who grants the pledge may both sell and transform the encumbered assets and that, if it is the case, the security right automatically passes to the sales proceeds and to that product resulting from the transformation of the original item, respectively, in order to encumber them. Prescriptions are provided for the case where assets, encumbered by different pledges and belonging to different creditors, are commingled, as well as for the case where the debtor or the pledge grantor abuse of their powers (Art. 1.2).

The non-possessory pledge is effective against both creditors and third parties by means of a registration in a digital register, specifically designed for non-possessory pledges. This register will be held by the Italian Revenue authority (Art. 1.4). Registration expires after 10 years; a renewal is allowed, provided that the previous registration has not already expired (Art. 1.6). The registration gives to the pledge priority over third parties in accordance with the ‘first-in-time rule’ (Art. 1.4). This rules applies, unless otherwise provided. In fact, Act 119/2016 provides two exceptions to this rule. The first exception could be summarized as follows: the retention of title by the seller over a specific movable property devoted to the firm always prevails over a non-possessory pledge, even if the retention of title is successive to the creation and registration of the non-possessory pledge (Art. 1.5). The second exception consists in the fact that a pledge, both possessory and non-possessory, which was granted to a creditor who financed the purchase of a specific movable property devoted to the firm, prevails over a prior non-possessory pledge, provided that, at the time of the registration, the registering creditor informed those creditors who had previously registered their non-possessory pledges (Art. 1.5).

The regulation concerning the Italian non-possessory pledge is innovative as regards enforcement too. In this respect the secured creditor enjoys many powers of self-help; he may – without any court intervention – either sell the assets, or enforce the encumbered claims; moreover – if it is provided by the pledge agreement and if this clause is registered – the secured creditor may either rent out the encumbered assets and employ the rental fees to satisfy his claim, or become the proprietor of them (Art. 1.7). Further, some prescriptions ensure that these forms of enforcement are carried out in a context of transparency and fairness – the secured creditor has a multi-direction duty of communication; he has to hand over the surplus to the debtor, or to the pledge grantor (if this is a different entity) (Art. 1.7), while both the debtor and the pledge grantor may challenge the enforcement before a court and claim against creditor abuses (Art. 1.7-*bis*).

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