

Ship Finance

Contributing editor
Lawrence Rutkowski



2018

GETTING THE
DEAL THROUGH

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Ship Finance 2018

Contributing editor
Lawrence Rutkowski
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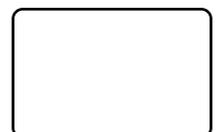


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Preface

Ship Finance 2018

Fifth edition

Getting the Deal Through is delighted to publish the fifth edition of *Ship Finance*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Italy and Switzerland.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Lawrence Rutowski of Seward & Kissel LL, for his continued assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
June 2018

Italy

Andrea Berlingieri and Lorenzo Pellerano
Berlingieri Maresca Studio Legale Associato

Due diligence

1 How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

The registration of a vessel under the Italian flag in the Ship Registers kept by the Port Authorities constitutes conclusive evidence of legal title to or legal ownership of a vessel; hence the title to or legal ownership of a vessel can be demonstrated by means of a certified abstract issued by the relevant Port Authority.

2 How can one determine whether there are any liens recorded over a vessel?

Under Italian law, the concept of lien is similar to *privilegio*. This is an encumbrance created by the operation of law. While hypothecs are recorded with the Ship Register, a *privilegio* over a vessel, as well as securities, liens or maritime claims, cannot be recorded, so that no certificate can be issued to determine whether there are any liens recorded over a vessel.

3 How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

The only possibility to determine whether encumbrances are recorded over the vessel is to request an abstract of the vessel's registry with all data relating to the vessel: her ownership, date of registration and registration number. However, as noted in question 2, apart from hypothecs it is not possible to determine whether there are encumbrances over the vessel. The only other encumbrances recorded are arrests or transcriptions of a judiciary order or judgment (such as a bankruptcy judgment).

4 Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

There are no certificates of good standing for Italian companies or partnerships. To determine whether an Italian company or partnership is in good standing, one should apply to the Register of Companies for a company's certificate, which includes non-insolvency or similar statements. This certificate shows the details of duly authorised officers having the power to bind the company and whether there is any record of insolvency proceedings.

5 Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

After conducting searches at the Register of Companies, one will be in a position to ascertain (and obtain evidence by means of certificates) the identity of the shareholders, directors and internal auditors of an Italian company or partnership, as well as determining their powers and identifying the authorised signatories.

6 What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Italian companies are represented by their directors. In the presence of a board of directors, the directors with powers should be indicated in the articles of association or in the resolution of their appointment as directors. The powers of the directors may be ascertained through a search with the Register of Companies. Approval by a shareholders' meeting is not necessary to enter into a guarantee.

7 Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

Foreign banks with a registered office within the EU and that are authorised to carry out banking activities in accordance with the laws of their country of incorporation (EU banks), may carry out business in Italy either by establishing a branch office in Italy or on a cross-border basis and without the establishment of a branch office in Italy, but in this case the foreign regulator in the EU country of origin must notify the Bank of Italy of the EU bank's intention to conduct business activities in Italy. A bank that is not an Italian bank or an EU bank may operate in Italy upon the Bank of Italy's prior authorisation.

Repayment

8 Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

Currently no central bank or other regulatory approval is required for the repayment of a loan in a foreign currency.

9 Do usury laws limit the interest payable to a lender in respect of a vessel financing?

The legislation on usury also limits the interest payable to a lender in respect of vessel financing. Law No. 108/1996 provides rules on usury and interest limitation which may restrict the lender's rights under a loan or the observance or performance by the borrower of its obligations.

10 Are withholding taxes payable on principal or interest payments to non-resident lenders?

Pursuant to article 26(paragraph 5-bis) of Presidential Decree No. 600/1973, as amended by article 22 of Law Decree No. 91/2014, no withholding tax applies in Italy in connection with the interest due on loans granted to Italian borrowers by non-resident banks.

Registration of vessels

11 What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

The three different ship registers for vessels in Italy are the International Register, the Matricola and the Registro.

Pursuant to article 1(2) of Law No. 30/1998, three categories of vessels are eligible for registration in the International Register:

- vessels belonging to Italian residents or to other EU residents in compliance with the provisions of article 143(a) of the Italian Navigation Code;
- vessels belonging to non-EU residents who are entitled to own Italian vessels in compliance with article 143(b) of the Italian Navigation Code; and
- vessels belonging to EU or non-EU persons registered in a foreign EU or non-EU register under temporary flag suspension following a bareboat charter to an Italian resident.

Vessels eligible for registration in the Matricola are those capable of sailing on the high seas. Pursuant to article 302 of the Regulations for the Execution of the Navigation Code, such vessels must have characteristics, equipment and crew quarters such as to be suitable for sailing on the high seas; pursuant to article 303 of the Regulations for the Execution of the Navigation Code, for the purposes of registration the necessary documentary evidence (plans, certificates etc) must be provided to the Port Authority in charge of the relevant register.

Vessels eligible for registration in the Registro also require some evidence of their sailing capabilities.

Article 136 of the Navigation Code defines ships as ‘...any craft destined to the carriage by water, even for the purpose of towage, fishing, pleasure, or other purpose’ and extends its regime ‘also to movable floating crafts destined to any navigation or traffic service at sea or in inland waterways’. These provisions are widely discussed by Italian writers: the majority opinion considers fixed platforms as immovable goods, while others adopt a so called dual-use approach. A case-by-case approach is necessary.

12 Who may register a vessel in your jurisdiction?

As to ownership of the vessel under article 146 of the Navigation Code, there are no restrictions on registration for persons (physical or legal) having the nationality of an EU member state. However, a non-Italian (but EU) physical or legal person shall elect domicile in Italy by the appointment of an Italian office for the purpose of communication or service by the ship register. As a general rule, persons who are not nationals of an EU member state may only own a share of less than 50 per cent (under Italian law property of a vessel is divided into 24 shares, called *carati*, and therefore non-EU ownership must be below 12 *carati*). As an exception to this rule, new buildings or vessels formerly registered in a non-EU register also fully owned by non-EU physical or legal persons may be registered in Italy provided the vessel is managed from Italy by a person having Italian nationality, domiciled or with principal place of business where the ship is registered, who undertakes full responsibility for the management vis-à-vis the Italian administrative authorities and any third party, and who makes a declaration to that effect to the Port Authority of the place of registration.

13 Is there an alternate registry for international shipping operations?

There is no a special registry in Italy that allows for foreign ownership of vessels. Law No. 30/1998 introduced the Italian International Register, where only vessels employed exclusively for international shipping operations can be registered. Both bareboat-in and bareboat-out registration are provided by Italian law on a temporary basis. Temporary flagging in is allowed by article 145 of the Navigation Code as amended by article 28(3) of Law No. 234/1989. Temporary flagging out is allowed by article 29 of the same law.

Ship mortgages and other liens over vessels

14 What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

As Italy is a Civil Law country, it is more appropriate to make reference to the hypothec. Under article 565 of the Code of Navigation, only voluntary ship hypothec is allowed (while the Italian Civil Code also regulates the legal and judicial hypothecs). The hypothec must be granted, under penalty of nullity, with a notarial deed (*atto pubblico*) or simply in writing (*scrittura privata*), the signature(s) being certified by a Notary

Public (both to be referred to as ‘Deed of Hypothecation’). There is no form prescribed by or approved under registration regulations.

15 Give details of any required form for ship mortgages in your jurisdiction.

Pursuant to article 565 of the Navigation Code, the hypothec must identify the vessel on which the hypothec is granted. Additional elements consist in the name of the owner of the vessel, his or her domicile or principal place of business and the name of the person in whose favour the hypothec is granted, as well as his or her domicile or principal place of business, the amount secured, the interest thereon and the date or dates of repayment. These elements, in fact, must, pursuant to article 569 of the Navigation Code, be mentioned in the application for registration (*nota di trascrizione*) and this implies that they must be mentioned in the Deed of Hypothecation itself. In Italy the hypothec used to be a very simple instrument, similar to the English mortgage, but this was for a different reason: the existence in the Civil Code and in the Navigation Code of detailed provisions covering the collateral securities, the rights and liabilities of the parties and the extinction of the security. However, due to ship financing becoming international and because of the realisation of the security taking place anywhere in the world, the Italian hypothec has gradually incorporated the standard provisions of a deed of covenants.

16 Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

Hypothecs are recorded with the Ship’s Registers kept by the Port Authorities where the vessels are registered. The information is that noted in question 15. The registration of a hypothec renders the security interest opposable to third parties starting from the date and hour of the registration, and determines the priority.

Article 2853 of the Civil Code provides an exception for the case when two persons appear at the same time to register a hypothec against the same person and the same immovable; in such a case the two credits get the same priority and the proceeds of sale are distributed proportionally. This principle should also apply for ship mortgages.

17 Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

As mentioned in question 15, the total amount of the hypothec and its maturity date are to be stated in the application for registration and must appear in the hypothec. The underlying debt instrument is not required to be filed with or attached to the recorded hypothec, but the most relevant terms of the debt instrument are normally inserted in the hypothec.

18 Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

It is usual to register the hypothec in the name of an agent when multiple lenders are present. The agent is usually one of the lenders.

19 If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

In principle, any amendments to the existing hypothec are to be recorded with the Ship’s Registrar in order to be opposable to third parties.

20 If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor’s consent required?

Pursuant to article 2843 of the Civil Code, transfer of the hypothec to a new lender is to be filed with the same formalities of registration, and such filing is a condition for validity of the transfer. However, under article 58 of Decree No. 385/1993 specific categories of transfer of hypothecs between banks and other financial institutions are exempted from the formalities provided by article 2843 of the Civil Code. It is advisable, in any event, to record the transfer with the Ship’s Registrar through the filing of a deed with the Ship’s Registrar in order to record the transfer of the interest to a new lender.

21 What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

If Italian law applies, only the maritime claims mentioned by article 552 of the Navigation Code have priority over the hypothec. Maritime claims under article 552 of the Navigation Code are mainly the same as those listed by the 1926 Brussels Convention on Maritime Liens and Mortgages:

- judicial expenses of the state or made in favour of all creditors for arresting or preserving the vessel; anchorage, lights and harbour dues and similar dues; pilotage expenses; and costs for preserving the ship at the last port;
- crew and master's wages;
- expenses advanced by the state for victualling and repatriating the crew, and credits for compulsory contributions to the pension system;
- salvage rewards and sums due by the vessel as a contribution to general average;
- sums due to collisions, hits, casualties occurring during navigation, and damage to ports, yards and navigable ways, and indemnities due to passengers and crew for death or personal injuries, and loss or damage to cargo and baggage; and
- claims resulting from contracts entered into by the master for preserving the vessel or continuing her voyage.

Under the 1952 Brussels Convention on Arrest of Ships the arrest of sister ships is allowed. That is also the case if Italian law and not the 1952 Arrest Convention applies, since any asset of the debtor may be made subject to arrest.

22 What maritime liens rank higher than a mortgage lien?

Only the maritime claims listed in article 552 of the Navigation Code (see question 21) rank higher.

23 May non-mortgage liens be recorded over a vessel?

No, other securities, liens or maritime claims cannot be registered. See question 2.

24 Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Under Italian law, a mortgagee of a vessel may secure its claim by arresting the vessel within the Italian jurisdiction, irrespective of her flag. Mortgages on 'foreign' flag vessels share the same priority as hypothecs on vessels registered under Italian law. However foreign mortgages are not eligible for registration in Italy.

25 What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

An Italian ship mortgage (ie, a hypothec) is capable of being enforced on the vessel only if the underlying claim is enforceable by itself. In fact, enforcement proceedings may be initiated only if the claimant holds an enforceable title, such as an Italian enforceable judgment or an acknowledgment of debt contained in a notarial deed. Pending the time to obtain an enforceable title the claim may be secured by way of an arrest of the relevant vessel burdened with the hypothec.

Interlocutory sales are not permitted, but it happens quite often that the proceeds of the judicial sale are not distributed to creditors pending decisions on the apportionment.

The duration of a judicial sale may depend on the interest of potential purchasers in the vessel, the type of vessel to be sold at auction and the prevailing market conditions at the time of the sale. The minimum time between the date of the seizure and the date of the sale that is required to comply with the various formalities and commitments provided by Italian law is about 120–180 days.

26 May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

No, a mortgagee cannot enforce its mortgage by applying for a court-approved private sale. The only remedy for the mortgagee is to arrest the vessel and apply for a foreclosure sale at public auction. However, a sale by private judicial treaty (ie, a sale without auction) is possible (article 661 Code of Navigation) if there are no bids at least equal to 60 per cent of the original basic price. The court appoints a sale's commissioner, usually a ship's broker, who is charged to collect offers, which are then communicated to the court for approval.

27 What are the limitations on rights of self-help by a mortgagee?

As a general principle, under Italian law self-help remedies are not allowed, and therefore in case of non-cooperation of the counterparty, a judicial proceeding is required.

28 What duties does a mortgagee owe to an owner or third-party creditors?

While the mortgagee has the right to be given notice of any enforcement conducted by owners or third-party creditors, the mortgagee him or herself has the duty to obey the procedural provisions regulating the enforcement, starting from the service of the formal demand of payment.

Collateral

29 May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

No.

30 May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

No.

31 How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Security interests over earnings, charters and insurance proceedings may be created by an agreement between the parties. In order to be perfected, such agreements are to be served to or accepted by the third assigned party.

32 Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

The only registrable security interest is the hypothec. A particular regime applies for the pledge of shares or accounts.

33 How is a security interest over a deposit account established? How is a security interest perfected?

A security interest over an account is made and perfected by a pledge agreement between the parties (pledgee and pledgor) bearing the certified date. If the pledgee is not the bank where the pledged account is open, the pledge agreement is to be served to or accepted by (with a certified date) the bank of the pledged account.

34 How are security interests in non-vessel collateral enforced?

The enforcement of non-vessel collateral depends on the type of collateral. A security over a deposit account is normally enforced through a court action. However, the parties may agree that the deposit account is enforced without commencing a court or enforcement proceeding, authorising the bank to distribute the credit balance to the secured creditor. A security over shares may be enforced through a sale of the shares by an authorised intermediary at market price (if contemplated in the shares' pledge agreement) or, otherwise, through a court procedure (as general rule).

35 How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Share pledges agreements are to bear the specific date and the shares' certificate must be endorsed in favour of the secured creditor; otherwise, the creation of the pledge must be annotated by a director of the company on the shares' certificate. In addition, the shares' certificate must be delivered to the secured creditor. Notice to the company and annotation on the shareholder's ledger must be obtained in order for the pledge to be valid against the company. Dividend and voting rights are for the benefit of the secured creditor, but this can be excluded by the parties in the agreement creating and governing the pledge. In practice it is usual that the chargor keeps rights to the dividend and to vote until an event of default (or analogous circumstance under the credit documentation) occurs.

36 Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

There are no risks before enforcement. After enforcement, the pledgee becomes a shareholder of the company with all the correspondent rights and liabilities provided by Italian law.

Tax considerations for vessel owners

37 Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

Yes. Italian companies are subject to a corporate income tax (IRES) and to a regional production tax (IRAP). The standard rates are as follows:

- 24 per cent for IRES; and
- 3.9 per cent for IRAP.

38 Is there an optional tonnage tax exempting vessel owners from tax on income?

Yes. Articles 155–161 of the Italian Income Tax Code provide that Italian tax-resident shipping companies can elect to be subject to the Italian tonnage tax regime. Pursuant to article 10 of Law No. 167/2017 (the European Law 2017) the tonnage tax regime is also available for non-resident shipping companies operating in Italy through a permanent establishment in Italy and for vessels registered in an EU Shipping Register (however, the amendment enacted with European Law 2017 is not yet in force, since it is to be implemented by a ministerial regulation). The tonnage tax regime is voluntary and allows for the determination of presumptive income based on the net tonnage of the qualified vessel apportioned to the effective days that the vessel is utilised (the vessel is not considered utilised when she is in lay-up, performing ordinary or extraordinary maintenance, or performing conversion works). The presumptive income based on the net tonnage is:

- from zero to 1,000 net tons: €0.0090 per ton;
- from 1,001 to 10,000 net tons: €0.0070 per ton;
- from 10,001 to 25,000 net tons: €0.0040 per ton; and
- above 25,001 net tons: €0.0020 per ton.

No deduction is allowed for tonnage tax incomes.

39 What special tax incentives are available to shipowners registering vessels in your jurisdiction?

There are other tax incentives, such as a tax credit for shipping companies with vessels registered in the Italian International Shipping Register for an amount equal to the withholding tax amount paid for crew members, a reduction in the IRES and IRPEF tax base of 80 per cent (see question 37) and an exemption from social security contributions for crew.

40 Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

See question 39.

Insolvency and restructuring

41 Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

The Italian legislation system governing insolvency proceedings is:

Update and trends

Pursuant to article 10 of Law No. 167/2017 (the European Law 2017) the Italian tonnage tax regime was made available for both resident and non-resident shipping companies operating in Italy through a permanent establishment in Italy and for vessels registered in an EU Shipping Register. However, at the time of writing, said amendment enacted with European Law 2017 is not yet in force, since it is to be implemented by a ministerial regulation.

- articles 2272–2283, 2308–2312 and 2484–2496 of the Civil Code providing for the winding up of partnership and companies;
- Royal Decree No. 267/1942 (Bankruptcy Law);
- Legislative Decree No. 270/1999 (Extraordinary Administration); and
- Law No. 39/2004 (the Legge Marzano, regulating the extraordinary administration of larger companies – companies with more than 500 employees and a debt higher than €300 million).

A general principle under Italian law is that of the *par condicio creditorum*. If an insolvency proceeding is opened, creditors are not entitled to enforce their claims against the debtor, but must file their claim with the proceeding and seek satisfaction from the insolvency assets.

The holder of the hypothec (ie, a mortgage) has a priority right over the insolvency asset(s) covered by the hypothec, subject to any prior right arising out of maritime liens on the vessel.

42 Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

If the insolvency proceeding is opened in an EU member state, Regulation (EU) No. 848/2015 is applicable, and therefore a foreign (EU) insolvency proceeding is recognised. If the insolvency proceeding is opened outside Europe, the effect of a foreign (non-EU) insolvency proceeding may be extended in Italy upon the recognition of the foreign judgment declaring the insolvency of the foreign company. The recognition is subject to certain conditions.

43 Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

No.

44 What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

A principle of Italian Bankruptcy Law is the *par condicio creditorum*, which means that all creditors shall have an equal right to payment of their claims, with the exception of those creditors who have a priority. The priority of claims among the creditors is provided by article 111 of the Bankruptcy Law:

- administrative priority creditors rank ahead of all other creditors (eg, fees owed to insolvency liquidators, administration costs of insolvency procedures and fees for the professionals involved in the procedures);
- secured creditors;
- unsecured creditors; and
- subordinated creditors

Among the secured creditors, according to article 575 of the Navigation Code, liens listed in article 552 of the Navigation Code have priority over the hypothec, while the hypothec has priority over all other general or special liens as provided by the Civil Code. The liens in article 552 of the Navigation Code are listed in question 21.

Article 67, paragraph 1, of the Bankruptcy Law provides a list of transactions that can be clawed back unless the counterparty to the transaction can show it had no knowledge of the debtor's insolvent state:

- transactions made in the year preceding the bankruptcy judgment in which the value of the obligations performed or assumed by the debtor exceeded one-quarter of the consideration received in exchange by the debtor;

- payments of monetary debts past due, where the payment was made in the year preceding the bankruptcy judgment and was not made with money or other customary payment methods;
- pledges, securities and mortgages wilfully created in the year preceding the bankruptcy judgment that were not yet past due; and
- pledges, securities and mortgages created voluntarily or by court order in respect of debts past due created in the six months preceding the bankruptcy judgment.

Article 67, paragraph 2, of the Bankruptcy Law provides a list of transactions that can be clawed back if they have been made in the six months preceding the bankruptcy judgment and the liquidators can show that the counterparty to the transaction had knowledge of the debtor's insolvent state:

- payment of liquid and enforceable debts;
- transactions for consideration; and
- transactions giving rise to rights of pre-emption over debts, including third-party debts.

Articles 64 and 65 provide a list of additional transactions that are subject to clawback actions:

- gratuitous transfers; and
- payments of debts originally due on or after the date of the declaration of insolvency.

45 May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

Yes, the hypothec may be granted as security for claims against persons different from the owner of the vessel. This is allowed by article 2808 of the Civil Code, pursuant to which the subject matter of the hypothec may be an asset of the debtor or of a third party. A hypothec is capable of being enforced only if the underlying claim is enforceable by itself. Enforcement proceedings may be initiated only if the claimant holds an enforceable title (ie, an Italian enforceable judgment or an acknowledgment of debt contained in a notarial deed).

46 Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Under Italian law (article 39, paragraph 4, of Legislative Decree No. 385/93 on banking law) hypothecs granted to secure loan agreements cannot be challenged if the transcription is made 10 days before the publication of the judgment declaring bankruptcy. Article 67 of the Italian bankruptcy law further provides that the ordinary remedies to challenge are not applicable to credit operations regarding immovable properties. The above has been criticised for possibly being unconstitutional and cannot be interpreted extensively. Certain writers consequently say that the said provisions are not applicable to ship finance, which relates to movable properties. In this case, the ordinary provisions of article 67 of the Bankruptcy Law should be applicable and the bankruptcy court or third creditor should be entitled to look at and challenge any security granted on the vessel in the previous year.

47 How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

According to article 5 of the Bankruptcy Law, a company may be declared bankrupt when it is unable to repay its debts as they fall due. In the circumstances, a creditor or the public prosecutor may file a petition before the competent court asking to declare a company in bankruptcy.

48 Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

Yes. The model has been adopted in Italy.

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Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
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