

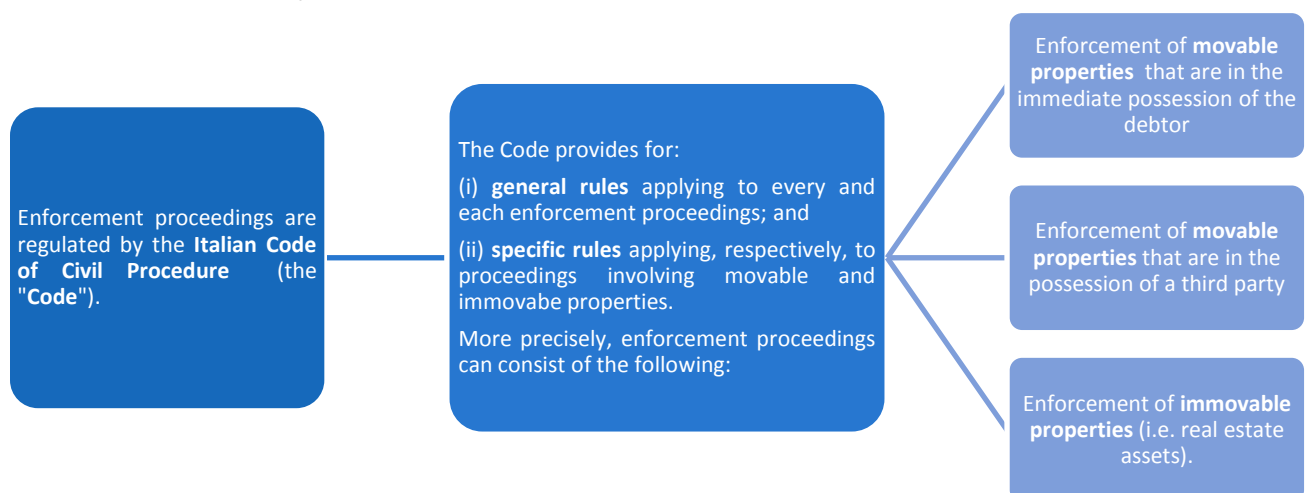
The Italian Government adopts new measures aimed at pursuing the efficiency of enforcement proceedings*

Following the 2015 reforms introducing key amendments to shorten the length of Italian enforcement proceedings involving both movable and immovable properties, the Italian Government took another step towards the reduction of the time required to satisfy creditors' claims with the approval of law decree no. 59/2016 (the "**Decree**").

The Decree entered into force on 4 May 2016 following publication in the Italian *Gazzetta Ufficiale* on 3 May 2016. Conversion into law shall occur by and no later than 60 days following the publication date.

Key highlights on Italian enforcement proceedings before the Decree (but taking into account the 2015 reforms)

■ Overview: how are they structured?



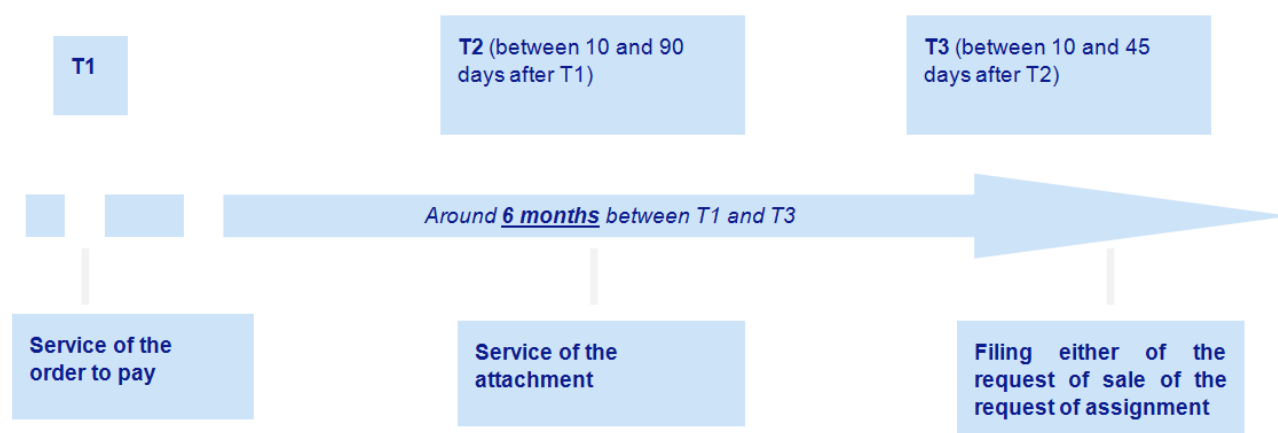
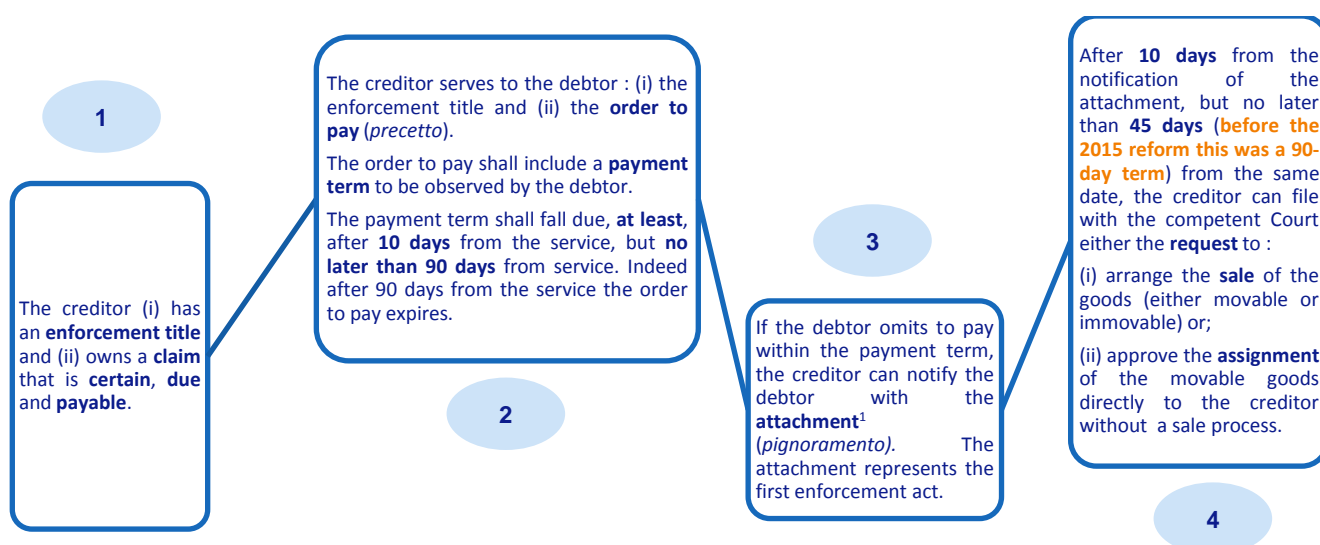
■ General rules: preliminary steps and timing

The preliminary phase of each of the above listed enforcement proceedings is ruled by general principles mainly concerning the establishment and the opening of the proceedings.

*This client briefing does not cover amendments adopted for bankruptcy proceedings.

After having obtained an enforcement title (*titolo esecutivo*), the preliminary phase begins with the service of the order to pay (*precetto*) to the debtor and ends with the creditor's request to proceed with the sale of the good or asset or to obtain the assignment of the same.

Furthermore, general rules apply to the debtor's right to challenge either (i) the entire enforcement proceedings (opposing, for instance, the validity of the enforcement title or the existence of the credit) or (ii) specific enforcement acts (e.g. the validity of the order to pay or of the attachment).



The above timing significantly varies if the relevant debtor decides to **challenge** either the enforcement proceedings (*opposizione all'esecuzione*) or an enforcement act (*opposizione agli atti esecutivi*).

¹ For the sake of clarity, the attachment is not required for the enforcement of a pledge.

Indeed, in such a circumstance, a new and **ordinary proceeding** is established (*giudizio ordinario di cognizione*) whereby the competent Court must assess if the debtor's claim is grounded or not. Clearly, an ordinary proceeding entails much longer procedural terms and **the enforcement will be suspended** until a decision over the debtors' opposition is provided by the competent Court. The decision of ordinary proceedings might take several years.

Enforcement proceedings might be challenged by the debtor **either before or during** the enforcement (that formally begins when the Court approves either the sale or the assignment of the good), while **enforcement acts** might be challenged only **before** the opening of the enforcement

■ The sale and assignment process

The **sale** of goods might be performed **without an auction** (*vendita senza incanto*) or **with an auction** (*vendita con incanto*). As a general principle, the sale with an auction (which is more time consuming) can be disposed if the Court deems that the relevant good or asset can be sold at a higher price.

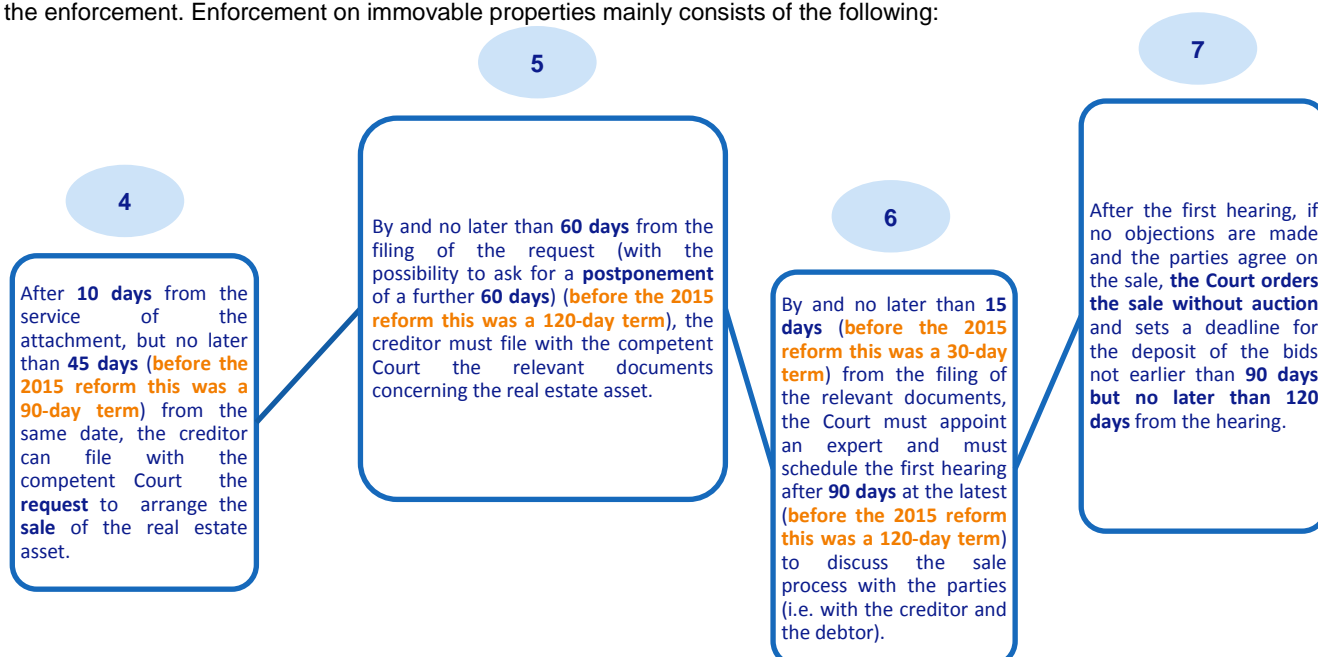
The supervision and the arrangement of the sale without an auction are usually delegated by the competent Court to an **external appointed expert**, such as a notary public, a lawyer or an accountant. The sale, however, must be preliminarily authorised by the Court and the expert must periodically report the outcome of the activity carried out to the Court itself.

The sale with an auction, on the other hand, is directly managed by the Court (typically through the appointed clerk) and is usually performed if the sale without an auction has had a negative outcome.

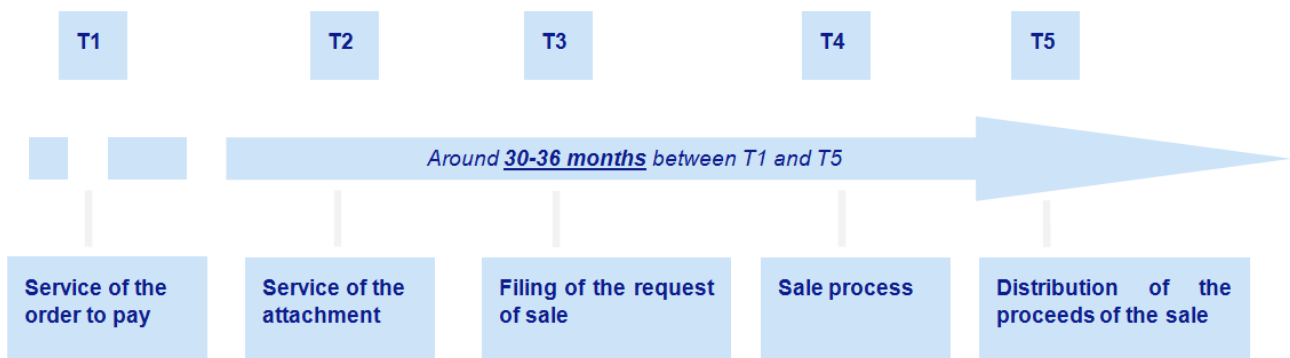
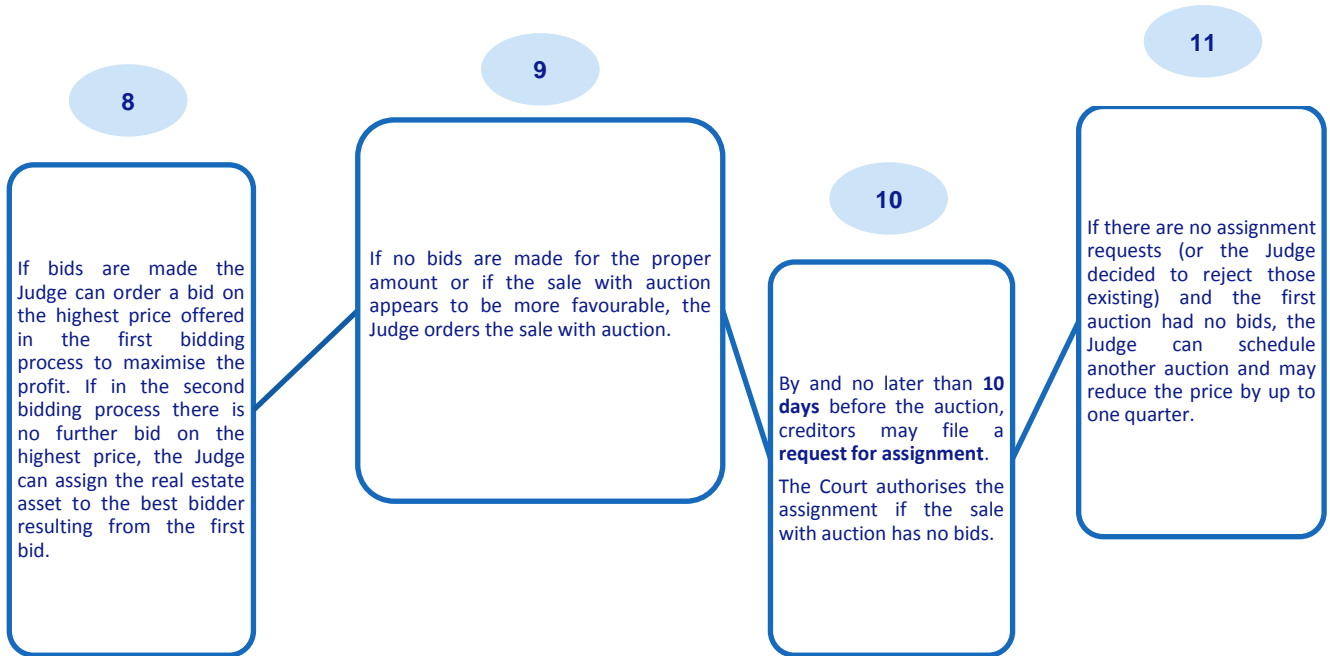
Differently from the sale process, the **assignment** entails an immediate satisfaction of the creditor who can obtain direct possession of one or more goods or assets of the debtor to recover the credit. Terms and conditions to file a request for assignment vary from one enforcement proceeding to the other.

■ Specific rules: focus on the enforcement of immovable properties (real estate assets)²

As said, general rules are followed by specific provisions aimed at regulating the sale, assignment and distribution phases of the enforcement. Enforcement on immovable properties mainly consists of the following:



² This client briefing does not cover enforcement proceedings of movable properties that are in the immediate possession of the debtor or of third parties, including the enforcement of a pledge.



Such timing³ may vary from court to court, depending of the court workload and it may significantly be extended in case an ordinary proceeding is commenced in case the debtor challenges the enforcement proceedings ("*opposizione all'esecuzione*") or an enforcement act ("*opposizione agli atti esecutivi*") or if a dispute arises in connection with the distribution of the proceeds of the sale.

³ With reference to the enforcement of a pledge, timing might vary in relation to in Court or out of Court enforcement. The in Court enforcement might take one/two years from the service of the order to pay to the distribution of the sale's proceeds. Clearly, if the debtor challenges either the enforcement procedure or an enforcement act, an ordinary proceedings may start which may last for longer than one/two years. A dispute can also arise in the phase of the distribution of the sale's proceeds. Also in this latter case, the relevant proceedings may last for longer than one/two years. The out of Court enforcement usually should take from one to six months from the expiry of applicable statutory deadline for the debtor and pledgor to raise objections. However, also in this circumstance, if the debtor and/or the pledgor objects the notice and starts an ordinary proceedings, such proceedings can last up to several years.

What changes with the Decree?

As a preliminary remark, it must be noted that the Decree has amended few provisions of the Code, if compared with the 2015 reform that had a much greater impact. This is possibly due The Italian Government, however, is working on a comprehensive reform of the Code that will probably implemented from this year on.

■ General rules

The Decree amended general rules with specific reference to the debtors' right to challenge the enforcement proceedings (*opposizione all'esecuzione*).

As said, formerly enforcement proceedings could be challenged by the debtor either before or during the enforcement (while enforcement acts can be opposed only before the proceedings begin) with the potential risk of paralysing the enforcement until the end of the ordinary judgment.

The Decree prevents the debtor from opposing enforcement proceedings during the enforcement, therefore, the opposition can be filed until the Court authorises the sale or the assignment of the relevant assets.

To ensure the acknowledgment of the debtor, the Decree requires the creditor to include in the attachment an *ad hoc* warning on the above mandatory deadline to oppose the enforcement.

■ Specific rules

With reference to specific enforcement proceedings, the Decree introduces further measures aimed at increasing the efficiency of the sale and distribution process in the best interest of the creditors' satisfaction.

As for the **enforcement of movable properties** that are in the immediate possession of the debtor, the Decree reforms the sale without an auction phase by stating that the sale process cannot be performed more than three times and that, in any event, it cannot last more than six months. Formerly, the ultimate term was one year.

As regards the **enforcement of immovable properties**, the Decree has amended the provisions of law relating to:

- the assignment, by allowing creditors to ask and obtain the assignment of the asset to the benefit of a third party;
- the sale with an auction, by stating that, if after the first auction having a negative outcome, the Judge schedules another three auctions by reducing the price up to one quarter and the outcome is still negative, **from the fourth auction onwards, the price might be reduced by half**; and
- the distribution phase by introducing the possibility to **prepare a partial distribution report**. The latter is usually drafted by the Judge upon having sold the relevant asset(s) and having received the relevant sums. Upon completion, it shall be (i) reviewed by the creditors and by the debtor, (ii) discussed with the Judge during a hearing and (iii) approved. Formerly, the report was supposed to be prepared after having completed the sale of all the existing assets. The Decree introduces the partial distribution report, that might grant an earlier (although partial) distribution of the cash in court amounts.

■ A new digital platform

In addition to the above, the Decree mandates the creation of a **digital registry** – held by the Ministry of Justice – where all enforcement proceedings must be tracked and recorded electronically.

The above measure will ensure more transparency towards creditors and other potential purchasers, with the effect of increasing the changes of maximising the profits deriving from the sale of the debtor's goods.

Our view

- **Fabio Guastadisegni**, Partner and Head of the Litigation and Dispute Resolution department comments that: "*Italian Finance Minister, Mr Carlo Padoan, publicly declared that thanks to 2015 Reform and 2016 Decree the average length of enforcement proceedings has been shortened of three years. While we need to see what actually happens in Court, we positively welcome both the reforms of 2015 and 2016, which could contribute to restore foreigners' confidence in the Italian legal system.*"
- **Tanja Svetina**, Partner, Finance and Capital Markets, observes that: "*Although it is too soon to determine the actual impact of these changes, alongside those introduced during the summer last year, the Italian legislator seems this time extremely focused towards resolving the unacceptable lengths of the Italian courts proceedings, as they are now well aware that any reduction in that respect could have a significant impact on the price of the major stocks of non performing portfolios currently held by Italian banks. Great effort is also being put in the digitalisation of the process and the monitoring of the single court activities and timings in order to level, to the greater extent possible, the differences in lengths from one court to the other of the different regions in Italy.*"

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*Linda Widyati & Partners in associazione con Clifford Chance.

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