

In spite of article 2740 of Italian civil code principle, stating that “the debtor is liable for the meeting of his obligation with all his present and future properties”, in Italy the recovery of a credit always presents considerable difficulties, especially in some areas.

Recovery times depend on the document the creditor has at his disposal: if it is a “writ of execution” ( titolo esecutivo) ( bill, check, notarial act, verdict delivered by an Italian judge or a judicial conciliation report), a legal action can be taken affecting alternatively ( or cumulatively) movables, immovables or debtor’s credits.

Times for a movable execution ( attachments of assets, sale of goods, distribution of proceed) vary from twelve to twenty-four months; times for an immovable execution vary from twenty-four to forty-eight months ( actually, even more when the attached immovable hardly finds a buyer); times for an execution on credits ( on a third party) vary from six to eighteen months.

If creditor has not a writ of execution at his disposal, he must obtain a sentence from the judge to charge the debtor by means of an ordinary proceeding or , when he has a documentary evidence of his credit, a summary judgment called “Injunction proceeding appeal” (RICORSO PER DECRETO INGIUNTIVO). Nevertheless, in this last case, if the judge believes that the conditions for a provisional execution measure are lacking, the debtor can slow times for the obtaining the writ execution by proposing an opposition within forty days from the notice of the “decreto ingiuntivo”. For, after the debtor’s opposition, an ordinary proceeding can be started with the consequent times. In other words, at best, it may need six months to get a writ execution and at worst, three or four years; after that an executive proceeding can begin.

Legal costs depend on credit’s amount, results and on proceeding itself.

It would be better to demand an estimate legal action costs to the legal office.

### ESSENTIAL INFORMATION REQUIRED TO INITIATING LEGAL ACTION.

Before starting a credit recovery action, the following information may be needed:

1. Precise name, surnames or business name of the creditor and the debtor;
2. Written agreements or contracts between parties (if there are any);
3. General terms and conditions of agreements (if there are any);

4. Order;
5. Order confirmation;
6. Delivery paper;
7. Invoice;
8. Correspondence between parties;
9. Precise interest and credit calculation;

Not every of the previous documents are necessary due to the fact that debt can be recovered on the grounds of some (not every) of them.

### INFORMATION.

It's possible to obtain commercial and usually reliable information about traders' solvency and properties through specialized agencies (D&B, etc.). Business names' and companies' registries may be freely consulted at the Chamber of Commerce; real properties' registries at the archivist's office (even of private citizens).

### ENFORCEMENT OF A RETENTION-OF-TITLE CLAUSE

Retention of ownership's sale is provided for by Italian civil code. The contract can be opposed to the buyer's creditors when it results from public act with a certified date. As far as machineries are concerned, contract can be even opposed to the third buyer depending on other formalities.

### PREVENTIVE REMEDIES

It may be possible to obtain debtor's assets attachments measure from the Court before the beginning of the ordinary proceeding, if requisites of "periculum in mora" (imminent and irretrievable prejudice) and of "fumus boni iuris" (likelihood of law) subsist. Nevertheless, it would be better to adopt this preventive remedy for bigger amounts only, since judges don't usually grant the respective measure.

## LETTERS AND PHONE CALLS.

Debt recovery by phone call is not customary in Italy because it does not worth for putting in default the debtor or because it is not fit for the interruption of the period of limitation.

Although giving a notice to the debtor does not constitute a precondition for bringing an action against him, the creditor usually sends at least one letter to the debtor before proceeding with the lawsuit. The last warning of liquidation is usually dispatched by creditor's lawyer.

In some cases, this last notice can be decisive persuading the debtor to pay.

Sometimes, when the debtor does not have sufficient financial means for the whole payment, it would be useful to proceed with a payment on instalments by subscribing a transaction agreement and formalize it in the presence of the judge (having an writ of execution power). It is also possible to guarantee the instalments by issuing bills, to have the writ of execution, so that in case of default of payment, it will be faster the proceeding to attach debtor's assets.

## LIMITATION PERIOD.

The limitation period is usually of ten years, but it's possible to prescribe credits in shorter terms.

This period can be interrupted with a formal demand of payment (recorded delivery letter, for example).

## CLAIMING INTERESTS.

From the credits' expiration date, even without a specific agreement, interests will accrue at legal rate (nowadays in Italy the rate is 2.5% per year). Higher interests can be negotiated in writing. Creditor's request should include capital and interests.

## LEGAL PROCEEDING IN DEFAULT OF PAYMENT.

The creditor should refer to his Italian lawyer. While obtained lawyer's availability to accept the assignment, creditor will procure him all the documents about the economic relation which

generated the credit; in particular, he should get the copy of the invoice, of the order, of occurred delivery, the elapsed correspondence and a power of attorney for judicial proceeding. If this power of attorney is signed in the presence of the lawyer, it can be authenticated by him; otherwise, it will have to be authenticated by a public officer where the creditor resides. The lawyer will prepare an injunction proceeding and deposit it at the Court, which will admit the claim within thirty days and order the debtor to pay the whole amount, the interests and the legal fares settled by the Court itself, within forty days.

The creditor's attorney will make sure to obtain the service of measure against the debtor.

In the mean time, the debtor can appeal by denying the existence or the amount of credit or by declaring to be creditor in his turn etc..

If opposition does not occur, the judgement becomes enforceable and creditor can start with the coercive recovery.

On the other hand, if opposition occurs, a normal proceeding will take place. During it, the creditor can ask to the judge to grant the provisional enforceability of the summary judgement, if there is the possibility of serious prejudice in delay, or if the opposition is not founded on solid bases.

Usually, this phase will take six/eight-month. If the provisional enforceability is not granted, the opposition proceeding will be concluded in three or four years, depending on the Court.

#### LEGAL FEES.

Legal fees of executive proceeding weigh on debtor only insofar settled by judge (usually the legal costs of all proceeding will be charged to the losing party). The judge decision may not completely satisfy lawyer's request to his client. They are determined on the grounds of attorney's fares established with a compulsory administrative measure. Hourly payment is not provided in Italy and it should be previously arranged. Lawyer's fees are calculated on the grounds of credit's amount and not the recovered one. If the recovery does not come to a successful conclusion, costs weigh in creditor and so they will worsen the damage.

#### SENTENCE EXECUTION.

Once obtained the writ of execution, creditor will be able to attack debtor's goods.

### PROCEEDING COSTS.

As specified above, costs depend on asserted credit's amount and on the undertaken proceeding; if credit comes to € 100.000 the executive movable proceeding cost (or to thirds execution proceeding) can vary from € 2.500 to € 5.000; charge of immovable execution goes up to € 10.000.

Amounts of injunction proceeding are not included: with no opposition, they are estimable around € 2.000, with an opposition proceeding can be estimated from € 7.000 to € 13.000.

### BANKRUPTCY PROCEEDING.

Besides the possibility of a direct proceeding on debtor's goods, creditor can ask for debtor's bankruptcy even without a writ of execution ( if debtor has a trade activity).

Actually, bankruptcy almost never offers advantages to creditor, but, because of its consequences (even criminal sometimes), makes the debtor feel under a big pressure which, usually, drives him to pay.

On the other hand, if bankruptcy is declared, recovery times for credit (usually in a small percentage) grow out of all proportions and are not predictable anyway.

Bankruptcy's petition can be filed even after an unprofitable execution.

Costs are relatively low (about € 2.500)

### FOREIGN JUDGMENTS.

If creditor has a judgment delivered by a foreign Court, it has an automatic recognition in Italy, but to have it executed, he should follow a complicated recognition procedure (called delibazione) before the Court of Appeal; therefore, when someone intends to recover the credit by execution in Italy, it would be better to turn to an Italian judge.

Recognition's judgment can vary from € 5.000 to € 10.000.

