

Eurojuris IBG Event

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“ ... Did you know that a company, formed and registered under a Joint Stock company in Italy, pursuant to Art. 2447-bis of the Italian Civil Code, may:

- 1) Segregate assets, whose amount does not exceed 10% of the overall value of the company's net assets, to a specific business activity; or,*
- 2) Destine the proceeds, generated from the segregated assets, to secure the repayment of a financial instrument ...”*

1) In order to properly segregate the assets dedicated to specific business activities, the following formalities shall be carried out:

1.1 Resolution (Art. 2447- ter of the Italian Civil Code)

- A Resolution should be properly taken by a simple majority (51%) of the company's Board of Directors (BOD);
- The Resolution shall define the segregated business assets, along with the specific business activity in which the assets will be used for;
- The Resolution, in accordance to Art. 2436 of the Italian Civil Code, shall be adopted by the BOD in front of the Notary Public.
- The Resolution shall then be submitted by the Notary Public to the competent Company Registry for its subsequent review and registration.

1.2 Publicity and Creditor's rights (Art. 2447- quater, second paragraph, and, Art. 2447- quinquies of the Italian Civil Code)

- Once the Resolution has been registered, creditors are entitled to a 60-day-period to request a court issue in order to prevent the establishment of the segregated assets.
- If no position is taken by the creditors within the 2-month-period from the date the Resolution is registered, the segregated assets will no longer be attachable by the creditors of the company that are not related to the specific business activity to which the assets have been segregated.

1.3 Annual Accounts (Art. 2447- septies of the Italian Civil Code)

- The segregated assets shall be separately recorded as a separate item in the balance sheet of the company.

2. In order to properly destine the proceeds, generated from the segregated assets, to secure the repayment of a financial instrument, the following formalities, in accordance to Art. 2447- decies of the Italian Civil Code, shall be carried out:

2.1 How the segregation may be used in the financing and banking sector

The segregation of assets, generating profit and proceeds, may be pursued by a company wishing to leverage finance from a banking institution, as all or part of the proceeds generated by the segregated assets of the specific business activity may exclusively be destined to the repayment of all or part of the financing granted by the banking institution.

Such financial transaction shall prevent the proceeds from being dispersed or misused in the day-to-day management of the company's business affairs.

2.2 Agreement to be entered into

The banking institution and the company segregating the assets must properly enter into an Agreement, which shall define the following:

- a) The identification of the financial transaction's main object, as well as the timing and framework for the implementation of the financial transaction;
- b) The assets to be segregated and allocated to the repayment of the financing;
- c) The specific commitments entered into by the company segregating the assets and the terms and conditions according to which, the company should timely and promptly perform the commitment entered into in order to ensure the repayment of the financing;
- d) The financial plan of the transaction, exposing the share of funds that are likely to be generated by the segregated assets and that will be channeled by the company segregating the assets to repay the financing received pursuant to the financial arrangement;
- e) The agreed final repayment date.

The proper Agreement to be entered into, once executed by the signatories of the parties, shall be filled with the Company Registry for its subsequent review, registration and publication.

2.2 Annual Accounts

The company shall keep the segregated assets separately recorded as a separate item in the balance sheet of the company.

In addition, the company shall keep a separate set of registers to record the revenues generated by the segregated assets to be destined to the repayment of the financing received.

BOTH SEGREGATIONS, EITHER OF ASSETS DESTINED TO A SPECIFIC BUSINESS ACTIVITY OR, ASSETS DESTINED TO THE REPAYMENT OF A FINANCIAL ARRANGEMENT WHICH HAS BEEN ENTERED INTO, MAY BE SET UP IN ORDER

TO:

PREVENT FORMER CREDITORS OR THIRD PARTIES OF THE COMPANY, WHICH ARE NOT RELATED TO THE SPECIFIC BUSINESS ACTIVITY, FROM ENFORCING THEIR RIGHTS ON THE ASSETS WHICH HAVE BEEN SEGREGATED AND, THEREFORE, PROTECT:

- a) THE SPECIFIC BUSINESS ACTIVITIES TO BE DEVELOPED BY THE COMPANY
OR;**
- b) THE FINANCING INSTITUTION GRANTING FINANCE TO THE COMPANY.**

THANK YOU

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