SCHEDULE 2

ITALY

COUNTRY ANALYSIS

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1. General

1.1 Pledge – General Characteristics

- Since 1942 Italy has considered two ways of taking security: a regular pledge with no transfer of title involved and irregular pledge with the transfer. The **irregular pledge** gives the custodian, according to Art.1851 of the Italian Civil Code, an unrestricted right to freely dispose of the collateral, subject only to custodian's obligation to redeliver equivalent collateral in accordance to the terms of the pledge agreement. Another aspect of this irregular pledge that the pledge will constitute a continuing security for the secured obligation, notwithstanding any intermediate payment or settlement of that obligation.

- Pursuant to prevailing judicial precedents, the pledgor and the pledgee can agree to substitute from time to time the collateral pledged with other collateral of equal value, without this being treated as the creation of a new security (e.g., Corte di Cassazione, Decision no. 5264 of 28 of May 1998). According to the relevant decisions, the date of creation of the security would remain the date of the initial delivery provided that: (i) the requirements for perfection of the security are complied with each time a substitution takes place; (ii) substitution is provided for in the relevant security agreement; and (iii) at any given time the value of the collateral does not exceed the value of the collateral initially delivered. If these conditions are met substitution will not result in a postponement of the date on which the "suspect period" (during which the security may be set aside at the instance of a bankruptcy receiver) would start running.

- The possibility to substitute from time to time collateral consisting of Italian dematerialised securities (including Italian Government trends) deposited with an Italian Centralised Depository, without each substitution being regarded as a creation of fresh security, is expressly provided for in Art.46 of the Consob Regulation No. 11768 of 23 December 1998 on the markets pursuant to Art. 34(2) of legislative decree No. 213 of 24 June 1998, under which it is possible to set up special "pledge" accounts with an intermediary participating in the Centralised Depository and provide for substitution from time of the collateral deposited in the accounts, on condition that the value of collateral never exceeds the value of the securities originally deposited.

- It is permissible for the pledgee to hold collateral in excess of its actual exposure to pledgor. However, according to the prevailing view, the pledgee could not rely on the portion of the collateral exceeding its exposure in order to secure future transactions with priority vis-à-vis the other creditors of the pledgor. Moreover the pledgee would be obliged to return the excess portion of the collateral to the pledgor upon satisfaction of its secured claims.

- As a matter of Italian law the Secured Party cannot use the collateral without prior consent of the pledgor. However, even if the pledgor grants its consent, the pledgee cannot re-pledge, sell or let third parties use the collateral as any such use is or may be incompatible with the limited nature of the interest which the pledgee has in the collateral.

- The written document evidencing the creation of the pledge is not subject to any

stamp duty or equivalent documentary tax, if such written document is drawn in the form of “corrispondenza commerciale” (letter). However, for documents submitted to the Judge in case of proceedings not concerning administrative law a stamp duty and a registration tax will apply.

- The general trend in court decisions is that a valid and perfected security interest cannot be created over after-acquired property or over an undetermined pool of assets, the rationale being that taking security over future or non-specific assets may prefer one creditor over the others. Also some judicial precedents have held a pledge inadmissible where the amount of the secured exposure is not pre-determined or cannot be easily determined in advance. According to the prevailing view, in all such cases, the collateral agreement would at most be given effect as a promise to pledge and the secured party will be vested with a perfected security interest over the relevant assets only once these are actually acquired by the pledgor and physically delivered to the pledgee or to a third party custodian and once the secured obligations have been determined.

  If it is found that a new security is created each time a delivery of collateral is made then:

  - the formalities for creation and perfection must be complied with each time;

  - in the case of bankruptcy of the pledgor, the suspect period during which the security may be regarded as a preference and voided at the instance of bankruptcy receivers will start running as from the time of the last delivery;

  - with respect to future obligations, pledge will not be perfected until the relevant obligation comes into existence.

- A pledge of shares (pegno) must have a specific date of execution, a date certain is normally evidenced by a notarial deed. Voting rights and rights to dividends will transfer to the pledgee by operation of law on granting of the security. Parties may contract for these rights to remain with the pledgor prior to enforcement. Notice is not required to be given to the pledgor to create valid pledge but it must be given to the company if the pledgee wishes to exercise voting and dividend rights. Often notice is given after a default has arisen so that the pledgee may have its interest noted on the register. The pledgor must endorse and deliver certificates to pledgee.

  It is also possible to pledge quotas in "societa a responsabilita limitada". Enforcement is by sale following court order. Registration is by deposit of either an original or a certified copy of the pledge with Chamber of Commerce; for quotas of a s.r.l. must be registered in the Company's quota holders books.

- The Legislative Decree n.213 of the 24th June 1998 and the CONSOB Regulation n.11768 of 23rd of December contemplates the possibility of creating a new type of security interest, the floating lien. The collateral will only consist of dematerialised securities.

  - the pledge is not constituted over specific financial instruments individually identified by their serial number or reference to their type and amount, but rather over a pool of financial instruments held in a specific collateral account

- the value of the pledge may be maintained by means of addition to or substitution of the financial instruments held in the account and this will not result in the creation of a new pledge

- the security agreement can be governed by either Italian law or foreign law and it needs to comply with the perfection requirements stated in Italian law. It must indicate the initially posted collateral, the secured obligation and the secured amount and it must be evidenced by a signed writing bearing a certain date in a notarised document

- the custodian will open a special-purpose collateral account

- title to the assets may be transferred to the pledgee by way of irregular pledge or the title may be retained by the pledgor

- the intermediary will register the account information, creation date and value of the lien with the register referred under Art.45 of the Consob regulations, upon opening the account. The register of liens will have to be subject to the regulations of Montetitoli. Since the value of the collateral is calculated not by reference to specific securities but by reference to such number of securities as equal in value to the amount to be secured, there is no need for new registrations on a substitution. On the substitution or reconstitution of other financial instruments registered in the same account, for the same value, the date of creation of the lien will be identical to the date of creation of the lien over the substituted or reconstituted collateral

- the account holder at the time of creation of the pledge must give the intermediary written instructions in accordance with any arrangement with the secured party with respect to the maintenance of the collateral, the collateral value and the rights attached to the financial instruments registered in the account.

- if transactions are to be effected through an intermediary authorised pursuant to legislative decree other than the intermediary where the account has been opened, the execution of such transactions will be subject to prior authorisation by the intermediary where the account has been opened.

1.2. Transfer of Title – General Characteristics

It is not possible to effect a fiduciary transfer of legal title in Italy, due to the invalidity of "patto commissorio", as provided in Art. 2744 Civil Code, which states that any agreement is void if it provides that if the debtor fails to fulfil his obligation on the due date, the property on the assets is automatically transferred to the creditor. The Italian judges rigorously apply this rule, not only at the time of failure by the debtor, but also at the time of the creation of the security interest.

A transfer of title will be recharacterised as an irregular pledge as this mechanism has the same effect as transferring title to the pledgee.

2. Private International Law and Domestic Law Aspects of Collateral

Validity of the Contract/Attachment

Italian private international law:

- In Italy the Rome Convention is applicable to contractual obligations according to its conflicts of law.

- The law chosen by the parties to govern their contract between them will be the “lex contractus” which will govern the constitution and scope, the validity and effectiveness of contractual relationship embodied by the agreement. So whether there is a valid agreement will be governed by the “lex contractus”.

- Pursuant to Article 51 of the law No. 218 of 31 May 1995 (“Law 218/1995) the type of in Rem security rights which may be created in respect of any type of asset, the nature and extent of the security interest, the characterisation of a person’s holding of assets and, according to the majority of scholars, the formalities required to create a security interest in collateral and to protect it against competing claims, are all governed by the law of he jurisdiction where the relevant asset is located at the time the security right is created (“lex situs”).

Italian domestic law:

- In order for a collateral contract to be valid, it is necessary to satisfy all the requirements of a contract, such as the agreement between the parties, the object (security in pledge), the consideration and the legal form (written contracts are required for pledges).

- To create a valid security interest, the pledged assets or the documents conferring the exclusive right to dispose of such assets, must be delivered to the secured party or to a third party designated jointly by the pledgor and the secured party (Art. 2786 of the Italian Civil Code).

- In general, the issue of financial instruments subject to dematerialisation must be made through a central custody and administration manager of financial instruments, which should open an account in the name of each issuer and to which the issuer will communicate the global amount of the issue, the date of the placement and the terms and conditions of the specific issue as well as any other relevant information on the issue. The creation of pledges over these dematerialised financial instruments will be done only through authorised intermediaries, who will keep a record of the pledges.

Perfection:

Italian private international law:

- Since dematerialised financial investments traded on regulated markets can no longer be represented by certificates or other material instruments but must be administered by a Centralized Management Company through a

special account, and also considering that under Italian private international law the law governing the perfection of the collateral is the “lex rei sitae”, in the case of Italian dematerialised securities which no have physical existence and no obvious location, the “lex rei sitae” will be the location of the intermediary’s account.

Italian domestic law:

- Generally, until the securities have been delivered to the pledgee (by account registration if appropriate), no perfection of pledge takes place and therefore no pledge exists over the securities of the pledgor, who has a simple obligation to deliver according to the pignus conventum (agreement to pledge).

- In order to perfect a security interest and make it effective vis-à-vis third parties, including any other creditors of the pledgor, the deed creating the pledge must (i) be executed in writing , (ii) bear a “certain date” and (iii) contain sufficient detail as to the secured obligations and the pledged assets.

  According to Art. 2704 of the Italian Civil Law Code, the date is also deemed to be certain if another fact occurs which proves with certainty the prior execution of the document A means of satisfying this requirement used in the practice and recognised by some decisions of Italian Courts is to have a stamp of the Italian post office (with the indication of the relevant date) put on the document itself.

- For bearer securities, the pignus datum (the perfection of the pledge) takes place by delivery of the security**.**

- For registered securities (titoli nominativi), if not shares, the “pignus datum” takes place by delivery of the security with the wording "in pledge" on it. If it is a share (not dematerialised), the pledge requires also a registration on the books of the issuing corporation if the pledge is to be enforceable against it.

- For dematerialised securities, the “pignus datum” takes place as soon as the pledge is registered in the specific account held by the bank and filed with the register of pledges held by the bank. The custodian will keep the register of liens in which it records all the liens created with respect to financial instruments held in custody by it according with Art. 87 of the Financial Intermediation Act and the Arts. 2215, 2216 and 2219 of the Civil Code. This is the most flexible way to pledge in Italy. Therefore the only way to perfect the security interest is to have the lien recorded in the register of lien held by the custodian.

Priorities:

Italian private international law:

- Priority aspects will be governed by the “lex rei sitae”.

Italian domestic law:

- In case of default the pledgee has the right to be paid in preference;

- In the case of failure or liquidation of the debtor, the pledgee may ask to be admitted with preference to the creditors list, and following such admission, may be authorised by the liquidator to sell the collateral.

- Priority is accorded to a third party bona fide purchaser or pledgee of the pledged securities, even if the pledgor is not entitled to pledge, on condition that the third party is in good faith at the moment of the delivery and there is a valid agreement between the pledgor and the pledgee. This principle appears inappropriate now with the dematerialization regime, because, as stated before, the only way to perfect the security interest is to have the lien recorded in the register of liens held by the custodian.

Enforcement:

Italian private international law:

- Upon default of the counterparty, enforcement is governed by the law of the location of the assets; so the Italian conflict of law rule determining the law governing the enforceability against third parties is the lex rei sitae. Therefore the key issue will be where the asset is located.

Italian domestic law:

- There is a major distinction between the regular and the irregular pledge.

  - for the regular pledge, before proceeding with the sale the creditor shall, through a process-server, serve a demand of payment of the debt and charges on the debtor, warning that if he fails to comply with the request, the item will be sold; the notice shall also be served on the third person pledgor, if any. If no objection is raised within five days from such notice, or the objection is overruled, the creditor can cause the item to be sold at public auction or, if it has a market price, he can cause it to be sold at the current price through a person authorised to make such sale, such as a bank. If the debtor does not have his residence or elected domicile in the place in which the creditor has his residence, the time limit for objection is extended. Acting upon the objection of the pledgor, the judge can limit the sale to one of several items pledged whose value is sufficient for payment of the debt. Note that the parties can agree on other procedures for the sale of the item given in pledge.

    The creditor can also petition the judge that the property be awarded to him in payment, up to the amount of the debt, according to an appraisal to be made by experts, or according to the current price, if the items have a market price.

- for the irregular pledge the procedure is much quicker and a simple notification to the debtor is considered sufficient. Of course other rules should be taken into consideration (such as Monte Titoli and Consob).

Insolvency:

Italian private international law:

- The basic rule is that a company that has its main business activity abroad and that has been declared insolvent in that country can be declared insolvent in Italy as well. So "lex concursus" will govern the insolvency proceedings.

Italian domestic law:

- The winding-up proceedings under Italian law are the falliamento (the general insolvency procedure applicable to commercial enterprises), the liquidazio ne coatta amministrativa (which apply in lieu of the falliamento to the insolvency of banks, investment firms, insurance companies, etc…) and also Italian insolvency law may allow a "composition with creditors" (Insolvency Law, Art. 160 and following) to take place, substituting the insolvency proceeding and declaratory decree with a "concordato preventivo", if the debtor appears to deserve such stay. Such "composition" creates a "procedura concorsuale" under the supervision of a judicial manager, on the insolvent debtor's request, should certain subjective and objective requirements exist. Among such requirements there are:

  - the payment of a minimum percentage (40%) to a "creditori chirografi" (unsecured creditors); and

  - the offering of security interests or personal securities to guarantee the obligations which the insolvent debtor intends to undertake.

- Insolvency proceedings aimed at the recovery of enterprises in temporary difficulties are the amministrazione controllata (which may last a maximum of 2 years) and the amministrazione straordinarie delle grandi imprese in crisi (which applies to major enterprises only). In case of both, the receivers may decide a freeze on payments for limited periods of time.

- Special consideration must be given to the so-called "zero hour" rule, under which the insolvency of the company may have a retroactive invalidating effect on completed transfers, payments and set-off accounts made by or with the insolvent company. The Finality Directive and, particularly, Art. 7 will affect this rule, simplifying banks' dealings with other banks in member states. Art. 7 states that insolvency proceedings shall not have retroactive effect on the rights and obligations of a participant arising from its participation in a system earlier than the moment of opening such proceedings.

- Pursuant to Article 53 of Law No. 267 of Law 267/1942 the pledgee must file a petition with the bankruptcy court asking permission to sell the pledged

assets. The sale must be made pursuant to a judicial procedure under the supervision of the bankruptcy court, which shall determine the methods for the sale (e.g., by public auction, private sale or on the market through an authorised intermediary).

3. Miscellaneous

3.1 Cross-border transactions in multi-tiered holding systems

Italy was, until the innovative reform providing for a dematerialisation regime enacted by the Legislative Decree n. 213 June 24 1998 (now mandatory for certain financial instruments traded or destined to be traded on regulated markets), one of the jurisdictions following traditional categories of legal rights. These provide that if any financial intermediary is allowed to co-mingle the securities with its own assets, the person generally loses its property rights in the individual securities and is deemed to have a personal or contractual claim for the return of the same amount and type of securities as those deposited, with title in the individual securities having passed to the financial intermediary. Here the location of the intermediary becomes highly relevant for the purpose of applying the "lex rei sitae" rule. So if a person takes a book entry pledge of such an interest, it will acquire an interest in the personal right against the intermediary; the intermediary is free to sell, pledge or transfer or use the underlying securities , because it has full title to them. However, if the interest pledged falls within the traceable property rights category, the intermediary will play an irrelevant function for the purpose of applying the "lex rei sitae".

With the new dematerialization regime the Italian legislation has created a new type of security interest that serves the public policy interests of protecting investors against intermediary insolvency risk, promoting the finality of the security transaction and reducing the costs and risks of cross-border collateral transactions. The new floating lien could be now considered as one of the most flexible collateral mechanisms in the EU collateral arrangements. Here we have the possibility of having the title retained by the pledgor or transferred to the pledgee by irregular pledge; in the latter case the secured party will acquire full title to all the posted collateral, plus the right to immediately dispose of the secured amount. The pledgor can exercise his restitution rights, being able to obtain immediate restitution of the posted collateral exceeding the secured amount and, upon fulfilment of the secured obligation, the residual portion of the posted collateral. The security agreement is able to provide daily substitution and top-up mechanisms not affecting the initial date of perfection of the security interest, as well as voting instruction clauses and rebate in the particular case that there has been transfer of title by irregular pledge.

The zero hour rule, under which the insolvency of the company may have a retroactive invalidating effect on completed transfers, payments and set-off accounts made by or with the insolvent company, was an obstacle to the rights of the pledgee, but following the implementation of the Finality Directive this will no longer be a problem. The Italian floating pledge is therefore a very attractive mechanism.

3.2. Implementation of the Settlement Finality Directive

[The Italian Treasury in close collaboration with the central bank and the Securities and Exchange Commission made an official announcement that they will take the broad interpretation of the Art. 9 (2). In other words, as well as eliminating legal risk for certain collateral takers (central banks of Member States; the European Central Bank and those participants that provide liquidity to a European Union payment or securities settlement system to which the Finality Directive applies), the Italian approach will also eliminate legal risk for all direct or indirect participants in a European Union Settlement system

and direct and indirect participants of all payments and securities systems, whether or not they are European Union systems.

The Directive will affect the Italian insolvency proceedings as follows:

- the "zero-hour rule" will need to be abolished. Art. 7 of the Finality Directive states that insolvency proceedings shall not have retroactive effect on the rights and obligations of a participant arising from its participation in a system earlier than the moment of opening such proceedings.

- Italy will recognise collateral arrangements created in other European jurisdictions, so it will mandate an Italian Bankruptcy judge to respect those collateral arrangements.]