

BANKING

Ione Ferranti, Partner at Ferranti Law Firm



"The structure of the Firm is small, very flexible and Spartan, reducing costs without sacrificing quality or professionalism. We provide our Clients different types of legal services (from bespoke services to 'routinizable' services) and different types of billing, according to circumstances and legal needs." – Ione Ferranti

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Further into our short focus on Banking, our next Thought Leader talks to *Lawyer Monthly* about the pitfalls and risks of the banking sector in Italy, the challenges it faces and its connection with EU banking directives. Ione Ferranti, who began practising in 1998, is a Partner at the Ferranti Law Firm (Studio Legale Ferranti), an Italian law firm established by Ione in 2004.

You deal mostly in banking consultancy; in your experience, what are the most common legal pitfalls your clients fall victims to? Why do you think this is?

In my experience, one of the most common legal hitches our Clients fall victims to is the breach of the borrowers' right to reduce the lender's security for a mortgage loan (or 'restrizione ipotecaria' in Italian, according to article 39 Italian Legislative Decree no. 385/1993 'Consolidated Law on Banking') when they have repaid 1/5th of the principal or the remaining lender's security is sufficient (approximately 80% of the property value). In mortgages business this is a very important right because it allows the borrower (who remains the legal owner of the property in mortgage by legal charge) to sell the 'discharged' portion of the land (the bank's security for a mortgage loan is recorded in the Italian Land Register to some extent). In that case, Italian Banks tend to work slowly. Very often in defence of their rights borrowers have to file an appeal with the 'Banking and Financial Ombudsman' (or 'Arbitro Bancario Finanziario' (ABF) in Italian language, who provides a rapid decision on disputes regarding banking and financial transactions and services. The competence of ABF is limited to no more than 100,000 Euros if the claimant's request concerns the payment of a sum of money) or

if there is a need to appeal to the Italian Civil/Commercial Court.

What are the biggest challenges the banking sector faces today in terms of compliance and regulation and are the solutions within reach?

In my opinion, today's biggest challenge for the Italian banking sector is the problem of the approximately €200 billion in gross non-performing loans resulting from three years of recession that are weighing down the Italian banking system and the Italian economy. What happened to the oldest Italian bank, Monte de' Paschi di Siena, is emblematic of the systemic fragility of Italy's banking system and crisis. Recently Italy's government passed a new legislation to change Italian security law and insolvency proceedings (Italian Law Decree n. 59/2016 dated 3 May 2016, convert into Italian Law no. 119/2016 dated 30 June 2016). According to this new law, a new type of security called a 'pledge without possession' has been introduced in the Italian law system.

How do you think EU banking law has evolved since you began practising, and how can it be made more transparent for banks, business and the public?

EU banking law and Italian banking law have changed for the better

in the last years. The European Union banking system had to face the financial crisis and decided to create a banking union that would allow for centralised supervision and resolution for banks in the euro area. In other words, the banking union is conceived to ensure that banks are stronger and better supervised and, should problems arise in the financial sector, they can be resolved more easily and without using taxpayers' money. A series of stress tests were carried out to provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of large EU banks to adverse economic developments. The European Banking Authority has published the results of the last 2016 EU-wide stress tests of 51 banks and is providing again substantial transparency of EU banks' balance sheets lately. At the beginning of 2016 the Single Resolution Mechanism (SRM) became fully operational. The SRM implements the EU-wide Bank Recovery and Resolution Directive in the euro area and the relative Single Resolution Board (SRB) has been created to respond to the euro area crisis. In July 2016 the SRB collected over 10 billion Euros in contributions in total from nearly 4,000 banks and investments firms via the National Resolution Authorities.