



# The Insolvency Regulation in the Italian Experience

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## International Jurisdiction



- Art. 9 Italian Insolvency Law
  - possibly overreaching provision
  - practice: Courts require foreign companies to carry out an organized activity in Italy. Transitory activities are not enough (*Italian fiscal code alone is not sufficient - Tribunale di Genova 8 giugno 2000, in Il fallimento, 2001, 108*)

Under the InsReg, courts to determine the COMI have argued that

*Italian courts maintain international jurisdiction where the transfer of the COMI is not effective, and the presumption in art. 3 Regulation 1346/2000 can be rebutted. This is the case where after the transfer of the seat, the transfer of managerial, administrative and organizational activities does not follow in the new State. In such a case, the transfer of the COMI is fictitious in nature. Elements such as the registration in the Company Register, difficulties in serving documents at the new seat, and the nationality of managers are only to be taken into consideration for the overall localization of the COMI. [Cassazione, 7470/2017 – 23<sup>rd</sup> March 2017]*



## Group of Companies

- The presumption of the COMI (registered office) can be rebutted if the company does not carry out any activity in the latter place and managerial decisions are taken by the mother company in another Member State
- Recent Practice: A domestic company part to a group, subject to a principal procedure abroad, can still be subject to a secondary procedure in Italy, even if this substantially annuls the principal one (*Cassazione civile, sez. un., 29/10/2015, n. 22093, Illochroma italia Srl in liquidazione c. Sutti, in Guida al diritto 2016, 3, 38* – in CJEU 4 September 2014, *Burgo Group SpA v Illochroma SA and Jérôme Theetten*, Case C-327/13 the company had assets in both States)

## Recognition of decisions

- Seldom recourse to the public policy exception
- Following the opening of a principal procedure, individual actions are precluded (*Tribunale Venezia, 21/12/2010, Dan Bunkreing Ltd.. c. Dolphin Maritime Ltd.. e altr, in Il diritto marittimo, 2011, 607*)
- No relocation of COMI if already determined by foreign courts



## Cooperation and communication

- Little practice in Italy