



PROPERTY QUESTIONS ANSWERED

This month, *Avv. Fabio Pucciarelli* considers the implications of the reciprocity condition for foreign property buyers

THE DECISION to buy a property abroad or to invest in a foreign partnership or company is usually arrived at after a detailed evaluation of the financial, practical and technical aspects of the operation; however, there is one essential legal requirement that cannot be left out of consideration.

This is the so-called *reciprocity condition*. While, in many situations, it does not represent a real obstacle to the successful conclusion of a property purchase or the incorporation of a company, there are some circumstances where it may give rise to a serious impediment which will affect the validity of the contract itself, if entered into by a party considered to be incapacitated.

Under Italian law (Article 16 of Italian Disposition about Law in general introducing the Italian Civil Code) except in those cases provided for under specific legislation, a foreign national is allowed to enjoy the same civil rights due to an Italian citizen on reciprocity condition. This rule is inspired by the principle of limiting a foreigner's civil rights in Italy, so that he will enjoy certain rights only if the national law of his own country allows Italian citizens to enjoy the same rights in his country. The purpose of the rule is to establish a kind of a '*contrappasso*' or *quid pro quo* instrument in relation to foreign countries, in order to promote the interests and rights of Italian citizens abroad.

However, the scope of this rule seems to be narrower now than in the past, mainly because it is applied in combination with other regulations that affect a foreign national's economic activities. First of all, it is important to establish whether the foreigner's home country has concluded an international agreement with Italy in relation to civil rights and with particular regard to the protection of investments. If such an agreement exists, it will prevail, and then the reciprocity condition would be overridden by the terms of the interstate agreement.

Check the Web

A quick check of the frequently updated **Italian Ministry of Foreign Affairs'** website (www.esteri.it/ita/10_89.asp) shows that this is what happens in relation to Australia and the purchase of property by Australian citizens in Italy and vice versa. The reciprocity formally exists with regard to the incorporation of or investment in a company in either country.

Second, there is no need to establish whether the reciprocity condition comes into play when the parties to transactions are stateless persons or refugees, or citizens of Iceland, Norway or Liechtenstein. This is



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all in compliance with the terms and the conditions stated by the relevant international agreements. So it means that they should face no obstacles in the purchase of a property in Italy.

Italian law confirms that article 16 cannot be invoked against citizens of any member state of the European Union – such people are no longer considered to be 'foreign' – or against inviolable rights such as the right to health, the right to own private property or any fundamental human rights acknowledged by national laws, international agreements or unwritten laws, such rights being assured to any foreigners as soon as they arrive at the Italian frontier or any part of the Italian territory.

Benefits of Residence

Finally, the reciprocity condition cannot be invoked against a foreigner who regularly stays in Italy; in this case he enjoys the same civil rights owing to a citizen. In particular, an extra-EU citizen holding a residence card or a residence permit issued for the purposes of gaining employment, or for self-employment or family reasons, is automatically granted those civil rights. However, the reciprocity condition is always to be checked in the case of foreign citizens not staying (living) in Italy or not staying regularly in Italy and for those who do not have a residence permit or card, either because they never applied for it or it was denied. The reciprocity condition is to be always verified for

foreign juridical persons, e.g. companies, partnerships, clubs and societies.

The Italian Ministry of Foreign Affairs' website provides a wealth of very interesting information about the current situation of the reciprocity condition in relation to each foreign state in the matter of property purchase, including mortgages and investment in Italian partnerships or companies. There is also some curious information. For instance, while we see that the reciprocity condition is fully satisfied in relation to the United States of America, the Isle of Man or the Channel Islands, a Canadian citizen is entitled to buy in Italy only dwellings located in urban areas or plots of land – not State demesne (land) – with a surface area no greater than five acres (about 20,000 square metres, or two hectares); however, there is no problem if the transfer occurs without consideration, i.e. through inheritance or by deed of gift. Canadians are also limited in relation to corporate transactions. Citizens of New Zealand cannot purchase a property with a surface area greater than five hectares (50,000 square metres) or with a value in Euros that exceeds the equivalent of 10 million New Zealand dollars. 