

Newsletter

Banking & Finance Department
Recent changes to the Italian Securitisation Law

Summary

Italian Law No. 145 of 30 December 2018 (the “**2019 Budget Law**”), published in the Official Journal No. 302 of 31 December 2018, has introduced some important changes to the Italian securitisation law (Law No. 130 of 30 April 1999, “**Law 130**”).

The main changes are as follows:

- i.* securitisation companies can now subscribe for notes issued by unlisted limited liability companies (*società a responsabilità limitata* – “*Srls*”) and securitisation companies issuing notes may subscribe for unlisted notes issued by Italian companies limited by shares (*società per azioni* – “*SpAs*”), in derogation from the usual statutory ratios on debt limits;
- ii.* securitisation companies may grant financing to “microenterprises” that have a balance sheet equal to or in excess of Euro 2 million;
- iii.* originators can create segregated pools of assets in connection with these transactions to facilitate the risk transfer;
- iv.* Law 130 now applies to the securitisation of cashflows from real estate and ‘registered moveable property’.

I Broadening the scope of Law 130

The 2019 Budget Law broadens the scope of Law 130, by amending Article 1, par. 1-*bis*. As a result:

- a Law 130 now applies to securitisation transactions carried out by way of subscription or purchase of notes by the ‘securitisation company’ (previously, Article 1 referred to the ‘issuer of the notes’);
- b where the notes issued by the securitisation company are to be acquired by qualified investors, the debt securities to be subscribed for may be issued in derogation from

the rules allowing only regulated professional investors to subscribed for the notes. Further, as regards the Italian rules that disapply the limits on debt issuances, the requirement in those rules for the notes to be listed will be satisfied also by listing the notes issued by the securitisation company. Securitisation companies will therefore be able to subscribe for unlisted notes issued by Italian SpAs in excess of the statutory *ratio* that would otherwise apply, provided that the ABS issued by the securitisation company are listed. As a result of these changes, securitisation companies may subscribe for bonds issued by smaller companies, thereby increasing the potential sources of financing for Srls (*i.e.* “basket bonds”).

Another amendment to Law 130 introduced by the 2019 Budget Law broadens the range of enterprises that may be financed by securitisation companies. The amendment provides that securitisation companies may grant financing to microenterprises with a balance sheet in excess of – or equal to – Euro 2 million.

II Risk transfer and asset segregation

A further amendment to Law 130 (of Article 7(2)) now allows the entity owning the receivables to borrow amounts under a loan arrangement (the effect of which is to transfer the risks and rewards of the receivables on the contractually agreed terms) and to segregate such receivables, related rights and the underlying assets for the benefit of the securitisation company by way of asset separation or by the creation of a charge (Italian law *pegno*) over them. The relevant contracts would provide that the borrower pay the securitisation company all amounts deriving from the securitised receivables.

No later than 90 days after the 2019 Budget Law becomes effective, the Italian Finance Minister is required to enact secondary legislation specifying:

- a the type of assets over which the notes (or, in the case of synthetic securitisation, other contractual rights under the hedging agreements) can be secured;
- b the manner in which the assets may be segregated and the effect of such segregation;
- c the terms on, and purposes for, which the borrower can transfer the receivables;
- d the effect of such segregation;
- e the nature of the security over the segregated assets, rights and receivables, including in the event of the originator’s insolvency;
- f any appointment of the securitisation company for the management of the securitised receivables.

III Securitisation of real estate and registered movable property

By amending Article 7 of Law 130, the 2019 Budget Law now provides that Law 130 applies to securitisations of revenues from the ownership of real estate assets and registered movable property, including rights *in rem* or *in personam* over such property.

Under the new provisions, securitisation companies will be allowed to pursue transactions using a mechanism similar to that under Law Decree No. 351 of 25 September 2001 (“**Decree 351**”) relating to the disposal of real estate held in the public sector.

Decree 351 authorised the Italian Finance Minister to incorporate limited liability companies (Srls) with the sole corporate object of purchasing publicly owned real estate and to finance the purchase through the issuance of notes or by granting bank loans. Decree 351 established a separate regime with respect to Law 130, and also contained specific provisions concerning the obligations of the relevant SPV *vis-à-vis* the noteholders, including rules that the specifically-identified real estate assets and related rights were effectively segregated for the exclusive benefit of noteholders and related parties. Decree 351 also provided that the provisions of Law 130 would apply to such transactions, to the extent compatible.

The amended wording of Article 7(1) of Law 130 would appear broad enough to to open up the possibility for private investors (as well as the Italian State) to securitise cashflows from real estate and registered moveable property. However, as the new provisions do not establish a specific framework for these transactions, it remains to be seen whether Law 130 will be sufficient in practice to permit private real estate securitisations.

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