Changes to the Italian securitization law: A boost for the NPLs market

On 24 April 2017, the Italian Government issued Law Decree No. 50 – converted into law by Law No. 96 of 15 June 2017 – providing for, *inter alia*, amendments to Law No. 130/1999 (the **Italian Securitization Law**).

These amendments aim at facilitating the divestment of loans qualified as non-performing pursuant to the provisions of the Bank of Italy (**NPLs**) by banks and financial intermediaries enrolled in the register of Article 106 of Legislative Decree No. 385 of 1 September 1993 (**Registered Financial Intermediary**) that have their registered office in Italy.

In particular, the amended version of the Italian Securitization Law sets out a special framework providing for new operational tools that can be used in the context of a securitization of NPLs.

What are the new tools?

Grant of loans to the transferred debtors by the NPLs SPV

A special purpose vehicle purchasing the NPLs (**NPLs SPV**) can finance the transferred debtors. By granting new liquidity, the NPLs SPV improves the chances that the transferred receivables (i.e. the NPLs) will be eventually recovered.

The NPLs SPV may grant these loans only to transferred debtors who are not individuals or micro enterprises where:

- the borrowers are identified by banks or Registered Financial Intermediaries;
- the notes issued by the NPLs SPV to finance the granting of the loan are assigned to qualified investors only; and
- the bank or the Registered Financial Intermediary identifying the borrower retains a significant economic interest in the transaction (minimum of 5%) so that its interests are aligned with the interests of the securitization noteholders.

In the event that the NPLs SPV grants loans to the transferred debtors, the management of the transferred receivables and the loans granted must be carried out by a bank or a Registered Financial Intermediary.

Purchase of shareholdings of the transferred debtors by the NPLs SPV

In the context of restructuring plans agreed with the NPLs assignor, agreements executed pursuant to the Italian bankruptcy law, or similar agreements for the restructuring provided for by law, the NPLs SPV may also:

- purchase or underwrite shares, quotas and other equity instruments deriving from the conversion of the receivables of the assignor; and
- Grant loans to such debtors with the purpose of improving the chances of recovering the transferred receivables.

The funds deriving from such shares, quotas or equity instruments will be segregated and allocated exclusively to satisfy the rights of the securitization noteholders and support the costs of the securitization transaction.

In this case, the provisions of Italian law establishing the subordination of loans granted by shareholders do not apply. The NPLs SPV must entrust a suitable entity that has all the authorizations required by law with the management of the equity interests purchased and the loans granted as well as the relevant power to represent the NPLs SPV, in the sole interest of the investors of the relevant securitization transaction.

Purchase and management of the NPLs collaterals

Furthermore, in the context of a NPLs securitization, an additional special purpose vehicle (**Collateral SPV**) that has the exclusive corporate purpose of purchasing, managing and fostering any assets and rights granted as collateral of the transferred receivables (**NPLs Collateral**) may be established.

The funds deriving from the holding, management or disposal of the NPLs Collateral will be segregated and allocated exclusively to satisfy the rights of the securitization noteholders and support the costs of the securitization transaction.

In the event that – in addition to the NPLs Collateral – the Collateral SPV is also the assignee of the relevant financial lease contracts, it must be:

– consolidated in the balance sheet of a bank even if it is not part of a banking group;

– established for a particular securitization transaction only; and

– wound up once upon conclusion of the relevant securitization transaction.

In this case, the Collateral SPV will benefit from all the tax provisions applicable to the financial lease companies and from a favorable tax regime for the transfer of real estate properties.

Final thoughts

The new tools have been designed to boost the transfer and management of the NPLs through the securitization scheme and to reduce the burden of the NPLs on the Italian banking system. However, since the enactment of these amendments to the Italian Securitization Law, only one transaction has been made using the new provisions.

The Italian market players are therefore expecting additional amendments to further improve the impact of these tools (in particular for tax-efficiency purposes) and expand their application.

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