

New trends for the Italian securitization market

The end of 2018 and the start of 2019 have been crucial times for the legal framework of securitization transactions in Italy.

On 30 December 2018 the Italian Parliament approved the Law No. 145 of 30 December 2018, setting out the provisions relating to the prospective budget of the State for financial year 2019 and multiannual budget for the three year period 2019 – 2021 (the **Budget Law**).

The Budget Law introduced, *inter alia*, certain new provisions (**Provisions**) in relation to the Law No. 130 of 30 April 1999 (**Italian Securitization Law**) which have envisaged the following main innovations:

- the introduction of specific provisions relating to so called “sub-participation securitization” (i.e. securitization transactions without the sale of the receivables to a special purpose vehicle (**SPV**));
- the possibility of securitizing the revenues deriving from real estate assets and registered movable assets; and
- the simplification of access to funding for small and medium enterprises (**SMEs**) through minibonds and the securitization market.

On 30 April 2019 the Law Decree No. 34 (*Decreto Crescita* (**Growth Decree**)) was published in the Italian Official Gazette and entered into force on 1 May 2019. The *Decreto Crescita* provided the following additional changes to the Italian Securitization Law and specified certain aspects of the Budget Law provisions in respect of real estate assets securitization:

- the simplification of securitization of receivables classified as Unlikely To Pay (**UTP**);
- improvements and changes to the current framework for non-performing receivables securitizations;
- the possibility to securitise the revenues of real estate asset and registered movable assets only if owned by the SPV.

The *Decreto Crescita* must be converted into law by the Italian Parliament within 60 days from its publication. Failure to do so would result in the ineffectiveness of the provisions of the *Decreto Crescita*.

The Budget Law

The sub-participation structure

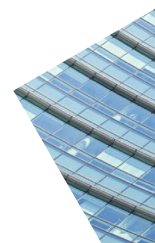
The sub-participation structure was already contemplated in the original version of the Italian Securitization Law. However, so far it has rarely been used as the existing provisions did not ensure the statutory segregation of the securitised receivables in favour of the noteholders. In essence, the sub-participation structure contemplates the following key features:

- the granting of a loan (**Loan**) by the SPV to the originator of the receivables to be securitised (**Borrower**);
- the issue of asset-backed securities (**ABS**) by the SPV, so as to fund the granting of the Loan; and
- the title to and ownership of the securitised receivables remaining with the Borrower.

The provisions enacted by the Budget Law have established a more complete and detailed legislative framework for this type of transaction, by granting to the SPV the same rights that it would have in a scenario where it purchases the securitised receivables. To this extent, the transaction will contemplate the following provisions:

- the receivables, as well as the rights and assets securing such receivables, being segregated in favour of the SPV. In this respect, it will be also possible to create a pledge over such assets and rights as security for the receivables deriving from the Loan; and
- the Borrower being under the obligation to pay to the SPV the sums deriving for the securitised receivables.

Certain matters of the sub-participation structure still need to be defined by way of one or more decrees of the Ministry of economy and finance (expected in the next months), including for instance the creation and the effects of the statutory segregation of the securitised receivables and the creation of security interest over such assets and rights.



Simplifying access to funding for SMEs through minibonds and the securitization market

The minibonds (**Minibonds**) legislation was introduced in Italy in 2012 with the purpose of making available to SMEs an additional source of funding (alternative to the banking channel).

However, so far the use of Minibonds by limited liability companies (**LLCs**) (of which SMEs form a significant component) has been subject to certain restrictions under the Italian Civil Code. In particular, such restrictions require that the Minibonds are subscribed only by professional investors subject to prudential supervision (essentially, banks and financial intermediaries) and set out quantitative limits for the issuance of Minibonds which do not apply exclusively in case the securities are listed on a regulated market.

In this context, the provisions of the Budget Law now allow the LLCs to overcome the above mentioned restrictions in the following cases:

- the Minibonds can be subscribed or purchased by securitization companies (not subject to prudential supervision), in derogation of the relevant provision of the Italian civil code;
- the listing requirement provided by the Italian Civil Code can be fulfilled through the listing of the ABS only, instead of the direct listing of the Minibonds.

For these exemptions to be applicable it will be sufficient that the ABS are subscribed by qualified/professional investors, which is usual in a securitization transaction.

One step further – the *Decreto Crescita*

Further to the innovations set out in the Budget Law, the *Decreto Crescita* has set out additional amending provisions to the Italian Securitization Law (the **New Provisions**).

Simplification of securitizations of non-performing receivables

The New Provisions are directed to make transfers of non-performing receivables easier, particularly of those positions classified as Unlikely To Pay (**UTP**).

In particular, the New Provisions allow for the transfer of commitments or faculties to grant new loans to the assigned debtors from the assignor bank (which is transferring the non-performing loans) to other banks or financial intermediaries, avoiding the termination of the credit line agreements. The account to which the credit is granted remains with the assignor bank, which, however, carries out the disposal of non-performing loans.



Securitization of non-performing receivables

In the context of securitizations of non-performing receivables, the New Provisions have also implemented certain innovations in order to facilitate the realization of such transactions.

In particular, for the purpose of improving the recovery perspectives of the non-performing receivables, the New Provisions allow the SPV to grant loans not only to the assigned debtors but also to entities acting as “guarantor” of the debtors’ liabilities or being debtors’ parent companies or connected companies.

At the same time, in order to facilitate the acquisition and management of the non-performing receivables, the New Provisions provide:

- the establishment of more than one special purpose vehicle supporting the activity of acquisition, management and valorisation of real estate assets, registered movable assets and of other assets and rights granted or constituted as security on the non-performing receivables transferred under the securitization transaction;
- the simplification of the transfer mechanisms of the relevant assets to such “supporting” special purpose vehicles through the application of the provisions of the Italian Banking Act (article 58);
- the segregation by operation of law in favour of the holders of the ABS of the relevant assets and the rights attached thereto (and not only of the revenues deriving from the management and valorisation of such assets).

Real estate assets securitizations

The Budget Law introduced the possibility of carrying out under the Italian Securitisation Law securitizations of revenues deriving from the ownership of real estate assets and registered movable, *in rem* and personal rights on such type of assets.

Only four months following the enactment of the Budget Law, the *Decreto Crescita* further modified and detailed such new regime, in particular providing that such “real estate securitizations” can only be made by setting up a “real estate” SPV which becomes the exclusive owner of the real estate assets and/or registered movable assets and respective rights. Consequently, an SPV is now permitted under the Italian Securitization Law to purchase and securitize assets other than monetary receivables, i.e. the real estate assets and registered movable assets.

Such “real estate” SPVs can carry out only this type of transaction and the real estate assets owned by the SPV are segregated in favour of the holders of the relevant ABS.

Real estate assets securitisations are not completely new in Italy. There have been transactions in the past but only in relation to real estate assets owned by the Italian state for the purpose of the dismissal and privatisation of such assets (i.e. the SCIP securitisations). Such transactions were regulated by special legislation.



Final thoughts

The Budget Law and the *Decreto Crescita* have brought relevant innovations to the Italian Securitization Law envisaging new possibilities that may have a positive impacts on the Italian securitization market. In particular, the simplification provided for non-performing loans transactions as well as the introduction of a brand new regime for real estate assets securitizations clearly show the aim to make securitization transactions easier and enlarge their scope.

Furthermore, the introduction of the possibility of carrying out “Minibond securitizations” highlights the role of the securitization technique also for supporting and sustaining the growth of alternative funding channels for Italian SMEs, thus creating a positive side effect for the real economy.

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