

Securitization in Italy: New Market-Friendly Rules Enacted

IN SHORT

The Situation: The Italian Parliament recently approved the Conversion Law of Decree no. 50, dealing with, among others, securitization regulations.

The Result: The Conversion Law expands the scope of the "Law 130 Vehicle" for the sale of certain securitized assets due to an insolvency or restructuring.

Looking Ahead: The new provisions should attract new investment and make it easier for banks and other financial intermediaries to dispose of nonperforming leases and other claims.

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On June 15, 2017, the Italian Parliament approved the Conversion Law of Decree no. 50 of April 25, 2017 ("Conversion Law"), which includes changes to the laws applicable to Italian securitization transactions.

The Conversion Law is designed to attract new investments and facilitate—for Italian banks and financial intermediaries—the disposal of distressed claims ("*crediti deteriorati*") (including nonperforming, unlikely to pay, and forborne claims) as well as lease receivables (and their residual value component).

The Conversion Law will be published in the *Italian Official Gazette* and likely become effective the following day.

ReoCo-Like Schemes

Some of the proposed changes entail a legal recognition of the so-called "ReoCo" schemes, which are implemented by investors in securitization transactions to maximize profits with respect to collateral real estate assets that offer a potential upside.

A special purpose vehicle company ("AssetCo") may be incorporated to manage the assets and/or the security package used as collateral in relation to the receivables being securitized, a "Law 130 Vehicle."

In addition, AssetCo must:

- Be set up as a limited liability company; and
- Have as its sole corporate purpose the purchase, management, and extraction of value from immovable assets, registered movable assets, and other rights granted or constituted in any form as collateral, in the exclusive interest of the securitization transaction, to guarantee the assigned claims, e.g., assets subject to financial leasing agreements (even after their termination) and any ancillary contractual relationships.

The proceeds from the management or disposal of the assets owned by AssetCo are reserved by law exclusively for the satisfaction of the noteholders' claims *vis à vis* the Law 130 Vehicle and for the payment of relevant transaction costs.

If the pool of assets assigned to AssetCo in connection with the securitization of lease receivables includes, in addition to the leased assets, the leasing agreements or the legal relationships resulting from the termination of such agreements:

- AssetCo must be consolidated in the financial statements of a bank, even if it is not otherwise part of a banking group;
- AssetCo must be dissolved at the end of that securitization transaction;
- The bylaws of AssetCo and the contractual documentation of the transaction must set out the limitations to the corporate purpose of AssetCo;
- Any rights and obligations pertaining to the leasing agreements must be carried out by a bank or by a financial intermediary acting as servicer under the securitization transaction, or by an entity authorized to carry out a "leasing business" activity in Italy; and
- The transfer of the assets to AssetCo or by AssetCo following the termination of a financial lease agreement is subject to nominal registration, mortgage, and cadastral taxes of €200 each.

These changes recognize a fronting structure, based on the Law 130 Vehicle/AssetCo scheme, permitting nonbanking/financial institutions to invest in nonperforming leases ("NPLs"). The Law 130 Vehicle purchases the claims, while the AssetCo purchases the residual portion of the agreements and the underlying assets, with the intent of managing and liquidating them, and then transferring the relevant proceeds to the Law 130 Vehicle.

The above scheme applies to: (i) so-called "*crediti deteriorati*," with the goal of supporting the NPL disposal processes; and (ii) NPLs originated by banks or financial institutions with a registered office in Italy—thereby excluding, at least literally, those sales made by branches of EU or non-EU banks.

Investing in this asset class is made more efficient by the application of the favorable tax regime (namely, transfer taxes) applicable to transfers of assets by financial leasing companies to transfers made by AssetCo, as well as by segregation of proceeds deriving from the sale of assets made by AssetCo in favor of noteholders.

Rescue Finance

The Conversion Law allows for Law 130 Vehicles to grant rescue financing to distressed debtors to the extent that it may actually improve the recoverability of the receivables included in the securitized portfolio and the turnaround of those debtors.

However, the relevant lending activity by the Law 130 Vehicles is subject to the involvement of a bank or a so-called Section 106 financial intermediary, which must also retain a significant economic interest (at least 5 percent) in the securitization. But if the financing is granted in the context of insolvency or restructuring proceedings, no "skin in the game" apparently is required. This is probably because those financing transactions would take place under court-supervised proceedings.

With regard to insolvency and restructuring proceedings (such as debt restructuring agreements and composition with debtors proceedings), Law 130 Vehicles may acquire or subscribe for, as applicable, shares, quotas, and/or other participating financial instruments deriving from debt-to-equity swap transactions.

Purchase on a Cherry-Picking Basis

The Conversion Law allows Law 130 Vehicle to purchase nonperforming claims on a cherry-picking basis, substantially taking advantage of the same simplified formalities provided for portfolios' acquisitions and for trade receivables.

FOUR KEY TAKEAWAYS

1. Changes to Italian securitization laws will make it easier for banks and other financial intermediaries to dispose of nonperforming financial assets.
2. The Law 130 Vehicle/AssetCo arrangement permits non-banking and non-financial institutions to invest in nonperforming financial leases.
3. The introduction of a favorable tax treatment will potentially make investments in these assets more attractive.
4. Law 130 Vehicles can provide rescue financing to distressed debtors in an attempt to improve the chances of ultimately recovering the receivables.

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