



COMMENTARY

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## Securitization in Italy: Recent Reform Opens New Investment Opportunities in Real Estate Market and Boosts NPLs/UTPs Dismissal

### IN SHORT

**The Situation:** In the last years the Italian legislature reformed the Italian securitization law to foster investments in NPLs/UTPs by Italian and foreign professional investors. A recently approved Law Decree provides for further innovations and substantive improvements to meet new market practices and needs.

**The Result:** The Law Decree (i) simplified the procedures for dismissing NPLs/UTPs, (ii) clarified the tax regime applicable to ReoCo/LeaseCo and their operations, and (iii) opened the securitization of real estate assets.

**Looking Ahead:** The Law Decree opens a whole new market for securitization of real estate assets and provides for a definitive boost to the Italian NPLs/UTPs market.

### ReoCo/LeaseCo

The Italian Government recently enacted the law decree No. 34 of 2019 (the "Law Decree") providing for, inter alia, important changes to the Italian securitization law No. 130 of 30 April 1999 ("Law 130"). Such changes fall along the same lines as those introduced by the budget law for 2019 (the "Budget Law") with the aim of fostering securitization schemes in the Italian market. The Law Decree is immediately effective and will be reviewed by the Italian Parliament within 60 days from its approval, possibly with further changes, additions or deletions.

The Law Decree introduces an overarching accounting and tax regime applicable to ReoCo(s) and/or LeaseCo(s) incorporated in the context of NPLs' securitization transactions. Notably:

- The accounting and income tax regime applicable to ReoCo(s)/LeaseCo(s) is now aligned with that of securitization vehicles incorporated under Law 130 (i.e., de facto tax-exempt entities). In particular, all the assets, rights, and sums deriving from the activities carried out by the ReoCo(s)/LeaseCo(s) constitute a separate pool of assets from those of the ReoCo(s)/LeaseCo(s) themselves and are thus segregated by law in favor of the sole fulfilment of the noteholders' rights under the securitization scheme. This provision supersedes the position taken so far by the Italian tax authorities in respect of the tax treatment of ReoCo(s);
- The transfer of real estate assets to ReoCo(s)/LeaseCo(s) (also in the context of enforcement proceedings) is subject to registration, cadastral, and mortgage taxes in a fixed amount (Euro 200). The same tax regime now applies in case of transfers of assets from (i) a ReoCo to business taxpayers who declare their intention to re-transfer the asset within the following 5 years; (ii) a ReoCo to non-business taxpayers that qualify for the so-called "first dwelling" regime; and (iii) a LeaseCo after the default of the lessees. The above indirect tax regime appears very favorable compared to the standard one previously applicable to the same kind of transactions and this is expected to foster the use of ReoCo/LeaseCo's structures in the context of NPLs/UTPs securitization transaction as part of the workout of the securitized assets.

Moreover, the Law Decree clarifies that (i) there may be more than one ReoCo/LeaseCo incorporated in connection with the same securitization transaction, (ii) LeaseCo(s) may now be consolidated within the financial statements of a financial intermediary incorporated under art. 106 of the Italian Banking Act (e.g., a master servicer), rather than of an Italian bank only,

and (iii) the transfer of the assets to ReoCo(s)/LeaseCo(s) can be carried out under the regime set forth by art. 58 of the Italian Banking Act even if such assets cannot be identified as a pool on the basis of common objective criteria.



Securitization will become the most efficient investment structure for acquisition of real estate portfolios.



### Securitization of Real Estate Assets or Registered Movable Assets

Pursuant to the Law Decree, securitization vehicles may now also directly acquire real estate assets or registered movable assets (as, for example, ships, aircrafts, motor vehicles) and securitize any proceeds arising therefrom. Such assets will be segregated by law from those owned by the securitization vehicle itself in favor of the sole fulfilment of the noteholders' rights under the securitization scheme as well as of any right of any lender and/or hedging bank, if any. Securitized assets must be managed and serviced by persons/entities having the required expertise and authorization provided that the asset manager are not statutorily required to hold any banking license. This creates new investment opportunities in the Italian real estate market for both traditional players as well as new investors approaching such market for the first time. Such opportunities may also provide for certain upsides, from a tax and regulatory perspective, compared to investment schemes (e.g., investment funds) adopted so far.

### Dismissing of UTPs

The Law Decree simplifies the dismissing of UTPs by providing that the outstanding commitment under the credit facility in which the UTPs arise from may be transferred by the originator/seller to another bank or art. 106 financial intermediary separately from the connected bank account relationship, which can remain with the originator/seller, provided that all the proceeds deposited on the relevant bank account constitute separate assets from those of the originator/seller bank and that they are exclusively dedicated to the repayment of the debtors' payment obligations arising from the credit facility. This should simplify migration processes and ensure that any domiciliation (e.g., SDD instruction) will remain valid and effective irrespective of the transfer of the relevant financing relationship.

### Financings by SPVs

Moreover, the Law Decree also extended the pool of possible borrowers of financings, which may be granted by securitization vehicles in the context of NPLs/UTPs securitization transactions. In the context of restructuring initiatives, securitization vehicles may now lend also to those entities assuming liabilities of or in any case controlling or connected with financially distressed companies instead of financing the distressed companies directly only.

## THREE KEY TAKEAWAYS

1. The result of the Law Decree is the introduction of a certain and favorable tax regime applicable to ReoCo (s)/LeaseCo(s) operations in the context of NPLs/UTPs securitization transactions.
2. Securitization vehicles can now purchase real estate and/or movable registered assets and securitize any proceeds arising therefrom taking advantage of the favorable tax and legal framework governing Italian securitization schemes.
3. The Law Decree allows the transfer of any outstanding commitment under UTP positions to new lenders and at the same time the maintenance of any connected bank account relationship with the originator in the exclusive interest (and a legal segregation in favor) of the securitization schemes.



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