Amendments to the law on securitisation of receivables

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1. Introduction

On 24 June 2017, the law of 21 June 2017, no. 96 (the "**Law 96**") came into force, which converted into law, with modifications, Decree Law of 24 April 2017, no. 50, which included urgent provisions on financial matters.

Law 96 amended Law No.130 of 30 April 1999 on securitisation ("**Law 130**") by inserting a new article 7.1, the provisions of which apply only to **securitisation transactions involving the transfer of receivables which are classified as non-performing loans, by banks and financial intermediaries registered in the register referred to in article 106 of the Italian Banking Act, with their registered office in Italy**. The changes, which partly recognise what has already been implemented in practice, are designed to facilitate the structuring and implementation of this type of transaction.

2. The new provisions

The following new provisions were introduced by Law 96:

a. Granting of loans for the purposes of better recovery of the receivables

A securitisation company may grant loans for the purposes of improving the prospects of recovery of receivables in relation to which it is a transferee and to favour the repayment by the transferred debtor. This is in any case subject to compliance with the general conditions referred to in article 1, paragraph 1-ter of Law 130 that apply to the granting of loans by securitisation companies.

The new law clarifies the position that the previous law did not expressly prohibit: namely, in the same transaction, the securitisation company, on the one hand, purchases receivables and, on the other hand, provides loans.

b. Loans, purchase of shares and participative financial instruments in the context of economic and financial reorganisation plans or restructuring arrangements

In the context of economic and financial reorganisation plans agreed with the transferor or restructuring arrangements (such as *"concordato", "concordato preventivo", "accordi di ristrutturazione dei debiti"* entered into under articles 124, 160, 182-bis of the Insolvency Law) the securitisation company may buy or subscribe for shares, quotas and other securities and participative financial instruments (PFIs) resulting from the conversion of part of the receivables of the transferor. It may also grant loans in order to improve the prospects for recovery of the transferred receivables and to facilitate repayment by the transferred debtor.

Articles 2467 and 2497-*quinquies* of the Civil Code dealing with the subordination of shareholders' loans, which would generally apply to shareholders' loans granted in a financial stress situation, do not apply to these loans.

Any proceeds deriving from the above mentioned shares, quotas, other securities and PFIs acquired or subscribed for by the securitisation company are regarded as payments made by the transferred

debtor and have to be exclusively used by the securitisation company to satisfy payments due under the notes and to cover the costs and expenses of the securitisation transaction.

c. The new role of manager

The new provisions, therefore, envisage a more complex and dynamic role for the securitisation company, which is no longer limited to the mere collection and recovery of the receivables, and is now expected to possibly contemplate an active management of the receivables through the provision of new funding and the transformation of the securitised receivables into equity instruments or shares (in relation to which it will be necessary to exercise the relevant patrimonial and administrative rights).

In line with what has already been provided for in relation to certain essential roles of securitisation transactions, the new provisions also provide that the securitisation company must use a specialised person or entity to deal with these new management activities and thus creates the new roles of the "manager" of the receivables, which are added to that of the servicer. In particular:

i. in transactions where the securitisation company can, on the one hand, buy receivables and, on the other hand, provide loans with the aim of securing the best possible repayment of those receivables, the management of the receivables and the loans must be entrusted to a bank or financial intermediary, registered in the registry referred to in article 106 of the Italian Banking Act; (which therefore might be performed by the same entity which is appointed as servicer of the securitisation) and

ii. in transactions in which the securitisation company, in the context of economic and financial reorganisation plans agreed with the transferor or restructuring arrangements (such as *"concordato", "concordato preventivo", "accordi di ristrutturazione dei debiti"* entered into under articles 124, 160, 182-bis of the Insolvency Law) may acquire or subscribe for shares, quotas and other securities or PFIs, the securitisation company must identify an entity (holding the necessary skills and authorisations) to which it gives, in the interests of the holders of the notes, the responsibility of management or administration and representation powers. If this entity is a bank, a financial intermediary entered in the register referred to in article 106 of the Italian Banking Act, an investment company ("*società di intermediazione mobiliare*") or an asset management company ("*società di gestione del risparmio*"), that entity must also verify that the activities and transactions of the securitisation company comply with the law and the prospectus.

d. ReoCo and securitisation of receivables arising from financial leasing contracts

In the context of a securitisation transaction, it will be possible to set up a vehicle company in the form of a limited liability company ("*società di capitale*"). This company will have, as its sole purpose, the purchase, management and maximising of returns, in the exclusive interest of the securitisation transaction, in relation to real estate, registered moveable assets and other assets and rights granted or established in any form to guarantee the securitised receivables. This will include property subject to financial leasing contracts, even if terminated, and any legal relationships arising from these contracts.

On the one hand, the new law clarifies what the previous law did not previously prohibit: namely that in order to service a securitisation transaction, a vehicle company can be established which purchases property or other assets securing the receivables. Companies set up in order to buy real estate are known as ReoCo (Real Estate Owned Company) companies. On the other hand, the new law contains entirely new provisions that specifically facilitate the transfer of non-performing receivables resulting from financial leasing contracts, by providing for the purchase by the vehicle company of both the assets subject to the financial leasing contracts (even if terminated) as well as the legal relationships arising from those contracts, provided that the vehicle company is:

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i. consolidated into a bank's balance sheet,

ii. incorporated for the sole purpose of the securitisation, and

iii. intended to be liquidated on completion of the securitisation transaction.

The law also provides that the vehicle company that is transferee of the financial leasing contracts and the relevant legal relationships and of the assets arising from that activity are subject to the tax legislation applicable to leasing companies. In addition, transfers of property carried out by vehicle companies will be subject to the same reliefs originally provided in relation to the application of registration, mortgage and cadastral taxes.

Finally, the new law extends the benefit of segregation to the proceeds deriving from the management of these assets and rights. It provides that the sums in any way resulting from the holding, management or disposal of the assets and rights, due from the vehicle company to the securitisation company, are regarded as payments made by the transferred debtors and have to be exclusively used by the securitisation company for the satisfaction of the rights incorporated in the notes issued and for the payment of the costs and expenses of the securitisation transaction.

e. Simplified publicity regime for transfer of non-performing receivables not identified as a pool

If the non-performing receivables transferred are not identified as a pool, a simplified publicity scheme applies for the perfection of the transfer and the segregation of such receivables. In fact, it will be enough the registration in the relevant Companies' Register and the publication in the Official Gazette of the notice of transfer of the receivables containing the following information: the name of the transferor and the transferee, the date of the transfer, type of receivables and origination period, as well as the website on which the transferor and the transferee shall make available, until the cancellation of such receivables, the data relating to such transferred receivables and the confirmation of the transfer to the transferred debtors if they ask for it.