



Notes on Financial Stability and Supervision

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Recent changes to Law 130/1999 on securitization of loans

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Summary

The decree law n. 50/2017, as amended by Parliament, has introduced important innovations into the regulation on securitization with the aim of facilitating the disposal of non-performing loans by banks.

The changes to the existing regulatory framework widen the scope for maneuver of Special Purpose Vehicles (SPVs), as these are allowed to grant additional loans to those borrowers whose debts have been sold by banks, to acquire holdings deriving from securitized non-performing loans (NPLs) through debt-to-equity swaps, and to purchase and manage the immovable (real estate) or other property placed as collateral of the securitized NPLs.

These innovations make it easier to securitize some categories of NPLs (as the so called unlikely to be repaid, UtP) and will encourage participation in foreclosure auctions. At the same time, safeguards are introduced to ensure that these innovations do not foster uncontrolled development of shadow banking or make supervision on activities reserved to supervised entities less effective.

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Introduction and main conclusions

In converting decree law n. 50/2017¹⁾ into law, Parliament has made important changes to Law 130/1999 on securitization of loans.

The changes aim at facilitating securitization of NPLs originated by banks and financial intermediaries as referred to in article 106 of the consolidated law on banking (CLB). As a matter of fact, the new provisions remove or soften some of the limits and stringent provisions on new loan granting to distressed debtors by Special Purpose Vehicles (SPVs) and make NPLs recovery process more efficient.

In particular, SPVs that buy and securitize NPLs are allowed:

- (i) to grant new loans to certain categories of distressed debtors or acquire holdings in their company, where this helps restructuring debtors' financial position and facilitate repayment (see paragraph 1 below);
- (ii) to buy and directly manage the immovable or other property placed as collateral of the securitized exposures (see paragraph 2 below).

Some safeguards are also introduced to avoid uncontrolled development of shadow banking.

1) *Urgent financial arrangements, measures to support local authorities, additional measures in favor of earthquake areas and measures for development* (Decree Law n.50/2017 published in GU Serie Generale n.95 del 24-04-2017 - Suppl. Ordinario n. 20). The innovations described in this Note are set out in article 60-*sexies*, introduced by the conversion Law nr. 96 of 21st July 2017 published in GU Serie Generale n.144 del 2-06-2017 - Suppl. Ordinario n. 31/L

SPVs are allowed to grant loans and acquire holdings

1. Granting of new loans and debtor's position restructuring

The SPVs that buy and securitize NPLs are allowed to grant additional loans and/or help restructuring the debtor's position in two ways:

- a. by granting new loans, provided that conditions are met to ensure that the debtor's creditworthiness has been assessed by an institution, such as a bank or a financial intermediary as referred to in article 106 of the CLB, which is required to align its interests with those of investors²⁾;
- b. by underwriting capital or other equity instruments deriving from the conversion of loans (debt-to-equity swaps) as agreed with debtors in economic and financial balance plans.

The effectiveness of supervision is safeguarded

The legislation previously in force (Law 130/1999) allowed securitization of unsecured loans but made it difficult, if not impossible, for SPVs to carry out the above mentioned activities.

The new loans granted by the SPVs (referred to in point a.) must be managed by a professional and duly licensed entity - such as a bank, a financial intermediary as specified in article 106 of the consolidated law on banking, an investment firm or an asset management company -, that has to act in the interest of investors and check whether the operations performed by the SPV are in compliance with law and the transaction prospectus. These provisions have been introduced to safeguard the principle that banking and financial activities are reserved to supervised banks and financial institutions as provided for by the Italian regulations and to ensure the correct performance of new permitted activities by the SPVs.

SPVs are allowed to buy and manage real estate

2. Securitization of loans collateralized by immovable property

With regard to NPLs secured by immovable or other property, ad hoc vehicles are now entitled to acquire the property or assets placed as collateral and are required to use the proceeds of their management to pay the investors' claims in the asset-backed securities (ABS) issued by the SPV. Among other things, that will make it possible for the vehicles to take part in foreclosed properties auctions with the aim of supporting prices or buying the property before it loses value.

2) The law refers to the conditions set out in art. 1, para. 1-ter, of Law N. 130/1999, that, among other things, provide that the bank or financial intermediary identifying the receiver of the loans granted by the SPV "keeps a significant interest in the operation, in compliance with the implementing regulation of the Bank of Italy". The Bank of Italy has implemented this provision by issuing the 15th revision of Circular no. 285/2013 "Disposizioni di vigilanza per le banche" and the 1st revision of Circular no. 288/2016 "Disposizioni di vigilanza per gli intermediari finanziari" (8 March 2016).

The management of lease receivable has to be delegated to professional and duly licensed entities

In the specific case of securitization of lease receivables, under the new regulations an ad hoc vehicle has to be established for any specific securitization transaction, consolidated in the balance sheet of a bank (even if the SPV is not part of a banking group), and wound up once the operations associated with securitization are completed, if the immovable or other property leased and the relevant agreements are to be sold. The management of immovable or other property has to be delegated to the securitization servicer (or to a professional and duly licensed entity as set out in para. 1 above).

These provisions are intended to ensure that the immovable or other property placed as collateral of securitized loans are professionally managed to safeguard the interest of investors in ABS.

The transfer or selling of securitized loans is simplified

3. Simplification of loan transfer or selling

The new provisions simplify the procedures for loan transfer from the originating institutions to the SPVs by departing from the obligation to notify the debtor as provided for by the Civil Code. The simplified procedures can be applied also in the case of transfer of loans non identifiable en bloc under article 58 of the CLB. Appropriate forms of publication - including by the internet - are, however, provided for.