ABSTRACT

The article, after a brief description of the recent amendments to the Italian securitisation legislation, provides a few remarks on the new piece of legislation and suggestions to implement, in a safe way, the real estate and registered assets securitisation transactions.

REAL ESTATE SECURITISATION TRANSACTIONS

A FEW PRELIMINARY REMARKS AND SUGGESTIONS

Introduction

Law Decree of 30th April 2019, No. 34 (the Growth Decree), converted into law by Law 28 June 2019, No. 58 has introduced a number of changes to the Italian securitisation law (law 30 April 1999, No. 130).

The legal regime of real estate – registered assets securitisation transactions

Law 130/1999 (article 7.1 letter b-bis, in particular) already contemplated the possibility for the securitisation vehicles to (a) acquire the property or other rights in rem on real estate assets and registered assets and/or other rights to use such assets and (b) put in place a "securitisation" of the revenues deriving from such assets.[1]

As it is clear, such "securitisation" transaction is not based on the traditional concept of receivables transfer and issuance of notes.

Given the above, many commentators soon highlighted that the legal regime introduced in 2018 was very light (too much light) to regulate a brand-new model of securitisation transaction.

The Growth Decree has provided (mainly introducing a new article 7.2 in the securitisation law) some clarifications and new provisions essentially dealing with the management and segregation regime.

More in particular,

(a) all vehicles carrying out securitisation transactions under new article 7.2 of the Italian securitisation law are prevented from carrying out any other kind of securitisation transaction;

(b) the management and administration of the securitised assets must be delegated to a professional asset manager;

[1] As a matter of fact, this possibility has been introduced in December 2018, with effect from 1° January 2019.

(c) the assets and rights securitised for the benefit of the noteholders and the hedging counterparties shall be clearly identified for each transaction;

(d) the assets and rights under letter (c) above, the revenues deriving there-of and any other right acquired within the securitisation transaction are ring-fenced from the assets and rights belonging to the vehicle and those of any other securitisation transaction;

(e) the segregated assets are the only assets on which the noteholders and other creditors would have recourse;

(f) given the segregation regime above, no actions from any creditor different from the noteholders and/or lenders and/or the hedging counterparties are allowed on the segregated assets.

Some preliminary remarks

Hereinafter are some preliminary remarks on the changes introduced with article 7.2 of the securitisation law.

Many commentators have been sceptical on such new piece of legislation, considering that it introduced a brand-new model of securitisation. Despite its novelty in the context of the securitisation law, such kind of securitisation transaction is not entirely new in the Italian legislation, as it looks based (this appears to be the preferable interpretation) on the model of the securitisation transaction of public real estate assets, regulated by Law Decree 25 September 2001, No. 351 (the so called SCIP transaction).

It is worthwhile highlighting that compared to the SCIP transaction, a first element of difference is constituted by the necessarily public nature of the SCIP transaction. In addition, a second element (which seems even more relevant) of difference is represented by the role of public entities involved at that time, which assumed the double role of vendors and managers of the buildings.

The regulation of article 7.2 of the securitisation law recalls the provisions of the "ordinary" securitisation transaction, to the extent compatible. Again, the comparison with "normal" securitisation transactions shows some important differences, starting from the different risk profile.

Some preliminary suggestions

Considering all the above, it may be appropriate in the circumstances of a transaction to adopt the following safeguards:

(a) be very careful in the assets selection, paying attention to the risks deriving therefrom, with an aim at putting as less risks as possible on the vehicle;

(b) conduct an extensive due diligence activity on the real estate or registered assets and the vendor (more extensive than it would be usual for a normal receivable transaction) and the related risks;

(c) set up a particularly safeguarding contractual set of clauses for the buyer in the contracts to acquire the assets, according to the best market practice in this specific sector; the contractual documentation shall also allow the vehicle to tackle any unexpected problem;

(d) to conduct a strict assessment of the competence and soundness requirements for the asset manager, during the selection phase;

(e) set up a contractual agreement with the asset manager that aims at transferring on it as many responsibilities as possible, as to mitigate the same risks on the securitisation vehicle.

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