



Italian securitisation law

English translation of law 130 of 30 April 1999 as amended by law decree 35 of 14 March 2005, introducing covered bonds legislation



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Introduction

This document provides an English translation of the new Italian securitisation law, law 130 of 30 April 1999, as amended by law decree 35 of 14 March 2005.

In summary, the securitisation law:

- allows thinly capitalised companies incorporated in Italy to purchase receivables and issue asset-backed securities;
- ring-fences the securitised assets in favour of the holders of the asset-backed notes (the notes) ultimately issued and the other parties involved in the securitisation structure;
- maintains the preferential regime under article 58 of legislative decree 385 of 1 September 1993 (the consolidated banking act) for the perfection of the assignment of the relevant receivables, under which only a publication in the Italian official gazette and a registration in the companies' register are required;
- restricts the entities that can service receivables portfolios to banks and certain Italian financial companies (although the Bank of Italy has now agreed that certain functions may be delegated to third parties);
- provides an exemption from the Italian withholding tax legislation for interest payments on notes issued by Italian issuers to noteholders resident in jurisdictions outside Italy that are (1) not resident for tax purposes in a tax haven country (as defined by the Italian ministry of finance) and (2) resident for tax purposes in a country that allows for an adequate exchange of information if the notes have been deposited in accordance with the provisions of Italian tax laws and all the relevant requirements have been fulfilled. Special exemptions have been provided for institutional investors; and
- sets out the regime that will allow Italian banks to issue bonds 'covered' by guarantees issued by vehicles owning mortgages loans or receivables vis-à-vis public entities.

Article 1: scope and definitions

- 1 This law shall apply to securitisation transactions involving assignment for consideration of existing or future monetary claims, where those claims are homogenous in the case of multiple claims, and where the following requirements are satisfied:
 - a the assignee is a company of the type set out in article 3 below;
and
 - b the sums paid by the assigned debtor or debtors are applied by the assignee exclusively to satisfy rights attaching to securities issued by it or another company to finance the acquisition of such claims and the costs of the transaction.
- 2 In this law references to ‘consolidated banking act’ are to legislative decree 385 of 1 September 1993, as amended, which is a consolidating law in banking and credit matters.

Article 2: transaction programme

- 1 The securities referred to in article 1 above are financial instruments and are regulated by legislative decree 58 of 24 February 1998, which is a consolidating law in matters of financial brokerage.
- 2 The assignee company or, where different from the assignee company, the company issuing the securities shall prepare an information memorandum.
- 3 Where the securities subject to the securitisation transactions are placed with professional investors, the information memorandum shall contain the following information:
 - a the assignor, the assignee company and a description of the transaction, both as regards the claims and the securities issued to finance the transaction;
 - b the persons responsible for managing the issue and the placement of the securities;
 - c the persons responsible for the recovery of the assigned claims and the cash flow and payment services;
 - d the conditions upon which the assignee company may assign the purchased claims for the benefit of the holders of the securities;
 - e the conditions upon which the assignee company may reinvest in other financial activities the amounts arising from the management of the assigned claims which are not immediately used to satisfy the obligations arising in connection with the securities;
 - f any secondary finance transactions entered into in the context of the securitisation transaction;
 - g the minimum essential content of the securities issued and details of the publication of the information memorandum which shall be adequate to make it easily available to holders of securities;
 - h the costs of the transaction and the terms upon which the assignee company may deduct the same from sums paid to it by the assigned debtor or debtors, as well as details of the forecast in relation to the transaction and the identity of the person receiving the same; and
 - i any shareholding relationship between the assignor and the assignee company.
- 4 Where the securities relating to the securitisation transactions are offered to persons other than professional investors, the transaction shall be subject to credit rating by qualified third parties.

- 5 The Italian securities authority (Consob) shall, by way of a regulation to be published in the official gazette of the Republic of Italy, set out the professional qualifications and the criteria to ensure the independence of the entities that carry out the credit rating as to the quality of the claim and the information concerning any relationship between them and the persons who, in their respective capacities, are party to the transaction, including where the credit rating is not required.
- 6 The services referred to above under paragraph 3(c) of this article shall be provided by banks or financial intermediaries which are recorded in a special register pursuant to article 107 of the consolidated banking act, who shall ensure that the transactions comply with the law and the information memorandum.
- 7 The information memorandum shall be delivered, upon request, to the holders of the securities.

Article 3: companies involved in securitisation transactions

- 1 The assignee company or, where different from the assignee company, the company issuing the securities, shall have as its sole corporate object the undertaking of one or more securitisation transactions.
- 2 The claims relating to each transaction shall constitute assets segregated for all purposes from the assets of the company and from assets relating to other transactions. No creditor other than the holders of the securities issued to finance the acquisition of the claims themselves shall be able to commence proceedings in relation to each asset pool.
- 3 With the exception of article 106(2) and article 106(3)(b) and (c), the provisions contained in title V of the consolidated banking act, together with the sanctions contained in title VIII of the consolidated banking act, shall apply to the assignee company and the issuer.

Article 4: conditions and enforceability of the assignment

- 1 The provisions contained in article 58(2), (3) and (4) of the consolidated banking act will apply to assignments of claims made pursuant to this law.
- 2 From the date of publication of the notice of the assignment in the official gazette of the Republic of Italy, proceedings may only be commenced in relation to the purchased claims and to amounts paid by the assigned debtors in order to protect the rights referred to above in article 1(1)(b). From such date, the assignment of the claims shall be enforceable against:
 - a persons asserting rights against the assignor who have not satisfied the formalities required to ensure the effectiveness of their title as against third parties before that date; and
 - b creditors of the assignor who have not secured the claim before the publication of the notice of assignment.
- 3 Article 67 of the royal decree 267 of 16 March 1942, as amended, shall not apply to payments made by the assigned debtors.
- 4 For the purposes of securitisation transactions governed by this law, the time limits of two years and one year contained in article 67 of royal decree 267 of 16 March 1942, as amended, are hereby reduced to six months and three months, respectively.

Article 5: securities issued in relation to the purchased claims

- 1 Articles 129 and 143 of the consolidated banking act shall apply to securities issued by the assignee company or by the company issuing the securities for the purposes of financing the acquisition of the claims.
- 2 Neither article 11(2) of the consolidated banking act, prohibiting the solicitation of public savings, nor quantitative limits to the raising of funds set by current law shall apply to the issue of the aforementioned securities. Articles 2410 to 2420 of the Italian civil code shall not apply either.

Article 6: taxation and accounting provisions

- 1 For income tax purposes, the same regime established for debentures issued by public limited companies whose shares are traded in regulated Italian markets as well as the regime established for similar securities, including the regime set out in legislative decree 239 of 1 April 1996, shall apply to the securities referred to in article 5.
- 2 The benefits set out in article 15 of presidential decree 601 of 29 September 1973 shall continue to apply to assignments concerning claims arising from the transactions indicated in articles 15, 16 and 19 of the same presidential decree.
- 3 Where they relate to securitisation contracts entered into within two years of the entry into force of this law, any depreciation in the value of the assigned assets, the security and guarantees given in favour of the assignee, and the assets (other than those assigned) used as collateral or security in the context of the securitisation transaction, as well as accounting provisions (*accantonamenti*) effected in connection with the security and guarantees given to the assignor, may be accounted for directly in the asset reserves; they shall be recorded in the profit and loss account in equal portions for each of the accounting periods in which they are first recorded and the following four accounting periods. References to securitisation transactions and any depreciations and accounting provisions not yet made in the profit and loss statement must be made in the notes accompanying the financial statements.
- 4 In the case of events referred to in paragraph 3 above of this article, the depreciations in the assets referred to therein shall be taken into account in the assessment of the income for the accounting periods in which the same are recorded in the profit and loss statement.
- 5 In relation to lower revenues arising pursuant to this article, equal to L300m per year for every year from 1999 to 2005, a corresponding reduction in the accounting provision for the years 1999, 2000 and 2001 shall apply for the purpose of the triennial financial statement 1999-2001, within the 'special fund' of the Treasury budget for the financial year 1999, partially utilising for this purpose the accounting provisions made in relation to the same ministry.
- 6 Where necessary, the Treasury is authorised to make amendments to the budget by way of decree.

Article 7: other transactions

- 1 To the extent that they are not inconsistent, the provisions of this law shall apply to:
 - a securitisation transactions effected by way of the granting of a loan to the assignor by the company issuing the notes in connection with the securitisation transaction; and
 - b assignments of claims to investment funds relating to legislative decree 58 of 24 February 1998.
- 2 When transactions are effected by way of the granting of a loan, references to the 'assignor' and the 'assignee' shall be deemed to be references to the 'borrower' and the 'lender', respectively.

Article 7-bis: covered bonds (*obbligazioni bancarie garantite*)

- 1 Subject to provisions set out in paragraphs 2 and 3 of this article, the provisions of article 3(2) and (3), article 4 and article 6(2) apply to transactions regarding transfers of mortgage claims (*crediti fondiari e ipotecari*); claims vis-à-vis or guaranteed by public administrations, which can also be identified in pools (*in blocco*); and notes issued in the context of securitisation transactions [by way of assignment] regarding claims of the same kind, effected by banks in favour of companies whose exclusive purpose is the purchase of such claims and notes, funded by loans granted or secured also by the banks/transferees [of the above claims and title] and providing for guarantees for the bonds issued by those banks or different ones.
- 2 The claims and the notes purchased by the company referred to in paragraph 1 above and the amounts paid by the related debtors are reserved to satisfy the rights of the bondholders referred to in paragraph 1 (also pursuant to article 1180 of the Italian civil code), the counterparties to the derivative agreements for the hedging of the risk inherent to the transferred claims and notes and to the other ancillary agreements, and the payment of the other transaction costs, with priority in respect of the repayment of the loans referred to in paragraph 1.
- 3 The provisions set out in article 3(2) and article 4(2) apply for the benefit of the parties referred to in paragraph 2 of this article. For these purposes 'noteholders' (*portatori dei titoli*) shall be understood to be a reference to the bondholders referred to in paragraph 1.
- 4 Articles 69 and 70 of royal decree 2440 of 18 November 1923 do not apply to the transfers referred to in paragraph 1. The entrusting or transfer of the functions referred to in article 2(3)(c) to entities other than the bank/transferee is notified by way of publication in the official gazette and, for public entities, also by registered letter with return receipt. Paragraph 3 of article 67 of royal decree 267 of 16 March 1942 as further amended applies to the loans granted to the companies referred to in paragraph 1 and the guarantees given by those same companies.
- 5 In a regulation adopted pursuant to law 400 of 23 August 1988 and after consulting the Bank of Italy, the minister of the economy and finance shall establish the rules implementing the provisions of this article, establishing in particular the maximum ratio between the bonds and the transferred assets, the type of such assets and of those (with equivalent risk profiles) which can be used for their successive

integration, and the characteristics of the guarantee referred to in paragraph 1.

- 6 Rules implementing the provisions of this article shall be issued pursuant to article 53 of legislative decree 385 of 1 September 1993, as further amended. Those rules shall also lay down the requirements for the issuing banks, the criteria that the banks adopt for evaluating the assigned claims and notes and the procedure for their integration, and the checks that the banks make in order to verify compliance with the obligations set out in this article, also through an auditing company appointed for this purpose.
- 7 Duties or taxes are levied as if the transactions set out in paragraph 1 are not made with the claims and notes which have been transferred as accounted for in the financial statements of the bank/transferor in the event that consideration for the transfers equal to the last registration amount in the financial statements of the claims and notes has been given, and the loan referred to in paragraph 1 has been granted or secured by the same bank.

Article 7-ter: applicable provisions

The provisions set out in article 7-bis(5) and (6) will apply to both the creation of dedicated assets (*patrimoni destinati*) related to the claims and notes described in article 7-bis(1) and the destination of the relevant proceeds, effected pursuant to article 2447-bis of the Italian civil code, in order to secure the rights of the holders of the bonds issued by the banks under article 7-bis.

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