

## Italian Government Enacts Innovative Measures to Support Access to Finance

***A new decree expands the types of entities allowed to provide loans beyond banks and financial intermediaries.***

### Introduction

The Italian Government enacted law decree No. 91, of June 24, 2014, published on the Italian Official Gazette No. 144 of June 24, 2014 (the Decree) with new measures aimed, inter alia, at supporting access to finance. The Decree entered into force on June 25th and has to be converted into law within 60 days of its publication. With this Decree, the Italian Government, for the first time, introduces significant changes to the banking sector, allowing players other than banks and financial intermediaries to carry out direct lending activity on the primary market, rather than simply purchasing receivables arising out of loans originated by licensed banks or financial intermediaries.

### New entities admitted to direct lending

Before enactment of the Decree, direct lending was reserved to licensed banks and financial intermediaries. The Decree amended the legal framework applicable to direct lending, to include collective investment undertakings, Italian licensed insurance companies, Sace S.p.A. and Italian securitization vehicles incorporated pursuant to law No. 130 of April 30, 1999, (Italian SPVs) among the entities allowed to carry out direct lending.

### Collective investment undertakings

The Decree amended the definition of collective investment undertakings set forth under the Italian Financial Act, in order to include the possibility for such undertakings to invest in receivables “including those issued out of the assets of the collective investment undertaking,” possibly to be meant as “including receivables arising out of loans granted with the assets of the collective investment undertaking.” This wording would include collective investment undertakings among the categories of entities which can now carry out direct lending activity.

The draft ministerial decree published for public consultation by Ministries of Treasury and of Economic Development regarding the structure of Italian collective investment undertakings, also supports the above interpretation, stating that the regulation “contemplates the possibility to use the assets to grant loans.”

Based on the interpretation of the set of rules governing the provision of collective investment services in Italy, and in light of the declared intent of the Decree to open the direct lending market to a wider

spectrum of players, the amendment could be interpreted also to include European Union (EU) collective investment undertakings among the entities allowed to carry out direct lending activity, to the extent that such entities are authorized to carry out such activity in their EU home country.

Direct lending by collective investment undertakings does not appear to be subject to the restrictions applicable to insurance companies and Italian SPVs, as briefly illustrated in the following paragraphs. However, in order to have a clear view of the legal framework applicable to Italian and EU collective investment undertaking willing to carry out direct lending in Italy, it is necessary to wait until the Decree is converted into law, also considering that amendments can be made during the conversion process. Further, the new provisions will need to be fully implemented at the regulatory level, also by the Bank of Italy and Consob; the draft regulations are currently under consultation.

### **Insurance companies**

The Decree extends to Italian Insurance companies, the possibility to carry out direct lending with companies. The Istituto per la Vigilanza sulle Assicurazioni (IVASS), the Italian insurance supervisory authority, shall set forth conditions and limitations to the direct lending activity, provided that: i) any borrower shall be identified by a bank or a financial intermediary registered pursuant to article 106 of the Italian Unified Banking Act; and ii) this bank or financial intermediary shall maintain a significant economic interest in the transaction up to its maturity.

The Bank of Italy shall also detail with regulation the periodical disclosure duties applicable to insurance companies as well as their participation to the Italian Central Credit Register (Centrale dei Rischi).

### **Italian securitization vehicles**

The Decree also introduces the possibility for Italian SPVs to carry out direct lending in favor of companies. The same conditions specified above with respect to Italian insurance companies apply to Italian SPVs and the notes issued to finance the loan are issued in favor of qualified investors, as defined by article 100 of the Italian Financial Act.

The Decree specifies that securitization transactions can be carried out also by securitizing the receivables arising out of one or more loans granted by the Italian SPV. In order to ensure transparency and reduce systemic risks, the Decree also entrusts the servicer with the duty to verify the financing transactions comply with the applicable laws.

The Decree also introduced changes to the legal framework governing the segregation of accounts held by servicers and other depositories.

The amendments aim at attracting under the segregation benefit all sums due by the servicer or depository to the Italian SPV in connection with the securitization transaction (including any sum due pursuant to any ancillary transaction carried out within the scope of the securitization) so that creditors of the depositories or of the servicers may bring an action only on amounts exceeding those sums. Similar provisions apply to securitizations of receivables arising out of loans: from the date the loan is drawn, also in part, no actions are admitted on the receivables or on any sums paid by the borrowers, other than actions for the rights of the noteholders and actions in connection with other securitization transaction costs.

Further, as a result of the newly introduced provisions, any collections can be utilized to make payments to the noteholders and hedging counterparties, regardless of any insolvency proceedings involving a servicer or a depository.

## Tax measures

In addition to amending the regulatory framework to broaden the type of entities that can carry out direct lending, the Decree also introduces tax measures aimed at incentivizing lending on both primary and secondary markets.

Before enactment of the Decree, interests paid by an Italian borrower to a non-resident lender were subject to a withholding tax (currently 26 percent or the different percentage applicable according to double taxation treaties). The Decree now exempts EU banks, EU insurance undertakings, and unleveraged collective investment undertakings established in the EU or in a European Economic Area State allowing an adequate exchange of information with Italy, from paying the withholding tax on interests due by Italian borrowers (provided they are enterprises) on mid-long term financing.

The Decree also included (i) Italian SPVs, (ii) EU insurance companies and (iii) collective investment undertakings established in the EU or in a European Economic Area State, among the categories of entities that qualify to apply the 0.25 percent substitute tax regime to medium and long term financing. This tax regime allows to apply a lump sum taxation instead of indirect taxes applicable to the loan and all accessories to the loan, including the relevant security package. Further, before enactment of the Decree, each transfer of receivables on the secondary market was subject to taxation in connection with the assignment of the loan and the re-registration of the relevant security package, and, therefore, inefficient from a tax perspective. The Decree now extends the 0.25 percent substitute tax also to any transfer of medium-term loans on the secondary market, thus excluding all other taxes and duties.

The Decree, however, does not expressly specify, whether this exemption applies to all transfers, including those in favor of entities which are not expressly mentioned under article 15 and subsequent of Presidential Decree No. 601/73. In light of such uncertainty and considering that the new provisions may be changed when the Decree is converted into law, loan agreements should properly address the matter, with specific provisions regulating the allocation of the costs connected with all the different tax regimes which may possibly apply.

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