



News flash



Italy publishes new Law Decree on State Guarantee on securitization of receivables from Non Performing Loans (NPLs)



On 15 February 2016, Italian Law Decree dated 14 February no. 18 was published in the Italian official Gazette entering into force the day following its publication (so-called Bank's Law Decree). This Law Decree must be converted into law within the following 60 days.

As anticipated by our previous release of Legal Pulse the *Italian* project to create a *bad debt* has been blocked for months by the EU Commission and now finally it comes to light.

Measures proposed by the Italian government do not follow the path of the bad bank structures used by other EU countries.

What follows is a brief summary of the principles ruling the State guarantee to secure the securitization of the NPLs receivables (the so-called *Garanzia Cartolarizzazione Sofferenze* -GACS)

Features of the GACS

- GACS is an unconditional, irrevocable and first demand guarantee, which:
 - (i) is issued only in favour of the senior note holder and covers payments of interest and capital for the entire life of the transaction with regard to the senior tranche;
 - (ii) can be enforced within 9 months after the maturity of the senior note;
 - (iii) is awarded by means of Ministerial Decree upon request of the assigning bank provided that following conditions are met:
 - the assignment of receivables deriving from NPLs is carried out by banks having registered offices in Italy only;
 - the assignment is carried out in the context of the securitization transactions provided for by article 1 of Law 130/1999; and
 - is issued within 18 months following the entering into force of the Decree. Such period can be extended for further 18 months (upon UE's authorization).
- Rating of the senior note: Senior tranche of the ABS must be rated in order to be in compliance with EU state aid rules. Rating cannot be lower than the

investment grade. The SPV that will acquire the NPLs undertakes not request the withdrawal of such rating until the full payment of the capital.

• **Conditions Precedent to the GACS:**

- (i) Bank's assignment of NPLs must cover at least 50% plus 1 of its junior notes; and
- (ii) securitisation of junior and mezzanine notes (if any) should allow the cancellation of such receivables from the bank's accounts. Accounting principles in force at the time of the transaction will be applied at the consolidated level of the banking group .

- **Price of the GACS:** will be calculated at market standard, taking as reference the prices of credit default swaps of Italian issuers with a risk level equal to that of the guaranteed securities (so ensuring compliance with EU state aid rules).

The securitisation transaction

- **SPV:** each bank will set up a special purpose vehicle. Banks' Decree does not provide any solution for transferring to the same SPV such non performing receivables deriving from syndicated loans.
- **Price of NPLs portfolios:** must not be higher than their net book value.
- **Types of notes:** at least senior and junior notes. Mezzanine notes can be issued, provided that they are subordinated to senior notes.
Junior notes will be reimbursed at the end of the payment cascade.
Junior and mezzanine notes cannot be purchased by the Italian State, the public authorities and the companies controlled, directly or indirectly, by public authorities.
- **Other guarantees:** SPVs can enter into
 - hedging agreements;

- operating credit line agreements to cover risks deriving from the lack of cash flows regarding the senior tranche.

- **NPLs Servicer:** neither the assigning bank nor any of its affiliates can be appointed as NPLs Servicer.
- **MEF Fund:** has been established in order to cover expenses deriving from the issuance of the GACS. The budget for 2016 year amounts to €100million.

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Contacts

Avv. Stefano Maria Zappalà

stefano.zappala@strataspa.net

tel: +39 3484764005

director of  **strata**_{sp.a.} Global Legal Advisor