As is normally the case, the Italian Parliament has used the yearly budget law to introduce a number of amendments to existing laws. Among such changes, paragraphs from 1088 to 1090 of article 1 of Law No. 145 of 30 December 2018 (the so-called “2019 Budget Law”) have introduced some welcomed clarifications and additions to Law No. 130 of 30 April 1999 (the so-called “Securitisation Law”).

**Lending by Securitisation SPVs**

The Securitisation Law has already been amended in 2014 to set out the possibility for securitisation SPVs to advance loans: (a) to borrowers identified by a bank or a financial institution registered under article 106 of Legislative Decree No. 385 of 1 September 1993, who would have to retain a significant interest in the securitisation (the Bank of Italy having set out such significant interest to be determined in accordance with the rules for risk retention requirements set out by article 405 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013, as from time to time amended, supplemented, or repealed); (b) subject to the investors in the securitisation being qualified investors.

Securitisation SPVs were, however, prevented from advancing loans to physical persons and to micro enterprises (as defined by article 2, paragraph 1 of the exhibit of Commission Recommendation 2003/361/EC, of 6 May 2003).

The micro enterprises lending ban has now been lifted by the amendments to article 1-ter of the Securitisation Law introduced by article 1, paragraph 1090 of the 2019 Budget Law, having been replaced by a ban to lend to enterprises having a balance sheet total lower than Euro 2,000,000.

In addition, article 1, paragraph 1090 of the 2019 Budget Law has clarified that lending by a securitisation SPV may occur (subject to the rules and limitations set out by the Securitisation Law and outlined above) in the framework of, *inter alia*, a “traditional securitisation” (i.e. one encompassing the true sale to the securitisation SPV of the claims to be securitised thereby).

**UTP Securitisations**

The above amendments are of specific interest for the purpose of certain NPL securitisations, particularly those involving unlikely-to-pay claims (“UTPs”).

UTPs are an asset class that could benefit from being securitised in the context of transactions involving an active management of the securitised portfolio of claims, such active management also encompassing, when need be, helping the debtors to find sources of new finance. It is therefore a welcome clarification that the Italian Parliament has provided, confirming the interpretation of the Securitisation Law made by legal practitioners in the context of recent high-
profile securitisations of, *inter alia*, UTPs. Even more important is the lift of the ban to micro enterprises financing, which had the unintended—as confirmed by the recent amendment—consequence of limiting financing sources to real estate undertakings who could be among the UTPs’ borrowers benefitting from the new (actively managed) securitisations.

"Synthetic” Securitisations

Article 1, paragraph 1088 of the 2019 Budget Law amended article 7 of the Securitisation Law in respect of the discipline of a specific type of securitisations: those whereby the securitisation SPV issues notes in order to finance the advance of a loan to an entity (typically, in the experience so far of this type of transactions, a bank) who shall repay such loan out of the collections deriving from a portfolio of claims which is identified at the onset of the securitisation and remains owned by such entity (as opposed to being transferred to the securitisation SPV, as would be the case in the context of “true sale,” or “traditional,” securitisations).

In addition to clarifying that such securitisation transactions involve the transfer of the risk in respect of the underlying claims (which is a way in which existing transactions of this type have been structured), the amended provisions set out that the borrower/owner of the claims can ring-fence such claims, as well as the rights and assets securing them, and can create a pledge over such rights and assets. They also set out that the securitisation can encompass an obligation of the borrower/owner of the claims to pay to the securitisation SPV all collections from the underlying claims, as if it involved a transfer of such underlying claims.

While the above amendments clarify certain aspects of this type of transaction and have the potential to strengthen their structure (respect to existing formats), a view on their import will only be able to be taken after the measures set out by paragraph 1089 of article 1 of the 2019 Budget Law are implemented by the Ministry of the Economy and Finance (the “MEF”). The MEF is mandated to issue regulations identifying assets and rights that can be ring-fenced and the formalities to achieve the ring fencing and security. Two points to note are that paragraph 1089 refers to: (a) the assets and rights being able to be ring-fenced not only for the benefit of the holders of the notes issued in the context of the securitisation, but also for the benefit of the counterparties of derivatives undertaken for the mitigation of risks concerning the underlying claims (in addition to those concerning the notes); and (b) the discipline to be set out by the MEF will also have to detail implications of ring-fencing and security when the borrower/owner of the claims becomes subject to an insolvency procedure. The timeline applicable for the MEF to issue the relevant decree(s) is 90 days from the entry into force of the 2019 Budget Law (1 January 2019). The measures to be implemented by the MEF are key to the effective strengthening of this type of transaction and their content, both from an operational viewpoint and from the viewpoint of their consistency with existing laws and regulations, will have to be closely examined in due course.

"Real Estate” Securitisations

Another amendment made to article 7 of the Securitisation Law by article 1, paragraph 1088 of the 2019 Budget Law is aimed at introducing the securitisation of receivables arising from the ownership of real estate assets (as well as registered movable assets, such as automotive, and rights in rem or personal rights over such assets). The aim of such amendment would appear to allow CMBS securitisations by-passing the need of a loan being granted to the real estate company and secured by a mortgage over the real estate assets owned thereby and other security (notably an assignment by way of security of proceeds from lease agreements), in order for claims arising from such loan to be securitised. The amendment introduced in this respect is a very high-level one, and it relies mostly on the beginning of article 7 of the Securitisation Law stating that the other provisions of the Securitisation Law apply also to such newly introduced type of transaction. However, the beginning of article 7 so extends the application of the other provisions of the
Securitisation Law “to the extent they are compatible” with the securitisation structures contemplated by article 7 (to which the “real estate” securitisation has just been added). A level of uncertainty as to which provisions would be compatible with the newly introduced structure, coupled with the lack of specific discipline for this structure, might result in the application of this newly introduced structure being more cautious than intended.

**Other Amendments**

Changes have been made also to article 1-bis of the Securitisation Law. Article 1-bis sets out a type of securitisation involving the underwriting or the purchase by the securitisation SPV of, *inter alia*, certain types of bonds. One of the amendments aims at avoiding some potential confusion under previous wording between the securitisation SPV and the company issuing the bonds. In addition, subject to the investors in the notes issued in the framework of the securitisation being destined to qualified investors, certain limitations in respect of the underwriters of the bonds, and their liabilities *vis à vis* non-qualifying transferees, have been lifted, and the requirement for the bonds to be listed can now be satisfied also by way of listing of the notes issued in the framework of the securitisation.

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While not all of the above amendments are currently operational, and a level of uncertainty exists as to the ability of some of them to strengthen the intended securitisation type, the changes implemented with the 2019 Budget Law are a testimony to the success story represented by securitisation transactions in the Italian space and to the consequent reliance of the Italian market on securitisation structures aimed at straight financing of business or capital regulation optimisation, straight dismissal of portfolios, as well as active management of portfolios.

If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings London lawyer:

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