Zenith in the UTP real estate securitization of Amco and Prelios

AMCO and the Prelios Group have signed an agreement with Banca Monte dei Paschi di Siena, MPS Capital Services per le Imprese, UBI Banca and Banco BPM to create a multi-originator platform to manage UTP (Unlikely to Pay) loans relating to the real estate sector. AMCO and the Prelios Group will manage in partnership a portfolio of small/medium UTP loans arising from loans from €3 million to €30 million to companies in the real estate sector undergoing restructuring or experiencing financial difficulties granted by banks and AMCO itself. The loans have been securitized to the vehicle Ampre S.r.l., made available and managed by Zenith as **Corporate Servicer**. The securitization securities were subscribed by a closed-end mutual fund managed by Prelios SGR. Units in the fund are held by banks and AMCO. Zenith also acts as **Calculation Agent** in the transaction. AMCO serves as Master and Special Servicer in the securitization. The Fund is also expected to provide new finance to support the turnaround of companies and the completion of outstanding real estate projects.

The objective of the Fund is to raise €1.5 billion in portfolio under management through subsequent capital contributions.

Consultation on the Esma guidelines

ESMA placed its Guidelines on the requirements for completeness and consistency of data transmitted to securitization repositories in public consultation. The draft Delegated Regulation - which complements Regulation (EU) 2017/2402 on simple, transparent and standardised securitizations with regulatory technical standards - specifies the information and data on securitizations that must be made available by the originator, the sponsor and the SSPE in compliance with its transparency obligations, providing that the reporting agent is able to specify with the value *"No Data Option (no data)"* the justified unavailability of the information to be made available. The purpose of these Guidelines is to make it easier to understand whether, when verifying the information collected by the data repositories, the 'No Data' options are used correctly and in a way that does not prevent adequate representation of the exposures underlying the securitization.

EBA stress test: reform under way

The European Banking Authority has launched a public consultation on possible future changes in banking stress tests. The aim is to make them "more capable of providing information to identify risks, flexible and less costly", according to Eba President, Jose Manuel Campa. The consultation will last until 30 April 2020. The stress tests verify the resilience of the financial statements of the main European banks in two macroeconomic scenarios, one basic and one adverse. The proposed new framework seeks to balance the need to preserve comparability of results while ensuring greater flexibility in identifying bank specific risks. Two components are therefore envisaged, which are the responsibility of the supervisor and the banks respectively. In particular, the document under discussion seeks views on three options: disclosure of Pillar 2 guidelines for specific risks (P2G); disclosure of a range of P2G; disclosure of Cet1 (and not P2G) capital absorption net of any supervisory adjustments so that the results are useful in terms of supervisory expectations with respect to capital distribution.

Two new tools for reperforming strategies (article by Italian Legal Services)

In 2019 players in the European NPL space have shown increasing interest in the so-called reperforming loans (or RPLs), also following the completion of certain important transactions of this type in Ireland. In a nutshell, reperforming is a recovery strategy aimed at promoting the debtors' ability to resume making regular payments on agreed terms, with a view to or in combination with the implementation of a rated securitisation transaction whose rating level factors the greater stability of the relevant expected cash flows (compared to the typical volatility of a portfolio of NPLs).

In this market context, at the end of December 2019, the Italian Parliament introduced two new instruments available to securitisation companies in the NPL space. These are, namely:

(a) the renegotiation of "primary dwelling house" (*prima casa*) mortgage loans in the framework of real estate enforcement procedures, with the benefit of a guarantee from the "primary residential dwelling house" guarantee fund (*Fondo di garanzia «prima casa»*[1]); and

(b) a new type of socially driven securitisation transactions[2].

Although these measures seems intended, from a political viewpoint, to protect the interest of debtors in retaining the *de facto* availability of their properties, it cannot be ruled out the possibility that they will result in useful tools for the development of reperforming strategies in the Italian legal system.

Renegotiation of mortgage loans guaranteed by the "primary residential dwelling property house" Guarantee Fund

At the request of the debtor and subject to certain conditions, the securitisation company and the debtor may now agree on a debt rescheduling, the repayment of which may benefit from a (partial) guarantee from a special compartment of the "primary residential dwelling" Guarantee Fund, set up by the Ministry of Economy and Finance (hereinafter referred to as the "Fund"[3]).

This instrument is characterised both by its temporary nature and a quite specific scope.

As regards the first aspect, access to this preferential scheme is subject to a time limit, *i.e.* the debtor needs to submit "for the first time4" the relevant application in the relevant enforcement proceeding within the mandatory deadline of 31 December 2021.

With regard to the scope, the new instrument applies only to certain cases having specific features, *i.e.*:

- the debtor qualifies as a consumer (*i.e.* be a natural person whose debt is not related to a professional activity) and needs not to be subject to an over-indebtedness resolution proceeding;
- the original financing was granted in connection with the purchase of the debtor's primary dwelling house (*prima casa*) and needs to be secured by a first lien mortgage;
- the debtor needs to have already repaid at least 10 per cent of the principal originally financed;
- the mortgaged property is the subject matter of an enforcement proceeding still pending and the relevant attachment (*pignoramento*) has been notified between 1 January 2010 and 30 June 2019;
- there are no other intervening creditors other than the securitisation company or, otherwise, a waiver will have been filed by the other intervening creditors prior to the submission of the renegotiation request.

In addition, there are additional conditions concerning the characteristics of the renegotiation. In particular:

- the subject matter of the renegotiation needs to be a total debt (for principal and interest) secured in the context of the enforcement proceeding within the limits provided for by article 2855 of the Italian Civil Code, not exceeding Euro 250,000, and the payment deferment needs not to exceed 30 years (or the shorter term that, together with the age of the debtor, would equalise 80 years);
- the renegotiated amount needs not to be less than 75 per cent of the base price (*prezzo base d'asta*) at the subsequent auction (or of the value of the property as determined in the *ex officio* technical expert's report (*CTU*) should an auction not have been fixed yet), *provided however that*, if the total debt is less than 75 per cent of the aforesaid values, the 75 per cent limit will not

apply and the renegotiated amount needs not to be less than the amount of the debt (for principal and interest) secured in the context of the enforcement proceeding within the limits provided for by article 2855 of the Italian Civil Code;

- the debtor needs to undertake to reimburse in full the creditor's procedural costs.

From a procedural point of view, in addition to the mandatory deadline for the filing of the debtor's application, it is envisaged that, by way of a joint application by the debtor and the creditor and provided that the above conditions are met, the enforcement judge may suspend the enforcement for a maximum of 6 months (during which time the parties are expected to try finalising the terms of the renegotiation and, if necessary, obtaining the guarantee from the Fund). It is, however, expressly provided that, notwithstanding the submission of the joint application for suspension, the creditor is entitled to reject the terms of the renegotiation proposed by the debtor. This clarification is presumably related, on the one hand, to the fact that, for the purposes of the suspension of execution, the judge is called upon to carry out a merely formal verification of the requirements of the law (including the debtor's willingness to accept the minimum terms of renegotiation provided for by law) and, on the other hand, to the need not to discourage the creditor from freely exploring the debtor's offer without prejudice to the possibility of proposing additional terms and conditions itself without constraint.

It seems reasonable to believe that, among the possible conditions requested by the creditor in order for the renegotiation to be accepted, there may be precisely the granting of the guarantee by the Fund, covering 50% of the renegotiated amount(5).

Similar to what happened in the past occasions for similar initiatives(6), the law then requires a decree of a non-regulatory nature adopted by the Minister of Economy and Finance, in agreement with the Minister of Justice and the Minister of Infrastructure and Transport, after consulting the Bank of Italy for the aspects falling within its competence, to define a number of further practical and procedural aspects of the new discipline, including:

- the content and manner in which the renegotiation request is to be submitted;
- the manner in which the judge has to review the application, the assessment of whether the objectives of the new regime have been achieved, the liquidation and verification of the payment of procedural costs, the discharge of the enforcement proceeding;
- the terms, conditions and procedures for accessing the benefits of the special compartment of the Fund (7);
- the circumstances which prevent the granting of the renegotiation and the signing of the relevant agreement (8);
- the procedures for reporting to the archives of the Bank of Italy's Credit Bureau (*Centrale dei Rischi*) and to the archives of private credit information systems.

In our view, the implementing rules on reporting to the Credit Bureau's archives will be particularly important for the success of the initiative, as the possibility of improving the debtors' treatment in the Credit Bureau could incentive debtors to apply for the new instrument. In this respect, clarifications on the terms and conditions for the admission to the benefit of debt discharge (*esdebitazione*) (expressly referred to in the first paragraph of article 41-*bis*) in the context of such a renegotiation would be probably helpful.

Moving on to a commentary on the new discipline, it must first of all be noted that it has immediately jumped to the attention of those involved in reperforming strategies. Based on our preliminary informal discussions with investors, a number of issues of a legal or practical nature have been pointed out (with particular regard to the functioning of the guarantee of the special compartment of the Fund) which could have a significant impact on the attractiveness of the instrument. To mention just a few, the following issues were raised:

- what are the prerequisites and conditions (including those of a formal nature) for the enforcement of the guarantee and the related payment periods;

- whether the benefit of the guarantee requires the payment of a consideration;
- what happens in case of insufficiency of the special compartment of the Fund (in other words, whether a State guarantee will operate as a guarantee of last resort(9));
- the possibility to request the granting of the guarantee for an amount lower than 50% of the renegotiated amount;
- whether the granting of the guarantee is a necessary condition for the application of the scheme provided for by article 41-*bis* or, on the contrary, access to other (possible) benefits (for example, as regards reporting to the Credit Bureau) may be obtained also in the absence of such guarantee;
- what are the implications of the payment of the guarantee (and the subrogation of the credit by the Fund) with respect to the allocation of the proceeds of the subsequent enforcement of the mortgage (*i.e.* whether the creditor may retain such proceeds up to the amount due to it by returning any surplus to the Fund, or whether such proceeds shall be allocated *pari passu* to pay the respective claims of the creditor and the Fund (10)).

From a more purely legal viewpoint, the new rules could allow securitisation companies, in the context of such renegotiation activity, to capitalise in whole or in part the interest component of the debt (with the consequent possible novation (*novazione oggettiva*) of the underlying relationship) and, in this way, carry out lending activity to the public. Should this be the case, such activity would represent an additional form of direct lending that securitisation companies would then be allowed to carry out, considering that, contrary to the requirements of article 1(1-ter) of Law No 130 of 30 April 1999 (the Italian securitisation law), renegotiation would be directed at consumers and would not seem to require the involvement of any bank or financial intermediary acting as a sponsor.

Socially driven securitisations

The Budget Law for the year 2020 (Law no. 160 of 27 December 2019) made certain amendments to Law no. 130 of 30 April 1999 (the Italian securitisation law) consistent with the proposals presented in the context of the so-called "Progetto Fondo Salva Casa".

In summary, these amendments now make it possible for the special regime provided for by article 7.1 of Law 130 of 30 April 1999 to apply in respect of assignments of non-performing receivables made, at the request of the debtor, in the context of socially driven transactions which, simultaneously with the assignment of the receivables, provide for the underlying mortgaged properties to be transferred to a special purpose vehicle (so-called reoco) and leased back by the latter to the original debtors, together with an option to repurchase the relevant properties at predefined terms during the term of the lease.

In connection with the lease of the underlying property to the debtor, it is required that the future tenant is assisted by a social promotion association (*associazione di promozione sociale*) enrolled with the relevant register for at least five years, in the negotiation and execution of the relevant lease agreement.

In the context of socially driven securitisations, article 7.1. of the Italian securitisation law (and, in particular, the reoco regime contained therein) will also apply where the non-performing loans purchased by the securitisation company have been assigned to it by sellers other than banks and financial intermediaries (and therefore also in the case of purchases made on the secondary market). This would allow, for example, the use of reocos ex art. 7.1 also in the context of socially driven securitisation transactions involving portfolios of loans currently already securitised through GACS transactions.

In addition, with the newly introduced paragraph 8-*bis* of article 7.1, the legislator has provided for three exceptions and innovations to the ordinary regime applicable to reocos, which constitute a sort of *ad hoc* sub-regulation for reocos operating in the context of socially driven securitisation transactions. These reocos will be able to benefit, at the time of the acquisition of the properties, from the application of registration, mortgage and cadastral taxes at a fixed rate of Euro 200 each if the reocos declare in the relevant deed that they intend to

transfer the properties within *fifteen years* from the date of purchase and in any case within a time limit not less than the duration of the lease (whereas the ordinary term would be five years from the date of purchase).

In addition, also in order to facilitate the transfer of the property to the reocos operating in the context of socially driven securitisation transactions, paragraph 8-*bis* provides for the exemption of the seller from the delivery of the documents relating to urban planning, building and fiscal regularity if, within six months of the sale, the preparatory inquiry for the procedure for the aforementioned documents is initiated and the same procedure is completed within a maximum of thirty-six months.

Finally, starting from 2020, properties acquired by the reocos will be exempted from municipal tax if they continue to be used as the principal residence of the debtors. The exemption will not apply to properties classified in cadastral categories A1, A8 and A9.

Final considerations

In conclusion, the two measures seem potentially suitable to support work out strategies focusing on reperforming. Their success, however, will probably be linked, in the first case (renegotiation), to the size of the financial coverage of the special compartment of the Fund, the effectiveness of the debt discharge mechanism (and the type of treatment of the relevant exposures in the Credit Bureau) and an extension of its duration. In the second case (socially driven securitisation transactions), on the other hand, at least with regard to NPLs portfolios already securitised, a collective and coordinated effort by the various players involved (investment funds currently holding interest in the underlying receivables, rating agencies, arrangers, social promotion associations, local authorities and "ethical" investors) will be necessary to create a new financial product capable of reconciling the need for social relaunch, on one side, with the objective of enhancing the value of non-performing assets in the portfolio, on the other side, by reallocating risk to investors guided by a logic of fair profit and ethical finance.

Contact us:

Zenith Service S.p.A.
Services and solutions for structured finance

Via V. Betteloni, 2 Milano
Via Pieve Torina, 44 Roma

Tiziana Bertolazzi
Tiziana.bertolazzi@zenithservice.it
tel. +30 02 77880 544

Giuliana Ranaldi
giuliana.ranaldi@zenithservice.it
tel. +39 02 77880 574

Federico Mella
federico.mella@zenithservice.it
tel. +39 02 77880 584

www.zenithservice.it
LinkedIN

[1] See article 41-bis of Law-Decree no. 124 of 26 October 2019, converted into law with amendments by Law no. 157 of 19 December 2019.

[2] See paragraph 445 of article 1 of Law no. 160 of 27 December 2019 (so-called Budget Law 2020).

[3] Although the relevant legislation also provides for a similar preferential scheme with regard to refinancing, with subrogation in the existing mortgage, by a third-party bank, this contribution focuses on renegotiation by securitisation companies

4 This is likely to be understood as meaning that there should not be other pending or unsuccessful claims for payment previously made in other proceedings or procedures

5 The initial provisioning of the special compartment of the Fund for 2019 is equal to Euro 5 million. Although this provisioning appears rather modest, it is possible to foresee, in line with previous rules already applicable to the Fund, that, for each renegotiation or refinancing transaction admitted to the intervention of the special compartment of the Fund, the amount to be set aside as risk coefficient will be equal to only a percentage of the guaranteed amount, with the consequent multiplier effect that such a mechanism would have on the overall availability of the special compartment

6 Consider, for example, the rules governing the «primary dwelling house» guarantee fund referred to in article 1, paragraph 48, letter c), of Law no. 147 of 27 December 2013 and the related implementing regulation set out in the decree of 31 July 2014 of the Minister of Economy and Finance

7 Paragraph 6 of Article 41-bis also provides, in fact, for a further item to be devolved to supplementary regulations by the decree of the Minister of Economy and Finance, namely "the methods and terms for the payment of the sum referred to in paragraph 1 to the Fund". In that regard, it should be noted that paragraph 1 of Article 41-bis does not appear to contain any reference to any payment of sums to the Fund. This lack of coordination could perhaps indicate the legislator's intention to make access to the benefits of the guarantee conditional on some form of payment by the guaranteed party or the beneficiary (as is the case, for example, under the so-called GACS).

8 In this respect, reference may be made to article 69 of the Code of Insolvency, "Subjective impeding conditions", which with specific regard (as in our case) to consumers, excludes access to debt discharge where the person has obtained the benefit in the previous five years or has led to over-indebtedness through gross negligence, bad faith or fraud

9 Unlike article 1, paragraph 48, letter c), of Law no. 147 of 27 December 2013, article 41-bis does not expressly mention that "the interventions of the Guarantee Fund for the primary dwelling house are backed by the State guarantee, as a guarantee of last resort"

10 The precedent set forth in article 8, paragraph 3, of the Decree of 31 July 2014 of the Minister of Economy and Finance seems to provide support to the first of the two alternatives