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# INSIGHTS

DESTOCKING AND  
SECURITISATION: THE  
NEW PROVISIONS  
UNDER THE SME ACT



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# DESTOCKING AND SECURITISATION: THE NEW PROVISIONS UNDER THE SME ACT

Article 8 of the annual law for small and medium-sized companies, approved by the Senate of the Republic of Italy on 4 March 2026 and currently pending promulgation and publication (the “SME Act”), introduces certain targeted amendments to law number 130 of 30 April 1999 (the “Law 130”). The purpose of the amendments, as stated in the relevant explanatory memorandum, is to “[...] respond to the need of companies to access financing channels capable of maximising operational efficiency, whilst maintaining sustainable financial costs and without compromising ownership of the share capital through the granting of guarantees or benefits that reduce their competitiveness on the market [...]”, by applying the securitisation technique to inventory financing transactions (so-called destocking transactions).

The amendments follow two main lines of intervention.

### (1) Securitisation of unregistered movable assets

As a result of the amendment, special purpose vehicles (“SPV”) are enabled, pursuant to article 7.2 of Law 130, to acquire directly unregistered movable assets, in addition to the already contemplated immovable assets and registered movable assets. Companies will therefore be able to transfer to the SPV the movable assets constituting their inventory, effectively anticipating its liquidation. The SPV, through funds raised by means of bank financing or issuance of asset-backed securities subscribed by institutional investors, will acquire ownership of the assets and manage their realisation of value (typically through an appointed agent, which may be the same company which transferred the assets).

The assets so acquired by the SPV will benefit from the ring-fencing regime provided for under Law 130.

### (2) Synthetic securitisations

The second line of intervention concerns “synthetic” securitisation transactions, implemented through the transfer to the SPV of the credit risk relating to a reference portfolio of receivables by means of the SPV’s granting of a “limited recourse” loan, without transferring the legal ownership of such receivables.

The amendment broadens the object of the *patrimonio destinato* (dedicated pool of assets) pledged to satisfy the rights of the SPV arising from the loan which has been granted, by providing for the possibility of including in such *patrimonio destinato* not only the

receivables and the related collateral, but also “*the rights and assets to the use or ownership to which such receivables refer, including products derived from the combination and transformation of the aforementioned rights and assets, or assets substituting the assets previously so dedicated*”.

Pursuant to article 4-bis.2 of Italian legislative decree number 162 of 30 December 2019 (converted into law number 8 of 28 February 2020), the pool of assets so identified, which may be replenished on a revolving basis, may be rendered substantially immune from claims by the general creditors of the financed company by means of a dedicated corporate resolution registered in the companies register for the purposes of notice to third parties.

The segregation of assets may also be implemented through their transfer to a support special purpose vehicle (*SPV d'appoggio*) incorporated pursuant to article 7.1, paragraph 4, of Law 130<sup>1</sup>, as follows: in the first instance, the SPV grants to the company a limited recourse loan; thereafter, the company transfers the assets to the *SPV d'appoggio* “*possibly simultaneously with the assignment of the receivables forming the object of the transaction and the assumption of the debt arising from the loan*”. The *SPV d'appoggio* has the task of acquiring, managing and realising the value of the assets in the exclusive interest of the transaction.

The so-called “indirect” taxation of the *SPV d'appoggio* is regulated by paragraphs 4-bis, 4-*quater* and 4-*quinquies* of article 7.1 of Law 130 (as expressly referred to in the SME Act), which provide for the application of registration tax, mortgage tax and cadastral tax at a fixed rate (the latter two being limited to immovable assets), in relation to:

- (i) deeds and transactions relating to the transfer, on any legal basis, of assets to the *SPV d'appoggio*; and
- (ii) subsequent transfers by the *SPV d'appoggio* of such assets to (a) companies that resell them within 5 years, and (b) provided they are residential immovable assets, to natural persons acquiring them as their “first home”.

With reference to the VAT regime, the transfer of assets to the *SPV d'appoggio* constitutes an actual transfer of ownership and, accordingly, value added tax applies, where the relevant conditions are met, under the ordinary rules.

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<sup>1</sup> Originally, the use of a support special purpose vehicle was limited, pursuant to article 7.1 of Law 130, to transfers of non-performing receivables assigned by banks and financial intermediaries.

## Observations

The two structures introduced by the SME Act – the securitisation *ex* article 7.2 of unregistered movable assets and the “synthetic” securitisation (which may be also implemented using an *SPV d'appoggio ex* article 7.1) – are alternative to, and complementary with, one another, offering market participants a range of solutions adaptable to the specific requirements of each transaction (*e.g.* type of assets, revolving nature, de-recognition requirements, transfer restrictions, etc.). In particular:

- (i) the securitisation *ex* article 7.2 of unregistered movable assets is likely to be the structure that best lends itself to accounting de-recognition of inventory, insofar as it provides for the transfer of legal ownership of the assets to the SPV, it being understood that any such analysis will also need to have regard to whether the specific conditions imposed by the applicable accounting rules for such an outcome are satisfied. Such transactions, having assets (rather than receivables) as their object, will not, as a general matter, fall within the definition of “securitisation” under Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 (the “**SecReg**”)<sup>2</sup>;
- (ii) the “synthetic” securitisation, where structured without the *SPV d'appoggio*, is particularly suited to circumstances where the company does not intend, or is not in a position, to transfer ownership of the assets, or must necessarily retain operational availability thereof (*e.g.* due to production cycle requirements or contractual constraints with suppliers or lenders).

## Assets vs receivables

It is clear that, whatever structure is chosen, the transactions will rely on the cash flows generated by the use or realisation of the reference assets. However, the fact that the applicable provisions have as their focal point and operative premise – in the case of “synthetic” transactions – the receivables (with the assets serving broadly as collateral), and in the other – that of transactions *ex* article 7.2 – the assets themselves, is not without significance with regard to the characterisation of the transaction (*e.g.* for the purposes of the application of the European securitisation framework or the characterisation of the transaction as specialised lending).

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<sup>2</sup> Article 2(1) of the SecReg defines a “securitisation” as a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics: (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures; (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; (c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013.

*Scope of application*

Notwithstanding the heading of article 8 of the SME Act, which refers to “*Measures to promote the financial realisation of inventory assets*” (and, implicitly, it may be presumed, to transfers by the companies owning such assets), we believe that such references should not be construed as restricting the scope of application of the amended provisions. It follows that:

- (i) the circumstance that the assets constitute inventory is not a necessary condition for the application of the new provisions; and
- (ii) with respect to the securitisation *ex* article 7.2, the acquisition of unregistered movable assets by the SPV could in theory also take place before such assets enter the company’s inventory and thus be sourced directly from the company’s suppliers.

The above-mentioned structures may, as a result of the amendment, have as their object assets of any kind, both movable and immovable, as well as the related rights. Under the definitions provided by the Italian civil code, assets include, among others:

- (i) natural energy sources (electrical energy, radio-electrical energy, thermal energy), which article 814 of the Italian civil code equates to movable assets, provided they have economic value; and
- (ii) negotiable instruments (under certain conditions).

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