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Client**Alert**

Milan Office

Italy further facilitates financing transactions for Italian issuers *(Destinazione Italia* Decree)

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White & Case in the working group that provided advice in the preparation of the Decree

On December 13, 2013 the Italian Government approved Law Decree *Destinazione Italia* (the **"*Destinazione Italia* Decree"**), aimed at further facilitating financing transactions for Italian issuers[1].

The most significant changes introduced by the *Destinazione Italia* Decree consist of the following six points:

- ***the lower substitute tax (*****imposta sostitutiva*****)*[2] *now extended to the security package for corporate bonds (previously available only for bank loans);***
- ***the* privilegio speciale *(akin to a floating charge) now permitted to secure corporate bonds (previously available only for bank loans);***
- ***banks now can issue new collateralized bonds (as opposed to covered bonds) with a broad range of assets as collateral;***
- ***withholding tax exemption on interest payments of bonds issued by Non-Listed Companies*[3] *now extended to credit funds invested in by Qualified Investors*[4]*;***
- ***investment in corporate bonds and shares of certain types of investment funds now facilitated for insurance companies and pension funds; and***

[1] The *Destinazione Italia* Decree will become effective once published in the Italian Official Gazette. In addition, in order to remain effective under Italian law, a decree must be converted into law within 60 days from its publication in the Italian Official Gazette and may be amended through the conversion process. This Client Alert will be updated to reflect changes, if any, to the *Destinazione Italia* Decree upon conversion into law.

[2] A 0.25% tax substituting any other applicable taxes (*e.g.* mortgage tax).

[3] They are Italian private companies whose equity securities are not listed.

[4] "Qualified Investors" would include, inter alia, (a) persons authorized and regulated to operate in financial markets, both Italian and foreign (e.g., banks, investment firms, other authorized and regulated financial institutions, insurance companies and pension funds); (b) large companies (e.g., companies satisfying at least two of the following requirements: total assets of at least Euro 20,000,000, net revenues of at least Euro 40,000,000 and capital resources of at least Euro 2,000,000); (c) institutional investors whose principal activity is investment in financial instruments, including companies dedicated to the securitization of assets; (d) other institutional investors who request to be treated as qualified investors; and (e) national and regional public entities.

- ***securitization regime5 now extended to corporate bonds acquired by SPVs and simplification of the securitization process.***

These new provisions partially amend the Decreto Sviluppo[6]. See our prior Client Alerts on the subject published on [December 2012] and [June 2012].

The lower substitute tax (*imposta sostitutiva*) extended to the security package for corporate bonds

The *Destinazione Italia* Decree extends the favourable substitutive tax regime (*imposta sostitutiva*) to bond issuances and their security packages. The *imposta sostitutiva* was previously only available in bank loan transactions. The tax will be equal to 0.25% of the aggregate principal amount of the placed bonds. Current general tax rules apply to security in Italy (which may be subject to registration tax, stamp duty, mortgage tax and/or land registry tax) and can range from Euro 168 to 3% of the reference amount[7]. The *imposta sostitutiva* will replace all such taxes and will apply also in the event of full or partial transfer, amendment, replacement and/or cancellation of a bond.

We expect the lower tax cost of providing security to have a positive effect on all bond issuances that are secured, including in both the investment and non-investment grade space.

The *privilegio speciale* permitted to secure corporate bonds

The *Destinazione Italia* Decree extends the availability of the *privilegio speciale*[8] to bonds with a maturity longer than 18-months to the extent such bonds are acquired only by Qualified Investors.

The *privilegio speciale*, which was originally only available to secure bank loans, now allows bonds to benefit from a security interest, which is similar to a floating charge. The floating charge may be over any corporate assets such as plant, machinery and inventory.

We expect the availability of greater assets for secured transactions will have a positive effect on all bond transactions that are secured, including in both the investment and non-investment grade space.

Banks can issue new collateralized bonds with a broad range of assets as collateral

The *Destinazione Italia* Decree amends the regime of collateralized bank bonds (as opposed to covered bonds), which may be collateralized, *inter alia*, with (i) corporate bonds issued by Non-Listed Companies, (ii) securities issued in a securitization that has corporate bonds as underlying assets, and (iii) receivables of small

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5 Under Law No. 130 of April 30, 1999 (as amended) (the "**Securitization Law**").

6 Law Decree No. 83 of June 22, 2012 as converted into Law No. 134 of August 7, 2012 and amended by Law Decree No. 179 of December 17, 2012.

7 Depending on the type of security and on the contents of the finance documents.

8 The *privilegio speciale* is a security interest established under article 46 of Legislative Decree No. 385 of September 1, 1993 (as amended) (the "**Consolidated Banking Act**").

and medium companies (SMEs)[9].

We expect this change to encourage and facilitate banks to invest in bonds and receivables of Italian corporates, thereby providing additional liquidity to these companies. In addition, we expect this change to help broadening the market for collateralized bond transactions issued by Italian banks.

Withholding tax exemption on interest payments of bonds issued by Non-Listed Companies extended to credit funds invested in by Qualified Investors

In 2012 *Decreto Sviluppo* extended the 'listed bond exemption' to Italian Non-Listed Companies enabling such companies to issue corporate bonds and benefit from an exemption from withholding (provided they were listed on a Qualified Exchange and subject to certain other certain limitations).

The *Destinazione Italia* Decree now extends the withholding tax exemption to credit funds that purchase corporate bonds if the investment funds (i) are owned by Qualified Investors and (ii) a majority of the investments funds' assets are invested in bonds.

This change is aimed at achieving withholding tax neutrality for investments by investment funds in corporate bond issues by SMEs. We expect it to broaden and deepen the corporate bond market for Italian Non-Listed Companies.

Investment in corporate bonds and shares of certain types of investment funds facilitated for insurance companies and pension funds

The *Destinazione Italia* Decree amends legislation establishing the types of instruments which are eligible for insurance companies' statutory technical reserves and investment limits for pension funds. Through these changes, investment is facilitated for insurance companies and pension funds in (i) corporate bonds, (ii) securitized securities having as underlying corporate bonds, and (iii) shares of investment funds mainly investing in corporate bonds. This applies whether or not the bonds or securities are rated or listed on a Qualified Exchange.

Additional legislation[10] is expected to establish limits for investments by insurance companies and pension funds in corporate bonds. These changes are aimed at encouraging investments in corporate bonds by insurance companies and pension funds.

We expect these changes to broaden and deepen the liquidity of the Italian corporate bond market for Non-Listed Companies.

Securitization regime extended to corporate bonds acquired by SPVs and simplification of the securitization process

The *Destinazione Italia* Decree extends, subject to certain exceptions, the applicability of the Securitization Law to corporate

[9] Collateralized bank bonds can also have receivables guaranteed by ship mortgages and receivables arising from leasing and/or factoring agreements as collateral.
[10] IVASS regulation to be adopted within 30 days from the date on which the Decree will enter into force.

bonds acquired by securitization SPVs[11] (other than hybrid and convertible bonds or to equity instruments (*titoli rappresentativi del capitale sociale*)). The *Destinazione Italia* Decree also introduces several rules aimed at eliminating burdensome formalities that were common in securitizations in Italy, thereby increasing transaction efficiency.

Amongst the changes introduced to the securitization process, the following are the most significant:

a. the segregation of an SPV's underlying assets has been extended to bank accounts opened by servicers and sub-servicers, thereby putting such assets out of reach of the estate of insolvent servicers or sub-servicers;
b. the requirement for a block transfer of receivables (*cessione in blocco*) pursuant to article 58 of the Consolidated Banking Act has now been abolished. As a result, formalities applicable under Factoring Law[12] would now also apply to transfers of receivables to an SPV and the principle set out in article 1248 of the Italian Civil Code now expressly applies to securitization transactions[13];
c. special provisions regulating the transfer of receivables *vis-à-vis* public entities[14] have also been abolished and such transfers are now treated in the same way as transfers between private entities;
d. where securitized securities are reserved for Qualified Investors, such securities may also be acquired by a single investor;
e. prepayments of securitized receivables are no longer subject to article 65 of the Bankruptcy Law[15]; and
f. where securitizations are made by transferring receivables to an investment fund, (i) the management company may be appointed as the servicer of the transaction, (ii) the block transfer of receivables (*cessione in blocco*) pursuant to article 58 of the Consolidated Banking Act now applies, and (iii) the more favorable tax regime (*imposta sostitutiva*) now applies to such transfers (as they already do to transfers of receivables to securitization SPVs).

Finally, the Decree also simplifies the formalities applicable to the transfer of receivables pursuant to the Factoring Law in order to obtain the certified date (*data certa*) of a payment and the effectiveness of such transfers *vis-à-vis* third parties by providing that for this purpose only the cash record in the transferor's account is required.

We expect that the Italian debt capital markets will benefit from the extension of the special securitization regime to allow for the securitization of corporate bonds. Once again, such changes should broaden and deepen the liquidity of the Italian corporate bond market.

[11] Corporate bonds may now be the underlying assets of securities issued by securitization SPVs.
[12] Law No. 52 of February 21, 1991 (as amended) (the "**Factoring Law**"). .
[13] Such principle now establishes that receivables payable by an SPV to transferors cannot be set-off against receivables payable by debtors which arise after the date of publication of the transfer of securitized receivables in the Italian Official Gazette or the date of payment (even partial) of the purchase price for the receivables, to the extent they bear a certified date (*data certa*).
[14] Established under articles 69 and 70 of Royal Decree No. 2440 of November 18, 1923 as amended.
[15] Article 65 of Royal Decree No. 267 of March 16, 1942 (as amended) (the "**Bankruptcy Law**") provides that prepayments made by a bankrupt entity during the two years prior to the date on which bankruptcy has been declared are not effective *vis-à-vis* creditors of the bankrupt entity. Claw-back of payments under article 67 of such law does not apply already.