



Securitisation of loans, exposures or receivables in Cyprus

Securitisation involves transactions that enable a lender or a creditor – typically a credit institution or a corporation – to refinance a set of loans, exposures or receivables, by transforming them into tradable securities accessible by investors.

By enacting the Securitisation of Credit Facilities or Other Forms of Claims or Exposures Law, L. 88(I)/2018 (the “**Law**”), Cyprus has established a framework for securitisation of credit facilities in Cyprus. It is envisaged that the Law will facilitate the secondary market for loans which may consequently enhance efforts to reduce non-performing loans (“**NPLs**”).

Scope of the Law

The Law vests the Central Bank of Cyprus (“**CBC**”) with powers to regulate and supervise securitisations under the Law, which draws heavily on the definitions of Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

However, the scope of the Law is limited to the securitisation of credit facilities or other forms of receivables and/or exposures originated or acquired by credit institutions, financial institutions or credit acquiring companies, provided they are subject to supervision by a competent authority. For this purpose, a competent authority includes the CBC and, in the case of branches of credit institutions or financial institutions established in another Member State, the competent authority of the home Member State.

Originators, SSPEs and servicers

An originator for the purposes of the Law is an entity which either:

- (a) was involved (directly or indirectly) in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or
- (b) purchases a third party’s exposures on its own account and then securitises them.

Only credit institutions, financial institutions and credit acquiring companies can act as originators for the purposes of the Law.

A securitisation special purpose entity (“**SSPE**”) means a corporation, trust or other entity, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective. The SSPE should be structured so as to isolate the obligations of the SSPE from those of the originator.

An SSPE shall appoint a servicer for the day-to-day management of the securitised exposures under the terms of a management agreement. A servicer can either be limited company authorised as such by the CBC pursuant to the provisions of the Law, an entity duly authorised in another EU member state, credit

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institutions, and - where their respective licensing so allows - credit acquiring companies and financial institutions.

True sale to SSPE

In a true-sale securitisation, the ownership of the underlying exposures is transferred or effectively assigned to an issuer entity which is a SSPE. The transfer or assignment of the underlying exposures to the SSPE should not be subject to clawback provisions in the event of the seller's insolvency, without prejudice to provisions of national insolvency laws under which the sale of underlying exposures concluded within a certain period before the declaration of the seller's insolvency can, under strict conditions, be invalidated.

The Law contains provisions on the true sale of the exposures to the SSPE. In particular, it provides that the method of transfer of exposures is to be agreed between the originator and the SSPE and that the transfer becomes final, irrevocable and binding once the terms of such an agreement have been satisfied. A legal opinion provided by legal counsel could confirm the true sale or assignment or transfer with the same legal effect of the underlying exposures and the enforceability of that true sale, assignment or transfer with the same legal effect under the applicable law.

The Law also enables originators to transfer the exposures using a trust and clarifies that an insolvency procedure against the originator will have no impact on an SSPE, its rights or exposures.

Originators are required to notify the transfer of exposures to an SSPE at least 30 days in advance, with certain mandatory contents prescribed in the Law, through either:

- (a) a written notice to the underlying debtors, collateral providers and guarantors
- (b) publication of a notice in 3 daily newspapers.

Where the originator is a credit institution and a right of set-off exists (or is created during the securitisation) in respect of the underlying exposures of the securitisation against credit balances held by the underlying borrower with that credit institution, the terms of the securitisation shall include provisions pertaining to such right. A number of mitigating actions are provided under the Law where such a right of set-off exists or is created during the securitisation.

An SSPE will be subrogated to all rights of the originator to collateral held by it for the purposes of securing the repayment of the exposures and this subrogation will take place simultaneously with the transfer of exposures to the SSPE. The SSPE will assume all the rights and obligations of the originator and its ranking in respect of both the exposures and the related collateral.

Securitisations

The Law grants SSPEs both the right to borrow under credit facilities and the right to issue financial instruments. The financial instruments may be offered to professional clients or admitted to trading on a regulated market or on a multilateral trading facility.

An SSPE can only commence its activities as a securitisation vehicle, on the originator notifying the CBC of its intention to carry out one or more securitisation transactions.

A traditional securitisation involves the transfer of the economic interest in the exposures being securitised through the transfer of ownership of those exposures from the originator to an SSPE or through sub-

participation by an SSPE, where the securities issued do not represent payment obligations of the originator.

In the case of a traditional securitisation, the originator submits to the CBC information which includes the amount and type of credit facilities to be securitised, the structure of the securitisation and the terms on which the SSPE will issue the financial instruments.

On the other hand, a synthetic securitisation involves the transfer of risk by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator. In the case of a synthetic securitisation, the notification to the CBC must be accompanied by information conforming to the requirements of the Law or secondary legislation that the CBC will issue.

Notifying a securitisation enables the CBC to assess whether the servicer of the SSPE has sufficient resources to carry out its activities and whether a sound and prudent management of the SSPE is achieved. The CBC must inform the originator within 20 days of receipt of its decision on whether it will oppose the securitisation or not.

CBC supervision

The Law vests the CBC with wide-ranging supervision powers over SSPEs and servicers, which, inter alia, include: the assessment of the management and key function holders of a servicer; the requirement for SSPEs and servicers to report audited financial statements to the CBC; the CBC's right to conduct on-site investigations and have access to SSPEs' and servicers' books and records; and sanctions that may be imposed in relation to SSPEs and servicers.

The Law also provides for the involvement of the CBC in the liquidation of an SSPE. The consent of the CBC will be required for voluntary liquidations of SSPEs, by entitling the CBC to initiate liquidation procedures and appoint a liquidator for an SSPE in certain circumstances.

The CBC is expected (and is empowered under the Law) to issue secondary legislation regulating the administrative and procedural aspects of the exercise of authorisations under the Law, as well as its powers of supervision.

Conclusion

Securitisation allows for a broader distribution of risk and can help free up originators' balance sheets to allow for further lending to the economy. It is also expected to improve efficiencies across the wider financial system.

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