

Debt Capital Markets Focus Team



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Key points

- Italian SMEs show strong financial positions and comparatively low default rates, yet continue to face **constrained access to traditional bank credit**.
- Asset lending structures via Italian SPVs provide a robust and scalable entry point for foreign alternative funds to deploy capital **without the need for a banking licence nor EU passporting**.
- The model combines **asset segregation**, non-possessory pledges with **out-of-court enforcement, preferential tax treatment**, enhanced **claw-back protections** and SPV **bankruptcy remoteness**.
- With ongoing and planned **targeted legislative refinements**, Italy offers a clearer runway for overseas AIFs to participate in SME credit.

Italy unlocks a scalable path for SME asset based lending

1. INTRODUCTION

Small and medium-sized enterprises (“**SMEs**”), the backbone of the Italian economy, have long been facing constrained access to traditional bank credit compared to other EU markets, despite showing comparatively low default rates, moderate leverage, and stable cash flow profiles.

Against that backdrop, in recent years, the securitisation toolbox has matured into a practical channel for overseas capital, in particular for Alternative Investment Funds (**AIFs**), to fund real-economy assets, with clear legal protections and predictable workout mechanics.

Recent reforms, including the full operability of the non-possessory pledge register since June 2023 and, most recently, the 2025 annual bill on SMEs (*disegno di legge annuale sulle piccole e medie imprese*), which has been approved by the Senate on 23rd October 2024 and is currently under review by the Parliament for final approval (the “**2025 SME Bill**”), are gradually translating policy intent into execution traction: better collateral usability, stronger segregation (including borrower-side segregated pools), and faster enforcement that preserves business continuity while addressing SMEs’ working-capital and capex needs.¹

Below we analyse the main advantages of asset-based lending to SMEs via Italian SPVs, as well as what the most recent developments unlock for foreign AIFs in terms of opportunities and deployment at scale, with a critical view on what to focus on next.

¹ The shift from traditional bank lending to alternative forms of SMEs financing has been underway for several years in Italy. A pivotal moment in this evolution came with Law No. 145 of 30 December 2018 (“**Budget Law 2019**”), which introduced significant amendments to Law No. 130/1999 (the “**Italian Securitisation Law**”). These included, *inter alia*:

- (i) the promotion of SME financing by SPVs, both through the subscription of debt instruments and the so-called “direct lending” model;
- (ii) the introduction of a new real estate securitisation framework under Article 7 of the Italian Securitisation Law; and
- (iii) clarifications as to the legal regime applicable to sub-participation structures, i.e., transactions whereby the SPV grants a loan backed by the cash flows of a specific credit portfolio, without acquiring the underlying receivables.



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2. MAIN ADVANTAGES OF SPVs STRUCTURES WITHIN THE ITALIAN ASSET-BASED LENDING JIGSAW

Foreign AIFs can currently rely on a diversified set of financing routes, nance solutions. In particular, under the current framework, access to the Italian SME sector can be gained though the following main routes:

- (i) **direct secured lending by AIFs**, which is subject to regulatory authorisation and compliance requirements established by the Bank of Italy;²
- (ii) **subscription of asset-backed bonds** issued by SMEs, which is subject to capital thresholds and transparency requirements³, even after the liberalisation introduced by Law No. 21/2024; and
- (iii) **asset-based lending by a securitisation SPV** pursuant to the Italian Securitisation Law.

While direct lending by AIFs and bond subscription remain valid tools⁴, asset-based lending via SPVs appears to offer the strongest blend of legal certainty, operational flexibility and tax efficiency. In particular, its key advantages include:

- a) **regulatory and legal flexibility:** AIFs can gain access to a wide range of securitisable assets – including inventory, machinery, and

² EU AIFs may lend directly in Italy, provided that they apply to the Bank of Italy for clearance and comply with specific regulatory requirements (i.e., *inter alia*, authorisation by their Member State to engage in credit activities, management by an authorised AIFM, passporting, operating as closed-ended funds, compliance with risk diversification and leverage limits equivalent to those imposed under Italian law). Moreover, transparency obligations under Legislative Decree No. 385/1993 (the “**Consolidated Banking Act**”) apply, and the Bank of Italy may require the AIF to join the Central Credit Register. Interest payments are in principle subject to a 26% withholding tax, although exemptions may apply for medium/long-term loans (over 18 months) advanced by qualifying EU funds.

³ An EU AIF may subscribe bonds issued by the borrower and secured by movable assets under a non-possessory pledge. In this case, the issue size may not exceed twice the issuer’s corporate capital, plus legal and available capital reserves, unless the bond: (i) is subscribed – even upon resale – exclusively by professional investors if such condition is provided for in the terms of the issue; (ii) is admitted to trading on a regulated market or on a multilateral negotiation trading venue, and (iii) provides the right to purchase or subscribe for shares.

Under Italian law, even limited liability companies (*società a responsabilità limitata*) can issue such instruments. Following the enactment of Law No. 21 of 5 March 2024, the regime has been further liberalised: (i) subscription is now permitted more broadly to professional investors (beyond those subject to prudential supervision), and (ii) the liability regime in case of subsequent resale has been disapplied, provided that the bonds are subscribed exclusively by professional investors and such condition is expressly set out in the terms of issuance.

⁴ While viable, these alternatives often require longer authorisation timelines, higher operational costs, and closer regulatory scrutiny. Moreover, interest payments on direct loans are generally subject to 26% withholding tax, unless the AIF qualifies for an exemption.

real estate – without the need for a financial institution to act as originator;

- b) **tax exemptions:** SPVs benefit from significant tax exemptions, including exemptions from withholding tax on interest payments (subject to specific requirements being complied with) as well as from registration tax, stamp duty, and transfer tax. Moreover, proceeds from loans or asset sales are also excluded from the SPV's taxable income;
- c) **credit protection through double assets segregation:** the law provides a dual layer of segregation. On one hand, the SPV's loan rights are segregated by law from its other assets. As a result, cash flows generated by the loan advanced by the SPV cannot be attached by third parties, except for the noteholders and hedging counterparties in respect of hedging instruments relating to the specific lending transaction. On the other hand, Article 7, paragraph 2-*octies* of the Italian Securitisation Law provides for the possibility to segregate any collateral securing the loan, offering investors enhanced protection in the event of a borrower default. The assets so allocated lie beyond the reach of other creditors;
- d) **mitigation of claw-back risks:** in case of later insolvency, loan repayments by the borrower in favour of the SPV are not subject to any claw-back and hardening period on other disposals is shortened: *e.g.*, only pledges granted within 6 months prior to the insolvency filing may be clawed back, against the ordinary one-year hardening period;
- e) **non-possessory pledge – continuity with control in Italian asset-based lending by the securitisation SPV:** the non-possessory pledge (*pegno non possessorio*), fully implemented since June 2023 via the digital collateral registry, is particularly well-suited to asset-based lending originated by Italian securitisation vehicles. It preserves operational continuity by allowing the borrower to retain use of working assets – plant and machinery, inventories of raw materials and finished goods – so production and sales are not disrupted. At the same time, the security interest is perfected and publicised through registration, providing the SPV with clear priority over the pledged assets (including assets acquired in the ordinary course where the pledge has been structured to cover future assets and substitutions) and reducing dilution risk as collateral turns over. Critically for securitisations, the framework supports rapid, out-of-court enforcement on default, with court involvement confined to exceptional “compelling reasons”, which in practice shortens timelines, enhances recoverability and predictability, and limits value leakage compared to traditional possessory pledges or purely contractual covenants. The result is a security package that aligns with the revolving nature of working-capital collateral while delivering a more efficient enforcement path for investors;

- f) **bankruptcy remoteness:** investors benefit from legal certainty: both loan receivables and segregated collateral remain shielded from insolvency procedures affecting either the borrower or the SPV; and
- g) **tailored structures:** the framework allows revolving asset pools, dynamic replenishment, and collateral substitution, allowing AIF's funding the SPV via the securitisation to customise transactions to their specific risk-return appetite.

3. ASSET-BASED LENDING VIA ITALIAN SPVs – HOW TO AND WHY NOW

The Italian Securitisation Law offers three main pathways through which AIFs can channel funding via SPVs – each providing a distinct mix of flexibility, investor protection and asset control. Some of these pathways are also directly affected by the 2025 SME Bill (provided that the current draft remains subject to potential amendments following Parliament's review) which, following its approval, is expected to open up to new opportunities.

- ***Direct lending by SPVs (Art. 1, para. 1-ter of the Italian Securitisation Law)***

Under Article 1, paragraph 1-*ter* of the Italian Securitisation Law, an SPV may originate loans directly to eligible borrowers (which shall be identified by a bank or a financial intermediary and may include SMEs) and fund them through notes issuances (to be placed with qualified investors only). The notes are backed by the SPV's separate estate (*patrimonio separato*) and serviced from principal and interest repayments on the loan.

To align interests between originators and investors, the bank or financial intermediary responsible for identifying borrowers (acting as sponsor) must retain a material net economic interest – typically at least 5% of the nominal value of the securitised assets or asset-backed securities, although alternative retention methods can be implemented such as having the sponsor advancing a loan directly to the SPVs other than subscribing the notes.

As with traditional securitisations, loans originated by the SPV must be segregated from the SPV's other assets, guaranteeing that proceeds are dedicated to the noteholders and insulated from other creditors' claims.

In addition, SPVs can combine the purchase of receivables with direct lending within a single securitisation transaction, offering greater structuring options for capital markets.

- ***Synthetic asset lending or sub-participation (Art. 7, para. 1 lett. a) and para. 2-octies of the Italian Securitisation Law)***

In synthetic securitisations pursuant to Article 7, paragraph 1, letter a) of the Italian Securitisation Law, the SPV may extend a limited-recourse loan and issue notes whose servicing depends on the borrower's cash flows, without a true sale of receivables or physical assets.

In addition, under Article 7, paragraph 2-octies of the Italian Securitisation Law, the borrower may allocate a segregated asset pool (a *patrimonio destinato*) within its estate as security for the loan.

While the assets allocated by the borrower are primarily composed of receivables, they can also include rights and corporate assets. Under the current version of the Italian Securitisation Law, this is possible only on the condition that such rights and assets constitute a guarantee of repayment of the receivables included within the segregated asset pool.

The 2025 SME Bill specifically addresses this point by permitting (according to the current draft and subject to potential amendments following Parliament's review):

- the allocation of any present and future trade receivables, inventories of raw materials, work-in-process and finished goods, operating assets and rights used in the production or distribution cycle, regardless of the existence of the aforementioned "guarantee function"; and
- the asset segregation to be implemented not only "internally" but also through the transfer of assets to a support vehicle (*società veicolo di appoggio*) as referred to in Article 7.1, paragraph 4 of the Italian Securitisation Law, a scheme borrowed from securitisation of non-performing loans (NPL).

The above segregation is without prejudice to the right of the borrower to secure its loan repayment obligations by creating a non-possessory pledge over the segregated assets.

If properly structured, the above scheme supports revolving collateral with substitutions, mirroring working-capital turnover, proving to be particularly suited where continuity of use is essential and where rapid enforcement and orderly monetisation of collateral is the value-maximising path.

Notably, synthetic positions may also be combined with traditional securitisation and/or direct lending to create bespoke financing structures.

- ***True Sale of Assets or Inventory (Art. 7, para. 1, lett. b-bis) and Art. 7.2 of the Italian Securitisation Law)***

Under Article 7.2 of the Italian Securitisation Law, SPVs are entitled to own directly real estate or other registered assets (e.g. ships, aircraft and cars) in order to carry on securitisations having such types of assets as underlying collateral for the notes (as opposed to secured receivables where the SPV would have only a security right over those assets).

Thus, in line with the general principle of the Italian Securitisation Law, the assets of the SPV are automatically segregated by operation of law for the benefit of, *inter alia*, the noteholders.

Under the 2025 SME Bill (according to the current draft and subject to potential amendments following Parliament's review), the scope of this type of securitisations is further expanded to capture also unregistered movable goods (such as inventory, warehouse stock, equipment, real-estate rights) as well as the proceeds deriving from the use of such assets. Accordingly, companies (especially SMEs) will have the opportunity to liquidate and monetise their inventory by transferring their stock assets to an SPV, thus being able to inject new liquidity into their production activities.

Products so purchased by the SPV will have to be managed and administered through an asset manager (possibly, the originator), equipped with the skills and authorisations necessary for the valorisation of the goods.

This could primarily benefit sectors characterised by long maturing/storage times for products, such as the agri-food sector (e.g. dairy products, wine, etc.).

Furthermore, from an investors' perspective, the above scheme offers significant advantages in terms of total control of the assets and related income or future cash flows, as well as greater security with regard to the insolvency proceedings of the originator.

4. A CRITICAL LENS: FRICTIONS TO PLAN FOR, NOT BARRIES TO ENTRY

Legislative updates since the Budget Law 2019 have progressively expanded the securitisation perimeter, clarified sub-participation tools and introduced real-asset and inventory-centric solutions.

As a result, asset-based lending via Italian SPVs is no longer a theoretical construct, but rather a practical, investor-grade route for foreign AIFs to finance the real economy at scale, with disciplined risk and credible downside protection.

The 2025 SME Bill further aligns the existing legal framework with operating realities, particularly for inventory-backed financing and destocking programmes, opening up to further and enhanced opportunities.

For AIFs seeking to diversify European exposure, originate secured, asset-intensive credit, and build repeatable deployment in an under-served market, the opportunity set is immediate and expanding.

Transaction set-up – including, *inter alia*, servicing and reporting, naturally entails some fixed costs. Yet the market is already responding through programme scalability and standardised documentation. In addition, the use of automated reporting tools is helping investors gain cleaner visibility on SMEs portfolios and supporting accurate credit modelling.

Asset selection also remains key. Not all SMEs are suited to this form of lending: clear governance, stable cash flows, and identifiable collateral pools (especially inventory or equipment) are often necessary to make these deals viable. For less liquid and revolving pool, enhanced structuring techniques, credit protection layers and co-investment schemes are proving effective in broadening investor participation and stabilising pricing.

Hence, although certain practical challenges remain to be addressed, these are increasingly understood and manageable within today's regulatory and market environment and should be viewed as tailwinds rather than obstacles – clear signs of a market evolving towards maturity, positioning Italy as promising environment in Europe for private credit and securitised SME financing.



Debt Capital Markets Focus Team

The Focus Team is a constellation of expertise in different business areas with a focus on *debt capital markets*.

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