

Italy: Financial Regulatory Bimonthly Newsletter

January - February 2023

In brief

This publication features the latest Financial Regulatory developments in Italy.

Investment Services - Consob's Supervision

POC: consultation on a draft communication concerning capital strengthening operations reserved to a single investor (*Proposta di comunicazione avente ad oggetto "operazioni di rafforzamento patrimoniale riservate ad un unico investitore:*

POC non standard, SEDA, SEF e altre operazioni aventi caratteristiche analoghe - richieste ai sensi dell'art. 114, comma 5, del d.lgs. n. 58/1998", che sostituisce la comunicazione n. DME/6083801 del 20 ottobre 2006 e la comunicazione n. DEM/DME/DSG/8065325 del 10 luglio 2008)

On 14 February 2023, the Consob launched a public consultation concerning a draft communication on capital strengthening operations reserved to a single investor (e.g., convertible bonds reserved to a single investor) and required pursuant to Article 11, paragraph 5, of Legislative Decree No. 58 of 24 February 1998 (the "Italian Consolidated Law on Finance", or "**TUF**"). In particular, the proposed draft communication aims at providing guidelines on the:

- reporting obligations of issuers in relation to the POC non-standard operations (i.e., convertible bonds reserved to a single investor to be converted in several tranches, spread over a specified period of time, with a conversion price determined, from time to time, on the basis of the performance of the issuer's securities on the market);
- capital increase transactions reserved to a single investor, so-called Stand-by Equity Distribution Agreement (SEDA) and Step-Up Equity Financing (SEF).

The deadline for the submission of observations expired on 1 March 2023.

Mandatory tender offer: Consob clarifies the applicability of exemptions (*Comunicazione n. 0003619 del 12 gennaio 2023*)

On 20 January 2023, the Consob published the Consob Communication No. 0003619 of 12 January 2023 (the "**Consob Communication**") concerning mandatory tender offers pursuant to Article 106 of the TUF. In particular, the Consob Communication addressed a scenario where a shareholder exceeds the threshold of 30% of the voting rights in a listed issuer (therefore triggering the duty to make a mandatory tender offer) as a consequence of the sale of shares by another shareholder to third parties, reducing the overall number of voting rights exercisable in the listed issuer.

The Consob clarified that in such a scenario the exemption from the duty to make a mandatory tender offer set forth in Article 106, paragraph 5, letter c), of the TUF, as implemented by Article 49, paragraph 1, letter d-bis), of the Consob Regulation No. 11971 of 14 May 1999 (the "**Italian Issuers' Regulation**"), is applicable, since the exceeding of the 30% threshold is caused by facts independent from the will of the shareholder to exceed such a threshold.

Contents

Investment Services - Consob's Supervision

Payment and Banking Services - Bank of Italy's Supervision

Insurance products - IVASS's Supervision

As a general rule, the Consob remarked that the applicability of the above exemption must be assessed on a case-by-case basis, in order to ascertain that there is no connection between the external circumstances which cause a shareholder to exceed a threshold triggering mandatory tender offer duties and the will of the same shareholder to exceed such a threshold.

Supervision: warning notice on corporate governance and transactions with related parties (*Richiamo d'attenzione del 13 gennaio 2023*)

On 13 January 2023, the Consob issued a warning notice concerning the supervision on corporate governance and related party transactions in the context of prospectuses offers and admission to trading. In particular, the Consob drew the attention on the fact that, pursuant to the amendments to the Italian Issuers' Regulation, companies are not required to attach to the listing application the policy on transactions with related parties and the information on relationships which are relevant to the independence of the members of the corporate bodies of the issuer. The Consob invited issuers and other parties involved in the listing process to verify, prior to the listing:

- the compliance of the policy on transactions with related parties with the provisions of the Consob Regulation No. 17221 of 12 March 2010 (the "Italian Transactions with Related Parties Regulation"), as well as the consistency of the discretionary choices reflected in the by-laws of the issuer; and
- whether the composition of corporate bodies of the issuer ensures compliance with the independence requirements applicable to the members of the administration and control bodies.

Furthermore, the Consob underlined the possibility for issuers to seek clarifications from the same authority, also during the pre-filing phase.

Payment and Banking Services - Bank of Italy's Supervision

Licensing requirements and procedures: new section on the Bank of Italy's website

On 21 February 2023, the Bank of Italy made available on its website a **new section** named "Licensing", in order to help foreign operators (e.g., banks, financial intermediaries, payment institutions, electronic money institutions, investment firms, asset management companies) to easily find regulations concerning the modalities for applying for a license in Italy. In particular, in the new section users can find any information relating to (i) authorization procedures, (ii) requirements for the performance of regulated activities in Italy, and (iii) FAQs and regulations.

Transparency: Bank of Italy's communications on interest rates and inflation (*Comunicazione del 15 febbraio 2023*)

On 15 February 2023, the Bank of Italy published a communication concerning unilateral changes in contractual conditions made by banks due to changes in interest rates and inflation. In particular, the Bank of Italy urged banks to consider that the increase in interest rates caused by the European Central Bank may have a positive effect on the profitability of the relationship between banks and their clients. For this reason, the Bank of Italy asked banks to consider very carefully the opportunity to make unilateral changes in contractual conditions to the detriment of customers, taking into account that the increase in interest rates could offset inflation-induced cost increases.

Furthermore, the Bank of Italy encourages banks to ensure that the unilateral contractual changes are always justified by the need to restore the balance of the commitments originally assumed by the bank and the customer.

Ethical and sustainable finance: ministerial decree on the rules for banking operators (*Decreto del Ministero dell'Economia e delle Finanze 4 ottobre 2022, n. 209*)

On 21 January 2023, the Decree of the Ministry of Economy and Finance No. 209 of 4 October 2022 (the "**MEF Decree**") was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*). The MEF Decree lays down provisions implementing Article 111-bis of Legislative Decree No. 285 of 1 September 1993 (the "Italian Consolidated Banking Law") concerning the rules applicable to banking operators engaged in ethical and sustainable finance. In particular, the MEF Decree provides for, amongst others, (i) the requirements that must be satisfied in order to obtain the qualification as banking operator

engaged in ethical and sustainable finance, and (ii) the procedures for obtaining such a qualification and benefitting from related tax relieves.

The MEF Decree entered into force on 5 February 2023.

CBR/CBD: consultation on amendments to the Bank of Italy's Circular No. 285 (*Documento di consultazione sulle disposizioni della Banca d'Italia in materia di "Obbligazioni bancarie garantite"*)

On 12 January 2023, the Bank of Italy launched a public consultation concerning amendments to the Bank of Italy's Circular No. 285 of 17 December 2013 on "*Supervisory provisions for banks*" (the "**Circular No. 285**").

In particular, the proposed amendments to the Circular No. 285, which aim at transposing Directive (EU) 2019/2162 of 27 November 2019 (the Covered Bond Directive, or "**CBD**") and implementing Regulation (EU) 2019/2160 (the Covered Bond Regulation, or "**CBR**"), relate to the:

- requirements for obtaining the authorization for starting covered bond programs;
- requirements for the application of the preferential prudential treatment of covered bond;
- organizational and risk management requirements that relate to the issuance of covered bond.

The deadline for the submission of observations expired on 11 February 2023.

Supervisory reporting: clarifications on amendments to the Bank of Italy's Circular No. 154 (*Precisazioni segnaletiche al 75° aggiornamento della circolare n. 154 del 22.11.1991*)

On 10 January 2023, the Bank of Italy published clarifications on amendments to the Circular No. 154 of 22 November 1991 on "*Supervisory reporting of credit and financial institutions. Templates for the collection of data and instructions for the submission of information fluxes*". In particular, the clarifications aimed at amending typographical errors in the A6 and U survey reporting templates on investment services.

Insurance products - IVASS's Supervision

Non-durable securities: IVASS's Order concerning amendments to several IVASS Regulations (*Provvedimento IVASS n. 127 del 14 febbraio 2023*).

On 23 February 2023, the IVASS Order No. 127/2023 of 14 February 2023 was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*). The IVASS Order No. 127/2023 concerns amendments to the following regulations:

- IVASS Regulation No. 52/2022, implementing Law Decree No. 73 of 21 June 2022, as converted by Law No. 122 of 4 August 2022, regarding the possibility to evaluate non-durable securities based on the value resulting from the last annual financial statement. In particular, the amendments aim at implementing the provisions on the temporary suspension of capital losses for non-durable securities, for the purpose of aligning the secondary provisions with Law Decree No. 73/2022, as amended by Law Decree No. 176 of 18 November 2022 (so-called "*Decreto Aiuti Quater*"); and
- ISVAP Regulation No. 38/2011, concerning the establishment and administration of separately managed accounts of insurance undertakings that pursue life insurance. In particular, the amendments aim at clarifying the minimum amount of assets to be compared to the mathematical reserve of policies under separately managed accounts.

The amendments to the IVASS Regulation No. 52/2022 and to the ISVAP Regulation No. 38/2011 entered into force on 24 February 2023.

Insurance distribution: IVASS's Order concerning amendments to the IVASS Regulation n. 40/2018 (*Provvedimento IVASS n. 128 del 20 febbraio 2023*).

On 20 February 2023, the IVASS issued the Order No. 128/2023 concerning amendments to the IVASS Regulation No. 40/2018 on professional requirements and internet domains. The amendments to the IVASS Regulation No. 40/2018 relate to, amongst others:

- professional requirements applicable to insurance intermediaries, in order to align the educational qualification requirements with the current school system; and
- introduction of the obligation to notify the IVASS about the internet domain used by insurance intermediaries for the promotion and placement of insurance policies through distance communication techniques.

The Order will enter into force the day after its publication on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*).

Accounting: letter to the market on the transition to IFRS 17 (*Lettera al mercato del 3 gennaio 2023*)

On 3 January 2023, the IVASS published a letter to the market concerning the transition to the new international accounting standard IFRS 17, as set forth in Annex 4 of ISVAP Regulation No. 7/2007, as amended by the IVASS Order No. 121/2022.

In particular, the IVASS specified that the:

- *una tantum* information required pursuant to Annex 4, paragraphs 1.1.1 "*Transition to IFRS 17 - Information of Qualitative Nature*", and 1.1.2 "*Transition to IFRS 17 - Information of Quantitative Nature*", must be filed with the IVASS together with the consolidated half-year report, at the certified email (PEC) address vigilanza.prudenziale@pec.ivass.it; and
- Appendix 6 of ISVAP Regulation No. 7/2007 "*Report on items in the consolidated financial statements relating to contracts issued by insurance undertakings*" has been replaced by the new Annex 4 "*Report on items in the consolidated financial statements relating to contracts pertaining to insurance undertakings*", in order to take into account the provisions of IFRS 17 "Insurance Contracts".

Contact Us



Eugenio Muschio

Partner

Milan

[Read my bio](#)

eugenio.muschio@bakermckenzie.com

© 2023 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of the this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.

