

Equity crowdfunding: new Consob regulation for innovative start-ups

On 26 June 2013, Consob approved, by resolution No. 18592, published on July 12, 2013, a new regulation providing for a set of rules on fund raising for innovative start-ups via crowd funding on-line portals (the “**Regulation**”).

The Regulation implements Articles 50-*quinquies* and 100-*ter* of the Legislative Decree No. 58 of 24 February 1998 (the “**Italian Financial Law**”) introduced by Article 30 of the Italian Law Decree No. 179 of 18 October 2012, modified by the Parliament and subsequently converted into Law No. 221 of 17 December 2012 on “Further urgent measures for Italy’s economic growth”, commonly known as “*Decreto Crescita bis*” (the “**Decree**”). Such Articles provide for the fund raising procedure for innovative start-ups¹, including innovative start-ups with social purposes (start-ups *innovative a vocazione sociale*) via on-line portals, enabling them to perform an offer to a large number of potential investors.

Pursuant to Article 50-*quinquies* of the Italian Financial Law, the management of the portals is exclusively reserved to investment companies, banks authorised to provide such investment services and companies enrolled in a specific register held by Consob (the “**Portal Management Companies**”).

Below, a short description of the key provisions of the Regulation.

Portal Management Companies Register

The Regulation establishes the creation of the Portal Management Companies register (the “**Register**”) and contains a set of rules governing its content, the procedure and the necessary requirements for the enrolment and the cases of cancellation from such Register.

Conduct rules

The Regulation provides for certain conduct rules to be complied with by the Portal Management Companies which include, *inter alia*, certain disclosure obligations in favour of the investors, information that needs to be published on the relevant portal and the obligation to ensure that the investors, other than professional investors, may withdraw their acceptances, free of expenses, within 7 days of the date of the order.

As far as the management of the investors’ orders are concerned, the Regulation provides that the Portal Management Companies shall transmit the received orders to the banks and the investment companies in charge of their execution pursuant to the provisions of the Section II of the Italian Financial Law (MiFID conduct rules). The provision above shall not apply in the event of (i) orders from individuals below Euro 500 for each order or Euro 1,000 considering the total yearly amount of the orders; and (ii) orders from companies below Euro 5,000 for each order or Euro 10,000 considering the total yearly amount of the orders.

The conduct rules also include certain confidentiality obligations, the obligation to ensure that the information remains available for at least 12 months after the end of the relevant offer and the obligation to provide for certain communications to Consob (both periodically and on the occasion of variation of specific information).

Sanctions

The Regulation sets forth certain sanctions for the case of serious breaches of the relevant conduct rules by the Portal Management Companies. In this case, Consob can suspend such companies, as a precautionary measure, for a maximum period of 90 days and, in the event the occurrence of a breach has been ascertained, can provide for a further suspension or the cancellation from the Portal Management Register.

¹ For the definition of innovative start-up, see Article 25, 2nd and 4th Paragraphs, of the Decree.

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Offers via portals

The Regulation contains certain provisions for offers via portals regarding, *inter alia*, the conditions to be satisfied for the admission of an offer on a portal.

In this respect, the by-laws of the issuer shall (i) include the withdrawal right and/or a tag-along right in favour of the investors (other than professional investors, banking foundations or start ups' incubators) in the event the controlling shareholders transfer the control of the company to third parties while the issuer satisfies the necessary requirement to be qualified as innovative start-up and in any case for a period of at least 3 years after the end of the relevant offer; and (ii) provide for the communication to the issuer and the publication on the issuer's web site of any shareholders' agreement. Finally, for the duly completion of the offers, the Portal Management Companies shall ensure that a quota at least equal to 5 per cent. of the securities offered by the innovative start-ups shall have been subscribed for by professional investor, banking foundations or start ups' incubators (as defined in Article 25, 5th Paragraph, of the Decree).

INFORMATION PURSUANT TO ARTICLE 13 OF LEGISLATIVE DECREE NO. 196/2003 (Data Protection Code)