

Legislative Decree No. 44 of 4 March 2014

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For any further clarifications or research please contact:

Marco Zaccagnini
Tel: +44 20 7397 1700
mzaccagnini@gop.it

Andrea Marani
Tel: +39 06 478751
amarani@gop.it

Paolo Iemma
Tel: +39 06 478751
piemma@gop.it

Paolo Bordi
Tel: +39 06 478751
pbordi@gop.it

Fabio Ilacqua
Tel: +39 02 763741
filacqua@gop.it

Emanuele Grippo
Tel: +39 02 763741
emgrippo@gop.it

Luca Lo Pò
Tel: +44 20 7397 1700
llopo@gop.it

Rome

Milan

Bologna

Padua

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www.gop.it

On 25 March 2014, Legislative Decree No. 44 of 4 March 2014 (the “**Decree**”) was published in the Italian Official Gazette. The Decree implements the provisions of the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (the “**AIFMD**”) in Italy and its provisions will be effective as from 9 April 2014.

The Decree will have a profound impact on the regulatory framework applicable to alternative investment fund managers (“**AIFMs**”) that manage or market alternative investment funds (“**AIFs**”) in Italy, as set forth by Legislative Decree no. 58/1998 (the “**Consolidated Financial Act**”). The full implementation of the AIFMD into Italy will however require the enactment of second-level provisions by the competent authorities (*i.e.* CONSOB and Bank of Italy).

According to the Decree, pending the enactment of such second-level implementing provisions, the regulations currently in force (as for instance Bank of Italy’s resolution dated 8 May 2012, as amended), will continue to apply (i) to the extent that they do not conflict with the principles set forth by the AIFMD and (ii) unless otherwise provided by the Decree.

The status of the regulatory framework for the marketing of AIFs to professional investors in Italy can be summarised as follows:

- it should be already possible to market EU AIFs managed by an EU AIFM (having a EU country other than Italy as its “Member State of reference”) in Italy, pursuant to the “passporting procedure” set forth by Article 32 of the AIFMD. This notwithstanding the fact that the Decree calls for further second-level implementing regulations governing the passporting procedure.
- The marketing in Italy of (i) non-EU AIFs or (ii) AIFs managed by non-EU AIFMs (in each case having a EU country other than Italy as their “Member State of reference”), pursuant to the “passporting procedure” set forth by Articles 35 and 37-41 of the AIFMD, will only be possible following the enactment of the regulation of the European Commission on the application of these Articles of the AIFMD (the “**Delegated Act**”), expected in 2015.
- The new regime providing for the authorisation in Italy of non-EU AIFMs (electing Italy as their “Home Member State”), will only come into force following the enactment of the Delegated Act and CONSOB implementing regulations.

Please note that neither the existing legal framework nor Decree provide for a private placement exemption for the marketing of AIFs.