

Banking Decree

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By Legislative Decree number 18 of 14 February 2016, published in the Official Journal on 15 February 2016 (the “Decree”), the Italian government passed a series of regulatory changes concerning - among other things - the authorization of EU alternative investment funds (“EU AIFs”) to directly provide loans in Italy.

The Decree is part of the reforms initiated by the legislature in 2012 to expand access to credit for Italian companies, and is intended to clarify certain questions of interpretation arising from Decree Law 91/2014 (the so called Competitiveness Decree).

In particular, the Decree introduces a new section (Part II, Section III, Chapter II-*quinquies* “OICR di credito” – “Lending” collective investment schemes) into Legislative Decree number 58 of 24 February 1998 (the “Italian Financial Act”) expressly allowing EU AIFs, alongside Italian AIFs, to provide direct lending to entities other than consumers (see new Article 46-ter TUF).

For an EU AIF to obtain authorisation to provide loans in Italy it must comply with the following requirements:

- (i) it must be authorized by the competent authority to carry out lending activities (including direct lending) in the country of origin;
- (ii) it must be a closed-end entity and have a functioning/governing model - with particular reference to rules regarding purchase/holding of units - similar to that of Italian FIAs that carry out direct lending;
- (iii) the regulations and standards of the country of origin relating to the limits and risk management (including limitations on the use of leverage) must be equivalent to the standards governing Italian FIAs that carry out direct lending. The requirement of equivalence can be met also by reference to the by-laws or regulatory provisions of the EU AIF, as long as the competent authority of the home jurisdiction ensures compliance with these.

The managers of the EU AIF (AIFM) must inform the Bank of Italy of their intention to start carrying out direct lending, and the operation of the EU AIF is suspended for a period of sixty days from this notice. Within that period the Bank of Italy may prohibit the operation of the applicant.

From an operational standpoint, the managers of an EU AIF operating in Italy will be subject to the legislation on transparency and relationships with customers provided for Italian operators, with the express exclusion of compulsory adherence to the out of court dispute resolution system provided for under art. 128-bis of Legislative Decree Number 385 of 1 September 1993 (the “Italian Banking Act”), as well as the supervision by Consob and Bank of Italy.

The Decree also provides for the application, *mutatis mutandis*, of the administrative sanctions set out in Section VIII, Chapters V and VI of the Banking Act relating to lending activities. The fund manager of an EU AIF must ensure compliance with regulatory requirements.

Finally, the Decree has definitively clarified, in response to the serious doubts raised by operators in the field, that the statutory tax provisions relating to withholding tax on interest on loans made by funds introduced by the Competitiveness Decree (and subsequently amended) do not entail any waiver or derogation from the rules on authorization to carry out banking activities, as provided at the primary level by the provisions of the Italian Banking Act.

The provisions introduced by the Decree on direct supply of finance in Italy by EU AIFs are subject to the adoption of implementing regulations by the Bank of Italy, including whether the EU AIFs will need to participate in the Central Risks Register (*Centrale dei Rischi*) through banks or financial intermediaries, as already provided for Italian AIFs. The Decree came into force on 16 February 2016 and will be presented to Parliament for its conversion into law within 60 days.

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