# Italy

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## Statutes and regulations

**1** What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

The primary domestic statutory regulation on securities offerings is Legislative Decree No. 58 of 24 February 1998, otherwise known as the Financial Laws Unified Text (TUF). The TUF was recently amended by Legislative Decree No. 164 of 17 September 2007 (introducing the new rules of Directive 2004/39/EC on Markets in Financial Instruments (MiFID), Legislative Decree No. 195 of 6 November 2007 on Transparency, Legislative Decree No. 229 of 19 November 2007 and Legislative Decree No. 146 of 25 September 2009 (on IPOs).

Other regulatory measures are those issued by the Commissione Nazionale per le Società e la Borsa (Consob), the Ministry of the Economy and Finance, the Bank of Italy and the Italian Stock Exchange (Borsa Italiana spa).

Consob is the regulatory and supervising authority responsible for controlling Italy's market for financial products. The activity of Consob is aimed at the protection of the investing public.To achieve its tasks, Consob:

- regulates investment services by intermediaries, the disclosure requirements for companies listed on regulated markets and the solicitation of investors;
- supervises market operating companies with the aim of maintaining transparent and efficient trading conditions and ensuring proper conduct by intermediaries and financial operators;
- may inspect and investigate unusual or irregular trading conditions involving listed securities and undertakes any other action deemed necessary to verify infringements of the law on insider trading and market manipulation; and
- may issue sanctions on those subject to its supervision.

## Public offerings

**2** What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

TUF article 94 requires that those intending to make a public offering shall give advance notice thereof to Consob, attaching the prospectus to be published. The prospectus shall be authorised by Consob, which may require, on reasonable grounds, supplementary information it deems necessary or the adoption of specific procedures for its publication.

The prospectus is the fundamental document of a listing process. The prospectus provides information to potential investors about the nature and characteristics of the operation, any relevant financial, economic and market data of the issuing company and the purpose and strategy underlying the decision of the company to be listed on the Stock Exchange.

Specifically, prospectuses shall contain the information that, depending on the characteristics of the financial products and the issuer, is deemed necessary for investors to make an informed assessment of the issuer's assets and liabilities, profits and losses, financial position and the prospects of the financial product. Prospectuses for financial instruments other than units or shares of open-end collective investment undertakings shall be drawn up in accordance with Regulation (EC) No. 809/2004.

Among the necessary information, prospectuses shall contain a summary briefly describing the risks and essential characteristics associated with the issuer, any guarantors, the financial instruments and a warning to the effect that any decision to invest in the financial instruments should be based on an examination by the investor of the complete prospectus.

In case of secondary offerings, issuers who have already had their registration document approved by Consob are only required to draw up the security note and the summary when the securities are offered to the public.

For non-equity securities, including warrants, issued under a programme or in a continuous or repeated manner by banks, prospectuses may consist of a base prospectus containing all the relevant information on the issuer and the securities offered to the public of investors.

Several exceptions to the obligation to publish a prospectus may apply pursuant to Consob Regulation No. 11971/99, article 57 which provides, for instance, an exemption for placements of securities offered in connection with either a merger or a takeover by means of an exchange offer, provided that a document is made available containing information regarded by the authority as being equivalent to that of a prospectus. Another case of exemption is the secondary offering of shares representing over a period of 12 months less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market.

**3** What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

TUF, the Regulations of Consob and the Regulations of the Borsa Italiana markets set forth the rules of the flotation process.

The first requirement to get the offering process started is to pass formal resolutions by the board of directors and by the shareholders' meeting of the issuing company. After that, the company must formalise the appointment of a 'sponsor', which generally acts as coordinator of the operation. At this stage, the company usually organises the legal and business due diligence.

According to the Regulations of the Borsa Italiana, the sponsor must certify that the issuing company has set up procedures for the release of precise and updated information adequate to represent its actual financial and economical situation. An auditing company supports the sponsor to this extent by issuing a comfort letter. The auditing company must also express its opinion about the congruity of the securities issuance price within 30 days of the communication

of the board of directors. In the meantime, a shareholders' meeting shall resolve the eventual increase of the stated stock capital.

According to the provisions of TUF, article 94 and Consob Regulation No. 11971/99, article 4, the application for official listing on the Italian Stock Exchange must be presented along with a set of documents, among which are the company's by-laws, the shareholders' meeting resolution, the prospectus, the required financial documents and the certification by the sponsor.

The same set of documents must be filed with Consob, which shall express its opinion about the fairness and completeness of the prospectus and may require further integrative documentation within 15 days of the date of filing.

Within two months of the filing of the listing application, Borsa Italiana issues its decision regarding the admission or rejection of the application, which is effective for six months. During the same period of time, Consob authorises the publication of the offering prospectus.

Under no circumstances can a public offering commence while the regulatory review is in progress.

The listing price of the floating securities is usually determined through book building.

Following the authorisation by Consob, the securities issuer carries out its road shows. During a road show, the stock listing planning is illustrated and explained to potential investors, along with all the necessary information about the securities offering and the issuing company.

During this period of time, the underwriting syndicate is set up through underwriting agreements negotiated with the participants.

Publication of the notice of filing of the offering prospectus with Consob shall occur at least five days before the beginning of the offering. Before the date set for the beginning of the offering, the issuing company publishes the prospectus along with the decision of admission to listing by Borsa Italiana.

The definitive price for the issuance is set through a resolution of the board of directors, which additionally approves the terms of the public offering.

Following these actions, the issuing securities are assigned to the participants of the underwriting syndicate that will start the public offering. The offering must last not less than two days.

The issuing securities are paid off and delivered through their deposit at Monte Titoli spa, respectively within 10 days from their payment and 20 days from the end of the public offering.

After the public offering has begun, the issuing company shall inform Borsa Italiana of its results within the operating business day of the Stock Exchange before the final day of the public offering. The Stock Exchange then verifies the existence of the floating requirements and subsequently admits the financial instruments to be listed on the Exchange by setting a date for the beginning of trade negotiations and by giving notice of it to the public through at least two press agencies.

**4** What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Article 8 of Consob Regulation No. 11971/99 sets forth the rules for the publication of the prospectus. Before the start of the acceptance period, the prospectus shall be published by filing it with Consob and made available to the public in accordance with Regulation (EC) No. 809/2004. Prior to the publication of the prospectus, the offeror, issuer and underwriters may, directly or indirectly, disseminate new information, carry out marketing research and perform surveys of intentions to buy in connection with public offerings, provided that:

- only information already made public through fulfilling its obligations under the rules in force are disseminated;
- the related documentation is sent to Consob contemporaneously with its dissemination;
- express reference is made to the fact that the prospectus will be published and to the places where it will be available; and
- it is specified that intention-to-buy survey responses do not constitute orders to buy.

Article 17 establishes some general criteria for preparing advertisements. Advertisements must be clearly recognisable as such. The information contained in advertisements must be expressed clearly and correctly and be consistent with that contained in the prospectus. The message conveyed by the advertisement must not be likely to mislead as to the features, nature and risks of the products offered and of the related investment. Only following publication of the prospectus may the offering be advertised, provided that the advertisements refer only to features of the issuer or of the financial products involved in the offering that have already been made public.

In addition, all publicity must include the warning 'read the prospectus before accepting' and must indicate the places where the public may obtain a copy of the prospectus and any other additional means by which it may be consulted.

**5** Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Primary public offerings of securities always require a prospectus that shall be authorised by Consob and published. Secondary offerings follow the same general rule, although several exceptions may apply, depending on determined circumstances. For instance, the obligation to publish a prospectus does not apply to the public trading of securities representing over a period of 12 months less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market.

Another exemption from the requirement of a listing prospectus applies to securities already admitted to trading on another regulated market, provided that such securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months in compliance with the EU regulatory requirements and that the obligations with regard to disclosure and admission to trading on that other regulated market have been fulfilled.

Whenever an exemption from the requirement of a listing prospectus applies, the issuer remains subject and liable towards Consob and public investors for any other regulatory information requirement to be disclosed in connection with the listing of financial instruments (such as any material events and circumstances, periodic information, etc).

**6** What is the typical settlement process for sales of securities in a public offering?

The Bank of Italy, in agreement with Consob, regulates the operation of the clearing and settlement service and the gross settlement service for transactions involving financial instruments other than derivatives, including the establishment of time limits and preliminary and supplementary duties.

All transactions on financial markets, including the over-the-counter market, are handled in accordance with the straight-through-processing (STP) principle by being sent to the automated matching and correction system (RRG). The RRG system is the link between the trading of securities and the clearing and settlement of the resulting transactions. The securities settlement system (Express II) is managed by Monte Titoli spa and is integrated with the funds transfer system to ensure the finality of payments by providing settlement in central bank money.

## Private placings

**7** Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

In general, there are no specific rules for the private placing of securities. However, several exemptions from the obligation to publish a prospectus may apply pursuant to Consob Regulation No. 11971/99, article 57, for example, in the case of securities offered in connection with a takeover by means of an exchange offer. Another exemption is provided for securities offered, allotted or to be allotted in connection with a merger. In both cases, a document shall be available containing information regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of EU legislation.

In addition, a noteworthy exemption applies to securities offered, allotted or to be allotted to existing or former directors or existing or former employees by an issuer that has securities already admitted to trading on a regulated market or by the parent company or a subsidiary, provided that such securities are of the same class as those already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

**8** What information must be made available to potential investors in connection with a private placing of securities?

See question 7.

**9** Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

The transferability of listed securities acquired in a private placing is not subject to regulatory restrictions. In case of unlisted securities, their transferability may be conditioned or restricted by ad hoc provisions in the by-laws of the issuing company (ie, a pre-emptive right to the benefit of the existing shareholders) or through provisions of the eventual shareholders' agreements. No standard mechanisms are used to enhance the liquidity of securities sold in a private placing.

## Offshore offerings

**10** What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

In accordance with Regulation (EC) No. 809/2004, Directive 2003/71/EC and Consob Regulation No. 11971/99, prospectuses and any supplements whose publication has been authorised by Consob shall be valid for the purposes of offers to the public in another EU member state. If the public offer does not take place in Italy, Consob shall issue its authorisation only if Italy is the home member state. At the request of the issuer or the offeror, Consob shall provide the competent authorities of the EU member state in which the offer is planned with a certificate attesting that the prospectus has been drawn up in accordance with Directive 2003/71/EC, along with a copy of the prospectus and – if requested – a translation of the summary into the official language of the member state in which the public offer is planned. Delivery shall be made within three working days of the request or, if the request is made together with the draft prospectus, within one working day of the issue of the authorisation.

## Particular financings

**11** What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Pursuant to the provisions of the Italian Civil Code, articles 2368 and 2420bis, the issuance of convertible bonds and warrants shall be resolved by a quorum majority of two-thirds of the share capital represented at the shareholders' meeting of the issuing company. If the by-laws so provide, the board of directors may be granted the authority to issue convertible bonds up to a specified amount and for a maximum period of five years from either the date of filing by the company with the Registrar of Companies or from the resolution by the shareholders' meeting, which amended the by-laws to that extent.

## Underwriting arrangements

**12** What types of underwriting arrangements are commonly used?

The underwriting arrangements concerning the purchase of the issuing securities by the underwriting syndicate participants and establishing the provisions for the eventual guarantee by the underwriting syndicate are designed in accordance with the international market practice. Book-building arrangements are more frequently used.

**13** What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

### Indemnity

Indemnity provisions are almost always used in underwriting agreements. Such clauses primarily refer to the rights the underwriter suffering losses or damages can claim against the issuer. The shift of an economic loss to the issuer is usually linked to false statements, misrepresentations, breaches of warranties or omissions in the prospectus and, in general, any of the offering documents.

### Force majeure

Underwriting agreements often include a force majeure provision, by which the underwriters are entitled to avoid or terminate the agreement upon the occurrence of determined circumstances, such as material adverse changes in the financial markets, suspensions or limitations in trading, banking moratoria or material adverse changes in currency rates.

### Success fees

Success fees are not commonly used, although they may be negotiated among the concerned parties.

### Over-allotment

During the initial period of trading negotiation, the underwriting syndicate participants may intervene in the financial market to support the share price quotation or to stabilise it, or both, either by buying the shares on the market or by offering to the market the eventual 'greenshoe'. The greenshoe generally does not exceed 10 to 15 per cent of the total amount of stock issuance placed on the financial market.

**14** What additional regulations apply to underwriting arrangements?

Save for the general statutory provisions on contracts that the Italian Civil Code sets forth, there are no other noteworthy regulations.

## Ongoing reporting obligations

**15** In which instances does an issuer of securities become subject to ongoing reporting obligations?

When the securities of a company have been admitted to flotation, the issuer must fulfil the periodic reporting statutory requirements that Regulation No.11971/99 sets forth.

Periodic reporting requirements can be divided into: information to be disclosed to the public; and notices to Consob. As far as information to the public is concerned, see question 16.

**Update and trends**

Just on 12 March 2010, Consob adopted a new regulation on related party transactions. Following two rounds of public consultations, the Commission passed the new regulation No. 17221 governing transactions of listed companies and issuers of widely distributed securities with individuals potentially in conflict of interests, as for instance relevant or controlling shareholders, directors, internal auditors and senior managers, including their close relatives. This piece of legislation follows policy directions issued by the Italian parliament while reforming company law, specifically article 2391bis of the Italian Civil Code, entrusting Consob, as market supervisory authority, with the power to issue the general principles to be complied with, to 'ensure transparency and fairness of related party transactions'. The main aim is to strengthen protection of minority shareholders and other stakeholders by combating abuses arising from transactions potentially in conflict of interests carried out with related party as, for instance, from merger activities, acquisitions, dismissals and reserved share capital increases. The main features of the Regulation are: strengthening the role of independent directors in all phases of the decision making process on related party transactions; and enhancing transparency requirements.

As for the definition of 'related-party transactions', the Regulation makes express reference to the International Accounting Principles, and namely to IAS 24, as endorsed by the European Union. As for the definition of 'independent directors', the Regulation requires at least compliance with the requirements provided for in the Article 148 of the TUF and, for companies adhering to the Corporate Governance Code of Conduct, the more stringent requirements provided for in said Code. The Regulation identifies related-party transactions having regard to a dimensional criterion (significant or not), on the basis of which different rules apply with respect to the role of independent directors and transparency.

Regarding the informative obligations towards Consob, Regulation No.11971/99, article 96 sets forth that the issuers of listed shares shall provide Consob with the following corporate information within one day of the approval of the company annual financial statements:

- the approved annual balance sheet, coupled with the statutory reports of the board of directors and of the supervisory board;
- consolidated financial statements, if any; and
- reports containing the opinion rendered by the independent auditors.

In addition, issuers of shares shall provide Consob with information about their half-yearly report, with any observation of the internal control body and – if prepared – the report containing the opinion rendered by the independent auditors.

Moreover, issuers of shares are required to file quarterly reports prepared by the board of directors on the basis of the same accounting policies as used in the company and to consolidate annual financial statements for the current fiscal year.

For issuers required to prepare consolidated annual fiscal statements, the half-yearly report shall also contain the parent company's financial statements and the notes thereto if necessary to be accurately informed. Information on the assignment of financial instruments to corporate officers, employees and collaborators shall be offered at least 15 days prior to the date set for the shareholders' meeting called to approve the compensation schemes.

**16** What information is a reporting company required to make available to the public?

All the above corporate information mentioned in question 15 – to be filed with Consob – shall be made available to the public as well by way of a deposit at the registered office of the issuer and at the market management company. Notice of the deposit shall be advertised in at least one daily newspaper.

Additionally, listed issuers and those controlling them shall make inside information directly concerning the issuers and their subsidiaries available to the public, as well as any other relevant information on material events and circumstances, by sending a press release to:

- the market management company, which shall immediately make it available to the public; and
- at least two news agencies.

Listed issuers shall issue appropriate instructions for subsidiaries to provide all the information necessary to comply with the mandatory information requirements.

Those persons performing administrative, supervisory and management functions in a listed issuing company and managers who have access to inside information and the power to make managerial decisions, those holding shares amounting to at least 10 per cent of the share capital, and any other persons exercising control over the issuer must inform the public (and Consob) of transactions involving the issuer's shares or other financial instruments linked to them.

In addition, any information on fundamental corporate changes of the issuer, mergers, spin-offs, acquisitions and disposals, increasing capital by way of contributions in kind and the constitution of pools of assets allocated to a specific business project shall be disclosed.

Also, listed companies shall annually publish a report on adherence to their code of conducts and the fulfilment of the commitments arising therefrom. The report shall be drafted in accordance with criteria established by the code of conduct's issuer and shall contain specific information about:

- adherence to each of the code of conduct's provisions;
- the reasons for any failure to comply with the code of conduct's provisions; and
- any conduct adopted instead of that provided for in the code of conduct.

As far as shareholders' agreements are concerned, those regarding the exercise of voting rights in companies with listed shares and their parent companies must be notified to Consob, published in abstract form in the Italian daily press, filed with the register of companies in which the company office is registered and notified to the companies with listed shares.

**Anti-manipulation rules**

**17** What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

TUF sets forth the main rules prohibiting manipulative practices in securities offerings and secondary market transactions by setting the relating sanctions arising therefrom.

Article 173bis establishes penal sanctions for any person who includes false information or conceals data or news in prospectuses required for public offerings or for admission to trading on regulated markets in a way that is likely to mislead recipients of the prospectus for the purpose of obtaining an undue profit for himself or others and with the intention of deceiving such recipients.

Penal and administrative sanctions are also provided for any person who disseminates false information or sets up sham transactions or employs other devices concretely likely to produce a significant alteration in the price of financial instruments.

Similar sanctions are also imposed on any person who, possessing inside information by virtue of his membership of the administrative, management or supervisory bodies of an issuer, his holding in the capital of an issuer or the exercise of his employment, profession,

duties, including public duties, or position:

- buys, sells or carries out other transactions for his own account or for the account of a third party involving, directly or indirectly, financial instruments using such information;
- discloses such information to others outside the normal exercise of his employment, profession, duties or position; or
- recommends or induces others, on the basis of such information, to carry out any of the transactions involving financial instruments.

Sanctions shall also apply to any person who, possessing inside information and knowing or capable of knowing through ordinary diligence its inside nature, carries out any of the actions referred to therein.

Pecuniary administrative sanctions are also imposed on any person who, through the media, including the internet, or by any other means, disseminates information, rumours or false or misleading news that give or are likely to give false or misleading signals regarding financial instruments.

In addition, administrative sanctions are provided for those directors, members of internal control bodies and general managers of companies listed on regulated markets who omit the communication or allow false information about the adoption of the mandatory code of conduct by listed companies.

## Price stabilisation

**18** What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

A stabilisation regime is uniformly provided for in Europe since December 2003 when statutory Regulation (EC) 2273/2003 entered into force.

The rules on the stabilisation activity of initial and secondary offerings are therefore set forth through this European statutory set of norms in Italy. Articles 7 to 11 of the Regulation provide for two types of stabilisation: pure stabilisation and the syndicate covering transaction.The stabilisation activity can be carried out for 30 days after the first day of listing and cannot be done above the offering price. The green shoe option may not amount for more than 15 per cent of the original offer and the naked short position may not exceed 5 per cent of the original offer. Disclosure requirements concern two activities of ex-post disclosure: first, the stabilisation activity must be notified to the competent authority no later than the end of the seventh daily market session following the date of execution of the transactions; and second, the following information has to be disclosed to the market within one week of the end of the stabilisation period (ie, the 30 days):

- whether or not stabilisation was undertaken;
- the date at which stabilisation started;
- the date at which stabilisation last occurred; and
- the price range within which stabilisation was carried out, for each of the dates during which stabilisation transactions were effected.

Disclosures to the public shall be sent simultaneously by issuers, offerors or entities undertaking the stabilisation, whether or not acting on behalf of such persons, via a person appointed jointly to the market management company, which shall immediately make them available to the public and at least two news agencies. A copy of the disclosures shall be sent to Consob.

## Liabilities and enforcement

**19** What are the most common bases of liability for a securities transaction?

Liability of the issuer, its directors and of those who undertook responsibility for the prospectus in connection with securities offerings may primarily arise for failure to comply with the provisions of TUF and those of Consob Regulation 11971/99 and, in general terms, with the relevant provisions the Civil and the Penal Codes set forth. Among the causes of liability towards investors are inaccuracies or omissions in the information contained in the offering prospectus, failure to comply with formalities concerning the registration and preparation of the prospectus and its relating documents, inaccurate or incomplete indications regarding the price and the quantity of the financial products offered, misrepresentations and dissemination of false or misleading information, as well as any omission to mandatory on-going reporting and disclosure duties towards Consob and the public of investors.



**20** What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Depending on the nature of the claim and save for administrative sanctions, any other remedy and sanction for improper securities activities can be pursued through either criminal, civil or commercial law ordinary proceedings.

Administrative sanctions shall be imposed by the Bank of Italy or Consob within the scope of their respective authority.

The measure imposing sanctions shall be published in the Bulletin of the Bank of Italy or Consob. Measures imposing administrative sanctions may be appealed to the Court of Appeal. An appeal shall not suspend enforcement of the measure, unless the existence of serious grounds is proved. The Court of Appeal shall decide on the appeal having heard the public prosecutor in a ruling stating the grounds for its decision.

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