New implementation provisions for Italian financial intermediaries

Nearly five years after the enactment of the Italian Legislative Decree number 141/2010, which sets forth the reform of Title V of the Italian Legislative Decree number 385 of 01 September 1993 (Italian Banking Act) - by, inter alia, introducing a single register held by the Bank of Italy (Register) - the Ministry of Economy and Finance (MEF) and the Bank of Italy adopted implementing measures relating to the financing activities and the supervision of financial intermediaries, and in particular:

(i) MEF Decree number 53 of 02 April 2015 introducing the “Regulations relating financial intermediaries implementing Articles 106, paragraph 3, 112, paragraph 3, and 114 of the Italian Banking Act and 7-ter, paragraph 1-bis, of Law No. 130 of 30 April 1999”, published in the Italian Official Gazette number 105 of 8 May 2015 (“MEF Decree”), and

(ii) the Bank of Italy Circular number 288, dated 3 April 2015 on “Supervisory Provisions for financial intermediaries” (Bank of Italy Circular).

**MEF Decree**

MEF Decree implements the Title V of the Italian Banking Act, including Article 106, according to which the financing activity “in whatsoever form” is reserved to authorised financial intermediaries enrolled in the Register held by the Bank of Italy.

The most significant provisions of the MEF Decree are:

(i) Article 2, which defines the “activity of granting financings in whatsoever form” by setting out a detailed list of activities which do not qualify as granting financings, and

(ii) Article 3, which provides for a more detailed list of activities that do not constitute “activity of granting financings vis-à-vis the public”.
Bank of Italy Circular

The new supervisory provisions for financial intermediaries have been subject to two subsequent public consultations starting from 2012, in order to implement the new framework introduced by Directive 2013/36/EU (CRD IV) and Regulation 575/2013/EU (CRR).

According to the new provisions, financial intermediaries are subject to a supervision regime equivalent to the one applicable to banks, taking into account the so called proportionality principle, in order to consider the different level of complexity of the entities subject to the new provisions.

In particular, the Bank of Italy Circular:

- governs the authorisation required for carrying on the activity of granting financings, which main purpose is verifying the existence of all necessary requirements to ensure the sound and prudent management of the intermediary requesting to be enrolled in the Register pursuant to Article 106 of the Italian Banking Act (to this end, a number of requirements, including the existence of a minimum legal capital, must be met)
- establishes that granting financings and servicing can be considered as core activities and provides the list of complementary activities that intermediaries can also carry on
- identifies the requirements for a company becoming parent undertaking of a financial group pursuant to Article 109 of the Italian Banking Act, which may be either a financial intermediary or a financial holding company pursuant to Article 59, paragraph 1, lett. b), of the Italian Banking Act
- governs the authorization requirements for the acquisition of qualifying holdings in the capital of a financial intermediaries or of a parent financial holding company and the relevant reporting obligations
- provides for general organisational requirements and corporate governance rules, and
- identifies the prudential regime applicable to financial intermediaries by making extensive reference to the provisions applicable to banks and, in particular, the provisions of CRR.

Implementation of the new provisions: the timeline

The implementation of the new supervision regime will be according to the explanatory note and relevant timetable published by the Bank of Italy on 26 May 2015. In particular, please note the following:

- financial intermediaries registered either with the general (106 Register) or the special (107 Register) registers provided under the previous text of Articles 106 and 107 of the Italian Banking Act and trust companies under Article 199, paragraph two, of the Italian Legislative Decree number 58 of 24 February 1998 (Italian Financial Act) may continue to operate until 12 May 2016
- financial intermediaries registered in the 107 Register which would continue to operate after the 12 May 2016 deadline are required to submit to the Bank of Italy, by 11 October 2015, a request of authorisation to be enrolled in the Register
- financial intermediaries providing money broking activities are required to submit to the Bank of Italy, by 12 November 2016, a request of deregistration from the relevant registers
- trust companies under Article 199, paragraph 2, of the Italian Financial Act, which would continue to operate after the 12 May 2016 deadline are required to submit to the Bank of Italy, by 12 February 2016, a request of authorisation to be registered in the special section of the Register, and
- any other financial intermediary which would continue to operate after the 12 May 2016 deadline is required to submit to the Bank of Italy, by 12 February 2016 a request of authorisation to be enrolled in the Register or in one of the lists provided under Articles 111 and 112, paragraph one, of the Italian Banking Act.
Companies which have applied the Bank of Italy for the purpose of the above registration, may continue to operate, pending the authorisation procedure, also after the 12 May 2016.

This document (and any information accessed through links in this document) is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.