

Insight: Milan office

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Italy completes implementation of Prospectus Directive 2010/73/EC

The Italian Government completed the implementation process of Directive 2010/73/EC, which amended Prospectus Directive 2003/71/EC and Transparency Directive 2004/109/EC.¹

The Decree sets out provisions relating to, inter alia (i) the voting requirements to **approve capital increases**, by **reducing the requirement of majority shareholder approval** previously required for capital increases that exclude or limit preemptive rights; (ii) **retail cascade**, by allowing financial intermediaries to resell securities originally offered directly by issuers; and, (iii) **disclosure obligations**, by simplifying the disclosure of privileged information.

1. Majority Required for Capital Increases with Exclusion or Limitation of Preemptive Rights

The Decree reduces the voting requirements to approve capital increases when excluding or limiting preemptive rights to existing shareholders. In particular, the Decree repeals the requirement of a qualified majority (*i.e.*, approval by more than 50% of the share capital in any capital call, as requested by former Art. 2441, par. 5, of the Italian Civil Code), thereby allowing Italian companies to approve capital increases with exclusions or limitations of preemptive rights with a favorable vote of two-thirds of shareholders attending the shareholders' meeting, provided that the attendance quorums are met.²

¹ The implementation process was made through Legislative Decree No. 184 of October 11, 2012 (the "**Decree**"), which will become effective on November 13, 2012. The Decree, which amends both the Italian Civil Code and Legislative Decree 58/1998 (the "**Italian Financial Act**"), is the last step of the implementation process and follows regulatory measures of the Italian Securities Commission ("**CONSOB**") set forth in resolutions No. 18079 of January 20, 2012 and No. 18214 of May 9, 2012.

² Please note that, under Italian law (*i.e.*, Art. 2368 and 2369 of the Italian Civil Code), the first call of extraordinary shareholders' meeting of a public company is duly convened with at least one-half of the capital stock of the company and resolves with the approval of at least two-thirds of the capital stock present at the meeting. Upon the second call, the extraordinary meeting is duly convened with at least one-third of the capital stock and resolves with the approval of at least two-thirds of the capital stock present at the meeting. For meetings subsequent to the second call, the extraordinary meeting is regularly convened with at least one-fifth of the capital stock and resolves with the approval of at least two-thirds of capital stock present at the meeting. Finally, by-laws of public companies may provide that extraordinary shareholders' meetings may be held only on the first call and in such a case the majority is that required for calls subsequent to the second call (*i.e.*, the presence of at least one-fifth of the capital stock and approval of at least two-thirds of the capital stock present at the meeting).

For private companies, the first call of extraordinary shareholders' meeting is convened and resolves with the approval of more than one-half of the capital stock of the company. Upon the second and any subsequent calls for extraordinary shareholders' meetings, the extraordinary meeting is regularly convened with more than one-third of the capital stock and resolves with the approval of at least two-thirds of the capital stock present at the meeting.



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2. Retail Cascade

The Decree includes a new provision found in par. 2-*bis* of Art. 100-*bis* in the Italian Financial Act, which entitles financial intermediaries to rely on a prospectus-directive compliant prospectus published by an issuer in the placing or reselling of securities to retail investors, so long as the prospectus is still valid and up-to-date³ at the time of the placing or resale and so long as the issuer consents to the use of the prospectus by the financial intermediaries.

3. Disclosure Obligations

The Decree abolished the duty of the controlling shareholders to disclose to the public privileged information concerning the issuer and its subsidiaries pursuant to Article 114 of the Italian Financial Act, limiting such duty to the sole issuer. Prior to the Decree becoming effective, both the issuer and the controlling shareholders had these disclosure obligations.

This amendment also affects other provisions of the Italian Financial Act, including provisions relating to the register of persons or entities that must have access to privileged information by eliminating controlling shareholders from the register of persons or entities. As a result, the controlling shareholder is no longer subject to certain duties concerning the disclosure of privileged information about an issuer except upon the specific request of CONSOB.

³ According to Article 10 of the CONSOB Issuers' Regulation approved with resolution No. 11971 of May 14, 1999 and subsequent amendments, a prospectus is valid for 12 months after its approval, provided that the prospectus is completed by any supplements required pursuant to Article 94, paragraph 7 of the Italian Financial Act.