

The Capital Markets Bill: A long-awaited reform at a glance

On 2 May 2023, the parliamentary debate to enact a long-awaited bill, commonly known as the Capital Markets Bill, commenced. The Capital Markets Bill is aimed primarily at introducing a number of significant changes in the regulatory framework governing the Italian capital markets.

In light of the significance of the provisions in question, although the final text will likely include changes with respect to the version approved by the Council of Ministers (please see below), it is worth summarising the main legislative changes that are expected to be enacted.



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The areas of intervention

Small and medium enterprises

Goal:

Promotion of a capital markets union.

Main changes:

- (i) Widening the scope of the **definition of SMEs** to include all those issuers with shares admitted to trading and having a market capitalisation not exceeding EUR1 billion;
- (ii) Application on a voluntary basis of the dematerialisation regime, as set forth by Article 83-bis and following Legislative Decree no. 58/1998, as amended (**Italian Financial Act**) to the standardised quotas of SMEs-s.r.l. The relevant quotas would then be issued in a **book-entry form**.

Issuance and underwriting of debt securities

Goal:

Facilitating the issuance of debt securities by stock companies (*società di capitali*) not listed on a regulated market, encouraging professional investors to subscribe them.

Main changes:

Changes will be made to Articles 2412 and 2483 of the Italian civil code, in relation to:

- (i) Joint stock companies (ie S.p.A.): bonds can be issued for an aggregate amount exceeding twice the share capital, the statutory reserve and the available reserve of a S.p.A., where the underwriting or the subsequent transfer are strictly reserved to professional investors and such selling restriction is clearly provided in the terms and conditions relating to the bond issuance;
- (ii) Limited liability companies (ie S.r.l.) and S.p.A.: repeal of the obligation providing for the intermediation of an entity, subject to prudential supervision, to guarantee the solvency of the issuer where the underwriting and the subsequent transfer of the debt instruments or bonds are strictly reserved to professional investors.

Access to the capital markets and streamlining of the listing procedure

Goal:

Relaxation of the requirements for accessing the capital markets and/or for listing purposes.

Main changes:

- (i) Full review of the regulatory regime applicable to issuers of financial instruments having a wide distribution (*strumenti finanziari diffusi presso il pubblico*);
- (ii) Repeal of the provisions setting forth the regime as to the liability entity responsible for the placement activities (**responsabile del collocamento**);
- (iii) Time limit envisaged for the approval of the prospectus from the first filing of the draft prospectus with the competent authority;
- (iv) Introduction of regulated market operator discretion as to the requirements that it may impose for the listing of certain **categories of companies**;
- (v) Repeal of the five-day term for the suspension of admissions to trading;
- (vi) Exemption from the “door-to-door” regime for the so called “self-placement” category.



Corporate Governance

Goal:

Streamlining the corporate governance regime.

Main changes:

- (i) **Two years' temporary regime** derogating from the enhanced **quorum requirements**, as set forth in the Italian civil code, in relation to recapitalisation transactions;
- (ii) **Two years' temporary regime** during which companies having shares admitted to trading on a regulated market or on a multilateral trading facility may resolve upon recapitalisation transactions by contribution excluding the rights of **pre-emption up to 20%**;
- (iii) Increase of the number of votes attaching to shares to up to 10 (previously 3), in the case of shares with multiple votes attaching to them;
- (iv) Repeal of the obligation on **controlling shareholders** to disclose to CONSOB any transactions concluded by them including through nominees (*interposta persona*);
- (v) Where provided by the by-laws, conducting the shareholders' meeting and exercise of the voting rights exclusively by the representative designated by the company.

Collective Asset Management

Goal:

Encouraging the development of collective asset management.

Main changes:

Changes will be introduced into the Italian Financial Act to streamline the regulatory regime applicable to externally managed **SICAV** and **SICAF**:

- (i) Introduction of an autonomous definition of externally managed SICAV and SICAF, to clarify that such entities are not themselves authorised to provide collective asset management;
- (ii) Application to externally managed SICAV and SICAF of a simplified regulatory regime, inspired by that applicable to investment funds;
- (iii) Exemption for externally managed SICAV and SICAF from the limitations laid down by the Italian civil code as to the issuance of shares to which multiple voting rights are attached;
- (iv) Application to externally managed SICAV and SICAF and relevant sub-funds of the compulsory administrative liquidation procedure (*liquidazione coatta amministrativa*);
- (v) Ability to delegate the authority to exercise voting rights at more than one shareholders' meeting to asset management companies.

Supervision

Goal:

Revision of CONSOB's supervisory powers in light of the proportionality principle.

Main changes:

A number of CONSOB's supervisory powers are expected to be amended by:

- (i) introducing new powers to prevent any unlawful marketing activities concerning reserved investment services and activities carried out by unauthorised entities;
- (ii) the repeal of CONSOB's authority to increase the free float in those scenarios where the entity holding shares exceeding 90% of the share capital and admitted to trading on a regulated market is required to reinstate a sufficient amount of free float to ensure the proper functioning of any trading activities;
- (iii) Qualification of private pension funds (*casse di previdenza*) as eligible counterparties for the purpose of the provision of reserved investment services and activities.

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Stay Tuned

As mentioned above, as of the date of this publication, the final text of the Capital Markets Bill has recently been proposed for discussion and approval by the Italian Parliament. At the time of writing, it is therefore not possible to reasonably foresee the future developments of the legislative text, if and what changes the Italian Parliament may propose to introduce and, ultimately, to what extent the final version of the Capital Markets Bill, once signed-off by the Italian Parliament, will differ from the version we have analysed for the purposes of this publication.

We are available to discuss the current draft provisions, in order to timely identify any potential issues or investigate sufficiently in advance any opportunities that – should the current legislative text be confirmed – the entry into force of the Capital Markets Bill may give rise to, and we intend to follow up with another alert on any future developments.

In the meantime, if you want to be kept up to date on the main parliamentary developments and on any material changes to the text of the Capital Markets Bill proposed and discussed by the Italian Parliament, do not hesitate to click on this [link](#) in order to subscribe to our mailing list.

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