Year in review,
Year to come
Italian Law
December 2019
Year in review
Italian Law in 2019

2019 saw a large number of legal and regulatory changes impacting our clients’ businesses. Our review aims to give you an overview of the key ones you may have missed, with links to further information where available.

Capital Markets/FRG

Brexit
With Law Decree No. 22 of 25 March 2019 (so-called “Brexit Decree”), converted into law by Law No. 41 of May 2019, Italy has set out the transitional measures that would apply in a “hard-Brexit” scenario, to ensure continuity of markets and institutions in the financial sector.
For those types of entities for which a third country local regime exists (banks, investment firms and e-money institutions), the Brexit Decree provides for an 18-month transitional period starting from the withdrawal date. However, the ability to fully rely on the transitional period is subject to, inter alia, submission of a prior notification by the UK firm to the competent Italian authority and the filing of an application to obtain a third-country local license in Italy within six months of the withdrawal date. The relevant forms and instructions have been made available on the Bank of Italy and CONSOB websites, respectively.
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5th Anti-Money Laundering Directive
With Legislative Decree No. 125 of 4 October 2019, the Italian government has transposed the 5TH AML Directive (Directive (EU) 2018/843) into Italian law. Among other changes, this Legislative Decree (i) broadens the scope of the providers of services related to the use of virtual currencies that are subject to the Italian AML regulations, by including the exchanges who convert virtual currencies into other virtual currencies and custodian wallet providers; (ii) expands the powers and the exchanges of information between national authorities and (iii) improves safeguards on transactions involving high-risk third countries.

Benchmark Regulation/Securities Financing Transactions Regulation
With Legislative Decree No. 19 of 13 February 2019, which came into force on 28 March 2019, the Italian Government has made the necessary changes to the indices used as benchmarks in financial instruments and contracts or for measuring the performance of investment funds; and of Regulation (EU) 2015/2365 on the transparency of securities financing transactions and re-use.

MIFID II
A draft legislative decree making certain changes to the TUF (i.e., Legislative Decree no. 58 of 24 February 2018, the Italian Financial Act) and the CAP (i.e., Legislative Decree no. 209 of 7 September 2005, the Italian Insurance Code) has been approved by the Council of Ministers on 21 November 2019 and will soon be published in the Official Gazette. The decree intends to complete the transposition process of MiFID II (originally implemented into Italian law with Legislative Decree No 129/2017), with supplementary and corrective provisions, which include: (i) eliminating the obligation to send a prior notice to CONSOB concerning the PRIIPs’ KID; (ii) modifying certain provisions on the off-the-premises offer of financial products and services; (iii) aligning the notions of small and medium-sized enterprises; and (iv) modifying the sanctions regime, also allowing CONSOB to sanction insurance distributors.

Pension funds
With Legislative Decree No. 147 of 13 December 2018, the Italian Government has implemented Directive (UE) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (“IORP2 Directive”) into Italian law. This measure contains a number of amendments and additions to the Italian Regulation on Pension Funds (i.e, Legislative Decree no. 252 of 5 December 2005), with particular reference to their governance and the transparency towards their members.

2019 Brexit
The Italian Government approved the measures aimed at ensuring security and stability in the event of Britain’s exit from the European Union without a deal (“Hard Brexit”).

2019 Cyber Security
In late 2019 Italy has adopted stringent supervisory measures for the “cyber security” of several governmental agencies, public administrations and private companies active in the national strategic sector which, for these purposes, have been included in the newly-established “National Cybersecurity Perimeter”. 
Corporate

Foreign Investment

On 20 November 2019 Law No 133, 2019 was published in the Italian Official Gazette containing "Conversion into law, with amendments, of the decree-law 21 September 2019, n. 105, containing urgent provisions on the cyber-national security perimeter". It came into force on 21 November 2019. The law provides for changes to the rules on the exercise of the Government's special powers in the defence and national security sectors, as well as for activities of strategic importance in the sectors of energy, transport and communications, (called "golden power").

Shareholders rights directive:

Legislative Decree No.49 of 10 May 2019, which came into force on 10 June 2019 (save the deferred application of some provisions) has implemented into Italian Law Directive EU 2017/828 (the "Shareholders Rights Directive 2"). The main changes include the introduction in the TUF (i.e., Legislative Decree no. 58 of 24 February 2018, the Italian Financial Act) of article 192-quinquies. This provides for a new set of administrative sanctions applicable to listed companies and their supervisory bodies, for the breach of the transparency duties provided by art. 2391-bis of the Italian Civil Code in respect of transactions with related parties.

Employment

Riders and self-employed workers

Law Decree No. 101/2019, in force as of 5 September 2019, and converted into Law No. 128/2019 on 2 November 2019, contains measures aimed at awarding stronger protection to certain categories of particularly workers, including those self-employed workers who, on behalf of a third party, perform goods delivery services by driving two-wheeled vehicles or similar vehicles in urban areas, upon delivery instructions given to them through a dedicated digital platform (the so-called riders). With reference to riders, the key points include a mandatory written form for employment contracts; riders’ salary minimum to be defined by national collective agreements and the prohibition to pay riders based on the number of deliveries; a supplementary indemnity for work performed by riders over nights, festivity days or in bad weather conditions; and mandatory insurance coverage against work accidents and illnesses. For self-employed workers who are organised by the principal (lavoratori eterorganizzati), the same protections of subordinate employees shall apply to any such self-employed workers, who are organised by the principal as to the "modalities of performance of their services", and provide such services continuously, and predominantly on a personal basis. Before Law Decree 101/2019, the same protection as subordinate employees applied only if the self-employed workers were organised by the principal with specific reference to the place where the services were to be performed and the relevant timing. Law Decree No. 101/2019 has amended Legislative Decree No. 81/2015 eliminating the specific reference to "timing and place of work" organised by the principal. This is now replaced by a generic reference to the "modalities of performance of the services". Therefore it will be up to case law to identify what modalities of performance of the services, if organised by the principal, will afford the self-employed worker the same protection as subordinate employees.

Insolvency & Restructuring

Insolvency Reform

On 14 February 2019, a new Code on corporate crises and insolvency implementing the Law No 155 of 19 October 2017 was published in the Italian Official Gazette. It came into force on 15 August 2020 except for a few provisions (mainly related to corporate governance) which are already in force (from 16 March 2019). Key points include: a) introducing a definition of 'crisis'; b) replacing the term 'bankruptcy' with the term 'judicial liquidation' which will be adopted if and when a restructuring is not possible; c) introducing early warning tools for early detection of the crisis and the adoption of appropriate measures; d) introducing a faster restructuring agreement with the approval of creditors representing at least 30% of credits debt owed? when the debtor does not propose the deferred payment to the other creditors and does not ask for safety measures; e) reshaping the composition with creditors mainly aimed at maintaining business continuity and f) regulation of the crisis or insolvency of companies belonging to the same Group.

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Public Law

Unlock Shipyards

Law Decree No. 32 of 18 April 2019 (so called "Unlock Shipyards") which has been converted into Law by means of Law No 55 of 17 June 2019, contains a set of rules to simplify the public procurement sector and the construction authorisation procedures. In particular, the new measures replace several implementing regulations and guidelines governing the awarding of public procurement contracts with a new single regulation to be adopted by the Government. They also increase the quota of a contract that can be subcontracted.

New incentives to renewable energy plants

The Decree of the Ministry for Economic Development dated 4 July 2019 has introduced a new incentive regime. The eligible plants are: wind plants, photovoltaic plants, hydroelectrical plants and sewage treatment gas plants. The incentives are granted until the achievement of installed power capacity quotas, on the basis of two different mechanisms: registration procedure with pre-determined feed-in tariff, for plants having a power capacity up to 1MW; and paid-as-bid auction system, for plants having a power capacity exceeding 1MW.

Tax

Growth Decree

On 29 June 2019, Law 28 June 2019, No. 58 featuring "Conversion into law, with amendments, of the Decree-Law 30 April 2019, no 34, concerning urgent measures of economic growth and for the resolution of specific crisis situations" together with the coordinated text of the decree-law 30 April 2019, No. 34 (called "Growth Decree") were published in the Italian Official Gazette, and came into force on 30 June 2019. The Growth Decree introduced certain tax incentives to boost securitisations of non-performing and unlikely-to-pay receivables (NPLs/UTPs) and the real estate market.

Read more...
We anticipate that in 2020 will see a large number of legal and regulatory changes. Our review aims to give you an overview of the European and Italian legislative agenda and how these developments may affect our clients.

Fintech

Regulatory sandboxes for fintech firms
To encourage entrepreneurship and facilitate the development of technological solutions in the financial sector, the so-called “Growth Decree 2019” has established the creation of regulatory sandboxes where fintech companies can test and refine their innovative business models without being burdened from the outset by the usual regulatory requirements which would otherwise apply to their activities. These sandboxes are set to take off in 2020 and will allow fintech firms to offer their products and services for a maximum 18-month timeframe within a partially deregulated environment, whilst mitigating risks to customers and the market more broadly. The application criteria and the rules of these sandboxes will be set out in one or more decrees to be issued by the Ministry of Economy and Finance (MEF) upon consultation with the Italian supervisory authorities (Bank of Italy, CONSOB, IVASS).

Dispute Resolution

Class Action
On 18 April 2019, Law No. 31 of 12 April 2019 was published on the Italian Official Gazette and will come into force on 18 April 2020. The law provides a new set of rules relating to class actions in Italy (formerly regulated by law n. 244/2007). The new regulation is aimed at expanding the right of individuals who own homogeneous rights to obtain compensation for damages arising from conduct carried out by commercial entities. The main features of the new regulation are the following: a) the new regulation is contained in the Code of Civil Procedure (title VIII-bis, art. 840-bis-840-sexdecies) and no longer in the Italian Consumers’ Code; b) the class action is no longer limited to “consumers” and “users”, being the class action extended to all who have suffered a damage relating to “homogeneous individual rights”; c) the competent venue to start a class action is the section specialising in corporate matters of the Court where the defendant has its corporate office; d) the class action can be started against any enterprises and entities providing public services or public utilities (with the exclusion of the Public Administration).

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Employment

Whistleblowing Directive
On 26 November, the Directive No. 2019/1937/EU on the protection of a person who reports breaches of Union Law was published in the Official Journal of the EU and will come into force on 16 December 2019. Member states will have until 17 December 2021 to transpose the new rules into national law. The new Whistleblowing Directive could have a significant impact on Italian Law No. 179 of 30 November 2017.

Restructuring /Insolvency

New EU Restructuring and Insolvency Directive
Directive (EU) 2019/1023 of the European Parliament and the Council of 20 June 2019 (“Restructuring and Insolvency Directive”) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 was published in the Official Journal of the European Union of 26 June 2019. This directive sets out rules on: a) pre-emptive restructuring frameworks for debtors who are in financial difficulty and for whom there is a probability of default, in order to prevent default and to ensure debtors’ economic sustainability; b) procedures leading to the debt relief of the insolvent entrepreneur’s debts; and c) measures to increase the efficiency of restructuring, insolvency procedures. The Directive has to be adopted by Member States before 17 July 2021.
2020 review of Solvency II

During 2020, the European Commission will conduct a broad review of the EEA-wide framework for (re)insurers known as “Solvency II”. The Commission’s report is due by 1 January 2021 and is likely to include recommendations for change.

Money Market Funds Regulation

With Law No 117 of 4 October 2019 (so-called European Delegation Law), the Italian Government has been mandated by the Parliament to, *inter alia*, co-ordinate the national legislation with the provisions of Regulation (EU) No. 2017/1131 on money market funds. The Government has time until 2 November 2020 to make these changes, by issuing a legislative decree.

Among the innovations introduced by the money market regulation we note: (i) the limit for a Money market funds (MMF) to invest only in certain categories of financial assets (i.e. money market instruments, eligible securitisations and asset-backed commercial papers (ABCPs) and units or shares of other MMFs); and (ii) the prohibition for a MMF to hold more than 10% of the instruments issued by a single body.

Prospectus Regulation

The European Delegation Law has also delegated the Italian Government to issue, by 2 November 2020, a legislative decree aimed aligning the national legislation to the provisions of the Prospectus Regulation (Regulation (EU) No. 2017/1129).

The relevant changes to CONSOB’s Regulation on Issuers have already been implemented with CONSOB Resolution No 21016 of 24 July 2019. Such changes include: a) the repeal of incompatible or repetitive provisions in relation to the provisions of the Prospectus Regulation; b) a separate discipline for financial products other than securities; c) a simplification of the plans for the prospectus approval application to be sent to CONSOB; d) a reduction in the maximum duration of the approval procedure of the prospectus; and e) the co-ordination of the exemptions in relation to the provisions of the Prospectus Regulation.

Review of the EU Market Abuse Regulation

The European Commission will conduct a review of the EU Market Abuse Regulation. An initial consultation by the European Securities and Markets Authority indicates that the review will cover a wide range of topics, such as possibly extending the scope to Spot FX contracts, potential amendments to the definition of inside information and extending the restriction on dealings in closed periods to closely associated persons of PDMRs.

Clean Energy Package


Sustainable finance

Climate risks and resilience are likely to be brought into the heart of financial decision-making. Climate-related financial disclosures could be made mandatory, with the UK government announcing in its Green Strategy that it expects all listed companies to report climate risks by 2022. EU measures on ESG are likely to be phased in.

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What now?

Your contacts

We hope that you have found this guide useful. Please contact your usual Linklaters contact, if you would like to discuss any of these matters further.

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