Global Financial Services Regulatory Guide - Italy

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Last updated: April 2024

# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Italy has three main regulators responsible for the authorization and supervision of banks, insurers and other financial institutions. These are the Bank of Italy, the Istituto per la Vigilanza sulle Assicurazioni (IVASS) and the Commissione Nazionale per le Società e la Borsa (Consob). The allocation of responsibilities among the above authorities may be summarized as follows:

The Bank of Italy oversees the activity of banks and financial intermediaries in the banking market, which is mostly governed by Legislative Decree no. 385 of 1 September 1993, as amended, and by secondary regulations issued by the Bank of Italy. In particular, the Bank of Italy issues general regulations and specific recommendations, and is in charge of setting the risk control and capital adequacy requirements of banks and financial intermediaries and ensuring the stability of the domestic financial system. It should, however, be considered that the European Central Bank (ECB) has become the supervisor of Eurozone banks under the EUs Single Supervisory Mechanism (SSM), thereby taking over certain supervisory powers over the most relevant Italian banks. The Bank of Italy is also the supervisory authority competent for the payment services market (including supervision overpayment institutions and electronic money institutions), which is governed by Legislative Decree no. 385 of 1 September 1993 and by secondary regulations issued by the Bank of Italy as well. Furthermore, the Bank of Italy is the supervisory authority responsible for the anti-money laundering regulations which apply to banking and financial institutions, which are set forth by Legislative Decree no. 231 of 21 November 2007, as amended, and by secondary implementing regulations issued by the Bank of Italy. For this purpose, the Unità di Informazione Finanziaria (the Italian financial intelligence unit, UIF) is the dedicated division established within the Bank of Italy.

The Consob oversees the activity of the securities markets and the investment firms, which are mostly governed by Legislative Decree no. 58 of 24 February 1998, as amended, and by secondary regulations issued by the Consob (sometimes in agreement with the Bank of Italy). More in particular, the Consob is in charge of ensuring the transparency of the markets and the fairness and transparent conduct of intermediaries and issuers. Together with the Bank of Italy, the Consob oversees the Undertakings for Collective Investments (UCIs) and their managing entities.

The IVASS is the official body that controls and supervises the insurance and reinsurance business and insurance and reinsurance mediation. It is mostly governed by Legislative Decree no. 209 of 7 September 2005, as amended, and by secondary regulations issued by the IVASS.

The Bank of Italy, the Consob and the IVASS have formal, reciprocal cooperation protocols in place in an effort to facilitate achievement of their respective goals.

In addition to the above, an important role in the Italian banking and securities market is played by the Italian Ministry of Finance (Ministero dell’Economia e delle Finanze), which has cross-area competencies, ranging from the collective portfolio management industry (as the Ministry of Finance is the authority that defines the mandatory requirements that Italian investment funds must satisfy in order to be authorized) to the investment services sector (such as the power to identify new types of “financial instruments”).

Finally, the European Supervisory Authorities (the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA)) (ESAs) play an important role by issuing technical standards in the financial and insurance sector. The ECB closely cooperates with the European Union supervisory authorities, especially the EBA. In particular, the ECB is involved in the EBAs work and contributes significantly to supervisory convergence by integrating supervision across jurisdictions.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

A substantial part of the relevant law in Italy is derived from or has been harmonized to adjust to, EU directives and regulations. In many respects, therefore, Italian domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives have been implemented across Europe can vary. In other words, Italy and other European jurisdictions have introduced domestic laws that exceed European-level requirements. Directives also contain obligations and discretions at a member state level, and Italy also has various domestic rules.

The main domestic sources of the Italian regulatory framework are essentially as follows (each of which is further detailed by secondary regulations issued by the competent authorities):

Legislative Decree no. 385 of 1 September 1993, as amended (the Consolidated Banking Act or CBA), for the banking sector

Legislative Decree no. 58 of 24 February 1998, as amended (the Consolidated Financial Act or CFA), for the securities sector

Legislative Decree no. 209 of 7 September 2005, as amended, for the insurance sector

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Italy regulates a broad range of financial activities. These include, among others, the following:

Accepting deposits – This covers the acquisition of funds with a repayment obligation in the form of deposits or in any other form.

Issuing electronic money – Electronic money is a prepaid electronic payment product that can be a card- or account-based.

Carrying out payment services – This covers a broad range of activities involving matters such as execution of credit transfers, operating a payment account, execution of payment transactions, transfer of funds and the execution of direct debits.

Granting of financing – This covers the granting of financing, in any form, to the public and includes loans, finance leases, factoring, and issuance of guarantees and performance bonds.

Investment consultancy – This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.

Reception and transmission of orders – This covers both the reception and the transmission of orders by the client regarding the subscription and the buying and selling of financial instruments.

On 20 February 2024, the Italian Ministry of Economy and Finance (MEF) launched a public consultation on draft legislative decrees concerning the alignment of Italian domestic legislation with, respectively: (i) Regulation (EU) No. 1114 of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010, and Directives 2013/36/EU and (EU) 2019/1937 (MiCAR); and (ii) Regulation (EU) No. 1113 of 31 May 2023, on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (TFR).

In particular, the draft legislative decree aligning Italian domestic legislation with the MiCAR provides for the following:

Identification of the national authorities competent for the supervision on the crypto-assets space and related services

Establishment of the authorization procedures for the issuance of tokens

Introduction of specific provisions for issuers of asset-referenced token (ART Issuers) and crypto-asset service providers (CASPs)

Adoption of dedicated provisions regulating the voluntary liquidation and crisis of ART Issuers and CASPs that are not subject to specific provisions by virtue of their status as regulated entities

Repealing of provisions introducing the current regulatory framework for providers of services relating to the use of virtual currencies and custodian wallet providers

The draft legislative decree aligning Italian domestic legislation with the TFR provides for the following:

Qualification of CASPs as obliged subjects, under the category of banking and financial intermediaries, for the purpose of the application of Legislative Decree No. 231 of 21 November 2007 (Italian AML Decree) and implementing regulations issued by the Bank of Italy

Attribution to the Bank of Italy of supervisory powers on CASPs for AML purposes

Repealing of provisions introducing the current AML framework for service providers relating to virtual currencies and custodian wallet providers

The deadline for the submission of observations expired on 22 March 2024.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Where a firm located outside Italy deals with a client or a counterparty located in Italy, those activities will typically be considered to be subject to Italian laws and regulations unless it is clear that the firm was contacted by the Italian counterparty without any solicitation. Foreign service providers will need to consider whether they are triggering a local licensing requirement and whether they are complying with Italian marketing rules.

The marketing of financial/banking services to Italian residents will most likely constitute financial promotions, which would not be allowed if the foreign entity were not authorized to provide such services in Italy. Hence, no similar offers/solicitation directed to Italian residents should be made through any means within Italy, including any form of mass communication with the public or with groups of prospective investors, such as customers of a particular bank or any other financial institution. Marketing activities should generally be restricted to prospective clients residing in Italy that are believed to be “qualified investors,” as defined under the securities laws of Italy, but in any case at their unsolicited request. In this respect, however, since the Italian authorities have not released any official paper/guideline on the so-called reverse solicitation scheme (i.e., unsolicited investments of Italian residents), any similar scheme should be carefully evaluated on case-by-case basis, having regard to factual scenario. Note that the unauthorized performance of regulated financial activities constitutes a crime; criminal courts may have, and in the past often had, a different and stricter view than that of regulatory authorities of what can and cannot be done without possessing a license.

Under European law, firms established outside the European Economic Area (EEA) are called “Third Country Firms” (TCFs). Until recently, European laws have not sought to harmonize the approach of member states to TCFs. This meant that access to the markets of member states had to be considered on a case-by-case basis. However, the trend in European legislation is now toward harmonizing the approach across all member states to TCFs. On the one hand, this approach is likely to create a barrier to entry into European markets. On the other hand, firms that become compliant with new EU standards will be able to access the whole EEA market as opposed to having to consider the market on a country-by-country basis.

The following EU legislative measures may limit the ability of foreign firms to do business in Italy:

The Alternative Investment Fund Managers Directive imposes limitations on non-EEA persons marketing fund interests to persons in Italy (and other European jurisdictions).

The MiFID II regime (comprising a recast of the Markets in Financial Instruments Directive and a European regulation) results in greater restrictions on TCFs doing business in Italy.

MiCAR prevents TCFs from providing crypto-assets and related services to clients established in the EU, unless such TCFs rely on the reverse solicitation exemption.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

In order to obtain authorization, an applicant must satisfy the conditions set forth in the applicable Italian regulations.

The conditions can vary, depending on the particular regulated activities that the applicant intends to carry out and, in particular, whether the applicant is to be authorized by the Bank of Italy, the Consob, the ECB or the IVASS. Broadly, however, the following conditions will usually need to be satisfied:

Location of offices - For Italian incorporated companies, both the head and registered office must be located in Italy.

Business model - The regulator will examine the applicant’s business model. In particular, specific business models are required in order to carry out certain activities.

Capital requirement - Certain capital requirements will need to be met, depending on the authorization sought.

Independence and integrity requirements - The corporate officers (i.e., those performing administrative, management or control functions) must meet certain experience, independence and integrity requirements.

Shareholders’ requirements - The substantial shareholders must satisfy certain integrity requirements.

Corporate plan - The applicant must submit a plan concerning the initial activity, together with the articles of incorporation and the bylaws. The plan is necessary in order to evaluate the business projects of the applicant.

Structure of the group - The applicant must not have a group structure that may impede the supervision activity by the relevant authorities.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

An applicant must complete a formal process to obtain authorization. The documents to be attached to the authorization application as well as the timing for obtaining the relevant authorization vary, depending on the type of authorization request.

On 2 July 2021, the Decree of the Ministry of Economy and Finance No. 100 of 30 April 2021 (MEF Implementing Decree) was published on the Official Journal of the Republic of Italy (Gazzetta Ufficiale). The MEF Implementing Decree provides the technicalities for the implementation of Article 36, paragraphs from 2-*bis* to 2-*octies* of the Legislative Decree No. 34 of 30 April 2019, as amended by Law No. 58 of 28 June 2019 (Growth Decree) in relation to the introduction of a FinTech regulatory sandbox in the Italian financial system. The MEF Implementing Decree (i) regulates the tasks attributed to the newly established FinTech Committee, its functioning and composition, and (ii) provides a comprehensive framework for the FinTech experimentation, including setting out the requirements for participating to the sandbox, the operational perimeter during the participation, and the regime for the termination of the experimentation.

The MEF Implementing Decree entered into force on 17 July 2021.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Once authorized in Italy, an Italian firm can passport its authorization into other EEA member states. This passport, however, is only available to firms established in Italy and will not be available to Italian branches of TCFs. Passporting permits the provision of cross-border services and also the establishment of a physical branch location in other EEA member states.

# 8. Authors and contact information

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