



Client Alert | Capital Markets

Italy

New amendments to Article 120, TUF and new enhanced transparency requirements for major shareholding variations and declarations of intent

April 2020

In order to limit the negative effects that the COVID-19 epidemiological emergency is producing on the Italian economy, on **8 April 2020** Decree-Law No. 23/2020 was published in the Official Gazette of the Republic of Italy, concerning urgent measures on access to credit and tax compliance for companies, special powers in strategic sectors as well as measures in the field of health and work and extension of administrative and procedural deadlines (“**Decree**” or “**Liquidity Decree**”), which *inter alia* introduces some amendments to Article 120 of Legislative Decree No. 58/1998 (Consolidated Law on Finance – “**TUF**”).

More specifically, the Decree amends paragraph 2-*bis* of Article 120 of the TUF, giving Consob the power to lower the thresholds (whose exceeding triggers the notification requirements under Article 120, paragraph 2, TUF) with reference to companies with a dispersed shareholding structure, regardless of the extent of their capitalisation.

The Decree also amends paragraph 4-*bis* of Article 120 of the TUF, which requires purchasers of particularly significant shareholdings (i.e. over 10, 20 and 25%) in the voting capital of Italian listed companies to state the objectives pursued through the acquisition during the following six months. More specifically, the Decree introduces a new period in the aforesaid paragraph, providing that Consob may, on a temporary basis (i.e. “for a limited period of time”), identify a lower percentage threshold, in companies with a particularly dispersed ownership structure, also for the publication of declarations of intent.

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On 9 April 2020, availing itself of the powers under Article 17 of the Decree, Consob adopted two measures (**Resolution No. 21326** and **Resolution No. 21327**), which provide for an “enhanced transparency” regime regarding:

- the obligation to disclose major shareholdings in certain listed Italian companies ⁽¹⁾; and
- the “declaration of intent” in case of acquisition of shareholdings in listed companies.

More specifically, concerning variations in major shareholdings, Consob, by **Resolution No. 21326, repealing previous Resolution No. 21304 of 17 March 2020**, which introduced a similar obligation for 48 listed companies, identified according to the double criterion set out in Article 120, paragraph 2-*bis*, of the pre- Decree version, i.e. a) “high market value” and b) “dispersed shareholding structure”, lowered, for 104 companies listed in Italy (specified in a list attached to Resolution No. 21326), the thresholds triggering the obligation to notify Consob, raising them from 3% to 1%, for "non-SMEs", and from 5% to 3%, for "SMEs", respectively ⁽²⁾.

In this regard, it should be noted that, as a result of the Decree – which instead recognises “dispersed shareholding structure” as the only criterion, while ruling out the “high market value” criterion –, Consob’s latitude for decision has been extended ⁽³⁾.

On the other hand, concerning enhanced transparency for “declarations of intent”, i.e. the obligation on investors to disclose, when a certain threshold is exceeded, their investment objectives in relation to the period of the following six months, by **Resolution No. 21327**, Consob availed itself of the option under Article 17 of the Decree to lower the threshold from 10% to 5%. Such provision also extends to the 104 aforementioned companies. Further thresholds of 10%, 20% and 25% remain, instead, unchanged.

Both measures, unless revoked earlier, shall apply, **for the three-month period from 11 April to**

⁽¹⁾ Pursuant to Article 120, paragraph 2, of the TUF “Persons who hold more than three per cent of the capital of a listed issuer with Italy as home Member State shall notify the investee company and CONSOB. If the issuer is an SME, this threshold is five percent”.

⁽²⁾ Pursuant to Article 1, paragraph 1, letter w-*quater*.1, of the TUF, SMEs are “... small and medium enterprises, listed issuers whose sales volume, also before admission to trading, is less than 300 million Euros, or which have a market capitalisation of below Euro 500 million. Issuers of listed shares which have exceeded both the aforesaid limits for three consecutive years are not considered SMEs.”.

⁽³⁾ Article 17 of the Decree amends Article 120 of the TUF as follows: “Article 120 of Legislative Decree No. 58 of 24 February 1998 is amended as follows: a) in paragraph 2-*bis*, the words ‘high current market value and’ are deleted”.



11 July 2020, to the aforesaid 104 companies listed in Italy ⁽⁴⁾. Listed companies controlled under the law, i.e. those companies having a shareholder owning 50% of the share capital plus at least one share, remain outside the scope of operation of the aforesaid provisions.

At the same time, (by **Resolution 21320 of 7 April 2020**) Consob amended its Regulation No. 11971/1999 ("**Issuers' Regulation**") (Article 122-*ter*) with reference to the exemption from the obligation to communicate the "*declaration of intent*". According to the new provision, which will come into force on the day following its publication in the Official Gazette, there will be no obligation to make a "*declaration of intent*":

- a) in the cases of exemption provided for in relation to mandatory takeover bids under Article 49, paragraph 1, letters a), limited to the case in which a shareholder alone has the majority of voting rights exercisable at the ordinary shareholders' meeting of the listed issuer, c), d) and h), of the Issuers' Regulation;
- b) when the acquisition of the shareholding is also such as to trigger the obligation to launch a tender offer pursuant to Article 106, paragraphs 1 or 1-*bis*, of the TUF, and any of the exemptions provided for by Article 49, paragraph 1, letters b) or g) applies;
- c) in the cases of exemption set out in Article 119-*bis*, paragraph 3, a), b) and c-*ter*), of the Issuers' Regulation;
- d) without prejudice to the provisions in the last part of Article 49, paragraph 1, d-*bis*), if the reaching or exceeding of the thresholds is caused by changes in the share capital and/or the number of voting rights, based on the information published by the issuer pursuant to Article 85-*bis* of the Issuers' Regulations;
- e) for management companies acquiring shareholdings, also in aggregate form, in listed issuers as part of the management activities referred to in Article 116-*terdecies*, paragraph 1, e) carried out in accordance with the conditions set out in Directive 2009/65/EU, or for non-EU entities carrying on an activity for which, if they had their registered office or central administration in an EU Member State, the authorisation would be required under Directive 2009/65/EU, as well as for Italian AIFs not reserved for professional investors and EU AIFs whose applicable national law provides for investment limits and conditions equivalent to those laid down by Italian law in respect

⁽⁴⁾ According to the above mentioned resolutions, anyone who, as of the date hereof, holds an interest in the voting capital of the above listed companies above the new thresholds and below the thresholds set forth in Article 120, paragraph 2, of the TUF, is required to give notice thereof **within 10 business days**.



of AIFs not reserved for professional investors;

- f) for purchases made in the context of public takeover or exchange bids already disclosed to the market.

The applicability of the exemption in the cases referred to in the previous letters, except for letter c), is subject to a declaration being made by the person concerned as to existence of any of the exemptions in the specific case. Such declaration is contained in the form required for compliance with the notification obligations under Article 120 of the TUF (Annex 4 of the Issuers' Regulations).

Finally, it should be noted that the exemption clauses provided for by the above-mentioned regulatory changes, which arise from statutory provisions introduced into the TUF in 2017 (the so-called "anti-invasion rules"), shall remain valid also for the new reduced threshold of 5%.

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