
ALERT MEMORANDUM

CONSOB Amends the Prospectus Regulatory Framework to Adopt Simpler Approval Procedures and Expand the Possibility to Draft Prospectuses in English

August 5, 2022

By resolution No. 22423 of July 28, 2022 (the “Resolution”), the Italian securities regulator (*Commissione nazionale per le Società e la Borsa*, “CONSOB”) approved significant amendments to the Italian regulatory framework for issuers (the “Issuers’ Regulation”), pointing out its commitment to ensuring faster and easier access to capital markets.

In particular, the Resolution:

- aligns the time limits for CONSOB’s approval of prospectuses with the European regulatory framework;
- expands the scope of the pre-filing tool;
- expands the possibility for issuers to draft prospectuses in English.

If you have any questions concerning this alert memorandum, please reach out to your regular firm contact or the following authors.

MILAN

Pietro Fioruzzi

+39 02 7260 8214

pfioruzzi@cgsh.com

Nicole Puppieni

+39 02 7260 8616

npuppieni@cgsh.com

Edoardo Filiberto Roversi

+39 02 7260 8680

eroversi@cgsh.com



clearygottlieb.com

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Aligning time limits for CONSOB's prospectus approval with the European regulatory framework

By adopting the Resolution, CONSOB has aligned the Italian regulatory framework with the European regulatory framework with regard to the time limits for the prospectus approval process.

To that end, CONSOB has removed from Article 8 of the Issuers' Regulation: (i) certain provisions that allowed it to conduct a preliminary assessment of the completeness of the prospectus approval application, and (ii) the provision specifying the overall time limit of CONSOB's approval process. As a result, the approval process of prospectuses relating to offers/listings of securities and the related time limits are now governed by Article 20 of the Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14, 2017 (the "Prospectus Regulation") only.

Additionally, in order to facilitate the drafting of the prospectus approval application and simplify the collection of the documents required to be submitted therewith, CONSOB has streamlined the structure of the prospectus approval application and reduced the number of such documents.

Expanding the scope of the pre-filing tool

Under Article 4, paragraph 1-*bis*, and Article 52, paragraph 1-*bis*, of the Issuers' Regulation, issuers can enter into a dialogue with CONSOB ahead of the formal beginning of the prospectus approval process. This possibility, which is generally referred to as "pre-filing", was available only with regard to offers/listings that presented "*peculiarities*". CONSOB has now amended the Issuers' Regulation to extend the scope of the pre-

filing tool to "*issues of particular relevance concerning the offer/listing*".

In the case of a pre-filing, issuers are not required to produce an initial draft of the prospectus or equivalent document to be able to start any relevant discussions with CONSOB. Rather, they can bring any such issues to CONSOB's attention by submitting only the relevant sections of the documents to which the issues relate (*e.g.*, relevant portions of the issuer's by-laws or financial statements or specific paragraphs of the draft prospectus). In this case, CONSOB would not assess the completeness, comprehensibility and consistency of such sections ahead of the submission of the prospectus approval application.

Finally, in line with the practice of other EU member states authorities, parties involved in the offer/listing process can now agree with CONSOB on an indicative schedule of its approval process, also in the context of pre-filing discussions.

Drafting the prospectus in English

Prior to the adoption of the Resolution, Article 12 of the Issuers' Regulation allowed issuers to draft the prospectus in English exclusively in the context of:

- offers/listings authorized in Italy but carried out outside of Italy;
- offers/listings in which Italy is a host member state;¹ and
- offers/listings authorized and carried out in Italy that do not relate to equity securities

¹ Pursuant to Legislative Decree No. 58 of February 24, 1998, "host member state" means the EU member state where the offer is carried out or admission to trading on regulated market is sought, if different from the home member state (as defined below).

within the meaning of Article 2, letter m), of the Prospectus Regulation.²

In the last two cases, the Issuers' Regulation requires the prospectus summary to be translated into Italian.

CONSOB has now expanded the possibility to draft prospectuses in English in the context of offers/listings carried out, in whole or in part, in Italy and in which Italy is the home member state.³

If the offer/listing is being carried out in whole or in part in Italy and the prospectus is drafted in

English, an Italian translation of the prospectus summary is necessary, regardless of whether Italy is the home member state.

Finally, CONSOB has clarified that, as provided in Article 7, paragraph 5, letter e), of the Prospectus Regulation, issuers may not be deemed liable for inconsistencies between the Italian translation and the original English version of the prospectus summary, provided that such inconsistencies do not significantly affect the overall information contained in the prospectus.

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² Article 2, letter m) of the Prospectus Regulation refers to (i) non-equity securities whose denomination per unit amounts to at least Euro 1,000; (ii) non-equity securities giving the right to acquire transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer.

³ Pursuant to Legislative Decree No. 58 of February 24, 1998, "home member state" means: (1) with respect to the offer of securities by an issuer incorporated in the European Union, the member state in which the issuer has its registered office; (2) with respect to the offer of units or shares of harmonized UCITS, the EU member state in which the UCITS was established.