

Text updated with amendments introduced by Law no. 120 of 12.7.2011. The amendments are indicated in bold.

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LEGISLATIVE DECREE No. 58 OF 24 FEBRUARY 1998 Consolidated Law on Finance pursuant to Articles 8 and 21 of Law no. 52 of 6 February 1996¹

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Legislative Decree no. 21 of 27.1.2010 (published in Official Gazette no. 44 of 23.2.2010); Legislative Decree no. 27 of 27.1.2010 (published in Ordinary Supplement no. 43/L, Official Gazette no. 53 of 5.3.2010), the amendments made by Legislative Decree no. 27 of 27.1.2010 shall enter into force on 20 March 2010 unless otherwise envisaged in the final provisions of Article 7 of that Decree; Legislative Decree no. 39 of 27.1.2010 (published in Ordinary Supplement no. 58/L, Official Gazette no. 68 of 23.3.2010), the amendments made by Legislative Decree no. 39 of 27.1.2010 shall enter into force on 7 April 2010 unless otherwise envisaged in the final and transitional provisions of Article 43 of that Decree; Decree Law no. 78 of 31.5.2010 (published in Ordinary Supplement no. 114/L, Official Gazette no. 125 of 31.5.2010), coordinated with conversion law no. 122 of 30.7.2010 (published in Ordinary Supplement no. 174, Official Gazette no. 176 of 30.7.2010); Legislative Decree no. 104 of 2.7.2010 (published in Ordinary Supplement no. 148/L, Official Gazette no. 156 of 7.7.2010), the amendments introduced by Legislative Decree no. 104 of 2.7.2010 entered into force on 16.9.2010; Legislative Decree no. 141 of 13.8.2010 (published in Ordinary Supplement no. 212/L, Official Gazette no. 207 of 4.9.2010), the amendments introduced by Legislative Decree no. 141 of 13.8.2010 entered into force on 19.9.2010; Legislative Decree no. 176 of 5.10.2010 (published in Official Gazette no. 253 of 28.10.2010), the amendments introduced by Legislative Decree no. 176 of 5.10.2010 entered into force on 12.11.2010; from Italian Legislative Decree no. 224 of 29.11.2010 (published in O. J. no. 300 of 24.12.2010), the changes made from Italian Legislative Decree no. 224 of 29.11.2010 are in force from 8.1.2011; from Italian Legislative Decree no. 239 of 30.12.2010 (published in O. J. no. 9 of 13.1.2011), the changes made from Italian Legislative Decree no. 239 of 30.12.2010 are in force from the date on which it was published in the O. J.; from Italian Legislative Decree no. 259 of 30.12.2010 (published in O. J. no. 30 of 7.2.2011), the changes made from Italian Legislative Decree no. 259 of 30.12.2010 are in force from 22.2.2011; from Italian Law Decree no. 26 of 25.3.2011 (published in O. J. no. 70 of 26.3.2011) in force from 27.3.2011, converted with Italian Law no. 73 of 23.5.2011 (published in O. J. no. 120 of 25.5.2011); from Italian Legislative Decree no. 48 of 24.3.2011 (published in O. J. no. 92 of 21.4.2011) in force from 30.6.2011; **by Law no. 120 of 12 July 2011 (published in O.J. no. 174 of 28.7.2011) in force from 12.8.2011.**

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ANNEX

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PART I COMMON PROVISIONS

Article 1 *Definitions*

1. In this legislative decree:

- a) "Bankruptcy Law" shall mean Royal Decree no. 267 of 16 March 1942 and subsequent amendments;
- b) "Consolidated Law on Banking" shall mean Legislative Decree no. 385 of 1 September 1993 and subsequent amendments;
- c) "Consob" shall mean Commissione nazionale per le società e la borsa;
- d) "Isvap" shall mean Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo;
- e) "Italian investment company" (società di intermediazione mobiliare - SIM) shall mean an undertaking, other than a bank or a financial intermediary entered in the register referred to in Article 107 of the Consolidated Law on Banking, authorised to provide investment services or activities having its registered office and head office in Italy²;
- f) "EU investment company" shall mean an undertaking, other than a bank, authorised to provide investment services or activities having its registered office and head office in the same member state of the European Union, other than Italy³;
- g) "non-EU investment company" shall mean an undertaking, other than a bank, authorised to provide investment services or activities having its registered office in a state that is not a member of the European Union⁴;
- h) "investment companies" shall mean Italian investment companies and EU and non-EU investment companies;
- i) "Società di investimento a capitale variabile" (SICAV) shall mean an open-end investment company having its registered office and head office in Italy and the exclusive purpose of collective investment of the capital raised by offering its shares to the public;
- j) "investment funds": shall mean equity raised independently through the issue of one or more fund units from among a number of investors, with the aim of investing the equity raised in accordance with a pre-established investment policy; divided into units pertaining to a given number of investors; managed upstream in the interests of the investors and fully independent of those investors⁵;
- k) "open-end fund" shall mean a mutual fund whose participants have the right to request, at any time, to redeem units in accordance with the procedures established by the rules of the fund;
- l) "closed-end fund" shall mean a mutual fund in which the right to redeem units may be exercised by participants only at predetermined maturities;
- m) "collective investment undertakings" shall mean mutual funds and SICAVs;

² Paragraph amended by art. 1 Legislative Decree no. 164 of 17.9.2007 (published in the Ordinary Supplement no. 200/L of Official Gazette no. 234 of 8.10.2007).

³ Paragraph amended by Article 1 of Legislative Decree no. 164 of 17.9.2007

⁴ Paragraph amended by art. 1 Legislative Decree no. 164 of 17.9.2007.

⁵ Paragraph first amended by art. 5, Law Decree no. 351 of 25.9.2001, converted to Law no. 410 of 23.11.2001 (published in Official Gazette no. 274 of 24.11. 2001) and later replaced by art. 32, subsection 1, Law Decree no. 78 of 31.5.2010 (published in Ordinary Supplement no. 114/L, Official Gazette no. 125 of 31.5.2010). Subsection 3, Legislative Decree no. 78 of 31.5.2010 states: "Asset management companies that have established real estate investment funds which, as at the date of entry into force of this decree, do not meet the requirements of article 1, subsection 1, paragraph j) of Legislative Decree 58/1998, as amended by subsection 1, paragraph a), shall adopt the following updating resolutions within thirty days of the date of issue of the decree pursuant to subsection 2"; subsection 4, Law Decree no. 78 of 31.5.2010 states: "On adoption of the updating resolutions, by way of substitute tax on income taxes, the asset management company shall withdraw a sum equal to 5 per cent of the average net value of the funds as indicated in the half-yearly financial statements prepared for the tax years 2007, 2008 and 2009. 40% of said tax shall be paid by the asset management company by 31 March 2011 and the balance shall be paid in two equal instalments, the first of which payable by 31 March 2012 and the second by 31 March 2013"; subsection 5, Law Decree no. 78 of 31.5.2010 states: "Asset management companies that do not intend to adopt the updating resolutions envisaged in subsection 3 shall resolve, within thirty days of the date of issue of the Decree as indicated in subsection 2, to wind up the investment fund as an exception to all other provisions contained in Legislative Decree no. 58 of 24 February 1998 and related implementing provisions. In this case the substitute tax referred to in subsection 4 shall be payable at a 7 per cent tax rate in accordance with the terms and conditions established therein"; subsection 6, Law Decree no. 78 of 31.5.2010 states: "To ascertain the calculation and payment methods for the tax referred to in previous subsections, the provisions of Title IV of Presidential Decree no. 600 of 29 September 1973 shall apply"; subsection 9, Law Decree no. 78 of 31.5.2010 states: "By order of the Managing Director of the Italian Inland Revenue, to be issued within 30 days of the date of issue of the decree referred to in subsection 2, the implementing methods for the provisions of subsections 4 and 5 shall become final".

n) "collective portfolio management" shall mean the service that is performed through:

1) the promotion, establishment and organisation of mutual funds and the administration of participants' accounts;

2) the management of the assets of own or third-party collective investment undertakings by means of investment in financial instruments, claims and other movable or immovable assets;⁶

o) "asset management company" (*società di gestione del risparmio - SGR*) shall mean a *società per azioni* having its registered office and head office in Italy authorised to provide the service of collective portfolio management;⁷

o-bis) "harmonised asset management company" shall mean a company having its registered office and head office in an EU country other than Italy authorised under the UCITS Directive to provide the service of collective portfolio management;⁸

p) "promoter" shall mean an Italian asset management company that performs the activity indicated in paragraph n), point 1);⁹

q) "manager" shall mean an Italian asset management company that performs the activity indicated in paragraph n), point 2);¹⁰

r) "authorised intermediaries" shall mean investment companies (SIM), EU investment companies with branches in Italy, non-EU investment companies, asset management companies, harmonised asset management companies, SICAVs and financial intermediaries entered in the register referred to in Article 107 of the Consolidated Law on Banking and Italian banks, EU banks with branches in Italy and non-EU banks, authorised to engage in investment services or activities;¹¹

s) "services subject to mutual recognition" shall mean the activities and services listed in sections A and B of the table annexed to this decree, authorised in the home EU member state¹²;

t) "public offering or investment incentive" shall mean every offer or incentive, invitation to offer or promotional message, in whatsoever form addressed to the public, whose objective is the sale or subscription of financial products including the allocation through authorised people;¹³

u) "financial products" shall mean financial instruments and every other form of investment of a financial nature; bank or postal deposits without the issue of financial instruments shall not constitute financial products;¹⁴

v) "public offer to buy or exchange" shall mean every offer, invitation to offer or promotional message, in whatsoever form effected, whose objective is the purchase or exchange of financial products, addressed to a number of persons and of a total amount greater than that indicated in the regulation pursuant to article 100, subsection 1, paragraphs b) and c); an offering of securities issued by the central banks of EU Member States shall not constitute a mandatory takeover bid or exchange tender offering¹⁵;

w) "listed issuers" shall mean Italian or foreign issuers of financial instruments listed on Italian regulated markets;

w-bis) "financial products issued by insurance companies": the policies and operations referred to in the sectors on Life III and V according to Article 2, Subsection 1, of the Legislative Decree No. 209 of 7th

⁶ Subparagraph as amended by Article 2 of Legislative Decree 274/2003 (Official Gazette n. 233 of 7.10.2003).

⁷ Paragraph as amended by Article 2 of Legislative Decree 274/2003.

⁸ Paragraph added by Article 2 of Legislative Decree 274/2003.

⁹ Paragraph as amended by Article 2 of Legislative Decree 274/2003.

¹⁰ Paragraph as amended by Article 2 of Legislative Decree 274/2003.

¹¹ Paragraph as amended by Article 2 of Legislative Decree 274/2003 and later by art. 1 Legislative Decree no. 164 of 17.9.2007.

¹² Paragraph amended by art. 1 Legislative Decree no. 164 of 17.9.2007.

¹³ Paragraph modified by Article 3 of Italian Legislative Decree no. 303 of 29.12.2006 and later substituted by Article 2 of Italian Legislative Decree no. 51 of 28.3.2007

¹⁴ The wording: "bank or postal deposits without the issue of financial instruments shall not constitute financial products" has been added by Art. 3 of Legislative Decree No.303 of 29.12.2006.

¹⁵ Paragraph amended by art. 1 Legislative Decree no. 229 of 19.11.2007 which replaced the words: "greater than that indicated in the regulation pursuant to article 100, and of a total amount greater than that indicated in said regulation;" with the words "and of a total amount greater than that indicated in the regulation pursuant to article 100, subsection 1, paragraphs b) and c); an offering of securities issued by the central banks of EU Member States shall not constitute a mandatory takeover bid or exchange tender offering;".

September 2005, with the exclusion of individual pension schemes according to Article 13, Subsection 1, paragraph b), of Legislative Decree No. 252 of 5th September 2005.¹⁶

w-ter) “regulated market”: shall mean a multilateral system which permits or facilitates the meeting, internally and according to non-discretionary regulations, of multiple third party purchase and sale interests with regard to financial instruments, admitted to trading in compliance with the rules of the market, in order to effect contracts, and which is operated by a management company, is authorised and operates regularly¹⁷.

w-quater) “listed issuers with Italy as home member state”:

1) issuers with shares admitted to trading on Italian regulated markets or of another EU Member State, with registered office in Italy;

2) issuers of debt securities with a nominal unit value of less than one thousand Euro, or corresponding value in a different currency, admitted to trading on Italian regulated markets or those of another EU Member State, with registered office in Italy;

3) issuers of securities indicated under points 1) and 2), with registered office in a non-EU country, for which the first application for admission to trading on an EU regulated market was submitted in Italy or Italy was later chosen as the home member state when said first application for admission was not implemented by decision of the issuer;

4) issuers of securities other than those indicated under points 1) and 2), with registered office in Italy or whose securities are admitted to trading on an Italian regulated market and who have adopted Italy as the home Member State. The issuer may choose one Member State only as the home member state. The decision shall remain valid for at least three years, unless the issuer's securities are no longer admitted to trading on any EU regulated market¹⁸.

1-bis. “Securities” shall mean categories of securities for trading on the capital market, such as:

a) company shares and other shares equivalent to shares of companies, partnerships or other persons and share deposit certificates;

b) bonds and other debt securities, including certificates of deposit relating to such securities;

c) any other security normally negotiated which permits the purchase or sale of securities indicated in the preceding paragraphs;

d) any other security usually involving cash settlement determined with reference to securities indicated in the preceding paragraphs, to currency, interest rates, returns, commodities, indices or measures¹⁹.

1-ter. “Money market instruments” shall mean categories of instruments normally negotiated on the money market, such as Treasury bonds, certificates of deposit and commercial bills²⁰.

2. “Financial instruments” shall mean:

a) securities;

b) money market instruments;

c) units in collective investment undertakings;

d) options, futures, swaps, futures contracts on interest rates and other derivative contracts linked to securities, currency, interest rates or returns, or other derivatives, financial indices or measures that may be settled by the physical delivery of the underlying asset or by cash payment of differentials;

e) options, futures, swaps, interest rate swaps, and any other derivative contracts on commodities, settlement of which is by payment of the differentials in cash, or at the discretion of one of the parties, except in cases where such option is the result of default or other event leading to cancellation of the contract;

f) options, futures, swaps and other derivative contracts on commodities, the settlement of which may be by physical delivery of the underlying asset and which are traded on a regulated market and/or multilateral trading systems;

¹⁶ Paragraph added by Article 3 of Legislative Decree No. 303 of 29.12.2006.

¹⁷ Paragraph first added by art. 2 Legislative Decree no. 51 of 28.3.2007 and later replaced by art. 1 Legislative Decree no. 164 of 17.9.2007.

¹⁸ Subparagraph added by art. 1 Legislative Decree no. 195 of 6.11.2007

¹⁹ Paragraph included by art. 1 Legislative Decree no. 164 of 17.09.2007

²⁰ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

g) options, futures, swaps, forward contracts and other derivative contracts on commodities, the settlement of which may be by physical delivery of the underlying asset, other than those indicated in paragraph f), that have no commercial purpose, and with the characteristics of other derivatives, taking into consideration, amongst other things, whether they are cleared and executed through recognised clearing houses or whether they are subject to regular margin calls;

h) derivatives for the transfer of credit risk;

i) differential financial contracts;

j) options, futures, swaps, futures contracts, swaps, futures contracts on interest rates and other derivative contracts related to climatic variables, transport rates, emission levels, inflation rates or other official economic statistics, settled by cash payment of differentials or at the discretion of one of the parties, except in cases where such option is the result of default or other event leading to cancellation of the contract and other derivative contracts on assets, options, bonds, indices and measures other than those indicated in previous paragraphs, with the characteristics of other derivative financial instruments, taking into consideration, amongst other things, whether are traded on a regulated market or multilateral trading systems, whether they are cleared and executed through a recognised clearing house or whether they are subject to regular margin calls²¹.

2-bis. The Minister of the Economy and Finance, by the regulation pursuant to Article 18, subsection 5, shall identify:

a) the other derivative contracts pursuant to subsection 2, paragraph g), with the characteristics of other derivatives, cleared and executed through recognised clearing houses or subject to regular margin calls;

b) the other derivative contracts pursuant to subsection 2, paragraph j), with the characteristics of other derivatives, traded on a regular market or through multilateral trading systems, cleared and executed through recognised clearing houses or subject to regular margin calls²²;

3. "Derivatives" shall mean the financial instruments specified in subsection 2, paragraphs d), e), f), g), h), i) and j), as well as the financial instruments specified in subsection 1-bis, paragraph d)²³.

4. The payment instruments are not financial instruments. Financial instruments, and specifically swaps, are foreign currency buy and sell contracts, extraneous to commercial transactions and settled on the difference, also by means of automatic "roll-over" transactions. The additional foreign currency transactions identified pursuant to article 18, subsection 5, are also financial instruments²⁴.

5. "Investment services and activities" shall mean the following activities where they concern financial instruments:

a) dealing for own account;

b) execution of orders for clients;

c) subscription and/or placement with firm commitment underwriting or standby commitments to issuers;

c-bis) placement without firm or standby commitment to issuers;

d) portfolio management;

e) reception and transmission of orders;

f) investment consultancy,

g) management of multilateral trading systems²⁵.

5-bis. "Trading on own account" shall mean buy and sell transactions of financial instruments, directly and in relation to customer orders, together with market maker activities²⁶.

²¹ Paragraph included by art. 1 Legislative Decree no. 164 of 17.09.2007

²² Subsection as amended by art. 1 Legislative Decree no. 164 of 17.09.2007. See Ministry of the Economy and Finance decree no. 44 of 2.3.2007 (published in Official Gazette no. 81 of 6.4.2007).

²³ Subsection replaced by art. 1 Legislative Decree no. 164 of 17.09.2007.

²⁴ Subsection as replaced by art. 9, Legislative Decree no. 141 of 13.08.2010.

²⁵ Subsection replaced by art. 1 Legislative Decree no. 164 of 17.09.2007

²⁶ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

5-ter. "Systematic internaliser" shall mean the person who, in an organised, frequent and systematic manner, trades on his own account executing customer orders outside a regulated market or multilateral trading systems²⁷.

5-quarter. "Market maker" shall mean a person offering his services to trade directly on regulated markets and multilateral trading systems on a continuous basis, buying and selling financial instruments at self-established prices²⁸.

5-quinquies. "Portfolio management" shall mean the management, on a discretionary and individual basis, of portfolio investments which include one or more financial instruments and according to mandate conferred by customers²⁹.

5-sexies. The service pursuant to subsection 5, paragraph e), including the receipt and transmission of orders as well as consistent activities to place two or more investors in contact, thereby making it possible to conclude transactions by mediation³⁰.

5-septies. "Investment consultancy" shall mean the provision of customised recommendations to a customer upon request or as an initiative by the service provider, regarding one or more transaction on an identified financial instrument. The recommendation shall be customised when it is presented as suitable for the customer or is based on consideration of the customer's characteristics. A recommendation shall not be customised if disclosed to the public through distribution channels³¹.

5-octies. "Multilateral trading systems management" shall mean the management of multilateral trading systems which permit the meeting, within and on the basis of non-discretionary rules, of multiple third party purchase and sale interests relating to financial instruments, in such a way as to give rise to contracts³².

6. "Non-core services" shall mean the following:

- a) safekeeping and administration of financial instruments and related services³³;
- b) safe custody services;
- c) lending to investors to enable them to carry out transactions in financial instruments where the lender is involved in the transaction;
- d) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- e) services related to the issue or placement of financial instruments, including the organisation and constitution of underwriting and placement syndicates;
- f) Investment research and financial analysis or other forms of general recommendation regarding transactions on financial instruments³⁴;
- g) foreign exchange trading where this is connected with the provision of investment services.
- g-bis) activities and services identified by regulation by the Minister of the Economy and Finance, after consulting the Bank of Italy and Consob, and relating to the provision of investment or accessory services on derivatives³⁵.

²⁷ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

²⁸ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

²⁹ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

³⁰ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

³¹ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

³² Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

³³ Paragraph amended by art. 1 Legislative Decree no. 164 of 17.9.2007.

³⁴ Paragraph as replaced by art. 1 Legislative Decree no. 164 of 17.09.2007

³⁵ Paragraph added by art. 1 Legislative Decree no. 164 of 17.09.2007

6-bis. "Shareholdings or holdings" shall mean shares, capital parts and other financial instruments that confer administrative rights or in any case those provided for by the final subsection of Article 2351 of the Civil Code.³⁶

6-ter. Except as specified, the provisions of this legislative decree that refer to the board of directors, the administrative body or the directors shall also apply to the management board and the members thereof.³⁷

6-quater. Except as specified, the provisions of this legislative decree that refer to the board of auditors, the members thereof or the control body shall also apply to the supervisory board, the management control committee and the members thereof.³⁸

Article 2

Relationship to Community law

1. The Ministry of the Economy and Finance,³⁹ the Bank of Italy and Consob shall exercise the powers conferred on them in harmony with the provisions of Community law, apply the regulations and decisions of the European Union and act on recommendations concerning matters governed by this decree.

Article 3

Administrative measures

1. The ministerial regulations referred to in this decree shall be adopted under Article 17(3) of Law 400/1998.

2. The Bank of Italy and Consob shall establish the time limits and procedures for the adoption of the measures falling within the scope of their respective authority.

3. The regulations and measures of general application adopted by the Bank of Italy and Consob shall be published in the *Gazzetta Ufficiale*. Other important measures concerning persons subject to supervision shall be published by the Bank of Italy and Consob in their respective Bulletins.

4. By 31 January of each year the Ministry of the Economy and Finance,⁴⁰ shall publish all the regulations and measures of general application issued under this decree as well as the rules governing the markets in a single compendium, which may be in electronic form, where even one such document has been amended during the preceding year.

Article 4

Cooperation between authorities and professional secrecy

1. The Bank of Italy, Consob, the Commissione di vigilanza sui fondi pensioni, Isvap and the Ufficio Italiano Cambi shall cooperate by exchanging information and otherwise for the purpose of facilitating their respective functions. Said authorities may not invoke professional secrecy in their mutual relations⁴¹.

³⁶ Subsection added by Legislative Decree no. 37 of 06.02.2004.

³⁷ Subsection added by Legislative Decree no. 37 of 06.02.2004.

³⁸ Subsection added by Legislative Decree no. 37 of 06.02.2004.

³⁹ The former wording "Ministry of the Treasury, Budget and Economic Planning" was replaced with the wording "Ministry of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

⁴⁰ The former wording "Ministry of the Treasury, Budget and Economic Planning" was replaced with the wording "Ministry of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

⁴¹ See Bank of Italy-Consob memorandum of understanding of 31.10.2007 (published in Official Gazette no. 270 of 20.11.2007 and Consob Bulletin no. 10.2 of October 2007, attached to the joint Bank of Italy-Consob regulation adopted pursuant to Article 6, subsection 2-bis.

2. The Bank of Italy and Consob shall cooperate by exchanging information and otherwise with the competent authorities of the European Union and individual EU countries for the purpose of facilitating their respective functions.

2-bis. For the purposes of subsection 2, Consob and the Bank of Italy may conclude cooperation agreements with the competent authorities of EU member states that may involve mutual delegation of supervisory tasks⁴².

2-ter. Consob shall be the point of contact for the receipt of requests for information from competent authorities of EU member states regarding investment services and activities performed by authorised persons and regulated markets. Consob shall cooperate with the Bank of Italy on aspects for which the latter is responsible. The Bank of Italy shall submit information simultaneously to both the competent authority of the EU member state issuing the request and to Consob⁴³.

3. For the same purpose, the Bank of Italy and Consob may cooperate by exchanging information and otherwise with the competent authorities of non-EU countries⁴⁴.

4. Information received by the Bank of Italy and Consob pursuant to subsections 1, 2 and 3 may not be transmitted to third parties or other Italian authorities, including the Minister of the Economy and Finance, without the consent of the authority that supplied it.⁴⁵

5. The Bank of Italy and Consob may exchange information:

- a) with administrative and judicial authorities in connection with winding-up or bankruptcy proceedings in Italy or abroad involving authorised intermediaries;
- b) with bodies responsible for the administration of compensation systems;
- c) with bodies responsible for the clearing and settlement of market transactions;
- d) with stock exchange companies, for the purpose of ensuring the regular operation of the markets they manage.

5-bis. The exchange of information with authorities of non-EU countries shall be subject to the existence of provisions concerning professional secrecy.⁴⁶

6. The information referred to in subsection 5, paragraphs b), c) and d), may be disclosed to third parties with the consent of the person who supplied it. Such consent shall not be necessary where the information has been provided in compliance with domestic and international cooperation obligations.

7. The Bank of Italy and Consob may also exercise the powers conferred on them by law for the purpose of cooperating with other authorities and at the request thereof. The competent authorities of EU and non-EU countries may ask the Bank of Italy and Consob to carry out investigations in Italy on their behalf pursuant to the provisions of this decree, and to issue notifications on their behalf in Italy in relation to provisions adopted under Italian law. Such authorities may ask for members of their staff to be allowed to accompany the personnel of the Bank of Italy and Consob during the performance of the investigations.⁴⁷

8. For any other purpose the provisions governing professional secrecy in respect of information and data in the possession of the Bank of Italy shall be unaffected.

⁴² Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

⁴³ Subsection included by art. 1 Legislative Decree no. 164 of 17.09.2007

⁴⁴ Subsection amended by art. 1 Legislative Decree no. 164 of 17.9.2007 which removed the words: "For the same purpose,".

⁴⁵ Subsection as amended by Article 3 of Legislative Decree 274/2003 and Article 9 of Law 62/2005 (the 2004 Community Law).

⁴⁶ Subsection added by Article 3 of Legislative Decree 274/2003 and amended by Article 9 of Law 62/2005 (the 2004 Community Law), which suppressed the words "equivalent to those in force in Italy".

⁴⁷ Subsection first amended by art. 9, Law no. 62 of 18.04.2005 (*EU Law 2004*) and later by art. 1, Legislative Decree no. 229 of 19.11.2007.

9. In order to facilitate the supervision on a consolidated basis with regards to groups operating in several different European Community States, on the basis of agreements reached with the competent authorities, the Bank of Italy defines forms of collaboration and coordination, institutes supervisory boards and participates in the boards instituted by other authorities. Under this scope, the Bank of Italy may agree specific allocations of tasks and delegations of functions⁴⁸.

10. All the information and data possessed by Consob by virtue of its supervisory activity shall be covered by professional secrecy, with respect to governmental authorities as well, except for the Minister of the Economy and Finance.⁴⁹ The cases in which the law provides for investigations of violations subject to criminal sanction shall be unaffected.

11. In the performance of their supervisory functions employees of Consob shall be public officials and required to report any irregularities which they may discover exclusively to Consob, even where such irregularities appear to be criminal offences.

12. Employees of Consob and consultants and experts engaged by Consob shall be bound by professional secrecy.

13. Governmental authorities and public entities shall provide the information, documents and every further form of cooperation requested by Consob in accordance with the laws governing each authority or entity.

Article 4-bis

*(Identification of the competent authority for the purpose
of EC Regulation no. 1060/2009 on rating agencies)*

1. Consob is the competent authority for the purpose of application of the provisions of EC Regulation no. 1060/2009, issued by the European Parliament and Council on 16 September 2009, on rating agencies. For this purpose, Consob performs the duties indicated in the aforementioned regulation, exercises the powers and adopts supervisory measures as envisaged in articles 23, 24 and 25 of said regulation.

2. For the exercise of their respective duties, also based on special memoranda of understanding, Consob, the Bank of Italy, ISVAP and the Italian Pension Funds Supervisory Commission cooperate and exchange information on the agencies referred to in subsection 1 and the use of ratings for regulatory purposes by the parties indicated in article 4, paragraph 1 of the regulation referred to in subsection 1, supervised by the aforementioned authorities⁵⁰.

PART II REGULATION OF INTERMEDIARIES

TITLE I GENERAL PROVISIONS

Chapter I Supervision

Article 5 *Purpose and scope*

1. The objectives of supervisory activities indicated in this section shall be:

⁴⁸ Paragraph thus replaced by art. 2 of Italian Legislative Decree no. 239 of 30.12.2010.

⁴⁹ Name as amended by Legislative Decree 37/2004.

⁵⁰ Article added by art. 1, Legislative Decree no. 176 of 5.10.2010.

- a) the safeguarding of faith in the financial system;
- b) the protection of investors;
- c) the stability and correct operation of the financial system;
- d) competitiveness of the financial system;
- e) the observance of financial provisions⁵¹.

2. For the pursuance of objectives indicated in subsection 1, the Bank of Italy shall be responsible for risk containment, asset stability and the sound and prudent management of intermediaries⁵².

3. For the pursuance of objectives indicated in subsection 1, Consob shall be responsible for the transparency and correctness of conduct⁵³.

4. The Bank of Italy and Consob shall exercise supervisory powers over authorised persons. Each shall supervise the observance of regulatory and legislative provisions according to their respective responsibilities as defined in subsections 2 and 3⁵⁴.

5. The Bank of Italy and Consob shall operate in a coordinated manner, *inter alia* with a view to minimizing the costs incurred by authorised intermediaries, and shall notify each other of the measures adopted and the irregularities discovered in carrying out their supervisory activity.

5-bis. The Bank of Italy and Consob, with the aim of coordinating their supervisory duties and reducing to a minimum the onus on authorised persons, shall stipulate a protocol of understanding in relation to:

- a) the responsibility of each and task performance methods, according to the prevalence criteria of duties pursuant to subsections 2 and 3;
- b) the exchange of information, also with reference to irregularities discovered and measures adopted in the exercise of supervisory activities⁵⁵.

5-ter. The protocol of understanding pursuant to subsection 5-bis shall be made public by the Bank of Italy and Consob according to jointly agreed methods, and shall be attached to the regulation pursuant to Article 6, subsection 2-bis⁵⁶.

Article 6 Regulatory powers

01. In the exercise of supervisory functions, the Bank of Italy and Consob shall observe the following principles:

- a) valuation of the decision-making autonomy of authorised persons;
- b) proportionality, intended as a criterion for the exercise of power suited to achieving the purpose, with the minimum sacrifice of addressees' interests;
- c) recognition of the international character of the financial market and safeguarding of the competitive position of Italian industry;
- d) facilitation of innovation and competition⁵⁷.

⁵¹ Subsection replaced by art. 2 Legislative Decree no. 164 of 17.09.2007

⁵² Subsection replaced by art. 2 Legislative Decree no. 164 of 17.09.2007

⁵³ Subsection replaced by art. 2 Legislative Decree no. 164 of 17.09.2007

⁵⁴ Subsection replaced by art. 2 Legislative Decree no. 164 of 17.09.2007

⁵⁵ Subsection as amended by art. 2 Legislative Decree no. 164 of 17.09.2007. See Bank of Italy-Consob memorandum of understanding of 31.10.2007 (published in Official Gazette no. 270 of 20.11.2007 and Consob Bulletin no. 10.2 of October 2007, attached to the joint Bank of Italy-Consob regulation adopted pursuant to Article 6, subsection 2-bis.

⁵⁶ Subsection as amended by art. 2 Legislative Decree no. 164 of 17.09.2007. See Bank of Italy-Consob memorandum of understanding of 31.10.2007 (published in Official Gazette no. 270 of 20.11.2007 and Consob Bulletin no. 10.2 of October 2007, attached to the joint Bank of Italy-Consob regulation adopted pursuant to Article 6, subsection 2-bis.

⁵⁷ Subsection as amended by art. 2 Legislative Decree no. 164 of 17.09.2007. See joint Bank of Italy-Consob Regulation of 29.10.2007 (published in Official Gazette no. 255 of 2.11.2007 and Consob Fortnightly Bulletin no. 10.2, October 2007).

02. With regard to matters governed by Commission Directive 2006/73/EC of 10 May 2006, the Bank of Italy and Consob may maintain or impose by regulation additional obligations to those of the said directive only in exceptional cases in which such obligations are objectively justified and proportionate, taking into account the need to face specific risks to protect investors or market integrity which are not adequately considered in the European provisions, and if at least two of the following conditions are satisfied:

- a) the specific risks which the added obligations aim to face are particularly significant, considering the structure of the Italian market;
- b) the specific risks which the added obligations aim to face should emerge or become evident after the issue of related European provisions⁵⁸.

03. The Bank of Italy and Consob shall inform the Minister of the Economy and Finance of the regulatory provisions containing additional obligations pursuant to subsection 02 for the purposes of notifying the European Commission⁵⁹.

1. The Bank of Italy, after consulting Consob, shall issue a regulation on:

- a) obligations of investment companies and asset management companies in terms of capital adequacy, the limitation of risk in its various forms, permissible shareholdings;⁶⁰
- b) obligations of authorised intermediaries in terms of the manner of depositing and subdepositing financial instruments and funds belonging to customers;⁶¹
- c) the rules applicable to collective investment undertakings concerning:
 - 1) the criteria and prohibitions relating to investment activity, having regard, *inter alia*, to group relationships
 - 2) the prudential rules for limiting and spreading risk;
 - 3) the standard formats and procedures to be used for drawing up the accounting statements that asset management companies and SICAVs must prepare periodically;
 - 4) the methods of calculating the value of units or shares of collective investment undertakings;
 - 5) the methods and procedures to be adopted to value goods and securities in which assets are invested and the frequency of valuation. For the valuation of goods not traded in regulated markets, the Bank of Italy may prescribe recourse to independent experts and may also require their intervention when managers buy and sell goods.

1-bis. The provisions pursuant to subsection 1, paragraph a) allow for the adoption of internal risk measurement systems to determine equity requirements, subject to authorisation by the Bank of Italy, and for the use of credit risk assessments issued by the company or external authorities⁶².

2. Consob, after consulting the Bank of Italy and taking into account the different need for protection of investors in relation to their nature and professional experience, shall issue a regulation governing the obligations of authorised intermediaries on:

- a) transparency, including:
 - 1) reporting obligations on the provision of investment services and activities, and collective asset management services, with particular reference to the level of risk of each type of financial product and portfolio management offered, to the companies and to services provided, to the safeguarding of financial instruments or cash equivalents held by the company, and the costs, incentives and strategies for executing orders;

⁵⁸ Subsection included by art. 2 Legislative Decree no. 164 of 17.09.2007

⁵⁹ Subsection included by art. 2 Legislative Decree no. 164 of 17.09.2007

⁶⁰ Paragraph first amended by art. 2 Administrative Order no 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007 and then replaced by art. 2 of Legislative Decree no. 164 of 17.9.2007. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

⁶¹ Paragraph replaced by art. 2 Legislative Decree no. 164 of 17.9.2007. See Bank of Italy Regulation no. 1097 of 29.10.2007 (published in Official Gazette no. 255 of 2.11.2007).

⁶² Subsection included by art. 2 of Administrative Order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

2) the methods and criteria to be adopted in advertising and promotion communications and investment research;

3) obligations to inform customers regarding the execution of orders, portfolio management, transactions with potential liabilities and statements of customers' financial instruments or cash equivalents held by the company;

b) correctness of conduct, including:

1) obligations to obtain information from customers or potential customers with the aim of assessing the adequacy or appropriateness of the transactions or services provided;

2) measures for the execution of orders under the best conditions for customers;

3) obligations relating to order management;

4) the obligation to ensure that portfolio management is performed in a manner consistent with the specific needs of individual investors, and that on a collective basis is performed in observance of the aims of UCITS investments;

5) the conditions under which incentives may be paid or received⁶³.

2-bis. The Bank of Italy and Consob shall jointly govern the obligations of authorised persons, by regulation and in reference to the provision of investment services and activities, together with collective asset management services, on matters of;

a) general organisational requirements;

b) business continuity;

c) administrative and accounting organisation, including establishment of a department pursuant to paragraph e)

d) procedures, including internal audit, for the correct and transparent provision of investment services and activities together with collective asset management services;

e) monitoring of compliance with regulations;

f) company risk management;

g) internal audit;

h) top management responsibilities;

i) complaint handling;

j) personal transactions;

k) outsourcing of essential or important operations, services or activities;

l) management of conflict of interest potentially prejudicial to customers;

m) record keeping;

n) procedures including internal audit, for the receipt or payment of incentives⁶⁴.

2-ter. For supervision purposes, pursuant to subsection 2-bis, the responsible parties shall be:

a) The Bank of Italy for aspects pursuant to paragraphs a), b), c), f), g) and h);

b) Consob for aspects pursuant to paragraphs d), e), i), j), l), m) and n);

c) The Bank of Italy and Consob, according to their respective duties pursuant to Article 5, subsections 2 and 3, and for aspects pursuant to paragraph k)⁶⁵.

2-quater. By regulation and after consulting the Bank of Italy, Consob shall identify:

a) standards of conduct which shall not apply in relations between managers of multilateral trading systems and their participants;

b) the conditions in which authorised persons shall not be obliged to observe regulatory provisions pursuant to subsection 2, paragraph b), subparagraph 1), when they provide services pursuant to Article 1, subsection 5, paragraphs b) and e);

c) the specific discipline applicable to relations between authorised persons and professional customers;

⁶³ Subsection replaced by art. 2 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

⁶⁴ Subsection first added by art. 10, Law no. 262 of 28.12.2005 and later replaced by art. 2, Legislative Decree no. 164 of 17.09.2007. See joint Bank of Italy-Consob Regulation of 29.10.2007 (published in Official Gazette no. 255 of 2.11.2007 and Consob Fortnightly Bulletin no. 10.2, October 2007).

⁶⁵ Subsection included by art. 2 Legislative Decree no. 164 of 17.9.2007.

d) standards of conduct which shall not apply between authorised persons providing services pursuant to Article 1, subsection 5, paragraphs a), b) and e), and qualified counterparties, intended as:

1) investment companies, banks, insurance companies, UCITS, asset management companies, harmonised asset management companies, pension funds, financial intermediaries registered in the lists pursuant to Articles 106, 107 and 113 of the Consolidated Law on Banking, companies pursuant to Article 18 of the Consolidated Law on Banking, e-money organisations, banking foundations, national governments and their offices, including public bodies established to manage public debt, central banks and international public organisations;

2) companies whose main activity consists in trading commodities on own account and derivatives on commodities;

3) companies whose exclusive activity consists in trading on own account on derivatives markets, and solely for hedging purposes on OTC markets, provided they are guaranteed by members adhering to the clearing house for such markets, when the responsibility for the performance of contracts stipulated by said companies lies with members adhering to the clearing house for such markets;

4) other categories of private persons identified by regulation by Consob, after consulting the Bank of Italy, with respect to criteria pursuant to directive 2004/39/EC and related execution measures;

5) categories corresponding to those of previous paragraphs for persons in non-EU countries⁶⁶.

2-quinquies. By regulation and after consulting the Bank of Italy, Consob shall identify private professional customers, together with the criteria to identify private persons who on request may be treated as professional customers, and related request procedures⁶⁷.

2-sexies. By regulation and after consulting the Bank of Italy and Consob, the Minister of the Economy and Finance shall identify public professional customers, and criteria to identify public persons who on request may be treated as professional customers, and related request procedures⁶⁸.

Article 7

Supervisory powers

1. The Bank of Italy and Consob, within the scope of their respective authority, may take the following actions with respect to authorised intermediaries:

a) convene the directors, members of the board of auditors and managers;

b) order the convening of the governing bodies and set the agenda for the meeting;

c) proceed directly to convene the governing bodies where the competent bodies have not complied with an order issued under paragraph b);

2. The Bank of Italy may, for the purposes of stability, issue provisions of a particular nature related to matters governed by article 6, paragraph 1, letter a), and may adopt, where required, restricted or limited provisions concerning services, activities, transactions and territorial structure as well as prohibit the distribution of profits or other capital items and, with reference to the financial instruments that can be calculated in regulatory capital, prohibit the payment of interest⁶⁹.

3. In the public interest or in the interest of participants, the Bank of Italy and Consob, within the scope of their respective authority, may order the suspension or temporary limitation of the issue or redemption of units or shares of collective investment undertakings.

⁶⁶ Subsection as amended by art. 2 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

⁶⁷ Subsection as amended by art. 2 Legislative Decree no. 164 of 17.9.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

⁶⁸ Subsection included by art. 2 Legislative Decree no. 164 of 17.9.2007.

⁶⁹ Paragraph first amended by art. 2 of Italian Law Decree no. 297 of 27.12.2006, coordinated with the conversion law no. 15 of 23.02.2007 and then replaced by art. 2 of Italian Legislative Decree no. 239 of 30.12.2010. See Bank of Italy Regulation of 24.10.2007 (published in O.S. no. 247 of O.J. no. 277 of 28.11.2007).

Article 8

Reporting requirements

1. The Bank of Italy and Consob, to the extent of their duties, may require authorised intermediaries to communicate data and information and to transmit documents and records in the manner and within the time limits they establish.⁷⁰
2. The powers envisaged in subsection 1 may also be exercised against the independent statutory auditor⁷¹.
3. The board of auditors shall inform the Bank of Italy and Consob without delay of any act or fact it comes to know of in the performance of its duties that may constitute a management irregularity or a violation of the provisions governing the activity of Italian investment companies, asset management companies and SICAVs. To this end the Articles of Association of Italian investment companies, asset management companies and SICAVs, independently of the system of management and control adopted, shall assign the related tasks and powers to the control body.⁷²
4. The independent statutory auditors of Italian investment companies, asset management companies and SICAVs shall notify the Bank of Italy and Consob without delay of the acts or facts found in the performance of the engagement that may constitute a serious violation of the provisions governing the activity of the audited companies, jeopardize the continued existence of the undertaking or result in an adverse opinion or a qualified opinion on the annual accounts or interim statements of collective investment undertakings or a disclaimer⁷³.
5. Subsection 3, first sentence, and subsection 4 shall also apply to the control body and independent statutory auditors of the companies that control or are controlled by Italian investment companies, asset management companies and SICAVs pursuant to Article 23 of the Consolidated Law on Banking⁷⁴.
- 5-bis. Consob, to the extent of its duties, may exercise the powers pursuant to Article 187-octies upon authorised persons. The Bank of Italy, to the extent of its duties, may exercise the powers pursuant to Article 187-octies, subsection 3, paragraph c) upon authorised persons⁷⁵.
6. Subsections 3, 4, 5, and 5-bis shall apply to banks, limited to the provision of investment services and activities⁷⁶.

Article 9

Statutory audit

1. For Italian investment companies, asset management companies and SICAVs, article 159 subsection 1 shall apply.

⁷⁰ Subsection as amended by art. 2 Legislative Decree no. 164 of 17.9.2007 which replaced the wording: “for matters within the scope of their duties” with the wording “to the extent of their duties”. See Consob Regulation no. 14015 of 1.4.2003, Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007) and the Bank of Italy-Consob memorandum of understanding of 31.10.2007 (published in Official Gazette no. 270 of 20.11.2007 and in Consob Bulletin no. 10.2 of October 2007), attached to the joint Bank of Italy-Consob regulation adopted pursuant to Article 6, subsection 2-bis.

⁷¹ Subsection amended by art. 40, Legislative Decree no. 39 of 27/01/2010 which replaced the words: “the appointed independent auditors” with the words: “the appointed statutory auditor”.

⁷² Subsection as amended by Legislative Decree no. 37 of 06.02.2004.

⁷³ Subsection amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: “the appointed independent auditors” with the words: “the appointed statutory auditors”.

⁷⁴ Subsection first replaced by Legislative Decree no. 37 of 06.02.2004 and later amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: “the appointed independent auditors” with the words: “the appointed statutory auditors”.

⁷⁵ Subsection included by art. 2 Legislative Decree no. 164 of 17.09.2007

⁷⁶ Subsection replaced by art. 2 Legislative Decree no. 164 of 17.09.2007

2. For asset management companies, the statutory auditor or the independent statutory auditor shall issue a special report expressing an opinion on the financial statements of the mutual fund⁷⁷.

Article 10 *Inspections*

1. The Bank of Italy and Consob, to the extent of their duties, may carry out inspections of authorised intermediaries⁷⁸ and require the exhibition of documents and the adoption of measures deemed necessary, in harmony with the provisions of Community law⁷⁹.

1-bis. Consob may request that the independent statutory auditor performs audits. Related expenses, the fairness of which is evaluated by Consob, are borne by the person inspected⁸⁰.

2. Each authority shall notify the inspections it undertakes to the other, which may request it to carry out on the-spot verifications of matters within the scope of its authority.

3. The Bank of Italy and Consob may request the competent authorities of another EU country to carry out on-the spot verifications of branches of Italian investment companies, asset management companies and banks established within the territory of such state or agree on other methods of verification.⁸¹

4. The competent authorities of another EU country, after notifying the Bank of Italy and Consob, may, directly or by way of persons engaged by them, inspect the branches established in Italy of EU investment companies, banks and harmonised asset management companies which they have authorised. Where the competent authorities of another EU country so request, the Bank of Italy and Consob, within the scope of their respective authority, may carry out on-the-spot verifications directly or agree on other methods of verification.⁸²

5. The Bank of Italy and Consob, to the extent of their duties, may conclude agreements with the competent authorities of non-EU countries on procedures for the inspection of branches of investment companies and banks established in their respective territories⁸³.

Article 11 *Composition of groups*

1. The Bank of Italy, after consulting Consob:

a) shall determine the notion of group relevant for the purpose of verifying the requirements provided for in Articles 19(1)(h) and 34(1)(f)⁸⁴;

⁷⁷ Article first amended by art. 3, Legislative Decree no. 303 of 29.12.2006 and later replaced by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁷⁸ Subsection as amended by art. 2 Legislative Decree no. 164 of 17.9.2007 which replaced the wording: “for matters within the scope of their duties” with the wording “to the extent of their duties”. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007 and the Bank of Italy-Consob memorandum of understanding of 31.10.2007 (published in Official Gazette no. 270 of 20.11.2007 and in Consob Bulletin no. 10.2 of October 2007, attached to the joint Bank of Italy-Consob regulation adopted pursuant to Article 6, subsection 2-bis.

⁷⁹ See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007 and the Bank of Italy-Consob memorandum of understanding of 31.10.2007 (published in Official Gazette no. 270 of 20.11.2007 and in Consob Bulletin no. 10.2 of October 2007, attached to the joint Bank of Italy-Consob regulation adopted pursuant to Article 6, subsection 2-bis.

⁸⁰ Subsection first added by art. 2, Legislative Decree no. 164 of 17.09.2007 and later amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: “the appointed independent auditors” with the words: “the appointed statutory auditor”.

⁸¹ Subsection as amended by Article 4 of Legislative Decree 274/2003.

⁸² Subsection as amended by Article 4 of Legislative Decree 274/2003.

⁸³ Subsection amended by art. 2 Legislative Decree no. 164 of 17.9.2007 which replaced the words “for matters within the scope of their duties” with the words: “to the extent of their duties”.

⁸⁴ See Bank of Italy instructions of 4.8.200, 17.6.2002 and 14.4.2005 (published in Official Gazette no. 218 of 18.9.2000, Official Gazette no. 167 of 18.7.2002 and Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

b) may issue rules for identifying the set of persons to be subjected to group supervision from among those providing investment services and collective portfolio management services as well as related and instrumental activities or other financial activities, as defined in Article 59(1)(b) of the Consolidated Law on Banking. Such persons shall be identified from among those not subject to consolidated supervision under the Consolidated Law on Banking that:

- 1) are directly or indirectly controlled by an Italian investment company or asset management company;
- 2) directly or indirectly control an Italian investment company or asset management company⁸⁵;

1-bis. The group identified pursuant to subsection 1, paragraph b), is registered in a special register held by the Bank of Italy. The parent company shall immediately inform the Bank of Italy of the existence of the group and its updated composition. A copy of the aforementioned notification is forwarded by the Bank of Italy to Consob⁸⁶.

Article 12 *Supervision of groups*

1. The Bank of Italy may issue rules to the Italian investment company or asset management company or financial company heading the group identified in accordance with Article 11(1)(b) referring to all the persons identified under the same article and regarding the matters referred to in Article 6(1)(a), 1-bis and 2-bis, paragraphs a), b), c) and g). Where reasons of stability require, the Bank of Italy may issue specific rules regarding the same matters⁸⁷.

1-bis. In line with EU regulations, the Bank of Italy shall identify options for exemption from the application of provisions adopted pursuant to subsection 1⁸⁸.

2. The Italian investment company or asset management company or financial company that is the group's parent undertaking, in performing its activity of direction and coordination, shall issue rules to the components of the group identified in accordance with Article 11(1)(b) for carrying out instructions issued by the Bank of Italy. The directors of the companies belonging to the group shall supply all the data and information needed for the issue of such rules and shall cooperate in complying with the provisions on consolidated supervision⁸⁹.

3. The Bank of Italy and Consob, within the scope of their respective authority, may require persons identified in accordance with Article 11(1)(b) to transmit reports, data and any other relevant information on a periodic or other basis. Information needed to carry out supervision may also be required of persons that, while not engaging in investment services, collective portfolio management services, related and instrumental activities or other financial activities, are linked to the Italian investment company or asset management company by the shareholding relationships specified in Article 11(1)(b)⁹⁰.

⁸⁵ Subsection replaced by art. 2 of Administrative Order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

⁸⁶ Subsection added by art. 2 of Administrative Order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

⁸⁷ Subsection first replaced by art. 2 Administrative order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007, and later amended by art. 2 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "and 1-bis." with the words: "1-bis and 2-bis, paragraphs a), b), c) and g).".

⁸⁸ Subsection included by art. 2 of Administrative Order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

⁸⁹ Subsection included by art. 2 of Administrative Order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

⁹⁰ Subsection first replaced by art. 2, Decree Law no. 297 of 27.12.2006, coordinated by conversion law no. 15 of 23.2.2007, and later amended by art. 2, Legislative Decree no. 164 of 17.09.2007 which replaced the words: "on matters pertaining to their respective duties" with the words: "to the extent of their duties". See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

3-bis. In the exercise of supervisory activities on a consolidated basis, the Bank of Italy may issue provisions, pursuant to this Article, with regard to all persons included in the group identified pursuant to Article 11, subsection 1, paragraph b)⁹¹.

4. ...omissis...⁹²

5. The Bank of Italy and Consob, to the extent of their duties, may:

- a) carry out inspections of persons identified under Article 11(1)
- b) exclusively for the purpose of verifying the exactness of the data and information provided, carry out inspections of persons that, while not engaging in investment services, collective portfolio management services, related and instrumental activities or other financial activities, are linked to the Italian investment company or asset management company by the shareholding relationships specified in Article 11(1)(b)⁹³.

5-bis. In the exercise of supervisory activities on a consolidated basis, the Bank of Italy may issue provisions, pursuant to article 7, subsection 2 with regard to persons pursuant to Article 11, subsection 1, paragraph b)⁹⁴.

Chapter II Corporate officers and shareholders

Article 13

*Experience, integrity and independence requirements for corporate officers*⁹⁵

1. Persons performing administrative, management and supervisory functions in Italian investment companies, asset management companies or SICAVs shall fulfil the experience, integrity and independence requirements established by the Minister of the Economy and Finance in a regulation adopted after consulting the Bank of Italy and Consob⁹⁶.

2. Failure to fulfil the requirements shall result in disqualification from office. The disqualification shall be declared by the board of directors, the supervisory board or the management board within thirty days of the appointment or of its learning of subsequent failure.⁹⁷

3. In the event of inaction by the board of directors the disqualification shall be declared by the Bank of Italy or Consob.

3-bis. In the event of failure to fulfil the independence requirements established by the Civil Code or the Articles of Association, subsections 2 and 3 shall apply.⁹⁸

4. The regulation referred to in subsection 1 shall establish the grounds for temporary suspension from office and its duration. The suspension shall be declared in the manner established in subsections 2 and 3.

⁹¹ Subsection included by art. 2 of Administrative Order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007. See Bank of Italy Regulation of 24.10.2007 (published in Ordinary Supplement no. 247, Official Gazette no. 277 of 28.11.2007).

⁹² Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁹³ Subsection first replaced by art. 2 Administrative order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007, and later amended by art. 2 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "for matters within the scope of their duties" with the words: "to the extent of their duties".

⁹⁴ Subsection added by art. 2 of Administrative Order no. 297 of 27.12.2006, coordinated by enactment law no. 15 of 23.2.2007.

⁹⁵ Title as amended by Legislative Decree 37/2004.

⁹⁶ Subsection amended by Leg. Decree no. 37 of 6.02.2004. See also Ministry of the Treasury, Budget and Economic Planning decree no. 468 of 11.11.1998 (published in Official Gazette no. 7 of 11.1.1999).

⁹⁷ Subsection as amended by Legislative Decree 37/2004.

⁹⁸ Subsection added by Legislative Decree 37/2004.

Article 14⁹⁹
Integrity requirements

1. The Minister of the Economy and Finance shall establish the integrity requirements for holders of the investments indicated in article 15, subsection 1, Italian investment companies and asset management companies and for holders of SICAV capital in a regulation adopted after consulting the Bank of Italy and Consob¹⁰⁰.
2. For the purpose of application of this article and Article 15, for SICAVs reference is made only to registered shares, and the regulation indicated in subsection 1 establishes cases in which, for the purpose of voting rights assignment, such shares are considered bearer shares with regard to the purchase date¹⁰¹.
3. For the purposes of subsection 1 shareholdings held through subsidiaries, trusts or nominees shall also be considered, together with cases in which the attached voting rights are exercisable by or attributed to a person other than the investor or agreements exist concerning exercise of the voting rights¹⁰².
4. Where the requirements are not met, voting and other rights that might influence the company cannot be exercised if the shareholdings exceed the thresholds envisaged in Article 15, subsection 1¹⁰³.
5. In the event of non-compliance with the prohibition, any resolution or other act adopted where the votes or other contribution of the shareholdings referred to in subsection 1 were decisive may be challenged under the Civil Code. The shareholdings for which voting rights may not be exercised shall be counted for the purpose of establishing the due constitution of the meeting.
6. The challenge may also be initiated by Consob or the Bank of Italy within one hundred and eighty days of the date of the resolution or, where this has to be entered in the Company Register, within one hundred and eighty days of the date of such entry or, where it only has to be filed with the office of the Company Register, within one hundred and eighty days of the date of such filing.
7. Shareholdings exceeding the thresholds specified in Article 15, subsection 1, of persons failing to meet the integrity requirements must be disposed of within the time limits established by the Bank of Italy or Consob¹⁰⁴.

Article 15
*Investments*¹⁰⁵

1. Any person who for any reason intends to directly or indirectly acquire or dispose of a controlling investment or an investment that could have a significant influence in an Italian investment company, asset management company or SICAV, or an investment that assigns a share of voting rights or capital of at least 10 per cent, taking into account the shares or units already owned, must notify the Bank of Italy in advance.

⁹⁹ Article first replaced by Legislative Decree no. 37 of 06.02.2004 and later amended by art. 2, Legislative Decree no. 21 of 27.01.2010 as indicated in the following footnotes.

¹⁰⁰ Subsection amended by art. 2, Legislative Decree no. 21 of 27.01.2010 which replaced the words: "shareholders" with the words: "holders of the investments indicated in article 15, subsection 1,". See Ministry of the Treasury, Budget and Economic Planning decree no. 469 of 11.11.1998 (published in Official Gazette no. 7 of 11.1.1999).

¹⁰¹ Subsection as replaced by art. 2, Legislative Decree no. 21 of 27.01.2010.

¹⁰² Subsection amended by art. 2, Legislative Decree no. 21 of 27.01.2010 which replaced the words: "subsection 2" with the words: "subsection 1".

¹⁰³ Subsection amended by art. 2, Legislative Decree no. 21 of 27.01.2010 which replaced the words: "exceed the limit pursuant to subsection 2" with the words: "exceed the thresholds indicated in article 15, subsection 1".

¹⁰⁴ Subsection amended by art. 2, Legislative Decree no. 21 of 27.01.2010 which replaced the words: "in subsection 2" with the words: "in Article 15, subsection 1".

¹⁰⁵ Heading as replaced by art. 2, Legislative Decree no. 21 of 27.01.2010.

Advance notice must also be given for changes in investments when the share of voting rights or capital reaches or exceeds, upwards or downwards, 20 per cent, 30 per cent or 50 per cent, and in any event when changes result in the acquisition or loss of control of the company¹⁰⁶.

2. Within the time limit established pursuant to subsection 5, paragraph c), the Bank of Italy may forbid acquisition of the investment where it considers that the conditions are not met for guaranteeing sound and prudent management by the intermediary, assessing the quality of the potential buyer and financial soundness of the acquisition plan according to the following criteria: the reputation of the potential buyer, including possession of the requirements envisaged in Article 14; possession of the requirements pursuant to Article 13 by persons who, following the acquisition, will have director, management or control duties; the financial soundness of the potential buyer; the post-acquisition capacity of the intermediary to comply with regulations governing intermediary activities; the suitability of the group structure of the potential buyer to allow effective supervision; the absence of grounds to suspect that the acquisition is associated with money laundering or terrorist financing. The Bank of Italy may establish a time limit for the acquisition and, even before that time limit expires, may issue approval for the transaction¹⁰⁷.

3. Acquisitions and disposals referred to in subsection 1 shall be notified upon completion to the Bank of Italy, Consob and the company¹⁰⁸.

4. Holdings are considered to be acquired or disposed of indirectly where the acquisition or the disposal is effected through subsidiary companies, trust companies or nominees. Control shall exist in the cases defined in Article 23 of the Consolidated Law on Banking.

5. By a regulation, the Bank of Italy shall establish:

a) the calculation criteria for voting rights for application of the thresholds envisaged in subsection 1, including cases in which voting rights are not calculated for the purpose of that subsection, together with criteria to identify cases of significant influence;

b) the persons required to give notice where voting rights attached to holdings are exercisable by or attributed to a person other than the owner of the holdings and where agreements exist concerning the exercise of voting rights;

c) the notification procedures and time limits, and for completion of the assessment procedures envisaged in subsection 2¹⁰⁹.

Article 16

Suspension of voting rights, obligation to dispose of shareholdings¹¹⁰

1. The voting and other rights making it possible to influence the company attached to the shareholdings exceeding the thresholds established under Article 15(5) may not be exercised where the notices referred to in Articles 15(1) and 15(3) have not been given, where the Bank of Italy has prohibited the acquisition or the time limit within which the Bank of Italy may prohibit the acquisition has not expired or where the time limit established under Article 15(2), if any, has expired.¹¹¹

2. The Bank of Italy, acting on its own initiative or on a proposal from Consob, may suspend the voting and other rights making it possible to influence the company attached to a qualifying shareholding in an Italian investment company or asset management company or a SICAV where the influence exercised by the holder

¹⁰⁶ Subsection first replaced by Legislative Decree no. 37 of 6.02.2004 and later amended by art. 2, Legislative Decree no. 21 of 27.01.2010.

¹⁰⁷ Subsection amended by art. 2, Legislative Decree no. 21 of 27.01.2010 which replaced the first sentence.

¹⁰⁸ Subsection amended by art. 2, Legislative Decree no. 21 of 27.01.2010 which deleted the second sentence.

¹⁰⁹ Subsection first replaced by Legislative Decree no. 37 of 6.02.2004 and later amended by art. 2, Legislative Decree no. 21 of 27.01.2010 which replaced paragraph a) and added the following words to paragraph c): “, and for completion of the assessment procedures envisaged in subsection 2”. See Bank of Italy instructions of 4.8.200, 17.6.2002 and 14.4.2005 (published in Official Gazette no. 218 of 18.9.2000, Official Gazette no. 167 of 18.7.2002 and Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

¹¹⁰ Title as amended by Legislative Decree 37/2004.

¹¹¹ Subsection as amended by Legislative Decree 37/2004.

of such voting rights is likely to be prejudicial to the company's sound and prudent management or effective supervision.¹¹²

3. In the event of non-compliance with the prohibitions referred to in the preceding subsections, Articles 14(5) and 14(6) shall apply.

4. The Bank of Italy may fix a time limit for the disposal of shareholdings exceeding the limits established under Article 15(5) when the prior notice referred to in Article 15(1) has not been given or when, pursuant to Article 15(2), the Bank of Italy has prohibited an acquisition or any time limit it established for the acquisition has expired.¹¹³

Article 17

Requests for information on shareholdings

1. The Bank of Italy and Consob, specifying the time limit for the response, may require:

a) Italian investment companies, asset management companies and SICAVs to provide the names of the owners of shareholdings on the basis of the register of shareholders, notifications received or other information available to them;

b) companies and entities of whatsoever nature which own shareholdings in the companies referred to in paragraph a) to provide the names of the owners of the shareholdings on the basis of the register of shareholders, notifications received or other information available to them;

c) the directors of companies and entities which own shareholdings in Italian investment companies or asset management companies or SICAVs to provide the names of their controllers;

d) trust companies which hold shareholdings in companies referred to in paragraph c) in their own names to provide the identification data of the beneficiaries.¹¹⁴

TITLE II

INVESTMENT SERVICES¹¹⁵

Chapter I

Persons and authorisation

Article 18

Persons

1. The provision of investment services and activities to the public on a professional basis shall be reserved to investment companies and banks¹¹⁶.

2. Asset management companies may provide the services referred to in Article 1(5)(d) and (f) to the public on a professional basis. Harmonised asset management companies may provide the services referred to in Article 1(5)(d) and (f) to the public on a professional basis, provided they are authorised to do so in their EU home country.¹¹⁷

3. Financial intermediaries entered in the register referred to in Article 107 of the Consolidated Law on Banking may provide the services referred to in Article 1(5)(a) and (b) exclusively for derivative financial

¹¹² Subsection as amended by Legislative Decree 37/2004.

¹¹³ Subsection added by Legislative Decree 37/2004.

¹¹⁴ Article as amended by Legislative Decree 37/2004.

¹¹⁵ Title as amended by Article 3 of Legislative Decree 164/2007.

¹¹⁶ Subsection amended by Article 3 of Legislative Decree 164/2007.

¹¹⁷ Subsection as amended by Article 5 of Legislative Decree 274/2003 and, subsequently by Article 3 of Legislative Decree 164/2007.

instruments, and in Article 1(5)(c) and (c-bis) to the public on a professional basis in the circumstances and subject to the conditions established by the Bank of Italy after consulting Consob.¹¹⁸

3-bis. The regulated stock exchange company may be authorised for the activity pursuant to Article 1, subsection 5, paragraph g)¹¹⁹.

4. Italian investment companies may provide non-core services and other financial activities as well as related and instrumental activities to the public on a professional basis. Reservations of such activities established by law shall be unaffected.

5. The Minister of the Economy and Finance,¹²⁰ in a regulation adopted after consulting the Bank of Italy and Consob:

a) for the purpose of tracking the development of financial markets and the standards of adaptation of EU authorities, new categories of financial instruments, new investment services and activities and new accessory services, indicating which persons subject to certain forms of prudential supervision may exercise the new services and operations^{121 122};

b) shall adopt the rules implementing and integrating the reservations of activities provided for in this article, in compliance with the provisions of Community law¹²³.

Article 18-bis *Financial advisors*

1. The reservation of activities pursuant to Article 18 shall not prejudice the opportunity for natural persons in possession of the requirements of professionalism, integrity, independence and equity established by regulation adopted by the Minister of the Economy and Finance, after consulting the Bank of Italy and Consob, and entered on the register pursuant to subsection 2, to provide advisory services on investment matters, without holding sums of money or financial instruments pertaining to customers. The professionalism requirements for entry in the register shall be ascertained on the basis of strict evaluation criteria that take into account duly documented past professional experience or on the basis of evaluation tests.

2. In compliance with the provisions of subsection 7, a register of financial advisors who are natural persons has been set up and envisages a body comprising a chairman and four members, two of which representing the persons registered and appointed according to methods established in the entity's articles of association, and all nominated by decree of the Ministry of Economy and Finance. The members of said body shall be identified from among persons of proven professionalism and expertise in financial, legal and economic matters.

3. The body pursuant to subsection 2 above shall be of a legal nature and have organisational and financial independence.

4. The body shall prepare its articles of association containing rules on operations and the internal organisation, in accordance with the principles and criteria established by Consob in the Regulation adopted pursuant to subsection 7 and by the Ministry of Economy and Finance adopted pursuant to subsection 1. The

¹¹⁸ Subsection as substituted by Article 3 of Legislative Decree 164/2007.

¹¹⁹ Subsection included by art. 3 Legislative Decree no. 164 of 17.09.2007

¹²⁰ The previous wording : "Minister of the Treasury, Budget and Economic Planning" was replaced by the wording: "Minister of the Economy and Finance" by Article 1 of Legislative Decree 37/2004.

¹²¹ See Ministry of the Economy and Finance decree no. 44 of 2.3.2007 (published in Official Gazette no. 81 of 6.4.2007).

¹²² Paragraph as replaced by art. 3 Legislative Decree no. 164 of 17.09.2007

¹²³ Pending issue of the enactment regulations for this subsection, Treasury decree no. 329 of 26.6.1997 (published in Official Gazette no. 228 of 30.9.1997).

articles of association must be submitted to the Ministry of Economy and Finance for approval, after consulting the Bank of Italy and Consob, and subsequent publication.

5. Within the scope of its financial independence, the body shall determine and collect fees and other sums payable by members from registration applications and persons submitting application as candidates for the evaluation test to ascertain possession of the professionalism requirements for entry in the register, by the amount necessary to guarantee continued performance of its duties. The order issued by the body to claim payment of such fees shall be deemed executive. On expiry of the payment deadline, the body shall levy sums due on the basis of regulations for the official collection of national taxes, and amounts due to local, public and welfare authorities. In the event of failure to pay such fees, the body shall arrange cancellation of the person in default from the register.

6. The body pursuant to subsection 2:

a) subject to verification of the necessary requirements, shall arrange entry in the register of natural persons submitting due application to provide the services indicated in subsection 1, and arrange cancellation should such requirements be no longer met;

b) shall supervise compliance with the provisions of paragraphs c), d), e) and g) of subsection 7;

c) in cases of infringement of the rules of conduct pursuant to subsection 7, paragraph d), after consulting the interested party, shall in relation to the seriousness of the infringement and in compliance with the provisions of subsection 7, paragraph b), decide to issue of a written reprimand, order payment of a fine of between five hundred euro and twenty-five thousand euro, order a 1-4 month suspension from the register or order disqualification from the register;

d) shall take all other action necessary for the proper keeping of the register;

e) may request registered persons to communicate data and information, and forward documents and papers according to terms and conditions decided by the body;

f) may perform inspections of registered persons, or request sight of documents and completion of any papers deemed necessary, also through personal hearings.

7. By regulation, Consob shall determine the principles and criteria relating to:

a) setup of the register and related forms of advertising;

b) entry in the register, reasons for suspension, disqualification and readmission, and measures applying to persons registered;

c) grounds for incompatibility;

d) the rules of conduct to be followed by persons registered in their relations with customers, with due regard to the provisions to which licensed parties are subject;

e) the storage methods for documents concerning activities performed by persons registered;

f) the activities of the body, with specific reference to the duties referred to in subsection 6;

g) the professional training of persons registered.

8. Should an adverse decision be issued pursuant to subsection 6, paragraph c), the interested party may submit appeal to Consob within thirty days of the date of the related notice. The submission of an appeal and the related decision shall follow procedures determined by Consob by regulation pursuant to subsection 7.

9. Should Consob adopt an adverse decision pursuant to subsection 8, the interested party may file appeal before the Court of Appeal. Subsections 4, 5, 6, 7 and 8 of Article 195 shall apply.

10. Consob may request that the body communicate data and information, and forward documents and papers according to terms and conditions decided by Consob; Consob may perform inspections of the body, or request sight of documents and completion of any papers deemed necessary.

11. In the event of inactivity or malfunction of the body, Consob shall submit a justified proposal to the Ministry of the Economy and Finance for the adoption of suitable measures or, for more serious cases, to wind up the body and appoint a commissioner¹²⁴.

¹²⁴Article first included by art. 3, Legislative Decree no. 164 of 17.9.2007 and later replaced by art. 1, Legislative Decree no. 101 of 17.7.2009. Pursuant to art. 19, subsection 14, Legislative Decree no. 164 of 17.9.2007 (final and transitory provisions), first amended by art. 1, Law Decree no.

Article 18-ter
Financial consulting companies

1. With effect from 1 October 2009, the reservation of activities pursuant to Article 18 shall not prejudice the opportunity for public limited companies or private limited companies in possession of the requirements of equity and independence established by regulation adopted by the Minister of the Economy and Finance, after consulting the Bank of Italy and Consob, to offer consultancy services on investment matters, without holding sums of money or financial instruments pertaining to customers.
2. After consulting the Bank of Italy and Consob, the Minister of the Economy and Finance may also require that the company officers be in possession of the requirements of professionalism, integrity and independence.
3. In the register pursuant to article 18-bis, subsection 2, a special section is dedicated to financial consulting companies for which subsections 3, 4, 5, 6, 7 and 8 of article 18-bis shall apply¹²⁵.

Article 19
Authorisation

1. Consob, after consulting the Bank of Italy, shall authorise investment companies to provide investment services and activities, within six months from the presentation of the complete application, where the following conditions are satisfied¹²⁶:
 - a) the legal form adopted is that of a *società per azioni*;
 - b) the name of the company contains the words "*società di intermediazione mobiliare*";
 - c) the registered office and the head office of the company are in Italy;
 - d) the paid-up capital is not less than that established on a general basis by the Bank of Italy¹²⁷;
 - e) a programme relating to initial operations is submitted, together with the instrument of incorporation and articles of association, including an illustration of the types of operations envisaged, the procedures adopted and the type of accessory services intended for offer, together with a report on the organisational structure, including an illustration of any outsourcing to third parties of essential operating functions¹²⁸;
 - f) the persons performing administrative, management and supervisory functions fulfil the experience, independence and integrity requirements referred to in Article 13;¹²⁹
 - g) holders of investments indicated in Article 15, subsection 1 are in possession of the integrity requirements established in Article 14 and there are no grounds for prohibition pursuant to Article 15, subsection 2¹³⁰;
 - h) the structure of the group of which the company is part is not prejudicial to the effective supervision of the company and at least the information required pursuant to Article 15(5) is provided.
2. Authorisation shall be refused where verification of the conditions indicated in subsection 1 shows that sound and prudent management is not ensured and the ability of the company to exercise investment services or activities correctly is ensured.¹³¹

113 of 30.6.2008 and then by art. 41, subsection 16-bis of Law Decree no. 207 of 30 December 2008, supplemented by the related Conversion Law no. 14 of 27 February 2009 until the entry into force of measures under the terms of this article, and in any event no later than 31 December 2009 (deadline amended by art. 23, subsection 7, Law no. 102 of 3.8.2009), the reservation of activities pursuant to article 18 shall be without prejudice to the option of registered persons, who as at 31 October 2007 provide investment advisory services, to continue to provide such services pursuant to article 1, subsection 5, paragraph f), without holding sums of money or financial instruments pertaining to customers.

¹²⁵ Article included by art. 2 Law no. 69 of 18.6.2009.

¹²⁶ Indent replaced by art. 3 Legislative Decree no. 164 of 17.9.2007.

¹²⁷ See Bank of Italy Regulation no. 1097 of 29.10.2007 (published in Official Gazette no. 255 of 2.11.2007).

¹²⁸ Subsection replaced by art. 3 Legislative Decree no. 164 of 17.09.2007

¹²⁹ Paragraph as amended by Legislative Decree 37/2004.

¹³⁰ Paragraph first replaced by Legislative Decree no. 37 of 6.2.2004 and later by art. 2, Legislative Decree no. 21 of 27.01.2010.

¹³¹ Subsection amended by Article 3 of Italian Legislative Decree no. 164 of 17.9.2007

3. The Bank of Italy, after consulting Consob, shall regulate the authorisation procedure and the cases in which authorisation shall lapse where the Italian management company fails to start or interrupts the provision of services authorised.¹³²

3-bis. Investment companies shall inform Consob and the Bank of Italy of any significant change, after authorisation, to the conditions pursuant to subsection 1¹³³.

4. The Bank of Italy, after consulting Consob on activities pursuant to Article 1, subsection 5, paragraph g), shall authorise the provision of investment services and activities by banks authorised in Italy, as well as services and activities indicated in Article 18, subsection 3, by financial intermediaries registered in the list pursuant to Article 107 of the Consolidated Law on Banking¹³⁴.

Article 20

Register

1. Consob shall enter Italian investment companies and non-EU investment companies in a special register. EU investment companies shall be entered in a special list annexed to the register¹³⁵.

2. Consob shall communicate entries in the register to the Bank of Italy.

3. The persons referred to in subsection 1 shall indicate the details of the entry in the register or list in their documents and correspondence.

Chapter II

Performance of services¹³⁶

Article 21

General criteria

1. In providing investment and non-core services and activities, authorised intermediaries must:

- a) act diligently, fairly and transparently in the interests of customers and the integrity of the market.
- b) acquire the necessary information from customers and operate in such a way that they are always adequately informed;
- c) use publicity and promotional communications which are correct, clear and not misleading,
- d) have resources and procedures, including internal control mechanisms, suitable for ensuring the efficient provision of services and activities¹³⁷;

1-bis. In the provision of investment services and activities and accessory services, Italian investment companies, non-EU investment companies, asset management companies, harmonised asset management companies, financial intermediaries registered in the list pursuant to Article 107 of the Consolidated Law on Banking, Italian banks and non-EU banks:

- a) shall adopt all reasonable measures to identify and manage conflict of interest which may arise with the customer or between customers, also by the adoption of appropriate organisational measures, in order to avoid a negative impact on the interests of the customer;

¹³² Subsection amended by art. 3 Legislative Decree no. 164 of 17.9.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹³³ Subsection included by art. 3 Legislative Decree no. 164 of 17.09.2007

¹³⁴ Subsection replaced by art. 3 Legislative Decree no. 164 of 17.09.2007

¹³⁵ See Consob resolutions no. 11760 of 22.12.1998 and no. 16216 of 13.11.2007.

¹³⁶ Heading amended by art. 4 Legislative Decree no. 164 of 17.9.2007.

¹³⁷ Subsection first amended by art. 14 Law no. 262 of 28.12.2005 and by art. 10, subsection 6 of Law no. 13 of 6.2.2007 (2006 Community Law) and later replaced by art. 4 Legislative Decree no. 164 of 17.9.2007.

b) shall clearly inform customers, prior to acting on their behalf, of the general nature and/or sources of conflict of interest where measures taken pursuant to paragraph a) are not sufficient to ensure, with reasonable certainty, that the risk of damaging the interests of the customer is avoided;

c) shall perform independent, sound and prudent management and take measures to safeguard the rights of customers with regard to their assets¹³⁸.

2. In performing services, investment companies, banks and asset management companies may, subject to their obtaining customers' consent in writing, act in their own names and on behalf of their customers.

Article 22 *Separation of assets*

1. In providing investment and non-core services, the financial instruments and funds of individual customers held in whatever capacity by an Italian investment company, asset management company, harmonised asset management company or financial intermediary entered in the register provided for in Article 107 of the Consolidated Law on Banking and the financial instruments of individual customers held in whatever capacity by a bank shall be separate assets for all intents and purposes from those of the intermediary and from those of other customers. Actions in respect of such assets may not be brought by creditors of the intermediary or on behalf of such creditors, nor by creditors of the depositary or the sub-depositary, if any, or on behalf of such creditors. Creditors of individual customers may bring actions up to the amount of the assets owned by such customers.¹³⁹

2. Legal and court-ordered set-off shall not apply to accounts referring to financial instruments or funds deposited with third parties and agreements may not be made for their set-off against claims of the depositary or the sub-depositary on the intermediary or the depositary.

3. Unless customers have agreed in writing, an investment company, Italian asset management company, harmonised asset management company or financial intermediary entered in the register provided for in Article 107 of the Consolidated Law on Banking or a bank may not use, on its own behalf or on behalf of third parties, financial instruments belonging to customers which it holds in any capacity. Nor may an investment company, Italian asset management company, harmonised asset management company or financial intermediary entered in the register provided for in Article 107 of the Consolidated Law on Banking use, on its own behalf or on behalf of third parties, liquid balances belonging to customers which it holds in any capacity.¹⁴⁰

Article 23¹⁴¹ *Contracts*

1. Contracts for the provision of investment and non-core services, except for the service set forth in Article 5 (f), and, if foreseen, the provision of accessory services, shall be reduced to writing and a copy given to customers. Consob, after consulting the Bank of Italy, may issue a regulation establishing that, for justified technical reasons or in relation to the professional nature of the contracting parties, certain types of contract may or must be concluded in a different form. Failure to comply with the prescribed form shall render the contract null and void¹⁴².

¹³⁸ Subsection included by art. 4 Legislative Decree no. 164 of 17.09.2007

¹³⁹ Subsection as amended by Article 6 of Legislative Decree 274/2003.

¹⁴⁰ Subsection as amended by Article 6 of Legislative Decree 274/2003.

¹⁴¹ Art. 19, subsection 13 Legislative Decree no. 164 of 17.9.2007 (*final and transitional provisions*) establishes that "subjects shall adapt existing contracts as at 1 November 2007 by 30 June 2008".

¹⁴² Subsection amended by art. 4 Legislative Decree no. 164 of 17.9.2007 which replaced the words "investment services and" with the words: "investment services, excluding services pursuant to article 1, subsection 5, paragraph f) and, where envisaged, contracts relating to the provision of services" and removed the word "technical".

2. Any clause which refers to usage for the determination of the fee payable by customers or any other amount charged to them shall be null. In such cases, nothing shall be payable.
3. In cases referred to in subsections 1 and 2, nullity may be enforced only by the customer.
4. Title IV, Chapter I, of the Consolidated Law on Banking, shall not apply to investment services and activities, to the allocation of financial products as well as to transactions and services which are components of financial products subject to the regulations of Article 25-*bis* or of part IV, title II, chapter I. In any case, the pertinent provisions of title VI of the Consolidated Law on Banking are applied to transactions regarding consumer credit.¹⁴³
5. Within the scope of the provision of investment services and activities, Article 1933 of the Civil Code shall not apply to derivative financial instruments or to similar instruments specified pursuant to Article 18(5)(a)¹⁴⁴.
6. In actions for damages in respect of injury caused to the customer in the performance of investment services or non-core services, the burden of proof of having acted with the due diligence required shall be on the authorised intermediaries.

Article 24

*Management of investment portfolios*¹⁴⁵

1. The following regulations shall be applied to portfolio management:
 - a) the customer may issue binding instructions with regard to transactions to be performed;
 - b) the customer may withdraw from the contract at any time, without prejudice to the right of withdrawal by the investment company, asset management company or bank pursuant to Article 1727 of the Civil Code;
 - c) the power to exercise voting rights in relation to financial instruments under management may be conferred upon an investment company, bank or asset management company by means of proxy granted in writing for each shareholder's meeting in observance of the limits and procedures established by regulation by the Minister of the Economy and Finance, after consulting the Bank of Italy and Consob¹⁴⁶.
2. Agreements in conflict with the provisions of this article shall be null and void, nullity may be enforced only by the customer.

Article 25

Trading on regulated markets

1. Investment companies and Italian banks authorised to provide the services of dealing for own account and execution of orders for clients may operate in Italian regulated markets, in EU markets and in non-EU markets recognized by Consob pursuant to Article 67. EU and non-EU investment companies and EU and non-EU banks authorised to provide such services and activities may operate in Italian regulated markets.
2. Persons other than those as indicated in subsection 1 of this Article may access regulated markets, taking into account the regulations adopted by the management company pursuant to Article 62, subsection 2, under the following terms:
 - a) they satisfy the requirements of integrity and professionalism;
 - b) they have a sufficient level of trading experience and capacity;
 - c) they have adequate organisational strategies;

¹⁴³ Subsection first amended by art. 3 Legislative Decree no. 303 of 29.12.2006 and later by art. 4 Legislative Decree no. 164 of 17.9.2007 which added the words: "and activities" and suppressed the words: "or the accessory services pursuant to article 1, subsection 6, paragraph f)".

¹⁴⁴ Subsection amended by art. 4 Legislative Decree no. 164 of 17.9.2007.

¹⁴⁵ Heading amended by art. 4 Legislative Decree no. 164 of 17.9.2007 which removed the words "investment".

¹⁴⁶ Subsection replaced by art. 11 Legislative Decree no. 164 of 17.09.2007. See Ministry of the Treasury, Budget and Economic Planning decree no. 470 of 11.11.1998 (published in Official Gazette no. 7 of 11.1.1999).

d) they have sufficient resources for the role to be performed.

3. Persons pursuant to subsection 2, permitted to trade on regulated markets, shall adopt conduct using due diligence, correctness and transparency in order to ensure market integrity¹⁴⁷.

Article 25-bis¹⁴⁸

Financial products issued by banks and insurance companies

1. Articles 21 and 23 shall apply to the subscription and placement of financial products issued by banks and by insurance companies.¹⁴⁹

2. In relation to products referred to in subsection 1 and for the purposes referred to in Article 5(3), Consob shall exercise the regulatory powers and the powers regarding reporting requirements and inspections referred to in Article 6 subsections 2 and 2-bis, paragraphs d), e), i), j), l), m) and n), as well as the powers referred to in Article 7(1)¹⁵⁰.

3. The board of auditors, the supervisory board or the management control committee of insurance companies shall promptly inform Consob of any act or fact it comes to know of in the performance of its duties that may constitute a violation of the rules referred to in this chapter or of general or specific rules laid down by Consob under subsection 2.

4. The independent statutory auditors of insurance companies shall promptly notify Consob of acts or facts they find in the performance of the engagement that may constitute a serious violation of the rules referred to in this chapter or of general or specific rules laid down by Consob under subsection 2¹⁵¹.

5. Subsections 3 and 4 shall also apply to the internal control bodies of companies and the independent statutory auditors of companies that control insurance companies or are controlled by insurance companies as defined in Article 2359 of the Civil Code¹⁵².

6. Isvap and Consob shall inform each other of the inspections they conduct at insurance companies. Each authority may ask the other to make checks on matters for which it is competent.

Chapter III

Cross-border operations

Article 26

Branches of Italian investment companies and freedom to provide services

1. Italian investment companies may operate:

a) in another EU country, also without establishing branches there, in compliance with the regulation referred to in subsection 2;

¹⁴⁷ Article first amended by art. 10, subsection 3 of Law no. 13 of 06.02.2007 (2006 Community Law) and later replaced by art. 4, Legislative Decree no. 164 of 17.09.2007.

¹⁴⁸ Article first replaced by art. 11, Law no. 262 of 28.12.2005 and later amended by art. 3, Legislative Decree no. 303 of 29.12.2006, by art. 4, Legislative Decree no. 164 of 17.09.2007 and art. 40, Legislative Decree no. 39 of 27.1.2010 as indicated in the following footnotes.

¹⁴⁹ The previous wording: "and, insofar as they are compatible," was replaced by the wording: "and" by Art. 3 of Legislative Decree No. 303 of 29.12.2006.

¹⁵⁰ Subsection amended by art. 4 Legislative Decree no. 164 of 17.9.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁵¹ Subsection amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: "the appointed independent auditors" with the words: "the appointed statutory auditors".

¹⁵² Subsection amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: "the appointed independent auditors" with the words: "the appointed statutory auditors".

b) in a non-EU country, also without establishing branches there, subject to authorisation by the Bank of Italy.

2. The Bank of Italy, after consulting Consob, shall lay down in a regulation:

a) the rules implementing the Community provisions concerning the conditions and procedures to be complied with for Italian investment companies to provide services subject to mutual recognition in other EU countries by establishing branches or under the freedom to provide services;

b) the conditions and procedures for granting authorisation to Italian investment companies to provide services not subject to mutual recognition in other EU countries and services in non-EU countries¹⁵³.

3. The existence of cooperation agreements between the Bank of Italy and Consob and the competent authorities of the host country and the opinion of Consob shall in all cases be conditions for the granting of authorisation.

Article 27

EU investment companies

1. For the purpose of providing services subject to mutual recognition, EU investment companies may establish branches in Italy. The establishment of the first branch shall be subject to prior notification to Consob by the competent authority of the home country; the branch shall commence business two months after the notification¹⁵⁴.

2. EU investment companies may provide services subject to mutual recognition in Italy without establishing branches there provided Consob has been informed by the competent authority of the home country¹⁵⁵.

3. Consob, after consulting the Bank of Italy, shall lay down in a regulation the conditions and procedures to be complied with for EU investment companies to provide services subject to mutual recognition in Italy, including those procedures regarding possible requests for Consob to amend the provisions regarding the branches to be established in Italy.¹⁵⁶

4. Consob, after consulting the Bank of Italy, shall by regulation establish rules for the authorisation of any activities performed by EU investment companies that are not subject to mutual recognition in Italy¹⁵⁷.

Article 28

Non-EU investment companies

1. The establishment in Italy of the first branch of a non-EU investment company shall be authorised by Consob after consulting the Bank of Italy. The authorisation shall be subject to:

a) satisfaction by the branch of requirements corresponding to those provided for by Articles 19(1)(d), 19(1)(e) and 19(1)(f);

b) authorisation and actual provision in the home country of the investment services and activities, and non-core services which the non-EU investment company intends to provide in Italy¹⁵⁸;

c) the existence in the home country of provisions concerning authorisation, organisational arrangements and supervision equivalent to those applying to Italian investment companies in Italy;

d) the existence of cooperation agreements between the Bank of Italy and Consob and the competent authorities of the home country;

¹⁵³ See Bank of Italy Regulation no. 1097 of 29.10.2007 (published in Official Gazette no. 255 of 2.11.2007).

¹⁵⁴ Subsection amended by art. 5 Legislative Decree no. 164 of 17.9.2007 which removed the words “to the Bank of Italy and”.

¹⁵⁵ Subsection amended by art. 5 Legislative Decree no. 164 of 17.9.2007 which removed the words “to the Bank of Italy and” and replaced the words: “have been informed” with the words: “has been informed”.

¹⁵⁶ Subsection amended by art. 5 Legislative Decree no. 164 of 17.9.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁵⁷ See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁵⁸ Subsection amended by art. 5 Legislative Decree no. 164 of 17.9.2007.

e) the fulfilment of conditions of reciprocity in the home country within the limits permitted by international agreements.

2. Consob, after consulting the Bank of Italy, shall authorise non-EU investment companies to provide investment and non-core services and activities without establishing branches, provided the conditions referred to in subsection 1, paragraphs *b*)-*e*), are fulfilled and a programme of the activities to be carried on in Italy is submitted¹⁵⁹.

3. Consob, after consulting the Bank of Italy, may adopt general rules specifying the services and activities non-EU investment companies may not provide in Italy without establishing branches.¹⁶⁰

Article 29

Banks

1. Title II, Chapter II, of the Consolidated Law on Banking shall apply to the provision of investment and non-core services and activities in foreign countries by Italian banks and to the provision such services in Italy by foreign banks¹⁶¹.

Chapter IV Door-to-door selling

Article 30

Door-to-door selling

1. Door-to-door selling shall mean the promotion and placement with the public of:

a) financial instruments in a place other than the registered office or the establishments of the issuer, the offeror or the person appointed to carry out the promotion or placement;

b) investment services and activities in a place other than the registered office or the establishments of the provider, promoter or seller of the service¹⁶².

2. Services provided to professional customers, identified pursuant to Article 6, subsections *2-quinquies* and *2-sexies*, shall not constitute door-to-door sales¹⁶³.

3. Door-to-door selling of financial instruments may be carried on by:

a) persons authorised to perform the service referred to in Article 1 subsection 5, paragraphs *c*) and *c-bis*)¹⁶⁴;

b) asset management companies, harmonised asset management companies and SICAVs, exclusively for units and shares of collective investment undertakings.¹⁶⁵

4. Investment companies, banks, financial intermediaries entered in the special register provided for in Article 107 of the Consolidated Law on Banking, asset management companies and harmonised asset management companies may engage in door-to-door selling of their own investment services and activities.

¹⁵⁹ Subsection amended by art. 5 Legislative Decree no. 164 of 17.9.2007.

¹⁶⁰ Heading amended by art. 5 Legislative Decree no. 164 of 17.9.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁶¹ Subsection as replaced by art. 5, Legislative Decree no. 164 of 17.09.2007.

¹⁶² Paragraph amended by art. 6 Legislative Decree no. 164 of 17.9.2007.

¹⁶³ Subsection replaced by art. 6 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁶⁴ Heading amended by art. 6 Legislative Decree no. 164 of 17.9.2007.

¹⁶⁵ Paragraph as amended by Article 7 of Legislative Decree 274/2003.

Where such selling involves services and activities provided by other intermediaries, investment companies and banks must be authorised to perform the services referred to in Article 1(5)(c) or (c-bis).¹⁶⁶

5. Investment companies and banks may engage in door-to-door selling of products, other than financial instruments and investment services and activities, the characteristics of which shall be established in a regulation issued by Consob after consulting the Bank of Italy.¹⁶⁷

6. The enforceability of contracts for the placement of financial instruments or the management of individual portfolios concluded outside the registered office or sold using distance marketing techniques pursuant to Article 32 shall be suspended for a period of seven days beginning on the date of subscription by the investor. Within that period the investor may notify his withdrawal from the contract at no expense and without any compensation for the approved person or the authorised person. This possibility shall be mentioned in the forms given to the investor. The same rules shall apply to contract proposals effected outside the registered office or using distance marketing techniques pursuant to Article 32¹⁶⁸.

7. Failure to indicate the right of withdrawal in forms shall result in the nullity of the related contracts, which may be enforced only by the customer.

8. Subsection 6 shall not apply to public offerings of shares with voting rights or other financial instruments permitting such shares to be acquired or subscribed for, provided the shares or financial instruments are traded in regulated markets in Italy or other EU countries.

9. This article shall also apply to financial products different from financial instruments and, restricted to authorised persons, to financial products issued by insurance companies.¹⁶⁹

Article 31 *Financial salesmen*

1. For door-to-door selling, investment companies, asset management companies, harmonised asset management companies, SICAVs, financial intermediaries registered in the list pursuant to Article 107 of the Consolidated Law on Banking and banks shall make use of financial salesmen. Financial salesmen used by EU and non-EU investment companies, harmonised asset management companies, EU and non-EU banks, shall be equivalent, for the purposes of the application of rules of conduct, to a branch established in Italy¹⁷⁰.

2. A financial salesman shall mean a natural person who, as associate agent pursuant to Directive 2004/39/EC, professionally exercises door-to-door selling as an employee, agent or representative. Financial salesman activities shall be performed exclusively in the interests of one person¹⁷¹.

3. The authorised person conferring the appointment shall be jointly and severally liable for losses caused to third parties by a financial salesman, including cases where such losses are the consequence of a criminal offence resulting in conviction.

4. The single register of financial salesmen, divided into territorial sections, has been set up. A body

¹⁶⁶ Subsection as amended by Article 7 of Legislative Decree 274/2003 and later by art. 6 Legislative Decree no. 164 of 17.9.2007.

¹⁶⁷ Subsection amended by art. 5 Legislative Decree no. 164 of 17.9.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁶⁸ Subsection amended by art. 6 Legislative Decree no. 164 of 17.9.2007 which removed the words: "or distance placement pursuant to article 32" and the words: "or by distance techniques pursuant to 32."

¹⁶⁹ Subsection replaced first of all by Art.11 of I No. 262 of 28.12.2005 and then amended by Art. 3 of Legislative Decree No. 303 of 29.12.2006 which replaced the wording: "and from financial products issued by insurance companies, withstanding the obligation to deliver the prospectus" with the words: "and, restricted to qualified people, to financial products issued by insurance companies". **Art. 8, subsection 4 Legislative Decree no. 303/2006 states:** "In exception to the amendments to article 3 subsection 5, article 30 of Legislative Decree no. 58 of 24 February 1998 shall apply to financial products issued by insurance companies as from 1 July 2007".

¹⁷⁰ Subsection replaced by art. 6 Legislative Decree no. 164 of 17.09.2007

¹⁷¹ Subsection replaced by art. 6 Legislative Decree no. 164 of 17.09.2007

composed of members of professional associations representing the financial salesmen and licensed persons has been established to keep said register. The body is legally established in the form of an association, with organisational and statutory independence, in compliance with the principle of territorial division of departments and activities. Within the scope of its financial independence, the body shall determine and collect fees and other sums payable by members, by registration applicants and by persons wishing to sit the evaluation test pursuant to subsection 5, by the amount necessary to guarantee continued performance of its duties. The order issued by the body to claim payment of such fees shall be deemed executive. On expiry of the payment deadline, the body shall levy sums due on the basis of regulations for the official collection of national taxes, and amounts due to local, public and welfare authorities. The body shall arrange entry in the register, subject to verification of possession of the necessary requirements, or cancellation from the register in any case contemplated by Consob in the Regulation indicated in subsection 6, paragraph a), and shall take all other action necessary for the proper keeping of the register. The body shall operate in compliance with the provisions and criteria of Consob regulations and under Consob's supervision¹⁷².

5. The Minister of the Economy and Finance¹⁷³ shall establish the integrity and experience requirements for entry in the register referred to in subsection 4 in a regulation adopted after consulting Consob. The experience requirements for entry in the register shall be verified on the basis of rigorous evaluation criteria that take account of validly documented previous professional experience or on the basis of examinations.¹⁷⁴

6. Consob shall lay down in a regulation the principles and rules concerning:

- a) the setting up of the register provided for in subsection 4 and the related forms of publicity;
- b) the representative requirements for the professional associations of approved persons and authorised intermediaries;
- c) entry in the register provided for in subsection 4 and the grounds for suspension, striking off and readmission;
- d) the grounds for incompatibility;
- e) the precautionary measures and sanctions governed respectively by Articles 55 and 196 and the violations to which the sanctions provided for in Article 196(1) shall apply;
- f) the examination by Consob itself of complaints against the decisions of the body referred to in subsection 4 regarding matters referred to in paragraph c);
- g) the rules of presentation and conduct which approved persons must comply with in their dealings with customers;
- h) the arrangements for retaining the documentation regarding the activity performed by approved persons;
- i) the activity of the body referred to in subsection 4 and the manner of performing supervision by Consob itself;
- l) arrangements for the professional updating of approved persons.¹⁷⁵

7. Consob may require approved persons and the persons who use approved persons to communicate data and information and to transmit documents and records and establish the related time limits. It may also carry out inspections and require the exhibition of documents and the adoption of measures it deems necessary.

¹⁷² Subsection first replaced by art. 14, Law no. 262 of 28.12.2005 and later replaced by art. 1, subsection 2, Legislative Decree no. 101 of 17.7.2009.

¹⁷³ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

¹⁷⁴ See Decree 472/1998 issued by the Minister of the Treasury, the Budget and Economic Planning (published in Official Gazette no. 7 of 11.11.1999). The words "held by Consob" were deleted by Article 14 of Law 262/2005.

¹⁷⁵ Subsection as amended by Article 14 of Law 262/2005. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

Article 32

*Distance marketing of investment services and activities and financial instrument*¹⁷⁶

1. Distance marketing techniques shall mean techniques of contacting customers, other than advertising, which do not involve the simultaneous physical presence of the customer and the offeror or a person appointed by the offeror.
2. Consob, after consulting the Bank of Italy, may issue a regulation, in conformity with the principles established in Article 30 and in Legislative Decree no. 190 of 19th August 2005, on the distance marketing of investment services and activities and financial products.¹⁷⁷

Chapter IV-bis¹⁷⁸**Protection of investors**

Article 32-bis

Protection of investors' collective undertakings

1. Consumer associations entered on the list pursuant to Article 137 of Legislative Decree no. 206 of 6 September 2005 shall be entitled to protect investors' collective undertakings, relating to the provision of investment services and activities, accessory services and collective asset management services, in the forms pursuant to Article 139 and 140 of the aforementioned Legislative Decree.

Article 32-ter

Out-of-court settlement of disputes

1. For the purposes of out-of-court settlements of disputes between investors and authorised persons and relating to the provision of investment services and activities, accessory services and collective asset management services, the procedures for conciliation and arbitration defined pursuant to Article 27, Law no. 262 of 28th December 2005 shall apply. Until such procedures are established, Article 41 of Legislative Decree no. 206 of 6th September 2005 shall apply.

TITLE III**COLLECTIVE PORTFOLIO MANAGEMENT****Chapter I****Authorised intermediaries**

Article 33

Eligible activities

1. The provision of the service of collective portfolio management shall be reserved to:
 - a) asset management companies and SICAVs;
 - b) harmonised asset management companies, exclusively for the activity referred to in Article 1(1)(n), point 2.
2. Asset management companies may:
 - a) provide portfolio management services¹⁷⁹;

¹⁷⁶ Heading amended by art. 6 Legislative Decree no. 164 of 17.9.2007.

¹⁷⁷ Subsection first amended by art. 3 Legislative Decree no. 303 of 29.12.2006 and later replaced by art. 6 Legislative Decree no. 164 of 17.9.2007. Legislative Decree no. 190 of 19.8.2005 was repealed by art. 21, Legislative Decree no. 221 of 23.10.2007, which included regulations on "distance marketing of financial services to consumers" provided in Legislative Decree no. 206 of 6.9.2005. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁷⁸ Chapter amended by art. 7 Legislative Decree no. 164 of 17.9.2007.

¹⁷⁹ Paragraph amended by art. 8 Legislative Decree no. 164 of 17.9.2007.

- b) set up and manage pension funds;
- c) perform the related and instrumental activities established by the Bank of Italy after consulting Consob¹⁸⁰;
- d) provide the non-core services referred to in Article 1(6)(a), exclusively for the units of collective investment undertakings they themselves have set up;
- e) provide investment consultancy services¹⁸¹;
- e-bis) market own or third party UCITS units or shares in observance of the rules of conduct established by Consob, after consulting the Bank of Italy¹⁸².

3. Asset management companies may entrust specific investment choices to intermediaries authorised to provide asset management services within the framework of asset allocation criteria laid down from time to time by the managers.

4. Asset management companies may delegate specific functions inherent in the provision of the services referred to in subsections 1 and 2 to third parties in ways that avoid turning the company into an empty shell, without prejudice to its responsibility vis-à-vis participants in the fund for the actions of agents.¹⁸³

Chapter II Investment funds

Article 34

Authorisation of Italian asset management companies

1. The Bank of Italy, after consulting Consob, shall authorise the provision of the service of collective asset management, the service of portfolio management, and investment consultancy services by asset management companies where the following conditions are satisfied¹⁸⁴:

- a) the legal form adopted is that of a *società per azioni*;
- b) the registered office and the head office of the company are in Italy;
- c) the paid-up capital is not less than that established on a general basis by the Bank of Italy¹⁸⁵;
- d) the persons performing administrative, management and supervisory functions fulfil the experience, independence and integrity requirements referred to in Article 13;¹⁸⁶
- e) holders of investments indicated in Article 15, subsection 1 are in possession of the integrity requirements established in Article 14 and there are no grounds for prohibition pursuant to Article 15, subsection 2¹⁸⁷;
- f) the structure of the group of which the company is part is not prejudicial to the effective supervision of the company and at least the information required pursuant to Article 15(5) is provided;
- g) a programme of initial operations and a description of the organisational structure have been submitted together with the instrument of incorporation and the Articles of Association;
- h) the name of the company contains the words "*società di gestione del risparmio*".

2. Authorisation shall be denied where verification of the conditions indicated in subsection 1 shows that sound and prudent management is not ensured.

¹⁸⁰ See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

¹⁸¹ Paragraph amended by art. 8 Legislative Decree no. 164 of 17.09.2007 which replaced the words: "the accessory services pursuant to article 1, subsection 6, paragraph f)" with the words: "investment consultancy services".

¹⁸² Paragraph added by art. 8 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

¹⁸³ Subsection first amended by art. 8 Legislative Decree no. 274 of 1.8.2003 and later by art. 8 Legislative Decree no. 164 of 17.9.2007.

¹⁸⁴ Indent amended by art. Legislative Decree no. 164 of 17.9.2007 which replaced the words: "and management services on an individual basis on investment portfolios" with the words: " , portfolio management and investment consultancy services".

¹⁸⁵ See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

¹⁸⁶ Paragraph as amended by Legislative Decree 37/2004.

¹⁸⁷ Paragraph first replaced by Legislative Decree no. 37 of 6.2.2004 and later by art. 2, Legislative Decree no. 21 of 27.01.2010.

3. The Bank of Italy, after consulting Consob, shall regulate the authorisation procedure and the cases in which authorisation shall lapse where the Italian management company fails to start or interrupts the provision of services authorised¹⁸⁸.

4. The Bank of Italy, after consulting Consob, shall authorise the merger or division of Italian asset management companies¹⁸⁹.

Article 35 *Register*

1. Asset management companies shall be entered in a special register kept by the Bank of Italy. Harmonised asset management companies that have sent the communications referred to in Article 41-*bis* shall be entered in a list annexed to the register.¹⁹⁰

2. The Bank of Italy shall communicate entries in the register referred to in subsection 1 to Consob.¹⁹¹

3. The persons referred to in subsection 1 shall indicate the details of the entry in the register in their documents and correspondence.

Article 36 *Investment funds*

1. Investment funds shall be managed by the originating asset management companies or by other asset management companies. The latter may manage both their own established funds and funds established by other companies.

2. Custody of the financial instruments and cash of investment funds shall be entrusted to a depositary bank.

3. Minimum investments in an investment fund shall be regulated by the fund regulation. The Bank of Italy, after consulting Consob, shall establish the general criteria for the drafting of fund regulations and their minimum content, in addition to the provisions of Article 39¹⁹².

4. In performing their respective functions, the promoter, the manager and the depositary bank shall act independently and in the interests of the unit-holders.

5. The promoter and the manager shall jointly and severally assume the obligations and responsibilities of agent vis-à-vis the unit-holders.

6. Each investment fund and each sub-fund shall constitute an independent pool of assets, separate to all intents and purposes from the assets of the Italian management company and from those of each unit-holder, as well as from any other assets managed by the same company; commitments relating to bonds subscribed on its own account shall be met solely from the investment fund's own equity. Such assets may not be admitted in legal actions brought by creditors of the Italian management company or in its interest or in actions brought by creditors of the depositary or the sub-depositary or in their interest. Actions brought by the creditors of individual investors shall be admitted only with respect to the latter's units. In no case may

¹⁸⁸ See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

¹⁸⁹ See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

¹⁹⁰ Subsection as amended by Article 9 of Legislative Decree 274/2003. See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

¹⁹¹ Subsection as amended by Article 9 of Legislative Decree 274/2003.

¹⁹² See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

the Italian management company use the assets belonging to the funds it manages in its own interest or in the interest of third parties¹⁹³.

7. The Bank of Italy, after consulting Consob, shall issue a regulation on the procedures for investment fund mergers¹⁹⁴.

8. Investment fund units shall be represented by registered or bearer certificates, at the choice of the investor. The Bank of Italy, after consulting Consob, may establish on a general basis the characteristics of certificates and the initial face value of units.¹⁹⁵

Article 37

Structure of investment funds

1. The Minister of the Economy and Finance¹⁹⁶ shall establish, in a regulation adopted after consulting the Bank of Italy and Consob, the general criteria investment funds must observe as regards:

- a) the object of the investment;
- b) the categories of investor targeted,
- c) the manner of participating in open- and closed-end funds, with special reference to the frequency of the issue and redemption of units, the minimum subscription, if any, and the procedures to be followed;
- d) the minimum or maximum duration, if any;
- d-bis) the terms and conditions for the purchase or transfer of assets, both when funds are first set up and thereafter, for funds investing exclusively or prevalently in real estate, property rights and investments in real estate companies^{197 198};

2. The regulation referred to in subsection 1 shall also establish:

- a) the circumstances in which funds must be of the closed-end type;
- b) the precautions to be taken, with special reference to the intervention of independent experts in the assessment of assets, in the case of the sale or contribution of assets to a closed-end fund by shareholders of the management company or by companies belonging to the same group as the management company, with the establishment of a percentage limit with respect to funds' total assets, and in the case of the sale of fund assets to such persons;¹⁹⁹
- b-bis) the cases in which it is possible to waive the prudential rules for limiting and spreading risk established by the Bank of Italy, having regard, *inter alia*, to the nature and professional experience of investors, the final sentence of article 36 subsection 3, subsection 7, and article 39 subsection 3, shall not apply to such funds; in the case of funds referred to in subsection 1, paragraph d-bis), provision must be made for such funds to be able to take out loans up to at least 60 per cent of the value of real estate, property rights with respect to real estate and shares of property companies and up to 20 per cent for other assets and to take steps to enhance the value of such assets²⁰⁰;

¹⁹³ Subsection amended by art. 32, subsection 1, Law Decree no. 78 of 31.5.2010 which added the words: “; commitments relating to bonds subscribed on its own account shall be met solely from the investment fund’s own equity”.

¹⁹⁴ See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

¹⁹⁵ Subsection as amended by Article 10 of Legislative Decree 274/2003. See the Bank of Italy Regulation of 14.4.2005 (published in the Ordinary Section no. 88 of Official Gazette no. 109 of 12.5.2005).

¹⁹⁶ The former wording “Minister of the Treasury, Budget and Economic Planning” was replaced with the wording “Minister of the Economy and Finance” by art. 1 of Legislative Decree no. 37 of 6.2.2004.

¹⁹⁷ Paragraph added by art. 5, Law Decree no. 351 of 25.9.2001, converted to Law no. 410 of 23.11.2001.

¹⁹⁸ See Minister of the Treasury, Budget and Economic Planning decree no. 228 of 24.05.1999 (published in Official Gazette no. 164 of 15.07.1999). Art. 32, subsection 2 of Law Decree no. 78 of 31.5.2010 states: “Pursuant to article 37, Legislative Decree no. 58 of 24 February 1998, the Minister of the Economy and Finance shall issue implementing provisions to subsection 1 within thirty days of the date of entry into force of the conversion law relevant to this decree”. Art. 32, subsection 9 of Law Decree no. 78 of 31.5.2010 states: “By order of the Managing Director of the Italian Inland Revenue, to be issued within 30 days of the date of issue of the decree referred to in subsection 2, the implementation methods for the provisions of subsections 4 and 5 shall become final”.

¹⁹⁹ Paragraph as amended by Article 5 of Decree Law 351/2001, ratified by Law 410/2001.

²⁰⁰ Paragraph first replaced by art. 5, Law Decree no. 351 of 25.9.2001, converted to Law no. 40 of 23.11.2001 and later amended by art. 32, Law Decree no. 78 of 31.5.2010 which added the words: “the final sentence of article 36 subsection 3, subsection 7, and article 39 subsection 3, shall not apply to such funds”.

c) the accounting records, the report on operations and the periodic statements that asset management companies are required to prepare, in addition to what is prescribed for commercial undertakings, and the obligations concerning the diffusion of the report on operations and the periodic statements;

d) the circumstances in which an Italian management company must apply for the admission to trading in a regulated market of the certificates representing fund units; e) the requirements and fees for the independent experts referred to in point 5 of Article 6(1)(c).

e) the requirements and fees of independent experts indicated in Article 6, subsection 1, paragraph c), subparagraph 5).

2-bis. The regulation referred to in subsection 1 shall also identify the matters for which meetings of participants in closed-end funds shall be called to adopt resolutions that are binding on the Italian management company. Such meetings shall in any case be called to vote on the replacement of the Italian management company, admission to listing where this is not provided for and changes to the investment policy. Meetings shall be called by the board of directors of the Italian management company, inter alia at the request of participants representing at least 10 per cent of the value of the units in circulation, and resolutions shall be adopted with the favourable vote of at least 50 per cent plus one of the units represented in the meeting. In no case may the quorum be less than 30 per cent of the value of all the units in circulation. The resolutions adopted by meetings shall be submitted to the Bank of Italy for its approval. They shall be deemed to be approved where four months elapse from their submission without the adoption of a measure rejecting them. Articles 46(2) and 46(3) shall apply to meetings of participants for matters not governed by this provision or the regulation referred to in subsection 1.²⁰¹

Article 38 *Depositary bank*

1. In performing its functions, a depositary bank shall:

a) verify the legitimacy of the operations of issuing and redeeming units and the application of fund income;²⁰²

a-bis) verify the correctness of the calculation of the value of the fund's units or, if appointed to do so by the Italian management company, make the calculation itself;²⁰³

b) verify that in transactions involving a fund's assets any consideration is remitted to it within the customary time limits;

c) carry out the instructions of the Italian management company unless they conflict with the law, the fund rules or the prescriptions of the supervisory authorities.

2. The depositary bank shall be liable to the Italian management company and unit-holders for any loss suffered by them as a result of its failure to perform its obligations.

3. The Bank of Italy, after consulting Consob, shall establish the conditions for accepting appointment as depositary bank and the procedures for subdepositing fund assets²⁰⁴.

4. The directors and members of the board of auditors of the depositary bank shall promptly inform the Bank of Italy and Consob, within the scope of their respective authority, of irregularities they discover in the management of the Italian management company and in the management of investment funds.

²⁰¹ Subsection added by Article 41-bis, subsection 7, of Law 326/2003 (published in Official Gazette, no. 274 of 25 November 2003) and then amended by Article 3(124) of Law 350/2003 (published in the Ordinary Supplement of Official Gazette, no. 299 of 27 December 2003).

²⁰² Paragraph as amended by Article 11 of Legislative Decree 274/2003.

²⁰³ Paragraph added by Article 11 of Legislative Decree 274/2003.

²⁰⁴ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

Article 39
Fund rules

1. The rules of each investment fund shall specify the characteristics of the fund, regulate its operation, indicate the promoter, the manager, if different from the promoter, and the depositary bank, specify the division of tasks between such persons, and regulate the relationships between such persons and unit-holders.
2. In particular, the fund rules shall establish:
 - a) the name and duration of the fund;
 - b) the manner of participating in the fund, the time limits and procedures for the issue and cancellation of certificates and for the subscription and redemption of units, as well as the procedures for winding up the fund;
 - c) the bodies responsible for the selection of investments and the criteria for the apportionment of investments;
 - d) the types of goods, financial instruments and other assets in which the fund's assets may be invested;
 - e) the methods for determining the fund's operating income and profits and, where appropriate, the manner in which the latter are allocated and distributed;
 - f) details of the expenses to be borne by the fund and those to be borne by the Italian management company;
 - g) the amount of, or the methods for determining, the commissions due to the Italian management company and the charges to be borne by unit-holders;
 - h) the manner of making public the value of units.
3. The Bank of Italy shall approve the fund rules and amendments thereto, assessing in particular their completeness and compatibility with the general criteria established pursuant to Articles 36 and 37.²⁰⁵

3-bis. The Bank of Italy shall specify the cases in which, on the basis of the subject of the investment, the category of investor or the fund's operating rules, the fund rules and amendments thereto shall be deemed to be approved on a general basis. In the other cases the rules shall be deemed to be approved where three months elapse from their submission without the Bank of Italy adopting a measure rejecting them.²⁰⁶

Article 40
Rules of conduct and voting rights

1. Asset management companies must:
 - a) operate diligently, correctly and transparently in the interests of the unit-holders and the integrity of the market;
 - b) organise themselves in such a way as to minimize the risk of conflicts of interest, including conflicts between the pools of assets under management and, where a conflict of interest exists, act in such a way as to ensure the fair treatment of the collective investment undertakings;
 - c) adopt measures to protect the rights of the unit-holders and have sufficient resources and suitable procedures for the efficient provision of services.²⁰⁷
2. Asset management companies shall exercise, in the interests of the unit-holders, the voting rights attached to the financial instruments belonging to the funds under management, except as provided for otherwise by law.
3. Where the manager is different from the promoter, the exercise of voting rights provided for in the previous subsection shall pertain to the manager, unless agreed otherwise.

²⁰⁵ Subsection as amended by Article 12 of Legislative Decree 274/2003. See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

²⁰⁶ Subsection added by Article 12 of Legislative Decree 274/2003. See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

²⁰⁷ Subsection as amended by Article 13 of Legislative Decree 274/2003.

Chapter II-bis **Operations abroad**²⁰⁸

Article 41²⁰⁹

Italian asset management companies' operations abroad

1. Italian asset management companies may operate, also without establishing branches:
 - a) in another EU country, in compliance with the regulation referred to in subsection 2;
 - b) in a non-EU country, subject to authorisation by the Bank of Italy.
2. The Bank of Italy, after consulting Consob, shall lay down in a regulation:
 - a) the rules implementing the Community provisions concerning the conditions and procedures to be complied with for asset management companies to provide in other EU countries the services they are authorised to provide under Community law;
 - b) the conditions and procedures for granting authorisation to asset management companies for the provision of authorised services in non-EU countries²¹⁰.
3. The granting of the authorisation referred to in subsection 2, paragraph b) shall be subject to the existence of cooperation agreements between the Bank of Italy and Consob and the competent authorities of the host country.

Article 41-bis²¹¹

Harmonised asset management companies

1. In order to carry on the activities they are authorised to engage in under Community law, harmonised asset management companies may establish branches in Italy. The establishment of the first branch shall be preceded by a communication to the Bank of Italy and Consob from the competent home country authority. The branch shall start operating when two months have elapsed from such communication.
2. Except as provided for in Article 42, harmonised asset management companies may engage in Italy in the activities they are authorised to perform under Community law without establishing branches, provided the Bank of Italy and Consob are informed by the competent home country authority.
3. The Bank of Italy, after consulting Consob, shall issue a regulation on the conditions and procedures harmonised asset management companies must comply with in order to carry on in Italy the activities referred to in subsections 1 and 2 by establishing branches or under the freedom to provide services.
4. Harmonised asset management companies that engage in Italy in the activities referred to in subsection 3 are required to comply with the rules of conduct provided for in Article 40.

Article 42

The marketing in Italy of the units of harmonised and non-harmonised investment funds

1. The marketing in Italy of the units of EU investment funds falling within the scope of the directives on collective investment undertakings must be notified in advance to the Bank of Italy and Consob; marketing may begin after two months have elapsed from the notification.
2. The Bank of Italy, after consulting Consob, shall lay down in a regulation:

²⁰⁸ Indication added by Article 14 of Legislative Decree 274/2003.

²⁰⁹ Article as amended by Article 15 of Legislative Decree 274/2003.

²¹⁰ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²¹¹ Article added by Article 16 of Legislative Decree 274/2003.

- a) rules implementing the provisions of Community law on the procedures to be observed in the application of subsection 1;
- b) rules on the organisational model to be adopted with a view to ensuring the exercise of investors' ownership rights in Italy²¹².
3. Consob, after consulting the Bank of Italy, shall lay down in a regulation:
- a) the information to be provided to the public on the marketing of units in Italy;
- b) the manner in which the issue, sale, repurchase or redemption price of units must be made public.²¹³
4. The Bank of Italy and Consob may, to the extent of their respective duties, require issuers and the persons marketing the units referred to in subsection 1 to provide data and information, also on a periodic basis, and to transmit records and documents²¹⁴.
5. The marketing in Italy of the units of investment funds not falling within the scope of the directives on collective investment undertakings shall be authorised by the Bank of Italy, after consulting Consob, provided the operating arrangements are compatible with those prescribed for Italian undertakings.
6. The Bank of Italy, after consulting Consob, shall lay down in a regulation the conditions and procedures for granting the authorisation referred to in subsection 5.
7. The Bank of Italy and Consob shall exercise the powers referred to in Articles 8 and 10 with regard to activities performed in Italy by the foreign undertakings referred to in subsection 5²¹⁵.
8. The Bank of Italy and Consob may, to the extent of their respective authority, require persons marketing units of the undertakings referred to in subsection 5 to provide data and information, also on a periodic basis, and to transmit records and documents²¹⁶.

Chapter III SICAVs

Article 43 *Establishment and eligible activities*

1. The Bank of Italy, after consulting Consob, shall authorise the establishment of SICAVs where the following conditions are satisfied²¹⁷:
- a) the legal form adopted is that of a *società per azioni* in accordance with the provisions of this chapter;
- b) the registered office and the head office of the company are in Italy;
- c) the paid-up capital is not less than that established on a general basis by the Bank of Italy;
- d) the persons performing administrative, management or supervisory functions fulfil the experience, independence and integrity requirements referred to in Article 13;²¹⁸
- e) holders of investments indicated in Article 15, subsection 1 are in possession of the integrity requirements established in Article 14 and there are no grounds for prohibition pursuant to Article 15, subsection 2²¹⁹;

²¹² See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²¹³ See Consob Regulation 11971/1999 as amended.

²¹⁴ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²¹⁵ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²¹⁶ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²¹⁷ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²¹⁸ Paragraph as amended by art. 3 Legislative Decree 37/2004.

²¹⁹ Paragraph first replaced by art. 3, Legislative Decree no. 37 of 6.2.2004 and later by art. 2, Legislative Decree no. 21 of 27.1.2010.

f) the Articles of Association provide for the object of the company to be exclusively the investment on a collective basis of funds raised through the offer of the company's shares to the public;

f-bis) the structure of the group of which the company is part is not prejudicial to the effective supervision of the company and at least the information required pursuant to Article 15(5) is provided;²²⁰

f-ter) a programme of operations is submitted, together with the instrument of incorporation and the Articles of Association and a report on the company's organisational structure.²²¹

2. The Bank of Italy, after consulting Consob, shall regulate:

a) the authorisation procedure and the cases in which authorisation shall lapse;

b) the documentation to be submitted by the founder members together with the application for authorisation and the content of the proposed instrument of incorporation and Articles of Association²²².

3. The Bank of Italy shall verify compliance of the proposed instrument of incorporation and Articles of Association with law, regulatory provisions and its established general criteria²²³.

4. The founding members of a SICAV must establish the company and pay in the capital subscribed within thirty days of the date of issue of the authorisation. The capital must be fully paid.

5. The name of the company shall contain the words "*società di investimento per azioni a capitale variabile SICAV*". The name must appear on all the company's documents. SICAVs shall not be subject to Articles 2333, 2334, 2335 or 2336 of the Civil Code; capital may not be contributed in kind.

6. SICAVs may perform related and instrumental activities as established by the Bank of Italy after consulting Consob²²⁴.

7. SICAVs may delegate powers to manage their assets exclusively to Italian asset management companies.

8. In the case of multi-sector SICAVs, each sector shall constitute an independent pool of assets, separate for all intents and purposes from the assets of the other sectors.

Article 43-bis²²⁵

SICAVs that appoint an Italian or a harmonised asset management company

1. The Bank of Italy, after consulting Consob, shall authorise the establishment of SICAVs that appoint an Italian management company or a harmonised management company to manage their assets where the following conditions are satisfied:

a) the legal form adopted is that of a *società per azioni* in accordance with the provisions of this chapter;

b) the registered office and the head office of the company are in Italy;

c) the paid-up capital is not less than that established on a general basis by the Bank of Italy;

d) the persons performing administrative, management or supervisory functions fulfil the experience and integrity requirements established pursuant to Article 13;

e) holders of investments indicated in Article 15, subsection 1 are in possession of the integrity requirements established pursuant to Article 14 and there are no grounds for the prohibition envisaged in Article 15, subsection 2²²⁶;

²²⁰ Paragraph added by Article 17 of Legislative Decree 274/2003.

²²¹ Paragraph added by Article 17 of Legislative Decree 274/2003.

²²² See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²²³ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²²⁴ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²²⁵ Article first included by art. 18, Legislative Decree no. 274 of 1.8.2003 and later amended by art. 2, Legislative Decree no. 21 of 27.1.2010 as indicated in the following footnote.

²²⁶ Paragraph as replaced by art. 2, Legislative Decree no. 21 of 27.01.2010.

f) the Articles of Association provide for:

1) the object of the company to be exclusively the investment on a collective basis of funds raised through the offer of the company's shares to the public;

2) the management of all the assets to be entrusted to an Italian or a harmonised management company with an indication of the company appointed. Entrusting the management to a harmonised management company shall be subject to the existence of cooperation agreements with the competent home country authorities, so as to ensure the effective supervision of the management of the SICAV's assets²²⁷.

2. For the purposes of subsection 1, subsections 3, 4, 5 and 8 of Article 43 shall apply.

Article 44

Register

1. SICAVs authorised in Italy shall be entered in a special register kept by the Bank of Italy²²⁸.

2. The Bank of Italy shall communicate entries in the register of SICAVs to Consob.

3. The persons referred to in subsection 1 shall indicate the details of the entry in the register in their documents and correspondence.

Article 45

Capital and shares

1. The capital of a SICAV shall always be equal to its net assets, determined as provided for in point 5 of Article 6(1)(c).

2. Articles 2438 and 2447 of the Civil Code shall not apply to SICAVs²²⁹.

3. The shares representing the capital of a SICAV must be fully paid at the moment they are issued.

4. The shares of a SICAV may be in registered or bearer form, at the choice of the subscriber. Bearer shares carry only one vote per shareholder, irrespective of the number of such shares held.

5. The Articles of Association of a SICAV shall specify the manner of determining the value of its shares, their issue and redemption prices and the intervals at which the shares may be issued and redeemed.

6. The Articles of Association of a SICAV may provide for:

a) limits on the issue of registered shares;

b) restrictions on the transfer of registered shares;

c) the existence of more than one investment sector, for each of which a special class of shares may be issued; in such case criteria shall be laid down for allocating overheads among the various sectors

c-bis) the possibility of issuing fractions of shares, except that the attribution and exercise of the shareholders' rights shall be subject to the possession of at least one share in accordance with the provisions of this chapter.²³⁰

7. Articles 2348, second and third subsections, 2349, 2350, second and third subsections, 2351, 2352, third subsection, 2353, 2354, third subsection, paragraphs 3 and 4, 2355-bis and 2356 of the Civil Code shall not apply to SICAVs.²³¹

²²⁷ Paragraph added by Article 18 of Legislative Decree no. 274 of 1.8.2003.

²²⁸ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²²⁹ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²³⁰ Paragraph added by Article 19 of Legislative Decree 274/2003.

²³¹ Subsection as amended by Legislative Decree 37/2004.

8. SICAVs may not issue bonds or savings shares or purchase or hold their own shares.

Article 46
Shareholders' meetings

1. SICAVs' ordinary shareholders' meetings and extraordinary meetings at the second call shall be duly constituted and may adopt resolutions however much capital is represented.

2. Votes may be cast by post where this is provided for in the Articles of Association. In such case the notice calling the meeting must contain the full text of the proposed resolutions. Postal votes shall not be counted where the resolution to be put to the vote in the shareholders' meeting does not conform with that contained in the notice calling the meeting, but the shares in question shall be counted for the purpose of establishing due constitution of the ordinary shareholders' meeting. The Minister of the Economy and Finance shall establish the procedures for casting postal votes in a regulation adopted after consulting the Bank of Italy and Consob^{232 233}.

3. The notice provided for in the second subsection of Article 2366 of the Civil Code shall also be published in the daily newspapers, specified in the Articles of Association, in which the value of the company's net assets and the net asset value per share are published; the time limit referred to in Article 2366, second subsection, shall be thirty days.

Article 47
Amendments to the Articles of Association

1. The Bank of Italy shall approve amendments to SICAVs' Articles of Association. They shall be deemed to be approved where four months elapse from their submission without adoption of a rejection measure by the Bank of Italy²³⁴.

2. Resolutions involving amendments to a SICAV's Articles of Association may not be filed pursuant to and for the purposes of Article 2436 of the Civil Code if they have not been approved within the time limit and in the manner provided for in Article 1. The resolutions shall be sent to the Bank of Italy within fifteen days of the date of the shareholders' meeting; the filing referred to in Article 2346 of the Civil Code must be effected within fifteen days from the date of the reception of the Bank of Italy's approval. Article 2376 of the Civil Code shall not apply.

Article 48
Dissolution and voluntary liquidation

1. Article 2448, subsection 1, paragraphs 4 and 5, of the Civil Code shall not apply to SICAVs. Where the capital of a SICAV falls below the level determined in accordance with Article 43(1)(c) and remains below that level for sixty days, the company shall be dissolved. The time limit shall be suspended where the procedure for a merger with another SICAV has been initiated.²³⁵

2. The acts for which publication is provided for in Article 2484, subsections 3 and 4, of the Civil Code must also be published in the daily newspapers specified in the Articles of Association and transmitted to the Bank of Italy within ten days of their entry in the Company Register. The issue and redemption of shares shall be suspended in the case referred to in Article 2484, subsection 1, paragraph 6, of the Civil Code from the date the resolution is adopted, in the cases referred to in Article 2448, subsection 1, paragraphs 1, 2, 3 and 7, of

²³² The former wording: "Minister of the Treasury, Budget and Economic Planning" has been replaced by the words: "Minister of the Economy and Finance" by art. 1, Legislative Decree no. 37 of 6.2.2004.

²³³ See Minister of the Treasury, Budget and Economic Planning decree no. 139 of 26.3.1999 (published in Official Gazette no. 116 of 15.07.1999).

²³⁴ See Bank of Italy instruction of 14.4.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.5.2005).

²³⁵ Subsection as amended by Art. 3 Legislative Decree 37/2004.

the Civil Code and in subsection 1 of this article from the date the resolution is adopted by the board of directors or from the date the decree of the president of the court is entered in the Company Register. The resolution adopted by the board of directors shall also be transmitted to Consob within the same time limit.²³⁶

3. The liquidators shall be appointed, removed and replaced by the extraordinary meeting of shareholders. Article 2487 of the Civil Code, except for subsection 1c), and Article 97 of the Consolidated Law on Banking shall apply.²³⁷

4. The Bank of Italy shall be notified in advance of the plan for the disposal of assets and the allotment of the proceeds. The liquidators shall realize the company's assets in accordance with the rules established by the Bank of Italy.

5. The statement of liquidation assets and liabilities shall be submitted to the independent statutory auditors for their opinion and shall be published in the daily newspapers specified in the Articles of Association²³⁸.

6. The depositary bank shall reimburse, in accordance with the instructions of the liquidators, the shares on the basis of the final statement of the assets and liabilities of the liquidation.

7. For matters not governed by this article, SICAVs shall be subject to Book V, Title V, Chapter VIII, of the Civil Code insofar as they are compatible.²³⁹

Article 49 *Mergers and divisions*

1. SICAVs may not transform themselves into undertakings which are not subject to this chapter or Chapter II of this title²⁴⁰.

2. Mergers and divisions of SICAVs shall be subject to Articles 2501 *et seq.* of the Civil Code insofar as they are compatible.

3. Plans for mergers and divisions, drawn up in accordance with Article 43, and resolutions of shareholders' meetings amending such plans shall be submitted to the Bank of Italy in advance for clearance, which it shall grant after consulting Consob.²⁴¹

4. In the absence of the clearance referred to in subsection 3, the entries in the Company Register required by the Civil Code may not be made.²⁴²

Article 50 *Other applicable provisions*

1. For matters not governed by this chapter, SICAVs shall be subject to Articles 36(2), 37, 38, 40 and 41. SICAVs authorised under Article 43 shall also be subject to Articles 33(3) and 33(4).²⁴³

²³⁶ Subsection as amended by Art. 3 Legislative Decree 37/2004.

²³⁷ Subsection as amended by Art. 3 Legislative Decree 37/2004.

²³⁸ Subsection amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: "the appointed independent auditors" with the words: "the appointed statutory auditor".

²³⁹ Subsection as amended by Art. 3 Legislative Decree 37/2004.

²⁴⁰ Subsection amended by Article 8 Italian Legislative Decree no. 164 of 17.9.2007

²⁴¹ Subsection as amended by art. 3 Legislative Decree 37/2004.

²⁴² Subsection as amended by art. 3 Legislative Decree 37/2004.

²⁴³ Subsection as amended by Article 20 of Legislative Decree 274/2003.

2. The marketing in Italy of the shares of foreign SICAVs shall be subject to Article 42.

TITLE IV INJUNCTIVE REMEDIES AND CRISES

Chapter I Injunctive remedies

Article 51

Injunctive remedies vis-à-vis Italian and non-EU intermediaries

1. In the event of violations by Italian investment companies, non-EU investment companies and banks, asset management companies, SICAVs or banks authorised to provide investment services and activities having their registered office in Italy of the provisions applicable to them under this decree, the Bank of Italy or Consob, to the extent of their duties, may order them to put an end to such irregularities²⁴⁴.

2. The supervisory authority which takes action may also, after consulting the other authority, prohibit the persons referred to in subsection 1 from engaging in new transactions as well as place any other limitation with regard to each type of transaction involving single services or activities, at single branches or establishments of the intermediary or otherwise where²⁴⁵:

- a) the violations are likely to prejudice interests of a general nature;
- b) it is a matter of urgency to protect the interests of investors.

Article 52

Special measures for EU intermediaries

1. In the event of violations by EU investment companies with branches in Italy, harmonised asset management companies, EU banks with branches in Italy or financial companies referred to in Article 18(2) of the Consolidated Law on Banking of the rules applicable to them under this decree, the Bank of Italy or Consob, to the extent of their duties, may order them to put an end to such irregularities and shall inform the competent supervisory authorities of the member state in which the intermediary has its registered office so that any necessary measures may be taken.²⁴⁶

2. The supervisory authority which takes action may, after consulting the other authority, adopt the necessary measures, including the prohibition of new transactions, as well as any other limitation with regard to each type of transaction, single services or activities, also limited to single branches or establishments of the intermediary, and may also order the closure of branches where²⁴⁷:

- a) the competent authorities of the member state in which the intermediary has its registered office take no measures or measures that prove inadequate;
- b) violations of the rules of conduct are found;
- c) the irregularities are likely to prejudice interests of a general nature;
- d) it is a matter of urgency to protect the interests of investors.

3. The measures provided for in subsection 2 shall be notified by the authority that has adopted them to the competent authorities of the member state in which the intermediary has its registered office.

²⁴⁴ Subsection amended by art. 9 Legislative Decree no. 164 of 17.9.2007 which added the words: “and activities” and replaced the words: “on matters within the scope of their duties” with the words: “to the extent of their duties”.

²⁴⁵ Indent amended by art. 9 Legislative Decree no. 164 of 17.9.2007 which replaced the word: “regarding” with the words: “, and impose any other limitation with regard to each type of transaction,”.

²⁴⁶ Subsection as amended by Article 21 of Legislative Decree 274/2003 and later by art. 9 Legislative Decree no. 164 of 17.9.2007.

²⁴⁷ Indent substituted by Article 9 of Legislative Decree no. 164 of 17.9.2007.

3-bis. Where there are grounds to suspect that an EU investment company of bank freely operating in Italy do not comply with obligations deriving from EU regulations, the Bank of Italy or Consob shall inform the competent authority of the member state in which the intermediary's registered office is based to arrange necessary measures. If despite measures adopted by the competent authority the intermediary continues to act in a manner that compromises the interests of investors or regular market operations, the Bank of Italy or Consob, after notifying the competent authority of the member state in which the intermediary's registered office is based, shall adopt all measures necessary, including the prohibition of execution of further operations in Italy. After consulting the other authority, the Bank of Italy or Consob shall proceed and inform the European Commission of the measures adopted²⁴⁸.

3-ter. Subsection 3-bis shall also apply in the case of violations by EU investment companies or banks with branches in Italy of obligations deriving from EU regulations for which the competent authority is that of the EU member state in which the intermediary's registered office is based²⁴⁹.

Article 53

Suspension of administrative bodies

1. In situations of danger for customers or markets, the Chairman of Consob may suspend the administrative bodies of an Italian investment company as a matter of urgency and appoint a provisional administrator to take over its management where serious administrative irregularities or serious violations of laws, regulations or Articles of Association are found.
2. The appointment of the provisional administrator shall be for a maximum of sixty days. In the performance of his or her duties, the provisional administrator shall be a public official. The Chairman of Consob may establish special safeguards and limitations on the management of the Italian investment company.²⁵⁰
3. The emolument due to the provisional administrator shall be determined by Consob on the basis of criteria it shall establish and charged to the Italian investment company. The last sentence of Article 91, subsection 1 of the Consolidated Law on Banking shall apply²⁵¹.
4. Civil actions against the provisional administrator for acts performed in carrying out his official duties shall be brought subject to authorisation by Consob.
5. This article shall also apply to the Italian branches of non-EU investment companies. The provisional administrator shall assume the powers of the administrative bodies of the investment company with regard to such branches.
6. This article shall also apply to asset management companies and SICAVs. The Chairman of Consob shall adopt the suspension measure after consulting the Governor of the Bank of Italy.

Article 54

Suspension of the marketing of units of foreign collective investment undertakings

1. Where there are grounds to believe that a foreign collective investment undertaking has violated the provisions applicable to it under this decree, the Bank of Italy or Consob, within the scope of their respective authority, may suspend the marketing of its units or shares as a precautionary measure and for a period not longer than sixty days. If the violation is verified, the supervisory authorities, within the scope of their respective authority, may suspend temporarily or prohibit the marketing of the collective investment undertaking's units or shares.

²⁴⁸ Subsection added by art. 9 Legislative Decree no. 164 of 17.9.2007.

²⁴⁹ Subsection added by art. 9 Legislative Decree no. 164 of 17.9.2007.

²⁵⁰ See Consob Resolutions 10579/1997 and 12378/2000.

²⁵¹ See Consob resolutions no. 12378 of 16.2.2000 and no. 14064 of 6.5.2003.

Article 55

Precautionary measures applicable to financial salesmen

1. In cases of necessity and as a matter of urgency Consob may, as a precautionary measure, suspend financial salesmen from the exercise of their activity for a maximum of sixty days, where there are grounds to believe that there have been serious violations of the law or of general or specific rules laid down by Consob.
2. Consob may, as a precautionary measure and for a maximum of one year, suspend financial salesmen from the exercise of their activity where they have been subjected to one of the precautionary measures referred to in Book IV, Title I, Chapter II of the Criminal Procedure Code or where they are defendants pursuant to Article 60 of that Code for:
 - a) crimes referred to in Book V, Title XI, of the Civil Code and in the bankruptcy law;
 - b) crimes against the public administration, against the good faith of the public, against property, against public order or against the public economy, and tax crimes;
 - c) the crimes referred to in Title VIII of the Consolidated Law on Banking;
 - d) the crimes referred to in this decree;

Chapter II

Crisis procedures

Article 56

Special administration

1. The Minister of the Economy and Finance,²⁵² acting on a proposal from the Bank of Italy or Consob, to the extent of their duties, may issue a decree dissolving the administrative and control bodies of an Italian investment company or management company or a SICAV where:
 - a) serious administrative irregularities or serious violations of laws, regulations or Articles of Association governing its activity are found;
 - b) serious capital losses are expected;
 - c) the dissolution has been the object of a reasoned request by the administrative bodies, an extraordinary meeting of shareholders or the provisional administrator appointed pursuant to Article 53²⁵³.
2. The measure provided for in subsection 1 may also be adopted with respect to the Italian branches of non-EU investment companies. In this case the administrator and the oversight committee assume the powers of the investment company's administrative and control bodies with respect to such branches.
3. The Bank of Italy shall be responsible for the direction of the procedure and all the related formalities. Insofar as they are compatible, Articles 70(2-6), 71, 72, 73, 74 and 75 of the Consolidated Law on Banking shall apply; where such provisions shall be understood to refer to investors instead of depositors and to Italian investment companies, non-EU investment companies, asset management companies and SICAVs instead of banks; and the term "financial instruments" shall refer to financial instruments and cash.
4. Title IV of the Bankruptcy Law shall not apply to Italian investment companies or asset management companies or SICAVs.

²⁵² The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

²⁵³ Subsection amended by art. 9 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "for matters within the scope of their duties" with the words: "to the extent of their duties".

Article 57

Compulsory administrative liquidation

1. The Minister of the Economy and Finance,²⁵⁴ acting on a proposal from the Bank of Italy or Consob to the extent of their duties, may issue a decree withdrawing authorisation to carry on business and ordering the compulsory administrative liquidation of Italian investment companies, asset management companies and SICAVs, even when special administration or liquidation under ordinary rules is already in effect, where the administrative irregularities or the violations of laws, regulations or Articles of Association or the losses referred to in Article 56 are exceptionally serious²⁵⁵.
2. Compulsory liquidation may be ordered in the manner provided for in subsection 1 upon a reasoned request by the administrative bodies, the extraordinary shareholders' meeting, the provisional administrator appointed pursuant to Article 53, the special administrators or the liquidators.
3. The Bank of Italy shall be responsible for the direction of the procedure and all the related formalities. Insofar as they are compatible, Articles 80(3-6), 81, 82, 83, 84, 85, 86 except for subsections 6 and 7, 87(2-4), 88, 89, 90, 91, 92, 93, 94 and 97 of the Consolidated Law on Banking shall apply; where such provisions shall be understood to refer to Italian investment companies, asset management companies and SICAVs instead of banks and the term "financial instruments" shall refer to financial instruments and cash.
4. The liquidators, within thirty days of the expiry of the limitation period referred to in Article 86(5) of the Consolidated Law on Banking and after consulting the superseded directors, shall file the lists of admitted creditors, indicating the existence and order of rights of preference, of holders of rights referred to in subsection 2 of such article and of persons belonging to the same categories whose request for allowance of their claims has been denied with the Bank of Italy and, for inspection by those having entitlement, with the clerk of the court of the place where the Italian investment company or management company or the SICAV has its registered office. Customers entitled to the restitution of financial instruments and funds in connection with services and activities referred to in this decree shall be entered in a special section of the statement of liabilities. This subsection shall apply in the place of Articles 86(6) and 86(7) of the Consolidated Law on Banking²⁵⁶.
5. Persons whose claims have not been allowed in whole or in part may present objections to the statement of liabilities regarding their own position and to the recognition of rights in favour of persons included in the lists referred to in subsection 4, within fifteen days of receipt of the registered letter referred to in Article 86(8) of the Consolidated Law on Banking, and persons whose claims have been admitted may present objections within the same time limit starting from the publication of the notice referred to in subsection 8 of such article. This subsection shall apply in the place of Article 87(1) of the Consolidated Law on Banking.
6. If the compulsory administrative settlement regards a SICAV, the commissioners shall inform shareholders within thirty days of appointment of the number and type of shares pertaining to each in accordance with company records and documents.

Article 58

Italian branches of foreign investment companies

1. Where the authorisation to do business of an EU investment company or a harmonised management company has been revoked by the competent authority, its Italian branches may be subjected to the compulsory administrative liquidation procedure under the provisions of Article 57, insofar as they are compatible.²⁵⁷

²⁵⁴ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

²⁵⁵ Subsection amended by art. 9 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "for matters within the scope of their duties" with the words: "to the extent of their duties".

²⁵⁶ Subsection amended by art. 9 Legislative Decree no. 164 of 17.9.2007.

²⁵⁷ Subsection as amended by Article 22 of Legislative Decree 274/2003.

2. The branches of non-EU investment undertakings shall be subject to the provisions of Article 57, insofar as they are compatible.

Article 59 *Compensation systems*

1. The issue of authorisation for the provision of investment services and activities shall be subject to membership of a compensation system for the protection of investors recognized by the Minister of the Economy and Finance²⁵⁸ after consulting the Bank of Italy and Consob^{259 260}.

2. The Minister of the Economy and Finance,²⁶¹ after consulting the Bank of Italy and Consob, shall adopt a regulation on the organisation and operation of compensation systems.²⁶²

3. The Bank of Italy, after consulting Consob, shall issue a regulation on the coordination of the operation of compensation systems with the compulsory administrative liquidation procedure and supervisory activity in general.

4. Compensation systems shall succeed to the rights of investors up to the amount of payments made to them.

5. The bodies of the insolvency procedure shall verify and certify whether claims admitted to the statement of liabilities arise from the provision of investment services and activities covered by compensation systems²⁶³.

6. The competent court for legal actions involving requests for compensation shall be the court of the place in which the registered office of the compensation system is located.

Article 60 *Foreign intermediaries' membership of compensation systems*

1. Branches of EU investment companies, harmonised asset management companies and banks established in Italy may join a recognized compensation system, with reference exclusively to the activity carried on in Italy, in order to supplement the protection provided by the compensation system in force in their home country.²⁶⁴

2. Unless they are members of an equivalent foreign compensation system, branches of non-EU investment companies and banks established in Italy must join a recognized compensation system, with reference exclusively to the activity carried on in Italy. The Bank of Italy shall verify whether the protection provided by foreign compensation systems to which branches of non-EU investment companies and banks operating in Italy belong can be considered equivalent to that provided by recognized compensation systems.

²⁵⁸ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

²⁵⁹ The compensation system was approved by a decrees issued by the Minister of the Treasury, the Budget and Economic Planning on 30.6.1998 and 29 March 2001, and by the Ministry of the Economy and Finance on 19 June 2007.

²⁶⁰ Subsection amended by art. 9 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "The provision of investment services" with the words: "The issue of authorisation for the provision of investment services and activities".

²⁶¹ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

²⁶² Pending issue of the implementing provision referred to in this subsection, Decree 485 of 14.11.1997 issued by the Minister of the Treasury, the Budget and Economic Planning (published in Official Gazette no. 13 of 17.1.1998) shall apply. Also see the operating regulations approved in decrees issued by the Ministry of the Treasury, the Budget and Economic Planning on 30 June 1998 and 29 March 2001, and by the Ministry of the Economy and Finance on 19 June 2007.

²⁶³ Subsection amended by art. 9 Legislative Decree no. 164 of 17.9.2007.

²⁶⁴ Subsection as amended by Article 23 of Legislative Decree 274/2003.

Article 60-bis

*(Liability of Italian investment companies, asset management companies and SICAVs
for administrative offences consequent on a crime)*

1. Public prosecutors who enter an administrative offence involving an Italian investment company or management company or a SICAV in the register of suspected crimes pursuant to Article 55 of Legislative Decree 231/2001 shall notify the Bank of Italy and Consob. The Bank of Italy and Consob may be heard during the proceedings at the request of the public prosecutor; they may submit written briefs.
2. In every court concerned with the merits of the case, the judge, proceeding on his own authority or otherwise, shall provide for the acquisition from the Bank of Italy and Consob of updated information on the situation of the intermediary, with special reference to its organisational structure and internal control system.
3. An unappealable sentence that imposes interdictive sanctions referred to in Articles 9(2)(a) and 9(2)(b) of Legislative Decree 231/2001 on an Italian investment company or management company or a SICAV shall be transmitted, upon expiration of the time limit for the conversion of the sanctions, by the judicial authority to the Bank of Italy and Consob for enforcement. To this end Consob or the Bank of Italy, within the scope of their respective authority, may propose or adopt the measures referred to in Part II, Title IV, taking account of the nature of the sanction imposed and the primary aim of safeguarding stability and protecting the rights of investors.
4. The interdictive sanctions referred to in Articles 9(2)(a) and 9(2)(b) of Legislative Decree 231/2001 may not be applied on a precautionary basis to Italian investment companies or asset management companies or SICAVs. Neither shall Article 15 of Legislative Decree 231/2001 apply to such intermediaries.
5. This article shall apply to the Italian branches of EU and non-EU investment companies insofar as it is compatible.²⁶⁵

²⁶⁵ Article added by art. 10 Legislative Decree 197/2004.

PART III
REGULATION OF MARKETS AND
CENTRAL DEPOSITORIES FOR FINANCIAL INSTRUMENTS

TITLE I
REGULATION OF MARKETS

Chapter I
Regulated markets

Article 60-ter
(Regulation principles)

1. The Bank of Italy and Consob shall exercise the regulatory powers envisaged in this Title in observance of the principles pursuant to article 6, subsection 1²⁶⁶.

Article 61
Regulated markets for financial instruments

1. The organisation and management of regulated markets for financial instruments is an entrepreneurial activity and shall be performed by *società per azioni*, which may also operate on a non-profit basis (stock exchange companies).

2. Consob shall lay down in a regulation:

- a) the financial resources of the management company²⁶⁷;
- b) the activities related and instrumental to the organisation and management of markets which may be performed by stock exchange companies²⁶⁸.

3. The Minister of the Economy and Finance,²⁶⁹ after consulting Consob, shall adopt a regulation establishing the integrity, professionalism and independence requirements for persons performing administrative, management or supervisory functions within stock exchange companies. Article 13(2) shall apply. In the event of inaction, Consob shall declare disqualification.²⁷⁰

4. The regulation referred to in subsection 3 shall establish the grounds for temporary suspension from office and its duration. The suspension shall be declared in the manner established in subsection 3.

5. The Minister of the Economy and Finance,²⁷¹ after consulting Consob, shall issue a regulation establishing the integrity requirements for shareholders.²⁷²

6. Acquisitions and disposals of shareholdings in stock exchange companies, whether effected directly or indirectly through subsidiary companies, trust companies or nominees, must be notified by the acquirer to

²⁶⁶ Article included by art. 10 of Legislative Decree no. 164 of 17.09.2007

²⁶⁷ Paragraph amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which replaced the words: “minimum capital” with the words: “financial resources”.

²⁶⁸ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

²⁶⁹ The former wording “Minister of the Treasury, Budget and Economic Planning” was replaced with the wording “Minister of the Economy and Finance” by art. 1 of Legislative Decree no. 37 of 6.2.2004.

²⁷⁰ Subsection amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which replaced the words: “ and professionalism” with the words “, professionalism and independence”. See the regulation no. 471 issued by the Minister of the Treasury, Budget and Economic Planning on 11.11.1998 (published in Official Gazette no. 7 of 11.1.1999).

²⁷¹ The former wording “Minister of the Treasury, Budget and Economic Planning” was replaced with the wording “Minister of the Economy and Finance” by art. 1 of Legislative Decree no. 37 of 6.2.2004.

²⁷² Subsection amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which removed the words: “, identifying the shareholding threshold relevant to this purpose”. See the regulation no. 471 issued by the Minister of the Treasury, Budget and Economic Planning on 11.11.1998 (published in Official Gazette no. 7 of 11.1.1999).

Consob and the stock exchange company within 24 hours, together with documentation certifying that the acquirer satisfies the requirements referred to in subsection 5²⁷³.

6-bis. Consob shall regulate:

a) the content, terms and methods for reports to Consob by stock exchange companies on information relating to shareholders, identifying the significant shareholding threshold for this purpose and with regard to the possession of integrity requirements pursuant to subsection 5 and reports pursuant to subsection 6;

b) the content, terms and methods for reports to Consob by stock exchange companies on information relating to persons performing administrative, management and audit duties for the management company and to persons effectively managing regulated market activities and operations, and any subsequent changes;

c) the content, terms and methods of publication by stock exchange companies of information relating to shareholders and any subsequent change in the identity of persons with a significant shareholding²⁷⁴.

6-ter. The provisions of subsection 6-bis shall be adopted by the Ministry of Economy and Finance, after consulting the Bank of Italy and Consob, in cases of regulated stock exchange companies for the wholesale trading of government securities, and by Consob, after consulting the Bank of Italy, in cases of management of regulated markets for the wholesale trading of private and public bonds, other than government securities, together with the regulated stock exchange companies for instruments pursuant to article 1, subsection 2, paragraph b) and derivatives on public securities, interest rates and currency²⁷⁵.

7. Failure to satisfy such requirements or to provide notification shall preclude the exercise of the voting rights attached to the shares in excess of the limit referred to in subsection 6-bis²⁷⁶.

8. In the event of non-compliance with the prohibition referred to in paragraph 7, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit established in Article 14(6).

8-bis. Within 90 days of notification by the management company, Consob may oppose changes to the ownership structure when such changes could compromise the sound and prudent management of the market. For wholesale markets of government securities the provision shall be adopted by the Bank of Italy. In cases of opposition from the competent authority, voting rights on shares subject to disposal may not be exercised²⁷⁷.

8-ter. The provisions of subsection 8-bis shall be adopted after consulting the Bank of Italy in cases of regulated stock exchange companies for the wholesale trading of private and public bonds, other than government securities, together with regulated stock exchange companies for instruments pursuant to article 1, subsection 2, paragraph b) and derivatives on public securities, interest rates and currency²⁷⁸.

9. Part IV, Title III, Chapter II, Section VI, except for Articles 157 and 158²⁷⁹.

10. The Minister of the Economy and Finance,²⁸⁰ after consulting the Bank of Italy and Consob, shall specify the characteristics of wholesale trading of financial instruments with a view to application of the provisions of this decree²⁸¹.

²⁷³ Subsection amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which removed the words: "to Consob and".

²⁷⁴ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

²⁷⁵ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

²⁷⁶ Subsection amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "subsection 5" with the words "subsection 6-bis".

²⁷⁷ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

²⁷⁸ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

²⁷⁹ Subsection first amended by art. 11, Legislative Decree no. 164 of 17.9.2007 which replaced the words: "and 165" with the words " , 165 and 165-bis", and later by art. 40, Legislative Decree no. 39 of 27.1.2010 which replaced the words: " , 158, 165 and 165-bis" with the words: "and 158".

²⁸⁰ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

Article 62
Market rules

1. The organisation and management of a market shall be governed by rules approved by the ordinary shareholders' meeting or supervisory board of the stock exchange company. The rules may assign powers to establish implementing provisions to the board of directors or management council²⁸².

1-bis. If the shares of the stock exchange company are listed on a regulated market, the rules referred to in subsection 1 shall be approved by the company's board of directors or management council.²⁸³

1-ter. In compliance with the provisions of Directive 2004/39/EC and related enactment measures, Consob shall identify and regulate the general criteria to which market regulation must adapt on matters of:

- a) admission to trading of financial instruments;
- b) Suspension and exclusion from trading of financial instruments on regulated markets;
- c) methods to guarantee advertising of market regulation²⁸⁴.

1-quarter The provisions of subsection 1-ter shall be adopted after consulting the Bank of Italy in cases of markets for the wholesale trading of private and public bonds, other than government securities, together with markets for the trading of instruments pursuant to article 1, subsection 2, paragraph b) and derivatives on public securities, interest rates and currency²⁸⁵.

2. Stock exchange companies shall adopt transparent, non-discretionary rules and procedures to guarantee correct and orderly trading, and objective criteria to allow the efficient execution of orders. In any event, market regulation shall determine²⁸⁶:

- a) the conditions and procedures for the admission, exclusion and suspension of intermediaries and financial instruments to and from trading;
 - b) the conditions and procedures for the conduct of trading and any obligations of intermediaries and issuers;
 - c) the procedures for ascertaining, publishing and distributing prices;
 - d) the types of contract admissible and the methods for determining the minimum amounts which may be traded.
- d-bis) the terms and conditions for the clearance, settlement and guarantee of transactions concluded on the markets²⁸⁷.

2-bis. The rules may lay down that the shares of parent companies whose assets consist primarily of direct or indirect shareholdings in one or more companies with shares listed on regulated markets are to be traded in a separate segment of the market.²⁸⁸

3. Regulations pursuant to subsection 1 shall govern the access of operators to the regulated market, in accordance with transparent, non-discriminatory rules and based on objective criteria, together with criteria for the direct or remote participation in a regulated market and obligations imposed upon operators deriving from:

²⁸¹ See Minister of the Economy and Finance decree no. 216 of 22.12.2009 (published in Official Gazette no. 65 of 19.3.2010).

²⁸² Subsection replaced by art. 11 Legislative Decree no. 164 of 17.9.2007.

²⁸³ Subsection first included by art. 14, subsection 1 of Law no. 262 of 28.12.2005 and later amended by art. 11 Legislative Decree no. 164 of 17.9.2007.

²⁸⁴ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

²⁸⁵ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

²⁸⁶ Indent replaced by art. 11 Legislative Decree no. 164 of 17.09.2007

²⁸⁷ Paragraph included by art. 11 Legislative Decree no. 164 of 17.09.2007

²⁸⁸ Subsection added by Article 14 subsection 1 of Law 262/2005.

- a) the establishment and management of the regulated market;
- b) provisions regarding the transactions executed on the market;
- c) the professional standards imposed upon persons pursuant to article 25, subsection 1 operating on the market;
- d) the conditions established for participants other than persons referred to in paragraph c) pursuant to article 25, subsection 2;
- e) the rules and procedures for clearance and settlement of transactions concluded on the regulated market²⁸⁹.

3-bis. Consob shall lay down in a regulation:

- a) the rules concerning accounting transparency and adequate organisational structure and internal control mechanisms that subsidiaries set up under and governed by the laws of non-EU countries must comply with for the shares of the parent company to be listable on an Italian regulated market. The notion of control defined in Article 93 shall apply;
- b) the conditions whose existence precludes the listing of shares of subsidiaries subject to the activity of direction and coordination of another company;
- c) the transparency rules and the restrictions on the admission to listing on the Italian securities market of financial companies whose assets consist exclusively of shareholdings.²⁹⁰

Article 63

Authorisation of regulated markets

1. Consob shall authorise the operation of regulated markets where:

- a) the requirements referred to in Article 61(2-5) are satisfied;
- b) the market rules are in conformity with Community law and sufficient to ensure the transparency of the market, the orderly conduct of trading and the protection of investors.

1-bis. Authorisation pursuant to subsection 1 shall be subordinate to the submission of a plan of activities illustrating the type of activities planned and the organisational structure of the management company²⁹¹.

2. Consob shall enter regulated markets in a register, complying with Community provisions in this field, and shall approve amendments to market rules.

3. The measures referred to in subsections 1 and 2 shall be adopted, after consulting the Bank of Italy, for markets for the wholesale trading of private and public debt securities other than government securities, as well as for markets for the trading of instruments referred to in Article 1(2) paragraph b) and financial derivatives based on public securities, interest rates and currencies²⁹².

4. The Bank of Italy shall be admitted to trading in markets for standardized forward contracts on government securities.

Article 64

*Organisation and operation of markets and stock exchange companies*²⁹³

01. By its own regulation, Consob shall identify the reporting obligations of stock exchange companies to Consob and, with regard to transparency, the orderly conduct of trading and investor protection and, in

²⁸⁹ Subsection replaced by art. 11 Legislative Decree no. 164 of 17.09.2007

²⁹⁰ Subsection added by Article 14 subsection 1 of Law 262/2005. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

²⁹¹ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

²⁹² Subsection replaced by Article 11 of Legislative Decree no. 164 of 17.9.2007 which replaced the words: "paragraph d)" with: "paragraph b)".

²⁹³ Heading amended by art. 11 Legislative Decree no. 164 of 17.09.2007

compliance with the provisions of Directive 2004/39/EC, the general organisational requirements of the regulated stock exchange companies²⁹⁴.

1. A stock exchange company shall:

- a) provide the structures and services of the market and establish its charge schedule;
- b) adopt all the measures required for the efficient operation of the market, and arrange and maintain effective devices and procedures for the control and observance of the regulation²⁹⁵;
- b-bis*) adopt all the provisions and measures required to prevent and identify insider trading and market manipulation;²⁹⁶
- c) admit, exclude and suspend financial instruments and market participants to and from trading and immediately inform Consob about the decisions taken; implementation of decisions taken for trading ordinary shares, bonds and other financial instruments issued by people or bodies other than those of Member States of the European Union, of Community banks and of companies having shares listed on a regulated market, including exclusion decisions of shares from trading is suspended until the time specified in subsection 1-*bis*, paragraph *a*); this suspension is not applied in the case of admission to trading of financial instruments admitted under the exemption rule from the obligation to publish the prospectus as well as admission of supplementary lots of shares already admitted to trading;²⁹⁷
- d) notify Consob of violations of the market rules and the measures adopted.
- e) ...*omissis*...²⁹⁸;
- f) perform any other tasks that may be entrusted to it by Consob.

1-*bis*. Consob:

- a) can forbid the implementation of admission decisions and the exclusion as per subsection 1, paragraph *c*), second period or order to revoke a suspension decision for financial instruments and trading operators, within five days from receiving the communication as per subsection 1, paragraph *c*), if, on the basis of the information different to the ones assessed, according to market regulations, by the management company during its investigation, considers the decision being against the aims as per Article 74, subsection 1.²⁹⁹
- b) may request the stock exchange company to provide all the inform it considers necessary for the purposes of paragraph *a*);
- c) may request the stock exchange company to suspend financial instruments or intermediaries from trading.³⁰⁰

1-*ter*. The admission, exclusion and suspension to and from trading of financial instruments issued by a stock exchange company on a market that it manages shall be decided by Consob. In such cases Consob shall determine the amendments to be made to the market rules to ensure transparency, orderly trading and the

²⁹⁴ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

²⁹⁵ Subsection replaced by art. 11 Legislative Decree no. 164 of 17.09.2007 which replaced the words: “verify the” with the words: “arrange and maintain effective devices and procedures for the control of”.

²⁹⁶ Paragraph added by Article 9 of Law 62/2005 (the 2004 Community Law).

²⁹⁷ The wording: “and immediately inform Consob about the decisions taken; implementation of admission decisions and of exclusion is suspended until the time specified in subsection 1-*bis*, paragraph *a*)” have been added by Art.14 of I No. 262 of 28.12.2005. The wording: “and of exclusion is suspended until the time specified in subsection 1-*bis*, paragraph *a*)” have been replaced by the wording: “for trading of ordinary shares, bonds and other financial instruments issued by people or bodies other than those of Member States of the European Union, Community banks and companies having shares listed on a regulated market, including exclusion decisions of shares from trading is suspended until the time indicated in subsection 1-*bis*, paragraph *a*); this suspension is not applied in the case of admission to trading of financial instruments admitted for exemption from the obligation to publish the prospectus as well as admission of supplementary lots of shares already admitted to trading” by Art. 3 of Legislative Decree No. 303 of 29.12.2006;

²⁹⁸ Paragraph removed by art. 1 Legislative Decree no. 195 of 6.11.2007.

²⁹⁹ The subsections thus amended by Art. 3 of the Legislative Decree No. 303 of 29.12.2006 which added the wording: “as per subsection 1, paragraph *c*), second sentence”, and replaced the wording “in its possession” with the wording: “different to the ones assessed, according to the market regulation, by the management company during its investigation”.

³⁰⁰ Paragraph added by Article 14 subsection 1 of Law 262/2005.

protection of investors and to regulate possible conflicts of interest. The admission of such financial instruments shall be subject to the amendment of the rules of the relevant market.³⁰¹

1-*quater*. Where a financial instrument is traded on regulated markets pursuant to article 67, subsection 1, Consob shall:

a) make public any decisions made pursuant to subsection 1-*bis*, paragraph c) and inform the competent authorities of EU member states of the regulated markets on which the financial instrument relating to the decision is admitted for trading;

b) inform the competent authorities of other EU member states of the decision to suspend or exclude a financial instrument from trading, based on the report received from the management company pursuant to subsection 1, paragraph c)³⁰².

1-*quinquies*. The provisions of subsection 01 shall be adopted after consulting the Bank of Italy in cases of regulated stock exchange companies for the wholesale trading of private and public bonds, other than government securities, together with regulated stock exchange companies for instruments pursuant to article 1, subsection 2, paragraph b) and derivatives on public securities, interest rates and currency.³⁰³

1-*sexies*. Unless damage may be caused to the interests of investors or to regular market operations, Consob shall request the suspension or exclusion of a financial instrument from trading on a regulated market in cases where said financial instrument was subject to a suspension or exclusion measure by the competent authorities of other EU member states³⁰⁴.

Article 65

Recording of transactions in financial instruments at the stock exchange company and obligations of communication of transactions in financial instruments concluded

1. Consob shall lay down in a regulation:

a) the manner of recording at the stock exchange company of all transactions concluded on financial instruments admitted to trading in a regulated market;

b) the content, terms and manner in which persons authorised to carry out the transactions concluded regarding financial instruments admitted to trading in a regulated market shall report such transactions.

2. Where necessary in order to guarantee investor protection, Consob may also extend reporting obligations pursuant to subsection 1, paragraph b) to financial instruments not admitted to trading on regulated markets³⁰⁵.

Article 66

Wholesale markets in government securities

1. Also by way of derogation from the provisions of this chapter, the Minister of the Economy and Finance,³⁰⁶ after consulting the Bank of Italy and Consob, shall regulate and authorise wholesale markets for government securities and shall approve their rules³⁰⁷.

³⁰¹ Subsection added by Article 14 subsection 1 of Law 262/2005.

³⁰² Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁰³ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

³⁰⁴ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁰⁵ Article as replaced by art. 11 of Italian Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

³⁰⁶ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

³⁰⁷ See Minister of the Economy and Finance decree no. 216 of 22.12.2009 (published in Official Gazette no. 65 of 19.3.2010).

2. The Bank of Italy shall be admitted to trading in wholesale markets in government securities. The Ministry of the Economy and Finance³⁰⁸ shall be admitted to trading in wholesale markets in government securities; it shall notify the Bank of Italy in advance of the timing and manner of its interventions. Within twenty-four hours of the notification, the Bank of Italy may make a reasoned request for interventions to be postponed or carried out in a different manner in order to safeguard monetary stability. The measures issued pursuant to subsection 1 may also provide for the admission to trading of persons other than intermediaries authorised to engage in trading³⁰⁹.

Article 66-bis

Energy and gas derivatives markets

1. The provisions of this Chapter, except where indicated in the subsections below, shall apply to regulated markets for the trading of energy and gas derivatives and to companies operating such markets.
2. The provisions of articles 61, subsections 8 and 8-bis, 63, subsections 1 and 2, 67, subsections 2, 3, 5-bis and 5-ter, 70-bis, subsection 2, paragraph b), 70-ter, subsection 2, 73, subsection 4, and 75, subsections 2 and 4, shall be adopted by Consob, in agreement with the electricity and gas boards.
3. The provisions of article 62, subsection 1-ter shall be adopted by Consob after consulting the electricity and gas boards.
4. The provisions of article 64, subsection 1-bis paragraph c) shall be adopted by Consob after consulting the electricity and gas boards.
5. The provisions of article 67, subsection 2-bis shall be attributed to Consob after consulting the electricity and gas boards.
6. The electricity and gas boards shall exercise powers granted under this article with regard to general needs of stability, economics and competitiveness of electricity and gas markets, and the safe, efficient operation of national electricity and gas transportation networks.
7. In the exercise of duties envisaged under this article, Consob and the electricity and gas boards shall interactively provide mutual support and cooperation also by means of exchange of information, without objection on the grounds of official secrecy. Consob and the electricity and gas boards shall act in a coordinated manner, for this purpose stipulating special memoranda of understanding.
8. The electricity and gas boards shall inform the Ministry of Economic Development of supervisory activities performed and on irregularities discovered that could have an impact on the operations of physical markets for the underlying products and on the safe and efficient operation of national electricity and gas transportation networks³¹⁰.

Article 67

Recognition of markets

1. Consob shall enter markets recognized pursuant to Community law in a special section of the register referred to in Article 63(2).

³⁰⁸ The former wording "Ministry of the Treasury, Budget and Economic Planning" was replaced with the wording "Ministry of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

³⁰⁹ Subsection amended by art 11 of Legislative Decree no. 164 of 17.9.2007 which removed the following phrase: "The provisions issued pursuant to subsection 1 may involve the admission to trading also of persons different to intermediaries authorised to carry out trading activities."

³¹⁰ Article included by art. 11 of Italian Legislative Decree no. 164 of 17.09.2007

2. Consob, after concluding agreements with the corresponding authorities, may recognize foreign markets for financial instruments other than those entered in the section referred to in subsection 1, for the purpose of extending the scope of their operations to Italy.

2-bis. In order to guarantee transparency, the orderly conduct of trading and the protection of investors, Consob shall stipulate agreements with the supervisory authorities of the home state of EU regulated markets that, in the opinion of Consob, have gained considerable importance in the operation of the Italian financial market and on the protection of investors in Italy. For wholesale markets of government securities such tasks shall be performed by the Bank of Italy³¹¹.

3. Stock exchange companies that intend to apply to the authorities of non-EU countries for recognition of the markets they manage shall notify Consob, which shall grant its authorisation after concluding agreements with the corresponding foreign authorities. For wholesale markets of government securities the Bank of Italy shall be notified, which will then release its authorisation subject to the stipulation of agreements with the foreign authorities and inform Consob accordingly³¹².

4. In cases pursuant to subsections 2 and 3, Consob or the Bank of Italy, according to their respective duties, shall verify that the information regarding securities and issuers, the methods of forming prices and settling transactions, and the laws and regulations governing the supervision of markets and intermediaries are equivalent to those in force in Italy and in any case able to ensure adequate protection of investors³¹³.

5. Stock exchange companies that intend to extend operations of the regulated markets managed to other EU member states shall issue prior notification to Consob. With respect to European regulations, Consob shall inform the competent authority of the EU member state in which the regulated market intends to operate. For wholesale markets of government securities the prior notification is issued to the Bank of Italy, which shall inform the competent authority of the EU member state concerned and Consob³¹⁴.

5-bis. Consob shall authorise the markets pursuant to subsection 1 to arrange appropriate devices to facilitate access to trading on such markets by their remote members and participants established in Italy³¹⁵.

5-ter. Consob may request the identity of members or participants of the regulated market established in Italy from the competent authority of the home member state pursuant to subsection 5-bis³¹⁶.

5-quater. For remote participants in Italian regulated markets, articles 8 subsection 1 and 10 subsection 1 shall apply. In this case, Consob shall inform the competent authority of the home member state of the remote participant. For wholesale markets of government securities, the Bank of Italy shall inform the competent authority of the EU member state of the remote participant and Consob³¹⁷.

Article 68

Contract guarantee systems

1. The Bank of Italy, in agreement with Consob, may regulate the establishment and operation of systems designed to ensure the success of transactions in financial instruments other than derivatives carried out on

³¹¹ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³¹² Subsection as amended by art. 11 Legislative Decree no. 164 of 17.09.2007

³¹³ Subsection amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "Consob shall ascertain" with the words: "In cases pursuant to subsections 2 and 3, Consob or the Bank of Italy, according to their respective duties, shall ascertain".

³¹⁴ Subsection replaced by art. 11 Legislative Decree no. 164 of 17.09.2007

³¹⁵ Subsection added by art. 11 Legislative Decree no. 164 of 17.09.2007

³¹⁶ Subsection added by art. 11 Legislative Decree no. 164 of 17.09.2007

³¹⁷ Subsection as amended by art. 11 Legislative Decree no. 164 of 17.09.2007

regulated markets, including the issue of rules on the establishment of guarantee funds financed with contributions from their investors³¹⁸.

2. The capital of each fund shall be kept separate from that of the body that administers it and from that of other funds. Funds may not be the object of actions, seizures or attachments by the creditors of the body administering them or creditors of the individual participants or in the interests of such creditors. Funds may not be included in bankruptcy proceedings involving the body administering them or the individual participants. Legal and judicial set-off shall not apply and voluntary set-off shall not be allowed between credit balances in the deposit accounts of the funds and any debts that the administrator of the funds may have with the depositary.

Article 69

Clearing and settlement of transactions involving financial instruments other than derivatives

1. The Bank of Italy, in agreement with Consob, shall regulate the operation of the clearing and settlement service and the gross settlement service for transactions involving financial instruments other than derivatives, including the establishment of time limits and preliminary and supplementary duties. Such regulations may provide for the clearing and settlement service and the gross settlement service, excluding final settlement of the cash portion of transactions, to be managed by a company authorised by the Bank of Italy in agreement with Consob³¹⁹. For the transfer of registered securities, including those other than shares, final endorsement may be effected in accordance with Articles 15(1) and 15(3) of Royal Decree no. 239 of 29 March 1942. Article 80, subsections 4, 5, 6, 7, 8 and 10 shall apply³²⁰.

1-bis. The Bank of Italy, in agreement with Consob, shall determine:

- a) the financial resources of the management company;
- b) the activities related and instrumental to clearing and settlement;
- c) the company's organisation requirements;
- d) general criteria for the admission, exclusion and suspension of participants;
- e) the general criteria based on which the management company may directly participate in foreign clearing and settlement systems³²¹.

1-ter. Access to the clearing and settlement service, and to the gross settlement service, of transactions on non-derivative financial instruments shall be subordinate to non-discriminatory, transparent and objective criteria³²².

2. The Bank of Italy, in agreement with Consob, may regulate the establishment and operation of systems to ensure the clearing and settlement of transactions referred to in subsection 1 and may issue instructions concerning the establishment and administration of guarantee funds financed with contributions from investors³²³.

3. Article 68(2) shall apply to the guarantee funds referred to in subsection 2.

³¹⁸ See joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008).

³¹⁹ See joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008).

³²⁰ Subsection as amended by art. 11 Legislative Decree no. 164 of 17.09.2007

³²¹ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007. See joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008).

³²² Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³²³ See Bank of Italy instructions of 16.6.1999 (published in Official Gazette no. 141 of 18.6.1999) and of 16.5.2003 (published in Official Gazette no. 117 of 22.5.2003), and the joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008).

Article 70

*Clearing and settlement of transactions involving financial instruments*³²⁴

1. The Bank of Italy, in agreement with Consob, may regulate the operation of clearing and settlement systems for transactions involving financial instruments and may require that investors make margin payments or other collateral arrangements as a guarantee of performance of the obligations deriving from investment in such systems³²⁵. Such guarantees may not be used for other purposes or be subject to enforcement proceedings or precautionary measures advanced by the creditors of individual participants or the operator of the system, including in cases where bankruptcy proceedings have been initiated. The guarantees obtained may be used in only accordance with rules subject to the provisions of this subsection. Article 80, subsections 4, 5, 6, 7, 8 and 10 shall apply³²⁶.

1-bis. The Bank of Italy, in agreement with Consob, shall determine:

- a) the financial resources of managers of clearing and guarantee systems;
- b) the system manager's organisation requirements;
- c) general criteria for the admission, exclusion and suspension of participants;
- d) the general criteria based on which the system manager may directly participate in foreign clearing and settlement systems³²⁷.

2. The bodies that administer the systems referred to in subsection 1 shall assume the contractual positions to be settled.

2-bis. Access to clearing and guarantee systems for transactions on financial instruments is subordinate to non-discriminatory, transparent and objective criteria³²⁸.

Article 70-bis

Access to guarantee, clearing and settlement systems for transactions on financial instruments

1. EU investment companies and banks authorised to provide investment services and activities may access the guarantee, clearing and settlement systems pursuant to articles 68, 69 and 70 in order to finalise or arrange the finalisation of transactions on financial instruments.

2. The management company shall guarantee the right of participants in the markets regulated to designate a clearing and settlement system for transactions on financial instruments executed on said markets, other than that designated by the market, provided the following conditions are observed:

- a) links and devices exist between the designated clearing and settlement system and the regulated market structure to guarantee effective and economic transactions;
- b) recognition by Consob that the technical conditions for the settlement of transactions concluded on a regulated market through a system other than that designated by the market allow regular and orderly market operations. In cases of regulated stock exchange companies for the wholesale trading of government securities, said recognition is confirmed by the Bank of Italy.

³²⁴ Title as amended by Legislative Decree 170/2004.

³²⁵ See joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008).

³²⁶ Subsection first replaced by Legislative Decree no. 170 of 21.5.2004 and later modified by art. 11, Legislative Decree no. 164 of 17.9.2007 which removed the words: "be distracted from the planned destination or" and added the following sentence: "The guarantees obtained may be used only in accordance with the rules subject to the provisions of this subsection. Article 80, subsections 4, 5, 6, 7, 8 and 10 shall apply."

³²⁷ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007 See joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008).

³²⁸ Subsection added by art. 11 Legislative Decree no. 164 of 17.09.2007

3. Stock exchange companies shall inform Consob of the designations of market participants pursuant to subsection 2. Such notifications shall be issued to the Bank of Italy in the case of wholesale government security markets.

4. Recognition pursuant to subsection 2, paragraph b) shall be confirmed after consulting the Bank of Italy in cases of regulated stock exchange companies for the wholesale trading of private and public bonds, other than government securities, together with regulated stock exchange companies for instruments pursuant to article 1, subsection 2, paragraph d) and derivatives on public securities, interest rates and currency³²⁹.

Article 70-ter

Agreements between guarantee, clearing and settlement systems for regulated markets

1. Regulated stock exchange companies may conclude agreements with central counterparty system management companies, clearing and settlement systems of other EU member states for the guarantee, clearance and settlement of certain or all transactions concluded on regulated markets by investors.

2. In agreement with the Bank of Italy, Consob may oppose the agreements pursuant to subsection 1 if, when also taking into account the conditions envisaged in article 70-bis, subsection 2, this is necessary to preserve the orderly operation of the regulated market. For this purpose, in agreement with the Bank of Italy, Consob shall regulate the reporting obligations of stock exchange companies at the time of conclusion of the agreements pursuant to subsection 1³³⁰.

3. The measures pursuant to subsection 2 shall be adopted by the Bank of Italy, in agreement with Consob, for wholesale markets of government securities³³¹.

Article 71

Finality of settlement of transactions involving financial instruments

[...omissis...] ³³²

Article 72

(Market insolvency regulations)

1. By agreement with the Bank of Italy, Consob governs market insolvency of parties admitted for trading on regulated markets and in multilateral trading systems and of participants in the systems established by article 70, in the form of regulation, thereby establishing the basis, scope of application and methods of ascertainment and liquidation. Market insolvency is declared by Consob, by agreement with the Bank of Italy³³³.

2. Without prejudice to the provisions of paragraph 1, the opening by the competent legal or administrative authority of a liquidation procedure or the restoration of parties admitted to trading on regulated markets and in multilateral trading systems and of participants in the systems provided for by article 70, constitutes a basis for the declaration of market insolvency. For the purpose of this paragraph, the definitions of "restoration procedure" and "liquidation procedure" established by article 1 of Italian Legislative Decree no. 170 of 21 May 2004 shall apply.

³²⁹ Article included by art. 11 of Italian Legislative Decree no. 164 of 17.09.2007

³³⁰ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

³³¹ Article included by art. 11 of Italian Legislative Decree no. 164 of 17.09.2007

³³² Article repealed by Article 13.1 of Legislative Decree 210/2001.

³³³ See arts. 80-83 of the joint Bank of Italy/Consob regulation of 22.02.2008 (published in O.J. no. 54 of 04.03.2008)

3. For the purpose of the declaration pursuant to paragraph 1, the competent legal or administrative authority shall immediately inform Consob and the Bank of Italy, also by telematic means, of the opening of liquidation or restoration proceedings of parties admitted for trading on regulated markets and in multilateral trading systems and of participants in the systems established by article 70.

4. The liquidation of market insolvencies, including compliances established by paragraph 6, may be carried out by the management companies established by article 61, paragraph 1 for contracts stipulated in the markets it manages, and by managers of systems established by articles 70 and 77-*bis* respectively for the transactions they guarantee and for the contracts stipulated in the systems they manage, and by other parties, in compliance with the provisions contained in the regulation established by paragraph 1. The costs for managing the liquidation of market insolvencies are borne by the parties managing the markets or systems in which the insolvent party has operated³³⁴.

5. For the purpose of liquidating market insolvencies, the management companies established by article 61, paragraph 1, the system managers established by article 70 and 77-*bis* and all other parties may provide for close-out netting clauses for contracts and transactions established by paragraph 4. Such clauses shall be valid and take effect in compliance with their provisions, also in the event of the opening of restoration or liquidation proceedings with regards to the market insolvent party. For the purpose of this paragraph, the definitions of "close-out netting clause", "restoration procedure" and "liquidation procedure" established by article 1 of Italian Legislative Decree no. 170 of 21 May 2004 shall apply, also for lack of financial guarantees.

6. The procedure for liquidating market insolvency concludes with the issue to assignees, for the residual credits, of a credit certificate, inclusive of costs sustained by the creditor. This shall constitute executive title with regards to the insolvent party for the effects of article 474 of the Italian Code of Civil Procedure.

7. Where criteria is met, the implementation provisions of Directive 98/26/EC of the European Parliament and Council of 19 May 1998 in relation to the definitive nature of the regulation of payment systems and security regulation system shall apply to the liquidation of market insolvencies³³⁵.

Article 73

Supervision of stock exchange companies

1. Stock exchange companies shall be subject to supervision by Consob, which for this purpose shall exercise the powers conferred by articles 74, subsection 2, and 187-*octies*³³⁶.

2. Consob shall enter stock exchange companies in a register.

3. Consob shall verify that amendments to the Articles of Association of stock exchange companies do not conflict with the requirements referred to in Article 61. Procedures for entry in the Company Register may not be initiated in the absence of such verification.

4. Consob shall check that market rules are suitable to ensure that market transparency, orderly trading, and investor protection are effectively achieved and may require stock exchange companies to amend market rules to eliminate any problems it finds³³⁷.

³³⁴ See Consob resolution no. 12055 of 13.07.1999.

³³⁵ Article thus replaced by art. 4 of Italian Legislative Decree no. 48 of 24.03.2011 as from 30.06.2011.

³³⁶ Subsection amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "by article 74, subsection 2" with the words: "by articles 74, subsection 2, and 187-*octies*".

³³⁷ Subsection amended by art. 11 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "of the aims indicated in article 63, subsection 1, paragraph b)" with the words: "of market transparency, orderly trading and investor protection".

Article 74
Supervision of markets

1. Consob shall supervise regulated markets with the aim of ensuring the transparency of the market, the orderly conduct of trading and the protection of investors, and may adopt any measure to guarantee observance of the obligations envisaged in this Chapter. For this purpose, for operators permitted to trade on regulated markets, other than authorised persons, articles 8 subsection 1 and 10 subsection 1 shall apply³³⁸.

1-bis. Consob shall check stock exchange companies' compliance with the market rules for financial instruments referred to in Article 64(1-ter).³³⁹

2. Consob may require stock exchange companies to communicate data and information and to transmit documents and records on a periodic or other basis in the manner and within its established time limits; it may also carry out inspections of such companies and require the exhibition of documents and the adoption of measures deemed necessary³⁴⁰.

3. In cases of necessity and as a matter of urgency Consob shall adopt the measures required for the purposes referred to in subsection 1, including its acting in the place of the stock exchange company.

4. The measures referred to in subsection 3 may be adopted by the Chairman of Consob or his substitute in the event of his absence or disability to act. They shall be immediately enforceable and submitted to the Commission for it to approve within five days, the effect of such measures shall cease if they are not approved within this time limit.

4-bis. Consob may exercise additional powers pursuant to article 187-octies³⁴¹.

Article 75
Extraordinary measures to protect the market and stock exchange company crises

1. In the event of serious irregularities in the management of markets or in the administration of stock exchange companies and wherever it is necessary for the protection of investors, the Ministry of the Economy and Finance,³⁴² acting on a proposal from Consob, shall dissolve the administrative and control bodies of the stock exchange company. The powers of the dissolved administrative bodies shall be conferred on a special administrator appointed in the same decree, who shall exercise them, in accordance with directives issued by Consob and under its control, until the administrative bodies are reconstituted. The emoluments due to the special administrator shall be determined with a decree of the Ministry and shall be charged to the stock exchange company. Where not otherwise provided for in this subsection, Article 70(2-6), Article 72, except for subsections 2 and 8, and Article 75 of the Consolidated Law on Banking shall apply, with Consob being assigned the powers attributed therein to the Bank of Italy.

2. Consob may cancel the authorisation pursuant to article 63 when:

- a) the management company fails to make use of the authorisation within twelve months or expressly waives the use thereof;
- b) the management company or regulated market ceased to operate more than six months previously;
- c) the management company obtained authorisation through false declaration or any other irregular means;

³³⁸ Subsection as amended by art. 11 Legislative Decree no. 164 of 17.09.2007

³³⁹ Subsection added by Article 14 comma 1 of Law 262/2005.

³⁴⁰ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

³⁴¹ Subsection added by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁴² The former wording "Ministry of the Treasury, Budget and Economic Planning" was replaced with the wording "Ministry of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

d) the management company or regulated market no longer satisfies the conditions required for the authorisation;

e) the management company has seriously and systematically violated the provisions of this Chapter³⁴³.

2-bis. The procedures pursuant to subsection 1 may determine cancellation of the authorisation referred to in subsection 2³⁴⁴.

3. Within thirty days of the notification of the order revoking authorisation, the directors or the special administrator shall call the shareholders' meeting to modify the corporate purpose or adopt a resolution for the voluntary liquidation of the company. Where the meeting is not called within such time limit or the meeting does not adopt the resolution within three months of the notification of the revocation order, the Ministry of the Economy and Finance,³⁴⁵ acting on a proposal from Consob, may dissolve the stock exchange company and appoint liquidators. The provisions concerning the liquidation of *società per azioni* shall apply, except for those concerning the revocation of liquidators.

4. In the cases referred to in subsections 1 and 2, Consob shall promote the agreements needed to ensure the continuity of trading. For this purpose it may arrange for the temporary transfer of the management of the market to another company, subject to that company's consent. The definitive transfer of the management of the market may be effected by way of derogation from Title II, Chapter VI, of the Bankruptcy Law.

5. The proposals referred to in the previous subsections shall be formulated by Consob, after consulting the Bank of Italy, for stock exchange companies of markets for wholesale trading of private and public sector bonds other than government securities and markets for the trading of instruments referred to in Article l(2) paragraph b), and financial derivatives based on government securities, interest rates and foreign currencies³⁴⁶.

6. Actions for the purpose of initiating bankruptcy proceedings, compositions with creditors or controlled administration and the related measures adopted by the court shall be notified to Consob within three days by the clerk of the court.

Article 76

Supervision of wholesale markets in government securities

1. Without prejudice to the responsibilities of Consob set out in this decree, the Bank of Italy shall supervise the wholesale markets in government securities, having regard to the overall efficiency of the market and the orderly conduct of trading. For operators permitted to trade on markets for the wholesale trading of government securities, other than authorised persons, articles 8 subsection 1 and 10 subsection 1 shall apply³⁴⁷.

2-bis. The Bank of Italy, under the terms and conditions it has established, may request data, information, records and documents from the stock exchange companies, may perform inspections on the companies, may request sight of documents and complete records as deemed necessary. Said powers may also be exercised with regard to other persons involved in the management company activities. For this purpose, the Bank of Italy may also call personal hearings. The Bank of Italy may authorise auditors or technical experts to

³⁴³ Subsection replaced by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁴⁴ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁴⁵ The former wording "Ministry of the Treasury, Budget and Economic Planning" was replaced with the wording "Ministry of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

³⁴⁶ Subsection replaced by Article 11 of Legislative Decree no. 164 of 17.9.2007 which replaced the words: "paragraph d)" with: "paragraph b)".

³⁴⁷ Subsection as amended by art. 11 Legislative Decree no. 164 of 17.09.2007 which replaced the words: "The Bank shall have the powers referred to in article 74" with the words: "For operators permitted to trade on markets for the wholesale trading of government securities, other than authorised persons, articles 8 subsection 1 and 10 subsection 1 shall apply".

perform inspections of the management company. Any related costs shall be borne by the company inspected³⁴⁸.

2-ter. In cases of need and emergency, for the purposes of subsection 1, the Bank of Italy shall adopt any necessary measures, including replacement of the management company³⁴⁹.

2-quater. For wholesale markets for government securities, Consob may exercise the powers pursuant to article 187-octies³⁵⁰.

2. The Bank of Italy shall supervise the stock exchange companies of the wholesale markets in government securities; for this purpose it shall exercise the powers conferred in Article 74(2).

3. Article 75 shall apply. The Bank of Italy shall have the powers and duties attributed therein to Consob.

Article 77

Supervision of clearing, settlement and guarantee systems

1. The supervision of the systems referred to in Articles 68, 69 and 70, of the persons that administer such systems shall be carried out by the Bank of Italy, as regards stability and systemic risk containment, and Consob, as regards transparency and investor protection. To this end, the Bank of Italy and Consob may require system managers and intermediaries to provide information and records, periodically or otherwise, concerning the clearing, settlement and guarantee of transactions and may carry out inspections.

2. In cases of necessity and as a matter of urgency, for the purposes referred to in subsection 1, the Bank of Italy shall adopt appropriate measures, including its acting in the place of the managers of the systems and services referred to in Articles 69 and 70.

3. For managers of the systems and services pursuant to articles 68, 69 and 70, article 83 shall apply³⁵¹.

Chapter II

Unregulated markets³⁵²

Article 77-bis

Multilateral trading systems

1. By its own regulation, Consob shall identify the minimum operating requirements for multilateral trading systems, including obligations of their managers with regard to:

- a) the trading and finalisation processes of transactions;
- b) the admission of financial instruments;
- c) information provided to the public and to users;
- d) access to the system;
- e) monitoring of the observance of system rules by users³⁵³.

2. Consob:

a) may request managers of multilateral trading systems to exclude or suspend financial instruments from trading on said systems;

³⁴⁸ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁴⁹ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁵⁰ Subsection included by art. 11 Legislative Decree no. 164 of 17.09.2007

³⁵¹ Article as replaced by art. 11 of Italian Legislative Decree no. 164 of 17.09.2007. See joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008).

³⁵² Heading replaced by art. 12 of Legislative Decree no. 164 of 17.9.2007.

³⁵³ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

b) may request managers of multilateral trading systems for all information deemed useful for the purposes of paragraph a);

c) at the time of authorisation and continuously thereafter, shall supervise the rules and procedures adopted by multilateral trading systems to confirm their compliance with European provisions.

3. Unless damage may be caused to the interests of investors or to regular market operations, Consob shall request the suspension or exclusion of a financial instrument from trading on multilateral trading systems in cases where said financial instrument was admitted to trading on a regulated market and was subject to a suspension or exclusion measure by the competent authorities of other EU member states.

4. For the guarantee, clearing and settlement systems of multilateral trading systems, article 70-ter, subsections 1 and 2 shall apply.

5. For operators permitted to trade on markets for the wholesale trading of government securities, other than authorised persons, articles 8 subsection 1 and 10 subsection 1 shall apply.

6. The measures pursuant to subsection 1 shall be adopted by Consob, after consulting the Bank of Italy, with regard to systems for the wholesale trading of private and public bonds, other than government securities, securities normally traded on the money market, derivatives on public securities, interest rates and currency, and shall be adopted by the Ministry of Economy and Finance, after consulting the Bank of Italy and Consob, with regard to systems for the wholesale trading of government securities. For the latter, activities pursuant to subsections 2 and 3 shall be performed by the Bank of Italy, after consulting Consob³⁵⁴.

Article 78

Systematic internalisers

1. Consob may request that systematic internalisers exclude or suspend from trading financial instruments admitted to trading on regulated markets for which they prove to be the systematic internalisers.

2. Consob shall regulate the criteria for identification of the systematic internalisers and their obligations with regard to the publication of listings, execution of orders and access to listings³⁵⁵.

Article 79

Multilateral systems for the exchange of money deposits in euro

1. The Bank of Italy shall supervise the efficiency and regular operations of multilateral systems for the exchange of money deposits in euro, and their managers.

2. The Bank of Italy, under the terms and conditions it has established, may also request periodic reports to include data, information, records and documents from managers and operators. The Bank of Italy may also perform inspections of said managers, request sight of documents and complete records as deemed necessary. Said powers may also be exercised with regard to other persons involved in the activities of the authorised person. For this purpose, the Bank of Italy may also call personal hearings. The Bank of Italy may authorise auditors or technical experts to perform inspections of said managers. Any related costs shall be borne by the person inspected.

3. Managers of multilateral systems for the exchange of money deposits in euro may also manage multilateral trading systems for derivatives on interest rates and currency.

4. For exchanges pursuant to subsection 1, article 77-bis shall not apply³⁵⁶.

³⁵⁴ Article added by art. 12, Legislative Decree no. 164 of 17.9.2007. See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007), joint Bank of Italy-Consob Regulation of 22.2.2008 (published in Official Gazette no. 54 of 4.3.2008) and Minister of the Economy and Finance Decree no. 216 of 22.12.2009 (published in Official Gazette no. 65 of 19.3.2010).

³⁵⁵ Article as replaced by art. 12 of Italian Legislative Decree no. 164 of 17.09.2007. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

Chapter II-bis³⁵⁷
Common provisions

Article 79-bis
Transparency requirements

1. In order to guarantee the effective integration of markets and stronger effectiveness of the price formation process, Consob shall regulate:

a) pre-trading transparency for transactions on shares admitted to trading on regulated markets and executed on said markets within multilateral trading systems and systematic internalisers;

b) post-trading transparency for transactions on shares admitted to trading on regulated markets and executed on said markets within multilateral trading systems and by authorised persons³⁵⁸.

2. Where necessary to guarantee orderly trading and investor protection, Consob may extend, wholly or in part, the pre- and post-trading transparency applicable to transactions on financial instruments other than shares admitted to trading on regulated markets.

3. The provisions pursuant to subsection 2 shall be adopted by Consob, after consulting the Bank of Italy, with regard to the wholesale trading of private and public bonds, other than government securities, securities normally traded on the money market, derivatives on public securities, interest rates and currency, and shall be adopted by the Ministry of Economy and Finance, after consulting the Bank of Italy and Consob, with regard to the wholesale trading of government securities³⁵⁹.

4. Consob shall regulate the management of customer limit orders on shares admitted to trading on a regulated market³⁶⁰.

Article 79-ter
(Consolidation of information)

1. In order to guarantee that market operators and investors may compare prices made public by regulated markets, multilateral trading systems and authorised persons in accordance with obligations, Consob, after consulting the Bank of Italy, may under its own regulation identify measures to eliminate impediments to the consolidation of information and related publication³⁶¹.

³⁵⁶ Article as replaced by art. 12 of Italian Legislative Decree no. 164 of 17.09.2007

³⁵⁷ Heading included by art. 13 Legislative Decree no. 164 of 17.09.2007

³⁵⁸ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

³⁵⁹ See Minister of the Economy and Finance decree no. 216 of 22.12.2009 (published in Official Gazette no. 65 of 19.3.2010).

³⁶⁰ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

³⁶¹ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

TITLE II³⁶²**CENTRAL DEPOSITORY SYSTEM FOR FINANCIAL INSTRUMENTS***Article 79 quater
Definitions*

1. For the purpose of this Title, “intermediaries” shall mean persons identified by the regulation referred to in Article 81 subsection 1, authorised to keep records of the registration of financial instruments and related transfers.

**Chapter I
Regulations for central depositories***Article 80
Central depository activities in relation to financial instruments*

1. Central depositories of financial instruments take the legal and operating format of a joint stock company, also as a non-profit organisation.
2. The sole corporate purpose of a central depository is to act as a central depository for financial instruments pursuant to Chapter II of this Title. Related and instrumental activities may also be performed.
3. By regulation and in agreement with the Bank of Italy, Consob shall establish the financial resources and organisational requirements of the companies and related and instrumental activities, which in any event shall not include representation at shareholders' meetings of listed joint-stock companies.
4. After consulting the Bank of Italy and Consob, the Minister of the Economy and Finance shall issue a regulation establishing the integrity, professionalism and independence requirements of persons performing director, management and control duties in such companies. Article 13, subsections 2 and 3 shall apply.
5. The regulation envisaged in subsection 4 shall establish the causes for temporary suspension from office and its duration. Article 13, subsections 2 and 3 shall apply.
6. By regulation adopted after consulting Consob and the Bank of Italy, the Minister of the Economy and Finance shall establish the integrity requirements of shareholders, identifying the investment threshold considered significant for this purpose.
7. The direct or indirect purchase and disposal of significant investments pursuant to subsection 6, also through subsidiaries, trusts or third parties, must be disclosed by the buyer to Consob, the Bank of Italy and the central depository within twenty-four hours, together with documents confirming the buyer's possession of the requirements established pursuant to subsection 6.
8. Where such requirements are not possessed or in the event of non-disclosure, voting rights associated with shares exceeding the threshold established pursuant to subsection 6 may not be exercised. In the event of failure to comply with the prohibition, Article 14, subsections 5 and 6 shall apply.
9. In agreement with the Bank of Italy, Consob shall authorise the company to perform central depository activities for financial instruments when the requirements envisaged in subsections 1, 2, 3, 4, 5 and 6 are met, and the services regulation pursuant to Article 81, subsection 2 complies with the provisions of this Title and related enactment regulations.

³⁶² Title as replaced by art. 2, Legislative Decree no. 27 of 27.1.2010 (published in Ordinary Supplement no. 43/L, Official Gazette no. 53 of 5.3.2010). Article 7, Legislative Decree no. 27 of 27.1.2010 states: “on first application of the provisions of Article 2 of this legislative decree, the enactment provisions currently in force and according to subject matter of Legislative Decree no. 58 of 24 February 1998 and Legislative Decree no. 213 of 24 June 1998, shall remain valid to the extent they may be compatible”.

10. Article 155 subsection 2, Article 156 subsection 4 and Article 159 subsection 1 shall apply to central depositories.

Article 81

Enactment regulation and service regulations

1. By regulation and in agreement with the Bank of Italy, Consob shall identify:

- a) the requirements that must be met by intermediaries and the activities envisaged under this Title that intermediaries are authorised to perform;
- b) the financial instruments admitted to the central depository system;
- c) the public distribution characteristics of financial instruments pursuant to Article 83-bis, subsection 2 for the purpose of their being subject to the provisions of this Title;
- d) the procedures and methods by which financial instruments are subject to or detracted from the provisions of this Title, depending on related requirements being met or ceasing to be met;
- e) the minimum content necessary for the contract to be stipulated between the central depository and the issuer or intermediary;
- f) the technical characteristics and content of the records and accounts opened with the central depository and the intermediary;
- g) the formats and methods that central depositories must adopt for account and record keeping, in compliance with the principle of segregation of their own accounts from those in the name of individual intermediaries;
- h) the formats and methods that intermediaries must adopt for account and record keeping, in compliance with the principle of segregation of their own accounts from those in the name of individual account holders;
- i) the methods by which the central depository must guarantee constant correspondence between the balances of issuer accounts and intermediary accounts, and related disclosures;
- l) the methods by which intermediaries must guarantee constant correspondence between the balances of their accounts held with the central depository and their own and customer accounts;
- m) without prejudice to the provisions of Article 83-sexies, subsection 4, the forms, models, terms, the intermediary responsible for issue and cancellation of certificates, and the issue and correction of disclosures envisaged, respectively, in Article 83-quinquies subsection 3 and Article 83-sexies;
- n) the criteria and methods for performing the activities specified in Article 83-octies;
- o) the deadlines by which intermediaries and central depositories must comply with disclosure obligations to issuers of the names of entitled shareholders and registrations under the terms of Article 83-octies, pursuant to Article 83-novies, subsection 1, paragraphs d), e), f) and g), and Article 89, respectively;
- p) additional provisions necessary for implementation of the provisions of this Title and others in any event required to ensure central depository system transparency and the regular provision of services.

2. The central depository shall adopt a services regulation indicating the services provided, the provision methods, criteria for admission to the central depository of persons and financial instruments, based on non-discriminatory, transparent and objective criteria. The services regulation shall be approved by Consob in agreement with the Bank of Italy. Consob, in agreement with the Bank of Italy, may establish that the fees for services provided by central depositories and fees requested by intermediaries for the certification, disclosure and reporting services envisaged in Chapter II of this Title shall be subject to Consob approval.

2-bis. The regulation envisaged in subsection 1 may refer the provisions for certain matters which, pursuant to subsection 1 or other provisions of this Title, are subject to Consob supervision in agreement with the Bank of Italy, to the services regulation.

Article 81-bis

Access to the central depository system

1. EU investment companies and banks authorised for investment services or activities may access the central depository system.

Article 82
Supervision

1. Supervision of central depositories shall be performed by Consob, in order to ensure transparency and investor protection, and by the Bank of Italy with regard to system stability and risk containment. Consob and the Bank of Italy may call upon such companies to submit data, information, papers and documents, also on a periodic basis, may perform inspections, request the exhibition of documents and that other action be taken as deemed necessary, indicating the related terms and conditions.

2. Consob and the Bank of Italy shall perform monitoring until the services regulation of the central depository is suitable to ensure actual achievement of the objectives indicated in subsection 1, and may request that the company amends the services regulation in a manner appropriate to eliminating any malfunction encountered.

Article 83
Central depositories in crisis

1. Should serious irregularities be ascertained, on recommendation from Consob or the Bank of Italy and by decree published in the Official Gazette, the Ministry of the Economy and Finance may order that the boards of directors of central depositories be disbanded. By such a decree one or more special commissioners are appointed for administration of the company and the fees payable to such commissioners, borne by the company, are established. Article 70 subsections 2 to 6, Article 72 except subsections 2 and 8, and Article 75 of the Consolidated Law on Banking shall apply, the Bank of Italy's powers being deemed attributed to the authority proposing the order.

1-bis. Should exceptionally serious irregularities be ascertained, in agreement with the Bank of Italy Consob may order cancellation of the authorisation referred to in Article 80, subsection 9.

2. If a central depository is declared insolvent pursuant to Article 195 of the Bankruptcy Act, or authorisation is cancelled pursuant to subsection 1-bis, the Minister of the Economy and Finance shall issue a decree ordering that the company be placed under compulsory administrative liquidation excluding bankruptcy, in accordance with the provisions of Article 80 subsections 3, 4, 5 and 6, Articles 81 to 83, Article 84 except subsection 2, and Articles 85 to 94 of the Consolidated Law on Banking, to the extent they may be compatible.

Chapter II
Central depository system regulations

Section I
Central depository system for dematerialisation

Article 83-bis
Scope of application

1. Financial instruments traded or due to be traded on Italian regulated markets may not be represented by securities pursuant to the provisions of Title V, Book IV of the Civil Code.

2. Based on their distribution among the public, the regulation referred to in Article 81, subsection 1 may also envisage that financial instruments without the characteristics indicated in subsection 1 be subject to the provisions of this section.

3. The issuer of financial instruments may subject them to the provisions of this section.

Article 83-ter
The central depository system

1. For each issue of financial instruments subject to the provisions of this section, a single central depository must be selected. This issue shall inform the central depository of the total value of the financial instruments issue, its composition and any other characteristics required under the regulation indicated in Article 81, subsection 1. For each issue the central depository system shall open an account in the name of the issuer.

Article 83-quater
Central depository and intermediary duties

1. Transfer of financial instruments subject to the provisions of this section, and the exercise of related ownership rights, may only be performed through intermediaries.

2. On request, the central depository shall open an account for each intermediary to record movements of the financial instruments deposited on that account.

3. For each financial instruments account holder, the intermediary, if appointed to perform this service, shall on each account – strictly separated by account holder and separate from any account in the intermediary's own name – record the financial instruments held, their transfer, the rights exercised and restrictions pursuant to Article 83-octies, as instructed by the owner or on their behalf. In all other circumstances the intermediary shall, for subsequent duties, inform the intermediary with whom the owner has opened an account of the transfer action taken. Registration of the transfers shall be performed by the intermediaries on settlement of the related transactions.

4. The registrations and disclosures prescribed by current regulations envisaging numeric identification of certificates shall indicate the type and quantity of instruments concerned.

Article 83-quinquies
Rights of the account holder

1. After registration, the account holder indicated in Article 83-quater, subsection 3 shall legitimately have full and exclusive exercise of rights pertaining to the financial instruments registered on that account, in accordance with their individual regulations and the provisions of this Title. The account holder may dispose of financial instruments registered to the account in compliance with current regulations on such matters.

2. Any person for whom registration is performed on his or her behalf, based on entitlement and in good faith, shall not be liable for claims or action taken by previous owners.

3. Unless otherwise envisaged in Article 83-sexies, the legitimate exercise of rights indicated in subsection 1 shall be confirmed by showing the certificates issued by intermediaries in compliance with their account records, bearing an indication of the voting rights exercisable. Certificates shall not confer rights other than those legitimised as above. Disposition instructions given in relation to the aforementioned certificates shall be null and void.

4. More than one certificate may not be issued for the same financial instruments for the purpose of legitimising exercise of the same rights.

Article 83-sexies
Right to attend shareholders' meetings and the exercise of voting rights

1. The legitimate attendance of shareholders' meetings and the exercise of voting rights is confirmed by a statement to the issuer from the intermediary, in compliance with intermediary accounting records, on behalf of the person with the right to vote.

2. In Italian companies with shares admitted to trading on regulated markets or multilateral trading systems in Italy or other EU countries with the consent of the issuer, the statement envisaged in subsection 1 shall be issued by the intermediary on the basis of balances recorded at the end of the seventh trading day prior to the date of the shareholders' meeting on first or single call. Credit and debit records entered on accounts after this deadline shall not be considered for the purpose of legitimising the exercise of voting rights at the shareholders' meeting.

3. The Articles of Association of companies other than those indicated in subsection 2 may specify that shares included in the statement must be registered on the account of the person with voting rights by a given deadline, and may envisage that such shares cannot be transferred until closure of the shareholders' meeting. For companies with widely-distributed shares the aforementioned deadline may not exceed two business days. Where the Articles of Association do not inhibit disposal of the shares, for any such disposal the intermediary shall be obliged to correct the previous statement issued.

4. The statements indicated in subsection 1 must reach the issuer by the end of the third trading day prior to the date of the shareholders' meeting on first call, or other deadline established by Consob regulation issued in agreement with the Bank of Italy, or by the later deadline established in the Articles of Association of companies referred to in subsection 3. It remains implicit that the right to attend and vote shall be legitimate if the statements are received by the issuer after the deadlines indicated in this subsection, provided they are received before the opening of a shareholders' meeting on single call.

5. Subsections 1, 3 and 4 shall apply to cooperatives. For cooperatives with shares admitted to trading on regulated markets or multilateral trading systems in Italy or other EU countries with the consent of the issuer, the time limit referred to in subsection 3 cannot exceed two business days³⁶³.

Article 83-septies *Opposable exceptions*

1. On exercise of the rights attached to financial instruments by the person on whose behalf the registration was completed, the issuer may only oppose exceptions personal to the individual in question and those common to all other holders of the same rights.

Article 83-octies *Establishing restrictions*

1. Restrictions of any kind on financial instruments governed by this section, including restrictions envisaged under special regulations on public debt securities, may be established only by registration in a special account held by the intermediary.

³⁶³ Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the newly introduced Article 83-sexies, Legislative Decree 58/98, shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 85 (*Central deposits*) **1.** Where financial instruments consigned to the central system are represented physically by securities, the performance and the effects of central depository activity shall be governed by this article and Articles 86-89. **2.** The clause of the deposit contract concluded with intermediaries identified in the regulation provided for in Article 81(1), with reference to financial instruments identified in the same regulation, which authorises the depository to subdeposit the financial instruments with a central depository must be approved in writing. In exercising such authority, depositories shall have all the necessary powers, including that of endorsement to the central depository where the financial instruments in question are registered. **3.** Financial instruments shall be consigned to the central systems as a non-fungible deposit. The central depository shall be authorised to carry out all the transactions inherent to central depository activity in conformity with the regulation referred to in Article 81(2), and to take the required action following the destruction, loss or theft of the financial instruments. Owners of the financial instruments consigned to the central system shall remain entitled to exercise the rights attached thereto. **4.** The exercise of the rights referred to in subsection 3 shall be legitimated by the exhibition of certifications attesting participation in the central system, issued by depositories in conformity with their accounting records and specifying the shareholder right that may be exercised. Certifications shall confer no other rights than such legitimisation. Agreements for the transfer of certifications shall be null and void. **5.** ...omissis... **6.** There may be no more than one certification in respect of the same financial instruments for the purpose of legitimating the exercise of the rights attached thereto. **7.** Central depositories shall be subject to the ban on representation referred to in Article 2372, subsection 4 of the Civil Code. **8.** Financial instruments owned by a central depository must be specifically identified and entered in a special register kept by the company. **9.** A central depository shall be liable for loss or harm due to negligence or fraud; intermediaries shall be jointly liable, without prejudice to the right of recourse to internal relations. The regulation provided for in Article 81(1) shall establish the guarantees that intermediaries and the central depository must supply for compensation due to customers and the arrangements and terms governing the guarantees, which may be different from insurance, serving to meet losses arising from events not attributable to the central depository."

2. Specific accounts may be opened to allow restrictions to be established on all financial instruments registered to that account. In such cases the intermediary shall be responsible for complying with instructions received at the time the restriction is established in relation to preserving intact the value of the restriction and the exercise of rights attached to the financial instruments affected.

Article 83-novies
Duties of the intermediary

1. The intermediary:

a) in the name of and on behalf of the account holder, shall exercise rights attached to the financial instruments, provided the account holder has conferred mandate to do so;

b) at the request of the interested party, shall issue the certificates referred to in Article 83-quinquies, subsection 3, when necessary for the exercise of rights attached to the financial instruments;

c) at the request of the interested party, shall issue the statements envisaged in Article 83-sexies. The request may be made with reference to all shareholders' meetings of one or more issuers, until otherwise instructed. In such cases, the intermediary shall make all due arrangements without the need for further statement issue requests;

d) shall inform the issuer of the names of persons requesting certificates envisaged in Article 83-quinquies, subsection 5, together with the names of persons that have received dividends and those who, exercising option rights or other rights, have acquired ownership of registered financial instruments, specifying the related quantity so that issuer obligations may be met;

e) at the request of the interested party or where envisaged under current regulations, shall also inform the issuer of the names of persons with rights on the financial instruments so that issuer obligations may be met;

f) if the persons with rights on the financial instruments are not the persons requesting certificates or are persons on whose behalf statements have been issued for attendance at shareholders' meetings, shall inform the issuer of the names of such persons so that issuer obligations may be met;

g) in cases in which statements pursuant to paragraph c) and reports pursuant to paragraphs d), e) and f) have been issued, shall inform the issuer of registrations performed in accordance with Article 83-octies.

2. The deposit of certificates issued by the intermediary shall, to all effect and purpose of the law, replace deposit of the security as envisaged under current regulations.

3. The obligation to issue certificates shall also apply in reference to financial instruments not admitted to the central depository system pursuant to Chapter I and which are registered on intermediary accounts.

Article 83-decies
Intermediary liability

1. The intermediary shall be liable:

a) to the account holder for damages deriving from the transfer of financial instruments performed on the account holder's behalf, for correct record-keeping and prompt compliance with obligations under the terms of this decree and the regulation referred to in Article 81, subsection 1;

b) to the issuer for compliance with disclosure and reporting obligations imposed by this decree and by the regulation referred to in Article 81, subsection 1.

Article 83-undecies
Issuer obligations

1. The issuers of shares shall update the shareholders' register in compliance with statements and reports submitted by intermediaries pursuant to Article 83-novies, subsection 1, paragraphs b), c), d), e) and f) and Article 83-duodecies, within thirty days of their receipt.

2. Without prejudice to Article 2421 of the Civil Code, even if the shareholders' register is not set up or maintained by electronic means, the results of that shareholders' register shall be made available to shareholders, on request, also on electronic support media.
3. The provisions regarding cooperatives' annotation of the shareholders' register remain valid.
4. All of the above without prejudice to the provisions of Article 7, Law no. 1745 of 29 December 1962.

Article 83-duodecies
Shareholder identification

1. Where envisaged in the Articles of Association, Italian companies with shares admitted to trading on regulated markets or multilateral trading systems in Italy or other EU countries with the consent of the issuer, may at any time and at their own expense call upon intermediaries – through a central depository – to provide data identifying shareholders that have not specifically denied consent to such disclosures, together with the number of shares registered on accounts in their names.
2. The disclosures referred to in subsection 1 must reach the issuer within ten trading days of the date of the request, or other deadline established by Consob by regulation issued in agreement with the Bank of Italy.
3. Where the Articles of Association envisage the option indicated in subsection 1, the company shall make the same request if asked to do so by a number of shareholders representing half the minimum investment established by Consob pursuant to Article 147-ter, subsection 1. The related costs shall be divided between the company and the shareholders concerned according to criteria established by Consob regulation, with due regard to the requirement not to encourage the use of this tool by shareholders for purposes not consistent with the aim of facilitating coordination between such shareholders for the exercise of rights calling for a professional investment³⁶⁴.
4. In accordance with the terms and conditions of Article 114, subsection 1, companies shall publish a disclosure confirming that a request for identification has been made, providing reasons if the request is made pursuant to subsection 1, or the identity and total investment of requesting shareholders for requests made pursuant to subsection 3. The data received shall be made available to shareholders free of charge, without prejudice to the obligation to update the shareholders' register.
5. This article shall not apply to cooperatives.

Section II
Central depository system for financial instruments in the form of securities

Article 85
Central deposits

1. Where financial instruments consigned to the central system are represented physically by securities, the performance and the effects of central depository activity shall be governed by this section. Unless otherwise envisaged in this section, Articles 83-ter to 83-undecies shall apply.
2. The clause of the deposit contract concluded with intermediaries identified in the regulation pursuant to Article 81, subsection 1, referring to financial instruments identified in the that regulation, which authorises the depository to subdeposit the financial instruments with a central depository must be approved in writing. In exercising such authority, depositaries shall have all the necessary powers, including that of endorsement

³⁶⁴ Article 7, Legislative Decree no. 27 of 27.1.2010 states: "until issue of the regulation envisaged in Article 83-duodecies, subsection 3, the costs relating to shareholder identification requests issued on the shareholders' initiative shall be borne by the requesting shareholders".

to the central depository where the financial instruments in question are registered. Deposit may be performed directly by the issuer.

3. Financial instruments shall be consigned to the central systems as a non-fungible deposit. The central depository shall be authorised to carry out all transactions inherent to central depository activity in compliance with the regulation referred to in Article 81(2), and to take action as necessary following the destruction, loss or theft of the financial instruments.

Article 86

Transfer of rights attached to financial instruments on deposit

1. The person depositing financial instruments admitted to the system may, through the depository and in accordance with the methods indicated in the services regulation envisaged in Article 81, subsection 2, request delivery of a corresponding quantity of financial instruments of the same type on deposit with the central depository.

2. The owner of financial instruments admitted to the system shall assume all rights and obligations deriving from the deposit should it be proved that the person depositing the instruments was not entitled to do so.

Article 87

Restrictions on centrally deposited financial instruments

1. Restrictions on financial instruments admitted to the system shall be transferred as-is to the rights of the depositing party, with endorsement to the central depository. Annotations of restrictions on the certificates shall have no effect, and this shall be stated on the instrument.

2. In the event of withdrawal of financial instruments from the system, the depository shall annotate the restrictions on the related certificates with an indication of the date on which they were established.

3. In the event of seizure of financial instruments admitted to the system, formalities regarding co-owner obligations as envisaged in Articles 599 and 600 of the Italian Code of Civil Procedure shall be completed on behalf of the depositaries.

Article 88

Withdrawal of centrally deposited financial instruments

1. The central depository shall make any financial instruments subject to a withdrawal request available to the depository. Registered financial instruments shall be endorsed in the name of the depository, who shall complete the endorsement with the name of the endorsee. Completion of the endorsement shall be validated with the stamp, date and signature of the depository.

2. The central depository may authenticate the endorsing signature also when endorsed in its own favour. The central depository signature affixed to the instrument as endorsing party does not require authentication. The endorsement and registration in the name of the central depository of financial instruments to be admitted to the system shall specifically mention this decree.

Article 89

Updating of the shareholders' register

1. For the purpose of updating the shareholders' register, the central depository shall inform issuers of registered shares endorsed in its favour.

Chapter III
Central depository regulations for government securities

Article 90
Central deposit of government securities

1. The Minister of the Economy and Finance shall issue a regulation on the central deposit of government securities, indicating related operating criteria and the methods for identifying central depositories of government securities. Unless otherwise envisaged in the regulations issued pursuant to this article, Chapter I and Chapter II, Articles 83-*bis* to 83-*decies* shall apply.

PART IV
REGULATION OF ISSUERS

TITLE I
GENERAL PROVISIONS

Article 91
Consob's powers

1. Consob shall exercise the powers provided for in this Part having regard to the protection of investors and the efficiency and transparency of the market in corporate control and the capital market.

Article 92
(Equal treatment)

1. Listed issuers and listed issuers with Italy as their home Member State shall guarantee the same treatment and with identical terms and conditions to all holders of the listed financial instruments.

2. Listed issuers and listed issuers with Italy as their home Member State shall guarantee the instruments and information necessary for the exercise of rights to all holders of the listed financial instruments.

3. By regulation and in compliance with EU law, Consob shall dictate the enactment provisions pursuant to subsection 2, also envisaging the option to use electronic information transmission media³⁶⁵.

Article 93
Definition of control

1. In this part, in addition to the companies indicated in paragraphs 1 and 2 of the first subsection of Article 2359 of the Civil Code, the following shall also be considered subsidiaries:

a) Italian and foreign companies over which a person has the right, by virtue of a contract or a clause in the instrument of incorporation, to exercise a dominant influence, where the applicable law permits such contracts or clauses,

b) Italian and foreign companies where a shareholder controls alone, on the basis of agreements with other shareholders, enough votes to exercise a dominant influence in the ordinary shareholders' meeting.

2. For the purposes of subsection 1, rights held by subsidiaries or exercised through trustees or nominees shall be considered, those held on behalf of third parties shall not be considered.

³⁶⁵ Article as replaced by art. 1 of Legislative Decree no. 195 of 6.11.2007

TITLE II SOLICITATION OF PUBLIC SAVINGS

Chapter I³⁶⁶ Public offerings

Article 93-bis³⁶⁷ Definitions

1. In this Chapter:

- a) "EU financial instruments" shall mean: securities and units of closed-end funds³⁶⁸;
- b) "equity securities" shall mean: shares and other tradable instruments equivalent to shares in companies and any other type of tradable EU financial instrument conferring the right to purchase the aforementioned instruments by conversion or the exercise of options, provided that such instruments are issued by the issuer of the underlying shares or by a member of the same group as that of the issuer;
- c) "instruments other than equity securities" shall mean: all EU financial instruments that are not equity securities;
- d) "open-end UCITS units and shares" shall mean: units of an open-end mutual investment fund and shares in an investment company with floating capital;
- e) "global organiser" shall mean: the person organising and establishing the placement syndicate, the placement coordinator or sole placement agent;
- f) "home member state" shall mean:
 - 1) for all EU issuers of financial instruments not mentioned under subparagraph 2) below, the EU member state of the issuer's registered office;
 - 2) for the issue of EU financial instruments other than equity securities, the nominal unit value of which is at least 1,000 euro and for the issue of EU financial instruments other than equity securities with options to purchase tradable securities or receive a cash amount through the conversion or exercise of options conferred, provided that the issuer of EU financial instruments other than equity securities is not the issuer of the underlying EU financial instruments or a member of the issuer's group, the EU member state of the issuer's registered office or in which the EU financial instruments have been or shall be destined for admission to trading on a regulated market or in which the EU financial instruments are offered to the public, as decided by the issuer, offeror or the person requesting the admission, as required. The same shall apply to EU financial instruments other than equity securities in a currency other than euro, provided that the minimum value of such currency shall be more or less equivalent to 1,000 euro;
 - 3) for all issuers of EU financial instruments not mentioned under subparagraph 2) with registered office in another country, the EU member state in which the EU financial instruments are destined to be offered to the public for the first time after the entry into force of Directive 2003/71/EC or in which the first application for admission to trading on a regulated market was submitted as decided by the issuer, offeror or person requesting the admission, as required, except where issuers with registered office in another country should subsequently decide, if the home member state was not determined by their own choice;
- g) "host member state" shall mean: the EU member state in which a public offering is implemented or where application to trading of EU financial instruments is made, if different from the home member state.

³⁶⁶ The whole of Chapter I (articles 93-bis-101) was initially replaced by art. 3 of Legislative Decree no. 51 of 28.3.2007 and later amended by art. 15, Legislative Decree no. 164 of 17.9.2007 and art. 1, Legislative Decree no. 101 of 17.7.2009 in the terms indicated in the notes to articles 93-bis and 100-bis.

³⁶⁷ Article first replaced by art. 3 Legislative Decree no. 51 of 28.3.2007 and later amended by art. 15 Legislative Decree no. 164 of 17.9.2007 in the terms indicated in the subsequent note.

³⁶⁸ Paragraph as replaced by art. 15 Legislative Decree no. 164 of 17.09.2007

Section I
**Public offering of EU financial instruments and financial products other
than open-end UCITS units or shares**

Article 94
Obligations of offerors

1. Persons who intend to make a public offering shall give advance notice thereof to Consob, attaching the prospectus to be published.
2. The prospectus shall contain the information that, depending on the characteristics of the financial products and the issuer, is necessary for investors to make an informed assessment of the issuer's assets and liabilities, profits and losses, financial position and prospects and of the financial products and related rights.
3. The prospectus for the public offering of EU financial instruments shall be drafted in compliance with models provided in EU regulations on this matter.
4. Offerors may request the issue of the authorisation referred to in subsection 3 in order to have the prospectus published in Italy recognized abroad.
5. Consob, taking account of the characteristics of individual markets, may, at the request of the stock exchange company, entrust such company with tasks concerning the examination of prospectuses for public offerings of financial instruments that are listed or the object of an application for admission to listing on a regulated market.
6. Where the offering relates to financial products other than EU financial instruments, the prospectus for which is not governed by article 95, subsection 1, paragraph b), Consob shall establish, on request from the issuer or offeror, the content of the prospectus.
7. Any new and significant fact or material error in relation to information contained in the prospectus and likely to influence the assessment of financial products, and which still exist or are discovered between the time of approval of the prospectus and the closing date of the public offering must be mentioned in a supplement to the prospectus.
8. The issuer, offeror or any guarantor, as applicable, or the persons responsible for the information contained in the prospectus, shall be liable, each in relation to the extent of their own duties, for damages caused to the investor placing reasonable faith in the truth and accuracy of information contained in the prospectus, unless it is proved that all due diligence was adopted for the purpose of guaranteeing that the information in question complied with the facts and that no information was omitted that could have altered the sense thereof.
9. The intermediary responsible for placement shall be liable for false information or omissions that could influence the reasoned decisions of an investor, unless said intermediary proves that all due diligence was adopted pursuant to the previous subsection.
10. No person may be held liable solely on the basis of the securities note, including any translation, unless the securities note proves misleading, inaccurate or inconsistent if read together with other parts of the prospectus.
11. Claims for compensation may be brought within five years of publication of the prospectus, unless the investor can prove having discovered the false nature of the information or omissions in the two years prior to the financial year in which such action is taken.

Article 94-bis
Approval of the prospectus

1. For approval purposes, Consob shall verify the accuracy of the prospectus, including the consistency and comprehensibility of the information contained therein³⁶⁹.
2. Consob shall approve the prospectus according to their own terms established by regulation in compliance with EU regulations. Failure to issue decision by Consob by the established deadlines shall not constitute approval of the prospectus.
3. Also taking account the characteristics of individual markets, Consob, through special agreements, may assign tasks relating to control of the prospectus to the stock exchange company for offerings concerning financial instruments admitted for trading or involving the application for admission to listing on a regulated market, in observance of the principles established under EU regulations. In observance of the aforementioned principles and related exceptions, delegated tasks shall terminate by 31 December 2001. Consob shall inform the European Commission and the competent authorities of other EU member states on agreements relating to such delegated tasks, specifying the terms governing said delegation.
4. In order to ensure the efficiency of procedures for approval of a prospectus concerning banking debt securities for trading on a regulated market, Consob shall stipulate cooperation agreements with the Bank of Italy.
5. Where an offering concerns EU financial instruments, Consob may transfer approval of the prospectus to the competent authority of another EU member state, subject to acceptance by the latter. Said transfer shall be notified to the issuer and offeror within three working days of the decision taken by Consob. The approval deadlines shall commence from said date.

Article 95
Implementing provisions

1. Consob shall issue a regulation with provisions implementing this chapter, which may be differentiated according to the characteristics of the financial products, issuers and markets. The regulation shall establish in particular:
 - a) the content of the notice to be sent to Consob and of the prospectus and the procedures for publishing the prospectus and updating it where necessary;
 - b) the procedures to be observed before the publication of the prospectus for disseminating new information, carrying out market research and surveying intentions to buy or subscribe;
 - c) the procedures for making public offerings, *inter alia* with a view to ensuring the equal treatment of the persons solicited.
 - d) the implementation methods for the offering, also to guarantee equal treatment of the addressees;
 - e) the language used for the prospectus;
 - f) the conditions for the transfer of approval of a prospectus to the competent authority of another member state³⁷⁰.
2. Consob shall lay down in a regulation the conduct-of-business rules to be observed by the offeror, the issuer and the person placing the financial products, as well as by persons in a control relationship with or related to such persons.³⁷¹
3. Consob shall publish at least a list of prospectuses approved pursuant to article 94-bis on its Internet web site.

³⁶⁹ Subsection amended by art. 1, subsection 3, Legislative Decree no. 101 of 17.7.2009, which replaced the word “and” with the word “including”.

³⁷⁰ See Consob regulation no. 11971 of 14.5.1999, as amended.

³⁷¹ See Consob Regulation 11971/1999 as amended.

4. Consob shall determine which financial instruments or products, admitted for trading on regulated markets or widely distributed among the public pursuant to article 116 and identified by a particular denomination or on the basis of specific qualifying criteria, must have a typical determined content.

Article 95-bis

Cancellation of a purchase or subscription

1. Where the prospectus does not indicate the conditions or criteria based on which the final offer price and quantity of products concerned in the public offering are determined or, in relation to the price, the maximum price, acceptance of the purchase or subscription of financial products may be cancelled by the deadline indicated in the prospectus and in any event in a period of not less than two working days calculated from the date of filing of the final offer price and the quantity of financial products offered to the public.

2. Investors that have already agreed to purchase or subscribe to financial products prior to publication of a supplement shall have the right, for exercise by the deadline indicated in the supplement and in any event not less than two working days after said publication, to cancel their acceptance.

Article 96

(Issuer financial statements)

1. The most recent separate or consolidated financial statements prepared by the issuer shall be accompanied by audit reports in which a statutory auditor or independent statutory auditors entered in the register held by the Ministry of the Economy and Finance expresses their opinion. Any offering of financial products other than EU financial instruments cannot be made if the statutory auditor or independent statutory auditors express an adverse opinion or disclaimer³⁷².

Article 97

Information requirements

1. Without prejudice to Title III, Chapter I, in relation to public offerings, the related issuers, independent auditors, members of the issuer and offeror boards of directors and the intermediaries appointed as placing agents shall be subject to Articles 114(5) and 114(6) and to Article 115, from the date of the notice envisaged in Article 94, subsection 1.

2. Consob shall lay down in a regulation which of the provisions referred to in subsection 1 shall apply, for the same periods, to the other persons referred to in Article 95(2) and to persons who provide services referred to in Article 1(6)(e)³⁷³.

3. Issuers shall submit any separate or consolidated financial statements approved or prepared during the offer period for the opinion of a statutory auditor or independent statutory auditor entered in the special register³⁷⁴.

4. Where there are grounds for suspected violation of the provisions of this Chapter or related enactment regulations, Consob, for the purpose of obtaining details, may within one year of the purchase or subscription request information and the submission of records and documents from the buyers or subscribers of the financial products *referred to under this Section*, establishing related deadlines. The power to request may also be exercised with regard to persons against whom there are no grounds for suspicion that they implement, or have implemented, a public offering in contravention of the provisions of article 94³⁷⁵.

³⁷² Article as replaced by art. 40, Legislative Decree no. 39 of 27.01.2010.

³⁷³ See Consob Regulation 11971/1999 as amended.

³⁷⁴ Subsection as replaced by art. 40, Legislative Decree no. 39 of 27.1.2010.

³⁷⁵ Subsection as amended by art. 1, subsection 4, Legislative Decree no. 101 of 17.7.2009, which added the words “, or have implemented”.

Article 98***Recognition of prospectuses***

1. The prospectus and any supplements approved by Consob shall be valid for the purpose of the offering of EU financial instruments in other EU member states. For this purpose Consob shall issue notification in accordance with procedures in compliance with EU regulations.
2. If a public offering is made simultaneously or within a short interval in Italy and other EU member states, it shall be subject to the requirements provided for in this chapter where the issuer has its registered office in Italy.
3. Consob may inform the competent authority of the home member state of the need to provide new information.

Article 98-bis***Issuers from non-EU countries***

1. Where the registered office of issuers is in a non-EU country, for whom Italy is the home member state, Consob may approve the prospectus drafted according to the law of the non-EU country provided the following conditions are satisfied:
 - a) the prospectus is drafted in compliance with international standards defined by international organisations for market supervisory commissions, including the Disclosure Standards issued by IOSCO and
 - b) the information requested, including information of a financial nature, is equivalent to that prescribed by EU regulations.
2. Where the offering requires that Italy acts as the host member state, article 98, subsections 2 and 3 shall apply.

Section II**Public offering of open-end UCITS units or shares****Article 98-ter*****The offering prospectus***

1. Those intending to implement an offering of units of open-end funds or shares in a SICAV, advance notice must be given to CONSOB, attaching the full prospectus and simple prospectus planned for publication.
2. The prospectuses shall contain information which, depending on the product and issuer characteristics, are necessary to allow the investor to form a reasoned opinion on the proposed investment, associated rights and related risks. The information contained in the prospectuses must be in a clear, easily understandable and analysable format.
3. The publication of prospectuses is governed by Consob pursuant to the terms and conditions established by Consob regulation.
4. The simplified prospectus may constitute the document valid for the offering in Italy, except where the translation of offerings of open-end UCITS units or shares is required pursuant to articles 42 and 50, subsection 2.
5. Article 94, subsections 8, 9 and 11 shall apply.

Article 98-quater
Implementation provisions

1. By regulation, Consob shall dictate the implementation provisions of this Section, also differentiated in relation to the characteristics of the open-end UCITS, issuers and markets. In line with EU provisions, the regulation shall establish in particular:

- a) the content of the notification to Consob and prospectuses, together with the publication method for the prospectus and any updates;
- b) the methods to be observed for the disclosure of information, perform market surveys or collect intentions to purchase or subscribe;
- c) the implementation methods for the offering, also to guarantee equal treatment of the addressees.

2. Where the offering relates to open-end UCITS units or shares for which the prospectuses are not regulated pursuant to subsection 1a), at the request of the offerors Consob shall establish the prospectus content.

3. By regulation, Consob shall identify the rules on accuracy that must be observed by the offeror and by placement agents of the open-end UCITS units or shares, and by those with control over or associated with said persons.

Article 98-quinquies
Reporting obligations

1. Without prejudice to Title III, Chapter I, the following shall apply to offerors of open-end UCITS units or shares:

- a) article 114, subsections 5 and 6, from the date of publication of the prospectuses until conclusion of the offering;
- b) article 115, from the date of the notification pursuant to article 98-ter until one year after conclusion of the offering.

2. By regulation, Consob shall identify which provisions referred to under subsection 1 shall apply, their related periods, other persons concerned pursuant to article 98-quater, subsection 3 and persons providing services pursuant to article 1, subsection 6, paragraph e).

3. Where there are grounds for suspected violation of the provisions of this Chapter or related enactment regulations, Consob, for the purpose of obtaining details, may within one year of the purchase or subscription request information and the submission of records and documents from the buyers or subscribers of the open-end UCITS units or shares, establishing related deadlines. The power to request may also be exercised with regard to persons against whom there are grounds for suspicion that they implement public offerings in contravention of the provisions of article 98-ter.

Section III
Common provisions

Article 99
Powers of interdiction

1. Consob may:

- a) suspend the public offering as a precautionary measure for a maximum of ninety days in the event of a well-founded suspicion of violation of the provisions of this chapter or the related regulations;
- b) prohibit the public offering in the event of an ascertained violation of the provisions or rules referred to in paragraph a).
- c) prohibit the public offering if there are grounds to suspect violation of the provisions of this Chapter or related enactment regulations;

- d) prohibit the public offering if violation of the provisions or regulations referred to under paragraphs a) or b) are confirmed;
- e) make public the fact that the public offering or issuer fails to meet obligations;
- f) without prejudice to the powers envisaged under article 64, subsection 1-*bis*, paragraph c), as a preventive measure and for a period not exceeding ten consecutive working days on each occasion, request that the stock exchange company suspend trading on a regulated market in the case of grounds for suspected violation of the provisions of this Chapter and related enactment regulations;
- g) without prejudice to the powers envisaged under article 64, subsection 1-*bis*, paragraph c), request that the stock exchange company prohibits trading on a regulated market in the case of confirmed violation of the provisions of this Chapter and related enactment regulations.

2. Where Consob, as the competent authority for the host member state, should discover irregularities committed by the issuer or authorised persons appointed to implement the public offering of EU financial instruments, Consob shall inform the competent authority of the home member state.

3. If despite measures adopted by the competent authority of the home member state, or if such measures prove inadequate, the issuer or authorised person appointed to implement the public offering continues to violate relevant legal or regulatory provisions, after informing the competent authority of the home member state, Consob shall adopt appropriate investor protection measures. Consob shall inform the European Commission as soon as possible of the adoption of such measures.

Article 100 *Cases of inapplicability*

1. The provisions of this chapter shall not apply to public offerings:
- a) aimed exclusively at professional investors as defined pursuant to Article 30(2);
 - b) aimed at a number of persons not exceeding that established by Consob in a regulation³⁷⁶;
 - c) of a total amount not exceeding that established by Consob in a regulation³⁷⁷;
 - d) having as their object financial instruments issued or guaranteed by the Italian government or an EU member state or issued by international organisations of a public nature of which one or more EU member states are part;
 - e) having as their object financial instruments issued by the European Central Bank or the national central banks of the EU member states;
 - f) relating to instruments other than equity shares issued on an ongoing or repeated basis by banks, provided that such instruments:
 - i) are not subordinated, convertible or tradable;
 - ii) do not confer the right to subscribe to or purchase other types of financial instruments and are not linked to a derivative;
 - iii) give material right to the receipt of refundable deposits;
 - iv) are covered by a deposit guarantee system pursuant to articles 96 to 96-*quarter* of Legislative Decree no. 385 of 1 September 1993;
 - g) relate to money market instruments issued by banks with a less than 12-month maturity.
2. Consob may specify in a regulation other types of public offering to which the provisions of this chapter shall not apply in whole or in part³⁷⁸.
3. The issuer or offeror shall have the right to draft a prospectus pursuant to European provisions at the time of the public offering of instruments referred to under paragraphs c), d) and e) of subsection 1.

³⁷⁶ See Consob regulation no. 11971 of 14.5.1999, as amended.

³⁷⁷ See Consob regulation no. 11971 of 14.5.1999, as amended.

³⁷⁸ See Consob regulation no. 11971 of 14.5.1999, as amended.

Article 100-bis³⁷⁹

Circulation of financial products

1. The subsequent resale of financial products which have become the subject matter of a public offering which is exempt from the obligation to publish a prospectus forms to all effects a distinct and autonomous investment incentive in the case where there occur the conditions specified in the definition provided for in Article 1, subsection 1, paragraph *t*) and there are not any cases of inapplicability provided for by Article 100³⁸⁰.
 2. An investment incentive occurs also whenever the financial products which formed the subject matter in Italy or abroad of an allocation reserved for qualified investors are, during the following twelve months, systematically resold to people who are not qualified investors and this resale does not fall within any of the cases of inapplicability provided for in Article 100³⁸¹.
 3. On the assumption as per subsection 2, whenever a prospectus has not been published, the purchaser, who acts for purposes outside entrepreneurial or professional activity, can insist on voiding the contract and the authorised persons where the resale of the financial products occurred shall be liable for damage. What withstands is the application of sanctions by Article 191 and what was established by Article 2412 subsection 2, Article 2483 subsection 2 and Article 2526 subsection 4 of the Civil Code³⁸².
 4. Subsection 2 is not applied to the resale of certificates of indebtedness issued by member States of the Organisation for Economic Co-operation and Development (OECD) with a rating investment grade assigned by at least two primary international rating agencies, withstanding the exercise of the other civil, penal and administrative actions provided for the protection of investors.
- 4-bis. Consob has the power to dictate enactment provisions with regard to this article³⁸³.

Article 101

Advertisements

1. Documentation relating to any form of advertisement concerning a public offering is issued to Consob at the time of advertising.
2. Prior to the publication of the prospectus, public offerings may not be advertised in any way. Advertisements must be transmitted in advance to Consob.
3. Advertisements shall comply with the guidelines laid down by Consob in a regulation having regard to the accuracy of the information and its conformity with the contents of the prospectus³⁸⁴.
4. Consob may:
 - a) suspend the further diffusion of an advertisement as a precautionary measure for a maximum of ninety days in the event of a well-founded suspicion of violation of the provisions of this article or the related regulations;

³⁷⁹ Article added by art. 11, subsection 2, Law no. 262 of 28.12.2005, later replaced first by art. 3, Legislative Decree no. 303 of 29.12.2006 and then by art. 3, Legislative Decree no. 51 of 28.3.2007 which replaced the entire Chapter I (articles 93-bis to 101), and lastly amended by art. 15, Legislative Decree no. 164 of 17.9.2007 and art. 1, subsection 5, Legislative Decree no. 101 of 17.7.2009 as indicated in the following footnotes.

³⁸⁰ Subsection as amended by art. 15 of Legislative Decree no. 164 of 17.9.2007 which replaced the wording: "an invitation" with the wording: "a public offering".

³⁸¹ Subsection as amended by art. 15 of Legislative Decree no. 164 of 17.9.2007 which replaced the wording: "professional investors" with the wording: "qualified investors".

³⁸² Subsection as amended by art. 15 of Legislative Decree no. 164 of 17.9.2007 which suppressed the word: "information".

³⁸³ Subsection added by art. 1, subsection 5, Legislative Decree no. 101 of 17.7.2009.

³⁸⁴ See Consob regulation no. 11971 of 14.5.1999, as amended.

b) prohibit the further diffusion of an advertisement in the event of an ascertained violation of the provisions or rules referred to in paragraph a).

c) prohibit the making of the public offering in the event of failure to comply with the measures referred to in paragraphs a) or b).

d) prohibit execution of the public offering, in the case of failure to comply with the provisions of paragraphs a), b) or c).

5. Regardless of the obligation to publish a prospectus, significant information provided by the issuer or offeror to qualified investors or special categories of investor, including information disclosed during meetings regarding the offering of financial products, must be disclosed to all qualified investors or all special categories of investor to whom the offering is exclusively addressed.

Chapter II

Public offers to buy or exchange financial instruments

Section I

General provisions

Article 101-bis³⁸⁵ (Definitions and application environment)

1. For the purposes of this chapter, “Italian listed companies” shall mean companies with registered office in Italy and with securities admitted to trading on an EU regulated market.

2. For the purposes of this chapter and article 123-bis, “securities” shall mean financial instruments carrying voting rights, also limited to specific topics, at ordinary or extraordinary shareholders' meetings.

3. Article 102 subsections 2 and 5, article 103 subsection 3-bis, all other provisions of this decree imposing specific reporting obligations upon the offeror or issuer with respect to employers or their representatives, together with articles 104, 104-bis and 104-ter, shall not apply to:

a) takeover bids or exchange tender offerings involving financial products other than securities;

b) takeover bids or exchange tender offerings not involving securities that carry voting rights on the topics indicated in article 105 subsections 2 and 3;

c) takeover bids or exchange tender offerings launched by parties who, directly or indirectly, hold the majority of voting rights exercisable at ordinary shareholders' meetings of the company³⁸⁶;

d) takeover bids involving own shares.

3-bis. Without prejudice to the provisions of subsection 3, by regulation Consob may identify takeover bids and exchange tender offerings, involving financial products other than securities, for which the provisions of this Section wholly or in part shall not apply, where there is no conflict with the aims of article 91³⁸⁷.

4. “Persons acting in concert” shall mean persons cooperating together on the basis of a specific or tacit agreement, verbal or in writing, albeit invalid or without effect, for the purpose of acquiring, maintaining or strengthening control over the issuer or to counteract achievement of the aims of a takeover bid or exchange tender offering³⁸⁸.

4-bis. In any event, persons considered to be acting in concert are:

³⁸⁵ Article first included by art. 2, Legislative Decree no. 229 of 19.11.2007 and later amended by art. 1, Legislative Decree no. 146 of 25.09.2009 as indicated in the following footnotes.

³⁸⁶ Paragraph wording amended by art. 1, Legislative Decree no. 146 of 25.09.2009 IN THE ITALIAN VERSION ONLY; the changes have no effect on the English version.

³⁸⁷ Subsection added by art. 1, Legislative Decree no. 146 of 25.09.2009.

³⁸⁸ Subsection as replaced by art. 1, Legislative Decree no. 146 of 25.09.2009.

- a) parties to an agreement, even if void, envisaged in article 122, subsection 1 and subsection 5 paragraphs a), b), c) and d);
- b) an entity, its parent company and its subsidiaries;
- c) companies subject to joint control;
- d) a company and its directors, members of the management board, or supervisory board or general managers ³⁸⁹.

4-ter. Without prejudice to subsection 4-bis, by regulation Consob shall identify:

- a) cases in which it is presumed that the parties involved are persons acting in concert pursuant to subsection 4, unless they can prove that the conditions of said subsection do not apply;
- b) cases in which the cooperation between several persons does not qualify as acting in concert pursuant to subsection 4 ³⁹⁰.

Article 101-ter *Supervisory authority and applicable law*

1. Consob shall supervise takeover bids or exchange tender offerings in compliance with the provisions of this chapter.
2. For the purposes of allocation of responsibilities between Consob and other EU Member State authorities with regard to takeover bids or exchange tender offerings involving securities of companies subject to the law of an EU Member State, and instrumental or subsequent to the acquisition of control under the national law of the issuer, the following provisions shall be observed.
3. Consob shall supervise the implementation of public offerings:
 - a) involving securities issued by a company with registered office in Italy and admitted to trading on one or more Italian regulation markets;
 - b) involving securities issued by a company with registered office in an EU Member State other than Italy and admitted to trading solely on Italian regulation markets;
 - c) involving securities issued by a company with registered office in an EU Member State other than Italy and admitted to trading on regulated markets in Italy and in EU Member States other than that in which the company is registered, if said securities were first admitted to trading on an Italian regulated market or, if the securities were simultaneously first admitted to trading on regulated markets in Italy and in other EU Member States, where the issuer adopts Consob as the competent supervisory authority, informing the aforementioned markets and their supervisory authorities on the first day of trading. By regulation, Consob shall establish the terms and conditions for the public disclosure of the issuer's decision regarding adoption of the authority responsible for supervision of the offering ³⁹¹.
4. Where Consob is the competent supervisory authority pursuant to subsection 3, paragraphs b) and c), matters concerning the price, procedure, with particular reference to reporting obligations on the decision of the bidder to proceed with the bid, content of the takeover bid document and disclosure of the bid shall be governed by Italian law. In matters relating to the information to be provided to employees of the issuer, matters relating to company law, in particular with regard to the threshold exceeded which a takeover bid becomes mandatory, to any derogation from such an obligation and the conditions under which the board of

³⁸⁹ Subsection added by art. 1, Legislative Decree no. 146 of 25.09.2009.

³⁹⁰ Subsection added by art. 1, Legislative Decree no. 146 of 25.09.2009.

³⁹¹ Subsection 1 of art. 8 Legislative Decree no. 229 of 19.11.2007 states: "If the securities of a company, registered in a Member State other than Italy, are already admitted for trading on an Italian regulated market and on regulated markets in other Member States at the time of entry into force of this decree, and said securities were admitted for trading at the same time within four weeks of said date Consob and the supervisory authorities of those other countries shall agree on which authority will supervise the public offering. If by then the supervisory authorities should fail to reach a decision, on the first day of trading following expiry of said time limit the issuer shall decide which authority will be responsible. Article 101-ter, subsection 2, paragraph b), final part of the Consolidated Law containing provisions on financial intermediation pursuant to Legislative Decree no. 58 of 24 February 1998, as introduced by this decree, shall apply." [It seems that the reference made by article 8, subsection 1 above to article 101-ter, subsection 2, paragraph b), final part, should refer to article 101-ter, subsection 3, paragraph c), final part].

the issuer may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the issuer has its registered office.

5. Where the takeover bid involves securities issued by companies with registered office in Italy and admitted to trading solely on one or more regulated markets of other EU Member States, the matters indicated under subsection 4, second paragraph, shall be governed under Italian law and the relevant supervisory authority shall be Consob³⁹².

Article 102

Bidder obligations and prohibitive powers

1. The decision or occasion giving rise to the mandatorily promote a takeover bid or exchange tender offering shall be notified to Consob without delay and at the same time disclosed to the public. By regulation, Consob shall establish the content and publication terms of the notice.

2. As soon as the bid has been made public, the boards or control bodies of the issuer and of the bidder shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

3. Unless otherwise dictated by article 106, subsection 2, the bidder shall take immediate action to make the bid, and in any event no later than twenty days from the notice pursuant to subsection 1, and submit the takeover bid document for publication to Consob. Should said deadline not be met, the takeover bid document shall be declared inadmissible and the bidder may not make a further bid on the same financial products of the issuer in the twelve months thereafter.

4. Within fifteen days of submission of the takeover bid document, Consob shall issue its approval if the document allows receiving parties to form a reasoned opinion on the bid. On issue of approval, Consob may indicate to the bidder additional information to be included, specific means of publication of the takeover bid document and any special guarantees to be provided. The time limit for takeover bids involving unlisted financial products, or products widely distributed among the public pursuant to article 116, shall be thirty days. Should it prove necessary to request additional information from the bidder, said time limits shall be suspended, once only, until such information is received. Such information shall be provided within the time limit established by Consob, in any event not exceeding fifteen days. If for takeover bid implementation purposes, sector regulations require authorisation from other authorities, Consob shall approve the takeover bid document within five days of notification by said authorities. On expiry of the time limits indicated in this subsection, the takeover bid document shall be deemed approved.

4-bis. Limited to exchange tender offerings involving bonds and other debt securities, the bidder, also as an exception to the provisions of this chapter, may apply to Consob requesting that the offering be made subject to the provisions for public offerings for sale and subscription pursuant to Chapter I in this Title. Within fifteen days of receipt of such an application, Consob shall accept the request provided it does not conflict with the aims of article 91³⁹³.

5. When the document is made public, the boards or controlling bodies of the issuer and of the bidder shall circulate the document to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

6. Pending the takeover bid, Consob may:

a) suspend the bid as a precautionary measure if there are grounds to suspect violation of the provisions of this chapter or of regulatory provisions;

b) suspend the takeover bid for a period not exceeding thirty days if new facts, or facts not previously known, come to light that would not allow receiving parties to form a reasoned opinion on the bid;

³⁹² Article inserted by art. 2 Legislative Decree no. 229 of 19.11.2007

³⁹³ Subsection added by art. 1, Legislative Decree no. 146 of 25.09.2009.

c) declare the takeover bid lapsed if violation of the provisions or regulations referred to under paragraph a) is confirmed;

7. For the purposes of its supervision of the observance of provisions referred to in this chapter, Consob shall exercise the powers envisaged by article 115, subsection 1, paragraphs a) and b) against any party appearing to be aware of the facts. Where there are grounds to suspect violation of the provisions of this chapter or of regulatory provisions, article 187-*octies* shall apply.

8. Where indiscretions in any event spread to the public with regard to a possible takeover bid or exchange tender offering and there are irregularities in the market performance of the securities concerned, article 114, subsections 5 and 6 shall apply to the potential bidders³⁹⁴.

Article 103 *Implementation of offers*

1. Offers shall be irrevocable. Any clause stating the contrary shall be null and void. The offer shall be made at the same conditions to all the holders of the financial products that are the object thereof.

2. Without prejudice to Title III Chapter I, article 114, subsections 5 and 6, and article 115 shall apply to the issuers, bidders, persons acting in concert and the intermediaries appointed to collect bids from the date of notification indicated in article 102, subsection 1 and until one year from closure of the takeover bid³⁹⁵.

3. The board of directors of the issuer shall issue a notice containing all information useful to evaluating the bid and its own evaluation of the bid. For companies with a two-tier structure, the notice shall be approved, jointly if necessary, by the control body and supervisory council³⁹⁶.

3-bis. The notice shall also contain an evaluation of the effects of eventual success of the takeover bid on the interests of the company, and on the employment conditions and location of business premises. At the same time as its disclosure, the notice shall be issued to representatives of the company's employees or, where there are no such representatives, directly to the employees. If received in time, the opinion of employee representatives regarding repercussions on employment conditions, shall be attached to the notice³⁹⁷.

4. By regulation, Consob shall dictate the enactment provisions of this section, in particular governing:

a) content of the takeover bid document, its publication terms and terms of implementation of the takeover bid;

b) correctness and transparency of transactions on the financial products concerned;

c) the effects on the takeover bid price of purchase of the financial products concerned, by the bidders or persons acting in concert with the bidders after issue of the notice pursuant to article 102, subsection 1, pending the bid or in the six months following its closure;

d) amendments to the bid, increased and rival bids, without limiting the number of increased offers, that may be made prior to expiry of a maximum deadline;

e) acknowledgment of takeover bid documents approved by the supervisory authorities of other EU Member States or of non-EU countries with which cooperation agreements exist;

f) the publication terms of measures adopted by Consob pursuant to this section³⁹⁸.

5. ...*omissis*...³⁹⁹

³⁹⁴ Article as replaced by art. 2 of Legislative Decree no. 229 of 19.11.2007

³⁹⁵ Subsection first amended by art. 9, subsection 1 of Law no. 62 of 18.04.2005 (2004 Community Law) and later replaced by art. 2, Legislative Decree no. 229 of 19.11.2007.

³⁹⁶ Subsection replaced by art. 2 Legislative Decree no. 229 of 19.11.2007

³⁹⁷ Subsection included by art. 2 of Legislative Decree no. 229 of 19.11.2007

³⁹⁸ Subsection replaced by art. 2 Legislative Decree no. 229 of 19.11.2007

³⁹⁹ Subsection repealed by art. 2 of Legislative Decree no. 229 of 19.11.2007

Article 104⁴⁰⁰
Defensive measures

1. Unless approved by the ordinary or extraordinary shareholders' meeting, depending on the attributed level of decision-making powers, Italian listed companies whose securities are involved in the offering shall abstain from action or transactions that could counteract achievement of the aims of the offering. This abstention obligation shall apply from the date of notice pursuant to article 102, subsection 1, until closure of the offering or until the offering expires. Mere research into other offerings shall not constitute an act or transaction in conflict with the aims of the offering. The liability of directors, members of the management board, supervisory board and general managers for action taken or transactions executed shall remain unchanged⁴⁰¹.

1-*bis*. The shareholders' meeting approval envisaged in subsection 1 shall also be required for the implementation of any decision taken before the start of the period indicated in subsection 1, not yet implemented wholly or in part, that does not fall within the normal business practices of the company and the implementation of which could counteract achievement of the aims of the offering⁴⁰².

1-*ter*. The articles of association may differ, wholly or in part, from the provisions of subsections 1 and 1-*bis*. The company shall notify any difference approved pursuant to this subsection to Consob and to supervisory authorities for takeover bids in member countries in which their securities are admitted to listing on a regulated market or in which admission to listing has been requested. Without prejudice to the provisions of article 114, such differences shall also be promptly disclosed to the public in accordance with said provisions⁴⁰³.

2. The notice of call to shareholders' meetings referred to under this article shall be published by the means indicated in Article 125-*bis* at least fifteen days prior to the date of the shareholders' meeting⁴⁰⁴.

Article 104-*bis*⁴⁰⁵
Breakthrough

1. Without prejudice to the provisions of article 23, subsection 3, the articles of association of an Italian listed company, other than a cooperative, may provide that, where a takeover bid or exchange tender offering

⁴⁰⁰ Article first amended by art. 3, Legislative Decree no. 37 of 6.2.2004 and art. 2, Legislative Decree no. 229 of 19.11.2007, then replaced by art. 13, Decree Law no. 185 of 29.11.2008 converted to Law no. 2 of 28.1.2009, and lastly amended by art. 1, Legislative Decree no. 146 of 25.9.2009 as indicated in the following footnotes.

⁴⁰¹ Subsection as replaced by art. 1, Legislative Decree no. 146 of 25.09.2009, entering into force on 1.7.2010. The text of subsection 1 in force until that date shall be: "1. The articles of association of Italian listed companies may envisage that, with regard to the launch of a takeover bid or exchange tender offering involving their own issued securities, the rules dictated by subsections 1-*bis* and 1-*ter* shall apply."

⁴⁰² Subsection as replaced by art. 1, Legislative Decree no. 146 of 25.09.2009, entering into force on 1.7.2010. The text of subsection 1-*bis* in force until that date shall be: "1-*bis*. Unless authorised by the ordinary or extraordinary shareholders' meeting, depending on the attributed level of decision-making powers, Italian listed companies whose securities are involved in the offering shall abstain from action or transactions that could conflict with achievement of the aims of the offering. This abstention obligation shall apply from the date of notice pursuant to article 102, subsection 1, until closure of the offering or until the offering expires. Mere research into other offerings shall not constitute an act or transaction in conflict with the aims of the offering. The liability of directors, members of the management board, supervisory board and general managers for action taken or transactions executed shall remain unchanged".

⁴⁰³ Subsection as replaced by art. 1, Legislative Decree no. 146 of 25.09.2009, entering into force on 1.7.2010. The text of subsection 1-*ter* in force until that date shall be: "1-*ter*. The approval envisaged in subsection 1-*bis* shall also be required for the implementation of any decision taken before the start of the period indicated in that subsection, not yet implemented wholly or in part, that does not fall within the normal business practices of the company and the implementation of which could counteract achievement of the aims of the offering."

⁴⁰⁴ Subsection as replaced by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the replaced version of subsection 2 shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 104 (*Defensive measures*) [...omissis...] 2. The terms and conditions for calling shareholders' meetings pursuant to subsection 1-*bis*, also as an exception to current legal provisions, are governed by the regulation issued by the Minister of Justice after consulting Consob (see Minister of Justice regulation no. 437 of 5.11.1998, published in Official Gazette no. 295 of 18.12.1998).

⁴⁰⁵ Article first replaced by art. 2 Legislative Decree no. 229 of 19.11.2007 and later amended by art. 13, Decree Law no. 185 of 29.11.2008 in the terms indicated in the subsequent note.

is launched involving securities issued by that company, the regulations pursuant to subsections 2 and 3 shall apply⁴⁰⁶.

2. In the takeover bid period, limitations on the transfer of securities as envisaged in the articles of association shall have no effect on the bidder. Likewise, limitations on voting rights envisaged in the articles of association or shareholders' agreement in cases where a shareholders' meeting is called to resolve upon the actions and transactions pursuant to article 104, shall have no effect on the bidder⁴⁰⁷.

3. If as a result of a takeover bid pursuant to subsection 1 the bidder comes into possession of at least seventy-five per cent of the share capital with voting rights in relation to resolutions on the appointment or removal of directors or members of the controlling body or supervisory council, at the first shareholders' meeting following close of the bid, called to amend the articles of association or to remove or appoint directors or members of the controlling body or supervisory council, the following shall have no effect:

a) limitations on voting rights as envisaged in the articles of association or shareholders' agreements;
b) any special right in relation to the appointment or removal of directors or members of the control body or supervisory council as envisaged in the articles of association⁴⁰⁸.

4. The provisions of subsections 2 and 3 shall not apply to articles of association limitations on voting rights attributed to securities with capital privileges.

5. If the result of the bid pursuant to subsection 1 proves positive, the bidder shall be obliged to pay a fair indemnity for any prejudice to share capital suffered by holders of rights the exercise of which is rendered null by application of the provisions of subsections 2 and 3, provided that provisions of the articles of association or contractual provisions constituting such rights were in force prior to issue of the notice pursuant to article 102, subsection 1. The claim for indemnity must be submitted to the bidder, on penalty of lapse, within ninety days of the close of the bid or, where subsection 3 applies, within ninety days of the date of the shareholders' meeting. Should no agreement be reached, the amount of the indemnity shall be decided by the court as a discretionary assessment with regard, *inter alia*, to a comparison between the average market price of the security in the twelve months prior to issue of the first notice concerning the bid and the price performance following the positive conclusion of the bid.

6. The indemnity referred to under subsection 5 shall not be payable due to prejudice to share capital derives from the exercise of voting rights in conflict with a shareholders' agreement if, at the time of exercise of the voting right, the declaration of withdrawal pursuant to article 123 subsection 3 had already been submitted.

7. The provisions regarding special powers pursuant to article 2 of Italian Decree Law no. 332 of 31 May 1994, converted with amendments to Law no. 474 of 30 July 1994 as amended, and on shareholding limitations and on voting rights pursuant to article 3 of said Decree Law, shall remain valid⁴⁰⁹.

Article 104-ter⁴¹⁰

Reciprocity clause

1. The provisions of article 104, subsections 1 and 1-bis and, if envisaged in the articles of association,

⁴⁰⁶ Subsection replaced by art. 13 Decree Law no. 185 of 29.11.2008

⁴⁰⁷ Subsection 2 of art. 8 Legislative Decree no. 229 of 19.11.2007 states: "The provisions of article 104-bis, subsections 2 and 3 of the Consolidated Law containing provisions on financial intermediation, pursuant to Legislative Decree no. 58 of 24 February 1998, as introduced by this decree, shall apply to shareholders' agreements concluded after the entry into force of this decree".

⁴⁰⁸ Subsection 2 of art. 8 Legislative Decree no. 229 of 19.11.2007 states: "The provisions of article 104-bis, subsections 2 and 3 of the Consolidated Law containing provisions on financial intermediation, pursuant to Legislative Decree no. 58 of 24 February 1998, as introduced by this decree, shall apply to shareholders' agreements concluded after the entry into force of this decree". [Reference to the appointment of members of the controlling body seems incorrect, given that, according to article 2409-novies subsection 3, and article 2409-terdecies subsection 1 paragraph a) of the Italian Civil Code, the appointment of members of the controlling body is the responsibility of the supervisory council].

⁴⁰⁹ Subsection amended by art. 13, Decree Law no. 185 of 29.11.2008 which inserted the words: "and voting rights".

⁴¹⁰ Article first included by art. 2, Legislative Decree no. 229 of 19.11.2007 and later amended by art. 1, subsection 6, Decree Law no. 185 of 29.11.2008 (converted to Law no. 2 of 28.1.2009) and by art. 1, Legislative Decree no. 146 of 25.09.2009 as indicated in the following footnotes.

the provisions of article 104-*bis*, subsections 2 and 3, shall not apply to takeover bids or exchange tender offerings by entities not subject to such provisions or equivalent provisions, or by a company or entity controlled by such entities. Where launched by persons acting in concert, it is sufficient that such provisions do not apply to just one of the bidders involved⁴¹¹.

2. ...*omissis*...⁴¹²

3. At the request of the bidder or issuer and within twenty days of submission of the request, Consob shall decide whether the provisions applicable to the parties indicated under subsection 1 are equivalent to provisions to which the issuer is subject. By regulation, Consob shall establish the content and submission terms of such a request.

4. Any measure adopted by the issuer that could frustrate the bid under the terms of subsection 1 must be expressly authorised by the shareholders' meeting, with regard to a possible takeover bid, in the eighteen months prior to disclosure of the decision to implement a takeover bid pursuant to article 102 subsection 1. Without prejudice to article 114, said authorisation shall be disclosed to the market without delay in accordance with the terms pursuant to said article⁴¹³.

Section II

Mandatory public offers to buy

Article 105⁴¹⁴ *General provisions*

1. Except for the provisions of article 101-*ter*, subsections 4 and 5, and the provisions of this section shall apply to Italian companies with securities admitted to trading on Italian regulated markets⁴¹⁵.

2. For the purposes of this section, shareholding shall mean a portion, held directly or indirectly through trust companies or nominees, of the securities issued by a company pursuant to subsection 1 that give the right to vote in shareholders' meetings on resolutions concerning the appointment, removal or liability of directors or members of the supervisory board⁴¹⁶.

3. Consob may issue a regulation whereby the relevant capital shall include security categories in the equity investment that give the right to vote on one or more different matters taking into account the nature of the influence their exercise, jointly or severally, may have on the management of the company. By regulation, Consob shall also decide upon the investment calculation criteria pursuant to subsection 2 if the securities referred to therein are, as a result of legal or regulatory provisions, without voting rights⁴¹⁷.

⁴¹¹ Subsection as first amended by art. 13, Decree Law no. 185 of 29.11.2008 (converted to Law no. 2 of 28.1.2009) which replaced the words: "The provisions of article 104 and article 104-*bis*, subsections 2 and 3," with the words: "If envisaged in the articles of association, the provisions pursuant to article 104, subsections 1-*bis*, 1-*ter*, 2 and 3" and then, with effect from 1.7.2010, by art. 1, Legislative Decree no. 146 of 25.9.2009 which replaced the words: "If envisaged in the articles of association, the provisions pursuant to article 104, subsections 1-*bis*, 1-*ter*, 2 and 3" with the words: "The provisions of article 104, subsections 1 and 1-*bis* and, if envisaged in the articles of association, the provisions of article 104-*bis*, subsections 2 and 3".

⁴¹² Subsection repealed by art. 13, Decree Law no. 185 of 29.11.2008

⁴¹³ Subsection replaced by art. 13, Decree Law no. 185 of 29.11.2008

⁴¹⁴ Article first replaced by art. 3, Legislative Decree no. 37 of 6.2.2004 and later amended by art. 3, Legislative Decree no. 229 of 19.11.2007 and by art. 2, Legislative Decree no. 146 of 25.09.2009 as indicated in the following footnotes.

⁴¹⁵ Subsection as amended by art. 3 Legislative Decree no. 229 of 19.11.2007 which replaced the words: "The provisions" with the words: "Except for the provisions of article 101-*ter*, subsections 4 and 5, the provisions" and the words: "with ordinary listed shares" with the words: "with securities admitted to trading".

⁴¹⁶ Subsection as amended by art. 3 Legislative Decree no. 229 of 19.11.2007 which replaced the words: "of the equity investment represented by shares" with the words: "of the shares issued by a company pursuant to subsection 1" and removed the words: "or responsibility".

⁴¹⁷ Subsection as amended by art. 3 Legislative Decree no. 229 of 19.11.2007 which replaced the words: "significant share categories in the share capital" with the words: "security categories in the equity investment" and at the end of the sentence added: "By regulation, Consob shall also decide upon the investment calculation criteria pursuant to subsection 2 if the securities referred to therein are, as a result of legal or regulatory provisions, without voting rights".

3-bis. By regulation Consob shall establish the cases and methods by which derivatives held are counted in the investment pursuant to subsection 2⁴¹⁸.

Article 106⁴¹⁹
Global takeover bid

1. Any party which, as a result of acquisitions, comes into possession of a shareholding exceeding the thirty per cent threshold shall implement a takeover bid addressed to all holders for the full quota of securities in their possession and admitted to trading on a regulated market.

2. For each class of securities, the takeover bid shall be made within twenty days at a price no less than the highest price paid by the bidder, and by persons acting in concert with the bidder, in the twelve months prior to issue of the notice pursuant to article 102 subsection 1, to acquire securities of the same class. If no purchase against payment of securities of the same class was made in the period indicated, the takeover bid is implemented for that class of securities at a price no less than the weighted market average over the previous twelve months or shorter available period.

2-bis. The bid price may be constituted, wholly or in part, by securities. If the securities offered in payment of the bid price are not admitted to trading on a regulated market in an EU Member State or if, in the period indicated in subsection 2 and until the close of the bid, the bidder or persons acting in concert with the bidder made a cash purchase of securities that confer at least five per cent of voting rights at the shareholders' meeting of the issuer of the securities involved in the takeover bid, the bidder must at least offer a cash payment to related investors as an alternative to payment in securities.

3. By regulation, Consob shall regulate situations in which:

a) the equity investment indicated in subsection 1 is acquired by the purchase of shareholdings in companies in which the capital is mainly constituted by shares issued by other companies pursuant to article 105, subsection 1;

b) the mandatory takeover bid results from acquisitions greater than 5% by parties that are already holders of the investment pursuant to subsection 1 but without holding the majority share of voting rights during the ordinary shareholders' meeting⁴²⁰;

c) subject to provision with just cause by Consob, the takeover bid is promoted at a price lower than the highest price paid, establishing criteria to determine said price and provided one of the following circumstances subsists:

1) the market prices were influenced by exceptional events or there are grounds to suspect they were subjected to manipulation;

2) the highest price paid by the bidder, or persons acting in concert with the bidder, in the period indicated under subsection 2 is either the buy-sell price for the securities involved in the takeover bid applied under market conditions and as part of the normal business practices or is the price of buy-sell transactions that would have benefited from one of the exemptions pursuant to subsection 5⁴²¹;

d) subject to provision with just cause by Consob, the takeover bid is promoted at a price higher than the highest price paid, provided such a measure is necessary for investor protection purposes and at least one of the following circumstances subsists:

⁴¹⁸ Subsection added by art. 2, Legislative Decree no. 146 of 25.09.2009.

⁴¹⁹ Article first amended by art. 3, Legislative Decree no. 37 of 6.2.2004 and later replaced by art. 3, Legislative Decree no. 229 of 19.11.2007, and lastly amended by art. 7, Law no. 33 of 9.4.2009 converting Legislative Decree no. 5 of 10.2.2009 and by art. 2, Legislative Decree no. 146 of 25.09.2009 as indicated in the following footnotes.

⁴²⁰ Paragraph first replaced by art. 7, Law no. 33 of 9.4.2009 converted from Decree Law no. 5 of 10.2.2009 and later amended by art. 2, Legislative Decree no. 146 of 25.9.2009 which replaced the words: "without the majority" with the words: "without holding the majority".

⁴²¹ Indent amended by art. 2, Legislative Decree no. 146 of 25.09.2009 which replaced the words: "and" with the words: "is either" and, in the Italian version only, the words: "or is the price" (è il prezzo) with the words: "or is the price" (sia il prezzo). Subsection 6 of art. 8, Legislative Decree no. 229 of 19.11.2007 states: "The provisions of article 106, subsection 3, paragraphs c) and d), of the Consolidated Law containing provisions on financial intermediation, pursuant to Legislative Decree no. 58 of 24 February 1998, as amended by this decree, shall apply as of the date of entry into force of enactment regulations stated therein".

- 1) the bidder or persons acting in concert with the bidder have agreed to purchase securities at a price higher than that paid for the purchase of securities of the same category;
- 2) there is evidence of collusion between the bidder, or persons acting in concert with the bidder, and one or more of the sellers;
- 3) ...*omissis*...⁴²²;
- 4) there are grounds to suspect that the market prices were subjected to manipulation⁴²³.

3-bis. By regulation and taking into account the characteristics of the financial instruments issued, Consob may establish situations in which a takeover bid becomes mandatory following purchases that result in a cumulative holding of securities and other financial instruments, with voting rights on matters indicated under article 105, to an extent that overall voting powers are equivalent to those of a party in possession of a holding indicated under subsection 1.

3-ter. The provisions of paragraphs c) and d) of subsection 3 shall be disclosed to the public in accordance with the terms indicated in the regulation pursuant to article 103, subsection 4, paragraph f).

4. A takeover bid shall not be considered mandatory where the shareholding indicated under subsection 1 is held as a result of a takeover bid or exchange tender offering involving all the holders of securities and for the total quantity of securities in their possession, provided that, in the case of an exchange tender offering, the securities offered in exchange are listed on a regulated market in an EU Member State or a cash payment is offered as an alternative.

5. By regulation, Consob shall establish cases whereby exceeding the shareholding indicated under subsection 1 or 3 paragraph b) a takeover bid will not be considered mandatory if implemented in the presence of one or more majority shareholders or results from:

- a) transactions to bail out a company in crisis;
- b) transfer of the securities indicated under article 105 among parties linked by significant investment relationships;
- c) causes not dependent upon the wishes of the buyer;
- d) transactions of a temporary nature;
- e) mergers or spin-offs;
- f) purchases free of charge⁴²⁴.

6. By provision with just cause, Consob may establish that a takeover bid shall not be considered mandatory on exceeding the holding indicated under subsection 1 or subsection 3 paragraph b) in cases attributable to the situations referred to under subsection 5, but which are not expressly indicated in the regulation approved pursuant to said subsection.

Article 107 *Prior partial bids*

1. In addition to the cases referred to in Articles 106(4) and 106(5), the provisions regarding mandatory takeover bids provided for in Articles 106(1) and 106(3) shall not apply where the shareholding is owned as a result of a takeover bid or exchange tender offering on at least sixty per cent of the securities in each category and all the following conditions are satisfied:

- a) the bidder and persons acting in concert with the bidder, have not acquired shareholdings exceeding one per cent, including shares acquired under forward contracts maturing at a later date, in the twelve months preceding the notice to Consob referred to in Article 102(1) nor during the bid period;

⁴²² Indent repealed by art. 2, Legislative Decree no. 146 of 25.09.2009.

⁴²³ Subsection 6 of art. 8 Legislative Decree no. 229 of 19.11.2007 states: "The provisions of article 106, subsection 3, paragraphs c) and d) of the Consolidated Law containing provisions on financial intermediation, pursuant to Legislative Decree no. 58 of 24 February 1998, as amended by this decree, shall apply as of the date of entry into force of enactment regulations stated therein".

⁴²⁴ See Consob Regulation no. 11971 of 14.5.1999, as amended.

b) the validity of the bid is subject to approval of a number of shareholders which together possess the majority of the securities concerned, pursuant to article 120, subsection 4, paragraph b) excluding securities held by the bidder, the major shareholder, also in relative terms, if that shareholding exceeds ten per cent, and by persons acting in concert with the bidder;

c) Consob shall grant the exemption after verifying satisfaction of the conditions specified in paragraphs a) and b)⁴²⁵.

2. The approval procedures shall be laid down by Consob in the form of a regulation. Shareholders not subscribing to the bid may also express their opinion thereon in accordance with subsection 1, paragraph b)⁴²⁶.

3. The bidder is required to launch a takeover bid referred to in Article 106 where, in the twelve months subsequent to the close of the unsolicited bid:

a) the bidder, or persons acting in concert with the bidder, have acquired shareholdings exceeding one per cent, also by means of forward contracts maturing at a later date⁴²⁷;

b) the issuing company has approved a merger or a spin-off⁴²⁸.

Article 108⁴²⁹

Commitment to squeeze-out

1. If as a result of a global takeover bid, the bidder becomes holder of at least ninety-five per cent of the capital represented by securities in an Italian listed company, the bidder shall be committed to squeeze-out of the remaining securities should any other party so request. Where more than one class of securities is issued, the commitment to squeeze-out shall subsist only for classes of securities for which the ninety-five per cent threshold is reached⁴³⁰.

2. With prejudice to the provisions of subsection 1, any party becoming holder of a quota exceeding ninety per cent of capital represented by securities admitted to trading on a regulated market shall be committed to squeeze-out the remaining securities admitted to trading on a regulated market by any holder thereof unless a float sufficient to ensure regular trading performance is not restored within ninety days. Where more than one class of security is issued, the commitment to squeeze-out shall subsist only for classes of securities for which said ninety per cent threshold is reached.

3. Where the situation indicated under subsection 1 applies, and in cases referred to under subsection 2 in which the holding indicated is reached solely as a result of a global takeover bid, the price is equal to that of the previous global takeover bid provided that, in the case of a voluntary takeover bid, as a result of said bid the bidder has acquired securities that represent not less than ninety per cent of the share capital with voting rights included in the bid.

4. Over and beyond the cases indicated in subsection 3, the price shall be established by Consob, also taking into account any previous price bid or the market price in the half-year prior to announcement of the

⁴²⁵ Subsection first amended by art. 3, Legislative Decree no. 37 of 6.2.2004 and later by art. 3, Legislative Decree no. 229 of 19.11.2007 and lastly by art. 2, Legislative Decree no. 146 of 25.09.2009 which in indent a) replaced the words: "the offeror and the persons linked to it by one of the relationships referred to in article 101-bis, subsection 4," with the words: "the bidder and persons acting in concert with the bidder," and in indent b) replaced the words: "the persons linked to them by one of the relationships referred to in article 101-bis, subsection 4," with the words: "persons acting in concert with the bidder".

⁴²⁶ See Consob regulation no. 11971 of 14.5.1999, as amended.

⁴²⁷ Paragraph replaced by art. 3, Legislative Decree no. 37 of 06.02.2004.

⁴²⁸ Paragraph amended by art. 2, Legislative Decree no. 146 of 25.09.2009 which replaced the words: "the offeror or persons linked to it by one of the relationships referred to in article 109(1)," with the words: "the bidder or persons acting in concert with the bidder,".

⁴²⁹ Article first replaced by art. 3, Legislative Decree no. 37 of 6.2.2004 and later by art. 3, Legislative Decree no. 229 of 19.11.2007, and lastly amended by art. 2, Legislative Decree no. 146 of 25.09.2009 as indicated in the following footnotes.

⁴³⁰ Subsection amended by art. 2, Legislative Decree no. 146 of 25.09.2009 which added the words: "in an Italian listed company".

bid pursuant to article 102, subsection 1, or article 114, or prior to the acquisition giving rise to the commitment⁴³¹.

5. Where the situation indicated in subsection 1 applies, and in cases referred to under subsection 2 in which the holding indicated is reached solely as a result of a global takeover bid, the price takes the same format as that of the takeover bid, but the holder of the securities may still demand full payment in cash, to the extent established by Consob, based on general criteria defined in this regulation⁴³².

6. If the takeover bid price is equal to that of the previous takeover bid, the commitment to squeeze-out may be effected by means of a reopening of the same terms.

7. By regulation, Consob shall dictate the enactment provisions of this section, in particular:

- a) reporting obligations relating to the enactment of this article;
- b) the time limits within which holders of securities may demand sale of the aforementioned securities;
- c) the procedure to be followed in order to establish the price.

Article 109⁴³³

Squeeze-out in concert

1. Parties acting in concert shall be jointly obliged under the terms of articles 106 and 108 when, as a result of purchases made even by one only of the parties, they come into possession of a total holding exceeding the percentages indicated under the above articles.

2. Subsection 1 shall not apply when a holding exceeding the percentages indicated in articles 106 and 108 constitutes the effect of the stipulation of an agreement, including a null agreement, pursuant to article 122, unless parties to said agreement came into possession of a total holding exceeding the aforementioned percentages in the twelve months prior to stipulation of the agreement.

3. For the purposes of application of subsection 1, the instances indicated in article 101-bis, subsection 4-bis, become significant, including jointly, only to parties in possession of the holdings⁴³⁴.

Article 110

*Failure to comply with obligations*⁴³⁵

1. In the event of violation of the obligations laid down in this section, the voting rights attached to the whole shareholding owned shall not be exercisable and the securities exceeding the percentages specified in Articles 106 and 108 must be disposed of within twelve months. Where the voting rights are exercised, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14(6)⁴³⁶.

1-bis. Without prejudice to the provisions of article 192, subsection 1, as an alternative to the sale referred to under subsection 1, Consob may, by provision with just cause and considering, *inter alia*, the reasons for failure to comply with obligations, the probable effects of the sale and any changes in the ownership

⁴³¹ Subsection as replaced by art. 2, Legislative Decree no. 146 of 25.09.2009.

⁴³² Subsection amended by art. 2, Legislative Decree no. 146 of 25.09.2009 which replaced the words: "demand payment in cash, to the extent established by Consob, based on general criteria defined in this regulation." with the words: "demand full payment in cash, established according to general criteria defined as a regulatory measure by Consob."

⁴³³ Article first replaced by art. 3, Legislative Decree no. 229 of 19.11.2007 and later amended by art. 2, Legislative Decree no. 146 of 25.9.2009 as indicated in the following footnote.

⁴³⁴ Subsection amended by art. 2, Legislative Decree no. 146 of 25.09.2009 which replaced the words: "indicated in article 101-bis, subsection 4", with the words: "indicated in article 101-bis, subsection 4-bis"

⁴³⁵ Heading as replaced by art. 3 Legislative Decree no. 229 of 19.11.2007

⁴³⁶ Subsection as amended by art. 3 Legislative Decree no. 229 of 19.11.2007 which replaced the words: "the shares" with the words: "the securities" and the word: "alienate (sold - f)" with the word: "alienati (sold - m)"

structure, impose implementation of the global takeover bid at the price established by Consob, also taking into account the market price of the securities⁴³⁷.

1-ter. The sale envisaged under subsection 1 or takeover bid envisaged under subsection 1-bis shall cancel the suspension of voting rights pursuant to subsection 1⁴³⁸.

Article 111 *Right to squeeze-out*

1. A bidder coming into possession following a global takeover bid of a holding of at least ninety-five per cent of the capital represented by securities in an Italian listed company shall have the right to squeeze-out on remaining securities within three months of expiry of the time limit for bid acceptance, if the intention to exercise said right was declared in the takeover bid document. Where more than one class of securities is issued, the right to squeeze-out shall subsist only for classes of securities for which the ninety-five per cent threshold is reached⁴³⁹.

2. The amount and form of payment to be assumed shall be established pursuant to article 108, subsections 3, 4 and 5⁴⁴⁰.

3. The transfer shall be effective from the moment notice of the deposit of the consideration with a bank is given to the issuing company, which shall make the consequent entries in the shareholders' register.

Article 112 *Implementing provisions*

1. Consob shall issue a regulation with provisions implementing this section; in a measure to be published in the *Italian Official Gazette* it may, after consulting the stock exchange company, increase the percentage provided for in Article 108 for individual companies⁴⁴¹.

TITLE III ISSUERS

Chapter I Company information

Article 113 *Listing particulars*

1. Before the date set for the start of trading in the financial instruments on a regulated market, issuers shall publish listing particulars containing the information specified in Article 94 subsections 1, 2, 3, 4, 5, 8, 10 and 11 and 94-bis, subsections 1, 2, 3 and 5 also for a person requesting admission to trading.

2. Any new and significant fact or material error in relation to information contained in the prospectus and likely to influence the assessment of financial instruments, and which still exist or are discovered between the time of approval of the prospectus and the start of trading on a regulated market must be mentioned in a supplement to the prospectus.

⁴³⁷ Subsection included by art. 3 of Legislative Decree no. 229 of 19.11.2007

⁴³⁸ Subsection included by art. 3 Legislative Decree no. 229 of 19.11.2007

⁴³⁹ Subsection first replaced by art. 3, Legislative Decree no. 229 of 19.11.2007 and later amended by art. 2, Legislative Decree no. 146 of 25.09.2009 which added the words: "in an Italian listed company".

⁴⁴⁰ Subsection replaced by art. 3 Legislative Decree no. 229 of 19.11.2007

⁴⁴¹ See Consob Regulation no. 11971 of 14.5.1999, as amended.

3. Consob:

a) shall lay down in a regulation the contents of listing particulars and the manner of their publication, with specific provisions for cases in which admission to listing on a regulated market is preceded by a public offering;

b) may require issuers to include supplementary information in the listing particulars and lay down specific procedures for their publication;

c) shall issue a regulation to coordinate the functions of the stock exchange company with its own and, taking account of the characteristics of the individual markets, at the request of such company, may entrust it with tasks concerning the examination of listing particulars.

d) shall govern the obligation to file a document with Consob concerning the information published or made available to the public by issuers during the year;

e) shall establish the conditions for the transfer of approval of a prospectus to the competent authority of another member state;

f) shall exercise powers pursuant to article 114, subsections 5 and 6 and article 115 in relation to the issuer, person requesting admission to trading and other persons indicated in said provisions.

g) may suspend the admission to trading on a regulated market for a maximum of ten consecutive working days each time there is reason to suspect that the provisions of this article and related enactment regulations have been violated;

h) without prejudice to the powers envisaged under article 64, subsection 1-bis, paragraph c), may as a preventive measure and for a period not exceeding ten consecutive working days on each occasion, request that the stock exchange company suspend trading on a regulated market in the case of grounds for suspected violation of the provisions of this article and related enactment regulations;

i) without prejudice to the powers envisaged under article 64, subsection 1-bis, paragraph c), may request that the stock exchange company prohibits trading on a regulated market in the case of confirmed violation of the provisions of this article and related enactment regulations.

l) shall inform the competent authority of the home member state if, as competent authority for the host member state, it should discover that violations of issuer obligations have been committed in relation to the admission of financial instruments for trading on a regulated market;

m) after informing the competent authority of the home member state, shall adopt appropriate investor protection measures if, despite measures adopted by the competent authority of the home member state, or if such measures prove inadequate, the issuer continues to violate relevant legal or regulatory provisions. The European Commission shall be informed as soon as possible of the adoption of such measures;

n) shall make public the fact that the issuer or person requesting admission to trading has failed to meet obligations.

4. For the advertising of an admission to listing of financial instruments on a regulated market, article 10 shall apply.

5. For the prospectus concerning admission to trading on a regulated market, articles 98 and 98-bis shall apply⁴⁴².

Article 113-bis⁴⁴³*Admission to trading of open-end UCITS units or shares*

1. Prior to the established date for the start of trading of open-end UCITS units or shares on a regulated market, the issuer shall publish a prospectus containing the information pursuant to article 98-ter, subsection 2.

2. Consob:

a) shall by regulation determine the content of the prospectus, related publication methods, without prejudice to the need to arrange media publication through national daily newspapers, and updating of the

⁴⁴² Article as replaced by art. 4 of Legislative Decree no. 51 of 28.3.2007

⁴⁴³ Article first included by art. 4, Legislative Decree no. 51 of 28.03.2007 and later amended by art. 1, subsection 6, Legislative Decree no. 101 of 17.7.2009 as indicated in the following footnote.

prospectus, dictating specific measures in cases in which admission to listing on a regulated market coincides with the timing of the public offering⁴⁴⁴;

b) may indicate information to be inserted by the issuer as integrations to the prospectus and specific advertising methods;

c) shall dictate provisions to coordinate stock exchange company functions with its own and, on request from said company, may assign tasks relating to control of the prospectus, also taking into account the characteristics of the individual markets.

3. The prospectus approved by the competent authority of another EU member state shall be recognised by Consob, under the terms and conditions established in subsection 2 of the regulation, as a prospectus for admission to trading on a regulated market. Under subsection 2 of the regulation, Consob may request the publication of a document for the listing.

4. For the advertising of an admission to listing of open-end UCITS units or shares on a regulated market, article 101 shall apply.

Article 113-ter⁴⁴⁵

General provisions on regulated disclosures

1. Regulated disclosures shall mean disclosures published by listed issuers, listed issuers for which Italy is the home member state or their controlling bodies, pursuant to the provisions of this Title, Chapters I and II, Sections 1, I-bis, and V-bis, and to related enactment regulations or provisions established by non-EU country authorities considered the equivalent of Consob⁴⁴⁶.

2. Regulated disclosures shall be filed with Consob and the stock exchange company for which the issuer has requested or received approval for admission to trading of its securities or closed-end funds, in order to guarantee that said company may exercise its duties pursuant to article 64, subsection 1.

3. In exercising powers attributed under this Title, Consob shall establish the terms and conditions for public dissemination of regulated disclosures, without prejudice to the need to arrange media publication through national daily newspapers, taking into account the nature of such information so as to ensure rapid, non-discriminatory and reasonably suitable access, guaranteeing effective dissemination throughout the entire European Union⁴⁴⁷.

4. Consob shall:

- a) authorise third parties to the issuer to provide disclosure services for regulatory information;
- b) authorise centralised archive services for regulatory information;
- c) organise and manage centralised information archive services in the absence of authorised persons pursuant to paragraph b).

5. By regulation and in relation to regulatory information, Consob shall establish:

- a) filing terms and methods pursuant to subsection 2;
- b) requirements and conditions for the release of authorisation to exercise disclosure services, and measures for the provision of such services given the objectives of subsection 3;

⁴⁴⁴ Paragraph amended by art. 1, subsection 6, Legislative Decree no. 101 of 17.7.2009.

⁴⁴⁵ Article first added by art. 1, Legislative Decree no. 195 of 6.11.2007 and later amended by art. 1, subsection 7, Legislative Decree no. 101 of 17.7.2009 and by art. 3, Legislative Decree no. 27 of 27.1.2010 as indicated in the following footnotes. Art. 2, subsection 4, Legislative Decree no. 195 of 6.11.2007 states: "Until this article is implemented, current legal and regulatory provisions on the methods for dissemination of regulated disclosures shall apply".

⁴⁴⁶ Subsection amended by art. 3, Legislative Decree no. 27 of 27.01.2010 which removed the words: ", II".

⁴⁴⁷ Subsection amended by art. 1, subsection 7, Legislative Decree no. 101 of 17.7.2009, which added the words "without prejudice to the need to arrange media publication through national daily newspapers,".

c) requirements and conditions for the release of authorisation to exercise archive services, and measures for the provision of such services to guarantee security, data source certainty, time and date stamps of the receipt of regulatory information, easy access for end users and filing procedures aligned with those of Consob;

d) the language to be used in the notices;

e) any exemptions from filing, disclosure and archiving obligations in compliance with EU law.

6. If a party has requested admission to trading of securities or closed-end funds on a regulated market, without permission from the issuer, disclosure obligations for regulatory information are observed by that party, except where the issuer, in accordance with provisions established in its home member state, discloses regulatory information to the public as required under EU law.

7. Parties obliged to disclose regulatory information to the public may not claim payment for such disclosure.

8. Consob may make public the fact that parties obliged to disclose regulatory information do not comply with such obligations.

9. Without prejudice to the provisions of article 64, subsection 1-*bis*, Consob may:

a) suspend or demand that the regulated market concerned suspends the trading of securities or closed-end funds for a maximum ten days on each occasion, if there are grounds to suspect that disclosures regarding regulatory information have been violated by the party under obligation, pursuant to this article, to disclose such regulatory information;

b) prohibit trading on a regulated market if it is confirmed that the provisions of paragraph a) have been violated.

Article 114⁴⁴⁸

Information to be provided to the public

1. Without prejudice to the information requirements established by specific provisions of law, listed issuers and the persons that control them shall make available to the public, without delay, inside information referred to in Article 181 that directly concerns such issuers and their subsidiaries. By regulation, Consob shall establish the terms and conditions for the disclosure of information, without prejudice to the need to arrange media publication through national daily newspapers, dictate measures to coordinate duties attributed to stock exchange companies with its own, and may identify duties to be delegated for the correct performance of duties envisaged in article 64, subsection 1, paragraph b).⁴⁴⁹

2. Listed issuers shall issue appropriate instructions for subsidiaries to provide all the information necessary to comply with the information requirements established by law. Subsidiaries shall transmit the information required in a timely manner.

3. Persons referred to in subsection 2 may under their own responsibility delay the public disclosure of inside information in the cases and under the conditions established by Consob in a regulation, provided that such delay would not be likely to mislead the public with regard to essential facts and circumstances and that such persons are able to ensure the confidentiality of the information. Consob may issue a regulation establishing that an issuer shall without delay inform it of the decision to delay the public disclosure of inside information and may identify the measures necessary to ensure the public is correctly informed.

4. Where persons referred to in subsection 1, or persons acting on their behalf or for their account, disclose information referred to in subsection 1 in the normal exercise of their employment, profession or duties to a third party who is not subject to a confidentiality requirement based on a law, regulations, Articles of

⁴⁴⁸ Article first replaced by art. 9, Law no. 62 of 18.04.2005 (2004 Community Law) and later amended by art. 14, subsection 1, Law no. 262 of 28.12.2005 and by art. 1, subsections 8 and 9, Legislative Decree no. 101 of 17.7.2009 as indicated in the following footnotes.

⁴⁴⁹ Subsection amended by art. 1, subsection 8, Legislative Decree no. 101 of 17.7.2009, which added the words “without prejudice to the need to arrange media publication through national daily newspapers,”.

Association or a contract, they shall make complete public disclosure thereof, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure.

5. Consob, on a general basis or otherwise, may require persons referred to in subsection 1, listed issuers for which Italy is the home Member State, the members of the board of directors, the members of the internal control body, managers and persons who hold a major holding pursuant to Article 120 or who are parties to a shareholders' agreement pursuant to Article 122 to publish, in the manner it shall establish, the information and documents needed to inform the public. Where such persons fail to comply, Consob shall publish the material at their expense.⁴⁵⁰

6. Where persons indicated in subsection 1 and listed issuers with Italy as their home member country submit justified claim to the effect that public disclosure of information pursuant to subsection 5 could seriously damage the issuer, the disclosure obligations shall be suspended. Within seven days Consob may waive the requirement to disclose all or part of the information permanently or temporarily, provided this is not likely to mislead the public with regard to essential facts and circumstances. On expiry of said deadline, the claim shall be deemed accepted⁴⁵¹.

7. Persons performing administrative, supervisory and management functions in a listed issuer and managers who have regular access to inside information referred to in subsection 1 and the power to make managerial decisions affecting the future development and prospects of the issuer, persons who hold shares amounting to at least 10 per cent of the share capital, and any other persons who control the issuer must inform Consob and the public of transactions involving the issuer's shares or other financial instruments linked to them that they have carried out directly or through nominees. Such disclosures must also be made by the spouse, unless legally separated, dependent children, including those of the spouse, cohabitant parents and relatives by blood or affinity of the persons referred to above and in the other cases identified by Consob in a regulation implementing Commission Directive 2004/72/EC of 29 April 2004. In the same regulation Consob shall identify the procedures and time limits for such notifications, the procedures and time limits for the disclosure of the information to the public and the cases in which such obligations also apply with reference to companies in a control relationship with the issuer and any other entities in which the persons specified above perform functions referred to in the first sentence of this subsection.

8. Persons producing or disseminating research or evaluations, excluding credit rating agencies, regarding financial instruments specified in Article 180 (1)(a), or issuers of such instruments, and persons producing or disseminating other information who recommend or suggest investment strategies intended for distribution channels or for the public must present the information fairly and disclose any interest or conflict of interest they may have with respect to the financial instruments to which the information refers.⁴⁵²

9. Consob shall lay down in a regulation:

- a) provisions implementing subsection 8;
- b) the manner of disseminating research and information referred to in subsection 8 produced or disseminated by listed issuers, intermediaries authorised to provide investment services or persons in a control relationship with them.

10. Without prejudice to subsection 8, provisions issued pursuant to subsection 9, paragraph a) shall not apply to journalists subject to equivalent self-regulatory rules provided their application achieves similar effects. Consob shall evaluate, preliminarily and on a general basis, that such conditions are satisfied.

11. Institutions that disseminate data or statistics liable to have a significant effect on the price of financial instruments referred to in Article 180(1)(a) shall disseminate such information in a fair and transparent way.

⁴⁵⁰ Subsection first amended by art. 14, Law no. 262 of 28.12.2005 and later amended by art. 1, Legislative Decree no. 195 of 6.11.2007.

⁴⁵¹ Subsection amended by art. 1, subsection 9, Legislative Decree no. 101 of 17.7.2009, which added the words "and listed issuers with Italy as their home member country".

⁴⁵² Subsection as amended by Article 14 subsection 1 of Law 262/2005.

12. The provisions of this article shall also apply to Italian and foreign persons who issue financial instruments for which an application has been made for admission to trading on Italian regulated markets.

Article 114-bis⁴⁵³

Information to be provided to the market concerning the allocation of financial instruments⁴⁵⁴ to corporate officers, employees and collaborators

1. Compensation plans based on financial instruments in favour of members of the board of directors or the management board, employees and collaborators not linked to the company by an employment contract and of members of the board of directors or the management board, employees and collaborators of parent companies or subsidiaries shall be approved by the ordinary shareholders' meeting.

In accordance with the terms and conditions envisaged in Article 125-ter, subsection 1, the issuer makes the report available to the public with information concerning the following⁴⁵⁵:

- a) the reasons for the adoption of the plan;
- b) the members of the Board of Directors, that is the management board of the company, of the controlling or controlled companies which benefit from the plan⁴⁵⁶;
- b-bis) the categories of employees or collaborators of the company and controlling companies or controlled companies which benefit from the plan⁴⁵⁷;
- c) the procedures and clauses for the implementation of the plan, specifying whether its implementation is subject to the satisfaction of conditions and, in particular, to the achievement of specific results;
- d) whether the plan enjoys any support from the special fund for encouraging worker participation in firms referred to in Article 4(112) of Law 350/2003;
- e) the procedures for determining either the prices or the criteria for determining the prices for the subscription or purchase of shares;
- f) the restrictions on the availability of the shares or options allocated, with special reference to the time limits within which the subsequent transfer of shares to the company or third parties is permitted or prohibited.

2. This article shall also apply to listed issuers and to issuers of financial instruments widely distributed among the public in accordance with Article 116⁴⁵⁸.

3. Consob shall lay down in its regulation information concerning matters specified in subsection 1 which should be provided in relation to the various procedures for implementing the plan, providing more detailed information for plans of special importance.⁴⁵⁹

Article 115

Information to be disclosed to Consob

1. For the purposes of monitoring the accuracy of information provided to the public, Consob, on a general basis or otherwise, may:

⁴⁵³ Article first included by art. 16 of Law no. 262 of 28.12.2005 and later amended by art. 3 of Leg. Decree no. 303 of 29.12.2006 in the terms indicated in subsequent notes.

⁴⁵⁴ Heading amended by art. 3, subsection 9 of Legislative Decree no. 303 of 29.12.2006 which replaced the word "shares" with the words "financial instruments".

⁴⁵⁵ Indent first amended by art. 3, subsection 9, Legislative Decree no. 303 of 29.12.2006 and later by art. 3, Legislative Decree no. 27 of 27.01.2010, which replaced the words: "At least fifteen days prior to the date of the shareholders' meeting called to pass the resolutions referred to in this subsection," with the words: "In accordance with the terms and conditions envisaged in Article 125-ter, subsection 1,." Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁴⁵⁶ Paragraph replaced by art. 3, subsection 9 of Legislative Decree no. 303 of 29.12.2006.

⁴⁵⁷ Paragraph included by art. 3, subsection 9 of Legislative Decree no. 303 of 29.12.2006.

⁴⁵⁸ Subsection amended by art. 3, subsection 9 of Legislative Decree no. 303 of 29.12.2006 which replaced the word "also" with "to listed issuers and".

⁴⁵⁹ Article amended by Art. 3 of Legislative Decree No. 303 of 29.12.2006.

a) require listed issuers, listed issuers with Italy as home Member State, the persons that control them and companies controlled by them to provide information and documents, establishing the related procedures⁴⁶⁰;

b) gather information, including by means of hearings, from members of governing bodies, general managers, managers charged with preparing companies' financial reports and other managers, statutory auditors, independent statutory auditors and companies and persons referred to in paragraph a)⁴⁶¹;

c) carry out inspections at the offices of persons referred to in paragraphs a) and b) to check company documents and obtain copies thereof.⁴⁶²

c-bis) exercise the other powers provided by Article 187-octies.⁴⁶³

2. The powers provided for in subsection 1, paragraphs a), b) and c)⁴⁶⁴ may be exercised with respect to persons who hold a major holding pursuant to Article 120 or who are parties to a shareholders' agreement pursuant to Article 122.

3. Consob may also require companies or entities with direct or indirect holdings in companies with listed shares to provide, on the basis of the available information, the names of their members or, in the case of trust companies, of their beneficiaries.

Article 115-bis

Lists of persons having access to inside information

1. Listed issuers and persons in a control relationship with them and persons acting on their behalf or for their account shall draw up, and keep regularly updated, a list of the persons who, in the exercise of their employment, profession or duties, have access to information referred to in Article 114(1). Consob shall establish the procedures for drawing up, keeping and updating such lists.⁴⁶⁵

Article 116

Financial instruments widely distributed among the public

1. Article 114, except for subsection 7,⁴⁶⁶ and Article 115 shall also apply to issuers of financial instruments that, although not listed on a regulated market in Italy, are widely distributed among the public. Consob shall lay down in a regulation the criteria for identifying such issuers and may disapply the aforementioned articles, in whole or in part, for issuers of financial instruments listed on regulated markets in other EU countries or on markets in non-EU countries in consideration of the information requirements they are subject to by virtue of being listed⁴⁶⁷.

2. The provisions of Part IV, Title III, Chapter II, Section VI, except for Articles 157 and 158, shall apply to the issuers indicated in subsection 1⁴⁶⁸.

⁴⁶⁰ Paragraph as amended by art. 1 Legislative Decree no. 195 of 6.11.2007.

⁴⁶¹ Paragraph first replaced by art. 14, subsection 1, Legislative Decree no. 262 of 28.12.2005 and later amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: "independent auditors" with the words: "statutory auditors, independent statutory auditors".

⁴⁶² The words "in paragraph a)" were replaced by the words "in paragraphs a) and b) to check company documents and obtain copies thereof" by Article 14 of Law 262/2005.

⁴⁶³ Paragraph added by Article 9 of Law 62/2005 (the 2004 Community Law) See Bank of Italy-Consob memorandum of understanding of 31.10.2007.

⁴⁶⁴ The words "in paragraphs a) and b)" were replaced by the words "in paragraphs a), b) and c)" by Article 14 of Law 262/2005.

⁴⁶⁵ Article added by Article 9 subsection 1 of Law 62/2005 (the 2004 Community Law)

⁴⁶⁶ The words "except for paragraph 7" were added by Article 9 of Law 62/2005 (the 2004 Community Law)

⁴⁶⁷ See Consob Regulation no. 11971 of 14.5.1999, as amended.

⁴⁶⁸ Subsection first replaced by art. 3, Legislative Decree no. 37 of 6.2.2004, later amended by art. 18, Law no. 262 of 28.12.2005, and lastly again replaced by art. 40, Legislative Decree no. 39 of 27.01.2010.

2-bis. Article 114, except subsection 7, and Article 115 shall apply also to issuers of financial instruments admitted to trading on multilateral trading systems meeting the characteristics established by Consob regulation, and provided that admission is requested or authorised by the issuer⁴⁶⁹.

2-ter. The provisions of Article 125-bis subsections 1 and 3 and, to the extent it be compatible, subsection 4, Articles 125-ter, 125-quater, 126, 126-bis and 127 shall apply to issuers of widely-distributed shares. By regulation Consob may extend all or part of the obligations envisaged in Articles 125-bis, 125-ter and 125-quater to issuers of widely-distributed financial instruments other than shares. Consob may dispense with compliance with the aforementioned provisions for issuers of financial instruments listed on regulated markets of other EU countries or on the markets of non-EU countries, in consideration of the disclosure obligations they are required to meet under the terms of their listing⁴⁷⁰.

Article 117 *Accounting information*

1. The exemptions from the obligation to prepare consolidated accounts provided in Article 27 of Legislative Decree 127/1991, Article 27 of Legislative Decree 87/1992 and Article 61 of Legislative Decree 173/1997 shall not apply to Italian companies with shares listed on regulated markets in Italy or other EU countries.

2. The Minister of Justice, in concert with the Minister of the Economy and Finance,⁴⁷¹ shall lay down in a regulation the internationally accepted accounting standards compatible with those laid down in Community accounting directives that issuers of financial instruments listed on regulated markets in Italy, other EU countries or non EU countries may use, by way of derogation from the rules in force, in preparing their consolidated accounts, provided such principles are accepted by the markets of non-EU countries. The standards shall be identified on the basis of a proposal from Consob, to be formulated in agreement with the Bank of Italy for banks and the financial companies referred to in Article 1(1) of Legislative Decree 87/1992 and with Siva for the insurance and reinsurance undertakings referred to in Article 1 of Legislative Decree 173/1997.

Article 117-bis *Mergers between listed and unlisted companies*

1. Article 13 shall apply to mergers in which a company with unlisted shares is merged into a company with listed shares when the latter's assets, other than liquid balances and financial assets that are not fixed assets, are significantly less than the assets of the company to be merged.

2. Without prejudice to the powers referred to in Article 13.2, Consob shall lay down specific rules in a regulation for transactions referred to in subsection 1.⁴⁷²

Article 117-ter *Provisions concerning ethical finance*

1. Consob, after consulting all the interested parties and consulting with the competent supervisory authorities, shall lay down in a regulation the specific disclosure and reporting obligations applicable to authorised intermediaries and insurance companies that promote products and services described as ethical or socially responsible.⁴⁷³

⁴⁶⁹ Subsection added by art. 1, subsection 10, Legislative Decree no. 101 of 17.7.2009.

⁴⁷⁰ Subsection added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁴⁷¹ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

⁴⁷² Article added by Article 14 subsection 1 of Law 262/2005.

⁴⁷³ Article added by Article 14 subsection 1 of Law 262/2005.

Article 118*Provisions not applicable*

1. The provisions of this section shall not apply to the financial instruments referred to in Articles 100(1)(d) and 100(1)(e).
2. Subsections 1 and 2 of article 116 shall not apply to financial instruments issued by banks, other than shares or financial instruments with the option to purchase or subscribe shares⁴⁷⁴.

Article 118-bis⁴⁷⁵*Checking information provided to the public⁴⁷⁶*

1. By regulation and taking into account international principles on the supervision of corporate disclosures, Consob shall establish the terms and conditions for its control over public disclosures issued in accordance with law, including information contained in accounting records, by listed issuers and listed issuers with Italy as its home member country⁴⁷⁷.

**Chapter II
Listed companies****Article 119***Scope*

1. Unless specified otherwise, the provisions of this chapter shall apply to Italian companies with shares listed on regulated markets in Italy or other EU countries (listed companies).

**Section I
Ownership structures****Article 120***Notification requirements for major holdings*

1. For the purposes of this section, the capital of *società per azioni* shall mean that represented by voting shares.
2. Persons who hold more than 2 per cent of the capital of a listed issuer with Italy as home Member State shall notify the investee company and Consob⁴⁷⁸.

2 bis. Consob may, by means of measures justified by needs to protect the investors as well as corporate control market and capital market efficiency and transparency, envisage – for a limited period of time –

⁴⁷⁴ Subsection amended by art. 1, subsection 11, Legislative Decree no. 101 of 17.7.2009, which replaced the words “Article 116 shall not apply” with the words “Subsections 1 and 2 of Article 116 shall not apply”.

⁴⁷⁵ Article first added by art. 14, subsection 1 of Law no. 262 of 28.12.2005 and later modified by art. 3 of Legislative Decree no. 303 of 29.12.2006 in the terms indicated in subsequent notes.

⁴⁷⁶ Heading amended by art. 3, subsection 10 of Legislative Decree no. 303 of 29.12.2006 which replaced the words: “Review of the” with the words: “Control of the”.

⁴⁷⁷ Subsection first amended by art. 3, subsection 10, Legislative Decree no. 303 of 29.12.2006, which added the words “taking into account international principles on the supervision of corporate disclosures,” and replaced the words: “periodic re-examination of” with the words “its control over”; and later by art. 1, subsection 12, Legislative Decree no. 101 of 17.7.2009 which added the words: “and listed issuers with Italy as its home member country”.

⁴⁷⁸ Subsection as amended by art. 1 Legislative Decree no. 195 of 6.11.2007 which replaced the words: “a company with listed shares” with the words: “listed issuers with Italy as home Member State”.

thresholds lower than that indicated in subsection 2 for companies with an elevated current market value and particularly extensive shareholding structure⁴⁷⁹.

3. Listed issuers with Italy as home Member State that hold more than 10 per cent of the capital of an Italian or foreign unlisted company or *società a responsabilità limitata* shall notify the investee company and Consob⁴⁸⁰.

4. Consob, taking account of the characteristics of the investors, shall lay down in a regulation:

- a) the variations in the holdings referred to in subsections 2 and 3 that must be notified;
- b) the methods for calculating holdings, including indirect holdings and those where voting rights belong or have been assigned to a person other than the member;
- c) the content of and procedures for notifications and public announcements and any exemptions applicable to the latter;
- d) the time limits for notifications and public announcements, which may be periodic in the case referred to in subsection 3⁴⁸¹;
- d-bis*) the cases in which notifications are due from owners of financial instruments carrying the rights referred to in the last subsection of Article 2351 of the Civil Code.⁴⁸²
- d-ter*) cases in which a holding of derivatives is subject to reporting obligations⁴⁸³;
- d-quater*) situations exempt from the application of these provisions⁴⁸⁴.

5. Voting rights attached to listed shares or to financial instruments which have not been notified pursuant to subsection 2 may not be exercised. In the event of non-compliance, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14(6).⁴⁸⁵

6. Subsection 2 shall not apply to shares held by the Ministry of the Economy and Finance⁴⁸⁶ through companies it controls. The related notification requirements shall be fulfilled by the companies controlled.

Article 121

Rules governing cross-holdings

1. Except in the cases provided for in Article 2359-*bis* of the Civil Code, in the event of cross-holdings that exceed the limits specified in Articles 120(2) and 120(3), the company that was the last to exceed the limit may not exercise the voting rights attached to the excess shares or capital parts and must dispose of them within twelve months from the date on which it exceeded the limit. In the event of failure to make the disposal within such time limit, the suspension of voting rights shall apply to the entire shareholding. Where it is not possible to ascertain which of the two companies was the last to exceed the limit, the suspension of voting rights and the disposal requirement shall apply to both unless they have agreed otherwise.

2. The limit of two per cent recalled in subsection 1 shall be raised to 5 per cent provided the limit of two per cent is exceeded by both companies following an agreement authorised in advance by the ordinary shareholders' meetings of the companies in question.

⁴⁷⁹ Subsection added by Article 7 of Law no. 33 of 9.4.2009 converting Decree Law no. 5 of 10.2.2009

⁴⁸⁰ Subsection as amended by art. 1 Legislative Decree no. 195 of 6.11.2007 which replaced the words: "Companies with listed shares" with the words: "Listed issuers with Italy as home Member State".

⁴⁸¹ See Consob Regulation no. 11971 of 14.5.1999, as amended.

⁴⁸² Paragraph added by art. 3 of Legislative Decree 37/2004.

⁴⁸³ Paragraph added by art. 1 Legislative Decree no. 195 of 6.11.2007

⁴⁸⁴ Paragraph added by art. 1 Legislative Decree no. 195 of 6.11.2007

⁴⁸⁵ Subsection as amended by art. 3 of Legislative Decree 37/2004.

⁴⁸⁶ The former wording "Ministry of the Treasury, Budget and Economic Planning" was replaced with the wording "Ministry of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

3. Where a person owns a shareholding that exceeds two per cent of the capital of a company with listed shares, the latter or the person that controls it may not acquire a shareholding that exceeds such limit in a company with listed shares controlled by the former. In the event of non-compliance, the voting rights attached to the shares in excess of the limit specified shall be suspended. Where it is not possible to ascertain which of the two persons was the last to exceed the limit, the suspension shall apply to both unless they have agreed otherwise.
4. The shareholdings shall be calculated by applying the methods laid down pursuant to Article 120 subsection 4, paragraph *b*).
5. Subsections 1, 2 and 3 shall not apply where the limits indicated therein are exceeded following a takeover bid or exchange tender offering aimed at the acquisition of at least sixty per cent of the ordinary shares⁴⁸⁷.
6. In the event of non-compliance with the prohibitions on the exercise of voting rights provided for in Article 14, subsection 5, paragraphs 1 and 3 shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14, subsection 6.

Article 122
Shareholders' agreements

1. In whatever format they may be stipulated, agreements regarding the exercise of voting rights in companies with listed shares and their parent companies, within five days of stipulation shall be:
 - a*) notified to Consob;
 - b*) published in abstract form in the Italian daily press;
 - c*) filed with the Register of Companies in which the company office is registered;
 - d*) notified to the companies with listed shares⁴⁸⁸.
2. Consob shall lay down in a regulation the contents of the notification, abridged form and publication and the related procedures⁴⁸⁹.
3. Agreements shall be null and void in the event of non-compliance with the requirements laid down in subsection 1.
4. Voting rights attached to listed shares for which the requirements laid down in subsection 1 have not been satisfied may not be exercised. In the event of non-compliance, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14(6).
5. This article shall also apply to agreements, in whatsoever form concluded, that:
 - a*) create obligations of consultation prior to the exercise of voting rights in companies with listed shares or companies that control them;
 - b*) set limits on the transfer of the related shares or of financial instruments that entitle holders to buy or subscribe for them;
 - c*) provide for the purchase of shares or financial instruments referred to in paragraph *b*);
 - d*) have as their object or effect the exercise, jointly or otherwise, of a dominant influence on such companies.*d-bis*) which aim to encourage or frustrate a takeover bid or exchange tender offering, including commitments relating to non-participation in a takeover bid⁴⁹⁰

⁴⁸⁷ Subsection amended by art. 3, Legislative Decree no. 146 of 25.09.2009 which replaced the words: "a public offer" with the words: "a takeover bid or exchange tender offering".

⁴⁸⁸ Subsection as replaced by art. 3, Legislative Decree no. 146 of 25.09.2009.

⁴⁸⁹ See Consob Regulation no. 11971 of 14.5.1999, as amended.

⁴⁹⁰ Paragraph added by art. 4 Legislative Decree no. 229 of 19.11.2007

5-bis. Agreements referred to in this article shall not be subject to Articles 2341-bis and 2341-ter of the Civil Code.⁴⁹¹

5-ter. The disclosure obligations pursuant to subsection 1 of this article shall not apply to agreements, in whatever format they may be stipulated, regarding shareholdings totalling less than the threshold indicated in article 120, subsection 2⁴⁹².

Article 123

Duration of agreements and right of withdrawal

1. Where agreements referred to in Article 122 are fixed term, they may not have a duration greater than three years and shall be deemed to have been concluded for such duration even if the parties provided for a longer term; agreements shall be renewable upon expiry.
2. Agreements may also be concluded for an indeterminate period; in such case each party may withdraw on giving six months' notice. Articles 122(1) and 122(2) shall apply to withdrawal.
3. Shareholders who intend to accept a public offer to buy or exchange made pursuant to Articles 106 or 107 may withdraw from the agreements referred to in Article 122 without notice. The declaration of withdrawal shall not produce effects if the transfer of the shares has not been finalized.

Article 123-bis

Report on corporate governance and ownership structures

1. The management report of issuers with securities admitted to trading on regulated markets shall contain a specific section entitled: «Report on corporate governance and ownership structures», providing detailed information on:

- a) the capital structure, including securities not traded on a regulated market in an EU Member State, with an indication of the different classes of shares and, for each class of shares, the related rights and obligations and the percentage of total share capital represented;
- b) any restriction on the transfer of securities, e.g. limitations in the possession of securities or the need to obtain consent from part of the company or other securities holders;
- c) significant direct and indirect holdings, for example through pyramid structures and cross-holdings, as stated in reports submitted pursuant to article 120;
- d) if known, the holders of any securities with special control rights and a description of such rights;
- e) the mechanism for the exercise of voting rights in any employee share scheme where voting rights are not exercised directly by the employees;
- f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for the exercise of voting rights, or systems whereby, with the company's cooperation, the financial rights attached to the securities are separate from the holding of securities;
- g) agreements known to the company pursuant to article 122;
- h) any significant agreements to which the company is party and which take effect, alter or terminate upon a change of control of the company, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;
- i) agreements between companies and directors, members of the control body or supervisory council which envisage indemnities in the event of resignation or dismissal without just cause, or if their employment contract should terminate as the result of a takeover bid.

⁴⁹¹ Subsection added by art. 3 of Legislative Decree 37/2004.

⁴⁹² Subsection added by art. 3, Legislative Decree no. 146 of 25.09.2009.

l) rules applying to the appointment and replacement of directors and members of the control body or supervisory council, and to amendments to the articles of association if different from those applied as a supplementary measure;

m) the existence of delegated powers regarding share capital increases pursuant to article 2443 of the Italian Civil Code or powers of the directors or members of the control body to issue security-related financial instruments or to authorise the purchase of own shares;

2. In the same section of the report referred to in subsection 1, information shall be provided regarding:

a) adoption of a corporate governance code of conduct issued by regulated stock exchange companies or trade associations, giving reasons for any decision not to adopt one or more provisions, together with the corporate governance practices actually applied by the company over and above any legal or regulatory obligations. The company shall also indicate where the adopted corporate governance code of conduct may be accessed by the public;

b) the main characteristics of existing risk management and internal audit systems used in relation to the financial reporting process, including consolidated reports, where applicable;

c) the operating mechanisms of the shareholders' meeting, its main powers, shareholder rights and their terms of exercise, if different from those envisaged by legal and regulatory provisions applicable as supplementary measures;

d) the composition and duties of the administrative and control bodies and their committees.

3. The disclosures pursuant to subsections 1 and 2 may be issued in a report separate from the management report, approved by the board of directors and published with the management report. Alternatively, the management report may refer to a section of the issuer's web site in which such a report is published.

4. The independent auditors shall express opinion pursuant to article 156, subsection 4-*bis*, paragraph *d*) on disclosures referred to under subsection 1, paragraphs *c*), *d*), *f*), *l*) and *m*), and under subsection 2 paragraph *b*), and shall confirm that a report on corporate governance and ownership structures has been prepared.

5. Companies that are not issuers of securities admitted to trading on regulated markets or multilateral trading systems may omit publication of the disclosures pursuant to subsections 1 and 2, except those indicated under subsection 2, paragraph *b*)⁴⁹³.

Article 123-ter *Report on remuneration*

1. At least twenty-one days prior to the date of the shareholders' meeting established by article 2364, paragraph two, or the shareholders' meeting established by article 2364-*bis* second paragraph of the Italian Civil Code, companies with listed shares shall make a report on remuneration available to the public at the company registered offices, on its internet website or in any of the other ways established by Consob regulation.

2. The report on remuneration shall be laid out in the two sections established by paragraphs 3 and 4 and is approved by the Board of Directors. In companies adopting the dualism system, the report is approved by the supervisory board, upon proposal, limited to the section established by paragraph 4, letter b), of the management board.

3. The first section of the report on remuneration explains:

a) the company's policy on the remuneration of the members of the administrative bodies, general managers and executive with strategic responsibilities with reference to at least the following year;

b) the procedures used to adopt and implement this policy.

⁴⁹³ Article first added by art. 4 Legislative Decree no. 229 of 19.11.2007 and later replaced by art. 5 Legislative Decree no. 173 of 03.11.2008. The provisions of this article, as amended by article 5 subsection 1 of Legislative Decree 173/2008 shall apply in the preparation of reports relating to financial periods starting after entry into force of the decree (21.11.2008).

4. The second section, which is intended for the members of the administrative and auditing bodies, general managers and, in aggregate form, without prejudice to the provisions of the regulation issued in accordance with paragraph 8, for executives with strategic responsibilities:

a) provides a suitable representation of each of the items comprising remuneration, including treatment provided for in the event of cessation of office or termination of employment, highlighting the coherence with the company's policy in terms of remuneration approved the previous year;

b) analytically illustrates the fees paid during the financial year of reference, for any title and in any form by the company and by subsidiaries or associates, noting any components of said fees that refer to activities performed in years prior to that of reference, in addition to highlighting the fees to be paid in one or more subsequent years in exchange for the work performed in the year of reference, potentially specifying an estimated value for components that cannot objectively be quantified in the year of reference.

5. Fee plans established by article 114-*bis* are attached to the report, or the report specifies the section of the company's website where these documents can be viewed.

6. Without prejudice to the provisions of articles 2389 and 2409-*terdecies*, first paragraph, letter a) of the Italian Civil Code and article 114-*bis*, the shareholders' meeting called in accordance with article 2364, paragraph two or article 2364-*bis*, paragraph two, of the Italian Civil Code, resolves in favour or against the section of the report on remuneration established by paragraph 3. The resolution is not binding. The outcome of voting is made available to the public in accordance with article 125-*quater*, paragraph 2.

7. By regulation, adopted having first consulted with the Bank of Italy and Isvap as concerns the parties respectively supervised and considering sector Community regulations, Consob indicates the information to be included in the section of the remuneration report established by paragraph 3, including all information aiming to highlight the coherence of the remuneration policy with the pursuit of the company's long-term interests and with the risk management policy, in accordance with the provisions of paragraph 3 of Recommendation 2004/913/EC and paragraph 5 of Recommendation 2006/385/EC.

8. By regulation adopted in accordance with paragraph 7, Consob also indicates the information to be included in the section of the remuneration report envisaged by paragraph 4. Consob may:

a) identify the managers with strategic responsibilities for which information is supplied in nominative form;

b) differentiate the level of information detail according to company dimension⁴⁹⁴.

Article 124

Provisions not applicable

1. Consob may declare Articles 120, 121, 122 and 123 subsection 2 second paragraph, inapplicable to Italian companies with shares listed only on regulated markets in other EU countries in consideration of the legislation applicable to such companies by virtue of their being listed.

⁴⁹⁴ Article included by art. 1 of Italian Legislative Decree no. 259 of 30.12.2010. Art. 2 of Italian Legislative Decree no. 259 of 30.12.2010 establishes that: "The report on remuneration established by article 123-*ter* of Italian Legislative Decree no. 58 of 24 February 1998, introduced by article 1, is presented to the shareholders' meeting established by article 2364, paragraph two, or by article 2364-*bis*, paragraph two of the Italian Civil Code, called during the year subsequent to that during which the regulation established by paragraphs 7 and 8 of said article 123-*ter* comes into force."

Section I-bis⁴⁹⁵**Information on the adoption of codes of conduct**

Article 124-bis

Reporting obligations regarding codes of conduct...omissis...⁴⁹⁶

Article 124-ter

Disclosures regarding codes of conduct

1. To the extent of its powers, Consob shall establish the disclosure formats for codes of conduct regarding corporate governance issued by stock exchange companies or trade associations⁴⁹⁷.

Section II**Shareholder rights⁴⁹⁸**

Article 125

Calling of shareholders' meetings at the request of minority shareholders...omissis...⁴⁹⁹

Article 125-bis

(Notice of call to shareholders' meetings)

1. The shareholders' meeting shall be called at least thirty days prior to the date of the meeting, by means of a notice of call published on the company web site and by other methods as envisaged by Consob regulation issued pursuant to Article 113-ter, subsection 3.

2. For shareholders' meetings called to appoint members of the board of directors and internal control bodies, the time limit for publication of the notice of call shall be at least forty days prior to the date of the meeting.

3. For shareholders' meetings envisaged in Articles 2446, 2447 and 2448 of the Civil Code, the time limit indicated in subsection 1 shall become at least twenty-one days prior to the date of the meeting.

4. The notice of call shall contain:

a) indication of the date, time and venue of the meeting, together with the list of items to be discussed;

b) a clear and precise description of procedures to be observed by shareholders in order to attend and vote at the shareholders' meeting, including information regarding:

1) the right to ask questions prior to the shareholders' meeting, the time limits by which the right to supplement the agenda may be exercised and, also through reference to the company web site, further details on such rights and their means of exercise;

2) the procedure for voting by proxy, and in particular the forms that shareholders may use to vote by proxy, together with the method for communicating proxies, also be electronic means;

⁴⁹⁵ Section added by Article 14 subsection 1 of Law 262/2005.

⁴⁹⁶ Subsection first added by art. 14, Law no. 262 of 28.12.2005 and later repealed by art. 5, Legislative Decree no. 173 of 3.11.2008.

⁴⁹⁷ Article first added by art. 14 Legislative Decree no. 262 of 28.12.2005, later amended by art. 3, Legislative Decree no. 303 of 29.12.2006 and then replaced by art. 5, Legislative Decree no. 173 of 3.11.2008.

⁴⁹⁸ Heading as replaced by art. 3, Legislative Decree no. 27 of 27.01.2010.

⁴⁹⁹ Article repealed by art. 9, Legislative Decree no. 37 of 6.2.2004. Reference should now be made to Article 2367, Italian Civil Code.

3) identification of the person appointed, if any, by the company upon whom proxy should be conferred and the methods and time limits for conferring proxy by shareholders, specifying that the proxy shall not be valid for proposals for which no voting instructions are given;

4) the procedure for postal or electronic voting, if envisaged in the Articles of Association;

c) the date indicated in Article 83-*sexies*, subsection 2, specifying that any person proving to be owners of shares only after that date shall not have the right to attend and vote at the shareholders' meeting;

d) the methods and time limits for access to the full text of the proposed resolutions, together with the reports and documents to be considered at the shareholders' meeting;

e) the address of the web site referred to in Article 125-*quater*;

f) other information to be indicated in the notice of call pursuant to other provisions⁵⁰⁰.

Article 125-*ter*

(Disclosure of items on the agenda)

1. Unless required under the terms of other legal provisions, by the date of publication of the notice of call to the shareholders' meeting, the board of directors shall make a report on items of the agenda available to the public at the company's registered office, on the company web site and by other means envisaged by Consob regulation.

2. The reports prepared in accordance with law shall be made available to the public by the deadlines specified in such legal provisions, by the means envisaged in subsection 1. The report pursuant to Article 2446, subsection 1 of the Civil Code shall be made available to the public at least twenty-one days prior to the shareholders' meeting. The provisions of Article 154-*ter*, subsections 1, 1-*bis* and 1-*ter* shall remain valid.

3. If the shareholders' meeting is called in accordance with Article 2367 of the Civil Code, the report on proposals relating to items to be discussed shall be made available by the shareholders calling the meeting. The board of directors shall make the report available to the public, accompanied by its own evaluations if any, at the same time as publication of the notice of call to the shareholders' meeting by the means indicated in subsection 1⁵⁰¹.

Article 125-*quater*

(Web site)

1. Without prejudice to the provisions of Articles 125-*bis* and 125-*ter*, by the date of publication of the notice of call the following shall be made available on the company web site:

a) documents subject to consideration by the shareholders' meeting;

b) forms that shareholders may use to vote by proxy and, if envisaged in the Articles of Association, for postal voting. If for technical reasons the forms cannot be made available in electronic format, the web site must indicate the method for obtaining printed versions of the form, and in this case the company shall

⁵⁰⁰ Article added by art. 3, Legislative Decree no. 27 of 27.1.2010. Italian Law Decree no. 26 of 25.03.2011, converted by Italian Law no. 73 of 23.05.2011, establishes that: "1. During the first application of Italian Legislative Decree no. 27 of 27 January 2010, companies to which article 154-*ter* applies of the Consolidated Law on the provisions of financial intermediation, pursuant to Italian Legislative Decree no. 58 of 24 February 1998, may call the shareholders' meeting pursuant to article 2364, paragraph two and 2364-*bis*, paragraph two of the Italian Civil Code within the terms of one hundred and eighty days of the end of financial year 2010, even where this possibility has not been envisaged by the company's articles of association. 2. Companies to whom article 154-*ter* apply, which as of the date on which this decree comes into force have already published the notice of calling of the annual shareholders' meeting may also call the shareholders' meeting, as a first or only calling, on a new date, in compliance with the terms and methods pursuant to article 125-*bis* of Italian Legislative Decree no. 58 of 24 February 1998, as long as the terms specified by article 83-*sexies*, paragraph 2 of Italian Legislative Decree no. 58 of 24 February 1998 have not yet expired with respect to the meeting originally called. Should the meeting have been called also to appoint the members of the company bodies, any lists that have already been filed with the issuer shall also be considered valid with regards to the new calling. The presentation of new lists in compliance with the terms established by article 14-*ter*, paragraph 1-*bis* of Italian Legislative Decree no. 58 of 24 February 1998 and of the implementation regulation of article 148, paragraph 2 of Italian Legislative Decree no. 58 of 24 February 1998 is permitted. Should the extraordinary shareholders' meeting also have been called with the same notice, this may also be postponed to the new date."

⁵⁰¹ Article added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

issue the forms by mail, also through intermediaries, free of charge and at the request of any individual shareholder;

c) information regarding the total share capital and an indication of the number and class of shares forming the share capital.

2. A summary report of the votes containing the number of shares represented at the shareholders' meeting and the shares on which a vote was expressed, the percentage of capital represented by those shares, the number of votes in favour and against the resolution and the number of abstentions, shall be made available on the company web site at least five days prior to the date of the meeting. The minutes of the shareholders' meeting pursuant to Article 2375 of the Civil Code shall in any event be made available on the web site within thirty days of the date of the meeting⁵⁰².

Article 126
(Notice of second and subsequent calls)⁵⁰³

1. [...omissis...] ⁵⁰⁴

2. Unless a single notice of call to shareholders' meetings applies, if the date of second or subsequent call is not indicated in the call notice, the shareholders' meeting may be called again within thirty days. In this case, the time limit established in Article 125-bis, subsection 1, shall be reduced to ten days provided there are no changes to the items on the agenda⁵⁰⁵.

3. [...omissis...] ⁵⁰⁶

4. [...omissis...] ⁵⁰⁷

5. [...omissis...] ⁵⁰⁸

Article 126-bis
(Additions to the agenda of the shareholders' meeting)

1. Within ten days of publication of the notice of call to the shareholders' meeting, or within five days if called pursuant to Article 125-bis, subsection 3 or Article 104, subsection 2, shareholders who, individually or jointly, represent at least one fortieth of the share capital may request additions to the list of items on the agenda, indicating the additional matters proposed in their request. Such applications must be made in writing.

2. Additions to the agenda submitted pursuant to subsection 1 shall be disclosed in the written formats described for publication of the notice of call, at least fifteen days prior to the date established for the

⁵⁰² Article added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵⁰³ Heading as replaced by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵⁰⁴ Subsection repealed by art. 9 of Legislative Decree 37/2004. Now see Articles 2368 and 2369 of the Civil Code.

⁵⁰⁵ Subsection as replaced by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 126 (Extraordinary shareholders' meeting) 1. [...omissis...] 2. If the shareholders attending on second call do not represent the number of votes required for due constitution of the meeting, the extraordinary shareholders' meeting may be called again within thirty days. In such cases the time limit established in Article 2366, subsection 2 of the Italian Civil Code shall be reduced to eight days. [...omissis...]"

⁵⁰⁶ Subsection repealed by art. 9 of Legislative Decree 37/2004. Now see Articles 2368 and 2369 of the Civil Code.

⁵⁰⁷ Subsection repealed by art. 9 of Legislative Decree 37/2004. Now see Articles 2368 and 2369 of the Civil Code.

⁵⁰⁸ Subsection repealed by art. 9 of Legislative Decree 37/2004. Now see Articles 2368 and 2369 of the Civil Code.

shareholders' meeting. This time limit shall be reduced to seven days for shareholders' meetings called pursuant to Article 104, subsection 2.

3. Additions to the agenda pursuant to subsection 1, shall not include matters on which, in accordance with law, the shareholders' meeting resolves at the proposal of the directors or on the basis of a project or report prepared by the directors, other than those referred to in Article 125-ter, subsection 1.

4. Shareholders requesting additions to the agenda shall prepare a report on the matters they propose to discuss. The report shall be delivered to the board of directors by the final deadline for the submission of requests for additions. The board of directors shall make the report available to the public, accompanied by its own evaluations if any, at the same time as publication of the additions to the agenda by the means indicated in Article 125-ter, subsection 1⁵⁰⁹.

Article 127 (Postal or electronic voting)

1. By regulation Consob shall establish the methods for exercising votes and the procedures for shareholders' meeting in cases envisaged in Article 2370, subsection 4 of the Civil Code⁵¹⁰.

Article 127-bis (Voidability of resolutions and right to withdrawal)

1. For the purpose of Article 2377 of the Civil Code, any person on whose behalf shares are registered after the date indicated in Article 83-sexies, subsection 2 and prior to opening of the shareholders' meeting, shall be considered absent from that meeting.

2. For the purpose of the right to withdrawal envisaged in Article 2437 of the Civil Code, any person on whose behalf shares are registered after the date indicated in Article 83-sexies, subsection 2 and prior to opening of the shareholders' meeting, registration of those shares shall not be calculated for the approval of resolutions.

3. This provision shall also apply to Italian companies with shares admitted to multilateral trading systems in Italy or in other EU countries with the consent of the issuer⁵¹¹.

Article 127-ter (Right to ask questions prior to the shareholders' meeting)

1. Shareholders may ask questions regarding items on the agenda also prior to the shareholders' meeting. Questions received prior to the meeting shall at the latest be answered during the meeting. The company may not provide a single answer to questions with the same content.

⁵⁰⁹ Article first added by art. 5, Legislative Decree no. 262 of 28.12.2005 and later replaced by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 126-bis (*Additions to the agenda of shareholders' meetings*) 1. Shareholders who, separately or jointly, represent at least one fortieth of the share capital may request, within five days of the publication of the notice convening the meeting, additions to the agenda, specifying in the request the additional items they propose. 2. Notice of items added to the agenda following requests referred to in paragraph 1 shall be given in forms prescribed for publication of the notice convening the meeting. 3. Additions to agenda pursuant to paragraph 1 may not be made for matters on which the shareholders' meeting is required by law to resolve on proposals put forward by the directors or on the basis of a plan or report they may have prepared."

⁵¹⁰ Article as replaced by art. 3, Legislative Decree no. 27 of 27.01.2010. See Consob regulation no. 11971 of 14.5.1999, as amended. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 127 (*Postal voting*) 1. The instrument of incorporation may provide for votes also to be cast in shareholders' meetings by mail. Consob shall lay down in a regulation the procedures for postal voting and shareholders' meetings."

⁵¹¹ Article added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

2. No answer shall be due when the information requested is already available in the form of an “FAQ” in a special section of the company web site⁵¹².

Article 127 *quater*
(Dividend increases)

1. As an exception to Article 2350, subsection 1 of the Civil Code, Articles of Association may envisage that each share held by the same shareholder for a continuous period as indicated in the Articles of Association, and in any event for not less than one year, grants the right to an increase not exceeding 10 per cent of the dividend distributed on the other shares. The Articles of Association may envisage other conditions for granting such a benefit. The benefit may also be extended to shares allocated pursuant to Article 2442 of the Civil Code to a shareholder with right to the increase as indicated in subsection 1.

2. If during the period indicated in subsection 1 that person has directly or indirectly held, on a continuous or temporary basis, a shareholding of more than 0.5 per cent of the share capital or lower percentage as indicated in the Articles of Association, the increase may only be granted on shares that in total represent that maximum shareholding. Furthermore, the increase may not be granted on shares held during the aforementioned period by a person who, even temporarily or jointly with other shareholders through a shareholders' agreement as referred to in Article 122, has exercised a dominant or significant influence over the company. In any event, the increase may not be granted on shares which during the period indicated in subsection 1 were continuously or temporarily assigned to a shareholders' agreement as envisaged in Article 122 and in the same period, or part of that period, formed part of a total shareholding exceeding that indicated in Article 106, subsection 1.

3. Disposal of the share, against payment or free of charge, shall result in loss of the benefits envisaged in subsection 1. Such benefits are retained in the event of universal succession, and in the event of merger or spin-off of the owner of the shares. In the event of merger or spin-off of the company issuing the shares indicated in subsection 1, the benefits shall be transferred to shares issued by the resulting companies, without prejudice to the application of subsection 2 in reference to such companies.

4. Shares on which the benefits indicated in subsection 1 are granted shall not constitute a special category of shares pursuant to Article 2348 of the Civil Code⁵¹³.

Article 128
Complaints to the board of auditors and the courts

[...omissis...] ⁵¹⁴

Article 129
Company actions for liability

[...omissis...] ⁵¹⁵

⁵¹² Article added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵¹³ Article added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵¹⁴ Article repealed by art. 9 of Legislative Decree 37/2004. Now see Articles 2408 and 2409 of the Civil Code.

⁵¹⁵ Article repealed by art. 9 of Legislative Decree 37/2004. Now see Article 2393-bis of the Civil Code.

Article 130
Information for shareholders

1. Shareholders may consult all the documents filed at the company's registered office for shareholders' meetings that have already been called and may obtain a copy thereof at their own expense.

Article 131
Right of withdrawal from mergers and spin-offs

[...omissis...] ⁵¹⁶

Article 132
Acquisition of own or parent company shares

1. Purchases of treasury shares under Articles 2357 and 2357-bis, subsection 1, paragraph 1 of the Civil Code by companies with listed shares must be made so as to ensure equal treatment of shareholders, according to procedures established by Consob in a regulation. ⁵¹⁷

2. Subsection 1 shall also apply to purchases of listed shares made under Article 2359-bis of the Civil Code by a subsidiary.

3. Subsections 1 and 2 shall not apply to purchases of own or parent company shares held by employees of the issuing company, subsidiary companies or the parent company and allotted or subscribed for in accordance with Articles 2349 and 2441, eighth subsection, of the Civil Code, or falling under the scope of the compensation plans approved in accordance with article 114-bis ⁵¹⁸.

Article 133
Exclusion upon request from trading

1. Subject to approval by an extraordinary shareholders' meeting, Italian companies with shares listed on regulated markets in Italy may request that their own financial instruments be excluded from trading, in accordance with the provisions of the rules of the market, where they are admitted to listing on other regulated markets in Italy or another EU country, provided investors are ensured equivalent protection, according to standards established by Consob in a regulation ⁵¹⁹.

Article 134
Increases in capital

1. For companies with listed securities, the deadline envisaged in article 2441 ⁵²⁰, subsection 2 of the Italian Civil Code shall be halved.

2. The majority required for extraordinary shareholders' meetings shall apply to resolutions approving increases in capital under the first sentence of the eighth subsection of Article 2441 of the Civil Code, provided the increase does not exceed one per cent of the capital. ⁵²¹

⁵¹⁶ Article repealed by art. 9 of Legislative Decree 37/2004. Now see Article 2437-quinquies of the Civil Code.

⁵¹⁷ Subsection as amended by art. 9 of Law 62/2005 (the 2004 Community Law).

⁵¹⁸ Paragraph thus amended by art. 3 of Italian Legislative Decree no. 224 of 29.11.2010, which replaced the wording "Civil Code" with the wording "Civil Code, or taken from the compensation plans approved in accordance with article 114-bis."

⁵¹⁹ See Consob regulation no. 11971 of 14.5.1999, as amended.

⁵²⁰ As amended by art. 12, subsection 11, Decree Law no. 185 of 29.11.2008, converted to Law no. 2 of 28.1.2009.

⁵²¹ Subsection as amended by art. 3 of Legislative Decree 37/2004.

3. [...omissis...] ⁵²²

Section II-bis ⁵²³
Cooperatives

Article 135
(Capital percentages)

1. For cooperatives, the capital percentages identified in the Civil Code for the exercise of shareholder rights shall be a ratio of the total number of shareholders ⁵²⁴.

Article 135-bis
Regulations for cooperatives

1. Without prejudice to the exclusions specifically envisaged in this legislative decree, Articles 116 subsection 2-ter, 125-bis, 125-ter, 125-quater, 126 subsection 2, 126-bis, 127-bis, 127-ter, 127-quater, 147-ter subsection 1-bis, final sentence of 148 subsection 2, 154-ter subsections 1, 1-bis and 1-ter and 158 subsection 2 shall not apply to cooperatives. The provisions of this section shall apply to such companies.

Article 135-ter
*Market disclosures on the assignment of financial instruments and company officers,
employees or collaborators*

1. As an exception to Article 114-bis, subsection 1, the report envisaged therein shall be made available to the public at least fifteen days prior to the deadline established for the shareholders' meeting in accordance with methods established by Consob regulation issued pursuant to Article 113-ter, subsection 3.

Article 135-quater
Extraordinary shareholders' meeting

1. If the shareholders attending on second call do not represent the number of votes required for due constitution of the meeting, the extraordinary shareholders' meeting may be called again within thirty days. In such cases the time limit established in Article 2366, subsection 2 of the Italian Civil Code shall be reduced to eight days.

Article 135-quinquies
Additions to the agenda of the shareholders' meeting

1. Within five days of publication of the notice of call, shareholders representing at least one fortieth of the total number of shareholders may request publication of the list of items on the agenda, indicating any other items proposed by shareholders in their request.

2. Additions to the list of items to be discussed by the shareholders' meeting following requests pursuant to subsection 1 shall be disclosed in the written formats described for publication of the notice of call, at least ten days prior to the date established for the shareholders' meeting.

⁵²² Subsection repealed by art. 9 of Legislative Decree 37/2004.

⁵²³ Section added by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the newly introduced Section II-bis shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵²⁴ Article first replaced by art. 3, Legislative Decree no. 37 of 6.2.2004 and later by art. 3, Legislative Decree no. 27 of 27.1.2010.

3. Additions to the list of items to be discussed pursuant to subsection 1, shall not include matters on which, in accordance with law, the shareholders' meeting resolves at the proposal of the directors or on the basis of a project or report prepared by the directors.

Article 135-*sexies*
Financial statements

1. Without prejudice to the terms of Article 2429 of the Italian Civil Code, within one hundred and twenty days of the end of the financial year, listed issuers with Italy as their home member country shall approve the financial statements and, by the methods established by Consob regulation issued in accordance with Article 113-*ter*, subsection 3, publish the annual report containing the separate and consolidated financial statements, where appropriate, the directors' report and the statement pursuant to art. 154-*bis*, subsection 5.

Article 135-*septies*
Audit reports

1. Audit reports pursuant to Article 156 must remain filed with the company's registered office during the fifteen days prior to the shareholders' meeting or meeting of the supervisory board for approval of the financial statements, and until the financial statements are approved and published in full with the annual report.

Article 135-*octies*
Share capital increase proposals

1. The directors' report and the opinion of the independent auditors pursuant to Article 158 shall remain filed with the company's registered office during the fifteen days prior to the shareholders' meeting and until the related resolution has been passed. Such documents must be annexed to other documents required for entry of the resolution in the Register of Companies.

Section II-*ter*⁵²⁵
Proxies

Article 135-*novies*
Representation at the shareholders' meeting

1. Any person with the right to vote may indicate one representative for each shareholders' meeting, without prejudice to the right to indicate replacements.

2. As an exception to subsection 1, any person with the right to vote may appoint a different representative for each account, used to record financial instrument transactions, valid where the communication envisaged in Article 83-*sexies* has been issued.

3. As a further exception to subsection 1, if the person indicated as owner of the shares in the communication envisaged in Article 83-*sexies* acts alone or through registered trustees on behalf of his or her customers, the person in question may indicate others on whose behalf he/she acts, or one or more third parties indicated by such customers, as their representative.

4. If the proxy form envisages such an option, the proxy may arrange for personal substitution by another person of his or her choice, without prejudice to compliance with Article 135-*decies* subsection 4 and to the right of the person represented to indicate one or more substitutes.

⁵²⁵ Section added by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the newly introduced Section II-*ter* shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

5. In place of the original, the representative may deliver or transmit a copy of the proxy, also in electronic format, confirming his or her liability in compliance of the proxy form to the original and the identity of the delegating party. The representative shall retain the original of the proxy form and keep track of any voting instructions received for a period of one year from closure of the shareholders' meetings concerned.
6. By regulation and after consulting Consob, the Ministry of Justice shall establish the methods for issuing proxy in electronic format, in compliance with the provisions of Article 2372, subsection 1 of the Italian Civil Code. In their Articles of Association, companies shall indicate at least one electronic means for notification of the proxy form that shareholders have the right to use.
7. Subsections 1, 2, 3 and 4 shall also apply to cases of share transfer by proxy.
8. All of the above without prejudice to the provisions of Article 2372 of the Italian Civil Code.

Article 135-decies

Conflict of interest of the representative and substitutes

1. Conferring proxy upon a representative in conflict of interest is permitted provided that the representative informs the shareholder in writing of the circumstances giving rise to such conflict of interest and provided specific voting instructions are provided for each resolution in which the representative is expected to vote on behalf of the shareholder. The representative shall have the onus of proof regarding disclosure to the shareholder of the circumstances giving rise to the conflict of interest.
2. In any event, for the purposes of this article, conflict of interest exists where the representative or substitute:
 - a) has sole or joint control of the company, or is controlled or is subject to joint control by that company;
 - b) is associated with the company or exercises significant influence over that company;
 - c) is a member of the board of directors or control body of the company or of the persons indicated in paragraphs a) and b);
 - d) is an employee or auditor of the company or of the persons indicated in paragraph a);
 - e) is the spouse, close relative or is related by up to four times removed of the persons indicated in paragraphs a) to c);
 - f) is bound to the company or to persons indicated in paragraphs a), b), c) and e) by independent or employee relations or other relations of a financial nature that compromise independence.
3. Replacement of the representative by a substitute in conflict of interest is permitted only if the substitute is indicated by the shareholder. In such cases, subsection 1 shall apply. Disclosure obligations and related onus of proof in any event remain with the representative.
4. This article shall also apply in cases of share transfer by proxy.

Article 135-undecies

Appointed representative of a listed company

1. Unless otherwise stated in the Articles of Association, for each shareholders' meeting listed companies shall appoint a person upon whom shareholders may confer proxy, with voting instructions on all or a number of items on the agenda, by the second trading day prior to the date established on first or single call of the shareholders' meeting. The proxy shall be valid only for proposals on which voting instructions are conferred.
2. Proxy is conferred by signing a proxy form, the content of which is governed by a Consob regulation. Conferring proxy shall be free of charge to the shareholder. The proxy and voting instructions may be cancelled within the time limit indicated in subsection 1.

3. Shares for which full or partial proxy is conferred are calculated for the purpose of determining due constitution of the shareholders' meeting. With regard to proposals for which no voting instructions are given, the shares of the shareholder concerned are not considered in calculating the majority and the percentage of capital required for the resolutions to be carried.

4. The person appointed as representative shall any interest, personal or on behalf of third parties, that he or she may have with respect to the resolution proposals on the agenda. The representative must also maintain confidentiality of the content of voting instructions received until scrutiny commences, without prejudice to the option of disclosing such information to his or her employees or collaborators, who shall also be subject to confidentiality obligations.

5. By regulation pursuant to subsection 2, Consob may establish cases in which a representative failing to meet the terms of Article 135-*decies* may express a vote other than that indicated in the voting instructions.

Article 135 *duodecies* *Cooperatives*

1. The provisions of this section shall not apply to cooperatives.

Section III Solicitation of proxies⁵²⁶

Article 136 *Definitions*

1. For the purposes of this section, the following definitions shall apply:

- a) "proxy", means of representation conferred for the exercise of votes at shareholders' meetings;
- b) "solicitation", a request to more than two hundred shareholders for proxy to be conferred in relation to specific voting proposals, or accompanied by recommendations, statements or other indications capable of influencing the vote;
- c) "promoter", the person or persons acting in concert to promote the solicitation⁵²⁷.

Article 137 *General provisions*

1. For the purposes of this section, Articles 135-*novies* and 135-*decies* shall apply to proxies⁵²⁸.

2. Articles of Association that in any way limit representation in shareholders' meetings shall not apply to proxies given pursuant to the provisions of this chapter.

3. The Articles of Association may contain rules aimed at facilitating voting by proxy by employee shareholders⁵²⁹.

⁵²⁶ Heading as replaced by art. 3, Legislative Decree no. 27 of 27.01.2010.

⁵²⁷ Article as replaced by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 136 (*Definitions*) 1. For the purposes of this section: a) "proxy" shall mean the authority to vote for another in shareholders' meetings; b) "solicitation" shall mean the seeking of proxies among shareholders in general; c) "promoter" shall mean the person or persons who jointly promote the solicitation, seeking support for specific proposals; d) "intermediary" shall mean the person who carries out the solicitation on behalf of a promoter; e) "collection of proxies" shall mean the seeking of proxies by shareholders' association exclusively from among their members.

⁵²⁸ Subsection as replaced by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 137 (*General provisions*) 1. Solicitation and the collection of proxies shall be regulated by the provisions of this section by way of derogation from Article 2372 of the Civil Code. [...omissis...]."

⁵²⁹ Subsection amended by art. 3, Legislative Decree no. 27 of 27.01.2010 which replaced the words: "the collection of proxies among employee shareholders" with the words: "voting by proxy by employee shareholders". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment

4. The provisions o-f this section shall not apply to *società cooperative*.

Article 138 *Solicitation*

1. Solicitation is performed by the promoter through dissemination of a statement and a proxy form.
2. The vote relating to shares for which proxy is conferred is exercised by the promoter. The promoter may be substituted only by a person specifically indicated in the proxy form and in the solicitation statement⁵³⁰.

Article 139 *Requirements for promoters*

...omissis...⁵³¹

Article 140 *Persons authorised to engage in solicitation*

...omissis...⁵³²

Article 141 *Shareholders' associations*

1. Requests for proxy are accompanied by recommendations, statements or other indications capable of influencing the vote shall not constitute solicitation pursuant to Article 136, subsection 1, paragraph *b*) by shareholders' associations, targeting their own members, which:
 - a*) are constituted by authenticated simple agreement;
 - b*) do not exercise business activities other than those directly instrumental to the purpose of the association;
 - c*) are composed of at least fifty natural persons, each of which owning a number of shares not exceeding 0.1 per cent of the share capital represented by shares with voting rights.
2. Proxy conferred upon the association by shareholders pursuant to subsection 1 shall not be considered in calculating the limit of two hundred shareholders envisaged in Article 136, subsection 1, paragraph *b*)⁵³³.

shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵³⁰ Article as replaced by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 138 (Solicitation) 1. Solicitation shall be carried out by the intermediary commissioned by the promoter distributing a proxy statement and a proxy form. 2. Votes attached to shares for which a proxy has been given shall be cast by the promoter or, where commissioned by the latter, by the intermediary that carried out the solicitation. Intermediaries may not entrust the performance of commissions to third parties."

⁵³¹ Article repealed by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 139 (*Requirements for promoters*) 1. Promoters must hold shares allowing them to vote in the shareholders' meeting for which proxies are sought equal to at least one per cent of the share capital represented by shares carrying rights to vote therein. Consob shall establish lower percentages of the share capital for companies with a high market capitalization and a particularly wide distribution of their shares. 2. For the purposes of paragraph 1, account shall also be taken, in the case of Italian management companies and persons authorized to set up pension funds, of the shares belonging to the funds on behalf of which they exercise the voting rights."

⁵³² Article repealed by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 140 (*Persons authorized to engage in solicitation*) 1. Solicitation shall be reserved to investment companies, banks, asset management companies, SICAVs and companies whose sole company purpose is solicitation and the representation of shareholders at shareholders' meetings. The corporate officers of the latter companies must satisfy the integrity requirements established for Italian investment companies."

⁵³³ Article as replaced by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the replaced version of Article 141 shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "Article 141 (*Shareholders' associations*) 1. Shareholders' associations may collect proxies provided they: *a*) are established with an authenticated private

Article 142

Proxies

1. Proxies shall be signed by the givers, may be revoked and may be given only for one shareholders' meeting that has already been called, remaining effective for subsequent calls where applicable; they may not be given blank and shall show the date, the name of the appointee and the voting instructions.
2. Proxy may also be conferred for only a number of the voting proposals indicated in the proxy form or for only certain items on the agenda. The representative shall vote on behalf of the person conferring proxy also on items of the agenda for which he or she has received instructions, even if not included in the solicitation. Shares for which full or partial proxy is conferred are calculated for the purpose of determining due constitution of the shareholders' meeting⁵³⁴.

Article 143

Liability

1. The information contained in the proxy statement or the proxy form and any sent out during a solicitation or collection of proxies must enable shareholders to make an informed decision; its suitability for this purpose shall be the liability of the promoter⁵³⁵.
2. The promoter shall be liable for the completeness of information sent out during a solicitation⁵³⁶.
3. In actions for damages arising from violation of the provisions of this section and the related regulations the burden of proof of having acted with the due diligence required shall be on the promoter⁵³⁷.

Article 144

Performance of solicitations and collections of proxies

1. Consob shall issue a regulation on the transparency and correctness of solicitations and collections of proxies. In particular, the regulation shall lay down rules for:
 - a) the content of proxy statements and proxy forms and the procedures for their distribution;
 - b) the procedures for solicitation and the collection of proxies, and the conditions and procedures for casting proxy votes and revoking proxies;
 - c) the forms of cooperation between the promoter and the persons possessing the information on the identity of shareholders in order to permit the performance of solicitations⁵³⁸.

instrument; b) do not engage in entrepreneurial activities except for those that serve directly to achieve the object of the association; c) have at least fifty members who are natural persons, each of whom owns shares not exceeding 0.1 per cent of the voting capital. **2.** Articles 122(3) and 122(4) shall not apply to the shareholders' associations referred to in paragraph 1. **3.** The collection of proxies shall be carried out by distributing the form referred to in Article 142. Proxies shall be given to the legal representatives of the association. **4.** The association shall vote, unanimously or otherwise, in conformity with the indications given by each member in the proxy form. Members are not obliged to give a proxy."

⁵³⁴ Subsection amended by art. 3, Legislative Decree no. 27 of 27.01.2010 which added the words: "or for only certain items on the agenda. The representative shall vote on behalf of the person conferring proxy also on items of the agenda for which he or she has received instructions, even if not included in the solicitation.". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵³⁵ Subsection amended by art. 3, Legislative Decree no. 27 of 27.01.2010 which removed the words: "or collection of proxies" and replaced the words: "the promoter and representatives of the shareholders' association" with the words: "the promoter". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵³⁶ Subsection amended by art. 3, Legislative Decree no. 27 of 27.01.2010 which replaced the words: "The intermediary" with the words: "The promoter". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵³⁷ Subsection amended by art. 3, Legislative Decree no. 27 of 27.01.2010 which replaced the words: "promoter, shareholders' associations and the intermediary" with the word: "promoter". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

2. Consob may:

a) request that the statement and proxy form include additional information to establish their specific dissemination methods;

b) prohibit solicitation if it is found that the provisions of this section have been violated;

c) exercise the powers envisaged in Article 114 subsection 5 and Article 115 subsection 1 against the promoters⁵³⁹.

3. ...omissis...⁵⁴⁰.

4. In cases in which the law envisages forms of control over investments in company share capital, a copy of the statement and proxy form must be sent to the competent supervisory authority prior to solicitation. The authorities shall prohibit any solicitation that compromises the purpose of the control of capital investments⁵⁴¹.

Section IV

Savings shares and other classes of shares⁵⁴²

Article 145

Issue of shares

1. Italian companies with ordinary shares listed on regulated markets in Italy or other EU countries may issue non-voting shares with preferential rights as regards the payment of dividends and the liquidation of assets.

2. The Articles of Association shall specify the substance of such preferential rights and the conditions and time and other limits for their exercise; they shall also establish the rights of holders of savings shares where ordinary or savings shares are excluded from trading.

3. The shares must carry, in addition to the information laid down in Article 2354 of the Civil Code, the words "azioni di risparmio" and an indication of the related privileges; the shares may be bearer shares,

⁵³⁸ Subsection amended by art. 3, Legislative Decree no. 27 of 27.01.2010 which replaced the words: "the intermediary" with the words: "the promoter". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply. See Consob regulation no. 11971 of 14.5.1999, as amended.

⁵³⁹ Subsection as replaced by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "2. Consob may: a) require proxy statements and proxy forms to contain supplementary information and lay down specific procedures for their distribution; b) forbid solicitation and the collection of proxies where it finds a violation of the provisions of this section; c) exercise the powers referred to in Articles 115(1)(a) and 115(1)(b) with respect to promoters and shareholders' associations; d) exercise the powers referred to in Article 115, subsection 1 with respect to authorised persons."

⁵⁴⁰ Subsection repealed by art. 3, Legislative Decree no. 27 of 27.01.2010. Art. 7 of the legislative decree implementing Directive 2007/36/CE of 11.7.2007 on the exercise of the rights of shareholders of listed companies states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of the legislative decree implementing Directive 2007/36/CE of 11.7.2007 shall continue to apply. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "3. The Minister of Justice, after consulting Consob, shall lay down in a regulation the time limits for calling shareholders' meetings, by way of derogation from the legislation in force where appropriate, and ensure proposed resolutions are publicized in an adequate and timely manner (see Ministry of Justice regulation no. 437 of 5.11.1998, published in Official Gazette no. 295 of 18.12.1998)."

⁵⁴¹ Subsection as replaced by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the replaced version of subsection 4 shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "4. Where the law establishes forms of control over shareholdings, a copy of the proxy statement or proxy form must be sent to the competent supervisory authority before the solicitation or collection of proxies. The authorities shall forbid solicitation and the collection of proxies where they interfere with the aims of the aims on shareholding."

⁵⁴² Title as amended by art. 6 Legislative Decree 37/2004.

without prejudice to the second subsection of Article 2354 of the Civil Code. The shares belonging to directors, members of the board of auditors and general managers must be registered shares.⁵⁴³

4. [...omissis...] ⁵⁴⁴

5. Where, as a consequence of a reduction in the capital owing to losses, the value of savings shares and shares with limited voting rights exceeds half the share capital, the ratio referred to in subsection 4 must be restored within two years through an issue of ordinary shares offered with the right of pre-emption to the holders of ordinary shares. However, where the capital represented by ordinary shares falls below one quarter of the share capital, it must be replenished to at least one quarter within six months. Companies shall be dissolved where the ratio of ordinary shares to savings shares and shares with limited voting rights is not restored within the aforementioned time limits.

6. The share capital represented by savings shares shall not be counted for the purpose of establishing the due constitution of the shareholders' meeting and the validity of the resolutions adopted, nor for the purpose of calculating the ratios referred to in Articles 2367, 2393 subsections 5 and 6, 2393-bis, 2408 subsection 2, and 2409 subsection 1 of the Civil Code.⁵⁴⁵

7. Savings shares may be issued as part of a share capital increase, in compliance with the provisions of article 2441 of the Italian Civil Code⁵⁴⁶, or on conversion of ordinary or other shares already in issue. Conversion rights shall be attributed to shareholders by resolution of the extraordinary shareholders' meeting.

8. Unless the instrument of incorporation and Articles of Association state otherwise, in the case of issues of new shares for cash where the right of pre-emption has not been excluded or limited, holders of savings shares shall enjoy the right of pre-emption for savings shares of the same class or, in the absence thereof or to make up the difference, for savings shares of another class, preference shares or ordinary shares, in that order.

Article 146

Special shareholders' meetings

1. Special shareholders' meetings of holders of savings shares shall resolve:

a) on the appointment and removal of the common representative and legal action for liability against such person;

b) on the approval of resolutions adopted by the shareholders' meeting of the company that prejudice the rights of the category, with the favourable vote of as many shares as represent at least twenty per cent of the shares of the class in question;

c) on the creation of a fund for the expenses necessary to protect common interests and the related statement of accounts; the fund shall be advanced by the company, which may recover the advance from the profits due to holders of savings shares in excess of any amount guaranteed;

d) on the settlement of disputes with the company, with the favourable vote of shares representing at least twenty per cent of the shares of the class in question;

e) on other matters of common interest.

2. Special meetings of holders of savings shares shall be called by their common representative or by the directors of the company within sixty days of the issue or conversion of the shares and when they deem it necessary or it has been requested by holders of savings shares representing at least one per cent of the savings shares of the same class.⁵⁴⁷

⁵⁴³ Subsection as amended by art. 6 Legislative Decree 37/2004.

⁵⁴⁴ Subsection repealed by art. 6 Legislative Decree 37/2004.

⁵⁴⁵ Subsection as amended by art. 3 Legislative Decree 37/2004 and subsequently by Article 3 of Law 262/2005, which replaced the words "2393, fourth and fifth paragraphs" with the words "2393, subsections 5 and 6".

⁵⁴⁶ As amended by art. 12, subsection 11, Decree Law no. 185 of 29.11.2008

⁵⁴⁷ Subsection as amended by art. 3 Legislative Decree 37/2004.

2-bis. In the case of omission or unjustified delay by the directors, special meetings shall be called by the board of auditors or the supervisory board or, if requested by holders of savings shares under paragraph 1, by the management control committee.⁵⁴⁸

3. By way of derogation from the second paragraph of Article 2376 of the Civil Code, special shareholders' meetings, except in the cases referred to in paragraphs 1b) and 1d), shall adopt resolutions at the first and second calls with the favourable vote of shares representing at least twenty and ten per cent of the shares in circulation; at the third call, the special shareholders' meetings shall adopt resolutions by simple majority of the persons present, regardless of the proportion of the capital they represent. Article 2416 of the Civil Code shall apply.

Article 147 *Common representatives*

1. Common representatives shall be subject to Article 2417 of the Civil Code, where the term bondholders shall be understood to refer to holders of savings shares.

2. [...omissis...] ⁵⁴⁹

3. Common representatives shall have the obligations and powers referred to in Article 2418 of the Civil Code, where the term bondholders shall be understood to refer to holders of savings shares; they may also examine the books referred to in subsections 1) and 3) of Article 2421 of the Civil Code, obtain extracts thereof, attend shareholders' meetings and challenge the resolutions they adopt. Their expenses shall be charged to the fund referred to in Article 146(1)(c).

4. The Articles of Association may assign the common representative additional powers to protect the interests of holders of savings shares and must establish procedures to ensure the common representative receives adequate information on corporate transactions that may influence the price of shares of the class in question.

Article 147-bis *Meetings of classes of investors*

1. Articles 146 and 147 shall apply to the special meetings referred to in Article 2376, first paragraph, of the Civil Code if the shares are listed on regulated markets in Italy or other EU countries.⁵⁵⁰

Section IV-bis ⁵⁵¹ **Administration bodies**

Article 147-ter ⁵⁵² *Election and composition of the Board of Directors*

1. The Statute provides for members of the Board of Directors to be elected on the basis of the list of candidates and defines the minimum participation share required for their presentation, at an extent not above a fortieth of the share capital or at a different extent established by Consob with the regulation taking

⁵⁴⁸ Subsection added by art. 3 Legislative Decree 37/2004.

⁵⁴⁹ Subsection repealed by art. 3 Legislative Decree 37/2004.

⁵⁵⁰ Article added by art. 3 Legislative Decree 37/2004.

⁵⁵¹ Section included Art. 1 of I No. 262 of 28.12.2005.

⁵⁵² Article first of all included in Article 1 of Law 262/2005 and then amended by Article 3, subsection 13, of Legislative Decree 303/2006 and by Article 1 of Law 120/2011 according to the terms indicated in the notes below.

into account capitalization, floating funds and ownership structures of listed companies. The lists indicate which are the directors holding independent requisites established by law and by the Statute. The Statute may also provide that with regard to the sector for directors to be elected, what is not to be taken into account are the lists which have not reached a percentage of votes at least equal to half of the one required by the Statute for the presentation of same.⁵⁵³

1-bis. The lists shall be filed with the issuer by the twenty-fifth day prior to the date of the shareholders' meeting called to appoint members of the board of directors, and made available to the public at the registered office, on the web site and by other means established by Consob regulation at least twenty-one days prior to the shareholders' meeting. Ownership of the minimum investment envisaged in subsection 1 shall be determined with regard to shares registered in the name of the shareholder on the date on which the lists are filed with the issuer. Related certification may also be submitted after filing, provided submission is within the time limit established for publication of the lists by the issuer⁵⁵⁴.

1-ter. The Statute also lays down that the division of directors to be elected be made on the basis of a criterion that ensures a balance between genders. The less-represented gender must obtain at least one third of the directors elected. This division criterion applies for three consecutive mandates. If the composition of the board of directors resulting from the election does not comply with the division criterion provided for in the present section, Consob warns the company involved to comply with this criterion within the maximum term of four months from the warning. In the event of non-compliance with the warning, Consob applies a fine of from euro 100,000 to euro 1,000,000, according to criteria and methods laid down in its own regulations and sets a new term of three months for compliance. In the event of further non-compliance with respect to the new warning, the members elected lose their position. The statute regulates the methods of formation of the lists and the cases of replacement during a mandate in order to guarantee compliance with the division criterion provided for in the present section. Consob lays down regulations on the subject of infringement, application and observance of the rules on gender quotas, also with reference to the preliminary phase and the procedures to be adopted, on the basis of its own regulations to be adopted within six months from the date of entry into force of the rules contained in the present section. The rules of the present section apply also to companies organised according to the monistic system⁵⁵⁵.

2. [...omissis...]⁵⁵⁶

3. Except as provided for in Article 2409-septiesdecies of the Civil Code, at least one member shall be elected from the minority slate that obtained the largest number of votes and is not linked in any way, even indirectly, with the shareholders who presented or voted the list which resulted first by the number of votes. In companies organised under the one-tier system, the member elected from the minority slate must satisfy the integrity, experience and independence requirements established pursuant to Articles 148(3) and 148(4). Failure to satisfy the requirements shall result in disqualification from the position.⁵⁵⁷

⁵⁵³ Subsection amended by Art. 3 of Legislative Decree No. 303 of 29.12.2006 which replaced the Italian word: "membri" with the Italian word: "componenti" (Translator's note: in English the word is always translated as "members") and lastly added the following words: "or at a different extent established by Consob with the regulation taking into account capitalization, floating funds and ownership structures of listed companies. The lists indicate which are the directors holding independent requisites established by law and by the Statute. The Statute may also provide that with regard to the sector for directors to be elected, what is not to be taken into account are the lists which have not reached a percentage of votes at least equal to half of the one required by the Statute for the presentation of same.

⁵⁵⁴ Subsection added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵⁵⁵ Subsection added by Art. 1 subsection 1 of Law no. 120 of 12.7.2011. Article 2 of Law no. 120 of 12.7.2011 states that "The rules of the present law apply from the first renewal of the administrative and auditing bodies of companies listed in regulated markets after one year from the date of entry into force of the present law, reserving for the less-represented gender, for the first mandate in application of the law, a quota of at least one fifth of the directors and auditors elected."

⁵⁵⁶ Subsection repealed by Art. 3 of Legislative Decree No. 303 of 29.12.2006.

⁵⁵⁷ Subsection amended by Art. 3 of Legislative decree No. 303 of 29.12.2006 which replaced the word: "member" (Translator's note: in this case the Italian and the English word are similar 'membri' = 'members') with the word in Italian: "componenti" which in English remains "members"; it replaced the wording: "the list resulted first by number of votes" with the words: "the members/shareholders who presented or voted the list which

4. In addition to what is provided for in paragraph 3, at least one of the members of the Board of Directors, or two if the Board of Directors is composed of more than seven members, should satisfy the independence requirements established for members of the board of auditors in Article 148(3) and, if provided for in the Articles of Association, the additional requirements established in codes of conduct drawn up by regulated stock exchange companies or by trade associations. This paragraph shall not apply to the boards of directors of companies organised under the one-tier system, which shall continue to be subject to the second paragraph of Article 2409-septiesdecies of the Civil Code. The independent director who, following his or her nomination, loses those requisites of independence should immediately inform the Board of Directors about this and, in any case falls from his/her office.⁵⁵⁸

Article 147-quater⁵⁵⁹
Composition of the management board

1. If the management board has more than four members, at least one of them must satisfy the independence requirements established for members of the board of auditors in Article 148(3) and, if provided for in the Articles of Association, the additional requirements established in codes of conduct drawn up by regulated stock exchange companies or by trade associations.⁵⁶⁰

1-bis. If the management board has not less than three members, the rules of article 147-ter, subsection 1-ter apply to it⁵⁶¹.

Article 147-quinquies
Integrity requirements

1. Persons who perform an administrative or management role must satisfy the integrity requirements established for members of internal control bodies in the regulation issued by the Minister of Justice pursuant to Article 148, subsection 4.

2. Failure to satisfy the requirements shall result in disqualification from the position.⁵⁶²

Section V
Internal control bodies⁵⁶³

Article 148
Composition

1. The Articles of Association of a company shall establish, for the board of auditors:
a) the number, not less than three, of auditors;

resulted first by the number of votes”, and replaced the word: in Italian “membro” with the Italian word “componente” (Translator’s note: this word always remains “member” in English).

⁵⁵⁸ This subsection was amended by Art. 3 of Legislative Decree No. 303 of 29.12.2006 which replaced the wording: “whenever the Board of Directors, or two if the Board of Directors is formed by more than seven members, at least one of them should” by the following wording: “at least one of the members of the Board of Directors, or two if the Board of Directors is composed of more than seven members, should”, and lastly added the following words: “The independent director who, following his or her nomination, loses those requisites of independence should immediately inform the Board of Directors about this and, in any case falls from his/her office.”

⁵⁵⁹ Article first of all included in Article 1 of Law 262/2005 and then amended by Article 1, subsection 2 of Law 120/2011 according to the terms indicated in the note below.

⁵⁶⁰ Article added by Article 1 of Law 262/2005.

⁵⁶¹ Subsection added by Article 1 Subsection 2 of Law 120/2011. Article 2 of Law 120/2011 states that “The rules of the present law apply from the first renewal of the administrative and auditing bodies of companies listed in regulated markets after one year from the date of entry into force of the present law, reserving for the less-represented gender, for the first mandate in application of the law, a quota of at least one fifth of the directors and auditors elected.”

⁵⁶² Article added by Article 1 of Law 262/2005.

⁵⁶³ Title as amended by art. 3 Legislative Decree 37/2004.

- b) the number not less than two, of alternates;
- c) [...omissis...] ⁵⁶⁴
- d) [...omissis...] ⁵⁶⁵

1-bis. The Articles of Association of the company state, moreover, that the division of members pursuant to section 1 shall be made in such a way that the less-represented gender shall obtain at least one third of the regular members of the board of auditors. This division criterion applies for three consecutive mandates. If the composition of the board of auditors resulting from the election does not comply with the division criterion provided for in the present section, Consob warns the company involved to comply with this criterion within the maximum term of four months from the warning. In the event of non-compliance with the warning, Consob applies a fine of from euro 20,000 to euro 200,000 and sets a new term of three months for compliance. In the event of further non-compliance with respect to the new warning, the members elected lose their position. Consob lays down regulations on the subject of infringement, application and observance of the rules on gender quotas, also with reference to the preliminary phase and the procedures to be adopted, on the basis of its own regulations to be adopted within six months from the date of entry into force of the rules contained in the present section ⁵⁶⁶.

2. Consob establishes the rules for the election procedure by list vote of a member of the Board of Auditors by minority shareholders, that are not directly or indirectly associated with the shareholders that submitted or voted the list qualifying as first for the number of votes received. Article 147-ter, subsection 1-bis shall apply ⁵⁶⁷.

2-bis. The chairman of the board of auditors shall be appointed by the shareholders' meeting from among the auditors elected by the minority shareholders. ⁵⁶⁸

3. The following persons may not be elected as auditors and, where elected, they shall be disqualified from office:

- a) persons who are in the conditions referred to in Article 2382 of the Civil Code;
- b) spouses, relatives and the like up to the fourth degree of kinship of the directors of the company, spouses, relatives and the like up to the fourth degree of kinship of the directors of the companies it controls, the companies it is controlled by and those subject to common control; ⁵⁶⁹
- c) persons who are linked to the company, the companies it controls, the companies it is controlled by and those subject to common control or to directors of the company or persons referred to in paragraph b) by self-employment or employee relationships or by other relationships of an economic or professional nature that might compromise their independence. ⁵⁷⁰

⁵⁶⁴ Paragraph repealed by Article 2 of Law 262/2005.

⁵⁶⁵ Paragraph repealed by Article 2 of Law 262/2005.

⁵⁶⁶ Subsection added by Article 1 subsection 3 of Law 120/2011. Article 2 of Law 120/2011 states that "The rules of the present law apply from the first renewal of the administrative and auditing bodies of companies listed in regulated markets after one year from the date of entry into force of the present law, reserving for the less-represented gender, for the first mandate in application of the law, a quota of at least one fifth of the directors and auditors elected."

⁵⁶⁷ Subsection first replaced by art. 2, Law no. 262 of 28.12.2005 and later amended by art. 3, subsection 14, Legislative Decree no. 303 of 29.12.2006, which added the words: "by list voting," and at the end added the words: "that are not directly or indirectly associated with shareholders that submitted or voted on the list qualifying as first for the number of votes received", and lastly amended by art. 3, Legislative Decree no. 27 of 27.1.2010 which added the words: "Article 147-ter, subsection 1-bis shall apply.". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁵⁶⁸ Subsection added by Article 2 of Law 262/2005.

⁵⁶⁹ Paragraph as amended by art. 3 Legislative Decree 37/2004.

⁵⁷⁰ Paragraph first replaced by art. 3 of Legislative Decree 37 of 6.2.2004 and later amended by art. 2 of Law no. 262 of 28.12.2005 which included the words "or directors of the company and persons referred to under paragraph b)" and the words "or professional".

4. In a regulation adopted pursuant to Article 17(3) of Law 400/2003, in agreement with the Minister of the Economy and Finance,⁵⁷¹ after consulting Consob, the Bank of Italy and Siva, the Minister of Justice shall lay down the integrity and experience requirements for the members of the board of auditors⁵⁷², the supervisory board or the management control committee. Failure to satisfy the requirements shall result in disqualification from the position.⁵⁷³

4-bis. Subsections **1-bis**, 2 and 3 shall apply to supervisory boards.⁵⁷⁴

4-ter. Subsections 2-bis and 3 shall apply to management control committees. The representative of the minority shareholders shall be the director elected pursuant to Article 147-ter(3).⁵⁷⁵

4-quater. In the cases provided for in this article, disqualification shall be declared by the board of directors or, for companies organised according to the two-tier system or the one-tier system, by the shareholders' meeting within thirty days of the appointment or of its learning of subsequent failure. In the event of inaction by the competent body, Consob shall declare the disqualification, at the request of any interested party or if it learns of the existence of the grounds for disqualification.⁵⁷⁶

Article 148-bis

Limits on the cumulation of positions

1. Consob shall lay down in a regulation the limits to the cumulation of management and control positions that members of the internal control bodies of companies referred to in this chapter and of companies with financial instruments widely distributed among the public in accordance with Article 116 may hold in all the companies referred to in Book V, Title V, Chapters V, VI and VII of the Civil Code. Consob shall establish such limits taking into account the onerousness and complexity of each type of position, including in relation to the size of the company, the number and size of the firms included in the consolidation, and the extension and articulation of its organisational structure.

2. Without prejudice to Article 2400, fourth subsection, of the Civil Code, members of the internal control bodies of companies referred to in this chapter and of companies with financial instruments widely distributed among the public in accordance with Article 116 shall inform Consob and the public, within the time limits and in the ways prescribed by Consob in the regulation referred to in subsection 1, of all the management and control positions they hold in companies referred to in Book V, Title V, Chapters V, VI and VII of the Civil Code. Consob shall declare the disqualification from positions taken on after the maximum number provided for in the regulation referred to in the first subsection was reached.⁵⁷⁷

Article 149

Duties

1. The board of auditors shall check:

- a) compliance with the law and the Articles of Association;
- b) observance of the principles of correct administration;

⁵⁷¹ The former wording "Minister of the Treasury, Budget and Economic Planning" was replaced with the wording "Minister of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

⁵⁷² See Minister of Justice Regulation no. 162 of 30.3.2000 (published in Official Gazette no. 141 of 19.6.2000).

⁵⁷³ Subsection as amended by Article 2 of Law 262/2005.

⁵⁷⁴ **Subsection first added by Article 3 of Legislative Decree 37/2004, then replaced by Article 2 of Law 262/2005 and finally thus amended by Article 1, subsection 3, of Law 120/2011 which inserted the words: "1-bis".**

⁵⁷⁵ Subsection added by Article 3 Legislative Decree 37/2004 and subsequently amended by Article 2 of Law 262/2005.

⁵⁷⁶ Subsection added by Article 3 Legislative Decree 37/2004 and subsequently amended by Article 2 of Law 262/2005.

⁵⁷⁷ Article added by Article 2 of Law 262/2005.

c) the adequacy of the company's organisational structure for matters within the scope of the board's authority, the adequacy of the internal control system and the administrative and accounting system and the reliability of the latter in correctly representing the company's transactions;

c-bis) the arrangements for implementing the corporate governance rules provided for in codes of conduct drawn up by regulated stock exchange companies or by trade associations that the company, by means of public disclosures, declares it complies with;⁵⁷⁸

d) the adequacy of the instructions imparted by the company to its subsidiaries pursuant to Article 114(2).

2. The members of the board of auditors shall attend the shareholders' meetings and the meetings of the board of directors and the executive committee. Members of the board of auditors who fail to attend shareholders' meetings without good cause or, in any one financial year, fail to attend two meetings of the board of directors or the executive committee shall be disqualified from office.⁵⁷⁹

3. The board of auditors shall notify Consob without delay of irregularities found in the performance of its oversight activity and shall transmit the related minutes of the meetings and investigations conducted with all other relevant documentation.

4. Subsection 3 shall not apply to companies with shares listed only on regulated markets in other EU countries.

4-bis. Subsections 1, 3 and 4 shall apply to the supervisory board. At least one member of the supervisory board shall participate in the meetings of the management board.⁵⁸⁰

4-ter. Subsections 1(c-bis), 1(d), 3 and 4 shall apply to the management control committee.⁵⁸¹

Article 150

Information requirements

1. The directors shall promptly inform the board of auditors, in the manner laid down in the Articles of Association and at least every three months, of the activities carried out and the transactions of greatest significance for the company's profitability, financial position or assets and liabilities effected by the company or its subsidiaries; in particular, they shall report on any transactions in which they have an interest, for their own account or on behalf of third parties, or that are influenced by the person who performs the activity of direction and coordination.

2. The obligation referred to in the previous subsection shall be fulfilled, in the two-tier system by the management board reporting to the supervisory board and, in the one-tier system, by the bodies with delegated powers reporting to the management control committee.

3. The board of auditors and the statutory auditor or independent statutory auditor shall promptly exchange data and information relevant to the performance of their respective duties⁵⁸².

4. The persons assigned to internal control functions shall also report to the board of auditors at their own initiative or at the request of one or more members of the board of auditors.

5. Subsections 3 and 4 shall also apply to the supervisory board and the management control committee.⁵⁸³

⁵⁷⁸ Paragraph added by Article 2 of Law 262/2005.

⁵⁷⁹ Subsection as amended by art. 3 Legislative Decree 37/2004.

⁵⁸⁰ Subsection added by art. 3 Legislative Decree 37/2004.

⁵⁸¹ Subsection added by art. 3 Legislative Decree 37/2004 and subsequently amended by Article 2 of Law 262/2005, which replaced the words "1(d)" with the words "1(c-bis), 1(d)".

⁵⁸² Subsection amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: "and the independent auditors" with the words: "and the statutory auditor or independent statutory auditors".

Article 151
Powers

1. Members of the board of auditors, jointly or severally, may at any time carry out inspections and controls, and require the directors to supply information, *inter alia* with reference to subsidiaries, on the performance of the business or on particular transactions or make the same requests for information directly to the management and control bodies of subsidiaries.⁵⁸⁴
2. The board of auditors may exchange information with the corresponding bodies of subsidiaries concerning management and control systems and the general performance of the business. After notifying the chairman of the board of directors, it may also call the shareholders' meeting and meetings of the board of directors or the executive committee and use employees of the company in performing its duties. The right to call meetings and request collaboration may also be exercised individually by each member of the board of auditors, except for the right to call the shareholders' meeting, which may not be exercised by less than two members.⁵⁸⁵
3. For the purpose of evaluating the adequacy and reliability of the administrative and accounting system, members of the board of auditors, on their own responsibility and at their own expense, may use, jointly or severally, their own employees and assistants who are not in any of the conditions referred to in Article 148(3). The company may deny such assistants access to confidential information.
4. Investigations carried out must be entered in the register of meetings and resolutions of the board of auditors, which must be kept by the board at the registered office of the company. The last subsection of Article 2421 of the Civil Code shall apply.

Article 151-bis⁵⁸⁶
Powers of the supervisory board

1. The members of the supervisory board, jointly or severally, may require the members of the management board to supply information, *inter alia* with reference to subsidiaries, on the performance of the business or on particular transactions or make the same requests for information directly to the management and control bodies of subsidiaries.⁵⁸⁷ The information shall be supplied to all the members of the supervisory board.
2. The members of the supervisory board, jointly or severally, may request the chairman to call a board meeting, indicating the matters to be discussed. The meeting must be called without delay unless this is prevented by reasons that are promptly notified to the person who made the request and explained to the next meeting of the supervisory board.
3. After notifying the chairman of the management board, the supervisory board may call the shareholders' meeting and meetings of the management board and use employees of the company in performing its duties. The right to call meetings and request collaboration may also be exercised individually by each member of

⁵⁸³ Article as amended by art. 3 Legislative Decree 37/2004.

⁵⁸⁴ Subsection as amended by art. 3 Legislative Decree 37/2004 and Law 262/2005, which added the words "or make the same requests for information directly to the management and control bodies of subsidiaries".

⁵⁸⁵ Subsection as amended by art. 3 Legislative Decree 37/2004 and Article 2 of Law 262/2005, which replaced the words "may not be exercised by less than two members of the board of auditors" with the words "may also be exercised individually by each member of the board of auditors, except for the right to call the shareholders' meeting, which may not be exercised by less than two members".

⁵⁸⁶ Article included by art. 3 Legislative Decree no. 37 of 6.2.2004 and later amended by art. 2 of Law no. 262 of 28.12.2005 in the terms indicated in subsequent notes.

⁵⁸⁷ The words "or make the same requests for information directly to the management and control bodies of subsidiaries" were added by Article 2 of Law 262/2005.

the board of auditors, except for the right to call the shareholders' meeting, which may not be exercised by less than two members.⁵⁸⁸

4. The supervisory board, or a member thereof with a specific mandate, may at any time carry out inspections and controls and exchange information with the corresponding bodies of subsidiaries concerning management and control systems and the general performance of the business.

Article 151-ter⁵⁸⁹

Powers of the management control committee

1. The members of the management control committee, jointly or severally, may require the other directors to supply information, *inter alia* with reference to subsidiaries, on the performance of the business or on particular transactions or make the same requests for information directly to the management and control bodies of subsidiaries.⁵⁹⁰ The information shall be supplied to all the members of the internal control committee.

2. The members of the management control committee, jointly or severally, may request the chairman to call a committee meeting, indicating the matters to be discussed. The meeting must be called without delay unless this is prevented by reasons that are promptly notified to the person who made the request and explained to the next meeting of the internal control committee.

3. After notifying the chairman of the board of directors, the management control committee may call meetings of the board of directors or the executive committee and use employees of the company in performing its duties. The right to call meetings and request collaboration may also be exercised individually by each member of the committee.⁵⁹¹

4. The management control committee, or a member thereof with a specific mandate, may at any time carry out inspections and controls and exchange information with the corresponding bodies of subsidiaries concerning management and control systems and the general performance of the business.

Article 152

Reports to the courts

1. The board of auditors, or the supervisory board or the management control committee, where it has a well-founded suspicion that the directors, in violation of their duties, have committed serious irregularities in transactions that may injure the company or one or more of its subsidiaries, may report the facts to the courts pursuant to Article 2409 of the Civil Code. In such case the costs of the inspection shall be borne by the company and the court may also remove the directors.⁵⁹²

2. Consob, where it has a well-founded suspicion of serious irregularities in the performance of the supervisory duties of the board of auditors, the supervisory board or the management control committee may report the facts to the courts pursuant to Article 2409 of the Civil Code, the costs of the inspection shall be borne by the company.⁵⁹³

⁵⁸⁸ Subsection as amended by Legislative Decree 37/2004 and Article 2 of Law 262/2005, which replaced the words "may not be exercised by less than two members of the supervisory board" with the words "may also be exercised individually by each member of the supervisory board, except for the right to call the shareholders' meeting, which may not be exercised by less than two members".

⁵⁸⁹ Article included by art. 3 of Legislative Decree no. 37 of 6.2.2004 and later amended by art. 2 of Law no. 262 of 28.12.2005 in the terms indicated in subsequent notes.

⁵⁹⁰ The words "or make the same requests for information directly to the management and control bodies of subsidiaries" were added by Article 2 of Law 262/2005.

⁵⁹¹ Subsection as amended by Article 2 of Law 262/2005, which replaced the words "may not be exercised by less than two members of the management control committee" with the words "may also be exercised individually by each member of the committee".

⁵⁹² Subsection as amended by art. 3 Legislative Decree 37/2004.

⁵⁹³ Subsection as amended by art. 3 Legislative Decree 37/2004.

3. Subsection 2 shall not apply to companies with shares listed only on regulated markets in other EU countries.

4. Article 70(7) of the Consolidated Law on Banking shall be unaffected.

Article 153

Obligation to report to the shareholders' meeting

1. The board of auditors, the supervisory board and the management control committee shall report on the supervisory activity performed and on any omissions and censurable facts found to the shareholders' meeting called to approve the annual accounts or pursuant to Article 2364-bis, subsection 2, of the Civil Code.⁵⁹⁴

2. The board of auditors may make proposals to the shareholders' meeting concerning the annual accounts and their approval and matters within the scope of its authority.

Article 154

Provisions not applicable

1. Articles 2397, 2398, 2399, 2403, 2403-bis, 2405, 2426, points 5 and 6, 2429 subsection 2, and 2441 subsection 6, of the Civil Code shall not apply to boards of auditors of companies with listed shares.

2. Articles 2409-septies, 2409-duodecies and 2409-terdecies, subsections 1c), 1e) and 1f) of the Civil Code shall not apply to supervisory boards of companies with listed shares.

3. Articles 2399, first subsection, and 2409-septies of the Civil Code shall not apply to the management control committees of companies with listed shares.⁵⁹⁵

Section V-bis⁵⁹⁶

Financial information⁵⁹⁷

Article 154-bis⁵⁹⁸

Manager charged with preparing a company's financial reports

1. The Statute of listed issuers with Italy as the home Member State provides for professional requirements and the procedures for appointing a manager charged with preparing the company's financial reports, subject to the mandatory opinion of the internal control body.⁵⁹⁹

2. Documents and communications of the company, which have been disseminated in the market and regard information on accounts including mid-year reports shall be accompanied by a written declaration by the general manager and the manager charged with preparing the company's financial reports attesting their conformity against document results, books and accounts records.⁶⁰⁰

⁵⁹⁴ Subsection as amended by art. 3 Legislative Decree 37/2004.

⁵⁹⁵ Article as amended by art. 3 Legislative Decree 37/2004.

⁵⁹⁶ Section added by Article 14 of Law 262/2005.

⁵⁹⁷ Heading as replaced by art. 1 Legislative Decree no. 195 of 6.11.2007

⁵⁹⁸ Article first inserted by art. 14 of Law no. 262 of 28.12.2005 and later amended by art. 3 of Legislative Decree no. 303 of 29.12.2006 and art. 1 of Legislative Decree no. 195 of 6.11.2007 in the terms indicated under subsequent notes. The provisions of this article, as amended by article 1 subsection 9 of Legislative Decree no. 195 of 6.11.2007 shall apply in the preparation of annual, half-yearly and other periodic financial reports relating to periods starting after the entry into force of Legislative Decree no. 195 of 6.11.2007.

⁵⁹⁹ Subsection first amended by art. 3 subsection 13 of Legislative Decree no. 303 of 29.12.2006 which inserted the words: "requirements of professionalism and" and later by art. 1 Legislative Decree no. 195 of 6.11.2007 which inserted the words: "of listed issuers with Italy as home Member State".

⁶⁰⁰ Subsection amended by Art. 3 of Legislative Decree No. 303 of 29.12.2006 which substituted the wording: "provided by the law or disseminated in the market, containing information and data on the economic, assets and liabilities and financial situation" with the wording: "which have been

3. The manager charged with preparing the company's financial reports shall put appropriate administrative and accounting procedures in place for preparing the annual accounts report and, where provided for, the consolidated accounts and every other disclosure of a financial nature.⁶⁰¹

4. The Board of Directors supervises so that the executive assigned to draw up the company accounts report has adequate powers and means to carry out the tasks given to him according to this Article, as well as on the actual observance of the administrative and accounting procedures.⁶⁰²

5. In a special report on the annual, half-yearly and, where applicable, the consolidated financial statements, the delegated control bodies and the executive responsible for the preparation of company accounting documents shall confirm:

a) the adequacy and effective application, during the period of reference of the documents, of procedures pursuant to subsection 3;

b) that the documents were prepared in compliance with applicable international accounting standards recognised by the European Community pursuant to European Parliament and Council Regulation no. 1606/2002 of 19 July 2002;

c) the correspondence between the documents and related bookkeeping and accounting records;

d) the suitability of the documents to truthfully and correctly represent the financial position of the issuer and the group of companies included in the scope of consolidation;

e) for the annual and consolidated financial statements, that the directors' report contains a reliable analysis of the business outlook and management result, the financial position of the issuer and group companies included in the scope of consolidation, and a description of the main risks and uncertain situations to which they are exposed;

f) for the simplified half-yearly report, that the interim directors' report contains a reliable analysis of the information pursuant to subsection 4 of article 154-ter⁶⁰³.

5-bis. The declaration pursuant to subsection 5 shall be prepared according to the model established by Consob regulation⁶⁰⁴.

6. The provisions governing the liability of directors shall also apply to managers charged with preparing companies' financial reports in relation to the tasks entrusted to them, without prejudice to actions that may be brought on the basis of the employment contract with the company.

disseminated in the market and regard information on accounts including mid-year reports; it suppressed the wording: "by the chief executive and" and substituted the wording: "to the true" with the wording: "against document results, books and accounts records".

⁶⁰¹ Subsection amended by Art. 3 of Legislative Decree No. 303 of 29.12.2006 which substituted the word: "pre-arrangement" with the word: "preparing"

⁶⁰² Subsection substituted by Art. 3 of Legislative Decree No. 303 of 29.12.2006.

⁶⁰³ Subsection first replaced by Article 3, Legislative Decree no. 303 of 29.12.2006 and later by Article 1, Legislative Decree no. 195 of 6.11.2007.

⁶⁰⁴ Subsection included by art. 1 of Legislative Decree no. 195 of 6.11.2007. See art. 81-ter, Consob Regulation no. 11971 of 14.5.1999, as amended.

Article 154-ter⁶⁰⁵
(Financial reporting)

1. Without prejudice to the provisions of article 2364 subsection 2 and article 2364-bis subsection 2 of the Italian Civil Code, within one hundred and twenty days of the end of the financial year, listed issuers with Italy as their home member country shall make the annual report, containing the draft separate and consolidated financial statements, where appropriate, the directors' report and the statement pursuant to Article 154-bis, subsection 5 available to the public at their registered office, on their web site and by other means envisaged by Consob regulation. Reports of the statutory auditor or independent statutory auditors and the reports indicated in Article 153 shall be made fully available to the public with the annual report⁶⁰⁶.

1-bis. There shall be at least twenty-one days between the publication pursuant to subsection 1 and the date of the shareholders' meeting⁶⁰⁷.

1-ter. As an exception to article 2429, subsection 1 of the Civil Code, the directors shall forward the draft financial statements, together with the directors' report, to the board of statutory auditors and the independent auditors at least fifteen days prior to the publication referred to in subsection 1⁶⁰⁸.

2. Within sixty days of the end of the first half-year, listed issuers with Italy as home member state shall publish a half-yearly financial report containing the simplified half-year statements, interim directors' report and the declaration pursuant to article 154-bis subsection 5. Where applicable, the statutory auditor or independent statutory auditors report on the simplified half-yearly statements shall be published in full within the same time limit⁶⁰⁹.

3. The simplified half-yearly statements referred to under subsection 2, shall be prepared in compliance with applicable international accounting standards recognised by the European Community pursuant to EC Regulation no. 1606/2002. Such statements are prepared in consolidated format if the listed issuer with Italy as home member state is required to prepare consolidated financial statements.

⁶⁰⁵ Article first included by art. 1 of Italian Legislative Decree no. 195 of 06.11.2007 and then amended by Italian Legislative Decree no. 27 of 27.01.2010, by Italian Legislative Decree no. 39 of 27.01.2010 and by Italian Law Decree no. 26 of 25.03.2011, converted by Italian Law no. 73 of 23.05.2011, in the terms specified in the subsequent notes. Italian Law Decree no. 26 of 25.03.2011, converted by Italian Law no. 73 of 23.05.2011, establishes that: "1. During the first application of Italian Legislative Decree no. 27 of 27 January 2010, companies to which article 154-ter applies of the Consolidated Law on the provisions of financial intermediation, pursuant to Italian Legislative Decree no. 58 of 24 February 1998, may call the shareholders' meeting pursuant to article 2364, paragraph two and 2364-bis, paragraph two of the Italian Civil Code within the terms of one hundred and eighty days of the end of financial year 2010, even where this possibility has not been envisaged by the company's articles of association. 2. Companies to whom article 154-ter apply, which as of the date on which this decree comes into force have already published the notice of calling of the annual shareholders' meeting may also call the shareholders' meeting, as a first or only calling, on a new date, in compliance with the terms and methods pursuant to article 125-bis of Italian Legislative Decree no. 58 of 24 February 1998, as long as the terms specified by article 83-sexies, paragraph 2 of Italian Legislative Decree no. 58 of 24 February 1998 have not yet expired with respect to the meeting originally called. Should the meeting have been called also to appoint the members of the company bodies, any lists that have already been filed with the issuer shall also be considered valid with regards to the new calling. The presentation of new lists in compliance with the terms established by article 14-ter, paragraph 1-bis of Italian Legislative Decree no. 58 of 24 February 1998 and of the implementation regulation of article 148, paragraph 2 of Italian Legislative Decree no. 58 of 24 February 1998 is permitted. Should the extraordinary shareholders' meeting also have been called with the same notice, this may also be postponed to the new date."

⁶⁰⁶ Subsection first replaced by art. 3, Legislative Decree no. 27 of 27.1.2010 and later amended by art. 40, Legislative Decree no. 39 of 27.1.2010 which replaced the words: "pursuant to Article 156" with the words: "of the statutory auditor or independent statutory auditors". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "1. Without prejudice to the terms of Article 2429 of the Italian Civil Code and art. 156, subsection 5, within one hundred and twenty days of the end of the financial year, listed issuers with Italy as their home member country shall approve the financial statements and publish the annual report containing the separate and consolidated financial statements, where appropriate, the directors' report and the statement pursuant to art. 154-bis, subsection 5. The audit reports referred to in art. 156 shall be published in full with the annual report."

⁶⁰⁷ Subsection added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁶⁰⁸ Subsection added by art. 3, Legislative Decree no. 27 of 27.1.2010. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

⁶⁰⁹ Subsection amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: "of the independent auditors" with the words: "of the statutory auditor or independent statutory auditors".

4. The interim directors' report shall at least contain indications of the more significant events occurring in the first six months of the financial year and their impact on the simplified half-yearly financial statements, together with a description of the main risks and uncertainties faced in the remaining six months of the year. For listed issuers with Italy as home member state, the interim directors' report shall also contain information on significant related party transactions.

5. Within forty-five days of the end of the first and third quarters of the financial year, listed issuers with Italy as home member state shall publish an interim management statement providing:

a) a general description of the financial position and economic outlook of the issuer and its subsidiaries in the reference period;

b) an illustration of significant events and transactions during the reference period and their impact on the financial position of the issuer and its subsidiaries.

6. By regulation and in compliance with EU law, Consob shall establish:

a) the publication terms of documents pursuant to subsections 1, 2 and 5;

b) cases of exemption from the requirement to publish half-yearly financial statements;

c) the content of information on significant related party transactions pursuant to subsection 4;

d) the terms of application of this article for issuers of units of closed-end funds.

7. Without prejudice to the powers envisaged by article 157, subsection 2, where it is ascertained that documents comprising the financial statements pursuant to this article do not comply with drafting regulations, Consob may request that the issuer publishes this fact and arrange publication of supplementary information as necessary in order to reinstate correct market information⁶¹⁰.

Section VI **Statutory audit**⁶¹¹

Article 155 *Performance of audits*

1. ...*omissis*...⁶¹²

2. The statutory auditor or independent statutory auditors shall inform Consob and the control body without delay of any censurable facts found during statutory audit of the separate and consolidated financial statements⁶¹³.

3. ...*omissis*...⁶¹⁴

Article 156 *Auditors reports*⁶¹⁵

1. ...*omissis*...⁶¹⁶

⁶¹⁰ Article inserted by art. 1 Legislative Decree no. 195 of 6.11.2007. The provisions of this article, as amended by article 1 subsection 9 of Legislative Decree no. 195 of 6.11.2007 shall apply in the preparation of annual, half-yearly and other periodic financial reports relating to periods starting after the entry into force of Legislative Decree no. 195 of 6.11.2007.

⁶¹¹ Heading as replaced by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶¹² Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶¹³ Subsection as replaced by art. 40, Legislative Decree no. 39 of 27.1.2010.

⁶¹⁴ Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶¹⁵ Heading replaced by art. 2 of Legislative Decree no. 32 of 2.2.2007.

⁶¹⁶ Subsection first amended by art. 2, Legislative Decree no. 32 of 2.2.2007 and later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

2. ...*omissis*...⁶¹⁷

3. ...*omissis*...⁶¹⁸

4. In the event of an adverse opinion, disclaimer or qualified opinion expressing significant doubts on going concern assumptions, the statutory auditor or independent statutory auditors shall promptly inform Consob⁶¹⁹.

4-bis. ...*omissis*...⁶²⁰

5. ...*omissis*...⁶²¹

Article 157

Effects of audit opinions on the accounts

1. Except in the cases referred to in Article 156(4), the resolution of the shareholders' meeting or meeting of the supervisory board approving the annual accounts may be challenged by shareholders representing at least five per cent of the share capital on the grounds that the accounts fail to conform with the provisions governing the preparation thereof. Shareholder's representing the same percentage of the capital of companies with listed shares may request the courts to verify the conformity of the consolidated accounts with the provisions governing the preparation thereof.⁶²²

2. Consob may take the actions referred to in subsection 1 within six months of the entry of the annual accounts or the consolidated accounts in the Company Register.

3. This article shall not apply to companies with shares listed only on regulated markets in other EU countries.

4. For *società cooperativa*, the percentage of capital specified in subsection 1 shall be understood to refer to the total number of members.

Article 158

*(Share capital increase proposals)*⁶²³

1. In the case of share capital increases excluding or limiting option rights, the fairness opinion on the issue price of the shares shall be released by the appointed statutory auditor. The statutory auditor or independent statutory auditors shall be informed of share capital increase proposals, together with the directors' report envisaged in article 2441, subsection 6 of the Italian Civil Code, at least forty-five days prior to the date established for examination by the shareholders' meeting⁶²⁴.

⁶¹⁷ Subsection first amended by art. 2, Legislative Decree no. 32 of 2.2.2007 and later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶¹⁸ Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶¹⁹ Subsection as replaced by art. 40, Legislative Decree no. 39 of 27.1.2010.

⁶²⁰ Subsection first added by art. 2, Legislative Decree no. 32 of 2.2.2007 and later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶²¹ Subsection first replaced by art. 3, Legislative Decree no. 37 of 6.2.2004 and later by art. 3, Legislative Decree no. 27 of 27.1.2010, and lastly repealed by art. 40, Legislative Decree no. 39 of 27.1.2010.

⁶²² Subsection as amended by art. 3 Legislative Decree 37/2004.

⁶²³ Heading as amended by art. 3, Legislative Decree no. 27 of 27.1.2010 which removed the words: “, mergers, spin-offs and the distribution of interim dividends”.

⁶²⁴ Subsection first amended by art. 3, Legislative Decree no. 27 of 27.1.2010 which replaced the words: “The independent auditors shall express their opinion within thirty days.”, and then by art. 40, Legislative Decree no. 39 of 27.1.2010 which in the first sentence replaced the words: “the appointed independent auditors” with the words: “the appointed statutory auditor”, and in the second sentence replaced the words: “of the independent auditors” with the words: “of the statutory auditor or independent statutory auditors”. Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply.

2. The directors' report and opinion of the statutory auditor or independent statutory auditor shall be made available to the public by the methods indicated in Article 125-ter, subsection 1, at least twenty-one days prior to the shareholders' meeting and until the related resolution has been passed. Such documents must be annexed to the other documents required for entry of the resolution in the Register of Companies⁶²⁵.

3. The previous subsection shall also apply to the report of the statutory auditor or independent statutory auditors referred to in Article 2441, subsection 4, paragraph 2 of the Italian Civil Code.⁶²⁶

4. ...omissis...⁶²⁷

5. ...omissis...⁶²⁸

Article 159⁶²⁹

Conferment and revocation of the engagement

1. In the event of failure to appoint a statutory auditor or independent statutory auditors, the company required to confer appointment must promptly inform Consob, explaining the reasons for the delay in arranging the audit assignment⁶³⁰.

2. ...omissis...⁶³¹

3. ...omissis...⁶³²

4. ...omissis...⁶³³

5. ...omissis...⁶³⁴

6. ...omissis...⁶³⁵

7. ...omissis...⁶³⁶

⁶²⁵ Subsection first amended by art. 3, Legislative Decree no. 27 of 27.1.2010 which replaced the words: "must remain filed with the company's registered office during the fifteen days prior to the shareholders' meeting" with the words: "shall be made available to the public by the methods indicated in Article 125-ter, subsection 1, at least twenty-one days prior to the shareholders' meeting" and then by art. 40, Legislative Decree no. 39 of 27.1.2010 which replaced the words: "of the independent auditors" with the words: "of the statutory auditor or independent statutory auditor". Art. 7, Legislative Decree no. 27 of 27.1.2010 states that the amendment shall apply to shareholders' meetings for which the notice of call is published after 31 October 2010. Until that date, the provisions replaced or repealed by the corresponding provisions of Legislative Decree no. 27 of 27.1.2010 shall continue to apply, as follows: "2. The directors' report and the opinion of the independent auditors shall remain filed with the company's registered office during the fifteen days prior to the shareholders' meeting and until the related resolution has been passed. Such documents must be annexed to other documents required for entry of the resolution in the Register of Companies."

⁶²⁶ Subsection first replaced by art. 3, Legislative Decree no. 37 of 6.2.2004 and later amended by art. 40, Legislative Decree no. 39 of 27.1.2010 which replaced the words: "of the independent auditors" with the words: "of the statutory auditor or independent statutory auditor".

⁶²⁷ Subsection repealed by art. 3 Legislative Decree 37/2004.

⁶²⁸ Subsection repealed by art. 3 Legislative Decree 37/2004.

⁶²⁹ Article first amended by Legislative Decree no. 37 of 6.2.2004, later replaced by art. 18 of Law no. 262 of 28.12.2005 and finally amended by art. 3 of Legislative Decree no 303 of 29.12.2006 in the terms indicated in subsequent notes.

⁶³⁰ Subsection first amended by art. 3, subsection 16, Legislative Decree no. 303 of 29.12.2006 and later replaced by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³¹ Subsection first amended by art. 3, subsection 16, Legislative Decree no. 303 of 29.12.2006 and later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³² Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³³ Subsection first replaced by art. 3, subsection 16, Legislative Decree no. 303 of 29.12.2006 and later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³⁴ Subsection first replaced by art. 3, subsection 16, Legislative Decree no. 303 of 29.12.2006 and later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³⁵ Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

8. ...omissis...⁶³⁷

Article 160
Incompatibility

...omissis...⁶³⁸

Article 161
Special register of independent auditors

...omissis...⁶³⁹

Article 162
Supervision of independent auditors

...omissis...⁶⁴⁰

Article 163
Consob measures

...omissis...⁶⁴¹

⁶³⁶ Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³⁷ Subsection repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³⁸ Article repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶³⁹ Article first added by art. 18, Law no. 262 of 28.12.2005 and later repealed by art. 40, Legislative Decree no. 39 of 27.1.2010. The text of article 161, which shall continue to apply until entry into force of the Ministry of the Economy and Finance regulations issued pursuant to the aforementioned repeal legislative decree: "Article 161 (*Special register of independent auditors*) – 1. Consob shall keep a special register of independent auditors authorised to perform the activities referred to in Articles 155 and 158. 2. Consob shall enter independent auditors in the special register after verifying that they satisfy the requirements referred to in Article 6, subsection 1, Legislative Decree 88/1992 and the requirement of technical adequacy. An independent auditor with a director in one of the situations specified in Article 8, subsection 1, Legislative Decree 88/1992 may not be entered in the register. 3. Independent auditors established outside Italy may be entered in the register if they satisfy the requirements referred to in subsection 2. Such companies shall transmit an annual financial report to Consob with reference to the account audit and organisation performed in Italy 4. In order to be entered in the register, independent auditors must hold an adequate guarantee provided by banks, insurance companies or intermediaries entered in the special register referred to in Article 107 of the Consolidated Law on Banking or have taken out an insurance policy against civil liability for professional negligence or errors, including a guarantee for employees' breach of duty, to cover risks deriving from their audit activities. The amount of the guarantee or insurance cover shall be established annually by Consob for classes of turnover and on the basis of any additional parameters specified by regulation."

Until issue of the Minister of the Economy and Finance regulations pursuant to Legislative Decree no. 39 of 27.1.2010, Consob shall perform supervisory tasks as specified in art. 22, subsection 1 of said decree in reference to persons entered on the Register pursuant to art. 161, Legislative Decree 58/1998 and, until the entry into force of the aforementioned ministerial regulations, shall arrange the registration of auditors and independent auditors of other countries referred to in art. 34, subsection 1, Legislative Decree no. 39 of 27.1.2010 in a special section of the register of independent auditors envisaged in art. 161, Legislative Decree 58/1998, in accordance with the terms and conditions established therein. Until issue of the Minister of the Economy and Finance measures in accordance with art. 43, subsection 1, Legislative Decree no. 39 of 27.1.2010, statutory auditors and independent auditors other than those entered in the Register pursuant to art. 161, Legislative Decree no. 58 of 24 February 1998 may not perform statutory audit of public entities.

⁶⁴⁰ Article first amended by art. 18, Law no. 262 of 28.12.2005 and by art. 3, subsection 18, Legislative Decree no. 303 of 29.12.2006, and later repealed by art. 40, Legislative Decree no. 39 of 27.1.2010. The text of Article 162, subsections 3 and 3-bis which continue to apply until entry into force of the Ministry of the Economy and Finance regulations issued pursuant to the aforementioned repeal decree, is as follows: "Article 162 (*Supervision of independent auditors*) – [...omissis...] 3. Independent auditors entered in the special register shall inform Consob within thirty days of the replacement of directors, shareholders representing the company for audit purposes and general managers, and of the transfer of capital and shares; within the same time limit they shall inform Consob of any other changes in the ownership structure, board of directors or shareholder agreements affecting the requirements indicated in Article 161, subsection 2. 3-bis. In relation to each audit assignment conferred, the independent auditors shall inform Consob of the names of persons responsible for the audit within ten days of their appointment."

The auditing principles which on entry into force of Legislative Decree no. 39 of 27.1.2010 prove to be issued in accordance with Article 162, subsection 2, paragraph a), Legislative Decree 58/1998 shall continue to apply until entry into force of the auditing principles issued pursuant to art. 11, Legislative Decree no. 39 of 27.1.2010. Until an agreement has been signed between the Minister of the Economy and Finance and the professional orders and associations concerned to define the principle preparation methods pursuant to art. 12, subsection 1, Legislative Decree no. 39 of 27.1.2010, the auditing principles shall be those issued pursuant to Article 162, subsection 2, paragraph a), Legislative Decree 58/1998: "Article 162 (*Supervision of independent auditors*) – [...omissis...] 2. In performing its supervision, Consob: a) after consulting the *Consiglio nazionale dell'Ordine dei dottori commercialisti* and the accounting profession, shall establish auditing principles and criteria to be adopted, also in relation to the types of corporate, administrative and accounting structures of the companies audited; [...omissis...]."

Article 164

Liability

...omissis...⁶⁴²

Article 165

Auditing of groups

...omissis...⁶⁴³

Article 165-bis

Companies with control of listed companies

...omissis...⁶⁴⁴

⁶⁴¹ Article first amended by art. 18, Law no. 262 of 28.12.2005 and then repealed by art. 40, Legislative Decree no. 39 of 27.1.2010. The text of Article 163, subsection 1 paragraph *b*), subsection 2 paragraphs *a*), *b*) and *c*), subsections 4 and 5 which continue to apply until entry into force of the Ministry of the Economy and Finance regulations issued pursuant to the aforementioned repeal decree, is as follows: “Article 163 (*Consob measures*) – 1. Where Consob finds irregularities in the performance of audit activities, according to their seriousness, it may: [...omissis...] *b*) order the independent auditors not to use the person responsible for the audit containing irregularities for a period not exceeding five years; 2. Consob shall arrange cancellation from the special register when: *a*) the irregularities are particularly serious; *b*) the requirements for entry in the special register are no longer satisfied and the company fails to restore the requirements within a period, not exceeding six months, as established by Consob; *c*) the company fails to comply with the measures referred to in subsection 1; [...omissis...] 4. Deletions from the special register and measures referred to in subsection 1 shall be communicated to the interest parties and the Ministry of Justice; the latter shall inform Consob of measures taken against persons entered in the register of auditors. 5. Deletions from the special register shall be communicated immediately to the company conferring the audit assignment. The provisions of Article 159, subsection 6 shall apply.”.

⁶⁴² Article first amended by art. 3, Legislative Decree no. 37 of 6.2.2004 and later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶⁴³ Article first amended by art. 9, Legislative Decree no. 37 of 6.2.2004 and art. 18, Law no. 262 of 28.12.2005, later repealed by art. 40, Legislative Decree no. 39 of 27.01.2010. The provisions issued by Consob pursuant to the regulations repealed or replaced by Legislative Decree no. 39 of 27.1.2010 shall continue to apply, to the extent they may be compatible, until the entry into force of Consob measures issued in accordance with corresponding matters of the aforementioned decree. Specifically, until the entry into force of regulations pursuant to art. 16, Legislative Decree no. 39 of 27.1.2010, the appointment and duration of audit assignments of subsidiaries of listed companies, companies with control over listed companies and companies subject to joint control with the latter, shall continue to be governed by art. 165 subsections 1 and 2, art. 165-bis subsections 1 and 2, Legislative Decree 58/1998, and related implementing provisions issued by Consob. The text of Article 165, subsections 1 and 2 is as follows: “Article 165 (*Auditing of groups*) – 1. The provisions of this section, except for Article 157, shall also apply to subsidiaries of listed companies. [...omissis...]. 2. Consob shall issue a regulation implementing this article, in particular establishing criteria for the exclusion of subsidiaries that are not significant for consolidation purposes. The regulation shall be issued in agreement with the competent supervisory authorities for rules applying to persons subject to their supervision.”.

⁶⁴⁴ Article first added by art. 18, Legislative Decree no. 262 of 28.12.2005 and later repealed by art. 40, Legislative Decree no. 39 of 27.1.2010. The provisions issued by Consob pursuant to the regulations repealed or replaced by Legislative Decree no. 39 of 27.1.2010 shall continue to apply, to the extent they may be compatible, until the entry into force of Consob measures issued in accordance with corresponding matters of the aforementioned decree. Specifically, until the entry into force of regulations pursuant to art. 16, Legislative Decree no. 39 of 27.1.2010, the appointment and duration of audit assignments of subsidiaries of listed companies, companies with control over listed companies and companies subject to joint control with the latter, shall continue to be governed by art. 165 subsections 1 and 2, art. 165-bis subsections 1 and 2, Legislative Decree 58/1998, and related implementing provisions issued by Consob. The text of Article 165-bis (*Companies with control of listed companies*) 1. The provisions of this section, except for Article 157, shall also apply to companies with control of listed companies and companies subject to joint control with the latter. 2. Article 165, subsection 1-bis shall apply to the independent auditors of the parent company.”. The text of Article 165, subsection 1-bis is as follows: “Article 165 (*Auditing of groups*) 1-bis. The independent auditors of the listed parent company shall have full responsibility for audit of the consolidated financial statements of the group. For this purpose it shall receive audit documents from the independent auditors of the other group companies; it may ask the aforementioned independent auditors or the directors of group companies for other documents and information useful for audit purposes, and make direct arrangements for verifications, inspections and controls on the premises of such companies. If censurable facts are found, it shall promptly inform Consob and the control bodies of the parent company and the group company concerned.”.

Section VI-bis⁶⁴⁵**Relations with foreign companies having their registered office
in a country that does not ensure corporate transparency****Article 165-ter**
Scope

1. This section shall apply to Italian companies with shares listed on regulated markets referred to in Article 119 and to Italian companies with financial instruments widely distributed among the public referred to in Article 116 that control companies having their registered office in a country whose legal system does not ensure transparency with regard to their formation, assets and liabilities, and operations; it shall also apply to Italian companies with shares listed on regulated markets or with financial instruments widely distributed among the public that are affiliated with or controlled by such foreign companies.
2. The notion of control defined in Article 93 and the notion of affiliation defined in the third subsection of Article 2359 of the Civil Code shall apply.
3. The countries referred to in subsection 1 shall be identified in decrees issued by the Minister of Justice, in concert with the Minister of the Economy and Finance, on the basis of the following factors:
 - a) as regards the forms and conditions for the setting up of companies:
 - 1) absence of provision for publicizing constituent instruments and Articles of Association and subsequent amendments thereto;
 - 2) absence of a minimum capital requirement for the setting up of companies capable of safeguarding creditors and of provision for the dissolution of companies in the event of a reduction of the capital below the legal minimum, except where it is replenished within a given time limit;
 - 3) absence of rules that ensure the effectiveness and integrity of the subscribed share capital, in particular by having contributions in kind and contributions of claims valued by an expert appointed for the purpose;
 - 4) absence of provision for persons or bodies authorised for the purpose by specific provisions of law to control the conformity of the instruments referred to in point 1) with the requirements for the setting up of companies;
 - b) as regards the structure of companies, absence of provision for a control body separate from the management body or of a control committee of the board of directors endowed with appropriate powers of inspection, control and authorisation with respect to the company's accounting records, annual accounts and organisational arrangements and consisting of persons who satisfy appropriate integrity, experience and independence requirements;
 - c) as regards the annual accounts:
 - 1) absence of provision for the obligation to draw up such accounts, including at least an income statement and a balance sheet, in conformity with the following principles:
 - 1.1) clear, truthful and fair representation of the assets and liabilities and financial position of the company and of the result for the year;
 - 1.2) clear description of the valuation methods used in preparing the income statement and the balance sheet;
 - 2) absence of the obligation to file the annual accounts, drawn up in conformity with the principles referred to in point 1), with an administrative or judicial body;
 - 3) absence of the obligation to have companies' accounting records and annual accounts checked by the control body or committee referred to in paragraph b) or by a statutory auditor;
 - d) the legislation of the country in which the company has its registered office impedes or restricts the business of the company in that country;
 - e) the legislation of the country in which the company has its registered office excludes the indemnification of directors dismissed without just cause or allows such a clause to be included in companies' constituent instruments or other contractual instruments;

⁶⁴⁵ Section added by Article 6 of Law 262/2005.

f) absence of provision for an appropriate discipline preventing companies from continuing in business after they are insolvent, without recapitalization or prospects of recovery;

g) absence of appropriate penal sanctions for corporate officers who falsify accounting records or annual accounts.

4. The decrees issued by the Minister of Justice referred to in subsection 3 may identify, in relation to the legal forms and frameworks for companies provided for in foreign legal systems, equivalent criteria on the basis of which the requirements concerning transparency and capital and organisational suitability specified in this article can be considered to be satisfied.

5. The decrees referred to in subsection 3 may identify countries whose legal systems show particularly serious shortcomings with regard to the aspects referred to in subsections 3(b), 3(c) and 3(g).

6. Consob shall lay down in a regulation the basic criteria in the light of which Italian companies referred to in Article 119 and Italian companies with financial instruments widely distributed among the public referred to in Article 116 may control companies having their registered office in one of the countries referred to in subsection 5. To this end consideration shall be given to the reasons of an entrepreneurial nature for having control and the need to ensure complete and fair disclosure of corporate information.

7. In the event of failure to comply with the rules issued pursuant to subsections 5 and 6, Consob may report the facts to the courts with a view to the adoption of the measures provided for in Article 2409 of the Civil Code.⁶⁴⁶

Article 165-*quater*⁶⁴⁷

Obligations of Italian parent companies

1. Italian companies with shares listed on regulated markets referred to in Article 119 and Italian companies with financial instruments widely distributed among the public referred to in Article 116 that control companies having their registered office in one of the countries specified in the decrees referred to in Article 165-*ter*(3) shall include an annex to their annual accounts or their consolidated accounts if they are required to prepare them with the annual accounts of the foreign subsidiary, drawn up in accordance with the accounting principles and rules applicable to the annual accounts of Italian companies or internationally accepted accounting standards.

2. The annual accounts of the foreign subsidiary, attached to the annual accounts of the Italian company pursuant to subsection 1, shall be signed by the latter's board of directors and general manager and its manager charged with preparing the company's financial reports, who shall attest to the truthfulness and fairness of the representation of the assets and liabilities and financial position and of the result for the year. The annual accounts of the Italian company shall also contain an annex with the opinion expressed by its internal control body on the annual accounts of the foreign subsidiary.

3. The annual accounts of the Italian parent company shall be accompanied by a report prepared by the directors on the business dealings between the Italian company and the foreign subsidiary, with special reference to credit and debt positions and transactions they concluded during the year to which the annual accounts refer, including the provision of guarantees for financial instruments issued in Italy or abroad by the above-mentioned companies. The report shall be signed by the general manager and the manager charged with preparing the company's financial reports. The opinion expressed by the internal control body shall be attached to the report.

⁶⁴⁶ Article added by Article 6 of Law 262/2005. Pursuant to Article 42(3) of Law 262/2005, the provisions of this article shall apply to companies subject thereto as of the financial year subsequent to that under way at the date of entry into force of Law 262/2005.

⁶⁴⁷ Article first added by art. 6, Law no. 262 of 28.12.2005 and later amended by art. 3, subsection 16, Legislative Decree no. 303 of 29.12.2006 and by art. 40, Legislative Decree no. 39 of 27.1.2010 as indicated in the following footnotes. Pursuant to art. 42, subsection 3, Law 262/2005 the provisions of this article shall apply to the companies subject thereto with effect from the year after the date on which Law no. 262 enters into force.

4. The financial statements of the foreign subsidiary, attached to the Italian company's financial statements pursuant to subsection 1, shall be subject to audit by the statutory auditor or appointed statutory auditor of the Italian company's financial statements; where such person does not operate in the country in which the foreign subsidiary is registered, the services of another suitable statutory auditor or appointed statutory auditor must be used and liability accepted for the latter's action. Where the Italian company, under no obligation to do so, does not have a statutory auditor or appointed statutory auditor, such an assignment must be arranged for the financial statements of the foreign subsidiary⁶⁴⁸.

5. The financial statements of the foreign subsidiary, signed pursuant to subsection 2, with the report, related attachments and the opinion expressed by the person responsible for the audit pursuant to subsection 4 shall be transmitted to Consob⁶⁴⁹.

Article 165-quinquies
Obligations of Italian affiliates

1. The annual accounts of Italian companies with shares listed on regulated markets referred to in Article 119 and Italian companies with financial instruments widely distributed among the public referred to in Article 116 that are affiliated with companies having their registered office in one of the countries specified in the decrees referred to in Article 165-ter(3) shall be accompanied by a report prepared by the directors on the business dealings between the Italian company and the foreign affiliate, with special reference to credit and debt positions and transactions they concluded during the year to which the annual accounts refer, including the provision of guarantees for financial instruments issued in Italy or abroad by the above-mentioned companies. The report shall be signed by the general manager and the manager charged with preparing the company's financial reports. The opinion expressed by the internal control body shall be attached to the report.⁶⁵⁰

Article 165-sexies
Obligations of Italian subsidiaries

1. The annual accounts of Italian companies with shares listed on regulated markets referred to in Article 119 and Italian companies with financial instruments widely distributed among the public referred to in Article 116 or which have obtained substantial loans that are controlled by companies having their registered office in one of the countries specified in the decrees referred to in Article 165-ter(3) shall be accompanied by a report prepared by the directors on the business dealings between the Italian company and the foreign parent company, the companies the latter controls and is affiliated with and those subject to common control, with special reference to credit and debt positions and transactions they concluded during the year to which the annual accounts refer, including the provision of guarantees for financial instruments issued in Italy or abroad by the above-mentioned companies. The report shall be signed by the general manager and the manager charged with preparing the company's financial reports. The opinion expressed by the internal control body shall be attached to the report.⁶⁵¹

Article 165-septies
Consob's powers and implementing provisions

1. Consob shall exercise the powers provided for in Articles 114 and 115 for the purposes specified in Article 91 with regard to the Italian companies referred to in this section. In order to verify fulfilment of the obligations referred to in this section by such Italian companies, it may exercise the same powers with regard

⁶⁴⁸ Subsection first amended by art. 3, subsection 16, Legislative Decree no. 303 of 29.12.2006 and later replaced by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶⁴⁹ Subsection amended by art. 40, Legislative Decree no. 39 of 27.01.2010 which replaced the words: "by the company" with the words: "by the person".

⁶⁵⁰ Article added by Article 6 of Law 262/2005. Pursuant to Article 42(3) of Law 262/2005, the provisions of this article shall apply to companies subject thereto as of the financial year subsequent to that under way at the date of entry into force of Law 262/2005.

⁶⁵¹ Article added by Article 6 of Law 262/2005.

to foreign companies, after obtaining the consent of the competent foreign authorities, or request the latter's assistance or cooperation, *inter alia* under cooperation agreements concluded with them.

2. Consob shall issue a regulation with provisions implementing this section.⁶⁵²

PART V SANCTIONS

TITLE I PENAL SANCTIONS⁶⁵³

Chapter I Intermediaries and markets

Article 166 *Unauthorised activity*

1. Imprisonment for between six months and four years and a fine of between four million and twenty million lire shall be imposed on any person who, without being authorised *pursuant to this decree*:

- a) provides investment services or activities or collective asset management services⁶⁵⁴;
- b) markets units or shares of collective investment undertakings in Italy;
- c) sells financial instruments or investment services door-to-door or uses distance marketing techniques to promote or place such instruments and services or activities⁶⁵⁵.

2. The same punishment shall apply to any person who acts as a financial salesman without being entered in the register referred to in Article 31.

3. Where there is a well-founded suspicion that a company is providing investment services or activities or collective asset management services without being authorised pursuant to this decree, the Bank of Italy or Consob shall inform the public prosecutor with a view to the adoption of the measures provided for in Article 2409 of the Civil Code or may apply to the courts for the adoption of the same measures. The costs of the inspection shall be borne by the company.⁶⁵⁶

Article 167 *Breach of duty*

1. Unless the act constitutes a more serious offence, any person who, in performing the service of management on a client-by-client basis of investment portfolios or the service of collective asset management in violation of the provisions governing conflicts of interest, undertakes operations that cause injury to investors with a view to obtaining an undue profit for himself or for others shall be punished by imprisonment for between six months and three years and by a fine of between ten million and two hundred million lire⁶⁵⁷.

⁶⁵² Article added by Article 6 of Law 262/2005.

⁶⁵³ Pursuant to art. 39, subsection 1, Law no. 262 of 28.12.2005, punishments envisaged under this Title are doubled within the limits posed for each punishment type according to Book I, Title II, Chapter II of the Italian Criminal Procedure Code.

⁶⁵⁴ Paragraph amended by art. 16 Legislative Decree no. 164 of 17.9.2007.

⁶⁵⁵ Paragraph amended by art. 16 Legislative Decree no. 164 of 17.9.2007.

⁶⁵⁶ Subsection first replaced by art. 3 Legislative Decree no. 37 of 6.2.2004 and later amended by art. 16 Legislative Decree no. 164 of 17.9.2007. Also see Title I – Financial Penalties

⁶⁵⁷ Subsection amended by art. 16 of Legislative Decree no. 164 of 17.9.2007 which removed the words “of individual investment”. See also Title I – Financial penalties.

Article 168
Commingling of assets

1. Unless the act constitutes a more serious offence, any person who, in providing investment services or activities or collective asset management services or custody for the financial instruments or cash of a collective investment undertaking, with a view to obtaining an undue profit for himself or for others, violates the provisions governing the separation of assets and thereby causes injury to clients shall be punished by imprisonment for between six months and three years and by a fine of between ten million and two hundred million lire⁶⁵⁸.

Article 169
Holdings of capital

1. Unless the act constitutes a more serious offence, any person who makes false representations in the notifications referred to in Articles 15(1), 15(3), 61(6) and 80(7) or in those required pursuant to Article 17 shall be punished by imprisonment for between six months and three years and by a fine of between ten million and one hundred million lire⁶⁵⁹.

Article 170
Central depository services for financial instruments

1. Any person who in effecting registrations or issuing certifications in connection with central depository services falsely represents facts of which the registration or certification is intended to prove the truth or who transfers or delivers financial instruments or transfers the related rights without recovering the certifications, shall be punished by imprisonment for between three months and two years⁶⁶⁰.

Article 170-bis
Obstruction of Consob's supervisory functions

1. Except for the cases provided for by Article 2638 of the Civil Code, any person who obstructs the supervisory functions entrusted to Consob shall be punished by imprisonment for a term of up to two years and a fine of between ten thousand and two hundred thousand euro.⁶⁶¹

Article 171
Protection of supervision

[...omissis...]⁶⁶²

⁶⁵⁸ Subsection amended by art. 16 Legislative Decree no. 164 of 17.9.2007 . See also Title I – Financial penalties.

⁶⁵⁹ See also Title I – Financial penalties.

⁶⁶⁰ See also Title I – Financial penalties.

⁶⁶¹ Article added by Article 9 of Law 62/2005 (the 2004 Community Law). See also Title I – Financial penalties.

⁶⁶² Article repealed by Article 8 of Legislative Decree 61/2002 (published in Official Gazette no. 88 of 15.4.2002). The offences that were previously referred to in Article 171 are now provided for and punished by Article 2638 of the Civil Code, as amended by Article 1 of Legislative Decree 61/2002: "Article 2638 (Hindering the performance of the functions of public supervisory authorities) - 1. Directors, general managers, members of the board of auditors and liquidators of companies and other entities and other persons subject by law to public supervisory authorities or to obligations towards them who, with a view to obstructing the performance of supervisory functions, in communications to such authorities provided for by law report material facts that are not true, even if the subject of estimates, concerning the profits and losses, assets and liabilities or financial position of persons subject to supervision, or who, for the same purpose, wholly or partly conceal by other fraudulent means facts that should have been communicated in relation thereto, shall be punished by imprisonment for between one and four years. The punishment shall also apply where the information concerns assets held or administered by the company on behalf of third parties. 2. The same punishment shall apply to directors, general managers, members of the board of auditors and liquidators of companies and other entities and other persons subject by law to public supervisory authorities or to obligations towards them who in any way, including the omission of communications due to such authorities, willfully hinder their functions." The punishment is doubled for companies with shares listed on Italian regulated markets or those of other EU member states or are disclosed to the public to a significant extent pursuant to article 116 of the Consolidated Law with regard to Legislative Decree no. 58 of 24 February 1998 .

Chapter II Issuers

Article 172

Irregular acquisition of shares

1. Directors of companies with listed shares or of subsidiaries thereof who acquire treasury shares or shares of the parent company in violation of Article 132 shall be punished by imprisonment for between six months and three years and by a fine of between four hundred thousand and two million lire⁶⁶³.

2. The provision of paragraph 1 shall not apply where the acquisition is made on the market regulated in a manner that differs from that established by Consob Regulation, but which is nonetheless suitable to ensuring the equal treatment of shareholders⁶⁶⁴.

Article 173

Failure to dispose of shareholdings

1. Directors of companies with listed shares or of companies that own shareholdings in companies with listed shares who violate the obligation to dispose of shareholdings referred to in Articles 110 and 121 shall be punished by imprisonment for a term of up to one year and by a fine of between twenty-five thousand Euro and two million five hundred thousand Euro⁶⁶⁵.

Article 173-bis

False statements in prospectuses

1. Any person who, with a view to obtaining an undue profit for himself or for others, in prospectuses required for public offerings or for admission to trading on regulated markets, with the intention of deceiving the recipients of the prospectus, includes false information or conceals data or news in a way that is likely to mislead such recipients, shall be punished by imprisonment for between one and five years.⁶⁶⁶

Article 174

False notifications and obstruction of Consob's functions

[...omissis...]⁶⁶⁷

Chapter III Auditing of accounts

Article 174-bis

False statements in auditing firms' reports or communications

...omissis...⁶⁶⁸

⁶⁶³ See also Title I – Financial penalties.

⁶⁶⁴ Paragraph thus replaced by art. 2 of Italian Legislative Decree no. 224 of 29.11.10.

⁶⁶⁵ Article as amended by art. 5 Legislative Decree no. 229 of 19.11.2007 which replaced the words: “from two hundred thousand Lire to two million Lire” with the words: “from twenty-five thousand Euro to two million five hundred thousand Euro. (See also author’s note to Title 1 – Financial penalties).

⁶⁶⁶ Article first included by art. 34 of Law no. 262 of 28.12.2005 and later amended by art. 4 Legislative Decree no. 51 of 28.3.2007 which replaced the words: “invitation to invest” with the words: “public offering of financial products”.

⁶⁶⁷ Article repealed by Article 8 of Legislative Decree 61/2002 (published in Official Gazette no. 88 of 15.4.2002). The offence of “False notifications and obstruction of Consob’s functions” is now provided for and punished by Article 2638 of the Civil Code, as amended by Article 1 of Legislative Decree 61/2002. For the text of Article 2638 of the Civil Code, see the note to Article 171.

⁶⁶⁸ Article first added by art. 35, Legislative Decree no. 262 of 28.12.2005 and later repealed by art. 40, Legislative Decree no. 39 of 27.1.2010.

Article 174-ter
Corruption of auditors

...omissis...⁶⁶⁹

Article 175
False statements in auditing firms' reports or communications

[...omissis...] ⁶⁷⁰

Article 176
Use and divulgence of confidential information

[...omissis...] ⁶⁷¹

Article 177
Illegal financial relationships with the audited company

...omissis...⁶⁷²

Article 178
Illegal compensation

...omissis...⁶⁷³

Article 179
Common provisions

...omissis...⁶⁷⁴

⁶⁶⁹ Article first added by art. 35, Legislative Decree no. 262 of 28.12.2005 and later repealed by art. 40, Legislative Decree no. 39 of 27.1.2010.

⁶⁷⁰ Article repealed by Article 8 of Legislative Decree 61/2002 (published in Official Gazette no. 88 of 15.4.2002). The offence of "False statements in auditing firms' reports or communications" is now provided for and punished by Article 2624 of the Civil Code, as amended by Article 1 of Legislative Decree 61/2002: "Article 2624 (False statements in auditing firms' reports or communications) - 1. The persons responsible for an audit who, with a view to making an unjust profit for themselves or for others, in reports or communications, aware of the falsity and the intention to deceive the recipients of the communications, make a false statement or conceal information concerning the profits and losses, assets and liabilities or financial position of the company, entity or person subject to audit in a way that is likely to mislead the recipients of the communications in relation thereto shall be punished, if the conduct has not caused harm to the latter's assets, by imprisonment for a term of up to one year. 2. If the conduct has caused harm to the assets of the recipients of the communications, the punishment shall be imprisonment for between one and four years."

⁶⁷¹ Article repealed by Article 8 of Legislative Decree 61/2002 (published in Official Gazette no. 88 of 15.4.2002). See Article 622 of the Penal Code as amended by Article 2 of Legislative Decree 61/2002: "Article 622 (Violation of professional secrecy) - 1. Any person who is in possession of confidential information, as a consequence of his/her status or office, or profession or activity, and divulges it without just cause, or uses it for his/her own benefit or for the benefit of others shall be punished, if the act may cause harm, by a term of imprisonment of up to one year or by a fine of between 60,000 and 1 million lire. 2. The punishment shall be increased if the offence is committed by directors, general managers, members of the board of auditors or liquidators or if it is committed by persons who audit the company's accounts. 3. The offence shall be punishable on the basis of a complaint lodged by the injured party."

⁶⁷² Article repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶⁷³ Article repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁶⁷⁴ Article repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

TITLE I-BIS⁶⁷⁵
INSIDER TRADING AND MARKET MANIPULATION

Chapter I
General provisions

Article 180
Definitions

1. For the purposes of this title:

a) "financial instruments" shall mean:

1) financial instruments pursuant to article 1, subsection 2, admitted to trading or for which admission to trading has been requested on an Italian regulated market or that of another EU member country, and any other instrument admitted to trading or for which admission to trading has been requested on a regulated market of another EU member country;

2) financial instruments pursuant to article 1, subsection 2, admitted to trading on an Italian multilateral trading system, for which admission has been requested or authorised by the issuer⁶⁷⁶;

b) "derivatives on commodities" shall mean financial instruments referred to in Article 1(3) based on goods admitted, or for which an application has been made for admission, to trading on an Italian regulated market or on a regulated market of another EU country and any other derivative instrument based on goods admitted, or for which an application has been made for admission, to trading on a regulated market of an EU country;

c) "accepted market practices" shall mean practices which it is reasonable to expect to find on one or more financial markets and accepted or identified by Consob in accordance with the implementing provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003⁶⁷⁷;

d) "entity" shall mean one of the persons referred to in Article 1 of Legislative Decree 231/2001.⁶⁷⁸

Article 181
Inside information

1. For the purposes of this title inside information shall mean information of a precise nature which has not been made public relating, directly or indirectly, to one or more issuers of financial instruments or one or more financial instruments and which, if it were made public would be likely to have a significant effect on the prices of those financial instruments.

2. In relation to derivatives on commodities, inside information shall mean information of a precise nature which has not been made public relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded expect to receive in accordance with accepted market practices on those markets⁶⁷⁹.

3. Information shall be deemed to be of a precise nature if:

a) it refers to a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to occur; and

b) it is specific enough to enable a conclusion to be drawn as to the possible effect of the set of circumstances or event referred to in paragraph a) on the prices of financial instruments.

⁶⁷⁵ Chapter IV – "Unauthorised use of inside information and manipulation involving financial instruments", comprising Articles from 180 to 187-bis was replaced by Title I-bis (Articles 180-187-quaterdecies) by Article 9 of Law 62/2005 (the 2004 Community Law).

⁶⁷⁶ Paragraph amended by art. 1, subsection 13, Legislative Decree no. 101 of 17.7.2009.

⁶⁷⁷ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

⁶⁷⁸ See footnote to Title I-bis.

⁶⁷⁹ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

4. Information which, if made public, would be likely to have a significant effect on the prices of financial instruments shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

5. For persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments and which, if made public, would be likely to have a significant effect on the prices of those financial instruments.⁶⁸⁰

Article 182

Scope

1. The crimes and the offences referred to in this title shall be punished according to Italian law even if committed abroad where they concern financial instruments admitted, or for which an application has been made for admission, to trading on an Italian regulated market or Italian multilateral trading system⁶⁸¹.

2. Without prejudice to subsection 1, Articles 184, 185, 187-*bis* and 187-*ter* shall apply to acts involving financial instruments admitted, or for which an application has been made for admission, to trading on an Italian regulated market or on a regulated market of other EU countries.⁶⁸²

2 bis. Unless otherwise indicated under subsection 1, the provisions of Articles 184, 185, 187-*bis* and 187-*ter* shall apply to matters concerning financial instruments pursuant to Article 180, subsection 1, paragraph a), point 2)⁶⁸³.

Article 183

Exemptions

1. This title shall not apply:

a) to transactions relating to monetary, exchange-rate or public debt management policy concluded by the Italian state, another EU Member State, the European System of Central Banks, a central bank of an EU Member State or any other officially designated body or any person acting on their behalf;

b) to trading of own shares pursuant to Article 180, subsection 1, paragraph a) implemented as part of a buy-back programme of the issuer, subsidiary or affiliate, and as transactions to stabilise financial instruments pursuant to Article 180, subsection 1, paragraph a) that meet the conditions established by Consob regulation⁶⁸⁴.

Chapter II

Penal sanctions⁶⁸⁵

Article 184

Insider trading

1. Imprisonment for between one and six years and a fine of between twenty thousand and three million euro shall be imposed on any person who, possessing inside information by virtue of his membership of the

⁶⁸⁰ See footnote to Title I-*bis*.

⁶⁸¹ Subsection amended by art. 1, subsection 14, Legislative Decree no. 101 of 17.7.2009, which added the words: "or Italian multilateral trading system".

⁶⁸² See footnote to Title I-*bis*.

⁶⁸³ Subsection added by art. 1, subsection 15, Legislative Decree no. 101 of 17.7.2009.

⁶⁸⁴ Paragraph replaced by art. 1, subsection 16, Legislative Decree no. 101 of 17.7.2009. See Title I-*bis*.

⁶⁸⁵ Pursuant to Article 39(1) of Law 262/2005, the penalties provided for in this Title shall be doubled within the limits set for each type of penalty in Book I, Title II, Chapter II of the Penal Code.

administrative, management or supervisory bodies of an issuer, his holding in the capital of an issuer or the exercise of his employment, profession, duties, including public duties, or position:

a) buys, sells or carries out other transactions involving, directly or indirectly, for his own account or for the account of a third party, financial instruments using such information;

b) discloses such information to others outside the normal exercise of his employment, profession, duties or position;

c) recommends or induces others, on the basis of such information, to carry out any of the transactions referred to in paragraph a)

2. The punishment referred to in subsection 1 shall apply to any person who, possessing inside information by virtue of the preparation or execution of criminal activities, carries out any of the actions referred to in subsection 1.

3. Courts may increase the fine up to three times or up to the larger amount of ten times the product of the crime or the profit therefrom when, in view of the particular seriousness of the offence, the personal situation of the guilty party or the magnitude of the product of the crime or the profit therefrom, the fine appears inadequate even if the maximum is applied.

3-bis. With regard to financial instrument transactions pursuant to Article 180, subsection 1, paragraph a), point 2), the judicial sanction shall involve infliction of a fine of up to one hundred and three thousand two hundred and ninety-one euro and up to three-years' imprisonment⁶⁸⁶.

4. For the purposes of this article, financial instruments shall also mean financial instruments referred to in Article 1(2) whose value depends on a financial instrument referred to in Article 180(1)(a).⁶⁸⁷

Article 185 *Market manipulation*

1. Imprisonment for between one and six years and a fine of between twenty thousand and three million euro shall be imposed on any person who disseminates false information or sets up sham transactions or employs other devices concretely likely to produce a significant alteration in the price of financial instruments.

2. Courts may increase the fine up to three times or up to the larger amount of ten times the product of the crime or the profit therefrom when, in view of the particular seriousness of the offence, the personal situation of the guilty party or the magnitude of the product of the crime or the profit therefrom, the fine appears inadequate even if the maximum is applied.

2-bis. With regard to financial instrument transactions pursuant to Article 180, subsection 1, paragraph a), point 2), the judicial sanction shall involve infliction of a fine of up to one hundred and three thousand two hundred and ninety-one euro and up to three-years' imprisonment⁶⁸⁸.

Article 186 *Accessory penalties*

1. Conviction for any of the offences referred to in this chapter shall entail the application of the accessory penalties referred to in Articles 28, 30, 32-bis and 32-ter of the Penal Code for a period of not less than six months and not more than two years and the publication of the judgement in at least two daily newspapers having national circulation of which one shall be a financial newspaper.⁶⁸⁹

⁶⁸⁶ Subsection added by art. 1, subsection 17, Legislative Decree no. 101 of 17.7.2009.

⁶⁸⁷ See footnote to Title I-bis and Chapter II – Financial penalties.

⁶⁸⁸ Subsection added by art. 1, subsection 18, Legislative Decree no. 101 of 17.7.2009. See Title I-bis and Chapter II – Judicial sanctions.

⁶⁸⁹ See footnote to Title I-bis.

Article 187
Confiscation

1. In the event of conviction for one of the crimes referred to in this chapter the product of the crime or the profit therefrom and the property used to commit it shall be confiscated.
2. If it is not possible to execute the confiscation pursuant to subsection 1, a sum of money or property of equivalent value may be confiscated.
3. For matters not provided for in subsections 1 and 2, Article 240 of the Penal Code shall apply.⁶⁹⁰

Chapter III
Administrative sanctions

Article 187-bis⁶⁹¹
Insider trading

1. Without prejudice to the penal sanctions applicable when the action constitutes a criminal offence, a pecuniary administrative sanction of between twenty thousand euro and three million euro⁶⁹² shall be imposed on any person who, possessing inside information by virtue of his membership of the administrative, management or supervisory bodies of an issuer, his holding in the capital of an issuer or the exercise of his employment, profession, duties, including public duties, or position:
 - a) buys, sells or carries out other transactions involving, directly or indirectly, for his own account or for the account of a third party, financial instruments using such information;
 - b) discloses such information to others outside the normal exercise of his employment, profession, duties or position;
 - c) recommends or induces others, on the basis of such information, to carry out any of the transactions referred to in paragraph a)
2. The sanction referred to in subsection 1 shall apply to any person who, possessing inside information by virtue of the preparation or execution of criminal activities, carries out any of the actions referred to in subsection 1.
3. For the purposes of this article, financial instruments shall also mean financial instruments referred to in Article 1(2) whose value depends on a financial instrument referred to in Article 180(1)(a).
4. The sanction referred to in subsection 1 shall also apply to any person who, possessing inside information and knowing or capable of knowing through ordinary diligence its inside nature, carries out any of the actions referred to therein.
5. Pecuniary administrative sanctions referred to in subsections 1, 2 and 4 shall be increased up to three times or up to the larger amount of ten times the product of the offence or the profit therefrom when, in view of the personal situation of the guilty party or the magnitude of the product of the offence or the profit therefrom, they appear inadequate even if the maximum is applied.
6. For the cases referred to in this article, attempted violations shall be treated as completed violations.

⁶⁹⁰ See footnote to Title I-bis.

⁶⁹¹ See footnote to Title I-bis.

⁶⁹² The amounts of pecuniary administrative sanctions were quintupled by Article 39(3) of Law 262/2005. Accordingly, here they are to be understood as having been increased respectively from twenty thousand euro to one hundred thousand euro and from three million euro to fifteen million euro.

Article 187-ter⁶⁹³
Market manipulation

1. Without prejudice to the penal sanctions applicable when the action constitutes a criminal offence, a pecuniary administrative sanction of between twenty thousand euro and five million euro⁶⁹⁴ shall be imposed on any person who, through the media, including the Internet, or by any other means, disseminates information, rumours or false or misleading news that give or are likely to give false or misleading signals as to financial instruments.
2. In respect of journalists when they act in their professional capacity the dissemination of information is to be assessed taking into account the rules of conduct governing their profession, unless they derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.
3. Without prejudice to the penal sanctions applicable when the action constitutes a criminal offence, the pecuniary administrative sanction referred to in subsection 1 shall be imposed on any person who:
 - a) carries out buy or sell transactions or places orders to buy or sell which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments;
 - b) carries out buy or sell transactions or places orders to buy or sell which secure, by a person or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level;
 - c) carries out buy or sell transactions or places orders to buy or sell which employ fictitious devices or any other form of deception or contrivance;
 - d) employs other fictitious devices likely to give false or misleading signals as to the supply of, demand for or price of financial instruments.
4. For offences referred to in subsections 3a) and 3b), administrative sanctions may not be imposed on persons who demonstrate that they acted for legitimate reasons and in accordance with accepted market practices on the market concerned.
5. Pecuniary administrative sanctions referred to in the preceding subsections shall be increased up to three times or up to the larger amount of ten times the product of the offence or the profit therefrom when, in view of the personal situation of the guilty party, the magnitude of the product of the offence or the profit therefrom or the effects produced on the market, they appear inadequate even if the maximum amount is applied.
6. The Ministry of the Economy and Finance, after consulting Consob or acting on a proposal therefrom, shall specify, in a regulation conforming with the implementing measures of Directive 2003/6/EC adopted by the Commission using the procedure referred to in Article 17(2) of the same directive, the cases, possibly in addition to those referred to in the preceding subsections, relevant for purposes of applying this article.
7. Consob shall make known, in measures it adopts, the elements and circumstances to be taken into consideration in assessing behaviour likely to constitute market manipulation according to Directive 2003/6/EC and the implementing measures thereof⁶⁹⁵.

Article 187-quater
Accessory administrative sanctions

1. Application of pecuniary administrative sanctions referred to in this chapter shall imply the temporary non-fulfilment of the integrity requirements for corporate officers and shareholders of authorised

⁶⁹³ See footnote to Title I-bis.

⁶⁹⁴ The amounts of pecuniary administrative sanctions were quintupled by Article 39(3) of Law 262/2005. Accordingly, here they are to be understood as having been increased respectively from twenty thousand euro to one hundred thousand euro and from five million euro to twenty-five million euro.

⁶⁹⁵ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

intermediaries, stock exchange companies, auditors and financial salesmen and, for corporate officers of listed companies, temporary disqualification from taking up administrative, management or supervisory positions in listed companies or companies belonging to the same group as listed companies.

2. Accessory administrative sanctions referred to in subsection 1 shall have a duration of not less than two months and not more than three years.

3. In the measure imposing pecuniary administrative sanctions referred to in this chapter, Consob, taking into account the seriousness of the violation and the degree of fault, may order authorised intermediaries, stock exchange companies, listed issuers and auditing firms not to use the offender in the exercise of their activities for a period of not more than three years and ask the competent professional associations to suspend the registrant from practice of the profession.⁶⁹⁶

Article 187-quinquies *Liability of the entity*

1. Entities shall be liable for payment of a sum equal to the amount of the administrative sanction imposed for offences referred to in this chapter committed in their interest or to their advantage:

a) by persons performing representative, administrative or management functions in the entity or one of its organisational units having financial and functional autonomy and by persons who, *de facto* or otherwise, manage and control the entity.

b) persons subject to the direction or supervision of a person referred to in paragraph a).

2. If, following the perpetration of offences referred to in subsection 1, the product thereof or the profit therefrom accruing to the entity is very large, the sanction shall be increased up to ten times such product or profit.

3. Entities shall not be liable if they demonstrate that the persons specified in subsection 1 acted exclusively in their own interest or in the interest of third parties.

4. Articles 6, 7, 8 and 12 of Legislative Decree 231/2001 shall apply, insofar as they are compatible, to offences referred to in subsection 1. The Ministry of Justice, after consulting Consob, shall formulate the observations referred to in Article 6 of Legislative Decree 231/2001 with regard to offences referred to in this chapter.⁶⁹⁷

Article 187-sexies *Confiscation*

1. The imposition of pecuniary administrative sanctions referred to in this chapter shall always entail the confiscation of the product of the offence or the profit therefrom and the property used to commit it.

2. If it is not possible to execute the confiscation pursuant to subsection 1, a sum of money or property of equivalent value may be confiscated.

3. In no case may property not belonging to one of the persons on whom the pecuniary administrative sanction was imposed be confiscated.⁶⁹⁸

⁶⁹⁶ See footnote to Title I-bis.

⁶⁹⁷ See footnote to Title I-bis.

⁶⁹⁸ See footnote to Title I-bis.

Article 187-septies
Sanction procedures

1. Administrative sanctions referred to in this chapter shall be imposed by Consob, with a measure stating the grounds for the decision, after notifying the charges to the interested parties, within one hundred and eighty days of the examination or within three hundred and sixty days if the interested party is resident or has its registered office abroad, and evaluating their submissions within thirty days. Within the same time limit interested parties may also request to be heard in person⁶⁹⁹.
2. The proceedings shall afford all parties the opportunity to state their case and have access to the investigation file. Transcripts shall be taken of the proceedings. Investigatory and adjudicatory functions shall be separate.
3. The measure imposing sanctions shall be published in abridged form in Consob's Bulletin. Taking into account the nature of the violation and the interests involved, Consob may establish further methods of publicizing the measure, charging the related expenses to the offender. Consob, acting on its own initiative or at the request of the interested parties, may postpone or exclude publication of all or part of the measure when this is likely to cause serious harm to the integrity of the market or cause disproportionate injury to the parties involved.
4. ...omissis...⁷⁰⁰
5. ...omissis...⁷⁰¹
6. ...omissis...⁷⁰²
7. ...omissis...⁷⁰³
8. ...omissis...⁷⁰⁴

Chapter IV
Consob's powers

Article 187-octies
Consob's powers

1. Consob shall oversee compliance with the provisions of this title as well as all other provisions issued in implementing Directive 2003/6/EC.
2. Consob shall investigate violations of the provisions of this title, utilizing the powers granted to it by this decree.
3. Consob may in relation to any person who could be acquainted with the facts:

⁶⁹⁹ Subsection amended by art. 1, subsection 19, Legislative Decree no. 101 of 17.7.2009, which added the words: “, within one hundred and eighty days of the examination or three hundred and sixty days if the interested party is resident or its company is registered abroad,”.

⁷⁰⁰ Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010. Art. 133, subsection 1, paragraph 1), Legislative Decree 104/2010 states: “Unless legal provisions state otherwise, the following shall be settled solely before the administrative court: ... 1) disputes concerning all proceedings, including sanction proceedings and excluding those referring to privatised relations, adopted by the Bank of Italy, by Consob [...]”.

⁷⁰¹ Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

⁷⁰² Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

⁷⁰³ Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

⁷⁰⁴ Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

- a) require information, data or documents in any form whatsoever, establishing the time limits for receipt thereof;
- b) require existing telephone records, establishing the time limits for receipt thereof;
- c) conduct personal hearings;
- d) seize property that may be confiscated under Article 187-*sexies*⁷⁰⁵;
- e) carry out inspections;
- f) conduct searches in the manner provided for in Article 33 of Presidential Decree 600/1973 and Article 52 of Presidential Decree 633/1972.

4. Consob may further:

- a) avail itself of the cooperation of governmental bodies, requiring that it be provided with data and information – notwithstanding where relevant the restrictions laid down in Article 25(1), of Legislative Decree 196/2003 – and access the information system of the tax records database in the manner provided for in Articles 2 and 3(1) of Legislative Decree 212/1991;
- b) require the provider to furnish it with the traffic records referred to in Legislative Decree 196/2003;
- c) require the communication of personal data, notwithstanding where relevant the restrictions laid down in Article 25(1) of Legislative Decree 196/2003;
- d) avail, where necessary, of the information contained in the register of accounts and deposits referred to in Article 20(4) of Law 413/1991 in accordance with the procedures set forth in Article 3(4)(b) of Decree Law no. 143 of 3 May 1991 ratified with amendments by Law 197/1991 as well as gain access, directly or otherwise, to the information contained in the register referred to in Article 13 of Decree Law 625/1979 ratified with amendments by Law 15/1980;
- e) gain direct access, through a dedicated electronic connection, to the data contained in the Bank of Italy's Central Credit Register referred to in the resolution of the Interministerial Committee for Credit and Savings of 29 March 1994, published in Official Gazette no. 91 of 20 April 1994⁷⁰⁶.
- e-bis) make use where necessary, also through an electronic connection, of data contained in the special section of the tax records system pursuant to Article 7, subsection 6, Presidential Decree no. 605 of 29 September 1973⁷⁰⁷;

5. The powers under subsections 3(d), 3(f) and 4(b) shall be exercised subject to authorisation by the Chief Public Prosecutor's Office. Such authorisation is also necessary for the exercise of the powers under subsections 3(b), 3(c), and 4(c) against persons other than authorised intermediaries, the persons specified in Articles 114(1), 114(2) and 114(8) and other persons subject to supervision pursuant to this decree.

6. Where there are grounds for suspecting that the provisions of this title are being violated, Consob may as a precautionary measure direct that the relevant conduct cease.

7. The provisions hereof are without prejudice to the application of Articles 199, 200, 201, 202 and 203 of the Criminal Procedure Code insofar as they are compatible.

8. In the cases provided for in subsections 3(c), 3(d), 3(e), 3(f) and 12, a *procès-verbaux* shall be drawn up noting the data and information obtained or the findings of fact made, the seizures carried out and the statements given by the interested persons, who shall be requested to sign the *procès-verbaux* and shall be entitled to a copy thereof.

9. In the event of a seizure under subsection 3(d), the interested persons may file opposition with Consob.

10. The decision on the opposition shall be adopted with a measure stating the grounds therefore issued within 30 days from the date of filing of the opposition proceedings in question.

⁷⁰⁵ See Consob resolution no. 15087 of 21.6.2005, as amended.

⁷⁰⁶ See Bank of Italy-Consob memorandum of understanding of 31.10.2007.

⁷⁰⁷ Subsection added by art. 1, subsection 20, Legislative Decree no. 101 of 17.7.2009.

11. The seized property shall be returned to those so entitled when:
- a) the person who committed the violation dies;
 - b) it is proved that those so entitled are third parties extraneous to the offence;
 - c) the notice of the charges is not served within the time limit laid down by Article 14 of Law 689/1981;
 - d) the pecuniary administrative sanction has not been imposed within the time limit of two years from the finding of the violation.
12. In the exercise of its powers under subsections 2, 3 and 4, Consob may avail itself of the cooperation of the Finance Police which shall carry out the requested inquiries relying on the investigatory powers that they enjoy in connection with the assessment of VAT and income taxes.
13. All of the information and data obtained by the Finance Police further to action taken under subsection 12 shall be covered by professional secrecy and be communicated without delay exclusively to Consob.
14. Consob's measures imposing pecuniary sanctions shall be enforceable. Failing payment within the time limit fixed therefore, Consob shall levy execution of the sum due in accordance with the rules governing the collection of sums owing to the State, local authorities, governmental bodies and social security bodies.
15. When the offender pursues a profession, the measure imposing the sanction shall be transmitted to the competent professional association.⁷⁰⁸

Article 187-nonies
Suspicious transactions

1. Authorised intermediaries, stockbrokers entered in the single national roll and stock exchange companies must notify Consob without delay of transactions that, on reasonable grounds, appear to involve a violation of the provisions of this title. Consob shall lay down in a regulation the categories of persons subject to this obligation, the elements and circumstances to be taken into consideration in assessing behaviour likely to constitute a suspicious transaction, and the procedures and time limits for such notifications.⁷⁰⁹

Chapter V
Relationship between proceedings

Article 187-decies
Relations with the judicial authorities

1. Upon receiving notice of the commission of a crime under Chapter II, the public prosecutor shall without delay inform the Chairman of Consob thereof.
2. The Chairman of Consob shall forward the public prosecutor the documentation gathered during its own inquiries accompanied by a reasoned report in cases where there are grounds for suspecting that a crime may have been committed. The documents shall be forwarded to the public prosecutor at the very latest within the time limit for investigating violations of Chapter III of this title.
3. Consob and the judicial authorities shall cooperate with each other, including through the exchange of information, in order to facilitate the investigation of violations of this title, including in cases where such do not constitute crimes. To this end Consob may utilize the documents, data and information obtained by the

⁷⁰⁸ See footnote to Title I-bis.

⁷⁰⁹ See footnote to Title I-bis. See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

Finance Police in the manner and form established in the first subsection of Article 63 of Presidential Decree 633/1972 and the third subsection of Article 33 of Presidential Decree 600/1973.⁷¹⁰

Article 187-undecies
Consob's powers in criminal proceedings

1. In proceedings for crimes under Articles 184 and 185, Consob may exercise the rights and powers granted by the Criminal Procedure Code to the bodies and associations representing the interests injured by the crime.

2. Consob may also intervene as a civil claimant and request, by way of compensation for the loss occasioned to the integrity of the market by the crime, damages in an amount to be assessed by the court, including equitably, taking account of the seriousness of the crime, the personal situation of the guilty party or the amount of the proceeds of the crime or the profit therefrom.⁷¹¹

Article 187-duodecies
Relationship between criminal proceedings and administrative and appeal proceedings

1. The administrative and appeal proceedings referred to in Article 187-septies may not be suspended on the grounds that criminal proceedings are pending covering the same facts or facts on which the definition of the case depends.⁷¹²

Article 187-terdecies
Collection of fines and pecuniary sanctions in criminal proceedings

1. When a pecuniary administrative sanction pursuant to Article 187-septies⁷¹³ has been imposed on the offender or the entity for the same facts, the collection of the pecuniary penalty and the pecuniary administrative sanction deriving from the crime shall be limited to the portion thereof exceeding what the administrative authority has collected.⁷¹⁴

Article 187-quaterdecies
Consultation procedures

1. Within 12 months of the date of entry into force of this subsection Consob shall lay down in a regulation the methods and time limits for the consultation procedures to be engaged in – through the setting up of a committee with members representing consumers, providers of financial service and other supervised persons – when regulatory changes are being made in the field of market abuse and in the other areas falling within Consob's institutional remit.⁷¹⁵

⁷¹⁰ See footnote to Title I-bis.

⁷¹¹ See footnote to Title I-bis.

⁷¹² See footnote to Title I-bis.

⁷¹³ The previous wording: “of article 195” was replaced by the words: “of article 187-septies” by art. 3, subsection 19 of Legislative Decree no. 303 of 29.12.2006.

⁷¹⁴ See footnote to Title I-bis.

⁷¹⁵ See footnote to Title I-bis.

TITLE II

ADMINISTRATIVE SANCTIONS

Article 187-*quinquiesdecies* *Safeguarding of Consob's supervisory functions*

1. Apart from the cases provided for in Article 2638 of the Civil Code, any person who fails to comply with a request from Consob within the prescribed time limits or delays the performance of Consob's functions shall be punished by a pecuniary administrative sanction of between ten thousand euro and two hundred thousand euro.⁷¹⁶

Article 188 *Unauthorised use of names*

1. The use in the name or in any logo or communication addressed to the public of the words *SIM* or *società di intermediazione mobiliare* or *impresa di investimento*, *SGR* or *società di gestione di risparmio*, *SICAV* or *società di investimento a capitale variabile*, or other words or expressions in Italian or in a foreign language likely to deceive as to authorisation to provide investment services or activities or the service of collective portfolio management, shall be prohibited for persons other than, respectively, investment companies, asset management companies and SICAVs. Any person who contravenes the prohibition of this article shall be punished by a pecuniary administrative sanction of between five hundred and sixteen euro and ten thousand three hundred and twenty-nine euro.⁷¹⁷

2. Article 16 of Law 689/1981 shall not apply to the pecuniary administrative sanction provided for in this article.

Article 189 *Holdings of capital*

1. Omission of notifications referred to in Articles 15(1), 15(3), 61(6) and 80(7) and of those required pursuant to Article 17 shall be punished by a pecuniary administrative sanction of between ten million lire and one hundred million lire.⁷¹⁸

2. The same sanction shall apply in the event of violation of the prohibitions on voting and in the event of non-compliance with the obligation to dispose of holdings referred to in Articles 14(4), 14(7), 16(1), 16(2), 16(4), 61(7) and 80(8).⁷¹⁹

Article 190 *(Other financial penalties regarding intermediaries, markets and the central depository system for financial instruments)*⁷²⁰

1. Persons performing administrative or management functions in and employees of companies or authorised entities shall be punished by a pecuniary administrative sanction of between one million lire and fifty million

⁷¹⁶ Article added by Article 9 of Law 62/2005 (the 2004 Community Law). The amounts of pecuniary administrative sanctions were quintupled by Article 39(3) of Law 262/2005. Accordingly, here they are to be understood as having been increased respectively from ten thousand euro to fifty thousand euro and from two hundred thousand euro to one million euro.

⁷¹⁷ Subsection as amended by Article 24 of Legislative Decree 274/2003. The amounts of pecuniary administrative sanctions were quintupled by Article 39(3) of Law 262/2005. Accordingly, here they are to be understood as having been increased respectively from five hundred and sixteen euro to two thousand five hundred and eighty euro and from ten thousand three hundred and twenty-nine euro to five hundred and one thousand six hundred and forty-five euro.

⁷¹⁸ The amounts of pecuniary administrative sanctions were quintupled by Article 39(3) of Law 262/2005. Accordingly, here they are to be understood as having been increased respectively from five thousand one hundred and sixty-five euro to twenty-five thousand eight hundred and twenty-five euro and from fifty-one thousand six hundred and forty-six euro to two hundred and fifty-eight thousand two hundred and thirty euro.

⁷¹⁹ Subsection as amended by Legislative Decree 37/2004.

⁷²⁰ Heading as replaced by art. 4, Legislative Decree no. 27 of 27.01.2010.

lire for non-compliance with Articles 6, 7(2-3), 8(1), 9, 10, 12, 13(2), 21, 22, 24(1), 25, 25-bis(1-2), 27(3-4), 28(3), 30(3-5), 31(1-2), 31(5-7), 32(2), 36(2-4), 36(6-7), 37, 38(3-4), 39(1-2), 40(1), 41(2-3), 42(2-4), 42(6-8), 43(7-8), 50(1), 65, 79-bis and 187-nonies, or with general or specific rules issued by the Bank of Italy or Consob based on the same articles, are punished by a financial penalty of between two thousand five hundred euro and two hundred and fifty thousand euro. The same sanction shall apply in cases of infringement of Article 18, subsection 1, or where financial advisor or financial salesman activities are performed without due registration in the respective registers pursuant to Article 18-bis and Article 31⁷²¹.

2. The same sanction shall also apply to:

a) persons performing administrative or management functions in and employees of stock exchange companies, for non-compliance with Part III, Title I, Chapter I, or with the provisions issued pursuant thereto;

b) persons performing administrative or management functions in and employees of central depositories, for non-compliance with Part III, Title II, or with the provisions issued pursuant thereto;

b-bis) persons performing the duties of director or manager of the intermediaries indicated in Article 79-quater for failure to comply with the provisions of Article 83-novies, subsection 1, paragraphs c) d), e) and f), Article 83-duodecies, and provisions issued on the basis thereof⁷²²;

c) organisers and operators of interbank fund trading systems, managers of multilateral trading systems and systematic internalisers, in cases of inobservance of the provisions of Chapters II and II-bis, Title I, part III and issued in relation thereto⁷²³;

d) persons managing systems referred to in Articles 68, 69(2) and 70 or performing administrative or management functions in the company referred to in Article 69(1), for non-compliance with Articles 68, 69, 70, 70-bis and 77(1) or the related implementing provisions⁷²⁴;

d-bis) persons who perform an administrative or management role and employees of insurance companies for non-compliance with the provisions referred to in Articles 25-bis(1) and 25-bis(2) and provisions issued based on the same.⁷²⁵

d-ter) operators permitted to trade on regulated markets in cases of inobservance of the provisions of article 25, subsection 3⁷²⁶.

d-quater) members of the financial advisors' association in the event of failure to comply with the provisions of Article 18-bis and provisions based on said article⁷²⁷;

d-quinquies) members of the financial salesmen's association in the event of failure to comply with the provisions of Article 31 and provisions based on said article⁷²⁸;

d-sexies) persons holding office as director of issuers in the event of failure to comply with the provisions of Article 83-undecies, subsection 1⁷²⁹.

3. The sanctions provided for in subsections 1 and 2 shall also apply to persons performing supervisory functions in the companies or entities referred to therein for violation of the provisions referred to in those subsections and for failure to ensure, in accordance with the duties inherent in their office, compliance with

⁷²¹ Subsection first amended by art. 9, Law no. 62 of 18.4.2005 (2004 Community Law) which added the words: “; 187-nonies”; then by art. 3, Legislative Decree no. 303 of 29.12.2006 which added the words: “25-bis, subsections 1 and 2;”; by art. 16 of Legislative Decree no. 164 of 17.9.2007 which added the word “authorised” and replaced the words “one million lire and fifty million lire” with the words “two thousand five hundred euro and two hundred and fifty thousand euro” and added the sentence “The same sanction shall apply in cases of infringement of Article 18, subsection 1, or where financial salesman activities are performed without due registration in the register pursuant to Article 31”; and lastly by art. 1, subsections 21 and 22, Legislative Decree no. 101 of 17.7.2009 which added the words “; 79-bis” and replaced the final sentence.

⁷²² Paragraph added by art. 4, Legislative Decree no. 27 of 27.01.2010.

⁷²³ Paragraph first replaced by art. 16, Legislative Decree no. 164 of 17.9.2007 and then by art. 1, subsection 23, Legislative Decree no. 101 of 17.7.2009 which replaced the words “Chapters II and III” with the words “Chapters II and II-bis”.

⁷²⁴ Paragraph amended by art. 16 Legislative Decree no. 164 of 17.9.2007.

⁷²⁵ Paragraph added by Article 14 of Law 262/2005 and later amended by art. 16 Legislative Decree no. 164 of 17.9.2007.

⁷²⁶ Paragraph added by art. 16 Legislative Decree no. 164 of 17.09.2007

⁷²⁷ Paragraph added by art. 1, subsection 24, Legislative Decree no. 101 of 17.7.2009.

⁷²⁸ Paragraph added by art. 1, subsection 24, Legislative Decree no. 101 of 17.7.2009.

⁷²⁹ Paragraph added by art. 4, Legislative Decree no. 27 of 27.1.2010.

such provisions by others. The same sanctions shall apply in the case of violation of the provisions of Article 8(2-6).

3-bis. ...omissis...⁷³⁰.

4. Article 16 of Law 689/1981 shall not apply to the pecuniary administrative sanctions provided for in this article.

Article 191 *Public offerings*

1. Any person who makes a public offering in violation of Articles 94(1), 94(5-bis) and 96 or of the interdictions adopted pursuant to Articles 99 and 101(3)(c) shall be punished by a pecuniary administrative sanction of between one tenth and one half of the total value of the financial products marketed but not exceeding two hundred million lire. If the total value of the financial products marketed is not determined, a pecuniary administrative sanction of between ten million lire and two hundred million lire shall apply.

2. Any person who makes a public offering in violation of Articles 94(3), 94(4), 95, 97 and 98 or the related implementing provisions issued by Consob shall be punished by a pecuniary administrative sanction of between ten million lire and two hundred million lire.

3. The sanction referred to in subsection 2 shall also apply to any person who advertises public offerings in violation of Article 101(1) or of the regulation issued or the interdictions issued pursuant to subsections 2, 3a) and 3b) of the same article.

4. For the purpose of article 195, subsection 3, Consob shall publish the measures and sanctions applied for violation of the provisions mentioned in this article, except where such publication could seriously disrupt the markets or cause disproportionate damage to the parties concerned.

5. Article 16, Law no. 689 of 24 November 1981 shall not apply to the financial penalties envisaged under this article⁷³¹.

Article 192 *Takeover bids or exchange tender offerings*

1. Any person violating the obligation to launch a takeover bid or exchange tender offering or launching a takeover bid or exchange tender offering in violation of article 102, subsections 1, 3 and 6, shall be punished by a financial penalty of not less than twenty-five thousand Euro and not exceeding the total amount payable by the bidder or which would have been payable by the bidder had the takeover bid or exchange tender offering been implemented⁷³².

2. The sanction referred to in subsection 1 shall apply to persons who:

a) fail to comply with the indications given by Consob pursuant to Article 102, subsection 4, or violate the regulations issued pursuant to Article 102, subsection 1 and Article 103, subsection 4⁷³³;

a-bis) violates the provisions of article 103, subsections 3 and 3-bis⁷³⁴;

⁷³⁰ Subsection first included by art. 10 Law no. 262 of 28.12.2005 and later repealed by art. 10, subsection 6 Law no. 13 of 6.2.2007 (2006 Community Law).

⁷³¹ Article first amended by art. 14, Law no. 262 of 28.12.2005 and later replaced by art. 4, Legislative Decree no. 51 of 28.3.2007.

⁷³² Subsection as amended by art. 5 Legislative Decree no. 229 of 19.11.2007 which replaced the words: "under article 102, subsections 1 and 3" with the words: "under article 102, subsections 1, 3 and 6" and the words: "of between ten million Lire and two hundred million Lire" with the words: "of an amount not less than twenty-five thousand Euro and not exceeding the total amount payable by the bidder or which would have been payable by the bidder had the takeover bid been implemented".

⁷³³ Paragraph amended by art. 5, Legislative Decree no. 229 of 19.11.2007 which replaced the words: "Article 102, subsection 2" with the words: "Article 102, subsection 4" and the words: "pursuant to Article 103, subsections 4 and 5" with the words: "pursuant to Article 102, subsection 1 and Article 103, subsection 4".

- a-ter*) violates provisions regarding mandatory takeover pursuant to article 108, subsections 1 and 2, and provisions of the regulation issued pursuant to article 108, subsection 7⁷³⁵;
- b*) exercises voting rights in violation of the provisions of article 110;
- b-bis*) violates the provisions of article 110, subsection 1-*bis*⁷³⁶;

3. ...*omissis*...⁷³⁷.

Article 192-*bis*
*Corporate governance disclosures*⁷³⁸

1. Without prejudice to the fact that such omission constitutes an offence, the directors, members of control bodies and general managers of companies listed on regulated markets failing to issue disclosures pursuant to article 123-*bis*, subsection 2, paragraph *a*) shall be punished by means of a financial penalty ranging from ten thousand to three hundred thousand euro. The disciplinary measure shall be published, at the expense of the offender, in at least two daily newspapers having a national circulation, including one of a financial nature⁷³⁹.

Article 192-*ter*
Admission to trading

1. The issuer or person requesting permission to trade that violates the provisions of article 113, subsections 2, 3 paragraphs *a*), *d*) and *f*), 4, and article 113-*bis*, subsections 1, 2, paragraphs *a*) and *b*) and 4, or general or special provisions issued by Consob on the basis of said articles, shall be punished by a financial penalty of between five thousand euro and five hundred thousand euro.

2. For the purpose of article 195, subsection 3, Consob shall publish the measures and sanctions applied for violation of the provisions mentioned in this article, except where such publication could seriously disrupt the markets or cause disproportionate damage to the parties concerned.

3. Article 16, Law no. 689 of 24 November 1981 shall not apply to the financial penalties envisaged under this article⁷⁴⁰.

Article 193
*(Corporate disclosures and the duties of auditors, statutory auditors and independent statutory auditors*⁷⁴¹

1. Companies, entities and associations required to make the disclosures referred to in Articles 113, 114, 114-*bis*, 115, 154-*bis* and 154-*ter* or subject as per requirements in Article 115-*bis* shall be punished by a pecuniary administrative sanction of between five thousand euro and five hundred thousand euro for non-

⁷³⁴ Paragraph added by art. 4, Legislative Decree no. 146 of 25.09.2009.

⁷³⁵ Paragraph added by art. 4, Legislative Decree no. 146 of 25.09.2009.

⁷³⁶ Paragraph added by art. 5, Legislative Decree no. 229 of 19.11.2007.

⁷³⁷ Subsection first replaced by art. 5, Legislative Decree no. 229 of 19.11.2007 and later repealed by art. 4, Legislative Decree no. 146 of 25.09.2009.

⁷³⁸ Heading as replaced by art. 5, Legislative Decree no. 173 of 03.11.2008

⁷³⁹ Article first added by art. 36, Law no. 262 of 28.12.2005, later amended by art. 3, Legislative Decree no. 303 of 29.12.2006 which removed the words. "i.e. in these or other communications directed at the general public, disclose or allow the disclosure of false information on adoption by the companies concerned of codes of conduct issued by regulated stock exchange companies or trade associations, or application of the same," and then amended by art. 5, Legislative Decree no. 173 of 3.11.2008 which replaced the words: "by article 124-*bis*" with the words: "by article 123-*bis*, subsection 2, paragraph *a*)".

⁷⁴⁰ Article as replaced by art. 4 of Legislative Decree no. 51 of 28.3.2007

⁷⁴¹ Heading as replaced by art. 40, Legislative Decree no. 39 of 27.01.2010.

compliance with such articles or the related implementing provisions. Where the disclosures are to be made by a natural person, in the event of violation the same sanction shall apply.⁷⁴²

1-bis. The sanction referred to in subsection 1 shall be imposed on persons who perform administrative, management or supervisory functions in companies or entities that engage in the activities referred to in Articles 114(8) and 114(11) and their employees and on persons referred to in Article 114(7) for non-compliance with such articles and the related implementing provisions issued by Consob.⁷⁴³

1-ter. The sanction referred to in subsection 1 shall also be imposed for non-compliance with Articles 114(8) and 114(11) and the related implementing provisions issued by Consob on natural persons who perform the activities referred to in subsection 1-bis and, when the condition for exemption laid down in Article 114(10) is not met, on natural persons who exercise the profession of journalist.⁷⁴⁴

1-quater. The same penalty as that referred to under subsection 1 shall apply, in cases of failure to observe the enactment provisions issued by Consob pursuant to article 113-ter, subsection 5, paragraphs b) and c), to persons authorised by Consob to provide disclosure and archiving services in relation to regulatory information.⁷⁴⁵

1-quinquies. The following are subject to the sanction referred to in subsection 1:

a) persons performing administrative, management and control duties in rating agencies registered in Italy in the event of infringement of:

1) the provisions of articles 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of EC Regulation 1060/2009 and related implementing provisions;

2) supervisory measures adopted pursuant to articles 24 and 25 of said regulation and related implementing provisions;

b) persons performing administrative, management and control duties in companies conducting confidential business activities pursuant to EC Regulation 1060/2009 without having obtained registration as required;

c) rating analysts and employees of rating agencies registered in Italy, any other natural person whose services are made available to or are subject to control by such a rating agency, persons actively involved in rating activities and persons strictly related to the aforementioned parties pursuant to article 114, subsection 7, paragraph 2, in the event of infringement of the provisions indicated in Annex I, section C of EC Regulation 1060/2009 and related implementing provisions.⁷⁴⁶

2. Failure to report significant holdings and shareholders' agreements envisaged, respectively, under article 120 subsections 2, 2 bis, 3 and 4, and article 122 subsections 1, 2 and 5, and the violation of prohibitions envisaged by article 120 subsection 5, article 121 subsections 1 and 3, and article 122 subsection 4, shall be punished by an administrative fine ranging between twenty-five thousand Euro and two million five hundred thousand Euro. A delay not exceeding two months in issuing reports pursuant to article 120 subsections 2, 2 bis, 3 and 4 shall be punished by an administrative fine ranging between five thousand Euro and five hundred thousand Euro.⁷⁴⁷

3. The sanction referred to in subsection 2 shall apply to:

⁷⁴² Subsection first amended by art. 9, subsection 1 of Law no. 62 of 18.04.2005 (2004 Community Law), later replaced by art. 14, Legislative Decree no. 262 of 28.12.2005, and amended by art. 3, Legislative Decree no. 303 of 29.12.2006 which replaced the words: "pursuant to articles 113, 114 and 115" with the words: "pursuant to articles 113, 114, 114-bis and 115 or subject to obligations pursuant to article 115-bis" and removed the words: "The provisions of article 190, subsection 3 shall apply."; amended by art. 4, Legislative Decree no. 51 of 28.3.2007 which removed the word: "113" and lastly as amended by art. 1 Legislative Decree no. 195 of 6.11.2007 which replaced the words "and 115" with the words: "115, 154-bis and 154-ter".

⁷⁴³ Subsection added by Article 9 of Law 62/2005 (the 2004 Community Law).

⁷⁴⁴ Subsection added by Article 9 of Law 62/2005 (the 2004 Community Law).

⁷⁴⁵ Subsection included by art. 1 of Legislative Decree no. 195 of 6.11.2007.

⁷⁴⁶ Subsection added by art. 1, Legislative Decree no. 176 of 5.10.2010.

⁷⁴⁷ Subsection first replaced by art. 1 Legislative Decree no. 195 of 6.11.2007 and then by art. 7 of Law no. 33 of 9.4.2009 converting Decree Law no. 5 of 10.2.2009.

- a) members of boards of auditors, supervisory boards and management control committees who commit irregularities in performing the duties provided for in Articles 149(1), 149/(4-bis) and 149(4-ter) or omit the notifications referred to in Article 149(3);⁷⁴⁸
- b) ...omissis...⁷⁴⁹.

3-bis. Unless the act constitutes a crime, members of internal control bodies who fail to make the communications referred to in Article 148(2-bis) within the prescribed time limits shall be punished by a pecuniary administrative sanction equal to twice the annual compensation provided for the position in relation to which the communication was omitted. The measure imposing the sanction shall also announce disqualification from the position.⁷⁵⁰

Article 193-bis

Business dealings with foreign companies with their registered office in a country that does not ensure corporate transparency

1. Persons who sign the annual accounts of foreign companies referred to in Article 165-quater(2), the reports and opinions referred to in Articles 165-quater(2), 165-quater(3), 165-quinquies(1) and 165-sexies(4) and those who perform audits pursuant to Article 165-quater(4) shall be subject to civil, penal and administrative liability in accordance with what is provided for in relation to the annual accounts of Italian companies.

2. Unless the act constitutes a crime, violation of the obligations deriving from the exercise of the powers assigned to Consob by Article 165-septies(1) shall be punished by the pecuniary administrative sanction provided for in Article 193(1).⁷⁵¹

Article 194

Proxies

1. ...omissis...⁷⁵²

2. Any promoter soliciting proxies in violation of Article 138, Article 142 subsections 1 and 2, Article 144 subsection 4 and the Regulation issued pursuant to Article 144 subsection 1 shall be punished by a financial penalty of between twenty-five thousand euro and five hundred thousand euro⁷⁵³.

2-bis. The sanction envisaged in subsection 2 shall apply to an appointed representative of a listed company acting in violation of Article 135-undecies, subsection 4⁷⁵⁴.

Article 195⁷⁵⁵

Sanction procedures

1. Except as provided by Article 196, administrative sanctions referred to in this title shall be imposed by the Bank of Italy or Consob, to the extent of their duties, with a decree stating the grounds for the decision, after notifying the charges to the interested parties to be implemented within one hundred eighty days from the

⁷⁴⁸ Paragraph as amended by Article 2 of Law 262/2005.

⁷⁴⁹ Paragraph repealed by art. 40, Legislative Decree no. 39 of 27.01.2010.

⁷⁵⁰ Subsection added by Article 9 of Law 62/2005 (the 2004 Community Law) and amended by Article 37 of Law 262/2005.

⁷⁵¹ Article added by Article 6 of Law 262/2005.

⁷⁵² Subsection repealed by art. 4, Legislative Decree no. 27 of 27.01.2010.

⁷⁵³ Subsection as replaced by art. 4, Legislative Decree no. 27 of 27.1.2010.

⁷⁵⁴ Subsection added by art. 4, Legislative Decree no. 27 of 27.1.2010.

⁷⁵⁵ Article first replaced by art. 9 of Law 62/2005 (the 2004 Community Law) and later amended by art. 16, Legislative Decree no. 164 of 17.9.2007, by art. 1, subsection 25, Legislative Decree no. 101 of 17.7.2009 and by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010 as indicated in the following footnotes.

investigation or within three hundred sixty days if the interested party resides or is headquartered abroad and evaluating the submissions they present within thirty days⁷⁵⁶.

2. The proceedings shall afford all parties the opportunity to state their case and have access to the investigation file. Transcripts shall be taken of the proceedings. Investigatory and adjudicatory functions shall be separate.

3. The measure imposing sanctions shall be published in abridged form in the Bulletin of the Bank of Italy or Consob. Taking into account the nature of the offences and the interests involved, the Bank of Italy or Consob may establish further methods of publicizing the measure, charging the related expenses to the offender or excluding publication of the measure where such publication may place the financial markets at serious risk or cause disproportionate damage to the parties⁷⁵⁷.

4. ...*omissis*...⁷⁵⁸

5. ...*omissis*...⁷⁵⁹

6. ...*omissis*...⁷⁶⁰

7. ...*omissis*...⁷⁶¹

8. ...*omissis*...⁷⁶²

9. Companies and entities with which offenders are connected shall be jointly and severally liable with them for payment of the sanction and the publicity expenses referred to in the second sentence of subsection 3 and shall be held to the exercise of the right of recourse against those responsible for the offences.

Article 196

Sanctions applicable to financial salesmen

1. Financial salesmen who violate the provisions of this decree or general or specific rules issued by Consob pursuant thereto shall be punished, taking account of the seriousness of the violation and recidivism, with one of the following sanctions:

- a) a reprimand in writing;
- b) a pecuniary administrative sanction of between one million lire and fifty million lire;⁷⁶³
- c) suspension from the register for a period of between one and four months;
- d) deletion from the register.

2. The sanctions shall be imposed by Consob with a measure stating the grounds for the decision after it has notified the charges to the interested parties, to be issued within one hundred and eighty days of the examination or three hundred and sixty days if the interested party is resident or its company is registered

⁷⁵⁶ Subsection as amended by art. 16 Legislative Decree no. 164 of 17.09.2007. See Bank of Italy instruction of 14.04.2005 (published in Ordinary Supplement no. 88, Official Gazette no. 109 of 12.05.2005).

⁷⁵⁷ Subsection as amended by art. 16 Legislative Decree no. 164 of 17.09.2007

⁷⁵⁸ Subsection first amended by art. 1, subsection 25, Legislative Decree no. 101 of 17.7.2009 and later repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010. Art. 133, subsection 1, paragraph 1), Legislative Decree 104/2010 states: "Unless legal provisions state otherwise, the following shall be settled solely before the administrative court: ... 1) disputes concerning all proceedings, including sanction proceedings and excluding those referring to privatised relations, adopted by the Bank of Italy, by Consob [...]".

⁷⁵⁹ Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

⁷⁶⁰ Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

⁷⁶¹ Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

⁷⁶² Subsection repealed by art. 4, Annex 4, Legislative Decree no. 104 of 2.7.2010.

⁷⁶³ The amounts of pecuniary administrative sanctions were quintupled by Article 39(3) of Law 262/2005. Accordingly, here they are to be understood as having been increased respectively from five hundred and sixteen euro to two thousand five hundred and eighty euro and from twenty-five thousand eight hundred and twenty-three euro to one hundred and twenty-nine thousand one hundred and fifteen euro.

abroad, and evaluated briefs submitted by them within thirty days. Interested parties may also request to be heard in person within the same time limit⁷⁶⁴.

3. The provisions of Law 689/1981 shall apply to the sanctions established by this article, except for Article 16.

4. The companies that use the services of the persons responsible for the violations shall answer jointly and severally with them for payment of the pecuniary sanctions and shall be held to the exercise of the right of recourse against them.

⁷⁶⁴ Subsection amended by art. 1, subsection 26, Legislative Decree no. 101 of 17.7.2009 which added the words: “to be issued within one hundred and eighty days of the examination or three hundred and sixty days if the interested party is resident or its company is registered abroad,”.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 197

Consob staff

1. In order to ensure the full and prompt exercise of the control functions established by Article 62 of Law 449/1997⁷⁶⁵ Consob shall carry out directly all the procedures necessary for the immediate filling of staff positions according to the competitive examination criteria referred to therein, within the limits of its own financial resources and without burdening the public finances.

Article 198

Endorsement of share certificates

1. The power to authenticate endorsements of share certificates provided for in Article 12 of Royal Decree Law 239/1942 may also be exercised by Italian investment companies.

Article 199

Trusts

1. Until the complete reform of regulations for trusts and independent auditors, the provisions of Italian Law no. 1966 of 23 November 1939 and of article 60, subsection 4, Italian Legislative Decree no. 415 of 23 July 1996 shall remain in force⁷⁶⁶.

2. Until the complete reform referred to in subsection 1, trusts operating pursuant to Italian Law no. 1966 of 23 November 1939 and providing securities custody and administration services, and subject to direct or indirect control by a bank or financial intermediary, or trusts that have adopted the public limited company format and have paid-up share capital totalling not less than double that required under article 2327 of the Italian Civil Code, shall be entered in a separate section of the register envisaged in article 106, Italian Legislative Decree no. 385 of 1 September 1993 even if the activities listed in subsection 1 of said article are not exercised. To the extent it may be compatible, article 107, Italian Legislative Decree no. 385 of 1 September 1993 shall apply to the registration application. Should authorisation be rejected, the authorisation pursuant to article 2, Italian Law no. 1966 of 23 November 1939 shall lapse. The Bank of Italy shall exercise the powers indicated in article 108 to ensure the compliance of trusts entered in the separate section with the provisions of Italian Legislative Decree no. 231 of 21 November 2007. To the extent they may be compatible, articles 110, 113-*bis* and 113-*ter* of Italian Legislative Decree no. 385 of 1 September 1993 shall apply to registered trusts⁷⁶⁷.

⁷⁶⁵ Article 62 of Law 449/1997 reads as follows: "Consob's staff. - 1. In order to perform the control functions assigned by Legislative Decree no. 415 of 23 July 1996 and those that will follow from the amended version of the Consolidated Law on Finance referred to in Article 8 of Law 52 of 6 February 1996, the Commissione nazionale per le società e la borsa (Consob) shall complete its staff as redetermined by Article 2, subsection 186, of Law 662 of 23 December 1996, by means of public competitive selection procedures (based on qualifications and exams) calling for very high standards of competence and experience and, for not more than 60 places, by means of a suitable internal selection procedure, without prejudice to Article 39, subsection 3."

⁷⁶⁶ The text of Article 60, subsection 4, Legislative Decree 415/96 states: "4. Trusts which, as at the date of entry into force of this decree, are entered in the special section of the register pursuant to article 3, Italian Law no. 1 of 2 January 1991 shall introduce the words "securities intermediary" to their company name within ninety days. They shall continue to provide investment portfolio services, also under the name of the trust, and be legally registered in a special section of the register as envisaged in article 9. They may not be authorised to provide investment services other than investment portfolio management unless they cease operations under the name of the trust. From the date of entry in the special section of the register, trusts shall be subject to the regulations of this decree and shall not apply Italian Law no. 1966 of 23 November 1939 and Decree Law no. 233 of 5 June 1986, converted with amendments to Italian Law no. 430 of 1 August 1986".

⁷⁶⁷ Article as replaced by art. 9, Legislative Decree no. 141 of 13.8.2010. For the transitional provisions regarding trusts as envisaged in article 199, subsection 2, Legislative Decree no. 58 of 24 February 1998, see article 10, Legislative Decree no. 141 of 13.8.2010.

Article 200

Intermediaries already authorised

1. Investment companies that at the date of entry into force of this decree are entered in the register referred to in Article 9 of Legislative Decree 415/1996 shall be automatically entered in the register referred to in Article 20.
2. Asset management companies that at the date of entry into force of this decree are entered in the register referred to in Article 7(1) of Law 77/1983, the register referred to in Article 3 (1) of Law 344/1993 and the register referred to in Article 3(1) of Law 86/1994 shall be automatically entered in the register referred to in Article 35 and shall be deemed authorised in accordance with Article 34.
3. SICAVs that at the date of entry into force of this decree are entered in the register referred to in Article 9(1) of Legislative Decree 84/1992 shall be automatically entered in the register referred to in Article 44.
4. Banks that at the date of entry into force of this decree are authorised to provide investment services shall remain authorised to provide the same services.

Article 201

Stockbrokers

1. The National Council of Stockbrokers' Associations shall dissolve the professional associations referred to in Article 3 of Law 402/1967, except for the Milan and Rome associations.
2. Stockbrokers shall be entered in the professional register kept by one of the associations referred to in subsection 1, which shall receive payments of the annual fee fixed by the association itself, having regard to entry in the special roll or the national roll referred to in subsections 5 and 6. The association must conserve the books of stockbrokers who are deceased or have been deleted from the single national roll.
3. The other provisions of Law 402/1967 shall be unaffected. Competitive examinations for the appointment of stockbrokers may not be held. Stockbrokers shall be removed from the rolls referred to in subsections 5 and 6 upon reaching the age of seventy. Stockbrokers who were appointed before the entry into force of Law 515/1956 shall be removed from the rolls upon reaching the age of seventy while preserving the rights and duties inherent in the office.
4. The funds in the stockbrokers' common fund and the sureties outstanding at the date of entry into force of this decree shall be returned to those having entitlement.
5. Stockbrokers in office who are members, directors, managers, employees or collaborators of Italian investment companies, banks or asset management companies shall be entered in a special roll kept by the Ministry of the Economy and Finance.⁷⁶⁸ They may not provide investment services and may be directors, employees or collaborators of only one of the aforesaid intermediaries. They shall remain individually subject to the incompatibilities established in subsection 11.
6. Stockbrokers in office who are not entered in the special roll referred to in subsection 5 shall be entered in the single national roll kept by the Ministry of the Economy and Finance.⁷⁶⁹
7. Stockbrokers entered in the single national roll may perform the investment services referred to in Articles 1(5)(b), (c-bis), (d) and (f). They may also provide their own investment services door-to-door and the non-core services referred to in Articles 1(6)(c), only as regards the conclusion of stock exchange repurchase

⁷⁶⁸ Name as amended by Legislative Decree 37/2004.

⁷⁶⁹ Name as amended by Legislative Decree 37/2004.

agreements and other general market transactions, and 1(6)(g), as well as related and instrumental activities, without prejudice to the reservation of activities by law⁷⁷⁰.

8. Stockbrokers entered in the single national roll must keep the accounting records referred to in Articles 2144 ff. of the Civil Code; Consob shall lay down in a regulation the procedures for accounting control on the part of auditing firms entered in the special register referred to in Article 161⁷⁷¹.

9. Failure to perform the service of dealing for customer account for a period exceeding six months shall result in disqualification from office, where documented reasons of health are pleaded, the Ministry of the Economy and Finance,⁷⁷² after consulting Consob, may extend such time limit up to a maximum of 18 months.

10. In order to perform investment services, stockbrokers shall be members of the compensation systems provided for in Article 59. Coordination of the operations of the compensation systems with the insolvency procedure for stockbrokers shall be governed by the regulation referred to in Article 59(3).

11. The position of stockbroker entered in the single national roll shall be incompatible with the performance of any commercial activity, with participation as a member with unlimited liability of companies of whatever nature, with the position of director or manager of companies that engage in commercial activity and, in particular, with the position of member, director, manager, employee or collaborator of a bank, an Italian investment company or asset management company or any other kind of financial intermediary.

12. Articles 6(1)(a), only as regards administrative and accounting procedures and internal controls, Articles 6(1)(b), 6(2) and (2-bis); 8(1), 10(1), 21-25, 31-32, 167, 171, 190 and 195⁷⁷³ shall apply to stockbrokers entered in the single national roll.

13. Stockbrokers may not deal for own account in financial instruments, directly or through nominees, except to invest their personal wealth; such investments shall be immediately communicated to Consob.

14. The Chairman of Consob may as a matter of urgency, where customers or markets are in danger, order the suspension of a stockbroker entered in the single national roll from engaging in the activities performed and the appointment of a special administrator to take over the management thereof where serious violations of legislative or administrative provisions are found. Article 53(2-4) shall apply.

15. The Ministry of the Economy and Finance,⁷⁷⁴ acting on a proposal from Consob, may issue a decree deleting the stockbroker from the single national roll where the irregularities or violations of legislative or administrative provisions are exceptionally serious. The decree may be also be adopted on a proposal from the special administrator referred to in subsection 14 or at the request of the stockbroker.

16. In the case provided for in subsection 15, the Ministry of the Economy and Finance⁷⁷⁵ shall appoint a special administrator for the protection and restitution of the assets belonging to customers. In the performance of his functions the special administrator shall be a public official; he shall act alongside the bodies responsible for bankruptcy proceedings, where these have been established. The Ministry may provide for special safeguards and limitations on the activity of the special administrator and may remove or replace him. The emoluments due to the special administrator shall be determined by the Ministry and charged to the stockbroker. The measures provided for in this subsection may also be adopted following the

⁷⁷⁰ Subsection replaced by art. 17 of Legislative Decree no. 164 of 17.9.2007.

⁷⁷¹ See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

⁷⁷² Name as amended by Legislative Decree 37/2004.

⁷⁷³ Subsection amended by art. 17 of Legislative Decree no. 164 of 17.9.2007 which replaced the words: "subsection 1, paragraph a) with regard solely to the administrative and accounting bodies and to internal audit, and paragraph b), subsection 2, paragraphs a), b) and c)" with the words: "subsections 1, paragraph b), 2 and 2-bis". See Bank of Italy Regulation no. 1097 of 29.10.2007 (published in Official Gazette no. 255 of 2.11.2007).

⁷⁷⁴ Name as amended by Legislative Decree 37/2004.

⁷⁷⁵ Name as amended by Legislative Decree 37/2004.

death of the stockbroker, acting on a proposal from Consob or the special administrator appointed pursuant to subsection 14, or at the request of customers.

17. Deletion of a stockbroker from the single national roll shall result automatically from a judicial finding of insolvency. Consob shall report insolvencies declared under Article 72 to the civil court.

18. Article 190 shall apply to violations of subsections 8, 11 and 13.

Article 202

Provisions on compulsory stock exchange settlement

...omissis...⁷⁷⁶

1. Without prejudice to Article 72, the rules regarding compulsory settlement of contracts concluded by stockbrokers shall apply, insofar as they are compatible, to investment companies and banks authorised to engage in the activities referred to in Articles 1(5)(a) and 1(5)(b)⁷⁷⁷.

2. Authority over the compulsory settlement of contracts shall belong to Consob, which may issue a regulation to coordinate such procedure with that referred to in Article 72⁷⁷⁸.

Article 203

Forward contracts

1. Without prejudice to the time limits for the effects of compulsory administrative liquidation referred to in Article 83 of the Consolidated Law on Banking and to the provisions of Article 90(3) thereof, Article 76 of the Bankruptcy Law shall apply to derivative financial instruments, to the analogous instruments identified pursuant to Article 18(5)(a), to foreign exchange forward transactions, securities lending transactions, repurchase agreements and stock exchange repos. All contracts concluded, even if not yet executed in full or in part, by the date of declaration of bankruptcy or the date from which the decree of compulsory administrative liquidation has effect shall be included for the purposes of this article.

2. For the application of Article 76 of the Bankruptcy Law to financial instruments and transactions specified in subsection 1, reference may also be made to the replacement cost of the same, calculated according to market values at the date of declaration of bankruptcy or the date from which the decree of compulsory administrative liquidation has effect.

Article 204

Central depository services

1. Within twenty-four months of the date of entry into force of this decree, the Bank of Italy shall arrange for the disposal of its shareholding in "Monte Titoli S.p.A. Istituto per la custodia e l'amministrazione accentrata di valori mobiliari".

2. Until the issue of the decrees provided for in Article 90, the central depository for government securities at the Bank of Italy shall continue to be governed by the provisions previously in force.

⁷⁷⁶ Article abrogated by art. 4 of Italian Legislative Decree no. 48 of 24.03.2011 as from 30.06.2011.

⁷⁷⁷ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

⁷⁷⁸ See Consob Regulation no. 16191 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

Article 205
Price quotations

1. Offers to buy or sell financial products in regulated markets or in the organised trading and, if the conditions by Consob regulation shall apply, those executed on multilateral trading systems or systematic internalisers, shall not constitute either public offerings or public offers to buy or exchange within the meaning of Part IV, Title II⁷⁷⁹.

Article 206
Rules applicable to companies listed on markets other than the stock exchange

1. The provisions of the Civil Code referring to companies with shares listed on the stock exchange shall apply to all companies with shares listed on regulated markets in Italy or other EU countries.

Article 207
Shareholders' agreements

1. Shareholders' agreements referred to in Article 122 and existing at the date of entry into force thereof shall be entered in the Company Register within one month of such date.

2. Fixed-term shareholders' agreements existing at the date of entry into force of this decree shall remain in effect until the time limit agreed but not beyond 1 July 2001.

3. Without prejudice to subsection 2, Article 123 shall also apply to permanent agreements existing at the date of entry into force of this decree.

Article 208
Proxies, saving shares, boards of auditors and auditing firms

1. The provisions concerning proxies shall apply to shareholders' meetings called as of the sixtieth day following the issue of the regulations provided for in Article 144.

2. The provisions concerning saving shares shall also apply to savings shares already issued at the date of entry into force of this decree.

3. Companies with listed shares shall apply the provisions concerning the appointment of the board of auditors as of the first renewal following the date of entry into force of this decree. Until the issue of the regulation provided for in Article 148(4), the second subsection of Article 2397 of the Civil Code shall apply.

4. Boards of auditors appointed before the entry into force of this decree but following its publication in the *Gazzetta Ufficiale della Repubblica italiana* shall remain in office for one financial year only.

5. The other provisions concerning boards of auditors and those concerning auditing firms shall apply as of the financial year commencing on 1 July 1998 or thereafter.

⁷⁷⁹ Article first amended by art. 4 Legislative Decree no. 51 of 28.3.2007 which replaced the words: "invitation to invest" with the words: "public offering of financial products" and then by art. 17 Legislative Decree no. 164 of 17.9.2007 which replaced the words: "or alternative trading as indicated in articles 78 and 79 by persons permitted to trade on such systems" with the words: "and, if the conditions indicated by Consob by regulation shall apply, those executed on multilateral trading systems or systematic internalisers". See Consob Regulation no. 16190 of 29.10.2007 (published in Ordinary Supplement no. 222, Official Gazette no. 255 of 2.11.2007).

Article 209
Auditing firms

1. Auditing firms that at the date of entry into force of this decree are entered in the register referred to in Article 8 of Presidential Decree 136/1975 shall be automatically entered in the register referred to in Article 161.
2. For the purposes of entering auditors in the register kept at the Ministry of Justice, the time limit laid down in Article 13(1) of Law 132/1997 shall be extended to the sixtieth day following the date of entry into force of this decree.
3. Companies with listed shares shall conserve a copy of the auditing firms' report on the annual accounts for the purposes of audits by the tax authorities of the corresponding income tax returns. Where such conservation is omitted, Article 39, second subsection, of Presidential Decree 600/1973 shall apply.

Article 210
Amendments to the Civil Code

1. In the fourth subsection of Article 2372 of the Civil Code, the words "or on banks or credit institutions" shall be suppressed.
2. The seventh subsection of Article 2441 shall be replaced by the following:
"The right of pre-emption shall not be considered excluded or limited where the resolution to increase the capital provides for the newly-issued shares to be subscribed for by banks, financial entities or companies subject to supervision by the Commissione Nazionale per le Società e la Borsa or other persons authorised to engage in the placement of financial instruments, with the obligation to offer them to the shareholders of the company, with whatsoever type of transaction, in conformity with the first three subsections of this article. During the period in which they hold the shares offered to the shareholders and in any case until the right of pre-emption has been exercised, such persons may not exercise the voting rights. The costs of the operation shall be borne by the company and the resolution to increase the capital must indicate their amount".
3. The following paragraph shall be inserted in the first subsection of Article 2630 of the Civil Code:
"4) fail to offer on the stock exchange, within the time limits and in the manner established by the third subsection of Article 2441, the unexercised pre-emption rights if the related shares are subscribed for."
4. The following subsection shall be added to Article 2633 of the Civil Code:
"Directors who issue convertible bonds without the indications prescribed in the last subsection of Article 2420-bis shall be punished by a fine of between 2 million and 10 million lire."
5. In the provisions for the implementation of the Civil Code and transitional provisions, approved with Royal Decree 318 of 30 March 1942, the following article shall be inserted after Article 211:
"211-bis. The second sentence of Article 2441, seventh subsection, of the Code shall not apply to the shares held at 7 March 1992 by the persons indicated in the same subsection, with the obligation to offer them to the shareholders."

Article 211
Amendments to the Consolidated Law on Banking

1. Article 52 of the Consolidated Law on Banking shall be replaced by the following:
"Article 52 - *Notifications by the board of auditors and the persons engaged to perform the statutory audit of the accounts*
1. The board of auditors shall inform the Bank of Italy without delay of any act or fact it comes to know of in the performance of their duties that may constitute an irregularity in the management of banks or a violation of the rules governing banking."

2. Firms engaged to audit the accounts of banks shall notify the Bank of Italy without delay of the acts or facts found in the performance of the engagement that may constitute a serious violation of the provisions governing banking, jeopardize the continued existence of the undertaking or result in their rendering an adverse opinion or a qualified opinion on the annual accounts or a disclaimer. Such firms shall send the Bank of Italy all other information and documents requested.

3. Subsections 1 and 2 shall also apply to persons who perform the duties referred to therein at companies that control banks or are controlled by them within the meaning of Article 23.

4. The Bank of Italy shall establish the manner and time limits for the transmission of the information referred to in subsections 1 and 2."

2. The following subsection shall be added to Article 107 of the Consolidated Law on Banking:

"6. Financial intermediaries entered in the special register that have been authorised to provide investment services or have accepted repayable funds for an amount exceeding their capital shall be subject to Title IV, Chapter I, Sections I and III; in place of Articles 86(6), 86(7) and 87(1), Articles 57(4) and 57(5) of the consolidated law on financial markets, issued pursuant to Article 21 of Law 52/1996, shall apply."

3. The following subsection shall be added to Article 111 of the Consolidated Law on Banking:

"5. This article shall not apply in the cases referred to in Article 107(6)."

4. Article 160 of the Consolidated Law on Banking is repealed.

Article 212

Provisions concerning privatizations

1. The second sentence of Article 3(3) of Decree Law 332/1994, ratified with amendments by Law 474/1994, shall be replaced by the following: "... *omissis* ...".

Article 213

Conversion of bankruptcy into compulsory administrative liquidation

1. From the date of entry into force of this decree bankruptcy procedures for intermediaries referred to in Article 107 of the Consolidated Law on Banking for which the conditions indicated in subsection 6 thereof are satisfied and the statement of liabilities has not yet been declared enforceable shall be converted into compulsory administrative liquidation procedures.

2. Without prejudice to the judicial finding of insolvency already declared, the court, proceeding on its own authority or otherwise, shall declare the company subject to compulsory liquidation with a ruling *in camera* and shall order the transfer of the record to the Ministry of the Economy and Finance⁷⁸⁰ for the issue of the related decree and to the Bank of Italy.

3. The bodies of the terminated procedure and those of the compulsory liquidation shall promptly effect the handing over of the company and give notice thereof in the manner established by the Bank of Italy. The effects of acts legally completed shall not be prejudiced.

Article 214

Repeals

1. Without prejudice to what is provided for in subsections 2 and 3, the following provisions are or remain repealed:

a) Articles 11(1), 12-17, 22, 25, 26, 28, 31, 45-52 and 58-60 of Law no. 272 of 20 March 1913 and subsequent amendments;

⁷⁸⁰ The former wording "Ministry of the Treasury, Budget and Economic Planning" was replaced with the wording "Ministry of the Economy and Finance" by art. 1 of Legislative Decree no. 37 of 6.2.2004.

- b) Articles 26 to 43, 44(2), 46(2), 47, 49, 51, 54, last sentence, 56, 61(2), 97, and 106 to 108 of Royal Decree 1068 of 4 August 1913;
- c) Articles 2 to 10 of Royal Decree Law no. 222 of 7 March 1925, ratified by Law no. 597 of 21 March 1926;
- d) Royal Decree Law no. 375 of 9 April 1925, ratified by Law no. 597 of 21 March 1926;
- e) Royal Decree 376 of 9 April 1925;
- f) Articles 4, 6 and 7 of Royal Decree Law no. 601 of 14 May 1925, ratified by Law no. 562 of 18 March 1926;
- g) Royal Decree Law no. 1047 of 26 June 1925, ratified by Law no. 562 of 18 March 1926;
- h) Royal Decree Law no. 1261 of 29 July 1925, ratified by Law no. 562 of 18 March 1926;
- i) Royal Decree Law no. 1748 of 11 October 1925, ratified by Law no. 562 of 18 March 1926;
- j) Royal Decree Law no. 950 of 19 February 1931, ratified by Law no. 1657 of 31 December 1931;
- k) Articles 1 to 11 and 14 to 18 of Royal Decree Law no. 815 of 30 June 1932, ratified by Law no. 118 of 5 January 1933;
- l) Royal Decree Law no. 1607 of 20 December 1932, ratified by Law no. 291 of 20 April 1932;
- m) Law no. 1913 of 4 December 1939.
- n) Article 2369-*bis* of the Civil Code, approved by Royal Decree 262 of 16 March 1942;
- o) Viceregal Legislative Decree no. 250 of 18 September 1944.
- p) Viceregal Legislative Decree no. 321 of 19 April 1946;
- q) Law no. 515 of 23 May 1956;
- r) Law no. 1778 of 31 December 1962;
- s) Articles 1, eleventh subsection, 2, tenth subsection, first and second sentences, 3, 4, 4-*bis*, 4-*ter*, 5-*quinquies*, 5-*sexies*, 9, second subsection, 13, second subsection, 14, 15, 16, 17, 18, sixth subsection, 18-*ter* 18-*quinquies*, fifth subsection, and 18-*septies*, second sentence, of Decree Law no. 95 of 8 April 1974, ratified with amendments by Law no. 216 of 7 June 1974 and subsequent amendments;
- t) Presidential Decree no. 136 of 31 March 1975;
- u) Presidential Decree no. 137 of 31 March 1975;
- v) Presidential Decree no. 138 of 31 March 1975, except for Articles 16 and 18;
- w) Law no. 49 of 23 February 1977;
- x) Law no. 77 of 23 March 1983, except for Articles 9 and 10-*ter*;
- y) Law no. 289 of 19 June 1986;
- z) Presidential Decree no. 556 of 12 December 1987;
- aa) Law no. 1 of 2 January 1991;
- bb) Law no. 157 of 17 May 1991, except for Article 10;
- cc) Legislative Decree no. 84 of 25 January 1992, except for Article 14;
- dd) Legislative Decree no. 86 of 27 January 1992, except for Article 4;
- ee) Law no. 149 of 18 February 1992;
- ff) Law no. 344 of 14 August 1993, except for Article 11;
- gg) Article 1(1)(*m*) and Article 2(1)(*f*) of Law no. 561 of 28 December 1993;⁷⁸¹
- hh) Law no. 86 of 25 January 1994, except for Articles 14-*bis* and 15;
- ii) Article 5(3), 5(4), 5(5) and 8 of Decree Law no. 332 of 31 May 1994, ratified with amendments by Law no. 474 of 30 July 1994;
- jj) Legislative Decree no. 415 of 23 July 1996, except for Articles 60(4), 62, 63, 64 and 65.

2. The following are repealed but shall continue to apply until the date of entry into force of the provisions issued pursuant to this decree:

- a) Articles 5, 5-*bis*, 5-*ter* and 5-*quater* of Decree Law no. 95 of 8 April 1974, ratified with amendments by Law no. 216 of 7 June 1974 and subsequent amendments; related violations shall be punished under Articles 173 and 174 or sanctioned under Article 193(2);
- b) Articles 18, except for the sixth subsection, 18-*bis*, 18-*quater*, 18-*quinquies*, except for the fifth subsection, 18-*sexies* and 18-*septies*, except for the second sentence, of Decree Law no. 95 of 8 April 1974, ratified with amendments by Law no. 216 of 7 June 1974 and subsequent amendments; related violations shall be sanctioned under Article 191;

⁷⁸¹ Paragraph as amended by Article 15 of Law 205 of 25.6.1999 (Official Gazette no. 149 of 28.6.1999).

- c) Article 3 of Presidential Decree no. 136 of 31 March 1975;
- d) Articles 1(1-9), 1(11), 2(2-3), 2-bis (3), 2-bis (4), 2-bis (5), 2-bis (7), 2-ter, 3(3-4), 4(2-14), 7(3), 7(5-6) and 10-bis of Law no. 77 of 23 March 1983; related violations shall be sanctioned under Article 190;
- e) Articles 3(2)(b), 3(2)(c), 3(2)(d), 3(2)(e), 4(2), 9(12-14), and 15 of Law no. 1 of 2 January 1991; related violations shall be punished under Article 169 or sanctioned under Articles 189 and 190;
- f) Article 6 of Law no. 157 of 17 May 1991; related violations shall be punished under Article 174 or sanctioned under Article 193;
- g) Articles 2-4 and 6-7 of Law no. 149 of 18 February 1992; related violations shall be sanctioned under Article 191;
- h) Articles 10, 14, 15, 16(1), 20(1), 20(4), 22-25, 27 and 28 of Law no. 149 of 18 February 1992; related violations shall be sanctioned under Article 192;
- i) Articles 1, 2(3), 2(4), 4(1), 4(4), 5(3), 5(6-11), 6(2), 7(1-6), 8 and 9(2-3) of Legislative Decree no. 84 of 25 January 1992; related violations shall be sanctioned under Article 190;
- j) Articles 1 and 2(2)(a) of Legislative Decree no. 86 of 27 January 1992;
- k) Articles 1(1-7), 3(2), last sentence, 4(1-5), 5(1-4), 8(2), 8(4-5), 9 and 10 of Law- 344 of 14 August 1993; related violations shall be sanctioned under Article 190;
- l) Articles 1(1-6), 3(2), last sentence, 4(1-6), 5(1-4), 7, 8, 9, 12(2), 12(5), 13 and 14 of Law no. 86 of 25 January 1994; related violations shall be sanctioned under Article 190;
- m) Articles 2(4), 6(3-4), 7, 8, 10, 13, 14, 15, 18(1), 18(3), 20(1)(e), 21(2-3), 22(2), 23(5-6), 24, 25, 35(2-3), 66(1)(b), 66(1)(c) and 66(1)(e) of Legislative Decree no. 415 of 23 July 1996; related violations shall be punished under Article 169 or sanctioned under Articles 189 and 190.

3. Until the issue of the regulations provided for in Articles 80(4), 80(5) and 80(6) and in any case until the completion of the sale referred to in Article 204(1), Articles 1 and 10-14 of Law no. 289 of 19 June 1986 shall apply.

4. Every other provision incompatible with this decree is repealed. Reference to the repealed provisions by statutory provisions, regulations or other measures shall be deemed to refer to the corresponding provisions of this decree and the measures provided for therein.

5. Provisions issued pursuant to provisions repealed or replaced shall continue to apply, insofar as they are compatible, until the date of entry into force of the provisions issued pursuant to this legislative decree concerning the corresponding matters. In the event of violations, Articles 190-193 shall apply, with the procedure provided for in Article 195, in relation to the matters respectively governed therein.

Article 215

Implementing provisions

1. The regulations and provisions of a general nature to be issued pursuant to this decree shall be adopted initially within six months of the date of its entry into force.

Article 216

Entry into force

1. This decree shall enter into force on 1 July 1998.

ANNEX⁷⁸²**Section A – Investment services and activities**

- (1) Reception and transmission of orders in relation to one or more financial instruments.
- (2) Execution of orders on behalf of customers.
- (3) Dealing for own account.
- (4) Portfolio management.
- (5) Investment consultancy.
- (6) Subscription and/or placement of financial instruments with firm or standby commitment to the issuer.
- (7) Placement of financial instruments without firm or standby commitment to issuers.
- (8) Management of multilateral trading systems.

Section B – Accessory services

- (1) Safety deposit box rental and the administration of financial instruments on behalf of customers, including custody and related services such as cash/security guarantees.
- (2) Allocation of credit or loans to investors in order to perform a transaction relating to one or more financial instruments, involving the company granting the credit or loan.
- (3) Business consultancy on capital structuring, industrial strategy and related matters, together with consultancy and services in relation to business mergers and takeovers.
- (4) Exchange service where such service is linked to the provision of investment services.
- (5) Investment research and financial analysis or other forms of general recommendation regarding transactions on financial instruments.
- (6) Related services with firm commitment.
- (7) Investment services and activities, together with accessory services of types indicated in sections A or B, linked to derivatives as per section C, points (5), (6), (7) and (10), if linked to the provision of investment or accessory services.

Section C – Financial instruments.

- (1) Securities.
- (2) Money market instruments.
- (3) Units in collective investment undertakings.
- (4) Options, futures, swaps, future contracts on interest rates and other derivative contracts on securities, currency, interest rates or returns, or other derivatives, financial indices or financial measures that may be settled by physical delivery of the underlying asset or by payment of the differentials in cash.
- (5) Options, futures, swaps, future contracts on interest rates and other derivative contracts on commodities, the settlement of which may be by payment of the differentials in cash or at the discretion of one of the parties, except in cases where such option is the result of default or other event leading to cancellation of the contract.
- (6) Options, futures, swaps, future contracts on interest rates and other derivative contracts on commodities, the settlement of which may be by physical delivery of the underlying asset and which are traded on a regulated market and/or multilateral trading systems.
- (7) Options, futures, swaps, forward contracts and other derivative contracts on commodities, the settlement of which may be by physical delivery of the underlying asset, other than those indicated in point 6, that have no commercial purpose, and with the characteristics of other derivatives, taking into consideration, amongst

⁷⁸² Annex replaced by art. 18 Legislative Decree no. 164 of 17.9.2007.

other things, whether they are cleared and executed through recognised clearing houses or whether they are subject to regular margin calls.

(8) Derivatives for the transfer of credit risk.

(9) Differential financial contracts

(10) Options, futures, swaps, interest rate futures and other derivative contracts on climatic variables, transport rates, emission levels, inflation rates or other official economic statistics, the settlement of which is by payment of the differentials in cash or at the discretion of one of the parties, except in cases where such option is the result of default or other event leading to cancellation of the contract, and other derivative contracts on commodities, options, bonds, indices and measures other than those indicated in the previous points, with the characteristics of other derivatives, taking into consideration, amongst other things, whether they are traded on a regulated market or multilateral trading systems, whether they are cleared through recognised clearing houses or whether they are subject to regular margin calls.