

Chambers

The cover features several large, dark green leaf-like shapes scattered across the background, creating a natural, organic feel. The leaves vary in size and orientation, with some pointing upwards and others downwards.

GLOBAL PRACTICE GUIDE

Definitive global law guides offering
comparative analysis from top ranked lawyers

Capital Markets: Debt

Italy

Shearman & Sterling LLP

chambers.com

2019

Law and Practice

Contributed by *Shearman & Sterling LLP*

Contents

1. Debt Markets/Exchanges	p.4	6. Offering Documents	p.8
1.1 Main Markets & Exchanges: Rules or Governance and Indices	p.4	6.1 The Prospectus or Offering Document	p.8
1.2 Rules or Governance Requirements	p.5	6.2 Responsibility and/or Liability for the Content of a Prospectus	p.8
1.3 Indices	p.5	6.3 Offering Documents	p.9
1.4 Regulatory Bodies	p.5	6.4 Main Publication, Filing or Delivery Requirements for the Prospectus	p.9
1.5 Remit of Regulatory Bodies	p.5	6.5 Exemptions to the Requirement to Produce a Prospectus	p.9
1.6 Application Process	p.5		
2. Regulatory and Legislative Framework	p.5	7. Marketing	p.9
2.1 Key Legislative or Regulatory Instruments	p.5	7.1 Marketing of Publicity Restrictions for an Offering of Debt Securities	p.9
2.2 Eligibility Requirements for Listing Debt Securities on the Exchange(s)	p.6		
2.3 Requirements for Incorporation or Valid Existence	p.6	8. Book building and Underwriting	p.10
2.4 Minimum Rating for Securities Listed on the Exchange(s)	p.6	8.1 Extent to Which Book building is Used	p.10
2.5 Historical Accounting or Reporting Requirements	p.6	8.2 Structure of the Underwriting	p.10
2.6 Currency of Debt Securities	p.6	8.3 Key Terms of Subscription/Dealer Agreement	p.10
2.7 Eligibility Requirements for Setting up a Debt Issuance Programme for Securities	p.6	8.4 Rules Regarding Stabilisation and Market Manipulation	p.10
3. Standalone Listings	p.6	9. Governing Law	p.10
3.1 Main Steps for a Standalone Listing of Debt Securities	p.6	9.1 Restrictions on the Use of Foreign Governing Law and/or Jurisdiction for Debt Issuances	p.10
3.2 Companies Incorporated in a Foreign Jurisdiction	p.7	9.2 Cases Where the Choice of a Foreign Governing Law/Jurisdiction Has Not Been Recognised	p.10
3.3 Debut Issuers	p.7	9.3 Enforceability of Foreign Judgments and Arbitration Awards	p.10
3.4 Main Ways to Structure an Offer	p.7	9.4 Special Requirements for a Contract, Judgment or Award to be Enforceable	p.10
3.5 Additional or Different Procedures for listing Different Types of Debt Securities	p.7	9.5 Special Requirements for the Perfection of Security over Assets	p.10
4. Issuances Under a Programme	p.7	9.6 Effect on Enforceability of a Bondholder Being Domiciled in a Foreign Jurisdiction	p.10
4.1 Main Steps to Set Up a Programme for the Issuance of Debt Securities	p.7	9.7 Regulatory Restrictions Concerning Foreign Entities Entering into Bond Transactions or Offering Their Bonds	p.10
5. Parties to an Offering of Debt Securities	p.7		
5.1 Roles of Key Advisers	p.7	10. Offering Timetable	p.11
5.2 Differences in Roles Played by Advisors or Additional Advisers	p.8	10.1 Timetable of an Offering of Debt Securities	p.11

11. Clearing and Settlement	p.11
11.1 Clearing & Settling Debt Securities	p.11
11.2 Differences When Securities Issued in Currency Other Than Local Currency	p.11
12. Tax	p.11
12.1 Main Tax Issues When Issuing & Listing Debt Securities	p.11
12.2 Withholding Tax	p.11
12.3 Taxes on the Issue or Transfers of Listed or Unlisted Debt Securities	p.12
12.4 Application of Capital Gains Tax on Disposal of Securities by Non-Residents	p.12
13. Continuing Obligations	p.13
13.1 Continuing Obligations Applicable to Listed Debt Securities	p.13
13.2 Continuing Requirements for Retail and Wholesale Offers of Debt Securities	p.14
13.3 Foreign Incorporated Issuers	p.14
13.4 Penalties for Non-Compliance with Continuing Obligations	p.14

Shearman & Sterling LLP was one of the first international firms to expand into Europe, with the Paris and London offices opening in 1963 and 1972. In addition to working on local and pan-European matters, the European offices serve as a hub for much of the firm's cross-border work, advising European clients as they expand their business operations globally and clients from all parts of the world looking to invest into Europe. With over 300 lawyers in Brussels,

Frankfurt, London, Milan, Paris and Rome, the firm has a deep understanding of the European capital markets, the industries in which its clients operate and the broader European business landscape. Shearman & Sterling is a market leader in the Italian capital markets arena, having advised underwriters and issuers in more than 100 Italian capital markets transactions in recent years.

Authors



Tobia Croff is a partner in the European capital markets group, advising various financial institutions and corporations in connection with transactions involving the issuance of equity (IPOs, rights offerings) and debt (high yield) securities.

He started in the firm's New York office in 1999, practising US domestic and cross-border M&A, and has been a resident of the Italian offices since 2003, when he switched his focus to the capital markets practice. Tobia is admitted in Italy and New York, and is fluent in English and Italian.



Marco Barbi is an associate in the European capital markets group, and practises in the areas of M&A, corporate law, corporate governance and capital markets. He has played an active part in the teams that have advised Italian and

international corporations and financial institutions in connection with some of the most innovative corporate transactions that have taken place in Italy over the last few years. Mr Barbi joined Shearman & Sterling in 2008, after his graduation from the Bocconi University of Milan.



Emanuele Trucco is counsel in the European capital markets group. He focuses on Italian and US transactions, including public and private M&A, capital markets, real estate and private equity funds transactions. Emanuele represents

financial institutions, corporate clients, property companies and private equity and real estate funds. He joined the firm in Rome after practising in Chicago and Milan with another major US firm and was resident in the New York office. Emanuele is admitted in Italy and New York, and is fluent in English, French and Italian.

1. Debt Markets/Exchanges

1.1 Main Markets & Exchanges: Rules or Governance and Indices

The main Italian regulated market for debt securities is the Mercato Telematico delle Obbligazioni (the "MOT") managed by Borsa Italiana S.p.A. ("Borsa Italiana"), which is dedicated to the trading of bonds (other than convertible bonds), Italian treasury bonds, asset-backed securities and other debt securities. In the following responses we will focus on the listing requirements applicable to the MOT.

Borsa Italiana also operates the ExtraMOT, a multilateral trading facility for the trading of, inter alia, corporate bonds of Italian and foreign issuers already listed on other EU-regulated markets.

The ExtraMOT includes "ExtraMOT Pro", a segment created in 2013 and reserved to professional investors, where debt securities issued by Italian SMEs are typically admitted to trading. In recent years, a significant number of non-listed Italian SMEs issued and listed bonds on this segment, which allows issuers to meet the requirement that their securities be listed in order to access certain beneficial tax (deductibility of interest payments and withholding tax) and corporate

(exemption from statutory debt-to-equity ratio limitations) regimes (the “minibond” regime), as well as to reach investors that are only permitted to invest in listed securities. See also section 12. Tax for the tax treatment of debt securities.

1.2 Rules or Governance Requirements

The MOT is divided into two segments, namely, the DomesticMOT, for securities settled through Monte Titoli’s settlement system, and the EuroMOT, for securities settled through foreign settlement systems (Euroclear and Clearstream).

As indicated above, the ExtraMOT includes a segment called “ExtraMOT Pro”, which is reserved to professional investors.

1.3 Indices

There are no commonly used indices for either the MOT or the ExtraMOT.

1.4 Regulatory Bodies

The main regulatory bodies governing the listing process on the MOT are the Commissione Nazionale per le Società e la Borsa (“CONSOB”), the Italian securities market regulator, and Borsa Italiana. The listing on a multilateral trading facility (“MTF”), such as the ExtraMOT Pro, does not require, per se, a prospectus subject to CONSOB’s review, and therefore the listing process on Italian MTFs is typically governed by Borsa Italiana.

1.5 Remit of Regulatory Bodies

CONSOB is the supervisory authority for the Italian securities market. Its aims are to protect investors and the efficiency, transparency and development of the market. CONSOB, inter alia, defines requirements for public offers and admission to the listing for companies issuing financial instruments and intermediaries, and supervises the regular conduct of trading, ensuring price fairness, efficiency and certainty of the procedures set for the execution of contracts on regulated markets. Moreover, it (i) regulates the reporting obligations of companies listed on regulated markets, (ii) checks information disclosed by monitored entities, including financial documentation, and (iii) can investigate and sanction the entities it is responsible for monitoring.

Borsa Italiana, on the other hand, organises and manages the domestic stock market and is responsible for the admission, suspension and exclusion of financial instruments and traders to listing and trading. In accordance with CONSOB regulations, Borsa Italiana defines and specifies the procedures for admission to the listing and trading on the markets for companies issuing financial instruments, as well as the procedures for admission with respect to intermediaries, and supervises the compliance of listed companies with the applicable disclosure requirements.

1.6 Application Process

In the context of a listing process on the MOT, the most important document is the prospectus, to be prepared by the issuer in accordance with the relevant EU prospectus regulation as well as the Italian implementing regulation. The prospectus is subject to review by CONSOB.

The prospectus may be comprised of a single document or be composed of three separate documents (ie, the registration document, relating to the issuer, a note on the financial instruments offered, relating to the debt securities, and a summary note, containing a summary of the most important information on the issuer and the transaction).

In connection with a debt issuance programme, the offering document would typically be comprised of a base prospectus, which is valid for a 12-month period from its approval and contains information regarding the issuer and the general terms of the programme, including, specifically, the type and array of terms of the securities that the issuer would be able to issue under the programme. For each issuance of debt under the programme, the issuer must file with CONSOB and publish the final terms of the securities it is proposing to offer and the summary note.

In addition to the prospectus, the issuer must file with Borsa Italiana and CONSOB the relevant additional documentation and listing-related communications, whose content is set forth under the regulation issued by Borsa Italiana and CONSOB themselves, regarding, in general, the issuer’s intention to admit the debt securities to a regulated market and its compliance with the relevant requirements, including Borsa Rules.

As further detailed in section 6. Offering Documents below, while the listing on a regulated market requires a prospectus subject to CONSOB’s review, the listing on a MTF and offerings reserved to professional investors do not require a prospectus. However, an offering document may need to be prepared by the issuer regardless, depending on the expectations of the investor pool targeted in the transaction. For the listing of minibonds on the ExtraMOT Pro, the main transaction document is usually the admission document, which is prepared in accordance with the requirements set forth under Borsa regulations for ExtraMOT Pro.

2. Regulatory and Legislative Framework

2.1 Key Legislative or Regulatory Instruments

The main Italian legislative and regulatory instruments governing debt listings on the MOT are the Legislative Decree No 58/1998, “Testo Unico della Finanza” (the “Italian Securities Act”) and its implementing CONSOB regulations, including Regulation No 11971/1999 (the “Issuers’ Regula-

tion”). In addition, the issuer must comply with the relevant regulation issued by Borsa Italiana, in particular, the main regulations applicable to the MOT are included in the rules of the markets organised and managed by Borsa Italiana (the “Borsa Rules”) and the implementing instructions (the “Borsa Instructions”), while the key regulations applicable to the ExtraMOT are contained in a dedicated ExtraMOT regulation issued by Borsa Italiana.

2.2 Eligibility Requirements for Listing Debt Securities on the Exchange(s)

In the first place, the issuance of bonds by Italian issuers is subject to certain requirements and limits set forth under the Italian Civil Code. However, notably, the quantitative limits for debt issuance by Italian joint stock companies are not applicable if the debt securities are intended for listing on a regulated market or a multilateral trading facility. The main eligibility requirements are included in the rules issued by Borsa.

2.3 Requirements for Incorporation or Valid Existence

The bonds (or other debt securities) must, among other things, be issued in compliance with applicable laws and regulations and must be freely negotiable.

Typically, the Italian issuer of debt securities is established in the form of a joint-stock company (*società per azioni*). A limited number of issuers of minibonds are established in the form of a limited liability company (*società a responsabilità limitata*).

2.4 Minimum Rating for Securities Listed on the Exchange(s)

For purposes of listing on the MOT there are no minimum (or any other) rating requirements for the bonds, or a rating requirement for the issuer, with the sole exception of asset-backed securities, which must meet investment-grade ratings. Further, pursuant to the Borsa Rules, if the issuer itself or the relevant bonds have been rated, the rating (if public) and any variation thereof must be communicated to Borsa Italiana during the listing process and to the market.

2.5 Historical Accounting or Reporting Requirements

The most important document in the listing process on the MOT is the prospectus. In accordance with the provisions of Commission Regulation (EC) No 809/2004 implementing Directive 2003/71/EC relating to, inter alia, information to be included in prospectuses (the “Prospectus Regulation”), it is necessary to include audited historical financial information covering the latest two financial years (or any such shorter period that the issuer has been in operation for), including the audit report in respect of each year. Under applicable rules, depending on the timing of the transaction, it may also be necessary to include interim financial state-

ments and, if the issuer has recently made significant acquisitions or dispositions, pro-forma financial information.

In accordance with the Borsa rules applicable to the ExtraMOT Pro, as a pre-requisite to list its debt securities, an issuer must have published financial statements for at least the last two years (of which the last year must be audited). However, it is sufficient to include financial statements for only the last year in the admission document (ie, the offering document applicable to listings on the ExtraMOT Pro, to be prepared in accordance with the requirements set forth under the Borsa regulations for ExtraMOT Pro).

2.6 Currency of Debt Securities

Debt securities are typically issued in Euro. However, there are also debt securities listed on the MOT that have been issued by Italian issuers in other currencies.

2.7 Eligibility Requirements for Setting up a Debt Issuance Programme for Securities

Under the Borsa Rules, issuers that intend to set up a debt-issuance programme must submit to Borsa Italiana an additional request regarding the compliance of the debt securities to be issued under the programme with the Borsa Rules (so-called “giudizio di ammissibilità”, or “eligibility clearance”). Borsa Italiana’s clearance is subject to the approval by CONSOB of the relevant prospectus. Following the obtainment of Borsa Italiana’s clearance, if the issuer intends to amend existing debt securities or if it intends to supplement an existing debt-issuance programme by adding the possibility to issue additional types of securities, the issuer must file revised or additional notes on the financial instruments.

3. Standalone Listings

3.1 Main Steps for a Standalone Listing of Debt Securities

The main steps for an issuer considering a standalone listing of its debt securities on the MOT include the following: (i) appoint the team of advisers (including lead managers, lawyers, independent accountants, etc); (ii) conduct due diligence activities; (iii) draft the prospectus and prepare ancillary documents; (iv) file the prospectus and other listing-related documents with the competent authorities (notably, CONSOB and Borsa Italiana); (v) obtain the relevant authorisations from CONSOB and Borsa Italiana; and (vi) pricing and placement of the securities.

Admission standards applicable to the admission to listing of minibonds on the ExtraMOT Pro are less strict and listings on the ExtraMOT Pro can be achieved in a shorter timeframe. Notably, a prospectus is not required and the main transaction document is the admission document, which is prepared in accordance with the requirements set forth under the Borsa regulations for the ExtraMOT Pro and is

not subject to the approval by Borsa or CONSOB. However, an offering document may need to be prepared by the issuer regardless, depending on the expectations of the investor pool targeted in the transaction.

3.2 Companies Incorporated in a Foreign Jurisdiction

The main procedures applicable to foreign issuers are similar to those applicable to Italian issuers. However, certain additional requirements apply.

For instance, under the Borsa Rules, non-EU issuers must file an opinion of a competent foreign lawyer confirming that there are no restrictions or any other impediment to the substantial compliance by the issuer with the provisions of the Borsa Rules and related Borsa Instructions, or of any other provision applicable to them in connection with their information obligations vis-à-vis the public, CONSOB or Borsa Italiana. In addition, foreign issuers must prove that there are no impediments regarding the exercise of any right related to the financial instruments listed on the MOT.

3.3 Debut Issuers

There are no material differences. However, from a practical point of view, issuers with listed securities may incorporate by reference certain information (eg, financial statements) in their prospectus, in accordance with the relevant EU rules. In addition, the CONSOB review period for first-time issuers may be longer. See section 10. **Offering Timetable.**

3.4 Main Ways to Structure an Offer

In general, wholesale offerings are usually based on trustee structures or fiscal agency structures governed by foreign law, and are listed in non-Italian markets (eg, Ireland, Luxembourg).

Retail offerings tend to be “plain vanilla” bonds, are listed on the MOT and require a prospectus. They typically involve a public offer, and are governed by Italian law, which does not contemplate trustee or fiscal agency structures.

3.5 Additional or Different Procedures for listing Different Types of Debt Securities

Under the Borsa Rules, there are specific requirements applicable to the listing of each different type of financial instruments (eg, structured notes, covered bonds, asset-backed securities and warranties).

Convertible bonds are not traded on the MOT but instead on the regulated market for equity securities managed by Borsa Italiana, the Mercato Telematico Azionario (“MTA”). A number of additional requirements are applicable to these securities. For example, the Borsa Rules require that the instruments provide for adjustment mechanics in the case of extraordinary transactions involving the underlying shares, which also must be admitted to trading on a regulat-

ed market. Notably, the issuance of convertible bonds typically requires a resolution of the extraordinary shareholders’ meeting.

4. Issuances Under a Programme

4.1 Main Steps to Set Up a Programme for the Issuance of Debt Securities

The main steps for an issuer considering setting up a programme for the issuance of debt securities are similar to those applicable to a standalone issuance. Notably, a specific filing with Borsa Italiana is required to verify the compliance of the programme with the relevant Borsa Rules.

5. Parties to an Offering of Debt Securities

5.1 Roles of Key Advisers

An issuance of debt securities usually requires the appointment of the following advisers:

Global co-ordinator

The global co-ordinator is the bank (or other authorised financial institution) that is responsible for overseeing the global offering. There may be one or more global co-ordinators.

Among its principal tasks, the global co-ordinator (or the joint global co-ordinators): (i) oversee the entire process; (ii) co-ordinate the advisors and underwriters (if any); (iii) define with the company the overall strategy of the offering, including with respect to disclosure, and the contractual terms of the instruments; and (iv) provide the company with information and updates regarding market conditions.

Usually, in retail offerings, the global co-ordinator also acts as *responsabile del collocamento* (ie, the bank that forms and co-ordinates the consortium for an Italian public offer) and in such capacity undertakes specific responsibilities regarding the accuracy and the completeness of the information included in the prospectus (Article 94(9) of the Italian Securities Act).

Underwriters (if any)

The underwriters (or initial purchasers), if any, are the banks (or other authorised financial institutions) that undertake to subscribe for (or purchase) a given amount of the debt securities offered to ensure the placement of the entire offered amount. The underwriters typically act in a co-ordinated fashion by forming an underwriting consortium (so-called “consorzio di garanzia”). In underwritten offerings, the global co-ordinator(s) typically also act as underwriters, but in large offerings there may be more underwriters than global co-ordinators.

Liquidity provider (*specialista*)

The issuer may also appoint a liquidity provider (*specialista*) that, in compliance with applicable regulation, supports the liquidity of the securities in the secondary market.

Lawyers

In the context of a debt issuance on the MOT, each of the issuer and the global co-ordinator(s) are assisted by legal counsel. The main duties of the issuer's legal counsel include the assistance to the issuer in connection with: (i) the set-up of the legal structure and timetable of the debt issuance; (ii) legal due diligence; (iii) drafting of the prospectus and of the transaction agreements; (iv) filing with competent supervisory authorities; (v) compliance with securities laws and regulation and, in general, legal and tax aspects; and (vi) issue legal opinions.

Independent auditors (and other consultants)

The main task of the independent auditors is to ensure the correctness of the information contained in the prospectus. The banks may also request the appointment of other consultants to provide comfort on specific data contained in the prospectus.

Independent auditors must review the issuer's financial statements to ensure they are a "true and fair" in accordance with applicable regulations, and the prospectus contains the auditors' audit report or limited review report, as the case may be. Auditors also typically issue comfort letters for the benefit of the underwriters, through which they tie the accounting information contained in the prospectus to the issuer's financial statements. The prospectus may also include the independent auditors' reports on pro-forma financial information and profit forecasts and estimates, if required or otherwise contained in the prospectus.

Financial adviser

When appointed, the financial adviser assists the issuer in structuring and facilitating the issuance process, interacts with investors and advises on matters of valuation and pricing.

Public relations company

When appointed, the public relations company assists the issuer in preparing its communication strategy, with the aim of protecting, enhancing or building the issuer's reputation through the media.

5.2 Differences in Roles Played by Advisors or Additional Advisors

In general, there are no significant differences in the roles played by advisors in the different scenarios indicated above.

In connection with a debt offering made by a foreign entity, in addition to the Italian legal counsel, it will be necessary

to appoint foreign legal counsel, covering the relevant jurisdiction.

Clearly, draw downs under existing programmes entail a more simplified process, also in terms of documentation.

6. Offering Documents

6.1 The Prospectus or Offering Document

Pursuant to Article 94 and 113 of the Italian Securities Act, a prospectus is required for any public offering and/or the admission to listing of debt securities on a regulated market. See also **1.2 Rules or Governance Requirements**.

If certain conditions are met, banks may publish a simplified prospectus for the public offer of debt securities up to EUR75 million over a period of 12 months, issued in a continuous or repeated manner by banks (Article 34-ter(4) of Issuers' Regulation).

Pursuant to Article 94(2) of the Italian Securities Act, the prospectus must contain all information that enables investors to reach an informed assessment of the financial position, economic performance and the prospects of the issuer. Content and format of the prospectus are mostly determined on the basis of the Prospectus Regulation. Certain additional Italian requirements may apply (such as the content of the "Avvertenze per l'investitore" section, if applicable).

The main information relates to financial statements and financial information in general, risk factors, information regarding the issuer, its business, the securities being offered and the offer. These categories of information are substantially the same for each issuer, regardless of the specific business carried out by the company.

6.2 Responsibility and/or Liability for the Content of a Prospectus

Pursuant to Article 94 of the Italian Securities Act, the issuer, the 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 investors that reasonably relied on the truthfulness and correctness of the information included in the prospectus, unless they prove they adopted all the due diligence for the purpose of guaranteeing that such information was in accordance with the facts and that no information was omitted that could have altered the sense thereof. Also the *responsabile del collocamento* (ie, the bank that forms and co-ordinates the consortium for an Italian public offer) undertakes specific responsibilities regarding the accuracy and the completeness of the information included in the prospectus (Article 94(9) of the Italian Securities Act).

6.3 Offering Documents

In general, the information to be included in the offering document is not significantly affected by the regulation of the relevant regulated market. As previously mentioned, the information requirements for listing on a multilateral trading facility are significantly less stringent, and the publication of a prospectus is not required by the applicable rules (although an offering document may be nonetheless required for marketing purposes).

Retail offerings, and offerings of securities to be listed on the MOT, a regulated market, generally require a prospectus that must be prepared in compliance with the relevant EU and Italian prospectus regulation, as described above. In general, for wholesale offerings of securities that are intended to be listed on multilateral trading facilities (such as ExtraMOT Pro or ExtraMOT), a prospectus is not required. Listing on ExtraMOT Pro requires an admission document prepared in accordance with the Borsa regulations for ExtraMOT Pro. However, depending on the expectations of the targeted investors, the issuer will prepare an offering document in accordance with international market standards. The content requirements for these offering documents are typically substantially similar to those of a prospectus, although with varying degrees of specificity and detail.

6.4 Main Publication, Filing or Delivery Requirements for the Prospectus

For listing on regulated markets, the prospectus including all the required information must be filed with CONSOB for its approval. Before the approval, CONSOB can require certain amendments or the inclusion of additional information in order to grant the greatest transparency and disclosure. Borsa Italiana then admits the bond to listing. Under certain circumstances, a separate application for admission to trading is required.

For listing on ExtraMOT Pro, the admission document must only be filed with Borsa Italiana, whose powers in this context are limited to verifying the requirements necessary to the admission to listing of the minibond.

6.5 Exemptions to the Requirement to Produce a Prospectus

Certain exemptions with respect to the obligation of producing and publishing a prospectus are provided by the Issuers' Regulation. The most frequent exemptions include offers where the minimum denomination per unit is at least EUR100,000, offers addressed to qualified investors, offers addressed to less than 150 investors, as well as offers whose total consideration is of less than EUR8 million over a period of 12 months. However, even in cases where the offering would be exempt from the prospectus requirement, a prospectus may still be required for purposes of listing of the bonds on a regulated market, such as the MOT.

7. Marketing

7.1 Marketing of Publicity Restrictions for an Offering of Debt Securities

A number of restrictions apply to marketing and publicity activities in connection with debt offerings.

Marketing or publicity activities must comply with two key principles:

- (a) the principle of correctness, transparency and equal treatment of the addressees of the offering; and
- (b) the principle of consistency of the information disseminated during the offering with the information contained in the prospectus.

Public offerings in Italy may not be launched until CONSOB has approved the prospectus and the same has been made available to the public. Limited advertisement activity may be carried out before the publication of the prospectus, to the extent it complies with applicable regulations (Article 101 of Italian Securities Act).

Before the publication of the prospectus, any excessively promotional publicity or any mention of the offering must be avoided. In addition, the commencement of any mass publicity campaign outside of the issuer's ordinary practices in advance of the offering would increase the risk of such campaign being deemed to constitute solicitation for investment purposes. In general, publicity activities carried out directly by the company and relationships with the media must be managed with extreme care.

The advertisement regime set forth under the Prospectus Directive applies, as implemented by the Italian Securities Act and CONSOB implementing regulations.

Among other things, any type of advertisement relating to the public offer or admission to trading on the MOT must:

- (a) be clearly recognisable as an advertisement;
- (b) be accurate and not misleading;
- (c) be consistent with the information contained in the prospectus (where the prospectus is already published) or with the information required to be included in a prospectus (where the prospectus is published later);
- (d) include reference to the fact that a prospectus has been/will be published and the location where the public can or may obtain a copy of the same as well as any other means via which it can or may be consulted; and
- (e) contain the required warning or legend (Article 34-octies of Issuers' Regulation).

The CONSOB regulations contain specific restrictions applicable to:

- (a) any advertisement referring to the performance of the proposed investment and other data (such as statistics and studies); and
- (b) dissemination of information, performance of market surveys and collection of purchase intentions pertaining to the retail offer prior to the publication of the prospectus.

The advertisement must be sent to CONSOB for clearance prior to publication.

8. Book building and Underwriting

8.1 Extent to Which Book building is Used

A book building process is typically used for wholesale debt offerings.

8.2 Structure of the Underwriting

In recent years, a number of standalone retail bond transactions were structured as public offers and did not include underwriting commitments. However, a limited number of deals included an underwriting agreement pursuant to which the underwriters undertook to purchase any securities that remained unsubscribed (or that remained unsold) at the end of the offering period.

8.3 Key Terms of Subscription/Dealer Agreement

The subscription or underwriting agreement is usually based on the template of the lead left bank and contain customary provisions. The negotiation of the subscription agreement is focused on provisions regarding representations and warranties, termination (including in connection with the occurrence of a material adverse change on the issuer or the markets) and indemnity.

8.4 Rules Regarding Stabilisation and Market Manipulation

The main rules regarding stabilisation and market manipulation are laid down at EU level by the Market Abuse Regulation (Regulation (EU) No 596/2014) ("MAR"). Italy has adapted its internal laws to the EU rules and CONSOB is the competent authority for the purpose of compliance with MAR.

9. Governing Law

9.1 Restrictions on the Use of Foreign Governing Law and/or Jurisdiction for Debt Issuances

In Italy there are no specific restrictions concerning the use of foreign governing law and/or jurisdictions for debt issuances, save for the applicable conflict of laws provisions.

Securities issued in wholesale offerings are usually governed by English or New York law.

9.2 Cases Where the Choice of a Foreign Governing Law/Jurisdiction Has Not Been Recognised

There is no evidence of Italian courts not recognising the choice of English or New York law in connection with debt issued by Italian companies.

9.3 Enforceability of Foreign Judgments and Arbitration Awards

In general, final, enforceable and conclusive judgments rendered by non-Italian courts, even if obtained by default, may not require retrial and will be enforceable in Italy, provided that, pursuant to Article 64 of Italian Law No 218 of 31 May 1995 (*Riforma del sistema italiano di diritto internazionale privato*), certain conditions are met.

In addition, if an original action is brought before an Italian court, the Italian court may refuse to apply non-Italian law provisions or to grant some of the remedies sought if their application violates Italian public policy and mandatory provisions of Italian law.

9.4 Special Requirements for a Contract, Judgment or Award to be Enforceable

In general, a contract, judgment or award is enforceable to the extent it complies with the conditions set forth under the Italian Law No 218 of 31 May 1995 (*Riforma del sistema italiano di diritto internazionale privato*) and the other applicable international and national regulations.

9.5 Special Requirements for the Perfection of Security over Assets

In general, the perfection of security requires specific steps which vary depending on the relevant security (eg, notices, registration or acknowledgments). In some cases, the perfection has to be repeated periodically (eg, pledge over bank accounts).

9.6 Effect on Enforceability of a Bondholder Being Domiciled in a Foreign Jurisdiction

Generally speaking, if one of the bond-holders is domiciled in a foreign jurisdiction, such element does not per se affect the issuance of debt securities by Italian companies. Clearly, if a bond-holder is domiciled in a foreign jurisdiction, service of process or enforcement of judgments against such bondholder may be more difficult. That said, economic sanctions and other sector-specific regulations may be applicable.

9.7 Regulatory Restrictions Concerning Foreign Entities Entering into Bond Transactions or Offering Their Bonds

In the first place, it should be noted that there is a very limited number of foreign issuers that listed their bonds on the

MOT. That said, from a securities law perspective, the regulatory regime applicable to foreign entities is similar to the regime applicable to Italian entities. The offering of bonds in Italy is subject to the restrictions set forth under the Italian Securities Act and applicable EU regulation (notably, the requirement for a prospectus).

10. Offering Timetable

10.1 Timetable of an Offering of Debt Securities

The typical timetable for an offering of debt securities depends on a number of factors, including (i) whether the issuer is a listed company or a first-time issuer; (ii) whether a prospectus is required; and (iii) market conditions.

The timing ranges from a few days (in the case of a draw-down under a programme) to three to six months (in the case of a debut standalone issuance requiring a prospectus). The timetable of a repeat standalone issuance is usually expected to be shorter, considering that the terms of the new issuance tend to be similar to the previous issuance and, if the issuer goes to market frequently, the disclosure and the related due diligence review will most likely only require updates.

A prospectus is typically required for retail offerings and for offerings of securities intended to be listed on the MOT, and the timetable should take into account the review process by the competent authorities. In this respect, CONSOB's review process for debut issuers may take up to a maximum of 75 working days (or a maximum of 45 working days for issuers with listed financial instruments or issuers that made a public offer of financial instruments).

For the sake of completeness, at the time of the issuance, a filing with the Bank of Italy, the Italian central bank, is also required, mainly for statistical purposes.

11. Clearing and Settlement

11.1 Clearing & Settling Debt Securities

Debt securities of Italian issuers are typically listed on the DomesticMOT segment and are cleared and settled through the Monte Titoli clearing system. Debt securities listed on the EuroMOT segment are settled through foreign settlement systems (Euroclear and Clearstream).

11.2 Differences When Securities Issued in Currency Other Than Local Currency

In general, on the DomesticMOT segment, debt securities are typically traded in Euro through the Monte Titoli clearing system, while on the EuroMOT debt securities issued in a foreign currency are typically traded through the Euroclear and Clearstream Banking Luxembourg clearing systems.

12. Tax

The tax section has been provided by Studio Tremonti Romagnoli Piccardi e Associati.

12.1 Main Tax Issues When Issuing & Listing Debt Securities

The main tax issues to be considered when issuing and listing debt securities in Italy are withholding/substitute taxes on interest and capital gains, deductibility of interest expenses and indirect taxation on any guarantees assisting the securities.

12.2 Withholding Tax

In general, interest, premium and other proceeds (as issue discount) on bonds and similar securities (*“obbligazioni e titoli similari”*) issued by Italian companies are in principle subject to withholding tax or substitute tax at a domestic rate currently of 26% when paid, among others, to non-Italian bondholders (without permanent establishment in Italy to which the investment is effectively connected), and to Italian resident individuals and certain non-commercial entities.

The applicable domestic rate may be reduced (generally to 10%) for non-Italian resident beneficial owners of interest and other proceeds who are resident of States that entered into double taxation treaties with Italy and are entitled to benefits under the relevant applicable double tax treaty.

However, subject to proper procedural requirements, an exemption from taxation in Italy is allowed under the currently applicable domestic legislation for certain categories of non-Italian resident investors in relation to interest, premium and other proceeds in respect of:

- bonds and similar securities (*“obbligazioni e titoli similari”*) issued by Italian resident banks and companies listed on a regulated market or multilateral trading facility of an EU Member State or of an EEA State included in a “white list” of countries recognising the Italian tax authorities’ right to an adequate exchange of information (currently, Norway, Iceland and Liechtenstein); and
- bonds and similar securities (*“obbligazioni e titoli similari”*) issued by Italian resident non-listed companies (other than banks), provided that the bonds:

(i) are either listed on a regulated market or multilateral trading facility of an EU Member State or of an EEA state included in a “white list” (currently, Norway, Iceland and Liechtenstein); or, alternatively,

(ii) if not listed on such a regulated market or multilateral trading facility, are entirely subscribed and held by one or more qualified/professional investor(s).

In brief, tax exemption for interest and other proceeds from bonds under the points above is granted to the following categories of non-Italian resident investors (without permanent establishment in Italy to which the investment is effectively connected):

- beneficial owners that are resident for tax purposes in a white-listed country which recognises the Italian tax authorities' right to an adequate exchange of information (included in Italian Ministerial Decree 4 September 1996, as subsequently amended and supplemented);
- non-Italian resident "institutional investors" ("*investitori istituzionali*") ie, entities which, regardless of their legal or tax status in their country of residence/establishment, have as their principal activity that of managing investments on their own account or on behalf of third parties, such as insurance companies, investment companies, investment funds, SICAV (open-end investment companies) and pension funds), that are established in a white-listed country;
- international bodies or entities set up in accordance with international agreements ratified by Italy; and
- central banks or entities managing also the official reserves of a State.

The above-mentioned exemption regime provided under Italian domestic legislation applies to debt instruments that qualify for Italian tax purposes as bonds or similar securities ("*obbligazioni o titoli similari*"), being debt instruments that: (i) guarantee redemption of the principal amount, and (ii) do not allow participation to, or control over, the management of the issuing company or of the business in relation to which they are issued. Please note that a different regime applies to interest and other proceeds from debt securities that do not qualify as such.

Exemption from Italian withholding tax is also provided for interest, premium and other proceeds from bonds and similar securities ("*obbligazioni e titoli similari*") issued by Italian resident non-listed companies (other than banks), if the recipient is an Italian or EU undertaking for collective investment of income or an Italian securitisation vehicle, subject to certain conditions being satisfied.

Moreover, exemption from Italian taxation may be allowed for intra-group interest payments under the EU Interest & Royalties Directive (2003/49/EC) (as amended), as implemented in Italy.

The viability of offshore structures should be carefully evaluated, based on specific facts and circumstances.

12.3 Taxes on the Issue or Transfers of Listed or Unlisted Debt Securities

The issue and transfers of debt securities qualifying as bonds and similar securities (ie, debt instruments that guarantee

redemption of the principal amount), as well as the establishment of a debt issuance programme, are not subject to any Italian taxes, except for fixed-rate registration tax (currently EUR200) that may in certain cases be due in Italy upon transfer of such debt securities.

In addition, Italian inheritance and gift tax (at a rate currently between 4% and 8%) is generally payable on (a) transfers of assets and rights (including debt securities) (i) by reason of death or donations by Italian residents, even if the transferred assets are held outside Italy, and (ii) by reason of death or donations by non-Italian residents, but limited to transferred assets held in Italy (which, for presumption of law, includes debt securities issued by Italian resident companies), and on (b) the creation of liens on assets and rights (including debt securities) for a specific purpose.

Moreover, a proportional stamp duty is generally applicable in Italy (subject to certain exclusions/exceptions) to periodical communications sent by Italian financial intermediaries to clients, relating to financial instruments deposited with them (including debt securities). The proportional stamp duty does not apply, inter alia, to communications sent by Italian financial intermediaries to subjects not qualifying as clients (as banks, insurance companies, pension funds and certain other financial entities), in relation to which fixed stamp duty applies equal to EUR2 for each communication. Where applicable, the proportional stamp duty shall apply at a rate of 0.2% per annum and for subjects other than individuals a maximum cap is provided equal to EUR14.000 per annum. Periodical communications to clients are presumed to be sent at least once a year.

Italian-resident individuals holding financial instruments abroad shall instead be generally subject to Italian tax on the value thereof (the so-called "Ivafe"). Such tax shall apply also on debt securities issued by Italian companies held abroad by Italian resident individuals. Ivafe shall apply at a rate of 0.2% per annum.

12.4 Application of Capital Gains Tax on Disposal of Securities by Non-Residents

Capital gains realised by non-Italian residents (without permanent establishment in Italy to which the investment is effectively connected) on disposal of debt securities that are listed on regulated markets are generally not taxable in Italy.

Capital gains on disposal of unlisted debt securities are not taxable in Italy if realised by non-Italian resident investors belonging to the categories listed under **12.2 Withholding Tax**, letters A) to D) above.

In the above cases, in order to benefit from exemption from Italian taxation on capital gains, non-Italian residents that hold the securities with an Italian authorised financial intermediary and elect to be subject to the *risparmio gestito*

regime, or are subject to the *risparmio amministrato* regime, may be required to produce in due time to the Italian authorised financial intermediary an appropriate self-declaration that they are not resident in Italy for tax purposes.

Capital gains on disposal of unlisted debt securities realised by other categories of non-Italian resident investors may be subject to substitute tax in Italy currently at a rate of 26%. However, a beneficial treatment under double taxation treaties entered into by Italy may possibly apply, provided that the relevant conditions are satisfied, according to which capital gains would be generally excluded from taxation in Italy (being taxable only in the state of residence of the investor).

Where the 26% substitute tax is due in Italy on capital gains realised by a non-resident investor (without permanent establishment in Italy to which the investment is effectively connected), the taxpayer may opt for one of the following three methods of taxation:

- tax return regime (“*regime della dichiarazione*”), under which the taxpayer must report capital gains realised in an annual tax return to be filed in Italy and 26% substitute tax on capital gains is chargeable, on a cumulative basis, on all capital gains, net of any relevant incurred capital loss of the same nature, realised pursuant to all disposals of securities carried out during any given tax year and is to be paid by the taxpayer;
- non-discretionary investment portfolio (“*risparmio amministrato*”) regime, under which 26% substitute tax is applied separately on capital gains realised on each transfer of securities. The non-discretionary investment portfolio regime is automatically applied (if not revoked) to non-Italian residents holding securities deposited with Italian banks or certain authorised financial intermediaries. Under the *risparmio amministrato* regime, the financial intermediary is responsible for accounting for substitute tax in respect of capital gains realised on each transfer of securities (net of any relevant incurred capital loss of the same nature) and is required to pay the relevant amount to the Italian tax authorities on behalf of the taxpayer, who is not required to declare capital gains in its annual tax declaration;
- discretionary investment portfolio (“*risparmio gestito*”) regime (optional), under which any capital gains accrued on debt securities by non-Italian residents who have entrusted the management of their financial assets (including the debt securities) to an authorised intermediary and have elected for the *risparmio gestito* regime will be included in the computation of the annual increase in value of the managed assets accrued, even if not realised, at year end, subject to 26% substitute tax to be applied on behalf of the taxpayer by the managing authorised intermediary.

13. Continuing Obligations

13.1 Continuing Obligations Applicable to Listed Debt Securities

Preliminarily, it should be noted that typically bonds listed on the MOT are issued by entities whose shares are at the same time listed on the Italian regulated market. In all those cases, the issuer is subject to the extensive obligations applicable to listed entities.

In general, continuing obligations are applicable to the following categories of issuers: (i) any Italian issuer of debt securities having a minimum denomination of less than EUR1,000 that are listed on the MOT or any other EU regulated market; (ii) any non-EU issuer of debt securities having a minimum denomination of less than EUR1,000 that are listed on a regulated market and that have opted to have Italy as home country; and (iii) any issuer of debt securities having a minimum denomination of EUR1,000 or more, which is either based in Italy or whose securities are listed on an Italian regulated market, and, in either case, that have opted to have Italy as home country.

In accordance with EU transparency rules, a number of exemptions apply if the minimum denomination of the bonds exceeds EUR100,000 (such as the exemption from the obligation to publish annual and semi-annual financial information).

The main continuing obligations are contained in the Italian Securities Act, the Issuer’s Regulation and the Borsa Regulations.

Reporting (financial or otherwise) obligations

Issuers with bonds listed on the MOT are required to publish annual and semi-annual financial information.

Disclosure requirements in respect of information regarding the issuer

Issuers with bonds listed on the MOT are also subject to the applicable provisions of MAR and of the Italian Securities Act. In general, privileged information must be disclosed to the market or a specific procedure must be followed, if a delay of such disclosure is permitted. It is worth noting that MAR is also applicable to financial instruments traded on multilateral trading facilities, such as ExtraMOT Pro.

Corporate governance requirements

Pursuant to the Italian Securities Act, the by-laws of issuers with bonds listed on the MOT detail the procedure to be followed for the appointment of the manager responsible for financial information (*dirigente preposto alla redazione dei documenti contabili societari*) as well as the relevant professional requirements.

All meetings of holders of the bonds issued by Italian companies (joint-stock companies) must be held in accordance with Italian applicable laws and regulations. In addition, a representative of the holders of the notes (*rappresentante comune*) may be appointed pursuant to Articles 2415 and 2417 of the Italian Civil Code by the holders of the bonds in order to represent the interests of the holders of the bonds pursuant to Article 2418 of the Italian Civil Code, as well as give effect to resolutions passed at a meeting of the holders of the bonds.

In the event the issuer is established in the form of a limited liability company (*società a responsabilità limitata*), it may be necessary to modify the by-laws to permit the issuance of the relevant bond.

Under applicable laws, Italian issuers whose shares or debt securities are listed on regulated markets must appoint a firm of external auditors to audit the financial statements, in accordance with the auditing standards applicable to listed companies (Legislative Decree No 39/2010). Among other things, the appointment must be made for nine-year terms.

Specific rules applying to transactions post-listing.

MAR is applicable to the instruments listed on a regulated market (such as MOT) or on a multilateral trading facility (such as ExtraMOT). Therefore, the relevant disclosure obligations regarding transactions by directors will be applicable post-listing.

Although it is a rare occurrence, Italian issuers with only debt securities listed on the MOT must also publish certain information regarding stock-option plans and other incentive plans based on financial instruments.

13.2 Continuing Requirements for Retail and Wholesale Offers of Debt Securities

Generally speaking, while retail offers (and, in general, bonds listed on regulated markets) are subject to a number of continuing requirements set forth under applicable laws and regulations, including the Borsa Regulations, wholesale offers listed on multilateral trading facilities are subject to requirements set forth under the terms of the bond.

As indicated above, MAR is applicable to instruments listed on a regulated market or on a multilateral trading facility.

13.3 Foreign Incorporated Issuers

Generally speaking, as previously mentioned, foreign issuers must prove there are no restrictions or any other impediment to their substantial compliance with the provisions set out in the Borsa Rules or in any other provision applicable to them in connection with their information obligations vis-à-vis the public, CONSOB or Borsa Italiana.

13.4 Penalties for Non-Compliance with Continuing Obligations

Penalties for issuers that do not comply with such continuing obligations depend on the relevant obligation and the nature of the provisions breached. Generally speaking, and depending on the relevant circumstances, the issuer, the member of the board of directors as well as the statutory auditors, the manager responsible for financial information (*dirigente preposto alla redazione dei documenti contabili societari*) and/or top managers are exposed to liability in connection with their respective duties and responsibilities. The relevant penalties include administrative fines and, for the most serious offences, criminal penalties.

Shearman & Sterling LLP

Palazzo Serbelloni
Corso Venezia, 16
20121 Milan, Italy

Tel: +39 02 0064 1500

Web: www.shearman.com

The logo for Shearman & Sterling, featuring the word "Shearman" in a large, stylized, cursive font, with "SHEARMAN & STERLING" in a smaller, sans-serif font underneath.

SHEARMAN & STERLING