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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.

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# Capital Markets: Equity

Italy

Shearman & Sterling LLP

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# 2019

## Law and Practice

*Contributed by Shearman & Sterling LLP*

### Contents

<b>1. Equity Markets / Exchanges</b>	<b>p.4</b>	<b>5. Parties to an Equity Offering</b>	<b>p.8</b>
1.1 Main Equity Markets or Exchanges	p.4	5.1 Parties to an Equity Offering	p.8
1.2 Rules and Governance Requirements	p.4	5.2 Role of Advisers for an IPO	p.9
1.3 Indices	p.5	<b>6. Offering Documents</b>	<b>p.9</b>
1.4 Regulatory Bodies Governing the Listing Process	p.5	6.1 The Prospectus or Offering Document	p.9
1.5 Remit of Regulatory Bodies	p.5	6.2 Responsibility and/or Liability for the Content of a Prospectus	p.10
1.6 Applications in the Process of an IPO	p.5	6.3 Content Requirements Differ in the Case of Specialist Companies	p.10
<b>2. Regulatory and Legislative Framework</b>	<b>p.5</b>	6.4 Main Publication, Filing or Delivery Requirements for the Prospectus	p.10
2.1 Key Legislative or Regulatory Instruments for Equity Listings	p.5	6.5 Exemptions to the Requirement to Produce a Prospectus	p.10
2.2 Specific Eligibility Requirements for Issuers Undertaking a Primary Listing	p.5	<b>7. Marketing</b>	<b>p.10</b>
2.3 Incorporation or Valid Existence	p.6	7.1 Marketing or Publicity Restrictions in Respect of an Equity Offering	p.10
2.4 Minimum Market Value	p.6	<b>8. Research</b>	<b>p.11</b>
2.5 Minimum Percentage of Shares in a Listed Issuer	p.6	8.1 Research Reports	p.11
2.6 Historical Accounting or Reporting Requirements	p.6	8.2 Liability Issues or Regulatory/Legislative Requirements	p.11
2.7 Minimum Time Period for Business Operation Prior to Listing	p.6	8.3 “Unconnected” Research Reports	p.11
2.8 Corporate Requirements	p.6	<b>9. Book building and Underwriting</b>	<b>p.11</b>
2.9 Obligations of Underwriters/Brokers to the Regulators	p.6	9.1 Book building Process	p.11
2.10 Eligibility Requirements for Specialist Companies	p.6	9.2 Structure of Underwriting for an Equity Offering	p.12
2.11 Main Requirements for Issuers to Undertake a Secondary Listing	p.6	9.3 Stabilisation and Market Manipulation Rules	p.12
<b>3. Primary Listings</b>	<b>p.7</b>	9.4 “Block Trades”	p.12
3.1 Main Steps for a Primary Listing	p.7	<b>10. Governing Law</b>	<b>p.12</b>
3.2 Procedures for Companies Incorporated in a Foreign Jurisdiction	p.7	10.1 Restrictions Concerning the Use of Foreign Governing Law and/or Jurisdiction	p.12
3.3 Foreign Issuers	p.7	10.2 English or New York Law	p.12
3.4 Main Ways of Structuring an IPO	p.7	10.3 Failure to Recognise Foreign Governing Law and/or Jurisdiction	p.12
<b>4. Subsequent Equity Offerings</b>	<b>p.7</b>	10.4 Enforcement of Foreign Judgments/ Arbitration Awards	p.12
4.1 Structuring Subsequent Equity Offerings	p.7	10.5 Special Requirements for Enforcement of a Contract, Judgment or Award	p.12
4.2 Impact on Procedure of Primary or Secondary Listing	p.8	10.6 Impact of Shareholders Domiciled in a Foreign Jurisdiction	p.13
4.3 Procedure if Offering Made Only to Existing Shareholders	p.8		

10.7 Regulatory Restrictions on Foreign Entities	p.13
<b>11. IPO Timetable</b>	<b>p.13</b>
11.1 IPO: Key Milestones	p.13
<b>12. Tax</b>	<b>p.13</b>
12.1 Main Tax Issues When Issuing and Listing Equity Securities	p.13
12.2 Withholding Tax	p.13
12.3 Capital Duties or Transfer Taxes	p.14
12.4 Capital Gains on Disposals of Listed Shares by Non-Residents	p.15
<b>13. Continuing Obligations</b>	<b>p.15</b>
13.1 Main Continuing Obligations for Publicly Listed Companies	p.15
13.2 Application of Obligations to Foreign Incorporated Issuers	p.16
13.3 Penalties for Non-Compliance With Obligations	p.16

**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.

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## 1. Equity Markets / Exchanges

### 1.1 Main Equity Markets or Exchanges

The main equity exchange is the Italian Stock Exchange, organised and managed by Borsa Italiana S.p.A. ("Borsa Italiana"), which is part of the London Stock Exchange Group. The main equity markets organised and managed by Borsa Italiana with regard to listed companies are (i) the automated screen-based trading system "*Mercato Telematico Azionario*" ("MTA"), a regulated market, and (ii) "*AIM Italia/Mercato Alternativo del Capitale*" ("AIM Italia"), a multilateral trading facility (or "MTF") dedicated primarily to the small and medium companies and the companies having a high growth potential. Equities markets organised by Borsa Italiana also include Market for Investment Vehicles ("MIVs"), a regulated market created with the aim to provide

capital, liquidity and visibility to investment vehicles with a clear strategic vision, including Special-Purpose Acquisition Companies ("SPACs"). In the following responses we will focus on the listing requirements applicable to MTA and AIM Italia.

### 1.2 Rules and Governance Requirements

STAR ("*Segmento Titoli con Alti Requisiti*") is the market segment of MTA dedicated to mid-sized companies with a capitalisation between EUR40 million and EUR1 billion, which voluntarily adhere to and comply with certain requirements exceeding those applicable to standard listing, including high transparency and disclosure requirements, high liquidity requirements (free float of minimum 35%) and corporate governance requirements in line with the best international standards.

### 1.3 Indices

The existing indices are generally market-cap weighted indices measuring the performance of Italian companies listed on the MTA market of Borsa Italiana. The FTSE MIB is the primary benchmark index for the Italian equity markets and includes approximately 80% of the domestic market capitalisation. This index is composed of 40 highly liquid leading companies across different sectors in Italy.

### 1.4 Regulatory Bodies Governing the Listing Process

The main regulatory bodies governing the listing process on the MTA 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 AIM Italia, does not require, per se, a prospectus subject to CONSOB’s review, and therefore the listing process on AIM Italia is almost entirely governed by the rules issued 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, CONSOB:

- regulates the reporting obligations of companies listed on regulated markets,
- monitors information disclosed by supervised entities, including financial documentation, and
- has the authority to investigate and sanction its supervised entities.

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 applicable to intermediaries, Borsa Italiana also supervises the compliance of listed companies with the applicable disclosure requirements.

### 1.6 Applications in the Process of an IPO

In the context of an initial public offering (“IPO”) on the MTA, the most important document is the prospectus, to be prepared by the issuer in accordance with the relevant provisions of Commission Regulation (EC) No 809/2004 implementing Directive 2003/71/EC relating to, inter alia, information to be included in prospectuses (the “EU Prospectus

Regulation”) as well as the Italian implementing regulations. The prospectus is subject to review and approval by CONSOB. A prospectus might also be divided into three separate documents (ie, the registration document, relating to the issuer, a note on the financial instruments offered, relating to the shares, and a summary note, containing a summary of the most important information on the transaction).

A company wishing to go public must file with Borsa Italiana and CONSOB the relevant documentation and other listing-related communications, whose content is set out under the regulations issued by Borsa Italiana and CONSOB themselves, regarding, in general, the issuer’s intention to float and its compliance with the relevant requirements. After the approval by CONSOB of the prospectus and the admission to listing of the shares provided by Borsa Italiana, the issuer must within 24 hours submit to Borsa Italiana a separate communication requesting the admission to trading. Only after Borsa Italiana’s second approval can the shares of the company be admitted to trading, thus completing the IPO process.

## 2. Regulatory and Legislative Framework

### 2.1 Key Legislative or Regulatory Instruments for Equity Listings

The main Italian legislative and regulatory instruments governing equity listings on the MTA 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’ Regulation”). In addition, the issuer must comply with the relevant regulations issued by Borsa Italiana, in particular, the main regulations applicable to the MTA are included in the rules of the markets organised and managed by Borsa Italiana and the implementing instructions.

For IPOs on AIM Italia, the key regulation is contained in the issuer’s regulation for AIM Italia (the “AIM Italia Rules”) issued by Borsa Italiana.

### 2.2 Specific Eligibility Requirements for Issuers Undertaking a Primary Listing

In general terms, in order to be listed, an Italian company must be validly established in the form of a joint stock company (*società per azioni*) and the shares must be freely negotiable. With respect to minimum value of the company and free float percentage in the shareholding structure, it is required: (i) for the listing on MTA, a foreseeable market capitalisation of at least EUR40 million and a free float at least equal to 25% of the company’s share capital and (ii) for the listing on the STAR segment of MTA, a capitalisation between EUR40 million and EUR1 billion and a free float at least equal to 35% of the company’s share capital. With

respect to AIM Italia, the minimum free float required is of 10% of the share capital.

### **2.3 Incorporation or Valid Existence**

See 2.2 **Specific Eligibility Requirements for Issuers Undertaking a Primary Listing** above.

### **2.4 Minimum Market Value**

See 2.2 **Specific Eligibility Requirements for Issuers Undertaking a Primary Listing** above.

### **2.5 Minimum Percentage of Shares in a Listed Issuer**

See 2.2 **Specific Eligibility Requirements for Issuers Undertaking a Primary Listing** above.

### **2.6 Historical Accounting or Reporting Requirements**

The most important document in the listing process on the MTA is the prospectus. In accordance with the provisions of the EU Prospectus Regulation, it is necessary to include audited historical financial information covering the latest three financial years (or such shorter period that the issuer has been in operation for), including the audit report in respect of each year. For AIM Italia listings, it is possible to include in the admission document (ie, the offering document applicable to AIM listings, to be prepared in accordance with the requirements set out under AIM Italia Rules) only the financial statements regarding the last year. Under applicable rules, depending on the timing of the transaction, it may be necessary to also include interim financial statements and, if the issuer has recently made significant acquisitions or dispositions, pro forma financial information.

In accordance with the rules issued by Borsa Italiana applicable to MTA, as a pre-requisite to list shares, the general rule is that an issuer must have published financial statements for at least the last three years (of which the last year must be audited) or such shorter period that the issuer has been in operation, pursuant to a waiver provided under the rules issued by Borsa Italiana..

### **2.7 Minimum Time Period for Business Operation Prior to Listing**

There is no minimum period of operations prior the listing for an issuer.

### **2.8 Corporate Requirements**

In accordance with the applicable laws and regulations, listed companies are required to comply with a number of corporate governance rules, relating to, inter alia, the composition of corporate bodies, requirements applicable to independent auditors and the set up of internal procedures and policies. In most cases, it would be necessary to amend the company's by-laws and put in place a number of other corporate procedures and policies. Furthermore, with respect to corporate

requirements, the issuer may also decide to comply with the code of self-regulation (the "Code of Self-Regulation") drafted by the Corporate Governance Committee for Listed Companies, established by Borsa Italiana, which contains additional corporate governance requirements. The "comply or explain" approach applies to the specific requirements contained in the Code of Self-Regulation.

### **2.9 Obligations of Underwriters/Brokers to the Regulators**

In the context of an IPO: (i) the *responsabile del collocamento* (ie, the bank that forms and coordinates the consortium for an Italian public offer) undertakes specific responsibilities regarding the accuracy and the completeness of the content of the prospectus (Article 94(9) of the Italian Securities Act); and (ii) the bank acting as sponsor must, inter alia, declare to Borsa Italiana that it has submitted all required documents and facts regarding the issuer that have come to its knowledge and that Borsa Italiana must take into consideration in the context of the listing process.

As to the listing process on AIM Italia, the intermediary acting as nominated adviser (or "nomad") must provide Borsa with certain key confirmations. For additional information see item 5.

### **2.10 Eligibility Requirements for Specialist Companies**

SIIQs are companies that can be defined as real estate companies, since they must be prevalently operating in the property rental sector (*società che esercitano in via prevalente l'attività di locazione immobiliare*). In order to be listed, SIIQs need to have a net asset value at least equal to EUR200 million. Such net asset value ("NAV") represents the market value of the assets in the issuer's initial portfolio net of the residual debt on such assets.

### **2.11 Main Requirements for Issuers to Undertake a Secondary Listing**

Foreign issuers wishing to undertake a secondary listing on the Italian stock exchange must comply with the requirements set out by the EU Prospectus Regulation and the applicable provisions of the Italian Securities Act. Furthermore, foreign issuers must prove there are no restrictions or any other impediment to their substantial compliance with the provisions set out in the rules issued by Borsa Italiana or in any other provision applicable to them in connection with their disclosure obligations vis-à-vis the public, CONSOB or Borsa Italiana. Nevertheless, Borsa Italiana may exempt issuers from the obligation to appoint a sponsor when the shares to be admitted are already traded on another EU or non-EU regulated market.

### 3. Primary Listings

#### 3.1 Main Steps for a Primary Listing

The main steps for an issuer considering a primary listing of its shares on the MTA include the following:

- (a) appoint the team of advisers (including lead managers, sponsor/nomad, underwriters, lawyers, independent accountants, etc);
- (b) conduct due diligence activities;
- (c) put in place the necessary corporate steps to comply with the corporate governance requirements applicable to listed companies;
- (d) draft the prospectus (and international offering circular, where applicable) and prepare ancillary documents;
- (e) file the prospectus and other listing-related documents with the competent authorities (notably, CONSOB and Borsa Italiana for the main market);
- (f) obtain the relevant authorisations from CONSOB and Borsa Italiana;
- (g) pricing and placement of shares; and
- (h) settlement.

Admission standards applicable to the admission to listing on the AIM Italia are less strict and listings on AIM 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 out under AIM Italia Rules and is not subject to the approval by Borsa or CONSOB.

#### 3.2 Procedures for 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 rules issued by Borsa Italiana, 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 rules issued by Borsa Italiana and the implementing 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, a foreign issuer must prove that there are no impediments regarding the exercise of any right related to the financial instruments listed on the MTA.

#### 3.3 Foreign Issuers

A very limited number of foreign issuers are listed on the Italian market and they tend to list shares.

#### 3.4 Main Ways of Structuring an IPO

There are three main ways of structuring an IPO: (i) an offer for subscription, contemplating the offering of newly issued shares; (ii) an offer for sale, contemplating the sale of shares owned by issuer's shareholders; or (iii) a combination of (i) and (ii).

In addition, it should be noted that in recent years a number of issuers listed on AIM Italia applied for listing on the MTA, the Italian main market. Such listings do not contemplate any offering of shares and are therefore called "pure listing".

Lastly, under certain circumstances, it is possible also to structure an IPO as a reverse merger of an unlisted company into a listed company. In such a scenario, the shareholders of the unlisted company receive exchange shares of the listed company. Recently, an increasing number of investment companies (and, in particular, SPACs) completed their IPO in Italy using this structure.

No mandatory retail offer requirements are applicable to IPOs in Italy.

The retail offering usually represents a small portion of the offering (typically between 5% and 10% of the global offer). The Italian IPO market has recently recorded an increasing number of IPOs that included, exclusively, an offering to institutional investors.

### 4. Subsequent Equity Offerings

#### 4.1 Structuring Subsequent Equity Offerings

In Italy, listed companies typically raise additional capital through capital increases. The main steps of a capital increase are similar to those applicable to an IPO and, in most cases, a prospectus is required. In general, considering that the company is already subject to the set of regulations applicable to listed companies, the process tends to be quicker and more straightforward.

Under Italian law, in the case of a capital increase of an Italian issuer, pre-emptive subscription rights are granted to existing shareholders. Shareholders who do not wish to exercise those rights may sell them on the market. Any right that remain unexercised within the timeframe provided by law are forfeited without compensation and are offered by the company to investors pursuant to a so-called "rights auction".

If certain conditions are met, with the favourable vote of the shareholders' meeting, the pre-emptive subscription rights may be excluded and, in such event, the newly issued shares are directly offered to the market.

Under the Italian Civil Code, Italian companies listed on regulated markets (such as MTA) may also exclude pre-emptive

subscription rights for a capital increase of up to 10% of the existing share capital, if the issue price equals the market value of the shares and certain other conditions are met.

Lastly, subsequent equity offerings by existing shareholders are usually carried out through an accelerated book-building processes. In limited circumstances, mostly in the context of the privatisation of state-owned companies, subsequent equity offerings are carried out through public offerings.

### 4.2 Impact on Procedure of Primary or Secondary Listing

In Italy there is a very limited number of secondary listings. In general terms, the procedures to be followed by a foreign company with a secondary listing in Italy may differ on a case-by-case basis considering that such issuer should in the first place comply with the applicable foreign corporate law and regulations.

### 4.3 Procedure if Offering Made Only to Existing Shareholders

In general terms, rights issues (ie, offerings made through pre-emptive subscription rights granted to existing shareholders) require the preparation of a prospectus. In particular, it should be noted that, under the applicable EU Prospectus Regulation, no prospectus is required if the new shares represent less than 20% of the existing listed shares for a 12-month period, however the prospectus is still required if (as typically happens) the capital increase contemplates a public offering.

Stock dividends are uncommon in Italy and the relevant procedures to be put in place depend on the legal structure to be followed (eg, scrip dividend scheme) and, under the EU Prospectus Regulation, may benefit from an exemption from the requirement of a prospectus. In general, any modification of the share capital of an Italian company requires the approval by the extraordinary shareholders' meeting.

## 5. Parties to an Equity Offering

### 5.1 Parties to an Equity Offering

An equity offering 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):

- oversees the entire process;

- co-ordinates the advisers and the underwriters;
- define with the company the overall strategy of the offering, including marketing disclosure; and
- provides the company with information and updates regarding market conditions.

For IPOs, they also advise and assist the issuer in connection with the preparation of the documentation required to comply with Borsa Italiana requirements (including business plan and ancillary documents).

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

The underwriters are the banks (or other authorised financial institutions) that undertake to subscribe for (or purchase) a given amount of the shares offered in the context of the IPO (or capital increase) 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.

#### Sponsor

The sponsor is a bank or an authorised financial intermediary that plays a fundamental role in the context of a company's admission to MTA from a regulatory perspective. In particular, the sponsor is required to assist the issuer both during the listing process and following the completion of the IPO (and, in particular, for a period of at least one year from the start of the trading of the shares). The sponsor is liable vis-à-vis Borsa Italiana for violation of certain Borsa regulation.

The sponsor must, inter alia:

- declare to Borsa Italiana that it has submitted all required documents and facts regarding the issuer that have come to its knowledge and that Borsa Italiana must take into consideration in the context of the listing process;
- ensure that the issuer's corporate bodies are aware of their duties and responsibilities as well as of the continuing obligations applicable to the issuer after the IPO; and
- ensure, usually with the assistance of an independent auditor, that:

- (a) the issuer has implemented internal controls in line with applicable requirements, as described in a document submitted to Borsa Italiana (this requirement is

- not applicable to listings on AIM Italia); and  
 (b) the issuer's estimates contained in the business plan are based on a careful analysis of the issuer's prospects.

Following the completion of the IPO, the sponsor must also:

- ensure that every year at least two research reports on the issuer are published following the approval of the annual report and the half-year report; and
- arrange and attend at least two meetings every year among the company's management and professional investors.

### Specialist

In the event of admission to certain markets/segments (including the STAR segment of the MTA), the issuer is required to appoint a specialist that must, for the entire duration of its appointment and in compliance with applicable regulation: (i) guarantee on a daily basis the liquidity of the traded securities; (ii) arrange and attend at least two meetings every year among the company's management and professional investors; and (iii) ensure that every year at least two research reports on the issuer are published. Such reports must be prepared promptly and in accordance with best practice following the publication of the annual report and the half-year report. The researches must be made public in accordance with the applicable regulation. The specialist is liable vis-à-vis Borsa Italiana for violation of certain Borsa regulation.

### Lawyers

In the context of the IPO process on the MTA, 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:

- the set-up of the legal structure and timetable of the IPO and the corporate governance of the listed entity;
- legal due diligence;
- drafting of the prospectus (and of the international offering circular, if any);
- filing with competent supervisory authorities; (v) drafting and negotiation of the underwriting agreement and of the other transaction agreements;
- compliance with securities laws and regulation and, in general, legal and tax aspects; and
- 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 (and in the international offering circular). The banks may also request the appointment of other consultants to provide comfort on specific non-accounting data contained in the prospectus.

Independent auditors must review the issuer's financial statements to ensure they are "true and fair" in accordance with applicable regulation, 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 IPO 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 in the context of the IPO.

## 5.2 Role of Advisers for an IPO

The appointment of financial advisers and public relations companies are more common for IPOs on the main market.

Listings on AIM require the appointment of a nominated adviser (or nomad) and a specialist enrolled in a register kept by Borsa Italiana.

### Nomad

The nomad is typically a bank or an authorised financial intermediary enrolled in a register kept by Borsa that meets certain eligibility criteria set out under applicable Borsa regulations. In accordance with AIM Italia Rules, companies listed on AIM Italia must retain a nomad at all times.

Each nomad is responsible, inter alia, for advising a company on its responsibilities in connection with its admission to AIM and, once listed on AIM, in connection with its continuing obligations. During the listing process, among others, the nomad must also perform a thorough due diligence on the AIM applicant, ensure that the admission document and the issuer comply with the applicable Borsa regulations, and provide Borsa with certain key confirmations. The nomad is liable vis-à-vis Borsa Italiana for violation of its duties under applicable Borsa regulation.

## 6. Offering Documents

### 6.1 The Prospectus or Offering Document

Pursuant to Articles 94 and 113 of the Italian Securities Act, a prospectus is required for any public offering and/or the

admission to listing of the shares on a regulated market. See also **1.2 Rules and Governance Requirements**.

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 EU Prospectus Regulation. Certain additional Italian requirements may apply (such as the content of the “*Avvertenze per l’investitore*” section, if applicable).

The main information relate 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 Content Requirements Differ in the Case of Specialist Companies**

In accordance with the relevant EU regulation, where the issuer’s activities fall under one of the categories set out under the EU Prospectus Regulation (ie, property companies, mineral companies, investment companies, scientific research-based companies, companies with less than three years of existence (start-up companies) or shipping companies), additional information may be requested, including, where appropriate, a valuation or other expert’s report on the assets of the issuer.

### **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 may require certain amendments or the inclusion of additional information in

order to provide the greatest transparency and disclosure. Borsa Italiana then admits the shares to listing and, following a separate request of the issuer, admits them to trading.

For listing on AIM Italia, 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 shares of the issuer

### **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 addressed to qualified investors, offers addressed to less than 150 investors, as well as offers whose total consideration of less than EUR8 million over a period of 12 months. Issuers listed on the MTA (or another regulated market) can also take advantage of an exemption from the requirement to publish a prospectus in connection with the issuance of new securities (to the extent the new securities are fungible with securities already admitted to trading on the same regulated market), if the new securities represent less than 20% of the existing listed securities for a 12-month period.

## **7. Marketing**

### **7.1 Marketing or Publicity Restrictions in Respect of an Equity Offering**

A number of restrictions apply to marketing and publicity activities in connection with equity offerings. Such restrictions are usually summarised in a document prepared by the legal advisers assisting the issuer (so-called “publicity guidelines”).

Marketing or publicity activities must comply with two key principles: (i) the principle of correctness, transparency and equal treatment of the addressees of the offering; and (ii) 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 invest-

ment purposes. Further, 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 out 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 MTA must:

- be clearly recognisable as an advertisement;
- be accurate and not misleading;
- 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 to be published at a later stage);
- 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
- contain the required warning or legend (Article 34-octies of Issuers' Regulation).

The CONSOB regulations contain specific restrictions applicable to:

- any advertisement referring to the performance of the proposed investment and other data (such as statistics and studies); and
- 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. Research

### 8.1 Research Reports

In the context of IPOs, the research department of the underwriters usually prepare research reports. Research reports are unusual for capital increases.

### 8.2 Liability Issues or Regulatory/Legislative Requirements

In accordance with applicable securities laws, the preparation and the distribution of research reports must comply with certain restrictions that are usually detailed in a document prepared by the legal advisers to the underwriters (the so-called "research reports guidelines").

The restrictions on research reports are intended to ensure inter alia:

- that the research reports are not regarded as forming part of the prospectus and/or the international offering circular (collectively, the "Offering Documents");
- consistency between the research reports and the Offering Documents; and
- no information that may influence an investment decision is made available by the issuer to investors but is omitted from the Offering Documents.

Among others, in accordance with such research report guidelines, research reports should include certain legends and their distribution should be restricted to qualified investors (as defined under Article 100 of the Italian securities Act). Research reports should also be sent to CONSOB (pursuant to Article 34-sexies(3) of the Issuers' Regulation) and Borsa Italiana.

Article 34-sexies(1) of CONSOB Regulation No 11971/1999 requires the issuer, the offeror and the underwriters (and any of their controlling, controlled or affiliated entities) to:

- comply with principles of correctness, transparency and equal treatment of the addressees of a public offering and
- refrain from disseminating information which is inconsistent with that disclosed in the prospectus or which may impact the level of acceptance of an offering.

In particular, any material information provided to the so-called "connected analysts" in the context of the analyst presentation (or otherwise included in a research report and/or communicated to institutional investors) must be included in the prospectus (or in supplements to the Italian prospectus and, more in general, in the offering documents).

In October 2017, CONSOB published certain guidelines on investment recommendations, dealing with inter alia:

- the fair presentation of investment recommendations,
- the disclosure of conflicts of interest and
- the description of the circumstances under which CONSOB may request the publication of investments recommendations.

### 8.3 "Unconnected" Research Reports

In Italy, "unconnected" research reports (ie, research reports prepared by analysts from institutions outside the syndicate advising on a specific transaction) are uncommon.

## 9. Book building and Underwriting

### 9.1 Book building Process

Book-building process is used for equity offerings.

### 9.2 Structure of Underwriting for an Equity Offering

In general, in Italy the banks that enter into the underwriting agreement with an issuer undertake to purchase any share that is not underwritten (or that remain unsold) at the end of the offering period.

The underwriting agreement is usually based on the form of the lead global co-ordinator and contain customary provisions. The negotiation of the underwriting agreement is focused on provisions regarding representation and warranties, termination (including in connection with the occurrence of a material adverse change on the issuer or the markets) and indemnity obligations of the issuer.

Typically, the fees are calculated on the basis of the maximum amount covered by the underwriting agreement. The portion of offering covered by equity commitments (such as equity commitments by principal shareholders or the issuer's management) is not covered by the underwriting agreement.

In connection with rights issues, in Italy a so-called "pre-underwriting agreement" is usually executed when the capital increase is announced to the market. Under such agreement, the banks agree to enter into the underwriting agreement at launch if certain conditions are met. Generally, the banks receive an additional fee for the execution of the pre-underwriting agreement.

### 9.3 Stabilisation and Market Manipulation Rules

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

Trading in shares for the stabilisation of securities is exempt from the prohibitions against market abuse if certain conditions are met, including among others, the following:

- stabilisation must be carried out for a limited period (for an IPO, 30 days from the date of commencement of trading of the securities on the trading venue and, for a secondary offering, 30 calendar days after the date of allotment);
- relevant information about the stabilisation must be disclosed and notified to the competent authority of the trading venue;
- adequate limits with regard to price must be complied with (eg, stabilisation of the securities shall not in any circumstances be carried out above the offering price).

### 9.4 "Block Trades"

Certain conditions are applicable to "block trades". Such trades may be done when they exceed certain defined thresholds and must be notified to Borsa Italiana and CONSOB.

## 10. Governing Law

### 10.1 Restrictions Concerning the Use of Foreign Governing Law and/or Jurisdiction

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

### 10.2 English or New York Law

English or New York law may be used to govern an underwriting agreement. Usually, the underwriting agreement relating to the domestic public offering is governed by Italian law, while the underwriting agreement relating to the institutional offer is governed by English or New York law. Separate indemnity provisions governed by New York law are also common when the offering contemplates US placement to qualified institutional buyers.

### 10.3 Failure to Recognise Foreign Governing Law and/or Jurisdiction

We have no evidence of Italian courts not recognising the choice of English or New York law contained in an underwriting agreement in connection with IPOs of Italian companies.

### 10.4 Enforcement of Foreign Judgments/ 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.

### 10.5 Special Requirements for Enforcement of a Contract, Judgment or Award

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 other applicable international and national regulation.

## 10.6 Impact of Shareholders Domiciled in a Foreign Jurisdiction

In general terms, if one of the shareholders is domiciled in a foreign jurisdiction, such element does not, per se, affect the issuance of equity securities by Italian companies and enforcement of transaction documents. Clearly, if a shareholder is domiciled in a foreign jurisdiction, service of process or enforcement of judgments against such shareholder may prove more difficult but must comply with the applicable foreign conflict of law provisions. That said, economic sanctions and other sector-specific regulation may be applicable.

## 10.7 Regulatory Restrictions on Foreign Entities

In the first place, it should be noted that there is a very limited number of foreign issuers that listed their equity securities on the MTA. From a securities law perspective, the regulatory regime applicable to foreign entities is similar to the regime applicable to Italian entities. The offering of shares in Italy is subject to the restrictions set out under the Italian Securities Act and applicable EU regulation (notably, the requirement for a prospectus).

## 11. IPO Timetable

### 11.1 IPO: Key Milestones

Below is an outline of a typical timetable of an IPO on the MTA:

- - T: appointment of the team of advisers (including global co-ordinator(s), legal advisers, independent accountants, etc); preparation of the timeline for the various workstreams (for IPOs, including prospectus, business plan and internal control system); preparation of the data room; drafting the prospectus.
- - T+40 days: filing of the prospectus and other documentation with competent authorities (CONSOB and Borsa Italiana)
- - T+90 days: approval of the prospectus by CONSOB (so-called “*nulla osta*”)
- - T+110 days: road show and book-building phase
- - T+120 days: pricing; admission to trading by Borsa Italiana following verification of free-float requirements; start of trading.

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). The length of CONSOB’s approval process depends on a number of factors, including the complexity of the transaction and the request of additional information.

As to capital increases (or equity transactions by listed companies), CONSOB’s approval process is shorter. On the other

hand, in the event of rights issues, it is worth noting that, following CONSOB’s clearance, the offering of pre-emptive subscription rights on the MTA usually takes an additional four weeks.

Listings on AIM Italia can be achieved in a shorter timeframe.

## 12. Tax

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

### 12.1 Main Tax Issues When Issuing and Listing Equity Securities

The main tax issues to be considered when issuing and listing equity securities in Italy are taxation of dividends and capital gains.

### 12.2 Withholding Tax

In general, dividends paid by ordinary Italian companies (including profits distributed upon liquidation) are in principle subject to withholding tax or substitute tax at a domestic rate currently of 26% when paid, among others, to non-Italian shareholders (without permanent establishment in Italy to which the investment is effectively connected), and to Italian resident individuals and certain non-commercial entities (excluding Italian investment funds, that do not suffer withholding on dividends received).

Shareholders that are not resident in Italy for tax purposes suffering such a 26% withholding or substitute tax on dividends, other than holders of savings shares, EU or EEA pension funds and EU or EEA resident companies and entities referred to below, are entitled, upon a specific request to be submitted to the Italian tax authorities under the terms and conditions provided by law, to a refund, for up to eleven twenty-sixths (11/26) of the withholding/substitute tax levied in Italy, of the final tax that they can demonstrate as having paid abroad on the same profits, upon presentation of the respective certification by the foreign country’s tax office to the competent Italian tax authorities.

As an alternative to the aforesaid refund, the applicable domestic withholding/substitute tax rate may be reduced (generally to 15%) for non-Italian resident beneficial owners of dividends 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, in the event of beneficiaries of dividends of Italian source that are companies or entities (i) resident for tax purposes in a EU Member State or in a 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 (ii) subject to corporate income tax in such State, subject to proper procedural requirements, the dividends are subject to withholding/substitute tax in Italy currently at a rate of 1.2%.

In addition, if the beneficiaries of the dividends are pension funds set up in one of the EU Member States or in one of the EEA States included in the above-mentioned white list, such parties will be entitled to benefit from the application of withholding/substitute tax on dividends currently at the reduced 11% rate, subject to proper procedural requirements.

Moreover, exemption from Italian taxation may be allowed for intra-group dividend payments under the EU Parent-Subsidiary Directive, as implemented in Italy. Similar treatment, even though with some differences, may be applied to residents of Switzerland based on an agreement in force with the latter.

Dividends distributed to international entities or bodies that benefit from exemption from taxation in Italy pursuant to international rules or treaties entered into force in Italy will not be subject to withholding/substitute tax.

Please note that a different regime applies to dividends/profits distributed by SIIQs (ie, special listed real estate investment companies), SIINQs (ie, special not-listed real estate investment companies), SICAVs, SICAFs and investment funds.

A different and temporary regime is also provided for distributions of profits from Qualified Shareholding (as defined below under paragraph 12.4) realised up to 31 December 2017, resolved up to 21 December 2022.

### 12.3 Capital Duties or Transfer Taxes

The issue of shares by Italian companies is not subject to any Italian taxes.

Save for certain exclusions and exceptions provided by law, transfers of ownership (including bare ownership) of shares (and depositary receipts representing shares) of companies having a legal seat in Italy (other than SICAVs and SICAFs) shall generally be subject to Italian financial transaction tax ("FTT"). FTT is generally due by those that receive the transfer of shares, irrespective of the place of tax residence of the counterparties and of execution of the transaction, and is generally applied at a rate of 0.2% on the value of the transaction, determined on the basis of the net balance of the daily transactions (calculated for each taxpayer with reference to the number of shares transferred each day). The applicable tax rate is reduced to 0.1% for transfers of shares executed in regulated markets or multilateral trading facilities.

Among other exceptions/exclusions, FTT does not apply to the transfers of shares traded on regulated markets or in multilateral trading facilities issued by companies with an average market capitalisation lower than EUR500 million, as registered in November of the year preceding the transfer of the shares. Moreover, exemption from FTT is granted, among others, to pension funds set up in one of the EU or EEA Member States included in a white list of countries recognising the Italian tax authorities' right to an adequate exchange of information (currently, Norway, Iceland and Liechtenstein).

Special provisions apply to high-frequency trading transaction on shares, which are subject to a special tax at a rate of 0.02% on the value of modified and cancelled orders that in a trading day exceed the 60% threshold established by Article 13 of Ministerial Decree 21 February 2013. High-frequency means those transactions generated by a computer algorithm that automatically determines the decisions relating to the sending, modification and cancellation of orders and of the related parameters that occur at intervals not exceeding half a second.

Moreover, fixed-rate registration tax (currently EUR200) may in certain cases be due in Italy upon transfer of equity 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 shares) (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 shares of Italian resident companies), and on (b) the creation of liens on assets and rights (including shares and rights over shares) 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 shares). The proportional stamp duty does not apply, inter alia, to communications sent by Italian financial intermediaries to those 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 those 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 shares and/or rights over shares of Italian companies held abroad by Italian resident individuals. Ivafe shall apply at a rate of 0.2% per annum.

#### 12.4 Capital Gains on Disposals of Listed Shares by Non-Residents

A distinction needs to be made between capital gains realised upon transfer of a “qualified” or a “non-qualified” shareholding.

References to “Qualified Shareholding” are to shareholdings in companies listed on regulated markets represented by the ownership of shares (other than savings shares), rights or securities through which shares may be acquired which represent overall voting rights exercisable at ordinary shareholders meetings of over 2% or an interest in the share capital of over 5%.

References to “Transfer of Qualified Shareholding” are to transfers for consideration of shares (other than savings shares), rights or securities through which shares can be acquired, which exceed, over a period of 12 months, the threshold for their qualification as Qualified Shareholding. The 12-month period starts from the date on which the securities and the rights owned represent a percentage of voting rights or interest in the capital exceeding the aforesaid threshold.

In brief, capital gains realised by non-Italian residents (without permanent establishment in Italy to which the investment is effectively connected) on disposal of shares listed on regulated markets not constituting a Transfer of Qualified Shareholding are generally not taxable in Italy.

In this case, in order to benefit from exemption from Italian taxation on capital gains, non-Italian residents that hold the shares 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 realised by non-Italian residents on the disposal of shares listed on regulated markets constituting instead Transfer of Qualified Shareholding would be taxable in Italy currently limited to 58.14% of their amount to be subject to Italian (i) personal income tax (up to 43% plus local surtaxes), for individuals, and (ii) corporate income tax (currently at 24%), for corporations.

Non-Italian residents should file a tax return in Italy to report such capital gains and should pay the relevant Italian taxes due. However, starting from 1 January 2019, capital gains taxable in Italy realised by non-Italian residents on

disposal of shares listed on regulated markets constituting Transfer of Qualified Shareholding will be entirely subject to substitute tax in Italy at a rate of 26%, both for non-Italian resident individuals and corporations, and the non-resident investors will be entitled to 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 shares 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 shares. The non-discretionary investment portfolio regime is automatically applied (if not revoked) to non-Italian residents holding shares 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 shares (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 shares 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.

Nonetheless, a beneficial treatment under double taxation treaties entered into by Italy may possibly apply, provided that the relevant conditions are satisfied, according to which, but subject to certain exceptions, capital gains would be generally excluded from taxation in Italy (being taxable only in the State of residence of the investor), even if derived from Transfer of Qualified Shareholding.

### 13. Continuing Obligations

#### 13.1 Main Continuing Obligations for Publicly Listed Companies

Italian listed companies are required to publish several periodical reports, including annual and semi-annual financial

reports (with respect to companies listed on the STAR segment, quarterly reports are also required); a remuneration report each year, relating to the remuneration of the corporate bodies' members and the structure of such remuneration; a corporate governance report, relating to the implementation of the corporate governance rules, with specific reference to the soft-law provisions of the Code of Self-Regulation, in accordance with the "comply or explain" principle; and a non-financial information report, relating to how sustainability and environmental matters are managed by the company.

Pursuant to the provisions of EU Market Abuse Regulation, which are applicable also to companies whose shares are traded on AIM Italia, 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. Press releases must include certain information as defined by Borsa Italiana in its instructions.

Members of the managing body (typically, a board of directors) and of the supervisory body (typically, a board of statutory auditors) must meet certain requirements set out under applicable laws and regulations. In particular, the corporate bodies of Italian listed companies are elected through a voting system on the basis of a list submitted to the shareholders meeting. Whilst all members of the statutory board must meet certain professional and independence requirements, only one director (or two, should the board of directors number more than seven members) must meet the independence requirements set out by the Italian Securities Act. Also, one director must be appointed from the list that resulted second for number of votes. Special rules apply for companies listed on MTA STAR segment (at least two independent directors for a board of up to eight members; at least three, for a board of between nine and 14 members; at least four for a board of more than 14 members). Also, pursuant to the Code of Self-Regulation, it is possible to appoint certain internal committees (nomination, remuneration and risk and control committees); such internal committees are mandatory for a company listed on MTA STAR segment.

Pursuant to the Italian Securities Act, the by-laws of Italian issuers must detail the procedure to be followed for the appointment of the manager responsible for financial infor-

mation (*dirigente preposto alla redazione dei documenti contabili societari*) as well as the relevant professional requirements.

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.

### 13.2 Application of Obligations to Foreign Incorporated Issuers

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 rules issued by Borsa Italiana or in any other provision applicable to them in connection with their information obligations vis-à-vis the public, CONSOB or Borsa Italiana. A limited set of rules are applicable to foreign incorporated issuers listed in an Italian regulated market, including, for example, disclosure obligations requirements (including the disclosure of privileged information and the managers' transactions) as well as the principle of equal treatment of shareholders pursuant to Article 92 of the of the Italian Securities Act. Additional obligations apply to foreign incorporated issuers that chose Italy as their home Member State.

### 13.3 Penalties for Non-Compliance With Obligations

Penalties for issuers that do not comply with such continuing obligations depend on the relevant obligation and the nature of the provisions breached. In general terms 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.

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