

# Italy

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## Regulatory framework

- 1** What are the principal governmental and regulatory policies that govern the banking sector?

The main principles of the Italian system aim to ensure the sound and prudent management of supervised entities, the stability of the entire banking and financial system as well as its efficiency and competitiveness.

The general structure of banking policy in Italy has, over the past three decades, been based on the obligation to comply with the principles and rules arising from Italy's membership of the European Union. As a consequence, the Italian banking system complies with the principle of the mutual recognition of banking authorisation granted in the EU home state.

The exercise of banking activities by authorised EU banks, both in relation to freedom of establishment and to freedom of service provision, must be preceded by a notice to the Bank of Italy from the competent supervisory authority in the bank's home state.

The structure of the Italian banking system is based on the presence of different kinds of institutions, which are entitled to conduct their business in relation to the following activities:

- banks: legally entitled, in principle, to carry out most types of banking activity (collecting savings from the general public, granting of loans and other forms of financing, payment services, issuing of e-money and, pursuant to specific rules, the exercising of investment services). Italian banks may be incorporated as companies limited by shares, as cooperative banks or as mutual banks;
- financial intermediaries: used to be entitled to provide financing, equity investments, brokerage on currencies and payment services (as reserved activities); however, after a very recent reform in 2010, they are now entitled only to grant financing as a reserved activity;
- payment institutions: entitled to carry out only payment services or other ancillary activities;
- e-money institutions: entitled to carry out business in the electronic money sector.

- 2** Please summarise the primary statutes and regulations that govern the banking industry.

The main principles governing the banking industry are contained in the two main legislative acts, which are Legislative Decree No. 385/1993 (the Italian Banking Act, TUB) and Legislative Decree No. 58/1998 (the Italian Financial Act, TUF). In the past two decades, the connections between the banking and the finance industries have considerably increased; therefore the most recent legislative acts affect both the banking and the finance sectors.

The TUB contains the principles regulating the carrying out of business by banks, other financial intermediaries, as well as by other entities operating in the banking sector. Moreover, the TUB is the

principal legislative source for the framework of the powers and responsibilities of the regulatory authorities in Italy.

Both the TUB and the TUF have been significantly amended in the past few years.

The other principal legislative acts and regulations governing banking and financing activities in Italy are the following:

- Bank of Italy Circular No. 229/1999, which contains the supervisory instructions for banks;
- Bank of Italy Circular No. 263/2006, which contains the precautionary guidelines for banks;
- Law No. 262/2005 on the protection of savings, which has profoundly affected the TUB; in particular, this law has reorganised: the powers of the Bank of Italy and its governor-general; the relationships, responsibilities and mutual cooperation of the two main public authorities respectively responsible for the supervision of the banking system (Bank of Italy) and of the securities market (Consob); and corporate governance for listed entities (including banks);
- Legislative Decree No. 206/2005 (the Consumers Code), which contains provisions concerning the distance marketing of consumer financial services, including the distance marketing of banking products;
- Legislative Decree No. 11/2010, which implemented in Italy Directive 2007/64/EC (the Payment Services Directive). In particular, this decree introduced the rules for payment institutions in Italy. Therefore, at present, the rendering of payment services is reserved to banks, e-money institutions and payment institutions;
- Legislative Decree No. 231/2007, which implemented Directive 2005/60/EC on the prevention of the use of the banking and financial system for the purposes of money-laundering and terrorist financing;
- Legislative Decree No. 141/2010, which implemented Directive 2008/48/EC on credit agreements for consumers. In particular, this decree introduced a set of provisions in the TUB regulating, inter alia, pre-contractual transparency duties, verification of the creditworthiness of consumers and the rights of consumers in case of withdrawal. This decree has also had a considerable impact on financial intermediaries. Indeed, this decree has cancelled from the list of reserved activities (towards the general public) equity investment and currency exchange services;
- in Italy an important regulatory role is reserved to the Bank of Italy. In carrying out this role, the Bank of Italy has adopted several regulations governing the requirement for pre-contractual transparency, the organisation and effectiveness of the alternative dispute resolution system provided by the TUB, the authorisation and supervision procedures over all supervised entities, and so on.

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**3** Which regulatory authorities are primarily responsible for overseeing banks?

The activity of overseeing banks is mainly performed by the Bank of Italy, together with other public bodies.

The Ministry of Economy and Finance is entitled to set forth, in regulations enacted by it, the integrity requirements for shareholders and the experience requirements for persons responsible for administrative, management and supervisory functions in the banks or financial intermediaries.

The Inter-ministerial Committee for Credit and Savings (CICR) also has certain powers, strictly coordinated with the Bank of Italy.

The Bank of Italy undertakes the main supervisory and regulatory duties, exercising them through a range of administrative, regulatory and penalty powers.

The Bank of Italy is also in charge of the supervision of:

- financial intermediaries that are entitled to provide financing;
- e-money institutions; and
- payment institutions.

**4** Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

According to the TUB, deposits are not insured by the government, but through a protection scheme originally set up on a voluntary and private basis, even though performing a public function.

The deposit protection schemes currently in force are the Inter-bank Fund for the Protection of Deposits, to which any Italian bank (and in some cases also Italian subsidiaries of banks operating outside the EU area) must adhere, and the Insurance Deposit Fund for Cooperative Savings, which operates for cooperative banks.

In the case of insolvency of a banking institution holding deposits a minimum compensation is provided, currently limited to €103,291.

Some depositors (ie, territorial entities, top managers and directors of the same bank, banks and other credit institutions, etc) and some types of deposits and credits (ie, credits resulting from bonds, promissory notes, share capital and reserves, etc) are excluded from the guarantee.

Any refund up to €20,000 will be paid within three months of the commencement of the forced liquidation procedure of the relevant bank. This term may be extended by the Bank of Italy in exceptional circumstances, up to a maximum of nine months.

There has been no recent intervention of the government in the ownership interest of insolvent banks.

**5** Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

Pursuant to Law No. 262/2005, the Bank of Italy, according to CICR resolution 277/2008, provides the limits and conditions under which a bank may assume risks towards 'related parties'.

This concept includes both 'related entities and 'entities connected to related entities'.

'Related entities' are:

- persons that carry out directive and control duties within the bank or the leading bank of the group;
- major shareholders who, under the TUB, needed prior authorisation for the acquisition of their share capital (see question 18);
- entities that may appoint, by virtue of agreements or of the articles of association, one or more members of the directing and controlling bodies;

- companies over which the bank or the banking group may directly or indirectly exercise a dominant influence;
- other entities identified by the Bank of Italy by the application of the International Accounting Standards (IAS).

'Entities connected to related entities' are:

- companies directly or indirectly controlled by a related entity;
- entities that control directly or indirectly a related entity; and
- other entities identified by the Bank of Italy by the application of the IAS.

Pursuant to the provisions of the Bank of Italy, the full amount of the risk assets of a bank or of a banking group towards related parties cannot exceed certain diversified thresholds (in any case no more than 20 per cent) of its regulatory capital.

Furthermore, persons that carry out directive and controlling duties within the bank, as well as a company of the banking group, can enter into obligations with the bank only under the prior authorisation of the board of directors

**6** What are the principal regulatory challenges facing the banking industry?

As a consequence of the significant legislative and regulatory activity carried out in the past few years, the Italian banking industry has to take into account various legislative and regulatory requirements.

Based on the practical experience of entities operating in the banking system, the more frequent regulatory challenges, also in the light of the most recent business trends in Italy, relate to:

- the need to bring the contractual provisions relating to payment services in line with the recent transparency regulations adopted by the Bank of Italy;
- the new structural organisation which affects financial intermediaries (other than banks) already authorised to carry out payment services;
- the implementation of business plans featuring the integration between banks and payment institutions (such as for example through the use of ATM networks owned by the banks for the offering to the public of money transfer services by payment institutions);
- the partial overlapping between consumer protection rules contained in the section of Legal Decree No. 2005/206 (Consumer Code) that regulates contracts negotiated at a distance having as their purpose banking or financial services and sector rules (such as in the case of consumer credit and payment services performed in favour of consumers).

**7** How has regulation changed in response to the recent crisis in the banking industry?

During the crisis, the Italian banking system did not attain the same level of 'contamination' by certain kinds of toxic assets as in other countries.

After the turmoil which affected the international banking markets, Italy approved two law decrees in order to ensure the stability of the Italian banking system.

In particular, Italy approved the Law Decree No. 155/2008, which has been converted into Law No. 190/2008, that provided for a new form of public guarantee which substantially was added to the pre-existing system of privately funded Italian deposit protection schemes.

In particular, with specific reference to the banking crisis, Law No. 190/2008 introduced a general power for the Ministry of Economy and Finance to subscribe and/or guarantee stock capital increases in those banks where the Bank of Italy discovered a lack of capital adequacy. Moreover, this decree has introduced a new case for the application of the procedure of extraordinary administration

(provided for by article 70 of the TUB), which can now also be applied to banks which are facing a liquidity crisis.

In addition, Law 2/2009 has established the terms for the issuing of certain kinds of hybrid bonds. Such bonds may be issued only by Italian banks or by holdings companies controlling an Italian banking group with shares listed on the Italian stock exchange. Pursuant to this law, the Ministry of Economy and Finance is entitled to subscribe these special bonds issued by the banks; it should be mentioned that these bonds do not carry voting rights and can be converted, after a given time, into ordinary shares with voting rights.

**8** In what ways do you anticipate the legal and regulatory policy changing over the next few years?

Over the next few years various legislative and regulatory interventions are expected to be implemented in Italy.

The Financial Stability Forum (FSB) proposal for the reform of prudential regulation, which was approved in terms of guidelines during the last G20 summit, will be implemented by 2013, as provided in the Bank of Italy's regulatory programme for 2011.

The regulatory interventions expected should be focused on the strengthening and rationalisation of the framework of supervisory controls on banks, investment companies and hedge funds.

To this purpose a first set of regulations should be introduced in order to implement Directive 2010/76/EU regarding capital requirements for the trading book and for securitisations, and the supervisory review of remuneration policies in banks and banking groups (CRD III) ensuring a stricter precautionary regime for financial instruments generated by securitisations.

In relation to a different line of intervention, it is worth underlining that the Bank of Italy has recently issued its regulatory programme for 2011, which identifies and defines two strategic targets for the next year:

- target 1: reinforcement of the precautionary rules for the banking system; and
- target 2: consolidation and coordination of the existing regulatory framework for transparency and fairness in banking contracts.

In order to reach target 1, it is expected that the Bank of Italy will:

- coordinate and unify, as much as possible, the existing regulatory provisions issued by Bank of Italy in the past few years;
- ensure a better consistency with EU and global standards;
- enact and reflect in the regulations several amendments carried out during the past few years;
- update the regulations in light of recent practice and experience.

In relation to target 2, the Bank of Italy will:

- complete the review of the legal framework put together in the recent years; and
- implement the transparency rules for consumer credit agreements, in connection with the recent introduction into the TUB of a specific set of rules.

At the moment there is a transitional legal scenario for financial intermediaries, since the first level rules, adopted by Legislative Decree No. 141/2010, are not fully enforceable until the implementing regulation expected from the Ministry of Economy and Finance is adopted.

## Supervision

**9** How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

Banking supervision performed by the regulatory authorities, and in particular by the Bank of Italy, consists of three types:

- regulatory supervision: this covers the power to adopt provisions of a general nature;
- information supervision: this covers the acquisition, audit and assessment of periodical information provided by the entity supervised on a compulsory basis; and
- inspection supervision: this covers the Bank of Italy's power to carry out on-site inspections.

### Regulatory supervision

The Bank of Italy's supervision aims at ensuring the sound and prudent financial management of supervised entities as well as the stability, efficiency and competitiveness of the banking and financial system as a whole. This aim is pursued through the enforcement of the rules and provisions regulating the credit sector.

Within the exercise of regulatory supervision, the Bank of Italy adopts provisions having as their purpose:

- capital adequacy;
- risk containment;
- ownership restrictions;
- permissible shareholdings;
- administrative and accounting organisation of the banks and internal audits; and
- public disclosure that supervised entities must provide with respect to the above points.

### Inspection supervision

As far as inspection supervision is concerned, this authority is not only exercised over banks and other Italian supervised entities, but also over the branches of banks established in Italy by foreign banks.

### Consolidated supervision

Banking supervision over a group of banks is defined as 'consolidated supervision' and implies a significant extension of the powers of the Bank of Italy also with respect to the following entities:

- companies in a banking group;
- banking and financial companies in which one of the companies of the group has an interest equal to at least 20 per cent of the capital;
- banking and financial companies which are not part of a banking group but which are controlled by the natural or legal person that controls a bank or a group of banks;
- companies that control at least one bank; and
- non-banking companies and non-financial companies directly controlled by a single bank.

As well as the supervisory activity over banks and groups of banks, the Bank of Italy exercises its powers over other relevant entities such as financial intermediaries, e-money institutions and payment institutions.

As a general remark, each of the above mentioned categories (ie, banks, financial intermediaries, etc) is regulated by specific supervisory rules adopted by the Bank of Italy.

A group of banks means a group composed of:

- a leading Italian bank that controls other banking, financial (or instrumental to the banking activity) companies; or
- a leading Italian financial company that controls other banking, financial (or instrumental to the banking activity) companies; or
- a leading Italian financial company, that has at least one bank within the company group.

**10** How do the regulatory authorities enforce banking laws and regulations?

The supervision exercised by the Bank of Italy over the correct performance of banking activity by supervised entities is quite pervasive

and includes the duty to provide periodical information, as well as the inspection power of the authority.

In cases of infringement of both laws and secondary level regulations by supervised entities, the Bank of Italy has a wide range of powers of intervention and sanction.

Supervision authorities, and in particular the Bank of Italy, mainly enforce laws and regulations by the following means (in rising order of seriousness):

- written warnings;
- notice of infringement by the Bank of Italy (upon receiving such notice a full hearing of the parties starts in which the entities involved may file with the Bank of Italy a written defence and potentially block the adoption of a sanctioning resolution);
- administrative pecuniary fines on persons and banks, companies or other bodies involved, should the written defence not be accepted.

If a serious irregularity is found in the management of the supervised entities or in case of a serious breach of the law or of regulatory or statutory provisions, the Bank of Italy may propose that the minister for the economy and finance withdraw the banking licence. If the minister considers the motivation and reasoning of the Bank of Italy well founded, it may order, by means of ministerial decree, the withdrawal of the licence and the commencement of the administrative forced liquidation procedure against the supervised entity.

In addition, with respect to credit institutions at risk of insolvency, the Bank of Italy may issue a number of extraordinary provisions in case of violation of legislative, administrative or statutory provisions which regulate their activities.

These extraordinary provisions include:

- the prohibition against starting up new operations; and
- the order to close branch offices, which may affect individual branches of an Italian bank, including those located abroad, or one or more branches located in Italy of a non-EU bank.

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**11** What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

For the following data we refer to the last available annual report on supervision issued by the Bank of Italy, which relates to 2009, but also contains references to data collected in 2010. From the results of the on-site inspections (205 in 2009 and 138 in the first five months of 2010) carried out by the supervisory authority mostly against banks and banking groups, it is possible to determine the most common critical points and the main irregularities which have arisen.

In 2009 and during the first five months of 2010, 234 cases of irregularity were investigated. Such a significant number, which showed an increase since 2007, reflects the increasing complexity of the Italian banking system's regulatory framework.

The most common infringements relate to the internal structure of supervised entities and to the inadequacy in the management of lending activity. Several procedures regarded non-compliance with the rules providing periodical information duties towards the Bank of Italy or breach of the rules in the matter of transparency in contractual terms and conditions.

As a consequence the supervisory authority:

- issued 55 orders for cancellation against financial intermediaries during 2009;
- issued 88 orders for cancellation of financial intermediaries investigated in the first few months of 2010;
- started 11 extraordinary administration procedures against banks, during 2009; and
- investigated 15 cases of forced administrative liquidation during the first half of 2010.

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**12** How has bank supervision changed in response to the recent crisis?

The financial turmoil of 2007 had a strong impact upon banking supervisory activity. As a general remark, it is worth noting that the crisis did not affect the tripartite structure of the supervisory activity of the Bank of Italy (regulatory, information and inspection).

During 2010, it was expressly clarified that in addition to the sound and prudent financial management of the supervised entities, the stability of the banking and financial system as a whole as well as the efficiency and the competitiveness of the financial system, the transparency of contractual terms and conditions is also to be considered as one of the key principles of banking supervision.

Furthermore, the framework of supervisory controls is in the process of being strengthened due to the above-mentioned EU intervention (CRD III).

As a final remark, in view of the progressive alignment of the Italian banking system with the directives coming from the European Union, several reviews have been started, aimed at implementing regulatory supervision in the following ways:

- giving progressive and gradual implementation to the new Basel III rules; and
- introducing a new set of rules on corporate governance, aiming at regulating remuneration policies and at encouraging a more balanced assumption of risks.

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**Capital requirements**

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**13** Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

The legal and regulatory capital adequacy requirements are of two types:

- requirements to be fulfilled in order to obtain a licence for banking activities;
- requirements to be fulfilled during the course of business (the regulatory capital).

In relation to the capital requirements for access to banking activities, banks must be incorporated with a minimum capital equal to €6.3 million for banks incorporated as companies limited by shares, and with a minimum capital equal to €2 million for banks incorporated as cooperative or mutual banks. This minimum capital must be fully paid up.

With respect to regulatory capital requirements during the course of business, Italian legislation complies with the standards and criteria set forth in the Basel II Guidelines. These requirements are based on the general criteria according to which banks must have a capital (at least) equal to the minimum capital required for access to the banking activity (ie, the incorporation capital).

Furthermore, banks must also align their regulatory capital and the availability of liquidity with the structure of their risk allocation. From this viewpoint, banks must maintain a regulatory capital equal to (at least) 8 per cent of their aggregate risk exposure calculated on the basis of specific accounting ratios for each type of risk.

Regulatory capital is structured on three different levels (tiers). Tier 1 (defined as 'basic assets') and tier 2 ('additional assets') are calculated on the basis of the sum of positive and negative financial items. Italian regulation also allows banks to use tier 3 assets, which are constituted by medium to long-term subordinate loans, but only to cover certain kinds of market risk.

At the moment a process is under way to verify the advisability of introducing forms of contingent capital arrangements.

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**14** How are the capital adequacy guidelines enforced?

The enforcement of capital adequacy guidelines is based on the banks' obligation to calculate their regulatory capital on a quarterly

basis with respect to individual banks and on a six-monthly basis with respect to banking groups, while the consolidated data of the end of the financial period are calculated according to the criteria of reporting for the financial statements for the accounting period.

The adequacy of the regulatory capital is also based on an ongoing enforcement based on the supervisory review process (SRP), which comprises two levels:

- internal capital adequacy assessment process (ICAAP), which relates to banks which internally assess their current and prospective capital adequacy; and
- supervisory review and evaluation process (SREP), carried out by the Bank of Italy, which examines the ICAAP and gives an overall assessment on the bank and its activity and may, if necessary, issue corrective measures.

By means of SREP the Bank of Italy not only verifies a bank's compliance with the capital adequacy requirements, but makes an evaluation of the corporate governance system and of the functionality of its internal bodies as well of the effectiveness of its internal supervisory capacity.

Should SREP reveal anomalies, the Bank of Italy orders the bank to adopt corrective measures.

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**15** What happens in the event that a bank becomes undercapitalised?

Should a bank become undercapitalised and, in general, when it finds itself in a situation of non-compliance with the regulatory provisions on capital adequacy, it may be subject to several potential interventions from the supervisory authorities (with different responsibilities between the Bank of Italy and the Ministry for Economy and Finance), which may vary depending on the seriousness of the infringement ascertained.

First the Bank of Italy may prohibit, by means of an extraordinary provision, the commencement of new operations. This is aimed at avoiding the capital inadequacy from spiralling out of control.

If an irregularity ascertained under the capital adequacy profile is particularly serious or when such inadequacy involves the risk of degenerating into a significant financial loss, the minister for the economy and finance, upon proposal of the Bank of Italy, may order the dissolution of the administrative and directive bodies of the bank and directly appoint an extraordinary commissioner.

Eventually, if the capital adequacy infringement is exceptionally serious, the minister for the economy and finance, upon proposal of the Bank of Italy, may even adopt an order for administrative forced liquidation.

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**16** What are the legal and regulatory processes in the event that a bank becomes insolvent?

A distinction must be made between situations of financial difficulty that are not yet so serious to be likely to cause the irreversible insolvency of a bank, and cases of actual irreversible insolvency.

If the Bank of Italy considers, after a prudent assessment, that the financial crisis of a bank does not yet constitute insolvency, the extraordinary administration procedure may be started.

This procedure contemplates that the minister for the economy and finance, upon proposal of the Bank of Italy, shall adopt a decree by means of which it orders the dissolution of the directive boards and the appointment of extraordinary commissioners. Nevertheless, in case of extreme urgency, the Bank of Italy is entitled to temporarily assign the management of the bank to one or more commissioners, even before the adoption of the ministerial decree.

Should a bank's crisis degenerate into an actual situation of insolvency, pursuant to Italian law, the only possible remedy is the insolvency procedure.

With respect to a banking group, the extraordinary administration of the lead company is provided also when a company of the

banking group is subjected to an insolvency procedure and that circumstance may significantly alter the financial and business balance of the group.

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**17** Have capital adequacy guidelines changed, or are they expected to change in the near future?

As mentioned in question 6, as decided at EU level in response to the ongoing financial crisis, sustainable solutions to avoid the future bankruptcy of banks are expected in the near future. In this respect several prudential requirements are to be introduced in order to reduce the risk of insolvency of those intermediaries as well as rules capable of ensuring the possibility that also those institutions in case of crisis may exit from the market in a sustainable way.

On the other hand, in order to strengthen the stability of intermediaries, a significant improvement in the quality of capital is expected through a rise in minimum requirements and the introduction of capital buffers to restrain financial pro-cyclicality.

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**Ownership restrictions and implications**

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**18** Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

As a general rule, there are no longer any particular limitations regarding the types of entities and individuals that may acquire a controlling interest in a bank.

Nevertheless, prior authorisation by the Bank of Italy is required in the following cases:

- acquisition of at least 10 per cent of the capital or of the voting rights (even by means of several subsequent acquisitions);
- acquisition of an interest which implies the acquisition of the majority of the corporate capital (control);
- the acquisition of an interest which implies the acquisition of a dominant influence on the bank;
- acquisition of shares which causes the overcoming of the thresholds of 20, 30 and 50 per cent of the capital or of the voting rights;
- acquisition of control of a company which already holds a controlling interest or when it exerts a dominant influence on a bank and in any case when it provides at least 10 per cent of the voting rights.

Other specific quantitative restrictions are in force with respect to mutual and cooperative banks. According to these restrictions, in such banks the maximum stake which can be owned by a single entity is such that the existence of a controlling shareholder is not permitted.

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**19** Are there any restrictions on foreign ownership of banks?

In Italy there is no specific restriction on foreign ownership of banks.

However, if the acquisition for which prior Bank of Italy authorisation is required (see question 18) is carried out by an entity (natural or legal person) resident into a non-EU state that does not ensure reciprocity in favour of Italian citizens, the Bank of Italy must transmit the authorisation request to the Ministry of the Economy and Finance. The ministry, upon proposal of the prime minister, may prohibit and stop the relevant acquisition.

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**20** What are the legal and regulatory implications for entities that control banks?

See question 21.

**21** What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

A natural person that controls a bank (see question 23) shall comply with the requirements of integrity provided by the minister for the economy and finance.

Should a legal entity control a bank, the persons that carry out administrative, directive and controlling duties within the controlling entity, shall comply, on a continuing basis, with integrity, professionalism and independence requirements.

Should the controlling entity be a bank or a financial company (see question 9 for the concept of banking group), it shall:

- draft the consolidated financial statements of the group; and
- adopt internal procedures to ensure correct observation of the instructions of the Bank of Italy.

Furthermore, in the case of a banking group, the non-fulfilment of the obligations mentioned above implies a risk that the controlling entity may be subject to the extraordinary administration procedure.

**22** What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

Should one of the companies of the banking group (see question 19) be subject to the insolvency procedure, the Bank of Italy can also start the extraordinary administration procedure for the leading bank.

### Changes in control

**23** Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

As mentioned in question 18, the acquisition of control of a bank must be previously authorised by the Bank of Italy. The Bank of Italy identifies the entities that are required to file the request for authorisation when the rights resulting from the interest are attributed to an entity other than the owner of the interest.

The issuing of the authorisation also depends on the classification of the applicant in terms of transparency of its assets, quality of the governance, soundness and fairness in business conduct and its relationship with other entities that may affect the effectiveness of the supervision.

For the purpose referred to, the notion of 'control' is met when:

- an entity has the majority of the voting rights exercisable in the shareholders' meeting;
- an entity has sufficient voting rights to exercise a dominant influence on the shareholders' meeting; or
- an entity can exercise its dominant influence on the bank by virtue of a particular contract with the bank.

The 'control' exercised through the dominant influence is presumed on the basis of the following (non-binding) legal presumptions:

- the entity owning the shares, on the basis of existing agreements, has the right to nominate or revoke the majority of the board of directors or of the board of statutory auditors or has the majority of the votes necessary to deciding on the approval of the financial statement and on the appointment of directors;
- the entity owns an interest which entitles it to appoint the majority of members of the board of directors and of the board of statutory auditors;
- the existence of economic relations between the shareholders of the controlled entity which cause alternatively:
  - the transmission of profits and losses; or
  - the coordination of management of the business activity with those of other business entities for a common purpose; or
  - the attributing of more powers than those directly deriving from the interest; or

- the attributing of the power to choose the directors or the members of the supervisory board to entities other than the owner of the interest;
- subjection to a common management.

**24** Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

The only difference between an Italian or a foreign acquirer is based on the need for the country of a non-EU acquirer that intends to acquire a capital participation in a bank higher than 10 per cent to ensure reciprocity in favour of Italian citizens.

In 2005–2006, two important Italian banks were acquired by foreign banks (BNL, acquired by BNP Paribas, and Antonveneta, acquired by ABN Amro).

**25** What factors are considered by the relevant regulatory authorities in considering an acquisition of control of bank?

The Bank of Italy would consider, on one hand, the structure of the acquisition operation and the acquirer's business strategy as well as the impact of the transaction on the prudential ratios of all the entities involved.

On the other hand, the assessment would focus on the relevant experience of the incoming management and the integrity of those who, in case of acquisition, would be entrusted with management and control duties in the bank.

**26** Describe the required filings for an acquisition of control of a bank.

In evaluating whether to authorise a major shareholder of a bank or a bank holding company, as described in question 23, the Bank of Italy will consider the information contained, inter alia, in the following documentation:

- for physical persons:
  - self-declaration certifying the absence of criminal convictions;
  - anti-Mafia certificate from the competent prefecture or from the business registry of the relevant chamber of commerce (if applicable);
  - outline of the business activity performed; and
  - list of interests directly or indirectly held;
- for legal entities:
  - minutes of a meeting of the board of directors certifying the absence of criminal convictions against the directors and compliance with anti-Mafia requirements;
  - list of shareholders with more than 5 per cent of the capital;
  - declaration of the directors with indication of the controlling entities; and
  - list of interests directly or indirectly held.

In addition, the acquirer must provide information about its economic equity situation (and, if appropriate, those of the other companies of the group), its business relations with the bank to be acquired and on the source of the financial funding available for the transaction.

Finally the acquirer must provide the business plan for the transaction in order to allow the Bank of Italy to assess its stability and soundness.

**27** What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

The time frame for the approval of an acquisition of a relevant shareholding subject to the Bank of Italy's authorisation (see question 18) is the same for both a domestic and a foreign acquirer.

**Update and trends****Reform of financial intermediaries**

A very recent reform introduced by means of Legislative Decree No. 141/2010 will be implemented by the Bank of Italy by 31 December 2011.

The new set of rules, which will amend title V and VI of the TUB, mainly regards financial intermediaries (ie, entities carrying out financial activity but without collecting savings from the general public). On one hand, some activities originally considered as reserved activities (equity investments and brokerage on currencies) have been removed and are no longer subject to authorisation, unless they fall under other regulated activities. On the other hand, the reform raises the level of supervision on capital adequacy, as well as the number of requirements for the administrative and accounting

organisation of those entities.

The aim of this reform is to ensure that all entities operating in the financial sector comply with the organisational and accounting rules once required only for certain financial intermediaries involving systemic risks (intermediaries formerly falling under article 107 of TUB) and therefore to exclude from the sector or market all those entities that are not able to grant an equivalent level of protection.

As a result, in the next few years there will probably be a reduction in the total number of financial intermediaries authorised to conduct business in Italy.

The ambit of the reform will also include new rules governing financial agents and credit intermediaries, providing a more thorough regulation of those entities.

This time frame is defined in a regulation adopted by the Bank of Italy, which distinguishes between:

- acquisitions that are also subject to competition law, for which a time frame of 60 days for completion of the procedure is set; and
- acquisitions that are not subject to competition law, for which a time frame of 90 days for completion of the procedure is set.

## UGHI E NUNZIANTE

STUDIO LEGALE

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