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Italian private debt eased by new capital market law

On 5 March 2024 the **new Italian capital market law** was passed with the aim of further facilitating access to the capital market by unlisted businesses.

Among the various novelties, in line with the trend of the past decade (Italy still has a banking monopoly, and measures designed to open the market to alternative lenders only started being introduced in 2014), the issuance of bonds is being further promoted.

As a general rule, the issuance of bonds by corporates remains capped at an amount equal to twice the share capital and reserves of the relevant company. As of today, such a cap may be exceeded if the bond is either convertible, or listed, or subscribed for by professional investors subject to prudential supervision (e.g. banks, financial institutions, AIFs). The issuance of bonds by small corporates (limited liability companies, *società a responsabilità limitata*) is even more limited since their (direct) subscription is currently reserved for professional investors subject to prudential supervision.

This has led the market (particularly private credit players serving the private equity industry) to list many bond issuances. While **listing** a bond with a multilateral trading facility appears to

be straightforward from time and cost perspectives, the application of **market abuse regulations** is still necessary. This requires compliance with strict rules in dealing with price-sensitive information, which is rather difficult in the case of listed debt financial instruments, in view of the amount of information covenants that such products typically entail.

The **new rule** (article 7), applicable to issuances by both joint stock companies (*società per azioni*) and limited liability companies (*società a responsabilità limitata*), provides for the possibility for such bonds (even in the case of issuances exceeding the above-mentioned cap) to be subscribed for by **any professional investors** – who, under the MiFID regulations, also include investors wishing ‘on request’ to be treated as professional investors –, as long as the terms and conditions of the bond explicitly limit trading to professional investors only. If the bond investor (i.e. a direct subscriber, considering the no-look-through approach) is an unregulated vehicle, the latter may be considered as a professional investor ‘on request’ (and, therefore, authorised to subscribe for the bonds) following the checks and procedures (set out in the MiFID regulations) with its own bank.

From a tax perspective the above change does not modify the current status. A bond will continue to enjoy the benefit of **exemption from withholding tax** as long as the (foreign) subscriber is a white-listed professional investor.

We do expect that this new law, effective from 27 March 2024, will further boost the Italian private debt market.

The Firm remains available with regard to any further information and to provide all necessary support in order to assist in the adaptation, within the time periods, to the relevant legislation.

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