

CONSULTATION ON THE DRAFT REGULATIONS CONCERNING THE REQUIREMENTS OF INTEGRITY AND THE CRITERIA OF COMPETENCE AND CORRECTNESS OF THE PARTICIPANTS IN THE CAPITAL OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS

The Department of the Treasury, at the Ministry of the Economy and Finance ("MEF"), opened a public consultation on two draft regulations concerning the requirements of integrity and the criteria of competence and correctness of the participants in the capital of credit institutions and investment companies, as provided for, respectively, by art. 25 of legislative decree 385/1993 ("TUB") and art. 14 of legislative decree 58/1998 ("TUF").

1. Requirements and criteria for banks, financial intermediaries, small consortiums, electronic money institutions and payment institutions

Art. 25 of the TUB - as amended by legislative decree 72/2015, implementing directive 2013/36/EU on the prudential supervision of credit institutions and investment firms - prescribes that the owners of shareholdings in the capital of banks indicated in art. 19 of the TUB must possess the requirements of integrity and meet the criteria of competence and correctness so as to ensure the sound and prudent management of the bank. The same article also gives the MEF the power to issue a specific decree, after consulting the Bank of Italy, in order to identify: a) the requirements of integrity; b) the criteria of competence, graduated in relation to the influence on the management of the bank that the owner of the shareholding may exercise; c) the criteria of correctness, with regard, among other things, to the business relations of the owner of the shareholding, to the conduct towards the supervisory authorities and the sanctions or corrective measures imposed by the latter, to restrictive measures inherent in professional activities carried out, as well as any other element that may affect the correctness of the owner of the shareholding.

This provision also applies to financial intermediaries, small consortium, electronic money institutions and payment institutions on the basis of the references contained in articles 110, paragraph 1-ter; 112, paragraph 2; 114-quinquies.3, paragraph 1-ter and 114-undecies, paragraph 1-ter of the TUB.

Pursuant to legislative decree 72/2015, until the entry into force of the implementing regulations issued pursuant to art. 25 of the TUB, as amended by the same decree, the provisions of article 25 of the TUB in the version prior to these amendments and the related implementing regulations, set out in ministerial decree 144/1998, continue to apply.

The draft regulation that is currently being submitted for consultation implements the above-mentioned provisions, introducing entirely new aspects with respect to ministerial decree 144/1998, such as the criteria of correctness (in addition to integrity) and competence. An amendment to MEF decree 176/2014 on the "microcredit regulations" is also envisaged in order to extend the application of the integrity requirements for participants in the capital to these companies as well. For non-banking intermediaries the decree provides, in line with the specific provisions of the TUB, differentiated rules in application of the principle of proportionality. Overall, the draft regulation significantly strengthens the eligibility standards for participants, raising the requirements already set out in the current regulations and introducing new criteria. This, furthermore, in order to align Italian regulations with the joint guidelines of the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

2. Requirements and criteria for SIMs, SGRs, SICAVs and SICAFs

Similarly, art. 14 of the TUF - as amended by legislative decree 72/2015, implementing directive 2013/36/EU on the supervision of credit institutions and investment firms - prescribes that the owners of shareholdings in the capital of SIMs, SGRs, SICAVs and SICAFs indicated in art. 15 of the TUF must possess the requirements of integrity and meet the criteria of competence and correctness so as to ensure the sound and prudent management of the subsidiary. The same article also gives the MEF the power to issue a specific decree, after consulting the Bank of Italy and Consob, in order to identify a) the requirements of integrity; b) the criteria of competence, graduated in relation to the influence on the management of the company that the owner of the shareholding can exercise; c) the criteria of correctness, with regard, among other things, to the business relations of the owner of the shareholding, to the conduct towards the supervisory authorities and the sanctions or corrective measures imposed by the latter, to restrictive measures inherent in professional activities carried out, as well as any other element that can affect the correctness of the owner of the shareholding.

These regulations also apply to simple investment companies (SIS) on the basis of the reference contained in art. 35-*undecies* of the TUF.

Pursuant to legislative decree 72/2015, until the entry into force of the implementing regulations issued pursuant to art. 14 of the TUF, as amended by the same decree, art. 14 of the TUF in the version prior to these amendments and the related implementing regulations, set out in ministerial decree 469/1998, continue to apply.

Similarly, the draft regulation that is currently being submitted for consultation implements the above-mentioned provisions, introducing entirely new aspects with respect to ministerial decree 469/1998, such as the criteria of correctness (in addition to integrity) and competence. In line with the specific provisions of the TUF, the decree provides for differentiated rules for certain types of investment firms in application of the principle of proportionality. Overall, the draft regulation significantly strengthens the eligibility standards for participants, raising the requirements already set out in the current regulations and introducing new criteria. This, furthermore, in order to align Italian regulations with the joint guidelines of the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

The deadline for submitting comments is **27 May 2022**.

The text of the two draft regulations put out for consultation are accessible at the following link:

https://www.dt.mef.gov.it/it/news/2022/consultazione_schemi_regolam.html

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