

17 FEBRUARY 2016

REFORM OF ITALY'S CREDIT COOPERATIVE BANKS

On 10 February 2016, the government approved decree no. 18/2016 (the "**Decree**") which, after months of discussions and speculation, introduces some important reforming measures for the Italian credit cooperative banks (the "**BCCs**"), with the aim of eliminating structural weaknesses in the cooperative banking system.

The Decree came into force upon publication in the Official Gazette on 15 February 2016 and must be converted into law within 60 days. Further amendments may be introduced during the conversion process and in any implementing rules promulgated by the Bank of Italy or the Italian Ministry of Economy and Finance.

Edited by Italian Finance Team

Patrizio Messina
pmessina@orrick.com

Gianrico Giannesi
ggiannesi@orrick.com

Raul Rizzo
rizzo@orrick.com

Madeleine Horrocks
mhorrocks@orrick.com

Emanuela Molinaro
emolinaro@orrick.com

Annalisa Dentoni-Litta
adentonilitta@orrick.com

This newsletter is for educational purposes only and, accordingly, does not necessarily deal with every relevant aspect of the topics described and does not constitute legal or other advice. Reproduction of this document is permitted provided that the title and date are mentioned as follows: Orrick, Herrington & Sutcliffe, Finance Law Alert – Italy, January 2016 Edition.

Summary

- **Each BCC must join a cooperative banking group or become an S.p.A.**
- **The parent company of a cooperative banking group must have Euro 1 billion capitalisation and receive Bank of Italy approval**
- **Group governance will be regulated by so-called "cohesion contracts"**
- **Certain reforms regarding the capitalisation of BCCs are introduced**

Requirement for the BCCs to join a cooperative banking group

Each BCC is required to join a cooperative banking group as a condition to being authorised by the Bank of Italy to carry out banking business.

Conversion into S.p.A.

An individual BCC may remain independent from a cooperative banking group, but in order to do so must transform into an S.p.A. (*società per azioni*). Smaller BCCs (i.e. with less than €200 million in net assets) wishing to remain independent will also be required to transfer their assets to one or more mutual funds for the promotion and development of cooperation (*fondi mutualistici per la promozione e lo sviluppo della cooperazione*) established under Law n. 59/92.

Such transfer is not required for larger BCCs which exceed this net asset threshold but their cash reserves (*riserve*) will be subject to an extraordinary tax at the rate of 20%.

Any BCCs that do not either join a cooperative banking group or transform into an S.p.A. must be liquidated and wound-up.

Group parent company

Each cooperative banking group must have a parent company which is regulated and authorised to carry out banking activity and have share capital of at least €1 billion.

The parent company must be incorporated as an S.p.A. with the majority of the shares held by the BCCs in the group.

The function of the parent company will primarily be the management and coordination of the BCCs carried out in accordance with so-called "cohesion contracts" (*contratti di coesione*) entered into between the holding company and the BCCs in the group.

Cohesion contracts will regulate the powers of the parent company and also provide that the parent and the BCCs are jointly and severally liable as regards the obligations assumed by the parent and the BCCs.

Approval of Bank of Italy

Any company wishing to be parent company of a cooperative banking group must notify the Bank of Italy of its intention no more than 18 months from the date of entry into force of the relevant implementing provisions, and submit:

- i) a proposed form of cohesion contract; and
- ii) an indication of the BCCs and other companies intended to be in the group (banking and financial companies).

The cohesion contract must be signed within 90 days of approval by the Bank of Italy. The evaluation process will focus on capitalisation and financial robustness of the group and the suitability of the cohesion contract to ensure a sound and prudent management of the group).

Reforms regarding capitalisation of the BCCs

The Decree contains the following modifications to the rules regarding capitalisation of individual BCCs:

- (i) the maximum share capital in a BCC that can be held by a single shareholder has been increased from €50,000 to €100,000;
- (ii) the minimum number of shareholders of a BCC has been increased from 200 to 500;
- (iii) BCCs may issue shares, subject to authorisation from the Bank of Italy.

Next steps

Implementation of the Decree has been delegated to the Bank of Italy and the Ministry of Economy and Finance as regards:

- (i) joint responsibility of the parent and of the BCCs, the procedure for formation of a cooperative banking group and adherence to a group by an individual BCC;
- (ii) the operational and organizational model of the parent company; and
- (iii) the minimum number of BCCs in a cooperative banking group in order to ensure that it respects prudential requirements.