

ITALIAN SMALL AND MEDIUM-SIZED ENTERPRISES TO TAP INTO EQUITY CROWDFUNDING

Date: 28 June 2017

K&L Gates Corporate and M&A Alert

By: Giampaolo Salsi, Riccardo Malaguti

On June 15, 2017, the Italian Senate approved the conversion into law of Law Decree No. 50, dated April 24, 2017, whereby small and medium-sized enterprises ("SMEs")^[1] are given recourse to equity crowdfunding that was originally restricted to innovative start-ups. In the wake of the recent reforms^[2] aimed at providing SMEs with new funding channels, the said piece of legislation has introduced into the Italian legal framework the possibility for SMEs, established in the form of limited liability companies ("*società a responsabilità limitata*" or "SRLs"), to offer their quotas for subscription via dedicated Web portals for the raising of capital — up to a maximum of €5 million per company.

According to the 2017 Budget Law,^[3] those equity crowdfunding portals are "*online platforms the exclusive object of which is to facilitate collection of venture capital by SMEs ... as well as of other companies which primarily invest in SMEs.*"^[4] The management of the portals in question "*is reserved to investment undertakings, to banks authorized to carry out investment services thereof and to entities enrolled in the special register held by CONSOB*"^[5] (i.e., the Italian Security and Exchange Commission).

On a broader level, the reform affects the discipline of SRLs in several ways, including a significant convergence with the rules governing joint stock companies. In particular, SRLs can now:

- Contemplate in their articles of association the option to create different categories of equity interests (i.e., so-called "quotas") bearing different rights. In fact, by way of proviso to Article 2468 of Italian Civil Code, not only can SMEs' quotas be offered to the public, but they can also be issued with disproportional rights or with special rights relating to the management of the company or the distribution of the profits;
- Include in their articles of association the option, by way of proviso to Art 2479, Paragraph 5, of the Italian Civil Code, to issue nonvoting quotas or quotas with multiple voting rights, as well as quotas with voting rights restricted to certain matters; and
- Trade their own quotas on condition that the transaction is instrumental to implementing incentive and stock option plans in favor of employees, directors, or work and service providers.

In conclusion, the reform represents a major milestone in the process aimed at providing SMEs with more flexible rules relating to members' rights and company governance. Indeed, the reform has been welcomed by a number of commentators and the business community alike as a long-awaited tool that promises to facilitate the raising of funds by companies in a market traditionally characterized by notable rigidity.

Notes:

[1] Pursuant to [EU recommendation 2003/361](#), SMEs are defined as enterprises having (i) less than 250 persons employed and (ii) an annual turnover of up to Euro 50 million or a balance sheet total of no more than Euro 43 million.

[2] Decree Law of October 18, 2012, No. 179 converted into Law of December 17, 2012, No. 221.

[3] Law of December 11, 2016, No. 232.

[4] Article 50-*quinquies*, Paragraph 1, of TUF, Testo Unico della Finanza.

[5] Article 50-*quinquies*, Paragraph 2, of TUF, Testo Unico della Finanza.

KEY CONTACTS



GIAMPAOLO SALSI

PARTNER

MILAN

+39.02.3030.291

GIAMPAOLO.SALSI@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.