

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background.

Italy

Regulation

FUNDS AND FUND MANAGEMENT 2010

2.1 Type of funds

Collective investment undertakings in Italy are organized as:

- open-end mutual investment funds which are in compliance with the UCITS Directive (Fondi Comuni Mobiliari Aperti armonizzati)
- open-end mutual investment funds not in compliance with the EU Directive (Fondi Comuni Mobiliari Aperti non armonizzati)
- closed-end mutual investment funds (Fondi Comuni Mobiliari Chiusi)
- funds for collective investment in real estate property (Fondi Comuni Immobiliari Chiusi)
- funds reserved for special categories of investors (fondi riservati); the investors in these funds can only be banks, investment companies, financial entities or other entities or persons specially qualified in financial matters
- speculative funds (fondi speculativi)
- variable capital investment funds (SICAVS): the only Italian funds with a corporate form
- guaranteed funds
- protected funds
- index funds

2.2 Laws

Funds are organized under and regulated by the following laws and regulations:

- Law no. 86 of 25 January 1994
- Decree no. 58 of 28 February 1998
- Consob Regulation no. 11971 of 14 May 1999
- Treasury Decree no. 228 of 24 May 1999
- Law no. 410 of 23 November 2001
- Consob Communication 28 June 2002
- Finance Ministry Decree of 31 January 2003, no. 47
- Legislative Decree 1° August 2003, no. 274
- Legislative Decree 6 February 2004, no. 37
- Bank of Italy Regulation of 14 April 2005
- Consob (National Commission for Stock Exchange and Companies) Regulation no. 16190 of 29 October 2007
- Consob: Bank of Italy Regulation of 29 October 2007
- Relevant rules issued by the Bank of Italy and Consob
- Decree n 351 of 25 September 2001

2.3 Managers, trustees, and custodians

Managers

The fund management company (Società di Gestione del Risparmio or SGR) must:

- be a stock company (SpA) with a minimum share capital of EUR 1 million fully paid up. In some cases the minimum share capital can be lower (Bank of Italy Regulation of 14 April 2005).
- have a legal seat and head administrative office in Italy.

- be administered and controlled by qualified, reputable and independent managers, directors, and auditors (that is, persons who have carried out the office of manager in any company for at least three years or who have carried out professional activity in credit, financial or insurance fields).
- be owned, directly or indirectly, by reputable persons whose shareholding is 5 percent or more of the company capital.
- be contained in the name of company the words, Società di Gestione.
- be authorized by the Bank of Italy, after consulting Consob, to carry out the provision of the service of collective portfolio management, the service of management on a client-by-client basis of investment portfolio and investment advice.

Investment fund shall be managed by the Italian management companies that set them up or by other Italian management companies. The latter may manage both funds they set up themselves and funds set up by other companies. . The Bank of Italy shall communicate entries, in the submentioned register, to Consob

Italian management companies shall be entered in a special register kept by Bank of Italy. Harmonized management companies shall be entered in a list annexed to the register.

Italian management companies may operate, also without establishing branches:

- in another EU country, in compliance with Directive EU; or
- in a non-EU country, subject to authorization by the Bank of Italy.

In order to carry on the activities they are authorized to engage in under community law, harmonized management companies may establish branches in Italy. The establishment of the first branch shall be preceded by a communication to the Bank of Italy and Consob from the competent home country authority. The branch shall start operating when two months have elapsed from such communication.

Except as provided for in article 42, Legislative Decree no. 58\1998, harmonized management companies may engage in Italy in the activities they are authorized to perform under community law without establishing branches, provided the Bank of Italy and Consob are informed by the competent home country authority.

Italian management companies may delegate specific functions inherent in the provision of their services to third parties in ways that avoid turning the company into an empty shell, without prejudice to its responsibility vis-à-vis participants in the fund for the actions of agents.

Custodian

The financial instruments and cash of the fund must be deposited in a custodian bank.

The custodian must:

- be a bank with a legal seat in Italy, or an Italian branch of a bank with a legal seat in another EU country.
- have a minimum reserve requirement of at least EUR 100 million.
- have the proper experience and organization.
- the custodian must be independent from the manager company. As a consequence, the directors and managers of the SGR cannot be directors and managers of the custodian bank.

2.4 Investment restrictions

Principal restrictions on the investment powers of open-end funds and open-end investment companies are:

- financial instruments and credit derivatives (OTC) unlisted on the stock exchange or on a regulated market cannot exceed 10 percent of the asset value of the fund if the counterpart is a bank, 5 percent otherwise.
- financial instruments issued by one company should not exceed 5 percent of the asset value of the fund. This limit can be increased in particular cases (such as, the securities are guaranteed by an EU country or they consist of bonds issued by EU credit institutions).
- financial instruments issued by companies of the same group cannot exceed 20 percent of the asset value of the fund. This limit can be increased in particular cases (such as the securities are guaranteed by an EU country or they consist of bonds issued by EU credit institutions).
- financial instruments placed by companies of the SGR group cannot exceed 25 percent of the asset value of the fund.
- assets of the fund cannot be invested in financial instruments (both listed and unlisted) issued by the same SGR which has established the fund and manages it.
- the shares held by the fund cannot exceed 10 percent or 20 percent of the voting capital of a company, depending on whether the company is quoted or not.

- EU fund's units, in compliance with the UCITS Directive, should not exceed 20 percent of the asset value of the fund (only for open-end funds in compliance with the UCITS Directive).
- fund's units, not in compliance with the EU Directive, should not exceed 10 percent of the asset value of the fund (only for open-end funds in compliance with the UCITS Directive).
- shares held by the fund cannot exceed 10 percent of the non-voting capital of a company; the bonds of a company or another fund's units held by the first fund cannot exceed 10 percent of all the bonds issued by said company and 25 percent of all the units issued by the second fund (The limits provided shall be doubled for open-end funds not in compliance with the EU Directive).
- the investments in deposits cannot exceed 20 percent of the asset value of the fund, 10 percent if the deposit is opened with custodian.
- short selling of financial instruments is not allowed.
- other limits on investment in credit derivatives are provided for by law.

The assets of the fund shall not be invested in goods directly or indirectly entrusted or sold by a SGR shareholder, manager or auditor, or by a Group company, and they cannot be either directly or indirectly sold to the same subjects. Moreover, the fund cannot invest more than 3 percent of its total value in operations of securitization regarding credits sold by an Italian managing company, or by other parties belonging to group companies.

Derogations may be granted to new funds for a period of up to six months from the beginning of the operations.

Principal investment restrictions applying to closed-end mutual investment funds are:

- unlisted financial instruments and units of the same collective investment undertakings (mutual funds and SICAVs) issued by a company should not exceed 20 percent of the asset value of the same fund.
- financial instruments issued by one company should not exceed 5 percent of the asset value of the fund. This limit can be increased in particular cases (such as, the securities are guaranteed by an EU country or they consist of bonds issued by EU credit institutions).
- financial instruments and credit derivatives (OTC) unlisted on the stock exchange or on a regulated market cannot exceed 10 percent of the asset value of the fund if the counterparty is a bank, 5 percent otherwise.

- assets of the fund cannot be invested in quoted or non quoted financial instruments issued by the SGR which has established the same fund and manages it.
- financial instruments placed by companies of the SGR group cannot exceed 25 percent of the asset value of the fund.
- financial instruments issued by companies of the same group should not exceed 30 percent of the value of the asset fund.
- financial instruments issued by companies of the SGR group should not exceed 25 percent of the value of the asset fund.
- value of each immovable property held by the fund cannot exceed one-third of the asset value of the fund.
- shares held by the fund cannot exceed 10 percent of the voting capital of a quoted company.
- the investments in deposits cannot exceed 20 percent of the asset value of the fund, 10 percent if the deposit is opened with custodian;
- short selling of financial instruments is not allowed.
- other limits on investment in credit derivatives are provided for by law.

Investment by the fund management company in closed-end fund units must be at least 2 percent of the fund.

The rules of a reserved fund may establish different investment limits from those established by Bank of Italy.

In particular, there is a limit of 30 percent of the asset value on the investment of speculative funds' assets and a limit of 50 percent of the asset value on the investment of closed -end funds, as provide for by law.

The assets of the fund shall not be invested in goods directly or indirectly entrusted or sold by a SGR shareholder, manager or auditor, or by a Group company, and they cannot be either directly or indirectly sold to the same subjects. Moreover, the fund cannot invest more than 3 percent of its total value in operations of securitization regarding credits sold by an Italian managing company, or by other parties belonging to group companies.

The above prohibition is not applicable to the shareholders of the Italian managing companies of real estate fund or of the group companies the SGR belongs to. Such operations can be performed by fulfilling some conditions.

Derogations may be granted to new funds for a period of up to six months from the beginning of the operations

Real estate investment fund

Real estate investment fund is set up only as a closed-end fund.

The assets of the fund shall be invested (according to the Bank of Italy limits) exclusively or prevalently in real estate, property rights with respect to real estate and shares of property companies. In particular, the fund should invest not less than two-third of its total value in real estate, property rights with respect to real estate and shares of property companies. This limit is reduced to 51 percent when the value of the assets invested in measure not less than 20 percent in financial instruments deriving from operations of securitization on real estate, property rights with respect to real estate or claims secured by real estate mortgage.

It should be pointed out that, subject to the above-mentioned limits, the real estate investment fund shall comply with both general prohibitions (such as, the prohibition to sell short on financial instruments or to invest in financial instruments issued by the SGR) and restrictions on concentration of risks (such as, the fund cannot invest more than 25 percent of its total activities in unlisted financial instruments of a same issuer, or more than 30 percent in financial instruments issued by subjects belonging to a same group, etc.). Moreover, only one-third of the fund can be invested, directly or through subsidiaries, in a unique real property having both town-planning and functional characteristics.

No more than 10 percent of the fund's own activities can be invested, directly or through subsidiaries, in real estate companies having within their business purposes the possibility to carry out construction activities.

The subscription of the units of the real estate fund can be made, when it is established by the fund rule, both when the fund is first set up and subsequently, by contribution of real estate, property rights with respect to real estate and shares of property company.

2.5 Borrowing

Closed-end and open-end funds may borrow in certain specific cases, but their borrowing must not exceed 10 percent of a fund's assets.

The fund management company of closed-end funds for collective investment in immovable property (established before the enforcement of Law no. 410/2001), can borrow in order to buy or reconstruct buildings or in order to buy shares in non quoted immovable companies, but its borrowing must not exceed 30 percent of the total value of the immovable properties held by the fund.

In case of the real estate fund regulated by Law no 410/2001, the borrowing value should not exceed:

- 60 percent of the value of the real estate, of property rights and shares of property companies ; and
- 20 percent of the any other assets belonging to the fund.

Within these limits, the real estate funds may take loans equivalent to a maximum of 10 percent of their NAV whenever an investor wants to liquidate its investment prior the maturity date

2.6 Accounts and prospectus

Fund management companies are obliged to publish their accounts each year. An authorized audit firm must audit the accounts.

The fund management company must keep separate accounts for each fund managed.

In addition to standard accounting requirements, the fund management company must comply with the following requirements for each fund managed. The company must:

- keep a journal book of the fund, recording day by day all the operations concerning the fund.
- draw up an annual fund management report, 60 days after the end of each accounting period or for a lower period in relation with the earnings distribution.
- a fund management statement, within 30 days of the end of each semester; this statement is not required in case a half-year report is produced in connection with the earnings distribution (see point above).
- draw up a prospectus indicating the value of the fund and the value of each unit, every time the units are issued or reimbursed (only for open-end funds).

Such documents must be available to the public.

Other forms of legal publicity are established for immovable funds.

2.7 Supervision

The supervisory authorities for funds are:

- Bank of Italy
- Consob
- Financial Intelligence Unit (anti money-laundering)

2.8 Fund ownership

For speculative fund the value of each unit should not be less than 500.000 Euro.

The reserved fund's investors must be qualified as indicated in the fund regulations, in compliance with the law and regulations.

The SGR can institute guaranteed funds which guarantee the return of invested capital and, in case, a minimum yield, by way of a contract with a bank, or insurance company or other financial institution.

For open-end investment funds not in compliance with the EU Directive the value of each unit should not be less than EUR 50,000 if the fund regulations state that the assets are to be invested mainly, within the limit provided for by law and regulations, in credit derivatives.

There are no restrictions on the percentage of units in other funds which may be held by any one person or group of persons, but please note that the units shall be held by a plurality of participants.

2.9 Fund structure

Each fund adopts its own regulations, subject to Bank of Italy approval, establishing:

- fund name
- duration of the fund
- promoter company, manager company (if different from the promoter), and custodian bank
- NAV computation
- terms and conditions of participation in the fund

- kind of investment allowed
- terms and conditions for distributing profits
- terms and conditions for publishing relevant fund documentation
- details of the expenses to be borne by the fund and those to be borne by the Italian management company
- the amount of, or the methods for determining, the commissions due to the Italian management company and the charges to be borne by unitholders

Open-ended mutual investment funds in compliance with the EU Directive may adopt simplified schemes of regulation.

Within the investment limits described in paragraph 2.4, funds of funds and umbrella funds are allowed.

Fund units can be issued in bearer form and in registered form.

2.10 Stock exchange

Funds may be quoted on local stock exchanges.

2.11 Bank secrecy

Banks, SGRs, and other financial entities must register contracts and money transfers in compliance with money laundering laws.

Italy's bank secrecy legislation can be set aside in circumstances involving tax evasion, Mafia connection, terrorism, or criminal action.

2.12 Fund set-up

Bank of Italy regulation establishes that the authorization from the Bank of Italy is issued within 90 days.

In general, the fund regulation shall be deemed to be approved where 90 days lapse from their submission without the adoption of a measure, by the Bank of Italy, to reject or modify them

Exceptions are provided for open end fund which the regulation has drawn up according to simplified regulation requirement.

But in this regard, please note that it takes approximately six months to set up an SGR and costs would amount to approximately EUR 100,000 (legal expenses).

It takes approximately three months to set up a fund in Italy and costs would amount to approximately EUR 50,000 (legal expenses).

2.13 Foreign funds

Foreign funds located in other EU countries and conforming to the UCITS Directive may market in Italy only after informing the Bank of Italy and Consob (the information must be presented in the form of documents concerning the activity of such funds). The funds may start their activity two months after the Bank of Italy and the Consob receive the information.

Other foreign funds located in the EU or outside EU countries may market in Italy if authorized by the Bank of Italy. This authorization is issued by Bank of Italy, after consulting Consob, within four months.

2.14 Bearer shares

In accordance with Italian Law company shares have to be registered and only certain types of shares issued by quoted companies and SICAV can be bearer shares.

The fund units, of equal amount and carrying the same rights, can be either registered or bearer shares, at the investor's choice. It is possible to change from one form to the other at any time.

The Bank of Italy allows the practice of issuing combined shareholding certificates, that is, certificates representing different quotas.

2.15 Use of the internet

Use of the Internet is allowed, in compliance with Article no. 32 of Law Decree no. 58/98, either as a promotion or as a placement instrument. This practice is subject to Consob regulations.

Promotion and placement via the Internet has to comply with the specific requirements provided for by Consob and Bank of Italy regulations.

2.15 Miscellaneous

Compensation scheme

The National Guarantee Fund (Fondo Nazionale di Garanzia) compensates investors in relation with investment services when an authorized firm, which joined to the National Guarantee Fund, is unable to pay claims against it, due to its gone out to business.

The maximum amount payable under the National Guarantee Fund to individual investor in respect of the total amount credit is currently EUR 20.000.

Anyway the segregation between the asset of the funds and of the fund management company guarantees the value of unites owned by investors in case of company winding -up or bankruptcy.

Capital requirements

The fund management companies must have to meet certain minimum capital requirements.

The Bank of Italy defines regulatory capital amount and regulatory capital requirement.

In particular, the regulatory capital shall not be lower than:

- 0.02 percent of the assets under management exceeding EUR 250 million (in this case the regulatory capital requirement shall not exceed EUR 10 million);and
- 25 percent of fixed operating expenses.

In general, the regulatory capital amount cannot be lower than the initial stock; that is, greater than or equal to EUR 1 million.

Appendix 1

Reference Material

The following points detail relevant laws and regulations for collective investment funds and fund management companies then they provide web addressed (in certain instances) in which this material can be found.

Law

The main primary law in relation to collective investments funds and funds management companies are:

- Law no 86 of 25 January 1994 and Decree no 351 of 25 September 2001 which define principal rules in relation to real estate funds; and
- Decree no 58 of 28 February 1998 which defines the general requirements in relation to investment fund management and its functioning.

Accounting pronouncements

The accounting statements are produced in accordance with IAS principles.

Moreover, in 16 December 2009, the Bank of Italy has issued the document, surveillance instructions for the production of the fund management company balance sheet

These instructions are published in the following Web site:

http://www.bancaditalia.it/vigilanza/intermediari/normativa/sim/provv/bilanci_IAS.pdf

Regulator

Consob (National Commission for Stock Exchange and Companies) and the Bank of Italy, in accordance with the primary law, define specific regulatory requirements in relation to funds and fund management companies.

Principal requirements have been formalized in the following documents:

- Bank of Italy Regulation of 14 April 2005
- Consob – Bank of Italy Regulation of 29 October 2007
- Consob Regulation no 16190 of 29 October 2007
- Consob Regulation no 11971 of 14 May 1999

Regulations issued by Consob and the Bank of Italy are respectively published in these following Web sites:

- <http://www.consob.it/main/regolamentazione/tuf/tuf.html?queryid=main.regolamentazione.tuf&resultmethod=tuf&search=1&symlink=/main/regolamentazione/tuf/index.html>
- <http://www.bancaditalia.it/vigilanza/intermediari/normativa>

Stock exchange

Italian authorized funds may be listed on a stock exchange. The Italian Stock Exchange (Borsa Italiana), in cooperation with Consob, is the responsible for the listing rules. The Italian Stock Exchange Web site:

<http://www.borsaitaliana.it/homepage/homepage.htm>

Taxation Authority

The tax authority in Italy is the Italian Revenue Agency (Agenzia delle Entrate)

The Italian Revenue Agency Web site:

<http://www.agenziaentrate.it/ilwwcm/connect/Nsi/>

In particular the Decree n 461 of 21 November 1997 defines the tax treatment of closed-end and open-end mutual investment funds and variable capital investment funds (SICAVS) and the Decree n 351/01 defines the tax treatment of real estate funds.

KPMG in Italy

Antonio Mansi
KPMG Advisory Spa
Via Ettore Petrolini 2
Rome
00197
Italy

Tel. +39 06 809711
Fax +39 06 809149234
e-Mail: amansi@KPMG.IT

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