



# Italy: COVID-19 & Corporate Governance Enhanced transparency for interests in listed companies

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## COVID-19 & Corporate Governance

### Enhanced transparency for interests in listed companies - The importance of disclosure

On 17 March 2020 CONSOB issued Resolution no. 21304 (the 'Resolution') to lower the reporting threshold<sup>(1)</sup> for substantial interests in listed companies.

This Resolution is just one of a slew of rules and measures designed to stem the impact of COVID-19 on the Italian financial market and ensure that corporate governance operates efficiently and transparently even in the event of possible stock market speculation. The move comes in a period of business and financial turmoil marked by a sharp fall in stock prices.

CONSOB is authorised to take this step by article 120(2-bis) of the Finance Act, which stipulates that the regulatory authority may "*by means of a measure justified by the need to protect investors, establish, for a limited period of time, lower thresholds*" for the reports that the shareholders of a company must submit to both the company itself and CONSOB.

Established in article 120 of Legislative Decree no. 58 of 24 February 1998 - the Finance Act.

The Resolution therefore lowers the thresholds for the reporting of substantial interests as follows:

- to 1 percent for companies with high market capitalization and a particularly large number of shareholders (previously 3 percent)
- to 3 percent for SMEs (previously 5 percent).

However, CONSOB has not considered it necessary to extend the Resolution to all Italian companies listed on the electronic share market (*Mercato Telematico Azionario di Borsa Italiana S.p.A.* or MTA): the Resolution only affects 48 companies, 10 of which are SMEs (a list is attached to the Resolution). These companies have been identified on the basis of their market capitalization on 31 December 2019, i.e. shortly before news about the COVID-19 epidemic spread.

(1) Established in article 120 of Legislative Decree no. 58 of 24 February 1998 - the 'Finance Act'.

From the perspective of investors, the Resolution offers protection; on the other hand, the compliance obligations are by no means negligible.

With regard to this second aspect, it is useful to distinguish between two types of investors affected by the Resolution.

The first group are those who, after making actual acquisitions and thereby exceeding the 1 percent or 3 percent thresholds, must report this circumstance to CONSOB and the investee company. This report must be made within 10 days of the date on which the threshold is exceeded.

The second group are investors who, when the Resolution came into force on 18 March, held an interest somewhere in between the new threshold and that set in the Finance Act (i.e. between 1 and 3 percent, or 3 and 5 percent). Even though they have not purchased any more shares, these investors must report their interest, since they exceed the new threshold. In other words, the new thresholds of 1 and 3 percent apply directly to all shareholders who find themselves in possession of more than these percentages of capital and they must therefore report their interests even if they have not purchased any shares recently. The report, in the same format as Form 120/A of Attachment 4 to the Listing Rules, must be submitted within 10 business days of the date on which the Resolution came into force, i.e. by 1 April 2020.

To understand the importance of this disclosure it is crucial to remember - with the 2020 season for annual shareholder meetings so close at hand - article 120(5) of the Finance Act. According to that article, it is not possible to exercise voting rights carried by shares that exceed the threshold but have not been reported. In other words, when article 120 - in its entirety - and the Resolution are read alongside each other, it becomes clear that it is absolutely essential for each shareholder who finds himself in this situation to submit the necessary reports: first and foremost to comply with the enhanced transparency regime introduced by CONSOB but also to be entitled to vote at the shareholder meeting.

Another aspect deserving attention is the role of the company itself. Companies cannot be considered to be 'passive' recipients of disclosures made by 'new substantial shareholders'.

Firstly, the companies on the list attached to the Resolution must, if stock buyback plans are in place, check how many of their own shares they hold. If the percentage of capital represented by such shares exceeds the new thresholds, the company must - within 10 business days of the date on which the Resolution came into force or the date on which the threshold is exceeded - report the substantial interest to CONSOB and then provide the market with further details of the number of these shares.

Secondly, although issuers have no obligation to inform investors about the new rule, they could decide to take a proactive approach (through their Investor Relations Departments) and notify shareholders about the necessary disclosures, also through communiqués and announcements in the press.

This 'information campaign', quite unrelated to the classic information obligations placed on companies by current legislation, is necessary precisely because voting rights could, potentially, be curtailed by failure to disclose a substantial interest.

The Resolution, which, as already mentioned, came into force on 18 March 2020, will apply for three months. This time limit, which CONSOB considers to be reasonable and compatible with the relevant rules of law, may be shortened or revoked before the three months are up, should the reasons for the measures no longer apply.

To sum up, an analysis of the effects of the Resolution reveals, on the one hand, how CONSOB is attempting to safeguard transparency and the market in the difficult times of the COVID-19 epidemic and, on the other hand, how companies may be able to obtain a clearer picture of their own ownership structure - a plea always made and almost never answered - also with a view towards implementing the second Shareholders' Rights Directive (SHRD II).

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