

TITLE VI – CROSS-BORDER OPERATIONS

CHAPTER I GENERAL PROVISIONS

1. Preamble

These provisions, implementing the Consolidated Law on Finance (Legislative Decree No 58 of 24 February 1998, TUF), govern the cross-border operations of asset management companies (*società di gestione del risparmio*, SGR), open-ended investment companies (*società di investimento a capitale variabile*, SICAV) and closed-ended investment companies (*società di investimento a capitale fisso*, SICAF) and the Italian operations of EU management companies and of EU alternative investment fund managers (AIFM). Chapter II sets out the conditions and procedures for the provision of services, with or without the establishment of branches, in foreign countries (EU and non-EU) by Italian SGRs.

Chapter III governs cross-border marketing of units or shares of Italian collective investment undertakings (CIU).

Chapter IV establishes the procedure for the provision of services in Italy by EU management companies and EU AIFMs.

Chapter V sets out the conditions and procedures for investment in loans in Italy by EU alternative investment funds (AIF).

2. Regulatory sources

The subject matter is governed:

- for SGRs that manage undertakings for collective investment in transferable securities (UCITS), by the UCITS Directive, by Commission Directives 2010/43/EU and 2010/44/EU of 1 July 2010, by Commission Delegated Regulation (EU) 2016/438 of 17 December 2015, regarding the implementation of the UCITS Directive, as well as Commission Regulation (EU) No 584/2010 of 1 July 2010 as regards the form and content of the standard notification letter and the UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and the procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities;
- for SGRs that manage AIFs, by the Alternative Investment Fund Managers Directive (AIFMD) and by Commission Delegated Regulation (EU) No 231/2013, implementing the AIFMD, and in particular Articles 113-115 which govern cooperation arrangements with the competent authorities of third countries;
- Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending the UCITS Directive and the AIFMD with regard to cross-border distribution of collective investment undertakings;
- Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) Nos 345/2013, 346/2013 and 1286/2014;
- by the following provisions of the TUF:

- Article 6-*bis*, concerning informative and investigatory powers;
- Article 6-*ter*, concerning powers of inspection;
- Article 7, concerning the powers of intervention over qualified parties;⁽¹⁾
- Article 7-*ter*, concerning the injunctive powers against national and non-EU intermediaries;
- Article 7-*quater*, concerning powers of injunction over EU intermediaries;
- Article 7-*quinquies*, regarding the powers of injunction over EU UCITS, EU and non-EU AIFs with units or shares offered in Italy;
- Article 41, concerning the cross-border operations of SGRs;
- Article 41-*bis*, concerning the Italian operations of EU management companies;
- Article 41-*ter*, concerning the operations of EU AIFMs in Italy;
- Article 42, regarding the marketing in Italy of EU UCITS units and shares;
- Article 43, concerning the marketing of reserved AIFs;
- Article 44, concerning the marketing of non-reserved AIFs;
- Article 46-*ter*, concerning the direct issue of loans by EU AIFs in Italy;
- by Ministerial Decree No 30 of 5 March 2015, as amended;
- Bank of Italy Regulation of 21 July 2021 establishing the terms and the organisational units in charge of administrative proceedings and the procedural phases within the scope of the Bank of Italy's and the Italian Financial Intelligence Unit's functions, pursuant to Articles 2 and 4 of Law 241/1990, as amended.

3. Administrative proceedings

The following administrative proceedings shall apply to this title:

- *prohibiting an Italian SGR from establishing a branch in an EU Member State (period: 40 days);*
- *prohibiting an SGR that manages a UCITS from implementing operational changes communicated when establishing a branch in an EU Member State (period: 40 days);*
- *prohibiting an SGR from implementing operational changes communicated when: a) establishing a branch in an EU Member State; b) starting operation under the freedom to provide services in an EU Member State for breach of the laws and regulations governing collective asset management (period: 15 working days);*
- *prohibiting material changes to the information and documents transmitted with the notification letter concerning the marketing of UCITS in another EU Member State by an SGR or a SICAV pursuant to Article 41 of the TUF (period: 15 working days);*
- *prohibiting material changes to the information and documents transmitted with the notification letter concerning the marketing in*

¹ 'Qualified parties' are those parties defined in Article 1, paragraph 1, letter r), and include SGRs, EU management companies with a branch in Italy, SICAFS, SICAVS, EU AIFMs with a branch in Italy.

Italy or in another EU Member State of reserved Italian AIFs and EU AIFs by an SGR, SICAV or SICAF pursuant to Article 43 of the TUF (period: 15 working days);

- approving or changing the regulation of the UCITS established in Italy by an EU management company (period: 30 days);*
- approving the regulation, and any subsequent changes, of non-reserved AIFs established in Italy by an EU AIFM (period: 30 days);*
- prohibiting EU AIFs to invest in loans made in Italy against their own capital (period: 60 days);*
- authorising an SGR to establish a branch in a third country (period: 90 days);*
- authorising an SGR to pursue activities under the freedom to provide services in a third country (period: 60 days).*

CHAPTER II
CROSS-BORDER OPERATIONS
OF ITALIAN ASSET MANAGEMENT COMPANIES ⁽¹⁾⁽²⁾

1. Establishment of branches in EU Member States

1.1 First-time establishment of a branch

An SGR that plans to manage a CIU by establishing a branch in an EU Member State shall communicate in advance to the Bank of Italy the following information:

- 1) the EU Member State in whose territory the SGR plans to establish a branch;
- 2) the programme of operations, indicating, among other things, the services and activities that the SGR intends to perform in the host country, and in the case of an SGR that manages a UCITS, the risk management systems, the procedures for processing investors' complaints and for fulfilling requests for information by the investors and the competent authorities of the host countries;
- 3) the branch's organisational structure (organisation chart, human resources, information systems) and the impact of the initiative on the SGR's organisational and financial structure;
- 4) the address of the branch in the host country or its head office (if the branch is comprised of more than one place of business);
- 5) the names of those responsible for the management of the branch;
- 6) whether it intends to manage a UCITS or an AIF in the host country. If it intends to manage a UCITS, the SGR shall request an attestation from the Bank of Italy indicating the activities carried out and any restrictions on the funds that it can manage. If it intends to manage an AIF, the SGR shall request an attestation from the Bank of Italy indicating that authorisation has been granted to manage an AIF in Italy.

Within 60 days of receipt of the communication, containing all the required material, the Bank of Italy shall transmit the information received to the competent authority of the host country, providing as well any information on the SGR's participation in investor-compensation schemes. The communication shall not give rise to administrative proceedings brought upon application of a party in accordance with Law 241/1990.

If the Bank of Italy intends to prohibit the establishment of the branch for reasons relating to compliance with the laws and regulations on collective asset management, to the suitability of the organisational structure, or the financial situation, profits and losses, and assets and liabilities of the SGR ⁽³⁾ and, consequently, refuses to provide notification to the competent authority of the host country, it shall initiate administrative proceedings *ex officio* to impose such prohibition, with said proceedings to be concluded within 40 days of receipt of the communication along with all the required material and, in any case, also taking into account any grounds for suspending

¹ The provisions of this Chapter shall also apply to SICAVs and SICAFs that manage their own assets.

² Refer to Consob's 'Regolamento Emittenti' (Consob's Regulation implementing Italian Legislative Decree 58/1998, concerning the discipline of issuers) for the rules regarding the mere marketing of units or shares of Italian AIFs in EU Member States.

³ If the SGR belongs to a group subject to supervision on a consolidated basis by the Bank of Italy, the group's technical and organisational situation shall also be taken into account.

the period, no more than 60 days from said date. Assessment of organisational aspects shall take account of the greater difficulty that the SGR may encounter in ensuring that the internal controls for a foreign branch are effective.

The SGR concerned shall be informed once the competent authority of the host country has been notified.

A UCITS management company can establish the branch and start operation after receiving the relevant communication from the competent authority of the host country or once 60 days have elapsed from when the authority receives notification from the Bank of Italy concerning the establishment of the branch. An Italian AIFM can establish the branch and start operation after receiving the relevant communication from the Bank of Italy that it has notified the competent authority of the host country.

The SGR shall promptly inform the Bank of Italy of the effective start and cessation of the branch's operation.

1.2 Change in information provided

1.2.1 SGRs that manage a UCITS

An SGR that manages a UCITS shall inform the Bank of Italy and the competent authority of the host country of any changes in the information referred to in paragraph 1.1, points 2), 3), 4) and 5), at least 30 days prior to making the change.

Within 30 days of receipt of the communication, containing all the required material, the Bank of Italy shall transmit the information received to the competent authority of the host country. The communication shall not give rise to administrative proceedings brought upon application of a party in accordance with Law 241/1990.

The SGR concerned shall be informed once the competent authority of the host country has been notified.

Except as provided in the next paragraph, if the Bank of Italy intends to refuse to notify the competent authority of the host country for reasons indicated in paragraph 1.1, it shall initiate administrative proceedings *ex officio* to impose such prohibition, with said proceedings to be concluded within 40 days of receipt of the communication along with all the required material and, in any case no more than 60 days from said date, also taking into account any grounds for suspending the period.

In the event that the change results in the SGR's non-compliance with the laws and regulations on collective asset management, the Bank of Italy shall initiate administrative proceedings *ex officio* to prohibit the change, which must be concluded within 15 working days of receipt of the communication with all the required material.

The Bank of Italy shall inform the competent authority of the host country of the prohibition against the SGR in making the change.

If a change has been implemented without having been communicated to the Bank of Italy or has taken place as a result of which the asset manager would no longer comply with the laws and regulations on collective asset management, the Bank of Italy shall take appropriate corrective measures in accordance with the TUF and shall promptly inform the competent authority of the host country of the measures taken.

The SGR that manages the UCITS shall promptly inform the Bank of Italy of the funds that it manages in the host country. The Bank of Italy shall notify the competent authority of the host country of the change in the information contained in the attestation referred to in paragraph 1.1, first indent, no. 6).

If the SGR manages a UCITS in the host country, the Bank of Italy shall consult the competent authority of the host country before revoking the SGR's authorisation.

1.2.2 SGRs that manage an AIF

An SGR that manages an AIF shall notify the Bank of Italy of any changes to the information referred to in paragraph 1.1, points 2), 3), 4) and 5), at least 30 days prior to making the change or immediately after an unplanned change is implemented.

Within 30 days of receipt of the communication, containing all the required material, the Bank of Italy shall transmit the information received to the competent authority of the host country. The communication shall not give rise to administrative proceedings brought upon application of a party in accordance with Law 241/1990.

The SGR concerned shall be informed once the competent authority of the host country has been notified.

In the event that the change results in the SGR's non-compliance with the laws and regulations on collective asset management, the Bank of Italy shall initiate administrative proceedings *ex officio* to prohibit the change, which must be concluded within 15 working days of receipt of the communication with all the required material.

If a planned change has been implemented without having been communicated to the Bank of Italy or if an unplanned change has taken place as a result of which the asset manager would no longer comply with the laws and regulations on collective asset management, the Bank of Italy shall take appropriate corrective measures in accordance with the TUF and shall promptly inform the competent authority of the host country of the measures adopted.

The SGR that manages the AIF shall promptly inform the Bank of Italy of the funds that it manages in the host country.

The Bank of Italy shall notify the competent authority of the host country of the change in the information contained in the attestation referred to in paragraph 1.1, first indent, no. 6).

1.3 Applicable national provisions

An SGR that operates in another EU Member State providing asset management services through foreign branches shall comply with the following regulatory supervision provisions of the TUF (Article 6), including the relative implementing provisions of the Bank of Italy and Consob:

- Article 6, paragraph 1, letter a), concerning the obligations of SGRs in terms of capital adequacy, limitation of risk and equity interests;
- Article 6, paragraph 1, letter c), concerning the rules applicable to CIUs, except for those managed in the host country;
- Article 6, paragraph 1, letter c-bis), concerning the organisation and controls of SGRs;

- Article 6, paragraph 2, letter b-*bis*), concerning the provision of asset management services, where applicable.

In the event that the SGR manages a fund in the host country, the Bank of Italy, in addition to verifying compliance with the aforementioned implementing provisions falling within its institutional remit, shall also check the adequacy of the organisational measures taken by the SGR in order to comply with the host country's fund operating rules.

2. Freedom to provide services in EU Member States

2.1 Advance notice

An SGR that intends to manage for the first time a CIU in another EU Member State without establishing branches shall communicate in advance to the Bank of Italy the following information:

- 1) the EU Member State in which the SGR intends to carry out its activities;
- 2) the programme of operations indicating the activities and the services that the SGR intends to provide in the host country, and in the event it plans to manage a UCITS, the risk management systems, the procedures for processing investors' complaints and for fulfilling requests for information by the investors and the competent authorities of the host countries;
- 3) the manner in which the SGR intends to operate;
- 4) whether it intends to manage a UCITS or an AIF in the host country. The SGR shall request an attestation from the Bank of Italy indicating the activities carried out and any restrictions on the funds that the company can manage: If it intends to manage an AIF, the SGR shall request an attestation from the Bank of Italy indicating that authorisation has been obtained to manage an AIF in Italy.

Said communication shall be sent to the Bank of Italy at least 30 days prior to the start of operation.

Within 30 days of receipt of the communication, containing all the required material, the Bank of Italy shall transmit the information received to the competent authority of the host country, providing as well information on the SGR's participation, if any, in investor-compensation schemes. The SGR concerned shall be informed once the competent authority of the host country has been notified. Once it receives such communication, the SGR may start operating in the host country.

2.2 Change in information provided

2.2.1 SGRs that manage a UCITS

An SGR that manages a UCITS shall inform the Bank of Italy and the competent authority of the host country of any change in the information referred to in paragraph 2.1, points 2) and 3), prior to making the change.

The Bank of Italy shall notify the competent authority of the host country of the change in the information contained in the attestation referred to in paragraph 2.1, first indent, no. 4).

The SGR shall promptly inform the Bank of Italy of the funds that it manages in the host country.

If the SGR manages funds in the host country, the Bank of Italy shall consult the competent authority of the host country before revoking the company's authorisation.

2.2.2 SGRs that manage an AIF

An SGR that manages an AIF shall notify the Bank of Italy of any changes to the information referred to in paragraph 2.1, points 2), 3), 5) at least 30 days prior to making the change or immediately after an unplanned change is implemented. Within 30 days of receipt of the communication, containing all the required material, the Bank of Italy shall transmit the information received to the competent authority of the host country. The communication shall not give rise to administrative proceedings brought upon application of a party in accordance with Law 241/1990.

The SGR concerned shall be informed once the competent authority of the host country has been notified.

In the event that the change results in the SGR's non-compliance with the laws and regulations on collective asset management, the Bank of Italy shall initiate administrative proceedings *ex officio* to prohibit the change, which must be concluded within 15 working days of receipt of the communication, containing all the required material.

If a planned change has been implemented without having been communicated to the Bank of Italy or if an unplanned change has taken place as a result of which the asset manager would no longer comply with the laws and regulations on collective asset management, the Bank of Italy shall take appropriate corrective measures in accordance with the TUF and shall promptly inform the competent authority of the host country of the measures adopted. The SGR shall promptly inform the Bank of Italy of the funds that it manages in the host country.

If the SGR manages funds in the host country, the Bank of Italy shall consult the competent authority of the host country before revoking the company's authorisation.

2.3 Applicable national provisions

An SGR that operates in another EU country that provides collective asset management services, under the freedom to provide services, must comply with the following regulatory supervision provisions of the TUF, including the relative implementing provisions of the Bank of Italy and Consob:

- Article 6, paragraph 1, letter a), concerning the obligations of SGRs in terms of capital adequacy, limitation of risk and equity interests;
- Article 6, paragraph 1, letter c), concerning the rules applicable to CIUs, except for those managed in the host country;
- Article 6, paragraph 1, letter c-bis), concerning the organisation and controls of SGRs;
- Article 6, paragraph 2, letters a) and b), and Article 35-*decies*, regarding transparency and correctness of conduct.
- Article 6, paragraph 2, letter b-bis), concerning the provision of asset management services, where applicable.

In the event that the SGR manages a fund in the host country, the Bank of Italy, in addition to verifying compliance with the aforementioned

implementing provisions falling within its institutional remit, shall also check the adequacy of the organisational measures taken by the SGR in order to comply with the host country's fund operating rules.

3. Establishment of branches in non-EU countries

3.1 Request for authorisation

An SGR may establish branches in non-EU countries with the prior authorisation of the Bank of Italy, in accordance with the laws in force in the host country.

The SGR shall submit to the Bank of Italy an application for authorisation containing the following information:

- 1) the non-EU country in whose territory the SGR plans to establish a branch;
- 2) a description of how the initiative fits into the SGR's overall expansion strategy;
- 3) the activities that the SGR intends to conduct in the host country and the branch's organisational structure (organisation chart, human resources, information systems) and the impact of the initiative on the SGR's organisational structure;
- 4) the address of the branch in the non-EU country, or its head office (if the branch is comprised of more than one place of business), where documents can be requested;
- 5) the names and curriculum vitae of those responsible for the management of the branch;
- 6) the amount of the branch's endowment capital, where required.

The application is considered to have been received on the day in which it is hand delivered to the Bank of Italy or on the day in which it arrives at the Bank of Italy, if sent by registered letter with return receipt or by certified e-mail (PEC).

The Bank of Italy shall grant authorisation within 90 days of receipt of the communication.

The granting of authorisation by the Bank of Italy is subject to the following conditions:

- 1) the existence, in the country of establishment, of an adequate supervisory legislation or system;
- 2) the existence of cooperation arrangements between the Bank of Italy and/or Consob and the competent authorities of the non-EU country, in accordance with Articles 113, 114 and 115 of Commission Delegated Regulation (EU) No 231/2013;
- 3) the possibility for the parent company to have easy access to the branch's data;
- 4) the suitability of the organisational structure and of the financial situation, profits and losses, and assets and liabilities of the SGR. ⁽⁶⁾ The assessment of organisational aspects shall take account of the greater difficulty that SGRs may encounter in ensuring that the internal controls for a foreign branch are effective.

⁶ If the SGR belongs to a group subject to supervision on a consolidated basis by the Bank of Italy, the group's technical and organisational situation shall also be taken into account.

The Bank of Italy shall communicate to the SGR concerned the reasons for not granting the authorisation.

The SGR shall promptly inform the Bank of Italy of the effective start and cessation of the branch's operation.

The Bank of Italy shall notify Consob of authorisations granted.

3.2 *Change in information provided*

The SGR shall inform in advance the Bank of Italy of any change it intends to make to the information provided in accordance with paragraph 3.1, second indent, points 3), 4) and 5).

The SGR may implement the change communicated once 60 days have elapsed from when the Bank of Italy receives notification.

4. **Provision of services without establishment in non-EU countries** ⁽⁷⁾

4.1 *Request for authorisation*

An SGR may operate in non-EU countries without establishing branches if it receives the prior authorisation of the Bank of Italy, in accordance with the laws in force in the host country.

The SGR shall submit to the Bank of Italy an application for authorisation containing the following information:

- 1) the non-EU country in whose territory the SGR plans to operate;
- 2) a description of how the initiative fits into the SGR's overall expansion strategy;
- 3) a programme of operations indicating the activities that the SGR intends to carry out in the host country;
- 4) the manner in which the SGR intends to operate.

The application is considered to have been received on the day in which it is hand delivered to the Bank of Italy or on the day in which it arrives at the Bank of Italy, if sent by registered letter with return receipt or by certified e-mail (PEC).

The Bank of Italy shall grant authorisation within 60 days of receipt of the application.

The granting of authorisation by the Bank of Italy is subject to the following conditions:

- 1) the existence, in the country in which the SGR plans to operate, of an adequate supervisory legislation or system, also as regards the prevention of the risk of money laundering and terrorist financing;
- 2) the existence of cooperation arrangements between the Bank of Italy, Consob, and the competent authorities of the non-EU country, in accordance with Articles 113, 114 and 115 of Commission Delegated Regulation (EU) No 231/2013.

The Bank of Italy shall deny authorisation when the conditions indicated are not satisfied and for reasons pertaining to the adequacy of the SGR's organisational structure and to its financial situation, profits and losses, and assets and liabilities.

⁷ This paragraph shall not apply to the services envisaged in Chapter III, paragraph 2, that are provided in non-EU countries by Italian CIUs.

The Bank of Italy shall communicate to the SGR concerned the reasons for not granting the authorisation.

The Bank of Italy shall notify Consob of authorisations granted.

4.2 *Change in information provided*

The SGR shall inform in advance the Bank of Italy of any change in the information provided in accordance with paragraph 4.1, second indent, points 3) and 4).

The SGR may implement the change communicated once 30 days have elapsed from when the Bank of Italy receives notification.

5. **Engaging in an EU Member State in activities other than those laid down in the UCITS Directive and the AIFMD**

5.1 *Notification*

An SGR may engage in an EU Member State in activities other than those laid down in the UCITS Directive and the AIFMD, with or without the establishment of branches. The carrying out of such activities is subject to the laws in force in the host country.

The SGR shall promptly communicate to the Bank of Italy the information indicated in paragraphs 1.1 and 2.1 – depending on whether the activity in question is carried out with or without establishing a branch – and the operation start and cessation dates. It shall also communicate any change in the information provided, in the manner provided in paragraphs 1.2 and 2.2.

6. **Representative offices abroad**

An SGR can open representative offices in other EU Member States and in non-EU countries.

The opening of the representative office abroad is subject to the procedures laid down by the competent authorities of the host country.

The SGR shall promptly notify the Bank of Italy of the start of operation of the representative office, indicating the foreign country of establishment, the office address and the activities that it carries out.

The SGR shall promptly inform the Bank of Italy of the cessation of operation of the representative office.

CHAPTER III

CROSS-BORDER MARKETING OF ITALIAN CIUS ⁽¹⁾

1. Marketing of UCITS in EU Member States

1.1 Notification

SGRs and SICAVs that are UCITS may offer, respectively, units of UCITS and of UCITS compartments or own shares in other EU Member States.

The marketing is contingent upon the submission to the Bank of Italy of a notification letter,⁽²⁾ containing:

- a) the fund regulation, or the instruments of incorporation and the statute of the SICAV, the prospectus, the annual report and subsequent half-yearly report. These documents shall also be translated, with the manager's certification that the translation conforms to the original, into the official language of the host country or into a language approved by the authority of the host country or into English.
- b) the document containing key information for investors. This document shall also be translated, with the manager's certification that the translation conforms to the original, into the official language of the host country or into a language approved by the authority of the host country;
- c) the information on arrangements made for marketing the units or shares (including in respect of relative classes) in the host country, specifying whether the UCITS is marketed by the asset management company that manages the fund;⁽³⁾
- d) the details necessary, including the address, for the invoicing or for the communication of any applicable regulatory fees or charges by the competent authorities of the host country;
- e) information on the facilities that the UCITS makes available in the Member State, where the units and compartments of the UCITS and shares are marketed, to perform the tasks referred to in Article 92 of the UCITS Directive, in accordance with the conditions provided in the host country.

If the documentation produced is complete, the Bank of Italy shall transmit the notification letter and the accompanying documentation to the competent authority of the host country within 10 working days of receipt, enclosing a statement certifying that the CIU fulfils the conditions required by the European legislation in force.

The Bank of Italy shall promptly inform the SGR or the SICAV that the letter has been transmitted, permitting it to start operation as of the date of receipt of such communication.

¹ Refer to Consob's "Regolamento Emittenti" (Consob's Regulation, implementing Italian Legislative Decree 58/1998, concerning the discipline of issuers) for the rules regarding marketing made by Italian AIFs and EU AIFs managed by Italian AIFMs in EU Member States. This applies without prejudice to the Bank of Italy's powers under Article 43 of the TUF.

² The notification letter shall be written in Italian and English, as provided by Commission Regulation (EU) No 584/2010, as amended, regarding, among other things, the form and content of the standard notification letter and the UCITS attestation (see Attachment VI.5.1).

³ These documents shall be made readily available to the competent authority of the host country. The documents referred to in points a) and b) must be kept updated and be published in accordance with Consob's regulations on marketing.

The procedure for transmitting the notification letter and the accompanying documentation to the competent authority of the host country is set out in Commission Regulation (EU) No 584/2010, as amended.

1.2 *Change in information provided*

The SGR or the SICAV shall inform the competent authority of the host country of changes in the documentation indicated in paragraph 1.1, letters a) and b).

Without prejudice to the obligation stated above, the SGR or the SICAV that is a UCITS shall inform the Bank of Italy and the competent authority of the host country of any other changes to the information contained in the notification letter indicated in the paragraph 1.1, including that in respect of the marketed classes of the units or shares set out in the notification letter, at least 30 days prior to the changes taking effect.

In the event the change results in non-compliance with the laws and regulations on collective asset management, the Bank of Italy shall initiate administrative proceedings *ex officio* to prohibit the change, which must be concluded within 15 working days of receipt of the communication, containing all the required material.

The Bank of Italy shall inform the competent authority of the host Member State of the UCITS of the prohibition on making the change.

If a change has been implemented without having been communicated to the Bank of Italy or has taken place as a result of which the asset manager would no longer comply with the laws and regulations on collective asset management, the Bank of Italy shall take appropriate corrective measures in accordance with the TUF and shall promptly inform the competent authority of the host country of the measures adopted.

1.3 *De-notification*

SGRs and SICAVs may cease to offer units of UCITS and of UCITS compartments or own shares in other EU Member States notified in accordance with paragraph 1.1, with advance notice to the Bank of Italy. The letter communicating the de-notification shall attest that all the following conditions are fulfilled:

- i. the SGR or SICAV has made a blanket offer to repurchase or redeem, free of any charges or deductions, the units or shares in the UCITS or classes thereof, held by investors in the country in which it intends to make the de-notification. The offer is publicly available for at least 30 working days. It is addressed, directly by the SGR or SICAV or indirectly through financial intermediaries, individually to all investors whose identity is known. The information shall clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase. The information shall also be translated, with the manager's certification that the translation conforms to the original, into the official language of the host country or into a language approved by the authority of the host country;
- ii. the SGR or SICAV shall make public its intention to terminate notification in the host Member State by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS units or shares and is suitable for a typical UCITS investor. In any event, the information shall clearly describe the consequences for investors if they

do not accept the offer to redeem or repurchase. The information published shall also be translated, with the manager's certification that the translation conforms to the original, into the official language of the host country or into a language approved by the authority of the host country;

- iii. the marketing arrangements concluded by the SGR or SICAV with financial intermediaries or other delegates are modified or, in any case, terminated with effect from the date of transmission of the de-notification letter to the Bank of Italy, in order to prevent any new or further offering or placement of the UCITS units or shares for which de-notification was made.

As of the date of transmission of the de-notification letter to the Bank of Italy, the SGR or SICAV shall not make any new or further offering or placement of the UCITS units or shares, or classes thereof, identified in the de-notification letter.

If the documentation produced is complete, the Bank of Italy shall transmit the de-notification letter to the competent authority of the host country and, through Consob, to ESMA, within 15 working days of receipt.

The SGR or SICAV concerned shall be informed once the de-notification letter has been transmitted to the competent authority of the host country.

The SGR or SICAV shall continue to provide investors who remain invested following the offer referred to in letter i) as well as to the Bank of Italy:

- a) the fund regulation or the instruments of incorporation and the statute of the SICAV, the prospectus, the annual report and subsequent half-yearly report;
- b) the document containing key information for investors;
- c) the issue, sale, repurchase or redemption price of units or shares in the UCITS.

The information indicated in points a), b) and c) shall be made available through the use of any electronic or other distance communication means⁽⁴⁾ and in the official language of the host Member State for which the de-notification was made or in a language permitted by the competent authorities of that country, as indicated in paragraph 1.1.

The Bank of Italy shall inform the competent authority of the host country for which de-notification was made of any changes to the documentation indicated in paragraph 1.1, letters a) and b).

2. Marketing of UCITS in non-EU countries

SGRs, SICAVs and SICAFs may offer units of funds or own shares in non-EU countries with advance notice to the Bank of Italy and in accordance with the laws in force in the host country.

The communication shall be sent to the Bank of Italy and shall contain the following information:

- 1) the country in which it intends to offer the units or shares;

⁴ The communication shall also be made in the official language of the host Member State or in a language approved by the authorities of the host country, in accordance with Article 93-bis, paragraph 7, of the UCITS Directive.

- 2) the fund, the SICAV or the SICAF or the relative compartments being marketed;
- 3) the procedures to be followed in marketing the units or shares.

CHAPTER IV OPERATIONS IN ITALY OF EU MANAGEMENT COMPANIES AND EU AIFMS ⁽⁰¹⁾

1. Establishment of branches

1.1 *First-time establishment*

An EU management company or EU AIFM intending to operate for the first time in Italy by establishing a branch shall notify the competent authority of its home Member State of its intention.

The start of operation of the branch is conditional upon the receipt by the Bank of Italy of the notification sent to it by the competent authority of the home Member State of the EU management company or EU AIFM.

The branch of the EU management company can be established and start operation in Italy once notice is received from the Bank of Italy or once 60 days have elapsed from when the Bank of Italy receives complete notification from the home Member State authority.

The company shall inform the Bank of Italy of the start date of the branch's operation.⁽¹⁾

The Bank of Italy shall enter the EU management company or EU AIFM in the relevant section of the list annexed to the register of SGRs.

1.2 *Change in information provided*

The EU management company or EU AIFM shall inform the Bank of Italy of changes in the information provided in the notification referred to in paragraph 1.1.

If the competent authority of the home Member State expresses an unfavourable opinion on the changes in question, the company shall promptly notify the Bank of Italy.

1.3 *Exercisable activities and applicable provisions*

In accordance with the rules and regulations of general interest in force in Italy, the branch can carry out the activities laid down in the UCITS Directive and in the AIFMD that the EU management company or the EU AIFM is authorised to perform in the home Member State.

Branches of EU management companies shall comply with Articles 6, paragraph 2, letter b), and 35-*decies* of the TUF, regarding correctness of conduct, including the relative implementing provisions issued by Consob. Branches of EU AIFMs shall comply with Articles 6, paragraph 2, letter b), and 35-*decies* of the TUF, regarding correctness of conduct, including the relative implementing provisions issued by Consob, as well as the rules on conflicts of interest set out in Article 6, paragraph 2, letter b-*bis*,

⁰¹ Refer to Consob's "Regolamento Emittenti" (Consob's Regulation, implementing Italian Legislative Decree 58/1998, concerning the discipline of issuers) for the rules regarding marketing made in Italy by EU management companies and EU AIFMs of units or shares of EU UCITS or of Italian or EU AIFs. This applies without prejudice to the Bank of Italy's powers under Articles 42, 43 and 44 of the TUF.

¹ The notification shall be sent to Banca d'Italia – Servizio Rapporti Istituzionali di Vigilanza (RIV) – Roma, or by certified e-mail (PEC) to: riv@pec.bancaditalia.it. A company that has more than one branch in the territory shall specify which branch is the main branch responsible for liaising with the Bank.

no. 6, of the TUF, including the relative implementing provisions issued jointly by the Bank of Italy and Consob.

1.4 *Controls performed by the Bank of Italy*

The Bank of Italy shall perform controls on the branches in Italy of EU management companies and EU AIFMs, having the power to perform inspections and request from them the same information that it can require from SGRs.

2. **Provision of services without establishment ⁽²⁾**

2.1 *Advance notice*

EU management companies and EU AIFMs that intend to carry out in Italy for the first time the activities laid down in the UCITS Directive and in the AIFMD under the freedom to provide services may start operation once the Bank of Italy has received notice from the competent authority of the home Member State.⁽³⁾

2.2 *Change in information provided*

The EU management company or EU AIFM shall inform the Bank of Italy of changes in the information provided in the notification referred to in paragraph 2.1.

3. **Management of UCITS in Italy**

3.1 *Application*

EU management companies that intend to manage – with or without establishing branches – an UCITS in Italy shall submit an application to the Bank of Italy providing, in addition to the information set out in Title V, Chapter II, regarding the approval of fund regulations, the following information:

- 1) the agreement with the depositary, provided for in paragraph 3.2;
- 2) information on any delegations of management functions;
- 3) an attestation from the competent authority of the home country indicating the activities carried out and any restrictions on the funds that the company can manage.

If this information has already been provided in connection with the management of another fund, the company may resubmit it by notifying the Bank of Italy of the prior submission. In any case, the company shall notify the Bank of Italy of any change in the documentation submitted.

The Bank of Italy may ask the competent authority of the home country for clarification concerning the documentation submitted by the EU management company.

² Refer to Consob's "Regolamento Emittenti" (Consob's Regulation, implementing Italian Legislative Decree 58/1998, concerning the discipline of issuers) for the rules regarding marketing in Italy of EU AIFMs by EU AIFMs.

³ The notification shall be sent to Banca d'Italia – Servizio Rapporti Istituzionali di Vigilanza (RIV) – Roma.

The Bank of Italy shall approve the fund regulation within 30 days of receipt of the application, complete with all relevant information and documentation, unless there are grounds for interrupting or suspending the time limit. The fund regulation must be drawn up in accordance with Title V, Chapter I, Sections I and II. Changes to the fund regulation shall be approved within 30 days of receipt of the application, complete with all relevant information and documentation; the general rules for approval shall apply in the cases provided by Title V, Chapter II, Section III of this Regulation.

The Bank of Italy shall deny the application, after having first consulted with the competent authority of the host country, if the company:

- fails to comply with the requirements of this paragraph and of paragraph 3.3;
- is not authorised in its home country to manage the same type of funds;
- the documentation in support of the application is incomplete.

These rules shall also apply to SICAVs authorised, pursuant to Article 38 of the TUF, to designate an EU management company to manage their assets.

Subsequent fund regulations shall be approved according to the general procedure (*approvazione in via generale*) in the cases provided by Title V, Chapter II, Section II. After the decision approving the fund regulation is issued, the EU management company shall submit the documentation referred to in points 1), 2) and 3) of this paragraph, in addition to that indicated in Title V, Chapter II, Section II.

3.2 Agreement with depositary

The EU management company shall sign an agreement with the depositary of the UCITS that it plans to manage in Italy that ensures that the depositary will have access to the information needed to perform its duties.

Without prejudice to the provisions of Article 2 of Commission Delegated Regulation (EU) 2016/438, the agreement regulates and contains, at a minimum, a description of the following:

- a) the procedures, including those relating to safekeeping, to be adopted for each type of asset entrusted to the depositary;
- b) the procedures to be followed where the EU management company plans to modify the fund regulation or prospectus, indicating when the depositary should be informed, or whether an agreement must first be reached with the depositary in order to proceed with the modification;
- c) the means and procedures by which the depositary will transmit to the EU management company the information that it needs to exercise any rights attached to financial instruments, and the means and procedures that apply in order to allow the management company and the UCITS to have timely access to information relating to the accounts of the UCITS;
- d) the means and procedures by which the depositary will have access to all the information that it needs to perform its duties;
- e) the procedures by which the depositary has the ability to enquire into the activity of the management company and to assess the quality of information transmitted, including by way of on-site visits;

- f) the procedures by which the management company has the ability to assess the performance of the depositary with respect to the depositary's contractual obligations;
- g) the information that needs to be exchanged between the UCITS, the EU management company, and the depositary relating to the issue and redemption of units of the UCITS;
- h) the confidentiality obligations applicable to the parties to the agreement. Those obligations shall not impair the ability of the supervisory authorities to perform their duties;
- i) the tasks and responsibilities of the parties to the agreement relating to the prevention of money laundering and the financing of terrorism, where applicable;
- j) the mutual obligations with respect to the tasks entrusted to third parties by the company or the depositary;
- k) the entities appointed to carry out duties by the EU management company or by the depositary, and the commitment to provide, upon request of the contract counterparty, information on the criteria used to select these third parties and the steps taken to monitor their activity;
- l) a statement by the depositary that its liability shall not be affected by the fact that it has entrusted the performance of its duties to a third party;
- m) the period of validity of the agreement, the conditions under which the agreement may be amended or terminated, and the procedures for facilitating a change of the depositary, including how information will be exchanged by the two depositaries;
- n) *repealed*;
- o) the specification that the applicable law is that of Italy.

3.3 *Applicable national provisions*

In managing Italian UCITS the EU management company shall comply with:

- Article 6, paragraph 1, letter c), of the TUF, regarding the rules applicable to CIUs and the relative implementing measures;
- Part IV (Regulation of issuers), Title II (Appeal to public savings), Sections II and III, of the TUF, regarding public offerings by open-ended CIUs and the relative implementing measures;

The Bank of Italy and Consob, each within their respective competences, shall monitor compliance with these provisions. The home Member State's authority shall be responsible for checking the adequacy of the organisational measures taken by the EU management company to comply with said provisions.

4. **Management of AIF in Italy**

4.1 *Notification*

An EU AIFMs that intends to manage – with or without establishing branches – an AIF in Italy shall communicate this to their competent authority,

which shall send to the Bank of Italy, as part of the procedures referred to in paragraphs 1 and 2, the following information and documentation:

- 1) a copy of the agreement with the depositary;
- 2) information on any delegations of management functions;
- 3) an attestation from the competent authority that it is authorised to manage, in the home Member State, AIFs with characteristics analogous to those that it plans to manage in Italy;
- 4) in the case of an AIF not reserved to professional investors, the documentation laid down in Title V, Chapter II, regarding the approval of fund regulations.

The Bank of Italy shall be notified of any change in the documentation submitted.

The Bank of Italy may ask the competent authority of the home country of the EU AIFM for clarification concerning the documentation submitted.

The Bank of Italy shall approve the non-reserved AIF regulation within 30 days of receipt of the application, complete with all relevant information and documentation, unless there are grounds for interrupting or suspending the time limit. The AIF regulation must be drawn up in accordance with Title V, Chapter I, Sections I and II. Changes to the AIF regulations shall be approved within 30 days of receipt of the application, complete with all relevant information and documentation; the general procedure for approval (*approvazione in via generale*) shall apply in the cases provided by Title V, Chapter II, Section III.

The Bank of Italy, after having first consulted with the competent authority of the host country of the EU AIFM, shall verify that the company:

- complies with the requirements of this paragraph and of paragraph 4.3;
- is authorised in its home country to manage the same type of funds.

These rules shall also apply to SICAVs and SICAFs that are authorised, pursuant to Article 38 of the TUF, to designate an EU AIFM to manage their assets.

Subsequent regulations of non-reserved AIFs shall be approved according to the general procedure (*approvazione in via generale*) in the cases provided by Title V, Chapter II, Section II. After the decision approving the AIF regulation is issued, the EU AIFM shall submit the documentation referred to in points 1), 2) and 3) of this paragraph, in addition to that indicated in Title V, Chapter II, Section II.

4.2 *Agreement with depositary*

The EU AIFM shall sign an agreement with the depositary of the AIF that it plans to manage in Italy containing the information laid down by Article 83 of Commission Delegated Regulation (EU) 213/2013.

4.3 *Applicable national provisions*

In managing Italian AIFs the EU AIFM shall comply with:

- Article 6, paragraph 1, letter c), of the TUF, regarding the rules applicable to CIUs and the relative implementing measures;

- Part II (Regulation of intermediaries), Title III (Collective assets management), Chapter II (Italian CIUs), of the TUF, regarding the rules governing investment funds and the relative implementing measures;
- Part IV (Regulation of issuers), Title II (Appeal to public savings), Chapter I, Sections I, II and III, of the TUF, regarding public offerings by EU AIFs and the relative implementing measures;

The Bank of Italy and Consob, each within their respective competences, shall monitor compliance with these provisions. The home Member State's authority shall be responsible for checking the adequacy of the organisational measures taken by the EU AIFM.

5. Representative offices

EU management companies and EU AIFMs may establish representative offices in Italy.

They shall notify the Bank of Italy of the start of operation, the addresses and the names of the managers of the representative offices.⁽⁴⁾

⁴ The notification shall be sent to Banca d'Italia – Servizio Supervisione Intermediari Finanziari - Roma.

CHAPTER V

DIRECT LENDING BY EU AIFS IN ITALY

1. General provisions

1.1 Preamble

The present provisions, in implementation of the TUF, govern direct lending by EU AIFs in Italy. The conditions and procedures for the provision of the service are laid out in paragraph 2. The applicable provisions and subsequent communications are set out in paragraph 3.

The Italian legislation applicable to EU AIFs on the marketing of units or shares and on all other matters not expressly covered by this chapter remain valid. In addition, the provisions on the transparency of contract terms and conditions and on relationships with customers shall apply to the loans granted in Italy by EU AIFs.

2. Conditions for operating in Italy

2.1 Conditions

EU AIFs can invest in loans, against their own capital, to borrowers other than consumers, made in Italy if the following conditions are met:

- a) the EU AIF is authorised by the competent authority of the home Member State to invest in loans, including those issued against its own capital, in the home country;
- b) the EU AIF is closed-ended and its operating model, particularly regarding the conditions for investors' participation in the fund, is the same as that of Italian AIFs that invest in loans;
- c) the regulatory framework of the home country of the EU AIF regarding containment and portioning of risk, including leverage limits, is equivalent to the rules established for Italian AIFs that invest in loans (see Title V, Chapter 3, Section V, paragraph 5, for AIFs marketed to retail investors and Section VI for AIFs marketed to professional investors). Equivalence with respect to Italian rules can be checked with reference also to the provisions of the statute or regulation of the EU AIF, provided that the competent authority of the home Member State assures compliance therewith.

2.2 Procedure

Managers of EU AIFs that intend to invest in loans in Italy shall communicate in advance to the Bank of Italy the following information for each AIF:

- the AIFM's name, registered office and top management;
- the name of the AIF or of the compartment in which it intends to operate in Italy;
- the full details on and the legal capacity of the signatory of the prior communication;
- the list of documents attached.

The communication shall be accompanied by the following documents:

- 1) the attestation of the supervisory authority that the manager is authorised to operate by the competent authority of its home Member State and that it can manage the fund referred to in the communication; as an alternative, a copy of the authorisation accompanied by the declaration of the legal representative that the fund manager is entered in the register, record or list of managers;
- 2) the attestation of the supervisory authority or, as an alternative, a legal opinion, regarding whether the fund can grant loans;
- 3) a copy of the AIF's regulation or statute, and a copy of the AIFM's statute or equivalent documents, along with the certificate of good standing issued by the competent authority of the home country of the AIF and of the AIFM; as an alternative, the certificate of the competent authority can be replaced by a statement by the legal representative of the AIF and of the AIFM certifying that the aforementioned documents are in force;
- 4) a statement by the AIFM's legal representative indicating that the laws and regulations of the AIF's home country are equivalent to those of Italy (a copy of the laws and regulations must be included in the documentation), and a legal opinion regarding said equivalence;
- 5) as an alternative to point 4, an attestation of the home country's supervisory authority certifying that it monitors compliance by the AIFM with the fund regulation or statute regarding the containment and portioning of risk, including leverage limits;
- 6) the most recent annual report and subsequent half-yearly report, if published;
- 7) a memo describing the AIF's operating model, specifically with reference to the procedures for subscribing and redeeming shares or units of the AIF and the AIF's purpose and investment policy. The memo shall indicate whether the AIFM has signed, or plans to sign, a side letter with the AIF's investors and, if so, shall describe the contents of said letter.

All the above documents can be transmitted in Italian or English. If the documents are drawn up in a foreign language other than English, they must be accompanied by a translation into Italian or English, along with the certification of conformity to the original provided by the legal representative of the AIFM.

If an EU AIF already authorised to invest in loans in Italy provides advance notice of the start of operation of a compartment in Italy, it shall not transmit the information concerning the EU AIFM that had already been submitted to the Bank of Italy upon beginning operation of the EU AIF in Italy.

The advance notice shall be sent to the Bank of Italy at least 60 days prior to the start of operation. Having received such notice, the Bank of Italy shall verify that it is complete and, if incomplete, shall request that the applicant provide the necessary supplemental information. The Bank of Italy shall notify the applicant by means of a "notice of receipt", once it has verified that the documents and, the necessary supplemental information, if any submitted are complete.

The Bank of Italy has a period of 60 days from the notice of receipt to prohibit the fund from investing in loans against its own capital in Italy if the conditions laid down in paragraph 2.1 are not met. If the Bank of Italy does not prohibit the activity during this period, the AIFM may begin operating the fund in Italy.

3. Applicable provisions and change in information provided

3.1 Supervisory disclosure

The AIFM shall submit the fund's annual report to the Bank of Italy within 10 days of its approval.

3.2 Change in information provided

The EU AIF manager shall promptly inform the Bank of Italy of any change in the information provided in accordance with paragraph 2.2, above.

The Bank of Italy shall notify the EU AIF that it has received the prior communication along with all the relevant information for verifying compliance with the conditions laid out in this chapter, by means of a “notice of receipt”.

Within 30 days of the notice of receipt, or in any case when it becomes aware that the said conditions for operating in Italy are no longer met, the Bank of Italy may initiate administrative proceedings *ex officio* to prohibit the EU AIF from investing in loans in Italy, which must be concluded within 60 days.