

Studio Legale Crocenzi e Associati

Via Canova, 1
CH - 6900 Lugano
Tel. +41 91 970 2718 | Fax +41 91 970 2720

Via Monte di Pietà, 21
I - 00121 Milano
Tel. +39 02 8633 7317 | Fax +39 02 8633 7431

crocenzifp@crocenzilex.com

Italian Regulatory Update¹

Issue 2020 04

To: Primary contacts
Date: August 3rd, 2020
Re: Italy – New decision of the Pension Fund Regulator (COVIP) – Delegation of the management of Italian pension funds to non-EU entities allowed

1 The Reply to a Query by the Chairman of COVIP of July 2020

COVIP, the Italian pension funds regulator, has published on July 30 a document (the “COVIP Decision”), signed by its Chairman and dated “July 2020” consisting of the reply to queries submitted by two industry associations, concerning:

- i. the confirmation that non-EU entities authorized to render investment services in Italy – typically on a cross-border basis – can be considered as included in the list of the entities eligible for the purpose of the management of Italian “second-pillar” (i.e., voluntary) pension funds (hereinafter, a “Pension Fund”) under article 6(1) of the Italian Pension Funds Act (Legislative Decree no 252 of 2005, hereinafter, “DLeg 252”); and
- ii. the possibility for the portfolio manager of a Pension Fund to delegate the management to a non-EU asset manager.

With regard to query (i), article 6(1) of DLeg 252 lists the entities which are allowed to manage Italian Pension funds: these are – *inter alia* – (a) asset managers “authorized

¹ **IMPORTANT INFORMATION** This memorandum is not given in performance of a professional engagement during an attorney-client relationship and is only given for a general information to the reader regarding the matters discussed herein. Therefore, this document should not be relied upon as a legal opinion and no action should be taken on the basis of the information herein contained.

to carry out the management of segregated portfolios in Italy” and (b) non-Italian MiFID companies or ManCo or AIFM of the EU having obtained the mutual recognition. Historically, the entities sub (a) have always been Italian investment firms or fund management companies (SIM and SGR), while the foreign players sub (b) always had their EU affiliates operating in this role. So long as the vast majority of the EU players acting through the mutual recognition were UK companies, the Brexit has raised the issue on whether a UK company, which will be no longer a EU entity, will be allowed to manage a Pension Fund as a company within category (a) after having obtained the authorization to operate in Italy as a non-EU player. The issue arose because so far there are no non-EU companies authorized to operate in Italy. Our Firm repeatedly pointed out with the COVIP that an authorization to a non-EU player would have the same value as one granted to an Italian SIM, or SGR, and COVIP shared this view.

Also with regard to query (ii), COVIP gave a feedback in the affirmative. Until now, COVIP required that the delegated manager for a pension fund needed to have the same status as the main portfolio manager: as it was not possible under DLeg 252 to have a non-EU portfolio manager, the consequence was that delegation to non-EU entities was actually impossible. This restriction, introduced in 1998, was quite bizarre, because for the “first-pillar” pension schemes (which are retail clients) the delegation to non-EU players was allowed under the general MiFID requirements.

Therefore, in order to sort out from this “asymmetrical” situation, COVIP has reviewed its position and now allows the delegation for pension funds too. This will be a game changer, especially for the British asset managers which became non-EU due to Brexit.

The Italian text of the COVIP Decision is available in the website of COVIP at www.covip.it under *Regolamentazione >>> Fondi Pensione >>> Risposte a quesiti >>> Gestione del fondo – depositario >>> Gestione delle risorse*.

Please contact crocenzifp@crocenzilex.com for any clarification.

Best regards

STUDIO LEGALE CROCENZI E ASSOCIATI

Francesco P Crocenzi