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## **EQUITY CAPITAL RAISING BY INNOVATIVE START-UPS THROUGH ONLINE PORTALS, THE SO CALLED “CROWDFUNDING”.**

On 30 April 2013 consultations were closed on the new regulation issued by Consob on “equity capital raising by innovative start-ups through online portals”<sup>1</sup> (the “**Regulation**”), the so-called “crowdfunding”. Italy shall be the first European country to establish an *ad hoc* regulation on this matter.

The Regulation was drafted by Consob pursuant to the mandate provided for in Article 30 of Decree Law no. 179 of 18 October 2012 (the so called “*decreto crescita bis*” converted, with amendments, into Law n. 221 of 17 December 2012), which, among other things, included in the *Testo Unico della Finanza* (the “**TUF**” or “**Consolidated Finance Act**”) Articles 50-*quinques* and 100-*ter*, rubricated respectively: “*Management of portals for raising equity capital for innovative start-ups*” and “*Offers through portals for raising equity capital*”.

The new legislation regulates the possibility for innovative start-ups – i.e. those companies not listed on a regulated market or a multilateral trading system that meet the requirements provided for by Article 25 of the above mentioned Decree Law – to raise equity capital online by calling on large numbers of investors (crowd) usually involved in micro-investments.

Within this regulatory framework, the Regulation aims at facilitating the activities of the operators of the online portals, while providing small investors who are parties to crowdfunding initiatives a level of protection substantially equivalent to that afforded to retail customers (i.e. no professional investors) by the intermediaries authorized to provide investment services.

In addition to banks and companies authorized to provide investment services, the management of online portals for raising capital is reserved to subjects entered in a register kept by Consob that satisfy the requirements of paragraph 3 of Article 30 of the Decree-Law no. 179 of 18 October 2012 and Articles 10 and 11 of the Regulation. These parties benefit (as per Article 50-*quinques*, paragraph 2, of the TUF) a significant exemption from the rules governing the conduct of investment services (Articles 21 to 25-*bis* and Article 32 of the TUF “*Marketing and distance placement of services and investment activities and financial instruments*”). In fact, pursuant to Article 50-*quinques*, paragraph 5, letter d) of the TUF, the rules of conduct that they must apply in their relationship with the investors are defined by the Regulation (Articles 14 to 23) and are not those established by the TUF for the conduct of investment services.

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<sup>1</sup> The regulation is available on the Consob website at the following link [http://www.consob.it/main/aree/novita/consultazione\\_crowdfunding\\_20130329.htm](http://www.consob.it/main/aree/novita/consultazione_crowdfunding_20130329.htm).

This measure is balanced by the fact that managers in the register kept by Consob may not hold money or financial instruments pertaining to third parties and must transmit orders underwriting of securities to banks and investment firms (Article 50-quinques, paragraph 2, of the TUF).

Furthermore, the Regulation provides that the operator has to comply with specific disclosure obligations to the public about online offers in order to allow investors to make investments in full awareness (Articles 15 to 17).

Operators must also comply with specific obligations during the collection of orders from investors and their transmission to the authorized intermediaries (Articles 18 to 23).

With regard to offers, the Regulation provides, on the one hand – as eligibility requirement - that at least 5% of the offer is subscribed by specific categories of professional investors and, on the other hand, that - in case of a change of control of the start-up – the underwriters minority have, for a period identified in the by-law, the right of withdrawal from the company or the right to sell their shares under the same conditions to which the majority stake is transferred to third parties (Article 26).

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