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Implementation of AIFMD II: Key Amendments to the Italian TUF

○ Financial Intermediaries Regulations

A draft legislative decree transposing Directive (EU) 2024/927 (known as AIFMD II) ("**Draft Decree**") has been submitted to the Italian Parliament. The Draft Decree implements Directives 2011/61/EU (known as AIFMD) and 2009/65/EC and introduces a comprehensive revision of Legislative Decree No. 58 of 24 February 1998 (the "**TUF**"), aimed at strengthening the regulatory framework for alternative investment fund managers ("**AIFMs**") and aligning national regulations with the latest developments in the European framework. It should be noted that the amendments provided for in the Draft Decree are distinct from those introduced by Law No. 21 of 5 March 2024 (the so-called *Legge Capitali*), which provided for measures to support the competitiveness of capital markets and gave the Government a mandate for the comprehensive reform of the TUF and the provisions on joint-stock companies contained in the Civil Code, which also apply to issuers.

The amendments introduced with the Draft Decree affect, *inter alia*, the delegation of functions, liquidity risk management, the supervisory reporting system and the provision of custody and depositary services.

In this context, a key role is assigned to the introduction of harmonized European rules for alternative investment funds ("**AIFs**") that originate loans, regulated within the TUF. The Draft Decree incorporates the European definition of "*loan-originating AIF*", classifying as such those funds whose investment strategy consists primarily of originating loans or whose originated loans have a notional value that represents at least 50% of its net asset value. Lending activities include both a direct activity of the AIF as the original lender and an indirect activity through third parties or vehicles, especially when the AIF or AIFM participates in the structuring of the loan. The Draft Decree introduces specific prudential safeguards for credit funds, providing for limits on the use of leverage, enhanced liquidity and credit risk management obligations, and measures to prevent conflicts of interest and moral hazard.

Finally, the Draft Decree revises the regime applicable to EU AIFMs wishing to invest in credit in Italy. In particular, it eliminates the reference to the sixty-day prior notification period – during which the Bank of Italy could prohibit operations – and requires only a notification to the Supervisory Authority. Secondary legislation will clarify whether this is a mere informative notification to the Supervisory Authority, as the wording of the provision suggests, or whether it is a procedural step affecting the start of operations.

Legance is available to provide any clarifications

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