

CHIOMENTI

The Italian Bond Market

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The Issuers

Who can issue bonds?

1. **Joint stock companies (*Società per Azioni*)** pursuant to articles 2410 and following of Italian Civil Code
2. **Limited Liability Companies (*Società a Responsabilità Limitata*)** pursuant to article 2483 of Italian Civil Code
3. **Cooperative Companies (*Società cooperative*)** pursuant to article 2526 of Italian Civil Code

The Issuers

Limits to the issuance and exceptions

- **Joint stock companies (*Società per Azioni*):** the issuer may issue bearer or registered bonds for a total amount not exceeding double of the share capital, the legal reserve and the available reserves resulting from the latest approved financial statements.

This limit **(i) may be exceeded** if the debt securities exceeding such limit are subscribed by professional investors which are subject to prudential supervision (such as banks and insurance companies) and **(ii) does not apply** to bonds to be listed on regulated markets or multilateral trading facilities.

- **Limited Liability Companies (*Società a Responsabilità Limitata*):** instruments may be issued exclusively to professional investors which are subject to prudential supervision, provided that the articles of association provides for this possibility.

High-Yield bonds vs Investment Grade bonds

High-Yield bonds and Investment Grade bonds have different contractual structure:

- **Investment Grade** bonds (issued either by corporate or regulated entities) are usually governed by English law, documented through standard Eurobond documentation and are listed on international markets (Ireland/Luxembourg);
- **Large High-Yield** bonds are usually governed by New York or English law, documented through standard HY documentation and listed on international market (with dual listing on Borsa Italiana's ExtraMOT PRO Market);
- **Small/Medium High-Yield** bonds are usually documented through simplified documentation (please following slides) governed by Italian law and listed on the ExtraMOT PRO market or the Third Market of Vienna.

Law governing the bonds

Mandatory provisions under Italian law

Bonds may be governed by any law (domestic or foreign). However some provisions are mandatory under Italian law, including the following:

- ✓ The T&Cs and the certificates must lay down the specific bonds features and information required under Italian law;
- ✓ Rate of interest and certain fees are subject to mandatory provisions of Italian usury law;
- ✓ PIK provisions are subject to certain limits concerning compounding of interest;
- ✓ Even if a trustee is appointed, it shall act also as representative of the bondholders pursuant to Italian law;
- ✓ No parallel debt concept is applicable under Italian law, but guarantees and securities may be granted in favor of the representative of the bondholders

Which form?

Physical certificates or dematerialized?

- **Bonds may be represented by physical certificates or may be dematerialised;**
- Bonds **must be dematerialised** if they are either:
 - ✓ To be listed on an Italian regulated market or Italian multilateral trading facility;
 - ✓ Issued by companies having other financial instruments listed on Italian regulated market;
 - ✓ Having a total nominal amount higher than Euro 150 million
- dematerialised bonds are usually held by **Monte Titoli acting as depository for Euroclear and Clearstream**. The application for the dematerialization on the Monte Titoli platform, as well as the procedure for the obtainment of the ISIN Code, are usually dealt for by the paying agent.

How to issue bonds?

Corporate steps

- approval by the issuer's competent corporate bodies (board of directors, unless the relevant by-laws provides for the competence of the shareholders meeting);
- before the issuance can take place, the company's resolution (and, where applicable, the director's sole determination by means of which final features of the bond are set) shall be notarised and registered with the competent Companies' Register (which usually takes 3-4 working days from the filing);
- the resolution must illustrate the essential terms of the bonds, including: the aggregate nominal amount of the bonds and the nominal value of each bond, the rights conferred to the bondholders, the investment return or the criteria set forth for the determination of such return, payment and reimbursement methods and the final repayment date, as well as details of the relevant guarantees and securities.

How to issue bonds?

Contractual Framework (1/2)

The documentation generally used in the context of bonds issuance includes:

- The **base prospectus / information memorandum / admission document** (in case of listed bonds), assuming that the offer is made free of the rules governing public offer and listing on regulated markets (i.e. the Prospectus Directive).
- The **terms and conditions of the bonds** that contain all the characteristics of the bonds and, in case of non-dematerialized bonds, the certificate representing the bonds.
- The **subscription agreement** entered into between the Issuer and the first subscriber.
- The **agency agreement** to settle the payments under the bond and the possible determination of the interest due in the case of variable rates, as well as some ancillary administrative activities.

How to issue bonds?

Contractual Framework (2/2)

- The *accordo di accentramento* with Monte Titoli (in case of dematerialized bonds).
- **Listing application** (in case of listed bonds).
- In case of secured issuance, the **security package**, such as:
 - 1) pledges on bank accounts;
 - 2) pledges of commercial receivables or assignment of commercial receivables by way of security;
 - 3) pledges on equity investments held in subsidiaries;
 - 4) pledges of receivables deriving from intercompany loans;
 - 5) guarantees (*fideiussioni*);
 - 6) mortgages.

Events of Default & Enforcement

The main events of default provided in the context of bonds issuance include the following:

- ✓ Non-payment;
- ✓ Breach of financial covenants;
- ✓ Cross default;
- ✓ Adverse judgements, injunctions and enforcement procedures for amounts above certain thresholds;
- ✓ Insolvency, appointment of a liquidator, or admission to composition with creditors;
- ✓ Significant corporate events (e.g. cessation of corporate activities, liquidation or voluntary dissolution of the issuer).

The trustee (acting as representative of the bondholders) is the legal representative of the bondholders in the context of bankruptcy proceedings but any bondholder may act on a solo basis.

Do you need bond agents? Trustee / Representative of bondholders

Trustee / Representative of the bondholders (RoBs):

- appointment of a trustee (usually in the context of English law governed bonds) is possible, provided that it will act also as representative of the bondholders under Italian law;
- no parallel debt concept is applicable under Italian law but guarantees and securities may be granted in favor of the RoBs, which is entitled to enforce the relevant rights in name and on behalf of the bondholders;
- RoBs is the legal representative of the bondholders in the context of bankruptcy proceedings but any bondholder may act on a solo basis.

Do you need bond agents?

Paying Agent

Any issuer is usually assisted by financial intermediary, acting as **paying agent**.

The Paying Agent is appointed under an agency agreement and is in charge of:

- (i) the **dematerialisation** procedure of the bonds with Monte Titoli,
- (ii) the procedure with Bank of Italy for the **obtainment of the ISIN Code**,
- (iii) to make **payments under the bonds**;
- (iv) the performance of **administrative activities**, including issuer's information duties *vis-à-vis* Borsa Italiana.

Where to list Italian corporate bonds?

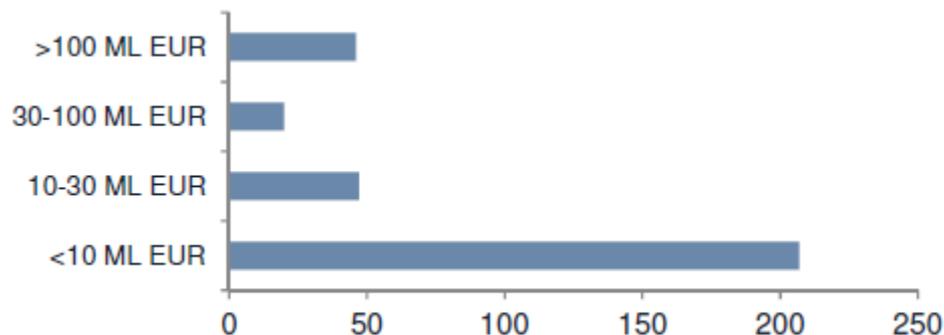
The Borsa Italiana's ExtraMOT PRO market

Since February 2013, the Italian Stock Exchange (Borsa Italiana S.p.A. or “Borsa Italiana”) has created - within the market ExtraMOT - a professional segment called ExtraMOT PRO for negotiation of debt instruments or project bonds.

Being a multilateral trading facility dedicated to professional investors only, the ExtraMOT PRO is the Italian market usually adopted for the listing of bonds issued by SMEs and for the dual listing of many HY bonds issued by Italian companies.

As of September 2018, **211 companies** have issued instruments on ExtraMOT PRO market, for overall **319 instruments** having a total nominal amount of **Euro 16 Bln.**

The breakdown of instruments per outstanding class is the following:



Why the ExtraMOT PRO Market?

Easy and quick access to a MTF

In order to list a bond on the ExtraMOT PRO Market, the following steps are required:

- I. the **contractual documentation** (i.e. the information memorandum containing the terms and conditions of the bonds) must be shared and agreed with Borsa Italiana beforehand. The documentation may be drafted either in **Italian or English language**;
- II. the issuer shall provide Borsa Italiana with (i) copy of the **latest two consolidated financial statements**, of which at least one audited, (ii) rating report, if any, and (iii) a spreadsheet with the essential terms and conditions of the bonds;
- III. the issuer shall **make available on its website** (usually, in the “investors relations” section) the information memorandum;
- IV. the bonds (and the issuer) must be correctly identified (“*censiti*”) on **Monte Titoli S.p.A. platform**;

After being satisfied of the occurrence of the above conditions (2/3 weeks), on the day before the issue date, Borsa Italiana publishes a notice informing the public that, starting from the next day, the instruments will be issued and tradeable on the ExtraMOT PRO Market (so-called “*comunicazione di inizio negoziazioni*”).

Thanks.