

COVID-19 Emergency Legislation: Consob exercises its powers pursuant to Article 17 of the Law Decree enacted on April 8, 2020 and imposes new disclosure obligations on holding thresholds and on investment plans statements in listed companies

On April 9, 2020, Consob issued two new resolutions adopted pursuant to Article 17 of Law Decree no. 23 dated April 8, 2020¹. These resolutions impose the obligation on the shareholders in certain listed companies (see below) to notify Consob and the relevant listed company of (i) the dimension of their shareholding and (ii) their "intentions" regarding their shareholding, in each case where the relevant shareholding meets certain thresholds². These new resolutions will remain in force from April 11, 2020 to July 20, 2020 (unless early revoked) and will apply only to the shareholdings in no. 104 listed companies with a particularly widespread shareholders base, specifically identified by the Authority in the lists attached to the aforementioned resolutions (the **Concerned Companies**).

NEW TRANSPARENCY REQUIREMENTS ON MATERIAL SHAREHOLDINGS

Consob Resolution no. 21326³ has amended the thresholds contemplated by Article 120 of Legislative Decree no. 58/98, as subsequently amended (the TUF). Article 120 of TUF requires shareholders to notify CONSOB and the Concerned Company every time their shareholding exceeds or falls below certain thresholds, which vary in light of the size of the said company.

More specifically, Resolution no. 21326 has introduced:

- i. a threshold of 1% for those Concerned Companies which do not qualify as Small/Medium Enterprises and listed in Section A) of the list attached to the Resolution; and
- ii. a threshold of 3% for those Concerned Companies which qualify as Small/Medium Enterprises and listed in Section B) of the list attached to the Resolution.

These new thresholds are additional (i.e. do not replace) to the thresholds already in force pursuant to Article 120 TUF and related implementing rules for Small/Medium Enterprises (i.e. 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66,6% and then 90%) and for companies which do not qualify as Small/Medium Enterprises (i.e. 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66,6% and then 90%).

Shareholders are usually required to notify Consob and the Concerned Company only whenever their shareholding is modified and, due to any such modification, exceeds or falls below the applicable thresholds⁴. Nevertheless, Resolution no. 21326 requires shareholders whose shareholdings in the Concerned Companies, as of the date of the entry into force of the Resolution (April, 11 2020), exceed the new thresholds⁵ but not the lowest thresholds already applicable⁶, to notify Consob and the Concerned Company despite the lack of any purchases. In this specific case, the notification must be made within 10 business days from April 11, 2020⁷.

It is worth reminding that the shareholding notification requirements, including those pursuant to this Resolution no. 21326, applies also to listed companies, in relation to their treasury shares.

"DECLARATION OF INTENTIONS"

Resolution n. 21327⁸ has introduced a new 5% threshold applicable to the disclosure obligation contemplated by Article 120, comma 4-bis of TUF.

This provision requires whoever acquires a shareholding in a listed company exceeding certain thresholds to declare the objectives it intends to pursue in relation to this shareholding over the following six months. This declaration must specify, inter alia, whether the purchaser intends to stop or to continue its purchases and whether it intends to acquire the control, or to exercise an influence on the management of the concerned listed company.

Article 120, comma 4-bis of TUF requires the shareholders to declare their "intentions" whenever their shareholdings exceeds any of these other thresholds: 10%, 20% and 25%.

[1] Law Decrees are issued by the Government and are immediately effective but need to be then converted into a law through a resolution of the Parliament. Parliament could confirm a law decree, refuse to convert it into a law or convert it into a law, with amendments.

[2] Only voting shares must be taken into account for the purpose of these disclosure requirements.

[3] <http://www.consob.it/web/area-pubblica/bollettino/documenti/bollettino2020/d21326.htm>.

[4] Article 121 of Consob Regulation no. 11971/99 (as subsequently amended) requires the shareholder to make this notification within 4 business days following the day of the transaction through which their shareholding exceeded or fell below the applicable thresholds.

[5] i.e., 3% for Small/Medium Enterprises and 1% for non Small/Medium Enterprises.

[6] i.e., 5% for Small/Medium Enterprises and 3% for non Small/Medium Enterprises.

[7] The notification is not due if already made pursuant to Consob Resolution no. 21304 of March 17, 2020. This Resolution, repealed by Resolution no. 21326, introduced the 1% and the 3% thresholds in relation to a limited number of listed companies, precisely those having a high current market value and a particularly widespread shareholders base, as indicated in the list attached to the said Resolution.

[8] <http://www.consob.it/web/area-pubblica/bollettino/documenti/bollettino2020/d21327.htm>.

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