Italy

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

In Italy, fintech is constantly growing. Italian financial institutions are making huge investments in digital and IT transformation, through integrating cloud technologies, leveraging big data analytics, developing new end-to-end processes and cybersecurity (EY's and Fintech District's 2020 report).

The Artificial Intelligence ("**AI**") market in Italy is still starting its growth process: in 2019, the market was valued at EUR 200 million (AI 2020, Observatory of Politecnico of Milan).

The development of the fintech revolution was certainly accelerated by the COVID-19 pandemic, which has opened the market to new players, including fintech companies that offer innovative and low-cost services, particularly with regard to electronic payments, asset management and securities brokerage. However, already existing operators have also started renewing their business models in order to meet the new technology standards.

With regard to payments, in the last year, due to the COVID-19 pandemic, the Bank of Italy registered a clear increase in the use of POS compared to ATMs. In addition, contactless card payments have gone from 35% (in the pre-COVID-19 period) to 55%.

In the e-commerce market, online card transactions increased from 25% before the lockdown period to over 40% in April 2020.

According to EY's and Fintech District's 2020 report, the five largest subsectors in Italy are: crowdfunding; DNA, ML, AI; smart payments and money transfers; lending; and insurtech (page 6).

The Bank of Italy stated that Application Programming Interfaces ("**APIs**") are the predominant technology and that APIs are very important for their capability to attract resources and to be combined with other technologies, encouraging collaboration and competition between operators even outside the perimeter of payment services.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

In Italy, banking and financial activities are subject to the issuance of specific authorisations (by the Bank of Italy and the Italian Commission for Companies and the Stock Exchange ("**Consob**"), which is the financial market supervisory authority), in order to select only the operators whose requirements have been previously assessed by these supervisory authorities, in compliance with the provisions set forth in the Consolidated Law on Finance (Legislative Decree No. 58 of 24 February 1998 – "**TUF**") and in the Consolidated Banking Law (Legislative Decree No. 385 of 1 September 1993 – "**TUB**"). The following, among others, are considered as reserved activities that must be previously authorised by the Bank of Italy/Consob: i) providing investment services or activities or collective asset management services; ii) marketing units or shares of collective investment undertakings in Italy; iii) selling financial products or financial instruments or investment services door-to-door or using distance marketing techniques to promote or place such instruments and services or activities; iv) carrying out data communication services; v) acting as a financial advisor authorised to make off-premises offers (this activity can only be carried out by enrolling with the register of financial advisors "*Promotore finanziario*") ("**Reserved Activities**").

Social lending

The Bank of Italy, in its "Regulation about the collection of savings made by operators other from banks" (issued on 19 November 2016), defined social lending (or lending-based crowdfunding) as "the mean through which a plurality of entities can request to a plurality of potential lenders, through online platforms, repayable funds for personal use or for financing a project".

The Bank of Italy also specified that social lending activities must comply with the specific regulation related to Reserved Activities. The collection of savings is an activity reserved to the banks, and the Bank of Italy stated that this activity is prohibited to both managers and borrowers, with some exceptions. In particular, with regard to managers, in cases where it does not constitute collection of savings or the collection of funds to be placed in payment accounts exclusively used for the provision of payment services by the managers themselves, if authorised to operate as payment institutions, electronic money institutions or financial intermediaries, or the collection of funds for issuing digital value by authorised managers.

With regard to borrowers, if the acquisition of funds carried out based on personalised negotiations with individual lenders does not constitute collection of savings, then the digital platform must necessarily be a neutral intermediary.

TAR Lazio (Administrative Court, Judgment No. 12848/2009) ruled that if the activity carried out through an online platform that connects lenders to borrowers constitutes a form of collection of savings, then it is a Reserved Activity that can only be performed by authorised entities.

Equity-based crowdfunding

Law Decree No. 179/2012 (converted in Law No. 221/2012,

then amended by Consob Regulation No. 18592/2013) introduced the equity-based crowdfunding regulation.

The management of crowdfunding platforms for small and medium-sized enterprises ("**SMEs**") and for social enterprises is reserved for investment firms, EU investment companies, companies of non-EU countries other than banks authorised in Italy, European Long-Term Investment Funds ("**ELTIF**") managers for just the offer of stakes or shares of Undertaking for Collective Investment ("**UCI**") that invest mainly in small and medium-sized businesses and banks, authorised to the relative investment services, as well as to the parties entered in the appropriate register kept by Consob, on the condition that they transmit orders for the subscription and the buying and selling of financial instruments representative of capital exclusively to banks, investment firms, EU investment companies and companies of non-EU countries other than banks, and orders for shares or stakes of the UCI to the relative managers.

Anti-money laundering ("AML") obligations
See question 4.5.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

In Italy, fintech businesses can be financed both by equity and debt systems. Funding to Italian fintech start-ups grew at a CAGR of over 60% from 2016 to 2019.

Fintech start-ups often resort to self-financing through the founders' own assets, to financing from certified stock companies, or to bank loans.

Even if during the pandemic, no relevant funding measures were addressed by the Government directly to fintech businesses, those companies that fall within the definition of SMEs can still benefit from some measures of liquidity support. Italy's Guarantee Fund for SMEs, managed by the Ministry of Economic Development ("**MiSE**"), is the major national aid instrument for enterprises, with the mission to support access to credit by SMEs through direct guarantees to banks. The guarantee can cover up to 80% of the loan and allows banks to improve the financial conditions applied to the borrowers.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

Legislative Decree No. 34/2020 increased the Smart&Start Italy programme, which introduced several measures in order to incentivise entrepreneurship focused on production and exchange of innovative goods/services. Decree No. 34/2020 allocated: i) EUR 10 million of non-repayable contributions in order to support innovative start-ups; and ii) EUR 200 million for the Venture Capital Support Fund.

Italy has recently approved the post-COVID-19 Recovery and Resilience Plan ("**RRP**"), defining actions and interventions to overcome the economic and social impact of the pandemic, in order to act on the country's structural nodes and to face the environmental, technological and social challenges. The RRP allocates EUR 11.44 billion for digitalisation and innovation in order to carry out the digital transition, by strengthening research and development centres investing in fintech, big data, quantum computing and other key technologies.

Also, general incentives and aids (not only for fintech businesses) are provided for SMEs. Pursuant to Law Decree No. 18/2020 (*Decreto Cura Italia*, "**Cure Italy Decree**"), SMEs based in Italy can benefit from an extraordinary moratorium on current account credit lines, loans for advances on negotiable instruments, short-term loan maturities, and loan instalments, and rent payments due, for an overall loan volume of over EUR 300 billion. Law Decree No. 104/2020 extended the moratorium measures until 31 January 2021 (Ministry of Economy and Finance ("**MEF**") website, https://www.mef.gov.it/en/covid-19/Liquidity-support-for-households-businesses-and-local-authorities/).

Law Decree No. 23/2020 enhanced the Guarantee Fund worth EUR 200 billion in order to grant access to liquidity to those companies that are facing the consequences of the COVID-19 pandemic, and SACE S.p.a. will grant guarantees in favour of banks and other financial institutions for any kind of new loans disbursed to companies (MEF website, https://www.mef.gov.it/en/covid-19/Liquidity-support-for-households-businesses-and-local-authorities/).

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

In order to launch an IPO, the company must comply with these requirements: i) prior notification to Consob specifying all the features of the offer and listing all the parties who will take part in the transaction indicating also the role of each part; and ii) drawing up the Information Paper according to the format indicated by Consob. The issuing company must organise the IPO in compliance with the provisions set forth in TUF.

More flexible rules are provided for the Alternative Investment Market ("**AIM**") – the market dedicated to dynamic and competitive SMEs which are looking for capital in order to finance their growth, and it offers a simplified and flexible admission process. AIM has minimum access requirements. To be listed on AIM, it is necessary to be advised by a financial institution listed in the Nomad registry (*Nominaded Advisers*, aim-italia.it), both in the period before the admission and after the listing. A minimum or maximum capitalisation of the company is not required and no minimum shares' thresholds on the market are requested.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

At the end of 2020, Illimity Bank S.p.a. and Fabrick S.p.a. (which is a company part of the Sella Bank Group and 100% shareholder of HYPE S.p.a.) announced a joint venture in the fintech HYPE S.p.a. In particular, Illimity will acquire a 50% shareholding in HYPE's share capital, with the target to reach over three million customers thanks to the synergies between the Illimity and Fabrick platforms. Illimity also invested in digital payments start-ups Hyppe Azimut and Epic SIM.

Among the main transactions concerning fintech, we have to highlight the purchase of capital stock by Banca Generali in the crypto-value platform Conio.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

There is not a specific and consolidated regulatory framework for fintech businesses operating in Italy.

The main pieces of legislation are the following:

i) Crowdfunding Regulation (Regulation No. 18592/2013 issued by Consob – last amended by Resolution No. 21259/2020); and
ii) Law Decree No. 34/2019 (so-called "**Growth Decree**") converted in Law No. 58/2019.

When fintech businesses carry out Reserved Activities, they shall also observe the provisions regulating such activities set forth in TUF and TUB

Fintech businesses shall also observe provisions set forth in:

i) Legislative Decree No. 196 of 30 June 2003 (the Italian Data Protection Code – "**IDPC**"), as amended by Legislative Decree No. 101 of 10 August 2018, which implemented EU Regulation 2016/679 (the General Data Protection Regulation – "**GDPR**");
ii) Legislative Decree No. 65/2018, which implements EU Directive No. 2016/1148 (also called the "**NIS Directive**"); and
iii) Legislative Decree No. 231/2007 on AML, as amended by Legislative Decree No. 125/2019).
iv) the Intermediaries Regulation adopted by Consob with Resolution No. 20307/2018.

On 24 September 2020, the EU Commission adopted the Digital Finance Package, including a digital finance strategy and legislative proposals on crypto-assets and digital resilience, setting out the main goals to be achieved in the digital transition, such as giving consumers access to innovative financial products, while ensuring consumer protection and financial stability.

In Italy, the Growth Decree appointed the MEF, after consulting the Bank of Italy, Consob and the Insurance Supervisory Authority ("**IVASS**"), with the duty of adopting one or more regulations to define the conditions and modalities for carrying out the testing of fintech applications (so-called "**Regulatory Sandbox**"). See question 3.3.

The Bank of Italy stated that if a fintech company carries out a Reserved Activity (such as banking, financial and payments services), the company must fulfil the requirements provided for that activity. See also question 1.2.

i) Crowdfunding

The Growth Decree introduced the definition of crowdfunding as the tool through which families and businesses are financed directly through online platforms, by a plurality of investors.

The Decree also introduced the definition of social lending as the tool through which a plurality of subjects can request a plurality of potential lenders, through online platforms, repayable funds for personal use or to finance a project.

Pursuant to the Italian Financial Act and Consob Regulation No. 18592/2013, only investment firms, banks authorised to provide investment services or portal managers specifically authorised by Consob can manage equity crowdfunding. Law No. 145/2018 introduced the possibility to use crowdfunding portals in order to offer debt instruments addressed to professional investors. See question 1.2.

ii) Distributed ledger technology ("DLT") and smart contracts

Art. 8-*ter*, Law No. 12/2019, converting Law Decree No. 135/2018, introduced the definition of DLT as IT technologies and telematic protocols that use a shared, distributed, replicable, simultaneously accessible, architecturally decentralised registry on cryptographic keys, such as to allow the recording, validation, storage of data both unencrypted and further protected by cryptography verifiable by each participant, which are not perishable or modifiable. The legal certainty of DLTs means that data stored in a DLT can be used as evidence in legal proceedings.

Art. 8-*ter* also introduced the definition of a smart contract as a computer program that operates on distributed register technology and whose execution automatically binds two or more parts based on predefined effects. Smart contracts satisfy the requirement of the written form upon electronic identification of the involved parties.

iii) Payment Services – PSD2

Legislative Decree No. 218/2017 ("**PSD2 Decree**") implemented EU Directive No. 2015/2366 on payment services in the internal market, modifying TUB. The PSD2 Decree also sets out rules for the application of the EU Regulation on interchange fees for card-based payment transactions ("**IFR**") in Italy.

The PSD2 Decree introduced two new payment services: the account information service ("**AIS**"); and the payment initiation service ("**PIS**"), and both banks and payment/e-money institutions could provide PIS and AIS after a prior communication to the Bank of Italy.

In May 2020, illimitybank.com, the digital bank part of Illimity Group, activated, for the first time in Italy, the PIS service, which allows making payments from current accounts of other banks aggregated on the Illimity platform.

In July 2020, the Bank of Italy granted Nexi S.p.a. the authorisation required by the PSD2 legislation in order to provide PIS and AIS services.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

A specific regulation on cryptocurrencies and cryptoassets has not been issued in Italy.

Legislative Decree No. 90/2017 (as amended by Legislative Decree No. 125/2019) subjected virtual currency providers to the regulations established for traditional money exchange operators and defined virtual currencies as: "… *the digital representation of value, which has not issued by a central bank or a public authority, not necessarily linked to a legal tender currency, used as means of exchange for the purchase of goods and service or for investment purposes, which is electronically transferred, stored and negotiated*" (Art. 1, Legislative Decree No. 90/2017). Legislative Decree No. 125/2019 introduced the definition of digital wallet services as each person (physical or legal) who provides safekeeping services for private cryptographic keys on behalf of its customers, in order to hold, store and transfer virtual currencies.

With regard to cryptocurrencies as an investment, Initial Coin Offering ("**ICO**") is not regulated, but in 2019, Consob launched a public consultation on a draft ICO regulation about crypto-assets, which was attended by over 200 participants.

On 2 January 2020, Consob published its final report on initial offers and exchanges of crypto-assets. With regard to the definition of crypto-assets, Consob clarified that, despite it being already argued that the proposed definition of crypto-assets does not draw a sufficiently clear distinction between crypto-assets falling into the category of financial instruments and those not falling into that, the concept of "financial instrument" is contained in the EU reference legislation (MiFID framework) and this European harmonisation regulation takes supremacy in the hierarchy of sources. Therefore, national authorities cannot provide regulatory additions and they must exercise their powers in compliance with European provisions. The interpretive criteria for distinguishing between financial instruments and crypto-assets may be found in the European legislation, where a catalogue of categories of financial instruments is codified. The regulation proposed by Consob on "initial offers and exchanges of crypto-assets" is based on the need to regulate the ICOs that

are typically characterised in operational practice through the use of DLT technology. Therefore, the proposed regulation includes, as a defining element, the technology based on distributed ledgers, considering the innovative scope of that technology and in consideration of the continuous development thereof which requires a legal framework to allow it to evolve, acting as a reference for operators while promoting, at the same time, the protection of investors.

The storage, exchange or use of virtual currencies is allowed, but providers of e-wallet and crypto-exchange services must comply with the AML regulation.

The Italian Supreme Court ruled (Judgment No. 26807/2020) that the online sale of Bitcoin, proposed to the market as an investment where the promoter has not fulfilled the obligations referred to, among others, in Arts 91 TUF (then, outside the control of Consob), is a financial crime under Art. 166, 1 paragraph, lett. c) TUF.

The Bank of Italy and Consob, following the Coinbase IPO in the NYSE, issued in April 2021 a joint communication clarifying that cryptocurrencies "represent high-risk activities". In particular, the authorities highlighted the "*high risks associated with operations in crypto-assets that may entail the full loss of the sums of money used*". The two authorities also underlined that "the purchase of crypto-assets is not subject to the rules on the transparency of banking products and investment services and continues to lack protection for consumers".

In particular, these activities "*are not subject to any form of supervision or control by the supervisory authorities. Consequently, even adherence to offers of financial products related to crypto-assets, such as the so-called Digital tokens, is a highly risky investment, all the more so if, as often found, the offers are made by unauthorized operators, not regulated and not supervised by any authority*", according to the authorities.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

The fintech sector is rapidly evolving in Italy and both regulators and policy-makers are aware of the fintech phenomenon.

The Growth Decree appointed the MEF, after consulting the Bank of Italy, Consob and IVASS, with the task of conducting a public consultation about a Fintech Regulatory Sandbox.

The Regulatory Sandbox applies to fintech activities, which promote innovation in financial, credit and insurance services/products using new technologies (i.e., AI and DLT), under the supervision of the competent authorities. For this purpose, the MEF opened a public consultation on a Draft Regulation, which identifies the criteria for testing fintech activities. In particular, the Draft Regulation set up the Fintech Committee, in charge of identifying goals and strategies for the development of fintech businesses. In order to apply to the Sandbox regime, the interested firm shall file a specific application to the relevant supervisory authorities: Consob; IVASS; and the Bank of Italy. The public consultation has already ended, but no final version of the regulation has been issued yet.

The Bank of Italy took an active role in supporting the development of the fintech sector by setting up the "FinTech Channel", a channel of communication and dialogue with market operators and fintech companies that wish to propose innovative financial services and fintech solutions (dedicated email address: canale-fintech@bancaditalia.it).

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

EU companies can carry out their activities in Italy without material hurdles. European Economic Area ("**EEA**") fintech companies duly licensed/authorised in their country may exercise their activities in Italy without a permanent establishment in Italy or through the establishment of an Italian branch.

In general, non-EU companies, pursuant to Art. 29-*ter* TUF (implementing MiFID II Directive No. 65/2014), in order to carry out investment services, must obtain specific authorisation from the Bank of Italy, after consulting Consob. Foreign non-EU banks may provide investment services and activities to retail clients or professional clients exclusively through the establishment of branches in the Italian territory.

The establishment of branches by foreign banks on the Italian territory must be authorised by Consob, after consulting the Bank of Italy.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

The principal national data protection legislation in Italy is the IDPC, as amended by Legislative Decree No. 101 of 10 August 2018, which was enacted in order to make the Italian data protection laws compliant with the GDPR. The IDPC implemented the Privacy and Electronic Communications Directive (EU Directive No. 85/2002).

The legal bases on which personal data may be processed most relevant for businesses are the following: (i) prior, freely given, specific, informed and unambiguous consent of the data subject; (ii) contractual necessity (i.e., the processing is necessary for the performance of a contract to which the data subject is a party, or for the purposes of pre-contractual measures taken at the data subject's request); (iii) compliance with legal obligations (i.e., the controller has a legal obligation, under the laws of the EU and/or IDPC, to perform the relevant processing); or (iv) legitimate interests (i.e., the processing is necessary for the purposes of legitimate interests pursued by the controller, except where the controller's interests are overridden by the interests, fundamental rights or freedoms of the affected data subjects).

Please note that businesses require stronger grounds to process sensitive personal data, which could be processed only under certain conditions, of which the most relevant for businesses are: (i) explicit consent of the affected data subject; (ii) the processing is necessary in the context of employment law; or (iii) the processing is necessary for the establishment, exercise or defence of legal claims.

Investment firms carrying out "algorithmic trading" shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market, pursuant to the security general principle set forth in Art. 5 GDPR and in Art. 17 MiFID II.

Art. 22 GDPR regulates automated individual decision-making, including profiling, stating that the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or similarly significantly affects him with the following exceptions: if the decision a) is necessary for entering into, or performance of, a contract between the data subject and a data controller; b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or c) is based on the data subject's explicit consent. In cases a) and c), the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.

This specific provision is particularly relevant in the fintech sector since it applies to automated processing used by financial institutions for credit rating.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The IDPC also applies to organisations established outside of Italy when they process personal data inside the Italian territory.

According to the GDPR, data transfer inside the EEA is permitted, while data transfers to jurisdictions outside the EU and the EEA are not always allowed. A data transfer abroad can only take place to a whitelisted country and it must respect the following rules: i) it must use standard contractual clauses and model contracts; ii) it must follow binding corporate rules; iii) it must have an approved certification; and iv) it must have an approved code of conduct.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

The IDPA has a wide range of powers, including issuing warnings or reprimands for non-compliance, ordering the controller to disclose a personal data breach to the data subject, to impose a permanent or temporary ban on processing, to withdraw a certification, and to impose an administrative fine which can be up to EUR 20 million or up to 4% of the business' worldwide annual turnover of the proceeding financial year, whichever is higher. If the IPA ascertains facts that represent criminal offences, it must communicate those facts to the public prosecutor (*Procura della Repubblica*) without delay.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

In 2016, the EU adopted the NIS Directive concerning measures for a frequent level of security of network and information systems across the European Union, which was implemented in Italy by Legislative Decree No. 65/2018. The NIS Directive's provisions apply to all businesses which fall under the definition of Digital Service Providers ("**DSPs**") or Operators of Essential Services ("**OESs**"); this includes the banking sector and financial market infrastructures (Annex 2 to the NIS Directive).

In accordance with the NIS Directive, operators must take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of the network and information systems (such as system security; monitoring and testing activity; incident handling procedures).

Decree No. 105/2019 was adopted in order to ensure a high-security level of networks and information/IT systems of the public administrations, as well as public and private bodies, through the establishment of a national cybersecurity perimeter.

In 2017 and 2018, Italy streamlined and strengthened its cybersecurity structure in order to boost its cybercapabilities. The Security Intelligence Department ("**DIS**") has a key role in Italian cybersecurity governance. Law No. 133/2019 ("**Cybersecurity Law**") contains provisions on national cybersecurity in order to guarantee the highest level of security of networks, information systems and information technology services for the public administration and private entities.

EU Regulation No. 2019/881 ("**ENISA Act**") enrolled ENISA, the European Union Agency for Cybersecurity, with the task of contributing to the development and implementation of European Union policy and law in the field of cybersecurity and on sector-specific policy and law initiatives where matters related to cybersecurity are involved and assisting Member States to implement the EU policy and law regarding cybersecurity.

In Italy, the MEF is the authority in charge of cybersecurity, jointly with the Bank of Italy and Consob.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

Legislative Decree No. 90/2017 (implementing the Fourth EU Anti-Money Laundering Directive No. 849/2015) and Legislative Decree No. 125/2019 (implementing the Fifth EU Anti-Money Laundering Directive No. 843/2018) provide that both exchanges and e-wallet providers must comply with the customers' due diligence duties and must report suspicious transactions to the Financial Intelligence Unit ("**FIU**").

Pursuant to the Fifth Anti-Money Laundering Directive (No. 843/2018), service providers whose activity consists of the provision of exchange services between virtual currencies and fiat currencies and digital wallet service providers must also comply with the AML obligations.

Italian anti-laundering legislation is fully harmonised with the EU provisions. Pursuant to Legislative Decree No. 231/2007, in the equity-based crowdfunding legal framework, banking and financial intermediaries, whose activity is necessary for the digital portals' services, must comply with the AML obligations, such as the identification of the investors, the recording of data and reporting of suspicious transactions to the FIU. In the social lending framework, AML obligations fall directly on the digital platforms' managers.

Pursuant to the AML Decree, digital portfolio service providers and virtual currency service providers are subject to prior notification and enrolment requirements, which will be set out in a Decree from the MEF (for now, only the draft version of the Decree is available). In particular, these operators must file a notification to the MEF before starting their business and then enrol with the exchange's specific register. See question 1.2.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

Consumer Protection Law (Legislative Decree No. 206/2005) also applies to fintech businesses.

In particular, with regard to fintech services related to the online platforms that compare financial and insurance products,

recently the Italian Antitrust Authority ("**IAA**", the authority in charge of the application of the Consumer Protection Law) opened an in-depth investigation (case PS11856, April 2021) against Facile.it, based on the allegation that it did not provide complete information to consumers for a correct comparison among financial (mortgage) and insurance products. The investigation will be closed at the end of 2021.

With regard to consumer protection, the IAA fined a company for the trading of a cryptocurrency linked with a pyramid sales system (One Coin case PS10550, August 2017).

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

In Italy, the Civil Code, the Workers' Statute (Law No. 300/1970) and other special laws set out very detailed regulation with regard to employment relationships. Furthermore, National Collective Bargaining Agreements ("**NCBAs**") specifically set out the hiring conditions, salary, working time, dismissal and all the other aspects of the employment relationship (such as maternity, illness and holidays).

NCBAs are negotiated by employers' association on the one hand and trade unions on the other, in relation to the different business sectors.

The written form is not mandatory for individual contracts; however, there are specific data and information that the employers must communicate to the employees within 30 days from the hiring date: i) the parties' data; ii) the start date; iii) the workplace; iv) the duration of the contract (i.e., fixed term or indefinite); v) the employee's job title; vi) the salary and also, if any, the trial period and the applicable NCBA.

With regard to the dismissal of staff, during the trial period, they may be legitimately terminated even without a valid reason.

Once the trial period has ended, the employment relationship may be lawfully terminated for the following reasons:

i) Dismissal for "*legitimate reason*" (in Italian: "*giusta causa*"): when the seriousness of breach by the employee prevents continuation of the employment relationship (the legal base is set forth in Art. 2119 of the Civil Code which provides that each of the contracting parties may withdraw without any notice if a cause occurs which does not allow the continuation of the employment relationship).
ii) Dismissal for "*justified subjective reason*": in case of a serious violation by the employee of the contractual obligations, but less serious than a "*legitimate reason*" dismissal (for example, unjustified absences from work).
iii) Dismissal for "*justified objective reason*": in relation to the production, the work organisation or the working activity of the employer.

While dismissal for *legitimate reason* could be given to the employee without notice, dismissal for *justified subjective/objective reasons* requires a prior notice to terminate the employment relationship (in general, the term of the notice is between 15 days and six months).

5.2 What, if any, mandatory employment benefits must be provided to staff?

The individual employment contract sets out terms and condition of the employment relationship, but NCBAs, if any, often provide mandatory employment benefits, such as the minimum wage, the minimum period of holidays, pregnancy and maternity/paternity leave, sickness, working hours (the maximum weekly working hours are fixed to 40 hours, but parties may agree a variation), etc.

With regard to the minimum wage, this is generally set forth on a sector-by-sector basis by NCBAs, which specify different minimum wages depending on the qualifications and level of the employees.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

EU citizens have the right to move and reside freely in the Italian national territory and they can carry out any type of activity, both autonomous and subordinate, under the same conditions as Italian citizens.

With regard to non-EU foreign citizens residing abroad, entry into the Italian territory for work reasons is only possible within the annual maximum entry quotas determined by the specific decrees providing details on entry for work reasons. In order to hire non-EU foreign workers residing abroad, an application for clearance must be submitted to the Single Desk for Immigration ("**SUI**") competent for the province where the work will take place.

With regard to the application procedure for obtaining a visa for non-EU foreign citizens, we refer to the Italian Intern Minister's website: https://www.poliziadistato.it/articolo/foreign-nationals#:~:text=Foreign%20nationals%20%2D%20that%20is%20non,specified%20on%20their%20entry%20visa.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

In Italy, intellectual property rights are regulated by Legislative Decree No. 30/2005 (the Industrial and Intellectual Property Code – "**IPC**") and it provides that new inventions which provide a technical contribution and that involve inventive steps (i.e., the invention is not obvious to a person skilled in the art due to an existing art or general knowledge) are protected by two kinds of patents: invention patents; and utility models. An invention is novel if it has not been disclosed before the date of filing or the date of priority of the application. Patents applications (with a sufficiently clear and complete description of the invention (Art. 51 IPC)) are filed with the Italian Patent and Trademark Office ("**UIBM**"), which is based in Rome. A patent for an industrial invention has a duration of 20 years starting on the date of filing of the application (Art. 60 ICP). The property rights for an industrial invention belong to the author of the invention who can transfer and dispose of those rights. See also question 6.3 for EU and International Patents.

Software technologies may be protected under the Italian Copyright Law (Art. 64-*bis*, Law No. 633/1941).

The author's software right protects software coding, i.e., the way it is written (programming language/machine language).

The author's right enjoys protection under the Copyright Law and in order to obtain the protection, the software has to be original, in comparison to pre-existing software. The protection, which includes moral and property rights, arises automatically when a piece of software is created. The Italian Society of Authors and Publishers ("**SIAE**") is entrusted with keeping a special public register of computer programs. Registration of

software in this special register serves as evidence of the existence of the software and of its creator and publication.

Software patentability is generally excluded because software are not generally considered inventions according to the definition set forth in Art. 45 IPC.

However, software may be patented only if containing at least one algorithm that is innovative from a technical point of view. Programs for data compression, video speeding and for the calculation of operative parameters are all instances of patentable software. In order to patent software, there is no need to supply lines of code, while it is necessary to prepare a detailed description of the innovative algorithms and of how they interact with the software.

Trade secrets (regulated by the IPC) provide a different kind of protection from the ones granted by trademarks and patents. Trade Secrets focus on the information related to productive activity or to a business organisation. The information protected by the trade secret must meet these features: i) it is secret, meaning that it is not commonly known among or easily accessible to workers and experts in the relevant field of activity; ii) it has commercial value just because it is secret; and iii) it is subject to control by authorised personnel so that the secret can be kept. Protection is granted to business information and technical-industrial experience, including commercial information and experience (Art. 98 IPC). The legitimate owner of the trade secret has the right to prohibit third parties, subject to his consent, from acquiring, disclosing to third parties, or using that information and experience in an unauthorised manner.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

IP rights' protection generally operates through a registration process: SIAE special register for authors' rights and patent registration procedure for inventions and utility models. With regard to patents, three kinds of filing are available in Italy: i) Italian National Patent; ii) European Patent; and iii) International Patent.

Italian National Patents are registered and protected by the UIBM. The Italian Patent guarantees its owner the right to prohibit third parties from producing, using, marketing, selling or importing the products covered by the patent for 20 years. After its registration, maintenance fees for the patent must be paid, as a requirement; otherwise, the patent will lapse and become public domain. The patent is published 18 months after the date of filing and, on expiry, the patent cannot be renewed. A National Patent is protected only in the country where it has been granted.

European Patents are granted by the European Patent Office ("**EPO**") and grants protection in one or more Member States through the filing of a single application. Within three months from the issuance of the European Patent, the holder has to initiate the procedure for the national validation.

International Patents are granted by the World Intellectual Property Organization ("**WIPO**") and provide protection of a patent for an invention or utility model in one or more Contracting States of the Patent Cooperation Treaty ("**PCT**").

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

In order to enforce IP rights in Italy, the patent right must be valid on the Italian territory, through an Italian National Patent or a European Patent for which protection in Italy was requested at the moment of the application to the EPO (the same is valid for International Patents).

Once granted, the Italian National Patent is valid from the date of filing of the application; however, the effects towards third parties start from the date on which the application is made available to the public. Until that date, it is not possible to take action in cases of infringement against third parties because the patent is secret. Until the patent is made available to the public, in order to protect IP rights, the only way is to notify a copy of the application to the infringer, and the effects of the patent application against the notified party start from the date of notification.

Italy is part of the Berne Convention for the Protection of Literary and Artistic Works that deals with the protection of works and the rights of their authors. The Berne Convention is based on the "principle of national treatment" according to which works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

In general, the owner of the IP right may monetise its right through the exclusive use of the invention/work protected by the IP right.

A patent can be assigned (similar to a sale) or licensed to third parties; in the second case, the patent owner will receive a royalty compensation. The assignment or licensing of a patent has to be registered with the UIBM through a specific petition for annotation. With regard to the patent's assignment, the MiSE has provided an evaluation model in order to measure the economic value of patents (i.e., the creation of value within the company and on the market deriving from the exploitation of the new patented technology) – very useful in a business context. The evaluation model is available on the MiSE website (https://uibm.mise.gov.it/index.php/it/griglia-di-valutazione-economica-dei-brevetti).

The Patent Box regime is a tax bonus introduced in order to improve the development of intellectual property, granting tax benefits to resident and non-resident taxpayers carrying out research and development activities. Companies and operators carrying out business activities involving the development of intangible assets (such as software protected by copyright, patents, business and technical-industrial know-how) can benefit from the Patent Box regime.

The benefit is an optional partial tax exemption from Corporate Tax for those incomes arising from direct use or licensing of qualified intangible assets. Taxpayers can partially exclude from their taxable income those qualified incomes deriving from the direct exploitation of intangibles or from licensing of the IP, such as royalties earned by the taxpayer, net of all IP-related costs. The Patent Box businesses shall be entitled to exclude up to 50% of their income derived from such assets. In order to determine the benefit, there must be a direct nexus between R&D activities and qualified IP, as well as a direct nexus between qualified IP and qualified income.

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