

DRAFT REGULATION*

**PART I
LEGAL BASIS AND DEFINITIONS**

Article 2
Definitions

1. In this Regulation:

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h) “related parties” shall mean parties so defined by the international accounting standard regarding financial statement information on related party transactions, adopted under the procedure referred to in article 6 of Regulation (EC) 1606/2002;

h-bis) “related party transactions” shall mean the transactions so defined by the international accounting standard regarding financial statement information on related party transactions, adopted under the procedure referred to in article 6 of Regulation (CE) 1606/2002;

.....

p) “atypical or unusual transactions” shall mean transactions with atypical or unusual features with respect to normal company operations, by virtue of the counterparty, the subject of the transaction, the method used to determine the price or the timing (proximity to the end of the financial year);

q) “independent directors” shall mean directors in possession of the requirements of independence provided by article 148 paragraph 3 of the Consolidated Law on Finance, or, if the company’s charter so provide, of the requirements envisaged by the codes of conduct promoted by regulated markets or by industry associations.

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**PART III
ISSUERS**

**TITLE II
COMPANY INFORMATION**

**Chapter XX
*Related party transactions***

Article x.1
Scope of application

1. Without prejudice to the provisions set forth in articles 2373, 2391, 2497-*bis* and 2497-*ter* of the Civil Code as well as those set forth in articles 53 and 136 of legislative decree no. 385 of 1

* This translation has been prepared for information purposes only. It is not intended to be nor does it constitute an official version of the text. For all legal purposes reference should be made to the Italian text.

September 1993, and the relevant implementation rules, this Chapter defines the principles that Italian companies listed on regulated markets and issuers of shares widely distributed among the public (hereinafter in this Chapter, jointly referred to as “the companies”) must comply with in order to ensure the transparency and the substantial and procedural fairness of related party transactions entered into directly or through subsidiaries.

2. The companies shall assess whether, for the purposes of this Chapter, to identify further parties as related parties in addition to those defined as such pursuant to this Regulation. To this end, they shall take into consideration, in particular, the ownership structure, significant contractual links for the purpose of article 2359, first paragraph, no. 3), of the Civil Code, as well as special legal provisions that may be applicable as regards related parties.

Article x.2

Adoption of an internal code

1. The companies’ board of director shall adopt, according to the principles defined in this Chapter, an internal code to ensure the transparency and the substantial and procedural fairness of related party transactions. In particular, the code shall:

- a) identify the related parties and the transactions to which the rules of this Chapter apply;
- b) define the procedures pursuant to which decisions on related party transactions are taken, specifying rules for transactions to be entered into through subsidiaries;
- c) specify the information and the documentation to be provided to the bodies entrusted with decision-making power on related party transactions and to the board of directors and the board of auditors after their execution;
- d) establish the procedures and the timing for the provision of the information and the documentation set forth in letter c).

2. Without prejudice to the competence of the extraordinary shareholder meeting for the necessary charter amendments, in the adoption of resolutions on internal code and on subsequent changes to it:

- a) a key role is to be played by a committee, entirely composed of independent directors, the independent director, if only one independent director is on the board, or the board of auditors, if there is no independent director;
- b) coordination with the procedures for financial information set forth in article 154-*bis* of the Consolidated Law on Finance is ensured.

3. The board of auditors shall oversee the compliance of the internal code with the general principles set forth in this Chapter and shall report on this to the shareholder meeting in accordance with article 2429, paragraph 2, of the Civil Code or article 153 of the Consolidated Law on Finance.

4. Without prejudice to the obligation to publish it in the annual report, the internal code and the changes to it shall be published without delay on the company’s website.

5. The entity controlling the company and the other entities as indicated in article 114, paragraph

5, of the Consolidated Law on Finance, which are related parties of a company, shall provide the necessary information to the latter in order to identify related parties under paragraph 1, letter a).

Article x. 3

Public disclosure of material related party transactions[†]

1. Pursuant to article 114, paragraph 5 of the Consolidated Law on Finance, without prejudice to the provisions set forth in articles 70 and 71, in the case of material related party transactions, even when entered into by subsidiaries, the companies shall issue a circular drawn up according to Annex 3B.

2. The internal code shall establish the criteria to identify material related party transactions, in such a way as to include at least the transactions set forth in annex 3I.

3. Material related party transactions shall also include those entered into with the same party, or with parties related to the latter which are also related to the company, when, taken together, they exceed the materiality thresholds in a twelve months period, even if, individually taken, they are not material.

4. The circular referred to in paragraph 1 shall be promptly made available to the public pursuant to article 66 of the present Regulation and, where applicable, to article 114, paragraph 1 of the Consolidated Law on Finance, after the approval of the transaction by the board of directors or by the restricted committee of independent directors as set forth in article x.4, paragraph 1, letter a) or after the board of directors has approved the proposal to submit it to the approval of the shareholder meeting. In the event that a material transaction is such pursuant to paragraph 3, the circular shall be promptly made available to the public following the approval of the transaction involving the crossing of the materiality threshold and shall contain information on all of the transactions concluded in the previous twelve months with the same related party.

5. The companies shall promptly make any opinions by the independent directors and/or independent advisers available to the public with the circular referred to in paragraph 1 or on the website, either as an attachment.

Article x. 4

Procedures for material related party transactions

1. In order to ensure the transparency and the substantial fairness of material related party transactions, other than those reserved to the shareholder meeting according to the law or the company's charter, the internal code must at least envisage:

- a) the award of decision-making power to the board of directors or, if approval of the transaction is not reserved to the board, to a restricted committee of independent directors;
- b) if the decision-making power lies with the board of directors: in conducting negotiations and in

[†] This provision replaces article 71-bis of Consob Regulation on Issuers.

the preparatory inquiry a key role for the independent directors, having no interests in the transaction under article 2391 of the Civil Code; in the approval of the transaction, a deciding role for the independent directors if the transaction is not reserved to the board, or a preemptive opinion of the independent directors if the transaction is reserved to the board;

- c) if the decision-making power lies within the restricted committee referred to in letter a), the participation of the committee itself in the negotiations and in the preparatory inquiry of the resolution, with the right to delegate these tasks to one or more of its members;
- d) the right of the independent directors to be assisted, at the company's expense, by one or more independent advisers of their choice, who do not have, even indirectly, any interests in the transaction;
- e) if the company has only one independent director with no interests in the transaction under article 2391 of the Civil Code, the assignation to her or him of the responsibilities set forth in letter c);
- f) an in-depth and documented analysis, in the preparatory inquiry and at the resolution stage, of the grounds for the transaction, of the interests of the company in entering into it and of the cost-effectiveness and fairness of its conditions. If the transaction is entered to at market conditions, or similar to those usually applied to non-related parties of similar quality and risk, the documentation contains objective elements supporting such conclusion;
- g) that the body responsible for approving the transaction is provided with complete and adequate information well in advance;
- h) specific rules in the event that there are no independent directors with no interests in the transaction under article 2391 of the Civil Code;
- i) adequate and complete information to the board of directors on the progress of the transactions at least on a quarterly basis.

2. Also pursuant to article 154-ter of the Consolidated Law on Finance, the companies shall provide analytical information on each material related party transaction entered into in the reference period, as well as on any changes to the material transactions illustrated in the previous financial statements.

3. The companies shall adopt internal rules for the evaluation of the material related party transactions to be entered into by subsidiaries, taking into account the provisions of this article.

Article x. 5

Procedures for other related party transactions

1. Companies not providing for the application of the procedure set forth in article x.4 for related party transactions other than material ones shall identify a further procedure for these transactions, even in the case that the decision-making power lies with the shareholder meeting, envisaging at least:

- a) that the independent directors with no interests in the transaction under article 2391 of the Civil Code provide their opinion upon it;
- b) the right of independent directors to seek the assistance, at the company's expense, of one or more independent advisers of their choice, who do not have, even indirectly, any interests in the transaction;
- c) an in-depth and documented analysis, in the preparatory inquiry and at the resolution stage, of the grounds for the transaction, of the interests of the company in entering into it and of the cost-

effectiveness and fairness of its conditions. If the transaction is entered to at market conditions, or similar to those usually applied to non-related parties of similar quality and risk, the documentation contains objective elements supporting such conclusion;

d) that the body responsible for the approval of the transaction is provided with complete and adequate information well in advance;

e) specific rules in the event that there are no independent directors who do not have interests in the transaction under article 2391 of the Civil Code;

f) adequate and complete information on at least a quarterly basis to the board of directors on the progress of the transactions.

2. The companies shall adopt internal rules for the evaluation of related party transactions other than material ones to be entered into by subsidiaries, taking into account the provisions of paragraph 1.

Article x.6

Regulation for specific types of company

1. Without prejudice to the provisions set forth in article x.3, issuers of shares widely distributed among the public, small listed companies and recently-listed companies may, by way of exception to article x.4, apply a procedure established in compliance with the provisions of article x.5 to material related party transactions. The Consob's present provision does not apply to listed companies subject to the management and coordination activity of another company or entity under article 2497 of the Civil Code, and listed companies controlled, even indirectly, by an Italian or foreign company listed on a regulated market.

2. For the purposes of paragraph 1, small listed companies are listed companies for whom Consob has ascertained a market capitalization of less than or equal to €500 million, pursuant to the provisions of article 144-*septies*, paragraph 1 of this Regulation with reference to financial year 2007. Small listed companies may no longer be classified as such if their market capitalization, ascertained by Consob on application of article 144-*septies*, paragraph 1, for financial years subsequent to 2007, exceeds the threshold of €500 million for three years in a row. In this case, the procedures will be made compliant with the principles of article x.4 within ninety days of the first shareholder meeting convened subsequent to Consob's assessment. Companies are classified as small companies if their market capitalization, ascertained by Consob on application of article 144-*septies*, paragraph 1, for the financial years subsequent to 2007, is lower than €500 million for three years in a row.

3. For the purposes of paragraph 1, companies are recently-listed from the first day of negotiations to date on which the financial statements for the second financial year subsequent to that of listing are approved. After this period, companies are classified as small companies if their market capitalization, ascertained by Consob on application of article 144-*septies*, paragraph 1, is lower than €500 million with reference to the previous financial year. Companies resulting from the merger or spin-off of one or more listed companies that are not recently-listed companies may not be classified as recently-listed.

Article x.7

Transactions within the scope of authority of the shareholder meeting

1. When, by law, charter provisions or other company provisions, a material related party transaction falls within the scope of authority of the shareholder meeting, the procedures shall envisage:

- a.1) the application of at least the provisions of article x.5, insofar as they are compatible, to the approval of the proposal to convene the shareholder meeting and of the draft resolution;
- a.2) that the resolution by the shareholder meeting, without prejudice to the provisions of article 2368, paragraph 3, and 2373 of the Civil Code, is conditional upon approval procedures ensuring that the voting outcome is not determined by the related parties involved in the transaction or by other parties related to the latter which in turn are related to the company. The procedures may envisage that this condition is applicable only if a given amount of share capital is represented at the shareholder meeting, to be determined taking into account the shareholdings required for the submission of lists under article 144-septies;

or, alternatively,

- b) the application of at least the provisions of article x.4, as far as compatible, to the negotiations, the preparatory inquiry, and the approval procedure for the proposal to be submitted and the draft resolution to be submitted to the shareholder meeting.
2. Pursuant to article 114, paragraph 5 of the Consolidated Law on Finance, at least ten days before the date set for the shareholder meeting convened to vote on a material related party transaction, the company shall make the circular illustrated in article x.3 and any updates of the same available to the public at its registered office or at the market management companies.

Article x.8

Cases of exclusion

1. Without prejudice to the provisions set forth in article x.4 paragraph 2, when identifying material related party transactions as referred to in articles x.3 and x.4 and the transactions subject to the procedures as referred to in article x.5, companies may exclude the following transactions:

- a) transactions with subsidiaries, on condition that in these companies there are no interests of other related parties, such as e.g. the ownership of shares and/or instruments under article 2346, paragraph 6, of the Civil Code or remuneration packages linked to the subsidiary's performance;
- b) transactions implementing share-based remuneration schemes approved by the shareholder meeting under article 114-*bis* of the Consolidated Law on Finance.

2. the internal code may establish criteria to identify small transactions to which the following provisions do not apply:

- a) the provisions of article x.3 and the procedures set forth in articles x.4 and x.7 regarding transactions identified as material on the basis of the qualitative criteria illustrated in annex 3I, point 2;
- b) the procedures set forth in article x.5, for transactions other than material related party transactions.

Article x. 9
Resolutions for standardized transactions

1. If, for specific categories of transactions, the internal code allows for the approval of a single resolution regarding a series of future, standardized transactions with the same related party, the procedures shall at least envisage:

- a) rules that, in order to guarantee the transparency and the substantial fairness of the transactions, take into account the provisions of articles x.3, x.4 and x.5, as far as compatible, based on the foreseeable consideration of transactions to be performed in the reference period;
- b) that the resolutions be valid no more than one year and that they refer to sufficiently defined transactions, indicating at least the foreseeable consideration of transactions to be entered into in the reference period and the grounds for the envisaged conditions;
- c) that the board of directors is fully and adequately informed of individual transactions concluded within the scope of the resolutions at least every three months.

2. Companies may exclude from the application of the provisions of paragraph 1 transactions covered by the provisions of article x.8, paragraph 1, and transactions for a foreseeable small amount as set forth in article X.8, paragraph 2.

Article x. 10
Companies Twotier-board

1. In twotier-board companies, the regulations of this Chapter that refer to the board of directors and to its members shall apply to the management board and its members; the regulations of this Chapter that refer to the internal board of auditors shall apply to the supervisory board. The procedures may envisage that independent directors' opinions are released by the audit committee established within the supervisory board, if existing, or by a committee established within the supervisory board.

2. Where resolutions on related party transactions fall within the scope of authority of the supervisory board, pursuant to article 2365, paragraph 2, or to article 2409-*terdecies*, paragraph 1, letter f-*bis*), of the Civil Code, the procedures set forth in articles x.4, x.5 and x.6 apply, insofar as such are compatible, during negotiations, the preparatory inquiry and the approval by the management board of the proposals to be submitted to the supervisory board. As to the approval by the supervisory board, the procedures envisage at least that:

- a) the audit committee established within the supervisory board, if existing, or a committee

- established within the supervisory board, must provide an opinion on the transaction;
- b) where supervisory board members have interests, personally or on behalf of third parties, in the transaction, they must inform the other board members, specifying their nature, terms, origin and extent;
 - c) the resolution approved by the supervisory board must provide adequate grounds as to the rationale and the cost-effectiveness of the transaction for the company.
3. In the event that there are no independent members of the management board who do not have interests in the transaction under article 2391 of the Civil Code, the procedures shall envisage specific rules that guarantee the substantial fairness of the transaction, ensuring at least that:
- a) the transaction is approved by the supervisory board with the preemptive opinion of the audit committee established within the supervisory board, if existing, or a committee established within the supervisory board;
 - b) for material related party transactions, in addition to what envisaged under a), the supervisory board appoints, at the company's expense, an independent adviser identified by the audit committee established within the same board, if existing, or selected on the favourable vote of the supervisory board member, or the majority of the supervisory board members, elected by minority shareholders, where present.

Article x.11

Transitional provisions

1. The companies shall adopt the rules as indicated in this Chapter within [to be defined].
2. The companies may defer the effectiveness of the rules adopted for a period not exceeding thirty days from adoption.

Article 37 of Market Regulation
Inhibitory conditions to the listing of shares of companies subject to management and coordination by other companies

1. 1. The shares of subsidiaries subject to management and coordination by another company may not be admitted to trading on an Italian regulated market where such companies:

- a)
- b)
- c)

d) ~~do not have sufficient numbers of independent directors to guarantee significant weight being given to their opinion in decisions of the board of directors. For the evaluation of independence and adequacy in number terms of the aforementioned directors, reference shall be made to the general criteria established by the management companies of regulated markets, taking into account best practices as governed by codes of conduct prepared by said companies or by industry associations.~~ do not establish an audit committee of directors in possession of the requirements of independence provided by article 148, paragraph 3 of the Consolidated Law on Finance, or, if so the company's charter provides, the requirements envisaged by the codes of conduct promoted by regulated markets or by industry associations (hereinafter "independent directors"). Where established, the other committees recommended by the codes of conduct promoted by regulated markets or by industry associations shall also be entirely comprised of independent directors. As regards companies subject to the management and coordination activity of another Italian or foreign company listed on regulated markets, a board of directors comprising a majority of independent directors is also required. For the purposes of this letter d), the directors of the entity that exercises management and coordination activity or the directors of its listed subsidiaries cannot be deemed as independent directors of the relevant company. As regards twotier-board companies, an audit committee established within the supervisory board and chaired by a director elected by minority shareholders is required.

Article 51 of Market Regulation
Transitional and final provisions

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6. The subsidiaries subject to the management and control of another company shall adopt the provisions set forth in article 37, paragraph 1, letter d) within [to be defined] of the first shareholder meeting convened to appoint the board of directors after [to be defined].

IDENTIFICATION OF MATERIAL RELATED PARTY TRANSACTIONS

1. Internal procedures shall establish **quantitative criteria** to identify “**material related party transactions**” in order to include at least the following categories of transactions.

1.1. Transactions in which at least one of the following indices of materiality, applicable depending on the specific transaction, is higher than **5%**:

a) Consideration index: is the ratio between the consideration of the transaction and the average capitalization of the company’s shares in the last six months.

If the economic conditions of the transaction have been established, the consideration of the transaction is:

- i) for cash components, the amount paid to/by the contractual counterparty;
- ii) for the components represented by financial instruments, the *fair value* calculated, on the date of the transaction, according to the international accounting standards adopted under Regulation (EC) 1606/2002.

If the economic conditions of the transaction depend all or part on amounts that are not yet known, the consideration of the transaction is the maximum value receivable or payable under the agreement. If a maximum value is not established and none of the other indices of materiality can be calculated, the transaction is considered material.

If the capitalization cannot be calculated, (for example, in the case of transactions regarding issuers of shares widely distributed among the public), the denominator of the index is represented by the company’s shareholders’ equity.

b) Assets index: is the ratio between the total assets of the entity which is the subject of the transaction and the company’s total assets.

As regards transactions on shares of companies which can modify consolidated accounts, the value of the numerator is the total assets of the investee company, regardless of the percentage of capital subject to the transaction.

As regards transactions on shares of companies that cannot modify consolidated accounts, the value of the numerator is:

- i) in the case of acquisitions of shares, the consideration of the transaction plus the liabilities of the company acquired that may be taken on by the buyer;
- ii) in the case of sales of shares, the value of the assets sold.

For transactions to acquire or sell other assets (other than the acquisition of shares), the value of the numerator is:

- i) in the case of acquisitions, the higher of the consideration and the book value that

will be attributed to the asset;

ii) in the case of sales, the book value of the asset.

c) Earnings index: is the ratio between pre-tax profit attributable to the entity which is the subject of the transaction and the company's pre-tax profit.

d) Liabilities index: is the ratio between the total liabilities of the entity purchased and the company's total assets.

e) Purchase and sale of goods and services index: is the ratio between the consideration of the transaction and the company's revenues.

1.2. Where at least one of the indices of materiality set forth in paragraph 1.1. exceeds **1%**, transactions:

a) with the entity that exercises management and coordination activity under article 2497 of the Civil Code or with parties related to that entity;

b) with listed controlling companies or with parties that, in turn, are related to the companies;

c) with the entity controlling the company or with parties related to the former that are, also related to the company, if the company has issued shares with restricted voting rights or without voting rights listed on regulated markets or widely distributed among the public;

d) with the entity controlling the company or with parties related to the latter which, are also related to the company, when the company's charter envisages limits to the possession of shares or to the voting right.

2. Without prejudice to the quantitative criteria set forth in paragraph 1, the companies shall also establish **qualitative criteria** to identify material related party transactions, at least considering:

a) related party transactions regarding intangible assets (for example, trademarks, patents);

b) atypical and/or unusual related party transactions.