



This PDF contains elements that are interactive.  
Midnight blue text indicates there is pop-up information.

# The Digital Financial Instruments Law

## Tokenised financial instruments go live in Italy

### Law Decree 25/2023 – a snapshot

Law Decree no. 25 of 17 March 2023, setting forth urgent provisions concerning the issuance and transfer of tokenised financial instruments, including bonds and shares (ie financial instruments in a digital form, ie issued by using the distributed ledger technology or blockchain), is effective as of 18 March 2023 (the **Digital Financial Instruments Law** or **DFIL**).

The **DFIL** is an epoch-making piece of legislation as designed to allow: (i) the issuance and transfer of financial instruments in digital form; and (ii) the applicability of the **Pilot Regime** in Italy.

In particular before the DFIL, only two alternative regimes were available to issue and transfer financial instruments under Italian law: (i) the regime of the Italian Civil Code applicable to securities in paper form; or, as an alternative (ii) the regime of the **Italian Financial Services Act**, applicable to dematerialised securities, ie to securities issued in book-entry form. In this respect, under a certain **interpretation**, tokenised securities cannot be subsumed under the regime of form and circulation provided by the Italian Civil Code or by the Italian Financial Services Act and, as such, an ad hoc legislation was deemed necessary.

As such, the Digital Financial Instruments Law, by enabling the issuance and transfer of tokenised financial instruments, has introduced a third regime with the aim of creating a legal “bridge” to the Pilot Regime provided by the new European digital finance package, supporting the legal innovation and the new technologies.

Thus, upon the publication of the DFIL, the Italian jurisdiction prepares to start the experimentation of the Pilot sandbox and to test a brand new regime to issue and transfer tokenised financial instruments exclusively relying on digital applications and infrastructures.



## Executive Summary

### 1. The covered instruments

The provisions laid down by the DFIL apply to pre-determinate categories of financial instruments including, *inter alia*, shares, bonds, debt instruments, quotas or shares of undertaking for collective investment.

### 2. The tokenised financial instruments regime

To improve and strengthen the competitiveness of Italian market operators in the digital finance market, the DFIL introduces a new regime covering the relevant matters governed by the existing centralised management system's regime pursuant to the Italian Financial Services Act, though tailored to the specificities and features characterising the tokenised financial instruments.

### 3. *Ad hoc* regime applicable to banks and MiFID investment firms

A specific regime is designed in relation to banks and/or MiFID investment firms where the registration of tokenised financial instruments is made in their own name and on behalf of their clients.

### 4. Register Supervisor

In order to ensure the proper functioning and traceability of the issuance and transfer of tokenised financial instruments, the DFIL envisages the legal status of "Register Supervisor". The activities of the Register Supervisor may be carried out by the issuers or other regulated entities, being previously enrolled in a specific register held by CONSOB.

### 5. CONSOB legislative delegation

The Italian legislator has delegated to CONSOB the enactment of secondary level legislation to further implement the principles laid down at a primary level legislation.

### 6. Alignment with the Pilot Regime

As a final note, to make the transposition of the Pilot Regime effectively enforceable in Italy, the DFIL designates the Bank of Italy and CONSOB as the national competent authorities to enforce the provisions set out by the Pilot Regime, in line with their respective competences.



## The Digital Financial Instruments Law – an epoch-making piece of legislation/the disruptive changes

### The tokenised financial instruments

The provisions laid down by the DFIL apply to:

- (i) shares pursuant to Book V, Title V, Chapter V, Section V of the Italian Civil Code;
- (ii) bonds pursuant to Book V, Title V, Chapter V, Section VII of the Italian Civil Code;
- (iii) debt instruments issued by limited liabilities companies pursuant to Article 2483 of the Italian Civil Code;
- (iv) debt instruments, other than those listed under items (ii) and (iii) above, whose issuance is permitted under Italian law;
- (v) depository receipts relating to bonds or other debt instruments of non-domiciled issuers where issued by Italian issuers;
- (vi) money market instruments governed by Italian law;
- (vii) quotas or shares of undertaking for collective investment within the meaning of Article 1, paragraph 1, letter l) of the Italian Financial Services Act; and
- (viii) instruments other than those listed under items (i) – (vii) above, identified by CONSOB by means of a secondary level regulation.

### The legal regime applicable to the issuance and transfer of tokenised financial instruments

To improve and strengthen the competitiveness of Italian market operators in the digital finance market, the DFIL introduces a new regime covering the relevant matters governed by the existing centralised management system's regime pursuant to the Italian Financial Services Act, though tailored to the specificities and features characterising the tokenised financial instruments. Such new regime includes, *inter alia*:

- (i) the direct or indirect identification of the legal or natural person in whose favour the tokenised financial instrument was registered and the category/type and the number of the tokenised financial instruments held by each persons;
- (ii) the creation of encumbrances over the tokenised financial instruments;
- (iii) the exercise of the voting rights attached to the tokenised financial instruments;
- (iv) the right to participate and intervene in the shareholders meetings of the issuers of the tokenised financial instruments held by the legal or natural person in whose favour the tokenised financial instrument was registered;

- (v) dividends and earnings distributions;
- (vi) objections that may raise claims; and
- (vii) management and periodic update of the shareholders register.

### **Ad hoc regime applicable to banks and MiFID investment firms**

An *ad hoc* regime is envisaged where a bank or a MiFID investment firm holds tokenised financial instruments on its own name and on behalf of its clients. Under this scenario, the entitlement to exercise the rights pertaining to the tokenised financial instruments is attributed to the client in whose name the relevant account has been opened.

To the extent possible, certain provisions set forth in the Italian Financial Services Act as to financial instruments in book-entry form would apply in substitution of the relevant provisions under the DFIL.

## Registration Regime for the Register Supervisor and liability regime

The DFIL introduces the completely new legal status of “Register Supervisor”, namely the issuer or a third-party entity identified as the responsible entity for the management and functioning of the issuer’s register used to issue and transfer the tokenised financial instruments.

The activity of Register Supervisor may only be carried out by entities enrolled on a specific register held by CONSOB and any of the following entities are eligible to file the registration application:

- (i) banks, MiFID investment firms and market operators established (*stabiliti*) in Italy;
- (ii) financial intermediaries, payment service providers, e-money institutions, insurance and re-insurance companies where incorporated in Italy and provided that the activity of Register Supervisor is carried out only in relation to tokenised financial instruments issued by these entities themselves or entities belonging to their corporate group;
- (iii) issuers having their registered office in Italy intending to act as Register Supervisor only in relation to the tokenised financial instruments they issue;
- (iv) entities established (*stabiliti*) in Italy other than those listed under items (i) to (iii) above;

(v) those entities identified by CONSOB by secondary level regulations; and

(vi) central depositories that are enrolled in the CONSOB register by law provided that they have applied for a top-up license covering also ancillary activities pursuant to Articles 16 and 19 of the **CSDR**.

Provided that certain criteria identified by CONSOB through secondary level regulation are met, the Register Supervisor may be classified as a “Significant Register Supervisor”.

The Register Supervisor shall be held liable to the issuer and the legal or natural person in whose favour the tokenised financial instrument was registered for any damages caused to them by the (improper) functioning of the register, unless the Register Supervisor proves to have implemented all the measures and arrangements deemed reasonably adequate to prevent such damages.

## CONSOB legislative powers

CONSOB has been delegated by the Italian legislator to enact a secondary level legislation in order to make the DFIL fully and efficiently enforceable and operative in Italy.

In particular, the Italian legislator may, *inter alia*:

- (i) introduce additional restrictions or conditions to the issuance and transfer of tokenised financial instruments;
- (ii) identify additional instruments to be issued and transferred in a tokenised format;
- (iii) regulate the modalities to be followed and the documents to be filed to get enrolled on the Register Supervisory registry; and
- (iv) set forth the criteria to benefit from the registration, conduct rules and reporting requirements applicable to the Register Supervisor depending on the category of investors who may invest in the tokenised financial instruments and/or the features characterising the issuance itself.

## The designation of the Italian competent authorities under the Pilot Regime

Article 29 of the DFIL identifies Banca d’Italia and CONSOB as the Italian competent authorities to exercise the powers and authorities envisaged under the Pilot Regime.

## What's next?

Since the primary level legislation is in effect, CONSOB can now implement the **ESMA Guidelines** and make available on its website instructions on how to submit an application for a specific permission to operate a DLT market infrastructure for the purposes of the Pilot Regime.

CONSOB is also asked to set a new registry to enrol the Register Supervisors where, in the meantime, entities intending to act as Register Supervisor would be enrolled on a temporary register. Finally, CONSOB is expected to issue the secondary legislation aimed at fully implementing the DFIL.

## Contacts



### Emiliano La Sala

Counsel - Head of domestic capital market and Fintech group coordinator  
Tel +39 02 2904 9740  
emiliano.lasala@allenoverly.com



### Giulia Ghiandai

Associate – Italy ICM  
Tel +39 06 6842 7446  
giulia.ghiandai@allenoverly.com



### Valentina Barbanti

PSL Counsel – Italy Know-how  
Tel +39 06 6842 7511  
valentina.barbanti@allenoverly.com

## Global presence

Allen & Overy is an international legal practice with approximately 5,800 people, including some 590 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at [www.allenoverly.com/global\\_coverage](http://www.allenoverly.com/global_coverage).

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy LLP is authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners is open to inspection at our registered office at One Bishops Square, London E1 6AD.