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A Guide to Takeovers in Italy

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For further information about this Guide and our Italian M&A capabilities, please refer to the following key contacts

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Foreword

The Italian takeover regime has been under the spotlight of regulators in the past few years, following the Implementation of the EU Takeover Directive. Highly structured laws and regulations have been issued to provide an improved and more detailed regulatory framework in the context of evolving financial markets.

This Takeover Guide wishes to provide preliminary guidance as to the rules applying to tender offers over Italian listed securities. It explains the different categories of tender offers, the general process and the requirements to implement a takeover and other related matters.

We have represented many of the leading national and international corporations and financial institutions on many of the largest and most innovative M&A transactions around the globe. Whenever a listed entity is involved, understanding takeover regulations is crucial, both to structure the transaction properly, and to achieve success. With this Guide we aim at sharing with our best clients our experience in public takeovers in Italy. Because of the increasingly cross-border nature of M&A transactions, this publication also includes a Section discussing the application of US securities laws to Italian public takeovers.

The Takeover Guide is up-to-date as of May 2012, but the legislation or market practice described herein is subject to frequent changes and evolves over time. This Takeover Guide should be considered only preliminary general guidance, and is not intended to be legal advice or to substitute legal assistance during the takeover process.

To find out more our Italian corporate practice and experience in this field, please contact us.

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1.1 Regulatory framework

Takeovers of companies whose securities are listed on the Italian regulated market (each, the "**Target**") are governed by the following laws and regulations:

(a) Legislative Decree no. 58 of 24 February 1998, as amended (the "**Draghi Law**"), sets forth general rules on takeovers, identifying the different types of offers. The Draghi Law was amended in 2007 and again in 2009 to reflect the implementation in Italy of the EU Takeover Directive no. 25/2004 (the "**Takeover Directive**"); and

(b) Consob Regulation no. 11971 of 14 May 1999 as amended, (the "**Consob Regulation**"), is a set of secondary rules issued by the Italian companies regulator, *Commissione Nazionale per le Società e la Borsa* ("**Consob**"), to implement certain general principles of the Draghi Law. The Consob Regulation was amended in 2011 to implement the Takeover Directive at the secondary level and again in February 2012.

This Takeover Guide takes into consideration the amendments to date to the Draghi Law and the Consob Regulation reflecting the implementation in Italy of the Takeover Directive.

1.2 Scope of application of takeover regulations

Italian takeover laws and regulations apply to:

(i) companies with registered office in Italy whose securities are traded on an Italian regulated market;

(ii) companies with registered office in an EU Member State whose securities are traded exclusively on an Italian regulated market;

(iii) companies with registered office in an EU Member State whose securities are traded both on an Italian and on an EU regulated market that were (i) either listed first on the Italian regulated market, or (ii) were simultaneously listed on both markets, and chose Consob as the competent independent authority; and

(iv) Italian companies with securities traded on a regulated market of another EU Member State.

For (ii) and (iii) above, the Italian takeover rules apply to the price and procedure of the takeover, with particular regard to disclosure duties.

For (iv) above, the Italian rules apply with regard to defensive measures and disclosure duties vis-à-vis employees.

The provisions regarding passivity, breakthrough and reciprocity rules and protection of employees do not apply to takeovers which:

- do not concern "securities" which grant voting rights in the ordinary or extraordinary shareholders' meeting;
- are launched by persons who already hold the majority of voting rights exercisable in general meetings; or
- concern treasury shares.

In addition to the above, the Draghi Law and the Consob Regulation provide for certain transparency and procedural rules that are generally applicable to any tender offer of securities (*prodotti finanziari*) addressed to the general public in Italy.

1.3 Types of tender offers: “voluntary” tender offers and “mandatory” tender offers

Italian public tender offers can take a variety of forms, such as offer for cash (*offerta pubblica di acquisto or OPA*), stock swap (*offerta pubblica di scambio or OPS*) or a combination of these (*offerta pubblica di acquisto e scambio or OPAS*).

Buy-out tender offers in Italy may be divided into two main categories:

(i) voluntary buy-out offers, which may be launched voluntarily by the bidder for any type or number of securities, either on a hostile or friendly basis; and

(ii) mandatory buy-out offers, which must be launched by any person or entity who has acquired (also by acting in concert with other person/s or entity/ies) securities granting voting rights over the appointment or revocation of the directors or members of the supervisory board of the Target in excess of certain percentages pre-defined in the Draghi Law.

The provisions applying to voluntary offers are also generally applicable to mandatory offers. However, there are two main differences between voluntary and mandatory offers:

(1) Price

- The Price in voluntary tender offers is freely determined by the bidder.
- The Price in mandatory tender offers cannot be freely determined by the bidder and cannot be lower than the highest price paid by the bidder (or by persons acting in concert with it) for the same securities over a period of twelve months before the offer is announced (see below Paragraph 3.3.2).

(2) Conditions

- Mandatory tender offers cannot be subject to conditions.
- Voluntary tender offers can be structured to be conditional upon certain events (see below Paragraph 2.1.3).

2. Making a tender offer

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2.1 Pre-bid planning

2.1.1 Object

Tender offers may be aimed at acquiring any percentage of any category of securities.

However, if the offer is (i) a "mandatory" offer, or (ii) an offer aiming at acquiring control of an Italian company listed in Italy, then the offer must be made for all the outstanding voting share capital or, subject to the conditions set out in Paragraph 3.5.1 below, for at least 60% of the voting share capital.

2.1.2 Price

The offer price in tender offers which are not "mandatory" may be freely determined by the bidder and may be increased (but not decreased) during the offer period.

However, based on the general principle of equal treatment of the holders of the same securities, a "*best price*" rule applies as follows:

(i) where the offer is "mandatory", the offer price cannot be lower than the highest price paid for the same securities by the bidder (or by persons acting in concert with it) over a period of twelve months before the offer is announced (see below Section 3.3.2);

(ii) where the bidder, between the time the offer is announced and the payment date, acquires securities of the Target, or long positions which have as their underlying securities of the Target, at a price higher than the offer price, the bidder has to increase the offer price up to the highest price paid in those transactions. The best price rule applies up to the date of payment, but does not apply to buy and sell transactions executed at market conditions in the context of trading on own account involving an overall number of securities that does not exceed 0.5% of the securities object of the offer; and

(iii) the best price rule also covers the period from the payment date up to six months following the payment date in case of acquisitions in excess of 0.1% of the securities object of the offer, with an obligation in such event to pay a cash adjustment of the price to those who accepted the offer. This threshold of 0.1% is increased to 1% in case of buy and sell transactions effected at market conditions in the context of trading on own account.

The consideration comprising the offer price may consist, in whole or in part, of any financial instruments. In the event of a "mandatory" offer or a "voluntary" tender offer launched to acquire control of a listed company pursuant to article 106, paragraph 4, of the Draghi Law, the price can only consist of securities listed on the stock exchange of a EU member state or, if not, a payment in cash must be offered in alternative (see below Paragraph 3.3.4).

2.1.3 Conditions

Once launched, tender offers are irrevocable but offers which are not "mandatory" can be structured to be conditional on certain specified events. In any case, fulfilment of the conditions can not be dependent solely on the "pure discretion" of the bidder.

The following conditions are commonly included in voluntary tender offers:

- **Minimum level of acceptance**

  The offer would generally be subject to a specified minimum number of acceptances, expressed as a percentage of the voting rights of the Target. The bidder may, however, reserve the right to accept the offer in the event of fewer acceptances, although Consob would require the bidder to disclose in the offer document the minimum percentage below which the condition may not be waived.

- **Absence of defensive measures**

  Generally the offer would also be subject to the condition that the Target refrain from taking any action that may hinder the fulfilment of the objectives of the offer. Again the bidder may reserve the right to waive this condition.

- **MAC clause**

  Another condition to which voluntary tender offers are often subject is the absence of any material adverse change in the business or the operations, assets, position, or financial profits of the Target's group since the date of the most recent financial statements of the Target.

- **Regulatory approvals**

  Another common condition is that any approvals or clearances required from the competent regulatory authorities (antitrust, Bank of Italy, etc.) be obtained.

2.1.4 Financing

The takeover is usually financed by way of loan. Other forms of financing, such as issuance of bonds by the bidder (or other companies of its group), although technical feasible, are subject to specific Italian legal and tax restrictions and issues, which must be evaluated on a case by case basis.

The bidder may only make its notification to Consob once it is in a position to fully fund the offer.

In addition, to ensure that the offer is fully funded and settled at closing, before the launch of the offer the bidder must give evidence to Consob that it has funds readily available for the payment of the offer price for all the shares object of the offer. To this end, before publication of the offer document, the bidder must either (i) deposit cash or readily disposable securities for an amount equal to the maximum value of the takeover (i.e. the maximum amount that the bidder may be required to pay in case of full acceptance by the market of the takeover) or (ii) obtain a "cash confirmation" letter from a bank or other suitable financial institution that confirms availability of the funds for the same amount and which is irrevocable and unconditional (or, more precisely, conditional only upon the granting by Consob of its clearance/*nulla osta*).

We set out below certain considerations on the main issues that may affect the structure of the financing.

- **Financial assistance**

  Save where certain (onerous) conditions are met, there is an absolute prohibition on a company assisting with the acquisition of shares in itself or in any controlling company. However, Italian law recognises the lawfulness of a merger between an acquiring company that has taken on acquisition debt and the target company provided that certain requirements are complied with in relation to the merger.

  Accordingly, push-down of debt is generally achieved with a "merger-based" structure where a newly incorporated Italian company acquires the shares in the Target and, following the acquisition, merges with the Target, *de facto* achieving a "push-down" of the acquisition debt. The debt of the company resulting from the merger should be capable of being secured on such company's assets. To avoid dilution and to minimise the risk that the merger is blocked by minority shareholders, in public to private transactions a "double newco" structure is usually adopted. In this structure, the newco which acquires the shares of the Target is 100% owned by another newco, to which the debt is "flipped-up" before the merger.

- **Deep subordination**

  Shareholder/intercompany loans granted to an "undercapitalised" company within the same group may be subordinated by operation of law to all other debts of such company. In addition, any payment received in repayment of such shareholder/intercompany loans may be clawed-back by a receiver in the context of the bankruptcy of the borrower, should the borrower become insolvent within one year from the date when the relevant payment is made.

  Accordingly, this risk should be considered when the financing structure provides for equity injections by the shareholders or intercompany.

- **Withholding tax**

  Withholding tax is chargeable in Italy on interest payments and other financial charges at the rate of 20%; however exceptions apply (i) where the borrower and the lenders are Italian tax resident persons; or (ii) interest is paid to a non-Italian resident lender and there is a double tax treaty with the country of the recipient of the payment, in which case the rate is usually reduced to 10%; or (iii) where the borrower and the lenders are members of the same group (subject to certain requirements to be met, among those, a *minimum* shareholding and a one year holding period) (see Section 8 below).

2.1.5 Due diligence

There are no statutory rules expressly requiring that due diligence be carried out in the context of a tender offer. Accordingly, the following guidelines are based on our interpretation of certain principles of Italian law, taking into account our experience in similar transactions.

- **General**

  Once the notice of the decision to launch a voluntary tender offer pursuant to article 102 of the Draghi Law is filed with Consob, the offer is irrevocable and cannot be withdrawn by the bidder. Accordingly, to the extent possible, any due diligence exercise should be conducted before the launch of the offer, to assess in advance whether and under which conditions investment in the Target is desirable.

- **Equality of information**

  Bidders must be treated equally. Therefore, if the Target provides information to one of the bidders, it is obliged to provide the same information to the other bidders who have asked to obtain such information.

  In addition, since the directors of a company are subject to the general obligation to act in the best interests of that company, they must grant similar access to all potential bidders with the aim of selecting the best offer for the Target and maximising the return for its shareholders.

- **Due diligence in the context of a hostile offer**
  Notwithstanding the above principle of "equality of information", in practice, in the event of a hostile offer, the bidder will in most cases have limited or no contact with the management of the Target (particularly in view of the

importance for the bidder of secrecy before launching an offer). Accordingly, the extent of due diligence carried out prior to launching the offer is often limited to a review of publicly available information.

- **Due diligence in the context of a recommended offer**
  Because directors are responsible for protecting the interests of the company, they will grant the bidder access to confidential information only to the extent that the potential offer is deemed to be in the interest of Target and its shareholders. Accordingly, to obtain access to the information, the potential bidder would normally disclose the main characteristics of the potential offer to the Target to enable the directors to make their own judgment on the offer.

  Although much more extensive than in a hostile offer, the scope of the due diligence carried out in the context of a recommended offer would often be more limited than in a private acquisition. One of the reasons for this is the obligation for the directors of the Target to grant similar access to several potential bidders pursuant to the "equality of information" principle.

  In any case, since most of the information provided during the due diligence process will be confidential, it is customary and recommended to require the bidder to enter into a confidentiality agreement. A confidentiality agreement may contain "standstill" provisions which limit the ability of the bidder to trade in the shares of the Target for a specified period.

- **Price sensitive information**
  In principle, the Target should not disclose information to the bidder which is clearly "price sensitive" and is not in the public domain. This may constitute a breach of Italian insider trading rules by both the directors of the Target and the bidder (in particular it may be argued that the directors of the Target have given the bidder, and the bidder may have used, price sensitive information for the purpose of launching the tender offer). The only way to provide any price sensitive information to the bidder should be to disclose it to the market at the same time. In practice, during the due diligence process, the bidder may come into possession of price sensitive information accidentally (*e.g*. information inadvertently disclosed by the Target or information that on its own may not be considered price sensitive but which becomes price sensitive if considered together with other information disclosed) or as a result of exchange of information under confidentially undertakings. Should a potential bidder deem it too risky to proceed with the offer in possession of such information, the sole remedy would be, again, to inform the market so as to eliminate the disparity of information between the bidder and the general public. This may be done by disclosing the information in the offer document made public by the bidder itself.

2.1.6 Stakebuilding

Bidders often acquire strategic stakes of the Target before launching a public bid (the so-called "*stakebuilding*"). This is usually done to maximise the chances of success of the offer to be launched and in some cases also to reduce the overall cost of the bid through acquisitions at market prices that are not yet inflated by the announcement of the bid.

In Italy, where many listed companies have blocks of strategic or controlling shareholders, most of the times stakebuilding is done in the form of negotiated transfer of one or more blocks of voting shares. This often triggers the 30% mandatory offer threshold, with the consequent application of the mandatory bid and best price rules (see below Section 3).

Where the Target is "public" and no controlling or strategic blocks are available, the bidder may consider acquiring a strategic stake before the announcement of the offer through open market transactions. In general, such stakebuilding transactions are permissible, but before initiating any such activity a bidder will need to consider a number of key restrictions and issues. Specific legal advice should be sought on the techniques, timing and implications of these types of acquisitions of shares.

- **Issues and restrictions**
  Whilst there may be tactical advantages to acquiring a strategic stake before the announcement of a public bid, it is important to consider the implications, carefully taking into account the following issues and restrictions:
  - stakebuilding activities may lead to an increase of the price of the Target's shares, particularly if the stakebuilding comes to the attention of the market;
  - stakebuilding may give rise to market rumours and speculation and result in a premature obligation to announce the offer, prejudicing secrecy and surprise;
  - acquisitions before the offer period are relevant for the "best price rule" (see above Paragraph 2.1.2), if the stakebuilding triggers a mandatory bid;
  - acquisitions made for stakebuilding carry the potential for loss, if the bid is unsuccessful and no competing bid emerges;
  - acquisition of strategic interests may trigger review by a competition or regulatory authority even before the offer has been announced;
  - acquisition of shares before the launch of the offer may not be effected if the bidder holds price sensitive information, either as a result of the negotiations with the sellers/Target or otherwise;
  - the acquisition of shares of the Target requires market disclosure upon the exceeding of certain thresholds.

- **Insider dealing**
  Stakebuilding activities may not be carried out if the bidder holds price sensitive information about the Target or its business. "Price sensitive information" is generally defined as any information about the Target which is not public and which, if made public, would be likely to have a significant effect, on the market price of the Target's shares. Price sensitive information may be gained by the bidder as a result of negotiations with the Target/sellers or in the context of pre-bid due diligence activities (see above Paragraph 2.1.5). Breach of insider dealing rules in Italy may result in criminal sanctions such as imprisonment for up to twelve years and fines of up to Euro six million.

- **Disclosure**
  Stakebuilding activities may require disclosure of the holding acquired if certain thresholds are exceeded. In particular, under Italian law any person acquiring voting shares in an Italian listed company of or in excess of 2%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.6%, 90%, and 95% of the voting share capital must disclose details of such holding to the

Target and Consob. In absence of such notification, the voting rights attaching to the shares in excess of the threshold are frozen and administrative fines are applicable. Disclosure is required, according to specific criteria, also in the event of stock lending, option rights, pledge, usufruct or other similar transactions involving voting rights attaching to shares.

- **Use of derivatives**

  Derivative transactions are sometimes used by bidders to build strategic stakes with the help of third party financing intermediaries. Again, such transactions are generally permissible, subject to compliance with all disclosure requirements and insider dealing rules. In particular, derivatives which grant the bidder a long position over the voting shares of the Target must be disclosed if the total shareholding of the bidder (including shares, potential shareholdings physically settled and derivatives) exceeds10%, 20%, 30% and 50% of the voting share capital of the Target. In addition, derivatives which grant the bidder a long position over the voting shares of the Target are relevant for the calculation as to the triggering of the mandatory bid thresholds (see below Paragraph 3.2.2).

2.2 Launching the offer

2.2.1 Announcement of the offer

The decision to launch a voluntary tender offer or the triggering of the obligation to the launch a mandatory tender offer must be promptly notified to Consob through a communication including all relevant details (the "**Communication**").

Upon filing of the Communication with Consob, the bidder must also inform the Target and the market of the offer by circulating a press release containing the same information already included in the Communication.

As soon as the offer has been made public, the board of directors (or other control bodies) of the Target and of the bidder shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

2.2.2 Offer Documentation

The following key documents need to be prepared in connection with voluntary or mandatory public tender offers.

- **Communication to Consob**

  The Communication sets out the key information about the offer, which shall include at least the following:

  (i) key terms of the offer (including price, number and class of securities to be tendered);

  (ii) a description of the objectives of the transaction;

  (iii) details on any communications or applications for authorisations required by applicable law, providing an indication of commencement of the relevant procedure before the authorities (such as Antitrust or Bank of Italy); and

  (iv) other details such as the number of securities held by the bidder and any person acting in concert with the bidder.

- **Offer document**

  The bidder, within 20 days of the Communication, must file with Consob a draft of the offer document. Should this deadline not be met, the offer document shall be declared

Offer document's content requirements

Annex 2A of the Draghi Law requires (among others)[1]:

■ a summary description of the structure and legal bases of the transaction and the offer	■ procedures and terms for the tendering of the shares in the offer and settlement of the offer price
■ the "risk factors" relating to the offer, including, among others, (i) the conditions to which the offer is subject, (ii) a summary of the bidder's future plans with particular reference to extraordinary transactions, (iii) statements from the bidder about the sell-out and the squeeze-out options, (iv) the Recommendation	■ financing of the offer and relevant performance guarantees
■ a description of the bidder, the Target and the intermediaries	■ future plans of the bidder with reference to the Target, including in respect to the sell-out and the squeeze-out options
■ the financial statements of the bidder for the last two years	■ details of transactions between the bidder and its related parties and the Target or significant shareholders or the members of the board of directors and internal control bodies of the Target
■ the details of the financial instruments object of the offer	■ fees to be paid to the intermediaries
■ the details of the Target's securities directly or indirectly held by the bidder	■ documents to be attached to the offer document and places where they are available
■ the offer price and its justification	■ declaration of liability as to the completeness and truthfulness of the information in the offer document

[1] In case of stock swap, information concerning the financial instruments to be exchanged needs to be incorporated, also by reference.

inadmissible and the bidder may not make a further offer on the same financial products of the issuer for a period of 12 months thereafter.

The Consob Regulation describes the required contents of the offer document, which must include all information (such as terms and conditions of the offer, information regarding the bidder and the Target) necessary for the public to fully evaluate the offer.

Consob approves the offer document within 15 days from filing. Consob may also require the bidder to disclose additional information. In this case, the term for approval will be suspended until the relevant information is provided by the bidder (who shall comply with Consob's request by the date set out in the letter, which cannot exceed 15 calendar days).

If specific regulations require clearance from other authorities, Consob shall approve the offer document within 5 days of that clearance being given. Upon expiry of the above terms, the offer document shall be deemed approved and can be published, made available to the public and sent to the Target.

- **Notice of the Target's board of directors**

After being notified of the tender offer, the board of directors of the Target is required to issue a recommendation containing the information necessary for the shareholders to evaluate whether to accept the offer (the "**Recommendation**"). The Recommendation should include any data useful for evaluating and assessing the takeover, in particular any data on the implications that the takeover is likely to have on the Target's interests and employees. The Recommendation should also be provided to the employees' representatives or, where there are no such representatives, to the employees themselves. If available, an assessment by the employees' representatives of the offer and its implications is attached to the Recommendation.

Where the offer is launched by insiders (*i.e.* persons who (i) directly or indirectly hold shares in excess of 30% of the voting share capital, (ii) are parties to a shareholders' agreement and have an overall shareholding in excess of 30% of voting share capital, (iii) are directors of the Target, or (iv) are any person acting in concert with these persons, the "**Insiders**"), independent directors who are not related parties must prepare a reasoned opinion containing their evaluations of the offer and the suitability of the price, appointing - if appropriate - an independent expert at expense of the Target. The evaluations by the independent directors and the independent expert shall be included in the Recommendation or, if the Target's board disagrees, shall be attached separately to the Recommendation.

The Recommendation shall be sent to Consob and made available to the public on or before the first day of the offer period.

2.2.3 Key steps and timing

The main steps and the timing usually involved in a tender offer are as follows:

(a) preparation of the offer document: in our experience, under normal conditions this takes between 15 and 25 calendar days (in the event of mandatory tender offers, this can be done between signing and closing of the sale and purchase agreement relevant to the acquisition of the controlling interest);

(b) Consob's review of the offer document following submission: 15 calendar days;

(c) offer period: to be agreed with Borsa Italiana S.p.A. (the company managing the Italian Stock exchange – "**Borsa Italiana**"), between 15 and 40 trading days for voluntary tender offers and between 15 and 25 trading days for mandatory tender offers;

(d) acceptance of the securities: during the offer period, each holder of securities of the Target may tender its securities by executing an acceptance form with any financial intermediary in Italy with which the securities are deposited or on the regulated market, according to the instructions of Borsa Italiana; please be aware that, unless a competing offer is launched (see below Paragraph 2.4), the tender of the securities is irrevocable;

(e) payment for the securities: it usually occurs within 5 trading days from the end of the offer period.

2.2.4 Rules of conduct

During the offer period, the bidder, the Target, subjects linked to them by a relationship of control (*e.g.* parent and subsidiaries), companies subject to common control and affiliated companies, their directors, the members of their boards of statutory auditors and their general managers, shareholders of the bidder or the Target who are parties to a shareholders' agreement and persons acting in concert with the bidder and/or the Target (the "**Interested Parties**") are subject to the following rules of conduct.

- **Marketing for, or against, the offer**

  Any announcement, however disclosed, intended to promote or to deter an offer, must be recognisable as such. The information contained in the announcement must be clear, correct and consistent with the documentation already disclosed and not misleading in respect of the transaction or the features of the financial instruments involved. A copy of each announcement must be sent to Consob at the same time as it is disclosed.

- **Trading in the Target's securities**

  Interested Parties can purchase and sell the Target's securities; however, Interested Parties must notify Consob and the market, by the end of the relevant day, of any completed transactions for the purchase and sale of shares object of the offer and those concerning derivative instruments connected to the shares, indicating the transactions' essential terms.

  In addition, the bidder and persons acting in concert with it must disclose to the market and to Consob, on or before the day prior to the transaction, information relating to their intention to sell the securities object of the offer to third parties (excluding sales to members of the bidder's group or those acting in concert with the bidder).

- **Equal treatment**

  All Interested Parties should act so as to ensure fairness and equal treatment of participants in the market during the offer period.

A sample timetable of a standard public offer is included in the table below.

Indicative offer timeline

Day 1

- Decision taken to launch a voluntary tender offer or triggering of the relevant obligation to launch a mandatory tender offer
- Filing of the communication pursuant to article 102 of the Draghi Law
- Notice to the Target and the market of the decision/obligation to launch the offer
- Notice by the bidder and the Target to the respective employees' representatives announcing the decision/obligation to launch the offer; where there are no employee representatives, the notice is given to the employees themselves

On or before Day 20

Filing of the offer document with Consob

Day 35

Approval of the offer document by Consob (if clearance from an independent authority is required, Consob will approve the offer document within 5 calendar day from that clearance being given; if the offer's consideration includes non listed securities, Consob will approve the document within 30 days)

Day 36

- Publication of the offer document
- Notice to employees' representatives regarding the publication of the offer document; where there are no employee representatives, the notice is given to the employees themselves
- Delivery of the offer document to the Target

Day 37

Start of the offer period (if the Recommentation is attached to the offer document)

Day 37+15/25 trading days

End of the offer period for mandatory tender offers

Day 37+15/40 trading days

End of the offer period for voluntary tender offers

Within 5 trading days from the end of the offer period

Settlement of the offer

2.2.5 Reopening of the offer (*riapertura dei termini di offerta*)

Offers launched by Insiders must be reopened on the day following the payment date, for an additional period of 5 days, in the following circumstances:

(a) where the offer is conditional upon the acquisition of a certain percentage of the Target's equity capital, and the condition is met or waived;

(b) where the offer is non-conditional, and (i) the bidder obtains acceptances in excess of half of the share capital or, (ii) if the bidder's initial shareholding was greater than half but less than two thirds of the share capital, and the bidder obtains acceptances to come to own more than two thirds of the share capital; or (iii) the bidder has acquired at least half of the securities object of the offer.

A re-opening of the offer period is excluded:

(i) when fulfilment or waiver of the condition in conditional offers occurs or a level of acceptance set out at point (b) above is reached at least 5 days prior to end of the acceptance period;

(ii) if the bidder has exceeded the 90% threshold upon termination of the acceptance period and is about to perform the "*sell out*" obligation to purchase all remaining shares (see below Section 4.1);

(iii) in case of a preventive partial offer (as described below) launched pursuant to article 107 of the Draghi Law (see below Section 3.5.1);

(iv) in case of competing offers;

(v) in case of offers having as their object securities issued by *società cooperative*;

(vi) in case of offers sub (a) and (b) above, other than mandatory offers, where: (i) the bidder has made the offer irrevocably conditional upon the approval by the majority of Target's shareholders not connected with the bidder, and (ii) the offer obtains such approval.

2.3 Amendments to the pending offer

Amendments to the offer can be made up to the day before the date on which the offer period is scheduled to end.

However, the bidder may not reduce the offer price and quantity of the financial instruments object of the offer.

In case of amendments, the offer period cannot end before the third business day after the day of publication of the amendment. Therefore, if necessary, the offer period will need to be extended to allow for this.

2.4 Competing offers

A competing offer can be published at any time up to five trading days before the date the initial offer is due to close.

In case of competing offers, the offer period of the first offer shall be aligned with that of the last competing offer unless the first bidder notifies Consob and the market, within five days of the publication of the competing offer, that it intends to keep the original offer period unchanged.

A re-launch following a competing offer is allowed if published within five trading days following (i) the publication of the competing offer; or (ii) the publication of a prior re-launch by another bidder. In case of a re-launch, the quantity of financial instruments object of the offer may not be reduced.

However, re-launchings may not be published beyond the 5th trading day preceding the end of the offer period of the latest offer. Further, on the last valid day, all bidders - except those in relation to which the 5th trading day following (i) or (ii) above has already expired - may again re-launch, subject to notice to Consob.

Following publication of a competing offer or a re-launching, acceptances of the other offers shall be revocable. In the 5 trading days following the publication of the results of the winning offer, securities tendered in the other offers may be tendered in the winning offer.

Where competing offers have been made, until the close of the offer period, bidders may not acquire, directly or indirectly or through nominees, the securities that are the object of the offer at prices higher than those of the announced offers.

3. Acquiring control of an Italian listed company: mandatory tender offers

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3.1 Types of mandatory offer

A mandatory tender offer over all outstanding voting shares of the Target is imposed by Italian law on any person (acting alone or in concert) acquiring voting capital of an Italian company listed in Italy in excess of certain percentages, which are deemed to be relevant for the purposes of exercising control over an Italian listed company.

Depending on the threshold triggered, there are three different types of mandatory tender offers:

(a) a mandatory offer is triggered whenever a person (acting alone or in concert) acquires more than 30% of the voting shares of an Italian company listed in Italy (*OPA da controllo*);

(b) a mandatory offer is also triggered by any person which (acting alone or in concert) (i) owns from 30% up to 50% of the voting capital of an Italian company listed in Italy and (ii) acquires additional shares for more than 5% of the voting capital during a period of 12 months (*OPA da consolidamento*); and

(c) a mandatory offer is also triggered when a person (acting alone or in concert) acquires (i) more than 30% of the voting shares of a listed company, or (ii) control of a non-listed company, in either case where the target company owns more than 30% of an Italian company listed in Italy and such shareholding forms the predominant asset of the target company. In this case, the mandatory takeover must be launched (also) on all outstanding share capital of the Italian listed company which is indirectly involved in the transactions described under (i) and (ii) above (*OPA indiretta*).

No mandatory offer is required for acquisition of voting shares from 50% up to 90% of the Target's voting stock. For acquisition of voting shares in excess of 90% of the Target's voting share capital, the sell-out rule applies (see below Paragraph 4.1).

3.2 Calculation of the relevant thresholds

3.2.1 Relevant shares

The shares of the Target which are relevant for the calculation of the threshold are voting shares that grant the right to vote for resolutions concerning the appointment or removal of directors or members of the supervisory board of the Target (the "**Voting Shares**").

3.2.2 Derivatives

In the calculation of the relevant thresholds, derivative instruments must also be included, to the extent that they give a "*long position*" in the underlying Voting Shares. According to the Consob Regulation, a "long position" is a financial position whereby the contracting party has an economic interest positively correlated to performance of the underlying Voting Shares.

In the calculation of the relevant thresholds, one must take into account either the total number of shares underlying the derivative contract or, if the number of such shares is variable, the maximum number provided for by the derivative contract.

The above rules do not apply to derivative instruments that:

(a) are traded on regulated markets;

(b) have as their underlying Voting Shares that will be issued in the future (though the relevant threshold would be triggered once the underlying Voting Shares are issued);

(c) are functional to provisions of shareholders' agreements aimed at resolving deadlocks or unwinding of these agreements;

(d) are held by authorised dealers to hedge clients' positions; or

(e) are offset by derivative instruments that confer a 'short position' in the underlying Voting Shares, provided that they are of the same type and have the same counterparty and equivalent terms.

3.2.3 Treasury shares

Treasury Voting Shares held by the Target must be excluded from the Voting Share capital basis in respect of which the threshold is calculated, save for treasury Voting Shares that are:

(i) the result of transactions implemented in accordance with certain conditions set out by Consob (essentially shares to be used as consideration for extraordinary transactions already approved);

(ii) purchased to meet obligations deriving from stock option plans approved pursuant to applicable laws; or

(iii) purchased on the basis of a resolution approved by the minority shareholders through the "whitewash" mechanism, *i.e*. approval by the majority of shareholders other than the shareholder or shareholders that, alone or in concert, hold the majority stake or a relative majority stake in excess of 10%.

3.3 Launching a mandatory offer

3.3.1 Object

Mandatory tender offers must be launched for acquisitions of all outstanding Voting Shares of every class of the Target. The offer is irrevocable and cannot be subject to conditions.

3.3.2 Price

The mandatory tender offer must be launched for every class of Voting Shares at the highest price paid for the same Voting Shares by the bidder or by other persons acting in concert with the bidder over a period of twelve months before the offer is announced.

If the bidder has not purchased any securities of the Target within the timeframe above, the mandatory offer shall be made at a price of not less than the weighted average market price over the previous twelve-month period, or any applicable shorter period if the securities have been listed for less than twelve months.

If the obligation to launch an offer is the result of the purchase of a derivative instrument, the offer price will be equal to the total of the reference price contractually attributed to the Voting Shares underlying the derivative instrument and the amounts paid or received for the acquisition of the "long position."

3.3.3 Revision of the price by Consob

Under Italian law, Consob has powers to revise upward or downward the price of a mandatory offer in certain circumstances where the application of the criteria indicated above in Paragraph 3.3.2 leads to inadequate results. In particular, Consob is empowered:

(a) to set the offer's price at a level lower than the highest price paid, whenever (i) market prices have been influenced by exceptional events or there is a grounded suspicion that they have been manipulated, or (ii) the highest price paid is the price of ordinary trading practices or the price of transactions that would have benefited from one of the exemptions from the launch of a mandatory tender offer (see below Section 3.5);

(b) to set the offer's price at a level higher than the highest price paid, if (i) the bidder or persons acting in concert with the bidder have agreed to purchase Voting Shares at a price higher than the offer's price; or (ii) there is evidence of collusion between the bidder or persons acting in concert with the bidder and one or more sellers; or (iii) there is a grounded suspicion that market prices have been manipulated.

For point (a)(i), Consob established that the decreased offer price will coincide with the higher of (x) the highest price paid for the purchase of securities of the same class by the bidder or persons acting in concert with the bidder, in the twelve months prior to notification of the offer pursuant to article 102 of the Draghi Law which was not influenced by the exceptional event or by manipulative conduct, and (y) the weighted average market price in the fifteen days prior and subsequent to the exceptional event/manipulative conduct, excluding market prices relating to trading days influenced by the event/conduct.

For point (a)(ii), Consob established that the offer price will be determined by it without taking into account the highest price paid by the bidder, if such higher price is the price for buy and sell transactions: a) made at market conditions, in the context of trading on own account, for an overall quantity that does not exceed 0.5% of the shares object of the offer; b) that have benefited from the exemption to launch of a mandatory offer because they are linked to bail out transactions for a company in distress or mergers and spin-offs.

As to the determination of a higher price, in the situation set out in point (b)(i), the offer price is the price actually agreed for purchase of the shares. In the situation under point (b)(ii), the offer price is the price eventually established as a result of the collusion. In the circumstances set out in (b)(iii), the offer price coincides with the weighted average market price in the fifteen days prior and subsequent to the manipulative conduct, excluding market prices relating to trading days influenced by such conduct.

3.3.4 Consideration in securities

The offer price may be constituted, wholly or in part, by securities. In the event that:

(a) the securities offered as price are not admitted to trading on a regulated market of an EU Member State; or

(b) the bidder (or a person acting in concert with the bidder) has, in the 12 months preceding the announcement of the offer, purchased for cash consideration 5% or more of the Voting Shares of the Target,

then, the bidder must propose a cash consideration as an alternative to the non-cash consideration.

3.3.5 Timing

Once triggered, the mandatory tender offer must be launched within 20 days from the date on which the relevant threshold was exceeded.

Timing and key steps of a mandatory tender offer are similar to those of any other tender offer, with certain specific differences. In particular, the offer period is slightly shorter and ranges from 15 to 25 trading days.

3.4 Acting in concert

For the purpose of determining whether the relevant mandatory offer thresholds have been triggered, the Voting Shares and derivatives held and acquired by parties acting in concert are considered on an aggregate basis. In practice, parties acting in concert are jointly and severally liable to launch a mandatory public tender offer when, as a result of purchases made by any of them, they come into possession of an aggregate number of Voting Shares and derivatives exceeding the mandatory tender offer thresholds. The obligation to launch the mandatory tender offer is joint and several for all the parties acting in concert, even where purchases have been made by only one party.

"*Parties acting in concert*" are defined by the Draghi Law as persons who cooperate under an agreement, whether express or tacit, oral or written, even invalid or unenforceable, if that agreement is intended to acquire, maintain or reinforce control over a listed company or to oppose the achievement of the objectives of a public tender offer or exchange offer.

In addition, there are specific cases which give rise to an unrebuttable presumption that persons are "acting in concert". Specifically, the following persons are in any case deemed to be acting in concert:

(a) parties to a shareholders' agreement over a listed company;

(b) a legal person, its controlling shareholder/parent company and its subsidiaries;

(c) companies under common control; and

(d) a company and its directors, members of its management board or supervisory board or general managers.

With reference to parties of a shareholders' agreement, the Draghi Law provides that the obligation to launch a mandatory offer does not apply when a holding exceeds the relevant threshold as a result of the mere execution of a shareholders' agreement, including a null agreement, pursuant to article 122 of the Draghi Law, unless the parties to this shareholders' agreement came into possession of an aggregate holding exceeding the aforementioned threshold in the 12 months prior to execution of the shareholders' agreement.

Furthermore, Consob has identified additional circumstances which give rise to a rebuttable presumption that persons are acting in concert, *i.e.* events in which it is presumed that persons are cooperating with each other, save for contrary proof. These include a person's:

(a) spouse, cohabitant and direct and collateral relatives within the second degree and any sons or daughters of the spouse or cohabitant;

(b) financial advisors in transactions involving the Target, where such advisors or companies belonging to their group have purchased shares of the Target, after their appointment or in the month prior to their appointment, other than in the context of trading activities on their own account and limited to ordinary trading at market conditions.

Consob has also identified certain "safe harbour" situations where the relevant cooperation is not aimed at acquiring, maintaining or reinforcing control over a listed company and therefore would not constitute 'acting in concert'. These include, among others:

(a) coordination between shareholders for the purpose of exercising minority rights granted by Italian law;

(b) agreements for the submission of "minority" lists of candidates for the election of company bodies.

3.5 Exemptions

3.5.1 Preventive offers

The Draghi Law provides that no mandatory tender offer is required if a relevant threshold in an Italian listed company is acquired through a "preventive" tender offer (*OPA Preventiva*). In practice, if the relevant mandatory offer threshold is triggered as a result of a tender offer which meets certain requirements (which are set out below), then no additional mandatory offer is required.

Two different types of "preventive" offer allow this exemption:

(a) No mandatory offer is required if the relevant threshold is triggered as a result of a tender offer for all outstanding Voting Share capital (*OPA preventiva totalitaria*). In this case, no further offer is required because the relevant threshold of the Target was acquired by offering the same divestment opportunity to all shareholders.

(b) The Draghi Law also provides that no mandatory offer is required if the relevant threshold is triggered as a result of an offer aimed at acquiring not less than 60% of the outstanding Voting Shares (*OPA preventiva parziale*), to the extent that the following requirements are met:

  (i) the offer has been approved by the minority shareholders with the so called "whitewash" process (i.e. approval by majority of shareholders other than (x) the bidder, (y) the shareholder or shareholders that, alone or in concert, hold the majority stake or a relative majority stake in excess of 10%);

  (ii) the bidder (or any person acting in concert with the bidder) has not bought more than 1% of the Voting Shares of the Target (including shares acquired under forward contracts maturing at a later date) during the offer period or in the 12 months preceding the announcement of the offer; and

  (iii) Consob has consented to the offer, having verified that the requirements above are met.

  In this case, following settlement of the offer, the mandatory tender offer will still be required if in the following 12 months:

  (i) the bidder, or persons acting in concert with the bidder, acquires shares in excess of 1% of of the Target's share capital, including shares acquired under forward contracts maturing at a later date; or

  (ii) the Target resolves upon a merger or a de-merger.

3.5.2 Other exemptions

The Draghi Law and the Consob Regulation provide for a number of exceptions to the rules on mandatory tender offer. In particular, a mandatory offer may not be triggered in any of the following circumstances:

(a) another shareholder holds, or other shareholders jointly hold, the majority of voting rights exercisable in an ordinary shareholders' meeting;

(b) the relevant threshold is triggered in the context of a rescue or turnaround of a listed company (*operazioni di salvataggio*), in the following specific circumstances:

  (i) in the event of any form of recapitalisation or equity investment which is needed to overcome serious financial difficulties proven by:

    (A) admission to an Italian law bankruptcy proceeding;

(B) approval of a debt restructuring agreement pursuant to article 182-*bis* of the Italian Bankruptcy Law; or

(C) a recapitalisation request issued by an Italian regulatory authority (such as the Bank of Italy or ISVAP for insurance companies), to prevent bankruptcy;

(ii) in the event of a recapitalisation by way of share capital increase reserved to a third party investor implemented in execution of a debt restructuring plan certified by an expert in accordance with Article 67, subsection 3, paragraph d) of the Italian Bankruptcy Law, provided that the third party investor has not acquired shares of the Target in the preceeding 12 months;

(iii) in any other case, to the extent that the transaction is approved by the minority shareholders through the "whitewash" mechanism, *i.e.* approval by the majority of shareholders other than (x) the bidder, or (y) the shareholder or shareholders that, alone or in concert, hold the majority stake or a relative majority stake in excess of 10%;

(c) in the event that the triggering of the relevant thresholds is the result of intra-group transactions;

(d) if the threshold is exceeded as a result of exercise of the pre-emption, subscription or conversion rights which pertain by law to the relevant exercising person (*i.e.* were not acquired on the market);

(e) if the thresholds of 30% or 5% (in case of a holding from 30% to 50% of the voting stock) are exceeded, respectively, by not more than 3% and 1% and the purchaser undertakes to transfer to non-related parties the excess securities within twelve months and not to exercise the related voting rights until the transfer;

(f) if the threshold is exceeded due to the purchase of derivative instruments and the buyer undertakes to transfer the excess securities to non-related parties within six months and not to exercise voting rights attaching to the excess securities until such transfer period;

(g) if the threshold is exceeded as a consequence of a merger or de-merger approved by the minority shareholders with the "whitewash" mechanism, *i.e.* approval by the majority of shareholders other than (i) the bidder exceeding the threshold as a result of the merger/demerger and (ii) the shareholder or shareholders that, alone or in concert, hold the majority stake or a relative majority stake in excess of 10%; and

(h) in the event of inheritance or transfer free of charge.

In addition, Consob is entitled to grant additional case-by-case exemptions from the mandatory tender offer obligation in cases which would not qualify under the exemption listed above but can be viewed as similarly deserving by applying the same underlying reasoning.

4. Sell-out and squeeze-out. Delisting

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4.1 Sell-out right

Pursuant to the Draghi Law, the majority shareholder is required to allow all the remaining minority holders of Voting Shares who request exercise their right to sell-out if it comes to hold:

(a) 95% or more of the Target's Voting Shares as a result of a tender offer for over the whole share capital; or

(b) 90% or more of the Target's Voting Shares and does not reinstate sufficient floating stock to ensure the regular trading of shares within 90 days.

The price for the securities to be transferred under the sell-out rights shall be the price in the tender offer giving rise to the sell-out right, if certain requirements set out in articles 108 of the Draghi Law and 50 of the Consob Regulation are met. In the event that such requirements are not met, the sell-out price is determined by Consob taking into account: a) the previous offer price, also in view of the percentage of acceptances; b) the weighted average market price for the shares object of the offer in the six months prior to notification of the offer; c) the value allocated to the shares or to the Target by any existing valuation reports, prepared by independent experts no earlier than six months prior to the purchase obligation arising, based on criteria generally used for financial analysis; d) any other acquisitions of securities in the same class during the last twelve months by the person subject to the purchase obligation or by persons acting in concert with it.

By contrast, in the event that the sell-out obligation did not arise as a result of a previous tender offer, the price will be established by Consob based on the higher of: i) the highest price paid for the purchase of securities of the same class over the last twelve months by the person subject to the purchase obligation or by persons acting in concert with it; and ii) the weighted average market price for the six months prior to the obligation arising.

4.2 Squeeze-out right

Pursuant to article 111 of the Draghi Law, the majority shareholder can squeeze-out minority shareholders when, as a result of a public offer over the whole share capital, it comes to own at least 95% of the Target's Voting Shares under the following conditions:

(a) the squeeze-out has to be effected within 3 months following the expiry of the initial term for acceptance of the offer;

(b) the bidder must have declared its intention to exercise the right in the offer document.

The squeeze-out price is determined according to the rules provided for the sell-out procedure (see Paragraph 4.1 above).

4.3 Delisting after a tender offer

Pursuant to article 2.5.1, paragraph 8, of the Rules of the Markets organised and managed by Borsa Italiana:

(a) in case of sell-out, where the 90% or 95% ownership threshold is exceeded, the shares subject to purchase will be delisted commencing from the trading day available following the last day for payment of the price for such shares, unless the bidder declares that it intends to restore the floating capital;

(b) in case conditions for a squeeze-out exist, the shares subject to acquisition will be suspended and/or delisted in consideration of the timing forecast for exercise of the squeeze-out. Borsa Italiana S.p.A. will notify the market appropriately in advance.

Summary of legal and regulatory implications of interests in Italian listed companies at various percentage levels

Any amount over 2% ■ Disclosure of relevant holding in the voting capital exceeding the 2% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)	**5%** ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 5% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)[1]
10% ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 10% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)[1]	**15%** ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 15% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)[1]
20% ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 20% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)[1]	**25%** ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 25% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)[1]
30% ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 30% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)[1] ■ Obligation to launch a mandatory tender offer (article 108 of the Draghi Law)	**from 30% up to 50%** ■ Obligation to launch a mandatory tender offer in case of acquisition of additional shares and derivatives for more than 5% of the voting capital during a period of 12 months (article 46 of the Consob Regulation)
50% Disclosure of relevant holding in the voting capital equal to or exceeding the 50% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)[1]	**66.6%** ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 66.6% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation)
90% ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 90% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation) ■ Obligation to buy the shares of minority shareholders (**voluntary sell-out procedure**) unless a sufficient floating stock of the voting shares to ensure the regular trading of shares is reinstated within 90 days (article 108 of the Draghi Law)	**95%** ■ Disclosure of relevant holding in the voting capital equal to or exceeding the 95% threshold and of any variation implying falling below this threshold (article 117 of the Consob Regulation) ■ If the majority shareholder comes to hold 95% of the Target's Voting Shares as a result of a tender offer for over the whole share capital • obligation to buy the shares of minority shareholders (**mandatory sell-out procedure**; article 108 of the Draghi Law) • right to buy the shares of minority shareholders (**squeeze-out procedure**; article 111 of the Draghi Law)

[1] This communication is due even if the interest in the voting capital is potential (article 119 of the Consob Regulation)

5. Defences

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5.1 Overview

Most of the defence techniques known to the takeover practice are generally available to a Target in Italy. In considering possible defences, the board of the Target is subject to:

(i) the general obligation to act in the best interest of the company and its stakeholders;

(ii) the requirements of the so called "*Passivity Rule*" and "*Breakthrough Rule*", which are described below.

5.2 Passivity rule

Article 104 of the Draghi Law provides for a duty for the board of directors of the Target to refrain from acting adversely to the objectives of a takeover without the shareholders' authorisation. The board of the Target becomes subject to this rule from the date the offer is announced until the end of the offer period or the date on which the offer ceases to have effect (the passivity period).

The Passivity Rule applies to any defence measure, except for the search of competing offers. The board also needs shareholders' authorisation to implement any decision made prior to the start of the passivity period that may adversely affect the offer and which (a) has not yet been implemented, in full or in part and (b) does not fall within the company's ordinary course of business.

Italian companies may expressly derogate from the passivity rule provisions by including specific provisions in their by-laws. This inclusion must be promptly disclosed to the public, and notified to Consob and the relevant market authorities in the EU member states in which the company's securities are admitted to trading.

5.3 Breakthrough rule

The breakthrough rule is optional and shall only apply if a provision to do so is set out in the by-laws of the Target.

Under the breakthrough rule, upon the launch of a takeover bid: (i) any transfer restrictions on the Target's shares set forth in the Target's by-laws will not apply to the bidder; and (ii) any restrictions on voting rights set out in shareholders' agreements or in the Target's by-laws will not apply at shareholders' meetings called to authorise defensive measures to thwart the takeover bid. Furthermore, shareholders willing to accept a tender offer aiming at acquiring control of the Target may terminate at will any existing shareholders' agreements, with effect from settlement of the offer.

The breakthrough rule further provides that at the first shareholders' meeting to be held after the takeover bid has been completed, called to amend the by-laws or to replace the directors, a bidder who has become a holder of at least 75% of the voting share capital - when voting on resolutions concerning the removal and appointment of the directors - will not be subject to any voting restriction in any shareholders' agreement or in the company's by-laws nor subject to special voting rights concerning the removal and appointment of directors included in the company by-laws.

If the tender offer is successful, the bidder shall indemnify the holder of those voting rights for any economic damage suffered as a result of the application of the breakthrough rule. The claim for indemnification shall be filed within 90 days from the end of the offer period or of the date of the shareholders' meeting. In case of disagreement, a fair indemnification shall be determined by the court (taking into account and comparing the average trading price of the securities in the 12 months preceding the notice given to Consob and the trading price trend after the end of the offer). No indemnification is granted for any economic damage suffered as a result of the exercise of the voting rights, in contrast with the provisions of a shareholders' agreement, if the shareholders' agreement is terminated before the exercise of the voting rights.

5.4 Reciprocity rule

Pursuant to article 104-*ter* of the Draghi Law, the passivity rule and/or the breakthrough rule (if the latter is provided for in the by-laws of the Target) shall not apply in the event that a public tender offer is made by an entity which is not subject to the same or equivalent rules in its state of incorporation. Consob is competent to establish whether the rules applicable to the bidder are equivalent or different to the rules applicable to the Target.

However, the above rule only applies to any defensive measures that have been authorised in advance by the shareholders' meeting of the Target, not earlier than 18 months prior to the filing of the Communication.

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When planning the acquisition of a company (even by way of public tender offer), careful consideration should be given in advance to whether the proposed transaction will be subject to any merger controls. Acquisitions in Europe may involve merger controls either by the EU or by the single Member State(s). Merger control filings may also be needed outside the EU, under certain conditions.

6.1 EU merger controls

Any acquisition of a 'decisive influence' over the strategic commercial decisions of a company will fall within the EU merger control regime, if the thresholds described below are satisfied.

As a general rule, decisive influence will exist where, at a minimum, one or more purchasers acquire the ability to veto (whether through the exercise of voting rights attached to the shares, the operation of shareholders' agreements, or any other form of governance arrangement) key commercial decisions of the Target, such as the approval of the budget and business plan, or the appointment of management.

6.1.1 Thresholds

If the transaction satisfies either of the following two thresholds, it will be subject to review by the European Commission (the "**Commission**"):

(a) thresholds applicable to transactions between large companies:

   (i) the combined aggregate worldwide turnover of the involved companies is more than Euro 5 billion; and

   (ii) each of at least two of the involved companies has an aggregate EU-wide turnover of more than Euro 250 million; unless

   all the companies concerned achieve more than two-thirds of their respective aggregate, EU-wide turnover within one and the same EU Member State; or

(b) thresholds applicable to transactions which affect several EU Member States:

   (i) the combined aggregate worldwide turnover of the involved companies is more than Euro 2.5 billion; and

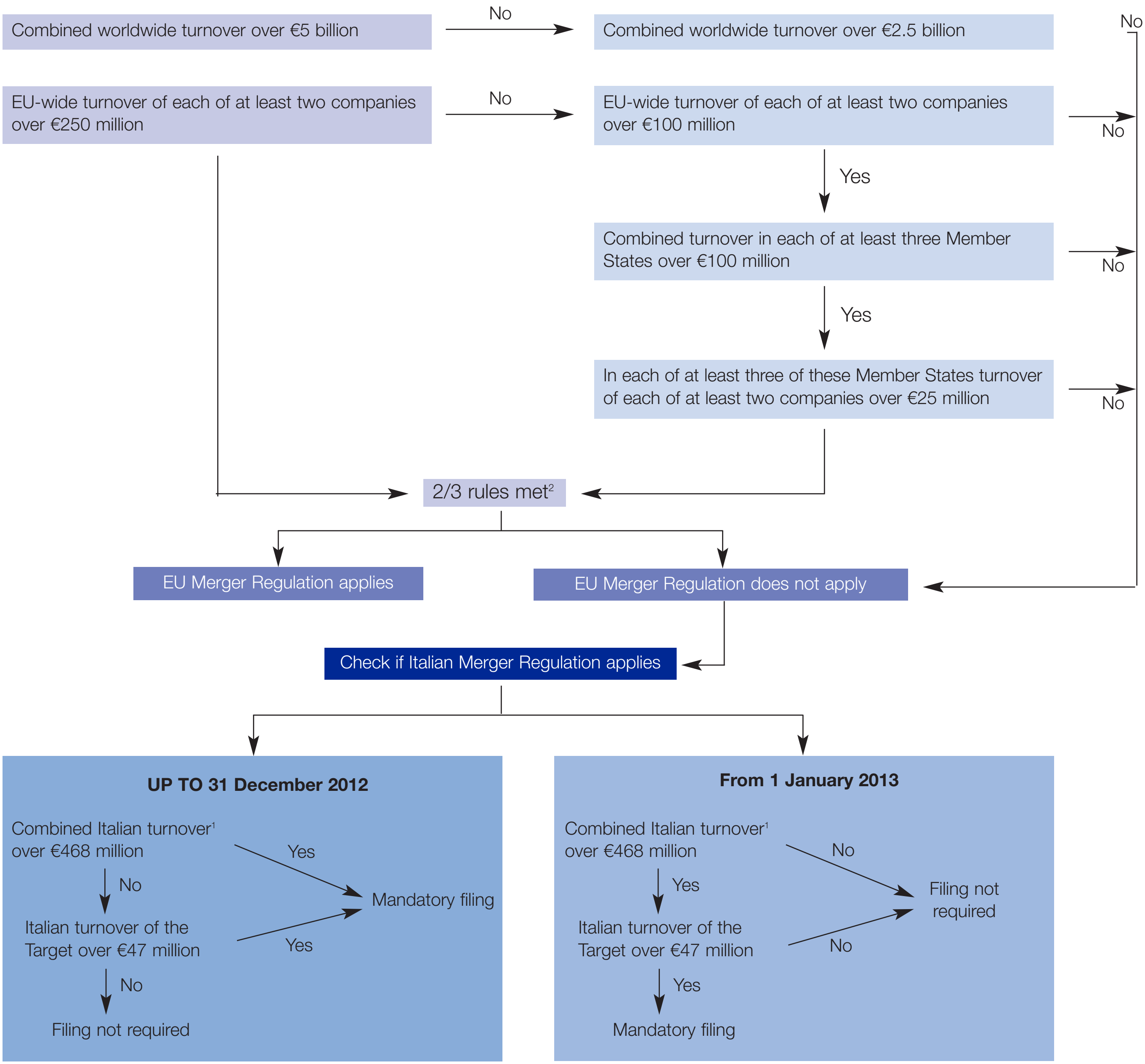
   (ii) each of at least two of the involved companies has an aggregate EU-wide turnover of more than Euro 100 million; and

   (iii) the involved companies have an aggregate combined turnover in at least three EU Member States of more than Euro 100 million; and

   (iv) each of at least two of the involved companies has an aggregate turnover in at least three of the EU Member States included above of more than Euro 25 million; unless

   all the companies concerned each achieve more than two thirds of their respective aggregate EU-wide turnover within one and the same EU Member State.

EU/Italian Merger Regulation thresholds



[1] All companies concerned

[2] Each of the companies achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.

6.1.2 Referral between the Commission and NCAs

(a) Referral from the Commission to National Competition Authorities (NCAs)

In advance of notifying the Commission, parties can request the Commission to refer a concentration to be examined, in whole or in part, by the NCA of a specific Member State on the basis that it may significantly affect competition in a distinct market within that Member State.

Following notification by the parties, it is also possible for a Member State to request a referral of the transaction to its NCA, either on the basis that it may significantly affect competition in a distinct market within that Member State, or on the basis that it affects competition in a distinct market within that Member State which does not constitute a substantial part of the common market.

(b) Referral from an NCA to the Commission

The parties can approach the Commission in relation to a concentration which does not meet either of the EU thresholds but which would have to be notified in at least three Member States, to request that the concentration should be examined by the Commission.

It is also possible for one or more NCAs to request that a transaction that does not meet the EU thresholds be referred to the Commission for consideration, in respect of the territory of the referring NCA(s). The criterion for referral is whether the transaction affects trade between Member States and threatens to significantly affect competition within the territory of the requesting NCA(s).

6.1.3 Notification

If either of the EU thresholds is met, the proposed transaction must be notified to the European Commission prior to the announcement of the public bid.

A binding merger agreement is no longer required for notification. It is sufficient for the parties concerned to demonstrate a good faith intention to conclude an agreement (*e.g.* in the case of a public bid, where the parties have publicly announced an intention to make such a bid).

If the transaction involves an acquisition, the buyer has the obligation to notify. If the transaction involves a joint venture or a merger, both parties must notify.

A transaction cannot be completed without obtaining prior clearance from the European Commission. However, it will be possible to proceed with the implementation of a public bid or of a series of transactions in securities, including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control is acquired from various sellers, provided that: (a) the concentration is notified to the Commission without delay; and (b) the bidder does not exercise the voting rights attached to such securities.

In addition, the Commission may, on request, grant a derogation allowing the bidder to exercise such voting rights if it is necessary to maintain the full value of its investments.

6.1.4 Failure to notify

The parties concerned may be fined up to 10% of aggregate turnover for failure to notify, for late notification, or for implementation of a merger prior to clearance (which could also attract liability under rules prohibiting anticompetitive co-operation), or up to 1% of aggregate turnover for supplying misleading or incorrect information.

6.1.5 Timing and decisions

The notifying parties must informally contact the Commission at least three or four weeks before the date scheduled for the formal filing in order to obtain the appointment of the case team and the review of the information that the parties intend to submit (pre-notification phase).

The first phase of the procedure takes 25 to 35 working days (under certain circumstances) from the formal filing. At the end of this phase, the Commission may grant authorisation or, if it considers it necessary to investigate the transaction in greater depth, may extend the procedure for 90 working days (or, under certain circumstances, to 105 working days) from the initiation of this second phase of investigation. At the end of this second phase the Commission may authorise or deny the transaction, or authorise it subject to conditions and obligations.

If the transaction is notified to the Commission, then no further notifications will need to be submitted to any other competition authorities within the EU, notwithstanding the possibility of the transaction being referred (in whole or in part) to an NCA.

If the parties breach procedural rules, fines of up to 1% of aggregate turnover may be imposed. Periodic penalty payments of up to 5% of average daily aggregate turnover may be imposed for any delay in complying with a decision taken under the merger regulation.

6.2 National merger controls

The types of transactions affected by Italian merger control include mergers, acquisitions of control and certain full-function joint ventures (that do not raise significant risks of co-ordination).

6.2.1 Thresholds

If the transaction satisfies either of the following two thresholds, it will be subject to review by the *Autorità Garante della Concorrenza e del Mercato* (the "**Authority**"):

(a) the involved companies had an aggregate combined turnover in Italy of more than Euro 468 million in the prior financial year; **or**

(b) the merged company, the acquired company or the joint venture company had an aggregate turnover in Italy of more than Euro 47 million in the prior financial year.

Please note that starting from **1 January 2013**, the two turnover thresholds provided for the notification of mergers - which are currently **alternative** conditions triggering the notification obligation - will become **cumulative**.

6.2.2 Notification

If the relevant threshold(s) is(are) met, notification is compulsory.

If the transaction involves an acquisition, the company acquiring control has the obligation to notify. If the transaction involves a joint venture or a merger, both parties must notify.

Special rules on timing and procedure apply to public tender offers in Italy (i) subject to filing with Consob **and** (ii) that cause a change in control. Conversely, the standard rules apply in case of public tender offers which are not subject to filing with Consob or that do not trigger the change in control (*e.g.*, if a mandatory public bid is a consequence of the bidder purchasing more that

51% of Target, the event triggering the merger filing is the acquisition of 51% of Target, not the subsequent public bid).

(a) The special rules applicable to public tender offers in Italy subject to filing with Consob and that cause a change in control

Public tender offers in Italy must be notified to the Authority at the same time as they are notified to Consob.

(b) The standard rules applicable to the other cases

In the case of public tender offers launched outside Italy, Italian law does not provide a specific rule on timing of notification. However, the Authority informally suggests that filing be made at the same time as the bidder launches the offer and gives notice to its national authority responsible for the securities markets.

For cases in which the change of control is not a direct consequence of the public tender offer, the ordinary rules apply: the notification should be made prior to the implementation of the agreement (closing date). If creating a new joint venture, the transaction must be notified before the memorandum of incorporation is filed with the Companies' Register.

In both cases, the notification does not entail any obligation to suspend the transaction. The parties may proceed with the implementation of the transaction after filing and before clearance. However, if competition concerns arise, the Authority may order the parties to suspend the implementation of the transaction until proceedings are terminated. Furthermore, should the Authority deny clearance to the transaction, in whole or in part, the parties shall comply with such decision by taking any relevant steps, including, if requested, divestiment of the whole or part of the business acquired.

An administrative fee has to be paid by the notifying parties. It currently amounts to 1.2% of the entire value of the transaction, with a minimum of Euro 3,000 and a maximum of Euro 60,000. However, if the transaction entails the acquisition of companies or part of companies achieving a turnover in countries other than Italy, the value of the transaction shall be modified by applying the correction factor given by the ratio between the domestic and worldwide turnover realised by the company which is to be acquired.

Please note that starting from **1 January 2013** the administrative fee, currently required for each concentration notified to the Authority, will be abolished. However, a new fee will be introduced, which is not linked to concentrations notified to the Authority but to the turnover of the companies in Italy. In particular, corporations ("*società di capitali*" under the Italian law) with total revenues exceeding Euro 50 million will be charged an annual fee amounting to 0.08 per thousand sales in the latest approved annual report. The minimum fee for each company will be Euro 4,000 and the maximum fee will be Euro 400,000 (only for the year 2013, the fee shall be paid by 30 October 2012; from 2014, the fee shall be paid by 31 July each year).

6.2.3 Timing and decisions

(a) The special rules applicable to public tender offers in Italy subject to filing with Consob and that cause a change in control

The first phase of the merger control procedure is shortened: within 15 days of receiving notification of the public tender offer, the Authority shall inform the parties of whether it has decided to clear the transaction or to open an in-depth investigation. The Authority shall inform Consob at the same time. The in-depth (or second-phase) procedure is the same as in the standard procedure.

(b) The standard rules applicable to the other cases

The first phase of the merger control procedure takes 30 days from notification.

In case of communication and insurance companies, the 30-day period is suspended to allow the relevant regulatory authority to issue its opinion (which shall be issued within 30 days of receiving the request).

The Authority may adopt a decision to initiate proceedings (*i.e.* begin the second-phase investigation) when it deems that the transaction may create or strengthen a dominant position as a result of which effective competition on the national market will be significantly reduced or eliminated. In such cases a decision shall be taken within 45 days from the date of the decision to initiate a second-phase investigation. Such period may be extended in the course of investigation for a further period up to 30 days when the companies fail to supply information and data in their possession upon request. At the end of the second-phase investigation, the Authority may: (i) clear the transaction; (ii) forbid its implementation; or (iii) impose structural (*i.e.* order the divestment of parts of the business, etc.) or behavioural conditions. In case of opening of a second-phase, the opinion of the regulatory authority (if required) shall be requested during this phase, not in the first phase.

6.2.4 Fines

Failure to notify may result in fines of up to 1% of worldwide turnover. If a transaction is not notified, the Authority has up to 5 years to initiate an investigation. The Authority deems that this term starts to run from the date of the delayed notification or the discovery of the breach. Non-notifying parties are, therefore, always subject to the risk of the opening of an infringement procedure.

In the case of implementation of a concentration deemed restrictive of competition, the Authority may impose a fine from 1 up to 10% of the turnover related to the business forming the subject matter of the concentration (which has been interpreted as the sum of the respective turnovers of the parties on the relevant markets).

If a concentration is implemented before the proceedings are concluded, the Authority may require the parties to take all appropriate measures to restore conditions of effective competition, and to remove any distorting effect.

6.2.5 Special rules

Specific merger control rules in Italy are as follows.

(a) Relevant turnover

For banks and other financial institutions, the turnover shall be equal to the value of one tenth of their total assets in Italy, with the exclusion of memorandum accounts.

For private equity companies, the turnover shall be equal to the sum of commissions receivable, the value of one-tenth of Italian assets, and the Italian turnover of any companies in which they hold a controlling interest.

For insurance companies, the turnover shall be equal to the value of premiums collected.

(b) Notification, timing and decision

For certain concentrations involving banks which are also subject to the review of the Bank of Italy pursuant to article 19 of Legislative Decree no. 385 of 1 September 1993 as amended (the "**Single Banking Act**"), the Authority will adopt its decision within 60 working days from the notification. Concentrations that can result in the creation or the strengthening of a dominant position in the banking sector can nevertheless be authorised by the Authority upon request of the Bank of Italy on the grounds of financial stability. Law No. 262/2005 also requires the Bank of Italy, Consob, ISVAP (the insurance regulator) and the Authority to implement co-operation procedures.

Transactions involving companies active in the insurance or communication sectors require an opinion from the *Istituto per la Vigilanza sulle Assicurazioni Private e d'Interesse Collettivo* ("**ISVAP**") or *the Autorità per le Garanzie nelle Comunicazioni* ("**AGCOM**"), respectively. If such opinion is not issued within 30 days from receipt of the Authority's file, the Authority may adopt its decision in any case. This means that the timing of the decision may be delayed by about 30 days. For concentrations in the communication sectors a separate filing with the AGCOM may be required.

In the film distribution sector, a concentration shall be notified to the Authority if one or more of the parties of the concentration would have, after implementation of the transaction, a share exceeding 25% of the market (in terms of turnover and number of cinemas) in one or more of the main cities in Italy for film distribution (Roma, Milano, Torino, Genova, Padova, Bologna, Firenze, Napoli, Bari, Catania, Cagliari and Ancona) (art. 26 of Legislative Decree No. 28, of 22 January 2004).

6.3 Other controls

If any of the merging parties has a significant presence or sales in another EU country and the EU thresholds are not met, it should also verify whether a filing is required in that EU country.

Irrespectively to the filing of the transaction with the European Commission or with any national competition authority in a Member State, if any of the merging parties has a significant presence or sales in a non-EU country, it should also verify whether a filing is required in that non-EU country.

6.4 Foreign exchange and investment controls

Foreign investment in Italy is generally unrestricted.

However, Italian Government has been given special powers in relation to (i) defence and national security sectors and to (ii) strategic assets in the energy, transport and communications fields.

With regards to the defence and national security sectors, the Italian Government may, *inter alia*, prevent the purchase of a shareholding in a company carrying out strategic activities for the defence and national security system by any person or entity other that the Italian State or an Italian Public Authority, if following purchase the purchaser would directly or indirectly hold a percentage of the voting capital such as to prejudice national defence and national security interests.

With regards to strategic assets in the energy, transport and communications fields, purchases, by non-EU residents, of a shareholding in a company that owns assets identified as strategic and sufficient to cause the non-EU resident to have permanent establishment as a result of the acquisition of the control of the company must be reported to the Italian Government and, in the event that the purchase is likely to give rise to serious and actual risk to the public interests, the Government can impose specific undertakings to ensure the safeguard of the interests at issue, or prevent completion of the transaction.

6.5 Regulated industries

There are statutory prohibitions and restrictions for companies in certain sectors. The most common are financial, insurance and banking services, media and communications, defence-related or arms and utilities.

If the Target operates in any of these sectors, consents and/or approvals are likely to be required from the competent authorities in order to complete the transaction.

7. Employment considerations

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7.3 Confidentiality 40

7.1 General

Employees in Italian companies generally enjoy quite extensive rights. In case of takeover, protections applicable to transfer of shares arise, as follows.

- The employees continue to be employed by the Target. A dismissal directly attributable to the share transfer is unlawful and the dismissed employee may claim damages (and reinstatement, depending on certain circumstances and only if the employer has more than 15 employees in the same plant or municipality, or more than 60 employees overall). However, a dismissal justified on other acceptable/customary grounds set forth by the law may be lawful.
- Any executive, if certain major national collective labour agreements apply, may be entitled to resign within a specific time and receive, on top of statutory severance payments, a special compensation (equal to one portion or all of the compensation payable in lieu of notice, as the case may be). To this purpose, some national collective labour agreements require that material changes occur in the ownership of the Target by means of a transfer of shares, but also that the involved executive shows having suffered a prejudice/detriment.

7.2 Information rights

The Draghi Law regulates certain reporting obligations that rest upon the Target and the bidder with respect to representatives of their employees or, where there are no such representatives, the employees themselves.

However those reporting obligations will not apply to:

- takeover bids or exchange offers involving financial products other than securities;
- takeover bids or exchange offers not involving securities that carry voting rights on specific topics (*e.g.*: removal or liability of directors or members of the supervisory board, or matters established in regulations issued by Consob);
- takeover bids or exchange offers launched by parties who, directly or indirectly, hold the majority of voting rights exercisable at ordinary shareholders' meetings of the Target;
- takeover bids involving own shares.

Additional information and/or consultation obligations towards the employees' representatives and/or employees and/or trade unions could be provided or required by collective labour agreements at any level.

7.3 Confidentiality

If a company employs at least 50 employees, employees' representatives and their advisers are not authorised to disclose to the workers or third parties information expressly provided to them in confidence and classified as confidential by the employer or its representatives in the lawful interest of the company. This prohibition lasts for three years after the expiry of the term of appointment. However, the national collective labour agreements may authorise the employees' representatives and their advisers to give confidential information to employees or third parties subject to a confidentiality undertaking, provided that the collective labour agreement lays down the relevant procedures. In the event of non-compliance with this obligation, without prejudice to civil liability, the disciplinary measures set forth by the relevant collective labour agreements apply. Breach of the provisions set out above by the advisers is punishable with an administrative fine ranging from Euro 1,033.00 and Euro 6,198.00. The employer is not required to hold consultations or to communicate information which - for proven technical, organisational or production reasons - creates significant difficulties for the functioning of the company or would be prejudicial to the company. The national collective labour agreements provide for the establishment of a conciliation board for disputes relating to the confidentiality of the information provided and classified as confidential, as well as for the actual identification of the technical, organisational and production requirements for the information which may create significant difficulties for the functioning of the company concerned or would be prejudicial to it. The collective labour agreements also lay down how the conciliation board is composed and how it works.

Employees are subject to specific law provisions, which provide for confidentiality duties (regarding, *inter alia* and to a limited extent, the employer's strategic and organisational choices).

Employees are bound by these confidentiality duties during the employment relationship and also after termination thereof.

8. Tax considerations

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8.1 Capital gain and transfer taxes

Corporation tax is charged on any capital gain realised by Italian resident entities upon the alienation of securities. Capital gains are subject to ordinary taxation consisting of both IRES (national corporate income tax of 27.5%) and, in certain cases, IRAP (regional tax on business activities of 3.9% - 4.65% and 5.90% in case of, respectively, banks/financial institutions and insurance companies) which may be varied by a maximum of 0.92 percentage points on a regional basis.

Where the securities have been recorded in the last three financial statements, the seller may opt, for IRES purposes, for taxation of the related capital gain in equal instalments over the fiscal year of the transfer and the following four years. This option must be set out in the tax return for the fiscal year in which the alienation occurs.

Any capital loss deriving from the alienation of securities is deductible, for IRES purposes, for an amount above any tax-exempt dividends received within the thirty-six rolling month period preceding the sale (this rule does not apply to entities who prepare financial statements in accordance with IAS/IFRS principles pursuant to EU Regulation No. 1606/2002) and, where applicable, for IRAP purposes.

However, capital gains deriving from the alienation of a shareholding in either a resident or non-resident entity whose securities are traded on a regulated market by a company resident in Italy for tax purposes are exempt for 95% of the gain, provided that:

(a) the shareholding is recorded as a fixed financial asset (or, for companies that prepare their financial statements in accordance with IAS/IFRS principles pursuant to EU Regulation No. 1606/2002, it is not accounted for as 'held for trading') in the first financial statements after the acquisition;

(b) the shareholding has been held without interruption for at least 12 months; and

(c) the company in which the shares are held is not resident in a state having a privileged tax regime. Following the expected enactment of a new 'white list' of states not having a preferential tax regime and allowing an adequate exchange of information with the Italian tax authorities, the company in which the shares are held will have to be resident in one of the states included in such 'white list'.

Beginning with the third financial year before the year of the disposal, condition (c) must be satisfied uninterruptedly.

In a stock swap (*offerta pubblica di scambio or OPS*), the exchange of securities should be made under a tax neutral regime provided that:

(d) the acquiring entity and the Target are resident in Italy for tax purposes;

(e) the acquiring entity has the legal form of a S.p.A. (*società per azioni*) or of a S.a.p.a. (*società in accomandita per azioni*);

(f) the shares received are recorded by the bidder and/or by the shareholders of the Target for a value not higher than the tax basis held in the securities swapped.

Any possible set-off received represents the realisation of gains subject to IRES under the rules outlined above and, in certain cases, IRAP.

Capital gains realised by non Italian resident entities (holding the securities not in connection with the activities of a permanent establishment in Italy) through the alienation of securities representing more than 5% of the issued share capital or 2% of the shares with voting rights of Target, are subject to IRES for 49.72% of the capital gain's amount. Otherwise, if a capital loss arises from the alienation of the securities, 49.72% of the loss can be carried forward and deducted from the taxable amount of any capital gain realised on similar shareholdings in the four years following the year when the loss was realised.

The above tax regime, however, will not prevent the application, if more favorable to the taxpayer, of any different provisions contained in the applicable tax treaty between Italy and the state in which the taxpayer is resident.

Contracts related to the transfer of securities executed in Italy are subject to a flat registration tax, presently set at €168, irrespective of the price of the shares, as follows:

(a) public deeds and notarised deeds are subject to mandatory registration. Registration must be applied for at the tax registration office within 20 days from execution (60 days in the case of deeds entered into abroad);

(b) private deeds are subject to registration only in the case of voluntary registration.

The endorsement of the securities is, in any case, exempt from registration tax.

8.2 Limitation on interest deductions on takeover financing

The following regime applies to interest accrued in tax periods starting on or after 1 January 2008.

Interest expenses (irrespective of whether they are related to bank financing or intra-group debt) other than capitalised interest expenses and interest accrued on loans guaranteed by a mortgage on real estate to be leased are deductible to the extent of any interest income accrued in each tax period:

(a) any excess of interest expenses over interest income is deductible to the extent of 30% of 'gross operating income' of the core business of the company. 'Gross operating income' (hereinafter referred to as "**EBITDA**") is the difference between (a) the value of production (item A of the profit and loss accounts scheme contained in Article 2425 of the Civil Code) and (b) costs of production (item B of the profit and loss accounts scheme contained in Article 2425 of the Civil Code), excluding depreciation, amortisation and financial leasing instalments relating to business assets; and

(b) any excess of interest expenses over the above threshold (i.e. 30% of EBITDA) may be carried forward (hereinafter "**Carried Forward Interest**") for deduction in the following tax periods to the extent that the net interest expenses (i.e. exceeding interest income) accrued in such tax periods are lower than 30% of EBITDA. Any excess of 30% of the EBITDA over net interest expenses realised from tax periods beginning on or after 1 January 2010 may be used to increase the relevant threshold for the following tax periods.

Subject to certain conditions, excess interest expenses over 30% of EBITDA (or any Carried Forward Interest) generated after the inclusion in the fiscal tax consolidation may be used to offset the taxable income of another company within the tax consolidation up to the amount of (30% of) such company's EBITDA that has not been used to deduct its own interest expenses and, for the purpose of computing the deductible amount of net interest expenses, also (30% of) the EBITDA of non-Italian resident controlled companies may in certain cases be taken into account. The utilisation of Carried

Forward Interest by the company resulting from a merger or benefiting from a de-merger is allowed for an amount not exceeding the net equity of both the absorbing or de-merging company and the absorbed or de-merged company (without taking into account the equity injections made in the previous 24 months) and subject to the condition that the profit and loss accounts of the companies carrying forward the tax losses show, for the period preceding the merger or de-merger, an amount of revenues and of labour costs exceeding 40% of the average of these items for the two previous periods.

Interest expenses suffered by banks, finance companies, insurance companies and parent companies of banking and insurance groups are deductible for IRES and IRAP purposes for an amount equal to 96% of the total amount of interest expenses suffered.

8.3 Withholding tax on dividend and interest payments

Withholding tax at the rate of 20% is chargeable on dividends paid to shareholders outside Italy. However, if the recipient is able to provide evidence (i.e., documentation issued by the tax authorities of its state of residence) that it has paid a final tax on the same dividends in its state of residence, up to one-fourth of the Italian withholding tax may be refunded.

The withholding tax applies at the reduced rate of 1.375%, provided that the beneficiary of the dividends is a company subject to corporate income tax in another state of the European Union or of the European Economic Area that allows an adequate exchange of information with the Italian tax authorities.

If the beneficial owner is an EU resident company qualifying as "parent company" under the EC Parent Subsidiary Directive (Council Directive No. 90/435/EEC of 23 July 1990), the dividends distributed should not be subject to withholding tax.

Withholding tax is generally chargeable on interest payments at a rate of 20%. If the beneficial owner is an EU resident company qualifying under the Interest & Royalties Directive (Directive 2003/49/CE) interest will not be subject to Italian withholding tax.

However, double tax treaties entered into with a large number of countries usually provide for a reduced withholding tax rate, generally 10%.

9. Application of US federal securities laws

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9.1 Application of US federal securities law to Italian takeovers

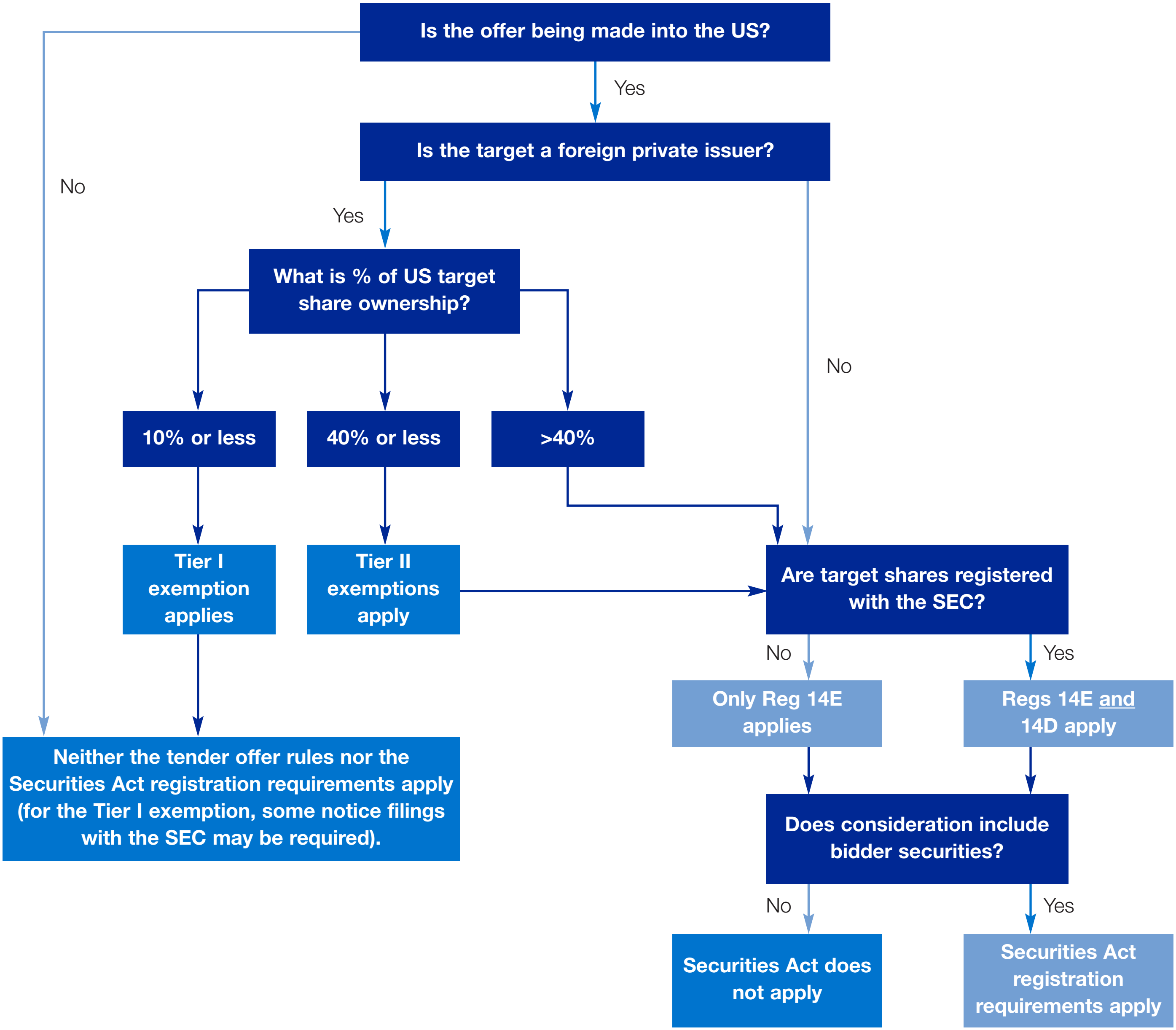
The principal US federal securities laws that may apply to takeovers of Italian companies are (i) the SEC's tender offer rules, promulgated under the US Securities Exchange Act of 1934 ("**Exchange Act**"), which potentially apply to any acquisition effected through a tender or exchange offer; and (ii) the registration requirements of the US Securities Act of 1933 ("**Securities Act**"), which potentially apply if shares or other securities are offered as consideration to target shareholders. In addition to the US federal securities laws, securities laws of individual states of the US may apply if the offer consideration includes shares.

The application of the US federal securities laws to takeovers of Italian target companies can be summarised as follows:

- if the Target has any US shareholders, the US tender offer rules potentially will apply (but if less than 10% of the Italian Target's shareholders are US persons, the Tier I exemption may be available);
- if the consideration to be offered to Target's shareholders includes securities and the Target has any US shareholders, the registration requirements of the Securities Act may apply (but if less than 10% of the Italian Target's shareholders are US persons, the Tier I exemption may be available);
- the general US anti-fraud rule, Rule 10b-5, may apply to any takeover transaction that affects US shareholders, regardless of transaction structure.

This Section provides a broad overview of the potential application of the US federal securities laws to takeovers of Italian companies. It does not address US competition or foreign investment laws.

A route map summarising the application of US securities laws to a takeover of an Italian company is set out below.



9.2 Is the Italian Target a "Foreign Private Issuer"?

A foreign private issuer is an entity incorporated under the laws of any non-US jurisdiction unless (i) a majority of its voting shares are held in the US and (ii) either a majority of its executive officers and directors are US citizens or residents, or a majority of its assets are located in the US, or its business is principally administered in the US.

9.3 If US share ownership of the Italian Target is under 10% – Tier I exemption

In general, a tender or exchange offer for an Italian "foreign private issuer" will be exempt under Tier I from most of the US tender offer rules and US registration requirements if the following conditions, among others, are met:

- US persons hold no more than 10% of Target shares;
- the Target's US shareholders are permitted to participate in the offer on terms at least as favourable as those offered to any other holder, subject to certain exceptions; and
- the bidder provides information to US holders comparable to that provided in the target's home jurisdiction.

The SEC has very specific and complicated rules for calculating US share ownership.

9.4 If US share ownership of the Italian Target is more than 10% but less than 40% – Tier II Exemptions

If the Italian Target is a foreign private issuer and US holders hold no more than 40% of the Target shares, the offer will qualify for the Tier II exemptions, which provide limited relief from a number of the tender offer rules. Exchange offers, however, must comply with registration requirements of the Securities Act.

Under the Tier II exemptions, the bidder can, among other things:

- conduct separate US and non-US offers (provided the terms of the US offer are at least as favourable as the terms of the non-US offer); and
- follow procedures in accordance with home jurisdiction law or practice regarding, among other things, extending the offer, paying for shares and withdrawal rights.

9.4.1 If the Italian Target has shares registered with the US SEC

The US tender offer rules consist of two sets of rules. Regulation 14E applies to all offers and imposes relatively limited requirements. Regulation 14D only applies if the Target has shares registered with the SEC and imposes extensive procedural and disclosure requirements (including filings with the SEC).

9.5 If bidder consideration securities are offered

If the consideration being offered to Target shareholders includes shares or other securities and the Tier I Exemption is not available, the offer will be subject to SEC registration procedures imposed by the Securities Act (in addition to the tender offer rules). Preparing the registration statement and responding to the SEC's comments typically takes at least eight weeks, and sometimes much longer, and can be time-consuming and expensive, particularly for a non-US bidder whose shares are not already listed or registered in the US.

If the bidder does not already have shares listed or registered in the US, after the completion of an exchange offer registered under the Securities Act, it will need to file with the SEC annual reports on Form 20-F and interim reports on Form 6-K.

9.6 No-action/exemptive relief

The Tier I and Tier II exemptions do not eliminate all conflicts presented by cross-border takeovers that are subject to US jurisdiction and, therefore, the SEC may grant "no action" relief on a case by case basis. Since the process of obtaining SEC relief can take at least a few weeks, bidders should seek advice well in advance of the anticipated launch date of the offer to ascertain whether this kind of relief will be needed.

9.7 Avoiding the application of US securities laws

In some circumstances, a bidder may wish to avoid the application of US securities law by not making the offer into the US. The SEC has provided guidance on the steps that must be taken in order to avoid making the offer into the US but has also indicated that it may view these steps as ineffective if there is a large US shareholding in the Target.

9.8 Other considerations

9.8.1 Regulation M

To avoid the possibility of share price manipulation in an exchange offer, Regulation M prohibits certain trading activity in bidder's shares by "distribution participants" (including the bidder) and "affiliated purchasers" regardless of intent from the announcement of a takeover offer until its completion or lapse. A bidder's financial adviser is potentially subject to these restrictions, although purchases on the other side of a "Chinese Wall" within an investment bank are permitted. Deal-specific relief from Regulation M may be negotiated with the SEC.

9.8.2 Rules affecting pre-bid stakebuilding

A number of US securities laws rules need to be considered before a bidder embarks upon pre-bid stakebuilding, including the US anti-fraud rules and Schedule 13D.

If the bidder and/or its concert parties directly or indirectly acquire beneficial ownership of more than 5% of SEC registered shares, the bidder will be required to provide certain prescribed information about its ownership/acquisition to the SEC in publicly available filings on Schedule 13D. The required disclosure would include any plans to acquire the target. The filing must be made within 10 days after the 5% ownership threshold is crossed and must be amended "promptly" following any material change in the information provided in the filing.

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Glossary

AGCOM – Autorità per le Garanzie nelle Communicazioni

Authority – Autorità Garante della Concorrenza e del Mercato

Bank of Italy – Banca d'Italia

Borsa Italiana – Borsa Italiana S.p.A., the company managing the Italian Stock Exchange

Commission – EU Commission

Communication – Communication of the decision or obligation to launch a tender offer pursuant to article 102 of the Draghi Law

Consob – Commissione Nazionale per le Società e la Borsa

Consob Regulation – Consob Regulation no. 11971 of 14 May 1999, as amended

Draghi Law – Legislative Decree no. 58 of 24 February 1998 as amended

EBITDA – Earings before interest and taxes, depreciations and armonizations

EU – European Union

Exchange Act – US Securities Exchange Act of 1934

Insiders – Persons who (i) directly or indirectly hold shares in excess of 30% of the voting share capital, (ii) are parties to a shareholders' agreement and have an overall shareholding in excess of 30% of voting share capital, (iii) are directors of the Target, or (iv) are any person acting in concert with these persons

Interested Parties – The bidder, the Target, subjects linked to them by a relationship of control (e.g. parent and subsidiaries), companies subject to common control and affiliated companies, their directors, the members of their boards of statutory auditors and their general managers, shareholders of the bidder or the Target who are parties to a shareholders' agreement and persons acting in concert with the bidder and/or the Target

ISVAP – Istituto per la Vigilanza sulle Assicurazioni Private e d'Interesse Colletivo

Italian Bankruptcy Law – Royal Decree No. 267 of 16 March 1942, as amended

MAC clause – Material adverse change clause

NCA – National Competition Authority

OPA – Offerta pubblica d'acquisto, a public offer of purchase

Recommendation – Recommendation issued by the board of directors of the Target pursuant to article 103 of the Draghi Law containing the information necessary to the shareholders to evaluate the offer

Securities Act – US Securities Act of 1933

Single Banking Act – Legislative Decree no. 385 of 1 September 1993, as amended

Takeover Directive – The EU Takeover Directive 2004/25/EC

Target – Company whose securities are listed on the Italian regulated market

Voting Shares – Shares granting the right to vote for resolutions concerning the appointment or removal of directors or members of the supervisory board of the Target

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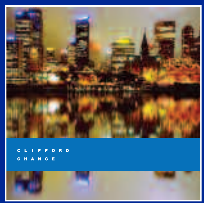
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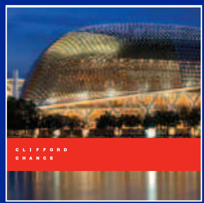
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