WHITE & CASE

Insight: Milan office

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Italy issues new "Golden Share" rules

On March 9, 2012, the Italian Council of Ministers approved a Law Decree (the "**Decree**") that changes Italy's "Golden Share" powers in certain strategic sectors and repeals Article 2 of Legislative Decree No. 332 dated May 31, 1994, as amended, which originally provided "Golden Share" powers to the Italian Government. The approval follows mounting pressure from the European Commission (the "**EC**"), which had threatened to bring Italy before the European Court of Justice for maintaining laws that it believed were in breach of EU rules on the free movement of capital. The EC had already opened violation procedures against Italy before the European Court of Justice in 2009.

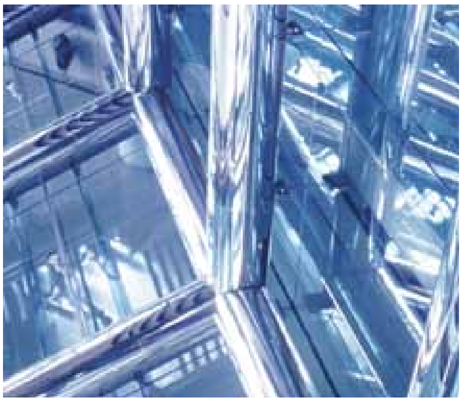
The Decree, which entered into force today, March 16, 2012, limits the Italian Government's veto power on ownership changes to specific enumerated circumstances, such as when a buyer lacks the ability to provide adequate financial guarantees, is linked to non-democratic or non-EU states or is linked to organized crime or terrorism. In particular, the Decree provides different powers with respect to the Defense and National Security sectors than those with respect to the Energy, Transportation and Communications sectors.

Defense and National Security

With respect to the Defense and National Security sectors, the Decree provides for the exercise of special powers in the event of a material threat to the Italian Government's essential interests in the defense of and national security of Italy. In such an event, the Italian government may with respect to companies of strategic importance to the defense and national security of Italy:

a) impose specific conditions relating to the security of supply and information, technology transfers and export controls in connection with the purchase, howsoever phrased, of participations in such companies;

b) veto resolutions of the General Meeting or the Board of Directors concerning (i) changes to the company's structure or corporate purpose, (ii) the dissolution of the company, (iii) the transfer abroad of the company's legal seat or (iv) the sale of any rights in or the use of tangible or intangible assets of the company as well as the assumption of constraints conditioning such use; and c) oppose the purchase, howsoever phrased, of a participation in such a company, by any entity other than the Republic of Italy or Italian public entities, when such purchase would provide a buyer, directly or indirectly, including by virtue of shareholder agreements, a participation with voting rights that could jeopardize the interests of the defense and national security of Italy.



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Generally, with respect to the powers listed above, the Italian Government must impose specific conditions or exercise its right of veto or opposition within 15 days from the date it receives notice of, *inter alia*, a resolution or purchase. However, the 15-day window can be suspended if the Italian Government requests additional information in connection with the relevant notification. In addition, the Decree permits certain penalties for, inter alia, non-compliance with any exercise of the above powers by the Italian Government.

Energy, Transport And Communications

With respect to the Energy, Transportation and Communications sectors, the Decree requires that a company notify the Italian Government of any resolutions it adopts that would have the effect of changing such company's ownership structure or purpose, or winding up such company's business.

The Italian Government is entitled to impose specific conditions to those resolutions, acts or transactions that would give rise to an exceptional situation of an actual threat of serious injury to public interests relating to the security and functioning of networks and systems and the continuity of supplies.

The effectiveness of any such resolutions, acts or transactions will, upon notice to the Italian Government, be stayed for 15 days during which time the Italian Government may approve or impose conditions to such acts, resolutions or transactions. However, the 15-day window can be suspended if the Italian Government requests additional information. With respect to the Energy, Transportation and Communications sectors, the Italian Government is also entitled to exercise its veto power if the buyer was originally established outside the EU and subsequently establishes itself within the EU through the purchase of an EU company or branch. However, the Italian Government is entitled to exercise its veto power only if:

a) there exists a link between the company(s) involved and a criminal organization(s) or persons or entities associated with such organizations; and

b) the proposed intervention is necessary to ensure the continuity of supply; the maintenance, safety and operation of networks and facilities and the free access to the market.

The Decree, which has a transitional validity for 60 days from the date of its enactment, will be submitted to the Italian Parliament for conversion into Law. As a result, further amendments may occur on or prior to its conversion into Law.