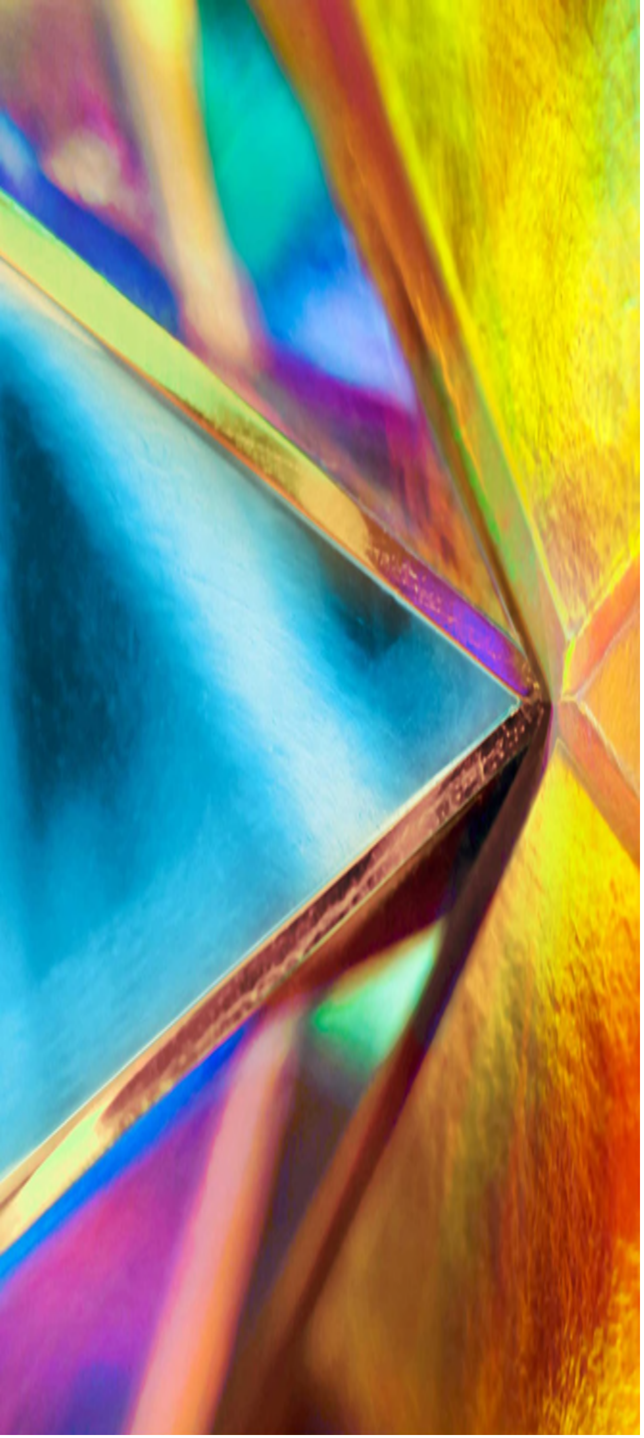

WHITE & CASE

Public to Private Deals in Italy

Six key things you need to consider

The Italian market is complex and highly regulated, requiring expert advice to navigate. Here are the key things you need to consider in a public to private deal ("**P2P deal**") where the Italian takeover rules applies.

- Structure and Timeline
- Secrecy and Disclosure
- Financing
- Diligence
- Special Deals and Management Incentivisation
- Deal Protections

Structure and Timeline

In Italy, a P2P deal can be implemented by way of either a mandatory tender offer ("MTO") or a voluntary tender offer ("VTO")

MTO

A MTO is a tender offer required by Italian laws as a result of the purchase, by one or more persons acting in concert, of more than 25% (or 30% for SMEs) of ownership or voting rights attached to shares able to be voted at shareholders meetings to appoint or remove directors ("**Material Interest**") in a company listed on the Italian Stock Exchange ("**Target**").

Key aspects:

- Typically, bidder enters into an SPA with the controlling shareholder of Target to acquire the Material Interest.
- The acquisition of the Material Interest can be subject to conditions precedent ("**CPs**"), but MTO cannot.
- Price shall be no lower than the highest price paid by the investor/bidder (and the parties acting in concert) in the 12 months prior to the announcement of the MTO.
- Applicability of the "best price rule" (price is increased if higher price is paid following the announcement of the MTO, during the MTO, or in the 6 months following payment of the shares tendered to the MTO).

VTO

A VTO is a tender offer launched by a bidder (directly or with other persons acting in concert) for all Target shares (or part of the shares if below 25/30%).

Key aspects:

- VTO can be subject to CPs (including minimum acceptance thresholds).
- Price is freely determined by the bidder.
- Applicability of the "best price rule" (price is increased if higher price is paid following the announcement of the VTO, during the VTO, or in the 6 months following payment of the shares tendered to the VTO).

Structure and Timeline (cont'd)

Delisting

Depending on the results of the tender offer (either MTO or VTO), there are two options for the delisting of Target:

- **Between 66.6% and 90%: delisting via merger** of Target into a private company (BidCo).
- **Above 90%: delisting by law** (through sell-out and/or squeeze-out).

Sell-Out (>90%)

- Target's minority shareholders are entitled to sell their shares to the bidder, if the bidder (together with persons acting in concert, if any) (i) is the owner of shares in excess of the threshold of **90%*** of Target's share capital; and (ii) declares its intention not to restore a free float sufficient to ensure Target's shares regular trading.
- Delisting takes place as of the trading day following the last day for the payment of the consideration in the sell-out procedure.
- Sell-out price is generally the same of the preceding tender offer if 90% threshold is exceeded via MTO or VTO. Usually the sell-out is conducted via a re-opening of the tender offer period.

Timeline

- Approximately 3 months for VTO/MTO plus 2 months for the sell-out (including preparation).

Squeeze-Out (>95%)

- Bidder (together with persons acting in concert, if any) is entitled to purchase Target's minority shareholders' shares if the bidder (i) is the owner of shares in excess of the threshold of **95%** of Target's share capital; and (ii) declared its intention to benefit of the squeeze-out right in the offering document.
- Squeeze-out price is generally the same of the preceding tender offer or is determined by CONSOB (the Italian authority).

Timeline

- Approximately 3 months for VTO/MTO plus 3-4 months for the sell-out and squeeze-out (including preparation).

* Or higher threshold set by CONSOB (the Italian authority) for larger companies.

Structure and Timeline (cont'd)

Delisting merger

- In case of a delisting merger, BidCo should not have significant debt as otherwise merger with minorities would be dilutive.
- Delisting merger to be approved by an extraordinary shareholders' meeting of Target ("**EGM**") following approval of the related parties committee and Board of Directors (with abstention of directors involved in the transaction) of Target.
- Requires support of 2/3 of the share capital attending the EGM (so merger can be passed even if BidCo owns less than 66.6% of the share capital as generally don't have 100% attendance).
- Withdrawal right: at price determined by law for shareholders who did not participate in passing the resolution (those who were at the meeting and voted in favour of the merger do not have this right). Liquidation price is calculated as the arithmetic average of the closing prices of the shares during the 6 months preceding the day of publication of the notice calling the EGM. Depending on such average price, the liquidation price may also be higher than the MTO/VTO price and in such a case there's a risk that the MTO/VTO price has to be increased to match the liquidation price.
- Delisting merger could also be conditional upon a limited level of withdrawal right.

Timeline

- Approximately 3 months for VTO/MTO plus 3-4 months for the delisting merger (including preparation).

Secrecy and Disclosure

Inside information

- Information prior to a tender offer may qualify as inside information and must be treated as strictly confidential. The bidder should therefore establish appropriate internal procedures. If the bidder intends to contact third parties at an early stage, this should be done exclusively under a non-disclosure agreement reflecting the nature of the P2P.
- It is good practice to restrict circulation of information and keep track of the people involved. In almost all such transactions the Italian regulatory authorities open a post deal criminal investigation in order to verify that no-insider trading has been committed.

Announcement

- **MTO:** announcement at closing of the Private M&A.
- **VTO:** announcement as soon as the Bidder declares its firm intention to launch an offer.
- In the event of a leak, an announcement may be required providing details of the status of negotiations.

Financing

Certain funds

There must be absolute certainty that the tender offer consideration will be available to shareholders in the event that the Bidder is successful. Accordingly, Bidder must have (or must have made the necessary arrangements to ensure that it has) “certain funds” prior to releasing a “firm” offer announcement, and in any event it shall give CONSOB (the Italian authority) evidence of certain funds.

To that purpose, Bidder needs to obtain a bank guarantee, the so-called “**Cash Confirmation Letter**”, by means of which the bank(s) confirms that Bidder has at its disposal the necessary resources to fulfil its obligations under the offer in full. The Cash Confirmation Letter needs to be filed with CONSOB prior to the start of the offer period and remain in place for a very long period, until all obligations under the offer have been met.

Considering the financial risks attached to the bank(s)’ Cash Confirmation Letter, the bank(s) practically always require the provision by the bidder of a collateral or similar counter-guarantee to secure the relevant funds.

Debt push-down

In the absence of a merger between BidCo and Target, there is limited scope for implementing debt push down.

Diligence

- Due diligence in P2Ps typically starts with the review of publicly available information due to general ongoing disclosure obligations of the Target under applicable capital market laws.
- In MTOs, negotiations with majority shareholder typically permit limited due diligence (not involving any inside information or any information that may become inside information).
- In VTOs, typically there is no due diligence or access to Target.
- When due diligence is performed, access to information largely depends on Target's discretion, and is generally far more limited in P2P deals compared to private M&A deals.
- No one can acquire, dispose of, directly or indirectly, securities of Target on the basis of inside information (also acquired during due diligence).
- In case information that may become inside information is shared along the process (i.e. forecasts and projections), it is customary to disseminate a cleansing statement.

Special Deals and Management Incentivisation

- Management incentives that are agreed with Bidder prior to publication of the offer document must be disclosed in such document and relevant Target's documentation (including issuer's communication).
- In case of reinvestment or roll-over of management and/or existing shareholders' into Bidder's structure, special consideration must be given to the aforementioned best price rule. Under such rule, and under the principle of equal treatment of shareholders,

  (i) agreements to acquire Target securities for a price higher than the offer price; and/or

  (ii) arrangements providing for more favourable reinvestment terms; and/or

  (iii) management incentive plans "off market", would automatically lead to a corresponding increase of the offer price.

  Therefore, it is important for Bidder to ensure that reinvestment or roll-over is done at the same economic terms as the other shareholders (including, at a price not higher than the offer price).

Deal Protections

MTO: certain protections may be included in the SPA (such as CPs at closing of the Private M&A, or behavioural rules of the parties concerning the MTO process).

VTO: possibility to include CPs, in particular on minimum acceptance threshold.

Irrevocable undertakings to tender one's shares to the offer may be executed but can be revoked if a competing offer is launched.

Rather than seeking commitments, Bidder may also stake build after the announcement of the MTO/VTO, thus increasing its stake outside the tender offer through off-market share purchases.

The price paid for the shares so purchased has to be equal to (or lower than) the tender offer price (if higher than the tender offer price, the higher price has to be offered to all shareholders in the tender offer under the best price rule).