

New Italian disclosure requirements for acquisitions of 10%, 20% or 25% interests in public companies

January 2018

The Italian legislators enacted new measures that require prompt and detailed disclosure of the objectives of investors who acquire interests exceeding 10%, 20% or 25% in companies listed on the Milan Stock Exchange.

Any acquisition in a company listed on a regulated market of the Milan Stock Exchange (the “Company”) that results in the purchaser holding a stake exceeding 10%, 20% or 25%, requires the purchaser to publicly announce its objectives for the subsequent six months with respect to the Company. The law decree of October was converted into law at the beginning of December.¹

The new rules are particularly designed to provide guidance to the market where a company’s share capital is fragmented and in cases where such acquisition does not require the purchaser to launch a mandatory takeover². The new rules were also prompted in response to recent cases where a purchaser bought stakes below the 25% threshold (which, in some scenarios, allows the exercise of *de facto* control) without disclosing their long term objectives with respect to the target group (e.g. Vivendi’s investment in Telecom Italia).

Disclosure Requirement. The purchaser will have to notify the Italian securities commission (Consob) and the issuer the following information:

- how the acquisition of the new interest was

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¹ Law Decree No. 148 of October 16, 2017, converted into law No. 172 of December 4, 2017.

² Under Italian law, a shareholder is required to launch a takeover bid when it exceeds the threshold of 30% of the target’s voting rights, or 25% if the target is not a SME and there is no other shareholder holding a higher percentage.

financed;

- whether the purchaser acted alone or in concert with other persons;
- whether the purchaser intends to further increase its interest in the Company;
- whether the purchaser intends to acquire control over the Company or exercise influence over its management, and if so, its strategies;
- the purchaser's intentions with regard to any shareholders' agreements into which they have entered; and
- whether the purchaser intends to propose any changes to management or any corporate body of the Company.

Timing of disclosure. The purchaser has to notify the Company and Consob within 4 business days of the date when the obligation to buy is binding and Consob notifies the market within the three following business days. Consob may identify, with *ad hoc* regulations, exemptions to the new disclosure obligations, based on the characteristics of the purchaser or of the target company.

Duty to Update for Six Months. If the purchaser's objectives change within six months of the date of the filing, as a consequence of supervening objective circumstances, the purchaser must notify Consob, the Company and the market in a new filing of the revised objectives, detailing the reason for the change. The purchaser's duty to update extends for a further six-month term following the publication of the updated disclosure. The new rules do not clarify if this obligation extends further³.

Non-Compliance Penalties. Failure to comply with the new disclosure requirements is punishable by administrative sanctions and a monetary fine. The fine may be material and can be calculated at the higher of (i) a range between Euro 10 thousand and Euro 10 million or (ii) up to 5% of the annual turnover of the purchaser. Criminal sanctions applicable to market manipulation could eventually apply in case the information disclosed to the public is held misleading.

A clarification by Consob on several aspects of the new rules is expected, including the level of detail of the disclosure and whether disclosure is required when a purchaser is also required to launch a mandatory takeover bid by exceeding the 25% threshold.

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Effect on Purchasers. Purchasers of stakes should be careful in planning acquisitions and be clear in defining the strategy (including what statements they need to make and the consequences of such statements). This may affect how a takeover is planned since in some cases earlier disclosure will need to be made of intentions.

Effect on Targets. On the other hand, the new rules aim to protect Companies that are the target of purchasers slowly building a stake. We expect that targets will carefully monitor

³ There is a discrepancy, however, in the two different versions of the conversion law published simultaneously in the Italian Official Gazette: according to the consolidated version of the law converting the law decree, the six-month period obligation to update the disclosure is still in force, whereas, according to the other version of the conversion law published simultaneously on the Official Gazette, the obligation to update the disclosure is repealed. We expect that a clarification on the matter will come from the legislators.

compliance with the provisions in order to use them as a defensive mechanism to help protect their independence.

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