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Trends and Developments

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▼ 1. Trends

▼ 1.1 M&A Market

Compared to 12 months ago, the Italian M&A market is showing broadly stable transaction volumes but higher overall deal value. The number of deals remains relatively consistent with the previous year, reflecting continued caution among

investors in light of macroeconomic uncertainty and valuation gaps between buyers and sellers.

At the same time, aggregate deal value has increased, supported by a number of sizeable strategic transactions, particularly in regulated and infrastructure-related sectors. After a relatively cautious start to the year, activity strengthened in the second half of 2025 as financing expectations improved and strategic buyers resumed larger transactions.

▼ 1.2 Key Trends

Several trends have shaped the Italian M&A landscape over the past 12 months.

One of the most visible developments has been ongoing consolidation in the banking sector, which accounted for a significant share of domestic deal value. A number of high-profile transactions and attempted bids contributed to reshaping the competitive landscape of the Italian financial services industry, including:

- Banco BPM's acquisition of Anima;
- Monte dei Paschi's transaction involving Mediobanca;
- Banca IFIS's takeover of Illimity; and
- BPER's bid for Banca Popolare di Sondrio.

Other potential consolidation transactions – such as UniCredit's approach to Banco BPM, and Mediobanca's bid for Banca Generali – were ultimately not completed but nevertheless highlighted the strong consolidation dynamics affecting the sector.

Another notable trend has been the continued wave of public-to-private transactions involving Italian listed companies. Several issuers listed on Euronext Milan and Euronext Growth Milan have exited the public markets, reflecting valuation gaps between public and private markets as well as a preference among controlling shareholders and financial sponsors for the flexibility of private ownership structures.

Private equity activity remained significant but more selective, with sponsors focusing on larger platform investments, carve-outs and minority partnerships, while also increasingly using GP-led secondary transactions and continuation funds as alternative exit solutions.

▼ 1.3 Key Industries

Over the past 12 months, M&A activity in Italy has been particularly strong in financial services, where consolidation among banks, asset managers and wealth management platforms has generated a number of large transactions.

Industrials and manufacturing also remained highly active, reflecting Italy's strong base of mid-market industrial companies and ongoing strategic acquisitions aimed at expanding technological capabilities and international reach.

In addition, energy, infrastructure and digital infrastructure assets attracted significant investor interest, supported by energy transition initiatives, digitalisation trends and long-term demand from institutional investors. The consumer and luxury sector also continued to generate transactions, driven by the global attractiveness of Italian brands and strategic investments by both corporate buyers and financial sponsors.

▼ 2. Overview of Regulatory Field

▼ 2.1 Acquiring a Company

The main techniques for acquiring an Italian company are:

- share deals, involving the acquisition of shares of the target company;
- asset deals, entailing acquiring the target company's business as a going concern;
- "mixed" deals, involving the acquisition of shares of a newly established entity to which the target company contributes its business as a going concern; and
- mergers – this method is less frequently used.

In the first three cases, consideration may be in cash or, less frequently, in securities issued or held by the acquirer (eg, exchange offers), or a combination of both. In the case of a merger, the consideration may only consist of shares, as Italian law does not provide for cash-out mergers.

Where the target company is listed, most acquisitions take the form of share deals, which are structured in one of two ways:

- a two-step transaction, involving the private acquisition of a controlling stake from the major shareholder(s) of the target company, governed by a sale and purchase agreement, followed by a mandatory tender offer for all the remaining shares of the target company (see **6.2 Mandatory Offer Threshold**); or
- a one-step transaction, involving a voluntary tender offer for all the target's shares, often supported by commitments from the target's main shareholder(s) to tender their shares in the offer (see **6.11 Irrevocable Commitments**).

In both cases, the transaction may also involve a rollover by selected selling shareholders of the listed target.

▼ 2.2 Primary Regulators

The primary regulator for M&A activity involving Italian listed companies is CONSOB (*Commissione Nazionale per le Società e la Borsa*), the Italian regulator for the stock market and listed companies. Its responsibilities include overseeing tender or exchange offers, share issues, corporate governance rules, public disclosure and compliance with market abuse regulations.

Other regulators that may be involved in an Italian public (or private) M&A transaction include:

- the Antitrust Authority for merger control review (see **2.4 Antitrust Regulations**);
- the Italian government for national security review (see **2.6 National Security Review**); and
- sector-specific regulators if the target company operates in a regulated industry, with examples including:
 - the Bank of Italy (and/or the European Central Bank) for acquisitions of banks and other financial institutions;
 - IVASS (*Istituto per la Vigilanza sulle Assicurazioni*) for acquisitions of insurance companies; and
 - AGCOM (*Autorità per le Garanzie nelle Comunicazioni*) for acquisitions of telecommunications companies.

▼ 2.3 Restrictions on Foreign Investments

Foreign investment in Italy may be subject to restrictions in certain sectors deemed relevant for national security – notably, defence and national security, energy, transport, communications, finance, and others based on the EU FDI Regulation. These restrictions

vary depending on the nationality of the investor, the sector involved and the percentage of shares or voting rights acquired by the investor in the target company (see **2.6 National Security Review**).

Regardless of the sector of investment, if a foreign country imposes restrictions on an Italian investor seeking to establish or acquire a company in that country, Italy applies reciprocal limitations to citizens or companies from that country wishing to invest in Italy.

▼ 2.4 Antitrust Regulations

Business combinations involving companies with turnover in Italy are subject to pre-closing notification requirements under Italian merger control laws, specifically Italian Law No 287 of 10 October 1990, as amended. These requirements apply if:

- the business combination results in one or more companies acquiring lasting control over one or more other companies; and
- the applicable Italian turnover-based notification thresholds are met.

However, no notification to the Italian Antitrust Authority is necessary if a business combination meets the thresholds for notification to the EU Commission.

Under certain conditions, business combinations below the applicable Italian thresholds may also require notification to the Italian Antitrust Authority.

Once a business combination has been notified to the Italian Antitrust Authority, there is no obligation to wait for clearance before completing the transaction (ie, no standstill obligation). However, in practice, buyers often request that Italian antitrust clearance be made a condition precedent to closing, to avoid potential post-closing problems in case clearance is ultimately denied or is subject to certain conditions or undertakings.

▼ 2.5 Labour Law Regulations

Acquisitions of Italian companies through asset deals or mergers are subject to both EU and Italian legislation regarding the transfer of undertakings (protection of employment). This legislation includes certain information and consultation obligations in favour of trade unions if the business involved in the transaction has more than 15 employees.

Acquisitions conducted through share deals typically do not require prior consultation with trade unions, but such a requirement may be mandated by the national collective bargaining agreements applicable to workers in a few specific sectors. For example, the national collective bargaining agreement in the banking sector stipulates consultation with unions in the event of a change of control transaction.

In addition, collective bargaining agreements applicable to the executives or employees of the target company may contain other provisions relevant to the acquisition or subsequent management of the target group. For instance, according to national collective bargaining agreements for executives in certain sectors, executives of target companies subject to a change of control acquisition have the right to resign as good leavers within a certain timeframe after the closing if their positions are materially affected by the transaction.

▼ 2.6 National Security Review

Investments in Italian companies operating in certain industries or holding certain strategic assets, mainly (but not exclusively) by foreign investors, are subject to prior review and approval by the Italian government for reasons of national security and public order. Depending on the sector and nationality of the investor, a filing may be necessary not only for acquisitions of controlling stakes but also for stakes as low as 3% (in defence and national security) or 10% (in other sectors, if the investor is non-EU). The Italian government has the authority to impose conditions or undertakings upon the acquirer or the target company. The government may even prohibit the acquisition altogether, but this has only happened in a few cases so far.

▼ 3. Recent Legal Developments

▼ 3.1 Significant Court Decisions or Legal Developments

Significant M&A-related court decisions or legal developments in Italy in the last three years include the following.

- Recent rulings by the Italian Supreme Court (*Corte di Cassazione*) confirmed the enforceability in principle of put options entitling a shareholder who has invested in a company to sell its equity interest to another shareholder at a fixed strike price that allows the put option holder to recover its entire investment. This issue is particularly relevant for minority acquisitions and shareholders' agreements, and had been the subject of debate in lower courts for several years.
- The use of buyer-side warranty and indemnity (W&I) insurance policies in Italian M&A transactions has increased significantly, mainly but not only in transactions involving financial investors as sellers. There is also more frequent use of management warranty deeds signed by the target's senior management when the seller is unable or unwilling to provide the buyer with the business representations and warranties to be insured.
- In 2025, a series of rulings by the Italian Supreme Court clarified the application of the abuse of law doctrine to merger leveraged buyouts (MLBOs). The Court confirmed that MLBO transactions are not inherently abusive, even when they produce significant tax advantages, provided that they are supported by valid non-tax business reasons. It also identified a number of relevant indicators, including an effective change of control, the existence of a broader corporate reorganisation financed through external bank debt, and an overall assessment of the transaction's economic substance based on the structure as a whole.

▼ 3.2 Significant Changes to Takeover Law

On 27 March 2026, the Italian government approved Legislative Decree No 47/2026, introducing a comprehensive reform of Italian capital markets regulation and the governance of Italian joint stock companies (the "Capital Markets Reform"). The Capital Markets Reform came into force on 29 April 2026, although certain provisions will take effect on later dates. The Capital Markets Reform includes significant changes to the Italian takeover regime, concerning the following, among others:

- the thresholds triggering a mandatory tender offer (MTO);
- the reference period for determining the minimum price for the MTO;
- the "squeeze-out" threshold; and
- the introduction of a "put up or shut up" rule, similar to the one provided by the UK Takeover Code, in the event of news or rumours regarding the potential launch of a bid.

The Capital Markets Reform also introduces a “full buyout” mechanism as an alternative to the traditional takeover bid regime, inspired by the scheme of arrangement typical of certain common law jurisdictions. Under this mechanism, a third party may acquire all the shares of a listed issuer for a consideration payable exclusively in cash, which may not be lower than:

- the weighted average of the closing prices of the shares over the six months preceding the announcement of the buyout; and
- any price paid by the buyer (or persons acting in concert with it) for purchases made within the same period.

The acquisition is subject to approval by the extraordinary shareholders’ meeting, requiring the favourable vote of at least three quarters of the share capital represented at the meeting, and of a simple majority of the attendees who are neither the bidder(s) nor any shareholder holding a relative or absolute majority stake exceeding 10% of the share capital. The provisions of the Capital Market Reform governing this new “full buyout” mechanism will enter into force only after CONSOB has adopted the relevant implementing regulations (to be adopted within 12 months from the entry into force of the Capital Markets Reform).

▼ 4. Stakebuilding

▼ 4.1 Principal Stakebuilding Strategies

It is uncommon for a bidder to accumulate a stake in an Italian listed target prior to launching a tender offer as there are several hurdles to this (see **4.3 Hurdles to Stakebuilding**).

The main strategies for building a stake involve acquiring shares in the market or utilising derivative instruments related to the listed shares, such as call options or total return equity swaps. Both approaches are subject to disclosure requirements if the bidder reaches certain actual or potential shareholding thresholds in the target company (see **4.2 Material Shareholding Disclosure Threshold** and **4.5 Filing/Reporting Obligations**).

▼ 4.2 Material Shareholding Disclosure Threshold

Any person who crosses one of the following thresholds in an Italian listed company, upwards or downwards, must disclose it within four trading days: 3% (applicable only to companies with a market capitalisation of at least EUR1 billion), 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.6% and 90%. Disclosure is made through a form submitted to the listed company and to CONSOB, which then publishes a summary.

These disclosure thresholds are calculated as a percentage of the total number of voting shares of the listed company (or, if the listed company has loyalty shares or multiple voting shares granting more than one voting right, of the total number of voting rights outstanding from time to time). They apply not only to actual holdings (ie, the listed target company’s voting shares) but also (excluding the 3% and 90% thresholds) to:

- potential holdings held through call options or other physically or cash-settled derivatives or other long positions on the target company’s shares; and
- the aggregate of actual and potential holdings.

▼ 4.3 Hurdles to Stakebuilding

The main hurdles to stakebuilding in Italy include the following.

- The relatively low disclosure thresholds applicable to the acquisition of both actual holdings (ie, voting shares) and potential holdings (ie, call options and other physically settled or cash-settled derivatives or other long positions) – see **4.2 Material Shareholding Disclosure Threshold**. These thresholds cannot be lowered or raised by the listed company itself.
- The requirement for a national security review, to the extent applicable to the acquisition of minority stakes in certain sectors (see **2.6 National Security Review**).
- The standstill obligations often imposed on a potential bidder by the main shareholders or the board of directors of the target company once the potential bidder has entered into discussions with them about a possible bid.
- The prohibition – stemming from the EU Market Abuse Regulation (Regulation (EU) No 596/2014 of 16 April 2014, as amended) and its implementing EU and Italian laws and regulations – on carrying out transactions while in possession of “inside information” (eg, price-sensitive non-public information) concerning the listed target company or its financial instruments. This may be relevant, for example, in a scenario where, as is often the case in Italian public M&A transactions, the bidder is already negotiating a potential takeover bid/control transaction with selected shareholders of the target or possibly the board of directors of the target, or, in some cases, is carrying out limited due diligence on the target.
- Stakebuilding purchases may impact the price to be paid for the target shares in a subsequent mandatory offer, as the price offered in a mandatory offer cannot be lower than the highest price paid by a bidder during the 12 months preceding the official announcement of the offer.

▼ 4.4 Dealings in Derivatives

Dealings in derivatives as a means to carry out stakebuilding are generally permitted, subject to the disclosure requirements outlined in **4.5 Filing/Reporting Obligations**. Specific and temporary restrictions on short selling may also be set by market authorities.

▼ 4.5 Filing/Reporting Obligations

As indicated in **4.2 Material Shareholding Disclosure Threshold**, the obligation to disclose the crossing of certain shareholding thresholds in an Italian listed company applies not only to actual shareholdings (shares with voting rights) but also to potential shareholdings held through call options or other physically or cash-settled derivatives, or other long positions on the company’s shares, and to the combination of actual and potential shareholdings. Disclosure is made by submitting a form to the listed company and to CONSOB, which publishes a summary thereof.

The thresholds triggering disclosure obligations for potential or combined shareholdings are 5%, 10%, 15%, 20%, 25%, 30%, 50% and 66.6%. These thresholds are calculated as a percentage of the total voting shares of the listed company (or as a percentage of the total number of voting rights outstanding from time to time if the listed company has loyalty shares or multiple voting shares granting more than one voting right).

In principle, and subject to possible exceptions in particular situations, the acquisition of a potential shareholding through derivatives does not trigger merger control notification obligations under Italian competition law. Such obligations typically arise

only with respect to the actual acquisition of the underlying shares, provided that the notification conditions set forth in **2.4 Antitrust Regulations** are met.

▼ 4.6 Transparency

Any shareholder who acquires at least 10%, 20% or 25% of the total voting shares of a company listed on the Italian main stock market (or of the total number of voting rights if the listed company has loyalty shares or multiple voting shares granting more than one voting right) must disclose their intentions for the following six months. This disclosure must be made within four trading days and sent to the listed company and to CONSOB, which publishes it. The disclosure should include the following points:

- how the acquisition was financed;
- whether the shareholder is acting alone or in concert with other persons, including intentions regarding any shareholders' agreements concerning the target to which the shareholder is already a party;
- whether the shareholder intends to continue acquiring shares and/or to acquire control or exercise a dominant influence over the management of the company, along with the strategy to achieve this result; and
- whether the shareholder intends to change the composition of the board of directors or the board of statutory auditors (*collegio sindacale*) of the company.

If any of the above intentions change during the six-month period, the disclosure must be updated accordingly.

Disclosure is not required if the acquisition triggers a mandatory tender offer, as in this case the bidder's intentions will be announced in a separate disclosure relating to the tender offer.

▼ 5. Negotiation Phase

▼ 5.1 Requirement to Disclose a Deal

Pursuant to the EU's Market Abuse Regulation (Regulation (EU) No 596/2014 of 16 April 2014, as amended), Italian listed target companies are obliged to immediately disclose any "inside information" to the public via a press release. Inside information refers to information that is:

- precise in nature;
- not publicly available;
- price-sensitive; and
- directly or indirectly related to the listed target company.

In protracted processes like the preparation and negotiation of a public M&A deal, intermediate steps may qualify as inside information if they are sufficiently precise. This may occur, for example, when a potential bidder approaches the target's board to request due diligence, submits a non-binding offer letter, or enters into a letter of intent. There are no hard and fast rules, and the assessment must be made on a case-by-case basis, considering several factors (eg, the degree of certainty regarding the consideration to be offered to the target's shareholders and the degree of likelihood of the offer being completed).

However, the listed target company may opt to delay the disclosure of inside information under the following conditions:

- if immediate disclosure would likely prejudice the legitimate interests of the target, such as, arguably, pursuing and possibly completing an M&A transaction in the interest of the target and its shareholders;
- if delaying disclosure is not likely to mislead the public; and
- if the target can ensure and maintain confidentiality (ie, no leaks).

The above rules on the disclosure of inside information in the context of a protracted process and on the conditions to possibly delay disclosure will change significantly as of 6 June 2026, when the relevant amendments to the EU's Market Abuse Regulation introduced by the EU's Listing Act will come into force. In summary, these amendments provide that the disclosure obligation will no longer apply to the intermediate steps (eg, mere intentions or ongoing negotiations), but only to the final event or final circumstances (eg, the decision to enter into the transaction), provided that the issuer can ensure the confidentiality of the process. Furthermore, with respect to the conditions for a possible delay of the disclosure of inside information, the amendments replace the generic reference to the absence of a misleading effect on the public with a requirement that the disclosure must not contradict the latest information disclosed to the public, or any other type of communication by the issuer related to the same situation to which the inside information relates.

▼ 5.2 Market Practice on Timing

Listed targets frequently opt to postpone the disclosure of inside information regarding potential M&A transactions until the execution of binding agreements or the first public announcement by the bidder, as long as the conditions for deferral outlined in **5.1 Requirement to Disclose a Deal** remain satisfied, including ensuring confidentiality. This trend is likely to strengthen after the amendments to the EU Market Abuse Regulation introduced by the EU Listing Act come into force in June 2026, removing the obligation to disclose intermediate steps in protracted processes and allowing issuers to limit disclosure to the final event or circumstance.

▼ 5.3 Scope of Due Diligence

In the context of negotiated business combinations involving Italian listed companies, due diligence is typically limited compared to private transactions, for several reasons. Firstly, a substantial amount of public information is already available on listed targets. Secondly, conducting a broader and more extensive due diligence increases the risk of leaks. Therefore, due diligence is usually limited to a “confirmatory” exercise focusing on a short list of selected relevant items. This is carried out through access to a restricted data room and one or more Q&A sessions or presentations with the target's senior management.

▼ 5.4 Standstills or Exclusivity

Before engaging in discussions or negotiations with a potential bidder, the main shareholder(s) or the board of the target company typically demand that the bidder agrees to standstill obligations concerning the target shares. These obligations are intended to prevent the bidder from making a hostile bid or engaging in share-building activities.

Conversely, bidders often seek exclusivity undertakings from the major shareholder(s) with whom they are negotiating. Exclusivity or no-shop undertakings by the target itself are less common, primarily due to legal constraints on the target's board.

▼ 5.5 Definitive Agreements

Most Italian listed companies have one or more controlling shareholders. Therefore, bidders typically negotiate the acquisition directly with these controlling shareholders rather than with the target board before launching a bid. If negotiations prove successful, the bidder and the controlling shareholder(s) usually enter into:

- a sale and purchase agreement for the controlling stake held by the controlling shareholder(s), in the case of a two-step transaction (private acquisition followed by a mandatory tender offer for the remaining target shares); or
- undertakings by the selling shareholders to tender their shares in the case of a one-step transaction (voluntary tender offer for all of the target shares).

Such agreements typically lack a detailed description of the terms and conditions of the tender offer, unless the transaction involves a rollover by the main shareholders of the target. In such cases, the co-investment/framework agreement between the bidder and the rollover investors is also likely to govern the mandatory or voluntary tender offer to be launched by the bidder.

As acquisitions are typically negotiated solely with the main shareholders of the target company, definitive agreements between the bidder and the target company governing the bid are rare. However, the scenario may vary in negotiated transactions where the target company is directly involved as a party, such as in a merger.

▼ 6. Structuring

▼ 6.1 Length of Process for Acquisition/Sale

The duration of the acquisition or sale process for an Italian private or listed company varies depending on several factors, such as:

- the length of negotiations with the selling/major shareholder(s) of the target;
- the time required to seek and obtain the regulatory approvals necessary to complete the transaction, such as merger control, the Foreign Subsidies Regulation (FSR), foreign direct investment (FDI) or sector-specific regulatory approvals; and
- in the case of a public M&A deal involving a tender offer:
 - the time required to carry out the tender offer process, from the initial official announcement to the final settlement; and
 - the transaction structure chosen.

Typically, a two-step transaction involving a private acquisition of control followed by a mandatory tender offer will take longer than a one-step transaction consisting of a voluntary tender offer only. On average, a private M&A deal or a one-step public M&A deal could take between three and six months, whereas a two-step public M&A deal could take between seven and nine months.

▼ 6.2 Mandatory Offer Threshold

Following the entry into force of the Capital Markets Reform (see **3.2 Significant Changes to Takeover Law**), an MTO is triggered by the acquisition of voting shares or voting rights in an Italian listed company that, when combined with the existing holdings of the acquiring person (and any persons acting in concert with them), surpasses the following thresholds based on the total number of voting shares or voting rights in the listed company:

- 30%; or

- for shareholders already holding between 30% and 50%, any increase in their holding exceeding 10% over a rolling 12-month period (so called “incremental” MTO).

In any event, the MTO will not be triggered if the above thresholds are exceeded due to a voluntary takeover bid for all the voting shares of the target company or in other exceptional circumstances (eg, another shareholder already possessing more than 50%, temporary threshold crossing, mergers approved by independent minorities, intragroup transactions, or recapitalisation of distressed companies).

▼ 6.3 Consideration

Cash Versus Shares

Cash tender offers are more prevalent than exchange offers in Italy due to several factors, as follows.

- Exchange offers are legally more complex as they often involve a capital increase in kind by the bidder, necessitating approval by the bidder's shareholders.
- If the shares offered in the exchange offer are not listed on an EU regulated market, certain obligations arise, including:
 - if the exchange offer is an MTO, the bidder must also provide a cash alternative to target shareholders; and
 - if the exchange offer is voluntary, the bidder would not be exempt from the subsequent obligation to launch an MTO if it surpasses an MTO threshold during the voluntary offer.
- Core shareholders of the bidder may resist dilution caused by new shares issued as consideration.

Bridging the Value Gap Between Buyer and Seller

Various tools are employed in private acquisitions to bridge value gaps between the parties, including:

- a partial rollover by the seller in the buyer's shares, allowing the seller to share in any future value appreciation of the buyer's group;
- earn-out mechanisms, where a portion of the purchase price is contingent upon the target's future performance;
- pre-closing carve-outs, where specific businesses or parts of the target group are sold separately if undervalued by the buyer;
- vendor loans or deferred payment terms; and
- asset swap transactions.

While these instruments are, in principle, also available in public M&A transactions, they are less common in this context (except, probably, the rollover route), as they may introduce a number of complexities.

▼ 6.4 Common Conditions for a Takeover Offer

Voluntary takeover bids are irrevocable but may include conditions that must be satisfied in order for the bid to complete. These conditions cannot be dependent on the bidder's will. Common conditions include:

- minimum acceptance threshold – the bid may be contingent upon a minimum percentage of shares being tendered by target shareholders (see **6.5 Minimum Acceptance Conditions**);

- regulatory approvals – the bid may require approval from regulatory authorities, such as merger control, FSR, FDI or sector-specific regulatory approvals; and
- absence of adverse events – conditions may include the absence of:
 - a material adverse effect;
 - actions by the target outside the ordinary course;
 - defensive actions by the target; or
 - decisions by government authorities prohibiting or complicating the transaction.

These conditions can typically be waived by the bidder, except for certain mandatory regulatory approvals.

Mandatory tender offers may not include any conditions.

▼ 6.5 Minimum Acceptance Conditions

The most common minimum acceptance conditions used in voluntary tender offers depend on the bidder's intentions.

Acquiring Control of the Company

50% + 1 of the voting shares gives the bidder mathematical certainty of controlling ordinary shareholder resolutions (eg, approval of the annual accounts and dividend distributions, and appointment of the board of directors).

Two thirds of the voting shares gives the bidder mathematical certainty of controlling not only ordinary shareholder resolutions but also extraordinary shareholder resolutions (eg, capital increases, mergers and demergers, and amendments to the by-laws).

Delisting and Taking the Company Private

90% + 1 of the voting shares allows the bidder to conduct a “sell-out” procedure leading to delisting and possibly a subsequent “squeeze-out”, and, following the entry into force of the Capital Markets Reform (see **3.2 Significant Changes to Takeover Law**), to “squeeze-out” the remaining shareholders (see **6.10 Squeeze-Out Mechanisms**).

Bidders often initiate the voluntary tender offer with a minimum acceptance condition but retain the right, with certain restrictions, to waive or reduce the threshold for such condition before the completion of the tender offer.

▼ 6.6 Requirement to Obtain Financing

A tender offer cannot be contingent upon the bidder obtaining financing. The bidder must have all the necessary financing secured before the offer actually commences, with the following specifications:

- at the announcement of the decision to launch a voluntary tender offer or when the event triggering a mandatory tender offer occurs, the bidder must ensure it will have all the funds required to complete the offer when the time comes; and
- before the tender offer period begins, the bidder must obtain and provide to CONSOB a cash confirmation, typically in the form of a first demand bank guarantee, covering the total consideration for the tender offer.

▼ 6.7 Types of Deal Security Measures

As most Italian listed companies are controlled by one or more shareholders, bidders typically negotiate the acquisition directly with, and seek deal protection measures from, these controlling shareholders, instead of the target's board of directors, before

launching a tender offer. From a deal protection standpoint, bidders often prefer a two-step transaction approach over a one-step transaction, as follows.

- In a two-step transaction, the bidder first privately acquires a controlling stake, followed by making a mandatory tender offer for the remaining shares. This approach provides stronger deal protection because the sale and purchase agreement governing the private acquisition can fully bind the selling shareholder(s).
- On the other hand, in a one-step transaction, the bidder conducts a voluntary tender offer for 100% of the target's shares, often supported by commitments from the main shareholders to tender their shares. However, these commitments to tender are subject to statutory provisions that allow shareholders to withdraw from the tender offer (see **6.11 Irrevocable Commitments**), providing less certainty for the bidder.

Deal protections granted by listed targets are rare. Listed targets typically only offer substantive undertakings, such as no-shop or exclusivity agreements, in negotiated transactions where the target is directly involved, such as mergers. In the context of a tender offer, it is uncommon for listed targets to provide deal protections. Break fees or reimbursement arrangements for a bidder's expenses in the case of an unsuccessful tender offer are also unusual. Implementing such measures may raise fiduciary duty issues for the target's directors.

▼ 6.8 Additional Governance Rights

A bidder aiming to establish control over a target listed company without pursuing 100% ownership or delisting would typically seek to attain an aggregate shareholding percentage that confers control over voting outcomes on both ordinary and extraordinary shareholder resolutions (see **6.5 Minimum Acceptance Conditions**). This approach usually hinges on reaching a percentage that guarantees control, considering the average attendance rate of the target's shareholders' meetings.

To secure governance rights, the bidder may enter into shareholders' agreements with other shareholders. These agreements have a maximum duration of three years (five years for non-listed companies) and may involve other shareholders committing to vote in alignment with the bidder's instructions, often in exchange for certain minority governance rights.

▼ 6.9 Voting by Proxy

As a general principle, shareholders of an Italian listed company can vote at shareholders' meetings either directly or through a proxy. They have the option to grant their proxy to a person of their choosing or to a common representative appointed by the company.

However, under the Capital Markets Bill enacted in March 2024, Italian listed companies now have the option to amend their by-laws to allow for closed shareholders' meetings, where participation is limited to a representative designated by the company. In such cases, shareholders would grant their proxies exclusively to this designated representative.

▼ 6.10 Squeeze-Out Mechanisms

In Italy, the "squeeze-out" mechanism is the sole method for a bidder to acquire 100% ownership of a listed company. This mechanism becomes available under specific circumstances following the completion of a tender offer for the voting shares of the listed company.

Following the entry into force of the Capital Markets Reform (see **3.2 Significant Changes to Takeover Law**), the squeeze-out mechanism operates as follows.

- If a bidder acquires at least 90% of the company's voting shares as a result of a tender offer for 100% of the shares or a "sell-out" procedure, the bidder has the right to purchase all the remaining voting shares within three months. The intention to exercise this right must be declared in the tender offer document published before the offer period commences. The "squeeze-out" mechanism also extends to financial instruments other than voting securities (eg, non-voting preferred shares).
- If the bidder acquires (through a tender offer or otherwise) more than 90% of the voting shares but fails to restore a sufficient free float, it must make an offer to all remaining shareholders to acquire their voting shares. This offer is conducted through a "sell-out" procedure, which results in the de-listing of the company's shares and may be combined with or followed by a "squeeze-out" procedure.

▼ 6.11 Irrevocable Commitments

It is common for a bidder to seek, and often obtain, irrevocable tender commitments from major or selected shareholders of the target listed company. Negotiations for such undertakings are usually conducted shortly before the announcement of the voluntary tender offer for the target shares, as the bidder typically wishes to announce both the acquisition/tender offer and the undertakings received in connection therewith.

Commitments to tender, which must be fully and promptly disclosed, do not give the bidder complete certainty on the success of the transaction because – by operation of Italian law (and thus irrespective of any contractual provisions) – shareholders may unilaterally terminate their existing commitments to tender in case of a competing offer.

This is one of the reasons why bidders in Italy often prefer to structure the transaction not as a one-step voluntary offer supported by undertakings to tender given by the major shareholders, but rather as a two-step transaction consisting of the "private" acquisition of a controlling stake from the major shareholders pursuant to one or more sale and purchase agreements (which are not subject to any statutory out in the event of a competing offer), followed by a mandatory offer for all the remaining shares of the target company.

▼ 7. Disclosure

▼ 7.1 Making a Bid Public

The bidder must formally announce the offer by means of a detailed press release, including all material terms of the offer, which must be published promptly after the bidder has decided to launch the offer in the case of a voluntary offer. In the case of a mandatory offer, the announcement must be made promptly after the occurrence of the transaction or other circumstance that causes the bidder to exceed a relevant MTO threshold in the target company.

If the mandatory offer follows a prior transaction, such as the acquisition of more than 25% (where applicable) or 30% of the voting rights in the target, the public announcement of the prior transaction will usually include a reference to the launch of a subsequent mandatory offer.

▼ 7.2 Type of Disclosure Required

Under EU regulations, when new shares are offered to the public or admitted to trading on an Italian regulated market in connection either with a takeover by means of an exchange offer or with a merger or demerger, a disclosure document (also known as an “exemption document”) must be prepared instead of a full prospectus, to enable investors to make informed investment decisions. The exemption document should contain relevant information which is necessary to enable investors to understand:

- the prospects of the issuer/offeree and, depending on the nature of the transaction, of the target company or the company being incorporated or demerged, including significant changes in their business and financial position since the end of the previous financial year;
- the rights associated with the shares; and
- the description of the transaction itself and its impact on the issuer/offeree.

In addition, under Italian law, the shareholders of the relevant company (offeror, incorporating entity in the merger, demerging entity) must be provided with an information document on the transaction if it exceeds certain materiality thresholds and the company has not opted out of this disclosure obligation.

▼ 7.3 Producing Financial Statements

The exemption document referred to in **7.2 Type of Disclosure Required** must incorporate the annual (and half-yearly) standalone and consolidated (if applicable) financial statements released within the 12 months prior to the publication of the exemption document of the issuer/offeree. Depending on the nature of the transaction, financial statements may also be required from the company being acquired, the company being incorporated or the company being demerged. These financial statements must be prepared in accordance with International Financial Reporting Standards (IFRS), or with local Generally Accepted Accounting Principles (GAAP) if the relevant company is not compelled to use IFRS. If there are particularly significant changes, defined as variations of more than 25% in one or more indicators of the size of the issuer/offeree’s business, pro forma financial information must be included. Such pro forma financial information should be accompanied by a report prepared by an independent auditor.

In the case of an exchange offer, the offer document must include financial statements for the last two financial years for the bidder and the issuer, if the offeror is the controlling shareholder of the issuer.

▼ 7.4 Transaction Documents

In the context of public disclosures related to a transaction, such as the initial press release announcing the transaction or the detailed press release announcing the decision or obligation to launch a tender offer, it is customary for the relevant material terms of the transaction documents to be described or mentioned. However, the bidder is generally not obliged to provide a full copy of the transaction documents to the public.

There is an exception to this rule when the transaction documents contain provisions that constitute “shareholders’ agreements” involving a company listed on the main Italian stock market or one of its parent companies. Shareholders’ agreements comprise various arrangements, such as:

- voting or consultation agreements;

- certain other governance provisions;
- share transfer restrictions; or
- commitments to tender shares in a takeover bid.

In such cases, a full copy of the relevant provisions constituting the shareholders' agreements must be provided to CONSOB and filed with the Companies Registry. Consequently, this document, in principle, becomes accessible to any person interested in reviewing it.

▼ 8. Duties of Directors

▼ 8.1 Principal Directors' Duties

The main duties of directors in the context of a business combination consist of the duties of care and loyalty to pursue the interests of the company and its shareholders by maximising the value of their investment. This includes tasks such as determining the exchange ratio in a merger, negotiating the terms of an acquisition, or facilitating the successful conclusion of a tender offer that is deemed beneficial for the generality of the shareholders. While these duties primarily benefit the company and its shareholders, directors must also consider the positions of other stakeholders, such as the company's creditors, its employees, the environment and the affected communities.

▼ 8.2 Special or Ad Hoc Committees

It is uncommon for boards to establish special or ad hoc committees in business combinations involving unaffiliated counterparties.

However, a board committee consisting of independent directors plays a significant role in two scenarios:

- transactions, including business combinations, undertaken by listed companies with related parties – material related-party transactions require, among other things, a favourable opinion from a committee comprising independent and unrelated directors regarding the company's interest in pursuing the transaction and the adequacy and fairness of its terms; and
- tender offers initiated by insiders – the board's opinion of the offer must be preceded by a separate opinion from a committee of independent directors.

▼ 8.3 Business Judgement Rule

Over the years, Italian courts have grown more hesitant to question directors' decisions or to intervene to assess their merits. Consequently, Italian courts typically refrain from analysing the substance of decisions made by directors in takeover situations. Instead, they focus on reviewing the directors' conduct and scrutinising the decision-making process to determine if the directors acted diligently in the interest of the company and its shareholders (as discussed in **8.1 Principal Directors' Duties**) and based on sufficient information.

▼ 8.4 Independent Outside Advice

In the case of a tender offer, the board of directors of the target company is required to provide a comprehensive and well-reasoned opinion regarding the offer and the fairness of the offer consideration. If the offer is made by an insider (such as the controlling shareholder, a director or an executive officer of the target company) or individuals acting in concert with an insider, the board's opinion must be preceded by a similarly well-reasoned opinion from the target company's independent directors who have no

affiliations with the bidder. Both the full board and the independent directors typically seek legal counsel and engage independent financial advisers to obtain one or more fairness opinions. In related-party transactions (as discussed in **8.2 Special or Ad Hoc Committees**), the committee of independent and unrelated directors typically also seeks support from independent experts and legal counsel when issuing opinions on the transaction's terms.

▼ 8.5 Conflicts of Interest

Any director with a vested interest in a transaction (including an M&A transaction) must promptly disclose this interest to the other directors and the board of statutory auditors. An interested director holding the position of chief executive officer (*amministratore delegato*) must abstain from executing the transaction and refer it to the entire board. In such cases, upon disclosing the interest, the board resolution must clearly state the reasons why the transaction is still beneficial to the company. Other directors (and the statutory auditors) have the right to challenge the resolution if the interested director(s) failed to disclose their interest or if the resolution, approved with the decisive vote of the interested director, was detrimental to the company. Breaches of these duties may render the director personally liable for any resulting losses suffered by the company.

Shareholders' resolutions passed with the decisive vote of conflicted shareholders can also be legally challenged if they are detrimental to the company.

If advisers participate despite a conflict of interest or lack of independence, they may be disqualified, and their opinions rendered irrelevant. Depending on the circumstances, such advisers could also be exposed to liability.

▼ 9. Defensive Measures

▼ 9.1 Hostile Tender Offers

As most Italian listed companies are controlled by a single shareholder or group of shareholders, a bidder intending to acquire control of a listed company usually begins negotiations with the target's controlling shareholder(s) before engaging the target's board of directors, to potentially gain access to selected due diligence materials. Should the negotiations (and the due diligence exercise, if any) yield favourable outcomes, the bidder can proceed to launch a friendly tender offer.

▼ 9.2 Directors' Use of Defensive Measures

Under the "passivity rule", any defensive measure adopted by the target company necessitates shareholder approval. While the target company's by-laws may grant the board of directors the authority to implement defensive measures without shareholder approval, this practice is highly uncommon for Italian listed companies.

Exceptions to this rule include actions carried out in accordance with pre-existing decisions that were already partially or entirely implemented prior to the bid announcement, as well as activities conducted in the ordinary course of business. Efforts to explore alternative bids are not classified as defensive measures requiring shareholder approval.

▼ 9.3 Common Defensive Measures

Because of the “passivity rule” outlined in **9.2 Directors’ Use of Defensive Measures**, defensive strategies such as poison pills, dilutive share issuances or the selling of valuable assets (often referred to as “crown jewels”) are not prevalent in Italian takeover bids.

▼ **9.4 Directors’ Duties**

As mentioned in **9.2 Directors’ Use of Defensive Measures**, according to the “passivity rule”, the authority to approve defensive measures lies with the shareholders of the target company rather than with the board of directors. This means that the board of directors cannot implement such measures without obtaining prior approval from the target company’s shareholders’ meeting.

▼ **9.5 Directors’ Ability to “Just Say No”**

When a tender offer is launched, the board of directors of the target company is required to provide its opinion on the fairness of the offer consideration and other terms of the offer. However, the decision as to whether or not to tender shares is ultimately left to the discretion of the company’s shareholders.

It is important to note that directors are not permitted to enact defensive measures against an announced takeover offer without first obtaining approval from the target company’s shareholders.

Conversely, when the board is approached directly (eg, with proposals of business combinations through mergers or asset deals), directors may “just say no” if they deem that the proposed transaction is not in the interest of the company.

▼ **10. Litigation**

▼ **10.1 Frequency of Litigation**

M&A-related disputes in Italy have traditionally been frequent, but there seems to have been a decrease in the number of new disputes in recent years. Most cases involve small and medium-sized M&A deals, possibly because transaction documents in smaller deals are often less sophisticated. There is also a growing trend towards the use of alternative dispute resolution mechanisms (such as arbitration and mediation) in M&A disputes.

▼ **10.2 Stage of Deal**

Pre-closing litigation often revolves around liability arising from interim arrangements like letters of intent, memoranda of understanding or term sheets. Determining the binding nature of such documents typically involves a detailed analysis of the facts. Express statements declaring their non-binding nature may not definitively influence the case’s outcome, particularly if the parties have progressed significantly in negotiations, justifying pre-contractual or even contractual liability, provided that the transaction’s essential elements had been agreed upon.

Post-closing disputes commonly stem from breaches of representations and warranties or special indemnities provided by the seller to safeguard the buyer against specific events. Breaches of representations and warranties constitute the most frequent source of M&A litigation.

In public M&A deals, shareholders may bring claims against the bidder after the transaction’s completion (such as regarding the determination of the minimum price of the mandatory tender offer) or, less commonly, against directors for breaching their

duties.

▼ 10.3 “Broken-Deal” Disputes

The COVID-19 pandemic brought a number of new and old issues to the attention of Italian courts relating to the possible suspension or termination of contractual obligations based on various grounds, such as:

- statutory force majeure;
- termination for supervening impossibility;
- the right to obtain a revision of obligations or to withdraw from the agreement for partial impossibility;
- termination of the agreement for supervening hardship; and
- the application of contractual clauses conditioning the buyer’s obligation to complete the transaction on the absence of a “material adverse change” or a “material adverse effect” (MAC/MAE) occurring between signing and satisfaction of all the other conditions precedent to closing.

Italian courts have not shown a clear and consistent approach on these matters, and the effectiveness of MAC/MAE clauses largely depends on their specific wording. For instance, some clauses may exclude changes affecting “general market conditions” unless disproportionately impacting the target. As a result, greater attention is now given to the drafting and negotiation of such clauses in the agreements.

▼ 11. Activism

▼ 11.1 Shareholder Activism

Shareholder activism plays a significant role in Italy, as several corporate governance rules grant substantial powers of intervention to activists. For instance, the appointment of one or more directors is relatively simple through the statutory slate voting system applicable to Italian companies listed on the Italian main regulated market, which may also allow the appointment of the chair of the internal control body (*collegio sindacale*). Another instrument is the request to convene an ad hoc shareholders’ meeting or to supplement the agenda of an already convened meeting with a relatively small percentage of shares. Activists may also take minority positions with the aim of blocking transactions that require an extraordinary resolution with a two-thirds supermajority, or to prevent the bidder from reaching the delisting or squeeze-out thresholds (see **6.10 Squeeze-Out Mechanisms**).

Classic shareholder activism campaigns targeting companies’ strategies have been less common in Italy compared to other key European jurisdictions.

▼ 11.2 Aims of Activists

Aims of activists include:

- influencing the target company’s strategy, such as pushing for the sale of certain business units, modification of the business plan or change in management, without necessarily gaining control of the board;
- gaining control of the board in companies without a controlling shareholder or in cases of de facto control, with relatively low shareholdings; and
- blocking de-listing or other extraordinary transactions or urging bidders to increase the price in take-private transactions.

These typical objectives appear to be pursued less frequently in Italy than in other comparable jurisdictions.

▼ 11.3 Interference With Completion

In addition to blocking de-listings or transactions requiring an extraordinary shareholder resolution, activist funds may also aim to interfere with take-private transactions launched by controlling shareholders when they deem the offer price too low. This interference can take various forms, such as writing to the board or promoting public campaigns to advocate for higher offer prices or better terms for minority shareholders.

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