

Italy improves transparency and extends its "golden powers" to protect new (corporate) treasures

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On October 16, 2017 the Italian government adopted Law Decree no. 148/2017 (the "**Decree**") containing, inter alia, new measures aimed at improving the transparency of Italy's regulated markets and extending the Italian government's "golden powers".

Under the new rules, investors acquiring significant stakes in listed companies must **reveal to the market** more information, **including strategic plans** such as their intentions regarding board representation and whether they plan to acquire further shares in the future.

In addition, the golden powers procedure, under which transactions in certain strategic sectors must be notified, in advance of completion, to the Italian Government which may veto the deal or impose conditions before allowing them to proceed, has been **extended to certain high-tech intensive industries**.

New disclosure requirements

Article 13 of the Decree amends Legislative Decree N. 58/98, the consolidated law on financial intermediation known as the "TUF". Among other things, the amendments impose **additional disclosure requirements on significant shareholders** aimed at increasing transparency in the ownership structure of Italian listed companies and forcing them to reveal information regarding their plans for such stakes.

In addition to the existing disclosure requirements, an investor which acquires an interest in any Italian listed company equal to or exceeding the thresholds of 10%, 20% and 25% must now disclose – within ten days – to the company and to CONSOB the objectives which it intends to pursue over the next six months.

Such disclosure must contain the following information:

- a) the manner in which the transaction has been financed;
- b) whether the investor is acting alone or in concert with other persons;
- c) whether or not the investor intends to make further acquisitions, and, if further stake-building is planned, whether the investor aims to acquire a controlling stake or otherwise exercise influence over the management of the company, the strategy it intends to adopt and how this will be implemented;

d) the investor's intention regarding any shareholders' agreements or other agreements to which it is a party;

e) whether the investor intends to propose additional members of management and/or control bodies of the company, or to revoke the mandates of such bodies.

If circumstances subsequently change, causing the investor to alter its intentions, this must also be disclosed in the same manner.

CONSOB (the public authority responsible for regulating the Italian financial markets) has been charged with preparing and issuing regulations to provide guidance and further rules for implementation of these provisions.

Extension of the "golden powers"

The "golden powers" procedure has **been extended** to apply also to transactions in industries which are **high-tech intensive**, and **specific sanctions** will now be applicable for failure to notify.

For a recap on golden powers, please [click here](#).

Extension of scope

Furthermore, the Decree extends the Italian Government's golden powers to high tech intensive industries in order to allow the Government to verify whether any danger is posed to national security or public order in critical areas such as data management, dual use technology and infrastructures.

Industries which will now come under scrutiny for application of the golden powers include:

- Critical or sensitive infrastructure such as storage and management of data or fintech infrastructure
- Critical technology including artificial intelligence, robots, semiconductors, dual use technology and network security and space and nuclear technology
- Security of procurement for critical high-tech inputs
- Access to, or the capacity to control, sensitive information

Secondary legislation in the form of regulations, which will be prepared by the Ministries involved, will also identify those intragroup transactions which will not be affected by the new regime.

Evaluation of prejudicial investments

In determining whether an investment might be prejudicial to national security or public order, the Government will be able to take into consideration whether the relevant foreign investor is controlled by a Non-EU Government, also by means of significant financing.

Sanction for failing to notify

In order to ensure the effectiveness of the special powers through enhanced screening of proposed investments, in addition to the existing sanctions for non-compliance which remain in place, **the failure to comply with the obligation to notify** (and not just non-compliance with the procedure as a whole) will now itself be **punishable by administrative fines**, ranging from a minimum of one per cent of the combined turnover of the undertakings involved to a maximum of double the transaction value.

Transition

The Decree, which **entered into force on October 16, 2017** and must be converted into law within 60 days, will not apply to transactions where the golden power procedure had already commenced prior to October 16, 2017. All transactions which have not, by that date, already been notified under the 2012 Law **are therefore now subject to these new provisions, including transactions involving operators in the high-tech industry sectors** described above which were not previously affected by the 2012 Law.

Accordingly if a qualifying deal in such sector has not completed before October 16, 2017, there is now a requirement to notify the transaction in advance under the 2012 Law and completion must be delayed while the golden power procedure runs its course.

Watch this space

The regulations to be issued by the Government and CONSOB are awaited with interest. If you have any queries please contact any of the partners indicated above, or your usual contact at Hogan Lovells.

Contacts



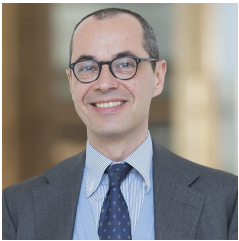
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