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NEW ITALIAN RULES ON STAKEBUILDING

The Italian Council of Ministers has approved Law Decree No. 148/2017, which introduces new disclosure requirements on stakebuilding in Italian listed companies, with the aim of strengthening defences against hostile takeovers.

In addition to the ordinary disclosure requirements relating to the acquisition of significant stakes, investors building up their stakes to 10%, 20%, or 25% must now also provide (unless obliged to launch a tender offer) details to clarify, among other things, their goals for the next six months, to the target company and the Italian Securities Commission (CONSOB) – which, in turn, publishes the relevant information. The Italian legislator did not follow France or the UK with a ‘put up or shut up rule’ and instead opted for a stricter disclosure regime when certain thresholds are exceeded.

More specifically, disclosures must include:

- the type of financing for the acquisition;
- specification of whether the investor is acting alone or with other investors;
- specification of whether the investor intends to continue acquiring stakes and, in particular, whether the investor intends to take control of the listed company or, in any case, influence its management and - if this is the case - the relevant strategy;
- the investor’s intentions for shareholders’ agreements that the investor is a party to; and
- specification of whether the investor intends to add or revoke members of the board of directors or of the control body of the target company.

Disclosures must be made within 10 days after the acquisition triggering disclosure requirements. If, in the six months following disclosure, the purchaser’s declared intentions change due to new events, a new disclosure must

be made in order to update CONSOB, the target company and the market. Failure to do so will be considered market manipulation, which entail criminal and administrative sanctions.

The decree is **immediately effective** but will be converted into law by the parliament **by 15 December 2017** and be implemented through secondary level regulations (to be issued by CONSOB), which will detail the content, timing and method of disclosures.

However the decree is **immediately effective**: therefore, save for possible amendments to the provisions of the decree through the conversion procedure, the additional disclosure obligations therein are immediately applicable.

How the disclosure requirements are to be fulfilled pending secondary level regulations still needs to be clarified. However, it can be reasonably believed that declarations must be submitted to Consob by certified email and to the target company – as is required by the Issuers' Regulation (*Regolamento Emittenti*) for ordinary disclosures relating to the holding of significant stakes. Consob's regulations will also have to coordinate the timing to fulfil ordinary disclosure requirements (i.e., four trading days from the date the investor becomes aware of the circumstances giving rise to the disclosure requirement) with the timing set out in the decree (i.e., 10 days from the acquisition triggering the disclosure requirement).

If the disclosure requirements are breached before the conversion into law of the decree and the issuance of secondary level regulations, it is reasonable to expect that the sanctions for breaching the ordinary disclosure requirements for holding significant stakes will apply (i.e., administrative fines and suspension of voting rights).