

Takeover Bids and “Full Buyouts”: The New Face of the Italian Financial Markets Act

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Key changes to the takeover bid regime and introduction of a “full buyout” regime

- Single 30% threshold for mandatory tender offers (“**MTO**”)
- Reduction from 12 to 6 months of the reference period for determining the MTO minimum price
- Exemption from “incremental” MTO for purchases (or increases in voting rights) up to 10%, instead of 5%, over 12 months, by investors already holding more than 30%
- Reduction from 60% to 50% of the threshold of securities subject to a voluntary takeover bid exempting the bidder from a subsequent MTO
- Reduction of the squeeze-out threshold from 95% to 90%, and extension of the squeeze-out regime to financial instruments other than voting securities (such as non-voting preferred shares)
- Introduction of a “full buyout” mechanism subject to approval by the extraordinary shareholders’ meeting
- Irrebuttable presumptions applicable to the definition of “persons acting in concert” replaced by rebuttable ones
- “Put up or shut up”: in the event of rumors, Consob may set a deadline by which the potential bidder must disclose its decision to launch a takeover bid or submit a “full buyout” offer, failing which the bidder will be prohibited from making an offer for the following 12 months for a takeover bid or 6 months for a “full buyout”
- Cash alternative in sell-out procedures limited to cases where the consideration consists of financial instruments other than securities admitted to trading on an EU-regulated market
- Further changes to the takeover bid regime concern, among others: the format of the offer document, the suspension of Consob’s review period in case of serious information deficiencies, the deadline for approval of the offer document (extended to 10 days) after any required industry-specific regulatory authorizations, and the exemption document for exchange offers

If you have any questions about the topics covered in this *memorandum*, please reach out to your regular firm contact or the authors listed below.

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On October 8, 2025, the Italian Council of Ministers approved, in a preliminary review, a draft legislative decree implementing the delegation of powers set out in Article 19 of Law No. 21 of March 5, 2024, as supplemented by Law No. 28 of March 11, 2025 (the “Capital Markets Bill”),¹ setting forth the principles of a comprehensive reform of the rules governing capital markets contained in Legislative Decree No. 58 of 1998 (the “Financial Markets Act”) and the governance provisions applicable to stock corporations contained in the Italian Civil Code (the “Capital Markets Reform”). The Capital Markets Reform will be reviewed by the competent parliamentary committees that will have to issue their opinion within forty days, and will subsequently be submitted to the Council of Ministers for final approval.

I. Introduction

The Capital Markets Bill granted the Government powers to carry out a comprehensive reform of the Financial Markets Act with the aim of fostering the development of Italian capital markets and more effectively channelling private investments into Italian listed companies by eliminating instances of “gold plating”.

The Capital Markets Reform, in exercising this delegation, must comply with the general principles and criteria set out in the Capital Markets Bill, including:

- supporting the country’s economic growth;
- increasing the competitiveness of national capital markets, simplifying and streamlining the rules applicable to issuers;
- facilitating the financing of companies at all stages of their growth, including the transition from listing on an MTF to regulated markets;
- reviewing the rules applicable to private investments to encourage their widespread deployment;
- simplifying corporate governance rules, also taking into account the provisions of self-regulatory codes;

- reorganizing and updating the rules applicable to solicitation of public savings, with particular regard to public offerings of securities and public tender and exchange offers;
- balancing the level of administrative burdens imposed on companies with the need to ensure the efficiency, effectiveness and relevance of controls;
- ensuring a coherent and integrated system of internal controls; and
- updating the liability regime of regulatory and supervisory authorities, such as the Bank of Italy and Consob.

II. Key changes to takeover rules

Among other matters, the Capital Markets Reform introduces significant changes to the regulation of tender and exchange offers, including a new “full buyout” mechanism subject to shareholder approval, inspired by common law jurisdictions.

a. *Single 30% threshold for MTOs*

The Capital Markets Reform provides for a single threshold of 30% of the share capital or voting rights triggering the obligation to launch an MTO on the issuer’s entire share capital under Article 106 of the Financial Markets Act.

Accordingly, the Capital Markets Reform repeals (i) the 25% of share capital threshold applicable to companies other than SMEs, and (ii) the possibility for SMEs to set alternative thresholds in their bylaws, ranging between 25% and 40% of the share capital or voting rights, both introduced in 2014.

The single and generalized 30% threshold is in line with the standards adopted by several other European jurisdictions, as well as with Directive 2004/25/EC on takeover bids.

Single 30% threshold for MTOs

b. *Reduction of the reference period for determining the MTO minimum price*

The Capital Markets Reform provides that the MTO minimum price under Article 106 of the Financial

¹ The full text (in Italian only) of the Capital Markets Bill is available [here](#).

Markets Act is determined based on the highest price paid by the bidder (or persons acting in concert with the bidder) during the six (instead of the current 12) months preceding the announcement of the offer pursuant to Article 102 of the Financial Markets Act.

This amendment aims to reduce the economic burden associated with the acquisition of controlling stakes, preventing the offer price from being influenced by purchases carried out long before the launch of the takeover bid.

Along with the single 30% threshold triggering the MTO, this measure contributes to an overall simplification of the takeover bid regime, aiming at enhancing the dynamism and efficiency of the market for corporate control.

The Capital Markets Reform also clarifies that, if the MTO threshold is exceeded as a result of the purchase of multiple-voting shares (*azioni a voto plurimo*), the offer must be carried out at least at the same price paid for the purchase of such multiple-voting shares, if higher.

Reduction from 12 to 6 months of the reference period for identifying the highest price paid by the bidder for the purpose of determining the MTO minimum price

c. Increase of the threshold applicable to the “incremental” MTO

The Capital Markets Reform also amends the rules governing the so-called “incremental” MTO under Article 106, paragraph 3, letter b), of the Financial Markets Act, by raising the relevant threshold. Specifically, shareholders already holding between 30% and 50% of the voting rights exercisable in the issuer’s ordinary shareholders’ meeting will be permitted to increase their voting rights (whether through purchases or enhanced voting rights through loyalty shares) by up to 10% (instead of the current 5%) within a rolling 12-month period without triggering an MTO.

Compared to the current threshold of 5%, the new threshold reduces the number of situations triggering the obligation to launch an “incremental” MTO, granting greater flexibility to “relative-majority” shareholders in progressively increasing their stake.

Obligation to launch an “incremental” MTO triggered by increases in voting rights exceeding 10% (currently 5%) for shareholders holding at least 30% of the voting rights

d. Reduction of the voluntary takeover bid threshold exempting from the launch of a subsequent MTO

The Capital Markets Reform amends the minimum voluntary takeover bid threshold provided under Article 107 of the Financial Markets Act.

Specifically, shareholders exceeding the MTO threshold as a result of a voluntary public tender or exchange offer targeting at least 50% (instead of the 60% currently provided) of each class of the issuer’s securities are exempted from the obligation to launch a subsequent MTO. This amendment broadens the possibilities for bidders to acquire control without being required to launch an MTO on the issuer’s entire share capital.

In addition, the Capital Markets Reform shortens from 12 to six months the period following the closing of a voluntary bid within which, if (i) the bidder or persons acting in concert with the bidder have increased their stake by more than 1% or (ii) the issuer has approved a merger or demerger resulting in delisting, an MTO on the issuer’s entire share capital must be launched.

Reduction from 60% to 50% of the minimum threshold of securities of each class subject to a voluntary takeover bid exempting the bidder from the obligation to launch a subsequent MTO on the issuer’s entire share capital

e. Reduction of the threshold for the exercise of the squeeze-out

The Capital Markets Reform reduces from 95% to 90% the threshold triggering the bidder’s right to buy out the remaining minorities pursuant to Article 111 of the Financial Markets Act.

The Capital Markets Reform also extends the scope of the squeeze-out mechanism to financial instruments other than voting securities, as defined in Article 93-bis, paragraph 1, letter c), of the Financial Markets Act. In particular, the new wording also

includes non-voting preferred shares (*azioni di risparmio*), regardless of the level of free float they represent.

Reduction of the threshold for the exercise of the squeeze-out from 95% to 90%. Application of the squeeze-out regime to financial instruments other than voting securities (including non-voting preferred shares)

f. Introduction of a “full buyout” mechanism subject to approval by the extraordinary shareholders’ meeting

The most significant innovation introduced by the reform concerns the inclusion, under Article 112-*bis* of the Financial Markets Act, of a new “full buyout” mechanism (with consequent delisting) subject to shareholder approval, as an alternative to the traditional takeover bid regime. Inspired by the scheme of arrangement typical of certain common law jurisdictions, this new regime enables a third party to purchase all the shares of an issuer (without launching a takeover bid) if such purchase is approved by a resolution of the issuer’s extraordinary shareholders’ meeting.

The shareholder resolution approving the buyout must be adopted with the majorities generally required under applicable law for extraordinary shareholders’ meetings,² as well as by a simple majority of the shareholders attending the meeting excluding (i) the shareholder(s) who submitted the buyout offer and any persons acting in concert with them, and (ii) any “absolute-majority” or “relative-majority” shareholder (or shareholders acting in concert), provided that their shareholding exceeds 10% of the issuer’s share capital.

Any restrictions on voting rights contained in shareholders’ agreements are ineffective at the extraordinary shareholders’ meeting convened to approve the buyout.

The consideration must be exclusively in cash and may not be lower than (i) the arithmetical average of the closing prices of the shares over the six months preceding the announcement of the buyout, and (ii)

any price paid by the buyer (or persons acting in concert with it) for purchases made within the same period.

The issuer’s Board of Directors plays a key role in identifying the potential buyer based on a binding and irrevocable buyout offer (providing for equal conditions for all holders of the same securities) and disclosing such offer to Consob and the public, as well as preparing an explanatory report containing all relevant information to assess the buyout offer, its own assessment and the opinion of the independent directors on the buyout and the adequacy of the offered price.

The buyout takes effect from the date of registration of the resolution with the Companies Registry, unless otherwise provided by the resolution itself (subject to prior notification of deposit of the purchase price).

Consob is empowered to regulate (i) the content of the notification by the Board of Directors of the buyout offer to Consob and the public, the Board’s explanatory report and the independent directors’ opinion, (ii) the performance guarantees to be provided by the buyer, (iii) the cases in which, between the date of the notification and the day prior to the extraordinary shareholders’ meeting, a takeover bid on the same shares is launched, and (iv) the standards of fairness and transparency applicable to transactions involving the shares subject to the buyout.

Introduction of a “full buyout” mechanism through which a third party may purchase all the shares of an issuer, provided that such buyout is approved by the extraordinary shareholders’ meeting (with the favorable vote of a 2/3 majority of attendees, as well as a simple majority of attendees excluding the bidder(s) and the absolute or relative majority shareholder holding more than 10%)

g. Amendments to the definition of “persons acting in concert”

The Capital Markets Reform replaces the irrebuttable presumptions currently included in the definition of

² I.e., the meeting is validly held when at least one-half of the share capital is represented (unless the bylaws provide for a higher *quorum*), and resolutions are adopted with a two-thirds majority of the share capital represented at the meeting.

“persons acting in concert” (provided for in Article 101-*bis* of the Financial Markets Act) with rebuttable ones.

The system of irrebuttable presumptions is an exception compared to other major European jurisdictions and may entail the risk of applying the concept of “concert” to cases that do not deserve to be considered as such (*e.g.*, certain shareholders’ agreements aimed only at consultation on voting strategies or a situation in which a director of the bidder, who is presumed to be a concert party, actually votes against the takeover bid).

Additionally, the Capital Markets Reform introduces a new definition of “interested parties” to ensure that Consob’s supervisory powers may continue to be exercised with respect to persons who, despite meeting conditions previously considered irrebuttable presumptions of concerted action, have proved the absence of concert.

The purpose of “*maintaining control*” over the issuer has also been removed from the definition of concert, as its scope is uncertain and it represents a case of “gold plating” (since it is not provided for by EU law). As a result, the definition of “persons acting in concert” will solely refer to the purpose of “*acquiring or strengthening control*”.

Replacement of irrebuttable presumptions with rebuttable ones in connection with the definition of “persons acting in concert”

h. New powers for Consob: the “put up or shut up” rule in the event of news or rumors

The Capital Markets Reform introduces a mechanism to manage situations of market uncertainty arising from the dissemination of unconfirmed news or rumors regarding the potential launch of a takeover bid. Specifically, Consob is empowered to set a deadline within which, in the event of market rumors, the potential bidder must publicly disclose whether it intends to launch a takeover bid. The mechanism is inspired by the “put up or shut up” rule under the UK Takeover Code, and aims to provide greater certainty and transparency to the market.

If disclosure is not made within the set deadline or the rumor is denied, the potential bidder will be precluded

from launching a bid on the securities of the same issuer for the following 12 months (revised Article 102, paragraph 8, of the Financial Markets Act).

A similar provision has also been introduced in the “full buyout” regime. Specifically, in case of rumors Consob may set a deadline within which the potential buyer must announce its decision to submit a buyout offer. In case of silence or refusal, the potential buyer will be prohibited from submitting a buyout offer on the securities of the same issuer for the following six months (new Article 112-*bis*, paragraph 11, of the Financial Markets Act).

Introduction of Consob’s power, in case of rumors, to set a deadline by which the potential bidder must disclose to the market its decision to launch a takeover bid or a “full buyout”, failing which the bidder will be prohibited from making an offer for the following 12 months in case of a takeover bid (6 months in case of “full buyout”)

i. Sell-out price

The Capital Markets Reform partially amends Article 108, paragraph 5, of the Financial Markets Act concerning the consideration payable to holders of outstanding securities following a takeover bid on the issuer’s entire share capital.

The Capital Markets Reform narrows the scope of the obligation to offer a cash alternative to shareholders requesting it upon the bidder reaching the thresholds set forth in Article 108, paragraphs 1 and 2, of the Financial Markets Act (the so-called “sell-out” right).

Specifically, the new version of Article 108 of the Financial Markets Act grants shareholders the right to demand a cash alternative only in cases where the consideration offered consists of financial instruments other than securities admitted to trading on a regulated market within the European Union.

Obligation to provide a cash alternative in the sell-out limited to cases where the consideration consists of financial instruments other than securities admitted to trading on an EU regulated market

j. Other changes to the takeover bid regime

Other changes to the takeover bid regime include the following:

- the offer document must be prepared in a machine-readable format, in Italian or (provided that a summary note in Italian is made available) in “*a language commonly used in international finance, at the choice of the offeror*”. It is therefore possible for the offer document to be drafted in English;
- the suspension of the review period for approval of the offer document is allowed only in cases of “*serious information deficiencies*” (a stricter standard than the current one, *i.e.*, “*if it proves necessary to request additional information from the offeror*”);
- the deadline for Consob’s approval of the offer document following release of any industry-specific authorizations from other regulatory authorities pursuant to applicable law (*e.g.*, ECB, Bank of Italy, IVASS, etc.) has been extended from five to 10 days; and
- the approval procedure for the exemption document that may be prepared *in lieu* of the offer or listing prospectus pursuant to Regulation (EU) 2017/1129 in connection with exchange offers, will be subject to specific regulation by Consob to define its purpose, timing, and review powers.

Changes concerning the format of the offer document, the suspension of Consob’s review period in case of serious informational deficiencies, the approval deadline of the offer document (extended to 10 days) after industry-specific regulatory authorizations, and the procedure concerning the exemption document for public exchange offers

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