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Regulation of Foreign Investment in Italy

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A Practice Note describing the legal regime governing foreign investment in companies and industries in Italy.

This Note provides an overview of the legal regime governing foreign investments in companies and industries in Italy. It sets out the key legislation regulating foreign direct investments in Italy under Law Decree no 21/2012 (FDI Law) and its implementing regulations, the various types of foreign investment transactions that are subject to the FDI Law, the roles and powers of the relevant regulatory authorities, and the penalties for non-compliance. It also summarises related anti-money laundering laws (AML) and ownership disclosure requirements (and their application to foreign entities).

This Note focuses on transactions where a foreign entity buys, or takes a stake in, a company incorporated in Italy or whose relevant business and assets are in the Italian territory. It does not comment on any specific restrictions in Italy relating to:

- Merger control, anti-trust, and competition law which is not dependent on the nationality of the acquirer or investor.
- International free trade agreements or international investment treaties.

To view and customize comparison charts on foreign direct investment, see Quick Compare Chart, Regulation of Foreign Direct Investment (FDI).

The acquisition by non-European Economic Area (EEA) nationals of real estate located in Italy (other than critical infrastructures and strategic assets) is not subject to any restriction other than the assessment of the reciprocity condition. For more information on the reciprocity condition, see Practice Note, Establishing a Branch Office or Presence in Italy : Reciprocity Condition.

For more information on merger control rules and competition law affecting acquisitions in Italy, see Practice Note, Competition: Private Acquisitions and Joint Ventures (Italy).

Unless otherwise stated, a reference in this Note to:

- FDI Law is to the Law Decree no 21/2012.
- EU FDI Regulation is to Regulation (EU) 452/2019.
- FSR is to FSR Regulation (EU) 2022/2560.
- AML Law is to the Legislative Decree no 231/2007.

Legal Framework for Foreign Investment in Italy

The foreign investment regime in Italy is mainly governed by the following key legislation:

- EU FDI Regulation (see EU FDI Regulation).
- FDI Law (see The FDI Law).
- FSR (see Foreign Subsidies Regulation).
- AML Law (see AML Law).

See also Other Legislation Affecting Foreign Investment.

EU FDI Regulation

On 19 March 2019 the EU adopted the EU FDI Regulation, which became effective on 11 October 2020. Under the EU FDI Regulation, EU member states are responsible for screening foreign investments in their jurisdiction in accordance with their applicable national legislation (where existing), provided that their legislation complies with minimum harmonisation requirements and that it allows for co-operation among European Commission (Commission) and other EU member states.

Under the EU FDI Regulation, foreign direct investment is an investment of any kind by a foreign investor (that is, any natural person or company of a country outside the EU) that aims to establish, or to maintain, lasting and direct links between the foreign investor and a party in

an EU member state to carry on business in a member state.

As part of the co-operation mechanism envisaged under Article 6 of the EU FDI Regulation, each member state screening foreign direct investment must notify:

- The Commission.
- Other member states "whose security or public order is deemed likely to be affected."

(Article 6, EU FDI Regulation.)

If the Commission or that other member state(s) believe that the proposed investment is likely to affect security and public order in another member state, or holds relevant information on the transaction, they may, respectively, provide an opinion or make comments. These comments or opinion must be provided within 35 days of the initial notification from the member state's government (*Article 6(7), EU FDI Regulation*) and must be given due consideration by the member state's government.

If the transaction may affect programmes or projects of EU interest (such as Copernicus or Horizon), the member state's government must also take utmost account of the Commission's opinion, explaining the reasoning behind any departure from it. However, in each case the member state's government remains in control of the final decision regarding the investment or transaction.

Accordingly, the term of duration of the screening process under the EU FDI Regulation (and the FDI Law) is suspended if another EU member state, or the Commission, indicates its intention to provide comments or issue an opinion on the investment or transaction under review under the EU FDI Regulation. The suspension ends, and the term starts running again, when the opinion or comment is received by the member state's government. Similarly, the term is suspended if the government requests the Commission, or another member state, to make comments or issue an opinion on the proposed investment.

The FDI Law

In 2012, Italy put in place foreign direct investment screening mechanisms by adopting the FDI Law. Since then, the FDI Law has been amended multiple times to materially extend the scope of its application, most recently by Decree-law no 21/2022 (March 2022 Decree).

Under the FDI Law, the Italian government has the power to review certain investments and other transactions (mainly purchases of shares and other corporate transactions) carried out by particular categories of investors, provided those investments or transactions concern a strategic asset or activity identified by the FDI Law and its implementing regulations.

Foreign Subsidies Regulation

On 12 January 2023 entered into force the Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market ("FSR" or Regulation 2022/2560/EU).

The FSR confers a set of new powers on the European Commission (the Commission) to tackle foreign subsidies that distort competition in the EU internal market, since the EU's existing state aid rules, which address public support by EU member states, do not cover subsidies granted by non-EU countries.

The Commission will have the power to investigate, in connection with mergers, acquisitions and joint ventures ("mergers") and public procurement, financial contributions granted by non-EU governments to companies active in the EU. If the Commission finds that such financial contributions constitute distortive subsidies, it can impose measures to redress their distortive effects and thereby level the playing field.

In particular the FSR imposes a prior notification to the Commission on mergers, when the parties to the transaction meet certain thresholds in terms of EU turnover and foreign financial contributions (FFC) received. Pending the Commission's review, the concentration in question cannot be completed.

On 6 June 2023, the European Commission published on its website answers to procedural, jurisdictional, implementation and practical questions about the notification of mergers under the Regulation 2022/2560. See Legal Update, Foreign Subsidies Regulation: European Commission Publishes Q&As on Obligations to Notify Concentrations.

The concept of "financial contribution" is broad under the FSR as the requirement can arise even if the financial contributions do not contain an element of subsidy (for example, because they are made on market terms). Under Article 3(2) of the FSR financial contributions can include capital injections, grants, loans, guarantees, tax exemptions and the provision or purchase of goods or services. Article 3(3) of the FSR addresses the circumstances under which a financial contribution will be "foreign" (including where the contribution is made by the central government or any level of public authority of a third country, or a private entity whose actions can be attributed to a third country).

If the Commission establishes that a foreign subsidy exists and that it is distortive, it will issue any of the remedies available under the FSR.

The notification obligation under the FSR applies from 12 October 2023. After 12 July 2023 the Commission can start investigations also ex officio.

For more information on the meaning of mergers, applicable turnover and FFC thresholds, notification process, outcome and possible remedies, as well as the other tools made available to the Commission under the FSR (including the right to start investigations ex officio), see Article, New EU Regime on Foreign Subsidies: Plugging a Regulatory Gap.

AML Law

Legislative Decree no 90/2017 amended the AML Law to implement Directive (EU) 2015/849 (AMLD IV), and Legislative Decree no 125/2019 amended the AML Law to implement Directive (EU) 2018/843 (AMLD V). Under the AML Law, certain obliged entities (including credit and financial institutions, as well as external auditors, notaries public, and lawyers) are required to comply with, among other things:

- Customer due diligence (or know-your-customer (KYC)) requirements.
- Record-keeping requirements.
- Suspicious transaction reporting requirements.

In addition, the AML Law provides that Italian companies and entities must obtain information regarding their beneficial owners and disclose this information in public registers (for example, the Companies House (*Registro delle Imprese*)). On 11 March 2022, the Italian Ministry of Economic Affairs, in consultation with the Ministry of Enterprises and Made in Italy (former Ministry of Economic Development), adopted a decree implementing such requirement, introducing an ultimate beneficial owner register; however, this decree entails the adoption of further implementing decrees, which have not been published yet in the Official Journal.

Other Legislation Affecting Foreign Investment

When planning a direct investment in Italy, foreign investors should be aware that the Italian legal system contains additional rules impacting foreign investments mainly requiring additional reviews or authorisations by sector-specific regulators (see Industry Sectors in Italy Where Foreign Investment Triggers Additional Notification or Approval).

There are no exchange controls in Italy. Residents and non-residents can hold foreign currency and securities of any kind within and outside Italy. Although transactions on the Italian territory must be carried out in euros.

Transfers of cash and securities in euros or a foreign currency in excess of (the equivalent of) EUR10,000, to and from foreign countries, by residents and non-residents, must be reported to the Customs Agency (*Agenzia delle Dogane*). Sanctions are applied in the case of breach.

For more information on merger control rules and competition law affecting acquisitions in Italy, see Practice Note, Competition: Private Acquisitions and Joint Ventures (Italy).

How Foreign Investment Is Governed in Italy

The FDI Law grants the Italian government special powers (see Screening Process and Government Powers) in relation to certain investments and other transactions (that is, mainly purchases of shares and other corporate transactions; see Type of Transactions Subject to Screening) carried out by particular categories of foreign investors (see Foreign Investors) provided those investments or transactions concern a strategic asset or activity identified by the FDI Law and its implementing regulations (see Strategic Assets and Activities).

Strategic Assets and Activities

The FDI Law identifies the strategic assets and activities falling in the following four separate strategic sectors:

- Defence and national security (see Defence and National Security).
- 5G technologies (see 5G Technologies).
- Energy, transport, and communication networks (see Energy, Transport, and Communication Networks).
- Other critical sectors (see Other Critical Sectors).

To a certain degree, the screening process and the special powers of the government vary depending on the sectors (see Screening Process and Government Powers).

Defence and National Security

Under the FDI Law, the government must identify assets and activities deemed strategic in relation to Italy's defence and national security system. The assets and activities must be reviewed every three years and, if necessary, updated.

The strategic assets and activities are included in a detailed list set out in the Prime Minister's Decree no 108/2014 (Defence Decree). These activities are generally defined as the study, research, design, development, production, integration, and support

to the life cycle (including logistics) of certain items including:

- Certain systems and materials, including:
  - command, control, computer, and information (C4I) systems;
  - advanced weapons and aeronautical systems; and
  - aerospace and military navy propulsion systems.
- Certain technologies (including stealth technologies and nanotechnologies).
- Systems and sensors that are used for observation purposes, monitoring and control of the territory for the protection of public security, public rescue and civil defence.
- Ballistic protection systems.
- Information and communication systems, as well as systems for the collection, classification and management of information and data developed and used for civil defence protection purposes.
- Connections used to establish and ensure the functioning of inter-police networks used by police forces and the Ministry of Defence.

5G Technologies

In 2019, the FDI Law was amended to extend its scope to investments in broadband electronic communication services based on 5G technologies. At present, the FDI Law does not provide additional detail on what these services or technologies consist of. As part of the amendments introduced by the March 2022 Decree, the government has been empowered to adopt a secondary legislation extending the scope of the rules beyond 5G technologies to any other technology that is relevant for cybersecurity purposes, including cloud technologies. To date, however, no such additional secondary legislation has been adopted.

Although the FDI Law qualifies the investments in broadband electronic communication services based on 5G technologies as part of the defence and national security sector, in practice, the rules applicable to these investments are substantially different from those applicable to the defence and national security sector.

Energy, Transport, and Communication Networks

Under the FDI Law, the government must identify the networks and infrastructures as well as the assets and contracts that are deemed strategic to national interests in the energy, transport, and communications sectors. These comprise the networks and infrastructures necessary to ensure the procurement and operation of essential public services, including in case these infrastructures are held pursuant to a public concession contract (expressly including large-scale water diversion plants). The list of networks and infrastructures must be updated, as necessary, every three years.

Strategic assets for the energy, transport and communications sectors are set out in the Prime Minister Decree no 180/2020 (ETC Decree).

The ETC Decree identifies the following strategic assets:

- Energy networks of national interest (including the national network for the transport of natural gas and gas storage or dispatching facilities, the infrastructures for the supply of gas and electricity from other countries, onshore and offshore regasification plants, the national network for the transmission of electricity, and the management activities and essential real estate related to the foregoing).
- Large transport networks and facilities of national interest (including ports and airports of national interest, national spaceports, the rail network relevant to the trans-European rail networks, freight villages (*interporti*) of national interest, and the network of roads and motorways of national interest).
- Telecom networks (including the public telecom network ensuring connection of end-users to the metropolitan area telecom network, services routers, long-distance telecom networks, and the telecom facilities used to provide the universal telecom service to end users, as well as broadband and ultra-broadband services).

By contrast, the ETC Decree does not include the relevant service providers (that is, the entities authorised to provide the services). However, in the gas and electricity sectors, the network must be operated by the same entity providing the related services. Therefore, in practice, the FDI Law also applies to the acquisition of any service provider in these sectors.

Other Critical Sectors

Under the FDI Law, the government must identify additional strategic assets and contracts in the following sectors set out under Article 4(1) of the EU FDI Regulation:

- Critical infrastructures, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructures, and sensitive facilities, as well as land and real estate crucial for the use of those infrastructures.
- Critical technologies and dual-use items, as defined in Article 2(1) of the Dual-use Regulation (428/2009/EC), including artificial intelligence, robotics, semi-conductors, cybersecurity, aerospace, defence, energy

storage, quantum and nuclear technologies as well as nano-technologies and bio-technologies.

- Supply of critical inputs, including energy or raw materials, as well as food security.
- Access to sensitive information, including personal data, or the ability to control that information.
- The freedom and pluralism of the media.

Strategic assets for these critical sectors are set out in the Prime Minister Decree no 179/2020 (Critical Sectors Decree).

The Critical Sectors Decree sets out a long list of critical technologies, infrastructures, production factors, critical information, and other economic activities of critical relevance. The "criticality" of this list is meant to serve as a threshold below which an investment concerning technologies, infrastructures, production factors, critical information, and other economic activities of critical relevance should not be relevant under the Critical Sectors Decree, and therefore under the FDI Law. However, the notion of "critical" in the Critical Sectors Decree is broadly defined as "essential for the maintenance of vital functions of society, health, security, economic and social wellbeing of people" and is therefore unlikely to serve as a practical reference to assess whether a transaction is subject to the government screening.

These additional technologies, infrastructures, production factors, information, and economic activities are comprised in the following categories:

- Energy (including storage of nuclear materials or radioactive waste, coastal deposits of oil with a capacity in excess of 100,000 cubic meters, oil pipelines for the procurement from other countries, and technologies – including digital platforms – for the management of wholesale markets of natural gas or electricity).
- Water (including physical or virtual infrastructures ensuring the continuity in the services of collection, purification, distribution, and wholesale supply of drinking water for human use, irrigation water, sewerage, and wastewater purification).
- Health (including digital technologies for the provision of health services (including remotely) technologies for the analysis of data and application of biological know-how for health and diagnostics, prognostics and therapy, bio-engineering technologies and nanotechnologies used in the pharmaceutical sector, and for medical devices).
- Sensitive data (including the processing, storing, access and control of multiple sets of data and information regarding, among others, satellite navigation, control of air, sea, rail, and road transportation, sensitive data under the General Data Protection Regulation no 2016/679, data collected through servers, database, cloud computing, smart car, smart building, smart city, and smart home technologies).
- Electoral infrastructures.
- Financial (including credit and insurance) sectors (including stock exchanges and trading facilities, technologies for the provision of settlement and central counterparty services, payment services, e-money, insurtech, and block chain-based financial services).
- Advanced industrial sectors (including artificial intelligence, robotics, machine learning, machine-to-machine communication, semiconductors, microprocessors, advanced manufacturing, big data and analytics technologies, and chatbot technologies).
- Non-military aerospace infrastructures and technologies instrumental to design, develop and manufacture space and aerospace products and services.
- Procurement of production factors and agri-food (including procurement of the raw materials set forth in the EU Commission communication of 13 September 2017 COM (2017) 490, procurement of production factors in the steel industry and in the agri-food production chain).
- Dual-use products (consisting of the economic activities regarding dual-use products under Article 3(1) of the Dual-use Regulation (428/2009/EC), provided that these are carried out by companies whose annual turnover is at least EUR300 million).
- Media freedom and pluralism (including the economic activities of national relevance carried out by providers of video or radio media services, press agencies, and editors of newspapers or magazines or electronic editions).

The list of assets and contracts set out in the Critical Infrastructures Decree must be updated, as necessary, every three years.

Finally, regarding the energy, water, health, and financial sectors, the Critical Infrastructures Decree contains a "catch-all" provision under which any economic activity in those sectors performed by a company whose annual turnover is at least EUR300 million and employing, on an annual average, no less than 250 employees is deemed of strategic relevance and as such subject to the FDI Law, regardless of whether that company holds or operates any of the specific infrastructures or technologies set out in the respective category.

Similarly, if a company processes, stores, has access to, or controls data (of the specific categories set out in the

Critical Infrastructures Decree, including sensitive data) that refers to at least 300,000 individuals or entities, the activity is deemed essential for the maintenance of vital functions of society, health, security, and economic wellbeing of people, as well as to media freedom and pluralism.

Foreign Investors

The FDI Law primarily (though not exclusively) applies to investments and other transactions by foreign investors in strategic assets, or in entities owning or operating strategic assets or strategic activities (see Strategic Assets and Activities).

Definition of Foreign Investor

Under the FDI Law, the definition of foreign investor varies depending on the strategic sector.

In the defence and national security sector, the FDI Law does not contain any specific definition for a foreign investor. It states that, in cases of acquisition of equity interests, the FDI Law applies to any of these investments unless the investor is the Italian state, an Italian public administration or other Italian public sector entity, or any subsidiary of those entities. In practice therefore, the FDI Law also applies to investments made by European investors and privately-owned Italian investors.

In the communications, energy, transportation, health, agri-food, and financial (including credit and insurance) sectors, the FDI Law also applies to acquisitions of a controlling interest in any company holding a strategic asset or carrying out a strategic activity by any investor regardless of its nationality (expressly including European and Italian investors).

In all other sectors, the FDI Law applies only to investments made by non-European investors. These are defined as:

- Any individual who is not a national of an EU member state.
- Any individual who is a national of an EU member state but is not resident or domiciled in, nor has the center of main interests or is established in, any European Economic Area (EEA) member state.
- Any entity whose registered office, headquarters or center of main interest is not in an EEA member state or is not established therein.
- Any entity whose registered office, headquarters or center of main interests is in an EEA member state or is established therein, but it is controlled, directly or indirectly, by any individual or entity that is not a national, resident or domiciled or does not have its registered office, headquarters or center of main interests in any EEA member state, nor it is established therein.
- Any individual or entity that is a national and is resident or domiciled, or has its registered office, headquarters or center of main interests in a member state of the EEA, or is established there, for the purpose of circumventing the application of the FDI Law.

Transactions Involving Foreign Government Investors

Under the FDI Law there are no special rules, different from those described in this Note, applicable to transactions involving foreign government investors. However, consistent with the EU FDI Regulation, when screening an investment and determining whether it may affect security or public order, the Italian government must consider whether the investor is directly or indirectly controlled (including control through significant funding) by a public administration, state body or the armed forces of a non-EEA member state.

Individual or Joint Acquisitions

In each strategic sector, to determine whether the acquisition of shares is relevant for the purpose of the notification and ensuing screening, the FDI Law takes into account both the shares acquired by the investor and the shares held by other persons or entities with which the investor enters (or has entered) into a shareholders' agreement.

Moreover, indirect acquisitions are also relevant. In particular:

- In the defence and national security sector, the FDI Law expressly contemplates the indirect acquisitions (that is, acquisitions of shares carried out through a subsidiary or an affiliate).
- In the energy, transport, and communications sectors, and the other critical sectors, the FDI Law does not expressly consider these indirect acquisitions. However, there seems to be no reason to exclude indirect acquisitions, and this appears consistent with the definition of non-European investor, which considers the ultimate parent company of the entity carrying out the investment or the transaction (see Definition of Foreign Investor).

Type of Transactions Subject to Screening

The FDI Law sets out the types of investments and transactions that trigger the notification obligations and the possible exercise of the government's special powers (see Screening Process and Government Powers). The investments and transactions vary depending on the strategic sector.

Defence and National Security

The FDI Law sets out two different categories of investments and transactions:

- The acquisition of an interest in the share capital of any company holding a strategic asset or performing a strategic activity. The equity interest does not need to confer on the investor the control of the company, as the FDI Law requires the investor to notify the government of the acquisition of any interest in excess of 3% (and thereafter, the crossing of the thresholds of 5%, 10%, 15%, 20%, 25%, and 50%).
- Any corporate resolution, action, or transaction by the relevant company resulting in a change of ownership, control, or availability of any strategic asset. These include certain extraordinary transactions such as a merger, demerger, asset disposal, winding-up, amendments concerning the corporate purpose, the transfer of, or creation of encumbrances on, strategic assets. These resolutions also include the seller's resolution to transfer a subsidiary holding any strategic asset or performing a strategic activity.

5G Technologies

The FDI Law requires any Italian company intending to acquire assets or services related to the design, manufacturing, maintenance, and management of broadband electronic communication services based on 5G technologies to submit an annual plan.

The plan must set out, among other things, details of the proposed purchases and related suppliers, including the technical details of the relevant assets or services. It must also report on pending contracts and the perspective of development of the 5G network.

Energy, Transport, and Communications

The FDI Law sets out three different categories of investments and transactions:

- The acquisition of a controlling interest in the share capital of any company holding a strategic asset or performing a strategic activity in the relevant sector.
- The acquisition by a non-European investor of a non-controlling interest in the share capital of any company holding a strategic asset or performing a strategic activity in the relevant sector, if the equity interest:
  - is at least equal to 10% of the corporate capital (and the value of the transaction is at least equal to EUR1 million); or
  - exceeds 15%, 20%, 25%, or 50% of the corporate capital (regardless of the value of the transaction).
- Any corporate resolution, action, or transaction by the company resulting in a change of ownership, control, or availability of the strategic asset or a change in its application. This includes certain extraordinary corporate resolutions by the shareholders or board of directors (such as, merger, demerger, transfer abroad of the registered office, winding up, amendments concerning the corporate purpose, transfer of a business unit comprising, or creation of encumbrances on, the strategic asset). These resolutions also include the seller's resolution to transfer a subsidiary holding any strategic asset or performing a strategic activity.
- The incorporation of a company holding a strategic asset or performing a strategic activity in a relevant sector, in case one or more shareholders who qualify as non-European investors hold an equity interest at least equal to 10% of the company's capital.

"Controlling" interests are defined by reference to the notion of control as set out in Article 2359 of the Civil Code (*Codice Civile*). A company (A) is controlled by another company (B) if B:

- Holds the majority of the voting rights at A's ordinary shareholders' meeting.
- Holds sufficient voting rights to exercise a dominant influence at A's ordinary shareholders' meetings.
- Exercises a dominant influence over A under contractual provisions between A and B.

In addition, for a company whose shares are traded on a regulated stock exchange, control also covers companies:

- On which another company may exercise a dominant influence under a contract or a clause in the articles of association.
- In which a shareholder, under an agreement with other shareholders, controls enough votes to exercise a dominant influence in the ordinary shareholders' meeting.

(Article 93, Legislative Decree no 58/1998.)

Other Critical Sectors

The FDI Law sets out three categories of investments and transactions. These are the same as the investments and transactions in the energy, transport, and communications sector, with the following exceptions:

- The corporate resolution, action, or transaction by the company holding the strategic asset in the sectors other than health, agri-food, or finance (including credit and insurance) will be relevant if it results in a change of ownership, control, or availability of the strategic asset in favour of a non-European investor.
- The resolution to move the company's registered office abroad will be relevant if it is moved to a country that is not a member of the EEA.

Intra-Group Transactions Exempted from the Special Powers of the Government

Under Article 4 of the Defence Decree, Article 4 of the ETC Decree, and Article 14 of the Critical Infrastructures Decree, the following intra-group transactions must be notified to the government (see Foreign Investment Notification Process). However, in principle, the government cannot exercise its special powers over the following:

- Mergers, de-mergers, mergers by incorporation, disposals (of assets or shares) (in each case, on condition that the corresponding resolutions of the shareholders' meeting or of the board of directors do not entail the transfer of the business or business units of the company or of a company subsidiary).
- Transfer of the registered office (with limited respect to the Critical Infrastructures Decree, only if the transfer is to a non-EEA country).
- Amendment to the company's corporate purpose.
- Winding-up of the company.
- Amendments concerning the corporate purpose or equity ownership caps in the articles of association of certain state-controlled companies.
- Creation of encumbrances on a strategic asset.
- Assumption of commitments affecting the use of any strategic asset (with limited respect to the Critical Infrastructures Decree, also taking into account the placement of the company in a bankruptcy proceeding).

However, if the notification of any of these intra-group transaction shows the existence of a threat of a serious damage to the public interests relating to defence and national security, or to the security and functioning of the networks and infrastructures and the continuity of procurements in the energy, transport, and communications sector, the exemption does not apply and, therefore, the government may exercise its special powers.

Foreign Investment Notification Process

Any investment and transaction within scope of the FDI Law must be notified to the government. The rules described in the below paragraphs and concerning the timing of the notification, the individual or entity which must perform the notification and the contents of the notification apply to all strategic sectors, unless differently stated in the paragraphs below.

The notification is compulsory: the obligation to notify the government must be complied with when an investment or transaction within scope of the FDI Law is carried out.

Person That Must Notify the Government

The notification to the government must be performed:

- As regards the acquisition of an equity interest, by the investor jointly with the target company, if possible. However, as the resolution of the board of directors approving the sale of the share interest must be notified (the obligation to notify the government is on the parent of the company owning the strategic asset or carrying out the strategic activity) the seller must also notify (normally, it does so jointly with the investor).
- By the company owning the strategic asset or carrying out the strategic activity, for corporate actions (other than an acquisition of a share interest).
- In the 5G technology sector, by the company that intends to acquire the relevant assets or services (see 5G technologies).

When Must the Notification Be Made?

The notification to the government must be performed:

- For an acquisition of a share interest, within ten days following completion of the acquisition (that is, the closing). However, typically the notification is made before completion (often with the government's clearance as a condition precedent) in the light of the restrictions applicable until completion of the screening process (see Effects of the Screening Process on the Transaction) or as a result of the screening (see Penalties for Non-Compliance). Importantly, the government considers that the ten-day term starts from signing (as opposed to closing), although the letter of the FDI Law does not seem to support this interpretation.
- For corporate actions (other than an acquisition of a share interest), within ten days of their adoption and, in any event, before implementation or completion.
- In the 5G-technology sector, once a year, before the procurement plan is implemented (see Contents of Notification).

Contents of Notification

A notification must be made on a standard form. Its contents will depend on the type of investment and transaction and strategic sector it relates to. The form can be submitted online by sending a certified email to "notificagp@pec.governo.it." The standard forms

are available on the government website (see Italian government: Golden Power, the notification forms (Golden Power, i moduli di notifica)).

In all strategic sectors aside from the 5G technology sector:

- For an acquisition of a share interest, the notification must include the investor's business plan, the related financial plan, a detailed description of the investor (including its ultimate beneficial owner), a detailed description of the transaction (including its funding and whether it is subject to other regulatory or FDI authorisations), a detailed description of the target, and any further information that may be necessary for the government to complete its screening.

  If a joint notification between investor and target company is not possible, simultaneously with the filing, the investor must submit to the target company a report setting out the key features of the transaction and the filing. In the latter case, the target company may submit a brief to the Prime Minister's Office within 15 days.

- For other corporate actions, the notification must include the minutes of the resolution and all documents provided to the members of the relevant corporate bodies, as well as any further information that may be necessary for the government to complete its screening.

The notification must be both in Italian and English. If the documents annexed to the notification are not in Italian, an Italian courtesy translation must be provided "if possible."

The requirement set out in the first bullet above must also be read in conjunction with Article 120(4-bis), of Legislative Decree no 58/1998. It provides that, where a share interest in a listed company equal to 10%, 20%, or 25% is acquired, the investor must disclose to the market its intentions for the subsequent six months along with certain other information. This includes, for example, the acquisition's funding sources, whether the investor acts alone or with third parties, whether the investor intends to stop or continue its purchases.

In the 5G-technology sector, the subject matter of the notification is an annual plan setting out details of the relevant company, the proposed purchases and related suppliers, including the technical details of the relevant assets or services. The plan must also report on pending contracts and the prospective development of the 5G network, any further information necessary to provide a detailed description of the development of the applicant's digitalisation systems as well as the accurate fulfillment of any prescription issued in connection with previous submissions, and a complete report on any notification submitted to the National Assessment and Certification Center (*Centro di valutazione e certificazione* nazionale) under the Cybersecurity Law (Decree-law no 105 of 21 September 2019, as amended).

In all sectors, for the corporate resolution, actions, and transactions by the company owning the strategic asset or operating the strategic activity, the FDI Law expressly provides that the notice to the government does not trigger disclosure obligations concerning material non-public information under market abuse rules.

Pre-Notification

With a view to addressing the frequent cases in which the parties to a transaction seek guidance as to whether a filing is required, in August 2022 the government adopted the Prime Minister Decree no 133/2022, which, among other things, introduced a voluntary pre-notification process. In particular, the parties to a proposed transaction are entitled to submit to the Government a report (*informativa*) on the proposed transaction, including – to the extent available at that time – the information required in case of a formal notification.

Within 30 days, the Co-ordination Group (see Competent Regulatory Authority) must provide written feedback to the applicant, which may consist of guidance as to whether the transaction:

- Is subject to the FDI Law and therefore a filing is required.
- Despite being subject to the FDI Law, is likely to be unconditionally cleared (and therefore the applicant may be dispensed from the duty to file).

In case the Co-ordination Group concludes that a filing is not required, it may still issue recommendations to the applicant.

However, if there is no such feedback within 30 days and the proposed transaction goes ahead, the applicant is required to follow up with a formal filing.

Similarly, in the context of the review of the pre-notification, any of the administrations that participates in the Co-ordination Group may require the applicant to make a filing (including in case the transaction would not be subject to the FDI Law and a filing would therefore not be required).

Screening Process and Government Powers

Competent Regulatory Authority

On receipt of a notification of a relevant investment or transaction (see Type of Transactions Subject to Screening), the government will start its screening

process. The maximum duration of the screening process is set out in the FDI Law (see Duration of the Screening Process).

Following its screening process, the government may decide to exercise its special powers based on the criteria set out in the FDI Law.

The screening process is co-ordinated by the Department of Administrative Co-ordination (a specific government office within the Presidency of the Council of Ministers), which is assisted by the Co-ordination Group. This group is composed of representatives of the Ministers involved in the screening process and, where necessary, members of other bodies whose knowledge is required for a deeper understanding of the relevant issues and interests.

Following a meeting with the Co-ordination Group, the Department of Administrative Co-ordination assigns the review of the notification alternatively to the Ministry of Economy, the Ministry of Defence, the Ministry of the Interior, the Ministry of Enterprises and Made in Italy (former Ministry of Economic Development), the Ministry of Infrastructure and Transport, the Ministry of Health, the Ministry of Agriculture, the Ministry of Environment, the Department of Information and Publishing, or the Department for Digital Transition. Which Ministry it is depends mainly on which Ministry is competent for the specific sector.

During the review, no specific procedural standing or rights of the parties involved in the transaction are expressly provided for by the FDI Law.

Moreover, the FDI Law excludes the right of any person who holds a qualified interest in the proceeding to have access to and make copies of the information and data contained in the documents filed in the context of the screening procedure.

The government's screening process operates on its own. If any other clearance or notification need to be made in relation to the same investment or transaction (for example, anti-trust), the parties must submit separate applications for the same transaction to the relevant bodies.

Duration of the Screening Process

All Strategic Sectors Aside From 5G Technologies

In all strategic sectors, other than 5G technologies, the screening process may take up to 45 days from the date of the initial notification.

Saturdays, Sundays, and other bank holidays will not be counted for purposes of this term (Article 6(7) of Decree of the President of the Republic no 35/2014 and Decree of the President of the Republic no 86/2014). However, in the past few years, the government seems to have taken the view that these provisions should be disregarded as not based on the primary statutory source (the FDI Law) and, therefore, the 45-day term does consist of calendar days.

During this period, the ministry in charge of the initial screening carries out its review of the proposed investment, resolution, or agreement and, taking into account the work of the Co-ordination Group, makes a proposal to the Presidency of the Council of Ministers. It also submits a draft of the government decree which will conclude the screening process (see Government Special Powers).

The FDI Law clarifies that certain sector-specific public authorities (that is, the Central Bank (*Banca d'Italia*), the Securities and Exchange Commission (CONSOB), the Pension Funds Authority (COVIP), the Private Insurance Authority (IVASS), the Transport Authority (ART), the Antitrust Authority (AGCM), the Communications Authority (AGCOM), and the Energy and Environment Authority (ARERA) must co-operate with the Co-ordination Group to facilitate its task, including by providing the necessary information (which may not be withheld on secrecy grounds).

The 45-day term may be extended, only once, by:

- Up to ten days, if the government requests additional information from the investor or the company.
- Up to 20 days, if the government makes enquiries with third parties, such as public authorities.
- Up to 35 days, if the Commission or any other EU member state wishes to issue an opinion or make comments, respectively, under the EU FDI Regulation. Such term may be extended by up to further 20 days in case the Commission or any such EU member state requires additional information to issue such opinion or make such comments.

If any of the above cases occurs, the 45-day term stops running from the request and starts running again once the information or document is supplied or the Commission or member state issues the opinion or makes the comment (or confirms that it no longer has the intention to do so).

If the initial notification is incomplete, the 45-day term does not start until the missing information is supplied.

5G Technologies

For 5G technologies, the initial duration of the screening process is 30 days. In this sector, "days" seem to clearly refer to calendar days (as opposed to business days) as there is no express indication in the FDI Law or any implementing regulation to the contrary.

The initial 30-day term may be extended by:

- An additional 20 days if a deeper analysis is required to assess possible vulnerability factors that may undermine the integrity and safety of the networks and data transmitted through them. That term may be further extended by 20 days in particularly complex cases.
- Up to ten days if the government requests information from the company.
- Up to 20 days if the government makes enquiries with third parties, such as public authorities.

If any of the above three cases occurs, the 30-day term stops running from the request and starts running again once the information or document is supplied.

If the initial notification is incomplete, the 30-day term does not start running until the missing information is supplied.

Effects of the Screening Process on the Transaction

Pending the screening process, the relevant transaction or investment may or may not be completed depending on the type of transaction, investment, and strategic sector.

Acquisition of Share Interests

Before the notification, and until the conclusion of the screening process, voting rights attached to the acquired shares are suspended.

If, however, the investor exercises those rights and their vote is decisive for purposes of the approval of the relevant resolution, the resolution (and the transactions carried out to implement it) is null and void. In addition, the investor may be subject to a pecuniary fine equal to twice the value of the transaction and, in any event, no less than 1% of the turnover booked in its latest financial statements.

Other Transactions

Pending conclusion of the screening process, any corporate resolutions, actions, or transactions to be carried out by the company holding the strategic asset or exercising the strategic activity cannot be implemented or completed.

Agreements on 5G Technologies

Pending the screening process, the applicant may not implement the annual procurement plan submitted to the government.

Should the applicant perform any of the contract envisaged under the plan before completion of the screening, the government may order to unwind the transaction at the notifying company's own expense.

Government Special Powers

As a result of its screening process, the government may exercise the following special powers:

- Decide to condition the relevant transaction or resolution on the investor or company assuming certain undertakings.
- Veto the transaction (in extreme cases).

The government may also (and in the vast majority cases does) decide to unconditionally clear the transaction.

Generally, if the government intends to exercise its powers, it should do so in the form of the imposition of conditions on the transaction or prescriptions on the investor or the target company. By contrast, the FDI Law provides that an outright veto of the transaction is a last resort solution that the government should use only in extreme circumstances. This would be the case, for example, if no conditions or undertakings imposed on the investor or target company would be sufficient to suitably address the underlying concerns of the government.

Aside from the 5G sector, to date, the government has exercised its veto power only eight times (once in 2017 and, more recently, four in 2021, twice in 2022 and once to-date in 2023).

For the energy, transport, communications, and the other critical sectors, the FDI Law also provides that the right of veto may be exercised only if the threat to public interest is not addressed by other sector-specific domestic or EU pieces of legislation.

If the government fails to exercise its powers by the end of the maximum term of duration of the screening process (see Duration of the Screening Process), the proposed transaction may be lawfully carried out.

Unless the simplified process applies (see Simplified Screening Process), the Ministry to which the initial screening was assigned (see Competent Regulatory Authority) will draft the proposed decree, which must specify any conditions or requirements imposed on the investor or the company, the criteria and mechanics for monitoring compliance with any conditions or requirements, and the penalties that will apply if the decree is infringed.

The decree is then submitted to the Presidency of the Council of Ministers and, if adopted, takes the form of a decree of the Prime Minister, which is not made public (except for a very high-level summary in the annual report to Parliament).

Simplified Screening Process

In case the Ministry to which the initial screening is assigned (see Competent Regulatory Authority) concludes that the transaction should be unconditionally cleared, and unless the investor requires otherwise, within 5 days of being informed of which Ministry is in charge, the matter is not submitted to the Council of Ministers and the transaction is cleared by means of the resolution of the Coordination Group, which is thereafter notified to the investor. Through such resolution, the Coordination Group may also issue recommendations.

Criteria for the Exercise of Government's Special Powers

The FDI Law sets out objective criteria that the government must consider when exercising its special powers. The criteria vary depending on the strategic sector and type of transaction.

For acquisitions of share interests in any of the strategic sectors, the government may permit the transaction exclusively on the basis that this is reciprocated. This means that, if the government ascertains that there is a lack of reciprocity between Italy and the country of origin of the prospective investor, the transaction may not be permitted, regardless of any further consideration.

Defence and National Security

As part of the screening process, the government considers whether the proposed transaction may pose a threat of serious harm to essential interests relating to defence and national security. The government must assess several aspects including:

- Whether the economic, financial, technical, and organisational characteristics of the prospective investor (including consideration of any financing conditions), as well as its business plan are suitable to carry on the business regularly, safeguard the country's technological portfolio, ensure security and continuity of procurements, and honour existing contractual commitments, with specific respect to contracts regarding national defence, public order, and national security.
- The presence of objective reasons to suspect the existence of any links between the prospective investor and third countries that do not respect democracy and the rule of law, or maintain relations with criminal or terrorist organisations, also taking into account the official position of the EU on these matters.
- Whether the foreign investor is controlled by a public sector administration of a non-EU country, including its armed forces, also as a result of significant public funding; whether that investor was involved in activities affecting security or public order of a member state; or whether there is a serious risk that that investor engages in illegal or criminal activities (these criteria are largely based on those set out in Article 4(2) of the EU FDI Regulation).
- For corporate resolutions or other actions or transactions by the company holding the strategic asset or exercising the strategic activity:
  - the relevance of the asset being transferred, whether as a result of the resolution or transaction the integrity of the national system of defence and national security would be preserved;
  - the security of the information regarding military defence;
  - the international interests of the state; and
  - the protection of the national territory and critical and strategic infrastructures.

5G Technologies

For agreements concerning the purchase of assets or the provision of services based on 5G technologies, in its screening process the government must consider whether there are any vulnerability factors that could undermine the integrity and security of the networks and data that are transmitted. It must take into account any relevant EU and international guidelines.

If prescriptions are unsuitable to address the national interest (taking into account the mentioned factors), instead of an outright veto of the plan, the government may grant a temporary authorisation of the plan taking into account the obsolescence, cost, and replacement timing of the relevant equipment, as well as the need not to delay the development of the 5G and other technology in the country.

Energy, Transport, and Communications; Other Critical Sectors

In the energy, transport, and communications, and the other critical sectors, the government will consider whether the proposed transaction may pose a threat of serious harm to public interests relating to the security and functioning of networks and plants and continuity in procurements. As regards acquisition of share interests, the government must also consider the impact on security and public order.

The government must assess substantially the same factors considered in the defence and national security sector (see Defence and National Security).

Ex Officio Powers

If the investor or the relevant company fails to notify the government of a transaction that is subject to the FDI Law, the government has the power to start the

screening process "*ex officio*". If this happens, the term of the screening process starts running from the date on which the government ascertains the breach of the notification obligation.

Penalties for Non-Compliance

If there is a breach of the obligation to notify the government of a relevant transaction or failure to comply with the government's final decision, under the FDI Law the government has the power to issue pecuniary fines and, in certain cases, to order the unwinding of the transaction.

Consequences of Breaching Investors' Obligations

The consequences of a breach will vary depending on the type of transaction and strategic sector.

Acquisition of Share Interests

If the investor does not comply with any conditions or commitments imposed by the government, the voting rights attached to the shares will be suspended for as long as the investor's failure to comply continues. Any resolutions adopted due to the decisive vote of those shares, as well as the transactions implementing those resolutions, will be null and void.

An investor that does not comply with any conditions imposed or commitments is liable to pay a fine equal to up to twice the value of the transaction and, in any event, no less than 1% of their turnover under its latest financial statements. The fine is without prejudice to possible further criminal liabilities.

If the government has vetoed an acquisition, but the acquisition has already been completed, the government may order the investor to sell the shares within one year. If the investor fails to do so, the government may apply to the courts to force the sale. Pending the sale, the investor cannot exercise any voting rights and any resolutions adopted with their decisive vote will be null and void.

Corporate Resolutions and Other Transactions

Failure to notify the government of the corporate resolution or other transaction carried out by the company owning or operating the strategic asset, as well as to comply with the decision made following the screening process, gives rise to a pecuniary fine on that company and other involved parties. This will be equal to up to twice the value of the transaction and, in any event, no less than 1% of the turnover of the involved parties as booked in their respective latest financial statements. The fine is without prejudice to possible further criminal liabilities.

In addition, any corporate resolutions or transactions made in breach of the FDI Law will be null and void and the government may order the relevant party to unwind the transaction at its own expenses.

5G Technologies

If an agreement envisaged under the annual plan has already been performed (*eseguito*) or is being performed when the government exercises its special powers, the government may order the company to unwind the transaction at its expense.

In addition, if the company has breached its obligation to notify the government, or to comply with any conditions set out by the government, it may be liable to a fine of up to 300% of the applicant's turnover. Any delay in complying with government order to unwind the relevant transaction can be punished with a further fine of one-twelfths of that fine for each month of delay.

These fines are without prejudice to possible further criminal liabilities.

Agreements entered into in breach of the FDI Law are deemed null and void by operation of law.

Remedies Available to Investors

The government's decisions may be appealed at first instance to the Administrative Court of Rome (*Tribunale Amministrativo Regionale* or TAR), and from there to the Council of State (*Consiglio di Stato*).

Remedies Available to Target Companies

In case of exercise of the government special powers (see Government Special Powers), the relevant company (that is, the target company which was meant to be the beneficiary of the investment, or the company that intended to carry out the transaction) may apply to the Ministry of Enterprises and Made in Italy to have access, on a priority basis, to certain forms of public support, notably:

- The Fund for the protection of employment levels and business continuity (*Fondo per la salvaguardia dei livelli occupazionali e la prosecuzione dell'attività d'impresa*), under Article 43 of Decree-Law no 34/2020, which is managed by Invitalia (a government agency) to make minority equity investments in companies in a situation of temporary distress to ensure the business continuity and the protection of employment.
- The Relaunch Fund (*Patrimonio Rilancio*), established and managed by Cassa Depositi e Prestiti and reserved to Italian companies (other than banks, financial or insurance companies) with a turnover of at

least Euro 50 million and presenting concrete growth perspectives to support their development plans.

- Development Contracts, which are instruments managed by Invitalia to support certain industrial investments with public funds, and Innovation Agreements, which fund certain industrial R&D projects,

In each of the above cases, provided that the applicable access requirements are met (that is, these support measures are not meant as indemnities to address the consequences of the failure to consummate the transaction that has been vetoed or abandoned because of the exercise of the government special powers under the FDI Law).

Industry Sectors in Italy Where Foreign Investment Triggers Additional Notification or Approval

Depending on the target of a foreign direct investment, in addition to the government screening process, the foreign investments may be subject to additional review or authorisation processes by sector specific authorities under domestic or EU legislation. These sectors include banking, insurance and investment services, telecommunications, broadcasting, gas networks, and electricity networks.

In certain fields, EU and domestic legislation set limits on the acquisition of controlling interests by non-EU persons. For example, with regard to commercial airlines, Article 4(f) of Regulation 1008/2008/EC on common rules for the operation of air services in the Community, provides that for a company to be granted (and maintain) an airline operating licence by the competent authorities in the relevant EU member state, EU member states or nationals of EU member states (or both), must at all times own at least 50% of the capital and effectively control that company.

Another example relates to television broadcasters. Article 3 of Law no 249/1997 provides that authorisations relating to private radio or television broadcasting may be granted exclusively to Italian or EU persons, and non-EU persons may only acquire control of those companies subject to reciprocity conditions.

Banking, Insurance, and Investment Services

Under the CRD V Directive (2013/36/EU as amended by Directive 2019/878/EU), the MiFID II Directive (2014/65/EU), the IFD Directive (2019/2034/EU), and the Solvency II Directive (2009/138/EC), (which in Italy have been respectively implemented by Article 19 of Legislative Decree no 385/1993, Article 15 of Legislative Decree no 58/1998 and Article 68 of Private Insurance Code and implementing regulations), there are specific requirements relating to proposed direct and indirect acquisitions of shares in a bank, investment services firm and insurer, which must be notified to the competent authority. These are:

- An interest equal to at least 10% of the target's share capital.
- An interest that would enable the acquirer to exercise a significant influence on the target.
- An interest that would grant control over the target.

The relevant competent authority must authorise an acquisition after assessing certain factors, including the reputation and financial soundness of the investor, and the ability of the target, following the acquisition, to comply with its obligations under the applicable supervisory regime.

Telecommunications

Under Article 11(2) of Legislative Decree no 259/2003, if a company authorised to operate a network or provide electronic communication services intends to transfer its authorisation to any third party (foreign or domestic), it must, in advance of the transaction, send a notice to the Ministry of Enterprises and Made in Italy. The Ministry may block the transfer if the prospective transferee does not meet the necessary requirements. In addition, Article 89 of the same decree sets out the requirements relating to an undertaking designated as having significant market power in one or more relevant markets, which intends to dispose of a substantial part, or all of, its local access network assets to a third party.

Broadcasting

Under Article 1(6(c), of Law no 249/1997, the AGCOM has the power to authorise the acquisition of an undertaking performing radio-television broadcasting activities. In addition, under Article 51 of Legislative Decree no 208/2021, concentration transactions must be notified in advance to the AGCOM, which decides whether the transaction may hamper media pluralism.

Gas Networks and Electricity Networks

Under EU law, natural gas and electricity transmission system operators (TSOs) are required to obtain a certification of compliance with applicable unbundling rules (for gas TSOs, Article 10, Directive 2009/73/EC and Article 3, Regulation (CE) 715/2009; for electricity TSOs, Article 52, Directive (EU) 2019/944 and Article 51, Regulation (EU) 2019/943). Where the certification

is requested by a TSO which is controlled by a person from a third country, the TSO must also demonstrate that it will not put at risk the security of energy supply of the member state and the EU (for gas TSOs, Article 11, Directive 2009/73/EC; for electricity TSOs, Article 53, Directive (EU) 2019/944).

Legislative Decree no 210/2021 (which has amended Article 36 of Legislative Decree no 93/2011) has implemented this provision for Terna SpA, the Italian electricity TSO, providing that, irrespective of the Commission's opinion, the Italian Energy Regulator can refuse the certification if the third country entity that has acquired control over Terna is likely to put at risk the security of energy supply of the Italian system or of the system of another EU member state.

Recently, certification requirements have also been introduced for storage system operators. Under Regulation (EU) 2022/1032 storage system operators – including those controlled by a TSO certified under Directive 2009/73/CE – must be certified by the national regulatory authority or another competent authority designated by a member state. Competent authorities may refuse certification where they conclude that the external influence over the storage system operator endangers the security of energy supply or any other essential security interest in the European Union or any member state. Competent authorities must assess:

- Ownership and supply or other commercial relationships of the storage system operator.
- Rights and obligations of the EU and member states with respect to a third country arising under international law or agreements concluded with those countries.
- Any other specific facts and circumstances of the case.

Anti-Money Laundering Laws

Under the AML Law, certain entities (including credit and financial institutions, as well as professionals such as auditors, external accountants, tax advisors, notaries public, and lawyers) are required to comply with certain obligations when, in the course of their business activities, among other things, they, carry out one of the following:

- Establish a business relationship.
- Carry out an occasional transaction that amounts to EUR15,000 or more (whether in a single transaction or in several transactions which appear to be linked).
- Make a transfer of funds (as defined in Regulation (EU) 2015/847 on the information accompanying transfers of funds), exceeding EUR1,000.

Notaries public and attorneys are subject to AML requirements when they take part in transactions for their client concerning the:

- Purchase and sale of real property or business entities.
- Management of client money, securities, or other assets.
- Opening or management of bank, savings, or securities accounts.
- Administration of contributions necessary for the creation, operation, or management of companies.
- Creation, operation, or management of trusts, companies, foundations, or similar structures.

In these cases, the mentioned subjects are required to comply with, among other things:

- **Customer due diligence requirements.** The encumbered subjects are required to:
  - identify the customer and the relevant beneficial owner (if any);
  - verify the identity of the customer and of the beneficial owner; and
  - assess and, as appropriate, obtain information on the purpose and intended nature of the business relationship; and
  - conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions are consistent with the obliged entity's knowledge of the customer, the business and risk profile (including where necessary the source of funds).
- **Record-keeping requirements.** The encumbered subjects must retain copies of the documents and information which are necessary to comply with the customer due diligence duties and original documents (or copies admissible in judicial proceedings) relating to transactions. This obligation applies for ten years after the end of a business relationship with the customer or after the date of an occasional transaction.
- **Suspicious transaction reporting.** Where the entities know, suspect, or have reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist

financing, the encumbered subjects must file a suspicious transaction report with the Italian Financial Intelligence Unit at the Bank of Italy (FIU). Obliged entities must refrain from carrying out the specific transaction before filing the report with the FIU and must keep the filing of a report with the FIU strictly confidential.

In addition, under the AML Law, all Italian companies and entities must obtain information regarding the identity of their beneficial owners and disclose that information in public registers (for example, Companies House (*Registro delle Imprese*)).

Registration and Disclosure of Ownership

There are no post-closing registration or disclosure requirements for shareholders, other than:

- The obligation of the directors of the target company to record the new shareholders in the shareholders' book of a public limited company (*società per azioni* (SPA)) (Article 2421(1), Civil Code). Italian law does not set a precise timing for the accomplishment of this obligation, which is normally performed as soon as possible after the change of ownership of the shares.
- Publication at the Companies' House (*Registro delle Imprese*) of the deed of transfer of equity interests in a limited liability company (*società a responsablità limitata* (SRL)), which is also a condition for the transfer to be enforceable towards third parties (Article 2470(1), Civil Code). The publication must be carried out by the notary public notarising the deed of transfer within 30 days of signing the deed (Article 2470(2), Civil Code).
- The obligation of the directors to file a list of quota holders of a private limited company (*società a responsablità limitata* (SRL)) and shareholders of non-listed SPAs at the Companies Register (*Registro delle Imprese*) as at the last day of the financial year, jointly with filing of the annual accounts (Article 2435(2), Civil Code). The filing obligation must be performed within 30 days from the approval of the annual accounts.
- The obligation of the purchaser of shares in a listed company in excess of 3% of the voting share capital (5% in case of a small-to-medium-sized company) to notify the target company and the Italian Securities and Exchange Commission (CONSOB) (*Article 120 of* Legislative Decree no. 58/1998), as well as in excess of 5%, 10%, 15%, 20%, 25%, 50%, 66.6%. and 90% (or any reductions below such thresholds) (*Article 117 of* CONSOB Resolution no. 11971/2021).
- The obligation of Italian companies and entities to obtain information regarding their beneficial owners and disclose this information in public registers (for example, the Companies House (*Registro delle Imprese*)) (Article 21 of the AML Law). This Official Journal of further implementing decrees following the decree adopted by the Italian Ministry of Economic Affairs, in consultation with the Ministry of Enterprises and Made in Italy (Ministry of Economic Development) on 11 March 2022.

Practical Implications of Foreign Investment Restrictions on Private M&A Transactions

Foreign investors planning to make an investment in an Italian company owning or operating a strategic asset and, which is, therefore, within the scope of the FDI Law should insist that the completion of the government screening process and issuance of the necessary authorisation under the FDI Law be a condition precedent to closing under the relevant acquisition agreement (see Duration of the Screening Process). These agreements typically contain other conditions precedent so the timing of closing would not be necessarily delayed by the need to seek and obtain the government authorisation.

The possible involvement of the Commission or other EU member states under the EU FDI Regulation may impact the timing by potentially delaying the issuance of the authorisation, as the government would need to wait for the Commission or EU member state to provide its opinion or comments, respectively (see EU FDI Regulation).

Often, parties to these agreements negotiate the content of the FDI condition precedent, such as whether the agreement would be fulfilled only in case of an unconditional authorisation or also in case of conditions or other prescriptions imposed by the government. In certain circumstances, these conditions can even take the form of "hell-or-high water" clauses (under which the investor undertakes to proceed with closing regardless of how burdensome the conditions or prescriptions are).

Prescriptions usually include:

- The requirement not to delocalise certain key activities (such as research and development) or dismiss or transfer key employees, and not to transfer abroad strategic technologies.

- The requirement to appoint Italian nationals on certain strategic positions (particularly in the defence and national security sector).
- The requirement to carry out investments necessary to ensure the security of the networks (for example the energy, transport, and communication networks).

However, prescriptions imposed by the government should not take the form of divestitures (as is often the case for antitrust remedies).

If one party insists that there is no need to obtain the government authorisation, the other party may seek some protection by requiring a warranty to that effect and an indemnity in case of breach.

However, this may prove insufficient. If the transaction does require the government authorisation, failure to submit the notification, as well as completion of the transaction without authorisation, may result in a pecuniary fine on both parties and also impact the validity of the transaction (see Penalties for Non-Compliance).