A Guide to Takeovers in Italy
At the forefront of innovation
We are the first “Magic Circle” that opened offices in Italy, in 1993, and have long-standing experience in the M&A market in Italy.

Our expertise
We represent high profile multinational corporations and financial institutions on the full range of M&A transactions – including public takeovers, mergers and cross-border acquisitions, strategic alliances and joint ventures.

Depth of skills and resources
Our Italian practice benefits from some of the most highly regarded and well-known professionals. It includes 35 lawyers, of whom 5 partners and one counsel.

Global reach
We draw on our international experience and integrated global approach to promote the highest quality solutions and advice.

For further information about this Guide and our Italian M&A capabilities, please refer to the following key contacts

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The Italian takeover regime has been under the spotlight of regulators in the past few years, following the Implementation of the EU Takeover Directive. Highly structured laws and regulations have been issued to provide an improved and more detailed regulatory framework in the context of evolving financial markets.

This Takeover Guide wishes to provide preliminary guidance as to the rules applying to tender offers over Italian listed securities. It explains the different categories of tender offers, the general process and the requirements to implement a takeover and other related matters.

We have represented many of the leading national and international corporations and financial institutions on many of the largest and most innovative M&A transactions around the globe. Whenever a listed entity is involved, understanding takeover regulations is crucial, both to structure the transaction properly, and to achieve success. With this Guide we aim at sharing with our best clients our experience in public takeovers in Italy. Because of the increasingly cross-border nature of M&A transactions, this publication also includes a Section discussing the application of US securities laws to Italian public takeovers.

The Takeover Guide is up-to-date as of May 2012, but the legislation or market practice described herein is subject to frequent changes and evolves over time. This Takeover Guide should be considered only preliminary general guidance, and is not intended to be legal advice or to substitute legal assistance during the takeover process.

To find out more our Italian corporate practice and experience in this field, please contact us.

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1. Overview of regulatory framework: “voluntary” and “mandatory” tender offers

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1.1 Regulatory framework

Takeovers of companies whose securities are listed on the Italian regulated market (each, the “Target”) are governed by the following laws and regulations:

(a) Legislative Decree no. 58 of 24 February 1998, as amended (the “Draghi Law”), sets forth general rules on takeovers, identifying the different types of offers. The Draghi Law was amended in 2007 and again in 2009 to reflect the implementation in Italy of the EU Takeover Directive no. 25/2004 (the “Takeover Directive”); and

(b) Consob Regulation no. 11971 of 14 May 1999 as amended, (the “Consob Regulation”), is a set of secondary rules issued by the Italian companies regulator, Commissione Nazionale per le Società e la Borsa (“Consob”), to implement certain general principles of the Draghi Law. The Consob Regulation was amended in 2011 to implement the Takeover Directive at the secondary level and again in February 2012.

This Takeover Guide takes into consideration the amendments to date to the Draghi Law and the Consob Regulation reflecting the implementation in Italy of the Takeover Directive.

1.2 Scope of application of takeover regulations

Italian takeover laws and regulations apply to:

(i) companies with registered office in Italy whose securities are traded on an Italian regulated market;

(ii) companies with registered office in an EU Member State whose securities are traded both on an Italian and on an EU regulated market that were (i) either listed first on the Italian regulated market, or (ii) were simultaneously listed on both markets, and chose Consob as the competent independent authority; and

(iii) companies with registered office in an EU Member State whose securities are traded both on an Italian and on an EU regulated market that were (i) either listed first on the Italian regulated market, or (ii) were simultaneously listed on both markets, and chose Consob as the competent independent authority; and

(iv) Italian companies with securities traded on a regulated market of another EU Member State.

For (ii) and (iii) above, the Italian takeover rules apply to the price and procedure of the takeover, with particular regard to disclosure duties.

For (iv) above, the Italian rules apply with regard to defensive measures and disclosure duties vis-à-vis employees.

The provisions regarding passivity, breakthrough and reciprocity rules and protection of employees do not apply to takeovers which:

■ do not concern “securities” which grant voting rights in the ordinary or extraordinary shareholders’ meeting;

■ are launched by persons who already hold the majority of voting rights exercisable in general meetings; or

■ concern treasury shares.

In addition to the above, the Draghi Law and the Consob Regulation provide for certain transparency and procedural rules that are generally applicable to any tender offer of securities (prodotti finanziari) addressed to the general public in Italy.
1.3 Types of tender offers: “voluntary” tender offers and “mandatory” tender offers

Italian public tender offers can take a variety of forms, such as offer for cash (offerta pubblica di acquisto or OPA), stock swap (offerta pubblica di scambio or OPS) or a combination of these (offerta pubblica di acquisto e scambio or OPAS).

Buy-out tender offers in Italy may be divided into two main categories:

(i) voluntary buy-out offers, which may be launched voluntarily by the bidder for any type or number of securities, either on a hostile or friendly basis; and

(ii) mandatory buy-out offers, which must be launched by any person or entity who has acquired (also by acting in concert with other person/s or entity/ies) securities granting voting rights over the appointment or revocation of the directors or members of the supervisory board of the Target in excess of certain percentages pre-defined in the Draghi Law.

The provisions applying to voluntary offers are also generally applicable to mandatory offers. However, there are two main differences between voluntary and mandatory offers:

(1) Price

- The Price in voluntary tender offers is freely determined by the bidder.
- The Price in mandatory tender offers cannot be freely determined by the bidder and cannot be lower than the highest price paid by the bidder (or by persons acting in concert with it) for the same securities over a period of twelve months before the offer is announced (see below Paragraph 3.3.2).

(2) Conditions

- Mandatory tender offers cannot be subject to conditions.
- Voluntary tender offers can be structured to be conditional upon certain events (see below Paragraph 2.1.3).
Our partners in Italy
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Clifford Chance Global M&A Series

The Clifford Chance Guide to Takeovers in Italy is part of our Global M&A Series. These publications include overviews of the takeover regimes of public companies in key jurisdictions, including UK, United States, France and Singapore. We are adding new publications to the series regularly.

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