The Acquisition and Leveraged Finance Review

Fourth Edition

Editor
Christopher Kandel

The Law Reviews

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

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PREFACE

Acquisition and leveraged finance is a fascinating area for lawyers, both inherently and because of its potential for complexity arising out of the requirements of the acquisition process, cross-border issues, regulation and the like. It can also cut across legal disciplines, at times requiring the specialised expertise of merger and acquisition lawyers, bank finance lawyers, securities lawyers, tax lawyers, property lawyers, pension lawyers, intellectual property lawyers and environmental lawyers, among others. An additional area of complexity and interest at the moment comes out of market forces that are driving convergence in the large cap leveraged financings between loan and high-yield bond products generally, as well as between different markets (particularly pressure on markets outside the United States to conform to terms available in the US market but sometimes also vice versa), and increasingly the market is debating whether to adjust for differences in bankruptcy, guarantee or security regimes, and frequently deciding not to.

The Acquisition and Leveraged Finance Review is intended to serve as a starting point in considering structuring and other issues in acquisition and leveraged finance, both generally but also particularly in cases where more than just an understanding of the reader's own jurisdiction is necessary. The philosophy behind the sub-topics it covers has been to try to answer those questions that come up most commonly at the start of a finance transaction and, having read the contributions, I can say that I wish that I had had this book available to me at many times during my practice in the past, and that I will turn to it regularly in the future.

Many thanks go to the expert contributors who have given so much of their time and expertise to make this book a success: to Nick Barette, Gideon Roberton and Gavin Jordan at Law Business Research for their efficiency and good humour, and for making this book a reality; and to the partners, associates and staff at Latham & Watkins, present and past, with whom it is a privilege to work. I should also single out Sindhoo Vinod, Aymen Mahmoud, Angela Pierre and Oliver Browne for particular thanks – their reviews of my own draft chapters have been both merciless and useful.

Christopher Kandel
Latham & Watkins LLP
London
August 2017

Chapter 13

ITALY

Andrea Novarese and Marcello Bragliani[1]

I OVERVIEW

The Italian banking market remains subject to significant limitations applying to intermediaries and investors who might be interested in investing resources and extending loans to Italian borrowers. However, most recently the Italian legislator has taken some steps intended to soften the general requirements of a banking licence and open the possibility for capital market investors and intermediaries to invest and benefit from security typically reserved for banks. In addition, a new kind of security, the 'non-possessory pledge', has recently been introduced in the Italian legal framework to facilitate the granting of credit to companies without requesting them to lose the possession and disposal of the secured assets.

II REGULATORY AND TAX MATTERS

i Licensing and regulatory aspects

Unlike a number of other EU countries, Italian law classifies lending activity, even if not conducted in connection with the taking of deposits from the public, as a restricted one. As a result, any person performing lending activity on a professional basis in Italy must be an authorised bank or financial intermediary. Non-Italian banks can lend under the following conditions: (1) non-EU banks can lend directly in Italy provided that they have obtained authorisation from the Bank of Italy, and (2) EU banks and financial institutions can lend in Italy under the right of establishment or free provision of services regime, provided that they have been properly authorised in their country of origin under the 'passport regime'. In addition, Law Decree No. 91/2014 (Decree 91), aimed at setting out measures for economic growth, introduced significant changes that increased the number of institutions permitted to engage in lending activity. As a result of these changes, Italian insurance companies, SACE SpA, Italian securitisation vehicles (Law 130 SPV), Cassa Depositi e Prestiti SpA[2] and certain EU credit collective investment institutions are now also authorised to exercise lending activity; however, it should be noted that several key elements of Decree 91 need to be interpreted in light of the relevant implementation regulation, which has not yet been issued by the relevant authorities.

1 Andrea Novarese and Marcello Bragliani are partners at Latham & Watkins LLP. Special thanks to Maria Cristina Storchi, partner at Latham & Watkins LLP, for her assistance with reference to Section VI 'Acquisitions of public companies' and to Davide Camasi, associate at Latham & Watkins LLP, for his help.

2 Cassa Depositi e Prestiti is a joint-stock company under public control, with the Italian government holding 70 per cent and a broad group of bank foundations holding the remaining 30 per cent.

At a practical level, Italian law requires security interests to be registered in the name of each lender, which means that the security must be retaken or reregistered when a lender transfers its interest in a loan to another lender, whether as a result of syndication or otherwise. It should also be noted in this respect that there is no 'security trust' concept to facilitate syndicated structures and that the parallel debt structure is untested before Italian courts.

The ability to operate in Italy and to benefit from full security can be achieved by non-licensed entities through the adoption of 'fronting structures' whereby a licensed lender based in Italy makes available to an Italian borrower certain credit facilities under the terms of a credit agreement, while other lenders participate by way of back-to-back loans or back-to-back guarantees under the terms of separate agreements (similar to participation or sub-participation agreements).

In order to increase market transparency and accountability, lenders and intermediaries must also carry out certain 'know your customer' checks similar to the requirements in other jurisdictions.

ii Recent developments

Law Decree No. 18 of 14 February 2016 (Decree 18) provides new rules that will expressly allow EU alternative investment funds (AIFs) to 'invest' in loans (where 'invest' also includes origination) to non-retail consumers, subject to certain conditions.

In order to be eligible, the relevant AIF would have to: (1) be authorised to invest in loans in such AIF's jurisdiction of incorporation and (2) be formed as a closed-end fund with rules comparable with those of an Italian AIF, including with respect to risk mitigation and diversification limits (e.g., lending limits).

Prior to making the loan, the manager of the AIF should notify the Bank of Italy of its intention to 'operate' in Italy and, within 60 days of such notice, the Bank of Italy has the discretion to stop the proposed investment.

Please note that the Bank of Italy must issue rules and regulations for the implementation of Decree 18, including rules requiring AIFs to register with the Central Credit Register, which the AIFs would be permitted to do through licensed banks or financial intermediaries. Until the Bank of Italy issues such rules and regulations the new regime is unlikely to be workable in practice.

iii Tax

Withholding tax

A 26 per cent withholding tax rate (or the different rate provided for by applicable tax treaties) is applicable on interest paid by Italian residents to non-Italian residents. Payments to Italian residents are not subject to any withholding tax and no withholding tax applies on interest paid to and beneficially owned by Italian resident banks or Italian permanent establishments of foreign banks. The sub-participation of a loan is generally 'transparent' for Italian tax purposes and interest is subject to withholding tax as if it was paid directly to the participant.

Italian tax law provides, however, for certain additional exemptions from this withholding tax, and Decree 91 introduced important exemptions for EU banks, insurance companies incorporated and authorised pursuant to laws enacted by EU Member States and certain EU credit collective investment institutions, *inter alia*. By way of example, no withholding tax applies on interest paid on medium-term loans (i.e., loans having a duration longer than 18 months) advanced to Italian 'enterprises' by:

a banks established in the EU – including Italian banks or Italian permanent establishments of non-resident banks;

b insurance companies incorporated and authorised pursuant to laws enacted by EU Member States;

c foreign institutional investors (e.g., investment funds or investment companies) established in 'white list' countries (both EU Member States and non-EU countries) provided they are subject to regulatory supervision in the country in which they are established – regulatory supervision is deemed to exist where activities are subject to continuous controls pursuant to the laws of the state in which they are resident.

Other tax considerations[3]

Registration taxes, mortgage tax, stamp duty and substitute taxes should also be taken into consideration. In particular, please note that substitute tax – equal to 0.25 per cent of the aggregate principal amount of the incurred debt – could be applicable at the option of the borrower only to medium-long-term loans (i.e., loans having a duration longer than 18 months); if not applicable, likely other Italian registration or stamp taxes apply depending on the specifics of the security which can therefore be significantly more costly. Proper opinion by fiscal advisers should be obtained regarding these matters.

iv Achieving deductibility of interest expense against operating income

In general terms, pushdown of acquisition financing is implemented in two phases. Initially, short-term debt is made available to a newco controlled by the sponsor to acquire the target entity. To avoid any financial assistance issues, this debt is likely to be supported only by a share pledge over the newco and the target. After perfection of the acquisition, a direct (or reverse) merger between the newco and the target takes place, subject to a specific procedure that also contemplates a debt sustainability test at the level of the merged entity. In this second phase, the short-term debt is transformed into long-term debt that can be supported, in addition to the share pledge over the merged entity, by security interests over any significant asset of the borrower.

From a tax perspective, please note that in the past, the Italian tax authority has in certain instances challenged the deductibility of interest expenses incurred in connection with acquisition financing for leveraged buyout (LBO) transactions culminating in the merger of the bidco and the target. To date, in light of the clarifications provided by the Italian revenue agency's circular letter 6/E of 30 March 2016, interest expenses incurred in connection with the acquisition financing for LBO transactions should be considered, in principle, as having business purpose and therefore be deductible. Abusive transactions are still subject to tax authority review.

v Other major regulatory concerns

Usury laws are strict in Italy and require the applicable interest rate not to exceed a certain threshold. In order to avoid any issues, the parties usually agree contractually that if, pursuant to a change in law or in the official interpretation of Italian usury laws, the applicable rate of interest or default interest at any time is deemed to exceed the maximum rate permitted by Italian usury laws, then the relevant interest rate (or default interest rate) is automatically

3 Please refer to Section II.iv, *infra*, for further comments relevant from a tax perspective.

reduced to the maximum interest rate permitted pursuant to such legislation, for the period during which it is not possible to apply the interest rate as originally agreed between the parties.

Other issues that can arise for debt finance in Italy include issues under data protection and data retention laws, and transparency rules and other regulations that impose certain requirements, formalities and duties for the exercise of banking activities and provision of financial services in Italy. These are outside the scope of this chapter and are not addressed further.

III SECURITY AND GUARANTEES

i Forms of security and guarantees

The usual kinds of security and guarantees created under Italian law in the context of a leveraged financing are the following:

Mortgage

A mortgage is an *in rem* security interest created on registered property such as real estate registered in public land registers, and entitles the mortgagee to enforce his or her security interest with priority over other creditors. As a consequence, any proceeds obtained from enforcing the mortgage must be used to repay the mortgagee up to the amount that is due.

Security over real estate may only be taken in the form of a mortgage that is registered with the land register. In contrast to certain other jurisdictions, a mortgage does not create or involve upon perfection any transfer of ownership of the real estate.

Mortgages can also be granted over specific tangible moveable property that is registered with official registries, such as motor vehicles, ships and aircraft.

Specific formalities are required for mortgages, including the execution of a notarial deed of mortgage and its registration.[4]

Real estate mortgages are enforced through a court-administered enforcement procedure which requires the secured creditor to demonstrate its right to the enforcement (e.g., notarial deed or enforceable court order) and submission by the secured creditor of a notice through a court bailiff demanding payment within a specified deadline and warning the debtor that, in the event of non-payment, an enforcement proceeding will be commenced. The enforcement may be made either by auction or direct sale with court approval.

Pledge

A pledge is an *in rem* security interest created over financial instruments (e.g., equity stock and debt instruments), cash deposits, receivables and intellectual property rights. The requirements for creation and perfection of a pledge differ depending on the assets being

4 Special formalities apply when granting mortgages over ships and aircraft. *Inter alia*, should a mortgage be taken over an aircraft or a ship pursuant to Italian law, the relevant security document must be in the form of a notarial document and the mortgage must be registered at the national aeronautical register or the navy register. Furthermore, should the security be taken with regard to an aircraft under construction, the mortgage must also be registered at the relevant construction register. In addition, please note that there is no unanimous view among academics with regard to the legal framework that is applicable to pledges on trains, as a specific discipline appears to be lacking at an Italian level.

charged but generally involve the delivery of the pledged assets (or delivery of the document which confers rights over the assets) to the pledgee or to a third-party custodian appointed by the parties.

In the case of a pledge over quotas of an Italian limited liability company, the relevant security document must be entered into in notarial form owing to the requirement for registration of the security interest with the competent companies' register; this formality is however not required for a valid pledge over the shares in a joint-stock company. In the case of a pledge over financial collateral (securities and cash deposits), the pledge is formalised in a simplified way introduced by Decree No. 170/2004, implementing the Financial Collateral Directive.[5] Should a pledge be created over intellectual property, there is also a requirement for notarising the security document and registering the security with the Italian office for trademarks and patents. With regard to copyright, it is also considered advisable to take security over the receivables arising from its use.

A pledge creates a privileged claim, in most cases requiring the pledgee to take action to realise the security following the occurrence of an enforcement event. This can include a private sale, enforcing the security by means of a court procedure, serving notice on the debtor through a court bailiff demanding payment of the debt or, where applicable, an appropriation in accordance with Decree No. 170/2004. The object of the pledge can only be appropriated up to the amount due to the privileged creditor, while any surplus value must be returned to the debtor.

Non-possessory pledge

Through Law No. 119/2016, the Italian legislator has recently introduced the non-possessory pledge, a form of security through which the pledgor maintains the possession of and the faculty to utilise the pledged assets.

The major difference between the non-possessory pledge and the *in rem* pledge concerns the perfection formalities. As regards the former, there is a need to register the non-possessory pledge in a special register, to be kept by the Italian Tax Authority and which is still to be fully implemented. On the other hand, as mentioned in the previous paragraph, the traditional pledge generally requires the handover of the pledged assets to the secured creditors.

In addition, such non-possessory pledge, which can be used to secure present or future credit (up to an agreed amount, which has to be expressly stated in the related deed of pledge), can be granted only over non-registered assets allocated for business purposes, which are determined or can be determined also with reference to product categories or overall value.

Assignment of receivables by way of security

Contractual receivables (e.g., claims for services released or goods sold, intercompany receivables, sponsorship receivables, dividends) can also be assigned by way of security to the secured creditor or assignee. This kind of security requires, for the perfection of the security interest, a notice to be served to the debtor by a court bailiff in order to establish the certainty of date, or alternatively the debtor may acknowledge the assignment with an instrument clearly stating the certainty of date.

5 Directive 2002/47/EC.

Special lien

A special lien is a security interest that can be granted over various assets such as existing and future plant, equipment and machinery, licences and instruments, and also over existing raw materials and receivables arising from disposal of any of these assets. In contrast to other kinds of security interest, this can only be created to secure medium-long term facilities (i.e., facilities having a maturity term exceeding 18 months) granted by banks licensed to carry out business in Italy or in favour of the representative of the bond holders in the context of bonds that are of medium-to-long-term tenor, issued by joint-stock companies, subscribed by qualified investors and approved for trading only among such qualified investors.

Formalities for this kind of security include a written agreement in notarial form describing the assets and the main terms and conditions of the secured loan, together with transcription of the agreement with the relevant court register or registers as applicable.

Guarantee or suretyship

A guarantee provides a guarantee of payment obligations (including future obligations) up to a maximum specified amount. It is a consensual quasi-security arrangement frequently provided by parent companies in the interest of subsidiaries. It is generally obtained by a creditor in addition to other forms of *lato sensu* security or collateral used to secure indebtedness.

The guarantor might obtain the *beneficium excussionis*, pursuant to which it will be required to pay only subject to previous unsuccessful enforcement against the debtor. It should be noted that, according to the general principles of Italian law, guarantors and original debtors are jointly liable. Therefore, should a guarantor seek, from a commercial perspective, to obtain the aforementioned *beneficium excussionis*, specific provisions must be inserted in the relevant agreement.

First demand guarantee

A first demand guarantee is a guarantee of payment obligations up to a maximum specified amount, payable on first demand. Should the guarantor be required to pay, the guarantor is not entitled to raise any defences, including those that are based on the underlying relationship from which the credit originated. Therefore, should the guarantor receive a claim that is formally valid (i.e., presented according to the provisions included in the relevant agreement), there is no basis for rejection of payment.

ii Limitations on the grant of security and guarantees

Financial assistance

Italian companies are restricted from directly or indirectly providing financial assistance by any means for the acquisition of or subscription for its own shares or quotas or for the acquisition of or subscription for shares or quotas owned by its direct or indirect controlling parent. Financial assistance for the refinancing of indebtedness originally incurred for a third party's acquisition of or subscription for its own shares or quotas or those of any entity that (directly or indirectly) controls the Italian company may also be construed as a violation of applicable Italian law. Any loan, guarantee or security given or granted in breach of these provisions is null and void.

There is a limited exemption to these restrictions which requires that the board of directors may pass a resolution that approves a report:

a outlining the legal and financial terms of the transaction to be put in place;
b outlining the underlying business interests and corporate benefits pursued;
c outlining the risks characterising the transaction considered;
d providing an arm's-length analysis especially focusing on the perimeter of the security package to be granted, and the relevant terms and conditions of the financing; and
e providing an assessment of the creditworthiness of the party receiving financial assistance.

Finally, the amount of the financing or guarantees may not exceed the limit of distributable profits and available reserves of the company registered in its last approved financial statements.

Corporate benefit

The granting of a guarantee or security for obligations undertaken by companies belonging to the same group requires, particularly, that the relevant Italian company, as guarantor or chargor, obtains a direct or indirect tangible benefit from the transaction in the context of which the issuance of the guarantee or security is granted.

The Italian legal principles on corporate benefit apply equally to downstream, cross-stream and upstream guarantees and security granted by Italian companies. While the existence of corporate benefit for a downstream guarantee or security is often clear, the validity and effectiveness of an upstream or cross-stream guarantee or security depend on the existence of a real and adequate benefit in exchange for the granted guarantee or security and it is necessary to demonstrate that the issuance of the guarantee or security falls within the corporate purpose of the Italian company and is in its corporate interest. The existence of a corporate benefit for an Italian entity is ultimately a matter of fact – rather than a legal concept – to be carefully evaluated by the management of the relevant Italian guarantor or chargor, and the guaranteed or secured amount must not materially exceed the financial capability of the Italian guarantor or chargor. Finally, the maximum guaranteed amount under the guarantee or security must be indicated expressly.

iii Security agents

Security agents feature in many syndicated financings and securitisations in the Italian market. However, there is no 'security trust' concept under Italian law, and the 'parallel debt' structure is untested and likely to be subject to court scrutiny in a bankruptcy scenario.

iv Floating charge

The newly enacted Law No. 119 of 30 June 2016 (Law 119) has introduced the 'floating charge'. In particular, it provides that:

a the assets subject to security remain in the possession of the relevant company;
b the security can charge non-tangible assets;
c the security may charge receivables arising from, or otherwise pertaining to, the chargor's business;
d secured creditors are entitled to bring judicial action for urgent and interim protection, in the event of misuse of the charged assets;

e an enforcement notice to the chargor and borrower can be given directly by the secured creditors by certified email, as opposed to going through the court procedure provided by the Italian Code of Civil Procedure;
f the chargor and borrower can object within five days of an enforcement notice, as with common possessory pledges;
g the chargor's obligation to deliver the charged assets to the secured creditors within 15 days of receipt of the enforcement notice for appropriation purposes and pursuant to their estimated value;
h clarifies that the security will prevail over enforcement proceedings brought by unsecured creditors; and
i the deeds must be executed in notarial form and registered with the competent Italian authorities.

IV PRIORITY OF CLAIMS

i Liquidation of a company's assets

The order of distribution of a bankrupt company's assets by a receiver is governed by the principle of equality among creditors – except for priority creditors (the principle of proportionality and ranking) – and is as follows:
a super-senior credits owed to creditors holding mortgages on immoveable assets or pledges of moveable assets, with reference to those proceeds arising from the sale or liquidation of the relevant charged assets;
b deductible credits arising on occasion of, or in relation to, the insolvency procedure or that are considered super senior by special provisions of law. Credits arising during the procedures that are liquid and collectable, and whose preference and amount are undisputed, may be satisfied outside the distribution process if the assets are deemed sufficient to satisfy all the holders of those claims;
c privileged and secured credits, including credits of the Italian tax authority, social security administrator or credits owed to creditors holding mortgages on immoveable assets or pledges on moveable assets, only with reference to the portion of their claims not reimbursed or repaid by means of the sale or liquidation of the charged assets;
d unsecured credits: these creditors usually receive a *pro rata* share of the distributed funds (unless available resources are sufficient to repay every unsecured creditor), ranking after privileged and secured credits; and
e shareholders' credits (shareholders normally receive distributions only if funds are available after satisfaction of the foregoing); holders of preferred shares take priority over ordinary shareholders.

The date of execution or perfection of each security interest determines its relative priority in relation to other security interests; applicable law determines relative priority between privileged credits. It should be noted that, according to Italian law, any exception to the *par condicio* among creditors must be linked to a specific legislative provision, and no priority rights other than those expressly provided for under Italian legislation can be created.

ii Subordination

Structural subordination

Structural subordination is commonly used in Italian financings and is achieved through the structure of the financing transaction rather than by any express contractual agreements between lenders and borrower or guarantor. Generally, the senior lender makes a loan to the operating company that generates the flow of funds needed for repayment, while the borrower of the subordinated lender's loan instead is a holding company that owns limited or no assets other than the shares that it holds in the operating company.

Contractual subordination

Contractual subordination is an agreement in which junior creditors agree they will not receive repayment of their claims unless the senior creditors have been repaid. Contractual subordination should be enforceable in a bankruptcy scenario provided that the agreement documenting the subordination is not subject to a clawback action carried out by the relevant receiver on the basis that it was entered into within the relevant 'suspect periods' set out in the Italian bankruptcy law. Because there has not been case law enforcing intercreditor agreements to date, intercreditor agreements are often used together with structural subordination, and among other things deal with senior creditors' ability to enforce security by way of disposal of the business, related releases of the security, and related releases of subordinated creditors' debt and guarantee claims.

V JURISDICTION

A contractual jurisdiction clause in an Italian law agreement will usually provide for either 'exclusive' or 'non-exclusive' jurisdiction. The Italian Supreme Court has upheld the validity of this type of clause, although mandatory provisions of law – i.e., provisions regarding specific enforcement proceedings – apply independently from contractual jurisdiction clauses.

VI ACQUISITIONS OF PUBLIC COMPANIES

Any loan agreement financing the acquisition of a public company must have no unsatisfied conditions precedent to draw down simultaneously with the announcement of the offer; the only permissible exception entitles the debt provider to withdraw its finance (during the 'certain funds' period) relating to the solvency of the bidder for failure to satisfy the conditions under which the bid is made.

i Fund requirements

The need to ensure that any funds needed for the bidder to pay the shares tendered to the offer are available to it on a 'certain funds' basis is addressed by the National Commission for Companies and the Stock Exchange (Consob) Regulation. This mainly requires the cash consideration to be secured by a cash confirmation letter (CCL) in a form acceptable to Consob. Such CCL usually takes the form of a letter from the debt providers confirming that the relevant funds are available under the relevant tender offer facility.

ii Mandatory offers triggered by a share pledge or enforcement of a share pledge

According to Italian laws regulating public acquisitions, a mandatory takeover bid is required when a person has acquired more than a certain percentage of the voting securities (i.e., listed shares and financial instruments, carrying voting rights to be exercised in the context of shareholders' meetings to appoint or remove the directors or the supervisory board of a listed Italian company). In particular, mandatory offers are required in the following circumstances.

Offer for all the outstanding voting securities of a listed Italian company

Any person who (alone or with any concert party) acquires, through making purchases, 30 per cent or more of issued share capital or the issued securities that carry voting rights of a listed Italian company, must launch an offer for all the remaining voting securities. The relevant threshold for a tender offer has been lowered to 25 per cent of the share capital in companies other than small and medium-sized listing companies when there are no other shareholders owning more than 25 per cent of such share capital. Special care should be taken with respect to shares that enjoy increased voting rights and multiple voting rights, introduced by Decree 91. In particular, such shares have to be taken into account to verify whether the relevant thresholds are exceeded.

Incremental offer

The same rule also applies to any person who (alone or with any concert party) already owns more than 30 per cent of the voting shares, but does not own the majority of voting rights generally exercisable at a meeting of ordinary shareholders in such issuer. If that person acquires within a 12-month period (either through direct acquisition or by exercise of subscription or conversion rights acquired during the period) a further shareholding representing more than 5 per cent of the company's voting securities, such person must also launch a mandatory offer for all the remaining voting securities.

Sell-out

Minority shareholders in the target have the right to sell their voting securities to the majority shareholder in either of the following scenarios:

a where, following an offer for 100 per cent of the target's voting securities, the offeror comes to own 95 per cent or more of the voting securities in the target; or

b where any person comes to own more than 90 per cent of the target's voting securities listed on a regulated market, unless such person sells a sufficient proportion of the target's voting securities to ensure regular trading in the voting securities within 90 days.

iii Minority squeeze-outs

Under Italian law, an offeror has a statutory 'squeeze-out' right to acquire minority shareholdings where, following an offer for 100 per cent of the voting share capital of a target company, it comes to own a shareholding equal to at least 95 per cent of the voting securities of the target. This right can only be exercised if the intention to do so was set out in the offer document, and within three months of the date of closing of the offer. Where the target company has different classes of voting securities, the rights of the offeror can only be exercised for each class of securities in which the 95 per cent threshold has been reached.

iv Disclosure requirements for financing terms (including flex and fees)

The main disclosure requirements are as follows: an announcement of the offer containing a minimum set of information, including the method of financing the offer; guarantee of payment (included within the key documents relating to the offer); and the date and method for settlement of the consideration, together with details of any guarantees of due performance of the payment obligation.

v Confidentiality requirements and other restrictions

If a debt provider proposes to syndicate its loan to the bidder to persons who are also shareholders in the target company, Consob must be consulted to ensure that there is no breach of the rules concerning favourable conditions being offered to some but not all shareholders.