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Deal Points



CELEBRATING 40 YEARS OF SHARING BEST PRACTICES FOR M&A TRANSACTIONS

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Italy's New Rules on Cross-Border Corporate Transactions: An Overview of the Reform Legislative Decree No. 88/2025

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On June 23, 2025, Legislative Decree No. 88 of June 19, 2025 (the "**Reform Decree**") was published in the Italian Official Gazette. The Reform Decree introduces supplementary and corrective provisions to Legislative Decree No. 19/2023 (the "**Decree 2023**"), which had transposed Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border transformations, mergers and demergers into Italian law.

The Reform Decree entered into force on July 8, 2025, and applies to cross-border and international extraordinary corporate transactions (i.e., transformations, mergers and demergers) where the relevant transaction plan had not yet been published by the Italian company involved as of that date.



The Reform Decree is a further step in Italy's legislative effort to align its domestic regime with the evolving EU corporate mobility framework and to harmonize its corporate legal framework with EU legislation, particularly in the area of cross-border transactions. It seeks to address interpretive and practical issues that have arisen since the enactment of Decree 2023 and to refine the legislative framework governing extraordinary corporate transactions (*operazioni straordinarie*) that span multiple jurisdictions.

BACKGROUND AND LEGISLATIVE FRAMEWORK

Directive (EU) 2019/2121 was adopted to amend Directive (EU) 2017/1132, with the objective of regulating cross-border transformations, mergers, and demergers. Italy implemented this Directive through Decree 2023, which repealed the previously applicable framework set by Legislative Decree No. 108/2008. Decree 2023 introduced critical novelties, such as: a formal definition of cross-border transformations; the expansion of the regulatory framework to include all extraordinary cross-border transactions, rather than just mergers ; protective mechanisms for

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Internal Policies and Notices:

Finally, the target's actual AI practices should be analyzed considering its public facing and internal policies as these contain undertakings to internal and external parties, such as employees and potential or actual customers. For example, a target that represents that it does not use generative or agentic AI when it does, could be liable for claims of false and misleading trade practices.

Documents required to address AI

Finally, as with any transaction, protecting a party against the other party's non-compliant or misleading AI practices should not be limited to the purchase agreement and the due diligence request list. Other documents in which AI language may appear include:

1. Deal NDAs: Parties may be required to clarify their respective expectations regarding the use of AI to conduct diligence and especially the use of data to train an algorithm's future modeling practices.
2. Transition Services Agreements: If AI is to be used in the delivery of transition services, how will it be used, which party owns the inputted data and the outputted data? What measures are in place both to protect the data and to make sure the other party can use it.

Conclusion

Despite an upsurge in AI representations, the technology in question is not present in every transaction. Its development, use, and deployment vary depending upon the business and its regulation is inconsistent across sectors and jurisdictions. While ignoring AI and hoping that its risks will be caught by other representations is risky, so too are unfocused AI representations.

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minority shareholders and creditors; a bifurcated control procedure (double-check) involving both the home and host jurisdictions; the inclusion of the "spin-off demerger" (*scissione mediante scorporo*) and the outbound transfer of a company's seat (*trasferimento della sede all'estero*) within the Italian Civil Code (the "ICC").

Nevertheless, certain areas of legal uncertainty persisted, particularly regarding the practical application of legal controls, the interaction between the laws of origin and destination states, and the operational details of the spin-off demerger. The Reform Decree was enacted precisely to clarify these issues and optimize the usability of the legal framework for companies undergoing cross-border reorganizations.

EXPANSION OF THE LEGISLATIVE SCOPE

A key innovation introduced by the Reform Decree is the extension of the legal framework's applicability. While originally limited to capital companies (*società di capitali*), the revised rules now encompass partnerships (*società di persone*), non-corporate entities, and—where compatible—companies undergoing crisis or insolvency resolution proceedings.

For such entities, procedural simplifications are available, thereby facilitating broader access to cross-border reorganization mechanisms. Additionally, the Reform Decree clarifies that the legal regime for cross-border transactions also applies to international transactions involving non-EU jurisdictions, except where explicitly excluded.

ENHANCED TRANSPARENCY IN CROSS-BORDER MERGERS

The Reform Decree introduces more rigorous transparency requirements, particularly in relation to public benefits received by companies. In merger plans, companies are now required to disclose all public subsidies received in the five years prior to the

plan's publication, including their value and issuing authority.

For "localized" public benefits (i.e., those tied to a specific geographic or operational base), the reference period has been extended to ten years. The definition of "public benefit" has also been broadened to include non-registered state aid or support for industrial development, even if not recorded in the National Register of State Aid (*Registro Nazionale degli Aiuti di Stato*).

These disclosures must be integrated into the report of the directors addressed to shareholders and employees when the resulting entity is governed by foreign law. This amendment aims to provide stakeholders with a more comprehensive view of the public interests implicated in cross-border mergers and fosters accountability in the use of state resources.

STRENGTHENED LEGAL CONTROLS AND PRELIMINARY CERTIFICATION

One of the most significant contributions of the Reform Decree concerns the enhanced legal control mechanisms. Article 30 of Decree 2023 has been comprehensively reformulated to set out in detail the requirements for issuing the preliminary legality certificate (certificato preliminare), which must be obtained before a cross-border transaction may proceed.

Before issuing this certificate, notaries (or the competent authority) must verify whether the Italian company involved has any of the following outstanding obligations: tax liabilities, as certified by the Italian Revenue Agency (Agenzia delle Entrate); social security or insurance contributions, as certified by the National Social Security Institute (INPS) and the National Institute for Insurance Against Accidents at Work (INAIL); outstanding obligations to repay unlawful State aid, based on a check of the National Register of State Aid; and administrative fines derived from criminal offenses, as evidenced by a certificate issued under Article 31 of Presidential Decree No. 313/2002.

To facilitate these verifications, a new Annex I has been introduced, standardizing the required documentation and ensuring uniform compliance across different types of transactions.

REFORMED DEFINITIONS AND CORPORATE CONTINUITY

The Reform Decree also redefines the legal concept of "transformation." According to the new formulation, a transformation entails the change in applicable law and corporate form without the dissolution or liquidation of the company. All rights and obligations, including litigation rights, are preserved.

The modification of Section 2510-bis of the ICC enshrines the rule that any outbound transfer of a company's registered office must be realized through a transformation. The new provision also clarifies that such a transformation is to be treated, for all legal purposes, as a transfer of seat abroad, irrespective of where the new registered office is ultimately located.

In case of legal conflicts between the laws of the originating and destination states, the latter prevails in determining the steps required to complete the transformation once the preliminary certificate has been issued. The home state's law governs the process up to the point of issuing that certificate.

CLARIFICATION AND SIMPLIFICATION OF SPIN-OFF DEMERGERS

The rules governing "spin-off demerger" (scissione mediante scorporo), introduced in 2023, have been further clarified. The new provision allows for the allocation of either part or the entirety of the transfer of the company's assets to one or more beneficiary companies—whether newly incorporated or pre-existing—in exchange for shares or quotas.

The requirement for the spun-off business to continue its operations has been removed, recognizing that continuity is not essential when the entire business is transferred. Moreover, where a spin-off results in the creation of new companies, the

obligation to draft an expert report on the exchange ratio has been eliminated.

Likewise, Section 2506-ter of the ICC has been amended to remove the right of dissenting shareholders in the transferring company to exercise withdrawal rights or seek compensation on the grounds of an allegedly unfair exchange ratio.

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of instruments with a structure or economic rationale similar to that of CVRs. Brazilian law allows considerable contractual freedom in allocating risk and consideration in M&A transactions, including through price adjustments, escrows, indemnification mechanisms, and contingent payments.

In practice, however, the main challenge lies in the regulatory and self-regulatory environment of the Brazilian capital markets, especially in the context of the B3 (Brasil, Bolsa, Balcão), Brazil's stock exchange and over-the-counter market.

Although public precedents are relatively limited, the Brazilian market has seen more than one structure with economic characteristics comparable to CVRs, particularly in the context of public tender offers (*ofertas públicas de aquisição* – "**OPAs**") and the so called 'cash mergers'.

One frequently cited example is the acquisition of Banco Industrial e Comercial S.A. ("**BicBanco**") by China Construction Bank Corporation, carried out through an OPA in October 2013. The transaction provided for the payment of R$ 8.90 per share, of which 75% was paid in cash at closing, while the remaining 25% were retained in an escrow account and released conditionally upon the resolution of certain legal contingencies. In addition, the final transaction value was subject to adjustments based on changes in BicBanco's net equity between signing and closing. While not labeled as a CVR, this structure allocated transaction risk through contingent and adjustable consideration, producing an economic outcome comparable to that of a CVR.

Similar economic structure and rationale can also be observed in so-called cash mergers historically used in Brazil, in which a significant portion of the consideration was paid in cash through complex multi-step reorganizations. The classic example was the merger between Suzano Papel e Celulose S.A. ("**Suzano**") and Fibria Celulose S.A ("**Fibria**")[4]. Theoretically, target shareholders could receive shares in a CashCo and the redemption terms depend on the achievement of certain milestones.

However, in both of those cases, the underlying right to receive the CVR would not/was not tradeable on the securities market. Finding a feasible approach to issue CVR-like securities would have added a level of attractiveness to the structure[5].

[4] Suzano's acquisition of Fibria, announced in March 2018, was one of the largest transactions ever carried out in the Brazilian forestry sector, totaling approximately R$ 65 billion in market value and resulting in the creation of one of the largest global pulp producers. Fibria shareholders received, in return, R$ 52.50 per share in redeemable preferred shares (i.e., cash) and 0.4611 ordinary shares of Suzano, through a CashCo, which then incorporated Fibria. Approximately 80% of the transaction value was paid in cash.

[5] In Brazil, unlike the U.S. regime, once a company is registered as a public issuer with the Brazilian Securities Commission (CVM), including as a Category A issuer, the issuance of equity securities does not require separate registration for trading purposes, provided that generally applicable rules are observed. For the avoidance of doubt, this exemption is limited to trading and does not extend to public offerings, which remain subject to CVM registration. This framework makes the use of securities as consideration – including securities tradable on an exchange – relatively more attractive than purely contractual instruments from a regulatory, operational, and tax perspective. In addition, taxation of securities tend to be more beneficial than taxation of other rights, particularly foreign shareholders (under the terms of Brazilian Federal Revenue Service Normative Instruction No. 1,585, dated August 31, 2015, and Joint Resolution No. 13, dated December 3, 2024, capital gains earned by foreign investors in transactions carried out on stock exchanges, commodity exchanges, futures exchanges, and similar exchanges are not subject to income tax).