

# Bit Market Services

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Societa' : ANSALDO STS

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Informazione  
Regolamentata

Nome utilizzatore : ANSALDON07 - Razeto Andrea

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Oggetto : Ansaldo\_sts\_extract\_of\_the\_agreement\_communicated\_to\_consob\_for\_all\_intents\_and\_purposes\_pursuant\_to\_article\_122\_of\_legislative\_decree\_no.58\_1998

*Testo del comunicato*

Vedi allegato.

Genoa, October 24, 2015

**Extract of the agreement communicated to Consob, for all intents and purposes, pursuant to Article 122 of Legislative Decree No. 58 dated 24 February 1998, as amended and supplemented ("TUF") and the applicable provisions of the Regulation approved by Consob with resolution no. 11971 on 14 May 1999, as amended and supplemented ("RE").**

Pursuant to Article 122 of the TUF and the applicable provisions of the RE, it is hereby given notice, for all intents and purposes, of the following.

## Introduction

On 20 October 2015, Hitachi Ltd., a company incorporated and existing under Japanese laws, with registered office in Nihon Seimei Marunouchi Building, 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo 101-8280, Japan, share capital equal to ¥ 458,790,000,000.00 ("**Hitachi**") and Finmeccanica S.p.a., a company incorporated and existing under Italian laws, with registered office in Piazza Monte Grappa no. 4, 00195 Rome, Italy, share capital equal to €2,543,861,738.00, registered in the Companies' Registry of Rome with no. 00401990585 ("**Finmeccanica**"), entered into a second amendment agreement (the "**Second Amendment Agreement**") of the share and purchase agreement entered into by the same parties on 24 February 2015 (the "**Agreement**"), as amended on 28 July 2015 through a previous amendment agreement, for the purchase by Hitachi of all the shares held by Finmeccanica in Ansaldo STS S.p.A. ("**Ansaldo STS**" or the "**Company**"), which represent approximately 40% of the share capital thereof (the "**Transaction**").

The execution of the sale and purchase of the Ansaldo STS shares provided for under the Agreement (the "**Closing**") is subject to the condition that the necessary antitrust clearances are issued beforehand, as well as to certain customary conditions precedent for this kind of transaction. The Closing shall take place at same time as the closing of the transfer of the going concern of Ansaldo Breda S.p.A. to the Hitachi group.

The Second Amendment Agreement exclusively provides for the extension until 27 October 2015 of the term for the verification of the fulfillment of the contractual conditions previously provided for 20 October 2015, as communicated on 31 July 2015 pursuant to Article 122 of the TUF. As a consequence, the Company's Shareholders' Meeting will be held in Second

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Call (as defined hereinbelow) in case the last Condition (as defined hereinbelow) has occurred (or has been waived) not later than 27 October 2015.

The Agreement provides, among other things, for certain provisions (which were notified to Consob on 28 February 2015 and 31 July 2015 pursuant to Article 122 TUF and Article 127 RE) designed to implement the Transaction and that could theoretically be construed as a shareholders' agreement, with respect to which, therefore, notice has been given for prudential reasons. The updated essential details of the provisions are set out below.

### **1. Companies whose shares are the subject-matter of the Covenant**

Ansaldo STS S.p.A., an Italian company with registered office in Genoa, 16151 Via Paolo Mantovani 3/5, with share capital equal to €100,000,000.00 divided into 200,000,000 ordinary shares having nominal value of € 0.50 each, enrolled with the Companies' Register of Genoa under no. and Tax Code no. 01371160662. The company is subject to direction and coordination activity of Finmeccanica.

### **2. Type of covenants concerning Ansaldo STS**

The provisions of the Agreement, as amended through the subsequent amendment agreements, may be abstractly construed as provisions governing the exercise of voting rights in a listed company.

### **3. Financial instruments covered by the covenants**

The provisions described in this extract concern all of the Ansaldo STS ordinary shares held by Finmeccanica, which amount to 80,131,081 ordinary shares of Ansaldo STS and which represent approximately 40% of the Ansaldo STS share capital (the "**STS Shares**").

### **4. Parties bound by the covenants concerning Ansaldo STS**

(i) Finmeccanica, which holds 80,131,081 ordinary shares in Ansaldo STS, representing approximately 40% of the Ansaldo STS share capital (and representing 100% of the shares that are covered by such agreements) and (ii) Hitachi, which currently does not hold any share in Ansaldo STS.

Until the Closing, Finmeccanica will continue to control Ansaldo STS pursuant to Article 93 TUF.

As a consequence of the Closing, Hitachi will acquire control of Ansaldo STS, pursuant to Article 93 TUF.

## 5. Contents of the covenants

### A) Provisions concerning the administrative body

Finmeccanica has undertaken to obtain and deliver to Hitachi, within 29 July 2015, the letters of resignation from office of at least five (5) of the Ansaldo STS directors, such resignations being subject to the occurrence (or waiver) of the last condition precedent among those set out in the Agreement or which is, anyway, relevant to perform the Transaction (the “**Conditions**”) and shall become effective as from the date of appointment of the new board of directors of the Company.

Hitachi has undertaken to deliver Finmeccanica, within 2 September 2015, a slate containing the candidates designated by Hitachi (the “**Hitachi Slate**”) to be filed by Finmeccanica in relation to the appointment of the new board of directors of Ansaldo STS by the Shareholders’ Meeting (as defined hereinbelow) to be held at Closing.

Finmeccanica has undertaken to cause Ansaldo STS to publish – in compliance with the provisions of the *Testo Unico della Finanza* and with any other applicable provision of law and with the by-laws of the Company - the notice convening the shareholders’ general meeting having on the agenda, among the others, the appointment of the new board of directors as a consequence of the qualified resignations delivered by the majority of the members of the board of directors of Ansaldo STS (the “**Shareholders’ Meeting**”), such meeting to be held:

- (i) in first call, on October 1<sup>st</sup>, 2015 (the “**First Call**”);
- (ii) in second call, on November 2<sup>nd</sup>, 2015 (the “**Second Call**”); and
- (iii) in third call, on December 1<sup>st</sup>, 2015 (the “**Third Call**”).

Finmeccanica has further undertaken to (a) file the Hitachi Slate within the term and according to the modalities provided under the *Testo Unico della Finanza*, any other applicable law and the by-laws of the Company and (b) at the Shareholders’ Meeting to be held on the date of Closing, after having complied with all the modalities provided under the *Testo Unico della Finanza* and any other applicable law and the by-laws of the Company in

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order to validly vote at the Shareholders' Meeting, vote in favour of Hitachi Slate with all of its STS Shares.

Finmeccanica has undertaken to provide, promptly following the occurrence of (or waiver to) the last Condition, the board of directors of the Company with a notice of such occurrence (or waiver) countersigned by Hitachi.

The Shareholders' Meeting will be held in First call, Second Call or Third Call provided that the Conditions have occurred (or are waived) beforehand. In particular:

- a) the Shareholders' Meeting will be held in First Call should the last Condition occur (or be waived) within and no later than September 18<sup>th</sup>, 2015 (the "**First Cut-Off Date**");
- b) the Shareholders' Meeting will be held in the adjournment of the First Call (as specified below) or in Second Call should the last Condition occur (or be waived) within and no later than October 27<sup>th</sup>, 2015 (the "**Second Cut-Off Date**");
- c) the Shareholders' Meeting will be held in the adjournment of the Second Call (as specified below) or in Third Call should the last Condition occur (or be waived) within and no later than November 20<sup>th</sup>, 2015 (the "**Third Cut-Off Date**");
- d) the Shareholders' Meeting will be held in the adjournment of the Third Call (as specified below) should the last Condition occur (or be waived) within and no later than December 20<sup>th</sup>, 2015 (the "**Fourth Cut-Off Date**");

(each and any of the First Cut-Off Date, the Second Cut-Off Date, the Third Cut-Off Date and/or the Fourth Cut-Off Date, the "**Cut-Off Date**").

The parties have further agreed that:

- a) in case any of the Conditions does not occur (or is not waived) within the First Cut-Off Date, the Shareholders' Meeting shall be held in Second Call;
- b) in case any of the Conditions does not occur (or is not waived) within the Second Cut-Off Date, the Shareholders' Meeting shall be held in Third Call,

it being understood that, should the Shareholders' Meeting be validly set up in any of the calls mentioned under points a) and b) above, Finmeccanica shall attend the Shareholders' Meeting and vote with all its STS Shares in favour of the adjournment of the Shareholders' Meeting to, as applicable, November 2<sup>nd</sup> or December 1<sup>st</sup>, 2015;

- c) in case any of the Conditions does not occur (or is not waived) within the Third Cut-Off Date, Finmeccanica has undertaken to vote in the Shareholders' Meeting with all its STS Shares in favour of the adjournment of the Shareholders' Meeting to January 4<sup>th</sup>, 2016. Should any of the Conditions not occur within the Cut-Off Date applicable to the date on which the Shareholders' Meeting shall be held after its adjournment, Finmeccanica has undertaken to abstain from voting upon the appointment of the new members of the board of directors of the Company.

Should the last Condition occur (or be waived) following the Cut-Off Date applicable to the date on which the Shareholders' Meeting shall be held after its adjournment in accordance with the rules specified above, but, in any case, within the final deadline specified in the Agreement, Finmeccanica shall:

- a) within 2 (two) Business Days from the occurrence (or waiver) of the last Condition, cause Ansaldo STS to validly publish the notice of call of a new ordinary shareholders' meeting to be held on the date that falls 40 (forty) days thereafter, having on its agenda the appointment of all the members of the board of directors due to the qualified resignations of the majority of the members of the board of directors of the Company (the "**New Shareholders' Meeting**"), in accordance with the provisions of the *Testo Unico della Finanza*, of any other applicable law and of the by-laws of the Company;
- b) within the term and according to the modalities provided for in the *Testo Unico della Finanza*, in any other applicable law and in the by-laws of the Company, file the Hitachi Slate;
- c) at the New Shareholders' Meeting to be held at Closing, after having complied with all the modalities provided for under the *Testo Unico della Finanza* and any other applicable law and under the by-laws of the Company in order to validly vote at the New Shareholders' Meeting with respect to the STS Shares, vote in favour of Hitachi Slate with all of its STS Shares.

Save for the provisions under items (b) and (c) above, Hitachi has the right to request that the date of Closing (and, therefore, the date of the New Shareholders' Meeting) is postponed to the first day of the month immediately after the date determined pursuant to paragraph (a) above for the New Shareholders' Meeting and, in such case, Finmeccanica has undertaken to cause the New Shareholders' Meeting to be validly called in order to be held on such first day of the month.

#### **B) Provisions concerning the *Interim Period***

As is customary for this kind of transactions, the Agreement contains certain so-called *interim management* clauses, pursuant to which, between the date of execution of the Agreement and the date of Closing, Finmeccanica shall - subject to Hitachi's prior consent - vote against: (i) Any resolution proposed at the extraordinary meeting of Ansaldo STS including any resolution relating to extraordinary transactions (such as, for example, mergers, splits, increases in share capital, reductions in share capital); (ii) Any resolution proposed by Ansaldo STS at the Meeting relating to: (x) distributions of dividends or reserve funds or other types of distributions; (y) transactions involving Ansaldo STS shares (including any purchase or disposal of treasury shares).

### C) "Best effort" provisions

Although Finmeccanica has not undertaken to guarantee any result (or otherwise incur costs, expenses or any other form of obligation which is legally relevant for such purpose) and, therefore, any obligation under Article 1381 of the Italian Civil Code has been expressly excluded, it must be pointed out, for the sake of clarity, that, as regards the period referred to in point B) above, Finmeccanica has undertaken to use its best efforts to ensure that: (i) Ansaldo STS conducts its business and its operations within the limits of the day to day running, in a prudent manner, consistently with its past practice and in line with sound industrial practice and the best standards of care, as well as in compliance with applicable regulations, so as to safeguard the relevant assets, rights and legal relations (including those relating to the performance of the works and capital investments) and not distribute interim dividends or make other distributions. Finmeccanica has also undertaken to ensure that Ansaldo STS and its relevant subsidiaries (i.e. Ansaldo STS France S.A.S., Ansaldo STS USA Inc., Ansaldo STS Australia PTY Ltd.) do not conduct certain non-routine activities that are specified in the Agreement, including but not limited to: (i) amending their articles of incorporation or articles of association, (ii) approving extraordinary transactions, (iii) waiving rights or receivables that are due under any temporary joint venture to which they are party or withdrawing therefrom, (iv) entering into, amending, terminating any Agreement with related parties or making any payment to related parties; (V) entering into, amending, terminating any Agreement with trade union representatives and/or any Agreement with the company's executives.

## 6. Duration and renewal of the covenants relating to Ansaldo STS

The Second Amendment Agreement is not a shareholders' agreement, but a contract which amends the Agreement, whose subject-matter is the purchase of shares of the Company and which contains, among other things, certain provisions (partially amended by the Second Amendment Agreement) designed to implement the Transaction, which could theoretically be construed as a shareholders' agreement. Such provisions are intended to

produce legal effects only until their performance. In this regard, the Agreement provides that the Closing shall occur within 270 business days from the date of the entering into of the Agreement, that may be extended for further 60 days, it remaining understood that the Parties shall have the right to set a different term, even subsequent. There are no undertakings for the renewal of the above provisions.

In the event that the said covenants were to be construed as shareholder agreements pursuant to Article 122 of the TUF, the obligations contained therein should be construed as being for a term of three years from the date of execution of the Agreement.

## **7. Filing of the Covenant**

The provisions concerning Ansaldo STS provided for under the Agreement and under the subsequent amendment agreements were filed with the Companies' Registry of Genoa lastly on 23 October 2015.

## **8. Further Information**

The provisions under the Agreement, as amended in the subsequent amendment agreements, do not provide for the establishment of any body in furtherance of a shareholders' agreement, and neither do they contain any obligation to register shares.

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This notice is given by Ansaldo STS upon joint request of Hitachi and Finmeccanica.

The present extract as well as the extract of the above covenants concerning the Company published pursuant to the applicable laws on the newspaper "Il Sole 24 Ore" of 24 October 2015, are available on the Company's website at <http://www.ansaldo-sts.com/en/governance/shareholders-agreement> and on the "NIS-Storage" authorised central storage system, which is accessible from the website [www.emarketstorage.com](http://www.emarketstorage.com).

### **External Communications:**

**Ansaldo STS**  
**Andrea Razeto, tel. +39 010 6552068**  
[andrea.razeto@ansaldo-sts.com](mailto:andrea.razeto@ansaldo-sts.com)

**SECRP**  
**Giancarlo Fré, tel. +39 06 3222712**  
[fre@segrp.it](mailto:fre@segrp.it)

### **Investor Relations:**

**Ansaldo STS**  
**Roberto Corsanego, tel. +39 010 6552076**  
[roberto.corsanego@ansaldo-sts.com](mailto:roberto.corsanego@ansaldo-sts.com)

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