

In the last 15 years we assisted to a flourishing of studies dedicated to Mergers and Acquisitions. Among the others, there are a few monographies and a relevant number of minor studies. All these studies mainly focused on the analysis of the final point of the acquisition operation, more precisely on the agreement with which the purchaser company acquires the control of the target company. And the recent studies on the acquisition agreement (i) revitalized the debate concerning the subject matter of the agreement, in which there are a formalistic thesis according to which the agreement should fall within the scheme of the stock sale, and a number of substantialist thesis which instead give, in various ways, importance to the qualities of the target company; (ii) widely discussed on the nature and on the function of the warranties and representations provided by the acquisition agreement and regarding in particular the qualities of the company; (iii) often took in account the Anglo-Saxon contractual experiences and practices, sometimes without asking if, to which extent and how they are compatible with the Italian law.

The above mentioned studies and approaches certainly are stimulating from any point of view. However, it is my opinion that such researches should be completed according to a different, or even opposite, perspective. In particular, it is evident that the acquisition agreement is the arrival of a number of preparatory acts. Therefore, it can be completely understood only after having reconstructed all these acts, examining each act according to the general categories of the Italian civil law, and analysing their possible connections. According to this way of proceeding, any acquisition operation can be considered as a private proceeding regulated by rules set out by the parties. This conclusion has an important number of corollaries as it suggests once again not to follow the formalistic thesis, but to adhere to the substantialist ones relating to the subject matter of the acquisition agreement. At the same time, this conclusion leads to requalify the warranties and representations contained in this agreement as an expression of the freedom of contract which modifies – totally or partially – the legislative rules regarding the natural effects of the purchase agreement related to the warranties for defects.

In light of the above, this study writes in chapter 1 an introduction relating to the practice of the acquisition operations. In chapter 2 the financial and legal advisor agreements are analysed, which are among the first acts of the acquisition proceeding and involve advisors which will handle the whole proceeding. In chapter 3 the other acts of the proceeding are studied in vitro. Lastly, chapter 4 concerns the reconstruction of the possible connections among the various acts, the qualification of their series as a private proceeding and the consequences of this qualification.