

NEWSLETTER N.2/ SEPTEMBER 2016**LEGISLATION OF PUBLICLY OWNED COMPANIES FOR THE PURPOSE OF THE LEGISLATIVE DECREE OF AUGUST 19TH, 2016, N.75**

The legislative decree dated August 19th, 2016, n.75, or, the “Consolidate Law on publicly owned companies” (the “**Consolidated Law**”), in force since September 23rd 2016, regulates the incorporation of companies by the State, as well as the acquisition, holding and management of participations, by the State, in companies which are, totally or partially, directly or indirectly, publicly owned.

Hereinafter is a summary of the main provisions.

Companies which can be publicly participated: the State can hold a participation exclusively in joint stock companies and limited liabilities companies.

Purposes of publicly owned corporations: the State shall not, directly or indirectly, incorporate companies having as company’s object the production of goods or supply of services which are not strictly necessary to its public purposes, neither acquire or hold participations, including minority ones, in such companies.

Burden of analytical proof: the decision taken by the public administration to incorporate a new company or acquire a stake, also indirectly, in a company that is already incorporated, shall be thoroughly justified, clarifying the reasons and the purposes which resulted in such choice, also on the basis of the economic rationale and financial sustainability.

Publicly participated companies: the Consolidated Law sets out, within the realm of “*publicly participated companies*” (which are so regardless of the amount of equity held in the company), the so called “*publicly controlled companies*”, whereby “*one or more public administrations exercise control*”, within the meaning of “*control: the circumstance described under art. 2359 of the Civil Code*”. In addition to the provisions of the Consolidated Law referred to publicly participated companies, publicly controlled companies are subject to a specifically tight regulation, both in terms of corporate structure, governance, internal organization and accounting. Amongst them, we herein highlight, by way of example, the obligation to appoint a single director, rather than a board, and the introduction of certain limits to the salary earned by “*directors, statutory board member, executives and employees*”.

Publicly participated companies insolvency procedures: the publicly participated companies are subject to the provisions on bankruptcy and composition with creditors, as well as, where the necessary requirements are met, on extraordinary management of large insolvent companies.

Periodic reporting of public participations: the public administrations shall annually carry out an analysis of the overall set up of the companies in which they hold an equity stake, directly or indirectly, for the purpose of their reorganization, including a possible transfer to third parties of such stakes.

Extraordinary review of public participations: within 6 months from the entry into force of the Consolidated Law, the public administrations shall carry out a review of the public participations held by the same in order to identify, duly justifying such identification, those participations which due to non-compliance with the requirements of the Consolidated Law, shall be transferred to third parties.