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Client Alert 18/2020

«Relaunch Decree» n. 34 of May 19, 2020

Main provisions

1. Changes for Innovative Businesses
2. Restart Estate or "Patrimonio Rilancio"
3. Changes to Finance and Banking Provisions
4. Impact on the Energy Sector
5. Labour and Employment Measures

1. Changes for Innovative Businesses

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New Measures for Innovative Businesses

- The new decree sets forth a number of significant measures in favor of innovative start-ups and SMEs.
- New resources are allocated to the re-financing of subsidized loans, for an amount of Euro 100 million for year 2020, in the framework of the so called «Smart&Start Italia» program.
- A further amount of Euro 10 million is allocated to grants, not subject to reimbursement, in favor of innovative start-ups for the acquisition of services provided by incubators, accelerators, innovation hubs, business angels and other public or private entities active in the development of of innovative businesses.
- Additional resources, up to Euro 200 million for year 2020, are allocated to the «Venture capital fund», aimed at supporting capital injections in favor of innovative start-ups and SMEs, including by way of participating financial instruments and subsidized loans.

New Measures for Innovative Businesses

- The term for the registration of innovative start-ups in the special section of the Companies' Registry is extended for 12 months.
- Tax breaks are envisaged for innovative start-ups and SMEs and new tax incentives for the investment in innovative start-ups and SMEs are provided.
- An amount of Euro 200 million is earmarked in favor of innovative businesses in the framework of the guarantee fund already established at Mediocredito Centrale Spa.
- A new «Technology transfer fund», with an endowment of Euro 500 million for year 2020, is established to promote initiatives and investments for the exploitation of research results by national businesses, and in particular innovative start-ups and SMEs.
- The details of the new measures will be set forth in ad hoc implementing decrees, to be subsequently adopted.

2. RESTART ESTATE OR "PATRIMONIO RILANCIO"

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Art. 27: Restart Estate

- Art. 27 of the Law Decree «*Rilancio*» enables Cassa Depositi e Prestiti S.p.A. («**CDP**», company participated by the Italian Ministry of Economy and Finance – «**MEF**», which supports the innovation and growth of Italian SMEs using the country's postal savings) to set-up a «Segregated Estate» («*Patrimonio Destinato*»), under art. 2447-*bis* and seq. of the Italian Civil Code, called «***Patrimonio Rilancio***»
- By specific Ministerial Decrees, the MEF will contribute to *Patrimonio Rilancio* its assets, holdings and legal relationships – even *en bloc* (that is, collectively)
- All contributions to *Patrimonio Rilancio* are tax free
- *Patrimonio Rilancio* is not an UCITS, but, like an UCITS, it can be organized in sub-funds
- It is funded by issuing convertible bonds

Art. 27: Restart Estate

- The MEF will contribute up to 45 billion euros of assets, participations and legal relationships to *Patrimonio Rilancio*, being a segregated compartment of CDP with ring-fencing of the undertakings and liabilities assumed by the same *Patrimonio Rilancio*
- *Patrimonio Rilancio* will be managed by CDP and may have an overall counter-value also larger than 10% of the CDP's net assets
- While art. 26 of the Relaunch Decree sets up a fund called «*Patrimonio PMI*» aimed at supporting Italian SMEs through the subscription of participating financial instruments, *Patrimonio Rilancio* realizes a measure also in favour of larger (private or public) companies (including cooperative companies)

Art. 27: Restart Estate

- Target companies of *Patrimonio Rilancio* are those:

  ✓with registered offices in Italy;

  ✓not active in the banking, financial or insurance industry;

  ✓having a total yearly turnover in excess of 50 million euros;

- Through *Patrimonio Rilancio*, for next 12 years and in the EU framework temporarily repealing the ban against State aids, CDP will acquire participations in said companies, positioning either on the equity side (that is, by underwriting dedicated share-capital increases) or on the debt side (granting loans)

- More details will be available when CDP shall enact its regulation on *Patrimonio Rilancio*, to be approved by the MEF.

3. Changes to Finance and Banking Provisions

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Artt. 32: Guarantee on Non-performing Loans Securitization

Whenever a State guarantee was granted or will be required in connection with a securitisation the following provisions shall apply:

- the MEF may authorise **amendments to securities' regulation or to transactions' agreements** agreed between the parties that provide for the **suspension**, subject to performance targets, of **one or more payment dates** of the mechanisms for subordination and deferral of payments due to the parties responsible for collecting the securitized receivables.
- The suspension may be granted under the following conditions:
  - the payment dates are scheduled to fall between the date of entry into force of the Relaunch Decree and July, 31st 2021;
  - the amendments do not lead to a deterioration of senior securities' rating;
  - the temporary suspension is justified by the slowdown in recoveries caused by the measures introduced to face the COVID-19's emergency.

Art. 33: Execution and Communication of Financial and Insurance Agreements

- **Simplified procedures have been introduced with regard to agreements relating to investment services, adhesion to collective investment undertakings (*OICR*) and insurance agreements**.
- The provision applies to those agreements executed between the date of entry into force of the Relaunch Decree and the end of the state of national emergency.
- According to Decree's provisions, the agreements comply with the requirement of **written form** provided by the Consolidated Financial Act and will have the effects of an **evidence as per artt. 2702** of the Italian Civil Code, even if the execution occurs through **non-certified electronic mail** or **other suitable instrument**, provided that:
  - a copy of a valid customer's ID is attached;
  - the agreement includes the reference to another agreement which can be surely identified;
  - such documents are stored together with the agreement.

Art. 33: Execution and Communication of Financial and Insurance Agreements

- the requirement of delivering both a copy of the agreement and mandatory information can also be fulfilled by making them available to the customer by means of a **durable instrument**;
- a copy of both the agreement and mandatory information documents must be delivered to the customer at the first useful opportunity following the end of the state of national emergency.
- Until the end of state of national emergency, the customer may **exercise the rights it is entitled by law or by the agreement**, including, where applicable, the right of withdrawal, through the same procedure as the one used for execution of the agreement;
- Decree's provisions apply also to **insurance agreements**.

Artt. 55, 56, 58: Loans to Enterprises

Regions, Autonomous Provinces, as well as other Local Authorities, in addition to Chambers of Commerce, may adopt aid measures, using their own financial resources, such as:

- **Guarantees to enterprises' loans**;
- **Granting subsidised interest rates loans to enterprises**.

Artt. 55: Garantees on loans to enterprises

- The guarantees may cover both **investment and working capital needs** and may operate either directly or through banks or other entities authorised to grant loans in Italy;
- For each loan, the guarantee premiums are fixed at a minimum level, which will progressively rise as the duration of the guaranteed loan increases.

Artt. 55: Guarantees on Loans to Enterprises (continued)

- The guarantee is limited to a maximum of six years.
- The public guarantee shall not exceed:
  - 90% of the loan principal amount, in case of losses proportionately borne by the credit institution and the State;
  - 35% of the loan principal amount, in the case of losses first borne by the State and, only subsequently, by credit institutions.
- **This form of aid may not be added to any other aid granted** in the form of subsidised interest rates for the same loan.

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Artt. 56: Subsidised Interest Rates

- The aid measures cover loans for **both investment and working capital needs** and may be granted either directly or through banks or other entities authorised to grant loans in Italy;
- Loan agreements must be **executed within December, 31st 2020** and **cannot exceed a six year duration**;
- **This form of aid may not be added to any other aid granted** in the form of guarantees granted on same loan.
- The Relaunch Decree and the Communication of the European Commission C(2020) 1863 final - "Temporary framework for State aid measures to support the economy in the current COVID-19 emergency" set out criteria for the calculation of subsidised interest rates, specifying their minimum level.

Common Restrictions on Loan Guarantees and Subsidised Rates

- The total amount of loans shall not exceed:
  - double of the beneficiary's annual cost of personnel for 2019 or of the last available financial year;
  - 25% of the total turnover of the beneficiary in 2019.
- Aid measures for different loans may be cumulated, only if the total amount does not exceed the above mentioned thresholds.
- The **guarantees provided for in art. 55 and the aid measures provided for in art. 56 do not apply to outstanding loans**, except where there is a legal obligation to extend the maturity of such outstanding loans in favour of small and medium-sized enterprises ('SMEs').
- The **aid measures may not be granted to enterprises that were already in distress** as at December, 31st 2019.
- The deadline for granting the aid measures is December, 31st 2020.

Art. 113: Loan Refinancing - Simplification of Granting Procedures

- For the year 2020, even during the temporary exercise of business referred to in art. 163 of the Consolidated Act for Local Authorities and subject to a resolution of the executive body, local authorities may **renegotiate or suspend repayment of the principal amount of loans** granted by banks, financial intermediaries and *Cassa Depositi e Prestiti*.
- Without prejudice to the obligation to pay due interests at the agreed dates, the suspension of payment of the principal amount of instalments of the outstanding loans falling due in the year 2020 may be allowed by undertakings promoted by Italian Banking Association and by the associations of the Local Authorities in derogation to art. 204, paragraph 2, of the Consolidated Act of Local Authorities and to art. 41, paragraphs 2 and 2-bis, of Law no. 448/2001.
- In both cases, the suspension does not trigger the issuance of new guarantees, as they are automatically extended by incorporating the change in the amortization schedule.

Artt. 165-166: State Guarantee on Newly Issued Liabilities

- Pursuant to art. 18, of the Legislative Decree no. 180/2015 and to art. 18, par. 4, lett. d), of EU Regulation no. 806/2014, **the MEF is authorised, in the six months following the entry into force of the Relaunch Decree, to grant the State guarantee up to a nominal value of €15 billion on newly issues liabilities of banks having their registered office in the Republic of Italy, also in compliance with European State aid rules.**
- The warranty can only be granted upon a positive decision of the European Commission.
- With the same restrictions and in accordance with the formats provided by the ECB, the MEF may also issue **State warranties to supplement the value of those guarantees already allocated by Italian banks as collateral for loans provided by the Bank of Italy** to address severe liquidity crises (emergency liquidity assistance - ELA).

Conditions

- The guarantees may be granted on the basis of a **case-by-case assessment** by the competent Authority (Bank of Italy / ECB), of compliance, both on an individual and consolidated basis, with the capital requirements set out in art. 92 EU Regulation no. 575/2013.
- Following the positive decision of the European Commission, the guarantee may be granted to a bank with positive net asset value, if it urgently needs liquidity support.
- **Banks that apply for the aid measures provided for in the Decree shall carry out their activity without abusing the support received or obtaining undue benefits**, especially in commercial communications vis-à-vis the public.

4. Impact on the Energy Sector

a. Energy Efficiency: Tax Incentives («Superbonus»)

b. Amendments to the Obligations with regard to White Certificates (certificati bianchi)

c. Burdens' Reduction of Electricity Bills

a. Energy Efficiency: Tax Incentives («Superbonus»)

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Energy Efficiency: Tax Incentives («Superbonus»)

- **Art. 119 of the Relaunch Decree Scheme** has introduced a number of tax incentives for natural persons and other entities
- It consists in a **tax detraction** in the **amount of 110%** of the costs burden, but it **can not be combined with further incentives**;
- granted in **five years** after work completion;
- Possibility to **assign** it without limits also to **banks**;
- It will be granted in case of **energy efficiency interventions** mentioned by the art. **14 of Decree 63/2003** and by **art. 119 of the Relaunch Decree**.

Supported Interventions

- The energy efficiency interventions introduced by the Relaunch Decree concern (i) **thermal coat remakes**; (ii) **air-conditioning systems** and (iii) **anti-seismic adaptations**;
- Energy efficiency interventions shall:
  1. increase the energy efficiency class of the building at least of 2 levels or the highest;
  2. be carried out within 31 December 2021;
- In the context of such interventions, the combined purchase of **PV** and **Storage units** as well as of **EV charging appliances**, will be admitted to the Superbonus, upon satisfaction of the following requirements:

Special Rules for PV, Storage and Charging Columns

- The overall amount of the investment in PV and Storage is limited to Euro 48.000. In addition:

  a) in case of PV plants on existing buildings the amount shall be below 2.400 €/kW;

  b) in case of PV plants installed in the context of (i) buildings renovation, (ii) new constructions and (iii) urban renewals, the limit is of 1.600 €/kW;

  c) combined PV and storage systems are supported within the cap of 1.000 €/kW.

b. Amendments to the Obligations with regard to White Certificates (Certificati Bianchi)

Expiry of the mandatory year: the Relaunch Decree's amendments

- Article 41, paragraph 1 of the Relaunch Decree provides for an **extension of the expiry date** for obtaining the prescribed White Certificates (*Certificati Bianchi*) **from 31 May 2019 to 30 November 2020**.
- This means that the Obliged Subjects (*Soggetti obbligati*) have **more time** to obtain the number of White Certificates needed to reach their share of energy saving competence **with reference to the 2019 annuity**.
- The Government's intention is to countereffect **the low liquidity of the White Certificates market** due to a downward trend of the generation rate resulting from the implementation of less new energy efficiency projects. With the arrival of the Coronavirus emergency, such trend has become even more pronounced.

Issuing White Certificates for cogeneration units: the Relaunch Decree's amendments

- Paragraph 2 of the Article 41 of the Relaunch Decree provides that the **issue of the White Certificates** (*Certificati Bianchi*) **for the high-yield cogeneration units** (*CAR*) would be issued **from the date of entry into operation** of the relevant cogeneration unit, without prejudice to the completion of the evaluation by the GSE set forth under Article 7 of Ministerial Decree of 5 September 2011. **January 1st of the year after the date of entry into operation** of the relevant cogeneration unit will no longer be the term.
- **Increasing White Certificates market liquidity is the new regulation goal**. This anticipation is necessary also due to the delays that projects are experiencing due to Coronavirus emergency.

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c. Burdens' Reduction of Electricity Bills

(Implementation of ARERA's proposal within the Article 30 of the Relaunch Decree)

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The Relaunch Decree's proposal

- The Article 30 of the Relaunch Decree provides for **two different types of intervention** on the components of the **electricity bill for non-domestic users** for the monthly payments of **May, June and July 2020**:

  1. **Zeroing** of the current **quotas for transport and meter management costs**, as well as **system charges** for **all low-voltage connected non-domestic utilities**;

  2. **Reduction** of these fixed quotas for **non-domestic connected low voltage users with available power of more than 3.3 kW**, applying a virtual value of available power equal to 3 kW.

- The spending cap set for such interventions is Euros 600,000.00.

5. Labour and Employment Measures

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Emergency Funds (Sections 68-71)

- Additional 5 weeks of emergency redundancy funds to be enjoyed by 31 August 2020, for companies that have already used all the 9-week period provided for by previous emergency legislation as well as other additional 4 weeks of emergency funds that can be used in the period between 1 September up to 31 October 2020.
- Employees hired before 25 March 2020 can be considered eligible for emergency funds.
- Compulsory consultation process with the unions is required.
- Tight timing and procedure for payments of the emergency indemnities, in particular for the so-called CIGD, to be paid directly by INPS.

Emergency Leaves (Sections 72 and 73)

- 30 days of extraordinary parental leave for employees who are parents of 12 years old kids or handicapped kids. Such leave can be enjoyed up to 31 July 2020 and is paid with an indemnity of 50% of the normal remuneration.
- Right to work from remote, if possible and the other parent is not unemployed or receiving emergency indemnity, for employees who have kids up to 14 years old.
- Right to be absent (same period as above for the extraordinary parental leave and with no compensation) with retention of the working place for employees who are parents of kids up to 16 years old.
- Baby sitting bonus of Euro 1,200.00, as alternative to the extraordinary parental leave, to be used also for summer and schooling services.
- Disability leaves provided for by Law n. 104, equal to additional 12 days, to be enjoyed in the period May-June 2020.

Stop to dismissals (Section 80)

Up to 17 August 2020, companies cannot:

- start collective dismissal procedures. Collective dismissal procedures started after 23 February 2020 are still suspended;
- dismiss single employee for objective justified reasons (*e.g.*, company's reorganization, suppression of the working position, etc.). Pending individual dismissals for the very same reasons are suspended and individual dismissals served in the period between 23 February and 17 March 2020 can be "regularized".

Remote Work (Section 90)

Up to the end of the emergency period, parents with kids up to 14 years old have a right to work from remote, even without entering a specific individual agreement with the company, provided that the other parent is not unemployed or is not enjoying emergency indemnities and that the remote working is compatible with the working activities.

Fixed-term employment contracts (Section 93)

In order to face the re-start of the working activities due to the COVID-19 emergency, companies can postpone or renew fixed-term employment contracts already executed with the employee on 23 February 2020, up to 30 August 2020 and without a specific cause.

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