

January 2014

## Further legislation regarding termination and renewal of lease agreements by Italian public entities

In December 2013, law decree No. 151 of 30 December 2013 ("**Decree No. 151**") introduced further changes regarding the right of certain Italian public entity tenants to terminate and renew their real estate leases.

Decree No. 151 follows certain provisions introduced earlier in 2013 in response to criticism that some public entities are paying too much for their real estate and, in certain cases, are renting in the private sector even though suitable real estate assets owned by the Italian state are available.

### 1. Introduction

This newsletter describes the further changes introduced by Decree No. 151 to legislation passed earlier in 2013 regarding:

- (a) an implied break clause introduced for Italian public entities under Article 2 *bis* of the law decree No. 120 of 15 October 2013 converted into law by Law No. 137 of 13 December 2013 ("**Decree No. 120**"); and
- (b) approval required for renewal of real estate lease agreements with Italian public entities under article 1, paragraphs 388 and 389 of Law No. 147/2013, the so called "*Legge di Stabilità 2014*" (the "**Budget Law 2014**").

### 2. Timing of additional break clause for Italian public entities

Decree No. 151 has brought forward by six months to 30 June 2014 (previously 31 December 2014) the date by which certain public bodies may terminate their lease agreements under an implied additional break clause introduced by Article 2 *bis* of Decree No. 120.

This applies to any real estate lease agreements in force on 15 December 2013 where the tenants are any of the following: public administration of the Republic of Italy ("*amministrazioni dello Stato*"), regions ("*regioni*"), local

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entities ("*enti locali*") and constitutional bodies ("*organismi costituzionali*").

In addition, the notice period required for exercise of the break clause has been extended to 180 days (previously 30 days), irrespective of any term contractually provided for under the relevant real estate lease agreement.

The provisions extending the notice period for termination have already been the subject of scrutiny and discussion as the applicable law seems to provide that the deadline for giving notice has already passed (on 1 January 2014 being 180 days prior to 30 June 2014).

It seems more likely however, following clarification by the Italian government to the media, that Article 2 *bis* of Decree No. 120 as amended by Decree No. 151 is intended to mean that prior notice must be given by 30 June 2014 with any termination becoming effective 180 days later.

### 3. Renewal of real estate leases is subject to prior approval of the *Agenzia del Demanio*

Following amendments introduced by Decree No. 151, certain public entities whose lease is available for renewal, may only do so if the *Agenzia del Demanio* (the Italian Public Land Office) has given its prior approval at least 60 days before the date on which the relevant



tenant is able to give notice of termination under the terms of its lease.

The *Agenzia del Demanio* will only give its prior consent to the renewal if:

- (a) the proposed rent is in line with the market value; and
- (b) there are no publicly-owned real estate assets available to be occupied by the relevant tenant.

Any relevant real estate lease agreement which has been renewed in breach of these provisions is null and void.

Interestingly, the public bodies identified by the 2014 Budget Law as being affected by the provisions regarding approval for renewal are slightly different from the public entities benefitting from the additional break clause pursuant to Decree No. 120 described in paragraph 2 above.

The public bodies requiring approval to renew are those indicated in the list issued by Italian National Institute of Statistics ("*Istituto nazionale di statistica*" - "ISTAT") (which include central administrations, public agencies and research institutes etc.) and, as such constitute a broader group.

#### **4. Removal of exception provided for the investment funds created upon initiative of the Ministry of Economy and Finance**

The Budget Law 2014 (Article 1, paragraph 389) provided that lease agreements in respect of real estate assets owned by (1) the investments funds ("*fondi comuni di investimento*") created on the initiative of the Ministry of Economy and Finance under Article 4 of Law Decree No. 351/2001 ("*FIP – Fondo Immobili Pubblici*" and "*Patrimonio Uno*") and (2) assignees of the real estate assets from such investment funds, for the duration of financings of such investment funds<sup>1</sup>, are exempt from the requirement to seek approval for renewal from the *Agenzia del Demanio* described in paragraph 3 above.

However, the amendment introduced by Decree No. 151 to Article 1, paragraph 389, of the Budget Law implies that such real estate assets are not exempt from the additional break clause provisions pursuant to Decree No. 120 described in paragraph 2 above, as previously was the case.

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<sup>1</sup> The provision seems to refer any financings granted to the relevant investment funds in accordance with Article 4 of Law Decree No. 351/2001.

#### **5. Next Steps**

Decree No. 151 must be converted into law by early March, being no later than 60 days from the date on which it was published in the Official Gazette. It is possible that the conversion law may contain additional amendments and corrections. In addition, further points may need to be clarified in a circular or other communication by the Ministry of Economy and Finance or by the *Agenzia del Demanio*.

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