

**FROM:** Avv. Patrizio Messina  
**DATE:** January 2014  
**RE:** Lease agreements entered into by government bodies

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Dear Sirs,

please find in this *memorandum* some preliminary thoughts relating to (i) the right of Italian government bodies to terminate real estate lease agreements entered into by the same as lessees as provided for 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 (the "**Decree No. 120**"), also considering the amendments provided for under the law decree No. 151 of 30 December 2013 (the "**Decree No. 151**") and (ii) the renewal of the real estate agreements entered into by the Italian government bodies as lessees provided for under article 1, paragraphs 388 and 389 of the budget law for year 2014 (the so called "**Legge di Stabilità 2014**", hereinafter called the "**Budget Law 2014**").

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**1. The provisions relating to the right of the Italian government bodies to terminate real estate lease agreements entered into by the same government bodies as lessees**

Article 2*bis* of Decree No. 120 provides that:

- (i) the government bodies of the Republic of Italy ("*amministrazioni dello Stato*"), the regions ("*regioni*"), the local entities ("*enti locali*") and the constitutional bodies ("*organi costituzionali*") have the right to terminate, by 31 December 2014<sup>(1)</sup>, any real estate lease agreement entered into by the same and in force on 15 December 2013 (which is the date in which the Decree No. 120 entered into force);
- (ii) in order to exercise the right to terminate such real estate lease agreements, the entities mentioned in point (i) above shall give to the relevant lessor thirty days prior notice<sup>(2)</sup>, notwithstanding any different terms provided for under the relevant real estate lease agreement.

The law provision mentioned above has been supplemented by two other law provisions included in the Budget Law 2014. In particular, such law provisions regulate:

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<sup>(1)</sup> Such term has been modified by the Decree No. 151 in 30 June 2014 (please see paragraph 3 of this Memorandum).

<sup>(2)</sup> Such term has been modified by the Decree No. 151 in 180 days (please see paragraph 3 of this Memorandum).

- A. in addition to the termination right provided for under article *2bis* of Decree No. 120, the renewal of real estate lease agreements (article 1, paragraph 388, of the Budget Law 2014); and
- B. the specific cases in which article 2bis of Decree No. 120 and article 1, paragraph 388, of the Budget Law 2014 do not apply (article 1, paragraph 389, of the Budget Law 2014).

### **1.1. The Budget Law 2014 provisions relating to the renewal of the real estate lease agreements**

Article 1, paragraph 388, of the Budget Law 2014, states that:

- (a) the government bodies listed under article 1, paragraph 2, of Law No. 196 of 31 December 2009 on the basis of a list issued by Italian National Institute of Statistics ("*Istituto nazionale di statistica*" - "ISTAT") (for example: central administrations, public agencies, research institutes) have the right to renew real estate lease agreements only in the event that the *Agenzia del Demanio* has given its prior consent ("*nulla osta*") to such renewal sixty days before the date in which the government body may (as lessee) exercise the right to terminate the relevant real estate lease agreement<sup>3</sup>;
- (b) the *Agenzia del Demanio* may give its prior consent ("*nulla osta*") to the renewal of the real estate lease agreements which provide for a rent in line with the market value and provided that there are no real estate assets owned by public entities which are available to be utilized by the relevant government bodies; and
- (c) any real estate lease agreement which has been renewed in breach of the provisions provided for under letters (a) and (b) above is null and void.

Therefore, pursuant to the above mentioned law provision:

- (i) also in case the government body has not exercised its right to terminate the relevant real estate lease agreement, such real estate lease agreement shall be renewed only if the *Agenzia del Demanio* has given its prior consent ("*nulla osta*") to such renewal;
- (ii) in case the *Agenzia del Demanio* has not given its prior consent ("*nulla osta*") to the renewal of the real estate lease agreement, such real estate lease agreement shall not be renewed; and
- (iii) the real estate lease agreements which have been renewed (1) without the prior consent ("*nulla osta*") of the *Agenzia del Demanio* or (2) on the basis of the prior consent ("*nulla osta*") to the renewal given by the *Agenzia del Demanio* in case there are real estate assets owned by public entities available to be utilized by the relevant government bodies, such real estate lease agreements are null and void.

### **1.2. Application of the law provisions relating to right to terminate the real estate lease agreements and to the right to renew the same real estate lease agreements**

It seems that article *2bis* of Decree No. 120 and article 1, paragraph 388, of the Budget Law 2014 apply to different categories of government bodies, in particular:

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<sup>3</sup> Since the renewal would imply that a real estate lease agreement is expiring, it seems that, notwithstanding the lack of clarity provided by law, the term of sixty days would be calculated taking into account the termination date (*disdetta*) of the real estate lease agreement.

- (a) the provision relating to the termination right provided for under article 2*bis* of Decree No. 120 applies to "*the administrations of the Republic of Italy, the regions, the public entities and the constitutional bodies*"; and
- (b) the provision relating to the renewal right provided for under article 1, paragraph 388, of the Budget Law 2014 applies to the administrations listed under article 1, paragraph 2, of Law No. 196 of 31 December 2009 and, therefore, to the entities included in the list issued by ISTAT.

It shall be noted that the government bodies listed under letter (b) above are not the same government bodies as those listed under letter (a) above. In particular, the government bodies listed under letter (b) above are a wider category compared with the government bodies listed under letter (a) above. As a consequence, it seems that all the government bodies listed under letter (a) above are entitled to exercise the renewal right provided under article 1, paragraph 388, of the Budget Law 2014, but, on the other hand, not all the government bodies listed under letter (b) above are entitled to exercise the termination right provided under article 2*bis* of Decree No. 120.

## **2. Cases in which the provision relating to the right to terminate the real estate lease agreement and the right to renew of such real estate lease agreement do not apply**

Article 1, paragraph 388, of the Budget Law 2014, states<sup>(4)</sup> that (a) the provision relating to the termination of the real estate lease agreements provided for under article 2*bis* of Decree No. 120 and (b) the provision relating to the renewal of the such real estate lease agreements provided for under article 1, paragraph 389, of the Budget Law 2014, shall not apply to real estate lease agreements on real estate assets owned:

- (i) by the investments mutual funds ("*fondi comuni di investimento*") created pursuant to article 4 of law decree No. 351 of 25 September 2011, as converted into law by Law No. 410 of 23 November 2011; and
- (ii) by third parties which have purchased the property rights from the abovementioned funds, for the entire duration of the financing of such funds<sup>5</sup>.

In particular the provisions relating to the right to terminate the real estate lease agreement and the right to renew such real estate lease agreement do not apply to real estate lease agreements on real estate assets owned by investments mutual funds ("*fondi comuni di investimento*") created following the two initiatives of the Ministry of the Economy and Finance, which are, as of the date hereof:

- 1) "FIP – Fondo Immobili Pubblici"; and
- 2) "Patrimonio Uno".

The above mentioned funds are both closed-end investment fund and reserved to qualified investors.

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<sup>4</sup> Such provision has been amended by the Decree No. 151 (please see paragraph 3 of this Memorandum).

<sup>5</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.

### **3. The amendments introduced by the Decree No. 151**

On 30 December 2013, the Decree No. 151 was published on the Official Gazette. The Decree No. 151 has introduced some amendments both to article *2bis* of Decree No. 120 and to the Budget Law 2014, in particular:

- (i) the term of 31 December 2014 within which, pursuant to Article *2bis* of Decree No. 120, the right to terminate the real estate lease agreements may be exercised, has been brought forward to 30 June 2014, and the term of thirty days for the prior notice provided for under Article *2bis* has been amended and replaced by a term of one hundred and eighty days. Such amendments have raised some doubts as to the applicability of the provisions of Article *2bis* of Decree No. 120. Specifically, on one hand, some politicians have deemed that the termination of the lease agreements shall in any case take effect on 30 June 2014 and therefore, the extension of the prior notice term to 180 days would render the provision of Article *2bis* inapplicable, since the termination notice should have already been sent by the government bodies by 1 January 2014. On the other hand, the government seems to have clarified, by way of declarations made to mass media, that the law shall be interpreted as (i) requiring for the prior notice to be sent by 30 June 2014, and consequently (ii) the termination becoming effective 180 days following such prior notice having been sent;
- (ii) with respect to the lease agreements on real estate assets owned by the investments mutual funds ("*fondi comuni di investimento*") created as of the date hereof upon initiative of the Ministry of the Economy and Finance (i.e. "FIP – Fondo Immobili Pubblici" and "Patrimonio Uno"), would return to be applicable Article *2bis* of Decree No. 120, while it would still remain inapplicable to the lease agreements on real estate assets owned by such investment mutual funds the discipline of Budget Law 2014 on the renewal of lease agreements. As a consequence, the lease agreements on the real estate assets owned by such investments mutual funds could be renewed without the prior consent ("*nulla osta*") of *Agenzia del Demanio*. On the other hand, the Decree No. 151 would imply that, contrary to the previous provisions of the Budget Law 2014 in this respect, government bodies would have the right to terminate by 30 June 2014 the lease agreements on real estate assets owned by such investment mutual funds in accordance with Article *2bis* of Decree No. 120, as subsequently amended.

### **4. The process of approval of the Decree No. 151**

The Decree No. 151, being a law decree, must be converted into law within sixty days from the date of 31 December 2013 (being the date of entering into force of such decree). Please note that, in enacting the law of conversion of the Decree No. 151, the provisions of such decree may be object of additional amendments implementations and/or corrections.

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This *memorandum* is rendered to you and is solely for your benefit in connection with the matters contemplated herein. This memorandum may not be relied upon or used by you for any other purpose, or furnished to, quoted to or relied upon by any other person, firm or corporation for any purpose, without our prior written consent. This memorandum is proposed as a preliminary analysis and does not purport to deal with every relevant topic or cover every aspect of the topics with which it deals.



Please let us know if there is anything in this *memorandum* you would like us to explain or clarify further.

Orrick, Herrington & Sutcliffe