



UPDATE FROM ITALY

In its programme, the Italian Government has pledged to introduce numerous changes in the legislation in order to modernize it in many ways, both concerning structural aspects of the State (such as the functions of the Senate, approved by the latter and to be shortly submitted to the examination of the lower Chamber), and specific sectors of law.

Many initiatives are currently being considered in these respects, including means to reduce the long duration of law suits and changes in the provisions governing employment relations (s.c. *Jobs Act*), aimed at facilitating the hiring of new employees, thereby helping to reduce the plague of unemployment.

However, all the bills in question are still at the stage of proposals (although the one concerning justice is somewhat more advanced than the others), and therefore any more detailed review appears to be still premature, given that both their timing and actual developments are yet difficult to be identified.

On the contrary, it may be important to focus in particular on two sets of laws already enacted, concerning respectively companies and anticorruption.

1. Company law

In a nut shell, the common aim pursued by the subject law (Decree Law no.91/2014) is basically to render the establishment and functioning of companies somewhat less costly and cumbersome.

More specifically, the most notable provisions may be summarized as follows:

- (i) The minimum capital stock required for a joint stock company (*Società per Azioni*, or “SpA”), formerly set in € 120,000 (one hundred twenty thousand) has now been reduced to € 50,000 (fifty thousand), thereby reducing the gap with Limited Liability Companies (*Società a responsabilità limitata*, or “Srl”), whose minimum capital stock has remained unvaried at € 10,000 (ten thousand).
- (ii) In order to allow an additional stability in the control of an SpA, the latter is now authorized to apply a kind of *fidelity bonus* by including in its By-laws a provision granting a greater right of vote (within the maximum of two votes per share) to each share owned by the same shareholder for at least two years.
- (iii) With respect to the Srls, some simplifications have been introduced both with regard to their mandatory enrolment in the Register of Enterprises and, more importantly, to the control systems applicable to them.

To explain the latter it should be first pointed out that, as a matter of fact, an SpA is always required to appoint and maintain in office a Panel of Statutory Auditors, whose duties (listed in Art. 2403 of the Civil Code) are to watch over the compliance with the law and the By-laws, the observance of the principles of correct administration and in particular the adequacy of the administrative and accounting order of the company and its actual functioning; in addition, in the cases provided by the law, the subject Panel may also be entrusted with the auditing.

While Statutory Auditors were once required also of Srls having a capital stock no lesser than the minimum required for SpAs, this parameter has now been eliminated: as a result, a limited liability company is bound to appoint a Panel of Statutory Auditors (or a Single Statutory Auditor, if it so chooses) only in some cases specified by the law.

2. Anticorruption

Important changes have been introduced (Decree Law no.90 of 2014) in the fight against corruption in dealings with the Public Administration

concerning particular works (with specific respect to major public works).

The supervision on this matter has been assigned to a newly created independent Authority called ANAC (*Autorità Nazionale Anti Corruzione*), currently headed by a former Judge.

Its task is to endeavour to prevent corruption, on the one side, and to intervene if corruption nonetheless occurs.

From the first view point, each Public Body has to appoint an officer responsible for anticorruption and to submit a three year programme to prevent corruption, following the basic guidelines issued by ANAC.

In case an episode of corruption or disturbance of tenders is detected to have been put into being by a firm that has been awarded a public tender, the Authority informs the competent Court for the appropriate criminal action to be taken.

One of the problems that have been analyzed within this context was that of avoiding that these kind of situations would interfere with the orderly and timely progress of works.

To reach this goal, without at the same time letting the offender continue to be involved in the works, the Authority is allowed (by Article 32) to ask the Prefect to (i) order the firm to renew its corporate bodies, replacing the Director(s) involved in such unlawful behaviour, or (ii) to appoint an independent Commissioner to run the firm, possibly also suspending on an interim basis the rights of its Directors and owners.

In addition, still in order to enable the progress of works, avoiding that these may be unduly slowed down by legal actions eventually proved to be manifestly unfounded, the subject Decree Law (Article 41) has laid down "measures to contrast the abuse of the trial", that allow the Court to penalize the losing party by ordering the same to pay the winner an amount determined on an equitable basis (somewhat similar to the punitive damages otherwise unknown to our legal system).