

June 2014

Public Contracts – update

LAW DECREE N. 90/2014 INTRODUCES NEW PROVISIONS ON PUBLIC CONTRACTS, EXPO 2015 AND ADMINISTRATIVE LITIGATION

12 days after its approval by the Council of Ministers, Law Decree n. 90/2014, together with its sibling Law Decree n. 91/2014 on economic development, has finally been published on the Official Journal of the Republic of Italy of 24 June 2014.

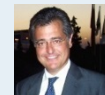
Among many provisions affecting different areas of law, the Law Decree, which is in full force and effect as of June 25th, 2014, introduces several new rules relating to public contracts, EXPO 2015 and litigation in front of administrative courts.

In particular:

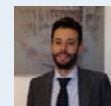
- The Authority for the Supervision of Public Contracts (AVCP), established by law n. 109/1994 with the aim of supervising public contracts in order to ensure compliance with principles of transparency, rightfulness and competition among operators in the public procurement market, is abolished with immediate effect and its function entrusted to the newly established National Anti-Corruption Authority (ANAC). A reorganization plan shall be submitted by the ANAC Chairman to the Prime Minister by the end of the year.
- The National Anti-Corruption Authority shall also have wide supervisory and investigation powers to ensure transparency and rightfulness of the EXPO 2015 related works, and shall avail itself of the support of a special investigation unit.
- In order to ensure the expeditious implementation of public works, the prefect upon proposal of ANAC Chairman and in presence of serious circumstances, can place under a receivership economic operators who have been awarded public contracts and which are subsequently subjected to investigation for corruption or other crimes against public administration, to the extent necessary to ensure the full performance of the contract works.
- In order to comply with Directives 2014/23/UE and 2014/24/UE, Italian public administrations cannot enter into financial or commercial agreements with companies having their registered offices in states whose legislation does not allow the identification of the ultimate beneficial owner.



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- In order to avoid or limit increase of public works prices, contracting authorities shall notify ANAC all variations agreed during performance of the works that are not a mere consequence of changes in law or errors or omissions in the design.
- In each prefecture a register of contractors and suppliers not involved in organized crime will be kept; the registration replaces the "anti-mafia" certification and shall be accessed directly by the relevant contracting authorities.
- Absence of, or mistakes in, self-certifications submitted by tenderers may be remedied by paying to the contracting authority a penalty between 1‰ and 1% of the contract amount, with a cap of Euros 50,000,00.

Focus: administrative litigation

Law Decree n. 90/2014 has introduced several new provisions on administrative courts and public contracts litigation aiming at expediting the proceedings.

Detached divisions of administrative courts have been abolished, and new, simplified rules have been introduced for public contracts litigation:

- All disputes have to be resolved by simplified judgment within a shorter term of 30 days.
- Judgments by regional administrative courts (TAR) shall be filed with the clerk's office within 20 days from final hearing.
- Administrative courts may impose on the losing party punitive damages on an equitable basis in case of manifestly groundless or merely dilatory proceedings.
- In the context of public contracts litigation, punitive damages are increased up to 1% of the contract amount.
- A new system of administrative digital proceedings shall start on a trial basis.

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Studio Legale Padovan has developed a substantial practice advising Italian general contractors, sub-contractors and designers on all aspects of major infrastructure projects in Italy and abroad.

The Firm regularly assists clients on drafting and reviewing construction, EPC and O&M contracts, subcontract agreements, joint venture and consortia agreements, as well as on handling construction claims, disputes and arbitration proceedings, applying the appropriate strategic approaches in negotiation and mediation stages.

The Firm has acquired a substantial experience of project finance initiatives in Italy and abroad and International Financial Institutions practices.

The Firm is a FIDIC Affiliate Member and a full member of DRBF, and all professionals at Studio Legale Padovan have a deep knowledge of FIDIC and Joint Contract Tribunal forms of contract and related practice.