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Italian project bond: the Government approved further provisions aimed at addressing some of the investor's concerns in connection with the envisaged guarantee mechanism

Through the Ministerial Decree 7 August 2012, published on the Official Journal of 8 September 2012 (the “Ciaccia-Grilli Decree” or the “Decree”), the Ministry of Economic and Finance (“MEF”) in consultation with the Ministry of Infrastructure and Transport (“MIT”) enacted further incentives to promote privately financed investments in the infrastructure field.

Article 157 of the Italian Legislative Decree No. 163 of the 12 April 2006 (the Italian “Code of Public Contracts” or “CCP”), as amended by the Law Decree No. 1 of 24 January 2012 and further supplemented by article 41 of Law No. 27/2002, allows a special purpose entity as well as companies that had been awarded a public-private partnership contract (“PPP”) to issue notes. If the issuer is constituted in the form of *società a responsabilità limitata*, debt securities (hereinafter “Project Bonds”) may be issued for the purpose of raising capital in the financial markets regardless of the limits set forth in Article 2412 of the Italian Civil Code. In addition, several other provisions of the Italian Civil Code affecting the issue of notes by joint stock companies were expressly repealed. The purpose of the issue of the notes should be limited to the financial needs incurred in connection with the realization of an infrastructure or of a public service.

Pursuant to the revised version of the article 157 CPP, Italian Project Bonds can be guaranteed by the financial system, by charities and by privately owned investment

funds in accordance with terms and conditions to be detailed in a separate Ministerial Decree which, as mentioned before, has been recently approved.

The Decree confirms the provisions of article 157 CCP whereby the underwriting and the circulation of the Project Bonds are limited to qualified investors (*investitori qualificati*) only. In addition, an amendment of the relevant provision stated in the CCP clarifies that guarantees offered to the investors can be released for a period beginning with the start of operation of the underlying infrastructure until the expiration of the legal maturity of the notes. Moreover, the decree clarifies that the guarantees can be released for a period commencing after the start of operation of the underlying infrastructure, in accordance with the provision of the financial and economic plan of the project.

From a subjective standpoint, the Decree specifies that the guarantees can be released by (a) Italian and EU banks, as well as non-EU banks qualified to operate in Italy; (b) financial intermediaries enrolled in the bar pursuant to Italian Legislative Decree 385/1993 (the Italian Banking Law); (c) insurance companies; (d) Cassa Depositi e Prestiti S.p.A.; (e) SACE S.p.A.; (f) the European Investment Bank (EIB). A further complementary legislation must be issued in form of inter-ministerial decree for the purpose of regulating the release of the guarantees by charities and privately owned investment funds.

The revised legislation and the enacting provisions summarized above can be viewed as a positive answer to the markets, in the attempt of creating a more attractive environment for those investors looking at the infrastructure as an asset class. Notwithstanding to the above, some matters remain controversial and the interpretation of certain provisions still raise several issues. However, it is worth nothing that a valuable step towards the successful outcome of those initiatives has been made and further benefit could be achieved combining the described funding scheme with the Project Bond Initiative launched at a European level.

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