

Valorisation and disposal of state-owned assets

As expected, the newly-issued Decree Law No. 87 of 27 June 2012 (the “**Decree Law**”) governs the valorisation and sale of state-owned assets. To contribute to reduce public debt in the short and medium term, the government has opted both to divest part of the state's holdings in corporations and to valorise, and then sell, publicly-owned real assets.

The Decree Law has been effective since 27 June 2012, the day when it was published in the Official Gazette, and will lose effectiveness unless it is converted into law on or before 27 August 2012. Amendments may be made to the Decree Law during the process of conversion, and the resulting law may have different provisions than the ones set out in the Decree Law.

Key issues

- Reduction of public debt through disposal of state-owned assets
- Streamlining of state ownership in corporations
- Valorisation and sale of state-owned real estate

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Streamlining of state ownership in corporations

A. Business combination of the operations of Fintecna, Sace and Simest with those of CDP

To streamline and to reorganise state holdings in Italian corporations, the Decree Law provides for the business combination of the operations currently carried out by Cassa depositi e prestiti S.p.A. (“**CDP**”) with the business operations of three state-owned companies in the same sectors. CDP's operations include the management and valorisation of real assets, operations in the export banking sector and the internationalisation of businesses; the three companies operating in these sectors whose business operations are to be merged with CDP's are: Fintecna S.p.A. (“**Fintecna**”), a holding company wholly-owned by the Ministry of Economy and Finance (“**MEF**”), which through its subsidiary Fintecna Immobiliare S.p.A. holds a large part of the real assets owned by the state and 99% of Fincantieri S.p.A.; Sace S.p.A. (“**Sace**”), an insurance company for export credits, wholly-owned by the MEF; and Simest S.p.A. (“**Simest**”), a company that promotes the internationalisation of businesses, owned for 76% by the MEF and by several banks, among which are UniCredit S.p.A. and Intesa Sanpaolo S.p.A.

B. Option to purchase: terms and conditions for exercise

The business combination of the activities of CDP and those of Fintecna, Sace and Simest was implemented by granting to CDP a right of option to purchase the shares owned by the state in Fintecna, Sace and Simest.

The option grants CDP the right to choose whether to acquire the shareholdings at issue, but from a practical point of view, no doubts exist that CDP will indeed exercise this right to purchase. The right to purchase can be exercised until the end of the exercise period, which falls 120 days after the Decree Law becomes effective.

CDP can exercise the right to purchase severally, for each of the companies; however, it cannot exercise the right to purchase for part of the MEF's shareholding in each of the companies, but only for the entire shareholding.

C. Determination of the price, terms and conditions of payment

Within ten days from exercise of its right of option, CDP is required to pay to the MEF a provisional payment equal to 60% of the net assets value of each of the companies it has opted to purchase, as shown on the respective company's most recent financial statements (consolidated, if available). The definitive price will be set by the MEF through a decree. The transfer and accounting value of the shareholding will be determined on the basis of a certified assessment by one or more persons who have the adequate skill, experience and professional standing, as appointed by the MEF.

The definitive price, so determined, will be subject to a fairness assessment by CDP, which will appoint an expert to issue a fairness opinion.

D. Business continuity

After the entry into force of the Decree Law, as well as after the transfer of the shareholdings, Fintecna, Sace and Simest will continue the business operations entrusted to them by law, thus guaranteeing business continuity. The Decree Law also provides that, upon transfer of the respective shareholdings of Sace and Simest, the provisions affecting these companies' governance that are not compatible with the transfer of the shares to CDP, or that do not allow CDP to exercise all its rights as a shareholder, will be repealed. Finally, the Decree Law does not affect the currently applicable law that requires the Republic of Italy to counter guarantee Sace's obligations.

E. Conclusions

In its preliminary estimate, the MEF has quantified the value of its shareholdings in Fintecna, Sace and Simest as approximately Euro 10 billion in the aggregate.

Although the intent of the Decree Law could be applied to other state-owned companies as well, the government has chosen to focus on three indubitably material and strategic companies, excluding, however, the most important state-owned companies (i.e., Eni S.p.A., Enel S.p.A. and Finmeccanica S.p.A.). To make future decisions regarding these fundamental and very valuable state-owned assets, the government will need to review carefully how the implementation of the Decree Law evolves.

Furthermore, the process that must follow the business combination is likely to be the sale to private investors by CDP of a

minority portion of its shareholdings in Fintecna, Sace and Simest. Therefore, to allow prospective investors to evaluate the acquisition of any such minority shareholdings in Fintecna, Sace or Simest, the methods by which CDP will be allowed to sell its holdings and the governance provisions applicable to these three companies will need to be explained clearly.

Valourisation and sale of state-owned real estate

A. Implementation of the integrated system of real estate funds for the sale and valorisation of the real assets of the local and state public entities

The solution that the Decree Law proposes to valorise and to sell state-owned real assets appears more complex, and is explained below. The form with which the solution is set out in the Decree Law is also not easy to understand, considering that the Decree Law amends, and cross-references to, several other provisions of law, requiring a concurrent reading of at least Article 33 of Decree Law No. 98 of 6 July 2011, converted into Law No. 111 of 15 July 2011 (“**Decree 98/2011**”), as well as of the other provisions to which the Decree Law cross-references.

First, the Decree Law supplements the wording of Art. 33 of Decree 98/2011, and makes a reference also to Legislative Decree No. 85 of 28 May 2010 (“**Decree 85/2010**”) on the federalism principle for real property; neither of these two provisions of law have yet been implemented. Further, the Decree Law, with a view of strengthening the effectiveness of the instruments created under Art. 33 of Decree 98/2011, creates an integrated system of real estate funds, the ultimate purpose of which is to abate the public debt and free-up economic resources for the local entities (i.e., Municipalities, Greater Metropolitan Areas, Provinces and Regions).

B. Types of investments under the SGR Funds

Decree 98/2011 allowed the creation of an investment management company (*società di gestione del risparmio*) (“**SGR**”), whose purpose would be to create real estate investment funds (the “**SGR Funds**”) in turn intended to participate in other real estate investment funds promoted or owned by local entities or other public entities (or their wholly-owned companies), for the purpose of valorising and selling the real estate owned by these local or public entities or their wholly-owned companies (the “**Entities Real Estate Funds**”).

The basic intent of Decree 98/2011 was to ensure that the Entities Real Estate Funds obtained sufficient liquidity, by way of private placement of their quotas as well as ownership by the SGR Funds, to perform works to increase the value of the real assets.

Decree 98/2011 also provided that the SGR would be created through a decree of, and be wholly-owned by, the MEF, without prejudice to the fact that part of the SGR's shares could be for no consideration transferred to the Italian real estate agency, the Agenzia del Demanio. Decree 98/2011 did not, and the Decree Law does not, specify the portion of share capital of the SGR that can be transferred to the Agenzia del Demanio, or the share capital that must be held by the MEF. In accordance with the provisions of the Decree Law, the SGR is required to have a share capital ranging from at least Euro 1 million to a maximum of Euro 2 million.

Following the amendments made by the Decree Law, the SGR Funds can invest, essentially, in the following two ways:

- subscribe for quotas in the Entities Real Estate Funds and the two other types of funds (described below), to valorise and to sell the real estate owned by the state, the local entities and by the Department of Defense (*Amministrazione della Difesa*) (“**DoD**”); this is meant to be the main type of investment under the Decree Law; and
- purchase directly the real assets occupied by the public administration as lessee (meant to be the residual type of investment under the Decree Law).

C. Main investment: Entities Real Estate Fund, State Real Estate Fund and DoD Real Estate Fund

As their main investment, the SGR Funds are allowed to invest in the following three types of funds:

- as provided under Decree 98/2011, the Entities Real Estate Funds, as described above at paragraph 2(b);
- as provided by the Decree Law, in a new fund created by the SGR to abate the public debt, to which state-owned real property, not used for institutional purposes, and attached rights, as well as real assets owned by companies that are directly or indirectly owned by the state and a few other types of real assets (as described below at 2(e) can be contributed or transferred (the “**State Real Estate Fund**”);
- as provided by the Decree Law, in a second type of new fund created by the SGR to abate the public debt, to which

real property owned by the state and no longer used by the DoD for institutional purposes and subject to valorisation, and the attached real rights, can be transferred or contributed (the “**DoD Real Estate Fund**”).

The real assets can be transferred to the three funds described either by way of contribution, whereby the contributor will receive quotas issued by the fund to which the assets are contributed, or by transfer following sale and purchase, whereby the transferor will receive payment of the price. Both types of transaction will benefit from the special provisions of law governing real estate funds.

Investment in the SGR Funds and in the State Real Estate Fund is also compatible with the law on technical reserves applicable to insurance firms, to the extent permitted in the law.

Finally, CDP can own quotas of the SGR Funds, of the State Real Estate Fund and of the DoD Real Estate Fund.

D. Contributions or transfers to the Entities Real Estate Funds

The following can be contributed or transferred to the Entities Real Estate Funds:

- real property as well as real rights or rights of use, in accordance with the procedures set forth for legislation on the streamlining of the real assets owned by local entities; and
- the real property as well as real rights transferred pursuant to Decree 85/2010, implementing the policy of real estate federalism.

The contribution or transfer will occur pursuant to projects to use and to valorise approved by the competent body of the entity, following completion of the selection process to identify the investment management company that will manage the fund to which the real assets are contributed or transferred, in compliance with the applicable legislation on contracts with the public administration. Proposals for the valorisation can be submitted by non-public persons, provided that the proposals comply with the legislation on contracts with the public administration.

E. Contributions or transfers to the State Real Estate Fund

The following can be contributed or transferred to the State Real Estate Fund:

- real assets owned by the state that are not used for institutional activities, and identified by way of a decree of the MEF;
- real assets owned by companies that are directly or indirectly controlled by the state, by way of resolution of the appropriate corporate body;
- state real assets available for disposal, that can be transferred to the local entities in implementation of the principles of real estate federalism, only with the consent of the appropriate body of the local entities that wish to valorise the assets;
- real assets owned by the local entities, pursuant to an *ad hoc* resolution of the appropriate body, even if in derogation of the obligation to attach to the financial statements the disposal and valorisation real estate plan as required under applicable legislation, provided that intended uses that are not compatible with zoning policies are clearly identified.

Real assets used for institutional purposes are excluded, because transfer of these assets would prejudice the public finances, by generating costs as payments under leases where the public administration is the lessee.

F. Contributions or transfers to the DoD Real Estate Fund

Real assets owned by the state and no longer used by the DoD for institutional purposes and subject to valorisation, as well as real rights, can be contributed into or transferred to the DoD Real Estate Fund.

The DoD, after consultation with the Agenzia del Demanio, will identify by way of one or more decrees all real assets that are to be contributed. The first of these decrees is to be issued on or before 27 August 2012. Once the real assets are identified in the decrees, they will be classified as "assets of the state available for disposal" and, as from the date of publication of the decree in the Official Gazette, the Agenzia del Demanio will have to commence the regularisation and valorisation procedures, solely for the assets to be valorised and therefore to be contributed or transferred to the DoD Real Estate Fund.

The real assets destined to be valorised will then be contributed into the DoD Real Estate Fund, while those not destined to be valorised will return available to the Agenzia del Demanio.

G. Contribution or transfer conditional on valorisation and cure of irregularities

The real estate to be transferred to these three funds can be granted a different use, should this be necessary to optimise valorisation, by entering into a framework agreement with the entities involved. Further, it will be possible to cure any irregularities or inconsistencies in the building permit or zoning irregularities; this process must be completed within the mandatory term of 180 days from the date of the resolution that approves the creation of the fund into which the real assets will be contributed or transferred.

The contribution or transfer of the real assets to the three funds is subject to the condition precedent that the procedure for valorisation and cure of irregularities be completed. In case of contribution, the transferor will not have the right to transfer the majority of the quotas it is to receive until the process is completed.

H. Conclusions

The MEF has recently estimated the value of the assets to be valorised in the context of the integrated fund system as ranging from Euro 239 billion to Euro 319 billion. This significant wealth, if adequately valorised, can be an effective tool to achieve reduction of the public debt and to provide funds for further development, proportionally to the interest of private investors in these funds.

Until the final text of the law, with any amendments to the current text of the Decree Law, is published, and until the decrees of the MEF identifying the assets to be transferred are issued, it will be necessary, on the one hand, to valorise the assets adequately and on the other to evaluate carefully the profile of the funds in each of the three categories described above, because it appears more likely that it will be these funds, rather than the SGR Funds, that will offer greater investment opportunities, and be of more interest to private investors.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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