Labour and Employment

2015 STABILITY LAW (FINANCE ACT)

"THOUSAND EXTENSIONS" DECREE

FIRST GOVERNMENT REGULATIONS IMPLEMENTING THE JOBS ACT

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Guido Callegari

Gaspare Roma
Giulietta Minucci
Giulio Ferrauto

Bridget Ellison
Sophie Bertoletto

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During December 2014 and the first months of 2015, newspapers and specialized press frequently reported on the intense activity of the Renzi Government concerning labour and social security law.

In December 2014 Parliament passed the so-called **"Jobs Act"** (Law n° 183 of December 10, 2014) followed by the so-called **"2015 Stability Law"** or **Finance Act** (Law n° 190 of December 23, 2014) which included some labour law provisions. Then on February 28, 2015, Law n° 11 of February 27, 2015, came into force converting into law, with modifications, the so-called "**Thousand Extensions Decree**" (Decree Law n° 192 of December 31, 2014), which extended certain statutory time limits and introduced new provisions on job security agreements. The first two Jobs Act implementing regulations were published in the Official Gazette on March 6, 2015; these were the **"Welfare Measures in the Event of Involuntary Unemployment and Re-employment Agreements Decree"** (Legislative Decree n° 22 of March 4, 2015) and the **"Permanent Employment Contracts with Increasing Levels of Protection Decree"** (Legislative Decree n° 23 of March 4, 2015).

Despite some controversy still surrounding the recent Government regulations and the fact that various further implementing regulations are still needed, actually a large number of them are immediately applicable. These provisions make significant changes to the legislation previously in force and to the consolidated legislative trend of recent decades.

We are setting out below the salient points of the provisions referred to above.

1 2015 STABILITY LAW

1.1 **A first group of provisions aims to put more money in employees' pockets, for the not secondary purpose of stimulating a recovery in consumer spending.**

The **tax credit of EUR 80.00 per month** for employees with a total annual income lower than EUR 24,000, which was introduced in May 2014 for that year, was confirmed as a permanent measure.

Starting from July 1 2015, the **value of tax-free meal vouchers will increase from EUR 5.29 to EUR 7.00** but only for electronic vouchers (so as to avoid forgeries and frauds).

By way of an experiment, from March 1, 2015 to June 30, 2018, the 2015 Stability Law also entitles employees in the private sector that have been working for at least six months with the same employer, to ask for the accrued quotas of their **Leaving Indemnity (in Italian "Trattamento di Fine Rapporto", hereinafter TFR)**, including, where appropriate, those accruing to form an additional pension, to be paid monthly as part of their salary. The employee's choice is irrevocable until June 30, 2018. The provision was conditional on the issuing of an implementing Decree of the Prime Minister which was then published in the Official Gazette on March 19, 2015 (D.P.C.M. n° 29, February 20, 2015) and will come into force on April 3, 2015. The implementing decree specifies that the provision allowing employees to benefit from this additional quota of salary (known as "***QuIR***") will not apply to employees **(i)** in the domestic sector; **(ii)** in the agricultural sector; **(iii)** for whom the law or the applicable national collective bargaining agreement directly or indirectly provides for their severance indemnities to be paid on a periodical basis, or to third parties; **(iv)** whose employer has filed a debt restructuring agreement or a recovery plan in the Companies Registry; **(v)** whose employer has been admitted to benefit from a special redundancies fund, as to employees in the production unit concerned; **(vi)** whose employer has executed a debt restructuring agreement and composition with its creditors. Like the TFR, the QuIR will not be subject to social security contributions; but unlike the TFR, it will be taxed at the applicable marginal rate, not separately. Employers with fewer than 50 employees which do not intend to immediately pay employees' QuIRs with their own resources, will be able to apply for a loan

guaranteed by the National Social Security Fund (INPS) and the State, to be repaid by October 30, 2018. The fund set up by INPS to cover these guarantees has received 100 million euros for the year 2015. The terms regulating access to and repayment of such loans are set out in a Framework Agreement between the Ministry of Labour and Welfare, the Treasury and Finance Ministry and the Italian Bankers' Association (ABI) signed on March 25, 2015.

1.2 **Another set of provisions concerns redundancies.**

The funds allocated to the Special Temporary Lay-off Scheme (CIGS) have thus been increased from 50 million to 60 million euros in order to fully cover in 2015 the temporary lay-off schemes already planned in 2014.

Furthermore, employers who prior to December 31, 2012 hired employees registered in the employment registers after being made redundant on economic grounds by companies having fewer than 15 employees (so-called "***Piccola Mobilità***") will benefit from the same social contribution reductions as enjoyed by employers who hire employees registered in the employment registers having been made redundant on economic grounds by employers having more than 15 employees, up to a maximum availability of 35,550,000 euros.

Lastly, with effect from January 1, 2015, people retiring before their 62nd birthday having reached the necessary number of years' contributions by December 31, 2017 will not have the percentage pension reductions provided by the previous legislation (sect. 24, para 10, points 3 and 4 of Decree Law no. 201 of December 6, 2011).

1.3 **An incentive for hiring employees with permanent agreements was also introduced, gaining the approval of companies even in the first few months of its application, and seems to have contributed to creating new jobs.**

The incentive applies to permanent employment agreements executed during the year 2015, except for apprenticeship agreements and domestic work agreements,

and exempts the employer from paying social security contributions, but not premiums and contributions for compulsory industrial accident and disease insurance, for a maximum period of thirty-six months and up to an annual ceiling of 8,060 euros. The exemption applies to new employees and so will not apply to: **(i)** employees who have been employed by any employer with a permanent agreement during the previous six months; **(ii)** employees to whom the same exemption has already been applied in relation to a permanent employment agreement with another employer; or **(iii)** employees who, in the three months prior to January 1, 2015, have had a permanent employment agreement with any company controlled by, associated with or owned, even indirectly by, the employer which intends to hire the employee in question. The exemption cannot cumulate with other exemptions or reductions contemplated by current legislation. One billion euros has been allocated to fund these exemptions in each of the years 2015, 2016, 2017 and 500 million euros for the year 2018.

This incentive will also apply to new employees hired in 2015 with permanent employment agreements in the agricultural sector, but not to employees who were employed with either permanent or fixed term contracts and were registered in the relevant registers for no less than 250 days in 2014. The incentive is funded up to a figure of 2 million euros for 2015, 15 million euros for each of the years 2016 and 2017, 11 million euros for 2018 and 2 million euros for 2019.

2 THE "THOUSAND EXTENSIONS" DECREE

For firms using the CIGS temporary lay-off scheme, the public Training and Employment Fund will be used to increase from 60% to 70% of lost earnings the amount paid to employees to compensate for lower salaries earned as a result of reduced working hours. Funds allocated to this for 2015 amount to up

to 50 million euros, priority being given to sums due in 2015 pursuant to solidarity contracts executed in 2014.

3 THE DECREE PROVIDING WELFARE MEASURES IN THE EVENT OF INVOLUNTARY UNEMPLOYMENT AND RE-EMPLOYMENT AGREEMENTS

This decree focuses on reforming unemployment benefits.

3.1 The new unemployment benefits - "NASpI"

From May 1, 2015 the previously existing unemployment benefits (ASpI) and the so-called Mini-ASpI will be replaced by a new unemployment benefit payable monthly - **"NASpI"**.

NASpI can be claimed by all employees, including working members of co-operatives and employed artistic staff, who have involuntarily lost their jobs and: **(i)** are unemployed; **(ii)** have paid at least thirteen weeks of contributions in the previous four years; and **(iii)** have worked for at least thirty days in the previous year. However, NASpI cannot be claimed by (ex) public sector employees with permanent contracts or agricultural workers.

The payment of NASpI benefits will be conditional on the worker concerned participating in programmes for re-entry into the labour market, re-training programmes and other initiatives aimed at helping him/her to find a new job and re-enter the labour market; these will be better defined in implementing regulations to be issued by the Ministry of Labour and Welfare, which will also specify what will be the consequences of not fulfilling these obligations.

The amount of NASpI will be a percentage of the (ex) employee's average monthly income subject to social security contributions in the last four years, up to a maximum monthly benefit in 2015 of 1,300 euros. The duration of the benefits cannot exceed half the number of weeks of contributions paid over the previous four years, so it can never exceed two years. The amount of NASpI benefit will also decrease by 3% per month from the fourth month onwards. In order to encourage business initiatives, NASpI can be paid as a lump sum to (ex) employees who apply for it in order to set up as a self-employed person or business, or to subscribe to a share of the capital of a co-operative for which he/she intends to work.

Except where paid as a lump sum as an incentive to setting up a business, NASpI will have the additional advantage of producing figurative social security contributions, calculated on the basis of the salary used to calculate the NASpI benefit itself, up to a maximum of 1.4 times the maximum monthly NASpI benefit for the current year.

NASpI benefits will cease: **(i)** when the person receiving them gets another job; and **(ii)** where the person concerned begins any kind of work, whether employed or self-employed, without duly notifying INPS that the NASpI benefits should be stopped or changed. Subject, however, to giving such notice to INPS, a person who, while receiving the benefits, takes on a new job for a period not in excess of six months, will not lose the entitlement, but the NASpI benefits will be suspended for the duration of such employment. A person who, while receiving benefits, is hired as an employee with an annual salary below the income tax threshold, will continue to be entitled to NASpI reduced by 80% of the income he/she will receive. In this case, the new employer must be different and totally unconnected with the one who was the cause of the unemployment. NASpI can also be claimed, but in a reduced amount as mentioned above, by a worker who has two or more part-time jobs, but loses one and whose remaining income is lower than that necessary to maintain unemployed status. Similarly, the NASpI benefit will be reduced for a person who begins work on a self-employed basis or starts a business with an income lower than that necessary to maintain unemployed status. Finally, there will be no further entitlement to NASpI **(iii)** upon fulfilment of the requisites for early or old-age pension; and

(iv) upon obtaining entitlement to a disability pension, unless the person opts to receive NASpI instead.

3.2 Unemployment benefits for self-employed persons: DIS-COLL

For the first time, the Italian legislator seems to contemplate unemployment benefits for self-employed by introducing, on an experimental basis for the year 2015, a Self-employed Workers Unemployment Benefit, called **DIS-COLL**.

In order to be entitled to **DIS-COLL** benefits a person must: **(i)** be unemployed; **(ii)** have paid contributions for at least three months from January 1 of the calendar year preceding that in which he/she ceased working, **(iii)** have paid contributions for at least one month in the calendar year in which he/she ceased working or have worked as self-employed for at least one month with an income of at least one half of the amount giving entitlement to crediting one months contributions.

Payment of DIS-COLL will be conditional on the worker participating in re-training programmes and other initiatives aimed at helping him/her to find a new job organised by the competent authorities, which will be regulated by the legislative decree issued on Job Promoting Policies.

The amount of DIS-COLL payable will be calculated on the basis of taxable income from self-employed work during the calendar year in which the person entitled ceased work and the previous one. It will be payable for a number of months equal to half the months of contributions credited from January 1 of the calendar year preceding that in which the person ceased work onwards, up to a maximum of 6 months. After the fourth month the amount will decrease by 3%.

DIS-COLL gives no entitlement to figurative contributions.

The person will lose entitlement to DIS-COLL if he/ she finds employed work for at least 5 days. If the new job is for less than 5 days, DIS-COLL will be automatically suspended. If, on the other hand, the worker starts self-employed work or a business with an income lower than that necessary to maintain unemployed status, subject to giving notice to INPS (otherwise the entitlement will be forfeited), DIS-COLL will be reduced to 80% of the income expected for the period between commencement of such work and that on which the DISS-COLL entitlement expires or the end of the year, whichever is earlier.

3.3 Social Security benefits (ASDI)

From May 1, 2015 a social security benefit, to be called **ASDI,** is to be launched on an experimental basis for all workers who, before December 31, 2015, have received NASpI for the entire duration of their entitlement thereto, have no work and are in difficult economic circumstances. During the first year following its introduction, ASDI will only be payable to families with children under eighteen and then to workers nearing retirement age.

Payment of ASDI benefits will be conditional on the person participating in a personalised job-seeking project, re-training programmes and on acceptance of adequate job offers.

ASDI will amount to 75% of the last NASpI benefit payable to the person concerned and will be payable for a period of no longer than 6 months.

ASDI will be financed by a special fund to be set up by the Ministry of Labour and Welfare and for which 200 million euros have been set aside for each of the years 2015 and 2016. If these funds are not sufficient, ASDI will no longer be payable.

The actual implementation of ASDI, however, has still to be regulated by a Decree of the Ministry of Labour and Welfare together with the Ministry of Finance and the Treasury, which has not yet been issued.

The decree also contains the government's first steps in introducing job-promoting policies with so-called "*Re-employment agreements*".

3.4 Re-employment agreements

This is not a new type of employment agreement but a kind of outplacement for the unemployed organised by the local Labour Offices or duly authorised private agencies.

Persons entitled will receive assistance in seeking a new job from the designated provider. At the same time they have a duty to participate actively in job-seeking, training and professional requalification programmes organised by the authorised provider, which must be focussed on finding job opportunities in line with market needs and not only with the previous occupational skills of the job-seeker in question. Entitlement to the re-employment agreement will cease if the person in question fails to participate in such programmes or finds a job.

It would appear that the costs of Re-employment Agreements will not be borne by employers and the Government has set aside 32 million euros to cover these for 2015. However, in order to become operative, these provisions must be adopted by the Legislative Decree on job promoting policies, and in decrees by the Regions, which will be delegated to implement and finance Re-employment Agreements.

4 THE DECREE INTRODUCING PERMANENT EMPLOYMENT AGREEMENTS WITH INCREASING PROTECTION

This Decree addresses the issue of flexibility in relation to the termination of employment agreements, redefining the conditions for protection against illegal dismissals in permanent employment agreements which enter into force after the entry into force of the Decree itself (March 7, 2015). With regard to permanent employment agreements already existing on March 6, 2015, generally speaking the law previously in force will apply.

4.1 Small businesses

For the purposes of the provisions set out in the Decree, the definition of the category "Small Businesses" continues to be important. Small businesses are those which: **(i)** employ no more than 15 employees (no more than 5 in the agricultural sector) in the production facility or in the municipality (in a specified territory as to the agricultural sector) where the ex-employee worked; or, in any event, **(ii)** no more than 60 employees, wherever situated.

4.2 Sphere of application and applicable procedures

The new provisions will apply to blue-collar workers, white collar workers and junior executives: **(i)** hired with a permanent employment agreement from March 7, 2015 onwards; or **(ii)** hired with a defined term apprenticeship agreement converted into a permanent employment agreement from March 7, 2015 onwards; and **(iii)** all blue-collar workers, white collar workers and junior executives hired with a permanent employment agreement prior to March 7, 2015 by a Small Business which exceeded the number of employees qualifying it as such as a result of hiring employees with permanent employment agreements from March 7, 2015 onwards.

The provisions will apply to all employers including non profit-making organisations set up for political, cultural, educational, religious purposes etc. The Decree applies to Small Businesses for which certain specific exceptions are provided.

In any event, the dismissals covered by the Decree will not be subject to the dismissal on economic grounds procedures, laid down by sect. 7 of law n° 604 of July 15, 1966, as amended by law n° 92 of June 28, 2012 (the so-called "*Fornero Law*"), or the summary proceedings (so-called "*Fornero Proceedings*") for appealing against dismissal, introduced by the Fornero Law.

4.3 **Employee protection: re-hiring orders**

An employee may obtain **an order to be re-hired** by the employer which dismissed him/her where the dismissal is found to have been: **(i)** void because it was discriminatory or on other grounds provided by law; or **(ii)** illegal because it was justified on grounds of a physical or mental disability of the employee; or **(iii)** unenforceable because not in writing (this also applies to collective dismissals).

Except in the case of Small Businesses, a dismissal will be annulled and the employee must be re-hired in his/her old job: **(iv)** where a dismissal for just cause or on subjective justified grounds was based on facts or circumstances which are shown to be inexistent.

An employee entitled to be re-hired will also receive compensation in an amount equal to the salary he/she would have received from the date of the dismissal until that of the re-hiring, and the employer must cover his/her pension and social security contributions for the same period (with penalties, except in the case referred to in **(iv)** above). For dismissals as in **(i)**, **(ii)** and **(iii)** above, the compensation cannot, in any event, be less than 5 times the final month's salary as calculated for leaving indemnity (TFR) purposes (i.e. 1 month's salary = 1/13.5 of annual salary, including all regular items). For dismissals as in **(iv)** above, no minimum amount is fixed, whereas the maximum is 12 times the final month's salary as calculated for leaving indemnity (TFR) purposes.

The worker can always waive being re-hired (whereas the employer cannot avoid it), in which case he/she will be entitled to a further sum of compensation equal to 15 months salary as calculated for leaving indemnity (TFR) purposes.

4.4 **Employee protection solely in the form of compensation**

For all other illegal dismissals, on the other hand, the **only remedy is compensation**.

In particular: **(i)** if the circumstances that gave rise to the dismissal, while actually existing, did not constitute a just cause or justified grounds, either subjective or objective, for terminating the employment or, in the case of collective redundancies, where there were procedural irregularities or breaches of the statutory criteria applicable to the choice of employees to be made redundant, employees illegally dismissed will be entitled to a sum of compensation equal to 2 months of their final salary as calculated for TFR purposes for each year of their employment, with a minimum of 4 and up to a maximum of 24 months.

But **(ii)** where a single employee has been illegally dismissed with only formal or procedural irregularities, such employee will be entitled to compensation equal to one month of his/her final salary as calculated for TFR purposes for each year of his/her employment, with a minimum of 2 and up to a maximum of 12 months.

For the purposes of calculating the length of the employment, where an employee has been transferred to a company to which work has been contracted out, the whole period for which the employee worked for companies involved in the contract work must be calculated.

The compensation described in this §**4.4** is not subject to social security contributions.

Compensation payable by Small Businesses according to the rules described in this §**4.4** will be halved and cannot, in any event, exceed 6 months salary.

4.5 **Conciliation**

The Decree introduces a further form of conciliation for disputes arising from dismissals falling within its sphere of application.

Within the term fixed for out-of-court challenges of the dismissal (60 days), the employer may, either in court, arbitration proceedings or in the course of a statutory reconciliation procedure (e.g. local employment office, bilateral conciliation bodies, unions), offer to the dismissed employee, by bank draft, a sum of

compensation equal to 2 months of their final salary as calculated for TFR purposes for each year of their employment, with a minimum of 2 and up to a maximum of 18 months. For Small Businesses, this amount is halved and cannot in any event exceed 6 months salary. Acceptance of the bankers draft implies automatic termination of the employment agreement as of the date of dismissal and waiver of any action to challenge it.

The conciliation amount, even where it falls within the limits referred to above, will not be subject to social security contributions or tax.

Within 65 days of termination of the employment, the employer must notify the local offices of the Ministry of Labour and Welfare whether the conciliation has or has not resolved the matter.

4.6 Revocation of dismissal

Where a dismissal is revoked within 15 days of notice by the employee of his/her intention to challenge it, the employment will be resumed as if the dismissal had never taken place. The employee will be entitled to the salary covering the period between the dismissal and the revocation, without application of the remedies provided by the Decree.