ITALIAN CONSTRUCTION AND INFRASTRUCTURE PROJECTS: LEGAL RISKS AND MANDATORY RULES IMPACTING FOREIGN OPERATORS

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EU Litigation and Dispute Resolution Alert

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Italy continues to represent a highly attractive jurisdiction for infrastructure and large-scale construction projects. Yet despite this favorable environment, operators entering Italy for the first time will encounter legal and operational risks that differ significantly from those in their home jurisdictions. For instance, certain Italian laws apply automatically and can influence not only the performance of works but also the economic allocation of risk and the management of delays; and the 'stability' of the contractual relationship may be open to question in some circumstances.

One of the most significant areas of exposure for contractors operating in Italy concerns joint and several liability within the subcontracting chain.

Under Italian law, a main contractor may be held jointly liable with its subcontractors for unpaid wages, severance payments, and social security and insurance contributions owed to the subcontractor's employees. This applies even if the main contractor has fully complied with its own obligations or was unaware of the subcontractor's shortcomings, leading employees and social security authorities to act directly against the main contractor.

This risk can be particularly significant in large, labor intensive projects where multiple tiers of subcontracting are involved.

Contractual indemnities and monitoring mechanisms are essential risk-mitigation tools, but they do not eliminate statutory exposure towards third parties.

Closely connected to this issue is Italy's strict regulatory framework on health and safety in the workplace under Legislative Decree 81/2008, which places extensive duties on contractors and may lead to administrative or even criminal liability in the event of breaches or accidents, pursuant to Legislative Decree 231/2001.

International operators must therefore ensure that their safety governance, training programs, and documentation are fully aligned with local standards from the very beginning of the project. Relying solely on subcontractors to manage safety compliance is rarely sufficient, and Italian authorities tend to consider the contractor as the primary responsible party for site conditions.

Another area that often surprises foreign operators is the approach to delays and acceleration plans. When projects fall behind schedule, employers—particularly public authorities—frequently require the contractor to submit a detailed acceleration plan, setting out additional resources, revised methodologies, and updated timelines. Although contractors may seek compensation for the increased effort required to recover delays, disagreements often arise as to whether the delay is attributable to the contractor or to external factors.

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Foreign investors should be aware that certain Italian legal provisions apply mandatorily, even when the parties choose a different governing law.

Among the most impactful is Article 1671 of the Italian Civil Code, which grants the employer the right to withdraw unilaterally from a construction contract at any time, even without the contractor being in breach.

Although compensation is due for works performed, costs incurred, and loss of profit, the mere existence of this statutory right can significantly affect the stability and risk profile of long-term projects. Many international contractors are unfamiliar with this broad termination power, which may override carefully drafted contractual termination clauses.

Another key provision is Article 1664 of the Civil Code, which provides for price revision where unforeseeable circumstances cause a cost increase exceeding 10% of the agreed price. In such circumstances, the disadvantaged party may seek an adjustment limited to the portion exceeding the 10% threshold. In long-term infrastructure projects exposed to market volatility, this rule may become particularly relevant. Recent legislative developments in the public procurement sector have reinforced mechanisms aimed at addressing extraordinary increases in material and energy costs.

Other mandatory norms may affect foreign operators, including strict rules on subcontracting in public works, certain liability provisions that cannot be contractually excluded, limits on penalty clauses and specific requirements concerning performance guarantees.

In summary, Italy remains a highly attractive market for international contractors but entering it without a clear understanding of these mandatory and sector-specific rules can lead to unexpected liabilities and claims. Joint liability for subcontractors, stringent safety obligations, mandatory price revision mechanisms, and the employer's statutory right of unilateral withdrawal all have the potential to reshape the economic and operational dynamics of a project.

Foreign investors would therefore benefit from anticipating these issues early—both in contract negotiations and in project execution—to safeguard timelines, budgets, and long-term commercial relationships.

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