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REviews

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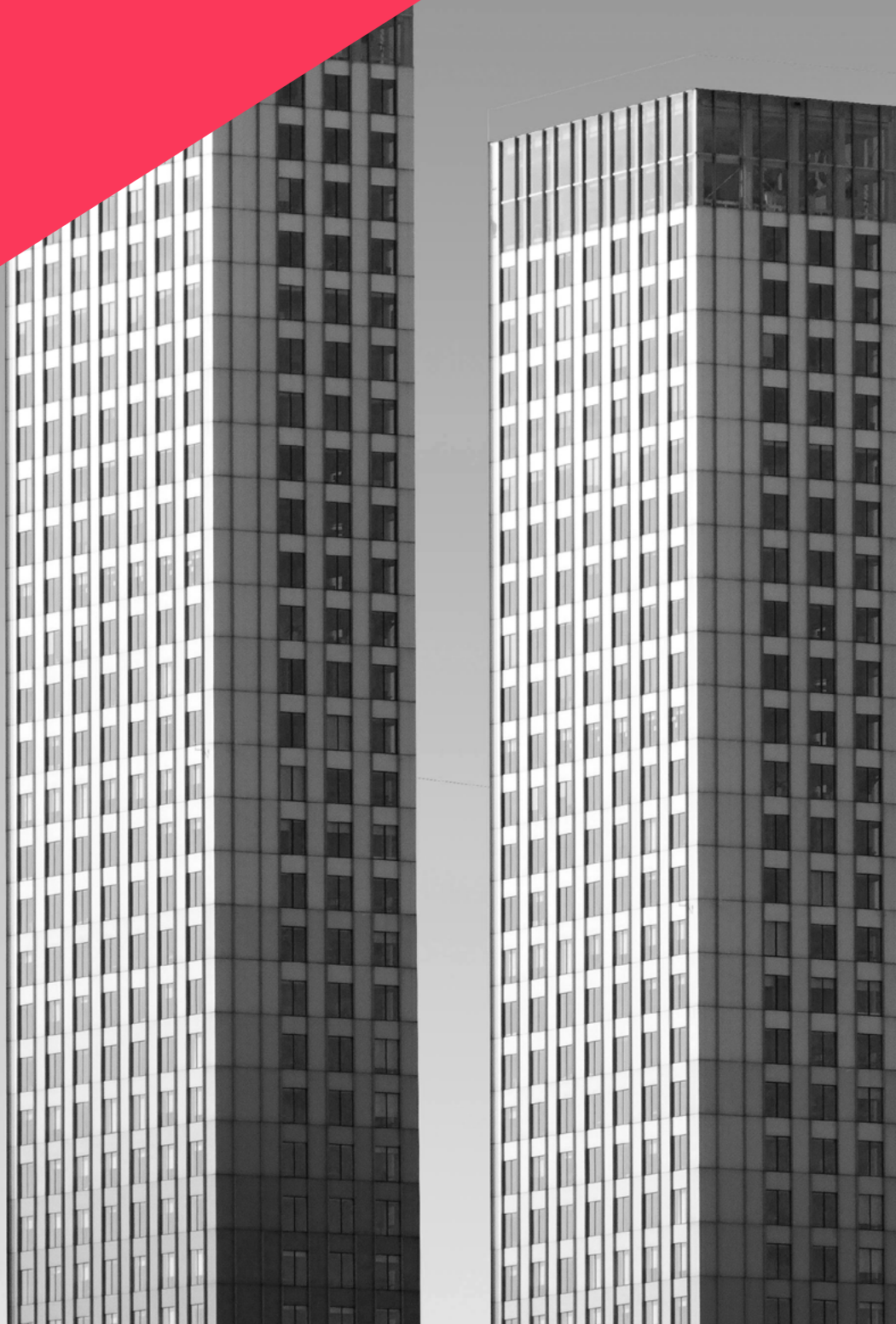
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The instruments introduced by the "simplification decrees", the discussion in the regions, as well as the draft National Recovery and Resilience Plan show a willingness to direct investments towards a new system of urban regeneration and redevelopment.

An obvious example is the change introduced to the definition of building renovation, which now also includes demolition and reconstruction work that can result in completely different buildings, with benefits in terms of both costs and more streamlined procedures.

In this issue, consistent with the concise style of REviews, a number of matters will be highlighted in connection with:

- i. the discussions on urban regeneration commenced by the Municipality of Milan;
- ii. the uncertain full effects of the annulment of the landscape plan (so-called *piano paesistico*) of the Lazio Region;
- iii. the transfer of demolition and environmental sanctions to the new owner;
- iv. the identification of mechanisms for amnesty for infringement of building regulations in the presence of constraints or in the case of "taxation of building abuse"; and
- v. the limits of the discretionary powers of administrative authorities in relation to expropriation and the applicability of the standard building regulations.

Clarifications will also be provided on the changes introduced by the "simplification law decree" to the Consolidated Building Act.

We hope that this issue of REviews will be a useful tool for discussion and work.

For any clarifications or queries, please contact osservatoriorealestate@legance.it.

Municipality of Milan - Proposal for the identification of disused properties and exclusions for the recovery of ground floors

With the proposed resolution of the Municipal Executive Board (*Consiglio Comunale*) of January 2021, disused properties in the municipal territory have been identified which, pursuant to Article 40-*bis* of Lombardy Regional Law No. 12/2005, in case of recovery/regeneration:

- a. benefit from a 20% increase in volume;
- b. are exempt from the obligation to create standard areas; and
- c. benefit from an additional 5% increase in volume if the work has specific characteristics.

The same proposed resolution also identifies the cases in which the recovery of existing ground floors is not permitted pursuant to Article 4 of Lombardy Regional Law No. 7/2017.

Although the proposed resolution has already been favourably reviewed by the City Council (*Giunta*), it is still a proposal that has not been approved by the Municipal Executive Board (*Consiglio Comunale*) and, therefore, could be amended further before approval.

Can the Court evaluate administrative opinions on compatibility with constraints?

By judgment no. 8469 of 29th December 2020, the *Consiglio di Stato* ruled that:

- i. the Administrative Court may censure the opinion on the compatibility between the abuse and the constraint on the property in the presence of macroscopic illogicality or a manifest factual error;
- ii. it is sufficient to refer to the contents of the negative opinion issued by the authority having jurisdiction to evaluate the compatibility of the constraint;
- iii. in the context of the amnesty for infringement of building regulations, the Administration is not required to provide the person concerned with indications as to the adjustments which may be appropriate to bring the work in compliance with the applicable legislation; and

- iv. the decision to refuse a building amnesty does not have to be preceded by the notification of commencement of the procedure.

Demolition orders are transferred with the property

By judgment no. 8283 of 23rd December 2020, the *Consiglio di Stato* confirmed the real nature of sanctions containing restoration/demolition instructions.

Furthermore, the Court specified that the repression of building abuses can be ordered at any time, as these are real measures (rather than real sanctions) that affect permanent offences.

Receiver (so-called *curatore fallimentare*) must dispose of waste on behalf of the company which has been declared bankrupt

The burden of restoring the property and disposing of the waste referred to in Article 192 of Legislative Decree No. 152/2006 falls on the receiver (*curatore fallimentare*), and the related costs are borne by the insolvency estate since the costs arising from that activity fall on the creditors who will benefit from the effects of such activity.

By judgment no. 3 of 26th January 2021, the Plenary Assembly of the *Consiglio di Stato* stated that the company declared bankrupt retains its legal status and remains the owner of its assets, which are managed by the receiver (*curatore*), and that the fact that said company is unable to pay the costs of reclamation is not relevant.

Municipality of Milan: limitations on the application of the 20% bonus for regeneration work

The Municipality of Milan has excluded the entire municipal territory from the application of the 20% increase in the maximum territorial building index provided for by Article 11, paragraph 5, of Regional Law No. 12/2005, with the exception of the following areas: (i) Certosa; (ii) Lambrate; (iii) Corvetto/Rogoredo; (iv) Piazza Maggi; and (v) Segesta/San Siro.

Disused properties in Lombardy: the Regional Law granting up to 25% volumetric bonus is challenged before the Italian Supreme Court

On 10th February 2021, the Lombardy Regional Administrative Court (TAR) raised the issue of the alleged unconstitutionality of Article 40-*bis* of Regional Law No. 12/2005 - introduced in autumn 2019 - regarding three appeals brought by owners of disused properties against the Municipality of Milan.

The challenged Article 40-*bis* allows owners of disused properties to obtain a building bonus of up to 25% and to build in derogation of morphological standards and the provisions of the so-called *Piano di Governo del Territorio* (Land Use Plan).

According to the Regional Administrative Court (TAR), these urban planning and building regulations appear to be unjustifiably rigid and uniform, as they apply irrespective of municipal decisions and are capable of having a significant impact on local urban planning, and potentially, of altering the structure of the territory in a manner inconsistent with what is established in the general urban planning regulations.

Clarifications on the amendments to the Consolidated Building Act (Circular on the Simplification Law Decree)

The clarifications provided by the Ministry of Infrastructure and Transport focus in particular on the new definition of building renovation and the new provisions regarding demolition and reconstruction and compliance of distances.



Annulment of the Lazio Landscape Plan (PTPR) - Discussions on the practical consequences between the Lazio Region and the Ministry of Cultural Heritage and Activities

Notes have been published on the Lazio Region's website concerning the consequences of the annulment of the Lazio Regional Landscape Plan (PTPR) regarding permits issued and/or in the course of being issued.

In particular, there are numerous interpretative doubts and differences between what is claimed by the Ministry and the Lazio Region.

Plenary Assembly: "taxation of building abuse" is possible only in case of formal flaws

Article 38 of the Consolidated Building Act provides that, in the case of annulment of a building permit, if it is not possible to remove flaws affecting the administrative procedures or to return the property concerned in its original state, the Municipality may order the payment of a fine instead of demolition; the payment of the fine entails the amnesty of the building work constituting infringement (so-called taxation of the building abuse).

Over the years, three different lines of thought have been upheld by case law:

- i. the first one allowed the application of the "taxation of the building abuse" provisions to all types of flaws, whether formal (e.g. failure to obtain an opinion) or substantive (e.g. application of a higher building index than that provided for by the applicable legislation);
- ii. the second one allowed the application of the "taxation of the building abuse" provisions only in cases of annulment of the building permit due to procedural flaws; and
- iii. the third one allowed the application of the "taxation of the building abuse" provisions both in the case of procedural flaws and in the case of substantive flaws, in the latter case when it was possible to remove the flaw (for example, in the case of a building permit issued for uses that were not permitted through the establishment of the uses actually permitted).

By judgment no. 17 of 7th September 2020, the Plenary Assembly of the *Consiglio di Stato* resolved this conflict by upholding the strictest line of thought that allows the application of the "taxation of the building abuse" provisions only in the

case of procedural flaws, with the consequence that in the case of substantive flaws, demolition must be carried out.

Municipality of Milan: sample schemes for the application of morphological standards have been published

The Municipality of Milan has published sample schemes for the application of morphological standards in the Areas of *Disegno Urbano Riconoscibile* (ADR - Recognisable Urban Design) and the Areas of Urban Renewal (ARU).

The schemes are a non-exhaustive aid (and do not replace the relevant standards) of the correct relationship between new projects and the urban areas to which they apply.

Municipality of Milan: updated table of constraints

By Executive Resolution No. 854 of 16th February 2021, the Municipality of Milan updated table "R06 - Protection and safeguard constraints" of the *Piano di Governo del Territorio* (Land Use Plan). The table has been amended to include properties and areas subject to protection under Legislative Decree No. 42/2004 and Law No. 633/1941 with measures issued after 31st July 2018.

Municipality of Milan: appeals against the Air Quality Regulations

The Air Quality Regulations (*Regolamento per la Qualità dell'Aria*), approved last November, are the subject of two appeals brought by Assopetroli-Assoenergia and Grandi Reti before the Lombardy Regional Administrative Court, whereby the appellants have challenged:

- i. the requirement that every petrol station must be equipped with an electric vehicle charging station by 1st January 2023, without taking into account the economic burden on companies and the low profitability of the charging service; and
- ii. a ban on the installation of new diesel and biomass heating systems in buildings and, from 1st October 2022, the obligation to remove existing ones at the expense of private citizens.

Standard Building Regulations do not apply directly in the absence of action by the Municipalities

By judgment no. 8426 of 8th December 2020, the *Consiglio di Stato* ruled out the direct applicability of the Standard Building Regulations (*Regolamento Edilizio Tipo*) to the Municipal Building Regulations (*Regolamento Edilizio Comunale*) if the latter had not been adjusted within the (ordinary) time limits laid down by the sector legislation.

According to the *Consiglio di Stato*, there is no provision of law that allows the Standard Building Regulations to take direct precedence over the Municipal Building Regulations, because otherwise there would be a violation of the planning autonomy of the local authority.

Automatic extension of the duration of expropriation constraints is unlawful

By judgment no. 270 of 18th December 2020, the Italian Supreme Court (*Corte Costituzionale*) declared Article 9, para. 12, second sentence, of the Lombardy Regional Law No. 12/2005 unlawful in the part in which it allows an automatic extension of the five-year duration of the expropriation constraint for the construction of facilities and services provided for by the services plan, by simple inclusion of the work in the three-year programme of public works.



Reporting on cross-border mechanisms that are subject to reporting obligations, pursuant to Directive 2018/822 (Dac6), will start in 2021

Intermediaries (including lawyers, accountants, other advisors, as well as banks and financial intermediaries in general) or, in their absence, taxpayers are required to report to the Inland Revenue Agency the so-called "*cross-border mechanisms that are subject to reporting obligations*", i.e. schemes, agreements or projects, concerning Italy and one or more foreign jurisdictions, which have certain characteristics and are aimed at obtaining tax benefits.

Reporting must be made within 30 days of the day following the date on which the mechanism was made available or commenced, with the exception of those implemented between June 2018 and December 2020, which must be reported once by the end of February 2021.

These provisions are part of the international initiatives launched on the basis of the OECD measures to report and counter aggressive tax planning operations and mechanisms of circumvention of the common reporting standard.

It will be necessary to carefully evaluate the application of the legislation both with respect to the possible qualification of market participants as "intermediaries" required to report, and with respect to the specific characteristics of entities that may present tax-efficient features, such as real estate funds, ordinary securitisation vehicles and real estate securitisation vehicles, in relation to which a case-by-case analysis will have to be carried out.

Inland Revenue Agency: online consultation of property value

Through the Inland Revenue Agency's portal, it is possible to access the property values and data declared in property sales concluded as of 1st January 2019.

The data is accessible in anonymous form on the Entratel-Fisconline service on the Inland Revenue Agency's website.



