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Secondment of executives and employees in U.S.A., in the context of the internationalization of companies.

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1. Introduction

The issue concerning the "internationalization" of companies and their relevant business involves, inevitably, the numerous aspects concerning the transnational nature of the employment relationships.

Indeed, companies have a growing need of flexibility in the management of the employees since the possibility for employers to deploy the workforce, temporarily or permanently, in a different country is an important opportunity in order to expand the business and/or the connections with foreign consumers and investors.

The Italian Law safeguards the work in each form and, in particular, the article 35 of the Italian Constitution makes specific reference to the protection of the "*Italian work abroad*" and to the promotion of the signature of international agreements with the aim of preserving essential workers' rights and equal treatment.

It goes without saying that Italy at the time of the Italian Constitution's implementation (right after the Second World War) was a land of emigration rather than immigration, so the protection of Italian workers in foreign countries was a prominent issue.

Nonetheless, even if the world has changed since then, that constitutional provision is still appropriate in the current globalized era.

According to Italian Employment Law, the place of work is one of the essential elements of the

employment contract, but it is not immutable, so the Law has provided (i) the employers with several useful instruments for moving the employees beyond the country's borders and (ii) the employees with protection under the social security profile, as well as health and safety and tax profiles.

The most common solution adopted by Italian companies to meet the abovementioned need of flexibility is the secondment ("*distacco*") abroad, whose rules differs depending upon the destination of the employees towards EU countries or Exra-EU countries (not members of the European Union), like the United States of America ("**U.S.A.**").

The aim of this article is to provide a general overview of the labor implications connected to the secondment of Italian executives ("*dirigenti*") and employees in the U.S.A., given the intensification of business relations between Italy and the U.S.A. and the mounting number of Italian enterprises willing to create bonds with the American market.

2. Definition of secondment

Under Italian law[1], the secondment occurs whenever an employee, regularly hired by an employer, is temporarily posted to another employer in favour of which he/she will perform his/her working activity, provided that during the secondment an employment relationship with the seconding company continues to exist.

Therefore, a legitimate secondment scheme involves the employer (the "**Home Company**"), the employee (the "**Posted Worker**") and a third company (the "**Host Company**") to which the Posted Worker shall render his/her services.

Secondment is lawful provided that (i) the Home Company **has an interest** in seconding the Posted Worker to the Host Company (the existence of the so-called "organic bond", e.g., the existence of a proper and genuine service or subcontract agreement justifying the temporary assignment of the personnel to the Host Company in order to execute the contracted services); and (ii) secondment is **temporary**.

[1] See art. 30, Legislative Decree no. 276/2003.

As to the "interest" requirement, the secondment is justified only if this interest is concrete and persistent and, according to Italian Law, it shall not coincide with the mere supply of work.

Furthermore, pursuant to the Ministry of Labor[2] the interest is considered existing in case of secondment inside a group of companies ("*intragroup secondment*") on the basis of the presence of a strategic plan finalized to achieve a unitary economic result.

In this context, the Home Company remains the employer and keeps the powers/responsibilities typically associated with its employer status (including payment of salary and social security contributions), but the directive power is shared with the Host Company.

In addition, it is worth mentioning that, according to Italian Law the consent of the employee to be posted is necessary only if there is a change of duties. In all the other cases the consent of the employee is not mandatory, but the Home Company shall demonstrate the technical, organizational, production reason that made secondment necessary.

3. Secondment in Extra-EU countries

The general discipline analyzed above applies to all types of secondment, but more specific provisions related to secondment in Extra-EU countries have been provided by Law Decree no. 317/1987 converted into Law no. 398/1987.

Preliminarily, it is worth mentioning that the procedure to implement secondment in Extra-EU countries has been recently simplified by Legislative Decree no. 151/2015 which has removed the obligation to demand for the Ministry of Labor's authorization to send the employee abroad, but it has to be noticed that the same Legislative Decree has introduced a detailed discipline related to the content of the employees' contract.

In particular, according to art. 2 Law Decree no. 317/1987, as modified by Legislative Decree no. 151/2015, the contract of the Italian employees to be sent abroad shall provide:

- an economical and regulatory treatment in general not inferior to the treatment set forth by the

[2] See *Interpello* no.1/2016 of the Ministry of Labor according to which the interest to the secondment in a group of companies can be considered existing whether there is relation of control among the companies (*i.e.* one is the subsidiary of another).

applicable national collective bargaining agreement;

- the possibility for the employees to obtain the transfer to Italy of the portion of the transferable foreign currency of the salary received abroad, respecting Italian and foreign currency laws;
- an insurance against death and permanent disability for every trip toward the place of destination and every return trip;
- the kind of accommodation;
- adequate measure in term of health and safety.

3.1 Social security aspects

Social security aspects are fundamental in the management of employees posted abroad since it is important to understand if the employee is duly covered by a social insurance and where his/her social security contributes need to be paid.

Generally speaking, in social security matter the legislation to be applied is the legislation of the country where the employee's activity is carried out (so called "*lex loci laboris*" principle).

Accordingly, if in the country of the Home Company (Italy in the case at stake) there is a mandatory social security regime, the employee may be subject to a "**double contributory imposition**" since he would be required to bear social security costs in the country of the Host company and in the country of the Home Company.

For this reason, certain Extra-EU countries has decided to execute Social Security Covenants (hereinafter "**SSCs**") providing for specific derogations from "*lex loci laboris*" principle.

In particular, SSCs may be:

- **Complete**: the SSC rules all kind of mandatory social security contributions so, during the secondment period, they have to be paid temporarily only in the country of the Home Company;
- **Partial**: the SSC does not rule all kind of mandatory social security contributions, therefore, during the secondment period some social security contributions has to be paid in the country of the Home Company and others in the country of the Host Company.

That being said, the first thing to be checked by an employer who wish to post an employee in an Extra- EU country consists in verifying the existence of an SSC and if it is complete or partial.

U.S.A. and Italy have executed an SSC concerning only the regulation of the social legislation related to disability, old age and survivors (IVS Insurance) therefore other matters are ruled by the Law Decree no. 317/1987.

Indeed, the Law Decree no. 317/1987 sets out several provisions finalized to ensure that the Posted Employees are subject to mandatory Italian social security insurances in order to guarantee a minimum imperative level of protection. Namely, pursuant to art. 2 Law Decree no. 317/1987 the following insurances are mandatory:

a) IVS insurance (the only covered by the SSC USA-Italy);
b) insurance against tuberculosis;
c) insurance against involuntary unemployment;
d) insurance against injuries at work and work-related illness;
e) insurance against sickness;
f) insurance for maternity.

It is worth clarifying that Law Decree no. 317/1987 provisions must be observed by:

a) employers with residence or domicile or legal registered office, also secondary, in Italy;
b) companies set up abroad but controlled by an Italian company with the majority of voting shares;
c) companies set up abroad where Italian individuals and Italian legal entities, directly or by means of subsidiaries, hold more than one-fifth of the share capital;
d) foreign employers.

Given that Italian Law, in order to ensure a minimum level of protection for Italian workers abroad, sets forth this mandatory social security regime regardless the co-existence of a social security system in the host country, Italian employees are subject to the abovementioned double contributory imposition when they are posted in countries where there is no SSC applicable or a partial SSC (such

as U.S.A. except for the IVS Insurance).

Accordingly, in case of double contributory imposition, the contributions due in Italy to comply with the mandatory social security regime are calculated on the basis of "**conventional remunerations**".

These conventional remunerations are set in charts divided per sector and levels, drafted by the Ministry of Labor and re-evaluated annually[3].

However, in certain cases set forth by art. 4, Law Decree no. 317/1987, if in the country of the Host Company there is a mandatory social security scheme and the Home Company (*i.e*. the employer) has duly complied with it, social security costs are reduced in proportion by means of decree of the Ministry of Labor.

With specific regard to the insurance against injuries at work, it is important for the Home Company to clarify if the Posted Employee will be requested to carry out in the Host Company the same activity that he performed before the secondment or a different one.

In the first case, the Posted Employee is already covered by INAIL (National Institute of Insurance against injuries at work) insurance, regardless the place of work; on the contrary, if the Posted Employee is supposed to carry out activities for which he has not covered yet by INAIL insurance, the Home Company shall pay the appropriate insurance.

However, should an injury occur, the Posted Employee shall promptly inform both the Home Company in order to start the procedure at INAIL and the Host Company for the organization of work.

3.2 SSC between Italy and U.S.A.

Moving on the exam of the SSC Italy-U.S.A., it was executed on May 23, 1973 and it entered into force along with the Administrative Protocol including implementing provisions on November 1st, 1978; afterwards, it has been modified by the Additional Agreement entered into force on January 1st, 1986.

As mentioned above, the SSC Italy-U.S.A. is a partial SSC and applies to IVS insurance only.

[3] For more information on conventional remunerations for the year 2020, see *Circolare Inail* no. 3/2020.

Generally speaking, the SSC Italy-U.S.A., under its art. 7 in par. 1, sets out the "*lex loci laboris*" principle, providing that people who carry out their activity on the territory of one the two States are subject to the legislation of such State.

However, the SSC Italy-U.S.A. provides several exceptions to this principle on the basis of the workers' citizenship and nationality.

In particular, with the aim to avoid the double contributory imposition and to apply only the legislation of one State, art. 7 provides as follows:

- U.S.A. citizens working in Italy and covered by the U.S.A. social security laws remain subject to the same legislation (par. 2);
- Italian citizens working in U.S.A., for an Italian employer or for a subsidiary of an Italian company, are subject to Italian legislation (par. 3).

Furthermore, the same article in par. 4 provides some options when the same period of work is subject to the legislation of both States:

a) citizens of one State are subject for the said period to the legislation of the State of nationality and are exempted from the legislation of the other State;
b) Italian citizens or people with both nationalities, may opt for the said period, for the legislation of one of the two States and be exempted from the legislation of the other State;
c) Workers who do not have any of the two nationalities shall be subject, for the said period, to the legislation of the State where they work and shall be exempted from the legislation of the other State.

To clarify, the same period of work may be subject to the legislation of both States when, for instance, an Italian worker goes to work in U.S.A. and in accordance of art. 7 par. 1 and par. 3, he/she is subject to both legislations.

In addition, it is worth noting that, unlike secondment in other countries (such as EU Member States), pursuant to SSC Italy-U.S.A. secondment in U.S.A. is not subject to specific temporal limitations, therefore the Home Company may decide the relevant duration in accordance with its needs.

4. U.S.A. Visa

A citizen of a foreign country who seeks to enter the United States generally must first obtain a U.S. visa, which is placed in the traveler's passport, a travel document issued by the traveler's country of citizenship.

To work in the United States temporarily as a lawful nonimmigrant, temporary workers must qualify for the available visa category based on the planned employment purpose. The steps in the process before applying for a visa vary.

Temporary worker visas are for persons who want to enter the U.S.A. for employment lasting a fixed period of time and are not considered permanent or indefinite.

Each of these visas requires the prospective employer to first file a petition with U.S. Citizenship and Immigration Services (USCIS) since some temporary worker categories are limited in total number of petitions which can be approved on a yearly basis.

The most common categories of Visa used for the purpose at stake are:

- **H-1B Person in Specialty Occupation**: to work in a specialty occupation. Requires a higher education degree or its equivalent.
- **L Intracompany Transferee**: to work at a branch, parent, affiliate, or subsidiary of the current employer in a managerial or executive capacity, or in a position requiring specialized knowledge. Individual must have been employed by the same employer abroad continuously for 1 year within the three preceding years.

5. Conclusion

In case of secondment of Italian employees in U.S.A. is necessary to examine the U.S.A. mandatory laws, the U.S.A. social security legislation, the Italian mandatory social security legislation, the Italian secondment discipline, the Italian official documents concerning the conventional remunerations, the SSC Italy-U.S.A., the U.S.A. VISA rules and so on.

It is clear that the procedure is very complex and we may not exclude that the procedure may become even more complicated and delicate because of the number of restrictions and bans to travel entered into

force in the current historical period affected by the Covid-19 pandemic, therefore it is advisable to check the continue updates published on official channels of Italian and U.S. governments.

Contractual Considerations for Italian Companies Doing Business in the United States in The COVID-19 ERA

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As the world continues to adjust to the "new normal" of the COVID-19 era, Italian companies that are doing business (or wish to do business) in the United States are also adjusting to new norms in contractual relations with U.S. based companies. This article focuses on two areas of U.S. contractual law that have gained attention as a result of the pandemic, and it also provides a high-level comparison of some common business structures that may be used by Italian companies to conduct their U.S. operations. The first section focuses on the U.S. law of "force majeure," which is contained in many U.S. contracts and serves as an avenue for delaying performance due to certain unanticipated events. The second section focuses on the law of price gouging and reviews the issue of whether companies can raise their prices to account for supply chain disruptions or other events. The third section summarizes the characteristics of four business structures and what impact such structures might have on a company's business and financing opportunities.

Force Majeure

A force majeure provision is a clause in a contract that generally excuses a party for non-performance under a contract if the non-performance is caused by an event that is outside the reasonable control of the affected party. Typically, force majeure provisions are not read into contracts; they must be expressly stated in a contract for an affected party to be able to invoke. If your contract is silent, there may be other remedies an affected party can pursue (e.g., under the Uniform Commercial Code or the common law).

A force majeure provision can be anywhere in a contract but will typically be found in the "boilerplate" language of a contract – which is basically the legal jargon at the end of agreement. Please note that the words "force majeure" may not be used, so look for terms like "acts of God," "war," "terrorism," or other actions that are outside a party's control.

The question that many companies have been asking is whether COVID-19 qualifies as a "force majeure" event. The answer is maybe. It depends on the contract language and also the law of the jurisdiction that applies to the contract. Some (but probably not many) contracts will specifically include pandemics,

epidemics, diseases or health crises as force majeure events.[4] If this is the case, it is very likely that COVID-19 will qualify as a triggering event.

However, the majority of contracts will not have a specific reference to pandemics or the like.[5] In that case, you will need to evaluate whether COVID-19 qualifies under one of the events that are enumerated in your contract (e.g. an "Act of God," a governmental action, etc.). Some U.S. state laws are very restrictive (such as New York) and suggest that a pandemic may not qualify as an "Act of God." Careful analysis therefore is required.[6]

Assuming that a force majeure event has occurred under the terms of your contract, the following additional elements typically must be satisfied in order for a force majeure provision to be enforceable:

1. Direct Causation: The affected party's inability to perform must be caused by COVID-19 or its direct impacts and not something else. In other words, force majeure should not be used to get out of a bad business deal.

2. Duty to Mitigate: The affected party has a duty to try to minimize damages and will typically be required to show that it took reasonable steps to avoid or mitigate (i.e. minimize) the event and its consequence.
3.
4. Proper Notice: If the contract requires notice of the force majeure event to be given to the other party, the affected party's right to invoke a force majeure claim may be jeopardized if proper notice is not given.
5.

[4] *See, e.g., Gulf States Protective Coatings, Inc. v. Caldwell Tanks, Inc.*, No. 3:15CV-00649-JHM, 2019 WL 7403970, at *9–10 (W.D. Ky. June 18, 2019) (wherein the contract stated that neither party would be responsible for any failure to perform due to "epidemics" among other things).

[5] *See, e.g., OWBR LLC v. Clear Channel Commc'ns, Inc.*, 266 F. Supp. 2d 1214, 1220 (D. Haw. 2003) (citing a force majeure provision without reference to epidemics or pandemics; rather that "[t]he parties' performance under this Agreement is subject to acts of God, war, government regulation, terrorism, disaster, strikes (except those involving the Hotel's employees or agents), civil disorder, curtailment of transportation facilities, or any other emergency beyond the parties' control, making it inadvisable, illegal, or impossible to perform their obligations under this Agreement").

[6] There are not many reported cases in the United States that address whether an epidemic or pandemic is covered by a force majeure clause. Compare *Phelps v. Sch. Dist. No. 109, Wayne Cty.*, 302 Ill. 193, 198, 134 N.E. 312, 314 (1922) (Illinois Supreme Court finding that epidemic did not excuse school's obligation to pay) with *Coombs v. Nolan*, 6 F. Cas. 468, 468–69 (S.D.N.Y. 1874) (New York federal court finding that an epidemic triggered force majeure clause and excused party's delay in delivering goods).

6. No Favoritism: In general, a company can't favor one customer over another – even if that customer is their largest or if not allocating evenly across customers would be economically beneficial to the affected party.
7.

While there are common elements to a force majeure analysis, the law and how courts will interpret and apply such provisions may differ significantly from jurisdiction to jurisdiction. For that reason, engaging U.S. counsel on these issues is an appropriate step to avoid or minimize litigation in U.S. courts.

Price Gouging

The term "price gouging" generally refers to a price increase which occurs during the time of a public crisis and appears designed to take advantage of the unfortunate circumstances. Because it is viewed as exploitative conduct, price gouging tends to capture the public's attention through media reports, and, in turn, can become a political issue, with elected officials publicly condemning the conduct.[7] This imposes increased pressure on law enforcement agencies to target the alleged wrongdoers for prosecution and seek to impose harsher-than-typical penalties in order to deter other would-be opportunists.

A common misconception about price gouging laws is that they only apply to retailers selling to individual consumers. In most instances, these laws expose every company in the supply chain, including manufacturers, suppliers, and distributors, to liability. See, e.g. Conn. Gen. Stat. § 42-235 (c) ("During such severe weather event emergency, no person within the chain of distribution of consumer goods and services shall sell or offer to sell consumer goods or services for a price that is unconscionably excessive"); NY Gen. Bus. § 396-r ("This prohibition shall apply to all parties within the chain of distribution, including any manufacturer, supplier, wholesaler, distributor or retail seller of goods or services or both sold by one party to another when the product sold was located in the state prior to the sale."); CA Penal Code § 396 ("… it is unlawful for a person, contractor, business, or other entity to sell or offer to sell … for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency.") The laws generally apply equally to commercial (i.e., business-to-business) and individual transactions. *Id*. For example, a manufacturer could be the victim of price gouging by a supplier.

It is not just the company that faces risks. Over the last few years, law enforcement agencies have increasingly focused on individuals - business owners and managerial-level employees - for other types of corporate-level wrongdoing. Already, allegations of price gouging have led to the filing of criminal

[7] See, e.g., Ryan Tarinelli, *Cuomo Sign Anti-Price Gouging Bill to Cover All 'Essential' Goods During Pandemic*, Law.com (Jun 30, 2020), https://www.law.com/newyorklawjournal/2020/06/08/cuomo-signs-anti-price-gouging-bill-to-cover-all-essential-goods-during-pandemic/; Luke Mullins, *Coronavirus Price-Gouging Has Become a Serious Law-Enforcement Issue in the DC Area*, Washingtonian (Jun. 30, 2020), https://www.washingtonian.com/2020/03/25/coronavirus-price-gouging-has-become-a-serious-law-enforcement-issue-in-the-dc-area/.

charges against individual business owners in both New York and California.[8] More arrests of this sort are certain to follow in the coming months, with the potential of significant financial penalties and prison terms hanging over the heads of defendants.

Until earlier this year, no federal law prohibited price gouging. On March 23, President Trump signed an Executive Order criminalizing the act of accumulating certain pandemic-related products in order to sell them above "prevailing market prices". Exec. Order No. 13910, 85 Fed. Reg. 17001 (Mar. 23, 2020).[9] The products affected by this Executive Order are those specially designated by the U.S. Department of Health and Human Services as critical to responding to the pandemic. HHS issued a Notice designating products such as personal protective equipment and ventilators within the scope of the Executive Order.[10] Importantly, the Executive Order does not define the term "prevailing market prices," which creates significant uncertainty over the Order's application.

Two Congressional bills have been introduced that would create federal statutory law on this subject. The COVID-19 Price Gouging Prevention Act would give additional enforcement powers to the Federal Trade Commission and state attorneys general to prevent the sale of a "good or service" at an "unconscionably excessive" price for the duration of a public health emergency due to COVID-19. H.R. 6472, 116th Cong. (2020). The Price Gouging Prevention Act also would give enforcement power to the Federal Trade Commission and state attorneys general and would provide that any price increase above 10 percent during a declared emergency, including any future emergency after COVID-19, is presumed to be price gouging. H.R. 6450, 116 Cong. (2020).

Until the Executive Order, and pending the outcome of those two federal bills, price gouging enforcement has been handled at the state and local levels. Most U.S. states, and some cities, have their own price gouging laws. See, e.g., Conn. Gen. Stat. § 42-235 (Connecticut); NY Gen. Bus. § 396-r (New York); CA Penal Code § 396 (California). These laws apply to a far broader universe of products than the Executive Order.[11] The standards vary among the different jurisdictions, with the more extreme laws purporting to

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[8] See, e.g., Asher Stockler, *New York Man Charged With Price Gouging in First-Ever Defense Production Act Prosecution*, NEWSWEEK (June 30, 2020), https://www.newsweek.com/new-york-man-charged-price-gouging-first-ever-defense-production-act-prosecution-1500232; Cindy Von Quednow, *L.A. pharmacist charged with price gouging after selling KN95 masks for $10: CA AG*, KTLA5 (June 30, 2020), https://ktla.com/news/local-news/l-a-pharmacist-charged-with-price-gouging-after-selling-kn95-face-masks-at-10-each-ca-attorney-general/.

[9] See also, Memorandum from the Office of the Attorney General to all Heads of Department Components and Law Enforcement Agencies, *Department of Justice COVID-19 Hoarding and Price Gouging Task Force,* Mar. 24, 2020 (https://www.justice.gov/file/1262776/download).

[10] Dept. of Health and Human Servs., *Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures Under Executive Order 12910 and Section 102 of the Defense Production Act of 1950*, Mar. 25, 2020 (https://www.hhs.gov/sites/default/files/hhs-dfa-notice-of-scarce-materials-for-hoarding-prevention.pdf); see also Press Release, Dept. of Health and Human Servs., *HHS Implements President Trumps Hoarding Prevention Executive Order*, Mar. 25, 2020 (https://www.hhs.gov/about/news/2020/03/25/hhs-implements-president-trumps-hoarding-prevention-executive-order.html).

[11] Connecticut law expressly prohibits increasing the price of *any item* offered for sale in Connecticut during any state or federal disaster or emergency declaration, provided the increase was not due to normal business fluctuation. Conn. Gen. Stat. § 42-230. New York law applies to goods and services used for personal, family or household purposes, including the rendering of repair services on an emergency basis. NY Gen. Bus. § 396-r. California law applies to any consumer food items or goods, goods or services used for emergency cleanup,

prohibit *any* price increase on *any* product once a state or federal authority declares a disaster or emergency.[12] The penalty provisions in these laws create the potential for considerable financial exposure.[13]

Despite these myriad laws, it is important to understand that businesses may, with some careful analysis, raise prices during the COVID-19 pandemic. The anti-gouging laws are generally designed to prohibit exploitation, but a business might be permitted to increase prices for reasons unrelated to the current crisis, such as raw material scarcity or labor shortages driving up costs. Given the risks and potential exposure of a price gouging prosecution, businesses should consider implementing a compliance program to vet all potential price increases; such a program would include some of the following components:

1. Training: Compliance lawyers have no shortage of anecdotes about important company policies that have never been seen, let alone followed, by company employees. One option is to have copies of the pricing compliance program materials delivered to each relevant employee via email, and each employee should sign and return an acknowledgement of receiving and reading the materials. That distribution should take place either immediately before or after a training session that reviews in detail the specific procedures and requirements of the program.

2. Corporate Philosophy: Effective compliance materials often begin with a written statement from the senior-most or at least a very senior executive expressing a corporate-wide prohibition on exploitative pricing. This way, there can be no confusion by employees about corporate expectations. No one wants an employee to tell government investigators that he or she thought the company was more interested in revenue than doing business through fair and legal methods.

3. Procedures Based on Relevant Laws: It is beneficial to have the compliance procedures prepared, or at least reviewed, by legal counsel to ensure that they are sufficiently up to date and consistent

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emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels. CA Penal Code § 396.

[12] Conn. Gen. Stat. § 42-230 ("No person, firm or corporation shall increase the price … Nothing in this section shall prohibit the fluctuation in the price of items sold at retail which occurs during the normal course of business."); NY GBL § 396-r (3) ("Whether a price is unconscionably excessive is a question of law for the court … [which] shall be based on any of the following factors: (i) that the amount of the excess in price is unconscionably extreme; or (ii) that there was an exercise of unfair leverage or unconscionable means; or (iii) a combination of both factors in subparagraphs (i) and (ii) of this paragraph."); CA Penal Code § 396 (b) ("… it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency.").

[13] Conn. Gen. Stat. § 42-235 ("(f) A violation of subsection (c) of this section shall constitute an unfair trade or deceptive practice under subsection (a) of section 42-110b. (g) Each violation and each day on which the violation occurs or continues shall be a separate offense." Section 42-110b allows for punitive damages, actual damages, recovery of enforcement costs, and injunctive relief.); Conn. Gen. Stat. § 42-232 (if the item has been designated to be in "short supply" or "in danger of becoming in short supply," a violator faces a fine of up to $1,000 per violation and criminal penalties, including up to one year imprisonment or, if the violation is found to have been intentional or part of a pattern of repeated violations, up to five years imprisonment and a fine of up to $5,000.); NY GBL § 396-r (4) ("… the court shall impose a civil penalty in an amount not to exceed twenty-five thousand dollars and, where appropriate, order restitution to aggrieved consumers."); CA Penal Code § 396 ("(h) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment. (i) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.").

with governing laws. The program should consider taking into account the "prevailing market prices" standard of the Executive Order as well as the particular laws of each jurisdiction in which the company's products will likely be sold.

4. Record Maintenance: An accurate and complete set of the relevant business records can be an important component of a company's defense when regulators knock on the door with concerns. The compliance program drafters should consider having employees be directed to preserve all records, including emails and invoices, that were involved in the analysis of whether the price increase satisfied the company's compliance policy.

Although no compliance program is certain to avoid liability, if the pricing procedures are well-drafted and then carefully followed by trained employees, the result should be a thorough analysis of pricing decisions and a comprehensive written record which together may prove to be strong evidence for rebutting potential price gouging claims.

Business Structures

Despite the unprecedented disruption caused by the COVID-19 pandemic for businesses across all regions and industries, the United States remains an attractive country for foreign investments mainly due to access to the most developed, efficient and liquid capital markets in the world. Choosing the right type of business structure is a critical first step to ensuring the overall success of a business in the U.S.

This section illustrates a high-level comparison of four most commonly used business structures in the U.S. and does not discuss all the factors that may be relevant in making the choice of structure for a particular business.

1. Corporation

   A corporation is an entirely separate and distinct business entity from its owners, whose ownership is represented by shares of stock in the corporation (hence they are also known as "stockholders" or "shareholders"). A corporation may have a sole shareholder, a few, or a large number of shareholders. Corporations may issue different classes of shares and designate different series of shares within a class, thereby allowing a corporation to grant different rights to different shareholders.

   Corporations are created and regulated by the corporate laws of their state of incorporation as well as corporate laws (both statutory and common-law) in any other jurisdictions in which they are qualified to conduct business.

   The day-to-day activities of a corporation are managed by officers who are appointed by the board of directors, the members of which are elected by shareholders to oversee their interests as owners of the corporation. Both the officers and the directors of a corporation have a fiduciary duty to act

in the best interests of the shareholders.

One of the main advantages of incorporation is that personal assets of the shareholders, directors, and officers are protected from creditors of the corporation if certain corporate formalities are observed, such as keeping corporate funds separate from personal funds, holding regular meetings of directors and shareholders, keeping minutes of the meetings, and maintaining detailed financial records. Additionally, if the corporation is a subsidiary of a foreign parent, creating a U.S. corporation can act as a shield for the assets of the foreign parent company and mitigate to some extent the rights of creditors of the U.S. company to bring actions against the parent.

Compared to other business structures, corporations have access to a broader range of financing options. Some common financing options for a corporation include: (i) the issuance of equity and the incurrence of debt to fund corporate activities in a registered offering with the U.S. Securities and Exchange Commission or an unregistered offering pursuant to certain exceptions from registration; (ii) traditional bank loans, such as term loans with fixed interest rates and long-term repayment plans, small business loans, and secured and unsecured lines of credit; and (iii) loans by a foreign parent entity.

2. General or Limited Partnership

A general partnership is a business entity managed and operated by at least two people (the partners) who contribute money, property, labor, or skill and expect to share the profits and losses of the business. Each partner in a general partnership has unlimited liability for the partnership's debts and obligations, meaning that each general partner can be sued for the full amount of the partnership's debts and obligations. Each general partner contributes to the day-to-day management of the business and has the authority to make business decisions and legally bind the partnership in entering into contracts. The contributions, responsibilities and liabilities of the general partners are often equal, unless stated otherwise in a partnership agreement signed by all partners.

A limited partnership consists of one or more general partners with unlimited liability who manage the business, and one or more limited partners with limited liability (meaning that limited partners are not responsible for the payment of the partnership's debts with their personal assets) who do not play an active role in the management of the business and have no authority to bind the partnership in entering into contracts.

Forms of financing options available to partnerships are similar to corporations, although with some limitations. For example, partnerships typically are not publicly traded, and they will normally convert into corporations prior to an initial public offering (IPO). Moreover, when a partnership applies for a loan or line of credit from a bank, the personal credit history and financials of the partners will be reviewed by the bank in addition to those of the partnership.

3. Limited Liability Company

A Limited Liability Company (LLC) is a business structure combining structural elements of a corporation with the tax benefits of a partnership. Rules and regulations pertaining to LLCs vary by state.

Owners of an LLC are called members, whose ownership of the LLC is represented by their holding of a certain percentage of membership interests or a certain number of membership units

(which are similar to shares of a corporation) of the LLC. An LLC is allowed to have different classes of membership interests or membership units, providing the flexibility to distribute voting rights and profits in different ways. Most states allow members to include U.S. and foreign individuals, corporations, and other LLCs.

LLCs may comprise a single member or multiple members. LLCs can be either member-managed, in which all members participate in the day-to-day operation and decision-making process of the LLC, or manager-managed, in which one or more managers are appointed by members as agents of the company to manage the business. A manager may be a member but does not have to be.

Like corporations, members of LLCs are not personally liable for the LLC's obligations, debts, or liabilities. Although the maintenance of company formalities is not as stringent for LLCs as it is for corporations, it is generally considered good practice to follow similar guidelines and observe such formalities as corporations.

LLCs have similar financing options and limitations as those applicable to partnerships.

4. Branch Office

A foreign company is not required to set up a separate U.S. entity in order to do business in the United States and could instead do so through a branch office. A branch office is an extension of the foreign company that conducts business directly in the United States and does not have its separate legal existence from the foreign company. This exposes the foreign company itself to U.S. tax and legal liabilities with respect to the branch office's operations.

Because it is not a separate legal entity, a branch office does not have the option to raise capital from private or public offerings. In addition, compared to a U.S. entity, a branch of a foreign company may experience additional scrutiny by a bank when trying to open a U.S. bank account.

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(*) Ed Heath (partner), Jeff White (partner) and Anna Jinhua Wang (Counsel) are attorneys with Robinson & Cole LLP. They have been invited to speak at The White House, U.S. Department of Commerce events, and by economic development organizations that wish to attract companies to the United States. Ms. Wang and Mr. White were selected by the U.S. Department of Commerce's SelectUSA program to co-author a chapter in its Investor Guide for companies interested in making investments in the United States.

New Proposals for businesses presented to the Italian Government by the Colao Committee.

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The Colao Committee is a task force appointed by the Italian Government, in order to present proposal of reforms and new laws, to relaunch Italy in the next two years, 2020 – 2022. The ideas that the Colao Committee introduced last days are particularly interesting and worth considering, and they offer opportunity to meditate.

The document indicates six areas of possible intervention, fixing very clear targets to be agree with. The interventions aim to make our system more resilient to future economic shocks, more competitive and reactive to invert crisis moments, more sustainable and equal to reduce the weight of the crisis on the poorest bracket of the population. By the analysis context, document expressly excludes, in addition to tax and welfare – because of their complexity – also civil justice, not renouncing to underlining its importance and stressing structural modernizations, included the digitalization of procedures.

In this large context, our attention focus on the businesses and work sector, and especially on identifying remedies to increase balanceable businesses cash and reduce the impact of post crisis litigations.

Proposals start by an hard fact: IMF predicts at least a 9% GDP decrease in 2020, after an already very low GDP growth since precedent crisis between 2008 and 2011. It's easy to understand Committee's concerns on this point and above all its intuition to take our credit system access to a turning point, in order to make it not more intermediated by the banks only.

Is this a very valuable target, considered that the business crisis management reform – postponed to September 2021 due to Covid – will be based on the "alert", that means on a system of rules urging the

ceo in monitoring the business continuity and in timely adopting necessary misures to resolve crisis and avoid bankruptcy.

That system – if well used and not distorted to repressive purposes – could fulfill the target indicated by the Committee, that is avoiding bankruptcy procedures in order to not block cash flows within manufacturing chains.

We can agree with that target, but it's necessary to – timely – think on how to support financial needs of businesses joining the alert system. If we take a look to the actual credit evaluation criteria, we realize that a business presenting crisis index, even if potentially balanceable, will not be able to accede to bank credit. Moreover, business will face a situation where its credit it has been already limited, if not totally cancelled. It's true that Government put in play cash incentives to businesses, also trough SACE public guarantee; but this is not enough, rather being necessary to create a said "crisis market", that means spreading operators specialized in support liquidity for businesses in crisis and in alert.

We believe that this could happen in two ways. The first one is to develop IT platforms that facilitate hard collectable credit transfer. A financial resource that a business could put in field is just the transfer of credits versus clients or Public Administration. With respect to that, Colao Committee shows interest, even if it limits credit transfer system to credits versus Public Administration, while it stresses big businesses on adopting an ethic code about timely pay to suppliers. It's a first step, but more shall be done. In fact, as a consequence of the crisis market, there will be an acceleration on civil justice, as already happened as a consequence of NPL market when funds needed to quickly collect credits transferred by the banks.

In our perspective, credits to be transferred are the ones of businesses that need cash and when funds will push to quickly collect credit they will implement a virtuous develop also in civil justice.

The second way is to modify the insolvency regulatory law concept. We know that we are highlighting a delicate point of crisis rules, but the support to the small and medium businesses could be in vain if would catch on the idea that a bankruptcy procedure shall open not only when the insolvency is actual, but also when it's of perspective, or foreseeable in 6/12 months. We believe that this would negatively impact our

Country most wick sector, transforming the alert system in a bankruptcy accelerator. Moreover, there would be no time to verify the liquidity support for manufactory sectors largely spread on the territory, that by themselves already suffer credit limitation due to a reduction of the proximity bank system. It's necessary a new deal like US Chapter 11 framework to improve a rescue culture and to support a business crisis market in Italy.

We cannot forget Zhuangzi words: "*what deserves to be learned is what cannot be teached*". So, what is needed is a deep common sense to relaunch our Country system.

Lobbying in Connecticut and the United States: background and compliance information for Italian business and companies.

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Abstract: *This brief article will provide contextual history of lobbying in the United States, Connecticut and Italy, an overview of the lobbying laws and regulations in the State of Connecticut and Washington, DC and compliance guidance for Italian businesses and companies doing business in Connecticut as well as those exploring and considering expanding into Connecticut.*

Keywords: Lobbying, Lobbyist, Italian Business, Government, State Government

Introduction

In the United States the terms "lobby" and "lobbying" began to be used in the late 19th Century and are commonly used to describe individuals representing other interests using professional skills, experience, expertise and knowledge to monitor laws and practices, influence policymaking and advocate for those interests with local, state and federal governments through a variety of actions and tactics. These interests attempt to influence political decisions using all the legal tools available to them. A lobbyist is any person who is employed by a client in exchange for financial or other compensation for services encompassing the needs of that client to influence and interact with governments.

While there are no legal or regulatory requirements that a “lobbyist” be an attorney, many lobbyists in Connecticut and Italy are licensed practicing attorneys and work in law firms in both locations. Many businesses, corporations and trade associations utilize licensed professional lobbyists to support their interests and help their businesses grow.

Lobbying in General

Lobbying is a legitimate part of the governmental process in all democratic systems in the world including Italy and the United States. Although the term often comes with negative perception, in the western world the work of lobbyists and lobbying is considered critically important to business compliance and success and is undertaken by entities to help grow markets and achieve international business success.

Origins of Lobbying in the United States

The United States is considered the birthplace of lobbying, where it first created and became a formal part of policymaking and decision-making process at the local, state and federal levels of government.[14] As the oldest home of this global profession, and the most formally developed, it is (often) used as a point of

[14] Milbrath, L.W. 1963. „The Washington Lobbyists”. Chicago: Rand McNall

reference for other countries and jurisdictions developing laws regarding lobbying regulation, structure and laws.

International businesses from Italy and the world have regularly used lobbyists and lobbying firms to assist them in Connecticut and the United States. Most public officials in Connecticut and Italy consider lobbyists as information providers and policy experts providing elected officials, appointed staff and other government officials with useful information about the underlying subjects of issues, policies, operations and proposed legislation. Lobbyists and the interests they represent play an important role in informing and educating elected officials about the need for, and the effects of, specific policy decisions.[15]

Lobbying in Italy

There are no specific rules governing lobbying or lobbyists today in the Italian parliament or in Italy, although there were attempts to create a lobbying and lobbyist system of regulation during the 1980s. In the Nineth Legislature (1983-1987) four bills were introduced and tabled that would have begun the formal regulation of professional public affairs activities in Italy. The committee on employment and social security discussed these bills in the *Camera dei Deputati*[16] which then prepared a unified text. The passage of this proposed legislation was interrupted by the early dissolution of parliament. Similar bills have since been tabled in 1987, 1989 and again in 1992 but have never been able to pass and become law. Today in the *Senato della Repubblica* (Senate of the Republic)[17], the Upper Chamber/Senate, national associations and organizations can normally request a card giving admittance to the Senate buildings, but not to the rooms where parliamentary committees meet.[18]

There has been increasing pressure in Italy for the introduction of a system of registration of interest groups and their representatives and to make it compulsory for registered groups to submit reports stating their expenses incurred and action taken in the interests of greater transparency of interest group activity. A bill presented to parliament in September 2001 which proposed inter alia such a register was not adopted. There have also been some attempts in the regional governments of Italy through the consideration of proposals and schemes that were introduced in the Consiglio regionale della Toscana in 2002 and in Regione Molise in 2004, but neither of those proposals became law.

Lobbying in the United States

Lobbying in the United States is strongly rooted in the First Amendment to the Constitution of the United States, which ensures Congress shall make no law prohibiting any citizens ability to petition governments in the United States for a redress of grievances.

Specifically, The First Amendment of the Constitution guarantees and protects explicitly "*the right…to petition," or the right to engage directly with government, "for a redress of grievances."*[19] The

[15] M. Cummings, D. Wise, op. cit, p. 32

[16] The *Camera dei Deputati* (Chamber of Deputies) is the Lower House in the bicameral Parliament of Italy. Pursuant to Article 56 of the Italian Constitution, the *Camera dei Deputati* has 630 seats, 12 of which are constituencies representing Italian citizens living abroad, including "nella circoscrizione Estero C (America Settentrionale e Centrale)" District that includes the State of Connecticut and is represented by the Onorevole (Hon.) Fucsia Fitzgerald Nissoli, M.P.

[17] The *Senato della Repubblica* (Senate of the Republic) is the Upper House in the bicameral Parliament of Italy. Pursuant to Article 56 of the Italian Constitution, it has 315 seats, 6 of which are constituencies representing Italian citizens living abroad, including "nella circoscrizione Estero C (America Settentrionale e Centrale)" District that includes the State of Connecticut and is represented by the Onorevole (Hon.) Francesca Alderisi.

[18] Malone, M., op.cit., p. 16

[19] U.S. Const. amend. I.

Supreme Court further incorporated and strengthened the petition clause of the First Amendment as part of the 14th Amendment's guarantees against the states holding that the clause applies equally to state and local governments and protects petitions directed to the judicial, executive and legislative branches.[20] In that seminal 1967 case the Court said: *"[The] rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press*".[21]

This Constitutional right to "*petition the government for redress of grievances*" applies today to all Italian businesses, salespersons and all international entrepreneurs operating, and seeking to grow their businesses, in Connecticut and throughout the United States.

The increased role of government, even more evident now in the current Covid-19 public health crisis, has led to an increasing role of government into the marketplace of businesses, corporations and trade associations in Connecticut, Italy and the world. This increased involvement, including new financing, taxes, law, regulations and executive orders, has led to an explosion of need for lobbying and lobbyists to assist businesses in their interactions and behaviors with government at all levels and the growth of lobbying practice in United States and Italy. And increase in companies represented by professional lobbyists and lobbying firms to represent and protect their economic interest and act to influence the policies that are impacting their businesses and markets.

US and the History of Lobbying

Since the ending of the Civil War in 1865 lobbying has been an issue in the United States and the regulation of lobbying and lobbyists remains extremely contentious to this day. During the populist movement in 1870s, certain practices by railroad interests led to demands to regulate those seeking to influence railway prices during the massive rail expansion that took place across the United States.[22]

Beginning in 1876 the U.S. House of Representatives attempted to require lobbyists to register but was unsuccessful for many years. Starting in 1911 bills to require lobbying regulation were considered in every session of the Congress through the late 1920's, frequently debated, but none ever passed.[23] Lobbyists' influence continued to be an issue in the country and it was not until the New Deal Presidency of Franklin Delano Roosevelt in the 1930s and 40s that the Federal Government began to undertake a serious review of the issue of lobbying the government.

Over the next few decades, Congress continued to discuss ways to regulate lobbying, which proved difficult to accomplish because of the First Amendment right of citizens to petition their government. Focusing therefore on disclosure rather than on actual regulation of lobbyists' activities, Congress later in the 1930s passed bills requiring registration by lobbyists for public utilities, shipping firms, and foreign agents.

[20] UNITED MINE WORKERS OF AMERICA, DISTRICT 12 v. ILLINOIS STATE BAR ASSOCIATION ET AL., 389 U.S. 217 (1967)

[21] UNITED MINE WORKERS OF AMERICA, DISTRICT 12 v. ILLINOIS STATE BAR ASSOCIATION ET AL., 389 U.S. 217 (1967)

[22] Kolko, 1965.

[23] Thomas, 1998: 504.

In 1935 the Congress passed the "*Public Utility Holding Company Act*" (PUHCA) to protects customers and prevent utility holding companies from subsidizing unregulated business activities from profits obtained from their regulated business activities. Included in that legislation was a requirement that any employee of a holding company would be required to submit reports before trying to influence the Congress. This was one of the earliest statutory and regulatory frameworks for "lobbying" and "lobbyist" (although still not defined with those terms) regulation, reporting and record keeping[24]

In 1946, as part of that year's Legislative Reorganization Act, it adopted the Federal Regulation of Lobbying Act, requiring those hired to lobby to register with Congress

The Federal Regulation of Lobbying Act of 1946 represents United States of America's first lobbying disclosure law for domestic lobbyists. The main goal of the 1946 Act was to establish for first time a system of lobbyist registration and disclosure. Therefore, the Act provided an organized system of registration and financial disclosure of any person attempting to influence legislation in Congress. It required anyone who wanted to influence the passage or defeat of legislation in Congress to register with the Clerk of the House and the Secretary of the Senate and file quarterly financial reports. The Regulation Act of 1946 was considered to be ineffective.[25]

INSERT 1970's WATERGATE INFORMATION HERE

Lobbying at the Federal Level in the United States

In 1995 the American Congress adopted Lobbying Disclosure Act (LDA). The LDA made important improvements for the lobbying regulations, for example it clarified the role of lobbying practice by giving a clear definition of lobbyist and lobbying activities; it provided information about when lobbying registration is required and also required that lobbyists and any organization involved in lobbying file bi-annual financial activity reports.[26]

At the same time, any organization contributing more than 10,000 dollars must register. These records are kept by the Secretaries General of the two legislative houses (Clerk of the House and Secretary of the Senate). Due to staff shortages, these two offices cannot investigate and discover illegal activities. Thus, of the 2,000 cases filed by the Justice Department since 2003, has not been solved either.

Lobbying in the Individual States of the United States

States generally define lobbying as an attempt to influence government action through either written or oral communication. However, each state may have unique elements for what constitutes lobbying, exceptions to the definitions, and exceptions to those exceptions.

The definition of a lobbyist typically revolves around lobbying on behalf of another for compensation. Arkansas, Connecticut, Georgia, Hawaii, Indiana, Maryland, Minnesota, Michigan, Texas, Wyoming and

[24] Ronald J. Hrebenar. 1977., Interest Group Politics in America", 3rd edition: Routledge.

[25] Federal Regulation of Lobbying Act. 2014. http://definitions.uslegal.com/f/federal-regulation-of-lobbying-act-of-1946/ (accessed May 2020)

[26] History of Lobbying Disclosure Act. 2005 http://www.lobbyinginfo.org/documents/LDAhistory.pdf. (accessed May 2020)

New York stipulate compensation thresholds, so that an individual is required to register only after receiving a certain amount of compensation.

Lobbyists are not simply individuals who engage in lobbying. As an example of one common exception, a legislator attempting to gather support for a bill through the normal course of legislative operations would not be considered a lobbyist. A constituent making a call to a policymaker regarding a matter of personal concern would similarly be exempt.

The increase in regulations and the better organized lobbying activities created the growth of lobbying practice in USA, represented by professional interest groups, companies or individual lobbyists. Many the lobbying institutions represent economic interest and act to influence the economic policies.

Lobbying in the State of Connecticut

In Connecticut "Lobbying" means communicating directly or soliciting others to communicate with any official or his staff in the legislative or executive branch of government or in a quasi-public agency, for the purpose of influencing any legislative or administrative action. A "lobbyist" is an individual or entity that receives or spends, or agrees to receive or spend, at least $ 3,000 in a calendar year on lobbying or activities in the furtherance of lobbying (CGS § 1-91(12)).

Lobbying in Connecticut is a highly regulated business and is overseen and governed by the Connecticut office of State Ethics.

Created on July 1, 2005, under Public Act 05-183, the Office of State Ethics ("OSE") is the independent regulatory agency charged with administering and enforcing the Connecticut Codes of Ethics ("Ethics Codes"), including the lobbying and lobbyist laws, which are found in Chapter 10 of the Connecticut General Statutes.

The OSE's duties include educating all those covered by the Ethics Codes; interpreting and applying the Ethics Codes; investigating violations of, and otherwise enforcing, the Ethics Codes; and providing information to the public.

Lobbyists

The State Code of Ethics recognizes two categories of lobbyists: client and communicator. Generally, a "client lobbyist" is an entity that pays for lobbying services on its own behalf, while a "communicator lobbyist" lobbies on behalf of one or more client lobbyists. Both must register once every two years with OSE, pay a registration fee, and file financial reports of lobbying activities (CGS §§ 1-95 and 1-96).

A client lobbyist is an individual or entity (e.g., business, corporation, union, association, firm, partnership, committee, club, or other organization) that, on its own behalf, spends or agrees to spend $3,000 or more in a calendar year for administrative lobbying, legislative lobbying, activities in furtherance of lobbying, or any combination thereof (CGS §§ 1-91(12) and (21)). Client lobbyists may use in-house communicator lobbyists, outside communicator lobbyists, or both. A communicator lobbyist is an individual or member of a business organization that, on behalf of one or more client lobbyists, receives or agrees to receive compensation, reimbursement, or both, totaling $3,000 or more in a calendar year for administrative lobbying, legislative lobbying, activities in furtherance of lobbying, any combination thereof. A communicator lobbyist communicates directly or solicits others to communicate with legislative, executive, or quasi-public officials or staff (CGS §§ 1-91(12) and (22)).

Non-Lobbyists, Further definition

With certain exceptions, "lobbying" means communicating directly with, or soliciting others to communicate with, a public official or his or her staff in the legislative or executive branch, or in a quasi-public agency, for the purpose of influencing legislative or administrative action

"Lobbying" does not include (A) communications by or on behalf of a party to, or an intervenor in, a contested case, before an executive agency or a quasi-public agency, (B) communications by a representative of a vendor or by an employee of the registered client lobbyist which representative or employee acts as a salesperson and does not otherwise engage in lobbying regarding any administrative action, (C) communications by an attorney made while engaging in the practice of law and regarding any matter other than legislative action, or (D) other communications exempted by regulations adopted by the Office of State Ethics.[27]

"Lobbyist" does not include: (A) A public official, employee of a branch of state government or a subdivision thereof, including an official or employee of a quasi-public agency, or elected or appointed official of a municipality or his or her designee other than an independent contractor acting within the scope of his or her authority or employment; (B) A publisher, owner or an employee of the press, radio or television while disseminating news or editorial comment to the general public in the ordinary course of business; (C) An individual representing himself or herself or another person before the legislature or a state agency other than for the purpose of influencing legislative or administrative action; (D) Any individual who receives no compensation or reimbursement specifically for lobbying and who limits his activities solely to formal appearances to give testimony before public sessions of committees of the General Assembly or public hearings of state agencies and who, if he or she testifies, registers his or her appearance in the records of such committees or agencies; (E) A member of an advisory board acting within the scope of his or her appointment; (F) A senator or representative in Congress acting within the scope of his or her office; (G) Any person who receives no compensation or reimbursement specifically for lobbying and who spends no more than 5 hours in furtherance of lobbying unless such person (i) exclusive of salary, receives compensation or makes expenditures, or both, of $3,000 or more in any calendar year for lobbying or the combined amount thereof is $3,000 or more in any such calendar year, or (ii) expends $50 or more for the benefit of a public official in the legislative or executive branch, a member of his or her staff or immediate family.[28]

Legislative v. Administrative Lobbying in Connecticut

In Connecticut *legislative lobbying* means any efforts which affects, or seeks to affect, legislation, even if an executive branch official is contacted as part of that effort.

Administrative lobbying is any effort which affects, or seeks to affect, the rules or regulations of an executive agency. It includes any lobbying which affects the actions of any executive agency or quasi-public agency regarding a contract, grant, award, purchasing agreement, loan, bond, certificate, license, permit or any other matter within the jurisdiction or cognizance of any such agency, even if members of the legislature are contacted as part of the effort. There are two major exceptions to this definition.

[27] Conn. Gen. Stat. Ann. § 1-91.

[28] Conn. Gen. Stat. Ann. § 1-91.

Administrative lobbying does NOT include (1) actions by a representative of a party to a contested case before an executive or quasi-public agency (including preliminary actions at an agency before a formal case has commenced) and (2) communications by a representative of a manufacturer or by an employee of the registered client lobbyist, which employee acts as a salesperson and does not otherwise engage in lobbying regarding any administrative action. See General Statutes § 1-91(k) and Regulations of Connecticut State Agencies thereunder for further explanation.

The State Code of Ethics recognizes two categories of lobbyists: client and communicator. Generally, a "client lobbyist" is an entity that pays for lobbying services on its own behalf, while a "communicator lobbyist" lobbies on behalf of one or more client lobbyists. Both must register once every two years with OSE, pay a registration fee, and file financial reports of lobbying activities (CGS §§ 1-95 and 1-96).

Additional activities that Italian companies and business leaders should be aware of include "activities in furtherance of lobbying" which, under Connecticut law, are activities that support actual lobbying activities, including research, reports, media buys, activities fostering good will, office expenses, or secretarial or paralegal salaries.

Italian companies doing business in Connecticut or considering doing business in Connecticut should be aware that legal definition of lobbying and lobbyists does not include an individual who represents himself or someone else before the legislature or a state agency for some reason other than to influence legislative or administrative action, anyone who is not paid or reimbursed specifically for lobbying, only appears formally to testify at public hearings, and registers his appearance with the committee or agency before whom he testifies, advisory board members acting within the scope of their appointment and a person who is not paid or reimbursed specifically for lobbying and spends no more than five hours engaged in it, unless he receives $3,000 or more, exclusive of his salary.

It is important to note that, if you lobby for both legislative and administrative purposes, any reportable expenditures made or income received in furtherance of lobbying must be accurately divided between legislative and administrative activities and reported separately. Additionally, your records must distinguish between administrative and legislative activities. The client lobbyist should note that all "other" expenditures, (expenditures for benefit of public officials, media communications, solicitations, office and other), must be allocated between either the legislative and/or administrative lobbying to which they relate.

Attorneys in the Practice of Law in Connecticut & Lobbying Exemptions

There are also specific legal guidelines in Connecticut State law that creates an exception to the definition of "lobbying" for attorneys engaged in the practice of law. This would apply to Italian attorneys representing businesses and clients in Connecticut before state government in their professional licensed capacity as attorneys representing their clients.

This concept first appeared in 1995 as substitute language to Senate Bill 889, *An Act Concerning the State Codes of Ethics For Public Officials and Lobbyists.* The Ethics Commission proposed SB 889 as a part of its legislative package. Under the law at the time, "lobbying" ment communicating directly or soliciting others to communicate with any legislative, executive, or quasi-public agency official or his staff for the

purpose of influencing any legislative or administrative action, but it did not include communications by an attorney made while engaging in the practice of law regarding any matter other than legislative action or rule or regulation making.

An individual or entity lobbies when it communicates, on its own or through someone else, with an official or his or her staff in the executive or legislative branch, or in a quasi-public agency, to influence legislative or administrative action. However, "lobbying" does not include communications: by or on behalf of the parties in a contested case before an executive or quasi-public agency.

The definition of "administrative action" is broad. It means an executive branch state agency's action or inaction regarding the proposal, draft, development, consideration, amendment, adoption, or repeal of any rule, regulation, or utility rate. It also means any action or inaction by an executive r quasi-public agency regarding a contract, grant, award, purchasing agreement, loan, bond, certificate, license, permit, or other matter within the agency's jurisdiction or cognizance (CGS § 1- 91(1)).

"Legislative action" is similarly broad. It means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, veto override, or other official action or inaction on a bill, resolution, amendment, nomination, appointment, report, or other matter pending or proposed in a legislative committee or either legislative chamber, or any matter within the legislature's jurisdiction or cognizance (CGS § 1-91(10)).

Attorneys and the Practice of "Door Opening" in Connecticut

The issue of "door opening" was raised on a few occasions, and each time the State Ethics Commission determined that it does indeed constitute "lobbying" including the following opinions and guidance:

- Advisory Opinion No. 95-11: "One of the fundamental purposes behind the expansion of the definition of administrative lobbying was to regulate the 'door opening' which takes place when an influential individual becomes involved, on behalf of a client, in the state contracting process."

- Declaratory Ruling 2000-A: "These exemptions [i.e., the exemptions to the requirement to register as an administrative lobbyist found in §1-92-42a (e) of the OSE regulations] ... were intended to encompass only 'routine' requests for information; i.e., essentially ministerial contacts between the private party and administrative employees of the executive agency. These regulatory exemptions were not intended to extend to meeth1gs, even merely informational meetings, between representatives of private entities seeking state contracts and the state decision-makers, e.g., the Treasurer, with the authority to award such contracts. Simply stated, to allow these exemptions to apply to such 'door opening' would essentially eviscerate the administrative lobbying requirements; since virtually all lobbying involves the provision and receipt of information.

Also, Request for Advisory Opinion No. 1650 (1996):

It is important to note that recent court cases and rulings have led to some important new developments including, Declaratory Ruling 2000-A, which was appealed to the Superior Court and stated: "The court must determine whether the telephone call to set up an informational meeting, and attending that meeting constitutes lobbying within the meaning of Connecticut General Statutes § 1-91(a) and regulation§ 1-92-42a(e)(2). The court holds such conduct is not '*lobbying'* because it did not constitute 'communicating directly ... with any official or his staff in the…..executive branch of government….for the purpose of

influencing any….administrative action.' This holding is based on the ordinary meaning of the language of the statute. Communicating for the purpose of influencing implies some sort of evaluative or qualitative statement in favor of the administrative action.

The holding is also based on the exception to the definition of 'lobbying' contained in regulation§ 1-92-42a(e)(2), under which 'contacts with an executive branch or quasi-public agency, whether fo1'mal or informal, for informational purposes ..., regardless of whether the contact is initiated by the private party or the agency'….and do not constitute lobbying." **ABC, LLC v. State Ethics Commission, Superior Court, judicial district of New Britain at New Britain, Docket No. CV000504071S (December 12, 2001).**

That decision was appealed, and the Connecticut Supreme Court reversed it, concluding that the plaintiff was not "aggrieved" by the Commission's declaratory ruling and thus could not seek review of it. **AJJC, LLC v. State Ethics Commission, 264 Conn. 812 (2003).**

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Since then, the issue has not been addressed by way of formal opinion.

Let us help one another to restart

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COVID-19 virus is challenging our lives, society, and economy. Many companies are suffering and the situation will definitely worsen in the future. The healthcare system and the economic "recovery" need multiple and contemporaneous interventions, which should also be targeted and personalized, with immediate results on the territory.

Together with a moratorium on overdue debts and/or maturing debts for at least six months, it is necessary to provide "support" liquidity, especially to small and medium enterprises, which are part of the backbone of our Country, that was already in financial difficulties before Coronavirus pandemic.

In many cases, banks' exposures of small and medium enterprises were already in "doubtful" position or "in default" and/or in "risk database". Data on n.p.l. and on unlikely to pay, are the demonstration of pre-existing difficulties.

During these days and in the next future, according to the reasonable and justified forecasts of the most accredited press, the effects of the economic slowdown and provisional closure - hopefully short – of many productive activities provided with a governmental decree, in such acute phase, manifest severe reduction of orders, heavy slowdown of payments and stall in collection of debts, highlighting the virus' aggressiveness, which threat our economy as well as our lives, attacking the basic resources of millions of Italian families that are at high risk.

Therefore, the economic and financial system needs to be controlled, reinforced and defended, boosting consumers' demand and productive system.

On the other hand, the legislative and judicial framework, with its necessary adaptation to new exigencies linked to this epochal tragedy, is required to adopt urgent and extraordinary directives and provisions for the economic sector, as it did for healthcare.

In short times, new legislation will have to be operative in the context of new and urgent necessities, therefore the future provisions will have to be immediately operational, efficient and effective in order to reach the objectives set out and expected throughout the territory. It is a huge and difficult task because of the heterogeneity of needs, situations and geographical allocations, but not impossible for our Government, that will know how to correctly evaluate the lines of convergence offered by the different solutions adopted in other Countries, and the guidelines suggested by international experts, together with their adaptability to the Italian socio-economic fabric.

In this context, with great humility and only for spirit of service, I would like to share the following notes and considerations.

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Some countries, not only extended the deadlines for tax and social security fulfilment, but also invoked the temporary block of payments, even further than the close or suspension of business provided by the government.

Personally, I do not agree with this apparent solution.

In fact, in order to reopen shops' "doors" and factories' "gates" to start business again, with all necessary health precautions and diversifying time of recovery for productive sectors - therefore acting gradually and progressively- it is necessary and essential to offer "new financing" through all the possible instruments and in an easy and non-costly way, to: credit; financial assistance; forgivable loans; security contributions; supplementary or subsistence allowance. Namely, it is necessary to boost the demand and therefore, the spending and the production.

Certainly, these initiatives will have to make sure that the recipients are not ”ghost” companies or enterprises connected to the organized crime.

Therefore, the answer is not the block of payments and cash flow, but payment support. The possibility to pay employees, suppliers, utilities, taxes, security payments, etc, is essential to move again our economy and defend our productive values.

In an article of “Sole 24Ore” dated 31.03.2020, Michele Romano remembered the experience of 2017. After the earthquake in Marche, over 2500 companies benefitted of “specific-purpose” zero rate loans, lasting for five years (plus two years of depreciation) given to local enteprises by “Cassa Depositi e Prestiti” and secured by the State, to avoid freezing of current payments. This is, for sure, one of the many good examples to look at.

Economic survival and financial aid to our companies is vital to avoid that provisonal closure or many productive facilities becomes definitive, and therefore, it is necessary to use any available financial tool, such as the so called “bazooka money or helicopter money”, in order to avoid devastating increase of job loss and volatilization of immaterial assets of companies, destruction of “know how” and loss of important markets for our products, avoiding, tough, condemning the Country to a grave recession, with inconceivable consequences, also in terms of social resilience.

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During these days, I had many occasions to think and discuss on what will happen “post” Coronavirus and on the necessity of gradual recovery for production and economy. I discussed with some Members of International Associations, such as the International Insolvency Institute (Montreal), the American College of Bankruptcy, (Washington) and with some delegates and representatives of different Governments at UNCITRAL [-Working Group V on MSM (micro, small, medium) companies].

In particular, reading CERIL document (Conference on European Restructuring and Insolvency Law), drafted by the Colleagues Professors Bob Wessels, Andreas Remmert and

Adolfo Rouillon (World Bank) and the dialogues that I had during these days, allow me to make some considerations, generally endorsed by the different interlocutors, on the following issues, that could support the recovery in our country, if promptly introduced and realized.

- Six months suspension [starting from the entry into force of ad hoc DPCM], of all executive and precautionary proceedings;
- Extension of the term of six months for the efficacy of unperformed foreclosures; "reduction to the essential" for performed foreclosures, immediately releasing – on application by debtors – the blocked liquidity in excess (as it often happens for third-party foreclosure performed by the same creditor, by virtue of the same title, on the stocks available in many banks); "reduction to the essential" of liens which are recorded in excess to the securing debt. The residual value of the good will make it possible to release more warranties in return of disbursement of "new financing".
- Six months moratorium to pay due debts or debts that will become due during the time of suspension or closure of the business;
- Postponement of one year for the entry into force in Italy of the Code of Crisis and Insolvency, therefore deferring the start of alert procedures that could be particularly negative in this phase. In fact, over 150 thousand closures of companies with consequential requests of insolvency and/or admission to insolvency procedures, are expected, with the result that Italian Tribunals and Entities for Crisis Solution, will be burdened with thousands of petitions.

  [In this context, it would be preferable to continue applying the "old" Bankruptcy Law which is well known by the "insiders" (I agree with what President Luciano Panzani said in a recent writing on this topic)];
- Six months suspension of all insolvency procedures already started, also extrajudicial, ex art. 67, third paragraph, letter d. (Bankruptcy Law), provided that

liquidators have already been appointed and are in course of performance. In fact, many recovery plans and proposals of composition with creditors, will have to be reviewed in light of Coronavirus effects;

- Six months extension for submission of companies financial statements, to be draw up applying the evaluation criteria used to guarantee business continuity;
- Concerning company law, it is recommended to suspend recapitalization duties for companies in capital loss; exclusion of liability complaints and criminal exemptions for directors and auditors that did not act willfully; suspension of revocation actions related to activities put in place in the period of pandemic. Statement of *business judgment rule* with favorable presumption of appropriate management by directors and auditors.

Regarding the economic and financial aspect, it is recommended:

- Immediate disbursement of public financing or grant of public warranties to acquire goods or services necessary to restart and continue business activities.

Such financing could be secured by "non-own pledge" on the goods acquired, or on future production, as well as on future sales revenues, based on the model and experience of "secured credits" (see Legislative Guide - UNCITRAL);

- Interbank agreement to immediately implement facilitations from Banks and Financial Institutes, for trading receivables of companies (both *in bonis*, and even more if in crisis). It could be provided for the verification of payables existence through summary procedures, not expensive and free of bureaucratic articulations, assigned to the Banks, or to the "Judge" that would decide in a simplified form on the basis of documents, and in case of need, of summary information;
- Incentives to sustain and improve trade receivables from and in favor of all VAT-registered private operators, to banks with grant of public warranties;

- New financing disbursement outside parameters and "creditworthiness" (based on European ratings); therefore, also in favor of companies that recorded losses but could be capable of ensuring employment levels – assuming that they receive sufficient orders – assisted by public warranties (providing adequate controls on company's existence, on existent orders, and on its "track record", also to avoid involvement with organized crime);
- Incentives to Interbank agreements [see what happened in the Netherlands (ABN AMRO, BNG Bank, BNG BANK N.V., Rabobank Groep N.V., Triodos Bank)] to foster access to credit, not only for large companies but also for medium and small ones, even if they recorded losses but are still capable of creating value, with primary focus on preservation of employment;
- Creation in Commerce Chambers, Regions and Municipalities, of "points of contact" throughout the territory, with access (not only via computer), to give financial support for immediate trading receivables, for anticipation on contracts, orders of production or purchase, supplies etc, in order to support the recovery of financial activity;
- Admission to calls for bids by the government and public procurements, also to companies that recorded losses (modifying Law Decree n. 124/2019);
- Acceleration in the Italian Revenue Agency (Agenzia delle Entrate) of VAT reimbursement and immediate payment of tax credits, especially if in favor of small and medium entrepreneurs, and enlargement of instances of compensation between taxes, namely providing for payment through sale of receivables to Public Administrations;
- Urgent liquidation (without costs nor bureaucracy) of credits of all companies, especially micro, small and medium ones, to State, Municipalities, Public Bodies and companies with a government participating interest.

It could be taken into consideration the appointment of Extraordinary Commissioners on the territory, easily reachable not only via computer, without any costs nor bureaucracy, that could use funds immediately allocated in apposite "special-purpose" expenditures.

On such topic, I complete the above framework, with some "flashes" related to interventions of some Supranational Organisms.

Dott. Roberto Azevedo General Director of World Trade Organization has commented upon:

"Covid 19 has provoked a Shock in offer and demand in the world economy, and such shocks inevitably cause severe interruption of trades".

Agreements on sanitary measures and on medicine's circulation require, on the basis of international agreements S.P.S. e T.B.T. Sanitary Measures and Sanitary Trades, weekly controls from States.

This notation is relevant because it delayed import of sanitary material in our Country.

World Bank and International Finance Corporation in person of his President David Malpass declared that " the stress induced by Coronavirus is particularly great especially for small and medium enterprises that are highly vulnerable to global shocks". For this reason, on 17.03.2020, it has been approved a first "pack" of 14 billion in favor of States and companies, which provides for "accelerated" financing to contain the virus and support private sector.

The majority of these funds is allocated to Financial Institutes so that they can offer commercial financing, support to working capital and medium-term loans, given to private companies with difficulties to support their employees to "pay the bills", and preserve the chain of supplies.

Especially in favor of sectors directly harmed by pandemic such as Tourism and Industry, and of course, Healthcare and companies related to it (medical equipment and pharmaceuticals).

International Monetary Fund, under the slogan: Acting for the best, trained for the worse through prompt financial assistance, specified: funds such as "Containment of Catastrophes and Relief Trust" can rapidly give, in a single solution, the liquidity aimed at covering an urgent need in terms of balance of payments. The Country asking for financing award will have to demonstrate that the debt is sustainable and will have to commit to implement economic policies that help overcoming the emergency.

The guidelines and directives that emerged in debates with foreign Colleagues, have been confirmed, in large part, by the American Institute for Law and Finance and by the influential publication: Oxford Business Law Blog of 24.03.20 that mentions provisions taken, or being implemented, in different Countries, among which: Germany, Australia, Spain and United Sates.

Ia) In Germany, for example, it has been suspended until 30.09.20 with possibility of extension until 31.03.21, directors' duty to initiate winding-ups as soon as they knew or should have known that companies were or would have become insolvents.

Ib) In Spain, as well, this duty has been suspended until the end of the "estado de alarma" (state of emergency), and in any case until 14.04.20 except extension is provided; such suspension regards also directors' duty to call shareholders' meeting to recapitalize the company, or if not possible, to wind it up.

Such terms should be adapted to grant the effective recovery and should be recalibrated on difficulties and necessities of different industrial sectors and different regions of the Country.

Another intervention on which the "insiders" of many Countries seem to agree on, is the suspension of creditors' right to present petitions for bankruptcy until the end of the state of emergency.

This should concern all debtors and not only the ones affected by Coronavirus, because these measures tend to safeguard employment and therefore, all the companies still capable of creating values and, most important, paying salaries, suppliers, utilities, taxes, social security charges, and are able to boost the demand of consumer goods, and as a consequence, to support production.

Australia limited the duration of this suspension. On the other hand, India through the announced reform of Bankruptcy Law, seems oriented to that direction, but highly increasing the eligibility threshold for bankruptcy petitions.

It was observed that the first solution is closer to reality and would avoid, among others, direct and indirect costs related to an insolvency procedure.

Further recommended measures concern the introduction in Commercial legislations of:

- *"Juris tantum"* presumption in favor of debtor concerning the consequences of Coronavirus on production of the collapse;
- Protection of secured credits, assuring a permissive approach for the debtor, except in cases where ***a)*** insolvency was pre-existing; ***b)*** the good of the warranty is not essential for the continuation or reorganization of the company in debt;
- Protection of new secured financing, also allowing a partial sacrifice of creditors' rights previously warranted, in cases where: ***1)*** company has income, or do not generate debt; ***2)*** the use of new financing creates value; ***3)*** previous "secured" creditors are protected.

II) Emergency legislation should extend the expiration of bond debts.

An automatic moratorium should be introduced, namely the suspension of judicial enforcement of debts for companies affected by Coronavirus.

Personally, I would encourage a gradual legislation to favor the recovery: ***a)*** firstly, a moratorium for all debtors, even when the request is extrajudicial; ***b)*** subsequently, an additional eventual moratorium for companies affected by Coronavirus. In fact, the objective of highest employment possible, should be safeguarded; in the second stage, rescuing of companies still able to "create value; and prohibition of accrual of conventional and legal interests in both stages.

III) For what concerns ongoing contracts, it should be avoided, possibly at European level, that these contracts are terminated in case of default in the period of Coronavirus, damaging the defaulter; and that warranties given can be enforced.

These guidelines, should be shared and involve the highest number of Countries, because the topic is relevant especially for international contracts which, very often, provide for withdrawal and immediate resolution in case of default and/or initiation of insolvency procedures, even when it is a procedure of reorganization. For example, in Italy: agreement with creditors ex art. 182 bis, or agreement among creditors (concordato preventivo).

For this reason, as well, it should be safeguarded and encouraged the use of contractual proceeding ex art. 67, third paragraph, letter d, Bankruptcy Law, that is generally not considered among insolvency procedures aimed at determining the application of *early termination* clauses.

IV) Fiscal Aids – tax waiver for operations that did not generate cash flows, for example, extrajudicial agreements between banks and debtors.

V) Emergency legislation should also extend the deadline for bond debts.

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With this contribution, I intended to report and comment some common standpoints emerged during debates among jurists, economists and experts coming from different Countries, legal systems and jurisdictions, that in face of the pandemic tragedy that sadly unites all of us, decided to confront their experiences and their *best practices* in order to give mutual help in the recovery.

(*)speech given by prof. avv. Lucio Ghia last May, during a webinar of the Italian Association of Joint Stock Companies