

MARKET BULLETIN

REF: Y4457

Title	Italy: New provisions stated by Anti-Mafia Law No 136 of 13 August 2010
Purpose	To provide information to the market on the new Law No 136 of 13 August 2010, "Extraordinary plan against mafias and mandate to the Government in the matter of anti-mafia rules"
From	Cameron Murray, Senior Manager, Lloyd's International Regulatory Affairs, General Counsel's Division
Date	21 December 2010
Deadline	With immediate effect

The purpose of this bulletin is to provide managing agents and coverholders with information on the new law No 136 of 13 August 2010¹ entitled "Extraordinary plan against mafias and mandate to the Government in the matter of anti-mafia rules", modified by decree No 187 of 12 November 2010². Action is required by Managing Agents who must implement changes in processes where business is conducted with public bodies, in particular, in respect of the Italian Public Tender process.

A full English translation of both pieces of legislation will be available on Crystal shortly under "Italy" in the "Pre-placement considerations" section.

BACKGROUND

On 7 September 2010 Law No 136 of 13 August 2010 (O. J. no. 196 dated 23 August 2010) came into force with regard to an "Extraordinary plan against mafias and mandate to the Government in the matter of anti-mafia rules" ("the Law").

Article 3 of the Law makes important changes to improve record keeping and the tracing of transactions resulting from public contracts entered into after 7 September 2010 (when the Law came into force). All contracts entered into prior to this date and that are still in force must be made compliant by the public entity buying the insurance within 180 days from 7 September 2010.

¹ www.interno.it/mininterno/export/sites/default/it/assets/files/19/00222_LEGGE_13_agosto_2010x_n._136.pdf

² www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/sicurezza/0965_2010_11_12_DL12112010n187.html

KEY FEATURES OF THE LAW

A) Article 3 of the Law

The new provisions concerning the traceability of financial transactions are set forth in Article 3 of the Law:

- Contracting public bodies must include in all public contracts of any value specific clauses relating to the duty to record and trace transactions stated under Article 3 of the Law. The aim of including these clauses is to make sure that contractors or any other persons connected with the supply chain of the enterprises³ are fully compliant with the above duties.

If the public contracting body does not comply with the above requirement, the contract may be considered null and void. Therefore, Lloyd's underwriters must check and confirm that the contract forms attached to the tender documents refer to the above specific clauses.

- All payments regarding each public contract for works signed with effect from 7 September 2010 must be registered in one or more bank or postal current accounts dedicated (even if not exclusively) to public work orders;
- These payments must be made by means of bank transfer or any other means suitable to guarantee full traceability of the financial transactions;
- The memo line of the bank transfer must indicate: a) the tender identifying code; b) the so-called "CIG"⁴ or c) the Unique Project Code, the so-called "CUP", where required by Article 11 of Law No 3 dated 16 January 2003.

Please note that any contractor or other person connected with the tender procedure that has information concerning non-performance of these duties must immediately inform the contracting body and the Local Government Office or "Prefecture" concerned.

B) Legal requirements regarding bank accounts

The details of the current accounts dedicated to public work orders must be notified to the contracting body. These details must also include the personal details and fiscal code of those persons authorised by power of attorney to operate these accounts. This notification must be given within seven days from the opening of the account or, for existing accounts, at the time this account is first used for financial operations related to a public assignment.

³ Refers to subcontracts as defined in art. 118, 1st paragraph of legislative decree no. 163/2006 as well as to subcontracts entered into for the execution (even if not exclusively) of the contract

⁴ Codice Identificativo Gara (Tender ID Code). The CIG is assigned by the Authority for the Supervision of Public Contracts for Works, Services, and Supplies to the contract to which this payment refers.

To this end, Lloyd's Italian Office (LIO) will provide the contracting parties with details of its dedicated bank accounts when submitting a bid for and on behalf of the Syndicate/s involved. Please contact LIO in this regard.

Should Managing Agents wish to operate their own dedicated bank accounts, they must provide LIO with these account details together with the tender documents to be forwarded to the contracting bodies. Managing Agents can provide this information via Lloyd's brokers or coverholders if applicable.

C) Penalties and sanctions

These rules require strict adherence given the contractual liability in case of breach of these duties and the sanctions set out under Article 6 of the Law. These provide for the following fines which may be applied to the awarding body or underwriters depending upon the nature of the activity and the subject that acts in breach of the measure:

- a) from 5 to 20% of the value of the transaction where such transaction relates to public service, works and supplies and deliveries and concessions of public provisions made without using banks or Poste Italiane S.p.A.
- b) from 2 to 10% of the value of the transaction where such transaction relates to public services, works and supplies on non-dedicated current accounts or in any manner other than bank or postal transfer;
- c) from 2 to 10% of the value of the transaction where the "CUP" code has been omitted from the bank or postal transfer;
- d) from 2 to 5% of each credit in respect of restoring dedicated current accounts in any manner other than bank or postal transfer;
- e) from 500 to 3,000 Euros for cases of omission, delay or incompleteness in the notification to the contracting body of the identifying details of the dedicated current accounts and the personal details and fiscal code of the persons authorised by power of attorney to operate them.

FURTHER INFORMATION

If you have any queries relating to this bulletin please contact:

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