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**PUBLIC PRIVATE PARTNERSHIP SUPPORTING PRISONS
CONSTRUCTION: “*IN COSTRUENDO*” PUBLIC LEASING**

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DOCTORATE OF RESEARCH – CYCLE XXI

Introduction

This work is focused on the identification and verification of eligibility for Private Public Partnerships; in particular it is focused on Public real estate Leasing, so-called *in costruendo*, for the realization of new penitentiaries and for the modernization and/or enlargement of existing ones.

The overcrowding of prisons and the rehabilitation of prisoners and of their quality of life, currently living in the severe degrade as that characterizing Italian correctional institutes, represent the constituent elements of an extremely important matter from a political, social and economic point of view; this latter profile must be necessarily taken into account whereas there is the intention to solve such serious problems through an effective and efficient realization of a reorganization of the system in which such institutes are currently structured and managed.

Prison overcrowding is now univocally considered a current and serious problem. There have never been so many prisoners in Italy since the post-war period; the actual forecast is that in a short period the prisoners will be 70 thousand vs. a regular capacity of 44.055 units and a “tolerability” threshold of 66.476.

The objectivity and the delicacy of the matter make save the situation from being used for personal aims and for partial interests; in fact, it is under this light that we should think about the serious problem of prisons and about the measures to be adopted, considering the involvement of privates increasingly possible.

The desired reform of Prison Administration, if from one hand realizes an important and comprehensive reform inspired by the principles of re-qualification of administrative and technical services and the social, educational and social-security treatment of prisoners, through the decentralization of decision-making, the qualification of staff and the strengthening of the organizations, on the other determines the need to be complemented by a specific process of identification and implementation of economic and financial instruments, innovative for the

penitentiary sector and capable of ensuring the effective operation of the new judicial machine and satisfying the need for an adequate level of safety in the community.

From this point of view, the most important issue is represented by the containment - as well as by focusing on efficient management criteria and cost-effectiveness per inmate - of maintenance and management costs of prevention and punishment institutes which, unlike the above costs, are charged on current spending. In this regard there is the need, in consideration of the well-known and irreversible problem of prisons and social security, to identify and adopt alternative funding means, making reference to technical-economic-financial projects, innovative in the construction of prisons (at least for our Country) until now applied in other administrative areas and sectors of our economy/infrastructures.

In the past, in order to face the emergency related to prisons, our law advanced the hypothesis to build prisons through a policy of "privatization" of the sector (in this regard, it is to be reminded a company established having all public capital, Dike Aedifica S.p.A., a company controlled by Patrimonio dello Stato S.p.A., under the control of the Ministry of Justice with the aim of building new prisons), rather than the study and examination of means and operational instruments capable of meeting the financial demands that the public sector was unable to fully satisfy.

The Government suggested that a significant part of the new investments in infrastructure of public interest could be funded directly with private capital, whose involvement should have implied the provision of risk capital and the issuing of loans aimed at financing the works.

In the broader programmatic scope of Justice, it has been inserted the regulatory intervention on "*Legislative measures of the action plan for the effectiveness of the judicial organization and of the penitentiary system*" presented by the Minister of Justice, which envisaged the establishment of a program of extraordinary measures aimed at constructing new buildings, adapting the existing ones and de-localization

of prisons deemed not suitable both due to their structural conditions and their capacity, also through the use of *In-Costruendo Public Leasing*, of Project Financing, as well as, residually, the joint contracting for the execution of the works and the sale of real estate (the so-called "trade-in").

Therefore, an initial analysis of the issue leads to verify, as it has happened in other countries of Anglo-Saxon tradition, the opportunity to use the above described alternative financing, such as the *Real estate leasing in costruendo*, and the consequent involvement of private capital/partner in the concession of construction works and operations (exception made for the so-called "not institutionally delegable" services), through the alternative tool of Project Financing.

Within the scenario above outlined, this work aims at:

- 1) outlining a general framework of the various models currently envisaged by the law in order to facilitate the construction of new prison facilities;
- 2) provide elements to consider pursuing the objectives of prison infrastructures through the *Public leasing in costruendo*, rather than Project Finance and trading-in;
- 3) draw the guidelines of the procedure to be followed for the acquisition of new prison facilities, under conditions of transparency and in compliance with the *par condicio* between competitors.