

### 1. Summary of Legislative Measures Adopted by the Italian Government

The recent outbreak of the coronavirus disease 2019 (COVID-19) has rapidly evolved from a local issue to a global crisis. In addition to the tragic human loss, the disease is having, and will continue to have, a profound economic impact.

Since the first reported COVID-19 case in Italy on February 21, 2020, the spreading of the virus has rapidly escalated, quickly becoming a national health emergency.

Based on Article 77 of the Italian Constitution, in extraordinary cases of necessity and emergency, the government can adopt decrees having the force of law, which are immediately binding upon adoption but require parliamentary ratification within 60 days.

In order to respond to the national crisis, the government has devised a series of urgent and restrictive measures on the entire national territory, limiting a number of commercial activities, except for essential services.

The following are the main legislative instruments issued by the Italian government:

1. Decree of the President of the Council of Ministers no. 6, dated February 23, 2020: Emergency measures for the containment and management of the epidemiological emergency from COVID-19
2. Decree of the President of the Council of Ministers no. 47, dated February 25, 2020 (further provisions for the implementation of Decree Law no.6)
3. Decree of the President of the Council of Ministers no. 55, dated March 4, 2020 (measures to combat and contain the spread of the COVID-19 throughout the national territory)
4. Decree of the President of the Council of Ministers no. 59, dated March 8, 2020 (further provisions implementing Decree Law no. 6 of February 23, 2020)
5. Decree of the President of the Council of Ministers no. 62, dated March 9, 2020 (further provisions implementing Decree Law no. 6 of February 23, 2020, applicable to the whole national territory)

6. Decree of the President of the Council of Ministers no. 64, dated March 11, 2020 (further provisions implementing Decree Law no. 6 of February 23, 2020, applicable to the whole national territory)
7. Decree of the President of the Council of Ministers no. 70, dated March 17, 2020 (further provisions implementing Decree Law no. 6 of February 23, 2020, applicable to the whole national territory)
8. Decree of the President of the Council of Ministers no. 76, dated March 22, 2020 (further provisions implementing Decree Law no. 6 of February 23, 2020, emergency measures for the containment and management of the epidemiological emergency from COVID-19, applicable to the whole national territory)

### 2. Suspension of Non-essential Industrial and Productive Activities

In order to further counter and contain the spread of COVID-19, the Italian government, with its latest Decree issued on March 22, 2020, has implemented the following measures:

- A. Suspension of all productive industrial and commercial activities, with the exception of businesses considered as primary in this period of serious emergency, and activities which can be carried out by smart working. Annex 1 to the Decree contains a list with permitted activities identified by means of ATECO classification codes,<sup>1</sup> which could be amended by the Ministry of Economic Development. Companies that will be allowed to continue their business operations according to the Decree must be identified on the basis of their ATECO classifications.
- B. Activities that are necessary to ensure the continuation of the production chains relative to the activities set out in Annex 1 are permitted on condition that prior notice is given to the relevant prefect (i.e., the government representative at a provincial level). The prefect has the power to suspend activities considered not to be essential.
- C. Professional activities are not suspended and the provisions set forth in Article 7 of the Decree of the President of the Council of Ministers dated March 11, 2020 are applicable – it is highly recommended to work in smart working or agile working; paid holidays and paid leaves are strongly encouraged; all activities in non-necessary departments of companies are suspended; anti-contamination security protocols are to be implemented and sanitization processes are to be carried out.

<sup>1</sup> ATECO classification has been adopted by the Italian Statistical Institute (ISTAT) since January 2007, in order to classify economic activities of businesses. This classification is the national version of the European nomenclature, Nace Rev. 2, published in the Official Journal of December 20, 2006 (Regulation (EC) no 1893/2006 of the European Parliament and of the Council of December 20, 2006).

- D. For public administrations, the provisions of Article 87 of the Decree of the President of the Council of Ministers dated March 18, 2020 are applicable; as above, all smart and agile working methods are strongly encouraged and, if it is not possible to use these methods, paid holidays, leave and other similar institutions should be implemented.
- E. Activities that provide services of public utility, as well as essential services referred to in Law no. 146 of June 12, 1990, are in any case permitted. However, the suspension of the service of opening to the public of museums and other institutions and places of culture referred to in Article 101 of the Code of Cultural Heritage, as well as services concerning education that are not provided at a distance or remotely within the limits currently permitted, remain unaffected.
- F. The production, transport, marketing and delivery of pharmaceuticals, health technology and medical-surgical devices, as well as agricultural and food products, is permitted. Any activity that is in any case functional to deal with the emergency is also permitted.
- G. The activities of plants with a continuous production cycle are allowed, subject to notification to the prefect of the relevant province where the production activity is located, and only in the cases where the interruption of the plant would cause serious damage to the plant itself or a danger of accidents. The prefect has the power to suspend the activity in any case but, until an official notice of suspension is sent, the plants can carry on their activities on the basis of a self-declaration made to the prefect. The activity of plants that guarantee the provision of an essential public service are not obliged to make self-declaration to the prefect.
- H. Activities of the aerospace and defense industry, as well as other activities of strategic importance for the national economy, are permitted, subject to authorization from the prefect of the province where the production activities are located.
- I. Companies not authorized to continue their business operations have until March 25, 2020, to organize the suspension of their activities.
- J. It is forbidden for all individuals to migrate or move, by public or private means of transport, to a municipality other than the one in which they are currently located, except for proven working needs, needs of absolute urgency or for health reasons.

The provisions of the Decree entered into force on March 23, 2020, and shall remain in effect until April 3, 2020.

## 3. Corporate

### 3.1 What Is New?

Taking into account the containment measures imposed in view of the exceptional emergency situation resulting from COVID-19 pandemic, Article 106 of Italian Legislative Decree no. 18 of March 17, 2020, introduced provisions to allow companies to call ordinary shareholders' meetings within a longer period of time than the ordinary one provided for in the Italian Civil Code.

The following relevant changes apply to all shareholders' meetings convened before July 31, 2020, or, if later, until the end of the state of emergency.

### 3.2 Longer Period to Approve Financial Statements

The approval of financial statements may take place within a longer period of 180 days from the end of the financial year. This provision is a special exception to Articles 2364, paragraph 2 and 2478 *bis* of the Italian Civil Code, which provides for a period of 120 days from the end of the financial year to convene the annual general meeting to approve the financial statements, allowing for deferment only in the event of statutory provisions or if certain particular circumstances occur.

### 3.3 Remote Participation and Voting

The notice of call of shareholders' meetings of joint-stock companies, limited liability companies, cooperative companies and mutual insurance companies can provide that voting shall be exercised by electronic means or by correspondence.

Attendance at the meeting can be by telecommunication means suitable to ensure the identification of participants, their participation and the exercise of voting rights without in any case the need for the chairman and the secretary, or the notary, to be in the same place.

Limited liability companies can allow, by way of derogation from Article 2479, paragraph 4 of the Civil Code, that voting rights may be exercised by written consultation or by written consent, even if their by-laws do not expressly provide for these alternative means.

### 3.4 Appointment of a Representative

Companies listed on regulated markets or on multilateral trading facilities, companies whose shares are widely distributed among the public, cooperative companies, mutual insurance companies, popular banks and cooperative banks can appoint a representative as provided for by Article 135-undecies of Italian Legislative Decree no. 58/1998, even if their by-laws provide otherwise.

The notice of call of shareholders' meetings may also provide that participation at the meeting may take place exclusively through this representative, to whom proxies or subdelegation may also be conferred.

## 4. Financial Measures

On February 23, 2020, the Italian government adopted Decree no. 6, empowering the President of the Council of Ministers to issue further and more detailed decrees aimed at the containment of COVID-19. A series of decrees adopted by the President of the Council of Ministers (Decrees) first instituted a containment zone concerning only the most affected areas of the country, and, later, went as far as extending increasingly stringent measures to the entire national territory.

With reference to production activities and professional services, certain safety standards must be strictly respected (i.e. the activities of non-essential company departments must be suspended; each company must adopt anti-contagion safety protocols and, wherever an interpersonal distance of one meter cannot be respected, individual protection gear must be provided; movement within the sites must be limited as much as possible and access to common areas must be reduced).

To support the production activities during this period, Decree No. 9 of March 2, 2020, and March 16, 2020, provide also for economic and financial measures. A brief and preliminary summary is set forth below.

As a preliminary note, it has to be considered that such measures, as of today: (i) do not allow companies to directly obtain funding, but are aimed to ensure liquidity and financial support to certain borrowers (that have the necessary requirements) throughout state-backed guarantees and tax deferrals; and (ii) should be further implemented through a decree of a non-regulatory nature to be issued by the Ministry of the Economy, to be adopted in agreement with the Ministry of Economic Development, that will regulate the technical forms, cost, conditions and parties authorized to grant loan and guarantees, in accordance with European regulations on state aid.

#### 4.1 Financial Support Measures for Small and Medium Enterprises

The following main financial measures of the Law Decrees are specifically addressed only to small and medium enterprises (SMEs), defined by the European Commission Recommendation as those enterprises having not more than 250 employees and falling under one of the following requirements: (i) annual revenues not exceeding €50 million, or (ii) assets not exceeding €43 million.

**1. Guarantee fund for SMEs (*Fondo di Garanzia per le PMI*)** – Law no. 662/1996 established a public fund in order to facilitate SMEs in accessing funding from financial institutions (banks, leasing companies and other intermediaries) by way of the grant of a partial public guarantee, which constitutes an additional statutory guarantee (and often replaces) the security provided by companies. The fund provides neither guarantees nor funding directly to the borrower and is not party to the negotiations between the bank and the borrower. Further, no additional security, insurance policy or bank guarantees may be required of the borrower in connection with the Guarantee Fund. Following the COVID-19 emergency, with specific concern to SMEs and for a limited period of nine months from the entry into force of the Decree of March 16, 2020, the Italian government has derogated from the ordinary regime regulating the Guarantee Fund, by providing the following main measures:

- A. Lenders are entitled to obtain the guarantee free of interest.
- B. The maximum amount of the guarantee per borrower has been increased to €5 million.

- C. For direct guarantees, the maximum guarantee amount is 80% of the amount of each financing, for a maximum guaranteed amount of €1.5 million per company.
- D. Public administrations and contributing EU programs may grant their contribution in order to increase the number of participants, thereby raising the maximum coverage ratio by the fund up to 80% as a direct guarantee and 90% as reinsurance.
- E. As an exception, the guarantee may also be granted in favor of refinanced facilities where the financed amount is at least 10% more than the outstanding amount of the original facilities.
- F. If the borrower has agreed a moratorium or suspension of the funding, due to the COVID-19 crisis, the duration of the guarantee granted by the fund is extended accordingly.
- G. For the purposes of access to the fund's guarantee (eligibility conditions), the probability of default by companies is to be assessed only on an economic and financial basis. This allows SMEs to be eligible even when presenting a stressed financial situation because of the emergency. In any case, SME with "non-performing" or "unlikely to pay" exposures and companies in difficulty under Article 2(18) of Regulation (EU) 651/2014 are out of scope.
- H. For certain investments and activities (real estate, tourism and hospitality), it is exceptionally allowed to combine the fund guarantee with other forms of security granted.
- I. Public bodies responsible for an economic sector and relevant associations or entities may contribute with resources to the fund in order to establish special sections and facilitate access to credit to enterprises operating in specific markets.
- J. The emergency provisions have extended by three months the terms for completion of the administrative formalities concerning operations guaranteed by the fund.

The above measures relate principally to guarantees granted in respect of single positions. In relation to portfolio guarantees for companies impacted by COVID-19 or 60% of whose activities relate to sectors affected by the epidemic, the junior tranche covered by the fund may be extended by 50% and is extendable by a further 20% where further guarantors accede.

- 2. Financial support to affected companies and lenders** – SMEs owning debt to banks or financial intermediaries may obtain a moratorium in case of suffering of shortage of liquidity due to the COVID-19 crisis.
- A. Outstanding lines of credit (used or unused) become irrevocable until September 30, 2020.
  - B. Bullet loans with contractual maturity before September 30, 2020, are automatically extended (without any formality) until that date, on the same terms and together with any security or guarantee.

C. Payments of instalments or lease payments related to loans and mortgages repayable in instalments that are due prior to September 30, 2020, are deemed suspended until September 30, 2020, and the related repayment schedule is deemed extended without further formality and at no extra cost for either party. SMEs may also opt to request suspension of principal payments only.

Access to the aforementioned measures is subject to the submission of a self-certification by the SME in which the SME declares to have suffered a temporary shortage of liquidity as a direct consequence of the COVID-19 emergency. In respect of the suspended payments, lenders are entitled to obtain (free of charge and without any credit check by the fund) a fund guarantee in the amount of 33% of the additional drawdowns on credit lines, or loans whose maturity is extended or of instalments that are suspended.

## 4.2 Financial Support for Companies

The following main financial measures of the Decrees are addressed to all companies, regardless of their size.

**1. Converting certain deferral tax assets (DTAs) into tax credits** – Upon payment of a 1.5% fee that is deductible for corporate income tax purposes, DTAs arising from tax losses or allowances for corporate equity may be converted into tax credits. The conversion is limited for an amount not exceeding 20% of the nominal value of non-performing loans transferred to a third party in exchange for consideration no later than December 31, 2020, (even if not booked in the financial statements). A cap of €2 billion receivables applies to third-party transfers made by companies that are members of the same corporate group.

Please note that for the purposes of this provision, non-performing loans are defined as financial or commercial receivables with at least a 90-day payment delay.

The conversion of the DTAs into tax credits occurs upon the receivables' transfer. Such tax credit can be used to pay current taxes, withholding taxes and social security contributions and any excess can be refunded.

Although these tax measures do not specifically concern funding, in addition to other tax measures, they allow companies to avoid shortage of liquidity, by reducing financial assets required for paying taxes and social security contributions. From a subjective point of view, the provisions apply to companies without any limitation concerning the activity carried out. In any case, they do not apply to companies in a state of insolvency.

**2. Financial support by means of *Cassa Deposito e Prestiti* (CDP, a state-controlled fund and deposit institution)** – In favor of companies that have suffered a decrease of their turnover due to the COVID-19 emergency, the Italian government has set out incentives to boost synthetic securitization through CDP. In particular, (i) banks, with the support of CDP, are allowed to further extend credit to companies; (ii) CDP is allowed to support banks in providing such loans; and (iii) the state is allowed to grant counter-guarantees to CDP up to 80% of CDP's exposure at market rates.

**3. Increase of public funding allocated to relevant development projects** – The Law Decrees provide for an increase in the public funding allocated for "development contracts" under Article 43 of Decree Law 112/2008. This law regulates public incentives for the development of relevant industrial projects.

**4. Financial measures relating to export credit in the tourism sector** – In order to export credit activities in the sectors affected by the COVID-19 during the current financial year, the Law Decrees allow to the Ministry of Economy to offer state guarantees for non-market risks in favor of SACE S.p.A. (the Italian export credit agency that offers a complex range of instruments for credit insurance, investment protection, provision of securities and financial guarantees) for approved transactions in the cruise sector for a maximum amount of €2.6 billion. This measure aims to (i) enable the completion of commercial transactions that are strategic for the Italian economy; and (ii) maintain employment levels.

## 4.3 Solidarity Fund for First Principal Residences

Law no. 244/2007 established the Solidarity Fund for mortgage loans used to purchase first principal residences. The fund allows eligible borrowers to benefit from payment suspensions in certain situations of temporary financial difficulty. The Law Decrees have extended the provisions relating to the suspension of instalments applicable to (irrespective of location) cases of suspension from work or reduction of working hours for a period of at least 30 days. The Law Decrees have also granted access to the Solidarity Fund, for a period of nine months, also to self-employed workers and professionals who have suffered a decrease in turnover of more than 33% in the last quarter of 2019 as a result of the closure or restriction of their activities because of COVID-19.

## 4.4 Other Measures

On March 6, 2020, the Italian Banking Association (ABI) and other associations representing companies entered into an addendum to the 2019 "Italian Credit Agreement", with the aim to extend the provisions contained therein to facilities outstanding as of January 31, 2020, granted in favor of companies negatively impacted by a temporary interruption/reduction of activity because of the COVID-19 emergency. According to such addendum, SME can request banks and financial intermediaries: (i) to suspend the repayment of principal for a period of up to one year; and (ii) to extend the maturity of loans by up to a period equal to the remaining term of the loan.

## 4.5 Final Remarks

It should be also noted that the Italian government is considering in this period to adopt specific measures to extend its "golden powers," in order to prevent foreign buyers from taking advantage of the significant falls in stock market values caused by the COVID-19 emergency.

Italian Law Decree No. 21 dated March 15, 2012, as amended, by Italian Law No. 56 dated May 11, 2012, provides for rules and regulations on the state's intervention powers in the event of extraordinary transactions involving companies doing business in the defense, national security, communications, energy and transport sectors (Strategic Sectors). Such "golden powers" consist in the right (i) to object; (ii) to put a veto on; and/or (iii) to impose special conditions, for certain extraordinary transactions concerning companies operating in Strategic Sectors.

According to certain Italian newspapers, the Italian government is considering to expand the state's golden powers to other sectors (i.e., banks, insurance companies, etc.) and, according to some journalists, to all companies listed on the Milan Stock Exchange.

## 5. Commercial Contracts

The Decree dated March 18, 2020, states in Article 91 that the containment measures provided in Article 3 of Decree no. 6/2020 have full force and effect for the purposes of the exclusion of debtor's liability set forth in Articles 1218 and 1223 of the Italian Civil Code, also with regard to the application of any penalties related to delayed or non-fulfilled obligations.

Such provisions concern the non-fulfillment of obligations (Article 1218 of the Italian Civil Code) and compensation for the resulting damages (Article 1223 of the Italian Civil Code).

Article 91 thus provides that in case a debtor cannot perform its contractual obligations due to the quarantine measures imposed by the government, they will not be responsible for such lack of performance and will not have to pay penalties for such non-fulfillment.

### 5.1 Commercial Contracts and *Force Majeure* Clauses

Some contracts may already have instruments to deal with this unexpected situation: *force majeure* clauses.

These clauses mandate that in the event of unpredictable and extraordinary events, beyond the control of the parties, the defaulting party is released from the obligation to pay damages.

The Italian Civil Code regulates this scenario in Article 1256, "Permanent impossibility and temporary impossibility," that states that the contractual obligation is extinguished when, for a cause not attributable to the debtor, performance becomes impossible or, when it is temporary, excuses the debtor for late performance.

### 5.2 Legal Consequences in Case of Non-performance

In light of the above, the legal consequences of non-fulfillment of contractual obligations caused by COVID-19 may include the following:

The non-fulfilling party is not responsible for the non-performance of its obligations, pursuant to Article 91 of Decree no. 18/2020, provided that all the legal requirements are met

1. The non-fulfilling party does not have to compensate the counterparty for its non-performance, pursuant to Article 91 of Decree no. 18/2020

2. Impossibility and/or *force majeure* clauses release the debtor from fulfilling its obligation (Article 1256, paragraph 1) or, when it is temporary, excuses the debtor for late performance (Article 1256, paragraph 2)

## 5.3 Lease Agreements

The impact of the COVID-19 raises a number of questions for landlords and tenants of commercial property that should be best addressed with a particular eye toward the following provisions of the most recent Decree:

- **Article 91 of Decree no. 18/2020**, excludes the tenant's liability pursuant to Articles 1218 and 1223 (compensation for damages) of the Italian Civil Code, also in relation to "penalties for delays or omitted performance" if the liability derives from "compliance with the quarantine measures set out by the decree."

The same Decree no. 18/2020, Article 65, provides that tenants who are party to commercial leases will benefit, for the year 2020, from a tax credit in the amount of 60% of the rent for the month of March 2020, for buildings falling under cadastral category C/1.

Other provisions of the Italian Civil Code may also be applicable in this scenario (Article 1256, Article 1467 and Article 1258).

## 6. Labor

On March 18, 2020 the Italian government enacted a new decree no. 18/2020 with measures to support businesses and workers during the COVID-19 crisis. Below is an overview of the main provisions.

- A. Ordinary Layoff (Article 19)** – Article 19 introduces a simplified procedure for all employers' submissions of applications to the Ordinary Layoff, for a maximum duration of nine weeks, for periods starting from February 23, 2020, and, in any case, within the month of August 2020.
- B. Extraordinary Layoff (Article 20)** – The Law Decree provides for the possibility to request the Ordinary Layoff also for companies that are already in Extraordinary Layoff. If granted, the Ordinary Layoff substitutes and suspends the Extraordinary Layoff.
- C. Fund Wage Supplement (Articles 19 and 21)** – Article 21 recognizes the possibility for employers registered with a Specific Integration Fund, who have a solidarity cheque in place, to apply for the granting of the ordinary cheque pursuant to Article 19 above, for a period not exceeding nine weeks, with consequent suspension and replacement of the solidarity cheque.
- D. Layoff in Derogation (Article 22)** – The Law Decree extends to all employees of companies, including those with less than five employees, not covered by the Layoff or Solidarity Funds, the possibility of access to the Layoff in Derogation, for the duration of the suspension of the employment relationship and in any case for a period not exceeding nine weeks. This measure is granted by decree of relevant regions and autonomous provinces.

**E. Compensation for self-employed persons** – A one-off allowance of €600 is provided for self-employed persons. The allowance is granted for the month of March 2020 to professionals with VAT number, workers with a coordinated and continuous agreement, self-employed workers enrolled in the Compulsory General Insurance and seasonal employees in tourism, agriculture and entertainment sectors.

**F. Income Fund of Last Resort (Article 44)** – Article 44 establishes a fund of €300 million to support employees and self-employed workers who have ceased, reduced or suspended their activity or employment relationship as a result of the COVID-19 crisis.

## 7. What Is Next?

The situation in Italy is developing fast and the Italian government is endeavoring to prevent further deterioration of the current public health system.

The government has already announced that further measures, in addition to those enacted with the most recent legislative instruments, will be adopted to support the local economy.

Therefore, we will be monitoring any developments on the measures adopted by the government in the near future and their actual implementation.

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