



# Gatti Pavesi Bianchi

COVID-19 Update  
ADMINISTRATIVE LAW

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## **PUBLIC CONTRACTS AND BUILDING TITLES AT THE TIME OF COVID-19 EMERGENCY MEASURES**

The Decree Law No. 18 of 17 March 2020 (the “Decree”) and the Decree of Prime Minister of 22 March 2020 (the “DPCM”) provide for several rules and prescriptions aimed at facing the COVID-19 emergency with regard to administrative matters.

As a general remark, please consider that, according to Art. 103 of the Decree:

- (a) for the purpose of calculation of the time-limits set by Italian laws and regulations with regard to all type of administrative proceedings, already pending on 23 February or started after such date, the period from 23 February 2020 until 15 April 2020 shall not be taken into account. Such provision applies also in case of tacit-consent proceedings (e.g. the golden power procedure) or tacit-denial proceedings (alternatively, it does not apply to proceeding related to the payment of salaries, retributions or for the grant of facilitations in favour of companies). However, the public authorities involved must ensure the reasonable length of proceedings, taking into account potential urgent needs expressed by private parties;
- (b) all certificates, permits, concessions, authorizations, which would have expired between 31 January 2020 and 15 April 2020, shall remain valid and effective until 15 June 2020;
- (c) the enforcement of the measures for the release of the properties, including those for non-residential use, is suspended until 30 June 2020.

Based on the forgoing, please find below some further information, with regard to public works and building permits related matters.

### **Public contracts**

As for public contracts and tender procedures, it should be pointed out that:

1. Implementation of public contracts and construction activities are **not automatically** suspended, also under the DPCM, as subsequently amended by the Decree of the Ministry of Economic Development dated 25 March 2020. However, according to the updated list of allowed activities, interventions for the construction of hydraulic projects, urbanization works, as well as interventions falling under the residual class "other construction activities related to civil

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engineering works" have to be suspended<sup>(1)</sup>. Any evaluation on this aspect should be made on a case by case basis. However, the contractors have to comply with several recommendations, with regard to health and safety rules and workplace sanitization operations (as summarized, for example, in specific guidelines issued by ANCE, *i.e.* the National Association of Builders).

2. The worksites activities might be suspended (i) by the administrative authorities following the emergency measures adopted by the Government, (ii) upon contractors' request submitted to the contracting authority or to the work supervisor ("*direttore dei lavori*"), who are allowed to suspend the activities pursuant to Article 107 of the Italian Public Contracts Code (Legislative Decree No. 50/2016). Moreover, requests for extension of the deadlines set forth by public contracts might be submitted by contractors, shouldn't they be able to complete works within such deadlines, due to the Covid-19 emergency.
3. All certificates and/or authorizations, which would have expired between 31 January and 15 April 2020, shall remain valid and effective until 15 June 2020 (reasonably, this should also include the works-related certificates on technical requirements, *i.e.* the SOA certificates). Moreover, with regard to the SOA, according to the ANAC (National Anti-Corruption Authority) communication, dated 4 March 2020, the renewal proceedings might benefit from a suspension up to a maximum of 150 days, at the contractor's reasoned request. However, please consider that the extended deadlines, as outlined by ANAC, exceed the suspension as provided for by the new Decree under Art. 103. Therefore, it is highly likely that ANAC will update its communication in the next days.
4. The Decree provisions are not clear enough whether the suspension of the time-limits set forth by Art. 103 of the Decree applies or not to pending tender procedures. Therefore, waiting for appropriate clarifications by the Government (or by ANAC), it might be advisable for the potential bidders to submit with the contracting authority a formal request aimed at obtaining the suspension of such procedures, the extension of the tender deadlines (relating, for example, to the submission of bids) or at least clarification whether Art. 103 applies or not.
5. The Decree provides for several specific exclusion or limitation in the application of the Italian Procurement Code with regard to specific tender procedures (*i.e.* the granting of funding for the promotion of Italy abroad; the purchases of information systems used in smart working; works contracts for the restoration of the functionality of penal institutions; the acquisition of supplies and services by companies, agencies and entities of the National Health Service to be used in emergency response activities; the purchase of telematics platforms by educational institutions).

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<sup>(1)</sup> In this regard, it should be noted that the Regions are allowed to adopt more restrictive measures, with the consequent lockdown of the relevant worksites and activities (as happened, for example, in the Lombardy Region).

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## Building Permits

According to Art. 103 of the Decree, all authorizations (included building titles), which would have expired between 31 January and 15 April 2020, shall remain valid and effective until 15 June 2020.

However, please consider that the developer might submit a specific request to the relevant municipality aimed at asking:

- (a) the postponement of the starting of works or the suspension of works, if already commenced, in order to avoid the forfeiture of the issued building permits, in case the deadlines falls after 15 April 2020 (since, in such circumstances, it is not clear if building titles can be considered valid and effective until 15 June 2020), also considering that, according to the DPCM, private worksites are locked down until 3 April 2020;
- (b) the extension of the deadlines for the payment of urbanisation and construction charges.

Finally, the Decree provides for special rules applying to the realization of temporary sanitary areas. The construction of such buildings and the relevant works can be carried out by way of derogation from the applicable town planning and building regulation.

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We assist our clients before the Italian administrative courts, in relation to disputes concerning public contracts and concessions, competition law and other regulated sectors, administrative procedures on town planning regulation, building permits and production activities, and environmental protection legislation.

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