



Gatti Pavesi Bianchi

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COVID-19 Update: impacts on civil and administrative justice

Decree Law no. 18 of 17 March 2020 (the “Decree”), which entered into force on the same day, fully replaced the Decree Law no. 11 of 8 March 2020, by introducing new rules concerning judicial activity, aimed at combating the epidemiological emergency from Covid-19 throughout Italy.

The Decree covers the whole area of judicial activity – civil, criminal, fiscal and military proceedings as well as the administrative and financial accounting proceedings justice – and, concerning civil justice, it introduces a general suspension of the activities which is wider than court holiday period suspension (*sospensione feriale*) and is of an exceptional nature.

CIVIL JUSTICE

1. With regard to the period from 9 March 2020 to 15 April 2020 the Article 83 of the Decree has provided for:

- the *ex officio* adjournment of all the hearings in civil lawsuits currently pending before all national Courts to a date after 15 April 2020,
- the suspension of all the procedural time-limits of all the proceedings (with the specification that if the procedural time-limit begins between 9 March 2020 and 15 April 2020 its commencement will be postponed until to the end of the period) including Alternative Dispute Resolution pursuant to Decree Law no. 28, 4 March 2010 (*mediazione*) and Decree Law no. 132, 12 September 2014 (*negoziazione assistita*) as well as all out-of-court settlement proceedings of the disputes, when such proceedings have been started before the 9 March 2020 and when they are a condition of admissibility of the court proceedings,

with the exceptions specified in Article 83, Paragraph 3, letter a). Among those exceptions, the following should be highlighted:

- (i) proceedings involving the discussion of the *interim* enforcement of first and second instance judgements (articles 283, 351 and 373 of the Italian Code of Civil Procedure),
 - (ii) all the proceedings in which the postponement may cause serious harm or prejudice to the parties. In that case the Head of the judicial office or the judge appointed for the case states the urgency by means of a non-objectionable order. The statement of urgent nature must take into consideration that the *ratio* of the Decree is to avoid the gathering of people within the Court and therefore, for the handling of the case, the reasons of the urgency should prevail over risks of infection.
2. With regard to the period from 16 April 2020 to 30 June 2020, the Decree provides that the Heads of Judicial Offices shall undertake organisational measures in order to avoid the gathering and close contacts between people, such as:
- (i) restricting public access to the courts,
 - (ii) allowing in camera hearings (*i.e.* without public attendance) for the ones pursuant to Article 128 of the Italian Code of Civil Procedure (*i.e.* final hearings),
 - (iii) allowing to hold hearings that do not require the presence of parties other than the counsel and the parties by means of remote connections (using Skype for Business and Teams, as set forth in the Order of 10 March 2020 of the Ministry of Justice),
 - (iv) adjourning all the civil hearings to a date after 30 June 2020 (except for the above mentioned proceedings which are not automatically adjourned pursuant to Article 83, Paragraph 3, letter a),
 - (v) allowing to hold hearings that do not require the presence of parties other than the counsels and the parties, through the exchange and electronic filing of written briefs containing only requests or conclusions and the subsequent adoption of the judge's decision outside the hearing.

In addition, it should be noted that in the cases where the measures undertaken in application of the abovementioned provisions preclude the submission of a judicial claim, the Decree provides the suspension of the statute of limitations and forfeiture period of those rights that can only be exercised through the activities precluded.

3. With regard to the whole period from 9 March 2020 to 30 June 2020, it is mandatory that claim forms, statements of defence and court papers (as well as related documents) are filed through electronic tools (*processo civile telematico*) before the Courts which are allowed to receive court papers by electronic means (except for court papers and documents that need to be filed to the Court of Cassation or to the *Giudice di Pace*).

ADMINISTRATIVE JUSTICE

Concerning the administrative judicial activity, the Decree sets out rules similar to those outlined above with reference to civil judgments, with the following further clarifications:

- (i) the suspension of all the procedural time-limits with regard to the whole period from 8 March 2020 to 15 April 2020 applies to all the time-limits relating to the judicial administrative proceedings (therefore, the Council of State's opposite view must be considered as now overcome). The suspension does not apply only to the precautionary proceedings, which however shall be decided directly by presidential decree (the relevant hearing will be scheduled immediately after 15 April 2020);
- (ii) as for the hearings already scheduled within the period from 6 April to 15 April 2020, the disputes shall be decided on the basis of the documents and pleadings submitted, where all parties to the proceedings jointly request it, otherwise the hearing shall be postponed. The relevant request must be filed within the mandatory time limit of two days before the hearing and, within the same deadline, the parties are allowed to file brief pleadings;
- (iii) from 15 April until 30 June 2020, all disputes shall be decided on the basis of the documents and pleadings submitted, without hearings. The parties are allowed to file brief pleadings within the mandatory time limit of two days before the hearing. Alternatively, the parties could request to have the hearing postponed, with the chance to submit pleadings within halved ordinary terms.

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We are highly experienced in litigation, before both the ordinary courts and arbitration courts, at a national and international level, in relation to commercial agreements, acquisitions of interests, shareholders' agreements, unfair competition, industrial and intellectual property rights and civil and product liability.

We also 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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