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## *COVID-19: Key Real Estate Issues*

The well-known emergency related to the Covid-19 forced the Italian Government to take severe countermeasures to fight the spreading of the disease.

Here below you can find a brief overview of the questions that are arising in the real estate sector, with particular reference to (A) retail shops; (B) construction sites activity; (C) duties of property owners; (D) hotels, and (E) eviction procedures.

### 1. CONSEQUENCES OF THE MEASURES TAKEN BY THE ITALIAN GOVERNMENT IN RESPECT OF THE RETAIL SHOPS.

The most recent Italian Prime Minister Decree dated 11 March 2020 – effective as of 12 March 2020 – applies severe restrictions to the entire Italian territory. In particular, under art.1, par. 1, the Decree dictates the suspension until 25 March 2020 of the following activities: (i) all retail activities (with the sole exception of those concerning the sale of food, medicaments and other primary goods), including the neighbourhood shops, the medium and large sales structures as well as the shops located inside shopping centers; (ii) restaurant services activities, among which bars, pubs, restaurants, ice-cream parlour, pastry shops); and (iii) personal services activities, among which hairdressers, barbershops, beauticians (with the sole exception of certain activities, including laundries and funeral parlours).

On one side, such measures triggered an immediate and comprehensible reaction from tenants and trade associations, with several requests for the suspension and/or postponement of the payment of rents as well as for a reduction of such rents. In this respect, by way of example, the Milan's Union of Artisans has already filed a petition with the Italian Government urgently requesting the immediate

interruption of the payment of rent for all commercial and productive activities which are interested by the Italian Government Decrees.

On the other side, also the landlords face a difficult situation to the extent that they have to bear several costs, among which financial and tax expenditures.

As a consequence, as of today most of them have adopted a prudential “wait-and-see” approach, waiting for the enactment by the Italian Government of other laws and regulations which may address the matters described above, by providing incentives for the whole sector and, hopefully, by clarifying on the payment of rents, also for the purpose of avoiding claims.

In this respect, through ordinance no. 10 129135/2020, dated 11 March 2020, the Municipality of Milan postponed to 30 September 2020 the terms for the payment of the first three rent instalments in relation to leased properties owned by the same Municipality.

As far as the Italian Government is concerned, through the Law Decree no. 18 of 17 March 2020, a number of economic measures has been approved, by granting, *inter alia*, (i) the tenants of the commercial activities interested by the Italian Prime Minister Decree dated 11 March 2020 a tax credit equal to 60% of the rent due for March 2020 under a property lease scheme, provided that the leased premises fall within the cadastral category C1 (art. 65), and (ii) the entrepreneurs a tax credit equal to 50% of the total amount spent for sanitizing measures in workplaces (up to a maximum of Euro 20,000) (art. 64).

The tax credit in favour of the tenants seems to be not applicable to the vast majority of Italian shopping centers, since it does not cover business lease agreements (*affitti di ramo d'azienda*), i.e the contractual scheme normal adopted in shopping centers (which, moreover, do not normally fall within the C1 cadastral category). However, it cannot be excluded that a few amendments to the Law Decree may be proposed and taken into consideration in the context of its conversion into law. Moreover, the Covid-19 situation is evolving continuously and it is therefore highly likely that the Italian Government will enact other laws and regulations. In this respect, a new law decree has already been announced by the Italian Government for the next April 2020.

## 2. CONSEQUENCES OF THE MEASURES TAKEN BY THE ITALIAN GOVERNMENT IN RESPECT OF THE CONSTRUCTION SITES.

On 22 March 2020, a new Italian Prime Minister Decree was adopted, effective as of 23 March until 3 April 2020, to establish further draconian measures, applicable on the entire Italian territory, aimed at containing the ever-increasing Covid-19 infection. This Decree, under art. 1, par. (a), dictates the mandatory suspension of the productive activities, with the exception of certain activities, considered to be “essential”. The “private” construction activities are included among the productive activities which have been suspended. Such latter activities were already suspended by Lombardy (ordinance no. 514 of 21 March 2020), Piedmont (decree no. 34 of 21 March 2020) and Campania (ordinance no. 19 of 20 March 2020) Regions. As per Lombardy Region, the suspension shall be effective until 15 April.

### 3. CONSEQUENCES OF THE MEASURES TAKEN BY THE ITALIAN GOVERNMENT IN RESPECT OF THE PROPERTY: DUTIES OF PROPERTY OWNERS.

Notwithstanding the measures that have been adopted by the Italian Government so far do not pertain to the property itself, property owners have faced with a certain degree of uncertainty about their duties and responsibility.

Generally speaking, the property owner is not responsible for the fulfilment by the tenant of its duties as employer vis-à-vis its employees or vis-à-vis its clients/guests in terms of compliance with health and safety regulations and prescriptions imposed by the competent authorities. Only in case such regulations and prescriptions involve the property itself and the relevant plants and systems, the landlord has a general duty of control over the use of the property made by the tenant.

In case of multitenant property, where the landlord manages common areas and common services, the landlord has the obligation to adopt and comply with all measures that are prescribed at a national and local level by the applicable regulation and by the competent authorities. However, where the management of common areas and common services is provided through property managers and/or service providers, the owner's duty is (i) to remind to property managers and service providers to duly comply with said regulations, measures and prescriptions; (ii) to monitor their activities (also through weekly reports); and (iii) to promptly intervene in case of any breach of such regulations.

In this respect, the Italian Ministry of Health Circular no. 5443 of 22 February 2020 provides, *inter alia*, for specific disinfection measures to be implemented in rooms or areas which have been used by those with confirmed COVID-19. Through the Law Decree no. 18 of 17 March 2020, the Italian Government grants the firms a tax credit equal to 50% of the total amount spent for sanitizing measures in workplaces (up to a maximum of Euro 20,000) (art. 64).

### 4. CONSEQUENCES OF THE MEASURES TAKEN BY THE ITALIAN GOVERNMENT IN RESPECT OF THE PROPERTY: HOTELS.

In order to face the Covid-19 emergency, art. 6, paragraphs 7 and 8 of the Law Decree no. 18 of 17 March 2020 allows the Prefect (or the Special Commissioner, pursuant to art. 122), upon proposal of the Department of Civil Protection and after having heard the competent Prevention Department, to proceed with the requisition for use of hotels and any other building with similar characteristics. Such facilities shall be used for hosting individuals under health surveillance (*sorveglianza sanitaria*) and fiduciary isolation (*isolamento fiduciario*) or in quarantine (*permanenza domiciliare*), where such measures should not be implemented at their domicile.

In case of requisition, a compensation shall be paid to the owner for each month or a part thereof. Such compensation shall be liquidated within the Prefect's decree providing for the requisition and the relevant amount shall be equal to the 0,42% of the market value of the facility or of any other facility with similar characteristics.

The requisition shall be effective until 31 July 2020. However, a prorogation to this term might apply until the duration of the state of emergency declared by the Italian Government. The duration of the single requisition shall be indicated in the Prefect's decree; otherwise, the requisition shall be deemed effective until 31 July 2020 or the different extended term.

In any case (including any claim), the enforceability of the Prefect's decree shall not be suspended.

Notwithstanding the measures that have been adopted by the Italian Government so far do not expressly provide the closure of the accommodation facilities and suspension of the relevant activities, severe measures in this respect have been adopted by certain Italian Region. In particular, by means of the ordinance no. 514 of 21 March 2020, as amended by means of the ordinance no. 515 of 22 March 2020 and effective until 15 April 2020, the Lombardy Region dictates the mandatory closure of all accommodation facilities, with the sole exception of student housing and facilities which are currently involved in the management of the Covid-19 emergency.

An identical measure has been adopted also by the Piedmont Region by means of the decree no. 34 of 21 March 2020, which shall be effective until 3 April 2020.

#### 5. CONSEQUENCES OF THE MEASURES TAKEN BY THE ITALIAN GOVERNMENT IN RESPECT OF THE PROPERTY: THE EVICTION PROCEDURES.

Pursuant to art. 103, paragraph 6 of the Law Decree no. 18 of 17 March 2020, the execution of eviction orders related to buildings (including commercial buildings) shall be suspended until 30 June 2020.

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The Firm offers specific expertise in the Real Estate sector, assisting and advising some of the main Italian and foreign institutional operators, in particular, in the context of extraordinary transactions, such as the purchase and sale of companies, individual assets and real estate portfolios, joint ventures and other development operations. We provide continuous assistance and consulting services to leading retailers and asset management companies. In addition, we also assist clients on various aspects of **administrative law**, supported by professionals specialized and capable of addressing and solving town-planning, building and licence-related issues.

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