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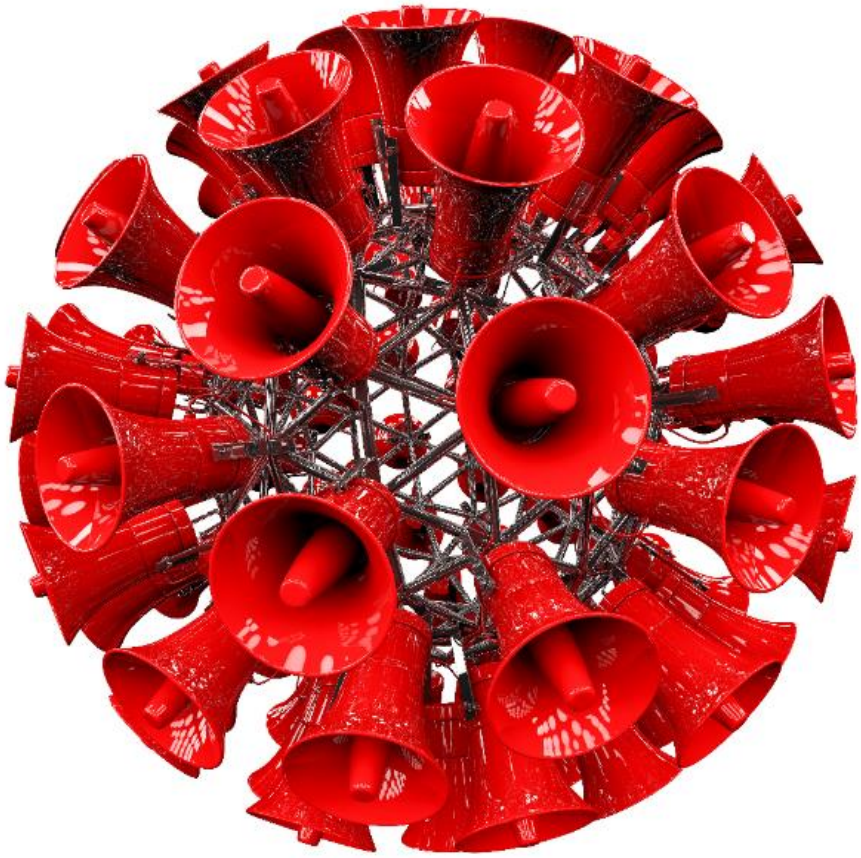

Deloitte Legal | Coronavirus Legal Tips

III Release

18 March 2020

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New version of our Legal Tips updated as at 18 March 2020: as always, this document is intended to be an informative and interpretative support in relation to the legal areas that are most affected by the COVID-19 emergency.

Below you will find the considerations of Deloitte Legal Italy's professionals broken down by subject and with no claim of completeness, as well as a series of FAQs that have emerged from our experience in these first weeks, starting from the declaration of the state of emergency, per the resolution of the Council of Ministers of 31 January 2020, and up until the issuance of the DL 18 dated 17 March 2020 (so-called "Cura Italia")

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Ordinances And Provisions

Following the declaration of state of emergency on 31 January 2020 and in order to contrast and contain the spread of the virus that causes COVID-19, the Italian Government issued the Law Decree n. 6 on 23 February 2020. This Law Decree provides that, in the event of positive COVID-19 cases, **the competent authorities shall take all the appropriate and proportionate containment measures in order to contain and manage the evolution of the epidemiological situation**. Since 23 February 2020 up to today, the Italian Government and the Italian Territorial Entities have issued several provisions, increasingly stringent, in fulfillment of the abovementioned Law Decree (at the end of this paragraph you may find the details of the most relevant ones).

In particular, the Italian Government, with the **Decree of the President of the Council of Ministers** (hereinafter "**DPCM**") **dated 9 March 2020**, has extended to the entire Italian national territory, the measures set forth under Article 1 of the **DPCM dated 8 March 2020**, issued with reference to the areas most affected by the contagion. Particularly, the DPCM dated 8 March 2020 puts in place the following main measures, effective until 3 April 2020:

a) **avoid any movement of natural persons** in entry and exit of the territories referred to in such Article, as well as within those territories, except for movements motivated by proven working needs, situations of necessity or transfers for health reasons. Movements to return to one's domicile, home or residence are permitted;

b) people subject to the quarantine measures or that have resulted positive to the COVID-19 virus, are absolutely prohibited from leaving their home or domicile;

c) facilities in ski areas are closed;

d) **all organized events, as well as events in public or private places, including those of a cultural**, recreational, sporting, religious and trade fair nature, are suspended, even if held in closed places but open to the public, such as, for example, major events, cinemas, theatres, pubs, dance schools, amusement arcades, betting and bingo halls, discos and similar establishments; all activities are suspended in these places;

e) **during public holidays and pre-festive days, medium-sized and large sales structures together with shops in shopping malls and markets, are required to close**. Pharmacies, Para pharmacies and grocery stores are not require to close, provided that the manager ensures compliance with the one-meter safety distance between people. In case of violation, the sanction is the suspension of the activity;

f) **the activities of gyms, sports centers, swimming pools, swimming centers, wellness centers, spa centers** (except for the services that constitute essential levels of care), **cultural centers, social centers, leisure centers are suspended**.

In addition, in order to counter and further contain the spread of the virus that causes COVID-19, the **DPCM dated 11 March 2020** was issued, which puts in place the following main measures, effective until 25 March 2020:

1. Aside from food and basic necessities, sales activities identified in Annex 1[1], **retail trade activities are suspended**, both in the context of neighborhood shops and in the context of medium and large-scale distribution, including those in shopping centers. Markets are closed, regardless of the type of activity carried out, with the exception of activities aimed at the sale of food only. Newsstands, tobacconists, pharmacies and para-pharmacies remain open. In any case, the interpersonal safety distance of one meter must be guaranteed.

2. **Activities of catering services (including bars, pubs, restaurants, ice-cream shops, pastry shops) are suspended**, with the exception of canteens and continuous catering on a contractual basis, which guarantee a safety distance of one meter. Catering with home delivery is allowed, provided it is in compliance with health and hygiene regulations, both in terms of packaging and transport. Food and beverage services are also open in the service areas located along roads and motorways and inside railway stations, airports, lakes facilities and hospitals, guaranteeing an interpersonal safety distance of one meter.

3. **Activities related to personal services (including hairdressers, barbers, beauticians)** other than those identified in Annex 2[2] are suspended.

4. **Banking, financial and insurance services**, as well as activities in the agricultural, zootechnical and agri-food processing sector, including the supply chains that provide goods and services, are guaranteed in compliance with health and hygiene standards.

5. With regard to production and professional activities, the following recommendations have been issued:

- companies should resort as much as possible to **smart working** methods for activities that can be carried out at home or at a distance;
- paid holidays and paid leave for employees as well as other tools provided for by collective bargaining are encouraged;
- **activities of company departments that are not necessary to production are suspended**;

[1] Annex 1. RETAIL TRADE. Hypermarkets; Supermarkets; Discount of grocery stores; Minimarkets and other non-specialized miscellaneous grocery stores.
Retail sale of: frozen food; food, beverages and tobacco in specialized stores (atheco code: 47.2); motor fuel in specialized stores; computer and telecommunications (ICT) equipment in specialized stores (atheco code: 47.(4); hardware, paints, varnishes, flat glass, electrical and thermo-hydraulic equipment; sanitary ware; lighting equipment; newspapers, magazines and periodicals; medical and orthopedic articles in specialized stores; perfumery, toilet and personal care products; small pets; optical and photographic equipment; fuel for domestic use and heating; soaps, detergents, polishes and similar products; any type of product via Internet; any type of product via television; any type of product via mail order, radio, telephone.
Trade carried out by means of automatic vending machines. Retail trade in non-specialized stores of computers, peripherals, telecommunications equipment, audio and video consumer electronics, household appliances. Pharmacies. Retail sale of medicinal products not subject to medical prescription in other specialized stores.
[2] Annex 2. Personal services; Laundry and cleaning of textile and fur products; Industrial laundry activities; other laundries, dye-works; Funeral parlours and related activities.

- safety protocols against contagion are implemented and, if the respect of the interpersonal one-meter distance as the main containment measure is not possible, individual protection tools are adopted;

- workplace sanitization operations are encouraged, also through the utilization of forms **"social shock absorbers"**;

6. For production activities only, movements within sites should be limited as much as possible and access to common areas should be restricted to a fixed number of people.

7. For all the non-suspended activities, the maximum use of smart working method is encouraged.

In addition, the DPCM 11 March 2020 sets forth that **from the date of the effectiveness of its provisions, the measures referred to in the DPCM 8 March 2020 and the DPCM 9 March 2020 shall cease to have effect, if they are incompatible with the provisions of the DPCM 11 March 2020**.

Moreover, on 17 March 2020 the Law Decree No. 18 was promulgated. Such Law Decree contains measures to strengthen the National Health Service and provide economic support for families, workers and businesses affected by the epidemiological emergency by COVID-19. Such Law Decree intervenes in many areas and will be discussed in more detail in the following paragraphs of this document.

Following the emergency regulations, many questions have arisen from citizens and companies. The Italian Government has tried to answer these questions through a dedicated FAQ internet page available at the following link: http://www.governo.it/it/articolo/decreto-iorestoacasa-domande-frequenti-sulle-misure-adottate-dal-governo/14278.

For example, the website clarifies that **medium and large sales facilities, as well as retailers in shopping centers** and markets are closed on public holidays and pre-festive days. Only pharmacies, para-pharmacies and food outlets are excluded, provided that the access is limited to these specific activities. Therefore, supermarkets located within shopping centers may open on public holidays and pre-festive days, but only for the sale of pharmaceutical, para-pharmaceutical and food products. Moreover, with reference to outdoor and covered markets, it is stated that only food sales can be carried out.

Furthermore, the following clarifications have been provided:

1. **bars and catering services** in service stations and service areas along roads and motorways or in lake ports and airports, as well as in the hospitals, may continue their activities, without any time limits;

2. **car dealers** are among the commercial businesses whose activity is suspended, while the **repair and maintenance of motor vehicles and motorcycles (mechanical workshops, car body shops, tyre reparation and replacement)** may continue their activity as they are considered essential to the needs of the community. Likewise, activities related to the maintenance and reparation such as the wholesale and retail sale of spare parts and accessories are authorised;

3. **real estate agencies** are not an essential service and shall, therefore, suspend their activities until 25 March 2020.

With regard to the construction sites, the DPCM dated 11 March 2020, such as the previous provisions, does not provide for the closure of constructions sites. Therefore, **there are no restrictions on the work carried out in construction sites**.

Likewise, there are no provisions that impose the suspension of activities of tourist-accommodation facilities. Therefore, **hotels, bed and breakfasts, agritourism, holiday homes and room rentals** may continue their activities on a regular basis and the bars and restaurants within them can continue to carry out their activities exclusively for the benefit of the guests of these structures and in compliance with the safety precautions in force. In addition, the tourist-accommodation facility is not responsible for verifying the existence of the conditions that allow the movement of natural persons. Moreover, with specific regard to hotels, the Law Decree n. 18 dated 17 March 2020 allows the Prefect ("Prefetto") to order **the requisition in use of hotel facilities** or of other buildings with suitable characteristics, to host persons under health surveillance, fiduciary isolation or domiciliary stay (art. 6, paragraph 7).

Finally, condominium meetings and meetings for the renewal of management bodies of the associations are prohibited, unless they can be held at long-distance and at the same time ensure compliance with the regulations on notices of calls and resolutions. In this regard, we point out that, with reference to **Shareholders' Meetings**, the communication (*ie.* "*massima*") no. 187 dated 11 March 2020 of the Notarial Board of Milan (not yet officially published), has clarified that: "***all participants of Shareholders' Meetings may attend the meeting through means of telecommunications*** *- if permitted by the Articles of Association pursuant to art. 2370, paragraph 4, of the Italian Civil Code, or in any case permitted by the current regulations -, including the chairman. The secretary taking the minutes or the notary need to be in place indicated in the notice of call, together with the person(s) appointed by the chairman to ascertain who is attending in person (provided that this task is not entrusted to the secretary taking the minutes or the notary)*". Moreover, with reference to the conduct of the Shareholders' Meetings, the Law Decree n. 18 dated 17 March 2020 establishes **emergency provisions** for **holding long-distance meetings** and for the **approval of the financial statements**. Such provisions apply to meetings convened by **31 July 2020** or, in any case, until the state of emergency lasts, whichever is later.

On the other hand, a large number of Italian Territorial Authorities have issued Ordinances and adopted other Provisions in order to inform citizens and companies about the behavior that must be observed and the further **measures adopted at local level**.

In this regard, the initiatives taken at a regional level in order to support companies are extremely important. For instance: (i) the **suspension for up to six months of loans** granted by the Regional Administration and a twelve-month postponement of the monitoring of the fulfillments following the conclusion of investments co-financed by the Region (Apulia Region); (ii) financing, through a call for tender worth € 4.5 million, for the **adoption of smart work business plans** (Lombardy Region); (iii) establishment of a **Guarantee Fund** for loans to support working capital worth € 5.5 million and a **Revolving Fund for the granting of repayable loans** for working capital worth € 1.7 million (Liguria); (iv) allocations worth € 38 million for the activation of the redundancy fund in derogation ("cassa integrazione in deroga") (Emilia Romagna).

Therefore, a thorough and constant tracking of the different support instruments implemented at a local level is highly recommended.

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These are the measures adopted by the relevant public authorities:

- Law Decree no. 18 dated 17 March 2020, containing measures to strengthen the National Health Service and economic support for families, workers and businesses related to the epidemiological emergency by COVID-19;
- Shared protocol to regulate measures in order to combat and contain the spread of the Covid-19 virus in the workplace, dated 14 March 2020;
- DPCM of 11 March 2020, Additional provisions implementing Decree-Law no. 6 dated 23 February 2020, on emergency measures for the containment and management of the epidemiological emergency by COVID-19, applicable throughout the country;
- Law Decree no. 14 dated9 March 2020, on urgent provisions for the strengthening of the National Health Service in relation to the COVID-19 emergency;
- DPCM dated 9 March 2020, on further provisions implementing Law Decree no. 6 dated 23 February 2020 laying down urgent measures for the containment and management of the epidemiological emergency by COVID-19, applicable throughout Italy (from the date of effectiveness of this DPCM dated 10 March 2020, the measures referred to in articles 2 and 3 of the Law Decree no. 6 dated 8 March 2020 cease to have effect if they are incompatible with the provision of Article 1);
- Law Decree no. 11 dated 8 March 2020, on extraordinary and urgent measures to counter the epidemiological emergency from COVID-19 and contain the negative effects on the performance of judicial activity;
- DPCM dated 8 March 2020, on further provisions implementing Law Decree no. 6 dated 23 February 2020, with urgent measures for the containment and management of the COVID-19 epidemiological emergency. Article 1 of this provision that was initially comprehensive of the Lombardy Region and 14 provinces in North Italy, has been extended to the entire national territory with DPCM dated 9 March 2020;
- Directive of the Ministry of the Interior no. 15350/117(2) to the prefects on 8 March 2020;
- Civil Protection Ordinance dated 8 March 2020;
- CDM resolution dated March 5, 2020, on the subject of further allocation for the implementation of interventions as a result of the health risk connected with the onset of pathologies arising from transmissible viral agents;
- Law Decree no. 9 dated 2 March 2020, on urgent support measures for families, workers and businesses related to the epidemiological emergency by COVID-19 (OJ n. 53 dated 2-3-2020).
- Law Decree no. 6 dated 23 February 2020, on urgent measures for the containment and management of the epidemiological emergency by COVID-19, converted with amendments into Law no 13 dated 5 March 2020;
- Circular no. 3190, Ministry of Health dated 3 February 2020;
- Resolution CDM dated 31 January 2020, concerning the declaration of the state of emergency as a result of the health risk associated with the onset of pathologies deriving from transmissible viral agents.

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Labour

On **08/03/2020**, the Decree of the President of the Council of Ministers was approved. Such Decree sets forth further implementing provisions of the Law Decree 23/02/2020, no. 6, containing urgent measures for the whole Italian territory aimed at containing and managing the epidemiological emergency of COVID-19 (the "**Implementing Decree**").

In particular, Section 2 of the Implementing Decree grants the possibility to implement Smart Work (the "**SW**"), throughout the national territory, for the duration of the emergency phase and, therefore, for a total of 6 months, starting from 31/01/2020 (resolution of the Council of Ministers dated 31 January 2020), without a written agreement.

However, on March 11th, 2020, a further decree was issued by the President of the Council of Ministers (in force from March 12th, 2020 to March 25th, 2020). Section 1 of such decree, in addition to the suspension of the previously mentioned commercial activities throughout the Italian territory, recommends, among other precautions, to maximize the use of the SW for those activities that can be performed from home or remotely, even if not affected by the suspension (the "**Decree 11 March"**).

With reference to the adoption of the Decree 11 March, according to the FAQ on the Government's website, the possibility to carry out the SW seems to be limited to the period of validity of that decree and, therefore, until March 25, 2020.

In any case, based on the combined provisions of the Decree 11 March and the Implementing Decree, which remain in force provided that they are not incompatible, the "simplified" activation SW would seem possible even after March 25th, 2020 and, therefore, until the end of the state of emergency (i.e. July 31st, 2020).; that is, of course, unless further changes are made through new decrees, since there is no provision in the Decree 11 March that states prevents it.

The Implementing Decree provides also that the information obligations relating to issues concerning health and safety at the workplace may be fulfilled electronically (also by email) by sending the standard information available on the INAIL website (that should be sent to each specific employee and to RLS, also separately, if any).

Moreover, also after the publication of the Decree 11 March, the provisions included in the note of Ministry of Labour dated 24 February 2020 still apply. More specifically, it will be possible to upload a simple self-certification indicating all those employees for whom the SW has been implemented (in order to avoid the communication generally required), as provided for under the implementation of the law decree and, subsequently, the Implementing Decree.

Without prejudice to these "formal" simplifications, in any case, it is worth remembering that all other provisions of Law 81/2017 on SW are to be respected and guaranteed, for example on: working time, business tools, information protection, right to disconnection, etc.

In this respect, after an initial phase of direct implementation of SW, it would be appropriate to regulate, in any case, the matter through a proper regulation, in order to define the ways to enjoy of SW and the relevant details during the emergency period provided by the law. Alternatively, such regulation may also be included in the telematic communication aimed at implementing SW.

It is also worth noting that the Decree 11 March, in addition to the mentioned suspension the majority of commercial activities throughout the country and recommending the maximum use of SW, also incentivizes the use of vacation periods and paid leave, as well as other items provided for by collective bargaining (please refer to the Q&A below, regarding the possible and unilateral imposition of holiday periods).

The mentioned decree also recommends the suspension of the activities of company departments that are not essential to production, the definition of contagion prevention safety protocols, the adoption of

individual protection instruments (without specifying them) where it is not possible to respect the safety distance and, lastly, that workplace sanitization operations be implemented, also using social shock absorbers for this purpose.

In relation to the above and limited to production activities, the decree also promotes the achievement of agreements between trade union and employer organizations.

Protocol for the regulation of the measures against Covid-19

On 14/03/2020, in order to implement the provisions of the Decree 11 March, a shared protocol regulating the measures aimed at fighting and containing the spread of the Covid-19 within the workplace was signed by trade unions, employers' associations and the Government (the "**Protocol**").

For the purposes of this section, it is worth noting that, in line with the provisions of the Decree 11 March, the Protocol sets forth that the continuation of production activities can only take place in the presence of conditions that ensure adequate levels of protection for employees, also by using social shock absorbers, in order to allow companies in all sectors to apply these measures and consequently ensure safety of the workplace.

Moreover, in point 8, the Protocol states that employers, in order to guarantee safety at work (in the event that it is not possible to apply SW and to provide employees with adequate individual protection instruments), are required to use, as a priority, the available social shock absorbers generally aimed at allowing the absence from work without loss of remuneration, in compliance with the contractual institutions (PAR, ROL, "banca ore"). Only if the use of such institutions is not be sufficient, it will be possible to use the accrued and not used vacation periods.

Also on the basis of the declarations made by the signatories of the Protocol, it does not seem that the Protocol is to be considered directly binding for employers, but rather a set of guidelines which employers should follow insofar as possible, in addition to the measures already implemented and taking into account the emergency situation, in line with the "precautionary approach" required in the management of health and safety protection within the company in the context of the existing emergency, also pursuant to section 2087 of the Italian Civil Code (for further information on the subject, please refer to the specific part of this document dedicated to the health and safety issue).

In other words, failure to apply the Protocol, in the event an employee is infected, could more easily generate an employer's responsibility, since even though a set of measures to mitigate this risk was available -, the employer refrained from implementing them.

Lastly, point 13 of the Protocol states that "*a Committee for the application and verification of the rules of the regulatory protocol with the participation of the work councils and the RLS shall be established within the company*". The RLS, therefore, must be actively and regularly involved.

Social shock absorbers

"Cassa integrazione guadagni ordinaria" - ("**CIGO**")

Several simplifications in accessing CIGO were introduced with the two relevant Law Decrees adopted within the COVID-19 emergency: the Decree-Law 2/03/2020, n. 9. (the "**Decreto Zona Rossa**") and the Decree-Law 17/03/2020, n. 18 (the "**Decreto Cura Italia**").

Section 13 of the Decreto Zona Rossa allows those employers who fall within the scope of the CIGO and who, due to the epidemiological emergency, have had to suspend or reduce their work activity, to apply for the CIGO (or access bilateral funds where established). Such application can be made with reference to production units located within the so-called "Red Zone" or outside the Red Zone but with exclusive reference to employees residing or domiciled within it and unable to work in SW. The areas comprised in the "**Red Zone**" are the municipalities of Bertonico. Casalpusterlengo, Castelgerundo, Castiglione d'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini, Vo' Euganeo.

The access to these social shock absorbers is significantly simplified, as it is not subject to compliance with trade union procedures and ordinary procedural deadlines with reference to CIGO (the same simplifications apply to bilateral funds, where existing) **and is allowed for a period not exceeding 3 months**.

A different provision is, instead, the one set forth in the "Decreto Cura Italia", applicable to the remaining part of the Italian territory.

Section 19 of said decree, states that all employers, falling within the scope of application of the CIGO, that, regardless of their location, suspend or reduce their working activity in the year 2020 for events attributable to the COVID-19 epidemiological emergency, may apply for the CIGO or the "assegno ordinario" with the causal "COVID-19 emergency", for periods **starting from February 23rd, 2020** and for a **maximum duration of 9 weeks** and, in any case, within the month of August 2020.

The above mentioned Section 19 of "Decreto Cura Italia" also states that the requesting employers will be exempted from abiding by the ordinary procedures and procedural terms, **without prejudice**, however, **to the fact that they will have to activate the information, consultation and joint examination process**, also electronically, within 3 days from the preventive notification.

The above mentioned provisions on the CIGO (whether applicable to the Red Zone or to the rest of Italy) are only applicable with reference to those employees employed as at February 23rd, 2020 by the employer requesting the CIGO. In order to access such benefits, the relevant employees are not required to have a company seniority of at least ninety days as at the date of submission of the relevant application (il "Decreto Zona Rossa" is not explicit on this point, but the interpretation seems reasonable).

Moreover, the additional contribution is not due with reference to the CIGO periods indicated above and such periods will not be taken into account in the calculation of the ordinary maximum duration (also in this case the "Decreto Zona Rossa" is not explicit on this point, but the interpretation seems reasonable taking into account the fact that the above is financed through the Social Fund for employment and training, pending clarification by INPS).

CIGO applications will be met by INPS within the limits of the allocated budget and, in any case, on the basis of a priority criterion based on the date of receipt of the relevant application.

Cassa in deroga ("**CIGD**")

The "Decreto Zona Rossa" and the "Decreto Cura Italia", moreover, together with the above, provide for a special ad hoc discipline, concerning the cases in which CIGO is not applicable, through the possibility, for employees excluded from the scope of CIGO, to access CIGD.

Also in this case, there is a "dual track", in the sense that the activation procedures and duration differ on the basis of the employers' location, always and in any case in compliance with the provided expenses limits.

In particular, Section 15 of the "Decreto Zona Rossa" recognizes employers with production units inside or outside the Red Zone, with reference to employees residing or domiciled there, to whom the ordinary rules regarding the suspension or reduction of working hours are not applicable, during the employment relationship, the possibility to submit an application for CIGD, also in this case, for a **maximum period of 3 months, starting from February 23rd, 2020**.

The "Decreto Zona Rossa", moreover, extends the possibility to benefit from CIGD treatments also to those employers who do not operate within the Red Zone.

In particular, Section 17 of the "Decreto Zona Rossa", states that, with the exception of the cases referred to in the aforementioned section 15, the regions of Lombardy, Veneto and Emilia Romagna may grant CIGD. This possibility can be granted to employers (i) with production units within the mentioned regions and to those who do not have a registered, productive or operational office within the same regions, but have employees residing or domiciled there, (ii) to whom the provisions on suspension or reduction of working hours do not apply, during the relationship, and (iii) only in case of ascertained prejudice, following the issuing of the ordinances of the Ministry of Health in agreement with the regions. An agreement in this respect has to be signed between the same regions and the trade unions

and for the duration of the suspension of the employment relationship and in any case for a maximum period of one month.

Section 22 of the "Decreto Cura Italia", instead, states that the Regions and the autonomous Provinces, with reference to employers, wherever they are located, for whom the protections regarding the suspension or reduction of working hours (including, also in this case, the CIGO) are not applicable, during the employment relationship, may recognize, as a result of the epidemiological emergency from COVID-19, subject to an agreement that the same regions and autonomous provinces may conclude with the trade unions, including by telematic means, wage subsidies by way of derogation, for the duration of the suspension of the employment relationship and in any case for a period not exceeding nine weeks.

Also in this case, the provisions indicated above with reference to the CIGD (whether applicable to the Red Zone or to the rest of Italy) will be applicable only with reference to those workers employed as at 23 February 2020 by employers requesting the benefit. The requirement that the employees for which such benefit is requested have a company seniority of at least ninety days at the date of submission of the relevant application does not apply (the Zona Rossa Decree is not explicit on this point the interpretation seems reasonable).

Moreover, with reference to the CIGD periods, the additional contribution is not due, nor will this latter be taken into account for the calculation of the ordinary maximum duration.

Applications will be met within the allocated budget and, in any case, still on the basis of a priority criterion based on the date of receipt of the application.

With regard to the activation procedure, whether or not the regional agreements on CIGD require passing through trade unions at company level will need to be verified on a case by cases basis (such as those relating to the agreements signed in Emilia Romagna in implementation of the "Decreto Zona Rossa", which expressly provide for the need for a company trade union agreement).

Cassa Integrazione Guadagni Straordinaria treatment in progress ("**CIGS**")

The "Decreto Zona Rossa" and the "Decreto Cura Italia", moreover, regulate differently the cases in which employers are already enjoying CIGS periods.

In case of activation of CIGO, it will be possible for the employers to obtain the suspension of the CIGS treatments in progress and, in any case, the granting of CIGO treatment will not be counted for the purposes of compliance with the ordinary terms of maximum duration of salary integration treatments.

"*Assegno ordinario*" treatment for the employees with "*assegni di solidarietà*" in progress

Section 21 of the "Decreto Cura Italia" recognizes the possibility for employers registered with the FIS who have an "*assegno di solidarietà*" in progress to apply for the granting of the "*assegno ordinario*" pursuant to section 19 above, for a period not exceeding nine weeks, with consequent suspension and replacement of the "*assegno di solidarietà*" already in progress.

The periods in which there is coexistence between "*assegno di solidarietà*" and "*assegno ordinario*" will not be counted for the purposes of compliance with the ordinary terms and limited to the periods of "*assegni ordinari*" granted pursuant to section 21, the additional contribution will not be due.

Further cases of suspension provided for in the applicable collective agreements

In any case, if is not possible to implement SW and/or apply for the unemployment insurance (both ordinary or extraordinary), theoretically, for non-production companies or departments - for which the Decree 11 March either expressly requires (for the sectors indicated therein) or recommends the suspension of activities – or, in any case where the employer is not able to guarantee sufficient safety measures, the employment relationship could be even suspended, by applying the potential and specific provisions of the collective agreements (which regulate the cases of suspension of the employment relationship for impossibility occurred or, in any case, for a fact not attributable to the employer). Naturally, the concrete possibility to implement such drastic solution should be evaluated in detail. It will be still possible to proceed with specific agreements on the use of vacation days or leaves not already used.

Furthermore, it is advisable to always pay attention to the applicable collective agreement, which could provide for a particular regulation (this is the case, for example, of the collective agreement of trade sector which provides, in section 202, named "Suspension", that "*in case of suspension of work due to fact dependent on the employer and independent of the will of the employee, the employee has the right to be granted with the remuneration provided under art. 208 for the entire period of the relevant suspension*. *The rule referred to in the previous paragraph does not apply in the case of public calamities, extraordinary weather events and other cases of force majeure*").

Further provisions of the "Decreto Cura Italia" and of "Decreto Zona Rossa"

Below are the additional provisions of the "Decreto Cura Italia" which are considered relevant for the employer and aimed at managing employees (please note that the provisions below have been described in order of importance and not by taking into account the sequential number of the relevant sections).

Suspension of the terms within which the dismissals could be challenged

As from the date of entry into force of "Decreto Cura Italia" (*i.e.* March 17th, 2020), pursuant to section 46, the start of a collective dismissal procedure is precluded for 60 days and during the same period the pending procedures started after 23 February 2020 are suspended.

Until the expiration of the mentioned term, employers, regardless of the number of employees, may not dismiss employees for justified objective reasons.

The mentioned provision it considered inapplicable to dismissals that have already been communicated (*i.e.* the ones for which the dismissal letter has already been delivered, regardless of whether the notice is still pending). On the other hand, for example, the relevant provisions applies to dismissals for which, only the procedure pursuant to Section 7 Law 604/1966 was started; therefore, it will be no longer possible to implement the relevant dismissal within the mentioned period.

Employees bonus

Pursuant to Section 63 of the "Decreto Cura Italia", employers must grant a bonus to employees with an income not exceeding 40,000 Euro during the year 2019. The bonus applies to the March 2020 remuneration and will not be considered part of the relevant income. The bonus amounts to 100 Euro, to be proportionated to the number days the working activity was performed in the workplace in the relevant month. The mentioned amount will then be set off with the payments due on withholding taxes, which will be reduced accordingly.

Extension of the terms for certain payments public administrations

Pursuant to section 60, payments to public administrations, including those relating to social security contributions and compulsory insurance premiums, due on March 16th, 2020 are extended until March 20th, 2020.

Suspension of payments of withholding taxes, social security contributions and compulsory insurance premiums

Section 5 of "Decreto Zona Rossa" has suspended, within the Red Zone, the terms relating to the fulfilment and payment of social security contributions and compulsory insurance premiums, expiring in the period from February 23rd, 2020 and April 30th 2020.

The relevant payments will have to be made as from May 1st, 2020, also by instalments up to a maximum of five equal monthly instalments, without the application of penalties and interest.

Section 8 of the "Decreto Zona Rossa", with reference to touristic companies, travel and tourism agencies and tour operators, operating on the Italian territory, suspended, with effect from March 2nd, 2020 until April 30th, 2020, the terms concerning the payment of withholding taxes, as well as the terms concerning the fulfilment and payment of social security contributions and compulsory insurance premiums.

Section 61 of the "Decreto Cura Italia", extends said provision to other activities such as, by way of example, sports clubs, betting offices, restaurants, ice-cream parlors, pastry shops, bars and pubs, nurseries, etc.

The same section also states that in relation to touristic companies, travel and tourism agencies and tour operators, as well as in relation to the other activities mentioned by the same section, the payment terms of VAT expiring in March 2020 are suspended.

The suspended payments shall be made, without the application of penalties and interest, in a single instalment within May 31st, 2020 or by instalments up to a maximum of 5 equal monthly instalments as from May 2020.

Active monitoring of private sector workers (i.e. "quarantine")

Section 26 of the "Decreto Cura Italia" provides that the period spent in quarantine with active surveillance or in fiduciary home stay with active monitoring by workers of the private sector provided for under section 1, paragraph 2, letters h) and i) of the Law Decree no. 6 of February 23rd, 2020 (*i.e.* the one ordered by the health authority and not the one ordered by the employer as a precautionary measure) must be considered as illness, for the purposes of the economic treatment provided for by the reference legislation, and that the same cannot be counted for the purposes of the period during which the ill employee has the right to maintain employment relationship.

To this end, the general practitioner shall issue the appropriate certification, subject to the specification of the measure by which quarantine has been ordered, in the ordinary manner.

Priority right for smart working

Pursuant to Section 39, until April 30th 2020, disabled employees or who have a disabled person in their household will be entitled to perform the working activity in smart working, provided that smart working latter is compatible with the characteristics of the activity to be performed.

For workers of the private sector suffering from serious and proven pathologies with reduced working capacity are prioritized in accepting smart working requests.

Leaves and indemnities for employees, workers enrolled to "gestione separata" and autonomous workers

Section 23 of the "Decreto Cura Italia", for the year 2020 and with effect from March 5th, due to the closure of schools, recognizes the possibility for parents that are subordinated employees, to enjoy a continuous or fractioned period of leave not exceeding 15 days, to assist children not older than 12 years, with the right to an allowance equal to 50% of ordinary salary.

This leave is also granted to workers enrolled with the "gestione separata" and autonomous workers, who will be respectively entitled to an indemnity, for each indemnifiable day, equal to 50% of 1/365 of income (to be determined on the basis of the same criteria used for the maternity allowance) and equal to 50% of the conventional salary annually established by law.

The use of this leave is granted alternatively to both parents for an overall total period of 15 days (it is therefore considered that the parents must/should alternate within this limit), and is subject to the condition that there is no other parent in the nuclear family who benefits of income support, in the event of suspension or employment termination, or another parent who is unemployed or not working.

As an alternative to the above, the same beneficiary employees may opt for the payment of a bonus for the purchase of child care services up to an overall and maximum limit of Euro 600, which is also granted to self-employed workers not registered with INPS, subject to notification by the respective social security funds of the number of beneficiaries.

Only for parents who are subordinate employees and who, due to schools closure are forced to take care of children between 12 and 16 years of age, the same section of the "Decreto Cura Italia" gives the possibility to refrain from performing working activity during the period of schools closure, provided that there is no other parent in the household who benefits of income support in case of suspension or termination of the working activity or that there is no parent not performing any working activity. In this case, the worker will not be entitled to compensation nor to recognition of figurative social security contributions, without prejudice to the ban to implement the dismissal and the right to maintain employment relationship (is the possibility to be granted with an "unpaid leave" in those situations).

Lastly, Section 24 provides for the extension of the number of days of paid monthly leave provided by Section 33, paragraph 3, of Law 104/1992 (for those who enjoy the so-called "104 leaves"), for a additional 12 days in toal, which can be taken during the months of March and April 2020.

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Allowances for professionals, autonomous workers and seasonal tourism workers

Among the measures introduced by the "Decreto Cura Italia", it is also worth mentioning the right to an indemnity, for the month of March 2020, equal to 600 Euro which, as such, should not be included in the income for tax purposes, in favour of :

- freelancers with VAT registration number and workers with coordinated and continuous collaboration active as of February 23rd, 2020, enrolled to the so-called "Gestione separata",who are not pensioners nor registered with other compulsory social security schemes;
- self-employed workers enrolled in the special sections of the "Gestione Ordinaria", who are not pensioners nor enrolled in other compulsory social security schemes;
- seasonal employees in the tourism sector and spas, who have involuntarily terminated their employment relationship in the period between January 1st, 2019 and the date of entry of the "Decreto Cura Italia" (*i.e.* March 17th, 2020), who are not pensioners nor employed at the same date;
- fixed-term farming workers, who are not pensioners, who during 2019 have carried out at least 50 actual days of farming work.

These mentioned allowances are not cumulative and may not be paid to recipients of the so-called "reddito di cittadinanza".

As of today, the "Decreto Cura Italia" does not contain any reference to income limits for the right to these allowances. However, operational indications are expected from the competent bodies (first of all INPS).

The same indemnity is also paid to workers enrolled in the entertainment workers' pension fund, with at least 30 daily social security contributions paid during 2019 to the same fund, having an income not exceeding Euro 50,000 and who are neither pensioners nor employees.

In addition to the above, it should be noted, for sake of completeness, that Section 16 of the "Decreto Zona Rossa" grants to coordinated and continuous collaborators, holders of agency and commercial representation relationships and autonomous workers or professional workers including the holders of business activities, enrolled in the general compulsory insurance and to the relevant substitutive insurance, as well as to the so-called "Gestione separata", who were performing their activity as at February 23rd, 2020 within the Red Zone or were resident or domiciled there on the same date, the right to a monthly allowance, to not be taken into account in the income for tax purposes, equal to 500 Euro for a maximum of three months and based on the actual period of suspension of activity.

This provision has not been canceled by the "Decreto Cura Italia" and, therefore, it is considered to be still in force and to be added to the above. In this regard, However, operational indications are expected from the competent bodies (first of all INPS).

Labour Q&A

1.What communications should be made to employees who have worked closely with an infected employee?

Communications should be limited to the invitation to comply with the provisions of the emergency law and, according to the provisions of the "Decreto Cura Italia", if quarantine by the authority is ordered, the employee will be considered to be on sick leave. Otherwise, the employer may order the observance of a period of 14 days of voluntary quarantine, preferring the use of the smart working,

where possible, or placing the relevant employee in "cassa integrazione", where it can be and has been activated.

2.How to deal with a worker who has been placed in quarantine due to COVID-19?
The "Decreto Cura Italia" states that the period spent in quarantine with active surveillance or in fiduciary home stay ordered by the public health authority with active surveillance is to be considered equivalent to an illness for the purposes of the economic treatment provided for by the relevant legislation and cannot be counted for the purposes of the period during which the ill employee has the right to maintain employment relationship".
Consequently, the employees affected by these restrictive measures must be guaranteed the economic and regulatory treatment provided for by the collective agreement applied to the employment relationship for periods of illness.

3. Is it possible to impose vacations to employees?
The emergency law suggests to encourage the use of accrued vacations. To this end, it would be necessary to provide for ways to incentivize the use of vacations (an increase in the number of days that can be taken or similar), as currently the possibility to unilaterally impose vacations should be carefully checked (also in case of activation of the social shock absorbers provided for by the "Decreto Cura Italia").

4. What are the tools to manage production losses due to the COVID-19 emergency?
In order to manage the employment relationship, the employer could evaluate the activation of social shock absorbers, in accordance with the provisions and facilities and/or simplifications introduced by the emergency legislation, in particular, with rotation criteria, where possible a partial return to work in compliance with the provisions on health and safety at work provided in the Protocol.

5.How to grant smart working without an individual agreement or regulation?
The emergency law allows smart work to be implemented in a simplified way, without the need to proceed with the signing of an individual agreement and/or a regulation. In this case, smart work can be activated by, for example, using the company email and communicating, through the same, to the involved employees, the conditions of use of the smart work periods and, above all, by attaching the information on health and safety issues in the workplace, available at the following link https://www.inail.it/cs/internet/comunicazione/avvisi-e-scadenze/avviso-coronavirus-informativa.html, as well as by implementing the simplified communication procedure of employees in smart working.

6.How to support employees who have to be absent from work due to family needs due to the COVID-19 emergency?
By making them enjoy leave, according to the law or the national collective labour agreement applied to the relative relationship, or even those that should be introduced by the emergency legislation.

7.Are the obligations towards employees similar to those for self-employed?
From a labour law point of view, no: the principal's obligations towards self-employed workers are quite distinct from those of the employer, towards employees. As a general rule, the self-employed person, as such, should bear all the consequences of any suspension of the relationship, within the limits of what is permitted by the collaboration contract. However, pursuant to Law 81/2017, if the self-employed worker, who performs a continuous activity towards the client, should be infected by

COVID-19, it will be possible, at the request of the worker, to suspend the relationship for a maximum of 150 days, without the right to compensation and unless the client proves that he/she has no interest in the continuation of the relationship. Of course, being a self-employed worker, he/she will be able, theoretically, to work and operate from any place he chooses and from which he is able to perform the relevant service (including, therefore, remotely).

8.How should relations with RLS be managed and what information should be given?
In order to manage COVID-19 emergency, it is suitable to involve the RLS as they are subjects who, according to the provisions on health and safety in the workplace, must be consulted on risk assessment, identification, planning, implementation and verification of prevention in the company or in the reference business unit.
This, in particular after the adoption of the Protocol which expressly provides for their active participation in the management of the COVID-19 issue.

9.How to deal with interns and apprentices?
On the assumption that internships (both curricular and extracurricular) could not be considered as employment relationships, it is suggested to suspend them, also in agreement with the promoting bodies or the university of reference. The alternative of smart work does not seem viable and, above all, advisable because it would give the intern an autonomy that, due to the type of relationship in place, the same should not have and, moreover, make it more complicated to work alongside the tutor. In any case, it is suggested to communicate with the universities and/or formative reference bodies, that could, in principle, consider SW admissible, taking ever into account the needs of the hosting company.
The apprenticeship relationship, on the other hand, is an ordinary employment relationship and, as such, should be subject to the same provisions provided for other employees of the company. With regard to the so-called external training, it is suggested to refer to the information made available on the websites of the regions, as it may have been subject to temporary suspension, due to the emergency related to the spread of COVID-19.

10.The CIGD also applies to employees of professional firms (*"studi professionali"*) who have to close due to the corona virus?
Yes, if the requirements of the "Decreto Cura Italia" are met, the CIGD is also applicable to employees of "studi professionali".

11. Is it necessary to grant to employees the previous vacation in order to activate the "*cassa integrazione*"?
Literally, emergency legislation does not provide for the need to enjoy past vacation periods in order to access to "cassa integrazione" treatment. In any case, INPS may require the relevant preventive use with possible circulars clarifying the text of the "Decreto Cura Italia".

12. Should restaurant tickets be recognised in a smart working situation?
In general, pursuant to the provisions of art. 20 of Law 81/2017, the worker who performs the service in smart working mode is entitled to an economic and regulatory treatment which is not less favorable than the one applied to workers who perform the same tasks exclusively within the company.
Without prejudice to the above, however, there is no regulatory provision requiring the employer to recognize the ticket restaurant to employees who perform the work in smart working mode. This

aspect, in fact, is traditionally regulated within the framework of agreements between employer and employee or within the relevant company regulations.
Under current emergency legislation, on the other hand, in the absence of the need for an agreement between the parties the recognition or non-recognition of meal vouchers must be assessed on a case-by-case basis.

13.Are expiring fixed-term employment contracts suspended?
No, there is no provision within the emergency legislation which provides for the suspension of fixed-term employment relationships.

14.Are dismissals which refer to a previous agreement and which have already been communicated suspended?
No, dismissals that refer to a previous agreement and already "communicated" are not suspended. In particular, from the date of which the "Decreto Cura Italia Decree" entered into force (i.e. 17/03/2020), the start of collective redundancy procedures is precluded for 60 days and during the same period pending procedures started after 23/02/2020 are suspended.
Also with reference to the same period, employers, regardless of the number of employees, may not terminate the employment contract for objective reasons.

15.Can apprenticeship contracts whose training period is expiring be terminated?
There is no provision in the emergency legislation aimed at suspending apprenticeship contracts. With reference to the so-called external training, it is suggested to refer to the information made available on the websites of the regions, as it may have been temporarily suspended due to the emergency related to the spread of COVID-19.

16.Individual dismissals for just cause are not suspended?
No, there is no provision in the emergency legislation aimed at suspend/limit the possibility to implement disciplinary dismissal (i.e. justified subjective reasons and just cause).

17. Is it possible to ask for the "cassa integrazione" only for employees of departments/offices considered "not essential" to production?
Yes, the request for access to "cassa integrazione" could potentially be addressed even only to employees of departments/offices considered not essential to production.

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Health and Safety in the workplace (Italian Legislative Decree No. 81/2008)

The measures that have taken place in recent days do not tire of reminding us of the need to take all measures necessary to counteract and avoid as much as possible the spread of COVID-19 and to make all places, including workplaces, safe.

Lastly, on **14 March 2020**, at the Italian Government's urging, employers' and trade union organizations signed the **"Shared Protocol concerning measures to combat and contain the spread of COVID-19 virus in the workplace"** (the "**Protocol**"). It provides for guidelines aimed to facilitate companies in adopting the anti-contagion security protocols introduced by the Decree of the President of the Council of Ministers (hereinafter "**DPCM**") dated 11 March 2020, given that the continuation of production activities can only take place adequate levels of protection for employees are ensured.

In this regard, it worth noting again that the **DPCM dated 11 March 2020**, while ordering the suspension of a large part of commercial activities, recommended that, in the context of production and professional activities, specific measures to contain the contagion be adopted, including: 1. the suspension of the activities of company departments that are not essential to production; 2. **the drafting of specific anti-contagion safety protocols which include, where it is not possible to guarantee the interpersonal distance of at least one meter, the use of individual protection equipment**; 3. the intensification of workplace sanitisation; 4. the limitation of movements within sites, as well as of access to common areas.

Back to the Protocol, it is useful to reiterate that it represents guidelines and therefore each company should take inspiration from it to draft its own **specific anti-accounting safety protocols**, integrating the measures provided for by the Protocol with other equivalent or more incisive ones according to the peculiarities of company's organization, after consulting the company trade union representatives.

Today the Protocol is, therefore, an indispensable tool (although not binding) for carrying out production and professional activities in safety, providing for operative instructions which summarize and specify the provisions contained in the relevant measures issued these days.

In particular, the Protocol deals with different topics:

- **Training**. As already said, the employer is required to inform all the employees as well as anyone entering the company on the hygienic-sanitary behaviour to adopt, delivering and/or posting specific leaflets at the entrance and in the most visible places within the company premises.

- **Entering/leaving the company**. The company may ask for information on movements and health status of anyone entering or leaving the company premises or local units, as well as take the body temperature, with reference to both employees and, when necessary, suppliers and/or contractors. The company may also provide for staggered entry/exit times for employees.

- **Cleaning and sanitization.** As already provided for in the DPCM dated 11 March 2020, the company ensures the daily cleaning and periodic sanitization of premises, environments, workstations and common and leisure areas, as well as, when necessary, the decontamination in compliance with the provisions of Circular no. 5443 of 22 February 2020 of the Italian Ministry of Health. In this regard, Law Decree No. 18 dated 17 March 2020 grants tax credits

to persons carrying out business, art or profession activities (for the tax period 2020), to the extent of 50 % of the costs of the sanitation of environments and work tools, documented up to a maximum of Euro 20.000,00 for each beneficiary, up to a total limit of Euro 50 million in the year 2020.

- **Personal hygiene measures.** The company provides for suitable hand cleaning tools.

- **Personal protective equipment**. If it is not possible to guarantee the interpersonal distance of one meter, the company shall provide for suitable personal protective equipment (such as gloves, goggles, tracksuits, headphones, scrubs, etc.) complying with the provisions of the scientific and health Authorities, compatibly with the availability on the market (in this regard, the Protocol promotes the "do-it-yourself" preparation of detergent gel). On this point, Law Decree No. 18 dated 17 March 2020 specifies that the surgical masks available on the market are personal protective equipment and authorizes the use, each under his/her own responsibility, of filtering masks without the CE mark.

- **Common areas**. As already recommended by the Italian trade associations, including Assolombarda, the company is also called upon to regulate access to areas intended for catering (e.g. canteens), leisure or similar (e.g. relaxation areas, coffee rooms, smoking areas), limiting the number of simultaneous accesses, ensuring the distance of at least one meter between people, and providing for periodic sanitization and daily cleaning of the spaces.

- **Company organization.** Companies could use the available tools (closure of non-production departments, rostering, smart working, modulation of production levels, social shock absorbers, etc.) in order to reduce the number of people physically present in the site, as well as to limit unnecessary movements, suspending/cancelling trips, events, meetings, training activities, which could be carried out, when possible, remotely. In particular, all the activities that would normally require a training update (RSPP, First Aid Officers, Fire Prevention Officers, RLS, etc.) can be carry out even in the absence of such update.

- **Management of a symptomatic person within the company.** This person is required to communicate his/her health status to the human resources department and the company shall proceed to notify the competent Health Authority via the COVID-19 emergency numbers provided by the Region or the Italian Ministry of Health.

- **Health Surveillance**. The Protocol confirms the central role of the **Occupational Doctor**, who is called to carry out the activities for which he/she is responsible in collaboration (even remotely) with the Employer, the trade union representatives and all the company figures responsible for prevention and training, scrupulously following the instructions of the competent Health Authorities.

In particular, **periodic health surveillance must not be interrupted**. It represents a further general prevention measure because it can intercept possible cases and suspicious symptoms of contagion and the Competent Doctor can provide workers with information and training aimed at avoiding the spread of contagion.

The activity of the Occupational Doctor is also important because he/she is called to **integrate and propose all COVID-19 prevention measures** as well as **to report** to the company cases of particular fragility and current or past pathologies affecting employees, given that the Italian Ministry of Health has found that the virus is particularly dangerous for older people and for those whose health conditions are already compromised by other diseases.

Finally, it should be noted that the importance of adopting and implementing the anti-accounting safety protocols is confirmed by the fact that the Protocol provides for the establishment within each company of a **Committee for the application and verification of the rules provided for by the regulatory protocol**, with the participation of the company trade union representatives and the RLS.

Health and safety in the workplace (Italian Legislative Decree no. 81/2008) Q&A

1. Does the Risk Assessment Document ("DVR") / Interference Risk Assessment Document ("DUVRI") need updating?

The company must take all appropriate preventive measures to avoid the risk of infection. Except for specific situations, the risk of contagion from COVID-19 is not directly related to the work activity and therefore the Employer has no specific obligation to update the DVR. However, given the current situation of social alarm, the Employer could consider, upon discussion with the Responsible for Prevention and Protection Service ("RSPP") and the Occupational Doctor, the opportunity to integrate the DVR (or to adopt a specific company policy), assessing the risk related to the spread of the biological agent COVID-19, which may be facilitated by the presence of human beings on the worksite. In the same way, it could be useful (or necessary) that the contractor and the client assess this risk when signing the DUVRI, on the assumption that the provisions of the competent Authorities today allow the performance of the activities that should be regulated by the DUVRI.

Having said the above, however, it is now a priority for companies to adopt anti-contagion safety protocols in line with the "*Shared Protocol concerning measures to combat and contain the spread of COVID-19 virus in the workplace*", an indispensable tool, in today's emergency context, for carrying out production and professional activities in safety.

2. Is it necessary to integrate the Personal Protective Equipment ("PPE")?

The Employer, through a specific risk assessment and always in collaboration with the RSPP and the Occupational Doctor, is called upon to provide its employees with the most suitable PPE to prevent the various modes of COVID-19 infection (i.e., contact through the skin or mucous membranes, diffusion by air), also taking into account the specific working activity carried out.

For example, it could be considered useful (if not necessary) to provide employees with PPE aimed at protecting the respiratory tract from potentially dangerous agents (e.g., fumes, dust, fibers or microorganisms), such as masks, as well as the skin, as in the case of gloves. In case of activities which imply contact with the public, placing special separators that maintain the distance between workers and any external users could also be considered indispensable.

In this regard, where it is not possible to guarantee the interpersonal distance of at least one meter, the Decree of Italian President of the Council of Ministers of 11 March 2020 and the "*Shared Protocol concerning measures to combat and contain the spread of COVID-19 virus in the workplace*" recommend using individual protection equipment (such as gloves, goggles, tracksuits, headphones, scrubs, etc.) complying with the provisions of the scientific and health Authorities, compatibly with the availability on the market (in this regard, the Protocol promotes the "do-it-yourself" preparation of detergent gel). On this point, Law Decree No. 18 dated 17 March 2020 specifies that the surgical

masks available on the market are personal protective equipment and authorizes the use, each under his/her own responsibility, of filtering masks without the CE mark.

3.How should the construction site be managed?

The Government has not set any restrictions as to work on construction sites.

Contractors are required to adopt and apply the necessary anti-accounting safety protocols, providing, where it is not possible to respect the interpersonal distance of one meter, suitable personal protective equipment should be used. In this regard, the Works Coordinator should integrate the Safety and Coordination Plan according to Italian Legislative Decree No. 81/2008.

The contracting authorities are required to ensure that all appropriate safety measures are taken in all the construction sites.

Construction workers are consistently authorised to travel to/from home and work, even if the site is located in a different region from the one they reside in.

Privacy & Data Protection

While implementing prevention measures aimed to reduce the risk of Coronavirus spread within companies, it should be borne in mind that **the collection of information on the movements and health status** of employees, suppliers and visitors involves the processing of personal data, which must be carried out in accordance with **Regulation (EU) 2016/679** (hereinafter the "**Regulation**") and with the law concerning the protection of personal data currently in force.

Some concerns and interpretative misunderstandings concerning the lawfulness of these processing activities have been addressed in the "**Shared Protocol for the regulation of measures to fight and contain the spread of the Covid-19 virus in the workplace**" signed on **March 14, 2020** (the "**Protocol**"), aimed to provide guidelines to facilitate companies in the adoption of anti-infection security protocols.

In particular, with regard to **privacy** and **data protection** issues, it should be noted that the companies that will adopt the Protocol will be able to request information on the travels made and the state of health of anyone accessing the premises or local offices, as well as to measure the body temperature, with reference both to employees and, where entry is necessary, to suppliers (for example, in the case of personnel in charge of sanitation activities or technicians working on maintenance of systems).
These activities shall, in any case, be carried out in compliance with the principles of necessity **of processing** and **data minimisation**.
Therefore, it will be appropriate to measure the temperature **without recording the data and without linking it to the person**, unless it is necessary to document the reasons that prevented access to the company premises.
However, concerning travel and health checks, in this case too, it will be appropriate **to refrain from requesting unnecessary additional information**, such as the identity of the infected person with whom the declarant has had contacts or the features of the restricted areas from which he/she comes.

In addition, **information campaigns** aimed at reminding to individuals involved the importance, as well as the requirement to **promptly declare** the existence of conditions such as the presence of flu symptoms, if they come from restricted areas or if they came into contact with a virus positive person in the previous 14 days, also involving the processing of personal data, remain fundamental.

To this end, the Protocol provides **guidelines** to be used by the company in the management of **any symptomatic or coronavirus-positive people**. The Protocol distinguishes the case in which the employee develops fever and infection symptoms from the case in which he or she tested positive for Coronavirus:
1. the **employee with symptoms of Coronavirus infection**, is required to notify the company that shall notify the competent healthcare authorities - through the emergency numbers for COVID-19 provided by the Region or the Ministry of Health - and to isolate the employee and other persons involved so that they do not come into contact with other people, containing the risk of contagion;
2. in the case of an **employee declared positive for the Coronavirus**, instead, the company shall carry out internal investigations and collect information aimed at identifying the persons who have come into close contact with the positive subject, in order to

communicate such data to the Health Authority and allow that the necessary and appropriate quarantine measures are applied.
The collection and processing of all this data must in any case be carried out in such a way as **to guarantee the confidentiality and dignity of the employee**.

The employer is, therefore, called to actively take part in the containment of the spread of COVID-19 and to cooperate with the Authorities.
In any case, he/she shall provide to data subjects the **information notice concerning the processing of personal data** carried out in execution of the Protocol. Such notice may exclude information already acquired by the data subject, previously provided, and can also be provided orally. However, it is advisable to draft an ad hoc information notice to be placed at the entrance, pointing out the following elements among others:
- the **purpose of the processing**, identifiable in the prevention of COVID-19 contagion;
- the **legal basis**, identifiable in the implementation of the anti-contagion security protocols pursuant to Article 1, no. 7, letter d) of the DPCM of March 11, 2020;
- the **time frame**, if applicable, **for the retention** of the data, which can be set with reference to the end of the state of emergency.

The company shall also define the **appropriate technical and organisational security measures** to protect the data. In particular, from an organisational perspective, the company shall identify and authorise (also orally) **the persons who will process such personal data**, as well as providing the necessary instructions.

In conclusion, it is necessary to remind that the data shall not be disclosed or communicated to third parties who are not subjects operating in the Police Force, in the National Civil Protection Service and in public and private organizations operating within the National Health Service, **the only subjects institutionally authorized** to process personal data that "are necessary to carry out the functions assigned to them in the context of the emergency caused by the spread of COVID-19", as provided for pursuant to Article 14 of **Decree Law No. 14 of March 9, 2020, concerning urgent provisions to strengthen the National Health Service in relation to the emergency COVID-19** through which - in execution of the powers granted to the Member States by the Regulation - **extraordinary measures** on the processing of personal data in the emergency context have been taken.

At a careful reading, the Protocol analysed does not appear to be in contrast with the recommendations of the **Italian Data Protection Authority for the protection of personal data of March 2, 2020**, which did not intend to prohibit any updates of the health surveillance protocols that would respond to the **need** to implement actions of prevention, verification and/or containment of the contagion based on an assessment of the **risk** as **concrete** and **effective**, stressing how "the employer's duties related to the need to communicate to the relevant bodies the possible variation of the "biological" risk coming from the Coronavirus for health in the workplace and the other requirements related to the health surveillance of workers through the Occupational Doctor" are still in force.
Risks that, to date, are **significantly increased compared to those detected at the beginning of the month**, so much so that the DPCM of March 9, 2020 declared the whole of Italy a restricted area, extending the precautionary measures initially adopted in the areas of the first epidemic outbreaks throughout the country and, on March 11, 2020, the World Health Organization declared the "**Pandemic**" status.

With reference to the D.P.C.M. (Decree of the President of the Council of Ministers) of March 9, 2020 on the Coronavirus emergency which extended to the whole of Italy the measures already in force for Lombardy and for the other 14 areas and which allows movements only for work, health reasons or other proven needs, it is specified that the **self-certification** of these reasons is subject to truth-checks and, unlike the self-declaration spread within companies to collect data on the movements of anyone who has access to the premises, the first may - if untrue - lead to a false declaration to a public official, failure of compliance with a measure of authority and the commission of malicious criminal offences against public health. Such self-certification **should not be given to any person other than a state or local police officer** (e.g. employer).

On data processing activities carried out in this emergency scenario, the **European Data Protection Board** also confirmed that data protection requirements cannot - and shall not - prevent the fight against the pandemic. Nevertheless, at the same time, any processing of personal data must be carried out **in compliance with the principles provided for in the GDPR**, which, moreover, allows employers and competent authorities to process personal data in the context of epidemics, for reasons of **public interest** in the **public health sector** or to protect **vital interests** (Articles 6 and 9 of the GDPR), as well as to comply with legal obligations.

The EDPB has also expressed its opinion on the opportunity to use **traffic and location data**, subject to the consent of the data subject or in anonymous fashion. Should this not be possible, each Member State of the European Union is called upon to take the necessary, appropriate and proportionate legislative measures to conduct such activities in compliance with the **principles of democratic society** and the **rights and freedoms of individuals**.

However, special attention from the point of view of data protection should be paid to the chance to carry out work in Smart Working mode, especially where employees use personal devices (non-corporate devices) and network connections to access company systems. However, it is necessary to strengthen security measures to protect the information accessed, processed or stored at "occasional workstations", including - where possible - measures such as: *(i)* the implementation of a **distant PC management system**, so that the IT staff can monitor and manage any issues (always in compliance with the ban of control on workers provided for by the Law No. 300/1970); *(ii)* the activation of a **VPN connection** as a communication channel between the remote device and the company; *(iii)* the adoption of **two-factor authentication** systems on personal devices - where possible - or the use of passwords generated according to strict composition rules; (iv) the recommendation to comply with the **regulation on the use of IT means** - where in force - or with rules set out to manage the contingent situation.

Furthermore, companies will have to take into consideration the recommendations issued by the Postal Police with regard to the growing number of **cyber attacks** that leverage the general concern about the spread of Coronavirus and, therefore, **strengthen technical and organizational security measures** to ensure the security of IT resources and data processed in the context of business activities. In particular, it is worth mentioning **phishing attacks** involving fake communications from influential senders (including the World Health Organization - WHO) to which **malware** are attached that can be executed with "one click" and that are aimed at stealing information and infecting companies' IT systems. In order to effectively fight such cyber attacks, it is advisable to renew the **cybersecurity guidelines**,

encouraging users to pay attention to the email address from which they receive the communication and to avoid opening suspicious attachments or links regarding information and/or indications about the Coronavirus.
It is finally recommended to report e-mails with suspicious content to the Postal Police, through the dedicated area on the website **www.commissariatodips.it**.

Privacy & Data Protection Q&A

1.What measures can be taken with regard to people who needs to enter the premises of the company?

The companies that will adopt the Protocol for the regulation of measures to fight and contain the spread of the Covid-19 in the workplace will be able to request information on the travels made and the state of health of anyone accessing the premises or local offices, as well as to measure the body temperature, with reference both to employees and, where entry is necessary, to suppliers (for example, in the case of personnel in charge of sanitation activities or technicians working on maintenance of systems). These activities shall, in any case, be carried out in compliance with the principles of necessity of processing and data minimisation.

2. How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

In the case of an employee declared positive for the Coronavirus, the company shall carry out internal investigations and collect information aimed at identifying the persons who have come into close contact with the positive subject, in order to communicate such data to the Health Authority and allow that the necessary and appropriate quarantine measures are applied. Indeed, it is necessary to remind that the data shall not be disclosed or communicated to third parties who are not subjects operating in the Police Force, in the National Civil Protection Service and in public and private organizations operating within the National Health Service.The collection and processing of such data must in any case be carried out in such a way as to guarantee the confidentiality and dignity of the employees involved.The company shall also define the appropriate technical and organisational security measures to protect the data.

3.What to do if an employee shows symptoms of Coronavirus infection?

In the case of an employee declared positive for the Coronavirus, the company shall carry out internal investigations and collect information aimed at identifying the persons who have come into close contact with the positive subject, in order to communicate such data to the Health Authority and allow that the necessary and appropriate quarantine measures are applied.

The employee with symptoms of Coronavirus infection, is required to notify the company that shall notify the competent healthcare authorities - through the emergency numbers for COVID-19 provided by the Region or the Ministry of Health - and to isolate the employee and other persons involved so that they do not come into contact with other people, containing the risk of contagion.

The collection and processing of such data must in any case be carried out in such a way as to guarantee the confidentiality and dignity of the employee. The company shall also define the appropriate technical and organisational security measures to protect the data. In conclusion, it is necessary to remind that the data shall not be disclosed or communicated to third parties who are

not subjects operating in the Police Force, in the National Civil Protection Service and in public and private organizations operating within the National Health Service.

4.For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of the processing is identifiable in the prevention of COVID-19 contagion; the legal basis is identifiable in the implementation of the anti-contagion security protocols pursuant to Article 1, no. 7, letter d) of the DPCM of 11 March 2020; the retention period can be set – if applicable - with reference to the end of the state of emergency.

5.Can an employee refuse to be checked or to give information about his or her travels and contacts?

No one can be forced to be checked or to give information about his/her travels and contacts to the company. The refusal can, in any case, constitute a serious interference in the work of the employer, who could issue disciplinary measures against the employee and deny him/her access to the premises.

6.How does the protocol coexist with what is reported by the Italian Data Protection Authority about the fact that companies shall refrain from requesting information to suppliers and customers about the time spent in potentially infected areas and with potentially infected subjects?

The risks related to the Coronavirus are significantly increased in comparison to those detected at the beginning of the month of March when, on March 2, 2020, the Italian Data Protection Authority issued its press released about the collection of the personal data within the emergency scenario; only the DPCM dated March 9, 2020 declared the whole of Italy a restricted area, extending the precautionary measures initially adopted in the areas of the first epidemic outbreaks throughout the country and the World Health Organization declared the "Pandemic" status on March 11, 2020.

At a careful reading, indeed, the Protocol signed on March 14, 2020, does not appear to be in contrast with the recommendations of the Supervisory Authority for the protection of personal data of March 2, 2020, which did not intend to prohibit any updates of the health surveillance protocols for the prevention of the contagion, based on an assessment of the risk as concrete and effective, but only to put a brake on the implementation of preventive measures, carried out «a priori and in a systematic and generalized manner». The Italian Data Protection Authority, indeed, has decided to keep «the employer's duties related to the need to communicate to the relevant bodies the possible variation of the "biological" risk coming from the Coronavirus for health in the workplace and the other requirements related to the health surveillance of workers (…)».

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Liability of Entities (Italian Legislative Decree no. 231/2001)

In today's context, **failure to adopt the most appropriate measures to protect the health and safety of the employees could theoretically expose the company to the liability provided for by Italian Legislative Decree No. 231/2001**.

The company's responsibility could arise pursuant to Article 25 septies of Italian Legislative Decree No. 231/2001 (i.e., manslaughter and negligent injuries) in case of **organizational fault connected with the violation of regulations on the protection of health and safety at the workplace**, such as omitted or insufficient health surveillance (Article 41 of Italian Legislative Decree No. 81/2008) or failure to assess the risks deriving from exposure to biological agents present in the environment (Article 271 of Italian Legislative Decree No. 81/2008), where it results in an actual spread of Coronavirus in the workplace and, consequently, in a contagion of workers.

In this regard, it is worth noting that, as specified in the "*Shared Protocol concerning measures to combat and contain the spread of COVID-19 virus in the workplace*" (the "**Protocol**"), **COVID-19 represents a generic biological risk**, for which the same measures, as defined by the DPCMs issued in these days as well as by the competent Health Authorities, must be adopted for the entire population. Indeed, the risk of Coronavirus contagion is not directly related to the work activity. However, given the current situation of social alarm, the Employer could consider, as a result of discussion with the RSPP and the Occupational Doctor, **the opportunity, for example, to integrate the DVR and/or the DUVRI according to Italian Legislative Decree No. 81/2008.**

In this context, it does not seem possible to rule out that even **the violation of the anti-accounting safety protocols** adopted by the companies in line with the Protocol may be considered as a violation of regulations on the protection of health and safety at the workplace, from which the company's liability could arise.

In any case, the adoption and implementation of such protocols could certainly constitute **an important safeguard to be integrated into the broader system of controls** provided for by the Organizational Model possibly adopted by the company under Italian Legislative Decree No. 231/2001.

Companies that have adopted an Organizational Model under Italian Legislative Decree No. 231/2001 should also address these topics through discussions and a **constant flow of information between the 231 Advisory Body and the figures responsible for risk management** (i.e. RSPP, Occupational Doctor, and Emergency Managers). In particular, the 231 Advisory Body shall be informed of the initiatives and related prevention measures adopted by the company to mitigate the risks deriving from the Coronavirus and, in the event of inertia, shall stimulate the process.

Finally, it is worth remembering that **even the sale at disproportionate prices of products** that are essential in the current health emergency, such as disinfectants and masks, could today entail the responsibility of the Company in whose interest or advantage such conduct is carried out.

The exploitation for profit of the health emergency triggered by the Coronavirus could, indeed, constitute a crime of fraud in the exercise of trade (Article 515 of the

Italian Criminal Code), included among the crimes referred to in Article 25-bis.1 of Italian Legislative Decree No. 231/2001.

Until the end of the state of emergency, however, no liability could be charged against companies which sell, for example, protective masks without CE marking, as Law Decree No. 18 dated 17 March 2020 authorizes the production, import and commercialisation of surgical masks and personal protective equipment **in derogation of the applicable provisions in force**.

Liability of Entities (Italian Legislative Decree no. 231/2001) Q&A

1. What impacts are there on Organizational, Management and Control Model pursuant to Italian Legislative Decree no. 231/2001?

In today's context, company's liability could arise in case of organizational fault connected with the violation of health and safety in the workplace provisions, such as the omitted or insufficient health surveillance or the failure to assess the risks deriving from exposure to biological agents present in the environment. But that's not all. Even the sale at disproportionate prices of today's essential products (disinfectants and masks) could today involve the responsibility of the company that exploits the current emergency for profit.

It is therefore essential that the initiatives and actions implemented by the company are promptly communicated and shared with the 231 Advisory Body, as far as it is concerned, so that it can effectively support the company in dealing with this moment in full compliance with the system implemented according to Italian Legislative Decree No. 231/2001.

Contracts Law

Commercial contracts

Measures taken to fight the spread of Covid-19 virus may affect the ability of companies to meet their contractual obligations, causing delays or even making the performance of the agreed services impossible. Moreover, certain companies may no longer be interested in receiving supplies due to the shutdown imposed by the Authorities.

Can the Authorities' measures exclude the liability for a breach of contract or legitimate the suspension or termination of pending contracts?

In order to answer the question, it is necessary to assess, on a case-by-case basis, the applicable contractual terms. Notably, contracts could specifically discipline the occurrence of extraordinary circumstances that could affect the performance of the agreement, like those deriving from the spread of Covid-19 virus.

Lacking contractual provisions on the matter, the occurrence of an unforeseen event could lead to the application of specific legal schemes to the agreements governed by Italian law: the supervening impossibility of performance, regulated by articles 1256, 1463 and 1464 of the Italian Civil Code, and the excessive onerousness, regulated by articles 1467 *et seq.* of the Italian Civil Code.

The supervening impossibility of the performance occurs when the fulfillment of contractual obligations by a party becomes absolutely and definitely impossible for reasons not attributable to the debtor. In this case, the debtor could claim the extinction of the obligation and the consequent termination of the contract. If the claim is successful, the parties will be released from their outstanding contractual obligations, with the duty to return the consideration already collected for activities not actually performed, if any.

If the impossibility of the performance is only temporary, the debtor is not responsible for the delay and he/she may perform his/her obligations when the impossibility ceases. However, if the unforeseen event lasts for such a long period of time that the creditor is no longer interested in obtaining the performance, to be assessed on a case-by-case basis, then the obligation ceases.

Instead, if the activity to be performed by one party has become only **partially impossible**, the other party is entitled (i) to claim the reduction of its performance or (ii) to withdraw from the contract, if it has no interest in the partial performance.

In addition, the Authorities' measures could determine an **excessive onerousness** of contracts with continuous, periodic or deferred performance.

Such circumstance occurs when the performance of the agreement by one party, at the time when the performance is due, becomes excessively onerous due to the occurrence of extraordinary or unpredictable events that are not attributable to the debtor. In this case, such party could ask the court to terminate the contract (article 1467 of the Italian Civil Code), unless the onerousness falls within the normal risk relating to the agreement or the parties have excluded the application of this remedy. Termination could be avoided if, within the same judicial proceeding, the other party offers to adjust the terms and conditions of the agreement on a fair basis.

Finally, where applicable, it is possible to consider requesting the renegotiation of the terms and conditions of the contracts that have been affected by the measures issued by the Authorities, if they caused an imbalance between the obligations of the parties.

In any case, the legal effects of the measures relating to the Covid-19 emergency on commercial contracts should be carefully assessed on a case-by-case basis, based on the factual circumstances, the agreed contractual terms and the applicable governing law.

Commercial leases

The measures adopted by the Government to contain the Covid-19 epidemic provide, *inter-alia*, the temporary shutdown of many commercial activities, including cinemas, theaters, gyms, clubs, bars, restaurants and non-food stores, with few exceptions.

In the light of the above, **operators may wonder if the rent** of the buildings used for such businesses **is in any case due even during the forced shutdown period**.

Whilst awaiting specific measures by the Government, the answer may be found in the terms and conditions of each lease agreement and, in second instance, in the general rules on contracts set out by the Italian Civil Code.

The most detailed leases agreement may include specific clauses applicable to unforeseen events, also in relation to the possibility of obtaining a reduction of the rent in case of impossibility to use the leased property for the purpose set out in the agreement.

In the absence of similar contractual clauses, the already mentioned general rules on supervening impossibility of performance could apply, pursuant to articles 1256 and 1464 of the Italian Civil Code. Notably, there could be a temporary impossibility to use the leased property for business purposes.

Therefore, the tenant could consider requesting a reduction of the rent regarding the period of shutdown. However, the parties should agree in writing the reduction of the rent or, in case of disagreement, should apply to the competent court.

A unilateral reduction of the rent by the tenant could be in breach of the lease agreements, which usually prohibit any suspension of the payment of the rent.

Finally, as mentioned above, it could be possible requesting the property owner to **renegotiate the terms and conditions of the agreement**, where applicable.

Contracts Law Q&A

1.How to manage pending commercial agreements?

In case of limitation or suspension of the business activity due to measures imposed by the Government, first of all we suggest assessing whether there are contractual clauses that regulate the effect of such measures. In the absence of such clauses, we suggest verifying whether the agreement is subject to Italian law and, should this be the case, assessing how the measures issued by the Authorities' could affect the business or the agreements entered by the company. In general, possible remedies under Italian law include the possibility to suspend the activities that have

temporarily become impossible, to request the other party to renegotiate or even to terminate the agreement. In any case, the possibility to enforce such remedies shall be assessed on a case-by-case basis, in the light of the specific circumstances.

2.How to manage the lease of the real estate used for the business?

We suggest assessing if the lease agreements regulate the suspension of the business due to force majeure events. In the absence of contractual provisions on such matter, the general discipline on the supervening impossibility of the performance could apply. Moreover, we suggest notifying in writing the landlord of the suspension of the business. Also in this case, the possibility to request the other party a renegotiation of the agreement could be considere.

3. With reference to commercial agreements, a client claims damages for delays in deliveries. The delays derive from the decision to close the plant until March, 25, as a consequence of certain Coronavirus infections among the employees. Is the claim well grounded?

In order to assess the grounds of the claim it is necessary to review the contractual provisions, notably those relating to force majeure. Lacking clauses on this matter, it could be possible to claim a temporary impossibility to perform, according to article 1256 of the Italian Civil Code, provided that it is possible to prove that the closure of the plant was inevitable.

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Insurance

Recent provisions introduced by the DPCM dated 11 March 2020 with specific regard to retail and commercial activities operating in the restoration sector, as well as activities operating in the sports and cultural sector, and the mandatory quarantine provisions for those found to be affected by Covid19, have led or may lead to suspensions and/or interruptions of productive activities, with significant consequences in terms of production for the companies involved.

While waiting for the economic subsidies issued by the Authorities to be extended to the entire national territory, it is up to individual companies to face and manage the considerable economic and financial consequences to which they are or will be exposed as a result of (possible and further) compulsory closure of activities (e.g. manufacturing) and restrictive measures imposed by the Authorities.

In this context, a significant contribution to the management of critical issues determined by the Covid19 emergency can come from the insurance sector. Both by virtue of insurance coverage that may already have been taken out by companies to protect production activities, which may already include forms of compensation for cases such as those that the entire Italian production fabric is now facing, and by new forms of guarantees developed in record time by certain insurance companies operating in Italy.

First of all the company should verify whether there are any policy already in place covering potential economic losses resulting from events affecting the company's production includes the "pandemic risk" among the insured risk events.

An analysis conducted on most of the insurance policies currently available on the market (e.g. trade and services policies) has shown that the majority of the insurance solutions envisaged for small and medium-sized enterprises in the manufacturing, trade and services sectors are generally designed to cover risks such as fire and/or weather events (e.g. floods, floods), socio-political and other events (such as earthquakes). The pandemic event, on the other hand, does not generally appear to included among the insured risks of the main policies currently on the market (*i.e.*, on the market before the Covid19 emergency).

In order to verify whether or not the pandemic event can be deemed to be included among the insured risks, a careful review of policies already in place is the first step that should be taken in dealing with emergency situations such as those resulting from company’s shut-down or quarantine measures and restrictions on the company's activities, including those affecting workers and their workplace.

On the other hand, the possibility for the company to take out now an insurance policy to cover an event (such as the aforementioned shut-down or restrictions on production activities) that has already occurred as a result of restrictive measures adopted by the authorities facing the Covid19 pandemic should be ruled out. In such a case, the typical structure of an insurance contract based on a mechanism where the insured party transfers the economic risk of a given event to the insurer would be frustrated, pursuant to Article 1882 of the Italian Civil Code. In fact, the insurer would not be able to bear that risk since the calculation of the probabilities (i.e. the probability of the event occurring) would not allow the insurer to divide the risk among the other insured parties, and obtain an economic advantage.

If the company has not yet been affected by restrictive measures, but it is concerned that such measures may be implemented and may lead to an interruption of its activities, the company may consider taking out specific insurance policies (in some cases in the form of an extension of existing policies) recently placed on the market by some insurance companies

operating in Italy, with the aim to cover financial losses due to restrictive measures resulting from a pandemic event.

For companies holding insurance policies covering liability towards third parties and workers, and operating in sectors more directly exposed to the risk of contagion, a careful assessment of the contractual conditions is also recommended in terms of obligation to notify the insurer of any "increase in risk" when the pandemic event is already included among the insured events.

Lastly, with reference to car insurance, art. 125 of DPCM dated 17 March 2020 provides for an extension:

- of the grace period of additional 15 days. Therefore, insurance undertakings are obliged to keep the coverage provided under the previous insurance contract until no later than the 30th day following the expiration of the contract, until the new policy takes effect;

- of additional 60 days for insurers to make compensation offer to injured parties or specify the reasons for not making an offer, in the event that material and not material damages need to be evaluated by technical and medical experts. Such activities shall be completed within 120 days of receiving documents required for the compensation proceeding by art. 148 of Italian Legislative Decree no. 209/2005 (the Italian Code of Private Insurance; hereinafter "**CAP**").

Extension measures above will have effect until 31 July 2020.

Insurance Q&A

1.Can I protect myself from the consequences of Covid19 pandemic?

At the moment it is not possible to insure oneself against the consequences of the spread of Covid-19. However, it is advisable to verify whether any policies, that may have already been drawn up to cover loss of earnings as a result of the cessation of production, already include the pandemic event among the insured events. Alternatively, it is possible to consider entering into one of the insurance policies recently placed on the market by some insurance companies operating in Italy, with the aim to cover any financial losses that may result from restrictive measures of total shut-down of the business

2.What benefits would I be able to receive if I decided to underwrite a policy to cover any financial losses resulting from a measure taken by the Covid19 emergency authority to close down the business?

Benefits may vary from policy to policy. In any case, such newly-designed policies dealing with economic emergencies arising from Covid19 generally give a per diem for the interruption of operations, for a limited period of time as provided for in the contract.

3.Do measures related to the suspension of the time-limit for payment of insurance premiums apply only to car insurance policies?

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Not, such provisions apply both to life and non-life insurance policies referred to in art. 2 of CAP.

Provisions related to "suspension of the time-limit for payment of insurance premiums" laid down in art. 7, paragraph 3 of Legislative Decree no. 9/2020 have not been modified by DPCM dated 17 March 2020 and they are still in force.

Please note that, according to provisions above, if the time-limit for payment of insurance premiums expires during the period 21 February 2020 to 30 April 2020, policyholders can postpone the relevant payment and pay it:

- in one lump sum within 31 May 2020;
- in monthly instalments, during 2020, in accordance with the insurance contract or upon agreement with insurance company.

Suspension measures apply to insurance policies entered into by and between:

- residents or entities with registered office in one of the Municipalities listed in Annex 1 of DPCM dated 1 March 2020 and, namely, the Municipalities of Bertonico, Casalpusterlengo, Castelgerundo, Castiglione D'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini, for Lombardy Regione, and the Municipality of Vò with reference to Veneto Region;
- Italian insurance companies, Italian branch of insurance undertakings having their head office outside the European Union, insurance companies whose head office is situated in Member States of the European Union operating in Italy under the right of establishment or the freedom to provide services.

During the suspension period, insurers ensure cover of risks and settlement of claims related to events occurred during the said period of suspension.

Provisions related to suspension of the time-limit for payment of insurance premiums do not apply to new insurance contracts entered into during the suspension period and to recurring single premium policies for which there is no obligation of payment

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Litigation

The Law Decree No. 18 of 17 March 2020, on civil justice, repeals Art. 1 and 2 of the previous Law Decree No. 11 of 8 March 2020 and provides a clearer regulatory framework also resolving some interpretative doubts that were raised immediately after the enactment of Law Decree No. 11 of 8 March 2020.

In consideration of the above, all indications relating to the Law Decree No. 11 of 8 March 2020, contained in the first Release of this document, must be considered as definitively superseded.

The new measures

With Law Decree No. 18 of 17 March 2020, the duration and the objective scope of the **"buffer" period** (which is now more extensive that the previous one) have been revised:

- From **9 March 2020 to 15 April 2020** all civil hearings in all judicial court offices have been automatically postponed until after 15 April 2020;
- From **9 March 2020 to 15 April 2020,** procedural time limits for the performance of any civil procedural acts are suspended. This suspension applies to **all time limits**, such as, for example, the time limits for filing proceedings, including enforcement proceedings, the time limits for appeals and the time limits for the adoption of judicial measures.

In the event that the time limit commences during the "buffer" period, the beginning of the time limit will be deferred until the end of the "buffer" period.

When the time limit period is calculated backwards (e.g. when calculating the date to appear in court) and the time limit falls, even partially, during the buffer period, then the hearing or the procedural activity will be deferred in order to comply with the restrictions of the "buffer period".

- From **9 March 2020 to 15 April 2020**, the time limits to carry out any activity regarding mediation proceedings (Legislative Decree No. 28/2010), assisted negotiation proceedings (Law Decree No. 132/2004 converted in Law No. 162/2014) or ADR proceedings in general are suspended.

Said suspension, however, only applies to mediation, negotiated assistance and other ADR proceedings that have been initiated by 9 March 2020 and only if they constitute a condition for the admissibility of legal proceedings. Moreover, the maximum time limits for these proceedings are also suspended.

A number of proceedings (which can be defined as "**Priority and Indefectible**"), the complete list of which can be found in the Law Decree No. 18 17 March 2020, are not subject to the rule of automatic postponement and to the rule of suspension of procedural time limits, and will therefore be carried out normally. This provision applies to, by way of example, proceedings relating to family, filiation and protection of fundamental rights, as well as the *"proceedings referred to in Articles 283, 351 and 373 of the Code of Civil Procedure* [**editor's note**: proceedings for suspension of the enforceability of judgments subject to appeal] *and, in general, all proceedings the delay of which may cause serious harm to the parties.*

In this case, the declaration of urgency is made by the head of the judicial office or his/her delegate at the end of the summons or appeal, through a decree that may not be appealed and, for pending trials, by order of the examining judge or the president of the panel, also not appealable".

During the "buffer" period, the heads of the judicial offices are requested to adopt a number of **further organisational measures** valid for the period between **16 April 2020 and 30 June 2020**. To this end, the heads of the judicial offices may, for example, provide for:

1. the **postponement** of hearings until after **30 June 2020** for all civil proceedings, with the exception of the Priority and Indefectible proceedings;
2. the **carrying out civil proceedings only through the electronic exchange and filing of written notes** containing only motions and closing claims, and the subsequent delivery of the judge's ruling outside the hearing. This measure is only allowed for those hearings that only admit the lawyer's presence;
3. **the holding of remote civil hearings**. This measure is permitted only for hearings which only admit the presence of the lawyers and parties. In such cases, before the hearing, the judge will inform the parties' lawyers of the day, time and method of connection (which, as clarified by a provision of the Ministry of Justice, must take place with Skype for Business and Teams).

For the period of adoption of the organisational measures precluding the possibility to file a legal action, the **statute of limitations and forfeiture period** are suspended in relation to those rights that are exercisable only by performing activities that are precluded by the adopted emergency measures.

With regard to **enforcement proceedings**, all measures applicable in general to "civil proceedings" shall apply.

Furthermore, it should be noted that Art. 103, par. 6 of Law Decree No. 18 of 17 March 2020 ("*Suspension of time limits in administrative proceedings and effects of expiring administrative acts*") provides that the enforcement of the measures for the **release of property**, including for **non-residential use**, is **suspended** until 30 June 2020.

With regard to the notification by mail referred to in Law No. 890/1982, Art. 108, paragraph 1 of Law Decree No. 18 of 17 March 2020, states that from 17 March 2020 until 30 June 2020, postal operators will deliver registered mail after verifying the presence of the addressee (or other person authorized to collect) and will omit the signature of the latter (for delivery), by placing the mail in the mailbox of the house, office or business, on the floor, or in another place, at the address indicated by the addressee (or other person authorized to collect) during the verification carried out beforehand. The signature on the delivery documents to be returned to the notifier will be made directly by the postal operator, who will also attest the specific delivery method performed.

With respect to notifications by hand, the circular of the Ministry of Justice of 12 March 2020 has provided that UNEP personnel, before proceeding with the notification, may request information from the Health Authority regarding the state of illness or quarantine or fiduciary home stay or health isolation of the addressee of the document or his/her cohabitants. This is an express exception to the privacy regulations transposed in Art. 14, para 2, Law Decree No. 14 of 9 March 2020, which states that *"the communication of personal data to public and*

private subjects, other than those referred to in paragraph 1 (Health Research Public Bodies), as well as the dissemination of personal data other than those referred to in Articles 9 and 10 of Regulation (EU) 2016/679, is made, in cases where it is indispensable for the performance of the activities connected with the management of the health emergency in progress". This is an unquestionable and temporary derogation connected to the protection of the "right to public health" -Art. 32 of the Constitution- which is considered a superior right to the individual's right to privacy (Art. 2, 3, 13, 14, 15 of the Constitution, Supreme Court, decision No. 2129 of 27.5.1975).

Administrative Litigation

With concern to **administrative litigation**, new measures have been adopted through Art. 84 Law Decree 17 March 2020.

Particularly:

1. From **8 March 2020 to 15 April 2020**, the following measures shall apply (paragraph 1)

- **suspension** of all procedural **time limits** concerning the administrative process;
- automatic **postponement** of all **hearings** to a future date;
- **precautionary proceedings** initiated or pending during this time will be decided by a monocratic decree issued by the President or the Delegated Magistrate;
- postponement of collegial panel hearings to a date after 15 April 2020.

Derogation (paragraph 2) for the period from **6 April 2020 to 15 April 2020**:

- If the parties jointly request it, a dispute, for which the hearing has already been set during the abovementioned period, either in a Chamber or a public hearing, may be decided without holding an oral discussion and on the basis of the documents filed.

2. **From 16 April 2020 to 30 June 2020** the following rules in derogation to the Administrative Procedure Code apply (paragraph 5):

- disputes, for which the hearing has already been set, either in Chamber or public hearing, will be decided without oral discussion and on the basis of the documents filed.

3. **From 8 March 2020 to 30 June 2020**

- the Chairperson has the authority to postpone hearings to a date after 30 June 2020. However, he/she must always ensure that the hearings are treated with priority. This could also be done by rescheduling the hearings, with the exception of *"precautionary and electoral hearings and chambers and for trials for which delay could cause serious harm to the parties"* (paragraph 4, letter e);
- the Chairperson's measures determining the parties' forfeiture of procedural rights "*shall imply the referral of the parties' procedural time limits*";
- the adoption of measures preventing the exercise of rights "*constitutes grounds for suspension of the **statute of limitation** and **forfeiture***";

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- for "Legge Pinto" proceedings, the period from 8 March 2020 to 30 June 2020 will not be counted.

Finally, Art. 84, paragraph 11, provides the **repeal** of Art. 3 of Law Decree No. 11/2020 containing the first exceptional measures adopted in the field of administrative justice.

Litigation Q&A

1.During the suspension period from 9 March to 15 April 2020, are the already pending civil precautionary proceedings automatically postponed? Is it possible to introduce new precautionary proceeding?

With reference to the exception to the application of the suspension period for the civil proceedings and the time limits, Law Decree No. 18 of 17 March 2020 does not expressly refer to civil precautionary proceedings (which are only mentioned with reference to the protection of fundamental rights), but instead refers to all proceedings the delay of which may cause serious harm to the parties. In this regard, the declaration of urgency with respect to proceedings the delay of which may cause serious harm to the parties should be made by the head of the competent judicial office (or his/her delegate) and, for cases that have already started, by order of the judge assigned to the case. In light of Law Decree No. 18 of 17 March 2020, with respect to civil precautionary proceedings, there is no automatic suspension and it is therefore suggested that a case-by-case assessment of the individual proceeding is made.

2.For the period up to 30 June 2020, if the organisational measures adopted by the Judicial Office prevent the filing of a legal action, what are the consequences in terms of statute of limitations and forfeiture?

If, during the period of adoption of the emergency organisational measures by the individual Judicial Offices, filing of a legal action is precluded, Law Decree no. 18 of 17 March 2020 states that the statute of limitations and the forfeiture period will be suspended. This applies, however, only to those rights for which the forfeiture and statute of limitation can only be avoided by carrying out those judicial activities precluded by the emergency organisational measures themselves. On the contrary, in all those cases where the statute of limitations and the forfeiture may be interrupted by judicial or extrajudicial acts that are not precluded by the urgent organisational measures, the statute of limitations and forfeiture periods remain the same, since they are not subject to suspension.

3.Is it possible, for the period up to 30 June 2020, for the party to participate remotely in the hearings before the judge?

Remote civil hearings, with the support of the Skype for Business and Teams programs, may be ordered by the individual Judicial Office only with respect to those hearings that do not require the presence of persons other than the lawyers and the parties. Therefore, the party may participate remotely, together with his/her lawyer, in a hearing that requires his/her presence. On the other side, with regard to civil hearings that do not require the presence of parties other than the parties' counsels, the hearing may be carried out only through the electronic exchange and filing of written notes containing only motions and closing claims, and the subsequent delivery of the judge's ruling outside the hearing.

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Corporate

On 17 March 2020, the Decree Law no. 18 dated 17 March 2020 (the so-called "**Decree Law**"), was published on the Italian "Official Gazzette" (G.U. General Series no. 70). The Decree Law is immediately effective and allows to derogate to certain rules on the approval of the financial statements and has provided for certain simplifications in terms of corporate meetings held through electronic means.

Article 106(1) of the Decree Law provides for a special derogation with respect to the timing for the approval of the financial statements. The ordinary rule states that the financial statements have to be approved by the shareholders within 120 days from the end of the fiscal year and that the approval within 180 days from the end of the fiscal year is allowed provided that the by-laws allow it and if certain conditions are met (Articles 2364,(2) and 2478-bis, Italian Civil Code). The Decree Law now states that the financial statements can in any case be approved within 180 days from the fiscal year-end; therefore, the ordinary requirements to benefit of the 180-day term (specific provision in the by-laws plus occurrence of certain conditions) do not apply.

Therefore, in practical terms, it means that companies with a fiscal year end as at 31 December 2019, instead of having to approve the FY19 financial statements by 29 April 2020, can hold the shareholders' meeting for the approval of such financial statements **by 28 June 2020**, without the need for a preliminary board meeting resolving on the postponement of the terms and regardless of whether the ordinary conditions for the postponement are met.

With regard to **the procedures for the management of corporate meetings**, article 106 of the Decree Law provides for express derogation from the usual procedures for the conduct of ordinary and extraordinary shareholders' meetings, to be considered applicable also to board meetings. More specifically, paragraph 2 thereof sets forth that for joint-stock companies (S.p.A.), limited liability companies (S.r.l.) and cooperatives (as well as limited partnerships for shares):

- meetings can **be held by means of teleconference (audio/video conference),** provided that the attendants can be identified, can actively participate in the meeting, and are able to exercise their voting rights;
- voting is also permitted by electronic means or through correspondence;
- **by way of derogation from the Civil Code and any statutory provisions, the secretary and chairperson of the meeting** (or notary public, in case of extraordinary shareholders' meetings) **do not necessarily have to be in the same place**.

With specific reference to limited liability companies (i.e. "*S.r.l.si*"), in derogation of article 2479 (4) of the Italian Civil Code, the financial statements can now be approved even by means of written consultation or express written consent (the ordinary rules require for such resolution to be taken in a meeting, not in writing).

The Decree Law sets forth that the derogations apply to meetings convened by **31 July 2020** or, in any case, until the state of emergency lasts, whichever is later.

***Practical Tips*:**

Place of the meeting: also in derogation from any provisions of the By-Laws, the meeting may be held anywhere and it is not necessary for the Chairperson and the secretary to be in the same place. In such a case, the meeting will be deemed to have been held in the place where the secretary of the meeting is located.

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Notice of call: the notice of call must contain an express reference to the public security measures adopted by the competent Authorities to face the COVID-19 emergency, as well as to Article 106 of the Decree Law; the notice shall contain the date and time of the meeting and the possibility to attend in audio/video connection. The notice of call could also contain the indication that the meeting will be deemed to take place in the place where the secretary is located.

Meetings already called: if a meeting has already been formally called, a new notice of call can be sent in accordance with the above-mentioned provisions and such notice of call will replace the previous notice.
Alternatively, without prejudice to the notice already sent to the addressees, it is possible to attend the previously called meeting by way of electronic means. The minutes of the meeting will have to contain an indication of such circumstance in addition to a reference the emergency provisions provided for under the Decree Law.

Meetings in plenary form/in lieu of notice: without prejudice to the ordinary legal *quorum*, the meeting in plenary form/in lieu of notice may be held via audio/video conference. The minutes will need to contain an indication of the emergency provisions provided for under the Decree Law and the meeting will be deemed to have been held in the place where the secretary is located.

Drafting of the minutes: also in compliance with the guidelines expressed by the Notarial Board, the minutes of the meeting held through electronic means may be drawn up at a later stage (in the form of the so-called non-simultaneous minutes) and signed by the person responsible for drafting the minutes (secretary /notary public) and the chairperson of the meeting.

Corporate Q&A

1.Is it possible to postpone the approval of the 2019 financial statements?

Yes, according to Law Decree 17 March 2020, No. 18, the financial statements can be approved **within 180 days from the end of the financial year**.

2.Can meetings be entirely held remotely?

Yes, according to article 106 of Law Decree, corporate meetings can even be held entirely through electronic means (tele-conference and videoconference). Moreover, in derogation to the civil code and the articles of association, the secretary and the chairperson could be in different locations.

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Emergency Measures

A number of **EU Member States** have announced the adoption of emergency measures (including financial, tax and logistical measures) in order to face the Covid-19 outbreak.

Depending on how such measures will be structured, they might be relevant from the EU state aid perspective and require careful assessment on the basis of the relevant EU rules and communications from the European Commission (which has just announced the publication of new guidelines in the next few days).

Companies affected by public support measures will therefore have to carefully assess whether these measures are compatible with EU state aid rules. In case of violation of the aforementioned provisions, the recipients might in fact be required the repay the unlawful aid plus interest at an appropriate rate fixed by the Commission.

https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html

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Tourism and Entertainment

Support measures for the tourism, culture and art industry.

With Law Decree 17 March 2020 ("**Save Italy Decree**"), the following provisions have been introduced for the tourism, culture and art industry.

First of all, the refund right has been extended to those who could not **enjoy temporary stays in accommodations** due to the COVID-19 containment measures.

In addition, from 17 March 2020, there is a refund right for **tickets purchased for shows, as well as for museums and for other cultural venues**, which could not be used due to the adoption of the containment measures.

In both cases, **application for refund must be submitted to the seller** within 30 days from 17 March 2020, enclosing, respectively, the documentation relating to the booking of the stay or the ticket purchase information.

The accommodation manager, within the 15 days following the date of receipt of the application, must issue a full refund of the amount paid or issue a voucher of equal value that may be used within one year from the issue date. In the same way, the seller of the tickets for shows, museums and other cultural venues must, within 30 days from the presentation of the application, issue a voucher of equal value to be used within one year from the issue date.

In addition, the Ministry of Cultural Heritage and Activities and Tourism ("**MiBACT"**) has set up two Emergency Funds, with a total budget for 2020 amounting to 130 million euros, with the aim to support the entertainment, cinema and audio-visual industries. These resources will be allocated in accordance to the modalities that will be communicated by the MiBACT.

Finally, in order to respond to the negative impact of the containment measures on the culture industry operators, the Save Italy Decree has provided that a share of fees collected in 2019 for private reproductions of phonograms and videograms (equal to 10% of all the fees calculated before SIAE's redistribution), **will be allocated in support of authors, performers and self-employed workers who are responsible for the collection of copyright royalties on the basis of mandate contracts with collective management organizations.**

A MiBACT decree , which will be adopted within 30 days of the entry into force of the law converting the Save Italy Decree, will establish the requirements for access to the above mentioned benefits, **which will have to take into account, among other things, the income of the recipients**.

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