

## CLIENT ALERT

### THE IMPACT OF COVID-19 ON ITALIAN LEGAL PROCEEDINGS

March 27, 2020

Francesca Petronio | Fabio Cozzi | Irene Saura

*The extraordinary measures addressing COVID-19 emergency are impacting also judicial and arbitral proceedings. Hearings and filings have been postponed, and the use of technologies will become even more common. Here a practical overview of the new measures, bearing in mind that legal protection will be anyway provided in case of serious risk of prejudice.*

\* \* \* \* \*

Among the various measures adopted by the Italian Government to face the emergency situation determined by the ongoing spread of COVID-19, some provisions specifically refers to procedural terms and hearings of judicial proceedings before Italian Courts.

#### **I. Hearings And Procedural Terms**

With the aim of regulating the development of judicial proceedings in this context, the Law Decree No. 18/2020 containing “*measures aimed at strengthening the National Healthcare Service and supporting families, workers and businesses affected by the epidemiological emergency of Covid-19*” (the “Decree”), applicable within the whole territory of Italy, identifies two different periods of time, the first between 9 March 2020 and 15 April 2020 (the “Suspension Period” or the so-called “buffer” period), and the second between 16 April 2020 and 30 June 2020 (the “Second Period”).<sup>1</sup>

##### **A) The Suspension Period – 9 March/15 April 2020**

All civil and criminal hearings scheduled between 9 March 2020 and 15 April 2020 will be rescheduled by the competent courts on a date after 15 April 2020, except for specific listed proceedings which are qualified as urgent (see below).

The same measure applies to administrative proceedings<sup>2</sup> and labour proceedings.

All procedural terms and deadlines are postponed to 15 April 2020, including terms to challenge judicial decisions, filing briefs or documents etcetera. This means that:

- (i) Procedural terms that were due to start running during the Suspension Period, will begin to run from April 16;
- (ii) Procedural terms that began to run before the Suspension Period are suspended during the Suspension Period and will continue to run after the end of it;

---

<sup>1</sup> See Article 83 of the Decree.

<sup>2</sup> See Article 84 of the Decree.

## CLIENT ALERT

- (iii) Where procedural terms are to be calculated backwards with regard to an hearing or another activity (e.g. the defendant shall file its appearance 20 days before the first hearing), the event (e.g. the hearing) is postponed as to allow to comply with the related term.

### **B) The Second Period – 16 April/30 June 2020**

As for the Second Period, the Law Decree allows judicial authorities to adopt additional measures to avoid unnecessary contacts within groups of people, thus extending the health-related precautionary measures for a longer period. Such measures may include, *inter alia*:

- (i) A further postponement of hearings to a date after 30 June 2020;
- (ii) Specific means for hearings to take place (in particular, for civil hearings, by remote connection systems, in case of participation to the hearing of lawyers and parties, by electronically filing of written notes, in case it is required only the participation of lawyers, or in closed hearings; for criminal hearings, in closed hearings);
- (iii) Electronic filing of all deeds and briefs (included those for which it is normally required paper filing);
- (iv) Limited access or limited opening hours of judicial offices.

It is noteworthy that the Decree explicitly provides that, in case any of the abovementioned measures impedes the filing of one's claims, the relative statute of limitation is suspended.

The suspension of procedural terms expressly applies also to mediation and other ADR proceedings (reference is made to mandatory ADR procedures).

Also, no exceptions are made in connection to bankruptcy proceedings and enforcement actions, which are subject to suspension according to the above-described measures.

### **II. How To Deal With Urgent Issues?**

The extraordinary measures recently adopted will necessarily cause a delay to judicial proceedings, however protection will be granted in case of emergency and where sensitive issues are involved. In fact, the suspension of terms and hearing postponement do not apply in the following cases:

- (i) Family and personal rights and status;
- (ii) Interim measures to protect fundamental human rights; and
- (iii) All cases where a delay could cause a serious harm to the parties, as determined by the Court by a specific decision (a specific application should be addressed to the head of the competent judicial office).<sup>3</sup>

---

<sup>3</sup> See Article 83, para. 3, of the Decree.

## CLIENT ALERT

### III. Arbitration Proceedings Before The Milan Chamber Of National And International Arbitration

No specific measures address arbitration proceedings. As to institutional arbitration, the Milan Chamber of National and International Arbitration ("CAM") – administering most of the international arbitration held in Italy – is currently providing its services remotely and, in particular arbitration claims can be filed via electronic certified email. Moreover, as to pending arbitrations, CAM's administrative body provided for:

- (i) The suspension of procedural terms scheduled between 16 March 2020 and 15 April 2020, and subsequently all terms will continue to run from 16 April 2020;
- (ii) A 30-day extension of the term for filing the award, where the term for filing the award expires within the suspension period under point (i) above, and the remaining time to file the award is less than 30 days;
- (iii) Postponement of all hearings after 15 April 2020;
- (iv) Arbitral Tribunals are free to adopt different measures, which have anyway to be compliant with the general restrictions provided at a general level by the Italian Government. In particular, this means that Arbitral Tribunals and parties may decide to anyway complete filings and hold hearings using electronic and digital means (e.g. video conferencing or telepresence systems).

### IV. Final Remarks

It is not surprise that also judicial proceedings have been deeply affected by the COVID outbreak; it shall therefore be paid close attention to the provisions included in the Decree, including the granted exceptions, as well as to the organisational measures which will be adopted by the various judicial offices and arbitral institutions.<sup>4</sup>

*This alert is provided by Studio Legale Delfino e Associati Willkie Farr & Gallagher LLP for informational purposes only and is not intended and should not be construed as legal advice.*

---

<sup>4</sup> Both the Tribunal of Milan and the Court of Appeal of Milan have adopted organisational measures to face the emergency situation. While the Tribunal of Milan measures, as for now, mainly reproduce the measures indicated in Decree, the Court of Appeal of Milan has already decided to postpone hearings to 31 May 2020 and that all hearings which will take place due for urgent reasons will be held by remote connection, or in closed hearings.