

## Italy Insight: Liquidity Law Decree Facing COVID-19: A Company Oriented Analysis

Pursuant to Law Decree April 8, 2020, no. 23 (published in the Italian Official Gazette no. 94 on April 8, 2020) (also referred to as “**Liquidity Law Decree**”) new measures have been adopted in order to face the **COVID-19** epidemic crisis.

Please find below a description of the main aspects of the Liquidity Law Decree, focusing on corporate and commercial law (page 1), tax law (page 5) and labour law related matters (page 6).

Considering the ongoing evolution of the epidemic, and the political and legislative measures to face it, it should be noted that the Liquidity Law Decree provisions may be extended or amended by further provisions subsequently adopted by the Italian Government or Parliament.

### Corporate and Commercial Law Focus

#### A) Reduction of share capital and winding-up (Section 6 of Liquidity Law Decree)

With effect from the entry into force of the Liquidity Law Decree (i.e. April 9, 2020), the following provisions of the Italian Civil Code do not apply with respect to events occurred until the end of financial year 2020 (December 31, 2020):

- (i) the provisions concerning the mandatory reduction of share capital, either for losses reducing the share capital by more than 1/3 or losses bringing the share capital below the minimum mandatory limit, both for joint stock companies (“*Società per Azioni* - S.p.A.”) (Sections 2446, par. 2 and 3, and 2447) and for limited liability companies (“*Società a Responsabilità Limitata* - S.r.l.”) (Sections 2482-bis, par. 4, 5, 6, and 2482-ter);
- (ii) the provisions concerning the mandatory winding-up of companies in case of losses causing the equity capital to fall below the minimum mandatory limit, applicable to S.p.A.’s, S.r.l.’s, companies limited by shares (“*Società in Accomandita per Azioni*”) (Sections 2484, par. 1, no. 4) and cooperative companies (“*Società Cooperative*”) (Section 2545-duodecies c.c.).

#### B) Provisions relating to the 2020 Financial Statements (Section 7 of Liquidity Law Decree)

Financial statements concerning financial year 2020 (December 31, 2020) and financial statements already approved by February 23, 2020 but yet to be approved by the shareholders meeting, may make reference to the recent past (i.e. prior to the emergence of COVID-19) in order to conduct the assessment of the company’s business/financial continuity required pursuant to Section 2423-bis par. 1, no. 1 of the Italian Civil Code.

In particular, such assessment may also be carried out by making reference to the last approved financial statements before February 23, 2020, to the extent they confirmed the business/financial continuity of the company.

The assessment criteria shall be specifically indicated in the informative note to the financial statements to be approved (even by mere reference to the previous financial statements only as per above).

The new provision is without prejudice to the possibility to extend the term by which the shareholders' meeting can be called to approve the 2019 financial statements, from the ordinary term of April 30, 2020 to June 28, 2020, as provided by Section 106 of Law Decree no. 18/2020.

**C) Suspension of subordinate *status* of loans by shareholders (Section 8 of Liquidity Law Decree)**

Sections 2467 and 2497-*quinquies* of the Italian Civil Code – providing that all loans granted by shareholders to companies will be subordinated to any other loan granted by third parties – shall not apply to any loan granted by shareholders to companies from the entry into force of the Liquidity Law Decree until December 31, 2020.

**D) Corporate Crisis and Insolvency Code (Section 5 of Liquidity Law Decree)**

The entry into force of the Legislative Decree no. 14/2019 (*i.e.*, Corporate Crisis and Insolvency Code) is postponed to September 1, 2021, except for specific provisions.

**E) Compositions with creditors and restructuring agreements (Section 9 of Liquidity Law Decree)**

The following provisions have been introduced with respect to compositions with creditors and restructuring agreements:

- i. all deadlines for the fulfillment of compositions with creditors and restructuring agreements which have been already approved by Courts and are due to expire between February 23, 2020 and December 31, 2021, have been automatically extended by six months;
- ii. with respect to judicial proceedings concerning compositions with creditors and restructuring agreements pending as at February 23, 2020, the debtor is entitled to lodge a request to the Court - until the hearing scheduled for the Court approval of the relevant plans – aimed at obtaining a new deadline of no more than 90 days in order to submit a new plan and a new composition proposal pursuant to Section 161 of Royal Decree no. 267/1942 or a new restructuring agreement pursuant to Section 182-*bis* of Royal Decree no. 267/1942 (except for such compositions with creditors proceeding where the meeting of creditors has not reached a majority pursuant to Section 177 of Royal Decree 267/1942);
- iii. with respect to judicial proceedings concerning compositions with creditors and restructuring agreements pending as at February 23, 2020, the debtor is entitled to lodge a request to the Court - until the hearing scheduled for Court approval - aimed at obtaining only a postponement of no more than 6 months the deadlines for the fulfillment of the composition with creditors or restructuring agreements, leaving all

other terms unvaried. The request shall set out the new deadline proposed and the documents proving the necessity of such postponement;

- iv. possibility for the debtor – who had already obtained a postponement pursuant to Section 161, par. 6, of Royal Decree no. 267/1942 or a deadline pursuant to Article 182-*bis*, par. 7, of same Decree – to lodge a new postponement request for no more than 90 days, with indication of all circumstances requiring the postponement, with specific reference to facts connected to COVID-19 emergency. This request can be lodged even if a claim for bankruptcy declaration has been filed.

**F) Interruption of bankruptcy and insolvency proceedings (Section 10 of the Liquidity Decree)**

All claims filed between March 9, 2020, and June 30, 2020, concerning the following matters shall be declared as not admissible:

- i. Claims for declaration of bankruptcy (Section 15 of Royal Decree no. 267/1942);
- ii. Claims for judicial assessment of insolvency (Section 195 of Royal Decree no. 267/1942);
- iii. Claims for judicial assessment of insolvency for extraordinary administration of large companies (Section 3 of Legislative Decree no. 270/1999).

Such proceedings may only be exceptionally activated upon request by the Public Prosecutor, whenever such claims are instrumental to the request for *interim* or conservative measures in order to protect the assets of the company, pursuant to Section 15, par. 8, of Royal Decree no. 267/1942.

**G) Suspension of deadlines for debt instruments and interruption of protests (Section 11 of Liquidity Law Decree)**

All deadlines falling between March 9, 2020 and April 30, 2020, which are applicable to promissory notes, bills of exchange and other debt instruments issued before April 9, 2020, as well as to any other enforceable act issued before such date, are suspended until April 30, 2020.

Therefore, the following terms are due to be suspended:

- i. Terms for presentation of debt instruments for payment;
- ii. Terms for filing of protests or equivalent acknowledgment;
- iii. Terms for the registration in the Registry of Irregular Bank and Postal Checks and Payment Cards ("*Centrale di Allarme Interbancaria*"), as well as for the relevant notice of such registration (Sections 9, par. 2, letter a) and b), and 9-*bis*, par. 2, Law no. 386/1990), in case of non-payment of checks due to lack of authorization or funds;
- iv. The 60-days term for late payment of checks issued without funds, as provided by Section 8, par. 1, Law no. 386/1990.

Debtors and co-debtors, including guarantors, have the right to waive such suspension.

Furthermore, all transmissions by public officers of protests or equivalent acknowledgments to the competent Chambers of Commerce are suspended from March 9, 2020 until April 9, 2020; if a transmission has already been made, the Chambers of Commerce must not take it into consideration.

Finally, all transmissions to the authority (*Prefettura*) of information concerning protests, equivalent acknowledgments or non-payment pursuant to Section 8-bis, par. 1 and 2, Law no. 386/1990 are also suspended.

H) A wider application of the Italian Government “*Golden Powers*” (Sections 15 to 17 of the Liquidity Law Decree)

The Liquidity Law Decree grants a wider application of Italian Government “Golden Powers” to certain sectors of strategic importance.

In particular, the obligations to notify the President of the Council of Ministers originally applicable with respect to (i) any purchase of shares, at any title, (ii) by entities incorporated outside the European Union, (iii) in companies holding assets and relationships of strategic importance in the sectors referred to by Section 4, par. 1, letters (a), (b), (c), (d) and (e), including credit and insurance sectors in the context of the financial services, pursuant to Regulation (EU) 2019/452 of the European Parliament and the Council of March 19, 2019, have been extended, until 31 December 2020, also to the following:

- i. resolutions, deeds and transactions carried out by companies holding assets and relationships in the aforementioned sectors, or in any other sector to be identified by decree of the President of the Council of Ministers, which entail changes to ownership, control and availability of strategic assets or changes to their use;
- ii. purchases of shares by foreign entities, including those incorporated within the European Union, of such relevance so as to entail a permanent establishment of the purchaser for the purpose of acquiring control of the target company pursuant to Section 2359 of the Italian Civil Code and Legislative Decree no. 58/1998 (“*Testo Unico Finanziario*”); and
- iii. purchases of shares by foreign entities incorporated outside the European Union that give the owner voting rights or capital equal to, at least, 10%, and whose total value of the investment is equal to or higher than one million euros. Acquisitions exceeding 15%, 20%, 25% and 50% thresholds shall be also notified.

In case of breach of the notification obligations, the Presidency of the Council may initiate proceedings against the responsible party.

CONSOB is expressly authorized to lower – for a limited amount of time – to 5% the relevant thresholds for notifications pursuant to Section 120 of the aforementioned Legislative Decree no. 58/1998 for companies with a significant number of shareholders.

## Tax Law Focus

### A) Tax credit for the purchase of protective equipment at the workplace (Section 30 of the Liquidity Law Decree)

The tax credit for sanitation costs pursuant to Section 64 of Law Decree no. 18 of March 17, 2020 (“**Italy Care Decree**”) – equal to 50% of the related expense in 2020, up to a maximum amount of EUR 20,000 per subject – also applies to all expenses throughout 2020 for purchase of personal protective equipment and any other safety devices to protect workers from accidental exposure to biological agents and to ensure interpersonal safety distance.

### B) Quantification of advance instalments based on the forecast method (Section 20 of the Liquidity Law Decree)

With respect to advance instalments of IRPEF (personal income tax), IRES (corporate income tax) and IRAP (regional tax) due for the current FY and quantified on the basis of the forecast method (*i.e.*, based on the amount expected to be due for the current year), no penalties and interests shall be applied if the difference between the amount paid and the amount actually due based on the current year tax return does not exceed 20%.

### C) Suspension of tax and social security payments (Section 18 of the Liquidity Law Decree)

The Liquidity Law Decree suspended payment deadlines on enterprises, artists and professionals, falling on April and May 2020, concerning (i) WHT on the pay of employees and equivalent workers, (ii) VAT, (iii) social security and welfare contributions, and (iv) compulsory insurance premiums.

The suspension is effective only in case of a decrease in turnover – respectively, in March and April 2020 compared with the same months of last year –by at least:

- 33%, for taxpayers with revenues up to EUR 50 million in the previous tax period;
- 50%, for taxpayers with revenues of more than EUR 50 million in the previous tax period.

For taxpayers performing business, art or professional activities with tax residence, registers office or place of business in the Provinces of Bergamo, Brescia, Cremona, Lodi and Piacenza, VAT payments scheduled on April and May 2020 are suspended in case of decrease of turnover by at least 33%, regardless of the volume of revenues in the previous tax period.

The suspended payments shall be made, without penalties and interests, either (i) in a single instalment, by June 30, 2020, or (ii) by monthly instalments, up to a maximum of 5 instalments, starting from June 2020.

#### D) New terms for payments (Section 21 of the Liquidity Law Decree)

Payments to Public Administrations originally due on March 16, 2020, whose deadline was postponed to March 20, 2020, pursuant to Section 60 of Italy Care Decree, shall be considered timely made if made by April 16, 2020.

### Labour Law Focus

#### A) Extension of economic aids to Employment: “Cassa Integrazione Guadagni Ordinaria”, “Assegno Ordinario” and “Cassa Integrazione in deroga” (Section 41 of the Liquidity Law Decree).

The Liquidity Law Decree extended the scope of application of the legal instruments for the protection of workers as provided for by Italy Care Decree.

In particular, pursuant to Section 41 of the Liquidity Law Decree, the provisions concerning the economic aids to employment provided by Sections 19 (*Cassa Integrazione Guadagni Ordinaria* and *Assegno Ordinario*) and Section 22 (*Cassa Integrazione in deroga*) of the Italy Care Decree, shall not only apply to all employees in force as of February 23, 2020 (as provided by Italy Care Decree), but also to workers hired between February 24, 2020 and March 17, 2020.

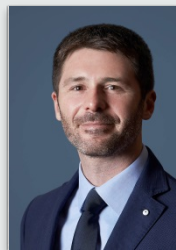
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