

**PROVISIONS SETTING OUT
EXTRAORDINARY AND URGENT MEASURES TO COMBAT THE
EPIDEMIOLOGICAL EMERGENCY CAUSED BY COVID-19**

**UPDATE TO THE LAW CONVERTING DECREE LAW No. 18 of 17 MARCH 2020,
"CURA ITALIA"**

- CIVIL LITIGATION ISSUES-

Update 30 April 2020

CIVIL LITIGATION ISSUES

Civil proceedings in Italy during COVID-19 emergency: Decree Law no. 18/2020 (“Decreto Cura Italia”) and its amendments

In order to prevent the Covid-19 transmission of all persons involved with judicial activity, the Italian Government has inter alia introduced measures to limit such activity (through postponement of hearings and suspension of procedural time limits) or to enable their carrying out through remote means.

Such measures, which are summarized below, shall be applied in two different phases: Phase 1 from 9.3.2020 to 11.5.2020 and Phase 2 from 12.5.2020 to 30.6.2020.

Phase 1 from 9.3.2020 to 11.5.2020: postponement of hearings and suspension of procedural time limits

Article 83 of Decree Law no. 18/2020 (“Decreto Cura Italia”) provided for the postponement of hearings and the suspension of all procedural time limits relating to civil and criminal proceedings, with the sole exception of those (i) regarding matters or proceedings considered “unpostponable” (as identified in Paragraph 3 of the same Article) or (ii) whose delayed processing may cause serious harm to the parties. In the latter case, a declaration of urgency must be issued by the Head of the Judicial Office or, for proceedings already commenced, by the Judge or the Chairman of the Panel.

The afore-mentioned measures, that apply starting from 9 March, have been extended until 11 May by Article 36 of Decree Law no. 23/2020 (“Decreto Liquidità”). As a result of said amendment, the suspension term of civil and criminal proceedings has therefore been extended from 38 to 63 days (going from 9.3.2020 to 11.05.2020).

Instead, with regard to administrative proceedings, the suspension of procedural time limits for those pending at 23 February 2020, or commenced after that date, was extended until 15 May by Article 37 of Decree Law no. 23/2020.

In addition to the above, Conversion Law no. 27/2020 made some minor changes to Decree Law 18/2020 by introducing – for civil matters – an additional exception to the application of the postponement and suspension, namely the electoral proceedings referred to in Articles 22, 23 and 24 of Legislative Decree no. 150/2011.

As far as the operation of the suspension of procedural time limits is concerned, in case (i) a procedural term starts during the suspension term, the starting of the former is postponed until the end of the latter; (ii) if a procedural term to be counted backwards ends during the suspension term, the hearing (or any time limit) from which such count starts must be postponed so as to ensure that the procedural term does not fall, totally or partially, within the suspension term.

The suspension applies to all time limits, including those for commencing and continuing lawsuits, enforcement proceedings, appeals and for the adoption of judicial measures.

Phase 2 from 12.5.2020 al 30.6.2020: remote means of conducting civil hearings

Article 83 of Decree Law no. 18/2020 also envisages general provisions for the management of Phase 2, which need to be implemented through specific measures by each Judicial Office.

In particular, Paragraph 7, letters f) and h) of said Article introduces two remote means of conducting civil hearings, namely:

- video-conference, for hearings that require the presence of counsels, parties and/or Judge's auxiliaries (the latter were added by the conversion law), and
- . written proceedings (“udienza cartolare”), for hearings that do require presence of counsels only.

As far as video-conference hearings are concerned, means of remote connections are identified and regulated by order of the Head of Information and Automated Systems of the Ministry of Justice (“Direttore generale dei sistemi informativi e automatizzati”). On the other hand, the written proceedings for remote hearings entails the exchange and filing of written notes by the parties and the adoption of the Judge's decision outside the hearing.

The criteria for adopting one or the other remote means have not been determined for the event only counsels are required to attend the hearing, which leaves wide discretion to Judicial Offices as to such choice.

The remote procedural means may apply, at the discretion of the Heads of Judicial Offices, to proceedings not subject to Phase 1-suspension.

Hearings that require the presence of subjects other than counsels, parties and/or Judge's auxiliaries, such as e.g. witnesses, are not included in Phase 2 and are hence being postponed to a date after 30 June.

With resolution of 26 March 2020, the Superior Council of the Judiciary (“Consiglio Superiore della Magistratura”) issued Guidelines for the Judicial Offices regarding the COVID 19 emergency and relevant Application Protocols thereof, which are subject to amendments by the Councils of the local Bar Associations. In any case, such Guidelines and Application Protocols merely entail operational recommendations not limiting in any way the construction of legal provisions by the Judges.

In concrete terms, for video-conference hearings, the Judge must inform in advance the counsels (and the public prosecutor, if their participation is required) of the day, time and method of connection (Article 83, Para. 7, letter f of Decree Law no. 18/2020).

For the “written proceedings”, which will likely become the main remote means for conducting civil hearings, the Application Protocol requires Judges to schedule reasonable terms for the lodging of written notes by the parties. The clerk's office shall communicate the Judge's scheduling to the parties, who shall then file their written notes accordingly. The parties may also be requested to provide an electronic copy of the documents that are not already included in the electronic file, for having been originally lodged as hard copies.

It is not clear whether failure to lodge the written notes by all counsels is equivalent to failure to appear at hearings pursuant to Article 309 of the Italian Code of Civil Procedure, envisaging the cancellation of the proceedings in case none of the parties appears at two consecutive hearings. For the sake of clarity, it is therefore advisable that Judges explicitly provide for such event.

With reference to civil proceedings before Supreme Court of Cassation, a memorandum of understanding by the National Bar Council and the Supreme Court provides for the “digitalization” of chamber hearings pursuant to Article 375 of the Italian Code of Civil Procedure. Said memorandum envisages, firstly, that the clerk's office shall invite the counsels to send, by means of registered e-mail, a pdf version of the deeds and documents, with the warning that if such documentation is not received within 7 days of receipt of the hearing notice, the hearing may be rescheduled. Secondly, the chamber hearing shall be carried out remotely.

In addition to the above, for Supreme Court proceedings Conversion law has introduced the possibility of electronic filing of all deeds and documents until 30 June (Article 83, Paragraph 11-bis of Decree Law no. 18/2020). For such purpose it is however necessary to wait for the implementation of a specific electronic service by the Head of Information and Automated Systems of the Ministry of Justice.

Finally, Conversion Law also provided that during the emergency situation (i.e. for a yet unspecified period of time) the signing of powers of attorney for civil litigation by the client and its authentication by the lawyer may exceptionally be neither contextual nor handwritten: the client may electronically transmit a scanned copy of the signed POA together with a copy of their ID and the lawyer may then authenticate such document with their personal e-signature.

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