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STUDIO LEGALE E TRIBUTARIO

# PROVISIONS REGARDING EXTRAORDINARY AND URGENT MEASURES TO COPE WITH THE EPIDEMIOLOGICAL EMERGENCY CAUSED BY COVID-19

## DECREE LAW No. 23 OF APRIL 8 2020 "LIQUID ASSETS" (*LIQUIDITA'*)

***Update of April 10, 2020***

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**BUSINESS ISSUES**
**BANKRUPTCY AND RESTRUCTURING ISSUES**
**TAX ISSUES**
**LABOUR LAW ISSUES**
**CORPORATE ISSUES**

**Suspension of debt securities deadlines (Article 11)**

Article 11 of Liquid Assets (*Liquidità*) Decree headed "*Suspension of debt securities deadlines"* provides very interesting provisions, which in relation to promissory notes, bills of exchange and other credit instruments issued before 9 April 2020 and any other enforceable deed at such date, lays down the suspension from 9 March to 30 April 2020 of the deadlines falling within or starting from such period, pointing out that the suspension is applicable in favour of debtors and obligors even by way of recourse or of guarantee, without prejudice to their power to waive it expressly.

This measure, therefore, extends to the full national territory a provision that, with a partially different formulation, Article 10, paragraph 5, of Decree Law No. 9 of 2 March 2020, limited to the only resident persons having operating offices or carryng out their own working or production activity within the municipalities indicated in Annex 1 of the Prime Ministerial Decree of 1st March 2020 (providing the suspension from 22 February to 31 March 2020 of the deadlines, falling within or starting from the same period, related to promissory notes, to bills of exchange and to any other debt securities or enforceable deed).

With particular reference to (bank and postal) **cheques**, paragraph 2 of Article 11 of the Decree points out, then, that the same are payable in the day of submission even in the above-mentioned period of suspension (existing the coverage on the drawer's account), applying the suspension with reference to (i) the deadlines for the submission at the payment, (ii) the deadlines for the issue of the protest or of the equivalent notifications, (iii) the deadlines for the late payment within 60 days from the submission (referred to in Article 8, paragraph 1, of the Law No. 386 of 1990) and (iv) to the deadlines related to the prefectorial penalties connected to the omitted payment because of lack of authorisation or coverage, referred to in Article 9, paragraph 2, letters a) and b), of Law No. 386/1990 (in relation to the registration in the files of bank and postal cheques and of irregular payment cards, the so called "C.A.I. - Interbank database on cheques and payment cards") and pursuant to Article 9-bis, paragraph 2, of Law No. 386 of 1990 (in relation to the notice of withdrawal of authorization to issue cheques).

With this regard, the Decree Report highlights that the notice of withdrawal concerning the cheques without coverage in the suspension period, will not be sent, and that, if the notice of withdrawal has been already sent, the deadline of 60 days for the execution of the late payment, will result suspended. In the Decree Report it should also be noted that all necessary elements to determine the possibility or not to carry on with the payment of the credit instrument (as, for example, the availability of funds and the lack of authorization), as well as, those to be considered for further actions (for example for protesting or not), will be assessed at the end of the suspension period.

Finally, the third and last paragraph of the Article under examination provides that (i) the protests (or equivalent notificatiosns) issued from March 9 to April 9, 2020 are not sent from public officers to the Chambers of Commerce and that the same protests, if already published, are cancelled *ex officio* and (ii) that with reference to the same period, the notifications to the Prefect, as a result of the omitted payment (pursuant to Article 8-bis, paragraphs 1 and 2, of Law No. 386 of 1990) are suspended. The rules indicated in Article 11 of the Decree, therefore sees to aim at:

- the protection of the rights of the recipients, to the extent that the same keep the possibility to submit the cheque at the payment, but, by virtue of the suspension of the related deadline, have also the power to postpone the related cash without falling into the risk of withdrawal of the payment order by the drawer;

- the protection of the debtors' position, in favour of which the above-mentioned moratoriums have been laid down, reducing also, with particular reference to cheques, the consequences of the omitted payment for absence of coverage or authorization (for example temporary inapplicability of the protest and of the penalty rules).

Furthermore, the broad wording of first paragraph of Article 11, makes it possible to consider that also the periods of limitation for the direct enforcement actions by the holders of cheques and bills of exchanges (steps to enforce and collect payment and to protest the bill) towards the respective obligors, result indirectly suspended.

**Postponement of the entry into force of the Italian business crisis and insolvency code (Article 5)**

The Liquid Assets (*Liquidità*) Decree at Article 5, postpones the entry into force of the Italian Business Crisis and insolvency Code until 1st September 2021, in place of the previously envisaged deadline on August 15, 2020.

Such deferment is explained in the explanatory report to the and of avoiding that the most outstanding changes contained in the reform and conceived for the occurred anticipated emergency of the crisis, but in a stable economic context, eventually cause – in the current and future economic situation of World crisis – the so called adverse effects, given that these would not have any ability to select and would end for capturing a generalised crisis/insolvency situation. At the same time, it should be noted that an only partial entry into force of the new legal framework would not have rationale, given that the reform was conceived as a whole, through several instruments, in the research of measures allowing to protect, as much as possible, the survival of companies. Finally, it can be noted that the operators would face the current economic crisis with an entirely new and previously unknown instrument, that, therefore, probably would arise further enforcement problems.

Indeed, some pointed out that the part of the reform concerning the regulation of groups of companies (Articles 284-292) would have been applied immediately with some adjustments. Evidently such remark has been disregarded, at least at present, but it is excluded that it may be accepted in the future, as the current legislation does not envisage any regulation of the crisis for business groups.

For the sake of completeness, it should be noted that Article 5 of the Liquid Assets (*Liquidità*) Decree does not affect the provisions referred to in second paragraph of Article 389 of the Italian business Crisis and Insolvency Code, already in force on March 16, 2019, such as that which lays down the duty of setting up an organizational, administrative and accounting structure, suitable for the company's nature and size.

**Provisions on agreement among creditors and on restructuring agreements (Article 9)**

Furthermore, Article 9 of the Liquid Assets (*Liquidità*) Decree sets forth a postponement of six months of the fulfilling terms provided for in the procedures of agreement among creditors and in the restructuring agreements pursuant to Article 182-bis of the Italian Bankruptcy Law, already approved and which terms expire between February 23, 2020 and December 31st, 2021. On the contrary, as regards proceedings pending as of February 23, 2020, the debtor has the chance to submit an application to the Court in order to obtain a 90 days term to submit a new concordatory plan and proposal or a new restructuring agreement pursuant to Article 182 bis of the Italian Bankruptcy Law. The only foreclosure is that the related proceedings that are still pending have not been already put to the vote and have not reached the majorities required by law, as in such case, it is envisaged that the Court declares such application as inadmissible.

Finally, if the debtor aims only at changing the fulfilling terms, postponing them of no more than six months compared to those originally provided for, the rule provides that the debtor may only submit a brief filing the documentation proving the necessity of the change of the terms. The Court, after having checked the prerequisites, carries on with the approval, acknowledging the new deadlines.

Another provision concerns the hypothesis in which the debtor gained admission to the so called agreement with creditors with the right to file the concordatory proposal and plan pursuant to Article 161, paragraph VI of the Italian Bankruptcy Law, and has already availed himself of an extension of the deadline granted by the Court (or pursuant to Article 161, paragraph VI of the Italian Bankruptcy Law or pursuant to Article 161, paragraph X of the Italian Bankruptcy Law). In such case, the chance to apply for a second

extension of the deadline up to ninety days, even where a bankruptcy petition is pending, is granted. This aims at overcoming the current emergency situation, given that the case-law considers that such a deadline is not extendable any longer. The request must be made highlighting the elements making the granting necessary, with specific reference to the occurred events as a result of the epidemiological emergency Covid-19.

The Court, if evaluate these elements as founded, grants such second extension and, also during such period, the obligations of periodic information stated by the Court, chargeable to the debtor, remain unchanged. Same chance is given also to the party that, in the field of negotiations prior to the execution of a restructuring agreement, pursuant to Article 182 bis of the Italian Bankruptcy Law, benefited from the grant of a deadline of 60 days pursuant to Article 182 bis paragraph VII of the Italian Bankruptcy Law. In this case the Court, in addition to checking the existence of the aforementioned elements appeared as a result of the emergency, must also verify that the prerequisites to reach a debt restructuring agreement, pursuant to Article 182 bis of the Italian Bankruptcy Law, are applied.

**Temporary provisions on appeals and application for the declaration of bankruptcy and of the state of insolvency (Article 10)**

Finally, Article 10 of the Liquid Assets (*Liquidità*) Decree, contains, first of all, an exceptional provision that sanctions the inapplicability of all bankruptcy petitions filed between March 9, 2020 and June 30, 2020. The only exception regards the bankruptcy petitions filed by the Public Prosecutor in which he requests to take precautionary measures within the bankruptcy proceedings. In the accompanying report such choice is motivated by the need to protect the entepreneurs in the current sudden crisis caused by the epidemiological emergency, from the need to face the increasing preassure of bankruptcy petitions by third parties and/or the need to apply the procedure by their own, in a moment in history in which the winding-up would not bring any benefit to creditors given that the winding-up would be implemented in a strongly disrupted market. Equally, the purpose is not to overload the court services which already experience operational difficulties. We also point out that the provision is extended to all applications because if the preclusion of claim would have been subordinated to the verification that the crisis was determined by the epidemiological emergency Covid-19, the Court would have been encumbered by a further verification with the same consequences of additional workload for the Courts.

Finally, in order to mitigate the adverse effects that such suspension of bankruptcies may cause on future bankruptcy proceedings, the essential suspension of the time-limit pursuant to Article 69 bis of the Italian Bankruptcy Law for the promotion of claw back actions during such period 9.3.2020-30.6.2020 shall apply. A similar suspension is provided for also for Article 10 of the Italian Bankruptcy Law. The wording of the rule appears not so comprehensive, with reference to such second Article, as the same sets forth that the entrepreneur who ceased his own business, may be declared insolvent within and no later than the year from the cancellation from the Company's Register. As a matter of fact, from a first reading of the law, it appears that its application, even with reference to Article 10 of the Italian Bankruptcy Law, is subject to the opening of the bankruptcy proceedings, whilst for the same, a reference to the proceedings for the declaration of bankruptcy, would be deemed as appropriate, since such law is applied under such cases.

Therefore, we cannot exclude that also such provision may be changed when converted.

**Temporary measures to support the liquid assets of companies**

The Government enforces the measures to support the liquid assets of companies expanding the areas of intervention of SACE S.p.A., through the granting, in favour of this latte, rightfully, of the State guarantee on further commitments that will be taken in the application of the Liquid Assets (*Liquidità*) Decree .

The new type of State guarantee, provided for by Article 1 of the Liquid Assets (*Liquidità*) Decree, subsequent to the EU Commission's Communication, aiming at temporarily easing the constraints on the State aids in the current emergency situation COVID-19, can be beneficial to all companies established in Italy – SME and large companies – that will apply for loans starting from April 9, 2020 up to the end of this year, with the exception of banking companies and of other parties authorized to the provision of credit.

With the purposes of obtaining the State guarantee, the companies applying for loans must demonstrate to be *in bonis* (assessed as not "in difficulty" as of December 31st, 2019 and not having impaired financial exposures as of February 29, 2020) and demonstrate of not providing the distribution of dividends or the re-purchase of the own stocks in 2020. As regards loans in favour of SME, for the purposes of application for granting of State guarantee, the running out of the plafond of the guarantee granted by the Central Guarantee Fund for SME, increased by Article 13 of the same Liquid Assets (*Liquidità*) Decree must be demonstrated.

The State guarantee may be required by entities entitled to the provision of credit operating in Italy, with regard to loans granted to Italian companies, intended to be used to *"bear the employee costs, investments or working capital involved in manufacturing facilities and business activities located in Italy, as documented and certified by the legal representative of the beneficiary company"* (paragraph 2, letter n) of Article 1 of the Decree).

In light of the broad wording contained in Article 1 of the Liquid Assets (*Liquidità*) Decree, within the financing entities that may apply for the guarantee of SACE S.p.A. on the credits issued, are included not only banks, but also the financial intermediaries, set forth in Article 106 of the Consolidated Law on Banking. The direct loan funds managed by authorized asset management companies are also considered as included. The guarantee shall be required even by foreign (Community or non-Community) financing entities, as long as they are enabled to carry out the activity of granting credit in Italy, by means of their own Italian branches, that is on a cross-border base.

The guarantee may also cover co-lending operations, with the involvement of a pool of financing entities, as confirmed by Article 1, paragraph 6, letter a) of the Liquid Assets (*Liquidità*) Decree.

Consistent with the aim of flexibility and fair treatment, the Liquid Assets (*Liquidità*) Decree makes reference to the loans granted to companies in any form. Therefore, in addition to the traditional loans (unsecured loans, bank account overdraft), also other technical forms are considered as included, among which those provided for by Article 2 of the Ministry for the Economy and Finance (MEF) Decree No. 53 of 2 April 2015, that is leasing, factoring, the loan backed by pledge, as well as the issue of guarantees and unsecured guarantees.

The guarantee set forth by Article 1 of the Liquid Assets (*Liquidità*) Decree is irrevocable upon first request, and covers from 70% to 90% of the credit supplied, depending on the turnover and employment bracket in which falls the financed company[1]. In any case, the total amount of the guaranteed loan shall not exceed 25% of the turnover, or the double of the Company's employee costs related to the year 2019 (as resulting from the financial statements or by certified data).

[1] First bracket: up to €1.5 billion of turnover and with less than 5000 employees in Italy.
Second bracket: between €1.5 and €5 billion and with more than 5000 employees in Italy.
Third bracket: turnover exceeding €5 billion of Euro.

The guaranteed loan may have a maximum duration of 6 years, in addition to an optional pre-amortisation period that may last up to two years at most. The annual fees due for the issue of the guarantee chargeable to the beneficiary are: for SME, equal to annual 0,25% on the first year, annual 0,5% on the second and third year, annual 1% from the fourth to the sixth year, in relation to the amount guaranteed. On the other hand, for larger companies these are equal to 0,5% of the amount guaranteed on the first year, 1% on the second and third year, 2% from the fourth to the sixth year.
As regards the financing cost, the financing entity has the obligation to apply a cost to be borne by the beneficiary which is lower than what normally requested for similar operations without guarantees and the commissions must be limited to the coverage of the costs incurred for the fulfilment of the dossier.

**Signing of banking and financial contracts and communications in simplified way**

The pandemic COVID-19 and its sunsequent restrictive measures adopted by the authorities in terms of free circulation of people, highlighted the need of continuing to provide banking and financial services, even in absence of documentation drawn up on paper supports or on digital supports complying with the technical features required for the related equivalence to the written document, in accordance with Article 20, paragraph 1-*bis*, of the Legislative Decree No. 82 of 7 March 2005 (Digital Administration Code).
To this purpose, the Liquid Assets (*Liquidità*) Decree introduces a temporary derogation to the ordinary rules, that allows to exceed the regulation of the written form, under penalty of nullity, contained in the Consolidated Law on Finance for banking and financial contracts that will be executed, with retail clients, or with consumers, natural persons carrying out professional or craft activity, non-profit bodies and micro-enterprises.
In order to meet the needs of such subject's categories, who are more subject to the limitations imposed by the health emergency as regards the access to banking and financial services, as not always in the possession of the computer and telematic equipment and tools necessary for the execution of contracts at a distance, Article 4 of the Liquid Assets (*Liquidità*) Decree confers to the consent given by the client by means of non-certified email address or other proper tool, both the requisite of the written form, pursuant to Articles 117, 125-*bis,* 126-*quinquies* and 126-*quinquiesdecies*, of the Consolidated Law on Banking, and the evidential effectiveness, in accordance with Article 2702 of the Italian Civil Code.
The simplified procedures introduced by the above-mentioned law set forth, in any case, some minimum requirements aiming at marking the connection between the consent given, through usual e-mail messages or other proper tools (for example *whatsapp* messages) and the person that expressed it: the message must be accompanied by a copy of a valid identification document of the client-contracting party and must make reference to *"a contract identifiable with certainty".* Such messages must be *"kept together with the same contract with procedures such to guarantee the safety, integrity and impossibility of modification".*

Furthermore a special regime both for the delivery of the copy of the contract made by the intermediary (to carry out in the first useful moment following the end of the state of emergency), and for the exercise of the right of withdrawal by the client (providing for the possibility of use of the same tool used to give the consent), both suitable to safeguard the client's interests in the framework of the current pandemic emergency shall be provided for.
This law has an exceptional nature and therefore soley regulates banking and financial contracts executed between the date of the entry into force of the Liquid Assets (*Liquidità*) Decree (April 9, 2020) and the end of the state of emergency (up to today's date fixed at July 31$^{st}$ , 2020, as issued by the Council of Ministers on January 31$^{st}$, 2020).

Nevertheless, it should be noted that the measures proposed for the simplification for the execution of banking and financial contracts do not take into account the obligations provided for in the "anti-money laundering" regulations, with regard to proper verification of clients or their legal representatives.

In the absence of temporary derogations even to the current legislation on the customer's identification, the banks and the others intermediaries that as of today are not equipped to manage a process of identification by video, namely, that are not able to provide to the clients solutions to generate qualified electronic signatures, could not be able to take full advantage of the simplification laid down in Article 4 of the Liquid Assets (*Liquidità*) Decree.

**Contributions from the Central Guarantee Fund for SME**

Article 13 of the Liquid Assets (*Liquidità*) Decree furtherly enhances the access to credit by the micro-enterprises, by small and medium enterprises, by professionals and by self-employed workers who have VAT number, strengthening the intervention measures of the Central Guarantee Fund for SME (the "**Fund**"), previously laid down in Article 49 of the Decree Law No. 18 of 17 March 2020 ("*Cura Italia* Decree"), not enterily abrogated and rewritten by the aforementioned Article 13.

In particular, the Fund's guarantee is granted free of charge, and now is extended also to loans granted to medium-large companies, with a number of employees not exceeding 499; in such way, even companies with higher size compared to micro-enterprises and small and medium enterprises, as defined by the European Commission's Recommendation of May 6, 2003 have been included.

For loans with a term over 72 months (for example 6 years) the maximum amount guaranteed equal to a maximum of €5 billion originally provided for by Article 49 of the *Cura Italia* Decree is confirmed.

Subject to the authorization of the European Commission, pursuant to Article 108 of the Treaty on the Functioning of the European Union, the followings Fund's contributions are provided:

a) for loans with a term up to 72 months, the maximum amount of the direct guarantee of the Fund is now equal to 90 per cent of the amount of each financial transaction, whose total amount cannot exceed the amounts referred to in points from 1) to 3) of paragraph 1, letter c) of Article 13 in question;
b) for the reinsurance operations, the maximum amount of the guarantee of the Fund, is equal to 100 per cent of the amount guaranteed by Confidi (Credit Guarantee Consortia) (or by other guarantee fund), provided that the guarantees issued by the same, do not exceed the maximum percentage of coverage of 90 per cent and that these have been not issued against payment (through the provision of payment of a premium for the credit risk taken);
c) for the operations of debt renegotiation, that set forth the providing of a loan at a rate of at least 10 per cent of the amount of the existing agreed debt, the maximum amount of the direct guarantee of the Fund is equal to 80 per cent, whilst for the reinsurances, such amount is equal to 90 per cent of the amount guaranteed by Confidi (or by other guarantee fund), provided that the guarantees issued by the same, do not exceed the maximum percentage of coverage of 80 per cent;

for the new loans of amount not exceeding €25,000.00 granted in favour of SME, natural persons engaged in business, arts or professions, whose business (or professional) activity has been damaged by the COVID-19 emergency, as by self-certified declaration, the guarantee of the Fund is equal to 100 per cent, as long as such loans provide: (i) the starting of capital repayment not earlier than 24 months from the provision and with a term up to 72 months; (ii) an amount not exceeding 25 per cent of the amount of revenues of the recipient, as resulting from the last financial statements filed or by the last tax declaration submitted at the date of the application for guarantee, or for beneficiaries set up afterJanuary 1st ,2019, by other proper documentation.

Compared to the original provisions contained in the abrogated Article 49 of the *Cura Italia* Decree, Article 13 of the Liquid Assets (*Liquidità*) Decree now takes correctly into account the critical conditions of the Italian companies, namely the damages suffered by these latter because of COVID-19 emergency. In view of the above, the guarantee of the Fund can be granted now also in favour of companies in difficulty, by way of derogation to the ordinary creditworthiness assessment process adopted by the Fund, and precisely:

a) to companies that submit, at the date of application for the guarantee, exposures towards the financing entity, classified as " loans unlikely to pay" or "overdue or impaired loans exceeding the limits"[2], as long as the aforementioned classification is not prior to the date of January 31st, 2020. In any event, companies that submit exposures classified as "bad loans" remain excluded, pursuant to the banking regulation.
b) to companies that, in a date following December 31st, 2019, were admitted to the procedure of agreement with creditors on a going concern basis, executed restructuging agreements or submitted a recovery plan, as long as, at the date of entry into force of the Liquid Assets (*Liquidità*) Decree, their exposures do not show a situation that would lead them to the classification as impaired exposures anymore, do not show outstanding amounts following the implementation of the measures of granting and the financing entity, on the basis of the analysis of the debtor's financial situation, may reasonably presume that the full repayment of the exposure at the expiration date will take place (pursuant to Article 47-bis, paragraph 6, letters a) and c) of the (EU) Regulation No. 575 of 2013);
c) to companies with revenues not exceeding €3.2 billion, the guarantee of the Fund, equal to maximum 90 per cent, may be combined with other for covering the remaining 10 per cent, granted by Confidi (or by other entity entitled to the issue of guarantees) and for loans of amount not exceeding 25 per cent of the revenues of the borrower.

The Fund's guarantee may be requested also on financial transactions already concluded and provided by the financing entity not before 3 months from the date of submission of the request, and therefore, on a date following January 31st, 2020. In such cases, the financing entity must forward to the Fund a declaration certifying the decrease of the interest rate applied on the guaranteed loan to the borrower, as a result of the grant of the guarantee.

Paragraph 2 of Artice 13 in question, provides the grant of guarantees by the Fund, on favourable terms, in favour of financing portfolios composed of at least 20 per cent of companies, having, at the date of inclusion of the transaction in the portfolio, a rating, determined by the requesting party on the basis of the own internal models, not exceeding the class "BB" of the Standard's and Poor's assessment scale. On the other hand, paragraph 7, confirms the possibility for the Fund to grant the guarantee also in favour of portfolios of minibonds (for example, those existing inside the closed investment funds).

The possibility to grant the Fund's guarantee, combined with other guarantee forms acquired on loans, in favour of real estate investments in the tourist-accommodation sectors, with regard to loans with a minimum duration of 10 years and with an amount exceeding €500,000.00 is also confirmed.

Finally, we also point out that the Fund's guarantees set forth by Article 13 of the Liquid Assets (*Liquidità*) Decree, shall be integrated with the guarantee granted by the public company SACE S.p.A. (in accordance with Articles 1, 2 and 3 of the Liquid Assets (*Liquidità*) Decree , by entities that fully used their ability to access the Fund.

[2] In accordance with paragraph 2, Section B of the Newsletter No. 272 of 30 July 2008 of the *Banca d'Italia* (Bank of Italy) (Supervisory Records).

**Suspension of tax and contribution payments (Article 18)**

**The persons engaged in a business, art or profession**, with **revenues or fees not exceeding €50 billion, may benefit from the suspension of payments** in self-assessment about to expire in the month of **April 2020** and in the month of **May 2020**, related to (i) withholding taxes at source on employment and assimilated earnings, (ii) value added tax and (iii) social security contributions, as well as, compulsory insurance premiums.
The aforementioned persons benefit from the suspension of the terms about to expire in the months of April 2020 and May 2020 in case of:

- decrease of the **turnover or of the compensations** of **at least 33%** in the month of March 2020 compared to the same month of the previous tax period;
- decrease of the same percentage in the month of April 2020, compared to the same month of the previous tax period.

The same suspensions benefit persons engaged in business, art or profession **with revenues or fees exceeding €50 billion**, in the previous tax period, who suffered from:

- decrease of the **turnover or of the compensations** of **at least 50%** in the month of March 2020 compared to the same month of the previous tax period;
- decrease of the same percentage in the month of April 2020, compared to the same month of the previous tax period.

The suspension of payments concerns, moreover, without provision of any threshold, **economic operators** that have **undertaken the run of business, arts or professions after March 31st, 2019** and, limited to payments for witholdings taxes at source for employment or assimilated earnings and to the value added tax to all non-commercial entities that carry out institutional activity.

Suspended payments are implemented, without application of penalties and interests, in a single payment within June 30, 2020 or through an instalment plan up to a maximum of 5 monthly instalments of equal amount from the same month of June 2020. No reimbursment will be made for what has been already payed.

We highlight the way in which the Article in question identifies the persons recipient of the suspension, making reference to criterions connected to **revenues or fees** related to the previous tax period, whilst, in order to identify the thresholds of application of the suspension of payments, the law makes reference to a decrease of the **turnover or of the compensations** in the single reference periods. Such incongruity would seem to be a misprint that, it is hoped, may be amended in the phase of conversion of the Decree into law.

**Extension of the suspension of withholding taxes on self-employed earnings and on commissions – (Article 19)**
The amounts collected between **March 31st, 2020 and May 31st, 2020**, by persons with revenues or fees **not exceeding €400,000**, are not subject to advance tax payments referred to in Articles 25 and 25-bis of the Presidential Decree No. 600 of 1973, by the withholding agent, against submission of proper return by the recipient.

Persons who incurred salaried employment expenses in the previous month may not benefit from this provision.

Witholding taxes shall be paid in a single instalment, by the deadline of **July 30, 2020**, by the **recipient**. However, the option of taking advantage of the payment by instalments, paying the amounts in 5 equal instalments from the same month of July 2020, is also available.

Paragraph 7 of Article 67 of the Decree Law No. 18 of 2020 is repealed; it provided for the the payment by the recipient of the withholding taxes made by the employer by May 31st, 2020.

**Previsional method down payments June (Article 20)**

As regards only the down payments for the tax period 2020, the provisions regarding penalties and interests, for the case of **omitted or insufficient payment of the down payments of the income tax on natural persons, of the corporate income tax, of the Regional tax on productive activities, in compliance with the previsional method** are not applied**.**

The exclusion occurs, provided that the amount payed is not **lower than eighty per cent of the sum** that would result due as an advance payment on the basis of the return related to the ongoing tax period (the so called historical method)

**Relief from the time limit for payments - (Article 21)**

Payments to public administrations, including social security and welfare contributions and INAIL premiums, due on **March 16, 2020**, are extended to March 20, 2020, pursuant to Article 60 of the Decree Law No. 18 of 2020, are considered as regularly made if made **by April 16, 2020**, without the payment of penalties and interests.

**Provisions related to the delivery and electronic transmission deadlines of the Income tax statement 2020 (Article 22)**

The deadline of March 31st, by which the withholding agents should have **delivered to the persons concerned** the income tax statements related to the employment and assimilated earnings and to the self-employed earnings, is deferred to April 30, 2020.

The penalties laid down in Article 4, paragraph 6-*quinquies,* of the Presidential Decree No. 322 of 22 July 1998 are not applicable, in the event that, the statements for which the drawing up of the pre-filled declaration to be sent electronically to the Italian Revenue Authority by the last 31 March is possible, are transmitted by April 30, 2020.

**Extension of the certificates referred to in Article 17-bis, paragraph 5, of the Legislative Decree No. 241 of 1997, issued in the month of February 2020 (Article 23)**

The validity of the certificates, pursuant to Article 17-bis of the Legislative Decree No. 241/1997 (the so called Tax DURC, Single insurance contribution payment certificate), on contracts issued by the Italian Revenue Authority in the month of February 2020 is extended.

**Free distribution of drugs for compassionate use (Article 24)**

A specific law aiming at neutralizing the tax effects of the distributions of drugs used in programs for compassionate use is provided for. This law **compares for VAT purposes the distribution of such drugs to their destruction** and **excluding the contributing of their normal value to the formation of revenues** with the purposes of direct taxes.

**Remote tax assistance (Article 25)**

The CAF (Fiscal Assistance Centres) and authorized professionals are entitled to manage "remotely" tax assistance or assistance for the drawing up of 730 form by electronic modalities **acquiring the proxy signed by the taxpayer** and the identity document of the same by image.

Furthermore, it is also provided that, if necessary, by way of example, because of the unavailability of tools such as printers or scanner, the taxpayer may send a proxy without signature but supported by his/her own authorization.

The same modalities are allowed also for the electronic submission of returns, forms and access applications or use of INPS services.

**Simplifications for the payment of the stamp duty on electronic invoices (Article 26)**

The deadlines set for the payment of the stamp duty on electronic invoices are suspended in the case in which the amount due for the electronic invoices issued **in the first** calendar **quarter** of the year (2020) **is lower than €250.**

The payment may be made within the deadlines set for the payment of the stamp duty related to the invoices issued in the second quarter of the year.

If the stamp duty due for **the e-invoices issued on the first and second quarter** of the year **is lower than €250**, the payment of the stamp duty related to the first and second quarter of the year may be made within the **deadlines** provided for the payment of the stamp duty due in relation to the electronic invoices issued in the **third quarter** of the reference year.

No changes occur for the regular deadlines for the payments of the stamp duty due for the electronic invoices issued in the third and fourth calendar quarter of the year.

**Amendments to Article 32-*quater* of the Decree Law No. 124 of 2019 (Article 28)**

The law governs the regulation of the dividends distributed by limited companies resident in Italy to simple partnerships with non-resident partners and of dividends distributed by foreigh companies to Italian simple partnerships for the share attributable to the resident partners. The special transparency regime (look through) provided for in Article 32-*quarter* of the Legislative Decree No. 124 of 2019 is extended. The new regime will concern also the share of dividends attributable to non-commercial entities, who will contribute fully to the formation of the taxable income of the entity.

**Provisions on tax trial and notification of sanction deeds related to the court fee (Article 29)**

Previous deadline of April 15 is deferred to May 11, 2020, with the consequence that the total break for all proceedings is of 64 days (9 March/11 May). The new deadline is applied to the deadline for appeal, for the hypothesis of acquiescence or for the submission of the tax settlement proposal. Actually, the situations that may occur are:

1. Tax assessment notices served before March 9, 2020, whose ordinary time-limit of 60 days would expire between March 9, and May, 11: to determine the new deadline it is required to add up 64 days to the ordinary 60 days.
2. Deeds notified between March 9 and May, 11: by express provision, the expiration of the deadline to file an appeal is deferred to the end of the suspension period, and therefore from May 12, 2020. It is not a frequent case (the offices activities should be suspended from March 8 to May 31st).
3. Deeds for which the tax settlement proposal was submitted by March 9, and the appeal of 90 days was suspended: it will be necessary to consider a total of 214 days (60 + 90 + 64) from the date of notification.

The extension of the deadlines apply to the applications originating proceedings, to the appeals of the judgements (in Regional Committee and before the Court of Cassation), for the filing of counterclaims, responses to the applications and cross-appeals as well as documents and briefs. In these last two hypothesis, the hearings shall be scheduled allowing the enjoiment of the deadlines for the filings. Therefore, by way of example, if the hearing is already scheduled on May15, given that there are 20 days left provided for backwards for the filing of documents, the date shall be postponed.

The obligation to file the deeds of the judgement only by means of electronic modalities even if the litigation started in printed form shall be provided.

Lastly, judicial offices may notify the sanction deeds coming from omitted or partial payment of the court fee by certified electronic mail to the address for service. The defence attorney, therefore, will receive not only the proceedings notifications but also the deeds related to legal costs, for which he shall guarantee the knowledge to its client.

It should also be noted, that, as of today's date, Decree Law No. 23 of 2020 provided no extension with respect to the provisions set forth in Decree Law No. 18 of 2020 regarding the Tax Credit for small shops and stores (Article 65) and for the Premium to employees (Article 63). Nevertheless, from the first drafts in circulation concerning the text of the law of conversion of Decree Law No. 18 of 2020, it would seem that such measures may be subject to deferment/modification in said drafts.

**Tax Credit for the purchase of personal protective equipments in workplace (Article 30)**

The sphere of application of Article 64 of Decree Law No. 18 of 2020 is extended. In particular, the expenses for the purchase of personal protective equipments and other equipments aiming at protecting the employees from the exposure to biological hazard of infection are included insuchh Article.

**Extension of bodies and balance sheets (Article 33)**

Article 33 provides for an extension of both the ordinary and extraordinary, administrative and supervisory bodies, of public entities referred to in Article 1, paragraph 2, of the Law No. 196 of 31 December 2009, with exclusion of Regions, Provinces, Municipalities, Mountain Communities and their consortiums and associations, as well as of the companies, that fall from office for having completed their mandate and not-reformed within the deadlines set by the provisions in force or because of impossibility, for those with an associative basis, to start and complete electoral procedures.

For the year 2020, the supplementary balance sheets, envisaged by Article 61 of the Royal Decree No. 2440 of 1923, related to the financial year 2019, are submitted within the end of the state of emergency declared by means of decision of the Council of Ministers of January 31st, 2020.

Decree Law No. 23 of 8 April 2020 does not provide any provisions that affect directly the regulation of employment relationships in the company. Nevertheless, some rules of the provision, deserve a brief in-depth analysis in relation to the connected implications of labour law aspects (directly or even only potentially) to the enjoiment by companies to the support measures provided for therein.

Article 1 (Temporary measures for the support to the liquidit assets of companies) provides for guarantees by the State, for a maximum amount of €200 billion, granted through SACE S.p.A. (of the group *Cassa Deposito e Prestiti,* Deposits and Loans Fund) in favour of banks and entities authorized to the provision of credit, providing loans, in any form, to companies established in Italy, allocating at least €30 billions of the aforementioned total amount to small and medium enterprises.

As explained in the illustrative report on Decree Law, the provision falls within the European regulatory framework introduced by means of the Commission Communication C (2020) No. 1863 of March 19, 2020 which allows the Member States to the implementation of measures aiming at *"finding a solution to a difficult economic upset"* and it is necessary to make reference to the European regulation for the notion of small and medium enterprise (referred to in Recommendation No. 2003/361/CE), whose notion includes also self-employed workers and independent practitioners with VAT number.

In the field of the conditions set forth for the release of the guarantees, it should be pointed out, as far as it may concern, that second paragraph of the aforementioned rule, at letter l) states that: *"the company that benefits from the guarantee, undertakes to manage the employment levels through trade union agreements"*. The *ratio* of the provision is, in our opinion, to protect the preexisting employment levels of companies that benefit from the guarantee, with the purpose of preventing the hyphotesis in which companies that after having obtained the loan, do not allocate the liquidit assets, almost in part, to support the personnel costs.

il cui corretto avvio ed esaurimento, anche senza un accordo, è condizione di legittimità dei licenziamenti che al termine saranno disposti dall'impresa, è legittimo l'interrogativo se saranno introdotte particolari procedure di esame congiunto – sul modello semplificato di quella in vigore per i licenziamenti collettivi – per le imprese che occupino meno di 15 dipendenti, e/o per le imprese che intendano effettuare licenziamenti plurimi per giustificato motivo oggettivo (meno di cinque dipendenti) o, addirittura, per procedere a licenziamenti individuali (sempre e solo per motivi oggettivi, non disciplinari) e se davvero sarà richiesta la sottoscrizione di un accordo sindacale per ritenere soddisfatta la "gestione" concertata voluta dalla norma.

Nevertheless, the modalities of assuming the commitment that will be required to the company and its standards, with particular reference to the compulsoriness – that, textually, would seem necessary – of reaching a "management" trade union agreement (no mention of the aforementioned condition is made in the illustrative report). Provided that the legislation on collective dismissals for industrial companies employing more than 15 employees (Law No. 223 of 1991), that provides for the necessity to start a concertation procedure with trade union organizations, whose correct start and completion, even without an agreement, is condition of legitimacy of dismissals that at the end will be concerned by the company, it is a legitimate question if particular procedures of joint examination will be introduced - in accordance with the simplified model of that in force for the collective dismissals – for companies employing less than 15 employees, and/or for companies that aim at carrying out objective justified collective dismissals (less than five employees) or, even, to carry on with individual dismissals (even and only for objective and not disciplinary reasons) and if the execution of a trade union agreement to consider the "management" agreed upon required by the rule, as "fulfilled" will be really required.

A Newsletter's guideline of the Ministry of Labour that clarify concretely the meaning of the aforementioned condition should be expected, in the short term.

Carrying on with the examination of the impact issues on labour issues, it should be pointed out that Article 30 provides that the tax credit at 50% attributed for the expenses incurred in 2020, in relation to the sanitization of workplaces and of working tools by Article 64 of the Decree Law No. 18 of 2020, may be extended with the measures and within the total limits of expenses provided therein, even to the purchase of personal protective equipments (face masks, protective visors, gloves, protective eye goggles) and other protection equipments aiming at preserving the employees from the accidental exposure to biological agents and the maintenance of the interpersonal safety distance.

The illustrative report makes a detailed simplification to explain the law.
Article 41 (labour provisions), finally, extends the benefit of wage top-up payments, referred to in Articles 19 and 22 of Decree Law, the so called "*Cura Italia"* even to employees hired in the period from February 24 to March 17, 2020. The rule also lays down the exemption from the stamp duty of the applications for the award of the exceptional redundancy fund.

With the Newsletter of the Ministry of Labour No. 8 of 08/04/2020, further clarifications on shock absorbers set forth for the epidemiological emergency COVID 19 have been provided.

The Newsletter explicitly limits the own application field to the CIGO (ordinary redundancy fund) and to the exceptional redundancy fund (CIGd) addressed to multi-location companies on the national territory and makes reference to a next Newsletter for the communication of further indications on solidarity funds and on the ordinary allowance (FIS).

The goahead is given to the exceptional redundancy fund for multi-located companies in almost five Regions (for example large retail). The support measure is extended to employees (as of March 17, 2020) and also to persons employed in bankrupct companies, although the employment relationship has been suspended.

Moreover, the right to Cigd is applicable both for suspensions and for reduction of working hours. The application, that shall be processed in accordance with the chronological order of submission, must be forwarded electronically through the platform Cigsonline with the reason "Covid-19 Deroga".

The Cigsonline's electronic modality, pursuant to the Newsletter, provides for two types of transmission: "paper sending" or "digital sending". In the first case, the scan of the first page of the application form (it seems without tax stamp) with hand-written signature and a currently valid document of recognition must be attached. If the company sent the application with a modality other than specified above, a new application shall be sent with electronic modality (this last aspect is clarified in barely intelligible terms).

The Ministry indicates that the requests, with the exception of companies employing less than 5 employees – shall be accompanied by the trade union agreement as laid down by «paragraph 1 of Article 1, of the Decree Law No.18 of 2020». However the abovementioned provision seems not to be comprehensive. However, in Article 22, paragraph 1 of the Decree Law No. 18, the agreement required is at regional level, but on the trade union issue it is not clear indeed which must be the correct recipient. A few days ago, INPS, with the newsletter No. 47, cleared that the applications for exceptional redundancy fund (Article 22) are subjected to the same trade unions procedures laid down in Article 19 (that is, information, consultation and joint examination).

The INPS choice from an administrative point of view seemed balanced, given that it puts on the same level all companies applying for the redundancy fund regardless of the instrument used (Cigo, Fis or Cigd). However, the position seemed also in line with the Government's willingness. By means of amendment No. 19.1000 submitted at the conversion law of Decree Law No. 18 of 2020 (subject to approval at the Senate in the next few days), an amendment to Articles 19 and 22 aiming at simplifying the procedures of access to the redundancy fund

for companies that suffered from a closure as a result of urgent regulatory provisions (the most part are those that make access to the exceptional redundancy fund) was explicitly provided. With such amendment it is laid down that information, consultation or joint examination and, even less, the trade union agreement are necessary. Therefore it is advisable that an unambiguous position is taken on this issue.

In any case, it is necessary, in the attachment to the application, to add the list of names of recipient employees, from which it results the total quantification of the working hours to complete with partition depending on the chosen type of working hours (full-time, part-time) with the related amount. Furthermore, the Ministry explains that also the data related to the company, to the business units that are receving the payment, the special single cause of intervention for accessing the payment and the name of the contact person of the application, are needed.

Also on the basis of the newsletter in question, an issue that seems common to various supplementation funds is the duration of the same that is fixed in nine weeks (except as specifically provided for Lombardy – Veneto and Emilia Romagna).

In this regard, it is worth recalling that on the basis of the well known Legislative Decree No. 148 of 2015, the calculation of the weeks (the so called “counter”) is based on the company, even if the hyphotesis that the enjoiment period must be based on the single employee has been contemplated.

At this time, however, INPS and its IT platform continue to be adjusted on the basis of the criterion provided for by Decree of 2015.

The possibility for employers, excluded from the scope of the payment of ordinary redundancy fund, to continue to refer to the special single causes envisaged by the current legislation for the extraordinary measure of wage top-ups, referred to in Legislative Decree No. 148 of 2015 still remains valid.

It is the case, for instance, of the air transport companies and companies of airport management, for which a possible use of the exceptional redundancy fund, referred to in Article 22, would not allow to access to the performances of the related solidarity Fund of the sector. The newsletter does not clarify wether in this case, constraints and burdens set out in the same Decree should be applied.

**Temporary provisions on the decrease of the share capital (Article 6)**

Article 6 of Decree Law No. 23 of April 8, 2020 set forth for limited companies, that, as a result of the economic crisis connected to the on-going health emergency, in the period between the entry into force of the Decree and up to the next December 31, should experiment a lockout of the losses carried forward from the previous fiscal year in the extent exceeding 1/3 of the share capital, namely, to an extent such to decrease it under the legal minimum, the suspension of the obligation burdening on directors to call the meeting without delay, in order to resolve the decrease of the share capital in the extent corresponding to the ascertained losses.

By means of such derogation on the enforceability of Articles 2446, second and third paragraph and 2447 of the Italian Civil Code, with regard to joint-stock companies, as well as of the analogous Articles 2482 *bis*, fourth, fifth and sixth paragraphs and 2482 *ter* of the Italian Civil Code, related to limited liability companies, the Government aimed at easing the approval of financial statements protecting those companies that as of December 31st, 2020, could reasonably not have covered the losses suffered in the on-going financial year, avoiding that the Board of Directors faces the choice of calling the meeting to resolve the decrease of share capital, that is of incurring in the liability for a preservative management that, however, would not be faithful to the real datum.

In such context, the disclosure requirement laid down in first paragraph of Article 2446 of the Italian Civil Code, given the express reference to the only second and third paragraphs, anyway remains valid.

Furthermore, in the same perspective, the last subparagraph of the Article in question provides that, in the same time span (that is from April 9 to December 31st, 2020) it is not possible to establish the winding-up of the company as a result of the reduction of the share capital under the legal minimum pursuant to Articles 2484, first paragraph and 2545 *duodecies* of the Italian Civil Code.

**Temporary provisions on the principles of drafting of the financial statements (Article 7)**

Article 7 of the Liquid Assets (*Liquidità*) Decree establishes a specific rule on the criteria for the drafting of the financial statements as of December 31st, 2020, explicitly stating that the prudent assessment of the financial statements items, in the perspective of a continuity of the social activity pursuant to Article 2423 *bis* of the Italian Civil Code, may be however made if existing in the financial statements of the previous fiscal year, closed by 23 February 2020, even if not formally approved by the meeting within said period.

Such provision aims at guaranteeing third parties from possible unfaithful representations of the company's statement of assets and liabilities, as the most part of social reports that will be closed by December 31st, 2020, could be considerably affected by the economic crisis following the spread of the pandemic and by the adoption of containment measures taken to fight such spread.

In such perspective, in order to guarantee third parties a so far as possible truthful representation of the business trend, net of the sudden and exceptional current circumstances, the Government has clearly intended to allow the organisations that, in ordinary conditions, enjoyed a good perspective of continuity, to draft the financial statements related to the current financial year and to make approve them in view of the same parameters used in the previous financial year, excluding, therefore, from the derogation in question all companies that, regardless of the current economic crisis, did not find themselves in a continuity state.

The provision contained in the *"Cura Italia"* Decree which postpones *erga omnes* the time-limit for the approval of the financial statements closed as of December 31st, 2019, of 180 days instead of 120 remains confirmed.

**Temporary provisions on loans to companies (Article 8)**

It is also in the context of safeguarding the companies from the catastrophic effects of the economic crisis and together with other financial solutions enforced by the Government, the following Article 8 of the Liquid Assets (*Liquidità*) Decree introduces a derogation indicated at Articles 2467 and 2497 *sexies* of the Italian Civil Code, establishing a derogation to the rule of the postponement of such entities in the restitution of loans compared to other company's creditors for the loans to companies provided by partners or by the "holding companies" in the period between the entry into force of the Decree (for example April 9, 2020) and up to December 31st, 2020.

The rule in question aims at encouraging the loans of the partners and of the parent companies to companies that could have the necessity (which still remains existing) to find funds in order to carry on the business and nevertheless the loan should be provided in a condition of excessive debt compared to the company's equity that is in a financial situation that would make reasonably to provide to a capital injection.

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