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Object: **Comments on Law Decree 8 april 2020, n. 23**

Introduction

The Italian government has adopted new urgent legislative provisions (Law Decree 8 april 2020, n. 23 – called “*Decree for Liquidity*”; “**DL 23**” hereafter), in an effort to assist companies in facing the emergency linked to the COVID-19 epidemic by (i) introducing urgent measures to facilitate access to bank financing (ii) delaying and simplifying fiscal deadlines and formalities (iii) temporarily amending company law provisions on company losses and shareholder funding (iv) protecting companies active in strategic sectors (v) introducing stringent rules on health protection in the work place and (vi) suspending and/or extending administrative and litigation deadlines.

Our Firm is making every effort to support its clients during this difficult period by providing: constant updates on legislative changes, advice regarding the practical impact of such changes, and general continued assistance with any specific needs they may have.

We have summarised below the main legal issues covered by DL 23. You will receive in due course a separate memo highlighting the tax aspects of DL 23, and comments by financial advisors on the new types of state guaranteed bank loans introduced by DL 23.

Art. 4 – Simplification for the execution of financial contracts

This article simplifies the execution of contracts between financial institutions and retail customers (defined as consumers, private persons acting in their role as professionals or sole entrepreneurs, non-profit organizations, companies with less than 10 employees or with a turnover below Euro 2 million, hereafter the “**Customers**”). This provision temporarily amends (during the period 9 April 2020 – 31 July 31 2020) the formalities required by the current legislation to ensure transparency of financial transactions. The simplified version of execution allows Customers to formalise their consent to the contract by ordinary e-mail provided that:

- Customers attach a valid form of identification to the email;
- The Customer’s consent expressly refers to a clearly identifiable contract;
- The financial institution archives the consent in accordance with maximum security standards ensuring that such consent cannot be tampered with.

The financial institution complies with its obligation to deliver a copy of the contract to the Customer by sending a soft copy of the agreement initially and delivering the original hard copy after 31 July 2020.

Customers can also use these simplified procedures to formalise their withdrawal from the contract to the extent such withdrawal is authorised by the law.

Arts. 5, 9 e 10 – Provisions in relation to bankruptcy procedures

DL 23 postpones to 1 September 2021 the term within which the new “*Italian Code of Corporate Crisis and Insolvency*” will come into force. As a consequence, situations of company distress during the Covid crisis will be governed by the current legislation on bankruptcy procedures. On one hand this allows Companies to use procedures they are familiar with, on the other, it deprives them of the new instruments/forms of relief available under the new Corporate Crisis and Insolvency Code.

DL 23 also provides that no company can be declared bankrupt until 30 June 2020, with the sole exception of bankruptcy procedures filed by the public prosecutor in conjunction with urgent, restrictive measures. All procedural terms in connection with pending bankruptcy procedures (or similar procedures, including court assisted agreements with creditors) are suspended from 9 March 2020 to 30 June 2020, including terms for filing director’s liability claims and those for claw-back procedures.

Art. 6 – Temporary provisions on consequences of losses on share capital

The duties of Directors to adopt corrective measures on corporate share capital in cases of losses accrued by a Company are suspended until 31 December 2020,

Art. 8 – Temporary provisions regarding loans to companies

The general principle of company law that provides that a shareholder’s loan can be reimbursed after all other creditors are satisfied, does not apply to loans made between 8 April 2020 and 31 December 2020.

Art. 11 – Suspension of payment deadlines for debt securities

The payment deadlines for promissory notes or other similar forms of debt securities issued before 9 April 2020 are suspended from 9 March 2020 to 30 April 2020; no other act or document to collect debts can be enforced during the fore-mentioned time period.

Despite the suspension, if funds are available, any cheque presented for payment during the above period must be paid the same day.

All other forms of sanctions connected to the non-payment of promissory notes and other similar debt securities are suspended from 9 March 2020 to 30 April 2020.

Arts. 36 e 37 – Procedural time limits in civil, criminal, administrative, tax, and military trials

All procedural time limits in civil and criminal trials are suspended until 11 May 2020. Until that date, no court hearing can be held.

The same provisions apply to all alternative dispute resolutions procedures.

Terms for serving claims in administrative procedures are postponed to 3 May 2020. No court hearing in administrative trial will be held until 15 May 2020.

Art.41 – New provisions on employment matters

All extraordinary forms of State funded salary support to employees temporarily laid off introduced by the previous Covid related emergency legislation will also apply to employees hired between 24 February 2020 and 17 March 2020.

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Please do not hesitate to contact us should you require further information or advice on the above.