Hogan Lovells

COVID-19 – Impact on hotel activities – Italy

9 April

On Wednesday, 11 March 2020, the World Health Organization declared the spread of coronavirus a global pandemic. On the same date – following the initial decrees issued to face the escalation of the Covid-19 emergency, which provided for limits only to certain activities and to certain areas of the country – the Italian Government issued the 11 March 2020 Law Decree (the "**Lockdown Decree**") providing for a shutdown of many activities and several limits to others on the whole Italian territory.

In particular, based on the Lockdown Decree, all commercial activities to the public/retail (e.g. restaurants, bars, etc. – including those located in the hotels) are shut down until 13 April 2020 (unless such term is postponed with further decrees), only with exclusion of essential and first necessity commercial activities, such as pharmacies and food stores. Strict limitations to people circulation have also been imposed. In addition, some important economic measures regarding, among others, hotel activities have been established by the Italian Government in the 17 March 2020 Law Decree (the "**Economic Measures Decree**").

Moreover, following the continuous spread of coronavirus, on 22 March 2020 the Italian Government issued another Law Decree ("**Shutdown Decree**") according to which, among others, all productive activities are shut down, with the express exclusion of those specifically listed in Annex 1 to the Shutdown Decree.

We have received inquiries from clients requesting legal guidance for navigating these uncharted waters, as the risk of pandemic may not have been one that was allocated in any specific document.
Although our perspective continues to evolve as we obtain updates about the coronavirus and its impact, we have identified a handful of legal topics for hotel industry stakeholders to consider while assessing the impact of this changing environment.

What about hotel activities?

At national level, hotel activities are allowed to operate (i.e. they do not fall under the activities which have to shut down based on the Lockdown Decree and the Shutdown Decree). However, there are some bans which directly impact on their activity, as reported below ("other bans impacting on hotel activities").

This does not apply to the Lombardy Region, where, based on a specific regional order (dated 22 March 2020) hotel activities and all accommodation facilities are not allowed to operate until 15 April 2020 (unless such term is postponed by future orders). An exception applies only to hotels

hosting certain categories (doctors/sanitary staff; staff serving at the same hotel; crew members; etc.).

Please note that the Lombardy Region order does not apply to certain accommodation categories such as residences, university student housing and social housing facilities.

Other bans impacting on hotel activities

At a national level, hotel activities have also been impacted by the following bans provided by the Lockdown Decree: (i) stop to all public and private events; (ii) stop to all restaurant and bar activities, including those within hotels; (iii) restrictions to travel to and from Italy.

Additional measures related to hotel activities

The Economic Measures Decree provides for specific measures impacting on hotel activities. In particular:

- until 31 July 2020 (unless such term is postponed with further decrees), in cases in which it is necessary to temporarily dispose of real estate in order to meet unavoidable needs related to the Covid-19, the competent local authorities may order the requisition in use of hotel facilities to accommodate persons under health surveillance or quarantine. A requisition allowance shall be paid by the Italian competent authorities to the owner of said property (for the purposes of the estimate, reference shall be made to current market value of the requisitioned property or that of properties of similar characteristics); and

- until 3 April 2020 (unless such term is postponed with further decrees), termination of travel packages and a full refund for bookings of hotel accommodations - as well as travel expenses and events tickets - can be obtained by the purchaser from the relevant seller (e.g. hotels, tour operators, travel agencies, transport company, etc. as the case may be) for various grounds related to the Covid-19 emergency and listed in the Economic Measures Decree.

Measures to be adopted by hotel companies in their position as employer

Hotel companies need to implement specific health and safety measures to protect health and safety of their employees. Specific safety protocols have to be adopted, in particular when hotels are still operating. In this respect, on 14 March 2020, the Government and the main Employers' Associations and Unions, have signed a protocol mentioning some safety and organizational measures to be taken with reference to the Covid-19 situation.

To be noted also that that the Economic Measures Decree:

- suspended the possibility for employers to dismiss employees for business reasons for 60 days starting from the entering into force of the same Decree;

- simplified and widened the access to the so called "*Cassa Integrazione Guadagni Ordinaria*" (i.e. public aid aimed to manage working time reductions due to particular circumstances);

- suspended until 31 May 2020 all the deadlines for the payment of social security contribution, mandatory accidents, work insurance and withdrawals on employees' payslips expiring in the period between 8 March and 31 March 2020 for companies meeting certain requirements. Moreover, the latest Law Decree issued by the Italian Government on 8 April 2020 has provided for the suspension until 30 June 2020 of all the deadlines for the payment of social security contribution, mandatory accidents, work insurance and withdrawals on employees'

payslips expiring in the period between April and May 2020 for companies meeting certain requirements

Hotel lease agreements - general considerations

In principle, there may be arguments to qualify the Covid-19 pandemic as a “force majeure” event, for the purposes of invoking termination of a lease agreement or suspension of certain obligations provided thereof (e.g. payment of the rent). Nevertheless, such qualification is not straightforward.

First of all, it would be necessary to review what is stated in the relevant lease agreement in relation to what may be considered as a “force majeure” event, or whether a “rebus sic stantibus" clause (or a similar concept) is provided in the agreement. For instance, provisions concerning guaranteed minimum rent are generally structured and interpreted as "aleatory provisions", meaning that the risk of potential losses weighs on the tenant as part of its commercial/professional activity.

If no clear regulation on “force majeure” is provided in the lease, evaluations have to be made on a case-by-case basis, taking into account the applicable Italian legal framework, including the fact that Italian law does not provide for a specific definition of “force majeure” – although various provision of the Italian civil code ("ICC") may help in this respect.

For instance, *inter alia*, article 1463 ICC provides that in contracts with mutual obligations, the party exonerated due to intervening impossibility of performance owed may not demand counterperformance, and must return what it has already received, according to the rules relevant to claim for return of undue payment. Pursuant to article 1464 ICC, where the performance by one party has become only partially impossible, the other party is entitled to a corresponding reduction in the performance due by it, and may also withdraw from the contract if it has no appreciable interest in partial performance. Moreover, article 1467 ICC provides that in contracts with continuous or periodic performance, or contracts with deferred performance, if the performance of one of the parties has become excessively onerous due to the occurrence of extraordinary and unforeseeable events, the party who owes such performance may request termination of the contract. Termination may not be demanded if the occurrence of such onerousness falls within the normal scope of the contract. The party against whom termination is sought may avoid such termination by offering to modify the terms of the contract in an equitable manner.

Bearing in mind what stated above, and that Italian case law consistently held that a law or a regulation of an authority shall be deemed as force majeure, if no clear regulation on "force majeure" is provided in the relevant lease agreement, different scenarios may come into consideration, depending on whether (i) the tenant is totally prevented from carrying out the hotel activity due to an order of a competent authority (e.g. if authorities ordered the suspension of all hotel activities and/or the closure of the hotel for health reasons, as it happens in the Lombardy Region pursuant to regional order dated 22 March 2020) or (ii) the force majeure event does not prevent the tenant to carry out the hotel activity, but has either a direct or an indirect impact on the hotel activity (as it happens for hotel activities in all Italy apart from the Lombardy Region, where hotel activities are allowed, although severely impacted by current restrictions applicable to bars, restaurants and travels).

It should be also noted that article 27 of Law no. 392/1978 provides that the tenant under a lease agreement may withdraw from the agreement at any time if there are "good causes" (i.e. serious reasons) by sending a registered letter with at least six months' notice – unless (in case of hotel

lease agreements with an annual rent higher than Euro 250,000) the applicability of this law provision was expressly excluded by the parties in the agreement. However, it must highlighted that Courts have always been quite reluctant to recognize withdrawal for serious grounds, and in any case have maintained that the serious grounds must be determined by objective facts unrelated to the tenant's will (not events pertaining to the normal business risk), unforeseeable and occurring during the establishment of the relationship, such as to make its continuation extremely burdensome to the tenant – taking into account that general reference to financial difficulties of the tenant have often been considered too vague and generic to support a request of termination of the lease agreement for good cause. Right to terminate under the above provision needs to be evaluated case by case.

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