LATHAM&WATKINS

Client Alert White Paper

COVID-19 Task Force — Milan

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Managing Italian Private Equity Investments During the COVID-19 Outbreak

Practical guidance for private equity firms when tackling Italian portfolio companies' questions during the pandemic.

In light of the COVID-19 outbreak, the Italian government has adopted significant steps to curb the spread of the disease. In particular, the government has issued four major extraordinary decrees: (i) the Law Decree no. 18 of March 17, 2020 (the Cura Italia Decree); (ii) the President of the Council of Ministers Decree of March 22, 2020 (the Cura Italia 2 Decree); (iii) the Ministerial Decree of March 25, 2020 (the Cura Italia 3 Decree); and (iv) the Law Decree no. 19 of March 25, 2020, which supplement orders and regulations implemented in late February to early March 2020, and affect the conduct of all activities, including the continuation of business and commercial operations. This *White Paper* will provide private equity firms with (i) an initial overview, from an Italian law prospective, of the questions that are most likely to arise in managing their Italian portfolio companies and (ii) a guideline of the most relevant issues.

Commercial matters

Has the government ordered the lockdown of all Italian companies?

Partially, yes. The government ordered the lockdown of only those entities that carry out non-essential business. In order to identify which businesses are essential and, consequently, which companies can carry on with their respective production activities, by means of the Cura Italia 2 Decree the government issued (and subsequently amended, with the Cura Italia 3 Decree) a list of specific codes that classify the activities of your portfolio company in the Registry of the Chamber of Commerce (so-called ATECO codes). Accordingly, a portfolio company must check the ATECO code, to confirm whether the company will be able to continue operating.

The list of the essential businesses is attached as Annex A to this *Client Alert*.

In addition:

- Production, transport, marketing, and delivery of medicines, health technology, and medical-surgical devices, as well as agricultural and food products will always be permitted.

- Any activity that is required to combat the COVID-19 emergency is also allowed.

- Continuous production cycle plants whose interruption causes serious damage to the plant or a risk of accidents is permitted, upon notification to the Prefect of the province where the production activities are located (in order to continue the relevant activities, companies shall notify the Prefect of the province where the production activity is located, who may suspend the activities if it deems that the conditions are not met. Note that, until the adoption of the relevant Prefect's measures, it shall be considered lawful to carry out the activities on the basis of the declaration made to the Prefect).

- The activities of the aerospace and defense industry, as well as the other activities of strategic importance for the national economy, are allowed upon authorization of the Prefect of the province where the production activities are located.

Key Provisions of Law: Art. 1 of the Cura Italia 2 Decree and Art. 1 of the Cura Italia 3 Decree.

When will the shutdown of production activities take effect?

The shutdown shall be effective from March 23, 2020, until April 3, 2020.

Moreover, according to the Cura Italia 2 Decree, companies whose activities are suspended had to complete the activities necessary for the suspension by and no later than March 25, 2020, including the shipment of goods in stock.

Other companies whose activities have been suspended only by the Cura Italia 3 Decree shall complete the activities necessary for the suspension by and no later than March 28, 2020, including the shipment of goods in stock.

Key Provisions of Law: Art. 2 of the Cura Italia 2 Decree and Art. 1 of the Cura Italia 3 Decree.

If the activity of a portfolio company is not suspended, is the company able to continue to operate without restrictions?

NO, even companies whose activities are not suspended by the Cura Italia 2 Decree shall comply with the provisions of the shared protocol — issued on 14 March 2020 — setting forth certain measures to fight and contain the spread of the COVID-19 virus in the working environment. In particular, such measures relate to, *inter alia*: (i) the flow of information regarding any medical conditions of the employees; (ii) the procedures for accessing the production sites (both for employees and suppliers); (iii) the cleansing and sanitization of the production sites; (iv) certain preventive measures relating to personal hygiene and protective tools; (v) the management of shared spaces; (vi) the company-level organization (*e.g.*, travel, rotation among the employees, smart-working); (vii) the sanitary surveillance; and (viii) the update to the relevant company's guidelines (through the set-up of a specific committee).

Implementation of these measures should be assessed and monitored by the HR department and discussed at board level, if necessary. Companies should keep a record of the adopted compliance measures.

Key Provisions of Law: Art. 1 of the Cura Italia 2 Decree.

How can portfolio companies continue production activities if any key suppliers' business is considered non-essential?

According to the Cura Italia 2 Decree, activities that are not considered essential, but are functional to ensure the continuity of the supply chains of the activities that are permitted (as mentioned in section B.1), as well as of public utilities and essential services, shall also continue to be permitted at all times,

subject to notification to the Prefect of the province where the productive activity is located. The notice shall specifically indicate the enterprises and administrations benefiting from the products and services pertaining to such activities, and the Prefect may suspend the above activities if they consider that the required conditions are not met. Note that, until the adoption of Prefect's measures, it shall be considered lawful to carry out the activities on the basis of the declaration made to the Prefect.

Key Provisions of Law: Art. 1 of the Cura Italia 2 Decree.

Does the COVID-19 outbreak (and consequent governmental restrictions) constitute an unforeseeable and exceptional event that may affect the performance of commercial agreements?

YES, for the majority of agreements in place, the COVID-19 outbreak and the consequent governmental restrictions to movement and business are exceptional and unforeseeable events.

The Cura Italia Decree clarified that any delay to perform a commercial agreement or breach of the agreement due to compliance with the restrictive measures would be excused and, therefore, the delay would exclude the application of any penalty.

Key Provisions of Law: Art. 91 of the Cura Italia Decree.

Does Italian statutory law expressly govern how to handle force majeure events that prevent parties to a contract to perform their obligations?

NO, there are no general statutory provisions relating to force majeure that would excuse any party to a commercial agreement for the breach caused by a force majeure event. However, parties may freely include specific provisions in their contracts to deal with any such unexpected events. Therefore, when dealing with the non-performance of any obligation caused by force majeure, it shall first be investigated whether or not the parties of a written agreement have agreed on how to handle such kind of events. See answer 5 of Section B with respect to the clarifications made in the Cura Italia Decree.

In the absence of statutory/contractual provisions specifically dealing with the occurrence of force majeure events, such as the COVID-19 outbreak, are there other relevant tools available under Italian law to terminate a commercial agreement or otherwise amend certain provisions thereof?

YES, under Italian law, several grounds that may be invoked to terminate commercial agreements or otherwise amend their terms exist. However, termination may not be in the best interest of the parties, who might simply prefer to amend in good faith the relevant provisions that, as a consequence of the unforeseeable force majeure event, have become unjust.

Note that most of the remedies provided by applicable laws are not mandatory and, therefore, parties may expressly exclude their application under an agreement. As a consequence, any relevant agreement must be scrutinized in order to ascertain if the parties excluded the below remedies. See answer 5 of Section B with respect the clarifications made in the Cura Italia Decree.

Key Provisions of Law: Art. 1256, 1463, 1464, and 1467 of the Italian Civil Code and Art. 91 of the Cura Italia Decree.

Which general remedies under Italian law apply upon occurrence of extraordinary events?

The General Principle of Good Faith

Under Italian law, parties to an agreement must always act and perform their respective obligations with fairness and good faith. As a consequence, in case of unexpected events that affect the obligations arising from an agreement, most recent case law and doctrine argue that, before claiming termination of the agreement (or otherwise claim the amendment of certain of its terms), the parties shall make reasonable efforts to renegotiate the provisions of the agreements that became unjust as a consequence of the unexpected event. This general principle cannot be excluded by the parties.

Termination of the Agreement and/or Payment Reduction for "Supervening Impossibility"

In case the performance of the obligation of one party becomes absolutely and objectively impossible and such impossibility was unforeseeable, the non-performing party may invoke the termination of the agreement for "supervening impossibility" in order to be completely discharged from his/her/its obligations. Under Italian case law, impossibility of the performance may be caused by, for example, supervening governmental regulations that affects the parties.

Significantly, in the event performance becomes only partially impossible, the party who shall benefit from the partially impossible undertaking has either the right to a corresponding reduction of his/her/its counter-performance or the right to withdraw from the contract if he/she/it does not have a material interest to the partial fulfilment of the obligation by the other party.

Termination of the Agreement for Excessive Cumbersomeness (eccessiva onerosità)

In case the performance of the obligation of one party under a long-term contract becomes excessively burdensome compared to the performance of the other party, and such burdensomeness is the result of an extraordinary and unpredictable event, the party whose performance became excessively burdensome may initiate a judicial claim to terminate the contract. The other party may avoid the termination by offering to renegotiate fairer terms of the agreement.

Focus on Lease Agreements

As a consequence of the government-imposed restrictions, lessees may argue that they are allowed to avoid paying rent to the lessor, because of supervening impossibility to use the leased premises or excessive cumbersomeness of the rent compared to the use they make of the premises. Parties must ascertain the existence of all the requirements for the mentioned remedies and, in particular, whether the current regulations really and objectively prohibit to use the leased premises. This might be true for shops (mostly closed as a consequence of the governmental measures), but not for offices; indeed, the governmental measures generally did not impose office closures, but offered only advice on how to carry out such activities in order to avoid any infection. As a consequence, in the latter case, the most appropriate means a lessee has under such emergency is the duty to act in good faith and request the lessor to renegotiate the rent. Lessees may not unilaterally decide not to pay the rent (or part of it), as such a unilateral act would constitute a breach of contract and would allow the lessor to apply the remedies provided for by the agreement or by applicable law. In this respect, it is worth noting that the Cura Italia Decree provides for a tax credit in an amount equal to 60% of the rent for shops (but not offices) for the month of March 2020.

Corporate matters

Do companies need / would it be appropriate to convene a board of directors of portfolio companies based in Italy to address the emergency?

YES, in general, it would be appropriate to convene a board of directors' meeting of at least those companies that exercise the management and coordination activity and the operating holding companies of the relevant portfolio group, in order to have all the directors fully involved in the decision process in such a critical situation. In any event, the timing and the organization of the meeting should be assessed on a case-by-case basis, depending on the corporate governance structure of each portfolio company and the powers' delegation structure.

What if certain directors have been provided with specific powers to act without board of directors' prior resolutions?

Certain CEOs and other delegated directors or officers of the portfolio companies may already have broad powers and may be in a position to take action expeditiously, given the circumstances. Therefore, there is no strict obligation to convene a board meeting.

However, since the directors of an Italian company have a general duty to (i) manage the respective company in compliance with applicable laws and the company's by-laws, acting at all times in the best interests of the company and (ii) supervise the way the business of the company is carried out, doing whatever they can to prevent or minimize the harmful consequences of any prejudicial act that they become aware of, it would be in their interest to request that a meeting is held to assess the situation as soon as possible and clarify the impact of the COVID-19 outbreak on the business of the company.

What measures should be taken?

Generally, portfolio companies should grant broad powers to cover extraordinary measures to be taken with respect to: (i) relationships with the clients and the suppliers; (ii) access to labor-cost reduction measures; (iii) financing measures to restructure financial indebtedness or obtain short-term liquidity; and (iv) access to tax benefits.

In addition, it is advisable that discussions on measures to meet health and safety requirements in the workplace are formalized at board level to ensure that the company reacts promptly in the event of contamination. Lack of proper action in this area might lead to civil and criminal liability of the directors.

Finally, portfolio companies should monitor from time to time the developments of the emergency and the effects of the measures to potentially adopt corrective measures and adjust those in place.

What might be the typical agenda of a board meeting during the emergency?

A typical agenda of a first board meeting of a portfolio company could cover the following matters:

- Acknowledgment of the measures set forth in the Cura Italia Decree and the other laws and regulation implemented at a national and local level and adoption of ad hoc resolutions, including with respect to measures on health and safety
- Assessment of the impact of a total/partial closure of the plants and adoption of a management and organization plan in relation to the core/essential activities
- Adoption of (i) a cost-containment plan and (ii) a plan to maintain adequate liquidity levels

- Assessment of relationships with suppliers and customers (in order to evaluate possible renegotiations of the existing contracts)

Are there any simplified formalities to hold shareholders and board of directors' meetings?

YES, the Cura Italia Decree provides for measures to help Italian private and public companies deal with the impact of COVID-19 during the 2020 annual general shareholders' meeting season, in order to facilitate the attendance of shareholders using means other than in-person attendance in compliance with the government-imposed restrictive measures to reduce the risk of infection.

Joint-stock companies (*società per azioni*) and limited liability companies (*società a responsabilità limitata*) are entitled to convene ordinary or extraordinary shareholders' meetings (and shareholders' votes may be collected and exercised) using electronic means or by mail, and shareholders may attend such meetings using audio or video calls (instead of in-person). Companies may also hold shareholders' meetings exclusively by audio or video calls, while verifying participants' identities, attendance, and their exercise of voting rights.

If meetings are held through audio/video calls, the chairman and the secretary of the meeting (*i.e.*, the notary in case of extraordinary shareholders' meetings) are no longer required to attend the meeting in-person in the same place.

Limited liability companies (*società a responsabilità limitata*) may allow voting to take place by written consultation or by written consent.

Companies with equity listed on Italian-regulated markets may appoint the designated representative (*rappresentante designato*) provided for companies with equity listed on Italian regulated markets to act as proxy of the shareholders at ordinary and extraordinary shareholders' meetings. Such companies can appoint the representative even if their by-laws provide for the opt-out from such an option. Listed companies may also provide in the notice calling the meeting that shareholders may attend such meeting exclusively by granting the proxy to the designated representative, thus reducing the number of in-person attendees. Notably, these provisions have also been extended to Italian companies with equity admitted to trading on a multilateral trading facility (*e.g.*, AIM Italia) and to private companies with shares widely distributed among the general public.

The corporate provisions above shall apply to shareholders' meetings convened by July 31, 2020 or even later (*i.e.*, until the national state of emergency due to the COVID-19 outbreak lasts).

Note that, according to the Milan's Corporate Commission of Notaries, the shareholders' meetings can be held via phone/video call even if the chairman is not in the same place as the secretary. By-laws provisions requiring that the chairman and the secretary (including a notary) attend the meeting in the same place only apply if the minutes of the meeting need to be finalized immediately after the meeting; in all other cases, only the secretary needs to attend the meeting in person where the meeting has been convened. Such provisions equally apply to the board of directors' meetings.

Key Provisions of Law: Art. 106 of the Cura Italia Decree and Art. 135-*undecies* of the Italian Legislative Decree no. 58/1998.

Is there a new deadline for the approval of portfolio companies' 2019 financial statements?

YES, all Italian companies are allowed to convene the annual general shareholders' meeting to approve the financial statements within 180 days after the end of their financial year (*i.e.*, 2019). This extends the

ordinary term of 120 days provided for by the Italian Civil Code, regardless of the existence of any by-laws clause providing for the longer 180-day term available to companies preparing consolidated financial statements or upon the occurrence of specific needs relating to the structure or business of the company to be described in the management report attached to the financial statements.

It is important for portfolio companies to consider any reporting covenant which may be contained in the existing finance documents setting forth different terms for providing the lenders or Bondholders with the annual financial statements.

Please note that the 180-term refers to the first call of the meeting.

Key Provisions Of Law: Art. 106 of the "Cura Italia" Decree and Art. 2364(2) of the Italian Civil Code.

Is any specific financial reporting or market disclosure due in connection with COVID-19?

YES, equity and debt listed issuers should take into account their disclosure requirements under the Market Abuse Regulation and, as far as issuers listed on regulated markets (*e.g.*, *Mercato Telematico Azionario*) are concerned, under the Transparency Directive. In this respect, note that on March 11, 2020, the European Securities and Markets Authority (ESMA) publicly recommended to issuers above:

- (i) to disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation;

- (ii) to provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment of their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalized or otherwise in their interim financial reporting disclosures.

Therefore, companies should determine the extent of disruption to their business and operations as a result of the epidemic emergency and evaluate if they need to update their forward-looking statement language, if any, to address the COVID-19 outbreak and include risk factor disclosures in their 2019 year-end financial report discussing any risks related to the spread of COVID-19 on their business operations (due to quarantines of employees and suppliers, travel restrictions, etc.).

Key Provisions Of Law: Regulation (EU) 2014/596, Directive 2004/109/EC, ESMA Recommendation of March 11, 2020.

Financing matters

Would it be possible to drawdown any available revolving credit facility (RCF)?

The possibility to drawdown available revolving credit facilities require an analysis of the events of defaults/covenants under the relevant contractual documentation governing the RCF, to be carried on a case by case basis. If the intention is to drawdown, in whole or in part, the RCF, portfolio companies need to be aware of the applicable drawing conditions and of the impact of the drawdown on the financial covenants. Typically, the absence of any event of default has to be represented as a condition to borrowing. Determining whether an event of default has occurred depends on the wording of the underlying contract and is highly fact-specific.

Some portfolio companies may consider to drawdown credit facilities with the aim of preventing shortfalls of working capital if economic prospects worsen.

Do companies need to inform bondholders if they drawdown the RCF? Are there any other disclosure obligations?

The drawdown on a revolving facility would not typically trigger an independent disclosure to the Bondholders or publicly. However, borrower/issuers may determine that public disclosure is required (*e.g.*, for MAR purposes) or otherwise appropriate in connection with a drawdown based on the facts and circumstances of the specific situation.

Do we need to review the finance documents in light of the COVID-19 outbreak?

YES, all portfolio companies shall conduct a full review of their finance documents. Focus should be placed in particular on the provisions that may have been impacted by the COVID-19 Outbreak, including financial covenants, information covenants, events of default, and MAC.

Is there any measure that could be Implemented to help a company in getting liquidity?

Portfolio companies may seek additional financial resources beyond drawings on existing credit lines. In order to get liquidity from other available sources of funding, they should consider whether the incurrence and drawdown of additional debt is allowed under the existing finance documents and whether there are any limitations, baskets or conditions which should be potentially re-discussed with the existing lenders to obtain additional liquidity.

Employment-related matters

Given the ordered shutdown, do portfolio companies still have to pay employees who can no longer come to work?

From a purely legal standpoint, the shutdown will entail a suspension of the mutual fundamental obligations set forth by each relevant employment agreement entered into with those employees who will no longer be in a position to work. Therefore, during the shutdown, such employees shall no longer be obliged to comply with their core obligations (*i.e.*, to work), whereas the employer shall no longer be obliged to pay the relevant salaries to such employees.

In this situation, the mechanism of the various wage guarantee funds (please see answer below) is implemented. This mechanism might entail that a company under shutdown may still have to anticipate the relevant wage integrations to its employees (thus sustaining an outbound cash-flow), which will be subsequently reimbursed by the competent Italian public entity (*i.e.*, the Italian Social Security Agency – *INPS*). That having been said, please also consider that from a practical standpoint the companies generally prefer to force the relevant employees to take their holidays before accessing the wage integrations fund. In this case, employees are paid as usual.

If employees still have to be paid, is there any government support/compensation? Are temporary layoffs with government compensation more easily accessible now?

YES, the Cura Italia Decree enables eligible employers (*e.g.*, industrial companies) to apply for the ordinary wage guarantee fund (*Cassa Integrazione Guadagni ordinaria*) or for access to the wage integration fund (*Fondo di Integrazione Salariale*) as a consequence of the COVID-19 emergency in a simplified and expedited manner, from February 23, 2020, up to a maximum of nine weeks and, in any event, until August 2020. On a residual basis, for those employers that cannot benefit from such

protections, regions, and autonomous provinces — following a previous agreement with the relevant national organizations — may provide for a wage guarantee fund by way of derogation (*Cassa Integrazione Guadagni in deroga*) for a maximum period of nine weeks (or 13 weeks if the company has a plant or an office in Emilia Romagna).

Such wage guarantee funds might be implemented on a "first-come, first-served" basis (until the maximum amount of the fund is reached), so portfolio companies, if eligible for such funds, should promptly request them. Considering the effects that the suspension of a company's business may have, it is, however, reasonable to expect that the government will increase the size of the wage guarantee fund accessible to the eligible companies.

If production is shut down, can office workers still work remotely?

YES, the Cura Italia 2 Decree specifically provides that all production activities that are suspended may continue if performed remotely.

Are portfolio companies free to implement dismissals for justified objective reasons due to the COVID-19 emergency?

NO, starting from the coming into force of the Cura Italia Decree (March 17, 2020) and for a period of 60 days, all employers are prohibited from executing any collective or individual dismissal of any employee for "justified objective reasons," and any pending procedure shall be suspended.

Tax matters

Are portfolio companies required to pay all the taxes on the applicable due dates? When are the tax declarations due?

IT DEPENDS on the seat and activity of the portfolio company in question.

The applicable legislation provides for the following suspensions[1]:

- for those companies which are active in sectors particularly affected by the COVID-19 emergency (*e.g.*, tourism, sport, art and culture, and transport) a suspension is provided for: (i) payments of withholding taxes on employment income and income assimilated to employment income and social security contributions expiring until April 30, 2020 (or May 30, for companies operating in the sport business); and (ii) VAT payments expiring in March 2020.

- for those companies having their registered offices or operational headquarters in the provinces of Bergamo, Cremona, Lodi, and Piacenza, a suspension is provided for VAT payments expiring between March 8, 2020 and March 31, 2020.

All the relevant payments mentioned above shall be made, without penalties/interests, by May 31, 2020 2020 (or June 30, for companies operating in the sport business) or in five monthly instalments payable from May 2020.

All other companies are required to make full tax payments when due.

The Cura Italia Decree provides that all tax compliance obligations that shall become due between March 8, 2020 and May 31, 2020 (*e.g.*, filing of tax returns and communications) other than: (i) tax payments; and (ii) the application of withholding taxes at source and regional and municipal surcharges are

suspended until June 30, 2020, when such tax obligations shall be complied with. Deadlines for the tax duties connected to pre-filled tax returns (so called *Dichiarazione precompilata*) are not affected.

Key Provisions of Law: Art. 61 and 62 of the Cura Italia Decree.

Does the COVID-19 legislation impact the tax rulings and/or tax litigation?

YES, the Cura Italia Decree sets forth that all administrative and collection actions to be performed by tax authorities, including tax rulings on new investments (so called *interpelli sui nuovi investimenti*), litigation, audits, and tax assessments, are suspended from March 8, 2020, to May 31, 2020.

During such period, any collections due are postponed until June 30, 2020, without application of any penalty or interest.

Any tax statute of limitations expiring on December 31, 2020, is postponed to December 31, 2022.

In the period between March 9, 2020 and April 15, 2020 (included), all hearings and terms for the completion of acts relating to ongoing tax proceedings or introductory acts in tax proceedings are suspended. Moreover, the terms that would have commenced in the period from March 9, 2020 to April 15, 2020 (included) shall start from April 16, 2020.

M&A and potential new investments

Is a buyer under a sale and purchase agreement entitled to trigger the material adverse change (MAC) clause because of the COVID-19 outbreak?

IT DEPENDS. MAC clauses most commonly apply if a material modification to the operations, assets, position (financial, trading, or otherwise), profits and prospects of the business of the target occurs between signing and closing as a consequence of an extraordinary and unexpected event.

The MAC clause may be drafted either providing that it shall be triggered upon the occurrence of specific events with specific consequences (giving more certainty to the parties) or providing a more generic wording (covering more events, but giving less certainty on its trigger). Without a specifically worded formulation, a precise analysis needs to be carried out in order to understand the impact of the COVID-19 outbreak on the application of each clause, and, more in general, of the relevant contract.

What if a sale and purchase agreement (SPA) does not contain a MAC clause?

Not all SPAs expressly include a MAC clause. In such case, a deep analysis must be carried out to ascertain how the parties ruled the allocation of any unexpected risk. For example, parties may have considered the agreement as a hazardous agreement (*contratto aleatorio*), so excluding any possible remedy a party may have should an unexpected event have caused an unjust modification of the value of the performances of each of the parties. Moreover, the existence of price adjustment clauses may be interpreted as means for the parties to amend (without renegotiation) certain provisions of the SPA that, as a consequence of the unexpected event, became unjust.

Key Provisions of Law: Art. 1469 of the Italian Civil Code.

Is there any limitation to portfolio companies' acquisition strategy?

YES, the Cura Italia Decree provided that all administrative procedures, initiated either by private individuals/entities or by public authorities pending as of February 23, 2020, or commenced after such

date, are suspended until April 15, 2020. Therefore, the timeframe between February 23, 2020, and April 15, 2020, shall not be taken into account for the purposes of the relevant time elapsing and the relevant procedures.

In this respect, all public authorities shall implement appropriate organizational measures to ensure a reasonable duration and a swift conclusion of all the ongoing administrative procedures, prioritizing cases/proceedings deemed to be "urgent" on the basis of the reasons indicated by the parties involved. The same principle applies to the computation of the terms that are relevant for the purposes of the automatic consent (*silenzio-assenso*) and automatic refusal (*silenzio-rifiuto*) mechanisms proceedings.

The above has also an impact on the administrative procedures for the granting of the so called "Golden Power" clearance, which must be requested to the Italian government, *inter alia*, in case of acquisition of entities involved in certain strategic sectors (including defense and national security; energy telecommunication and transportation, hi-tech and 5G technologies, and other critical infrastructure and technologies referred in the applicable EU regulation). In particular, even though no specific provision on the exercise of the special powers of the Italian government under the applicable Golden Power regulation are set forth in the Cura Italia Decree all ongoing terms relating to the notifications submitted, either prior to or after February 23, 2020, pursuant to the Golden Power regulation shall be suspended until April 15, 2020. Therefore, in relation to the notifications made to the Italian government prior to February 23, 2020, all terms (including those relating to the exercise of the powers vested upon the Italian government) under the Golden Power regulation shall be deemed to have commenced elapsing on the date of submission of the notification until February 23, 2020. The procedural terms shall start running again from April 15, 2020. As to notifications submitted after February 23, 2020, the relevant applicable terms shall start running from April 15, 2020.

Accordingly, all pending transactions in relation to which a notification has been made to the Italian government and whose closing is subject to the relevant Italian government's clearance shall remain on hold, due to the standstill obligation set forth by the applicable law which requires that, prior to implementing a transaction, either a clearance by the Italian government is given or the term to receive such clearance opinion is expired without any negative opinion having been given.

However, the above-mentioned suspension does not exempt entities, which intend to perform an acquisition subject to the Golden Power regulation, from making appropriate notifications to the Italian government also in the period between February 23, 2020, and April 15, 2020.

Moreover, the Italian Prime Minister recently mentioned in press interviews that the government may consider expanding the scope of the Golden Power regulation to include all listed companies on Milan's stock exchange, including banks and financial institutions.

Finally, the Cura Italia Decree also provides for the appointment of an Extraordinary Commissioner with powers to implement and coordinate the measures necessary to face the COVID-19 emergency. Specifically, the role's main powers include the adoption of any necessary measures to preserve and protect the production lines of the assets required for the COVID-19 emergency.

Key Provisions of Law: Art. 103 of the Cura Italia Decree.

Is there any limitation that affects listed companies?

YES, effective from March 18, 2020, the Italian Securities Commission (CONSOB) has imposed stricter reporting obligations of relevant shareholdings in certain Italian-listed issuers and extended the short sale ban on share traded on the Italian *Mercato Telematico Azionario*.

According to Italian law implementing the EU Transparency Directive, the entry threshold of relevant shareholding to be reported is lowered:

- From 3% to 1% for no. 38 companies with equity listed on the *Mercato Telematico Azionario*. The regulator has selected these companies based on capitalization higher than €5 million and spread ownership structure.

- From 5% to 3% for no. 10 small/medium enterprises.

These new restrictive measures will be effective until June 18, 2020, save for early revocation. Anyone holding a stake above the new entry thresholds in any of the listed issuers concerned as of March 18, 2020, will have to comply with the new reporting requirements under Italian law by April 1, 2020.

The above thresholds are on top of those already in existence, which shall continue to apply. Accordingly, in respect of the companies the thresholds will be 1% (only for those under item (i) above), 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, and 66.6%.

The short sale ban will be in place for 3 months starting from March 18, 2020, and covers all shares traded on the Italian *Mercato Telematico Azionario*. The ban applies to any net short position taken or increased on any trading venue and includes intraday transactions. It excludes (i) market making positions, (ii) trades in indices, provided that the Italian shares covered by the ban do not represent more than 20% of the index weight; and (iii) building up or increasing, net short positions exclusively aiming at stemming the equity underlying of convertible bonds or option rights previously purchased.

Key Provisions of Law: CONSOB Resolutions no. 21303 and 21304, Art. 120 of Legislative Decree no. 58/1998 and Regulation (EU) 236/2012.

Litigation

Does the COVID-19 Regulation affect ongoing civil litigations?

YES, pursuant to the Cura Italia Decree, all hearings (with the sole exception of certain hearings relating to maintenance obligations and individuals' fundamental rights) scheduled before all Italian civil courts between March 9, 2020, and April 15, 2020, shall be rescheduled *ex officio* after April 15, 2020.

Moreover, during the same period, all procedural deadlines relating to all civil litigations are suspended as follows: (i) procedural deadlines starting to run during the period of suspension will run as of the end of this period; and that (ii) all hearings and procedural activities scheduled after the period of suspension that are relevant for the purpose of determining backward procedural deadlines (*e.g.*, deadline for the defendants to appear before the courts and file their statements of defense) shall be also adjourned to a later date so that the relevant procedural deadlines can expire after the period of suspension.

The suspension at issue applies also to the performance of all activities relating to mediation and other alternative dispute resolution procedures pending as of March 9, 2020, when the start of such procedures represents condition of admissibility of the relevant judicial action.

Key Provisions of Law: Art. 83 of the Cura Italia Decree.

Does the COVID-19 Regulation affects ongoing administrative litigation?

YES, pursuant to the Cura Italia Decree, all administrative hearings scheduled between March 8, 2020, and April 15, 2020, are adjourned and shall be re-scheduled after April 15, 2020. In addition, between April 15, 2020, and June 30, 2020, oral hearings will be suspended and parties will have the chance to file additional written notes two days in advance of each hearing. An exception is established for hearings expected to be held between April 6, 2020, and April 15, 2020 — both public hearings and chamber hearings. In the latter case, on the basis of a join request of the parties, a final decision can be issued by the court, replacing the need to hold a hearing. The court will base its decision on the elements contained in the documents already filed with the court. In any event, all procedural deadlines for administrative judicial proceedings are temporarily suspended.

In this respect, between March 8, 2020, and June 30, 2020, the President of each section of the Supreme Administrative Court (*Consiglio di Stato*), as well as the President of the Sicilian Supreme Administrative Court (*Consiglio Giustizia Amministrativa per la Regione Sicilia*), will adopt dedicated measures to implement the COVID-19 hygienic guidelines. These measures include: (i) restricting access to judicial offices to persons who have to carry out urgent activities; (ii) limiting to the public office opening hours; (iii) postponing hearings after June 30, 2020; and (iv) adopting additional binding guidelines for the hearings that cannot be postponed.

Key Provisions of Law: Art. 84 of the Cura Italia Decree.

ANNEX A

Essential Activities

According to the Cura Italia 2 Decree, as amended by the Cura Italia 3 Decree, the production activities to be considered essential and therefore not suspended are the following:

ACTIVITY	ATECO CODE
Crop and animal production	1
Fishing and aquaculture products	3
Coal	5
Crude petroleum and natural gas	6
Support services to crude petroleum and natural gas extraction	09.1
Food	10
Beverages	11

Manufacture of technical textile and industrial products	13.96.20
Manufacture of non-woven fabric and non-woven products (excluding clothing)	13.95
Tailoring of gowns, uniforms and other work clothing	14.12.00
Manufacture of wooden containers	16.24
Paper and paper products	17 (with the exception of codes 17.23 and 17.24)
Printing and reproduction of recorded media	18
Coke and refined petroleum products	19
Chemical products	20 (with the exception of codes 20.12, 20.51.01, 20.51.02, 20.59.50 and 20.59.60)
Basic pharmaceutical products and pharmaceutical preparations	21
Plastic products	22.2 (with the exception of codes 22.29.01 and 22.29.02)
Hollow glass products	23.13
Manufacture of glassware for laboratories, for sanitary use, for pharmaceutical use	23.19.10
Manufacture of radiators and metal containers for central heating boilers	25.21
Manufacture of lightweight packaging	25.92
Manufacture of radiation appliances, electro-medical and electrotherapy devices	26.6
Manufacture of engines, power units and electrical transformers, and of devices for the supply and control of electricity	27.1
Manufacture of primary batteries and electrical accumulators	27.2
Manufacture of automatic dispensing machinery, wrapping and packaging	28.29.30

Manufacture of machinery for the paper and cardboard industries (including spare parts and accessories)	29.95.00
Manufacture of machinery for plastics and rubber industries (including spare parts and accessories)	28.96
Manufacture of medical and dental instruments and supplies	32.50
Manufacture of personal protective equipment	32.99.1
Manufacture of coffins	32.99.4
Repair, maintenance and installation of machinery and equipment	33 (with the exception of codes 33.11.01, 33.11.02, 33.11.03, 33.11.04, 33.11.05, 33.11.07, 33.11.09, 33.12.92, 33.16 and 33.17)
Electricity, gas, steam and air-conditioning supply	35
Water collection, treatment and supply	36
Sewage system management	37
Waste collection, treatment and disposal; materials recovery	38
Sanitation and other waste management services	39
Civil engineering	42 (with the exception of codes 42.91, 42.99.09 and 42.99.10)
Installation of electrical and hydraulic systems and other construction and installation works	43.2
Maintenance and repair of motor vehicles	45.2
Trade of motor vehicle spare parts and accessories	45.3
Maintenance and repair of motorcycles, and trade of motorcycle spare parts and accessories	45.4
Wholesale trade services of agricultural raw materials and live animals	46.2
Wholesale trade services of food, beverage and tobacco products	46.3
Wholesale trade services of pharmaceutical goods	46.46

Wholesale trade services of books, magazines and newspapers	46.49.2
Wholesale trade services of machinery, equipment, machines, accessories, agricultural supplies and agricultural tools, including tractors	46.61
Wholesale trade services of tools and equipment for scientific use	46.69.91
Wholesale trade services of fire-extinguishing and anti-hardship equipment	46.69.94
Wholesale trade services of automotive petroleum products and lubricants, of heating fuel	46.71
Land transport and pipeline transport	49
Maritime and water-way transport	50
Air transport	51
Warehousing and services in support of transport	52
Postal and delivery services	53
Hotels and similar structures	55.1
Publishing activities	J (DA 58 A 63)
Financial and insurance activities	K (da 64 a 66)
Legal and accounting activities	69
Company management and management consultancy services	70
Architecture and engineering services; technical tests and analyses	71
Scientific research and development	72
Other professional, scientific and technical activities	74
Veterinary services	75
Temporary work agencies services[2]	78.2
Private security services	80
Services connected with surveillance systems	80.2
Industrial cleaning and disinfestation	81.2

Call centre services[3]	82.20
Packaging services for third parties	82.92
Book, newspaper and magazine distribution agencies	82.99.2
Other business support services[4]	82.99.99
Public administration and defence; mandatory social security	84
Education	85
Health care system	86
Social work services with accommodation	87
Social work services without accommodation	88
Activities of business and professional services organizations	94
Repair and maintenance of computers and peripherals	95.11.00
Repair and maintenance of fixed phones, wireless phones and mobile phones	95.12.01
Repair and maintenance of other communication devices	95.12.09
Repair of electric equipment and other household appliances	95.22.01
Employer for domestic staff	97

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Endnotes

[1] Please note that specific provisions apply to small enterprises (*i.e.*, those with revenues lower than €2 million).

[2] To the extent that they are carried out in relation to the services referred to in Annexes 1 and 2 of the decree of the President of the Council of Ministers of 11 March 2020 and in Annex 1 of the Cura Italia 2 Decree, as amended by the Cura Italia 3 Decree.

[3] Limited to inbound call centre services, with the exclusion of outbound services and recreational telephone services. Inbound call centre may operate to the extent that their services are carried out in relation to those referred to in Annexes 1 and 2 of the decree of the President of the Council of Ministers of 11 March 2020 and in Annex 1 of the Cura Italia 2 Decree, as amended by the Cura Italia 3 Decree.

[4] Limited to home delivery service.