

CONTRAST TO COVID 19: IMPACT ON CIVIL PROCEEDINGS AND THE ACTIVITIES OF THE COURTS

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Law Decree 17 March 2020, n. 18 represents the main body of laws containing the provisions and rules which the Italian Government introduced to fight the COVID-19 pandemic. Amongst such provisions, rules were enacted so as to govern how the restrictive measures introduced in connection with the health emergency will impact on civil proceedings.

A two-phase modulated approach was adopted, aimed first (i) at suspending all procedural activities as well as the terms of statute-limitation and forfeiture, then (ii) at allowing the adoption of appropriate methods to safely protect the work places and the actual activities to be performed.

The new rules may be summarised as follows:

1. Suspension of hearings and procedural deadlines

From 9 March 2020 until 15 April 2020, all the hearings scheduled in civil proceedings pending before Courts throughout Italy are postponed and the deadlines for any filing or any other procedural activities are suspended.

Pursuant to art. 83, para. 3, of the Law Decree some exceptions exist (mainly, cases under the jurisdiction of the juvenile court, cases relating to alimony, precautionary proceedings related to human rights, proceedings on measures relating to tutorship, interdiction, inability, suspension of the enforceability of Court rulings subject to appeal, and in general cases that, if delayed, could seriously harm the parties, whereas the supposed harm must be evaluated by the President of the Court).

The suspension of the deadlines also applies to proceedings where there is not any hearing scheduled (e.g. filing of the closure remarks and replies thereto, service of appeals, etc.).

Should a procedural deadline expire during the suspension period, said expiration is deferred to the end of that period.

When a deadline has to be counted backwards and it falls totally or partially in the suspension period, the hearing or the activity from which the backwards counting begins is deferred in as much as to allow said deadline be effective.

Finally, the suspension applies also to mediations, negotiations and any other ADR procedures having been filed until 9 March 2020, when such procedures are deemed as condition precedent to filing a claim in Court. The maximum duration deadlines of such mediation and negotiation procedures is suspended too.

2. Statute-limitaton and forfeiture

As from 9 March 2020 until 15 April 2020, the statute-limitation and forfeiture of rights are also suspended if the underlying right can be enforced only by means of filing a petition or any other procedural initiative prevented by the suspension.

3. Further measures

As from the end of the suspension period and until 30 June 2020, the President of each Court, having consulted the health local authorities and the Bar, will have to implement measures to safely protect the work places and the actual activities to be performed, in compliance with the hygienic-sanitary requirements provided by the Ministry of Health, so to avoid people crowding in the offices. For this purpose, the President of each Court can:

- regulate or restrict public access to the Court;
- conduct hearings with closed doors or where individuals other than counsels may not attend, through remote connections or by means of electronic filing of acts, containing only pleadings and conclusions, whilst the Judge will rule afterwards;
- the general postponement of all hearings after 30 June 2020, save for the exceptions provided for in art. 83, para 3, of Law Decree 17 March 2020, n. 18 described above.

Even if the measures aimed at the containment of the pandemic will prove very effective, it is reasonable to estimate that the general suspension of procedural activities will be further extended.

Failing that, it cannot be excluded that – although the Government considers this as a residual measure – after 15 April 2020, hearings will be postponed to dates after 30 June 2020, as a measure of protection, also taking into consideration that the Courts are generally short of the necessary structures and personnel needed to quickly implement and adequately manage the new procedures for the protection of the work places and the actual activities to be performed therein.

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*Our contributions of information and update on the Covid-19 crisis and its implications constitute a collective effort of the Firm and an initiative of service. For such reason, the authors decided not to sign individually their works and articles.
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