



LCA

# The legal answers you would like to have about the effects of Coronavirus on your business

HOW TO ADDRESS THE CONTRACTUAL ISSUES DUE TO THE HEALTH EMERGENCY CAUSED BY CORONAVIRUS

# Introduction

With this vademecum, LCA aims to provide a ready-to-use and user-friendly decalogue to dispel doubts and uncertainties that COVID-19 is generating on the business relations of us all.

To this purpose, we have collected the most recurrent questions from our clients, which find a clear and simple answer in the following pages.

This document does not constitute a legal opinion and is updated as of March 12, 2020; as such, it is therefore subject to subsequent amendments according to new measures which will be issued in the near future.

# Index

<i>Theme</i>	<i>n. slide</i>
The new DPCM of March 9, 2020	5
Commercial Agreements	14
Labour Law	21
Criminal Law	27
Real Estate	31
Data Protection	35
Intellectual Property	42
Banking and Finance	45
Food Safety	51
Shipping	56
Capital Markets	60
Restructuring	65
Corporate Immigration	70

# The new DPCM dated March 11<sup>th</sup>, 2020

- WHAT CHANGES WITH THE NEW MEASURES?
- WHICH AREAS ARE AFFECTED?
- HOW HAVE THE EMERGENCY MEASURES BEEN AMENDED?

# What changes with the DPCM dated March 11<sup>th</sup>, 2020?

- The new decree provides for the **suspension of certain commercial activities throughout the country**.
- The provisions of the DPCM of March 11, 2020 will be effective until March 25<sup>th</sup>, 2020.
- The measures provided for in the DPCM dated March 8<sup>th</sup>, 2020 and the DPCM dated March 9<sup>th</sup>, 2020 to fight the spread of the virus **which are not incompatible with the new provisions** (including those restricting the movement of citizens) remain unchanged. These measures will be effective, it is recalled, until April 3<sup>rd</sup>, 2020.
- In addition, the provisions of the DPCM dated March 8<sup>th</sup>, 2020 and the DPCM dated March 9<sup>th</sup>, 2020 **which are incompatible with the new provisions**, cease to have effect .
- At the moment, the support measures for families and enterprises provided for in the *Decreto Legge* of March 2, 2020 have not been modified.

# Which areas are affected by the measure?

Also the new measure established by the DPCM dated March 11<sup>th</sup>, 2020 which provide the suspension of some commercial activities apply to **the entire national territory**.

*«Orange Zone»*

**THE ENTIRE NATIONAL TERRITORY**

# The measures established by DPCM dated March 9<sup>th</sup>, 2020

<i>Limitation of mobility</i>	<i>Limitation of educational, sports and judicial activities</i>	<i>Limitation of commercial activities</i>
<ul style="list-style-type: none"><li>• The movement of individuals entering and leaving the territories of risk areas, as well as within those territories, must be avoided, with the exception of movements motivated by proven occupational needs, emergency situations or health reasons;</li><li>• persons with respiratory infections and fever (over 37.5° C) are recommended to stay home;</li><li>• absolute prohibition of mobility for persons subject to quarantine or positive results to the virus.</li></ul>	<ul style="list-style-type: none"><li>• Suspension of child education services;</li><li>• suspension of educational activities in schools and universities;</li><li>• suspension of sporting events and competitions. The sports facilities may be used «behind closed doors» only for training sessions of athletes, both professional and amateur, recognised as of national interest by CONI and the respective federations in view of their participation in the Olympic Games or national and international events. In all cases, sports associations and clubs, through their medical staff, will have to carry out appropriate controls to contain the risk of spread of the virus between athletes and staff;</li><li>• from March 9 to 22, 2020, the hearings of civil and criminal proceedings pending in all judicial offices in Italy shall be postponed <i>ex officio</i> and the deadlines for the relevant judicial acts shall be suspended, with limited exceptions in the civil and criminal area provided for by Decree-Law no. 11 of March 8, 2020.</li></ul>	<ul style="list-style-type: none"><li>• Suspension of activities in gyms, swimming pools, thermal centres, wellness centres and ski resorts;</li><li>• closure of theatres, museums, archives, libraries, archaeological sites;</li></ul>



# Further limitations provided by DPCM dated March 11<sup>th</sup>, 2020

<i>Suspension of comercial activities</i>	<i>Exceptions (remain open)</i>
<p><b>Retail activities</b> are suspended both in the neighborhood shops and in the medium and large distribution sector, including those in shopping centers. Markets are closed, regardless of the type of activity carried out, with the exception of activities aimed at the sale of food only.</p>	<p>Are excluded from the measure, inter alia:</p> <ul style="list-style-type: none"><li>• hypermarkets, supermarkets, grocery stores;</li><li>• pharmacies and parapharmacies;</li><li>• retail sales activities in other specialized non-prescription medicine shops;</li><li>• retail sales of medical and orthopaedical goods in specialized stores;</li><li>• retail sale of health and hygiene products in specialized stores;</li><li>• newsstands;</li><li>• tobacconists.</li></ul> <p>In any case, the interpersonal safety distance of one metre must be guaranteed.</p>
<p>The <b>food services activities</b> are suspended (bars, pubs, restaurants. Ice-cream shops, bakeries)</p>	<p>Are excluded from the measure:</p> <ul style="list-style-type: none"><li>• canteens and catering on a contractual basis;</li><li>• catering with home delivery (in compliance with health and hygiene regulations);</li><li>• food and beverage services in service and refuelling areas located along the road and motorway network and inside railway stations, airports, lakes and hospitals.</li></ul> <p>In any case, the interpersonal safety distance of one metre must be guaranteed.</p>
<p><b>Activities related to individuals services</b> are suspended (barbershops, hairdressing shops, beauty shops).</p>	<p>Are excluded from the measure:</p> <ul style="list-style-type: none"><li>• laundries and dyeworks (including industrial ones);</li><li>• funeral services and related activities;</li></ul> <p>In any case, the respect of the interpersonal safety distance of one metre must be guaranteed.</p>

# What about production and professional activities?

With regard to **production** and **professional activities** it is **recommended** that:

- maximum use should be made by companies of agile working methods for activities that can be carried out at home or remotely;
- paid holidays and paid leave for employees as well as other tools provided for by collective bargaining are encouraged;
- the activities of company departments that are not essential to production are suspended;
- anti-accounting safety protocols should be adopted and, where it is not possible to respect the interpersonal distance of one metre as the main containment measure, individual protection devices should be adopted;
- encourage workplace sanitization operations, also using forms of social shock absorbers for this purpose.

For **productive activities** only, it is also recommended to limit as much as possible movements within the sites and to restrict access to common areas.

For all **non-suspended** activities, the maximum use of agile working methods is recommended.

# Any further exceptions?

Furthermore, they are not restricted (without prejudice to the obligation to ensure compliance with health and hygiene rules) :

- banks;
- financial and insurance offices;
- activities in the agricultural, livestock and agri-food processing sector (including the supply chains providing goods and services).

## And transports?

At the moment, transport services are granted, however...

Region Chairman



*may*, in order to contain the health emergency caused by coronavirus, arrange for the scheduling of the service provided by Local Public Transport Companies aimed at reducing and eliminating services (based on actual needs and with the sole purpose of ensuring the minimum essential services).

Minister for Infrastructure and Transport (with the agreement of the Minister for Health)



*may*, in order to contain the coronavirus health emergency, provide for the planning with reduction and elimination of interregional car and rail, air and sea transport services (based on actual needs and with the sole aim of ensuring the minimum essential services).

# Solutions for individuals and enterprises in virus outbreaks

**The new Prime Minister's Decree has not introduced support measures for families and enterprises.** We deem that new support measures are likely to be introduced in the next few days in the light of the provisions introduced by the latest interim measures.

In the meantime, the support measures introduced by *Decreto Legge* No. 9 of March 2, 2020 remain in force for families and enterprises in the municipalities of the "red zone" as defined by said *Decreto Legge*.

Here are the main measures:

- for persons having their residence, registered office or operational business headquarters in the “outbreak” municipalities, the following payments are suspended (*inter alia*):
  - **payments due** in the period from February 23 to April 30, relating to payment slips issued by collection agents;
  - **the payment of water, gas and electricity bills**, up to 30 April (with the provision for the possible instalment of the bills once the period of suspension has ended);
  - the payment, for 12 months, of the **instalments of subsidised loans granted by Invitalia to enterprises**;
  - payments of the instalments of the **loan agreements relating to the purchase of “first home”** (for a maximum total period not exceeding eighteen months) for employees suffering suspension from work or reduced working hours for a period of at least 30 days.

In addition, the suspension of deadlines for compliance and payments will also be extended to taxpayers who reside outside the “outbreak municipalities” but avail themselves of intermediaries located therein;

- for accommodation facilities, travel agencies and tour operators, the suspension of the payment of social security contributions and withholding tax until April 30

*The following pages will provide answers to the most frequent questions about the effects of COVID-19 on different business areas.*

# Trade contracts

- MAY THE CORONAVIRUS BE CONSIDERED AS A *FORCE MAJEURE* EVENT?
- WHAT ARE THE CONSEQUENCES OF EMERGENCY MEASURES ON THE CONTRACTS CONCERNED? AND ON THOSE AFFECTED ONLY INDIRECTLY?
- IS IT POSSIBLE TO RENEGOTIATE THE CONTRACTUAL CONDITIONS?

# Can we talk about force majeure?

Are emergency government measures, which prevent one of the parties from fulfilling its obligations a *force majeure* event?

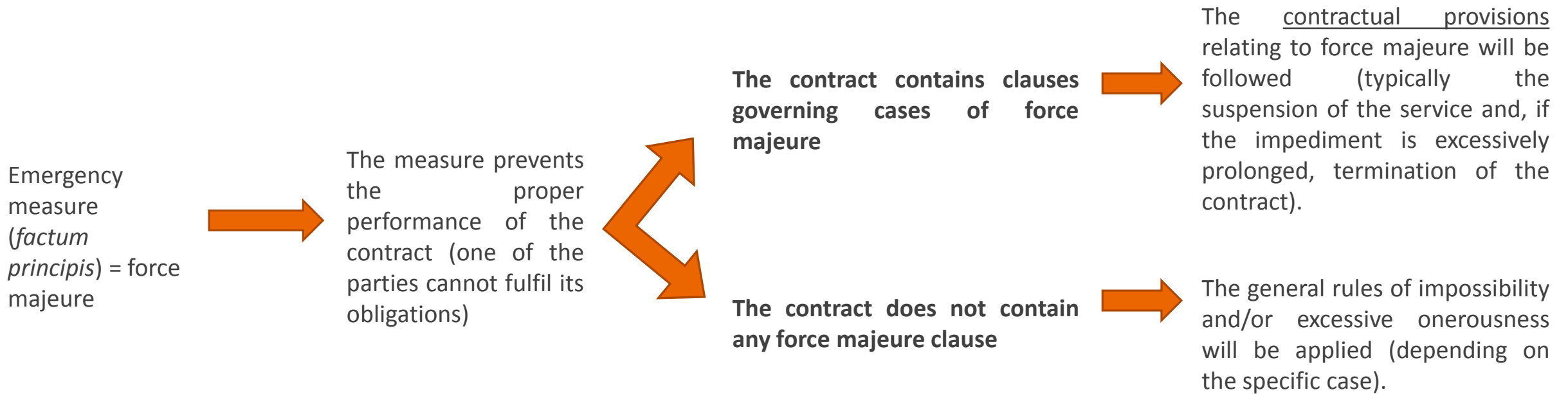
The answer is in the affirmative, provided that the measure (causing the impediment) is unforeseeable, inevitable and not attributable to one of the parties.

- Unpredictability** at the time of the conclusion of the contract, the parties could not foresee the occurrence of the exceptional event or the subsequent measure taken by the competent authorities.
- Inevitability** the impossibility caused by the measure cannot be overcome with normal diligence.
- Non imputability** the authority's measure is not a consequence of the party's failure to fulfil its obligations.

The emergency measures issued in these days meet these requirements. Consequently, they can be considered **force majeure** events, and could be invoked if one of the parties is unable to fulfil its obligations.

Obviously, a *case by case* assessment is necessary to state that force majeure can be invoked in the specific case.

# Consequences of force majeure on contracts affected by emergency measures





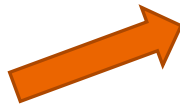
# Supervening impossibility

**Definitive impossibility**  
(impediment is irreversible)



automatic extinction of the obligation and consequent **termination** of the contract by law

**Temporary impossibility**  
(impediment is non-permanent)



if (i) the performing party is no longer interested in obtaining the consideration (*i.e.* transportation of a certain high fashion item for a show set for a certain date); or  
(ii) the defaulting party can no longer be considered obliged to fulfil its obligations (*i.e.* the only Italian date of a world tour of a famous international singer is cancelled due to the emergency: the singer cannot be requested to perform on another date)



automatic extinction of the obligation and consequent **termination of** the contract by law

In all other cases



the contract **is not terminated** and the defaulting party is **not liable for the delay** in performance

# Supervening unconscionability

This concerns only contracts for which a certain period of time elapses between the conclusion and the performance of the contract (contracts to be performed on a permanent or recurring basis, or contracts with deferred performance).

Government emergency measure



if it creates a disproportionate sacrifice of one party for the benefit of the other (*excessive onerousness*)



Modification of the contractual conditions in order to make the contractual relationship fair again (e.g. price reduction)

or



Termination of the contract

# What about contracts only indirectly affected by emergency measures?

Emergency measures do not always cause a hindrance in the performance of contractual obligations. In many cases, they only have a negative effect on the *normal business* activities (e.g. the lower flow of customers to restaurants).

In this case, can *force majeure* be invoked to justify the choice of a party to suspend the performance of its services (e.g. suspending the payment of the suppliers for the duration of the emergency situation)?



**NO**

Force majeure can only be invoked to justify failures caused by government emergency measures.

# Can the contractual conditions be renegotiated?

- It should be noted that certain scholars, who have been followed by some court decisions, have identified different solutions. In the wake of international experience (Unidroit and PECL), also in our legal system, it can be argued that there is a **legal obligation to renegotiate clauses that have become unfair**, as a result of extraordinary and unpredictable events.
- It is **the principle of good faith that obliges the parties to renegotiate clauses that have become excessively onerous**, regardless of the provisions of the contract.
- It goes without saying that, since this approach is not consolidated, the practical application of these principles will have to be carefully assessed on a case-by-case basis.

# Labour Law

- WHAT PREVENTIVE MEASURES SHOULD THE EMPLOYER TAKE IN THE WORKPLACE?
- WHAT ABOUT THE WORKERS WHO MUST NECESSARILY GO TO WORK?
- HOW CAN I MANAGE THE WORKERS?
- CAN I USE SMART WORKING?

# What preventive measures should the employer take in the workplace?

- update the Risk Assessment Document
- identify, with the Competent Doctor and RSPP, suitable "PPE" (personal protective equipment such as antibacterial gel dispensers, disposable gloves, certified masks, etc.);
- prepare, with the Competent Doctor and RSPP, an information notice addressed to all workers regarding Coronavirus and regarding prevention and protection measures that have to be taken in order to avoid the risk of its spread;
- inform and train workers in relation to the new specific risk by providing:
  - constant updates with official communications by the competent bodies
  - name and contact details of the employer and of the person responsible for the emergency plan
  - information on how to seek medical assistance in case of flu symptoms or respiratory problems
- in case of Smart Working, update the health and safety data sheet;
- regarding service agreements, the contractor and the principal must jointly update the DUVRI, considering new safety and biohazard measures.

# What about the workers who must necessarily go to work?

It is appropriate for the employer to identify the "indispensable" workers, i.e. the workers who must necessarily be present to the workplace (company headquarters or customer premises) to carry out their work activity, and who the company cannot do without even for a short period;

every movement, that can take place only if motivated by work needs, situations of necessity or for health reasons, has to be attested by self-declaration, which forms provided by the police that can also be filled in on the spot. (It is, however, advisable that the employer expressly authorizes workers to go to the workplace, indicating the work activities for which the presence is necessary);

regarding service agreements, the contractor (employer) should send to the principal a copy of the authorizations issued to its workers to carry out the work at the principal's premises. The principal should then invite the contractor to proceed with the authorization instead of the self-declaration.

# How can I manage the workers?

The employer can:

- make workers, whose tasks can be carried out remotely, work in smart working;
- put on holiday or leave (pending any social safety nets) workers whose duties cannot be carried out remotely. The employer can, therefore, unilaterally "impose" holidays and leaves.
- consider workers who have contracted the virus or who are placed in compulsory quarantine (upon receipt of the medical certificate) to be sick;
- considering workers in voluntary quarantine to be on unpaid leave



# Can I use smart working?

Until 31 July 2020, throughout the country, employers may use smart working:  
with reference to any employment relationship;  
even without individual agreement with the worker.

Activation is conditional:

- to the sending of appropriate communication to the worker;
- to the sending of a self-declaration of smart working activation warning for emergency reasons.

The security information document can be sent electronically.

# Allowances for self-employed workers

What is it?	monthly allowance of EUR 500.
Who	<ul style="list-style-type: none"><li>• <b>Coordinated and continuous collaborators</b></li><li>• holders of <b>agency</b> and <b>commercial representation relationships</b></li><li>• <b>self-employed workers</b> or professionals, including workers with business activities, enrolled in general social compulsory insurance and in the exclusive and substitute forms of insurance, as well as in special fund for self-employed workers, and who are employed or resident or domiciled in the Red Zone at the date of 23 February 2020</li></ul> <p><u>exclusions</u>: self-employed professionals enrolled in the category special fund.</p>
How long	max <b>3 months</b>

# Criminal Law

- WHICH ARE THE CRIMINAL CONSEQUENCES OF NON-COMPLIANCE WITH THE MEASURES TO CONTAIN THE SPREAD OF CONTAGION?
- WHICH ARE THE CRIMINAL CONSEQUENCES FOR THE ISSUANCE OF MISLEADING DECLARATIONS IN A SELF-CERTIFICATION?
- WHICH ARE THE RISKS ON THE EMPLOYER'S SIDE EXPOSING HIS EMPLOYEES TO THE RISK OF CONTAGION?

# Which are the criminal consequences of non-compliance with the measures to contain the spread of contagion?

- the failure to comply with the obligations and measures adopted to limit the contagion *«shall be punished pursuant Article 650 of the Italian Criminal Code, unless the fact constitutes a more serious offence»*;
- article 650 of the Italian Criminal Code, entitled *«non-compliance with the Authority's measure»*, punishes *«with arrest for up to three months or with a fine of up to € 206 [...] anyone who does not comply with a provision legally given by the Authority for reasons of justice or public security or public order or hygiene»*;
- considering this offence as a misdemeanor:
  - everyone shall be liable for his conscious and voluntary action or omission, whether intentional or negligent (Article 42, paragraph 4 of the Italian Criminal Code):
  - the offender might be admitted to extinguish the crime by paying, before the opening of the trial or before the criminal decree of conviction, a sum equal to one half of the maximum fine (in this case, € 103 – pursuant to article 162 *bis* of the Italian Criminal Code);
- according to the proviso clause (*«unless the fact constitutes a more serious offence»*), such offence referred to in Article 650 of the Italian Criminal Code shall not apply if more serious offences are committed.

# Which are the criminal consequences for the issuance of misleading declarations in a self-certification?

The movement of persons within the national territory is allowed only in case of: a) proven work needs; b) situations of necessity; c) health reasons; d) return to their domicile, home or residence.

The reasons causing the movement must be declared by means of self-certification released to the law enforcement pursuant to art. 46 of DPR no. 445 of 28 December 2000: statements made therein «shall be considered as made to a public official».

The presentation of a false self-certification may constitute two different offences:

- the offence referred to in Article 76 of DPR no. 445/2000, which, with reference to the falsification of declarations substituting certification or affidavit (falsificazione di dichiarazioni sostitutive di certificazione o di atto di notorietà) (Articles 46 and 47 of DPR no. 445/2000) provides for the applicability of the criminal provisions on material and/or ideological falsehood committed by private individuals (Articles 482 and 483 of the Italian Criminal Code).
- the crime referred to in Article 495 of the Italian Criminal Code, which punishes «with imprisonment from one to six years» the conduct of «anyone who falsely declares or certifies to the public official the identity, status or other qualities of himself or of another person», with specific reference to data concerning personal identity or other personal qualities.

# Which are the risks on the employer's side exposing his employees to the risk of contagion?

The Decree dated March 11, 2020, issued by the Prime Minister «*recomends*» companies to adopt anti-contagion safety protocols and, if it is not possible, to observe the interpersonal distance of one meter as main containment measure, with the adoption of personal protection equipment.

Possible actions to protect employees' health (in case of occupational risk of infection):

- update of DVR: risk assessment related to COVID-19 → procedures of risk management ( = «*anti-contagion safety protocols*» required by DPCM);
- sharing information with the employees and training them;
- supply of adequate personal protection equipment (if the risk cannot be reduced by other means), e.g. air supply respiratory protective equipment.

Which are the risks in case of the omission of safety protocols?

- misdemeanor provided for in Legislative Decree 81/2008 (e.g. failure to supply personal protection equipment (DPI) → infringement of article 18 lett. d) of legislative decree 81/2008 → arrest from two to four months or fine from €1,675.24 to €6,700.94 (article 55, paragraph 5, lett. d) legislative decree 81/2008);
- if the omission leads to an employee's illness (surely due to exposure at work): negligent injury with violation of accident's prevention measures (pursuant to article 590, paragraph 2, Italian Criminal Code)

# Real Estate

- IS IT POSSIBLE TO SUSPEND PAYMENT OF LEASE/RENT AMOUNTS?
- WHAT IF THE LEASE/RENTAL AGREEMENT PROVIDES FOR THE *FORCE MAJEURE* CLAUSE? AND WHAT IF NOT?

# Is it possible to suspend payment of lease/rent amounts?

- The Italian government emergency measures implemented over the past few weeks set out no provisions governing this issue.
- It is possible to suspend payment of the rent as long as the lease agreement provides this right (especially, under a force majeure clause, if any).

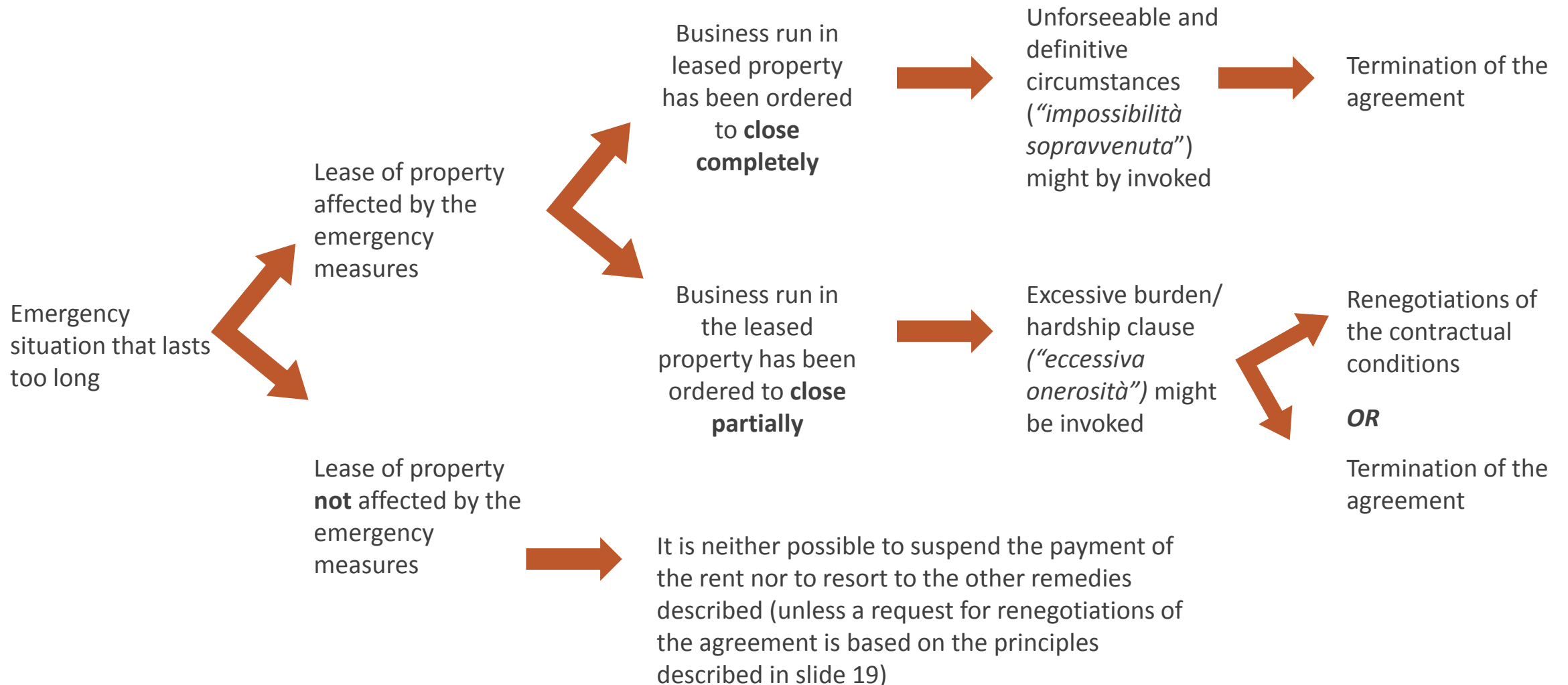
**But there are some limits...**



# If the lease/rental agreement provides for the *force majeure* clause...

- ... suspending payments of rent could be claimed to the extent that it is expressly set out in the agreement **and** only in connection with properties dedicated to business affected by Italian government measures that have ordered full closure, among which:
  - Museums, theaters, cinema, libraries, archives or any other places of culture;
  - Educational and training institutions;
  - Amusement arcades and betting shops;
  - Nightclubs;
  - Gyms, sports centers, swimming pools, wellness centers, spas.
- With regard to properties **not** affected by Italian government measures, *it is not possible to either suspend payments of the rent or reduce it*, regardless of whether the contract includes a *force majeure* clause.

# What if the lease/rental agreement does not set out a *force majeure* clause?



# Data protection

- IS THE EMPLOYER ALLOWED TO INVESTIGATE IF ITS EMPLOYEES HAVE COVID-19 SYMPTOMS?
- WHAT SHALL THE EMPLOYER DO IN COMPLIANCE WITH DATA PROTECTION LAWS?
- HOW MUST THE EMPLOYER BEHAVE IN CASE IT GAINS KNOWLEDGE THAT AN EMPLOYEE IS COVID-19 POSITIVE?
- WHAT MUST AN EMPLOYER DO IN CASE A COMMERCIAL PARTNER REQUESTS INFORMATION ABOUT THE HEALTH OF AN EMPLOYEE?

# Is the employer allowed to investigate if its employees have COVID-19 symptoms?

- Article 14 of Legislative Decree 14/2020 sets out that the processing of special categories of data (Articles 9 and 10 GDPR) may also be carried out by parties other than public authorities in cases in which it is essential for the performance of activities related to the management of the health emergency in progress
- The employer *may* carry out temperature scanning before the employees enter the workplace (*Shared protocol for the regulation of measures for combating and containing the spread of the COVID-19 virus in the workplace* - 14 March 2020)
- Temperature scanning constitutes a processing of personal data and shall be performed in compliance with the applicable data protection laws
- The employer must inform employees beforehand that access to the company's offices is denied if an employee has liaised with COVID-19 positive individuals or persons coming from at-risk areas according to WHO

# What shall the employer do in compliance with data protection laws?



Provide the employees with a **privacy statement** describing



Temperature scanning



Other processing of personal data, if any (e.g. processing of employees' statement concerning liaison with COVID-19 positive individuals or persons coming from at-risk areas according to WHO)



**NEXT**



**Not register** the scanned data, unless it is necessary to prove the reasons preventing the employees to enter the workplace



Collect only data that are **adequate**, **relevant** and **limited** to what is necessary for COVID-19 infection prevention, (e.g., the employer shall refrain from requesting additional information regarding the person who tested positive or about the epidemiological risk areas)



Identify the individuals in charge of temperature scanning and provide them with the necessary instructions



Ensure arrangements to guarantee the **confidentiality** and **dignity** of the worker



In case of temporary isolation due to overcoming of the temperature threshold (37, 5°)



If the employees inform the HR office that they have had contacts with COVID-19 positive individuals

# What shall the employer do in compliance with data protection laws?

## Privacy statement's content

### PURPOSE OF THE PROCESSING



Prevention from COVID-19 infection

### LEGAL BASIS



The implementation of the anti-infection security protocols pursuant to Article 1(7)(d) of the DPCM dated 11 March 2020

### DURATION



Until the end of the emergency situation

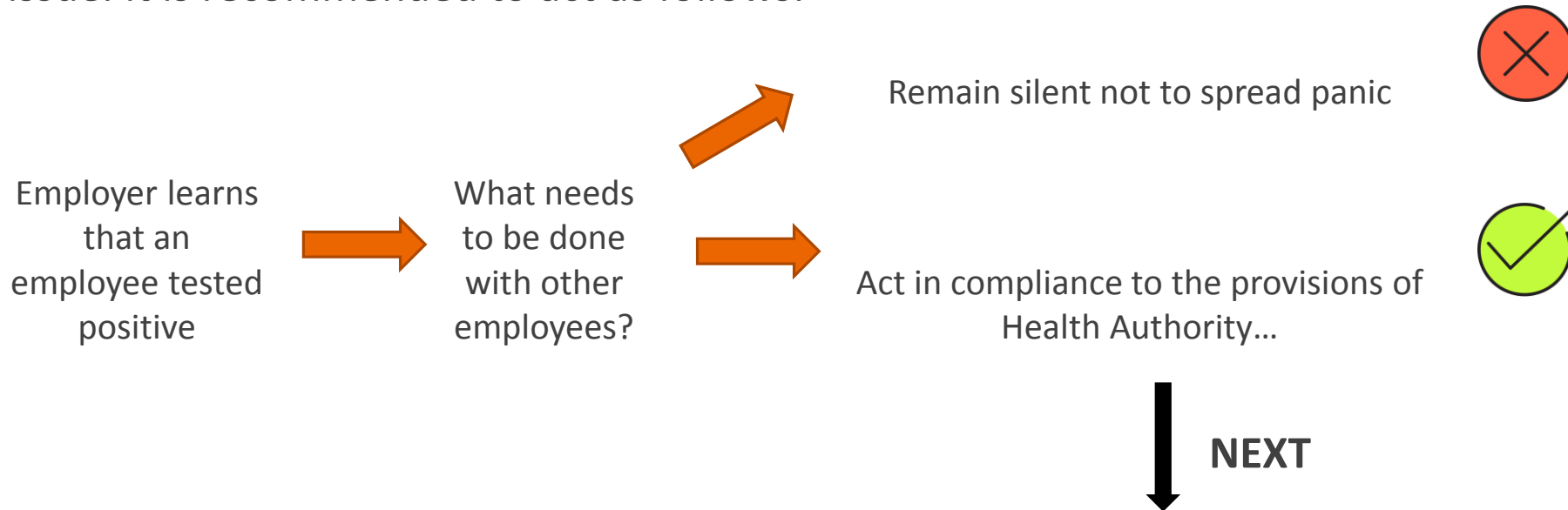
### RECIPIENTS OF PERSONAL DATA



Personal data shall be shared only with third parties specifically provided for by the law (e.g., Health Authority)

# How must the employer behave in case he gains knowledge that an employee is COVID-19 positive?

To date, the Data Protection Authority has not provided directions on this issue. It is recommended to act as follows:



# How must the employer behave in case he gains knowledge that an employee is COVID-19 positive?

What act in compliance with the provisions of the Health Authority means?



**Isolate** the positive employee (and other employees, if necessary) from the premises



in doing so, **no personal information** such as name or other data that allow to identify the person affected **must be disclosed**, unless strictly necessary (data minimisation principle)



**Notify** the competent health authorities immediately



**call** the COVID-19 **emergency numbers** provided by the Region or the Ministry of Health (data minimisation principle)



**Cooperate** with the authorities to identify any "close contacts" the positive employee may have had



during the investigation period, the company may ask any possible close contacts to **leave the factory cautiously**



# What must an employer do in case a commercial partner requests information about the health of an employee?

As said above, certain investigations are not allowed (Authority's press release, 2 March 2020). However, if the employer knows of a COVID-positive person, he is allowed to inform the commercial partner upon request.

The exchange of such personal data, although allowed by Art. 9.2.g) and 9.2.i) of GDPR (processing necessary for reasons of substantial public interest; processing necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health) must comply with the data minimization principle.

A commercial partner requests information about the health of an employee



What must the employer do?

the



Disclose the name or other data which allow the identification of the affected employee



Disclose data strictly necessary to inform third parties of virus risk (e.g. premises and times in which the affected employees has worked)



# Intellectual Property

- WHAT ARE THE MEASURES ADOPTED BY THE ITALIAN PTO («UIBM»)?
- WHICH TERMS ARE EXCLUDED FROM THESE MEASURES?
- WHAT STEPS SHOULD BE TAKEN ONCE THE SUSPENSION HAS EXPIRED?

# What are the measures adopted by the Italian PTO?

- The expiring terms for any administrative activity to be carried out before the Italian PTO – such as the filing of applications, deeds, documents, and renewals – are suspended until April 3rd, without the need to submit a specific request in this respect.

After that date, unless extended, the terms shall start to run again for the remaining part of the relevant period.

## Which terms are excluded from the measure?

- The term to file a notice of opposition against third parties' trademark applications (i.e. within three months from the date of publication of the same)
- The term for submitting evidence and documents in support of the opposition already filed (two months from the date of expiry of the so-called cooling off period)
- The notification terms to appeal Italian PTO measures (e.g. in the event of total or partial refusal of requests or transcriptions) (within 60 days of the date on which the subject was notified with or became aware of the contested measure)

# What steps should be taken once the suspension has expired?

- The user must indicate (in the «deposit note» field of the form), that the ordinary term has not been fulfilled due to the health emergency by COVID-19, in accordance with the Executive Decree for the suspension of Terms.

# Banking and Finance

- WHAT MEASURES HAVE BEEN ISSUED IN BANKING, FINANCIAL AND INSURANCE SECTORS DUE TO COVID 19 OUTBREAK?
- WHAT ARE THE POSSIBLE PROBLEMS WHICH MAY BE CAUSED BY CORONAVIRUS' SPREAD WITH REFERENCE TO FINANCING TRANSACTIONS?

# Measures adopted in banking, financial and insurance sectors due to COVID-19 outbreak in the «hotbed» municipalities

In addition to the measures described in slide 9 above, the Decree Law no. 9, dated March 2<sup>o</sup>, 2020, on financing, sets out that:

- SMEs located in one of the «hotbed» municipalities shall be granted, free of charge and with priority over other measures, the public guarantee under the SME Guarantee Fund for 12 months and for a maximum amount of EUR 2,5 million for each company (SMEs located in different areas may also benefit from such measure, considering the exceptional economic impact suffered, for example, because they belong to a particularly affected sector);
- agricultural undertakings located in one of the municipalities first affected by the virus shall be granted interest-free loans for a period not exceeding 15 years, for the repayment of bank debts outstanding at 31 January 2020;
- with respect to people/entities with residence/registered office in the old "red zone" which have taken out life and non-life insurance policies, there is a temporary suspension of the payment of premiums falling due between February 21<sup>st</sup>, 2020 and April 30<sup>th</sup>, 2020.
- the payment, for 12 months, of the instalments due no later than 31 December 2020, and a corresponding extension of the duration of the amortization plans, is suspended with regard to the subsidized loans granted by Invitalia to companies.

# Measures taken in banking, financing and insurance sectors to support companies – Part 1

On **March 10<sup>th</sup>, 2020** in Italy it is already effective the agreement reached by ABI and Associazioni di Impresa by which it has been extended the possibility of requesting the suspension or the extension of loans to January 31<sup>st</sup>, 2020. The moratorium refers to loans to micro, small and medium companies damaged by the epidemiological emergency "COVID-19". The suspension of payment of the principal of the instalments of loans can be requested for up to one year. The suspension is applicable to medium/long-term loans, including those completed through the issuance of agricultural bills of exchange, and to leasing operations. In this second case, the suspension concerns the implicit principal of the lease instalments. As per the extension operations, on the other hand, the extension of the duration of the loan can be up to 100% of the residual duration of the depreciation. The maximum extension period for short-term loans and agricultural loans is 270 days and 120 days respectively. The Agreement provides that, where possible, banks may apply more favorable measures for companies than those provided by the Agreement. The agreement was signed by ABI, Alleanza delle Cooperative Italiane (AGCI, Confcooperative, Legacoop) CIA-Agricultori Italiani, CLAAI, Coldiretti, Confagricoltura, Confapi, Confedilizia, Confetra, Confimi Industria, Confindustria and Rete Imprese Italia (Casartigiani, Cna, Confartigianato, Confcommercio, Confesercenti).

# Measures taken in banking, financing and insurance sectors to support companies – Part 2

## **Cassa Depositi e Prestiti** has made available:

- 3 billion euro of loans at a low interest rate to SMEs and mid-caps for investments and working capital requirements, provided by partner banks through the “Companies Platform”;
- EUR 1.5 billion of guarantees on bank loans to support working capital requirements, guaranteed by SACE;
- 2 billion euros in additional credit lines for foreign buyers of Italian goods and services, guaranteed by SACE;
- 500 million euros in guarantees to support Italian exports, at favorable insurance conditions and without the application of evaluation costs;
- 400 million euros in refinancing of Fund 394 by Simest.

## **SACE and SIMEST** have promoted moratorium measures in favor of companies benefiting from **financing supporting export and internationalization**:

- SACE will grant a moratorium of up to 12 months on guaranteed medium-long term loans;
- SACE Factoring will grant its customers an extension of up to 6 months of the extension terms;
- SACE Assicurazione will grant its customers an extension of the terms provided for premium payment until 30 April and a 60-day extension for the management of the other fulfilments provided for in the policy;
- SIMEST will grant a moratorium of 6 months for the presentation of the documentation necessary to obtain the disbursement of the loan and for the reporting of the expenses incurred; 6 months postponement of the pre-amortisation and amortisation periods of the loan. In addition, in case of cancelled initiatives, the loan disbursed may be repaid without the application of the 2% penalty.



# What are the possible problems caused by the emergency in relation to the commercial relationships between the bank and the financed company?

Transaction still under negotiation (e.g. discussion of the *term sheet*)



*if* the absence of material adverse change (so-called "MAC") is foreseen as a **condition precedent to the signing** of the financial documentation



it is necessary to assess in concrete terms whether any negative effects suffered by the financed company as a result of the COVID-19 are such as to determine the occurrence of a MAC and, therefore, the risk of withdrawal from negotiations by the bank.

financial documentation already signed but loan not yet disbursed (phase between *signing* and *closing*)



*if* the absence of material adverse change (so-called "MAC") is foreseen as a **condition precedent to the disbursement of the loan**



any negative consequences suffered by the financed company as a result of the health emergency should be examined in order to assess in concrete terms whether they can be considered as a MAC hypothesis, involving the lending bank's right to not proceed with the disbursement.

# And what about the contractual obligation bearing on the financed company?

If the funding has already been disbursed and the financial documentation provides the occurrence of a **MAC among the events of default**



It shall be verified



if the COVID-19 emergency itself causes a default case



whether, in practice, the negative effects of the emergency are such as to impair the ability of the financed company to meet its payment obligations or to comply with the provided financial parameters

If the funding has already been disbursed and the agreement **does not include any MAC clauses**



the COVID-19 emergency could represent a case of supervening unconscionability



if the financed company is in a situation of disproportionate imbalance between the performance due and the consideration



the financed company shall have the right to terminate the agreement or, alternatively, re-discuss the economic terms

# Food Safety

- WHICH MEASURES HAVE BEEN ADOPTED AT NATIONAL AND INTERNATIONAL LEVEL IN THE FOOD LAW AREA IN ORDER TO ADDRESS THE COVID-19 EMERGENCY?
- THE SPREAD OF COVID-19 LEADS TO THE APPLICATION OF THE FORCE MAJEURE CLAUSE FOR SUPPLY CONTRACTS IN THE FOOD CHAIN?
- THE PRODUCER CAN BE CONSIDERED LIABLE FOR DEFECTIVE PRODUCTS DUE TO COVID-19?

# Which measures have been adopted at the international level in the food law area in order to address the Covid-19 emergency?

The European union has not adopted restrictive measure for the free circulation of agri-food products within the internal market.

Therefore, any request against producers or suppliers aimed at obtaining additional certifications as “coronavirus free” shall be considered unlawful.

This notwithstanding the applicability of the precautionary principle as a general principle of the european framework in relation to food safety risk regulation.

# And which measures have been adopted at national level?

Every Eu Member State and/or extra Eu State has put in place unilateral measures in order to restrict the import of Chinese products.

In Italy, the current situation in the northern regions brought two directorates of the Ministry of Health (DGSAF e DGSAN) to issue a document which analyses aspects of public health, food safety and veterinary. This document, besides confirming the position already expressed by the World Health Organization and the European Commission which explains that currently there is no scientific evidence of COVID-19 transmission through food, specifies which farming, livestock and veterinary activities can and cannot be postponed for a maximum period of 30 days.

Moreover, it has been established a task force under the Ministry of Agricultural, Food and Forestry Policies (Mipaaf) in order to monitor the current situation of the agri-food sector. Such task force has been in contact with the European Commission requiring to postpone and defer: deadlines related to demands and disbursements of the Common Agricultural Policy; payments for areas involved in the Regional Rural Development Policy and the implementation of programmes concerning the promotion and support of the Common Market Organization.

Lastly, Mipaaf, pending the adoption of guidelines for the handling of goods, in relation to the provisions contained in the decree of the President of the Council of Ministers of 9° March 2020, clarifies that agri-food products can enter and leave the areas affected by the relevant measures at stake.

# The spread of COVID-19 Covid-19 leads to the application of the force majeure clause for supply contracts in the food chain?

Where the contract provides for a force majeure clause



The epidemic no doubt falls within the force majeure clause (even if this event is not expressly mentioned in the contract)

**BUT**

The fact that it is expressly mentioned in the contract or the possibility to consider Covid-19 under the force majeure clause do not automatically lead to a liability exemption or limitation



Therefore, it is necessary to take into consideration other aspects on a case by case basis, namely, how the impediment effects on the proper execution of contractual obligations or the degree of diligence adopted by the party responsible after the event has occurred.

# The producer can be considered liable for defective products due to Covid-19?

The producer of a food product with possible exposures to the virus can be considered liable for damages for defective products

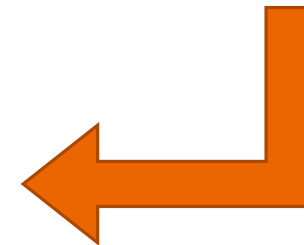
**BUT**

if the state of scientific and technical knowledge at the time when the producer put the product into circulation was not such as to enable the existence of the defect to be discovered, the producer shall not be liable



The current scientific and technical knowledge do not consider as risky a food product with possible exposures to SARS-Cov-2

**It has to be excluded the producer's liability for possible damages due to a defective product because of the virus**



# Shipping

- IS THERE ANY LEGAL GROUND FOR THE FOREIGN PURCHASER TO REFUSE TO RECEIVE GOODS ORIGINATED BY ITALY?
- WHAT ARE THE LEGAL CONSEQUENCES IF THE CARGO IS EITHER DELIVERED ON DELAY OR NOT DELIVERED AT ALL?
- WHAT PREVENTION AND CONTAINMENT MEASURES SHOULD BE TAKEN FOR THE CREW/PASSENGERS ON BOARD SHIPS?



# Is there any legal ground for the foreign purchaser to refuse to receive goods originated by Italy?

- Under Italian Law, the seller could find itself facing the «force majeure» defence by the buyer, as justification for its breach.
- The «force majeure», as a purchaser's defence to refuse to perform his obligations under the contract (i.e. obligation to take delivery of the cargo and to pay the price), should be narrowly construed and carefully considered under a case-by-case analysis.
- At present, it can be deemed that only specific restrictions on the import of certain goods/products from Italy imposed by either States of destination or international authorities, may amount to a «force majeure» defence which allows the purchaser to terminate the purchase contract.
- In order to carry out a precise assessment, on a case-by-case basis, of each case, the seller should ask the foreign purchaser, who claims a «force majeure» defence, to provide a certificate or equivalent documentation issued by the State of destination or international authorities, which confirm that specific restrictions on the import of Italian goods have been implemented.

# What are the legal consequences if the cargo is either delivered on delay or not delivered at all?

## 1. May cargo interests claim compensation under the cargo insurance for losses/damages/expenses caused by the delayed delivery of goods?

Generally speaking, both Italian (Polizza italiana di assicurazione merci trasportate) and English (Institute Cargo Clauses) most widespread cargo insurance forms do NOT cover losses, damages or expenses caused by delay.

It is therefore recommended to check that your cargo insurance cover includes a specific guarantee for damage caused by delay.

## 2. What the freight forwarder has to do in the event of delayed delivery or default delivery?

Generally speaking, freight forwarder (FF) is not liable for delayed delivery of cargo or default delivery. At this stage, it is advisable that the freight forwarder closely liaise with his FF correspondent of the import/export (as the case may be) State, as well as with shipping liner companies, in order to constantly cast a careful glance on the status of the shipment and keep the client fully updated.

As far as FF may be deemed also as contractual carrier (CC), FF could be held liable for the delayed delivery or default delivery. In the event of blockade of cargos, the FF/CC is advised to:

- gathers all the information related to causes of the cargo blockade;
- as far as possible, requires the export State to issue a certificate which states the cargo blockade situation/force majeure (e.g. PRC are issuing specific “force majeure” certificates);
- asks his client to provide FF with all the appropriate instructions.

# What prevention and containment measures should be taken for the crew/passengers on board ships?

On 24<sup>th</sup> February 2020, WHO issued its “Operational considerations for managing COVID-19 cases/outbreak on board ships” which, among other things, recommend:

<i>Prevention measures</i>	<i>Management of suspect cases</i>	<i>Measures on board of ship</i>
<ul style="list-style-type: none"><li>• development of a written plan by each ship for the disease outbreak management;</li><li>• provide the crew with guidelines for the management of cases/outbreak disease;</li><li>• pre-boarding screening of the passengers which boards for international voyages requiring them to fill the form attached to the WHO issue.</li></ul>	<ul style="list-style-type: none"><li>• disembarkation asap of suspicious cases in close liaison with the port of call health authorities;</li><li>• reporting by the master to the authorities of the first port of call of any suspicious case of COVID-19;</li><li>• transmission by shipowners to the health authorities of all necessary information (PLF, crew list and passenger list) in cases where a crew member or passenger has been recognised as infected in order to allow monitoring.</li></ul>	<ul style="list-style-type: none"><li>• In the event a ship has recorded suspect cases, the port health authority should conduct a risk assessment and may decide in consultation with the shipowner to end the cruise.</li><li>• provisions for specific cleaning and disinfection measures for cabins occupied by suspicious cases;</li><li>• laundry, food service utensils and waste from the cabins of suspected cases and their contacts should be handled as if infectious and according to the outbreak management plan provided on board for other infectious diseases.</li></ul>

# Capital Markets

- WHAT IS THE IMPACT OF THE COVID-19 SPREAD ON ISSUERS IN TERMS OF CORPORATE REPORTING?
- ARE THERE ANY PROVISIONS FOR THE SUSPENSION OF TRADING ON THE ITALIAN MARKETS?
- IS IT POSSIBLE TO CONTINUE WITH SHORT SELLING?

# What is the impact of the COVID-19 spread on issuers in terms of corporate reporting?

In the absence of explicit guide-lines from CONSOB, it is useful to consider as a starting point the communication issued by the French market regulation authority, Autorité des marchés financiers ('AMF').

The AMF states that - in accordance with the rules on the management of inside information provided by Regulation (EU) 596/2014, ("**MAR**") - any knowledge about the impact of the COVID-19 on activities, performances or prospects of the issuer must be communicated to the market without delay.

In view of the current situation's uncertainty in relation to this event, the same authority also suggests that issuers should review on a regular basis the possible impact on their business and future prospects.

# What information should be communicated?

The AMF highlights that certain information related, for example, to the geographical area of activity, production and supply is suitable to be qualified as inside information and, therefore, AMF recommends the issuers to promptly disclose it to the market. Disclosure might also be made in occasion of the annual results' presentation, providing an information note among the events following the end of the financial year, as well as in the report on operations, which must include a description of the main risks and uncertainties that the company will face.

Even in the absence of precise information, issuers disclosing forecasts or prospects for the year 2020, are required to indicate the assumptions underlying their formulation, also in light of the potential impacts of developments related to the COVID-19 emergency.

Although the guide-lines provided by the AMF are addressed to companies listed in France, the AMF communication is relevant also for our internal market, given that the MAR applies in all Member State. These guide-lines can therefore be helpful, also in the Italian context, to better understand the regulatory scope of the provisions on the disclosure of inside information.

# Are there any provisions for the suspension of trading on the Italian markets?

With reference to the temporary closure of Italian Stock Exchange, CONSOB, with the communication dated March 9, 2020, has pointed out that there is, nowadays, no evidence that the performance of the Stock Exchange is a reflection of speculative attacks, unless one intends to ascribe to this term the reaction of operators to the uncertainties about the future caused by the effects of COVID-19 on the economy.

The suspension of all negotiations on the Stock Exchange would, however, turn off the price indicator without removing the causes, entailing market issues which are not easy to solve in the immediate future.

According to CONSOB, therefore, such effects would not be correctable with restrictive decisions of the Stock Exchange, especially if such decisions were to be taken independently from other EU countries which are affected by the same issues as Italy.

Therefore, for the time being, a suspension of trading of the stocks listed on Italian Exchange Stock is not planned.

# Is it possible to continue with short selling?

CONSOB, with the same note of March 9, 2020, has pointed out that any adoption of the unilateral prohibition of short selling will be assessed, according to EU Regulation 236/2012, if the value drop exceeds 10% on average and the other requirements set out in the aforementioned Regulation are met.



# Restructuring

Extension of the effectiveness of the alert procedures

- WHAT ARE ALERT PROCEDURES (“*PROCEDURE DI ALLERTA*”) AND WHICH COMPANIES ARE SUBJECT TO THE ALERT PROCEDURES?
- WHO ARE THE PERSONS AND ENTITIES IN CHARGE TO GIVE THE ALERT ABOUT THE CRISIS EVIDENCES AND WHO HAVE THEY TO ADDRESS SUCH ALERT TO?
- HOW COVID-19 RULES IMPACTED SUCH OBLIGATIONS?

# Which companies are subject to the alert procedures (*“Procedure di allerta”*)?

**What are *alert procedures*?** They are alert obligations. They have been recently introduced by *The new business crisis and insolvency code* also known as *New Insolvency Code* (*“Codice della crisi d’impresa e dell’insolvenza”*) to allow a timely detection of the crisis of the company. The purpose of the alert is the timely adoption of appropriate measures to overcome or manage the crisis.

The alert procedures apply to the following kinds of businesses:

- **individual entrepreneurs;**
- **general partnerships;**
- **agricultural businesses and smaller companies**, to the extent that their structure is compatible;
- **undertakings subject to administrative liquidation**, for which the *alert procedure* and the composition of the company's crisis is supplemented by the participation of the administrative supervisory authorities.

# Are there any exceptions?

The early warning mechanism (“*Meccanismi di allerta*”) shall not apply to:

- **large businesses**, *i.e.* businesses that at the balance sheet date exceed of at least two of the following three thresholds: (a) total assets: EUR 20 million; (b) net revenues from sales and services: EUR 40 million; (c) average number of employees during the financial year: 250;
- **groups of companies of significant size**, *i.e.* those consisting of a parent company and subsidiaries to be included in the consolidated financial statements, which comply with the limits set out in Article 3 (6 and 7) of Directive 2013/34/EU;
- **companies with shares listed on regulated markets;**
- **banks, financial intermediaries** registered pursuant to Article 106 of Law on Finance (“*TUF*”);
- **mutual funds;**
- **Insurance and reinsurance companies;**
- **trust companies.**

# Who is obliged to raise the alert?

- **those who are required by law to supervise the company** (board of statutory auditors and sole auditor) **or to carry out a statutory audit** (external auditor or external auditing firm). They have the obligation to verify the existence of the economic and financial equilibrium of the company and to immediately report to the administrative body the existence of well-founded suspicions of the crisis;
- **qualified public creditors** identified by the *New Insolvency Code*, *i.e.* the Inland Revenue Agency (“*Agenzia delle Entrate*”), the National Institute for Social Welfare (“*Istituto nazionale della previdenza sociale*”), the Personnel responsible for collecting taxes (“*Agente della riscossione delle imposte*”), who are obliged to report directly to the OCRI (*Organisation for the Assisted Composition of the Crisis*, established at the Chambers of Commerce) due to a significant debt position.

# What are the provisions of the new emergency measures in the business crisis area?

The text of the *New Insolvency Code* provided for the *alert procedures* will come into force of 14 August 2020. For the micro-enterprises, for which the corrective decree provided for an extension of six months (and therefore until 15 February 2021).

**Finally, Decree-Law No 9 of 2 March 2020 extended this deadline to 15 February 2021 for all companies subject to the alert procedures.**

In a nutshell, due to the health emergency, the Government has provided for a six-month postponement of the start of the crisis index reporting system.

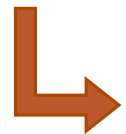
# Corporate immigration

- WHAT ARE THE PROVISIONS OF THE NEW EMERGENCY DECREES RELATED TO THE STAY IN THE ITALIAN TERRITORY OF THIRD-COUNTRY NATIONALS?
- WHAT ARE THE CONSEQUENCES OF THE SUSPENSION OF THE LEGAL TERMS ON THOSE THIRD-COUNTRY NATIONALS ALREADY PRESENT IN THE NATIONAL TERRITORY?

# What are the provisions of the new emergency decrees related to the stay in the Italian territory of third-country nationals?

Article 9 of Law Decree no. 9/2020 provides for the suspension, for a period of 30 days:

- of the legal terms for the issuance and/or the renewal of residence permits, by Police stations (*Questura*), to those third-country nationals who have already submitted the application;
- of the legal terms for the submission of the request for the issuance of the first residence permit by those third-country nationals already present in the national territory.



According to article 5, paragraph 2, of Italian Immigration law (Legislative Decree 286/1998), the request for the issuance of the first residence permit shall be submitted by third-country nationals within and not later than 8 days after the arrival in the Italian territory.

- Of the legal terms for the submission of the request for the renewal of the residence permit by those third-country nationals who already reside in the national territory.



According to article 5, paragraph 4, of Italian Immigration law (Legislative Decree 286/1998), the request for the renewal of the residence permit shall be submitted by the holder 60 days before the expiration date and not later than 60 days after the expiration of his/her residence permit.

# What are the consequences of the suspension of the legal terms on those third-country nationals already present in the national territory?

Third-country nationals who have already submitted the application for the first issuance and/or for the renewal of the residence permit to the competent Police station (*Questura*)



Strong delays are to be expected in the issuance of the final residence permits by Police stations (*Questura*)

Third-country nationals who have already entered the national territory but have not yet submitted the request for the issuance of the first residence permit



They **are not** requested to comply with the 8-day term provided for the submission of the application for the issuance of the first residence permit (those who do not comply with such term **will not be** subject to any penalty)

Third-country nationals who have not yet submitted the request for the renewal of their residence permit



They **are not** requested to comply with the 60-day term provided for the submission of the application for the renewal of the residence permit (those who do not comply with such term **will not be** subject to any penalty)





LCA

[www.lcalex.it](http://www.lcalex.it)

---