

## Newsalert

Litigation and arbitration department

The extraordinary and urgent measures on the performance of judicial activity: the provisions of Law Decree no. 18 known as "Curaltalia"

On March 16, 2020, the Council of Ministers approved Law Decree no. 18 containing measures aimed at strengthening the national health care system and supporting families, workers and businesses affected by the epidemiological emergency of Covid-19 (the so-called "Curaltalia" decree, hereinafter the "**Decree**", published in the Official Journal on March 17, 2020).

Among the measures adopted, there are also those aimed at allowing the proper exercise of judicial activity during the health emergency and, in particular, those concerning the postponement to a subsequent date to April 15 for hearings of non-urgent cases, the suspension of all procedural deadlines relating to civil and criminal cases from 9 March to 15 April, as well as the initiatives that each Court may take to ensure the best management of justice in compliance with the concurrent need to protect public health.

The main provisions of the Decree are set out below.

### I. Postponement of hearings

As a general rule, Article 83 of the Decree provides that, **from 9 March 2020 to 15 April 2020, hearings in civil and criminal proceedings pending in every judicial office shall be postponed ex officio until after 15 April 2020**. This further extends the original deadline of 22 March set by Law Decree no. 11.

There are, however, some **exceptions**. The third paragraph of Article 83 provides, in fact, that the general provision indicated above does not apply to those proceedings - listed precisely in the paragraph in question - which require immediate discussion due to their particular subject (e.g., protection of minors and incapacitated persons, precautionary proceedings aimed at protecting fundamental rights, protective measures against family abuse, cases for alimony or maintenance, expulsion validations). In addition to the detailed list of cases for which the postponement of hearings does not apply, there is also the broader provision that **all proceedings whose delay is likely to cause serious harm to the parties, are in any event excluded from the postponement**. In the latter case, the declaration of urgency is made by the head of the judicial office or his delegate at the bottom of the summons or appeal, by a decree that cannot be challenged and, for cases already initiated, by order of the investigating judge or chairman of the panel, which cannot be challenged either.

Pursuant to paragraph 6 of Article 83 of the Decree, for the period between 16 April and 30 June 2020, the heads of the judicial offices, after consulting with the regional health authority and the Bar Association Council, are required to adopt the organisational measures, including those relating to the handling of judicial affairs in compliance with the health and hygiene instructions provided by the Ministry of Health. To this end, the Judicial Offices may - for example, among other things - arrange the conduct of civil hearings that do not require the presence of parties other than the defendants and the parties, by means of **remote connections** (such as Skype for Business and M-Teams), as well as **postponing hearings in civil and criminal proceedings until after 30 June 2020**, with the exceptions already indicated in paragraph 3 of the same Article 83.

This means, for example, that except from those proceedings that cannot be postponed pursuant to paragraph 3 of Article 83, the hearings already scheduled for the period of suspension will be postponed until after April 15 (or even after June 30, 2020, based on the autonomy granted to each single Court pursuant to paragraph 6 of Article 83) and their discussion will probably take place - upon request for authorization addressed to the counsel - through the remote instruments recalled above.

The abovementioned exceptions apply also to the provisions establishing the suspension of procedural time limits, which will be discussed below.

It is noteworthy mentioning paragraph 8 of Article 83, which provides that for the period of effectiveness of the measures that preclude the filing of legal actions, the limitation and forfeiture periods of the rights which may be exercised exclusively by the performance of activities precluded by the measures themselves (e.g. notification of the summons) shall be suspended.

## II. Suspension of deadlines

Pursuant to Article 83 of the Decree, deadlines for filing **any civil or criminal brief** are **suspended from 9 March 2020 until 15 April 2020** (e.g., deadlines to file additional briefs pursuant to Article 183, paragraph 6 of the Italian Code of Civil Procedure granted at a hearing held before 9 March 2020, should be calculated from the date of that hearing, but taking into account the suspension period; thus, if for instance the first hearing was held on 5 March 2020, the 30 + 30 + 20 days provided by Article 183 should be calculated from that date, without taking into account the period from 9 March 2020 to 15 April 2020, just as it happens for periods calculation during summer suspension of courts' activities).

Accordingly, deadlines provided by the law for (i) judicial orders to be issued and respective grounds to be published, (ii) **writ of summons** and other applications initiating proceedings to be filed (also if referred to **enforcement proceedings** or **appeal proceedings**), and by way of general remark (iii) all procedural deadlines, are deemed to be suspended. In this respect, the Decree clarifies that (thus overcoming some uncertainties that had arisen with regard to Law Decree no. 11):

- i. if a procedural deadline was supposed to start running during the suspension period, it will start running at the end of such period (e.g., in the event an appeal before the Italian Supreme Court has been serviced upon the defendant on 10 March 2020, deadline provided by Article 370 of the Italian Code of Civil Procedure for the defendant to file its defensive brief will start running from 16 April 2020);
- ii. when a deadline is to be counted backwards and falls in whole or in part within the suspension period, the hearing or the activity from which the deadline starts running backwards is postponed in order to allow for the term to be observed. This is to say that even hearings currently scheduled after the end of the suspension period will be postponed *ex officio*, in the event they are the starting point for previous performance of procedural activities (as it happens, for example, for first hearings: e.g., if a first hearing has been scheduled on 16 April 2020, in order to grant the defendant the term provided by Article 166 of the Italian Code of Civil Procedure – according to which the defendant must file its statement of defence at least 20 days before the first hearing date - the hearing will be postponed to a date later than 6 May 2020).

As already mentioned, the suspension period does not apply to those proceedings which cannot be postponed pursuant to Article 83, paragraph 3 of the Decree.

Pursuant to paragraph 20 of the Decree, deadlines related to the following proceedings are also suspended: (i) **mediation proceedings pursuant to Legislative Decree 28/2010**, (ii) **alternative dispute resolution proceedings pursuant to Law Decree 132/2014** (so called "*negoziazione assistita*"), (iii) **other out-of-court dispute resolution proceedings**, as long as all such proceedings have been commenced within 9 March 2020 and represent a precondition for the prosecution of the judicial litigation. Accordingly, paragraph 20 of the Decree also specifies that the maximum

period of duration of the above-mentioned proceedings provided by the relevant laws is suspended.

With regard to the general functioning of judicial offices, among the measures to be adopted in order to reduce the risks related to Covid-19 the Decree mentions the following:

- limitation to public access, although access will still be granted to those who must carry out urgent activities;
- limitation of opening hours to the public;
- regulation of access to the various services provided by the offices, prior reservation also by telephone or by electronic means;
- adoption of binding guidelines for scheduling and addressing hearings.

To the extent possible, provisions of Article 83 of the Decree also apply to tax and military proceedings.

With the implementation of the Decree, **Articles 1 and 2 of Law Decree 11/ 2020 shall be repealed.**

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*For further information, please reach out to your usual Chiomenti contact*

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