



*BLCI International - avvocati e commercialisti
Milano – Monza - Roma - Udine – Pescara*

Italian emergency measures in response to COVID-19 (Law Decree 18/2020-23/2020)

BLCI International

Is an **Italian based Tax & Legal consulting firm**, with offices in Milan, Seregno, Udine, Rome and Pescara, originated from the alliance of four Italian based consulting companies, with the purpose to address **local and international clients** in their **tax, legal or business affairs**, linking together a wide range of expertise. The highly qualified members of BLCI are lawyers, business and tax advisors, labour consultants and CPA's with a long past experience and strong expertise in domestic, Chinese and international business law, tax law, due diligence, mergers and acquisitions.

BLCI International has recently set up an internal COVID 19 - Emergency Team, to analyze the legal, fiscal and financial effects of the pandemic in the Italian economic context; the Team, therefore, is mainly devoted to support company crisis linked to COVID-19 in Italy, and in all such jurisdictions where professional firms, member of the international network "BOKS International", are present. In that context, the COVID 19 - Emergency Team operates both in cross-border and international dimension, on the basis of "flat" prices for an initial survey.



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PROFESSIONAL BLCI'S ASSISTANCE IN TACKLING COVID-19 IMPACT ON ITALIAN BUSINESSES: FIRSTS AREAS OF ACTIONS

LEGAL, BANKING AND EMPLOYMENT RELATED MEASURES:

1. **FINANCIAL SUPPORT** (obtaining moratorium and in rescheduling of the beneficiary's debt with banks ad suppliers);
2. **RE-NEGOTIATION OF PENDING AGREEMENTS** (Covid-19 force majeure event: avoiding penalties or additional charges);
3. **EMPLOYMENT RELATED MEASURES** (supporting in smart working and related risks, health protection and safety at workplace, internal risk management, salary integration);
4. **ADOPTION OF NEW ORGANITATION MODELS** (GDPR, compliance with 231/2001 Law, corporate liability);
5. **BUSINESS REPORTING** (assistance to the corporate governance in internal and external communication)

CORPORATE ADVISORY, TAX AND WEALTH PLANNING

1. **LIQUIDITY SHORTAGES AND FACILITATE ACCESS TO FINANCING** (new financial plans, debt restructuring);
2. **BUSINESS RESTRUCTURING** (going concern emergency plans, marketing and strategies from offline to online business);
3. **TAX AND SOCIAL SECURITY PAYMENT** (assistance in benefiting of suspension of tax payments, of deferral of tax filing obligations, and in rescheduling of tax credits/losses scheme);
4. **ASSET PROTECTION** (“Tailor made” legal and tax solutions for family hit by pandemic events, and support in wealth coverage against extraordinary events/tax wealth measures)



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LEGAL AND BANKING, CORPORATE FINANCE AND EMPLOYMENT RELATED MEASURES

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Employment Related Measures



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SUPPORTING CORPORATE LIQUIDITY

Italian SMEs with registered office in Italy are granted economic extraordinary measures in relation to their debt exposures against banks and financial intermediaries. In detail, according to the COVID -19 emergency law, are SME the italian enterprises with:

- > 250 labour units;
- A turnover < € 50 million or with a annual balance sheet not exceeding total € 43 million;
- performing debt exposures.

can benefit until September 30, 2020 from the **MORATORIUM** on the payment of corporate debt for:

- a) short-term overdraft facilities and loans granted as advance payments of receivables, existing as of 29 February 2020;
- b) bullet loans with contractual maturity date falling before 30 September 2020;
- c) amortizing loans and other amortizing facilities (mortgage loan, instalments or lease payments due before 30 September 2020)

PROCEDURE TO BENEFIT FROM THE MORATORIUM:

For the application of the measure, the SME shall submit:

- a telematic request to the BANK or FINANCIAL INTERMEDIARY;
- a SELF-CERTIFICATION stating:
 - the **temporary shortage of liquidity** as a direct consequence of COVID-19 epidemic;
 - **the financing** to which the moratorium is requested to apply;
 - **the requirements** to be qualified as a **SME** are met

The **BANK** or **FINANCIAL INTERMEDIARY** will VERIFY only the formal regularity of the above procedure.



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CONTRACTUAL OBLIGATIONS AND FORCE MAJEURE CLAUSE

The spread of **COVID-19** has already affected the performance (or non performance) of **COMMERCIAL AGREEMENTS (i.e real estate leases, finance leases, supply of goods, franchising, licencing, M&A, etc.)**

A preliminary **contractual due diligence** is advisable, in order to:

- 1) **identify the relevant applicable law** and the **competent jurisdiction**;
- 2) ascertain if the agreement contains a **force majeure clause**, and if such clause covers the Covid-19 emergency;
- 3) identify what are the **consequences on the contractual party** who intends to invoke and rely on the force majeure clause;

In general, **should a force majeure clause is not present in the agreement**, it shall be necessary – on a case by case approach - to assess the applicable law in order to (i) apply the specific italian emergency rule (event of force majeure art 91 Decree n° 18/2020 "Cura Italia") and if so (ii) to what extent.

Some practical and immediate indications:

➤FOR PENDING NEGOTIATIONS

- Advisable the inclusion of a **clause** that may limit liability in case of delay in the performance of obligation(s);
- in case of **interruption** of pending negotiations due to **one's own fault**: promptly communicate to the counterparty that (i) a cause of force majeure has occurred, (ii) the unpredictability of the event, (iii) the event should make the performance impossible and/or difficult;
- in case of **interruption** of pending negotiations due to **other contractual party's fault**: assess the negotiation's validity/effectiveness in relation to an event of force majeure (also in relation to the applicability of Italian law and/or the jurisdiction of countries other than Italy).

➤FOR AGREEMENTS TO BE PERFORMED (ON A CONTINUOUS OR PERIODIC BASIS) referring to:

1. Execution with counterparties, within an Italian context:

- SUSPEND the execution of the agreement; TERMINATE the agreement due to: **impossibility to be compliant** or **excessive burdensome** reasons; CLAIM the debtor no-liability.

2. Foreign trade relations:

- VERIFY what is the applicable law either under the agreement or under International law (i.e in the event of trade sales - Vienna Convention 1980); ADJUST the terms and conditions of the agreement; SUSPEND the execution of the agreement (avoiding penalties or additional charges/deposits); WITHDRAW FROM THE AGREEMENT on the basis of existing element of force majeure through **hardship** clauses (ICC Force Majeure Clause 2003, UNIDROIT Principles, Principles of European Law), or **AMC-Adverse Material Change** (excessive burdensome incurred) .

In any event, **A PRELIMINARY PROFESSIONAL REVIEW** of the terms and conditions of the agreement is advisable.



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EMPLOYMENT RELATED MEASURES

Italian **extraordinary measures** have been also introduced for working relationships in the private sector, with special focus on:

- 1. Social shock absorbers:** for a period not exceeding **9 weeks as of February 23, 2020** and amount up to **80% of the employee's remuneration is granted** through the Ordinary Redundancy Fund (CIGO), Ordinary Check (FIS) and the Exceptional CIG schemes. The FIS and the Exceptional CIG allowances are paid directly by the National Security Body (INPS).
- 2. Allowances and leaves for special groups of workers:** parental leaves, right to be absent from work and allowances (whose % depends on the working activity) are granted to workers with minor children. In addition, an allowance amounting to 600 € is granted to co-workers, self-employees, employees of the touristic sector, and workers of the agricultural and entertainment sectors
- 3. Other provisions that are of relevance to employers:** among others, (i) quarantine qualifies as sick-leave and is not computed to calculate the maximum period of protected sick-leave, (ii) **employers cannot commence collective dismissal procedures**, nor carry out individual dismissals for economic reasons; (iii) collective dismissal procedures commenced after February 23, 2020 are suspended, (iv) additional contributions to companies for safety and enhancement of health devices are provided.

In such general framework, SMART WORKING has to be generally adopted where compatible with the content of the employment duties, disabled employees and employees having a disabled family member have the right to enter into smart working arrangements. **BUT, SMART WORKING** must comply with Regulations on Privacy (GDPR and national laws) and Regulations of remote control of workers (Law n° 300/1970). COMPANIES, therefore, **MUST necessarily adopt NEW ORGANISATIONAL MODELS** providing:

- a) INTERNAL PROCEDURES** in order to: ENSURE either the use of company and personal **devices**; SET FORTH regulations to be compliant with in the Smart Working place (leaving, custody of personal data); DIVERSIFY the access to **personal data**; PROMPTLY INFORM about fraudulent going on practices that could lead to strategic company data leakage (e.g. phishing, etc.); Provide specific PROCEDURES to be activated in case of personal **data breach**, hacking, theft or loss of devices.
- b) SECURITY MEASURES** in order to: FACILITATE the use of company devices; USE a reliable VPN connection; MAKE SECURITY TECHNOLOGIES AVAILABLE on workers' personal devices as well; PROVIDE suitable tools to act remotely in case of data breach (or others event) to prevent risks.

Professionals of BLCI International, expert in LEGAL and LABOUR matters, are able to suggest the best choices, in relation to the specific situation of the company.



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ADOPTION OF NEW ORGANISATIONAL MODELS TO AVOID CORPORATE LIABILITY

Law Decree n° 18/2020 (Decree "Cura Italia") contains provisions that allow:

- To DEFER the ordinary terms **for convening the shareholder's meeting to approve the 2019 financial statement** within 180 days from the closing of the financial year.
- To HOLD **company meetings entirely at a distance** (audio/video conference).

The new emergency procedures and the ORGANISATIONAL MODELS to be adopted within the **CORPORATE GOVERNANCE** framework shall also take into account that:

1. COVID-19 pandemic represents a BIOLOGICAL RISK FACTOR that requires the employer to adopt the most suitable **HEALTH AND SAFETY PROTECTION MEASURES** for employees/co-workers;
2. The OdV (Supervisory Body) must actively provide instructions to the company for a **timely implementation** of the ORGANIZATIONAL MODEL (in order not to trigger liability under Law n° 231/2001 - Corporate liability).

DULY NOTE THAT: may also be considered liable under Law n° 231/2001 (Corporate liability):

- **Italian companies with registered office abroad that do not have business in Italy, but merely carry out formal activity herein;**
- **foreign companies based in Italy that have committed crimes abroad (if not being prosecuted abroad yet)**

NEW ORGANIZATIONAL MODELS

The COMPANY, shall consider **updating the Risk Assessment Document** according to NEW potential RISKS (DIRECT AND INDIRECT), and consequently adopt the relevant PREVENTIVE MEASURES in order to:

- Prevent risks of Covid-19 infection at work: which it is considered as a work-related accident (falling under the health and safety work regulations – Law n° 81/2008), as stated in art. 42 of the Decree "Care Italy";
- Increase information and communication flows;
- The managing of systematic information obtained by the Supervisory Body regarding emergency measures;
- The managing and analysis of any report (data breach, violations under Law n° 23 – Corporate liability);
- Guarantee a continuous update with the Supervisory Body.



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INFORMATION DUTIES AND BUSINESS REPORTING

The COVID-19 EMERGENCY raises significant issues in terms of:

- **Compliance with the Corporate liability legislation** (Law n° 231/2001)
- **Privacy Compliance** (GDPR and national regulations)

In this context, plays an important role a constant **BUSINESS REPORTING** among:

- Governance Bodies: Directors, Board of Directors;
- Control Bodies: Board of Statutory Auditors (internal control) and Auditors (external control);
- Supervision Bodies: OdV (Supervisory Body), DPO (Data Protection Officer), which must provide suggestions/instructions for the **timely implementation of NEW ORGANISATIONAL MODELS**

On the other hand, **INFORMATION DUTIES** to be duly carried out in favour of employees/co-workers (also taking into account the ORGANISATIONAL MODELS already implemented) shall regard:

1. Quality and efficiency of technologies used within the company;
2. The corporate liability of the company;
3. The existing company relations with Public Bodies;
4. Risk assessments in relation to:
 - trade/Industrial transactions: protection against trade/industrial fraud and intellectual property infringements;
 - COVID-19 risk of infection.

And accordingly:

1. Provide info and updates regarding health & safety protocol, and company welfare;
2. Adopt emergency measures (according to ministerial and regional laws and guidelines, constantly updated) in relation to:
 - **Risk mitigating actions:** i.e. setting up of Crisis Units, according to the Ministerial "Protocol" dated 14 March 2020;
 - **Anti-infection measures already adopted:** cleaning and sanitation of working environments, organization of work and “safety distance” to be maintained in the workplace;
 - **Verify and analyze alerts/warnings received by third parties**



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PRESERVING BUSINESS GOING CONCERN

In order to preserve business going concern, it is necessary for each company to review the sales target and the production/delivery process of good and services, in order to develop the most advisable strategies to limit the impact of Covid-19 in a long term scenario. Accordingly, could alternatively be identified the following scenarios:

1. **RESUMING** the Historical **BUSINESS MODEL** adopted so far;
2. **CHANGING some aspects of the CURRENT BUSINESS MODEL (access to new online trade channels???)**;
3. **CHANGE/REPLACE** entirely the **CURRENT BUSINESS MODEL**;
4. **MANDATORY LOCKDOWN** and **RESUMPTION OF ACTIVITIES** in **12-18 months (once the emergency is ceased)**

Law Decree n° 18/2020 and n° 23/2020, contain several measures aimed at ensuring going concern (especially for those companies that were in a good standing before the crisis arose) by way of:

- Relying to the applicable prudential **criterion in drawing up current** financial statements;
- Avoiding **company dissolution** due to reduction or **loss of share capital**;
- Encouraging shareholders to increase their financing in the company (**shareholders' financing**)

In addition, further measures have been provided to support corporate liquidity. In details,

1. **The SME Guarantee Fund**: it will grant to enterprises with no more than 499 employees a guaranteed financing, free of charge, up to a maximum amount of 5 million, until 31 December 2020
2. **SACE (the Italian Export Agency) will guarantee bank loans made to large companies, SMEs and self-employed workers if they have used up their entitlement to access the SME Guarantee Fund.** Guaranteed financing must have a duration of no more than 6 years, with the possibility of an early depreciation for a period up to 24 months, when:
 - The beneficiary company is in good standing and does not hold “non performing” debt exposure with banks or financial institutions;
 - The amount of the guaranteed financing does not exceed the greater between (i) the 25 % of the company's annual turnover or (ii) twice of the personnel costs in FY 2019.



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BUSINESS RECOVERY AND NEW MARKET STRATEGIES

Although we do not know yet how the worldwide economy will recover from the significant effects caused by the Covid-19 epidemic, we do **know ACTIONS THAT BUSINESSES CAN NOW TAKE OVER to deal with the covid-19 emergency:**

- **Getting ready now for a further increased in demand:** Many companies are choosing to reduce production and supply levels in order to prevent further financial losses. Reducing production, even though convenient in terms of costs occurred, could preclude recovery and therefore satisfaction of growing demand once the emergency is gone. **Be prepared is essential. LOOK AHEAD AND CONTINUE TO DEVELOP NEW ACTION PLANS.**
- **Remain flexible as a company, setting up more sales channels:** Your business priority is to develop new market strategies and access new online channels (such as Amazon, Tmall Global) or setting e-stores. **Key word: FLEXIBILITY**
- **Think how customers' needs are currently changing and adapt your products/services to them:** You need to retask your company goals and the production/delivery process of good and services in order to be more appealing to your customers. **FASTER ADAPTABILITY TO NEW SITUATIONS**
- **Continue to work on developing new leads and opportunities.** Address the actual situation positively by making it known to the outside world how the company manages the current situation, demonstrating the adaptability and added value of your business. **BE CONFIDENT**

The professionals of BLCI International, expert in the FINANCE and CORPORATE BUSINESS matters, are able to suggest the best choices, in relation to the situation of the company.



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SUSPENSION OF TAX AND SOCIAL SECURITY CONTRIBUTION OBLIGATIONS AND FURTHER MEASURE TO BOOST COMPANIES LIQUIDITY

Law Decrees n° 18/2020 and n° 23/2020 contain several measure to help COMPANIES and SELF-EMPLOYED WORKERS (with registered office or tax domicile in Italy) remain liquid. Some of these measures are underlined below:

1. SUSPENSION OF TAX PAYMENTS AND SOCIAL SECURITY CONTRIBUTIONS UNTIL 31 May 2020.

In details, the suspension applies to taxpayers with:

- profit/earnings < to €50 million in FY 2019, and who have suffered IN MARCH OR APRIL 2020 at least a **33%** reduction in their turnover (with respect to March – April 2019);
- profit/earnings OVER 50 million Euros in FY 2019, who have suffered IN MARCH OR APRIL 2020 at least a **50%** reduction in their turnover (with respect to March – April 2019)

1. MEASURES FACILITATING THE SALE OF NON-PERFORMING LOANS TO OBTAIN TAX CREDITS.

In details:

- The assignment must take place by 31 December 2020 AMONG INDEPENDENT COMPANIES;
- The transformation of the DTAs into tax credits takes place on the effective date of the assignment of the receivables.
- From the effective date of the assignment, the assignor will be able to offset losses, deduct or take advantage of the surplus of the ACE (Allowance for Corporate Equity) notional return up to a maximum 20% of the nominal value of the receivable sold/assigned.
- The tax credit obtained must be indicated in the 2021 tax return (tax year 2020) and do not constitute revenue nor are part of the Italian 'IRAP' (Regional business tax) tax base.

3. ADVANCE TAX PAYMENTS (DUE ON 30 June 2020 AND ON 30 November 2020)

- No penalties and interest shall be applied on underpayments of advance instalments of IRPEF (individual tax), IRES (corporate tax) and IRAP (Regional business tax), provided that the underpayment does not exceed the 20% of the amount that would be due on the basis of the tax 2021return (tax year 2020).



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ASSET PROTECTION: SAFEGUARDING THE ENTREPRENEUR'S FAMILY WEALTH

On April 11, 2020, the Italian Partito Democratico launched the proposal for the introduction, in FY 2020 and 2021, of a Covid-19 solidarity tax to be levied on the part exceeding incomes higher than 80,000 euros. After all, a **WEALTH TAX NIGHTMARE** is not to be excluded. **Historically**, Italy has already dealt with the introduction of “extraordinary taxes” while facing **EXTRAORDINARY EVENTS**. In details:

- **1922: FOLLOWING THE FIRST WORLD WAR**, a wealth tax was introduced and levied on individual and legal entities with income/profits higher than 50,000 Lire;
- **1936-1938**: three different types of wealth taxes were introduced for the **FINANCING OF WAR OF AFRICA**;
- **1947: FOLLOWING THE SECOND WORLD WAR**, was levied either a progressive extraordinary tax on individuals and a proportional tax on companies,
- **1992: THE NEAR COLLAPSE OF LIRA** led to an extraordinary tax levy on sums deposited on Italian bank accounts;
- **2011: AS A RESULT OF THE 2008 FINANCIAL CRISIS**, the Municipal local tax (IMU) was tightened, and a new tax on luxury vehicles, financial investment and real estate held abroad were introduced

ITALIAN LEGAL INSTRUMENTS – TO BE TAX OPTIMISED - FOR THE PROTECTION OF THE FAMILY BUSINESS: KEY ASPECTS

- **FAMILY TRUST (fondo patrimoniale)**: suitable against actions brought by creditors (no transfer in ownership occurs);
- **FAMILY AGREEMENT (patto di famiglia)**: for inheritance, governance, or tax managing purposes (suitable for generational transfer, but not against actions brought by creditors)
- **FIDUCIARY ENTRUSTMENT/INVESTMENT**: suitable for privacy and governance managing purposes (flexible instrument with certain limitations)
- **INSURANCE POLICIES**: suitable against actions brought by creditors (fairly for inheritance managing purposes);
- **TRUST**: to preserve and manage inheritance, and for tax managing purposes (suitability to be assessed in respect of the concrete tasks to be achieved).

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