

PAVIA e ANSALDO
STUDIO LEGALE

Via del Lauro, 7 . I - 20121 Milano . Tel. +39.02 8558.1 . Fax +39.02 89011995 . info.milano@pavia-ansaldo.it
Via Bocca di Leone, 78 . I - 00187 Roma . Tel. +39.06 69516.1 . Fax +39.06 6793236/7 . info.roma@pavia-ansaldo.it
www.pavia-ansaldo.it

COVID-19 EMERGENCY

Law Decrees no. 11/20 and 18/20 introducing distance communication technology in Italian courts along with other measures to face the crisis



Associazione professionale tra

Avv. Stefano Bianchi - Avv. Daniele Carminati - Avv. Claudio Cera - Avv. Enrico Del Guerra - Avv. Mario Di Giulio - Avv. Gian Paolo Di Santo
Avv. Filippo Fioretti - Avv. Marco Giustiniani - Avv. Vittorio Loi - Avv. Francesco Manara - Avv. Nico Moravia - Avv. Mia Rinetti - Avv. Meritxell Roca Ortega
Avv. Marina Santarelli - Avv. Maurizio Vasciminni - Avv. Sven von Mensenkampff - Avv. Roberto Zanchi e Dott. Marco Jannon

Soci Onorari: Agostino Migone de Amicis - Bruno R. Pavia

C.F. - P.I. (V.A.T. N.) 01771720156

The emergency legislation enacted by the Italian Government to face the current health emergency also concerns Court proceedings and ADR (Law Decrees No. 11 of 8 March 2020 and No. 18 of 17 March 2020).

Amongst the most significant measures, the Law Decrees provide that **civil and criminal proceedings hearings may be held via videoconference** through Skype for Business and/or Microsoft Teams. This is an unprecedented innovation aimed at avoiding the paralysis of the Italian judicial system during the lockdown period. It cannot be ruled out, however, that it may work as a trial stage to be hopefully confirmed once the current emergency period is over.

CIVIL PROCEEDINGS

All hearings scheduled from March 9, 2020 through April 15, 2020 will be postponed and all trial deadlines expiring in the same period of time will be stayed or extended. Exceptions apply in cases concerning the following matters:

- 1) protection of minors;
- 2) family support obligations;
- 3) fundamental rights of the person concerned;
- 4) compulsory health treatments and mental illness;
- 5) voluntary pregnancy interruption;
- 6) protection against domestic abuses;
- 7) expulsion and detention of foreign nationals, including nationals of other EU Member States;
- 8) petitions for a stay of enforcement of judgments in proceedings that are pending before Courts of Appeal or the Supreme Court;
- 9) appointment of a protector or advisor for an incapable person, support administration, guardianship, interdiction and incapacitation under circumstances of extreme urgency.

The proceedings whose postponement may affect the parties' rights are also excepted, provided that the President of the Court has confirmed that the matter is urgent. If the proceedings have already started, the declaration of urgency is made by the Judge.

For the period from April 16, 2020 until June 30, 2020 the Presidents of the Courts have been granted with the power to issue of specific rules for access to Court premises and to extend the rules in force until April 15, 2020.

As mentioned above, the emergency provisions provide that the hearings scheduled until April 15, 2020 must be held via video-conference. The Presidents of the Courts may extend such provision until June 30, 2020. Alternatively, oral discussions can be replaced by briefs of defence to be exchanged electronically. The relevant Court decision is also transmitted electronically to the parties.

CRIMINAL PROCEEDINGS

The solutions adopted for civil proceedings have also been adopted for criminal trials: (i) all scheduled hearings are postponed after April 15, 2020 and the relevant deadlines are stayed (as well the limitation period of the offences and the duration of the precautionary measures in general). Only exception: specific cases where the trial must be urgently conducted; (ii) possible adoption - by the Presidents of the Judicial Offices - of organizational measures for hearings not postponed in the period until April 15, 2020 and, in general, for the following period, from April 16, 2020 to June 30, 2020. The range of such measures is wide and includes the celebration of the trial “behind closed doors” and the postponement of hearings even after June 30, 2020 (except for urgent proceedings).

For trials involving person imprisoned, from March 9, 2020 to June 30, 2020 hearings shall be held, where possible, by video-conference or adopting solutions expressly indicated by the judicial authority, as for the civil sector.

In addition, by way of derogation from general rules, notices and notifications to defendants and other private parties, shall be transmitted only to the certified email address of the appointed attorney (if formally known).

ADMINISTRATIVE JUDICIAL PROCEEDINGS

All hearings scheduled from March 8, 2020 until April 15, 2020 (“*first period*”) will be postponed. Moreover, all deadlines expiring in the first period will be suspended. As to requests for urgent measures, the Law Decrees have introduced a special regime for the first period: courts will issue the so called “*decreto monocratico*” (*i.e.* an order issued without hearing the parties) and will schedule the hearings after April 15, 2020. As to the period from April 16, 2020 until June 30, 2020 (“*second period*”), all claims will be decided without oral discussion, based on the pleadings electronically filed by the parties. Furthermore, parties will have the faculty to electronically file and exchange closing arguments until 2 days before the scheduled hearings. In other terms, such closing arguments will substitute the oral discussions, which will not take place due to the ongoing sanitary emergency. Finally, parties will be relieved from the effects of the expiration of time limits for the filing of pleadings during the first period.

SUPREME COURT PROCEEDINGS

By a decree dated March 31st, 2020, the President of the Supreme Court ordered the adjournment of all cases scheduled for discussion in public hearings before June 30, 2020, except those mentioned in paragraph “*Civil Proceedings*” above.. The same decree also sets restrictions upon scheduling and holding of Supreme Court panels meetings, in both civil and criminal proceedings, and established that all hearings the lawyers are not entitled to attend will be held via remote connection.

ADR

From March 9, 2020 through April 15, 2020 all terms to carry out any activity in mandatory ADR proceedings are stayed. Said suspension applies to ADR proceedings that under Italian law must be brought before the filing of a claim in Court, provided that the said proceedings were commenced before 9 March 2020.

There is no provision with reference to non-mandatory ADR proceedings and arbitration proceedings.

A number of Italian arbitration chambers (such as Milan Arbitration Chamber and Bologna Arbitration Chamber) adopted even more efficient measures than those currently taken by overseas arbitration institutions ⁽¹⁾, such as: the postponement of the hearings (provided that, with the parties' consent, the hearings may take place by videoconference) and the stay of the terms granted by the Arbitral Tribunals and the applicable arbitration rules.

Similarly, the Bank of Italy stayed (from March 17, 2020 to April 3, 2020) all terms of ABF (the Banking and Financial Ombudsman) proceedings and CONSOB stayed all the terms (from March 12, 2020 to the April 15, 2020) of ACF (Finance Dispute Arbitration) proceedings.

In conclusion, although some of the above rules leave room for interpretation, the intention of the legislator is crystal clear: foster social distancing and, at the same time, suspend the procedural terms.

⁽¹⁾ As of today: **(i)** ICC provided for the mandatory on line filing of requests for arbitration and postponed the hearings at the Paris ICC Hearing Centre; **(ii)** LCIA provided for the mandatory on line filing of requests for arbitration; **(iii)** similar provisions were adopted by SCC and VIAC, that also provided the arbitral tribunals with guidelines concerning the possible hearings; and **(iv)** SIAC provided for the electronic filing of requests for arbitration and that the hearing shall be held via video or teleconference.