

D.L. 23/2020: corporate and statutory norms



Focus on...

Below is an overview of the main corporate and tax provisions contained in Law Decree 23/2020 (so-called “Liquidity Decree, hereinafter the Law Decree), in force since 9 April 2020.

Provision banking and financial intermediaries’ services - Art. 4 DL

During the epidemiological emergency, new procedures aimed at simplifying the execution of banking documents are in force, making it unnecessary to physically go to the premises of banks and intermediaries. It is possible to enter into contracts with retail clients (as defined under the Bank of Italy guidelines) in the period included between the entry into force of the Law Decree until the end of the state of emergency, provided that the written form requirement is complied with and that evidential effectiveness are granted through the expression of the client’s consent through non-certified email or other suitable tool, upon condition that these are (i) accompanied by a copy of a valid identity document, (ii) referred to a contract identifiable in a univocal way and (iii) kept in the files together with the contract in such a way as to guarantee their security, integrity and that they cannot be modified.

The norm is aimed at guaranteeing the continuity of the provision of services and the offer of products to clients by banks and financial intermediaries during the emergency situation, favouring the conclusion of contracts through the abovementioned procedure to express consent, simplified if compared to the ordinary formalities. The requirement of the delivery of a copy of the contract to the

client is met by making available a copy on a durable medium and further delivering a hard copy at the first useful occasion.

This provisions guarantees legal certainty to the relations concluded during the emergency period making use of the most widespread communication tools, avoiding the risk of invalidity of the underlying contracts and granting them evidential effectiveness.

This norm has an exceptional character and thus regulates only the contracts concluded in the period between the enforcement and the termination of the state of emergency.

Financial Statements and going concern - Art. 7

The Law Decree faces the negative impact, severe though temporary, that the crisis may have in 2020 on the going concern of businesses. It is therefore provided for that companies draft and approve their Financial Statements at 31.12.2020 evaluating the items basing on the principle of prudence and of the going concern as under art. 2423, para. 1 n. 1 of the Italian Civil Code, if existing in the last Financial Statements closed before 23.02.2020. This implies a particular focus on these aspects, particularly on evaluations, which are already explained in the Financial Statements being approved (relevant to FY 2019).

Shareholders' loans to companies - Art. 8

The Law Decree originates from the need to enhance the necessary channels for a proper financing of companies, also through an increased involvement of shareholders in increasing finance flows. It is therefore provided for the temporary disapplication of the mechanisms deferring loans granted by shareholders or by entities carrying out the management and coordination activity under art. 2467 and 2497-quinquies of the Italian Civil Code.

From a temporary point of view, a limitation to the deferment of loans granted before 31.12.2020 has been introduced.

Provisions on share capital reduction - Art. 6

The application of the provisions under art. 2446, para. 2 and 3 ("Share capital reduction due to losses" for SpA), art. 2447 ("Share capital reduction below the statutory limit" for SpA), art. 2482-bis, para. 4, 5 and 6 ("Capital reduction due to losses" for Srl) and art. 2482-ter ("Capital reduction below the statutory limit" for Srl) of the Italian Civil Code is suspended.

The temporary suspension is in force from the date of entry into force of the Law Decree and until 31.12.2020.

During the same period, the norms providing for the dissolution of companies due to a share capital reduction or loss under art. 2484, para. _, n. 4 ("Reasons for dissolution for SpA and Srl) and art. 2545-duodecies ("Dissolution" for cooperatives) of the Italian Civil Code will also be suspended.

Negotiable instruments: suspension of terms - Art. 11

It is provided for the suspension of the terms to maturity of money orders, bills of exchange and any other enforceable negotiable instrument, falling due or starting in the period included between 09.03.2020 and 30.04.2020.

The suspension is in favour of debtors and obligors, also as recourse and guarantee, without prejudice to the possibility for the latter to expressly waive them.

Again, the payment terms of bank and postal cheques in favour of the beneficiary are suspended.

In this context, the notice of revocation will not be issued for cheques without funds and, in case it had already been issued, the 60 days term for the late payment is suspended.

The filing with the Chamber of Commerce by public officials of protested bills and other similar protests notified from 09.03.2020 up to the date of entry into force of the Law Decree is also suspended and, in case they have already been registered, they are automatically cancelled.



Our professionals would be pleased to provide you with any further information you may need.

Please refer to Clever Desk on our website - bgt-grantthornton.it - for further details on any issues concerning COVID-19.

