

## Clever Desk: your interactive support

### Expert's opinion

**Davide Gabriele Savian**  
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### Overview

**Clever Desk, supporting businesses and entrepreneurs**

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### Federico Feroci

*Partner Bernoni Grant Thornton*

In the last few weeks, the Italian Parliament has been working on the conversion into law of Law Decree n. 18 dated 17 March 2020 (so-called "Cura Italia" Decree), while the Government issued a new Decree (so-called "Liquidity Decree", i.e. Law Decree n. 23 dated 8 April 2020) introducing further measures to support...

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### Legal opinion

**Carlo Giuseppe Saronni**

*Civil lawyer*

Among the articles included in Law Decree dated 17 March 2020, so-called "Cura Italia" decree, there is one that is interesting for the purposes of contractual fulfilments.

This is art. 91, containing "Provisions on delays or contractual breaches due to the implementation of containment measures and price advance measures in public contracts".

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## Overview

### Clever Desk, supporting businesses and entrepreneurs

The consequences of the spread of Covid-19 have swept across Italy straining Italian enterprises that are forced to deal with an unprecedented situation. In fact, many business are forced to adjust their production lines to meet the new market needs.

To respond to the complexity of this scenario, we founded Clever Desk, an online consultancy platform to support businesses in the management of the difficulties caused by the health crisis. Our professionals are available to assist businesses by providing a support that is both useful to deal with the current hindrances and to identify new priorities through actions that are aimed at overcome the crisis.

Clever Desk is based on interdisciplinary approach, offering entrepreneurs a cross assistance covering different scopes of application, thanks to the diverse skills of our professionals.

Quick and agile actions required by the current emergency situation led Bernoni Grant Thornton to conceive Clever Desk as a free online support.

Your first contact on the platform are two reference partner, who can understand your specific needs and direct each request to the most appropriate team in our organization among the following service areas: tax, corporate, financial, human resources & payroll, communication and marketing, outsourcing, ICT, and privacy.

The first step is assisting businesses in understanding the measures provided by “Cura Italia” Decree, approved on 17 March. This is a complex package including many provisions and dispositions, 126 articles concerning many different business functions and professional subjects. Due to such complexity, it is crucial for businesses to have the opportunity to receive a specialized assistance from professionals able to interpret the provisions and opportunities for each business: in this context, Clever Desk will provide you with a valid support in the interpretation and implementation of rules.

In the April edition of TopHic you will find the latest comments by our professionals on articles 56, 65, and 91 of “Cura Italia” Decree.



## Expert's opinion

**Davide Gabriele Savian**

*Partner Bernoni Grant Thornton*

### **Moratorium on loans: risks and opportunities**

Among the support measures introduced by Law Decree n. 18 dated 17 March 2020 (the so-called *Cura Italia* Decree) to face the emergency resulting from the COVID-19 outbreak, art. 56 is worth mentioning as it provides for the “freezing”, until 30 September 2020, of current account credit facilities, loans for advance payments on receivables, deadlines for short-time loans and loan instalments and rental payments.

As specified by the Ministry of Economics and Finance with a note dated 22 March 2020, the moratorium includes the following financial support measures:

1. the possibility to use the available amount of uncommitted credit facilities and loans granted against advances on receivables existing at 29 February 2020 or at 17 March, if higher. The amounts granted by the bank or by the financial intermediary cannot be withdrawn, not even in part, until 30 September 2020;
2. the extension until 30 September 2020, under the conditions above, of overdrafts facilities due before 30 September 2020;
3. the suspension, until 30 September 2020, of the payment of instalments or of lease payments due before 30 September 2020,



for mortgages and other loans repayable by instalments, also by the issuance of agricultural loans. In this regard, the Ministry of Economics and Finance specified that the suspension period includes instalments due on 30 September 2020, meaning that such instalment needs not be paid. The entrepreneur can decide whether to request the suspension of the entire instalment, or of the entire lease payment, or just of the principal.

Within the measures aimed at helping businesses in these challenging times, it is worth mentioning also the agreement between ABI (i.e. the Italian banking association) and trade associations, entered into on 7 March 2020 and concerning the suspension, up to one year, of the payment of the principal of loan instalments and the extension of the deadlines of loans.



## 1. Addressees

The beneficiaries of this moratorium are small and medium enterprises (SMEs) as defined by the European Commission Recommendation n. 2003/361/EC, operating in Italy in all industry sectors.

Basing on the European Commission definition, SMEs are enterprises which employ fewer than 250 persons and which have a turnover not exceeding Euro 50 million, and/or an annual financial statements total not exceeding Euro 43 million. As specified by the Ministry of Economics and Finance, self-employed workers having a VAT number also fall within the scope of the definition of SME.

## 2. Formalities related to the moratorium applications: applications to intermediaries

As specified in the note by the Ministry of Economics and Finance dated 22 March 2020, the applications to benefit from the moratorium on loans can be submitted by businesses starting from the entry into force of the so-called “Cura Italia” Decree, i.e. from 17 March 2020. Applications can also be sent via certified email (PEC) or other means allowing to keep track of the communication with a certified date.

In said applications, businesses need to provide a self-declaration including indication of: (i) the loan for which they are filing the moratorium communication; (ii) to have suffered from a temporary lack of liquid funds as a consequence of the Covid-19 outbreak; (iii) to meet all the requirements to be qualified as a microenterprise, small or medium enterprise.

## 3. Issues related to the issuance of the self-declaration certifying the compliance with the subjective requirement of SMEs and assessment relevant to the liquidity crisis

Once clarified the scope of the subjective application of the norm and the fulfilments necessary to benefit from the moratorium, it is now worth focusing on the risks related to the issuance of a false self-declaration attesting the existence of the subjective requirement to qualify as a SME and the liquidity crisis, also considering that the moratorium applications are not accepted automatically but are evaluated on the basis on the going concern outlook each business can guarantee.

To this end, it is worth specifying that according to criminal law, the issuance of a false self-declaration can constitute a criminal offence pursuant to art. 483 of the Italian Criminal Code, i.e. when a document is neither forged nor counterfeited, but contains a false statements.

From an analysis of the case-law of the merits courts ruling on the substance and the case-law of supreme courts, it emerges that wilful misconduct is excluded in all cases in which the falsehood above is simply due to thoughtfulness or negligence, given that the Italian Criminal Code currently in force does not consider the negligent falsification of documents as a criminal offence.

More in detail, as specified by the Court of Cassation with judgement n. 33218 dated 31 May 2012, in order for the above to be classifiable as a crime, wilful misconduct cannot be considered to exist for the mere circumstance that the declaration contains an objectively untrue statement.



It is necessary, instead, to ascertain whether the falsehood is due to the thoughtfulness of the agent, or to a lack of knowledge and/or misinterpretation of the legal provisions, or, again, to the negligent application of an administrative procedure, since the Criminal Code currently in force, as specified above, does not consider the negligent falsification of documents as a crime.

Therefore, in case of a self-declaration as required under art. 56 of the “Cura Italia” Decree certifying that the applicant company meets the dimensional requirements to be considered as a SME, as specified under the Commission Recommendation n. 2003/361/EC, the applicant cannot be charged with the offence above, provided that the self-declaration is supported by an appropriate and thorough indication of the underlying regulatory requirements (the support of a specific legal/accounting opinion could be advisable in the more complex cases) basing on which it believes to meet the dimensional requirements to be considered as a SME.

On the above, we underline that it is advisable to carefully evaluate the possession of the dimensional requirement, especially in case the company belongs to a group of significant dimensions or is controlled by a holding or an investment company (or venture capital companies)<sup>1</sup>.

Financial Statements items of all companies belonging to a group will actually be considered to assess the dimensional requirements, as clarified by the Ministry of Economics and Finance on 27 March 2020<sup>2</sup>.

In these cases, the possibility of benefitting from the measure is not automatically excluded, there being a series of other conditions to be considered.

Moreover, should the intermediary consider the moratorium just as a mean to further delay the emergence of an irreversible crisis, it should not be granting it, under penalty of committing the crime of fraudulent lending, for which imprisonment from 6 months to 3 years is provided for Directors and CEOs in case of concealment of insolvency.

This said, in order to provide evidence of the temporary liquidity crisis, the self-declaration and the moratorium application need to be supported by a business plan, carefully drafted, if possible according to the Guidelines for drafting business plans issued by the Italian Board of Certified Chartered Accountants (CNDCEC).

Of course, this document needs to carefully outline the impact of the Coronavirus emergency on the company’s specific business, focussing on the DSCR (debt service coverage ratio), i.e. on the ratio between future free cash flow from operations (or FCFO) and the loan instalments granted, or not, by the moratorium. The business plan should demonstrate how the delay granted would allow to overcome the downturn, which must be a temporary and not a chronic one.



## Conclusions

In the light of the remarks above, it is clear that though, on the one hand, the moratorium can bring short-term benefits, on the other hand, the relevant application needs to be supported by a careful strategic evaluation.

We can actually presume that although benefitting from the moratorium does not automatically imply for a company being reported to the Risks Central Office, its position could nonetheless be subject to a specific monitoring activity by financial intermediaries as concerns its creditworthiness.

The condition to be met in order to be granted the moratorium is actually represented by the difficulties, though temporary, the company declares to face in terms of liquidity. This implies that possible future requests of new loans to the same banking institution, over a short time period, could be subject to a more stringent and stricter evaluation.

For this reason, as well as for the risk of committing a criminal offence when issuing a false declaration, companies should apply for a moratorium only in case of actual need, supporting said application by specific details proving that all subjective and objective requirements are met.

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<sup>1</sup> Art. 3 of the European Commission Recommendation, for example, specify that an enterprise may be ranked as autonomous, and thus not having any partner enterprises when its investors are venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital - "business angels".

<sup>2</sup> The Ministry of Economics and Finance clarified, in reply to the following question "do enterprises controlled by other entities and, thus, belonging to a group - which group exceeds the dimensional parameters under EC Recommendation for the definition of microenterprises, small and medium enterprises - also fall within the scope of the SME definition" that such enterprises are not considered as SMEs since, as concerns enterprises controlled by other entities, reference needs to be made to the dimensional parameters of the group.

**Facing Covid-19  
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## Expert's opinion

Federico Feroci

Partner Bernoni Grant Thornton

### Tax benefits – Tax credit granted under the Cura Italia Decree

6 April 2020

In the last few weeks, the Italian Parliament has been working on the conversion into law of Law Decree n. 18 dated 17 March 2020 (so-called “Cura Italia” Decree), while the Government issued a new Decree (so-called “Liquidity Decree”, i.e. Law Decree n. 23 dated 8 April 2020) introducing further measures to support the economy, businesses, professionals and families.

The “Cura Italia” Decree, which we analyse below, is the first systematic intervention - after the various Decrees of the President of the Council of Ministers issued first to face the healthcare emergency - issued by the Government with three priority goals in mind: protect public health, support the production system and safeguard the workforce. The key aim of this regulatory package is that of exponentially curb the epidemic while sustaining productive activities in order to avoid that the production slowdown (if not its complete stop) brings long lasting negative effects. Support to business include, tax, financial and credit benefits aimed at injecting liquidity in the system in various ways, some specific for small and medium enterprises, others for bigger companies.



The norms provides for, in particular, the granting of the following tax credits, which allow for an immediate tax savings through offsetting:

1. tax credit for the sanitisation of working environments (a new norm, valid only for FY 2020);
2. tax credit for rentals of workshops and shops (a new norm, valid for March 2020);
3. extraordinary tax credit for advertising investments (an amendment to the norms previously in force, valid only for FY 2020);
4. tax credit for the transformation of deferred tax assets and liabilities relevant to the ACE (aid to economic growth) tax benefit (a new norm, valid only for FY 2020);
5. tax credit for newsstands (an amendment to the norms previously in force, valid only for FY 2020).



The norms above were welcomed with interest, also due to the ease with which they can be applied, especially as concerns the tax credit for workshops and shops under point 2 above and included under art. 65 of Law Decree n. 18 dated 17 March 2020.

### **Tax credit for workshops and shops - Interpretations**

The norm provides for the granting of a partial refund of the costs borne to rent the premises used to carry out the business activity in favour of retailers.

Persons carrying out a business activity are thus granted, for FY 2020, a tax credit equal to 60% of the total amount of the rental paid for March 2020, provided they are lessees of premises falling within the C/1 cadastral category.

Circular Letter n. 8/E dated 3 April 2020 clarified that the tax credit is accrued once the rental is paid, although, as detailed below, amendments being analysed by the 5th permanent commission (budget) go in the opposite direction. The provision does not apply to those businesses considered as essential, among which pharmacies, para-pharmacies, newsstands and convenience stores. The tax credit can be used to offset amounts due, pursuant to art. 17 of Legislative Decree n. 241 of 1997, through the F24 form, indicating the code 6914, i.e. “Tax credit for rental payments of workshops and shops – art. 65 of Law Decree n. 18 dated 17 March 2020”, created following to the Revenue Office resolution n. 13 dated 20 March 2020.

As concerns the scope of application of the norm, the Ministry of Economics and Finance clarified that it applies to shops and workshops, with the exclusion of contracts concerning other goods and services, such as leases of business units or other contractual forms regulating the relationships between tenants and lessors of commercial real estate.

The norm soon originated an extensive debate due to the various limitations it contains. This are in particular, the limitation relevant to the C/1 cadastral category (workshops and shops) regardless of the type of activity carried out in the premises and of the retail area.

Limiting the norm to a sole cadastral category actually risks nullifying the beneficial effect by excluding subjects who have also been hit by the lockdown, such as private offices falling within the A/10 category (although professional activities have not mandatorily been closed) and even more so workshops for arts and professions (C/3), warehouses (C/2) and premises built or adjusted basing on the specific needs of a commercial activity and not likely to be used in other ways, unless following to major changes (D/8).

These cadastral units could also be used (as well as those under the C/1 category) to carry out retail activities (closed following to the Decree), but their lessees, in compliance with the norm, are required to pay the rental, not being entitled to any benefit.

The sole possibility for such lessees will therefore be that of asking their lessors to postpone and/or suspend the rental payment provided for in the relevant rental contract





for the lockdown period (a request which has certainly been made by the majority of lessees of commercial real estate in Italy), pursuant to art. 91 of the “Cura Italia” Decree titled “provisions on late payments or breaches of contract further to the implementation of the measures reducing and anticipating the payments due under public contracts”. The temporary impossibility to carry out one’s business activity (anything but obvious, but to be evaluated by the Judge on a case by case basis) should imply the exemption for lessees from the liability for the late payment of the rental. The impossibility of carrying out the business activity which should exempt the lessees from the payment of the rental would in any case be difficult to enact as it won’t concern the lessor who is regularly carrying out its activity (granting the availability of the premises). Reference is made, for these aspect, to the article by Carlo Saronni.

Given the above, it would be desirable for the Parliament, when converting Law Decree n. 18 dated 17 march 2020, to carefully evaluate the various amendments proposed on art. 65, all of them aimed at expanding the scope of the tax benefit.

Some of the submitted amendments, in particular, propose:

- to entirely substitute para. 1 and provide for the total exemption from the payment of rentals for lessees and for a tax credit equal to 60% of the uncollected rentals for lessors;
- to extend such measure also to leases of businesses or business units;
- to include also C/2, C/3, D/1, D/2, D/3, D/6 and D/8 cadastral categories, as well as professionals and self-employed falling within the A/10 cadastral category.

We are therefore looking forward to the conversion of the Decree into law, hoping that the inequalities outlined above will be overcome, notwithstanding the difficulties connected with the relevant streamlining and the limited public resources available.



## Legal opinion

Carlo Giuseppe Saronni

*Civil lawyer*

### **Contractual breaches at the time of Covid-19 - Art. 91, part 1, of law decree n. 18 dated 17 March 2020, so-called *Cura Italia* decree focusing on commercial leases**

Among the articles included in Law Decree dated 17 March 2020, so-called “Cura Italia” decree, there is one that is interesting for the purposes of contractual fulfilments.

This is art. 91, containing “Provisions on delays or contractual breaches due to the implementation of containment measures and price advance measures in public contracts”.

A first and quick reading of the above title could lead to the idea that the article is about public contracts. Actually, the rule contains two provisions.

The first one concerns civil code dispositions generally applicable to liabilities and contracts.

The second one, which is more specific, concerns public contracts and an extending obligation to pay an advance of 20% of the public contract consideration – due to the contractor within 15 days from the starting of works, as regulated under art. 32, para. 18 of Legislative Decree no. 50 dated 18 April 2016, (so-called “Code on public contracts”) – also to case of urgent delivery.

This article concerns the first part of the rule, which is always applicable to private-law relationships.

Art. 91 of the decree states: “Art. 3 of law decree no. 6 dated 23 February 2020, turned with amendments into law no. 13 dated 5 March 2020, introduces, after para. 6, following para. 6-bis, providing that the observance of containment measures included in the decree is always taken into account to evaluate the possible exclusion of the debtor’s liability, pursuant to art. 1218 and art. 1223 of the Italian Civil Code, also with reference to the application of any limitation of actions or penalties related to delayed or omitted payments”.



## Art. 91 and civil code provisions

Art. 1218 of the Italian Civil Code regulates the liability of those debtors who do not correctly fulfil their obligations, imposing them to compensate for damages, unless the debtor proves that the breach or the delay derived from an impossibility due to causes that are not attributable to the debtor. Art. 1223 of the Italian Civil Code specifies that the damage due to total nonpayment or delayed payment must cover both the emerging damage, i.e. the loss incurred by the creditor, and the *lucrum cessans*, i.e. the missing profit. The impossibility to fulfil the debtor's obligations due to causes that are independent from the debtor exclude liability.

The new regulation introduced by Cura Italia decree provides a genuine interpretation of these civil code provisions in relation to the Covid-19 containment measures that are defined as a cause that cannot be attributed to the debtor.

However, this does not automatically exclude liability, because each case must be carefully examined by a court. In other terms, the debtor must prove the compliance with containment measures and that this made it impossible, either totally or partially, to fulfil the payment. The court will have to examine and justify, for each case, the implementation of the specific containment measures under Law Decree no. 6 of 2020, analysing if these have actually made it impossible to fulfil the payment.

To make a practical example, it is clear that the closure of a factory makes production and, subsequently, delivery of goods, impossible. In this case, the supplier will certainly be indemnified against any liability.

On the other hand, a more complex case arises if the factory is not closed, as it falls within those allowed activities, but it cannot procure the necessary subcontractors' raw materials or semi-finished products.





In this latter scenario, each single case need to be evaluated by the court.

It must be pointed out that the regulation under analysis seems to refer mostly to the case of delayed payment, rather than that of total and final unpayment, assuming that containment measures should be temporary.

In this case, the regulation expressly provides that the creditor cannot apply for damages due to delayed payment or claim for penalties or limitation of actions, if provided.

In fact, the regulation acts mostly as a justification for damages due to delayed payments, rather that total unpayment.

To this regard, a distinction must be made between definite impossibility to pay and temporary impossibility to pay.

In bilateral contracts, the total impossibility to pay that is not attributable to the debtor determines the lapse of the obligation and the relief of the creditor, who cannot claim the consideration to the other party, according to the provisions under articles 1256 and 1463 of e Italian Civil Code, which however are not referred to in art. 91 of “Cura Italia” decree.

Therefore, if the producer closed the factory in compliance with containment measures and, subsequently, is not able to provide the expected product, save for any default, will be possibly relieved from the obligation, will not have any right to receive the agreed consideration, or will have to return it if this was already collected, and will not have to compensate for damage according to the provisions under art. 91, part 1, of “Cura Italia” decree.

If the impossibility is temporary - and this will be the most frequent case - the obligation does not lapse, but the debtor will not be liable for the delay. Pursuant to art 1256, para. 2, f the Italian Civil Code, the obligation will lapse if the debtor proves that, due to the nature or subject of the obligation, a delayed fulfilment would be unreasonable or the creditor is no more interested in it.

Similarly, in case of partial impossibility to fulfil an obligation, the debtor is relieved by fulfilling the remaining possible part of such obligation, as provided under art. 1258 of the Italian Civil Code, save for the reduction in the consideration or the withdrawal of the creditor if this proves to be not significantly interested in the partial payment (art. 1464 of the Italian Civil Code).

In all cases described above, if the impossibility to fulfil an obligation is due to the observance of containment measures, there will not be compensatory consequences due to the effects of art. 91 of *Cura Italia* decree.



## Commercial leases

Commercial leases are meant as leases of property to be used for other purposes than dwelling.

Many traders, professionals and companies are claiming not to pay their lessors, either totally or partially, lease rentals related to shops, offices or businesses that cannot be used due to their closure, following the recent government provisions on public health.

Many and different opinions on this issue arose.

It is reasonable to try and limit costs in order to reduce the negative economic impact caused by the impossibility to provide services and products during the closure of business activities and afterwards, due to the general recession that will derive.

In juridical terms, this problem arises only for the closure period, according to the containment measures implemented by the government, so from 12 March 2020 for commercial activities, in compliance with Presidential Decree dated 11 March 2020, and from 25 March 2020 for industrial and commercial activities, in compliance with Presidential Decree dated 22 March 2020, up to 13 April 2020 as provided by recent art 1 of Presidential decree dated 1 April 2020 and by regional orders, including that of Lombardy region dated 4 April 2020 n. 521, which extended the closure of activities up to 13 April.

However, some distinctions must be specified.

First of all, under art. 65 of “Cura Italia” decree, a tax credit equal to 60% of the lease rental relevant to March 2020 is granted to those subjects carrying out business activities in leased premises falling within the C/1 category (shops and workshops). Such tax credit is not granted to activities under annexes 1 and 2 of Presidential Decree dated 11 March 2020 and can exclusively be offset, pursuant to art. 17 of legislative decree dated 9 July 1997, no. 241.

Maybe this tax credit will be granted also for April – currently concerned by containment measures up to 13 April – but certainly this provision is aimed at significantly reducing the economic – rather than financial – impact deriving from the temporary closure of commercial premises.

On the other hand, the case of leases of offices and commercial or production sites that do not fall within the C/1 category but whose activities are suspended, is more complicated.



Some lessees, in order to try and not pay rentals, resorted to the (partial) impossibility to fulfil their obligations provided under articles 1256 and 1464 of the Italian Civil Code.

However, the above pleaded articles, as mentioned, which are not referred to in art. 91 of “Cura Italia” decree, do not seem to legitimate the final omitted payment of rental, since the impossibility to perform the activity, which should relieve the lessee from the payment of rentals, actually does not impact the lessor, who continues carrying out its full activity.

In fact, the main activity of the lessor, as described under art. 1575 of the Italian Civil Code, is the delivery of the located good to the lessee in good conditions, maintaining it in such good conditions for the entire term of contract and in granting its pacific use.

It is clear that, at the time of Coronavirus, leased real estate remain to the lessee and, therefore, the activity of the lessor is not impossible, nor defaulted.

Moreover, the suspension of the activity should have, for now, a very limited time scope compared to the term of a commercial agreement (generally, and according to law, of six-plus-six years) and, therefore, the substantial economic reason underlying the whole agreement does not fail.

It must be pointed out that leased real estate does not generally have an exclusively commercial or production function, since it is also used by the entrepreneur or professional as warehouse, office, headquarter, etc.

On the other hand, the main activity of the lessee is identified under art. 1571 of the Italian Civil Code, and consists in the payment of the agreed rental, generally in cash.

Such activity is never objectively impossible, since money is defined as a fungible and always available good. Therefore, there is neither impossibility in the main obligation of the lessee.

Lastly, in the specific case of professional offices, art. 1, para. 1, letter. a, of Presidential Decree dated 22 March 2020, so-called “Chiudi Italia” decree, provides that professional activities are not suspended and provisions under art. 1, para. 7 of Presidential Decree dated 11 March 2020 remain valid, providing the continuity of professional activities through smart working or by adopting specific safety protocols.

In Lombardy region, however, the Order of Regione Lombardia dated 21 March 2020 no. 514 provides that activities of professional firms are suspended, except those related to services that cannot be deferred, urgent services and services that are related to terms and deadlines.



The above was specified in the Order of Regione Lombardia no. 521 dated 4 April 2020, which provides, under para. 1,4, the continuity of legal, accounting, corporate and management advisory, architectural, engineering, IT and communication services through smart working, except for urgent services or those services that cannot be deferred or that are useful for the provision of urgent services.

In conclusion, the economic damage deriving from Covid-19 containment measures seem to remain a business risk for the lessee – as long as the measures are limited in time or no specific regulation or favourable case law are issued.

The only advantage for the lessee deriving from the provisions under art. 91 of “Cura Italia” decree seems to be the exemption – in case of delayed payment of rentals – from the payment of any compensations, from criminal consequences, from contractual limitations of actions, and (following an extended but reasonable interpretation of the regulation) from incurring a default eviction, provided that the delayed payment is reasonable and falls within the scope of articles 1175 and 1375 of the Italian Civil Code as concerns fairness and good faith.

The case of the termination of a contract due to excessive onerousness, provided under art. 1467 of the Italian Civil Code seems to better suit the case at issue. In fact, it allows the lessee to terminate the contract when the obligation, i.e. the payment of rentals, is too onerous due to the occurrence of extraordinary and unforeseeable events.

Certainly, the current epidemic and the restrictive government provisions adopted accordingly are objectively extraordinary and unforeseeable events.

However, the solution presents two important critical issues.

The first one refers to the question on whether this regulation is applicable to long-term contracts even though the excessive onerousness is temporary.

The second one concerns the kind of protection granted to the party that is in difficulty, i.e. the right to terminate the contract. This protection will only benefit those entrepreneurs or professionals who intend to definitely close their activity in the leased property and who can therefore opt for this solution.

However, the right to terminate the contract is always due to the lessee pursuant to art. 27 of Law no. 392 dated 27 July 1978, which provides that, regardless of the contractual terms, the lessee can terminate the contract at any time if serious events occur. The difference consists in the fact that in case of termination due to serious events, a six-months’ notice is required from the lessee.



Lastly, the last paragraph of art. 1467 of the Italian Civil Code gives the lessor the right to avoid the termination of contract proposed by the counterparty by proposing to properly amend the amount of the rent.

### **Conclusions on commercial leases**

My advice for both lessors and lessees is to contact the counterparty and decide in good faith on a temporary reduction of the rental fee and/or an extension according to a fair commercial practice that is arising in these days.

This contractual option responds to solidarity principles, which should inspire us all in this historical moment that is undermining the market and everyone's life, but also responds to the economic interest of both parties.

In fact, on the one hand, businesses and professionals are interested in reducing costs – which could be crucial for them – and, on the other hand, lessors do not want to have their properties vacant maybe for months and relocate them at a lower fee, bearing also agency costs and causing a higher damage than that derived from a small economic renunciation, i.e. an agreed discount.

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## Focus on...

### Clever Desk: how we can help

Our Clever Desk professionals will make their time and expertise available to devise an assistance plan to proactively meet the requirements and needs of interested clients, overcoming possible difficulties and trying, where possible, to turn them into growth and development opportunities.

### Assistance and coordination with tax and SSCs benefits and incentives

Thanks to our understanding of specific situations and to an analysis of urgent issues and/or opportunities we can assist entrepreneurs, thus allowing to devise the most appropriate solutions in the light of the recent extraordinary law provisions related to the Coronavirus emergency. The current emergency situation lead to the introduction of new tax measures aimed at supporting taxpayers' economy. The implementation of such measures by taxpayers implies a preliminary careful analysis of subjective and objective requirements, as well as a careful evaluation of possible related issues. Our professionals play a key role in supporting our clients during the evaluation and actual application of these various measures (tax credit, refunds, reliefs, incentives, etc.), thanks also to the multidisciplinary approach characterising the various service lines of our firm.

### Assistance with corporate and financial matters and Financial Statements

Our professionals will help you steer through the legislation novelties which are regulating and sometimes disrupting the various aspects of the Italian civil and business life. The continuous refinements and amendments to the provisions imply the need of keeping constantly updated on all the measures the Government is enacting to face the crisis and guarantee to all business activities the necessary operational continuity of production cycles. The aids and provisions devised have an impact on both the labour and financial aspects, as well as on that of tax benefits.

The tax measures package includes provisions which stop or delay tax fulfilments and payment of taxes, social security contributions and withholdings. Our professionals support clients dealing with the complexities related to deferments, deadlines and suspensions related to tax law. The new provisions also include measures aimed at a moratorium on loans, financing, credit lines and leases, which require a thorough understanding to avoid missing on useful chances of mitigating the inevitable financial strains. No less important is the impact that the "Cura Italia" Decree has on the process of approval of Financial Statements and on the effects (to name but one, the going concern) to be considered in the Directors' Reports and in the Notes to the Financial Statements in order to best safeguard both stakeholders and directors, with win-win solutions for all the subjects involved.



## Assistance with tax litigations and collection

Our Desk provides a prompt, straightforward and practical response to all tax litigation and tax collection issues, on which the Italian legislation is focusing in the last days. We assist our clients on a case by case basis, supporting them in interpreting the complex tax and administrative norms introduced, identifying the best operating solutions to safeguard both the need of a defensive protection and the corporate assets.

Thanks to our experience in preventively managing administrative and criminal-tax risks, we are available to provide a qualified opinion, from an operation perspective, to clarify doubts on the specific issues which may arise while managing the Covid-19 emergency.

By way of example, our Desk can carry out an in-depth analysis aimed at assessing the opportunity to benefit from the measure provided under art. 56 of the “Cura Italia” Decree, concerning the moratorium on loans and the subsequent possibility to qualify as a SME, or, alternatively, it can provide insights on the actual eligibility to obtain tax credit provided under art. 65 of the same Decree.

Basing on a tailored evaluation of clients’ operations, we are also available to suggest possible activities and actions concerning the refund of tax and charges which could promptly guarantee an additional financial support in the recovery phase post Covid-19.

## Labour and HR consultancy

Our HR experts are available to help clarify the issues and opportunities offered by the “Cura Italia” Decree - Law Decree n. 18 dated 17 March 2020.

In particular, our professionals are available to provide a dedicated assistance on the main measures introduced by the “Cura Italia” Decree in favour of businesses and employees, such as:

- layoff arrangements: preliminary advice on layoff arrangements due to the Covid-19 emergency;
- suspension of the payment of taxes: specific analysis on the application of the provisions relevant to the suspension of the payment of taxes under the “Cura Italia” Decree;
- measures supporting families and employees: definition of the measures made available by the Government in favour of employees and for the care of their families.

L’obiettivo è offrire soluzioni specifiche e concrete alle aziende con particolare riferimento al personale dipendente.

## Marketing and communication

Being able to manage a crisis is crucial for any type of business and communication plays a major role in sharing the ability to react, renew and grow.



Tough moments like the one businesses are experiencing give rise to the need of targeted communication strategies. This is the case for example of companies which have reconverted their manufacturing lines to face the growing demand of new products, especially in the medical and healthcare sector. But also of all those entrepreneurs who, once the lockdown will be over, will have to resume contacts with their clients and face the market in a very different economic environment compared to that of the pre-crisis period, with changed needs and new opportunities. We will all face unforeseeable and often confused situations and the possibility to rely on clear, flexible and resilient communication strategies can represent an anchor point for businesses. In this perspective, Grant Thornton communication services go hand in hand with the traditional services lines and offer a highly customisable assistance. Joining the expertise of various professionals and benefitting from the existing synergies among the various service lines, we can analyse the situation of a business from various points of view and structure a communication plan to maximise the existing strengths. Our proposal is mainly structured around two macro areas: on line and off line media; in each area, we can take on a strategic role, coordinating activities, selecting and supervising suppliers. We help clients manage the effects of the crisis on the brand and corporate image, planning communication activities consistent with the new corporate vision.

### **Smart working: today's need, tomorrow's opportunity**

The situation resulting from the Covid-19 pandemic compelled everybody to test new ways to work, such as teleworking or smart working; nowadays, thanks also to the incentives available, it is advisable to turn these options into an organised, structured and informed choice.

The digitalisation of manufacturing processes and the technologic transformations actually allow a new structuring of business and new organisational arrangements of work; in this changed environment, our professionals can combine the compliance needs with the need to adopt a more pragmatic approach in line with the pressing need to contain costs.

In order to implement a smart-working or teleworking policy, it is necessary to properly consider and address at least the following aspects, which, if overlooked, can undermine or even nullify their effectiveness:

- strategy and planning
- norms and contracts
- ICT and security
- privacy
- work organisation
- HR management.



The programme we propose is based on a multidisciplinary approach combining organisational, ICT, cybersecurity, labour law, tax, and other skills and it is aimed at attaining efficiency and effectiveness through cost saving, improving performances and maximising the organisational productivity focusing on various areas in a coordinating and synergic way:

Organisation, processes and HR:

- identification of organisational areas and processes
- definition of tools to evaluate performance
- organisation of corporate activities and process also in terms of communication protocols.

ICT & Cybersecurity:

- definition of IT requirements consistent with the scope of the project
- identification of interventions basing on the state of the art of the infrastructure, applications and devices uses
- design and implementation of cybersecurity solutions aimed at guaranteeing the protection of smart-working or teleworking solutions
- support to the realisation of interventions, also by coordinating existing providers
- evaluation of the impact on the structure
- identification of new regulatory and corporate fulfilments (labour, health and safety aspects)
- management of personal data
- support with the amendment of corporate policies and procedures.

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