

# Legal Report

Preliminary remarks on the urgent provisions introduced by the Italian Government with respect to the Covid-19 situation

8 March 2020



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# Legal Report

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## Purpose

Osborne Clarke has prepared this report to help client dealing with the various legal issues arising from the DPCM 8 March 2020 (the “**Decree**”) which is in force from today (8 March 2020) and will remain in force until 3 April 2020.

The Decree contains provisions aimed at dealing with the risk arising from the ongoing Covid-19 situation in the country.

**This document is just a preliminary memo** and shall not be considered as the source of detailed legal advice. In particular, please note this document is updated as of 8 March 2020 and will be updated in the next few days as we are expecting additional guidelines and interpretation notes being published by the Governement and/or various other offices.

All our teams would be happy to handle any specific request you may have.

**Please feel free to refer to your usual contact at Osborne Clarke** or to any of the experts below.

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## 1 Territory affected by the Decree

Please note that only a part of the Italian territory will be affected by all the restrictions provided by the Decree, while the rest of the territory will be subject to softer restrictions.

The territory affected by all the restrictions (“**Restricted Area**”) is the whole territory of the Lombardy region, as well as the territory of the provinces of Modena, Parma, Piacenza, Reggio Emilia, Rimini, Pesaro e Urbino, Alessandria, Asti, Novara, Verbano-Cusio-Ossola, Vercelli, Padova, Treviso, Venezia (please click [here](#) to see a map of the whole Restricted Area).

The previous classification providing certain “red areas” and certain “yellow areas” is no longer in force (see the following section on this).

## 2 Travel restrictions to and from other countries

Some countries have introduced travel restrictions based on the provenance of travellers from the “red areas” and the “yellow areas”.

As **this classification is no longer in force**, we would be happy to provide guidance as to the current scope of application of the various travel restrictions.

## 3 Activities which are suspended or restricted

3.1 The Decree provides that the following **activities cannot take place** (are suspended) within the entire territory of Italy:

- Any **sport event**, with the only exception of training sessions of professional players and national matches (provided they take place at sport facilities which are closed to the public);
- All **public events**, whether of a sport, cultural, religious or business nature cannot take place, including any fair, exhibition, cinema or theatre show;
- All **casinos, betting rooms**, bingo rooms and discos shall remain closed;
- All **schools**, including universities and including any private company providing education and/or training courses shall remain closed;

- All **museums** are closed.

3.2 Within the Restricted Area, **in addition to the provisions above**, please note that sky resorts, gyms, sport centres, public pools, swimming centres, spa and thermal centres shall remain closed.

3.3 **Within the Restricted Area, certain other activities are not suspended, but are subject to the following restrictions:**

- **Restaurants and bars can be open for business from 6:00am till 6:00pm** and they must ensure each customer seats at least at one metre from other customers;
- **Medium and big supermarkets, as well as all stores located within malls and markets** (with the exception of pharmacies, parapharmacies and food shops) shall remain closed on Saturdays, Sundays, as well as on each bank holiday and the day before each bank holiday. When open, this shops must ensure at all times a minimum distance of one metre between a customer and any other customer;
- All **other shops and retail stores** must ensure at all times a minimum distance of one metre between a customer and any other customer. In case this is not possible, the relevant business shall remain closed.

## 4 Freedom to travel

The main provision of the Decree states that **travelling to and from the Restricted Area, as well as within the territory of the Restricted Area, should be avoided unless it is necessary in connection with “documented business needs”**.

The provision makes also reference to two other justifications (health-related causes and any other just cause) which do not relate to business activities and which, therefore, we are not considering in this document.

The concept of “documented business needs” is rather vague and **we expect some guidelines** will be made available shortly by the Government.

For the time being we would suggest the following interpretation:

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- Travelling to and from the Restricted Area and within the same is not allowed under any circumstance in connection with activities which are absolutely prevented;
- Travelling to and from the Restricted Area and within the same is not allowed for leisure and personal reasons;
- Travelling to and from the Restricted Area and within the same is always allowed if happening in connection with the provision of a public service;
- Travelling to and from the Restricted Area and within the same **is allowed if necessary to allow the due and timely performance of a contract which is binding for a business.**

According to the last paragraph, **we are of the opinion that any transport of goods happening in connection with the performance of a binding agreement is authorized and may take place.**

However, in order to **manage the risk properly**, we would recommend:

- a review of the “risk assessment document”, as well as of the applicable travel policy of your business and
- providing all necessary information and training on health & safety
- making all necessary protective tools and precautions available for your employees
- providing employees with (i) documents (e.g. written statements to be properly drafted by the employer) attesting the existence of “documented business needs”, (ii) company card attesting the existence of the employment relationship, to be provided in case of controls by authorities.

Our employment team would be happy to support you in connection with any such activity.

## 5 Lease agreements (where your company is the tenant)

If you are a tenant under a lease agreement and the activity you run at the premises is one of the activities which are subject to the suspension order provided by the Decree or is otherwise restricted by the Decree, you should check, as a preliminary

step, whether your lease agreement contains provisions dealing with this scenario.

In broader terms, we believe tenants may avoid payment of the rent for the period during which the suspension order will be enforceable.

A detailed analysis would be necessary in case your business is restricted (but not suspended) by the Decree.

Our real estate team would be happy to review existing agreements and suggest the best course of action.

## 6 Lease agreements (where your company is the landlord)

The situation where your business is the landlord is likely to be similar to that described in the previous paragraph.

However, especially in circumstances where your business owns a large property, which is the object of more than one lease agreement, there could be a number of specific elements to be considered and our real estate and banking team would be pleased to discuss the issue with you.

## 7 Other contractual issues

There are some general issues of contract law which may arise as a consequence of certain measures provided by the Decree.

### 7.1 Deadlines

If your business is a party to a contract providing a deadline, we would recommend carrying out a detailed analysis of the likely impact of the Decree on the relevant contract.

Where meeting the deadline becomes impossible or simply too expensive, you may have the right to ask the other party to re-negotiate the contract

### 7.2 Conditions

The same applies where your business is bound by a contract which is subject to certain conditions (precedent or subsequent).

### 7.3 MAC clauses

Depending on the circumstances, the Decree could trigger one or more MAC clauses provided by contracts to which your business is bound.

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We would be happy to help you analysing and understanding any issue you may have with existing commercial agreements.

## 8 Employees

### 8.1 General obligations

**The obligation to preserve the employees' health against Covid-19 infection falls within the general obligation of employers to preserve and protect health and safety at work.**

In this framework, according to the Decree's provisions, employers are first required to avoid employees' movements from and to the Restricted Area and within the same, unless they are based on "documented business needs".

In this regard:

- the employer has to take all actions to allow smart working in all cases where this is possible, even if this is not expressly allowed by individual employment agreements;
- in all cases where smart working is not possible, accrued holidays and/or leave can be spent. In their absence, some social plans are applicable (see below);
- movements from and to the Restricted Area and within the same are however allowed if based on "documented business needs" (for the relevant interpretation and requirements see above).

### 8.2 Social plans

Law Decree no. 9 of 2 March 2020 ("**Law Decree 9**") provided for a first set of measures aimed at facilitating the access to benefit plans.

Those measures are addressed to employers operating (i) in one of the municipalities that, when the Law Decree 9 was enacted, were included in the former so called "red areas": i.e. Bertinico, Casalpusterlengo, Castelgerundo, Castiglione d'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia, Terranova dei Passerini (Lombardy Region) and Vò (Veneto) or (ii) in Lombardy, Veneto and Emilia Romagna.

For employers having: (i) the legal office or a manufacturing facility in one of the municipalities included in the red areas or (ii) having one or more

employees resident or domiciled in those municipalities (in that latter case, limited to those employees), Law Decree 9 provides for the following measures:

- a simplified access to the ordinary benefit plans, namely to "Cassa integrazione e Guadagni Ordinaria – CIGO" and to the ordinary cheque, omitting the information and consultation procedure; or
- the access to so called "Cassa integrazione in deroga" for employers not covered by ordinary benefit plans. The relevant application must be submitted to the Region and the suspension of the employment relationship cannot exceed three months.

For employers having (i) the legal office or a manufacturing facility in Lombardia, Veneto and Emilia Romagna or (ii) having one or more employees resident or domiciled in those Regions (limited to those employees) and not covered by ordinary benefit plans, Law Decree 9 provides for the access to the "Cassa integrazione in deroga" for a maximum period of one month.

The benefit is granted subject to the following conditions: (i) the employer suffered a "proven prejudice" from the orders issued by the Ministry of Health, and (ii) the execution of an agreement between the Regions and the trade unions.

As of today, only Emilia Romagna Region signed the agreement.

We however expect new measures to be adopted in the next few days, considering the suspension of many activities across the country established by the Decree.

## 9 Data privacy

**Any employer should refrain from carrying out investigations regarding the employee/candidate's personal data, including his/her health status.**

According to the Italian Data Protection Authority note of 2 March 2020, any employer shall avoid collecting personal data on employees and/or third parties suffering (or suspected of suffering) from Covid-19 with whom the employee had contact.

In particular, this note provides that:

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- Employers must refrain from collecting in a systematic and generalized way, also through specific requests to the individual employee or unauthorized investigations, information on the presence of any flu symptoms of the employee and his closest contacts or in any case falling within the work environment;
- The collection and evaluation of information relating to the typical symptoms of the Covid-19 and/or information on the recent movements of each individual falls can be performed only by the public health authority (healthcare professionals and officers of Civil Protection), within the public health system;
- In any case, employees who have recently travelled from/to any country affected by Covid-19 outbreak must promptly inform the public health authority and the company in order to take all the necessary precautionary measures within the prevention guidelines provided for by the relevant authorities.

Rather than collecting personal information as described above, the companies could (and should) have policies in place addressing the necessary requirements in order to access the work premises (both of the company and of third parties like clients or suppliers/providers).

Any person entering the work premises should undertake to comply with such policy under his/her own responsibility.

Furthermore, the companies should have in place policies concerning the processing and the security of data collected in the framework of possible remote working solutions in place.

Finally, where a company is aware of a case of Covid-19 amongst their employees, they should be prepared to inform possible third parties who had contact with him/her in the recent period. Such communication should be drafted carefully in order to guarantee the confidentiality of the identity of the relevant person possibly affected by Covid-19.

could be indirectly affected by the Covid-19 health emergency and the restrictions provided by the Decree.

With reference to the approval of the annual accounts, the main option available to the directors of Italian companies is the postponement of the annual general meeting. Usually this must take place within 120 days from the end of the previous fiscal year, but under certain circumstances it could be postponed until 180 days from the end of the previous fiscal year.

Our corporate team would be happy to analyse the situation of your business and provide an opinion on this.

From a practical point of view, the current situation may require certain meetings taking place by videoconference. This is possible, provided the articles of association of your company have been drafted properly and we would be happy to carry on an analysis for you.

## 10 Corporate

**Corporate activities are not directly involved by the Decree.**

However certain corporate decisions (with particular reference to the approval of the annual accounts)

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