



## COVID-19 EMERGENCY - CIVIL COURT HEARINGS: WHAT'S NEW?

### I. The relevant legal provisions

The Law Decree no. 18 of March 17<sup>th</sup>, 2020 (so-called "**CuraItalia Decree**") and the Law Decree no. 23 of April 8<sup>th</sup>, 2020 (so-called "**Liquidity Decree**") have introduced two types of emergency measures in the civil justice sector:

#### Immediate measures:

- 1) automatic postponement of all hearings scheduled between 9<sup>th</sup> March and 11<sup>th</sup> May 2020 to a date after 11<sup>th</sup> May 2020;
- 2) suspension of all procedural time-limits for the same period.

However, 1 and 2 above shall not apply in relation to proceedings where postponement would cause serious harm to the parties, provided that a declaration of 'urgent and immediate trial' be issued by the competent Court (see Section II below).

#### Organisational measures:

Court Presidents are entrusted with the power and the duty to provide and ensure that all hearings taking place until 30<sup>th</sup> June 2020 are carried out in compliance with health & safety rules, according to the following guiding criteria:

- hearings requiring the attendance of parties and counsels shall be carried out by remote connection systems (e.g. through videoconference);
- hearings requiring the attendance of counsels only can be carried out in written form;
- hearings requiring the presence of further attendants (such as witnesses, third parties, experts, etc.) are to be carried out in person, with the implementation of specific rules of conduct to ensure the health safety of all attendants.

### II. The declaration of urgency for immediate trial

The declaration of urgency (for proceedings requiring urgent and immediate trial) shall be issued by the Court President or by the judge in charge of the litigation, as the case may be. Such order cannot be challenged, and can be issued *ex parte* (without the need of hearing the parties in advance).

According to the Guidelines issued by the Court of Milan<sup>1</sup>, the assessment of the state of urgency is left to the judge's appreciation based on the review of the specific case and of the relevant circumstances. In this respect, the following elements shall be appreciated:

- a personal state of need or the existence of further serious prejudicial situations requiring immediate action to be taken;
- the existence of a potential harm to individuals' rights (health, family integrity, right to work, etc.);
- the existence of a potential economic harm, either *ex latere debitoris* or *ex latere creditoris*, in relation to which the existence of "serious and significant conducts of

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<sup>1</sup> See the Binding [Guidelines](#) adopted by the President of the Court of Milan (prot. no. 56 of 10<sup>th</sup> April 2020).



*subtraction/concealment (or danger of subtraction/concealment) of specific assets or of the overall debtor's assets" are to be considered particularly relevant;*

- conducts that seriously affect the business by compromising the integrity of the goodwill or of specific assets (e.g., trademark protection or other business components that require immediate *in rem* protection).

A state of urgency is usually entailed in most cases that are subject to the jurisdiction of Court divisions dealing with bankruptcy and judicial enforcement.

According to the Court of Rome<sup>2</sup>, judges are called to adopt a more general "*balanced criterion for the evaluation of the parameter of the seriousness of prejudice*". The proceedings which shall be considered urgent include those scheduled for the final hearing, or for the decision on evidence-taking measures, especially in the case of backlog proceedings. In respect to the urgency of final hearings, the same position is held also by the Court of Milan and the Court of Appeal of Milan<sup>3</sup>.

### III. New Hearing Typologies

For hearings to be held up to 30<sup>th</sup> June 2020, the Curaltalia Decree identifies three different types of hearing:

- (a) **Virtual hearing** (via remote connection/videoconference);
- (b) **Written hearing**;
- (c) **Hearing in person** (in all cases where it is not possible to adopt the forms referred to in points (a) and (b), with particular caution to ensure the health safety of the participants).

The Curaltalia Decree and the protocol adopted by the Supreme Council of the Judiciary (*Consiglio Superiore della Magistratura*, CSM) following the proposal by the National Bar Council (*Consiglio Nazionale Forense*, CNF) ("**CSM-CNF Protocol**")<sup>4</sup> provide some operational guidelines on how to manage the virtual and written hearings.

#### Virtual hearing:

- this type of hearing is recommended for hearings that do not require the attendance of persons other than counsel and parties (recourse to the virtual hearing is, therefore, excluded in principle for evidence-taking hearings);
- the virtual hearing shall be organised so to preserve the respect of the adversarial process and the effective participation of the parties;
- the virtual hearing shall be managed through Microsoft Teams<sup>5</sup>;
- parties are summoned to the virtual hearing through a Court order to be notified to the parties at least 7 (seven) days before the hearing date; the order shall contain a clear indication of the day, time and the hypertext *link* to the virtual hearing room;

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<sup>2</sup> See the Binding [Guidelines](#) adopted by the President of the Court of Rome (prot. n. 5273 of 20<sup>th</sup> April 2020).

<sup>3</sup> See the Binding [Guidelines](#) adopted by the President of the Court of Milan (prot. no. 56 of 10<sup>th</sup> April 2020), p. 7; see the Binding [Guidelines](#) adopted by the President of the Court of Appeal of Milan (prot. no. 3416 of 10<sup>th</sup> April 2020), p. 3.

<sup>4</sup> See CSM [plenary resolution](#) of 26<sup>th</sup> March 2020.

<sup>5</sup> See the [order](#) issued by the Directorate General for Automated Information Systems (DGSIA) of the Department of Judicial Organization, Personnel and Services at the Ministry of Justice on March 20<sup>th</sup>, 2020.



- the failure of parties to appear at the virtual hearing shall trigger the same effects as the failure to appear before the judge in person as provided for in the Italian Code of Civil Procedure, provided that the summon to the virtual hearing was duly notified;
- at the hearing the judge shall ascertain that only the entitled persons will attend;
- parties are allowed to use the tools made available by the Microsoft Teams software, such as the screen-sharing for exhibition of documents, provided that the judge so authorizes;
- recording of the virtual hearing is prohibited;
- at the end of the virtual hearing, the judge shall read the minutes of the hearing to the parties and shall invite the parties' counsel to declare that the hearing was properly held in full compliance with the adversarial principle.

## **Written hearing:**

- it is recommended for hearings that require the presence of counsels only;
- the written hearing is carried out by means of the exchange and electronic filing of summary written notes, including only parties' claims and statements of relief, and the issuance of a subsequent written order by the judge to be notified electronically to the parties;
- it is up to the judge to issue an order granting each party a reasonable time limit for filing written notes ahead of the date set for the hearing;
- in case the hearing is held in a written form the date of hearing originally set can be maintained or rescheduled by the judge;
- on the date set for the hearing, the judge ascertains that all notifications to the parties have been performed by the Court's clerks, that the parties' written notes have been duly filed;
- Courts can provide that the written hearing is to be used with preference, provided that the protection of the parties' right to be heard is always fully ensured.

## **Hearing in person:**

- hearings are usually public in Italy; however, if the hearing is to be held in person in Court, judges can provide for the hearing to be held behind closed doors to ensure health safety;
- hearings in person shall be properly scheduled, in order to ensure that there is no overlap between hearings and avoid the potential risk of people gathering in proximity of hearing rooms/Court buildings;
- Courts shall provide for specific practical guidelines for hearings in person to be held (which shall include the application of proper distance measures, identity verification, the use of PPE tools by all attendees, etc.).

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All Italian Courts have already fully implemented the above provisions and issued more practical instructions for the management of hearings.

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The Dispute Resolution Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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