

# COVID-19 Emergency Business support actions in Italy

## Q&A



Covid-19 task force\*

The following Q&A are based on the recent developments of the COVID-19 emergency and the regulations implemented in Italy in this respect.

### Liquidity Decree Law - Art. 5 -

**Q.: I am the sole director of a limited liability company in serious liquidity crisis. I intended to apply for one of the new composition tools provided for by the crisis and insolvency code, and I asked for the certification of social security and tax debts. I read that the coming into force of the code has been postponed. Will I have to wait?**

Art. 5 of Decree-Law 23/2020 postponed the coming into force of the "Code of Business Crisis and Insolvency" (Legislative Decree 14/2019) until September 1, 2021, but this does not mean, unfortunately, that you can wait a year and a half without taking action if your company is in a state of insolvency. On one hand, certifications of debts can be issued because the relevant rules of the Code came into force on 16 March 2019. On the other hand, the instruments already provided for by the Bankruptcy Law (composition with creditors also in continuity, debt restructuring agreements) can be activated, for the management of the crisis while continuing the business activity.

**Q.: I am the supplier of a medium-sized company that continues to delay the payment of a significant amount of my credit. Can I file for bankruptcy to induce my debtor to pay?**

The application for bankruptcy cannot be used as an instrument of pressure on the debtor. This is underlined by the fact that the rules of the Code of Business Crisis and Insolvency whose coming into force has not been postponed include that charging on the creditor applicant the costs of the proceedings and the liquidator's fee in the event of revocation of the declaration of judicial liquidation (or bankruptcy) due to negligence in the application.

It should also be considered that art. 10 of Decree-Law 23/2020 provides that appeals and requests for the declaration of bankruptcy and state of insolvency filed in the period between 9 March 2020 and 30 June 2020 are not admissible.

**Q.: Together with two partners I manage a business activity set up as a limited liability company. We three are all directors. We have had a period of unexpected growth which we have faced in a somewhat messy way. Now we fear that the situation of stagnation will turn into a real crisis: are we taking risks?**

Among the rules introduced by the Code of Business Crisis and Insolvency and already in force, is the one that introduced a new second paragraph in Article 2086 of the Italian Civil Code: the entrepreneur has the obligation to adopt an organizational, administrative and accounting structure that is appropriate to the size and nature of the company, also in order to prevent the crisis. Failure to comply with this provision may result in liability on the part of the administrative body, which may be invoked in the event of bankruptcy.

**Q.: Together with some family members, I hold the entire share capital of a limited liability company (always maintained at the minimum provided by the law) . This company represents the family "safe" and in turn controls a number of other companies. Recently a subsidiary has been transformed into a Stock Company. The statute of the LLC is very old and does not provide for the appointment of the Board of Statutory Auditors. Should we adapt it or has there been a postponement?**

The postponement of the coming into force of the Code of Business Crisis and Insolvency

\* S. Cianciullo – D. Dodaro – C. Dello Siesto – C. Fonti - M. Juan – M. Longavita – F. Masuri – A. Pace – F. Panunzi – M. Porretti – M. Sardo – G.D. Tirrito – S. M. Zappalà – M. Zottola

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### Liquidity Decree Law - Art. 5

does not concern the provision of art. 379: the new text of art. 2477 of the Civil Code, introduced by this provision, is therefore in force and requires the adaptation of the by-laws and the appointment of the Statutory Auditors by the date of approval of the financial statements for the financial year 2019.

We remind you that pursuant to art. 106 of Legislative Decree 18/2020 this deadline has been extended to 30 June 2020.