

## Covid – 19 coronavirus update

### The main measures for the credit sector in the Italian Government's recent decrees

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#### KEY INFORMATION

On 9 April 2020 decree n. 23 of 8 April 2020 (the so-called **Liquidity Decree**) came into force. It introduced significant new measures, some of which deal with matters that were already addressed by prior pieces of legislation aimed at combating the Covid-19 Coronavirus emergency, and among which decree no. 18 of 17 March 2020, which came into force on 17 March 2020

(the so-called **Cura Italia Decree**), is worthy of particular mention. In this publication we summarise the main measures introduced by these decrees with specific regard to the credit sector. For an analysis of further measures please see our Client Bulletin "The Italian Government's Liquidity Decree : new measures for business sector".

# 1. Temporary measures to support liquidity for enterprises

## THE SACE GUARANTEE (*GARANZIA ITALIA*)

|   |   |   |  |
|---|---|---|--|
| <b>Type of guarantee</b>                | First demand, express, irrevocable guarantee which meets the regulatory requirements for the mitigation of the lender's credit risk in accordance with the EU prudential supervisory regulation.  |   |  |
| <b>Eligible borrowers</b>               | Enterprises with less than 5000 employees in Italy and total revenues amounting to less than euro 1.5 billion (provided that the enterprise did not fall within the meaning of an 'undertaking in difficulty' as at 31 December 2019 and its debt was not within the range of non-performing exposures as at 29 February 2020, each as set out under the EU regulations).   | Enterprises with more than 5000 employees in Italy or total revenues amounting to between euro 1.5 billion and euro 5 billion (provided that the enterprise did not fall within the meaning of an 'undertaking in difficulty' as at 31 December 2019 and its debt was not within the range of non-performing exposures as at 29 February 2020, each as set out under the EU regulations). | Enterprises with total revenues exceeding euro 5 billion (provided that the enterprise did not fall within the meaning of an 'undertaking in difficulty' as at 31 December 2019 and its debt was not within the range of non-performing exposures as at 29 February 2020, each as set out under the EU regulations). |
| <b>Maximum guaranteed amount</b>        | 90%   | 80%   | 70%  |
| <b>Amount of the credit facility</b>    | The amount must not exceed an amount equal to the greater of (i) 25% of the enterprise's annual revenues and (ii) two times the enterprise's employee-related costs in Italy.   |   |  |
| <b>Date of the credit facility</b>      | The <i>Garanzia Italia</i> scheme applies to new credit facilities to be granted between the entry into force of the Liquidity Decree and 31 December 2020  |   |  |
| <b>Purpose of the credit facility</b>   | Financing of costs for employees, investments and/or working capital needs incurred or to be incurred in Italy.   |   |  |
| <b>Repayment of the credit facility</b> | The tenor must not be longer than 6 years, with the possibility of agreeing a pre-amortisation period of up to 24 months.   |   |  |
| <b>Covenants of the borrower</b>        | <ul style="list-style-type: none"> <li>- No dividend distribution by the borrower and/or any other Italian entities belonging to the borrower's group is allowed during 2020.</li> <li>- No repurchase of shares by the borrower and/or any other Italian entities belonging to the borrower's group during 2020.</li> <li>- Employee-related changes must be managed through agreements with the relevant trade unions.</li> </ul> |   |  |
| <b>Cost of the guarantee</b>            | <b>For SMEs</b>   | <b>For enterprises other than SMEs</b>  |  |
|   | In relation to the outstanding principal amount of the credit facility:   | In relation to the outstanding principal amount of the credit facility:   |  |
|   | - 0.25% for the first year,   | - 0.5% for the first year,  |  |
|   | - 0.5% for the second and third years,  | - 1% for the second and third years,  |  |
|   | - 1% for the fourth, fifth and sixth years.   | - 2% for the fourth, fifth and sixth years.   |  |
| <b>Cost of the credit facility</b>      | The cost of the credit facilities guaranteed by SACE must be lower than the cost that would have applied to the same transaction without the guarantee.   |   |  |

**State guarantee**

The obligations of SACE arising from the *Garanzia Italia* are, in turn, guaranteed by a first-demand, express, unconditional, irrevocable and non-recourse State guarantee. This counter-guarantee covers all the obligations of SACE with respect to principal amount, interest and ancillary charges, net of fees received by SACE for the issuing of its guarantee.

**1.1. Introduction**

With the aim of supporting the liquidity of Italian businesses and enhancing their access to bank credit, Article 1 of Law Decree No. 23/2020 (so called "*Decreto Liquidità*") (**Liquidity Decree**), puts SACE S.p.A. (**SACE**) (the Italian public export credit insurance agency) into action. SACE has been employed to make available, in the interests of Italian enterprises (other than banks and other entities licensed to carry out lending activities in Italy) suffering from the current situation caused by the Covid-19 coronavirus pandemic, certain guarantees (the so-called "*Garanzia Italia*") in favour of banks (either Italian or international financial institutions, as well as other entities licensed to carry out lending activities in Italy), up to an overall aggregate amount equal to euro 200 billion.

Subject to the euro 200 billion limit, the Liquidity Decree also enables the Minister of Economy and Finance (*Ministero dell'economia e delle finanze* or the **MEF**) to issue public guarantees, in accordance with the EU regulations, in favour of Cassa Depositi e Prestiti S.p.A. (**CDP**) in respect of any of its credit exposures which were incurred or will be incurred by 31 December 2020 as a result of CDP issuing guarantees (including, but not limited to, first loss guarantees) to cover credit facilities granted by banks (or other entities being licensed to lend into Italy) to Italian enterprises (including, without limitation, banks or other entities being licensed to carry out lending activities). In order to be eligible to benefit from the State guarantees scheme, the guarantees issued by CDP must be given in the interests of businesses that have suffered a decrease in revenue because of the Covid-19 coronavirus emergency. The State guarantees are irrevocable, first-demand guarantees and meet the requirements for the mitigation of the relevant

lender's credit risk for the purposes of the EU prudential supervisory regulation.

**1.2. Characteristics of the SACE guarantees**

The guarantees to be issued by SACE are irrevocable, first-demand guarantees and meet the legal requirements for the mitigation of the relevant lender's credit risk for the purposes of the EU prudential supervisory regulation.

The *Garanzia Italia* will guarantee the principal amount, interest and ancillary charges of the relevant credit facilities, up to the relevant maximum guaranteed amount. The maximum guaranteed amount is set by reference to the size of the debtor. The SACE guarantees (on a pro-rata and pari passu basis, with both the lender(s) and SACE bearing the risk of non-payment) may cover up to:

- (a) 90% of the outstanding principal amount of the credit facility if the debtor is an enterprise with less than 5000 employees in Italy and has total revenues amounting to less than euro 1.5 billion;
- (b) 80% of the outstanding principal amount of the credit facility if the debtor is an enterprise with more than 5000 employees in Italy or has total revenues amounting to between euro 1.5 billion and euro 5 billion;
- (c) 70% of the outstanding principal amount of the credit facility if the debtor's total revenues exceed euro 5 billion.

If the debtor belongs to a group, the total revenues of the whole group, rather than just those of the relevant debtor, must be considered.

The *Garanzia Italia* scheme applies to new credit facilities to be granted between the date of entry into force of the Liquidity Decree and 31

December 2020. The guaranteed creditor(s) must provide evidence that, as a result of such guaranteed credit facility being made available, its exposure vis-à-vis the relevant borrower is increased.

### 1.3. Characteristics of the credit facilities

In order to be eligible to benefit from a SACE guarantee, the relevant credit facility must meet, inter alia, the following requirements:

- (a) its amount must not exceed an amount equal to the greater of (i) 25% of the debtor's annual revenues in Italy or (ii) two times the debtor's annual employee-related costs in Italy;
- (b) its purpose must be the financing of costs for employees, investments or working capital needs incurred in Italy; and
- (c) its tenor must not be longer than 6 years, with the possibility of agreeing a pre-amortisation period of up to 24 months.

For the purposes of paragraph (a) above, if the debtor belongs to a group, the total revenues and employee-related costs in Italy of the whole group, rather than just relevant borrower, must be taken into account.

### 1.4. Characteristics of the eligible enterprises and covenants

Any Italian enterprise (other than an enterprise licensed to carry out lending activities in Italy) may benefit from a SACE guarantee provided that it did not fall within the meaning of an 'undertaking in difficulty' as at 31 December 2019 and its debt was not within the range of non-performing exposures as at 29 February 2020, each as set out under the EU regulations.

SMEs can only benefit from the *Garanzia Italia* if they have already fully utilised their ability to access the support tools of the SMEs Central Guarantee Fund (*Fondo Centrale di Garanzia per le PMI*).

By SACE guaranteeing its debt, the borrower undertakes not to approve any dividend distribution or share repurchase (and to procure that no other Italian entity belonging to its group does so) during the current calendar year. In addition, the borrower also undertakes to manage any employee-related changes through agreements with the relevant trade unions.

The lenders must periodically report to SACE regarding compliance with the relevant requirements set out under Article 1 of the Liquidity Decree. In turn, SACE must report to the MEF.

### 1.5. Costs

In return for the granting of the guarantee, the borrower must pay, on an annual basis, a fee of the following amount:

- (a) in relation to credit facilities provided to SMEs, 25 basis points during the first year, 50 basis points in both the second and the third years and 100 basis points in the fourth, the fifth and the sixth years, in each case calculated by reference to the guaranteed amount; and
- (b) in relation to credit facilities provided to entities other than SMEs, 50 basis points during the first year, 100 basis points in both the second and the third years and 200 basis points in the fourth, the fifth and the sixth years, in each case calculated by reference to the guaranteed amount.

The cost of the credit facilities guaranteed by SACE must be lower than the cost that would have applied to the same transaction without the guarantee.

### 1.6. State guarantee

The obligations of SACE arising from the *Garanzia Italia* are, in turn, guaranteed by a first-demand, express, unconditional, irrevocable and non-recourse State guarantee. This counter-guarantee covers all the obligations of SACE with respect to principal amount, interest and ancillary

charges, net of fees received by SACE for the issuing of its guarantee.

SACE will perform any activity connected to the enforcement of the guarantee and debt recovery, both on its own behalf and on behalf of, and in the interests of, the MEF. It may delegate such activities to banks, Italian and international financial institutions or any other entity that is licensed to carry out lending activities in Italy.

### 1.7. Procedures for the issuance of the SACE guarantees

Two different procedures, depending on the size of the relevant borrower, must be followed in order for an enterprise to benefit from the SACE guarantee. Enterprises with less than 5000 employees in Italy and revenues earned in Italy amounting to less than euro 1.5 billion are eligible to follow the following simplified procedure:

- (a) the borrower submits a request for a guaranteed credit facility to the lender, which may lend together with other lenders;
- (b) the lenders agree to grant the credit facility;
- (c) the lenders submit a request for a guarantee to SACE;
- (d) upon SACE completing the relevant checks, it makes the guarantee available and provides a guarantee identification number; and

- (e) finally, the guaranteed credit facility can be disbursed.

For enterprises other than those eligible to follow the simplified procedure, the granting of the *Garanzia Italia* is also subject to approval by the MEF (which must consult the Minister of Economic Development (*Ministero per lo sviluppo economico* or *MISE*)). The MEF's approval will be given by means of a decree, based on SACE's analysis and taking into account the borrower's involvement and role in the following areas:

- (a) technological development;
- (b) supply chain and logistics;
- (c) critical and strategic infrastructures;
- (d) importance in the job market and to the maintenance of employment levels; and
- (e) relevance in the context of a strategic production chain.

The MEF, through the abovementioned decree, may increase the guarantee coverage percentages referred to in paragraph 1.1 above (Article 1, par. 2, let. d), of the Liquidity Decree) up to the immediately higher level, subject to compliance by the borrower with certain additional covenants to be set out in the MEF decree.

## 2. SMEs Central Guarantee Fund

| SMEs CENTRAL GUARANTEE FUND (FONDO CENTRALE DI GARANZIA PER LE PMI) |  |  |   |
|---|--|--|---|
| <b>Borrowers</b>  | SMEs (including those with positions toward the lender classified as "unlikely to pay" or "past due") and natural persons carrying out their own businesses or professional activities | Enterprises with no more than 499 employees and revenues not exceeding euro 3.2 million (including those with positions toward the lender classified as "unlikely to pay" or "past due") | Enterprises with up to 499 employees (including those with positions toward the lender classified as "unlikely to pay" or "past due") |
| <b>State guarantee</b>  | 100% for credit facilities not exceeding euro 25,000   | 90% State + 10% Confidi for credit facilities not exceeding the higher of 25% of the enterprise's revenues and euro 800,000  | 90% for credit facilities not exceeding euro 5 million  |
| <b>Procedure</b>  | Self-certification regarding the damage suffered as a result of the Covid-19 coronavirus outbreak.<br><br>No evaluation of the borrower's creditworthiness.                            | Central Guarantee Fund to perform an evaluation on the basis of the economic and financial situation and the trend of the borrower over the previous months                              |   |
| <b>Repayment</b>  | Repayment to start no earlier than 2 years following drawdown. Tenor of up to 6 years  | Not provided.  |   |

### 2.1. Introduction

Article 13 of the Liquidity Decree replaces Article 49 of the *Cura Italia* Decree, concerning the access by SMEs to guarantees from the Central Guarantee Fund (the **Fund**)<sup>1</sup>.

These measures were authorised by the European Commission under Article 108 TFEU on State aid, which was received on 15 April 2020.

Set out below are the main changes introduced by the Liquidity Decree compared to the provisions of the *Cura Italia* Decree.

### 2.2. Additional beneficiaries of the SMEs Central Guarantee Fund

The Liquidity Decree extends the possibility of benefiting from the Fund guarantees to the following additional beneficiaries:

- (a) enterprises employing no more than 499 persons;
- (b) enterprises whose debt against the relevant lender qualifies as "unlikely to pay" or "past due", to the extent that such classification is made after 31 January 2020; and
- (c) enterprises that, after 31 December 2019,
  - (i) have been admitted to a composition agreement "with continuation of business" procedure (*concordato con continuità*)

<sup>1</sup> The Fund may grant guarantees to SMEs in two ways: (a) by a direct guarantee, at the request of the lenders, including as lead manager of pools of lenders; or (b) by reinsurance and a counter-guarantee,

at the request of the guarantors, including as lead manager of pools of guarantors.

aziendale), (ii) have entered into debt restructuring agreements, or (iii) have filed a certified recovery plan (*piano attestato*), provided that, as at the date of the entry into force of the Liquidity Decree, the debt of these enterprises no longer qualifies as non-performing, there are no payments in arrear and the lender may reasonably rely on the ability of the borrower to fulfil its payment obligations upon these becoming due and payable.

Enterprises whose debt qualifies as distressed remain ineligible for the Fund guarantees.

### 2.3. Additional categories of credit facilities that may benefit from the Fund guarantees

In addition to those credit facilities that are already eligible under the *Cura Italia* Decree, credit facilities drawn no earlier than 3 months from the date of submission of the guarantee request (and, in any event, no earlier than 31 January 2020) may also now benefit from the Fund guarantees. In these cases, the lender must deliver to the Fund manager a statement certifying that the interest rate of the relevant credit facility has been reduced as a consequence of the guarantee being granted.

### 2.4. Fund guarantee coverage percentage

As compared to the *Cura Italia* scheme, the Liquidity Decree has increased the guarantee coverage ratios, both in relation to direct guarantees and reinsurance, as follows:

(a) The direct guarantee is increased to 90% of the credit facility amount for financial

transactions lasting up to 6 years and having an amount no higher than that set out under the Liquidity Decree<sup>2</sup>.

(b) The reinsurance coverage ratio for credit facilities having the tenor and amount referred to in paragraph (a) above is increased to 100% of the sum guaranteed by Confidi or any other guarantee fund, to the extent that such guarantees do not exceed a coverage ratio of 90% and provided that such guarantees do not provide for the payment of any premium.

(c) New credit facilities granted or to be granted to SMEs and natural persons carrying out their own businesses or professional activities, whose businesses or activities have suffered as a result of the Covid-19 coronavirus outbreak (as attested through a self-declaration by the borrower), may benefit from the Fund guarantees, with coverage ratio of up to 100% either as a direct guarantee or reinsurance, to the extent that:

- the tenor of the credit facilities is no longer than 6 years and the repayment does not start before 2 years from the date of drawdown; and
- the amount of the credit facilities does not exceed 25% of the revenues of the borrower. In addition, the guaranteed amount may not, in any event, exceed euro 25,000.

The entity requesting the guarantee or reinsurance, as applicable, must apply to the guaranteed credit facility an interest rate, in case of a direct guarantee, or an

<sup>2</sup> The aggregate amount of the financial transaction must not exceed, alternatively:

(a) an amount equal to two times the employee-related costs of the borrower (including employee-related costs for those employees who are formally included as employees of any sub-contractors) incurred in 2019 or in the latest year available. In the case of enterprises incorporated after 19 January 2019, the amount of the credit facility must not exceed the amount of the wage costs expected to be incurred during the first two years following incorporation;

(b) 25% of the total 2019 revenues of the borrower; or  
(c) the amount needed to pay working capital and investment costs during either (i) the following 18 months, in the case of SMEs, or (ii) the following 12 months, in the case of other enterprises having a number of employees no higher than 499. Such amount must be attested through a self-declaration by the debtor, in accordance with the Decree of the President of the Republic of 28 December 2000, No. 445.

overall premium, in case of reinsurance, the amount of which must be calculated on the basis of credit facility assessment and transaction management costs only and, in any event, must not be higher than certain *Rendistato* rates as set out in the Liquidity Decree.

The granting of the guarantee is both automatic and free, and no further assessment by the Fund is required. Therefore, the lender is able to disburse the guaranteed credit facility upon verifying that the borrower meets the relevant requirements and is not required to await the outcome of any evaluation by the Fund manager.

- (d) The Fund is also entitled to grant guarantees covering up to 90% of the relevant credit facilities (the amount of which must not exceed 25% of the revenues of the relevant borrower and, in any case, euro 800,000) in the interests of businesses with revenue not exceeding euro 3,200,000 and which have suffered as a result of the Covid-19 coronavirus pandemic (as attested through a self-declaration by the relevant borrower). A supplemental 10% guarantee may be granted by Confidi or any other public entity entitled to do so.

## 2.5. Guarantees for credit facility portfolios

The Liquidity Decree provides that, until 31 December 2020, certain favorable conditions will apply to guarantees securing portfolios including credit facilities<sup>3</sup> (in terms of maximum aggregate amount, eligibility criteria and the coverage ratio for each tranche of the portfolios), even if no amortisation plan is provided. The credit facilities included in the portfolio must be made available to enterprises that are suffering as a result of the Covid-19 coronavirus outbreak. At least 20% of the portfolio must be made up of credit facilities made available to borrowers that, as at the date of inclusion of the credit facilities in the relevant portfolio, have a rating (as determined by the entity requesting the guarantee on the basis of its internal models) no higher than class "BB" on the Standard and Poor's rating scale.

Furthermore, credit facilities are also permitted to be granted to enterprises located in those regions in which the eligibility for benefitting from the direct Fund guarantee is still limited (so-called *lettera r*).

Lastly, subject to EU Commission approval and certain requirements being met, those portions of credit facilities which are not captured under the Fund guarantee or other public guarantee schemes can be guaranteed by Confidi.

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<sup>3</sup> A loan portfolio is a set of loans, referring to the beneficiaries, with common characteristics, such as the technical form used, the

purpose for which the loan is granted, the duration of the credit facility, the collateral required, etc.



## 3. Measures in relation to insolvency proceedings and distressed companies

### MEASURES IN RELATION TO INSOLVENCY PROCEEDINGS AND DISTRESSED COMPANIES

|   |   |
|---|---|
| Measures for the continuation of businesses as going concerns | Suspension of the rules regarding the recapitalisation of companies   |
|   | Suspension of the rule regarding subordination of shareholder loans   |
|   | Accounting rule regarding the preparation of corporate balance sheets   |
| Measures in relation to the crisis and bankruptcy procedures  | Inadmissibility ( <i>improcedibilità</i> ) of bankruptcy petitions  |
|   | Extension of deadlines and procedural terms for pre-insolvency workout agreements with creditors ( <i>concordato preventivo</i> ) and debt restructuring agreements ( <i>accordo di ristrutturazione dei debiti</i> ) |
|   | Suspension of deadlines for insolvency clawbacks  |

### 3.1. Introduction

The Liquidity Decree provides specific rules concerning insolvency proceedings and distressed companies, which must be read together with the special legal framework on civil proceedings set forth by the *Cura Italia* Decree.

In particular, the Liquidity Decree provides several measures which significantly impact the management of companies that are facing financial and economic distress as a result of the Covid-19 coronavirus epidemic. These measures can be divided into the following two macro-categories:

- (a) measures aimed at protecting and sustaining the continuation of the business as a going concern; and
- (b) measures having an impact on bankruptcy and pre-insolvency proceedings and which are aimed at containing the number of bankruptcies.

In addition, the Liquidity Decree postpones the entry into force of the Italian Insolvency Code – which is due to replace the current bankruptcy framework - to 1 September 2021. This is intended to avoid any uncertainty in the legal system during this period of economic and financial instability which might be caused by the innovative provisions contained in the Italian Insolvency Code (some of which are aimed at early crisis detection and prevention).

### 3.2. Measures aimed at protecting and sustaining the continuation of businesses as going concerns

Between 9 April and 31 December 2020, by way of exception to the ordinary rules:

- (a) both the recapitalisation obligations of companies and the obligation to wind-up companies as a result of the reduction of share capital below the minimum amount required by law are suspended. Consequently, companies will not need to

be mandatorily recapitalised or liquidated even in the event of a full loss of share capital. However, directors are still required by law to call shareholders' meetings in order to provide shareholders with appropriate information with respect to the company's economic and financial situation; and

- (b) shareholders may grant loans, in any form whatsoever, to support companies without the risk of their claims being ranked junior to the claims of third-party creditors, and therefore have a greater chance of recovering all or part of such claims<sup>4</sup>.

With the aim of facilitating the continuation of businesses as going concerns, the Liquidity Decree also provides that in the preparation of corporate balance sheets relating to the ongoing financial year (or, if such balance sheets are yet to be approved, relating to the financial period ending before 23 February 2020), evaluations can be made as if the relevant business activity is still continuing if such continuation is shown in the previous balance sheet relating to the financial period ending before 23 February 2020 (being the date on which the first emergency legislation was enacted).

### **3.3. Measures having an impact on bankruptcy and pre-insolvency proceedings and which are aimed at containing the number of bankruptcies**

The Liquidity Decree also provides for the following measures, which are aimed at facilitating the more orderly administration of

bankruptcy and pre-insolvency procedures in order to avoid a rapid increase in bankruptcies.

### **3.4. Inadmissibility (*improcedibilità*) of petitions for the declaration of bankruptcy or for the ascertainment of the state of insolvency**

Any filings for the declaration of bankruptcy or for the ascertainment of the state of insolvency brought within the period between 9 March 2020 and 30 June 2020 (whether by third parties or by the company itself) are deemed inadmissible (*improcedibili*) and will be required to be filed again after the expiration of such period<sup>5</sup>. However, the public prosecutor (*pubblico ministero*) will still be entitled to file such a petition if it is made both for the declaration of bankruptcy and in order to issue precautionary or conservative measures to protect the assets of the bankrupt company.

Moreover, for the purposes of safeguarding the *par condicio creditorum* principle, it is provided that, in the event that a bankruptcy is declared after 30 June 2020 following a declaration of inadmissibility during the period between 9 March 2020 and 30 June 2020, that period should not be taken into account when calculating the deadline for bringing relevant clawback actions.

<sup>4</sup> In addition, it should be pointed out that – in order to incentivise the provision of loans aimed at maintaining SMEs as going concerns – the Liquidity Decree extends, in accordance with Article 13, access to the guarantee scheme of the Central Guarantee Fund for SMEs (*Fondo Centrale di Garanzia*) to companies which, after 31 December 2019, have entered into a pre-insolvency workout agreement on a going concern basis (*concordato preventivo con continuità aziendale*), which have entered into debt restructuring agreements (*accordo di ristrutturazione dei debiti*) or which have implemented a certified recovery plan (*piano attestato di risanamento*). In order to obtain

such guarantee it is required that, as of 9 April 2020, such companies have exposures which are no longer capable of being declared as non-performing, do not have any payment obligations in arrears after the granting of the guarantee and that the bank, based on an analysis of the borrower's financial situation, is able to reasonably assume that the exposure will be fully reimbursed at maturity, pursuant to Article 47-*bis*, paragraph 6, letters a) and c) of Regulation 575/2013.

<sup>5</sup> This provision does not appear to apply to very large companies that are subject to the extraordinary administration procedure governed by Legislative Decree no. 347/2003 (Marzano Decree).

### **3.5. Rules relating to pre-insolvency workout agreements with creditors and debt restructuring agreements already ratified (*omologati*) by the Court**

The deadlines for the fulfilment of pre-insolvency workout agreements with creditors or debt restructuring agreements which have already been ratified (*omologati*) by the Court and which fall within the period between 23 February 2020 and 31 December 2020 are extended by a period of six months.

### **3.6. Rules relating to pre-insolvency workout agreements with creditors and the procedures for the Court's ratification of debt restructuring agreements pending 23 February 2020**

Companies taking part in pre-insolvency workout agreements with creditors or debt restructuring agreements pursuant to Article 182-*bis* of the Italian Bankruptcy Law are entitled to request (before the hearing for the Court's ratification and excluding the cases where the creditors have

already rejected the pre-insolvency workout agreement proposal): (i) a new deadline for the filing of a new plan and a new proposal; and/or (ii) a unilateral amendment to extend by six months the deadline for the fulfilment of the pre-insolvency workout agreement with creditors or the debt restructuring agreement.

### **3.7. Rules relating to pre-insolvency workout agreements with creditors "with reservation"**

Companies that have applied for a pre-insolvency workout agreement with creditors "with reservation" pursuant to Article 161, paragraph 6, of the Italian Bankruptcy Law, are entitled, under certain circumstances, to request a further extension of up to 90 days of the deadline for the filing of a fully-fledged pre-insolvency workout agreement with creditors or a debt restructuring agreement pursuant to Article 182-*bis* of the Italian Bankruptcy Law.

### **3.8. Extension of suspension terms in civil proceeding**

Please see our [Client Bulletin](#) in this respect.

## 4. Forbearance measures

| FORBEARANCE                  |  |  |
|------------------------------|--|--|
|                              | Forbearance in relation to residential mortgage loans  | Forbearance in relation to financing to micro-enterprises and SMEs   |
| <b>Beneficiaries</b>         | <ul style="list-style-type: none"> <li>- Employees: suspension of work due to Covid-19 for at least 30 consecutive business days or reduction in working hours (equal to at least 20% of overall working hours)</li> <li>- Self-employed persons: until 17 December 2020, reduction in average daily income due to Covid-19 for a quarter falling after 21 February 2020 (or such shorter period of time between such date and the date of request for suspension), of more than 33% of the average daily income received in the last quarter of 2019</li> <li>- ISEE index not applicable. Until 9 January 2021, mortgage loans which have been amortising for less than one year may also be subject to this forbearance measure</li> <li>- Debtors must not have been in arrears for more than 90 days as at the date of the request</li> </ul> | <ul style="list-style-type: none"> <li>- Micro-enterprises (as defined in Recommendation 2003/361/CE) which due to Covid-19 have suffered a temporary liquidity shortfall</li> <li>- Micro-enterprises and SMEs which, as at 17 March 2020, have impaired debt exposures are not eligible</li> </ul>   |
| <b>Forbearance mechanics</b> | <ul style="list-style-type: none"> <li>- Employees: payment holiday in respect of both principal and interest (i) for six months, if the suspension or reduction in working hours is for a period of between 30 and 150 consecutive business days, (ii) 12 months, if such suspension or reduction is for a period of between 151 and 302 consecutive business days, or (iii) 18 months, if such suspension or reduction is for a period exceeding 303 consecutive business days.</li> <li>- Self-employed persons: 18 months</li> <li>- Payment holiday in respect of both principal and interest. Suspended instalments become due at the end of the end of the suspension period (unless otherwise agreed between the parties)</li> </ul>   | <ul style="list-style-type: none"> <li>- Uncommitted short-term facilities and factoring in place as at 29 February 2020 (or, if later, as at 17 March 2020): not revocable until 30 September 2020</li> <li>- Bullet loans with a maturity falling prior to 30 September 2020: postponed until 30 September 2020</li> <li>- Financing repayable in instalments (including financial leases) falling due before 30 September 2020: suspended until 30 September 2020</li> <li>- Payment holiday in respect of both principal and interest (provided that the borrower may elect to request the suspension of principal only in respect of financings repayable in instalments). For such financing, the repayment plan for the suspended instalments or lease rentals will be deferred in such a way as to ensure that, from an actuarial perspective, there are no new or greater charges for either party</li> </ul> |
| <b>Procedure</b>             | <ul style="list-style-type: none"> <li>- Request addressed to Consap which, subject to verification that all the conditions for the admission to the Solidarity Fund are satisfied, authorises lenders to grant payment holidays</li> </ul>  | <ul style="list-style-type: none"> <li>- Request addressed to lenders who grant payment holidays upon receipt of a self-certification attesting to the temporary liquidity shortfall</li> </ul>  |

## 4.1. Residential mortgage loans

### 4.1.1. Which forbearance measures apply to residential mortgage loans?

Law Decree no. 9 of 2 March 2020, the *Cura Italia* Decree and the Liquidity Decree have introduced forbearance measures in relation to mortgage loans granted for the purchase of the principal house. These measures allow borrowers to access the existing Solidarity Fund and benefit from payment holidays as detailed below.

### 4.1.2. Which borrowers are eligible for these forbearance measures?

Eligible borrowers comprise (i) employees (*lavoratori subordinati e parasubordinati*) who have suffered a suspension of work for at least 30 consecutive business days or a reduction in working hours for at least the same period of time (corresponding to a reduction of at least 20% of the overall working hours), pending the enactment of further income support measures, and (ii) until 17 December 2020, self-employed persons (*lavoratori autonomi*) (including individual companies (*ditte individuali*), artisans (*artigiani*), merchants (*commercianti*) and farmers (*coloni e mezzadri*)) who have suffered a reduction in average daily income for a quarter falling after 21 February 2020 (or such shorter period of time between 21 February 2020 and the date of request for suspension), of more than 33% of average daily income received in the last quarter of 2019 as a consequence of the interruption or limitation of their business ordered by the competent authority in light of COVID-19 emergency.

By way of exception to the existing rules of the Solidarity Fund, (i) until 31 December 2017 the equivalent economic condition index (*indicatore della situazione economica equivalente* or *ISEE*) is not relevant for admission to the Solidarity

Fund, and (ii) until 9 January 2021, mortgage loans which have been amortising for less than one year can also benefit from a payment holiday.

Borrowers can only send a request for admission to the Solidarity Fund if they have not been in arrears for a period of more than 90 days as at the date of the relevant request.

### 4.1.3. How do these forbearance measures work?

Any payment holiday applies to both principal and interest. Capitalisation of interest is not permitted; however, lenders may charge compensatory interest (*interessi compensativi*) during the suspension period. By way of exception to the existing rules of the Solidarity Fund, compensatory interest is reimbursed by the Solidarity Fund in an amount equal to 50% of the interest accrued on the outstanding principal amount during the suspension period.

For employees (*lavoratori subordinati e parasubordinati*), the payment holiday will not exceed (i) 6 months, if the suspension of work or reduction in working hours is for a period of between 30 and 150 consecutive business days, (ii) 12 months, if such suspension or reduction is for a period of between 151 and 302 consecutive business days, or (iii) 18 months, if such suspension or reduction is for a period longer than 303 consecutive business days. For self-employed persons (*lavoratori autonomi*) (including individual companies (*ditte individuali*), artisans (*artigiani*), merchants (*commercianti*) and farmers (*coloni e mezzadri*)), the payment holiday will not exceed 18 months. Until 17 December 2020, any previous suspension by law of a mortgage loan will not be taken into account for the purposes of the suspension period provided that such mortgage loan has been regularly amortising for at least 3 months.

The payment holiday will defer the payment of interest and principal for the relevant suspension period indicated above. The final maturity date of the mortgage loans will be extended for a period of time corresponding to the suspension period. At the end of such period, the suspended instalments will become due in the amount and frequency originally agreed in the relevant mortgage loan agreement, save as where otherwise agreed between the parties.

#### 4.1.4. What is the procedure for the admission to the Solidarity Fund?

Eligible borrowers must send the request for admission to the Solidarity Fund (enclosing the relevant self-certifications) to Consap, as management company of the Solidarity Fund. Lenders will be required to grant payment holidays following receipt of confirmation from Consap that the conditions for the admission to the Solidarity Fund are satisfied.

## 4.2. Financing to micro-enterprises and SMEs

### 4.2.1. Which forbearance measures apply to financing to micro-enterprises and small and medium enterprises (SMEs)?

The *Cura Italia* Decree introduced forbearance measures in favour of micro-enterprises and SMEs. These measures allow micro-enterprises and SMEs to benefit from the non-revocability of certain uncommitted short-term facilities and factoring and payment holidays in respect of bullet loans and loans and other financing repayable in instalments, as detailed below.

### 4.2.2. Which micro-enterprises and SMEs are eligible for these forbearance measures?

Micro-enterprises and SMEs (as defined in Recommendation 2003/361/CE) that have suffered a temporary liquidity shortfall as a direct

consequence of COVID-19 are eligible for these forbearance measures.

Micro-enterprises and SMEs can only apply for these forbearance measures if, as at 17 March 2020, they have no debt exposures classified as "impaired" (*deteriorate*).

### 4.2.3. How do these forbearance measures work?

Uncommitted short-term facilities and factoring in place as at 29 February 2020 (or, if later, as at 17 March 2020) cannot be revoked until 30 September 2020. The repayment of bullet loans with a maturity falling prior to 30 September 2020 is postponed until such date. For loans and other financing repayable in instalments (including financial leases and loans granted through agricultural promissory notes) falling due before 30 September 2020, repayment is suspended until such date.

Any payment holiday applies to both principal and interest provided that, in respect of loans and other financing repayable in instalments, including financial leases and loan granted through agricultural promissory notes, the relevant micro-enterprise or SME may elect to request the suspension of principal only. Capitalisation of interest is not permitted; however, lenders may charge compensatory interest (*interessi compensativi*) during the suspension period.

Any payment holiday will defer payment of interest (save as specified above) and principal for the relevant suspension period set out above. At the end of such period (i) in respect of bullet loans, the final maturity date will be extended for a period of time corresponding to the suspension period and payments will become due on the same conditions as existed prior to the suspension, whilst (ii) in respect of loans and other financing repayable in instalments, including financial leases and loan granted through agricultural promissory notes, the repayment plan for the suspended instalments or lease rentals will

be deferred in such a way as to ensure that, from an actuarial perspective, there are no new or greater charges for either party.

#### 4.2.4. What is the procedure for admission to these forbearance measures?

Lenders will be required to grant payment holidays following receipt of a self-certification from the relevant micro-enterprise or SME stating that it has suffered a temporary liquidity shortfall as a direct consequence of Covid-19.

#### 4.2.5. Other measures

On 6 March 2020, the Italian Banking Association entered into an addendum to the 2019 credit agreement "*Accordo per il credito 2019*" with some associations representing micro-enterprises and SMEs (the **ABI Agreement 2020**). Pursuant to the ABI Agreement 2020, the following forbearance measures introduced by the 2019 credit agreement have been extended to loans granted in favour of micro-enterprises and SMEs existing as at 31 January 2020: (i) suspension for up to 12 months of the quota capital amount of the instalments (in relation to long-term facilities) or lease payments (in relation to financial leases in respect of movable and immovable assets); and (ii) an extension of the loan maturity up to a maximum of: (A) in respect of long-term facilities, 100% of the residual length of the amortisation plan; (B) in respect of short-term facilities and agricultural financing, 270 days and 120 days respectively; and (C) in respect of

loans secured by the transfer of immovable assets under article 48-bis of Legislative Decree no. 385 of 1 September 1993 (so-called "*patto marciano*"), 30 years (depending on the relevant type of asset).

Only micro-enterprises and SMEs having no debt exposures classified as impaired (*deteriorate*) by the relevant bank may file a request for suspension or extension. In addition, such enterprises can only send the request for admission to any of the measures indicated above if they have not been in arrears for a period of more than 90 days as at the date of the relevant request.

Banks adhering to the ABI Agreement 2020 must reply to the relevant request within 30 business days from the receipt thereof.

#### 4.3. Consumer loans/other types of financing

No legislative or trade association measures have been enacted in respect of non-mortgage consumer loans and other types of financing not described above.

However, financial institutions may grant a suspension of payments in respect of consumer loans or such other types of financing on a voluntary basis.

## 5. Measures to support exports, internationalisation and business investment

### 5.1. The new SACE-State co-insurance system

The Liquidity Decree creates, as of 1 January 2021, a new co-insurance system between SACE and the State.

In particular, SACE's commitments deriving from insurance and guarantee activity for "non-market" risks are assumed, without any joint liability, 10% by SACE and 90% by the State.

In carrying out its activities, SACE must now privilege strategic sectors for the Italian economy in terms of employment levels and repercussions for the country's economic system, as well as operations destined for countries which are strategic for Italy.

In this new context, the issuance of guarantees and insurance coverage is carried out by SACE, both for itself and on behalf of the State, with prior authorization from the MEF, having received the opinion of the Committee for public export support (see below), in relation to transactions with a high concentration risk with respect to the overall insured portfolio. Any communication or request, as well as any claim for compensation, must be addressed exclusively to SACE.

In order to guarantee coverage of the commitments undertaken by the State in relation to the interventions described above, a cover fund will be set up which will be fed by the premiums collected by SACE on behalf of the MEF and managed by SACE in accordance with the 10-year agreement to be entered into between SACE and the MEF.

### 5.2. Supporting and revitalising the economy: the euro 200 billion guarantee

In order to support and revitalise the Italian economy, SACE, following the issuance of the relevant MEF decree, is also empowered to issue - at market conditions and in compliance with European Union regulations - guarantees in any form (including counter-guarantees towards banks) up to a total maximum amount of euro 200 billion in favour of banks, national and international financial institutions and other entities authorised to provide credit in Italy for loans in any form granted to companies based in Italy.

Compared to the co-insurance system described above, this activity is carried out with separate accounts and allows SACE to benefit by right - for the commitments undertaken pursuant to the aforementioned guarantees issued - from the guarantee at the first request of the State with the exclusion of any direct recourse by the lenders against the latter.

### 5.3. What happens to transactions outstanding before the entry into force of the Liquidity Decree or before 1 January 2021?

Commitments entered into and transactions approved by SACE's Board of Directors, as well as State guarantees issued before the date of entry into force of the Liquidity Decree or before 1 January 2021, shall remain governed by the rules in force prior to the entry into force of the Liquidity Decree, within the limitations set forth therein.



## 6. Streamlined measures for entering into banking contracts with retail clients

The Liquidity Decree introduces a simplified and temporary instrument which can be used in order to enter into banking agreements for the purposes of articles 117, 125-*bis*, 126-*quinquies* and 126-*quinquiesdecies* of the TUB. If the client gives its consent by way of a standard communication delivered through its own non-certified e-mail account (or other appropriate instrument), the agreements entered into with retail clients (pursuant to, and as defined under, the Transparency Rules issued by the Bank of Italy - e.g. consumers, professionals and micro-enterprises), during the period between the entry into force of the Liquidity Decree and the end of the Covid-19 coronavirus outbreak (as resolved upon by the Italian Council of Ministers), will fulfil the requirements set forth under art. 20, par. 1-

*bis*, first section of the Legislative Decree no. 82/2005 and become effective accordingly.

Please note that the abovementioned instrument is admissible to the extent that the relevant e-mail communication:

- (i) is accompanied by a copy of a valid ID card of the client;
- (ii) refers to an agreement which can be identified in a certain way; and
- (iii) is stored together with the original of such agreement in a way that is sufficient to ensure its safety, integrity and inalterability.

## 7. Changes in terms of "Golden Power" rules

With the introduction of the Liquidity Decree, the Italian Government has amended Legislative Decree no. 21/2012 on the so-called "Golden Powers", by extending the scope of application of the Government's special powers to sectors that had thus far been excluded, and by extending the

notification obligations to transactions carried out by foreign EU and non-EU entities.

For more details on the new rules, in force as of 9 April 2020, please [click here](#).

## 8. Tax measures

### SUMMARY TABLE

|   |   |
|---|---|
| Suspension / postponement of tax obligations and payments | Tax (e.g. withholding taxes and VAT) and social security contribution payments for certain taxpayers  |
|   | Non-application of withholding taxes on self-employed income  |
|   | Provision and transmission of the withholding tax agents' certifications ( <i>certificazioni uniche</i> )   |
|   | Carrying out of formalities in order to benefit from tax incentives related to the primary residential property ( <i>prima casa</i> )   |
|   | Payment of stamp duties on electronic invoices  |
| Tax incentives / credits                                  | Non application of sanctions for 2020 omitted or insufficient advance payments ( <i>acconti</i> ) calculated on the basis of the forecast method ( <i>metodo previsionale</i> ) |
|   | Tax credit related to acquisition costs of protection tools for workplaces  |

### 8.1. Introduction

The Liquidity Decree introduces new tax provisions (in addition to those already enacted, mainly through the *Cura Italia* Decree) to respond to the Covid-19 coronavirus outbreak emergency.

Most of the new measures are aimed at supporting liquidity in the business sector by providing for the suspension and postponement of certain tax obligations and payments, as well as tax credits and incentives to taxpayers impacted by the emergency situation.

### 8.2. Suspension and postponement of tax obligations and payments

The most important changes introduced by the Liquidity Decree in respect of the suspension and postponement of tax obligations and payments are the following:

- a) suspension of the deadlines for certain tax payments due to be made in April and May 2020 (including payment of certain withholding taxes, VAT and social security contributions) in favour of business taxpayers meeting certain income and reduction of income thresholds or having recently started their business activity;
- b) extension up until 31 May 2020 of the period – starting from 17 March 2020 and previously ending (pursuant to the *Cura Italia* Decree) on 31 March 2020 – for the non-application of withholding taxes on self-employed income paid to taxpayers with (i) no costs for employees in the preceding month and (ii) revenues or income lower than euro 400,000 in the preceding tax year;
- c) postponement to 30 April 2020 of the deadline for withholding tax agents to provide the withholding tax agents' certifications (*certificazioni uniche*) to employees and the Italian tax authorities;
- d) suspension from 23 February 2020 to 31 December 2020 of the deadlines for the carrying out of formalities (e.g. transfer of the residence) required in order to benefit from the tax advantages related to the primary residential property (*prima casa*); and
- e) postponement to (i) the second quarter of 2020 (i.e. until 20 July 2020) or (ii) the third quarter of 2020 (i.e. until 20 October 2020) of the payment of stamp duties on electronic invoices to the extent the amount of such duties for the first quarter or the first

two quarters, respectively, is lower than euro 250.

### 8.3. Tax incentives and credits

With reference to tax incentives and credits, the main changes introduced by the Liquidity Decree are the following:

- (a) non-application of sanctions and interest on omitted or insufficient advance tax payments (*acconti*) for 2020 income tax and IRAP purposes in favour of taxpayers who calculated the amount of such advance tax payments on the basis of the forecast method (*metodo previsionale*) to the extent the amount paid is not lower than 80% of the amount due as resulting from the relevant tax return; and
- (b) extension of the scope of the tax credit for sanitization costs (provided under the *Cura Italia* Decree) in favour of business taxpayers so that it also includes costs arising from the acquisition of tools for personal protection (such as surgical masks, gloves, protection suits or glasses, etc.) and other tools aimed at protecting workers from exposure to biological infections and ensuring the minimum safety distance. Such tax credit is equal to 50% of the incurred and documented costs and up to a maximum amount of euro 20,000. Under the *Cura Italia* Decree, this tax credit was originally limited to costs incurred from sanitization of the working environment and equipment.

### 8.4. Background

The above measures introduced by the Liquidity Decree extend the scope of, and are in addition to, those that have already been adopted by the recent Covid-19 coronavirus emergency legislation enacted at the Italian level, primarily by the *Cura Italia* Decree.

For a more comprehensive overview of the recent Italian emergency legal framework, we set out

below a high-level description of the most relevant tax provisions included in the *Cura Italia* Decree:

- (a) tax incentive for the transfer for consideration of non-performing commercial or financing receivables to transferees that are not part of the seller's group, consisting of the conversion of a portion of certain transferors' deferred tax assets – including those not recognised in the financial statements – into tax credits within specific limits. Both financial and industrial companies may benefit from such tax incentive; and
- (b) suspension from 8 March 2020 to 31 May 2020 of certain activities (including liquidation, control, assessment, collection, litigation and ruling-provision activities) of the Italian tax authorities. As a result of the suspension, an extension of the statute of limitations for the carrying out of such activities has been granted in favour of the Italian tax authorities to the extent that (i) such activities are exercised in relation to taxpayers benefitting from suspension from tax obligations and payments pursuant to the Covid-19 coronavirus emergency legislation and (ii) the statute of limitations expires in the same year as when the suspension for the taxpayers from tax obligations and payments operates (i.e. activities of the tax administration for which the statute of limitations expires in 2020). The statute of limitations is extended until 31 December of the second year following the end of the suspension period (i.e. until 31 December 2022). We note that such provision has been harshly criticized by scholars and practitioners as being excessively disproportionate and proposals for its amendment are currently under discussion by the Italian Parliament in the context of the conversion into law of the *Cura Italia* Decree.

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