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COVID-19 Update Financing

Adverse effects that will be caused to the business and financial situation of companies by the “COVID-19” outbreak and the measures implemented to contrast such emergency have led lawmakers to implement measures to support such entities.

This note contains a summary of the most relevant measures adopted to support the ability of companies to meet their financial commitments. In particular:

- Section I provides for an analysis of the main term contained in the agreements between the Italian Banking Association (IBA) and the Associations representing enterprises in terms of suspension and re-scheduling of the payment of amounts due as principal under loans granted in favor of micro, small and medium-sized enterprises; and
- Section II provides for an analysis of the most relevant provisions contained in the Law Decree so-called “Cure for Italy”.

SECTION I

IBA - ADDENDUM TO THE AGREEMENT FOR THE CREDIT 2019

1. “BUSINESSES IN RECOVERY 2.0” (“IMPRESE IN RIPRESA 2.0”) PURSUANT TO THE ADDENDUM TO THE AGREEMENT FOR THE CREDIT 2019

On March 6, 2020, with the signing of an addendum to the so-called Agreement for the Credit 2019 (“*Accordo per il Credito 2019*”, the **Agreement**), the IBA and the Associations representing enterprises have extended the so-called “Businesses in Recovery 2.0” (“*Imprese in Ripresa 2.0*”) provisions to credit facilities outstanding at January 31, 2020 to support businesses affected by the temporary interruption and / or reduction of their activities in the midst of the “COVID-19” outbreak.

1.1 Suspension and extension

The “Companies in Recovery 2.0” measure, as contemplated by the Agreement and the addendum, allows micro, small and medium-sized enterprises operating in Italy, to request banks adhering the

Agreement to:

- **suspend** up to one year the payment of the principal amounts of instalments due under credit facilities. Companies may file an application for the suspension for the payment of principal amounts in relation to medium-long term facilities, including those secured by the issue of bills of exchange of agricultural activities (“*cambiali agrarie*”), and financial leases, including real estate leases. In the latter case, the suspension concerns the part of the lease rent paid as principal.

Loans and financial leases supported by public grants are also eligible for the suspension, but only to the extent that: (i) the public entity providing the grant has specifically approved the suspension, giving notice of the approval to the Ministry of Economy and Finance, that shall publish it on its website and; and (ii) following the suspension, the original plan for the disbursement of public grant remains unchanged.

During the suspension period, companies shall pay interests only (or, in case of financial leases, instalments comprising only the interest share), at the rate originally agreed or increased within the limits of the Agreement;

- **extend** the maturity of existing loans up to a maximum period equal to 100% of the residual duration of the amortization. For short-term loans and agricultural management loans, maturity can be extended up to a maximum, respectively, of 270 days and 120 days.

Extension may apply also to short-term credit facilities in relation to which the companies suffered defaults in the payments of receivables discounted in favour of the bank.

1.2 Requesting the measures

In order to benefit from the measures, companies shall complete and file an application (based on the format prepared by IBA¹) with the relevant bank by December 31, 2020. The bank will respond as soon as possible (with a best-effort undertaking to do so within 30 business days from the filing of the application) after having carried out its approval process, during which the applicant may provide any additional information requested.

¹ URL to the format of the application: https://www.abi.it/DOC_Mercati/Crediti/Credito-alle-imprese/Accordo%20credito%202019/Modulo%20richiesta%20imprese%202019_Accordo%202019.pdf

It shall be noted that banks, even if adhering to the Agreement, maintain the widest autonomy in evaluating the granting (or not) of the moratoriums and / or the extensions required by each applicant. The Agreement further provides that credit institutions are allowed to grant enterprises more favourable measures than those provided therein.

In order to facilitate a positive resolution by their credit committees, banks may request to the applicants: (1) an increase in the interest rate originally agreed with the company, provided that such increase shall be strictly connected to the coverage of the costs to be incurred by the credit institution and, in any case, shall not exceed 60 basis points; and / or (2) the granting of additional guarantees, which may be taken into consideration also to avoid the increase of the interest rate. In any case, banks shall not charge applicants with costs or charges not strictly related to the admission to the measures.

As of March 14, 2020, IBA confirms 98% of the banks adhered to the new provisions on suspension of payments agreed between IBA and Associations representing enterprises.

2. REQUIREMENTS FOR THE ADMISSIBILITY

2.1 Subjective and objective requirements

Below is a brief summary of the requirements set forth by the Agreement for the applicants to the “Businesses Recovery 2.0” measures.

As to subjective requirements, the Agreement expressly provides that such measures can be requested by micro, small and medium-sized enterprises operating in Italy, in any sector. In this regard, pursuant to the Recommendation of the (European) Commission of 6 May 2003 and the Ministerial Decree issued by the Ministry of Productive Activities on 18 April 2005, are defined:

- (i) micro-sized enterprises, those having: (a) less than 10 staff headcount and (b) an annual total turnover or an annual balance sheet total not higher than Euro 2 million;
- (ii) small-sized enterprises, those having: (a) less than 50 staff headcount and (b) an annual total turnover or an annual balance sheet total not higher than Euro 10 million; and
- (iii) medium-sized enterprises, those having: (a) less than 250 staff headcount and (b) an annual total turnover not higher than Euro 50 million or an annual balance sheet total not higher than Euro 43 million.

Requirements referred to in letters (a) and (b) of the foregoing paragraphs (i), (ii) and (iii), that shall apply jointly, are those resulting on the basis of the approved financial statements referred to the latest closed accounting year.

With reference to the requirements set out above, it is worth noting that:

- employees are either permanent or temporary employees of the company, registered in the company register and employed by means of agreements providing for the subordination, with the exception of those placed in extraordinary layoffs;
- turnover means item A.1 of the income statement prepared in accordance with civil code (i.e. the net turnover, including the amounts deriving from the sale of products and the provision of services

- included in the ordinary activities of the company, less sales discounts as well as VAT and other taxes directly related to turnover); and
- balance sheet total means the total assets.

As to **objective requirements**, the Agreement provides that loans eligible for the measures are those that: (i) were in place on January 31, 2020; (ii) have not already been subject to a moratorium (neither in the form of suspension of the instalments, nor in the form of an extension) in the 24 months preceding the application; and (iii) are not classified as non-performing positions, although the instalments may have already expired (in whole or in part) for no more than 90 days at the date of submission of the application.

2.2 Group of companies

In the event an enterprise belongs to a group of companies, the calculation of the subjective requirements described in the foregoing paragraph shall consider any “partner” or “linked” company.

Two companies are considered **partner companies** if one holds, alone or together with one or more partner companies, 25% or more of the capital or voting rights of another company².

If any of the above applies, the data of the partner company (together with those of any companies linked to the latter) are added to the data of employees, turnover or total assets of the applicant, in proportion to the percentage of participation. The data to be taken into consideration are those resulting from the financial statements or, in the case of consolidated financial statements, those resulting from such consolidated accounts.

Two companies are considered **linked enterprises**² if one of them:

- (i) has a majority of the voting rights in the ordinary shareholders’ meetings or voting rights sufficient to exercise a dominant influence over the ordinary shareholders’ meetings of the other company; or
- (ii) has the right to exercise a dominant influence over the other company pursuant to a contract or to a provision in its articles of association; or
- (iii) controls alone, pursuant to an agreement with other shareholders, the majority of voting rights in the ordinary shareholders’ meetings of such company.

If any of the above applies, data to be considered for the applicant company are those resulting from the consolidated financial statements or, if not present, from the financial statements of each partner company. Furthermore, data of any partner companies of such linked companies (if not already included in the consolidated accounts) shall be added proportionally.

² An enterprise will not be considered partners if the 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, either individually or jointly to the enterprise in question: (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses, provided the total investment of those business angels in the same enterprise is less than Euro 1,250,000; (b) universities or non-profit research centres; (c) institutional investors, including regional development funds; (d) autonomous local authorities with an annual budget of less than Euro 10 million and fewer than 5,000 inhabitants.

3. REPORTING IN THE CENTRAL CREDIT REGISTER

It is important to flag that the adhesion to one of the “Businesses in Recovery 2.0” measures is reported in the Central Credit Register as a measure aimed at supporting a company that has temporary financial difficulties. Hence, before adhering to these measures, it shall be carefully evaluated the consequences of such reporting on the operations of the applicant.

SECTION II

LAW DECREE MARCH 17, 2020, NO. 18

“MEASURES FOR THE STRENGTHENING OF THE NATIONAL HEALTH SERVICE AND THE ECONOMIC SUPPORT OF FAMILIES, WORKERS AND COMPANIES RELATED TO THE EPIDEMIOLOGICAL EMERGENCY COVID-19”

1. FINANCIAL SUPPORT MEASURES TO COMPANIES – INTRODUCTION

The Law Decree 17 March 2020 no. 18 providing “Measures for the strengthening of the national health service and the economic support of families, workers and companies related to the epidemiological emergency COVID-19” (*“Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19”*) (the **Decree**), which entered into force on the same day of its publication in the Italian Official Journal (*Gazzetta Ufficiale*) on 17 March 2020, introduces, inter alia, financial support measures for companies by setting limits on the withdrawal of bank credit lines and the suspension of payments relating to loan and leasing agreements, as well as through the introduction of liquidity support tools and the strengthening of the SMEs National guarantee fund.

The main features of such support measures are illustrated in the following paragraphs.

2. STANDSTILL

2.1 Financial support measures pursuant to article 56 of the Decree

In relation to companies that satisfy the requirements described in paragraph 2.2 below, article 56 (*Financial support measures for micro, small and medium-sized companies affected by the epidemiological emergency COVID-19*) of the Decree, provides for the application of the following measures:

- a) **limits on withdrawal of credit lines**: the amounts granted, both for the part already disbursed and for the part still available), under revocable credit overdraft facilities and loans granted as advances on receivables (such as, by way of example, advances on invoices and cash flows, as well as factoring lines) existing on 29 February 2020 or on 17 March 2020, shall not be withdrawn, in whole or in part, until 30 September 2020;
- b) **extension of the final maturity date of bullet loans**: the final maturity date of bullet loans falling before 30 September 2020, is extended until 30 September 2020, together with the respective ancillary elements and without prejudice to the existing conditions of such loans, without any formalities being necessary;

- c) **suspension of payments:** payments (for principal and interest) of loan instalments and leasing instalments due before 30 September 2020 pursuant to, respectively, loan agreements or other financing agreements - also entered into through agricultural promissory notes (*cambiali agrarie*) - to be repaid pursuant to an amortization plan and leasing agreements, are suspended until 30 September 2020. The amortization plan or the payment of the leasing instalments subject to suspension is deferred, together with the respective ancillary elements, in a manner such as to exclude new or greater charges for the parts, without any formality being necessary. The borrower may request that suspension applies to the payments of the amounts due for capital only.
- d) **SMEs National guarantee fund:** in relation to the debt exposures to which the measures referred to in paragraphs a), b) and c) above are applicable, subject to a telematic request of the lender, which shall indicate the maximum guaranteed amount, a guarantee (the **Guarantee**) is granted automatically and free of charge by the SMEs national fund (using a special section of the Fund pursuant to article 2, paragraph 100, letter a) of Law 23 December 1996, no. 662), for an amount equal to 33%:
- (i) on the additional drawdowns - at 30 September 2020 - under the revocable credit overdraft facilities and loans granted as advances on receivables to which the measures referred to in paragraph a) above apply, calculated as the difference between the amounts disbursed as at 30 September 2020 and those already disbursed as at 17 March 2020;
 - (ii) on the bullet loans, whose final maturity date has been extended as consequence of the application of the measures under paragraph b) above;
 - (iii) on the loan instalments and leasing instalment due within 30 September 2020 and whose payment has been suspended as consequence of the application of the measures under paragraph c) above.

The Guarantee may be enforced if, during the 18-month period following 30 September 2020 (i.e. from 30 September 2020 to 31 March 2022), enforcement actions have been carried out as consequence of any breach of any payment obligation relating to the debt exposure to which the measures referred to in paragraph a), b) and c) above apply.

2.2 Companies that may benefit from the financial support measures under article 56 of the Decree

The financial support measures referred to in article 56 (*Financial support measures for micro, small and medium-sized companies affected by the epidemiological emergency COVID-19*) of the Decree described in paragraph 2.1 above, are applicable to micro, small and medium-sized companies, as defined in the Recommendation of the (European) Commission of 6 May 2003³, which:

- a) have their legal seat in Italy;

³ For the requirements of micro, small and medium-sized enterprises, please refer to paragraph 2.1 (*Subjective and objective requirements*) of Section I (*IBA - Addendum to the Credit Agreement 2019*) of this note. In light of the specific reference made by article 56 of the Decree, it is considered that, in the event of a discrepancy between the provisions of the Recommendation of the (European) Commission of 6 May 2003 and the Ministerial Decree issued by the Ministry of Productive Activities on 18 April 2005, the former shall prevail.

- b) have a debt exposure vis-à-vis banks, financial intermediaries pursuant to article 106 of the Italian Banking Law and other entities authorized to grant credit in Italy which, as of 17 March 2020, is not classified as non-performing pursuant to the rules applicable to financial intermediaries⁴;
- c) have communicated to their respective lenders, using a self-certification pursuant to article 47 of Presidential Decree no. 445/2000, that they have temporarily suffered shortages of liquidity as a direct consequence of the spread of the COVID-19 epidemic.

3. SUPPORT TO THE LIQUIDITY OF COMPANIES

Article 57 (*Support to the liquidity of companies affected by the epidemiological emergency through guarantee mechanisms*) of the Decree regulates the support by “Cassa Depositi e Prestiti” (CDP) and of the State for companies affected by the epidemiological emergency COVID-19.

The measure concerns loans granted by banks or other authorized intermediaries to companies which:

- a) suffered a reduction in turnover due to the COVID-19 emergency;
- b) operate in the sectors to be identified by a decree to be issued by the Ministry of Economy and Finance in consultation with the Ministry of Economic Development⁵;
- c) do not benefit from the guarantee of the Fund for SMEs (please see paragraph 4 below).
CDP will be able to support banks or other authorized intermediaries providing loans to companies which meet the requirements above through a variety of credit facilities.

The State may issue unconditional and irrevocable first demand guarantees in favour of CDP to guarantee the aforementioned credit facilities, up to a maximum amount equal to 80% of CDP's liability.

This measure set out above will be implemented by means of a decree to be issued by the Ministry of Economy and Finance.

4. STRENGTHENING OF THE NATIONAL GUARANTEE FUND

Article 49 (*SMEs National guarantee fund*) of the Decree provides for the extension of the applicability of the national guarantee fund for SMEs, established with Law no. 662/96 with the aim of supporting the development of micro, small and medium enterprises through the granting of a public guarantee, replacing the guarantees and security interests usually requested to the borrowers, securing loans made available to SMEs by banks (the **Fund**).

⁴ For the definition of “non-performing exposure” please refer to “Circolare di Banca d’Italia n. 272 del 30 luglio 2008” and to the Guidelines on the application of the definition of default under Article 178 of Regulation (EU) No 575/2013 (EBA-GL-2016-07) jointly with the Regulatory Technical Standards on the materiality threshold for credit obligations past due under Article 178 of Regulation (EU) No 575/2013 (EBA/RTS/2016/06).

⁵ The decree will also provide the requirements for the granting of the guarantee and its enforcement.

Among the most significant changes, which will apply for 9 months from the date of entry into force of the Decree (i.e. until 17 December 2020), it contemplates the following:

- the granting of the guarantee by the Fund for free;
- the increase of the maximum guaranteed amount from Euro 2.5 million to Euro 5 million;
- the increase of the maximum percentage that can be secured by the Fund up to 80% in case of the guarantee is issued directly by the Fund and up to 90% for the reinsurance of loans guaranteed by consortia or other guarantee funds; and
- the increase up to Euro 1.5 million of the maximum guarantee amount for each financing transaction.

In the event of moratorium of payments (either for principal or interest, or both) due under loans secured by the Fund, the guarantee is automatically extended. Such automatic extension applies also with reference to loans benefitting the measures referred to in the “Agreement for the Credit 2019” and the related Addendum better examined in Section I above.

It should be noted that, according to the Decree, also rescheduling of existing loans can benefit from the guarantee of the Fund, provided that the new loan provides for the disbursement of additional facilities up to an amount equal to at least 10% of the outstanding debt.

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