



Gatti Pavesi Bianchi

COVID-19 Update

FINANCING

28 April 2020

LAW DECREE NO. 23 OF 8 APRIL 2020 "LIQUIDITY LAW DECREE"

In the light of the severe consequences the current COVID-19 outbreak is having on the national economy, on 8 April 2020, the Italian Government enacted the Law Decree no. 23 of 8 April 2020 ("*Urgent measures concerning access to credit and tax obligations for companies, special powers in strategic sectors, as well as measures concerning health and work, extension of administrative and procedural deadlines*", the "**Liquidity Law Decree**") providing for new and important measures to support the financial liquidity of companies, in addition to those already contained in the Law Decree No. of 17 March 2020 (the "**CuraItalia Law Decree**").

The measures provided by the Liquidity Law Decree are implemented as part of the European regulatory framework established by the Commission with Communication C (2020) 1863 of 19 March 2020 ("*Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak*") which, pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), allows States to intervene "to remedy a serious disturbance in the economy".

It should be pointed out that the Liquidity Law Decree, which entered into force on 9 April 2020, will need to be converted into law by the Italian Parliament within 60 days following its publication in the Italian Official Journal in order not to lose its effectiveness. As a result of the conversion process, it may be also subject to amendments.

The most relevant measures provided by the Liquidity Law Decree to provide financial support to companies can be summarized as follows.

1. MEASURES TO SUPPORT BUSINESS LIQUIDITY

Pursuant to Article 1 (*Temporary measures to support the liquidity to companies*) of the Liquidity Law Decree, in order to ensure the necessary liquidity to companies based in Italy affected by the COVID-19 outbreak, Italy, through SACE S.p.A. ("**SACE**"), a State-run company belonging to the Cassa Depositi e Prestiti group, will support the granting of credit facilities banks, national and international financial institutions and other entities authorised to lend in Italy by issuing first demand-irrevocable guarantees in favour of the lenders.

The Minister of Economy and Finance may issue an additional decree in order to regulate further implementation and operational procedures and any additional elements and requirements.

The maximum financial commitment provided for under the Liquidity Law Decree to be borne by SACE for the granting of the above mentioned guarantees is equal to Euro 200 billion, of which at least Euro 30 billion to be allocated to the support of SMEs (including among these also self-employed workers and VAT-registered professionals).

1.1 Beneficiaries

Companies of any size are eligible for request the issuance of guarantees by SACE, provided that SMEs, in order to be eligible, shall have already made full use of the SME National Guarantee Fund (please see paragraph 2 below).

In order to be eligible for the SACE's guarantee, the applicant company should meet the following requirements:

- as of 31 December 2019, not being classified as a company "in distress" (*impresa in difficoltà*) pursuant to the definitions provided under Commission Regulation (EU) no. 651/2014 of 17 June 2014, the Commission Regulation (EU) no. 702/2014 of 25 June 2014 and the Commission Regulation (EU) no. 1388/2014 of 16 December 2014;
- as of 29 February 2020, not having debts classified as non-performing loans *vis-à-vis* banks pursuant to the relevant EU legislation.

In addition, the granting of a SACE's guarantee is subject to the following conditions:

- the beneficiary and other entities registered in Italy which are part of the same group must not approve payments of dividends or share buybacks within the year 2020;
- the beneficiary shall commit to manage its employment levels pursuant to arrangements with the Italian trade unions.

1.2 Financings eligible for the SACE's guarantees

The SACE's guarantee covers financings disbursed from the effective date of the Liquidity Law Decree and by 31 December 2020, whose maturity date does not fall after 6 years, with the possibility for companies to set a pre-amortisation period of up to 24 months.

The aggregate amount of all financings granted to the same beneficiary shall not exceed the higher of:

- 25% of the beneficiary's 2019 annual revenues, as indicated in the last approved financial statements; or
- twice its 2019 expenditure for employees, as indicated in the financial statements or from certified data if the beneficiary has not yet approved the financial statements.

For the calculation of thresholds above, reference shall be made to the value of revenues in Italy and expenditure for employees incurred in Italy by the applicant company or, if the company belongs to a group, to consolidated data. The data shall be communicated by the applicant company to the lender.

In case the applicant company (or other company belonging to the same group) is beneficiary of other public-guaranteed credit facilities, the amounts of such facilities shall be cumulated for the purposes of calculating the limits referred to in this paragraph.

The financings covered by the SACE's guarantees shall be exclusively used to finance expenditure for employees, investments and working capital relating to operations located in Italy, as documented and certified by the legal representative of the applicant company.

Fees related to the financing allowed under the SACE's guarantee shall be limited to the recovery of the costs associated with the granting of the loan and, in any event, the cost of loan covered by the guarantee must be lower than the cost that would have been required by the lender for transactions having similar nature but without the SACE's guarantee, as documented and certified by the legal representative of the lender.

1.3 Percentage of coverage

The SACE's guarantee may be requested up to the following maximum guaranteed amounts:

- 90% of the principal amount of the loan for companies employing less than 5,000 persons in Italy and having annual revenues lower than Euro 1.5 billion;
- 80% of the principal amount of the loan for companies employing more than 5,000 persons in Italy and having annual revenues between Euro 1.5 billion and Euro 5 billion; or
- 70% of the principal amount of the loan for companies having annual revenues higher than Euro 5 billion.

Reference shall be made to the value - of revenues in Italy and expenditure for employees incurred in Italy by the company, or on a consolidated basis if the company belongs to a group, as communicated by the applicant company to the lender.

1.4 Fees

The annual fees due to SACE by the relevant borrower for the granting of the guarantees shall be calculated as follows:

- in relation to financing granted to SMEs: 25 bps during the first year, 50 bps during the second and third year and 100 bps during the fourth, fifth and sixth year;
- in relation to financings granted to entities other than SMEs: 50 bps during the first year, 100 bps during the second and third year and 200 bps during the fourth, fifth and sixth year.

1.5 Procedure to accede the SACE's guarantee

Companies employing less than 5,000 persons in Italy and having annual revenues not exceeding Euro 1.5 billion, as resulting from the latest financial statements or certified data with reference to the date of entry into force of the Liquidity Law Decree if the company has not yet approved financial statements, can benefit from the SACE's guarantees through a simplified procedure which comprises the following steps:

- (i) the company shall apply for a loan guaranteed by SACE to one of the lenders

indicated in the Liquidity Law Decree, which may operate and provide the financing also with other lenders;

- (ii) in the event of a positive resolution by the lender(s), the latter(s) shall file with SACE a request for the issuance of the guarantee; SACE, after having verified the positive resolution by the lender(s), shall issue the guarantee and assign a unique identification code for the loan and the guarantee; and
- (iii) the lender shall provide the loan secured by the SACE's guarantee.

Companies having revenues and employees exceeding the thresholds above, shall also obtain the approval by Ministry of Economy and Finance, in consultation with the Ministry of Economic Development, to be made on the basis of the SACE evaluation process.

2. DEVELOPMENT OF THE SME'S GUARANTEE FUND

Article 13 (*Central SME's Guarantee Fund*) of the Liquidity Law Decree extends and strengthens the measures already provided for in relation to the SME's Guarantee Fund (as set up by Law no. 662 of 23 December 1996, the "**Fund**") by Article 49 of CuraItalia Law Decree, which is suppressed by Article 13 itself.

Please find below the most relevant provisions set forth as an exception to the provisions of Law no. 662 of 23 December 1996, by Article 13 (*Central SME's Guarantee Fund*) of the Liquidity Law Decree in relation to the Fund.

2.1 *The guarantee of the Fund*

Until 31 December 2020, the Fund guarantee shall be granted:

- a) free of charge;
- b) up to a maximum total guaranteed amount for each company of Euro 5,000,000;
- c) without application of the creditworthiness assessment model referred to in Part IX, letter A of the eligibility conditions and general provisions for the administration of the Fund set out in the annex to the Decree of the Minister of Economic Development of 12 February 2019, published in the Italian Official Journal on 27 February 2019, no. 49, and exclusively on the basis of the data needed for the filing of the economic-financial form;
- d) excluding the payment of abort fee in case of failure to grant the facility (to be borne by the lenders).

It is also provided that, until 31 December 2020:

- for guarantees related to portfolios of loans, also not amortizing, granted to companies damaged by the COVID-19 outbreak, at least 20% of which are companies with a rating, determined by the applicant on the basis of its internal models, not higher than class "BB" on the Standard's and Poor's rating scale at the date of inclusion of the transaction in the portfolio, more favourable conditions

are applied in terms of maximum amount of the portfolios, valuation for the access to the Fund, percentage coverage of the different tranches of the portfolio;

- guarantees on portfolios of mini-bond are granted ensuring the existence, from time to time, of an amount of resources of the Fund to be allocated to the issue of guarantees on individual financial transactions, equal to at least 85% of the Fund's available commitment;
- for companies with revenues not exceeding Euro 3,200,000, damaged by the COVID-19 emergency (as self-certified by the applicant companies), the Fund's guarantee for a coverage percentage of 90% of the financing may be cumulated with another guarantee covering the remaining 10% granted by trusts or other entities authorized to issue guarantees, provided that the financing in relation to which the guarantee is granted does not have a duration exceeding 6 years and an amount exceeding 25% of the beneficiary's revenues.

2.2 *Beneficiaries*

Until 31 December 2020, the Fund's guarantee is granted not only to SMEs (as defined in the Recommendation (European Commission) of 6 May 2003 (2003/361/EC)), but also to the following entities:

- a) companies with no more than 499 employees;
- b) SMEs and companies with no more than 499 employees even if (i) they have, after 31 January 2020, exposures to the lender classified as "unlikely to pay" or "past-due or over-threshold deteriorated" pursuant to paragraph 2, Part B of Circular No. 272 of 30 July 2008 of the Bank of Italy and subsequent amendments, or (ii) after 31 December 2019, were admitted to: compositions with creditors with continuation of business (*concondato con continuità aziendale*) pursuant to Article 186-bis of the Royal Decree No. 186-bis of 16 March 1942, no. 267 (the "**Bankruptcy Law**"), restructuring agreements (*accordo di ristrutturazione*) pursuant to Article 182-bis of the Bankruptcy Law or certified plans (*piano attestato*) pursuant to Article 67 of the Bankruptcy Law, provided that, as of the date of entry into force of the Liquidity Law Decree (e.g. 9 April 2020) (i) they are not subject to the bankruptcy proceedings, their exposures are not classifiable as "non-performing", there are no payments in arrear following the granting of the guarantee and, on the basis of the evaluations of the bank, the latter is likely to repay in full the relevant exposure at the due maturity date pursuant to article 47-bis, paragraph 6, letters a) and c) of Regulation 575/2013 (on prudential requirements for credit institutions and investment firms and amendment of Regulation (EU) No. 575/2013). 648/2012). The guarantee of the Fund will not cover, in any case, the exposures which are classified as "non-performing" pursuant to the relevant Bank of Italy regulations;
- c) subject to authorisation by the European Commission, natural persons carrying out business activities, arts or professions whose business activity is damaged by the COVID-19 emergency as resulting from a self-certified declaration, in relation to financing with the requirements and for the percentage of coverage indicated in paragraph 2.3, letter d) below.

2.3 *Transactions eligible for the Fund guarantee*

Until 31 December 2020, the following transactions may be covered by the Fund guarantee:

- a) financing of a maximum duration of six years, the maximum amount of which, for each individual application, may not exceed either
 - (i) twice the applicant's annual expenditure for employees (including social security contributions and the cost of staff working on the company's site but formally on the payroll of subcontractors) for 2019 or the last year available. For companies established from 1 January 2019, the maximum amount may not exceed the expected wage costs for the first two years of operation; or
 - (ii) 25% of revenues in 2019; or
 - (iii) the need - to be self-certified by the beneficiary pursuant to Presidential Decree no. 445 of 28 December 200 - for working capital costs and investment costs in the following 18 months, in the case of small and medium enterprises, and in the following 12 months, in the case of enterprises with no more than 499 employees,

for a coverage percentage up to 90% of the amount of the financing (direct guarantee) and up to 100% of the amount guaranteed by Confidi or other guarantee funds (indirect guarantee), provided that the guarantees issued by Confidi do not exceed the maximum coverage percentage of 90% and do not provide for the payment of a premium for the remuneration for the credit risk assumed by the Fund;

- b) loans not meeting the requirements referred to in paragraph a) above, **for a percentage of coverage, up to 80% of the amount of the loan (direct guarantee) and up to 90% of the amount guaranteed by Confidi or other guarantee funds (indirect guarantee);**
- c) rescheduling of the beneficiary's debt - for a percentage coverage of 80% of the direct guarantee and 90% of the reinsurance coverage - provided that the new financing provides additional credit of at least 10% of the amount of the outstanding debt;
- d) **with 100% cover both for the direct guarantee and reinsurance** and without prior investigation by the Fund, also in relation to new financing for SMEs and natural persons carrying out business activities, arts or professions whose business activity is damaged by the COVID-19 emergency as per the self-certified declaration, provided that such financing has a duration not exceeding 6 years, having a final maturity date not earlier than the date falling 2 years after the disbursement and that have been granted for an amount not exceeding the lower of: (i) 25% of the revenues of the beneficiary, as resulting from the latest financial statements filed or from the last tax declaration submitted on the date of the application for the

guarantee or, for beneficiaries established after 1 January 2019, other appropriate documentation, as a self-certification; and (ii) Euro 25,000.00; and

- e) financial transactions already completed and disbursed by the lender within 3 months from the date of application and, in any case, after 31 January 2020. In such cases, the lender shall send a declaration to the Fund certifying the reduction of the interest rate applied to the loan as a result of the granting of the Fund's guarantee.

TEAM



Partner

Andrea Limongelli

andrea.limongelli@gpblex.it



Partner

Marc-Alexandre Courtejoie

marcalexandre.courtejoie@gpblex.it

The Firm provides advice on banking law, financing transactions and security package and provides ongoing assistance to Italian and foreign banks, financial institutions, industrial and commercial companies, private equity investors, investment funds and asset management companies. The professionals' expertise extends to all the main sectors of corporate finance, from acquisition finance transactions to real estate finance and project finance, and to various products: senior, second lien, mezzanine, junior, high yield and other structured finance products. The Firm also specializes in the issuance of bonds for listed and non-listed companies.

Disclaimer

This publication is provided by Gatti Pavesi Bianchi Studio Legale Associato and has been duly and professionally drafted. However, the information contained therein is not a legal advice and cannot be considered as such. Gatti Pavesi Bianchi Studio Legale Associato cannot accept any liability for the consequences of making use of this issue without a further cooperation and advice is taken.

CONTACTS

Milano

Piazza Borromeo, 8
20123 Milano (MI)
Tel. +39 02 8597 51
Fax +39 02 8094 47
studio@gplex.it

Roma

Piazza dei Caprettari, 70
00186 Roma (RM)
Tel. +39 06 6813 4961
Fax +39 06 6813 4701
studioroma@gplex.it

gplex.it