

Newsalert

Finance and Regulated Entities Department
Liquidity Decree: further measures to support Italian undertakings

On 8 April 2020, the Italian Government approved Law-Decree No. 23 of 8 April 2020 containing emergency provisions to support undertakings and promote export liquidity, published in the Italian Official Gazette No. 94 of 8 April 2020 (hereinafter, the "**Decree**").

The Decree, in particular:

- widens the definition of the type of undertaking that can benefit from State guarantees through SACE S.p.A., by 31 December 2020, in favour of bank, financial intermediaries authorised credit providers thereby going beyond the measures introduced by Law Decree No. 18 of 2020 (the "**Cura Italia Decree**").
- has introduced further possibility for the State to grant guarantees on exposures assumed or to be assumed by Cassa Depositi e Prestiti S.p.A. ("**CDP**") by 31 December 2020, which will be added to that already provided for by Cura Italia Decree;
- has introduced further emergency measures governing the Guarantee Fund for SMEs (*Fondo di Garanzia per le Piccole e Medie Imprese*), as Article 49 of the Cura Italia Decree is replaced with Article 13 of the Decree.

The Decree also reflects the provisions of the framework outlined in the Communication of the European Commission of 19 March 2020 on the "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak", as subsequently amended on 4 April 2020 (the "**Communication**").

Please note that the Decree is subject to change during the conversion process.

Temporary liquidity support measures for undertakings

In summary, the Decree provides as follows:

a The intervention of SACE S.p.A.:

Article 1 of the Decree governs the involvement of SACE S.p.A. ("**SACE**") to ensure necessary liquidity is provided to undertakings based in Italy that are affected by the Covid-19 epidemic.

In particular, until 31 December 2020, the Decree allows SACE to grant guarantees for loans in any form to undertakings in accordance with European legislation on State aid and in compliance with certain conditions (described below), in favour of banks, national and international financial institutions and



other entities authorised to lend in Italy. SACE's guarantee benefits from the counter-guarantee of the State.

The Decree permits SACE to provide credit to all undertakings based in Italy, both SMEs and medium and large enterprises.

The Decree therefore widens the range of beneficiaries of State assistance, which was initially limited to SMEs. However, the Decree also expressly benefits those undertakings which could already take advantage of the measures included in Article 49 of the Cura Italia Decree (i.e. SMEs, including self-employed persons and VAT-registered professionals), provided they have made full use of the Fund for SMEs.

In contrast to the SME Fund regulated by the Cura Italia Decree, the granting of guarantees by SACE is subject to the payment of the following fees in respect of the guaranteed amount by the relevant undertaking:

- 1) for SME loans, in relation to the guaranteed amount, 25 basis points are paid during the first year, 50 basis points during the second and third year, and 100 basis points during the fourth, fifth and sixth year;
- 2) for loans to enterprises other than SMEs, 50 basis points in the first year, 100 basis points in the second and third year and 200 basis points in the fourth, fifth and sixth year.

The guarantee granted by SACE is an express, first demand, irrevocable guarantee and complies with prudential regulations for risk mitigation, and may be granted in respect of new loans or refinancings after the entry into force of the Decree. It applies to capital, interest and ancillary charges up to the maximum amount guaranteed.

SACE's obligations under the guarantees are counter-guaranteed by operation of law by the State on a first demand and without recourse basis, the operation of which will be registered by SACE and managed separately. The State counter-guarantee is an express, unconditional and irrevocable guarantee extending to the repayment of principal, payment of interest and any other incidental charges, net of commissions received for the provision of the guarantee.

SACE will also undertake to enforce the guarantee and recover the related receivables on behalf of the Italian Ministry of Economy and Finance ("MEF"). Such activities may also delegate to banks, national and international financial institutions and other Italian authorised credit providers.

The MEF may by decree (i) provide SACE with guidelines on the management of the granting of the guarantees and on the verification of compliance with such guidelines and with the criteria and conditions provided for in the Decree for the purpose of enforcement of the State guarantee, and (ii) issue further implementation, operational and other procedures for the execution of the transactions.

The Decree also provides that the effectiveness of the new regulations relating to the guarantee is subject to the approval of the European Commission pursuant to Article 108 of the Treaty on the Functioning of the European Union. In the event of amendments to the Communication, the conditions and requirements for the granting of the guarantee may be adjusted accordingly by decree of the MEF, in agreement with the Italian Minister of Economic Development.

b Conditions

The guarantees are granted subject to the following conditions:

- (a) guarantees can only be issued on or prior to 31 December 2020;
- (b) guarantees can be only issued in respect of loans of a maturity not exceeding 6 years, although undertakings may take advantage of a grace period of up to 24 months;

- (c) (i) as at 31 December 2019, the beneficiary undertaking was not an “undertaking in difficulty” within the meaning of Commission Regulation (EU) No 651/2014 of 17 June 2014 and (ii) at 29 February 2020 it was not classified as “impaired exposures” by the banking system, as defined under European legislation;
- (d) the amount of the guaranteed loan cannot exceed the greater of:¹
 - 1) 25% of the undertaking's annual turnover in 2019, as stated in the approved financial statements or tax declaration, if the undertaking has not yet approved the financial statements;
 - 2) two times the undertaking's personnel costs for 2019, as stated in its latest financial statements or audited accounts, if the undertaking has not approved its financial statements; in the event that the undertaking commenced trading after 31 December 2018, personnel costs are based on estimates for the first two years of trading, as documented and certified by the relevant undertaking's legal representative.

Where the same undertaking is the beneficiary of several loans guaranteed under the Decree or of another publicly funded guarantee, the aggregate amounts of those loans are taken into account in calculating the relevant limits. Similarly, where the same undertaking or the same group is the beneficiary of several loans secured by the guarantee of SACE, the loan amounts are also aggregated.

- (e) any losses from non-payment under the guarantee are borne *pari passu* and *pro rata* as to 50 percent between the guarantor and the borrower, and the guarantee covers:
 - 1) 90% of the loan for undertakings with fewer than 5000 employees in Italy and a turnover of less than Euro 1.5 billion;
 - 2) 80% of the loan for undertakings with a turnover between Euro 1.5 billion and Euro 5 billion or with more than 5000 employees in Italy;
 - 3) 70% of the loan for undertakings with a turnover of more than Euro 5 billion.

The above percentages are applied on the principal amount outstanding from time to time of the relevant loan(s).

c Undertakings by the funded enterprise and the lender

The relevant undertaking, together with any other company belonging to the same group and benefiting from the guarantee, undertakes not to approve the distribution of any dividends in the 12 months following the disbursement of the loan. In addition, the undertaking benefiting from the guarantee undertakes to manage employment matters in compliance with collective bargaining arrangements.

The loan secured by the guarantee must be used to bear personnel costs, investment or working capital employed in production plants and business activities located in Italy, as documented and certified by the legal representative of the beneficiary undertaking.

The lender, for its part, needs to demonstrate that, following disbursement of the loan secured by the guarantee, its aggregate exposures to the lender is higher than that held at the date of entry into force of the Decree (appropriately adjusted for contractual amortization prior to the entry into force of the Decree or for other actions by the lender).

d Simplified procedure for certain categories of undertaking

For the granting of guarantees securing loans in favour of undertaking with fewer than 5000 employees in Italy and with a turnover of less than Euro 1.5 billion (based on the latest approved financial statements or certified data with reference to the date of entry into force of the Decree, if the company

¹ Reference is made to revenue generated in Italy and personnel costs incurred in Italy by the company or its group where part of a group. The applicant company is required to notify the amount of such revenue to the financing bank.



has not yet approved the first financial statements), the following simplified procedure is applied, as further specified in procedural terms by SACE:

- a) the borrower undertaking must submit an application for a loan guaranteed by the State to the relevant lender or (where syndicated) lenders;
- b) where the loan is approved, the lender must transmit the request for the issuance of the guarantee to SACE and SACE must assess the request, verifying the lender's approval of the loan and issuing a unique identification number for the loan and the guarantee;
- c) the lender proceeds to issue the loan secured by the guarantee.

I The State guarantee of Cassa Depositi e Prestiti S.p.A. ("CDP") exposures

The Decree also provides that State guarantees can be granted by decree of the MEF on or prior to 31 December 2020 in respect of exposures of CDP arising from guarantees, including first loss guarantees, on portfolios of exposures originated by banks and other authorised institutions to undertakings based in Italy which have suffered a reduction in turnover due to the COVID-19 pandemic and which allow for the extension of further credit by the relevant lenders on account of the regulatory capital released by virtue of the State guarantee.

The guarantee is on first demand, unconditional, explicit, irrevocable, and complies with Italian prudential regulations for risk mitigation. The purpose of this provision would appear to be to permit banks and other authorised entities to free up regulatory capital in order for it to be reallocated for the further provision of liquidity to finance the real economy.

The provision is limited both temporally (it covers exposures incurred by CDP prior to 31 December 2020) and as to quantum (it covers up to a maximum total amount of €200 billion, of which at least €30 billion is allocated to support SMEs), unlike Article 57 of the Cura Italia Decree.

II The intervention of the SME Guarantee Fund

a Clarifications and amendments made to measures already adopted

As previously noted, the Decree repeals Article 49 of the Cura Italia Decree, widening both the scope of the relief and the number of undertakings that can benefit from it. As such, it represents a derogation from the standard rules of the SME Guarantee Fund that will be in place until 31 December 2020. Further:

- (a) the Fund guarantee is unremunerated: the fees normally applicable are waived;
- (b) the maximum guaranteed amount is Euro 5 million, in line with the European framework.
- (c) in contrast with the Cura Italia Decree, the guarantee can also benefit undertakings with fewer than 500 employees;
- (d) subject to authorisation by the European Commission pursuant to Article 108 of the Treaty on the Functioning of the European Union:
 - for direct guarantees, the maximum coverage percentage is increased to 90% of the amount of each transaction lasting up to 72 months. The total amount of these financial operations may not exceed, with regard to the beneficiary, alternately (a) two times the undertaking's personnel, (b) 25% of total turnover or (c) and capital assets and investment costs in the following 18 months for SMEs, and in the following 12 months, for undertakings with fewer than 500 employees; and
 - without prejudice to the characteristics of the duration and amount of the operation referred to in the previous point, for reinsurance related guarantees, the maximum coverage percentage is 100% of the amount guaranteed by Confidi (or other guarantee fund), *provided that* the guarantee granted by such entities does not exceed the maximum coverage percentage of 90%.

The Cura Italia Decree had a limit of 80% for direct guarantees and 90% for reinsurance. These limits will continue to apply until the abovementioned authorisation from the European Commission is obtained.



- (e) the guarantee can also be used for debt rescheduling. The limits here are 80% for direct guarantees and 90% for reinsurance, in each case of the amount guaranteed by Confidi or other guarantee fund, provided that the guarantees issued by other funds do not exceed the maximum coverage percentage of 80%, and provided further that the lender grants new loans for at least 10% of the existing loan. With respect to the provisions of the Cura Italy Decree, the Decree clarifies that the Fund must operate by way of direct guarantee and reinsurance and be subject to the above percentages;
- (f) the automatic extension of the guarantee was initially contemplated only in cases of moratoria or suspensions caused by the Covid-19 pandemic, but in fact applies also in the event of an extension in maturity of the loans;
- (g) the fee for failure to complete the transactions referred to in Article 10, paragraph 2, of the Ministerial Decree of 6 March 2017 is waived;
- (h) the Fund guarantee can be combined with other forms of guarantee, including mortgage security, granted in favour of the lender for real estate investment operations in the hotel and tourism sector and real estate activities of more than Euro 500,000 and with a minimum duration of ten years;
- (i) the portion of the junior tranche covered by the Fund in respect of portfolios of loans granted in favour of undertakings impacted by Covid-19 or operating in specific sectors and supply chains particularly harshly affected by the epidemic can be increased by 50%, and by a further 20% if additional guarantors accede. The Decree therefore contemplates an increase in the portion of the junior tranche covered by the Fund since, under the standard rules of the Fund set out in the Italian Interministerial Decree of 14 November 2017, the limit is 7%; and
- (j) the deadlines for the operation of the Fund have been extended by three months.

Of particular note is the option to issue Fund guarantees to beneficiaries whose exposures to the lender are classified as "unlikely to pay" or "past due or impaired" prior to 31 January 2020, in accordance with paragraph 2, Part B of Bank of Italy Circular No. 272 of 30 July 2008, provided that exposures were not so classified prior to that date. This is in contrast to the Cura Italia Decree.

Guarantees can also be granted to undertakings that (i) have concluded arrangements with creditors on a going concern basis (*concordato con continuità aziendale*) after 31 December 2019, pursuant to Article 186-bis of Royal Decree No. 186-bis of 16 March 1942, 267 ("**Bankruptcy Law**"), (ii) have entered into restructuring agreements pursuant to Article 182-bis or (iii) have submitted a certified plan pursuant to Article 67 of the Bankruptcy Law, provided that, on the date of entry into force of the Decree, the relevant exposures are not classified as impaired, do not have any amounts in arrears and the lender, on the basis of a reasonable analysis of the debtor's financial position, is satisfied that the debtor is likely to be able to repay the loan at maturity, pursuant to Article 47-bis, paragraph 6, letters a) and c) of EU Regulation 575/2013.

To be eligible for the guarantee it is not necessary that one year has elapsed from the date of grant of the measures or, if later, from the date on which the exposures were classified as impaired, pursuant to Article 47 bis, paragraph 6, letter b) of EU Regulation 575/2013. On the other hand, undertakings with exposures classified as "non-performing" are not eligible, while companies falling within the definition of "company in difficulty" pursuant to art. 2, point 18 of Regulation (EU) no. 651/2014 which were previously ineligible, are now eligible.

Submission of the "performance" (*andamentale*) application form is no longer an eligibility criterion.²

Finally, the Decree permits microfinance operators qualifying as SMEs to benefit, free of charge, from the Fund guarantee, up to a maximum of 80% of those loans granted by banks and financial intermediaries

² The current rules of the Fund provide for a system of provisioning (*accantonamenti*) based on the beneficiary's rating assigned by the Fund during the credit check. To this end, the Decree provides that for the purpose of defining the provisioning measures as a risk-weight, when the individual financial transaction becomes eligible, the probability of default of the companies is calculated exclusively on the basis of the data contained in the eligibility form. On a bimonthly basis, with reference to all the financial transactions eligible for the guarantee, the amount of prudential provisions made from the Fund is adjusted according to the data of the Central Risk Office of the Bank of Italy, acquired by the Fund Manager at the time of submission of the applications for admission to the guarantee.



that are for the purpose of granting microfinance loans, and raises the minimum threshold of amounts payable under the Italian Single Banking Act (*Testo Unico Bancario* or 'TUB') from Euro 25,000 to Euro 40,000.

b Further measures in favour of undertakings

In addition to the above measures, which reflect the previous provisions of the Cura Italia Decree, the Decree introduces the following new measures:

- (a) subject to authorization of the European Commission, where eligible for the Fund guarantee, the Decree increases the coverage to 100%, both for direct guarantees and reinsurance, for new loans granted to small and medium sized undertakings and natural persons carrying on business activities, arts or professions whose business activity has been damaged - as resulting from a self-certification - by the Covid-19 emergency, provided that these loans provide for the reimbursement of principal not earlier than 24 months and no later than 72 months after disbursement and an amount not exceeding 25% of the amount of the beneficiary's revenues, and in any case not exceeding Euro 25,000,00. Eligible beneficiaries can assert the right that the Fund guarantee applies automatically, free of charge and without evaluation, and the lender is entitled disburse the loan subject to formal verification of the fulfilment of the requirements but without having to wait for the Fund manager's credit assessment.
- (b) for beneficiaries with revenues not exceeding Euro 3,200,000 whose business was impacted by the COVID-19 emergency (as resulting from a self-certification), the guarantee referred to in paragraph a, letter d) above may, in order to cover the loan, be aggregated with an additional guarantee granted by Confidi or other entity authorised to issue guarantees, up to 100% of the amount of the loan granted. The aforesaid guarantee may be granted for loans of an amount not exceeding the lower of 25% of the beneficiary's revenues.
- (c) the Fund guarantee may also be granted on lending transactions that have already completed and been disbursed no later than 3 months after the date of submission of the request if after 31 January 2020. In such cases, the lender needs to certify to the Fund Manager that the interest rate applicable to the guaranteed loan has been reduced as a result of the granting of the guarantee.

c Synthetic securitisation through the SME Fund

In derogation from the current provisions of the Fund, the following measures also apply until 31 December 2020 to guarantees in respect of loan portfolios (including those without an amortisation plan) for underlying companies impacted by the Covid-19 crisis where at least 20% of the companies have a rating (as determined by the applicant on the basis of its internal rating models) not exceeding "BB" on the Standard's and Poor's rating scale as at the date of inclusion of the transaction in the portfolio:

- a) the maximum amount of loan portfolios is increased to Euro 500 million;
- b) the loans³ may be approved, finalised and disbursed by the lender prior to the request for a guarantee on the loan portfolio if made after 31 January 2020;
- c) the beneficiaries are eligible without a credit assessment on the part of the Fund Manager;
- d) the detachment and the attachment points (*punto di stacco e di spessore*) of the junior tranche of the loan portfolio are determined using the probability of default calculated by the applicant on the basis of its internal rating models disregarding the calculation method set out in the Italian Interministerial Decree of 14 November 2017;
- e) the guarantee is granted to cover a maximum of 90% of the junior tranche of the loan portfolio;
- f) the portion of the junior tranche covered by the Fund, without prejudice to the provisions of Article 8, paragraph 2, of the Italian Interministerial Decree of 14 November 2017, may not exceed 15% of

³ Which must have the characteristics referred to in Article 13(1)(c) of Decree



the amount of the financed portfolio, or 18% if the portfolio relates to loans granted for the implementation of research, development and innovation projects and/or investment programmes;

- g) in relation to each financing included in the guaranteed portfolio, the Fund will cover 90% of the loss recorded on the individual funding;
- h) loans may also be granted to undertakings located in regions where the intervention of the SME Guarantee Fund has been limited to counter-guarantees of regional guarantee funds and collective guarantee consortia (*consorzi di garanzia collettiva*).

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For further information, please reach out to your usual Chiomenti contact