

THE 2020 MORATORIUM IN FAVOUR OF SMEs IMPACTED BY “COVID-19”

Due to the COVID-19 pandemia, on 6 March 2020 the Italian Banking Association (ABI) together with the most representative enterprises’ associations executed an addendum to the so-called “*Agreement for Credit 2019*” (the “**Agreement**”), in order to extend the measures called “*Companies in Recovery 2.0*” also to loans existing as at 31 January 2020.

The measures “*Companies in Recovery 2.0*” allow the small and medium-sized enterprises operating in Italy, in any industry, to apply for the stay the payment of the principal of a financing and for the extension of the duration of the loans existing as at January 31, 2020. Notwithstanding the adherence to the Agreement, please consider that there is no obligation on banks and financial institutions (“**Banks**”) to grant such measures. Each Bank has in fact the faculty (and not the obligation) to grant said measures to the relevant borrower on a discretionary basis.

Please find below a summary of such measures, including the relevant requirements and other practical information.

1. MAIN MEASURES PROVIDED BY THE AGREEMENT AS RECENTLY AMENDED

The Agreement provides that Banks may be requested to:

- A. **Interrupt**, for a maximum of 12 months, the principal amount of a loan, while the borrower will continue to pay the relevant quota of interests;
- B. **Extend** the duration of a loan.

1(A) The interruption

According to Articles 2.2.1 and 2.2.2 of the Agreement, the possibility to apply for the interruption is granted to: (i) medium and long-term loans (even entered into with the issuance of agricultural promissory notes); (ii) leasing contracts, both on movable goods and real estate, and (iii) mortgages and leasing assisted by a public contribution, provided that the public entity who granted the financial assistance has resolved the possibility to benefit from this measure, with appropriate notice given to the Ministry of Economy and under the condition that, after the interruption, the original plan for the granting of public contributions is not amended.

As above indicated, we highlight that during the period of interruption (of a maximum of 12 months), the borrower can suspend the payment of the principal amount of a loan, while will be requested to pay the relevant quota of interests at the rate contractually agreed.

Please also consider that the Bank may ask for:

- an increase of the interest rate (exclusively connected with the increase of costs linked to the completion of the transaction) which cannot exceed 60bps; and
- additional guarantees to the applying borrower to limit the increase of the interest rate.

The interruption triggers the extension of the amortizing plan for a period equal to the interruption, while the interests are paid at the original due dates.

1(B) The extension

According to Article 2.3.1 of the Agreement, the extension may be granted to mortgages, short-term loans and agricultural credit, with our without promissory notes.

According to article 2.3.2 of the Agreement, for the mortgages the maximum extension period is equal to 100% of the remaining duration of the amortizing period. For the short-term credit, the limit is set in 270 days while for the agricultural credit the limit is set in 120 days.

It is important to highlight that the extensions of the short-term due dates may also be granted in relation to payments overdue that the enterprise has registered on bank advances on receivables.

Finally, according to Articles 2.3.4, 2.3.5 and 2.3.6 of the Agreement, Banks may ask for additional guarantees or they may increase the agreed interest rates. The Agreement however provides that the new amortizing instalments shall result to be substantially lower than the original instalments.

2. APPLICATION REQUIREMENTS AND PRATICAL INFORMATION

As to the entities entitled to request the above-mentioned measures, the Agreement provides that micro, small and medium-sized enterprises (as defined by the Commission Recommendation of 6 May 2003 and by the Decree of the Ministry of Productive Activities dated 18 April 2005) are allowed to apply.

As to the perimeter of such measures, it is required that the loans (i) were already ongoing as at 31 January 2020 (article 4 of the addendum); (ii) have not been interested by any previous moratoria request (including interruption and/or extension) for the 24 months before the application (article 2.1.5 of the Agreement); and (iii) have not been classified as non-performing loans (article 2.1.3 of the Agreement), although the instalments may be entirely or partially overdue for no more than 90 days at the date of application (article 2.1.4 of the Agreement).

To access to the measures listed above, the borrower is required to sign a request through a specific form and to submit it to the relevant Bank. The applications may be filed until December 31, 2020 (always for loans already existing as at 31 January 31 2020). In assessing the request, the Banks shall provide a response to the relevant applicant approximately within 30 days from the filing of the request.

It should be noted that the access to the aforementioned “*Companies in Recovery 2.0*” measures is notified to the National Credit Bureaus (“*Centrale Rischi Interbancaria*”), therefore it is important to assess accurately the potential impact of such application to existing or future new loans requests or other bank facilities.

3. RECENT GOVERNMENTAL UPDATE

Finally, please be advised, that Article 56, Section 2, letter (c) of Law Decree 18/2020 recently approved on 17 March 2020 (called “*Decreto Legge Cura Italia*”), provides - *inter alia* – an additional standstill provision which substantially disposes that for mortgages and loans (including leasing) to be repaid in one or more instalments, the payment of the relevant instalment(s) expiring before 30 September 2020 is suspended until 30 September 2020 and the reimbursement plan of the relevant deferred instalments is automatically postponed without any formality to be carried out.

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The only purpose of this memorandum is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice.