

LIQUIDITY DECREE No. 23/2020

FURTHER MEASURES TO SUPPORT ITALIAN COMPANIES

On 8 April 2020, the Italian Government approved Law Decree No. 23 containing emergency provisions to support companies and promote export liquidity (hereinafter, the "Decree").

Please find below a summary of the main measures provided by the Decree.

I. The intervention of SACE S.p.A.

a Beneficiaries

Article 1 of the Decree provides the involvement of SACE S.p.A. ("SACE") to ensure necessary liquidity is provided to companies 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 companies 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 allows SACE to provide credit to all companies based in Italy, both SMEs and medium and large enterprises.

b Conditions

The guarantees are granted subject to the following conditions:

- (a) guarantees can only be issued on or prior to 31 December 2020 and can be only issued in respect of loans of a maturity not exceeding 6 years, although companies may take advantage of a grace period of up to 24 months;
- (c) (i) as at 31 December 2019, the beneficiary company was not a "company in difficulty" within the meaning of Commission Regulation (EU) No 651/2014, the Regulation (EU) No 702/2014 and the Regulation (EU) No 1388/2014 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) 25% of the annual turnover in 2019, as resulting in the approved financial statements or tax declaration;
 - 2) two times the personnel costs for 2019, as resulting in the latest approved financial statements or audited accounts, if the company has not approved its financial statements; in the event that the company commenced its business after 31 December 2018, personnel costs are based on estimates for the first two years of business, as documented and certified by the relevant company's legal representative.

Where the same company is the beneficiary of several loans guaranteed under the Decree or of another publicly funded guarantee, the aggregate amounts of those loans are both taken into account in calculating the relevant limits.

- (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 companies with fewer than 5000 employees in Italy and a turnover of less than Euro 1.5 billion;
 - 2) 80% of the loan for companies 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 companies with a turnover of more than Euro 5 billion.

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

- 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 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 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. Such activities may also delegate to banks, national and international financial institutions and other Italian authorised credit providers.

c Undertakings by the funded company and the lender

The relevant company, 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 company 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 company.

The lender needs to demonstrate that, following disbursement of the loan secured by the guarantee, its aggregate exposures to the funded company 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 companies

For the granting of guarantees securing loans in favour of companies 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 has not yet approved the first financial statements), the following simplified procedure is applied:

- a) the borrower 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.

II. The intervention of the SME Guarantee Fund

a Clarifications and amendments made to measures already adopted

The Decree repeals Article 49 of the so called "Cura Italia Decree", widening both the scope of the relief and the number of companies 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;
- (c) in contrast with the so called "Cura Italia Decree", the guarantee can also benefit companies 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 company'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 companies 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%.
- (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 so called Cura Italy Decree, the Decree provides 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 companies 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 provides 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.

Moreover the Decree provides the possibility 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.

b Beneficiaries

Guarantees can also be granted to companies that (i) have entered into 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.

On the other hand, companies 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.

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 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.

c Further measures in favour of companies

In addition to the above measures, which reflect the previous provisions of the so called "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 companies 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. 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 (II)(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.

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