

## Liquidity Decree - Measures to support the companies' liquidity

### 1. Introduction

Law Decree no. 23 of 8 April 2020, published in the Official Gazette no. 94 of 8 April 2020 (the "**Liquidity Decree**") provides for urgent measures to support liquidity of businesses and export activities<sup>1</sup>.

The new decree supplements the measures adopted under the previous Law Decree no. 18 of 17 March 2020 (the so-called "**Cura Italia Decree**")<sup>2</sup>, which has not yet been converted into law. After the first wave of support measures, the Italian Government has introduced new measures to reduce the negative economic and social impacts of the COVID 19 emergency and support companies' liquidity.

Set out below are the key measures introduced in Article 1 (*Temporary measures to support companies' liquidity*) and Article 13 (*Central Guarantee Fund for SME*) of the Decree. Under the newly introduced support regime (i) SACE S.p.A. ("**SACE**") can issue guarantees in the interest of companies based in Italy affected by the COVID-19 epidemic, and (ii) a new temporary framework for guarantees issued by Central Guarantee Fund for SME (*Fondo centrale di garanzia per le PMI*) is enacted.

### 2. SACE S.p.A. - Temporary measures to support the liquidity

The Liquidity Decree introduces temporary measures to support businesses, according to which SACE, until 31 December 2020, can issue first demand, explicit and irrevocable guarantees for a total maximum amount of EUR 200 billion, of which at least EUR 30 billion is intended to support small and medium-sized enterprises (each, a "**Guarantee**").

The Guarantee is issued for loans granted to beneficiary companies after the entry into force of the Liquidity Decree aimed at funding costs or investments in business activities, in Italy<sup>3</sup> and cover the principal amount, interest and other charges, up to the maximum amount guaranteed.

The beneficiaries of the Guarantee are businesses with registered offices in Italy, other than banks and other credit institutions (the "**Companies**"), including small and medium-sized enterprises ("**SMEs**") as defined under the European Commission Recommendation no. 2003/361/EC<sup>4</sup>. For the sake of clarity, also self-employed workers and professionals with VAT number have been included in this definition. As anticipated, SMEs benefit from a reserved plafond of at least EUR 30 billion, out of the aggregate maximum amount of EUR 200 billion.

SMEs can access the support measures to the extent that they have already fully used the possibility to access the so-called "*Central guarantee fund for SMEs*".

<sup>1</sup> Please note that the Decree Law is necessarily a provisional measure and may be subject to amendments during the process of conversion into Law (or not converted at all).

<sup>2</sup> For a review of the main economic measures of the so-called Cura Italia Decree, please refer to the newsletter "*Cura Italia Decree - Measures to support liquidity through the banking system*" ([http://www.gop.it/doc\\_covid/40.pdf](http://www.gop.it/doc_covid/40.pdf)).

<sup>3</sup> These aspects must be documented and certified by a representative of the beneficiary enterprise.

<sup>4</sup> The small and medium-sized enterprises eligible for measures under the Decree are those which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million and/or whose annual balance sheet total assets do not exceed EUR 43 million. The data to apply to the headcount of employees and the financial amounts relate to the latest approved accounting period, calculated on an annual basis. It should be noted that the calculation of the relevant materiality thresholds is different in the case of 'associated' and 'connected' enterprises, where all or part of the employees and accounting values of the other related entities must be taken into account.

The Guarantee is issued subject to certain conditions, including:

1. loans with maturity date falling no later than 6 years after the execution of the loan agreement<sup>5</sup>;
2. as at 31 December 2019, the beneficiary enterprise must not fall within the category of "distressed companies" ("*imprese in difficoltà*") under the Commission Regulation (EU) no. 651/2014 of 17 June 2014, Regulation (EU) no. 702/2014 of 25 June 2014 and Regulation (EU) no. 1388/2014 of 16 December 2014<sup>6</sup>;
3. on 29 February 2020, the debt exposures of the enterprise were not classified as non-performing exposures under the applicable European legislation;
4. the amount of the loan secured by the Guarantee does not exceed the higher of the following amounts:
  - 25% of the annual turnover in 2019, as resulting from the financial statements (or tax declaration (*dichiarazione fiscale*));
  - twice the employment costs borne in 2019, as resulting from the latest financial statements (or audited data if the enterprise has not approved its financial statements yet <sup>7</sup>).

The Guarantee, at the same level and proportional loss sharing ("*in concorso paritetico e proporzionale tra garante e garantito*") between the guarantor and the guaranteed entity, covers the following amounts:

1. 90% of the amount of the loan, for business with less than 5,000 employees in Italy and with a turnover up to EUR 1.5 billion;
2. 80% of the amount of the loan, for businesses with a turnover from EUR 1.5 billion to EUR 5 billion or with more than 5,000 employees in Italy;
3. 70% of the amount of the loan, for businesses with a turnover of more than EUR 5 billion.

To benefit from the Guarantee, the business must pay annual fees, ranging from 25 to 200 basis points depending on the duration of the financing and the size of the business.

In addition, the Guarantee is issued subject to the following commitments which must be assumed by the beneficiary:

1. no dividend distribution or shares buyback (*riacquisto di azioni*) may be approved by the beneficiary (as applicable), or by any other business with registered office in Italy belonging to the same group, in 2020;
2. the beneficiary of the Guarantee must manage any redundancies through agreements with Trade Unions (*accordi sindacali*).

As far as the procedures for issuing the Guarantee is concerned, the Liquidity Decree provides for two separate procedures based on the size of the beneficiary:

1. for loans granted to businesses with less than 5,000 employees in Italy and a turnover lower than EUR 1.5 billion, the prospective borrower of the loan must submit the application for the guaranteed loan to the relevant lender, which, after having positively resolved upon the granting of the loan, must

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<sup>5</sup> The Decree specifies that companies may avail themselves of a pre-amortization period (*i.e.* excluding the repayment of principal instalments) of up to 24 months.

<sup>6</sup> Undertakings in difficulty, within the meaning ascribed to it pursuant to the Commission Regulation (EU) No. 651/2014, Regulation (EU) no. 702/2014 and Regulation (EU) no. 1388/2014 include, among others, those undertakings which are subject to collective insolvency proceedings or fulfil the criteria under their domestic law for being placed in collective insolvency proceedings at the request of their creditors.

<sup>7</sup> The Decree specifies that if the enterprise started its activity after 31 December 2018, reference should be made to the personnel costs expected for the first two years of activity, as documented and certified by the legal representative of the enterprise.

forward the relevant request to SACE to obtain the issue of the Guarantee; and

2. in other cases, the issue of the Guarantee is also subject to the a specific decree to be issued by the Minister of the Economy and Finance, after consultation with the Minister of Economic Development, adopted on the basis of the analysis sent by SACE, taking into account the role that the applicant enterprise has with respect to certain sectors and other relevant matters in Italy (as indicated in the Decree).

Article 1 of the Liquidity Decree also includes a provision relating to Cassa Depositi e Prestiti S.p.A.. According to this provision, a counter-guarantee of the Italian State within the plafond of EUR 200 billion can be granted also in respect of guarantees issued by Cassa Depositi e Prestiti S.p.A. covering portfolios of loans of any kind granted to enterprises located in Italy. This State guarantee can be granted only until 31 December 2020, and only in favour of banks and other entities allowed to perform lending activities in Italy.

### 3. Central Guarantee Fund for SME

The Liquidity Decree regulates the use of the Central Guarantee Fund for SME (the "**Fund**"), introducing under Article 13 (*Central Guarantee Fund for SME*) a number of exceptional and contingent measures aimed at supporting the liquidity needs of small and medium-sized enterprises in the coming months.

The operational framework of the Fund was previously regulated under Article 49 of the Cura Italia Decree, which is fully replaced by the new Liquidity Decree. The Government has therefore reshaped in full, after a short period of time, the temporary regulation on the operation of the Fund. The provisions deleted from the Cura Italia Decree have been inserted into the new Liquidity Decree together with additional provisions about the operations of the Fund.

The new provisions on the emergency operating procedures for the Fund, in force until 31 December 2020. The main features of the temporary regulation are the following:

1. the Fund's guarantee is issued free of charge;
2. the maximum guaranteed amount for each business is increased to EUR 5 million; and
3. the percentage of the guarantee coverage has been increased, both for the issuance of direct guarantees (90%) and for reinsurance transactions (100% of the value of the guarantee issued by the counter-guaranteed entity) subject to certain conditions<sup>8</sup>. The increase is applicable to financial transactions with a term of up to 72 months, and for an amount lower than, alternatively:
  - twice the beneficiary's annual wage expenses (*spesa salariale*) (including social security contributions and the cost of personnel working on the enterprise's site, but formally on the payroll of subcontractors) for the year 2019 or the last year available;
  - 25% of the beneficiary's total turnover in the 2019; or
  - the amount required for working capital and investment costs<sup>9</sup> in the following 18 months (in case of small and medium-sized enterprises), or 12 months (in case of enterprises having up to 499 employees).

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<sup>8</sup> More specifically: "the percentage of coverage for reinsurance is increased, also through the contribution of the special sections of the Fund, to 100 per cent of the amount guaranteed by Confidi or another guarantee fund, provided that the guarantees issued by them do not exceed the maximum percentage of coverage of 90 per cent [...] and that such guarantees do not involve the payment of any amount as remuneration for the credit risk". It should be noted that both measures must be subject to authorization by the European Commission pursuant to Article 108 TFEU. Until the granting of such authorization, and following such authorization for the financial transactions which do not comply with the requirements set out above, the above percentages are increased, respectively, at 80 per cent for direct guarantees and 90 per cent for reinsurance.

<sup>9</sup> This requirement is certified by a statement of the beneficiary pursuant to Article 47 of Presidential Decree 445/2000.

4. financing of the rescheduling (*rinegoziazione*) of the beneficiary's debt is eligible for a guarantee from the Fund, for direct guarantee and for reinsurance to the extent of 80% and 90% respectively of the value of the guarantee issued by the counter-guaranteed entity (provided that the guarantees issued by the counter-guaranteed entity do not exceed the maximum percentage of coverage of 80%) In both cases (direct guarantees and counter-guarantees) the new financing will have to provide for additional funds to be granted to the beneficiary for at least 10% of the outstanding amount of the rescheduled financing.

Compared to the Cura Italia Decree, the Liquidity Decree broadens the scope of application of the measure by giving access to the guarantee schemes to companies with up to 499 employees, and extends the scope of application of the measure also to companies which, as of 31 January 2020, had exposures towards the relevant lender classified as "*unlikely to pay*" or "*past due*", excluding in any case those ones which have exposures classified as "*non-performing*" (*sofferenze*). The guarantee may also be issued in favour of beneficiaries, in relation to which a business crisis settlement procedure (*procedura di composizione della crisi di impresa*) is pending, provided that they are in a situation of substantial regularity of payments and the lender may reasonably assess that full repayment of the existing exposures is likely to occur at the relevant maturity<sup>10</sup>.

<p><b>New loans for companies affected by the epidemic<sup>11</sup></b></p>	<p><u>Beneficiaries:</u> small and medium-sized enterprises and natural persons engaged in business, arts or professions whose activity has been affected by the Covid-19 epidemic.</p> <p><u>Measure:</u> 100% coverage under both direct guarantee and reinsurance.</p> <p><u>Scope of the guarantee:</u> new financing with the following characteristics: (i) duration up to 72 months (ii) amount not exceeding 25% of the beneficiary's revenues, and in any case not exceeding EUR 25,000; (iii) repayment of the principal not earlier than 24 months after disbursement; (iv) certain restrictions on the interest rate applicable to the loan in the case of direct guarantee or the cost of the guarantee in the case of reinsurance.</p> <p>The beneficiary must produce a self-certified statement pursuant to Article 47 of Presidential Decree 445/2000 attesting its business activity has been negatively affected by the epidemic. The guarantee is granted automatically, free of charge and without further assessment from the issuer. The lender grants the financing to be guaranteed by the Fund, subject only to the positive verification of the admission requirements of the borrower (in such respect the lender does not have to wait for any approval from the Fund itself).</p>
<p><b>Cumulation of guarantees with Confidi</b></p>	<p><u>Beneficiaries:</u> beneficiaries with revenues not exceeding EUR 3,200,000.</p> <p><u>Measure:</u> the guarantee of the Fund may be cumulated with a further guarantee granted by <i>Confidi</i>, or other entities authorized to issue guarantees, from their own funds, up to 100% of the loan.</p> <p><u>Scope of the guarantee:</u> the guarantee of the Fund is issued in relation to new financing for an amount not exceeding the 25% of the beneficiary's revenues.</p>

<sup>10</sup> The scope of the measures is in fact further extended to those companies that, after 31 December 2019, have been admitted to the arrangement with creditors on a going concern basis ("*concordato con continuità aziendale*") pursuant to article 186-bis of the r.d. 267/1942 (hereinafter the "*Bankruptcy Law*"), have entered into restructuring agreements ("*accordi di ristrutturazione*") or submitted certified plans ("*piani attestati*") pursuant to, respectively, articles 182-bis and 67 of the Bankruptcy Law, provided that at the date of entry into force of the Decree "*their exposures are no longer in a situation that would determine their classification as impaired, do not have any amounts in arrears after the application of the concession measures and the bank, on the basis of the analysis of the financial situation of the debtor, may reasonably assess that the exposure is likely to be repaid at maturity, pursuant to Article 47-bis, paragraph 6, letter a) and c) of Regulation 575/2013*".

<sup>11</sup> Such measure is subject to the prior authorisation of the European Commission pursuant to Article 108 TFEU.

<p><b>Financing already granted</b></p>	<p><u>Scope of the guarantee:</u> financing already granted by the lender no later than 3 months after the date of submission of the request and, in any case, after 31 January 2020.</p> <p><u>Measure:</u> issue of the guarantee also after the granting of the financing.</p> <p>The lender must provide the Fund Manager with a declaration certifying the reduction in the interest rate applied on the guaranteed financing to the beneficiary as a result of the issuance of the guarantee.</p>
<p><b>Operations in the tourism industry</b></p>	<p><u>Scope of the guarantee:</u> real estate investment operations in the tourism and real estate industries, with a minimum duration of 10 years and for an amount higher than EUR 500,000.</p> <p><u>Measure:</u> the guarantee of the Fund may be cumulated with other forms of guarantee acquired on loans.</p>
<p><b>Guarantees on loan portfolios</b></p>	<p><u>Scope of the guarantee:</u> portfolios of loan, the latter even without amortization plan, granted to companies damaged by the Covid-19 emergency, or at least 60% of which belongs to specific industries and sectors affected by the epidemic.</p> <p><u>Measure:</u> the percentage of the junior tranche covered by the Fund can be increased by 50%, and a further increase of 20% can be granted if additional guarantors intervene in the transaction.</p>
<p><b>Guarantees on loan portfolios for companies with a rating not exceeding "BB"</b></p>	<p><u>Scope of the guarantee:</u> portfolios of loan, the latter even without amortization plan, granted to companies damaged by the Covid 19 emergency, at least 20 per cent of which are companies with a rating no higher than class "BB" on the Standard's and Poor's rating scale at the date the relevant transaction was included in the portfolio.</p> <p><u>Measures:</u> (i) maximum amount of the loan portfolios increased to EUR 500 million; (ii) the loans comply with the requirements set out in paragraph 1, letter c) of article 13 and may be approved and granted by a lender prior to the application for a guarantee on the loan portfolio<sup>12</sup>; (iii) the beneficiaries are admitted without a credit assessment by the Fund manager; (iv) the detachment point and the thickness 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 models; (v) the guarantee is issued to cover a maximum of 90 per cent of the junior tranche of the loan portfolio; (vi) the portion of the junior tranche covered by the Fund, without prejudice to the provisions of article 8, paragraph 2, of the interministerial decree of November 14, 2017, may not exceed 15 per cent of the amount of the loan portfolio, or 18 per cent if the portfolio is for loans granted for the implementation of research, development and innovation projects and/or investment programs; (vii) in relation to individual financing included in the guaranteed portfolio, the Fund shall cover 90 per cent of the loss recorded on the individual financing; (viii) financing may also be granted to enterprises located in regions where the Fund's intervention is limited to the counter-guarantee of regional guarantee funds and collective guarantee consortia.</p>
<p><b>Minibond</b></p>	<p>The guarantees referred to in article 39, paragraph 4 of the so-called "<i>Salva Italia</i>" Decree Law<sup>13</sup>, as well as guarantees on minibond portfolios, shall be issued in respect of the Fund's available endowment, ensuring the existence, from time to time, of an amount of free resources of the Fund, allocated to the issuing of guarantees on individual financial transactions, equal to at least 85 per cent of the</p>

<sup>12</sup> In any case after 31 January 2020.

<sup>13</sup> Decree Law no. 201 of 6 December 2011, converted, with amendments, into Law no. 214 of 22 December 2011.

	Fund's available endowment.
<b>Guarantee consortia (Confidi)</b>	<p>The quota of loan agreements which is not guaranteed by a guarantee issued by the Fund (or other public guarantee schemes) can be covered by an additional guarantee issued by a guarantee consortium (<i>confidi</i>) using financial resources made available by (European, national, regional entities or by a chamber of commerce).</p> <p>The application of this measure is subject to the authorization of the European Commission pursuant to Article 108 of the TFEU.</p>
<b>Microcredit</b>	The maximum amount of microcredit loans is raised to EUR 40,000.00. Moreover, microcredit operators will be able to benefit from the guarantees issued by the Fund in relation to their respective funding transactions.

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