

2 April 2020

“Cura Italia” Decree - Measures to support liquidity through the banking system

1. Introduction

The Law Decree n. 18 of 17 March 2020 (the so-called "Cura Italia" Decree, the "**Decree**"), providing "*Measures to strengthen the national healthcare system and to economically support households, workers and enterprises in the context of the COVID-19 epidemiological emergency*" has been published on the Official Gazette of the Republic of Italy no. 70¹ of 17 March 2020.

The Decree covers mainly the following four areas of intervention:

- a. financing measures and other tools to strengthen the National Healthcare System, the Civil Protection and other public agencies involved in facing the emergency;
- b. supporting measures to the labour sector, in order to protect employment and in-work income;
- c. credit support for households and micro, small and medium-sized enterprises ("**SMEs**") through the banking system and the use of the Central SME guarantee fund (the "**SME Fund**"); and
- d. deferral of payment of taxes, contributions and other fiscal obligations; tax incentives for the sanitisation of workplaces and bonuses for employees that remain in service, together with further measures relating to specific sectors.

A summary of the main economic and financial measures introduced under letter c) (included in Title III (*Measures to support liquidity through the banking system*) of the Decree) is provided herebelow.

The measures implemented by the Italian Legislator include, in particular, a moratorium in relation to loans granted to SMEs (applicable, upon request, on mortgages, leasing agreements, overdraft facilities and short-term loans), as well as the establishment of a special section of the SME Fund to support the financial institutions affected by such *moratorium*².

Further measures in support of the banking system and enterprises have also been adopted and implemented in the Decree and are briefly summarized below.

¹ Please note that a Law Decree is, by definition, an interim measure and may be subject to amendments during the conversion into law (or it may not be converted into law at all).

² Please see article 56 (*Financial support measures for SMEs affected by COVID-19*) of the Decree.

2. Article 56 – Financial support measures for SMEs affected by COVID-19 epidemic

Beneficiaries	<p>Micro-enterprises and SMEs with registered office in Italy. The measure is therefore applicable, by operation of law, to businesses:</p> <ol style="list-style-type: none"> 1. employing less than 250 people; and 2. whose annual turnover does not exceed Euro 50 million or the annual balance sheet total does not exceed Euro 43 million³.
Financing institutions	<ol style="list-style-type: none"> 1. Banks enrolled in the Register held by Bank of Italy; 2. financial intermediaries, pursuant to article 106 of the Italian Banking Act; and 3. “any other entity authorized to carry out lending activities in Italy”. The language of the Decree is not explicit, but it seems to include, for example, insurance companies, Italian and EU AIFs (the so-called <i>fondi di credito</i>), Cassa Depositi e Prestiti S.p.A., SACE S.p.A., Poste Italiane S.p.A. (in relation to <i>bancoposta</i> services) and securitisation vehicles.
Object / incentive measure	<p>Debt exposures <i>vis-à-vis</i> the abovementioned lenders may benefit from the following financial support measures:</p> <p><u>Type</u>: short-term overdraft facilities and loans granted as advance payments of receivables existing as of 29 February 2020</p> <p><u>Measure</u>: the outstanding credit lines (including the facility made available and not drawn down) cannot be revoked (neither in full nor in part) until 30 September 2020.</p> <p><u>Comment</u>: the provision states that the committed credit line “cannot be revoked”, it being understood that it can be used by the company; however, in the case of invoice discounting, it should be considered that the bank has a certain degree of discretion as to what invoices to pay in advance and, therefore, a refusal by the bank to grant credit cannot be excluded.</p> <p><u>Type</u>: bullet loans with contractual maturity date falling before 30 September 2020.</p> <p><u>Measure</u>: such agreements can be extended, together with the relevant ancillary elements, automatically without any formality, until 30 September 2020 under the same conditions originally agreed.</p> <p><u>Comment</u>: the provision does not seem differentiate between principal and interest payments, therefore such new rule appears to be applicable to debt exposures that do not provide for an amortization plan, nor by way of principal, nor by way of interest.</p> <p><u>Type</u>: amortizing loans and other amortizing facilities, also executed by way of agrarian promissory notes.</p> <p><u>Measure</u>: the payment of instalments or lease payments due before 30 September 2020 shall be suspended until that date, and the relevant repayment plan shall be automatically extended without further formalities, and without new or additional charges</p>

³ The definition of SMEs used in the Decree is the one provided under the European Commission Recommendation n. 2003/361/EC of 6 May 2003. The data to be used to calculate the financial amounts are those relating to the latest approved accounting period, calculated on an annual basis. It should be noted that the calculation of the materiality thresholds in the case of “partner enterprises” and “linked enterprises” shall take into account, in full or in part, the headcount of the staff and financial amounts also of the other partner or linked entities.

	<p>to be borne by any parties; the requesting SME may also demand the sole suspension of principal payments (i.e. interest payments are not suspended).</p> <p><i>Comment: it is not clear what happens at the end of the suspension period, as it seems burdensome to reschedule a repayment plan without any new or increased charges for any party: it may reasonably be assumed that interest accrued and not paid during the suspension period will be charged on the first instalment due after the suspension period or distributed over more instalments.</i></p> <p>As specified in the Illustrative Report of the Decree, the support measures do not imply any automatic change in the classification of the debt exposures, unless during the <i>moratorium</i> period there are "new, objective elements" that cause the financial intermediary to change the credit valuation of the debtor.⁴</p>
Procedure to benefit from the measure	<p>The SME shall send a written request to the relevant lender requesting the application of the measure.</p> <p>The SME shall also submit a self-declaration (<i>dichiarazione sostitutiva di atto notorio</i>) stating that a temporary liquidity shortage has occurred, being it a direct consequence of the spread of the COVID-19 epidemic.</p>
Limits	<p>SMEs whose debt exposures, at the date of publication of the Decree, are classified as "non-performing" according to the applicable prudential framework are not eligible for such support measure.</p> <p><i>Note: the classification of the outstanding receivables is evidenced in the reports submitted by the intermediaries to the Central Credit Register of the Bank of Italy ("Centrale Rischi"). Among those, we remark that past due debt exposures (overdue or overdue for more than 90 days) are considered to be excluded from the scope of the Decree as well.</i></p>

From the lenders' perspective, the Decree provides for an additional guarantee that can be granted by the SME Fund in favour of the lenders:

Guarantee	The transactions that can benefit from the support measures introduced by the Decree can also be admitted, free of charge and without any prior approval required, to benefit from the guarantee provided under a special section of the SME Fund ⁵ .
Admission Procedure	Telematic request from the lender.
Object of the guarantee	The guarantee of the SME Fund covers up to 33% of the support measures provided under the Decree in favour of the SMEs. More in particular:

⁴ In the absence of a precise identification of these elements in the Illustrative Report, it could be considered the case of a company that, despite the application of the measures of Article 56, files the so-called "blank" agreement among creditors (*concordato preventivo in bianco*) pursuant to Article 161 of the Bankruptcy Law due to the deterioration of its equity and financial situation. In this case, it may be assumed that the credit assessment on the company shall necessarily be reassessed by the lender since, by express provision of law applicable to credit intermediaries, this situation implies that the overall exposure of the debtor shall be classified as unlikely to pay.

⁵ Being the guarantee fund set forth in Article 2, paragraph 100, letter a), of Law no. 662 of 23 December 1996, established to facilitate the access of SMEs to financial credit, by issuing a public guarantee in addition to (or as an alternative to) the securities created by the SMEs themselves to secure the obligations arising from loans granted by banks or, *inter alios*, financial intermediaries.

	<ol style="list-style-type: none"> 1. with regard to the irrevocability of overdraft facilities and short term loans, the guarantee of the SME Fund covers up to 33% of the additional utilized amounts, as at 30 September 2020, compared to the amounts amount that were utilized as at the date of publication of the Decree; 2. with regard to the extension of bullet loans, the guarantee of the SME Fund covers up to 33% of the amount of the extended bullet loans; and 3. with regard to suspension of the payment instalments of amortizing loans and financial leases, the guarantee of the SME Fund covers up to 33% of the amount of the suspended instalment of the loans, or the suspended financial lease payments, due by 30 September 2020.
<p>Enforcement procedure</p>	<p>The guarantee may be enforced provided that, within the 18 months-period following the end of the support measure, enforcement proceedings have been commenced in relation to: (i) total or partial default on the obligations arising from the exposures under letter (a) of the paragraph above; (ii) non-payment, or partial payment, of the amounts due by way of principal and interest relating to the loans granted pursuant to letter (b) of the paragraph above; (iii) non-payment of one or more of the suspended loans' instalments or financial lease payments pursuant to letter (c) of the paragraph above).</p> <p>In any such case, the relevant lender shall send to the SME Fund an enforcement request, along with an estimate of the final loss that the SME Fund will be required to bear.</p> <p>Once the validity of the request has been assessed, the SME Fund shall pay within 90 days an amount equal to 50% of the lower of the maximum guaranteed amount and 33% of the estimated final loss to be borne by the SME Fund; the remaining amount shall be paid to the lender, if the relevant request is submitted to the SME Fund within 180 days of the completion of the enforcement procedures.</p>

3. Other Supporting Measures

In addition to the debt *moratorium* measures granted in favour of SMEs (and the related SME Fund's guarantee), below is a list of the main financial measures set forth by the Decree in support of the banking system and the national guarantee funds.

a. [Article 49 \(Central guarantee fund for SMEs\)](#)

This article provides for an enhancement of the Italian the SME Fund's guarantee scheme. In particular, for a 9-month period, starting from the entry into force of the Decree, the following measures will be adopted:

- i. the SME Fund's guarantees will be granted free of charge, with the suspension of the fees to be paid for the access to such Fund;
- ii. the maximum guaranteed amount for a single enterprise will be increased from Euro 2.5 million to Euro 5 million;
- iii. refinancing transactions will be entitled to benefit from the SME Fund's guarantee, provided that the new loan is at least equal to 10% of the outstanding amount of the loan that is refinanced;
- iv. automatic extension of the SME Fund's guarantee in case of *moratorium* or suspension of a loan due to the coronavirus emergency;
- v. the assessment of the entity requesting to access to the SME Fund will be carried out only in

respect of its economic and financial conditions, in order to widen the access to such fund also to enterprises under financial stress as a consequence of the coronavirus epidemic, with the exception of those enterprises having financial exposures that are already classified as non-performing or unlikely to pay;

- vi. waiver of all penalty fees that would otherwise be applicable in case of failure to close a financing transaction;
 - vii. the SME Fund's guarantee may be granted on top of other forms of guarantee obtained in the context of more significant transactions in terms of amount and duration in the tourism and real estate sectors;
 - viii. possibility to increase the percentage of the junior tranche secured by the SME Fund's guarantee in relation to portfolios of loans to be granted to companies/sectors/supply chains that are more affected by the coronavirus epidemic;
 - ix. possibility to establish special compartments of the SME Fund to ease the access to credit for certain economic sectors or supply chains, at the initiative of sector administrations and associations;
 - x. three-month extension of the term of all administrative formalities in relation to financing transactions secured by the SME Fund's guarantee;
 - xi. possibility for private entities to increase the size of the SME Fund;
 - xii. facilitation in the granting of guarantees to self-employed workers, professionals and individual entrepreneurs.
- b. [Article 51 \(SMEs' cost saving measures for guarantees granted by credit consortia pursuant to article 112 of the Italian Banking Act\)](#)

This article provides for the enhancement of credit consortia ("Confidi") for micro-enterprises, by introducing simplified procedures to their access.

- c. [Article 54 \(Adoption of the solidarity fund in relation to mortgage loans, the so-called. "Fondo Gasparrini"\)](#)

This article provides for the extension of the solidarity fund in relation to mortgage loans granted for the purchase of the first house to self-employed workers and professionals that experience a decrease in their turnover higher than 33% in the quarter following 21 February 2020, if compared to the last quarter of 2019. Moreover, the working mechanics of such solidarity fund have been simplified.

- d. [Article 55 \(Measures for the financial support to enterprises\)](#)

This article provides for new incentive measures for the assignments of non-performing loans by way of conversion of deferred tax activities into tax credit for financial and industrial enterprises.

- e. [Article 57 \(Liquidity support to enterprises affected by the epidemic emergency, through guarantee mechanisms\)](#)

Introduction of a counter-guarantee mechanism in favour of bank and other authorized intermediaries, to be established by Cassa Depositi e Prestiti S.p.A. ("CDP"), granting access to credit also to medium-large enterprises affected by the current crisis.

In particular, it is envisaged:

- i. that CDP may support banks granting loans to those enterprises that have suffered a decrease in their turnover due to the epidemic emergency, by setting up funding plafonds, guarantees

and/or first-loss portfolio guarantees in relation to exposures held by the banks themselves;

- ii. the granting of State counter-guarantees up to 80% of CDP's exposures. The State counter-guarantee in favor of CDP shall be a first demand guarantee, irrevocable, unconditional and subject to the payment of a fee.

The enforcement measures of this provision and the sectors that will benefit from it will be identified by a decree of the Ministry of Economy and Finance, yet to be published.

f. Article 58 (Deferment of repayment terms of fund 394/81)

Providing for the suspension, for a 12-month period, of the payment of instalments due in 2020 in respect of loans granted under the "394 Fund" managed by Simest S.p.A. ⁶, and the consequential postponement of the amortization plan for a correspondent period of time.

Gianni, Origoni, Grippo, Cappelli & Partners has set up an in-house **Task Force** to constantly monitor the evolution of legislation in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations. For our previous newsletters on this subject, please click [here](#).

For any questions, please send a mail to coronavirus@gop.it.

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⁶ Being subsidised loans granted pursuant to article 2 of law decree n. 251 of 28 May 1981, converted into law, with amendments, by law n. 394 of 29 July 1981.