

1. INTRODUCTION

On 7 April 2020 the Italian Banking Association ("ABI") and SACE S.p.A. ("SACE") have formed a working group to implement the State guarantee to be made available through SACE (the "**SACE Guarantee**"), in accordance with article 1 of law decree No. 23 of 8 April 2020 (the "**Liquidity Decree**"). On 20 April 2020, they have published guidelines setting out the steps and formalities required to access this guarantee scheme (the "**Guidelines**") [[link](#)]. We summarise below the main terms and implications of the Guidelines.

2. ELIGIBLE LOANS

- 2.1 The loan must be granted by a **bank or financial institution** licensed to lend in Italy (including domestic and foreign institutions) to an **enterprise based in Italy**, which was **not in 'difficulty'**, in the meaning of EU rules on State aid as at 31 December 2019, **not classified as 'non-performing exposure'** pursuant to EU banking rules as at 29 February 2020, and was **adversely impacted** by COVID19.
- 2.2 The **purpose** of the loan must be to finance labour costs, investments or working capital, in respect of productive assets and operations located **in Italy**. The loan **cannot** be used to **refinance existing loans**, purchase of own stock, or **finance acquisitions**.
- 2.3 The prohibition on refinancing is not expressed in the Liquidity Decree, which does however require each participating lender to show an **increased net credit exposure** after payment of each SACE Guaranteed loan, from the position existing as of the date of the Liquidity Decree (after deducting intermediate repayments and prepayments).
- 2.4 The loan must have a maximum term of **six years**, in addition to a pre-amortisation phase of up to two years in which the borrower only pays interest. The loan is paid in **one utilisation** on a dedicated bank account set aside to service this loan only. Repayment is in quarterly instalment of equal amount in principal.
- 2.5 The **combined costs** of the loan must be **lower** than that of a similar loan between the parties without the benefit of the SACE Guarantee. The fees for the SACE Guarantee are set at the rates per annum¹ published in the Liquidity Decree in accordance with the EU Commission's Temporary Framework.
- 2.6 The SACE guarantee is for **pari passu** sharing between the lenders and SACE, **pro-rata** in proportion with the percentage of cover of the loan under the SACE Guarantee, as described in 3.2 below. SACE shares in **all security** and guarantees granted to the lenders.
- 2.7 The SACE Guarantee is available to cover new loans granted between 9 April and 31 December 2020. For eligible loans paid until 17 May 2020, the SACE Guarantee can be added retrospectively, subject to SACE's approval and review of all conditions and requirements, and in this case the benefit of the SACE Guarantee is at the lenders' risk. In respect of loans granted after 17 May, lenders must await issuance of the SACE Guarantee to pay the loan to the borrower.

3. MAXIMUM COVERAGE

¹ For SMEs, 25 bps (year 1), 50 bps (years 2 and 3) and 100 bps (years 4 to 6), for other borrowers 50 bps (year 1), 100 (years 2 and 3) and 200 (years 4 to 6)

3.1 The SACE Guarantee is capped for each borrower at the **greater** amount of (i) **25% of 2019 turnover**, and (ii) **twice the overall cost of labour in 2019**. For corporate groups, the calculation includes the consolidated position, and in each case the amount of turnover and labour costs only takes into account assets and operations in Italy.

3.2 The SACE Guarantee can cover up to:

- (a) **90%** of the principal amount of loans to businesses with less than **5,000 employees**, and a turnover **not exceeding EUR 1.5bn**;
- (b) **80%** of the principal amount of loans to businesses with 5,000 employees or more (or revenues in excess of EUR 1.5bn), and revenues **not exceeding EUR 5bn**; or
- (c) **70%** of the principal amount of loans to businesses with revenues **exceeding EUR 5bn**.

To calculate this percentage, the figures of turnover and employees take into account all operations of the participant borrower or group, based in Italy or abroad.

3.3 For loans which must go through the Ministry approval as described at 4.10 to 4.13 below, the maximum rate of **cover can be increased** to compensate for special requirements or undertakings imposed on the participant borrower on ground of the strategic interests purposes described below.

4. APPLICATION

4.1 To accede to the SACE Guarantee, participating lenders must register on SACE's digital platform² and sign up to the guarantee conditions set out in the Guidelines (the "**SACE Terms**").

4.2 Each participating lender appoints an **authorised representative**, who takes responsibility for notices and information transferred on behalf of that lender. The designated representative is awarded a master account and **personal access keys**, and may appoint and authorise one or more user accounts to accede to the platform for administrative purposes.

Simplified procedure

4.3 The Liquidity Decree and Guidelines set out a simplified procedure for access to the SACE Guarantee for loans not exceeding EUR 375m, to enterprises with turnover not exceeding EUR 1.5bn and with less than 5,000 employees.

4.4 The process starts with the borrower's application to the lender for a SACE Guaranteed loan, in the form attached to the Guidelines (the "**Loan Request**"). The application includes information and statements in respect of the statutory requirements for eligibility, and there is no requirement for official searches or certifications from public registries.

4.5 The lender reviews the Loan Request and submits the loan for credit approval. Once this is achieved, the lender applies for issuance of the SACE Guarantee on the digital platform, in the form set out in the Guidelines (the "**Guarantee Request**"). For syndicated or multilateral loans there is a sole Guarantee Request to be filed by an agent in the name of all lenders.

² 'Portale Garanzia Italia', available at www.garanziaitalia.sace.it. The registration is submitted via certified electronic email to SACEgaranziaitalia@pec.it

- 4.6 The Guarantee Request includes a copy of the Loan Request, and the lender's own confirmation of credit approval, receipt of the prescribed documentation and statements, completion of its own KYC, and the further statements and attestations of the requirements laid down in the Liquidity Decree, including confirmation that the position is not classified as non-performing for credit risk regulation purposes.
- 4.7 SACE reviews the Guarantee Requests in sequence, **first come-first served**. Each SACE Guarantee must be issued on or prior to 31 December 2020. Capacity is limited by the overall size of EUR 200bn under the Liquidity Decree, although EUR 30bn of that total is set aside to guarantee loans to SMEs.
- 4.8 Each loan that is admitted to benefit from the coverage is assigned a unique identifier ("**CUI**"). Once the CUI is generated the matching SACE Guarantee is regarded as issued, without the need for delivery of a counterpart or copy to the lender.
- 4.9 For the SACE Guarantee to take effect, the lender must notify the **payment of the loan** to the borrower through SACE's digital platform. The date and amount of the utilisation is matched to the CUI, and the SACE Guarantee is perfected as of the date of the utilisation. SACE then calculates and uploads on the portal a **repayment schedule** for the corresponding loan, including the fee payable in connection with the SACE Guarantee.

Ministry procedure

- 4.10 To cover loans for **larger businesses** exceeding the thresholds at 4.3 above, the SACE Guarantee must be approved in a specific decree of the Ministry of the Economy and Finance. The lenders must report³ the corporate name of each such borrower to SACE immediately on receipt of the Loan Request, prior to their own review or credit approval.
- 4.11 The application is processed as described in 4.4 to 4.9 above, although the Guarantee Request must be supplemented with a summary report setting out the grounds behind the lenders' own credit analysis, and an **analysis** of the borrower's (a) contribution to **innovation in technology**, (b) role in **logistics and supply networks**, (c) involvement with **critical or strategic infrastructure**, (d) impact on occupation levels and the **job market**, and (e) weight in strategic **international supply chains**.
- 4.12 The Guarantee Request includes the borrower's own support documentation, an excerpt from the lender's own credit review and evaluation of compliance with the requirements for eligibility and, where requested, the lender's own evaluation of a request for increase of the coverage rate of the SACE Guarantee as described at 3.3 above.
- 4.13 SACE forwards each eligible Guarantee Request to the Ministry for approval. In this case the issuance of the SACE Guarantee and origination of the CUI is subject to the Ministry's decree for approval of each coverage.

5. REGULATION OF THE SACE GUARANTEE

- 5.1 Each loan must be **utilised within 30 days** from issuance of the relevant SACE Guarantee, or **45 days** in case of the Ministry procedure. Participating lenders must provide an **information report** to SACE at the end of **each calendar quarter**, in the form and with the detail set out in the Guidelines. Each lender maintains **full electronic records** of each loan and the SACE Guarantee during the life of the loan and beyond (for at least twelve months from repayment in full).

³ Together with documentation available to support the application, by certified email to garanziaitalia.istruttoria@sace.it

- 5.2 The lenders are liable to SACE for payment of the **guarantee fee**, provided that this payment is made to them by the borrower. The fee is payable in one annual advance at the end of the quarter year of issuance of the SACE Guarantee, and at yearly intervals thereafter. The fee accrues late payment interest at a rate of 0.5% per annum.
- 5.3 The SACE Terms include the requirements and restrictions applicable under the Liquidity Decree, including (a) the borrower's obligation to use the proceeds from the loan in accordance with the **agreed purpose**, (b) the borrower's obligation to manage employment relations through **union arrangements** for the whole term of the loan, (c) a prohibition from the approval or **distribution of dividends**, or the **repurchase of own shares**, from 9 April and until 31 December 2020, for the borrower and other members of its corporate group.
- 5.4 In case of a **breach of a borrower's key undertakings** described above, or the borrower's representations and warranties in respect of the requirements for eligibility under the Liquidity Decree, SACE recalculates the fee payable in respect of the SACE Guarantee at **full market rates**, and the borrower is liable for payment of the increase for the whole term of the SACE Guarantee. This remedy is in addition to the rights and protection available under the loan agreement.
- 5.5 **Payment claims** under the SACE Guarantee are fulfilled on the later of (a) 30 days from request in the form set out in the SACE Terms, and (b) 90 days from the borrower's failure to pay amounts on maturity. An **acceleration** of the loan is not binding for SACE, which may elect to discharge its payment obligations to the lenders in accordance with the **original repayment schedule**.
- 5.6 SACE is liable on **first demand**, although it may raise objections and defences ensuing from the lender's own breach of the SACE Terms. The SACE Guarantee extends to amounts paid to a lender and then set aside or **clawed back** under the insolvency law. A lender may only assign or transfer its claims under a SACE guarantee to another **bank or financial institution** licensed to lend in Italy, a Central Bank or EIB.
- 5.7 Following payment under a SACE Guarantee, SACE is **subrogated** in the lenders' rights, interests and security, or it can request that the lenders **assign or transfer** their legal position to SACE. SACE may in each case delegate the lender to take enforcement action in its interest. Any **proceeds** from enforcement on a borrower's assets or security are applied in discharge of documented enforcement costs and then allocated pro-rata and pari passu between the lenders and SACE.