ITALIAN LEGISLATION ON COVID19 - MEASURES FOR LOANS

As of 10 April 2020

Payment holidays for SMEs, State guarantee for larger corporates, insolvency holiday for all until 30 June 2020

Italy passed a broad suite of measures to support the economy in the face of COVID19. As usual with emergency legislation, most measures are passed in the form of law decrees issued by Government, which have the force of primary law for sixty days, and require conversion into law by Parliament for validity beyond this term. Further measures and adjustments are being discussed in the consultations for this conversion. Other provisions are enacted by way of decrees of the Ministries or the Presidency of the Council of Ministries, with the force of secondary legislation.

1. 'LIQUIDITY' DECREE

Significant measures were passed with law decree No. 23 of 8 April 2020 (the "**Liquidity Decree**") [link] in accordance with the temporary framework, the rules on State Aids set out in the EU Commission's Communication of 19 March 2020[1] (the "**Temporary Framework**"), with stimulus for EUR 400bn, after the EUR 350bn deployed with the Cure Italy Decree (described below).

State Guarantee for Loans

1.1 The main form of support for large enterprises comes through a guarantee granted by SACE S.p.A. ("**SACE**", Italy's export credit agency and a subsidiary of by Cassa Depositi e Prestiti S.p.A.), backed by an express and unconditional first demand guarantee by the State.

1.2 This coverage is intended for new financings granted to non-financial enterprises in all forms by domestic or international banks, financial intermediaries and other lenders licensed to lend in Italy. To qualify for this guarantee, loans must be granted after the issuance of the Liquidity Decree and by 31 December 2020, to finance labour costs, investments or working capital for assets and operations located in Italy, and have repayment schedules not exceeding six years.

1.3 SACE's guarantee is available for 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 up to EUR 5bn; or

(c) 70% principal amount of loans to businesses with revenues exceeding EUR 5bn.

For each business the amount of the guarantee is capped further at the greater of (i) 25% of 2019 turnover, and (ii) twice the yearly aggregate cost of employees costs in 2019.

1.4 The guarantee covers principal, interest and ancillary charges, on the basis of pari passu and pro-rata sharing of losses between SACE and the lender in case of the borrower's failure to repay principal. Businesses acceding to the guarantee are required to manage job cuts through arrangements with labour unions, and prevented from distributing dividends or share buybacks for the whole of 2020. This restriction applies to all affiliates in the borrower's group based in Italy.

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[1] EU Commission Communication C(2020) 1863 of 19 March 2020, as amended on 4 April

1.5 The fees payable by borrowers for this guarantee are set out in the Liquidity Decree at the minimum rates set out in the Temporary Framework[2], and the cost of the loans to the borrowers must reflect the reduction in credit risk ensuing from this guarantee.

1.6 To accede to the guarantee:

(a) the business enterprises described at 1.3(a) above apply to the lenders, which will submit the application to SACE, together with evidence of their own credit approval; and

(b) for larger enterprises the process requires a specific decree by the Ministry of the Economy and Finance on consultation with the Ministry of Economic Development, taking into account the borrower's contribution and role in technological development, logistics and supplies networks, critical or strategic infrastructure, jobs and the labour market, and strategic production chains.

1.7 The State coverage can be granted by way of first loss or other guarantees through Cassa Depositi e Prestiti for loan portfolios held by banks or licensed lenders with businesses based in Italy which were impacted by COVID19, so as to release regulatory capital for further loans. This form of support also requires a specific decree of the Ministry of the Economy and Finance.

1.8 The Liquidity Decree commits EUR 200bn in total for this form of support, including EUR 30bn for small and medium enterprises[3] (SMEs) which have used up coverage available to them under SME Protection Fund (described below).

SME Protection Fund

1.9 The Liquidity Decree strengthens the support for SMEs through access to the SME Protection Fund (*Fondo di garanzia per le PMI*) established under the 1997 Budget Law[4], in form of a guarantee or reinsurance of loans granted by banks or financial intermediaries. The amount of the protection is set at EUR 5m for each business, and the scheme is extended to include firms with up to 499 employees.

1.10 Subject to approval by the EU Commission, the amount covered through the SME Protection Fund is increased to 90% (direct guarantee) or 100% (reinsurance of loans guaranteed under other schemes), and in each case the coverage is capped alternatively at (i) 25% of yearly turnover, (ii) twice the yearly aggregate cost of employees costs in 2019, or (iii) the budget working capital and investment expenditure for the following 18 months (for SMEs) or 12 months (for larger businesses).

1.11 Unlike the SACE guarantee described above, this coverage is also available for the extension or rescheduling of loans, provided that this includes at least 10% of new credit. The coverage is extended as a matter of course to reliefs (such as postponement and waivers) granted spontaneously by banks to eligible loans in light of COVID19 prior to enactment of the Liquidity Decree. This scheme is also available for financings made available after 31 January and prior to the enactment of the Liquidity Decree. The lender must in this case certify a reduction in the end cost to the borrower by virtue of this coverage.

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[2] 25 to 100 bps for SMEs, 50 to 200 bps for larger undertakings, in each case depending on the term of the guarantee

[3] Defined in EC Recommendation of 6 May 2003: those with up to 250 employees, EUR 50m turnover or EUR 43m assets

[4] Article 2 paragraph 100(a) of law No. 662 of 23 December 1996

Corporate and insolvency law

1.12 To provide temporary relief to businesses affected by COVID19, the Liquidity Decree includes departures from a number of fundamental rules of Italian corporate and insolvency law.

1.13 Until 31 December 2020, Italian companies are exempt from the requirements on mandatory recapitalization in case of losses eroding corporate capital, as set out in articles 2446 and 2447 (for S.p.A.s), and 2482-bis and 2482-ter of the Italian civil code (for S.r.l.s).

1.14 The effects of the pandemic can be carved out from the financial statements for the period in which COVID19 has struck, as the requirement of business continuity is deemed satisfied to the extent as this could be established present as of 23 February 2020. This treatment must be mentioned in the directors' notes to the financial statements.

1.15 The maturity of bills of exchange, promissory notes, negotiable securities (*titoli di credito*) and other enforceable instruments falling due after 9 March 2020 is suspended until 30 April 2020.

1.16 To encourage financial support from shareholders, articles 2467 and 2497-quinquies of the Italian civil code on structural subordination of shareholder loans do not apply until 31 December 2020. The rule is that shareholder loans rank behind third party claims (including financial and commercial debt) if there is an imbalance in the company's asset and leverage conditions at the time the shareholder loan is made, not when it is repaid. Hence this departure is likely to affect financing transactions well beyond the end of the year. The change will probably not affect contractual subordination however.

1.17 The entry into force of the reformed consolidated insolvency law (*Codice della crisi di impresa e dell'insolvenza*)[5] is postponed by one year until 1 September 2021. All filings for a declaration of insolvency for the purpose of bankruptcy (*fallimento*) and similar proceedings between 9 March 2020 and 30 June 2020 are inadmissible, except when filed by a public prosecutor to seek interim and protection measures on the affected business or its assets.

1.18 All terms for execution of formal restructuring agreements (*accordi di ristrutturazione omologati*) and compositions with creditors (*concordati preventivi*) falling between 23 February 2020 and 31 December 2021 are delayed by six months. In proceedings pending as of 23 February 2020 and which are not yet approved by the Court, the debtor is granted 90 days to prepare a new plan or arrangement to reflect the impact of the pandemic.

2. 'CURE ITALY' DECREE

2.1 Further forms of support for the economy are set out in law decree No. 18 of 17 March 2020 (the "**Cure Italy Decree**") [link], which formally declares COVID19 an exceptional occurrence and a serious disturbance to the economy, for the purposes of article 107 of the Treaty on the functioning of the European Union.

Hold of credit facilities and payment holidays for MSME

2.2 Until 30 September 2020 all micro-enterprises or SMEs ("**MSME**"s) based in Italy and impacted by COVID19 may postpone interest and principal payments until 30 September 2020. For the same term, lenders are prevented from cancelling credit facilities committed to MSMEs.

[5] Legislative decree No. 14 of 12 January 2019

2.3 The relief is effective on a simple declaration by the affected borrower to the lender, and requires no approval or confirmation of that lender. Affected lenders may still apply for a guarantee covered by the SME Protection Fund, for up to 33% of the further credit drawn during the freeze, or 33% or the interest or principal payments extended or postponed. To benefit from that coverage, a lender must bring enforcement action.

2.4 We understand that Parliament is considering the extension of this relief to investment funds invested directly or indirectly in (non residential) real estate, in the consultation on conversion into law of the Cure Italy Decree.

Agri and Fishing Fund

2.5 The Cure Italy Decree established a further fund to support businesses in the agriculture and fishing sectors to bear the cost of interest on loans and credit facilities in the last two years. The fund has an initial endowment of EUR 100m, and the operation of this support is to be determined in a decree of the Ministry of Agriculture and Forestry, in accordance with EU rules on the agriculture sector.

Impact assessment

2.6 The Cure Italy includes a statement that "... *compliance with the containment measures set out in this decree is always assessed for the purposes of exclusion, pursuant to and for the effects provided by articles 1218 (liability of the debtor) and 1223 (compensation for damages) of the civil code* ..." also in relation to "... *any forfeiture of rights or penalties related to delays or failure to perform*".

2.7 This provision is introduced by way of a supplement to law decree No. 6 of 23 February 2020, the legislative measure introducing containment orders as the Government's first response to COVID19. This provision is consistent with the established view of the Italian Courts that a change in law or a binding order of an authority can create an objective and unforeseen impediment to perform a contractual obligation.

3. DECREE 9 OF 2 MARCH 2020

Government has adopted early economic and financial measures to support the economy during COVID19 in law decree No. 9 of 2 March 2020 ("**Decree 9**") [link] including:

(a) extended access to the **SME Protection Fund** for twelve months from publication of Decree 9 for SMEs based in the Red Zone (see 4. below); and

(b) access to the **First-Home Protection Fund** (*Fondo Prima Casa*) established under the 2008 Budget Law[6] for borrowers who have their employment suspended or reduced for 30 days, to obtain a moratorium of up to eighteen months, with the Fund indemnifying the lenders for the cost and charges ensuing from the rescheduling.

4. MORATORIUM FOR RED ZONE

4.1 By order of the Presidency of the Council of Ministries No. 642 of 29 February 2020 (the "**Red Zone Order**") [link], Government declared a moratorium on principal and interest payments on loans for property or businesses located in the 'Red Zone' territories

[6] Article 2 paragraph 475 of law No. 244 of 24 December 2007

identified in the Government's first response to COVID19[7], to mitigate the impact ensuing from the isolation condemned to contain the outbreak.

4.2 The Red Zone Order refers to the 'Piano Famiglie' framework agreement between the Banking Association (ABI) and the main consumer protection associations of December 2009 for the technical instructions to reschedule the loan. Piano Famiglie awards a moratorium of up to twelve months at no additional cost or charge of the borrower.

4.3 Affected borrowers may request a moratorium until the cessation of the state of emergency. Banks which haven't published a general statement setting out their proposed rescheduling and charges within 30 days of publication of the Red Zone Order have payment on their loans suspended until 14 November 2020, at no additional cost for the borrowers.

4.4 The Red Zone Order also declares the health emergency as a cause of 'temporary impossibility not imputable to the debtor' as required under article 1218 of the Italian civil code to exempt a debtor's failure to perform a contract obligation. This provision is unusual, as the law would require a case-by-case review of a debtor's inability to perform an obligation, and the grounds of that inability. This declaration is not limited expressly to the Red Zone municipalities, although the context and general scope of the Red Zone Order are intended to regulate the impact of COVID19 on those territories.

5. ABI Credit Relief

5.1 On 6 March 2020 the ABI has agreed with the main business Associations to extension of the credit support under the existing 'Accordo per il Credito 2019' programme[8] to MSMEs affected by COVID-19 for loan agreements entered into until 31 January 2020. The programme allows SMEs to require a moratorium of up to twelve months (for medium and long term financings), or an extension in repayment plan for up to 100% of the remaining term (for short term loans).

5.2 The lenders may only charge increased costs to the borrowers to cover their own funding costs to third parties ensuing from the rescheduling. The interest rate on medium or long term financing can increase by up to 60 basis points, and the overall cost of a short term loan can also increase, provided that the size of each instalment is reduced to reflect the longer repayment plan. This programme is voluntary for banks, and according to ABI around 98% of the banks active in Italy have acceded to the programme as of 14 March 2020.

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[7] Decree of the President of the Council of Ministries of 23 February 2020: the Municipalities Bertonico, Casalpusterlengo, Castelgerundo, Castiglione D'Adda, Codogno, Fombio, Maleo, San Fiorano, Somaglia and Terranova dei Passerini in Lombardy, and Vo' in Veneto

[8] To facilitate the rescheduling of loans to SMEs Entered into to provide small and medium enterprises the possibility to reschedule their loans to support growth