

ITALIAN LEGISLATION ON COVID19 - MEASURES FOR LOANS

As of 1 June 2021

Italy passed a broad suite of measures to support the economy in the face of COVID19, as amended and superseded over time. 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. CURE ITALY DECREE AND INITIAL RESPONSE

- 1.1 Initial forms of support for the economy were set out in law decree No. 18 of 17 March 2020 (the "**Cure Italy Decree**") [\[link\]](#), which formally declared 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.
- 1.2 The Cure Italy Decree 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*".
- 1.3 This provision was 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.

2. LIQUIDITY DECREE AND FOLLOWING ECONOMIC INTERVENTIONS

- 2.1 Significant measures were passed with law decree No. 23 of 8 April 2020 (the "**Liquidity Decree**"), as converted into law by law of 5 June 2020, No. 40 [\[link\]](#) in accordance with the temporary framework, the rules on State Aids set out in the EU Commission's Communication of 19 March 2020¹ (the "**Temporary Framework**"), with stimulus for EUR 400bn, after the EUR 350bn deployed with the Cure Italy Decree (described below). The availability of these incentives was initially set for 2020 and subsequently extended until 31 December 2021.

State Guarantee for Loans

- 2.2 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 EU Commission Communication C(2020) 1863 of 19 March 2020. See ABI Circular Letter of 2 February 2021.

- 2.3 The Liquidity Decree commits EUR 200bn in total for this form of support, including EUR 30bn for small and medium enterprises² (SMEs) which have used up coverage available to them under SME Protection Fund (described below).
- 2.4 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. The scheme applies to recourse factoring and receivable financing transactions, in respect of commercial claims transferred with or without recourse to the borrower.
- 2.5 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.
- 2.6 To qualify for this guarantee, loans must be granted to finance labour costs, investments, rents and business rentals, or working capital for assets and operations located in Italy, and have repayment schedules not exceeding six years.
- 2.7 However, financings which benefit from SACE's guarantee may be extended for a maximum duration of ten years in aggregate, or replaced by new loans with a term up to ten years in aggregate.
- 2.8 Only up to 25% of the new financing can be applied to discharge pre-existing loan payments falling due between 1 March 2020 and 31 December 2020, provided that these payments had been prevented by the pandemic.
- 2.9 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.
- 2.10 To accede to the guarantee:
- (a) businesses with up to 499 employees 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 and subject to review by the Court of Auditors.
- 2.11 The SACE guarantee is also available for domestic and foreign banks and financial institutions subscribing debt notes and other debt instruments issued by enterprises which would qualify for SACE's loan guarantee. The debt instruments must have a credit rating of

² Defined in EC Recommendation of 6 May 2003: those with up to 250 employees, EUR 50m turnover or EUR 43m assets.

at least BB-, and, with a rating below BBB-, the initial subscribers are required to maintain a share of at least 30% of that debt issue.

SME Protection Fund

- 2.12 The Liquidity Decree strengthens the support for SMEs through access to the SME Protection Fund³ (*Fondo di garanzia per le PMI*) established under the 1997 Budget Law⁴, in form of a guarantee or reinsurance of loans granted by Mediocredito Centrale (the State owned development bank) to banks or financial intermediaries until 31 December 2021. The scheme covers the following amounts:
- (a) for loans up to EUR 30,000, the protection is available for up to 100% of the principal amount, without the need for a credit evaluation, and the duration of the guarantee is up to 15 years;
 - (b) for loans up to EUR 800,000, the protection is up to 100% of the principal, and requires the bank's assessment of each borrower's credit standing;
 - (c) for transactions in excess of the amounts above and up to EUR 5m for each business, the coverage is for up to 90% of principal, and a term of up to 6 years.
- 2.13 The coverage rates at (a) and (b) are set to decrease to 80% with effect from July 2021, and there are lower thresholds based on turnover, cost of labour, budget expenditure and value of a borrower's inventory.
- 2.14 Coverage through the SME Protection Fund is available to SMEs with up to 250 employees and with revenues below EUR 50m. Firms with up to 499 employees could accede to this scheme until 28 February 2021, and from then allowed to resort to SACE's guarantee at the on the simplified procedure described at 2.12-2.13.
- 2.15 This coverage is also available for the extension or rescheduling of loans, provided that this includes at least 10% of new credit (or 25%, for loans granted after 5 June 2020). The coverage was 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.

Corporate and insolvency law

- 2.16 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.
- 2.17 For losses accrued as at 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). The 2021 Budget Law clarified that the statutory capital requirements must be reinstated within the fifth subsequent fiscal year.
- 2.18 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

³ Most recently affected by the ABI Circular Letter of 5 February 2021.

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

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.

- 2.19 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.
- 2.20 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.

3. **HOLD OF CREDIT FACILITIES AND PAYMENT HOLIDAYS FOR MSMES**

- 3.1 All micro-enterprises or SMEs ("**MSME**"s) based in Italy and impacted by COVID19 may postpone interest payments until 30 June 2021, and the repayment of loan principal until 31 December 2021. Until 30 June 2021, lenders are equally prevented from cancelling credit facilities committed to MSMEs.^{6 7}
- 3.2 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% of the interest or principal payments extended or postponed.
- 3.3 To activate the coverage, the lender must bring enforcement action for the borrower's default or failure to pay within 18 months from the end of the covered period as described at 3.1 above.

4. **SUPPORT TO LARGE ENTERPRISES**

- 4.1 From March 2021 the Ministry of Economic Development is endowed with a dedicated fund of EUR 200m to grant loans to large enterprises in temporary distress caused by COVID19.
- 4.2 The fund will support enterprises with more than 250 employees, EUR 50m turnover or EUR 43m assets, in sectors other than banking, finance and insurance sector, showing credit standing sufficient to expect reasonably that the loan will be repaid at maturity. The financings are subject to the limits and conditions laid down in the Temporary Framework, and for a period of 5 years. Companies that were already in distress on or prior to 31 December 2019 are not eligible.

⁵ Legislative decree No. 14 of 12 January 2019.

⁶ The ABI-CDP Agreement of 30 November 2020 on the effects of moratorium granted by banks in favour of SMEs on the return of principal payments, granted by CDP to banks for financing of business and restart of the tax collection, has been amended and replaced by the new Agreement of 31 March in order to regulate also the suspension manners of the CDP facilities also in relation to the payments due as at 30 June 2021.

⁷ A postponement for 12 months was provided also by the Decree No. 18/2020 in relation to beneficiaries of assisted facilities granted by INVITALIA, located in the territories more affected by COVID19 pandemic.

- 4.3 The fund may also support companies in extraordinary administration⁸, provided that loans are aimed to ongoing business, the completion or revamping of plants, buildings and industrial equipment, or other actions as per an approved business plan. Claims in respect of these loans rank super senior in insolvency pursuant to article 111 of the Italian bankruptcy law.
- 4.4 The detailed criteria, terms and conditions for access to this form of support are left to be set out in a decree of the Minister for Economic Development, and the operation of the fund is in each case subject to authorisation of the European Commission.

⁸ As per legislative decree No. 270 of 8 July 1999 and law decree No. 347 of 23 December 2003.