

## Italy's "LIQUIDITY DECREE"

On 8 April 2020, the Official Gazette published Law Decree no. 23, (the **Decree**), which came into effect on 9 April 2020, and contains "urgent measures in relation to access to credit and fiscal compliance for businesses, special powers in strategic sectors, as well as interventions in the areas of health and employment, including the postponement of limitation periods.. The Decree has been tabled before the Italian Parliament for the required conversion into law, which must be effected within 60 days from its presentation. During that process, the Decree may be (and, given the complexity of the provisions, likely will be) subject to amendment by Parliament.

We are circulating this newsletter on the basis that it may be helpful for clients to have an initial, summary list of the civil law elements contained in the Decree, noting that the Decree also includes a series of important provisions relating to accounting and tax matters, as well as matters of public health, which are not described herein.

### ACCESS TO CREDIT

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#### 1. SACE guarantee temporary measures to support cash needs

On the basis of the provisions of article 1 of the Decree, SACE S.p.A. (**SACE**)<sup>1</sup> may, in the period up to 31 December 2020, issue guarantees to banks and national financial institutions to secure new financing to businesses in any form for an aggregate amount of Euro 200 billion<sup>2</sup>.

The release of the guarantee by SACE will be subject to specific conditions and the relevant business assuming specific undertakings and will be subject to the limits established by the Decree.

For businesses with fewer than 5,000 employees in Italy and turnover of less than Euro 1.5 billion, there will be a simplified procedure for access to the guarantee. For businesses which exceed the thresholds set out above, the release of the guarantee will be subject to a decree of the Ministry of the Economy and Finance, adopted taking into consideration the scale of the relevant business in areas of specific relevance for Italy. .

The measures outlined above are, in any case, subject to approval from the European Commission in accordance with the rules on state aid in the Treaty on the functioning of the European Union.

#### 2. Guarantee from the central fund for small and medium enterprises for enterprises with less than 500 employees

Under art. 13 of the Decree, businesses with less than 500 employees may, until 31 December 2020, obtain a free of charge guarantee on new financing (including in the context of a refinancing of existing debt) from the central small and medium business fund, providing cover for amounts up to Euro 5 million. The percentage of coverage from the fund and the process for evaluation for the

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<sup>1</sup> A company which is wholly owned by Cassa Depositi e Prestiti, and active in the sector of insurance for export credit.

<sup>2</sup> At least Euro 30 billion will be used to fund support for SMEs (including the self-employed and independent professionals who have already exhausted their access to the central guarantee fund for small and medium enterprises.

grant of such coverage, within the aforesaid general limits, will vary in accordance with amount guaranteed and the dimension of the relevant business.

## **MEASURES IN SUPPORT OF EXPORTS, INTERNATIONALISATION AND INVESTMENT IN ENTERPRISES**

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In order to increase public support for export activity, art. 2 of the Decree invests SACE with the role of export credit agency, providing for a system of co-insurance of non-market credit risks, on the basis of which the obligations deriving from the insurance activity of SACE are assumed by the State as to 90% and the remaining 10% by SACE.

As a consequence, significant amendments to the functioning of SACE and its relations with the Ministry of Economy and Finance are set out in the Decree.

The mechanism will enter into force fully as from 1 January 2021.

In addition, it is provided that SACE may continue, after 31 December 2020, to grant, on market terms and in compliance with EU rules, guarantees in any form in favour of banks and, in general, entities (both national and international) entitled to grant credit for financing in any form to businesses with a presence in Italy, up to an aggregate, maximum amount of Euro 200 billion. With respect to such obligations assumed by SACE, it is provided that the State will, by law, grant a first demand guarantee. This provision is not yet completely operative: the conditions for the grant of guarantees by SACE and those regarding the operation of the guarantee granted by the State will be defined by an inter-ministerial decree, also in order to ensure conformity with EU measures.

## **PROVISIONS RELATING TO COMPANY LAW**

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### **1. Temporary derogations to the provisions of the Civil Code (Articles 6, 7 and 8)**

- Until 31 December 2020, in relation to the last financial year ended prior to that date, the provisions relating to the obligation to restore or reduce the corporate capital as a result of losses, as well as those providing for the liquidation of a company for the reduction or loss of capital below the minimum amount prescribed by law will not apply..
- In drawing up the balance sheet for the financial year that is in course on 31 December 2020, and the balance sheets closed on or before 23 February 2020 and not yet approved, the evaluation of a going concern may be assumed where such going concern existed in the last balance sheet for the financial year ended prior to 23 February 2020.
- The provisions on the subordination of shareholder financing set out in arts. 2467 and 2497 *quinquies* of the Civil Code will not be applied in the period up to 31 December 2020 (and, therefore, any shareholder financing granted in that period will always rank equally with, and not be subordinated to, third party financing).

## 2. Golden Power (Articles 15 and 16)

The special powers of the government are extended to 31 December 2020 (opposition to the acquisition of shareholdings, veto on the passing of company resolutions and the imposition of specific limitations and conditions) to safeguard the assets of companies operating in strategic sectors. In particular:

- the concept of a “strategic sector” (which prior to the Decree covered the sectors of defence, national security, energy, transport, communications and networks of electronic telecommunication) is extended to other sectors, including the sectors of food, health, finance, insurance and credit;
- the requirement to notify the office of the Prime Minister of acquisitions of shareholdings in companies which hold assets and “relationships” in “strategic sectors” applies to (i) foreign entities in jurisdictions not forming part of the European Union in relation to acquisitions of holdings which (a) result in such entity holding a share of the voting rights in or of the share capital of at least 10% (taking into account any direct and/or indirect holdings already held) of the relevant entity, where the total value of the investment is equal to or greater than Euro 1 million; or (ii) results in exceeding a capital threshold of 15%, 20%, 25% or 50% and (ii) in relation to foreign EU entities, for acquisitions of shareholdings such as to result in the acquirer assuming a stable role within the target by reason of assuming control;
- resolutions, actions and transactions which may have the effect of altering the holding of control, or of the “availability of the assets”, or the change of their use must be notified by all businesses operating in “strategic sectors”;
- the Government may also prohibit an investment where the buyer is directly or indirectly controlled by the public administration of a EU member state.
- Finally, the power to the Government may exercise its special powers spontaneously, even if the relevant transaction has not been notified.

## 3. Extension of the powers of Consob to introduce temporary, stricter obligations in relation to the notification of holdings in listed companies

The powers of Consob have been extended to provide that it may, with its own reasoned measures, on the basis of the requirement to protect investors, as well as the efficiency and transparency of the market, establish that:

- The obligation to communicate relevant holdings ex Art. 120 TUF and related regulatory provisions of implementation arises, for a limited period of time, also upon exceeding lower thresholds in the share capital of companies with particularly widely held capital<sup>3</sup>;
- For a limited period of time, the notification obligations under Art. 120, comma 4-bis, of the TUF, will also be applicable to subjects which acquire a holding equal to or greater than 5% in a company with particularly wide spread ownership<sup>4</sup>.

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<sup>3</sup> See, in this context, the resolution of Consob n. 21326 of 9 April 2020 (<http://www.consob.it/web/area-pubblica/bollettino/documenti/bollettino2020/d21326.htm>) according to which Consob, in the exercise of that power, has introduced additional thresholds (1% for companies which do not qualify as Small/Medium Enterprises and 3% for Small/Medium Enterprises) for the purposes of the obligation to notify relevant holdings in the capital of companies included in the list attached to the resolution.. The measures in the resolution referred to will remain effective for 3 months (unless revoked earlier) as from 11 April 2020..

<sup>4</sup> See, in this context, the decision of Consob n. 21327 del 9 April 2020 (<http://www.consob.it/web/area-pubblica/bollettino/documenti/bollettino2020/d21327.htm>). The provisions of the resolution referred to will remain in force for 3 months (unless revoked earlier) from 11 April 2020..

## PROVISIONS RELATING TO INSTRUMENTS OF CREDIT

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In accordance with Article 11:

- The deadlines (whether initial or final) falling in the period from 9 March to /30 April 2020, including any act of enforcement related to the instruments of credit (such as bills of exchange and cheques) already issued are suspended, provided that cheques presented for payment during the suspension period are payable on the day of presentation.
- Protests or equivalent ascertainties raised from 9 March to 9 April are not published, or, if published, will be cancelled.

## PROVISIONS RELATING TO INSOLVENCY PROCEEDINGS AND THE CRISIS

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- The entry into force of the Code relating to the Business Crisis (D.lgs. 12 January 2019, n. 14) has been postponed to 1 September 2021 (Article 5);
- The deadline for compliance with the terms of approved creditors arrangements (*concordati preventivi*) and restructuring agreements which expire in the period from 23 February 2020 to 31 December 2021 are extended for 6 months (Article 9);
- In proceedings for the approval of creditors arrangements (*concordati preventivi*) and restructuring agreements which are pending as at 23 February 2020, the debtor may, until the hearing is held for the approval, present a request to the court to be granted a term, no longer than 90 days, to present a new plan or a new restructuring agreement proposal. Such request will be admissible if presented in the context of proceedings for an arrangement with creditors where the meeting of creditors has already been held, but the majority required by law for the approval of the arrangement has not been reached (Article 9);
- Where the debtor intends only to modify the term for carrying out the arrangement with creditors or the restructuring agreement, the debtor may indicate a new term, attaching documentation which substantiates the necessity. The postponement may not be longer than 6 months from the original deadlines (Article 9);
- A debtor which has made a so called “blank” request for an arrangement with creditors (*concordato c.d. “in bianco”*) and has been granted by the Court a deadline for the deposit of the supporting documentation and a further extension of such deadline, may present a request for a further extension of up to 90 days. The Court will grant the extension if the request is founded on concrete and justified reasons. An analogous rule is provided for in favour of a debtor which has filed a proposal for a restructuring agreement and obtained from the Court the 60 day term for the deposit of the restructuring agreement (Article 9);
- No requests for bankruptcy, administrative winding up or insolvency filed in the period from 9 March 2020 to 30 June 2020 will be proceeded with, subject to the exception for requests presented by the public prosecutor when the same request also contains a request for precautionary or conserving measures to protect the assets of the relevant business. If, following the Court decision not to proceed, the business owner is, in any case, declared insolvent, the period from 9 March 2020 and 30 June 2020 will not be taken into account in the calculation (a) of the latest date on which the business owner may be declared bankrupt (i.e. one year from the cancellation from the Register of Enterprises); and (b) the end of the limitation period for proceeding with insolvency claw-back actions. (Article 10).

## PROVISIONS IN RELATION TO PROCEDURAL MATTERS

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The term of suspension provided for art. 83, sub-paragraphs 1 and 2 of the Law Decree 17 March 2020, no. 18 (the "**Cure Italy**" Decree) has been extended to 11 May 2020 for civil and penal hearings pending before the courts and for any action in civil or penal proceedings, subject to the exceptions under art. 83, paragraph 3 of the Cure Italy Decree. The provision applies also to proceedings involving mediation or assisted negotiation, as well as to proceedings of the tax tribunals and military magistrates.<sup>5</sup> A further extension has been provided for by judges applying the code of procedure for administrative matters, where the terms for notification of appeals are further suspended from 16 April to 3 May 2020 (inclusive), with the exception of precautionary proceedings. With regard to the terms of administrative proceedings and the effectiveness of administrative provisions reaching expiry, art. 37 of the Decree provides, on the other hand, for the extension to 15 May 2020 of the term of 15 April 2020 provided for by commas 1 and 5 of Article 103 of the "Cure Italy" Decree.

## LABOUR LAW PROVISIONS

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Art. 41 of the Decree extends access both to the normal state unemployment fund and to an unemployment cheque under Art. 19 of the "Cura Italia" Decree, also to new employees, as well as exceptional access to the supplementary unemployment fund under art. 22 of the Decree, also to employees hired in the period from 24 February to 17 March 2020.

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<sup>5</sup>On the other hand, there is a specific exclusion from the application of the aforementioned provisions for penal proceedings in which the maximum terms of preventive detention expire in the 6 month period after 11 May 2020.