

Covid-19 – "Liquidity Decree" (D.L. April 8, 2020, n. 23) urgent measures for access to financial credit, internationalization and tax compliance.

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I. INTRODUCTION

The "Liquidity Decree" (Decree-Law no. 23, April 8, 2020) pursues the objective of countering medium and long term critical issues for companies, introducing – specifically at Chapter I (articles 1-3), Chapter II (articles 4-14) and Chapter IV (articles 18-35) – further and different measures to support companies, intervening on five main macro-sectors:

1. access to financial credit and support for liquidity, export, internationalization and investment;
2. ensurance of business continuity;
3. strengthening special powers in areas of strategic importance and financial transparency obligations;
4. taxation and accounting;
5. court proceedings.

The so-called "**liquidity bazooka**" provides more than 400 billion Euro guarantees, bringing the "mobilised credit" to more than 750 billion Euro. This intervention is apparently in line with the measures launched by the other European countries affected by the health emergency. Germany, for example, has allocated more than 820 billion Euro through the new Economic Stabilisation Fund (WSF) and the Credit Institute for Reconstruction (KfW) to strengthen and extend the coverage of public guarantees on loans to companies affected by Covid-19. More limited resources, yet significant, have been issued by France: up to € 300 billion to support public guarantees on loans granted to companies affected by the emergency. Finally, Spain has allocated up to € 100 billion to implement the volume of public guarantees to support the new finance provided to SMEs, self-employed professionals and even large companies damaged by the virus.

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II. MEASURES FOR ACCESS TO CREDIT FOR BUSINESSES (CHAPTER I, ARTICLE 1)

Article 1 of the Liquidity Decree introduces and regulates temporary measures to support the liquidity of companies based in Italy, which are grounded on the following assumptions:

- the granting by SACE Simest (a company belonging to the Cassa Depositi e Prestiti Group) until December 31, 2020, of guarantees (under European State aid rules) up to a maximum of 200 billion Euro, of which at least 30 billion Euro to support SMEs, including self-employed workers and freelancers with a VAT number, in favor of banks, national and international financial institutions and other entities authorized to exercise credit in Italy, to cover loans granted in any form to businesses;
- compliance with the subjective and objective conditions set out in paragraphs 2 to 11 of Article 1.

1. The beneficiaries of the measures

companies of any size, operating in any sector of activity, which meet the following requirements:

- headquartered in Italy;
- destination of the requested financing to Italian industrial plants;

- "non distressed" as at December 31," 2019, pursuant to Article 2, point 18, of Commission Regulation (EU) No 651/2014 of June 17 2014;
- who have faced or are distressed exclusively as a result of the Covid-19 pandemic;
- previous access to the Guarantee Fund up to full capacity;
- self-employed workers;
- self-employed persons with a VAT number.

2. Types of financing eligible for the guarantee

- loans for personnel costs;
- loans for investment;
- loans for working capital.

Loans will have a cost applied to the company in line with the Covid-19 pre-emergency financing conditions.

3. The conditions for issuing the guarantee (art. 1, paragraph 2)

- the guarantee can only cover loans of up to 6 years, with the possibility for companies to make use of a grace period of up to 24 months;
- the amount of the guaranteed loan must not exceed the higher of (i) 25% of the company's annual turnover in 2019, as shown in the balance sheet or tax return; (ii) double the company's personnel costs in 2019, as shown in the balance sheet or certified data; (iii) if the company started its activity after December 31, 2018, the expected personnel costs for the first 2 years of activity (as documented and certified by the company's legal representative) will be referred to instead.

4. The characteristics of the guarantee

- is on first demand, explicit, irrevocable, and complies with the requirements of prudential supervision regulations for the best mitigation of credit risk;
- it only covers new loans, granted to the company after the entry into force of this decree, for capital, interest and ancillary charges up to the maximum amount guaranteed;
- and to cover only loans with a duration not exceeding 6 years;
- must be applied for by December 31, 2020.

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The guarantee, in equal and proportional contribution between the guarantor and guaranteed in losses due to non-repayment of the loan, covers the:

- 90% of the amount of the loan for companies with less than 5000 employees in Italy and a turnover of up to 1.5 billion Euro;
- 80 % of the amount of financing for companies with a turnover value between 1,5 billion Euro and 5 billion Euro or with more than 5000 employees in Italy;
- 70 % for companies with a turnover value of more than 5 billion Euro.

The entire *plafond* of the guarantee will be 200 billion Euro, of which at least 30 billion Euro will be allocated to support SMEs, self-employed workers and professionals holding VAT numbers, and these companies can access to the guarantee whether they have exhausted their capacity to use the credit issued by the Central Guarantee Fund.

5. The costs of the guarantee

The costs of the guarantee shall be proportionate to the size of the company applying for financing:

- for enterprises with turnover \leq € 50 mln and number of employees \leq 250 will be - 25 bps (for year 1) 50 bps (from year 2 to year 3) 100 bps (from year 4 to year 6);
- for companies with turnover \leq €1.5 bps or number of employees \leq 5,000 will be 50 bps (for year 1) 100 bps (from year 2 to year 3) 200 bps (from year 4 to year 6);
- for companies with a turnover $>$ 1.5 billion € or a number of employees $>$ 5,000 will be 50 bps (for year 1) 100 bps (from year 2 to year 3) 200 bps (from year 4 to year 6).

The total cost for the applicant company, therefore, will consist of the specific financing cost (interest rate including margin) defined by each financing institution, and the cost of the guarantee.

Article 1, paragraph 2, letter h), also specifies that: (i) the fees must be limited to the recovery of costs; (ii) the cost of the loans covered by the guarantee must be lower than the cost that would have been required by the lender or lenders for transactions with the same characteristics but without the guarantee; (iii) this lower cost must be at least equal to the difference between the cost that would have been required by the lender or lenders for transactions with the same characteristics but without the guarantee and the cost actually applied to the company.

6. Warranty exclusions

The guarantee may not be issued for loans for the refinancing of loans already obtained.

7. Obligations of the undertakings benefiting from the guarantee

- both the company benefiting from the guarantee and any other company based in Italy and belonging to the same group is obliged not to approve the distribution of dividends or the repurchase of shares during 2020;
- the beneficiary company is obliged to manage employment levels through union agreements;
- the lender must demonstrate that, following the issue of the guaranteed loan, the total amount of exposures to the lender is higher than the amount of exposures held at the date of entry into force of the decree, adjusted for the reductions in exposures that occurred between the two dates as a result of the contractual settlement established between the parties before the entry into force of this decree;
- the financing covered by the guarantee must be used to support personnel costs, investments, or working capital employed in production plants and business activities located in Italy.

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III. CENTRAL GUARANTEE FUND FOR "PMI" (CHAPTER II, ARTICLE 13)

Article 13 of the provision regulates access to the Guarantee Fund for PMI in derogation of the relevant provisions of Law 662/1996, repealing Article 49 of the Italian Care Decree.

1. Entities entitled to apply for the Guarantee according to art. 13

The access to the Guarantee Fund is allowed to **companies**:

- with no more than 499 employees, based in Italy, who allocate the guaranteed financing to Italian plants;
- even if, in the period between 31.01.2020 and the date of application for the guarantee, they have exposures to the lender classified as "probable defaults" or "past due" or "impaired loans"

following Bank of Italy Circular No. 272 of 30.07.2008, as amended and supplemented. (par. 2, part B);

- and even after the date of 31.12.2019 (i) have been admitted to the arrangement procedure with going concern according to art. 186 bis of Royal Decree no. 267/1946; (ii) have entered into debt restructuring agreements pursuant to art. 182 bis of Royal Decree no. 267/1946; (iii) have submitted a certified plan pursuant to art. 67 of Royal Decree no. 267/1946. 267/1946, provided that at the date of entry into force of the Liquidity Decree (A) the related exposures cannot be classified as "impaired"; (B) they do not have any amounts in arrears after the application of the measures granted; and (C) the Bank can reasonably assume full repayment of the loan at maturity pursuant to Article 47 bis, paragraph 6, letters a) and c), of EU Regulation no. 575/2013.

2. Eligible Loans

Loans granted by the Banks or other qualified entities are admitted to the Guarantee Fund:

- of an overall amount not exceeding, alternatively, (i) double the beneficiary's annual personnel costs incurred in 2019 or in the last available year; (ii) 25% of the beneficiary's total turnover in 2019 or in the last available year; (iii) the requirements for working capital and investment costs in the following 18 months in the case of small and medium-sized enterprises, and in the following 12 months in the case of enterprises with employees up to 499, certified by the beneficiary by means of self-certification (letter c), paragraph 1, art. 13);
- of a duration not exceeding 72 months (6 years);
- even if already completed and disbursed no later than three months after the date of application for the guarantee and, in any case, after 31.01.2020, provided that the lending institution reduces the interest rate applied to the operation as a result of the granting of the guarantee and notifies the Fund thereof;
- even if disbursed for the rescheduling of the beneficiary's pre-existing debts, provided that the new finance amounts to at least 10% of the outstanding rescheduled loan;
- and even when the new finance is granted to small and medium-sized enterprises, natural persons engaged in business activities, arts or professions, which self-certify the harmful impact of Covid-19 on the related activities, provided that such financing (i) does not exceed the duration of 6 years; (ii) does not exceed 25% of the beneficiary's income resulting from the last financial statements deposited or the last tax declaration submitted; (iii) provides for the start of repayment of the capital not earlier than 24 months after disbursement.

Article 4 of the Liquidity Decree regulates simplified procedures for the signing of loan agreements. To this end, the customer's consent may also be given by non-certified electronic mail or other suitable means (to meet the requirements of both written and evidential effectiveness). It is still necessary for the customer to attach an identification document and specify the contract to be signed to allow the unequivocal identification of both the parties and the type of financing signed. Besides, the obligation is imposed to keep the contract in such a way as to guarantee its security, integrity and unchangeability. The same simplified and "remote" procedure is provided for the exercise of the right of withdrawal by the customer.

3. The content of the Fund Guarantee

In relation to the above financial transactions, the Central Guarantee Fund Guarantee for PMI:

- is available until 31.12.2020;
- is granted free of charge and without the application of the Fund's valuation model to the beneficiary;
- it is granted up to a maximum amount of € 5 million per company, in compliance with the EU guidelines;
- directly covers up to 90% of the value of the operation, subject to authorization by the European Commission (art. 108 TFEU);
- it covers in reinsurance up to 100% of the amount guaranteed by the Confidi or other guarantee funds, provided that the guarantees issued by them (i) do not cover more than 90% of the underlying amount, and (ii) do not provide for the payment of premiums that take into account the remuneration of the credit risk (until the authorization of the European Commission - and, in any case, for financing other than those referred to in the previous point (letter c of the DL) - the coverage percentages of the direct guarantee and in reinsurance are equal, respectively, to 80% and 90%);
- for loans granted for the rescheduling of a pre-existing debt, the coverage percentages of the direct guarantee and reinsurance guarantee are 80% and 90%, respectively, if the amount is guaranteed by the Confidi or other guarantee funds provided that, in the latter case, the guarantees issued by the latter do not cover more than 80% of the underlying amount;
- for the operations admitted to the Guarantee Fund already subject to measures of suspension and/or extension of the terms of expiry granted autonomously by the credit institutions depending on the health emergency, the duration of the Guarantee is automatically extended for the corresponding period;
- for real estate investment operations in the tourism-hotel and real estate sectors, with a minimum duration of ten years and an amount greater than €. 500,000.00, the Fund's guarantee can be cumulated with other forms of guarantee;
- regarding specific financing portfolios, even without an amortization plan, intended for companies affected by the health emergency and belonging to sectors and supply chains damaged by the epidemic, the guarantee covers up to 50% of the junior tranche and may extend for a further 20% if additional guarantors intervene;
- for financial transactions for the benefit of small and medium-sized enterprises, natural persons engaged in business activities, the arts or professions, which self-certify the damaging impact of Covid-19 on the related activities, the guarantee (i) covers 100% of the value of the transaction, both directly and in reinsurance, (ii) is automatic and free of charge; (iii) is granted without assessment of the status of the beneficiary's debt exposure;
- regarding companies whose revenues do not exceed € 3.2 million, whose activity has been damaged by Covid-19, the Fund's guarantee - which may be granted for loans not exceeding 25% of the beneficiary's revenues - may be cumulated with other forms of guarantee issued by Confidi or other authorized entities up to 100% of the loan disbursed;
- regarding loan portfolios of up to €. 500 million, with a duration of up to 6 years and an amount following the letter as mentioned earlier c), paragraph 1, of art. 13, even without amortization plan, intended for companies damaged by Covid-19, at least 20% of which are companies with a "BB" rating on the Standard's and Poor's scale, the guarantee covers up to 90% of the loss recorded on the individual loan;
- concerning the minibond portfolios, the guarantee is granted on the Fund's available endowment, ensuring the existence, from time to time, of an amount of free resources of the Fund, destined to issue guarantees on individual financial transactions, equal to at least 85% of the Fund's available endowment.

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IV. MEASURES TO SUPPORT EXPORTS AND BUSINESS INVESTMENT (CHAPTER I, ARTICLE 2)

The Liquidity Decree also strengthens public export support by introducing some amendments to Article 6 of Decree-Law 269/2003, which governs the operation of SACE's intervention.

In particular, the intervention provided for by article 2 of Chapter I provides for a co-insurance system under which the State assumes 90 % of the commitments deriving from SACE's insurance activity and the remaining 10% by the company itself, thus freeing up to a further 200 billion of resources to be allocated to the strengthening of exports.

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V. BUSINESS CONTINUITY (CHAPTER II)

To ensure business continuity in the difficult emergency phase, the Liquidity Decree also provides for a package of measures that have an impact on both company and insolvency law.

With particular regard to companies that before the crisis were in balance and had a regular prospect of business continuity, the legislative intervention until 31.12.2020, has its effects:

- when preparing the current financial statements, assessing the criteria of prudence and continuity in the light of the situation emerging from the last financial statements closed;
- suspending the effectiveness of the causes of corporate dissolution due to reduction or loss of share capital.

In addition to these two measures to directly protect the company, there is a third one that aims to encourage the involvement of shareholders in increasing the flow of financing to the company, deactivating at this stage the mechanisms that generally put them in second place to creditors.

There are also measures concerning the discipline of bankruptcy which, on the whole, are aimed at this stage at:

- to prevent companies from opening bankruptcy and other insolvency proceedings for as long as the emergency lasts;
- sterilize the period of the crisis to calculate actions to protect creditors (i.e. at the end of the emergency period, creditors may, if necessary, bring actions for revocation).

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VI. TAX AND ACCOUNTING MEASURES (CHAPTER IV, ARTICLES 18-21)

The Liquidity Decree also introduces new and additional fiscal and accounting measures, also to mitigate the critical issues encountered with the previous Care Italy Decree which, except for companies operating in the sectors most affected by the pandemic, had suspended payments of taxes and contributions only to companies with revenues of less than 2 million euros.

In particular, Articles 18 - 21 of Chapter IV provides:

- the suspension of tax payments, contributions and premiums for compulsory insurance falling due in April 2020 and in May 2020 for persons a) with revenues or compensation not exceeding 50 million Euros, if they have recorded a decrease in revenues or compensation of at least 33% in March 2020 compared to the same month of the previous tax period and a decrease of the same percentage in April 2020 compared to the same month of the previous tax period; b) with revenues or compensation exceeding 50 million euros but whose decrease in revenues is at least 50% ;

- the suspension of VAT payments, for the months of April and May 2020, for persons carrying on business, art or profession, who have their fiscal domicile, registered office or operating headquarters in the provinces of Bergamo, Brescia, Cremona, Lodi and Piacenza, who have suffered a decrease in revenues or remuneration of at least 33%, regardless of the amount of the revenues or remuneration achieved;
- for companies operating tourist accommodation, travel and tourism agencies and tour operators, as well as persons included in paragraph 2 Art. 61 of DL 18 of March 17 2020 (restaurants, museums, theaters, freight and passenger transport services, etc.), if they do not fall within the above parameters, remains the suspension provided for until 30/04/2020 of withholding work and similar and social security contributions to compulsory insurance premiums (as provided by art. 8 paragraph 1 of DL 9/2020);
- the suspension of withholding taxes according to articles 25 and 25-bis of Presidential Decree no. 600/1973 on revenues or compensation received in the period between March 17, 2020 (the date of entry into force of Decree-Law no. 18) and May 31, 2020 (instead of March 31, 2020) for income from self-employment, commissions relating to commission, agency, brokerage, trade representation and business procurement relationships on condition that the parties concerned have revenues or compensation not exceeding €400,000 in the tax period before the date of entry into force of the Decree-Law and that they have not incurred expenses for employment or similar services in the previous month.

Concerning **IRES and IRAP** advance payments, provision is made for this:

- the non-application of penalties and interest for insufficient payment, provided, however, that the difference between the amount paid and that due does not exceed 20% ;
- the remittance in terms of payments, considering that payments to public administrations due on March 16, 2020, extended to March 20, 2020, by art. 60 of Decree 18/2020, if made by April 16, 2020, have been duly made.

Chapter IV closes with the provision of a series of other measures on tax obligations that are about to expire and on the simplification of their implementation.

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