

## CLIENT ALERT

### LAW DECREE NO. 23/2020: SUMMARY FINANCIAL SUPPORT MEASURES

April 18<sup>th</sup>, 2020

**AUTHOR:** *Vincenza Altieri*

---

Law Decree no. 23 of 8 April 2020 addressing "*Urgent measures for companies to access credit, tax compliance provisions, special powers in strategic sectors as well as interventions for health and workplace safety, extension of administrative and procedural deadlines*"; published in the OG no. 94 of 8 April 2020 and entered into force on 9 April 2020, so-called *Decreto Liquidità*, ("Law Decree no. 23/2020").

Please see below summary of main financial support measures, in the form of guarantees, for companies, in particular small and middle-sized enterprises, provided by Law Decree no. 23/2020, taking into account also (i) how they integrate similar guarantee provisions mentioned the previous issued Law Decree no. 18/2020 (so-called *Decreto Cura Italia*) and (ii) subsequent approval by the European Commission on 13 April 2020 making effective some guarantees commitments or increasing the guarantee coverage.

#### **1) Guarantees by SACE S.p.A. (Art. 1)**

**Preliminary note:** this is a supplementary measure with respect to the provisions of Law Decree no. 18/2020 (so-called "*Cura Italia*") as provided in art. 53 (State guarantee in favour of SACE S.p.A.<sup>1</sup> for insurance operations in the cruise sector already approved as of 17 March 2020, up to a maximum amount of Euro 2.6 billion) and art. 59 (guarantees and insurance coverage of SACE S.p.A. in favour of (a) foreign suppliers for the sale to the Italian Regions of goods related to the management of the COVID-19 emergency, and (b) Italian and foreign banks and other credit facility entities financing the aforesaid sale activities and any related activity); the effectiveness of the new measure is subject to the approval of the European Commission. **Update: the European Commission approved these new provisions on 13 April 2020, and therefore they are now effective and operative.**

**Scope:** until 31 December 2020, SACE S.p.A. grants guarantees in favour of the beneficiaries indicated below, with a maximum total financial commitment of Euro

---

<sup>1</sup> A State-owned company providing guarantee and insurance services, in particular, for credit export activities.

## CLIENT ALERT

200 billion (of which Euro 30 billion reserved for SMEs<sup>2</sup>). **Beneficiaries:** Italian and international financial institutions and other credit facility entities carrying out their credit activities in Italy; all companies based in Italy affected by the COVID-19 epidemic (including SMEs if they have already used and exhausted their guarantee access to the Central Guarantee Fund) provided they are not classified, as at 31 December 2019, as companies in economic difficulty<sup>3</sup>, and are not in default, as at 29 February 2020, with banks<sup>4</sup>.

### Conditions, characteristics and procedure:

(i) the issuance of guarantees is subject to the following conditions:

- a)** loans granted by 31 December 2020, with a maximum duration of 6 years and the possibility of pre-amortisation of up to 24 months;
- b)** guaranteed loan amount equal to the greater of the following two values:
  - 25% of annual turnover for 2019 in Italy;
  - double of personnel costs for 2019 in Italy;
- c)** guarantee coverage equal to:
  - 90% of the loan, for companies with less than 5,000 employees in Italy and turnover up to Euro 1.5 billion;
  - 80% of the loan, for companies with more than 5,000 employees in Italy or turnover between Euro 1.5 billion and Euro 5 billion, subject to the approval mentioned in point (iii) below ;
  - 70% of the loan, for companies with a turnover of more than Euro 5 billion, subject to the approval mentioned in point (iii) below;
- d)** coverage of new loans granted after 9 April 2020, for principal amount, interest and ancillary charges up to the maximum amount guaranteed;
- e)** guarantee commissions are limited to the recovery of costs, and loan commissions applied by lenders and guaranteed by SACE S.p.A. cannot exceed the amount of costs if they were applied by lenders without such guarantee;
- f)** commitment by the company not to approve the distribution of dividends or the repurchase of shares during 2020;

<sup>2</sup> As defined in Recommendation no. 2003/361/EC of the European Commission (i.e. companies with less than 250 employees and either an annual turnover not exceeding Euro 50 million or an annual balance sheet not exceeding Euro 43 million).

<sup>3</sup> As defined in EU Regulations nos. 651/2014, 702/2014 and 1388/2014.

<sup>4</sup> As defined under EU Regulations.

## CLIENT ALERT

**g)** commitment by the company to manage employment levels through agreements with trade unions;

**h)** use of the guaranteed loan to support personnel costs, investments or working capital, used in production plants and business activities located in Italy;

**i)** payment by the companies of annual guarantee commissions;

**(ii)** in order to facilitate the guarantee, for companies with less than 5,000 employees in Italy and a turnover of less than Euro 1.5 billion, the following simplified procedure is available:

- the company submits an application credit to the lender;

- in case of acceptance, the lender sends to SACE S.p.A. a request to issue the guarantee;

- SACE S.p.A. verifies the positive outcome of the lender's resolution and issues a unique identification code for the loan and guarantee;

- the lender grants the loan guaranteed by SACE S.p.A.;

**(iii)** for companies with employees and turnover exceeding the thresholds under point (ii) above, the issuance of the guarantee is decided by a decree of the Minister of Economy and Finance, after consulting the Minister of Economic Development, taking into account the role of the company in specific sectors (as indicated in Art. 1 paragraph 7, a) to e), including contributions made to technological development, strategic infrastructures, employment levels, etc.);

**(iv)** the obligations of SACE S.p.A. are guaranteed by the State on a first demand, express, unconditional and irrevocable basis, and cover the repayment of the principal amount, interest and any other accessory charges, net of commissions received.

## **2) State guarantee on exposures by Cassa Depositi e Prestiti S.p.A. (Art. 1)**

**Preliminary note:** this is a supplementary measure to the provisions of the previous Law Decree no. 18/2020 and, in particular, to art. 57 (counter-guarantee by the State of 80% of the exposures by Cassa Depositi e Prestiti S.p.A. in favour of banks and other credit facility entities carrying out their activities in Italy granting loans to companies with reduced turnover due to the COVID-19 emergency, operating in sectors identified by ministerial decree and without access to the Central Guarantee Fund for SMEs).

**Scope:** the Minister of Economy and Finance, by decree, may grant, in compliance with EU regulations, a State guarantee on exposures undertaken or to be undertaken

## CLIENT ALERT

by Cassa Depositi e Prestiti S.p.A. by 31 December 2020, deriving from its guarantees in favour of the beneficiaries indicated below in respect of investment portfolios.

**Beneficiaries:** Cassa Depositi e Prestiti S.p.A.; banks and other credit facility entities carrying out their activities in Italy; companies based in Italy with reduced turnover due to the COVID-19 emergency.

**Conditions and characteristics:**

- (i) the maximum total financial commitment is Euro 200 billion;
- (ii) the guarantee is on a first demand, unconditional, express and irrevocable basis;
- (iii) the guarantee is covered by a fund with an initial contribution of Euro 1,000 million for the year 2020.

### 3) **Central Guarantee Fund for SMEs (Art. 13):**

**Preliminary note:** this measure replaces art. 49 of the previous Law Decree no. 18/2020. However, for the sake of clarity, other financial support measures provided by previous Law Decree no. 18/2020 in favour of specific categories of companies remain in force, for example as provided in art. 56 (temporary suspension of termination of certain loans and overdraft facilities, temporary extension of duration of specific loans, temporary suspension of instalments repayment of loans and other financings), art. 58 (temporary suspension of instalments repayment of subsidised loans) and art. 94 (support to the air transport sector and airport operators).

**Scope:** until 31 December 2020, the beneficiaries listed below may have access to guarantees by the Central Guarantee Fund for SMEs under certain favourable conditions.

**Beneficiaries:** SMEs based in Italy covering also companies employing up to a maximum of 499 employees, but excluding “non performing companies” vis a vis banks.

**Conditions, characteristics and procedure:**

- (i) companies have free access to the guarantee without being subject to the fund's valuation model;
- (ii) maximum total amount guaranteed per company has been increased (from Euro 2.5 million) to Euro 5 million;
- (iii) total amount of loan, with a maximum duration of 6 years, not exceeding one of the following:

## CLIENT ALERT

- double the amount of the beneficiary's employment costs for 2019 or the last available year;
- 25% of the total turnover of the beneficiary for 2019;
- working capital costs and investment costs to be made in the following 18 months by small and medium-sized companies, or 12 months by companies with a maximum of 499 employees;

**(iv)** direct guarantee coverage has been increased to 80% (to be increased to 90% once authorised by the European Commission) of each financial transaction. **Update: the European Commission authorised this provision on 13 April 2020, thus the guarantee coverage has been increased to 90%;**

**(v)** reinsurance coverage has been increased to 90% (to be increased to 100% once authorised by the European Commission) of the amount guaranteed by *Confidi* or other guarantee fund, provided that such guarantees do not cover more than 90% of a loan and do not request the payment of a credit risk premium to the Fund. **Update: the European Commission authorised this provision on 13 April 2020, thus the reinsurance coverage has been increased to 100%;**

**(vi)** direct guarantees and reinsurances are available also in case of renegotiation of debts, provided that (i) the new loan is made to the same beneficiary, (ii) the new loan amount is at least 10% higher than the original loan, and (iii) in case of reinsurances, the guarantee coverage does not exceed 80% of the loan;

**(vii)** the duration of the guarantee is automatically extended in the event of (a) extension of the duration of the guaranteed loan or (b) suspension of instalments or principal amount repayment;

**(viii)** the guarantee is available also for loans already granted to the borrower within 3 months preceding the guarantee application and in any event granted after 31 January 2020, provided the lender reduces the applicable interest rate and communicates such reduction to the Fund;

**(ix)** the guarantee is available also to: (a) companies whose exposures towards the lender are classified, after 31 January 2020, as "probable defaults" or "overdue or deteriorated"; and (b) companies which, as of 31 December 2019, have entered into any of the following business supporting procedures: Creditors' Arrangement (*Concordato Preventivo*) pursuant to art. 186 *bis* of the Italian Bankruptcy Law or Debt Restructuring Agreement (*Accordo di Ristrutturazione del Debito*) pursuant to art. 182 *bis* of the Italian Bankruptcy Law or Certified Business Continuity Plan (*Piano Attestato di Risanamento*) pursuant to art. 67 of the Italian Bankruptcy Law, provided that, as at

## CLIENT ALERT

9 April 2020, they do not have exposures classified as "deteriorated", nor amounts overdue, and the bank can reasonably assume full repayment of the exposure within the deadline;

**(x)** the guarantee can coexist with other guarantees in respect of real estate investments, in the tourism-hospitality sector and other real estate activities, which have a minimum duration of 10 years and an investment value above Euro 500,000;

**(xi)** the guarantee is available to SMEs and individual professionals or aircraftmen declaring they have suffered damage from the COVID-19 emergency and require new funding, whose amount does not exceed 25% of the revenues for 2019 and in any case it is not higher than 25,000, has a maximum duration of 6 years and a 24-month grace period;

**(xii)** SMEs with revenues up to Euro 3,200,000, which declare they have been damaged by the COVID-19 emergency and require new loans for an amount up to 25% of their revenues for 2019, are allowed to combine the Fund's direct guarantee with an additional guarantee from *Confidi* or other authorised entity, so to cover 100% of the loan;

**(xiii)** until 31 December 2020, guarantees on investment loan portfolios, which have invested in companies damaged by the COVID-19 emergency, of which at least 20% have a rating not higher than "BB" on the Standard's and Poor's rating scale, have the following favourable conditions:

- a)** maximum guaranteed amount of investment loan portfolio is Euro 500 million;
- b)** investment loans have a duration and limitations as mentioned in point (iii) above;
- c)** loans may be approved and granted also before the guarantee application, but in any case after 31 January 2020;
- d)** guarantee coverage not exceeding 90% of the junior tranche of the investment loan portfolio, which does not exceed either 15% of the investment loan portfolio or 18% of the investment loan portfolio dedicated to research, development, innovation projects or investment plans;
- e)** guarantee coverage for 90% of the loss on each individual investment loan;

**(xiv)** the Fund can guarantee up to 80% of loans granted by banks to micro-credit providers which are SMEs, and those micro-credit providers which have started their business within 3 years before the guarantee application are exempted from credit standing valuation.

## CLIENT ALERT

#### 4) Measures to support companies' exportation, internationalisation and investment activities (Art. 2):

**Preliminary note:** these are supplementary measures, involving mostly SACE S.p.A., to those provided in the previous Law Decree no. 18/2020, in particular to Art. 53 (State guarantee in favour of SACE S.p.A. for insurance operations in the cruise sector already approved on 17 March 2020, up to a maximum amount of Euro 2.6 billion) and Art. 72 (establishing the "Integrated Promotion Fund" with an initial contribution of Euro 150 million for 2020, and providing a simplified procurement contracts award procedure).

**Beneficiaries:** companies based in Italy; national and international banks and financial institutions operating in Italy;

**Different measures with different scope of applications are provided:**

(i) as of 1 January 2021, non-market risks, as defined by EU regulations, deriving from insurance and guarantee commitments by SACE S.p.A. are split between SACE S.p.A. and the State respectively for up to 10% and 90%, on a disjoint liability basis; in this respect a fund is set up by the Ministry of Economy and Finance, funded with premiums collected by SACE S.p.A. net of commissions.

(ii) the issuance of guarantees and insurance coverages, which involve a high concentration risk for SACE S.p.A. in respect of individual counterparties, groups of connected counterparties or countries of destination, are subject to the prior authorisation by the Ministry of Economic Development;

(iii) the Ministry of Economy and Finance and SACE S.p.A. will enter into an agreement for a ten year period to regulate the practical aspects issuing and managing insurance and guarantee commitments;

(iv) a "Committee for Public Financial Support for Exportation" ("*Comitato per il sostegno finanziario pubblico all'esportazione*") is established by the Ministry of Economy and Finance, whose task is to resolve on the annual plan for insurance and guarantee commitments, the exposure amount of guaranteed/insured transactions and the limitations of risks;

(v) SACE S.p.A. may issue guarantees, in any form, in favour of national and international financial institutions and other parties carrying out lending activities in Italy, aimed at facilitating the granting of loans to companies based in Italy, in order to support the internationalisation of the Italian production sector, giving priority to strategic sectors and transactions with countries considered to be strategic for Italy,

## CLIENT ALERT

up to a maximum total amount of Euro 200 billion. Such guarantees by SACE S.p.A. are guaranteed by the State on first demand basis (which is directly available to lenders);

**(vi)** specific transactions in the cruise sector are guaranteed by the State, such as, for example, those approved by SACE S.p.A. by 9 April 2020, as identified in the list attached to Law Decree, up to a maximum amount of Euro 2.6 billion;

**(vii)** the Minister of Economy and Finance, for the year 2020, is authorized to issue a State guarantee in favour of SACE S.p.A. for the cruise sector (for new transactions to be approved during 2020, not exceeding Euro 3 billion and except for the cases expressly mentioned) and for the defence sector (for new transactions involving only a sovereign counterparty approved during 2020, not exceeding Euro 5 billion);

**(viii)** the State reinsures 90% of existing commitments undertaken by SACE S.p.A. as at 9 April 2020 for insurance activities and non-market risk guarantees, and 90% of the commitments by SACE S.p.A. arising in the period from 9 April 2020 until 31 December 2020.

For any clarification or further queries please contact [valtieri@delfinowillkie.com](mailto:valtieri@delfinowillkie.com)

This alert is provided by Studio Legale Delfino e Associati Willkie Farr & Gallagher LLP for information purposes only and is not intended and should not be construed as legal advice.