



## THE LIQUIDITY LAW DECREE – SUMMARY OF THE MAIN RELEVANT PROVISIONS

### 1. INTRODUCTION

Italy, like most Countries worldwide, is currently facing a tremendous health emergency due to the spread of the new Coronavirus Disease-2019 (“**COVID-19**”), which is affecting human health and causing major disruption to markets, the economy and businesses.

Therefore, after declaring a “state of emergency”, the Italian Government has immediately adopted certain extraordinary measures aimed at limiting the spread of COVID-19 and mitigating its effects, including, *inter alia*, restrictions to the movement of the population in the whole country and the suspension of retail businesses which are considered not to be strictly essential.

The first consolidated package of structural measures adopted by the Italian Government in order to support the health system while helping Italian families and the economy was provided for in the Law Decree No. 18, issued on 17<sup>th</sup> March 2020 (the “**Curaltalia Law Decree**”).

Following further developments of the emergency, on 8<sup>th</sup> April 2020 the Italian Government issued a new Law Decree (i.e., Law Decree No. 23, the “**Liquidity Law Decree**”), which entered into force on 9<sup>th</sup> April 2020, providing for urgent measures regarding (i) access to credit and tax compliance for businesses, (ii) special governmental powers in strategic sectors, as well as (iii) measures in the health and labour sectors, and (iv) the extension of administrative and procedural deadlines.

The provisions of the Liquidity Law Decree must be read in connection with the Curaltalia Law Decree, whose conversion process into law is currently ongoing with several amendments still under discussion. Likewise, also the Liquidity Law Decree will need to be converted into law by the Italian Parliament within 60 days following its publication and it cannot be excluded that, during the conversion process, further amendments are approved by the Italian Parliament.

Please find below a summary of the main relevant provisions contained in the Liquidity Law Decree, regarding in particular: banking, tax, corporate, labour, golden powers and litigation/insolvency.

### 2. BANKING

#### 2.1. Introduction

In order to support the liquidity needs of Italian companies, the Liquidity Law Decree, *inter alia*: (i) widens the categories of companies eligible to benefit from the State’s guarantee, which is provided through a company controlled by the State, SACE S.p.A. (“**SACE**”); (ii) introduces, in addition to the already issued provisions of the Curaltalia Law Decree, the possibility for the State to guarantee on exposures assumed or to be assumed by Cassa Depositi e Prestiti S.p.A. (“**Cdp**”); (iii) sets forth further emergency provisions in relation to the Italian SMEs’ guarantee fund (the “**SME Fund**”) by amending the provisions set out in the Curaltalia Law Decree; and (iv) aims at renovating the actual framework of the combined support by SACE and the Italian State for the internationalisation of Italian companies.

On 14<sup>th</sup> April 2020 the European Commission has issued two press releases<sup>(1)(2)</sup> confirming the approval of the provisions set out in Article 1 (*Temporary measures to support the liquidity to companies*) and Article 13 (*Central SME’s guarantee fund*) of the Liquidity Law Decree.

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<sup>(1)</sup>[https://ec.europa.eu/commission/presscorner/api/files/document/print/it/ip\\_20\\_655/IP\\_20\\_655\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/it/ip_20_655/IP_20_655_EN.pdf)



## 2.2. The SACE Guarantee

### 2.2.1. General remarks

Pursuant to the Liquidity Law Decree until 31<sup>st</sup> December 2020, SACE will be entitled to guarantee companies' repayment obligations originated by new financings disbursed by banks, financial intermediaries and any other authorised financial entities (the "**SACE Guarantee**").

In particular, the SACE Guarantee will benefit the SMEs (including self-employed persons and VAT-registered professionals), provided that they have already made full use of the SME Fund.

The total commitment of SACE in relation to the SACE Guarantee will be equal to a maximum amount of Euro 200,000,000,000 (of which, at least Euro 30,000,000,000 is allocated to support SMEs, including self-employed persons and VAT-registered professionals).

### 2.2.2. Financings eligible for the SACE Guarantee

The SACE Guarantee may be granted subject to, *inter alia*, the following conditions:

- i) within 31<sup>st</sup> December 2020, in relation to financings whose maturity date does not fall after 6 years (with the possibility to set a pre-amortisation period of up to 24 months);
- ii) in relation to financings provided after the effective date of the Liquidity Law Decree to companies:
  - a. which as of 31<sup>st</sup> December 2019, were not "in distress" (*impresa in difficoltà*) pursuant to the Commission Regulation (EU) No. 651/2014 of 17<sup>th</sup> June 2014; and
  - b. as of 29<sup>th</sup> February 2020, the relevant exposures *vis-à-vis* banks were not classified as deteriorated exposures (*esposizioni deteriorate*) pursuant to the relevant EU legislation;
- iii) in relation to financings which do not exceed the higher of<sup>(3)</sup>:
  - a. 25% of the turnover (*fatturato*) made by the relevant company during the financial year 2019, as resulting from the relevant approved financial statements or tax declaration; and
  - b. twice as much as the relevant personnel costs (*costi del personale*) incurred during the financial year 2019,provided that, in case the same company (or another company belonging to the same group) has already received other financings secured by the SACE Guarantee (or other public guarantee) (the "**Additional Financings**"), the amount of such Additional Financings shall be taken into account for the purposes of the calculation of the abovementioned maximum threshold;
- iv) in relation to financings whose proceeds will be applied to cover:
  - a. personnel costs (*costi del personale*);
  - b. investments; or

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<sup>(2)</sup>[https://ec.europa.eu/commission/presscorner/api/files/document/print/it/ip\\_20\\_656/IP\\_20\\_656\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/it/ip_20_656/IP_20_656_EN.pdf)

<sup>(3)</sup> Reference is made to the turnover (*fatturato*) generated in Italy and personnel costs incurred in Italy by the company or its group. The applicant company is required to notify the amount of such turnover (*fatturato*) to the financing bank.



- c. working capital

employed in manufacturing facilities (*stabilimenti produttivi*) and business activities (*attività imprenditoriali*) which are located in Italy.

### 2.2.3. Characteristics of the SACE Guarantee

The SACE Guarantee is a first demand, unconditional and irrevocable guarantee. It only covers financings and re-financings granted to companies after the entry into force of the Liquidity Law Decree.

### 2.2.4. Fees

In order to benefit from the SACE Guarantee, the following fees (to be calculated on the relevant amount secured by the SACE Guarantee) will be due to SACE by the relevant borrower:

- i) in relation to financings granted to SMEs:
  - a. 25 basis points during the first year;
  - b. 50 basis points during the second and third year; and
  - c. 100 basis points during the fourth, fifth and sixth year.
- ii) in relation to financings granted to entities other than SMEs:
  - a. 50 basis points during the first year;
  - b. 100 basis points during the second and third year; and
  - c. 200 basis points during the fourth, fifth and sixth year.

### 2.2.5. Negative and positive covenants

The company which benefits from the SACE Guarantee (and any other company of the relevant group) cannot (i) distribute any dividends and/or (ii) repurchase its shares for the 12 months following the granting of the relevant financing. Further undertakings with respect to the maintenance of appropriate employment levels (to be agreed upon with the workers' unions) are also envisaged.

### 2.2.6. Coverage of the SACE Guarantee

The SACE Guarantee will cover:

- i) 90% of the financings granted to companies with less than 5,000 employees in Italy and turnover (*fatturato*) of up to Euro 1,500,000,000;
- ii) 80% of the amount of the financings granted to companies with more than 5,000 employees in Italy or turnover (*fatturato*) between Euro 1,500,000,000 and Euro 5,000,000,000;
- iii) 70% of the amount of the financings granted to companies with turnover (*fatturato*) higher than Euro 5,000,000,000.<sup>(4)</sup>

Any losses from payment default by the relevant borrower are equally borne *pari passu* and *pro rata* between SACE and the relevant lenders.

### 2.2.7. Procedure to accede the SACE Guarantee

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<sup>(4)</sup> These percentages are applied on the principal amount outstanding from time to time of the relevant financing(s) and calculated on 2019 data.



With regard to the granting of the SACE Guarantee in relation to financings *vis-à-vis* companies with (a) less than 5,000 employees in Italy and (b) a turnover (*fatturato*) of less than Euro 1,500,000,000<sup>(5)</sup>, a simplified procedure applies as follow<sup>(6)</sup>:

- i) the relevant company submits an application for a financing guaranteed by the State to the relevant lender or lenders (if a syndication takes place);
- ii) where the loan is approved, the lender must transmit the request for the granting of the SACE Guarantee to SACE and SACE must assess the request, verifying the lender's approval of the relevant financing and issuing a unique identification number for the loan and the SACE Guarantee; and
- iii) the lender grants the loan secured by the SACE Guarantee.

In case the above requirements regarding the size of the company are not met, the SACE Guarantee may be only granted subject to a decree of the Minister of the Economy and Finance (the "MEF"), after hearing the Minister of Economic Development, adopted following a specific investigation (*istruttoria*) by SACE as to the role of the relevant company in the Italian economy. By means of such decree, the MEF may also increase the portion of the loan secured by means of the SACE Guarantee.

## 2.3. The Italian state guarantee

### 2.3.1. Counter-guarantee of the SACE Guarantee

In addition to the provisions of the Curaltalia Law Decree<sup>(7)</sup>, the Liquidity Law Decree provides that the obligations of SACE arising from the granting of the SACE Guarantee are counter-guaranteed by the Italian State.

### 2.3.2. Guarantee of Cdp exposures

Without prejudice to the maximum amount indicated in paragraph 2.2.1 above (*i.e.*, Euro 200,000,000,000), upon authorisation of the MEF (and pursuant to the European Union legislation), the Italian State can also guarantee the exposures of Cdp<sup>(8)</sup>, which will be incurred before 31<sup>st</sup> December 2020 in favour of those banks and other authorised entities which grant financings in any form to certain companies, whose turnover (*fatturato*) has decreased as a consequence of the COVID-19 outbreak. In this case, such banks and other authorised entities will be allowed to release regulatory capital by virtue of the guarantees.

### 2.3.3. Characteristics

The Italian State's guarantee is first demand, unconditional and irrevocable.

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<sup>(5)</sup> As resulting from the latest approved financial statements or certified data if there is no approved financial statements as at the entry into force of the Liquidity Law Decree.

<sup>(6)</sup> The procedure will be further detailed by SACE.

<sup>(7)</sup> Pursuant to the Curaltalia Law Decree, the exposures of Cdp (also in the form of guarantee on first losses (*garanzie di prima perdita*) on portfolios of loans (*portafogli di finanziamenti*)) in favour of banks and other authorised entities – which grant financings in any form to certain Italian companies whose turnover (*fatturato*) has decreased as a consequence of the COVID-19 outbreak and do not have access to the guarantee of the SME Fund – can be guaranteed by the Italian State. The Italian State's guarantee (i) is first demand, unconditional and irrevocable and (ii) is granted in favour of Cdp up to an amount equal to 80% of the relevant exposure.

<sup>(8)</sup> Also in the form of guarantee on first losses (*garanzie di prima perdita*) on portfolios of loans (*portafogli di finanziamenti*).



## 2.4. The SME fund

The new provisions of the Liquidity Law Decree shall apply in derogation of (i) the ordinary discipline provided for the Italian SME Fund and (ii) the extraordinary provisions set out in Article 49 of the Curaltalia Law Decree.

### 2.4.1. Amendments to the Curaltalia Law Decree in relation to the SME Fund provisions

The list below sets out the amendments of the provisions already provided for under the Curaltalia Law Decree.

- i) The guarantee of the SME Fund will be granted free of charge (*a titolo gratuito*);
- ii) The maximum amount of the guarantee of the SME Fund to be granted to a single SME will be increased, in line with the European Union legislation, to Euro 5,000,000, provided that the relevant SME does not have more than 499 employees.
- iii) In relation to financial transactions to be repaid within no more than 72 months, the guarantee of the SME Fund will provide for a direct coverage of 90% of the relevant amount granted under each financial transaction, provided that the amount of the financial transaction does not exceed, alternatively:
  - a. twice as much as the relevant salary expenses incurred during the financial year 2019;
  - b. 25% of the turnover (*fatturato*) made by the relevant SME during the financial year 2019; or
  - c. the operating capital costs (*costi del capitale di esercizio*) and investments costs (*costi di investimento*) envisaged for the following 18 months in case of a SME (or for the following 12 months in case of companies having no more than 499 employees).

In relation to such financial transactions, the guarantee of the SME Fund also provides for a reinsurance coverage of 100% of the relevant amount already covered by Confidi (or any other guarantee fund), provided that the latter guarantees an amount not exceeding 90% of the relevant amount granted under the relevant financial transaction.

- iv) In relation to financings whose purpose is to restructure the debt exposure of the relevant borrower, the guarantee of the SME Fund will provide for:
  - a. direct coverage of 80% of the relevant amount granted under each financing; or
  - b. a reinsurance coverage of 90% of the relevant amount already covered by Confidi (or any other guarantee fund),provided that an additional amount equal to 10% of the restructured debt will be granted to the relevant borrower.<sup>(9)</sup>
- v) In relation to transactions (carried out by banks and/or financial intermediaries) benefitting from the guarantee of the SME Fund and whose repayment has been suspended (including those which have been suspended upon initiatives of the lenders

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<sup>(9)</sup> The same percentages will apply to financings which do not meet the parameters indicated under item (iii) above.



themselves), the effectiveness of the guarantee of the SME Fund is extended accordingly.

- vi) In relation to transactions regarding real-estate investments in tourism/hotel sector and in other real-estate activities, such investments can be guaranteed by the SME Fund together with other forms of guarantee, provided that their amount is higher than Euro 500,000 and is to be repaid within not less than 10 years.
- vii) The portion of the junior tranche covered by the SME Fund in respect of portfolios of loans (*portafogli di finanziamenti*) granted in favour of companies negatively affected by the COVID-19 outbreak either directly or indirectly (as part of specific sectors and supply chains) can be increased by 50%, and by a further 20% if additional guarantors accede.
- viii) The guarantee of the SME Fund will also cover the exposures:
  - a. classified as “unlikely to pay” (*inadempienze probabili*) or “past-due or over-threshold deteriorated” (*scadute o sconfinanti deteriorate*) pursuant to the relevant Bank of Italy regulations before 31<sup>st</sup> January 2020;
  - b. of companies which, after 31<sup>st</sup> December 2019, were admitted to: compositions with creditors with continuation of business (*concondato con continuità aziendale*) pursuant to Article 186-bis of Royal Decree No. 186-bis of 16<sup>th</sup> March 1942. 267 (the “**Bankruptcy Law**”), restructuring agreements (*accordo di ristrutturazione*) pursuant to Article 182-bis of the Bankruptcy Law, or attested plans (*piano attestato*) pursuant to Article 67 of the Bankruptcy Law, provided that, as of the entry into force of the Liquidity Law Decree:
    - such exposures are not classifiable as “deteriorated” (*deteriorate*);
    - there are no payments in arrear following the granting of the guarantee; and
    - on the basis of the evaluations of the bank as to the financial position of the relevant debtor, the latter is likely to repay the relevant exposure at the due maturity date.
- ix) The guarantee of the SME Fund will not cover, in any case, the exposures which are classified as “non-performing” (*sofferenze*) pursuant to the relevant Bank of Italy regulations.
- x) The microfinance operators (*operatori di microcredito*) qualifying as SMEs can benefit from the guarantee of the SME Fund (free of charge (*a titolo gratuito*) and up to a maximum of 80% of the financings received by banks and financial intermediaries disbursed for the purpose of granting microfinance loans).
- xi) The Liquidity Law Decree raises, from Euro 25,000 to Euro 40,000, the minimum threshold of the financings to be granted by microfinance operators (*operatori di microcredito*) under Article 111 of the Legislative Decree No. 385 of 1<sup>st</sup> September 1993.

#### 2.4.2. New provisions relating to the SME Fund introduced by the Liquidity Law Decree

In addition to the above, the following new provisions have been introduced by the Liquidity Law Decree:



- i) The guarantee of the SME Fund will provide coverage of 100% (both as direct guarantee and as reinsurance) to new financings granted to SMEs and individuals carrying out business activities, which/who are negatively affected by the COVID-19 outbreak, provided that such financings:
  - a. have to be repaid within no more than 72 months (with a pre-amortisation period of at least 24 months);
  - b. will grant an amount not exceeding 25% of the turnover (*fatturato*) made by the relevant debtor during the financial year 2019, as resulting from the relevant approved financial statements or tax declaration as at the date of application for the guarantee of the SME Fund (and, in any case, not exceeding Euro 25,000.00).

In relation to such financings, the applied interest rate (in the case of direct guarantee) or total guarantee premium (*premio complessivo di garanzia*) (in the case of reinsurance) will only take into account the coverage of the costs of investigation (*costi di istruttoria*) and of management (*di gestione*) of the relevant transaction and, in any case, will not exceed certain thresholds calculated on the basis of the rate applicable to the Italian State bond.<sup>(10)</sup>

In this case, the guarantee of the SME Fund is automatic and free of charge (*a titolo gratuito*), without any evaluation by the SME Fund. The financing will therefore be granted immediately after formal verification of the requirements by the relevant bank, without waiting for the outcome of the investigation (*istruttoria*) of the Fund itself.

- ii) In relation to financing granted to companies with a turnover (*fatturato*) not exceeding Euro 3,200,000 and negatively affected by the COVID-19 outbreak, the guarantee of the SME Fund will provide for direct coverage of 90% of the relevant amount granted, which can also be cumulated with another guarantee granted by Confidi (or other entities entitled to grant guarantees) in order to cover 100% of the relevant financing. Please note that this guarantee can only be granted for financing not exceeding 25% of the turnover (*fatturato*) made by the relevant company.
- iii) The guarantee of the SME Fund can also cover transactions already completed no more than 3 months before the date of the request of the guarantee and, in any case, after 31<sup>st</sup> January 2020. In such cases, the relevant lender must provide the SME Fund manager with a declaration certifying the reduction of the interest rate applied to the beneficiary on the secured financial transaction as a result of the guarantee.
- iv) Until 31<sup>st</sup> December 2020, the following provisions apply to guarantees on loan portfolios (*portafogli di finanziamenti*) (even without an amortisation plan) granted to companies negatively affected by the COVID-19 outbreak, where at least 20% of which are companies having, as at the date of inclusion of the transaction in the portfolio, a rating (determined by the applicant on the basis of its internal rating models) not higher than "BB" on the Standard's and Poor's rating scale:

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<sup>(10)</sup> Namely, the rate of the State bond (Rendistato) with residual duration from 4 years and 7 months to 6 years and 6 months, plus the difference between the 5-year bank CDS and the 5-year ITA CDS, as defined the framework agreement for the financial advance for pension guarantee, pursuant to Article 1, paragraphs 166 to 178 of Law No. 232 of 11th December 2016, plus by 0.20 percent.



- a. the maximum amount of loan portfolios (*portafogli di finanziamenti*) is increased to Euro 500,000,000;
- b. the financings<sup>(11)</sup> may have been granted prior to the application for the guarantee on the loan portfolio (*portafoglio di finanziamenti*) but, in any case, after 31<sup>st</sup> January 2020;
- c. the beneficiaries are eligible without the need of a credit assessment by the SME Fund manager;
- d. the detachment and the attachment points (*punto di stacco e di spessore*) of the junior tranche of the loan portfolio (*portafoglio di finanziamenti*) are determined using the probability of default calculated by the applicant on the basis of its internal rating models;
- e. the guarantee is granted to cover a maximum of 90% of the junior tranche of the loan portfolio (*portafoglio di finanziamenti*);
- f. the portion of the junior tranche covered by the guarantee of the SME Fund, without prejudice to the provisions of Article 8, paragraph 2, of the Italian Interministerial Decree of 14<sup>th</sup> November 2017, may not exceed 15% of the amount of the loan portfolio (*portafoglio di finanziamenti*), or 18% if the portfolio includes loans granted for the implementation of research, development and innovation projects and/or investment programmes;
- g. in relation to each financing included in the guaranteed portfolio, the SME Fund will cover 90% of the loss recorded on each of the individual financing;
- h. financings may also be granted to companies located in regions where the intervention of the SME Fund has been limited to counter-guarantees of regional guarantee funds and collective guarantee consortia (*consorzi di garanzia collettiva*).

## 2.5. Export supporting measures

The Liquidity Law Decree aims at renovating the actual framework of the combined support by SACE and the Italian State (as set out in Law Decree No. 269 of 30<sup>th</sup> September 2003) for the internationalisation of Italian companies. Briefly, such new framework (effective as of 1<sup>st</sup> January 2021) is based on a co-insurance system for non-market related risks (*rischi non di mercato*), pursuant to which the obligations arising from the insurance by SACE will be assumed, between SACE and the Italian state, on a 10:90 percent. basis – respectively – within the relevant limits set out by the relevant annual budget laws.

## 3. TAX

The Liquidity Law Decree has introduced a number of provisions in order to strengthen the tax measures already in force under the Curaltalia Law Decree, as well as new measures to provide further support to the economy, under a tax standpoint. Such measures apply to entities with tax domicile or registered office or place of business in Italy.

### 3.1 Suspension of payments to public administrations

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<sup>(11)</sup> Please note that these financings shall meet the parameters indicated under item (iii) above.



With respect to tax payments, the Liquidity Law Decree has on the one side confirmed and extended the scope of application of certain provisions provided for by the Curaltalia Law Decree and, on the other side, introduced brand new provisions. The following is an overall list of the provisions currently in force (under both the Curaltalia Law Decree and the Liquidity Law Decree) aimed at temporarily putting on hold VAT, withholding taxes, social security and welfare contributions payments.

### 3.1.1 Suspension of payments due in March 2020 (Art. 21 of the Liquidity Law Decree)

All payments to public administrations (including VAT payments, withholding tax payments and social security and welfare contributions) expiring on 16<sup>th</sup> March 2020, can be executed within 16<sup>th</sup> April 2020.

### 3.1.2 Suspension of payments due in April and May 2020 (Art. 18 of the Liquidity Law Decree)

VAT, withholding taxes on employment income, social security and welfare contributions payments expiring in April and May 2020 are on hold for:

- business activities (or self-employed workers) with an overall turnover up to Euro 50 million in the last fiscal year, whose monthly turnover in, respectively, March and April 2020 has decreased by 33% (or more) compared to, respectively, March and April 2019;
- business activities (or self-employed workers) with an overall turnover higher than Euro 50 million in the last fiscal year, whose monthly turnover in, respectively, March and April 2020 has decreased by 50% (or more) compared to, respectively, March and April 2019; and
- business activities (or self-employed workers) who started their activity after 31<sup>st</sup> March 2019.

VAT payments due in April and May 2020 are also suspended for entities resident in the area of Bergamo, Brescia, Cremona, Lodi and Piacenza (without any turnover threshold) suffering a 33% reduction in turnover during, respectively, March and April 2020, compared to, respectively, March and April 2019.

The suspended payments are due:

- within 30<sup>th</sup> June 2020; or
- in 5 monthly instalments starting from June 2020.

No penalties nor interest are due for the suspension of payments.

### 3.1.3 Suspension of payments for entities most negatively affected by the emergency (Art. 18 of the Liquidity Law Decree)

In any case, payments of withholding taxes on employment income and social security and welfare contributions are on hold until 30<sup>th</sup> April 2020 and can be made within 31<sup>st</sup> May without additional costs for businesses operating in the most affected sectors including, for example:

- the tourism industry;
- professional and amateur sports associations and clubs;
- entities managing lottery receptions, lotteries, betting;
- restaurants, entities managing catering, bars and pubs;
- transport services; etc.



### 3.1.4 Withholding tax deferral for self-employed workers (Art. 19 of the Liquidity Law Decree)

Compensations received from 17<sup>th</sup> March 2020 until 31<sup>st</sup> May 2020 by self-employed workers whose revenues or compensation in the last fiscal year did not exceed Euro 400,000 are not subject to withholding tax, upon delivery to the withholding tax agent of an *ad hoc* self-declaration. The non application of withholding tax is conditional to the taxpayer not having incurred expenses for employees or other workers receiving income assimilated to employment income.

The suspended withholding taxes are due by the self-employed worker:

- within 31<sup>st</sup> July 2020; or
- in 5 monthly instalments starting from July 2020.

No penalties or interest are due for the suspension of withholding tax.

### 3.2 **Advance payments for IRES, IRPEF and IRAP (Art. 20 of the Liquidity Law Decree)**

For each fiscal year, Italian taxpayers pay income taxes (IRPEF and IRES) and the regional tax on productive activities (IRAP) in different instalments, namely (i) two so-called "advance payments" expiring, respectively, in June and November of the same year and (ii) a final "balance payment", expiring in June of the following year. Amounts payable as advance payments can be calculated based on a "historical method", which makes reference to the tax result of the previous fiscal year, or based on a "previsional method", which estimates the expected final taxable income. Taxpayers are free to choose either method, but should the estimate under the "previsional method" be inaccurate, interest and penalties are generally due. Under Art. 20 of the Liquidity Law Decree, no penalties or interest shall be due, in the event of option for the "previsional method" for 2020 fiscal year, if such payment covers at least 80% of taxes due for 2020, under the final tax return yet to be filed.

This provision applies to advance payments for income taxes (IRPEF and IRES) and for regional tax on productive activities (IRAP).

### 3.3 **Suspension of the deadlines relating to the activities of the offices of the tax authorities (Art. 29 of the Liquidity Law Decree) and to hearings and tax litigation (Art. 36 and 37 of the Liquidity Law Decree)**

Deadlines for clearance, control, assessment, collection and litigation by the tax authority, are put on hold until the date of ceasing of the state of emergency (yet not settled).

All tax litigation deadlines and terms to file for tax litigation are put on hold from 9<sup>th</sup> March until 11<sup>th</sup> May 2020 and the deadlines for the completion of any action in the same proceedings are suspended for the same period of time.

All terms pending as of 23<sup>rd</sup> February 2020 or thereafter for administrative proceedings are suspended until 15<sup>th</sup> May 2020.

### 3.4 **Tax credit for room sanitation (Art. 30 of the Liquidity Law Decree)**

The tax credit equal to 50% of the expenses incurred for the sanitation of environments provided for by the Curaltalia Law Decree is now extended to the expenses incurred for work tools and for the purchase of personal protective equipment and other safety equipment to protect workers.

### 3.5 **Other provisions relating to taxes and deadlines (Art. 21-28 of the Liquidity Law Decree)**



The Liquidity Law Decree has introduced other provisions, with the purpose of either postponing certain minor deadlines (e.g. the deadline for the delivery and filing of the withholding tax agent's single declaration (*certificazione unica*)) or extending the validity of certain other tax benefits (e.g. extension of the one-year period to sell the main residence in order to benefit from the "*prima casa*" benefit). The following is a list of the more significant other tax provisions.

- The gift of medical supplies part of a compassionate use program (*programma ad uso compassionevole*) does not constitute a taxable event for direct tax and VAT purposes, with no restrictions as to VAT deductibility (Art. 27 of the Liquidity Law Decree). The validity of certificates issued by the Italian Revenue Agency (still in force at the date of 29<sup>th</sup> February 2020) to prevent the recently-introduced contractors' joint liability for withholding taxes and social security contributions due by contractees is extended until 30<sup>th</sup> June 2020 (Art. 23 of the Liquidity Law Decree).
- Measures recently introduced to innovate the taxation of profits received by Italian partnerships (on a look-through basis in the hands of Italian partners carrying out a business activity) are tweaked to ensure the same tax treatment to non-Italian-resident partners and to Italian partners not carrying out a business activity (Art. 28 of the Liquidity Law Decree).
- Measures to favour the digitalisation of judicial deeds (e.g. tax proceedings to be carried out electronically, even though initiated in paper form) (Art. 29 of the Liquidity Law Decree).

## 4. CORPORATE PROVISIONS

The Liquidity Law Decree sets forth certain provisions aimed at derogating some corporate law provisions contained in the Italian Civil Code, in order to support and guarantee companies' business continuity.

### 4.1. Corporate losses

Starting from 9<sup>th</sup> April 2020 (*i.e.*, date of entry into force of the Liquidity Law Decree) and until 31<sup>st</sup> December 2020, the obligation to reinstate the corporate capital, as a consequence of losses impacting on that capital by more than 1/3<sup>rd</sup> and occurring until 31<sup>st</sup> December 2020, shall not apply. Likewise, such reinstatement obligation shall neither apply even in case the corporate capital has decreased below the minimum amount provided for by law, due to the above losses. The above mentioned provision of the Liquidity Law Decree therefore expressly derogates to Articles 2446, Paragraphs 2 and 3, 2447, 2482-*bis*, Paragraphs 4, 5 and 6 and 2482-*ter* of the Italian Civil Code.

Furthermore, starting from 9<sup>th</sup> April 2020 and until 31<sup>st</sup> December 2020, companies affected by corporate losses reducing the corporate capital below the minimum amount provided for by the law are not obliged to start the winding up procedure as a mandatory alternative to capital reinstatement (Article 2484, Paragraph 1, No. 4), and, with reference to the cooperative companies, Article 2545-*duodecies*, of the Italian Civil Code).

During the period indicated above, thus, losses affecting corporate capital as a consequence of the current COVID-19 crisis will not force directors/shareholders to resolve upon the reinstatement or winding-up and failing to reinstate or liquidate will not expose directors to liability for non-conservative management.



## 4.2. Financial statements

In drafting the financial statements as of 31<sup>st</sup> December 2020, assets/liabilities can be assessed in the perspective of business continuity (i.e., continuing going concern) provided that business continuity existed at the time of the financial statements closed prior to 23<sup>rd</sup> February 2020 (even if such financial statements have not been approved yet), without prejudice to Article 106 of the Curaltalia Law Decree on shareholders' meeting. That means that events prejudicing business continuity after February 23<sup>rd</sup> can be legally (and exceptionally) disregarded, in order to avoid that the Covid-19 outbreak forces companies to devalue their assets in a liquidation perspective.

The assessment above shall be specifically illustrated in the explanatory note to the financial statements.

## 4.3. Shareholder's loans

With respect to financings granted from 9<sup>th</sup> April 2020 (i.e., from the date of entry into force of the Liquidity Law Decree) until 31<sup>st</sup> December 2020, Articles 2467 (*shareholders' financings*) and 2497-*quinquies* (*intra-group financings*) of the Italian Civil Code shall not apply and, therefore, shareholders' loans and intragroup loans will not be subject to subordination with respect to satisfaction of third party creditors.

This provision is aimed at encouraging shareholders to provide for financing in favour of their subsidiaries/affiliates (in a situation of urging financial needs) without being subordinated to the other companies creditors.

## 5. LABOUR

Article 41 of the Liquidity Law Decree extends to employees hired in the period between 24<sup>th</sup> February and 17<sup>th</sup> March 2020 the use of the State-funded social programs introduced by the Curaltalia Law Decree in connection to the COVID-19 emergency (i.e. *Cassa Integrazione Guadagni Ordinaria*, *Assegno Ordinario* and *Cassa Integrazione Guadagni in deroga*). Such plans were indeed originally reserved to employees who were already in force on 23<sup>rd</sup> February 2020.

In addition, Article 36 of the Liquidity Law Decree extends the suspension of civil hearings and court deadlines and other fulfilments until 11<sup>th</sup> May 2020. This extension also applies to employment-related Court actions, with certain exceptions for urgency/summary proceedings.

Lastly, Article 1, paragraph 2, letter L of the Liquidity Law Decree provides for a further obligation for companies which benefit from the SACE Guarantee (see paragraph 2.2.2 above): the company undertakes to regulate the employment levels only through an agreement with the trade unions.

## 6. GOLDEN POWER

The main amendments introduced by the Liquidity Law Decree to the Italian provisions set forth in the Law Decree No. 21/2012 concerning special powers of the Italian Government in case of foreign investments (so called Golden Powers) can be summarised as follows.

### 6.1. High tech

The Liquidity Law Decree introduces the obligation to communicate to the Government **any acquisition, by any EU or extra-EU entity, of shareholdings** in companies operating assets



falling in the so-called **high tech sectors** under Article 4(1) of Regulation (EU) 2019/452, namely:

- (a) **critical infrastructures**, whether physical or virtual, including energy, transportation, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- (b) **critical technologies** and dual use items as defined according to EU regulations, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- (c) **supply of critical inputs**, including energy or raw materials, as well as food security;
- (d) **access to sensitive information**, including personal data, or the ability to control such information;
- (e) freedom and pluralism of the **media**.

It is clarified that the activities falling within the scope of the FDI Screening Regulation also include those concerning the **financial, banking and insurance sectors**.

## 6.2. Foreign investment filing

Until 31<sup>st</sup> December 2020, the following transactions are subject to a foreign investment filing:

- **any resolution and transaction** adopted by any **EU or extra-EU entity** holding strategic assets in the sectors of **energy, transportation and communications, as well as high tech** (including, when applicable, assets falling in the financial, banking or insurance sectors) resulting in **change of control, ownership, or destination of use** of assets above (asset deals);
- **any acquisition of shareholdings** (share deals), by any **EU or extra-EU entity**, in companies holding strategic assets in the sectors of **energy, transportation and communications, as well as high tech** (including, when applicable, assets falling in the financial, banking or insurance sectors), resulting in a **change of control** of the target company;
- **any acquisition of shareholdings** (share deals), by any **extra-EU entity**, in companies holding strategic assets in the sectors of **energy, transportation and communications, as well as high tech** (including, when applicable, assets falling in the financial, banking or insurance sectors), resulting in the **acquisition of at least 10% of share capital or voting rights** (taking into account also shares and rights already directly or indirectly held), provided that the **total investment value is equal to or higher than Euro one million**. Such acquisitions will also be subject to communication whenever **the holding thresholds of 15%, 20%, 25% and 50% are exceeded**.

## 6.3. Procedure

For all sectors falling within the scope of the Golden Power regulation, in case of failure to report a transaction, **the Government is entitled to commence *ex officio* the procedure to assess the exercise of the special powers** (*i.e.*, veto or imposition of prescriptions/conditions to the transaction). In such cases, the term for the exercise of the special powers by the Government (45 days, or 30 days only for 5G technology assets) starts from the date the violation of the notification obligations is ascertained.



For further information please refer to our newsletter "New rules on the Italian government's review of investments in strategic industries at the time of COVID-19".

## 7. LITIGATION/INSOLVENCY

By means of the Liquidity Law Decree the Italian Government has extended the measures already adopted within the Curaltalia Decree with respect to civil, criminal, administrative and tax justice.

### 7.1. Civil proceedings

In particular, in the context of civil justice, the Liquidity Law Decree has extended up to 11<sup>st</sup> May 2020 the following urgent measures in force as of 9<sup>th</sup> March 2020 (Article 36):

- (i) Automatic rescheduling of all civil Court hearings scheduled in the enforcement period to a date after 11<sup>st</sup> May 2020 by operation of law;
- (ii) stay of all procedural deadlines in all civil proceedings; and
- (iii) stay of all procedural deadlines in mediation proceedings and in assisted negotiation procedures.

The aforementioned urgent measures, shall not apply, *inter alia*, to certain excluded proceedings which, therefore, shall not be rescheduled or stayed:

- a) interim proceedings regarding fundamental human rights;
- b) proceedings for the suspension of the provisional enforceability of judgments;
- c) any proceedings where delay could cause serious detriment to the parties.

The urgent handling of proceedings under letter **c)** above shall be sought through an *ad hoc* application to the President of the Court or to the Judge in charge of the case.

In all above excluded proceedings, hearings, other than those pertaining to the evidentiary gathering phase (witnesses and/or Court appointed experts attendance), can be held via videoconference or in writing (e.g. through exchange of written briefs only).

Also, according to the Liquidity Law Decree, the following organisation measures could be adopted by Courts' Presidents for the period between 12<sup>th</sup> May 2020 and 30<sup>th</sup> June 2020:

- (i) limitation of public access to Courts' buildings;
- (ii) reduction of Courts' offices working hours and services;
- (iii) derogation from public hearings;
- (iv) rescheduling of civil Court hearings to a date later than 30<sup>th</sup> June 2020, if necessary to avoid several adjournments;
- (v) introduction of "videoconference hearings" for hearings to be attended solely by counsel and parties, and "written hearings" (through exchange of written briefs only) for hearings to be attended only by counsels. Videoconference and written hearings are, therefore, not available for evidence gathering hearings, e.g. hearings for interview, oath or attendance of witnesses and/or Court appointed experts.

### 7.2. Insolvency proceedings

With the Liquidity Law Decree the Government has adopted different measures also in the field of insolvency with a special view to (i) preserving business continuity of enterprises which



were solvent before the epidemics and have been impacted by the COVID-19 crisis (see section 4 above), and (ii) ensuring the successful outcome of restructuring proceedings already pending at the time the COVID-19 crisis began.

In this respect, the Liquidity Law Decree provides - *inter alia* - as follows:

- (a) the inadmissibility of petitions for bankruptcy and for insolvency of large companies filed from 9<sup>th</sup> March 2020 until 30<sup>th</sup> June 2020;
- (b) the extension of the deadlines for performing/fulfilling compositions with creditors and debt restructuring agreements already validated by the competent Courts, when those deadlines expire between 23<sup>rd</sup> February 2020 and 31<sup>st</sup> December 2021;
- (c) in case of pending proceedings of compositions with creditors or debt restructuring agreements, the possibility for the applicant company to file a new composition with creditors plan/debt restructuring agreement before the validation hearing or to request an extension of the term for the filing of the composition with creditors plan/debt restructuring agreement (if not yet filed);
- (d) the postponement of the entry into force of the new Code of Crisis and Insolvency - with the simultaneous repeal of the Italian Bankruptcy Law (R.D. No. 267/1942, as subsequently amended) – from 1<sup>st</sup> September 2021, instead of 14<sup>th</sup> August 2020;
- (e) as better illustrated under paragraph 4.1 above, the disapplication until 31<sup>st</sup> December 2020, under certain conditions, of the provisions of the Italian Civil Code that require: either the reinstatement of the corporate capital, when it has been reduced by more than 1/3 as a consequence of losses or the winding-up of the company.

For further information please refer to our newsletter "*COVID-19 Emergency – Italy insolvency and business crisis*".

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*This note does not provide an exhaustive analysis of the aforementioned rules.*

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The Banking & Finance, Tax Law, Corporate Finance, Employment and Industrial Relations, Dispute Resolution and Restructuring and Insolvency Departments of Legance are available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

For further information:

**Legance Task Force Covid-19**

[Covid19@legance.it](mailto:Covid19@legance.it)

or your direct contact at Legance.

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