

# FINANCIAL SUPPORT MEASURES FOR ITALIAN ENTERPRISES

under Law Decree No. 18 of March 17, 2020



## IN A NUTSHELL

The financial measures to support Italian enterprises through the banking system enacted by the Law Decree No. 18 of March 17, 2020 in connection with the health emergency caused by the widespread outbreak of the virus COVID-19: this newsletter is aimed at providing an overview of the main financial aids and measures for Italian enterprises to support their liquidity needs and facilitate their access to bank credit.

**Please note that the provisions contained in the above mentioned Law Decree, which entered into force on 17 March 2020, may be amended as a result of the legislative process.**

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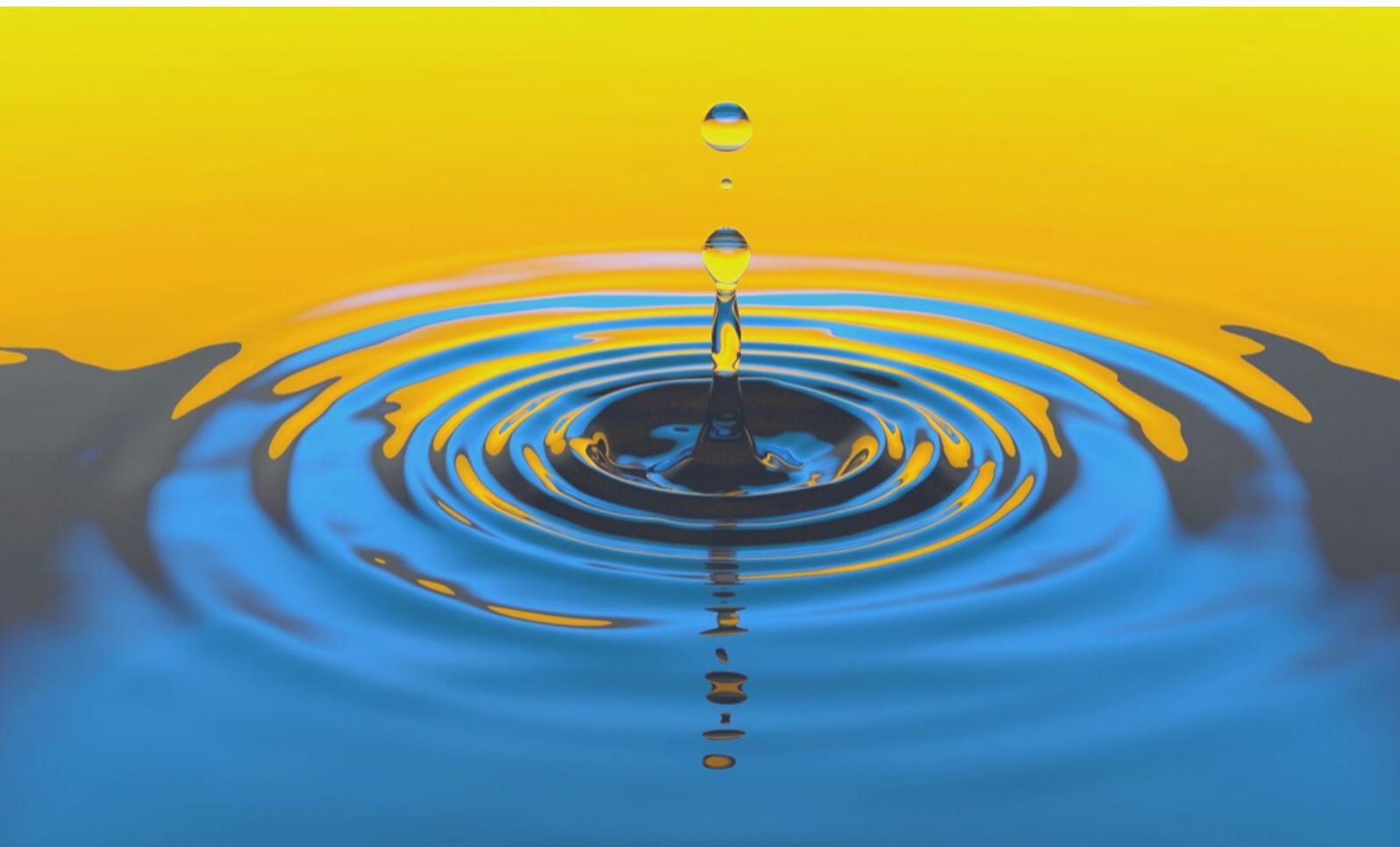
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On March 17, 2020, the Italian Government adopted the Law Decree No. 18 (so called “*Decreto Cura Italia*” -“**Heal Italy Decree**” or the “**Decree**”) which provides for measures to strengthen the national health service and economic support for families, workers and enterprises in connection with the COVID-19 epidemiological emergency. The Decree was published in the Italian Official Gazette on 17 March 2020 and entered into force on the same day.

*“Title III of the Decree is entirely dedicated to the financial measures aimed at supporting enterprises through the banking system”*

Title III of the Decree is entirely dedicated to the financial measures aimed at supporting enterprises through the banking system and introduces provisions that inure to the benefit of:

1. **SMEs**, by the extension and strengthening of the existing provisions of the Central Guarantee Fund for SMEs set forth under Article 2, paragraph 100, letter a) of the Law No. 662 of December 23, 1996 as well as by the introduction of some *ad-hoc* financial support measures;
2. **Enterprises “in general”**, by measures aimed at (a) providing financial support to the enterprises and (b) boosting their liquidity through guarantee and synthetic securitization mechanisms.



# SMEs

## 1. CENTRAL GUARANTEE FUND

Article 49 of the Decree provides for further interventions of the Central Guarantee Fund for SMEs - that is a public guarantee scheme managed by Mediocredito Centrale S.p.A. and directed to SMEs to support their access to bank credit - (the "**Fund**"), by integrating the provisions under Article 25 of the Law Decree No. 9 of March 2, 2020 ("*Urgent measures aimed at supporting families, workers and enterprises in connection with the epidemiological emergency relating to Covid-19*") and extending their application to Italian SMEs located anywhere within the whole national territory and not only in the municipalities located in the "red areas".

By circular letter No. 8/2020 of March 19, 2020 (the "**Letter**"), Mediocredito Centrale S.p.A. advised that the Management Council of the Fund (the "**Council**") had resolved upon the adoption of the measures required to implement the provisions under Article 49 of the Decree, which will apply, with some specifications, to petitions for access to the Fund guarantee submitted as from the date of entry into force of the Decree.



The Decree, for a period of nine months from its entry into force, introduces the following measures that derogate from the current legislative framework of the Fund.

(a) **Granting of the guarantee of the Fund free of charge**, with a suspension of the obligation to pay any fee for access to the Fund, where required.

(b) Increase, in compliance with the European legislative framework, **of the maximum guaranteed amount for each SME up to Euro 5 million**, it being understood that the application of the provision is subject to the adoption of a new method of calculation of the ESL (i.e. the gross subsidy equivalent), since the current methods may be used only until a maximum guaranteed amount of Euro 2,5 million.

(c) **A significant increase in the maximum coverage percentage**, which: (i) with respect to the granting of direct guarantees (*garanzie dirette*) has been raised up to 80% of the total amount of each financing, for a maximum guaranteed amount of Euro 1,5 million for each SME; and (ii) with respect to reinsurance operations (*riassicurazioni*) has been raised up to 90% of the total amount guaranteed by Confidi or any other guarantor, for a maximum guaranteed amount of Euro 1,5 million for each SME. The Council resolved that (i) such provision applies as long as the maximum coverage percentage according to the applicable General Rules of the Fund has not already been reached; (ii) for the purposes of granting of the Fund guarantee, the guaranteed amounts for each final beneficiary, that are already outstanding at the date of entry into force of the Decree, shall not be considered, provided that the General Rules of the Fund relating to the maximum guaranteed amount for each final beneficiary (as set out under point b) above) shall be complied with and (iii) for such

guarantees as are granted under this point c), owing to the increase of the coverage, the further resources relating to the “special sections” established by the inter-ministerial decree of January 26, 2012 cannot be used.

(d) **Eligibility of loans granted in debt restructuring transactions for the Fund guarantee**, provided that the relevant lender grants **additional financing for at least 10%** of the outstanding amount of the loan being rescheduled. The Council resolved upon the application of this measure only to financing transactions aimed at the renegotiation of such loans (and/or rescheduling of such short-term liabilities) as were granted to the final beneficiary by the same lender or by other entities belonging to the same bank group, provided that such loans are not already guaranteed by the Fund, since this is the only case, according to the General Rules of the Fund, where access to the Fund is not allowed.

(e) **Possibility** for public administrations and holders of Special Sections of the Fund or of EU programs supplementing the Fund’s resources or operations to grant their contribution **to increase the maximum coverage granted by the Fund** up to 80% as a direct guarantee and 90% as reinsurance.



(f) Where a bank or financial intermediary has agreed to a moratorium or suspension of loan as a result of COVID-19 in relation to transactions covered by the Fund, **automatic and consistent extension of the duration of the guarantee granted by the Fund.**

The Council resolved (i) to apply such measure to petitions to extend the Fund guarantee submitted, as from the date of entry into force of the Decree, by enterprises having non-performing exposures and in relation to amortizing loans with instalments overdue for a period exceeding 90 days; and (ii) that, in relation to this specific case, the ordinary procedure for the extension of the guarantees for enterprises “in financial difficulty” does not apply, whilst it remains applicable to cases other than the suspension, such as repayment plans or rescheduling of the current plans.

(g) For the purposes of accessing the Fund coverage, **the probability of default by enterprises** shall be determined exclusively on the basis of the economic and financial valuation model referred to in Part IX, letter A, of the General Rules of the Fund, without prejudice to the exceptions set forth under Article 6, paragraph 2 of the Decree of the Minister of Economic Development in agreement with the Minister of Economy and Finance of 6 March 2017. In any case, enterprises with “non-performing” and “unlikely to pay” exposures according to the banking provisions or being an “undertaking in difficulty” pursuant to Article 2, paragraph 18 of EU Regulation No. 651/2014 are excluded. The Council resolved that, for the sole purposes of the definition of the amount of the provision as risk coefficient, petitioners shall however submit, also by their automatic acquisition from private or public databases, information relating to their performances and the occurrence of adverse events.



(h) **Cancellation of fees due to the Fund in case of failure to complete the financial transactions** provided under Article 10, paragraph 2, of Ministerial Decree of 6 March 2017.

(i) **Eligibility for the Fund guarantee** (up to 80% for direct guarantees and 90% for reinsurance coverage) **of new financings** with a maturity of 18-month minus one day and up to a maximum amount of Euro 3,000 granted **to natural persons** carrying out business activities, arts or professions to the extent they are directly affected by the COVID-19 outbreak (in these case the Fund guarantee is free of charge and not subject to creditworthiness assessment).

(j) **Possibility to extend by 50% the junior tranche** covered by the Fund extendable by a further 20% in case of multiple guarantors in relation to portfolio guarantees for enterprises affected by Covid-19 outbreak or active in such specific industries/supply chains as are most affected thereby.

(k) **Possibility to combine the Fund guarantee with other guarantees or security interests**, including mortgages, acquired by the lender in relation to real estate investments and transactions in the tourism and/or hospitality industry provided that the relevant financing has a minimum duration of 10 years and is granted for an amount higher than Euro 500,000.00. The Council resolved, in particular, to allow, as an exemption to the provision under paragraph C.4, Part II of the applicable General Rules of the Fund, the acquisition of security interests and insurance or bank guarantees without any limitation as to their value.

(l) **Possibility for microcredit operators qualifying as SMEs to benefit from the Fund guarantee free of charge**, up to a maximum of 80%, on loans granted by banks and financial intermediaries to support their microcredit operations. Moreover, the Decree provides that the Fund guarantee is granted without creditworthiness assessment, when these operators are newly established companies that are unable to be assessed on the basis of the last two approved financial statements [1].



(m) **Possibility for private entities to contribute to increase the Fund and use of the resources of the Fund for portfolio guarantees and in connection with minibond portfolios**, ensuring from time to time an amount of free resources equal to at least 85% of the Fund resources.

(n) **Extension by three months of the term for completion of the administrative formalities concerning the management of the Fund.**

The Council resolved to apply such provision to all the administrative formalities still pending at the date of entry into force of the Decree, as well as to those started as from that date.

(o) **For the transactions guaranteed**, in whole or in part, **by the special sections of the Fund, the maximum percentage of the Fund guarantee may be increased** for new transactions up to the utmost possible limit allowed by the European Union legislative framework to the extent that such latter is increased compared to the limit provided for at the date of entry into force of the Decree.

(p) Last, by a non-regulatory decree of the Ministry of Economy, **further financial measures to support enterprises shall be adopted**, also by way of subsidized rates financings and guarantees up to 90% in favour of the enterprises or of the banks and other financial intermediaries that grant the new financing to the enterprises.

[1] The legislator also increased the minimum threshold of the amounts that can be made available, as set forth in the Consolidated Banking Law, from Euro 25,000.00 to Euro 40,000.00.

## 2. FINANCIAL SUPPORT TO THE SMES

Article 56 of the Decree introduced a “special moratorium” to help SMEs to overcome the most critical phase relating to the loss of productivity due to the Covid-19 epidemic.

In particular, micro-enterprises and SMEs having their registered offices in Italy can benefit from the following financial measures in relation to debt exposures *vis-à-vis* banks, financial intermediaries and other entities authorized to grant credit in Italy, provided that (i) their debt exposures are not, at the date of publication of the Decree, classified as “non-performing” and (ii) their applications for such measures attach a self-certification attesting that they have suffered from liquidity shortage caused by the restrictions issued in connection with the containment of Covid-19 [2].

**(a) as per open-ended credit facilities** (*aperture di credito a revoca*) **and advances on receivables** (*anticipazioni su crediti*) outstanding as of 29 February 2020, the amount granted (*importo accordato*), both for the portion drawn (*utilizzato*) and the portion undrawn (*non utilizzato*), **cannot be revoked – in whole or in part – until 30 September 2020.**

**(b) as per non-amortizing financings elapsing before 30 September 2020**, the relevant maturity date is extended until 30 September 2020, at the same terms and conditions, together with related ancillary rights (securities); such postponement shall not result in further burdens for the intermediaries nor for the

enterprises. Possible administrative costs for the performance of the transaction shall be borne by the creditor.

**(c) as per amortizing financings (including leasing agreements)**, repayment of instalments and lease rents falling due before 30 September 2020 is suspended until 30 September 2020 and the repayment plan together with the related ancillary elements are deemed extended without further formality and at no extra cost for either party, without prejudice to the right of the enterprises to request the suspension of the repayment of the sole principal amount.

The guarantee granted by the special section of the guarantee Fund for the SMEs applies automatically, upon electronic request of the lender, within the limit of 33% of the amounts indicated under letters a), b) and c) above.



[2] The self-certification by the enterprise to be attached to the communication shall generically refer to the “suffer of a partial or total reduction of the activity as a direct consequence of the spread of the Covid-19 epidemic”.

# ENTERPRISES

The Decree provides for measures of financial support to enterprises aimed at allowing the conversion of deferred tax assets (also "**DTA**") into tax credits, as well as at boosting the enterprises' liquidity through a synthetic securitization through Cassa Depositi e Prestiti S.p.A. ("**CDP**").



## 1. FINANCIAL MEASURES

Article 55 of the Decree boosts the assignment of non-performing loans and receivables ("*crediti deteriorati*") by allowing the transformation, for an amount proportional to the amount of non-performing loans transferred to third parties by December 31, 2020, of a portion of the DTAs (whether or not they are recorded in the financial statements) into tax credits, that may be used, without any limit, to offset any tax or social security contribution or transferred (intra-group or to third parties) or claimed as a refund in cash.

The non-performing loans or receivables that can be assigned may be of either commercial or financial nature, it being understood that NPLs are defined, for the purpose thereof, as **past-due loans over ninety days** from the due date.

The convertible deferred tax assets are referred to:

- (i) **tax losses carried forward** according to article 84 of the Presidential Decree No. 917/1986 TUIR, and
- (ii) **excess Notional Income Deduction** (NID) carried forward (i.e. still unused or deducted from taxable income at the date of the transfer of NPLs).

The portion of DTAs convertible into tax credit is equal to 20% of the nominal value of the assigned claims, provided that, for the purposes of conversion, a limit of 2 billion euros in terms of nominal value shall apply to the total amount of NPLs transferred by 31 December 2020. For entities belonging to groups, the above limit is calculated taking into account all assignments made by the entities belonging to the same group. The conversion of the DTAs into tax credits takes place on the effective date of the assignment of the non-performing loans or receivables. From the effective date of the assignment, the assignor will no longer be able to offset the taxable income with the tax losses carried forward, nor deduct or utilize as a tax credit the excess NID carried forward, for an amount equal to the portion of DTAs converted into tax credits.

## 2. MEASURES AIMED AT BOOSTING LIQUIDITY

Article 57 of the Decree allows:

- (i) the banks, with the support of CDP, to grant, more easily, loans and financings (in any technical form whatsoever) to those enterprises which have suffered a reduction in turnover owing to the COVID-19 emergency;
- (ii) CDP to support banks that provide such loans through specific instruments, including “first loss” guarantees granted in respect of portfolios or single exposures;
- (iii) the State to grant “counter-guarantees” up to 80% of the exposures undertaken by CDP and at market conditions.



## 3. TREATMENT OF SOME EXPENSES BORNE IN CONNECTION WITH THE HEALTH EMERGENCY

In addition to the above measures, the Decree provides that some expenses borne in relation to the Covid-19 health emergency may be treated, in part, as a tax credit and, in part, as a tax deduction. In particular, the following are allowable:

- (i) a tax credit for the expenses borne to sanitize workplaces. In particular: for the tax period 2020, 50% of the sanitization expenses relating to workplaces and equipment, up to Euro 20,000.00;
- (ii) a tax credit in favor of those entrepreneurs who pursue their business activity in leased estates, equal to 60% of the amounts of the rent relating to March 2020[A1] ; the real estate has to be included in C/1 cadastral category, with exemption to those activities listed under Annex 1 of the Decree of the President of the Council of Ministers dated March 11, 2020 (including, pharmacies, para-pharmacies, and grocery stores) and may be used only to offset;
- (iii) a deduction of the donations made by entities holding corporate income, pursuant to Article 27 of the Law No. 133/1999; for the purposes of IRAP (Regional Tax on Productive Activities), the donations at stake are deductible in the financial year in which the payment occurred.

#### 4. COORDINATION WITH THE SUPPORTING MEASURES FOR THE BANKING SYSTEM

The effectiveness of the afore-mentioned measures aimed at boosting the liquidity of enterprises through the banking system will also depend on the measures that will be adopted and implemented to support the banking system itself.

In this respect, it is worth pointing out that, on March 12, 2020, the European Central Bank (“**ECB**”) and the European Banking Authority (“**EBA**”) announced the adoption of measures aimed at reducing certain economic and operational constraints upon the European banks, with the aim of (i) strengthening the capital base and the liquidity reserves of the credit institutions; and (ii) avoiding that such latter use their own resources for the performance of activities not essential in connection with their functions in the “real economy”, in order to deal with the adverse economic situation resulting from the Covid-19 emergency. In particular:

(i) the EBC announced that it will allow the credit institutions to work under certain economic thresholds fixed by the CRR/CRD IV package and that it will review the supervising activities already planned in light of the specific needs of the entities concerned; and

(ii) the EBA stated that the stress test scheduled for 2020 will be postponed to 2021.



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