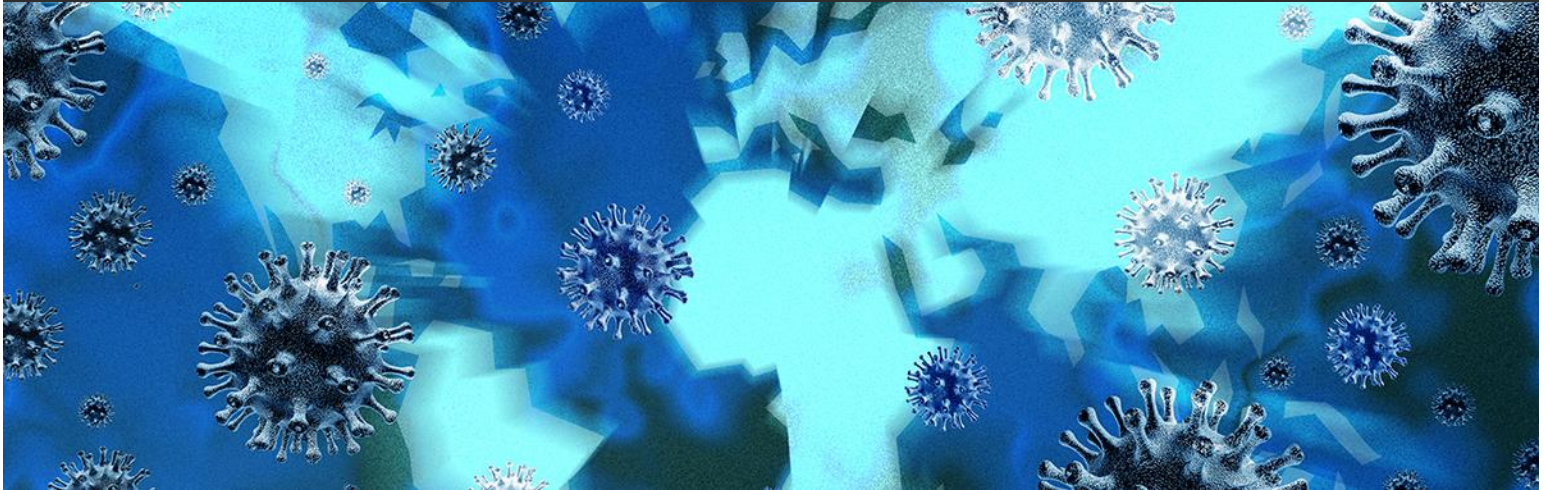


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019 — Focus on Italy



6 April 2020

Italian Banking & Finance: Emergency Legislation for Coronavirus Disease 2019

As part of a comprehensive legislative and regulatory package addressing the challenges of the Coronavirus Disease 2019 (COVID-19), the Italian Government has enacted extraordinary stimulus measures in the banking, finance and capital markets sectors¹. The focus of this alert is on the initial measures supporting the liquidity of individuals and companies through the banking system and public guarantee schemes.

The regulatory framework for these sectors (aligned with EU guidelines and soft law provisions issued by ESMA and EBA) is mainly governed by Law Decree 17 March 2020 No. 18 (the “**CuraItalia Decree**” or “**Decree**”). The Decree sets out, *inter alia*, a number of provisions which enable certain categories of borrowers and obligors – notably Small and Medium-sized Enterprises (“**SMEs**”), which represent the majority of Italian entities – to benefit from an option for standstill, moratoria or other rescheduling mechanisms as a result of the losses and damages they are suffering from the outbreak of COVID-19.

To neutralize the negative impact of such restructuring measures on the lenders’ balance sheets, on the one hand the CuraItalia Decree provides for eligibility criteria to certain public credit enhancement

¹ See our two previous GT Alerts “[Italian Corporate Law: Emergency Legislation for Coronavirus Disease 2019](#)” for an overview of the Italian corporate law sector, and “[Italian Law: Emergency Legislation for Coronavirus Disease 2019](#)”, for a general outline of the COVID-19 emergency legislation.

schemes (in the form of funding arrangements and/or guarantee/counter-guarantee mechanisms), while on the other hand the Italian and EU Italian regulators (Bank of Italy, ESMA and EBA) clarified that the restructured exposures deriving from the application of those relief measures would not, in principle, imply a change in the status of their underlying exposures affected by the pandemic, nor would they imply the application of a more burdensome regulatory and accounting regime.

A new decree expanding the stimulus measures is expected soon, as well as implementing regulations of the CuraItalia Decree.

Liquidity Support Measures through the Banking System under the CuraItalia Decree

1. Increased support for SMEs under the SME Central Guarantee Fund (*Fondo di Garanzia per le PMI*) (Article 49)

The first group of provisions of the Decree fosters the granting of new funding to SMEs and the restructuring of their existing indebtedness by enabling borrowers and lenders to benefit, for a nine-month period, from the enhanced backup of the SME Central Guarantee Fund (the “**SME Guarantee Fund**”), a public undertaking of investments managed by the Italian Ministry of the Economic Development. Measures supported by the public guarantee of the SME Guarantee Fund include:

- the increase of the maximum allowed guaranteed amount from EUR 2.5 million to up to EUR 5 million;
- the increase of the maximum guarantees amount to up to 80% of the financing (under the direct guarantee scheme) or 90% (under the counter-guarantee or reinsurance scheme), in either case up to an amount of EUR 1.5 million for each borrower;
- the SME Guarantee Fund backup scheme is now extended to allow the Fund’s guarantee in support of rescheduling arrangements of existing credit facilities (“*operazioni di rinegoiazione del debito*”), subject to the granting of additional finance to the borrower for at least 10% of the outstanding amount under the existing facility;
- the duration of the guarantee by the SME Guarantee Fund has been extended to back up the standstill granted by the lenders to micro-enterprises and SMEs pursuant to the Decree;
- the Fund’s guarantee can now be granted in addition to other security interests (including mortgages) assisting long-term financings in the real estate, tourism and hotel sectors, having a final maturity of at least 10 years and for a total commitment of at least EUR 500,000;
- the Fund’s guarantee also has been made available to microcredit lending schemes for amounts up to EUR 3,000 and a duration up to 18 months without prior credit assessment;
- the guarantee of the SME Guarantee Fund is granted free of charges and fees.

The provisions above appear to be coordinated with the EU State Aid safe-harbor exemptions introduced by the EU Commission in connection with the COVID-19 emergency as summarized in “*Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*” (see [GT Alert of 19 March 2020](#)).

2. Support to SMEs guarantee schemes from “Confidi” (Article 51)

In order to reduce the cost of collective guarantees granted to SMEs by consortia granting backup guarantees (referred to as “**Confidi**”), the deduction has been allowed of annual registration fees from the annual fee due by each Confidi to the joint consortium funds.

The reduction of operational costs of these collective guarantee issuers will result in a reduction of the fees payable by SMEs applying for the granting of Confidi’s collateral.

3. Enhanced export financing schemes (Article 53)

To support export credit transactions connected with the shipping sector, an additional up to EUR 2,6 billion Italian State-backed guarantee has been authorized in favor of SACE S.p.A. (*i.e.* the Italian Export Credit Agency indirectly owned by the Italian Ministry of the Economy).

This new State’s backup guarantee will support transactions already approved by SACE as of the date of the Curaitalia Decree and may play a key role in the financial close of strategic cross-border trade and construction projects by key Italian players.

4. Extension of Solidarity Fund to professionals and freelance workers (Article 54)

The financing Solidarity Fund (*Fondo di Solidarietà*) set up by the Italian Ministry of the Economy for the financing of the “first home” purchase has been extended to include professional workers and freelance borrowers who certify a loss of income, in the quarter following 21 February 2020, higher than 30% of the gross income made in 2019 Q4, as a result of the emergency.

The measure (which will apply for nine months) enables this category of borrowers materially affected by the current emergency (and originally not benefiting from the Solidarity Fund) to request (i) an 18-month moratorium of the “first home” purchase loan agreements to which they are parties; and (ii) the backup of the Solidarity Fund for a portion of the relevant unpaid amounts under the loan agreement.

5. Tax credit for deferred tax assets (DTAs) to sellers of non-performing receivables (Article 55)

In order to favor the transfer of non-performing receivables (NPLs), companies selling these assets until 31 December 2020 shall be entitled to a tax credit for deferred tax assets (DTAs, “*attività per imposte anticipate*”) for up to 20% of the nominal amount of the NPLs sold (for transactions of an aggregate nominal amount up to Euro 2 billion).

- The tax credit will be immediately available to all companies in good standing which have sold to third parties trade or finance receivables unpaid for more than 90 days following the due date (excluding infra-group receivables assignments).
- The tax credit shall apply for corporate income tax (s.c. IRES) purposes thereby reducing the tax liability of the relevant seller by allowing it to set off the relevant amount against the payable taxes.
- The DTAs eligible for the calculation of the relevant tax credit are (i) deductible losses not yet deducted from the taxable income on the relevant transfer date; and (ii) a portion of the equity contributions made from 2011 afterwards which have exceeded the net income declared within the same period (so

called “ACE excess amounts”²), to the extent the relevant amount has not been already been deducted or converted into a tax credit on the relevant transfer date. The eligible DTAs will be taken into account even if not reported in the seller’s balance sheet.

- The tax credit conversion shall apply through exercise of an option by the seller on the same tax period on which the receivables’ transfer becomes effective.

6. Standstill and rescheduling measures in favor of micro-enterprises and SMEs (Article 56)

Italian resident micro-enterprises and SMEs have been granted a number of protections to ease financial pressure and liquidity shortage and to prevent potential non-payment/insolvency scenarios deriving from business interruptions and/or losses of income directly connected to the COVID-19 outbreak. Micro-enterprises and SMEs being entitled to these reliefs represent the majority of Italian undertakings: these are undertakings employing fewer than 250 persons and having an annual turnover not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million. The extraordinary measures for micro and SMEs will be effective until 30 September 2020 and include the following:

- Credit lines and discount agreements granted to micro/SMEs cannot be revoked by the relevant finance parties until 30 September.
- Any final maturity date of “bullet” loan agreements falling before 30 September 2020 is suspended and deferred accordingly, without application of additional charges to the borrowers.
- Any other payment obligations and installments under “amortizing” loans or financial lease agreements falling before 30 September 2020 are suspended until such date and rescheduled on terms mutually renegotiated, without application of additional charges to the borrowers.
- Equivalent extensions of time are granted in respect of (i) the guarantee/security period of any collateral assisting the relevant exposures and (ii) the payment dates and final maturity of funding agreements in place between the relevant lender and any third-party investor.
- To neutralize the negative effects of the above measures for banks and financial institutions, the lenders shall have the option to apply for support from a EUR 1760 million SME Central Guarantee Fund (*Fondo Centrale di Garanzia per le PMI*) aggregate buffer, as a subsidiary guarantee to cover 33% of the sums unpaid by the relevant debtors within the relevant standstill period as referred to above.
- These measures are applicable to all outstanding exposures of micro enterprises and SMEs as of the date of the CuraItalia Decree, provided that:
 - the borrower has exercised an option for the application of a standstill/rescheduling measure by sending to the lender a self-certification stating that a shortfall on liquidity has occurred as a direct consequence of the outbreak of the COVID-19 epidemic;
 - the relevant exposure is treated as “performing” from a regulatory perspective (*i.e.* a non-payment has not occurred for a period longer than 90 days), and

² ACE (*Aiuto alla Crescita Economica*, *i.e.*, aid for economic growth) is a facility introduced with Law Decree no. 201/2011 to encourage the strengthening of the capital structure of companies and the Italian production system by reducing payable taxes on companies’ income deriving from new equity contributions. The facility was abolished with Law no. 145/2018 and reintroduced with the 2020 Budget Law (article 1, paragraph 287, Law no. 160/2019) in 2019.

- the exercise of such option does not fall within the “forbearance” measures specified under the banking regulatory framework, and the standstill resulting therefrom shall not be treated as a non-payment period for the purpose of the credit quality assessment of the relevant debtor.

As mentioned above, the write-off which may be suffered by the lenders as a consequence of these standstill and rescheduling measures and/or the possible non-payments (also subsequent to expiry of the standstill period) will be backed up by the SME Guarantee Fund (the public undertaking of investments managed by the Italian Ministry of the Economic Development as referred above) to the extent the lenders will not be able to successfully enforce their claims within 18 months following the expiration of the standstill period.

7. State’s guarantee to support undertakings’ liquidity through CDP’s (Article 57)

All banks and financial institutions providing funding in any form to enterprises having suffered a turnover reduction as a consequence of COVID-19 are entitled to benefit from enhanced backup guarantee schemes with Cassa Depositi e Prestiti S.p.A. (“**CDP**”), the Italian Ministry of Economy-controlled financial institution supporting the innovation, growth and internationalization of small, medium and large companies.

Indeed, the Italian State will issue a first demand, irrevocable and unconditional counter-guarantee to cover CDP’s exposures (also in the form of first-losses guarantees on loan portfolios), for a maximum guaranteed amount up to 80% of such exposure.

An initial buffer of EUR 500 million for 2020 is set forth in the Ministry of Economy’s balance sheet to cover the State’s counter-guarantee for financing transactions backed-up by CDP to the benefit of COVID-19-affected companies.

This public credit enhancement measure – which according to the Italian Government would potentially cover in aggregate a loans portfolio for an amount up to EUR 10 billion – may have a substantial impact on the Italian financial market since:

- it is not subject to limitations depending on the size of the relevant borrower (indeed, not only SMEs are entitled);
- the CDP/Italian State guarantee scheme would enable the lending financial institutions to apply a lower ratio on capital absorption and therefore a more favorable treatment on the relevant exposure from a regulatory perspective.

The aforementioned framework is subject to implementation by Ministerial Decree which will set out *inter alia* (i) the specific industry sectors of the undertakings eligible for this CDP/Italian State back-up financing scheme; and (ii) the criteria and modalities to be satisfied to have access to the CDP’s guarantee and the Italian State’s counter-guarantee.

8. Standstill on SIMEST subsidized financing schemes (Article 58)

A 12-month standstill may be applied, upon request, to certain financings subsidized by the publicly owned fund managed by Simest S.p.A. (the investment company indirectly controlled by the Italian Ministry of the Economy supporting Italian companies willing to grow on the global market).

The standstill measures may be applied until 31 December 2020 and involve enterprises which currently benefit from the “Fondo 394” subsidized financing scheme for globalization of SMEs.

Other Emergency Measures

9. Standstill option for financing transactions between ABI Banks and borrowers being members of representative Associations of enterprises

The Italian Banks' Association ("ABI") has agreed with representative Associations of undertakings (including *Confcommercio* and *Confedilizia*) to extend through an Addendum the standstill and moratoria measures provided for in the 2019 ABI Credit Arrangement (*Accordo per il Credito*) to the benefit of borrowers affected by COVID-19 for loans outstanding on 31 January 2020.

Eligible loans include mortgages, leasing and short-term credit lines. The ABI's measure is available to micro-enterprises and SMEs associated with an undertakings' representative Association being a party to the *Addendum*, provided that the relevant exposures are performing and have not benefited from moratoria or rescheduling in the preceding 24 months.

The option, exercisable by way of a self-declaration to be delivered within 31 December 2020, may include (i) the standstill of the principal amounts due under the relevant loan arrangements up to 12 months, or (ii) an extension of the final maturity for no longer than double of the original tenor of the loan.

10. Suspension of loan agreements in the original "Red Zone Areas"

The borrowers having obtained (i) a mortgage loan for a property located in the Municipalities originally affected by COVID-19 in the south Lombardy and Veneto (the "**Original Red Zone**"), or (ii) a general corporate purposes loan for business operated in the Original Red Zone, are entitled to claim for suspension of their respective obligations for impossible fulfilment (*impossibilità sopravvenuta*) and to exercise an option for standstill of their payment obligations (or exclusively the relevant principal payment obligations) for the entire duration of the emergency status (Article 1, Order of the Head of the Civil Protection Department No. 642 on 29 February 2020).

Similarly, the lenders (banks and financial intermediaries) shall inform their borrowers of the right to benefit from such standstill option by appropriate means (including by inserting a notice on their website); failure to do so by the relevant lender will result in an automatic standstill of all affected loans until 14 November 2020 without additional charges to the borrower.

This extraordinary measure was originally issued by the Italian Civil Protection to govern the emergency status of the Municipalities included in the Original Red Zone. The Civil Protection standstill schemes have been reinforced and also partially superseded - at least with regard to microenterprises and SMEs - by the broader standstill provisions of the CuraItalia Decree now applicable to individuals and undertakings located in the entire Italian territory (see comment to Article 56 of the Decree above).

11. Relief from certain credit risk reporting to "Centrale Rischi"

The Bank of Italy and the Italian Banks' Association (ABI) issued guidelines aimed at providing guidance and comfort to the lenders in terms of compliance with "*Centrale Rischi*" regulatory and accounting treatment and with capital requirements in connection with exposures affected by the pandemic and benefiting from the relief measures of the Decree (see Bank of Italy Notice of 23 March 2020 and ABI Notice "*in materia di segnalazione alla Centrale Rischi*" of 26 March 2020). These measures are consistent with the Decree and the EBA's guidelines on exposures' regulatory treatment (see comment on EBA's measures below). Essentially:

- exposures benefiting from the restructuring and rescheduling measures under Article 56 of the Decree shall not be classified and reported as NPLs to the Central Credit Risk Register (“*Centrale dei Rischi*”) from the moment when any of the above reliefs has been granted under the Decree;
- the relevant standstill period (and ensuing deferral of payment) shall not be accounted for as “persisting delays” for regulatory and credit risk reporting purposes;
- lenders shall not notify any reduction of their commitment (“*importo dell’accordato*”) where the revocation of credit has been prevented (or an extension of term has been granted) pursuant to the Decree.

12. Clarification on regulatory and accounting regime of COVID-19 affected financial exposures

Italian financial institutions can rely also on the EBA and ESMA’s public Statements clarifying that public and private general moratoria granted as a consequence of the COVID-19 pandemic:

- shall not be automatically classified as forbearance measures for regulatory purposes nor as defaults for the purposes of IFRS9 accounting principle;
- shall not *per se* constitute a significant credit risk increase event, for accounting purposes, in connection with securities or financial instruments held in borrowers which benefit from any general moratorium regime in connection with the emergency; and
- shall be considered on a limited extent (and, if applicable, mitigated by the correspondent granting of public credit enhancement measures) for the purposes of reporting and assessing expected credit losses on the relevant exposures for accounting purposes (see *EBA Statement on the application of the prudential framework regarding Default, Forbearance and IFRS9 in light of COVID-19 measures*, 25 March 2020; *EBA Final Report – Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis*, and *ESMA Public Statement 32-63-951: Accounting implications of the COVID-19 outbreak on the calculation of expected credit losses in accordance with IFRS 9*, 25 March 2020).

These statements, which refer to moratoria and other credit support measures granted before 30 June 2020, should be read together with the Italian legislative framework of general standstill and moratoria measures under the Decree (see comment to Article 56 above) and, as such, are likely to strengthen the positions of the lender by enabling them to grant those debt reliefs without significant prejudice in respect of the credit quality of their exposures and consequent capital requirements.

13. Postponement on securities reporting obligations

ESMA confirmed not to consider necessary compliance with the Trade Repository registration requirements of all securities financing transactions to which credit institutions and investment firms are parties within the first deadline of 13 April 2020, with a view to ensure these registrations for the following deadline falling on 13 July 2020.

ESMA accounts for the operational difficulties that financial players are facing due to the pandemic, has suggested that the relevant authorities waive possible breaches of the new reporting regime set out by the SFTR Regulation by the first deadline originally scheduled for April 2020 (see *ESMA Public statement 80-191-995: “Actions to mitigate the impact of COVID-19 on the EU financial markets – postponement of the reporting obligations related to securities financing transactions under the Securities Financing Transactions Regulation and under Markets in Financial Instruments Regulation”*, 26 March 2020).

14. Postponement on issuers' publication deadlines under the Transparency Directive

ESMA acknowledges that, due to the COVID-19 pandemic, impediments to compliance with financial reporting obligations by issuers of securities admitted to trading on regulated markets may occur.

ESMA encourages the relevant national competent authorities to permit potential delays in delivery of the relevant information package by the issuers within a grace period of two months, as to the annual reporting obligations, or one month, as to semi-annual reporting obligations, in connection with financial years or semesters falling between 31 December 2019 and 1 April 2020.

The above measures may be followed shortly by a specific notice or resolution of the Italian National Competent Authority (CONSOB) implementing the guidelines proposed by ESMA (see ESMA Public Statement 31-67-742: “*Actions to mitigate the impact of COVID-19 on the EU financial markets regarding publication deadlines under the Transparency Directive*”, 27 March 2020).

** This GT Alert is limited to non-U.S. matters and law.*

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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