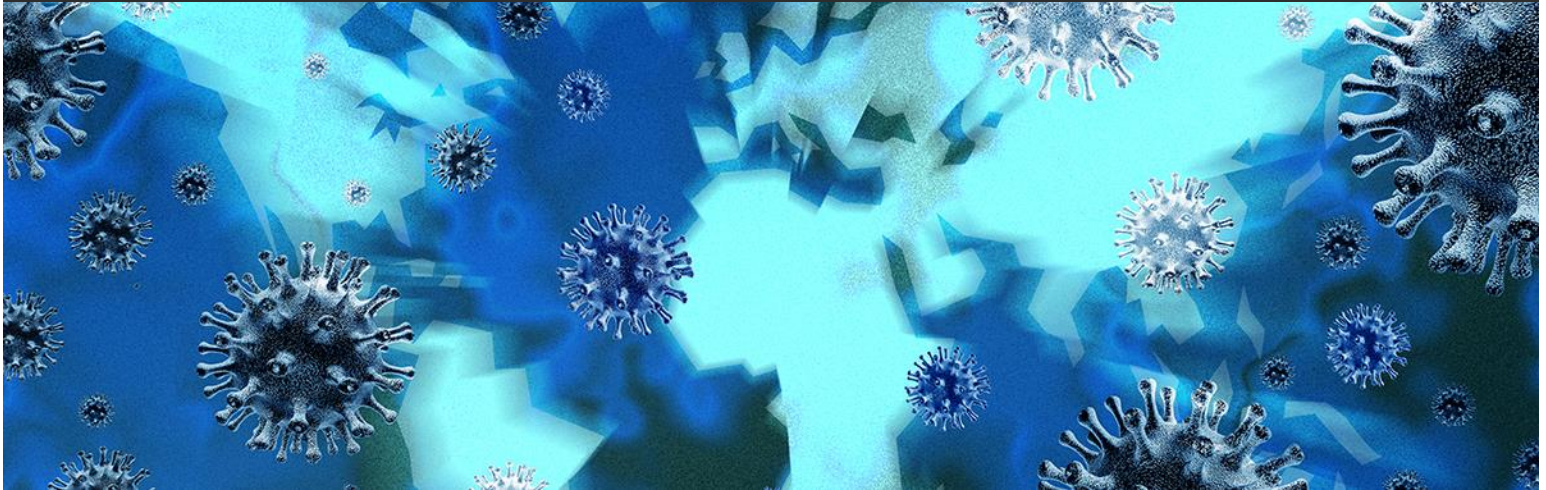


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019 – Focus on Italy



June 2020

COVID-19 Pandemic: Banking & Finance ‘Phase 2’ Measures in Italy

The Legislative Framework So Far

Legislative measures implemented by the Italian government in response to Coronavirus Disease 2019 (COVID-19) to ensure a **more favourable framework for the granting of new financing and tackling liquidity shortage to assist undertakings and financial institutions** include the following:

- **Law Decree 17 March 2020, No. 18** - so-called “*Decreto Cura Italia*”, enacted into law 24 April 2020, No. 27 (the “**Cura Italia Decree**”) summarized in GT Alert *Italian Banking & Finance: Emergency Legislation for Coronavirus Disease 2019* of 6 April 2020;
- **Law Decree 8 April 2020, No. 23** - so-called “*Decreto Liquidità*”, enacted into law 5 June 2020, No. 40 (the “**Liquidity Decree**”) summarized in GT Alerts *Italian Law Emergency Legislation for Coronavirus Disease 2019* of 20 April 2020 and *Italian Law: Corporate Transparency and ‘Golden Power’ Provisions in Emergency Legislation for Coronavirus Disease 2019* of 23 April 2020; and
- **Law Decree 19 May 2020, No. 34** - so-called “*Decreto Rilancio*” (the “**Relaunch Decree**”), which started “phase 2” of the recovery.

This GT Alert provides an outline of the measures of the Relaunch Decree relevant to banking and finance, followed by an updated high-level summary of the broader support legislation relating to such sectors, resulting from the above-referenced legislative framework¹.

The Relaunch Decree

2.1 Increased flexibility for NPL securitisations backed by State guarantee (GACS) (Article 32)

In the context of asset-backed securitisations of non-performing and defaulted exposures (*sofferenze*) which benefit from the State guarantee on the senior notes claims (so-called “*Garanzia Autonoma per le Cartolarizzazioni di Sofferenze*” or “GACS”), the Italian Ministry of Economy (MEF) may now consent to **amend the relevant terms and conditions of the ABS notes in order to allow the full payment of the servicing fees also in the event that the performance targets set by the transaction agreements have not been achieved.**

The MEF consent to this derogation is to be granted upon request of the issuer, provided that the proposed amendments:

- apply only with respect to payment dates falling between 19 May 2020 and 31 July 2021;
- are grounded on **underperformance of receivables’ collection deriving from the entry into force of the COVID-19 legislative and regulatory measures**; and
- do not prejudice the rating attributed to the senior notes.

By taking into account the inevitable shortfalls of credit collections and recoveries deriving from the COVID-19 measures, this provision should avoid unduly disincentivizing the servicers (which have a crucial role in assuring the performance of these transactions). Further, this provision could encourage senior noteholders to approve appropriate amendments to the relevant transaction documents without prejudice to the continuation of the guarantee assisting their claims vis-à-vis the issuer and, finally, could prompt **more flexibility in addressing similar underperformance issues also in “ordinary” securitizations.**

2.2 Simplified execution and communication of financial and insurance agreements (Article 33)

To provide **more flexibility on the requirements for execution in writing of investment services and insurance agreements as well as subscription agreements with undertakings for collective investment**, from 19 May 2020 until the end of the COVID-19 state of emergency (31 July 2020):

- **the client’s consent given through non-certified email** or other suitable means, accompanied by a copy of a valid ID and referencing the specific investment/insurance/subscription agreement being executed, shall be deemed **valid for the purposes of complying with the written form requirement** set forth by the Italian Financial Act and Article 2702 of the Italian civil code; the

¹ As of the date of this Alert, the Relaunch Decree is the only decree not yet converted into law, which will occur within 60 days of its entry into force. Therefore, its provisions are not final and conclusive since (i) the conversion law could amend or remove certain provisions and (ii) if the decree is not converted into law within the above term, it will cease to be in force, in principle with retroactive effects.

consent email with copy of the ID document shall remain stored with the agreement in such a way as to ensure the relevant safety, integrity and unchangeability;

- the relevant professional intermediary, in turn, can fulfil its obligation to deliver to the client a copy of the signed agreement together with the mandatory information documents by making available the full document package through a durable storage system; the hardcopy of the same shall then be delivered as soon as possible after the end of the state of emergency;
- during the state of emergency, the client is entitled to use the same simplified method to exercise the rights arising from the agreement itself or provided by law.

This provision is in line with the **applicable simplified regime for the execution of banking contracts**.² Moreover, by ensuring the validity of investment contracts executed in the above manner, the provision may provide **comfort to both investors and professional financial operators** approaching retail clients without the option of organizing physical meetings or obtaining hardcopies of signed documents given social distancing measures adopted during the pandemic.

2.3 Public (non-State) credit enhancement schemes to support undertaking liquidity: guarantees on loans, subsidized-rate loans, other grants (Articles 55, 56 and 58)

In the framework laid out by the European Commission communication, “*Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*”, as amended (2020/C 1863 final 91 I/01) (the “**Communication**”)³, the Relaunch Decree provides that the **Italian Regions, Autonomous Provinces, local governments and Chambers of Commerce are enabled to implement credit enhancement schemes by using their own funds in favour of *in bonis* undertakings**, in the form of:

- **direct or indirect guarantees** (granted also through banks or other authorized credit providers in Italy) assisting loans with a tenor not exceeding six years and with a maximum guaranteed amount not exceeding (x) 90% of each loan principal amounts, if the relevant loss is borne proportionally and under the same conditions (*pari passu*) by the relevant credit institution and the Italian State; or (y) 35% of each loan principal, if the first loss is attributed to the Italian State and, thereafter, to the credit institutions (i.e., first loss guarantee) (Article 55), or
- **direct or indirect subsidized-rate loans** (“*prestiti a tasso agevolato*”), for specific investments or general corporate purposes, to be granted by 31 December 2020, having a final maturity not exceeding six years (Article 56); subsidized-rate loans are an alternative aid to the guarantees above and cannot be granted in relation to the same loan.

The above public credit enhancement schemes shall not result in exposures exceeding (i) twice the annual costs borne by the relevant beneficiary for employees’ salaries in 2019 or in the last available financial year; and (ii) 25% of the beneficiary’s total turnover of 2019. Such aid may be granted in connection with new loan agreements or existing loan agreements which benefit from the compulsory extension of their duration in favour of SMEs pursuant to the emergency legislation.

² See article 4 of the Liquidity Decree.

³ See GT Alerts *EU State Aid: Public Recapitalization and Subordinated Debt to Tackle Effects of COVID-19* of 26 May 2020 and *EU at the Time of COVID-19* of 5 May 2020.

Other aid may be granted under the Relaunch Decree by the public entities listed above in the form of **direct subsidies, repayable advances or tax advantage** relief within the limits set forth in the Communication (Article 58).

The inclusion of **local public entities as potential guarantors** may have a positive effect on enterprises and may, therefore, play a significant role in the **development of the economic environment of local areas**. However, given the relatively short timeframe for the application of the above measures, their success may depend on the ability of Italian local entities to promptly organize themselves in order to take an active role in these subsidized financing transactions.

2.4 State Guarantee on newly issued liabilities of Italian banks (Articles 165 and 166)

To prevent a liquidity or financial crisis in banks with registered offices in Italy, the Relaunch Decree contemplates that, within six months from its entry into force, the MEF may issue a **State guarantee**

- to assist newly issued liabilities of Italian banks, or
- to supplement the value of those guarantees already allocated by Italian banks as collateral for financings provided by the Bank of Italy to address severe liquidity crises of banks pursuant to emergency lending schemes (s.c. *emergency liquidity assistance - ELA*) implemented in compliance with the BRRD, the Single Resolution Mechanism and the State aid EU regulatory framework.

The maximum overall guaranteed amount of banks liabilities shall be up to nominal Euro 19 billion. The State guarantee may be granted to the requesting banking institution if the following eligibility requirements are met:

- positive assessment by the competent regulator (BCE or Bank of Italy, as appropriate) that the relevant institution satisfies the capital requirements under the CRR (EU Regulation no. 575/2013), also taking into consideration the stress tests carried out in the last semester, if any;
- approval by the European Commission that the conditions of the specific guarantee are compliant with EU State Aid Legislation, subject in any case to the eligible institution having a positive net worth and being in urgent need of liquidity; and
- banks receiving this State aid shall carry out their activity without abusing the support received or obtaining undue benefits, particularly with reference to the commercial information to the public.

The aid at issue aims to ensure business continuity of Italian banks exposed to the economic and financial challenges of the pandemic.

COVID-19 Banking and Finance Legislation, In a Nutshell

The entry into force of the Relaunch Decree, combined with the innovations set forth by the Cura Italia Decree and the Liquidity Decree, have given rise to a complex framework of financial aid and support to Italian undertakings which can be summarised as follows.

3.1 Support via standstill/moratoria and debt restructuring schemes

- Standstill and moratoria measures (i) on SMEs debts are applied upon request of the borrower in respect of payment obligations falling due before 30 September 2020 (article 56 Cura Italia Decree); and (ii) on SIMEST “Fondo 394”-subsidized export financings to SMEs (Article 58 Cura Italia Decree).
- Increased flexibility for NPL securitisations backed by the GACS State guarantee, through approval by MEF of waivers to servicing fees subordination/deferred payment events (Article 32 Relaunch Decree, see above).

3.2 Financial support via public subsidies and subsidized-rate loans

- **Reduction of costs of funding** for the issue of collective guarantees (“Confidi”) in favour of SMEs (Article 51 Cura Italia Decree);
- **Financing Solidarity Fund** (*Fondo di Solidarietà*) available to borrowers under “**first home**” loan agreements having suffered significant loss of income in the first quarter of 2020 as a result of the COVID-19 emergency (Article 54 Cura Italia Decree and Article 12 Liquidity Decree);
- **Non-repayable grants in favour of small entrepreneurial activities and self-employed workers**, in proportion with the shortfall on revenues of those eligible borrowers between April 2019 and April 2020 (Article 25 Relaunch Decree)⁴;
- Injection of **additional non-repayable grants and subsidized loans reserved to companies qualifying as innovative start-ups** in accordance with the applicable legislation (Article 38 Relaunch Decree)⁵.
- **Italian Regions and other local public entities as direct lenders for subsidized-rates loans** (Article 56 Relaunch Decree).

3.3 Support via credit enhancement schemes

- Until 31 December 2020, **SACE** will be entitled, subject to the occurrence of certain conditions, to issue **first demand, unconditional and irrevocable guarantees**, up to Euro 200 billion in aggregate, **in favor of non-distressed Italian companies, to guarantee repayment obligations arising from new financings** with a six-year maximum duration, **granted in any form by banks, financial intermediaries and other authorized financial entities**. The guarantee will be counter-guaranteed by the Italian State and will cover 70% to 90% of granted financings, depending on the companies’ size and turnover (Article 1, paragraphs 1-11, 14 bis and 14 ter Liquidity Decree);
- The **conversion law** of the Liquidity Decree has made the following **amendments** in relation to, *inter alia*: (i) eligibility of the SACE guarantee also in connection with financings in the form of assignment of receivables with recourse and factorings; (ii) clarification on the concept of “defaulting undertaking” by reference to specific financial covenants to be complied with; (iii) clarification on the undertaking not to make any distribution for the financial year falling on 2020; (iv) application of a portion of the loans backed-up by the SACE guarantee to refinance a portion of the existing financial indebtedness; (v) extension of the SACE guarantee to rated bonds subscribed and paid for by banks

⁴ See GT Alert *Italian Law: Emergency Legislation for COVID-19 – Corporate* of 26 May 2020.

⁵ See GT Alert *Italian Law: Emergency Legislation for COVID-19 – Corporate* of 26 May 2020.

and Italian and international financial institutions; and (vi) the inclusion of a self-certification from the borrower within the documentation package required for filing the application of the SACE guarantee;

- Within the cap of Euro 200 billion set forth for the SACE guarantee, the **Italian State can issue first demand, unconditional and irrevocable guarantees or counterguarantees (via Ministry of Economy) to cover Cassa Depositi e Prestiti S.p.A. exposures**, to be incurred before 31 December 2020, **to support banks and other authorized entities granting financings in any form to Italian companies** with decreased turnover due to COVID-19. By virtue of these guarantees, banks and other authorized entities may release regulatory capital (Article 57 Cura Italia Decree and Article 1, paragraph 13 Liquidity Decree);
- Until 31 December 2020, the **Central Guarantee Fund (*Fondo Centrale di Garanzia*) provides guarantees, with no fees or commissions, covering the financial liabilities of SMEs** (including financings made available in the context of debt-renegotiation, if at least 10% of new financing is granted), also with exposure classified as “unlikely to pay” (*inadempienze probabili*) or “past-due or over-threshold deteriorated” (*scadute o sconfinanti deteriorate*), for single amounts **up to Euro 5 million**, with a coverage percentage from 80% to 100%, depending on certain features of the SME concerned and the relevant financing (Article 13 Liquidity Decree); the conversion law has extended the eligibility for the PME Fund support also to publicly owned undertakings meeting the requirements to access such fund;
- Authorisation to the **SME Capital Fund to subscribe and pay for financial instruments issued by eligible small entrepreneurial activities** and self-employed workers;⁶
- **Italian Regions and other public local entities as eligible guarantors on financings granted by Italian lenders** (Article 55 Relaunch Decree).

3.4 Support via tax benefits

- **Tax credit for deferred tax assets** regime applicable **to sale of non-performing receivables** made before 31 December 2020 up to 20% of the relevant nominal amount (Article 55 Cura Italia Decree);
- **Tax credits on capital contributions** (Article 25 Relaunch Decree) and on losses exceeding the net assets (Article 26 Relaunch Decree).

3.5 Waiver of execution formalities

- **use of non-certified email and ID card for valid execution of banking agreements by clients** and exercise of rights therefrom; and use of a durable storage system as a valid instrument to comply with the intermediary’s undertaking to distribute a signed copy of the banking agreement to its client (Article 4 Liquidity Decree);
- **use of non-certified email and ID card for valid execution of financial investment and insurance agreements by clients** and exercise of rights therefrom; and use of a durable storage system as a valid instrument to comply with the intermediary’s undertaking to distribute a signed copy of the financial

⁶ See GT Alert *Italian Law: Emergency Legislation for COVID-19 – Corporate* of 26 May 2020.

agreement and the information documentation to its client (Article 33 Relaunch Decree).

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

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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