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Measures Taken By the Italian Government to Support the Economy in the COVID-19 Pandemic

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Synopsis

Italy was in lockdown from 10 March to 4 May. It wasn't until June 18 that all restrictions were lifted and life largely went back to normal. In that three-month period only a few business sectors were allowed to remain active. Most business activities have been hit significantly by the lockdown. Retail business, in particular, is down 90 percent. Unsurprisingly, as a result of this Italian GDP is expected to be down by almost 13 percent for 2020.

The Italian government responded to economic crises ignited by the COVID-19 pandemic with three law decrees (that is, laws enacted by the government out of 'urgency and necessity' that must be converted into laws by Parliament within 60 days): Law Decree No. 18 of 17 March 2020 ('Decreto Cura Italia'), Law Decree No. 20 of 8 April 2020 ('Decreto Liquidità'), and Law Decree No. 34 of 19 May 2020 ('Decreto Rilancio').

Essentially, the bulk of the measures implemented by the government through these emergency laws are aimed at making it easier for businesses hit by the effects of the pandemic to obtain new liquidity. Although it may be too early to assess the impact of the measures taken by the government to support businesses hit by the lockdown, recourse to massive bank indebtedness prompted by the emergency laws is likely to create problems in the mid-term.

I. Measures to address liquidity crunch (loans and subsidies)

I.1 State-guaranteed loans for large businesses (500+ employees)

(i) Section 57 of Decreto Cura Italia sets forth supporting measures to businesses, other than SMEs, whose turnover shrank due to the COVID-19 emergency. These consist of new liquidity that will be generated by the guarantee provided by the State to Cassa Depositi e

Prestiti S.p.A. ('CDP') for its exposures to lenders who in turn are exposed to businesses affected by COVID-19 emergency. Such State guarantee is unconditional and irrevocable and covers CDP's exposure to the banks for up to 80%. Criteria, terms and conditions for granting the above instruments and related procedure, will be set forth under a specific decree of the Ministry of Economy and Finance, in agreement with the Ministry of Economic Development, which shall – *inter alia* – set up a fund with an initial budget of EUR 500 m for 2020 aimed at covering the above State counter-guarantee, and identify the sectors in which companies must operate to be eligible for the above guarantee, without prejudice to other Central SMEs Guarantee Fund's measures.

(ii) In addition, Section 1 of Decreto Liquidità (paras. 1-12) sets forth, subject to specific terms and conditions, a special guarantee to be issued by SACE as a measure to give financial support to those Italian companies whose business is affected by COVID-19 emergency (including SMEs and mid-caps, as well as free lancers and VAT professionals that have fully consummated their rights to the Central SMEs Guarantee Fund set forth under Section 56 of Decreto Cura Italia¹). Originally designed for large companies only (500+ employees), it has been extended at least in part to SMEs (up to 250 employees) and mid-caps (up to 499 employees).

SACE's guarantee is irrevocable and first-demand, must comply with the prudential supervisory regulations, aimed at covering loans with a maximum six-year term granted after 9 April 2020, and will be issued until 31 December 2020. Any obligation of SACE under the above guarantee is automatically counter-guaranteed by first-demand, without recourse, unconditional, irrevocable State guarantees, which cover both principal amount as well as any interest and ancillary charge, net of any commission for the same guarantees.

Although SACE's guarantees has been structured to be a very flexible instrument, Decreto Liquidità sets forth several terms and conditions for their issuance,

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¹ The total amount allocated by Decreto Liquidità in this respect is equal to EUR 200 bn, of which at least EUR 30 bn to support SMEs, freelancers, and VAT professionals.

such as a cap to the maximum guaranteed amount² and, without prejudice to such cap, a specific percentages for covering the total exposure.³ Additional requirements are that borrowers must maintain certain levels of employment, to be agreed upon with trade unions in advance, and must not make any distribution of dividends or buyback of shares and that new financing must be used for personnel, capex or opex.

(iii) Finally, Section 1, para. 13, of Decreto Liquidità set forth a potential State counter-guarantee for covering CDP's exposure (existing or potential) deriving from the guarantees issued by the same to secure loan portfolios granted, in any form, by banks and other authorized Italian credit institutions, in favour of Italy-based companies that have suffered a reduction in turnover due to the COVID-19 emergency. It is not clear how this provision combines with Section 57 of Decreto Cura Italia (described in para. A.1 above); indeed, without replacing such provisions, the State counter guarantees set forth under Section 1, para. 13, of Decreto Liquidità seems to jeopardize the one mentioned under Decreto Cura Italia.

1.2 State-guaranteed loans for SMEs (up to 250 employees) and mid-caps (up to 499 employees)

Section 13 of Decreto Liquidità allows SMEs and mid-caps to access new banks financing more easily and on more favourable terms thanks to the guarantee provided by the Central SMEs Guarantee Fund. The same guarantee can be extended to loans and credit lines 'perfected and disbursed' (i) after 31 January 2020 and (ii) no later than three months after the date of the request, as well as provided the new supporting benefits to additional categories of companies.

Some details: (a) maximum amount guaranteed is EUR 5 m; (b) guarantee may cover from 80% to 100% of financing; (c) financing may be obtained by a borrower to refinance existing debt, provided only that new finance exceed by no less 10% the debt to be refinanced; (d) it is available also to borrowers holding debts with the lender classified as UTP prior to 31 January 2020 (thereby excluding that the new finance afforded by Section 13 can be used to refinance bank debts that have become UTPs other than for COVID-19); as well as

to (e) companies which, after 31 December 2019, have been admitted to a pre-bankruptcy arrangement with creditors that entails business continuity, or entered into debt restructuring agreements; or submitted a certified debt restructuring plan, provided that (1) their exposure as of 9 April 2020 would not have led to their classification as 'impaired', (2) they will not have any outstanding debt after applying to the supporting measures; and (3) the bank, based on the analysis of debtors' financial situation, can reasonably expect that such exposure will be entirely repaid when due.

1.3 Moratorium on repayment obligations to banks

Section 56 of Decreto Cura Italia sets forth several measures to grant Italian SMEs, free-lancers (*lavoratori autonomi*) and VAT professionals (*professionisti titolari di Partita IVA*) affected by the COVID-19 epidemic a moratorium on the repayment of existing debts (excluding NPLs).

In particular, borrowers may address to banks a simple request, together with self-certification attesting that they have suffered temporary liquidity shortages as a result of the COVID-19 epidemic, in order to (a) avoid the revocation, until 30 September 2020, of bank overdraft credit facilities existing on 17 March 2020; (b) extend under the same conditions, and without any formalities, the bullet loan agreements maturing before 30 September 2020; and (c) suspend instalments, or lease payments, due on or before 30 September 2020, of loans and other financings repayable in instalments.

On their side, the lenders applying to the above measures, can access (free of charge and without any prior assessment) a special section of the Central SMEs Guarantee Fund,⁴ which can guarantee up to 33% of the amounts drawn or the extended/suspended instalments.

1.4 Measures aimed at facilitating access to debt financing by SMEs (SMEs Asset Fund – Fondo Patrimonio PMI)

Section 27 of the Decreto Rilancio sets forth the SMEs Asset Fund (*Fondo Patrimonio PMI*) managed by

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- 2 The maximum guaranteed amount cannot be higher than the following amounts recorded in the approved FY2019 financial statements or, if not already approved, in a self-certification: (1) more than 25% of company's 2019 turnover; and (2) more than double of company's 2019 personnel costs, provided that (a) such maximum guaranteed amount is determined referring both to turnover and personnel costs in Italy and, for group of companies groups, on a consolidated basis; and (b) in case the company has several loans secured by the SACE's guarantees or other public guarantees, the loan amounts are combined.
- 3 (1) 90% of the loan amount for companies with less than 5,000 employees in Italy and a turnover of up to EUR 1.5 bn; (2) 80% of the loan amount for companies with a turnover of EUR 1.5–5 bn or more than 5,000 employees in Italy; and (3) 70% of the loan amount for companies with a turnover of more than EUR 5 bn, provided that (a) in relation to losses, guarantor and borrower bear them in equal and proportional percentages; (b) for non-bullet loans the above percentages apply to the outstanding amount; and (c) for groups of companies, the percentage of the guarantees is determined by referring to the group's turnover and personnel costs on a consolidated basis.
- 4 Such special section of the SMEs Guarantee Fund has been provided with a budget of EUR 1,730 m.

Invitalia S.p.A., aimed at subscribing new bonds or debt securities issued by companies eligible for tax credits set forth under Section 26 above. The amount of debt that may be subscribed by the SMEs Asset Fund must not exceed the lower of (a) three times the amount of the capital increase under Section 26 mentioned above; or (b) 12.5% of FY2019 revenues. Overall debt incurred by an SME through the SMEs Asset Fund, other loans guaranteed by Italian state, and subsidized loans in general cannot exceed the higher of (1) 25% of FY2019 revenues; (2) two times the cost of personnel in 2019; or (3) the company's liquidity requirements for the next 18 months, as self-certified by its legal representative. This tool will remain in force until 31 December 2020.

The initial overall endowment of the SMEs Asset Fund is EUR 4 billion. Ordinary restrictions of the Italian Civil Code on issuance of bonds (Art. 2412) do not apply. Maturity is six years from subscription, without prejudice should the issuer exercise the redemption right after three years.

The company issuing the above bonds and debt securities shall (a) not resolve or pay any profit, make any buy-back of its own shares, or reimburse any shareholder loans until the financial instruments are completely repaid; (b) allocate the financing received as a result of subscription of the above financial instruments for personnel costs, investments, or working capital for any production facilities or business activities in Italy; and (c) provide to Invitalia S.p.A. periodic reports aimed at verifying its ongoing compliance with the undertakings and commitments made under Section 27.

1.5 Non-refundable subsidies

Section 25 of the Decreto Rilancio provides a tax-free non-refundable subsidies to (a) companies and self-employed workers with revenues for the last financial year not exceeding EUR 5 million and whose revenues in April 2020 have decreased by more than two thirds relative to those of April 2019 and (b) any business (1) that started after 1 January 2019, or (2) that was already affected by other emergency events as of the date of the COVID-19 pandemic. The grant is calculated as a percentage of the difference between April 2020 revenues and April 2019 revenues, as follows:

- (i) 20% of such difference, if FY2019 revenues were less than EUR 400,000;
- (ii) 15% of such difference, if FY2019 revenues were between EUR 400,000 and EUR 1,000,000; and
- (iii) 10% of such difference, if FY2019 revenues were between EUR 1,000,000 and EUR 5,000,000

provided that the minimum guaranteed amount of the non-refundable grants is equal to EUR 1,000 for individuals and EUR 2,000 for any entity other than individuals.

2. Tax reliefs and tax credits

2.1 Reduction of IRAP (Regional Tax on Production Activities)

Section 24 of the Decreto Rilancio sets forth an exemption for companies and self-employed workers with revenues not exceeding EUR 250 million in the last financial year from payment of (1) the balance of IRAP for the current tax period until 31 December 2019, and (2) the first instalment (usually equal to 40%) of IRAP for the tax period after 31 December 2019, without prejudice, however, to any advance payment still due for the 2019 tax period.

2.2 Tax credits to facilitate strengthening of the equity of SMEs (tax credits)

Section 26 of the Decreto Rilancio grants a tax credit equal to 20% of the amount of capital increases up to EUR 2,000,000 resolved, and entirely paid-in in cash, in the period between 20 May 2020 and 31 December 2020.

Companies that may benefit from such a tax credit must satisfy the following requirements: (a) revenues between EUR 5 million and EUR 50 million (if the company is part of a group); (b) a decrease in revenues due to the COVID-19 emergency in March and April 2020 of at least 33% compared to March and April 2019 revenues; (c) not classified as a 'distressed company' (*impresa in difficoltà*) pursuant to EU Regulations No. 651/2014, No. 702/2014, and No. 1388/2014; (d) compliant with certain laws and regulations (*e.g.*, tax laws, workplace health and safety regulations, environmental regulations, construction and urban planning regulations, 'anti-mafia' measures, *etc.*); (e) fewer than 250 employees, if the same also wants to benefit from the SMEs Asset Fund set forth under Section 27 of the Decreto Rilancio.

The tax credit is excluded (or, if already granted, revoked) if the shares or quotas subscribed and paid-in as a result of the capital increase are transferred before 31 December 2023, or if any distribution of profits occurs during that same period. In addition, the tax credit cannot be granted to any company that, directly or indirectly, controls, is jointly controlled by, or is an affiliate of the beneficiary company.

Finally, the same companies that may benefit from the above tax credit and that comply with certain 'good management' requirements upon approval of their FY2020 financial statements will be granted an additional tax credit equal to 50% of the losses exceeding 10% of their net equity (*patrimonio netto*), up to 30% of the amount of the same capital increase benefitting from the tax credit. Any tax losses to be carried forward to the next tax periods may also be reduced by the amount of the tax credit granted.

All the above tax credits must not exceed EUR 800,000 together with any other supporting measures due to the COVID-19 emergency.

2.3 Tax credits on rents of commercial lease agreements and financial leasing agreements

Section 28 of the Decreto Rilancio sets forth a tax credit equal to 60% of the amount of the rental fees for commercial lease agreements, or leasing, for March, April, and May 2020. This measure is available only to (a) hotels and hospitality facilities without limitation, and (b) companies with less than EUR 5 million in revenues in 2019 that in the period March–May 2020 suffered a decrease in revenues of at least 50% compared to March–May 2019.

The above percentage is reduced to 30% in the case of service agreements related to at least one commercial building and lease agreements of businesses as going concerns (*affitti d'azienda*).

3. Reinforcement of capital or debt structure: 'Patrimonio Rilancio' by Cassa Depositi e Prestiti S.p.A.

Pursuant to the Section 27 of Decreto Rilancio, Cassa Depositi e Prestiti S.p.A. ('CDP') will set up a specific fund named 'Patrimonio Rilancio' aimed at supporting and relaunching the Italian economic and production systems. The Italian Ministry of Economy and Finance ('MEF') will contribute assets and contractual relationships to the *Patrimonio Rilancio*, which is completely autonomous and segregated from any other CDP asset or fund. In exchange for the contributions made by the MEF, CDP will issue equity financial instruments and bonds in favour of the MEF, the remuneration of which is subject to the economic results of *Patrimonio Rilancio*.

The resources of *Patrimonio Rilancio* will be addressed specifically to listed and non-listed joint-stock companies (*società per azioni*), including those that take the form of cooperative companies (*società cooperative*), which (a) have their registered offices in Italy; (b) do not operate in the banking, financial, or insurance business sectors; and (c) have a volume of revenues per year exceeding EUR 50 million.

The *Patrimonio Rilancio* fund will support the above companies by subscribing convertible bonds or capital increases of the same, by purchasing listed shares on the secondary market, in case of strategic transactions, as well as by putting in place restructuring interventions for those companies that, notwithstanding temporary capital or financial imbalances, might have adequate profitability prospects.

The *Patrimonio Rilancio* fund will have a term of 12 years from its incorporation, although the board of

directors of CDP, upon request of the MEF, can extend or reduce such duration.

4. Other sector-specific measures of Decreto Rilancio

- (i) Section 30: reduction of energy costs for May, June, and July 2020 for low-voltage utilities for commercial buildings;
- (ii) Section 31: refinancing of certain funds, such as the guarantee fund under Article 1, paragraph 14 of the Decreto Liquidità and the SMEs Guarantee Fund (which is refinanced with EUR 3,950 million);
- (iii) Section 35: SACE first demand guarantee in favour of short-term trade credit insurance companies aimed at supporting commercial trades, as well as the same type of credit insurance companies adversely affected by the COVID-19 emergency. This guarantee shall be equal to 90% of the indemnities resulting from exposure related to trade receivables accrued from the date of entry into force of the Decreto Rilancio until December 31, 2020, with a cap of EUR 2 billion;
- (iv) Section 38: several measures aimed at supporting and implementing innovative start-ups;
- (v) Section 40: supporting measures for gas stations located along Italian highways;
- (vi) Section 41: supporting measures for what are known as 'White Certificates' (*Certificati Bianchi*), i.e., energy efficiency certificates (*titoli di efficienza energetica*) certifying the energy savings achieved as a result of certain specific interventions;
- (vii) Section 42: creation of a Technology Transfer Fund (*Fondo per il Trasferimento Tecnologico*) aimed at promoting R&D initiatives and investments at companies in Italy, with particular emphasis on innovative start-ups;
- (viii) Section 137: postponement to 30 September 2020 of the term for the revaluation of shareholdings owned by individuals or partnerships (*società semplici*) as of 1 July 2020 in non-listed companies (the value of the substitute tax – *imposta sostitutiva* – will still be equal to 11%, but it may be split into three annual instalments of equal value, i.e., 3% each).

5. Amendments to existing laws

In April 2020, one of the main concerns of the Italian government was to keep businesses affected by the COVID-19 pandemic to stay afloat. To do so, the Decreto Liquidità has suspended all those provisions of

corporate and insolvency law whose application would otherwise force economic operators to wind-up their businesses or incur into insolvency proceedings as a result of a state of insolvency caused by COVID-19. To do so, several derogations to corporate and insolvency law have been provided, namely:

- (i) entry into force of the new Italian Insolvency Code (Legislative Decree No. 14 of 12 January 2019) is postponed from 15 August 2020 to 1 September 2021 exception made for those provisions already effective (e.g. provisions amending specific sections of the Italian Civil Code concerning corporate law). This was designed to give the economic operators stability and regulatory certainty with regard to their business activity. In this scenario, the application of the new provisions set forth in the new insolvency code (e.g. the alert system) would inevitably generate negative effects for the majority of companies. Therefore, the Code would fail to meet its purpose, i.e. to facilitate the recovery and the business continuity, considering the bankruptcy of a company as '*extrema ratio*.';
- (ii) certain measures concerning settlement with creditors procedures ('*concordato preventivo*') or restructuring agreements ('*accordo di ristrutturazione*') have been taken to prevent the possibility that procedures with a chance of success before the occurrence of COVID-19 may be jeopardized by the sudden downturn in the economy as a consequence of COVID-19;
- (iii) no applications for bankruptcy could be filed in the period between 9 March 2020 and 30 June 2020. The purpose of the measure is to lighten the load on bankruptcy court dockets.

6. Some preliminary remarks on the impact of the Italian COVID-19 emergency laws

In its response to the economic crisis prompted by the COVID-19 lockdown, the Italian government has focused its efforts mainly on measures aimed at putting liquidity into the system through bank loans. There are several reasons for this: the liquidity crunch was the first and more dangerous effect of the pandemic on businesses that saw their revenues sink down to zero almost overnight but at the same time had to pay their bills at the end of the month; loans, at least in theory, can be granted quickly through the banks thanks to a state guarantee, which makes lengthy preliminary due diligence unnecessary; they require little or no

implementing regulations, unlike all other measures, which for the time being have yet to come into full force due to a lack of implementing regulations.

Time will tell whether the 'toolkit' made available by the government will be effective and whether making bank loans the main instrument to support businesses was the right strategy. There are some virtuous examples of how this has worked (for example, FCA took a EUR 6.3 bn loan to secure payment to its supply chain). At the same time, though, we can already see some concerns in the business community regarding certain inefficiencies that make it complicated for those measures to be fully exploited by businesses in need. Finally, the choice of the Italian government to favour recourse to bank loans may have repercussions on the overall economy in the long run.

First: Liquidity guaranteed by the state is channelled through the banks, and so far the banking system has been slow. Bank loans up to EUR 30,000 that are 100 percent guaranteed by the state (that in theory do not require any preliminary credit checks and should be granted quickly) take up to two months. Clearly, this fails to meet the needs of businesses hit by the COVID-19 lockdown, which need money now.

Second: Companies that survive will be burdened by excessive debt relative to their repayment capacity. It seems likely that Italy will see a U-shaped recovery rather than a V-shaped recovery. This means that revenues will remain low for quite some time before they pick up again. Will cash flows generated by suffering businesses be sufficient to meet the repayment obligations taken on during the COVID-19 crisis? What will happen if they are not? NPLs have burdened the balance sheets of the banks for years, and it is only recently that banks managed to get rid of NPLs: Will we see another season of NPLs stacking up again? Mario Draghi's prophecy⁵ that private debt will transform into public debt is not far-fetched.

Third: When companies fail to repay their unsecured loans and the state guarantees kick in, the state will become a secured creditor, 'cutting the line' in front of all other creditors, who suddenly will see their claims ranking below those of the state. This being the case, it is likely that unsecured creditors will be the ones who will pay the bill for this.

Fourth: There is a concrete possibility that all or many other measures introduced by the government will never be implemented in practice. To become fully functional they require complicated implementing regulations to be approved, and this is hardly compatible with the demand on the part of companies hit by the pandemic for quick and immediate responses.

Notes

5 <https://www.ft.com/content/c6d2de3a-6ec5-11ea-89df-41bea055720b>.

International Corporate Rescue

International Corporate Rescue addresses the most relevant issues in the topical area of insolvency and corporate rescue law and practice. The journal encompasses within its scope banking and financial services, company and insolvency law from an international perspective. It is broad enough to cover industry perspectives, yet specialised enough to provide in-depth analysis to practitioners facing these issues on a day-to-day basis. The coverage and analysis published in the journal is truly international and reaches the key jurisdictions where there is corporate rescue activity within core regions of North and South America, UK, Europe Austral Asia and Asia.

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