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Covid-19 Italy: Measures to support the business liquidity of the enterprises and the credit sector

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On 19 May 2020 the **Law Decree no. 34** has been published in the Official Gazette ("**Rilancio Decree**"). The new emergency decree is in line with the previous Cura Italia and Liquidità Decrees, introducing *inter alia* measures to support the liquidity the capitalization of enterprises, incentives and tax credits as well as measures in the context of indirect taxation, tax assessment and tax litigation.

Specifically, the Rilancio Decree provided extraordinary measures to support the business liquidity of the enterprises and, more generally, to the national economic and business community, including measures to protect savings in the credit sectors.

This section A outlines the main actions in the field of support to the enterprises, the economy and to protection of savings in the credit sector, with particular reference to the State Guarantee on newly issued liabilities.

Financial support of medium-sized enterprises – Article 26

The Rilancio Decree established the fund called *Fondo Patrimonio PMI* aimed at the subscription of bonds and debt securities issued before 31 December 2020 by companies which:

1. have had more than Eur. 5 million revenues (or 10 million in the particular case under paragraph 10 of the same article) and up to Eur. 50 million in the 2019 financial year. In case the company is part of a group, the revenues is considered at a consolidate level, without taking into consideration the intragroup revenues;
2. have suffered a decrease in the March-April 2020 revenues in respect of the same period of 2019 of at least 33% because of the Covid-19 emergency;
3. have resolved upon and fully paid-in a share capital increase after the entry into force of the Rilancio Decree and within 31 December 2020;
4. at 31 December 2019 were not considered companies in difficulty within the meaning of the European legislation;
5. are fully compliant with tax and social security contributions;
6. are fully compliant with building and town planning legislation, labor and injury prevention laws and environment protection rules;
7. did not receive public grants or any kind of aid, which have been considered illegal and have not been reimbursed or duly deposited in a locked account or have been considered incompatible by the European Commission;
8. in regard to their directors, shareholders or ultimate beneficial owners, in the last five years have not been subject to final court judgement relating to tax evasion crimes;
9. employ less than 250 people.

The financial instruments at hand are exempted by the limits under art. 2412, first paragraph of the Italian

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Civil Code and shall be reimbursed within six years after subscription.

The issuing company shall:

1. up until full reimbursement of the security, refrain from resolving upon distribution of reserves, purchase of own shareholding interests and reimbursement of shareholders' loans.
2. Utilize the amounts received through the Fund to employee costs, capital expenditures and working capital investments in regard to plants and industrial activities located in Italy.

The Fund has an initial endowment of Eur. 4 billion for the year 2020.

Rilancio Fund– Article 27

CDP S.p.A. is authorized to constitute a reserved fund (**Rilancio Fund**), with assets and legal rights contributed exclusively by the MEF, characterised by easy and prompt liquidation or refinancing, which will be used for the support and relaunch of large enterprises, namely enterprises incorporated in the form of a cooperative or joint stock company (S.p.A.), even with shares listed on regulated markets, which ***(i)*** have their registered office in Italy; ***(ii)*** do not operate in the banking, financial or insurance sectors; ***(iii)*** have an annual turnover higher than Eur. 50 million.

The Rilancio Fund may be structured into sections and will be, as each of its sections, independent and distinct from the assets of CDP S.p.A. and from the other reserved funds of CDP S.p.A. The Rilancio Fund and each of its sections will respond exclusively to the obligations assumed by each of them, within the limits of the assets and the legal rights.

The contributions of the MEF are performed by MEF Decree.

The Rilancio Fund is constituted by resolution of the Shareholders' Meeting of CDP S.p.A., which, on the proposal of the Board of Directors, identifies the assets and the legal rights included in the Rilancio Fund.

The access requirements, the conditions and the criteria of the Rilancio Fund will be defined by a MEF Decree, heard the MISE and, if necessary, subject to the approval of the European Commission pursuant to Article 108 TFEU.

The Rilancio Decree sets forth that the Rilancio Fund will preferentially carry out actions through the subscription of convertible bonds, participating interests in share capital increases, or purchase of shares listed on the secondary market in case of strategic transactions.

The intervention in the enterprise is subject to the verification of specific criteria of eligibility and the acceptance of certain conditions and can be carried out in relation to operations of restructuring of enterprises which, despite temporary capital or financial imbalances, are characterised by adequate prospects of profitability.

The Rilancio Fund can also be increased through bonds and the State guarantee can be released to the

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securities holders.

The Rilancio Fund expires twelve years after its establishment, but its duration may be extended or reduced by a resolution of the Board of Directors of CDP S.p.A., at the request of the MEF.

Refinancing of funds – Article 31

The Rilancio Decree establishes an increase, for the year 2020, of the resources of: ***(i)*** **the fund of the state guarantee** pursuant to art. 1, co. 14, Liquidity Decree, ***(ii)*** **the guarantee fund set up with Mediocredito Centrale S.p.A.** for the small and medium-sized enterprises pursuant to art. 2, co. 100, lett. a), L. 23 December 1996, No. 662, (iii) **ISMEA (Institute of Services for the Agricultural Food Market)** for the management of guarantees granted to agricultural enterprises and to the fishery, ***(iv)*** as well as **the "first home" guarantee fund** pursuant to art. 1, co. 48, lett. c), L. 27 December 2013, No. 147.

SACE guarantee for commercial credit insurance – Article 35

Furthermore, the Rilancio Decree has adopted another extraordinary measure to support the business liquidity of the enterprises through the SACE Guarantee. This provision aims at maintaining the continuity of trade between enterprises and ensuring that **the commercial credit insurance services** are available to the enterprises affected by the Covid-19 epidemic.

SACE S.p.A. may grant to short-term commercial credit insurance enterprises, authorized to operate in the credit business, a guarantee equal to 90% of the indemnities generated by the exposures related to the credit business from the date of entry into force of the Rilancio Decree until 31 December 2020 and within the maximum limit of Eur. 2,000 million. On the obligations of SACE S.p.A. deriving from the granting of such guarantees, the State guarantee will be released at first request and without recourse.

Participation in the Pan-european Guarantee Fund (EGF) of the European Investment Bank – Article 36

Pursuant to article 36, the MEF is authorized to enter into the necessary agreements with the European Investment Bank to allow the Italian participation in the **EGF**, established by the European Investment Bank Group with a budget of Eur. 25 billion to primarily guarantee small and medium-sized enterprises (Smes), mid-caps, large enterprises and public bodies in the Member States, liquidity and access to finance to address the consequences of the pandemic.

The Fund will provide up to approximately Eur. 200 billion mainly in the form of guarantees and direct (from the EIB or the European Investment Fund-EIF, both with AAA credit rating) or indirect (through financial intermediaries and national promotion banks) loans to the final beneficiaries. The Fund will consist in the guarantees (irrevocable, unconditional and first-loss) provided by the Member States of the European Union to the EIB Group (EIB and EIF) on a proportional basis.

The MEF is therefore authorized to issue the guarantee of the State, unconditional and at first request, in favour of the EIB and to implement the contribution of Italy to the guarantee, equal to its share capital in the

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Bank, which is the 18.78% of the total contribution of Eur. 25 billion, namely Eur. 4,695 million, which corresponds to the maximum possible loss.

Strengthening of the innovative startups – Article 38

This provision aims at supporting the creation and development of innovative startups by acting within the "***Smart&Start* Italia**" measure, the main national financing tool providing subsidized loans to innovative startups, established by the MISE on 24 September 2014, through the allocation of additional resources of Eur. 100 million for the year 2020.

Moreover, a new intervention line has been established, besides the Smart&Start Italia, to ease the encounter among innovative startups, incubators, accelerators, universities, etc. through a non-refundable aid for the acquisition of the services provided by the mentioned entities and the strengthening of the capital base of the innovative startups, encouraging, in a phase after the incubation/ acceleration path also the investment in the startups by qualified investors (so called "***Smart Money***" measure). The granting of said financial support will be regulated by a Ministry decree, to be adopted within 60 days after the entry into force of the Law Decree.

The "***Fondo di sostegno al venture capital***" (a venture capital support fund established according to art. 1, par. 209, Law No. 145/2018) has been increased by additional 200 million for the year 2020 in order to support investments, including through equity financial instruments, according to the rules that will be adopted by decree of the MISE, for the benefit of innovative *startups* referred to in Article 25 of Law Decree No. 179/2012, and innovative Smes referred to in Article 4 of Law Decree No. 3/2015.

Innovative startups have been equated to universities and research institutes in order to increase research activities and development in relation to the current emergency situation and allowing them to rely on the increased expense limits according to art. 1, par. 200, let. C) Law No. 160/2019.

Paragraph 5 of the article 38 provides for a one year extension of the permanence of the innovative startups referred to in Article 25 of Law Decree No. 179/2012 in the special section of the register of the enterprises.

An amount of Eur. 200 million within the ***Fondo di Garanzia PMI*** has been reserved for innovative startups (as defined in art. 25, par. 2, Law Decree No. 179/2012).

Paragraphs 7 to 9 introduce a preferential tax regime aimed exclusively at individuals who invest in innovative startups or Smes. In particular, a tax deduction of 50% of the amount invested by the taxpayer in the share capital of one or more innovative startups is foreseen. The maximum deductible investment cannot exceed, in each tax period, the amount of Eur. 100,000 and must be maintained for at least three years. The same tax deduction can be applied to taxpayers investing in innovative Smes.

Finally, as a support measure for the digital entertaining industry, a special fund called "***First Playable Fund***" has been established by the MISE with an initial funding of Eur. 4 million for the year 2020. This fund supports videogames creation and pre-production and prototypes production, through the granting of non-refundable aids, recognised to the extent of 50% of eligible expenditure, and for an amount ranging from

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Eur. 10,000 to 200,000 per single prototype.

Intervention of the State in the corporate capital of the enterprises in view of the latest amendments to the Temporary Framework on State aids – Article 43

Article 43 of the Law Decree 34/2020 (D.L. Rilancio) is aimed to introduce an instrument of financial support for the preservation of the employment levels and the continuation of the business in such cases where the cessation of business activities or their delocalization outside the national territory involve a significant social and economic impact.

It is therefore established in the Ministry of the Economic Development the Fund for the preservation of the employment levels and the continuation of the business (the “Fund”) that replaces the Fund for the protection of the traditional trademarks of national interest (provided by Law Decree 34/2019 but not implemented yet) and works through

- interventions in the corporate capital of enterprises that are in economic and financial difficulties, carried out at arm’s length, in compliance with the regulation on State aids aimed at promoting investments for the risk financing (Communication of the European Commission 2014/C 19/04), and
- supporting measures for the maintenance of the employment levels in compliance with the instruments provided by the active and passive labour policies.

The article targets at safeguarding the strategic value of the traditional trade-marks of national interest (providing for a specific priority access for the enterprises holding these trade-marks as well as for those that mostly impact the employment levels and the development of the production system), nonetheless it extends such intervention to the companies (other than partnerships) with a number of employees not lower than 250, in economic and financial difficulty, in order to identify all the delocalization or business activity (with significant social and economic impact) cessation processes.

If the enterprises in economic and financial difficulty want to benefit from the support of the Fund, they will provide the Ministry of the Economic Development with information concerning:

- actions to be implemented for mitigating the employment impacts (i.e. exit incentives, early retirement and reallocation);
- enterprises that have already expressed their interest in the take-over of the company or in the continuation of the business activity or the actions to be implemented for the purposes of finding a possible purchaser even though foreign investor;
- opportunity for the employees to submit a purchase proposal or to recover the assets of the enterprise.

Such article, by allowing a direct intervention of the State for rescuing enterprises in difficulty (instead the so

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called de minimis rule) liaises with the latest amendment carried out by the European Commission to the Temporary Framework on State aids. In particular, the new intervention of the Commission regarding the Temporary Framework is specifically addressed to the rescue of the enterprises in difficulty: up to now, therefore, all the measures providing support for the liquidity have been granted to the enterprises not in difficulty.

On 8 May 2020, the European Commission has adopted a second amendment to the “Temporary Framework on State aids in support of the economy in the current emergency due to Covid-19” by providing for the extension of the scope of the State aids to the enterprises in difficulty, so as to enable, up to 30 June 2021, the Member States to recapitalize (i.e issuing of new ordinary or preferred shares, right of participation in the distribution of profits, convertible bonds) and grant the enterprises with subordinated debt, by simultaneously maintaining equal conditions in the EU.

The public intervention (subject to the approval of the Commission, upon prior notice by the Member States) shall be limited to enable the profitability of the enterprise and shall not go beyond the recovery of the equity structure of the beneficiary before the pandemic due to Covid-19. The enterprises already in difficulty on 31 December 2019 are not eligible for such aids according to the relevant temporary framework.

The amendment to the Temporary Framework sets several guarantees in order to avoid undue distortions of competition in the single market, in particular:

- conditions concerning the necessity and the suitability of the intervention: the aids for the recapitalization should be granted as long as other appropriate solutions are not available;
- conditions regarding the intervention of the State in the corporate capital of the enterprises and the relevant compensation: the public investment shall be properly remunerated and a “step-up” mechanism shall be introduced in order to boost the beneficiary enterprises or its shareholders to re-purchase the participation interests for the purpose of ensuring the temporary nature of the State intervention;
- conditions regarding the governance: the beneficiaries are prevented from distributing profits and re-purchasing shares up to the exit of the State from the corporate capital of the beneficiary enterprises. The management will suffer a strict limitation on the remuneration (inter alia the ban on bonus) as long as at least 75% of the recapitalization is reimbursed;
- conditions regarding the exit of the State from the corporate capital of the beneficiary enterprises: the beneficiaries and the Member States shall develop an exit strategy. If, six years after the aid to the recapitalization in case of listed joint stock companies or seven years in case of other companies, the exit of the State has not been finalized yet, a restructuring plan for the beneficiary shall be notified to the Commission;
- ban on cross subsidies and acquisitions: the beneficiary enterprises, in order to ensure that the State aid for the recapitalization is not improperly used against fair competition in the single market, shall not benefit from the aid in order to support the integrated enterprises in difficulty before 31

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December 2019. Furthermore it is forbidden to the beneficiaries other than the SMEs, up to the reimbursement of at least 75% of the recapitalization, to acquire a participation interest higher than 10% in competing companies or other enterprises in the same line of business.

Increase of the Third Sector Fund – Article 67

The Lawmaker intended to support the activities of the voluntary organizations, social promotion associations and third sector entities active in the fight against the Covid-19 pandemic. The amount available to said Funs has been increased by Eur. 100 million for the year 2020.

State guarantee on newly issued liabilities – Articles 165, 166 and 167

The Lawmaker has authorized the Ministry of the Economic Development to release guarantee on Italian bank liabilities up to Eur. 19 million for the six months after entry into force of the Rilancio Decree.

The Ministry is also authorized to release guarantees within the first six months after the entry into force of the Decree in order to increase the collateral value for recourse in favor of the loans granted by Banca d'Italia for the current liquidity risk (so called, *Erogazione di liquidità di emergenza – ELA*).

These articles foresee that the guarantee will be release after a case by case evaluation on the possible lack of liquidity revealed by stress tests or inquiries at European union level, through the Single Supervisory Mechanism, the European Central Bank or the European Banking Authority.

Do you have any questions? Our German Desk Team is at your disposal.

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