



The Italian «*Liquidity Decree*»
Urgent measures supporting access to liquidity and financing
for Italian companies

«Liquidity» Decree

Law Decree of 8 April 2020, n. 23, so-called «Liquidity Decree»

Summary

On 8 April 2020, Law Decree No. 23 was published in the Official Gazette of the Italian Republic providing "Urgent measures for access to credit and tax compliance for businesses, special powers in strategic sectors, as well as measures in the field of health and work, extension of administrative and procedural deadlines".

This is the sixth emergency measure to face the socioeconomic situation resulting from the outbreak of the COVID-19.

It provides a range of measures to ensure **liquidity** and **business continuity** to Italian enterprises



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Summary

This presentation contains a summary of the main provisions of the “**Liquidity Decree**” relating to:

- Supporting access to liquidity
- Business continuity measures.

The scenario is still uncertain, so we will communicate any changes or updates to the following slides.

We remain available for any clarification that might be required.



«Liquidity» Decree

Supporting access to liquidity

Supporting access to liquidity

Law Decree of 8 April 2020, n. 23, so-called «Liquidity Decree»

This Law Decree, implementing the guidelines of the European Unions, adopts various instruments to preserve companies from a potential liquidity crisis.

An amount of **400 billion euros** in guarantees is raised to support businesses and exports.



Supporting access to liquidity

THE RESOURCES AVAILABLE

More specifically:

- i. the SMEs Guarantee Fund's intervention is strengthened to support SMEs and mid-caps (enterprises with up to 499 employees). In this respect, taking into account also the measures already allocated by means of the previous provisions, the Fund could provide funding of around **65 billion euros** in 2020;
- ii. it is expected that SACE S.p.A. (hereinafter SACE) will provide a new guarantee intervention. to cover bank loans granted to SMEs and large enterprises that have exhausted their capacity to access the Guarantee Fund. **200 billion euros** in guarantees are expected to be provided.
- iii. it is modified the functioning of SACE's intervention to enhance official export support for companies. It is estimated that this intervention could release **200 billion** resources for export enhancement..



Each of the above measures is further explained in the following slides.

Supporting access to liquidity

SMEs GUARANTEE FUND

The overall amount of SACE's undertakings may not exceed 200 billion euros, of which approximately **30 billion euros is reserved to SMEs**.

It should be noted that the definition of SMEs, as meant by the illustrative report of the Liquidity Decree, includes both *self-employed persons* and *freelancers with a VAT number*.

However, as far as SMEs are concerned, access to the SACE guarantee is subject to the condition that the SMEs have exhausted their capacity to use the guarantee which may be issued to them by the Guarantee Fund.

For this purpose, SACE is supported by a **State Guarantee**, upon express, unconditional and irrevocable request, to cover the refund of the capital and the payment of interest.



Supporting access to liquidity

CONDITIONS TO BE MET

Granting of a SACE Guarantee is subject to the following **conditions**

- i. **Maximum duration:** not more than 6 years maturity;
- ii. as of 31 December 2019, the company was not classified as an "undertaking in difficulty" (**impresa in difficoltà**) under EU Regulation no. 651/2014;
- iii. The aggregate amount of all financings granted to the same entity backed by a state guarantee cannot exceed the higher of:
 - a) **25% of the beneficiary's 2019 annual revenue; or**
 - b) **twice its 2019 employment costs.**



Supporting access to liquidity

MAXIMUM GUARANTEED AMOUNT

The Liquidity Decree also identifies the following three distinct percentages of coverage of the loan by the guarantee:

- i. **90%** of the principal amount of the financing for companies which employ fewer than 5,000 persons in Italy and which have annual revenues lower than 1.5 billion euros;
- ii. **80%** of the principal amount of the financing for companies which employ more than 5,000 persons in Italy and which have annual revenues between €1.5 billion and €5 billion euros;
- iii. **70%** of the principal amount of the financing for companies which have annual revenues higher than €5 billion euros.

In relation to the above limits, loans guaranteed by SACE or supported by another public guarantee are cumulated. Where the beneficiary company is part of a group, all companies belonging to the group are taken into account for the calculation.



Supporting access to liquidity

DESTINATION OF THE LOAN

It should be noted that the company benefiting from the guarantee undertakes **not to approve the distribution of dividends or the repurchase of shares during 2020.**

In addition, the financing covered by the guarantee is intended to support **personnel costs or investments or working capital employed in production plants and business activities located in Italy.**



Supporting access to liquidity

PROCESS TO ACCESS GUARANTEE

Companies **fewer than 5,000 employees** in Italy and annual revenues **not exceeding 1.5 billion euros** can access the SACE Guarantee through a simplified procedure:

- the borrower undertaking must submit an application for a loan guaranteed by the State to the relevant lender or (where syndicated) lenders;
- where the loan is approved, the lender must transmit the request for the issuance of the guarantee to SACE and SACE must assess the request, verifying the lender's approval of the loan and issuing a unique identification number for the loan and the guarantee;
- the lender proceeds to issue the loan secured by the SACE guarantee.



Supporting access to liquidity



PROCESS TO ACCESS GUARANTEE

For companies with a turnover and employees above the aforesaid thresholds, the issuing of cover is decided by **decree of the Minister for Economic and Financial Affairs**, after consultation with the Minister for Economic Development, on the basis of the SACE investigation.

Further implementation and operating procedures and any **additional elements and requirements** may be regulated by a subsequent decree of the Minister of Economy and Finance.



Code of Business Crisis and Insolvency

Crisis and Insolvency Code:

Delaying the entry into force

Article 5 of the Decree Law on Liquidity, replacing Article 389 of Decree Law no. 14 of 12 January 2019, delays the enactment of the so-called "**Code of Business Crisis and Insolvency**" which, therefore, will come into force from 1 September 2021, with the obvious exception of the individual provisions already in force.

The purpose of this measure should certainly be sought in the so-called **alert measures** system, aimed at causing the early outbreak of the business crisis. The alert system, in fact, was developed in the perspective of a stable economic framework characterized by physiological fluctuations, where, accordingly, the prevalence of the companies is not affected by the crisis.



Crisis and Insolvency Code:

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Moreover, the Crisis and Insolvency Code's approach is to operate with the aim of a **wider rescue of companies** and their continuity, adopting the liquidation instrument (i.e. bankruptcy) as an *extrema ratio*, to be used in the lack of concrete alternatives.

Therefore, in such an uncertain economic context where a crisis in investment and in the resources needed to restructure companies is highly probable, the Crisis and Insolvency Code would end up failing to achieve its objective blamelessly.



Reduction of share capital

Reduction of share capital

Provisional laws

Article 6 of the Liquidity Decree regulates the temporary disapplication of the following articles of the Civil Code:

- **Art. 2446 c. 2-3**: reduction of the share capital for losses;
- **Art. 2447**: reduction of share capital under the legal limit;
- **Art. 2482-bis c. 4-5-6**: reduction of the share capital for losses;
- **Art. 2482-ter**: reduction of share capital under the legal limit.

For the same period, the companies will not be dissolved due to reduction or loss of share capital pursuant to **Articles 2484 (1) (4)** and **Articles 2545-duodecies** of the Italian Civil Code.



Reduction of share capital

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Despite the significant financial measures being taken, there is a clear risk that it will be very difficult to find the resources for adequate refinancing of companies. In this perspective, the provision in question aims to avoid that the **loss of capital** that occurred during the financial years ended 31 December 2020, puts the directors of too many companies faced with the choice between the immediate liquidation of the company and the risk of exposing themselves to liability for non-conservative management pursuant to Article 2486 of the Italian Civil Code.

Nevertheless, the provisions relating to the information to shareholders set out for the S.p.A. by Article 58 of Directive 1132/2017 remain valid.



Drafting of the financial statements

Drafting of the financial statements

Business continuity

Given the disruptive and anomalous effects of the COVID-19 epidemic on the economy, and in particular the impact that it may have on the prospects of business continuity, the extraordinary situation that has arisen would require a lot of companies to draw up their 2020 financial statements according to warped criteria and without the possibility of applying a business continuity approach, with consequent fallout on the valuation of all items in the financial statements.

For these reasons, Article 7 of the Liquidity Decree allows companies which before the crisis had a regular business continuity perspective, **to maintain this perspective in drafting the financial statements for the current financial years in 2020**, and thus excluding companies which before the current crisis were autonomously in a state of loss of continuity.



Drafting of the financial statements

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The time reference relates to the situation on **23 February 2020**, when the first emergency-related measures entered into force (Decree Law no. 6 of 23/2/2020).

However, the provision of Article 106 of Decree Law no. 18 of 17/3/2020, which extended by **60 days** the deadline for approval of the 2019 financial statements, remains unchanged.



Derogations to financing provisions

Derogations to financing provisions

Deferral of shareholder financing

In order to ensure adequate refinancing of companies, the Liquidity Decree has deactivated, until 31 December 2020, the **deferral of loans** made by shareholders or by those who exercise management and coordination activities..

This is achieved through the temporary **disapplication** of articles 2467 (Shareholders' loans) and 2497-quinquies (Financing in management and coordination activities).



Derogations to financing provisions

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The disapplied provisions provide that the repayment of shareholders' loans to the company is subordinated to the satisfaction of other creditors. The purpose of these rules is to avoid the so-called **nominal undercapitalization**, the situation where the company has the resources to carry out its business but such resources are only partially allocated to capital, because they are mostly granted in the form of financing.

In the current economic situation, however, the application of such provisions results as an excessive disincentive against an economic framework that instead requires a greater involvement of the shareholders in the increase of financing flows.



Article 120 of the Consolidated Financial Act

Article 120 of the Consolidated Financial Act

Amendments to Anti-Raid Rules

Pursuant to Article 120 of Decree Law No. 58 of 24/02/1998 (the so-called Consolidated Financial Act or «TUF») those who hold more than **3%** of the share capital of an Italian listed company shall notify the issuer and CONSOB. Where the issuer is an SME, this threshold is **5%**.

The Liquidity Decree also provides certain amendments to Article 120 of TUF.

More specifically, pursuant to the former paragraph 2 of Article 120 TUF:

*«CONSOB may, by means of measures justified by needs to protect the investors as well as corporate control market and capital market efficiency and transparency, envisage – for a limited period of time - thresholds lower than that indicated in paragraph 2 for companies with **particularly extensive shareholding structure**».*

The specification “**particularly extensive shareholding structure**” has been deleted.



Article 120 of the Consolidated Financial Act

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That being said, the Government held that “*the investor's protection as well as the efficiency and transparency of the corporate control and capital market*”, in situations of strong market upheaval such as the current crisis resulting from the spread of the COVID-19 epidemic, may also arise with regard to **small and medium-sized enterprises** with shares listed on regulated markets and not only for «*particularly extensive shareholding structure*».

The aforesaid paragraph 2-bis, without prejudice to the purposes set forth therein and the reference to companies with a particularly widespread shareholding, has therefore been modified by deleting the reference to companies with a particularly extensive shareholding structure in order to allow Consob to provide, always for a limited period of time, **lower thresholds** than those indicated in paragraph 2 of the same Article 120 (3% and 5% for SMEs) also with regard to companies that do not have significant market capitalization, if the protection requirements expressly indicated by the regulation are fulfilled.



Article 120 of the Consolidated Financial Act

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Furthermore, Article 120 of TUF was amended with the introduction of a paragraph *4-bis*.

This provision is intended to improve the degree of transparency and to protect the proper functioning of the market, increasing the **level of information of the stakeholders** requiring to those who purchase a significant stake in a listed company (equal to or above the thresholds of 10%, 20% and 25% to issue to the market, among other things, a **statement of intentions** on the issuer.

This threshold has been reduced to 5% for substantially all Italian listed companies that do not have a controlling shareholder.



Article 120 of the Consolidated Financial Act

...continues

Therefore, in accordance with the provisions of paragraph 2-bis of the same Article 120 of TUF, the aforesaid paragraph 4-bis has been modified by introducing the power of Consob, for limited periods of time, in relation with **“requirements of investor protection and the efficiency and transparency of the corporate control and capital markets”**, to establish, in addition to the thresholds already indicated in paragraph 4-bis, a threshold of **5%** for companies with a particularly widespread shareholding.



Suspension of deadlines for administrative proceedings

Suspension of deadlines for administrative proceedings

Suspension until 15 May 2020

In accordance with Article 37 of the Liquidity Decree, all deadlines relating to administrative proceedings pending on or initiated after 23 February 2020, as well as the deadlines for disciplinary proceedings against Public Administration personnel, including those relating to personnel governed by public law, pending on or initiated after 23 February 2020, shall be further suspended **until 15 May 2020**.



Materials and documentation



Useful links

- Decree text: [Decreto Legge 8 aprile 2020, n. 23](#)

Contacts



milano@lexia.it



[\(+39\) 02 3663 8610](tel:+390236638610)



[LinkedIn](#)

MILANO

Via dell'Annunciata, 23/4
20121 Milano

T (+39) 02 3663 8610

E milano@lexia.it

ROMA

Piazza del Popolo, 3
00187 Roma

T (+39) 06 3265 0892

E roma@lexia.it

PALERMO

Via Quintino Sella, 77
90139 Palermo

T (+39) 091 3090 62

E palermo@lexia.it