

"RESTORE LIQUIDITY" DECREE: MAIN MEASURES AND RELEVANT APPLICATION IN THE ITALIAN SHIPPING SECTOR

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Law-Decree no. 23/2020 (the so called "Restore Liquidity" Decree), which entered into force and was published in the Italian Official Gazette on 9 April 2020, sets forth urgent measures concerning access to credit and fiscal duties for companies; special powers for the government in strategic sectors; and measures concerning health, employment and an extension of administrative and procedural deadlines.

In this briefing we analyse (i) extraordinary and specific measures introduced, with particular regard to the SACE guarantees and specific public guarantees for Fincantieri on cruise ship orders, and (ii) measures adopted to ensure businesses remain as a going concern.

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The "Restore Liquidity" Decree introduces extraordinary and specific measures in five main areas:

- 1. Access to credit, liquidity, export, internationalisation and investment support:** the measures adopted include (i) State guarantees totalling circa €200bn to be granted through SACE in favour of banks providing financing to companies in any form, (ii) specific public guarantees, through SACE – Cassa Depositi e Prestiti export-credit system for the Fincantieri Group and (iii) enhancing the Guarantee Fund for SMEs through an increase of its financial resources and the new ability to financially support companies with up to 499 employees and professionals;
- 2. Business continuity:** the measures adopted provide, *inter alia*, for the postponement of the entry into force of the Code of Crisis and Insolvency referred to in Legislative Decree no. 14/2019 ("Code of Crisis"), the deactivation of regulations relating to companies winding-up due to share capital reductions or losses and the neutralisation of the risk of bankruptcy for the duration of the current health emergency;
- 3. Golden powers and transparency:** the measures adopted provide for the enhancement of special powers in areas of strategic importance and financial transparency requirements;
- 4. Tax:** the fiscal and accounting measures adopted include, in particular, the postponement of tax and fiscal duties in favour of workers and companies, the extension of the withholding tax suspension and the first home tax reduction; and

5. **Judicial proceedings and the Institute for Sports Credit:** further provisions regarding, *inter alia*, the ex officio postponement of civil and criminal hearings scheduled until 11 May 2020, the suspension of procedural deadlines and the enhancement of the Guarantee Fund for sports facilities, under separate management by the Institute for Sports Credit.

SACE GUARANTEES

Pursuant to article 1 of the Restore Liquidity Decree, SACE will grant first demand guarantees, in accordance with European regulation on state aid, in favour of banks, national and international financial institutions and other entities authorised to exercise credit in Italy until 31 December 2020. The guarantees are in respect of new loans or refinancing transactions granted in any form, after the entry into force of the Restore Liquidity Decree, to companies with more than 499 employees. The SACE guarantee will benefit from the State counter-guarantee.

The granting of SACE guarantees is subject to a number of conditions, in particular: **(i)** guarantees shall be issued by 31 December 2020; **(ii)** guarantees shall only be issued in respect of loans of a maturity not exceeding six years with the possibility for the borrowers to benefit from a pre-amortisation period up to 24 months; **(iii)** the aggregate amount of the loan covered by a guarantee cannot exceed the higher of 1) 25% of the borrower's annual turnover in 2019, as stated in the approved financial statements or tax declaration and 2) twice the borrower's 2019 employment costs, as stated in the latest financial statements or audited accounts. If the borrower has not yet approved the financial statements, and in the event that the borrower concerned commenced trading after 31 December 2018, reference will be made to the expected employment costs for the first two years of trading, as documented and certified by the borrower's legal representative; **(iv)** the borrower undertakes not to approve the distribution of any dividends in the 12 months following the disbursement of the loan, **(v)** the borrower undertakes to manage its employment arrangements with Italian trade unions; **(vi)** the loan secured by a guarantee shall be used for the sole purpose of covering personnel costs, investments or working capital employed in production plants and business activities located in Italy.

The SACE guarantees will cover 90% of the principal amount of the loan for companies with fewer than 5,000 employees in Italy and an annual turnover lower than €1.5bn and for such companies a simplified procedure for accessing, financing and issuing the SACE guarantee is provided for. The guarantees' coverage drops to 80% of the principal amount of the loan for companies with more than 5,000 employees in Italy and an annual turnover between €1.5 and €5bn and drops to 70% for companies with an annual turnover higher than €5bn.

The Italian Banking Association (ABI) has sent a specific circular to all branches of credit institutions clarifying how to grant financing covered by a public guarantee, by the Guarantee Fund for SMEs and by SACE. As specified in the ABI circular, non-performing companies will not have access to the measures provided for in the Restore Liquidity Decree.

SPECIFIC PUBLIC GUARANTEES FOR FINCANTIERI

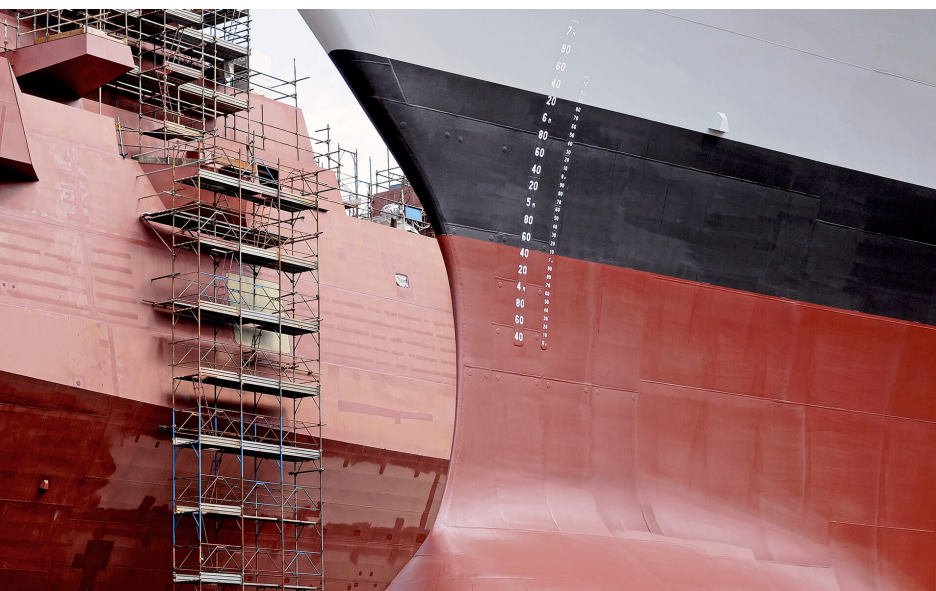
As regards the maritime transport field, with the Restore Liquidity Decree the Government has provided for specific public guarantees, through the SACE – Cassa Depositi e Prestiti export-credit system, for the Fincantieri Group which is expressly mentioned in the text of the "Liquidity Decree".

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The guarantee covers 13 orders by foreign shipowners intended for the cruise sector: 12 ships to be built, with deliveries between 2023 and 2026, to which is added the extension and the installation works of a scrubber on an additional cruise ship.

In particular, in paragraph 4 of article 2 of the Restore Liquidity Decree, it is specified that three types of operations are guaranteed by the Italian state, which are then specified in a table attached to the Restore Liquidity Decree of which it is an integral part and in which the amounts of each order are also indicated (see here):

- **Operations already authorised, pursuant to article 2 of CIPE Resolution no. 75/2019.** These are the six orders for a total value of over €3bn;
- **Operations eligible for the guarantee whose applications have already been submitted by SACE.** In this case, the public guarantees concern four contracts for an aggregate amount of €778m; and
- **Further operations approved by SACE by the date of entry into force of the Restore Liquidity Decree, up to a maximum amount of €2.6bn.** The coverage concerns three cruise ships for an aggregate of €1.5bn.



THE SIMPLIFICATION OF THE BUREAUCRATIC PROCESS OF THE OPERATIONS, INTRODUCED BY THE DECREE, IS AN IMPORTANT INNOVATION.

The cruise industry, recognised as strategic by the Italian Government, has been heavily affected by the pandemic, therefore, the provision of a guarantee that locks down existing orders represents an important result for the Fincantieri Group. It should be noted that SACE has for some time been granting Fincantieri guarantees via export credit for its cruise ship orders, however the simplification of the bureaucratic process of the operations, introduced by the Restore Liquidity Decree, is an important innovation.

MEASURES TO ENSURE THE BUSINESS AS A GOING CONCERN

The Restore Liquidity Decree also provides a package of measures aimed at ensuring business continuity during the current health emergency.

First of all, article 5 of the Restore Liquidity Decree provides for the postponement to 1 September 2021 of the entry into force of the Code of Crisis originally scheduled for 15 August 2020.

The entry into force of the Code of Crisis would not allow the full application of the reforms contained therein, whose main purpose is to ensure businesses remain going concerns, through the introduction of an alert phase planned on the basis of a steady economic framework. Therefore, given that the entire world economy has been impacted by the coronavirus pandemic, the parameters identified for the emergence of the crisis could not promptly intervene before it turns into irreversible insolvency.

The postponement of the entry into force of the Code of Crisis is also justified in light of the predictable impact of the emergency on companies' solvency, as well as a possible investment crisis and, in general, the resources needed for restructuring companies. As such, the new provisions may not be sufficient to meet the purpose of legal certainty. Indeed, the dispositions of the Bankruptcy Law, supported by consolidated case law, would certainly offer greater stability to operators compared to an instrument which, by introducing new dispositions, could lead to interpretative and procedural doubts.

"Such a provision is without prejudice to those provisions of the Code of Crisis which entered into force on 16 March 2019."

It should also be noted that such a provision is without prejudice to those provisions of the Code of Crisis which entered into force on 16 March 2019, including, *inter alia*, those concerning the organisational, administrative and accounting structures of companies.

Other significant measures are those concerning (i) the preventative composition with creditors (*concordato preventivo*) and restructuring agreements and (ii) the applications aimed at the declaration of bankruptcy and state of insolvency.

With reference to the first intervention, in order to stem the negative effects that could damage the national economy from the inadmissibility or termination of procedures aimed at maintaining a company as a going concern, the Restore Liquidity Decree grants an extension of the terms provided for by the Bankruptcy Law, in order to encourage the positive conclusion of the procedures themselves. In this regard, article 9 of the Restore Liquidity Decree provides for the legal extension by six months of the deadlines for the execution of the approved preventative composition with creditors (*concordato preventivo*) and restructuring agreements, expiring between 23 February 2020 and 31 December 2021.

With respect to the same procedures pending as of 23 February 2020 and not yet approved, the Restore Liquidity Decree provides for the possibility for a debtor to file, until the hearing set for the approval, an application to the Court for a new deadline, not exceeding 90 days, to prepare a new proposal or a new restructuring agreement, taking into account the economic conditions which have arisen as a result of the crisis. The debtor is also allowed to amend – by filing the documentation proving the need for the amendment – the terms originally envisaged in the proposal or agreement, provided that the deferral of the new terms does not exceed six months compared to the original deadlines.

"Article 10 of the Decree sanctions the impossibility of requests and applications for declarations of bankruptcy and insolvency, which have been or will have been filed between 9 March and 30 June 2020."

Finally, the provision under consideration allows a debtor who, in relation to the filing of an application for an *"in bianco"* composition with creditors or pending the negotiations for the finalisation of a restructuring agreement, has already obtained the suspension of individual enforcement and precautionary actions, whose terms are expiring and cannot be further extended, to request an additional extension of up to 90 days. This applies even in case of an application for bankruptcy. The Restore Liquidity Decree also provides that (i) the application must contain the elements that make it necessary to grant the extension in connection to events that occurred as a result of the COVID-19 epidemiological emergency and (ii) this extension may be granted by the court, after having acquired the opinion of the judicial liquidator, only if based on concrete and justified reasons.

With reference to the second area of intervention and, therefore, to the applications for declarations of bankruptcy and insolvency, the fear of filing several applications for bankruptcy, without any real advantage for creditors, led to the introduction of a temporary suspension of the same. To this end, article 10 of the Restore Liquidity Decree sanctions the impossibility of requests and applications for declarations of bankruptcy and insolvency, which have been or will have been filed between 9 March and 30 June 2020.

The only exception to this relates to applications filed by the public prosecutor containing precautionary or conservative measures, in order not to indulge dissipative conduct.

The postponement of the entry into force of the Code of Crisis; the extension of the terms of fulfilments regarding the preventative compositions with creditors and restructuring agreements; and the declaration of the inadmissibility of applications aimed at declaring bankruptcy, constitute significant measures for the shipping sector, which in recent years has been marked by preventative compositions with creditors and restructuring processes. In this regard, the provisions of article 9 relating to the six-month extension of the deadlines for the fulfilment of the preventative compositions with creditors and of the approved restructuring agreements are also in line with the proposal submitted to the government by the President of Confindustria, Mario Mattioli, a few weeks before the Restore Liquidity Decree was enacted.

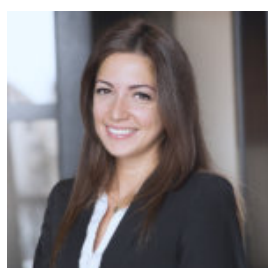
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