

PAVIA e ANSALDO
STUDIO LEGALE

Via del Lauro, 7 . I - 20121 Milano . Tel. +39.02 8558.1 . Fax +39.02 89011995 . info.milano@pavia-ansaldo.it
Via Bocca di Leone, 78 . I - 00187 Roma . Tel. +39.06 69516.1 . Fax +39.06 6793236/7 . info.roma@pavia-ansaldo.it
www.pavia-ansaldo.it

LABOUR LAW PROFILES CONCERNING
CREDIT ACCESS MEASURES

SUMMARY

1. **Premise: the «Covid-19» epidemiological emergency.....1**
2. **The commitment to manage the employment levels through union agreements as a requirement for the issuance of guarantees on loans granted to companies.....2**

1. Premise: the «Covid-19» epidemiological emergency

The «Covid-19»¹ epidemiological emergency affecting our country has important repercussions on employment relationships as well as on the life of companies.

From a regulatory perspective, the situation is particularly fluid and continually being updated: it is therefore necessary to keep it constantly monitored since the provisions that are valid today may no longer be in force tomorrow. The information provided hereunder is updated to 26 May 2020.

Please note that, in addition to the measures adopted at a national level – which are addressed in this document – it is necessary to pay attention to the provisions issued by

¹ This is the acronym that identifies the respiratory disease caused by the new coronavirus, representing the synthesis of “COrona”, “VIRus”, “Disease” and “2019” as year of identification. The virus was instead called “Respiratory syndrome acute severe coronavirus 2” or “SARS-CoV-2”. Further information can be found on the website of the Ministry of health: <http://www.salute.gov.it>



Associazione professionale tra

Avv. Stefano Bianchi - Avv. Daniele Carminati - Avv. Claudio Cera - Avv. Enrico Del Guerra - Avv. Mario Di Giulio - Avv. Gian Paolo Di Santo
Avv. Filippo Fioretti - Avv. Marco Giustiniani - Avv. Vittorio Loi - Avv. Francesco Manara - Avv. Nico Moravia - Avv. Mia Rinetti - Avv. Meritxell Roca Ortega
Avv. Marina Santarelli - Avv. Maurizio Vasciminni - Avv. Sven von Mensenkampff - Avv. Roberto Zanchi e Dott. Marco Jannon

Soci Onorari: Agostino Migone de Amicis - Bruno R. Pavia

C.F. - P.I. (V.A.T. N.) 01771720156

the Regions, Prefects and Municipalities, the relevance of which is limited to their respective territories and which, for such reason, cannot be taken into consideration here below².

2. The commitment to manage the employment levels through union agreements as a requirement for the issuance of guarantees on loans granted to companies

The Law Decree no. 23 of 8 April 2020, the so-called “**Liquidity Decree**”, which contains “*urgent measures regarding access to credit and tax fulfilments for businesses, special powers in strategic sectors, health and safety at work interventions, extension of administrative and procedural terms*”, has introduced – as from 9 April 2020 – a series of measures aimed at safeguarding companies from a serious **liquidity crisis** as a consequence of the Covid-19 epidemiological emergency.

Amongst such measures, primary importance is given to the concession by SACE S.p.A.,³ on a temporary basis until 31 December 2020, of **guarantees** in favour of banks, national and international financial institutions and other entities authorized to exercise credit in Italy, for loans granted, in any form, to Italian companies affected by the aforementioned epidemiological emergency.

The guarantees granted by SACE S.p.A. cannot exceed the maximum total amount of two hundred billion euros, of which at least thirty billion in support of small and medium-sized **enterprises**, including **self-employed workers** and **VAT registered professionals**, who have already used the Central Guarantee Fund.

Amongst the conditions set forth by the Liquidity Decree for the issuance of the guarantee, the following ones need to be mentioned:

- the company benefiting from the guarantee must undertake the obligation to manage the **employment levels** through **union agreements**;
- the loan covered by the guarantee must be used to support **personnel costs**, investments or working capital employed in production plants and business activities located in Italy;
- the beneficiary company must undertake the obligation, also on behalf of any company belonging to the same group and based in Italy, not to approve the distribution of dividends or the repurchase of shares during 2020.

² For example, specific restrictive measures for dealing with the emergency have been issued by the Lombardy Region (see orders no. 514, no. 515 and no. 517 dated 21, 22 and 23 March 2020, which have been enacted pending the entry into force of Law Decree no. 19/2020, containing inter alia provisions regarding the adoption of national and local measures, as well as orders no. 521, no. 522, no. 528, no. 537 and no. 538 dated 4, 6, 11 and 30 April 2020 and no. 539 of 3 May 2020).

³ SACE S.p.A. is a company controlled by Cassa Depositi e Prestiti, specialized in supporting Italian companies, in particular small and medium-sized enterprises.

The rationale of the provisions at issue appears to be clear: ensure that the companies benefiting from the measures offered by the Liquidity Decree use the resources obtained in such way also in order to protect the workforce.

However, the rule appears to be extremely vague and susceptible to multiple interpretations. For example, it does not identify the union organizations who are entitled to be involved, since no reference is made to a given level of representativeness. Similarly, the matters to be interpreted as pertaining to “management of employment levels” are not clarified (for instance, it is not clear if the rule meant to make reference only to dismissals or if, more generally, an agreement with the union becomes necessary for any decision that may adversely affect “the employment levels” of the company that has benefited from the measures referred to in the Liquidity Decree, including, for example, the issue of the renewal of fixed-term contracts that are due to expire).

Based on a literal interpretation, the provision at issue seems to require not only a confrontation with the union organizations, but also an actual agreement. In this last perspective, the use of the guarantees granted by SACE S.p.A. could severely limit the power of the entrepreneur to freely manage the company.

This document is for information purposes only. It does not constitute a legal opinion in relation to the matters described herein, nor can it be considered as a legal analysis replacing a specific legal advice in relation to such matters or as a reference for contracts or commitments of any kind.

This document is the property of Pavia e Ansaldo Studio Legale and its copying, duplication, citation or reproduction is prohibited, outside of its consultation.