

# Bird & Bird & SACE – *Green New Deal*



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*On 15 September 2020, Law no. 120 dated 11 September 2020, converting, with amendments, Law-Decree no. 76 of 16 July 2020 (the “**Semplificazioni Decree**”), containing urgent measures for simplification and digital innovation, was published in the Italian Official Gazette.*

*Pursuant to Article 64 of the Semplificazioni Decree, SACE S.p.A. may issue guarantees (the “**SACE Green Guarantees**”) in order to support projects aimed at facilitating the transition towards a clean and circular economy, or aimed at accelerating the transition towards sustainable and intelligent mobility (the “**Environmental Objectives**”).*

*Subsequently, Law no. 160 of 27 December 2019 (the “**2020 Budget Law**”) provided for a series of measures aimed at implementing a public investment plan for the development of an Italian Green Deal, in line with the environmental strategy promoted by the European Commission.*

*In particular, Article 1, paragraph 86 of the 2020 Budget Law authorizes the Ministry of Economy and Finance to intervene, granting one or more guarantees, with measures to support specific investment programs aimed at implementing economically sustainable projects and that have as their objective, inter alia, the decarbonization of the economy, the circular economy, adaptation and mitigation of risks on the territory arising from climate change. To this end, the 2020 Budget Law has established a fund endowed with an amount equal to Euro 4,240 million for the years 2020-2023.*

*Bird & Bird immediately set up a task force with professionals operating in the banking and financial, regulatory, corporate and tax sectors which, to date, has assisted several clients in loan transactions secured by the facilitated regime.*

*Our lawyers, by virtue of their in-depth knowledge and constant updating on the current regulatory framework, also thanks to preferential channels with the institutions, are able to assist banks, financial intermediaries and companies in this context of important innovations.*

# Overview

On 29 September 2020, the Interministerial Committee for Economic Planning and Sustainable Development (“**CIPESS**”) approved resolution no. 56, subsequently published in the Italian Official Gazette on 11 November 2020, attached to which is a copy of the operating agreement between the Ministry of the Economy of Finance and SACE, aimed at regulating, *inter alia*:

- the procedures for carrying out the **preliminary investigation** by SACE, also with reference to the selection and assessment of the initiatives in terms of their compliance with the objectives set out in the applicable regulations;
- the **procedures** to be selected in relation to the **issuance** of the SACE Green Guarantee;
- the management of the phases following the payment of the indemnity in the event of the **enforcement** of the SACE Green Guarantees, including the methods of exercising the rights against the debtor and the credit recovery activity;
- the indication of the amounts for the **fees** related to the SACE Green Guarantees to be paid by the parties requesting the granting thereof.

## Eligible Subjects

The SACE Green Guarantee may be issued in favour of **all Italian companies, of any size, beneficiaries of any type of financing** made available by domestic or foreign banks, domestic or foreign financial operators as well as subscribers of bonds, financial bills, debt securities and other financial instruments for credits granted in any form or for the issue of sureties, guarantees, commitments to sign or open documentary credit.

## Coverage and Features

The SACE Green Guarantees shall be issued in the form of a **first-call, irrevocable and unconditional guarantee** for a maximum amount equal to the **80%** of the amount financed.

In the event that the guarantee covers a capital amount higher than Euro **200 million**, the transaction shall be **approved by a decree of the Ministry of Economy and Finance**, having consulted the Ministry of Economic Development and the Ministry of the Environment and Protection of Land and Sea.

## Fees

The consideration for the SACE Green Guarantee is determined on the basis of the risk profile that SACE will be called to assume, defined taking into account, among others, the following criteria:

- the **type** of risk;
- the **duration** of the risk;
- the characteristics of the **security package** related to each project; and
- the project's contribution to the **Environmental Objectives**.

## Eligible Projects

The following project, by way of example, may benefit from the SACE Green Guarantee<sup>1</sup>:

- projects that aim to recycle waste and reduce landfill disposal;
- activities of eco-design, eco-innovation, re-manufacturing, re-engineering of production processes, re-design, reconditioning of products, extension of the life cycle, recovery of raw materials and regeneration aimed at achieving objectives of lower consumption of raw materials, greater efficiency in the use of raw materials and significantly lower waste production;
- investments aimed at reducing greenhouse gas emissions;
- investments aimed at integrating production cycles with low-emission technologies for the production of sustainable goods and services;
- investments in physical infrastructure to increase or optimize the use of energy from renewable sources (e.g. interconnection networks, smart grids and storage systems);
- projects aimed at adopting sustainable production methods such as organic farming, agroecology, agroforestry and spread the techniques of precision farming and animal husbandry, promote the management, enhancement and circular use of livestock manure in areas of high production intensity and projects aimed at reducing the waste of food waste;
- urban regeneration projects aimed at upgrading and increasing the stock of social housing, regenerating urban areas with an increase in environmental quality and resilience to climate change;
- digitization, applied research and innovation projects aimed at transforming the transport and mobility sector into a smart and dynamic sector through the implementation of shared mobility systems and the use of high technology (technology driven) - for example, the development of services and technologies to make transport and logistics services smarter and greener (e.g.: smart ticketing, wi-fi services, geolocation and related services for users to minimize waiting times, self-driving cars, etc.);
- projects involving difficult-to-involve segments such as biomethane in agricultural tractors, biofuels for aviation and bio-bunkers for the marine industry;
- sustainable freight logistics, including, but not limited to, cold ironing, dock electrification, cold chain energy efficiency for perishable products, as well as the green transformation of the shipping fleet in maritime transport and the development of alternative fuels (such as LNG and hydrogen) in the freight logistics supply chain;
- investments for a circular economy (understood as an increase in the ability to create economic value in an environmentally sustainable way by increasing the degree of “circularity” of products);
- interventions to prevent the risk of natural disasters.

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<sup>1</sup> In this regard, note that the list provided is included in the CIPESS guidance act covering FY 2020. By 28 February 2021, the CIPESS was supposed to publish the new guidance act covering FY 2021 but, to date, there is no evidence that this act has been promulgated.

# Our Services



## Legal Opinions and *memoranda*

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Since the entry into force of the Semplificazioni Decree, we have guided our clients in the correct interpretation and in-depth study of the most interesting issues related to the guarantee mechanisms governed by it. Through *pro veritate* opinions and *memoranda*, we are able to address specific issues related to the analysis of the regulatory framework and the consequent practical implications, as well as the methods of access to guarantees and the documentation required for such purposes.



## Assistance in obtaining guarantees

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In order to maximize the time it takes to obtain the new government facilities, it is essential to be assisted by experienced professionals. Our lawyers, thanks to the experience gained in the preceding months and to the preferential channels with the institutions, will be able to guide you in the best way in the relationships with SACE for the negotiation, the drafting and the release of the SACE Green Guarantee.



## Drafting of standard facilities agreement

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Our professionals have consolidated experience in the drafting of facilities agreement forms that integrate and include specific clauses referring to the new guarantee mechanisms granted by the State. The cooperation of professionals belonging to different disciplinary fields is able to offer a complete and ready-to-use product.



## Drafting and negotiation of complex facilities agreement

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As far as more complex transactions are concerned, our team, recognized by market operators for its experience and capacity, is able to provide comprehensive assistance in the drafting and negotiation of facilities agreement of any kind, intended for beneficiaries operating in different sectors. We were among the first to have assisted lenders and beneficiary companies in the preparation of these contracts, and this allows us to guarantee a quality service, ensuring our customers a solid product, cutting edge and on time.



## Security Package

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It is possible to combine SACE Green Guarantees with additional guarantees in favor of lenders. Our professionals provide assistance in the review, negotiation and drafting of security packages in accordance with the new legal provisions, taking into account the needs and availability of each client. In fact, our operational task force is well aware of the importance of safeguarding the bankability of each transaction. For these reasons, our professionals will advise and assist you in every step necessary to obtain the best possible security documentation based on your needs.

# Contacts

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