

CLIENT ALERT

COVID-19: ITALIAN MEASURES ON SHAREHOLDERS' MEETINGS

March 24, 2020

AUTHORS

Maurizio Delfino | Bruno Cova

With annual general meetings of listed and non-listed companies approaching, and in the context of sweeping statutory measures to address the Covid-19 emergency (Law Decree No. 18 of 17 March 2020, so-called "Heal Italy"), the Italian Government introduced legislative measures to facilitate the holding of shareholders' meetings.

To ensure that quotaholders (in the case of Srl or Società a responsabilità limitata-type of companies) and shareholders' (for SpA or Società per Azioni-type of companies) meetings are held in safety conditions, Article 106 of the Decree provides for a temporary deviation from the current provisions of the Civil Code, By-Laws and special regulations. The temporary rules apply to meetings to be held by 31 July 2020 or by the date in which the state of emergency will be lifted. in particular:

- Companies with shares listed on regulated markets and on MTF or companies whose shares are widely distributed in the market (Para. 4 and 5) can designate a representative to whom shareholders may grant a proxy with voting instructions on all or some of the proposals on the agenda of ordinary and extraordinary meetings even if the by-laws of the company do not permit such option. Furthermore, the notice of call can provide that the participation at the meeting will take place exclusively through such representative, to whom proxies or sub-proxies pursuant to Article 135-novies of Legislative Decree No. 58 of 1998, may also be conferred.

CLIENT ALERT

- The banks so called banche popolari, cooperative banks, cooperative companies and mutual insurance companies can disregard the restriction provided for by applicable laws, regulations and by-laws provisions with respect to the number of shareholders represented by a proxy holder in ordinary and extraordinary meetings, also with respect to the designation of the representative pursuant to Article 135-novies of Legislative Decree No. 58 of 1998. The notice of call can provide that the participation in the meeting will take place exclusively through the representative to whom proxies may be given by the second day before the date of first call of the meeting.
- Extension of the term for the approval of the financial statements (Para. 1): Disapplying Articles 2364, Para. 2, and 2478-bis of the Civil Code and any by-laws provisions to the contrary, the shareholders' meetings of all types of Italian companies can be convened to approve the financial statements within 180 days from the end of the financial year (instead of 120 days currently provided). Thus, the meetings for the approval of the 2019 financial statements can be convened by 28 June 2020.
- Possibility to attend the meeting by means of telecommunication systems and vote by electronic means or correspondence (Para. 2). Meetings can be held, even exclusively, through telecommunication means which guarantee the identification of the participants, their participation and the exercise of the voting rights. The physical presence in the same place of the chairman and the secretary (or the notary, if a notary acts as secretary) of the meeting is not a requirement¹. The provision is applicable to joint-stock companies (società per azioni), limited partnerships with shares (società in accomandita per azioni), limited liability companies (società a responsabilità limitata), cooperative companies (società cooperative) and mutual insurance companies (mutue assicuratrici).

¹ In line with a recent principle expressed by the Notarial Councils of Milan – No. 187 on 11 March 2020 – according to which: “Participation in the shareholders’ meeting by electronic means - if permitted by the By-Laws pursuant to Article 2370, paragraph 4, of the Italian Civil Code, or in any case allowed under the applicable laws and regulations - may concern all attendees in the meeting, including the chairman, it being understood that the secretary entrusted to take the minutes or the notary, together with the person(s) appointed by the chairman to ascertain the identity of those who participate in person (provided that this task is not entrusted to the secretary or the notary), must be in the location indicated in the notice of call”.

CLIENT ALERT

- Expression of the voting right by written consultation or by written consent (Para 3) is allowed also in the circumstances non permitted by Article 2479, Para. 4, of the Civil Code. The provision is applicable to Srl-type of companies.

Other emergency measures adopted earlier this month to reduce the risk of contagion may have an impact on attendance to shareholders' meetings and the way they are held. In particular, Article 1 of the Law Decree No. 11 of 8 March 2020 limits personal travel "except for travel motivated by proven work needs or situations of necessity or travel for health reasons", and a number of countries have introduced measures to restrict or discourage travel to and from Italy.. Similarly, the same provision imposes sanitary measures, such as a minimum safety distance between people attending meetings, that will have to be adopted and enforced by the companies that will hold physical meetings.

Comments

Some Italian companies have already decided to postpone their shareholders' meetings, while others seem minded to confirm the dates already contemplated in their 2020 financial calendar, and are organizing themselves to take advantage of the new rules.

It is expected that the situation will result in lower attendance to shareholders' meetings, reduced shareholders' activism, and more limited engagement. A postponement of the shareholders' meeting may also result in the delayed payment of dividends.

This alert is provided by Studio Legale Delfino e Associati Willkie Farr & Gallagher LLP for informational purposes only and is not intended and should not be construed as legal advice.