



Client Alert | Capital Markets

Italy

2020 Shareholders' Meetings

Extension of deadlines to 180 days, remote voting and designated representative for listed issuers

March 2020

On the occasion of the COVID-19 virus emergency, by Article 106 of Decree Law No. 18 of 17 March 2020 ("Decree") containing measures to strengthen the national health service and provide financial and economic support to families, workers and companies in connection with the COVID-19 epidemiological emergency, Italian law-makers have taken action to adopt a specific discipline setting out terms and conditions for the 2020 shareholders' meeting season.

As specified in the Explanatory Statement attached to the Decree, the specific purpose of the provision at issue is to **allow companies to convene ordinary shareholders' meetings within a longer time limit (i.e. 180 days) than the standard time limit set out in the Italian Civil Code as well as to facilitate the conduct of shareholders' meetings in compliance with the provisions aimed at reducing the risk of contagion.**

1. Extension of the deadline for convening meetings to 180 days

Under Article 106, paragraph 1, of the Decree, in derogation from the provisions on joint-stock companies (Article 2364, paragraph 2, of the Italian Civil Code, which requires ordinary shareholders' meetings to be called at least once a year within 120 days of the end of the financial year) and limited liability companies (Article 2478-bis, of the Italian Civil Code, which requires financial statements to be submitted to quotaholders within 120 days of the end of the financial year) or other statutory provisions, **shareholders' meetings for the approval of financial statements shall be called within 180 days from the end of the financial year.**

2. Procedure for conducting shareholders' meetings: electronic voting (even exclusively)

Milano

Roma

London

Brussels

Shanghai



The Decree provides that, **if stated in the notice of call for meeting, all joint-stock companies¹ may provide**, even in derogation from the provisions of the by-laws, for **voting by electronic or correspondence and attendance to the shareholders' meeting by telecommunication means**.

Furthermore, joint-stock companies may provide for **shareholders' meetings to be held, even exclusively**, by means of telecommunication means that ensure the identification of the attendees, their participation and the exercise of voting rights, **without the chairman, a secretary or a notary public having to be present in the same place²**.

As outlined by the AMF³, in order to facilitate remote voting, it is necessary for issuers to provide for **the streaming of meeting proceedings on their website** and notify the market thereof appropriately.

Pursuant to Article 106, paragraph 7, of the Decree, the provisions on remote voting shall apply to shareholders' meetings convened by **31 July 2020** or by the date until which the state of health emergency on the national territory associated with the COVID-19 epidemic is in force, pursuant to the applicable regulation, whichever is later.

3. Appointment of the designated representative

Paragraph 4 of Article 106 of the Decree allows **companies with listed shares to appoint a designated representative ("rappresentante designato")** (pursuant to Article 135-undecies, TUF) for ordinary or extraordinary shareholders' meetings, **even if the by-laws provide otherwise**.

Issuers may also provide in the notice of call that participation in the shareholders' meeting take place **exclusively through the designated representative** in order to ensure that the shareholders' meetings be held in the **total physical absence of shareholders, with the exclusive presence of the designated representative**.

The notice of call shall also indicate the procedure for the granting of proxies to the person designated by the company, if any, with the provision, on the issuer's website, **within the**

⁽¹⁾ The same article of the Decree applies also to partnerships limited by shares ("società in accomandita per azioni"), limited liability companies, cooperative companies ("società cooperative") and mutual insurance companies ("mutue assicuratrici").

⁽²⁾ The Decree also provides that limited liability companies may allow, even in derogation from the provisions of Article 2479, paragraph 4, of the Italian Civil Code and the provisions of the by-laws, that voting take place by means of written consultation or written consent.

⁽³⁾ AMF, *Communiqué de presse relatif aux assemblées générales de sociétés cotées*, 6 March 2020.



deadline for publication of the notice of call, of the form for the granting of proxies to the designated representative.

In derogation from Article 135-*undecies*, paragraph 4, of the TUF ("Consolidated Law on Finance") - pursuant to which the designated representative may be granted proxies only pursuant to and for the purposes of the same article - the Decree has provided that the designated representative **may also be granted proxies and/or sub-delegations** pursuant to 135-*novies* of the TUF, **as a mere representative of the individual shareholder**.

The rules described above shall also apply to **issuers admitted to trading on multilateral trading facilities (MTFs), including AIM Italia, and publicly traded companies** under Article 2-*bis* of the Consob Issuers' Regulation⁴. In such case, given the different nature of the institution governed by Article 135-*undecies*, of the TUF, the quantitative limits set forth in Article 2372, paragraph 6, of the Italian Civil Code **shall not apply to the collection of proxies through the designated representative, which on the contrary apply in the event if a proxy is conferred upon the individual representative of the holder of the voting right**.

With regard to the **prohibition**, under Article 2372, paragraph 5, of the Italian Civil Code, **on appointing members of management or supervisory bodies or employees of a company and its subsidiaries as proxies**, given the uncertainty of its applicability, it would be advisable that the designated representative be a third party having the necessary professional skills.

In this case too, pursuant to Article 106, paragraph 7, of the Decree, the provisions on the designated representative will apply to meetings convened **by 31 July 2020** or by the date until which the state of health emergency on the national territory associated with the COVID-19 epidemic is in force, pursuant to the applicable regulation, whichever is later.

(⁴) In addition to the above, cooperative banks ("banche popolari"), cooperative credit banks ("banche di credito cooperativo"), cooperative companies ("società cooperative") and mutual insurance companies ("mutue assicuratrici"), also in derogation from Article 150-*bis*, paragraph 2-*bis*, of Legislative Decree No. 385 of 1 September 1993, according to which the by-laws of cooperative banks set out the maximum number of proxies that may be conferred on a member, in any event not exceeding 20, and Article 2539, paragraph 1, of the Italian Civil Code, which, with regard to cooperative credit banks, establishes that each member may represent up to a maximum of 10 members, may appoint a designated representative for ordinary or extraordinary meetings. Said companies may also provide in the notice of call that attendance to shareholders' meetings take place exclusively through the aforementioned representative. In such cases, Article 135-*undecies*, paragraph 5, of the TUF will not apply, since the designated representative shall be prevented from voting in a manner other than that specified in the instructions.



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