

CORONAVIRUS OVERCOMING THE DIFFICULTIES

CORPORATE LAW PROVISIONS

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Article 106 of Decree no. 18 of March 17th, 2020 (Decree “Cura Italia”) established important provisions for companies

What does it apply to?

To Shareholders' Meetings convened **by July 31st 2020**, or by any later date until which the state of emergency will be in force on the national territory for the health risk associated with the COVID-19 epidemic.

What does it provide for?

1. Approval of 2019 financial statements

The Shareholders' Meeting may be called **within 180 days from the end of the financial year, even in derogation of the Bylaws**. For the financial statements closing on 31/12, the shareholders' meeting may therefore be **called by 28 June 2020 (Sunday)**.

Consequently, also the deadline for the approval of the draft financial statements by the Board of Directors and the transmission to the Board of Statutory Auditors (or to the control body for limited liability companies) and external auditors may be postponed accordingly (30 days before the date set for the Shareholders' meeting).

2. Procedures for the Shareholders' Meeting

Companies with share capital (joint-stock companies, limited partnerships, limited liability companies), cooperatives and mutual insurance companies, in the notice of call of ordinary or extraordinary shareholders' meetings, also in derogation from the provisions of the Bylaws, may provide that:

- the vote is express electronically or by correspondence and attendance at the meeting is by telecommunication devices;

- the shareholders' meeting shall be held - even exclusively - by telecommunications devices that guarantee the identification of participants, their participation and the exercise of voting rights, pursuant to and for the purposes of the law.

In any case, it is not necessary for the chairman, secretary or notary public, if any, to be in the same place.

More in detail:

- **limited liability companies** may allow voting to take place by written consultation or by written consent (even in derogation of the provisions of Article 2479, paragraph 4, cc and of the provisions of the bylaws);
- **companies with listed shares, companies admitted to trading on a multilateral trading system and companies with shares widely distributed among the public** may: (i) designate for ordinary or extraordinary shareholders' meetings the representative provided for by Article 135 *undecies* TUF, even if the Bylaws provide otherwise, (ii) provide in the notice of call that attendance at the shareholders' meeting shall take place exclusively through the representative designated pursuant to Article 135 *undecies* of TUF; and the aforementioned designated representative may also be granted proxies or sub-delegations pursuant to Article 135 *novies* TUF, in derogation to Article 135 *undecies*, paragraph 4, of the same decree.
- **cooperative banks, cooperative companies and mutual insurance companies**, also by way of derogation from Article 150 *bis*, paragraph 2 bis TUB, Article 135 *duodecies* TUF and Article 2539, paragraph 1 cc, and the provisions of the Bylaws providing for limitation to the number of powers of attorney which may be granted to the same individual, may: (i) designate the representative provided for in Article 135 *undecies* TUF for ordinary or extraordinary shareholders' meetings; (ii) provide in the notice of call that attendance at the shareholders' meeting shall take place exclusively through the aforementioned designated representative. Article 135 *undecies*, paragraph 5 TUF does not apply and the deadline for granting the proxy referred to in paragraph 1 of the same article is set at the second day prior to the date of first call of the shareholders' meeting.

3. What about the Boards of Directors and other corporate bodies?

The Decree “Cura Italia” does contain any provision. However, it seems useful to point out that:

- before to the Decree “Cura Italia”, the Milan notaries, with recommendation no. 187 of 11 March 2020, had in part already anticipated the above mentioned provisions regarding attendance at the shareholders' meeting by telecommunication devices, including the fact that it is was not to be intended as necessary the chairman and secretary of the meeting to be in attendance at the same place provided that the secretary is in the place indicated in the notice of call.
- the Assonime Note of 18 March 2020 (**Assonime Note**) maintained that: (i) the Decree [“DPCM”] of March 8, 2020 requires the adoption, in all possible cases, of remote connection methods for the holding of meetings and that therefore said Decree (ii) must be interpreted as a general principle applicable to the meetings of each corporate body
- In the light of the above, the Assonime Note concluded that "***the indications contained in the mentioned recommendation no. 187 of the Consiglio Notarile di Milano, on the basis of which it is declared that the meeting is validly held by audio or video conference, even in the absence of a provision in the Bylaws, are to be considered applicable to the meetings of all corporate bodies. The meetings of the Board of Directors, the Board Committees and the Board of Statutory Auditors may therefore be held remotely, in accordance with the procedures of recommendation no. 187, even in the absence of specific provisions of the Bylaws or self-regulation...***".

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Il presente articolo ha esclusivamente finalità informative e non costituisce parere legale.

This article is exclusively for information purposes, and should not be considered as legal advice.



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