

IMPACT OF CORONAVIRUS ON CERTAIN CORPORATE ISSUES

1. INTRODUCTION

This is the second in a series of short notes that Orsingher Ortu - Avvocati Associati intends to make available to support Italian companies in relation to the situation arising from and in relation to the spread of Covid-19 infection (Coronavirus).

The indications provided below (although non exhaustive) could be useful for the management of two situations of completely different nature: the first, fortunately far from being certain and thus only possible (i.e. the need to make up for the lack - temporary or definitive - of one or more directors), the second, although inevitable certainly less dramatic (i.e. the approval of the financial statements).

Some solutions derive exclusively from the so-called "ordinary" rules' being applied to the extraordinary circumstances under way; others, (especially, although not exclusively, with reference to the procedure for the preparation and approval of the annual financial statements), from special rules recently issued. The right-hand column of the table below always indicates the regulatory reference for further insights.

2. TERMINATION OF ONE OR MORE DIRECTORS / SOLE DIRECTOR OFFICE IN THE ITALIAN JOINT STOCK COMPANY

Criticalities	Possible operative solutions	Law reference standards
Contagion of one or more directors	<p>1) Sole director: (a) the sole director, despite the contagion, may still be able to perform its functions, for example remotely and/or by means of a wider resort to delegation to company's staff. (b) if the event that the sole director is unable to carry out its functions as indicated above, it the shareholders must necessarily meet to replace it.</p> <p>2) Member(s) of the Board of Directors without delegated powers: it is recommended that the Board of Directors meets to acknowledge the situation and verify whether or not the director(s)</p>	<p>Art. 2383, paragraph 3, civil code (Revocation by the shareholder's meeting)</p> <p>Art. 2385, paragraph 1, civil code (Renouncement of the director)</p> <p>Art. 2386 civil code (Replacement of directors)</p> <p>Art. 2381, paragraph 3, Italian Civil Code (Chairman, executive committee, managing directors)</p>

	<p>is/are able to continue to carry out their mandate as director(s). <u>If the Board of Directors verifies that such continued performance is not possible, it should promptly inform the shareholders</u> but, given the proximity of the annual meeting for the approval of financial statements, <u>it may well postpone the decision</u> on the removal and subsequent replacement of the concerned director(s), which lies exclusively on the shareholders, <u>to the aforementioned shareholders' meeting.</u></p> <p>3) <u>Managing directors:</u> in case of impossibility for an executive director to continue his/her mandate, the Board of Directors shall proceed <u>to revoke the delegated powers and assign them to one or more other directors</u>, provided that, absent eligible directors within the Board for the purpose, the Board of Directors shall urgently call (waiting for the meeting for the approval of the financial statements will not be possible) a shareholders' meeting to take the necessary decisions (revocation and/or integration of the members of the Board of Directors).</p>	
<p>Definitive termination of one or more members of the Board of Directors/ Sole Director</p>	<p>1) <u>Sole Director:</u> in the event that the sole director ceases from the office, the Shareholders' Meeting must necessarily meet urgently to appoint a new management body.</p> <p>2) <u>Member(s) of the Board of Directors:</u> in the vent that one or more directors with no delegated powers cease(s) from the office, the Board of directors must replace them itself with specific resolution(also approved by the Board of Statutory Auditors) with no need to immediately resort to the shareholders. The directors thus appointed will remain in the office until the next Shareholders'</p>	<p>Art. 2386 Italian Civil Code (Replacement of directors)</p> <p>Art. 2381, paragraph 3, Italian Civil Code (Chairman, executive committee, managing directors)</p>

	<p>Meeting, which may well be the one called to approve the financial statements. However, the above procedure is possible only if, even after such replacement, the majority of the directors would still consist of directors appointed by the Shareholders' Meeting. If this is not the case, the non – ceased directors cannot but convene the Shareholders' Meeting to replace the ceased directors. The same is true if particular provisions of the concerned company's bylaws provide that, following the termination of one or more directors, the entire Board is deemed to have ceased. In both cases last mentioned above, the Shareholders' Meeting for the appointment of the new Board of Directors shall be convened as a matter of urgency (i.e. unless the Shareholders' Meeting is very close to approve the financial statements, it will be necessary to convene a different special Shareholders' Meeting). 3) Managing directors: in case of termination of a director with delegated powers, the Board of directors will have the double problem: (i) the reintegration of the Board of Directors and (ii) the filling of the operational gap that has been created. <u>The first issue</u> can be managed as described under point 2) above (integration by the Board of Directors itself or, for the hypothesis indicated therein, directly by the Shareholders' Meeting). <u>The second issue</u>, due to its more urgent nature, will necessarily have to be handled very promptly by the Board of Directors through the redistribution, on a temporary or definitive basis, of the delegated powers previously held by the ceased director, to one or more other directors.</p>	
--	---	--

3. SHAREHOLDERS' MEETING AND APPROVAL OF THE FINANCIAL STATEMENTS

The provisions below will apply to meetings convened within 31 July 2020 or up to the date, if later, until there will be the state of emergency on the Italian territory relating to the health risk associated with the spread of the COVID-19 epidemic.

Criticalities	Possible operative solutions	Law reference standards
<p>Terms for unlisted companies</p>	<p><u>Convening of Shareholders' Meetings and relevant formalities:</u> as an exception to the provisions of the Italian Civil Code or other provisions possibly contained in the company's bylaws, the ordinary Shareholders' Meeting for the approval of the financial statements may be called within 180 days from the end of the financial year.</p> <p>In the notice of the meeting, joint stock companies (<i>Società per Azioni</i>) may also provide for the possibility of the exercise of voting rights voting by electronic means or by correspondence as well as for remote participation with telecommunications means, anything to the contrary in the concerned company's by-laws notwithstanding.</p> <p>Joint stock companies (<i>Società per Azioni</i>) may also provide that the Shareholders' Meeting shall be held, even exclusively, remotely by resorting to means of telecommunications provided that such means shall guarantee the identification of the participants, their attendance and the exercise of the voting right in accordance with law. Particularly there will be no need that the Chairman, the Secretary or the Notary Public be in the same place.</p> <p>Limited liability companies (<i>società a responsabilità limitata</i>) may allow that the voting rights are exercised by the quota-holders, no matter what the concerned</p>	<p>Art. 2364, paragraph 2, Italian Civil Code</p> <p>Art. 2370, paragraph 4, Italian Civil Code</p> <p>Art. 106 Decree of 17 March 2020 "Cura Italia" (Rules on the conduct of the Shareholders' Meetings)</p>

	company's by-laws may provide in such respect, by written communication.	
<p>Terms for listed companies</p>	<p><u>Convening of Shareholders' Meetings and relevant formalities:</u> also in this case, notwithstanding anything to the contrary in the Italian Civil Code or the provisions possibly contained in the concerned company's bylaws, the ordinary Shareholders' Meeting for the approval of the financial statements may be called within 180 days from the end of the financial year.</p> <p>In addition, no matter what the concerned company's by-laws may state, listed companies may however appoint a representative for ordinary and extraordinary Shareholders' Meetings to whom shareholders may grant a proxy for the exercise of participation and voting rights. The same companies may also provide in the notice of call that participation in the Shareholders' Meeting shall be exclusively through the so appointed representative.</p> <p>If a Shareholders' Meeting has already been called without appointing the representative referred to above or remote voting methods, the concerned companies may postpone the Shareholders' Meeting or reiterate a consistently adjusted notice of call.</p>	<p>Art. 135-undecies Consolidated law on Finance</p> <p>Art. 135-novies Consolidated law on Finance</p> <p>Art. 106 Decree of 17 March 2020 "Cura Italia" (Rules on the conduct of the Shareholders' Meetings)</p>