

COVID-19 SPECIAL

We are living through extraordinary, unprecedented and complex times. All of us at Orsingher Ortu – Avvocati Associati are committed to rigorously complying with the rules of government and relevant authorities to protect our clients, colleagues, staff, fee-earners, partners and community from Covid-19, with the highest degree of social and professional responsibility and care. At the same time, we are doing our very best to continue assisting our domestic and international clients with the same degree of competence, efficiency and enthusiasm as always. We have robust IT infrastructure and communications system in place and have deployed an emergency plan for remote-working which will allow us to promptly address all of our clients' requests for assistance, on both existing and new matters, taking forward all current projects and transactions in order to timely deliver our work product as usual.

In what is a challenging period for all of us, our policy will be that any inefficiency which you may experience on our side as a result of this period will be for our account. Please refer to your contact partner or reach out to us via the special e-mail account covid19@orsingher.com for any specific need/request you may have in connection with the above. Thank you for your continuing trust and support.

CORPORATE **Measures to mitigate Covid-19's impacts on forthcoming Italian companies shareholders' meetings**

On 17 March 2020, the Italian Government issued the [Law Decree No. 18/2020](#) (know as "Decreto Cura Italia") which contains *inter alia* relevant provisions for Italian companies, aimed at mitigating the impact of Covid-19 on the good course of shareholders' meetings. The Law Decree provides the following: (a) the deadline for convening ordinary shareholders' meetings to be held to resolve on 2019 financial statements is extended (from 120 to 180 days within the end of the relevant financial year); (b) participation by telecommunications means and voting by electronic means or by correspondence are permitted, even in derogation of the provisions of by-laws; (c) listed companies (even if the by-laws provide otherwise) are able to appoint a representative who shareholders may or even must delegate in order to attend the meeting and exercise voting rights. These exceptional provisions apply to shareholders' meetings convened by 31 July 2020 or by the later date until which the state of emergency connected with Covid-19 is in force.

FINANCE **Measures to mitigate Covid-19's impacts on early warning tools**

As set out under article 11 of the [Law Decree No. 9 of 2 March 2020](#), the implementation of certain early warning tools aimed at facilitating an early diagnosis of financial distress of the Italian companies pursuant to the new Code on business in distress or insolvency (see [Our Echo of February 2019](#)) has been postponed from 15 August 2020 to 15 February 2021. Specifically, the implementation of the following early warning tools has been postponed: (i) internal and external auditors' reporting obligations under article 14, paragraph 2 of the Code and (ii) Tax Agency (Agenzia delle Entrate), National Social Welfare Institute (INPS) and tax collection agent's reporting obligations under article 15 of the Code. The Law Decree entered into force on 2 March 2020.

For more tips on COVID-19 see our [special newsletters](#):

- [COVID-19 and HR](#)
- [COVID-19 and Impact of Coronavirus on certain Corporate Issues](#)
- [COVID-19 and Suspension of Contractual Obligations](#)

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LITIGATION **Measures to mitigate Covid-19's impacts on judicial terms**

The Decree suspended since 9 March 2020 until 15 April 2020 proceedings before civil courts, which means that (a) all hearings (with the exception of those related to urgency proceedings) scheduled within this time frame shall be re-scheduled on a date after 15 April 2020; and (b) procedural terms and deadlines expiring between 9 March and 15 April 2020 are postponed to 16 April 2020 and if a term or deadline is supposed to start running between 9 March and 15 April 2020, it will start running on 16 April 2020.

CAPITAL MARKETS **Consob's new measures to mitigate Covid-19's impact on markets**

On 17 March 2020, having regard to the turbulences triggered by the Covid-19 pandemic, Consob adopted two resolutions aimed at containing the volatility of the financial markets and to strengthen the transparency of the holdings in the Italian listed companies: (i) [Resolution No. 21303](#) introduced a prohibition of net short positions (short selling and other bearish operations), which applies to all the traded shares on the Italian regulated market for three months starting from 18 March 2020; (ii) [Resolution No. 21304](#) lowered, for a period of three months starting from 18 March 2020, the minimum thresholds (1% for non-SME companies and 3% for SMEs) beyond which shareholders are required to communicate their participation into 48 listed companies specifically identified by the resolution.

IP **EUIPO and IPTO deadlines delayed**

The [terms to submit observations and appeals with the EUIPO](#) expiring from 9 March to 30 April 2020 have been postponed to 1 May 2020.

The [terms to submit observations and appeals with the Italian patent and trademark office](#) expiring from 9 March to 15 April 2020 have been suspended.

CAPITAL MARKETS

Public consultation on the review of the non-financial reporting directive

On 20 February 2020, the European Commission published a [consultation paper](#) on the review of Directive (EU) No. 2014/95 of 22 October 2014 (the Non-Financial Reporting Directive, "NFRD"). The public consultation aims to collect the views of stakeholders for the purposes of possible revisions to the provisions of the NFRD. The public consultation will end on 14 May 2020. In addition, the European Commission will, in the near future, launch a public consultation on a renewed sustainable finance strategy, seeking stakeholders' views in other sustainable finance related issues, including questions related to sustainable corporate governance.

Exemption from consolidated financial statements for subsidiaries of UK companies after Brexit

As a consequence of certain specific provisions of the agreement on the United Kingdom's withdrawal from the European Union - regulating, *inter alia*, relations between the United Kingdom and the European Union during the transitional period (from 1 February 2020 to 31 December 2020) - Italian joint stock companies controlling other companies and under the control of UK companies will be exempted from the preparation of consolidated financial statements to be prepared and filed during 2020 (in accordance with Article 27.3 of [Legislative Decree No. 127/1991](#) on sub-holding companies).

Mifid2: Consob consultation on the transparency of the costs of investment services

On 21 February 2020, Consob launched a [consultation](#) on a "Recommendation on the reporting methods ex post of the costs and charges associated with the provision of investment and accessory services". The consultation aims at ensuring that investors are aware of all the costs and charges for evaluating investments in a comparative perspective of services and financial instruments. Consob's guidelines, to be considered for the drafting of the next reports relating to 2019, involve the structure and content of the aggregated information, the relationship between aggregate and analytical information and the timing of delivery of the reports. The deadline for the consultation is 7 March 2020.

ESMA opinion on the new MAR Regulation no. 1 relating to liquidity support activity

ESMA has provided Consob with its [positive opinion](#) pursuant to Article 13.4 of Regulation (EU) No. 596/2014 of 16 April 2014 (on market abuses, "MAR") with reference to the new text of market practice no. 1 relating to market liquidity support activity. The opinion establishes that the new text is consistent with the criteria set out in Article 13.2 of the MAR and by the related provisions set out in Delegated Regulation No. 2016/908, and that the text itself provides several measures which are useful to contain the potential risk of market manipulation and the likely threats to trust in financial markets. The adoption of the new market practice no. 1 in the Italian legal framework will require Consob to issue a specific resolution.

Principle of legality and Consob's sanctions

On 3 March 2020, the Italian Supreme Court issued its [judgment](#) in case No. 4962/20, rejecting the appeal filed by Consob against three members of the Supervisory Board of an Italian listed company for alleged involvement in omitting the information required by Article 123-bis 1 (l) and 2(d) of the Italian Financial Act by the Management Board in the provision (in the annual corporate governance report). The Italian Supreme Court stated that, since the Italian Financial Act does not provide any specific sanction for the omission of such information by the Management Board of a listed company, it is not possible under Italian law to sanction the Supervisory Board for complicity in the relevant omission, as it would be contrary to the principles of legality and sufficient determination of the judgments, as set forth in Article 25 of the Italian Constitution and Article 1 of Law No. 689 of 24 November 1981.

EU Court of Justice on unwinding actions in transnational demergers

On 30 January 2020, the EU Court of Justice (the "ECJ") rendered its ruling on case [C-394/18](#). The case concerned the possibility for the creditors of a company involved in an EU transnational demerger plan, whose rights arose prior to the demerger and who did not use domestic remedies for the protection of their claims, to bring an unwinding action (*azione revocatoria*) to have the demerger declared ineffective vis-à-vis themselves, in order to be able to propose enforcement or conservation actions on the assets transferred to the newly established company in another EU member state. The Court ruled that EU provisions do not preclude the introduction of an avoidance action, even after the completion of the demerger, by the creditors of the EU demerged company, in order to make the demerger unenforceable vis-à-vis the claimant creditors.

PATENTS

The UK confirms it will not join the UPC system

On 27 February 2020, the UK Government published "[The Future Relationship with the EU - The UK's Approach to Negotiations](#)" report which is aimed at clarifying the UK's approach to negotiations with the European Union (the "Report") in connection with Brexit. Following the Report's publication, the UK government confirmed that the UK will not be seeking involvement in the Unified Patent Court system. Further details are available [here](#).

TRADEMARKS

The ECJ on the "Fack Ju Göhte" trademark

On 27 February 2020, the ECJ issued its decision in [case C-240/18](#) (Constantin Film Produktion GmbH v. European Union Intellectual Property Office), setting aside the judgment of the General Court of 24 January 2018 ([case T-69/17](#)) which in turn upheld an EUIPO decision of 1 December 2016 (case R 2205/2015-5). The EUIPO rejected the application for the "Fack Ju Göhte" trademark, deeming it contrary to public policy and accepted principles of morality (since its first part could be phonetically assimilated to an intrinsically vulgar English expression). The ECJ found that the EUIPO should not have limited its analysis to the abstract assessment of the trademark but should instead have focused on the prevailing perception of the trademark among the relevant German public. This conclusion is based on the assumption that the notion of "accepted principles of morality" safeguards the fundamental norms and values that prevail in a certain society at a given time and thus should be assessed on a case-by-case basis, taking into account the context in which the mark may be encountered. Consequently, although the English phonetic transcription of "Fack Ju Göhte" may be regarded as intrinsically vulgar, this does not mean that the German-speaking public would perceive the German wording in the same way.

Geneve Act of Lisbon Agreement entered into force

On 26 February 2020, [the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications](#) has officially entered into force, due to the accession of the European Union as of 26 November 2019. The Geneva Act of the Lisbon Agreement extends the international registration system established for appellations of origin by the Lisbon Agreement to geographical indications and expands the geographical coverage of the system.

CORPORATE

Notarial Council of Milan's new guidelines on by-laws clauses

On 3 December 2019, the Notarial Council of Milan issued three new guidelines concerning specific clauses (and their relevant consequences) that may be provided for in the by-laws of Italian stock companies according to Italian law: (a) [Guideline no. 184](#), concerning clauses granting different rights under specific circumstances related to a given shareholder; (b) [Guideline no. 185](#), concerning the effectiveness of change of control clauses specifically in respect of the transfer of shareholdings in the company, the by-laws of which contain the relevant restrictions; and (c) [Guideline no. 186](#), concerning anti-dilution clauses in case of future capital increases.

Holding company and hetero-direction of the controlled entities

On 21 January 2020, the Court of Vicenza issued a [decision](#) addressing the long-standing issue of the possibility for a de facto parent company to be subject to bankruptcy by extension, following the declaration of bankruptcy of its subsidiary. The Court of Vicenza stated that a holding company may only be subject to bankruptcy if the internal corporate governance of the controlled entities is entirely under the control of the holding company.

Extension of the deadline for the appointment of control bodies

On 29 February 2020, [Law No. 8 of 28 February 2020](#), which converted into law, with amendments, [Law-Decree No. 162 of 30 December 2019](#) (so-called "Milleproroghe") on urgent provisions regarding the extension of deadlines in legislative acts, the organisation of the public administration and technological innovation (the "Decree") was published in the Italian Official Gazette. The Decree provides for a number of changes, including the extension of the deadline for compliance by limited liability companies and cooperative companies with the obligation to appoint an accounting auditor or control body, postponing it to the date of approval of the financial statements for 2019. The deadline originally set out in Article 379.2 of Legislative Decree No. 14 of 12 January 2019 (so-called *Codice della crisi d'impresa e dell'insolvenza*) was 16 December 2019.

Extension of the so-called pignoramento revocatorio to quotaholdings

On 22 January 2020, the Court of Milan issued an order in [case no. 52815/2019](#), ruling on the applicability of Article 2929-bis of the Italian Civil Code (so-called "pignoramento revocatorio") also to the donation of quotaholdings. According to this order, considering that Article 2929-bis of the Italian Civil Code envisages all those assets which are subject to a regime of registration in public registers as potential subject targets of the *pignoramento revocatorio*, quotas representing the corporate capital of limited liability companies shall also be deemed as subject to such remedy, as the relevant transfer (even when executed without any consideration) must be registered with the competent (public) Companies' Register.

DATA PROTECTION

The EDPB on the processing of personal data through video devices

On 29 January 2020, following the conclusion of public consultation, the European Data Protection Board ("EDPB") issued the final draft of its "[Guidelines 3/2019 on processing of personal data through video devices](#)" (the "Guidelines"). The Guidelines represent the first European document to clarify which of the terms of Regulation EU 679/2016 (GDPR) apply to the processing of data carried out through video devices and aim to ensure the consistent application of the GDPR's principles to such processing. The last publication in Italy on this matter was the "[Video surveillance Provision](#)" of 8 April 2010, issued by the Italian Data Protection Authority (DPA).

The EDPB on the processing of personal data in the context of connected vehicles and mobility related applications

On 7 February 2020, the EDPB issued its "[Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications](#)" (the "Guidelines"). The Guidelines are open for public consultation until 20 March. Data controllers need to ensure that adequate transparency information is provided to drivers in accordance with Articles 13 or 14 GDPR (as applicable).

Joint report on "Big Data" issued by AGCM, AGCOM and Garante

On 10 February 2020, the Italian Antitrust Authority ("AGCM"), the Italian Communication Authority ("AGCOM") and the Italian Data Protection Authority (the "Garante") issued their [final report on "Big Data"](#). The Authorities jointly explored the impacts of the exploitation of Big Data on users providing the data, on companies using the data and, therefore, on the whole Big Data market. While it is generally felt that Big Data creates remarkable opportunities in the data-driven economy, the Authorities also identified certain critical issues.

INDUSTRIES

MEDIA

AGCOM approves guidelines on centralised sale of audio-visual rights

On 27 January 2020, the Italian Communication Authority ("AGCOM") approved the guidelines on the centralised sale of audio-visual rights by Lega Nazionale Professionisti Serie A for football seasons 2021/2022, 2022/2023 and 2023/2024 (the "Guidelines"). AGCOM's approval was required pursuant to Legislative Decree No. 9/2008 governing the exploitation of audio-visual sports rights. Lega Nazionale Professionisti Serie A, in its capacity as the organiser of the Serie A football league, will sell its audiovisual rights to audiovisual media operators according to the principles of fairness, transparency and non-discrimination detailed in the Guidelines. Specifically, the Guidelines clarify that Lega Nazionale Professionisti Serie A will pay particular attention to the development of emerging platforms (such as OTT) in order to ensure continuous fair competition among media operators. Further details are available [here](#).

TECHNOLOGY

FinTech: MEF launches public consultation

The Ministry of Economy and Finance (the "MEF"), in compliance with Article 36.2 of [Decree Law No. 34/2019](#), has launched a [public consultation](#) on the draft ministerial decree detailing the terms and conditions under which companies will be allowed to test innovative FinTech products and services regarding the financial, credit and insurance sectors for a period of 18 months. Specifically, the draft ministerial decree is divided into two chapters: Chapter I sets out the composition, functions and role of a FinTech Committee established in the MEF, and Chapter II covers the activities which may be subject to testing, subjective and objective eligibility requirements, the scope of the testing and the termination of the testing phase. When testing new FinTech products and services in compliance with the ministerial decree, companies may request and obtain derogations of regulatory provisions by supervisory authorities. On launching the consultation, the MEF stated that the end goal of the new provisions is the promotion of technological innovation in the financial, credit and insurance sectors. The public consultation was concluded on 19 March 2020.

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