

NEWS FROM THE FIRM

The Firm assists Black Diamond on the purchase of Hexion PSR

The firm, with a team led by [Pierfrancesco Giustiniani](#) and [Manfredi Leanza](#) (with senior associate [Martina Badessi](#), [Gianluca De Feo](#), [Tommaso Giavarini](#) and [Maria Rebecca Perugini](#)) assisted Skadden Arps Slate Meagher & Flom in their advising of US fund Black Diamond Capital Management investment fund on its acquisition (together with partner Investindustrial) of Hexion Psr, a division of the US Hexion group active in the chemical sector.

The firm assists Unicredit in "Broni Business Park" deal

The firm, with a team led by [Manfredi Leanza](#) and composed of [Federica Paniz](#) and [Riccardo Valgoi](#), assisted Unicredit, in connection with the Broni Business Park deal, on aspects related to the repayment of the existing bank debt and the release of the related guarantees.

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COVID-19 SPECIAL

FINANCE

Extension of the moratoria introduced by the Cura Italia Decree

On 15 August 2020, [Law Decree no. 104 of 14 August 2020](#) (the "Decree") on urgent measures to support companies damaged by the COVID outbreak came into effect. Among the measures set out in the Decree, provision was made for the extension of the moratorium on loan repayments introduced by Article 56 of [Law Decree no. 18 of 17 March 2020](#) (the "Cura Italia Decree"), establishing a moratorium on certain credit facilities, originally until 30 September, for micro-small and medium-sized enterprises self-certifying, *inter alia*, their temporary shortage of liquidity as a result of the COVID outbreak. Article 65 of the Decree has extended that moratorium to 31 January 2021. The extension applies both to companies already admitted to the moratorium at the date of entry into force of the Decree, which benefit from an automatic extension of the moratorium, and to companies which, at the date of entry into force of the Decree, have not yet been admitted to the moratorium, subject to the same terms and conditions provided under Article 56. Finally, banks and other financial intermediaries may benefit, upon request, from a state guarantee for [up to]33% of the exposure covered by the moratorium, issued by a special section of the SME Guarantee Fund. The European Commission, by [decision SA.57717](#) (published on 29 September 2020), approved the extension of the moratorium under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

CAPITAL MARKETS

Consob extends the obligations for enhanced transparency on changes in significant shareholdings and declaration of investment objectives for a further three-month period

By resolution no. 21435 of 7 October 2020, Consob extended the effect of the enhanced transparency obligations introduced in April 2020 (the term of which was already extended in July 2020). The Commission had previously strengthened obligations on significant participation and investment targets of public shareholding companies, and those provisions are now further extended (subject to prior revocation) from 13 October 2020 until 13 January 2021, due to the continuing uncertainty as to the evolution of the economic and financial situation generated by the COVID-19 pandemic (for further details, please see our [April](#) and [July](#) newsletters). For more information click [here](#).

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

- [Latest Employment News in Italy related to Covid-19 Emergency](#)
- [Special Newsletter: COVID-19 e HR \(2\)](#)
- [Liquidity Decree](#)
- [New disclosure obligations on holding thresholds and on shareholders "investment intentions" declarations for listed companies](#)
- [COVID-19 forward looking statements](#)
- [Contracts at the time of the Coronavirus](#)
- [COVID-19 and HR](#)
- [COVID-19 and Impact of Coronavirus on certain Corporate Issues](#)
- [COVID-19 and Suspension of Contractual Obligations](#)

BANKING LAW

Supreme court on interest on arrears above the usury threshold

On 18 September 2020, the Joint Chambers of the Supreme Civil Court issued a [judgment \(R.G. 19597/2020\)](#) resolving an outstanding conflict in Italian case law. Specifically, the Joint Chambers held that, when the interest rate on arrears agreed between the lender and the borrower is higher than the usury threshold (as provided by law), the relevant contractual provision is null and void and no interest on arrears is due to the lender. However, in the case of the invalidity of a clause of this kind, interest other than on arrears continues to be due, provided the rate of interest remains below the usury threshold.

CAPITAL MARKETS

Amendments to the issuers' regulation regarding open-ended reserved AIFs

By [Resolution no. 21508 of 22 September 2020](#), Consob – following consultation with the financial market – made certain changes to Consob Regulation no. 11971/1999 (Issuers' Regulation) regarding admission to trading, marketing and advertising activities of reserved open-ended Alternative Investment Funds (AIFs). The amendments are aimed at better defining the regulatory framework applicable to the trading on a regulated market of reserved open-ended AIFs, and consist mainly in (a) establishing detailed rules with regard to the listing prospectus (including contents and layout), (b) coordinating the regulation of the prospectus with that of the marketing, on a domestic and cross-border basis, provided for by the Alternative Investment Fund Managers Directive; and (c) clarifying that the advertising report, with the indication of the returns achieved by the proposed investment, makes a comparison with the reference parameter or with the return target, not only with a benchmark consisting of an index, but also with a return target, where this is indicated in the prospectus.

COPYRIGHT

Advocate General Szpunar on the embedding in a webpage of copyright protected works

On 10 September 2020, Advocate General Szpunar issued his opinion in [case C-392/19 \(VG Bild-Kunst v Stiftung Preußischer Kulturbesitz\)](#), in a dispute between a copyright collecting society for the visual arts in Germany, and a foundation registered under German law. In his opinion, the Advocate General advised the Court of Justice of the European Union that the embedding in a webpage of works from other websites (where those works are made freely available to the public with the authorisation of the copyright holder) by means of clickable links using the framing technique does not require the copyright holder's authorisation, since the latter is deemed to have given such consent when the work was initially made available to the public. On the contrary, according to the Advocate General, the embedding in a webpage of works from other websites by means of "automatic links" requires the authorisation of the holder of the rights in those works. This embedding occurs particularly because an "automatic link" makes a resource appear as an integral element of the webpage containing that link so that there is no distinction for a user between an image embedded in a webpage from the same server and one embedded from another website.

Advocate General Pitruzzella sheds lights on the method for calculating royalties by collecting societies

On 16 July 2020, Advocate General Pitruzzella issued his opinion in [case C-327/19 \(Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA \(SABAM\) v Wearone.World BVBA, Wecandance NV\)](#), in relation to whether the method for calculating royalties used by SABAM, the Belgian collecting society, amounts to an abuse of a dominant position under Article 102 of the [Treaty on the Functioning of the European Union](#) ("TFEU"). The case relates to a dispute between SABAM and festival organisers Wearone for the payment of royalties for music used at festivals which took place between 2013-2016. In his opinion, the Advocate General suggested that the ECJ reply to the question referred for a preliminary ruling stating that the second paragraph of Article 102 TFEU must be interpreted as meaning that a collection society which has a de facto monopoly in a Member State shall not abuse its dominant position by imposing unfair prices solely because it adopts a tariff structure on the basis of which the royalties received (for making protected musical works from its repertoire available for communication to the public at festivals) are calculated (a) by applying a degressive rate to the revenue from ticket sales or to the artistic budget, without the possibility of deducting costs not directly linked to the service provided by that organisation, and (b) by providing for a system of discounts based on the use of flat-rate franchises to take into account the proportion of musical works actually performed at the festival. However, the Advocate General further clarified that it is not excluded that the application of such a tariff structure may lead to unfair prices being imposed, especially when another method exists that enables the musical works actually performed to be identified and quantified more precisely, without leading to a disproportionate increase in the costs.

DESIGN

Signs and names affixed on a design and individual character

On 8 September 2020, the European Union Intellectual Property Office ("EUIPO") issued its judgment no. 108 043 ([Shenzhen Sonoff Technologies Co. Ltd. v. Shenzhen Huanmi Industrial Technology Co. Ltd](#)) in which it declared invalid a Community design consisting of the design of switches on the grounds of lack of novelty and individual character based on the existence of an earlier Community design. With respect to the individual character, the EUIPO pointed out that the challenged design may rely on the fact that it does not display the technical and trademark indications affixed to the earlier design, since such indications are not relevant for the purposes of assessing an informed users' overall impression of the designs concerned.

CORPORATE

Arbitration clause and approval of the financial statements

On 6 September 2020, the Court of Turin issued a [judgment \(R.G. 20694/2019\)](#) on the admissibility of arbitration clauses set out in company by-laws to settle certain company law matters. Specifically, on the basis of a long-standing principle of the case-law of the Italian Supreme Court, the Court of Turin reaffirmed the invalidity of arbitration clauses contained in company by-laws and aimed at challenging the shareholders' decisions approving *inter alia* the annual financial statements. As a consequence, ordinary courts are only competent to challenge resolutions on the approval of the financial statements, since the mandatory provisions of law regarding the drafting of the financial statements are aimed at protecting public interests, which may not be subject to the sole will of the shareholders.

Inapplicability of Legislative Decree 231/2001 to a sole-shareholder company without an independent centre of interest

On 16 July 2020, the Court of Milan issued a [judgment \(R.G. 971/2020\)](#), dismissing a case against a sole-shareholder company charged with administrative liability under Legislative Decree 231/2001, together with the two directors of the company for the crime of fraud against the Italian State. The applicability of Legislative Decree 231/2001 to sole-shareholder companies, has been the subject of a number of conflicting rulings. In the case at issue, the Court of Milan excluded administrative liability of this type of company, on the basis that it is not possible to identify the entity as a "centre of interest" autonomous from the perpetrators of the relevant criminal conduct.

Notarial Council of Triveneto's new guidelines on corporate law

On 29 September 2020, the Notarial Council of the Triveneto issued twenty-one new [guidelines](#) on corporate law (guidelines H.H.15, H.I.30, H.I.31, H.J.4, H.K.13, H.K.14, H.K.15, I.H.13, I.H.21, I.I.36, I.I.37, I.I.38, I.I.39, I.I.40, I.I.41, I.I.42, K.A.32, K.A.44, L.A.34, O.A.12 and O.A.13) concerning, *inter alia*, limits to clauses aimed at determining liquidation value in the event of withdrawal on conventional as well as legal grounds, pre-emption clauses in favour of third parties (non-shareholders) and bonds convertible into quotas of a third-party company.

TRADEMARKS

The ECJ on distinctive character of service trademarks

On 8 October 2020, the EU Court of Justice (ECJ) issued its judgment in [case C-456/19 \(Aktiebolaget Östgötaträffiken against the Swedish Patents and Market Court of Appeal\)](#), clarifying the interpretation of Article 3(1)(b) of [Directive 2008/95](#) (now repealed and replaced by Directive 2015/2436) with respect to the distinctive character of a service trademark. According to the ECJ, the distinctive character of a sign consisting of coloured motifs to be affixed exclusively and systematically in a specific manner to a large part of the goods used for the provision of the service covered by the trademark application (in the case at issue, vehicles for transport services) must be assessed by taking into account the perception of the relevant public and not whether that sign departs significantly from the norm or customs of the economic sector concerned. Indeed, the latter case is relevant only in different circumstances, i.e. where the sign consists of (a) the shape of the product for which registration is sought or (b) of the representation of the layout of the physical space in which the services identified by the trademark application are provided.

The EUIPO Board of appeal on trademark with the suffix "-book"

On 29 June 2020, the Board of Appeal of the European Union Intellectual Property Office (EUIPO) delivered a decision, only recently published, in the context of which it [refused the registration of the trademark 'MYHUNTBOOK'](#) due to the earlier trademark "FACEBOOK", registered in connection with identical services of Class 45 of the Nice Classification (mainly, online social network services). The EUIPO recognised that the "FACEBOOK" trademark holds a significant reputation on the market, with the consequence that in the perception of the target public such earlier trademark will be immediately brought to mind by the "MYHUNTBOOK" trademark, which would, as a result, have an undue benefit from the reputation of the "FACEBOOK" trademark.

FINANCE

The Italian Supreme Court on Bitcoin as a financial instrument

On 17 September 2020, the Italian Supreme Court issued its [judgment no. 26807/2020](#) relating to a criminal prosecution for various matters, including alleged unauthorised activity in relation to the exchange of Bitcoin online pursuant to Article 166.1(c) of [Legislative Decree no. 58/1998](#) (the "Italian Consolidated Law on Finance"). The Court rejected the defendant's argument that Bitcoin is a mere payment instrument and, as such, is not subject to the provisions governing financial instruments pursuant to Article 1.2 of the Italian Consolidated Law on Finance. Rather, the Court held that Bitcoin is a financial instrument, also considering that the sale of Bitcoin was advertised as a real investment proposal, on the basis of the following statement: "people who bet on Bitcoin earned more than 97% in two years". Consequently, the Court seems to suggest that Bitcoin is not a financial instrument per se but can be deemed as such under certain circumstances.

PATENTS

The UPC Preparatory Committee discusses progress of the Unitary Patent system

On 10 September 2020, the Preparatory Committee of the Unified Patent Court ("UPC") met virtually, for the first time since March 2017 –to discuss, among other matters, the effects of the formal withdrawal of the UK from the UPC system [See [Our Echo No. 50 of 24 March 2020](#); and the progress being made in Germany with regard to the legislation needed for the German ratification of the Unified Patent Court Agreement and the Protocol on Provisional Application [see [Our Echo n. 51 of 29 April 2020](#)]. Additionally, during the meeting, Italy formally submitted its proposal for Milan to host the life sciences seat of the central division court of the UPC on a permanent basis. The official press release of the Preparatory Committee meeting is available [here](#).

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