

New provisions on the execution of shareholders' meetings



Focus on...

Art. 106 Law Decree no. 18/2020, so-called *Cura Italia* decree

The so-called *Cura Italia* decree (Law Decree no. 18/2020) introduced some important new provisions in order to contain and manage the epidemiologic emergency derived from the spread of COVID-19 virus. Among the many measures implemented by the Government, those introduced by article 106 are aimed at facilitating the concrete execution of companies' shareholders' meetings.

180 days for the approval of the 2019 financial statements

Para. 1 of art. 106, departing from articles 2364 and 2478-bis of the Italian Civil Code) and from the dispositions under the Articles of Association, provides that companies can call the ordinary shareholders' meeting within a more extended term of 180 days from the end of the fiscal year. Therefore, for example, companies whose fiscal year ends at 31 December, can call the shareholders' meeting for the approval of the financial statements by 28 June 2020 (which, moreover, is Sunday).

Assonime (Association of Italian joint-stock companies) issued a Note dated 18 March 2020 specific on this issue, providing two important considerations. In fact, according to the Association, the choice to make use of the extended term:

1. do not need to be justified by the company or to be specifically taken by the Directors
2. should be referred to the date of "first call" of the shareholders' meeting, providing, therefore, a further 30-days' deferral in case the first meeting is inquorate.

The possibility to exercise the more extended term must be considered as a mere faculty for the company. Therefore, the financial statements can be approved earlier, according to the time deemed as adequate by the Directors.

Procedures to hold shareholders' meetings

To deal with the hindrances due to mobility restrictions imposed by the Government, para. 2 of art. 106 provides an extension of the possibility to use those instruments, already provided by corporate law, that allow attendees to participate in the (ordinary and extraordinary) meetings and vote without being physically present in a single place. Therefore, also departing from articles of association's provisions, the notice of call of the meeting can include the possibility to resort to means such as postal voting or electronic voting and to take part in the meeting via telecommunication means.

Consistently, the decree specifies that the Chairman, the Secretary or the notary public (if provided) do not need to take part in the meeting from the same place. As specified in norm no. 187 of the Milan Council of Notary Publics and as confirmed in the abovementioned Assonime note, all attendees can take part in the meeting through telecommunication means, including the chairman, as it is sufficient that the secretary who draws up the minutes or the notary public are present in the place indicated in the notice of call.

Para. 3 of art. 106 provides that “S.r.l.” limited companies can allow voting to be performed through written consultation or through express written consent, even departing from art. 2479 of the Italian Civil Code and from the company’s articles of association.

Further specific dispositions – besides the above-described provisions on remote voting and participation through telecommunication means – are provided for listed joint-stock companies and companies having listed bonds, such as the possibility to appoint the so-called “designated representative” under art. 135-undecies of the Italian act concerning the provisions on financial intermediation (TUF).

Time scope of the new provisions

Para. 7 of art. 106 specifies that the new provisions under previous paragraphs apply to shareholders’ meetings called by 31 July 2020 or, if called later, those called within the term in which the state of emergency derived from the health threat due to the spread of COVID-19 will be in force in Italy. Subsequently, this “reduced” time scope could imply some important differences, in some cases, for those companies whose fiscal year does not match the solar year.



Our professionals would be pleased to provide you with any further information you may need.

Please refer to Clever Desk on our website - bgt-grantthornton.it - for further details on any issues concerning COVID-19.

