

Recapitalisation of companies further to 2020 losses



Focus on

Para. 266, art. 1 of Budget Law 2021 (Law no. 178/2020) introduces a completely renewed version of art. 6 of Law Decree no. 23/2020 (so-called Liquidity Decree) regarding “temporary provisions on share capital reduction”.

The provision above is aimed at neutralising those statutory provisions intended to preserve the integrity of the share capital, in view of the

difficult economic scenario which characterised FY 2020 further to the Covid-19 healthcare emergency.

In particular, as concerns the losses recorded during the FY underway at 31 December 2020, the new norm provides for the non application of specific articles of the Italian Civil Code:

Provision under the Italian Civil Code		Short summary of the provision
Art. 2446, para. 2, 3; Art. 2482-bis, para. 4, 5 and 6	Provisions on share capital reduction due to losses	“If share capital is reduced by over one third due to losses, directors must immediately call a Shareholders’ Meeting to take any proper actions. [...] If such losses are not reduced to less than one third within the following fiscal year, a Shareholders’ Meeting must be called, to approve the financial statements and resolve upon the reduction of share capital in proportion to ascertained losses [...]”.
Art. 2447 and Art. 2482-ter	Provisions on share capital reduction under the minimum statutory amount	“If share capital, following a reduction by over one third, is lower than the minimum statutory amount, directors [...] must immediately call a Shareholders’ Meeting to resolve upon the reduction of share capital and its simultaneous increase”
The cause for the company winding-up due to share capital reduction or loss provided under articles 2484, para. 1, number 4) and art. 2545-duodecies of the Italian Civil Code does not apply		

Moreover, it is provided for that the term within which the loss needs to be reduced below 1/3 of the share capital (ex art. 2446, para. 2 and art. 2482-bis, para. 4 of the Italian Civil Code) is postponed to the fifth subsequent FY and that only upon approval of the relevant Financial Statements will the Shareholders' meeting have to implement appropriate measures (e.g. a reduction of the share capital proportional to the ascertained losses). In other words, companies will have five years to cover the losses reported in FY 2020.

The same provision will be applicable also in case of share capital reduction below the minimum level required by law (art. 2447 or art. 2482-ter of the Italian Civil Code).

More in detail, in such case it will be essential that the Shareholders' meeting, promptly convened by the Directors, as an alternative to the immediate reduction of the share capital and its contextual increase up to an amount not lower than the minimum threshold provided by law, resolve upon the postponement of such resolutions to the end of the fifth subsequent FY.

It is provided for that an indication of the origin of the losses and the changes occurred in the FY be necessarily included in dedicated tables in the Notes to the Financial Statements.

As a final note, it is specified that losses relevant to FY 2020 and recoverable within the fifth subsequent FY will have to be separately indicated in the net equity.



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](https://www.bgt-grantthornton.it) - for further details on any issues concerning COVID-19.

