

Simplifications on share capital increases



Focus on

Law Decree n. 76 dated 16 July 2020 (so-called *Simplification Decree*) has now been published in the Official Gazette - General Series n. 178 of 16 July 2020. Said Law Decree, in order to support Italian businesses facing the economic downturn deriving from the Covid-19 emergency, introduces specific measures aimed at facilitating share capital increases.

Reduced quorum to pass resolutions - art. 44, para. 1

Provided that at least half of the share capital is represented in a shareholder's meeting, the higher quorum required to pass resolutions, i.e. the favourable vote of 2/3 of the share capital represented in the meeting is no longer required for resolutions concerning:

- share capital increases with new contributions, pursuant to articles 2440 and 2441 of the Italian Civil Code;
- the introduction in the articles of association of a clause allowing to exclude option rights pursuant to art. 2441 of the Italian Civil Code;
- the granting to Directors of the power to increase the share capital, pursuant to art. 2443 of the Italian Civil Code.

These resolutions are therefore considered to have been validly passed with the favourable vote of the majority of the share capital represented in the shareholder's meeting (also in case the articles of association provide for higher quorums).

This is an exceptional derogation which can be applied until 30 April 2021.

Share capital increase with exclusion of option rights - art. 44, para. 2

Up to 30 April 2021, companies whose shares are listed in regulated markets or in multilateral trading facilities will have the possibility to resolve upon share capital increases through new contributions, excluding options rights pursuant to art. 2441, within the limit of 20% of the existing share capital or, where the nominal value is not indicated, within the limit of 20% of the number of existing shares.

The above is applicable also in case no specific provisions are contained in the articles of association. Moreover, the terms for convening the shareholders' meetings to resolve upon capital increases have been halved.



Amendments to art.2441 of the Italian Civil Code - art. 44, para. 4 on option rights

Para. 4 of art. 44 introduces some amendments to art. 2441 of the Italian Civil Code on option rights, among which:

- the reduction of the minimum term to exercise the option right (14 days from the publication of the offer on the corporate website or, alternatively, from the publication in the companies' register);
- the elimination of the obligation to offer the unexercised option rights on the market within the relevant term, allowing companies to impose the exercise of pre-emption rights on the share capital not directly taken up when exercising option rights (so-called oversubscription);
- the extension of the possibility to opt for a share capital increase with exclusion of option rights (art. 2441, para. 4) also to companies whose shares are traded in a multilateral trading facility;
- the possibility to provide for the exclusion of option rights (under art. 2441, para. 4) within the limit of 10% of the existing share capital, or, lacking indications on the nominal value of shares, within the limit of 10% of the number of existing shares, upon condition that the shares' issue price correspond to their market value, to be confirmed in a dedicated report by a legal auditor or audit firm. This extension makes it necessary to expressly provide for the obligation of stating the underlying reasons in a dedicated report to be drafted by the Directors.



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.

