

**“COVID-19” HEALTH EMERGENCY AND CORPORATE GOVERNANCE:
JOINT STOCK COMPANIES AND LIMITED LIABILITY COMPANIES IN ITALY**

In Italy the Covid-19 health emergency has not prevented the corporate governance from being managed, and the ban of the gathering of people also in a private location has transformed the exception of the use of virtual systems, already disciplined and implemented in the By-laws of many companies, in a general provision, at least until 31 July, 2020, dead-line (at this stage) for the emergency status.

This alert is updated on 27 May 2020 and it summarizes some practical aspects of the new rules applicable, in particular, to the joint stock companies (also known with the Italian acronym of “S.p.A.”) and the limited liability company (also known with the Italian acronym of “S.r.l.”) concerning the corporate governance.

Due to the continuous amendments of the laws for the health emergency, the following topics could be subject to additional changes.

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FUNCTIONING OF CORPORATE BODIES ON REMOTE MODE

(i) LAWS

Section 106, paragraphs 1,2 and 3 of Italian Legislative Decree No. 18 on 17 March 2020, converted into law (Italian Law No. 27 of April 24, 2020) provides:

(a) The possibility to convene the ordinary stockholders/shareholders’ meeting for the approval of the financial statements within 180 days from the closure of the fiscal year in derogation to Section 2364, paragraph 2, (for the S.p.A.) and 2478-bis (for the S.r.l.) of Italian Civil Code and/or the provisions included in the corporate By-laws of each company;

(b) The possibility to carry out the stockholders/shareholders’ meeting (and/or the meeting of other corporate bodies such as the Board of Directors or the Board of Statutory Auditors) included the interventions and the vote of the attendees through virtual system (eg. videoconference etc...), provided that the identification, the attendance and the vote are granted to the attendees pursuant to Sections 2370 and 2479-bis, paragraph 4 of Italian Civil Code;

(c) The possibility to carry out the stockholders/shareholders’ meeting (and/or the meeting of other corporate bodies such as the Board of Directors or the Board of Statutory Auditors) without the mandatory physical presence of the chairman and the secretary of the meeting or the public notary in the same place;

(d) The possibility for the S.r.l., in derogation to the Section 2479, paragraph 4, of the Italian Civil Code and the corporate By-laws, to allow the votes of the attendee by means of a written notice.

(ii) Dematerialization of the Corporate Books

The possibility to hold the meeting on remote (by means of video conference) give new interest to the topic, though not disciplined in the emergency provisions, of the corporate books' dematerialization and of the electronic signature and timestamp to be used for the certified date on the dematerialized minutes and books.

In the aim to reduce the personal contacts in favor of IT-systems - namely, software and tools concerning the signatures and the timestamp - those dematerialized documents will have legal validity of also with respect to the Italian Courts (Section 39, Italian Legislative Decree No. 82 on 7 March 2005, also known as Digital Administration Code and Section 2215-bis of Italian Civil Code).

Please note that the dematerialization of corporate books is not common in the Italian corporate governance -- e.g. for the practical difficulties concerning the stamp duties -- and the use of paper corporate books, legalized by a public notary, is also widespread due to the easy completion by printing of the minutes/annexes, to be signed by the chairman and the secretary of the company (Section 2215 of Italian Civil Code).

(iii) Validity of the Resolutions and Filings with the Register of Commercial Companies.

Section 106 amends also the organizational requirements of the meeting of the corporate bodies, however it does not change the provisions concerning the validity of the resolutions discussed and voted on remote, which remains subject to the majority established pursuant to Sections 2375, 2386, 2388, 2475, 2479, 2479-bis of Italian Civil Code and of the By-laws of each companies.

In light of the above, from an internal validity of the resolution of the corporate bodies' standpoint, nothing has been amended with respect to the majority established by the Italian Civil Code and the By-laws. The same comment is valid also with respect to the validity of the resolutions towards third parties, which must be object of legal filing in the Company Register locally competent with respect to the registered office of the company. The filing of the financial statements' minutes with the Company Register is already done digitally -- also using the documents legalized by the public notary in an electronic way (Italian Legislative Decree No. 110 of 2 July 2010 and Section 22, paragraph 1 of the



Digital Administration Code) -- by means of specific software. Notwithstanding the digitalization of the filing, the time of acceptance of same by the Company Register is still affected by the Covid-19 health emergency, and hopefully it will improve the speed of the acceptance and of the functioning of the system.

SILS' legal team is specialized in the assistance on the corporate matters and fully available with respect to issues arising from the corporate law also with reference to this period of Covid-19 health emergency. For further information and queries, please send an e-mail to the partners Mr. Fulvio Pastore-Alinante (fulvio.pastore@silsitalia.it) and Luigi Zumbo (luigi.zumbo@silsitalia.it).

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