

REVISED RULES ON ITALIAN LISTED COMPANY CAPITAL INCREASES AFTER THE COVID-19 OUTBREAK

July 28, 2020

By a decree-law (No. 76) published on July 16, 2020 (the “Simplification Decree”)¹, the Italian Government adopted a new set of rules, aimed primarily at Italian listed companies², to simplify and speed up the approval and execution of share capital increases.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

ROME

Giuseppe Scassellati-Sforzolini
+39 06 6952 2220
gscassellati@cgsh.com

MILAN

Pietro Fioruzzi
+39 02 7260 8214
pfioruzzi@cgsh.com

Paolo Rainelli
+39 02 7260 8246
prainelli@cgsh.com

Nicole Puppieni
+39 02 7260 8616
npuppieni@cgsh.com

¹ Under Italian law, a decree-law is adopted by the Italian Government and has the force of law. However, it lapses unless it is converted into law by the Italian Parliament within 60 days. The Parliament may also introduce amendments when ratifying the decree-law into law.

² Unless otherwise specified, this memorandum describes the rules applicable to Italian companies with shares listed on Italian regulated markets (or other EU regulated markets).



Article 44 of the Simplification Decree introduces certain measures to facilitate capital increases by Italian companies whose shares are listed on a regulated market (or admitted to trading on multilateral trading facilities).

- Reduction of the Majorities Required for the Resolutions by the Extraordinary Shareholders' Meeting

The enhanced majorities (*i.e.*, 2/3 of the share capital represented at the meeting³) required to approve:

- capital increases through new contributions in cash or in kind;
- the introduction in the bylaws of the exclusion of statutory pre-emptive rights up to 10% of the outstanding share capital; and
- amendments to the bylaws to delegate to the board of directors the power to increase the share capital;

are temporarily replaced, for resolutions adopted until April 30, 2021, by the simple majority of the share capital represented at the extraordinary shareholders' meeting (provided that at least half of the issued share capital is represented).

- Relaxed Rules on Capital Increases without Pre-emptive Rights

The bylaws of Italian companies listed on regulated markets may allow capital increases with the exclusion of the statutory pre-emptive rights up to 10% of the outstanding share capital, provided that the issue price is equal to the market value as confirmed by an auditors' report.

Until April 30, 2021, the Simplification Decree:

- (i) permits such share capital increases without pre-emptive rights to be approved by the shareholders' meeting even if not expressly provided for in the bylaws, in line with foreign jurisdictions;

- (ii) increases that percentage from 10% to 20% of the outstanding share capital; and
- (iii) reduces the notice period to convene such extraordinary shareholders' meeting from 30 days to 15 days.

These temporary rules will allow Italian listed companies to carry out equity raising transactions more easily and efficiently, in line with international market practice, and, as such, may facilitate the implementation of PIPE transactions (*i.e.*, private investment in public equity). PIPES are a faster and less expensive method to raise equity but, to date, have not been popular in Italy due to the main features of Italian corporate laws.

In addition, the Simplification Decree permanently amends Article 2441, paragraph 4 of the Italian Civil Code, which from now on:

- (i) allows Italian companies with equity admitted to trading on multilateral trading facilities (such as AIM Italia) to provide in their bylaws for capital increases without pre-emptive rights up to 10% of the outstanding share capital, subject to the conditions described above;
- (ii) clarifies that, if shares have no par value, the 10% threshold refers to the number of existing shares; and
- (iii) requires a board of directors' report to explain the reasons for the exclusion or limitation of pre-emptive rights.

- Subscription Period and Unexercised Pre-emptive Rights

Under the current regime, Italian listed companies must offer on the market (within the following month and for at least five trading sessions) the pre-emptive rights that remain unexercised after the end of the subscription period.

The Simplification Decree removes the Italian listed companies' obligation to offer on the market

³ Pursuant to Article 2368 of the Italian Civil Code, the enhanced majority (and the relevant temporary reduction) also applies to issuers of widely held securities (*emittenti titoli diffusi tra il pubblico in misura rilevante*).

the unexercised pre-emptive rights and reduces, also for unlisted Italian companies, the minimum subscription period from 15 to 14 days.

The Simplification Decree allows Italian companies listed on a regulated market (or whose equity is admitted to trading on multilateral trading facilities) to require shareholders to specify, when exercising their pre-emptive rights, whether they intend to exercise such rights also on shares that may remain unsubscribed (and the maximum number thereof).

These amendments are also permanent.

...

CLEARY GOTTLIB