

## ITALIAN LAW DECREE NO. 76/2020: UPDATES ON CAPITAL INCREASES

### 1. Introduction

On July 16<sup>th</sup>, 2020, Italian Law Decree No. 76/2020 on “*Urgent measures for simplification and digital innovation*”, (so-called “*Decreto Semplificazioni*”, hereinafter the “**Simplification Decree**”), was published in the Italian Official Gazette, introducing a framework of measures aimed at facilitating the economic recovery of Italy after the Covid-19 outbreak.

Among other provisions, article 44 of the Decree, headed “*Measures in favour of capital increases*” (hereinafter “**Article 44**”), is focused on facilitating capital strengthening measures for Italian companies, either listed or not listed on a stock exchange, in order to counter the current liquidity crisis of companies and, at the same time, prevent an excessive imbalance between companies' equity and debt.

In particular, Article 44 encourages capital strengthening through:

- a) a temporary exemption from general shareholders' meeting majorities – established by the Italian Civil Code - to approve capital increases; and
- b) changes to article 2441 of the Italian Civil Code concerning pre-emptive rights.

### 2. The reduction of the majority required for resolutions of the extraordinary shareholders' meeting

Until April 30, 2021, Article 44 reduces the majorities required at shareholders' meeting (*i.e.*, 2/3 of the share capital represented at the shareholders' meeting) to approve capital increase resolutions. In particular, recent changes affect:

- share capital increases through contributions in kind;
- the introduction in the by-laws of clauses allowing the exclusion of existing shareholders' pre-emptive rights; and
- the granting of powers to the directors (rather than the general shareholders' meeting) to increase the share capital.

In the above mentioned cases, resolutions of the extraordinary shareholders' meeting can be adopted with the favorable vote of the simple majority of the capital represented at the meeting, even if the by-laws require higher majorities, provided that at least half of the capital is represented<sup>1</sup>.

### 3. Pre-emptive rights of existing shareholders

The Simplification Decree also amends rules on pre-emptive rights of existing shareholders, which would normally require that, in case of capital increases, exceeding a certain threshold and in the absence of a specific exemption, newly issued shares must be offered first to existing shareholders pro rata to the number of shares owned.

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<sup>1</sup> The provision makes use of the lowest *deliberative quorum* allowed by Article 83, paragraph 2, of Directive (EU) 2017/1132.

### 3.1. Share capital increases with exclusion of pre-emptive rights

Companies with shares listed on a regulated market that included a specific by-laws clause in this respect are allowed to proceed with capital increases, up to 10% of the share capital, with the exclusion of pre-emptive rights provided that the issue price is equal to the market value of the shares.

The Simplification Decree introduces both temporary and permanent measures, which limit the previous restrictions in the Italian Civil Code.

Article 44, paragraph 4, extends the possibility for companies with shares listed on multilateral trading facilities (not only on a regulated market) to introduce specific by-laws clause excluding pre-emptive rights.

In addition, the Simplification Decree:

- requires the publication by the directors, within the deadline for the notice of call of the shareholders' meeting, of a report explaining the reasons for the exclusion or limitation of pre-emptive rights<sup>2</sup>;
- provides that, in the absence of an indication of the par value of the shares, the 10% threshold applies to the pre-existing number of shares, instead of the share capital.

With reference to temporary measures, Article 44, paragraph 3, provides that - until 30 April, 2021 - companies with shares either listed on regulated markets or traded on multilateral trading facilities:

- have the possibility to approve capital increases excluding pre-emptive rights:
  - a) even if such possibility is not provided in the by-laws;
  - b) up to 20 % of the pre-existing share capital or, in the absence of an indication of the par value of the shares, up to 20 % of the number of pre-existing shares.
- reduce the term (from 30 to 15 days) for convening the shareholders' meeting called upon to discuss and resolve on the proposed capital increase.

### 3.2. Share capital increases to be offered to shareholders

Article 44, paragraph 4, introduces further permanent measures affecting the regulation of capital increases offered to the existing shareholders.

In particular, the Simplification Decree provides for:

- a minimum period of 14 days - previously amounting to 15 days - to be granted to shareholders to exercise their rights to subscribe for newly issued shares resulting from the capital increase<sup>3</sup> and starting from the time of publication of the relevant offer on the company's website or, failing which, from the registration of the relevant resolution in the Companies Registry;

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<sup>2</sup> This amendment is designed to make the obligation to disclose reasons in support of the exemption also applicable to companies with shares traded on a multilateral trading facility.

<sup>3</sup> This provision aligns art. 2441, paragraph 2 of the Italian Civil Code with the minimum term provided by art. 72, paragraph 3 of Directive (EU) 2017/1132.

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- a change in relation to unexercised pre-emptive rights at the end of the procedure provided by law, by means of:
  - a) the elimination of the obligation for directors to offer unexercised pre-emptive rights on the regulated market; and
  - b) the introduction of the possibility for companies with shares either listed on regulated markets or traded on multilateral trading facilities to require shareholders who intend to subscribe for shares which end up not being subscribed for as a result of the exercise of pre-emptive rights of other shareholders to do so simultaneously of their own pre-emptive rights, indicating the maximum number of shares that they intend to subscribe for.

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The Equity Capital Markets Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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