



CMS AACCS Newsletter – September 2014

SIMPLIFICATION MEASURES IN FAVOUR OF COMPANIES

The law decree no. 91/2014, converted with amendments by the law no. 116/2014 in force since 21 August 2014, has introduced few simplification measures in favour of Italian companies, both listed and not listed.

Amendments to the Italian Civil Code	<p>Sworn expert report. The possibility not to file the sworn expert report, as in the case of contributions in kind and of credits (art. 2343-ter, par. 1 and 2 c.c.), has been extended (i) to purchases from promoters, founders, shareholders and directors during the two years from the registration of the company in the Companies' Register and (ii) to transformations of partnerships into corporations.</p> <p>Pre-emption right. (i) companies are bound to disclose the pre-emption right offer also either on their web site or by filing the offer at the Companies' Register and (ii) the duration of the offer period of the pre-emptions right has been reduced to 15 days starting from the day of publication of the pre-emption right offer.</p> <p>Minimum amount of the corporate capital. For corporations (<i>società per azioni</i>) has been reduced to Euro 50,000 from the original Euro 120,000.</p> <p>Auditor and internal auditor of limited liability companies (S.r.l.). S.r.l. companies are no more mandated to appoint an auditor or an internal auditor when the corporate capital is equal to or higher than the minimum corporate capital set forth by law for S.p.A. corporations (i.e., Euro 50,000). The obligation remains in the other cases set forth in paragraph 3 of article 2477 c.c.</p> <p>Multiple votes shares. The by-laws of non listed companies can allow the issuance of multiple votes shares (up to a maximum of 3 voting rights for each share), unless special laws provide differently. The effectiveness of the multiple vote can be limited only to some items on the agenda of the shareholders' meeting or be made subject to the occurrence of certain conditions. Companies registered in the Companies' Register as at 31 August 2014 can amend their by-laws for the purpose of providing for the issuance of multiple votes shares with the favorable vote of a majority of at least two third of the corporate capital represented at the shareholders' meeting (rather than more than half of the corporate capital), also in first call.</p>
	<p>Shares with plural voting right and prohibition to issue multiple votes shares</p> <ul style="list-style-type: none"> The by-laws of listed companies cannot allow the issuance of multiple votes shares. However, multiple votes shares issued prior to the start of the negotiations on a

<p>Amendments to the Financial Act (Legislative Decree n. 58/1998)</p>	<p>regulated market maintain their characteristics and rights.</p> <ul style="list-style-type: none"> • The by-laws of listed companies can provide that the shares which belonged to the same person for a continuous period not shorter than 24 months from the date of recording of the owner into a to-be created list, are granted plural votes – up to a maximum of 2 votes – for each such share. • The plural voting right is lost in case of sale - with or without consideration – of the shares to which the plural voting right is associated whereas the plural voting right extends to gratuitous newly issued shares. The extension of the plural vote to shares issued against consideration is subject to the existence of an ad hoc provision of the by-laws. • The plural voting right is relevant for the purpose of calculating the thresholds for takeover bids as well as for the purpose of the quorum for the adoption of valid resolutions (unless the by-laws provides differently). The plural vote is not effective on the rights, different from the voting rights, granted on the basis of the possession of certain quorum of the corporate capital. • Resolutions to amend the by-laws in order to allow the issuance of shares with plural voting right, adopted by 31 January 2015 by listed companies recorded in the Companies' Register as at 21 August 2014, can be adopted with the favorable vote of at least the majority of the corporate capital represented at the meeting, also in first call. • The implementation of the provisions of law concerning the plural voting right is subject to the adoption by Consob of an ad hoc Regulation by 31 December 2014. <p>Changes to the regulation concerning takeover bids</p> <ul style="list-style-type: none"> • Has been introduced the definition of listed SME which definition is functional to some simplifications concerning takeover bids and obligations to disclose relevant participations. • The threshold of 30% remains. In particular it is provided that anyone who, as a result of purchases or of plural voting rights, owns a stake greater than the threshold of 30% or has voting rights above 30% launches a takeover bid. • A new threshold is fixed: 25% of the share capital. In particular the takeover bid is launched also by anyone who, as a result of purchases, owns a participation above 25% in the absence of another shareholder who has a higher participation. The obligation does not apply to SMEs. • The by-laws of SMEs may provide for a threshold different from 30%: not lower than 25% and not higher than 40%. • The by-laws of SMEs can provide that the consolidation of the participations for the purposes of a takeover bid does not apply to SMEs up to the date of the shareholders' meeting called to approve the financial statements concerning the fifth year after the listing. • For the purposes of the disclosure obligation of relevant participations (2% and its relevant changes) shall be considered also the multiple votes shares as well as the shares with plural voting right, if permitted by the relevant by-laws (i.e., in the corporations whose by-laws allow the issuance of multiple votes shares and/or shares with plural voting rights, by corporate capital, for the purpose of the disclosure obligation, is meant the aggregate number of voting rights). The threshold is increased to 5% in the case of SME. • By means of a Regulation CONSOB shall govern, among others, the cases where there is no obligation of takeover bid since the relevant thresholds are exceeded due to temporary overcoming or temporary transactions.
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