

GENERIC RISK FACTORS ARE NOT ENOUGH TO PROTECT THE COMPANY FROM THE ACCUSATION OF HAVING MISLED INVESTORS.

The Court of Milan, in a decision dated March 25, 2019, found a listed company responsible for false statements contained in its financial accounts and in its prospectus since the same contained only generic, incomplete and approximate information on the risks incurred by the company.

Indeed, in the case dealt with by the Court of Milan, said conclusions have been drawn even if the prospectus contained several risk factors, such as highlighting a general deficit of the organisational structure, with potential negative consequences for the company without, however, providing a full disclosure on such risk.

More specifically, the company's prospectus made reference to the possibility that ISVAP could require the company to improve its operating procedures thus increasing costs and potentially applying administrative sanctions. However, the company's prospectus did not mention that the lack of adequate operating procedures could have triggered relevant losses for not correctly managing related party transactions, which in the case at hand had actually caused severe damages.

Many other risk factors - which were already present and relevant - were not disclosed at all in the prospectus: i.e. the inadequacy of the company's technical reserve funds, the insufficiency of its regulatory capital, an overestimation of the value of the stakes owned in other companies of the same group, as well as an overestimation of the company's goodwill. All such risks were not taken into account in the financial statements either.

According to the decision of the Court of Milan, said incomplete information must be deemed as misleading for those investors considering whether to purchase the company's shares. As a consequence, the company has been ordered by the Court to pay compensation for the economic loss suffered by an investor who decided to purchase the company's listed shares. The Court did not deem necessary for the investor to prove a connection between its decision to purchase the company's shares and the misleading information contained in the prospectus or in the financial statements.