MAKING GOOD USE OF THE NEW RULES ON CAPITAL INCREASES FOR ITALIAN COMPANIES

The Italian Government has adopted new and more favourable rules to allow companies to increase their corporate capital. Law No. 120 dated September 11, 2020 has converted, with amendments, law decree No. 76/2020, to introduce certain temporary provisions and other rules that will remain in force also after the current Covid-19 crisis.

The new law provides that until 30 June 2021:

- the majority required for the approval by shareholders of a capital increase, or the amendment of its by-laws empowering the Board of Directors to resolve on such capital increase, has been reduced – for all companies, both listed and non-listed – to the majority of the share capital represented at the meeting, provided that shareholders representing at least 50% of the total share capital are present or represented; this rule applies also if the by-laws provide for a higher majority; and
- listed companies will also be able to approve a capital increase excluding a pre-emption rights of the existing shareholders up to a maximum of 20% of the share capital (instead of the lower ordinary percentage of 10%), also if there is no such provision in the company's by-laws.

The new law also introduces structural changes to Article 2441 of the Italian Civil Code and in particular:

- for listed companies, the obligation to offer the new shares to existing shareholders is reduced from five trading sessions to two trading sessions;
- the exclusion, or the simple limitation, of the existing shareholders' pre-emption rights needs to be justified, for listed companies, in a directors' report that will set out the reasons of such exclusion or limitation and the criteria adopted to determine the issue price; and
- the expansion of the concept of "listed companies" to include not only companies with shares listed on regulated markets but also companies with shares negotiated on multilateral trading facilities, like the "AIM".

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