Implementation of Directive 2007/36/CE on Shareholders’ Rights

Legislative Decree No. 27, dated 27 January 2010 (the Decree), implemented in Italy the Directive 2007/36/CE on Shareholders’ Rights, introducing several significant amendments to the legal framework applicable to the rights of shareholders of listed companies, as outlined below.

Scope of the Decree
The Decree sets out new rules which mainly affect companies with shares listed on Italian or other EU-regulated exchanges (the Listed Companies), although some provisions are also applicable to issuers with a significant number of shares distributed among the public, as well as to companies with shares traded (with the issuers’ consent) on Italian or other EU multilateral negotiation systems, such as AIM Italia. Cooperative companies and investments funds are expressly excluded from the scope of application of the Decree.

Potential to Distribute Increased Dividends
The Decree introduced the ability to encourage small investments in Italian companies listed on Italian or other EU-regulated exchanges. The bylaws of such companies may now set forth that each share held by the same shareholder for a certain continuative period (in any case not less than one year) may give right to dividends increased by an amount not exceeding 10 percent of the dividends attributed to the other shares. The benefit may also be extended to shares attributed to shareholders through a free capital increase pursuant to article 2442 of the Italian Civil Code, provided that such shareholders already meet the requirements to benefit from the increased dividends. If the same shareholder during the course of the maturity period has held a participation exceeding 0.5 percent of the issuers’ corporate capital, or the lower percentage set forth by the bylaws, the increased dividends may be attributed to shares held by the same shareholders up to a maximum of 0.5 percent of the issuers’ corporate capital.

In any event, it should be noted that (i) shareholders exercising a dominant or considerable influence on the issuer or (ii) shares adhering to a shareholders’ agreement gathering an aggregate participation higher than 30 percent of the issuer’s share capital cannot benefit from the increased dividends described above. The benefit ceases to be effective in the event of sale or transfer at no consideration of the shares, while it remains in force in the event of universal hereditary succession, merger or demerger of the owner of the shares. Further, the benefit is automatically transferred to the shares issued by companies...

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resulting from mergers and demergers of which the issuer takes part.

**Record Date**

One of the most significant amendments set forth by the Decree is the introduction of the record date—the new rules grant the right to attend and vote in the shareholders' meeting of listed companies to those who were registered owners of the relevant shares on the seventh day of open market preceding the date set forth for the shareholders' meeting, regardless of the possible subsequent transfers of the shares. The Decree also governs the rights of those who purchased the shares in the period between the record date and the date of the shareholders' meeting—they shall have the right to challenge resolutions approved at the shareholders' meeting and may also exercise the withdrawal right, provided that the other requirements under applicable provisions are met. Such provisions ensure a protection of the rights of transferees of the shares which could not attend and vote in the shareholders' meeting under the record date mechanism.

**Web site**

Pursuant to the Decree, a company’s Web site becomes an official information source through which each shareholder (and, in general, the public) may—easily and with limited costs—follow corporate events (such as shareholders’ meeting calls and agenda proposals), look over documents which will be submitted at the shareholders’ meeting, appoint representatives (if any) and, above all, attend the shareholders’ meeting.

**Shareholders’ Meeting and Reporting**

Information duties preceding the meeting are now strengthened and detailed: the notice of call shall inform the shareholders about (i) modalities of collecting all the information made available by the company; (ii) procedures for the participation and exercise of voting rights, also through proxy by mail or through electronic vote; (iii) modalities of raising questions before the shareholders’ meeting and supplementing the agenda; (iv) modalities and terms for collecting the integral copy of the resolution proposals and the documents submitted to the shareholders’ meeting; and (v) the company’s Web site.

The notice of call must now be made public on the company’s Web site, as well as by any other means which will be set forth by Consob with a specific regulation; publication of the notice of call on the Italian Official Gazette is therefore no longer applicable.

Further, different terms of call have been provided for, based on the subject matters of the agenda, ranging from 15-40 days depending on the items.

The Decree also widens the information duties applicable to the directors: they must now make available to the public a report on each subject matter of the agenda, the documents to be submitted to the shareholders’ meeting in accordance with the applicable provisions of law, and the forms to vote by proxy and by mail, or alternatively, the modalities to obtain them.

In the event the shareholders’ meeting is called upon shareholders’ request, the report on the proposals submitted shall be made available to the public.

The Decree has also amended the terms and modalities of publication of the annual financial report in order to provide for the duty to publish it within 120 days of the closing of the financial year, including the project of the financial statements (not the final report as provided up to now).

**Shareholders’ Meeting Discussion and Remote Voting**

The Decree introduces the right to raise questions, before the shareholders’ meeting is held, on subjects listed on the agenda; such questions shall be answered at the latest during the meeting.
The Decree expressly provides that the bylaws may allow attendance at the shareholders’ meeting and the exercise of voting rights “by electronic means”. The exercise of voting rights by electronic means entails an interactive Web site able to allow during the shareholders’ meeting the direct interaction in real time of shareholders, directors and auditors in different physical locations. The option shall also be available for non-listed stock companies. Consob shall set forth the rules, applicable to the companies listed on Italian or other EU-regulated exchanges, governing remote attendance at the shareholders’ meeting by telecommunication systems and voting by mail and/or electronic means.

**Updating the Shareholders’ Book and Shareholding Transparency**

The Decree has modified the terms of keeping the shareholders’ book of listed companies in order to guarantee its timely update and an accurate shareholding transparency. In fact, new article 83-undecies of Legislative Decree No. 58, dated 24 February 1998 (the so called Unified Financial Act, the UFA) provides that issuers shall update the shareholders’ book according to the notifications received by intermediaries within 30 days of their receipt. The recordings in the shareholders’ book shall also be available to the shareholders upon their request (on electronic support as well).

The Decree introduces new provisions to allow greater shareholding transparency for listed companies on regulated exchanges and companies issuing shares admitted to Italian or other EU multilateral negotiation systems. The bylaws may authorize the issuer to request, at any time, from the intermediaries, the names of the account holders on which the shares are registered, as long those account holders have not expressly refused to consent to such sharing of their data. A similar faculty is also granted to qualified minority shareholders requesting it, provided that such shareholders represent at least half of the minimum quota set forth by Consob pursuant to article 147-ter of the UFA.

**Representation in Exercising the Voting Right**

The Decree amends the regime applicable to proxy voting in shareholders’ meetings of companies listed on regulated exchanges. The restrictions on the number of proxies that a representative may collect are removed, and the ability to collect proxies is now extended to directors and auditors. In addition, proxies may now be granted to persons with conflicts of interest, provided that such conflicts are adequately declared and the shareholder gives specific voting instructions for each resolution.

Except as otherwise provided for by the company’s bylaws, companies are also able to designate a person to whom shareholders may grant their proxy, with enclosed voting instructions.

**Solicitation of Voting Proxies**

The Decree has materially amended and simplified the provisions applicable to the solicitation of voting proxies, aiming to encourage activism and participation of minority shareholders.

The Decree provides that a voting request addressed to more than 200 shareholders on specific voting proposals or accompanied by recommendations, declarations or other indications as to influence the vote, shall be carried out by circulating a specific prospectus. The solicitation can now be carried out by the promoter without involving, as requested in the past, a qualified intermediary such as investment companies, banks, management companies, Sicav or companies having as their exclusive corporate purpose the solicitation of proxies. Moreover, the promoter does not have to satisfy the minimum shareholding requirements as required by the provisions previously in force. The regulation is thus simplified and should therefore encourage the solicitation of voting proxies.
In addition, the approach to collection of voting proxies by shareholders' associations has been amended. The Decree provides that the provisions governing solicitation of voting proxies are not applicable to requests for voting proxies made by shareholders' associations meeting specific characteristics and requirements.

Voting Results
The Decree provides for the publication of a synthetic report of the voting operations on the company's Web site within five days of the shareholders' meeting.

Entry Into Force
The entry into force of the new regulation is set for 20 March 2010. However, the provisions relating to the call of and participation in the shareholders' meeting shall apply to shareholders' meetings whose notice was published after 31 October 2010. Until such date, the provisions substituted or repealed by the Decree shall still be applicable. Within six months of the Decree's entry into force, the relevant regulations and implementing provisions shall be issued; in addition, until the new regulatory provisions enter into force, the former provisions of the UFA and of Legislative Decree no. 213/1998 concerning the centralized management shall still be applicable, to the extent they are compatible with the new provisions of the Decree.

Endnotes
1 Article 127-quater, paragraph 1, of Legislative Decree No. 58, dated 24 February 1998 (the so-called Unified Financial Act, the UFA).
2 This includes the participation held only temporarily, directly or indirectly, through a trustee, subsidiaries or a third party. (See article 127-quater, paragraph 2, of the UFA).
3 Article 127-ter of the UFA.
4 Article 125-bis of the UFA.
5 Article 127-ter of the UFA.
6 Article 2370, paragraph 4, of the Italian Civil Code.
7 Article 141, paragraph 1, of the UFA.
8 Article 125-quater, paragraph 2, of the UFA.

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