

Q&A ABOUT SHAREHOLDERS' MEETINGS OF LISTED COMPANIES

1) Who can be assigned the title of designated representative pursuant to Article no. 135-*undecies* of the Consolidated Law on Finance (TUF)?

The Article no. 135-*undecies*, paragraph 1, of the Legislative Decree no. 58/98 (Consolidated Law on Finance - "TUF") does not set any constraints to the company to identify the designated representative. This regulation provides, in fact, that: *“Unless the articles of association provide otherwise, the company with listed shares designate for each meeting a subject to which the shareholders can confer [...] a proxy with voting instructions on all or some of the proposals agenda ”* [ed. underline added] ¹. This being said, the company may choose any person - be it an employee or a member of the corporate bodies or a subject external to the company - without prejudice to the obligation to indicate any conflicts of interest in the proxy form pursuant to Article no. 135-*decies* of the TUF and with the exception of the limit established for the representative who is in this conflict situation of not being able to cast a vote different from that indicated in the instructions, pursuant to the same Article no. 135-*undecies*, paragraph 5, of the TUF, in the cases provided for by Article no. 134, paragraph 2, of Consob Regulation no. 11971/1999 ("**Issuers Regulation**")².

2) Is it possible to provide that the vote will be exercised exclusively through the representative appointed pursuant to Article no. 106, paragraph 4, of the “Italian Care Decree” and that the latter can participate with telecommunication means pursuant to paragraph 2 of the same Article no. 106?

It is possible that the issuers who have chosen the instrument of the designated representative as the exclusive mode of participation in the meeting provide that the latter will participate in the meeting by means of telecommunication media pursuant to Article no. 106, paragraph 2, of the Law Decree 17 March 2020, no. 18 ("**Italian Care Decree**"). This possibility does not appear to be in contrast with the substance of the regulation referred to above and with the *ratio* of the same, which is to reconcile, in this phase of epidemiological emergency from COVID-19, the right of the shareholders to participate and vote in the meeting with the security measures arranged for public health protection needs.

In particular, since the purpose of Article no. 106 of the "Italian Care Decree" is to guarantee the maximum flexibility for companies to safeguard all potential participants in the meetings without hindering their

¹ It should be remembered that the institution of the designated representative was introduced as a tool to facilitate the exercise of voting rights in listed companies with particular regard to *retail* shareholders and for this reason the Article no. 135-*undecies* of the TUF has provided that companies must identify ("*identify*") a representative designated "*for each meeting*", unless they provide for the so-called Statutory "*opt out*" ("*Unless the statute provides otherwise*").

² The Article no. 135-*undecies*, paragraph 5, of the TUF provides the following: "*With the regulation referred to in paragraph 2, Consob can establish the cases in which the representative who is not in any of the conditions indicated in Article no. 135-*decies* [ed. conflict of interest of the representative and substitutes] may cast a vote different from that indicated in the instructions*". In implementation of this rule, Article no. 134, paragraph 2, of the Issuers Regulation provides: "*The representative who is not in any of the conditions of conflict of interest provided for in Article no. 135-*decies* of the Consolidated Law, where expressly authorized by the delegating party, can cast a vote different from that indicated in the instructions in the event of significant circumstances, unknown at the time of issue of the proxy and which cannot be communicated to the delegating party, such as to reasonably believe that, if he had known them, he would have given his approval, or in the event of amendments or additions to the proposed resolutions submitted to the meeting*".

performance, it is compliant to this purpose also to allow the representative designated by the issuer, to collect the proxies of the shareholders, the participation to the meeting through telecommunication means.³

3) What are the reasons why Consob considered that shareholders cannot bring resolution proposals on the items on the agenda at the meeting through the representative appointed pursuant to Article no. 135-undecies of the TUF, in the event that the physical participation of shareholders in the shareholders' meeting is not allowed, as disclosed in Consob Communication no. 30 of 10 April 2020 concerning "COVID-19 - Law Decree of 17 March 2020, no. 18 - Communication regarding the shareholders' meetings of listed companies"?

With specific reference to cases in which participation in the meeting can only take place through the designated representative, as allowed in the emergency period by COVID-19 by Article no. 106 of the "Italian Care Decree", it is not possible to present resolution proposals directly at the Shareholders' Meeting nor through the designated representative itself. This is for the following reasons.

In general, the discipline of the representative appointed by the issuer pursuant to Article no. 135-undecies of the "TUF" provides that the latter can only be granted proxies with voting instructions in compliance with the provisions of the same article; instead, the delegating party cannot be sent proposals on the items on the agenda, also in the emergency period from COVID-19 - in which the right of the shareholders' vote could be exercised only through the designated representative and the latter could be granted proxies and sub-delegations pursuant to Article no. 135-novies of the "TUF", as required by Article no. 106 of the "Italian Care Decree" - it is not possible for a shareholder to bring to the meeting through the same designated representative proposals for resolutions on the items on the agenda without any other shareholder, other than the same proposer, being able to cast their vote on these proposals, not having been previously disclosed.

In fact, as represented in Consob Communication no. 3 of 10 April 2020, in the event that the methods of conducting the meeting do not allow, pursuant to Article no. 106 of the "Italian Care Decree", the physical presence of the shareholders at the meeting, it is necessary that all the resolutions being proposed are made known to the shareholders before the meeting, in good time so that the shareholders can express themselves on them through the delegation to the designated representative (and in time for the possible update of the relative proxy form).

Therefore, in order to allow shareholders to the presentation of resolution proposals in the aforementioned event, the companies may provide in the notice of meeting an adequate deadline for the presentation of individual resolution proposals on the items on the agenda by those who have the right to vote, to be published on the company's website, as well as a deadline for the publication of these proposals on the company's website; such deadlines must be identified in such a way as to allow shareholders to exercise the vote by proxy through the designated representative on each proposed resolution published.⁴

³ This is also the sense of the Rule no. 188 "Attendance at the meeting exclusively through the designated representative and use of telecommunication means" approved by the Notaries Council of Milan - Company Commission on 24 March 2020, commenting on Article no. 106, paragraphs 2 and 4, of the "Italian Care Decree".

⁴ In this regard, it is represented that some companies have identified as the appropriate term for the presentation of individual resolution proposals on the items on the agenda that of 15 days prior to the date of the meeting, a term borrowed from that provided for by Article no. 126-bis, paragraph 2, of the TUF for the publication of the resolution proposals on the items on the agenda presented by qualified minorities holding at least one fortieth of the share capital.