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**Subject: Periodic reporting by managing directors with delegated powers now mandatory also in limited liability companies – the greatest care is called for!**

By the so-called "Business Crisis Code" (Art. 377 of Legislative Decree 14/2019), the obligation under Art. 2381 of the Italian Civil Code regarding periodic reporting by managing directors with delegated powers, which previously applied only to joint-stock companies, has been extended also to limited liability companies, namely by a corresponding amendment of Art. 2475 paragraph 6 of the Italian Civil Code. The innovation has so far scarcely been discussed in the specialist press, probably also because the aforementioned body of legislation was initially suspended as a result of the coronavirus crisis and only truly entered into force on 15 July 2022, there being doubts as to whether the suspension actually affected the reporting obligation at issue at all. The umbrella association of joint-stock companies, "Assonime", provided initial guidance on the innovation in its Circular No. 19/2019. Since then, however, things have gone quiet around the obligation. Here, nevertheless, are a few notes:

As is known, Art. 2381 of the Italian Civil Code requires that, in joint-stock companies, managing directors with delegated powers (so-called "amministratori delegati") or also delegated bodies (e.g. an executive committee within the board of directors) report at least every 6 months to the board of directors and to the supervisory board or to the sole statutory auditor



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- on the general course of business, namely
- also with an outlook on the future development of the undertaking as well as
- with information on the most significant transactions carried out in the company itself and in any controlled undertakings.

Incidentally, the articles of association may also provide for shorter intervals for this mandatory reporting, for example on a quarterly basis.

With the innovation described at the outset, this obligation has now been extended also to limited liability companies, albeit with certain particularities. For a better understanding, it must first be recalled that limited liability companies may in principle be administered as follows:
a) by a board of directors as a collegial body, as is typical of the joint-stock company;
b) by several directors who discharge their duties with individual signing authority,
c) by several directors who perform their duties jointly and who may, as the case may be, sign jointly only for certain transactions and, for others, perhaps also with individual signing authority, or
d) by a sole director.
In practice, above all a collegial board of directors or a sole director are customary.

Against this background, it must be noted that managing directors with delegated powers are obliged, also in limited liability companies, to provide the information listed above to the board of directors and to the supervisory board or to the sole statutory auditor at least every six months in the following cases:
a) where a board of directors has been appointed as a collegial body (with a chairman and further members) and special powers have been delegated to individual directors or to all of them. In this case a reporting obligation towards the board of directors and towards the supervisory board or the sole statutory auditor exists only if the company has also appointed a supervisory board or a sole statutory auditor. If there is none, or if only an external auditor ("revisore legale") has been appointed, the reporting obligation remains voluntary;
b) where, on the other hand, no collegial board of directors has been appointed but instead several directors have been designated who act individually and/or jointly, and special powers are also delegated to them, then they are in any event obliged to report (at least) on a half-yearly basis, and this irrespective of the appointment of a supervisory board or sole statutory auditor. This stricter interpretation can probably be explained by the fact that, where directors act individually, an exchange of information is necessary so that – in simple terms – one hand knows what the other is doing;

c) in a limited liability company the reporting obligation moreover also applies to a sole director, but only where a supervisory board or a sole statutory auditor has also been appointed, and in that case the sole director must report to that control body and not, for instance, to the shareholders' meeting. In this case too, the appointment of an external auditor ("revisore legale") does not give rise to a reporting obligation.

The new reporting obligation will be regarded, particularly in small and medium-sized family-run undertakings, as a pointless additional bureaucratic burden. But caution: it is precisely the fact that the obligation was introduced by the Business Crisis Code that leads to the conclusion that, whenever an undertaking runs into difficulties, insolvency administrators and the courts will pay attention to precisely these formal aspects, and should it then be established that the periodic reporting obligation has not been complied with, this could be a welcome occasion for personal liability actions against managing directors with delegated powers and – where appointed – supervisory board members. It is therefore advisable to take the provision seriously!

Accordingly, we can only recommend that the agenda item "Reporting by the managing directors with delegated powers within the meaning of Art. 2381 of the Italian Civil Code" be firmly scheduled twice a year in the board of directors, in so far as the relevant preconditions, as set out above, are met. The report itself need not be a separate document, but may also be recorded merely in the minutes of the relevant meeting of the board of directors. And the more strained an undertaking's economic and financial situation is, the more detailed the reporting in the minutes on developments and on planned measures should be, primarily for the protection of the directors themselves.
Conversely, it would also be possible to dispense with a meeting of the board of directors and to prepare a report which is transmitted only by e-mail or certified e-mail (PEC) to the other directors and to the supervisory board or the sole statutory auditor. Precisely in critical situations, however, such an approach is unlikely to be appropriate.

We remain at your disposal as always for any further information.

*Yours sincerely*
*Josef Vieider*