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To all
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Reform of the board of directors of joint stock companies

Legislative Decree No. 47 of 27 March 2026, in force since 29 April 2026, has reorganised and in part supplemented the rules on the administration and control of joint stock companies (S.p.A.). To a large extent the reform consists of a systematic reorganisation of provisions that already existed. One significant substantive innovation, however, is Article 2381-ter, paragraph 4 of the Italian Civil Code: under certain conditions, non-executive directors may place reasonable reliance (“ragionevole affidamento”) on the information they receive; at the same time, their specific expertise must be taken into account. In practice, therefore, what matters is not so much an increase in formal requirements for board meetings as the quality of the information and decision-making process.

Below we summarise the main effects of the reform. But first the most important point:

Particular attention must be paid to ensuring that the members of the board of directors receive information that is adequate, timely and sufficient for the decision in question.

1. Organisation and delegated powers

The new wording of Article 2380-bis of the Italian Civil Code makes it clear that the administrative body is responsible not only for managing the business but also for organising

the undertaking. The delegated bodies attend on an ongoing basis to the organisational, administrative and accounting structures; the board of directors as a whole assesses whether these are adequate on the basis of the information it receives.

Article 2381-bis of the Italian Civil Code brings together the rules on delegated powers. The board of directors determines the content and the limits of the delegation, may issue directives and may take individual transactions back into its own hands. Existing resolutions granting delegated powers should therefore be reviewed with regard to a clear allocation of responsibilities, monetary thresholds, reporting duties and transactions reserved to the board.

2. Crisis and insolvency: decision reserved to the board of directors

Decisions on recourse to the instruments for the regulation of business crisis and insolvency are expressly incapable of delegation. The content of the proposals and the terms of the respective plan likewise remain reserved to the board of directors as a whole; only the implementation of a decision already taken may be delegated.

3. Information as the basis for the decision

Article 2381-ter of the Italian Civil Code places the rules on information to the board of directors in a separate provision.

Every director must act in an informed manner and may require the delegated bodies to provide the board with additional information on the management of the company. The chairman must ensure that adequate information is available on the items on the agenda. This duty, which already existed previously, takes on considerably greater practical importance as a result of the closer link between the quality of the information and the individual standard of liability.

In the case of significant investments, financing, acquisitions and disposals of businesses or shareholdings, restructurings, annual financial statements and strategic, industrial and financial planning, the documents relevant to the decision should therefore be available sufficiently early and in such a structured form that the subject matter, the economic and legal implications, the key assumptions, the risks and the available alternatives can be properly understood.

4. Reasonable reliance and individual responsibility

The new Article 2381-ter, paragraph 4 of the Italian Civil Code in principle allows non-executive directors to place reasonable reliance on the information received in accordance with the law and the articles of association. This is neither a general exemption from liability nor an obligation to verify in full the conduct of the delegated bodies. Recognisable contradictions, gaps in the information and warning signals may not, however, be left unheeded.

The provision must be read together with the amended Article 2392, paragraph 2 of the Italian Civil Code, which exempts non-executive directors from joint and several liability where, having placed reasonable reliance on the information received pursuant to Article 2381-ter, paragraph 4 of the Italian Civil Code, they neither knew nor could have known of the harmful circumstance.

The specific expertise of the individual director must also be taken into account when assessing whether such reliance was reasonable and may therefore give rise to a higher standard of attention within the relevant specialist field.

5. Reporting and minutes

The delegated bodies report to the board of directors and to the supervisory body at the intervals laid down in the articles of association and in any event at least every six months on the general performance of the business, its foreseeable development and the most significant transactions. For important resolutions, the minutes should make it possible to establish which documents were available, which key questions and risks were discussed and whether any reservations or dissenting views were expressed.

6. Further duties of conduct of directors

The prohibition of competition under Article 2390 of the Italian Civil Code has been extended: without specific authorisation from the shareholders' meeting, directors may now no longer take on the position of a manager with strategic responsibilities ("dirigente con responsabilità strategiche") in a competing company either. In addition, the new Article 2390-bis of the Italian Civil Code prohibits in particular the use, for one's own benefit or that of third parties, of data, information or business opportunities obtained by a director by virtue of his or her office. In the area of directors' interests, Article 2391 of the Italian Civil Code also allows the articles of association or the board, by its own rules of procedure, to lay down further conditions, procedures and limits for the participation of the director concerned in the board meeting and in the resolution.

7. What companies should now review

- Review existing delegations of powers with regard to responsibilities, limits, reporting duties and transactions reserved to the board.
- Establish a reliable process for the timely provision of comprehensible board documentation.
- Include the periodic reporting of the delegated bodies in the annual calendar of the board of directors.

- Address the adequacy of the organisational, administrative, accounting and information structures regularly and whenever material changes occur.
- Where the information is insufficient, request further information if necessary or adjourn the decision.
- Design the templates for the minutes of material decisions around the information basis, the risks, the questions raised and any reservations.

8. Note for limited liability companies (S.r.l.)

According to its wording, the reform applies directly to joint stock companies. For limited liability companies, Article 2475 of the Italian Civil Code continues to refer only to Article 2381 of the Italian Civil Code “in so far as compatible”. Since rules previously contained in Article 2381 are now in part set out in Articles 2381-bis and 2381-ter of the Italian Civil Code, without Article 2475 having been adapted accordingly, their direct applicability to limited liability companies has not yet been conclusively clarified.

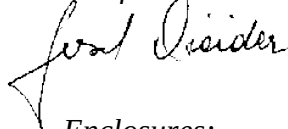
According to initial commentaries, continuity and systematic coherence suggest that the principles concerned should be taken into account – in so far as they are compatible with the structure of a limited liability company – in particular with regard to the allocation of tasks and to information flows. By contrast, particular caution is called for when extending the newly introduced principle of reasonable reliance (“ragionevole affidamento”) directly to limited liability companies.

The enclosures contain practical guidance for the company as well as a checklist for the individual board meeting.

We remain at your disposal for further information and documentation.

Kind regards

Josef Viejder



Enclosures:

as above



Enclosure 1 - Practical guidance for the company:

- Check the articles of association and the board's rules of procedure for compatibility with the new structure of Articles 2380 et seq. of the Italian Civil Code and, in particular, for references to provisions that have been amended, repealed or renumbered; outdated or unclear references must be interpreted and, where appropriate, corrected at the next suitable opportunity. However: not every existing set of articles of association of a joint stock company must now necessarily be amended.
- Record all resolutions granting delegated powers and review their content, limits, monetary thresholds, reporting duties and reserved transactions, as well as the power to issue directives and the right of the board of directors to take delegated transactions back into its own hands.
- For board meetings, determine who is responsible, the internal deadline for submission, the method of circulation and the procedure for supplementary documents.
- For material resolutions, use a short decision memorandum setting out the facts, the purpose, the financial effects, the assumptions, the risks, the alternatives and the proposed resolution.
- Firmly schedule at least half-yearly reporting by the delegated bodies; report more frequently where the risk is higher.
- Address the adequacy of the organisational, administrative, accounting and information structures appropriately at least once a year and additionally whenever circumstances require.
- Ensure an early-warning and reporting system covering liquidity, indebtedness, deviations from plan, margins, working capital, covenants and the main legal and tax risks.
- For material decisions, deliberately draw on the particular expertise of individual directors in the discussion.
- Where information is late or insufficient, adjourn the resolution if necessary.
- Design the templates for the minutes in such a way that, for important decisions, the documents, the key questions and answers, the risks, the alternatives and any reservations can be reconstructed.
- Review the interaction with the supervisory body: the flow of information to the supervisory body must be ensured, and the adequacy and the actual functioning of the internal control and risk management system must be incorporated into the governance processes.



Enclosure 2 - Checklist for board meetings

	<i>Item to check</i>	<i>Done</i>
A. Before the meeting	<i>Agenda formulated in specific terms; competence of the board of directors as a whole verified; documents circulated in good time; basis for the decision complete and comprehensible; main risks and alternatives set out; supplementary documents identified as such.</i>	☐
B. At the opening	<i>Quorum established; existence of interests of individual directors enquired into and the required disclosures or the requirements of the articles of association/rules of procedure on participation verified; where there were material supplementary documents, verified whether sufficient time for examination was available.</i>	☐
C. During the discussion	<i>Plausibility questions asked; recognisable warning signals examined in depth; the particular expertise of individual directors drawn upon; where necessary, further information or external expertise requested; alternatives and material risks discussed.</i>	☐
D. In the case of delegated powers	<i>Verified whether the matter may be delegated; limits of existing powers of attorney/delegations observed; for crisis instruments, decision by the board of directors as a whole ensured.</i>	☐
E. Periodic reporting	<i>Report of the delegated bodies on the performance of the business, its foreseeable development and the most significant transactions dealt with within the prescribed time; deviations between plan and actual figures and the risk situation discussed.</i>	☐
F. Organisational structures	<i>Adequacy of the organisational, administrative, accounting and information structures assessed on a regular basis or as circumstances require; measures, responsible persons and deadlines assigned to any shortcomings identified.</i>	☐
G. Minutes	<i>Documents submitted identified; key questions and answers recorded; reasons for the decision noted for significant transactions; reservations/dissent documented; enclosures archived in an orderly manner.</i>	☐
H. After the meeting	<i>Responsibility for implementing the resolutions assigned; outstanding requests for information followed up; measures arising from the review</i>	☐



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of structures and risks scheduled; subsequent report to the board of directors/supervisory body provided for.