

# FORMALITIES FOR COMPANIES' SHAREHOLDERS' AND/OR BOARD OF DIRECTORS' MEETINGS

during the Covid-19 emergency



## SUMMARY

This paper is intended to provide preliminary hints and summarize the main law provisions relating to the formalities for holding the companies' shareholders' and/or board of directors' meetings during the period of effectiveness of the emergency governmental measures adopted for the containment and management of the epidemiological emergency from COVID-19.

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**MARCH 2020**

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# Committee of Notary Public of Milan

The Committee of Notary Public of Milan provided its preliminary clarifications upon the attendance to the shareholders' meetings by means of teleconference.

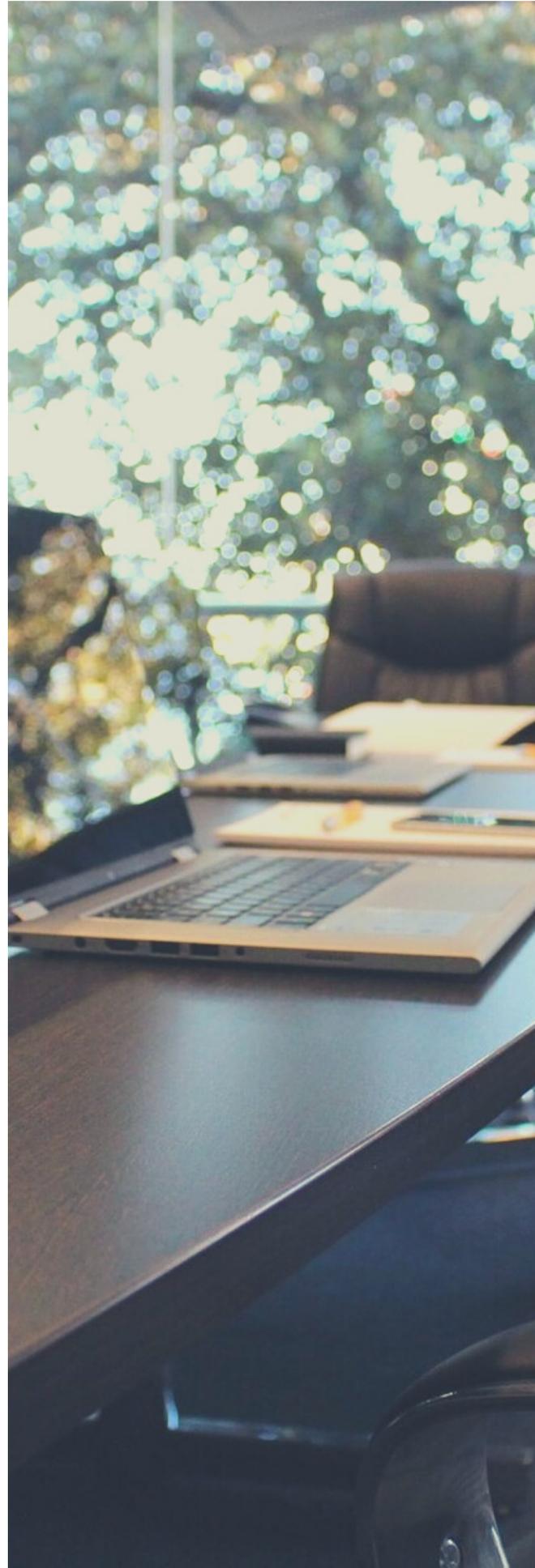
In particular, the Committee of Notary Public of Milan explained that all participants may attend the shareholders' meetings by means of teleconference provided, however, that the secretary of the meeting and/or the Notary, as the case may be, are located in the place indicated in the notice of call.

In this case, it would be allowed that:

(i) the chairman and the secretary of the meeting are not located in the same place; and

(ii) the minutes of the shareholders' meeting can be drawn up afterwards and signed by the chairman and the secretary of the meeting or the Notary in the event of minutes in public form [1].

[1] Please refer to "Consiglio Notarile di Milano – Commissione Società, Massima n. 187 – 11 marzo 2020 -Intervento in assemblea mediante mezzi di telecomunicazione (art. 2370, comma 4,c.c.)".





# Scholars

The principle at stake is further confirmed by other Notary Publics [2], since it complies with the ratio of Article 1, paragraph 1, letter q), of the Decree of the President of the Council of Ministers of March 8, 2020, which states that “remote connection methods, in all possible cases in the course of meetings, are to be adopted”.

From a practical point of view, it can be inferred that:

(i) it is possible to hold a meeting “remotely”, even if the company's by-laws does not provide anything in this regard; and

(ii) even if pursuant to the company's by-laws, the admissibility of the audio / videoconference meetings is subject to the attendance, in the same place, of the chairman and the secretary of the meeting, this circumstance can be overcome as long as the identification of the attendees is granted. The principle at stake, although expressly addressed to the shareholders' meeting, would also apply *mutatis mutandis* to the board of directors' meetings.

[2] Please refer to “A. Busani, Società, regolare l'assemblea in audio o videoconferenza, ne Il Sole 24 Ore, Norme e Tributi, 12 marzo 2020”.

# Law Decree of March 17, 2020 (so-called "Cura Italia")

The Law Decree of March 17, 2020, published in the Official Journal ("Gazzetta Ufficiale"), series 70, under Article 106 expressly regulates the formalities for holding the companies' shareholders meetings, as a temporary derogation from the provisions of the Italian Civil Code and the relevant company's by-laws as well as of the special laws applicable.

Please find below certain provisions of interests:

(i) all companies can call the shareholders' meeting for the approval of the financial statements within 180 days after the end of the financial year, also in derogation of the provisions of the Italian Civil Code and/or the relevant by-laws;

(ii) it is allowed - with reference to Italian joint stock, limited liability and cooperative companies - to express the vote by electronic means or correspondence and to attend the meeting by teleconference means, also in derogation to the company's by-laws provisions. The abovementioned companies may also provide that the meeting is held, even exclusively, by means of teleconference provided that the identification of the attendees, their attendance and the exercise of the voting rights are granted [3]; moreover, it is not

necessary that the chairman and the secretary of the meeting or the Notary, as the case may be, are located in the same place;

(iii) also by way of derogation to the provisions of Article 2479, fourth paragraph, of the Italian Civil Code and to the relevant company's by-laws provisions, limited liability companies may also allow that the voting rights are exercised by written consultation or express written consent.

[3] Should it be the case the notice of call does not need to identify a place of meeting.



The “Cura Italia” Decree introduces some derogations, always on a temporary basis, also with regard to the formalities of attendance to the meeting by means of representatives.

In this regard, we point out, inter alia, the possibility for listed joint stock companies to refer, in ordinary and extraordinary meetings, to the representative provided for by Article 135-undecies of Legislative Decree 24 February 1998, no. 58, even if the relevant by-laws provides otherwise. Said companies can also provide, in the notice of call, that the participation to the meeting is carried out exclusively through the designated representative to whom specific powers may be granted [4].

Finally, we recall that all the mentioned provisions are transitory in nature and apply to the shareholders' meetings of companies convened within July 31, 2020 or the date, if later, up to which the state of emergency relating to the health risk associated with the epidemiology from COVID-19 is in force.

[4] For further information – concerning in particular the companies with listed shares, the companies admitted to multilateral trading system, the companies with shares widely distributed among the public, the banks, the cooperative credit banks, the cooperatives and mutual insurance companies – please refer to paragraphs 4, 5 and 6 of the “Cura Italia” Decree.



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