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Florence - Cortina, 2 April 2020

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to the attention of the
Chairman Mr Luigi Frascino

Comments of professors Cera, Marchetti, Rescigno and Tremonti-Patriarca, to our independent "truth-seeking" opinion about the validity of the resolution of the Shareholders' Meeting of Cattolica Assicurazioni concerning: *"New corporate governance rules: amendments, cancellations and supplements to Articles 1, 22, 23, 24, 27, 29, 30, 31, 32, 33, 37, 38, 39, 40, 41, 43, 46, 47, 48 and 59 of the Articles of Association. Related and consequent resolutions".*

We have read with interest and attention – even if we do not agree at all with the findings – the comments that professors Cera, Marchetti, Rescigno and, together, Patriarca and Tremonti provided in relation to our independent "truth-seeking" opinion rendered on 11 February 2020, which, as we know, gave a negative response to the question whether, in the event that the extraordinary Shareholders' Meeting of Società Cattolica di Assicurazione - Società Cooperativa (hereinafter "Cattolica Assicurazioni") – convened by the Board of Directors upon the request of 18 December 2019 by certain shareholders in total holding 2.506% of the share capital – passed a resolution to approve the proposed resolution formulated by those shareholders concerning *"New corporate governance rules: amendments, deletions and additions to Articles 1, 22, 23, 24, 27, 29, 30 31, 32, 33, 37, 38, 39, 40, 41, 43, 46, 47, 48 and 59 of the Articles of Association. Related and consequent resolutions",* that such a resolution should be considered invalid.

Even in the variety of tones (some of them exhibiting some lively expressions of annoyance at the breadth of our writing, which was in fact exclusively due to the need to provide – including to the reader who is not an expert on the subject – all the information necessary for an informed assessment of opposing arguments and therefore the validity of our opinion), the comments of the Board of Directors' consultants expressed their dissent from the *pro veritate* conclusions that we reached and they reaffirm the opinions that the same consultants had already given to the Board of Directors of Cattolica Assicurazioni.

It seems to us that this outcome is to some extent predictable, considering that the comments to our *pro recitate* opinion, made by the Board of Directors' legal consultants who oppose the adoption of the amendments to the Articles of Association, merely reiterate – for obvious reasons of consistency with their previous opinions – the arguments already put forth in support of the position taken by the Board.

This of course does not hide the intellectual effort reflected in the replies written by the Board of Directors' consultants and their customary dialectical skills; while we may recognize this, our purpose here is to verify whether the chosen arguments and interpretative findings: (i) have a substantive foundation; and (ii) are such as to induce us to reconsider the conclusions that we reached in our "truth-seeking" opinion. On both aspects, the answer is no.

Although we have carefully examined the replies of the Board of Directors' consultants, we do not believe that we should change any point or add anything to the opinion that has already been rendered, which we reconfirm in every respect. Moreover, we are convinced that a judge, if he/she were ever assigned to adjudicate the matter of the validity of the Shareholders' Meeting resolution in question, would arrive at interpretative and applicative outcomes consistent with those conclusions that we have reached.

However, in the interest of courtesy (and for the pleasure, nonetheless, of intellectual dialogue, albeit, as mentioned, in clearly and objectively different roles) to the Board of Directors' legal consultants, we merely observe, with regard to their replies, that:

a) Contrary to their affirmations, the statutory changes introducing age limits and a cap on mandates as eligibility requirements have no purpose at all, if considered in themselves and interpreted objectively according to standards of reasonableness and good faith (as is proper to do in the case of company articles of association: see ANGELICI, *Appunti sull'interpretazione degli statuti di società per Azioni,* in G.B. FERRI, ANGELICI, *Studi sull'autonomia dei privati,* Turin, 1997, 337 ff.; TOMBARI, *L'interpretazione degli statuti di società. Profili di ermeneutica giuridica,* in various authors, *L'interpretazione e il giurista,* Padova, 2003, 477 ff.; SCIUTO, *L'interpretazione dell'atto costitutivo di società,* in *Rivista di Diritto Civile,* 2004, II, 277 ff.; C. MARCHETTI, *L'interpretazione degli statuti societari: la giurisprudenza italiana nel quadro del diritto comparato,* in Rivista delle Società, 2016, 833 ff.), that of selectively "hitting" the current Chairman and Deputy Chairmen, but setting a requirement that, once introduced, shall apply to any director and for the entire remaining lifespan of the company. In fact, the amendment to the Articles of Association has not been introduced with a clause containing a final time limit for it (the so-called "sunset" clause), which reserves its application only to the current Board of Directors. There is also no articulated and multiphase circumstance in which the amendment of the eligibility requirements is first introduced to achieve a certain *ad personam* effect, and once this effect is achieved, a new amendment removes those requirements from the Articles of Association. Instead, we are faced with permanent changes that structurally affect the body, and which have the purely incidental consequence of the termination of the office of the Chairman and Deputy Chairmen currently in office, not changes which find their cause in this effect of expiry of the term

of office. They also set requirements that affect the entire Board, since those requirements must be possessed by all its members, it being understood that an amendment that affects the eligibility requirements of one or more members of the body, by its nature, can only have an impact on some members of the body, while an amendment that adopts a new governance model removes the eligibility of all them. The amendment to the Articles of Association in the matter in question therefore, and much more basically, has been introduced to remain as the operating rule of the entity, since it is motivated by the need to strengthen its governance which does not appear to at all transient, and serves to ensure, with the amendment of eligibility requirements, the company interest that – as we have amply illustrated in the opinion – the Cooperative has an appropriate managerial turnover and ensures that the functions of government are entrusted to persons whose age is, according to the *id quod plerumque accidit,* appropriate to the complexity of the enterprise.

b) We are therefore faced, both in abstract and in concrete terms (and therefore in the actual relevance of the amendment to the Articles of Association under consideration), with an entirely legitimate interest, which is reflected in other examples that we have taken care to mention. As we wrote in the opinion, we are faced eminently organisational choices that the Italian legal system has not decided to standardise legislatively and impose obligatorily, or, conversely to prohibit, leaving any assessment of whether or not they are appropriate to the free decision of the shareholders. Moreover, the amendments to the Articles of Association in question fall within an area in which assessments by shareholders are, more than they already are by nature, unquestionable, given the purely organisational nature of the issues concerned, in relation to which decisions of principle are made on how to ensure the best possible governance of the company, beyond the minimum requirements imposed by the legislator. As we have already illustrated with the opinion, the amendments to the Articles of Association, where they provide for the introduction of age limits and limits on the number of director mandates (moreover in a more complex context of governance reform, generally oriented toward the strengthening of corporate governance) are fully in line with the national and international debate and experience on the most appropriate corporate governance instruments for promoting more effective and rapid forms of "renewal" and "diversity" of the administrative body. It should also be added that the Constitutional Court itself had the opportunity to recognise – albeit in another context, but with assessments whose reasoning may be extended to the circumstances of the matter we are examining – the merit of the benefit of provisions such as those in question, emphasising that the limit on the number of mandates in elective positions "favours the physiological replacement within the body, inputting 'fresh forces' into the representative mechanism (with a view to ensuring the expansion and greater fluidity of the those who may stand for election), and, on the other hand, blocks the emergence of forms of fixing representation in place" (see, Constitutional Court, No. 173 of 10 July 2019, where the maximum limit was deemed "in line with the principle of good management, including in its applications of impartiality and transparency"). With this ruling, the Constitutional Court not only enshrines the position already taken by the Court of Cassation, in an *en banc* session, which had considered the limitation on consecutive mandates compatible with constitutional values (judgement no. 32781 of 19 December 2018), but also emphasises the link between this limit and the principle of equality, given that the maximum limit has the "essential purpose" of "enhancing the conditions of equality that Article 51 of the Constitution sets as the basis of access to elective posts. *Equality which, in its fundamental sense, would evidently be compromised by competition that could be influenced by those who hold the office for which they are competing for two (or*

more) consecutive mandates and thus have been able to consolidate a strong bond with a part of the electorate, characterized by the distinctive features of proximity". And it is hardly necessary to underline how the principles enunciated by the judge called to rule on constitutionality have come to illuminate how the amendments to the Articles of Association in question serve to oversee the effectiveness of the rule of equality established as the basis of the system of *società cooperative* [cooperative or mutual companies set up under Italian law]; and therefore, ultimately, to preserve the same cooperative nature of the Company.

c) Precisely because the amendment to the Articles of Association recognises the new requirements for eligibility that it sets out as the basis for good governance, the application of these requirements from the outset, and therefore to the Board of Directors that is now in office and to all that will be in future, is a simple expression of consistency (and therefore of a reasonable and proportionate choice under the Articles of Association): if in fact shareholders consider those requirements to be important to the good governance of the company, why should they ever prefer to exclude their application (or should they indeed be obliged by law to exclude their application) immediately? The legal system allows this organisational decision to have immediate effect and provides full protection for the shareholders' decision to strengthen the governance of the cooperative, by referring to the judge, in the event of a dispute, (only) the assessment of whether this amendment – with respect to any claims for compensation by the person elected as a director when such requirements were not yet established – is valid as a just cause for termination of office, and thus excludes the right to obtain compensation (corresponding to the compensation that such director would have received until the end of his/her term of office).

d) In this regard, in the face of some ambiguous argumentation by the Board of Directors' legal consultants, we would like to stress that in our reasoned opinion, the legal system takes care to expressly attribute to a company: (i) a full right to introduce, at any time, additional personal requirements to which the assumption of the office of director is subject, with the dual effect that the person who does not meet them cannot be appointed to the position and, if appointed, his/her term shall expire (arising from the combined provisions of Articles 2387 and 2382 of the Italian Civil Code, expressly referred to in Article 2387); and (ii) an unconditional right that – as expressed in very explicit terms by the Supreme Court (see Supreme Court, judgement No. 2037 of 26 January 2018, at the end of paragraph 2.1.). – "the will of the shareholders' meeting, given that it is free to select the administrators, so must it be free to remove them at any time, whatever the reason for that decision". At the same time it seems to us that it is not possible, either to us or to the Board of Directors' consultants, to express any certainty on whether, in the present circumstances, if the Chairman and the two Deputy Chairmen – who were to have to cease holding office as a result of the amendment to the Articles of Association – were to contest the existence of just cause in order to obtain compensation for the damage (in principle, corresponding to the compensation they would have received until expiry), that the judge called upon to settle the dispute would award them such compensation. The likely outcome in this regard appears to us, in this case, particularly uncertain. As we have indicated in our opinion, in this case the proposed amendments are both objective and subjective in nature (not in the sense that they are linked to past breaches of duty of the incumbent directors, but in the sense that they refer to their personal characteristics); so that here, it seems to us, we are precisely at the point of intersection between objective reasons of self-organisation and reasons which, although not dependent on a negligent or malicious action of the directors, relate to subjective/personal aspects of the directors individually affected and

which, in the changed context of reinforced and renewed governance as chosen by the Shareholders' Meeting, could be considered by the judge to be capable, by reason of such personal characteristics, of cancelling with just cause the reliance initially placed on the aptitudes and abilities of the individual director concerned (in other words, such as to break the original *pactum fiduciae*, in the nomenclature of the Supreme Court). It is therefore not possible to share the confidence shown by the Board of Directors' consultants with regard to the fact that, in this situation, the judge would certainly accept a claim for compensation made by the directors who have been designated to step down from office as they do not meet the requirements deemed indispensable according to the new rules approved by the shareholders at the Shareholders' Meeting with a higher *quorum* than that required for the removal of the administrative body.

e) The Board of Directors' legal consultants also – in reiterating the alleged abusive nature of the resolution proposed to the Cattolica Shareholders' Meeting – wholly fail to take into consideration the "structural" argument, so to speak, which we raised in the opinion regarding the characterization of corporate abuse attributed to the resolution in question. First of all, it should be stressed that in this case an abuse of rights of the minority would not even be theoretically conceivable, since there could be no evidence of abusiveness in the exercise, by the proposing shareholders, of the right to request that the Shareholders' Meeting be convened in order to seek a resolution by a majority of the shareholders on proposed amendments to the Articles of Association. Nor, on the other hand, can it be seen how any possible abuse in the request for a meeting, once the Board of Directors has decided to convene a Shareholders' Meeting, can "translate" into an unlawful exercise of the vote of the majority of the shareholders, all the more so in a *società cooperativa* in which the majority is formed by the "one-person, one-vote" method. On these aspects, the Board of Directors' consultants, in their comments, prefer to keep quiet entirely, while they refer (see in particular Prof Marchetti's response) to a recent precedent of the Court of Milan – which we have already extensively considered in the opinion, to highlight its irrelevance in the case in question – regarding abuse of the majority vote to the detriment of the minority. The reference is to the decision of the Court of Milan 21 March - 23 April 2019 (General Register No. 5812/2016), which voided an amendment to reduce the number of members of the administrative body adopted by the majority in retaliation for the appeal by one of the three directors, a representative of the minority, of a board resolution adopted by the other two directors involving a conflict of interest. In that case there was a clear retaliatory purpose for the amendment to the Articles of Association, which is not found in the present matter under consideration. The case examined by the Court of Milan was characterized deliberative conduct (deemed abusive) attributable to a pre-established majority (as usually happens in the limited company) and to the detriment of a minority (immediately and directly to the detriment of the "fiduciary" representative of said minority within the administrative body). On the other hand, it is quite clear that in the case of Cattolica Assicurazioni, as has already been emphasised in the opinion, any possible majority would form at a Shareholders' Meeting called to approve a comprehensive reform of the corporate governance structure proposed by minority shareholders, and the associated amendments to the Articles of Association would not already represent the will of a pre-established majority determined on the basis of weighted voting, as is the case in a shareholding company, but the outcome of a free discussion and an equally free and autonomous assessment by each of the shareholders, in accordance with the principle, in accordance with the principle of one person, one vote a vote that shapes the cooperative regime. Structurally, therefore, this matter could not be more removed from the case considered by the Court of Milan and groundlessly

cited above in the arguments of the Board of Directors' consultants.

f) With regard to the issue raised by Prof Rescigno, whether the amendment to the Articles of Association is actually also applicable to the current Board of Directors, in view of the use of the word "loss" of the requirements stated in clause 30.9, we observe first of all that this interpretative question is outside the scope of our opinion, since it does not relate to an issue of invalidity of the resolution itself (which forms the interrogatory that was posed to us, and to which our opinion provided a truth-seeking" response), but concerns a question of interpretation regarding the subjective scope of application of that (valid) amendment. However, we can also observe that the interpretation proposed by Professor Rescigno of Article 30.9 gives a restrictive meaning to the expression "loss" (on the grounds that only requirements which were required by the Articles of Association at the time of appointment could be "lost"), which seems to us to be incompatible with a systematic interpretation of the amendments to the Articles of Association, given that Article 30.9 and the last sentence of Article 59.3 are read in a coordinated manner and they link the effect of the expiry of the term of office to the "loss during the mandate of the requirements referred to in paragraph 30.6", meaning by this, paragraph 30.6 following the amendments introduced. Given that paragraph 30.6. introduces the new requirements in letters c) and d), it is clear in our opinion that the amendment, if adopted, of the additional requirements may bring about the failure to meet the conditions of eligibility, even for those who are currently serving their term of office. Moreover, it appears that the doctrine considers the normal result in these cases – unless "the tenor of the clause in the Articles of Association is such as to suggest (a situation which must be considered certainly rare, but which cannot be excluded a priori) – that the requirement is necessary for the assumption of the post but not to maintain it".(Caselli, *Vicende del rapporto di amministrazione* in *Trattato delle società per anioni*, edited by Colombo and Portale, 4, Turin, 1991, 90). In other words, the provision of Article 30.9 seems to us to use the term "loss" not to indicate that the effect of expiry of the term of office results only from those who have lost the requisites required by the Articles of Association at the time of their appointment, but to indicate that the requisites of Article 30.6. are required of all directors both at the time of their appointment and during their term of office, and the "loss" of those that have been newly introduced during their term of office (and thus the loss of those requisites that have been newly introduced, without exception, for example due to the reaching of the age limit during their term of office, which was not the case at the time of appointment), results in the expiry of the term of office of both the members of the board in office and that of members of future boards of directors.

g) In the same way, it seems to us that the interpretative questions posed by Prof Cera in relation to potential difficulties in the implementation of the replacement of the Deputy Chairman go beyond the scope of our opinion, as in the previous issue, i.e. they do not raise questions of validity of the resolution in question. Articles of association, like any contract, are by definition an instrument for regulating (relatively) "incomplete" private relations, and the canons specific to their interpretation make it possible to resolve the issues regarding their implementation that any textual incompleteness or ambiguity would inevitably bring. The issues raised by Prof Cera are no exception to this, in that they appear to be capable of resolution in a reasonable (and not inconvenient) interpretative exercise.

* * *

We therefore confirm, with full conviction and in conscience, our independent "truth-seeking" opinion on the interrogatory that has been posed to us and whose conclusions, however necessary, we transcribe below:

(1) None of the new clauses of the Articles of Association submitted for approval by the company's Shareholders' Meeting displays any defects as to their legitimacy. In particular, there is no legal limitation on the introduction, with immediate effect, of additional personal eligibility requirements for directors such as those under consideration which, in the event that such requirements are not met, shall result in the immediate expiry of the term of office.

(2) The introduction of an age limit and a ceiling on the number of mandates in the articles of association of a listed joint-stock company is consistent and compatible with good market practices discussed and established at international level in the definition of the company's top management structure and seems worthy of particular consideration with reference to an insurance company that is cooperative in nature and has adopted the one-tier administration and control system.

(3) If approved by the Shareholders' Meeting and authorised by the Supervisory Authority, the new rules of the Articles of Association shall replace the previous rules from the time of their registration (unless otherwise provided for by the amendments to the Articles of Association themselves), since those previous rules cannot be recognised as having any extended validity. Moreover, our legal system does not entitle incumbent directors to have the rules existing at the time of their appointment applied to their relationship with the company until the expiry of the relevant mandate.

(4) Among other amendments to the Articles of Association, the resolution approving the introduction of new personal requirements for directors, such as the age limit and a limit on the number of mandates – including with effect with respect to the directors in office – while one the one hand it certainly cannot be considered to be null or invalid, it also is not subject to an action of annulment, not having established any defects in form or substance that could constitute a divergence from the law or the Articles of Association.

(5) It is the responsibility of the judge on the merits to assess, if and to the extent that he or she is called to hear the relevant question from the eligible parties, whether directors – who have been designated to leave office before the expiry of the term originally envisaged at the time of their appointment because they do not meet the new requirements in terms of age limits and/or the maximum number of mandates – should be granted, in each individual case, the right to be indemnified for the loss of remuneration that would have been due to them up to the end of their term of office. It is not prudent to make a forecast of this assessment; it is possible, however, that the judge on the merits may equate the amendment of the Articles of Association to a removal for just cause in view of the fact that, in the present case, the cause of the premature termination of the office of the directors is at the point of intersection between objective reasons of self-organization and reasons which, although not arising from any negligent or malicious act of the directors concerned, relate to their

subjective aspects which, in the changed context of governance chosen by the Shareholders' Meeting, cancel out, together with their eligibility for office, the reliance initially placed on their personal aptitudes and abilities. It is understood that, should the court hearing the case on the merits of the case not find a "just cause" this would in any case not be likely to affect the validity and effectiveness of the amendments to the Articles of Association and the resolution approving them.

(6) Both the provisions of the Articles of Association on the minimum quorum for the extraordinary Shareholders' Meeting convened to decide on the transfer of the registered office and the appointment of the Chairman and the Vice Chairman are fully lawful and therefore they also are not subject to any action for annulment, as there are no defects in form or substance that could constitute a divergence from the law or the Articles of Association.

That is our "truth-seeking" opinion.

Yours faithfully,

[Illegible Signature]
(Prof Niccolò Abriani)

[Illegible Signature]
(Prof Marco Lamandini