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OPINION

1. *Introduction*

Within the context of the call for a Shareholders' Meeting submitted pursuant to Articles 2367 of the Italian Civil Code and 22.2 of the Articles of Association by shareholders of Cattolica Assicurazioni on 18 December 2019, I have been asked to review some interpretative issues, relating above all to the position and powers of the Board of Directors receiving a call for a meeting.

2. *Calling for a Shareholders' Meeting at the Request of Shareholders and the Powers of the Board.*

As a preliminary matter, we must alert you that the Board is precluded from calling a Shareholders' Meeting when it relates to a preliminary proposal by the directors or a plan or a report to be produced by the directors themselves (Article 2367, third paragraph). In the present matter, the call for a meeting does not relate to matters of this type and therefore there is no obligation under the law not to proceed with the calling of the Shareholders' Meeting.

There is a view, which is indeed still dominant, that the directors are not required to call a Shareholders' Meeting not only in the case of Article 2367, final paragraph, but that a refusal to call a meeting may be also be exercised for reasons "of the unlawfulness of the basis of the request (the lack of competence of the Shareholders' Meeting over the matter, or the unlawful nature or legal impossibility of the arguments to be discussed), of an 'abuse of rights' by the minority (for example: repetitiveness and superfluousness of the request), or of a pre-eminent company interest contrary to the calling of the meeting..." (in this manner, based on the extensive case law prior to the Reform, Mario Libertini et. al, *L'assemblea di Società per Azioni* , p. 135 et seq. (Milan, 2016)).

However, if it is true that directors as a rule cannot enter the merits of the adoption of a proposal (N. De Luca, *Le Società per Azioni,* § Art. 2367, at p. 904 (P. Abbadessa and G.B. Portale eds., Vol. I, Milan, 2016), it is evident that outside the case of a request for resolutions with a content that is undoubtedly unlawful or legally impossible, the power to reject the call for the Shareholders' Meeting is very limited. The fact that the proposal that the Shareholders' Meeting is being asked to adopt is not to the liking of the Board of Directors does not constitute grounds for refusing the call for a meeting.

As a result of the fact that precisely because the Board cannot reject a call for a meeting on matters of substance that it does not agree with, the Board itself, in the report that it is entitled to prepare in commentary to the call for a meeting, pursuant to Article 2367, may evaluate the proposal and, where appropriate, may also issue a request to the Shareholders' Meeting that it not approve the proposal.

The Board's "neutrality" and respect for shareholders is translated into not refusing the call for a meeting unless it falls within the cases provided for by law or when the unlawfulness and legal impossibility of the resolutions proposed is unquestionable, but does not also extend to abstaining from purely substantive assessments by the directors who also have granted the call for a Shareholders' Meeting..

Article 125, paragraph 3, TUF [Consolidated Finance Act] 58/1998, clarifies that directors who proceed with a call for a Shareholders' Meeting at the request of shareholders may prepare comments "accompanied by their own assessments". "Assessments" are in order when, in the Board's view, acceptance of the proposals is contrary to the company interest and presents risks of prejudicial consequences for company.

3. *The Power of the Board to Challenge Resolutions Passed by a Shareholders' Meeting Called at the Shareholders' Request.*

In addition to that which has been set out above, it should be stressed that the Board has the ability, but not an obligation, to refuse to call a Shareholders' Meeting requested by shareholders where the proposed meeting is called for in order to adopt unlawful or legally impossible resolutions.

If the Board does not refuse the call for such a meeting, as is quite possible, and without prejudice to the Board's right to provide a negative assessment of the substance of the proposal, it is also possible for the Board and/or the supervisory body (or individual members of the Board of Directors) to challenge the resolution adopted. Therefore, the fact that the directors do not block the call on the grounds of illegality is without prejudice to their power to assess the proposal and to take steps to eliminate it by commencing a legal challenge to the resolution if the proposal was approved by the Shareholders' Meeting.

In this regard, it should be recalled that according to a substantial doctrinal principle supported by the case law of the Supreme Court (see, for example, Cass. 2538 of 8 February 2005) a challenge by the Board and/or the supervisory body is required at least on all occasions when the resolution can produce damaging consequences (see Sergio Patriarca, *Le Società per Azioni, op. cit.,* § Art. 2367*,* at p. 1064).

4. *The Unitary Character of the Shareholders' Proposals.*

Moving on to the structure of the proposal that is requested to be submitted to the Shareholders' Meeting, in the case in question it is a complex proposal as it includes, as a unified set, a series of amendments to the Articles of Association. Reading the motion for a resolution and the explanatory report clarifies without a doubt that shareholders who took the initiative to call for a Shareholders' Meeting intend to place a single matter on the agenda of the forthcoming Shareholders' Meeting., as they themselves specify,

Faced with the letter of the law (Article 2367, last paragraph) which entitles shareholders to call for a Shareholders' Meeting to discuss several matters in one meeting, in the case in question the shareholders wished to specify that there is only one matter to be discussed, which is contained and described in a structured resolution. The proposal, therefore, is a single proposal which consists of a series of amendments to the Articles of Association, each of which is considered essential in relation to each and all the others.

We are therefore dealing with, we repeat, a proposal that is in no uncertain terms a single proposal whose articulations are inseparable from one another. Hence the result that the entire proposal containing amendments to the Articles of Association must be put to the vote as a whole, as separate voting on the various items of the Articles of Association contained in the proposal is not permissible. The proposal shall only be approved if the Shareholders' Meeting expresses itself favourably with the required quorums on the proposal in its entirety without any modification or amendment of any of the articles that make up the complete and unitary proposal.

From the single matter, from the certain classification of the scope of the matter on which the Shareholders' Meetings is called to adopt a resolution as the "single proposal", a further significant consequence emerges.

I refer to the fact that a possible invalidation following an challenge of one of the various amendments to the Articles of Association included in the single proposal will drag along the entire proposal and thus all the amendments contained therein, even if, when viewed independently, they might not be deemed invalid.

The principle corresponds to what is undisputed in matters involving defects in the manifestations of intention, and it has been accepted for some time, including as regards the declarations of intention contained in the Shareholders' Meeting resolution.

It is therefore a firmly established principal that *"with regard to the connection between Shareholders' Meeting resolutions, the defects relating to a manifestation of intention may have an impact on subsequent, previous or contextual manifestations of intention when:*

a) a relationship of pre-conditional dependence exists when the effects produced by a resolution (a "pre-condition") enter into, for any reason –by law or by the intention of the parties – the subject matter upon which the effects of another (and dependent) resolution depend in broad sense; b) or when, even if the resolutions do not enter into the subject matter of the other, they appear aimed at achieving a single result" (F. Bellinzoni, Della Invalidità Derivata di Delibere Societarie Collegate; Della Tutela del Socio Escluso dal Diritto di Opzione e di Altri Problemi, in Giustizia Civile, file 1 - 1998 - p. 71).

5. *The Constructive Removal of Directors*

From the point of view indicated above, the proposal to establish an age limit and a minimum number of terms is of central importance, with the appropriate transitional rules forming part of the unitary proposal giving immediate effect to such resolutions. It is hard not to see how, with such an operation, in substance, if the resolution were approved, it would result in the removal of directors before the expiry of their current term who do not possess the new requirements introduced with the proposed amendment.

This is an obvious attempt to circumvent the rules governing the removal of directors and thus the duty to indemnify those who have been removed without just cause.

It was the very recent case in the Milan Court, 21 March 2019 (Simonetti reporting judge) which established the unlawfulness of the resolution of a company that brings about the removal of a director not through a formal removal from office, but "surreptitiously through the modification of the structure of the management body" (in the said case, it had passed from a Board of three members to a single director with consequent expulsion, and therefore removal, of the two directors not confirmed to the body.

The Court did not hesitate to define the matter as an indisputable case of abuse of majority, thus relying on the orientation of the Supreme Court (see Court of Cassation, 14 December 1995, No. 12820) so that the removal can only be achieved by a resolution which has its own content as such. This orientation, followed by numerous substantive decisions in which it is required that, if the resolution leads to removal, the reasons for the revocation must be explicit, and constructive removals

are not permitted. (Milan Court, 20 December 2005).

If, in a case like the present one, the removal is not the subject of a specific formal proposal, but follows a resolution of another kind (in this case; age limits, prohibition on multiple mandates), it is evident that the basis of the proposed rule is an agreement to take action regarding the composition of the company's bodies. The abuse of this method recognised by case law means (this is precisely voting abuse) that the intention is not to pursue a general company interest, but to achieve the personal interests of the person who creates the proposal. This, as a rule at least, can only correspond to a precise agreement of the proposers.

The existence of a concerted action, and more precisely a shareholders' agreement, cannot, therefore, be ignored by the supervisory authorities.

6. *The Deadline for Calling and Holding Shareholders' Meetings.*

After the reform of company law, the issue of the deadline within which the Board has to address the call for a meeting does not pose any particular problems.

Whereas prior to the reform, there was an obligation to "proceed without delay", Article 2631 now provides for a period of 30 days from the time when the directors and statutory auditors become aware of the obligation to call the Shareholders' Meeting. This means that the Board must take action within 30 days of 18 December 2019. It constitutes an absolutely self-evident interpretation that the 30-day period shall indicate the date by which the Board of Directors must, in the appropriate cases, fulfil the requirements for calling a Shareholders' Meeting and fix the date thereof. This date must be established in accordance with technical requirements and the circumstances, and may be after 30 days as from the date the on which the call of the meeting was ready.

7. *Conclusion.*

The Board of Directors, even if it calls the Shareholders' Meeting at the request of shareholders, it does not, by this action, indicate agreement with the proposal itself. It has the power and duty to express its views on the proposal critically and to challenge, if the conditions are met, the decision accepting the proposal.

In the event that, beyond the complex structure, the proposal is, as in the case in question, unitary, it must be put to the vote as a whole and the invalidity of a part thereof will determine the invalidity of the entire proposal.

The resolution that, instead of proposing the dismissal of directors, achieves the same result by changing the conditions for the appointment and tenure of directors, is unlawful, and as such, voidable.

The occurrence of such a situation, as a rule at least, indicates that an agreement exists between shareholders attributable to the category of shareholders' agreements.

[Signature]

Milan, 13 January 2020

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Milan, 14 January 2020

Dear
Società Cattolica di Assicurazione-Soc. coop.
Lungadige Cangrande, 16
37126 - Verona
Hand delivered - advance copy by e-mail

For the attention of the Chairman Paolo Bedoni

Subject: the call for an extraordinary Shareholders' Meeting by shareholders Prof Francesco Brioschi, Mr Massimiliano Caglierò, Mr Giuseppe Lovati Cottini, Credit Network & Finance S.p.A., SH64 S.r.l. (the "Requesting Shareholders"), on 18.12.2019.

I refer to the call by the Shareholders for a Shareholders' Meeting of Società Cattolica di Assicurazione Soc. coop. **("Cattolica"** or the **"Company")** and set out below to provide my opinion on the lawfulness of the company and, in particular, of the proposed amendments to the Articles of Association thereto.

1. Formal Compliance of the Call for a Shareholders' Meeting

Firstly, it should be noted that the call for a meeting appears to comply in itself with the law (Article 2367 of the Italian Civil Code) and with the Articles of Association (Article 22.2) and the Requesting Shareholders, as far as it appears, have complied with the prescribed requirements, hence the need to proceed with the call of the Shareholders' Meeting as exactly requested, however at the times deemed most appropriate by the Board of Directors in the interest of the Company and for the better informing of the Shareholders and the market.

It should be noted, for scrupulous and rigorous analysis, that the Requesting Shareholders have expressly ruled out having made any pacts or agreed to any coordination of voting between them However, there is some concern regarding the circumstances, given the fact that the proposed amendments to the Articles of Association were certainly the product of coordination and agreement and it seems unlikely that the shareholders at the Shareholders' Meeting will not come together in a unitary and shared manner on the proposal that they have collectively submitted to the other shareholders. This is noted not for the intra-corporate legal effects, but in terms of correct information to the market and to the Supervisory Authorities.

The Board, also taking into account the subject matter or the agenda items requested, must accompany the call of meeting with its own assessments (see Article 125-*ter,* paragraph 3, T.U.I.F. [Consolidated Act on Financial Intermediation]), i.e. with a report on the requested amendments to the Articles of Association. This is in order both to subsequently allow the review by the Supervisory Authorities and to provide sufficient information for all shareholders entitled to vote. In other words, the Board must not only express an opinion on the legitimacy of the proposal, but also on the Company's interest in the said proposal, even in terms of mere expediency. This author shall revisit what has been written elsewhere on this topic (M. Cera, *Le Società con Azioni Quotate nei Mercati,* Bologna, 2018, 89: *"At the same time as the publication of the request, the directors could accompany it with "any of their own evaluations", even if this is not an obligation and may on occasion not be possible due to the deadlines established by law for the above requirements There can be no doubt that, even at Shareholders' Meetings, directors must be able to express their considerations, if any, on the shareholders' proposals.* [....] *Moreover, it is difficult to imagine that the directors will remain indifferent or silent about Shareholders' Meeting proposals on matters for which shareholders are responsible – even for matters within the exclusive decision-making remit of the shareholders – the directors' opinion, even if not necessary, is certainly appropriate, even a duty"),* all the more so, it can be added, when the request concerns the Company's Articles of Association, that is, a charter that governs the Company's organisation and functioning.

2. Proposals for Amendments to the Articles of Association: Some Critical or Anomalous Aspects

The question here and first of all is to assess the legality (without any reference to the merits of any of these proposals for amendments, it being understood that they - as sought by the Requesting Shareholders - must be the subject of a uniform, indivisible resolution of the Shareholders' Meeting.

The proposed amendments do not present aspects of illegality and thus a risk of invalidity (however, with some doubt regarding that which referred to in the transitional clause in Article 59.3, which will be discussed below in paragraph 3.1), but some appear to be at great risk of illegitimacy and in any event to be anomalous and liable to censure when put before the Supervisory Body (it should be recalled that, as an insurance company, the amendments to the Articles of Association must be approved by IVASS [Italian insurance supervisory body] pursuant to Article 196 of Legislative Decree no. 209/2005 ("Codice delle Assicurazioni" or "C.A.P") ["Italian Insurance Code"]). We refer, in particular:

a) to any clauses that formally "tie" the Company to the city of Verona (Requesting Shareholders proposal, under Articles 1-24.3);
b) to the clause (and those related to it) which reserves the office of Deputy Chairman to a member drawn from the minority slate (Requesting Shareholders, under Articles 33.4 and 33.10).

2.1 *On the Proposed Clause Regarding the Company's Tie with the City of Verona*

With regard to the clauses relating to the Company's links with the city of Verona, considering that Cattolica is listed on a regulated market and "open" to institutional investors (currently its main shareholders are quite distant from Verona), one cannot fail to notice - in addition to the objective impropriety of "localistic" expressions such as "territory of reference" (Article 1) or "territory of membership" (the latter, perhaps self-justifying for some Requesting Shareholders, in the explanatory statement under Article 22.4) – which provides a high and much strengthened quorum to legally constitute the Shareholders' Meeting for resolutions regarding any transfer of the registered office outside Verona *(i.e.* participation of at least "one third of the number of persons entitled to vote", a quorum that it would become absurd in practice if the number of Cattolica shareholders were to rise significantly) making it almost *a priori* impossible to amend the Articles of Association, including a constructive amendment, which could in fact be useful not only to Cattolica shareholders, but above all to the stability and development of the Company.

In any event, providing for a particularly and unjustifiably high quorum requirement for the Shareholders' Meeting to be validly convened runs counter to the sound management of the Company.

It should be remembered here that we are dealing with a *società cooperativa* [co-operative or mutual company set up under Italian law] and therefore Article. 2538, paragraph 5, of the Italian Civil Code applies, which states that "*the majorities required for validly convening Shareholders' Meetings and for the validity of resolutions are determined by the deed of incorporation and are calculated* <u>*according to the number of votes accruing to shareholders"*</u>; it is therefore possible in abstract terms to provide higher majorities, but *"with all of the negative implications that can arise in company-by-company practice"*, *such as cooperatives, which are governed by the per-capita voting principle*" (M.C. TATARANO, *La nuova impresa cooperativa*, in Trattato di Diritto Civile e Commerciale, edited by A. Cicu-F. Messineo-L. Mengoni- P. Schlesinger, Milan, 2011, p. 448, but in the same substantial sense G. BONFANTE, *La società cooperativa,* in Trattato di Diritto Commerciale, edited by G. Cottino, Milan, 2014, according to which the freedom for cooperative companies to determine the Shareholders' Meeting quorums must primarily have the *"aim of making decision-making as easy as possible",* 308). However, it should be added that: *i)* Cattolica is a listed company that calls upon the risk capital market <u>and elevating the quorum for validly convening</u> (note: not the quorum for resolutions) the extraordinary Shareholders' Meeting restricts shareholders' rights and the possibility of extraordinary market transactions; *ii*) Cattolica is a supervised company, with supervision rules similar to those of banks, and it is well known that for some time the banking Supervisory Authority has been of the opinion that the particularly high decision-making quorums for high collegial bodies should be avoided, in any case, those that impede decision-making processes.

Therefore, in the opinion of this author that the clause in question, while formally lawful, is certainly inappropriate for the interests of the Company and its shareholders and is at great risk of censure during review by the Supervisory Authorities.

2.2 ***<u>On the Proposed Clause Regarding the Position of Deputy Chairman of the Board of Directors to be Reserved to a Minority List Director</u>***

Another point that deserves some precise and critical observation is that relating to Article 33.4, letter *b,* according to which *"the first minority director assumes the status of Deputy Chairman*," to be added to the Board of Directors.

Indeed, that a minority director may have "special" or executive duties (think only of the board committees) is out of the question. Here, however, we have a minority director who is, under the Articles of Association, "reserved" a position at the top of the Company, which could also translate, albeit transitively or occasionally, into the chairmanship-legal representative (a capacity in which a Deputy Chairman is well-known to serve, as lastly validated by the Court of Cassation. No. 31660 of 4.12.2019).

We shall not, nor would we wish to, dwell on the function and interests of the minority director. Suffice it to say that the opinion that the institution should be seen as an instrument for controlling the extraction of private benefits is somewhat current in the doctrine, with the aim of protecting minorities and more specifically of verifying the "substantive legality of individual management acts" (see, in this vein, in particular S. Alavaro- G. Mollo-G.Siciliano, *Il Voto di Lista per la Rappresentanza di Azionisti di Minoranza nell'Organo di Amministrazione delle Società Quotate,* in Quaderni Giuridici Consob, November 2012, 22; see also on this issue, M. STELLA RICHTER, *Gli amministratori non esecutivi nell'esperienza italiana,* IN Banca Impresa Società, 2005, I, 166, note. 8; from the same Author, most recently, *In Principio Sono Sempre le Funzioni,* in *Riv. soc.,* 2019, 25). It is no coincidence that the legislator was, first of all, concerned with giving preference to the representation of the minority in the internal control body, reserving the Chairmanship for it; while for the strategic supervision body, it merely requested the presence of a single minority director (consider the paradoxical case that the Articles of Association reserve the chairmanship to these directors …). But it should be noted that the provision concerning the minority director did not always elicit favourable opinions and interpretations, leading the doctrine to observe that "if the presence of directors representing the minority is really functional to the solution of the type of problem briefly described above – and that, with one of the formulas of law and economics now so fashionable, it can also be identified with the need to minimize the risk of 'extraction of private benefits for the controlling shareholder' by management, and thus, ultimately, for the purpose of protecting anonymous savings to which the company in institutional form turns to – or if it is not counterproductive to the fund, as it generates a new and different type of risk, such as the introduction of elements of disagreement and contestation and therefore ultimately destabilizing with respect to the orderly conduct of management, are issues that have long been debated"

(see further, G. Guizzi, *Il Voto di Lista per la Nomina degli Amministratori di Minoranza nelle Società Quotate: Spunti per una Riflessione* in *Corr. giur.* 2007, 301; see also extensively and significantly on this point G. Meo, *L'Amministrazione delle Società Quotate,* in the process of being published in II Testo Unico Finanziario, edited by M. Cera and G. Presti, Bologna, 2020, II, p. 1801, available courtesy of the Author).

In this case even, the proposal of the Requesting Shareholders introduces, in fact without providing any grounds (something which does not seem proper), an element of hybridity within the Company's senior management, which leads, at least, to exchanges, compensation and confusion of roles between the majority and the minority, to the detriment of full transparency in terms of the functions and responsibility of the body as a whole.

But this point also highlights issues in terms of the legitimacy of the Articles of Association. Reference is made to Article 40.1, which grants the Board the power to provide for, "in *the event of early termination of office, the appointment of the Chairman and the Deputy Chairman from among its members, as well as their removal and replacement at the next convenient Shareholders' Meeting"*.

Thus: *i)* this seems to indicate that the Board can also "remove" the Chairman and Deputy Chairman even if appointed by the Shareholders' Meeting, although this would be an unlawful eventuality, because this would obviously and unquestionably harm the prerogatives of the Shareholders' Meeting, which is responsible for the appointment; *ii)* if the Deputy Chairman – who, as indicated, would be taken from the slate presented by the minority – were to cease to hold office, there is no obligation to replace him with another "minority" member, but the Shareholders' Meeting should be convened, which can only vote for the replacement by a majority, so that the principle affirmed in Article 33.10, for which the Deputy Chairman falls to the minority, would no longer apply. We have reason to believe that the Supervisory Authorities, despite their different perspectives, will not be able to fail to detect the anomaly (or perhaps better, the "mess") that could arise, but above all the non-linearity and transparency of the solution, which goes beyond its unlawfulness, to provide for a Deputy Chairman necessarily taken from the minority slate, without nevertheless ensuring an automatic and appropriate mechanism for his/her possible replacement (it falls silent on the traffic and barter risks between the majority and minority and the compromising of the independence of the Chairman of the Management Control Committee, who would be "second" to the Deputy Chairman of the Board of Directors).

2.3. (Continued): In Particular. Regarding Problems in the Event of the Necessary Replacement of the Deputy Chairman;

The proposed amendment, in fact, does not make a provision for expressly providing for a specific form of substitution for the case that, for any reason, that the Deputy Chairman, taken as the first director on the minority slate, ceases to hold the office for any reason. Otherwise, if the Chairman of the Management Control Committee were to cease to hold office, among minority directors, as second on the relevant slate, there would be the solution from the Articles of Association (which, it should be noted, would remain in force) that the proposed amendment to the Articles of Association expressly preserves, (Article 40.1) and which provides that a replacement should be drawn from the same minority slate (cf. Article 34.2). This is by no means the case in which, for whatever reason, the first minority director who is then appointed Deputy Chairman ceases to hold office.

In this scenario, there may be various possible situations of uncertainty and confusion, given that the proposed amendment to the Articles of Association does not provide for anything to ensure that the outgoing Deputy Chairman's replacement is taken from the same minority slate as his predecessor.

In this situation, various aspects of concern may emerge that would truly “short-circuit” of the replacement system in the following scenarios:

a) the Chairman of the Management Control Committee, also drawn from the same minority slate from which the outgoing Deputy Chairman was drawn, would participate in the submission of the slate for the new Deputy Chairman, a decision of the Board and, therefore, in the submission of a candidate in opposition the decision of the shareholding structure that, so very recently, had contributed to his or her own appointment;

b) based on the provisions of Article 34.4 of the Articles of Association, "*the Shareholders' Meeting shall replace the outgoing Directors by resolution taken by a relative majority on the basis of candidacies proposed by the Board of Directors or by Shareholders in the manner described in Article 32.1*", thus with the slate system.

Since no coordination was provided for between the proposed new provision referred to in Article 33.10 on the provenance of the Deputy Chairman and the aforementioned Article 34.4, if a slate other than the one from which the outgoing Vice President was originally drawn were victorious, (in any case, for the appointment of replacement directors, only the majority principal could apply) the appointment of a non-minority Deputy Chairman, but presumably close to the majority, would occur, in clear contrast to the new provision set out in Article 33.10 as postulated in the proposal now under consideration;

c) however, even if one wished to take account, despite the lack of references and coordination, of the new provision of the aforementioned Article 33.10, and therefore wish to draw the new Deputy Chairman from the first minority slate at the Shareholders' Meeting, it could still be the case that several slates were presented for the replacement, in addition to that provided by the Board: if a slate other than the one from which the outgoing Deputy Chairman had originally been taken turned out to be a minority slate, the presence of two different minorities would occur in the Board, with evident problems of cohesion, harmony and functioning of the body, these being obviously the expression of different, or indeed potentially conflicting, claims, but with one that appoints the Deputy Chairman;

d) the alternative, and always wanting to take account of the introduction of the proposed amendment, could arise if the slate submitted by the Board turned out to be a minority at the end of the Shareholders' Meeting vote; if the Deputy Chairman were taken, as a minority, from the slate at that time in the minority, he/she would actually be the appointed by of the majority represented at the Board, with consequent de facto conflict with the dictates of the new Article 33.10.

Note: all this is occurring in a cooperative where majority and minority are fluid phenomena and not easily substantively verifiable.

In any case, from the above it emerges that:

(i) the claim inherent in the proposed amendment that the Deputy Chairman in any case represents the minority may give rise to significant application problems and is liable to generate serious uncertainties;

(ii) in a cooperative, majority and minority are always and in any case the result of a contingent debate at the Shareholders' Meeting, with the special factor that, while for the Chairman of the Control and Management Committee there is a certain regulatory aspect that would have this person represent a minority, this is not the case for the minority directors and this applies event more so for the position of Deputy Chairman. Moreover, with the further special factor that, since this is a monistic system, the prerogatives regarding the formation of slates on the part of the Board are also attributable to those who were nevertheless elected as a representative of the minority (in particular, and *in primis,* the Chairman of the Control and Management Committee, whose office is not insignificant).

2.4. (Continued): Further Anomalies Deriving from a Deputy Chairman Drawn from the Minority Slate

Further cases also need to be considered in which, according to the letter of the proposed amendments to the Articles of Association, the possible cessation of the Deputy Chairman expressing the minority could involve problems in application and proper functioning of the Board body.

Consider the situation in which the Chairman of the Board of Directors ceases to hold office; the functions would be assumed on an interim basis by the Deputy Chairman, for a more or less long period of time, which in any case is not predetermined. The fact that, in this case, the Chairman of the Control and Management Committee would find itself in a position of supervision and control over a body chaired and directed by a person who is a member of the same group as he represents, thereby in conflict with the ratio underlying the provision of Article 148, paragraph 4-*ter,* TUIF.

Furthermore, again according to the proposed changes, the Chairman of the Board of Directors could not form part of internal Board committees (Article 46.4); in terms of numbers, it seems clear that the Deputy Chairman, who is a member of the minority, would most likely form part of one or more committees.

It could be the case that he joined the nomination committee, thus finding himself in a position to assess the appointments and candidacies of individuals with conflicting interests, and to participate in the formation of the majority slate (at the Shareholders' Meeting to renew the bodies), or in any case that of a shareholding group of which he is not a member.

It seems to this author that there is sufficient material to consider the proposal or, more precisely, the request that a Deputy Chairman be a member of the minority to be anomalous and in some ways aberrant, hence its probable unlawfulness. Moreover, it is of certain inadvisability due to manifest functional and applicative uncertainty.

3. Regarding the Proposal to Introduce New Eligibility Requirements for Directors, the Related Expiry of the Term Office and Transitional Arrangements

We come to the perhaps most critical point, in several respects: the Requesting Shareholders propose the inclusion of eligibility requirements, which are also elevated in terms of requirements for maintaining office with a provision for the consequent expiry of the term of office, at least so it seems the letter of the transitional clause should be understood.

First of all, it should be noted that in the applicable legislative and regulatory framework, there is no maximum age limit for assuming office or for re-eligibility (which is expressly permitted by Article 2383, paragraph 3, of the Italian Civil Code, unless otherwise provided in the Articles of Association).

The issue of the registration and seniority of the office is only taken into account in the Corporate Governance Code for listed companies, which takes account of this code for identifying possible criteria for diversifying the composition of the administrative body: "*In assessing the composition of the board, it must be verified that the various components (executive, non-executive, independent) and professional and managerial skills, including those of an international nature, are appropriately represented in relation to the activity performed by the issuer, which includes the taking into account of the benefits that may derive from the presence in the Board of Directors of different genders, age groups, seniority and other aspects of diversity identified from the* issuer" (see Article 1, under Comments). That is nothing more.

It should be noted that the amendment proposed by the combined provisions of the new paragraphs 30.6 and 30.9, and in particular the configuration of the requirement of age and seniority as a condition for the maintenance of office (a provision that is quite different from the precedents that are noted in practice, in the context of the few companies that have identified the requirement of age as merely a requirement for eligibility and not the requirement for the maintenance of office), results in an element of instability of the company bodies, given that, from time to time, this requirement will no longer be met by one or more representatives during their term of office, which could entail continuous changes of in the company body in the course of its mandate.

This contradicts the interests of the Company, before the directors, in the stability of the body appointed by the Shareholders' Meeting until expiry, except in the case of typical legal reasons for early termination (see the Milan Court, 23 April 2019 at www.giurisprudenzadelleimprese.it, which stated, in very clear terms, "*the Shareholders' Meeting shall not, before the end of its term of office, replace the administrative body, without this finding any justification in the need to protect a specific, clearly identified company interest, if this entails damage to others*" and that *"the resolution to appoint the administrative body is a contractual act (between company and director) with organisational significance (dealing par excellence with the governance of the company and implying the significance of its effects also vis-à-vis the shareholders) that binds the parties pursuant to Article 1372 of the Italian Civil Code until the natural expiry of the mandate, except in the event of possible causes of termination of office*").

Moreover, it cannot be ignored that the most important Italian insurance company and one of the first in Europe, after introducing an age limit (in a form other than the one here in question), abruptly eliminated it with the "general" consent.

Regarding term limits in the holding of office (Article 30.6, a maximum limit of nine years as director in the preceding 15 years), first of all the appears to be unjustified and also irrational, both because it prejudices the principle equality and fairness in the absence of any justifying cause and because it is too abstract, by failing to take account of the Company's concrete situations and needs. Therefore, one rational thing would have been to establish a maximum of continuous terms. Another irrational thing, is the mechanism of merely remaining in the office for a certain number of overall years (to understand which, in view of the recent change in the Company's governance which saw the cessation of office of the Board of Statutory Auditors) over a very broad time frame, which seems bizarre and as stated not in the Company's interest (but shortly we will see that the purpose of the Requesting Shareholders does not seem to be that of pursuing the Company's interest).

3.1 (Continued): In Particular: Regarding the Transitional Clause in Article 59.3 of the Proposal

We now come to the proposal for transitional arrangements for the new requirements on eligibility and maintenance of the position of director (under Article 30.6) and the consequent expiry of the term of office for situations that might occur during the term of office (Article 30.9). In particular, the new provisions are to be applied, at the latest *(i)* on the date of approval of the 2019 financial statements and *(ii)* on the date of registration of the business register of the new Articles of Association following approval by IVASS. The new requirements should therefore also apply to the governing body in office, before the relevant natural expiry date.

In addition to certain interpretative uncertainties regarding the wording and application of the clause in Article 30.9, with reference to the "*loss*" of the requirements "*in the course of the term of office*" (indeed you lose what you already had, while here they wish you to lose what you will never have in the future), there are various doubts as to legitimacy regarding the transitional regime thus proposed and its implications.

In fact, the application of the new requirements – unless, but in the form not at all clear, it is not deferred to the expiry of the term of the current body – results in the expiry of the term of office of representatives who are not compliant with the new requirements.

It is appropriate, albeit swiftly, to point out that, in the case in question, there would be a "perverse" effect on the purpose of the resolution submitted to the Extraordinary Shareholders' Meeting and, in any case, such indirect effect should be covered by a justification consistent with the company's interest, which does not exist here; there is no trace of it (legal doctrine and case law are agreed and constant in stigmatising resolutions which, albeit with a formal, different object, result in the effect of the removal of directors: among the cases considered, the reduction of the number of members of the Board or the transfer of administration from the Board of Directors to a sole director: see Court of Cassation 18.9.2013, no. 21342; regarding the instrumental use of the "simul stabunt, simul cadent" clause , see Trib. Milan, 7.11.2012, in *Società,* 2013, 797; in the doctrine, for all, F. BONELLI**,** *Gli Amministratori di S.p.A. Dopo la Riforma delle Società,* Milan, 2004, 95).

It is that: ‘*'the rule that reserves the appointment and removal of directors for the Shareholders' Meeting is mandatory, as public policy because of its impact on the general interests of the community*" (Cass. 13.6.2017 - no. 14695) According to an important ruling of the Supreme Court "*the shareholders have the power to establish eligibility requirements (and associated grounds for the expiry of the term of office) other than those indicated by the legislator in Article 2382 of the Italian Civil Code.*

(ex, providing, as necessary, a capacity as a shareholder, not required in principle by Article 2380-bh of the Italian Civil Code, i.e. the non-eligibility of directors at the end of their term of office, as may be argued in Article 2382, 3rd paragraph, of the Italian Civil Code), it cannot, however, be allowed that, by this route, it can succeed in emptying of all content the principle that reserves to the competence of the Shareholders' Meeting the appointing and removal of directors for any reason." (like this, Cass. 14.12.1995, no. 12820; the doctrine is also unanimous in recognising that "*the freedom to establish new grounds for expiry of the term of office pursuant to the Articles of Association may not compromise the power of the Shareholders' Meeting to appoint and dismiss directors"*, see, M. Franzoni, *Società per Azioni. Dell'Amministrazione e del Controllo,* in Commentario del Codice Civile, by A. Scialoja and G. Branca, Bologna-Rome, 2008, 137).

Therefore, a de facto removal of individual directors outside a lawful and specific resolution of the ordinary Shareholders' Meeting is not permissible and, in any case, the existence of a removal that is not supported by just cause entails, pursuant to Article 2383, paragraph 3, of the Italian Civil Code, the right to compensation for damage to the complainant (Court 27.11.2008, no. 27512, which clearly notes as follows: *"the appointment of directors entails, for those appointed, the right to stability of the appointment for the period provided for (but in any case not exceeding three years) and any lawful initiatives (Article 2383, paragraph 3, of the Italian Civil Code) of the Shareholders' Meeting which, even if indirectly, are contrary to the originally established term of office, lead to compensation for damages if the removal, even if implicitly ordered, has taken place without just cause").*

Therefore, the transitional clause proposed, beyond the stated intent (see paragraph 2.4 of the Report of Requesting Shareholders) of "*enabling more gradual impact of the amendments*", **is** of significant importance in terms of compliance with current provisions of law, with all of the resulting consequences for the purposes of the validity of the entire resolution approving it (given the indivisible nature of the proposed resolution formulated). It **is** however, it has significant implications for the Company because, on the one hand, *(i)* it removes the inviolable competence of the ordinary Shareholders' Meeting to remove directors; on the other hand *(ii)* it exposes the Company to the obligation to pay compensation for damage to directors, which would thus be removed in the absence of just cause and in any case according to an action not supported by the Company's interest.

Precisely in this regard, with regard to amendments to the Articles of Association that affect the structure of corporate bodies, the legal doctrine has seen the opportunity to defer the effectiveness of the new rules to the expiry to term of the bodies. (see, with regard to the reduction of the Supervisory Board of dualistic S.p.A., V. CARIBI.LO, , *Il Sistema*

Dualistico Turin, 2012, 450, reports the appropriate option *"that the reduction of directors shall run from the expiry of the term of the members in office").*

Moreover, here it must be stressed that the transitional clause imposes an expiry of the term of office outside of any legal, regulatory or tax assumptions, but only on the basis of an assessment, non-transparent and arbitrary of the Company: moreover, without stating and justifying a company interest underlying this trauma: On the contrary, in the case in question on could say that there would be an opposing Company interest, namely stability, the exclusion of any risk of indemnity or compensation to which the clause could give rise, the uncertainty that could arise in the event of disputes over the interpretation and applicability of the clause. That even in the event of the removal of directors, there must be a company interest, since otherwise the decision would be unlawful, **is** certain in case law (see again, Court Milan, 23 April 2019, in *www.giurisprudenzadelleimprese.it* where the necessary conformity to the company interest is evident, which must also characterise the decision to remove a director, this author must add especially when it is only implied, because this would only be an abuse of power).

Perhaps, if not certainly, it **is** that the entire proposal of these Requesting Shareholders moves solely and exclusively by this clause, defined as transitory with "lightness", but it adversely affects the lawfulness of any approval resolution, as it is not transparent, not proper, and as such, strongly reeks of abuse of rights.

Finally, it should be noted that the transitional clause, which focuses on the issue of the early application of the new requirements to the incumbent bodies, neglects to govern the aspect of the reduction of Deputy Chairmen, another amendment proposed by the Requesting Shareholders under Articles 27.2, 27.3, 40.1, 40.3, 47.1 and 48.1, but without providing for any criteria for the immediate application of the clause, an aspect that is therefore uncertain and left to a wholly discretionary decision of the Board of Directors.

4. Some Summary Comments

We shall attempt to summarize.

The clause in the Articles of Association referred to in Article 59.3 (paragraph relating to the amending provisions of Articles 30.6 and 30.9), in relation to the proposed amendments to the Articles of Association made by the Requesting Shareholders, appears to provide for immediate application and entry into force, but it is by no means clear whether the directors "affected" by the new requirements (apparently, the Chairman and the two Deputy Chairmen) can indeed "lose", later and in fact, the

proposed new requirements, since they did not have them and were not required to have them, at the time of taking office with the appointment, which was entirely lawful at that time (please note only eight months ago).

In any case, if this were the case, this would result in a "false" expiry of the term of office and a "true" removal, which would furthermore be a constructive removal, with the double consequence that it would be unlawful or at least illegitimate because it would violate the rules on the removal of directors.

And, precisely because it is a constructive removal, as such it would also violate the rules regarding the proper and transparent information of Shareholders and the markets, a particularly striking circumstance, in this case, with Cattolica's status as a listed and supervised company.

This is even regardless of the certain right of directors, who have been had their terms falsely deemed to have expired and effectively removed, to obtain compensation for damage for lack of just cause, since in this case there is not even a shadow in the motivation of the requesting shareholders, who therefore have taken on an opaque, unlawful, unjustified request, which is liable to create possible significant prejudice for the Company, without even bothering to affirm the company interest underlying a fully arbitrary (and also poorly constructed) transitional clause.

All the contrary of what is required in a listed company and in public interest, for the purposes of respect for the shareholders all and the Supervisory Authorities (as well as for the company itself and its various stakeholders) and in any case, in defiance of the principles governing the proper and orderly functioning of the Shareholders' Meeting, given that the same request of the shareholders to meet and vote rests on an object at least apparently partly different from the actual reason for the proposed resolution or at least this reason appears not to have been adequately represented to the shareholders in terms of disclosure.

In this regard, this author cannot fail to point out that:

(i) The sector supervisory authority, IVASS, as is known, must issue the approval of the resolution amending the Articles of Association (pursuant to Article 196 C.A.P. and Article 5 of Ivass Regulation no. 14/2088) where it does not conflict with sound and prudent management, on the premise "*in particular that there are no impediments to an orderly conduct of company management*". It is objectively difficult to believe that the proposal as a whole submitted by the Requesting Shareholders can allow an orderly company performance in the near

future. In this regard, it cannot be ignored that the Authority, in exercising the power to approve the Articles of Association, is called on "to *reconcile respect for shareholders' contractual autonomy with the objectives of sound and prudent management underlying the rules governing control, exercising a power of verification based on guiding statutory autonomy on a plan of consistency with the interests protected by industry legislation*" (as specified in the accompanying Report to ISVAP Regulation No. 14 of 18 February 2008; specifically, "*reference to a criterion referred to the assessment by the Supervisory Authority reiterates the discretionary nature of IVASS's intervention, as there is no "notarial" duty to the action, confirming an approach that is absolutely consistent with the continuous sectional configuration of control* ***(...).****In other words, it is not sufficient for there to be a resolution of the extraordinary Shareholders' Meeting to approve the amendments to the company's system of governance or for the notary responsible to verify that the legal conditions have been fulfilled; for the purposes of the validity of changes in the Articles of Association, it is necessary that the privatistic obligations be accompanied by the assessment of the supervisory authority to consider such amendments as not inconsistent with the objectives of sound and prudent management", referring to L. Desiderio, Commento under Article 196, in Codice delle Assicurazione Private, Legislative Decree No. 209 of 7 September 2005 Naples, 2014, 839 and stressing that, even in the regulation of the contiguous banking sector, the criterion of "sound and prudent management" applied to the examination of the Articles of Association and its amendments is considered to involve a very wide scope of intervention for the Authority in the context of the purpose of sound and prudent management, as already noted since time immemorial: see M. Cera, AUTONOMIA STATUTARIA DELLE BANCHE E VIGILANZA, Milan, 2001, 105 ff.).*

(ii) the Supervisory Authority for the markets and on the governance of listed companies, Consob, as noted, must guarantee full transparency, propriety and linearity in the functioning of the corporate bodies, in particular the best disclosure information on the formation of the will of the Shareholders' Meeting and on the composition of the corporate bodies. It is objectively difficult to believe that the above proposal is fully consistent with respect for the general interests and purposes protected by the legislation on listed companies; this author permits himself to conclude the exact opposite in this case.

5. Conclusions

It must essentially be affirmed that, in the package of proposed amendments made by the shareholders indicated above, In essence, it must be stated that, in the

complex of the amendment proposals formulated by the shareholders in the epigraph, those relating to articles 24.3, 33.4 and 33.10,are not in the interest of the Company and all shareholders and are also "unlawful" because they are not transparent and are uncertain or impractical in application. More specifically, and explicitly, the amendment concerning the introduction of the transitional clause pursuant to Article 59.3, second sub-paragraph, with respect to Articles 30.6 and 30.9, which must be considered illegal, unlawful and in any event of unclear interpretation, as in such case any approval resolution, in its unitary complexity, would be invalid and unquestionably subject to challenge by any Shareholder, but also by the Board of Directors, as well as by the directors concerned, individually.

All the above clauses present a reasonable and not remote risk that they may not be approved during the authorisation process by IVASS, and in any case that they cannot be entered in the Companies Register pursuant to law, as well as being the subject of findings by Consob, and in any case, in themselves, may involve uncertainty in their application as well as the risk of serious litigation for the Company."

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We are available for any clarification or further information needed. Respectfully Submitted

[Signature]

(Prof Mario Cera)

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Milan, 13 January 2020

Società Cattolica di Assicurazione - Società Cooperativa
Lungadige Cangrande, 16
37126 Verona

For the attention of Director Paolo Bedoni.

Dear Sirs,

With reference to the case you have presented to us, we formulate our opinion below.

0. Summary and Conclusions.

The proposed **"amendments"** to the Articles of Association are (i) on the one hand, the subject of possible choices of expediency (for example, those relating to an even greater degree of alignment between the Articles of Association and applicable legislation; or those relating to the strengthening of relations with the territory), (ii) on the other hand, perhaps legitimate in law, but certain to shift the axis of corporate control towards minorities, with consequent and potentially serious effects on the governance of the company, significant effects in terms of internal conflict, potential paralysis, etc.,

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(iii) finally, relating to four directors, they are unlawful both in substance (it would in fact be a case of "retroactive" removal), and in the form in which they should be adopted (passing through an anomalous "constructive" decision, among other possible bases for liability).

1. The Matter.

By letter dated 18 December 2019, certain shareholders (hereinafter, for brevity: the **"Proposing Shareholders")** of Società Cattolica di Assicurazione - Società Cooperativa (hereinafter for brevity: **"Cattolica")** called for, pursuant to Article 2367 of the Italian Civil Code and Article 22.2 of the Articles of Association, a Shareholders' Meeting, in extraordinary session.

In particular, the **Proposing Shareholders** requested that the Shareholders' Meeting thus convened vote on a series of **"amendments"** to the Articles of Association, detailed in an "Explanatory Report" (attached to the request) drawn up in accordance with the regulations established by Legislative Decree 58 of 24 February 1998 ("Consolidated Finance Act"), based on regulatory provisions.

Therefore, based on the decisions that the Board of Directors will be required to make in relation to the aforementioned call for an extraordinary Shareholders' Meeting, we set out below our opinion specifically regarding the lawfulness of the "**amendments**" requested.

2. The Opinion.

2.1 In view of the foregoing, **(i)** whereas, in the ordinary session, a Shareholders' Meeting duly convened and with a favourable vote taken with the majorities required by law and/or the Articles of Association, may legitimately amend all the clauses of the deed of incorporation and the Articles of Association, but nevertheless within the limits established by the company model adopted, **(ii)** the following is intended to verify whether **"amendments"** envisaged in the "Explanatory Report" prepared by the **Proposing Shareholders** are lawful or not.

Having said this, it should firstly be noted that, as the "Explanatory Report" is developed, **"amendments"** envisaged occur as pure **"adaptations",** how many are **"innovative".**

The former, the **"adaptations",** are presented as simple adaptations of the current Articles of Association to the applicable regulations and regulatory indications provided by IVASS.

In these terms, the choice to be made at Shareholders' Meetings (whether or not to introduce them into the Articles of Association) is a choice of pure expediency, without any legal issues arising.

When considering the amendments that have an **innovative** reach, the following should be noted:

A) with regard to the **"amendments"** with a view to strengthening **Cattolica's** relationship with the region **("amendments"** contained respectively in Articles 1, 22.4 3 24.3, supplementing the Articles of Association), it should be noted that these would take the form of a mere declaration of intent and/or programming.

These are thus proposals for **"amendments"** on which the bodies of **Cattolica** may make their own assessments of expediency, in any event without the resulting particular effects or consequences of a legal order;

B)the **Proposing Shareholders** then assume that other **"amendments"** will be introduced to the Articles of Association, these are of a structural nature (e.g. appointment of a single Deputy Director instead of the two currently planned); the **"amendments"** which likewise do not seem to have particular issues of legitimacy, except as noted below: under 2.2;

C) two further proposals for **"amendments"** which are also "innovative" would, on the other hand, have significant legal effects and it is precisely on these that this opinion is developed.

2.2 To be with, attention should be focused on proposals to strengthen the powers of minorities.

Proposals highlighting critical aspects, **(i)** not so much with regard to the attribution to minorities of the right to designate two directors as opposed to just one, a right which should in particular be attributed to the slate which obtained the second quotient of votes (Article 33.4 of the Articles of Association) : in fact it does not seem anomalous that, within a Board of Directors with 17 members, two should be representatives of the minority; **(ii)** but with regard to the provision that the latter two should be granted the deputy chair of the Board of Directors and the chair of the Management Control Committee respectively.

What, together with the proposal, has already been mentioned above under 2.1, to appoint a single Deputy Director, would concentrate in favour of the minority a share of power that is totally disproportionate to the votes obtained from the respective lists.

In these terms, the impact on the power structure within **Cattolica (**but would be the same for any company) would most likely be so anomalous and intense that it would generate conflict, even functional paralysis.

These effects - even in terms of expediency - must, in our view, be seen as truly critical, because they are extremely important.

2.3. But the proposed clause, which undoubtedly constitutes **illegality** is that which would be contained in Article 30.6 of the Articles of Association, this clause is intended to replace, by supplementing it in the final part, the current Article 30.5.

In particular, it is proposed that the current clauses on incompatibility with the role of director be added by the **Proposing Shareholders**, in the current Articles of Association, two additional elements pertaining respectively to:

a) reaching 75 years of age (letter c);

b) the role of director "for a total of more than 9 years in the preceding 15 years" (letter d) .

In this regard, we should begin by noting that, as a result of the transitional provision that would be contained in the new Article 59.3 of the Articles of Association, this clause would enter into force, if not immediately, in any case in a very short time, and in particular from the date of approval of the budget for the 2019 financial year.

Given the above, the unlawfulness of the proposed clause is evident on three points, which in **summary** can be exposed as follows:

a) **on the merits,** given its essentially **retroactive** character, the intervention would be in effect a **removal** of the director;

b) **in form,** the action would be based on an anomaly, a **constructive resolution:**

c) **in effects,** this would more than likely create **liability** for damage for Cattolica.

Having said this, the following may be noted in a more analytical form.

To begin with, as formulated, the proposed clause is intended to introduce into the Articles of Association two causes for directors' ineligibility/expiry of the term of office.

These causes are intended to be added "ex novo" to those of legal origin already provided for by Article 2382 of the Italian Civil Code, but with an essential difference:

a) while the Italian Civil Code refers to legal events of negative value that, in terms of ineligibility, relate "a priori" to the aspiring director, or that, in terms of expiry of the term of office, relate to the person already in office;

b) otherwise, in the case of the clause put forward by the **Proposing Shareholders** one would be required to take note of "life events" (so-called **"Tatbestand")** that were already in place when the provision came into force.

As a result:

a) similar clauses may generally be lawful.

Lawful in particular in the logic suggested by the **Proposing Shareholders,** in terms of "replacement, including generational replacement, of directors"[1];

b) but here the essential point is different and it is this: whether it is lawful to introduce, in substantially retroactive terms, further proposals for expiry of the term of office, with reference to a Board of Directors that, in the scenario of entry into force of the new provision, will have completed only one third of the duration of the period of activity envisaged for it.

In particular, in these terms (i) it would not only constitute a question of eligibility - or lack thereof, of certain parties, a question that if anything would concern the next Board of Directors, (ii) it would not only be a question of the demolition effect that would result, given that the possible application of the **amendment** proposed would entail the loss of role by four directors, including the Chairman and the two Deputy Chairmen, (iii) but above all it would be a question, in terms of unlawfulness, of the essential aspect of the **expiry of the term of office of the directors.**

2.4. And this in the following terms:

a) even without assuming that the **Proposing Shareholders** initiative is inspired by instrumental logic, and/or in any case extraneous to the company interest (in fact, the combined application of the statutory provisions of (new) Articles 30.6 and 59.3 would in any case have the effect of **automatic departure** from office by four persons in absolutely prominent positions in the current Board of Directors);

[1]However, a "curiosity" should be noted in this regard, given the stated purpose of ensuring generational turnover, the established age limit would be consistent with this objective... but this would not be the same for the other limit, that relating to tenure for more than nine out of fifteen years. This could in fact impact individuals that are still very young!

b) however it is quite clear that the introduction of the new proposals for retroactive expiry of the term of office as a director (retroactive, given that the current Board of Directors was appointed for a three-year period starting in April 2019), would in reality be a **removal** measure of the four said directors.

It is in fact the revocation, and only this, the instrument that the law assigns to shareholders (more precisely: to the Shareholders' Meeting) to affect the subjective situation of incumbent directors.

Nor, against this argument, could one object an analogy with the proposals for expiry of the term of office provided for by the law.

This objection would not apply because:

a) in the case of Article 2382, of the Civil Code, cited (and, where applicable, in the case of Article 2387, of the Italian Civil Code, if the Articles of Association intended to introduce additional requirements, in terms of integrity, professionalism and independence, for directors), the person who accepts the position of director is immediately fully aware of the fact that the subsequent intervention of a given legal event relating to him or her would result in the expiry of the term of office;

b) otherwise, in the case in question, if the new Article 30.6 is introduced into the Articles of Association, the Shareholders' Meeting should retroactively take note of existing timing elements already known to it at the time of appointment of the director (elements which at the time were instead wholly irrelevant for the purposes of appointment, and then, consequently, for the purposes of the director’s term of office).

In these terms, it can only be concluded in the sense that the proposed amendment to the Articles of Association by the new Article 30.6 would have no substantive and/or real effect other than to cause the **removal** ”ad personam” of four directors.

2.5. It is in these terms that elements that already *prima facie* highlight the unlawfulness of introducing this clause into the Articles of Association, a clause that to begin with is certainly unlawful in its "retroactive" effectiveness.

Article 30.6, would in fact have no other substantive and/or real effect, other than that of causing the expiry of the term of the four directors, by virtue of elements and/or conditions of duration that would no longer be consistent with the Company Articles of Association, at first application (which is what is interesting here).

In substantive terms, since this would be a measure for only some members of the Board of Directors (and not the entire board), dismissal would be the only and/or proper way to achieve this objective.

But according to this logic, the Board of Directors should, with regard to this specific clause, convene the Shareholders' Meeting, including in ordinary session, the venue for the removal of directors.

Otherwise, the expiry of term/revocation effect would be the product of a **constructive resolution** taken by the Shareholders’ Meeting body in an inappropriate location.

Indeed: **(i)** although it is true that this latter finding could (perhaps) be overcome, reasoning in substantive terms and therefore believing, in a logic of the "more is less" type, that a decision of an Extraordinary Shareholders' Meeting, given the necessary presence of the notary, is in any case more "guarantor" with regard to the interests at stake, **(ii)** it is, however, the very legitimacy of a constructive resolution thus assumed which must be contested.

In this regard, it should be noted in particular that the matter of the constructive resolutions was dealt with mainly with regard to the question regarding the legitimacy of fixing the remuneration of directors, not through a specific resolution of the Shareholders' Meeting, but through the approval of a financial statement that contains the relevant expenditure forecast.

Thus, for some time (see e.g. Supreme Court, 24 July 1968, No. 2672) case law has established that a general resolution, such as the one approving the financial statements, cannot constructively assume another resolution of the Shareholders' Meeting, which has its own specific object that is separate and different, without the same having been mentioned on the agenda.

In these terms, and coming to the case in question, a resolution of the extraordinary Shareholders' Meeting introducing retroactively (new) instances of incompatibility for directors certainly cannot "contain", and inter alia obliquely, the removal of some directors.

Removal which should instead be manifested through the typical act of an explicit decision, on an agenda that provides for removal as a subject submitted to the vote in the Shareholders' Meeting.

2.6. Not only that. Moving from the corporate organisation plan to the personal position of the four directors who would automatically be deprived of their duties, it should be noted that, in accepting the position, they have earned a legitimate expectation to carry out their mandate for three financial years.

It is true that, according to the rules laid down in the Italian Civil Code, the director is not irremovable from office, with the Shareholders' Meeting (ordinary) having the power to remove directors (cf. Article 2364, paragraph 1, No. 2).

But the removal must be in fact be done in the proper form of removal.

A form that, among other things, would enable the removed person to use the courts to obtain recognition of possible **compensation for damage,** in the event that the court finds that the removal was carried out without just cause (as would most likely be the case here).

Conversely, the possible introduction into the Articles of Association of **Cattolica** of Article 30.6 would preclude the "lapsed" directors from any defence in court because, in the logic of the **Proposing Shareholders, (i)** this would not be a case of revocation, but of expiry of their term and **(ii)** the just cause would still be "a priori" present (more precisely: this would be contingent on expiry of term).

As is evident in these terms, what is proposed is therefore an abnormal **"amendment"** proposal, abnormal not only because it is retroactive, but also because it is detrimental to the legitimate trust of directors.

2.7. A further profile for which the legitimacy of the clause in question must be assessed is ultimately linked to the nature of **Cattolica,** as an entity whose shares are listed on a regulated market, and therefore with reference to the need to protect wider interests in principle than the traditional network of interests concerning "closed" companies.

Specifically, if the Board of Directors agreed to call an Extraordinary Shareholders' Meeting of **Cattolica** to submit to it the agenda suggested by the **Proposing Shareholders** (relating to a series of amendments to the Articles of Association, including the one relating to the removal/expiry of term of directors), it would most likely result in a situation characterised by serious critical issues, under the following terms:

a) if the Board, for obvious reasons of transparency, decided to inform the market of the "indirect" effects, intended to be manifested in a short time (at the time of approval of the financial statements for 2019), as a result of the introduction into the Articles of Association of Article 30.6

b) the market would be aware that, at the initiative of a minority of shareholders, the Shareholders' Meeting would be called to decide on the "beheading" of its senior management, without this effect being specified in the agenda, according to the logic previously examined in critical terms, which is typical of the constructive resolutions.

Furthermore, **(i)** if the Board of Directors were merely to provide the market with merely "formal" information, thus it merely mentioned the proposed amendments to the Articles of Association, without indicating the consequences deriving from any approval, with all the other clauses (being that of the **Proposing Shareholders** a "unitary" proposal), including that which would be contained in Article 30.6, **(ii)** this would result in a very serious weak point in terms of (non)transparency.

In the absence of a specific indication of the legal consequences of the introduction of the clause, minority shareholders and third parties would not be placed in a position to know a very significant fact, i.e. that any favourable vote by the Shareholders' Meeting would result in the aforementioned removal of the heads of **Cattolica.**

All this - it is repeated - on the basis of a constructive resolution of absolutely dubious legitimacy.

2.8. In conclusion, based on these considerations, it seems entirely reasonable to assume the unlawfulness of the clause (new Article 30.6) that the **Proposing Shareholders** would intend to include in the Articles of Association, at least with reference to its retroactive scope.

This is without prejudice, given the aforementioned unitariness of the proposals made by the **Proposing Shareholders,** to the question regarding the possibility for the Board of Directors to call the Shareholders' Meeting to decide only on amendments to the Articles of Association that are deemed by the Board to be legitimate (and appropriate).

Dear Sirs, we remain available for any clarification, and we express our best regards.

[Signature] (Prof Sergio Patriarca)

[Signature] (Prof Giulio Tremonti)

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AVV. PROF MATTEO RESCIGNO
Professor of Commercial Law at the
Università degli Studi di Milano

Avv. REMOMARIA GHIRARDI

Milan, dated 14 January 2020

Dear

Società Cattolica di Assicurazione-Soc. coop.

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For the attention of the Chairman of the Management Control Committee, Giovanni Glisenti

Re: **Opinion on certain clauses - Article 30.6, 30.9 and 59.3 - subject to request for amendment or introduction into the Articles of Association of Cattolica, during an extraordinary Shareholders' Meeting called on the request of shareholders**

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I am asked for an opinion by your Committee on the proposal for a Shareholders' Meeting resolution, formulated by some of the Cattolica shareholders pursuant to Article 2367 of the Civil Code, regarding the amendment of clauses 30 and 59 of the company's Articles of Association. More specifically, these issues have been brought to my attention:

a) the amendment of Article 30.6 of the Articles of Association on the eligibility requirements for the position of director of the company, in the sense of adding to letters (c) and (d), two cases of ineligibility: in particular, reaching the age of 75 and having been a director of the company *"for a total of more than nine years in the preceding fifteen years"*,

b) introduction into the Articles of Association *ex novo* of Article 30.9 of the Articles of Association, pursuant to which *"the loss during the mandate of the requirements referred to in paragraph 30.6 produces the immediate expiry of the term of office of the director*" ;

c) introduction into the Articles of Association *ex novo* of Article *59.3 "in derogation from the above, the amending provisions of paragraph 30.6 and paragraph 30.9 of these Articles of Association shall apply as of the date of approval of the financial statements for the 2019 financial year or, if later, also as of the date of entry in the relevant Companies' Register of the resolution passed by the said Shareholders' Meeting approving amendments to the Articles of Association* .

In particular, I am asked to assess the admissibility and legitimacy of such changes and, more generally, any problematic aspects resulting from their adoption, in order to permit appropriate reporting to the Shareholders' Meeting.

To this end I was able to examine:

- the call for a Shareholders' Meeting pursuant to Article 2367, with various amendments to the Articles of Association on the agenda, including those on which I was asked for the said opinion;

- an explanatory report by the Proposing Shareholders on the amendments to the Articles of Association on the agenda of the Shareholders' Meeting called.

On a factual point, I note - as can also be drawn from the opening words of the report of the Proposing Shareholders- that the initiative of Proposing Shareholders relates to recent events that led to the removal of the mandates to the Managing Director of your company. The initiative to call for a Shareholders' Meeting, as confirmed in the press, therefore originates and represents the result of a conflict between the Proposing Shareholders and the resolutions of the Board.

I am also informed that the Chairman and the two Deputy Chairmen – and thus the senior management of the Board, which passed a resolution to remove the mandates of the former Managing Director – do not possess the new additional eligibility requirements established in the proposed amendment to Article 30.6 of the Articles of Association.

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2. In expressing my opinion, in order to follow a logical order (but not of relevance) of the issues raised by this subject, I consider it appropriate, first of all, to make a number of comments on the interpretation of the amendments to the Articles of Association brought to my attention.

This decision stems from the fact that the most significant issue in terms of the legitimacy, both abstract and concrete, of the above clauses relates to the hypothetical effect of immediate expiry of the term of office for the position of director of those directors who do not meet the new eligibility requirements that are requested to be included, with the amending resolution, in Article 30.6 of the Articles of Association.

As will be emphasised, if this really were to be linked to the approval of the amendment, or at the time indicated in Article 59.3, there would be very vague doubts as to the legitimacy of the clauses submitted to my attention.

However, the fact is - for the reasons that I will set out in the following paragraph - that the reading of clause 30.9, which specifically provides for the expiry of the term of office in relation to the eligibility requirements, does not seem to be able to be read in the sense of the immediate expiry of the terms of directors who do not meet the eligibility requirements that would *ex novo* introduced if amendments to the Articles of Association are approved. A preliminary discussion of this point is therefore appropriate.

Subsequently – and assuming that this interpretation is not deemed to be in line with the content of the amendments to the Articles of Association and that the clauses therefore imply, if approved, the immediate expiry of the term of office of directors who did not meet the new eligibility requirements – I will analyse the issues relating to the rules governing the grounds for ineligibility for the position of director, both in relation to their legitimacy, abstract and concrete, and in relation to the "transitional" regulation of their applicability. In this context, I will also examine the possible reconstruction of the effects of approving the amendments to the Articles of Association submitted to the Shareholders' Meeting as a means of achieving substantial results of removing directors who do not meet the eligibility requirements that would be introduced if the amendments to the Company Articles of Association were approved. Analysis which, as stated above, leads me to believe that, for various reasons, there are serious doubts as to the legitimacy at least of clauses 30.9 and 59.3 and thus of the resolution approving them.

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3. Moving on therefore from the interpretation of clause 30.9, I believe that it should be read in the sense that the expiry of the term of office of the directors provided for therein cannot concern the grounds for ineligibility that would have been introduced ex novo with the amendments to clause 30.6 to the Articles of Association, and therefore cannot concern the current directors.

In fact, clause 30.9, when regulating the expiry of the term of office of the director, clearly indicates that it is *"**the loss** in the course of the mandate of the requirements referred to in paragraph 30.6" "results in the immediate expiry of the term of office of the director".*

But the reference to the "**loss of the requirements in the course of the current mandate**" is by definition inapplicable to current directors. In fact, the requirements that are wished to be introduced for the first time with the amendments to the Articles of Association in question, and in particular in Article 30.6, cannot be predicated on the **loss** of a director's eligibility requirement.

During the mandate only for eligibility requirements that were stipulated by the Articles of Association at the time the mandate was granted and which have been truly **lost** during the term of office may be treated as lost.

But the eligibility requirements that would be introduced ex novo in Article 30.6 cannot be **lost with an effect of expiry of the term of office** by the incumbent directors, for the obvious and simple reason that they did not need to have requirements at the time they were given the mandate.

It is not clear, moreover, whether the proponents actually intend to link an immediate effect of expiry of the term of office for those directors currently in office who do not possess the new eligibility requirements that would result from the possible approval of the amendments to the Articles of Association. In fact, the only - weak - indication of the will of the proponents in this sense could be found in the fact that, in commenting on the transitional clause 53.9 on the efficacy of Articles 30.6 and 30.9, the reason for this is indicated as being in order to avoid a destabilisation of the Board: which appears to evoke a briefly deferred expiry of the term of office the directors who do not meet the new requirements.

But it is hardly necessary to point out that the subjective intentions of the proponents on the scope and effects of the clause are not the interpretive criterion to be adopted in the present matter. In fact, in the interpretation of the Articles of Association, which form the basis of the organisational nature of the company contract - all the more so in a listed company with a very large shareholding - the voluntary element of the Proposing Shareholders is very unimportant, compared to objective interpretive criteria.

And the objective criteria—and primarily the literal one—leave no doubt that it is not **lack of possession but the loss of possession** of the eligibility requirements that is supported by the sanction of forfeiture of office.

After all, this reading is certainly preferable for two further reasons:

a) because it is in line with the legal provisions concerning the related eligibility requirements or those in the Articles of Association, which tie the invalidity of the appointment to the original absence of the requirements and the expiry of term to the lack, or the **loss**, in the words of clause 30.9, of certain requirements (and not for the supervening of new requirements);

b) because any other solution would imply an unacceptable retroactivity of the new clauses, which would equally unacceptably affect the rights of directors legitimately appointed on the basis of the rules attached to and in the Articles of Association existing at the time the mandate was granted.

With a further consequence, as will be explained in more detail below, that a different reading of the clause would be settled - for this reason also - in the violation of the principles on the basis of Shareholders' Meeting assumptions and powers over the appointment and, above all, the removal of directors. This reading would also be contrary to the legal rules on the termination of the directorship, which do not provide for a cause for termination of the office of director due to ineligibility requirements contained in the Articles of Association that did not exist at the time of his/her mandate and — as will be further explained – would result in a (crypto) decision to remove directors who perchance did not possess the new eligibility requirements, a decision not even on the agenda.

The preferred interpretation here, therefore, would also comply with the principle of preserving the clause intended to be included in the Articles of Association, otherwise unlawful if read differently.

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4. However, if it were to be considered that the clauses submitted for my examination had the effect of the forfeiture, within the period established at the transitional stage in Article 59.3, of directors who do not meet the new eligibility requirements, I believe that there are serious doubts as to the legitimacy of the clause, and thus of the resolution approving it, and I believe that in any case such expiry of the term of office - if it ever occurred - would expose the company to compensation for damages, as well as dismissal without just cause, in favour of the directors whose terms would be deemed to have expired.

This is for the following reasons.

The rules governing the requirements for eligibility for the office of director contained in the Italian Civil Code resolve in Articles 2382 and 2387 of the Italian Civil Code.

Article 2382 identifies and governs what are known as causes of ineligibility for the position of director: in the presence of causes at the time of appointment, there is nothing. If the cause of ineligibility occurs after the appointment, the director shall step down from office.

Article 2387, in the first paragraph, provides that the Articles of Association may subordinate the assumption of the office of director to the possession of requirements of integrity, professionalism and independence, including with reference to the requirements in this regard provided by codes of self-governance. The paragraph ends with the sentence "*Article 2382 shall apply* ***in such case***".

It should be noted immediately that both Article 2382 and Article 2387 have little or nothing to do with the subject that has brought to my attention. In fact, the first refers to lawsuits for ineligibility, and the second refers to the subordination of the assumption of the position to requirements that certainly do not identify with the circumstances typically indicated by the cited regulations. The exceeding the age of 75 or a certain number of years in the post of director, as provided in Article 30.6, letter c. and of the proposed amendments to the Articles of Association, does not concern the directors' good repute, professionalism

or independence. These requirements are not even included in the Corporate Governance Code for listed companies to which Article 30.2 of the Articles of Association seeks to define the independence requirements of at least ten directors.

This means that from these rules — by the I mean Article 2382 and Article 2387 - there can be no direct argument for identifying the legitimacy and scope of the amendments to the Articles of Association that are the subject of the proposed resolution. In particular, they do not intend to regulate in general terms the issue of autonomy of the Articles of Association in introducing requirements for the appointment of a director, both with regard to the admissibility of such introduction and with regard to its effects. Article 2387, in particular, seems to intend to grant to the autonomy of the Articles of Association the extension of the rules of regulations on legal cases of ineligibility for the office of directors — invalidity of appointment and immediate expiry of the term of office in the event of supervening grounds for ineligibility — precisely and solely to the eventuality of inclusion in the Articles of Association of requirements of integrity, professionalism and independence. These requirements, which, starting from the rules specific to special sectors (banking, financial, insurance), have assumed, especially in relation to listed companies, a role of particular importance in the design of a corporate governance efficient and attentive to the interests of the market and thus of institutional investors.

Therefore, if we wish to draw some interpretive indications from the rules in question, the literal content of Article 2387 of the Civil Code and thus the express reference to Article 2382 of the Civil Code seems to tie the mechanism of the invalidity of the appointment and, above all, the automatic expiry of the term of office of the director who loses the requirements related to eligibility to the special requirements of integrity, professionalism and independence, and not to any requirements of eligibility or assumption of the post of director provided for in the Articles of Association. And this - it seems to be possible to say with reasonable certainty - is precisely because those requirements and their maintenance were considered worthy of application of the specific normative safeguard guaranteed by Article 2382 of the Civil Code to causes related to ineligibility.

If this were the case, of course, Clause 30.9, in one with the transitional rule on its application, could only for this reason already appear unlawful: but, in this regard, I do not believe that this conclusion can be based only on the although not negligible observation just made.

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5. It is clear that the subject that was brought to my attention essentially concerns an issue not expressly regulated by the law: that is, the permissibility – and above all the relevant limits and regulations – for the autonomy of Articles of Association to introduce requirements of eligibility for the position of director.

Generally speaking, the legal doctrine has held that statutory autonomy was not precluded if eligibility for director of a company were conditional on meeting certain requirements. Some authors also hold – without any particular consideration of the concrete implications of this opinion – the view that negotiation autonomy could provide in the Articles of Association for an expiry of the term of office of director for the who lost the eligibility requirements indicated in the Articles of Association[1].

This autonomy of the Articles of Association, moreover, on the part of the authors themselves and by the case law which considered it permissible to exercise it, was deemed feasible within the limits on which it does not end up harming the exclusive and inviolable competence established by law for the Shareholders' Meeting to appoint and remove the company's directors[2].

The legal doctrine, in fact, has warned that setting of eligibility requirements in the Articles of Association can result in an inadmissible narrowing of the power of the Shareholders' Meeting to appoint or remove — characterised by a close fiduciary relationship with shareholders — directors. The examples and issues dealt with by the doctrine mainly concerned cases in which in exercise of the autonomy of the Articles of Association adopted eligibility criteria so stringent as to identify only a particular person as eligible (the so-called *portrait clauses)* or only certain persons comprising the majority of the Board of Directors, which may exclude both the freedom of appointment and the freedom to remove the person, since he/she is in fact irreplaceable. In this regard, the legal doctrine, with reference to this exercise of autonomy of the Articles of Association, warned, on the one hand, of the risk that the autonomy of the Articles of Association, through the use of the eligibility criteria, creates impasse situations and, on the other hand, warned, in general, that the use of clauses in the Articles of Association that significantly restrict the competence of the Shareholders' Meeting for the appointment and removal of directors (increasing the risk now mentioned) must be examined in the light of the criterion of reasonableness and thus can be justified only with a view to the need to implement the corporate objective[3].

[1] G. CASELLI, in *Trattato delle Società per Azioni,* edited by Colombo - Portal, UTET, 1993, volume 4, pages 89-90.
[2] Court of Cassation, 14 December 1995, No. 12820, in Dejure, specifically in a case concerning questions concerning eligibility requirements, has clearly established this principle, also citing further precedents. BENCHES, *sub-section Article 2382,* in *Codice commentato delle società,* by Abriani — Stella Richter, UTET, 2010, p. 1056; MAGNANI, *Sub Article 2387,* in *Commentario breve al diritto delle società,,* Maffei Alberti, Cedam, 2017, p. 722; REGOLI, *sub. Article 2387,* in *Commentary to the Italian Civil Code,* Directed by Gabrielli, UTET, 2015, p. 233; SIRONI, *sub. Art. 2387,* in *Commentary on Company Reform,* edited by Marchetti, Bianchi, Ghezzi and Notari, Egea, 2005, p. 282.
[3] SANFILIPPO, *under Articles 2382 and 2387,* in *Le società per azioni,* edited by Abbadessa — Portale, Giuffrè Editore, 2016, pp. 1217 and 1281.

In other respects, the Supreme Court's just cited judgement[4] affirmed the invalidity of a clause in the Articles of Association establishing eligibility requirements for the office of directors, such that the will of an individual shareholder was able to determine the loss of the requirement of eligibility for the director[5].

These considerations are, in my view, of considerable importance in the assessment of the case before me. In fact, the Articles of Association contains clauses, which establish requirements for eligibility for the office of director not only have a value in relation to the appointment resolution: in fact, precisely if accompanied by an automatic expiry of term rule, not - as provided for by those I have examined - when the requirement originally possessed ceases to exist, but upon the introduction of new eligibility requirements, they end up objectively affecting the power of the Shareholders' Meeting to remove the director, bypassing it.

Similarly to those recognised by the legal doctrine in relation to the so-called "portrait" in which autonomy of the Articles of Association is exercised not to ensure characteristics objectively useful for the pursuit of the company object, but only to bind the Shareholders' Meeting to an appointment or appointment *ad hominem,* the clauses of the Articles of Association in question, in abstract or (more specifically) in relation to the pursuit of the proper purposes of shareholders who intend to introduce it, can well be read as a means of constricting the competence of the Shareholders' Meeting with regard to the removal of the director in general and with respect to directors who do not possess the specific eligibility requirements introduced *ex novo.*

This effect, it seems to me, is clearly realized in the matter that has been submitted to my attention where what is important is the fact that the introduction of additional eligibility requirements during the mandate (and therefore there is no need for independent reflection at the beginning of the mandate: a point that merits – as will be stated below – independent reflection) accompanied by a clause in the Articles of Association which establishes the immediate expiry of the term of office, or in any case – for the transitional clause – before the end of the mandate, for directors who in fact do not meet the requirements, is objectively settled (and therefore also regardless of the concrete circumstances of the matter, which will also be addressed later) by the removal of directors who lack them. A resolution that, with great difficulty, could perhaps be seen as a constructive resolution in the decision to approve the amendments to the Articles of Association: but the report, in the interests of those who proposed it, is silent on this effect and remains entirely laconic on the identification of the directors intended to be removed from office. In this author's opinion, it seems clear that this will have the effect (similar to the examples cited above) of affecting the Shareholders' Meeting's exclusive and inviolable right to decide to remove specific directors who, indirectly but no less clearly, are intended to step down from office without the Shareholders' Meeting having passed a resolution to remove them.

[4] Court of Cassation, 14 December 1995, No. 12820

[5] It was a clause that made the eligibility requirement and its failure substantially dependent on the will of the designating member.

The result of this gives rise to doubt both on the legitimacy of the changes to the Articles of Association that would produce this effect, and consequently on the validity of the relevant resolution.

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6. So far, the issues brought to my attention have been assessed with general reference to the introduction of eligibility requirements for directors when exercising autonomy in the Articles of Association.

However, all the reflections carried out by the legal doctrine on the matter — as well as the legal rules established in Articles 2382 and 2387 of the Civil Code. — refer to a case that is significantly different from that submitted to my attention and on which, as far as I know, there are no academic studies or case law interventions, except for one of which I will give an account below.

In fact, the aforementioned doctrinal and case law contributions have addressed the issue moving from the consideration of analysis of clauses of the Articles of Association that introduce eligibility requirements and provide for related expiry of the term of office in the event of their loss. They then examine their admissibility and operation with regard to the position of the directors appointed in the course of these clauses.

In this case, the sanction for the invalidity of the appointment of directors without *ab origine* of the requirements existing at the time of appointment is explained, as well as the immediate sanction of expiry of the term of office in case of supervening lack of the requirements, legal or Company Articles of Association that are applicable at the time of appointment. In such cases as also noted above, such clauses cannot be structured in such a way as to affect the competence of the Shareholders' Meeting to appoint and remove directors.

But, in this case, the clauses submitted to me present a peculiarity that raises even more doubts about their legitimacy.

The Board of Directors, at the time of its appointment, possessed within each of its directors the eligibility requirements provided for by the Articles of Association.

Their appointment was therefore and is perfectly lawful.

Nor has there been any supervening loss of the eligibility requirements, either legal or in the Articles of Association, which could result in the imposition of the sanction of expiry of the term of office.

Article 2382 of the Italian Civil Code (cited by Art. 2387 of the Civil Code) is unequivocal on this point: the director who is *appointed* is invalidly appointed if he/she does not have *ab origine* the legal or Articles of Association requirements for eligibility, and *if appointed* shall his/her term shall expire if he does not possess such requirements or if, while originally possessing such requirements, he loses them and becomes barred, disabled, bankrupt, convicted, or no longer "professional", "honourable", or "independent", according to the requirements laid down at the time of his appointment.

In the present matter, instead, the legal and statutory requirements provided for at the time of appointment, were imposed on the directors at the time of appointment, were there at the time of the resolution and will be there after the resolution.

Therefore, what would happen (or would be done by the proponents) in the event of approval of the clauses of the Articles of Association in question is not what is provided for in Article 2382 or 2387 of the Italian Civil Code, or what legal theory and case law deem lawful, provided that in practice the clauses of the Articles of Association do not affect the powers of the Shareholders' Meeting with regard to the appointment or removal of directors.

The effect of the covenants that are sought to be obtained[6] — **not covered by any general or special rule on the Directors' eligibility requirements** — is as follows:

a) introducing **new — previously non-existing — statutory eligibility requirements, and;**
b) binding the introduction of new and different eligibility requirements, during the term of office, an *atypical* cause for immediate expiry of the term of office, consistent with the mandate of (only) directors who do not have the **new** requirements needed to be elected as a director[7].

In my opinion, this outcome is even greater than the scenario examined in the previous paragraph, both to the effect of affecting the powers of the Shareholders' Meeting with regard to the removal of directors and, indeed, to a greater extent to the entire process of appointment of directors. In fact, the rule in question is susceptible to a "selective" expiry of the term of office *ex post* of directors legitimately appointed in full regularity according to the requirements of legal eligibility and the Articles of Association. It thus also exposes itself to a violation of the contractual obligation between director and company established by the Shareholders' Meeting at the time of the granting a mandate and its acceptance. Furthermore, as in similar cases case law has had the opportunity to affirm, it is open to possible censure of a self-serving use of the introduction of such new requirements, in particular with regard to the immediate expiry of the term of office of directors who do not possess the new

[6] Unless, of course, the interpretation that I considered preferable at paragraph 3 and that does not lead to the expiry of term effects in question is correct.
[7] We shall recall the relevant clauses for ease of reading. Article 30.9 *"The loss during the mandate of the requirements referred to in Article 30.6results in the immediate expiry of the term of the director"* (Article 30.9), to which is added the transitional provision already mentioned which establishes the entry into force of the amendments referred to in Article 30.6 and 30.9 at the later of the date of approval of the company's financial statements as at 31.12.2019 and the date of entry into the company register of the resolution approving the amendments to the Articles of Association.

requirements for statutory eligibility.

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7. Under the first of the profiles now indicated, it is clear that the mechanism provided for by the regulation is of even greater derogatory importance for the mandatory competence of the Shareholders' Meeting than that which may result from expiry of term effects relating to causes of ineligibility existing before the mandate. In fact, the clauses forming the subject of my examination add to these aspects of unlawfulness that have also been mentioned here to affect the same contractual relationship between the company and the director, based on the irrevocable power of the appointment meeting (in accordance with the relevant laws) and the consequent contractual obligation concluded by the acceptance of the mandate by the directors. In a recent case decided by the Court of Milan[8], in which it was discussed whether it was lawful to replace a director during his term of office, passing a resolution on a change in the Articles of Association that provided for the transfer from the board administration to that of a sole director, the judgement stressed that "*the resolution to appoint the administrative body and an organisational act (between companies and directors) ... which binds the parties pursuant to Article 1372 of the Italian Civil Code until the natural expiry of the mandate, except in the event of possible reasons for termination of the mandate*", cases listed by the Court, and among which, of course, there is no amendment of the Articles of Association, subject to my examination, of the introduction *ex post* of an expiry of the term of office due to a lack of eligibility requirements introduced later.

And, the judgement continues, the replacement of the administrative body - other than in the typical cases (and thus possibly a revocation resolution, with its consequences) - before the end of the mandate is permissible only in the presence of "*the need to protect a specific, well-identified corporate interest* an interest which, with reference to the clauses in question and in particular the 30.9 *ex post* expiry of term clause of directors without the requirements introduced after the granting of a mandate, should be that having the term the Chairman of the Board of Directors and the two Deputy Directors immediately expire. This interest is very peculiar and it appears evident that it has nothing to do with the Good Government project, for which the introduction of new eligibility requirements may be significant, but certainly not the retroactive expiry of term sanction imposed on those who, possessing all the eligibility requirements required at the time of granting of their mandate, are entitled – failing a specific removal resolution – to remain in office, otherwise it would expose the company to a claim for compensation.

[8] Milan Court, 23 April 2019, in www.giurisprudenzadelleimprese.it

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8. With regard to the second of the profiles indicated in paragraph 6, the subject of possible objective assessment, with a view to instrumental use or abuse of voting rights of clauses 30.9 and 53.9 is highlighted.

As mentioned at the beginning of this opinion, the amendments to the Articles of Association link the Board of Directors' removal of the powers to the Chief Executive Officer, who immediately reacted to a pre-announced request for the Shareholders' Meeting called for by shareholders holding more than one-fortieth of the share capital. The meeting was then formally convened on 18 December 2019 with the agenda indicated above, containing a series of amendments to the Articles of Association, described in the explanatory report of the proposers as Good Government rules. These include changes to the eligibility requirements for the office of administration, the effect of which (if one does not accept the interpretation I gave in paragraph 3) would be to lead to the expiry of the term of office of the position of director for the directors who do not meet the new eligibility requirements.

If this were indeed the outcome of the amendments to the Articles of Association, and if it were to be considered that, despite this effect, such amendments could be deemed lawful, it seems obvious to me, on the basis of the concrete events that led to the call for the extraordinary Shareholders' Meeting, that this outcome would include a substantial effective removal without just cause of the directors without the new requirements, with the consequent certain exposure of the company to compensation for damages in favour of such directors and the emergence of serious doubts as to the legitimacy of the resolution. This is moreover confirmed by the fact that the resolution to remove the directors for just cause requires, based on consistent case law[9] the specific indication, at the Shareholders' Meeting, of the reasons that would be needed to support the removal. What is by definition missing in the case in question where removal would be the indirect outcome of the insertion of a clause in the Articles of Association, to which no good reason can be inferred.[10]

I also note that there may be grounds for the invalidity of the resolution.

The issue of the removal of directors through the use of clauses of the Articles of Association which lead to the expiry of office of directors is nothing new. Indeed, case law, particularly with reference to the clause "*simul stabunt, simul cadent*" has, understandably, stigmatized its indirect use to obtain the removal of unwelcome directors precisely in the presence of intra-company conflicts (both within the Board and within the shareholder structure), without passing — as should be — through a resolution of the Shareholders' Meeting bringing the dismissal of the directors to the agenda.

[9] Court of Cassation 26/01/2018, no. 2037; Court of Cassation No. 23557 of 12/09/2008; Milan Court, 17/12/2018, www.dejure.it.

[10] Furthermore – and correctly – case law has for some time pointed out that internal organisational requirements in themselves do not constitute just grounds for dismissal See Milan Court, 26-1-1987, in Società, 1987, 709; see G. CASELLI, in *Trattato delle Società per Azioni,* edited by Colombo — Portal, cited, p. 82.

In particular, case law has classed as a conduct contrary to good faith and propriety in the context of the company contract, if not just an abuse of the right by the directors and shareholders, that for which the resignation of one or more directors is used to cause the entire board to step down, unless then, subsequently, it appoints a new board composed of the same previous directors, without prejudice to unwelcome directors which are thereby essentially removed without just cause and in the absence of a shareholders' resolution bringing the dismissal of the director to the agenda, thereby also violating the competence of the Shareholders' Meeting to decide on the dismissal of the directors[11].

Such an assessment can certainly, in my opinion, be carried out with regard to the matter brought to my attention. Although certainly more elegant than the described use of the clause *simul stabunt, simul cadent*, the combined provisions of Articles 30.9 and 59.3, with regard to the new eligibility requirements, translate precisely into the selective removal - without a specific resolution and without just cause, on the basis of a retroactive application of the new eligibility requirements - of some board members who do not possess the new requirements built *ad hoc* in the new version of Article 30.6.

Nor is this outcome justified by a specific company interest. In fact, even if one wished to consider this the achievement of the aims of "Good Government" desired by the proponents, it does not derive from the fact that the current incumbent directors - elected in accordance with the Articles of Association and equipped with all the eligibility requirements - are immediately removed if they do not possess the new eligibility requirements, nor does it depend on the application of legal rules.

Article 30.9, in unison with the transitional rules, seems to have the sole objective outcome (and thus the goal) of removing from the Board three certain members of the Board, and in particular three members of its senior management - the Chairman and the two Deputy Directors - in the aforementioned situation of conflict between the Board and the former CEO and in which the proposers have recalled this conflict as the reason for the amendment of the Articles of Association, and in this way, also of the rule in question. That the fact that the call for the Shareholders' Meeting for the approval of a proposed amendment to the Articles of Association is not (only) the request for a reform of governance but is a moment of "close discussion" between the Board and the proposers is de facto not questionable and has, as such, been described in the records. That the objective of the immediate expiry of the term of office clause pursuant to Article 30.9 is to obtain the removal of the Chairman and the two Deputy Chairmen of the Board, which is essentially a forfeiture clause due to the absence of eligibility requirements which did not exist at the time of appointment, without going through the Shareholders' Meeting, is, in my view, equally clear.

The principles already expressed and reflected in the aforementioned precedent of the Court of Milan[12]

[11] D. ARCIDIACONO, *under Article 2383*, in *Le Società per Azioni* edited by Abbadessa — Portal, cit., p. 1236. In case law: Tr. Milan Court 20/04/2016 in www.dejure.it; Milan Court 13/03/2015; Rome Court 22/01/2014; Milan Court 28/12/2012; Milan Court 7/11/2012 in www.jurisprudencethe companies.it.
[12] Milan Court, 23.4.2019, cited above

are therefore once again highlighted, in that they affirm that a resolution seeking to replace a director by abuse of the right to vote can be voided by means of an amendment to the Articles of Association that transmutes the board administration into a single individual, where it is not in the company's specific interest and results in a prejudice to the director's lawful rights. This principle can also be considered to apply to the case in question.

Finally, I should add that the resolution approving Articles 30.9 and 59.3 under the terms indicated by the proposers could also be said to have been vitiated by a lack of information on the consequences of its adoption, in particular the selectively mandated expiry of the term of office the Chairman and the two Deputy Directors, which is an integral part of their removal, which is not on the agenda, is devoid of cause and exposes the company to compensation liability (in addition to the aforementioned profiles of unlawfulness for the clauses in question and the resolution approving them).

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9.Finally, I consider it appropriate to bring to the attention of the Committee a further issue that could be raised with regard to the possible application of the Articles of Association clauses submitted for my review. The conclusion that the amendment of the Articles of Association's rules on eligibility requirements cannot lead to immediate "selectively" mandated expiry of the term of office of directors due to the absence of the new eligibility requirements is indirectly confirmed in an opinion of the Triveneto dei Notai Committee (H.C.14). This guideline states that if the amendments to the Articles of Association relating to the composition of the administrative body are adopted that are incompatible with the previous provisions, the incumbent administrative body shall be deemed to automatically cease with the amendment decision entered in the companies register. The example that is given is that of a change in the number of directors, in the presence of a decrease or an increase in the number of directors.

The same situation would, it seems to me, arise if the amendments were approved, were deemed valid and the new eligibility requirements of the Board of Directors were affirmed in accordance with the transitional rules of Article 53.9 and not at the time when the Shareholders' Meeting is called upon to re-elect, at the end of its term of office, the new board: a Board of Directors would be formed on the basis of rules no longer compatible with those existing.

Moving on from what is considered in the aforementioned guideline, the mandated expiry of the term of office of the entire board should then be the inevitable consequence of the entry into force of the amendments to the Articles of Association. In fact, the board as a whole - as a body - would have been elected on the basis of rules of the Articles of Association incompatible with those sought by the shareholders. The Shareholders' Meeting and participating shareholders had appointed as directors individuals who possessed all the requirements for election and maintenance of their positions until the end of their term of office: on this basis, they oriented their vote. Subsequent amendments therefore highlight the requirement that entire Board's term, formed with a relationship of trust on the basis of the

legal and Articles of Association criteria of eligibility, shall expire due with the entry into force of the new rules so that the Shareholders' Meeting can, without any indirect "circumvention" of the vote cast, rename the entire Board on the basis of the new eligibility requirements, without having to suffer, due to a selective decline based on the eligibility requirements introduced during its mandate, a Board of Directors with reduced ranks or composed of co-opted individuals. However, the outcome of this finding does not even appear to be anticipated by the proposers of the resolution, and confirms the serious concerns raised about the validity of the clauses of the Articles of Association examined.

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10. I shall summarise the conclusions I have reached.

Should the interpretation of clauses 30.9 and 59.3 set out in paragraph 3 of this opinion not apply, and thus excluding any effect of expiry of the term for the directors in office on the introduction of the new eligibility requirements referred to in clause 30.6, I believe that:

a) Clauses 30.9 and 59.3, as well as the resolution approving their inclusion in the Articles of Association, are exposed to serious doubts as to their legitimacy, both because of the substantial violation of the mandatory competence of the Shareholders' Meeting on the matter of appointment and removal of directors, both because the shareholders would be called on to decide in fact to remove directors who do not possess the new requirements of eligibility, without even resulting from an agenda, both because it would postulate an inadmissible retroactivity of the effects of a clause of the Articles of Association, impacting, with a profile of ineffectiveness, the rights of directors declared to have lapsed due to the lack of eligibility requirements introduced after the appointment and not previously existing, and, finally, because in concrete terms an abuse or self-serving use of the right to vote could be identified.

b) these invalidity profiles are exacerbated if one considers that the company is listed on the stock exchange and that the TUF [Consolidated Law on Financial Intermediation] legislator has significantly enhanced the subject of pre-Shareholders' Meeting information and the agenda. Indirect usage of amendments to the Articles of Association and ad hoc lapsing clauses in order to lead in concrete terms to the selective removal of the Chairman and the two Deputy Chairmen of the Shareholders' Meeting without this forming the subject of specific disclosure and not being placed on the agenda, trusting in the effect of expiry of the term of office created by an ad hoc amendment to the Articles of Association and not by legal rules, may further expose the Shareholders' Meeting resolution to invalidity.

c) however minimal, and in my view certain, the outcome of a resolution approving the amendments to the Articles of Association contained in clauses 30.6, 30.9 and 53.9 – which would entail the immediate expiry of the term of office, or within the period established in Article 53.9, of directors without the new requirements of ineligibility – would be exposure of the company to the liability for compensation of directors whose offices are to expire as a result of the said clauses, due to the fact that such expiry of the

term of office is equivalent to removal from the position of director without just cause.

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Thank you for your confidence and I am available for any clarification.

[Signature]
Matteo Rescigno