



•ALERT•

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The Business Crisis Code and the appointment of Supervisory Bodies in Limited-Liability Companies

THE BUSINESS CRISIS CODE AND ART. 379

On February 14, 2019, the Legislative Decree No. 14 of January 12, 2019 was published in the Official Journal, containing the "*Business Crisis and Insolvency Code*" (hereinafter, in brief, the "*Crisis Code*"), which, among other provisions, affects with various provisions the rules laid down by the Italian Civil Code on business matters.

Among the most relevant innovations, considering its practical implications in the short-term, there is undoubtedly the one introduced by art. 379 of the Crisis Code.

Pursuant to art. 389 of the Crisis Code, the rule will be in effect from March 16, 2019, and, through the amendment of art. 2477 of the Italian Civil Code, it will have a significant impact on the appointment of the supervisory body or auditor in Limited-Liability Companies (hereinafter, in brief, "LLCs") substantially extending its mandatory requirement.

WHAT NEWS?

There are three main innovations introduced by art. 379 of the Crisis Code regarding the appointment of the supervisory body or the auditor in LLCs.

First, the new rule lowers the "size limits" which make the appointment of the control body or the auditor compulsory, pursuant to art. 2477, paragraph 3, of the Italian Civil Code. Therefore, the LLCs obliged to appoint the supervisory body will be those:

- required to draw up the consolidated financial statements;
- controlling a company obliged to have its accounts audited;
- exceeding for two consecutive financial years at least one of

the following limits: *(i)* total assets resulting from the balance sheet of € 2,000,000.00 (the current limit is € 4,400,000.00); *(ii)* revenue from the sale of goods and services of € 2,000,000.00 (the current limit is € 8,800,000.00); *(iii)* average number of employees employed during the financial year amounting to 10 units (the current limit is 50).

Secondly, the new rule extends the time span relevant for the assessment of the conditions that determine the termination of the duty to appoint the supervisory body or the auditor. Specifically, the supervisory body's or auditor's appointment duty will cease, pursuant to art. 2477, paragraph 3, of the Italian Civil Code, if the above-mentioned "size limits" are not exceeded for three consecutive financial years (and no longer for two, as currently provided for by art. 2477, paragraph 4, of the Italian Civil Code).

At last, in case of inaction of the LLC required to appoint the supervisory body or the auditor, the hypotheses of the court's "replacement" intervention are extended. If the shareholders' meeting does not appoint the supervisory body or the auditor within 30 days of the approval of the financial statements, the court will do so, or - as already provided for in art. 2477, paragraph 6, of the Italian Civil Code - upon request of any interested party, or even upon recommendation of the Registrar of Companies.

SINCE WHEN?

Regarding the temporal application of the innovations introduced by art. 379 of the Crisis Code, it is necessary to distinguish between:

- LLCs already incorporated on March 16, 2019, which will have time to comply with the new provisions until December 16, 2019, adjusting, if necessary, the memorandum and the articles of association; and
- LLCs incorporated after March 16, 2019, which will have to comply with the obligations imposed under the new rules starting from the incorporation date and, therefore, practically immediately.

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