

## Gender balance within administrative and control bodies of listed companies: starting from August 2012 the by-laws of all Italian listed companies shall have to be amended to ensure the gender diversity

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Law no. 120 of 12 July 2011 ("Law 120") represented a very important procedural step in the gender diversity awareness in the Italian legal system.

It amended Italian Legislative Decree no. 58 of 24 February 1998 ("Consolidated Law on Finance" or "TUF") requiring the introduction of by-laws provisions aimed at reserving to the least represented gender within the administrative and control bodies of Italian listed companies a quota equal to at least one third (1/3) of the appointed Directors and Statutory Auditors.

On 8 February 2012 by Resolution no. 18098, the Italian Authority on Stock Exchange, CONSOB, implemented Law 120 by introducing the new Section 144-undecies of the Regulation of Stock Issuers, which contemplates the by-laws amendments that have to be carried out in order to ensure gender balance within the corporate bodies of listed companies.

In particular, starting from August 2012, the By-laws of all Italian listed companies shall have to regulate:

- (a) the modalities for the composition of the lists, as well as any additional identification criteria of corporate bodies' members allowing the compliance with gender balance within the voting procedures;
- (b) the modalities for the replacement of the members of the corporate bodies ceased from office, taking into account the criteria for gender diversity allocation;
- (c) the modalities for the exercise of the appointment rights, if any, not in contrast with gender balance principles.

It is interesting to point out that - as suggested by many authors during the consultation procedure - CONSOB decided that the by-laws cannot impose the compliance with the gender balance criteria to the lists with less than three (3) members.

Should the compliance with the gender balance criteria not result in an integer number of the members of the administrative and control bodies belonging to the least represented gender, the Regulation provides that such number is rounded up to the following unit.

In case of violation of Law 120, new Section 144-undecies of the Regulation provides that, in case of non-compliance with the notice issued by CONSOB to the companies in breach of the gender balance criteria, the Authority shall grant an additional term of three (3) months, after which all the appointed members of the corporate bodies shall automatically cease from office, without prejudice to the further sanctions imposed to the listed company pursuant to applicable laws.

The Italian Ministry of Labour, Ms Elsa Fornero, recently declared that she is well intentioned to supervise in order to ensure compliance with the new provisions on gender balance set forth by Law 120.

The amendment to the Regulation has come into force on 18 February 2012 and shall apply to all renewals of corporate bodies in listed companies starting from August 2012 (for the first mandate a quota equal at least to one fifth (1/5) shall be tolerated).

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