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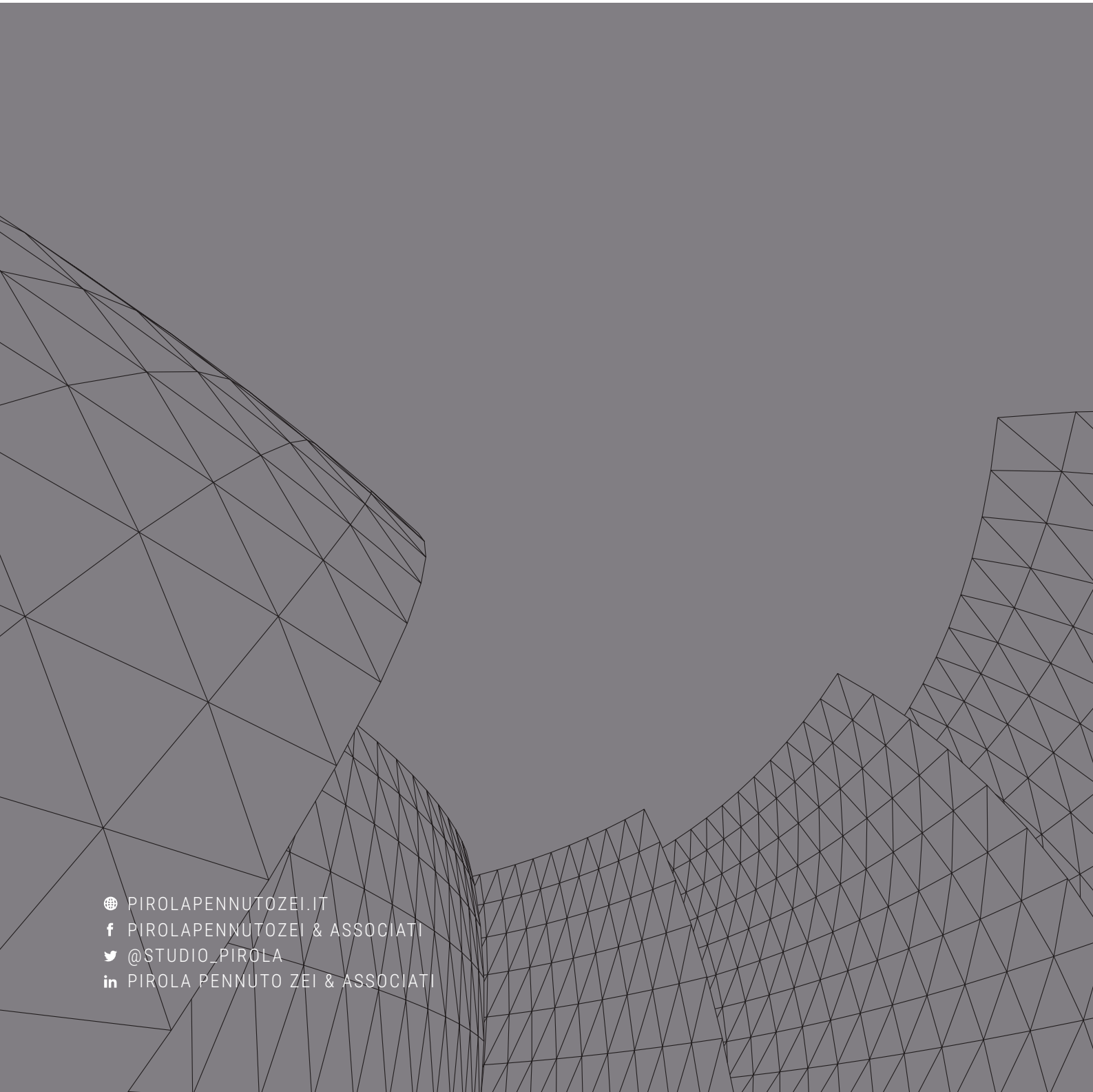
LEGAL

NEWSLETTER / JUNE 2018



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LEGISLATION

1.1

Decree of the Ministry for the Environment no. 56 issued 21 March 2018 "*Regulation to implement the voluntary national scheme to evaluate and communicate the environmental footprint of products" referred to as "Made Green in Italy*", pursuant to art. 21(1) of the former Connected Environment" (Official Gazette 29 May 2018, no. 123)

With Decree 21 March 2018, no. 56, published in the Official Gazette of 29 May 2018, no. 123, the Ministry for the Environment issued a regulation to implement the voluntary national scheme to evaluate and communicate the environmental footprint of products, "*Made Green in Italy*". This is done with the aim of promoting the competitiveness of the Italian production system in light of the growing demand for environmentally friendly products both nationally and internationally.

Essentially the scheme is a new voluntary environmental "*brand*", with a corresponding logo which can be affixed to those Italian products that, having been assessed by an independent accredited verifier, meet the requirements of the regulation (environmental footprint, DIAP (*dichiarazione di impronta ambientale di prodotto* - product environmental footprint declaration) compliance with product regulations and the reference CPR (*regole di categoria di prodotto* - product category rules), compliance with any applicable CAM (*criteri ambientali minimi* - minimum environmental criteria).

The Regulation was drafted in implementation of Article 21(1) of the Connected Environment (Law 221/2015) which established the national scheme and provided that the operating methods were to be established by subsequent decree (Ministerial Decree 21/3/2018). The logo "*Made Green in Italy*" can be affixed to products referred to in art. 2(v) of the Ministerial Decree: "*products originating in Italy which comply with the provisions of art. 60 of Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013, laying down the Union Customs Code, and its implementing provisions*".

The Decree came into force on 13 June 2018.

1.2

Ministry of Labour and Social Policies - Decree 27 April 2018 - "*Provisions governing the conversion, merger, division, transfer of business and assets of social enterprises*" (Official Gazette 18 June 2018, no.139)

In its Decree of 27 April 2018, entitled "*Provisions governing the conversion, merger, division, transfer of business and assets of social enterprises*", the Ministry of Labour and Social Policies set out the methods by which social enterprises are to carry out the extraordinary operations of conversion, merger, division and transfer of business and the way in which the names of the recipients of devolved assets are to be communicated, should the enterprise be dissolved voluntarily or should it lose its status as a social enterprise. The decree, in force as of 3 July 2018, was published in Official Gazette no. 139 on 18 June 2018.

Pursuant to this Decree, any intention to execute an extraordinary transaction involving the conversion, merger, division or transfer of business or branch carrying out activities in the public interest, must be communicated to the Ministry of Labour and Social Policies by way of written notice with certified date, by the management of the social enterprise.

Based on the documentation produced by the social enterprise, the Ministry is to verify that the extraordinary operation does not alter the not-for-profit character of the enterprise, the destination constraints of its assets, its pursuit of general interest activities, and that the persons taking control as a result of the operation do not change its corporate purposes of civic and social utility and solidarity.

At the end of the investigation, the Ministry is to issue either the authorization requested or a refusal order. In the absence of an express order being issued within ninety days after receipt of the notification, authorization is intended as having been granted.

In relation to the legal structure of the social enterprise, the provisions of Arts. 2498 to 2506-*quater* Civil Code also apply to all conversion, merger and demerger operations.

1.3

Legislative Decree 5 May 2018, no. 68 - "*Implementation of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution*" (Official Gazette 16 June 2018, no. 138)

With Legislative Decree 5 May 2018, no. 68, published in the Official Gazette of 16 June 2018, no. 138 and which came into force on 1 July 2018, the government implemented Directive (EU) 2016/97 on insurance distribution.

The provision provides greater guarantees for customers by way of the consolidation of systems of control, from the creation of the insurance product to its introduction into the market.
In summary, the Decree introduces the following:

- *Internal systems for reporting violations:* it is provided that insurance or reinsurance undertakings, and insurance and reinsurance intermediaries, including ancillary insurance intermediaries, are to set up specific internal procedures for personnel to report facts or actions that may constitute violations of the rules governing the activity;
- *Product governance and control requirements:* insurance companies and insurance intermediaries which create insurance products for sale to customers should operate and maintain a review process of each insurance product. Before any significant change made to an existing insurance product is marketed or distributed to customers, the documentation related to the product approval process must be sent, upon request, to IVASS (*Istituto per la vigilanza sulle assicurazioni - Institute for the Supervision of Insurance*);
- *Supervisory and control powers:* these are to be exercised by IVASS and CONSOB as applicable and in accordance with the procedures for the exercise of their respective supervisory powers;
- *Out-of-court resolution of disputes:* all disputes with customers relating to insurance benefits and services deriving from all insurance contracts, without any exception, must comply with the out-of-court dispute resolution systems;
- *Registration of insurance and reinsurance intermediaries:* it is envisaged that these bodies:
  - have legal personality under private law;
  - have statutory, organizational and financial autonomy;
  - are in the form of an association, to which the functions and responsibilities to keep a register of insurance and reinsurance intermediaries are transferred;

- are subject to the supervision of IVASS.

- Sanctions system: the Decree reinforces the system for sanctioning violations of the rules on insurance distribution. In addition to administrative fines imposed on individuals, non-pecuniary sanctions have been introduced.

Lastly, for the purpose of increasing customer protection and after having heard the positions of the most representative associations of insurance intermediaries, insurance companies and consumers, the Decree establishes that IVASS and CONSOB can define standard methods to guarantee the profiling of customers to ensure a unique profile, identifying a tolerable level of risk for the customer.

1.4

Legislative Decree 11 May 2018, no. 63 - "*Implementing Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure*" (Official Gazette 7 June 2018, no. 130)

Legislative Decree 11 May 2018, no. 63, Implementing Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, was published in the Official Gazette 7 June 2018, no. 130.

The Decree defines trade secrets as corporate information and technical-industrial experience, including commercial information, subject to the lawful control of the holder, where such information:

- is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- has commercial value because it is secret;
- has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

The lawful holder of trade secrets has the right to prohibit third parties, unless consent has been given, from acquiring, disclosing to others or using those secrets in an abusive manner, except when they have been independently discovered by the third party.

The Decree also amends art. 623 of the Penal Code, now entitled "*Disclosure of scientific or commercial secrets*". Pursuant to this article, anyone who comes to know of any trade secrets or information intended to remain confidential vis-à-vis scientific discoveries or inventions, through their status, office, profession or trade, and then discloses them or uses them for their own profit or the profit of third parties, is punished with a two year prison term. The same penalty applies to anyone, having acquired commercial secrets in an abusive manner, discloses them or uses them for their own profit or the profit of third parties. The penalty is increased if the offence is committed through cyber means. The Decree came into force on 22 June 2018.

1.5

CONSOB - Resolution of 31 May 2018, no. 20465 - "*Regulation containing implementing provisions of Legislative Decree 21 November 2007, no. 231 and subsequent amendments and additions on the organisation, procedures and internal controls of statutory auditors and auditing firms with auditing engagements on public-interest entities or on entities subject to intermediary regime, for the purposes of preventing and combating the use of the economic and financial system for the purposes of money laundering and funding terrorism.*" (Official Gazette of 13 June 2018, No. 135)

Resolution no. 20465 of 31 May 2018 of the National Commission for Companies and the Stock Exchange - CONSOB, concerning the "*Regulation containing implementing provisions of Legislative Decree 21 November 2007, no. 231 and subsequent amendments and additions on the organisation, procedures and internal controls of statutory auditors and auditing firms with auditing engagements on public-interest entities or on entities subject to intermediary regime, for the purposes of preventing and combating the use of the economic and financial system for the purposes of money laundering and funding terrorism*" in force from 1 July 2018, was published in the Official Gazette of 13 June 2018, no. 135.

The Resolution specifies that the general provisions contained therein apply to statutory auditors and auditing firms with auditing engagements in relation to public interest entities or entities subject to an intermediate regime. The provisions apply to statutory auditors in a manner consistent with their roles as individual professionals and in proportion to the organizational structure in which they operate.

The Resolution provides that in introducing specific safeguards to mitigate and manage the risks of money laundering and terrorist financing, statutory auditors and auditing firms must:

-have clearly identified and sufficiently specialised resources, procedures and organizational functions;

-adopt objective procedures to analyse and assess the risks of money laundering and financing of terrorism to which they are exposed.

There are several obligations detailed in the Resolution to be carried out by the auditing body, depending on whether it has administrative or control functions.

It is also provided that the anti-money laundering function continuously verifies that corporate procedures are consistent with the objective of preventing and combating the violation of laws and regulations regarding money laundering and terrorist financing.

CASE LAW

2.1

Bankruptcy - General partnership - Responsibility of the shareholder - Court of Cassation, Sec. VI, Decision 1 June 2018, no. 14069

With Decision of 1 June 2018, no. 14069, the Court of Cassation referred to art. 147(2) Bankruptcy Law, which provides that "*the bankruptcy of shareholders cannot be declared more than one year after the dissolution of the partnership or the termination of unlimited liability, including where there has been conversion, merger or division, provided that the formalities to inform third parties have been observed. Bankruptcy can only be declared if the insolvency of the partnership relates, in whole or in part, to debts existing on the date of the termination of the unlimited liability*". The Court then clarified that, in line with the purpose of this article, this period of time is to be calculated by taking into account the date of the bankruptcy judgment, even if it was issued following an appeal for an arrangement with creditors presented within the year, but then declared inadmissible after that deadline.

2.2

Managing Director - Conflicts of interest on a resolution - Compensation – Proof of damage - Court of Cassation, Sec. VI, Order 1 June 2018, no. 14072

With Order of 1 July 2018, the Court of Cassation clarified, in relation to responsibility under art. 2391 Civil Code, that "*a company, claiming to have suffered damages from the non-fulfilment of the director's obligation to provide information, still bears the onus of proving the damage and the causal relationship*".

2.3

Bankruptcy - Opposition - New exceptions - Admissibility - Court of Cassation, Sec. I, Order of 4 June 20158, no. 14240

With the Order issued on 4 June 2018, no. 14240, the Court of Cassation clarified that "*during the hearing at which the deed of appearance in opposition is presented under art. 99(7) Bankruptcy Law, the official receiver can raise ex novo the exceptions as to procedure and merit which cannot be raised ex officio". The Court also confirmed the case law orientation according to which "as the injunctive request to have*

the schedule of liabilities excluded does not constitute a contestation, it is not considered to be an appeal. As a result, the area of the "exceptions which cannot be raised ex officio" is fully regulated by art 99 Bankruptcy Law. This rule, as is known, does not provide any preclusion for new exceptions, and it would thus be arbitrary to introduce exclusions in this regard" (see Cassation No. 7918/2012 on this point).

2.4

Execution challenge - electronic communication - terms - Court of Cassation, Sec. III, Decision 12 June 2018, no. 15193

In relation to the process of execution, the Court of Cassation affirmed the following principle of law, in its Decision 12 June 2018, no. 15193: "*On the basis of the principle of the general correction of the nullity of procedural documents that have in any case achieved their purpose, the communication by the clerk of the court of an execution order which did not comply with the terms of art. 45 implementing provisions Code of Civil Procedure, is sufficient to begin the running of time within which to file a challenge to the execution order as per art. 617 Code of Civil Procedure, provided that the recipient is provided with de facto knowledge of the existence of a potentially prejudicial order. In this case the full text of the execution order was not reported. Notwithstanding the incompleteness of the communication, it is the responsibility of the recipient to take the necessary action to ascertain the complete order, without this interfering with the running of the twenty day period from the date of the incomplete communication. The challenging party has the onus of proving, if necessary, that the communication received was damaging to their rights to a defence*".

2.5

Bankruptcy – requirements disproving bankruptcy - proof - Court of Cassation, Sec. I, Order 18 June 2018, no. 16067

With Order issued on 18 June 2018, no. 16067, the Court of Cassation further stressed that "*in order to prove the existence of the requirements necessary to disprove the state of bankruptcy as per art. 1(2) Bankruptcy Law, the entrepreneur must provide the financial statements of the last three financial*

years. However, this is not a legal proof. Therefore, if this evidence is considered unreliable by the court, the entrepreneur must still prove the existence of the requirements necessary to disprove the state of bankruptcy" (see also Cass. no. 13746/2017, Cass.no. 24548/2016 on this point).

Pirola
Pennuto
Zei
& Associati
studio di consulenza
tributaria e legale

Via Vittor Pisani, 20
20124 Milano

T. +39.02.669951
F. +39.02.6691800

info@studiopirola.com
www.pirolapennutozei.it

LEGAL NEWSLETTER | JUNE 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 30 JUNE 2018.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY LEGAL DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.

FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM