



BANCA MONTE DEI PASCHI DI SIENA SPA

SHAREHOLDERS 'MEETING

11 April 2019 (single call)

EXPLANATORY NOTE BY THE BOARD OF DIRECTORS

ON ITEM 4 ON THE AGENDA OF THE SHAREHOLDERS' ORDINARY MEETING

**drawn up pursuant to Article 125- *ter* of Legislative Decree no. 58 of 24 February 1998,
as subsequently supplemented and amended**

PROPOSAL TO UNDERWRITE THE INSURANCE COVERAGE "DIRECTORS & OFFICERS LIABILITY" (D&O) AND CONSEQUENT REVOCATION OF THE "SELF-INSURANCE" SCHEME PREVIOUSLY ADOPTED BY THE SHAREHOLDERS' MEETING; RELATED AND CONSEQUENT RESOLUTIONS

REPORT OF THE BOARD OF DIRECTORS PURSUANT TO ART. 125- TER OF
LEGISLATIVE DECREE 24 FEBRUARY 1998 N. 58, AS SUBSEQUENTLY AMENDED.

Dear Shareholders,

this Shareholders' Meeting has been called to resolve on the following items on the agenda:

4. *Proposal to underwrite the insurance coverage "Directors & Officers Liability" (D&O) and consequent revocation of the "self-insurance" scheme previously resolved by the Shareholders' Meeting; related and consequent resolutions.*

1) Preliminary remarks

As is well known, the main Italian companies have for some time been underwriting " *Directors & Officers Liability* " insurance policies (hereinafter also referred to as "**D&O**") in their own name to cover the risks to be borne by the directors, top managers and members of the supervisory bodies, arising from any legal actions brought against them by the companies themselves or by third parties, in order to obtain their conviction for damages in relation to the performance of their own functions. In particular, this stipulation is also an act of specific interest for the company, since this policy is an instrument for the protection and guarantee of the claims for damages of the parties damaged by the conduct of the top managers.

2) The current regime of the Monte dei Paschi di Siena Group (hereinafter referred to as the "Group")

In relation to the coverage of these risks, a regime established by a shareholders' resolution passed on 1 September 1997 is currently in force. On that date, Banca Monte dei Paschi di Siena S.p.A. (hereinafter also referred to as the "**Bank**" or "**BMPS**") actually decided *"to extend to the Directors and Statutory Auditors of the Bank the protection provided by the collective agreements for the managers of the Bank itself, in the event of liability for any acts carried out in the performance of their functions, including any responsibilities relating to their involvement in criminal proceedings, with the express specification that the protection will not be due in the event of liability for any acts performed to the detriment¹ of the company. It is understood that the performance of the functions also includes the work carried out for the group companies and therefore the Board of Directors of Banca Monte dei Paschi di Siena S.p.A. will be entitled to extend a similar contractual provision to the members of the governance and administrative bodies of its subsidiaries"*.

¹ Therefore, in the case of willful misconduct or gross negligence.

On 29 November 1997, the Bank Board of Directors, implementing the above-mentioned shareholders' meeting resolution, adopted the *Regulations for the protection of the liability of the members of the administrative and supervisory bodies* of BMPS and decided to extend the regime to all the subsidiaries, subject to a resolution by the subsidiaries themselves.

With these resolutions, the Bank decided to directly bear the costs connected with the responsibilities and legal expenses the Directors and Statutory Auditors might incur as a result of the performance of their functions.

Subsequently, a similar resolution was passed - as instructed by the Parent Bank - also by the subsidiaries, in order to extend the protection in force for the Directors and Statutory Auditors of the Parent Bank to all the members of the Governance and Administrative Bodies of the subsidiaries. The protection in question does not apply to criminal proceedings if the director/manager has acted to the detriment of the Bank.

In the case of liability, the exclusion applies to the cases of wilful misconduct or gross negligence, where gross negligence must be assessed on the basis of the "qualified" diligence required from the Directors and Statutory Auditors of a company.

The Shareholders' Meeting held on 20 July 1998 also resolved to impose financial penalties on the Bank as a result of any breaches of tax provisions by the Directors, Statutory Auditors and Executives of the Bank, provided that they were carried out without wilful misconduct or gross negligence.

The administrative pecuniary sanctions imposed by the Supervisory Authorities are not covered by the current system of self-insurance, and shall be paid by the sentenced parties (top managers, directors and/or the company). In fact, this system of self-protection only covers legal costs, but not the amount of the sanction.

3) The proposed new insurance scheme

For the purpose of providing greater protection for the Bank - which under the current regime is fully liable for all resulting liabilities - and its shareholders, as well as its Directors and Statutory Auditors, the solutions adopted by the Group in this area should be aligned with the best market practices and the strategies of the main competitors (such as Intesa Sanpaolo, Unicredit and UBI, for example), by underwriting a specific D&O insurance cover. The objective is to hold the Bank harmless against any claims for damages for acts committed by its Directors, Statutory Auditors, top managers and members of the supervisory bodies (with the limit of wilful misconduct or gross negligence), persons better identified in paragraph 6 below (hereinafter referred to "**Directors, Statutory Auditors and Other Insured Persons**"). As detailed below, this solution limits the risk borne by the Directors, Auditors and Other Insured Persons and, in return for the payment of a premium and up to a maximum amount per year and per claim, transfers such risk to third parties, thus holding the Bank harmless and helping to protect its assets. This practice has also been adopted by other companies controlled by the Ministry of the Economy and Finance, such as ENI, Enel, Saipem, Leonardo and Poste.

D&O insurance policies offer significant advantages with respect to the current system of self-insurance, especially since the involvement of a third-party provider, as an insurer, ensures to limit the risk of any highly questionable situations between the Bank and its Directors, Statutory Auditors and Other Insured Persons.

A comparison of the main characteristics of the various options for covering the risks faced by the top managers confirms, therefore, the opportunity for the Corporate Governance Bodies to propose the underwriting of a D&O policy, in line with the main competitors, since, briefly:

- The D&O policy, unlike the 'self-insurance' regime, holds the Bank indemnified against any losses resulting from the conduct of its Directors, Statutory auditors and Other Insured Persons covered by the insurance, including legal costs², up to a pre-established maximum amount, by extending the scope of the insurance cover;
- The use of an external insurer allows, if decided, to eliminate any recurrence of decisions characterized by an intrinsic margin of discretion in the interpretation of the scope and possible applicability of the coverage in the system of self-insurance;
- In accordance with the policy, the risk of any losses resulting from any conduct attributable to its managers, who in any case are among the Insured Persons identified in paragraph 6 below³, in compliance with the provisions of Articles 6 and 7 of CCNL⁴, can be transferred (thus avoiding that the Bank is the only party incurring the related losses). The cover may also be provided for such managers for any actions taken in the capacity of director of subsidiaries of the Group (since the policy operates at Group level);
- On the other hand, the execution of a D&O policy with the definition of an appropriate and sufficient ceiling is an act of specific interest of the Bank, since this policy is an effective instrument of protection and guarantee of the claims of the parties damaged by the conduct of Directors, Statutory Auditors and Other Insured Persons failing such a specific insurance coverage, the actual possibilities of recovery of the sums which they had been sentenced to pay would be subject to the well-known difficulties of the enforcement of claims against individuals.

The underwriting of a D&O policy, also in view of the related constant decisions of the Courts, shall be subject to a shareholders' meeting resolution, for the following reasons:

- i) The current protection offered to Directors and Statutory auditors was approved by the Bank Shareholders' Meeting and therefore any repeal or amendment of these regulations shall be authorized by the same body that approved them, with revocation of the previous shareholders' meeting resolution, subject to authorization to underwrite the insurance policy;

² Including the costs incurred by the Bank for any actions for liability brought against its managers.

³ Including the General Manager and other officers, inclusive of those who are not executives.

⁴ Art.42 and 43 of the National Labour Agreement (CCNL) for Managers and Employees shall also apply to any officers with functions similar to the Executives in accordance with the policy, even though they are not formally designated as such.

- ii) The same resolution of 1997 stated that *"since it is a question of introducing a contractual provision affecting the relationship between the bank on the one hand and the Directors and Statutory Auditors on the other, the matter should be subject to a specific resolution by the shareholders' meeting"*. This reason is still valid and can be accepted also with regard to the concept of revocation of this regime;
- iii) The approach followed by other banks to the issues under examination considers that the option of underwriting D&O insurance coverage for the benefit of directors and statutory auditors of a company requires a prior favorable resolution by the shareholders' meetings. Therefore, it is proposed to authorize the stipulation of the insurance policy by resolution of the shareholders' meeting, granting the Board of Directors all the powers necessary for the implementation of this resolution, including, for example, the possibility of renewing the insurance cover, providing the Shareholders' Meeting with yearly information on the actual costs incurred and the scope of use of the coverage.

It should be noted that the majority shareholding of the Bank held by the Italian Ministry of Economy and Finance (MEF) does not imply that the Bank be qualified as a "public body" (nor would it qualify it as a "Body of Public Law" as provided for by Law no. 3 of 28 February 2008). Article 3, paragraph 59 of Law no. 244 of 24 December 2007, which excludes the possibility for a "public body" to underwrite insurance policies to cover its directors against any damage caused to the Government or public bodies, as well as by way of accounting liability (Administrative and Administrative Accounting Liability, so-called RAAC), cannot be applied. This approach is also confirmed by the legal opinions, drawn up by legal counsellors, which the Bank has obtained on this point.

In support of the proposed solution, it should be also noted that the use of such policies is justified, on the one hand, by the need to ensure the smooth performance of the functions of a director, in full compliance with the principles of the business judgement rule, and of an auditor; and on the other hand, by the need to encourage the assumption of office or duties by persons to whom the regulations and good corporate governance increasingly require high standards of professional qualification. Such policies provide for specific protection, within specific terms and conditions and up to the maximum limit, for the cases in which such persons are involved in administrative, criminal or civil proceedings brought against them for any acts committed during the exercise of their functions, in the event that, as a result of such proceedings, they are not held to be liable.

The D&O policy is a "Civil Liability" policy in the form of "claims made" which guarantees coverage during the period of its validity of the claims made against the Directors, Statutory Auditors and Other Insured Persons⁵ for any illegal, real or alleged, acts committed both during the insurance period and in any retroactive period agreed in the policy.

⁵ As identified in detail under par.6.

The D&O policy also covers the legal costs for the protection of Directors, Statutory Auditors and Other Insured Persons (normally prior authorization for the appointment of defendants), thus representing an advance payment that shall be reimbursed by the insured parties in the event of their possible judgement by a final sentence (res giudicata) that has established a liability for "wilful misconduct" or gross negligence of said parties.

Finally, the D&O policy guarantees the coverage of the company also in relation to facts attributable to the liability for gross negligence of its managers holding specific offices responsibilities, including the person responsible for Prevention and Protection (Legislative Decree 81/2008), Privacy (Legislative Decree 196/2003 of EU Regulation 2016/679) and the Financial Reporting Officer pursuant to Law 262/2005 and Article 154-bis of Legislative Decree 58/1998 (TUF).

With regard to the executives (including the General Manager), the provisions of the Banking Industry CCNL shall, in any case, continue to apply. More specifically, pursuant to art. 6 of the current CCNL for executives, coverage is guaranteed for the risks borne by the employees who are involved in criminal proceedings during the exercise of their functions. The contractual clause provides that the Bank shall be liable for any financial penalties and legal costs, including legal assistance (limited to a single lawyer chosen by the employee), provided that these are not acts or facts carried out in violation of instructions or provisions issued by the company or in any case if the conduct adopted is not in conflict of interest with the company. If the D&O policy is underwritten, the legal costs to be borne by the Bank deriving from the application of the CCNL, for the Insured Persons referred to in paragraph 6 below, would be covered (directly) by the insurance company, with clear cost savings. The Bank would be exempted from the obligation to pay this type of costs. Moreover, if the injured party is a plaintiff against the manager (involved in criminal proceedings), any compensation shall be borne by the Bank and this cost is covered (also in this case directly) by the policy proposed to be underwritten. The protection in question also concerns the executives against whom criminal proceedings are brought in relation to any acts committed during the exercise of their functions for the fulfilment of obligations imposed on the bank for money laundering, loan-sharking control, MIFID and privacy. Finally, the following Article 7 of the CCNL provides that the Bank *"shall bear the cost of covering third party liability - including any legal costs - resulting from the performance of the tasks, except in cases of wilful misconduct or gross negligence, of the managers particularly subject to the same risk"*.

If some managers (e.g. the manager in charge of prevention and protection) fall within the category of "middle managers", the provisions of Articles 42 and 43 of the CCNL for middle managers and professional areas shall apply⁶, also in enforcement of Article 5 of

⁶ *"..the companies shall bear the cost of covering third party liability - including any legal costs - resulting from the performance of the tasks, except in cases of wilful misconduct or gross negligence, of the managers particularly subject to the same risk"*.

Law No 190 of 13 May 1985⁷. In specific cases, these figures fall within the definition of Insured Persons (as identified in paragraph 6 below).

The administrative sanctions, which might be imposed on corporate representatives, for example, by the Supervisory Authorities, are not covered by either the CCNL (National Collective Labour Agreement) or the D&O policy, with the payment of the relative amounts to be borne by the sanctioned parties (whether they are the representatives and/or the Bank) in accordance with the provisions of the law, whereas the coverage of the expenses of legal assistance is guaranteed, within the above-mentioned limits and in the manner.

As mentioned above, the Other Insured Persons covered by the D&O policy are identified with a wording⁸ including a wide range of employees, even those not belonging to the category of managers, who might be involved in various ways in the events covered by the policy.

The D&O policy covers any claims made for the first time by third parties or by the company for any financial/pecuniary losses resulting from an illegal, real or alleged, act by the insured during the exercise of his/her duties as a director, statutory auditor or manager of the bank. These duties also include the same activities carried out at subsidiary companies on behalf/designation of the bank itself (so-called umbrella policy).

4) The Italian background for D&O policies

In accordance with the law (articles 2392 et seq. of the Italian Civil Code), the directors **are jointly and severally liable** for any damage caused to third parties or to the company in relation to the activity carried out by them during the exercise of their functions.

There might be many potential claimants, as shown in the chart below.

⁷ *"The employer shall insure the middle managers against third party liability resulting from fault during the fulfilment of their duties. This insurance shall be underwritten by the employer in favour of all its employees who – due to their functions – are particularly subject to the risk of third party liability".*

⁸ See par.6.

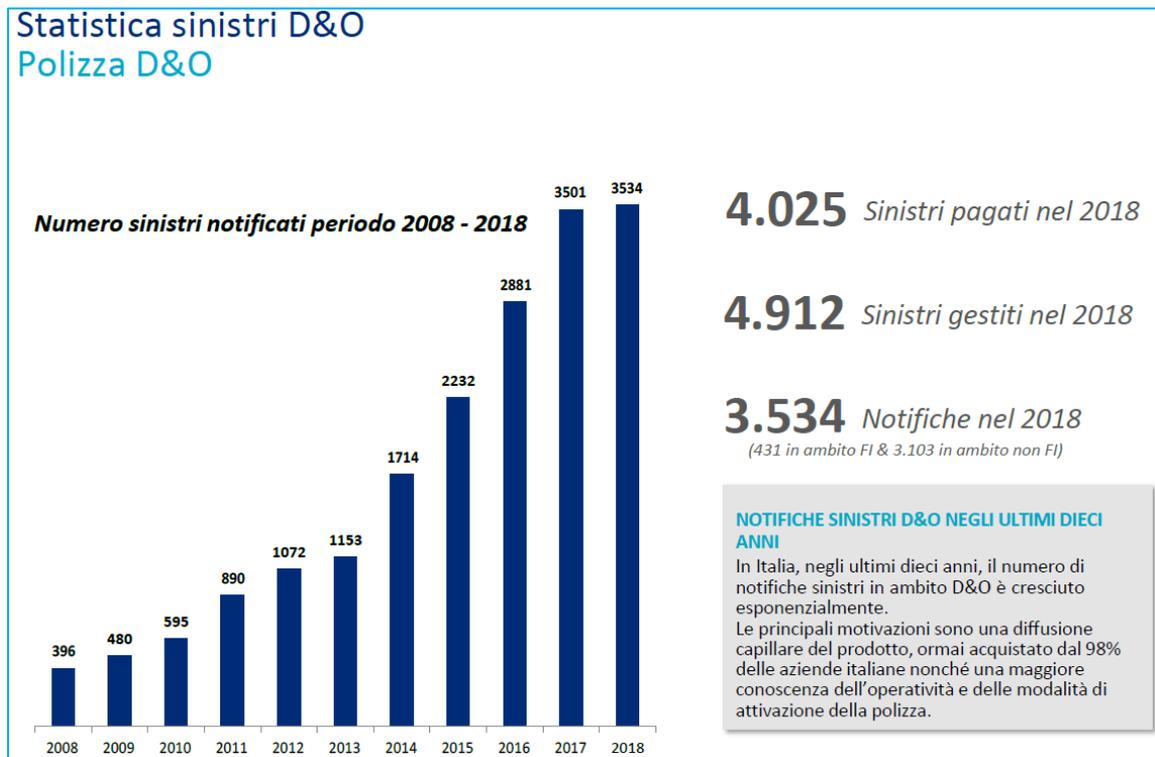


**MONTE
DEI PASCHI
DI SIENA**
BANCA DAL 1472

- Fulfilment of the obligations imposed on them by law or by the By-Laws (pursuant to articles 2393, 2393 bis, 2409 decies, 2476 of the Italian Civil Code)
- Through the corporate action of the shareholders (art. 2393 bis) or individual action of a shareholder and of a third party (art. 2395), if they have been directly damaged by the conduct of the directors
- Non compliance with the obligations inherent in the preservation of the integrity of the corporate assets (pursuant to Article 2394 of the Italian Civil Code)
- Discrimination in general, unjustified dismissals, violation of trade union agreements
- Unfair competition and violation of antitrust rules
- For the protection of collective interests

The following graph gives an overview of the riskiness managed by the D&O policy. The graph below shows a breakdown of the number of "D&O claims" occurred in the last 10 years with reference to about 80% of the Italian portfolio of D&O insurance policies. It is estimated, however, that about 20%-30% of these are attributable to financial institutions.

Number of D&O Claims in Italy: Data referring to about 80% of the market



Processed by Marsh S.p.A. on anonymous data provided by leading insurance companies

5) Company selection and policy characteristics

For the selection of the best insurance solution, the Group addressed to Marsh, a primary insurance broker.

As at the date of this report, the selection of the insurance companies' offers was still ongoing and involved all the main companies operating in the D&O policy market (more than 20 leading international companies).

The negotiations, which will eventually be finalized only after the decisions that will be taken by the Shareholders' Meeting in this regard, provides for the underwriting of the insurance coverage according to a text customized for MPS by the broker Marsh and in line with the international best practices for the policies in question, subject to negotiation by the Bank's functions.

Insurance cover is provided in the form of "claims made" and therefore the guarantees cover only the claims made for the first time by third parties during the period of validity of the policy (or during any observation period after the expiry in the event of non-

renewal of the policy) and related to unlawful acts occurred during the insurance period or during the retroactive period agreed in the policy, if any.

6) Main features of the D&O coverage for the MPS Group

On the basis of the above, the Board of Directors of the Bank proposes to the Shareholders' Meeting that a D&O insurance policy be underwritten at Group level with the following characteristics:

Features	Description
Insurer	The structure provides for the presence of several layers ⁹
Contractor	Banca Monte dei Paschi di Siena S.p.A.
Insured	<p>(i) The Contractor ;</p> <p>(ii) any Subsidiary of the Contractor ;</p> <p>(iii) the Insured Persons, or any natural person who is, has been or becomes such during the insurance period:</p> <p><i>A) a director (member of the company's board of directors or sole director); (B) a member of the 'management board' or of the 'supervisory board' if a two-tier system has been adopted; (C) a member of the management control committee if a one-tier system has been adopted;(D) a member of any governance body according to the company By-Laws; (E) the General Manager, a statutory auditor; (F) a manager or employee when he/she has received specific proxies by the shareholders' meeting, the board of directors or the members of the board of directors or the management board, supervisory board or management control committee; G) a Director or Officer, as defined and regulated in a legal system other than the Italian one; H) a Shadow Director, i.e. a person other than those listed above who has in fact performed the offices referred to in the previous points by virtue of a de facto or irregular mandate; I) a member of the supervisory committee established to monitor the operations and effectiveness of the model of organization and management established to prevent crimes as established by d) the Board of Directors, the Supervisory Board or the management committee established to prevent crimes, as provided for by Legislative Decree 231 of 2001; J) a manager responsible for preparing the company's financial reports (pursuant to legislative decree 262); K) a liquidator appointed, in the event of voluntary liquidation, by the company to proceed with the liquidation of a subsidiary; L) a Risk Manager or general counsel or internal legal counsel (for managerial and supervisory functions only) when he/she has received specific proxies by the shareholders' meeting, the board of directors or members of the board of directors or the management board, supervisory board or management control committee; M) a security manager pursuant to</i></p>

⁹ The risk (insured ceiling) is divided among the companies into amount layers that are activated gradually according to the absorption of the ceiling as determined by the individual indemnities paid. The first layer identifies the greatest risk and is conventionally defined as "primary", while the following layers identify the so-called "excess" portions.

Legislative Decree 81/2008 as subsequently amended and supplemented; N) a person responsible for privacy pursuant to Legislative Decree no. 196/2003 as subsequently amended and/or supplemented; O) a person responsible for preparing accounting documents pursuant to Law no. 262/2005 as subsequently amended and/or supplemented; P) an employee: (i) who is involved in a claim for compensation arising from the violation of labour law provisions; (ii) appointed as defendant together with a director, statutory auditor or manager of a company in the context of a claim for compensation in which it is claimed that such employee took part in or contributed to an unlawful act; (iii) appointed in the context of an investigation of an insured person.

The term insured person is extended to include:

- a. *the spouse or cohabitee (including same-sex partnerships, where applicable)*
- b. *The administrator, heirs, legal representatives or executor of the estate of a deceased person, the administrator of the estate of an incapacitated, insolvent or bankrupt person*

Coverage

Coverage in the form of "claims made on a standard text for D&O policies", improved with the customizations as agreed upon for the MPS Group⁽¹⁰⁾, as described in this report. The Guarantees cover only the claims made for the first time by third parties during the period of validity of the policy (or during any observation period following the expiry in the event of non-renewal of the policy) and relating to any unlawful acts committed during the insurance period or during the retroactive period (see below).

Exclusions

Only those usually provided for in the standard text of the Policy.

Period of observation

The policy provides for certain cases in which the effectiveness of the cover may be extended beyond the expiry of the D&O Policy or, with reference to the Directors, Statutory Auditors and Other Insured Persons, beyond the date of termination of office, and in particular in the following cases.

- (i) No renewal of policy at the natural expiry date
 - a) Inclusion of a free 72-month "Observation Period" for Insured Persons who leave office during the period of validity of the policy for any reason other than :
 - Revocation.
 - Expiry due to the loss of requirements of integrity, eligibility and professionalism. (The Insurer reserves the right to evaluate the inclusion of the Insured Person within the extension from time to time).
 - Dismissal for just cause .

The 72 months are to be calculated as of the date of termination of office of the individual Insured Person.

⁽¹⁰⁾ See paragraph "Observation period", item (i) letter a) and item (ii).

b) Optional 72-month observation period for all Insured Persons to be activated within and no later than 30 days after the expiry of the policy, against payment of an additional premium to be negotiated at best with the Insurer on the basis of a principle of good faith..

Both periods of observation are, of course, related to events that occurred during the period of validity of the policy, the legal implications of which arise during the period of observation.

(ii) Extraordinary transaction⁽¹¹⁾

Optional 72-month observation period for all Insured Persons, the so-called "Run-Off", with premium to be negotiated at best with the Insurer on the basis of a principle of good faith.

The Extraordinary Transaction is defined as follows:

- the Contractor merges with, is incorporated by or sells all or the majority of his assets to any other person or entity or group of persons and/or entities acting with each other; or
- any individual or entity (other than a Subsidiary), separately or together with any other individual or entity, acquires ownership of the exercise of more than 50% (fifty percent) of the voting rights in the Contractor's shareholders' meeting or otherwise acquires control of the appointment of the majority of the members of the Contractor's management body; or
- the Contractor is placed in compulsory administrative liquidation, goes bankrupt, is declared insolvent or is admitted to any bankruptcy or receivership proceedings.

The Run-Off will act as a guarantee for any claims for compensation relating to illegal acts that occurred before the closing date, but notified after the date of completion of the operation itself .

Ceiling	Up to a maximum of 100 million per claim and per year.
Advances for attorney's fees incurred in defending	<p>Pursuant to Article 1917 of the Italian Civil Code, the costs incurred in defending the Insured Parties against the actions of the injured party shall be borne by the Insurer within the limit of 25% (twenty-five per cent) of the Ceiling.</p> <p>The Insured Party may reserve the right to use, until exhaustion, the ceiling of € 100 mln for any pecuniary losses relating to the attorney's fees incurred in defending, which exceed the limit of one quarter of the ceiling. The attorney's fees incurred in defending related to criminal or administrative proceedings are sub-limited to € 5,000,000.00 per claim and in annual aggregate.</p>
Premium	Up to a maximum amount of €3.3 million, estimated on the basis of the best offers received so far from the Companies and still under

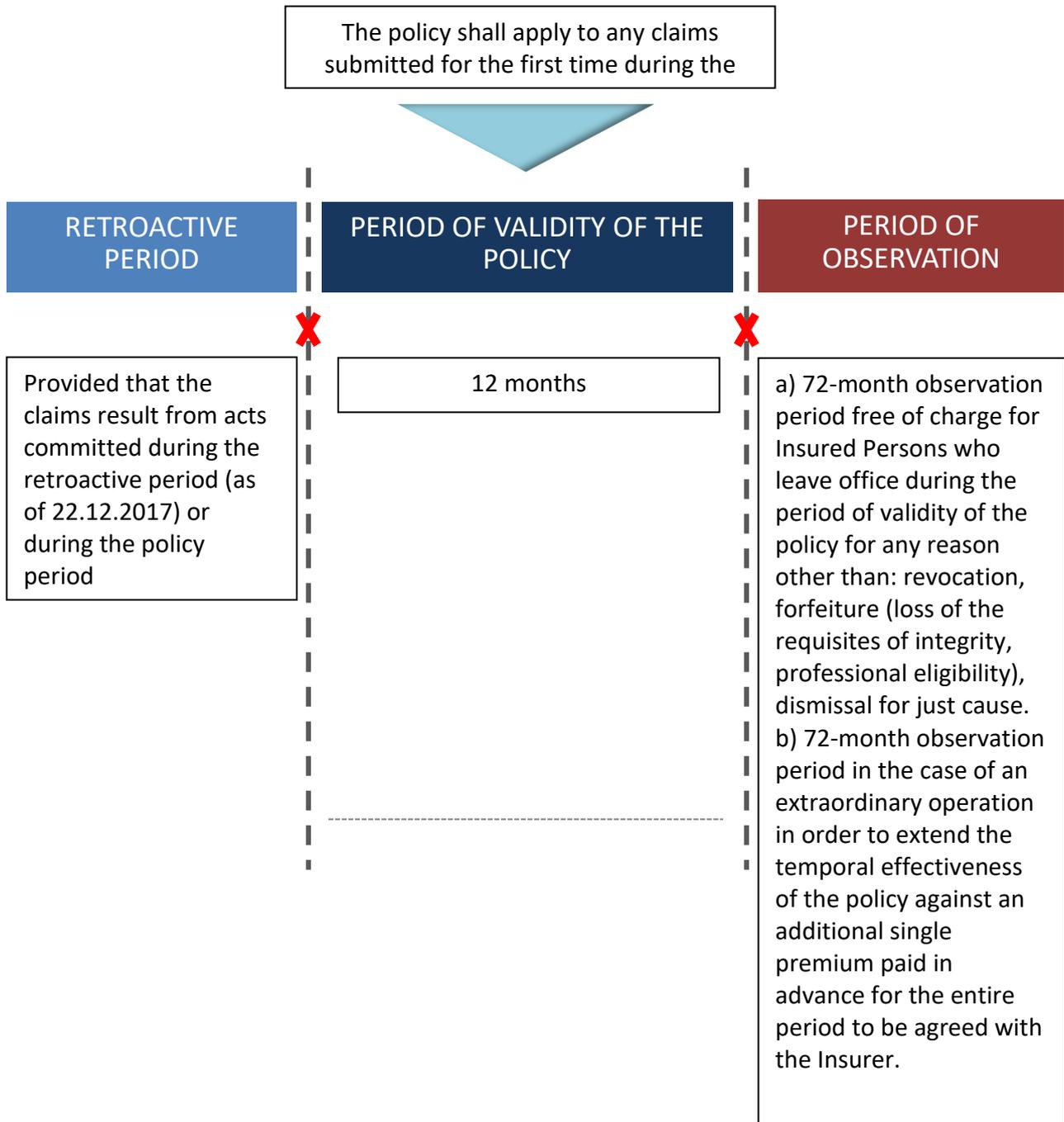
⁽¹¹⁾ In this case the cover expires automatically.



	negotiation.
Starting date	From the date the policy was underwritten.
Retroactivity	From the date of installation of the current Board of Directors (22 December 2017).
Continuity	Date of execution of the D&O policy.
Term	Annual with the right of renewal (by the Board of Directors, with an annual reporting obligation to the Shareholders' Meeting).

The table below provides a summary of the coverage's operational periods in the form of

"claims made ⁽¹²⁾.



⁽¹²⁾ The guarantees apply only to claims made for the first time by third parties during the period of validity of the policy (or during any observation period after expiry, in the event of non-renewal of the policy) and relating to unlawful acts committed during the period of validity of the policy or during the period of retroactivity.

Dear Shareholders

With reference to the above, you are requested to approve the following proposal:

The Ordinary Shareholders' Meeting,

examined the proposal formulated by the Board of Directors in this Report concerning the "Proposal to underwrite the insurance coverage "Directors & Officers Liability" (D&O) and consequent revocation of the "self-insurance" scheme previously resolved by the Shareholders' Meeting; related and consequent resolutions"

RESOLVES

- to approve:
 - 1) the stipulation at Group level of Directors & Officer Liability (D&O) insurance coverage in line with the conditions described in paragraph 6 "Main features of D&O coverage for the MPS Group" of this Report, for a maximum total annual premium not exceeding € 3.3 million, including taxes and ancillary charges;
 - 2) the renewal of this insurance cover, informing the Shareholders' Meeting annually of the actual costs incurred and the scope of use of the cover;
 - 3) to grant the Board of Directors the widest possible power to fully implement points 1) and 2) of this resolution;
- to revoke, as from the date of activation of the new insurance cover, and subject to the same, the previous self-insurance regime as resolved by the Shareholders' Meeting on September 1, 1997 and July 20, 1998, it being understood that these resolutions will continue to be effective with reference to the cases referred to the period prior to the period of entry into force and coverage of the D&O policy.

Siena, 11 March 2019

For the Board of Directors
Prof. Avv. Stefania Bariatti
Chairman of the Board of Directors