



QUESTIONS SUBMITTED PRIOR TO BPER SHAREHOLDERS MEETING OF 5 NOVEMBER 2022
BY TOMMASO MARINO

A) General aspects

Question # 1

I would like to know what 'the effective date of the merger' is and what practical and legal significance it has according to our Board of Directors.

In order to clarify some aspects of my request, I would like to point out that we have learned from press reports that the expected effective date of the merger is 28 November 2022, which will also be the effective date for Carige's customers, who have already received communications concerning 'new management in terms of current accounts, payment cards and existing contracts'. This mean, I would like at least the following to be specified and clarified in your answer (more elaborate answers will of course be appreciated):

- a. Can you confirm that the effective date of the merger is 28.11.2022? If not, when will it be?*
- b. Does this mean -for example- that on 28 November 2022 the current accounts held by customers with Banca Carige will have a new IBAN code traceable to BPER?*
- c. If so, can you refer me to the rule (or combination of rules) whereby IBAN codes can be changed before the deed of merger is signed?*
- d. Does this imply that one or more branches of Banca Carige will be rebranded?*
- e. Can you give us a list of the main practical and legal consequences of what will happen on the effective date of the merger (or on the immediately following days)?*
- f. Since BPER does not own 100% of Carige, are you sure that all the consequences of the transfer of assets from Banca Carige to BPER are legitimate? Let me remind you that BPER currently owns only 40 per cent of the savings shares of Banca Carige.*

Answer:

1.a)

We confirm that our aim is to ensure that the merger takes legal effect from 28 November 2022. It is understood, however, that "Each merger transaction shall take legal effect, pursuant to Article 2504-*bis* of the Italian Civil Code, as of the last recording of the merger deed in the Companies' Register, or any later date specified in the merger deed" (see the Report of the Board of Directors pursuant to Article 2501-*quinquies* of the Italian Civil Code).



Project planning also confirms the target of 28 November 2022 for technical, IT, organisational and resource integration activities. These activities will need to be carried out over a weekend when banks are closed to the public and the transfer will become operational on Monday. With a view to managing complexity and completing the integration before year-end, the last weekend of November was identified as preferable, provided, of course, that the merger takes legal effect on 28 November 2022.

1.b)

Correct: as of the legally effective date of the merger, the accounts of Carige customers will have a different IBAN code. Such a change is required mainly because the IBAN code features the acquiring bank's ABI code - which varies for all IBANs - and, in some cases, it is due changes in the branch routing number (CAB).

1.c)

The IBAN numbers will remain unchanged until the effective date of the merger, but in order for them to be operational on the effective date of the merger, BPER has prepared the numbers and fulfilled its obligations in advance. It is understood, however, that everything will change and become effective only on the effective date of the merger.

The new IBANs were communicated to customers to make them aware of the change well in advance, as required by the provisions on Transparency of Banking and Financial Transactions and Services.

1.d)

It was decided that the value of the CARIGE brand and the Banca Monte Lucca brand be respectively safeguarded in the Liguria Region and in the Province of Lucca, with the current signage of the original banks being preserved.

1.e)

From a legal standpoint, the takeover entails universal succession in all asset and liability relationships. Operationally, there will be full continuity with the past.

Customers received specific communications in October and November, containing all key operating instructions about migration to BPER and, in some cases, changes in contractual conditions for certain customer accounts, where necessary, with the aim of ensuring continuity of operations in accordance with BPER Banca's practice. FAQs were also prepared, sent to customers and made available on the gruppocarige.it website to support customers with over 10 thematic sections through the migration process. Below is some key information for customers:

- **CARDS:** post-merger continuity of operations will be maintained
- **IBAN:** the IBAN change is required, as was communicated to customers in October; however, specific technical 'quick-fixes' are planned to be activated to ensure continuity after migration
- **INTERNET BANKING:** a migration mode will be activated for customers to self-access the new Smartweb without assistance. Special instructions were prepared and sent out to customers in the October communication and are available on the gruppocarige.it website.



- **INSTITUTIONAL CUSTOMER TREASURY:** meetings were held with key institutional customers, in which BPER specialist teams explained the change underway and shared the best way to ensure business continuity.

1.f)

The law allows and regulates the merger of non-wholly owned companies. In this case, however, the percentage of minority shareholders is very small.

Question # 2

What are the practical and legal effects that will materialise on the effective date of the merger? (please note that the shareholders' meeting documentation specifies that the effective date of the merger will be backdated to 01.07.2022 if the merger deed is entered into by 31 December 2022, or will be set to 01.01.2023 if the merger deed is entered into in 2023)

Answer:

The law permits backdating of the accounting effects of a merger. While all legal effects run from the date on which the merger becomes legally effective, merger recognition will take effect from the date to which the accounting effects of the merger are backdated. The accounting treatment may not be backdated to an earlier date than the beginning of the financial year in which the legal effects of the merger originate. For this reason, if the merger deed was entered into in 2023, the accounting effects could not be backdated to a date prior to 1 January 2023.

From a practical standpoint, the continuity of asset and liability relationships will be managed by BPER Banca, which will continue to make use of former CARIGE personnel in addition to its own and as appropriately integrated into its organisational structure, so as to carry out the related activities both in the Branch Network and in the Head Office units.

Question # 3

The practical, logical and legal reasons for the mismatch between the 'effective date of the merger' and the 'date on which the merger takes effect'

Answer:

As mentioned above, the law permits the accounting effects of the merger to be backdated to a date not earlier than the beginning of the financial year current on the date on which the merger becomes legally effective. Accounting backdating allows for a unified accounting representation of the parties involved in the merger.

Question # 4

Why didn't you publish the report issued by BPER's advisor, Law Firm Chiomenti, on 10 February 2022, which summarises the findings of the analysis carried out on the legal aspects of the Transaction as described on page 6 of the Independent Auditors' Report?

Answer:

The report does not concern the merger. It is a working document that was prepared by the legal advisors to the Company as part of the due diligence process required for the acquisition of Banca Carige's control. It also contains a set of confidential information concerning, *inter alia*, (contractual and litigation-related) aspects of relationships with counterparties. There is no regulatory provision requiring the publication of such internal documentation; on the contrary, the dissemination of the information contained in the report could damage the Bank and expose it to possible action by the third parties to whom the information refers.

Question # 5

In the estimates of the 'one-off pre-merger charges, a portion of which was already accounted for in the respective half-year reports' mentioned on page 5 of the Independent Auditors' Report, did you take into account the costs related to the perpetuity of remuneration for the common representative of the savings shareholders and the perpetuity of the fund for expenses relating thereto? And if they were not considered in this section, were they considered in other sections of the estimates? Where? How? When? To what extent?

Answer:

The estimate contains a conservative forecast of several cost items and was made on the basis of the appropriate accounting principles.

Question # 6

*Can you give me as precise a timetable as possible for the merger procedures in chronological order?
More specifically:*

- a. dates of registration of the shareholders meeting resolutions relating to the merger in the Companies Register (or the short time period in which they are expected to be registered);*
- b. merger effective date (28.11.2022?);*
- c. time period in which creditors may exercise their opposition rights, if and to the extent applicable;*
- d. time period for the holders of Banca Carige savings shares to exercise the right of withdrawal and/or the*

right to sell their savings shares, possibly by drawing a distinction between the savings shares owned by BPER and those still owned by private shareholders;

e. the time period in which the procedure for the sale of the withdrawn shares will be carried out;

f. date of signing of the merger deed;

g. the date on which the share exchange takes place, i.e. from which we will have new shareholders (and friends).

Answer:

6.a)

The shareholders meeting resolutions will be registered by the Notary Public as soon as possible, under the terms and by the deadlines provided under applicable law.

6.b)

We confirm that our aim is to ensure that the merger takes legal effect from 28 November 2022. It is understood, however, that “Each merger transaction shall take legal effect, pursuant to Article 2504-*bis* of the Italian Civil Code, as of the last recording of the merger deed in the Companies’ Register, or any later date specified in the merger deed” (see the Report of the Board of Directors pursuant to Article 2501-*quinquies* of the Italian Civil Code).

6.c)

Creditors who consider that the merger may adversely affect their credit claims may object within 15 days after the date of registration of the resolutions in the Companies Register.

6.d)

As described in detail in the merger documents, savings shareholders will have the option of exercising the right of withdrawal or the right to sell their shares within 15 days after registration of the resolutions in the Companies Register.

6.e)

The procedure for liquidation of the shares which are withdrawn will be completed on a date following the merger.

6.f)

The date of signing of the merger deed will be set after the expiry of the 15-day creditor objection period referred to above.

6.g)

Given that, following the exercise of the squeeze-out right, Bper holds the entire ordinary share capital of Carige S.p.A., the exchange will only concern the holders of Carige savings shares who did not opt for



exercising the right to sell or the right of withdrawal. All savings shareholders who wish to avail themselves of the exchange will receive the new BPER shares reserved for them on the legally effective date of the merger.

B) With regard to the multiple litigation cases between Banca Carige and its shareholders (and/or former shareholders), which we are about to inherit:

Question # 1

I would like to know whether, how, when and why Banca Carige or BPER has closed or intends to close the multiple litigations currently pending between

- Banca Carige and some (now former) ordinary shareholders of Banca Carige;

- Banca Carige and the category of savings shareholders.

In particular, I would like to ask you what amount was agreed upon for the settlement of the disputes or what amount you intend to agree upon for the settlement of these disputes

Answer:

The Bank considers that the legal claims brought against its subsidiary, Banca Carige, are unfounded. Therefore, it does not expect to be unsuccessful in the aforementioned litigation proceedings.

With regard to pending litigation with former major ordinary shareholders and the category of savings shareholders, Banca Carige has not defined any settlement agreements, nor are any such agreements being discussed, nor have they been submitted to Carige's competent decision-making bodies.

Question # 2

Whether there are any (and if so, which) balance sheet items posted in Banca Carige's accounts in respect of the costs accrued in 2020, 2021 and 2022 to the Fund for the expenses necessary to protect the rights and interests of Banca Carige's savings shareholders pursuant to Article 146 of the Consolidated Law on Finance, and whether and how they were taken into account in the construction of the ratio for the exchange of such shares for BPER shares.

Answer:

Banca Carige has a fund in place for the expenses required under art. 146 of the Consolidated Law on Finance, which amounts to EUR 40,000. The amount was resolved upon by the special meeting of savings shareholders on 13 July 2017, considering that the later resolution adopted by the special meeting to increase the fund on 20 April 2020 was challenged by the Bank at the Court of Genoa. The balance sheet of Banca Carige considered for the purpose of determining the exchange ratio incorporates these items.

Question # 3

In the merger plan and its underlying 'opinions', why didn't you consider or even mention or take account of the opinion drafted by consultant Mr. Radaelli about the fair ratio of conversion of Banca Carige savings shares into the bank's ordinary shares? Let me herewith remind you that Mr. Radaelli's opinion was formally approved by the savings shareholders' meeting. Could the failure to mention and consider the above opinion have a negative effect on the handling of litigation?

Answer:

The law does not provide for an obligation to consider, mention or take into account opinions not requested by the Board of Directors. The BoD adopted the resolutions concerning the merger with the support and advice of financial advisors - of proven expertise, professionalism and competence - specifically appointed for the purpose.

Question # 4

Why were legal issues not considered in the various opinions about the exchange ratio? Were and are the engaged advisors perhaps unable to come up with suitable legal argumentations? Did our Board of Directors instruct the advisors not to consider them, or what else?

Answer:

The opinions concerning the exchange ratio were issued by leading merchant banks, which certified the fairness of the ratio. At the same time, the legal advisors carefully assessed all legal issues pertaining to the merger.

Question # 5

Have Carige and/or BPER considered the possibility that both the (former) ordinary shareholders and the savings shareholders of Banca Carige could initiate further litigation, e.g. with regard to the damage resulting from the capital increase resolved upon and executed in 2019 and/or with regard to the exchange ratio?

Answer:

The potential litigation scenarios and their implications have carefully been considered.

**Question # 6**

What costs have so far been incurred by Banca Carige (and how were they taken into account in the calculation of the exchange ratio) with reference to:

- *pending litigation with (former) ordinary shareholders?*
- *pending litigation with Banca Carige savings shareholders?*

Answer:

The costs incurred by Banca Carige for pending litigation with former major ordinary shareholders and the category of savings shareholders are in line with professional fees and current market practice for proceedings of this claimed amount and complexity. Proceedings already concluded in the first instance of litigation resulted in a favourable outcome for the Bank, with the counterparties being ordered to reimburse legal costs.

Question # 7

Have you considered the prospective costs of litigation with savings shareholders? Among these costs, have you considered the fees to be paid for 'n' years to the Common Representative of the Savings Shareholders (as a result of the perpetuity of his function for as long as the litigation lasts) and the costs of the legal assistance he will avail himself of?

Answer:

The potential litigation scenarios and their implications have carefully been considered.

Question # 8

Can you explain to me how it was logically and legally possible to calculate an exchange ratio between the (existing) savings shares of Banca Carige and the (currently fictitious) future privileged shares of BPER?

Answer:

The privileged shares will be issued by an existing Bank (BPER Banca) and will bear the rights specified in the merger plan. Consequently, all conditions were in place for their evaluation.

Question # 9

Will the savings shareholders of Carige who opt for the exchange of their shares into BPER privileged

shares be entitled to benefit both from the settlement of litigation, if any, and from any settlements with savings shareholders entered into by the Common Representative of this category of shareholders?

Answer:

Judgments passed at the end of litigation proceedings, once final, are binding on the parties and their successors in title. Settlements are binding on the parties (i.e. the contracting parties) and the law regulates the limits within which a settlement may have effect on third parties. The related gains increase the company's assets and hence benefit all shareholders, including the holders of special classes of shares.

Question # 10

Why is it that in the draft Articles of Association that you have published I do not see any provision regarding regulations for the special meeting of the holders of preference shares, which would instead be required under Article 147-bis of the Consolidated Law on Finance?

Answer:

The rules governing the Special Meeting of Preference Shareholders are defined and set forth in the Civil Code. Reference to the Consolidated Law on Finance is unfounded because, as is extensively specified throughout the merger documentation, the privileged shares issued in exchange, if any, will not be traded on any regulated market.

Question # 11

What is the point of having contemplated issuing BPER privileged shares in exchange for Banca Carige savings shares? Even assuming that the intention was to offer the alternative of something similar to savings shares to give continuity to the privilege in dividend entitlement, why didn't you also consider giving continuity to other rights and privileges, such as for example:

- *the appointment of a Common Representative of BPER privileged shares?*
- *the set-up of an Expense Fund to protect the rights and interests of BPER privileged shareholders?*

Answer:

The law did not impose any such provision. As mentioned, BPER privileged shares will not be traded on any regulated market, so the provisions of the Consolidated Law on Finance will not apply. As stated in the merger plan, the privileged shares issued by BPER Banca in exchange, if any, will have the same rights as Carige's existing savings shares. No other provision was required by law.

Question # 12

Why did the BPER-appointed Board of Directors of Banca Carige fail to convene the special meeting of savings shareholders concerning the merger and in particular the approval of the merger? Given that, to the best of my knowledge, not even the Common Representative of the savings shareholders of Banca Carige has convened the special meeting yet, should I be thinking that it is neither necessary nor useful?

Answer:

The merger by absorption of Banca Carige and Banca del Monte di Lucca into BPER is not subject to the approval of the special meeting of Banca Carige's savings shareholders because said savings shareholders were given the option of choosing whether to receive in exchange either newly issued privileged shares, conferring the same rights as Banca Carige's savings shares, or, alternatively, BPER ordinary shares.

For the sake of completeness, please note that, at the request of the Common Representative of Banca Carige's Savings Shareholders, the Special Meeting of Banca Carige's Savings Shareholders has been convened and will be held on 15 November 2022 on first call -and on 16 November 2022 on second call if necessary- to resolve, *inter alia*, upon the "authorisation for the Common Representative to activate any legal procedure for the protection of this category of shareholders, and in particular to challenge any potential merger resolution, even by initiating the urgency procedure, with all costs being charged to the Expense Fund pursuant to Art. 146 of the Consolidated Law on Finance".

Question # 13

I have noticed that:

- the right to call (or not to call) the special meeting of savings shareholders regarding the merger (and in particular the approval of the merger) was not considered at all, either in the merger plan and related documents, or in the opinions dated 05.10.2022 (by the Independent Auditing Firm, the Board of Directors, the Board of Statutory Auditors);

- the Board of Directors of Banca Carige (which, as is worth recalling, is under the control, direction and coordination of BPER) has, to my knowledge, not yet published any report, notice or communication regarding the right to call a special meeting, nor a notice of such call.

Are we/are you sure it was not necessary to do so? If I had been in the place of the Common Representative of the savings shareholders of Banca Carige, I would have at least objected against this and would have probably imposed the convening of the special meeting. Having said that, it is my understanding that not even the Common Representative of the Savings Shareholders of Banca Carige has done so, and I wonder why he was inactive. I would like to hear your thoughts on this.

Answer:



See answer to question 12.

Question # 14

If I understood correctly, I read in the merger documentation that the special meeting of Banca Carige's savings shareholders held on 29.05.2020 approved the conversion and reverse stock split transactions. As far as I know, however, not only did the special meeting object to this, but it also instructed the Common Representative to challenge the resolutions. Have I missed something or are there any aspects of the matter that I may not be adequately familiar with?

Answer:

The merger documentation refers to the shareholders meeting held on 29 May 2020, which, *inter alia*, determined the voluntary savings-to-ordinary share conversion ratio used in the valuation of savings shares for merger exchange purposes.

No special meeting of savings shareholders was held on that date.

Question # 15

How were the over EUR 100 million costs for the Carige Capital Increase allocated across the participating banks? What share was allocated to each bank? Did BPER give assignments to managers and/or directors of these banks, or to companies directly and/or indirectly connected to them? If so, what kind of assignments were they given?

Answer:

If the question refers to the capital increase approved by the Extraordinary Shareholders' Meeting of Banca Carige on 20 September 2019, it should be noted that this capital increase was not backed by an underwriting syndicate of banks, as it was largely reserved for specific legal entities and therefore implemented with the exclusion of option rights pursuant to Article 2441(5) of the Italian Civil Code. With regard to the only tranche of the capital increase to be offered on option, amounting to EUR 85 million, the Interbank Deposit Protection Fund (FITD) directly undertook to fully subscribe for the ordinary shares in the event of full or partial failure of subscription by the Bank's shareholders.

For completeness of information, it should be noted that, as part of this recapitalisation transaction, the capital increase was complemented with the issue of Tier2 subordinated bonds for an amount of EUR 200 million, fully guaranteed by subscription commitments undertaken by institutional, qualified investors, including Cassa Centrale Banca - Credito Cooperativo Italiano (CCB) for an amount of EUR 100 million.



Again, if the question refers to the capital increase approved by the Extraordinary Shareholders' Meeting of Banca Carige which was held on 20 September 2019, to the Bank's knowledge, no such assignments were conferred.

Question # 16

*Again with regard to Carige's capital increase, were assignments given to companies directly and/or indirectly connected to managers and/or directors of the Unipol Group and to companies of that Group??
When and why did it happen?*

Answer:

If the question refers to the capital increase approved by the Extraordinary Shareholders' Meeting of Banca Carige which was held on 20 September 2019, to the Bank's knowledge, no such assignments were conferred.