

QUICK GUIDE ON ITALIAN CORPORATE GOVERNANCE

1. Legal framework

Main Italian regulatory sources on listed companies are:

1. Civil Code of 1942 (Book V, Title V – updated on August 2014),
2. Consolidated Financial Law of 1998 (updated on August 2014),
3. Consob’s Issuers Regulation (updated on October 2013, to be updated within 31 December 2014 to include the new regulation on multiple-voting shares),
4. Borsa Italiana’s Corporate Governance Code of 2006 (“comply or explain” rule – updated on July 2014).

Specific sectors may be subject to additional regulatory sources, such as banks (Consolidated Law on Banks and Bank of Italy’s Regulations), insurers (Insurance Companies’ Code) or audit companies (new Consolidated Law on Audit of 2010).

2. Corporate bodies

The corporate bodies depend on the governance system adopted by the company. The Italian law allows three corporate governance systems:

- a. **The “traditional governance system”**, adopted by the large majority of listed companies (96% of major companies), which includes the Board of Directors and the Board of Statutory Auditors.
- **The Board of Statutory Auditors** is mandatory in all companies with a share capital of more than € 120,000.
 - o Main responsibilities:
 - Overseeing the compliance with the law and the articles of association, the respect of the principles of fair administration and the adequacy of the organizational structures of the company and their actual functioning.
 - Statutory Auditors have to attend the meetings held by the Board of Directors and by the Executive Committee.
 - Each Auditor may undertake inspection activities, even without previous notice, and may request information on company’s specific operations, even related to subsidiaries.
 - Shareholders may report to the Statutory Auditors concerns over the fairness of company’s operations.
 - Statutory Auditors are jointly liable of eventual damages caused by wilful misconduct or serious negligence committed by the Directors.

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- Composition:
 - The Board of Statutory Auditors shall be made of 3 or 5 members, including a Chairperson.
 - All members shall meet the independence requisites provided by the law: they cannot be relatives of the company's Directors (or of the Directors of related companies) or in any continuative professional relationships with the company (and its controlling, controlled and sister companies).
 - Statutory Auditors must be included in professional registers defined by the Ministry of Justice, or university professors of law or economics, and at least one of them must be a chartered accountant.
 - b. **The “monistic governance system”**, currently adopted by only one major company (the mid-cap Engineering), which includes only the Board of Directors and where the Audit Committee is charged of Statutory Auditors' duties.
 - c. **The “dualistic governance system”**, currently adopted by only 3% of major companies, including the Supervisory Board, which is appointed by the GM, and the Management Board.
 - **The Supervisory Board** appoints the members of the Management Board (for a maximum term of office of 3 years), it is charged of the duties of the Board of Statutory Auditors and of some responsibilities traditionally held by the Board of Directors or the General Meeting, such as:
 - the approval of annual accounts,
 - the promotion of a liability action,
 - the approval of strategic operations, as well as of industrial and financial plans proposed by the Management Board.

At least one member of the Supervisory Board must be a chartered accountant and the Chairperson shall always be appointed by the General Meeting. No strict independence requisites apply to the Supervisory Board.

3. Appointment of Board members

The members of the Board of Directors, the Supervisory Board and the Statutory Auditors are appointed by the Ordinary General Meeting, which has also to approve their term of office, annual compensation (not the compensation for special charges, such as the executive remuneration and the fees for the Chairperson which are approved by the Board) and the Chairperson of the Supervisory Board and of the Board of Statutory Auditors (in the “traditional system”). If provided by the Articles of Association, the GM may also appoint the Chairperson of the Board of Directors.

All Board members are appointed for a maximum term of office of 3 years, which is the usual term of office adopted by all companies with few temporary exceptions (e.g., Parmalat AGM 2011 set in 1 year the term of office of the Board, which was renewed in 2012 for the usual term of 3 years).

All proposals related to the renewal of the Boards (number of members, candidates, term of office, compensation and Chairperson) must be submitted by shareholders. However, the Articles of Association may

allow the outgoing Board to submit its own proposals (at the moment, the only large cap allowing the Board's proposal is Prysmian).

Starting from 2005, all Italian listed companies have to appoint the Board members through the **“slate of nominees” mechanism**:

- All shareholders holding, even jointly, a minimum percentage of voting share capital may submit a slate of nominees. The threshold is annually established by the Market Authority Consob for each company and it depends on the market capitalization and the weight of major shareholders (i.e., the threshold may be 0.5% for a large public company such as Assicurazioni Generali, 1% for a large cap with a controlling shareholder, such as Pirelli, up to 4.5% for a controlled small cap, such as Prelios).
- All slates must be submitted to the company at least 25 days before the GM and the company shall publish the slates on its website at least 21 days before the GM.
- The slates must include:
 - The list of candidates in ascending order (from 1 to the maximum number of members to be appointed).
 - Per each candidate:
 - The detailed curriculum vitae,
 - The full list of current mandates held (compulsory for the members of Supervisory Boards and Statutory Auditors, for which the law set a maximum number of mandates, while Directors are not obliged to disclose the full list of mandates),
 - Each candidate's declaration of acceptance of the candidacy and compliance with all legal requisites needed to be appointed Board members (i.e., they must not have been sentenced in a manner that bans them, temporarily or otherwise, from holding a public office or directorship positions), and/or with the stricter requirements eventually provided by the Articles of Association.
 - A declaration of independence: each candidate has to assess whether he/she meets all independence requisites provided by the law (for the Statutory Auditors) and by the Italian Corporate Governance Code.
 - At least 1 candidate shall meet the independence requisites provided by the law for Statutory Auditors (at least 2 candidates if the Board includes more than 7 members). However, as per the Italian Corporate Governance Code, all companies included in the FTSE MIB Index (large-caps) shall appoint at least 33% of independent members (rounded down).
 - All slates including 3 or more candidates shall include at least 33% of candidates of the less represented gender (20% for the first election following the enactment of the new law in 2011). Such provision will apply for 3 consecutive mandates starting from the approval of the law (2011), therefore it will apply for 9 years.
- Election mechanism (Board of Directors and Supervisory Board):
 - The Articles of Association defines the number of members to be appointed from each slate of nominees, in case more than one has been submitted. If only one slate is submitted, all nominees are appointed if it gets more than 50% of favourable votes.

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- In any case, pursuant to the Italian law, at least one Board member shall be appointed from the slate of nominees eventually submitted by independent shareholders (i.e., shareholders that are not related, in any way, to the shareholders that submitted the slate that obtained the majority of votes).
 - The majority of Articles of Association provide that only one or two members are appointed from the “minority list”. However, some companies adopt a sort of proportional election, such as the following adopted by Intesa Sanpaolo:
 - A fixed number of members (more than 50% in any case) are appointed from the slate that obtained the majority of votes;
 - The votes gathered by the other slates are attributed to each nominee divided per their progressive number in the list (i.e., if the slate gets 10% of the votes, the first candidate in the list has 10%, the second one 5%, the third one 3.33% and so on);
 - All candidates from all slates are put together and the ones with the highest quotient are appointed.
 - In any case, no members may be appointed from slates of nominees that obtain a number favourable votes lower than 50% of the shares held by the shareholders that submitted the slate (i.e., if a slate is submitted by 5 shareholders jointly holding 2% of the voting share capital, and at the Meeting it is only voted by 0.9% of the share capital, it cannot appoint any member even in case it results the second mostly voted slate).
 - The election of the Board of Statutory Auditors follows the same procedure seen for the other Boards, but:
 - If more than one slate is submitted, one member shall be appointed from the most voted “minority list”.
 - At least one member shall be of the less represented gender.
 - The Meeting has to appoint the Chairperson, but if more than one slate are submitted, the member that has been elected from the “minority list” will be automatically appointed Chairperson.
 - Voting procedures (for all Board elections):
 - If only one slate of nominees is submitted, shareholders may vote for or against the slate (or abstain).
 - If two or more slates are subject to be voted, each shareholder can vote for only one slate, withholding from voting the other ones, or they may oppose all slates (or abstain). Opposition is not allowed on individual slates and it is not possible to vote for more than one slate.
 - As all proposals related to the Boards are submitted by shareholders, the Board of Directors / Supervisory Board cannot recommend any voting directions (the Board’s recommendation on each slate is reported as “withhold”), except when the Articles of Association allows the Board to submit its own slates.

- Individual appointment (replacement or integration):

- If one or more Board members have to be replaced, or if the Meeting approved to increase the number of members, the GM is called to integrate the Board through individual appointments.
- In the event of resignations, the Board may co-opt a new member (generally the first non elected nominee in the slate including the former member, if any are available). The first Meeting held after the co-optation of the new member has to vote on the confirmation of the co-opted member or to appoint another member.
- In any case, proposals are formally submitted by shareholders, unless the Articles of Association allow the Board to appoint new members. As in this case the eventual proposals may be submitted until the day of the Meeting, in many cases the major shareholders do not disclose the identity of the candidates with sufficient advance.
- The office of the new members shall cease on the same date of the office of the Directors in charge (at max 3 years after the appointment of the Board through the “slate of nominees” mechanism).

4. Classes of shares

Listed companies may issue the following classes of shares:

- Ordinary (common) shares, each one enabling to one vote Ordinary and Extraordinary Meetings.
- Saving shares, with no voting powers at Ordinary and Extraordinary Meetings, but only at Special Meetings of Saving Shareholders (to appoint their common representative and to vote on any changes to the rights attached to saving shares). Saving shares grant a privileged dividend.
- Preferred shares, enabled to vote at Extraordinary Meetings, as well as at Special Meetings of Preferred Shareholders, with one vote each, and to a privileged dividend.

Additional vote: Since August 2014, listed companies may assign an additional voting right to all shareholders that requested the registration in a special register and uninterruptedly held their shares for at least 2 years.

Unlisted companies may also issue multiple-voting shares, each one granting up to 3 votes. In the event of subsequent listing of the shares, the multiple votes will be maintained and new multiple voting shares may be only issued through free share capital increases (i.e., scrip dividends).

5. General Meetings

Pursuant to the Italian legislation, the General Meetings of Shareholders differentiate between Ordinary GM and Extraordinary GM based on the type of resolutions to be voted. Therefore, Italian AGMs, which are called to approve the annual accounts, as all other Meetings eventually called during the year, may include both Ordinary and Extraordinary resolutions.

Another type of meeting is the Special Meeting of Saving Shareholders, which is called every three years to appoint the common representative of saving shareholders and any time a change to the rights attached to saving shares is proposed. The holders of saving shares are not entitled to vote at Ordinary and Extraordinary Meetings.

Only the holders of ordinary (common) shares are entitled to vote Ordinary resolutions, while Extraordinary resolutions may also be voted by the holders of preferred shares.

Voting quorums

Ordinary resolutions need a simple majority vote to be approved.

Extraordinary resolutions need at least two-thirds of favourable votes, but the Articles of Association may provide for a higher quorum.

Abstain votes are counted at all meetings, with the same effects as opposition.

Since 2011, Ordinary and Extraordinary Meetings may be held in a single call, regardless the voting quorum. However, the Articles of Association may still allow the company to call the Meetings in multiple calls (first and second call for the Ordinary Meeting; first, second and third call for the Extraordinary Meeting).

In case of multiple calls, the voting quorum needed to hold the meeting is different: 50% in first call and no minimum quorum in second call for the Ordinary Meetings; 50% in first call, 33% in second call and 20% in third call for Extraordinary Meetings.

Powers of the General Meeting

In companies adopting the “traditional” governance model, including the Board of Directors and the Board of Statutory Auditors, the Ordinary Meeting is called to approve:

- the annual accounts,
- the allocation of net results,
- the appointment of Directors and Statutory Auditors,
- the annual compensation of Directors and Statutory Auditors related to their Board membership (not the executive remuneration),
- eventual incentive plans linked to the company share market price (performance share plans, stock option plans and monetary plans directly linked to the share price, such as phantom stock option plans – binding vote),
- the remuneration policy (Section I of the annual Remuneration Report – binding vote for banks, advisory vote for all other companies),
- the appointment of the External Auditor (the mandate cannot exceed 9 years and it cannot be renewed until a cooling off period of 3 years has expired),
- eventual amendments to the compensation of the External Auditor,
- the authorisation to purchase and dispose of treasury shares (up to the legislative limit of 20% of the issued share capital and for a maximum length of 18 months),
- the initiation of legal liability actions against corporate Board members,
- any other resolutions provided by the Articles of Association, which do not need an Extraordinary Meeting as per the Italian Law.

In companies adopting the “dualistic” governance system, the Supervisory Board appoints the members of the Management Board, set their remuneration (executive and non-executive one), and approves the annual accounts and the initiation of a liability action. The Ordinary Meeting approves the allocation of results, appoints the Supervisory Board members and approves their compensation, together with all other powers listed above.

In all companies, regardless the governance model adopted, the Extraordinary Meeting is called to approve:

- amendments to the Articles of Association,
- authorisations to increase the share capital with or without pre-emptive rights (in the latter case, the maximum length of the authorisation is 5 years) and any other changes to the share capital (reduction, share split, issue of convertible bonds, etc.),
- mergers by incorporation.

6. Takeover bids

Mandatory bid: all shareholders who come to hold more than 30% of the share capital or of total voting rights must launch a public tender offer over 100% of the share capital. The takeover bid is mandatory even in the event the 30% threshold is exceeded through the assignment of the additional voting right per share.

A new law approved in August 2014 included an additional threshold: the takeover bid is mandatory if a shareholder comes to hold more than 25% of the share capital or voting rights following the purchase of shares (it does not apply on the assignment of the additional voting right), if no other shareholders hold a higher percentage.

Passivity rule: the Board cannot undertake any actions to prevent a hostile offer (e.g. increase the share capital, buyback shares, convert bonds, undertake M&A transactions etc.), unless such actions are approved by the General Meeting, but it can seek alternative bids. The passivity rule does not apply when the bidder is not subject to the same kind of rule (“reciprocity rule”). However, Italian companies may waive the passivity rule through an amendment to the Bylaws approved by the EGM (“opt-out”). Therefore, unless specifically approved by the EGM, Italian listed companies cannot buy-back shares nor increase the share capital since the disclosure of the intention to launch the takeover bid until the end of the acceptance period. Only two major Italian companies (currently included in the FTSE MIB Index) approved the exemption to the passivity rule: Gtech (which will change its country of incorporation from Italy to UK in 2015) and Yoox.

Multiple-voting shares: eventual multiple votes are not counted on proposals aimed at waiving the passivity rule (each share casts one vote).

7. Listed Cooperative Companies

When the company has a primary “mutual purpose” it may be established as a cooperative (mainly banks and insurers). The Italian law provides for different rules on listed cooperatives, with particular regards to:

- Status of shareholder: shareowners are differentiated in “members” (those who buy newly-issued shares and request membership status under methods and terms laid down by the Board) and “non-member” shareholders. The Board may reject the status of “member” for specific reasons provided by

the Articles of Association and the shareholder may appeal against the rejection to the Board of Arbitrators, which is appointed by the shareholders' meeting.

- Voting rights: only "member-shareholders" are entitled to vote at GMs and each shareholder is entitled to one vote, regardless the number of shares held, provided that they have been members over the 90 calendar days prior to the Meeting.
- Proxy voting: "member-shareholders" may vote in person or through a proxy, which can be exclusively released to another "member-shareholder". Any member can act as proxy agent, but for a limited number of proxies that is fixed by the Articles of Association (up to 10 proxies, but usually no more than 5).
- Meeting calls: cooperative companies cannot hold the GM in a single call.
- Board composition: the majority of Directors or Supervisory Board members shall be "member-shareholders".