



The implementation of the Shareholder Rights Directive in Italy

The government recently approved the legislation implementing the EU Shareholder Rights Directive in Italy. The aim is to enhance shareholders' rights in Italian companies whose shares are admitted to trading on a regulated market of an EU member state. This briefing provides a short overview of the main changes introduced into the Italian legal framework.

Introduction and scope

On 22 January 2010, the Italian government approved Legislative Decree No. 27/2010 (the Act), which implements EU Directive 2007/36/EC on the exercise of certain rights of shareholders of listed companies. The Act introduces relevant amendments to the rules of the Italian Civil Code and the Italian Financial Act (Legislative Decree No. 58 of 24 February 1998), aimed at improving shareholders' information rights and enhancing shareholders' participation in company meetings (eg each company is now required to designate a person to act as a collective proxy for shareholders at each meeting, unless otherwise provided by the company's articles of association).

In general, the new provisions apply to companies whose registered office is in Italy and whose shares are admitted to trading on a regulated market in Italy or any other EU member state. Certain provisions apply also to Italian companies whose shares, though not admitted to trading, are widely distributed among the public.

The amendments introduced by the Act do not apply to co-operative societies (*società cooperative*) whose shares are listed on an EU regulated market, which will continue to be governed by the rules already in force.

The Act will enter into force on 20 March 2010. However, most of its provisions will apply only to the shareholders' meetings called after 31 October 2010.

Finally, it is worth noting that certain provisions require further implementation by the Italian market

regulator (CONSOB), which will have to issue the relevant regulations within six months of the Act's entry into force.

Length of the notice period

The Act does not affect the existing general rule providing for a minimum 30 days' prior notice to call a meeting, but introduces special (minimum) notice periods, that derogate the general '30 days rule', for shareholders' meetings summoned to resolve on specific matters. In particular, the notice periods must be at least equal to:

- 21 days for meetings called in connection with: (i) the reduction of the company's share capital by more than one-third, due to losses; (ii) the reduction of the company's share capital below the statutory minimum (€120,000), due to losses exceeding one-third of the same; or (iii) the occurrence of a winding-up event as provided for by the law (eg non-remedied reduction of the company's share capital below the statutory minimum); or
- 40 days for meetings called to resolve on the appointment of members of the company's management or supervisory body.

Contents and publication of the notice

In addition to the basic information on the place, date and proposed agenda, the notice of shareholders' meeting must contain, inter alia:

- information on the shareholders' right to ask questions before the meeting;
- the date by which shareholders can exercise their right to add items to the agenda;
- the procedures to appoint a proxy;
- the identity of the person (if any) designated by the company to act as collective proxy and the means and terms of the relevant appointment;
- the procedures for voting by correspondence or by electronic means, if provided for in the company's articles of association;
- the date by which a shareholder must be registered on the intermediary's account (see below), to be entitled to attend and vote at the meeting;
- the means and date by which the full text of the proposed resolutions, explanatory reports and other documents to be submitted to the meeting may be obtained; and
- the details of the company's website where the information and documents to be published before the meeting are made available (see below).

The notice must be posted on the company's website and made public by the other means that will be identified by CONSOB in its implementing regulation.

Publication on the company's website of information before a meeting

No later than the day of publication of the meeting notice, the directors must make available on the company's website:

- the documents that will be submitted to the meeting;
- the forms to be used to vote by proxy and, if provided for by the articles of association, to vote by correspondence; if the forms cannot be made available on the internet for technical reasons, information must be given on how they can be obtained in hard copy;
- information on the amount of the company's capital, indicating the total number of shares and the classes of shares into which it is divided; and
- an explanatory report on each item of the proposed agenda.

In addition to the company's website, the above explanatory report(s), as well as any other explanatory report required by law, must be made available also at the company's registered office and by the other means that will be identified by CONSOB in its implementing regulation.

In this connection, the publication terms provided for certain explanatory reports (eg those prepared in the context of a company's share capital increase, appointment of members of the board of directors or statutory auditors, or approval of the annual financial statements) have been extended to 21 days.

Second and subsequent calls of the general meeting

Current legislation provides for the company's obligation to hold shareholders' meetings on second (and further) calls, if the shareholders' meeting is not duly assembled on its first call. This obligation may now be excluded by the company's articles of association provided that, at the extraordinary shareholders' meetings, at least one-fifth of share capital is in attendance. No minimum attendance quorum is required for ordinary shareholders' meetings to be validly assembled. Resolutions in ordinary and extraordinary shareholders' meetings are adopted, respectively, by absolute majority and two-thirds majority of the shares represented at the meeting. However, the provisions allow the company's articles of association to provide for higher quorum and majorities.

Shareholders' right to require the calling of a general meeting

The Act has reduced from 10 to 5 per cent the minimum holding that shareholders must have to require the directors to call a meeting (unless the articles of association provide for a lower threshold).

If a meeting is called following a shareholder request, the explanatory report(s) on the items of the proposed agenda must be prepared by the requesting shareholder(s) and published by the company on the same day of publication as the meeting notice. The company's board may add comments to such explanatory report(s).

Shareholders' right to add items to the agenda

The Act has extended, from five to 10 days after publication of the notice, the deadline by which shareholder(s) (representing, individually or jointly, at least 2.5 per cent of the share capital) can exercise their right to ask the company to add (one or more) items to the meeting agenda. However, the five-day term shall continue to apply in respect of meetings requiring a 21-day notice period (see above) or called to adopt defensive measures in the context of a takeover bid.

Any request to add items to the agenda must be submitted in writing and accompanied by the relevant explanatory report(s) prepared by the requesting shareholder(s). The company must publish the 'extra' items and the relevant explanatory report(s) at least 15 days before the meeting. This term is reduced to seven days if the meeting is called to adopt defensive measures in the context of a takeover bid.

Shareholders' questions

The company's board must now answer, at the latest during the meeting, any question raised by shareholders before the meeting in relation to any of the items included in the agenda. However, the company does not need to answer if the answer may be found in a dedicated 'Q&A' section on its website.

Record date

The Act has introduced a statutory record date for the determination of shareholders' rights to attend and vote in a meeting. In particular, these rights will be determined by reference to the shares registered in favour of the shareholder on the relevant intermediary's accounts on the close of the seventh market day preceding the date of the meeting, as attested by a communication given to the company by the intermediary. Any registration made in favour of or against a certain shareholder after this date will not be taken into consideration for the purposes of the shareholder's right to attend and vote in that meeting. However, if a registration is made after this date, the beneficiary of the registration will be considered as 'not attending' the relevant meeting or 'not having

contributed to the adoption of the relevant resolution' for the purposes of the right to withdraw from the company or challenge the resolution(s) adopted at the meeting.

A record date mechanism has also been introduced to determine shareholders' right to submit slates of candidates to be considered for appointment as members of the management or the supervisory body of the company. In particular, shareholders' title to the (minimum) number of shares required for this purpose will be determined by reference to shares registered in their name on the date on which the slates of candidates are submitted to the company.

'Loyalty prize'

The Act allows companies to provide in their articles of association for the right of certain shareholders to receive a higher dividend – not exceeding by more than 10 per cent the dividend per share distributed to the other shareholders – for shares representing not more than 0.5 per cent of the company's share capital (shares exceeding 0.5 per cent of the share capital shall not give the right to receive any higher dividend). However, the right to receive such higher dividend is conditional on the relevant shareholder (i) having held the shares for a certain uninterrupted period of time indicated in the articles of association, being in any case not less than one year, and (ii) not having exercised during the relevant period of time, even temporarily or jointly with other shareholders, a dominant or significant influence on the company.

Proxy appointment

Unless otherwise provided for by the company's articles of association, companies must indicate, for each meeting, a person to whom shareholders can grant proxies containing voting instructions on all or some of the items of the agenda. In general, the proxy must vote in accordance with the voting instructions given by the shareholder. However, CONSOB will determine, in its implementing regulations, specific cases in which a proxy is allowed to express a different vote from that specified in the voting instructions.

Proxy solicitation

The Act has also made some important amendments to the provisions of the Italian Financial Act governing proxy solicitations. In particular, it has repealed:

- the provision requiring promoters to hold at least 1 per cent of the voting share capital of the company;
- the provision reserving solicitation activities only to certain companies – they can now be conducted directly by promoters without the need for any intermediary; and
- the requirement that the solicitation proposal be addressed to all the shareholders, being now sufficient to direct it to a limited number of them (in any event more than 200).

Finally, the Act has clarified that shareholders adhering to a proxy solicitation are entitled to give different voting instructions from those specified in the proxy solicitation form.

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