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Dual class shares and loyalty shares

Dual class shares
- **Multiplier:** increase from x3 up to x10
- **Adoption:** pre-IPO

Loyalty shares
- **Multiplier:**
  - x2 (if shares are held for 24 months)
  - Increase up to x10 (once reached the 24 months-period, additional progressive increase by one unit every 12 months thereafter)
- **Adoption:** post-IPO, through bylaws modification (opt-in)

**Investor protection:**
- right of withdrawal in the event of bylaws amendments that increase voting rights beyond the x2 multiplier.

**Coordination with takeover rules:**
- disapplication of the rules on takeover bids where the relevant thresholds are exceeded as a result of an increase in voting rights following a cross-border merger/transformation/de-merger, where the transactions do not result in any change of control of the company.
Increase of multiple voting rights: focus points

In the case of loyalty shares, the increased voting rights may be introduced by amending the articles of association for companies that are already listed.

- There are operational/practical complexities in registering to access the increased vote
- Institutional investors do not access to increased voting rights
- Benefits of increased voting rights are a prerogative of majority shareholders only

- Significant unequal treatment/opportunity between majority and minority shareholders
- Institutional investors may refrain from investing in companies that adopts such mechanisms
Derogations from the principle of “one-share, one-vote” should necessarily be accompanied by limits and safeguards to protect minorities, in order to mitigate the risk of extraction of private benefits by majorities that underlies multiple voting.

Further mandatory safeguards such as:

- arithmetical limits for multipliers
- sunset clauses (5-7 years, according to international best practices)
- whitewash mechanisms (periodic shareholder vote on maintaining multiple voting structures)
- restrictions on using multiple voting for particularly important resolutions (e.g. RPT and say-on-pay)

The possibility of introducing multiple voting rights should be limited to the pre-IPO phase.

The price set for the listing would immediately discount the reduction in rights granted to investors.
## Slate submitted by the Board of Directors

### Allocation of board seats

- If the first two minority slates receive less than 20% of the votes at the AGM, the slate of the Board of Directors is entitled to up to 4/5 of the board seats (at least 20% of the seats are reserved for the first two minority slates, if they obtain less than 20% of the votes at the AGM).
- “If the total number of votes received at the meeting from the other lists, not to exceed two in order of votes received at the meeting, exceeds 20 percent of the total number of votes cast, the members of the new Board, whose competence lies with the minorities, are assigned in proportion to the votes received from the minority lists that have reached a percentage of votes of at least 3 percent. For the purposes of calculating the distribution of the eligible directors pursuant to the first clause, the votes of the lists that have received a percentage of votes of less than 3 percent are assigned in proportion to the votes received from the minority lists that have exceeded said threshold;”

### Slate requirements

- Outgoing Board of Directors entitled to submit a slate if provided for in the bylaws (Opt-in).
- Board slate consisting of a number of candidates equal to the **total number of members to be elected** plus 1/3.
- The board of directors decides on the presentation of the slate by a **2/3 majority** of its members.
- The slate must be published at least **40 days before the AGM**.

### Voting methods

- If the first two minority slates receive less than 20% of the votes at the AGM, the slate of the Board of Directors is entitled to up to 4/5 of the board seats (at least 20% of the seats are reserved for the first two minority slates, if they obtain less than 20% of the votes at the AGM).

### Other provisions

- If the slate of the Board of Directors is the slate with the most votes, the Chairman of the Risk&Control Committee shall be an independent director drawn from a slate other than that of the outgoing Board of Directors.
- Within **30 days of the entry into force of the law**, Consob is expected to issue the **implementing regulation**.
- Companies must **adapt their bylaws** to enable the rule to be applied starting from **1 January 2025**.
There is a risk that the new rules will not be understood by international investors and will increase their reluctance to invest in our market.
Slate submitted by the Board of Directors: focus points
Procedural Complexities

**Slate requirements**
Decision on the submission of the slate by a 2/3 majority of the Board of Directors

- Deviation from the "absolute majority" criterion.

Number of candidates = number of members to be elected + 1/3

- Makes harder to search and select candidates
- Hinders the presentation of high profile candidates

**Voting methods**
The candidates on the Board slate shall be voted on again individually if the slate of the Boards receives the highest number of votes.

Misalignments concerning:

a) Shareholders’ rights to:
- Vote on candidates submitted by the Board
- Vote on candidates submitted by shareholders

b) Directors' accountability system:
- Candidates on Board slate -individual accountability
- Candidates on shareholders slates – no individual accountability
Slate submitted by the Board of Directors: focus points
Interpretation of the rules

Scenario in which the Board slate is not the one with the most votes at the AGM

The provision doesn't specify what happens in this case.

scenario in which the first two minority slates obtain more than 20% of votes

“If the total number of votes received at the meeting from the other lists, not to exceed two in order of votes received at the meeting, exceeds 20 percent of the total number of votes cast, the members of the new Board, whose competence lies with the minorities, are assigned in proportion to the votes received from the minority lists that have reached a percentage of votes of at least 3 percent.”

It is unclear whether or not the board has access to the minority seat allocation.

The allocation of seats between the Board slate and the shareholders’ minority slates is unclear

Several interpretations are possible

Purely proportional system with a 3% threshold, with no "majority prize" for the Board slate.

Governability risks and potential imbalances in the definition of proper relationships between the parties.

Principle of proportional allocation of seats among minority slates only

Need for further regulatory or bylaws adjustments
New rules allow all listed companies to amend their bylaws (opt-in) to provide for **AGMs convened and held with the exclusive participation of the so called “designated representative”** (rappresentante designato).

Capital Markets Bill extended the possibility for companies to call for AGMs to be held exclusively through the designated representative (even if not foreseen by a company’s bylaws) until 31 December 2024 [it was originally provided in covid-19 legislation, enacted to face pandemic, and then postponed various times]

In case the AGM is held with the exclusive participation of the designated representative:

- The presentation of resolution proposals directly in the AGM won’t be allowed (individual resolution proposals must be filed by shareholders at least 15 days before AGM)
- The right of shareholders to ask questions on items on the agenda can only be exercised before the meeting and the company must respond at least three days before the meeting

**Risk of compression of shareholders’ voice**
Several companies (e.g. ERG, Webuild) have already proposed a change in their bylaws to introduce the «closed doors» format for AGMs.

Research documents provided by the two main proxy advisors highlight that proposal concerning the introduction of “closed doors” AGMs are not in shareholders’ interest and so it is recommended to vote AGAINST them as they may negatively affect minority shareholder rights.

GL specifies that they would recommend to vote against unless the proposed amendments specify that the closed-door meeting format would only be used in exceptional circumstances, such as a public health crisis, and the amendments include a commitment to publicly disclose the exceptional circumstance that warrants holding the meeting in a closed-door format as part of the meeting notice.

ISS specifies that despite the increasing occasions for (major) investors to engage with companies and the existing tools foreseen by the regulatory framework (e.g., pre-shareholder meeting questions etc.), investor feedback indicates that shareholders should not be deprived of the opportunity to debate and transparently interact in a common forum such as the general meeting.
Amendment of Art. 24 of Italian Law on Finance
Facilitation of the delegation of voting rights to the asset manager for mandates

For mandates, delegation for the exercise of voting rights may be now granted by the client to the asset manager for several AGMs by means of a general proxy.

- Full implementation of the mandate between the client and the asset manager
- Alignment to SRD II provisions concerning asset managers’ stewardship prerogatives