

What's new in Italian corporate law now that the "Decreto Competitività" is law?

Italian Law Decree no. 91/2014 (the so-called "Decreto Competitività") has been converted into law and implements substantial changes to the Italian legislative framework governing joint stock companies and small and medium listed companies, on matters such as takeover offers, shares carrying doubled votes and shares carrying multiple votes.

On 7 August 2014 the Italian Senate approved and converted into law the so-called "Competitività" Decree (the "**Converted Decree**") and on 20 August 2014 the conversion law was published in the Official Gazette of the Italian Republic (Official Gazette no. 192 dated 20 August 2014 - Ordinary Appendix no. 72). Among the major legislative amendments, articles 20 and 21 of the Converted Decree:

- introduce a new definition of "small and medium listed companies" ("**SMLCs**"),
- upon certain conditions, allow Italian listed companies to lower the thresholds triggering the obligation to launch a mandatory takeover offer,
- allow companies to create shares with doubled votes and shares with multiple votes, and
- reduce the minimum share capital required for joint stock companies.

Small and medium listed companies

The Converted Decree includes measures aimed at promoting the listing process for SMLCs

The Converted Decree expressly defines SMLCs as follows:

"subject to other provisions of law, small and medium companies issuing listed shares, which have, on the basis of the approved financial statements for the most recent financial year, even if before admission to listing of its shares, a turnover of up to Euro 300 million, or an average market capitalization in the prior calendar year of less than Euro 500 million. Issuers of listed shares that have exceeded both of the foregoing thresholds for three consecutive financial years, or three calendar years, are not deemed to be SMLCs".

To facilitate the acquisition of stakes into SMLCs, the Converted Decree reduces disclosure requirements for significant holdings in SMLCs, requiring disclosure of holdings in SMLCs only in case of holdings in excess of 5% of the share capital of the SMLC (compared to a disclosure requirement for holdings in excess of 2% in

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companies other than SMLCs).

The Converted Decree also amends certain aspects of the rules governing the takeover offers launched over SMLCs. For more details, see below "Thresholds for mandatory takeover offers".

Thresholds for mandatory takeover offers

Before the Converted Decree, the threshold of ownership triggering a mandatory takeover offer was ownership of 30% or more of the share capital of listed companies.

The Converted Decree has confirmed the above general rule, introducing however the following exceptions:

- any entity which comes to own more than 30% of the share capital of, or more than 30% of the voting rights in, a listed company as a result of acquisitions of shares or holding of shares carrying doubled votes, is required to launch a mandatory takeover offer over the shares of such listed company;
- any entity which comes to own more than 25% of the share capital of a listed company (other than SMLCs) as a result of acquisitions of shares is required to launch a mandatory takeover offer over the shares of such listed company if no other shareholder holds a higher stake;
- the by-laws of SMLCs are allowed to introduce an ownership threshold for mandatory takeover offers different than the 30% threshold set by the law, provided that such threshold cannot be lower than 25% or higher than 40% of the share capital of the SMLC. The relevant amendment of the by-laws triggers the right of withdrawal from the SMLC of shareholders not approving such amendment.
- the by-laws of SMLCs are allowed to include an exemption to the application of the rules relating to the incremental takeover offers¹; however, such exemption will be effective only until the date of the shareholders' meeting convened to approve the financial statements for the fifth financial year following the listing of the SMLC.

Shares carrying doubled votes (*maggiorazione del voto*)

The Converted Decree allows all listed companies to opt for a doubled vote regime, as summarised below:

- (i) The by-laws can provide that one additional vote (therefore up to two votes) be granted to each share that has been owned by the same person for a continuous period of not less than 24 months from the date such shareholder is registered in the list described below in paragraph (iii). To promote the listing process, the Converted Decree provides that the by-laws adopted by the companies in the context of their listing process can provide that the calculation of the period of continuous possession may also include a period

¹ An entity is obliged to launch an incremental takeover offer when (i) it already owns stakes into a listed company exceeding the thresholds triggering a mandatory takeover offer, AND (ii) it comes to own an additional stake representing more than 5% of the share capital of such listed company (either as a result of acquisitions of shares or holding of shares with doubled votes) without however coming to hold the majority of the voting rights in the ordinary shareholders' meeting.

that is before the date of registration in the list described in paragraph (iii) below.

- (ii) The by-laws can also provide that the person who is entitled to exercise the additional voting right (*i.e.* the doubled vote) may irrevocably waive the exercise of all or part of its additional doubled votes.
- (iii) The by-laws must set out the conditions to attribute the doubled votes and to ascertain that any such conditions have been met, and a list registering those shareholders entitled to exercise the doubled votes must be created.
- (iv) Transfers of the shares, with or without consideration, or direct or indirect transfers of control holdings in companies or entities that have shares carrying a doubled vote privilege in excess of 2% of the share capital (or 5% in case of SMLCs) will lead to the loss of the doubled vote. Unless the by-laws provide otherwise, the right to exercise the doubled votes:
 - is retained in the context of transfers in case of death, or in the case of merger or de-merger of the legal person holding the shares;
 - extends to newly-issued shares in the context of capital increases implemented through allocation of reserves to equity.
- (v) The plan for merger or de-merger of a company whose by-laws provide for doubled votes can provide that the doubled vote may also attach to the shares that will be exchanged for those that already enjoy the doubled vote. The by-laws can provide that the doubled vote will proportionally extend to the shares issued to implement a share capital through new contributions.
- (vi) The resolution approving the amendment to the by-laws granting the doubled vote does not give rise to the right of withdrawal pursuant to article 2347 of the Italian Civil Code.
- (vii) Unless the by-laws provide otherwise, the doubled votes are taken into account also for the purposes of quorum, both for constitution of the meeting and for voting, based on percentages of the share capital. To the contrary, the doubled votes are not taken into account for the purposes of exercising any other right (other than voting rights) based on percentages of the share capital.

The introduction of the doubled vote has required several amendments to other provisions of the Italian Financial Act (TUF):

- doubled votes are included in the calculation of the relevant thresholds for the mandatory takeover offers. For more details, please see above "Thresholds for mandatory takeover offers";
- exercise of doubled votes is not permitted in a shareholders' meeting that is deciding on any measure to defend against a hostile takeover offer;
- doubled votes are also relevant for incremental takeover obligations (*i.e.* the obligation to launch a takeover offer for those that already own a holding exceeding the relevant threshold and increase their holding by more than 5%, without however coming to hold the majority of the voting rights in the ordinary shareholders' meeting);
- doubled votes are taken into account also in relation to the obligation to launch a takeover offer by persons acting in concert. Therefore, to evaluate whether the relevant thresholds for mandatory

takeover offers have been exceeded, persons or entities acting in concert have to calculate their holdings taking into account any doubled votes to which they are entitled;

- for the purposes of the obligation to disclose significant holdings, the Converted Decree specifies that for the companies allowing the doubled vote the relevant thresholds are to be calculated on the basis of the total number of the voting rights (and not on the basis of the share capital).

Shares carrying multiple votes (*azioni a voto plurimo*)

Completely innovating compared to the past, the Converted Decree allows non-listed joint stock companies to create shares carrying multiple votes, up to three votes per share. The exercise of the right to multiple votes may be granted in full, or only in relation to decisions on certain matters or conditionally, provided that the conditions are not subjective or discretionary.

If already existing prior to the admission to listing, shares carrying multiple votes retain the same rights and conditions also after listing. Unless the by-laws provide otherwise, listed companies which already have shares with multiple votes may issue new shares carrying multiple votes to avoid altering the balance between the various existing classes of shares, only in case of (i) capital increases through allocation of reserves to equity, (ii) capital increases through new contributions, with an option right, or (iii) mergers and de-mergers. In these cases, the by-laws cannot provide for shares with doubled votes as well.

Companies already existing as of 31 August 2014 can amend their by-laws so as to introduce shares carrying multiple votes, pursuant to a decision of the shareholders' meeting to be approved with the favourable vote of at least 2/3 of the share capital in attendance.

Other provisions

Withdrawal right of the shareholders

Before the Converted Decree, article 2437-*ter* of the Italian Civil Code provided that, in case of exercise of the right of withdrawal by a shareholder of a company listed on a regulated market, the price of liquidation would be calculated exclusively on the basis of the average market price of the shares in the preceding six months.

The Converted Decree now allows the by-laws of a company listed on a regulated market to provide that the liquidation price in the case of withdrawal of a shareholder will be calculated on the basis of:

- (i) the assets of the company and its prospects for revenues, as well as the market value of its shares;
- (ii) other criteria, identifying the assets and liabilities which may be adjusted compared to the values shown on the balance sheet, along with the criteria for adjustments and the other elements subject to valuation to be considered.

In any case, the Converted Decree provides that the price of the liquidation cannot be lower than the average market price of the shares in the preceding six months.

Minimum of share capital amount

The Converted Decree provides that the minimum share capital for an Italian joint stock company is Euro

50,000, amending article 2327 of the Italian Civil Code, which had required a minimum capital of Euro 120,000 before the entry into force of the Converted Decree.

Board of statutory auditors in limited liability companies

The Converted Decree provides that limited liability companies whose quota capital exceeds Euro 50,000 are no longer required to have a board of statutory auditors. Therefore, limited liability companies are required to appoint a board of directors only if:

- they have to draft consolidated financial statements;
- they control companies mandatorily subject to external audit;
- for two consecutive fiscal years exceed any two of the following items:
 - total assets in the balance sheet: Euro 4,400,000,
 - profits from sales and activities: Euro 8,800,000,
 - average employees over the course of the financial year: 50 individuals.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice

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