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Italy

CORPORATE GOVERNANCE

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in Italy.

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ITALY
CORPORATE GOVERNANCE

1. What are the most common types of corporate business entity and what are the main structural differences between them?

Leaving aside partnerships (*società semplice, società in nome collettivo* and *società* in *accomandita semplice*) and partnerships limited by shares (società in accomandita per azioni), Italian companies are in most cases incorporated and operating as corporations, i.e. limited liability company (società a responsabilità limitata) or joint stock company (società per azioni).

Shareholders of both limited liability companies and joint stock companies are granted with limited liability (i.e. the risk is limited to the investment).

Private companies are usually incorporated as limited liability companies – especially if closely-held small and medium-sized enterprises (SMEs) – or joint stock companies. Public companies, i.e. companies with shares admitted to trading on a regulated market, are typically incorporated as joint stock companies (as limited liability companies cannot be listed).

It is worth noting that, while joint stock companies issue shares, limited liability companies issue "quotas", which are not securities from a legal standpoint.

The key corporate structure of both limited liability companies and joint stock companies is as follows:

- shareholders general meeting (assemblea dei soci);
- board of directors (consiglio di amministrazione) or sole director (amministratore unico);
- board of statutory auditors (collegio sindacale) (see point 13 below).

Joint stock companies may also opt-in – by means of an explicit by-laws provision – for implementing one-tier (monistico) or two-tier (dualistico) corporate governance systems. The one-tier system is characterized by the presence of a shareholders meeting, a board of directors and a committee on management control, operating within the latter and composed of independent directors. The two-tier one is characterized by the presence of a shareholders meeting, a supervisory board and a management board, whose members are appointed by the supervisory board.

Joint stock companies shall also appoint an accounting auditor, acting in compliance with Legislative Decree 39/2010, provided that the board of statutory auditors may act as accounting auditor, conditional to: (i) the company not being required to consolidate the accounts of other entities, (ii) the company not being a listed or supervised entity, (iii) all statutory auditors being enrolled with the Register of Accountants.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

Shareholder activism and engagement have kept growing and gaining strength in the past years. Following the national implementation of Directive (EU) 2017/828 as regards the encouragement of long-term shareholder engagement (Shareholder Rights Directive 2 or SRD 2), which occurred mid-year with Legislative Decree 49/2019, we expect such trend to increase even more in the Italian financial markets, also in light of the coming into effect of the new *Corporate Governance Code for listed companies* (the CG Code, adopted in January 2020 and effective from 1 January 2021) issued by Borsa Italiana S.p.A. (the Italian stock exchange management company).

On a different note, we expect companies and regulators to focus on the interactions between innovation and corporate governance (*e.g.* crypto-assets, FinTech, AI and technology within the corporation, etc.). We also expect a further spreading of remote corporate meetings, non-at-meeting voting methods (see point 4 below), with the support of innovative tech-tools.

Finally, strengthening corporate governance will be of pivotal importance for Italian companies (listed and non-listed), with a specific focus on internal control systems and procedures, as well as regulatory/compliance schemes, such as those related to the liability of legal entities for crimes committed in their interest or to their advantage (under Legislative Decree 231/2001), data protection (under the General Data Protection Regulation and its national implementing and supplementing measures), whistleblowing, IT and cyber risks, AML.

3. Who are the key persons involved in the management of each type of entity?

The key persons involved in the management of joint stock companies and limited liability companies are usually as follows:

- the governing body, which may be either a board of directors or a sole director (or a management board in case a two-tier system is in place) (see point 1 above);
- managing director (amministratore delegato), who usually serves on the board (see point 6 below);
- the committees established within the board of directors (see point 6 below);
- key managers, such as the general manager (direttore generale) and officers (CFO, COO, CIO, CTO, etc.), if appointed (see point 6 below).

4. How are responsibility and management power divided between the entity's management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

Management matters are reserved to the exclusive competence of the board of directors (Art. 2380-*bis*, par. 1, ICC) and shareholders are prevented from resolving upon any management matter, even though certain exclusions apply to limited liability companies under Art. 2479 ICC.

Shareholders general meetings are "ordinary" or "extraordinary", depending on the items to be addressed, and meet at first and second calling (*prima* and *seconda convocazione*).

The shareholders meeting is entitled to resolve upon the matters granted to its competence by the applicable laws and regulations, which most significantly include: (i) appointment of directors and statutory auditors, (ii) filing of corporate suits against directors and statutory auditors, (iii) approval of financial statements and distribution of profits, (iv) share buyback programs, (v) amendments to the by-laws, (vi) mergers and demergers, conversions, (vii) etc.

Meetings operate based on the majority principle, provided that the by-laws may provide for the existence and issuance of special classes of shares, granted with certain rights or obligations (see point 18 above). The applicable quorums and majorities are to be determined based on: (a) type of company (listed or non-listed), (b) type of meeting ("ordinary" or "extraordinary"), (c) calling (first or second), (d) super-quorums and/or majorities set forth under the by-laws, if any.

With reference to both shareholders and board meetings, the by-laws may opt-in for: (i) remote meetings, i.e. audio/video attendance to meetings, and/or (ii) non-at-meeting voting methods, i.e. by mail or electronic means, provided in any case that a formal meeting shall be called.

Only limited liability companies' by-laws may also provide for written consent or circular resolution instruments.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

Corporate governance requirements are regulated, inter alia, under the Italian Civil Code and, as regard listed companies, the Consolidated Financial Act (*Testo Unico della Finanza* or CFA), as well as other relevant laws, regulations and best practice guidelines, such as the CG Code.

Adherence to the CG Code is not mandatory. However, the company shall inform the public of the compliance to the latter on a yearly basis, under a comply-or-explain regime (Art. 123-*bis*, par. 2, CFA).

Corporate governance requirements of banks and financial institutions are regulated under the relevant supranational rules (e.g. EU ones), the CFA, the Consolidated Banking Act (*Testo Unico Bancario* or *CBA*), the Private Insurance Companies Act (*Codice delle Assicurazioni Private* or *PICA*) and the relevant implementing regulations.

Specific provisions apply to state-owned entities, non-profit and social entities and companies, etc.

The above is without prejudice to supranational soft-law rules and guidelines (e.g. the G20/OECD *Principles of Corporate Governance* and the Basel Committee on Banking Supervision *Corporate governance principles for banks*).

6. How is the board or other governing body constituted?

The default corporate governance system is the so-called “traditional” one, which is the most commonly used. As mentioned above, joint stock companies may also opt-in – by means of an explicit by-laws provisions – for implementing one-tier (*monistico*) or two-tier (*dualistico*) corporate governance systems (see point 1 above).

In the event that a board is appointed (i.e. not in the case of a sole director), pursuant to Art. 2381, par. 2-3, ICC, all or part of its powers may be attributed to: (a) one or more individual members, acting as managing director(s), and/or (ii) an executive committee. In such case, the managing director(s) or the executive committee shall report to the board – at least on a semi-annual basis – on the general management of the company, the most significant transactions/events of the relevant period (with respect to the company and the subsidiaries) and the foreseeable evolution of the business.

It is worth noting that the board shall have the right to recall the attributed powers at its sole discretion, provided that in the event that there is no just cause for recalling said powers, the relevant managing director(s) or executive committee shall have the right to sue a claim for damages.

Typically, the leadership is entrusted with a sole managing director (*amministratore delegato*).

It should be stressed that the chairperson – even if non-executive – is granted with significant rights and powers under Art. 2381 ICC, such as calling board meetings, defining the items on the agenda, ensuring that the directors receive all necessary information for the purposes of resolving on the matters to be addressed by the board.

Also, committees serving specific functions or tasks may be established within the board, either discretionally (non-listed and non-supervised entities) or mandatorily (listed companies, banks, financial institutions, etc.). Such committees may be executive (i.e. be granted by the board with autonomous management powers) or non-executive (i.e. serve preliminary or advisory functions).

Non-listed and non-supervised entities are not required to implement any committee structure, therefore it is to the by-laws or the board discretion to do so. Listed companies – pursuant to, respectively, Regulation no. 17221/2010 issued by the CONSOB (the Italian securities and markets authority) and the above mentioned CG Code – and banks – pursuant to Circular no. 285/2013 issued by the Bank of Italy – shall appoint the following board committees: related party transactions, appointments, remunerations and risks (the latter in listed companies is called “control and risks”).

Day-to-day activities and coordination with the management structures of the company, the governing body usually appoints a general manager (*direttore generale*) and officers (CFO, COO, CIO, etc.), who are generally employees of the company and do not serve on the board. They usually report directly to the managing director and/or the board.

7. How are the members of the board appointed and removed? What influence do the entity’s owners have over this?

Pursuant to Art. 2383 ICC, the members of the board of directors shall be appointed by the ordinary shareholders meeting, which is also exclusively competent in removing them. The removal may be discretionarily resolved upon by the meeting, provided that in the event that there is no just cause for removal, the removed directors shall have the right to sue a claim for damages. Ordinary quorums and majorities apply to the appointment and removal of directors (see point 4 above).

The term in office shall be of maximum 3 financial years.

It is worth noting that, inter alia: (i) special classes of shares may be granted with certain rights in relation to the appointment of directors, such as veto rights or the right to appoint (autonomously) a certain number of directors, (ii) each holder of a participating financial instrument (*strumento finanziario partecipativo* or SFP) may be granted with the right to appoint an independent director under Art. 2346, par. 6, ICC, provided that the majority of the board shall be appointed by the shareholders meeting.

Moreover, listed companies shall mandatorily apply list-voting mechanisms aimed at granting the appointment of at least 1 minority director.

8. Who typically serves on the board? Are

there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

SMEs and closely-held companies are typically managed by the majority shareholder or a trusted representative of the latter, who usually acts as managing director (*amministratore delegato*) and/or chairperson. Public and large companies are typically managed by non-investor professionals, while majority and qualified-minority investors hold offices as non-executive chairperson or directors.

In any case, pursuant to Art. 2382 ICC, one cannot be appointed as director – and, if appointed, terminates from office automatically – if he/she is: (i) interdicted, (ii) incapable, (ii) declared bankrupt, (iv) prevented from carrying out public offices or executive directorates.

Further suitability requirements apply to those holding offices as directors of listed companies, banks and financial institution, provided that the by-laws may voluntarily set forth specific requirements (Art. 2387 ICC).

With reference to independence: (i) listed companies' board of directors shall include at least 1 or 2 independent directors, depending on whether the board is composed of up to or more than 7 members ("independence" is defined under Art. 147-ter and 148 CFA and the CG Code), (ii) banks' board of directors shall include 25% of independent members ("independence" has been recently defined by Ministerial Decree no. 169/2020).

Statutory diversity requirements are provided for: (a) listed companies, which shall reserve at least 2/5 of the board seats to the least represented gender, and (b) banks, which shall ensure the appointment of board members with an adequate degree of diversity of competences, background, age, gender, internationalization, in compliance with their diversity policies (the CG Code provides for similar soft-law rules for listed companies). As regard banks, a minimum threshold of board seats reserved to the least represented gender is expected to the come into force in 2021 (the Bank of Italy launched a consultation in late December 2020).

No mandatory provisions are set out as regard succession plans. With regard to listed companies, the CG Code provides that succession plans should be implemented for the managing director, executive directors and top managers.

9. What is the role of the board with respect to setting and changing strategy?

As mentioned, management matters are reserved to the exclusive competence of the board of directors (see point 4 above), including the activities related to strategy setting and changing. The strategy is usually defined by the managing director or the executive committee; the board is in any case competent in examining the strategic plan, if any (Art. 2381 ICC).

The corporate strategy shall in any case be compliant with the applicable laws and be aimed at pursuing the purpose of the company, as set forth under the by-laws (Art. *2380-bis* ICC).

10. How are members of the board compensated? Is their remuneration regulated in any way?

Board members may be compensated in a variety of ways, ranging from a fixed annual remuneration, to stock option plans, from stock grants, to direct profit-sharing mechanisms.

It is worth noting that the compensation shall be resolved upon by the shareholders meeting, even though the board itself may grant further compensation to the benefit of the directors holding particular offices (*e.g.* managing director, chairperson, committee members, etc.), provided that the shareholders meeting shall in any case have the right to set out an aggregate maximum amount (Art. 2389 ICC).

Specific rules are provided for: (a) listed companies, as the CFA and the CG Code sets forth a number of principles and recommendations on the remuneration of board members and top management, and (b) banks, which shall comply with the mandatory rules under the EU Credit Requirements package, the CBA and their relevant implementing guidelines and regulations (*inter alia*, Circular no. 285/2013 issued by the Bank of Italy).

Specific provisions apply also to insurance companies and other financial institutions.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

Directors' duties and responsibilities are governed – as a general rule – under the ICC.

On the one hand, directors shall act in a loyal manner, as Art. 2390-2391 ICC sets forth that they shall not: (i) carry out any activity in competition with the company (unless so authorized by the shareholders meeting), (ii) use for their own advantage or the advantage of third parties any information (including information on business opportunities), of which they become aware as a consequence of their office and that might be exploited by the company. Moreover, Art. 2391-bis ICC and its relevant implementing measures set forth specific rules applicable to listed companies' related party transactions (scope of application, thresholds, procedures, whitewash, etc.).

On the other hand, pursuant to Art. 2392 ICC, directors are under a general duty to: (i) carry out the management of the company in accordance with the applicable laws and regulations, as well as the by-laws, (ii) act with the degree of care (*diligenza*) required in relation to their office, their professional skills and the particular features of the company.

Also, as a general rule, the directors shall define, approve and implement an organizational, management and accounting structure suitable in light of the company's purpose and dimension. Said structure shall also be fit for timely discovering distress/insolvency situations and monitoring the going concern of the business (Art. 2086 ICC).

In case of breach of the mentioned duties of loyalty and/or care, directors shall be jointly liable towards the company for any damages caused by or deriving from their negligence, with the exclusion of the powers attributed, as the case may be, to the managing director or the executive committee, if any.

However, non-executive directors are not totally exempt from liability. In case the relevant member: (a) negligently fails to obtain data or information from the managing director or the executive committee, or (b) knew that a detrimental action was being carried out, but did not do his/her best to prevent or limit the consequences thereof, he/she shall be jointly liable with the managing director or the members of the executive committee.

It should be noted that the so-called business judgement rule applies. Namely, directors shall not be held liable for any damages suffered by the company, provided that the latter are part of the range of choices that could be considered ex ante as potentially advantageous (or in any case harmless) for the company by a person having the standard of care and knowledge which could be expected from the director of a company operating in the same business sector. It is worthwhile noting that, even though the business judgment rule prevents the courts from plunging into the merits of managerial evaluations, courts are not prevented from evaluating whether the decisions of the directors have been taken with gross negligence or reckless disregard and/or with the actual awareness that said decisions would cause a prejudice to the company.

Specific provisions apply to banks and financial institutions.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Ex ante indemnities and limitations of liability are generally not permitted to cover board members' potential personal liability (see point 11 above), as limitations or waivers to directors may be granted only by means of an *ex post* shareholders meeting resolution (Art. 2393 ICC).

The company may enter into D&O insurance policies for protecting board members against such potential liability. Insurance protections are commonly used only by listed companies, banks and financial institutions, especially if part of international groups. Otherwise they are still quite rare.

13. How (and by whom) are board members typically overseen and evaluated?

Management activities are primarily overseen by: (i) the board of directors as a whole (especially in relation to strategic decisions and high-level management), the managing director(s) and/or the executive committee, and (ii) the board of statutory auditors (compliance with the law and the by-laws).

The board of statutory auditors is a corporate body composed of professionals independent from the company and its management, which is entrusted with internal control functions; limited liability companies shall appoint a board of statutory auditors or a sole statutory auditor only if certain dimensional thresholds are triggered, the company controls an entity subject to mandatory accounting audit and/or it consolidates the accounts of other entities (Art. 2477 ICC, as recently amended).

Managers evaluation shall be discretionally defined and carried out by the board of directors, internal evaluation functions and senior management (e.g. CEO, COO, HR).

It is worth noting that listed companies, insurance companies and banks' board of directors shall conduct auto-evaluations on a periodic basis, respectively, under the CG Code and Circular no. 285/2013 issued by the Bank of Italy.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

On the one hand – with the aim of preserving corporate secrets and the exclusive governance competence vested into the directors – shareholders of joint stock companies are not granted with the right to engage with the board of directors for the purposes of being informed of the business activity of the company.

On the other hand, holders of quotas of limited liability companies are granted with the individual right to ask the board of directors for any information on the business activity of the company (Art. 2476, par. 2, ICC).

The latest version of the CG Code explicitly states that the board of directors shall assess the opportunity of engaging with the shareholders and the other relevant stakeholders. As regard banks, similar rules on engagement with shareholders are expected to the come into force in 2021 (the Bank of Italy launched a consultation in late December 2020).

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

The by-laws may provide for the existence and issuance of special classes of shares, granted with certain rights or obligations, e.g. (i) multiple-voting rights (up to no more than 3 votes per share) or limitations/conditions to the exercise of voting rights, (ii) specific rights regarding the distribution of profits or the apportionment of losses, (iii) rights or obligations relating to the transferability of the shares (lock-up, pre-emption, right of first offer, drag and tag-along, etc.), (iv) prior approval or veto rights on specific matters to be resolved upon by the general shareholders meeting.

Multi-class capital structures are commonly used by start-up companies, as well as in private equity and other tailor-made investment schemes, with the aim of protecting the position and the investment of specific shareholders. They are not common in listed companies.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

As regard financial information, joint stock companies and limited liability companies shall file with the Register of Companies their yearly financial statements, within 30 days from the approval by the shareholders meeting (see point 20 below). Financial statements approved by the shareholders meeting, once filed, are available to the public.

Listed companies shall also disclose semi-annual financial statements and may opt-in for extending such disclosure regime also to quarterly financial information.

As regard non-financial information, non-listed entities are not required to disclose business information to the public, other than the required corporate disclosures to the Register of Companies, such as: (a) corporate seat and purpose, (b) number and characteristics of the issued shares or quotas, (c) names and data of (i) shareholders, (ii) members of the corporate bodies (directors and statutory auditors, with indication of those holding managing director or chair functions, as well as their date of appointment and term in office), (iii) accounting auditor, (iv) entity carrying out management and coordination activity (*direzione e coordinamento*) over the company.

On a yearly basis, listed companies shall disclose their compliance to the CG Code provisions, pursuant to Art. 123-*bis*, par. 2, CFA (comply-or-explain).

Moreover, while listed companies shall comply with the disclosure duties under Regulation (EU) no. 596/2014 on market abuse (Market Abuse Regulation or MAR), certain large undertakings and groups (even though non-listed) shall comply with those under Directive 2014/95/EU as regards disclosure of non-financial and diversity information, as well as the relevant national implementing laws and regulations (see point 24 below).

Specific provisions apply to banks, insurance companies and financial institutions.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

Pursuant to and subject to the limitations under Art. 2367 ICC, shareholders holding at least 10% of the corporate capital (or 5% in case the company is listed) shall have the right to request the directors to call a shareholder meeting, for the purposes of resolving on specific items. The meeting can only resolve on the matters reserved to its competence (i.e. the shareholders are prevented from resolving upon any management matter, which is reserved to the directors' exclusive competence).

The same rule applies to investors holding quotas amounting to at least 1/3 of the corporate capital.

As regard listed companies, Art. 126-bis CFA grants the shareholders representing at least 2.5% of the corporate capital with the right to request the directors to supplement the agenda of an already-called meeting. In such case, the requesting shareholders shall provide the company with a report on the supplemented item, to be made public prior to the meeting.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

In case the directors breach their duties, they shall be liable towards the company (see point 11 above).

Should the shareholders meeting not reach the required majority, qualified minority shareholders (20% of the corporate capital or 5% in case the company is listed) may file a derivative suit. Any recovered amount shall be paid to the company, net of the legal costs.

In case an investor suffers a direct damage following a negligent or wilful misconduct of a director (i.e. not an indirect damage, such as a reduction of the value or the revenues of the company), said investor may claim damages from the relevant director.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

Italian financial markets experienced a significant growth in shareholder activism and engagement in the past years.

According to the latest publicly-available data (2019 Report on corporate governance of Italian listed companies, issued by the CONSOB): '*In line with the previous year, the 2019 Annual General Meetings (AGMs) of the 100 most capitalized Italian listed companies record a large attendance by shareholders (on average 72% of the share capital), and in particular by institutional investors (on average 21% of the share capital). Participation by both Italian and foreign institutional investors has remained stable over the last year (1.8% and 18.7% of the share capital, respectively)*'.

It should be noted that the national legal framework has been recently supplemented with the relevant implementing measures of the provisions under the SRD 2.

Namely, the newly-implemented Art. 124-quarter seq. CFA set forth that asset managers and institutional investors holding stakes in listed companies shall, inter alia: (i) make available to the market a commitment policy which describes how their investment intertwines with their general investment strategy (e.g. investment monitoring and engagement, risks, financial and non-financial results, exercise of voting rights, social and environmental impact, etc.), (ii) disclose, at least on a yearly basis, their actual implementation of such commitment policy and how their voting rights have been exercised.

Specific rules tackle the issue of transparency of asset managers and institutional investors, as well as long-term shareholder engagement.

As a general rule, non-controlling investors cannot exert influence on a corporate entity's management, as the latter is exclusively competent and responsible on business matters. However, in engaging with the management, investors may express their views and make suggestions and/or recommendations. Nonetheless, they cannot deprive the directors of their exclusive governing competence. The board is not required – from a strictly legal standpoint – to factor into its decisions investors' interests, unless on a voluntary basis.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

Pursuant to Art. 2364, par. 2, ICC, the board of directors shall call the shareholders meeting at least on a yearly basis, no later than 120 days from the date of expiration of the financial year (usually set by the by-laws at 31 December) – or 180 days from such date if the company is required to consolidate the accounts of other entities or such term extension is grounded on reasons relating to the corporate purpose or structure – for the purposes of resolving upon the financial statements, which shall be made freely accessible to the shareholders (at the corporate seat) at least 15 days prior to the meeting.

With sole reference to listed companies, Art. 125-*ter* CFA sets forth that, together with the calling notice, the shareholders shall be provided with written reports on each of the items on the agenda, prepared by the board of directors, as well as other transparency documents.

It is worth noting that, pursuant to Art. 2374 ICC, shareholders holding at least 1/3 of the corporate capital shall have the right to request a postponement of the meeting, should they assert not to have enough information on the item to be addressed. The new meeting shall convene no later than 5 days from the original date.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Proxy advisors often play a fundamental role in determining the voting outcome in listed companies' shareholders meetings, especially with reference to compensation resolutions (so-called say-on-pay).

Art. 123-octies CFA (recently adopted as part of the SRD 2 implementing measures) sets forth specific rules applicable to proxy advisors. The latter shall disclose to the market, inter alia: (i) the essential characteristics of the methods and models applied, (ii) their main sources of information, (iii) the extent and nature of their engagement with the listed companies object of their research, (iv) the procedures implemented to guarantee the quality of their research, advice and voting recommendations, (v) the procedures implemented to prevent and manage conflicts of interest.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

Unless so provided for on a voluntary basis, stakeholders do not typically play a role in the company's corporate governance.

It should be noted that, among others: (a) employees may be granted with corporate rights by means of granting them with financial instruments or stock options, (b) pursuant to Art. 2394 ICC, creditors shall have the right to sue the directors for breach of their duties (see point 12 above), in case such breach is detrimental to the creditors' rights to effectively collect their receivables, (c) pursuant to Art. 2418 ICC, the noteholders' representative shall have the right to attend the shareholders meeting.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

As mentioned, management matters are reserved to the exclusive competence of the board of directors (see point 4 above).

The board is not required – from a strictly legal standpoint – to factor non-shareholder stakeholders' interests into its decisions, unless on a voluntary basis (see point 19 above).

As regard listed companies, the latest version of the CG Code strongly stresses the importance of considering them as well.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

The mentioned issues are experiencing a significant growth in awareness by companies and stakeholders.

From a legal standpoint, general legal disclosure obligations are set forth under Directive 2014/95/EU as regards disclosure of non-financial and diversity information (which is currently under review by the European Commission), as well as the relevant national implementing laws and regulations. Also, the European Commission issued a set of guidelines to help companies disclose environmental and social information and a further set of guidelines on reporting climate-related information (which in practice supplement the mentioned non-financial disclosure).

More recently, Regulation (EU) 2019/2088, on sustainability-related disclosures in the financial services sector, laid down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products. The latter has been later amended by Regulation (EU) 2020/852, on the establishment of a framework to facilitate sustainable investment, establishing the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable.

The remuneration policy under Art. 123-*ter* CFA (recently amended by the SRD 2 implementing measures) shall serve the long-term interests and sustainability of the company as a whole and shall be approved by the shareholders meeting at least every 3 financial years.

As regard listed companies, the latest version of the CG Code strongly stresses the importance of ESG issues.

As regard banks, governance principles on sustainable finance and ESG are expected to the come into force in 2021 (the Bank of Italy launched a consultation in late December 2020).

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

With regard to listed companies: (a) pursuant to Art. 120 CFA, investors holding more than 3% of the corporate capital/voting rights of the company (5% if the company is a SME under the CFA) shall notify such holding to the company, the CONSOB and the market, (b) pursuant to Art. 122 CFA, where investors holding more than the mentioned thresholds enter into a shareholders agreement (patto parasociale), such investors shall inform of the agreement the company, the CONSOB and the market.

Also with regard to listed companies, any investor triggering certain holding-thresholds (namely: 10%, 20% and 25% of the corporate capital/voting rights of the company) shall state the objectives it intends to pursue in the following six months, setting out inter alia: (a) the means of financing used for acquiring the relevant holding, (b) whether it acted alone or in concert with other persons, (c) whether it intends to make further stock purchases and/or acquire control over the company and, in such case, the strategy it intends to adopt, (d) its intentions as to any agreements and shareholders' agreements to which it is a party to, (e) whether it intends to appoint and/or remove directors or statutory auditors.

As regard stewardship, no statutory rules are provided for. It should be noted that Assogestioni (the Italian Investment Management Association) issued the Italian Stewardship Principles, which are best practice and non-mandatory principles, aimed at inter alia: (i) providing a set of high-level best practices designed to promote discussion and cooperation between investment management companies and listed companies in which assets are invested, (ii) encouraging interaction between investment management companies and investee companies, in order to ensure that governance and investment process are closely linked, (iii) improving the quality of communication with investee companies, as well as encouraging investment management companies to create added value for their clients/investors by effectively addressing the issues related to corporate performance.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

As mentioned, SRD 2 introduced a varied set of rules aimed, among others, at: (a) encouraging long-term shareholder engagement (e.g. institutional investors shall publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets), (b) enhancing transparency between companies and investors (e.g. asset managers shall disclose how their investment strategy contributes to the medium to long-term performance, reporting on the key material medium to long-term risks associated with the investments), (c) ensuring a more long-term approach by listed companies, (d) enhancing long-term financial and non-financial performance of both the companies and the investors, (e) incentivizing directors to contribute to the long-term success of the company (e.g. the remuneration policy shall contribute to the company's business strategy and long-term interests and sustainability).

The relevant national implementing laws and regulations provide further detail on such principles.

As regard listed companies, the latest version of the CG Code strongly stresses the importance of long-term sustainable development. A similar principle is set forth under Circular no. 285/2013 issued by the Bank of Italy.

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