LOYALTY SHARES: AN ITALIAN PERSPECTIVE

The ability for companies to implement dual-class and loyalty share mechanisms varies broadly from one legal system to another, due to different approaches to dual-class shares that entitle shareholders to exercise multiple voting rights.

For example, the Spanish Ministry of Economy has recently proposed a **draft bill** that, among other aspects, suggests an amendment of the Spanish Companies Act to allow listed companies to **reward long-tenured shareholdings**. This would confer additional voting rights to those individuals who remain shareholders in a corporation for at least two years. For that purpose, a company would need to amend its bylaws by a qualified majority. Similar to the corresponding loyalty share model implemented in Italy, the adoption of loyalty shares in Spain would therefore follow an opt-in rule.

The Italian model

In Italy, more than 50 companies have introduced double voting rights.

All the companies that have introduced such rights are characterized by a low free float ratio with the presence of a strategic shareholder holding 58% of the share capital on average, with a minimum of 37% and a maximum of 85%.

When looking at voting records on proposals related to the implementation of such mechanisms, there is a significant trend of votes against such provisions from institutional investors and of negative recommendations from Proxy Advisors, even when the double voting rights are limited to specific items such as board renewals.

However, there have been some changes among institutional investors, such as French asset manager Amundi expressing support in favor of the introduction of double voting rights following a modification in its voting policy: *"We are not opposed to the allocation of double votes to long-term shareholders as long as they are accessible to all and do not lead to disproportionate control to the detriment of minority shareholders."*

How does this mechanism work in Italy?

The provision on double voting rights ascribable to ordinary shares of Italian listed companies (commonly referred to as loyalty shares) was introduced by the Italian legislator in 2014 in the Decree on Competitiveness. It was adopted along with a series of measures aimed at streamlining, revamping and fostering the development of Italian enterprises, with the purpose of promoting listings and long-term investments on Italian capital markets.

Italian companies with listed shares may introduce in their respective bylaws the attribution of increased voting rights of up to two votes for each ordinary share held by the same shareholder for an uninterrupted period of no less than 24 months starting from the date of registration. This registration is made in a special list prepared and maintained by the company in accordance with the detailed provisions on such list's content and on its update and disclosure obligations adopted by CONSOB (Articles 85-bis and 143-quater of the Issuers' Regulation).

As clarified in Article 127-quinquies, shares with increased voting rights do not constitute a special class of shares, different from the ordinary shares vested with the increased rights.

Double voting rights vs. other CEMS

The potential availability of the loyalty reward to all shareholders should prevent any violation of the principle of equal treatment. In the hypothetical situation in which all company shareholders maintain their investment for the duration of the loyalty period, all of them will be rewarded with double voting rights and thus double voting rights will have no effect on the distribution of power within the company.

In this sense, double voting rights are more equal than other CEMS such as voting cap mechanisms.

Double voting rights based on time-phased voting can also improve transparency if used as an alternative to other CEMs like pyramidal structures or shareholders' agreements.

The double voting rights aim to provide the company's management with stability and continuity, and to encourage the investment of all shareholders who support the company's strategy.

Finally, by encouraging stable investments and the long-term commitment of shareholders, the double voting rights will contribute to balance potential short-term oriented investor strategies.

Open questions

1. Are double voting rights or loyalty shares useful systems to reward long-term shareholders or do they serve to strengthen positions of control?
2. Does the introduction of majority voting require new governance for the companies that adopt it?
3. Are there more efficient systems than double voting rights to reward long-term investors?
4. Does the introduction of double voting rights make it necessary to think about some forms of balancing or corrective measures to corporate governance?

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