

Companies with shares listed in a regulated market

Italian and European Company Law – A.A. 2024/2025

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Regulation

- European Directives and Regulations
- Secondary EU Regulation
- Italian Civil Code
- Italian Financial Consolidate Law (Italian Legislative Decree n.58/1998)
- Consob secondary rules (Issuers Regulation_Regolamento emittenti)
- Corporate Governance Code

What does a listed company mean?

It means that the company's shares are listed on a “regulated market”.

“Regulated market” means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly. [MiFID II]

When the shares of a company (the issuer) are admitted to trading on a regulated market, special rules apply to the company and also to the shares. Also, the company is subject to supervision by the national financial market authority.

Purpose of the Financial Market discipline

- Ensuring the efficient functioning of financial markets.
- Promoting trust in financial markets.
- Protect investors.
- Eliminate the information asymmetries between market operators and investors.

Purpose of the Listed Companies discipline

- Ensuring the efficient functioning of the capital markets and the investors protection.
- Ensuring transparency of corporate information.
- Ensuring efficient corporate governance systems.
- Ensuring transparency in the corporate control market.
- Ensuring the protection of minority shareholders.

The Consob supervisory function

- Regulatory power
- Powers of information and investigation
- Powers of inspection
- Powers of intervention

Corporate governance of listed companies

Shareholders' meeting

Shareholders' rights

Directive 2007/36/EC (SHRD I)

→ exercise of the voting rights

a. timely access of shareholders to all information relevant to general meeting

b. right to actively participate in the general meeting

c. facilitation the cross-border exercise of voting rights by correspondence and by proxy

d. abolition of practices that constitute major obstacles to voting (in particular for institutional investor, i.e. investment funds)

- Art. 5 - Information prior to the general meeting
- Art. 6 - Right to put items on the agenda of the general meeting and to table draft resolutions
- Art. 7 - Requirements for participation and voting in the general meeting
- Art. 8 - Participation in the general meeting by electronic means
- Art. 9 - Right to ask questions
- Art. 10 - Proxy voting
- Art. 12 - Voting by correspondence
- Art. 14 - Voting results

Consolidated Financial Law

- the role of the website
- the notice of call: content and disclosure
- disclosure of the items put in the agenda
- the information to be made available after the meeting
- integration of the items listed in the agenda
- presentation of new proposal of resolution
- right to submit questions prior to the shareholders' meeting

The so-called record date

Entitlement to participate in the meeting is determined by the so-called record date rule: those who hold shares on the seventh market day before the meeting are entitled to participate in the meeting.

Transfer of shares made after these date are not relevant in terms of assuring the legitimate exercise of voting rights at the shareholders' meeting.

Article 125-bis. Notice of call to shareholders' meetings

- The notice of call must be published on the company's website and in extract form in the daily newspapers.
- The notice of call must be published within thirty days prior of the date of the meeting.
- For shareholders' meetings called to appoint, by means of list voting, members of the board of directors and internal control bodies, the time limit for publication of the notice of call shall be at least forty days prior to the date of the meeting.

Article 125-ter. Disclosure of items on the agenda

By the date of publication of the notice of call to the shareholders' meeting provided for each of the items on the agenda, the board of directors shall make a report on each of the items on items of the agenda available to the public at the company's registered office and on the company website.

Article 125-bis. Notice of call to shareholders' meetings

The notice of call shall contain:

- a) the indication of the day, time and place of the meeting and the list of matters on the agenda;
- b) a clear, precise description of the procedures to be applied in order to attend and vote at the shareholders' meeting;
- c) the record date, with the specification that those who become holders of shares only after that date shall not have the right to attend and vote at the shareholders' meeting;
- d) the terms and conditions for collecting the full text of the proposed resolutions, together with the explanatory reports and documents to be submitted to the shareholders' meeting;
- d-bis) the terms and conditions for presenting lists to elect the members of the board of directors and minority members of the board of auditors or the supervisory board;
- e) the address of the website where to find all information and documents relating to the matters discussed and the exercise of voting rights;
- f) the other information which must be indicated in the notice calling the meeting pursuant to other provisions.

Information that must be published before the shareholders' meeting in the company's website:

a) within the terms for the publication of the notice calling the meeting, as provided for each of the items on the agenda to which they refer, or subsequent terms as provided by the law for publication, the documents will be submitted to the shareholders' meeting;

b) within the terms for the publication of the notice calling the meeting, the forms that can be optionally used for voting by proxy and for correspondence voting; where the forms cannot be made available in electronic format for technical reasons, the same website will specify how to obtain hard copies and, in this case, the company must send them free of charge, on request, by mail, also through the intermediaries;

c) within the terms of publication of the notice calling the meeting, information on the amount of the share capital specifying the number and categories of shares into which it is divided.

After the shareholders' meeting must be published in the company's website a summary report of the votes containing the number of shares represented at the shareholders' meeting and the shares on which a vote was expressed, the percentage of capital represented by those shares, the number of votes in favour and against the resolution and the number of abstentions, shall be made available on the company web site within five days the date of the meeting.

The minutes of the shareholders' meeting pursuant to Article 2375 of the Civil Code shall in any event be made available on the website within thirty days of the date of the meeting.

Integration of the items listed in the agenda and presentation of new proposal of resolution

Shareholders, who individually or jointly account for one fortieth of the share capital, may ask for the integration of the list of items on the agenda, specifying in the request, the additional items they propose or presenting proposed resolution on items already on the agenda.

The proposal are presented in writing, by correspondence or electronically and are disclosed in the same ways as prescribed for the publication of the notice calling the meeting.

The agenda cannot be supplemented with items on which, in accordance with the law, the shareholders' meeting resolved on proposal of the administrative body or on the basis of a project or report prepared by it.

Right to submit questions prior to the shareholders' meeting

All those with voting rights may submit questions on the items on the agenda even prior to the shareholders' meeting. Questions received before the meeting will be answered at the latest during the said meeting. The company may provide a single reply to questions with the same content.

Proxies in listed companies (art. 135-*novies* et seq.)

The SHRD states «apart from the requirement that the proxy holder possess legal capacity, Member States shall abolish any legal rule which restricts, or allows companies to restrict, the eligibility of persons to be appointed ad proxy holders».

→ *ratio legis?*

- The limits provided by the article 2372 c.c. do not apply.
- It applies the conflict of interest regulation for proxies (if there is a conflict of interest between the shareholder and the representative, the latter must inform the shareholder in written form. the shareholder is obliged to give voting instructions to the representative, who must exercise the vote in accordance with the instructions).
- The appointed representative of listed companies.
- Solicitation of proxies...

Shares:

- Saving shares
- Multiple-voting shares
- Vote increase

- Dematerialization regime for circulation

* See slides on shares

The regulation of the shareholders' agreements

In whatever format they may be stipulated, agreements regarding the exercise of voting rights in companies with listed shares and their parent companies, within five days of stipulation shall be:

- a) communicated to CONSOB;
- b) published in extract form in the national daily newspapers;
- c) filed at the Companies Register of the place where the company has its registered office;
- d) communicated to listed companies.

This article shall also apply to agreements, in whatsoever form concluded, that:

- a) create obligations of consultation prior to the exercise of voting rights in companies with listed shares or companies that control them;
- b) set limits on the transfer of the related shares or of financial instruments that entitle holders to buy or subscribe for them;
- c) provide for the purchase of shares or financial instruments referred to in paragraph b);
- d) have as their object or effect the exercise, jointly or otherwise, of a dominant influence on such companies.
- d-bis) which aim to encourage or frustrate a takeover bid or exchange tender offering, including commitments relating to non-participation in a takeover bid

Agreements shall be null and void in the event of non-compliance with the requirements laid down by the law.

Voting rights attached to listed shares for which the requirements have not been satisfied may not be exercised. In the event of non-compliance, the resolution can be contested (annullability).
The resolution may also be contested by CONSOB.

The board of directors
(article 147-*ter* et seq.)

Composition: the administrative body must necessarily consist of several members.

→ Requirements: persons who perform an administrative or management role must satisfy the integrity requirements established in the regulation issued by the Minister of Justice (they must not have been convicted of certain types of criminal offence or subjected to preventive measures). Failure to satisfy the requirements shall result in disqualification from the position.

→ Article 2382 of the Civil Code applies.

→ Additional requirements laid down in the articles of association.

→ List voting mechanism: The Statute provides for members of the Board of Directors to be elected on the basis of the list of candidates and defines the minimum participation share required for their presentation, at an extent not above a fortieth of the share capital or at a different extent established by CONSOB with the regulation taking into account capitalization, floating funds and ownership structures of listed companies. The articles of association can rule that the leaving Board of Directors may submit a list of candidates for the election of the members of the Board.

Lists are deposited with the issuer, also by means of remote communication, in compliance with any requirements strictly necessary to identify the applicants indicated by the company, by the twenty-fifth day prior to the date of the meeting called to resolve on the appointment of the members of the board of directors and made available to the public at the company's headquarters, on the company's website and in the other ways envisaged by CONSOB by regulation, at least twenty-one days prior to the date of the shareholders' meeting.

→ Director elected by the minority:
at least one member shall be elected from the minority list that obtained the largest number of votes and is not linked in any way, even indirectly, with the shareholders who presented or voted the list which resulted first by the number of votes.

→ Indipendent director: at least one of the members of the Board of Directors, or two if the Board of Directors is composed of more than seven members, should satisfy the independence requirements established for members of the board of statutory auditors and, if provided for in the Articles of Association, the additional requirements established in codes of conduct drawn up by regulated stock exchange companies or by trade associations.

→ Gender Equality: The Statute also stipulates that the division of directors to be elected should be made on the basis of a criterion that ensures a balance between genders. The less-represented gender must obtain at least two fifths of the directors elected.

Consob warning.

Administrative sanctions.

The board of statutory auditors
(article 148 *et seq.*)

Composition:

The Articles of Association of a company shall establish, for the board of auditors:

- a) the number, not less than three, of auditors;
- b) the number, not less than two, of alternates.

Requirements:

The following persons may not be elected as auditors and, where elected, they shall be disqualified from office:

- a) persons who are in the conditions referred to in Article 23 82 of the Civil Code;
- b) spouses, relatives and the like up to the fourth degree of kinship of the directors of the company, spouses, relatives and the like up to the fourth degree of kinship of the directors of the companies it controls, the companies it is controlled by and those subject to common control;
- c) persons who are linked to the company, the companies it controls, the companies it is controlled by and those subject to common control or to directors of the company or persons referred to in paragraph b) by self-employment or employee relationships or by other relationships of an economic or professional nature that might compromise their independence.

Requirements:

Integrity and experience requirements for the members of the board of statutory auditors provided by the Decree of the Ministry of Justice n. 162/2000.

List voting mechanism (statutory auditor elected by the minority)

CONSOB establishes the rules for the election procedure by list vote of a member of the Board of Statutory Auditors by minority shareholders, that are not directly or indirectly associated with the shareholders that submitted or voted the list qualifying as first for the number of votes received.

The Chairman of the Board of Statutory Auditors

The chairman of the board of statutory auditors shall be appointed by the shareholders' meeting from among the auditors elected by the minority shareholders.

Gender Equality

The Articles of Association of the company shall also state that the division of members shall be made in such a way that the less-represented gender shall obtain at least two fifths of the regular members of the board of auditors.

Limits on the cumulation of positions

The position of member of the control body of an issuer may not be assumed by those who hold the same position in five issuers.

The relationship between the board of statutory auditors and Consob:

→ The board of auditors shall notify CONSOB without delay of irregularities found in the performance of its oversight activity and shall transmit the related minutes of the meetings and investigations conducted with all other relevant documentation.

→ CONSOB, where it has a well-founded suspicion of serious irregularities in the performance of the supervisory duties of the board of auditors, the supervisory board or the management control committee may report the facts to the courts pursuant to Article 2409 of the Civil Code.

Transparency

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

Efficient, transparent and integrated securities markets contribute to a genuine single market in the Community and foster growth and job creation by better allocation of capital and by reducing costs. The disclosure of accurate, comprehensive and timely information about security issuers builds sustained investor confidence and allows an informed assessment of their business performance and assets. This enhances both investor protection and market efficiency.

→ Periodic information (Chapter 2)

→ Ongoing information (Chapter 3)

[→ Occasional information provided by the
Consob Issuers Regulation]

Periodic information:

- Annual financial report
- Half-yearly financial reports

The issuer shall make public its **annual financial report** at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least 10 years.

The annual financial report shall comprise:

- (a) the audited financial statements;
- (b) the management report; and
- (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer.

The issuer of shares or debt securities shall make public a **half-yearly financial report** covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest three months thereafter.

The half-yearly financial report shall comprise:

- (a) the condensed set of financial statements;
- (b) an interim management report; and
- (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer.

Ongoing information:

- Information about major holdings.
- Information for holders of securities admitted to trading on a regulated market to grant the participation in meetings and the exercise of their rights.
- Inside information: Regulation (EU) n. 596/2014 on market abuse (MAR).

Major shareholdings (transparency of ownership structures)

Those who participate in the share capital of a listed company shall notify the investee company and Consob:

- (a) the exceeding of the 3% threshold in case the company is not an SME (5% if it is a SME);
- (b) reaching or exceeding the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.6% and 90%;
- (c) the reduction of participation below the thresholds indicated in (a) and (b).

CONSOB may, by order motivated by the requirements of investor protection as well as efficiency and transparency of the corporate control and capital market, provide, for a limited period of time, lower thresholds.

“Declaration of intentions”

When acquiring an interest in listed company equal to or exceeding the thresholds of 10%, 20% and 25% of the relevant capital, the person making the notifications shall declare the objectives he or she intends to pursue during the following six months.

The declaration shall indicate:

- (a) the means of financing the acquisition;
- (b) whether it is acting alone or in concert;
- (c) whether it intends to stop its purchases or to continue them as well as whether it intends to acquire control of the company or otherwise exercise influence over the management of the company and, in such cases, the strategy it intends to adopt and the operations to put it into effect
- (d) its intentions regarding any agreements and shareholders' agreements to which it is a party;
- (e) whether it intends to propose the integration or removal of the company's administrative or controlling bodies.

Share capital:

Share capital means **capital represented by voting shares**. In companies whose bylaws allow for increased voting rights or have provided for the issuance of multiple voting shares, capital means the total number of voting rights.

Shareholdings

- Shares of which a person is the holder, even if the voting right is attributed to a third party or is suspended.
- Persons who do not own the shares but are entitled to vote.
- Holders of other financial instruments (refers to financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market).
- Aggregated holdings.

Shall be comprised in the first and in the second point of the previous slide:

a) the right to vote accrues as a pledgee or usufructuary creditor;

(b) the right to vote accrues as a custodian or account holder, provided that such right may be exercised discretionally;

(c) the right to vote accrues by virtue of a proxy, provided that such right may be exercised discretionally in the absence of specific instructions from the proxy giver;

(d) the right to vote accrues under an agreement providing for the provisional and remunerated transfer thereof.

Those who are members of a shareholders' agreement also count the voting rights referring to the shares contributed to the agreement by the other members.

[Relevant kind of shareholders agreements:

- shareholders' agreements establishing prior consultation requirements for the exercise of voting rights
- shareholders' agreements having as their object or effect the exercise of a dominant influence over such companies]

The disclosure of major shareholdings, shareholdings in financial instruments and aggregate shareholding shall be made **promptly** and in any case **within four trading days**, using the disclosure template provided by the CONSOB.

→ Exemptions

→ Administrative sanctions

→ Suspension of voting rights

→ Claim against the resolution (the resolution can be annulled ex art. 2377 c.c.; also Consob can contest the resolution)

Provisions about information for holders of securities admitted to trading on a regulated market refer to those information necessary to enable holders of shares/debt securities to exercise their rights.

→ Information requirements for issuers whose shares are admitted to trading on a regulated market (art. 17)

→ Information requirements for issuers whose debt securities are admitted to trading on a regulated market (art. 18)

Inside information: Regulation (EU) n. 596/2014 on market abuse (MAR)

→ An issuer shall inform the public as soon as possible of **inside information** which directly concerns that issuer.

An integrated, efficient and transparent financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

Inside information:

information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a **significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.**

The insider dealing crime

Insider dealing arises when a person owns inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information are related.

Occasional information provided by the Consob Issuers Regulation

- Mergers, divisions and increase of the share capital with contributions other than in cash
- Assets allocated to a specific business project
- Significant takeovers or sales
- Given facts related to amendments to the bylaws
- Issue of bonds
- Purchase and sale of treasury shares (i.e. own shares)
- Reduction of the share capital
- Issuers of securities other than shares

Rules on takeovers bids

**(Directive 2004/25/EC of the European
Parliament and of the Council of 21
april 2004 on takeover bids)**

Italian Financial Consolidate Law definition:

Public takeover bids (cash payment) or exchange offers (payment in the form of other financial instruments) represent an **irrevocable offer made, under the same conditions**, to all the holders of the financial products referred to therein. Any clause to the contrary shall be null and void.

(art. 103, par. 1, t.u.f.)

Directive definition:

‘Takeover bid’ or ‘bid’ shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company.

→ **"Securities" means financial instruments that grant the right to vote, even limited to specific matters, at ordinary or extraordinary shareholders' meetings.**

→ Voluntary takeover bids

→ Mandatory takeover bids

General rules

- Supervision of the CONSOB (powers)
- The 'offer document'
- The target company press release and the report drawn up by the directors
- The period for the acceptance of the offer
- Possible competing offers
- Closing of the bid

The mandatory takeover bid

→ anyone who, as a result of purchases or an increase in voting rights, comes to hold a **participation in excess of the threshold of 30%** or to have voting rights in excess of 30% of the same, **promotes a takeover bid** addressed to all holders of securities on all the securities admitted to trading on a regulated market in their possession.

The mandatory takeover bid

Participation means a stake, held even indirectly through trustees or intermediaries, in securities issued by a company that confer voting rights in shareholders' meeting resolutions concerning the appointment or removal of directors or the supervisory board.

→ Takeover bid is also promoted by any person who, as a result of purchases, comes to hold a **participation exceeding the 25% threshold in the absence of another shareholder holding a higher participation**

→ obligation to make a takeover bid follows purchases of more than 5% or the increase of voting rights by more than 5% of the voting rights by those who already hold a participation of more than 30% without holding a majority of the voting rights in the ordinary shareholders' meeting

→ Calculation of voting rights in case of multiple voting shares or increased voting rights

→ Price of the offer

→ Calculation of the percentage (derivative financial instruments, indirectly holdings, consolidation)

→ Cases in which mandatory takeover bid does not apply

Purchase obligations

→ Any person who comes to hold a stake of more than 90 % of the capital represented by securities admitted to trading on a regulated market shall be obliged to purchase the remaining securities admitted to trading on a regulated market from those who request it, unless he or she restores within 90 days a free float sufficient to ensure the orderly conduct of trading.

Purchase obligations

→ A bidder who comes to hold, as a result of a total public offering, an interest of at least 95% of the capital represented by securities in a listed Italian company is obliged to purchase the remaining securities from those who request them.

Right to purchase

A bidder who comes to hold as a result of a total public offering a participation of at least 90% of the capital represented by securities in a listed Italian company has the right to purchase the remaining securities within three months of the expiration of the deadline for acceptance of the offer, if it has declared in the offer document its intention to avail itself of this right.

Breach of any obligation to launch a takeover bid

- voting rights and resolution
- obligation to sell

→ **Passivity rule (Defence Techniques)**

During the period of acceptance of the offer, the board of the offeree company shall obtain the **prior authorisation of the general meeting of shareholders** given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

Broadly speaking, the law obliges target companies to refrain from engaging in transactions that conflict with a takeover bid (encouraging the so-called change of control). The purpose of this rule is to allow the company to adopt defensive techniques to contrast the takeover bid, putting the decision in the hands of the shareholders (and not the directors, avoiding actions that could undermine the interest of the company on their part).

→ Breakthrough rule

The **articles of association of listed companies may provide** that when a takeover or exchange offer concerning the securities issued by them is made, the following rules shall apply:

1. During the period of acceptance of the offer, the limitations on the transfer of securities provided for in the bylaws shall have no effect on the offeror, nor shall the limitations on voting rights provided for in the bylaws or in shareholders' agreements have any effect in the meetings called to decide on the defensive acts and transactions. In the same meetings, shares with multiple voting rights confer only one vote, and increased voting rights shall not be counted.

2. When, as a result of a public takeover bid, the offeror comes to hold at least 75% of the capital with voting rights in resolutions concerning the appointment or removal of directors or members of the management or supervisory board, at the first meeting following the closing of the bid, convened to amend the bylaws or to remove or appoint directors or members of the management or supervisory board, multiple voting shares shall confer only one vote and shall have no effect:

(a) limitations on voting rights provided for in the articles of association or in shareholders' agreements;

(b) any special rights regarding the appointment or removal of directors or members of the management or supervisory board provided for in the articles of association;

(c) the increased voting rights.

The **first rule** aims to neutralize the most common defensive techniques implemented by the control group against takeover bids by making them ineffective **during the offer acceptance period.**

The **second rule** aims to neutralize the effectiveness of certain clauses in the articles of association or shareholders' agreements that could prevent the successful bidder from achieving the actual result pursued by the takeover bid (**and thus apply after the offer**).

Passivity rule and breakthrough rule are subject to the so-called **reciprocity clause**.

Indeed, they do not operate when the takeover bid is launched by a person or an entity that is not itself subject to these rules or equivalent provisions.

[This is obviously a compromise included in the directive to reach the agreement of all EU member states].