

**ICGN**

International Corporate Governance Network

inspiring good governance & stewardship

Mr. Federico Freni
Undersecretary
Ministry of Economy and Finance
Secretariat of the TUF Commission
Minister of Economy and Finance

16 August 2024

Dear Mr. Freni, Dear members of the TUF Commission

Subject: The Capital Markets Law and the TUF reform

The International Corporate Governance Network (ICGN) would like to offer its perspective on the recently adopted 'Capital Markets Law' (or 'Legge Capitali'), published in the Official Journal on 13 March 2024, and the reform of the Consolidated Law on Finance ('TUF'), currently under discussion.

Led by investors responsible for assets under management of \$77 trillion, the ICGN promotes good corporate governance standards globally.¹ We are writing to you as institutional investors, members of ICGN, are concerned by the recent legislative changes adopted in Italy, which may undermine the Italian market's competitiveness and reduce its attractiveness for institutional investors. We hope that the reform of the TUF is an opportunity to rethink some of these measures.

Election of directors

Investors rely on strong independent boards to provide strategic guidance, risk oversight, and effective monitoring of company management's plans and performance. Voting on the election of directors is an important responsibility for investors.

Italy has a board slates system ('voto di lista') that is unique and complex, but is increasingly understood by international investors. We are concerned that the new 'Capital Markets Law' makes the presentation of a slate of candidates by the incumbent board of directors more difficult and increases further the complexity of the process.

For instance, we note that the outgoing board slate must have 33% more candidates than the number of directors to be elected to the board and a higher board quorum to approve it. The outgoing board slate must be presented at an earlier date than other slates. Furthermore, it seems from the legal text that the election will take place in two stages – if the outgoing board slate obtains the highest number of votes, it will be followed by a vote on each candidate. It is hard to understand how this system will work in practice. Some questions remain open: When and how will the second vote take place? How will foreign investors, for instance, be able to participate in the second vote, if the company holds a 'closed-doors' AGM? Why is the procedure more constraining for the outgoing board slate than for a shareholder slate? How will investors be able to make informed voting decisions with little visibility on the final composition of the board?

Many investors see the presentation of a slate by the outgoing board as an alignment with international best practice, giving directors a greater role in board composition and long-term

¹ The ICGN [Global Governance Principles](#) - written by market participants - are widely used by investors in their company assessments and voting decisions, and by regulators when developing corporate governance rules. The EU Corporate Sustainability Reporting Directive (CSRD), for instance, refers to the ICGN Principles as an authoritative global framework of governance information of most relevance to users.

succession planning.² The board is best placed to evaluate the balance of professional skills, knowledge, experience, diversity, and independence needed for the long-term success of the company. With the two-stages voting, the reform may have the unintended consequence of having boards that are unbalanced or lacking the specific expertise they need. We are also concerned that this reform, with the significant hurdles it creates, will discourage boards from presenting a slate of candidates.³

Finally, we note that the new rules introduce a complex system for the allocation of seats to candidates from other slates giving potentially a disproportionate representation of certain shareholders on the board, which seems to be an unequal treatment of shareholders. This is worrying for institutional investors.

We believe the current system is preferable to the reform adopted recently.

Unequal voting rights

Shareholders have a residual claim on the company's income and bear the ultimate economic risk. This is why they have the right and responsibility to vote on key company decisions. According to corporate governance best practices, when a shareholder holds one share, they get one vote (the 'one share, one vote' standard). Their influence on the company's decision-making is proportionate to their economic exposure.

Unequal voting rights (including loyalty shares) are problematic because they dilute the voice of minority shareholders. They may serve to entrench management and allow founders and controlling shareholders to monopolise the decision-making, potentially putting minority shareholder interests at risk. In extremis such structures create opportunities for expropriation, with controlling shareholders gaining private benefits of control at the expense of minority shareholders.

Also, the loyalty shares system introduced is quite complex, and it is not clear to foreign investors whether the increase in voting rights will be automatic or based on some application mechanism.

The importance of Annual General Meetings (AGMs)

The Annual General Meeting (AGM) is an important forum for corporate boards and management to communicate the company's financial position, performance, strategy, and long-term prospects to shareholders. As such, the AGM is a key mechanism by which accountability is upheld for sustained value creation through the conduct of high standards of corporate governance and exercise of shareholder rights.

We are concerned by the decision to make the COVID emergency measure of allowing AGMs in "closed doors" format (i.e., in which participation is allowed only through the designated representative) to become a permanent feature of Italian corporate governance.

This significantly limits the ability of shareholders, especially minority shareholders, to interact with boards and management (particularly on contentious proposals), view materials presented at the meeting, ask unmoderated questions, and make statements from the floor.

As we are no longer in an 'emergency' situation, it is not necessary for companies to restrict AGMs to fully virtual or, in the case of Italy, 'closed doors' formats. We recommend that companies provide instead for hybrid AGMs to allow investors to have the option of virtual or

² Glass Lewis, [Italy's 'Capital Markets Bill' Raises Governance Concerns](#), February 2024

³ Squarewell Partners, [Institutional Views on DDL Capitali](#), July 2024

live participation.⁴ While some measures could be introduced to avoid disruptions, such as overly long statements, investors should be allowed to ask questions during the AGM (not only in advance).

Additional comments

As debates on the reform of the TUF progress, we encourage policy-makers to 1) keep the current system for director election, 2) promote the 'one share one vote' principle, 3) encourage hybrid AGMs rather than 'closed doors' AGMs.

In addition, we would like to react to some of the proposals mentioned in some public position papers⁵ and share institutional investors' perspective. Many investors appreciate the opportunity, under the 'voto di lista' system, to appoint minority candidates. This was introduced to help strengthen board independence.⁶ We see the benefits of reserving seats on the board and the position of chair of the board of statutory auditors for the candidates nominated by minority shareholders; we support Assogestioni's position on this matter. Furthermore, we do not agree with the proposal made by some stakeholders that board directors should have a six-year term, this would be a departure from common practice internationally.

Given the absence of public consultation, international asset owners and asset managers would appreciate the opportunity to meet with the government and/or the Taskforce ('TUF Commission') to exchange views on measures that can help promote the Italian market's competitiveness while respecting shareholder rights. The quality of a company's governance is an important determinant of stock price. We would caution against legislative reforms that lower corporate governance standards and dilute minority shareholder rights for the benefit of a few shareholders.

Thank you again for the opportunity to share our perspective. If you would like to follow up with questions or comments, please contact our Global Policy Director, Severine Neervoort (severine.neervoort@icgn.org).

Yours faithfully,



Jen Sisson

Chief Executive Officer, ICGN

⁴ ICGN, Statement: [Post-COVID AGM practices and shareholder rights](#), April 2023

⁵ Assonime, Position Papers, Proposte per una Reforma Organica del TUF, April 2024

⁶ ICGN, [Italian governance and voto di lista Viewpoint](#), 2016