

TREVISAN & ASSOCIATI  
STUDIO LEGALE

**Proxy Access System in Italy  
“Voto di Lista”  
&**

**Less represented gender in the Italian Boards of  
Directors and Statutory Auditors.**

*"I firmly believe that providing a meaningful opportunity for shareholders to exercise their right to nominate directors at their companies is in the best interest of investors and our markets. It is a process that helps to make boards more accountable for the risks undertaken by the companies they manage."*

*Mary L. Schapiro Chairman of SEC*

# Table of contents:

1. *Introduction.*
2. *The aim of “Voto di Lista” proceeding.*
3. *Legal framework: from past to present.*
4. *The operative rule of “Voto di Lista” – Statistics.*
5. *Less represented gender in the Italian Boards of Directors and Statutory Auditors.*
6. *Less represented gender from past to present.*
7. *Conclusion.*

# Introduction: the aim of the paper

This paper aims to give a brief explanation about the voting system in Italy, on the appointment of independent members of the Board of Directors and Board of Statutory Auditors of listed Italian companies.

# Introduction: “Voto di Lista”

- “Voto di lista”: The slate voting mechanism to elect directors and statutory auditors of listed Italian companies, selected and proposed by shareholders, including institutional investors.
- It is an interesting tool which drives the attention, especially, of institutional investors, due to its advantage of being an important measure to protect the interests of minority stakeholders at the board level.
- It tries to responds of the needs of transparency, accountability and disclosure, essential both for the fair protection of investments and the development of the international good corporate governance principles.
- It is also one of the tools used to comply with the rules of the appointment of women at Board level in Italy, as prescribed by new Italian law.

# Italian markets:

The Italian markets are characterized by concentrated ownership of listed company, so through "the Voto di lista", institutional investors are entitled to propose and elect independent directors.

The presence of independent directors elected by institutional investors drives management and/or controlling shareholders towards being more responsive to all shareholders interests.

# Legal Framework from past...

- 1994 Law n. 474: the “Voto di Lista” procedure was introduced and became compulsory for appointment of members of the Board of Directors and Statutory Auditors, by “minority” shareholders of listed companies controlled by the Government: at least 1/5 of members should have been elected from a slate presented by one or more minority stakeholders.
- The Legislative Decree n. 58/1998: provided the voting procedure described above, also for the election of Statutory Auditors of all listed companies of the Italian Stock Exchange.
- The EU directive n. 36/2007: has established the abolition of the block of shares before the Annual General Meeting and the Extraordinary General Meeting.

## ...to present

### **The nowadays procedure of “Voto di lista”:**

- Since 28th December 2005 is also provided in the Consolidated Law on Finance (Legislative Decree 58/1998), art. 147-ter: (in the Board of Directors) *“at least one member shall be elected from the minority slate 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 of all by number of votes”*.
- The same rule applies to the appointment of members of the Board of Statutory Auditors by minority shareholders.

# The operative rules of “Voto di Lista” →

- Threshold: each shareholder has the right to present a slate of candidates if he/she owns (also together with other shareholders) between 0,5 % (for companies whose market capitalization it's greater than EUR 15 billion) – 1% (market capitalization is greater than EUR 1 billion and less than or equal to EUR 15 billion) - 2,5% (market capitalization is less than or equal to EUR 1 billion) - and 4,5 % (for companies whose market capitalization is less than or equal to € 375.000.000) and in accordance with thresholds set by Italian Securities and Exchange Authority (Consob) every year, to elect on average from one to three (independent) directors.
- Modalities of filing the slates: could be performed also by a group of shareholders and it shall not constitute the so-called “action in concert”. This method to present a slate by group of minority shareholders does not require any prior written agreement among them.
- No obligations of filing: the above mentioned procedure does not require any filing to Consob, neither any notary public certificate and/or apostille for whichever documentation.



- Presentation of slates: each shareholder can present and vote one slate and each slate can be filed by one or more shareholder. In any case, shareholder(s) who have presented a specific slate, is (are) not obliged to vote for the same.
- Term: The slate has to be presented at least 25 days before the date of the Shareholders' Meeting and in most cases, it could be performed through electronic means, as, for example, certified e-mails. 21 days before the date of the Shareholders' Meeting all slates presented, with names and c.v. of the candidates, are published in the company's web-site.
- Candidates: each slate contains the name of one or more candidates, listed in the numerical sequence. For each name it is possible to indicate if the candidate could be (or not be) qualified as an "independent director" in compliance with the law and the definition of the Italian Stock Exchange – Code of Conduct.
- The selection of candidates: there is no obligation to comply with any specific previous approval by the company's Board nor other rules, although the practice in our market provides that the candidates of the minority slates are previously selected by a well known head hunter company. In most of the cases the selection is driven by Assogestioni the Italian Association of Asset Managers.



- Ownership of shares: with reference to evidence of the ownership of the shares, rules are very simple and not difficult to comply with. Shareholder(s), alone or with others, shall only demonstrate the minimum ownership necessary to present the slate, as described above, only at the date of presentation. It could be done by electronic means too, issued by the authorized custodian/agent bank(s) to the company 21 days before the Shareholders' Meeting.
- There is no obligation to block the shares and to hold the voting securities before and after such date or for a minimum period of time: the shareholder could include securities lent to a third party if they can be recalled at the day of presentation.
- The appointment: is performed at the Shareholders' Meeting via election of candidates at the top of the list (presented by the minority shareholders) who have obtained the highest number of votes among the other lists submitted and voted by other shareholders. According to the law, at least one of the members of the Board of Directors shall be elected from the slate presented by one or more of the minority shareholders.

# Statistics

- In 2015 Directors elected through “Voto di Lista” are present in 87 Issuers, plus 3 two-tier Issuers out of 4. The global number (90) is slightly decreasing (93 in 2014, 97 in 2013). The total weight of the companies having directors proposed and elected by minority shareholders is, however, stable (39%) due to the simultaneous reduction in the number of listed issuers.\*
- The total number of directors elected through “Voto di Lista” is 172 (170 in 2014, 191 in 2013). They represent 18% of the aggregate number of directors in the companies where they are present (the weight increases to 23% in the Supervisory Board).\*
- The framework is basically the same for statutory auditors: 95 companies (91 in 2014, 88 in 2013, see Tab.16) have at least one statutory auditor elected through “Voto di Lista”. The total weight of the companies having statutory auditors elected through “Voto di Lista” is, however, slightly increasing (from 41% to 43%) due to the reduction in the number of listed issuers. Also the global number (101) of statutory auditors elected through “Voto di Lista” is substantially stable (103 in 2014, 98 in 2013).\*
- Assogestioni – the Italian Association of Asset Managers – played a central role at this regard.

\* Assonime «Corporate Governance in Italy: Compliance, Remunerations and Quality of the Comply- or Explain (Year 2015)

# Less represented gender in the Italian Boards of Directors and Statutory Auditors

## Situation in Italy:

during the last years, as known, many amendments to the laws regarding the presence of women at board level, both at European and nationally level, have occurred and legislative amendments are continuous, even today. For this reason, and in this context, the "Voto di Lista" is, again, a very useful tool.

# Less represented gender from past....

- For giving an overview, before the new law entered in force in Italy there was this type of picture: the 4.2% of total boards seats was held by a woman. It is very far from being a good result, and the percentage was only increasing from 2003 to 2011 around 3.0%.
- The cause of this slow growth is also the circumstance that the Italian Corporate Governance Code had not provided recommendations on this issue of differences, unlike to many other Codes in Europe.

## ...to present



- Indeed, law 120 of 2011 introduces the provision of a female gender representation in the Boards of Directors and Audit Boards in the listed companies. The target has been achieved through the female quotas for female : a fifth % ( the first year ) and then third % ( for the remaining two ) in compliance with the proposal of European directive dated 2010.
- According to the Italian Financial Law, amended by Law n. 120 dated 2011, art. 147 ter, the By-Laws of corporations have to provide the criterion that ensures a balance between genders, so that the division of directors to be elected, has to be made on this basis. The less-represented gender must obtain at least one third of the directors elected. This division criterion must be applied for three consecutive mandates.



- The Italian Security and Exchange Authority (Consob) requires the application of and compliance with the rules on gender balance. It describes preliminary phases, the procedure and timing for their adoption. The non-compliance is followed by financial sanctions and, in the case of continued non-compliance, there is the potential dissolution of the board.
- The inspection authority, specifically “Consob”, carry out the necessary checks to ensure comprehensive implementation of the Law.
- Moreover, the same procedure states that at least one third of the Board of Directors shall be allocated to the representatives of less represented gender. The mentioned criteria apply for three consecutive mandates.
- Same rules are required to appoint Audit Board.

# Legal Framework

- Italy introduced a Board of Directors gender quota in 2011, by stipulating that during the first year (i.e. 2012) of application of the new rule, one-fifth of the board of members should have allocated to female.
- It required that all public limited companies and state-owned companies should have had at least 33% of each gender on their boards (executives and non-executives) by 2015 (with a target of 20% for the transitional period).

# Effectiveness

- The current regulations has produced the desired results and now the proportion of women on the boards of Italian Companies has risen a growth up during the years 2011-2015, from 4,2% to 24,6%.
- Furthermore we have to consider that Italy, in European contest, had the lowest starting point, with an average of 4,2% percent female board membership in 2011 and in these last years our country have seen the greatest improvement in terms of reducing all-male boards.
- Our current law will remain in force for nine years since its approval and the first goal had been reached and improved. The statistical analyses indicated a growth of 20% between 2012 and 2015 while women, now, represent 24,6% of members.
- Another significant trend which represent an important target achieved by our country, is the number of female board chairs that in Italy is equal to three, in accordance with the European tendencies.
- For the next two board terms between 2015 and 2018 this percentage will increase one-third (33.3%), the quota is applicable to Directors boards (i.e. executives and non executives) and Auditors boards
- Thus now, Italy is complying with the European directives and international practices and increasing the representatives of the less represented gender to participate to the activities of Italian corporate governance.

# In conclusion

- Last year, at the end of the first term following the entering in force of the law, Italy has celebrated a good achievement because, the listed companies have fulfilled the benchmarks identified by the law.
- Less than three years from the introduction of gender quotas there has been a significant increase in female representation on Italian boards, this represents a significant acceleration.
- Now, in the future and specially in the next board term (2015-2018) this type of innovation, together with the tool of proxy access, provides the even increasing effective participation of independent foreign women directors at board level, guaranteeing in this way, the existence of crucial values as transparency, accountability and disclosure.



TREVISAN & ASSOCIATI

---

STUDIO LEGALE

Viale Majno 45 • 20122 Milano

Tel: +39.02.80.51.133 • Fax: +39.02.86.90.111

mail@trevisanlaw.it • www.trevisanlaw.it

Avv. Dario Trevisan

trevisan@trevisanlaw.it