Italy

GLASS LEWIS

2024 Benchmark Policy Guidelines

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Guidelines Introduction

These guidelines are intended to supplement Glass Lewis' *Continental Europe Benchmark Policy Guidelines* by highlighting the key policies that we apply specifically to companies listed in Italy and the relevant regulatory background to which Italian companies are subject, where they differ from Europe as a whole. Given the growing convergence of governance regulations and practices across companies subject to European Union rules and directives, Glass Lewis combined our general approach to Continental European companies in a single set of guidelines, the *Continental Europe Benchmark Policy Guidelines*, which set forth the underlying principles, definitions and global policies that Glass Lewis uses when analysing Continental European companies.

While our approach to issues addressed in the *Continental Europe Benchmark Policy Guidelines* is not repeated here, we will clearly indicate in these guidelines when our policy for Italian companies deviates from the *Continental Europe Benchmark Policy Guidelines*.

Corporate Governance Background

The Civil Code, as well as the Consolidated Law on Finance and relevant Consob rules provide the legislative framework for corporate governance in Italy whereas best practices are primarily derived from the Code of Corporate Governance (Code), a body of non-compulsory rules for the governance of listed companies issued by Borsa Italiana under which a "comply or explain" principle applies. Companies are required to file a corporate governance report, detailing compliance with the Code's provisions, every year before the annual general meeting. The Code was most recently updated in January 2020 and came into force for financial years commencing January 1, 2021 or later. The Code is organised with principles, aimed at defining a company's objectives, and recommendations, outlining actions to implement for effective achievement of the principles. Further, the Code establishes a proportional approach based on company size and ownership structure,[1] which intends to facilitate compliance by medium and small-cap companies and promote access to the stock market for those discouraged by the complexity of the corporate governance requirements provided for listed companies.

In May 2014, the Bank of Italy adopted new rules on corporate governance applicable to Italian banks and the parent companies of banking groups (update no. 1 dated May 6, 2014 of Circular no. 285 of December 17, 2013 titled "Disposizioni di vigilanza per le banche"). Most recently, the Bank of Italy has published the update no. 42 on March 30, 2023.

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[1] Under the Code, a set of recommendations refers only to large companies, intended as those with a market cap above €1 billion on the last trading day of the year in the three prior years. Recommendations differ if the ownership structure is dispersed or concentrated.

Regulatory Updates

Proposed Reforms

On April 21, 2023, the Italian Government presented a draft law called "Interventions in support of capital competitiveness", referred to as "Ddl Capitali".

The proposed draft is aimed at strengthening the Italian capital market, improving its competitiveness and attractiveness for new listings, and reforming the current corporate governance regulations and the Consolidated Law on Finance ("TUF").

The main changes affecting public companies would be as follows:

- For companies adopting loyalty initiatives on their shares, voting rights attributable to each share may increase progressively in 12-month intervals until a maximum of 10 voting rights for each share (the current maximum of voting rights attributable under loyalty initiatives is 2 after continued holding for at least 24 months);
- If so regulated in a company's articles of association, general meetings may be convened and held with exclusive participation of a shareholder representative, which receives voting proxies by shareholders, designated by the company;
- Presentation of resolutions will no longer be permitted during general meetings. Any resolutions will have to be presented by the fifteenth day prior to the meeting and will be made available to shareholders within two days of the deadline for presentation;
- The right to ask questions may only be exercised before the meeting. The company will have to provide answers at least three days prior to the meeting date;
- Proxies to exercise voting rights can be assigned to the shareholder representative for multiple meetings, in accordance with derogations to article 2372, second paragraph, of the Italian Civil Code.
- If so regulated in a company's articles of association, the outgoing board of directors can present a list of nominees for the renewal of the board. When an outgoing board is presenting a slate:
    - The slate must be approved by two-thirds of directors;
    - The slate must contain a number of candidates equal to the number of members to be elected increased by one third;
    - The slate must be published within forty days before the meeting;
    - If the slate presented by the outgoing board receives the highest number of votes, the general meeting will cast individual votes on nominees on the slate in the order in which they are presented. Nominees receiving the higher number of votes will be elected.
    - If the board slate receives the highest under of votes, directors to be drawn from the minority lists will be elected as follows:
    - If the total number of votes received from the other slates presented is lower than 20% of total votes cast, the minority slates will obtain representation on the board in proportion to votes obtained at the meeting and in any case not lower than 20% of the total board members;
    - If the total number of votes received from the other slates presented is higher than 20% of total votes cast, the minority slates will obtain representation on the board in proportion to votes obtained, provided they received at least 3% of votes;

- If the list presented by the board receives the highest number of votes, the audit committee will be chaired by an independent director who was not elected from the list of the outgoing board.
- Consob, the Italian market regulator, will be tasked with establishing implementation regulations for the new provisions within thirty days from the date of the law coming into effect.
- Companies will have to present amendments of their articles of association to allow for the application of the provisions starting from general meetings convened after January 1, 2025.

If the draft law is approved, the Government will be tasked with the adoption of one or more law decrees within 12 months from the approval of the bill to operate revisions of the Consolidated Law of Finance and, if needed, the Italian Civil Code. Any revision should be inspired by the following principles:

- Supporting Italian growth and access to capital markets for companies, making Italian companies attractive for international investors;
- Increasing competitiveness of the Italian market and streamlining applicable norms and regulations;
- Encouraging transfer of listing from non-regulated to regulated markets;
- Reviewing the norms on private investments to foster its diffusion;
- Simplifying corporate governance requirements, mindful of existing self-regulation codes;
- Reviewing the norms on public saving, especially with regards to public purchase and exchange offers;
- Balancing administrative costs with efficiency and efficacy of controls;
- Ensuring a streamlined system of internal control, avoiding function duplication among structures;
- Updating the scope of the liability regime of regulating and supervising authorities in line with existing laws and regulations, recommendations and international standards;
- Aligning and coordinating the Consolidated Law of Finance, the Consolidated Law on Banking, the code of private insurance companies and the Consolidated Law on Supplementary Pension Schemes.

On October 24, 2023, the Senate of the Republic approved the draft and transmitted it to the Chamber of Deputies, which will review the articles and propose possible amendments within the legal timeframe established by the Government. When both Chambers approve an identical formulation of the text, the draft will be promulgated to the President of the Republic (who maintains the right to return the law to the Chambers for further reviews) and will then be published in the Italian Official Gazette. The law will effectively come into force on the fifteenth day following its publication in the Official Gazette.

Summary of Changes for 2024

Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis.

Housekeeping Changes

We have made changes of a housekeeping nature in order to enhance the clarity and readability of the document.

A Board of Directors that Serves the Interests of Shareholders

Election of Directors

Italian regulations allow companies to choose among three main governance structures:

- The so-called "traditional model", with a board of directors, which may delegate some of its powers to a managing director or to an executive committee, and the board of statutory auditors. The board of directors includes both executive and non-executive members elected for a term of up to three years.[2] The board of statutory auditors, whose members are elected by shareholders, is the corporate body in charge of overseeing compliance by the company with the law and adequacy of the company's accounting system;
- One-tier, with a board of directors and a board-level management control committee.[3] The board is elected by shareholders, the management control committee is comprised of directors who do not carry out executive duties and are subject to independence requirements of statutory auditors (as detailed in the "Election of Board of Statutory Auditors" section of these guidelines). One director member of the management control committee must be registered as chartered accountant;[4]
- Two-tier, with a supervisory board and a management board. The supervisory board is elected by shareholders, while the management board is appointed by the elected board.[5] A number of financial institutions moved from the two-tier to the one-tier or traditional structure to enhance the efficiency of internal processes.

The vast majority of Italian listed companies adopts the traditional model, with a board of directors and a board of statutory auditors.

Independence

In Italy, we classify directors in three categories based on an examination of the type of relationship they have with the company:[6]

[2] Civil Code, article 2383.
[3] Civil Code, article 2409 sexiesdecies.
[4] Civil Code, article 2409 octiesdecies.
[5] Civil Code, article 2409 octies.
[6] The Code of Corporate Governance (Code) recommends the board of directors to assess the independence of each non-executive director (i) immediately after their appointment, (ii) at least every year, and (iii) when circumstances which may affect their independence occur (article 2.6). It further states that the outcome of the assessments should be announced in a press release immediately after the appointment and disclosed later on in the corporate governance report. The board should specify the criteria followed to assess the significance of the relationships and a clear and detailed rationale in the event of any deviation from the Code (article 2.10).

Independent Director — An independent director has no material[7] financial, familial[8] or other current relationships with the company[9], the shareholder or group of shareholders who control the company, its executives, or other board members, except for board service and standard fees paid for that service.[10] An individual who has been employed by the company within the past five years[11] is not considered to be independent. We use a three year look back for all other relationships.

Affiliated Director — An affiliated director has a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.[12] Directors will normally be classified as affiliated if they:

- Have served in an executive capacity at the company in the past five years;
- Have — or have had within the past three years — a material business relationship with the company;
- Own or control 10% or more of the company's share capital or voting rights;[13]

[7] Per Glass Lewis' *Continental Europe Benchmark Policy Guidelines*, "material" as used herein means a relationship in which the value exceeds: (i) €50,000 (or 50% of the total remuneration paid to a board member, or where no amount is disclosed) for board members who personally receive remuneration for a professional or other service they have agreed to perform for the company, outside of their service as a board member. This limit would also apply to cases in which a consulting firm that is owned by or appears to be owned by a board member receives fees directly; (ii) €100,000 (or where no amount is disclosed) for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly compensated. This limit would also apply to charitable contributions to schools where a board member is a professor, or charities where a board member serves on the board or is an executive, or any other commercial dealings between the company and the board member or the board member's firm; (iii) 1% of the company's consolidated gross revenue for other business relationships (e.g., where the board member is an executive officer of a company that provides services or products to or receives services or products from the company); (iv) 10% of shareholders' equity and 5% of total assets for financing transactions; or (v) the total annual fees paid to a director for a personal loan not granted on normal market terms, or where no information regarding the terms of a loan have been provided.

[8] Per Glass Lewis' *Continental Europe Benchmark Policy Guidelines*, familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person's home. A director is an affiliate if the director has a family member who is employed by the company.

[9] A company includes any parent or subsidiary in a group with the company or any entity that merged with, was acquired by, or acquired the company.

[10] Code, article 2.7.

[11] In our view, a five-year standard is appropriate because we believe that the unwinding of conflicting relationships between former management and board members is more likely to be complete and final after five years. However, Glass Lewis does not apply the five-year look back period to directors who have previously served as executives of the company on an interim basis for less than one year. According to the Code, reference should be made to the current fiscal year and to the three preceding fiscal years in the case of business dealings, past employment relationships and significant remuneration in addition to board fees received for serving on the board at the Company, its parent or subsidiaries (article 2.7).

[12] If a company classifies a non-executive director as non-independent, Glass Lewis will classify that director as an affiliate.

[13] Per Glass Lewis' *Continental Europe Benchmark Policy Guidelines*, we view 10% shareholders as affiliates because they typically have access to and involvement with the management of a company that is fundamentally different from that of ordinary shareholders. More importantly, 10% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings, personal tax issues, etc. We note that according to Italian law, there is control when: (i) a shareholder owns more than 50% of the voting shares; (ii) a shareholder owns less than 50% of the voting shares, but the holding allows them to exercise a significant influence over the company since there are

- Serve as board chairs, presidents, executive directors, officers or legal representatives of the controlling entity;
- Have served on the board for more than nine years over the last twelve-year period;[14] and/or
- Are partners or board members of any entity affiliated with the independent auditing firm.[15]

Inside Director — An inside director simultaneously serves as a director and as an employee of the company. This category may include a board chair who acts as an employee of the company or is paid as an employee of the company.[16]

Voting Recommendations on the Basis of Board Independence and Performance

We generally recommend that the majority of the board consist of non-executive directors and at least half of the directors be independent.[17] However, we accept the presence of representatives of significant shareholders in proportion to their equity or voting stake in the company. Furthermore, in the case of companies listed on the Star segment of the Italian Stock Exchange, boards should generally include the following number of independent directors: (i) at least two if the board consists of up to eight members; (ii) at least three if the board consists of nine to 14 members; and (iii) at least four if the board consists of more than 14 members.[18]

When the whole board is up for election, directors must be elected on the basis of slates presented by the outgoing board and/or shareholders.[19] In reviewing the lists presented for shareholder approval, Glass Lewis will review the independence of candidates, the ownership structure of the company, potential voting outcomes (in particular, the expected voting patterns of major shareholders and the company's regulations on how candidates are elected from the lists to the board), and the performance of the incumbent board. We will recommend supporting the slate that appears able to best protect the interests of all shareholders. We highlight in particular that concerns identified with the composition or performance of the incumbent board, as assessed

no other major shareholders; or (iii) a group of shareholders enters into a syndicate agreement and, as a result, this group owns more than 50% of the voting shares or a percentage that enables it to exercise a significant influence over the company.

[14] Code, article 2.7(e). As outlined in our *Continental Europe Benchmark Policy Guidelines*, we refrain from recommending to vote against directors who are not considered independent due to lengthy board tenure on that basis alone in order to meet recommended independence thresholds.

[15] Code, article 2.7(g).

[16] Under the Bank of Italy's Update no. 1 dated May 6, 2014 of Circular no. 285 of December 17, 2013 titled "Disposizioni di vigilanza per le banche" (hereinafter "Circular no. 285 of December 17, 2013 and subsequent revisions"), in the case of financial institutions, members of the executive committee shall be considered executive directors (IV.1.I.3). Further, the board chair may not be a member of the executive committee. However, if it is deemed useful to ensure an effective relationship between supervision and management, the chair may participate in the meetings of the executive committee without holding any voting rights (IV.1.V.2.2(e)).

[17] Pursuant to Italian law, at least one director, or two directors if the board is composed of more than seven members, must meet the independence requirements stipulated in article 147-ter(4) of the Consolidated Law on Finance. With regard to self-regulation, the Code recommends that (i) at least one-third of the board be independent in large companies with concentrated ownership and (ii) at least half of the board be independent in large companies with dispersed ownership. For all other companies the Code recommends that there be no less than two independent directors (article 2.5). Further, the Code recommends that the chair of the board should not chair the remuneration and audit committees (article 2.7.).

[18] Rules and Instructions issued by Borsa Italiana, Article IA.2.10.6.

[19] Companies listed on Euronext Growth Milan are not required to adhere to the slate election system.

against the policies outlined in this section of the guidelines, will be taken into account when assessing lists that contain incumbent board members.

We also note that individual elections may occur in some cases, and we will evaluate these candidates on a case-by-case basis in accordance with the aforementioned independence thresholds.

Voting Recommendations on the Basis of Committee Independence

We believe that the audit and remuneration committees should be composed exclusively of non-executive directors,[20] a majority of whom should be independent. Committees should be chaired by an independent director.[21] Moreover, we believe a majority of the members of the nominating and governance committees should be independent.[22]

Given the Italian voting list system described above, we typically do not base voting recommendations on a concern regarding committee composition alone; however, if an individual director is up for election, we may recommend voting against the nominee solely based on a concern regarding the individual's position on a committee.

Other Considerations for Individual Directors

Our policies with regard to performance, experience and conflict-of-interest issues are not materially different from our *Continental Europe Benchmark Policy Guidelines*. The following are clarifications regarding best practice recommendations in Italy.

External Commitments

We generally consider that executive officers should not serve on more than two public company boards, and non-executives should not serve on more than five public company boards.[23]

In accordance with our *Continental Europe Benchmark Policy Guidelines*, we typically recommend shareholders vote against a director who:

- Serves as an executive officer of any public company while serving on more than one additional external public company board; or
- Serves as a 'full-time' or executive member of the board[24] of any public company while serving on more than two additional external public company boards; or
- Serves as a non-executive director on more than five public company boards in total.

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[20] EU Commission Recommendation of 15 February 2005 on the role of non-executive directors of listed companies and on the committees of the board. Annex I. Articles 3.1 and 4.1.
[21] Code, articles 5.26. and 6.35.
[22] Code, article 4.20.
[23] Neither the law nor the Code provide any specific limitations to board mandates.
[24] This policy applies to directors that serve on a board in a 'full-time' or executive capacity without further defined responsibilities within the executive team (e.g., executive chair that is not a member of the executive committee, or a non-executive chair that serves in the role in a full-time capacity).

We will count non-executive board chair positions at European companies as two board seats given the increased time commitment generally associated with these roles.

Further, as executive directors will presumably devote their attention to the company where they serve as an executive, we will generally not recommend that shareholders vote against the election of a potentially overcommitted director at the company where they serve in an executive function. Similarly, we will generally not recommend that shareholders vote against the election of a potentially overcommitted director at a company where they hold the board chair position, except where the director:

- Serves as an executive officer of another public company; or
- Holds board chair positions at three or more public companies; or
- Is being proposed for initial election as board chair at the company.

Nevertheless, we adopt a case-by-case approach on this issue, as described in our *Continental Europe Benchmark Policy Guidelines*.

We note that according to the Code, the board of directors should issue guidelines regarding the maximum number of directorships that may be considered compatible with an effective performance of a director's duties based, among others, on the director's role within the company and the company's size.[25]

Board Interlock

As stated in our *Continental Europe Benchmark Policy Guidelines* and reinforced by Italian law and best practice, we believe that CEOs or other top executives who serve on each other's boards create an interlock that poses conflicts that should be avoided.[26] When a director with an interlocking directorship is up for individual election, we will recommend voting against the nominee on this basis alone.

Board Structure and Composition

The Code recommends that an evaluation of the board is conducted at least every three years, prior to the renewal of the board. Boards at large companies with dispersed ownership are recommended to carry out a self-evaluation every year and consider the appointment of an external advisor at least every three years. The board evaluation should assess the size, composition and performance of the board and its committees. In companies with dispersed ownership, the board of directors should present shareholders with guidelines on the optimal composition of the board upon its renewal (every three years), which are based on the outcome of the self-evaluation. The board should identify the mix of managerial and professional skills required by the company's industry, and specify diversity criteria and limits on external commitments.

Our policies with regard to board structure and composition are not materially different from our *Continental Europe Benchmark Policy Guidelines*. The following are clarifications regarding best practice recommendations in Italy.

[25] Code, article 3.15.

[26] Italian Law Decree 6/2011 and amendments by Law 214/2011 relate to interlocking directorships in the financial sector.

Board Size

As stated in our *Continental Europe Benchmark Policy Guidelines*, we typically recommend voting against the board size proposal if a board has: (i) fewer than five directors; provided, however, that this will generally not apply to small-cap companies with smaller boards; or (ii) more than 20 directors. However, in Italy, we may recommend against a proposal which sets the potential maximum board size for a non-financial institution at more than 15 members.[27]

Separation of the Roles of Board Chair and Managing Director (CEO)

According to the Code, chairs and managing directors should each have their own responsibilities. Furthermore, when the two positions are combined or the chair has executive powers, the board of directors should appoint a lead independent director.[28] However, it is not unusual in Italy for the same person to hold the two positions.

Board Committees

We believe that companies should create audit, remuneration, and nominating committees which generally consist of at least three members. The Bank of Italy requires financial institutions to establish three committees to oversee board nominations, risk and remuneration. Each committee must consist of between three and five non-executive members, the majority of whom are independent, with an independent chair. When there is a board member elected from a slate presented by minority shareholders, they should serve on at least one committee.[29]

Expertise of Audit Committee Members

For an audit committee to function effectively on investors' behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities. In Italy, it is recommended that at least one member of the audit committee has adequate knowledge and experience in accounting, finance, or risk management.[30]

We believe that companies should clearly outline the skills and experience of the members of the audit committee, and that shareholders should be wary of audit committees that include members that lack the requisite expertise.

Board Diversity

Pursuant to the Consolidated Law on Finance, as amended by Law 160/2019, companies are required, from 2020, to ensure at least 40% representation of both genders on the board of directors and the board of

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[27] The average board size for financial and non-financial institutions in Italy during the past fiscal year was 12.8 members and 9.3 members, respectively. Report on Corporate Governance in Italy: The implementation of the Italian Corporate Governance Code. Assonime. 2022.

[28] Pursuant to the Code, a lead independent director should also be appointed when the board is chaired by the controlling shareholder. For large companies, the Code also recommends that a lead independent director be designated if requested by the majority of independent directors (article 3.13.).

[29] Circular no. 285 of December 17, 2013 and subsequent revisions, IV.1.IV.(2.3).(2.3.1).subsection (a).2.

[30] Code, article 6.35.

statutory auditors following their next full-board elections and for the next six terms of the boards (18 years).[31] Consob has clarified that, in boards comprising three members, which is the Italian market practice for the board of statutory auditors, the quota requirement would be met by ensuring that both genders are represented on the board.[32]

We expect companies to provide a description of their policy on board diversity as regards age, gender, managerial skills, professional qualification and international background, as well as a description of the implementation and results of the application of such policy. If no policy is applied, companies should disclose the rationale behind such a choice.[33]

Moreover, we expect shareholders presenting a list for the election of the board of directors to disclose whether the composition of the list is aligned with the relevant company's gender diversity policy.

Board-Level Oversight of Environmental & Social Risk

Glass Lewis believes that companies should ensure that boards maintain clear oversight of material risks to their operations, including those that are environmental and social in nature. Accordingly, for large-cap companies and in instances where we identify material oversight concerns, Glass Lewis will review a company’s overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues.

We generally expect the boards of FTSE MIB companies to provide explicit disclosure concerning the board’s role in overseeing material environmental and social issues.

Election Procedures

Our policies with regard to election procedures are somewhat different from our *Continental Europe Benchmark Policy Guidelines*. The following are clarifications regarding best practice recommendations in Italy.

The company’s articles of association stipulate the threshold for the presentation of a list, which cannot exceed the percentage mandated by Consob regulations on the basis of the company’s capitalisation, freefloat and ownership structure. Each shareholder (or group of shareholders) holding the required percentage of share capital is allowed to submit and vote for a single list of candidates. A company can also amend its articles of association in order to introduce the right for the outgoing board to submit a list of candidates. We will usually recommend in favor of such proposals. We note that the submission of a list by the outgoing board of directors is a practice recently adopted by Italian companies with dispersed ownership and an international shareholder base. When a slate is submitted by the board, we evaluate those candidates in the same way as slates presented by shareholders.

[31] Although the 40% requirement is only effective for six board terms (18 years), the Code recommends that boards continue to ensure at least one-third representation of both genders on the board after the law becomes obsolete (articles 2.5. and 2.8).

[32] Press release n. 1/2020 of January 30, 2020.

[33] Consolidated Law on Finance article 123-bis (d-bis). Code Article 2.8.

It is market practice to list nominees on each slate in the order in which they will be elected based on the number of votes cast in favour of the slate. Furthermore, at least one director must be elected from the minority slate that obtains the highest number of votes.[34] The articles of association can, however, reserve more than one seat for minority candidates. All board members, with the exception of the director(s) to be taken from the minority list(s), are elected from the list that receives the highest number of votes, in the order in which they are listed on the slate. The remaining candidate(s) are elected from the list ranking second in terms of votes cast. In the event of a plurality of minority lists, and if so regulated by a company's articles of association, the votes cast for each list are divided by whole numbers from one up to the number of directors to be elected. The quotients obtained are assigned to the candidates of such slates in the order in which they are listed. Candidates on the various slates are then arranged in a single ranking. Those who have obtained the highest numbers are elected to the board.

We note that in addition to the slate voting process for the election of the whole board, certain cases can result in the election of individual directors. For example, any director who has been appointed by the board during the past fiscal year ("coopted"), to replace a director who has left prior to the expiration of their term, must be confirmed at the next meeting of shareholders. In other instances, the company may propose to increase the board size by the addition of new director(s).

In these cases, election may occur through the presentation of candidate lists by shareholders, or through the submission of the coopted director/individual nominee directly by the board. In the former case, we will follow our slate voting process, and in the latter, we will evaluate the single nominee on a case-by-case basis, applying our standards for individual director election.

We note, however, that at times the name(s) of the candidate(s) up for election is unclear. Thus, if the board has not explicitly proposed to reconfirm a coopted director as nominee or in any other case where we are unable to definitively determine the identity of the candidate(s) up for election, we will recommend that shareholders abstain from voting on the election.

Term Length

Although Glass Lewis favours the annual election of directors, as noted in the *Continental Europe Benchmark Policy Guidelines*, under Italian law directors may be elected for a term of up to three years and it is common practice for Italian companies to elect their directors for the maximum term permitted by the law.[35] As such, we recommend voting for proposals to set the board's term length.

Election of Board Chair

In Italy, shareholders are commonly asked to approve the election of the chair of the board of directors. A company's articles of association may specify the procedure by which the chair will be elected, or candidates may be proposed before or during the shareholder meeting. The election of the chair may be presented as a separate item on the agenda or, more often, bundled with the election of the board as a whole.

[34] Consolidated Law on Finance, article 147-ter(3).
[35] Civil Code, article 2383.

Glass Lewis will generally support the election of the chair as long as the information on candidates has been disclosed in a timely manner and we have not identified substantial issues for shareholder concern as to any of the nominees.

Election of Board of Statutory Auditors

According to Italian law,[36] statutory auditors are elected by shareholders at the general meeting for a term of up to three years. The board of statutory auditors is the corporate body in charge of overseeing compliance by a company with the law and the articles of association. Moreover, it is responsible for ensuring the adequacy of a company's organisation, internal control, administrative and accounting system, as well as for monitoring compliance with the procedures adopted by the board of directors with respect to related party transactions and their adequacy.

The law bars the appointment to the position of statutory auditors for:

- Individuals who went bankrupt or were interdicted from public functions;
- Spouses or relatives of the directors of the company or of its parent or subsidiaries companies;
- Individuals who work either in a self-employed capacity or as employees of the company or of its parent or subsidiaries companies; and
- Individuals who have professional or other business relationships with any director of the company or any member of the director's family.

We believe that these limitations should ensure the independence and the integrity of statutory auditors. Further, in line with the Code, we determine the independence of the statutory auditors on the basis of the criteria outlined for the board of directors (See "Independence" section).[37]

Pursuant to Italian law, statutory auditors are elected on the basis of slates presented by shareholders, as detailed under "Election Procedures". The company's articles of association can stipulate the threshold for the presentation of a list, which cannot exceed the percentage mandated by Consob regulations on the basis of the company's capitalisation, free float and ownership structure. Each shareholder (or group of shareholders) holding the required percentage of share capital is allowed to submit and vote for a single list of candidates. Furthermore, the board chair is elected from the slate that obtains the second highest number of votes cast.[38] With regard to the choice among competing slates of candidates for election to the board of statutory auditors, Glass Lewis will review the background of the nominees on each list to identify any affiliated transactions that we consider to bias them as board members. We will recommend supporting the slate that appears able to best protect the interests of all shareholders, including minority investors. Further, we will evaluate whether the slates are aligned with gender diversity requirements. Moreover, we will take into account the ownership structure of companies, particularly those with a dispersed share ownership, in evaluating the lists presented and the potential voting outcome at the meeting. Further, when formulating our recommendation, we will take into consideration any issues that have emerged where there is evidence of poor oversight on the part of the board of statutory auditors, such as those related to the independent auditor. We may consider voting against a

[36] Consolidated Law on Finance, articles 148-151; Civil Code, articles 2397-2407.

[37] Code, article 2.9.

[38] Consolidated Law on Finance, article 148 (2-bis).

proposed member of the board of statutory auditors if we have significant concerns regarding that member, should the nominee be up for individual election. In the case of slate voting, we may recommend that shareholders do not vote on a slate which includes such candidate or vote against this slate should it be the only one presented for election.

Election of Board of Statutory Auditors Chair

Italian law requires that the chair of the board of statutory auditors is appointed from the effective members that are elected from the slate receiving the second highest number of votes cast.[39] It is common that a company's articles of association provide for the first candidate listed on the slate receiving the minority of votes to be appointed as chair. A proposal on the election of the chair of the board of statutory auditors may be submitted for shareholder approval as a separate item on the agenda. However, given the aforementioned appointment procedure mandated by law, shareholders may not be required to vote on the election of chair proposal at the meeting.

We note that, in companies with a dispersed ownership structure, there is potential for the list presented by institutional investors to receive the most votes. As a result, the chair will be appointed from the slate presented by the majority shareholder(s). We will take this into account in our evaluation of slates presented for the election of the board of statutory auditors. In some cases, we may recommend shareholders use their vote as a way to reinforce the likelihood for the candidate indicated by institutional investors to be elected as chair of the board of statutory auditors.

Shareholder Proposals Regarding Board Ancillary Proposals

Under Italian law, a shareholder (or group of shareholders) holding at least 2.5% of a company's share capital may submit additional items to the agenda of a general meeting already convened.[40] When presenting a list of candidates for the election of the board of directors and the board of statutory auditors, shareholders holding the required percentage of share capital (usually the company's largest shareholder) often submit resolutions regarding board ancillary proposals where the board has invited shareholders to submit resolutions. These proposals typically address board size, term length, election of the chair and directors' and statutory auditors' remuneration. In cases where the board of directors has not provided a recommendation regarding such proposal(s), we will base our analysis and voting recommendations on the proposal(s) presented by the shareholder(s) in lieu of management proposals.

Further, where no specific proposals have been presented by the board or shareholders on board size, we will recommend voting for such proposals as long as the company's articles of association define a range or number of directors that may serve on the board that aligns with the thresholds indicated under the "Board Size" section of these guidelines. Regarding board term length, as noted in the "Term Length" section of these guidelines, while Glass Lewis favours the annual election of directors, under Italian law directors may be elected for a term

[39] Consolidated Law on Finance, article 148(2-bis). At least one effective member should be appointed by the slate receiving the minority of votes casts.
[40] Consolidated Law on Finance, article 126-bis.

of up to three years and it is common practice for Italian companies to elect their directors for the maximum term permitted by the law. As such, we will recommend shareholders vote for these resolutions even where no specific proposals have been presented by the board or shareholders on term length.

Companies Listed on Euronext Growth Milan

As an adjunct to the Main Market (Mercato Telematico Azionario or MTA) of Borsa Italiana, the Italian stock exchange, the Euronext Growth Milan allows smaller companies from a wide range of industries to raise capital while subject to less stringent regulations. Approximately 120 companies are currently listed on the Euronext Growth Milan. While some of these companies will continue to trade on the Euronext Growth Milan for some time, many will eventually 'graduate' to the MTA upon reaching adequate size and productivity.

As a multilateral trading system, the Euronext Growth Milan does not qualify as a regulated market. While Euronext-listed companies are exempt from the provisions of the Consolidated Law of Finance and the Code, they are subject to the Euronext Growth Milan Rules (Rules) issued by Borsa Italiana which, among other things, sets rules related to corporate governance, takeovers, related-party transactions, capital requirements, reporting deadlines and disclosure. In particular, we note that, when the whole board is up for election, directors and statutory auditors are not required to be elected through the slate voting system; Euronext Growth Milan-listed companies may decide to amend their articles of association to adopt the slate system for the election of directors and statutory auditors or otherwise opt for the individual election procedure.

Euronext Growth Milan-listed companies generally provide lower levels of disclosure and apply less stringent corporate governance practices than their MTA-listed peers. In line with the Rules, we expect at least one director to meet independence requirements provided for statutory auditors under article 148 of Consolidated Law on Finance.[41] We will conduct a case-by-case assessment of board candidates and slates on the basis of information available. Where the company does not provide sufficient information to allow for a meaningful assessment of board candidates—or any other proposal presented to the meeting (e.g., the proposed dividend)—we will generally recommend that shareholders abstain from voting.

Given the diverse range of companies listed on the Euronext Growth Milan, we recognise that some companies may aspire to the higher independence standards recommended by the Code. Where companies choose to comply with the Code, deviations from best practice may be justified due to the small size of many Euronext Growth Milan-listed boards.

[41] Under the Rules, companies may also refer to the independence requirements provided in the Code if at least equivalent to those provided by the Consolidated Law on Finance, regardless of whether the company has decided to comply with the Code (Glossary, page 36).

Transparency and Integrity in Financial Reporting

In Italy, shareholders are required to approve a company's financial statements and the allocation of company results (profits or losses) annually. In the event of a loss, a company may propose to use its retained earnings, profit reserves or legal reserve to absorb losses and is exempt from the distribution of any dividends.

Shareholders are also required to approve the company's choice of independent auditors, which are appointed for terms of nine years, and the fees to be paid to the auditors.[42] According to the law, the board of statutory auditors (or supervisory board or management control committee depending on the governance structure chosen by a company) is in charge of conducting a tender offer for the auditors and recommending at least two possible alternatives for shareholder approval.[43] Consequently, companies may offer the option to vote separately on the proposed external auditors. Generally, the board of statutory auditors lists external auditors in order of preference and shareholders are called to cast their votes for the appointment of the first proposed external auditor (preferred option). Where the preferred auditor does not receive sufficient support and is not elected, shareholders will then be offered the opportunity to vote on the second proposed external auditor. Where the second proposed auditor does not receive sufficient support, shareholders will be offered the opportunity to vote on any additional proposed external auditors.

Our policies for these issues in Italy do not deviate materially from our *Continental Europe Benchmark Policy Guidelines*.

Accounts and Reports

As a routine matter, Italian company law requires that shareholders approve a company's financial statements, within the six months following the close of the fiscal year, in order for them to be valid.[44] The financial statements are accompanied by the directors' report, the independent auditors' report and by the board of statutory auditors' report.

[42] Legislative Decree no. 39 of January 27, 2010, as amended by Legislative Decree no. 135 of July 17, 2016.
[43] European Regulation n. 537 of April 16, 2014. 2018 update of the Code of Conduct for the Board of Statutory Auditors of Listed Companies issued by the Italian National Council of Auditors and Accountants.
[44] Civil Code, article 2364.

The Link Between Pay and Performance

Since 2011, Italian law has required all listed companies to submit remuneration reports for shareholder review.[45] In 2019, the law implementing the EU Shareholder Rights Directive (SRDII) reinforced the existing reporting framework with a focus on principles of clarity, alignment to corporate strategy and long-term sustainability, and introduced a binding remuneration policy vote for non-financial companies.[46] The Code of Corporate Governance provides best practice remuneration recommendations and the Consob rules mandate the structure and content of such remuneration.

Further regulations regarding remuneration policies at financial institutions are included in (i) Circular 285 of December 17, 2013 and subsequent revisions issued by the Bank of Italy; and (ii) ISVAP Regulation n. 39 of June 2011 concerning remuneration policies of insurance companies.

Our assessment of a company's remuneration policy is not materially different from the approach to evaluating remuneration outlined in Glass Lewis' *Continental Europe Benchmark Policy Guidelines*, except with regard to clarity, transparency, and comprehensibility to severance pay, as detailed below.

Vote on Remuneration (Say-on-Pay)

In accordance with the revised Consolidated Law on Finance, companies are required to make available a remuneration report divided into two sections and to submit each of them to shareholder approval.

Remuneration Policy

The first section of the remuneration report explains the company's forward-looking policy for board members, general managers, executives with strategic responsibilities, and members of control bodies. This section also details the procedures used to adopt and implement the remuneration policy, and how the policy contributes to the corporate strategy, long term interests and company sustainability.

The remuneration policy must be put to a binding shareholder vote requiring majority approval at least every three years. If the proposal does not receive majority approval, payments are made in compliance with the most recently approved policy or, in its absence, in compliance with market practice and a new policy is submitted to shareholders vote at the next AGM. The policy must also be put to a vote if the company wishes to amend the policy. Companies are allowed to temporarily deviate from the policy under exceptional circumstances to pursue long-term interests and/or the company's sustainability, or to ensure business continuity.[47]

We expect companies to fully disclose and explain their remuneration policies in a manner that is consistent with shareholder interests. Our voting recommendations for a binding vote on the remuneration policy will

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[45] Legislative Decree 30 December 2010, n. 259 published in the Italian Official Gazette of 11 February 2011; Consolidated Law on Finance, article 123-ter.

[46] Legislative Decree 10 May 2019, n. 49 published in the Italian Official Gazette of 10 June 2019; Consolidated Law on Finance, article 123-ter.

[47] Consolidated Law on Finance, article 123-ter, paragraph 3.

reflect an overall assessment of the structural alignment between pay and company performance, as well as any changes that would affect the alignment of executive and shareholder interests.

The Code recommends the following best practices with which we believe most companies should comply:[48]

- The adequate balance between the fixed and the variable component which is consistent with the company's strategic objectives and risk management policy; variable remuneration opportunity should be a significant part of the overall remuneration;
- The establishment of upper payout limits for variable components;
- The use of predetermined and measurable performance criteria to determine the vesting of awards, which are mainly linked to the long-term and consistent with the company's strategy and sustainable success;
- The deferral of a significant portion of the variable component of remuneration for an appropriate period of time; the amount of deferred remuneration and the length of the deferral period should be consistent with the company's business and risk profile;
- The arrangement of a provision that allows the company to claim or withhold, in whole or in part, the variable components of remuneration awarded on the basis of data which subsequently proved to be manifestly misstated or of other circumstances that may be defined by the company (clawback and malus);
- A significant portion of share-based incentive awards have a vesting and holding period of at least five years; and
- The formulation of clear and predetermined guidelines on termination payments as well as caps linked to a specific amount or number of years of director's remuneration; the indemnity should not be paid in the event the termination occurs due to poor performance.

When a company's executive remuneration policy deviates from these guidelines, we expect a clear and compelling rationale for why the proposed structure or practice is appropriate for the company.

Policy Implementation

The second section of the remuneration report illustrates the amounts paid by the company and/or its subsidiaries during the fiscal year under review and explains how the company has taken into consideration shareholders' votes of the previous year.[49] The company's independent auditor will verify that the board of directors has prepared this section of the remuneration report.[50] Shareholders vote annually to approve the second section on an advisory basis.[51]

We believe this vote provides shareholders with an important opportunity to support or oppose remuneration policies and practices. As such, our voting recommendations may reflect ongoing structural concerns as well as remuneration decisions and outcomes during the past fiscal year. In assessing implementation during the year

[48] Code, article 5.27 and 5.28.

[49] Consolidated Law on Finance, article 123-ter, paragraph 4.

[50] Consolidated Law on Finance, article 123-ter, paragraph 8-bis.

[51] Consolidated Law on Finance, article 123-ter, paragraph 6.

under review, particular attention is paid to the alignment between performance and pay outcomes, and the board's level of disclosure regarding any application of discretion.

Severance Payments

While we generally believe that severance payments should be limited to two years' fixed salary, executive severance agreements in Italy often exceed this cap. We will take into account this market practice when evaluating a severance-based payment on an existing contract; nonetheless, we may recommend voting against a severance policy that allows for payments that are excessive. Similarly, as executives in Italy are often entitled to additional termination payments under their collective bargaining agreements, we expect companies to disclose such entitlements in detail in the remuneration report.

The Code recommends that in the event of termination of an executive director or general manager's office, a press release should be issued by the company upon completion of the internal processes which led to the grant of severance indemnities and/or other benefits. The press release should detail the following:[52]

- The indemnities for the end of office or termination of the employment relationship, specifying the circumstances for accrual (e.g., expiry, revocation or settlement agreement);
- The overall amount of the severance indemnities and/or other benefits (including non-monetary benefits, maintenance of rights related to any incentive plans and non-compete payments) as well as the timing of the payment, specifying the amount of the up-front and deferred portions;
- The application of any clawback or malus provisions;
- The compliance of the severance payment with the company's remuneration policy; in the event of non-compliance, partial or in full, a clear narrative of the rationale and the process behind the decision should be provided; and
- The procedures followed or that will be followed for the appointment of a new executive director or general manager.

Pursuant to circular n. 285 published by the Bank of Italy, banks must seek shareholder approval of their severance policies. The quantum of such severance payments should be based on (i) individual performance; (ii) the level of capital and liquidity of the bank; and (iii) the length of employment. A clear maximum limit should also be defined.

Further, the law specifies that severance indemnities fall under the definition of "variable remuneration" and as such are included in the maximum ratio of variable-to-fixed-remuneration, which cannot exceed 100% of fixed remuneration (or 200%, with shareholder approval).

While payments for non-compete agreements, as well as amounts paid for the settlement of a current or potential dispute and indemnities in lieu of notice exceeding the legal entitlements, are considered severance payments, the following amounts are not included in the calculation of the maximum ratio of variable-to-fixed-remuneration: (i) non-compete agreements which do not exceed one year's fixed remuneration for each year of

[52] Code, article 5.31.

the duration of the agreement; and (ii) any amount paid for the settlement of a current or potential dispute related to termination of employment if calculated according to a predefined formula.[53]

Where a bank does not set a clear maximum limit on a severance payment, and where that limit is excessive or where performance conditions may allow for undue payouts, we will generally recommend voting against the severance policy in question.

Remuneration at Companies Listed on Euronext Growth Milan

Companies listed on the Euronext Growth Milan are not required to hold binding or advisory votes on executive pay. However, companies listed on Euronext Growth Milan may submit their remuneration report for shareholder approval on a voluntary and advisory basis. When assessing Euronext Growth Milan company remuneration reports, we take a broadly similar approach as for main market issuers, particularly with regard to the alignment between executive and shareholder interests, and protections against unmerited pay. However, we recognise that the remuneration structure, and level of disclosure, may be less developed at Euronext Growth Milan-listed issuers than at larger, more established firms.

Directors' Remuneration Plans

According to Italian Law,[54] the shareholders' general meeting fixes the remuneration of the members of the board of directors. The board of directors fixes the remuneration of those directors who are appointed to particular positions, after consultation with the board of statutory auditors. Where permitted by the company's articles of association, shareholders at the annual general meeting can determine a cap on the total remuneration of the directors, including those who are appointed to particular positions.

[53] Supervisory provisions for banks. Circular 285 of December 17, 2013 and subsequent revisions issued by the Bank of Italy.
[54] Civil Code, article 2389.

Governance Structure and the Shareholder Franchise

In Italy, shareholders may be asked to approve amendments to a company's articles of association, or the authorisation of competing activities. Our policy on these issues does not deviate materially from our *Continental Europe Benchmark Policy Guidelines*.

Authorisation of Competing Activities

Italian law prescribes that board members may not become partners of unlimited liability in competitor companies, nor carry out competing activities on their own account or that of third parties, nor take up the office of director or general manager in competitor companies, unless authorised by shareholders. In case of violation of the non-competition clause, the board member may be revoked and is responsible for any damage caused.[55]

If any of the appointed directors is in competition with the company, either directly or indirectly, shareholders will be asked to vote on a waiver of the non-competition clause. We also note that a director is required to disclose to the other directors and to the board of statutory auditors any interest that, personally or on behalf of third parties, he or she has in a specific transaction of the board. In such a case, the board resolution must state the reasons why the transaction is in the company's best interest. Further, a director is liable for damages suffered by the company as a result of his or her personal interest in a transaction.[56]

While Italian law provides for some measures to protect the company and its shareholders from abuses, we will recommend against such a proposal, as we believe that it is not in shareholders' best interests to grant directors the right to potentially enter into a situation that may be considered a conflict of interest.

Double Voting Rights

Law no. 116 of August 11, 2014 (converted, with amendments, from Legislative Decree no. 91 of June 24, 2014) introduced the possibility of increased voting rights, as an incentive for shareholders to become long-term investors in listed companies. Once provided for in its articles of association, a company may grant up to two votes per share to shareholders who have held their shares continuously for at least two years. Pursuant to Italian law, the articles of association shall specify the terms and conditions for allocating increased voting rights and establish a special list to ensure the relevant conditions are met.[57]

Under the Code, when proposing the introduction of double voting rights ("voto maggiorato") the board is required to provide adequate rationale in its explanatory report. The report should detail the following: (i) the anticipated impact on the company's ownership and control structure as well on the company's future strategy;

[55] Civil Code, article 2390.

[56] Civil Code, articles 2391 and 2392.

[57] Consolidated Law on Finance, Article 127-quinquies, subsection 2.

and (ii) the decision-making process which led to the definition of such a proposal and any dissenting opinions voiced within the board.[58]

Glass Lewis is generally opposed to measures that treat shareholders unequally. In general, we do not favour the creation or extension of stock with differential voting rights as it implicitly creates multiple classes of stock, which we believe is detrimental to the equal exercise of shareholder rights. As such, we will recommend shareholders vote against the implementation of provisions relating to such loyalty initiatives into a company's articles of association[59].

[58] Code, article 1.2.

[59] We note that our policy on multi-class share structures described in our *Continental Europe Benchmark Policy Guidelines* does not apply to loyalty initiatives such as double voting rights.

Capital Management

Shareholders in Italian companies may be asked to approve capital-related proposals. Our policies with regard to these matters do not differ materially from our *Continental Europe Benchmark Policy Guidelines*.

Issuance of Shares and/or Convertible Securities

In Italy, shareholders are required to approve all proposals related to the issuance of shares and/or convertible securities. According to Italian law, shareholders may delegate the power to increase the company's share capital to the board of directors. Notwithstanding the aforementioned, shareholders must determine the length of the authority, which in no event may be greater than five years, and the overall ceiling for the increase.[60]

Authority to Repurchase Shares

Under Italian law, a company may seek shareholder approval to repurchase its own shares. The law requires the company to indicate (i) the maximum number of shares to be acquired; (ii) the duration of the authority (which must not exceed 18 months); and (iii) the corresponding minimum and maximum purchase prices. The number of shares to be repurchased may not exceed 20% of the company's share capital. Further, repurchases must be made out of the company's distributable profits so as to ensure equal treatment of shareholders according to procedures set by Consob.[61]

We will generally support buyback programmes so long as the company is left with a sufficiently strong balance sheet in light of its capital requirements.

[60] Civil Code, article 2443.

[61] Civil Code, articles 2357 and 2357-bis; Consolidated Law on Finance, article 132.

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