



The main innovations of the so-called Capital Law

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Paolo Barbanti Silva
Enzo Fanelli

On 14 March 2024, following the final approval on 27 February 2024 by the Parliament of Bill S.674-B (the 'Capital Bill'), Law No. 21 of 5 March 2024, containing measures to support the competitiveness of capital (the "**Capital Law**"), was published in Official Gazette No. 60 of 12 March 2024; the published text came into force on 27 March and consists of 27 articles.

The numerous interventions envisaged by the Capital Law aim to promote the modernisation of the Italian regulatory framework and to remove some obstacles to the demand for capital by companies. As reported in the Green Paper on '*The Competitiveness of Italian Financial Markets in Support of Growth*' (https://www.dt.mef.gov.it/it/dipartimento/consultazioni_pubbliche/consultazione_libro_verde.html), in fact, the Italian capital market is still underdeveloped compared to other advanced economies, manifesting a condition of 'chronic lag'. This phenomenon is due both to structural weaknesses in the system of reference and to the presence of certain obstacles of legislative and regulatory

nature, often common to the entire European Union area, which, compared to the other main economic areas at the international level, has a significant competitive gap, also due to the scant progress made in overcoming the fragmentation of capital markets and to a system of rules that is not always able to keep pace with the evolution of capital intermediation mechanisms.

With this in mind, the aim of the Capital Law is to facilitate the growth of the Italian capital market by favouring the access and permanence of companies in the financial markets in order to provide companies with alternative financial channels to traditional banking.

The law also delegates the Government to adopt, within twelve months, one or more legislative decrees revising the Consolidated Law on Financial Intermediation (Legislative Decree 58/1998, "**Consolidated Law on Finance**") and the provisions of the Civil Code applicable to listed companies.

The main changes introduced by the Capital Law are analysed below.

1. New discipline for SMEs



1.1. Amendment to the SME definition and dematerialisation of limited liability company shares (quotas)

Article 2 of the Capital Law modifies the definition of SMEs, increasing the capitalisation threshold from the current EUR 500 million to EUR 1 billion in order to facilitate the listing of small and medium-sized companies. This change will result in the application, to a significantly larger number of companies, of the benefits deriving from the favourable rules for SMEs, including:

- the raising of the minimum threshold determining the obligation to disclose major holdings - pursuant to Article 120 of Consolidated Law on Finance - from 3% to 5%;
- the possibility to opt-out, by means of a provision in the articles of association, from the obligation of the so-called "consolidation takeover bid" (i.e., an obligation to launch a takeover bid arising from consecutive acquisitions or a voting increase of more than 5% by a person who already holds a relevant shareholding for takeover bid purposes, but not the majority of voting rights in the ordinary shareholders' meeting), in the first five years following listing; and
- the possibility of changing, by means of a provision in the articles of association, the minimum threshold determining the obligation to launch a takeover bid (i.e. 30% of the share capital or voting rights in general), provided that the different threshold is between 25% and 40%.

In addition, Article 3 of the Capital Law introduces the possibility for SMEs established as limited liability companies (*società a responsabilità limitata*, "S.r.l.") to dematerialise their shares (quotas). The dematerialisation is structured on the basis of electronic data entries with an intermediary through which the shares will be registered.

This is an innovation that entails an important departure from the codified rules for the transfer of S.r.l. quotas, which require a notarised private deed and subsequent filing with the relevant Companies Register. Now the dematerialised quotas of S.r.l. - SMEs

will be able to circulate on the basis of deeds between intermediaries. On the other hand, the S.r.l. whose quotas will be dematerialised will have to set up a shareholders' register to record the various shareholding transactions, as there is no provision for them to be filed with the Companies Register.

Amendments to the Rules on the Issue of Bonds by joint stock companies and Debt Securities by limited liability companies

Worth mentioning are the amendments to Articles 2412 and 2483 of the Civil Code by Article 7 of the Capital Law, aimed at facilitating the raising of financial resources by corporations.

In particular:

- with reference to joint stock companies (*società per azioni*, "S.p.A."), the amendment of the fifth paragraph of Article 2412 of the Civil Code, which now provides that the limitations set forth in the first two subsections of Article 2412 of the Civil Code (i.e., the limits on the issuance of bonds for an amount not exceeding a total of twice the share capital, the legal reserve and the available reserves resulting from the latest approved financial statements) do not apply to issues of bonds intended to be subscribed exclusively by professional investors; and (ii) the obligation to be liable for the solvency of the issuing company in the event of a subsequent transfer of the bonds;
- on the subject of the issuance of debt securities by S.r.l., the amendment of paragraph 2 of Article 2483 of the Civil Code, which provides that the obligation of interposition for the purpose of guaranteeing solvency by a professional investor subject to prudential supervision does not apply to bonds intended to be acquired exclusively by professional investors.

2. Multiple and Increased Voting Shares

2.1. Multiple-voting shares

Article 13 of the Capital Law amends Article 2351(4) of the Civil Code, providing for an increase from 3 to 10 in the number of votes that may be

assigned, by provision in the articles of association, to each multiple-vote share.

In line with Article 127-sexies of Consolidated Law on Finance, which allows the issuance of multiple-vote shares only prior to listing, the amendment will only affect companies that are not listed yet, while for companies whose shares are already listed, the prohibition to introduce multiple-vote shares into the bylaws will remain.

2.2. Increased voting shares

Article 14 of the Capital Law amends the regulation of the increased vote provided for by the Consolidated Law on Finance in order to provide that the articles of association may provide for the allocation of votes in addition to the 2 votes per share provided for by the current regulation.

In more detail, the law amends:

- Article 106 of the Consolidated Law on Finance by adding paragraph 5-bis, which eliminates the obligation to launch a takeover bid in the event that the relevant thresholds are exceeded due to an increase in voting rights as a result of a merger, cross-border transformation or proportional demerger, carried out pursuant to Legislative Decree No. 19/2023, provided that there is no change in the direct or indirect control over the company resulting from the aforementioned transactions;
- Article 127-quinquies of Consolidated Law on Finance by providing:
 - i. in subsection 1, that the articles of association may provide that an increased voting right, up to a maximum of two votes, be attached to each share held by the same person for a continuous period of not less than 24 months;
 - ii. in subsection 2, that the articles of association may provide for the allocation of one additional vote upon expiry of each 12-month period, following the expiration of the period referred to in subsection 1, in which the share has belonged to the same person, up to a total maximum of 10 votes per share;

- iii. in Section 3, the possibility of including a provision in the statutes to the effect that the person entitled to vote may irrevocably waive, in whole or in part, the increased voting right.

The introduction into the articles of association of the provision permitting the further increase up to an overall maximum of 10 votes per share is intended to favour the position of the 'loyal' shareholder in the interest of industrial policies of sustainable growth and long-term value creation, with positive effects on the financing of companies, their capitalisation and market development.

3. Corporate governance

The area in which the Capital Law has had the greatest impact - as already seen in light of the above-mentioned changes on multiple and increased voting - is that relating to the *governance* of listed companies. In particular, there are important changes in the following areas: (i) the list of the Board of Directors; and (ii) conduct of shareholders' meetings through the appointed representative.

3.1. Board List

With reference to the appointment of the Board of Directors, Article 12 of the Capital Law introduces the new Article 147-ter of the Consolidated Law on Finance, providing for specific rules for the submission of lists by the Board of Directors of listed companies on the occasion of its renewal.

In particular, it is established that, if provided for in the bylaws, the outgoing board of directors may submit a list of candidates to be elected to the new board of directors, provided that (i) the resolution on the submission of the list is passed with the favourable vote of at least two-thirds of the members of the outgoing board of directors; (ii) the number of members of the list is equal to the number of members to be elected plus one-third; and (iii) the list is made public and filed at least 40 days prior to the date of the shareholders' meeting.

If the list of the outgoing Board of Directors is the only one submitted, the

directors to be elected shall be drawn in full from it.

If, however, there are other lists, the law regulates in detail - in paragraph 3 of the same article - how to proceed.

In particular, if the list of the outgoing Board of Directors obtains the highest number of votes cast:

- there will be a further individual vote on each candidate at the same meeting;
- the candidates will be ordered according to the number of votes obtained by each of them (i.e. from highest to lowest);
- the candidates obtaining the highest number of votes, in proportion to the posts to be filled, shall be elected; and
- in the event of a tie between candidates, the order in which they appear on the list shall be used.

Furthermore, in the event that the aforementioned list is the one with the most votes, but there are also minority lists, the members of the new Board of Directors will be elected from the other lists as follows:

- if the total number of votes received by the first 2 lists after the majority one, is no more than 20% of the total votes cast, the aforesaid 2 lists shall compete for the allocation of seats on the Board of Directors in proportion to the votes cast by each list at the shareholders' meeting, and in any case for a total amount of no less than 20% of the total number of members of the same body (so-called minority bonus). The remaining seats on the Board of Directors are allocated to the list with the highest number of votes, and the relevant candidates are voted by the Shareholders' Meeting in the same manner as explained above;
- if the total number of votes collected at the shareholders' meeting by the other 2 first lists after the majority one, exceeds 20 per cent of the total votes cast, the members of the new Board of Directors pertaining to minorities shall be assigned in proportion to the votes obtained by the minority lists

that obtained a percentage of votes of no less than 3 per cent;

- in both cases, the remaining members will be allocated to the list of the outgoing Board of Directors.

These new rules, which will apply as of the first shareholders' meeting convened after 1 January 2025, present several application criticalities and grey areas, including - for example - the modalities for the distribution in the event that the Board of Directors' list does not obtain the highest number of votes at the shareholders' meeting. The implementing provisions of the law, which will be published shortly by Consob, may shed light on these still unclear aspects.

3.2. Conduct of meetings through appointed representative

Through the introduction - by Article 11 of the Capital Law - of the new Article 135-undecies of the Consolidated Law on Finance, companies with shares listed on a regulated market or admitted to trading on a multilateral trading system are allowed to provide in their articles of association that shareholders' meetings may be held exclusively through their appointed representative. Pursuant to Article 135-novies of Consolidated Law on Finance, the representative may also be granted proxies and sub-delegations.

If this measure is adopted, it is further stipulated that:

- proposals for resolutions may not be submitted to the assembly through an appointed representative;
- those entitled to vote may individually submit proposals for resolutions on items on the agenda (or proposals whose resolution is otherwise permitted by law) no later than the 15th day prior to the meeting in first or single call;
- proposals are published on the company's website within 2 days after the deadline;
- the entitlement to submit individual resolution proposals is subject to the company's receipt of the notice from the intermediary referred to in Article 83-sexies of Consolidated Law on Finance; and

- the right to ask questions shall only be exercised prior to the meeting and the company shall provide answers at least three days before the meeting.

4. Further measures to facilitate companies' access to the capital markets

The Capital Law, as mentioned, has as its main objective to facilitate the access and permanence of companies in the financial markets. The legislator sought to encourage the listing of new companies and to simplify the rules for already listed companies, including by removing certain forms of gold plating. Below are the main measures that go in this direction.

4.1 Amendments to the rules for the approval of the prospectus and responsibility of the placement agent

Article 94(2) of the Consolidated Law on Finance is amended, establishing that the terms for the approval of the prospectus shall run from the date of submission of the draft. If Consob ascertains that the draft prospectus does not meet the criteria of completeness, comprehensibility and consistency necessary for its approval or that amendments or additional information are required, the procedure and terms set forth in Article 20(4) of Regulation 2017/1129/EU (Prospectus Regulation) shall apply. The purpose of the amendment is, therefore, to reduce interpretative uncertainty as to the point in time from which the deadlines for approval of the prospectus run, which is thus made to coincide with the date of submission of the draft prospectus and not at the point in time when the Authority deems the application complete.

Furthermore, in order to align the Italian regulations with the European ones, paragraph 7 of Article 94 of the Consolidated Law on Finance, which provided for the placement agent's liability in the event of false information or omissions capable of influencing the decisions of a potential investor, is repealed.

4.2. Door-to-door off-site offer

Article 30(2) of the Consolidated Law on Finance is supplemented by introducing

a new hypothesis that is not considered as an offer outside the place of business (door-to-door) and, therefore, is not subject to the relevant rules.

In particular, the exemption has been extended to off-premises offers for the sale or subscription of its own shares provided that (i) the shares are issued by issuers with shares traded on regulated markets or multilateral trading facilities in Italy or in EU countries, and (ii) they are made by the issuer through its directors or its managerial staff for subscription or purchase amounts greater than or equal to EUR 250,000.

4.3. Simplified listing

The Capital Law eliminates several conditions previously required for listing on the financial markets. In particular, through the amendment of Article 66 bis of Consolidated Law on Finance, it eliminates **(i)** the criteria identified by Consob regarding accounting transparency and the adequacy of the organisational structure and internal control system that subsidiaries, established and regulated by the laws of non-EU states, must comply with in order for the parent company's shares to be listed on an Italian regulated market; and **(ii)** the limits - again outlined by Consob - for the admission to listing on the Italian securities market of financial companies whose assets consist exclusively of equity investments.

4.4. Float regulations

Article 6 of the Capital Law amends Article 112 of the Consolidated Law on Finance, abolishing the power attributed to Consob to reduce the free float when a shareholder with more than 90 per cent of the capital represented by securities admitted to trading on a regulated market is required to restore a free float sufficient to ensure the regular course of trading.

5. Repeal of the obligation to report transactions by material shareholders

Article 10 of the Capital Law abolishes the obligation to report transactions carried out by material shareholders to Consob. In particular, the provision repeals paragraph 7 of Article 114 of Consolidated Law on Finance, effectively abolishing the obligation for anyone



holding at least 10 per cent of the share capital of a listed company, as well as for any other person who controls the issuer, including through an intermediary, to report to Consob and to the public on transactions involving shares issued by the company.

This measure aims both to align the Italian regulatory framework with the European one and to streamline the procedure for transactions involving shares issued by the issuer or other financial instruments linked to them.

6. Measures relating to sanction proceedings handled by Consob

A reform aimed at optimising the efficiency and functioning of the financial markets could not be separated from a revision of the sanctioning system within the remit of the relevant Supervisory Authorities.

With this in mind, Article 23 of the Capital Law inserts a new title in the Consolidated Law on Finance, containing provisions common to all sanctioning measures that can be imposed by Consob and which allow the sanctioning procedure to be defined in a negotiated manner.

In a nutshell, the addressee of a notice contesting sanctions is allowed to submit commitments such that the harm to the interests of investors and the market that is the subject of the contestation is removed. Consob must then assess the suitability of such commitments to achieve the intended objective and consequently issue a decision with binding commitments. In the event of non-compliance with the commitments

made, the maximum limits of the administrative pecuniary sanction provided for in the relevant regulations are increased by 10 per cent.

The provision, which allows for negotiated solutions to disputes on financial markets, aims to achieve a reduction in the number of disputes between Consob and supervised entities in order to simplify and make the activity of the Supervisory Authority more efficient and to facilitate the remedy of any critical situations.


7. Some final considerations


The Capital Law has certainly introduced a number of significant innovations in the area of company law and capital markets, providing more tools and more flexibility for companies to meet their financial and governance needs. It is, however, a first step towards a more organic reform of the entire discipline of the law on listed companies, with a view to making the legislation more competitive with that of other jurisdictions and more homogeneous at the EU level so as to foster the development of a single capital market. The Capital Law (Article 19) in fact contains a delegation to the government to adopt, within 12 months, legislative decrees for the overall revision of capital market regulations. In addition, the Italian regulations will have to be coordinated to the so-called Listing Act, a series of regulations with important innovations aimed at reforming the capital market rules at the EU level, which is expected to be approved soon.



Paolo Barbanti Silva

PARTNER

 p.barbanti@dejalex.com

 +39 02 72554.1


 Via San Paolo, 7
20121 - MILAN



Enzo Fanelli

ASSOCIATES

 e.fanelli@dejalex.com

 +39 02 72554.1

 Via San Paolo, 7
20121 - MILAN

MILAN

Via San Paolo, 7 - 20121 Milan, Italy
T. +39 02 72554.1 - F. +39 02 72554.400
milan@dejalex.com

ROME

Via Vincenzo Bellini, 24 - 00198 Rome, Italy
T. +39 06 809154.1 - F. +39 06 809154.44
rome@dejalex.com

BRUSSELS

Chaussée de La Hulpe 187 - 1170 Bruxelles, Belgique
T. +32 (0)26455670 - F. +32 (0)27420138
brussels@dejalex.com

MOSCOW

Potapovsky Lane, 5, build. 2, 4th floor, office 401/12/9 - 101000, Moscow, Russia
T. +7 495 792 54 92 - F. +7 495 792 54 93
moscow@dejalex.com