

Supervisory board and the so-called “co-determination”

Italian lawmaker, in its 2003 company law reform does not impose the presence of employee-chosen members within the supervisory board due to:

- 1) cultural-historical reason;
- 2) **Article 2409-duodecies, par. 10 Civil Code:** “those who are linked to the company or to the companies controlled by it or under common control of them by a labor relationship [...]”;
Article 148, par. 3 Financial Markets Consolidated Act (Draghi Law): “those who are linked to the company or to the companies controlled by it, the companies it is controlled by and those subject to common control, or to directors of the company or persons referred to in subparagraph b) by self-employment or employee relationships [...]”.

*Minority shareholders' representation in non-listed
companies*

Italian lawmaker does not guarantee any kind of minority shareholders' representation or protection within the supervisory board



Possible contribute to a more equilibrate, impartial and independent exercise of the significant board's competences and duties, at least in open non-listed companies, on the basis of the following considerations:

- FUNZIONI DI ALTA AMMINISTRAZIONE:
Art. 2409-terdecies, par. 1, subpar. f-bis) c.c.:
“the supervisory board, only if so empowered

by the by-laws, resolves on strategic transactions and on industrial and financial plans of the company drafted by the management board [...]”; Germany there is a mandatory “Katalog von bestimmten Arten von Geschäften” *ex Art. 111, par. IV AktG*;

– REVOCAION WITHOUT CAUSE:

Art. 2409-duodecies, par. 5 c.c.: “revocation of board members without cause at any time with resolution adopted with the majority of 20 per cent of the share capital”; Germany only revocation with cause is allowed pursuant to *Art. 103 AktG*.

Art. 148, par. 4-bis Draghi Law (as amended by Law 2005/262 and Legislative Decree 2006/303):

“The CONSOB shall regulate the procedures for the election, on the basis of slates, of a member of the supervisory board by the minority shareholders, who are not related, even indirectly, to the shareholders that have presented or voted the slate that ranked first by number of votes”



Draft regulation 6th April 2007 and its contents:

– every shareholder may present a slate of candidates; the by-laws may require a minimum participation, which shall not be more in any case than 2,5% of the total share capital, but can be

Kommentar: ormai c'è versione definitiva!

reduced by half in the case only one slate or only slates related to dominant shareholders have been presented;

– related party disclosure (*IAS 24, Report of the High Level Group*): minority shareholder is related to dominant shareholder if the latter has the ability to control or to exercise significant influence or joint control over the former by making financial and operational decisions.



Companies who have adopted the two-tier system (Intesa Sanpaolo S.p.A., Management & Capitali S.p.A., S.S. Lazio S.p.A., Monti Ascensori S.p.A., Banche Popolari Unite S.c.p.A., Banco Popolare Soc. Coop.) will be obliged to conform their by-laws until 30th June 2007.