LEADING ITALIAN ACADEMICS, JOURNALISTS AND BOARD DIRECTORS JOIN WITH INVESTORS TO URGE SAFEGUARD OF KEY INVESTOR PROTECTIONS

FOR IMMEDIATE RELEASE:

Monday, 2nd February 2015: Today, in an unprecedented joint initiative, a large group of prominent Italian academics and professionals, listed company board directors as well as international investment institutions gathered together to urge the Renzi government to refrain from interfering with longstanding rules aimed at safeguarding the rights of minority shareholders.

The statement was signed by:

- 93 professors and practitioners of law and economics, journalists and other opinions leaders, a significant number of which also serve as Directors of listed Italian companies;
- 22 listed company board directors who disclosed their affiliation with 23 Italian companies;
- 20 international investment institutions representing over US$7.5 trillion of assets under management; and
- 9 advisory firms specialising in voting and stewardship-related services to investors.

The signatories of the statement have voiced strong opposition to the government's attempt to disable a key provision in Italian law that has, since passage of the Draghi Law in 1998, required companies to obtain a two-thirds majority of shareholder votes in order to amend their statutes. This has served as a key protection for minority shareholders whose ability to influence voting outcomes would otherwise be systematically overwhelmed by controlling shareholders.

In introducing a temporary exception to the voting rules, the Government is allowing companies to disadvantage minority shareholders by granting double voting rights to majority shareholders, effectively without minority shareholders' consent. The below signatories are opposed to this and are asking the Government to reintroduce the two-third majority vote as enshrined in the law.

The signatories have expressed serious concern that a temporary exemption passed in July 2014, and due to expire on 31st January 2015, is at risk of being extended through the end of 2015. This provision allows listed companies to introduce so-called Loyalty Shares (shares with double voting rights) by securing a simple majority of votes, rather than the standard supermajority.

Luigi Zingales*, Professor, Harvard University and Non-Executive Director, Eni S.p.A, explained: "Appealing as the concept of Loyalty Shares may sound, they don't actually reward long-term investing: the administrative hurdles that investors must overcome to qualify for double votes are so onerous that the main beneficiaries are the controlling shareholders themselves, as France's experience has amply demonstrated. So tell it like it is: this is a device to entrench controlling shareholders and insulate them from the influence of minority shareholders."

Claudia Kruse, Managing Director Sustainability & Governance at APG Asset Management, which manages about €400bn on behalf of Dutch pension funds, continued: "Nobody would disagree with the government's objective of promoting investor loyalty and focus on sustainable value creation.

But by effectively halving our voting rights, this law disenfranchises minority investors and isolates boards from the company's owners. It risks driving investors away and thereby driving down valuations, rather than building loyalty and making Italy an attractive place to invest."

Luca Enriques*, Professor, University of Oxford, concluded: "Things have to have reached a pretty worrying point for investors, board directors and academics all to agree. In a market like Italy's, where 90% of listed companies have some form of dominant shareholder, the safeguard built into the Draghi Law is critical to attracting international capital. Tampering with it risks turning shareholder meetings into meaningless exercise where votes will, by sheer force of numbers, favour the controlling shareholder. We should not be surprised if international investors pack up and take their capital elsewhere – and that is a scenario we simply cannot afford to see happen".

**** Luca Enriques and Alessandro De Nicola express these views in a strictly personal capacity***

BACKGROUND INFORMATION:

- Given the unusual ownership structure of Italy's listed companies, approximately 90% of which are characterised by controlling or dominant shareholders, so-called minority investors have, since the 1998 passage of the Draghi Law, relied on a crucial legal safeguard that has protected them from dominant shareholders seizing the reins of the company and sidelining them. By requiring that any amendment to a company's statutes be subject to a two-thirds majority vote in favour, the law has ensured that minority investors have had a reasonable amount of leverage over key decisions affecting a company through the exercise of their votes at extraordinary shareholders' meetings.
- In July 2014, however, the Renzi government introduced a special amendment that temporarily replaced this supermajority requirement with a mere 50%-plus-one threshold for companies seeking to introduce so-called Loyalty Shares – shares with double voting rights for investors that have held their shares for over two years.
- Although in theory available to any shareholder who meets the holding period requirement, experience in France, where these structures are widespread, have revealed that as a result of significant administrative hurdles, the double voting rights accrue overwhelmingly to controlling shareholders, leaving minority shareholders with voting rights that have been effectively halved relative to their economic exposure.
- The above-noted amendment was due to expire on 31st January 2015 – but not before three companies, acting in the final days before the amendment's expiry, successfully put the law into practice: Astaldi, Amplifon and Campari, each with single shareholders holding over 50% of the shares, pushed through proposals at extraordinary shareholder meetings in which the outcome was a foregone conclusion.
- On 29th January, two days before the amendment's expiration date, Italian legislators presented a proposal to extend it through 31 December 2015. This would ensure that hundreds of other controlled Italian companies will have the opportunity to introduce double voting shares without the need for a supermajority of investors to approve the change.
- In the week of 26th January 2015, three companies, Astaldi, Campari and Amplifon, held extraordinary shareholders' meetings (EGMs) in which they proposed the introduction of Loyalty Shares. With controlling stakes of 52.52%, 51.00% and 54.84%, respectively, and a

voting threshold of 50%-plus-one, the successful passage of these proposals was a foregone conclusion. Despite unusually high turnouts for and EGM, and overwhelming opposition from minority holders, the Loyalty Shares have now been adopted. If, as expected, few if any minority investors qualify for them, the controlling shareholders will gain over two thirds of the voting rights, in effect securing all future votes despite the supermajority requirement applying to all future changes in statutes.

ADDITIONAL REFERENCES:

Other organisations that have taken a position on this matter include the following:

- Assogestioni: contact Massimo Menchini, massimo.menchini@assogestioni.it http://www.assogestioni.it/index.cfm/1,147,10681,49,html/voto-maggiorato-e-voto-plurimo-un-vulnus-al-principio-di-one-share-one-vote
- Georgeson: contact Stefano Marini, s.marini@georgeson.com, +39 348 795 8786
- Glass Lewis Europe, Ltd.: contact Carla Topino, ctopino@glasslewis.com, +41 76 346 0673
- International Corporate Governance Network: contact Kerrie Waring, Kerrie.waring@icgn.org https://icgn.org/images/28_Jan_Italy_Growth_Decree_ICGN_Prof_Padoan.pdf
- ISS: contact Gabriel Alsina, gabriel.alsina@issgovernance.com, (http://www.issgovernance.com/file/policy/2015europesummaryvotingguidelines.pdf)
- Studio Legale Trevisan & Associati: contact Dario Trevisan, trevisan@trevisanlaw.it; see analysis on voting outcomes of three Extraordinary Shareholders' meetings at Campari, Astaldi, Amplifon – www.trevisanlaw.it