Activism in Italy

Italy’s painfully slow legal system, the strong hold of powerful families and entities on many of its largest companies, and a general perception that the country is complicated and inefficient keep most activist investors at bay. But not everyone is scared.

U.S. activists Elliott Management and Amber Capital have invested in Italy for years. Amber even has an office in Milan, while Elliott runs its European operations from London.

“Investors, mainly from abroad, see risks. We see important opportunities,” Arturo Albano, corporate governance specialist in Amber’s Italian office, told Activist Insight Monthly in a recent interview.

His firm and Elliott are both waging campaigns at Ansaldo STS, a Genoa-based railway signaling company that recently had a majority stake acquired by Tokyo-based Hitachi, in a deal which the activists believe defrauded minority investors.

Elliott – which is assisted in its campaign by Bluebell Partners, a London-based investment adviser founded by two Italian investment bankers – has elected three directors through a minority slate mechanism, and it is currently fighting a court battle to annul Ansaldo STS’ most recent shareholder meeting, and gain control of the majority of the board.

The ‘Voto di lista’ rule

In Italy, most companies have a controlling shareholder, or a coalition of shareholders in control. To limit their power, regulators introduced proxy access rules—the ‘Voto di lista’ mechanism—which governance experts and investors operating in the country unanimously describe as advanced and generous.

Since 2008, minority shareholders owning as little as 0.5% of large cap companies can elect at least one board member, plus the chairman of the board of auditors, which roughly corresponds to the audit committee in the U.S. Larger stakes are required for small companies, up to 4.5% for the smallest micro caps.

Chairmen of audit boards have the power to investigate wrongdoings even if their fellow board members do not support them.

In addition, even majority shareholders’ slates are required to include independent directors.

Massimo Menchini, Secretary of Italian association Investment Managers’ Committee, told Activist Insight Monthly that minority shareholders’ representation on Italian boards has increased dramatically in recent years. The committee assists investment firms in nominating slates, coordinating minority shareholders and providing a free headhunting service to select independent directors. In the 2016 proxy season, it submitted slates at 34 companies – up from 14 in 2013 – and elected close to 60 board members.
A system that is changing

‘Relational capitalism’ is how Italians refer to a network of families, financial institutions and companies helping each other to hold control of most of the country’s large companies through pyramidal ownership structures and cross holdings. They succeeded for decades, but are now struggling. The financial crisis, legal trouble and a series of new regulations have weakened their grip on the Italian economy.

Andrea Di Segni, a partner at proxy solicitor Morrow Sodali, told Activist Insight Monthly that the influence of international investors in Italy has increased in recent years. Their presence at listed companies’ annual meetings increased by 40% between 2012 and 2015, and they represented the majority of the shares at large firms such as Telecom Italia, Intesa Sanpaolo, Prysmian Group, Finmeccanica and others last year.

“Obviously, activist investors now have more room to wage their campaigns,” Di Segni said.

Bluebell Partners’ co-founder Giuseppe Bivona is even firmer. In an interview with Activist Insight Monthly, he argues that “traditional family capitalism, which entrenched the country for decades, is falling apart… Some U.S. investors are starting to realize that Italy’s governance rules make it a very interesting market.”

The actions of Italian governments have played their part too. In 2015, a law imposed the conversion into limited companies of Italy’s largest cooperative banks. Traditionally, each shareholder had a single vote, regardless of the size of its stake, in a system which granted a huge power to unions. Now, those banks have been left without a controlling group, while a ban on director overboarding within competing entities in the financial sector has been implemented to disincentivize cross ownership.

In addition, recent scandals – notably at Monte dei Paschi di Siena – pushed lawmakers to limit the amount that bank foundations could invest in a single company – potentially reducing their traditional influence on the country’s lenders.

Finally, companies have not been allowed to issue shares with increased voting power since 2014. However, they are allowed to link the voting power to the seniority of the shareholding.

No country for rude men

“In Italy, form has its importance,” says Albano. If an activist wants to invest in the country, it has to learn the local rules.

One of the rules is that the aggressive approach often used in the U.S. normally does not pay—and that holds true for most of Europe. Sometimes a tough campaign, such as the one waged at Ansaldo STS, is possible—and maybe profitable. However, as Bivona puts it, “Ansaldo STS is not an example of what activist engagement normally is in Italy. For activist investors, being forced into disputes that get headlines is not the best scenario.”

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