

Impact of Florange Act (France)

Background and Overview

The Florange Act, adopted on March 29, 2014, impacts French governance principles and provisions, particularly the one-share, one-vote principle and antitakeover measures:

The Act provides for the automatic granting of double-voting rights to any shares held in a registered form by the same shareholder for at least two years (also known as "time-phased" voting or "loyalty shares"), provided that the company does not prohibit double-voting rights in its bylaws. The Act allows companies to amend their bylaws (with shareholders' approval) to opt-out of this automatic granting of double voting rights and thus continue under the one-share, one-vote principle. The two-year holding period triggering the automatic acquisition of double-voting rights started on April 1, 2014. As a consequence, double-voting rights will start to be automatically applied March 31, 2016. This means that French companies which did not already prohibit double-voting rights in their bylaws have to submit such bylaw amendment by March 31, 2016, in order to opt out of the automatic granting of double-voting rights.

The Act further enables the board, facing a potential takeover, to adopt any provisions to thwart a takeover, without shareholder approval. The Act does allow companies to amend their bylaws (with shareholders' approval) to opt-out the ability to adopt antitakeover measures without shareholders' prior approval.

Key Changes under Consideration

To address the automatic granting of double voting rights, ISS proposes the following approach:

For French companies that do not currently have a bylaw prohibiting double-voting rights, and do not have such a bylaw on their ballot for shareholder approval, on a case-by-case basis, ISS may recommend against the following types of proposals:

1. The reelection of directors or supervisory board members, or
2. The approval of the annual report and accounts.

An exception to this policy will apply when there is a public commitment from the company to submit such a bylaw amendment to shareholder vote before March 31, 2016.

Second, ISS proposes a limited application of its current antitakeover measures policy for 2015 as follows:

For companies in the CAC40 index, and until Jan. 31, 2016, generally recommend voting against any general share issuance authorities (with or without preemptive rights) if they can be used for antitakeover purposes without shareholders' approval.

Intent and Impact

ISS proposes the policy approach regarding the automatic granting of double-voting rights as the appropriate response for a company deciding not to opt out of the provisions of the Florange Act. Directors should be held accountable for the decision not to opt out of the Act and thus have their companies adopt the automatic granting of double-voting rights. The impact of the proposed policy approach would be significant as 46 percent of widely held French companies do not currently prohibit double-voting rights in their bylaws and would therefore be impacted.

ISS proposes a narrow application of its current policy on antitakeover measures in 2015, to give effectively one additional year to smaller companies to respond to the impact stemming from the Florange Act.

Request for Comment

While we appreciate any comments on this topic, ISS seeks specific feedback on the following issues.

1. Would your organization hold current directors accountable for the absence of a bylaw to opt-out of the automatic granting of double-voting rights by voting against any reelections? If not, please explain.
2. Would your organization systematically oppose any authorizations on share capital increase which could, by law, be used for antitakeover purposes without shareholders' approval? If no, would your organization consider, as a first step (i.e. during a temporary period), limiting opposition to companies belonging to the main local index (CAC40)?

To submit a comment, please send via email to policy@issgovernance.com. Please indicate your name and organization for attribution. While ISS will consider all feedback that it receives, comments will not be published without attribution.

All comments received will be published as received, unless otherwise requested in the body of the email submission.