MEMORANDUM

To:          Prof. Robert Eccles / UN Global Compact

From:        Mario Roli, Elisabetta Bellini, Giulia Elisabetta Uboldi

Reference:   Legal Perspective on an Annual Board “Statement of significant Audiences and Materiality” - Italian Law Perspective

Date:        18 March 2015

The information contained in this memorandum is based solely on the laws and regulations of Italy effective as of the date hereof and does not consider the laws or regulations of any other jurisdiction.

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**SETTING THE LEGAL LANDSCAPE**

1. Briefly explain in the broader legal landscape regarding the obligations that a company has to its stakeholders or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders over all other stakeholders.

Italian law and case law use the notion of “corporate interest” in relation to, among other things: (i) the interest that directors must pursue when managing the company; and (ii) the right to challenge general meeting resolutions that are detrimental to the company and passed with the favourable vote of a shareholder which has an interest conflicting with the corporate one.

However, the notion of “corporate interest” is not defined by the law and therefore it is a matter of interpretation.

In the past the “corporate interest” was interpreted to be:

(a) the interest of the company as an autonomous and independent entity different from its shareholders; or, as an alternative

(b) the interest of the company’s shareholders, rebutting the idea that there can be an interest of the company as such, i.e. as an independent entity.

Recently, the second interpretation seems to be prevailing and, therefore, the “corporate interest” is nowadays mostly considered as the “common interests of all shareholders”, expressed in and regulated by the company’s by-laws. These interests include: profit realisation, distribution of realised profits, transferability of stakes and investment duration.

By the same token, interests that do not relate to the shareholders’ aims, or that are not typically common to all shareholders, are not part of the “corporate interest”.

Therefore, under Italian law, “corporate interest” commonly refers to shareholders and not to other stakeholders.

However, this interpretation does not prevent companies from voluntarily adopting best practices and codes on sustainability to protect the interests of stakeholders other than shareholders. Listed companies generally pay attention to these issues, mainly for reputational reasons or because are pushed by their investors to do so (for more details, please see the reply to question 7).

**REGULATORY FRAMEWORK**

2. To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?

The Italian jurisdiction belongs to the civil law tradition. It is mainly based on written codes (such as the civil code and the criminal law code) and laws enacted by parliament or, in certain cases, the government.

Regions have limited legislative powers in specific matters. Some public authorities (such as Consob, the authority on capital markets and listed companies) can issue regulations implementing state laws.
Case law can provide guidelines for interpreting the law but generally has no binding power comparable to that in common law jurisdictions.

3. Are corporate/securities laws regulated federally/nationally, provincially or both?

Corporate and securities laws are regulated by EU (self-executing) legislation, national laws and regulations issued by competent public authorities (such as Consob, the authority on capital markets and listed companies, and Banca d’Italia, the Italian central bank).

As far as capital markets and listed companies are concerned, the most important law is the Consolidated Financial Act of 1998 (Legislative Decree No. 58 of 24 February 1998), which has been implemented by several Consob regulations on - among other things - listed companies, intermediaries and capital markets.

4. Who are the government corporate/securities regulators and what are their respective powers (in summary only)?

With respect to corporate/securities issues, the main regulators are: (i) Consob, the authority responsible for capital markets and listed companies; (ii) Banca d’Italia, the Italian central bank which has supervisory and regulatory authority over banks, investment funds and other financial institutions; and (iii) IVASS, the authority responsible for insurance companies.

All three authorities issue regulations implementing national laws and perform supervisory activities in the relevant sectors, including by sanctioning breaches of regulations and issuing authorisations to perform specific activities (as is the case for banking activity).

Consob is an independent public entity, responsible for ensuring efficiency and transparency in capital markets, fostering their development, and protecting investors.

Banca d’Italia is the Italian central bank and is, therefore, a public entity regulated by national and EU legislation. In addition to its monetary activities (such as maintaining price stability), it is responsible for maintaining stability and efficiency in the financial sector, including by performing supervisory activities.

IVASS is a public entity responsible for ensuring stability in the insurance market and protecting consumers. IVASS performs its activity in close coordination with Banca d’Italia, also thanks to interlocking management offices between the two entities.

5. Does the jurisdiction have a stock exchange(s)?

Italy currently has one stock exchange in Milan, which is managed by the private company Borsa Italiana S.p.A. (controlled by the London Stock Exchange).

The management of capital markets is subject to the law and regulations mentioned above in our reply to question 3.

Borsa Italiana S.p.A. also issues its own regulations for admission to listing and trading on
the markets it operates. It can suspend or prohibit negotiations if these regulations are not complied with.

**INCORPORATION AND LISTING**

6. Do the concepts of “limited liability” and “separate legal personality” exist?

The concepts of limited liability and separate legal personality exist under Italian law and apply to various entities.

All companies are separate legal entities and are divided into the following two categories according to the application of the limited liability principle:

(i) category one: companies in which the limited liability principle applies (*società di capitali*), i.e. stockholders’ liability for the company’s debts is limited to the stockholders’ equity contributions (in other words, stockholders do not guarantee payment of the company’s debts, other than with their contributions, and cannot be asked by the company’s creditors to do so). This category includes joint stock companies (*società per azioni*) and limited liability companies (*società a responsabilità limitata*);

(ii) category two: companies for which the limited liability principle does not apply (*società di persone*), meaning that the company’s creditors can ask stockholders for payment (and courts for enforcement on the stockholders’ assets) of the company’s debts that cannot be repaid by using the company’s assets. This category includes partnerships (*società semplice* and *società in nome collettivo*).

7. Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or to respect its stakeholders?

No such recognition is, or has historically been, required by Italian law.

However, please note that the European Parliament and European Council recently approved Directive 2014/95/EU, amending Directive 2013/34/EU, regarding the disclosure of non-financial information by certain large undertakings and groups. Based on the European Commission’s guidelines and on international best practices, the new directive provides that: “large undertakings which are public-interest entities exceeding on their balance-sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking’s development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”. Member states must implement into national law this new directive by 6 December 2016.

So far, some of the largest (in terms of capitalisation) companies listed on the Italian stock exchange have applied international best practices on sustainability on a voluntary basis, by adopting codes of ethics and by disclosing, on an annual basis, all activities carried out in relation to - for example - sustainability, health, environmental, human rights, labour, anti-bribery, and diversity issues. Listed companies voluntarily apply these internationally recognised best practice standards mainly for reputational reasons or because their
investors are paying attention to such policies.

The best practice standards that companies adhere to are those set out in codes, reports or guidelines issued by international organisations, or within international initiatives, promoting sustainability or simply good reporting standards, such as the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC), the UN Global Compact, the International Labor Organization (ILO), the Global Sustainability Initiative (GeSI) and CSR Europe. Guidelines can also be provided by sector specific international organisations.

The initiatives that listed companies undertake with respect to sustainability issues mainly consist of the adoption of “codes of ethics” and the periodic disclosure to the public of such initiatives. In particular:

- **Codes of ethics**

  Codes of ethics set out the principles, values, standards or rules of behaviour that guide the decisions, procedures and organisation of the company, so as to: (a) contribute to the welfare of its key stakeholders; and (b) respect the rights of all parties affected by the company’s operation. These codes can also set out principles relating - for example - to honesty and correctness, impartiality, transparency, integrity, confidentiality and the prevention of conflicts of interests. They usually apply to all group employees, who must comply with these principles when working for the company or group, including when dealing with suppliers, clients and other stakeholders. In addition, codes of ethics may promote environmental consciousness, equal opportunities and diversity. Non-compliance with codes of ethics can generally be taken into account when deciding to terminate employment contracts or take other sanctioning initiatives.

- **Disclosure on sustainability**

  The activities the company or its group carry out in relation to sustainability are generally disclosed in a sustainability report, which is published on an annual basis, or in “integrated financial statements” that include information on sustainability in addition to financial data, combining financial and non-financial performance. The sustainability reports are generally subject to (limited) review by the auditor.

  Companies can also (voluntarily) adopt “sustainability plans”, mainly at group level, to address the interests of stakeholders other than shareholders.

  Generally, disclosure on sustainability is aimed at - for example - avoiding the company being implicated in publicised environmental, social and governance failures and improving the company’s reputation and brand loyalty. Disclosure through sustainability reports helps to measure the company’s values and governance model; it helps demonstrating, e.g. to potential investors which pay attention to sustainability issues, that the company takes care of the impacts of its operations on all stakeholders.

  Furthermore, some companies listed in Italy are included in sustainability indexes (for more details, please see the reply to question 8).
8. Do any stock exchanges have a responsible investment index, and is participation voluntary (See e.g. FTSE4Good, Dow Jones Sustainability Index, the Johannesburg Stock Exchange's Socially Responsible Investment Index.)?

The Italian stock exchange, managed by Borsa Italiana S.p.A., has two socially responsible investment indexes called FTSE ECPI SRI Indexes.

The ECPI group of Borsa Italiana S.p.A. provides investment and sustainability advisory services and is responsible for: a) periodically analysing public information concerning the top 100 companies listed on the main Italian market (mercato telematico azionario - MTA); and b) selecting the companies to include in the two sustainability Indexes. The selection criteria are based on: (a) the quality of the company’s social and environmental performance, and (b) the company’s corporate governance.

The first sustainability index is the FTSE ECPI Leaders Index, which is composed of a selected basket of Italian shares presenting high-level features concerning environmental, social and governance areas. The second sustainability index is the FTSE ECPI Benchmark Index, which is composed of a larger benchmark of listed companies that have distinctive features in environmental, social and governance areas.

The ECPI group uses a six-level rating ranging from the lowest E+ to the highest EEE: the companies rated E+ or above (i.e. from E+ to EEE) are included in the FTSE ECPI Benchmark Index, whereas those rated EE or above (i.e. from EE to EEE) are included in the FTSE ECPI Leaders Index.

9. To who are directors’ duties generally owed?

Directors are liable to the company for damage caused by breaching the law or the company’s by-laws.

Directors are also liable to shareholders and third parties for any direct damage caused to them when performing their managerial activity.

For more details, please see the reply to question 10 below.

10. What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company’s reputation?

- **Directors’ general duties**

Directors must fulfil the following general duties: (a) complying with the law and the company’s by-laws with due diligence; and (b) pursuing the corporate interest.

More specifically, the general duty to act with due diligence corresponds to: (i) the duty to act with the diligence required by the nature of their office; (ii) the duty to act using their specific competences; (iii) the duty to act in an informed manner; and (iv) the duty to do everything in their power to prevent acts that could be detrimental to the company or to eliminate or reduce detrimental consequences these acts might have.

Theoretically, this general duty could also be considered to include a duty to avoid damaging the company’s reputation, but no specific provisions of law exist in this respect.
For details on directors’ liability, please refer to the reply to question 13 below.

The general duty to pursue the corporate interest entails a duty of full transparency about directors’ interests in company transactions. Therefore, if any director has an interest on his/her own behalf or on behalf of third parties in a specific transaction, this director must inform the other directors and the board of statutory auditors accordingly. Any managing director must refrain from carrying out a transaction in which he has an interest, meaning that the whole board shall be in charge for the approval and completion of such transaction. Finally, the board must adequately justify the reasons for carrying out a transaction and its coherence with the company’s interest, whenever a director has an interest in such transaction.

- Directors’ specific duties

Managing directors must fulfil the following specific duties: (a) the duty to set organisational, administrative, and accounting structures of the company that are suitable for the size and nature of the company; and (b) the duty to report to the board of directors and to the board of statutory auditors, with the frequency provided under the by-laws and, in any case, at least every six months, on the general trend of management and its expected development, as well as on transactions of major significance in terms of size and characteristics that the company and its subsidiaries carry out.

On the other hand, non-managing directors must fulfil the following specific duties: (a) the duty to assess the suitability of the company’s organisation, management, and accounting structures, based on information received from the managing directors; (b) the duty to review the company’s strategic, industrial, and financial plans, when prepared by the managing directors; and (c) the duty to assess the general management trend, based on the report from the managing directors.

11. More generally, are directors required or permitted to consider the company’s impacts on non-shareholders, including impacts on the individuals and communities affected by the company’s operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss.(1))? Under Italian law, there is no provision similar to Article 172 of the UK Companies Act 2006.

However, impacts on non-shareholders and sustainability issues can be taken into consideration for a number of reasons other than a specific legal constraint, such as for reputational reasons, or to comply with best practices (see the reply to question 7 above), or to avoid sanctions for breaches of specific laws (e.g. criminal, anti-bribery, and environmental laws).

With particular regard to listed companies, taking into consideration these kinds of issues or, more generally, the interests of stakeholders other than shareholders, can be considered an efficient way to attract investors (especially those which pay attention to sustainability while making investment decisions); this would mean pursuing the corporate interest and,
thus, creating value for the company.

12. If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to balance different factors including such impacts? What, additional liabilities, if any, do the board or individual directors assume in exercising such discretion?

As mentioned in the reply to question 11 above, there is no legal obligation for directors to take into consideration the interests of stakeholders other than shareholders. The company can discretionarily apply best practices on sustainability and, in general, relating to interests of stakeholders other than shareholders.

13. What are the legal consequences for failing to fulfil any duties described above; and who may take action to initiate them? What defences are available? Can these issues give rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?

A. Liability to the company

Directors must diligently perform their duties under applicable law and the company’s by-laws and are liable to the company for any damage caused by breaches of their general and specific duties (please see the reply to question 10).

A claim based on directors’ liability for damage caused to the company can be filed by: (i) the company, if the general meeting or the board of statutory auditors so resolve; or (ii) shareholders representing at least 1/5 of the share capital (or 1/40, in the case of listed companies).

Any claims must be submitted within five years from the date the related director ceased to hold office.

If a claim is filed with the approval of at least 1/5 of the share capital, the director in question is immediately removed from office.

Any such claims can only be waived or settled with the approval of the general meeting and provided that no more than 1/5 of the share capital (or 1/20, in the case of listed companies) has voted against a waiver or settlement.

B. Liability to creditors

Directors are liable to the company’s creditors if, in performing their managerial duties, they have diminished the company’s assets. Creditors can file a claim whenever the company’s assets are insufficient to pay creditors’ receivables.

The company’s waiver of a claim against the directors does not affect any claim(s) against the same directors filed by creditors.

If the company is in a bankruptcy proceedings requiring that a receiver be appointed, the appointed receiver must file the claims referred to under A. and B. above.

C. Liabilities to shareholders and third parties

Each shareholder, or any third party, can file claims against directors to seek compensation
for any damage caused to them (or their assets) by directors’ fraudulent or negligent behaviour. These claims concern “direct” damage suffered by shareholders or third parties, rather than any “indirect” damages that they suffer as a consequence of the damage caused to the company (and for which the claims under A. above can be filed).

These claims can only be filed within five years from the event that caused the damage.

D. Statutory auditors and courts

In joint stock companies (società per azioni) and, in certain cases, in limited liability companies (società a responsabilità limitata), internal audits (including, in certain cases, on accounts) are performed by a corporate body called the “board of statutory auditors” (collegio sindacale), whose members are appointed by the general meeting.

The board of statutory auditors can inform shareholders of irregularities in directors’ conduct in its annual report or report these irregularities to the courts. In addition, each shareholder can report any alleged irregularities of directors to the board of statutory auditors, which will then take the allegations into consideration when conducting its audit and writing its annual report to shareholders. If a report is submitted by shareholders representing more than 1/20 of the share capital (or 1/50, in the case of listed companies), the board of statutory auditors investigates the report without delay and then submits its findings to shareholders.

In the event of significant irregularities that are potentially detrimental to the company or its subsidiaries, shareholders representing 1/10 of the share capital (or 1/20, in the case of listed companies) can report the irregularities to the courts.

The courts can investigate the directors, convene the company’s general meeting for their removal from office, or remove them from office and appoint a judicial manager for a limited time.

E. Defences: the “business judgment rule”

Pursuant to the so-called “business judgment rule”, as applied by case law and interpreted by legal scholars, directors are liable only if they do not fulfil their duties, thus primarily breaching the law or the company’s by-laws.

The application of the abovementioned principle entails that, as long as a director has complied with his duties, a court cannot judge the merits - i.e. the profitability and business rationale or consequences - of a transaction and find a director liable, for example, for the mere fact that such transaction was not profitable for the company.

Therefore, according to case law, directors are liable - for example - if they have not performed adequate analysis and checks prior to approving a certain transaction. Conversely, directors cannot be liable for the fact that a certain business decision proved to be commercially disadvantageous for the company.

14. Are there any other directors’ duties which are relevant to the interests of stakeholders?

There are no other general or specific directors’ duties relevant to the interests of stakeholders, other than the duties mentioned above.
15. For all of the above, if does exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures? What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?

Under Italian law, the two-tier system can be adopted by joint stock companies. The management board performs all management activities.

The supervisory board performs the following activities: (i) appointing and removing the members of the management board and setting their remuneration, unless the related powers are assigned to the general meeting in accordance with the by-laws; (ii) approving the annual financial statements and, if drafted, the consolidated accounts; (iii) verifying compliance with the law and the by-laws and the diligent management of the company; (iv) submitting claims for liability of the members of the management board and filing claims with courts if the management board has caused damage to the company by not diligently managing it; (v) reporting in writing, at least once a year, to the shareholders’ meeting on the supervisory activities carried out and any irregularities found; and (vi) resolving, if provided by the by-laws, on strategic transactions, as well as business and financial plans, proposed by the management board (without prejudice to the management board’s liability regarding actions undertaken to carry out these transactions or implement these plans).

Members of the supervisory board shall fulfil their duties using adequate diligence. They are jointly liable with members of the management board for acts or omissions that caused damage to the company and that would not have occurred had the supervisory board properly performed its activity.

The duties and liabilities of senior managers are typically regulated under their employment contracts.

REPORTING

16. Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to governments or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).

As highlighted in the reply to question 7, under Italian law companies are under no legal obligation to disclose the impact of their operations on stakeholders other than shareholders; however, certain companies may be under this obligation when Directive 2014/95/EU, concerning the disclosure of non-financial information by certain large undertakings and groups, is implemented in Italy.

Nevertheless, companies can disclosure this information voluntarily, mainly in order to
comply with international best practices. This is typically the case for listed companies, which adopt international best practice codes and guidelines on sustainability. Listed companies therefore often publish sustainability reports, or “integrated financial statements” that also report on sustainability issues, on an annual basis.

17. Do legal reporting obligations extend to such impacts outside the jurisdiction, to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?

As explained above, there are no legal obligations concerning the impacts of operations on stakeholders other than shareholders.

Voluntary disclosure by (mainly listed) companies depends on the best practice principles and guidelines that each company adopts. No legal obligation prevents companies from considering the impacts on their subsidiaries, suppliers or other business partners, or in foreign jurisdictions. Some of the biggest companies listed in Italy usually disclose information concerning the impacts of the company’s operations on the community, environment and human resources (e.g. the quality of employees’ lives whilst working at the company or the company’s CO₂ emissions) in sustainability reports. They do not usually give information about the impacts on subsidiaries or on suppliers.

Furthermore, in 2012 Italian law introduced the so-called “compliance rating” for certain companies. This is a new kind of “ethic rating” which is not mandatory, but voluntary. It can be given to applying companies that: (a) have not committed severe violations of the law; (b) adopt an organisational model to prevent offences from being committed; and (c) voluntarily set behaviour standards higher than the standards provided by law. If the company obtains the compliance rating, it is rewarded with specific benefits, such as: (i) increased profile and reputation; (ii) benefits and privileges in public financing; and (iii) benefits and privileges in accessing bank credit.

The compliance rating is designed for Italian companies or groups with annual revenues of over EUR 2 million and which have been registered in the companies’ register for at least the last two years. It has a three-level rating, ranging from one to three stars; the law distinguishes between the basic requirements to obtain the rating and the further requirements to increase it. For instance, the basic requirements to obtain the rating include the fact that either the company or its top managers must not have been convicted of a criminal or tax offence or violated the law protecting customers.

The company can obtain a rating increase if it adopts internal processes to ensure corporate social responsibility or joins international or national sustainability indexes or programmes, such as the UN Global Compact Principles, the OECD Guidelines for Multinational Enterprises, and the UNI ISO 26000 Guidelines concerning corporate social responsibility. In addition, the rating can also be increased if the company adheres to voluntary codes of ethics adopted by groups or associations.

A company that wishes to obtain a compliance rating has to apply to the Italian Competition Authority, declaring that it fulfils the requirements referred to above. The Authority will then issue its decision within 60 days. A list of the companies that have so far obtained a compliance rating can be found on the Authority’s website. The compliance rating lasts for two years and is renewable on request.
18. Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?

There is no legal obligation regarding the issue and verification of sustainability reports, which are published voluntarily based on international best practices.

In certain companies (such as joint stock companies), financial statements are verified by internal or external auditors. Companies can also ask auditors to conduct a (limited) review of their sustainability reports.

19. What is the external assurance regime for reporting on a company's impacts on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance. Please summarize any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.

There is no specific external assurance regime for reporting on companies’ impacts on stakeholders other than shareholders (please see also replies to questions 7, 16 and 18 above).

STAKEHOLDER ENGAGEMENT

20. Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?

There are no restrictions of this kind.

21. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard? How does the legal duty of the fund align with term and contractual performance criteria of fund managers - does this facilitate or deter consideration of such impacts?

Under Italian law, there are no general legal requirements whereby institutional investors must take non-shareholders’ interests into account when making investment decisions.

Institutional investors may voluntarily choose to do so, for example, for reputational reasons or in order to adhere to best practices.

Specific disclosure rules apply for certain investment entities:

(a) pension funds must notify the relevant regulatory authority (COVIP) of their investment policies, including ethical, environmental, corporate governance and social aspects taken into consideration for their investment activity; and

(b) pursuant to a very recent regulation enacted by the Bank of Italy, investment vehicles (internally or externally managed) must include - in their management regulations - information on any limits, with respect to the selection of investments, that may be
based on ethical and sustainable finance criteria.

22. Can non-shareholders address companies' annual general meeting? What is the minimum shareholding required for a shareholder to raise a question at a company's AGM?

Only shareholders can address the general meeting and submit questions to the board.

Each shareholder, irrespective of the stake held in the company, can raise questions during general meetings.

In the case of listed companies, shareholders can submit questions either during the meeting (in compliance with the company’s general meeting regulation) or between the call and the meeting itself. Replies can be provided either during the meeting or published on the company’s website.

Shareholders can submit questions to the board in writing at any time, or even ask for a meeting, which is often the case for activist investment and hedge funds. The company is under no legal obligation to reply, collaborate, or disclose the questions raised by the shareholders and any answers given, unless this amounts to price sensitive information (i.e. it can affect the market price of the company’s shares).

23. Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?

As described in the reply to question 7, Italian companies can apply international best practice standards voluntarily. This is often the approach adopted by listed companies.

Adherence to these best practices can have an impact on the company’s structure, as specific offices/employees may be dedicated to the study and implementation of sustainability plans, and to the drafting of the related annual reports. In addition, a specific body may be in charge of verifying the application of the code of ethics and of investigating any alleged breaches of such code.

In any case, also national provisions of law or best practices can affect a company’s corporate governance or structure and concern issues that are related to sustainability. For example:

(i) in accordance with the law regulating the criminal liability of legal entities (Legislative Decree 231/2001), companies must appoint a specific body to verify the application of measures to prevent criminal offences from being committed by company officers; and

(ii) in accordance with the code on corporate governance promoted by Borsa Italiana S.p.A. (the company that manages the Italian stock exchange; see the reply to question 7 above), an audit committee should be appointed within the board of directors of
listed companies, to coordinate risk management and control activities.

24. Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?

There are no such laws affecting the corporate governance of listed or unlisted companies. Employee representatives must be notified of certain events, such as a public tender offer being launched on the company or a merger being proposed.

25. Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?

Under the Consolidated Financial Act, at least 1/3 of directors and statutory auditors of listed companies must be part of the “less represented gender” (meaning that if, for example, the majority of appointed directors are men, no less than 1/3 of the board must be women). A company’s by-laws must provide adequate appointment mechanisms to comply with this 1/3 rule, which applies for three consecutive appointments.

26. In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholders groups? Are there any serious proposals to impose such responsibility?

Italian law provides a specific liability of parent companies exercising a so-called direction and coordination activity over their subsidiaries, i.e. giving guidelines to subsidiaries with respect - for example - to business strategies and financial policies. In particular, these parent companies are liable to the shareholders of the subsidiaries whenever they cause damage to the value and profitability of the stockholdings in the subsidiaries, by acting in their own interest (or in the interest of third parties) in breach of diligent management principles. Parent companies are also liable to the creditors of the subsidiaries for damage caused to the assets of the latter in the same cases mentioned above. These liabilities can be avoided only if the damage is removed by taking proper actions, or if it is compensated by advantages deriving from the direction and coordination activity of the parent company.

Also individuals (e.g. directors) who contributed in causing the damage, or who benefited from it, are jointly liable with the parent companies.

Subsidiaries’ shareholders and creditors can submit claims against the parent companies only if they have not been satisfied by the relevant subsidiary.

As described above, the liability of parent companies is to shareholders or creditors of subsidiaries; no other provisions of law provide for the liability of parent companies to other stakeholders of subsidiaries in respect of operations of the latter.
27. Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.

Apart from new Directive 2014/95/EU on the disclosure of non-financial and diversity information by certain large undertakings and groups (see the reply to questions 7 and 16), we are not aware of any incoming law or draft legislation that could affect the issues raised in this questionnaire.