Shareholders' minority rights in Italy after the recent company law reform. Opening up the corporation to prevent self-referential business ethics?

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One cause of legal and ethical failures in business is a lack of understanding of the changing social mandates for business: following the law is not enough to keep businesses out of trouble with society, since the law does not change quickly enough to reflect current expectations of society.

The change in corporate control, as well, may sometimes be too slow to allow new ideas to seep into the set of values guiding corporate action, thereby resulting in further detachment from society's expectations as to what goals business organizations should pursue.

However, when the corporate world parts from society, vicious mechanisms may arise: when a company's success leads to a self-perceived immunity from the oscillations of the market, the requirements of business operations, the principles of accounting, and even the laws and regulations of financial markets, the leading forces of that company may transform themselves from energetic innovators to a mischievous group focusing on preservation of status and position in everything from the company's share price to their own personal financial positions and wealth accumulations.

A natural solution to the problem sketched above may be the opening up of the corporation to new investors, thereby fostering a periodic renewal of the corporate value system through the entrance of new stockholders and, consequently, new ideas. However, in order to allow such mechanism to function, new stockholders should ideally be given a saying on corporate matters without regard to the share of stock held by them.

This is essentially the direction taken by the Italian corporate law reform (Legislative Decree No. 6/2003): empowering minorities in order to overcome the distance between society expectations and corporate ethics and to prevent self-referentialism in business conduct by the company's majority shareholders and management.

Focusing on the innovations relating to Joint Stock (SpA) and Limited Liability Companies (SrL), the panelist explores which legal mechanisms have been enacted in order to achieve the aforementioned goals.

In particular, minority shareholders nowadays play a more significant role in the decisionmaking phase and possess new instruments in order to exert control over the way the company is administered.

In view of the foregoing, the panelist attempts to reconstruct the system of corporate safeguards according to the distinction between ex ante and ex post safeguards, operating respectively during (a) the decisionmaking phase (e.g. powers with respect to calling of shareholders' meetings) and (b) the administration phase (e.g. company action for director liability, report to tribunal).