
Spain's "loyalty shares" proposal

Legal flash

September 7, 2020



Today the Official Gazette of the Spanish Congress of Deputies has published a draft bill regulating loyalty shares for the first time in Spain. The draft bill will now begin parliamentary processing and is likely to be approved during the last quarter of the year.

The regulation of loyalty shares, which we summarize in this document, may undergo changes during the parliamentary processing. In principle, on approval of the corresponding act, the provisions on loyalty shares would enter into force 20 days after being published in the Official Gazette of the Spanish State.

Double voting rights

To make the Spanish legal system as attractive as that of some of its neighboring countries (e.g., France and Italy), listed companies can grant, through their bylaws, double voting rights to shares held by the same shareholder for at least two years from the date they are registered in the record book described below. The bylaws may extend (but not reduce) this minimum period.

This right will also be granted to those that have made their investment through a financial intermediary and, therefore, do not formally appear as a shareholder (the "ultimate beneficiary"), if they are able to prove they have owned the investment during the established minimum period.

Unless the bylaws provide otherwise, the additional votes for the shares will be taken into account when determining the quorum for constituting the general meeting and to calculate the voting majorities. These votes will also be taken into account for (i) reporting major holdings, (ii) the granting of votes on takeover bids, and (iii) the system for reporting significant stakes in credit institutions.



Incorporation and removal of loyalty shares

To protect minority shareholders, the inclusion of the additional loyalty vote in the bylaws requires a meeting quorum and extraordinary voting majorities, that may be increased in the bylaws:

Quorum	Majorities
First session: $\geq 50\%$	60% of the capital present or represented
Second session: $25\% \leq X < 50\%$	75% of the capital present or represented

In contrast, removal of this type of shares does not require such extraordinary quorum and majorities and, once the system on loyalty shares has been included in the bylaws for 10 years, it becomes even easier to eliminate them.

Transfer of shares

This is a mechanism to encourage investors to invest long-term and to decrease short-term pressure on corporate management. Therefore, as a rule, additional voting will no longer exist if there is a transfer of shares or, in the case of an ultimate beneficiary, the investment.

Exceptionally, double voting will still be allowed if the transfer is carried out owing to mortis causa succession, allotment of shares to a spouse due to the company being subject to wind-up or liquidation of community of property, donations within the family circle, structural modification or transfer of shares between companies belonging to the same group.

Paid-up capital increases

To calculate the entitlement to double voting rights, shares allotted free of charge owing to capital increases will have the same seniority as those giving the right to that allotment.

Record book of double voting shares

The company must establish a recording system to monitor the assignment and withdrawal of double voting rights. If a shareholder wishes to be assigned double voting rights, it must previously request registration in the record, which requires the submission of a certificate of legitimacy.



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As a rule, the two-year term to assign double voting rights will be calculated from the date they are registered in the record book. Exceptionally, a special system has been set up for companies that have applied for admission to listing of their shares.

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