CUATRECASAS

CAPITAL MARKETS; CORPORATE AND M&A ; CORPORATE GOVERNANCE AND COMPLIANCE;

Multiple-vote shares: EU promotes minimum harmonization

Legal flash EU

November 20, 2024

Key aspects

- **What are multiple-vote shares ("MVSs")?** MVSs are shares belonging to a distinct and separate class of shares in which the shares carry more votes per share than other classes of shares with voting rights on matters to be decided at the general meeting of shareholders.

  They are a "form of a control-enhancing mechanism" that incentivizes access to direct financing on the capital markets. As MSVs enable the proportionality between the nominal value and the voting rights of the shares to be different, they are attractive for the controlling shareholders of companies that want to access the capital markets while retaining control.

- **Minimum level of harmonization in the EU**. Pursuant to Directive (EU) 2024/2810—which must be transposed by December 5, 2026—Member States must, at a minimum, recognize the right of companies requesting admission to trading on a multilateral trading facility ("**MTF**") to adopt MVS structures, provided they meet certain requirements and safeguards. The aim of the Directive is to reduce the current differences between national laws, make MTFs more attractive, and diversify financing options, particularly for SMEs.

- **Extension for other purposes**. Member States can maintain or introduce provisions that permit the use of MVS structures for other purposes. An example would be companies listed on regulated markets or private limited companies that do not intend to request admission to trading on a regulated market or MTF.

Introduction

On October 8, 2024, the Council of the European Union ("**EU**") adopted the Listing Act, a legislative package designed to simplify and make more attractive access to EU public capital markets for companies, particularly for SMEs. For more details on the Listing Act in general please refer to The European Council Approves the EU Listing Act.

One of the provisions under the Listing Act is Directive (EU) 2024/2810 of the European Parliament and of the Council of 23 October 2024 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility (the "**MVS Directive**"), which must be incorporated into our legal system before December 5, 2026.The MVS Directive seeks to reduce current differences between national laws, make MTFs more attractive and diversify financing options, particularly for SMEs. The MVS Directive requires Member States to, at a minimum, recognize, the right of companies requesting admission to trading on an MTF to adopt MVS structures, if they meet certain requirements and safeguards.

Below we describe the main aspects of the MVS Directive, whose application and scope must be reviewed by the Commission by December 5, 2028, based on the information the Member States must send by December 5, 2027.

What are MVSs and how can they incentivize financing through MTFs?

- MVSs are shares that belong to a distinct and separate class of shares in which the shares carry more votes per share than other classes of shares with voting rights on matters to be decided at the general meeting of shareholders. As stated under recital 4 of the MVS Directive, in these structures, the difference of voting rights between the different share classes is not only determined by the different nominal values of the shares. This represents an exception to the principle of proportionality established for public limited companies under article 96.2 LSC, which prohibits the issue of shares "that directly or indirectly change the proportionality between the nominal value and the voting right or the pre-emptive right."

- The MVS Directive considers that a minimum level of harmonization in the regulation of MVS structures in the EU would incentivize raising capital on MTFs because :

  - MVS structures permit controlling shareholders to retain their decision-making power while the company accesses a new source of financing;

  - MVS structures enable companies to choose the capital and governance structures that best adapt to their development stage; and

  - The MVS Directive removes regulatory barriers reducing the inequalities when obtaining funds in the EU.

Who can adopt MVS structures?

- The Spanish lawmaker should recognize the right to adopt these structures at a minimum to **public limited companies intending to trade on an MTF for the first time,** provided their shares are not listed on another MTF or regulated market. These companies cannot be required to grant greater economic rights to the shares without additional voting rights, although it would be possible to make the exercising of additional voting rights associated with the MVSs to their admission to trading on an MTF. Companies cannot be compelled to grant additional economic rights to shares without granting additional voting rights. However, Member States may restrict the exercise of extra voting rights associated with MVSs until the company is officially admitted to trading on an MTF.

- Also, the Spanish lawmaker will be able to introduce MVS structures for other purposes. For example, recital 10 of the MVS Directive contemplates the possibility to extend their use to companies seeking admission to trading on a regulated market or companies that do not intend to request admission to trading on a regulated market or MTF.

Requirements and safeguards

To protect the interests of shareholders that are not holders of MVS, the MVS Directive establishes requirements, safeguards and transparency obligations:

- **Approval requirements.** Adopting or modifying a MVS structure:
  - must be backed by a qualified majority at the general meeting of shareholders; and
  - when there are several classes of shares, the decisions will be subject to a separate vote for each class of shares whose rights are affected.

- **Safeguards**. Member States must limit the effects of MVSs on the decision-making process at the general meeting by introducing at least one of the following measures:
  - There must be a maximum ratio between the number of votes attached to MVS and the number of votes attached to the rest of the shares.
  - A condition that decisions by the general meeting requiring a qualified majority are adopted by a qualified majority of the votes cast and also meet one of the following requirements:

    (a) be approved by a qualified majority of the share capital represented at the general meeting or of the number of shares represented at the general meeting; or

    (b) be subject to a separate vote in each class of shares the rights of which are affected.

    This requirement will not affect decisions regarding the appointment and dismissal of the members of the company's administrative, management and supervisory bodies or operational decisions to be taken by those bodies that are subject to approval by the general meeting of shareholders.

Also, Member States can adopt further safeguards to protect the shareholders that are not MVS holders. For example, they could establish sunset clauses for the additional voting rights in the case of (a) transfers to third parties, or upon death, incapacity or retirement of the original holder of the MVSs, (b) the elapsing of a designated period of time, or (c) the occurrence of a specified event.

- **Transparency obligations.** The MVS Directive details the information that companies must provide and the place where they should do so, distinguishing whether these are or will be listed or will be listed on an MTF registered as a SME growth market or on another MTF.

Contents	Location
Share structure. Classes of shares, indicating for each one the rights and obligations attached to the shares, the total number of votes represented and the percentage of the total share capital or of the total number of shares they represent.	Prospectus/admission document and annual financial report (*).
Restrictions on transfers or voting rights (including those established in shareholder agreements which are known to the company).	Prospectus/admission document and annual financial report (*).
Identity of the MVS holders representing more than 5% of the voting rights of all shares in the company and its representatives.	Prospectus/admission document or annual financial report (*).

(*) In the case of companies listed or to be listed on a SME growth market, information will only be required to be included in the annual financial report if this is different to that in the prospectus.

Member States shall ensure that investment firms and the companies managing MTFs clearly identify the companies with MVS structures.

For additional information, please contact our *Knowledge and Innovation Group* lawyers or your regular contact person at Cuatrecasas.