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State Special Rights and their Impact on Corporate Governance and Organisation: A Management Perspective

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Abstract
This study explores the impact of State special rights, commonly referred to as "golden shares" or "golden powers," on corporate governance and organizational structures of companies operating in industries deemed strategically important for national interests. While extensive legal literature has explored the concept and the implications of these special rights, there has been comparatively less attention given to their effects from a managerial and organizational viewpoint. This literature review aims at filling this gap by shedding lights into the ways in which golden shares can influence corporate decision-making, governance dynamics, and internal organizational structures. After providing an overview on the state-of-art of golden share literature, the study delves into the potential managerial and organizational implications related to the implementation of such measures in firms. The research opens avenues for further investigation into how golden shares can shape both governance practices and internal organizational frameworks, providing original and rare insights on this topic from a management perspective.
Keywords: Corporate Governance, State Special Rights, Golden Shares, Golden Powers, Public Interest Sectors

Introduction

This study explores the consequences of the State Special Rights ("SSRs")[1] on corporate governance and organization of companies operating in "strategic sectors." This analysis aims at clarifying how the changing nature of SSRs, observed in various national contexts, influence corporate governance mechanisms, decision-making processes, and internal organization structures of the affected companies.

[1] For the purpose of this review, the terms "State special rights", SSRs, "State special powers", "golden shares", and "golden powers" are used as synonyms.

The importance of corporate governance for competitiveness and for reconciling multiform stakeholders' interests is well-established in the literature (Airoldi & Forestieri, 1998; Shleifer & Vishny, 1997; La Porta et al., 1999) [2]. Scholars have thoroughly examined the legal implications of SSRs for a firm's governance (e.g., Vitali, 2013; Oppo, 2006). However, research on this topic from a management perspective is scattered and incomplete (Boardman & Laurin, 2000; Oxera, 2005). Furthermore, no study examines the impact of SSRs on firms' internal organization, although several anecdotal evidence suggest its importance. This study helps uncovering these aspects, by providing an overview of the state-of-art of golden shares and corporate governance literature, with a special focus on SSRs from a managerial viewpoint. In this regard, this study aims to address the following research objectives:

- Examine the impact of SSRs on corporate governance and decision-making processes within companies operating in strategic sectors, providing an outline of the literature across various social science disciplines, including finance, law, and economics
- Explore the relevance of SSRs' application for affected firm's internal organization– an area that has received limited attention from a management perspective–by illustrating a real-world business case involving Telecom-Vivendi
- Suggest potential directions and methodologies for future research in management and business studies pertaining to this topic

This topic is of interest for several reasons. First, while legal studies have extensively covered SSRs (e.g., golden shares, golden powers), their practical impact on company structures and decision-making process remains largely understood. Second, managers, investors, and policymakers are particularly interested in understanding the effects that SSRs' application can have on corporate governance mechanisms and internal organization.

Following the financial crisis of 2008-2012 and numerous corporate failures[3], the issue of "good governance" has gained prominence in the policy agendas of many countries and within national and international institutional debates (Coffee, 2005; Conyon et al., 2011). In many circumstances, several commentators suggested that gaps and issues in corporate governance while not directly identifiable as "the" causes of the crisis, could be interpreted as potential aggravating factors (e.g., European Commission, 2011). Recently, there has been a broad reassessment of the state's role in the economy, leading to growing skepticism about the so-called "market opening" that has driven the complex wave of privatizations since the 1980s (Stiglitz, 2010; Tanzi, 2011; Wright, 2019). This role has become even more complicated in contexts such as the European Union, where increasing supranational integration continues to blur the lines of national sovereignty (Alvaro & Ciccaglioni, 2012; Szyszczak, 2002). It is, thus,

[2] Most of these studies also highlight that corporate governance, intended as a set of roles, rules, and relationships that links the shareholders, the management, and other corporate employees, is the result of different norms and different legal-cultural traditions. This circumstance is known in the literature as "Path-Dependency" and it is deemed to limit the possibility of a comprehensive and unified analyses of corporate governance models existing in different countries (Bebchuk & Roe, 1999; Hopt et al., 1998; Hopt, 1999; La Porta et al., 1999)

[3] Some prominent examples are represented by business failure cases such as Enron, Parmalat, and Adelphia. These cases has prompted many regulators worldwide to undertake several investor-protection initiatives, as well as other measures to foster corporate internal control and compliance (e.g., the Sarbanes-Oxley Act in the United States) (Coffee, 2005).

in this evolving landscape that the relevance of golden shares for corporate governance and organization should be understood.

By exploring the relevance of SSRs for firms' governance and organization, this paper can contribute to the academic literature in three relevant ways. First, this research contributes to studies investigating the role public interest in business economics. These studies indicate that public interest protection through the application of SSRs can influence several business activities and financial outcomes (Boardman & Laurin, 2000; Quagli, 2023). Additionally, it suggests that these measures may influence corporate governance (Vitali, 2013; Oxera, 2005). This study enhances the discussion from a management perspective by emphasizing the relevance of SSRs not just for corporate governance, but also for firms' internal organizational structures and decision-making processes. Second, the study contributes to the ongoing discourse on emerging trends in corporate governance (Di Vito & Trottier, 2022; Pandey et al., 2023; Wiersema & Koo, 2022). Studies focus on several critical aspects affecting firm's governance, including hedge fund activism, pressures related to corporate social responsibility (CSR), control mechanisms, and disclosure. This study further enriches this conversation, focusing on the impact of SSRs on corporate governance and organisation.

Finally, the study highlights the increasing complexity in aligning business and organizations purposes with national interests, especially in contexts of geopolitical change and increased strategic competitions among nations (Mayer, 2021; Grosman et al., 2023).

This paper is organized as follow. Section 2 reviews the literature on "golden shares" from the perspective of the corporate governance theory. Section 3 provides an overview on the empirical literature on golden shares. Section 4 discusses the relevance of golden shares for firms' governance and internal organization. The paper concludes at Section 5, providing suggestions for future research.

"*Golden Shares" and the Theory on Corporate Governance*

Initially, the term corporate governance referred mainly to the study of the configuration and functioning of the Board of Directors (BoD), especially in large, publicly listed companies where there is a clear separation between ownership and management. Over time, the concept of corporate governance broadened to encompass additional aspects and practices common to non-listed companies (Shleifer & Vishny, 1999). Zingales (2000), suggests that corporate governance has a "two-faced" nature. Internally, it serves as a mechanism for allocating decision-making authorities to address challenges of completing contracts with stakeholders. Externally, it is identified as a set of procedures to safeguard investors from managerial discretion. The academic literature highlights that corporate governance, intended as a set of roles, rules, and relationships that links the shareholders, the management, and other corporate employees, is the result of different norms and different legal-cultural traditions, a phenomenon referred to as "Path-Dependency" (Bebchuk & Roe, 1999; La Porta et al., 1999).

From a purely legal standpoint, aligning national strategic policies with the protection of private interests inherent in organizational contracts can be particularly challenging (Abriani, 2011). This because corporations operate primarily on contracts that prioritize private interests and can conflict with broader strategic national goals. However, legal scholars suggest that derogation to certain aspects of the privately-based contractual nature of corporations, as those potentially triggered by provision of SSR, are not isolated occurrences in company law (Vitali, 2013). Significant examples, in this sense, can be found in legal provisions that weaken the traditional role of shareholders by separating corporate rights from share ownership, such as the creation of special categories of shares, and the typification of shareholding financial instruments (Vitali, 2013; Oppo, 2006).

Strictu sensu, the term "golden shares" appropriately refers to those public intervention tools specific to the British system during Thatcher's privatization in the mid-1980s. However, it is not uncommon to observe a non-technical use of this term, and now broadly employed to encompass all the various form of SSRs in companies (Szyszczak, 2002; Latipulhayat, 2012). Consistently, the Court of Justice has observed that "golden shares" should be understood as any legal framework applied to specific companies aimed at preserving or enhancing public authority influence over them (see *Commission v. Germany*, C-112/05, 2007).

The topic of corporate governance, as well as that one related to the issuance and application of SSRs, has assumed a particular critical dimension within the European Union context, due to the underlying integration process. This process has led, on one hand, to calls for greater harmonization of rules related to corporate governance and, on the other hand, to a reconsideration of the scope and limits of the concept of "national interest," increasingly circumscribed by the need to protect the fundamental freedoms established in the Treaties (Lannoo & Khachaturyan, 2004; Kohler-Koch & Friedrich, 2020). This scenario constitutes the basis for conducting more in-depth investigations aimed at describing this particular, yet complex and current, form of public intervention in the economy.

Golden Shares: Empirical Evidence from the Literature

It is worth noting the existence of several active research streams that are relevant and somewhat related to our discussion[4]. One key area of research focuses on privatization, with several studies indicating that corporate performance improves when firms shift from public to private ownership (Galal et al., 1994; Megginson et al., 1994). Megginson & Netter (2001), also demonstrated that privatization enhances productivity across various political and institutional contexts. However, mechanisms such as "golden shares," which enable governments to retain control over certain corporate decisions, have been found to adversely affect stock performance (Boardman & Laurin, 2000).

Another stream of the literature examines how corporate control influences business performance, considering aspects such as ownership structure, board composition, executive pay, and anti-takeover defenses (Oxera, 2005). Studies reveal that anti-takeover measures like poison pills and supermajority merger requirements can adversely impact on company performance limiting shareholder oversight (Gompers et al., 2003). These findings are consistent with theoretical predictions of the Agency Theory (Jensen & Meckling, 1976), which suggests that managers may prioritize their own interests over those of shareholders, undermining corporate value creation.

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[4] The research lines related to the topic of golden shares are outlined based on the report by Oxera (2005).

Further studies on voting rights also show that shares with increased voting powers tend to be more valuable in the market. Cross-country studies, including Nenova (2003), and Dyck & Zingales (2004), highlight the role of "control blocks," providing evidence that their sale is often associated with positive stock price movements. However, market responses to shifts in corporate control are not always uniform, with some studies reporting conflicting results (Sudarsanam, 1996; Banerjee et al., 1997).

Finally, research into restrictions on international investment, particularly limitations on foreign ownership, shows that these restrictions tend to decrease market value and lead to negative abnormal returns (Booth, 1994). These restrictions, by imposing limits based on investor nationality, introduce additional complexities into corporate governance.

Collectively, the aforementioned literature, although not always directly addressing the topic of golden shares and/or SSRs, suggests a mixed and context-specific effect of these measures on corporate performance. While these tools can provide public authorities with ability to influence corporate decisions, their overall impact remains complex. Therefore, there is a clear need for further research, particularly to explore how such performance and value effects are triggered by corporate governance and organizational structures changes. Given the inconsistent findings from quantitative studies, qualitative approaches, such as case studies, may help providing valuable insights in this field.

The Relevance of Golden Shares for Corporate Governance and Organization

Despite the increasing interest in golden shares within the law and finance literature, there remains little investigation into their effects on firm's internal organization and corporate governance from a strictly managerial perspective. Yet, several anecdotal cases illustrate that the application of State special powers is frequently accompanied by a series of organizational measures, typically outlined in the governmental decree activating these powers. A notable example, in this sense, is the Telecom-Vivendi case (Covato, 2017; Zattoni, 2015; Preta, 2017). The Italian Government, via the Prime Ministerial Decree (DPCM) of October 16, 2017, activated the golden powers for the companies TIM, TIM Italia Sparkle S.p.A, and Telsy Elettronica, introducing a series of organizational requirements aimed at modifying the organizational group's structure.

A central aspect of this measure was the creation of a "Security Organizational Unit," responsible for meeting government requirements under continuous oversight. This unit, with full financial and personnel management autonomy, was required to prepare an annual "Security Plan," in which detailing critical assets and potential issues. Though part of the company's structure, the unit is led by a security officer selected from a list proposed by the Department of Security Information (D.I.S.) and reports to a Monitoring Committee, which informs the Prime Minister's Coordination Group.

Although the Telecom-Vivendi case suggests that SSRs can substantially impact on firm's internal organizational structures, this is not always the case. In other circumstances, indeed, State special powers can exert an influence on corporate governance mechanisms without significantly altering internal organization. For instance, the government may block board decisions, appoint directors, or prevent asset transfers with limited or no impact on the internal organization (Oxera, 2005). Overall, the varying nature and applications of these powers highlight the need for empirical research to understand better their effects on corporate governance and/or internal organizations.

Conclusion and Suggestions for Future Research

The literature on golden shares and related-SSRs measures reveals interesting connections with the broader topic of corporate governance, which has evolved from focusing solely on ownership structures to encompassing the broader relationship between public and private interests (Zingales, 2000). Similarly, the notion of golden shares has broadened its boundaries and can now be referred to those mechanisms enabling public authorities to retain influence over private companies (Szyszczak, 2002; Latipulhayat, 2012).

Legal discussions emphasize the challenge of integrating SSRs into corporate governance, balancing national interests with the principles of private ownership and market efficiency (Vitali, 2013; Oppo, 2006). Empirical research reflects this complexity, providing mixed findings. While some studies document performance improvements after privatization, others suggest that golden shares can negatively influence stock performance and valuation (Gugler, 2001; Boardman & Laurin, 2000). Additionally, SSRs may disrupt managerial incentives and shareholder interests, negatively affecting firm performance (Sudarsanam, 1996; Banerjee et al., 1997). Restrictions on international investment flows due to these measures can also lead to market segmentation and lower valuations (Booth et al., 1994). While these studies can provide insights into the effect of SSRs for corporate governance, they do not address specifically the managerial implications of SSRs application, especially in terms of corporate organization, decision-making flows, and governance dynamics.

This study can thus contribute to this literature in several ways. First, this research adds to the body of literature exploring the significance of public interest in business economics. Prior studies suggest that safeguarding public interest through the implementation of SSRs can significantly affect several financial outcomes for businesses (Boardman and Laurin, 2000; Quagli, 2023). Furthermore, it indicates that such regulations may have an impact on corporate governance structures (Vitali, 2013; Oxera, 2005). This study broadens the dialogue from a management viewpoint, underscoring the importance of SSRs in shaping a firm's internal organizational structures and decision-making frameworks. Second, the research contributes to the current dialogue on emerging trends in corporate governance (Di Vito & Trottier, 2022; Pandey et al., 2023; Wiersema and Koo, 2022). Existing studies address several key factors influencing corporate governance, such as hedge fund activism, CSR pressures, and control mechanisms. This study further enriches this conversation by examining the effects of SSRs for governance and organizational structures. Finally, the research emphasizes the growing challenge of reconciling business and organizational objectives with national interests, particularly amid intensified strategic competition among countries and supranational integration processes, like in the EU (Mayer, 2021; Grosman et al., 2023).

This study calls for in-depth investigation on this topic from a management viewpoint. Future research, using case studies, could clarify the effects of SSRs on firms' internal organization and governance dynamics (Yin et al., 2009, 2012). Quantitative studies can also extend examination of SSRs application on firm's performance, for example, considering the moderating role of corporate governance prescriptions embedded in these powers. Finally, additional theoretical investigation is needed in order to create frameworks that can better integrate SSRs into corporate governance without compromising market efficiency and shareholder value.

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