http://dx.doi.org/10.12775/CLR.2018.005

Carlo Bruni*

JOINT STOCK COMPANIES IN THE ITALIAN LEGAL SYSTEM

Abstract

In the Italian legal system a company (società) is the collective exercise of an enterprise. From an organisational point of view, companies may be divided between: (1) companies of persons and (2) share companies. Share companies may have either a profit motive or an object of mutual benefit. Share companies with a profit motive are, inter alia, the Joint Stock Companies. This is both: the principal type of company and the most appropriate company structure for large enterprises which involve a considerable capital and the assumption of a notable risk. The peculiar characteristic of this type of company is that the relationship between the company and its shareholders is impersonal and anonymous. The three distinguishing features of the SpA are: first, the liability of the shareholders is limited to their contributions; second, the participation of the shareholder in the company is represented by shares of equal nominal value; and finally, the company must have a minimum capital.

Keywords

Italian joint stock companies – mode of formation – shareholders agreements – contribution

Introductory notes– Historical Developments of the Relevant Regulations

Italy has a legal system of Roman-Justinean derivation and statutes are expected to play a dominant role in ruling commercial issues. The most

* Attorney at Law in Rome Bar, carlo_bruni@fastwebnet.it

important instrument regulating commercial issues is the 1942 Civil Code, as amended in 1991 by the adoption of the Fourth and Seventh European Directives.

The key points are the following: Italian commercial regulation has its roots in the French Commercial Code of 1807, which was introduced into the Italian Kingdom during the period of Napoleon's domination. These rules were basically maintained in the 1865 and 1882 Italian Codes (Italy as a unitary state came into existence in 1861). Companies limited by shares were not sufficiently regulated until the enactment of the commercial code of 1882. Freedom to incorporate anonymous companies liberated the promoters from the burden of the previous authorization of the State, but it was counterbalanced by the imposition of the board of statutory auditors. Such freedom was defeated by the commercial code of 1882, which was the first attempt to regulate companies limited by shares in a structured way. In fact, in that code we find rules on the functioning of the shareholders' meeting, on the duties and liabilities of the directors, on the minority shareholders and their protection, on the balance sheets, and on liquidation and merger.

The Civil Code of 1942 represents, from one side, a turning point and a model, from another side the mark of continuity. It merges, all within one code, the matters that in previous European models were split into two parts: the Civil Code and the Commercial Code.

On January 2003, Italy's centre-right government approved a reform of Title V of the Civil Code, dating from 1942, which regulates stock companies and cooperatives. The reform came into force on 1 January 2004 and redefined the characteristics of cooperatives and of the two main types of company – limited liability companies (*Società a responsabilità limitata*, Srl) and joint stock companies (*Società per azioni*, SpA).

I. The Types of Companies in the Italian Legal System

1. General considerations

Entrepreneur (imprenditore) is defined by Article 2082 of civil code as one who undertakes professionally an economic activity, organized to produce or to exchange goods or services.

The Civil Code of 1942 (hereinafter also CC) is the principal source of legislation on companies and partnership. Companies are regulated by Title V of Book V of the Civil Code. The Civil Code opens with three articles which provide for general rules.

Pursuant to article 2247 a company is formed by an agreement (contratto di società) by which "two or more persons confer goods or services[1] for the mutual performance of an economic activity with the purpose of sharing the profits".

Article 2248 establishes: "communion created or kept with the only aim of utilizing one or more goods is regulated by the seventh title of the third book". The third book refers to the property and the seventh title to the communion; this one is not, therefore, regulated together with enterprises and companies (fifth book), but it is stressed its "property" element.

Pursuant to article 2249 (types of companies) companies which have as their purpose a commercial activity must be formed according to one of the following types: General partnership, Limited Partnership, Joint Stock Companies, Limited Partnership by Shares, and Limited Liability Companies.

The legal address of the company and the office of the register of enterprises with which the company is registered and the registration number shall be stated in the records and correspondence of companies which are subject to the duty of registration in the register of enterprises (article 2250 paragraph 1° of the Civil Code).

Article 2250 paragraph 4 of the Civil Code relating to the disclosure obligations of single-member private limited liability companies requires each such company to disclose its status as a single-member private limited company in its acts and letterheads[2].

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[1] Thus, including not only cash, tangible, and intangible assets, but also work and services.

[2] According to Article 2362 CC – Sole shareholder 1. When all shares result as owned by a single person or when the sole shareholder changes, the directors must deposit for the entry in the Business Register a declaration stating the name and surname or denomination, date, and place of birth or country of incorporation, domicile or registered office, and nationality of the sole shareholder. 2. Once the plurality of shareholders is created or re-created, the directors must deposit an ad-hoc declaration for entry in the Business Register.3 The sole shareholder or the person ceasing to be so may directly carry

Generally speaking, the main practical difference between a company and a partnership is this, that the formation and existence of a partnership depends upon the mutual trust in, and personal relationship of, the members with each other, whereas the formation and existence of a company does not depend to any extent on these.

In Italian law the essential difference is that a company is regarded as being a separate entity from its members, while a partnership is not, although, as a matter of procedure, many things can be done in the name of the firm.

2. Partnerships

Società semplice (the Informal/Simple Partnership) is the partnership which have as their purpose the exercise of a non-commercial activity are governed by the provisions on the simple company (articles 2251–2290 of the Italian Civil Code).

Società in nome collettivo (General Partnership, Articles 2291 to 2312) comparable to the conventional partnership under English law in which all the members are liable without limitation for the company's obligations.

Società in accomandita semplice (Limited Partnership, Articles 2313 to 2324), in which the members who manage the business (accomandatari) are jointly liable with no limitation for the company's obligations, whereas the non-managing members (accomandanti) are liable only within the subscribed share.

Società in nome collettivo and *Società in accomandita semplice* are classified as "associations of persons", to underline the fact that the provisions that regulate them are based more on a personal relationship, founded on trust and cooperation among the partners, than on the share of ownership of the capital.

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out the disclosure provided for in the preceding paragraphs. 4. The directors' declarations referred to in the preceding paragraphs must be deposited within thirty days from the entry in the shareholders' register, and must indicate the entry date. 5. The company's contracts with a sole shareholder or the transactions in the interests of the sole shareholder are valid towards the company's creditors only if they have been mentioned in the board of directors' register of the meeting and the resolutions, or if they result from a written deed having a certified date preceding the date of the distraint.

3. Companies

The following types of company may be established:

Società a responsabilità limitata (Limited Partnership By Shares) corresponding to an English private company, (articles 2462 to 2483), which we call a limited liability company.

Società per azioni (Joint Stock Companies) similar to an English public company, which we call company limited by shares (articles 2325 to 2451).

Società in accomandita per azioni, (Limited Partnership by Shares, articles 2452 to 2461 CC), in which the capital is represented by shares, the managing members (accomandatari) are jointly liable with no limitation and the non-managing members (accomandanti) are liable only within the limits of their own shares of the capital.

The above companies are classified as "capital companies", because the capital invested by each member is more relevant than the quality of the other members.

While the associations of persons have no legal personality, the capital companies have a legal identity separate from that of each member, with the consequent limitation of liability and total separation of the personal assets of each member from the fate of those belonging to the company.

Legal personality generally means that the legal entity is different from its members: it has separate legal existence and it is distinct from its members. It follows that the legal entity's assets are completely segregated from those of its members. The company's creditors cannot seek satisfaction of their claims on the assets of the company's members, as they can rely on the company's assets only.

However, a partnership's creditors cannot satisfy their claims on the individual partners' assets before having first tried to satisfy them on the partnership's assets: only in the event that the partnership's assets were not enough to pay the partnership's creditors, would the partners be held personally liable for the non-fulfilled obligations.

The incorporation of a company which does not fit in one of the legal schemes described so far (società atipiche) is not allowed under the applicable law.

4. Innovative start up

The Decree-Law 179/2012 on "Further urgent measures for Italy's economic growth" converted into Law 221/2012, which can appropriately be called "Italy's Startup Act", has introduced into the Italian legal system the definition of a new innovative enterprise of high technological value, the "innovative startup".

One can define as an "innovative startup" any company with shared capital (i.e. limited companies, "società di capitali"), including cooperatives, whose capital shares – or the equivalent – are neither listed on a regulated market nor on a multilateral negotiation system.

These enterprises must also comply, inter alia, with the following requirements: be newly incorporated or have been operational for less than 5 years (in any case, not before 18 December 2012); have their headquarters in Italy or in another EU country, but with at least a production site branch in Italy; have a yearly turnover lower than €5 million; do not distribute profits; have as an exclusive or prevalent company object – as stated in the deeds of incorporation – the production, development, and commercialization of innovative goods or services of high technological value; are not the result of a merger, split-up, or selling-off of a company or branch.

5. Cooperative companies

Cooperative companies (governed by articles 2511 to 2545 CC) are driven by a mutual benefit purpose, which consists of the supply, in favour of the company's members, of goods, services, and working opportunities under more convenient conditions compared to those that the members would have obtained in the market.

Article 2516 CC provides that the rules established for companies limited by shares apply to cooperatives, whenever there is no special regulation.

This is particularly true for the subscription of the capital, the organization and the structure of the company's organs, and the accounts. The large majority of the cooperatives are limited liability companies,

even though it is possible to form cooperatives with unlimited and subordinate liabilities (Article 2513 CC).

6. Professionals

Professional can organize themselves as companies according to Law 12 November 2011 N. 183.

II. Joint Stock Companies

1. Liability

According to Article 2325 CC, in a joint stock company, any liability arising in relation to obligations contracted, may be satisfied solely with the company's assets.

In the event of the insolvency of the company, for any obligations incurred during the period in which the shares of the company were held by a sole shareholder, the sole shareholder will be exposed to unlimited liability when contributions have not been made pursuant to the provisions of article 2342 (contributions) or for the entire period prior to the time in which the publication requirements have been fulfilled pursuant to the provisions of article 2362 (sole shareholder).

In Italy there are three models of Joint Stock Companies that are: (a) the Close Joint Stock Companies; and (b) the Open Joint Stock Companies, that resort to the risk capital market and that are defined by the art. 2325 bis c.c. that covers two hypotheses: (b1) Companies with shares widely distributed among the public (or companies with a substantially widespread share ownership); (b2) Companies with shares listed on regulated markets[3].

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[3] Article 2325-bis – Companies that resort to the risk capital market. [1] For the purposes of the application of this Title, companies which issue shares which are listed on a regulated market or widely distributed among the public are considered as companies that resort to the risk capital market. [2] The provisions of this Title apply to companies with shares listed on regulated markets unless otherwise provided for in other provisions of the Civil Code or in applicable laws.

2. Company Name

According to Article 2326 CC the company name, in whatever way formulated, must include an indication of joint stock company status.

3. Minimum Capital Amount

A joint stock company shall be constituted with a capital of not less than Euros 50.000,00 (Article 2327 CC).

4. Articles of Association (Article 2328 CC)

The company may be established by way of either a contract or a unilateral deed.

The Articles of Association (atto costitutivo) shall be drafted by public deed and shall specify:

1) the name and surname or the company name, the place and date of birth or the State of incorporation, the domicile or the address of the registered office, the citizenship of the shareholders or of any promoters, as well as the number of shares subscribed by each of them;
2) the company's name of the municipality in which the company has its registered office, and the indication of any secondary offices;
3) the company's business purpose;
4) the amount of the share capital subscribed and paid-up;
5) the number of shares and their par value; the characteristics of the shares and the modality in which they shall be issued and circulated;
6) the value attributed to the receivables and the property contributed in kind;
7) the rules regulating the distribution of the profits;
8) any benefits attributed to the promoters or to the founding shareholders;
9) the model of corporate governance adopted, the number of directors and their powers, and the indication of those to whom have been delegated powers of representation;

10) the numbers of those on the board of statutory auditors;
11) the appointment of the initial directors and statutory auditors, or the members of the supervisory board, and when contemplated, the person entrusted with the statutory accounting audit;
12) the approximate amount of the incorporation costs to be borne by the company;
13) the duration of the company, or if the company has been established for an indefinite term, the period of time, not more than one year from the date of incorporation, which must necessarily elapse before a shareholder shall be entitled to withdraw.

The by-laws statuti containing the rules for the functioning of the company, even if contained in a separate document, constitute an integral part of the Articles of Association. In the event of any inconsistencies between the provisions of the Articles of Association and those of the by-laws the latter shall prevail (Article 2328 paragraph 3 CC).

5. Conditions for Incorporation

According to Article 2329 CC (Conditions for Incorporation) the following conditions must be fulfilled in order to incorporate a company: 1) the share capital shall be subscribed in its entirety; 2) the provisions of articles 2342, 2343 and 2343-ter regarding contributions in kind must be complied with; 3) the required authorization must be obtained, and other conditions required by the specific laws for the setting up of the company in relation to its specific business purpose must be met.

6. Filing of the Articles of Association and registration of the Company

Article 2330 CC provides that the notary who has received the deed containing the Articles of Association must file such deed within twenty days with the Business Register Office of the district in which the company has its registered office, including documents proving compliance with the conditions as set forth in article 2329 CC.

If the notary or the directors do not file the said documents within the term indicated above any shareholder may file the deed at the company's expense.

7. Effects of registration

The incorporation process of a joint stock company is structured in two steps: the execution of the memorandum of association of the company in the form of a notarial deed and the filing of the memorandum with the Companies register.

According to Article 2331 of the Civil Code the company becomes a legal person – and acquires a legal personality – once registered in the Register of Companies. It is only from that moment that the company comes into existence and is recognized as a legal person within the Italian legal system.

Those persons who have acted on behalf of the company before registration, are unlimitedly, jointly, and severally liable as third parties, for the operations carried out.

The sole founding shareholder and those shareholders who, in the Articles of Association or in a separate deed have decided, authorized, or consented to the implementation of the operation, are also held unlimitedly, jointly and severally liable for such operations.

If subsequent to the registration the company approves a transaction referred to above, the company is also liable and it must indemnify those who have acted on its behalf (Article 2331 CC – Effects of registration).

Prior to registration in the Business Register, the issuance of shares is forbidden, and the shares – save for the offer of public subscription in accordance with article 2333 (Prospectus and subscription of shares) – cannot be the object of a public offering of financial products (Article 2331 paragraph 5° CC).

The first step of the incorporation process (execution of memorandum of association) can be accomplished through two alternative procedures, namely the "simultaneous execution" or the "execution following public subscription".

8. Nullity of company

According to Article 2332 CC once the registration in the Business Register is completed, a declaration of nullity of the company can be rendered only in the following cases: 1) failure to stipulate the Articles of Association in the form of a public deed; 2) illegality of the company's purpose; 3) the lack in the Articles of Association of any indication relating to the name of the company, or the contributions, or the amount of capital subscribed or the company's purpose.

The declaration of nullity does not impair the effect of the transactions carried out in the name of the company after the registration in the Company Register. The shareholders are not discharged from their obligation to pay their contributions until the creditors of the company have been satisfied. The court decision which declares the nullity of the company, appoints the liquidators. Nullity cannot be declared if the cause of action of the same has been eliminated, and such elimination has been rendered public through the filing of the same with the Company Register. The final statements of the decision which declares the nullity must be registered with the Business Register by the directors or the liquidators nominated.

9. Incorporation through public subscription

Under the regime for drawing-up by means of public subscription, the formation of the memorandum of association of the company is completed after a complex (and therefore very rarely used) procedure aimed at collecting the initial share capital from amongst the public (Articles 2333 – 2336 CC)[4]. The promoters are jointly and severally liable

[4] Article 2333 – Prospectus and subscription of shares [1] The company may also be founded through public subscription on the basis of a programme indicating the company's purpose and the capital, the main provisions of the articles of Association and the by-laws, and any participation which promoters reserve for themselves in the profits, and the time limit within which the Articles of Association are to be executed. [2] The prospectus, with the authenticated signatures of the promoter(s), must be deposited with a notary prior to being made public. [3] The subscription of shares must be evidenced by a public act or by authenticated private deed. Such documents shall contain the name and surname

vis-à-vis third parties for the assumed obligations in the incorporation of the company (Article 2338 1° paragraph CC).

10. Shareholders' Agreements

It frequently occurs that, either upon setting up the company or thereafter, the shareholders enter into agreements regulating various aspects of the running of the company or the circulation of shares. Such agreements are

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or the company name, domicile or legal address of the subscriber, the number of shares subscribed and the date of subscription.

Article 2334 – Payments and calling of meeting of subscribers [1] Upon completion of the collection of the subscriptions, the promoters shall, by registered post or in the manner set out in the prospectus, assign to the subscribers a term not exceeding one month within which the payments prescribed in paragraph 2 of article 2342 must be made. [2] In the event that such payments are not made within the term specified, the promoters are authorized to take action against the subscribers who are in default, or to release them from their obligation(s). If the promoters avail themselves of the latter power, the company may not be formed prior to the shares subscribed being disposed of. [3] Unless the prospectus provides for a different time limit, the promoters, within twenty days following the expiration of the time limit established in the first paragraph of this article, shall call a meeting of the subscribers by means of a letter sent to each subscriber by registered post at least ten days before the date set for the meeting, stating the matters to be dealt with.

Article 2335 – Meeting of the subscribers [1] The meeting of subscribers shall: 1) ascertain the existence of the conditions required for the formation of the company; 2) resolve on the contents of the Articles of Association and the by-laws; 3) resolve on the share in the profits reserved by the promoters for their own benefit; 4) appoint the directors and the statutory auditors (2397) or the members of the supervisory board (2409-*duodecies*) and, if provided, the person entrusted with the statutory accounting audit (2409-*bis*). [2] The meeting is validly convened and quorate with the presence of at least half of the subscribers. [3] Each subscriber is entitled to one vote, regardless of the number of shares subscribed, and the favourable vote of the majority of those present is required for the resolution to be valid. [4] However in order to amend the terms of the prospectus, the unanimous consent of all subscribers is required.

Article 2336 – Execution and filing of the Articles of Association [1] Upon compliance with the requirements of the preceding article, those present at the meeting, also on behalf of the absent subscribers, execute the Articles of Association, which shall be filed with the Business Register in accordance with Article 2330.

Article 2337 Promoters [1] The promoters are those who, in the incorporation of the company by public subscription, have signed the prospectus in accordance with the second paragraph of article 2333.

known as contratti parasociali or patti parasociali, that is, shareholders' agreements, insofar as they are associated with, and depend on, the company agreement. The contratti parasociali may cover a wide range of aspects involving the company, but they tend to focus mainly on such matters as exercising voting rights at the shareholders' meeting, and transferring shares.

Until the above mentioned 2003 reform, the Italian Civil Code made no reference to shareholders' agreements, and consequently there is an abundance of case law debating the legitimacy of restrictions on shareholders' rights.

Until the 1990s, the general orientation adopted by the courts was to hold agreements covering voting rights null and void, as they are in conflict with the principle according to which the will of the company must be formed in the course of a shareholders' meeting, which means that the shareholders cannot commit themselves to voting in a manner predetermined by third parties.

In the course of the 1990s, case law partly altered its orientation. A number of rulings held shareholders' agreements envisaging obligations simply in terms of exercising the vote (i.e., shareholders' agreements 'giving rise to obliging effects') to be valid, but not shareholders' agreements setting in place mechanisms that make it possible to obtain the concrete result of ensuring that the vote is expressed as agreed (shareholders' agreements 'giving rise to real effects').

A clear affirmation of the general validity of shareholders' agreements can be found in the text of the Legislative Decree. N. 58/1998 (Consolidated Law on Finance) for listed companies. The contents of this text have been partially embodied in Articles 2341-bis[5] and 2341-ter, which were introduced into the Civil Code by the 2003 reform.

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[5] Article 2341-bis **CC** *[1] Agreements, in whatsoever form executed, which have the purpose of regularizing the ownership structures amongst the shareholders or the management of the company which: a) have as their object the exercise of voting rights in company limited by shares or the companies that control them; b) set limits on the transfer of the related shares or the interest held in the companies that control them; c) have as their object or effect, the exercise jointly or otherwise, of a dominant influence on such companies, cannot have a duration of more than five years, and shall be deemed to have been agreed for such duration even if the parties anticipate a longer term; such agreements shall be renewable upon expiration. [2] In the event that the agreement does not provide a specific term of duration, each party may withdraw on giving one hundred and eighty*

Article 2341-bis of the Italian Civil Code regulates the shareholders' agreements in S.p.A.s and its affiliates; Article 2341-ter of the Italian Civil Code regulates the shareholders' agreements in S.p.A.s whose share capital is listed on regulated capital markets (or whose share capital is spread widely amongst the public?).

Under Article 2341-bis of the Italian Civil Code, S.p.A. shareholders' agreements may not have duration longer than five years, unless such agreements are "instrumental to cooperation agreements for the production or exchange of goods or services ...": in such a case, the duration of a shareholders' agreement may last more than five years.

According to Article 2341-ter (Publicity of shareholders agreements) shareholders agreements relating to companies that resort to the risk capital market must be communicated to the company and a statement must be made at the opening of each shareholders' meeting. The statement must be recorded in the minutes of the shareholders' meeting and must be filed with the Business Register Office. In the absence of the above statement, the owners of shares to which the shareholder agreement refers, cannot exercise their right to vote and any resolutions adopted with their decisive vote are contestable.

11. Contributions

According to Article 2342 CC (Contributions), unless otherwise provided for in the Articles of Association, contributions shall be made in cash. At the time of the execution of the articles of association at least twenty five per cent of the contribution in cash, or, in the event of incorporation by virtue of a unilateral deed, the full amount, must be deposited with a bank. In respect of contributions consisting of property in kind or assignment of receivables, the provisions of article 2254[6] and

days' advance notice. [3] The provisions of this article do not apply to agreements instrumental to cooperation agreements for the production or exchange of goods and services relating to companies wholly owned by the participants of the agreement.

[6] Article 2254 – Warranties and risks of contributions: [1] With regard to items where ownership is contributed, the warranty of the contributing partner and the allocation of risks are regulated by the provisions concerning sales. [2] The risk relating to items whose

2255[7] are applicable. The shares corresponding to such contributions must be paid in full upon subscription. If the plurality of shareholders no longer exists, outstanding payments must be made within ninety days. The performance of work or services cannot be provided as a contribution.

12. Appraisal of contributions in kind and receivables

Those who contribute property in kind or loans to an S.p.A. shall submit the sworn report of an expert appointed by the President of the Court where the company's registered office is, containing a specific description of the value of the property or claims contributed and the criteria applied for their evaluation, as well as an attestation that the value ascribed is not lower than the value of the increase in the share capital (Article 2343 of the Italian Civil Code).

The directors of the relevant company must, within 180 days from the registration of the company, verify the evaluation contained in the expert's report and, where reasonable grounds for revisions exist, shall revise the appraisal. Until the valuation has been verified, the shares corresponding to contributions in kind are non-transferable and shall remain on deposit with the company. If it is shown that the value of property or claims contributed was less than 20 per cent of the value for which the contribution was made, the company shall reduce its corporate capital proportionally, voiding the shares whose value is shown not to have been adequately covered. The contributing shareholder, however, may deposit the difference in cash or resign from the company; the resigning shareholder is entitled to receive the contribution in kind back, in whole or in part to the extent provided under Article 2343 of the Italian Civil Code[8].

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enjoyment is contributed remains with the contributing partner. The warranty as regards enjoyment is regulated by the rules concerning leases.

[7] Art. 2255 – Contribution of receivables [1] A member who has contributed a receivable is liable in respect of the insolvency of the debtor as per the limits set out in Article 1267 in the case of agreed assumption of guarantee.

[8] Article 2343 1° paragraph CC (Appraisal of contributions in kind and receivables) "*Those who contribute property in kind or receivables shall submit a sworn report of an expert, appointed by the court of the district in which the company has its registered office, which contains:*

13. Purchase by the company from promoters, founders, shareholders and directors

Article 2343-bis[9] applies a similar framework (need to provide a sworn report) in case the company purchases goods, assets or receivables from its shareholders.

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a description of the property or the receivable(s) contributed; a statement attesting that the value assigned to each item of property or receivable contributed is not lower than the nominal value, increased by the share premium, if any, of the shares issued against the contribution, and the criteria of evaluation used. The report shall be attached to the Articles of Association."

Article 2343 3° paragraph CC "*Within one hundred and eighty days from the registration of the company, the directors must verify the evaluations contained in the sworn report indicated in the first paragraph, and, if well founded reasons exist, they must revise the appraisal. Until the evaluations have been verified, the shares corresponding to the contributions in kind are not transferable and shall remain deposited with the company.*"

Article 2343 4° paragraph CC "*If it should result that the value of property or of the receivables contributed is lower by more than one fifth of the value for which the contribution was made, the company shall reduce its capital proportionately, cancelling the shares in relation to which such value is unsubscribed. The contributing shareholder, however, may deposit the difference in cash or withdraw from the company; the exiting shareholder is entitled to the restitution of the contribution in kind, should it be possible in whole or in part. The articles of association may contemplate, subject in any case to the provisions of the fifth paragraph of article 2346, that as a consequence of the cancellation of the shares as provided in the previous paragraph, a different distribution of the shares among the shareholders may be determined.*"

[9] Article 2343-bis CC *(Purchase by the company from promoters, founders, shareholders, and directors). [1] The purchase by the company, of property or receivables from promoters, founders, shareholders, or directors, for a consideration equal to or higher than one tenth of the capital of the company, within two years from the registration of the company in the Business Register, must be authorized by the ordinary shareholders' meeting (2364, 2364 bis). [2] The seller shall submit a sworn report of an expert appointed by the court of the district in which the company has its registered office, containing a description of the property in kind or the receivables, the value ascribed to each item of property or receivable, the criteria of evaluation applied, as well as an attestation that such value is not lower than the consideration itself, which must in any event be specified. [3] The report shall be deposited at the registered office of the company during the fifteen days preceding the shareholders' meeting. The shareholders are entitled to examine the report. Within thirty days from the authorization, the minutes of the meeting, together with the report of the expert appointed by the court, shall be filed by the directors with the Business Register Office.[4] The provisions of this article do not apply to purchases which are effected under normal conditions in the context of the day-to-day business operations of the company or those that occur in regulated markets or under the control of judicial or administrative authorities. [5] In the event of any breaches of the*

14. Contributions of assets in kind or receivables without an appraisal

According to Article 2343-ter of the Italian Civil Code (Contributions of assets in kind or receivables without an appraisal) for contributions of securities or money market instruments, the appraisal above described is not required if the value set for the purposes of determining the share capital and the premium, if any, is equal to or less than the weighted average price at which such securities/instruments have been traded at on one or more regulated markets in the six months preceding the contribution.

The appraisal described in the first paragraph of article 2343 is furthermore not required when the value set, for the purposes of determining the share capital and the premium, if any, to the assets or receivables contributed in kind, is equal or inferior to: a) the fair value entered in the financial statements of the financial year preceding the financial year during which the contribution is carried out, provided that it has undergone statutory audit and that the auditor's report does not contain any exception on the evaluation of the assets being contributed, or; b) the value resulting from an appraisal carried out as of a date preceding the contribution of no more than six months and in compliance with the generally accepted principles and criteria for the appraisal of assets to be contributed, provided that it has been drafted by an expert independent from the contributing person, the company, and the shareholders who individually or jointly control the contributing person or the company, and who is of proven and adequate professionalism. Those who contribute assets or receivables shall submit documentation evidencing the value attributed to the contribution, and for the contributions described in paragraph two, that the conditions described therein have been met. Such documentation has to be attached to the Articles of Association. For the definition of "fair value", reference is made to the international accounting principles adopted by the European Union.

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provisions of this article, the directors and the transferor shall be jointly and severally liable for any damages caused to the company, the shareholders, or third parties.

15. Exceptional or relevant facts influencing the appraisal

Pursuant to Article 2343-quarter[10], paragraph 1 of the Civil Code, following the contributions becoming effective, the directors of the Company receiving the contribution Company must verify whether, following the date of the evaluations performed, relevant new events have occurred such as to modify significantly the fair value of the contributions. In the event that the directors deem, from the outcome of the verification, that the said events did take place, a new evaluation must be performed by an expert designated by the competent Court in compliance with the provisions of Article 2343, of the Civil Code.

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[10] Art. 2343-quater – Exceptional or relevant facts influencing the appraisal *[1] Within thirty days of the registration of the company, the directors must verify whether – in the period following the one outlined in paragraph 1 of article 2343-ter – any exceptional events have occurred which affected the prices of the conferred securities or money market instruments to the extent that the value of these assets was significantly altered at the date of registration of the company in the Business Register, including situations in which the securities or instrument markets are no longer liquid. The directors shall also verify within the said term whether, following the end of the financial year of the financial statements referred to under letter a) of the second paragraph of article 2343-ter, or at the cut-off date of the appraisal referred to under letter b) of the same paragraph, any new significant events have occurred, considerably altering the value of the contributed assets or receivables at the date of registration of the company with the register of Companies, as well as the requirements of professionalism and independence of the expert who drafted the appraisal pursuant to the second paragraph, letter b), of article 2343-ter. [2] Should the directors determine that the facts described in the first paragraph have occurred, or that the expert who drafted the appraisal pursuant to the second paragraph, letter b) of article 2343-ter) does not possess the required professionalism and independence, upon the initiative of the directors, a new appraisal shall be carried out pursuant to article 2343. [3] For any case not covered by paragraph 2, the directors shall file a declaration with the Business Register, within the same period as outlined in paragraph 1, containing the following information: a) a description of the contributed goods or receivables in relation to which the report pursuant to the provisions of article 2343, paragraph 1, was not submitted; b) the value set for these items, the source of the appraisal and, if necessary, the method used for the appraisal; c) a statement that this value is at least equal to that attributed to such items in the determination of the share capital and, of the share premium, if any; d) a statement that no extraordinary or major events that might have an impact on the appraisal described in letter b) have occurred; e) a statement that the expert has the required professionalism and independence pursuant to paragraph 2, letter b) of article 2343-ter. [4] The shares cannot be transferred and must remain deposited with the company until such statement is registered.*

16. Failure to pay quota

Pursuant to Article 2344 of the Civil Code (failure to pay quota), if a member fails to the pay his or her quota, upon the elapse of fifteen days from the publication of the warning in the Gazzetta Ufficiale, the directors, if they do not consider it to be useful to commence action for the enforcement of the execution of the contribution, can offer the shares to the other shareholders in proportion with their shareholding, for a price not lower than the contributions still due. In the absence of offers, they are entitled to have the shares sold at the risk and for the account of the member, through a bank or intermediary authorized to operate on regulated markets. If the sale cannot take place owing to lack of buyers, the directors can declare the dismissal of the member, and retain the sums collected from him, without prejudice to compensation for additional damages. If the unsold shares cannot be circulated within the financial year during which the dismissal of the defaulting member is pronounced, they shall be cancelled by a corresponding reduction of the capital of the company. The member having defaulted in the payment of his quota cannot exercise his right to vote.

17. Accessory services

Finally, Article 2345 of the Civil Code provides that in addition to the obligation to contribute, the articles of association may provide for the obligation of the members to perform non-monetary accessory services, by specifying the content, duration, modality, and compensation for such services, and providing for special sanctions in the event of non-performance. In determining the remuneration for such services, the standards applicable to relationships requiring the performance of similar services shall be observed. The shares to which the duty of such performance is connected shall be nominative and are not transferable without the consent of the directors. Unless otherwise provided in the articles of association the duties above mentioned cannot be modified without the consent of all the shareholders.