

Company's bodies

Directors

Overview

▶ Structure:

- ▶ Sole director
- ▶ Board of directors
 - ▶ Executive committee
 - ▶ CEO
- ▶ Shareholders or not

▶ Functions:

- ▶ Management
- ▶ Executive
- ▶ Representative

▶ Liability

Number (2380 bis c.c.)

- ▶ Articles of association
- ▶ Shareholders' meeting
- ▶ Minimum-maximum

Structure

- ▶ Sole director/board of directors
 - ▶ Chairman
 - ▶ CEO (*Chief Executive Officer*) and executive committee
 - ▶ Collegial method

Ineligibility/forfeiture (2382 c.c.)

- ▶ **external facts:**

- ▶ Interdicted/disqualified persons
- ▶ Bankrupt
- ▶ Sentenced to a penalty entailing a ban from public office or the inability to exercise managerial functions

Appointment (2383 c.c.)

- ▶ Who appoints the directors?
 - ▶ Articles of association/ shareholders' meeting
 - ▶ Business Register
- ▶ Requirements (2387 c.c.)
- ▶ For how long are they appointed?

Cessation

- ▶ Resignation

- ▶ Majority?

- ▶ Terms expiry

- ▶ Prorogatio

- ▶ Removal

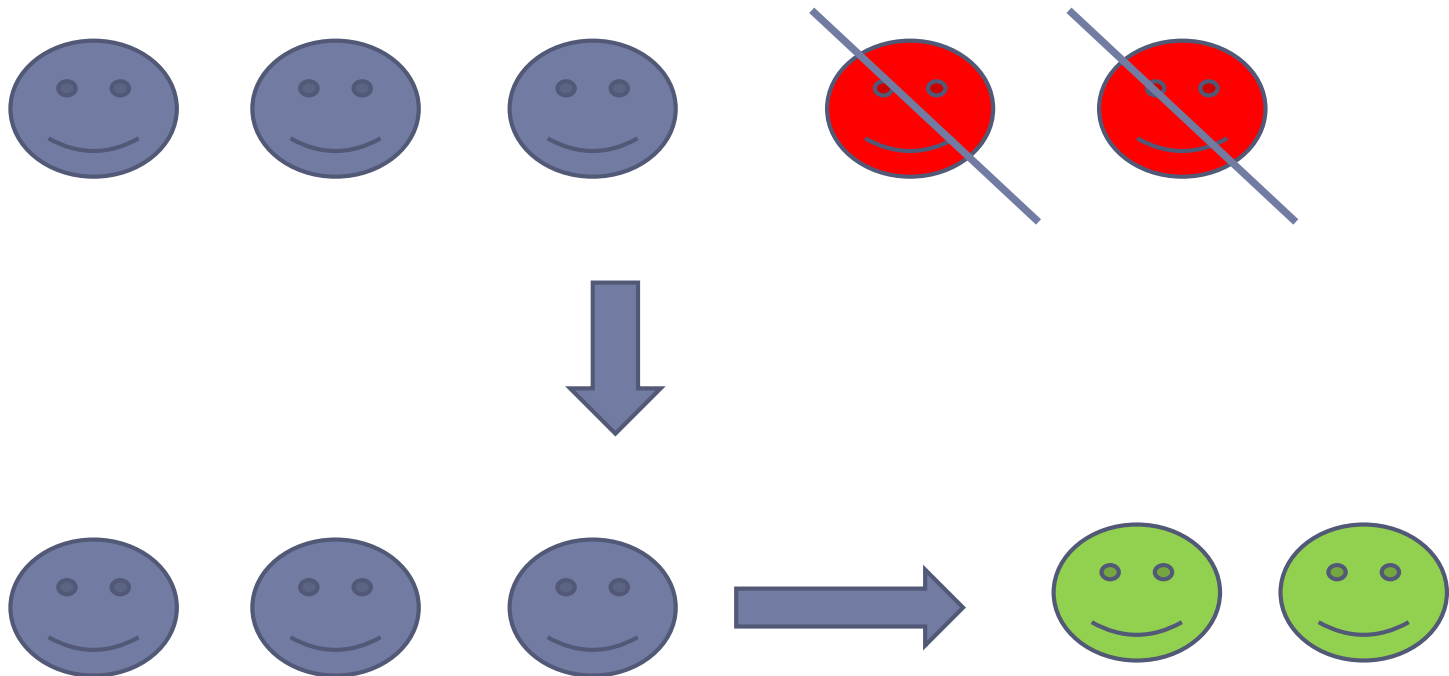
- ▶ They can be removed by the shareholders' meeting at any time

Cessation

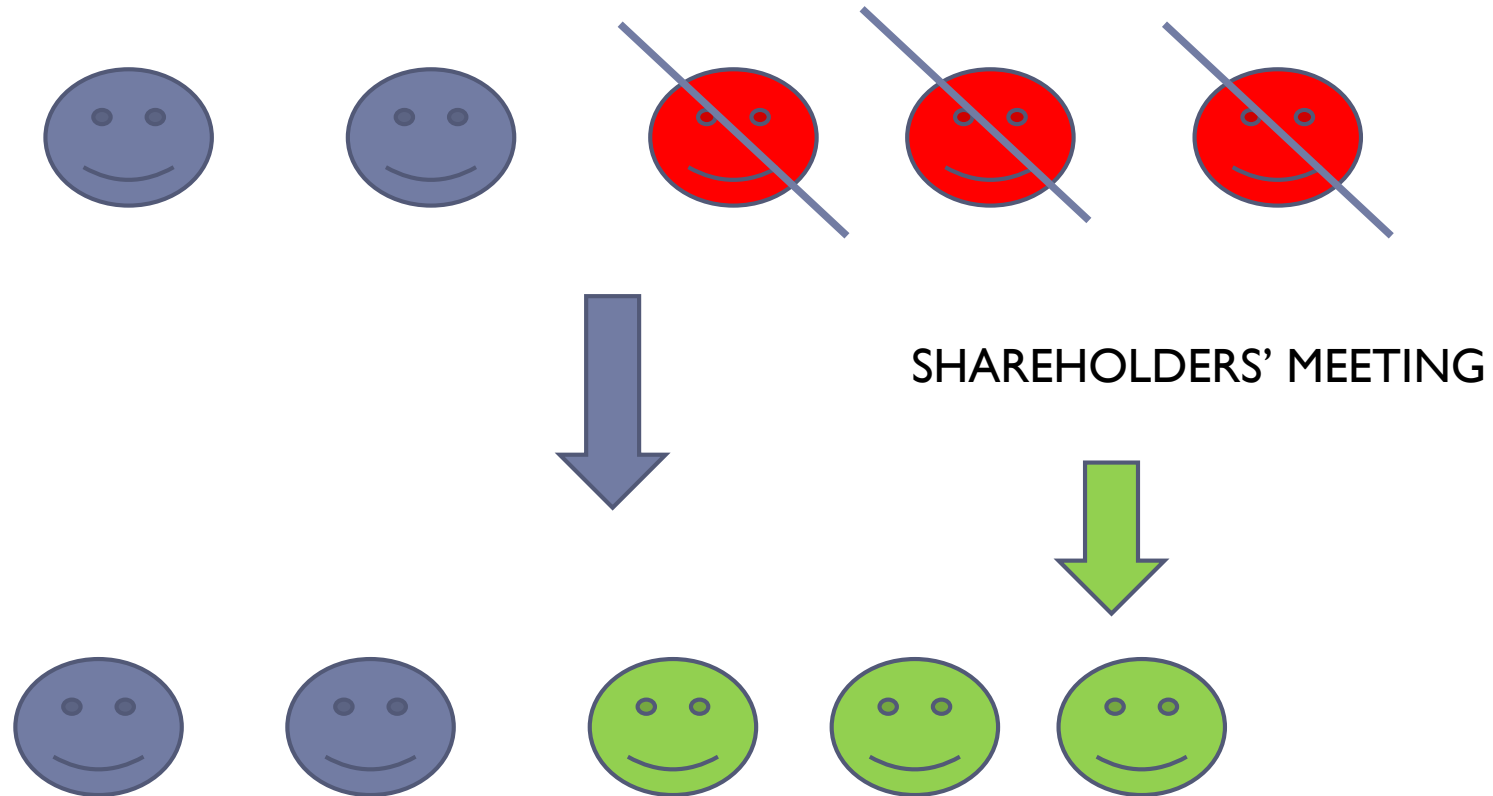
- ▶ Forfeiture
- ▶ Death
- ▶ Amendments

Replacement (2386)

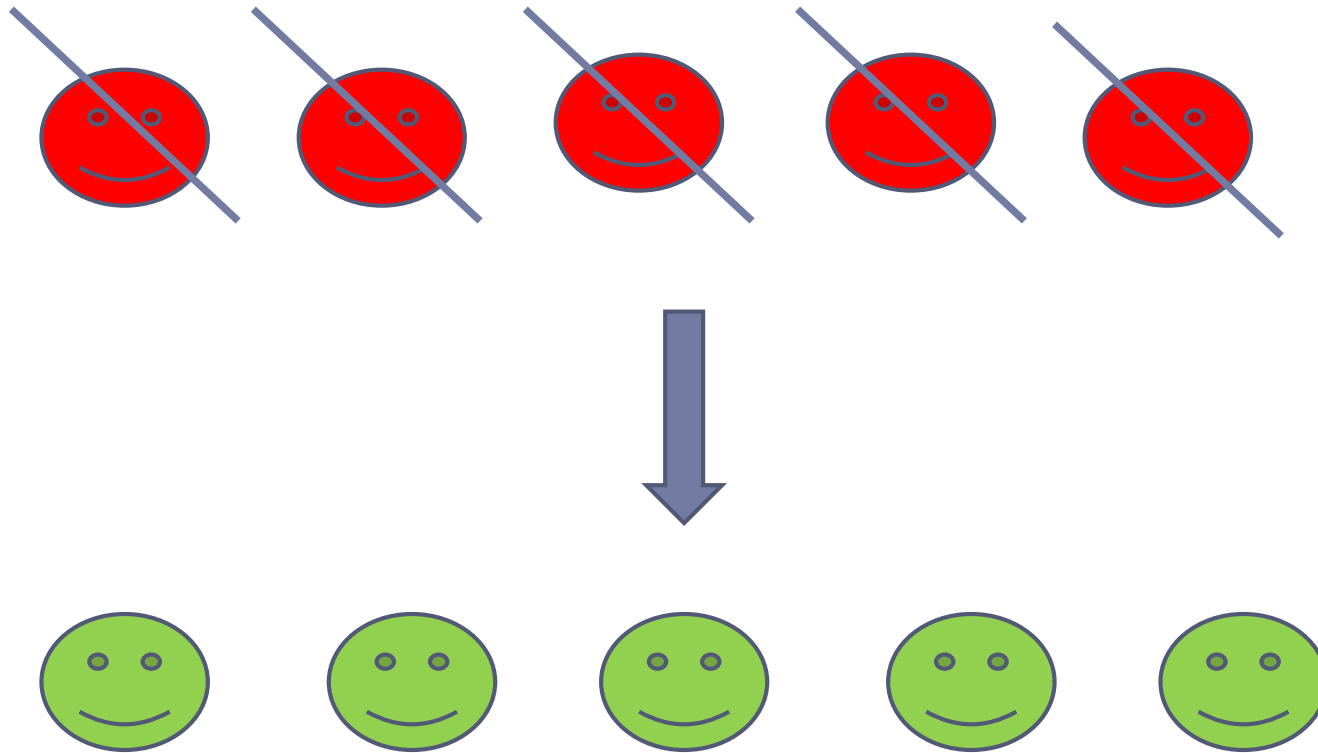
► Minority? » Cooptation



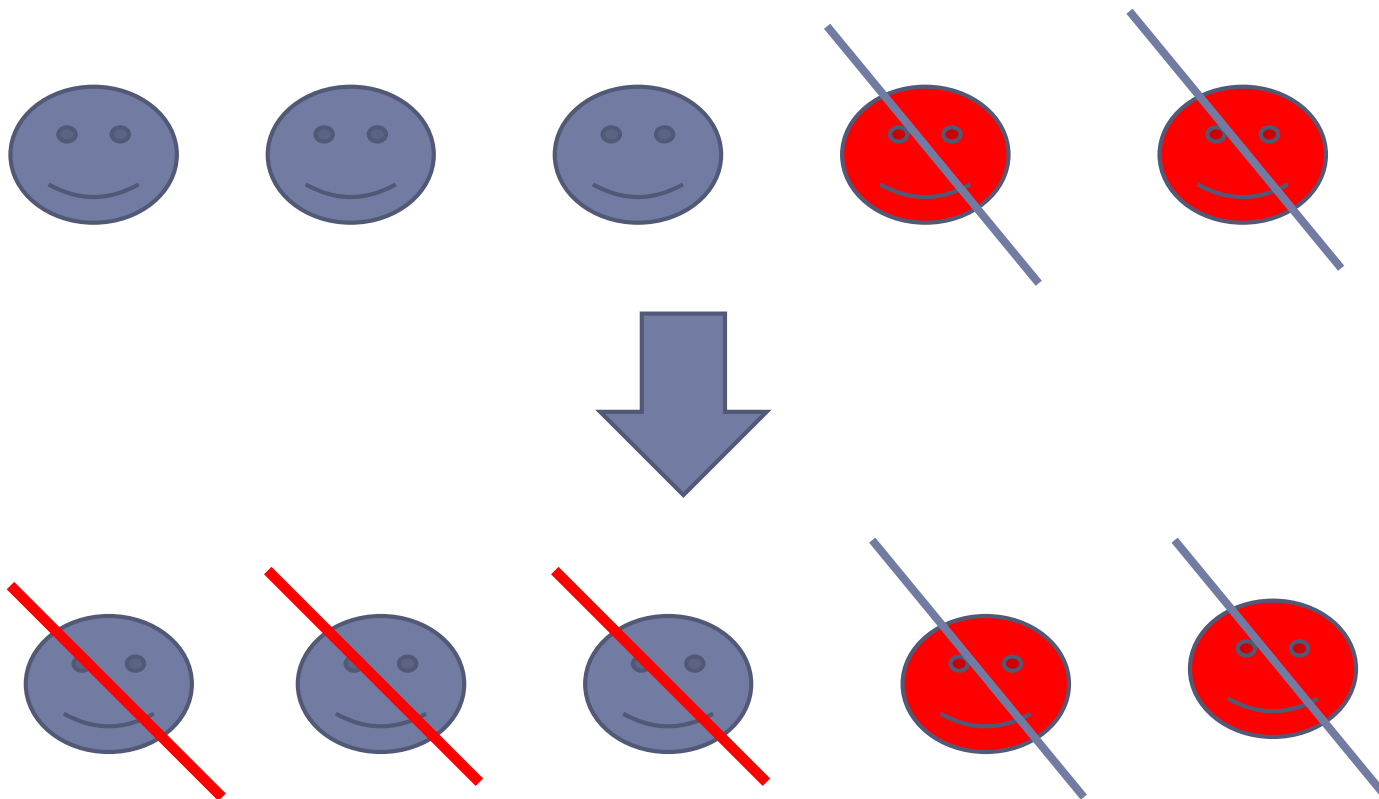
► Majority? » Call the shareholders' meeting



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- ▶ everyone? » Board of statutory auditors shall call the shareholders' meeting



► SIMUL STABUNT SIMUL CADENT



Remuneration (2389 c.c.)

- ▶ Shareholders' meeting
- ▶ Money/sharing in the profits/c.d. stock options
 - ▶ Listed companies (123 TUF): Remuneration report

Roles and responsibilities

- ▶ **Management power**
 - ▶ general
 - ▶ Achievement of the company's purpose
- ▶ **Directors vs Shareholders' meeting**
 - ▶ **Management: exclusive power of the directors**

Roles and responsibilities

- ▶ Diligence
- ▶ Prohibition on competition
- ▶ If there are managing directors/executive committee

▶ Executive power

Roles and responsibilities

▶ **Representative power**

▶ 2384 c.c.: general

▶ Limitations

- Third parties

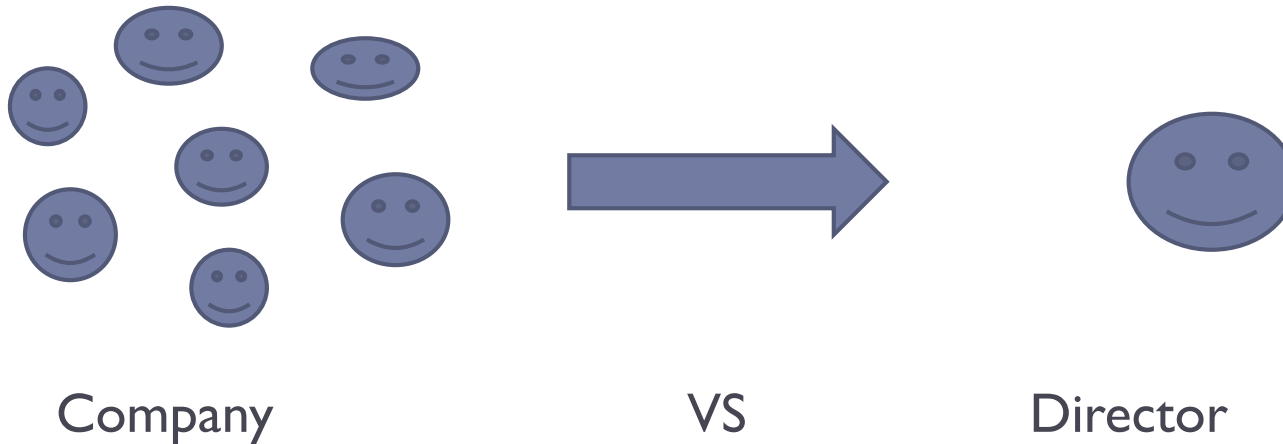
▶ 2383, 4° co.

▶ Void/voidability of the appointment resolution

Board's resolutions validity

- ▶ not in compliance with the law or the articles of association
- ▶ Absent/dissenting directors and board of statutory auditors
- ▶ 90 days

Conflict of interests



2391 c.c.: information + justification

- ▶ abstention
- ▶ Challenge
- ▶ Third parties

Operations with related parties

- ▶ **2391 bis c.c.**

- ▶ Risk capital market
- ▶ Procedures
- ▶ Information!

- ▶ See Regulation Consob 12-23-2010 n. 17221

Liability

- ▶ Non-observance of duties
- ▶ Non-preventing occurrence
- ▶ Exceptions
- ▶ “business judgement rule”

actions

- ▶ Company
- ▶ Creditors
- ▶ Individual

Corporate action for liability (2393)

- ▶ Resolution of shareholders' meeting
 - ▶ Financial statement
- ▶ Resolution of board of statutory auditors
 - ▶ 2/3
- ▶ Within 5 years
- ▶ Waiver/settlement

Corporate action for liability by shareholders (2393-bis)

- ▶ Minority shareholders: 1/5 (1/20 capital market)
- ▶ Suit brought against the company and the chairman of the board of statutory auditors
- ▶ The company will repay the costs
- ▶ Waiver/settlement
- ▶ To the benefit of the company

Liability to creditors (2394)

- ▶ Preservation of the share capital's integrity
- ▶ Insufficiency of the assets to satisfy their claims
- ▶ Effects of
 - ▶ Waiver of the company
 - ▶ Settlement of the company

Individual action (2395)

- ▶ by shareholder
- ▶ by third party
- ▶ Directly injured

General Managers (2396 c.c.)

- ▶ Liability = directors