

Board of statutory auditors

Company's bodies

Board of statutory auditors

- ▶ Structure
- ▶ Functions
- ▶ Duties
- ▶ Liability



- ▶ Monitoring
- ▶ Control
- ▶ 2403 c.c.
- ▶ **INTEGRITY, PROFESSIONALISM AND INDEPENDENCE**

Composition (2397)

- ▶ 3/5 standing members + 2 substitutes
- ▶ Chairman
 - ▶ Minority shareholders

Ineligibility/ Forfeiture (2399)

- ▶ **May not be appointed**

- ▶ Interdicted, disabled, bankrupt persons...
- ▶ Spouse, relatives by blood or marriage..
- ▶ Those who are connected with the company or with its subsidiaries or its controlling entities or companies under joint control by an employment relationship, or a continuous remunerated relationship or other remunerated services or works, or other relationships of an economic value **which would compromise their independence**

Appointment (2400)

- ▶ Articles of association / Shareholders' meeting
- ▶ Information about appointments
- ▶ For how long?

Cessation (2400)

- ▶ =directors
- ▶ Terms expiry: *prorogatio*
- ▶ Revoke by just cause only (≠directors!) with approval of court

Replacement (2401)

- ▶ Death/resignation/forfeiture → alternate auditor
- ▶ Chairman
- ▶ What if...the board cannot be completed?

Remuneration (2402)

- ▶ by the by-laws / shareholders' meeting
- ▶ For the entire duration of their term of office

Duties (2403)

- ▶ **Supervision**
 - ▶ Compliance with the law and the bylaws
 - ▶ Proper management
 - ▶ Adequacy of the organisational, administrative and reporting structure
- ▶ (optional) Performing the auditing of accounts, but only if...

Attendance at the meetings (2405)

- ▶ Of the board of directors
 - ▶ Of the shareholders' meeting
 - ▶ Of the executive committee
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- ▶ Forfeiture if 2 times/financial year not attend

Powers (2403-bis)

- ▶ Inspection
 - ▶ Request information
 - ▶ Exchange information
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- ▶ Confidential information

Meetings and resolutions (2404)

- ▶ **Every 90 days**
 - ▶ Forfeiture
- ▶ **Collegial method**
 - ▶ Quorum
 - ▶ Minutes
 - ▶ Dissenting auditor

Omissions by the directors (2406)

- ▶ In calling the shareholders' meeting
- ▶ Censurable and significantly serious events
 - ▶ urgency
- ▶ Call the shareholders' meeting

Liability (2407)

- ▶ Professionalism and diligence required by the nature of the office
- ▶ For the truthfulness of their statements
- ▶ Confidentiality
- ▶ With the directors for actions or omissions

Complaint to the board of statutory auditors (2408)

Facts deemed censurable

Every shareholder



The board must take such complaint into account in its report to the shareholders' meeting

1/20 (or 1/50) of shareholders



The board must investigate without delay and submit its findings and recommendations to the shareholders' meeting (and call it, if necessary according to 2406)

Statutory audit

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- ▶ “statutory audit” means an audit of annual financial statements or consolidated financial statements (dir. 2014/56/UE)

Statutory audit

- ▶ Verify that the company's accounts are kept properly
- ▶ Verify that the transactions are properly reported in the accounting records
- ▶ Verify that the accounts are consistent with the results of the accounting records
- ▶ **Report on the financial statements (qualified, unqualified, adverse, unable to express an audit opinion c.d. “disclaimer of opinion”)**

Legislative framework

- ▶ D.lgs. 27 gennaio 2010, n. 39 Attuazione della direttiva 2006/43/CE, relativa alle revisioni legali dei conti annuali e dei conti consolidati, che modifica le direttive 78/660/CEE e 83/349/CEE, e che abroga la direttiva 84/253/CEE
 - ▶ Amended by d.lgs. 17 luglio 2016, n. 135 Attuazione della direttiva 2014/56/UE che modifica la direttiva 2006/43/CE concernente la revisione legale dei conti annuali e dei conti consolidati
- ▶ REGULATION (EU) No 537/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC

- ▶ Approval and continuous education of statutory auditors or audit firms
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- ▶ Register
 - ▶ Professional ethics
 - ▶ Independence
 - ▶ NO NON-AUDIT SERVICES
 - ▶ Confidentiality
 - ▶ Professional secrecy
 - ▶ Professional scepticism
 - ▶ Transparency

▶ PUBLIC INTEREST ENTITIES

- ▶ “public-interest entities” means: (a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market (b) credit institutions (c) insurance undertakings
- ▶ Compulsory external accounting auditor

- ▶ «Intermediate regime» entities

- ▶ Compulsory external accounting auditor
- ▶ Art. 17 d.lgs. 39/2010 - Independence

- ▶ Non public interest entities

- ▶ Audit: possible Board of statutory auditors

Internal Control and Audit Committee

- ▶ **For EIP**
 - ▶ Board of statutory auditors
 - ▶ Supervisory board
 - ▶ If not 2409terdecies lett. f-bis
 - ▶ Committee for management supervision

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- ▶ Memorandum of association / Shareholders' meeting
 - ▶ Quality Assurance for the Statutory Audit
 - ▶ **Liability**
 - ▶ Breach of duties
 - ▶ Jointly with directors
 - ▶ 5 years
 - ▶ **Crime**

External controls

Report to the Court (2409 c.c.)

- ▶ Serious irregularities in the management
- ▶ Detrimental
- ▶ 1/10 of the capital (1/20 capital market)
- ▶ Petition filed to the Court
- ▶ Inspections

Report to the Court (2409 c.c.)

- ▶ Call the meeting
- ▶ Revoke the directors
- ▶ Judicial administrator
 - ▶ Action for liability

CONSOB

- ▶ Information
- ▶ Transparency