

Limited liability company

**s.r.l.**

# General remarks

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▶ LIMITED LIABILITY

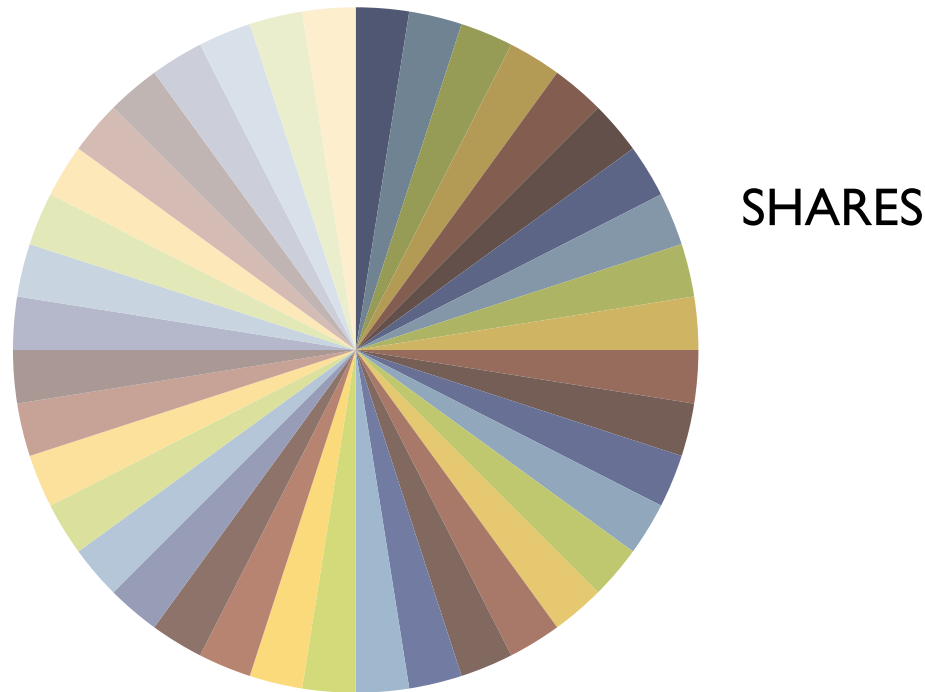
▶ NO SHARES



# General remarks

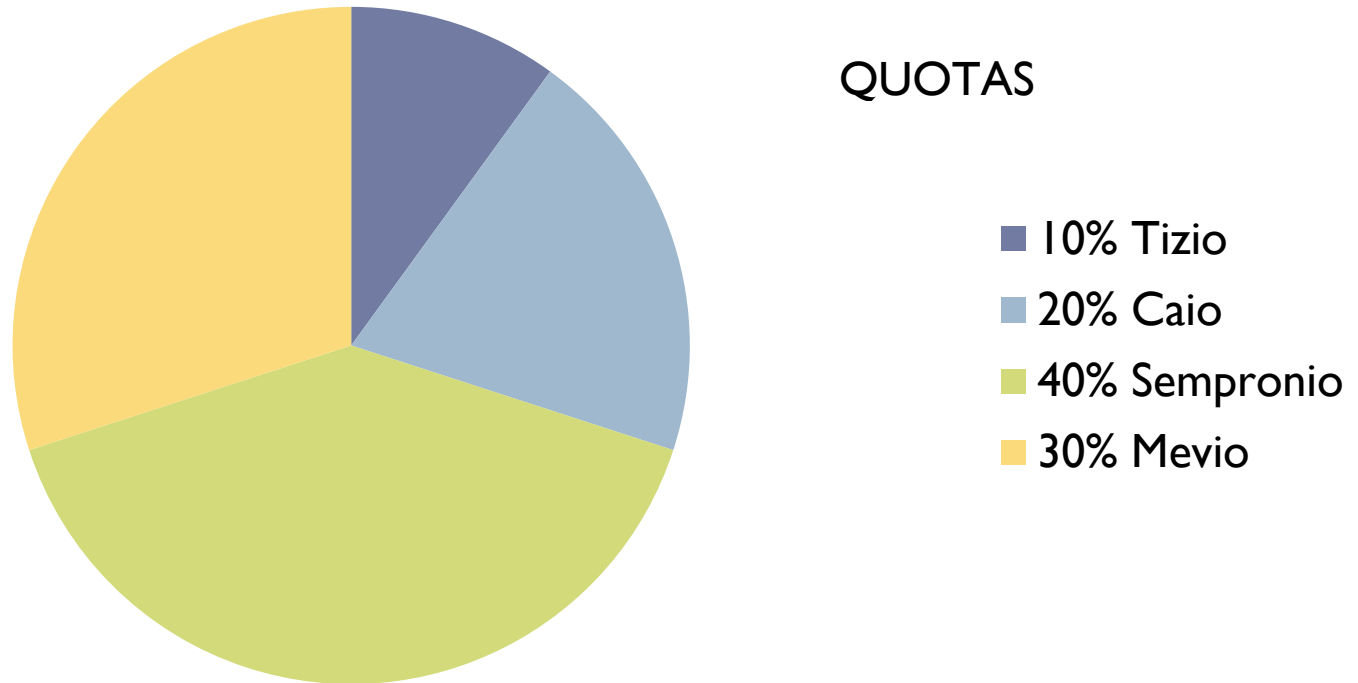
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## **CAPITAL of S.P.A.**



e.g. The capital stock amounts to EURO 29,045,044.98 (twentyninemillionfortyfivethousand fortyfour point ninetyeight) and is divided into 484,084,083, common shares stock of nominal value, EURO 0.06 (zero point zero six euro) each (Luxottica Group s.p.a.)

## CAPITAL OF S.R.L.



## SUBSCRIBED CORPORATE CAPITAL

e.g. capital stock 10.000 euros

Tizio pays 1.000; Caio pays 2.000; Sempronio pays 4.000; Mevio pays 3.000

# Limited liability company

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- ▶ Lower corporate capital
- ▶ Lower operating costs
- ▶ Lower costs of formation
- ▶ Greater organizational and decision making flexibility



# Limited liability company

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QUOTAHOLDERS

DIRECTORS



# Limited liability company

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## ► CORPORATE BODIES



**BY-LAWS**



# Limited liability company

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- ▶ Quotaholders decide on:
  - ▶ Matters reserved to their decision by the bylaws
  - ▶ Financial statements
  - ▶ Dividend distribution
  - ▶ Appointment of directors
  - ▶ Appointment of audit/supervisory body if needed
  - ▶ Amendments of articles of association
  - ▶ Operations that may imply a modification of the purpose of the company or the modification of the rights of the quotaholders





# Limited liability company

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- ▶ Topics submitted to their approval by directors or 1/3 quotaholders

≠ companies limited by shares

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## Quotaholders

- ▶ Every vote counts proportionally to the quota
- ▶ Decide with the favorable vote of them who represent at least  $\frac{1}{2}$  of the corporate capital
- ▶ **Don't decide always through a resolution adopted by the meeting**
- ▶ **The meeting is necessary if:**
  - ▶ **Amendments of articles of association**
  - ▶ **Modification of the corporate purpose**
  - ▶ **Request of director(s)**
  - ▶ **Request of quotaholders who represent  $\frac{1}{3}$  corporate capital**



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## **Quotaholders' meeting**

- ▶ By-laws
  - ▶ 8 days before the meeting notice of calling
  - ▶ Proxy
  - ▶ Constitution majority:  $\frac{1}{2}$  corporate capital
  - ▶ Resolution majority 50%+1
  - ▶ Chairman
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- ▶ Totalitarian ( $\neq$  companies limited by shares)



# Limited liability company

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## **Invalidity of resolutions**

- ▶ Voidability within 90 days
  - ▶ By every quotaholder, by directors, board of statutory auditors
- ▶ 3 years if void because of
  - ▶ Illegal or impossible object
  - ▶ Absence of information
- ▶ Forever if
  - ▶ Modifies the corporate purpose providing for impossible or illegal activities



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## **Invalidity of resolutions**

- ▶ *Sanatoria* if a new decision is adopted which is appropriate to eliminate the cause of invalidity

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## MANAGEMENT

- ▶ To one or more quotaholders
- ▶ To no quotaholder (by-laws)
- ▶ If more directors are appointed, they form the Board of directors BUT the articles of association can set forth that the management is granted to them severally or jointly



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## ▶ MANAGEMENT

- ▶ Not always collegial method

## ▶ But

- ▶ Financial statements
- ▶ Merger/demerger
- ▶ Capital increase



# Limited liability company

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- ▶ **REPRESENTATIVE POWER**
- ▶ 2475 BIS C.C. = companies limited by shares





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## MANAGEMENT

- ▶ No term of expiry
- ▶ The law doesn't set forth any requirement of eligibility or incompatibility, or anything about the cessation



Which rules shall be applied?

The ones set forth for companies limited by shares or the ones set forth for partnerships?

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## MANAGEMENT

- ▶ Conflict of interest
  - ▶ Voidability if the third party was aware of the conflict of interest and
  - ▶ Detrimental operation



# Limited liability company

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## MANAGEMENT

- ▶ Liability (2476)

- ▶ Violation of duties

- ▶ Severally liable

- ▶ Not the ones who can show they are not fault and have expressed disagreement before the action

- ▶ Every quotaholder

- ▶ Removal



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## MANAGEMENT

2476, 7° co.: liability of the **quotaholders** who intentionally have decided or authorised the carrying out of act detrimental for the company



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## “SUPERVISORY BODY”

- ▶ **Mandatory only if:**
  - ▶ Articles of association
  - ▶ The company is required to draft consolidated financial statements
  - ▶ Controls a company required to carry out the statutory auditor
  - ▶ Exceeding of limits for abridged financial statements for 2 financial years

 Applicable provisions for the board of statutory auditors

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- ▶ supervision by quotaholders
- ▶ 2476: entitled to control
  - ▶ ≠ companies limited by shares

# LIMITED LIABILITY COMPANIES

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## ▶ 2473 c.c. - WITHDRAW

- ▶ Stated by the law that cannot be derogated
  - Also merger/demerger
  - Operations which have as a consequence the change of the article of association
- ▶ Stated by the by-laws

## ▶ terms and conditions for the exercise - **bylaws**

- ▶ Revoke of the resolution
- ▶ Winding-up
- ▶ Redemption of shares

## ▶ Redemption - value

# LIMITED LIABILITY COMPANIES

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- ▶ Redemption - 180 days
  - ▶ Quotaholders
  - ▶ Third party (chosen by the quotaholders)
- ▶ Available reserves
- ▶ Capital decrease
  - ▶ Winding-up





# LIMITED LIABILITY COMPANIES

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## ▶ **Exclusion**

- ▶ By-laws
- ▶ Just cause
- ▶ Redemption

