

ISTRUZIONI PER LE LEZIONI ONLINE

REGISTRATE E TRASMESSE TRAMITE MICROSOFT TEAMS



NON REGISTRARE

Non registrare le lezioni con dispositivi esterni alla piattaforma. Ricorda che **è vietato registrare esami o sessioni di laurea.**



TUTELA LA TUA IMMAGINE

Se non vuoi apparire nella registrazione della lezione **disabilita o copri la webcam.**

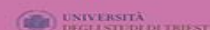


STUDENTI E STUDENTESSE



TUTELA I TUOI DATI

Non usare la piattaforma o la chat per **comunicazioni non pertinenti** alle lezioni, per finalità estranee o per domande personali.



TUTELA IL CONTESTO

Disabilita il microfono se non necessario e usa la funzione **sfocatura dello sfondo** se attivi la videocamera. Presta attenzione ai contenuti presenti nel campo di ripresa.



ITALIAN AND EUROPEAN COMPANY LAW

AA 2021/2022

JOINT STOCK COMPANIES

Limited liability company

(Società a responsabilità limitata S.R.L.)

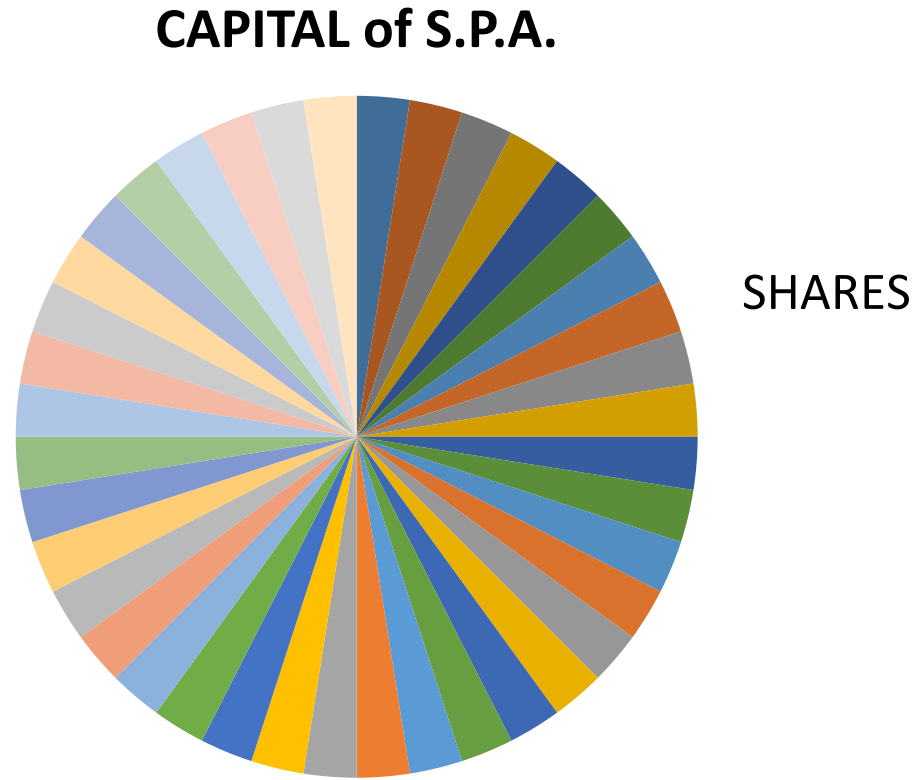
General remarks

- LIMITED LIABILITY
- NO SHARES (quotas may not be represented by shares nor be offered to the public as financial products)
- WEAKENING OF THE STRUCTURAL RIGIDITY
- LARGE STATUTORY AUTONOMY

Limited liability company

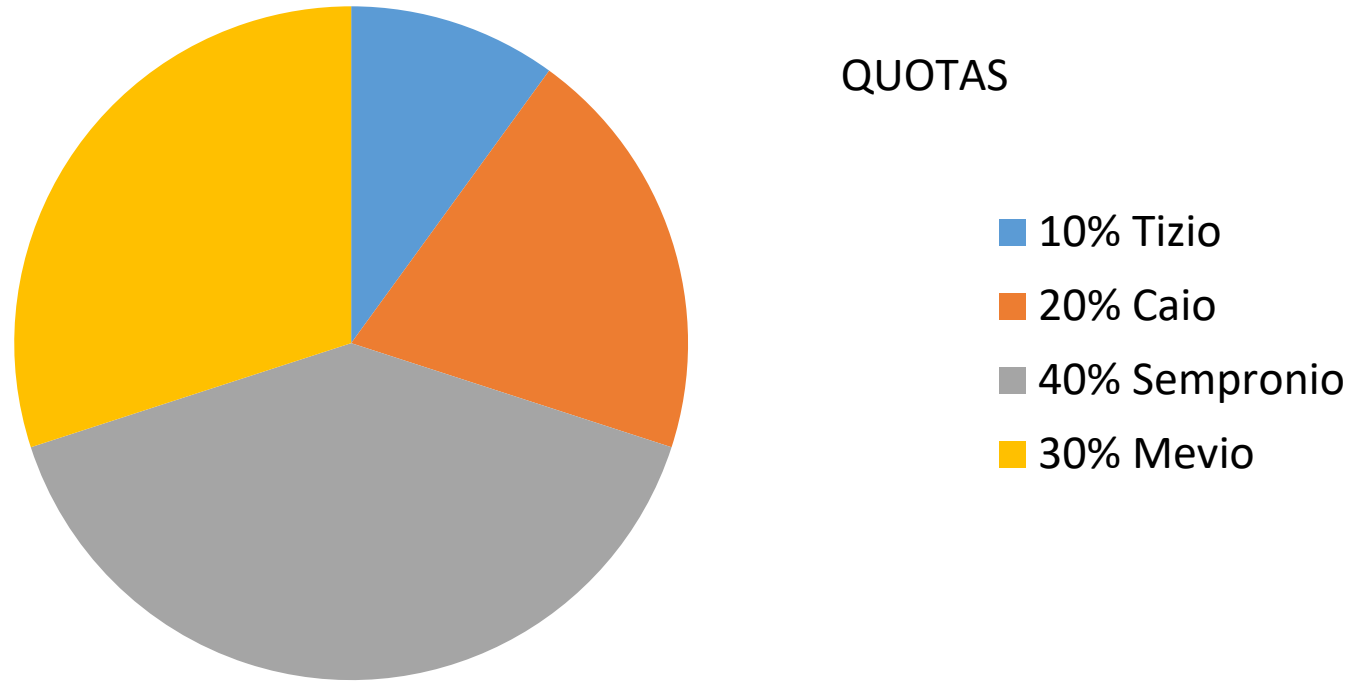
- Lower corporate capital
- Lower operating costs
- Lower costs of formation
- Greater organizational and decision making flexibility

General remarks



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

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

MAIN SIMILARITIES

S.R.L. & S.P.A

- CAPITAL
- CORPORATE STRUCTURE (IF NOT DEROGATED)
- WINDING-UP/LIQUIDATION

S.R.L. & PARTNERSHIPS

- CORPORATE STRUCTURE (IF DEROGATED)
- CONTRIBUTIONS (WORK&SERVICES) but...
- NO DEBT SECURITIES (but professional investors) OR SHARES
- «Particular rights» granted to quotaholders
- Circulation (but withdrawal right)
- Control of the quotaholder as individual
- Exclusion

Limited liability company

QUOTAHOLDERS

DIRECTORS

Limited liability company

- CORPORATE BODIES
- FLEXIBILITY



INSTRUMENT OF INCORPORATION/ARTICLES OF ASSOCIATION

Limited liability company

- 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

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

≠ companies limited by shares

Limited liability company

Quotaholders

- Every vote counts proportionally to the quota
- **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 **1/3 corporate capital**

Limited liability company

Quotaholders' meeting

- Articles of association
 - 8 days before the meeting notice of call
 - Proxy
 - Constitution majority: $\frac{1}{2}$ corporate capital
 - Resolution majority 50%+1
 - Chairman
-
- Plenary (\neq companies limited by shares)

Limited liability company

Invalidity of resolutions – similar to s.p.a.

- 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

Limited liability company

Invalidity of resolutions

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

Limited liability company

MANAGEMENT

ART. 2475 C.C.- Amministrazione della società (testo riformato dal d.lgs. n. 14 del 2019 e dal d.lgs. n. 147 del 2020)

[I]. L'istituzione degli assetti di cui all'articolo 2086, secondo comma, spetta esclusivamente agli amministratori. Salvo diversa disposizione dell'atto costitutivo, l'amministrazione della società è affidata a uno o più soci nominati con decisione dei soci presa ai sensi dell'articolo 2479.

[omissis]

Limited liability company

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

Limited liability company

- MANAGEMENT
 - Not always collegial method
- But
 - Financial statements
 - Merger/demerger
 - Capital increase

Limited liability company

- REPRESENTATIVE POWER
 - 2475 BIS C.C.

Limited liability company

MANAGEMENT

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

Limited liability company

MANAGEMENT

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

Limited liability company

MANAGEMENT

- Liability (2476)
 - Violation of duties
 - Severally liable
 - Not the ones who can show they are not at fault and have expressed disagreement before the action
- Removal

Limited liability company

- Liability action
 - Company
 - Every quotaholder
 - Individual
 - Creditors

Limited liability company

MANAGEMENT

- Art. 2476 - Responsabilità degli amministratori e controllo dei soci (testo riformato dal d.lgs. N. 14 del 2019)

[omissis]

[VI]. Gli amministratori rispondono verso i creditori sociali per l'inosservanza degli obblighi inerenti alla conservazione dell'integrità del patrimonio sociale. L'azione può essere proposta dai creditori quando il patrimonio sociale risulta insufficiente al soddisfacimento dei loro crediti. La rinuncia all'azione da parte della società non impedisce l'esercizio dell'azione da parte dei creditori sociali. La transazione può essere impugnata dai creditori sociali soltanto con l'azione revocatoria quando ne ricorrono gli estremi.

[omissis]

Limited liability company

MANAGEMENT

2476, 8° co.: liability of the **quotaholders** who intentionally have decided or authorised the carrying out of act detrimental for the company, the shareholders or the third parties

Limited liability company

“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:
 - 1) totale dell'attivo dello stato patrimoniale: 4 milioni di euro;
 - 2) ricavi delle vendite e delle prestazioni: 4 milioni di euro;
 - 3) dipendenti occupati in media durante l'esercizio: 20 unità



Applicable provisions for the board of statutory auditors

Limited liability company

- supervision by quotaholders
 - 2476: EVERY QUOTAHOLDER is entitled to control
 - ≠ companies limited by shares

Limited liability company

- 2467 c.c. – QUOTAHOLDER LOANS
- Repaid after the pay-off of the creditors' claims (and, if paid in the previous year from the bankruptcy declaration, it must be paid back)
- *But* v. art. 8 d.l. 8 aprile 2020, n. 23, conv. con modif., in l. 5 giugno 2020, n. 40 (COVID emergency law)

See also art. 164 Codice della Crisi d'Impresa e dell'Insolvenza (in force May 2022)

LIMITED LIABILITY COMPANIES

- Amendments
- 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 business purpose or the particular rights
 - 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

- Redemption - 180 days
 - Quotaholders
 - Third party (chosen by the quotaholders)
 - Available reserves
 - Capital decrease
 - Winding-up
- Increase and reduction of the capital

LIMITED LIABILITY COMPANIES

- **Exclusion**

- By-laws
- Just cause
- Redemption