

Companies limited by shares

Italian and European Company Law – A.A. 2024/2025

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Shares

Shares are the quota held by shareholders in companies limited by shares (and also in s.a.p.a.).

Their sum represents the share capital of the company, and the share capital is divided into shares of equal value, so each share represents the same portion of the nominal share capital.

Art. 2346, par. 4, c.c.

Each shareholder is granted a number of shares proportional to the portion of the share capital subscribed and for a value not exceeding that of his contribution.

The bylaws (statute) may provide for a different allocation of shares.

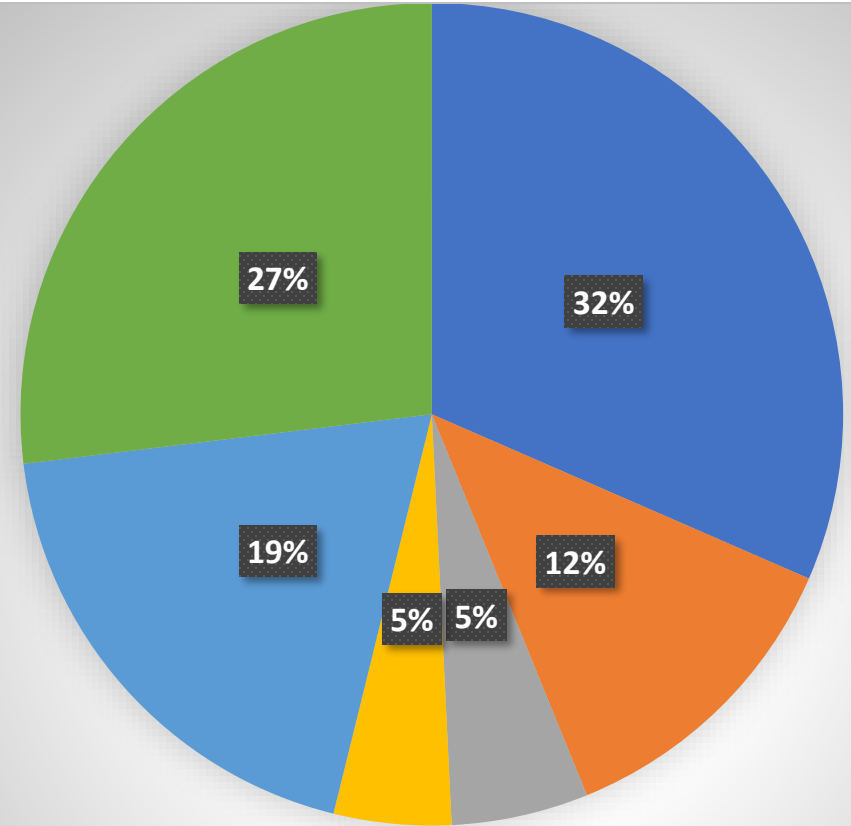
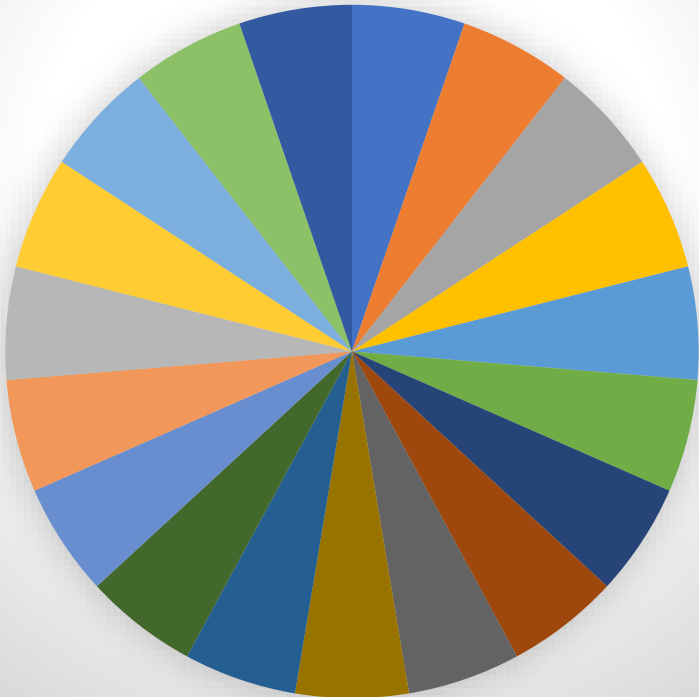
Main features of share:

- have the same value
- grant the same right
- are independent and indivisible
- circulate freely on a so-called certificate-holder basis

Shares have the same value (2348, par. 1, c.c.)

s.p.a.

Share capital: 100.000 EUR divided into
20 shares (each one has the nominal
value of 5.000 EUR)



s.r.l.

Share capital: 100.000 EUR
divided into different quotas

- Shares issued with nominal value
- Shares issued without nominal value

- Nominal value (it's the part of the share capital represented by each share and expressed in money)
- Real value (also financial statement value, it's determined by the net asset divided by the number of shares)
- Market value (listed share, it's the exchange price of the shares resulting from official stock exchange listings)

Equality of rights conferred to the shareholders (2348, par. 1, c.c.)...

→ each share grants the owner a set of administrative rights, rights which regard to the assets and mixed rights (regarding both administration and assets, e.g., pre-emption right)

→ Relative equality (2348, par. 2, c.c.: s.p.a. could create different categories of shares that grant different right)

→ Objective equality (not subjective...rights may depend on the number of shares held)

From a subjective point of view, shareholder rights may be distinguished into four categories:

- a) Rights independent of the number of shares held
- b) Rights that compete only if one owns a given percentage of the share capital
- c) Rights that compete only if one holds a shareholding for a given period
- d) Rights that compete to each shareholder in proportion to the number of shares held

→ Indivisibility of the share

→ Independence of the shares

Ordinary shares and special categories of shares

→ Ordinary shares are those provided with the typical rights stated by law.

→ Special shares are provided with rights other than those typically provided by law. They can be created by statute or a subsequent amendment to it.

The creation of **special categories of shares** involves a change in the internal organization of the company.

In fact, if there are special categories of shares, resolutions of the general meeting that undermine the rights of a category must also be approved by the meeting of the special category concerned.

- Some special categories of shares are provided by law
- Others special categories of shares can be issued with wide autonomy by the company with observance of certain legal limits (2348, par. 2, c.c.)
- All the shares belonging to the same category must grant the same rights (2348, par. 3, c.c.)

Special share categories and voting rights (2351 c.c.)

- *One share one vote* principle (derogable by statute)
- shares without voting right
- shares carrying voting rights limited to specific matters
- shares granting voting right upon the occurrence of certain events (not merely potestative)
- limit provided by art. 2351, par. 2, c.c.: the value of these shares may not exceed 50% of the share capital

→ Voting rights may be limited up to a certain cap or based on a staggering mechanism (scaled vote) in relation to the number of shares held by a single person

(these are not a special category of share because are not inherent to the share itself, but may be provided in relation to the number of shares held)

→ Not listed companies: share granting multiple voting rights (not more than 10 votes) also limited to specific matters or that can be exercised upon the occurrence of certain events (not merely potestative). **[new art. 2351, par. 4, c.c., introduced by the so-called Legge capitali]**



→ Listed companies are not allowed to issue this kind of share. They could grant an increased vote (*voto maggiorato*, art. 127-*quinquies*, t.u.f.) to those who have owned the shares for a certain amount of time (but this is not a special category of shares because the benefice is attributed to the shareholder, not to the shares).

Special share categories and rights which regard to the assets (2350 c.c.)

→ Each share give the right to a proportional part of the net profits (dividendo) and of the shareholders' equity resulting from liquidation (also this rule can be derogated).

→ Preferred shares: shares carrying rights of preference in the distribution of profits

→ Shares deffered in losses

→ Limit: leonine pact

→ Listed companies: dividend increase (art. 127-*quarter*, t.u.f.)

→ Tracking shares: shares that grant economic rights linked to the performance of the company's activity in a given business sector (art. 2350, par. 2, c.c.)

→ Savings shares (listed companies, 145 t.u.f.)

1. Italian companies with ordinary shares listed on regulated markets in Italy or other countries of the European Union may issue shares without voting rights, which granted special asset privileges.

2. The articles of association shall determine the content of the privilege, the conditions, limits, terms and modalities for its exercise; it shall also determine the rights due to savings shareholders in case of exclusion from trading of ordinary or savings shares.

- Workers' shares (2349 c.c.)
- Dividend-bearing shares (2353 c.c.)
- Shares carrying ancillary obligations (2345 c.c.)

Circulation of shares

Shareholding can be represented by share certificates (art. 2346, par. 1, c.c.).

Different rules apply to the circulation of shares depending on whether or not certificates have been issued. In addition, different rules apply to open and listed companies.

If the company has not issued share certificates, the transfer of shares will apply the rules provided for the transfer of the contract (art. 1406 et seq., c.c.) and it's effective for the company from the time of the recording in the shareholders' register (art. 2355, par. 1, c.c.).

Share certificates

Share certificates are documents that represent the shareholding. In other words, shares are incorporated into the document.

More exactly, they are securities (titoli di credito) which are based on a contractual relationship (titoli di credito causali), which is mentioned on the certificate they are represented by. The rights and undertakings incorporated in the shares are not simply those mentioned on the certificate: they also include the rights and undertakings governing the relationship between the original holder and the issuer.

In principle, shares may be registered (nominative, they must be issued in the name of a natural or legal person) or issued to the bearer (al portatore, they are not issued in the name of any person).

As a matter of fact, however, a number of special laws reduce issuers' freedom on this point, providing that shares shall always be registered, with only a few exceptions, the most relevant of which refers to fully paid-up savings shares.

→ Art. 2354 c.c.

If shares are issued to the bearer, they may be transferred by a simple delivery of the share certificate.

In the other cases, if the company has issued the share certificates, the shareholdings can be transferred in two ways.

→ The so-called *transfert*: this procedure requires the change of the holder's name both on the certificate share and on the shareholders' ledger, and only then the shareholder can exercise the rights related to the shareholding (it is not widely used, because involving the company in any share-transfer is inefficient exercise).

→ The so-called *girata*: 1. the parties mention the transfer of the shares on the share certificate and sign it before a notary or another public official; 2. the buyer show the share certificate to the company which has to check the continuous series of signatures. In this case the shareholder can exercise the rights although his name has not yet been recorded in the shareholders' ledger (the company is obliged to update the register, but the member's registration has no legitimizing effect in relation to the exercise of rights).

Transfer of listed shares is performed by means of an electronic system whereby each transaction is registered in accounts opened in the name of the seller and the buyer by financial intermediaries (dematerializzazione dei titoli).

Restrictions to the transfer of the share:

a. legal restriction

1. shares paid for with contributions other than money may not be transferred before the relative valuation has been checked by the directors.

2. shares with ancillary services may be not transferred without the approval of the board of directors.

b. restrictions provide by the articles of association for registered shares and when no share certificated are issued (art. 2355-*bis* c.c.)

- Clauses forbidding transfer (maximum 5 years)
- Pre-emption clauses
- Acceptance clauses (not mere approval and mere approval, in the last case in case of refusal of approval there must be provided an obligation for the company to purchase the shares or a right of withdrawal of the transferor)
- Redemption clauses

c. restrictions contained in shareholders' agreements (so-called blocking syndicates)

→ different effects of the breach: enforceability

Company transactions involving own shares

1. Subscription of own share is forbidden without exception.

Imagine that the company issues shares with a value of 1000 and that the company itself subscribes for them. The company will advance 1000 from itself and the credit will be offset ($+1000 - 1000 = 0$). It's a zero-sum operation...No capital contribution, no real capital increase (just nominal capital).

Effects of the breach of the ban: who will pay for these shares?

→ subscription remain valid (to enable the company to acquire the contributions)

→ in the case of direct subscription at the moment of incorporation, shares must be paid up by the founding shareholders;

→ in the case of direct subscription at the moment of a share capital increase, shares must be paid up by the directors;

→ in the case of indirect subscription, the persons who have subscribed the shares in their own name but on behalf of the company will be considered subscribers for all purposes. They will be jointly and severally liable, together the founders/directors, for paying up the shares.

2. Purchase of own share (here we have shares that are already issued and are owned by someone).

We have more or less the same problem...

Imagine that you have a nominal capital share of 1,000 and a real capital of 1,000. If company use this 1,000 to buy the shares the nominal capital remains 1,000 but the real capital would be zero (the company is basically repaying the contributions).

But in certain cases, these kinds of operations can benefit society.

Moreover, in this case problems can be avoided with certain expedients, and the law provides some rules to the purchase of own shares.

Art. 2357 c.c.

1. Company can use only certain sums
2. The shares to be purchased must be fully paid-up
3. Resolution of the ordinary shareholders' meeting

→ In the case of breach of these rules must be sold within one year, otherwise company will have to cancel the shares and reduce the capital share

→ Exceptions to the application of these rules, art. 2357-*bis*, c.c. (e.g., purchase of shares to decrease the share capital)

Rules on the exercise of certain rights in the case of own shares (which aim to prevent the control of these rights by the directors)

→ voting rights are frozen

→ dividend and pre-emption rights are split proportionally between the other shares

→ to dispose of these shares (for example, to sell them), directors must obtain an authorization from the shareholders' meeting