

Companies limited by shares

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

Dott.ssa Giulia Serafin

Alternative Administration and Control Systems

Administration and control systems:

→ traditional system (administrative body and board of statutory auditors; default system)

→ two-tier system (supervisory board and management board)

→ one-tier system (board of directors and management control committee)

Two-Tier System

The management board carry out the functions of the board of directors.

The functions of the supervisory board are peculiar, because it is given both the typical functions of the internal control body and some functions that, in the traditional system, are under the responsibility of the shareholders' meeting (and which can also be increased by the bylaws).

The audit of account shall be entrusted, without exception, to an external legal auditor or to an audit firm.

Supervisory board

- Number
- Appointment
- Professionalism, respectability and independence requirements may be provided by the bylaws
- Remuneration
- Duration
- Removal
- Publicity of appointment and termination of office in the Business register

Function

- supervision activities
- it appoints and removes the members of the management board; determines their compensation unless the bylaws attribute this power to the shareholders' meeting
- it approves the financial statements and the consolidated financial statement; the shareholders' meeting maintains the competence to approve the distribution of profits. Also, the bylaws may provide that the financial statements be approved by the shareholders' meeting if the supervisory board fails to approve them or when a request is made by at least one-third of the members of the management board or of the supervisory board
- it can decide to promote the liability action against the members of the management board, competence that it is also maintained by the shareholders' meeting
- if it is provided by the bylaws, the supervisory board may also pass the resolutions on strategic transactions and on the company's business plans and financial plans drawn up by the management board (liability)

Functioning

- the chair
- meeting
- quorum
- resolution validity
- liability

Management board

- almost all the rules provided for the board of directors in the traditional system will apply
- composition, appointment and removal
- duration of the office
- replacement mechanisms for directors do not apply

Corporate liability action against management directors is specifically regulated in some respects (art. 2409-*decies* c.c.):

- the action can also be promoted by the supervisory board

- removal

- renunciation and settlement of the liability action by the supervisory board

One-Tier System

This system is characterized by the absence of the board of statutory auditors.

The management is exercised by the board of directors and the control by a management control committee, which is established within the first and performs the functions of the board of statutory auditors.

The audit of account shall be entrusted, without exception, to an external legal auditor or an audit firm.

Board of directors

- the rules provided for the board of directors in the traditional system will apply as they are compatible
- the members of the internal committee that performs the functions of the board of statutory auditors (management control committee) are appointed among the members of the board of directors
- at least one third of the members of the board of directors must meet the independence requirements established for statutory auditors (in listed companies s. art. 147-*ter* tuf)
- in listed companies one directors must appoint by the minority throughout the list voting mechanism

Management control committee: functions

Its role corresponds to that of the board of statutory auditors, it supervises compliance with the law and the bylaws, supervises the adequacy of the company's organizational, administrative and accounting system.

Complaints may be submitted to it by shareholders under Article 2408 of the Civil Code, and it may submit the complaint to the court under Article 2409 of the Civil Code.

MCC shall perform such other duties as may be entrusted to it by the board of directors.

MCC shall attend shareholders' meetings and meetings of the board of directors.

For listed companies, information flows between committee, board of directors, external auditor are regulated more specifically.

Functioning

- the chair
- meeting
- quorum
- convocation at the request of a member

Appointment

- the board of directors determines the number of members; for open companies limited by shares cannot be less than three members
- unless otherwise provided in the bylaws, the members of the committee must be chosen from among the members of the board of directors who meet the requirements of independence (and the requirements of honorability and professionalism that may be established in the bylaws)
- at least one member must be chosen from among those who are registered in the Official Registry of legal auditors
- in listed company members of MCC have to meet the professional and honorability requirements provided for the statutory auditors of the listed company (and the chairman of the committee must be appointed among the members chosen by the minority)

Removal

- although the law does not specify it, it is believed that the board of directors can remove committee members, even without just cause (they will maintain the position of director, which can be removed only by the shareholders' meeting)
- in addition to this, it must be considered that the shareholders' meeting has the power to remove directors, who will then also lose their committee member status

Replacement

- In all cases in which a member of the MCC ceases to hold office, he/she will be replaced by the board of directors from among members with the requirements provided by the law
- If there are no eligible directors (because no one is qualified), the board of directors shall co-opt new directors (Article 2386 c.c. applies)