

Companies limited by quotas

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

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Main features of CLQ:

Article 2462, par. 1, c.c.

→ liability for company obligations:

Article 2468, par. 1, c.c.

→ quotaholders' equity stakes cannot be represented by shares and nor may they be offered to the public as financial products

Main benefits:

- lower capital requirements
- lower operating and incorporation costs
- greater organizational flexibility

Incorporation

Incorporation

- The incorporation by public subscription is not allowed
- Minimum capital required: 10.000 Euro
- The company name can be freely determined but must contain the term s.r.l.
- Companies limited by quotas can be incorporate also without a timelimit
- The instrument of incorporation must been drawn up in the form of a public deed

→ The instrument of incorporation can have the form of an agreement or of a unilateral act (art. 2463, par. 1, c.c.)

→ In the last case we will have a single-member company, but some specific rules will apply with regard to:

a) contribution (art. 2464, par. 4 and 7, c.c.)

b) publication (art. 2470, par. 4-7, c.c.)

→ unlimited liability of the sole quotaholder if he/she fails to fulfill his/her obligations under the previous rules

→ Content of the instrument of incorporation: 2463, par. 2, c.c.

Article 2463, par. 3, states that Articles 2329, 2330, 2331, 2332 [and 2341] apply to the CLQ

- 2329: Incorporation requirements
- 2330: Filing the instrument of incorporation and registering the company
- 2331: Effects of the registration
- 2332: Nullity of the company

Contributions

Article 2464, par. 2, c.c., states that «any asset item which can be valued may be contributed».

→ cash

→ assets in kind and receivables

→ work and services

→ general rule to grant the integrity of the capital:
the total value of contributions cannot be lower than
the total amount of the company's capital

Contributions in cash

- default rule (unless otherwise stated in the instrument of incorporation, contribution must be made in cash)
- at the time of incorporation is required the payment at least of 25% of the cash contribution (100% in the event of a single-member CLQ); paid directly to the directors appointed in the instrument of incorporation
- the payment can be replaced by an insurance policy or a bank guarantee of at least the same amount (and then they can also be replaced at any time by paying the corresponding amount in cash)

Contributions of assets in kind and receivables (art. 2465 c.c.)

→ sworn report by a legal auditor or an audit firm
(enrolled the Register of Legal Auditors)

→ content and purpose

→ check by the directors?

→ Potentially Risky Acquisitions (art. 2465, par. 2 and 3,
c.c.)

- procedure of valuation

- authorization (derogable)

Contributions of work and services

- in this case, the quotaholder obligates himself to work for the company or to give his services to the company
- these kind of contributions must be guaranteed through an insurance policy or a bank guarantee (if it is provided for by the instrument of incorporation the guarantee can be replaced by paying the correspondent amount to the company in cash, as a security (cauzione))
- even though the law does not provide for it, it is believed that these contributions should be subjected to estimation

Failure to make contributions (art. 2466 c.c.)

- formal notice from directors (30 days to make the contributions)
- if the deadline elapses, the quota can be sold
- exclusion of the quotaholder and capital reduction
- these rules apply also if the insurance policy or the bank guarantee expires or becomes invalid

Minimum capital required: 10.000 Euro...

→ at the time of incorporation, it can also be determined in a smaller amount, as long as it is equal to one euro: SRL with a reduced capital (art. 2463, par. 4 and 5, c.c.)

→ in this case, contributions must be made in cash and must be fully paid up

→ special rules about the legal reserve formation apply

Simplified SRL (art. 2463-*bis* c.c.)

- Can be established by agreement or unilateral act only by natural persons
- the company name must contain the indication SRLS
- the capital must be at least one euro and less than ten thousand euros
- only cash contributions are allowed, which must be fully paid up
- must be incorporated by a public deed, but is exempted from registration fees in the Business register
- the notary's fee is not due
- the instrument of incorporation must be drafted in accordance with the standard model provided for by a special decree of the Minister of Justice (the clauses of the standard model are mandatory)
- even though the law does not provide for it, it is believed that the special rules about the legal reserve formation for the SRL with a reduced capital apply

Quotaholder loans (art. 2467 c.c.)

→ repayment of quotaholder loans is subordinated to the other creditors payment if...

→ loans (in any form) that are given when there is an excessive imbalance between the company's level of debt and its equity or if, considering the company's financial situation, a contribution would have been more reasonable

Debt securities (art. 2483 c.c.)

- provision in the instrument of incorporation
- body responsible
- resolution content
- limit to circulation
- change to the term or to the conditions

Equity stakes

- personalistic criteria
- quotas can be very different from each other

The value of the quotas is proportional to the contributions, but the instrument of incorporation may provide that the value of the quotas can be also determined in a manner that is not proportional to the contributions.

Article 2468, par. 3, c.c.

The instrument of incorporation may grant to individual quotaholders special right regarding the running of the company or the distribution of profits.

→ circulation of special rights

Transfer, effectiveness and publicity of quotas (art. 2469 and 2470 c.c.)

- quotas are freely transferable unless otherwise provided in the instrument of incorporation (limits to the circulations and the right of withdrawal)
- the transfer takes effect in respect of the company only when it is filed in the Business register (form required: certified deed by a notary)
- conflicts among several buyers
- in the case of transfer, the transferor shall be jointly and severally liable with the purchaser for any payments still due, for a period of three years from when the transfer is recorded in the Business register (art. 2472, c.c.)

For Companies limited by quotas, it is absolutely forbidden to subscribe or purchase their own quotas, accept their own quotas as collateral, or provide guarantees for their purchase or subscription (art. 2474 c.c.).

Art. 100-ter, TUF

Notwithstanding the provisions of Article 2468, first paragraph, of the Civil Code, quotas in companies limited by quotas may be subject of public offerings of financial products, including through crowdfunding platforms, within the limits provided by Regulation (EU) 2020/1503 on European crowdfunding service providers for business.

Alternative quotas circulation scheme

As an alternative to the provisions of Article 2470, second paragraph, of the Civil Code and Article 36, paragraph 1-bis, of Decree-Law No. 112 of June 25, 2008, converted, with amendments, by Law No. 133 of August 6, 2008, as well as, in reference only to the units representing the capital of small and medium-sized enterprises, by article 26, paragraph 2-bis, of decree-law no. 179 of 18 October 2012, converted, with amendments, by law no. 221 of 17 December 2021 for the subscription and subsequent transfer of quotas representing the capital of companies limited by quotas:

- the subscription may be made through financial intermediaries
- intermediaries shall carry out the subscription of the quotas in their own name and on behalf of the subscribers or purchasers who have joined the crowdfunding offer
- within 30 days after the closing of the offering, licensed intermediaries shall file in the Business register a certification attesting their ownership on behalf of third-party
- the transfer of quotas by a subscriber or subsequent purchaser takes place by simply recording the transfer in the records kept by the intermediary
- The execution of subscriptions, purchases and disposals of financial instruments issued by companies limited by quotas or of quotas representing their capital, carried out in the manner described, does not require the conclusion of a written contract

Withdrawal (art. 2473 c.c.)

- grounds of withdrawal provided by the articles of associations
- grounds of withdrawal by the law (mandatory)
- ground of withdrawal if the company has been incorporated with an indefinite duration

- when the right of withdrawal cannot be exercised

Reimbursement of the quota

- the value is determined in proportion to the company's assets, taking into account its market value
- if there is disagreement on the determination of the value, it is determined by an expert appointed by the court
- repayment must be made within 180 days of the notice made to the company

The quota of the member who has exercised the right of withdrawal is:

(a) offered to the other quotaholders in proportion to their quota or to a third party identified by the quotaholders

(b) if there are no buyers, repayment is made using the company's available reserves, or if there are none, through a capital reduction

(c) if the reduction is not possible, the company is dissolved

Exclusion

Article 2473-*bis* states that the instrument of incorporation may state specific grounds of exclusion for just cause.

Quotaholders' decisions

Art. 2479 c.c.

- Decisions on matters that are reserved to the quotaholders
- Others matters provided in the instrument of incorporation
- Items that one or more directors or the quotaholders representing at least $\frac{1}{3}$ of the quota capital submit for their approval

- Collegial decision-making method (default rule)
- Other methods: written consultation or consent expressed in writing (in this case, decisions are adopted with the approval of the majority representing half of the quota capital)
- Matters in which there must be adopted the collegial decision-making method

Quotaholders' meeting procedure

- it is left to the instrument of incorporation the determination of the manner of calling the meeting
- if nothing is provided for in the instrument of incorporation, the meeting is called by the directors with a registered letter (sent at least eight days before the meeting)
- if the instrument of incorporation do not provide otherwise, the meeting shall be held at the registered office
- chair and resolution minute

- All quotaholders may attend the meeting
- unless the instrument of incorporation provide otherwise, the member may freely be represented at the meeting
- the right to vote is proportional to the stake

Quorum:

- the meeting is duly constituted with the presence of many members who represent at least half of the quota capital and passes resolutions with the absolute majority of the capital present in the meeting (50%+1)
- for some decision a higher majority is required (changes to the instrument of incorporation, decision to complete operation that would substantially change the company object or that would significantly alter quotaholders' right): positive vote of quotaholders representing a majority of the capital
- Plenary quotaholders' meeting

Invalidity of quotaholders' decisions

→ Annulability:

- decisions that are not taken in accordance with the law or the instrument of incorporation may be appealed by the quotaholders who did not consent to them (absent, dissenting, and abstaining), by each director, and by the board of statutory auditors
- decisions taken with the determining vote of the quotaholder with a conflict of interest
- within 90 days after the registration of the decision in the book of quotaholders' decisions
- replacement of the invalid decision

→ Nullity:

- Decisions that have unlawful or impossible object
- Decisions made in the absolute absence of information

→ May be appealed by anyone with an interest within three years after the registration of the decision in the book of quotaholders' decisions

Running and monitoring of the company

Directors

→ Art. 2475, par. 1, c.c. states that the directors are responsible for the obligation to establish a suitable organisational, administrative and accounting structure.

→ Art. 2479 allows for quotaholders to contribute to the running of the company.

Indeed, to the quotaholders may be given certain responsibilities...

- matters provided in the instrument of incorporation
- items that one or more directors or the quotaholders representing at least $1/3$ of the quota capital submit for their approval.

→ limits: some matters cannot be assigned to the responsibility of the quotaholders (art. 2479, par. 5, c.c.)

Appointment

- directors must be chosen among the quotaholders (unless otherwise provided in the bylaws)
- exclusive competence of the quotaholders
- recording of the appointment in the Business register
- grounds for ineligibility and removal
- remuneration and non-competition obligation

Duration and termination

→ unless otherwise provided, directors shall hold office without a time limit

→ causes of termination of office: death, withdrawal, removal, expiration of the deadline (if any)

Management systems

- sole director
- board of directors (delegated bodies:
executive committee, managing directors)
- procedure

→ Management model based on powers that are exercised severally or jointly

- instrument of incorporation

- application of articles 2258 and 2259 c.c.

→ limits: certain matters must fall under the responsibilities of the administrative body (art. 2475, par. 5, c.c.)

The power of representation of the directors
(art. 2475-*bis* c.c.)

- instrument of incorporation
- limits on directors' powers

Conflicts of interest (art. 2475-ter c.c.)

→ par. 1: contracts signed by directors (with the power of representation) who have a conflict of interest

→ par. 2: decisions adopted by directors with a conflict of interest

Directors' liability

- liability action on behalf of the company
- liability action by individual quotaholders and third parties
- liability action by company's creditors
- Liability of quotaholders with a management role
(art. 2476, par. 8, c.c.)

Monitoring of management

→ quotaholders role (art. 2476, par. 2, c.c.)

→ statutory auditors and external auditors
(art. 2477 c.c.)

Changes to the instrument of incorporation,
quota capital increase and decrease

Changes to the instrument of incorporation

→ Article 2480 provides that the decision of the quotaholders shall be made with the higher majorities provided for in Article 2479-*bis* and that the procedure provided in the Article 2436 shall apply.

Material quota capital increase

- the decision cannot be implemented until any outstanding contributions have been made in full
- delegated increase of the quota capital (instrument of incorporation)
- right to subscribe (exclusion → right of withdrawal)
- new contributions

Free quota capital increase

- methods

Material quota capital reduction

→ methods

→ execution and opposition of the company's creditors

Quota capital reduction due to losses

→ optional (losses that affect capital by less than one-third)

→ mandatory

- losses that affect capital by more than one-third

- losses that affect capital by more than one-third and affect also the minimum capital required by the law