Company Groups

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

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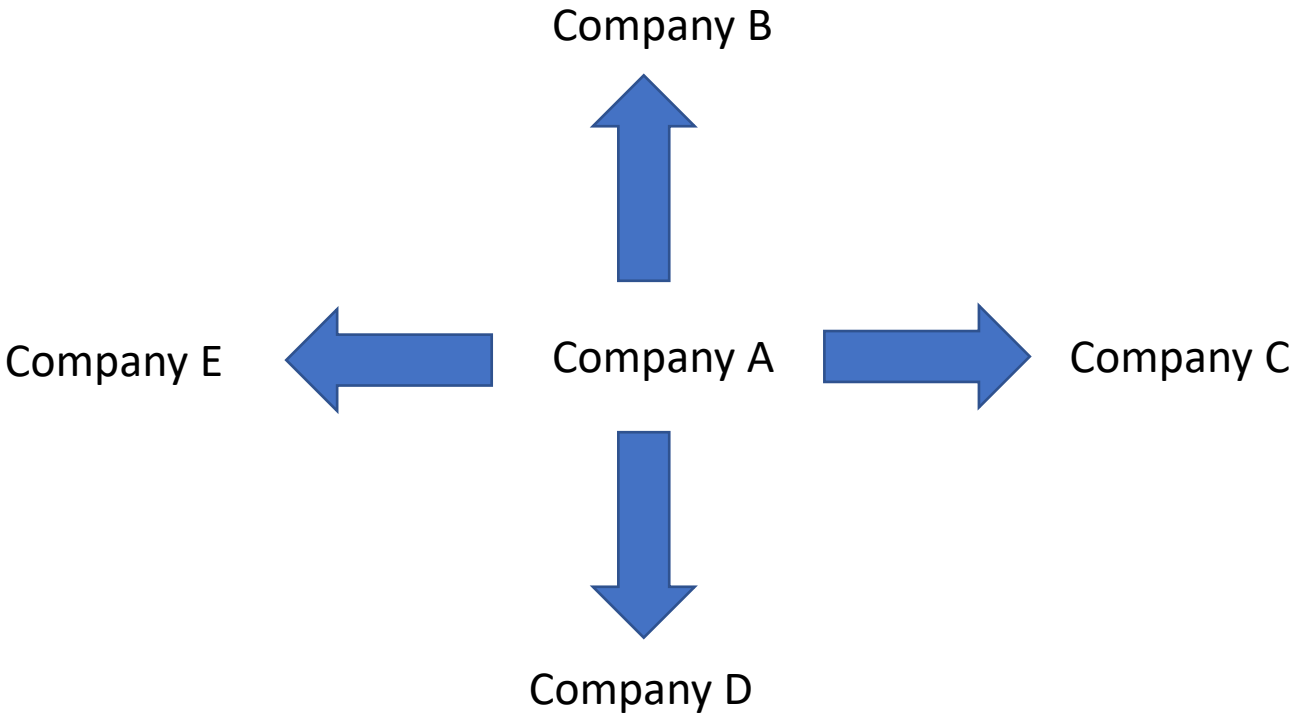
The phenomenon

A company group is a set of companies that maintain their autonomy and independence from a formal point of view, but that are managed under a unified leadership.
All the companies of the group act under the dominant influence of a single company, which controls them (directly or indirectly) and directs them by pursuing a common purpose (the so-called group interest).
By an economic point of view, we have one business activity, but by a legal point of view we have different companies.

Structure and configuration

Groups with a **star structure**



Structure and configuration

Groups with a **chain structure**

Company A  Company B  Company C

Purpose of the regulation governing the company groups:

→ Ensure adequate information on the phenomenon of groups, and the relationship between the companies belonging to the group

→ To prevent choices made in the interest of the group from undermining the interests of those who rely solely on the performance of a specific company that belongs to the group (shareholders and creditors)

→ Preventing cross-shareholdings between companies from undermining the assets of companies involved and from altering the functioning of corporate bodies

Under article 2359, par. 1, c.c., is controlled the company that is under the dominant influence of another company and the latter is therefore able to direct its activities.

1) companies in which another company holds the majority of the voting rights that can be exercised in the ordinary shareholders' meeting (de jure internal control)
2) companies in which another company holds sufficient voting rights to exercise a dominant influence in the ordinary shareholders' meeting (de facto internal control)
3) companies under the dominant influence of another company by virtue of specific contractual obligations with the latter (de facto external control)

Under article 2359, par. 3, c.c., is relevant also the significant influence:
Influence are considered significant when at least 1/5 of the voting rights can be exercised in the ordinary shareholders' meeting or 1/10 in the case of a listed company.

Cross-shareholdings (art. 2359-*quinquies* c.c.)

Subscription by the subsidiary of the capital increase resolved by the parent company is prohibited.
In case of violation, the subscription shall be deemed to be made by the directors of the subsidiary company.

Art. 2359-*bis*, (2359-*ter* c.c.)

Purchase of shares when there is a controlling relationship:

→ the purchase of shares or quotas of the parent company by the subsidiary companies is considered a purchase of its own shares, so it is subject to the same rules:

- shares must be fully paid-up
- limits of the profits available for distribution and available reserves
- the nominal value of the shares purchased must never exceed one fifth of the share capital of the parent company when the latter is an open company (taking into account the shares held also by the parent company and by the other companies that it controls)
- the purchase must be approved by the ordinary shareholders' meeting
- the controlled company cannot exercise the voting rights

Consolidated financial statement is a financial statement drawn up by the parent company, in addition to its own financial statements.
It represents the equity, financial and economic situation of the group considered as a whole and is drawn up on the basis of the financial situation of the group.
It is an instrument of information on the overall situation of the group, and it is regulated by the Italian legislative decree n. 127/1991.

Consolidated financial statements must be drawn up by the parent company when one of the following situations occurs:

- absolute majority of voting rights may be exercised
- a dominant influence may be exercised
- a dominant influence may be exercised due to clauses in article of associations or based on a contract
- the majority of voting rights may be exercised based on shareholder agreements.

The management and coordination activity

The law provide specific rules on:

→ the parent company's liability
→ disclosure that the company belongs to a group
→ the obligation to justify decisions that are influenced by the party managing the company on a unified basis
→ the conditions when it is permitted to exercise a right of withdrawal to the shareholders in the company subject to a management and coordination activity
→ the rules applicable to intra-group financing

When do these rules apply?
From a legal point of view, when is there management and coordination activity and so the rules for groups of companies will apply?

Art. 2497-*sexies* and 2497-*septies* c.c.

The exercise of management and coordination activity by a company is presumed when:

→ there is an obligation to consolidate the financial statements
→ one of the situations provided for in Article 2359 of the Civil Code exists

→ also, it is presumed that there is a management and coordination activity when there is a contract (or clauses in the bylaws) whereby companies agree to conform to a unified direction (so-called joint or horizontal group)

Liability (art. 2497 c.c.)

Companies that manage and coordinate other companies which act undermining the interest of the controlled companies

- are directly liable towards the shareholders of said companies (for any damage caused to the value of their shareholding)
- are directly liable towards the creditors of said companies (for any damage caused to the integrity of company's assets)

Liability is excluded when:

→ the damage is missing in light of the overall results of the management and coordination activity or has been eliminated
→ through specific group operations
the shareholder or creditor has been satisfied by the subsidiary company

Disclosure (art. 2497-*bis* c.c.)

→ indication if the company is subject to the management and coordination activity (documentation and correspondence)

→ Business register: dedicated section for the management and coordination activity

→ directors' liability (towards shareholders and creditors)

Justification of decision (art. 2497-*ter* c.c.)

Decision influenced by the management and coordination activity of the controlled companies must be analitically justified and clear indicating the reasons and the interests that influenced that decision.

Right of withdrawal (art. 2497-quater c.c.)

→ shareholders of a company subject to a management and coordination activity may withdraw when certain events occur affecting the parent company and that result in a change in the original risk conditions of the investment in the controlled company.

Shareholders/quotaholders of a company subject to management and coordination activities may withdraw:

1) if the parent company pass a resolution to transform the company (a transformation that imply a change of its purpose)
2)if the parent company pass a resolution to change the company's object (and doing so alter the economic conditions of the subsidiary company)
3) if in favour of the shareholder/quotaholder there is a decision of the court ex art. 2497 c.c. (direct liability of the parent company towards the controlled companies' shareholders/quotaholders)
4) at the beginning and at the end of the management and coordination activity (this cause of withdrawal doesn't apply to listed companies)

Loans in the context of management and coordination activity (art. 2497-*quiquies* c.c.)

In order to avoid excessive indebtedness within the group, to the loans made by the parent company (or by other controlled companies by the same) to the controlled company will apply the rule provided by art. 2467 c.c.
→ the repayment of these loans is subordinate to that of other creditors