Italian Company Law

Italian and European Company Law – A.A. 2025/2026

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Under Italian Company Law there are two main categories of entities which may be incorporated: partnerships and companies. Both include three form.

Categories of legal entity:

- Partnerships (società di persone):
    - simple partnership (società semplice)
    - general partnership (società in nome collettivo - s.n.c.)
    - limited partnership (società in accomandita semplice - s.a.s)

- Companies (società di capitali):
    - companies limited by share (società per azioni - s.p.a.)
    - limited liability companies (società a responsabilità limitata - s.r.l.)
    - partnership limited by shares (società in accomandita per azioni - s.a.p.a.)

Italian Company Law provides another kind of company named cooperative company, which mainly can be distinguished from the other companies for the purpose: companies follow the profit purpose, cooperative companies follow the mutualistic purpose.

Article 2247. (Partnership/company agreement)

«By a partnership/company agreement two or more persons contribute goods or services for the joint exercise of an economic activity in order to share the profits deriving therefrom».

This rule applies to both partnerships and companies (with the exception of the first part for the s.p.a. and the s.r.l.)

Common features between partnership and companies:

1. Joint exercise of a business activity

2. Contributions granted by the members

3. Profit sharing

Main difference between partnerships and corporations:

- Companies have the legal personality (they are **legal persons**)
- Partnerships don’t have legal personality, but they are still a **legal subject**

(see art. 2266 c.c.: «**partnership acquires rights and undertakes obligations** through its members», also see art. 2256 c.c.)

Legal personality generally means that the legal entity is different from its members: it has separate legal existence and it is distinct from its member. Il follows that the **legal entity's assets are completely segregated** from those of its members: the company's creditors cannot seek satisfaction of their claims on the assets of the company's member, as they can rely on the company's assets only.
On the other hand, **in partnerships their members have an unlimited and joint liability for partnership debts**. Here, the assets and the liabilities of the partnership are only partially segregated from the assets and the liabilities of their members. **Partial segregation** means that partnerships' creditors cannot satisfy their claims on the on the individual partners' asset before having fist tried to satisfy the on the partnership's assets: only in the event the partnership's asset were not enough to pay the partnership's creditors, the partners will be held personally liable for the non-fulfilled obligations.

In partnerships there is only a **partial segregation** of the partnerships' assets.
Indeed, in simple partnerships and general partnerships, by default, **all partners are unlimited, jointly and severally liable for the partnership obligations (debts)**.

Be careful. The liability for partnership obligations is primarily that of the partnership and subsidiarily that of the partners: liable is, first and foremost, the partnership with its assets.

What does it mean unlimited liability of the partners?
It means that partners are liable with all their personal assets.

What does it mean joint and several liability (responsabilità solidale) of the partners?
Joint and several liability refers to the situation in which two or more parties are obligated to the same performance. Under Article 1292 of the Civil Code, each debtor may be forced to perform for the entirety of the performance.

Art. 1292. (Concept of joint and several).
An obligation is joint and several when several debtors are obligated all for the same performance, so that each of them can be forced into performance for the whole and performance by of one frees the others; or when among several creditors each of them has the right to demand the performance of the entire obligation and the performance achieved by one of them frees the debtor towards all creditors.

Simple partnership
(società semplice)
and
General partnership
(società in nome collettivo)

Partnerships agreement Incorporation

Art. 2251. (Partnership agreement).

In the **simple partnership**, the agreement is not subject to special forms, except those required by the nature of the assets contributed (contributions).

Art. 2252. (Amendments to the partnership agreement).

The partnership agreement can be amended only with the consent of all the partners, unless otherwise agreed.

Art. 2295. (Instrument of incorporation).

The articles of incorporation of the **general partnership** shall state:
1) the last name and first name, domicile, citizenship;
2) the name of the partnership;
3) the partners who have the administration and representation of the partnership;
4) the headquarters of the partnership and any branch offices;
5) the corporate purpose;
6) the contributions of each partner, the value attributed to them and the method of valuation;
7) the services to which the work partners are obligated;
8) the rules according to which profits have to be distributed and the share of each partner in profits and losses;
9) the term of the partnership.

Art. 2296. (Publication).

The instrument of incorporation of the **general partnership**, with certified signatures of the parties by the notary, or a certified copy if the stipulation was made by public deed, shall be filed for registration, within thirty days by the directors, at the Business register office in whose district the headquarters of the partnership is established.
If the directors fail to file within the period specified in the preceding paragraph, each partner may provide for it at the partnership's expense, or request that directors be ordered to do so.
If the stipulation is made by public deed, the notary is also obliged to execute the deposit.

Art. 2297. (Failure to register).

Until the **general partnership** is registered in the Business register, the relations between the partnership and third parties, without prejudice to the unlimited and joint liability of all partners, shall be regulated by the provisions relating to the simple partnership.

(see, e.g., the rules on the application of the *beneficium excussionis*)

Contributions and liabilities

Art. 2253. (Contributions).

The partner is obligated to execute the contributions determined in the partnership agreement.
If the contributions are not determined, it is presumed that the partners are obliged to contribute, in equal parts among themselves, what is necessary for the achievement of the corporate object.

Art. 2262. (Profits).
Unless otherwise agreed, each partner is entitled to receive his/her profits after the approval of the accounts.

Art. 2263. (Allocation of gains and losses).
Partners' shares in gains and losses are presumed to be proportional to contributions. If the value of the contributions is not determined by the agreement, they shall be presumed equal.
The share due to the working partner, if not determined by the contract, shall be determined by the court according to equity.
If the contract determines only the share of each partner in the gains, to the same extent shall be presumed to be determine the share in losses.

Art. 2265. (Leonine pact).

A pact by which one or more partners are excluded from all participation in profits or losses is void.

Art. 2267. (Liability for corporate obligations).
Creditors of the partnership may claim their rights to the corporate assets. For corporate obligations also shall be liable personally and jointly the partners who have acted in the name and on behalf of the partnership and, unless otherwise agreed, the other partners.
The agreement must be brought to the knowledge of third parties by suitable means; failing this, the limitation of liability or exclusion of solidarity is not enforceable against those who did not have knowledge of it.

Art. 2268. (Preventive execution of partnership assets).
A partner required to pay corporate debts can request, even if the company is in liquidation, the preventive enforcement of the corporate assets, indicating the assets on which the creditor can easily satisfy himself.

Beneficium excussionis

Art. 2291. (Notion).
In a **general partnership** all partners are jointly and unlimitedly liable for corporate obligations.
An agreement to the contrary has no effect against third parties.

Article 2304. (Liability of partners).
Corporate creditors, even if the partnership is in liquidation, may not demand payment from individual partners, except after the execution of the partnership's assets.

Beneficium excussionis

Beneficium excussionis

→ Simple partnership: the beneficium excussionis doesn't work automatically. Partnership creditors can address their request to the partners, and it is the latter who must oppose the beneficium excussionis.

→ General partnership: the beneficium excussionis works automatically. The partnership creditors first have to execute the partnership assets and only in the case these are insufficient may address the request to members.

Liability's limitation of some partners:

→ Simple partnership: an agreement limiting the liability of some (not all) of the partners is possible but is enforceable against third parties only if brought to their knowledge by appropriate means.

→ General partnership: an agreement limiting the liability of some (not all) of the partners is possible, but it has only an internal effect (i.e., only among the partners) and is not enforceable against third parties.

Corporate activity

Article 2257. (Disjunctive management).

The management of the enterprise shall be carried out in compliance with the provision of Article 2086, second paragraph, and is the exclusively responsibility of the directors, who carry out the operations necessary for the implementation of the corporate purpose. **Unless otherwise agreed, company management shall be entrusted to each partner, severally from the others.**
If management powers are exercised severally by different partners, then each manager-partner has the right to object to any operations proposed by another manager-partner before it is completed.
On the objection shall decide the majority of the partners, determined according to the portion in the profits attributed to each of them.

Art. 2258. (Joint management).

If management is entrusted to several partners jointly, then **all manager-partners** must give their consent for company operations to be carried out.
If it is agreed that for that the management or for certain acts require the **consent of the majority**, the majority is determined in accordance with the last paragraph of the previous article.
In the cases provided for in this article, individual manager cannot take any decision on their own, except in the case of urgency to avoid a damage to the partnership.

Art. 2266. (Representation of the partnership).

The partnership acquires rights and assumes obligations by means of the partners who are its representatives and stands in court in the person of the same.
In the absence of any provision to the contrary in the agreement, the representation is assigned to each managing partner and extends to all acts within the corporate purpose.
Modification and extinction of powers of representation are regulated by Article 1396.

Partner’s personal creditors

Article 2270. (Personal creditor of the partner).

A partner's personal creditor, as long as the partnership lasts, may assert his rights to the profits due to the debtor and perform conservative acts on the share due to the latter in the liquidation.

If the debtor's other assets are insufficient to satisfy the debtor’s his claims, the partner's personal creditor may also demand at any time the liquidation of his debtor's share. The share must be liquidated within three months of the request, unless the dissolution of the company is resolved.

Applicable to all partnerships

Applicable only to simple partnerships

Applicable only to general and limited partnerships

Article 2305. (Personal creditor of the partner).

A partner's personal creditor, as long as the partnership lasts, cannot may demand the liquidation of the share of the debtor partner.

Art. 2307. (Continuation of the partnership).

Applicable only to general and limited partnerships

A partner's personal creditor may object to the extension of the company, within three months after the registration of the extension resolution in the business register.
If the opposition is accepted, the partnership must, within three months of the judgment, liquidate the share of the debtor partner.
In case of tacit extension, each partner may always withdraw from the partnership, giving notice in accordance with Article 2285, and the personal creditor may demand the liquidation of the quota of his debtor in accordance with Article 2270.

Dissolution of the social relationship:

Applicable to all partnerships

- Death of the partner
- Withdrawal of the partner
- Exclusion (automatic causes/optional causes)

→ Liquidation of the quota of the leaving partner

Article 2284. (Death of the partner).
Unless the partnership agreement provides otherwise, in the event of the death of one of the partners, the others must liquidate the quota to the heirs, unless they prefer to dissolve the partnership, or to continue it with the heirs themselves and the latter agree to this.

There is three ways in this case:
→liquidation of the quota to the heirs
→dissolution of the partnership
→continuation of the partnership with the heirs (it requires the consent of the partners and heirs)

Art. 2285. (Withdrawal of the partner).
Any partner may withdraw from the partnership when it is contracted for an indefinite period or for the lifetime of one of the partners.
He may also withdraw in the cases provided for in the partnership agreement or when a just cause exists.
In the cases provided for in the first paragraph, the withdrawal must be communicated to the other partners with at least three months' notice.

The right of withdrawal can be always exercised by the partner if the partnership agreement does not provide for a term or if the term exceeds the lifetime of the partners. In such cases, notice of termination must be given at least three months in advance.
The right of withdrawal can be always exercised when there is a just cause.
Finally, the right of withdrawal can be exercised for the causes provided in the partnership agreement.

Article 2286. (Exclusion). → optional causes

Exclusion of a partner may take place for serious breach of obligations arising from the law or the partnership agreement, as well as for the interdiction, incapacitation of the partner or for a criminal judgment that involves the disqualification from public office, even temporary.
A partner who has contributed his labor or the enjoyment of a good to the partnership may also be excluded for the supervening inability to do the work conferred or for the loss of the good due to causes not attributable to the directors.
Likewise, a shareholder who has obligated himself by the contribution to transfer the ownership of a good may be excluded if this has perished before the property is acquired to the partnership.

Under this discipline there are three kinds of causes for which the partner can be excluded:

1. Causes related to breach of social obligations.
2. Causes related to the loss of the legal capacity.
3. Causes related to the contributions.

For each of these causes there needs to be an exclusion process to decide for the exclusion of a partner.

Art. 2287. (Exclusion procedure).

Exclusion is decided by the majority of the partners, not counting in the number of them the partner to be excluded and takes effect after thirty days from the date of notice to the excluded partner.

Within this period, the excluded partner may file an appeal to the court, which may suspend the enforcement of the decision.

If the partnership consists of two partners, the exclusion of one of them shall be pronounced by the court at the request of the other.

Art. 2288. (Exclusion by right).

(→automatic causes = those causes operate automatically and do not need a decision of the members)

A partner who is declared bankrupt is excluded by right.
Likewise, a partner against whom one of his personal creditor has obtained the liquidation of the quota under accordance with Article 2270.

Limited partnership
(società in accomandita semplice)

Article 2313. (Notion).
In a limited partnership, the **general partners** are jointly and unlimitedly liable for the corporate obligations, and **limited partners** are liable limited to the share conferred.
The partners' quota cannot be represented by shares.

Art. 2315. (Applicable rules).

The provisions relating to general partnerships shall apply to the limited partnership, insofar as they are compatible with the following rules.

→ Why establish an s.a.s.?

→ Danger of abuse…
→ Incorporation…business name (ragione sociale)
→ General partners: unlimited liability and the power of management
→ Limited partners and their power and right
→ Transfer of quota
→ Irregular limited partnership

Article 2316. (Instrument of incorporation).

The instrument of incorporation shall specify the general partners and limited partners.

Article 2314. (Business name).

The limited partnership acts under a business name consisting of the name of at least one of the general partners, with the indication of limited partnership, save as provided in the second paragraph of Article 2292.
The limited partner, who allows his name to be included in the partnership name, is liable before third parties unlimitedly and jointly with the limited partners for partnership obligations.

→ principle of trust

Art. 2318. (General partners).

Limited partners have the rights and obligations of general partners of the general partnership.
The administration of the partnership can only be given to general partners.

Article 2319. (Appointment and removal of directors).

Unless the instrument of incorporation provides otherwise, for the appointment of partner-directors and for their removal in case they were appointed by a separate act, it is necessary the consent of all the general partners and the approval of so many limited partners who represent a majority of the share capital subscribed by them.

Art. 2320. (Limited partners).

Limited partners may not perform acts of administration or transact or conclude business in the name of the partnership, except by virtue of special power of attorney for individual business. A limited partner who breaches this prohibition assumes unlimited and joint liability for all corporate obligations and may be excluded under Article 2286.
Limited partners may, however, perform their work under the direction of the partner-directors and, if the instrument of incorporation permits, give authorizations and opinions for certain operations and perform acts of inspection and supervision.
In any case they shall have the right to have annual notice of the balance sheet and of the profit and loss account, and to check their accuracy by consulting the books and other documents of the partnership.

Art. 2322. (Transfer of quota of limited partners).

The limited partner's share is transferable by death. Unless otherwise provided in the instrument of incorporation, the quota may also be transferred, with effect towards the partnership, with the consent of the partners representing a majority of the share capital.

Art. 2317. (Failure to register).
→ irregular limited partnership

Until the partnership is registered in the business registry, the relations between the partnership and third parties shall be governed by the provisions of Art. 2297.
However, for corporate obligations the limited partners are liable only to the extent of their quota, unless they have participated in the partnership's operations.

The dissolution and liquidation of partnersphips

Art. 2272. (Causes of dissolution).
The partnership is dissolved:
1) by the expiration of the term;
2) by the achievement of the corporate purpose or by the supervening impossibility of achieving it;
3) by the consent of all members;
4) when the plurality of members ceases to exist, if within six months this is not reconstituted;
5) for other causes provided for in the partnership agreement.
5-bis) for the opening of the controlled liquidation procedure.

Applicable to all partnerships

Article 2308. (Dissolution of the general partnership).
The **general partnership** is dissolved, in addition to the causes indicated in Art. 2272, by order of the governmental authority in the cases established by law, and, unless its object is a non-commercial activity, by the declaration of bankruptcy.

Art. 2323. (Causes of dissolution).
The **limited partnership** is dissolved, in addition to the causes provided for in Art. 2308, when only limited partners or general partners remain, unless within the period of six months the partner has been replaced.
If all the general partners fail, for the period indicated in the preceding paragraph the limited partners shall appoint a temporary director to carry out acts of ordinary administration. The temporary director does not assume the status of a general partner.

Applicable to all partnerships

Art. 2274. (Powers of directors after dissolution).

After the dissolution of the partnership has taken place, the directors retain the power to manage, limited to the urgent affairs, until the necessary steps are taken for the liquidation.

Article 2275. (Liquidators).

Applicable to all partnerships

If the agreement does not provide for the liquidation of the partnership assets and the partners do not agree to determine it, the liquidation is done by one or more liquidators, appointed with the consent of all the partners or, in case of disagreement, by the president of the court.
Liquidators may be removed by the will of all partners and in any case by the court for a just cause upon the petition of one or more members.

Applicable to all partnerships

Article 2276. (Obligations and liability of liquidators).

The obligations and liability of liquidators shall be governed by the provisions established for directors, insofar as is not otherwise provided by the following rules or by the partnership agreement.

Applicable to all partnerships

Article 2277. (Inventory).

The directors shall deliver to the liquidators the assets and the corporate documents and submit to them the account of the management for the period following the last account.
The liquidators must take over the assets and the corporate documents, and draw up, together with the directors, the inventory showing the assets and liabilities of the corporate assets. The inventory must be signed by the directors and the liquidators.

Applicable to all partnerships

Art. 2278. (Powers of liquidators).
The liquidators may perform the acts necessary for the liquidation and, if the partners have not provided otherwise, they may also sell the corporate assets in bloc and make transactions and compromises.
They also represent the partnership in court.

Art. 2279. (Prohibition of new transactions).
Liquidators may not engage in new transactions. In contravening this prohibition, they shall be liable personally, and jointly for the business activity undertaken.

Applicable to all partnerships

Art. 2280. (Payment of corporate debts).
The liquidators may not distribute the corporate assets even partially, among the partners, until the creditors of the partnership are paid or the sums necessary to pay them are set apart.
If the available funds are insufficient to pay the corporate debts, the liquidators may demand from the partners the payments still due on the respective quotas and, if necessary, the sums required, within the limits of their respective liability and in proportion to each one's share in the losses. In the same proportion, the debt of the insolvent partner shall be divided among the other partners.

Applicable to all partnerships

Article 2282. (Allocation of assets).
Having extinguished the corporate debts, the remaining assets are allocated to the repayment of contributions. Any surplus shall be distributed among the partners in proportion to each one's share in the gains.
The valuation of non-cash contributions is determined in accordance with the valuation that was made in the contract or, failing that, according to the value they had at the time they were made.

Applicable only to general and to limited partnerships

Article 2311. (Final liquidation balance sheet and distribution plan).
Once the liquidation is completed, the liquidators shall draw up the final balance sheet and propose a distribution plan to the partners.
The balance sheet, signed by the liquidators, and the distribution plan must be communicated by registered letter (raccomandata) to the partners, and shall be considered approved if they have not been contested within two months of the communication.
If the balance sheet and the distribution plan are contested, the liquidator may request that matters relating to the liquidation be examined separately from those relating to the division, to which the liquidator may remain extraneous.
With the approval of the balance sheet, the liquidators are released before the partners.

Applicable only to general and to limited partnerships

Art. 2312. (Cancellation of the partnership).
Having approved the final liquidation balance sheet, the liquidators shall apply for the cancellation of the partnership from the Business register.
From the cancellation of the partnership, corporate creditors who have not been satisfied may assert their claims against the partners and, if the lack of payment is due to the lack of the liquidators, also against them.
[…]
Accounting records and documents must be conserved for ten years from the date of the cancellation of the partnership from the business register.