

Companies limited by shares

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

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Main features of companies limited by shares:

→ for corporate obligations only the company is liable with its assets (art. 2325, par. 1, c.c.)

→ corporate participation is represented by shares (art. 2346, par. 1, c.c.)

Main features of the companies limited by shares:

→ Legal personality

→ Limited liability of shareholders

→ Corporate organization

→ Shares

Evolution of the regulation:

- Italian Civil code (1942)
- Italian Law n. 216/1974
- Testo unico dell'intermediazione finanziaria (d.lgs. n. 58/1998)
- 2003 Company Reform for not listed companies
- Italian Law n. 21/2024 (so-called «legge capitali»)

Sub-types of companies limited by shares

Article 2325-bis, c.c.

- close companies limited by shares
- companies that resort to the risk capital market

Companies that resort to the risk capital market (so called **open companies**, art. 2325-bis c.c.)

→ companies with shares that are widely held among the public

→ companies with shares that are listed on «regulated markets» (listed companies)

Art. 2325-ter, c.c. (Companies issuing widely distributed financial instruments)



For the purposes of Article 2325-bis, issuers of shares widely distributed among the public are Italian issuers not listed on regulated Italian markets that have shareholders, other than shareholders owning more than 3 per cent of the share capital, in excess of five hundred, which together hold a percentage of share capital of at least 5 per cent and exceed two of the three limits set forth in Article 2435-bis, first paragraph.

Those issuers whose shares are subject to legal restrictions on circulation also concerning the exercise of rights having an equity content, or whose corporate object includes exclusively the performance of non-profit activities of social utility or aimed at the enjoyment by the shareholders of a good or a service, are not considered to be widespread issuers.

...we have rules that will apply:

→ to **all** the companies limited by shares

→ only to the so-called **close companies** limited by shares

→ only to the so-called **open companies** limited by shares

→ only to the **listed companies**

Incorporation

The drawing up of the instrument of incorporation can follow two different ways:

1. simultaneous incorporation
2. incorporation through public subscription

Incorporation through public subscription: steps (Art. 2333-2336 c.c.)

1. setting up a program (prospectus)
2. subscriptions
3. meeting of subscribers
4. stipulation of the incorporation instrument
5. registration of the instrument of incorporation in the Business register

This procedure is
rarely used

→ obligations and liability of promoters (art. 2337-2341 c.c.)

Simultaneous incorporation procedure

1. drawing up the instrument of incorporation
2. registration of the instrument of incorporation in the Business register

→ abrogation of the approval by the judicial authority
(2000)

The instrument of incorporation

- agreement or unilateral act 2328 par. 1
(partial disapplication of Art. 2247 c.c.)
- form of the act: public deed (under
penalty of invalidity)

The content of the instrument of incorporation

Art. 2328, par. 2, c.c.

The **instrument of incorporation** must be drawn up by **public deed** and must state:

- 1) the surname and first name or company name, date and place of birth or the state of incorporation, the domicile or the registered office, the citizenship of the shareholders and promoters, if any, as well as the number of shares assigned to each of them;
- 2) the company name and the municipality where the registered office of the company and any branch offices;
- 3) the activity that constitutes the company's object;
- 4) the amount of subscribed and paid-up capital;
- 5) the number and par value, if any, of the shares, their characteristics and the manner of issue and circulation;
- 6) the value attributed to receivables and assets contributed in kind;

- 7) the rules according to which profits are to be distributed;
- 8) the benefits, if any, granted to the promoters or members founders;
- 9) the system of administration adopted, the number of directors and their powers, indicating which among them have the representation of the company;
- 10) the number of members of the board of auditors;
- 11) the appointment of the first directors and auditors or the members of the supervisory board and, when provided for, of the person in charge of carrying out the external audit;
- 12) the total amount, at least approximately, of the expenses for the establishment charged to the company;
- 13) the duration of the company or, if the company is incorporated for an indefinite period, the period of time, however, not exceeding one year, after which the partner may withdraw.

Art. 2328, par 3, c.c.

→ Instrument of incorporation

→ Articles of association (or statute or by-laws)

Conditions for incorporation

- minimum capital amount (art 2327 c.c.)
- art. 2329 c.c.

- Effects of the stipulation of the instrument of incorporation for the parties (2331, par. 4, c.c.).
- The obligation to file the instrument of incorporation (art. 2330, par. 1 and 2, c.c.).
- Legal check by notary (formal and substantive legality check).
- Check by Business registry Office (2330, par. 3, c.c., formal regularity of the filed documentation).
- Registration (constitutive effect: 2331, par. 3, c.c.).

Before registration we do not have a legal entity...

Who is liable for obligations related to operations carried out before the registration in the name of the company?

Art. 2331, parr. 2-5, c.c.

- transactions carried out before the registration
- liability of those who acted
- liability of the company (necessary and unnecessary operations)

- if the company is not registered...

Nullity

Nullity of Companies limited by shares

Purposes of the discipline

- certainty of legal transactions
- stability of corporate organization

→ before the Company is registered we don't have a legal entity, we have only a contract

→ it will apply the provisions of Contract Law...
[the contract will be void or voidable for the causes provided for in contract law: art. 1418 c.c.]

Article 1418 c.c. (Causes of nullity of contract).

A contract is void when it is contrary to mandatory rules, unless the law provides otherwise.

The nullity of the contract is provided for the lack of one of the requirements indicated by Art. 1325 [the agreement of the parties; the cause; the object; the form, when it appears that it is prescribed by law under penalty of nullity], the illegality of the cause, the illegality of the motives in the case indicated by Article 1345 and the lack in the object of the requirements set forth in Article 1346.

The contract is also void in the other cases established by the law.

→ But after the registration we have a legal person, a company which has economic and contractual relationships with third parties...

→ if we continued to apply the causes of nullity provided by contract law, it would create a very unstable situation, and this would go against the principle of certainty of legal transactions (just think that the nullity of a contract can be declared without time limit and that this declaration of nullity generates an obligation for the parties to return the performances done)



Once the Company is registered, it can only be declared void in a limited number of cases, which must be strictly interpreted.

Article 2332, par. 1, c.c.

- failure to draw up the instrument of incorporation as a public deed;
- illegality of the company's object;
- failure to provide indication in the instrument of incorporation (or in the statute) of the company name or the contributions or the share capital amount or the company's object.

Consequences of nullity under Italian Company Law:

Article 2332, par. 2, 3, 4, 5, c.c.

- the happening of a **cause of nullity** of the company is treated as a **cause of dissolution** of the company
- the nullity of a company does not undermine the effectiveness of any actions taken on behalf of the company after its registration
- the cause of nullity can be eliminated
- publicity

Single member companies

It is possible to incorporate a single-member company limited by shares (unilateral act, 2328 c.c.), but some specific rules will apply with regard to:

- a) liability of the sole shareholder before the company is registered (2331, par. 2, c.c.)
- b) contract between the company and the sole shareholder (2362, par. 5, c.c.)

c) contributions (2342, par. 2 and 4, c.c.)

d) disclosure (2250, par. 4 and 2362, par. 1-4, c.c.)

→ consequences of breaching the rules c) and d)
(2325, par. 2, c.c.)

→ application of the discipline even when the shares
belong to a single person at a time after the
incorporation

Contributions

Share capital

- minimum capital required
- purpose?

Main purpose of the discipline:

→ effectiveness of the contributions

→ true value of contributions (2346, par. 5, c.c.)

In a Company limited by shares can be contributed only cash or assets in kind or credits. It is not possible to contribute the provision of a service or work (2342, par. 5, c.c.).

Unless otherwise is provide in the instrument of incorporation, contributions must made in cash (2342, par. 1 , c.c.).

Company Law provides different rules depending on whether the contribution is made in cash or in assets in kind or credits.

Cash contributions:

- Obligation to pay 25% of the cash contribution at the time of incorporation of the company (2342, par. 2, c.c.)
- Payment of the residual contributions
- Transfer of shares not fully paid up (2356 c.c.)
- Rules for contributions not paid (2344 c.c.)

Contributions of assets in kind or credits

- Valuation report by an expert appointed by the court
- Check by the directors (non-transferability of the shares)
- Possible non-concordance of value: remedies
- Contributions without valuation – cases (art. 2343-ter, 2343-quater, c.c.)

Potentially Risky Acquisitions

Art. 2343-bis c.c.

→ this discipline aims to prevent the company from acquiring assets not by way of contribution and thus without following the rules provided for them

→ field of application, time limit

→ excluded operations

→ liability

Shares to which the obligation of ancillary performance is connected (art. 2345 c.c.)...