

# Companies limited by shares

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

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The board of statutory auditors  
(traditional system)

Is the body responsible for supervising the activities of the company and, mainly, the activities of the directors.

Its main limitation is that it is a body that is still appointed by the majority that appoints the directors themselves.

Many of the rules concerning the board of statutory auditors are designed to ensure the independence of its members.

## Composition (art. 2397 c.c.)

- not listed companies: three or five acting members and two alternate members (shareholders or not)
- listed companies: at least three acting members and two alternate members

→ Professionalism requirements:

at least one acting member and one alternate member must be chosen from the Official Register of auditors. The other members must be chosen from professional official registers in the field of law or economics or must be university full professors in the fields of law or economics.

## Listed companies limited by shares

The members chosen from the Register of Auditors must practice the audit profession by a given period of time

The other statutory auditors shall be chosen from among those who have gained experience of at least three years in the performance of:

(a) administrative or supervisory activities or duties management tasks in corporations that have a share capital share capital of not less than two million euros, or

(b) professional activities or tenured university teaching in legal, economic, financial and technical-scientific subjects, closely related to the activity of the enterprise, or

(c) managerial functions in public bodies or public administrations operating in the credit, financial and insurance or otherwise in sectors closely related to that of activity of the enterprise.

## Listed companies limited by shares

A person can't hold the office of statutory auditor if she/he has performed functions of administration, management or control in enterprises:

- (a) subject to bankruptcy, compulsory administrative liquidation or equivalent procedures;
- (b) operating in the credit, financial, securities and insurance undergoing procedures extraordinary administration.

Also, can't be appointed who has been sentenced for certain crimes (honorability requirements).

→ Reasons for inelegibility (independence) → also valid for listed companies

- Reasons for ineligibility provided for directors in Article 2392 of the Civil Code.
- Company directors' spouses, relatives and relatives-in-law up to the fourth degree (also in relation of directors of companies belonging to the same group).
- Persons linked to the company or to companies belonging to the same group by an employment relationship (in a broad meaning) which may compromise their independent position.
- Other reasons provided in the bylaws.
- Open and listed companies: limits on the accumulation of appointments.

# Appointment of statutory auditors

- first statutory auditors: instrument of incorporation
- then, ordinary shareholders' meeting resolution
- in listed companies, directors are appointed through the list voting mechanism and at least one acting statutory auditor must be chosen from the minority list (also, the composition of the board of auditors must respect a gender balance)
- holders of participating equity instruments
- State or public authorities (in the event that these entities hold shares in the company)
- Publicity of appointment and termination of office (2400, par. 3, c.c.)

## Duration of the office

- three financial years (they remain in office until the new statutory auditors are appointed)
- they may be reappointed

## Remuneration

To ensure the independence of statutory auditors, their compensation must be predetermined by the resolution of appointment and must remain unchanged throughout their office (art. 2402 c.c.).

# Reasons for termination of office before term expiration

- Removal (just cause, approval by the Court)
- Withdrawal
- Disqualification (a cause of ineligibility arises; the requirements of professionalism are no longer met; art. 2404, par. 2 and art. 2405 c.c.)
- Death

→ Replacement mechanism: if one of the statutory auditors ceases to hold office, he/she will be replaced by one of the alternate statutory auditors (in order of age, by the eldest), who will remain in office until the next shareholders' meeting (art. 2401 c.c.)

## Duties and powers of the board of statutory auditors

→ Article 2403 c.c.

«The board of statutory auditors oversees compliance with the law and with the bylaws...»

The function of the board of statutory auditors is to ensure that in the performance of the company's activities, the law and the bylaws are complied with.

- First, supervision relates to the administration of the company as a whole and it is extended to all the company's activities.
- In particular, the board of statutory auditors supervises the suitability of the organizational, administrative and accounting structure adopted by the company and its actual implementation.
- The supervision is carried out with respect to the directors, but it is also extended to the activities of the shareholders' meeting (hence the power-duty of the statutory auditors to attend the meetings of the shareholders, and to appeal their resolutions).

## Supervision of administration

→ global and synthetic control (which can become analytical if the circumstances require it)

→ control of formal and substantive legality (not of merit)

## Powers/duties

- Information and disclosure obligations of directors to the board of statutory auditors (see e.g. article 2381, par. 5, c.c.).
- Power to request information from the directors (at. 2403-*bis*, par. 2, c.c.).
- Inspection and control acts.
- They must attend board of directors, shareholders' and executive committee meetings.
- Power to call the shareholders' meeting whether it detects serious facts during its activity and there is a need to take action (art. 2406, par. 2, c.c.).
- Power to promote the liability action against the directors and to promote the judicial review under Article 2409 of the Civil Code.

## Other functions in addition to control

### → Substitute activity

Statutory auditors have specific initiative powers-duties to replace the shareholders' meeting and directors to ensure compliance with the legality of corporate activities:

- they have to call the shareholders' meeting and must carry out the publications required by law in case of omission by the directors;
- they must apply to the court for an order to reduce the share capital when it is required by the law and the shareholders' meeting, or the directors, fail to do so.

→ It has to express his opinion in certain cases:  
on the determination of the remuneration of directors holding special offices; in unlisted companies, on the share price in the event of exclusion or limitation of the pre-emption rights; in listed companies on the appointment and removal of the auditing firm.

→ Active administration functions:  
in the event that all directors cease to hold their office, they are responsible for the administration of the company (limited to acts of ordinary management).

## Accounting audit functions

After the reforms of 1974 (for listed companies) and 2003 (for all companies limited by shares) the board of statutory auditors is no longer entrusted with the statutory audit function (which is exercised by an external auditor or an auditing firm), but the board of statutory auditors it is still required to supervise the adequacy of the administrative and accounting system and his consent is necessary for the inclusion of certain items in the balance sheet as assets.

Also, it has the power to make certain proposals to the shareholders' meeting on the financial statements and their approval.

## Exception:

The bylaws may provide that the statutory audit shall also be carried out by the board of statutory auditors (in this case, all members of the board of statutory auditors must be chosen in the Register of statutory auditors).

This option is not allowed for companies limited by shares that:

- a) are required to draw up the consolidated financial statements;
- b) are classified as “public interest entities”, and to companies that control, are controlled or are under common control with the same;
- c) are controlled by public authorities;
- d) the company adopt the two-tier or the one-tier system of administration and control.

## Functioning of the board of statutory auditors (art. 2404 c.c.)

- the chair (resolution of the shareholders' meeting; listed companies limited by shares)
- meetings
- quorum
- minutes
- use of employees and auxiliaries (art. 2403-*bis*, par. 4-5, c.c.)

## Reporting issues to the board of statutory auditors (art. 2408 c.c.)

The supervisory activity of the board of statutory auditors can be solicited by shareholders (who in the company limited by shares lack individual powers of control)

→ Complaint that comes from a shareholder or shareholders holding less than 5% of the share capital (2% in open companies limited by shares): the board of auditors must take the complaint into account in the report to the shareholders' meeting but is not obliged to investigate.

→ Complaint that comes from a shareholder or shareholders holding more than 5% of the share capital (2% in open companies limited by shares): the board of statutory auditors must immediately investigate and submit its findings and any recommendations to the shareholders' meeting and, in the cases provided for in Article 2406 of the Civil Code, it must call the shareholders' meeting.

Liability (art. 2407 c.c.) towards the company and the company's creditors

→ professional diligence (statutory auditors must perform the duties imposed by law and bylaws to them with the professionalism and the diligence required by the office)

→ exclusive liability of statutory auditors

→ joint liability of statutory auditors with directors

External Audit of Accounts  
Italian Legislative Decree n. 39/2010  
Article 2409-*bis* of the Civil Code

External audit of accounts is the activity by which a professional and qualified person (natural or legal person, filed in the Official Register of statutory auditors) audits the annual and consolidated financial statements of the company.

- Appointment (instrument of incorporation, shareholders' meeting resolution based on a proposal made by the internal control body)
- Independence of the external auditors
- Remuneration (fixed with the appointment)
- Duration (3 financial years)
- Removal (Resolution – just cause – opinion of the internal control body)

Auditors' main function is to check:

- that the accounts are properly kept
- that the financial statements reflect a proper recognition of operating events
- the conformity of the financial statements with the regulations
- the true representation of the financial situation and economic performance

The activity is aimed to express an opinion on the financial statements (graded according to 4 models):

1. opinion expressed “without notes to report”
2. opinion expressed “with findings to report”
3. negative opinion
4. declaration that is impossible to express an opinion

The opinion expressed does not bind the approval of the financial statements by the shareholders' meeting, which may approve them even if the opinion is not positive.

The positive judgment has effects for the contestation of the resolution that approve the financial statements.

To the external auditor is then assigned certain advisory functions in connection with particular operations.

(e.g., determination of the value of shares in case of shareholder withdrawal, in the case of mergers and divisions drafts a report on the fairness of the exchange ratio, on the merger project following indebtedness, ...)

To carry out their function, the law provides external auditors with certain powers:

- has the right to obtain documents and news relevant to the review from directors
- may independently conduct investigations, audits and examination of acts and documents of the company
- it exchanges relevant information with the board of statutory auditors
- in the case of consolidated financial statements, the external auditor's powers are extended to all companies that are part of the same group

## Duties and liabilities

The auditors must perform their duties with the diligence required by their role (professional diligence).

They shall be liable towards the company that conferred the office, shareholders and third parties (for the last two only for direct damages), jointly and severally with the directors, for damages arising from the failure to perform their duties.