

Companies limited by shares

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

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The amendments to the bylaws

These amendments refers to all changes to the **objective content** of the bylaws or the instrument of incorporation. Amendments of the subjective content of these documents are not considered amendments (in particular, those involving the persons of directors, statutory auditors, and shareholders).

From a formal point of view, amendments are the removal or the modification of clauses contained in the bylaws and the introduction of new clauses.

The following rules will applies only in the case of change to the objective content.

Procedure (art. 2346 c.c.)

1. extraordinary shareholders' meeting resolution

2. notary checks

→ 2.1. (eventually) judicial control

3. recording in the Business register

1. extraordinary shareholders' meeting resolution

→ Article 2365 c.c.

→ In some cases, the bylaws may give to the administrative body the competence for amendment (art. 2365, par. 2, c.c.) → the same rules of procedure will apply

→ In non-listed companies, higher deliberative quorums for the second call of the shareholders' meeting are required for some amendments (art. 2369, par. 5, c.c.)

2. notary checks (art. 2346, par. 1, c.c.)

→ the minute is drawn up by a notary (the amendments of the bylaws are subject to the same form provided for the drawing up of this document: public deed)

→ legal control (not just a formal check)

3. recording in the Business register

→ the notary must apply for registration of the resolution within 30 days

→ formal control by the Business register Office

2.1 (eventually) judicial control

→ If during the checks, the notary finds that the conditions required by law are not met, he shall promptly notify the directors

→ directors have two options: call a shareholders' meeting to take appropriate action or apply to the court to see if the conditions required by law are met (art. 2346, par. 3, c.c.)

→ If the directors do not provide the resolution will have no effect

- effectiveness of the resolution: it shall not take effect until it has been recorded in the Business register (there are, however, cases in which effectiveness is conditioned or deferred)
- legal publicity: in order to allow the current content of the bylaws to be known, an updated copy of the bylaws must be filed in addition to the resolution of amendment

The right of withdrawal

→ ratio legis

→ grounds of withdrawal

→ liquidation of the shares

Grounds of withdrawal

A. mandatory (not derogable)

B. derogable by the bylaws

C. provides for by the bylaws (closed companies)

D. withdrawal in case of indefinite-term company (art. 2437, par. 3, c.c., non-listed companies)

E. withdrawal in case of delisting (listed companies, art. 2437-*quinquies*, c.c.)

A. **mandatory** (not derogable) → shareholders absent, dissenting, abstaining can exercise the right of withdrawal, for all or part of their shares, in those cases:

- a. Amending of the corporate purpose
- b. Transformation of the company
- c. ~~[Transferring the company's headquarter abroad]~~: abrogated
- d. Revoking liquidation status
- e. Elimination of one or more of the derogable grounds of withdrawal
- f. Changes of the criteria to value the shares in the event of withdrawal
- g. Changes concerning the voting rights or the participation rights

→ in these cases any agreement aimed at excluding the right of withdrawal or making the latter more difficult is null and void (2437, par. 6, c.c.)

B. **derogable** by the bylaws

a. Extension of the term of the company's duration

b. Introduction or removing of restrictions on the circulation of shares

Terms and procedure for exercising the right of withdrawal (art. 2347-*bis*, c.c.)

- registered letter
- within 15 days from the recording of the resolution in the Business register
- if the ground of withdrawal doesn't refer to a resolution, within 30 days from the day the shareholder becomes aware of the fact

- Non-transferability and deposit of shares
- When the right of withdrawal has no effect or can't be exercised (art. 2437-*bis*, par. 3, c.c.)

Criteria to determine the value of the shares (art. 2347-*ter*, c.c.)

- unlisted companies limited by shares
- listed companies limited by shares

- alternative criteria established by the bylaws
- shareholder's opposition

Procedure to liquidate shares (art. 2437-*quater*, c.c.)

- a. Offer to shareholders and convertible bondholders
- b. non-listed companies: offer to third parties; listed companies: offer on regulated markets
- c. reimbursement through purchase of the own shares by the company
- d. capital share reduction (creditors opposition) or dissolution of the company

The Civil Code provides specific regulations for certain amendments to the bylaws: the increase and the reduction of share capital; transformations, mergers and divisions of the companies.

The amendments to the share capital

Increase of the share capital:

- material increase (or paid increase)
- nominal increase (or free increase)

Reduction of the share capital:

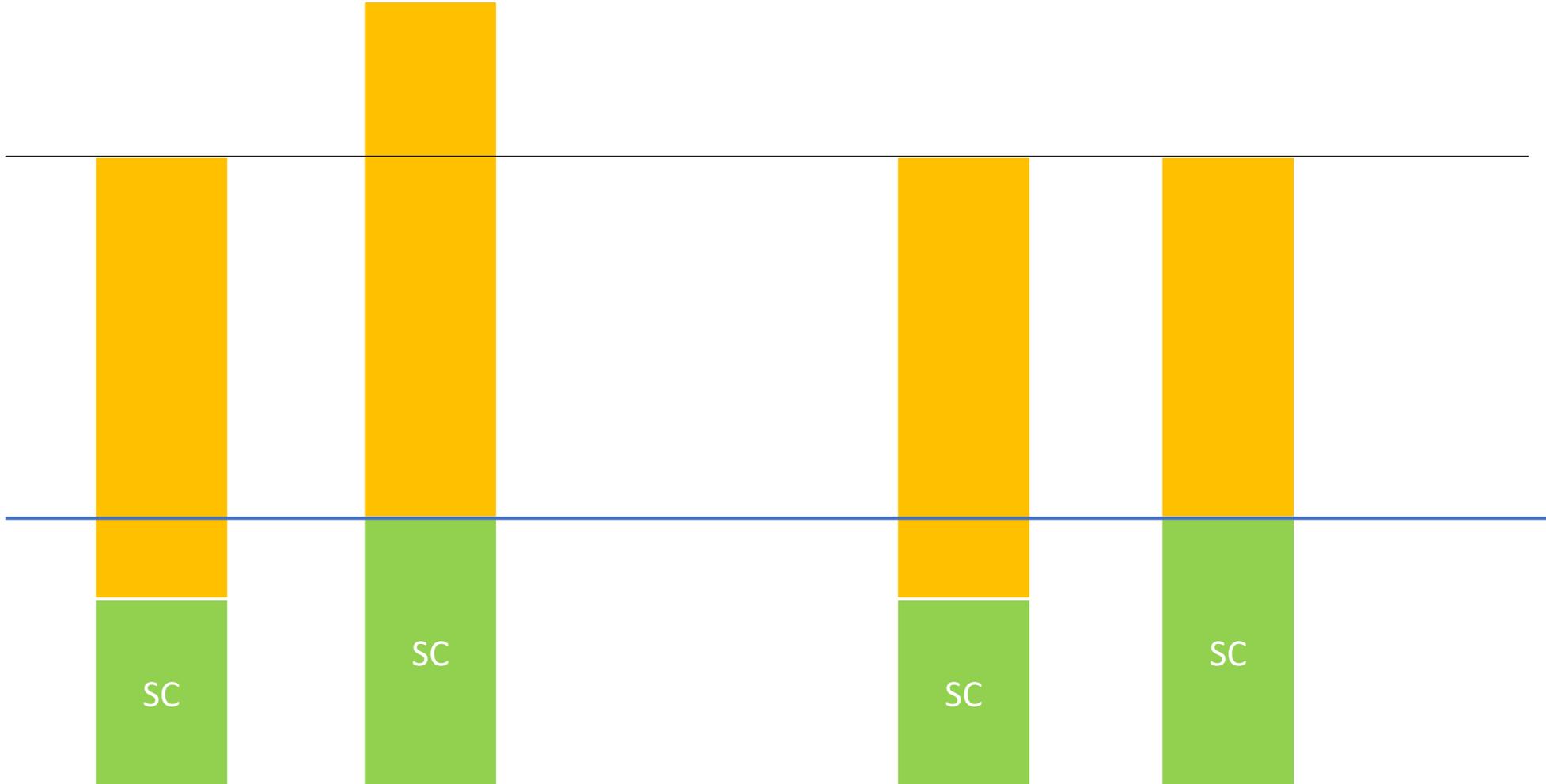
- material reduction
- nominal reduction (reduction for losses)

- cases other than losses where reduction is mandatory

Increase of the share capital

material increase
(or paid increase)

nominal increase
(or free increase)



Material (or paid) share capital increase

- new financial resources = new contributions
- issuance of new shares
- conditions: previous contributions have to be fully paid-up; there must be no losses that would require a compulsory reduction
- competence
- the delegated increase (art. 2443 c.c.)
- term for the subscription of the new shares
- non-divisible and divisible increase
- rules for new contributions

The right of pre-emption (art. 2441 c.c.)

- persons entitled to exercise the pre-emption right
- ratio legis
- term for the exercise
- shares on which pre-emption rights have not been exercised (preferential right on the not opted shares)
- circumstances in which the right of pre-emption can be excluded (cases in which the shares have to be issued with a premium)
- indirect exercise of the pre-emption rights
- Recording in the Business register

Nominal (or free) share capital increase
(art. 2442 c.c.)

→ assets that can be used for the free share capital increase

→ methods that can be used for the free share capital increase

Reduction of the share capital

Material share capital reduction (art. 2445 c.c.)

- causes and conditions
- ways of execution
- the shareholders' meeting notice of call
- recording, execution and creditors' opposition

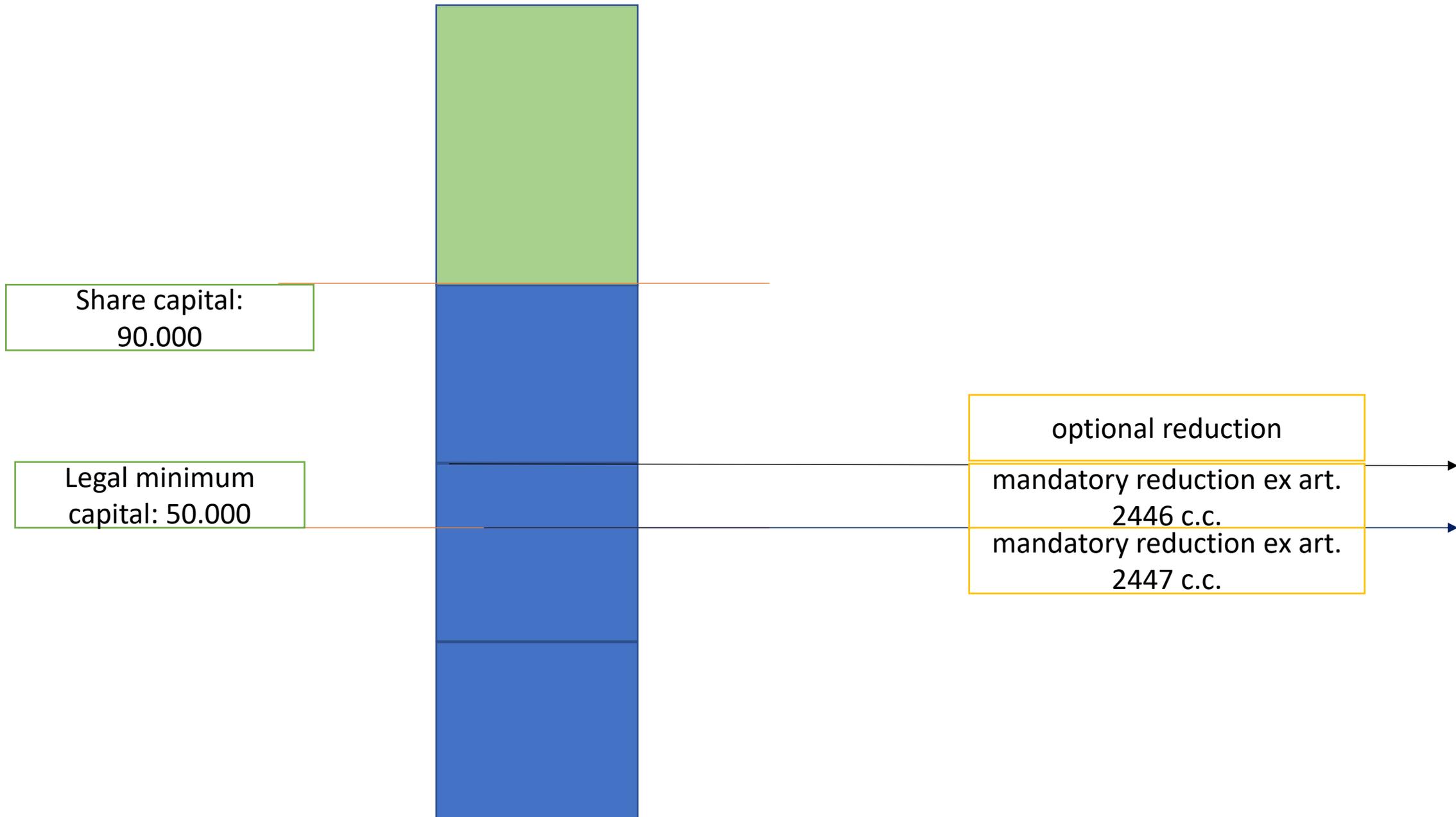
Nominal share capital reduction (due to losses)

1. The optional reduction (decrease of less than 1/3 of the share capital): there are no rule, hence in this event the reduction is optional, but if there are losses profits cannot be distributed...

2. Mandatory reduction:

2.1 Decrease of more than 1/3 of the share capital that does not affect the legal minimum capital

2.2. Decrease of more than 1/3 of the share capital affecting the legal minimum capital



Share capital:
90.000

Legal minimum
capital: 50.000

optional reduction

mandatory reduction ex art.
2446 c.c.

mandatory reduction ex art.
2447 c.c.

2.1 Decrease of more than $\frac{1}{3}$ of the share capital that does not affect the legal minimum (art. 2446 c.c.)

- calling of the shareholders' meeting
- up-to-date balance sheet, directors' report and observations of the board of statutory auditors
- appropriate measures of the shareholders' meeting
- compulsory reduction: within the next financial year the loss has not decreased to less than $\frac{1}{3}$ (ordinary shareholders' meeting)

2.2. Decrease of more than $\frac{1}{3}$ of the share capital affecting the legal minimum capital (art. 2447 c.c.)

- calling of the shareholders' meeting
- measures that must be taken