CAPITOLO I
AN INTRODUCTION TO ITALIAN CORPORATE LAW

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1.1. INTRODUCTION[1]

This book examines the regulations governing limited liability companies in Italy. These regulations are contained in the Italian Civil Code, from Article 2325 to Article 2506-*quater*.

Before introducing readers to the specific regulations governing these types of company, it was deemed useful to include this chapter, for two reasons.

Firstly, this chapter provides a brief overview of the regulations that go before those applicable to limited liability companies, introducing how the latter are governed. The initial sections therefore illustrate the general regulations that apply to any entrepreneur, whether a natural or a legal person; the chapter then moves on to describe the regulations governing partnerships, explaining the basic concepts to which reference will be made in the section dedicated to limited liability companies.

The second reason why this chapter has been included is to briefly describe the regulations and institutions that are not elaborated on in the section of the Italian Civil Code under analysis, but that are referred to therein. Italian readers, students, professionals or entrepreneurs would already be familiar with these regulations and institutions; however, this may not be the case for non-Italian readers, which is why this preliminary description has been provided. Some important examples include the Italian Chambers of Commerce and Companies Register, the CONSOB *(Italian National Commission for Companies and the Stock Exchange)* and Borsa Ital-

[1] Before reading this Chapter, please refer to the "Notes for readers" section.

iana S.p.A. (Italian stock exchange). Other concepts such as 'open companies', 'closed companies' and 'companies that resort to the risk capital market' are also explained.
Let's begin by looking at how Italian corporate law has evolved over time.

1.2. A BRIEF HISTORY OF ITALIAN COMMERCIAL LAW

In Italy, the key regulations governing companies, and enterprises in general, are contained in the country's Civil Code.
The Italian Civil Code dates back to 1942, when the 'civil code' and 'commercial code' were merged; these two codes were first written towards the end of the 19th century, taking their inspiration from the Napoleonic model. Since then, the basic structure of the Italian Civil Code has remained the same. It is broken down into six sections (known as 'books'): the first regards individuals and families, the second successions, the third property, the fourth obligations (and contracts in general), the fifth work and the sixth the protection of rights. The fifth book therefore contains the basic rules governing enterprises and companies.
Corporate law in Italy then underwent significant developments, as a result of both changes to domestic legislation (mainly due to three reforms, in 1974, 1998 and 2003 respectively) and the process to implement the many EU directives that came into force from the end of the 1960s onwards.
The 1974 reform focused on the regulation of the stock market, establishing the CONSOB (*Italian National Commission for Companies and the Stock Exchange* – see section 1.11), the aim of which was to guarantee the completeness and veracity of company information, and introducing the requirement to have an independent audit firm certify financial statements. Acknowledging the fact that many minority shareholders present on the stock market were more interested in financial returns than taking part in shareholders' meetings, the possibility was also introduced for listed companies to issue *savings shares* (see ch. 3.5).
In the subsequent reform in 1998, the Italian legislator instead focused on the important role played by professional operators and institutional investors, both Italian and foreign; despite holding minority stakes, these operators were able to use their expertise to be active minority shareholders in listed companies. It was precisely the objective of encouraging savings under management to be invested in Italy that inspired a new law, the so-called "TUF" – "Testo unico delle disposizioni in materia di intermediazione finanziaria" *(Italian Consolidated Law on Financial Intermediation)*, otherwise known as Italian Legislative Decree no. 58 of 24 February 1998. The TUF therefore contains the regulations governing listed companies (the underlying principles for which are progressively explained in this manual).

Lastly, in the 2003 reform, the legislator granted more autonomy to the articles of association of limited liability companies, thereby allowing them to grow and become more competitive internationally.

1.3. THE ITALIAN SYSTEM AND TYPES OF COMPANY

The Italian Civil Code states the regulations governing enterprises, starting with those applicable to sole traders followed by those applicable to collective enterprises (i.e. companies); rules are then provided for partnerships and, lastly, for limited liability companies.
Partnerships may come in three different forms: *ordinary partnerships* (for non-commercial activities); *general partnerships* (for commercial and non-commercial activities, characterised by the fact that all partners have unlimited liability for the partnership's obligations) and, lastly, *limited partnerships* (for commercial and non-commercial activities, characterised by the fact that there are two partner categories: partners belonging to the first category have unlimited liability for the partnership's obligations, while those belonging to the second category – who may not be directors – only have liability for the capital they have contributed).
There are also three different kinds of limited liability company: companies limited by shares ('SPAs'), limited partnerships with a share capital ('SAPAs') and companies limited by quotas ('SRLs').

Types of company	
Partnerships *(Società di persone)*	• Ordinary partnership (*Società semplice*) • General partnership *(Società in nome collettivo)* • Limited partnership *(Società in accomandita semplice)*
Limited liability companies *(Società di capitali)*	• **Company limited by shares** **('SPA', *Società per azioni)*** • Limited partnership with a share capital ('SAPA' *Società in accomandita per azioni*) • **Company limited by quotas** **('SRL', *Società a responsabilità limitata*)**

In addition to these types of company, there are also cooperatives, mutual companies and also European public limited companies (generally speaking, these types of company are not able to meet the needs of investors in Italy).
Entrepreneurs wishing to open a company in Italy must therefore choose from one of the types of company provided for by law, as atypical companies are not allowed. Leaving ordinary partnerships to one side, as these cannot carry out commercial activities, there are theoretically five types of company left to choose from; however, if we remove those entailing unlimited liability for all or some of the partners (thereby getting rid of the remaining two types of partnerships and the limited partnership with a share capital), we are left with two options: an SPA or an SRL.
There are also special laws in place for specific categories of commercial enterprises (banks, insurance companies, sports enterprises, asset management companies, brokers, etc.), which impose further restrictions.
For each type of company, the Italian Civil Code sets forth a number of regulations that apply, although the shareholders/quotaholders may also decide on additional requirements; these constitute the legal framework of reference. However, for each type of company, the Italian Civil Code also allows for a number of derogations and amendments, which may be implemented in order to define each company's organisational structure in the best way possible.
The regulations governing these two groups of companies (partnerships and limited liability companies) define the first type of company in each group in full (i.e., ordinary partnerships and companies limited by shares); for the second type of company in each group, on the other hand, only the aspects that distinguish them from the first type are covered. Lastly, regulations for the third type of company in each group are defined on the basis of what makes these companies differ from the second type, forming a kind of 'concentric circle' structure.
A similar approach was used for limited liability companies. The basic rules governing SPAs formed the basis and the model for SAPAs and, later, for SRLs.
This is why there are still many articles that refer back to the previous framework, which can be inconvenient and somewhat difficult to understand for readers.
Lastly, it is also important to bear in mind that the 2003 reform altered the regulations governing SRLs so dramatically that many legal theorists deem them to now represent a second corporate model, separate from the SPA model.

1.4. THE KEY ROLE PLAYED BY ENTREPRENEURS

The first articles of the Italian Civil Code that are of interest to us define the concept of entrepreneurs and, therefore, of enterprises. These are important as we can

immediately see that the 'enterprise' concept includes not only sole traders (i.e., entrepreneurs as natural persons), but also collective enterprises (i.e., companies).
Two sets of regulations are then defined.
The first applies to all entrepreneurs (regardless of whether or not they carry out commercial activities) and, therefore, also to companies. These regulations are made up of: business rules (mainly rules regarding business transfers); rules regarding distinguishing features (company name, trademark and signage) and, lastly, competition rules. However, this manual does not elaborate on these aspects.
The second set of regulations only applies to entrepreneurs that carry out 'commercial activities' (and therefore companies). These regulations govern: registration with the Companies Register, the obligation to keep accounting records, commercial representation and, lastly, bankruptcy. With regard to these regulations, this manual only focuses on registration with the Companies Register in consideration of the numerous connections referred to by Italian legislation governing companies.

1.5. COMPANIES REGISTER

Italy's Companies Register was founded in 1993 and is held by the Chamber of Commerce in each province, managed entirely online.
The purpose of the Companies Register is to provide easy access to accurate and incontestable information about the enrolled companies. Companies are legally obliged to record a number of documents and information (as will be shown in the following chapters). Only legally required information may be recorded.
Information is recorded in the Companies Register in the Italian province where the company has its registered office (or where a foreign company has its secondary offices in Italy). In order to make it easier for third parties to search for information, each company is obliged to indicate the specific Companies Register with which it is enrolled in all of its documentation and correspondence (i.e., on its letterhead, etc.).
The company submits a request for initial registration (this is usually done by the notary who draws up the company's instrument of incorporation), although companies may also be registered by the competent judge with no need for a request from the company. In fact, all Chamber of commerce activities are carried out under the supervision of a judge (who is appointed by the president of the court in the capital of the relative province).
The Companies Register has an *ordinary section* and a number of *special sections*. The *ordinary section* records the information required for companies (the effects of which shall be analysed below). There are seven *special sections*, regarding: 1 agricultural entrepreneurs; 2 professional organisations; 3 entities that carry out *manage-*

ment and coordination activities (see ch. 18); 4 social enterprises; 5 company documentation in a foreign language (where limited liability companies may publish the translation of documentation that must be registered or filed. Publishing the documentation in the foreign language is optional and does not waive the obligation to publish the documentation in Italian); 6 innovative start-ups and certified incubators (see ch. 21); 7 innovative small and medium-sized enterprises (see ch. 21).
Each department issues certificates and copies of the documents stored in its computer files, which it can send by mail and electronically.
One of the most significant aspects of the Companies Register regards the validity of the registered documents. In this regard, it is important to distinguish between the registration of documents in the ordinary section and in the special sections.
Registering documents in the *ordinary section* may make them valid for declaratory, constitutive or legal purposes.
Generally speaking, registration is only **valid for declaratory purposes**, i.e., the registered documents are valid for the disclosure of information and for the relative facts to have effect vis-à-vis third parties. Once registered, the information and documentation that are required to be registered shall have effect vis-à-vis any third party from the very moment they are registered: this is referred to as immediate '**positive validity**'. For limited liability companies, information and documentation shall only have effect vis-à-vis third parties fifteen days after they have been registered with the Companies Register. Failure to register any information that is required to be registered means that said information cannot have effect vis-à-vis third parties ('**negative validity**'). Entrepreneurs (companies) may nonetheless prove that the third party in question was aware of the information (for example, because said third party had been directly notified thereof via a letter or e-mail).
Registering a document with the Companies Register may also make them **valid for constitutive purposes**, if said registration is a prerequisite for the document to take effect. If registration is required in order for a document to take effect, both between the parties and vis-à-vis third parties, then reference is made to **full** constitutive effectiveness; if, on the other hand, this is only required for a document to take effect vis-à-vis third parties, then reference is made to **partial** constitutive effectiveness. Registration of the incorporation of a limited liability company is an example of *full* constitutive effectiveness: if the relative deed is not registered, the company is not incorporated. Registration of a resolution to reduce the capital of a general partnership (not elaborated on in this book), giving rise to the deadline for third parties to object, is an example of *partial* constitutive effectiveness: if the resolution is not registered, the reduction shall only have effect between the parties but not vis-à-vis third parties.

Lastly, registering documents may also make them **valid for legal purposes** if this is a prerequisite for certain regulations to be applied (this only applies to partnerships and will therefore not be elaborated on in this book).
Registering documents in the *special sections* does not have any of these effects, as this is simply done for official record-keeping purposes. Registering information in the special sections does not mean that said information shall have effect vis-à-vis third parties; for this to happen, proof must always be provided that the third party in question was actually aware of the information.

1.6. ORGANISATIONAL, ADMINISTRATIVE AND ACCOUNTING STRUCTURES

The general regulations applicable to entrepreneurs include an article that is also valid for companies, which was recently amended by the 'company crisis' reform. This article refers to the obligation of entrepreneurs (and companies) to ensure that a suitable organisational, administrative and accounting structure is in place, taking into account the nature and size of the enterprise in question.
This structure must be able to, inter alia, promptly detect any early signs of a crisis and/or loss of business continuity in order to allow for the measures provided for by Italian law to be implemented without delay, thereby overcoming the crisis and restoring business continuity. This is a requirement of the new legislation, integrating Article 2086 of the Italian Civil Code.

Art. 2086 ***Gestione dell'impresa***	**Art. 2086** ***Business management***
[1] L'imprenditore è il capo dell'impresa e da lui dipendono gerarchicamente i suoi collaboratori.	[1] The entrepreneur shall head up the business and his/her co-workers shall depend on him/her in a hierarchical structure.
[2] L'imprenditore, che operi in forma societaria o collettiva, ha il dovere di istituire un assetto organizzativo, amministrativo e contabile adeguato alla natura e alle dimensioni dell'impresa, anche in funzione della rilevazione tempestiva della crisi dell'impresa e della perdita della continuità aziendale, nonché di attivarsi senza indugio per l'adozione e l'attuazione di uno degli strumenti previsti dall'ordinamento per il superamento della crisi e il recupero della continuità aziendale.	[2] Entrepreneurs, working as a company or collectively, are under the obligation to establish an organisational, administrative and accounting structure that is suitable for the nature and size of their enterprise, also in order to promptly detect any company crisis and any loss of business continuity, as well as to immediately adopt and implement one of the measures provided for by law to overcome a crisis and recover business continuity.

With regard to companies, Article 2086 is referred to by Article 2380-*bis* – *Management of the company* and Article 2409-*novies* – *Management board*, thereby adding to the obligations of the administrative body (see ch. 5).

1.7. PARTNERSHIPS

After setting forth the regulations governing individual entrepreneurs, the Italian Civil Code moves on to define companies and provides the set of rules applicable to partnerships.
The regulations governing partnerships (where an economic activity is carried out) state that partners shall always have unlimited and joint liability, which is why Italian entrepreneurs rarely opt for this type of enterprise and why foreign entrepreneurs never do (hence why these regulations are not elaborated on in this book).
However, there are two aspects worth looking at, as reference is made to them later with regard to limited liability companies: the definition of a partnership agreement and the concept of autonomy with regard to assets.
The Italian Civil Code defines partnership agreements as follows: "*Through a partnership agreement, two or more people contribute goods or services in order to carry out an economic activity for the purpose of sharing the relative profits*". This definition is valid for all types of company, with the exception of the requirement to have several partners, as this now only applies to partnerships. In fact, with regard to limited liability companies, two EEC directives made it possible to incorporate single-member SPAs and SRLs (see chs. 2.8 and 10.1).

1.8. AUTONOMY WITH REGARD TO ASSETS AND LEGAL PERSONALITY

Upon incorporation, each company has its own set of assets, normally created through the contributions made by its shareholders/quotaholders/partners.
These assets provide a guarantee that the company is able to pay its debts and therefore represent the main guarantee for the company's creditors.
Partnerships have no minimum capital requirements and do not need the equivalent of a share capital in order to be established, considering that the partners' unlimited and joint liability provides a sufficient guarantee for creditors; in this case, the partnership's capital is therefore a *secondary guarantee* that does not necessarily need to be approved.
A partnership's assets are nonetheless separate from the partners' own assets and, in fact, the partnership's assets are used to satisfy the enterprise's creditors first. This means that a partner's personal creditors cannot make any claim on the partnership's assets (at the most, it may exercise protective rights over the stake held by the partner in question).
In the case of a limited liability company, on the other hand, the company's assets are completely autonomous with respect to the assets of its shareholders/quotaholders, creating a new legal entity – a legal person – that is separate from its shareholders/quotaholders. In fact, it is said that the company's assets

have *'perfect autonomy'*. Under no circumstances may a company's creditors claim anything from the shareholders/quotaholders personally. The shareholders/quotaholders may never be liable for the company's obligations, only being responsible for the capital that they have contributed (or pledged, if the relative contributions have not yet been made); the share/quota capital therefore represents the *only guarantee* for the company's creditors. Reference will be made to this concept as we look at the incorporation of SPAs and SRLs in more detail.

1.9. LEONINE PARTNERSHIP

Article 2265 of the Italian Civil Code states: *"Any agreement leading to one or more partners being fully excluded from profit sharing or from participation in losses shall be deemed null and void".*
The strict ban on any agreement leading to one or more partners being completely excluded from profit sharing or from participation in losses dates back to Roman times; such agreements are deemed null and void as they go against the main reason for the partnership agreement, i.e., business risk. It would indeed be unreasonable to exclude a partner from the consequences of any losses to the detriment of the others, just as it would be unfair if only one partners or one group of partners were to receive the profits deriving from the business activity.
In any case, the inclusion of such a clause within a partnership agreement would not cause the entire agreement to be declared null and void, but would merely invalidate the clause itself. This means that the partnership agreement would still be deemed valid and effective, while the leonine partnership provision in the articles of association would be deemed to have been excluded.
It is, however, permitted to include clauses stating that partners may share in profits and participate in losses to a different extent compared with their respective stakes in the company (see chs. 3.4, 6.5.2, 11.3 and 16.3).

1.10. THE 'GAZZETTA UFFICIALE'

Historically, the *Gazzetta Ufficiale della Repubblica Italiana (*Official Journal of the Italian Republic*)* derives from the *Gazzetta Piemontese*, which was the official journal of the Kingdom of Sardinia. In 1860, its name was changed for the first time into the *Gazzetta Ufficiale del Regno* (Official Journal of the Kingdom), before being changed again following the 1946 referendum, into the *Gazzetta Ufficiale della Repubblica Italiana.*
The *Gazzetta Ufficiale della Repubblica Italiana*, or *Gazzetta Ufficiale* for short, is the official means to disclose the regulations in force in Italy. It discloses, provides information on and formalises legislative texts and public and private deeds of

which all citizens must be made aware in a certain way (for example, please refer to the provisions of Art. 2366 of the Italian Civil Code regarding how to call shareholders' meetings in SPAs).
Laws approved by Italy's two chambers of parliament and signed by the President of the Republic are published in the *Gazzetta Ufficiale* and come into force on the fifteenth day thereafter.
On 1 January 2013, in accordance with the Italian Ministry of Justice and with the support of the 'Istituto Poligrafico e Zecca dello Stato' *(State Printing Works, Stationery Office and Mint)*, the Italian Ministry of Economy and Finance began making the various releases of the *Gazzetta Ufficiale* available in digital format, free of charge.

1.11. THE CONSOB

The CONSOB *(Italian National Commission for Companies and the Stock Exchange)* is a public body whose role is to supervise the capital market; it was established by Italian Law no. 216 of 07/06/1974. CONSOB is currently a *legal entity governed by public law* which is fully independent within the limits established by the law. It is headquartered in Rome and also has operational offices in Milan.
The CONSOB's duties have been gradually extended over time. It was established as a supervisory authority for the stock exchange and for companies with shares listed on the stock exchange and has gradually become a supervisory authority for the entire securities market, for those operating in it and for all transactions that call upon the public to invest by issuing and distributing financial instruments on regulated markets.
The CONSOB plays a key role in ensuring that information on the securities market is adequate and truthful, in order to allow investors to make better informed choices (see ch. 5.5.2).

1.12. BORSA ITALIANA S.P.A.

Borsa Italiana (the Italian Stock Exchange) was established in 1998 when the stock markets were privatised in the form of an SPA, owned by Italy's main banks. In 2007, it became part of the London Stock Exchange Group. In October 2020, it was sold to Euronext N.V. (short for European New Exchange Technology), which is the largest stock exchange in Europe, operating markets in Amsterdam, Brussels, Dublin, Lisbon, London, Oslo, Paris and now Milan.
Borsa Italiana S.p.A. ensures fair trading, defines the requirements and procedures for issuers to be admitted and remain on the market, defines the admission and operating requirements for brokers and manages information about listed compa-

nies. It organises and manages the Italian market using a fully electronic trading system to complete trades in real time.
It also regulates and manages the markets. Supervision, on the other hand, is carried out by the CONSOB and Banca d'Italia *(Bank of Italy)*.

1.13. COMPANIES THAT RESORT TO THE RISK CAPITAL MARKET

Companies that resort to the risk capital market or *open companies*, are companies with shares that are listed on regulated markets or that are *widely-held among the public*. These include companies with over 500 shareholders (other than the controlling shareholders) who together hold at least 5% of the share capital, or companies that have issued bonds for a total value of at least Euro 5 million and with more than 500 bondholders (for the precise definition of the requirements to identify these companies, please refer to the criteria established by the CONSOB under Article 2-*bis* of CONSOB regulation no. 11971/1999 – www.consob.it).
The reform of limited liability companies was also characterised by the fact that it provided a differentiated set of regulations of a more mandatory nature for all *companies that resort to the risk capital market* (see Art. 2325-*bis*). The latter include listed companies (which are nonetheless subject to special regulations in many respects) and companies with shares that are *widely held among the public*.
Based on Article 2325-*bis* of the Italian Civil Code, it is therefore possible to distinguish between:

- **listed SPAs**, which are firstly subject to the regulations dictated by Italian Legislative Decree no. 58/1998 (*Italian Consolidated Law on Financial Intermediation*, 'TUF') and, secondly, to the provisions of the Italian Civil Code;
- **SPAs with a widespread shareholder base**, which are firstly subject to the provisions of the Italian Civil Code with regard to companies, secondly, to the specific provisions of the Italian Civil Code for *companies that resort to the risk capital market* and, lastly, to Articles 114 and 115 of the TUF regarding communications to the public and to the CONSOB (with the latter being in charge of supervising also this type of company);
- **so-called 'closed' SPAs**, which do not resort to the risk capital market, and which are subject to the provisions of the Italian Civil Code.