A Review of Italian and UK Company Law

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A JOINT STUDY BY

Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili

The Association of Chartered Certified Accountants

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Foreword

This booklet has been prepared as an introduction to the basic elements of company law in the UK and Italy. It will, hopefully, prove of interest to accountants and businesspeople with cross-border interests as well as to other students of European company law.

As the result of successive EU Directives, company law is becoming increasingly harmonised throughout the EU. This is certainly the case with regard to requirements regarding financial reporting. But there remains much in national company law which is special and unique to the country concerned. While the booklet does not aspire to be a fully comprehensive guide to the corporate law regimes of the either country, it sets out to explain the most significant national provisions in a format which enables the reader to cross-refer to the corresponding provisions of the other country.

The booklet has been prepared as a joint project between ACCA (the Association of Chartered Certified Accountants) and the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC). It is the latest in a long line of projects on which our bodies have worked together though a bi-lateral committee which meets twice yearly to discuss matters of common interest.

The current members of the bi-lateral committee are set out below. Thanks are also due for his contribution to this project to a former member of the bi-lateral committee, Mr Alberto Crosti.

Current members of the bi-lateral committee:

CNDCEC
Roberto D'Imperio – Council member CNDCEC
Giuliano Bond – Council member CNDCEC
Andrea Bo
Ernesto Gatto
Carlo Vicarioli

ACCA
Mark Gold – Council member
Michael Sleigh – ACCA Secretary
John Davies
Chas Roy-Chowdhury

A Review of UK Company Law

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1. Different Forms of Business Entity

There are an estimated 4.7 million business enterprises in the UK. This figure includes private sector, public sector and nationalised bodies other than government and non-profit making organisations.

Of these enterprises, 99.3% have fewer than 50 employees; 27,000 employ between 50 and 250 people, and 6,000 have more than 250 staff. Over two-thirds of all enterprises – 3.5 million – have no staff at all other than their owners. Between them, UK business enterprises employ nearly 23 million people.

Of the 4.7 million businesses in existence, some 2.5 million are limited companies. The remaining 2.2 million are a mixture of sole traders and partnerships. Of the limited companies, about 1.7 million have share capital of £100 or less, while only 34,000 have capital of £1 million or more.

The UK business environment therefore comprises a mixture of legal forms, although the great majority of enterprises are small in terms of the numbers of staff they employ and their financial circumstances.

Before going on to consider the characteristics of the limited company, it may be useful to first consider the basic features of the different forms of business in the UK.

SOLE TRADERS

A sole trader can be defined as an individual who is the sole owner and operator of a business. The sole trader is personally responsible for the debts of his or her business. For this reason, a sole trader is not required to register the business in a central registry or submit financial statements and other documents for public filing.

Partnerships

A partnership is a group of two or more individuals who carry on a trade, business or profession on a collective basis with a view to making profits.

Persons who are in partnership with each other are generally referred to collectively as constituting a firm, in other words a single business unit. This is not, however, technically accurate. Apart from in Scotland, where individual partnerships do have a legal identity of their own, a UK partnership is no more than a network of relationships between the various partners in the firm.

The partnership is liable for wrongs (wrongful acts or omissions) committed by any partner, and every partner is liable on a joint and several basis for everything for which the firm is liable. So the wrongful acts of one partner in the firm may lead to all or any of the other partners being made personally responsible for meeting a resulting claim. Because each partner must be prepared to accept responsibility for the actions of the other partners in the firm, a successful partnership venture requires a high degree of trust and confidence between the individual partners.

Despite the element of personal risk, the partnership has always been a popular form of doing business, largely because it is a relatively informal structure and the law intrudes to only a limited extent into the internal affairs of an individual partnership. There is no requirement for partnerships to be registered with or licensed by the state. Further, there is no requirement for partnerships to place on the public record details of their constitutional arrangements, their profit-sharing procedures, their financial results or the remuneration earned by their partners.

Given that the partnership is not a corporate body, the partnership itself does not pay corporation tax. Tax is charged on the earnings of the individual partners and employees of the firm.

A deed of agreement usually forms the constitution of the partnership, but this is not a legal requirement. In other words, there can be a partnership between two or more persons that is not evidenced or supported by a written constitution. Where an individual partnership makes no arrangements of its own on particular matters concerning the management and administration of the firm, standard rules contained in the Partnership Act 1890 will apply.

Traditionally, the partnership has been the main or the only available business structure for professional firms in the UK. This has been because, in the past, most professional bodies did not allow their practitioners to set themselves up in limited liability structures. Although these rules have now largely been relaxed (and in the case of auditors the law now allows them to operate as limited liability entities), the partnership continues to be a highly popular format, for professionals as well as for business people.

Limited partnerships

The limited partnership is a specialised variation of the partnership.

As stated above, in a partnership each partner is liable on a joint and several basis for the debts of the firm. This situation will not be attractive to persons who wish to engage in a business venture with other individuals, and share in the profits of that venture, but who are not prepared to subject themselves to joint and several liability for all the debts of the firm.

The limited partnership was created, in 1907, to acknowledge and override such concerns. A limited partnership therefore consists of one or more ‘general’ partners, who have the same rights and responsibilities as partners in ‘traditional’ partnerships, and one or more ‘limited’ partners. Limited partners are not responsible for the debts and obligations of the firm beyond a specified amount, which they contribute as capital at the time that the partnership is created.

The limited partner cannot take part in the management of the firm and does not have power to commit the firm on any matter.

Because of the element of limited liability that applies to this type of firm, limited partnerships must apply to be registered with the state. They do this by applying to Companies House, which is the government registry that stores public information about all limited liability entities (most of which are companies).

In order to register as a limited partnership, a signed statement must be delivered to Companies House providing the following information:

- the name of the firm
- the general nature of its business
- the full name of each partner
- the term, if any has been set, for which the partnership is to exist and date of its commencement
- a statement that the partnership is to be limited and the description of every limited partner
- the sum contributed by each limited partner and whether this has been paid in cash or otherwise.

Because this information is filed on the public record, those with whom a limited partnership conducts business are able to verify which partners may validly act on the firm's behalf and the extent to which individual partners' personal liability may be limited.

Limited partnerships are not used widely since it is generally perceived to be more advantageous to form a private limited company, but as of 2007 there were, nonetheless, around 14,000 registered limited partnerships in the UK.

LIMITED LIABILITY PARTNERSHIPS (LLPS)

The LLP was created in the UK in 2000. The LLP is a hybrid form of structure, which combines elements of both the partnership and the limited liability company.

The LLP resembles a company in that it is a corporate body, it has a separate legal 'personality' and it must comply with most of the company law requirements that are imposed on companies, including the responsibility to prepare and file annual accounts with Companies House.

The LLP resembles a partnership in that any individual LLP is free to decide its own internal constitutional arrangements and individual partners of the firm are taxed on their own earnings from the firm.

The main reason for the introduction of the LLP by the UK government was to enable professional firms, in particular big audit and law firms, to increase the level of protection of their individual partners against big claims made against them. As a corporate body, the debts of the LLP are the primary responsibility of the firm itself, and individual partners, like shareholders in a company, have no personal responsibility for them. While an individual partner in an LLP may be held personally responsible to a client of the firm to whom he owes a personal duty of care, other partners in the firm will not be required to bear any personal responsibility if such a case arises. Thus the principle of joint and several liability does not apply to partners in an LLP. This is seen as being particularly attractive to larger firms that have very many partners and that offer a wide variety of professional services to clients; partners in such firms had become very uncomfortable with the idea of assuming personal responsibility for the acts of partners whom they did not know well and in respect of areas of work in which they had no expertise.

Apart from the changes to the liability of partners, there are certain other advantages to LLP status. For example, the LLP can hold property in its own name and enter into contracts and bring legal proceedings in its own name. On the other hand, the LLP has to publish information on its financial results, including some limited information on the remuneration of its partners.

The LLP became available for adoption as a business structure in April 2001. By September 2008, about 35,000 firms had decided to become LLPs. Most LLPs are firms that have converted from partnership status to LLP status. Among those firms that have converted are all the Big 4 audit firms and most of the big law firms.

2. Different Types of Company

INTRODUCTION

There are three main types of company in the UK: those limited by shares, those limited by guarantee, and those that are 'unlimited'. All are governed by UK companies legislation, the most important of which is the Companies Act 2006.

The first type, the company limited by shares, is the most popular form of company. This type of company can be formed in one of two further formats: the 'private limited company' or the 'public limited company'. Whether they are private companies or public companies, share-based companies are usually commercial businesses of some kind.

Companies limited by guarantee do not have a share capital. Instead, the members undertake to contribute an agreed amount to the assets of the company in the event that it is wound up. Usually, this form of company is adopted only by non-profit-making entities, such as charities or members' clubs.

As will be explained below in the section on 'Formalities', companies are required to register with Companies House. They may not conduct business as limited companies until this process of registration is complete and a certificate of incorporation is issued. In the case of public companies only, a separate certificate of entitlement to conduct business is also required.

As of September 2008, the numbers of the two types of UK company on the register maintained by Companies House were:

Public companies	11,900
Private companies	2,708,000
TOTAL	2,720,000

Of the private companies, 87,000 were either limited by guarantee or unlimited; the remainder, the vast majority, were limited by shares. Public companies accounted for 0.4% of the total number of companies.

In 2005, a new type of company was introduced in the UK. This is the Community Interest Company (CIC). The CIC is a non-profit-making entity and must be committed, in its constitution, to operating solely in the interests of some form of community enterprise. A CIC is subject to a statutory 'asset lock' to prevent it from distributing its assets to its investors.

CICs have to be registered with Companies House and there is an annual re-registration process, at which each CIC will have to satisfy Companies House that it is continuing to act in the 'community interest'.

PUBLIC COMPANIES V PRIVATE COMPANIES

The main differences between private companies and public companies are as follows:

1) Membership

A private company may be formed and operate with just one member. A public company must have at least two members.

2) Minimum capital

A public company must have a minimum share capital of £50,000. At least 25% of this figure must be paid up at the time of registration. There is no minimum share capital for a private company and shares may be issued wholly or partly unpaid.

3) Company Secretary

Every public company is required to have a company secretary, who is the company officer primarily responsible for compliance and administration. Private companies are not required to have a secretary, though the larger private ones usually do.

4) Share issues

Only a public company is permitted to offer its shares directly to the public. It follows that only public companies are permitted to apply for listing on any stock exchange.

5) Accounting and audit exemptions for SMEs

Company law provides separate rules for accounting disclosure by small and medium sized companies: these separate rules amount to exemptions from the standard legal requirements applicable to larger companies. Small companies – currently defined (in part) as those with turnover of up to £6.5 million - are also exempt from having their annual accounts audited. These special rules apply, however, only if the company is private; so even if a company meets the statutory criteria that are used to define 'small' companies, if it is a public company it is not eligible to take advantage of the 'small company' rules.

6) Solvency action

If a public company's net assets fall below 50% of its called-up share capital, it must convene a general meeting of its shareholders to address the situation. No such requirement applies to private companies.

7) Dealings in own shares, etc.

Public companies are subject to special restrictions in relation to the purchase or redemption of their own shares, providing financial assistance for the purchase of their own shares, and loans to their directors.

8) AGM

Every public company is required by law to hold an Annual General Meeting (AGM) in each calendar year. Private companies are not subject to the same requirement, although their articles of association may insist that an AGM be held.

3. Incorporation of Companies

FORMALITIES

To incorporate a company (in other words to give corporate status to a new or existing entity), it is necessary to file an application with Companies House. There are three main offices of Companies House: in Cardiff, Edinburgh and Belfast. If an applicant wishes the new company to be registered in England and Wales, the application is to be made to the office in Cardiff.

Applicants must deliver a number of statutory documents. These are as follows.

- **The company's two constitutional documents:** the Memorandum of Association and the Articles of Association. The Memorandum contains a list of prescribed information including details of the company's name, the type of company that it is intended to be, and details of its intended share capital, if appropriate. (NB as from October 2009 there will be no requirement for private companies to stipulate the maximum amount of capital they may raise). Unless the company is to be an unlimited company, there is also a standard statement in the Memorandum to the effect that the liability of the company's members is to be limited. The Articles are the internal administrative rules of the company and govern matters such as the means of appointment of the company's directors, the rights of members and the conduct of company meetings. A standard, 'model' set of Articles of Association exists in statutory form: if a new company wishes to adopt the whole of that model document, it need declare, in its application, only its intention to adopt it, either in whole or with stated modifications.

- **Details of its officers: the applicant company** must give prescribed details of the persons who it is intended will be the company's first director or directors and (in the case of a public company) its first company secretary. This document also records the address of the company's registered office.

- **A compliance statement**, which takes the form of a statutory declaration of compliance with all the requirements of the Companies Act in respect of registration. The statement is made either by a solicitor who has been engaged in the formation of the company or by a person named as one of the directors or the secretary of the company.

Along with the above statutory documents, a registration fee of £50 is payable.

It is not necessary to use the services of a professional person to form a limited company, although it is usually desirable to seek advice from an accountant or solicitor on the most suitable way to construct the new company's constitutional arrangements.

It is, in fact, common practice for incorporators to acquire a ready-made (or 'shelf') company; ie one set up in advance by a specialist company formation agency.

Following acquisition, the new controllers of the company can change its name and registered office and make whatever changes to its Memorandum and Articles of Association that they think fit. The initial purchase of a 'shelf' company can cost between £50 and £200, depending on the buyer's detailed requirements.

Once the new company's incorporation documents are accepted for filing, Companies House will issue a certificate of incorporation and the company comes into legal existence. A new file is opened for the company at Companies House and the incorporation documents are the first documents posted to that file. All subsequent documents filed by the company are added to its file in due course.

CAPITAL

As previously stated, the minimum capital of a public company is £50,000; there is no corresponding requirement for private companies.

There is no prescribed minimum or maximum amount for the value of shares issued by a company. A company may issue shares against a non-cash consideration, eg for goods and services.

In most circumstances, for a private company there will be no enquiry as to whether the non-cash consideration equals the nominal value of the shares. A more stringent regime applies, however, in the case of public companies.

A public company may not issue shares in consideration for an undertaking to do work or perform services; where a public company issues shares for a non-cash consideration, an expert's report of valuation is required. The expert will be appointed by the directors, who may use the company's external auditors for this purpose.

There are a number of different types of share, each of which has its own characteristics, as follows.

- Ordinary shares entitle holders to vote at company meetings, to receive dividends (where the directors agree to pay them) and to participate in any distributions that may be made following the company's winding up.

- Preference shares carry preferential rights (over ordinary shares) to receive dividends from the company, usually of a defined level. As a consequence of their preferential rights to dividends, however, their rights to vote are usually restricted.

- Convertible shares are usually issued as preference shares that may be converted into ordinary shares on the occurrence of certain specified events.

- Redeemable shares are shares issued on a short-term basis and redeemable (or capable of being bought back) by the company either at a fixed time or at the company's option. The holder usually receives back the money paid for the shares, often with a redemption premium. When these shares are bought back by a company, they must be cancelled.

- Deferred shares carry restrictions on their holders' rights to dividends. Usually, holders of these shares may not receive a dividend unless ordinary shareholders have been paid at least a specified amount for the year.

- Non-voting shares are ordinary shares, and carry the same rights to dividends as those shares, but their holders have no rights to vote at company meetings. Such shares are issued when a company wishes to keep decision-making power in the hands of a defined group.

Currently, a company may issue shares up to the number it is authorised to issue in its Memorandum of Association (although as previously stated this requirement will be repealed in 2009). If the company wishes to issue more shares than it is currently authorised to do, it will have to convene a general meeting of the company's members to approve an increase in the authorised level, and to change the terms of its Memorandum to reflect this.

Reduction of capital

A company's issued share capital structure may be 'reduced' in accordance with the procedures set out in the Companies Act and subject to confirmation by the court. (In the case of private companies, it is not necessary to obtain court approval provided the directors make a declaration of solvency and the shareholders approve the proposed reduction).

TRANSFER OF SHARES

Shareholders have a basic right to transfer their legal title to their shares to other persons. There is a prescribed procedure that allows for this to take place, involving the completion of a 'Stock Transfer Form'. This form must specify the shares to be transferred, the names and addresses of the transferor and transferee and the consideration to be paid for the transaction. In most circumstances the form needs to be signed only by the transferor.

Tax, or 'Stamp Duty', is payable on the transfer. The form must be 'stamped' with the appropriate duty before it is delivered to the company to register the transfer. Duty is payable at 0.05% of the value of the consideration.

4. Company Administration

COMPANY MEETINGS

There are two types of general meeting of the company's members: the annual general meeting (AGM) and the general meeting. A public company is required by law to hold an AGM each year: a private company is only required to hold an AGM if its Articles of Association say so.

The Companies Act provides that two members present in person constitute a quorum at a company's general meeting. This provision may be overridden, however, by individual companies' Articles of Association: these commonly provide that two members present in person or by proxy constitute a quorum. Where a company has only one member, the Companies Act provides that, irrespective of anything in its Articles of Association, the quorum for a general meeting is one member present in person or by proxy.

Annual General Meeting

A public company's first AGM must be held within 18 months of its incorporation. Thereafter, an AGM must be held in each calendar year with a gap of no more than 15 months between each meeting. The meeting is convened by the company's directors. The business of the meeting is governed by the company's Articles of Association – it is usual for AGM business to include the presentation to the members of the company's annual accounts for the preceding year, the appointment or re-appointment of directors, the appointment or re-appointment of the company's auditor and the declaration of a dividend. It is universal practice for the company's annual accounts to be presented at the AGM. This, however, is not legally compulsory – the accounts may instead be presented at a general meeting.

As from 2003, a new standard item of AGM business, for listed companies only, is the presentation to members of the directors' report on the company's policy on directors' remuneration. This report must set out details of the company's remuneration policies for the forthcoming year on issues such as incentive schemes, together with full details of each individual director's remuneration package for the previous financial year. It must also contain information linking the company's financial performance over recent years to the company's share price.

The report must be put to a shareholder vote. The vote, however, is only 'advisory' and does not affect the validity of any contracts entered into by the company's directors.

Any shareholder with voting rights is usually entitled to receive 21 days' notice of the AGM. This should be in writing and state the time and venue for the meeting and the nature of the business to be transacted. Where the company is to table a 'special' or 'extraordinary' resolution – these are required for particular types of resolution that require a 75% majority rather than a simple majority – the full text of the resolutions must be set out in the notice.

The 21-day notice period may be waived if all the members entitled to attend and vote at the meeting agree to do so. This makes it possible for small companies to hold meetings at minimal notice where all interested parties agree to do so.

General meetings

A general meeting of the company is any meeting of shareholders that is not an annual general meeting, and is usually convened by the directors to discuss urgent matters. Members with shares representing 10% of the paid-up share capital of the company may requisition the directors to convene a general meeting to discuss specified business. If the directors do not proceed to convene a meeting that has been requisitioned by the members, those who have requisitioned it may convene the meeting themselves.

In most circumstances, written notice of a meeting is delivered to any member who has voting rights. A general meeting may be convened at short notice if 95% of the members entitled to attend and vote agree.

A company's Articles of Association usually fix the quorum for both types of meeting. Two members present in person or by proxy usually constitute a quorum.

COMPANY DIRECTORS

Every private company has to have at least one director. Public companies must have at least two. A director must be at least 16 years of age. The first directors of the company are appointed by the company's documents of incorporation. Thereafter, they are appointed in accordance with the provisions of the company's Articles of Association. The Articles may permit new directors to be appointed either by the shareholders in general meeting or by the other directors, or both. The Articles will also govern the length of directors' appointments and the basis on which they must retire and seek re-appointment.

There is no real statutory definition of 'director', and there are no legal eligibility criteria other than the age condition referred to above. The role of directors is, however, essentially to manage the company's pursuit of its objectives and to take legal responsibility for the company's acts. The specific legal responsibilities and liabilities of directors have traditionally been contained in a mixture of statute law and case law. Under the Companies Act 2006, however, these duties are for the first time written down in legislation. The main elements of directors' legal duties are as follows:

- directors owe their duties to their company and not to third parties
- directors must comply with the requirements of their company's constitution
- directors must act in the way that they consider, in good faith, is most likely to promote the success of their company; in doing so they must have regard to a number of specified factors, viz

- the likely long-term consequences of their decisions
- the interests of the company's employees
- the need to foster the company's relationships with suppliers, customers and others
- the impact of the company's operations on the environment
- the desirability of the company maintaining a reputation for high standards of business conduct
- the need to act fairly as between members
- directors must exercise independent judgement
- directors must exercise reasonable care, skill and diligence
- directors must avoid conflicts of duty
- directors must not accept benefits from third parties that could give rise to a conflict of interest
- directors must declare any interest they have in transactions being discussed by their company

In addition, while directors ordinarily owe their duties to the company's members as a group, where the company is insolvent or approaching insolvency, directors must give precedence to the interests of the company's creditors. Where directors allow their company to continue to trade past the point where they know *or should know* that the company cannot avoid liquidation, they may be made personally liable for the company's debts.

There are few statutory rules governing meetings of a company's directors. Such matters are instead dealt with mainly by the Articles of Association. Company articles invariably contain rules regarding the right of directors to receive notice of meetings, the length of such notice and the way in which decisions are to be made.

STATUTORY RECORDS

The directors are responsible for keeping and maintaining a number of statutory records. These are:

- a register of the company's directors and secretaries
- a register of directors' interests in the company's shares and debentures
- a register of the company's members (including details of their shareholdings where appropriate)
- a register of charges given over the company's assets.

All these registers must be made available for inspection by the company's members or by any member of the public.

In addition, the directors must ensure that minutes are kept of all company meetings and meetings of directors. The minutes of company meetings must be made open for inspection by members of the company. Minutes of directors' meetings are not open for inspection by members, though they may be inspected by the company's auditor.

MINUTES

Minutes must be kept of all meetings of the company (AGMs and general meetings) and of meetings of the company's directors. These minutes must be kept for ten years. Minutes of company meetings must be available for inspection by any of the company's members; minutes of directors' meetings are, however, private.

PUBLICATION OF STATUTORY INFORMATION

The Companies Acts require companies to file with Companies House a large number of documents relating to the company's affairs. This information may be inspected by any member of the public. Inspection may be made by a number of means – by physically inspecting company files at any one of a number of search offices around the UK, by ordering copies of documents by post or electronic means either directly from Companies House or from a commercial information agency, or by accessing the required information via Companies House's online database.

The documents that must be filed by law include the following.

Companies' annual accounts

In the case of a private company, these must be filed at Companies House within nine months of the company's accounting year-end. Public companies must file their accounts within six months of their year-end. If the accounts are filed late, fines will be imposed on the company.

Company annual returns

Every year, each company must file an 'annual return', which contains up-to-date details of the company's directors, secretary, shareholders and capital structure. This must be filed at Companies House within 28 days of the date chosen by the individual company as its 'return date'.

Appointments/resignations of directors and secretaries

Each new appointment and resignation must be notified to Companies House within 15 days of their taking effect.

Resolutions

The text of all 'special' and 'extraordinary' resolutions passed by a company must be filed within 15 days of their being passed.

DISTRIBUTIONS

A company may make distributions only out of 'distributable profits', ie the company's accumulated, realised accounting profits minus its accumulated realised accounting losses. In addition, a public company may declare a dividend only if, at the time of making its distribution, the amount of its net assets does not fall below the aggregate of its called-up share capital and undistributable reserves and if, and to the extent that, the distribution does not reduce the amount of those assets to less than the aggregate.

If a company makes a distribution that is not permitted by the above test, then those members who receive a dividend in circumstances where they know or have reasonable grounds for knowing that it is illegal are liable to repay the amounts received to the company.

5. Accounting Records and Company Accounting

ACCOUNTING RECORDS

The Companies Act 2006 requires directors to keep accounting records of all the company's financial transactions. They may be kept in any format, but must contain details of all the company's assets and liabilities, and its day-to-day entries of payments and receipts, and be sufficient to explain the company's financial position at any time. The records must be open for inspection by the company's directors and secretary at all times. They are not accessible by the company's members.

COMPANY ACCOUNTING

The directors are responsible for preparing and approving their company's financial statements. These must comply with the requirements as to form and content that are set out in the Companies Act 2006; this in turn implements in the UK the provisions of the EU Fourth and Seventh Company Law Directives.

The financial statements must by law contain a balance sheet and a profit and loss account. These are supplemented by notes that give more detailed information on matters dealt with in the financial statements. The balance sheet is required to show a true and fair view of the state of the company's affairs at the end of the accounting period; the profit and loss account must show a true and fair view of the company's profit or loss over the accounting period concerned.

Large UK companies also produce a 'cash flow statement', though this is not currently a legal requirement.

The law sets out a number of principles that must underpin the preparation of financial statements:

- the company must be presumed to be a going concern
- accounting policies must be applied consistently from year to year and to similar items during the same year
- all income and charges relating to the financial year in question must be accounted for in that year, regardless of the date of receipt or payment
- the amount of any item must be determined on a prudent basis (eg only realised profits may be included in the profit and loss account)
- in determining the aggregate amount of any item, the amount of each individual asset or liability taken into account must be determined separately.

Where a company is a parent company, then unless it is specifically exempt it must prepare group accounts that consolidate the results of both itself and its subsidiary undertakings. A company need not prepare group accounts if it is itself a subsidiary of another EU company and its results are included in the group accounts of the group headed by that other company. This exemption does not, however, apply where a company is listed on any Stock Exchange.

The accounts must be approved by the company's directors and signed by a director on behalf of the board. A copy of the accounts must be sent to every shareholder at least 21 days before the meeting at which they are to be presented to the members. (Because the accounts of listed companies are usually so lengthy, those companies are allowed the option, if they wish to use it and provided their shareholders give their agreement via a statutory approval procedure, of sending to their members 'summary' financial statements instead of the full accounts. Even where companies do this, however, any individual shareholder is still entitled to ask for a copy of the full accounts.)

In addition to the accounts, each company must prepare a directors' report, which contains information relating to the development of the company's business over the accounting period, the recommended dividend (if any) and items such as charitable and political donations.

As from 2005, a company's directors are required to declare, in their company's annual accounts, that they have not withheld from the auditor any information that they should have provided.

Special disclosure rules for SMEs

Small and medium-sized companies may choose to file on the public record at Companies House only 'abbreviated versions' of their accounts, which omit certain information which they include in their 'full' accounts.

6. Auditing

THE LEGAL REQUIREMENT

Until 1994, all UK limited companies, other than 'dormant' companies, were required to have their annual accounts audited by a qualified, independent external auditor. In 1994, however, private companies began to be exempted from the standard audit requirement on the basis of their financial 'size'. Initially, the exemption threshold was set at £90,000 turnover, but the level has been raised several times subsequently.

Since April 2008, most private companies have been exempt from the audit requirement if their turnover does not exceed £6.5 million and the net assets figure in their balance sheet does not exceed £3.25 million. Certain types of company are, however, excluded from audit exemption. Excluded companies include public companies and companies that are either parent or subsidiary companies. In addition, any member or members who together represent 10% of the company's membership or shareholding may demand that an audit be carried out, regardless of the wishes of the company's directors.

The requirements regarding the appointment of auditors and the duties of auditors are found in the Companies Act 2006. The rules of the EU Statutory Audit Directive concerning the eligibility of company auditors are also found in the Companies Act 2006. Auditors in the UK are authorised to carry out company audit work and are regulated by one of five Recognised Supervisory Bodies (RSBs), which are professional bodis approved by the UK Government for the purposes of assessing eligibility, issuing licences and carrying out ongoing quality control checks of the auditors' work.

APPOINTMENT OF AUDITORS0

Under the 2006 Act, the company's auditor is to be appointed by the company's members/shareholders at each general meeting of the company at which its annual accounts are presented to the members/shareholders – this is usually the company's AGM. The auditor holds office until the next general meeting at which accounts are laid. Notwithstanding this basic rule, companies usually give themselves power in their Articles of Association to appoint auditors to fill a casual vacancy, ie a vacancy which arises because of a previous auditor's death, resignation or loss of eligibility.

Private limited companies that are large enough to require the appointment of an auditor must follow a separate procedure, given that private companies are not required to hold an AGM. A private company has 28 days from the end of the period by when it is required to send out its accounts for the previous year to appoint an auditor. This 28 day period is known as the 'period for appointing auditors'. The auditor appointed in this way will serve office until the end of the next 'period for appointing auditors' and will automatically be deemed to be re-appointed unless the company chooses to appoint another auditor or the company decides (as an exempt small company) not to have an auditor at all.

ROLE OF THE AUDITOR

The 2006 Act contains the basic requirement for the company's auditor to make a report to the company's members on all statutory accounts that the company prepares and presents to its members during the auditor's tenure of office. The report must state whether, in the auditor's opinion, the balance sheet, profit and loss account and notes to the accounts have been properly prepared in accordance with the requirements of the Act and whether a true and fair view is given of:

- the state of affairs of the company as at the end of the financial year and
- the profit or loss of the company for the financial year.

In the case of group accounts, the audit report must also give an opinion on the state of affairs and the profit or loss of the companies contained in the consolidated accounts as a whole.

The Act requires the auditor to carry out such investigations as will enable him or her to form an opinion as to whether the company has kept proper accounting records and whether the accounts are in agreement with those records. If the auditor considers that either of these conditions has not been met, this must be stated in the audit report. Further, if the auditor fails to obtain all the information and explanations that, to his or her knowledge and belief, are necessary for the purposes of the audit, this must also be stated in the report.

The auditor has the legal right to inspect the company's records and to obtain information from the company's directors. Reforms that took effect in 2005 require directors to volunteer information to the auditor where they are aware that information in their possession is 'material' to the audit. Additionally, the reforms give the auditor the right to obtain information from company employees as well as from directors.

The auditor does not have to audit the directors' report, but must consider whether the information in it is consistent with the information contained in the accounts; if it is not, the auditor must say so in the audit report.

The audit report must set out the name of the firm's 'senior statutory auditor', that is the member of the audit firm who has been the lead or engagement partner on the audit.

When an auditor ceases to hold office, for any reason, he must send to the company a formal statement saying whether or not there are any reasons connected to the resignation that he or she feels should be brought to the attention of the company's members. If there are any such reasons, they must be stated. The company must then circulate the auditor's statement to the company's members (although the company may apply to the court for permission not to do this if it believes that the auditor's statement should not be circulated). Where an auditor

ceases to hold office before the natural expiry of his term of office (for example through resignation or dismissal) he is required to notify his RSB and explain the circumstances.

ELIGIBILITY TO ACT AS AUDITOR

The 2006 Act states that only persons who are properly supervised and appropriately qualified may be appointed as auditors of limited companies. The main condition for eligibility is that the person must be a member of an RSB. The Act also contains rules prohibiting a person from accepting appointment as auditor if he or she has one of a number of specified conflicts of interest, eg if the prospective auditor is an officer or employee of the company.

In order to be approved as an RSB, a body must have rules and procedures that ensure that it authorises as auditors only persons who have satisfied conditions specified in the Act. These conditions include that authorised persons must have obtained an appropriate qualification and are fit and proper persons. They also require that the body has rules and practices that ensure that authorised persons are subject to technical and ethical rules and that complaints against members will be investigated and, where appropriate, lead to disciplinary action.

The 1989 Companies Act, for the first time, allowed the auditor of a limited company to be a limited liability entity itself, provided it meets the standard eligibility criteria to act as a company auditor. As a result, most of the larger audit firms are now Limited Liability Partnerships (LLPs).

Some Useful Links

The UK statute law database	www.opsi.gov.uk
The UK Government Department for Business	www.berr.gov.uk
The UK company registration agency	www.companies-house.gov.uk
The UK Financial Reporting Council	www.frc.org.uk
The UK Accounting Standards Board	www.asb.org.uk
The UK Auditing Practices Board	www.apb.org.uk
Company law pages of the ACCA website	www.accaglobal.com/publicinterest/activities/subjects/company_law

A Review of Italian Company Law

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1. Different Types of Companies

There are two main types of incorporated entity: the Società per Azioni (SPA), a company limited by shares, and the Società a Responsabilità Limitata (SRL), a company limited by 'quotas' (SRLs may not issue shares).

The Company Law reform (Legislative Decree No 6 of 17.01.03) substantially modified the SRL, which has now become extremely flexible.

The SRLs are no longer regulated as 'small SPAs', and are now treated more like partnerships, while retaining limited liability for quotaholders.

THE SPA (SOCIETA PER AZIONI)

Company incorporation

The incorporation of an SPA must take place before a notary, who will draw up the necessary deed.

The required contents of the memorandum and articles for an SPA are set out in the Civil Code, as follows:

- the names and addresses of shareholders (if shareholders are companies, the address of their registered office) must be given, and the number of shares for which each has subscribed
- the company name (which must include the indication 'Società per Azioni')
- the town where the registered office of the company is situated
- the proposed activity of the company
- the amount of the company's capital (which must be not lower than €120,000)
- the number and the face value of the company's shares
- the value of contribution in kind or in receivables made by shareholders
- the rules governing distribution of profits
- the model of governance adopted, the number of directors and their powers
- the number and the names of the members of the board of auditors ('*Collegio Sindacale*'), if the traditional governance model is adopted
- the number and the names of the directors, and the names of the legal representatives of the company
- the aggregate amount, at least approximate, of the expenditure for the incorporation chargeable to the company
- the intended duration of the company's existence.

The Company Law reform provides that an SPA can also be incorporated with a single partner (or member), who may be a company or an individual. The sole partner has unlimited liability for the company obligations only if proper information has not been provided to the companies' registry or for non-compliance with rules on contributions.

Companies Registry

The final step of the procedure for the establishment of the company and the recognition of its legal personality is the formal registration of the company in a special companies registry, under the supervision of the Ministry of Productive Activities. Registration has the practical value of giving legal publicity to third parties of the existence of the company and of its characteristics.

Costs of incorporation

Costs of incorporation include the following items:

- notary and accountancy fees are variable according to the services provided
- companies' registry registration cost: €200.00
- an annual fee, from €200.00
- state tax on accounting books (annual fee): €309.87 if the subscribed capital at January 1st of each year is up to €516.456,89; €516,46 if the subscribed capital is €516.456,90 or more.

Capital contributions

The minimum amount of the subscribed capital for an SPA is €120,000.00.

Contributions to the capital of an SPA can be made cash, but also in receivables and goods.

All contributions in kind and receivables must be valued by a registered auditor. In listed companies the estimation is made by an auditing firm registered in CONSOB, the Italian regulator of the financial market ('*Commissione Nazionale per il controllo delle Società quotate in borsa*'). At least 25% of cash contributions must be deposited into a dedicated bank account before the company's incorporation.

If the company is incorporated by a single person, 100% of the capital must be paid up at the time of incorporation.

Shares

The participation in the company's capital is represented by shares. There is no obligation to issue paper share certificates. There is no minimum face value for shares.

All shares must have an equal value, but the company's articles can provide for different categories of shares, which may also differ with respect to their rights to participation in the company's gains and losses.

Financial instruments

SPAs may now issue financial instruments against contributions (of shareholders or third parties) in the form of work or services. Such instruments do not confer the status of shareholder and never represent a part of the company's share capital, although they may confer to their holders the same rights (participation in profits and decision rights) as are attributed to shareholders, except for the vote in shareholders' meeting. SPAs may also, within certain limits, issue shares (and/or financial instruments) to be assigned to their employees.

Participation in partnerships

SPAs may participate in partnerships as partners with unlimited liability. Any participation in a partnership must be approved by the partners, and directors must disclose the participation in an explanatory note.

Transfer of shares

The company's articles can set limitations on the right to transfer shares. If transfer is subject to the approval of directors, partners or third parties, and if this is denied or is otherwise impossible, partners or their heirs must have the right to withdraw from the company.

Meetings of shareholders

Meetings of shareholders may be either ordinary or extraordinary. For each type of meeting, the law states the matters that are to be dealt with, and these vary according to the governance model adopted.

In the traditional model of governance, ordinary and extraordinary meetings deal with matters as set out below.

Ordinary meetings deal with:

- approval of the financial statements within the directors' and auditors' reports
- appointment/removal and remuneration of directors
- appointment and remuneration of the *Collegio Sindacale*
- appointment and remuneration of auditor(s)
- any resolution to be made on the responsibility and liability of the directors and the *Collegio Sindacale* if either are considered to have failed in their duties. Such a resolution may be passed at the meeting convened for the approval of the financial statements, even if this matter has not been included on the agenda.

An ordinary meeting has to be held at least once a year, for the approval of financial statements, within 120 days (if the articles so provide, 180 days) from the accounting reference date. There is no limit to the number of ordinary meetings that may be held.

Extraordinary meetings deal with:

- changes of the company's articles
- the appointment, revocation and regulation of powers of liquidators
- the issue of debentures
- any proposal to enter insolvency procedures
- the issue of shares and/or financial instruments in favour of employees
- participation in a partnership.

Notice of the meeting must be published in the *Gazzetta Ufficiale*, or in a newspaper indicated by the articles, at least 15 days before the date of the meeting, giving details of the matters to be discussed and the date, time and place of the meeting.

If the company has not issued shares or debentures on the market, the company's articles may allow that notice of the meeting can be given to shareholders via registered mail.

Quorum to approve resolutions

Two types of quorum are required for shareholders' meetings – a 'constitutive quorum', ie the attendance of a minimum number of shareholders representing a prescribed amount of the company's capital, and a 'resolution quorum', ie the requirement for specified majorities to pass resolutions.

At ordinary meetings, for the constitutive quorum to be achieved, partners representing more than 50% of the share capital, excluding shares with limited voting rights, must attend. The articles of a company may impose a higher threshold. The resolution quorum requires that resolutions be passed by a simple majority of the capital represented at the meeting, unless a higher majority is required by the company's constitution. Ordinary meetings of companies that have issued shares or debentures on the market may pass resolutions if they achieve a majority of two-thirds of the capital represented by partners in attendance.

If an ordinary meeting does not achieve the constitutive quorum and has to be reconvened, that second ordinary meeting may pass resolutions by simple majority of the capital represented at the meeting on the matters that should have been dealt with at the original meeting I irrespective of the proportion of the share capital represented by partners in attendance.

For extraordinary meetings, the threshold for both constitutive quorum and resolution quorum is partners holding more than half of the company's capital. In the case of a reconvened extraordinary meeting, the constitutive quorum is more than one third of the company's capital; resolutions require the support of partners holding more than two thirds of the capital

represented at the meeting (again, the company's constitution may set a higher threshold). In the case of companies which have not issued shares or debentures on the market, additional requirements apply to reconvened extraordinary meetings – certain, specified matters, including proposals for a change of the company's scope and for the liquidation, require a majority of in excess of one third of the company's total capital.

The deed of incorporation may require that shares must be filed at the company's registered office or with the bank stated in the notice of the meeting. For listed companies, the deadline cannot be more than two days before the meeting.

Company governance

The law requires a statutory minimum of one director, but there is no statutory maximum. The minimum and maximum number of directors shall be established by the company's articles: the shareholders' meeting establishes how directors on the board are required to carry on the business of the company.

The first director(s) will be the one(s) appointed upon incorporation of the company by the subscribers to the memorandum. Thereafter the director(s) will be appointed by shareholders' meetings.

If one or more directors resign, but a majority of the directors appointed by the shareholders' meeting remains, the remaining directors can appoint the new member(s) of the board. Otherwise, the remaining directors must convene a meeting of shareholders for the appointment of the new directors.

There is no provision for rotation of directors under Italian company law.

Those appointed as directors must confirm their consent to act by signing a declaration of consent, to be filed with the Registrar of Companies within 30 days of the notice of their appointment.

Both partners and non-partners may be appointed as directors of an SPA. Directors may serve for not more than three years and they may be re-elected.

The director(s) may carry out all operations they consider necessary for the company's business; any limitation of the directors' powers, even if resulting from the articles and publicised on the companies' register, in most cases has no effect on third parties.

There are rules designed to avoid conflict of interests. Directors of a company that is in competition with another company cannot become directors of, or partners with unlimited liability in, that other company, nor may they have a competing business in their own names. A decision of the general meeting can, however, authorise such activities.

Other forms of company governance

Besides the 'traditional' governance system, the new company law allows an SPA to choose one of the following two models.

1. **Management board and supervisory board**. Under this system, a management board has all power of management over the company. Members of the management board are appointed by the supervisory board, whose members are appointed by the general assembly of shareholders. Members of both these boards may serve for not more than three years but may be re-elected.

   While powers and duties of management board members are similar to those of directors under the traditional system, powers of the supervisory board can be set by the company's articles. Duties of the supervisory board include supervision over the company's compliance with legal and accounting rules and regulations, and general supervision over the company's operations.

   The supervisory board must also examine and approve the annual report prepared by the directors. The annual report is not, therefore, examined by the shareholders' meeting.

   Members of the supervisory board share joint and several liability with members of the management board.

2. **The board of directors with an internal committee of non-executive directors who supervise executive directors**. Under this system the board has all powers and duties of corporate management, while an internal committee, made up of members of the management board, has the powers and duties of the '*Collegio Sindacale*'. Members of the committee for supervision of management cannot be members of other executive committees and must match the same independence standards required of '*Collegio Sindacale*' members.

Issue of debentures

Unless the company's articles state otherwise, directors have the power to decide whether to issue debentures.

In companies that have not issued shares or debentures in the market, the maximum value of debentures that can be issued is twice the company's share capital. This limit can be overridden if the excess amount is underwritten by financial institutions. When these debentures are sold, however, the seller and the company are jointly liable to the buyer in case of insolvency, with only one exception: the seller is not liable if the buyer is another financial institution.

Capital maintenance

Where losses exceed one-third of the company's capital, the directors must immediately convene a meeting of partners in order to take necessary action. At the meeting, partners may decide to wait until the end of the following year. If losses are, at that date, still higher than one-third of the capital, partners must reduce the company's capital accordingly.

If losses (exceeding one-third of the company's capital) caused the reduction of the capital below the minimum required by law, directors must immediately convene a partners' meeting, where partners must reduce the company's capital by an amount corresponding to losses incurred, and simultaneously increase the capital to the minimum legal amount, through new subscriptions. If this cannot be achieved, the company must either be transformed into a SRL or dissolved.

Assets allocated for a specific business

Under the Company Law reform, SPAs may allocate assets and/or be granted loans allocated for specific purposes. A company may, therefore:

- allocate a (very small) part of its assets to develop a specific business and 'separate' it from the remaining corporate assets, which has the same effects as the creation of a controlled company set up ad hoc for the same business project (third parties may participate in the 'separated' assets by means of contributions, against which the company may issue financial instruments)
- be granted a loan for the realisation of a specific business and guarantee its reimbursement only by the profits (or part of them) of the same business.

The transactions/operation must be disclosed by the board of directors, which must enrol it in the Companies' Register. Directors must keep accounting books specifically for each allocation of the assets operated by the SPA and must draw up a special financial report to be included in the balance sheet. SPAs must, moreover, appoint an auditing firm specifically for the controlling of the business.

THE SRL (SOCIETA A RESPONSABILITA LIMITATA)

Incorporation

The deed of incorporation must be in the form of a public act that includes the following information:

- names and addresses of partners (if they are companies, their registered office must be disclosed)
- name of the company (which must include the words 'società a responsabilità limitata')
- town where the registered office of the company is located
- the activity
- the capital amount (which cannot be lower than €10,000)
- the payments made by each partner and the value of contributions in kind or in receivables
- the quota of capital paid by each partner
- the rules governing the company, including control of accounts and the power to represent the company
- the number and the names of the company's directors
- the company's intended duration.

An SRL can be incorporated with a single partner (company or individual), or can become a single partner company at any time during its existence. The sole partner has unlimited liability for the company's obligations only if the proper information has not been given to the companies' registry or for non-compliance with rules on contributions.

Cost of incorporation

- Notary and accountancy fees are variable according to the services provided.
- Companies' registry registration cost is €200.00.
- Companies' registry annual fee is from €200.00
- State tax on accounting books (annual fee) is €309.87 if the subscribed capital at January 1st of each year is up to €516.456,89; €516,46 if the subscribed capital is €516.456,90 or more.

Capital contributions

The minimum amount of the subscribed capital for an SRL is €10,000.00.

The reform has considerably widened the list of assets that can be contributed to the capital:

- receivables, cash and goods (as before)
- all kind of intangibles, including labour, services and know-how.

All contributions in kind, receivables and intangibles must be valued by a registered auditor appointed by the partners, and the partners must also provide a guarantee for an amount not lower than the value of the subscribed capital (by means of insurance policies, or cash deposits).

At least 25% of cash contributions must be paid before the company's incorporation and deposited into a dedicated bank account. If the company is incorporated by a single person, 100% of the capital must be paid up at the time of incorporation.

In any case, cash payments can be replaced by insurance policies or bank guarantees.

Quotas

The following solutions may be adopted :

- rights granted to quota holders are not proportional to the value of their quotas, and
- quotas are not proportional to subscriptions made to the company's capital.

This means that in the company's articles, partners are free to determine three different and separate mechanisms for balancing the reciprocal interests of the partners:

- the amount of contributions each of them shall make to the company's capital
- the quota of the company's capital each of them will own
- the rights related to the management of the company and the rules on profits' distribution.

The new company law allows the partner to define these mechanisms freely, independently of each other, so that each company can be built and adapted to suit its individual needs.

For example, it is possible that a member who paid in, for instance, 20% of the total amount of the capital, receives a quota representing 45% of the capital, is granted the right to receive 60% of the distributed profits, and is given the power to appoint two of the three members of the board.

These provisions, which must be included in the deed of incorporation, can be modified only if all members agree.

Transfer of quotas

Quotas can normally be freely transferred, but the company's articles may provide limitations. If the transfer is forbidden, or subject to approval of directors, partners or third parties, or if it is otherwise impossible, partners or their heirs may choose to withdraw from the company.

The transfer of quotas must be notified to the companies' registry, and is effective towards the company only after its inscription on the quotaholders' register.

It must be taken into account that from 30 March 2009 this statutory book will be mandatory only for SPA and no more for SRL, for which it's replaced by the registration to the Companies' Registry of the digitally signed deed of transfer drawn up by a Notary or a Dottore Commercialista. So that the third parties wanting to know the company compages have to make an inquiry (also by an intranet system network) to the Chamber of Commerce where the Companies' Registry is held.

Up to 6 August 2008 the transfer of SRL quotas was mandatory to be made by a Notary, who had to register the formal deed to the Revenue Agency, and then to the Companies' Registry.

From that date, the transfer of SRL quotas may be drawn up by an accountant 'Dottore o Ragioniere Commercialista' who is listed in Section A of the CNDCEC register as well as by a Notary and, in this new procedure, the digitally signed deed must be registered both to the Revenue Agency and the Companies' Registry on behalf of the same professional.

The fee for the procedure depends upon the complexity of the clauses inside the deed, but normally the average amount is about €1.500 tax and consultancy included.

Loans from partners

SRLs cannot issue debentures on the market, nor can their shares be listed on financial markets. Furthermore, quotas may not be sold to the public.

SRLs may accept loans from partners. If these loans are given to the company when debts are too high compared with the company's capital, or when a contribution to the company's capital would have been reasonable, they can be repaid only after payment of all other company creditors.

In the event of bankruptcy, the official receiver, appointed by the law-court, will immediately ask the partners for all the loans repaid in the 12 months before the bankruptcy judgment.

Withdrawal from the company

The law allows for other different causes of withdrawal from the company.

In the company's articles, partners can define reasons for withdrawal, and how this right can be exercised, but there are some causes defined by law:

- change of the company's activity
- change of the type of company
- merger or division of the company
- if the company partners revoke a decision to liquidate the company
- transfer of the company head office abroad
- deletion of one or more of causes of withdrawal previously defined by the company's articles
- carrying on of operations that result in a practical change of the company's activity
- relevant changes of partners' rights in the areas relating to company management or distribution of profits
- if the company duration is not fixed, any partner can withdraw at any time. Notice must be given, however, not later than six months and not earlier than one year before the withdrawal.

Partners are free to define how the right of withdrawal may be exercised: the law does not state any rule.

When the right of withdrawal is exercised, the partner must be paid within six months. The amount due is as close as possible to the market value of the partner's quota. An expert, appointed by the court in case of disagreement, fixes the value.

The quota of the withdrawing partner can be proportionally bought by the other partners, or by a third party. The quota value must be otherwise paid from the company reserves and the company's capital. If the amount due is higher than reserves and capital, the company must be liquidated.

Withdrawal may not be exercised, and, in case it has already been exercised, it will be ineffective, if the company revokes the decision to legitimise it or if there is a resolution to wind the company up.

Company governance

The law requires a minimum of one director, and the company's articles usually define the maximum number of directors. Directors must be partners of the company, unless otherwise specified by the company's articles, and are appointed by a partners' decision (see below), if the company's articles do not provide otherwise.

New directors must fill in a form, to be deposited in the Companies' Registry, within 30 days of their appointment.

Directors remain in charge for the period set by the partners at the appointment. The law makes no provision. In practice it is possible to have directors appointed for an unlimited period of time, or until a different decision is made by the partners.

Different forms of governance

When more than a single director is appointed, there will normally be a board of directors. The company's articles may provide, however, that the powers of administration are granted individually or jointly. In this case, rules regarding partnerships will apply to the company's directors: when the directors act jointly, they must all consent to operate, except in case of risk for the company. When they can act individually, each one may operate independently. Nonetheless, each director may prevent the others from operating before the act has been executed. In case of disagreement, the final decision must be taken by the majority of partners (according to the rights of partners to profits).

If the administration is granted to a board of directors, the company's articles may provide that its partners may also take their decisions in writing, without a formal meeting.

The preparation of the draft accounts, or of a merger project, is in any case the duty of all directors.

Company representation

The power of representation of the company is attributed by law to the company's directors, but it is not automatically attributed to each director (except in case of a sole director). The board of directors can define and place limitations on the powers of representation of each of its members. Limitations on the power to represent the company must be communicated to the companies' registry.

Powers of directors

Except for those activities which must be approved by the members, the sole director or the directors, individually or jointly, may carry out all the operations they consider necessary for carrying out the company's business, in accordance with the company's articles.

Powers of directors

Except for those activities that must be approved by the partners, the sole director or the directors (individually or jointly) may carry out all the operations they consider necessary for the company's business, in accordance with the company's articles.

Conflict of interests

In case of conflict of interests between a director and the company, the director is no longer bound to inform the other directors.

The new provisions state that the company has the right to demand that the court declares contracts signed by a director in conflict null and void. If the board of directors takes a decision with the vote of a director in conflict, and this decision causes a loss to the company, the other directors, members of *Collegio Sindacale* (if existing) or the company's auditor (if present) may oppose the decision within three months. Rights of third parties in good faith acquired in consequence of that decision are in any case safe.

Partners' decisions

Decisions of partners may be taken on all matters reserved to them by the company's articles, which define in detail the area where a partners' decision is required.

Each director, or partners representing at least one third of the company's capital, may, furthermore, request a partners' decision on any matter, even if that matter is not included in the list provided in the company's articles.

The law reserves the following five matters for a partners' decision:

- approval of the annual return and distribution of profits
- appointment of director(s), unless otherwise specified by the company's articles
- appointment of *Collegio Sindacale* members, indication of *Collegio Sindacale* President, and/or appointment of the company auditor
- changes to the company's articles

- decisions about performing acts involving a material change to the scope of the company, or a material change in partners' rights.

Decisions on the last two matters must be taken in a formal partners' meeting. On all the other matters, the company's articles may allow decisions to be taken through a 'written consultation' or on the basis of the partners' written consent. The company's articles define how, in practice, these decisions shall be taken.

Partners' decisions must be approved by partners representing at least one-half of the capital and the majority of partners, unless otherwise specified by the company's articles.

Meetings of partners
When the decision is taken in a partners' meeting, the law requires that all partners must be informed of the meeting and of the matters that will be on the agenda. If the company's articles do not define how the meeting notice shall be given, this must be done via certified mail at least eight days before the meeting.

The quorum to approve resolutions is the absolute majority of attending partners, provided that the attending partners represent at least one-half of the company's capital. If the decision relates to the last two matters of the list above, it must be taken by partners representing at least one-half of the capital.

Capital maintenance
For SRLs the same rules as for SPAs are applied.

Issue of debt instruments
As a result of the Italian company law reform, SRLs may now issue debt instruments if their company's articles specifically allow it. This document must specify who has the power to decide the issuance (whether partners or directors) and state practical rules for governing the operation.

Only financial institutions can underwrite debt instruments issued by SRLs. When these debt instruments are sold, the seller is jointly liable with the company towards the buyer in case of insolvency, with only two exceptions: the seller is not liable if the buyer is a financial institution or a company partner.

Statutory books and accounting records
Incorporated entities must keep accounting books and records as follows:

- the **register of associated partners**, giving names of all partners, their participation share, the part of capital nominal value paid, and all changes to this information
- it must be taken into account that from 30 March 2009 this statutory book will be mandatory only for SPA and no more for SRL, for which it's replaced by the registration to the Companies' Registry of the digitally signed deed of transfer drawn up by a Notary or a Dottore Commercialista. So that the third parties wanting to know the company compages have to make an inquiry (also by an intranet system network) to the Chamber of Commerce where the Companies' Registry is held
- the debentures' book, which indicates details relating to debenture holders, to the issued debentures, and to their charges and transfers
- books relating to the activities of the corporate bodies (book of the shareholders' meetings, of the board of directors, of the controlling body, bondholders' meetings' minute book)
- financial instruments' book (*issued after the allocation of assets*).

Statutory books (for SRLs)
These are:

- the **register of partners' decisions**, including minutes of partners' meetings and decisions held via written consultations or on the basis of partners' written consent
- the **register of directors' decisions**
- **the register of *Collegio Sindacale's* and/or auditors' decisions**, containing minutes of inspections carried out during the year, and the annual report.

Accounting records (for SPAs and for SRls)
These are:

- the **daybook**, containing day-to-day entries of all transactions undertaken by the company that are relevant to the accounts
- the **inventory register**, containing a complete listing of all balances that make up the annual financial statements, including detailed stock, receivables and payables listings, but excluding any detail of the profit and loss account.

Registers required by for taxation purposes
These are:

- the **depreciable assets' register**, containing a complete list of every asset of the company, together with their costs of purchase, depreciation charged and net value
- VAT purchases' register
- VAT sales' register.

All the accounting records are free of stamping and authentication that are, on the contrary, still mandatory for statutory books (partners decisions, board of directors decisions and *Collegio Sindacale* meetings) before they are come into use, with a cost of about €50 for each book.

2. Financial Statements

The draft financial statements for the financial year are drawn up by the director(s) for formal presentation to the shareholders' or quota holders' meeting. The director's report and the *Collegio Sindacale* (if appointed) report are prepared at this point.

The annual financial statements are drawn up in accordance with the rules established by the Civil Code, including the following general principles:

- the company is presumed to be a going concern
- prudence – unrealised profits should not be included, whereas all foreseeable losses should be reflected in the financial statements
- consistency – accounting principles and valuation criteria must be applied without variations, to ensure the comparability of financial statements with those of the past
- accrual – income and expenditure must be accounted for in the period in which they are earned or incurred, and not in the period in which the cash payments occur.

The draft accounts must be preliminarily approved by the director(s), and signed, usually, by the chairman of the board or the sole director.

In accordance with the EU fourth directive, the financial statements comprise a balance sheet, a profit and loss account and a explanatory note (companies applying IASs must additionally prepare a financial report).

At least 30 days before the date of the partners' meeting, the draft accounts and the directors' report must be given to the *Collegio Sindacale*, if appointed, so that it can prepare its report. The complete set of accounts must be deposited at the company's registered office at least 15 days before the meeting that will approve the accounts.

Smaller companies have the option of preparing their accounts in a simplified form. In this case there is no need for a directors' report; the balance sheet and profit and loss account are less detailed, and the explanatory note contains less information.

For this purpose, a company is considered small when it doesn't exceed two of the following thresholds, during the last two periods:

- gross assets: €4,400,000.00
- annual turnover: €8,800,000.00
- average staff employed during the year: 50.

A company must come back to the ordinary financial statement scheme from the second consecutive year in which it exceeds two of the above mentioned thresholds.

The Financial statement must be approved by the partners general assembly within 120 days starting from the closing of the company financial year and only for specific reasons it could be approved within 180 days.

The Financial statement must be subsequently conveyed to the Chamber of Commerce where the Companies' Registry is held within 30 days from the approval.

3. Distributions

Distributions of profits must be approved by ordinary meetings of shareholders, or by a decision of quota holders.

Unrealised profits cannot be distributed: the amount of profits available for distribution must be determined by reference to the financial statements approved by the partners.

If the company's capital is eroded, distributions may not be made until the capital is restored or reduced through reorganisation. Under Italian company law, following implementation of the EU fourth company law directive, dividends can be distributed only if, after the distribution, sufficient reserves remain to cover the amount of certain intangible assets (research and development costs, advertising and set up costs).

Where capital has been reduced by losses to a level below the minimum stated by law, a shareholders' or quota holders' meeting must be convened immediately in order to restore the capital to the minimum amount allowed, or, alternatively, to decide to transform the company (for example from an SPA to an SRL, or from an SRL to a partnership), or to decide to put the company into liquidation.

The Company must assign at least 5% of the annual net profits to a special Reserve Fund until it will reach the 20% of the Company capital.

4. Compliance with Law and Auditing

The EU Fourth Directive (on the form and content of company accounts) was implemented in Italy by decree No. 127 of 9 April 1991. The Eighth Directive (auditors' qualifications) was implemented in Italy by the decree No. 88 of 27 January 1992.[1]

The objectives and scope of the statutory audit as set out in article 2403 bis of the Civil Code (previously article no. 2403) are:

- to control the company's administration
- to verify the company's compliance with law and its own articles
- to ascertain that the accounts are correctly kept
- to ascertain that the Financial Reports accurately reflect the contents of the accounting registers and books
- to ensure compliance with the rules set out in article 2426 for valuation of the company's assets.

TYPES OF AUDITORS

After the company law reform, the following types of auditor may be appointed:

1) Board of Auditors (Collegio Sindacale)

The *Collegio Sindacale* is an internal body of the company. The *Collegio*'s members must be invited to directors' meetings, which they normally attend.

The *Collegio Sindacale* consists of three or five permanent auditors and two alternate auditors, who are appointed for the first time upon incorporation of the company, if this is provided by law or the company's articles.

At the end of this initial term of office, the partners in ordinary general meeting appoint the *Collegio Sindacale.*

Appointment of a *Collegio Sindacale* (or, in instances where a non-traditional governance model has been chosen, of another internal controlling body whose partners have the same qualifications as the members of the *Collegio Sindacale*) is compulsory for SPAs, whereas for SRLs such an appointment is mandatory only if certain thresholds are exceeded.

Dottori Commercialisti e Ragionieri Commercialisti (Members listed in Section A of the CNDCEC register) may be appointed as statutory auditors. If the *Collegio Sindacale* has been assigned control over the accounts, its members must be registered auditors.

The statutory auditor must be a physical person. Decree No. 88 of 27 January 1992 provides that statutory auditors may use assistants who may be physical persons or firms.

The *Collegio Sindacale* usually exercises three types of control:

- control over accounts
- control over compliance with law and the company's articles
- control over correct administration.

Nevertheless, audit of accounts may be assigned to an external auditor.

Statutory auditors are prohibited by law from providing consultancy on a permanent basis to the audit client.

2) The registered auditors (revisori contabili)

According to the new Company Law, the appointment of a 'registered auditor' in addition to the *Collegio Sindacale*, responds to the need to separate the legal control from the accounting control.

Registered auditors may operate as individual professionals or as companies (as defined by Legislative Decree No. 58 of 24 February 1998).

This auditor may perform the following services:

- on a voluntary basis
  - audit
  - company organisation advice
- on a mandatory basis, the accounting control in companies that are not subject to the control of the CONSOB, the Italian Securities Commission (this authority is devoted to the control on listed or assimilated companies) or in companies that do not operate in regulated sectors (insurances, etc).

The new company law states the cases in which it is compulsory to appoint two different bodies for controls, as is described below.

SPAs

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1 As for the different types of control qualified as 'legal' and 'accounting', it may be a matter of interest for readers to know the situation in Italy before the implementation of the EU Company Law Directives. The functions then performed by the *Collegio Sindacale* (statutory auditor) were not just audit services as understood in the UK. The statutory auditor was not allowed to use assistants in performing his duties, and so had to carry out the work with only two colleagues (both being permanent members of the *Collegio Sindacale*), even in very large unlisted companies.

Following implementation of the EU *Fourth Company Law Directive*, the audit performed tends increasingly to be an audit in the international sense of the word and is conducted in accordance with Italian auditing standards or, on matters not covered by Italian auditing standards, in accordance with International Standards on Auditing ('ISAs'). After the implementation in Italy of the EU *Eighth Company Law Directive*, the statutory auditor is permitted to use assistants, who may be either individuals or auditing companies, so it should be possible for audits to be carried out in accordance with internationally accepted best practice.

The SPAs must always appoint a *Collegio Sindacale*, whereas the appointment of a 'revisore contabile' for auditing the accounts is required in the following situations:

- for public companies operating on a financial market – an audit company must be appointed (as defined by Law No. 1966 of 1939)

- for companies that draw up a consolidated financial statement; in this case, the company may appoint an individual registered auditor.

On a voluntary basis the company may, even if not required, appoint the registered auditor as accounting controller.

In all mentioned situations, the registered auditors will collaborate with the *Collegio Sindacale*, whose controls will focus on the compliance with law and the company's articles and to the correct administration.

SRLs
SRLs are not subject to mandatory control, except under the following conditions:

- where the company's articles establish that the SRL has to appoint a controlling body (which may be either a '*Collegio Sindacale*' or a registered auditor)

- where the capital equals or exceeds the minimum level foreseen for SPAs (€120,000.00)

- where the SRL exceeds two of the following thresholds , during the last two periods:

  - gross assets: €4,400,000.00
  - annual turnover: €8,800,000.00
  - average staff employed during the year: 50.

In the event that an SRL must draw up the consolidated financial statements, the company has to appoint a registered auditor, in the same way as an SPA, separating the function of the legal control (dealt with by the *Collegio Sindacale*) from that of the accounting control.

Italian company law requires the consolidation of financial statements when the following thresholds are overcome during the last two periods:

- assets: €*17,500.000.00*

- annual turnover: €*35,000.000.00*

- average staff employed during the year: *250.*

The Law establishes a strict incompatibility between being a member of the board of auditors (*Collegio Sindacale*) and being the registered auditor: article no. 2409 does not allow the same person to fill both positions.

Further, this regime is extended in practice to all the companies that belong to the same group, either as controlling companies or as controlled companies.

3) Auditing firms as defined by Legislative Decree No. 58 of 1992
These are firms that can carry out the external audit of the financial statement of listed companies..

These firms are also enrolled in a special register under the control of CONSOB, the Italian Securities Commission.

4) Alternative control systems to the Collegio Sindacale (applicable only to SPAs)
As we recall, in SPAs there are two alternative governance models to the *Collegio Sindacale* that may be adopted. In the dualistic model controls are performed by the supervisory board (*consiglio di sorveglianza*) whereas in the monistic model they are performed by the supervisory committee (*comitato per il controllo di gestione*), which, as mentioned, is internal to the management board.

In any case, these two boards will replace only the *Collegio Sindacale*: the registered auditor will have to be appointed according to the same rules as previously examined.

Finally, only SPAs are allowed to appoint one of the alternative control boards.

Entities not subject to audit
The following entities are not subject to audit, neither a legal audit nor of their accounts:

- partnerships (SNCs and SASs)

- where permitted by their articles, SRLs that fall below two of the three thresholds set out above, having in any case a capital of less than €120,000.

5. Company Liquidation

When one or more of the reasons indicated in the Law or in the company's articles occur, the company enters into liquidation.

The law provides the following causes of liquidation:

- when the duration of the company has expired
- where the company has reached its mission and objective, or where they have become impossible
- where partners' meetings are unable to reach a decision
- where the company's capital is reduced below the minimum amount required by law, because of losses or because of the withdrawal from the company of one or more partners
- where partners decide to liquidate the company
- where other causes have occurred, as provided by the company's articles or by the law.

If a cause of liquidation occurs, the company directors have one single duty, ie to manage the company in order to preserve its assets' integrity and value. A new body, appointed by a partners' decision or by the court (if partners are unable to reach a decision), called the 'Liquidatore' takes the directors' place.

The company partners have at all times the power to revoke the company liquidation. This decision will require the same formalities and quorum as are needed to modify the company.

The liquidator must prepare the (intermediate) annual balance sheet of liquidation and submit it to the meeting of partners, who must pass it following the rules regulating the adoption of balance sheets.

If the (intermediate) balance sheet of liquidation has not been deposited within three years, the company will be struck off the companies' registry without consultation.

Liquidators must sell the company assets, and pay all the creditors with the proceeds. All remaining sums will then be distributed to partners, after all creditors have been fully satisfied.

Once the liquidator has accomplished all his duties, he must prepare the final balance sheet of liquidation, indicating the portion of the profit to which each partner is entitled (if any profit results after the discharge of all debts) and submit it to the partners' meeting.

When partners approve the final accounts, the company can be struck off the companies' register.

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ACCA 29 Lincoln's Inn Fields London WC2A 3EE United Kingdom / +44 (0)20 7059 5000 / www.accaglobal.com