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LEGAL INFORMATION NEWSLETTER

No. 4 December, 2003

We are pleased to provide you with the new issue of our legal information newsletter.

It discusses topical legal questions and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

Italian Corporate Law Reform: Brief Overview About Relevant Amendments to the Statutory Regulation of Corporations (S.P.A. - Società per Azioni)

L. 3.10.2001, n.366 (Legge Delega)
D.Lgs. 17.1.2003 (enforcement date: Jan.1st 2004)

CORPORATIONS
S.P.A. - Società per Azioni

The new statutory regulation provides that circulation of corporate capital is a relevant factor in order to classify:

- Companies without outstanding shares held by public investors (Closely Held Corporations)
- Companies with outstanding shares held by public investors, these latter to be intended as companies issuing stock shares that are traded on regulated markets or circulating in the market *on a relevant scale* (Civil Code, Article 2325bis), that means circulating among Italian issuers with Net Capital not less than € 5 million and with a number of shareholders or bondholders greater than 200). Specific rules are set for these companies.

FORMATION REQUIREMENTS
DURATION: Stating a life term for the Corporation is no longer a requirement. However, if no term has been provided for, a term shall be set forth in the bylaws before the shareholder may exercise his appraisal right.

STATED CAPITAL: The minimum amount for stated capital has been raised to € 120,000.00. Nevertheless already existing companies shall not comply with such new rule until their life term stated in the bylaws elapses.

ADDRESS: It will be sufficient to mention in the certificate of incorporation the municipality where the company establishes its own registered office. Therefore, an extraordinary shareholder meeting for amending bylaws shall no longer be required for moving the registered office within the municipality. Giving just notice of the transfer to the Companies Registry will be sufficient.

CORPORATE PURPOSE: It is now mandatory to specify the business activity that constitutes the corporate purpose and not just the corporate purpose in general terms.

CONFLICT B/W CERTIFICATE OF INCORPORATION & BYLAWS: In case of divergences between the certificate of incorporation and the bylaws, these latter shall prevail (Civil Code, Article 2328, last paragraph).

CAPITAL CONTRIBUTIONS: Shareholders shall subscribe the entire stated capital. Shareholders shall pay upon subscription at least 25% of the stated capital (Civil Code, Article 2324). The term for restitution to the company of the percentage deposited in the bank for subscription of the shares has been reduced to 90 days. If the shares have not been entirely paid in, it is not possible for the company to increase its stated capital.

NOTARY: Upon receipt of the Certificate of incorporation the Notary shall file the certificate with the Companies Registry within 20 days, applying for incorporation.

It is duty of the notary to verify that requirements imposed by the law for the application to the Companies Registry are observed (Civil Code, Article 2329). The notary before filing the application shall verify that all requirements of law are met and shall provide for documentation evidencing the compliance. The Office of the Companies Registry shall only exercise a *formal control of regularity* over the documentation (Civil Code, Article 2330).

REGISTRATION OF THE COMPANY WITH THE COMPANIES REGISTRY: The company is incorporated only upon its registration with the Companies Registry.

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SHAREHOLDER AGREEMENTS: Civil Code, Article 2341bis – Shareholder agreements are those contracts that concern:

- voting rights of either Corporations or controlling companies
- limitations to the transfer of the shares of either the corporation or the controlling companies in order to exercise control over the property and/or the management
- aim of exercising dominant influence

The following shall not be considered as shareholder agreements: agreements aimed at selling stocks in a percentage that would change the majority of control, and those agreements that affect pacts among companies entirely owned by the parties to the agreement.

Duration of the agreements cannot last more than 5 years, even if the contract for a longer term. Agreements are renewable. If no duration time has been agreed, participants may withdraw upon previous notice of 6 months.

Undisclosed Shareholder agreements have no validity and the meetings' resolutions adopted in accordance to an agreement are voidable. Shareholder agreements must be disclosed before any meeting of corporations issuing risk capital, otherwise have no validity for the meeting.

STOCK SHARES: Issuance of NO PAR VALUE shares is now allowed. In other words shares may now be linked to a fraction of the stated capital, as well as it is possible for Limited Liability Companies (SRL-Società a Responsabilità Limitata). The only requirement is to make express reference about it in the Bylaws.

Nominal shares are transferable upon authenticated signature. Power to exercise corporate rights is transferred upon signature. If the share transfer is conditioned to the acceptance by either the other shareholders or the Board of Directors, bylaws shall provide that in case such acceptance is denied:

1. the company and/or its shareholders undertake to purchase the share; or
2. the seller has a right to withdraw at expense of the company and/or its shareholders

(Civil Code, Article 2355bis).

In order to be enforceable stock transfer restrictions must be mentioned on the stock certificate

Issuance of redeemable shares is now permitted (Civil Code, Article 2437sexies). Redeemable shares may be of relevant interest in case participation to the stock capital is connected to determined relationship from outside the company.

PRINCIPAL CLASSES OF STOCK:

- Common Stock. Full voting rights, save for those shares issued for specific corporate business activities
- Stock having different rights. Upon specific mention in the Bylaws it is possible to create categories of stock having different rights even with reference to a predetermined and eventual level of losses
- Stock and other instruments to the benefit of employees. The extraordinary general meeting has the power to determine assignments, rules, rights, eventual expiration terms and faculty of repurchase
- No voting Stock. No voting rights, such shares may be only issued by companies whose shares are traded on the Stock exchange for an amount of Stock capital not greater than 51%.
- Stock of participation to a determined business. Financial instrument of participation, whose rights must be specifically predetermined

A corporation may authorize – not more than 51% of Stock Capital – specific Stock without voting rights, with restricted voting rights, with limited or subordinated voting rights (Civil Code, Article 2351).

Stock to the benefit of employees or issued pursuant to services or work contribution by shareholders or third parties may carry the right to vote on specific arguments of particular interest for the rights of the stock itself and a member of the controlling board may represent them.

The mandatory deposit with consequent prohibition of withdrawal of the shares for a corporate meeting has been eliminated.

ASSETS DEDICATED TO SPECIFIC BUSINESSES

Corporations (SPA) may dedicate and link the result of a portion of the stock, not more than 10% of the stock capital, to the results of a determined area of business (with the exclusion of the business regarding activities with a reserved statutory regulation).

Civil Code, Article 2447bis – A corporation may:

- set up one or more assets specifically dedicated to the realization of a specific business (a single business or an entire business activity to be carried out along with the main business activity of the company).
- Establish that financial resources necessary for carrying on the activity have to come from the specific business itself

The purpose of this regulation is allowing to split management and result of different activities and businesses each one valuable independently.

POSSIBILITIES:

1. DISPOSITION OF ASSETS (Civil Code, Article 2447bis, par. 1, lett. a). Setting up of a separate corporate entity internal to the company, without need of coping with rules and regulations of the Civil Code applicable to de-merge of companies, therefore without bearing related costs (i.e. investment of corporate equity in financial speculations aimed at risk diversification). By previous mention in the Bylaws of the criteria for calculation of outcome and income for the specific business, the issuance of stock

directly linked to results of the specific business is permitted.

2. NEW CONTRIBUTIONS AND NEED OF NEW RESOURCES FOR DEVELOPING A NEW PROJECT – A separate accounting for the specific business activity is mandatory (Contributors may decide on the basis of the substance and the content of the single project or operation)

A specific resolution of the shareholder meeting is necessary in order to bind some assets to a specific business. The meeting shall determine:
- The object of the business
- Assets involved
- Financial and economical business plan (in order to determine congruity, criteria of management, expected result, guaranties etc.)
- Contributions specifically undertaken and financial instruments issued for the operation
- Appointment of an auditing company in case the corporation issues equity securities publicly traded and offered to non professional investors
- Rules of accounting of the specific business

The resolution must be filed with the Companies Registry. Actual creditors may file an opposition within two months from the filing.

DEBT SECURITIES

Corporations are allowed to issue debt securities offered to the market for subscription. The decision to issue debt securities as a financial instrument, may be led by:

- the preference of raising financial resources without granting new subjects the right to vote and without altering corporate control
- the necessity of financing projects or operations, which just need a temporary financing
- the circumstance that the purchase of equity stock is not a sounding investment during a particular period of time

Issuance of equity security instead may sound convenient for:

- raising permanent resources
- acquiring new resources without paying additional financial costs
- financing the stock capital without being subject to statutory limitations provided for the issuance of debt securities.

Civil Code, Article 2410 – Unless otherwise provided by either the certificate of incorporation or the bylaws, the Board of Directors may adopt the resolution for issuance of debt securities. The extraordinary general meeting may vote for issuance of convertible bonds. To be enforceable, the resolution of issuance must be entered in the minutes of the meeting and must be filed in accordance with the regulation established for bylaws amendments (Civil code, Article 2436).

The threshold for debt issuance has now been raised to an amount equal to the double of the stock capital, of the legal reserve and of the available reserves as they result on the last approved balance sheet. It would seem possible to make reference to the subscribed stock capital and not to the stock capital paid in, since the law says nothing in respect.

The following situations are not subject to the above limitations:

- Bonds issued in excess that are subscribed by professional investors subject to prudential control in accordance with specific regulations and that are traded among non professional purchasers (situation where bond subscribers are liable for the solvency of the company).
- Bonds backed by first mortgage over real estate owned by the company up to 2/3 of their value
- Authorization by governmental authority

Rules and regulations concerning convertible bonds has not changed (extraordinary general meeting + stated capital increase for an amount equal to the shares to issue in conversion). Stated capital must be entirely paid in.

SOLE SHAREHOLDER CORPORATION

A unilateral certificate is necessary for incorporation. The sole shareholder has to pay the entire stated capital. The same rule applies whenever a shareholder of a corporation with more than a single shareholder takes over the other shareholders' stock not yet paid in (in this case the sole shareholder gets 30 days for compliance). In case of concurrent capital increase the outstanding amount must be corresponded forthwith.

It is necessary to comply with a certain number of formalities whenever a new shareholder joins the company: directors must file an affidavit with the Companies Registry within 30 days with information about name, date and place of incorporation, address or registered office of the single shareholder. The rule requiring disclosure about ownership by a sole shareholder on company's literature and letterheads, which has been enforced for limited liability companies, does not apply to corporations.

Contracts entered by the company and the sole shareholder and operations to the benefit of the latter are not enforceable against creditors, unless there is mention of them on either the Board of Directors meeting book or a writing with date certain and precedent to eventual distraint.

The sole shareholder remains liable up to an amount equal to the capital subscribed and paid in, with the following exceptions:

- Insolvency of the company
- Stated capital not entirely paid in
- Publicity requirement not fulfilled

SHAREHOLDERS' MEETING

The general meeting may now be called at any place within the municipality where the company has its own registered office, unless Bylaws provide otherwise.

The meeting has to take place once a year within the 120th day after closing of the corporation's fiscal year. Bylaws may set a longer period of time not exceeding

180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company (in this case Directors have to make mention of the deferral in their report (Civil Code, Article 2428).
The following powers previously reserved to the extraordinary general meeting may be assigned to the Board of Directors, to the Board of Auditors or to the Management Board, if any:

- Issuance of non convertible bonds or of financial instruments without voting rights
- Merger with a wholly owned company
- Creation or suppression of secondary offices
- Attribution of powers of attorney
- Capital reduction due to a shareholder's withdrawal
- Bylaws amendments in compliance with statutory regulations
- Transfer of the registered office within the national territory

Companies without outstanding shares held by public investors may avoid formalities and requirements established for the call of the meeting (notice on the Official Gazette 15 days before the meeting). Bylaws may allow calls through means of communication that guarantee the effective knowledge of the call at least 8 days in advance on the date scheduled (Certified letter with receipt, fax are proper means; some doubts about e-mails with automated reading receipt message).
Shareholders are not allowed to call the meeting on arguments of exclusive competence of Directors.
Upon petition by 10% of the Shareholders, the Tribunal may also call the general meeting, but only if the management did not call it without justification.

QUORUM FOR THE SHAREHOLDERS' MEETINGS

FIRST CALL

1. Companies without outstanding shares held by public investors

ORDINARY GENERAL MEETING – In order to effectuate corporate business a quorum of **50%** of shares entitled to vote must be represented. Unless Bylaws provide otherwise, shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote.
Call formalities need not to be observed if the meeting is attended by:

- shares representing the entire capital
- the majority of Directors
- the majority of members of the Board of Auditors

Absentees must be given immediate notice about adopted resolutions. Participants may claim they have not been sufficiently informed on the argument.

EXTRAORDINARY GENERAL MEETING – Unless Bylaws provide otherwise a quorum of **50%** of shares entitled to vote must be represented and shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote.

2. Companies with outstanding shares held by public investors

ORDINARY GENERAL MEETING – Same rules as above

EXTRAORDINARY GENERAL MEETING – A quorum of 50% of the shares (entitled or not to vote) must be represented and shareholders' actions must be approved by **2/3** of the shares represented at the meeting.

SECOND CALL

If the above quorum required for the first call of the shareholders' meeting are not met, the meeting has to be recalled on another day, within 30 days.

1. Companies without outstanding shares held by public investors

Only resolutions on arguments to the order of the day of the first meeting may be adopted, with the following quorum:

ORDINARY GENERAL MEETING – No minimum quorum required

EXTRAORDINARY GENERAL MEETING – A quorum of more than **1/3** of the shares must be represented and shareholder actions must be approved by **2/3** of the shares represented at the meeting.

Civil Code, Article 2369 – Bylaws may increase quorum required, but not for annual financial reports approval, appointment and revocation of corporate management.

A quorum of at least 1/3 of the shares representing the stated capital is required for passing a resolution on the following arguments:

- Change of the corporation's purpose
- Modification of form of business association, anticipated winding up, extension of duration for the company
- Revocation of the winding up procedure
- Transfer of the registered office abroad
- Issuance of preferred stock

2. Companies with outstanding shares held by public investors

Same quorum set above for those companies which do not solicit investment at large, with the exception of

those Extraordinary General meetings with calls subsequent to the second one, where a quorum of at least **1/5** of the shares must be represented to effectuate corporate business.

VOID AND VOIDABLE MEETING RESOLUTIONS

Circumstances affecting the validity of a resolution and determining that the same is *voidable* are as follows:

- Lack of standing of participants, but only if the quorum required would not be reached without their attendance to the meeting
- Lack of title in voting shares or their erroneous accounting if, without their accounting the required majority would not be reached

Mistakes or omissions in the minutes are not causes for invalidity if they do not affect the substance and the effects of the resolutions passed.

Resolutions are *void* if the following circumstances occur:

- Lack of call for the meeting (with the exception of the meeting where the overall capital is represented and the majority of the members of the Board of Directors and of the Board of Auditors attend it). In case of irregular call, the call is not deemed lacking whenever (a) irregularity arises from an omission of either the management or the Board of Auditors; (b) it is possible to inform the participants about time and place for the meeting – The validity of a meeting cannot be challenged by those who declared their assent to participate at the meeting, and neither can be challenged after three years from the filing of the meeting within the Companies Registry or the Shareholders' book.
- Lack of minutes for the resolution adopted. Minutes are not considered lacking (with regard to formalities) if the date of the meeting and passed resolutions are there mentioned and if the minutes are duly signed by either the President of the Board of Directors or of the Board of Auditors, and by the secretary or the notary. Anyhow, an invalid meeting may be validated if the missing information are filled in the minutes before the next meeting, save for any right third parties may claim.
- Illicit or impossible purpose of the resolution

A challenge to the validity of a resolution may be claimed by:

- Members of the Board of Directors
- Members of the Board of Auditors
- Absentees, those who expressed their dissent or, for ordinary general meetings only, shareholders with limited right to vote. Shareholders can move a claim when they own either 5% of the capital of those companies that do not issue capital of risk, or 1/1000 for the others. Shareholders that do not reach the capital percentages mentioned may, anyway, claim relief for damages they have incurred. Both the challenge to the validity of a meeting and the claim for damages has to be carried out within three months from the resolution.

With the exception of those resolutions regarding amendments to the corporate purpose aimed at carrying out illicit or impossible business activities, a resolution cannot be challenged after three years from the date of its filing with the Companies Registry, or from the date the resolution is reported in the minutes of the Shareholders' Book.

In case of capital increase or decrease pursuant to Article 2445 of the Civil Code and in case of bond issuance, resolutions may be challenged within the following periods of time:

Companies without outstanding shares held by public investors – Within 180 days from the filing of the resolution with the Companies Registry. In case of missing call, within 90 days from the approval of the annual balance sheet where the resolution has been partially enforced.

Companies with outstanding shares held by public investors – Resolution about increasing of the capital stock cannot be challenged after its enforcement has been certified and filed with the Companies Registry. The resolution of decreasing the capital stock pursuant to Article 2445 of the Civil Code or the resolution of issuance of bonds cannot be challenged after its enforcement.

CORPORATE GOVERNANCE

Different models of corporate governance may be adopted. Bylaws may regulate more freely the internal organization of the Board competent for management, its functioning, the circulation of information among its members and the members of the Board of Auditors. If Bylaws do not provide otherwise the model of corporate governance and control applied is still represented by the traditional system.

Traditional System – The reference model is the traditional system (General Shareholders' Meeting, Board of Directors, Executive Committee, Board of Auditors and external auditing when required by the Law).

Under the new system, the accounting control previously attributed to the Board of Auditors is now attributed to an external Auditor or an Auditing Company.

New Article 2386, III paragraph of the Civil Code establishes that the office term for appointed directors is the same office term set of directors appointed by the time of their election. In case of conflict of interest, the executive director shall refrain from undertaking operations and shall empower the Board of Directors for their enforcement. If a resolution would have not been approved without the vote of the Director in conflict of interest, such resolution may be challenged within 90 days, and during this period of time

operations carried out with bona fide third parties are valid.
Directors and members of the Board of Auditors "*…must act with the same professionalism and diligence required by the nature of the action undertaken"* (Civil Code, Article 2704). Such standard "*does not require Directors to be necessarily experts on accounting, finance and any other sector of management and governance of the enterprise, rather it means that their decisions shall be informed and pondered, based on knowledge and on a calculated risk, and not on irresponsible and negligent improvisation*" (Parliamentary Report on the specific topic of the Corporate Reform Law). Power of attorney of directors is general. Limitations on power of Directors resulting from Bylaws or from a corporate resolution are not valid against third parties, even if published, unless evidence is given that these latter acted wilfully to the damage of the company.
COMPETING VENTURES – According to Article 2390 of the Civil Code, Directors cannot act as unlimited liable shareholders in competing ventures, neither they can carry on a concurrent business activity on their own or on behalf of third parties, nor they can act as Directors or General Managers in competing ventures, unless explicit authorization by the General Shareholders' Meeting.
Directors' compensation, set on their appointment or by the General Shareholders' Meeting may include participations to corporate profits or stock options.
Directors are liable to:

- *The company*, if they have not exercised due care over the general management of the company, they have not done what they could for preventing damages to the company to occur, and they have not fulfilled their duty with the professionalism and diligence required by the nature of the action undertaken. A claim of their responsibility may be promoted by resolution of the General Shareholders' Meeting. With reference to the balance sheet, without previous notice, a claim of responsibility may be carried out during discussion about balance sheet approval by shareholders representing 1/1000 of the stock capital and within the five years subsequent to their removal from office. Outside the General Shareholders' Meeting, even a minority of shareholders may carry out the claim (1/5 of the stock capital for companies which do not issue capital of risk, and 1/20 of the stock capital for the others)
- *Creditors* of the company, whenever the preservation of the stock assets is not guaranteed and the stock assets are not sufficient to satisfy their credits. In case of bankruptcy, the claim for responsibility may be initiated by the bankruptcy administrator, and in case of extraordinary administration, by the extraordinary administrator.
- *The single shareholder or the third* may carry out a claim for damages within five years

BOARD OF AUDITORS – Only one out of the three or five of the effective members (and one of the supplemental members) of the internal Board of Auditors must be an auditor member of the Roll of Auditors; other members may be chosen among members of other professional categories or among professors in juridical or economical sciences.
According to Article 2403 of the Civil Code, the Board of Auditors exercises a control of Law and Bylaws regulation compliance and over principles of fair management. In other words its duty is to exercise administrative and legal control, while duty of control over accountancy, which characterized the activity of the Board, has been eliminated.
Members of the Board of Auditors have to attend both the Board of Directors' and the General Shareholders' meetings, as well as meetings of the Executive Committee. They are removed if they do not attend without justification two consecutive meetings during a fiscal year. The supervisory board must meet at least each 90 days and may meet through the use of electronic means (e.g. videoconferences).
When some shareholders report an unlawful action by Directors, the Tribunal cannot intervene if the General Shareholders' Meeting substitutes members of the Board of Directors and of the Board of Auditors as a whole, and elect new members of adequate professionalism for curing eventual illegality. The following cannot be elected members of the Board of Auditors (Article 2399 Civil Code): those who are in the condition listed on Article 2382 (Insanity etc.), parent and relatives within the 4th degree of company's Directors, Directors of the company, parent and relatives within the 4th degree of either controlling or controlled company's Directors; those who are bound to either the company or to controlling/controlled companies by an employment relationship, a continuative consulting relationship, a remunerated service activity, or by other economical interested relationship that affect their independency.
Among other duties, members of the Board of Auditors have also to certify that a bond issuance does not override legal limitation (Civil Code, Article 2412).

ACCOUNTING SUPERVISION
Supervision over accounting has to be exercised by an external auditor, who cannot be member of the Board of Auditors. His appointment may be mentioned in the Certificate of incorporation or he may be elected by the General Shareholders' Meeting.
Accounting supervision over companies with outstanding shares held by public investors has to be exercised by an auditing company.
Accounting supervision over companies without outstanding shares held by public investors and required to have consolidated financial statements may be exercised by an auditor.

Accounting supervision over companies without outstanding shares held by public investors and not required to have consolidated financial statements may be exercised by an auditor as well. In this latter situation, however, Bylaws may provide that accounting supervision is exercised by the Board of Auditors, whose members shall be in this case only auditors members of the Roll of Auditors.
The auditor is elected by the General Shareholders' Meeting, takes his office for three years and may be removed only for "good cause". His activity of control consists in:

- drafting a specific auditing report
- communicating to the Supervisory Board about the existence of any fact deemed to be blamed

Auditors are required to:

- Verify quarterly during the fiscal year regularity of accounting and fairness of accounting methods applied
- Express with specific report an opinion over the annual balance sheet and the consolidated balance sheet
- Document the activity carried out on a specific book as provided by statutory regulation on mandatory bookkeeping

The auditing activity is in conflict with the office of member of the Supervisory Board of:

- the company
- controlling/controlled companies

and with other activities listed on Article 2399 of the Civil Code (Civil Code, Article 2409quinques).

Dualistic System (German tradition)
It may be established on Bylaws that governance of the company is exercised by the Management Board, which is appointed by the Supervisory Board (with the exception of the first election resulting from the certificate of incorporation). Management Board can assign specific executive powers to one or more of its members. Rules regulating relationship between board of Directors and the Executive Committee, and Directors in general apply to this corporate model. Management Board cannot take the office for more than three consecutive fiscal years. It may be however be confirmed and removed for "good cause" by the Supervisory Board. General rules apply to individual claims against members of the Management Board, as well as to claims raised by the Supervisory Board against them. When the resolution is adopted by 51% of its members, the member of the Management Board against whom the claim has been raised, is automatically removed from office.
The Supervisory Board, which exercises general supervision over activity of the company, is elected by the General Shareholders' Meeting (with the exception of the first election resulting from the certificate of incorporation). Its members has to be no less than three. Their office lasts three fiscal years. At least an effective and a supplemental member have to be auditors members of the Roll of Auditors. It is not possible to be member of the Management and of the Supervisory Board at the same time. The Supervisory Board exercises supervision over:

- compliance with legal and accounting rules and regulations
- corporate operations, reporting any unlawful act

Moreover, once a year the Board reports to the Management Board.
Members of the Supervisory Board share joint and several liability with members of the Management Board for acts and omissions of the latter, whenever the activity of supervision of the Board could have avoided damages.

Monistic System (British Tradition)
Bylaws may set forth that a Board of Directors have the duty of corporate management, while duty of its supervision is on an internal entity called Committee for supervision of the management. This system of governance must be explicitly set on Bylaws. There is a close connection between the Board of Directors and the Committee for supervision of the management, in fact only those who have been previously elected members of the Board of Directors may serve as members of the Committee.
The Board of Directors set the number of members for the Committee (not less than three, if the company solicits investment at large). Half of the members at least must match requirement of independency, and further standards set by ethical codes prepared by business associations or by legal entities of management of trading markets. It is not allowed to serve at the same time as member of the Committee for supervision of the management and as member of any other Executive Committee. Further, it is not permitted to a member of a Committee for supervision of the management to have specific assignments, powers or offices regarding the management of the company. At least a Director, among members of the Committee for supervision of the management must be an auditor member of the Roll of Auditors. The same powers and duties of the Board of Auditors are attributed to the Committee.

MANDATORY CORPORATE BOOKKEPING
Besides mandatory accounting records and books required by Article 2214 of the Civil Code, a company keeps:

- Shareholders' book
- Bondholders' book
- Shareholders' Meeting book
- Board of Directors' Meeting book and Executive Committee Meeting book
- Bondholders' Meeting book
- Financial instruments book required by Civil Code, Article 2447sexies

BALANCE SHEET
Corporate reform amendments concern essentially the rules of the Civil Code regarding balance sheet drafting

and aimed at ensuring that the balance sheet reflects precisely the corporate economical situation. In this connection the most relevant changes pertain to the relationship between balance sheet and fiscal regulations.

APPLICABLE RULES OF LAW – Article 223undecies of the "Disposizioni di Attuazione" of the Civil Code provides as follows that balance sheets relating to fiscal years ended:

- before January 1st 2004 are drafted according to previous norms of law
- between January 1st 2004 and September 30th 2004 may be drafted following the former rules of law
- after September 30th 2004 shall be drafted in accordance with the new statutory regulation

Law 3.10.2001, n.366 has eliminated whatever reference to fiscal norms, to the extent that financial reports will be drafted in accordance with rules of the Civil Code as they are the only rules applicable.

APPRAISAL RIGHTS

(I) Shareholders, who did not participated to the following resolutions get right of appraisal:

- Changes of the corporate purpose, if the change substantially affects the business activity of the company
- Modification of the form of business association (i.e from corporation to limited liability company).
- Revocation of the winding up procedure
- Elimination of one or more causes for appraisal below listed on n. **(II)** or as provided in Bylaws
- Modification of criteria for calculating value of the share participation in case of withdrawal by the shareholder
- Bylaws amendment concerning voting or participation rights

Save for different provisions set forth in Bylaws, Shareholders, who did not vote to pass a resolution on the following issues have right of appraisal:

- Extension of life term for the company
- Enforcement or lifting of limitations to the assignment of the stock shares

If the company has no life term and its shares are not listed on a stock exchange a shareholder may withdraw with prior notice of 180 days (save for a longer term provided in Bylaws not exceeding one year at most). If shares are listed on a stock exchange any shareholder gets appraisal right in case of delisting of the company.

Appraisal rights may be exercised by shareholders:

- within 30 days from personal knowledge of the fact (which gave rise to the right), if the right is not connected to a resolution adopted by the company
- within 15 days from the company's resolution otherwise

With reference to liquidation of the share the new rules provide that the value of the share, unless otherwise provided in Bylaws, shall be determined in accordance to:

- the value of the company's assets
- economical forecasts for the company
- market value of the shares

Directors shall determine the value of the stock shares and doing so they shall carry on an attentive and thorough economical evaluation to be included in a specific report. It is possible to object to the evaluation done. In this case the value of the stock share for their liquidation shall be determined by an expert appointed by the President of the Tribunal within three months from the date of withdrawal by the shareholder. Evaluation of shares listed on a stock exchange is based on the arithmetic average calculation of closing prices of the shares during the six months precedent to the date of receipt of the call for the meeting, where the decision giving rise to the right of appraisal was adopted.

Enforcement & Deadlines
January 1st, 2004 • Corporate Law Reform enforcement date • Since this date on Certificate of incorporation and Bylaws shall comply with new rules (newly incorporated companies)
June 30th, 2004 • Ministerial Decree about the institution of the Registry of "Cooperative" • Deadline for limitations to exercise appraisal rights (art. 2437 lettera e).
September 30th, 2004 • Deadline for amending Bylaws in order to comply with new rules • Anticipated compliance makes amendments enforceable since January 1st, 2004. • Enforcement of new rules for drafting annual financial reports.
December 31st, 2004 • Deadline for amending Bylaws of "Cooperative".
December 31st, 2009 • End of automatic renewal of voting agreements entered before January 1st, 2004.
• Raising stated capital to the new legal threshold of € 120,000.00 for companies operating on January 1st, 2004 is not mandatory until expiration of the life term of the company