

# Quotaholder rights in an SRL (Italy)

by **Federico Bal** and **Marco Ventoruzzo**, Gattai Minoli Agostinelli and Partners

Practice notes | **Maintained** | Italy

---

This note describes the statutory rights of quotaholders of Italian private limited companies (*società a responsabilità limitata* or SRL) under the Italian Civil Code.

---

## Scope of this note

### Corporate personality and limitation of liability

### Quotaholder acting as director or statutory auditor

### Quota capital

- Quotas

- Differences between quotas and shares

## Quotaholder rights

### Quotaholder rights: individual economic rights

- Right to dividends (diritto ai dividendi)

- Right to liquidation proceeds (diritto alla quota di liquidazione)

- Right to subscribe for a new issue of quota capital in proportion to existing quota (diritto di opzione)

- Right to exit (diritto di recesso)

### Quotaholder rights: individual administrative rights

- Right to attend the quotaholders' meeting (diritto di intervento) and right to vote (diritto di voto)

- Right to challenge resolutions of the quotaholders (diritto di impugnare le decisioni dei soci)

- Supervisory rights (diritti di controllo)

## Quotaholder remedies

### Main rights of quotaholders holding certain percentages of quota capital

### Special rights of quotaholders

- Special rights (diritti particolari)

- Special classes of quotas

## Scope of this note

This note describes the statutory rights of quotaholders of Italian private limited companies (*società a responsabilità limitata* or SRL) under the Italian *Civil Code* (*Codice Civile*). Some of the rights discussed pertain to individual quotaholders regardless of the percentage of corporate capital they own; other rights require a minimum percentage holding to be reached to be exercisable.

Where significant, the note highlights the main differences between the rights granted to quotaholders of an SRL and the rights granted to shareholders of an Italian public limited company (*società per azioni* or SPA).

For the purpose of this note we have assumed that the SRL has two or more quotaholders (it is not a sole quotaholder company).

The scope of this note is limited to the rules set out in the Civil Code, applicable to all privately owned corporations not active in regulated industries such as banking and insurance. This note does not include references to special civil, criminal or administrative laws, secondary regulations or self-regulation (such as specific provisions set out in the articles of association of such companies).

## Corporate personality and limitation of liability

An important feature of an SRL is the limitation of liability for quotaholders (*Article 2462, Civil Code*). This means that under Italian law any liability arising out of obligations undertaken by an SRL may be satisfied exclusively with the company's assets subject to limited exceptions (see *Practice note, Main characteristics of an SRL and SRLS (Italy): Liability of quotaholders*).

According to the general principle of the separate legal personality, an SRL is a legal person distinct and separate from the quotaholders. The business activity is carried out by the SRL and not by the individual quotaholders.

Consequently, in principle, quotaholders are not liable for the obligations undertaken by the company and, simultaneously, they cannot exercise the rights belonging to the same. Quotaholders are only liable up to the amount they agreed to pay as consideration for the quotas they subscribed for (see *Practice note, Main characteristics of an SRL and SRLS (Italy): Quota capital*).

For this same reason, creditors are not entitled to sue quotaholders and they may only rely on the company's assets to see their credits duly satisfied. For this same reason creditors are not entitled to sue quotaholders and they may only rely on the company's assets to see their credits duly satisfied.

## Quotaholder acting as director or statutory auditor

Quotaholders of an SRL may be directors as well as statutory auditor(s), provided that they fit the statutory, regulatory or contractual requirements (*Article 2399, Civil Code*). For example, the quotaholder holding more than a certain percentage of the quota capital (for example, 20%) or granted with particular rights in term of governance or exit that would have an impact on the management of the company is unlikely to be deemed to be independent to be a statutory auditor.

A director of an SRL must be a quotaholder, unless otherwise expressly stated in the articles of association (*Article 2475(1), Civil Code*).

Where acting as directors, quotaholders are subject to the same statutory duties as any other director.

When the director is also a quotaholder, special attention must be paid to ensure that there is no breach of the duty not to act in conflict of interest and with the duty not to compete with the company (which is deemed applicable to the directors of an SRL too).

Quotaholders can also serve as officer, trustee, fiduciary, employee, agent or special attorney of the SRL.

## Quota capital

### Quotas

The corporate capital of an SRL is divided into quotas. Quotas cannot be represented by shares (*Article 2468(1), Civil Code*). Each quota represents a portion or quota of the corporate capital of the SRL.

Each quotaholder owns a single quota of the quota capital and the number of quotas will be equal to the number of quotaholders.

Each quota has a different value and grants different rights depending on the portion of quota capital that it represents. Quotas are divisible (for example, a quotaholder can sell a portion of the quota they own and maintain the remaining part).

For SRLs which are small-medium enterprises (SME), it is possible to issue different classes of quotas granting different rights from the ordinary class of quotas (see *Special classes of quotas*).

### Differences between quotas and shares

The table below summarises the main differences between quotas of an SRL and shares of an SPA.

Share	Quota
The maximum number is predetermined by the articles of association and depends on the amount of share capital.	The number is equal to the number of quotaholders.
Indivisible, homogenous and standardized unit.	Divisible portion of the corporate capital.
Identical value if within the same class.	Value depending on the represented portion of corporate capital.
Identical rights if within the same class.	Rights depending on the represented portion of corporate capital.
Can be issued in materialised (by certificates) and dematerialised form.	Cannot be issued in materialised form (by certificates).
Can be listed on regulated markets.	Cannot be listed on regulated markets.

### Quotaholder rights

The rights of quotaholders can be divided into two categories:

- Economic rights (*diritti patrimoniali*): rights of financial nature connected to the investment in the corporate capital.
- Administrative rights (*diritti amministrativi*): quotaholders are not automatically involved in the management of the company. Nevertheless, the law grants to them certain administrative rights including the right to resolve on the appointment of the directors.

The statutory rights granted under the Civil Code to quotaholders can, within certain limits, be modified by the articles of association of the company. Such modifications can be obtained by granting special rights or issuing special classes of quotas in an SRL (see *Special rights of quotaholders and Special classes of quotas*).

Certain rights are absolute and are granted to quotaholders irrespective of the percentage in the corporate capital held. Other rights require a minimum percentage holding of quota.

In addition, quotaholders are entitled to bring some legal actions (see [Quotaholder remedies](#)).

## Quotaholder rights: individual economic rights

Regardless of the percentage quotaholding they hold, a quotaholder of an SRL has the following individual rights:

- Right to dividends (*diritto ai dividendi*) (see [Right to dividends \(diritto ai dividendi\)](#)).
- Right to participate in liquidation proceeds (*diritto alla quota di liquidazione*) (see [Right to liquidation proceeds \(diritto alla quota di liquidazione\)](#)).
- Right to subscribe for a new issue of quotas in proportion to existing quota (pre-emption right) (*diritto di opzione*) (see [Right to subscribe for a new issue of quota capital in proportion to existing quota \(diritto di opzione\)](#)).
- Right to exit the SRL (*diritto di recesso*) (see [Right to exit \(diritto di recesso\)](#)).

### Right to dividends (*diritto ai dividendi*)

Quotaholders approving the annual accounts can also approve the payment of a dividend out of the available profits. Should this occur, each quotaholder would be entitled to receive a proportional amount of the net dividend ([Article 2468\(2\), Civil Code](#)).

The articles of association may set out non-proportional rights to dividends by issuing quotas with special rights attached (see [Special rights \(diritti particolari\)](#)). The only limit in this regard is that no quotaholder can be entirely excluded from the distribution of the dividends (*divieto di patto leonino*).

Directors and quotaholders enjoy a broad discretion in deciding whether to distribute dividends or not. Quotaholders may resolve not to pay any dividends (without reason) for certain financial years, provided that this does not amount to an abuse of the rights of minority quotaholders.

### Right to liquidation proceeds (*diritto alla quota di liquidazione*)

In case the SRL is wound-up, each quotaholder is entitled to receive a proportional amount of the remaining company's assets (after the repayment of third-party creditors).

The proportionality principle may be amended by the articles of association for quotas with special rights attached (see [Special rights \(diritti particolari\)](#)). However, no quotaholder can be excluded from the distribution of the company's assets after the winding-up (*divieto di patto leonino*).

### Right to subscribe for a new issue of quota capital in proportion to existing quota (*diritto di opzione*)

Like in an SPA, in case of quota capital increase each quotaholder is offered a right to subscribe a portion of the newly issued quota capital in proportion to their existing quota (*Article 2481-bis(1), Civil Code*).

The pre-emption right has an economic value and can be transferred by the quotaholder before the expiration of the term for subscription. Articles of association may limit the right to transfer the pre-emption right to third parties.

The quotaholders' meeting held to resolve on the quota capital increase may disapply the pre-emption right, provided the articles expressly allow such disapplication (*Article 2481-bis(1), Civil Code*). Where there is an increase of quota capital with the pre-emption right disappplied, any dissenting, abstaining or absent quotaholder is entitled to exit (see *Right to exit (diritto di recesso)*). Practitioners debate whether in case of pre-emption disapplication quotas must be issued with a premium or can be issued at face value.

The quotaholders' meeting must set a deadline for take up of the pre-emption right which cannot be less than thirty days from the notice that the pre-emption right can be exercised (*Article 2481-bis(2), Civil Code*). Only a decision approved by quotaholders unanimously may waive this deadline.

Unlike SPA, the quotaholders' meeting can decide whether any portion of the quota capital for which pre-emption right has not been exercised will be offered to the other quotaholders or to third-parties (*Article 2481-bis(2), Civil Code*).

As for an SPA, for an SRL the corporate capital may also be increased gratuitously by capitalisation of available reserves of the company's assets (bonus issue of quotas) (*Article 2481-ter, Civil Code*). In this case, the new portion of capital will accrue proportionally the existing quotas. (See further *Practice note, Shareholders' rights in an SPA (Italy): Right to subscribe for any new shares for which the pre-emption right has not been exercised (diritto di prelazione)*.)

## **Right to exit (*diritto di recesso*)**

There are two categories of exit rights available to quotaholders:

- Mandatory rights of exit that cannot be modified, excluded or limited by the articles.
- Optional rights of exit set out in the articles (if any).

### **Mandatory right to exit**

Mandatory rights to exit are granted to quotaholders who did not vote in favour of a quotaholders' resolution (whether by dissenting, being absent or abstaining from voting) on any of the following matters (*Article 2473(1), Civil Code*):

- Conversion (*trasformazione*) into other types of Italian trading vehicle.
- Amendment of the corporate purpose: as for SPA, the amendment must be significant and cause a change in the risk conditions of the investment.
- Amendment *de facto* of the corporate purpose. This cause operates when a particular transaction carried out by the company causes a substantial amendment in the business purpose of the company (for example, the sale of a significant going concern).

- Merger or demerger of the company.
- Revocation of the winding-up procedure.
- Transfer of the company's registered office abroad.
- Amending or deleting from the articles of association of a pre-existing right of exit.
- Significant amendment of the particular rights (*diritti particolari*) granted to any individual quotaholder, if any, pursuant to Article 2468 of the Civil Code.

Additional mandatory exit rights are as follows:

- Quotaholders who did not vote in favour of the quotaholders' resolution to increase the quota capital with disapplication of the pre-emption right (whether by dissenting, being absent or abstaining from voting) are granted a mandatory right to exit (see *Right to subscribe for a new issue of quota capital in proportion to existing quota (diritto di opzione)*) (Article 2481-bis(1), Civil Code).
- If the SRL has no term, quotaholders are always entitled to freely exit by giving at least 180 days' notice (this can be extended up to one year by the articles) (Article 2473(2), Civil Code).
- Specific mandatory rights to exit are granted in favour of quotaholders of a company subject to direction and coordination of another entity (*direzione e coordinamento di società*), like the parent company (Article 2497-quarter(1), Civil Code).

### Optional right to exit

Articles of association may set out additional causes of exit (Article 2473(1), Civil Code).

Additional causes may be, for example:

- The adoption of certain resolutions in addition to those mandatorily listed above (see *Mandatory right to exit*).
- The sale of certain assets or of going concerns.
- The performance of certain to be identified transactions.

### Exercise of the right to exit

Italian law does not contain a detailed regulation of the process for the exercise of the exit right in an SRL.

Normally the articles fill the gap by setting out such regulation (normally reference is to the rules applicable to an SPA; see *Practice note, Shareholders' rights in an SPA (Italy): Exercise of right to exit*).

Where the articles are silent, it is a question of interpretation whether specific provisions applicable to the process for the exercise of the exit right in an SPA can apply.

In any event the exiting quotaholder has the right to be paid the value of the quota.

The value of the quota is determined by the directors with reference to the market value of the company's assets. In case of a dispute, the matter is resolved by an independent expert appointed by the court, through a sworn report (*Article 2473(3), Civil Code*).

In any case, the right to exit is not effective if the resolution giving rise to the right to exit is revoked or the quotaholders resolve the winding-up of the company (*Article 2473(5), Civil Code*).

## Quotaholder rights: individual administrative rights

A quotaholder of an SRL has the following administrative rights, regardless of the percentage shareholding they hold:

- Right to attend quotaholders' meetings and right to vote (see *Right to attend the quotaholders' meeting (diritto di intervento) and right to vote (diritto di voto)*).
- Right to challenge resolutions of the quotaholders (*diritto di impugnare le decisioni dei soci*) (see *Right to challenge resolutions of the quotaholders (diritto di impugnare le decisioni dei soci)*).
- Supervisory rights (*diritti di controllo*) (see *Supervisory rights (diritti di controllo)*).

### Right to attend the quotaholders' meeting (*diritto di intervento*) and right to vote (*diritto di voto*)

Quotaholders' meeting may only be attended by quotaholders holding voting rights. Voting rights are proportional to the percentage of the quota capital held by each quotaholder (*Article 2479(5), Civil Code*). The articles of association may set out non-proportional voting rights or grant special rights to individual quotaholders (*diritti particolari*) or, when possible, allow the issuance of special classes of quotas allocating special voting rights to the holders (see *Special classes of quotas*).

Ancillary to the right to attend and the right to vote is the right of quotaholders to timely receive adequate information on any item to be resolved. Moreover, articles of association may provide for voting mechanisms other than the meeting discussion (for example, written resolutions), provided that specific voting procedures are implemented assuring that all quotaholders are involved in the relevant decisions.

Quotaholders of an SRL may attend the quotaholders' meeting through a proxyholder, unless expressly excluded by the articles of association (*Article 2479-bis(2), Civil Code*). However, the proxy must be granted in writing.

Unlike in an SPA, Italian law does not grant to minority quotaholders the right to request the directors to convene the quotaholders' meeting and to set out the relevant agenda (see *Practice note, Shareholders' rights in an SPA (Italy): Main rights of shareholders holding certain percentages of corporate capital*). Case law has excluded the application to quotaholders of an SRL of the right granted to shareholders to request the directors to convene the quotaholders' meeting (*Supreme Court of Cassation no 10821/2016*).

### Right to challenge resolutions of the quotaholders (*diritto di impugnare le decisioni dei soci*)

Resolutions adopted by quotaholders in breach of the articles of association or the law may be challenged by dissenting or abstaining quotaholders and, in the event of a meeting of quotaholders (as opposed to written

resolutions) by absent quotaholders. The resolution must be challenged within 90 days of the recording of the relevant minute in the book of the quotaholders' decisions (*Article 2479-ter, Civil Code*).

The right to challenge quotaholders' decisions is granted to quotaholders individually (unlike an SPA where the right is granted to quotaholders holding at least 5% or the lower percentage set out in the articles of association; see *Practice note, Shareholders' rights in an SPA (Italy): Main rights of shareholders holding certain percentages of corporate capital*).

Unlike an SPA, members of an SRL are not granted with a specific right to challenge the board of directors' resolutions.

## Supervisory rights (*diritti di controllo*)

To strengthen the voting right and the right to bring liability actions against the directors, quotaholders have the following rights of control:

- Right to information.
- Right to access the corporate books

(*Article 2476(2), Civil Code*.)

These rights are only granted to members who are not directors of the company nor beneficiaries of particular administrative rights pursuant to Article 2468 of the Civil Code (see *Special rights (diritti particolari)*).

The right of information concerns any specific activity or transaction of the company and can be enforced at any time without a specific reason. It can also be enforced through professionals who are mandatorily subject to confidentiality obligations towards their client (the quotaholder).

The right to access (and extract copy of) the corporate books concerns any ledger, book of the minutes of the resolutions of the corporate bodies, financial and accounting records as well as any further document concerning the management of the company (such as, court judgements, invoices, agreements, correspondence, and so on).

The supervisory right cannot be limited by the articles of association. However, it is possible to set out special rules for accessing the books (for example by providing specific hours or procedures for requesting the documents).

In any case, both information and access rights cannot be abused by the members. In case of abuse members could incur liability for damages vis-à-vis other quotaholders or the company.

## Quotaholder remedies

In addition to the economic and administrative rights, individual quotaholders are entitled to bring the following legal actions, on occurrence of certain conditions:

- Liability action against the directors for damages caused to quotaholders by a wilful or negligent act or omission. Quotaholders may claim the damages directly incurred by them (and not as an indirect damage consisting in the loss of value of the quota) (*Article 2476(7), Civil Code*).

- Liability action against the statutory auditors (and the accounting auditing company, both if appointed), which are jointly liable with the directors for the acts or omissions of the latter if such damages would not have been suffered had the auditors duly supervised the activity of the directors (*Article 2407(2), Civil Code*).
- Action for the winding-up of the company if, as a result of the triggering of a cause of termination of the company, the directors do not start the winding-up procedure (*Article 2485(2), Civil Code*).
- Individual quotaholders are also granted with a specific right to bring liability actions against the directors of the company acting in breach of their duties and to claim for damages incurred by the company (*Article 2476(3), Civil Code*). The claim must be exercised within five years from the date of the relevant facts, being such term suspended until the termination of the office of the director.

## Main rights of quotaholders holding certain percentages of quota capital

Quotaholders holding certain percentages of the quota capital of an SRL, enjoy the rights listed in the following table.

Percentage of corporate capital	Right	Provision of Civil Code
10%	To veto any waiver or settlement of the company's liability action against directors.	Article 2476(5)
33%	To submit to the approval of the quotaholders' meeting specific matters that would not usually fall within the competence of the quotaholders' meeting.	Article 2479(1)
33%	To have a certain decision adopted by the quotaholders' meeting collectively (rather than by written resolution)	Article 2479(4)

## Special rights of quotaholders

Italian corporate law offers wide flexibility to SRL as to the allocation of both economic and administrative rights.

The aim is to grant a legal framework where individuals can build corporate structures tailored on the basis of their own needs.

### Special rights (*diritti particolari*)

The articles of association can provide that one or more quotaholders are granted with special rights concerning the management and the distribution of profits (*Article 2468(3), Civil Code*). The rights must be different from the other rights generally attached to the quotas and must be granted to a specific and identified quotaholder.

Consequently, such special rights are strictly personal and cannot be transferred along with the quota unless otherwise provided in the articles of association. They attach to the single quotaholder and are not ancillary or attached to the quota (differently from the rights incorporated in the special classes of shares).

Common examples of special rights which can be granted to precisely identified quotaholders are the following:

- Right to appoint one or more directors and/or statutory auditor(s) (or to provide a list of potential candidates from which the quotaholders' meeting will appoint the directors).
- Right to veto certain decisions of the quotaholders' meeting or of the board of directors.
- More than proportional voting rights.
- Right to preferential (or more than proportional) dividends or proceeds deriving from the sale of 100% of the corporate capital of the company.
- Right not to be diluted.

It is considered that the articles of association of an SRL cannot grant special rights different from the administrative and economic ones (for example, special rights of exit).

### **Special classes of quotas**

In addition to the special rights, SRL which are small-medium enterprises (SME) can issue special categories of quotas (similarly to the classes of shares of an SPA) having special rights (*categorie di quote dotate di diritti diversi*) (Article 26, *Law Decree no 179/2012*; *Law Decree no 50/2017*; *Legislative Decree no 129/2017*). Although quotas cannot be traded on stock exchanges, special classes of quotas can be offered for subscription through crowdfunding systems under Article 26 of Law Decree no 179/2012.

---

END OF DOCUMENT