

# Shareholder rights in an SPA (Italy)

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This note describes the statutory rights of shareholders of Italian public limited companies (*società per azioni* or SPA) under the Italian Civil Code.

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## Scope of this note

This note describes the statutory rights of shareholders of Italian public limited companies (*società per azioni* or SPA) under the Italian *Civil Code* (*Codice Civile*). Some of the rights discussed relate to individual shareholders regardless of the percentage of corporate capital they own; other rights require a minimum percentage holding to be exercisable.

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

For the purpose of this note we have assumed that:

- The SPA is managed according to the traditional structure of corporate governance, meaning that the company is managed by either a board of directors or a sole director appointed by the shareholders, while the control over the management body is exercised by a board of independent statutory auditors also appointed by the shareholders (for more information on the different corporate governance structures available to an SPA, see [Practice note, Directors' duties in an SPA \(Italy\): Corporate governance structures: SPA](#)).
- The SPA is not a sole shareholder company.
- The SPA does not have equity securities listed on a recognised stock exchange or other trading facility.

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, and 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).

## Corporate personality and limitation of liability

An important feature of an SPA is the limitation of liability for shareholders (*Article 2325, Civil Code*). This means that under Italian law any liability arising out of obligations undertaken by an SPA may be satisfied exclusively with the company's assets, subject to limited exceptions (see [Practice note: Main characteristics of an SPA and SAPA \(Italy\): Liability of shareholders](#)).

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

Consequently, in principle, shareholders are not liable for the obligations undertaken by the company and, simultaneously, they cannot exercise the rights belonging to the company. Shareholders are only liable up to the amount they agreed to pay as consideration for the shares they subscribed for (see [Practice note: Main characteristics of an SPA and SAPA \(Italy\): Share capital](#)).

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

## Shareholder acting as director or statutory auditor

Shareholders of an SPA may be directors as well as statutory auditors, provided that they fit the statutory, regulatory or contractual requirements (*Article 2399, Civil Code*). For example, a shareholder holding more than a certain percentage of the share capital (for example 20%) or granted particular rights as regards 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 member of the board of statutory auditors.

Where acting as directors, shareholders are subject to the same statutory duties as any other director. When the director is also a shareholder, special attention must be paid to ensure there is no conflict with:

- The duty to disclose interests in a proposed transaction (see *Practice note, Directors' duties in an SPA (Italy): Duty to disclose an interest in a proposed transaction*).
- The duty not to compete with the company (see *Practice note, Directors' duties in an SPA (Italy): Duty not to compete with the company*).

A shareholder can also serve as an officer, trustee, fiduciary, employee, agent or special attorney of the SPA.

## Share capital

### Shares

The corporate capital of an SPA is divided into shares (*Article 2346(1), Civil Code*). A share is a predetermined single portion (unit) of the entire share capital.

In addition to ordinary shares, an SPA is entitled to issue different classes of shares granting rights different from those granted by ordinary shares (see *Special classes of shares*).

Within the same class, shares have the same nominal value and rights attached to them. Each share is independent. This means that a shareholder who owns more than one share may, for example:

- Vote only in relation to certain shares and abstain in relation to the others.
- Vote personally in relation to certain shares and through a proxyholder in relation to the others.
- Vote in one way for some shares and differently for other shares.

The only restriction is where such action would breach the duty to act fairly in the execution of the corporate agreement (that is, the deed of incorporation and the articles) (*dovere di buona fede nella esecuzione del contratto sociale*).

Shares may be issued in a materialised or dematerialised form. Opting for the issuance of materialised or dematerialised shares has consequences on the transfer formalities.

A common feature of each class of shares is that the shareholder is entitled to exercise the corporate rights (and acquires the quality as shareholder) only on registration in the shareholders' book (*Article 2355(3), Civil Code*).

### Differences between shares and quotas

The table below summarises the main differences between shares and quotas. A quota represents a portion or quota of the corporate capital of an SRL.

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 standardised 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 form (by certificates) or dematerialised form.	Cannot be issued in materialised form (by certificates).
Can be listed on regulated markets.	Cannot be listed on regulated markets.

## Shareholder rights

The rights of shareholders can be divided into two categories:

- Economic rights (*diritti patrimoniali*): rights of financial nature connected to the investment in the share capital.
- Administrative rights (*diritti amministrativi*): shareholders 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 shareholders can, within certain limits, be modified by the articles of association of the company. Such modifications can be obtained by issuing special classes of shares (see [Special classes of shares](#)).

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

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

## Shareholder rights: individual economic rights

A shareholder of an SPA has the following economic rights, regardless of the percentage shareholding they hold:

- 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 participate in liquidation proceeds \(diritto alla quota di liquidazione\)](#)).
- Right to subscribe for a new issue of shares in proportion to existing holding of shares (pre-emption right) (*diritto di opzione*) (see [Right to subscribe for a new issue of shares in proportion to existing holding of shares \(pre-emption right\) \(diritto di opzione\)](#)).
- Right to subscribe for new shares for which the pre-emption right has not been exercised by other shareholders (*diritto di prelazione*) (see [Right to subscribe for any new shares for which the pre-emption right has not been exercised \(diritto di prelazione\)](#)).
- Right to exit the SPA (*diritto di recesso*) (see [Right to exit the SPA \(diritto di recesso\)](#)).

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

The annual general meeting of shareholders which approves the annual accounts can approve the payment of a dividend out of the available profits (*Article 2433, Civil Code*). Should this occur, each shareholder would be entitled to receive a proportional amount of the net dividend (*Article 2350(1), Civil Code*).

The articles of association may provide for special classes of shares granting non-proportional rights to dividends (and also a non-proportional allocation to shareholders of the proceeds deriving from the sale of the entire (100%) share capital of the company to a third party). The only limit in this regard is that no shareholder can be entirely excluded from the distribution of the dividends (*divieto di patto leonino*).

Directors and shareholders enjoy a broad discretion in deciding whether to distribute dividends or not. The shareholders' meeting 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 shareholders (*Supreme Court of Cassation no 2020/2008*).

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

If the SPA is wound-up, each shareholder is entitled to receive a proportional amount of the remaining company's assets (after the repayment of third-party creditors) (*Article 2350(1), Civil Code*).

The proportionality principle may be amended by the articles of association for certain special classes of shares, provided that no shareholder can be excluded from the distribution of the company's assets after it has been wound-up.

## **Right to subscribe for a new issue of shares in proportion to existing holding of shares (pre-emption right) (diritto di opzione)**

Pre-emption is a right in favour of existing shareholders in relation to new shares. Each shareholder (irrespective of the class of shares held) is offered a right of first refusal to subscribe for a portion of the newly issued shares in proportion to their existing shareholding (*Article 2441(1), Civil Code*).

A pre-emption right is an anti-dilution mechanism that allows shareholders to preserve their percentage shareholding in a company, provided they have (and want to allocate) sufficient funds available to be able to take up their rights. The pre-emption right must remain open for at least 14 days from the publication of the offer of the new issue of shares on the website of the company or from the registration of the offer at Companies House (*Registro Imprese*), unless the shareholders unanimously waive the term for the exercise of the right to pre-emption (*Article 2441(2), Civil Code*).

The pre-emption right may be exercised in full, partially or waived. Having an economic and commercial value, the non-exercised pre-emption rights may also be transferred by the shareholders to third parties in exchange for consideration (*Supreme Court of Cassation no 10240/ 2017*).

As a general principle, shareholders holding shares of a certain class are entitled to exercise the pre-emption right over newly issued shares of the same class. However, if this is not possible (for example, where the new offer of shares of a certain class are not enough to satisfy the acceptance level of all the shareholders of such class), shareholders can

exercise the pre-emption right with regard to newly issued shares of different classes (*Court of Milan, 26 September 1991*), starting with the class granting the most similar rights to those of the owned shares.

The pre-emption right may be limited or disapplied by the extraordinary shareholders' meeting approving the share capital increase in the following cases:

- The pre-emption right is disapplied when the issue of shares is paid up in non-cash consideration (*Article 2441(4), Civil Code*). The directors must explain the rationale for the non-cash consideration in a specific report submitted to the shareholders' meeting to approve the share capital increase, in advance of such shareholders' meeting.
- For listed SPAs, the pre-emption right may be disapplied for issues of up to 10% of the issued share capital, provided that an independent auditor confirms that the subscription price is at least equal to the market value of the shares (*Article 2441(4), Civil Code*).
- The pre-emption right may be disapplied where a reasonable interest of the company so requires (*Article 2441(5), Civil Code*). This provision allows the directors to propose the disapplication of the pre-emption right when a specific and reasonable interest of the company arises (*Supreme Court of Cassation no 3779/2019*). A detailed report must clearly explain to shareholders the nature of such interest. The shareholders' meeting can resolve to limit the pre-emption right only to certain shareholders and to exclude the pre-emption right of the remaining shareholders, provided that this resolution is backed by an interest of the company, duly asserted by a report from the directors (*Court of Appeal of Torino, 1 June 2006*).
- The pre-emption right may be disapplied where the newly issued shares are to be offered to employees of the company (as well as to employees of the parent company or the subsidiaries) (*Article 2441(8), Civil Code*). No report by the directors is required.

If the pre-emption right is disapplied for a non-cash consideration or at the company's discretion for a specific interest of the company, the newly issued shares shall be issued at a premium (*soprapprezzo*) (*Article 2441(6), Civil Code*), in order not to prejudice the existing shareholders by offering the new shares at a price lower than their market value.

The pre-emption right does not apply in the case of a bonus issue of shares (*aumento gratuito di capitale*) (that is, a gratuitous share capital increase by capitalisation of available reserves). In the case of a bonus issue, the new shares are allotted in proportion to each shareholder's current holding (either by issuing new shares or by increasing the nominal value of the shares already issued) (*Article 2442(2), Civil Code*).

For the temporary provisions concerning the pre-emption right enacted by the Italian government in the context of the 2019 novel coronavirus disease (COVID-19) pandemic, see [Practice note, COVID-19: corporate FAQs \(Italy\): How has the pre-emption right for shareholders been affected by legislation relating to COVID-19?](#)

## **Right to subscribe for any new shares for which the pre-emption right has not been exercised (diritto di prelazione)**

There may be some shareholders that do not exercise their pre-emption right.

Should this occur, the remaining shareholders who have exercised the pre-emption right are granted the right to proportionally subscribe for the portion of shares in respect of which the pre-emption right has not been exercised by other shareholders (*Article 2441(3), Civil Code*).

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

The events permitting shareholders to exit the company fall into three categories:

- Mandatory rights to exit that cannot be modified, excluded or limited by the articles.
- Optional rights to exit set out in the law which can be expressly waived by the articles.
- Optional rights to exit set out in the articles (if any).

### Mandatory rights to exit

Mandatory rights to exit are granted to shareholders who did not vote in favour of any shareholders' resolution (whether by dissenting, being absent or abstaining from voting) on any of the following matters:

- Changes in the purpose, entailing a significant change in the company's business.
- Conversion (*trasformazione*) into other types of Italian trading vehicle.
- Transfer of the registered office abroad.
- Revocation of the winding-up procedure.
- Removal of one or more rights of exit set out in the articles of association.
- Changes in the criteria for determining the value of the shares on exit.
- Amending the administrative or economic shareholder rights in the articles of association.

(*Article 2437(1), Civil Code.*)

Additional mandatory rights to exit are as follows:

- Where a share capital increase is paid-up by non-cash consideration, each shareholder is entitled to exit if the directors assess that the value of the non-cash consideration is lower than one fifth of the amount for which the contribution has been made, provided that the shareholder may always elect to pay the difference between such values (*Article 2343(3), Civil Code*).
- Where the articles of association provide that any transfer of shares is subject to the discretionary approval (*mero gradimento*) of a corporate body or another shareholder, the relevant clause of the articles is not effective unless the transferring shareholder is granted a right to exit or the company or the other shareholders have an obligation to purchase (*Article 2355-bis(2), Civil Code*).
- Specific mandatory rights to exit are granted in favour of shareholders of a company subject to the direction and co-ordination of another entity, including the parent company (*direzione e coordinamento di società*) (*Article 2497-quarter(1), Civil Code*).
- When the articles of association do not provide for a term of the company (*Article 2437(3), Civil Code*). In this case, any shareholder can freely exit the SPA by giving at least 180 days' notice (this can be extended up to one year by the articles).

Unless expressly excluded, mandatory rights to exit may relate to the shareholder's entire shareholding or a part of it. Consequently, shareholders have the widest range of options as to the outstanding risk of their investment.

In listed SPAs, specific rights to exit are granted in favour of shareholders that did not vote in favour (whether by dissenting, being absent or abstaining from voting) of the resolution providing for the delisting of the shares from a regulated market (*Article 2437-quinquies, Civil Code*).

### **Optional exit rights**

Unless the articles of association expressly provide otherwise, exit rights are granted to shareholders who dissent, are absent or abstain on the following resolutions at a shareholders' meeting (*Article 2437(2), Civil Code*):

- Extension of the term of duration of the company.
- Introduction or removal of any restrictions on the transfer of shares.

The articles of association of non-listed SPAs may set out additional rights to exit (*Article 2437(4), Civil Code*).

### **Exercise of right to exit**

The notice to exercise the right to exit must be communicated to the company through registered letter (or equivalent) within fifteen days from the recording (*iscrizione*) of the shareholders' resolution entitling the shareholders to exit in the book of shareholders' meeting minutes. If the cause of exit is not a resolution, the notice must be sent within 30 days from the knowledge of the event triggering the right to exit (*Article 2437-bis(1), Civil Code*). Following exercise of the right to exit the shareholder, provided that the shares are materialised, must file the share certificates at the company's registered office and is prohibited from transferring the relevant shares (*Article 2437-bis(2), Civil Code*).

If the resolution determining the trigger event is revoked or the shareholders' meeting resolves the winding-up of the company, the right to exit cannot be exercised or, if already exercised, it is not effective (*Article 2437-bis(3), Civil Code*).

It is often discussed among practitioners whether the exit becomes effective when the company receives the notice of exercise by the shareholder, when the share certificates are filed at the company's registered office, when the exiting shareholder receives payment for their shares or on expiration of the 90-day term referred to above. The preferred option pursuant to case law is that the exit is effective when the relevant notice of exercise is received by the company (*Court of Rome, 11 May 2005*).

The exiting shareholder has the right to be paid fair value for the shares (*Article 2437-ter(1), Civil Code*).

The value of the shares is determined by the directors, after prior consultation with the board of statutory auditors and with the external auditing company. Such value must be determined based on the value of the company's assets, the earning prospects of the company and the market value of the shares (*Article 2437-ter(2), Civil Code*), provided that further or different criteria can be set out in the articles of association (*Article 2437-ter(4), Civil Code*).

Any dispute on the determination of the value of the shares must be resolved by an independent expert appointed by the court, through a sworn report to be delivered to the shareholder and the company within 90 days from the date of the exercise of the right to exit (*Article 2437-ter(6), Civil Code*).

## Pre-emption right to buy the shares of a shareholder who has exercised the exit right

When a shareholder exercises the right to exit, the other shareholders have a pre-emption right to buy the shares of the exiting shareholder in proportion to their own shareholding (*Article 2437-quater, Civil Code*).

One or more shareholders can decide to not exercise the pre-emption right. Should this occur, the other shareholders who have exercised the pre-emption right can elect to proportionally buy the portion of shares in respect of which the pre-emption right has not been exercised (*Article 2437-quarter(3), Civil Code*).

## Shareholder rights: individual administrative rights

A shareholder of an SPA has the following administrative rights, regardless of the percentage shareholding they hold:

- Right to attend shareholders' meetings (*diritto di intervento*) (see [Right to attend shareholders' meetings \(diritto di intervento\)](#)).
- Right to vote (*diritto di voto*) (see [Right to vote \(diritto di voto\)](#)).
- Right to information (*diritto di informazione*) (see [Right to information \(diritto di informazione\)](#)).
- Right to file a complaint with the board of statutory auditors (*diritto di denuncia al collegio sindacale*) (see [Right to file a complaint with the board of statutory auditors \(diritto di denuncia al collegio sindacale\)](#)).

### Right to attend shareholders' meetings (*diritto di intervento*)

Shareholders' meetings may only be attended by shareholders with rights to vote on the matters to be resolved at the meeting (*Article 2370, Civil Code*). Shareholders with suspended voting rights (for example shareholders who have delayed the payment for their shares (*Article 2344(4), Civil Code*)) may attend the meeting.

Unless otherwise set out in the articles of association, shareholders have the right to attend the shareholders' meeting by proxy, provided that:

- The proxy is in writing and states the name of the proxyholder.
- The proxyholder is not a member of the board of directors, a statutory auditor nor an employee of the company or of a controlled company.
- The proxyholder can attend the meeting on behalf of no more than 20 shareholders.

(*Article 2372, Civil Code*.)

The articles of association may limit or prohibit the right to appoint a proxyholder. The proxy may always be revoked by the shareholder (*Article 2372, Civil Code*). The vote expressed by virtue of an invalid proxy is void and, if it is a deciding vote, the resolution can be annulled.

### Right to vote (*diritto di voto*)

Each ordinary share carries one voting right. Special classes of shares may grant more voting rights per share, a limited voting right or no voting right at all (see *Special classes of shares*).

In general, shareholders are free to vote as they think fit, except:

- Where the personal interest of a shareholder conflicts with the interests of the company and the vote of the conflicted shareholder is a deciding vote, the resolution can be challenged, provided it is potentially detrimental to the company (*Article 2373(1), Civil Code*). The conflict must be objective and existing before the resolution (*Supreme Court of Cassation no 2958/1993*).
- Shareholder directors cannot vote in relation to any resolution concerning their liability as director (*Article 2373(2), Civil Code*).
- Where the right to vote is being abused. A resolution can be challenged when it has been adopted by the majority with no other purpose than to cause detriment to the minority (*Supreme Court of Cassation no 1361/2011*). Similarly, a resolution may be challenged if minority shareholders cause a deadlock by abusing their right of abstention or dissention.

## Right to information (*diritto di informazione*)

Unlike quotaholders, shareholders of an SPA do not have a general right to information (for more information on quotaholders, see *Practice note, Quotaholders' rights in an SRL (Italy): Supervisory rights (diritti di controllo)*). The reason is the higher degree of separation between the investors and the company. However, shareholders have the right to access the shareholders' book and the book of shareholders' meeting minutes (*Article 2422, Civil Code*).

## Right to file a complaint with the board of statutory auditors (*diritto di denuncia al collegio sindacale*)

When a single shareholder becomes aware of acts of mismanagement carried out by directors, they are entitled to report such circumstances to the board of statutory auditors (*Article 2408(1), Civil Code*).

## Shareholder remedies

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

- Action against the directors for damages caused to the shareholder by a wilful or negligent act or omission (*Article 2395, Civil Code*). This right is granted to individual shareholders.
- Action against the statutory auditors (and the accounting auditing company), 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*). Depending on the action, this right is granted individually or to shareholders holding specified percentages of share capital.
- Action for damages caused by the adoption of a shareholders' resolution in breach of the law or the articles of association (*Article 2377, Civil Code*). This civil action is granted exclusively to those shareholders without voting rights to pass the relevant resolution and to minority shareholders who do not meet the

required percentage for challenging the unlawful resolution (see *Main rights of shareholders holding certain percentages of corporate capital*).

- Annulment of a board resolution breaching the shareholder rights (*Article 2388, Civil Code*). This right is granted to individual shareholders.
- Action for the winding-up of the company if the directors do not start the winding-up procedure when a termination event has been triggered (*Article 2485(2), Civil Code*). This right is granted to individual shareholders.

In order for the shareholder to be awarded damages under any of the above listed actions, the damage must be suffered directly by the claimant shareholder and not be a consequence of the losses to the company's assets.

## Main rights of shareholders holding certain percentages of corporate capital

Shareholders holding certain percentages of the share capital of an SPA enjoy the additional rights listed in the table below:

Percentage of share capital	Right	Provision of Civil Code
5%  (or such lower percentage set out in the articles of association)	To challenge shareholders' resolutions that breach the law or the articles of association, provided that the shareholder was absent, dissenting or abstained from voting. The claim must be filed within 90 days.	Article 2377
10%  (or such lower percentage set out in the articles of association)	To request the directors to convene the shareholders' meeting and to set out the meeting's agenda.	Article 2367(1)
10%  (or such lower percentage set out in the articles of association)	To file a complaint with the court reporting serious breaches by the directors in managing the company.	Article 2409
20%  (or such different percentage that may be set out in the articles of association, but not higher than 33%)	To bring an action against directors and statutory auditors.	Article 2393-bis Article 2407(3)
20%  (or such different percentage that may be set out in the articles of association, but not higher than 33%)	To block a shareholder resolution to: <ul style="list-style-type: none"> <li>• Waive the bringing of an action against the directors.</li> <li>• Settle an action brought by the company against the directors.</li> </ul>	Article 2393(6)
33% of the share capital attending the shareholders' meeting	To request that the shareholders' meeting is postponed for no longer than five days, if the shareholders declare to be not adequately informed on the matters on the agenda.	Article 2374

## Special rights of shareholders

Italian corporate law offers wide flexibility to SPAs 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 classes of shares

The general rule is that all shares grant shareholders the same rights.

However, the articles of association may provide for the issuance of special classes of shares (*categorie di azioni*) granting different administrative or economic rights to those granted to holders of ordinary shares (*Article 2348(2), Civil Code*).

If classes of share are issued, all shares of the same class must grant the same rights. Within the limits set out in the law, each company may discretionally determine the content of the rights granted by the special classes of shares.

The law expressly identifies the following special classes of shares:

- **Preference shares** (*azioni privilegiate*). These shares grant privileged economic rights in terms of preference in the dividend distributions or in the liquidation of the company's assets in case of winding-up. In shaping this privileged right attention must be paid to avoid a de facto exclusion of other shareholders from the distribution of dividends (*Article 2350(1), Civil Code*).
- **Shares with limited or non-voting rights** (*azioni senza diritto di voto e a voto limitato*). The vote may be totally removed, limited in relation to certain matters only or conditional on certain events. In any case, the shares with limited or non-voting rights must, overall, not exceed half of the entire share capital (*Article 2351(2)(3), Civil Code*).
- **Shares granting multiple voting rights** (*azioni con diritto di voto plurimo*). Each share can bear up to three votes (*Article 2351(4), Civil Code*). The administrative privilege may be general or limited to certain matters, as well as made subject to certain conditions.
- **Enjoyment shares** (*azioni di godimento*). These are issued in connection with a reduction of share capital (*riduzione reale del capitale sociale*) and allotted to the shareholders whose shares were cancelled as a result of the reduction to mitigate the possible damages of having repaid the ordinary shares at nominal value. Enjoyment shares grant the right to participate in the distribution of the dividends which are residual after the payment to the shares different from enjoyment shares of a dividend equal to the legal interest rate (*interesse legale*). In case of winding-up of the company, shareholders of enjoyment shares participate in the distribution of the corporate assets which are residual after the repayment of the nominal value of the outstanding shares. Unless otherwise provided by the articles of association, enjoyment shares do not grant any voting rights (*Article 2353, Civil Code*).
- **Performance shares** (*azioni con prestazioni accessorie*). Holders of these shares must, in addition to a monetary subscription, perform certain non-monetary activities in favour of the company (for example, shareholders of an SPA in the pharmaceutical industry may have the additional obligation to participate in the research and development activities in favour of the company). These shares must be registered (*azioni*

*nominative*) and cannot be transferred without the directors' consent. The ancillary obligations must remain during the entire life of the company, being of a recurring or continuous nature. The articles of association providing this special class of shares shall also set out specific sanctions for the breach of the ancillary obligations as well as specific considerations for the ancillary activities (*Article 2345, Civil Code*).

- **Tracking shares** (*azioni correlate*). These shares enjoy participation in profits and losses connected to the results of certain business areas (*Article 2350(2), Civil Code*). The distribution of dividends is always subject to the existence of distributable profits for the company as a whole (and not only with reference to the tracked business area).
- **Redeemable shares** (*azioni riscattabili*). These shares are subject to the pre-emption right of the company or other shareholders to repurchase according to the articles. In case of redemption, the process for the redemption and the determination of the value of the shares is governed by the provisions concerning the right to exit (*Article 2437-sexies, Civil Code*) (see *Exercise of right to exit*).

The above is a non-exhaustive list of different classes of shares that may be created under the articles of an SPA within the limits of the law. An SPA can also issue a wide variety of classes of shares combining different economic and administrative rights (for example, a class of shares with a specific right to appoint directors or statutory auditors, or with veto rights on certain specific matters, or with certain specific rights in terms of exit from the investment or of a non-proportional distribution of dividends or proceeds to shareholders deriving from the sale of the entire (100%) share capital of the company to a third party, and so on).

The special rights attaching to the shares of a special class remain unaltered on transfer, unless the articles of association provide that shares of a special class are converted into ordinary shares or into a different class of shares on transfer.

Any amendment to the rights of a special class of shares in the articles of association must be approved not only by all the shareholders but also by the meeting of the holders of shares of such class (*Article 2376(1), Civil Code*). The provisions for the extraordinary shareholders' meetings (*assemblee straordinarie*) apply to the special class meetings (*Article 2376(2), Civil Code*).

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