# Corporate Governance and Directors' Duties in Italy: Overview

**by Barbara Corsetti, Chiara Sannasardo and Gaia Accetta and Enzo Marasà*, Portolano Cavallo**

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A Q&A guide to corporate governance law in Italy.

The Q&A gives a high-level overview of corporate governance trends; the main forms of corporate entity used; the corporate governance legal framework; corporate social responsibility and reporting; board composition and restrictions; directors' remuneration; management rules and authority; directors' duties and liabilities; transactions with directors and conflicts; disclosure of information; shareholders' rights, company meetings, and minority shareholder action; and internal controls, accounts and audits.

## Corporate Governance Trends

1. What are the main recent corporate governance trends and reform proposals in your jurisdiction?

### Main Recent Corporate Governance Trends

Recent corporate governance trends on listed companies are set out in the 2021 *Report on corporate governance* of Italian listed companies issued by the National Commission for Companies and the Stock Exchange (*Commissione Nazionale per le Società e la Borsa*) (CONSOB).

According to the report, there were 225 Italian companies listed on the Italian Stock Exchange at the end of 2020.

In recent years, the concentration of ownership in Italian listed companies has slightly fallen. The average stake held by the largest shareholder was 47.6% in 2020 compared with 48.3% in 2018, while the market held an average stake of about 40% compared with 39.5% in 2018. Families are confirmed as main shareholders in the majority of listed companies, as the ultimate controlling agent in 64% of the companies, mainly small firms in the industrial sector.

One in ten companies are owned by the state or other local authorities, and these are mainly large firms in the service sector.

For almost 19% of the firms, while no ultimate controlling agent (UCA) could be identified (generally large companies operating in the financial sector).

At the end of 2020, the percentage of companies belonging to a pyramidal group or to the vertical part of a mixed group was 11.5%, while the proportion of Italian listed firms not belonging to any group was 84%.

 

At the end of 2020, the vast majority of listed companies adopted the traditional management and control system (220 out of 225), while five firms chose the one-tier model and one firm the dual-tier model.

See *Question 6* (*Board composition and restrictions*).

In line with previous years, boards of directors consist of about ten members. On average, nearly two directors on every board hold a directorship in other listed companies (interlockers).

The presence of foreign directors remains low (less than 5.5%), while the proportion of family directors is higher than 16%. The presence of women in the management bodies of listed companies is at its highest level, with nearly 41% female directors on corporate boards at the end of 2020.

This trend was helped by the entry into force of Law 160/2019 which provided that, from 2020, at least two-fifth of companies' directors must be from the least represented gender. Overall, women hold on average almost four directorships, with higher records in medium and large-sized firms and almost no differences across industries.

Under the rules concerning the transparency of related party transactions (RPTs) (CONSOB Regulation 17221/2010), Italian listed companies must provide information on material RPTs by issuing an ad hoc information document describing the transaction. From 2011 to 2021, 670 information documents were published (on average about 61 per year). The RPTs were mainly carried out by small companies in the financial sector.

In that period, listed companies also entered into material, arm's length RPTs in the ordinary course of business that benefit from a waiver from the ownership disclosure obligations set out by the CONSOB Regulation. Under this waiver, a total 264 material RPTs in the ordinary course of business have been reported to the CONSOB, especially by large companies.

Most material RPTs are connected with the company's operating activities, namely the supply of typical goods and services for non-financial firms and financing contracts for banks (respectively, 34.5% and 28.7% of all material RPTs in the ordinary course of business). Other material RPTs relate to funding activities of/by non-financial firms, that benefit from the waiver as they are closely related to the firm's operating activities.

Most material RPTs in the ordinary course of business involve controlling or major shareholders (100% of the transactions in 2021).

### Reform Proposals

After several amendments to the original version, Legislative Decree 14/2019 (New Insolvency Code) (NIC) entered fully in force on 15 July 2022. The NIC introduced a series of amendments to the Civil Code that (among others) relate to corporate governance of listed and unlisted companies. Specifically, under the Civil Code, directors must set up a system of corporate governance that is:

- Adequate to the size and nature of the business.
- Capable of detecting and addressing crisis situations to ensure continuity of operations.

## Corporate Entities

 

2. What are the main forms of corporate entity used in your jurisdiction?

The most common forms of commercial entities are the:

- Joint stock company (*società per azioni*) (SpA). An SpA's corporate capital is divided into shares. This is the form of company used by listed companies. An SpA has a minimum corporate capital of EUR50,000.
- Limited liability company (*società a responsabilità limitata*) (Srl). An Srl's capital is divided into quotas (which represent a portion of the corporate capital). The Srl is mostly used for small and medium-sized businesses and for start-ups. An Srl has a minimum corporate capital of EUR10,000. Relevant provisions have been introduced by Law Decree 76/2013, converted into Law 99/2013, to encourage the development of this form of company. In particular, the minimum corporate capital required by law for a simplified Srl (*società a responsabilità limitata semplificata*) ranges from EUR1 to EUR10,000 and it must be fully subscribed and paid in cash to the management body.

This Q&A focuses on the SpA and the Srl.

## Legal Framework

3. Outline the main corporate governance legislation and authorities that enforce it. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? List any such groups with significant influence in this area.

### Non-listed Companies

The regulatory framework is set out in the:

- Civil Code.
- Company's deed of incorporation and by-laws.

### Listed Companies

The regulatory framework is set out in the:

 

- Civil Code.
- Legislative Decree 58/1998 (*Testo Unico della Finanza)* (TUF).
- Rulings (*Regolamenti*) issued by CONSOB. They are available on *CONSOB's website*.
- Code of Self-Regulation (Corporate Governance Code) (CG code), a non-mandatory code issued by the Italian Corporate Governance Committee.

  Listed companies can voluntarily adopt the CG Code which is available on its website (the latest version CG Code(2020) is currently available only in Italian at *www.borsaitaliana.it/comitato-corporate-governance/codice/2020.pdf* (*see* Question 4).

The CONSOB is the public authority responsible for regulating the Italian securities market.

4. Has your jurisdiction adopted a corporate governance code?

Listed companies can voluntarily adopt the CG Code, the latest version of which was issued in January 2020 (*see* Question 3). This code mainly regulates the following:

- Corporate governance.
- Composition, appointment and remuneration of the board of directors.
- Statutory auditors.
- Internal committees.
- Internal control and risk management system.
- Related-party transactions.
- Relations with the shareholders.

If a listed company adopts the CG Code, it is bound to comply with its provisions. The CG Code is based on the "comply or explain" principle. The directors must declare in the directors' management report attached to the financial statements which activities have been carried out to comply with the CG Code and statutory auditors must verify compliance.

No penalties are applicable for non-compliance with the CG Code however.

Many listed companies have adopted the CG Code. Non-listed companies do not usually adopt the Code but if they adopt it, they must communicate the adoption of the CG Code (or other relevant code of conduct), by explaining it in the corporate governance report as well as in the remuneration report.

## Corporate Social Responsibility and Reporting

5. Is it common for companies to report on social, environmental, and ethical issues? Highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.

Under Legislative Decree. 254/2016, under certain conditions, the annual financial statements of listed companies and other entities of public interest must publish a non-financial statement related to the sustainability of the company and its business (sustainability disclosure). Specifically, the non-financial statement must report certain information on the company's compliance with social, environmental and ethical issues (for example, social and environmental impacts, sustainable management and production strategies).

Listed companies that are not required to under Legislative Decree 254/2016 can voluntarily publish a non-financial statement.

In January 2018, the CONSOB issued Regulation 20267, which sets out the rules for the publication, control and analysis of non-financial statements of listed companies.

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR or Disclosure Regulation) imposed a range of transparency obligations on financial sector participants on environmental, social, governance (ESG) risks, ranging from publication on websites to pre-contractual and periodic disclosures.

See also *Sustainable finance: EU SFDR: overview*.

In addition, disclosure requirements for benefit companies were introduced by Law 208/2015. These are companies that pursue one or more common benefit purposes in the exercise of their business activity, which is usually a social, environmental or ethical purpose. In particular, the directors must draw up an annual report on the pursuit of the common benefit, to be attached to the company's financial statements including:

- A description of the specific objectives, methods and actions implemented by the directors in pursuit of the common benefit purpose and any circumstances that have prevented it or slowed it down.
- An assessment of the impact generated.
- A section describing the new objectives that the company intends to pursue in the next financial year.

In addition, on 2 August 2021, as part of its Sustainable Finance Strategy, the European Commission published a number of delegated acts amending the implementing provisions of:

- MiFID II (Directive 2014/65/EU).
- Insurance Distribution Directive (IDD) (Directive (EU) 2016/97).
- UCITS V Directive (2014/91/EU).
- AIFMD (Directive 2011/61/EU).

- The aim was to facilitate the integration of sustainability profiles into intermediary and product governance processes and client preferences for ESG factors in the provision of investment services and distribution of insurance-based investment products (IBIPs), including in relation to suitability assessment.

## Board Composition and Restrictions

6. What is the management/board structure of a company?

### Structure

**SpA.** The management body can be structured in one of the following ways:

- Traditional system (*sistema tradizionale*). The shareholders' meeting appoint:
  - a management body (sole director or board of directors); and
  - a panel of statutory auditors that is responsible for ensuring that the company is managed in compliance with the law, company bye-laws and proper management standards (*see* *Question 40*).

  If certain conditions are met, the panel of statutory auditors may also be required to carry out accounting control activities. Otherwise, the shareholders' meeting must also appoint an external auditing body (section 2409-bis, Civil Code).
- Dualistic system (*sistema dualistico*). This is a two-tier structure ruled by sections 2409-*octies* and following of the Civil Code. The shareholders' meeting appoints a supervisory board (*consiglio di sorveglianza*), which is responsible for ensuring that the company is managed in compliance with the law, company bye-laws and standards of proper management. The supervisory body must appoint the management board (*consiglio di gestione*), which is responsible for the company's day-by-day management (section 2409-terdecies, Civil Code). The shareholders' meeting must also appoint an external auditing body.
- Monistic system (*sistema monistico*). This is a one-tier structure ruled by sections 2409-*sexiesdecies* and following of the Civil Code. The shareholders' meeting appoints a board of directors (*consiglio di amministrazione*), which will manage the company. The board of directors will appoint a controlling body (*comitato per il controllo sulla gestione*) from among its members. The shareholders' meeting must also appoint an external auditing body.

If the company's bye-laws do not specify the management and control system, the traditional system applies.

**Srl.** The management body can be structured in one of the following ways:

- Sole director.

 

- Two or more directors acting jointly or severally to manage the company, but not forming a board of directors.
- A board of directors.

The quotaholders' meeting must also appoint a controlling body if required by the company's bye-laws, or if the company meets the following specific requirements:

- The Srl must draft and approve the consolidated financial statements.
- The Srl controls a company which must appoint an external auditing body.
- The Srl has gone beyond two of the following economic requirements in any two consecutive years:
  - EUR4 million of total assets in its balance sheet.
  - EUR4 million of revenue (from sales of goods and services).
  - 20 employees on average per year.

  (*See Question 40*.)

  From 19 April 2019, the appointment of a controlling body exceeding the above thresholds is required also for Srls.

  Law Decree 91/2014 (passed as Law 116/2014) abolished the requirement related to the amount of corporate capital. Therefore, unless required by the company's bye-laws, the quotaholders' meeting is no longer required to appoint a controlling body if the corporate capital is at least the minimum corporate capital provided for a SpA (*see Question 2*).

**Listed companies.** Listed companies:

- Must be managed by a board of directors.
- Can choose between the traditional, dualistic or monistic system of management and control. Directors are appointed by the shareholders' meeting based on the voting list mechanism (a system under which shareholders representing a certain percentage of the shares of the company are entitled to file a list of directors to be appointed).
- Must maintain a gender balance on the board (*see Question 7*).

## Management

Directors of an Srl and an SpA must manage the company and are responsible for its management.

In an SpA, the company's bye-laws can require the shareholders' meeting to authorise certain management decisions (section 2364, Civil Code).

In an Srl, one or more directors can request the quota holders' meeting to resolve on specific issues that are usually resolved by the management body (*section 2479, Civil Code*).

In both companies, managing powers can be granted to individuals who are not directors of the company (*direttori generali*).

## Board Members

 

For all companies, the board of directors can be composed of individuals or legal entities. The company's shareholders or quotaolders can also be directors of the company.

### Employees' Representation

Generally, employees are not entitled to board representation. The SpA's bye-laws can provide that the company can issue shares to employees that can give them a right to appoint a member of the board of directors (section 2349, Civil Code).

### Number of Directors or Members

**SpA.** The number of directors can vary depending on the management structure adopted by the company:

- Traditional system: the shareholders' meeting can freely determine the number of directors if the number is not already fixed by the company's bye-laws.
- Dualistic system: there must be at least two members of the management board, but the shareholders' meeting can freely determine the maximum number of directors. The supervisory board must be composed of at least three members.
- Monistic system: the number of members of the board of directors is not fixed and it can be freely determined by the shareholders' meeting. The supervisory board of publicly traded companies must be composed of at least three members.

For appointment of the panel of statutory auditors, see *Question 40*.

**Srl.** The quotaholders' meeting can freely determine the number of directors where the number is not provided by the company's bye-laws.

**Listed companies.** The same rules as for the SpA apply. In addition, specific rules apply concerning the appointment of independent directors and the directors appointed by the minority shareholders.

7. Are there any general restrictions or requirements on the identity of directors?

### General Restrictions

The directors must not find themselves in a judicial situation of prohibition, incapacity or insolvency conviction to a criminal sanction which entails even a temporary ban from public offices or the incapacity to exercise executive offices.

Other causes of incompatibility are provided for by special laws.

### Age

Directors must be 18 years old, unless the company's bye-laws provide otherwise.

## Nationality

There are no nationality restrictions or requirements that directors must meet.

However, foreign persons can only be appointed as directors provided that Italian citizens are allowed to act as directors (or similar offices) in the country of those foreign persons, under the principle of reciprocity (section 16, preliminary provisions, Civil Code).

## Corporate Directors

Even in the absence of a specific legal provision, notarial doctrine and Italian case law provided for the possibility that the office of a director can be held by companies or entities other than natural persons.

The legal person appointed as director must designate a natural person within the entity, to represent it as a director. This individual will assume the same obligations and the same civil and criminal liabilities as those provided for natural person directors, without prejudice to the joint and several liability of the legal person director.

## Diversity

Listed companies must maintain a gender balance on the board: the least represented gender must be represented by at least two-fifth of the directors (section 147-ter, TUF, as amended by Law No. 160/2019).

8. Are non-executive, supervisory, or independent directors recognised or required?

## Recognition

The law recognises non-executive and independent directors.

## Board Composition

Non-listed companies do not have to maintain independent directors.

The rules applying to listed companies depend on the system adopted:

- **Traditional system.** A board of directors must include at least one director appointed from a list submitted by the minority shareholders (section 147-ter, TUF) and one independent director. The independent director must be independent from the company, the majority shareholder and other directors and meet the same requirements of integrity, experience and independence required for statutory auditors (*see Question 41*). If the board of directors is composed of more than seven members, at least two directors must be independent.

- **Monistic system.** The directors must include at least one director appointed from a list submitted by the minority shareholders (section 147-ter, TUF). This director must be independent and meet the same requirements of integrity, experience and independence required for statutory auditors.
- **Two-tier dualistic system.** If the board of directors is composed by four or more members, at least one must be independent and meet the same requirements of integrity, experience and independence required for statutory auditors (section 147-quarter, TUF).

## Independence

A SpA's bye-laws can require that a director comply with specific requirements of integrity, experience and independence (section 2387, Civil Code). Similar requirements may exist under self-regulatory codes issued by professional associations, or by the companies who manage regulated markets.

Generally, directors (similarly to the statutory auditors), are considered independent if they are not:

- Declared bankrupt or disqualified from public office or from the direction of enterprises (even temporarily).
- Parents or relatives of the directors of the company, or the companies controlled by, controlling or under common control of the company (associated companies).
- They are party to an employment agreement or have other economic or professional relationships that limit their independence from the relevant company or associated companies.

For listed companies that have adopted the CG Code, a director is likely to be independent if they:

- Do not maintain (directly, indirectly or on behalf of third parties) and have not recently maintained business relationships with the issuer or persons linked to the issuer that could influence the director's autonomous judgement.
- Do not control the issuer (directly, indirectly, or through subsidiaries, trustees or third parties), cannot exercise a dominant influence over the issuer and do not participate in a shareholders' agreement through which one or more persons can exercise a control or dominant influence over the issuer.
- Are not (and have not been in the preceding three fiscal years) a significant representative of:
  - the issuer;
  - a subsidiary having strategic relevance;
  - a company under common control with the issuer; or
  - a company or entity controlling the issuer or able to exercise over the same a considerable influence (including jointly with others through a shareholders' agreement).
- Do not have a significant commercial, financial or professional relationship (and have not had one in the preceding fiscal year) either directly or indirectly (such as through subsidiaries or companies of which theythey are a significant representative, or as partner of a professional firm or of a consulting company):
  - with the issuer, one of its subsidiaries, or any of its significant representatives; or

  - with a person who controls the issuer (including with others under a shareholders' agreement), or with the relevant significant representatives of a company or an entity.

- Are not (and has not been in the preceding three fiscal years) an employee of any of the above.
- Do not receive (and has not received in the preceding three fiscal years) from the issuer (or a subsidiary or holding company of the issuer) significant additional remuneration other than the:
  - basic remuneration of a non-executive director of the issuer;
  - recommended remuneration for being a member in any of the committees that are recommended by the Code); and
  - participation in incentive plans linked to the company's performance (such as stock option plans).
- Have not been a director of the issuer for more than nine years in the last 12 years.
- Do not hold an executive director office in another company where an executive director of the issuer holds the office of director.
- Are not a:
  - shareholder, quotaholder or director of a legal entity belonging to the same group as the issuer's appointed auditor or
  - close relative of a person who is in any of the positions listed above.

The board of directors annually evaluates the independence of its members, using the above examples as criteria for the assessment. The results of the assessments must be communicated to the market.

- There must be at least two independent directors, under the CG Code.

### 9. Are the roles of individual board members restricted?

There are no legal restrictions on the number of roles that an individual board member can hold.

Under the CG Code, if the chairman of the board of directors is also the chief executive officer (CEO), it is recommended that a lead independent director be appointed as a counterbalance.

 

10. How are directors appointed and removed? Is shareholder approval required?

## Appointment of Directors

**SpA.** The first director or the first members of the management body are appointed by the shareholders in the incorporation deed. Any subsequent directors are appointed as follows:

- Traditional system: an ordinary shareholders' meeting appoints the sole director or the members of the board of directors.
- Dualistic system: the supervisory body appoints the members of the management board.
- Monistic system: an ordinary shareholders' meeting appoints the members of the board of directors.

On the death, resignation or termination due to ineligibility of the director, the other directors must appoint a new director until the next shareholders' meeting, provided that the majority of the directors remain in office (*cooptazione*). This appointment must be approved by the panel of statutory auditors (section 2386, Civil Code).

**Srl.**The directors are appointed by the:

- Quotaholders within the incorporation deed.
- The quotaholders' meeting for subsequent appointments.

**Listed companies.** Certain directors must meet independence requirements and be appointed from a list submitted by the minority shareholders, depending on the system chosen. The same rules apply to the appointment of directors in SpAs (*see above*).

## Removal of Directors

For both the SpA and Srl, the directors can be dismissed by a resolution of the ordinary shareholders' meeting at any time (or by a resolution of the supervisory body in the dualistic system). However, a dismissed director is entitled to claim damages if the shareholders' meeting or supervisory body has dismissed them without just cause (*senza giusta causa*).

11. Are there any restrictions on a director's term of appointment?

## SpA

Directors can be appointed for a maximum term of three years. The term of their office will expire on the date of the shareholders' meeting that resolves to approve the financial statements relating to the last fiscal year of their office.

 

Directors can also be re-appointed at this date.

### Srl

The directors can be appointed also for an indefinite period of time until they resign or are dismissed.

### Listed Companies

CONSOB provides regulations on specific restrictions on the terms of appointment for particular directors.

## Directors' Remuneration

12. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

### Directors Employed by the Company

Directors can be, but do not have to be, employees of the company.

### Shareholders' Inspection

**SpA.** Shareholders have the right to inspect corporate books and make copies at their own expenses (section 2422, Civil Code).

**Srl.** Quota holders that do not manage the company have the right to:

- Receive information on the company's business.
- Consult, through their own experts, the company's books and documents relating to the company's management.

(Section 2476, Civil Code.)

13. Are directors allowed or required to own shares in the company?

Directors are not required, but are permitted, to own shares in the company. The remuneration to directors can consist, wholly or partly, of:

- Participations in company profits.

 

- The attribution of the right to subscribe, at a pre-determined price, shares that the company will issue in the future. For this to occur:
  - the company bye-laws must expressly provide for this possibility;
  - the shares must be allocated to the directors through a special shareholders' resolution at a shareholders' meeting.

Directors of listed companies must notify the CONSOB and the public with details of their transactions in the shares of the relevant issuer and other financial instruments linked to those shares (section 114-bis TUF). This rule extends to the director's close relatives, including the director's:

- Spouse, if not legally separated.
- Dependent children.
- Dependent children of the spouse.
- Any of the spouse's relatives who live with the director.

14. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

## Determination of Directors' Remuneration

**SpA and Srl.** The shareholders' meeting generally determines directors' remuneration, either through the same resolution under which they are appointed, or through a separate shareholders' resolution (section 2389, Civil Code).

The board of directors determines the remuneration of directors that have special offices under the company's bye-laws, subject to the opinion of the panel of statutory auditors.

The bye-laws can provide that the shareholders' meeting can determine the aggregate compensation for the remuneration of all company directors, including those vested with special offices.

**Listed companies.** Any remuneration based on financial instruments whose details are not yet published must be:

- Approved by the shareholders' meeting.
- Made available to the public:
  - at the company's registered office; and
  - on the company's website.
- Filed with CONSOB.

 

(Section 114-bis, TUF.)

The board of directors of listed companies can appoint an internal committee for the remuneration of the directors.

### Disclosure

**SpA and Srl.** The directors' remuneration must be included in the company's financial statements.

**Listed company.** The company must publish an annual report on the company's policy regarding directors' remuneration (section 123-ter, TUF).

### Shareholder Approval

See above, *Determination of directors' remuneration*.

### General Issues and Trends

Following the transposition of the Shareholder Rights Directive II (EU Directive No. 828/2017), the 2020 proxy season marks the first adoption of the new provisions mandating a binding vote on the remuneration policy of Italian listed companies (which was previously advisory, except for financial companies subject to sectoral regulations) and a new advisory vote on the remuneration report (providing information on remuneration paid for the relevant financial year). The 2021 vote on remuneration policy records on average a rising consent by institutional investors, casting votes in favour of the policy for 64,4% of their shares (compared with 63.1 % in 2020). On average, remuneration policies gained approval by two-thirds of the share capital (namely, 14.8% held by institutional investors and 51.1% by other investors) and 90% of the annual general meeting (21.2% by institutional investors and 67.4% by other investors). Votes against and abstentions amounted to nearly 8% of the share capital, especially represented by institutional investors. In one case the remuneration policy was rejected by the annual general meeting.

## Management Rules and Authority

15. How is a company's internal management regulated? For example, what is the length of notice and quorum required to convene board meetings, what are the quorum requirements at those meetings, and what voting requirements must be met to pass resolutions?

The chairman of the board of directors is entitled to call the board of directors' meeting, unless the company's bye-laws state otherwise.

For the meeting to be correctly held, the majority of the members of the board of directors or management body must attend. Board resolutions require a simple majority of the directors attending the meeting.

The company's bye-laws can set out:

 

- Different quorum requirements.
- Whether it is possible to attend board meetings by teleconference.
- Other rules and notice requirements for the calling of board meetings.
- In the absence of a specific legal provision, notarial doctrine and case law provide that board meetings can be held and attended by means of videoconferencing, without having the secretary and the chairman of the meeting in the same place. In such cases, the relevant minutes are not considered to be drafted simultaneously with the meeting.

16. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

## Directors' Powers

**SpA.** In the traditional system, the sole director or the board of directors can exercise all the management powers of the company. The board of directors can delegate specific functions and grant the relevant powers to a managing body or to a particular director.

However, the board of directors cannot delegate certain specific functions, such as:

- Preparing the annual financial statements and the management report.
- An increase or a reduction in corporate capital.
- The drafting of a merger plan.

(Section 2381, paragraph 4, Civil Code.)

In terms of representing the company in relation to third parties, the company's bye-laws or resolution of appointment can provide that a director has the general power to act in the name and on behalf of the company (section 2384, Civil Code). This representative power is usually granted to the chairman of the board of directors or to the managing director(s).

In the dualistic system, the management body exercises all management powers of the company and it can delegate specific functions to its members. However, the supervisory body must approve:

- The annual financial statements.
- The strategic and industrial plan or operations prepared for the management body.

**Srl)** Similar rules to the traditional system in SpA apply.

 

All directors can act in the name and on behalf of the company (*section 2475*, *Civil Code*).

### Restrictions

For all companies, the powers of the directors can be restricted by the bye-laws or by a proper resolution of the relevant body. However, those restrictions are not enforceable against third parties, unless those parties have intentionally acted in a way that causes damages to the company (section 2384, Civil Code).

17. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

For all companies, the bye-laws or shareholders' meeting can expressly permit the board of directors to delegate its functions to an executive committee formed by some of its members, or to one or more of its members (section 2381, Civil Code).

However, the board of directors cannot delegate the following issues, among others:

- The issuance of convertible bonds.
- The drafting of financial statements.
- Resolutions to increase or decrease the company's corporate capital.
- Drafting of merger plans.

The board of directors is always entitled to cease delegating responsibility for functions, if necessary.

## Directors' Duties and Liabilities

18. What is the scope of a director's general duties and liability to the company, shareholders and third parties?

Directors are exclusively responsible for running the business and must act in the best interest of the managed company with diligence and in compliance with the obligations set out by applicable law and the company's bye-laws.

The Civil Code sets out certain specific obligations, for example to:

- Draft the annual financial statements.

- Enter into transactions.
- Regularly keep the corporate books.
- Attend the board of directors' meeting.
- Abstain from carrying out any transaction on which they have interests, either personally or on behalf of third parties.
- Set up a system of corporate governance adequate to the size and nature of the business, and capable of detecting and addressing situation of crisis to ensure continuity of operations.

In addition, there are general duties binding on each director, such as:

- Duty of care.
- Duty to inform the other directors.
- Duty to act advisedly (for example, with the appropriate skill and experience).
- Duty to monitor the other directors.

The extent of these duties and responsibilities and the standard of care required for each director depend on the director's office and specific expertise. In certain circumstances, directors are jointly liable to the company for damages that result from a failure to fulfil their duties or for failing to take the necessary measures to prevent damage to the company (if they are aware about facts that may adversely affect the company) (section 2392, Civil Code).

Directors may have civil liability duties towards:

- **The company.** All directors are jointly and personally liable to the company for damages caused by a failure of one or more directors to perform the specific duties and obligations under applicable law and the bye-laws with regard to the management of the company. If the board of directors has delegated specific functions to certain directors, then only those directors will be liable for the delegated functions. However, the board of directors will also be held liable if a court finds that the board of directors has breached its duty of supervision and control.
- **The company's creditors.** if the directors have breached the specific rules regarding the preservation of the corporate assets, and those assets are insufficient to pay the creditors off.
- **Each shareholder and third parties.** Directors are personally liable for damages directly caused to each shareholder or any third person by directors' fraudulent or negligent action. The shareholder or third person can bring an action against a director before a competent court, if they can show that the damage was caused by actions exclusively attributable to the director.

In relation to criminal liability, as well as the general rules that apply to all, specific rules of criminal corporate law apply to directors. These rules mainly concern the:

- Accounting documents.
- Shareholders' contribution.
- Distribution of profits and reserves.
- Corporate assets.

Generally, criminal liability arises only if the fraudulent act is performed with the intention of gaining a profit and if it causes actual damage to the company.

19. Briefly outline the regulatory framework for theft, fraud, and bribery that can apply to directors.

As well as the general criminal laws regarding theft and fraud that are applicable to all, the directors are subject to certain specific provisions concerning crimes committed when performing their office.

These crimes are similar to theft and fraud as they refer to entering into a deception to gain a monetary profit and to cause damages to the company's property. They can be committed by the company's:

- Directors.
- Main officers.
- Auditors.
- Receivers (in the case of a winding-up).

The most common crimes of this kind include:

- False or omitted information concerning the economic and financial situation of the company in the financial statements, the reports and other accounting documents (*false comunicazioni sociali*).
- Fraudulent reduction of the corporate capital and fraudulent merger or spin-off in breach of the provisions protecting the company's creditors (*operazioni in pregiudizio dei creditori*).
- Donation or sale of the company's assets causing economic damage to the company (*infedeltà patrimoniale*).
- Performance or omission of an act in breach of the obligations concerning their office against a personal profit (*bribery among private individuals*).

20.Briefly outline the potential liability for directors under securities laws.

Directors are bound by several duties concerning the issue and sale of securities of public listed companies in stock exchange markets (sections 172, 173, 184 and 185, TUF). The breach of those duties may trigger criminal liability and resulting criminal sanctions.

 

The most common crimes triggering directors' liability in securities law are:

- Unlawful purchase of shares of the company or of the controlled companies in breach of the rules set out for this kind of purchase.
- Failure to sell shares in the case of:
  - a mandatory public offer; or
  - interests that are mutually owned.
- Disclosure of false information in the prospectus required for the public offer.
- Abuse of privileged information regarding securities.

21. What is the scope of a director's duties and liability under insolvency laws?

The relevant law relating to insolvency is set out in the NIC.

The general duties of the directors also apply where insolvency proceedings are commenced (sections 149 and 255, NIC; sections 2392, 2394, 2395 and 2476, Civil Code) (*see Question 18*).

Directors have criminal liability if they commit offences during either:

- Insolvency proceedings.
- The period before a company is declared insolvent, under certain specific circumstances.

The main insolvency crimes include:

- Bankruptcy (*bancarotta semplice*).
- Fraudulent bankruptcy (*bancarotta fraudolenta*).
- Illegal applications for loans (*ricorso abusivo al credito*).
- Declaration of non-existing creditors (*denuncia di creditori insesistenti*).

(NIC).

 

22. Briefly outline the potential liability for directors under environment and health and safety laws.

Legislative Decree 152/2006 and its relevant amendments (Environment Law) sets out the rules with which companies must comply to protect the environment against potential damage.

Where directors do not comply with the law, administrative monetary fines may apply and the directors can be deemed liable for any economic damage suffered by the company.

The breach of provisions concerning the environment can also trigger criminal liability for the directors in certain circumstances.

Among their other obligations, the directors are considered to be responsible (as an employer) for fulfilling health and safety obligations and must guarantee the best health and safety working conditions for employees (Health and Safety Code (Legislative Decree 81/2008 and relevant amendments)).

These obligations bind all directors if the members of the board of directors have the same powers and a director is not specifically appointed in the role of employer.

Breach of the health and safety provisions trigger criminal liability for the directors as the employer.

23. Briefly outline the potential liability for directors under anti-trust laws.

Law 287/1990 and relevant amendments (Anti-Trust Law) sets out the rules that companies must comply with when entering into transactions that may have a negative impact on fair competition, such as restrictive distribution or supply agreements, acquisitions and joint ventures, including:

- Prohibitions of certain transactions.
- Mandatory communication of the transaction with the Competition Authority (*Autorità Garante della Concorrenza e del Mercato*).
- Other requirements for companies that enter into certain transactions under certain conditions.

If the company does not comply with the rules or the Competition Authority's decisions, administrative fines may apply and the directors may be deemed liable, under the Italian Civil Code, for any economic damage that they have wilfully or negligently caused to the company.

Further, certain recent amendments to Law 287/90 allow the Competition Authority to:

- Carry out unannounced inspections (dawn raids) in the premises of directors of companies subject to investigations for antitrust infringements.

- Address information requests personally to directors.
- Impose administrative fines on directors for:
  - obstructing investigations;
  - failing to respond to an information request (unless justified by the right not to self-incriminate);
  - responding incorrectly, partially or in a misleading fashion (provided that the request for information is directly addressed to directors rather than to the company or entity).
- Impose periodic payments on directors until compliance.

However, under a recently introduced provision of law 287/90, directors can (subject to certain conditions) escape liability for certain crimes connected to an antitrust infringement if their company has submitted an application for leniency or immunity with a member state's competition authority or with the European Commission in connection with that infringement and the application fulfills certain conditions. However they may still be subject to civil liability under general rules.

24. Briefly outline any other liability that directors can incur under other specific laws.

Criminal sanctions apply to anyone (including directors) committing cyber-crimes, including:

- Illegal access to a computer or internet system.
- Illegal possession and circulation of access codes to computer or internet systems.
- Illegal tapping, blocking and interruption of computer or internet communications.
- Damage to computer information, data and programs.
- Damage to computer or internet systems.

Where company directors commit specific crimes, in addition to the individual criminal liability of directors, the company may also incur direct liability for the offences (Legislative Decree 231/2001) (Law 231). In particular, Law 231 introduced corporate criminal liability for entities including companies with respect to specific crimes including bribery, corporate tax, health and safety and IP rights (231 crimes). Companies are liable in cases where:

- The offences were committed:
  - by specific individuals (for example directors/managers/employees);
  - in the interest and/or to the benefit of the company;
- The company had not adopted an adequate and effective compliance programme suitable to prevent such crimes.

Sanctions that can be imposed on the company include both financial penalties, as well as disqualification measures.

In addition, the directors of benefit companies may be deemed liable if they fail to:

- Pursue the common benefit purpose.
- Identify the responsible parties to be entrusted with the pursuit of the common benefit purpose.

In this case, the rules on misleading advertising set out in Legislative Decree 145/2007 will apply to the company.

25. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

Directors' civil liability cannot generally be restricted or limited. All directors are jointly liable if they have not done their best to prevent a damaging action or to eliminate or mitigate the damaging consequences of such an action.

However, directors can avoid civil liability if they have both:

- Acted without negligence.
- Noted their disagreement concerning a damaging action in the relevant corporate document, as well as informing the chairman of the panel of statutory auditors about their dissent.

Whether directors can be indemnified by the company depends on the kind of civil liability incurred. For example, the company can indemnify the directors against civil liability towards third parties on condition that the directors have not acted fraudulently or with gross negligence. However, the company cannot indemnify the directors from liabilities incurred concerning the company itself.

Criminal liability cannot be restricted or limited for any reason under law.

26. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

The directors can obtain insurance against their civil liability, except for liability arising from acts carried out fraudulently or with gross negligence.

Companies commonly take out such insurance policies in favour of its directors and pay for the policies.

The insurance policy cannot cover directors' criminal liability.

27. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

Under law, a de facto director is a person that has not been appointed as director by the competent corporate body, but performs management acts in the name, and on behalf, of the company. This may happen, for example, when the controlling shareholder exceeds their role within the shareholders' meeting and acts as a director.

In those cases, the general duties and rules concerning directors' liability apply to the de facto director (*see Question 15 to Question 17*).

The Civil Code sets out specific rules and liabilities applying to legal entities that exercise direction and co-ordination (*direzione e coordinamento*) towards other companies (parent companies). In particular, those legal entities are liable when they act in their own interest (or in the interest of other third parties) in breach of the principles of fair management of the companies subject to their direction and co-ordination. Specifically, those entities are liable towards:

- The shareholders of the controlled companies, for the damage/loss caused to the value of their shares.
- The creditors for the damage/loss caused to the controlled companies' assets.

Therefore, all the resolutions passed by the controlled companies must specify the reasons and the interests that had an impact on the decision. However, no liability arises when:

- There is no damage, taking into account the overall outcome of the activity of direction and co-ordination.
- The damage has been completely eliminated by a specific action carried out for this purpose.

The CONSOB sets out specific regulations concerning related-party transactions.

Italian case law has held that the formal existence of a group is not incompatible with the de facto directorship of individual companies within the group itself. While the formal existence of a group corresponds to a legal situation in which the parent company carries out the activity of direction and co-ordination of the controlled company, the de facto directorship of individual companies within the group itself gives rise to a de facto situation in which the powers of directorship are exercised directly by a person lacking any appointment.

## Transactions with Directors and Conflicts

 

28. Are there general rules relating to conflicts of interest between a director and the company?

Directors are bound by fiduciary duties towards the company since they act in its name and on its behalf. Therefore, directors must act in the best interest of the company.

The Civil Code sets out rules concerning directors' conflicts of interest. Under these rules, directors with a potential interest in a company's transaction, on their own behalf or on behalf of a third party, must:

- Disclose this interest to the other directors and the auditors.
- Specify the nature, terms, source and value of this interest.

A potential conflict of interest does not prevent the director with this interest from voting in favour of the transaction, but it does require the entire board of directors to specify the reasons for the transaction and the opportunity that entering the transaction will grant the company.

If the director with the conflict of interest is a managing director, that director must not carry out the transaction and must involve the whole board of directors in the decision. If the director is a sole director, they must also provide information about the transaction at the next shareholders' meeting.

Directors with a conflict that act in breach of these rules are liable towards the company for the damages:

- Deriving from their action or omission.
- Arising from the use of company information or business opportunities on their behalf or on behalf of third parties.
- The company can seek the invalidation of the agreements entered into on the company's behalf by directors having a conflict of interest (either personally or on behalf of third parties) with the company itself, if the conflict was known or could have been known by the third party that entered into the agreement with the directors**.**
- Other directors and the auditing body of the company can claim for the invalidation of decisions of the board of directors that have been taken with the casting vote of a director who has a conflict of interest (if such decisions may cause economic damages to the company). The statute of limitation for such an action is 90 days from the date the decision was taken.

29. Are there restrictions on particular transactions between a company and its directors?

The main restrictions on transactions between a company and its directors concern transactions that give rise to conflicts of interest, and which require the directors to comply with specific disclosure requirements (*see Question 28*).

There are specific restrictions on the purchase by the company of goods and credits from, among others, the directors, where the:

 

- Consideration for the purchase is equal to or higher than 10% of the company's corporate capital.
- The purchase occurs during the first two years from the registration of the company at the register of enterprises.

(Section 2465, paragraph 2, Civil Code.)

This purchase must be authorised by the shareholders' meeting and needs a sworn report from a court-appointed expert.

Where these rules are breached, the directors are liable for damages caused to the company, shareholders and third parties.

The CONSOB sets out specific regulations concerning related-party transactions. Directors of listed companies are deemed to be related parties.

30. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company they is a director of?

### Unlisted Companies

There are no restrictions on the purchase or sale by directors of shares and other securities of unlisted companies. In practice, it is common for a company to provide share option plans for its directors.

### Listed Companies

Criminal liability may arise for directors that have purchased or sold securities while in possession of certain unpublished, confidential and sensitive information.

Share option plans for listed companies must be approved by a shareholders' meeting and disclosed to the public (section 114-bis, TUF).

## Disclosure of Information

31. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

For both the SpA and the Srl, the directors are subject to several disclosure duties, that also depend on the business carried out by the company, for example:

- The competent register of enterprises.
- Tax authority.
- Municipality(ies).
- Anti-trust authority.

Section 114 of TUF provides a list of all information concerning listed companies that must be filed with the public and with the CONSOB. Among other things, the directors of listed companies must disclose to CONSOB their transactions in the company's shares or related financial instruments.

## Shareholder Rights

### Company Meetings

32. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

The same requirements apply to both SpAs and limited liability companies (Srl) (section 2364 and 2478-bis, the Civil Code, respectively). Generally, the shareholders' meeting must be called at least once a year, within the date fixed by the bye-laws, if any, or within 120 days from the end of the financial year.

The annual shareholders' meeting must resolve the following issues:

- Approval of the financial statements.
- Allocation of profit and loss.

The bye-laws can provide for a longer time limit, which must not exceed 180 days from the end of the financial year, where:

- The company must draft the financial statements in a consolidated form.
- There are special needs related to the structure and to the corporate purpose of the company.

33. What are the notice, quorum and voting requirements for holding meetings and passing resolutions?

 

If the bye-laws of a Srl do not provide otherwise:

- Notice must be sent at least eight days before the meeting.
- The quotaholders' meeting must be held at the registered office. It is validly held if quotaholders representing at least half of the corporate capital attend the meeting.
- The quotaholders resolve with the majority of the quotaholders attending the meeting (by corporate capital). However, specific resolutions can be passed only with if at least half of all quota holders (by corporate capital) votes in favour.

For SpAs, the shareholders' meeting is validly held if at least half of the share capital is represented. The general meeting passes resolutions by means of absolute majority of those present (if the attendees at the meeting represent at least 50% of the share capital), unless a larger majority is required by the bye-laws. Therefore, it is possible to pass resolutions even if shareholders that represent less than 50% of the total share capital vote in favour.

In contrast, the extraordinary shareholders' meeting can adopt resolutions only if more than half of the shareholders (by share capital) vote in favour, unless a larger majority is required by the bye-laws.

34. Are specific voting majorities required by statute for certain corporate actions?

The bye-laws can require larger voting majorities for certain corporate actions in the limits set out by law (except for the approval of the financial statements, and for the appointment and removal of company officers).

Any amendments to the bye-laws, mergers and winding up procedures and so on are required by law to be approved by the same majorities required for the extraordinary shareholders' meetings. A notary public must also be present and must draft the relevant minutes.

35. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

## SpA

The SpA's directors or the management board must call a shareholders' meeting without delay when requested by 10% of the company's corporate capital or a lower percentage set out in the company's bye-laws (section 2367, Civil Code) and the request indicates the issues to be discussed by the meeting.

Calling a meeting at a shareholder's request is not permitted for issues that must be:

 

- Proposed by the directors.
- Dealt with on the basis of a project or a report drafted by the directors.

### Srl

At the request of one-third or more of the company's corporate capital, resolutions must be put before a quota holders' meeting.

### Listed Companies

Shareholders of listed companies that represent at least 1/40 of the corporate capital can ask for an item to be included in the agenda of the shareholders' meeting (section 126-bis, TUF). The shareholders can also ask for clarifications before the shareholders' meeting on an agenda item.

## Minority Shareholder Action

36. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

### SpA

Minority shareholders representing at least 20% of the corporate capital (or a different percentage set out in the company's bye-laws), but not higher than one-third of the corporate capital, can bring an action on behalf of the company against the director(s) (section 2393-bis, Civil Code). Any damages that the court awards are paid to the company rather than to the shareholders that have brought the action.

Where there are grounds for suspicion of serious irregularities from the directors in managing the company that could cause damage to the company or its controlled company, shareholders representing at least 10% of the corporate capital can also report this irregularity to the court (section 2409, Civil Code). The court has the discretion to take several actions to resolve those irregularities, including:

- Dismissing the director.
- Appointing an interim director to temporarily manage the company.

Each shareholder, regardless of shareholding, can also:

- Claim damages against the director(s), where that shareholder has been directly damaged by the directors' negligence or wilful conduct.

- Report any irregularities in the management of the company to the panel of statutory auditors. The panel of statutory auditors must then immediately investigate these irregularities and report the outcomes of the investigation and possible solution to the shareholders' meeting.

For listed companies, shareholders must hold at least 2.5% of the corporate capital to bring an action under section 2393-*bis*.

### Srl

Where damage has been caused to the company, each quota holder can (section 2476, Civil Code):

- Bring an action against the director(s).
- Claim before the court that the relevant director(s) be dismissed in cases of serious events of mismanagement of the company.

## Internal Controls, Accounts and Audit

37. Are there any formal requirements or guidelines relating to the internal control of business risks?

The statutory auditors have the role of monitoring the directors' activity and ensuring that the:

- Management of the company is carried out in compliance with the applicable law, bye-laws and standards of good management.
- Company's structure, governance and accounting are adequate to comply with the law.

In performing these duties, the statutory auditors are entitled to:

- Request information from the directors concerning the management of the company.
- Call a general meeting to discuss items on which a resolution is urgently necessary.
- Report to the local courts any suspicion of unlawful operations carried out by the directors in the management of the company.
- Italian corporate law does not provide for director-specific obligations in terms of the risk management of the company. However, as a result of the reform of the Bankruptcy Law, implemented by the Legislative Decree No. 14/2019, directors now have a general duty to set up a system of corporate governance that is adequate to the size and nature of the business, and capable of detecting and addressing situations of crisis to ensure the continuity of operations.
- In addition, as an application of the duty of care, directors may consider adopting a management and control organisational model under Legislative Decree No. 231/2001 depending on the type and the size (number of

 

employees, turnover and so on) of the company's business. This law provides for direct liability of Italian companies, associations and other legal entities for certain crimes committed by their representatives. The law aims at encouraging Italian companies to adopt corporate governance structures and other risk prevention measures to stop directors, managers, employees and external collaborators from committing certain crimes.

- Specifically, a management control organisational model is usually adopted by big corporations that are usually incorporated as an SpA .

38. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The company's directors must draft the yearly financial statements with clarity in order to represent, in a true and correct manner, the company's assets, liabilities, and financial and economic situation.

Where the directors breach these duties, they can be held liable in relation to the company, the share or quota holders, and third parties. If the yearly financial statements are inaccurate, the directors can also face criminal liability.

39. Do a company's accounts have to be audited?

## SpA

The financial statements may be subject to accounting control by an auditor or by an auditing company registered in the register created by the Ministry of Justice.

A corporation controlling other enterprises must draft consolidated financial statements if (taking into account also the controlled enterprises) the following thresholds are exceeded for two consecutive fiscal years:

- Total assets equal to EUR20 million.
- Business proceeds equal to EUR40 million.
- Average personnel employed equal to 250 individuals.

(Legislative Decree 127, 9 April 1991.)

However, where the SpA is not required to draft consolidated financial statements, the bye-laws can provide that the accounting control is carried out by the panel of the statutory auditors. In that case, the panel of the statutory auditors must consist of auditors enrolled in the proper register kept by the Ministry of Justice.

 

### Srl

Generally speaking, the accounts of an Srl do not need to be audited, unless the Srl is required to appoint a controlling body (that is, an external auditor or the statutory auditors).

The company is required to appoint a controlling body when it has exceeded two of the following requirements for two consecutive years:

- EUR4 million of total assets in its balance sheet.
- EUR4 million of revenue (from sales of goods and services).
- 20 employees on average per year.

(*see Question 6, Structure, Limited liability company (Srl)*).

40. How are the company's auditors appointed? Is there a limit on the length of their appointment?

### SpA

The company's internal and external auditors are appointed by the shareholders' general meeting. The panel of statutory auditors consists either of three or five regular members. Two alternate auditors, who can replace an auditor who ceases to hold office, must also be appointed.

At least one of the regular and one of the alternate auditors must be chosen from external auditors listed in the register of external auditors kept by the Ministry of Justice. The other auditors, if not listed in the register of external auditors, must be elected from the auditors listed in the registers of professional orders authorised by the Ministry of Justice, such as the accountants' professional order, or from legal and economic professors (such as a University academic).

### Srl

The company's internal and external auditors are appointed by the quota holders' general meeting.

Currently, a sole auditor can be appointed and an alternate auditor is not necessary. The same rules concerning the identity of the auditor apply as those for SpAs.

### Listed Company

The rules depend on the system adopted by the listed company:

- Traditional system: at least one-third of the members of the panel of statutory auditors must be appointed from a list of auditors provided by the minority shareholders (section 148, TUF). The chairman of the panel of the statutory auditors must be chosen from those auditors appointed by the minority shareholders. Auditors must be independent (*see Question 8*).

- One-tier monistic system: at least one-third of the members of the panel of the statutory auditors must be appointed from the minority shareholders' list. The chairman of the panel of the statutory auditors must be chosen from those auditors appointed by the minority shareholders (section 148, TUF). Auditors must be independent.
- Two-tier dualistic system. There are no rules regarding appointment of auditors from the minority shareholders. Auditors must be independent.

41. Are there restrictions on who can be the company's auditors?

The following persons cannot be appointed as auditors:

- Those prohibited from acting, bankrupt persons and those who have been sentenced to a penalty involving a prohibition (even a temporary prohibition) from public office or from exercising managerial functions.
- Parents and relatives of directors of the company or of controlling companies, companies subject to the company's control or under common control (associated companies).
- Individuals who are related to the company or associated companies by an:
    - employment relationship;
    - consultancy relationship on a regular basis;
    - other economic relationship that could prejudice their independence.

For other rules regarding appointment of auditors, see *Question 40*.

42. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

To maintain independence, auditors cannot provide consultancy services on a permanent basis to the company, its subsidiaries or to a parent company.

 

43. What is the potential liability of auditors to the company, its shareholders, and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

Statutory auditors must comply with the experience and diligences required by the nature of their office and are responsible for the accuracy and truth of their statements. In particular, if the panel of statutory auditors is required to monitor the company's accounting, it must verify the adequacy of the resources the company has made available for accounting and observe the rules for external auditors. Failure to act in compliance with this principle may result in the auditors incurring civil or criminal liability.

Statutory auditors are jointly and severally liable for their responsibilities to the directors of the company and each other, and personally liable in their responsibilities to the company and to creditors.

Auditors' liability cannot be limited or excluded.

44. What is the role of the company secretary (or equivalent) in corporate governance?

Italian law does not provide for the role of a company secretary.

**Contributor Profiles**


## Barbara Corsetti

**Portolano Cavallo**
**T** +39 06 696 661
**F** +39 06 696 665 44
**E** *bcorsetti@portolano.it*
**W** *www.portolano.it*


**Professional Qualifications.** Italy, Lawyer, 2005

**Areas of Practice.** M&A; commercial agreements (such as agency, dealership, distribution agreements and in general agreements relating to commercial distribution networks); real estate.

**Recent Transactions**

- Assisting domestic and international clients on corporate law and in particular on merger and reorganisation operations.

 

- Advising businesses on all legal aspects of interacting with consumers, as well as internet and e-commerce.

### Chiara Sannasardo

**Portolano Cavallo**
**T** +39 06 696 661
**F** +39 06 696 665 44
**E** *csannasardo@portolano.it*
**W** *www.portolano.it*

**Professional Qualifications.** Italy, Lawyer, 2016

**Areas of Practice.** M&A; commercial agreements; private equity and venture capital.

**Recent Transactions.** Advising Italian and foreign clients and providing assistance on matters concerning ordinary and extraordinary corporate management.

### Gaia Accetta

**Portolano Cavallo**
**T** +39 02 722 341
**F** +39 02 722 345 45
**E** *gaccetta@portolano.it*
**W** *www.portolano.it*

**Professional Qualifications.** Italy, Lawyer, 2019

**Areas of Practice.** M&A; insolvency law; white collar crimes; criminal compliance.

**Recent Transactions.** Advising Italian and foreign clients and providing assistance on matters concerning corporate transactions, insolvency proceedings, as well as issues related to corporate criminal law and white-collar crime, including advice on aspects of Legislative Decree No. 231/01, compliance, and whistleblowing.

### Enzo Marasà

*(specifically for the antitrust section)

**T** +39 02 722 341
**F** +39 02 722 345 45
**E** *emarasa@portolano.it*
**W** *www.portolano.it*

**Professional Qualifications.** Italy, Lawyer, 2006

 

**Areas of Practice**: Competition and EU law, in particular in media, electronic payment services, e-commerce, energy, fashion and luxury, and pharmaceutical and biomedical.

**Recent Transactions**: Assisting national and multinational companies before national and EU courts or authorities on complex issues of competition and EU law, such as:

- Merger control.
- Anti-competitive agreements.
- Abuse of a dominant position.
- Private antitrust litigation.
- Restrictive regulatory measures on the free movement in the single market.
- Distribution or co-operation agreements.
- Technology transfers.
- Implementation of antitrust compliance programmes.

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