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INSIGHTS

FAMILY BUSINESSES IN
ITALY AND GERMANY:
SELECTING THE
COMPANY FORM AND
RULING
SHAREHOLDERS'
RIGHTS



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SELECTING THE COMPANY FORM AND RULING SHAREHOLDERS' RIGHTS

Does there exist a "right" corporate form for a family business?

The choice of the corporate model should be made on a case-by-case basis considering the needs of the shareholders.

The most common model in the past was the non-limited partnerships (*società di persone*). Indeed, non-limited partnerships ensure lower costs than a limited company, greater informality in passing the decisions, and were (and are) certainly suitable in small family settings (e.g., a single family). In contrast, this partnership does not grant the quota-holders with the benefit of limited liability and does not allow for articulated governance systems.

On the contrary, companies with limited liabilities (S.r.l./S.p.A.) are perceived by the market as financially more solid companies, capable of providing greater diversification of governance structures and roles of the various shareholders.

When thinking about the governance of family businesses, it must be considered that such companies often include two categories of shareholders: the "working shareholders", who, in addition to benefiting from profits are deputized to manage the business, and the "financial shareholders", who are unrelated to management but interested in the results of the business.

Italian corporate law, since the 2003 reform, allows the use of "special rights" (*diritti particolari*) as a functional tool to regulate the particularities of the corporate governance of S.r.l., while in the context of the S.p.A. for the same purpose are used the class of share (*categorie di azioni*).

The joint-stock company (*società per azioni*) is the most know model among companies, especially when third investors (such as private equity funds) intend to make investment in the company. However, such model implies a rigid division between shareholders' rights and management of the company and cost wise is less convenient than other Italian limited.

When the membership of a family business remains somehow family-based (albeit with more complex family articulations) the choice of a limited liability company (*società a responsabilità limitata*) is a good compromise because it has lower fixed costs than the joint stock company (*società per azioni*) and is more flexible in defining a "family-friendly" governance.

In limited liability company (*società a responsabilità limitata*) it is possible to set up "special rights" (*diritti particolari*) of shareholders. Essentially, some shareholders, for different reasons related to their quality (e.g., founder of the business, main financier, person belonging to a certain family unit etc.) are given particular governance rights (e.g., right of veto in the shareholders' meeting on certain matters, right of pre-emption, right of drag along i.e., to "force" the sale of the minority shareholders' holdings in case of sale of the majority etc.) or particular economic rights (e.g., more than proportional profits). Or, for those who are not involved in the management of the company,

special interim reporting rights, ensuring higher alignment on results and a more transparent relationship among the shareholders.

In addition to the "special rights" regime Italian law created the "class of quotas" regime. After the various amendments that affected d.l. no. 179 of 2012 (the so-called "start-up act"), class of quotas, in Italy, are not only a prerogative of innovative start-ups but of all small and medium-sized enterprises (SMEs), incorporated as S.r.l.: essentially, many of the family businesses.

Issuing class of quotas (similar in their function to class of shares) means being able to assign to members (e.g., members of different families), interest in the corporate capital of different categories, each of which is endowed with different rights without these rights being the individual prerogative of a single shareholder as is the case with "special rights": whoever holds such class of quotas is the holder of the rights of that category, with obvious simplification in the succession of rights within the same family groups. This is a mechanism that generates certainty in relations between family units, stability of balances that can accommodate specific needs or expectations.

Some examples? The category of operative shareholders can have a bonus in profit distribution, as an incentive and "reward" for their work. The category of non-operative shareholders can be deprived of voting rights, making them silent in governance, possibly associating them with an automatic right to profit distribution, to avoid conflicts of interest. Or limits on circulation for certain categories of shares.

The "Special rights" regime and "class of quotas" regime can be mixed to set up tailored governance whereby certain rights linked to the category pass from one shareholder to another while other rights are established as special rights attached to only certain members.

Categories of quotas and "special rights" are a decisive technical tool that aims to foster transparent, virtuous, balanced and "tailor-made" governance.

Follow us in future installments to explore additional challenges affecting family businesses.

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For a comparative look on the family business in Germany, please refer to the Insight of Bettina Wirth-Duncan on the blog/web site of Flick Gocke Schaumburg (click [here](#)).

This document aims to provide general information on the topic discussed and should not be considered legal advice nor an exhaustive analysis of every aspect related to the subject matter.

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