The characteristics of companies in general

The advantages of companies

A company has an existence of its own, quite apart from that of its partners: it could continue to exist even if the partners die, or else it could be dissolved and wound up even if its partners survive.

Juridical subjectivity

All companies have a juridical subjectivity, insofar as they have a worth separate from that of the partners, they have their own name and their own offices and, accordingly, are legal subjects distinct from the persons of the partners composing them.
They are referred to as non-personified collective subjects.
In certain types of company (partnerships), however there is not complete autonomy between the worth of the company and that of the individual partners who, to varying degrees, are liable for the company's debts.
Whereas other types of company (joint-stock companies and co-operative societies) are recognised by the juridical system as possessing what is termed personality, since their worth is perfectly autonomous from that of the partners and, accordingly, the partners with their assets are never liable for the debts of the company, save in certain cases foreseen by the law.
Very briefly then, through recognition of juridical personality, the company worth is made autonomous of that of the partners, and that of the partners is made autonomous of that of the company.
The juridical personality proper to the aforesaid companies is not automatically attributed: in order for it to be acquired, it is necessary to register the memorandum of association in the Register of Companies.

Pooling of goods and funds

For carrying out an economic activity, often big investments are necessary which might well exceed the financial possibilities of a single person. Carrying out an economic activity in corporate form enables several persons to invest and work together: thus each of them will be in a position to benefit from the activity carried out in proportion to his/her share in the investments made and the work done.
In exchange for the assets contributed, a consideration is obtained, that is a participation (quota or share) in the company's capital.
In the course of the company's existence the founder partners or new partners, by means of contributions to capital, will have the possibility of conferring new assets, for example, by a rise in capital.
The assets conferred become a part of the company's worth and the investor will not be able to recover his/her contribution, but will have to wait for the dissolution of the company or, if he /she no longer wishes to stay in the company, to assign his/her holding to third parties or else withdraw, exclusively in those cases where this possibility is envisaged, from the partnership contract, but will never obtain the return of what he/she has conferred.

Autonomy of worth

In a joint-stock company a perfect autonomy of worth is achieved, in the sense that the partners are liable for the debts of the company only within the limits of the quota conferred. This means:

- that personal creditors of the partner cannot advance claims on the company's assets;
- that the company creditors, in their turn, cannot expect the partners to be liable with their personal assets for the debts incurred by the company.

So that questions of the worth of partners in joint-stock companies do not affect the company worth and vice versa, with the one exception of the case in which all quotas or shares are concentrated in the hands of a single person (see however the remarks regarding the one-man limited liability company according to the present rules and for the one-man company limited by shares regulated by art. 2325 para. 2 of the Civil Code, new text, consequent on the reform of companies). Your civil law notary will be pleased to provide you with any information desired.

On the other hand in partnerships an imperfect autonomy of worth is achieved:
- for example, in the ordinary partnership and in the other forms of partnership (unlimited partnership and limited partnership) only in case of prorogation, does the law foresee cases of liquidation of the partner's quota for his personal debts;
- furthermore the law sanctions the unlimited and joint liability of partners with their own assets (except in the case of limited partners) for the debts of the company, even in subsidiary measure. However the personal liability of the partners is brought to bear in a different way in the case of an ordinary partnership and the other forms of partnership.

Perfect autonomy of worth means that bankruptcy of the company does not as a rule lead to bankruptcy of the partners; while in the case of imperfect autonomy of worth, the partner who is unlimitedly liable likewise goes bankrupt.

Vice versa, if the unlimitedly liable partner goes bankrupt, the company does not go bankrupt.

Duration of the company

Duration of the partnership

The time limit of duration is not an essential element for setting up a partnership. The parties may also explicitly agree on an indefinite duration.

When foreseen, the time limit leads, on expiry, to dissolution of the company.

The time limit may be modified or removed at the will of the partners by means of:
- explicit prorogation. In this case all the partners explicitly decide to lay down another time limit and to continue the company for an indefinite period of time;
- tacit prorogation. If, on expiry of the time limit for which the company was contractually set up, the partners continue to carry out the corporate operations, the company is tacitly understood to be prorogated for an indefinite period of time.

Duration of the joint-stock company

Joint-stock companies too may be set up for an indefinite period of time, but in that case the partners have the right of withdrawal: accordingly this is a choice to be made with due caution, since the possibility of withdrawal represents a strong ground of instability in the company's cohesion.

Distinctive signs

In carrying out its activity, the company can utilise distinctive signs such as the business name, the sign and the brand.

The business name distinguishes the entrepreneur carrying out a business activity, the brand makes it possible to identify and distinguish the goods and services produced by a company, and the sign finally, marks out the premises where the company's activity is carried out.

The registered office

Each company should indicate, in the memorandum of association, the registered office, where it is presumed that its administrative and management activity is carried out.

The company may set up one or more secondary offices, where the corporate activity is carried out, in organisational and administrative autonomy and normally, on a basis of stable representation

Nationality

The company is of Italian nationality when the procedure of setting it up and registering it in the Register of Companies has been carried out in Italy. For foreign companies, see "Foreigners in Italy".

The Italian company is, as such, liable to the organisational and fiscal rules laid down by the Italian legislator.

The partnership contract

What you should do to set up a company

The parties intending to set up a company have to conclude a contract: the partnership contract (what is known as the memorandum of association), by means of which two or more persons confer goods or services for carrying out an economic activity in common for the purpose of sharing out the profits therefrom.

However, the juridical system envisages that a company may be set up even by one single person on the basis of a deed poll: for example, the one-man limited company or limited liability company; or else a new company may be set up following demerger, on the basis of resolution of the meeting of the company which has split up.

If the partnership contract should not be based on a document, but on the behaviour of the partners, there will be what is known as an de facto company: however, the absence of a formal document creates difficulties, because there is nothing to prove the existence of the company. In any case, no joint-stock company can exist on this basis.

What capacity is required to undersign a partnership contract

The subjects interested in becoming partners, whether physical persons, companies, associations or bodies of any kind, must be capable of acting, that is, of validly creating juridical acts.

But can joint-stock companies be partners in a partnership? This was a controversial question up until recent times, however the legislation taking effect as from 1 January 2004 has solved this problem in the affirmative.

Likewise the participation of other bodies in companies may give rise to different solutions according to the body participating and the type of company that is participated.

If we were to give information in general terms, a company may be set up by all physical persons of at least eighteen years of age, of Italian citizenship or of some other State of the European Union.
The participation of minors, even if emancipated, of legally incapacitated or incapable persons, though generally possible, is subject to particular authorisations. The variety and multiplicity of these according to the type of company to be set up and to the circumstances leading to its creation – for example the hereditary communion of a firm – make it advisable to refer on each separate occasion to your notary public in order to single out the right course to follow in the particular case.
The participation of foreigners, who are not citizens of countries of the European Union is possible within the limits foreseen by the law (See "Foreigners in Italy"). In this case once more, we advise you to consult your notary public on the subject.

Essential requirements of the partnership contract
There are three essential requirements of the partnership contract:
- contributions to capital;
- carrying out in common of the economic activity;
- participation in the profits.

Contributions to capital. Company worth and capital stock.
Contributions to capital are the undertakings pledged by the partners on the basis of the partnership contract.
In other words, contributions to capital are the contributions made by the partners to formation of the initial company worth.
Their function is to provide the company with its initial capital, thus enabling it to carry out an entrepreneurial activity.
By means of such conferment, each partner earmarks, for the whole duration of the company, part of his/her own personal assets for the common activity and exposes him/herself to entrepreneurial risk: specifically, the partner runs the risk of not receiving any consideration for the contribution made if the company fails to achieve profits, and runs the further risk of losing, wholly or in part, the value of the conferment if the company incurs losses.
The objects of conferment may be any of the following: money, goods in kind (movable and real estate, tangible or intangible) transferred to the company's ownership or simply granted for utilisation, working activity whether manual or intellectual, credits and businesses. In short, an object of conferment may be any entity liable to economic assessment that the parties consider useful or necessary for carrying out the activity in common of the enterprise.
Nevertheless, limits are laid down as regards joint-stock companies and co-operative societies: in particular, work or services may only be conferred in the case of limited liability companies.
At this point it is appropriate also to fix our notions of company worth and of capital stock, since they are connected to the concept of contributions to capital.

Company worth
The company worth is the sum-total of juridical credit and debit ratios, coming under the umbrella of a company. Initially this consists of all the various contributions to capital effected or promised by the partners. In the course of the company's life the

company worth undergoes continuous variations in relation to the company's economic vicissitudes. Its consistency (assets and liabilities) is ascertained periodically by drawing up financial statements each year.
The positive difference between assets and liabilities is defined as the net worth.
Furthermore, the social worth has the function of a general guarantee for the company's creditors.

The capital stock
The capital stock is a numerical entity expressing the value in money of the contributions to capital, as shown by the assessment carried out in the memorandum of association of the company.
A capital stock of 100 means that the partners have undertaken to confer (subscribed capital) and/or have conferred (paid-up capital) money or other entities which, at the time of the stipulation of the partnership contract, had that monetary value.
The capital stock remains unchanged in the course of the company's life until such time as, following some change introduced in the memorandum of association, it is decided either to raise it or to reduce it.

Carrying out in common of the economic activity. The corporate purpose
Those setting up a company are motivated by the purpose (the so-called object means) of carrying out a given economic activity together with other subjects. This activity constitutes the corporate purpose, and must be determined in the memorandum of association. This may be modified in the course of the company's existence only in observance of the rules regulating any amendments to the memorandum of association.
Such purpose must be a productive activity, that is, an activity having an economic content, carried out with economic method and targeted at the production or exchange of goods or services, while it cannot be limited to the mere utilisation and management of the assets because, otherwise, it would be a communion and not a company (with the exception of management companies).
Moreover it is essential, in order to have a company, for the productive activity to be carried out in common.

Participation in the profits
The carrying out in common of an economic activity in the form of a company is targeted at the achievement of earnings (objective profit) destined to be shared out thereafter among the partners (subjective profit). This is what is known as the profit-making purpose of the company. Companies seeking this end are defined profit-making companies (partnerships and joint-stock companies).
However, other types of company exist (the co-operative societies), which by law must have a different purpose from that of making profit and, more specifically, a mutualistic purpose.
Their typical purpose is to procure for their partners a direct patrimonial advantage which might consist, according to the field of activity of the co-operative, of a saving in expenditure or a higher remuneration for the work done by the partners in the co-operative.

Types of company
When wishing to join up with other persons with a view to setting up a company, it is necessary to single out , possibly with the help of one's own notary public, what in organisational terms, would be the most suitable form of company, bearing in mind among other things the purposes to be pursued.
From the organisational point of view, companies are distinguished into the following types:

1. Partnerships
These comprise:
- ordinary partnerships;
- unlimited partnerships;
- limited partnerships.

2. Joint-stock companies
These comprise:
- companies limited by shares;
- partnerships limited by shares;
- limited liability companies.

All of the aforesaid companies are profit-making, that is to say, they have been set up for the purpose of achieving profits to be shared out between the partners.
The choice of type of company which it is intended to set up depends essentially on the will of the parties responsible for creating it: one single limitation is laid down for companies having the purpose of exercising a commercial activity: they cannot be of the ordinary partnership type.
In addition, there is the possibility of setting up further types of company in the form of limited liability co-operative societies, unlimited liability co-operative societies and mutual assurance companies, all of which have a mutualistic purpose. In other words, they have the purpose of supplying the partners directly with goods, services and work opportunities on more advantageous conditions than those that the partners themselves would obtain on the market.
Finally, all companies, except for ordinary partnerships, may have a consortium purpose, that is, to co-ordinate the economic activities of several entrepreneurs having a similar purpose, or to carry out given phases of the respective enterprises.

Partnerships in general
Take the hypothesis in which the parties have decided to undertake an entrepreneurial activity by setting up a partnership.
In general, what characteristics should such a company have?
First and foremost, there will be the unlimited and joint liability of partners for the corporate obligations:
- of all the partners, in the unlimited partnership;
- of all the partners, but with the possibility of an agreement to the contrary for those partners who have no powers of representation, in the ordinary partnership;
- of the unlimited partners only, in limited partnerships, while the limited partners enjoy the benefit of limited liability;
Unlimited liability also signifies that the partner answers for the corporate obligations with all of his/her goods, present and future.

Whereas joint liability signifies that the company creditor may, at his/her discretion, refer to any of the partners and demand from him/her fulfilment of the entire obligation.
In second place, each partner, as such, is empowered to administer the company, save agreement to the contrary and save also the hypothesis of the limited partner in the limited partnership.
Lastly, it will not be possible to transfer the quota of participation of each partner without the consent of the other partners, save by deed among living persons or deed as a result of death., In fact, if one of the partners dies, with the exception of provisions relating to the limited partner (please refer to paragraph 8.4), his/her quota of participation is not automatically transferred to the heirs. In order for this to occur, it is necessary to obtain the consent both of the heirs and of the surviving partners.
However the clause of free transfer of the quota by deed among living persons is admitted, just as it is possible, following a partner's death, to regulate transfer of the quota in some other way by means of clauses of continuation and consolidation: the notary public will be pleased to help you draft such alternative clauses, without violating juridical norms, if you explain your intention to him and ask for his help.

Ordinary partnerships

Activities which can be carried out in such a form. Liability of the partnership and liability of the partners for the corporate obligations

The ordinary partnership constitutes the most elementary form of company.
The fundamental characteristic of the ordinary partnership consists of the fact that it may have the exclusive purpose of carrying out non-commercial profit-making economic activities.
The sphere of application of ordinary partnerships may accordingly be extended to carrying out:

- agricultural activities, with certain limitations insofar as:
• the company cannot have as its purpose mere utilisation of goods, but the common and concrete carrying out of an economic activity;
• tacit family communions, such as family groups practising agriculture using their own or other people's funds, are regulated by customs and not by a partnership contract;

- real estate management activity: Art. 29 of act no. 449 dated 27 December 1997 has foreseen the transformation into ordinary partnerships of commercial companies having the exclusive purpose of managing real estate not instrumental for running the enterprise, of registered movable property, or of quotas of participation in companies. However, this is an exceptional, as well as a temporary, norm.

Another characteristic is the unlimited liability of partners for corporate obligations, while at the same time excluding, by special agreement, the liability of the partners without powers of representation.
And now take the case of a company's having incurred a debt: against what assets can a creditor obtain satisfaction of his/her right? Against the assets of the company, or those of the individual partners?
In an ordinary partnership the creditor can claim his/her due either against the assets of the company, or of the partners with unlimited liability. However it should be noted that, if payment of the sum owing was first of all requested directly from the partner, the latter may request the creditor to undertake prior excussion of the social worth, or

else may indicate to him those company assets against which he is most likely to obtain satisfaction (the so-called benefit of prior excussion of the company's assets).

Dissolution of the company

How to set up an ordinary partnership

The setting up of an ordinary partnership is marked by rules and criteria of extreme simplicity

- the contract is not liable to any particular forms, save those required by the nature of the assets conferred (and save the probative limitations);
- to set up an ordinary partnership, all that is needed is the mutual undertaking of the partners to carry out a profit-making non-commercial activity together;
- the ordinary partnership is subject to entry in the register of companies. Such registration takes place in a special section and does not imply any juridical effects, having the sole function of a registry certification and publicity notice.

Accordingly, since no special forms are prescribed, setting up a company may take place even verbally or in the form of conclusive facts (de facto ordinary partnership), even if in such cases there are obvious difficulties of proving the existence of the tie.

In any case the written form is necessarily required when:

- conferring real estate or other real estate rights
- conferring the simple utilisation of the same for an indeterminate period of time or in any case for a period of time in excess of nine years.

With stipulation of the partnership contract, the contracting parties assume the capacity of partners, thus giving rise to rights and obligations explicitly foreseen by the law;

The obligation of conferment is essential for the acquisition of such a capacity. Especially in the case of the ordinary partnership the law establishes that a partner is obliged to make the contributions to capital foreseen in the partnership contract.

In partnerships, unlike what applies to joint-stock companies, no limitation is laid on the bargaining autonomy of the parties as regards the assets which may be conferred. Any entity (asset or service) susceptible to economic assessment and useful for achieving the corporate purpose may be conferred.

Accordingly contributions may be made in money, in kind (real estate, machinery, raw or semi-processed materials) or in credits.

It is possible to confer, for purposes of ownership or utilisation, firms, including if encumbered with debts, and also offers of guarantee (fiduciary bonds and bill guarantees).

Contributions may also consist of the obligation of a partner to make available his/her own working activity(manual or intellectual) in favour of the company (so-called working partner).

Administration and legal representation of the company

The administration of the company is the activity of running the corporate enterprise. The power of administering is the power of carrying out all the acts included in the corporate purpose.

When the administration of the company falls on more then one partner (all or some) and the partnership contract gives no ruling on the procedures for exercising the power of administration, separate administration will be applied: each partner is a director, that is, has the power of administering and may carry out alone all the operations comprised in the corporate purpose, without being bound to request the consent or the

opinion of the other partners in the administration, or to inform them in advance of any operations planned.
Separate administration offers the advantage of arriving rapidly at the taking of decisions, but is not without danger, since the individual director may start up operations which are not profitable for the company unknown to the others.
Precisely for this reason it is possible to foresee the method of joint administration. Joint administration must be explicitly agreed on by the partners in the deed of partnership or by means of a modification of the latter, since, if the parties thereto do not specify otherwise, the rule in such cases is separate administration.
Furthermore, joint administration may be either based on unanimity or on a majority. In the type foreseeing unanimity the consent of all the partner directors is required in order to carry through corporate operations; in that based on a majority, it is sufficient to obtain the agreement of a majority of the directors, calculated in relation to the profits attributed to the same.
Both separate administration and joint administration may be entrusted to all the partners, or else to only some of them.
Finally, it may be foreseen that administration of the company is entrusted to only one of the partners.
Accordingly the options are multiple and the notary public, in view of his competence, will be in a position to help you draw up a model of administration best suited to your requirements and those of the enterprise.
While the director is the person who has the power of management of the company, that is, the power of deciding how the corporate acts will be carried out (such power is of internal importance), the representative is the person who has the power of expressing the corporate will outside of the company, that is, of acting in the name and on behalf of the company (this power is of external importance).
a) If not stipulated otherwise in the partnership contract, representation of the company falls on each partner director, jointly or separately, according to whether the administration has been foreseen of one or the other type. This implies that:
- if the administration is separate, each director may decide and stipulate on his own deeds in the name of the company (separate signature);
- if the administration is joint, all the directors must participate in stipulation of the deed (joint signature).
b) However it must be pointed out that the partners have the possibility of regulating the power of administering in a different way from that of representing.
For example:
- legal representation of the company may be reserved to certain partner directors alone;
- it may be established that for given acts joint signature is required, even if the administration is separate;
- Separate signature may be foreseen for those acts not in excess of a given amount or, in general, for deeds of ordinary administration, while joint signature is required for those of a higher amount or of special administration (or else for those acts of administration which are included among the activities foreseen as part of the social purpose of the company itself).
You should refer to your notary public for useful advice in this regard.

Modifications to the partnership contract in the course of the company's existence
Throughout the life of the company, the partners may modify the partnership contract but, if not agreed otherwise, this requires the agreement of them all.

Changes in the company's cohesion (think for example of transfer of the capital share by deed between live persons and as a result of death) and changes in the corporate purpose are considered as modifications to the partnership contract. .
Consent to the transfer of a quota may be given beforehand, by including in the deed of partnership memorandum a clause foreseeing the free transfer between living persons of the capital share and/or the continuance of the company with the heirs of the deceased partner.

Dissolution of the corporate relationship as regards the individual partner: causes and liquidation of the capital share

The eventuality of the individual partner ceasing to belong to the company is envisaged. Causes of cessation are: death of the partner, withdrawal and exclusion.
However the cessation of one or more partners as a result of one of the aforesaid causes does not lead to dissolution of the company.

Death of a partner

If a partner dies, dissolution of the relationship between such partner and the company occurs automatically, with the consequent obligation, for the surviving partners, to pay over the share falling to the deceased partner or his heirs within the time limit of six months. Accordingly the surviving partners are not obliged to permit the subentry into the company of the deceased person's heirs.
Instead a further two possibilities are available for the surviving partners:
- they may decide on dissolution in advance of the company;
- they may decide to carry on the company with the deceased partner's heirs. In such case, however, it is necessary to have obtained both the consent of all the surviving partners, and the consent of the heirs.
However the partners in any case have ample liberty of pre-determining, in the partnership contract the consequences of the death of one of them, inserting specific clauses to such effect. Among the most common of these are:
- a consolidation clause, by means of which it is established that a deceased partner's quota will in any case be acquired by the other partners, while the heirs will receive in settlement only the value of the same;-
- a clause of continuation with the heirs (all or certain), by means of which the partners express in advance their agreement to transfer the quota as a result of death, precluding recourse to the other two alternatives (settlement of the capital share or dissolution of the company).
The clauses of continuation may, in turn, be distinguished into three groups:
- the clause is binding only on the surviving partners, while the heirs are free to choose whether to join the company or to request settlement of the quota due (clause of optional continuation);
- the clause foresees the obligation of the heirs to enter into the company, with the consequence that they will be obliged to pay compensation for any prejudice to the surviving partners if they choose not to join (clause of obligatory continuation);
- the clause foresees the automatic subentry of the heirs into the company (clause of succession). In other words, they automatically become partners by dint of having accepted the inheritance.
These types of clause are not all considered valid by jurisprudence, since they may contrast with prohibitions foreseen by the law, for example regarding agreements on successions: in order to ensure their correct formulation for from the point of view of

any implications liable to affect succession, you would be well advised to refer to the notary public, who will draw up an unambiguous clause on the basis of your requirements.

Withdrawal of a partner

If for any reason a partner no longer wishes to belong to the company, he may exercise the right of withdrawal.

Precisely, if the company was set up for an indefinite period of time or for the lifetime of one of the partners, each partner may withdraw freely.

Otherwise, if the company is for a definite period of time, withdrawal is admitted by law only when a just cause exists for same.

The partnership contract may in any case foresee other hypotheses of withdrawal, which detail the procedures for exercising this right.

Exclusion

Dissolution of the individual corporate relationship may also occur following the exclusion of a partner from the company.

In certain hypotheses such exclusion is in the nature of a right (e.g. in the case in which the partner has been declared bankrupt), while in other cases the exclusion is referred to the will of the other partners, in the presence of given causes foreseen by the law or by the partnership contract. Your Notary public will be pleased to illustrate these to you.

In all the cases examined thus far in which the corporate relationship is dissolved limitedly to one partner, as a result of death, withdrawal or exclusion, the latter or his heirs are only entitled to a sum of money representing the value of his/her capital share.

Accordingly the partner cannot claim return of the goods conferred in ownership, even if at that time included in the company's assets, nor can he/she claim return of the goods conferred for utilisation for as long as the company lasts, save in the case of agreements to some other effect.

The value of the share liable to liquidation is determined on the basis of the company's worth as established on the day when dissolution of the corporate relationship occurred.

Causes determining the dissolution of companies - Consequences of the occurrence of a cause for dissolution of the company - Revocation of the state of liquidation

An ordinary partnership may be dissolved in the following cases:

- on expiry of the duration laid down in the partnership contract, save cases of prorogation of the company, either explicitly or tacitly;
- when the corporate purpose has been achieved or when it has proved impossible to achieve it (for example, in the case of an irremediable state of conflict between the partners leading to the absolute and definitive paralysis of the corporate activity);
- in the presence of the firm determination of all the partners to put an end to the company, save if the deed of partnership foresees that the dissolution in advance of the company must be resolved on a majority basis;
- when the plurality of the partners no longer exists (that is, when only one partner is left), if within the time limit of six months this has not been reinstated;
- in the presence of other causes explicitly foreseen in the partnership contract.

When any such cause of dissolution occurs, the company does not come to an end immediately, but automatically enters into a state of liquidation. In the course of the

liquidation procedure, arrangements will be made to pay off the company's debts and to distribute any remaining assets among the partners.
The directors will only be empowered to carry out those urgent actions aimed at defining the relationships under way, while the appointed liquidators, taking over from them, may not undertake any new operations and will be personally and jointly answerable for any business undertaken in defiance of such a prohibition.
Whereas there remains the obligation for the partners to make any conferment still due, albeit even if within the limits of the funds available, if these should be insufficient for payment of the company's debts..
Once liquidation is completed, the company is considered to be lapsed.
The partners have the faculty of revoking the state of liquidation, before this has been completed.
As a result, in such case, the company will return to the normal management activity with the continuance of the same company: in other words, no new company will be set up.
Such a decision of revocation must be adopted unanimously.

Unlimited partnership

Activities which can be carried out in this form. Liability of the partnership and liability of the partners for the corporate obligations

If the parties wish to set up an unlimited partnership, they must respect the specific rules laid down in this regard by the Civil Code, bearing in mind, in any case that, for many aspects, the law refers the reader to the norms regulating the ordinary partnership, which accordingly apply equally to the unlimited partnership.
So that, in the light the foregoing, the present file foresees multiple referrals to the subjects already dealt with and developed with regard to the ordinary partnership.
The unlimited partnership (commonly abbreviated to s. n .c.) is a type of company which may be utilised both for carrying out a commercial activity, and for carrying out a non-commercial activity (see *ordinary partnership* to the related paragraph).
In this form of company all the partners are liable jointly and unlimitedly for the corporate obligations. Any agreement to the contrary is without effect on third parties.
The aforesaid characteristic is proper of the unlimited partnership alone and does not apply to the other two types of partnership (in fact, in the ordinary partnership the liability of the partners not representing the company may be excluded, while on the contrary in the limited partnership it is essential that only certain of the partners are liable jointly and unlimitedly for the corporate obligations).
In case the company has incurred a debt: against which assets can the creditor stake his/her claim? The assets of the company or the assets of the individual partners?
In the case of an unlimited partnership, first and foremost the company with its assets is liable for payment of the company's debts, and to a lesser extent the individual partners may be unlimitedly and jointly liable with their personal assets. In the unlimited partnership too, as in the ordinary partnership, the partners accordingly enjoy the benefit of prior excussion of the social worth, which however operates automatically.
Only if the company assets are insufficient to meet his/her claims, can a creditor request payment by any one of the partners.

How an s.n.c. is set up

In this case too a partnership contract must be concluded (explicitly known by the law as "deed of partnership"). The contract must be drawn up in the form of a public deed or an authenticated private contract.

In practice, an s.n.c. contract is a document which may consist of the deed of partnership proper and of the company by-laws attached to the latter. The former contains the expression of the will of the partners and the essential elements of the company's organisation, while the latter lays down the rules for the running of the company.

The company by-laws, even if drawn up separately from the deed of partnership, constitute an integral part of the latter.

It is necessary to resort to the form of public deed or of authenticated private contract if it is wished to enter the s.n.c. in the register of companies and such registration, although not a condition for the existence of such a company, is however a condition for its regularity. Entering in the register of companies implies the possibility for third parties to rely on it for obtaining the essential elements of the partnership contract and thereafter any modifications and the most important events in the company's life. Such information is covered by public vouchsafing (word of the notary public): for this reason both the deeds of partnership and any deeds modifying the company are screened in advance by the notary public in his capacity of outside and impartial party empowered by the State to exercise such a function.

If the deed of partnership is not entered in the register of companies, the s.n.c. may still be set up; however, failure to register the deed of partnership means that relations between the company and third parties will not be governed by the norms laid down for the s.n.c., but by the norms laid down for ordinary partnership, less favourable for the partners, precisely on account of the lack of publicity relative to the existence of such an entity.

An unregistered s.n.c. is known as an irregular unlimited partnership.

As regards the assets which may be conferred in an unlimited partnership, please refer to the ordinary partnership.

Administration and legal representation of the company

The rules governing an unlimited partnership are similar from many points of view to those for the ordinary partnership(*please refer to the related paragraph).*

Modifications to the partnership contract in the course of the company's existence

In unlimited partnerships too it may happen that, in the course of the company's existence, the partners wish to make some changes to the deed of partnership.

If not agreed otherwise, such changes must be adopted unanimously and must be shown, as in the case of the deed of partnership, in a public deed or an authenticated private contract, since the law prescribes that also the aforesaid modifications must be entered, at the request of the directors or of the notary public, in the register of companies for the publicity requirements the importance of which was stressed in the preceding paragraph.

Subjective modifications may be introduced, that is to say, concerning changes in the personal composition of the company. For example, the assignment of the capital share, the introduction of a new partner, the replacement of a partner, and cessation from the capacity of partner.

Or else objective changes may be introduced, that is, modifications regarding the content of the deed of partnership. For example: prorogation of duration of the company, reduction or raising of the capital stock, transfer of the registered office, decision to dissolve the company, change in the corporate purpose, variation in the number of directors or of the representatives appointed in the deed of partnership, revocation of the director appointed in the deed of partnership, modification of the criteria for the sharing out of profits, transformation into another company, merger and demerger.

In particular: modification of the capital stock - Reduction and raising of capital stock

Take the case in which a loss in capital stock has occurred, what is it necessary to do?
The only thing prescribed by the law in this connection foresees that, in case of losses, the company cannot share out the profits among the partners until the capital has been reduced or reintegrated to a corresponding degree.
However, unlike what happens for joint-stock companies, no obligation exists to reduce the capital whatever the amount of the losses incurred, even if the latter are such as to wipe out the entire capital.

While, however it is true that, if the company intends to continue to distribute profits to its shareholders, there is no getting away from the alternative laid down by the law: either reduction of the capital up to complete wiping out of the losses, or reintegration of the capital by the partners.
Side by side with the hypothesis of reduction of capital as a result of the losses described heretofore, is the hypothesis of reduction of what is termed capital in excess.
This constitutes a real operation of reduction of the net worth that the company can adopt. In such a case, the procedures for such reduction are two:
- release of the partners from the obligation of making any further payments already promised but not yet effected;
- return to the partners of the contributions to capital already made.

Whereas, if the partners should decide to raise the capital stock, how should they go about this?
The rise may be on payment or free.
If the rise is on payment, the company increases its capital, by having new partners enter into the company or by collecting new contributions to capital from the pre-existing partners.
If the increase is free, the partners decide to transfer to capital certain securities already existing in the social worth, such as any reserves which may have been created on capital account.
In a partnership the setting up of reserves is not obligatory. However, the deed of partnership or the partners unanimously may decide on their creation, by setting aside profits which it is considered appropriate not to distribute among the shareholders.
When the passing over of reserves to capital is envisaged, each partner's quota of holding in the company rises in proportion to his/her participation in the profits of each of them, thus safeguarding also the position of the working partner..

Dissolution of the corporate relationship in respect of the individual partner: causes and settlement of the capital share.
The rules governing the unlimited partnership are similar from many points of view to those for the ordinary partnership (*please refer to the related paragraph).*

Causes determining dissolution of the company
Dissolution of the unlimited partnership is determined by the causes already singled out and described with reference to the ordinary partnership, to which the reader is explicitly referred.
However, other specific causes of dissolution of the s.n.c. are the latter's bankruptcy, and the provision by the government authority laying down the compulsory administrative winding up of the partnership.

Consequences of the occurrence of a cause for dissolution of the company
The rules governing the unlimited partnership are similar from many points of view to those for the ordinary partnership; *(please refer to the related paragraph).*

Revocation of the state of liquidation
The rules governing the unlimited partnership are similar from many points of view to those of the ordinary partnership (*accordingly the reader is referred to the relative paragraph).*

Cancellation of the company
Following approval of the final settlement accounts, the liquidators must request cancellation of the company from the Register of Companies, presenting such request for cancellation to the Office of the Register of Companies c/o the Chamber of Commerce of the province where the company is based. Cancellation leads to lapsing of the company.

Limited partnership

Activities which can be carried out in this form. Liability of the partnership and liability of the partners for the corporate obligations
If the parties wish to join forces by setting up a partnership, they can do this also by the creation of a limited partnership (hereafter referred to as an s.a.s.).
In general, the s.a.s. is governed by rules relative to the unlimited partnership (which as we may recall refers, in turn, to the rules laid down for the ordinary partnership), save the particular norms which will be examined hereafter.
Such a partnership is characterised by the presence of two categories of partners:
- the unlimited partners, exclusively responsible for the administration and running of the company. These have unlimited and joint liability for carrying out the corporate obligations and, accordingly, are in a similar situation to that of the partners in the unlimited partnership;

- the limited partners, who are liable for the corporate obligations within the limits of the quota conferred, providing they do not interfere in the administration of the partnership.
The s.a.s. is a type of partnership which may be utilised both for carrying out a commercial activity, and for carrying out a non-commercial activity (*please refer to appropriate section*).
As for the system of liability of the partnership and the partners for the corporate obligations, the reader is referred back to the unlimited partnership, pointing out that in the limited partnership any liability of the limited partners is excluded, providing they have not interfered in the administration.

How an s.a.s. is set up
For setting up an s.a.s., the rules given for the unlimited partnership apply (*please refer to the related paragraph*).
The deed of partnership should contain the same requirements of form and content as those considered in connection with the unlimited partnership (*please refer to the related paragraph*). In addition to these, there is the requirement that it should clearly indicate which are the unlimited partners and which the limited partners.
The deed of partnership of the s.a.s. too is liable to be entered in the Register of Companies, but failure to effect such registration implies only the irregularity of the partnership, to which different rules will be applied, less favourable for the partners and already described when considering the unlimited partnership, once more in connection with the same requirements of publicity and safeguarding of third parties extraneous to the company which were highlighted when dealing with the unlimited partnership.
In any case the limitation of liability of the limited partners who have not participated in any way in the company operations, continues to apply.
As for the assets which may be conferred in the limited partnership, please refer to the unlimited partnership and the ordinary partnership.
As to whether the limited partner may be a working partner, you should consult the notary public.
By stipulation of the partnership contract, the contracting parties assume the capacity of partners, as a result of which a partner receives the powers, rights and obligations explicitly foreseen by the law, which are different in the case of an unlimited or of a limited partner.

The unlimited partners
By law all unlimited partners are directors of the s.a.s..
However, the deed of partnership may entrust the administration to one or some of the unlimited partners, excluding the others from the administration.
Directors who are unlimited partners are governed by the same rules as those laid down for s.n.c. directors
Their liability is identical to that of partners in an s.n.c., and is accordingly unlimited and joint, with the benefit of preventive excussion of the corporate assets.

The limited partners
Limited partners are excluded, in principle, from administration of the company.

However, they may negotiate or conclude individual deals on behalf of the company, providing they have received a specific proxy or authorisation empowering them to do so.
Each limited partner is responsible for the corporate obligations, limitedly to the conferment made to the company. Accordingly he/she does not assume any further risks, except that of losing the value of the capital conferred.
However he/she loses the benefit of limitation of such liability when he/she violates the prohibition of interfering in the administration and when he/she allows his/her name to be incorporated in the business name of the company.
What is meant by prohibition of the limited partner from interfering?
Generally the limited partner is without any autonomous decision-making power as regards the company administration.
Accordingly, in general, he/she cannot carry out acts of internal administration, or acts of representation, under pain of losing his/her limited liability with the possibility in certain cases of incurring bankruptcy.
However, it is possible that the limited partner may represent the company on the basis of a special proxy for individual deals or carry out given acts under the direction of the unlimited partners.

Administration and legal representation of the company
The rules applying to the limited partnership are in many ways similar to those for the ordinary partnership. (*Please refer to the related paragraph).*
However in an s.a.s. only an unlimited partner can be a director and legal representative.

Modifications in the partnership contract in the course of the company's existence
The rules applying to the limited partnership are similar from many points of view to those for the ordinary partnership. *(Thus we refer the reader to the relative paragraph).*
In addition, as regards the subjective modification consequent on transfer of the capital share, a distinction should be made between the unlimited partner's share and that of the limited partner.
Take the case in which one of the unlimited partners should intend to transfer his/her own share of corporate holding. The transfer by a deed between living persons may undoubtedly take place; however, unless the deed of partnership makes come other provision, it will be necessary to obtain the agreement of all the other partners, both unlimited and limited. For transmission of the capital share as a result of death, agreement of the heirs will likewise be required (*please refer to the unlimited partnership and ordinary partnership*).
And no, instead, let us take the case in which one of the limited partners should intend to transfer his/her share of corporate holding. The transfer by deed between living persons can undoubtedly take place; however, unless the memorandum of association makes some other provision, it will be necessary to obtain the agreement of the partners (both limited and unlimited) representing the majority of the capital stock. Whereas transfer of the capital share as a result of death does not require the agreement of the surviving partners.
However, it is possible to draw up clauses which foresee different rules: in this case too consultation with your notary public will prove extremely useful, above all on account of the implications regarding succession connected with such clauses.

Dissolution of the company relationship with the individual partner: causes and liquidation of the capital share

The rules applying to the limited partnership are similar from many points of view to those for an ordinary partnership. Thus we refer the reader to the relative paragraph.
However it is underlined that death of the limited partner does not imply dissolution of the corporate relationship falling on the partner, since such a share, as stated, is transmitted as a result of death, save specific clauses in the deed of partnership introducing some other arrangement.

Causes determining dissolution of the s.a.s.

In general the dissolution and winding up of the s.a.s. is regulated by the rules laid down for the unlimited partnership, to which the reader is referred to the related paragraph.
However, besides the causes of dissolution in common with the s.n.c., one in particular is added, which is foreseen exclusively for the s.a.s., namely: the discontinuance of one category of partners.
In fact, it is foreseen that the s.a.s. is dissolved when only limited partners or only unlimited partners remain unless, within the time limit of six months, steps are taken to arrange for replacement of the missing category.
During this period of six months, granted in order to reconstitute the twofold category of partners, the activity of the company continues normally if only limited partners are missing. Whereas if, instead, no unlimited partners are left, the limited partners must appoint a provisional director (who may even be a limited partner), whose powers are limited by law to carrying out the acts of ordinary administration.
You are reminded that, as regards the questions and problems not explicitly dealt with here, you should consult the unlimited partnership and, consequently, since the rules laid down for ordinary partnerships are applied to the latter, by explicit legislative referral, so also are the questions dealt with in relation to this type of company.

Joint-stock companies in general

Joint stock companies may be of three types: companies limited by shares (s.p.a.), limited liability companies s.r.l.) and limited partnerships (s.a.p.a.).
These consist of organisations of persons and means for carrying out a productive activity in common, endowed with full autonomy of worth. This means that the company alone answers for the corporate obligations with its social worth.
Accordingly a partner enjoys liability limited to the capital conferred, without assuming any personal liability, not even subsidiary, for the corporate obligations (with the exception of the unlimited partners of the limited partnership who, on the other hand, answer unlimitedly and jointly for the corporate obligations).
In order to offset this benefit of limited liability, the legislator has foreseen that the partner of a joint-stock company does not have direct power of administration and control of the company, but can only contribute to the latter by means of his vote expressed in the meeting for the appointment of directors and auditors (in conformation of this principle, the law assigns the capacity of regular directors with unlimited liability to the unlimited partners in an limited partnership).
In fact, the functioning of the joint-stock company is of corporative type, that is, it is based on the necessary presence of three organs: the meeting, with competence limited

to decisions of major importance for the corporate body, the directors, to whom the running of the company and the implementation of the social purpose are referred, and the auditors, as organ of control and surveillance of the activity of the directors.
The weight of a partner in the meeting is determined by the capital share underwritten, since the assembly is governed by the majority principle according to capital. However, in the rules of the *collegium* both the requirements of weighting of decisions, and of rapidity in the adoption of suitable resolutions to protect absent or disagreeing partners, are safeguarded
The partner's investment is then represented by shares (in the s.p.a. and in the s.a.p.a.) or quotas (in the s.r.l.), which determine the extent of the partner's rights of participation and are destined to be circulated and thus, to varying degrees, are easily transferable.
Choice of one or the other type of company must be verified in the light of the concrete requirements of the enterprise which is to function in company form, the presumed volume of business, the entity of the social purpose and the running costs.
You are advised to consult your notary public, who will explain in detail the differences in the rules applying to the s.p.a., the s.r.l. and the s.a.p.a., with a view to arriving at a wise solution suitable for your specific activity.

The new company law.
At the beginning of 2003 the Italian legislator issued a legislative decree reforming profoundly the system of joint-stock companies. The declared aim consisted of simplifying, where appropriate, and enriching wherever possible, the rules governing such bodies, with a view to increasing their competitiveness on both domestic and international markets.
Many changes were made, and as a result, we are now faced with a better, though still not complete, co-ordination between the rules governing companies that are quoted or not quoted (with explicit references also to the category of joint-stock companies limited by shares with shares spread widely mainly among the public); with an increased perfecting of the instruments for the protection of minorities; and accordingly, more in general, as regards limited liability companies, with clear favour given to the will of private individuals, granting them powers of regulation of their own interests not envisaged in any way until now.
The new law was to take effect as from 1 January 2004, even if the legislator has specially foreseen a system of rules (not always clear) for regulation of the transitory phase.

Companies limited by shares
From the historic and normative point of view, the company limited by shares constitutes the prototype of joint-stock companies, whose analytical discipline may also be applied to the partnership limited by shares and to the limited liability company. Compared to these types of company the s.p.a. is differentiated by the simultaneous presence of two particular elements, that is the limited liability of all the partners, which distinguishes it from the s.a.p.a., in which the components of the administrative organ (unlimited partners) are answerable jointly and unlimitedly for the obligations arising in the period in which they held such office, as well as the division of the capital into shares, which instead distinguish it from the s.r.l., in which the quotas of participation cannot be represented by shares.
The legislation in place as from 1 January 2004 has introduced (or, in certain cases, merely organised better) certain differentiations between what are termed open

companies, which have recourse to the risk capital market, closed companies, which have no such recourse, and quoted companies, whose shares are in fact quoted on regulated markets. One important difference lies in the system of book-keeping control, which in closed companies may be entrusted to an accountant auditor or to the auditing board itself; whereas in open companies an external auditing company is required.
Shares are quotas of participation freely transferable and normally represented by documents circulating according to the rules governing paper credits, even if the issuing of shares is normal but not essential, since the law permits the company limited by shares not to issue shares, replacing these with entry in the register of shareholders; in companies quoted on the stock exchange shares may no longer be represented by paper documents, but by ordinary book-keeping records, known as "book entry shares" or "dematerialised shares". In certain circumstances the company limited by shares may also issue financial instruments implying peculiar rights.
The minimum initial capital of the company limited by shares should be not less than one hundred and twenty thousand euro (save the raising of this legal minimum for certain companies in relation to the nature, size and repercussions on the market of the activity which the company proposes to carry out). It is no longer necessary for participation in the company's capital to correspond to capital contributions of each member: but for example the partners may freely decide to "reward" with a larger holding a fellow partner whose participation is considered to be strategic.
However, in general, no further prescription is foreseen in view of the activity to be carried out (what is known as the corporate purpose), besides that whereby the company limited by shares is set up with a capital of at least one hundred and twenty thousand euro, of which a quarter of the assets conferred must have been in money: or all of them, when the company has been set up by a single person.
In the past, it was quite a common practice to set up companies limited by shares having standardised by-laws, entrusting implementation of the entrepreneurial programmes agreed on between the partners to what were called the "para-social pacts", consecrated in separate agreements. This practice is now due to be drastically revised: the para-social pacts now have a maximum duration of five years and, if concluded for a longer time, each participant may is free to withdraw from them, on notice to such effect. Thus partners intending to reach solid agreements with one another, lasting in time, nowadays have no concrete alternative to the adoption of company by-laws drafted according to their specific requirements when it comes to stipulation of the relative acts or minutes with a notary public.

We suggest that you consult your notary public for further details and in order to assess any further limits of the law to setting up a company limited by shares or to its social purpose, liable to undermine the concrete operation which it proposes to carry out.

How a company limited by shares is set up

The company limited by shares must be set up by public deed, which should indicate the parties to the partnership contract, who may not only be physical persons, but also juridical persons (for example, other companies limited by shares, or partnerships or even co-operatives).
The memorandum of association should also identify the company's head office, which is the place where the corporate activity is carried out, as well as the firm's name, that is the name of the joint-stock company, but unlike the latter, the name need not necessarily contain any indication of the name of one of the partners, since the only

thing that is indispensable is specification of the form: “company limited by shares” or “s.p.a.”.
However, there are certain limits to statutory autonomy in choice of the firm’s name, which cannot be in contrast with the prohibitions sanctioned by the law; thus use cannot be made of terms such as “co-operative”, if the company does not have a mutualistic purpose, or “bank”, “credit”, or “saving”, utilisation of which is reserved to credit institutions.
Then there are certain limits implicit in the system regarding choice of the firm’s name, insofar as they must not be contrary to public order or decency or to respect of the rights of third parties.
The economic activity which the company proposes to carry out integrates a further element of the memorandum of association, that is the corporate purpose, which may consist of a commercial or an agricultural activity, however in any case of economic, and accordingly not of charitable or cultural nature or for the purpose of mere utilisation, in which cases there would be an overflow into the discipline of associations or of communion.
The corporate purpose emerging from the memorandum of association of companies limited by shares must imply a certain degree of precision, in the logics of a system which sanctions the relative impossibility for third parties to oppugn acts extraneous to the corporate purpose carried out by the directors in the name of the company.
In addition, the company limited by shares must be endowed with an initial capital stock, the minimum amount of which is laid down by the law at one hundred and twenty thousand euro, with the specification that for certain companies special legislation establishes higher minimum entities, in relation to the peculiarity of the activity carried out (this is the case, for example, of companies offering intermediation on movables, or banking or finance companies).
Another requirement of the memorandum of association is the appointment of the first directors, identified on a nominative basis, singling out those entrusted with representation of the company. In case the memorandum of association omits to give indication of the subjects entrusted with such representation, it is considered that this falls jointly on all the directors, since dealing with a collegial organ and that it extends to all the acts encompassed by the corporate purpose. The memorandum of association may indicate either a fixed or a variable number of directors, in which case it will be up to the ordinary meeting to establish on each separate occasion, in accordance with the company’s particular requirements, what concretely should be the number of members of the administrative organ.
Finally, the law prescribes indication of the duration of the company limited by shares, which may be prorogated prior to expiry by resolution of the extraordinary meeting; the company may also have an indefinite duration, in which case the partners have the right of withdrawal.
The initial capital stock consists of the assets conferred by the partners which, as a rule, should consist of money, save if the memorandum of association foresees contributions to capital other than in money, whose corresponding shares should be integrally released at the time of underwriting.
Unlike what happens for partnerships and with limited liability, not all economic entities may be conferred in companies limited by shares, since prohibition of the conferment of work or services is explicitly sanctioned , in the light of a conception of capital stock aimed at the achievement of the corporate purpose and of guarantist type, which would make it obligatory to confer on the company exclusively assets suitable for constituting a guarantee for the company’s creditors.

Accordingly work or services can be exclusively the object of accessory contributions, distinct from the conferment of assets and not attributable to capital.

The shareholders' meeting

The functioning of the joint-stock company, in its traditional model, is based on the necessary contemporaneous presence of three organs: the shareholders' meeting, the administrative organ and the control organ (the auditing board), having distinct spheres of competence.

The meeting, which is a sovereign organ since it is competent to decide on the supreme acts of government of the company, may deliberate in its ordinary or extraordinary versions, with different constitutive and deliberative quorums and different procedures of reporting, depending on the specific subject to be dealt with.

In fact, the ordinary meeting has competence of a general nature since it may deliberate on all the subjects that the law does not reserve to the competence of the extraordinary meeting. Instead, the competence of the extraordinary meeting is determined by art. 2365 of the Civil Code with an obligatory listing of the subjects (which concern: modifications to the memorandum of association, the issuing of bonds and the appointment and powers of the liquidators), while the listing of the subjects given in art. 2364 of the Civil Code for the ordinary meeting should be considered as indicative only, needing to be filled out by other rules.

Finally, the memorandum of association may empower the meeting to deliberate on given acts of management, but cannot attribute to the latter the whole of the company's management, since the running of the corporate enterprise is reserved exclusively to the administrative organ.

However, as mentioned, the legislation in force as from 1 January 2004 foresees other models of administration. Adoption of what is called the dualist model (of German derivation) also has a considerable influence on the powers of the meeting. In fact this elects a Board of surveillance, which assumes certain of the most important functions habitually referred directly to the meeting: election of the business managers (the management board) and approval of the company's accounts.

Administration of the company

On the basis of the norms in force as from 1 January 2004, the administration of companies limited by shares may be organised according to three separate models: the traditional one, the monistic one (of Anglo-Saxon origin) and the dualistic one (of German origin).

In the traditional model, the directors have the task of running the company, and are accordingly provided with the power of promoting the deliberative activity of the meeting (power of initiative), of making the partners' decisions executive (executive power), of resolving on the acts of management of the corporate enterprise (power of management in the strict sense) and of expressing the corporate will outside of the company, acting in the name and on behalf of the company (power of representation).

The management competence attributed to the directors is of a general nature and comprises all acts necessary for achievement of the corporate purpose, which are not explicitly reserved to the competence of other organs by the law or by the memorandum of association.

A limit to the wide power thus attributed to the directors is pinpointed in the targeting of their activity to pursuance of the corporate interest, quite apart from any distinction between acts of ordinary and extraordinary administration.

In fact, the distinction between acts of ordinary and of extraordinary administration has no reason to exist when referred to the company's activity, aimed at the production of an income and not at the conservation of the social worth, accordingly it should always be considered an activity of extraordinary administration: what counts is the pertinence of the act to the corporate purpose and not its economic importance.
By virtue of the duties of diligence and correctness in the management of a corporate enterprise, it is further considered that the directors have the duty of submitting to the meeting any decisions relative to operations implying major changes in the structure of the enterprise itself, thus affecting the rights of participation and the economic interests of the partners .
One or more persons may be put in charge of the administrative organ: in both cases the administrative organ is unitary and, if there are several directors, these belong to a collegial organ (board of directors) which chooses a chairman from among its members, if the latter has not already been appointed by the meeting or by the memorandum of association. The number of members of the board of directors is laid down in the memorandum of association, which however may merely indicate a minimum and a maximum number of directors.
In this case, it is up to the ordinary meeting to determine concretely the number of directors and the choice of giving the company a sole director or several directors, save if the by-laws already specify this point.
If then the board of directors of a joint-stock company is composed of two members, resolutions are adopted unanimously.
A peculiar figure is the chairman of the board of directors, who has the typical function of chairing the collegial organ and thus directing board meetings, convening the board, checking that the secretary has drawn up the minutes of meetings and of resolutions in the book for such purpose. At times the Chairman has management competences, in such a case cumulating the role of chairman with that of managing director.
So much for the traditional system. Whereas in the dualistic system, management competencies are entrusted to a management board, elected by the board of surveillance, which in turn is elected by the meeting. In the monistic system, the rules governing the administration undergo no major changes: rather it is the system of control which is importantly affected.

The Auditing Board

The board of auditors is the control organ of companies limited by shares having the task of controlling the company's administration and of seeing that the law and the memorandum of association are observed. Directors who prevent or hinder such control are liable to the penal sanctions foreseen by art. 2623, no. 3.
Purely accountancy control is by now exercised only exceptionally by the Board of Auditors: only in closed companies, that is, which do not have recourse to the risk capital market, and only if the by-laws foresee this. In all other cases, this function falls on an accountant auditor or on an auditing company.
Control by the board is of a general nature and is extended to any act of administration, including those undertaken by the individual directors, by the managing directors and the general managers. Verification of observance of the law and of the memorandum of association also encompasses the work of the meeting and consists of the obligation for the auditors to impugn any resolutions which are not valid, and to act in place of the meeting in case of obligatory reduction of the capital due to losses, as well as in case of the constitution or raising of capital as a result of appraisal of the assets in kind conferred.

The implications of the control activity exercised by the auditors affects not only the checking of purely formal data, but also the substance of administration, however with the exclusion of appraisal of the merits of management, which would imply an invasion of the sphere of competence reserved to the directors.
The law still attributes to the board of auditors certain specific competencies in the field of book-keeping, as well as a series of powers and duties which do not consist directly of the exercising of control, but integrate activities substitutive of the duties of the directors or the meeting, that is, functions of active administration (limited to the carrying out of acts ordinary administration), or, further, to tasks of a consultative nature (the formulation of obligatory, preventive, non-binding opinions).

Modifications of the partnership contract in the course of the company's existence
Modifications of the memorandum of association of a company limited by shares encompass the following: the suppression or modification, including purely formal, of clauses contained in the memorandum of association or the introduction into the memorandum of association of new clauses, making a distinction between modifications "in the strict sense", which have no limit other than their correctness and good faith, and modifications "in a broad sense", namely which concern elements that, although included in the memorandum of constitution document, are not included in the partnership contract (for example, modification of the persons of directors and auditors).
Modifications of the memorandum of association "in a strict sense", also including those concerning the by-laws alone, must be resolved on a majority basis by the extraordinary meeting, with minutes drawn up by a notary public.
Whereas for modifications of the memorandum of association "in a broad sense" no resolution needs to be taken by the extraordinary meeting (take the examples of those decisions adopted unanimously and without observance of the method adopted by meetings, prior to entering the partnership contract in the register of companies, that is to say, modifications of a subjective type, such as withdrawal of a partner).
The majority rule is considered unexceptionable by prevalent jurisprudence, which considers invalid any clause in the by-laws requiring unanimity of agreement for every change in the memorandum of association.
The procedure for modification of the memorandum of association is grouped essentially around three moments: certification of the will of the meeting by a Notary public, notarial or judiciary control for homologation purposes , and publicity.
In fact the law prescribes that the notary public who has recorded the resolution of the meeting, within thirty days, after verifying fulfilment of the conditions laid down by the law, requests its entering in the register of companies kept by the Chamber of Commerce of the place where the company has its head office.
The office of the register of companies, after verifying the formal regularity of documentation, records the resolution in the register. If the notary public considers that the conditions laid down by the law have not been met, he notifies accordingly the directors, who may appeal to the court with a view to obtaining the aforesaid entry of the resolution in the register of companies.
The most important modifications to the memorandum of association concern operations on the capital stock (increase of payment capital, by the issuing of new shares to be offered as an option to the partners and thereafter, in the case of failure to subscribe by the latter within the time limit laid down, to third parties, what is known as the free increase of capital, ascribing to capital the available part of reserves and of special funds included in the company's accounts, reduction of capital due to losses and

reduction of capital as a result of dispersion compared to the social object), in other words, the structures, organisation and juridical capacity of the company (transformation, merger and demerger).
In view of the technical complexity of these operations and the gravity of the consequences of a solution which is not correctly conceived, we advise you to refer to your notary public, who will provide you with all the necessary explanations.

Dissolution of the company
With the norms in place as from 1 January 2004, dissolution of the joint-stock company has seen a renewal of the rules governing it.
The causes of dissolution consist of expiry of the term of duration, achievement of the corporate purpose or the ascertained impossibility of achieving it, in view of the impossibility of functioning, or the continued inactivity of the meeting, the reduction of capital to below the legal minimum, save if the company resolves to reconstitute it or to change itself into some other type compatible with the entity of its capital, resolution by the meeting, and other causes foreseen by the memorandum of association and, finally, certain quite peculiar hypotheses connected with withdrawal of the partners.
When such events occur, the legal consequence is dissolution, which has the effect of placing the company in a state of liquidation, quite independent of the subsequent ascertaining of the cause of dissolution and of any further acts. In joint-stock companies the procedure of winding up is unexceptionable, even in the case of there being no assets or liabilities to be liquidated. Those directors who continue the corporate activity by ignoring the requirements of the law expose themselves to very serious liabilities.
Ask the notary public what acts should be envisaged in order for the company to cease to exist in the correct way, also so as to avoid incurring liability towards third parties.

Partnership limited by shares
The partnership limited by shares is a modified company limited by shares in which the power of management falls to the permanent directors whose pre-eminent position also implies unlimited, even if subsidiary, liability for the corporate obligations.
The peculiar characteristic of this type of company consists in the co-existence of two different groups of shareholders: the limited partners, excluded from the administration and liable only to the extent of their own conferment, and the unlimited partners, who are regular directors and thus personally and unlimitedly liable.
According to the legislator's initial intention, this type of company was foreseen for individual enterprises undergoing restructuring and extension of the individual enterprises, thus enabling the founder to resort to the financing of risk capital, while at the same time maintaining management of the enterprise.
However, in economic practice, the partnership limited by shares, has never been very widely used, except perhaps in the period of the 1980s and 1990s when the S.a.p.a. Giovanni Agnelli & Co. was set up in the framework of the financial restructuring of the FIAT group, in which the shares of the IFI holding were conferred, for the precise purpose of binding the partners in the command group to the pursuance of common strategies. And also in other limited cases the partnership limited by shares has been used as a "family safe".
In any case, it should be underlined that recourse to this type of company has been limited to particular sectors, with an alternative use to what the legislator had foreseen, since the requirement of extension of the entrepreneurial activity, together with the guarantee of being able to maintain its management, has in fact been ensured by the

creation of companies limited by shares with a preconstituted majority, that is to say, made foolproof against trade union votes and bloc positions.
In fact the entrepreneur finds it more congenial to maintain the benefit of limited liability, even if this implies an only indirect influence over administrative strategies.
The ground rules of the partnership limited by shares are similar from many points of view to those of the company limited by shares; accordingly the reader is referred to the files relative to:

Constitution
(please refer to the related paragraph)

Shareholders' meeting
(please refer to the related paragraph)

Administration of the company
(please refer to the related paragraph)

The Board of Auditors
(please refer to the related paragraph)

Modifications to the partnership contract in the course of the company's existence
(please refer to the related paragraph)

Dissolution of the company
(please refer to the related paragraph)

The new company law.
It would seem that the reform has not affected this type of company, since only minimal modifications have been introduced to the letter of the previous law. Besides, it should be recalled that the rules governing the s.a.p.a. are borrowed, since compatible, from those applying to the s.p.a. Accordingly, in principle, it should be possible to apply the novelties introduced to the rules governing companies limited by shares, to which reference was made heretofore, also to limited partnerships, providing they are considered as meeting the aforesaid criteria of compatibility. In fact there would seem to be no doubt that the dualistic system of administration and control could also be adopted for the partnership limited by shares. And, among the various innovations, mention could in any case be made of the norms regarding para-social pacts, shares and financial instruments, auditing of book-keeping, and assets and financing earmarked for a specific business.

The limited liability company
The limited liability company is intended for smaller companies than the companies limited by shares, and participation in the company is marked by a personalistic profile which is absent in the s.p.a. In fact, the company team as a rule consists of a small number of partners, who are not personally liable for the corporate obligations, even if they have acted in the name and on behalf of the company.
The legislation in place as from 1 January 2004 has affected in a particularly innovative way the limited liability company, which today represents an extremely flexible pattern, which the partners can model in pursuance of their specific objectives.

There is great liberty in determining contributions to capital, while it is also possible to establish the quotas of participation in the company in a way which is not proportional to the assets conferred. As soon as the implementing provisions have been adopted, payments in money can be replaced by a simple guaranty. As for contributions in kind, it is no longer necessary for the expert estimator to be appointed by the Judiciary Authority.
It is possible to restrict transferability of quotas to the extent even of foreseeing its prohibition, but in such case each partner is entitled to withdraw from the company, obtaining reimbursement of his/her quota.
Extreme flexibility likewise marks the rules governing administration: it will be possible, as in the past, to have a Sole Director or else a Board of Directors, but now also forms of joint administration (where precisely the directors have to act jointly) or else separate (where each director can work on his/her own). It is also possible to foresee that a partner has special personal rights of administration.
As in the past, the Board of Auditors is obligatory only for the limited liability companies of a certain size, assessed on the basis of a series of parameters laid down by the law.
Except for certain resolutions of particular importance, it is no longer obligatory to have even the Meeting: the By-laws may foresee alternative methods for arriving at decisions.
Lastly, the limited liability company may issue debt securities: these are comparable to bonds (which remain the prerogative of companies limited by shares and partnerships limited by shares). However, unlike bonds, these securities may be underwritten only by professional investors.
This increased flexibility of the limited liability company model means that it is possible, when it comes to drafting the By-laws, to meet the specific requirements of the partners and regulate relations between them in a much more stable and legally binding way than could be done on the basis of separate agreements, the so-called para-social pacts.
Your notary public, who is a specialist in this sector, will be pleased to offer you any necessary advice .

Co-operative societies and consortiums

Co-operatives are bodies which are protected at constitutional level: in fact art. 45 of the Italian Constitution declares that “the Constitution recognises the social function of co-operation, which is in the nature of mutualism and without goals of private speculation”.
In co-operatives predominant importance is ascribed to the social function, which consists in the implementation of a democratic decentralisation of the power of organisation and management of production and, at the same time, in the greater and fairer spreading of the useful result of production itself.
On the basis of the constitutional norm laid down in art. 45, a legislation of support to co-operatives has grown up (what is known as the Basevi act, legislative decree of the Head of State and President no. 1577 of 14.12.1947; see the reform introduced by act no. 59 dated 31.1.1992.
In general, co-operatives pursue a mutualistic goal, and not the profit-making goal denoting joint stock companies. The mutualistic goal consists in the management of a service in favour of the partners, who are the elective, but not exclusive, recipients of the goods and services made available by the co-operative, under more favourable

conditions than those of the market, as a result of the elimination, in the production and distribution process, of the intermediation of other entrepreneurs.
The partners in a co-operative must belong to a given category and have a particular identity and affinity of interests. They are the recipients of what is termed the mutualistic advantage, which is characterised by two essential elements: the making available to partners of goods or services by the co-operative and the economic advantage, in the form of saving in expenditure or increase in remuneration, that the partner achieves by benefiting from the services of companies practising normal terms of trade.
In fact, a twofold order of relations is established between co-operative society and partner: the corporate relationship, which consists of participation in the organisation in common, and various multiple relations of exchange, separate from the corporate relationship.
If follows that the partners are the recipients, not only of a delimited percentage of profits, but also of refunds, consisting of sums of money periodically distributed by the co-operative in proportion not to the capital invested, but to the quantity of exchanges of services that have taken place between the partner and the co-operative over a certain period of time.
The running of a commercial enterprise is not irreconcilable with the mutualistic aim of the co-operative society, which can accordingly operate also with third parties, carrying out in this way a profit-making commercial activity, in spite of the mutualistic purpose pursued on the basis of its statutory provisions.
In fact the mutalistic aim, may have different gradations, consisting either of pure mutualism, characterised by the absolute absence of any profit-making purpose, or else of spurious mutualism, which permits the enterprise to be operative, not only with its partners, but also with third parties for profit-making.
However achievement of the mutualistic aim is in any case ensured by foreseeing in the by-laws a percentage limit to the distribution of profits and by the obligation of assigning at least one fifth of the net annual profits to legal reserve, whatever the amount already attained by this.
You should consult a notary public who will introduce you to the peculiar nature of the rules governing co-operatives, deriving from a combination of the norms of the Civil Code, of the Constitution and of special legislation, and who will be pleased to explain further the conditions for obtaining any the special tax concessions available.

New company law.
On the subject of co-operatives too there are many novelties, however among these a special mention should be made of the one which foresees the contraposition of two fundamental categories of this type of corporate body: that is, the co-operative societies of prevalent mutualism, and those without any marked mutualistic connotation. The differences involve both the rules and procedures applicable and the necessary requirements and conditions. In fact the latter appear much more stringent in co-operatives where mutualism is prevalent, however they are offset by greater concessions, of fiscal and other nature.

Consortiums are formed between entrepreneurs with the establishment of a common organisation for the disciplining and carrying out of given phases in the respective enterprises.
The consortiums too are of a mutualistic character, since the consortium's activity should be carried out in the interest of the associated enterprises. The "disciplining" of

given phases in the respective enterprises is the function typical of internal consortiums, and may even have anti-competitive connotations, while the "carrying out" of given phases in the respective enterprises is a typical and exclusive function exclusively of consortiums having an external activity.
Participation in the consortium is reserved to entrepreneurs alone, whether the latter are physical or juridical persons and quite apart from the object, dimensions and juridical structure of the enterprise, accordingly the participation in consortiums of subjects other than entrepreneurs is not allowed, save in cases and to the extent in which derogation is foreseen and permitted by special laws.
The phases of the respective enterprises consist of all the operations (from purchase of the raw materials up to the finished product) into which the entrepreneurial activity can be broken down in the abstract, while at the same time each enterprise has its own identity within the overall organisation.
In consortiums having an external activity, the organisation is destined to carry out an activity with third parties, general implying the creation of an office to which the juridical relations arising refer.
The consortium with external activity has no legal personality, but is an autonomous centre of juridical relations and assumes the responsibility, guaranteed by the consortium fund, for the contracts stipulated in its name, likewise assuming the risk, of extra-contractual nature, deriving from the running of an entrepreneurial activity.
You should refer to your notary public, who will make a point of advising you and indicating the legislative limits and any specially favourable norms for consortiums among entrepreneurs.
The aim of the consortium may also be achieved in the form of commercial companies (unlimited partnership, limited partnership, company limited by shares, partnership limited by shares and limited liability company).
The consortium company is a particular form of consortium liable to very much the same sort of rules as the consortium with external activity, set up for carrying out in common activities with third parties. So that the case in point possesses the character of an organisational company structure coupled with the function of consortium.
What are called mixed consortium companies may also be set up, that is, with the participation also of partners who are not entrepreneurs but whose presence is considered instrumental for the achievement of the consortium's purposes (for sample the "supporter" partners, that is, the associations representing certain entrepreneurial categories).
Ask your notary public to what extent statutory clauses relative to the achievement and distribution of profits between members of the consortium are compatible with the consortium's cause, with a view to structuring a company perfectly in line with your concrete requirements.

The firm

By explicit provision of the law, assignments and leases by a firm may be stipulated only on the basis of notarial act; this measure was introduced in the early 1990s in order to offset the phenomenon of money laundering, which often passed through operations on firms, which at that time were not liable to any form of control.
Such acts first of all meet requirements of a commercial type, however it would be a mistake to underestimate the role that consultation with a notary public can play in such contexts. Above all, for arriving at a balanced compromise between the interests at stake, activity in which the notary public, a figure super partes, has often proved particularly efficacious. Add to this that the particular juridical training of the notary

public makes him/her particularly suited for providing assistance on particular contractual clauses, in such a way as to meet specific requirements, and for advising the parties on the implications which an operation may have on the economic position of the subjects concerned, for example for inheritance purposes.

(from http://www.notariato.it/eng/home.aspx).