

WHICH ARE THE INFORMATION RIGHTS OF A SHAREHOLDER?

In Italian corporations, and in particular in limited liability companies which corporate capital is represented by quotas (in Italy these companies are called *società a responsabilità limitata - S.r.l.*), single shareholders - regardless of the amount of their shareholding in the company or of the fact that they are able or not to designate one or more Directors or one or more Statutory Auditors - have extensive individual powers.

The auditing power, granted to individual shareholders of an *S.r.l.*, is set out in article 2476, 2nd section of the Italian Civil Code which sets forth two rights:

- (1) a right of information on the conduct of the business; and
- (2) a right to consult the company's books as well as administrative documentation (including the accounting documents of the company).

A recent ruling by the Court of Turin dated February 20, 2019 allows to clarify the extent of such auditing rights. In the case at hand, a minority shareholder of an *S.r.l.* that controls another limited liability company (an *S.p.A.*) requested documents and information relating to the *S.p.A.*

The Court of Turin rejected the possibility for the minority shareholder to access the documents and information of the subsidiary directly but upheld the right to request the information to the directors of the *S.r.l.* in which the minority shareholder holds a participation.

Indeed, the directors of a company are obligated to be aware of the most relevant information relating to the business of the subsidiaries of the company in which they hold the directorship. Those same directors must be aware of the main corporate documents of the company's subsidiaries. On the contrary, the information relating to the day-to-day business remains the sole competence of the directors of the subsidiaries and is excluded from the information that a director of the controlling entity must be aware of.

Within such limits, the shareholder of an *S.r.l.* is entitled to, pursuant to article 2476, 2nd section of the Italian Civil Code, request to the directors of the *S.r.l.* - that will be obliged to provide - the information abovementioned, *i.e.* the contents of the subsidiary's main corporate documents and the status of its business.