

The Board of Statutory Auditors

監査役会

*Milano
15 July, 2019*

監査役会 (1/4)

義務と権限

業務監督



監査役会は、その主要業務として日々の事業活動が関連法令及び定款を遵守しているかどうかを監督・監視する役目を担います。少なくとも90日毎にこれらの活動を実施し、また取締役会、執行委員会(任命された場合)および株主総会に出席する義務があります。

マネジメントの業務監査活動には下記が含まれます。

- 法人が関連法令及び定款に遵守できているか、コンプライアンスチェック、監督
- “Good management practice”(グッド・マネジメント・プラクティス)、つまり良好なマネジメントが行われているかチェック、監督
- 法人が採用する組織的、マネジメント、会計システムの効果的な機能とその妥当性のチェック、監督

会計監査



もう一つの監査役会の主要業務として、会計監査があります。

- 財務諸表および取締役会報告書の監査
- 四半期会計監査
- 確定申告書、及びその他の関連申告書への署名

会計監査の作成最終段階において、監査役会は財務諸表が会計基準を十分に満たし、業績について正確かつ公正な報告がなされているか検証を行い、その意見を公表しなければなりません。

その他の義務



以下の事象が発生した場合、監査役会は株主総会を招集する権限が与えられています。

- 取締役により、株主総会が取り下げられた、または不当に繰り延べられた場合
- 違法行為及び重大な事態の発生により、緊急の是正措置導入が必要な場合
- 全ての取締役員が総会に出席しない場合
- 会社の倒産を招くような事態が発生した場合
- 損失により減資が行われた場合、または関連法令で定められた純資産最低額を下回る減資が行われた場合

The Board of Statutory Auditors (1/4)

Duties and powers

Management Control activities



Within this functions, the Board of Statutory Auditors acts like a guardian, monitoring the day-by-day life of the company. It may implement acts of inspection and control (**at least, every 90 days**) and shall attend the meetings of the board of directors, the executive committee, if appointed, and the shareholders.

The **Management Control** activities encompass:

- The control over the company's compliance with the law and the by-laws;
- The respect of the good management practices;
- The adequacy of the organizational, administrative and accounting systems adopted by the company and their effective functioning.

Audit Control activities



When the Board of Statutory Auditors carries out the **Audit Control**, the following activities must be performed:

- Audit of the Financial Statements and the board of directors' report;
- Quarterly audit controls of the company's accounting procedures;
- Signing of the tax returns and other statutory filings.

In this case, the auditors, in finalizing the Audit Control activities, must release an opinion on the Financial Statements, assessing whether it complies with the accounting standards and whether it correctly and truly represents the financial and accounting position of the company.

Other duties



The Board of Statutory Auditors is also entrusted to call the shareholders' meeting when one of the following circumstances occur:

- Omission or unjustified delay by the directors;
- Illegal acts and significantly serious events encountered in carrying out its duties and urgent need to take appropriate measures;
- Vacancy of all directors (or the sole director);
- Occurrence of an event that causes the winding - up of the company;
- Measures to be taken as a consequence of share capital reduction due to accounting losses or capital reduction below the minimum set forth by law.

監査役会 (2/4)

義務と権限 – 監査統制活動と管理統制活動



株式会社(S.p.A.)

一般的に、株式会社 (S.p.A.) の形式としては、会計監査は外部の監査人/監査法人によって行われ、業務監督は監査役会によって行われます。

イタリア民法によれば、連結決算の作成が義務づけられていない法人については、定款により監査役会に会計監査を委任することが可能です。（稀なケース）



有限会社(S.r.l.)

有限会社 (S.r.l.) は会計監査および業務監査について、以下3種類から1つを選択することができます。

- 「従来のアプローチ」：株主は、監査役会（業務監査担当）と外部の監査人または監査法人（会計監査担当）の両方を任命します。
- 「シングル・プロバイダ・アプローチ」：株主は監査役会のみを任命し、業務監査及び会計監査の両方を委任します。（外部の監査人・監査法人に委託しない場合）この監査役会のメンバーの各専門家の専門性は、監査法人よりも限定的なので、中小企業によく採用されています。

注：監査役会が会計監査を担当する場合、必ずイタリア監査役協会に登録されていなければなりません。

- 「限定的アプローチ」：株主は外部の監査人/監査法人に会計監査のみを任命します。企業や外部の組織が業務監査を実行しません。

The Board of Statutory Auditors (2/4)

Duties and powers – the Audit Control activities and Management Control



**Joint stock
company (S.p.A.)**



As a common practice, in the traditional model of S.p.A. entities the **Audit Control** is carried out by an external auditor/audit firm. The **Management Control** is performed by the Board of Statutory Auditors.

According to Italian Civil Code, **for companies that are not obliged to prepare the consolidated Financial Statements**, the by-laws may provide that the Board of Statutory Auditors can be also entrusted with the **Audit Control** activities (less likely scenario).



**Limited liability
company (S.r.l.)**



In S.r.l. entities, the **Audit Control** and **Management Control** can be carried out according to 3 alternative models:

- **"Traditional approach"**: quota-holders appoint both the Board of Statutory Auditor (in charge of the **Management Control**) and an external auditor (in charge of the **Audit Control**);
- **"Single provider approach"**: the quota-holders appoint the Board of Statutory Auditor only, which performs both the **Management** and the **Audit Control**. This model is usually adopted by small companies (as individual professionals appointed as members of the Board of Statutory Auditor usually have lower expertise than an audit firm on audit control);
- **"Limited approach"**: the quota-holders appoint an external auditor/audit firm performing the **Audit Control** only. In other words, no corporate or external body performs the **Management Control**.

In case the Board of Statutory Auditors is encharged of the Audit Control, it must necessarily be composed by auditors enrolled in the Italian Register of Auditors.

監査役会 (3/4)

株式会社 (S.p.A.) と有限会社 (S.r.l.) の比較 – 共通の機能

任命及び解任	<p>最初の監査役会は条例に基づき選任され、その後株主総会により任命されます。</p> <p>監査役の任期: 3年。</p> <p>監査役会は正当な理由で解任されることがあります。取消し判決は、裁判所が監査役会の意見を聴いた後、決定されます。</p>
監査役会の会議および決議	<p>監査役会は少なくとも90日毎に開催されなければなりません。会計年度中に監査役会に二回欠席し、さらに正当な理由が示されなかった場合、その監査役会は役職を失うこととなります。</p> <p>監査役会の会議は、監査役会の過半数の出席で、決議にはその出席者の過半数が必要となります。</p>
責任	<p>監査役会は、職務遂行に要求される専門性と勤勉さをもって成し遂げられなければなりません。</p> <p><u>監査役会が適切に監督を行っている場合には発生しないと考えられる、取締役会の不適切な行動・不作為の損害について、監査役会は連帶的責任を負う義務を有します。</u></p>

The Board of Statutory Auditors (3/4)

Joint stock company (S.p.A.) vs. Limited liability company (S.r.l.) – Common features

Appointment and termination of office	<p>The original Board of Statutory Auditors is appointed by the articles of the association, and subsequently thereafter, the Statutory Auditors are appointed by the shareholders' meeting. The Statutory Auditors serve a 3 year-term of office. The Statutory Auditors may be revoked from role for just cause only. The resolution of revocation must be approved by a court decree after having heard the Statutory Auditors.</p>
Meetings and resolutions of the board of statutory auditors	<p>The Board of Statutory Auditors must meet at least every 90 days. Auditors who, without justified reason, fail to attend 2 meetings of the Board of Auditors during a company financial year, shall forfeit their office. The meetings of the Board of Statutory Auditors are duly constituted with the attendance of the majority of the auditors, and the meeting deliberates with the absolute majority of those presents.</p>
Liability	<p>The Board of Statutory Auditors must fulfill its duties with the professionalism and diligence required by the nature of the office.</p> <p><u>They Statutory Auditors are jointly and severally liable with the directors for actions or omissions of the latter, where damages would not have occurred had the Auditors supervised pursuant to the duties of their office.</u></p>

監査役会 (4/4)

株式会社(S.p.A.) と有限会社(S.r.l.) の比較 – その他の違い

	株式会社(S.p.A.)	有限会社(S.r.l.)
任命の要否	必須	<p>イタリア民法の新しい第2477号によれば、法人が以下に該当する場合、監督機関または監査法人の任命が必須となっています。</p> <ul style="list-style-type: none">➤ 連結財務諸表を作成している➤ 法定監査の実施が義務付けられている➤ 2会計年度連続して以下の1つが該当する場合(当該義務は、3会計年度連続して下記の条件を超えない場合終了します。)<ul style="list-style-type: none">・貸借対照表の総資産: 400万ユーロ (Bilancio di Totale Attivo dello stato patrimoniale)・販売およびサービスからの収益: 400万ユーロ (Bilancio di Recavi delle vendite e delle prestazioni)・会計年度中の平均従業員数: 20人
監査役会の構成員	3名もしくは5名の正監査役と補欠監査役2名で構成されています。	定款に特段の規定がない限り、監査役一名のみで構成されています。中～大企業では、監査役会は3名で構成されます。

The Board of Statutory Auditors (4/4)

Joint stock company (S.p.A.) vs. Limited liability company (S.r.l.) – Other differences

	Joint stock company (S.p.A.)	Limited liability company (S.r.l.)
Mandatory of appointment	Appointment is always mandatory.	<p>According to new art. 2477 of the Italian Civil Code the appointment of a supervisory body or auditor is mandatory if the company:</p> <ul style="list-style-type: none">➤ Prepares consolidated financial statements;➤ Controls a company that is required to carry out a statutory audit;➤ Has exceeded at least 1 of the following limits for 2 consecutive years:<ul style="list-style-type: none">✓ Total balance sheet assets: Euro 4 million;✓ Revenues from sales and services: Euro 4 million;✓ Employees on average during the year: 20 units. <p>This obligation ceases when, for 3 consecutive financial years, none of the above limits is exceeded.</p>
Composition of the Board	3 or 5 standing members + 2 alternate auditors.	Unless the company's by-laws provides otherwise, this corporate body is composed by a single individual (i.e. the «Sole Statutory Auditor»). In medium/large entities, the Board of Statutory Auditors is composed by 3 members.

イタリア民法によると

イタリアの公認会計士令のガイドラインが、監査役会の独立性に影響を及ぼす条件の一つとして財政的自立の欠如であると述べているように、専門家または個人のサービス先である会社の費用が、その受益者である会社やその関連会社の売上高に関与しているかどうかが重要になります。民法第 2399条によると、下記該当者は監査役会に選任することはできず、選任されている場合、その役割から退任しなければなりません。

- a) 無資格、無効、破産の対象、または官公庁からの失格または取締役会やCFOやCEOとして指令を行使できない等の罰を非または決定判決された人。
- b) ①血縁または会社の取締役の4度以内の結婚による配偶者および血縁者、②取締役自身、③または管理会社(controlled company)、支配会社(controlling company)、同じ支配会社管理下会社の取締役の4度以内の結婚による配偶者および血縁者。
- c) 雇用またはコンサルタント契約/関係、あるいは独立性を危うくするような関係がある会社または管理会社、支配会社または同じ支配会社管理下の会社に関連している人。

Art. 2399 of Italian Civil Code - Causes of ineligibility and forfeiture

The above rule set forth by Italian Civil Code has been commented by a guideline issued by the Italian Order of Chartered Accountants, according to which one of the conditions that mostly affects the independence of the member of the Board Statutory Auditors is **the lack of financial independence**, which occurs when **the fees earned by the professional(s) or his(their) firm** towards a given company or its group are material in respect of the firm turnover.

According to art. 2399, the following persons cannot be appointed as members of the Board of Statutory Auditors and, if already appointed, they decay from their role:

- a) those who are in the conditions set forth by article 2382 [i.e. persons who are subject to disqualification, disablement, undergo bankruptcy, or who is sentenced, even if with non-definitive sentence, to a punishment that involves disqualification, even if temporary, from public offices or the incapacity to exercise directive offices];
- b) the spouse and relatives by blood or by marriage within the fourth degree of the directors of the company, the directors themselves, the spouse and relatives by blood or by marriage within the fourth degree of the directors of any controlled company, controlling company or companies controlled by the same controlling company;
- c) those who are linked to the company or to any controlled company or to the controlling company or to the companies controlled by the same controlling company by employment or consultancy agreements/relationship or by any other relationship having financial nature so to compromise their independence.



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