Corporation Law

Prof. Carmelo Massimo De Iuliis

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to provide students with a general understanding of the principles inherent to partnerships, as well as the basics of legal events related to the constitution, functioning and structural changes of corporations.

Through a theoretical approach and the illustration of applicative cases, students will acquire a general understanding of the corporate discipline with adequate confidence, enabling them to frame social phenomena in light of the known rules of Commercial Law, and within the context of their own economics and business studies.

At the end of the course, students will be able to: (a) know and understand the corporate discipline, in particular that of corporations, in order also to apply original ideas in a research context; (b) examine the most relevant legal problems in corporate affairs with appropriate language, conceptual autonomy and a critical approach; (c) integrate knowledge and manage complexity, formulating judgments based on limited information; (d) clearly and unambiguously communicate their conclusions, knowledge and underlying reasons to both specialist and non-specialist interlocutors; and (e) further their studies in Corporate Law and, more generally, in Commercial Law in a largely self-directed and autonomous way.

***COURSE CONTENT***

*Introduction*

– Guiding principles of the reform of the law on companies and cooperative societies.

– Legal classification of companies and societies and the actual situation in practice: companies, societies and corporate groups as vehicles to organise business.

– Equity holdings as an investment.

*Joint stock companies*

– Concept and capital structure.

– Capital and transfers of assets in exchange for equity.

– Contributions other than transfers of assets in exchange for equity.

– Potentially dangerous acquisitions.

– Shares and other forms of equity participation.

– Shares and share capital.

– Types of shares.

– Treasury shares.

– Cross shareholdings.

– Significant shareholdings.

– Subsidiaries and affiliates.

– Singe-member joint stock companies and limited liability companies.

– Assets dedicated to a specific business venture.

*Shareholders' general meetings*

– Concept and proceedings.

– Representation, conflicts of interest and abuses.

– Shareholders' agreements.

– System for setting aside resolutions.

*Management and auditing*

– The traditional system: structure, powers and duties of directors, statutory auditors and accounting auditors.

– The two-tier system: difference in structure and rules compared to the traditional system.

– The single-tier system: difference in structure and rules compared to the traditional and two-tier systems.

– Conflict of interest and directors.

– Actions regarding directors' liability.

– External controls: the courts pursuant to article 2409 of the Civil Code and overview of CONSOB (Italian stock exchange regulator) controls.

*Changes to the bylaws*

– Procedure.

– Right of redemption.

– Capital increases.

– Capital reductions.

*Limited liability companies*

– Concepts and distinguishing features.

– Formation and transfers of assets in exchange for equity.

– Membership interests.

– Members' loans.

– Members' decisions.

– Management and auditing.

– Liability of directors and auditors.

*Corporate groups*

– Concept and overview of the law.

– Groups and the rules governing them in terms of direction and coordination of companies.

– Powers and duties of the group parent.

– Protection of shareholders and creditors of subsidiaries.

*Structural changes*

– Winding-up, transformation, merger and splits.

– Winding-up of joint stock companies.

– Homogeneous and heterogeneous transformations.

– Mergers.

– Splits.

***READING LIST***

G.F. Campobasso, *Diritto Commerciale 2. Diritto delle società,* Utet, Turin, latest edition available.

As a supplement to the aforementioned manual:

C.M. De Iuliis, *Norme e Schemi di Diritto delle Società di Capitali,* fourth edition, Giappichelli Torino, 2020.

N.B.: In view of the continuous legislative developments attendance at lectures is strongly recommended, so as to be able to update what appears in the recommended textbooks with the changes occurred since the last edition. Moreover, students must use a Civil Code updated to 2021. *It is suggested the use of Codice civile* edited by De Nova, Zanichelli, Bologna; or Codice Civile edited by Di Majo, Giuffrè, Milano.

A detailed syllabus and further study material will be available online on the Blackboard platform.

***TEACHING METHOD***

The blended course includes on-site (50%) and off-site (50%) activities. The on-site activities are based on interactive lectures, including the framing and analysis of legal case studies. Off-site activities involve the use of video-lectures (asynchronous) and the discussion of any problems via tutorial webinars and live feed-back (synchronous). The syllabus containing the course's analytical programme will be communicated on Blackboard.

Active participation in webinars, class, and feedback sessions is highly recommended.

***ASSESSMENT METHOD AND CRITERIA***

1. Ongoing assessment

Students who sign up for the ongoing assessment will have to take two ongoing tests and a final test. In particular:

* the ongoing tests, which contribute 50% to the final mark, consist of: (i) a written test to ascertain the student's knowledge of modules 1 and 2, to be carried out individually in person during the lecture indicated on Blackboard; and (ii) a group assignment aimed at assessing students' skills and competences with regard to the contents of modules 3, 4 and 5;
* the final exam, which contributes 50% to the final mark, is to be carried out orally during one of the 3 sessions following the semester in which the course was delivered.

Please also note that:

* if the student passes the test in person, the relative theoretical contents (modules 1 and 2) are excluded from the final exam;
* in the event of absence, a fail or rejection of the mark obtained for the test in person, it is possible to retake the test only once at the sitting of the final exam (during only one of the 3 exam sessions following the semester in which the course was delivered); for the retake, the contents covered in modules 1 and 2 will be examined in written form; if the student passes the retake test, the final exam is carried out in oral form during the same exam session; if the student fails the retake test, they will have to take the exam as a single summative assessment (sub B);
* where the test is carried out remotely, the student must pass it (it is not possible to retake the test for absence or a fail mark); in case of failure, the student must take the exam as a unitary summative assessment (sub B);
* 50% of the final mark is determined by the simple average of the 2 ongoing assessments;
* the final exam can be taken in only one of the three exam sessions (at the student's choice) after the end of the course and must be passed;
* the student cannot refuse the mark obtained in the second online ongoing test (online test) and/or the final exam (50%), if passed, by asking to repeat this exam. In the case of a refusal, the student may take the test in the following exam sessions as a summative assessment;
* vice versa, it is also possible to switch from the ongoing assessment to the summative one, as well as to reject the mark obtained during the summative assessment (retaking the exam in summative mode).

1. Single summative assessment

Oral exam, preceded by a written selection test given on the same day as the oral exam and marked immediately; students that pass the written test may take the oral exam.

***NOTES AND PREREQUISITES***

*Preliminary knowledge*

A basic knowledge of the following legal concepts is required:

*- The businessman*. The general notion of an entrepreneur: difference between a commercial entrepreneur and an agricultural entrepreneur. Ability and enterprise. Individual enterprise and collective enterprise. The small business owner. Imputation of business activity. Start and termination of a business. Commercial representation. The business and the company. Distinctive signs of the company. Competition between companies.

The aforementioned topics can be further studied in G.F. Campobasso, *Diritto Commerciale 1. Diritto dell’impresa*, Utet, Turin, latest available edition.

*- Companies*. Collective business operation: companies. Concept of the company. Types of companies.

*- The sole proprietorship, general partnerships and limited liability companies*. Establishing a company. Asset management. Social activity. Dissolution of the sole company relationship. Dissolution of the company.

The aforementioned legal institutes may be further studied in G.F. Campobasso, *Diritto Commerciale 2. Diritto delle società*, Turin, Utet, latest available edition, from Chapter 1 to Chapter 3.

In case the current Covid-19 health emergency does not allow frontal teaching, remote teaching will be carried out following procedures that will be promptly notified to students.

Further information can be found on the lecturer's webpage at http://docenti.unicatt.it/web/searchByName.do?language=ENG, or on the Faculty notice board.