

## Exiting perpetual LLC

Andersen Tax & Legal in Italy examines in depth the accurate analysis of the so-called *ad nutum* withdrawal of a partner of LLC given by the Court of Bologna in the ruling of 18 March 2019.

Starting with general terms, the Court observes that withdrawal is a right with potestative nature, consisting in the power to unilaterally dissolve from a plurilateral legal relationship, in the presence of certain conditions. In a corporate context, with particular reference to the regulation of limited liability companies, the institution is disciplined by Article 2473 of the Italian Civil Code. This provision gives the shareholder the right to be reimbursed in certain cases.

The analysis of those cases reveals that the institution in question mainly performs a function of protection of the individual shareholder, who is given the right to exit the company so as not to suffer the effects of certain decisions adopted by the majority without its consent. From another point of view, the Court points out how the institution of withdrawal, considering the serious consequences for the company following the exit of a shareholder, carries out also a “dialectical” function within the company’s internal dynamics, so the right of withdrawal represents a tool offered to the dissenting shareholder to induce the majority to better weigh their decisions.

In order to make the institution of withdrawal properly work, the Legislator has provided for a complex procedure of liquidation of the quota of the exiting shareholder. First, the value of the quota is to be determined by the shareholders, or by an expert appointed by the court, taking into account the company's assets and the market value of the quota. Secondly, the provision states that the reimbursement must be made within 180 days from the date of receipt of the communication by the company, unless the company decides to revoke the resolution legitimizing the withdrawal, or the shareholders decide to dissolve the entity, thus depriving the withdrawal of effectiveness.

However, the Italian Civil Code does not identify the moment of effectiveness of the exit and its consequent effects, without prejudice to the problem of the *status socii* following the declaration of withdrawal and the rights of exiting shareholder before the reimbursement of its quota.

On this point, the consolidated orientation of the jurisprudence on the merits and legitimacy argues that the right of withdrawal should be qualified as a unilateral act effective from the receipt of the communication, with the consequent loss of the quality of shareholder and all rights arising from this quality, from the moment when the relevant communication reaches the company.

According to interpretation given in the ruling of the Court of Bologna, without prejudice to the above considerations, it should be taken into account that, unlike the other cases of withdrawal provided by law, in case of withdrawal *ad nutum* from a perpetual LLC, there is no decision with respect to which a shareholder intends to react by exiting the company, inducing the majority to reconsider its positions. In fact, Article 2473, paragraph 2, of the Italian Civil Code provides that, in case of a company established for an indefinite period, each shareholder has the right to withdraw from the company at any time, giving at least 180 days' notice, a period that the Articles of Association may extend up to one year. So, with the withdrawal *ad nutum*, the Legislator intends to grant to each of the shareholders of perpetual LLC the right to exit the company.

Hence, in case of *ad nutum* withdrawal, the period of 180 days for the reimbursement of the quota starts not from the date of receipt of the notice of withdrawal, but from the moment in which it becomes effective, i.e. from the moment of expiration of the of the 180 days' notice period (or the longest period established in the Articles of Association). The period of notice permits the company to have time necessary to find the resources needed to pay the quota of the exiting shareholder. In the meantime, during the period of notice the exiting shareholder keeps running the business risk and participates fully in the life of the company and all its consequences until the time when withdrawal produces its effects.