

In accordance with article 2364 *bis* c.c., in the companies provided with a supervisory board, the ordinary meeting:

- 1) appoints and removes the members of the supervisory board;
- 2) establishes the sum which is due to them as a fee, if it isn't laid down by the statute;
- 3) discusses and decides what is the liability of the members of the supervisory board;
- 4) discusses and decides on the distribution of the net profit;
- 5) appoints the auditor.

Only the appointment of the members of the board of directors appears to be an imperative function assigned by law to the supervisory board. If the regulation doesn't provide for any such ouster about the appointment of the managing directors, then it is plain that any other different regulation with regard to this isn't allowed. Two comments support that: the original wording of the rule kept the different statutory provision, for the supervisory board to appoint the managing directors of the company, but it was deleted in the final drawing up. When the legislator wants to allow such ousters, he does it explicitly, as in the case of the European Cooperative Society (SCE), where the meeting is allowed to appoint them, and that happens by means of a special statutory provision (article 39²).

Right in reference to the ordinary competence of the General Meeting it is not to be deduced whether it is a peremptory list or not; there is not a provision to coordinate all those rules which generally relate to the meeting, without relating to a precise governance model. On the issue some scholars tend to strict construction, under which the list in article 2364 *bis* c.c. is seen as closed, others tend to flexible interpretation, under which the above-mentioned functions are conferred to the meeting, but all scholars tend to agree about the approval by the shareholders of the regulation concerning the meeting. In fact are of the same opinion on the issue even those scholars who believe that these functions are peremptory legal provisions.

Consequently, the law provides for a complex scheme of the functions of the ordinary general meeting because, if we leave out the possible statutory provisions and follow the interpretational options above-explained, there are exclusive and mandatory decisions (the appointment and removal of the members of the supervisory board; the lawsuit for damages against; the decision of the profit distribution; the appointment of the auditor); decisions which are exclusive, but may be ousted by the statute (the resolution to the fees of the members of the supervisory board; the authorization to perform the directors' managing operations); decisions which only possibly are parallel (the sanction of the balance-sheet); and at last decisions which are *tout court* parallel (the lawsuit for damages against the managing directors and the liquidators).

The role of the meeting within the two-tier system isn't, after all, bound by an imperative functions assignment. The duties of this body can change, according to the choices of the contracting parties, thanks to the statutory clauses.