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THE EFFECTIVENESS OF THE COMPANY ARBITRATION CLAUSE WITH RESPECT TO THE HEIRS OF A SHAREHOLDER



The Italian Supreme Court, First Section, through its recent decision no. 16556 of 31 July 2020, declared the applicability of the company arbitration clause also to disputes involving the heirs of the shareholder, in the event that the arbitration clause contained in the articles of association provides for the arbitrators to arbitrate "any dispute that may arise between the shareholders or between some of them and/or between their heirs and the company regarding the interpretation and execution of these articles of association and the resolutions passed pursuant to them".

The Italian Supreme Court has expressly stated that in this context disputes concerning the heirs of the shareholder are expressly included among those arbitrable and should be referred to the arbitral tribunal.

The decision operates an extension of Article 34, paragraph 1, Legislative Decree no. 5/2003, which provides that "the deeds of incorporation of companies, excluding the listed companies under Article 2352-bis of the Civil Code, may, through arbitration clauses, provide for the devolution to arbitrators of some or all disputes arising between the shareholders or between the shareholders and the company, pertaining to rights related to the corporate relationship. Article 34 of Legislative Decree no. 5/2003 does not refer to the heirs of the shareholder; however, as established by the recent decision of the Italian Supreme Court, following the death of the shareholder, the heirs take over entirely the position of the deceased shareholder and therefore also any corporate relationship.

The decision of the Italian Supreme Court is obviously founded on the literal content of the clause of the articles of association, that makes express reference to the heirs of the deceased shareholder, binding them to the arbitration clause.

Previously, also the Court of Milan, by decision of 30 April 2018, had extended the applicability of the arbitration clause to the heirs of the deceased shareholder with even more daring reasons and in the absence of the express mention of the heirs in the text of the arbitration clause. The Court gave reasons based on the assumption that the heir of the deceased shareholder, taking over all legal relationships surviving the loss of the original shareholder, automatically takes the place of the latter in the relationship established with the conclusion of the arbitration clause, even if he does not acquire the status of shareholder and does not take over the disputed legal relationship in arbitration.

The aforesaid recent jurisprudence will have a huge impact on the resolution of corporate disputes, given the fact that arbitration clauses are recurrent in the standard articles of association of Italian companies.