

THE RIGHT OF WITHDRAWAL OF SHAREHOLDERS PURSUANT TO ARTICLE 2437 OF THE ITALIAN CIVIL CODE UNDER THE SCRUTINY OF THE JURISPRUDENCE

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With judgment no. 30.133 of 14 November 2025, the Supreme Court ruled on the right of withdrawal of shareholders provided for by Article 2437, first paragraph, of the Civil Code, excluding the legitimacy of the withdrawal of those shareholders who have contributed to the resolution of complex and inextricably linked transactions.



With judgment no. 30.133 of 14 November 2025, the Supreme Court established that the right of withdrawal provided for under Article 2437, first paragraph, of the Civil Code is precluded to the shareholder who – although absent from the resolution or present there but dissenting or abstaining – has contributed to the implementation of a complex and unitary transaction, consisting of a series of facts and/or events that have occurred over time, but they are inseparably and causally connected, each serving as the necessary precondition for the next step until the final resolution is reached – the outcome that, from the outset, the shareholders understood this complex operation was intended to achieve.

The term “contribution” mentioned in Article 2437 of the Civil Code indicates not only the expression of a vote in favor, but includes any behavior that has causally affected the final decision.

The judgment concerns an integration transaction implemented through a merger by incorporation, structured as a sequence of inseparably linked steps culminating in the merger resolution. The Supreme Court upheld the courts’ decision denying the legitimacy of the withdrawal exercised by shareholders who had themselves undertaken multiple acts that contributed to the adoption of essential measures inseparable from the final result – the merger resolution, which was the final link in a single decision-making chain known to and shared by the shareholders from the outset.

Therefore, according to the Supreme Court, when the resolution represents the final act of a transaction known from the beginning, the shareholder who has participated in one of the aforementioned facts and/or events may not be entitled to exercise the right of withdrawal. That right must in fact be exercised in accordance with good faith and cannot be an opportunistic remedy.



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