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Start-up Legislation in US, UK, and Italy: a comparison between the three jurisdictions.

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CHAPTER 1. Start-up Law: An Introduction

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1.1Start-ups and their origins

Even though it is difficult to define precisely what a start-up is, which one has been the first one to be born, and what differences it had from previous companies, there are some concepts that are common to them all, and that can be thus rearranged into a general definition, that goes as follows. Start-ups are early-stage businesses seeking to raise capital and fighting for survival. These organizations, when successful, are founded on innovative and excellent ideas, and have the potential for a rapid and ascendable growth. Generally, start-up founders are young men and women who have little or no experience in running a business. Thus, one can say that start-ups' strength has always been the practical application of fresh ideas. Moreover, start-up businesses frequently use technologies like the Internet, e-commerce, or even robotics. While not all of them are in the technological sector, the word gained international traction during the dot-com boom of the late 1990s, when a large number of Internet-based businesses were formed. And, actually, the "dot-com bubble" influenced the creation of the term "start-up."

The dot-com bubble (also known as "the dot-com boom," "the tech bubble," "the Internet bubble") occurred in the late 1990s and early 2000s. The name comes from the fact that many new Internet-based companies, known as "dot-coms," were founded during this period, leading to a subsequent spike in their stock exchange value. This boom quickly devolved into a bust. It has been one of the most significant speculative crashes in history.

A lot of investors were presented to a lot of companies as a result of this massive surge. New businesses began to emerge and issue initial public offerings (IPOs). Their stock prices soared for a brief period, attracting an influx of new investors, whose risky bets prompted the formation of even more businesses. The surge was so large that these companies were able to boost their stock values by simply adding a "e-" prefix – or a ".com" suffix – to their names. Most of the now-successful firms were founded during this time period. This is also when the term "start-up" became widely used and took on its current meaning.

But it would be wrong to associate the birth of the first start-ups to this period. In fact, some of them were born during the Great Depression, and even before that, we can assume that some had already been invented, and we'll see this more in depth in a few pages.

The study of start-ups is of key importance, especially during this period of economic crisis (from Covid-19 and from the Russian-Ukrainian war), and I find it to be of even greater importance to be aware of how these young companies are treated in different countries. Through my research, I am going to point out the main differences between start-ups' legislation in three different jurisdictions: Unites States, United Kingdom, and Italy. I am also going to present the different ways in which these three aim to protect data and ideas, since the latter might be a huge problem common to the three. I will further include some case studies focused on start-ups in the fashion industries of the three jurisdictions and on the challenges and policies that these have to face while struggling for their existence. Finally, I'm going to make a final comparison between the three, thus drawing some conclusions from a legislative and economic point of view, because the location in which one chooses to start a business is fundamental to the latter's success.

Now, one could ask me why am I doing research on start-ups focused on a legislative point of view, and my answer is that law and economics are strictly correlated, and choosing in which place to start a business, or, in this case, a start-up, can be crucial to its success. US, UK and Italy are very different, not only because the first two are common law countries, and thus do not have a written Civil Code, while the third one, a civil law country, does. There are important differences also within these countries, especially in the US, where most start-ups are born, and legislative divergences must be studied in depth before building a start-up or another business type of entity somewhere rather than somewhere else, and this is what I intend to do through my studies and research.

1.1.1 Start-ups and their history in the US

The U.S. is an outsider financial system [1], in which different types of corporations coexist. In fact, there are:

- "closely-held" corporations, which are similar to the Italian SSLs, composed by few shareholders, that generally are also directors, with a modest economic scope;

- "intermediate" corporations;

- "publicly held" corporations, in which shares belong to the market, and they are generally listed to stock exchanges [2]

[1] Outsider financial system: to the latter belong the US and the UK. Here, there are few or no blockholders, and ownership is dispersed, in fact, there are many small shareholders. The main problem in this financial system is the separation between ownership and control (see note (1) chapter 2).

[2] Listed corporations generally to the most important stock exchanges, which are NASDAQ and NYSE

- “Start-ups”: here, the shareholder is a venture capital fund, and the start-up is used to start a new business, through an IPO[3]

The United States have always been an attractive market for start uppers.

We may trace the origins of this creative style of organization by looking at the first start-ups in history. For example, one may argue that Edison General Electrics (GE), formed in 1892 in Schenectady, New York, was one of the first start-ups. It was founded because to Thomas Edison's brilliant ideas and the foresight of America's most powerful banker, John Pierpont Morgan, and it has long been the most renowned firm in the country.

However, it wasn't until the emergence of Silicon Valley that start-ups really took off. The latter is a cluster of tech companies centred on Stanford University, which I'll go over in more detail later. It comprises many cities, including Palo Alto, San Francisco, San Jose, Berkeley, and others, that are located in the southern part of California's San Francisco Bay Area. Therefore, it would be reasonable to predict that the first start-ups were Silicon Valley firms. In 1911, IBM (the International Business Machines) was created. It has since expanded to become one of the world's largest makers of hardware, middleware, and software. Even if it isn't the first true company – and it doesn't satisfy the aforementioned start-up’s description in every way – it's a good idea to think of it as one of the first ones. Apple and Google are two other great examples.

New start-up centres take time to emerge, and one way to track their progress is to look at start-up funding indexes.

Early-stage venture capital investments, sometimes known as "initial financings," are the most commonly associated with high-growth entrepreneurial start-up enterprises. Start-up investment has become more concentrated in the top start-up hubs over the last decade.

Around 70% of all early-stage VC funding in the United States goes to start-ups in the top ten hubs of San Francisco, San Jose, California, New York City, Los Angeles, Boston, Seattle, Chicago, San Diego, Austin, Texas, and Washington, D.C., with L.A., Chicago, and San Diego accounting for the largest relative gains over time.

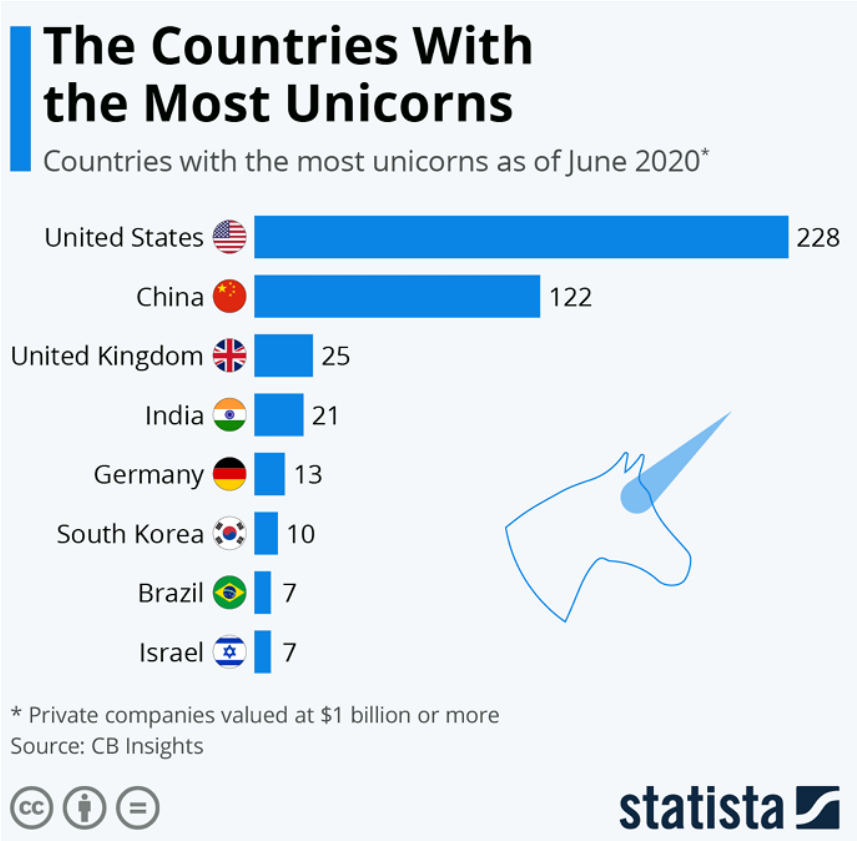
In addition, there are new start-up hubs springing up all throughout the country. These are mostly seen in college communities. Boulder, Colorado, home of the University of Colorado; Columbus, Ohio, home of Ohio State University; Bend, Oregon, near Oregon State; Indianapolis, Indiana, home of Indiana University and Purdue; and Gainesville, Florida, home of the University of Florida, have all seen a surge in start-up funding.

[3] IPO: Initial Public Offering. Corporations can be set up by incorporators or the initiative can also start by the so-called ‘promoters’, and, in this case, we have an IPO. Promoters will make an offer to the public asking for a subscription of shares of the company that is going to be incorporated.

Smaller towns like Pittsburgh, an older industrial centre that may be developing into a start-up hub, have seen an increase in start-up finance.

The report's most concerning result is the significant overall reduction in start-up funding in recent years. From 2009 to 2014, first-round financings increased by more than 20% each year, but then fell by 10% per year from 2014 to 2017. According to the article, the shrinking has been "geographically pervasive."

As a result, studies may point to a drop in start-ups and entrepreneurship in the United States. What we see here primarily depicts the environment prior to President Trump's and his administration's actions to restrict immigration and attack science, both of which many consider as detrimental to the national climate for technology and talent. Is the true rise of the start-up industry taking place outside of the US?



Unicorns are highly valued start-ups. The term is a reference to their elusiveness.

Based on the data from this table, we can clearly see that in 2020, the US still was an extremely appealing jurisdiction to entrepreneurs, followed by China and immediately next by the United Kingdom. We can also notice that there's a large divergence between the United States and basically any other country in the world, and that Italy isn't even mentioned in the table, and thus we can deduce that its impact on the start-up market in 2020 has been very low.

Finally, we can say that the United States are extremely appealing to young entrepreneurs who want to build a start-up company.

Is there a reason for this? Why do most entrepreneurs choose the US?

1.1.2 Start-ups and their history in the UK

The United Kingdom is an outsider financial system, based on common law, but with reference to corporations we find all regulations in the Companies Act of 2006[4] . The CA distinguishes two types of companies:

-Private companies: also defined as 'companies which are not public' [5]. These companies' shares cannot be offered to the public, and thus, to the market, similarly to the 'closely-held' corporations of the US. Shares can be sold just to specified potential investors, and holdings may be shares or quoras. There is no capital requirement to set them up, and they can also be composed by just one member.

-Public companies: companies whose shares may be offered to the public. Listed companies on the London stock exchange are public. There is an authorized minimum share capital of 50 000 sterlings[6] , and in this, they're different from the United States' 'publicly-held' corporations, which do not need a minimum share capital to be set up.

Start-ups, in the UK, are private companies, and, more specifically, they are Limited Private Companies.

Regarding their diffusion in the country, based on a study by the consumer research company NimbleFins, which aimed to find the best places for startups in Europe, the United Kingdom appeared to be the second-best ranked country for Startups in 2019.

[4] The Companies Act, 2006

[5] See The Companies Act, 2006, part 1, "Types of company", section 4. "Private and Public companies": A "private company" is any company that is not a public company. Source: https://www.legislation.gov.uk/ukpga/2006/46/section/4

[6] In the UK there is a minimum share capital to set up public companies because, when the CA was issued, the country was part of Europe, and, according to the second European directive on capital (see note (2) ch. 1.1.3), all public companies in Europe need to have this minimum share capital.

What about today?

According to Start-ups.co.uk, nearly 80 new businesses were started *every hour* in the first half of the year.

So where are the top UK cities, outside of London, that are empowering new business success?

This year, Sheffield has been revealed as our ultimate winner, thanks to the city's strong performance across many of our research areas. The industrial powerhouse impressed us with its low cost of living, large working population, and fantastic transport links. As a university city, Sheffield is home to thousands of highly skilled workers and graduates, creating a huge pool of talent for recruiters to pick from.

But there are plenty of other cities that are also helping to nurture new business talent in exciting ways, including Glasgow, Liverpool, Bristol, and Leeds.

1.1.3 Start-ups and their history in Italy

Italy is an insider financial system[7] , and a civil law country. The main sources of law are the Civil Code of 1942[8] , the Legislative Decree N.58/1998, as amended[9] , plus Consob[10]. In addition, there is the Corporate Governance Code, which is not a source of law, but it is rather a set of recommendations, for which the 'comply or explain' rule applies. To set up a company, there's a minimum share capital of 500 000 euros, based on the Second European directive[11].

There were no large startup programs in Italy about ten years ago. The Italian government saw the need to address this problem by promoting long-term prosperity, technical improvement, and, in particular, by fostering the establishment of a new business culture that values innovation. Other explicit goals were improving social mobility, creating new jobs, particularly for young people, strengthening university-business ties, and increasing Italy's ability to attract international capital and expertise.

To achieve these objectives, the government began developing a comprehensive, all-encompassing legislation in 2012 to encourage the formation and growth of new creative firms with high technological value. This effort culminated in Decree-Law 179/20121, commonly known as "Decreto Crescita 2.0" ("Growth Decree 2.0"), which was transformed into Law 221/2012.

Many of the policy proposals proposed in "Restart, Italia!"2 – a report compiled by a task force of 12 experts appointed by the Minister of Economic Development in April 2012 – as well as crowd-sourced policy suggestions arose during a large consultation with the main players in the Italian innovation ecosystem – are gathered in Decree-Law 179/2012. The Decree, dubbed "Italy's Startup Act" (ISA), established a definition of a new inventive firm with high technological value, known as a "innovative startup," in the

[7] Insider financial systems are bank oriented, and are constituted by: Italy, Germany, France, and most financial systems. The ownership pattern of the latter is very different from outsider financial systems; there are public companies (listed on the stock exchange) that have one or more strong shareholders (also the State), or a family/group of shareholders with effective voting control, who own the majority of shares: the so-called blockholders. Due to this, capital markets are illiquid and both crossholdings and interlocking directorates are very common. Control, or the power to manage and take decisions, comes from inside the corporation, this is why the main problem of these financial systems is the 'divergence of interest'. Managing and balancing the power of blockholders by enhancing the protection of minority shareholders is necessary.

[8] The Civil Code of 1942 was amended many times for companies' matters.

[9] Legislative Decree N.58/1998 as amended regulates listed companies and the financial market in general

[10] Consob is the stock exchange authority

[11] Second European Directive: Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration. Source:https://eurlex.europa.eu/legalcontent/EN/ALL/?uri=CELEX%3A32001L0097

Italian legal system. For the first time, a comprehensive regulatory framework has been established (articles 26-31)

CHAPTER 2. Start-up Law in the US

Summary: 2.1 LLC: the Limited Liability Company - 2.2 The Silicon Valley - 2.3 Start-up Governance - 2.3.1 Vertical Issues - 2.3.2 Horizontal Issues

2.1 LLC: the Limited Liability Company

The Limited Liability Company is a combination between a corporation and a partnership. It is available in all 49 states, even though most companies are registered in Delaware due to its favourable legal measures. Delaware law, in fact, leaves ample room to the freedom of contract, and this has been one of the main reasons for the successful creation and financing of startups in the Silicon Valley. The sources of law are the different States legislations. An LLC is organized as a corporation, but taxation it is treated as in a partnership; in fact, there's no double taxation, meaning that the company itself isn't the subject of taxation, but taxes on the company's income are paid independently by its owners. Investors have limited liability. Once the LLCs are registered, they have a legal personality. The duration cannot exceed 30 years and there is no problem of dissolution: members can withdraw within 6 months of notice in advance. If one member withdraws but the others all agree to continue to carry on the partnership's business, they can do so since there is no involuntary dissolution problem. Dissolution is possible if any of the members dies, if one withdraws and the others are not able to carry out the business, and in case of bankruptcy. There's free transferability of interests, but the new member has no right to manage the LLC with the others.

2.2 The Silicon Valley

Policymakers have been studying the concept of high technological industrial districts for a long time, trying to define the origins of these agglomerate regions, and the life cycles of their industries. The most well-known case of the latter is the Silicon Valley, which was born from the Stanford University. The experience of regions like that of the Silicon Valley, and what has taken the name of the "Third Italy"[12], holds out the promise of giving birth to new jobs with high wages[13]. Some other regions that followed the

[12] The term "Third Italy" refers to a number of successful regions largely in north and central Italy from "the impoverished South and the old industrial triangle of Genoa, Turin, and Milan." CHARLES F. SABEL,
FLEXIBLE SPECIALIZATION AND THE RE-EMERGENCE OF REGIONAL ECONOMIES, IN REVERSING INDUSTRIAL
DECLINE? INDUSTRIAL STRUCTURE AND POLICY IN BRITAIN AND HER COMPETITION 17, 22 (Paul Hirst &
Jonathan Zeitlin eds., 1989). Joseph Bankman, Victor Goldberg, Jeffrey Gordon, Alan Hyde, and Lance Liebman provided helpful comments on an earlier draft.

[13] In 1996, Silicon Valley added some 50,000 jobs, while average wages grew at five times the national average. In the same year, the average wage in Silicon Valley totaled $43,510, compared with $28,040

Silicon Valley's model are Route 128, from Harvard and MIT[14], the Silicon Mountain, Silicon Alley, Silicon Forest, and Silicon Glen.

One thing that immediately comes to mind is the spatial concentration of high-tech firms, and this is a concept that dates back to Alfred Marshall's writing in 1890[15]. He developed the concept of 'agglomeration economies', thus describing the input scale economies external to the firm but internal to the region, that are available to any firm as a result of the proximity of similar firms. The concept explains the most important characteristic of an industrial district, that is, why firms are so close together, and that is because more firms (and thus more skilled workers) in a region, leads to a migration of skilled workers (and thus firms) to the region, which leads to a migration of more firms (and thus skilled workers). The process is self-reinforcing, and it results in a propensity for an input's relative price to be lower when the number of firms in a region that need that input is higher[16], and it also results in a lower cost of skilled labour. Moreover, the movement of workers between firms also causes a "spill over" of tacit knowledge between firms and start-ups.

The Silicon Valley began to expand more and more throughout the years, and, in 1995, it reported the highest gains in export sales of any other metropolitan area in the United States[17]. Silicon Valley's modern form took shape after the end of the Second World War, thanks to the efforts of Professor Frederick Terman[18]. The latter, in fact, increased the size of the Stanford engineering program, and turned some of the university's adjacent land into the Stanford Industrial Park[19], reinforcing ties between the university and electronics community. During the 1970s, employee turnover averaged 35% a year

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nationally (in 1995 dollars). Jonathan Markoff, *A Gold Rush From Software Reinvigorated Silicon Valley*, N.Y. TIMES, Jan. 13, 1997, p.C1, col. 1. Wage rates in Italy's Emilia-Romagna are twice the national average, and went from 17th out of Italy's 21 regions in 1973 to 2nd in 1986. Bennett Harrison, *Industrial*
Districts: Old Wine in New Bottles?, 26 REGIONAL STUDIES 469, 472 (1992).

[14] We can notice that these conglomerates of firms are frequently born in places where universities are located. This is because a scientific innovation is of course linked to universities' R&D. Plus, the universities' communities provide an initial population of highly skilled workers, thus also triggering the Marshallian factor market externality.

[15] ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 267-77 (8th ed. 1920, originally published in 1890).

[16]

[17] With an increase of 35% over 1994.

[18] Frederick Terman was a MIT Ph.D., and had been director of Harvard's Radio Research Lab during WWII, and he saw since the early beginnings the potential benefits from a collaboration between industries and universities. He then went to Stanford after WWII, becoming dean of engineering.

[19] Stanford Industrial Park: a business park, which comprises more than 150 companies and is a hub of R&D activities, spanning all high-tech industries. More than 250 start-ups were launched at StartX, Stanford's incubator, located in the park. Source: https://stanfordresearchpark.com/

at the region's electronics firms, and even during periods of recession, Silicon Valley engineers quit their jobs for different employers[20]. With this structure based on rapid employee movement both between employers and in connection with founding start-ups, Silicon Valley firms haven't vertically integrated, because smaller start-ups can provide them products in a more effective and cheaper way. Thus, a single company doesn't need to be a technological leader in every sector, and can focus on one stage of production.

Due to these reasons, there was a second stage agglomeration economy resulting from inter-company and intra-district knowledge spillovers. This is why the whole district functions more as an innovation laboratory.

Thus, we can conclude that employee mobility is the requisite for knowledge spillover to occur. On the other side though, an employer has a competitive interest in protecting its intellectual property. The legal infrastructure of high technological industrial districts mediates the tension between the two. In fact, during the earlier days, the district's employers responded to departing employees by undertaking a legal action, and it was only the failure of these, which led them to accept this phenomenon[21].

A variety of legal instruments have been established to protect tacit knowledge and inventions.

The first one is Trade Secret Law, through which employees retain the right to use their general and industry specific human capital when they move to a new position, but they cannot make use of an employer's trade secrets. If the employer is able to prove that another employer for whom a former employee of his now works has actually used his/her trade secrets, he/she can use a variety of legal remedies, such as injunctive relief and damages. The line between the industry's knowledge and the employer's trade secrets has been drawn by the Uniform Secrets Act (UTA)[22], adopted by 41 states, including California. This legal instrument though, is less effective than it might appear, due to the imprecision of the lines that the UTA requires a litigant to establish.

The second instrument is Invention Law, which is a bit more effective than the latter that we've analyzed. Legal rules, in fact, provide the employer a little more comfort when an employee leaves the firm with a new invention to potentially form a new start-up.

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[20]David Angel, *The Labor Market for Engineers in the U.S. Semiconductor Industry*, 65 ECON. GEOG. 99, 103 (1989)

[21] Even though occasional outbursts of employers' hostility towards employees' mobility continue to occur. (SAXENIAN)

[22] The UTA defines a trade secret as "information, including a formula, pattern, compilation, program, device, method,
technique, or process, that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy". Source: UNIF. TRADE SECRETS ACT § 1(4) (definitions) (amended 1985).

Under the Law of Inventions, ideas remain the employee's property until their conception. For conception to occur, the employee must create written corroboration, so he/she can choose to delay this until he/she leaves the company. As long as the employee leaves before the invention's formal conception, the ownership rules influenced by these considerations do not apply. To be sure, the sooner in the invention process an employee must decide to start a business, the higher the risk of the employee's human capital investment in the endeavor. It is crucial to note, however, that the former employer who is claiming ownership bears the legal burden of establishing conception.

Employers, on the other hand, have another, more effective option for preventing employee-disseminated proprietary knowledge spillovers. If employee mobility is the primary source of spillovers, a company might ensure protection by requiring existing employees to sign a post-employment covenant not to compete. The covenant not to compete is the third instrument to be analyzed when dealing with knowledge spillover. A postemployment covenant not to compete prevents knowledge spillover of an employer's proprietary knowledge not by prohibiting its disclosure or use, as trade secret law does, but by preventing the mechanism by which knowledge spillover occurs: employees leaving to work for a competitor or start a competing business. After a specified period of time – typically one to two years – following the termination of employment for any reason, the employee will not compete with the employer in the employer's existing or planned businesses in a specified geographical region that corresponds to the market in which the employer participates. The provision's logic reflects the short shelf life of knowledge in high-tech enterprises. Given the rapid pace of invention and the telescoping of product life cycles that has resulted, knowledge that is more than a year or two old is unlikely to have considerable competitive value. This last instrument though, is not applicable everywhere. The California Law, and thus, the Silicon Valley, prohibit[23] the appliance of the covenant not to compete rule, which an instead be applied in Massachusetts' Route 128.

In 1865, David Dudley Field proposed the New York Civil Code[24], and in 1872, California adopted Field's proposed prohibition on post-employment pledges not to compete without any justification.

2.3 Start-up Governance

[23] California Business and Professions Code § 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade or business of any kind is to that extent void.". Source: CAL. BUS. & PROF. CODE § 16600 (West 1997).

[24] [Field Codes]. The Civil Code of the State of New York, Reported Complete by the Commissioners of the Code. 1865. Composed of five volumes, which contain the complete texts of the law codes drafted for New York State by David Dudley Field and his colleagues during the years 1847 to 1865. They include Field's two procedural codes and three substantive codes. Source: https://www.lawbookexchange.com/pages/books/58353/david-dudley-field-commissioners-of-the-code/the-civil-code-of-the-state-of-new-york-1865

Traditionally, U.S. venture-backed companies are structured as corporations and incorporated in the state of Delaware[25]. In the United States, there has been a strong conviction, supported by Delaware courts, that "shareholder primacy" means that both management and directors have a responsibility to maximize shareholder value on behalf of the company. Only with social enterprises, B corporations, and public companies, the stakeholder perspective is taken into account.

In a start-up, there is no such thing as "separation of ownership and control."[26] At least initially, the owners (founders and investors) of businesses are all represented on the board of directors. A typical start-up board will consist of one or two founders, one or two investors, and one or two independent directors. This is in stark contrast to the composition of a public company board, where the majority of board members are independent.

A general framework of the start-up governance was laid out by a seminal paper by Michael Jensen and William Meckling, which stated that one general model has dominated the discussion of corporate law and governance for a long time, agency costs[27]. As stated in the paper, "the agency problem arises when one party, the 'principal', relies on actions taken by another, the 'agent', which will affect the

[25] In the United States, even though you decide to incorporate in a particular state, you can still operate the company in all the 50 states. Over 90% of companies though, have decided to incorporate in Delaware, which holds the absolute primacy in this matter. Each state wants to attract as many corporations as possible, because the latter are a source of profit (through the payment of taxes for example). There are two points of view to see this competition between states. The first one is that the latter is a "race to the top", meaning that corporations generally tend to register in the state that offers them the best legislation, and the most benefits. The second one is that the competition is actually a "race to the bottom", meaning that whether a state is better than another one depends on each shareholder's specific needs, thus not being an objective matter. Overall, though, we can observe that Delaware is chosen by the majority because it has many provisions that are in favour of directors. Moreover, in this state there are many specialized judges, and, since it has always been chosen by corporations, it has a load of case law, and lawyers and other consultants are more specialized there.

[26] Berle and Means: While Berle and Means had assumed that all large public corporations would mature to an end-stage capital structure characterized by the separation of ownership and control, (See ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 5-19 (1932)), the contemporary empirical evidence is decidedly to the contrary. Based on Berle and Means' studies, since shareholders are many, and have little holdings, they have no power or might have no interest in controlling directors, thus generating the collective action problem, which, in turn, results in the so-called 'rational apathy'. In the twentieth century though, the situation is different. Small shareholders have decreased their ownership, while institutional investors have increased their hold in corporations, so we have a dichotomy; there is in fact, a mix of dispersed and concentrated owners. Source: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1241&context=faculty_scholarship (The Yale Law Journal)

[27] Robert H. Sitkoff, *An Agency Costs Theory of Trust Law*, 89 CORNELL L. REV. 621, 623 (2004) ("Agency cost theories of the firm dominate the modern literature of corporate law and economics.").

principal's welfare"[28]. Based on corporate governance theory, shareholders are the principals, and managers are the agents[29]. In a corporation, agency problems arise due to the separation of equity ownership and managerial control, but Jensen and Meckling's explanation of the agency cost problem has a hitch. The authors in fact, only saw the company in vertical, hierarchical terms, and they merged the board of directors and executives into a single managerial agency, obfuscating management disagreements[30]. In addition to this, outside shareholders were believed to have homogeneous interests[31].

How does the US finance startups?

Startups are originally financed by the founders' personal funds ("bootstrapping") as well as those of their family, friends, and fools (FFFs). These early backers buy common stocks and take on the same obligations and dangers as the founders. The founders' home state or, less commonly, Delaware is where the firm is typically formed. The majority of the remaining 32.2 percent of the sample firms—28.7 percent—incorporate in their home states, while just over two-thirds (67.8 percent) pick Delaware as their first state of incorporation. Only 3.5% of sample companies decide to incorporate outside of Delaware or their native state.

After FFFs, affluent individuals (referred to as "angels") and their organizations (referred to as "angel groups") support the company's next round of funding and offer advise.

Since venture capital firms often make sizable investments, they intervene later than FFFs and Angels. As the business achieves specific milestones, VCs increase their initial investment.

Favorite stocks are the preferred investment vehicle of venture capitalists (VCs), who use them to get more rights and protections than regular stockholders.

Fundamental Start-up Governance Issues

All start-up participants have a stake in the equity and all work to pursue the objective of growing the company's value. However, in many circumstances, their interests can diverge, and conflicts can arise between and among these stakeholders due to different reasons, the main one being potential private benefits. These come at high costs, namely: inefficiencies due to divergences of interests, a potentially higher cost of capital, as well as value-reducing opportunistic behaviours.

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[28] Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 308-09 (1976) (theorizing that the misalignment between shareholders and managers gives rise to agency costs).
[29] See Jensen & Meckling, *supra* note 28, at 310.
[30] *See* Jensen & Meckling, *supra* note 28, at 309
[31] *See* Jensen & Meckling, *supra* note 28, at 312

2.3.1 Vertical Issues

Governance issues are born when a company has more than one founder, and is thus jointly owned, but this is no big deal when we consider the problems arising from the balance of power between founders and investors, and this is what this chapter deals with.

Shareholders vs. Board of Directors

The board is formally created during the first round of venture capital funding, and the size and membership of the board are often stated in the financing term sheet and then entrenched in a voting agreement or the corporation's certificate of incorporation[32]. Entrepreneurs frequently get the advice to carefully choose the board members, and thus from which VCs to take money, by doing long reference checkings.

There are three basic types of start-up boards:

-founder-controlled: To keep control of their boards and companies, founders might use a variety of legal techniques. As a founder/CEO, what does it mean to have control over your board of directors? You have power over your board as long as the number of common board seats exceeds the number of investor seats (sometimes referred to as preferred) plus the number of independent board seats[33].

-investor-controlled: although venture capitalists often own less than 50% of a firm, they often negotiate special control arrangements to ensure that they have a say in crucial decisions or when certain events such as liquidation or going public occur[34]. Board seats are the main way through which they can do so.

The first two are of straightforward understanding, referring to situations in which one group outnumbers the other in allocated board seats

-shared control: this last model can take different structures. There can be an even separation between board seats occupied by founders and the ones occupied by investors, or there can be a split board with one or more independent directors, or as dependent control, with the preferred and common shareholders voting together as a single class filling the tie-breaking seat[35].

Thus, the board and voting control are product of many negotiations between different parties. Control is separated from ownership, and it is possible for it to change over

[32] BRAD FELD & MAHENDRA RAMSINGHANI, STARTUP BOARDS: GETTING THE MOST OUT OF YOUR BOARD OF DIRECTORS 4 (2014).
[33] See https://www.forbes.com/sites/timyoung/2019/06/23/maintaining-control-of-your-company-what-all-founders-should-know/?sh=1c2122c957a5
[34] See https://www.securedocs.com/blog/understanding-investor-control-in-startup-fundraising-contracts
[35] *See* Brian J. Broughman, *The Role of Independent Directors in Startup Firms*, 2010 UTAH L. REV. 461, 462 (discussing the use of independent directors in startups)

time. In start-ups, VCs and founders often face divergences between each other with respect to risk level, liquidity needs and private benefits., which are usually implicated in critical board decisions. If a party in these resolutions isn't satisfied, conflicts can arise between shareholders and the board. These conflicts usually arise from a conflict of interests between founders and investors, who are both shareholders, and reflect a control balance that was already established while selecting the size and composition of the board, defining the shareholder-board relationship as a vertical one[36].

Board vs. Founders

Corporate governance standard models often group the board and the executives into one single category, but in start-ups, the two may have overlapping roles with dual statuses.

Therefore, conflicts between the board and the founders are not rare. Some typical scenarios might involve the board firing a CEO-founder or deciding to change the strategic direction regardless of the objection of the founder.

VCs frequently attribute start-ups' failures to problems with the founders and CEOs, therefore, the board should step in if a CEO is inadequate or underperforming[37]. VCs frequently replace the founder-CEO, and in many cases, this is a genuine decision, but we also need to analyse whether the board is always acting in the best interests of the company. In many cases in fact, the interests of the start-up and those of the VCs do align, but sometimes they don't because for example of the liquidation seniority that the VC investors have[38]. Therefore, it is possible for the board to act opportunistically.

Shareholders vs. Founders

When conflicts between shareholders and founders arise, in some cases the former decide to just sidestep the board, because start-ups' shareholders don't always have the exit mechanism to deal with governance problems. In fact, when they are not satisfied with the management of the company, they cannot easily sell their stock and just leave.

Plus, while parties are generally aligned in wanting to achieve a financial return, founders may be receiving private benefits from continuing the operation of the start-up, or from some specific exit opportunities.

Tensions between founders and investors due to their diverging interests have begun to fill courtrooms and are now grabbing national headlines.

2.3.2 Horizontal Issues

[36] The relationship is hierarchical in the sense that the board of directors is chosen by the shareholders, but it is not one of pure agency (in the sense that the founder-entrepreneur is the agent, and the VC is the principle). *See* Smith, *Team Production in VC*, at 949-50

[37] *See* Jill E. Fisch, *Taking Boards Seriously*, at 282-89

[38] VCs investors will get paid back before other investors.

Since different types of equity interests have varying terms and preferences, shareholders may have competing interests and incentives to take actions that harm other shareholders or undertake unproductive decisions that lack to maximize aggregate welfare[39].

Preferred vs. Common Stockholders

This first one is the most classic horizontal conflict that arises in start-ups. Both have an equity position in the company and hence share a desire for the company to achieve a significant exit. Apart from this point of agreement, they frequently disagree on how much risk they prefer, how and when to raise further funds, how and when to quit, and a variety of other issues[40]. Furthermore, founders, who often possess a large amount of the business's common stock, may gain private benefits from keeping ownership of the company that preferred shareholders do not[41]. This discussion highlights the possibility for opportunistic behaviour as well as the difficulties of balancing the preferred and shared interests.

Preferred vs. Preferred Stockholders

Despite owning the same general sort of stock, preferred shareholders' interests are not necessarily aligned. A start-up often issues a fresh series of preferred stock with variable pricing and terms after each round of funding. In some cases, these disparities can lead to a conflict between preferred shareholders. As the VC Director Guide states, "[D]ifferent investors even within the same round may have different exit valuations in mind […]"[42]

Common vs. Common Shareholders

Addressing horizontal conflicts among common shareholders in start-ups also brings the attention to another aspect of governance that is often overlooked: employees. Employees are frequently excluded from study in corporate theory, since they are considered "non shareholder constituents," however this assumption simply does not hold true in start-ups. As a result, most startups give their staff stock options that vest over time and become common stock once they are exercised[43]. This allows employees to participate in the startup's growth and, in the aggregate, can represent a

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[39] *See* HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE, at 40 (1996)
[40] See Steven E. Bochner & Amy L. Simmerman, *The Venture Capital Board Member's Survival Guide: Handling Conflicts Effectively While Wearing Two Hats*, at 3, DEL. J. CORP. L. 1, 2 (2016)
[41] See D. Gordon Smith, *The Exit Structure of Venture Capital*, 53 UCLA L. REV. 315, 316-20 (2005) [hereinafter Smith, *Exit Structure*] (examining potential conflicts between venture capitalists and entrepreneurs regarding exit), at 318
[42] WORKING GRP. ON DIR. ACCOUNTABILITY & BD. EFFECTIVENESS, A SIMPLE GUIDE TO THE BASIC RESPONSIBILITIES OF VC-BACKED COMPANY DIRECTORS 1 (Oct. 2007), https://www.levp.com/a-simple-guide-to-the-basic-responsibilities-of-vc-backed-companydirectors/ [https://perma.cc/X2Y9-S5LP] [hereinafter *VC Director Guide*], at 4
[43] THERESE H. MAYNARD ET AL., BUSINESS PLANNING: FINANCING THE START-UP BUSINESS AND VENTURE CAPITAL FINANCING at 337-44 (3d ed. 2018).

considerable portion of the company's stock. Divergence among common shareholders can occur while the firm is being acquired or sold, in secondary sales in which some shareholders have the opportunity to sell their shares, and even in routine corporate decisions like whether to prolong the exercise period for specific option holders. Employee stock arrangements, for example, can differ in terms of grant form, exercise price, vesting schedule, and other characteristics such as triggers to accelerate vesting on a change in ownership, putting employees on opposing sides of a vote on whether the company should take an exit offer.

CHAPTER 3. Start-up Law in the UK

Summary: 3.1 Private Limited Companies - 3.1.1 Protecting data, ideas, know how & other intellectual property – 3.2 Acts and Regulations 3.2.1 The Data Protection Acts (1998, 2018) – 3.2.2 The GDPR

The division between public and private firms that has been described historically is less natural than it would seem. Since establishment required a royal charter or a special act of Parliament and the business normally sought to attract money from the public, firms were initially entirely public. Only after the concession system was abolished and freedom of incorporation was subsequently introduced in Europe in the middle of the 19th century did the distinction become obvious. After this watershed moment, general limited liability was also granted to business owners who did not intend to raise capital from the public but instead merely wished to establish a partnership-like company in order to divide and protect their assets.

In this sense, Germany and the UK serve as the standard-setting jurisdictions for comparison. At the time, both nations had the most developed economies. Furthermore, a race to incorporate private limited liability companies was already under way between them. In fact, although German lawmakers passed the GmbH-Gesetz, the first law governing private limited liability companies, in 1892, the phenomenon of small private companies was already well-established in legal and economic practice in the United Kingdom before the Companies Act 1907 (sec. 37).

The UK saw significant stock market bubbles in the closing decades of the 19th century. It resulted in the creation of a closed organizational form for the conduct of business operations by SMEs that was characterized by restricted liability and contract freedom in designing the custom governance structure.

Furthermore, incorporation was a straightforward and affordable procedure in the United Kingdom, particularly under the Joint Stock Companies Act 1856, which led to the creation of countless fake companies. In contrast to German legislators, the Companies Act of 1900 tightened regulatory requirements by interfering with the disclosure regulation rather than the formation regime. Once again, the concerns of SMEs were disregarded and inadequately taken into account. As a result, the Companies Act of 1907 established the first distinction between public and private companies and loosened laws for the latter on the basis of proposals made by a reform panel.

In summary, we can argue that the British option was distinguished by the preservation of market integrity through a transparency strategy with tougher prospectus and disclosure standards. In the end, the United Kingdom stayed true to the uniform business model, with extremely lax capital requirements in compared to its German

counterparts and public and private companies being only variations of the fundamental structure.

3.1 Private Limited Companies

In the United Kingdom, start-up businesses generally choose the form of private limited companies. Unlike sole proprietorship or partnership, a limited company is a legal entity in its own right. As such, it has a different structure and more complex requirements, such as different tax and legal obligations.

The biggest difference between going at it alone as a sole trader and forming a limited company is that a limited company has special status in the eyes of the law. Part of a limited company's definition is that it is incorporated[44] and it issues shares to its shareholders.

Limited companies can either be private or public. Unlike a publicly limited company, where shares are traded on the stock exchange, a private limited company does not publicly trade shares and is limited to a maximum of 50 shareholders.

Since there is no minimum capital need to form a limited company other than the issuance of at least one share, the majority of private limited firms are small. Initial share capital is typically in the range of £100.

As stated in 'The Companies Act', sec.3[45], a company is a limited one if the liability of its members is limited by constitution, as it may be limited by shares or by guarantee[46].

Thus this of course implies that if there is no limit on the liability of its members, the company is an "unlimited company".[47]

A private limited corporation (PLC) is a legal "person" that acts as a separate legal entity from its directors and stockholders. This indicates that the company owns all of the company's assets, obligations, and profits and that the shareholders are not solely liable for the company's debts. It is the most common form of corporation in the United Kingdom.

Thus, it is the private limited corporation itself that is sued or pursued rather than the directors in case of a legal dispute or debt issues. As a result, the director can be regarded as an employee of the organization and his or her personal assets, such as the family home or savings, are not at danger in the event that the company fails. The

[44] formally set up and registered with Companies House

[45] Sec.3 is on limited and unlimited companies

[46] If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is "limited by shares". If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is "limited by guarantee".

[47] The Companies Act, sec.3

'limited' component of the business structure name refers to the shareholder's responsibility being restricted to the shares they own in the company.

Shareholders[48] usually set up a limited company, and they become the latter's owners, as each of them holds a number of shares in the corporation. One single shareholder can set up the company too, thus owning a hundred percent of all the shares, or he/she can choose to set it up with other shareholders, then dividing the available shares between them all.

Limited companies are managed by directors, often known as company executives, who may also be stockholders. Since the majority of business owners are also directors, a limited company can be owned and operated by one person or a group of people.

Of course, there are some advantages to building a limited company.

The most obvious one is restricted liability. The firm's owners know that their personal assets (such their house or savings) are safe in the event that the business fails, and they are not legally required to pay any outstanding company obligations that exceed the value of their shares.

Some other advantages can be, as listed:

-raising capital: because it is in fact possible to raise capital by selling shares in the company to help it grow. Investors' liability is restricted to the value of the shares they own, and they are also protected from the firm's failure.

-protection of the business' name: when the firm is incorporated, its name is protected, making it illegal for other companies to trade under the same or a confusingly similar name.

-doing business with other companies; it might be needed for the start-up to operate as a limited company in order to supply goods and services to other organizations because the majority of larger corporations won't cooperate with unincorporated businesses such as sole proprietors.

3.1.1 Protecting data, ideas, know how & other intellectual property

It is easy for a start-up business to overlook protection of intellectual property. IP isn't just designs and ideas, it includes things like the content of the startup's website, or its customer database or the way it works. A good legal agreement should cover keeping secrets secret, but if in doubt, or if the company is exploring options before a contract for the deal is signed, a confidentiality agreement (also called a non-disclosure agreement or NDA) can be very useful.

[48] To become a shareholder, an individual must purchase one or more shares issued by the corporation. The more shares the latter owns, the larger percentage of the business he/she has.

3.2 Acts and Regulations

3.2.1 The Data Protection Acts (1998, 2018)

There are two legislative acts[49] which cover the issue of protecting data[50], and the latter is a concept of fundamental importance for SMEs[51], and, thus, startups.

The Data Protection Act (1998) protects personal information that identifies living, specific individuals and includes audio and video. It encompasses data stored on computers as well as paper-based records on customers and employees.

The following are the two main tenets of the act:

-Transparency, since it should be obvious why personal data is being stored and how it will be utilized.

-Consent, as individuals must agree to the collection of their information and have the option to decline additional uses of that information, such as marketing.

People have a right to access the information that is kept about them and to get a copy of it. Users also have the right to learn who could receive the information and how it is being processed. Companies are permitted to charge up to £10 for delivering the desired information.

Consumers are required by law to disclose all information within 40 calendar days, and failing to do so would put them in violation of the Data Protection Act.

The other important Data Protection Act is the one that was enacted in 2018. It controls how users' personal information is used by organizations, businesses and the government. It is the implementation of the GDPR[52], the General Data Protection

[49] The Data Protection Act of 1998 and The Data Protection Act of 2018.

[50] What is personal data? It is Information that may be used to identify or contact a specific individual is known as personal data. A name or a number can be used to identify someone, or other identifiers like an IP address, a cookie identifier, or other details may also be used. It may constitute personal data if it may be used to directly identify a person from the information you are processing. https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/

[51] SMEs: small and medium enterprises (and micro enterprises too), which constitute 99% of all businesses in Europe. They include newly born startups. Source: https://single-market-economy.ec.europa.eu/smes/sme-definition_en

[52] The General Data Protection Regulation is a legislative regulation valid throughout the EU. Since the United Kingdom left the European Union on December 31, 2021 -through Brexit-, it is no longer subject to the European GDPR, and has now -since January 31,2020- its own version of the GDPR, known as the UK-GDPR. https://www.cookiebot.com/en/uk-gdpr/ .The UK GDPR outlines seven important principles that one should follow when approaching personal data: lawfulness, fairness, and openness; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality (security); and accountability. https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/

Regulation. Most processing of personal data is subject to the GDPR. Divided into seven parts, aims to "make provision about the processing of personal data"[53].

The Seven Parts of the Data Protection Act, 2018, at a glance:

After an introductory text, there's the First Preliminary Part which overlines the terms related to the processing of personal data. Then, there is the Second Part, about General Processing. The latter is divided into three chapters, which deal with, respectively: scope and definitions of the processing to which this part applies; the GDPR and its meanings and definitions; and, finally, other General Processing, such as the application of the GDPR and some exemptions too. In sum, we can say that part 2 supplements the GDPR and outlines some types of processing to which the GDPR doesn't apply. Going on, there's Part Three, which deals with Law enforcement processing, and is divided into six chapters. It is interesting to note that chapter 4 goes back to analyze the concepts of 'controller' and 'processor'[54], which we had already found in the Second Part, when explaining and outlining the GDPR. Other than this, the chapters in Part 3 analyze the rights of the data subject and transfers of personal data, for example to third countries. Chapter six deals with special processing restrictions and reporting infringements. Part Four contains provisions relating to how the intelligence services may process personal data, and is divided into six chapters. Moreover, Part Five contains provisions regarding the Information Commissioner[55], such as the latter's general functions and international role. Part 6 deals with enforcement of the data protection legislation, enforcement notices and penalties and penalty notices. Lastly, Part 7 is the Supplementary and Final Provision.

3.2.2 The GDPR

[53] Data Protection Act 2018, part 1 (1), Overview

[54] 'Controller' and 'processor'. 'Controller': the person on whom the obligation to process the data is imposed by the enactment (or, if different, one of the enactments) is the controller, from art. 4(7) of the GDPR. The 'processor' on the other side, is the individual that carries out processing of personal data on behalf of the controller, as stated in Chapter 4, 59 (1) of the Data Protection Regulation of 2018.

[55] Part 5, 115 (3)The Commissioner is the supervisory authority whose functions in relation to the processing of personal data to which the GDPR applies include— (a)a duty to advise Parliament, the government and other institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data, and (b)a power to issue, on the Commissioner's own initiative or on request, opinions to Parliament, the government or other institutions and bodies as well as to the public on any issue related to the protection of personal data.

As previously stated, UK startups have been affected by the GDPR, and the Law of Data Protection of 2018 is an implementation of the latter.

Europe's new data privacy and security

The strictest privacy and security regulation in the world is the General Data Protection Regulation (GDPR). Although it was created and approved by the European Union (EU), it imposes requirements on any organizations that target or gather information about individuals residing in the EU. The rule becomes effective on May 25, 2018. The GDPR will impose severe fines—up to tens of millions of euros—on those who break its privacy and security criteria.

In a time when more individuals are entrusting their personal data with cloud services and breaches are occurring on a daily basis, Europe is signaling with the GDPR its tough position on data privacy and security. In especially for small and medium-sized businesses, GDPR compliance is a frightening proposition due to the regulation's scale, scope, and relative lack of specificity (SMEs).

History of the GDPR

The 1950 European Convention on Human Rights includes the right to privacy, which reads as follows: "Everyone has the right to respect for his private and family life, his home and his correspondence."

As technology advanced and the Internet was created, the EU saw the need for contemporary safeguards. After being approved by the European Parliament in 2016, the GDPR came into effect, and as of May 25, 2018, all enterprises had to comply to it.

Scope, penalties, and key definitions

Even if the start-up in question is not located in the EU, the GDPR nonetheless applies to it if it processes the personal data of EU citizens or residents or if it provides products or services to them.

Additionally, the penalties for breaking the GDPR are quite severe. The two categories of fines have a combined maximum of €20 million or 4% of worldwide sales (whichever is higher), and data subjects also have the option of pursuing damages compensation.

When is the start-up allowed to process data?

The permissible circumstances for processing personal data are outlined in Article 6:

1. The person whose data the start-up is processing granted it expressely a clear consent to do so.

2. The processing is required in order to carry out or make ready a contract to which the data subject is a party.

3. The start-up company must process it in order to fulfill a legal obligation it has.

4. To save a life, the data has to be processed.

5. Processing is required to carry out an official duty or a job in the public interest.

6. The start-up has a legal basis for processing someone's personal information. The "basic rights and freedoms of the data subject" always take precedence over companies' interests, especially if for example, the data pertains to a minor. This is the most flexible legal foundation.

Once the legal justification for data processing has been established, documentation and, thus, transparency are needed.

CHAPTER 4. Start-up Law in Italy

Summary: 4.1 SRL (Società a Responsabilità Limitata) innovativa – 4.1.1 SRLS (Società a Responsabilità Limitata Semplice)- 4.2 Legislation and regulations – 4.2.1 D-L. 179/2012 - 4.2.2 Amendments to the Decreto Legge of 2012 - 4.2.2 a) D.L. n. 135/2018 - 4.2.2 b) D.L. n. 34/2020 and the Covid-19 emergency - 4.2.3 The Italian Start-up Act (ISA), D.L. 179/2012 - 4.3 S.P.A. (Società per Azioni) - 4.4 Brief Case Study on Yoox: an Italian Unicorn

In theory, there is no suitable corporation law legislation in Italian company law for start-up businesses.

In European business law, the distinction between public and private companies is a classic one. Regarding the regulatory framework chosen for the governance of these two types of companies, Member States vary. On the one hand, there are countries (like Germany[56] and Austria) that follow a two-law system[57], wherein private limited companies and public limited companies are subject to separate and independent legislative actions. Similarly to this, a number of Member States expressly distinguish between public and private businesses[58], even if they combine the relevant laws into a single code (France, Italy, Switzerland) or consolidated act (Spain). The Nordic countries (Denmark, Finland, and Sweden), on the other hand, all choose for a one-law system to regulate the mostly uniform business model, following the common law precedent of the United Kingdom. All firms were initially public as creation needed a royal charter or a unique act of Parliament and the company normally sought to attract money from the public. Until the concession system was abolished and released from its constraints, which resulted in the development of private firms, it was unclear what the difference between public and private enterprises was in Europe. A parallel legal system exists in Italy. Even while the SPA (public company type) has some of the required financial independence, it is nonetheless restricted by strict management and control standards and European laws on legal capital. The SRL (private company type) provided the administration of the firm with a great lot of independence, but because it was not designed to be a vehicle for investors, it did not permit any freedom of contract in terms of finance. As a result, Italian corporate law is now in chaos. A dual model system based

[56] On this, see also § 43(2) of the German *GmbHG*

[57] See Mind the Bridge, European Dual Company: Scaleup Migration(2017), https://startupeuropepartnership.eu/reports/

[58] See sec. 37(1) Companies Act 1907, a private company is "a company which by its articles (1) restricts the right to transfer its shares; (2) limits the number of its shareholders to fifty; and (3) prohibits any invitation to the public to subscribe for any shares or debentures of the company". Today, only the last restriction is still applied.

on the public company and the private business is being replaced by the gradual, albeit covert, dismantling of the GmbH model[59], which was adopted by the majority of European nations between the end of the 19th century and the first part of the 20th century.

4.1 SRL (Società a Responsabilità Limitata) innovativa

The innovative limited liability start-up (Società a responsabilità limitata innovativa, or "innovative start-up") is registered into the special section of the firms' register (Registro delle Imprese), under the part that is dedicated to innovative SRLs, due to its innovative nature and high technological value.

It is a young business with great technological value and development potential, making it one of the main targets of Italian industrial strategy.

A choice of company type that stands out for its extreme flexibility and huge cost savings is the S.r.l. It has a minimum capital requirement of 10,000 euros and does not require the so-called "collegio sindacale"[60]. This indicates that the S.r.l. may have capital of at least one euro and less than ten million euros. In this case, the company can abide by the guidelines outlined in Article 2463, Fourth and Fifth Commas, C.C., which places the obligation on it to accelerate the reservation process and award the whole amount in cash.

As a result of its originality, the administration (amministratore unico, c.d.a., amministrazione pluripersonale congiuntiva o disgiuntiva[61]), as well as the provision of specific rights for single members in accordance with article 2468 [62], third comma, c.c., which assigns specific patrimonial and administrative prerogatives, can both be altered to suit the circumstances.

[59] GmbH model, or "Gesellschaft mit beschränkter Haftung" model is the German limited liability company, a widely used legal model for corporations. It is governed by directors, and has a minimum share capital of 25,000 euros. Its formation is not complicated, but it of course requires a deed of formation and articles of association established in the presence of a notary. For empirical data on costs of incorporation, see simplified SRL, see Lavecchia and Stagnaro (2019), pp 277 et seq.

[60] Board of statutory auditors

[61] In a company, when there is a plurality of directors, the administration can be accomplished:
- only with the necessary consent of all the directors, thus being the so-called conjunctive administration;
- each performed independently, getting the name of disjunctive administration.

[62] articolo 2468, terzo comma, c.c.

Once more, statistical information supports decision-making: most companies present themselves as innovative S.r.l.[63]

As already mentioned, during the 2003 general reform of corporate law, the Italian legislature emphasized the concept of a tightly held ownership structure in the SRL even more than some of its European equivalents. In 2003, the SRL experienced a dramatic shift from its previous status as a "simplified" or "small" public business. The public corporation-centric worldview was mainly supplanted by a quotaholder-centric one. Numerous clauses that offer the choice of numerous management structures emphasize the distinctive features of the recently constituted SRL[64].

4.1.1 SRLS (Societa a responsabilità limitata semplificata)

Returning to the S.r.l.s is an additional choice that startuppers might have. In 2012, the società a responsabilità limitata (s.r.l.s.) was simplified by the Italian government. Founders under the age of 35 were the only people who could use this edition at first, but that limitation was eventually lifted. Because it was needed to employ a statutory template, incorporation fees were also kept to a minimum. The advantages of this choice are far more apparent than they actually are. The S.r.l.s. constitutive act is really based on a predefinite model that excludes all but the most necessary models. The provisions of the plan are rigid and cannot be altered, which is frequently a benefit of the S.r.l. form of business and the inclusion of all regulatory words.

There are clear limitations on the investing partners' freedom of choice because only real persons can create the S.r.l.s. The option to exclude quotations in favor of themes other than real individuals has been made available by the MiSE in a recent Note dated February 15th, 2016[65]. But for the latter to be practical, the word "simplified" (semplificata) in the identification of the kind of organization must be removed, and it must adopt genuine and actual legislation. The application of discipline is contemplated for a capital of less than ten thousand euros, but the society must be turned into a non-simplified S.r.l.

Considering the minimal capital, which must be at least one euro, the latter doesn't actually represent a cost on which to save money.

[63] See: Giudici Paolo and Agstner Peter Startups and Company Law: The Competitive Pressure of Delaware on Italy (and Europe?) Working Paper N° 471/2019, August 2019, all data was collected by *InfoCamere* (infocamere.it)

[64] Art. 2475 c.c.
[65] prot. 39365

4.2 Legislation and Regulations

4.2.1 D.L. 179/2012

In 2012, the D.L. 179/2012[66] introduced some specific measures to sustain these kinds of enterprises and firms during their life cycle (birth, life and maturity). Through these provisions, it promoted a sustainable growth strategy, and it gave life to new opportunities to create enterprises.

In fact, the introduction to this decreto legge quotes : "Ritenuta la straordinaria necessità ed urgenza di emanare ulteriori misure per favorire la crescita […] dell'economia e della cultura digitali, […] nonché' per dare impulso alla ricerca e alle innovazioni tecnologiche, quali fattori essenziali di progresso e opportunità di arricchimento economico, culturale e civile […] viene emanato il seguente decreto legge[67]", so basically stating that D.L. 179/2012 was developed due to the urgence to have new provisions to favor the growth of technological innovations, and, thus, of the digital economy.

The text has been applicable since the 19th December of 2012, and it is divided into ten sections of articles.

-Section I: on the agenda and digital identity

-Section II: on Digital Administration and Open Data

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[66] note: Entrata in vigore del provvedimento: 20/10/2012.
Decreto-Legge convertito con modificazioni dalla L. 17 dicembre 2012, n. 221 (in S.O. n. 208, relativo alla G.U. 18/12/2012, n. 294). *(Ultimo aggiornamento all'atto pubblicato il 31/12/2021)*

[67] D.L. 179/2012 introduction : IL PRESIDENTE DELLA REPUBBLICA
Visti gli articoli 77 e 87 della Costituzione;
Ritenuta la straordinaria necessità ed urgenza di emanare ulteriori misure per favorire la crescita, lo sviluppo dell'economia e della cultura digitali, attuare politiche di incentivo alla domanda di servizi digitali e promuovere l'alfabetizzazione informatica, nonché' per dare impulso alla ricerca e alle innovazioni tecnologiche, quali fattori essenziali di progresso e opportunità di arricchimento economico, culturale e civile e, nel contempo, di rilancio della competitività delle imprese;
Vista la deliberazione del Consiglio dei Ministri, adottata nella riunione del 4 ottobre 2012;
Sulla proposta del Presidente del Consiglio dei Ministri e del Ministro dello sviluppo economico e delle infrastrutture e dei trasporti, di concerto con i Ministri dell'istruzione, dell'università e della ricerca, per la pubblica amministrazione e la semplificazione, della salute, dell'economia e delle finanze, per la coesione territoriale e della giustizia;

Emana il seguente decreto-legge:

-Section III: a Digital agenda for education (and digital culture)

-Section IV: on Digital Health

-Section V: on closing the digital gap and electronic money

-Section VI: on Digital Justice

-Section VII: on research, innovation, and intelligent communities

-Section VIII: on Insurance, mutual and financial markets

-Section IX: Measures for the emergence and development of enterprises and innovative start-ups

-Section X: Further measures for the country's growth

To the sense of article 25, comma 15, of the D.L. n.179/2012, the latter modified by D.L. 135/2018 too, the legal representative of the innovative startup or of the certified incubator has to annually testify the maintenance of the possession of the prerequisites, depositing that declaration in the *Registro delle Imprese* office with the same telematic modalities, within 30 days from the exercise balance approval, and anyways within six months from the closure of each exercise, except for the major temporal limits ex art. 2364 cc., in which case, the fulfillment of such is brought to conclusion within seven months. The ex officio cancellation from the Special Section occurs within 60 days of the removal following the requirements, leaving the regular entry in the Commercial Register (Article 25, paragraph 16). The continuation of the facilities given by the regulations may be maintained for the startup firm that retains the requirements to enter the special section of innovative SMEs while losing one of the case's constituent needs (such as after sixty months from establishment).

The facilities contained in the D.L. n. 179/2012, as supplemented by D.L. n. 34/2020 Decree-Law n. 179 of 2012 introduced a comprehensive framework of provisions, concerning the creation and development of innovative startups, providing for a series of tax concessions in their favor, ranging from the exclusion of shell companies (società di comodo), to exemption from the payment of stamp duty, from tax credits in favour of new hires to Irpef[68] deductions and Ires[69] deductions in favour of investors.

[68] Irpef and Ires are two of the most important tax and accounting obligations. Irpef, the "Imposta sul Reddito delle Persone Fisiche", is the acronym for Personal Income Tax, and it is applied to the personal income produced by each individual, see https://www.agenziaentrate.gov.it/portale/schede/pagamenti/imposte-sui-redditi/cosa-imposte-sui-redditi

[69] Ires, the "Imposta sul Reddito delle Società" is the income tax of Italian corporations, *ibidem.*

Finally, innovative startups and accredited incubators' articles of association may permit the issuance of financial instruments with capital rights or even administrative rights, excluding the right to vote on member decisions, in exchange for contributions from shareholders or third parties, including work or services.

Section IX, art. 25:

Art. 25 of the D.L 179/2012 states the prerequisites that an enterprise needs to have in order to be an innovative start-up:

"For the purposes of this Decree, the innovative start-up company, is the capital company, also constituted in cooperative form, whose shares or shares representing the share capital are not listed on a regulated market [...] having the following requirements:"

a) LETTER DELETED FROM D.L. 28 JUNE 2013, N. 76, CONVERTED AS AMENDED BY L. 9 AUGUST 2013, NO. 99;

b) is formed by not more than sixty months;

c) is resident in Italy pursuant to Article 73 of Decree 917 of the President of the Republic of 22 December 1986, either in one of the Member States of the European Union or in States party to the Agreement on the European Economic Area, provided that it has a production site or a subsidiary in Italy;

d) from the second year of operation of the innovative start-up, the total value of the annual production, as shown in the last approved balance sheet within six months of the end of the financial year shall not exceed EUR 5 million;

e) does not distribute, and has not distributed, profits;

f) has as its exclusive or overriding object the development, production and marketing of innovative products or services of high technological value; (10)

g) it was not formed by a merger, a division of companies or a transfer of a company or a branch of a company;

h) has at least one of the following additional requirements:

1) The amount spent on R&D[70] is equal to or more than 15% of the difference between the cost and the overall value of the product produced by the creative start-up. The R&D expenditure statement does not include costs associated with the acquisition or renting of real estate. Spending on pre-competitive and competitive development, such as experimentation, prototyping, and business plan development, as well as spending related to incubation services provided by accredited

[70] Art. 25(8), Decree Law 2012, no.179.

incubators, as well as the gross costs of internal staff and external consultants employed in research and development activities, including members and administrators, are considered for this measure. The latest authorized budget is what determines expenditure, which is explained in the notes to the financial accounts.

A statement issued by the legal representative of the innovative start-up assumes responsibility for their implementation in the absence of a balance sheet during the first year of operation;

2) Certified research activity at public or private research institutes, in Italy or abroad, that is, a percentage equal to or greater than two thirds of the total workforce, staff holding a master's degree, and employment as employees or collaborators in any capacity, equal to or greater than one third of the total workforce, staff holding a PhD or holding a PhD at an Italian or foreign university, or who have completed a degree and have completed at least three years.

3) is the owner, depositary, or licensee of at least one industrial right relating to an industrial invention. By biotechnological invention, it is meant a new plant variety or a semiconductor product's topography. It is also meant holding rights to an original computer program registered with the Special Public Register for Computer Programs.

4.2.2 Amendments to the Decreto Legge of 2012

During the current parliamentary term, simplifications have been introduced to the start-up regulation.

4.2.2 a) D.L. n. 135/2018

The changes, introduced with the D.L. n. 135/2018, mainly concerned the advertising system of the companies in question. The main novelty is that which provides for the inclusion of information that allows the innovative Start-Up/SME company to register in the special section of the Register of Companies, and to update the information in question, through the platform *startup.registroimprese.it* . In addition, financial support for start-ups has been introduced. Divided into twelve articles, the following decree-law has been introduced to support small and medium-sized enterprises in various sectors (such as construction, to which it guarantees mainly funds for structural interventions of economic policy).

Article I: Support for small and medium-sized enterprises creditors of public administrations and those operating in the construction sector

Article II: Regulation of the deadline for the repayment of the financing referred to in Article 50, paragraph 1, of Decree-Law No. 50 of 24 April 2017

Article III: Simplification measures in the field of business and labour

Article IV: Amendments to the Code of Civil Procedure on Forced Execution of Public Administration Creditors

Article V: Rules on simplification and acceleration of public procurement procedures below Community threshold

Article VI: Provisions on the traceability of environmental data relating to waste

Article VII: Urgent measures in the field of prison construction

Article VIII: Digital platforms

Article IX: Urgent provisions on specific training in general medical practice

Article X: Administrative simplification in the fields of school education, universities and research

Article XI: Adjustment of funds earmarked for the ancillary economic treatment of civil servants

Article XII: Entry into force, signed by MATTARELLA, Count, President of the Council of Ministers, Mr Di Maio, Minister for Economic Development and Labour and Social Policy, Mr Tria, Minister for Economic Affairs and Finance, Mr Bonafede, Minister for Justice, Mr Costa, Minister for the Environment, Mr Toninelli, Minister for infrastructure and transport ,Grillo, Minister for Health, Bussetti, Minister for Education, University and Research, Bongiorno, Minister for Public Administration, Savona, Minister for European Affairs.

4.2.2 b) D.L. n. 34/2020 and the Covid-19 emergency

In order to deal with the financial difficulties caused by the epidemiological emergency caused by the coronavirus, with the D.L. n. 34/2020, some financial support measures for non-listed SMEs at the start-up stage and with a high development potential were subsequently established during the current legislature and recently strengthened. In particular, the National Innovation Fund (also established under the Budget Law 2019, Art. 1, paragraph 116) or other businesses approved by the Bank of Italy to provide the service of collective asset management, as well as the Venture Capital Support Fund mentioned in the 2019 Budget Act (L. No. 145/2019), through which the MISE is authorized to invest in Venture Capital Funds, established and managed by CDP Venture Capital SGR S.p.A.

In this respect, it is important to keep in mind that the new D.L. n. 34/2020 (Article 38) has included exceptional measures to help entrepreneurs deal with the financial

hardships they have experienced as a result of the coronavirus epidemiological emergency. The 12-month extension of the duration of residency for inventive startups in the special part of the register of businesses is one of the measures that was implemented. Any conditions set forth under the threat of forfeiture for receiving public incentives and for their revocation are prorated by a year.

4.2.3 The Italian Start-up Act (ISA)

Many of the policy recommendations made in "Restart, Italia!," a report created by a task force of 12 experts appointed in April 2012 by the Minister of Economic Development, are gathered in Decree-Law 179/2012. Additionally, crowd-sourced policy recommendations that came from extensive consultation with the key participants in the Italian innovation ecosystem are also included. The Decree, which is rightly referred to as "Italy's Startup Act" (ISA), has added a definition of a new innovative firm with high technological value, the "innovative startup," to the Italian legal system. For the first time, a comprehensive regulatory framework (articles 26-31) has been set up in favor of this sort of corporation, free from any restrictions based on the industry or age, as is typical in other national laws. The innovative enterprise's whole lifespan, from incorporation through the stages of growth, development, and maturity, is covered by the new instruments and supporting measures.

More than six years after its inception, the ISA continues to generate significant interest among Italian business owners. So far, more than 10.000 startups have been registered. The number increases to well over 15,000 when firms that have folded or those that are still there but no longer qualify as creative startups are added to the list. Comparing impacted firms' development prospects and propensity for innovation to similar organizations that did not take part in the policy, independent research concluded that the ISA significantly boosted these outcomes.

The regulation has undergone several revisions and upgrades over the years, but its core ideas remain the same. Beyond the ISA's structure, a number of recent rules have been especially advantageous to creative firms.[71]

The latter is intended for innovative start-ups or recently established companies with a close connection to technological innovation. No extra limitations apply; innovative businesses can operate in any sector. According to the ISA, companies must meet several standards in order to qualify as innovative startups. The unlisted limited liability

[71] The most notable of these regulations is the National Plan for Industry 4.0 (2017). See Giudici Paolo and Agstner Peter Startups and Company Law: The Competitive Pressure of Delaware on Italy (and Europe?) Working Paper N° 471/2019, August 2019

companies that satisfy the requirements listed below are thus to be considered innovative startups.

The firms need to have a production facility or a branch in Italy, or if they have one, another EU/EEA Member State if they have been formed for less than five years, they are not the result of a company merger, separation, or transfer of a business or branch. They also have to facture less than €5 million in revenue annually and according to their mission statement[72], the development, production, and marketing of novel goods or services with a pronounced technical component are their main or only concerns.

Lastly, they have to satisfy at least one of the three innovation-related factors listed below:

1. At least 15% of the gap between turnover and yearly costs is attributable to research and development costs (as per the last statement of accounts).

2. At least 2/3 of the team has a master's degree, or at least 1/3 of the total workforce is a PhD, PhD student, or researcher.

3. The company is the owner or licensee of a registered patent or possesses an original registered software (or has filed an application for an industrial property right). It should also be highlighted that, aside from any special measures at the regional and municipal levels, the designation of innovative startup with a social aim does not yet involve any additional legal benefits.

ISA and startup incorporation

The incorporation is free and digital. For the first time, incorporation is permitted without the oversight of a public notary, which marks a disruptive innovation within Italian company law. There are no special charges associated with the formation of the firm aside from minor registration obligations. Comparing the online process to a traditional notarial deed, significant savings are realized. The entire process is conducted online, and the electronic signature ensures the parties' identities.

Additionally, the bankruptcy process is made more affordable and accessible for entrepreneurs, and recapitalization is also made simpler. Due to this, startups may prolong their lifeline, something that established organizations cannot do. Access to the SMEs Guarantee Funds is made easier by the Guarantee Fund for Small and Medium Enterprises[73], a governmental institution that promotes access to credit by placing

[72] "oggetto sociale"

[73] The SMEs that are included in Recommendation 2003/361 / EC, which is how the European Commission defines SMEs, are the target audience for the Guarantee Fund for Small and Medium Enterprises. The latter aims to promote Italian enterprises' access to public guarantees by utilizing public funding from the EU or resources donated by public or private organizations.

guarantees on bank loans, provides an easy, free, and direct intervention for innovative companies.

4.3 S.P.A. (Società per Azioni)

The S.p.A. is unquestionably more demanding than the S.r.l. and has a binding governing structure. The minimum capital needed is greater than the former type of company, and the stake is in fact at 50.000 euros. Because participation is unrelated to the member as a whole, it is not feasible to create specific rights that are assigned to members. Instead, special categories of shares must be created.

The S.p.A. is a public limited company, which was "unique" in every way when the Civil Code was published in 1942; and the same regulations applied to both big and family-run businesses. Soon, in the middle of the 1950s, reform programs alternated and made an effort to include reforms, but they battled to become actual laws. Nevertheless, numerous improvements were made possible by these programs[74].

There are several public limited company issues, including those that needed an immediate legislative change and were mostly caused by a legal framework that was unable and insufficient to keep up with the rapidly changing economic landscape. Due to the inadequacy of the general rules that apply to all public limited companies, both for those with a very small number of shareholders who can maintain the affectio societatis and for those with a very large size, these issues concerned public limited companies that raised capital from public savings.

Affectio societatis

In accordance with French law, this phrase signifies that two or more persons jointly and individually dedicate themselves to realizing the association's goals. The existence of a "spirit of collaboration" among the partners, or affectio societatis, which describes their willingness to achieve their aims jointly, has been added by French courts to the list of objective elements for a partnership. According to Cuisinier, Vincent, in "L'affectio societatis", the absence of affectio societatis is a necessary condition for dissolution of the partnership. In addition, the member's affectio societatis compelled him to prioritize the needs of the business over his own. "On entering the business, the partner committed to put his personal interests second to those of the company; it is the affectio societatis," says V. Allegaert in Company Law and Fundamental Rights and Freedoms. Moreover, the author continues by stating that being a partner entails having a stake in a community as well as being a contractor of the business agreement and an owner of securities. As a result, even in theory, the

[74] Among these changes, we should mention: the Ascarelli project, which is published with the relevant Introductory Reports, in the volume SCOTTI CAMUZZI, S., The Reform of Companies with Capital in Italy. Projects and documents, Giuffrè, Milan, 1966, and subsequently, Professor Santoro Passarelli, who drafted a Report on the subject of joint stock companies, published in 1964.

rights of the partner cannot be thought of as unrestricted since they always adhere to those rights' limitations.

The Italian public company (società per azioni) had some qualities that made it well suited to some startup characteristics, particularly in terms of financial flexibility, as this flexibility is made possible by the possibility of issuing different share classes (Article 2348 C.C.), allocating shares to shareholders in a manner that is not proportional to their contributions (Article 2346 C.C.), etc.

The startuppers' two biggest barriers, however, were a regulated minimum capital requirement of Euro 50,000 and an obligatory board of three statutory auditors[75], which anecdotally corresponds to a fixed cost of Euro 15,000–20,000 each year. As a result, the SRL, a family-run business, became the preferred choice for this emerging social class of entrepreneurs.

4.4 Brief Case Study on Yoox: an Italian Unicorn

Incorporated in 2000, Yoox SPA is the first high-end online discount retailer from Italy. Italian private equity institutions and certain Italian businesspeople, like Renzo Rosso from Diesel, generously sponsored the seed stage.

In just three years, Yoox had become a market leader in Europe for online fashion, operating in more than 15 nations, and was prepared to enter the American market with the help of U.S. Benchmark Capital and other international venture capital groups.

FTSE STAR listed Yoox initially in 2009, followed by FTSE MIB in 2013.

Yoox and U.S. Net-A-Porter, both owned by the Swiss Compagnie financière Richemont, combined in 2015 to form YNAP SPA.

The Compagnie financière Richemont successfully acquired YNAP SPA in 2018 for 5.3 billion. The upshot of this transaction was the delisting of the corporation.

On January 22, 2018, Richemont makes an offer to acquire whole ownership of Yoox Net-a-Porter.

The corporation was one of the only successful Italian unicorns to emerge and to be well-positioned also between American and British startups.

[75] So-called "collegio sindacale"

CHAPTER 5. Legislation and normative: a comparison between the three jurisdictions

Legislators in Italy gradually changed the SRL into the SME SRL, which is essentially a new sort of business that falls between the two original categories. This business structure presents a challenge for venture-funded firms due to its unclear nature. Rather than intra-European rivalry on company charters, Delaware is the competitor exerting pressure on Italian corporation law. This happens because Delaware Law, as I have previously analyzed in Chapter II, gives significant opportunities to newly-born companies due to the freedom it leaves to contracts of the latter ones, while European[76], and, more specifically, Italian legislation has resulted inadequate to sustain the growth of innovative firms.

Italian business law is under pressure, although not from other European nations, but rather from the US, particularly from Delaware. The need for US-equivalent mechanisms to finance startups is growing among Italian startup actors.

However, Italian law, like many other laws in Europe, was not set up to provide comparable tools. These laws, which were created at the tail end of the nineteenth century by quite different economic forces and players, appear to no longer be capable of fostering rapid economic expansion. The legislation governing private firms was progressively changed as this was realized at the end of the previous century, however without a systematic strategy or set of well-defined policy principles.

Due to its inability to cater to the interests of a new social class (startuppers), and the fact that Italian company law is yet unprepared to deal with the new economic environment, the existing dual system approach in Italy is ill-suited to deal with the advances of the new millennium.

Europe yearns for American-style businesses that succeed, scale up, and produce money and employment. The five[77] biggest businesses by market value today began as startups financed by venture capital. Sole a few European "unicorns" are among the biggest firms in the world, and the only unicorn in Italy is Yoox, which I have previously examined.

Moreover, Italy's company law has undergone a significant shift. The US Limited Liability Company (LLC) has served as a model for the liberalization process in Europe.

[76] See European Commission (2016).
[77] The reference goes to Apple, Microsoft, Google, Facebook and Amazon.

Italy has followed a similar path, but it did so by modifying an existing corporate structure, the "società a responsabilità limitata," rather than by inventing a new one (SRL).

Numerous legislative initiatives have been taken across Europe to achieve the common policy goal of regulatory relaxation motivated by common law experience. One important objective was the gradual elimination, or at the very least, relaxing, of the minimum capital requirements, which may be seen from a comparative viewpoint. In fact, while lawmakers once required that private companies pay a minimum share capital that ranged from Euro 7,500 (France), Euro 10,000 (Italy), Euro 18,000 (Netherlands), Euro 25,000 (Germany), and Euro 35,000 (Austria) to form an ordinary or simplified private limited liability company with a minimum share capital of 1 euro or even below. However, today, the majority of them permit this. Speeding up the incorporation procedure is another crucial issue, but Italy is still on the fence about it. This is mostly due to the ongoing debate about the importance of the public notary in the formation process. However, this procedure was not primarily and expressly geared at establishing an environment favorable to the creation of European startups. In any event, all these initiatives are intended to simplify and speed the establishment of new enterprises and, as a result, improve national economic growth.

In Italy, the SRL was thus gradually transformed into a semi-liberal being that, in the intention of the legislation, should provide Italian startuppers with an instrument to finance their businesses through VCs and also allow access to crowdfunding and capital markets. This decision to depart from tradition was driven by economic necessity and social pressure. Since there are no indications of European regulatory competition in it, this reshaping has certainly been the product of competitive pressure emanating from the US. This competitive pressure has been brought about by the forces of economic logic, precedent, and competition, particularly from Delaware, but also and completely unexpectedly by the force of direct competition for charters, which is evident with regard to Italian startups that have relocated to Delaware and adopted the "dual company" scheme, previously analyzed in depth.

In fact, the US experience and, consequently, Delaware from the standpoint of corporation law, were the key influences on the social and political dynamics that propelled the Italian changes. As a result, the legislative and policy drivers of the Italian reform from 2012 to 2017 have not been significantly influenced by regulatory competition inside the European Union. The goal of the legislation was to inject financial flexibility into the nearly rigid Italian SRL corporate finance law in order to make this company form appealing to both VC and crowdsourcing campaigns.

However, the goal of reorienting the SRL towards purposes that are entirely unrelated to those that led to its establishment by making a few minor changes to some of its most important financial provisions seems overly ambitious. Creating an LLC modeled after one in the US might be a bold answer.

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