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Company law during the blockchain revolution.

The rise of “CorpTech”



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TABLE OF CONTENTS

1. Introduction
2. Tokenization of company's participations
3. Exercise of rights through DLT
4. DLT vs *deepfake* technology
5. Final remarks



1. Introduction



The CorpTech “myth”

- ✓ CorpTech → technological solutions applied to corporate governance systems
- E.g.: registration of company shares on a public blockchain; voting using tokens; balance sheets on the blockchain; etc.

Can these solutions find application in the real life?

Aim of this paper is



Answer two questions:

According to Italian Company Law:

- It is possible to issue equity tokens?
- Can tokens be used to exercise economic or administrative rights?

Provide one solution:

- The use of DLT against the perils of *deepfake* technology

2. Possibility of issuing equity tokens

How companies' participations are represented and can circulate



Companies Limited by Shares (S.p.A.)

- Securized shares (*Azioni cartolarizzate*)
- Not-securized share (*Azioni non-cartolarizzate*)

Limited Liability Companies (S.r.l.)

- Traditional regime
- Alternative Regime (Art. 100-ter TUF, 2015)

Issuing Equity Tokens in S.p.A.



Regime: *Azioni cartolarizzate*

- ✓ Shares incorporated in physical documents (*titoli di credito*)
- ✓ Difficulties in considering tokens as ‘physical’
- Token ≠ Credit titles

In this regime shares cannot be incorporated in tokens

Issuing Equity Tokens in S.p.A.

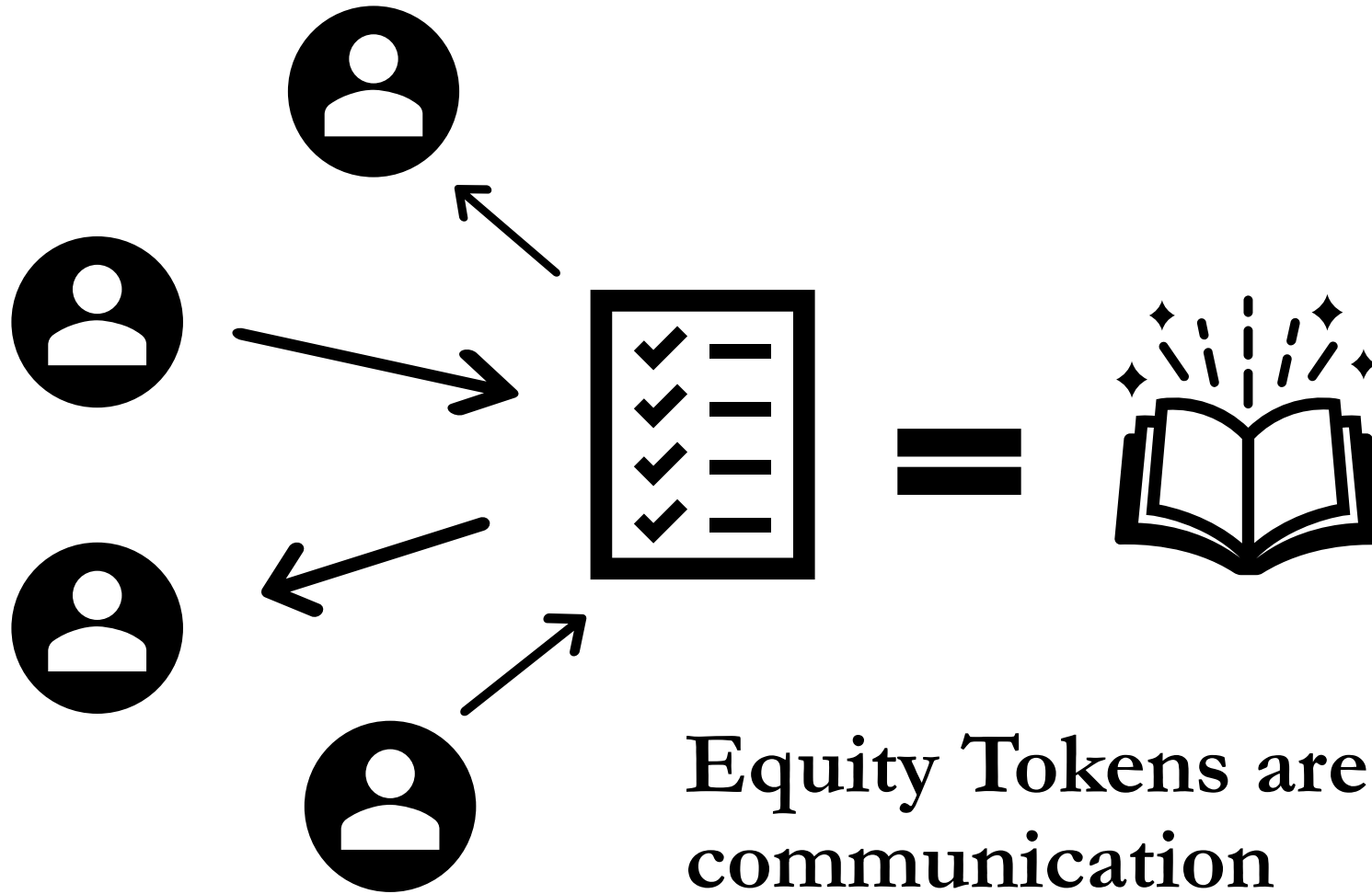


Regime: *Azioni non cartolarizzate*

- ✓ Shares circulation is based on the Shareholder Book
- ✓ Transfer by consensus on it registered in the S.B.
- Shareholder Book can be kept using electronic means (art. 2215-bis c.c.)

Equity Tokens can be issued in this regime

How:



Equity Tokens are just a mean of communication

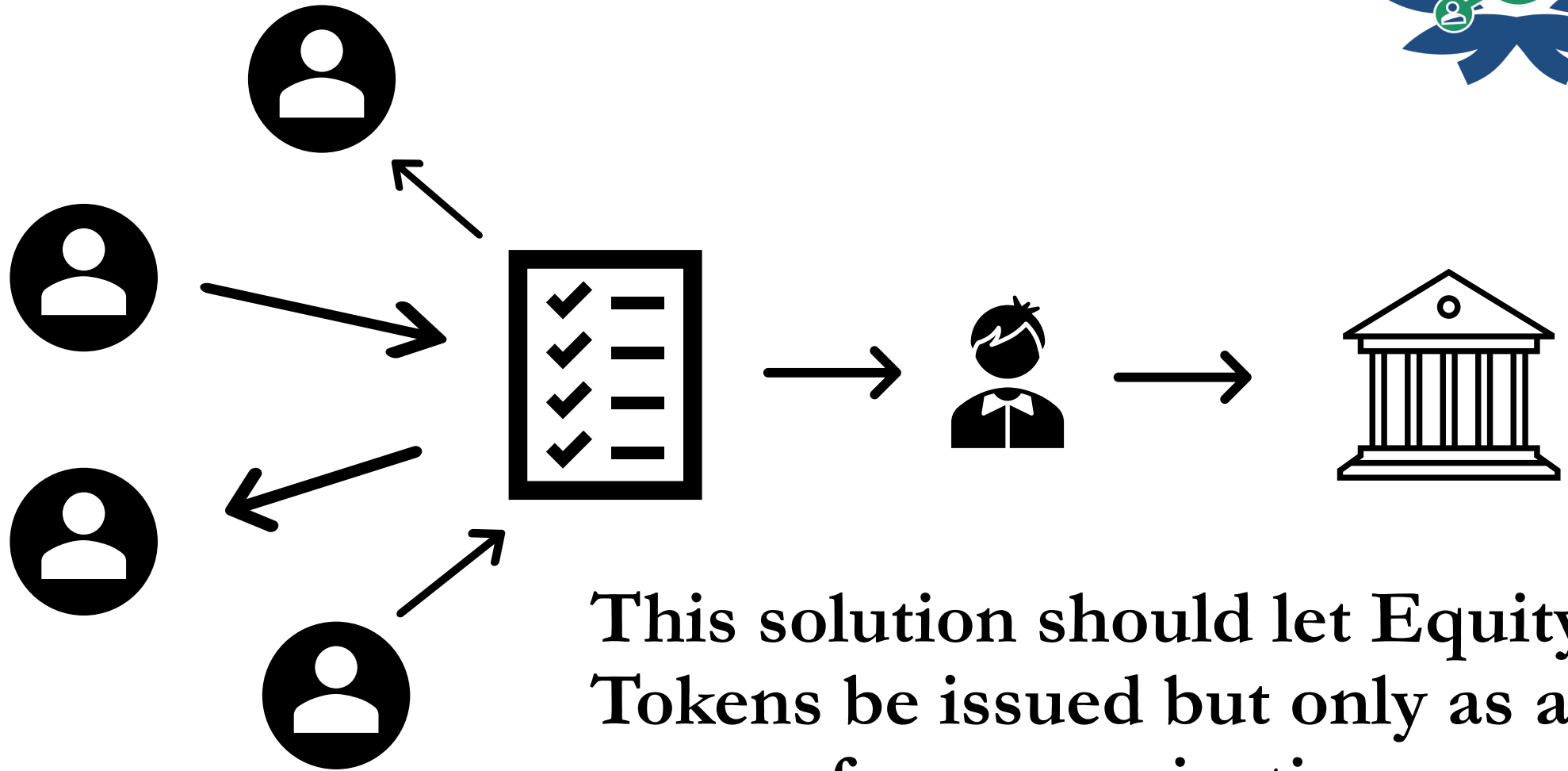
Issuing Equity Tokens in S.r.l.

Regime: Traditional Regime



- ✓ Quotas circulation is based on the Company Register
- ✓ Transfer communications must be sent by a public notary or by a *dottore commercialista*
- The system is too much centralized and intermediated to be tokenized

However....



This solution should let Equity Tokens be issued but only as a mean of communication

Issuing Equity Tokens in S.r.l.



Regime: Alternative Regime

- ✓ Regime introduced in 2015 for equity crowdfunding campaigns (Art. 100-ter TUF)
- ✓ A private intermediary has the task to manage the transfers being the only shareholder in the Company Register
- The intermediary is free to adopt a DLT system and so to issue equity tokens

Tokens can be only a mean of communication

To sum up the first part..



Q1: According to Italian Company Law, it is possible to issue equity tokens?

Companies Limited by Shares (SPA)

- R. of *azioni cartolarizzate* → No, tokens are not credit title
- R. of *azioni non-cartolarizzate* → Yes, but just as a mean of communication

Limited Liability Companies (SRL)

- Traditional regime → Maybe, but just as a mean of communication
- Alternative Regime → Yes, but just as a mean of communication

3. Exercising economic and administrative rights



Economic rights

- Right to receive dividends

Administrative rights

- Right to vote
- Right to intervention within the meeting

Exercise of economic rights



No legal limitations (ex ante)

BUT

- ✓ DLT implies the impossibility to claim back distributions
 - Such mechanism should be implemented to be activated under specific events
- ✓ There is the need to create a link between cash and cryptocurrencies
 - Corruption of the «bridge» between on- and off-chain

Technological limits(?)

Administrative rights



No legal limitations (at all)

- ✓ Voting using DLT shall be provided in the bylaws

BUT

Strong technological limits (!)

- e.g.: Problem of transparency of permissionless DLT

Solution: only record the hash

4. DLT for participations at distance



- ✓ Emergency situations require reunions to be held at distance
- ✓ Until few years ago, seeing a person face or hearing his voice was a guarantee

Deepfake technology nullifies this guarantee

What is deepfake technology



Solution: DLT and identification tokens

5. Final remarks

CorpTech myth is not real yet

- ✓ Legal obstacles (Part I)
- ✓ Technological limitation (Part II)
- Concrete applicable solutions (Part III)



What we can do about it?



- ✓ Update the laws
- ✓ Innovate technology

BUT ALSO

- Change our behaviour (i.e. using cryptocurrencies)



Thank you!

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