Italy

Legal overview

Registered Companies and Partnerships

Types of business associations may be classified in two categories, created by the law depending on the circumstance that they are organised on a stock capital basis ("società di capitali" or capital companies) or on a personal basis ("società di persone" or partnerships).

The difference between the two categories is that only the capital companies are regarded as having a legal entity entirely separate and distinct from the individuals who compose it. Capital companies have the capacity of continuous existence or succession and have the capacity to take, hold and convey property.

A capital company's liability is normally limited to its assets and the stock or quota holders are protected against personal liability in connection with the business of the company.

Partnerships are not legal entities distinct from its members, although they may acquire property and assume obligations in their own trade name.

There is an exception to the above distinction that is represented by a rarely used business association structure, the so called "società in accomandita per azioni" or Partnership Limited by Shares. This is a form of company organised on a stock capital basis, where two categories of shareholders exist: Those who enjoy the shield of corporate privilege of this business association and do not respond on a personal basis for the obligations of the limited share partnership ("soci accomandanti") and those who are instead entrusted with the management of the company and are as well personally liable for the obligations ("soci accomandatari").

Registered Companies

Only the Corporation (Società per Azioni) and the Limited Liability Company (Società a Responsabilità Limitata) possess full and separate legal identity. Foreign investors usually choose one of these

two structures to minimise potential liability exposure. Società per Azioni and Società a Responsabilità Limitata may be deemed respectively close to the Public and Private Companies in United Kingdom, as well as to the Corporation and Limited Liability Companies in the United States of America.

The main types of registered capital companies provided for in the Civil Code are the following:

Limited Liability Company
("Società a Responsabilità Limitata – S.r.l.")

Small or medium-sized enterprises may adopt the limited liability company form to run their businesses in Italy.

This form of business association enjoys a great degree of internal flexibility in terms of management and control that makes it attractive to closely held enterprises. This flexibility leaves the stockholders free to develop their organisational structure and to some extent their own management rules and principles.

Stockholders are not personally liable for debts of a Limited Liability Company, unless the following circumstances concur altogether: Sole Stockholder Company; Insolvency of the company; Stock contributions have not been fully paid in, rules concerning payment of the stock or rules regarding duty of legal publicity have not been observed.

In the above circumstances, the stockholder is personally liable for debt of the company.

The contribution of a stockholder may be cash, property or services as long as a contribution can be financially evaluated. Participation of a member is a quota that cannot be represented by shares.

Corporation ("Società per Azioni – S.p.a.")

In a Corporation, the capital holdings of members are represented by shares. The Corporation has the same major features as the corporate form in most other countries.

A Corporation is governed by the shareholders at the general meeting, by the directors and the board of statutory auditors. Its statutory regulation provides that circulation of corporate capital is a relevant factor in order to classify companies without outstanding shares held by public investors (Closely Held Corporations)

and companies with outstanding shares held by public investors. Namely, companies issuing stock shares that are traded on regulated markets or circulating in the market on a relevant scale that means circulating among Italian issuers with net capital not less than €5 million and with a number of shareholders or bondholders greater than 200). Specific rules are provided for these public companies.

Partnership Limited by Shares ("Società in Accomandita per Azioni – S.a.p.a."). Very rarely used, this structure has the same features of Limited partnerships and stock companies.

The share capital consists of stocks and shareholders which are divided into two groups, general partners, who manage the company and have unlimited, collective and contingent liability and limited partners, whose exposure to debt is limited to the shares each underwrote, and who cannot carry out management activities within the company.

The appointment of a new director is subject to the approval of the other directors.

Innovative Start-Ups

Any capital companies with shared capital (i.e. limited companies, "società di capitali"), including cooperatives, whose capital shares, or equivalent, are neither listed on a regulated market nor on a multilateral negotiation system. These enterprises must also comply with the following requirements. They must be newly incorporated or have been operational for less than 5 years (in any case, not before 18 December 2012), have their headquarters in Italy or in another EU country, (but with at least a production site branch in Italy), have a yearly turnover lower than €5 million and must not distribute profits. They must also have an exclusive or prevalent company object, as stated in the deeds of incorporation, the production, development and commercialisation of innovative goods or services of high technological value are not the result of a merger, split-up or selling-off of a company or branch.

The innovative character of these enterprises is identified if at least 15% of the company's expenses can be attributed to R&D activities, at least 1/3 of the total workforce are PhD students, the holders of a PhD or researchers, alternatively 2/3 of the total workforce must hold a Master's degree or the enterprise is the holder, depositary or licensee of a registered patent (industrial property), or the owner and author of a registered software.

Among other benefits, they enjoy incorporation and following statutory modifications by means of a standard model with digital signature, cuts to red tape and fees, flexible corporate management, extension of terms for covering losses, flexible remuneration system, tax incentives and the possibility to collect capital through equity crowdfunding authorised online portals.

Articles of Association and By-Laws

The main constitutional document for a company is its articles of association, a simple document, which provides basic information. For instance the articles provide information about the trade name of the company, its stated capital and initial shareholders. All registered companies must also have their By-Laws, which provides the rules for the life and governance of a company. A company must register the By-Laws with the Companies' Register.

Share Capital (Minimum and Minimum paid in amount)

The minimum amount required of stated capital in corporations (s.p.a.) is €50,000. As a condition of the incorporation, shareholders must subscribe the entire stated capital. Shareholders shall pay upon subscription at least 25% of the stated capita (if there is a sole shareholder, deposit of the stated capital as a whole is required). The term for restitution to the company of the percentage deposited in the bank for subscription of the shares has been reduced to 90 days. If the shares have not been entirely paid in, it is not possible for the company to increase its stated capital.

The minimum amount required of stated capital in limited liability companies (s.r.l.) is €10,000. In case of simplified or reduced capital S.r.l. companies, the minimum amount upon their inception can be between € 1 and €9,999, however each year 20% of the profit achieved must be accounted for in a specific statutory reserve until an amount of €10,000.

The same rules apply concerning the entire subscription of the stated capital, the payment of the 25% of the stated capital and the eventual contributions in kind. In contrast to corporations, contributions of a quota-holder may also be intellectual property and labour services, as long as the contribution can be economically appraised.

Contributions by members of limited liability companies cannot be represented by shares, nor can they be publicly traded. If the Articles of incorporation do not provide differently, participation

of the members is determined in proportion with the contribution. The Articles of incorporation may provide for granting special rights to single members in relation to the management of the company or the distribution of profit.

Public Offer of Shares

The exchanges for IPOs in Italy consists regulated and of non-regulated markets, organised and managed by Borsa Italiana. The regulated markets of the Italian Stock Exchange for IPOs are the Main Market (MTA) and the Market for Investment Vehicles (MIV).

Non-regulated markets for IPOs are AIM and GEM.

There are several complex listing requirements for free floating on the main Italian stock markets. For instance having audited financial statements for last 3 years prior to filing the application and a foreseeable market capitalisation of at least €40 million in some instances not exceeding €1 billion.

The duration of the listing procedure may be influenced by many factors, such as the size of the issuer, its corporate and organisational structure, the sector in which it operates, the structure of the offer and the level of complexity of the due diligence process. However, the average duration of the entire listing process is usually around 24-30 weeks.

General Meetings

Unless the By-laws provide otherwise, the General Meeting may be called at any place within the municipality where the company has its registered office.

The General Meeting must take place once a year, within the 120th day after closing of the corporation's fiscal year. By-laws may set a longer period of time, not exceeding 180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company. In the latter case, directors have to make mention of the deferral in their report.

Companies without outstanding shares held by public investors may avoid formalities and requirements established for the call of the meeting (notice on the Official Gazette 15 days before the meeting).

By-laws may allow calls through means of communication that guarantee the effective knowledge of the call at least 8 days in

advance of the scheduled date (certified letter with receipt and fax are proper means, however, there are some doubts about e-mails with automated reading receipt messages).

Upon petition by 10% of the shareholders, the Tribunal may also call the General Meeting, but only if the management did not call it without justification.

Quorum and majorities for the resolution of the Shareholders Meetings are different among closely held and publicly traded corporations.

Directors

In Limited Liability companies, the By-Laws may contain a provision that management is undertaken by a sole director or a Board of Directors, whose members exercise their actions jointly. In this case statutory rules regulating management of partnerships apply to Limited Liability Companies. Therefore, unanimous consent of all the Directors is required for company's actions and single directors cannot carry out any action on their own, save when there is necessity to avoid damage to the company.

Board of Directors, whose members may act individually. In this case, each director may exercise her/his office individually and the power to manage the company belongs to any stockholder with unlimited liability.

Certain company's actions (annual financial reports drafting, merger or de-merger plan and capital increase plan drafting) may only be exercised by the Directors altogether, by way of majority quorum or the different quorum that the By-Laws of the company may set forth.

In Corporations, different models of corporate governance may be adopted. By-Laws may regulate more freely the internal organisation of the board competent for management, its functioning, the circulation of information among its members and the members of the Board of Auditors. Unless By-Laws provide otherwise, the model of corporate governance and control is still represented by the traditional system.

If the reference model is the traditional system (General Shareholders' Meeting, Board of Directors, Executive Committee, Board of Auditors and external auditing when required by the Law). Under this system, the accounting control previously attributed to the Board of Auditors is attributed to an external Auditor or an Auditing Company.

If it is the dualistic system (German tradition), it may be established on By-Laws that governance of the company is exercised by the Management Board, which is appointed by the Supervisory Board (with the exception of the first election resulting from the certificate of incorporation). Management Board can assign specific executive powers to one or more of its members.

If the reference model is the monistic system (British tradition), the By-Laws may set forth that a Board of Directors have the duty of corporate management, but a Committee appointed internally will be appointed for the purpose of supervising the management.

This system of governance must be explicitly set out in By-Laws. There is a close connection between the Board of Directors and the Committee for supervision of the management. Only those who have been previously elected members of the Board of Directors may serve as members of the Committee.

Financing of a Company

Companies are financed through capital contribution from shareholders, loan, debt and bank finance, equity investment from private equity funds and grants.

Corporations may dedicate and link a proportion of their stock (not more than 10% of the stock capital) to the results of a determined area of business (with the exclusion of business activities with a reserved statutory regulation). To that extent, a corporation may set up one or more assets specifically dedicated to the realisation of a specific business (a single business or an entire business activity to be carried out along with the main business activity of the company).

Additionally, a corporation may establish that financial resources necessary for carrying on the activity have to come from the specific business itself

The purpose of this regulation is to allow for split management and to enable different activities and businesses to be valued independently

Corporations are also allowed to issue debt securities offered to the market for subscription. The decision to issue debt securities as a financial instrument, may be led by the preference of raising financial resources without granting new subjects the right to vote and without altering corporate control, the necessity of financing projects or operations, which only need a temporary financing or the circumstance that the purchase of equity stock is not a sound

investment during a particular period of time.

Issuance of equity security is convenient for raising permanent resources, acquiring new resources without paying additional financial costs, or financing the stock capital without being subject to statutory limitations provided for the issuance of debt securities.

Commencement of Business

Several requirements must be fulfilled before a company may commence a business and most of them depend on its corporate object and business activity. A simple company formation will generally take a week to register. The basic requirements are to open a bank account, to notarise the Articles of association and to register with the tax authority and the Companies' Register.

There are not specific statutory regulations in Italy providing limitations on foreign investment in the Country. In principle, foreign investments as well as domestic investments can be forbidden only for reasons of public order, public health or other general principles of law.

In accordance with the general principles of EU, foreign EU citizens and EU companies enjoy the same treatment and protection of law as domestic ones.

As long as the reciprocity of treatment with another Country is observed, foreign companies are generally allowed to operate, to maintain representative offices or permanent establishments, to incorporate subsidiaries and to participate to domestic business concerns in Italy.

Mergers and Acquisitions

In terms of structure, merger and acquisition transactions can come in the form of acquisitions of companies through share (and quota) deals, asset deals, leveraged buyouts, tender offers, turnarounds, equity carve outs, mergers and demergers, or combinations of the above.

The main forms of transactions covered by Italian law are asset deals, share and quota deals, mergers and demergers. The choice of one structure over the others entails different consequences in terms of legal implications and tax consequences.

The rules applicable to listed companies are set forth in the Civil Code and in the Italian Securities Act, and implemented by secondary regulations adopted by the Italian Securities and Exchange Commission, the public overseeing authority of mergers and takeovers; and the Italian Stock Exchange (Borsa Italiana), the private company in charge of the management of the Italian securities market.

Certain transactions are subject to merger control clearance, which, depending on the nature of the companies involved and the sector in which they operate, is issued by the Bank of Italy, the Italian Antitrust Authority or the Insurance Regulation Authority.

Italy has fully implemented the EU Merger Directive regarding the tax ramifications arising from mergers, divisions, transfers of assets and exchange of shares between EU-resident corporations. In line with the EU Merger Directive, Italian tax law specifies the conditions under which income, profits and capital gains from the above indicated business reorganisations - occurring between Italian and other EU-resident corporations - are deferrable.

Corporate insolvency

Italian insolvency law provides for several out-of-court and court-sanctioned insolvency proceedings, some dedicated to winding up and liquidation, others permitting restructuring and turnaround. These proceedings include bankruptcy, winding up, turnaround plans, debt restructuring agreements, preventive creditor's settlements and extraordinary administration.

The turnaround and restructuring of a company can be achieved through four different procedures which apply to different crisis levels. They are turnaround plans, debt restructuring agreements, preventive creditors' settlement or judicial composition with creditors and extraordinary administration.

As an example, a debt restructuring agreement must be proposed by a debtor and approved by at least 60% of the secured and unsecured creditors. The agreement is based on a plan assessed by an expert who must certify its «feasibility». The plan must provide full satisfaction to all creditors who do not take part in it. Although it is private, the agreement must be filed with the court and then published in the company's register.

Winding up of companies

Liquidation of companies can be either voluntary or compulsory. The Italian Civil Code provides for specific reasons upon occurrence of which the company must be liquidated. In general terms, the expiration of its duration time, the reduction of the corporate capital for losses below the minimum required by the law, or the impossibility of governance functioning (i.e. a deadlock situation), require the directors to call a shareholders' meeting to resolve upon the liquidation if no corrective action is taken (such as the extension of time, a further injection of funds to cover the losses and the like).

During the liquidation phase, the liquidator cannot take any new business transactions for and on behalf of the company. This prohibition does not include transactions specifically aimed at liquidating the company's assets. The liquidators also may, and indeed must, continue to fulfil existing contractual obligations of the company until cancellation, appear in court and enter into judicial settlements.

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Tax overview

Company registration

Every new company, whatever its legal form, must register with the local Chamber of Commerce in Italy (C.C.I.AA. – Camera di Commercio, Industria, Artigianato e Agricoltura).

Setting-up taxation

The below taxes must be paid for the incorporation of a Limited Company:

Flat Stamp duty (Imposta di registro) in case of contribution of cash	**€**	**200**
Stamp duty (Imposta di registro) in case of contribution of fixed assets		From 1 to 8%
Cadastian taxes (Imposte ipotecarie e catastali) in case of contribution of buildings		2%+1%
Subscription at the Camera di Commercio	€	170
Regitered email address (PEC – Posta Elettronica Certificata))	€	7
Flat tax for VAT	€	310
Stamp taxes (Imposta di bollo) on accounting and minutes books (average amount)	€	160

National current benefit taxation

Corporate income tax

The income must always be determined in accordance with accounting principles. Adjustments (increase or decrease) defined by the tax rules must be shown when the tax return is filed. However, expenditure and other charges may be considered as deductible only if they are posted on the profit and loss account of the related period. Consequently, certain items or valuations, which are not provided for in the accounting principles, must be shown in the preparation of the balance sheet.

Corporate income tax is levied at a national (IRES) and regional (IRAP) level.

Category	Rate%	
	IRAP	IRES
Partnerships	3.90	–
Companies	3.90	24.00

In some Italian regions, the IRAP is applied at a higher rate, up to 4.82%.

A national and worldwide tax consolidation is planned.

Capital gains

Capital gains made by a company are treated as part of the profits of the business of the company.

Capital gains arising from transfers of shares in resident or non-resident companies are not considered as a taxable income by the capital gains of 95% if:

the holding is reported on the balance sheet during the period of ownership as a financial asset;
the company is a trading entity;
the company is not resident in a country which appears on the black list; and
the shares have been continuously held for at least twelve months.

Payment of corporate taxes

The tax year in Italy is the calendar year. However, a company may file a return based on its own financial year. For capital companies, the tax return must be filed online before the ninth month following the end of the financial year. Tax is payable as follows:

a first payment on account (calculated as 40% of the tax payable for the preceding year) on 30 June for partnerships, and on the 30th of the sixth month after the closing of the accounting period for companies; the balancing payment can also be settled with the first payment on account on 30 July for partnerships or 30 days after the delay here above mentioned for companies, which will result in a 0.4% penalty;
a second payment on account (calculated as 60% of the tax payable for the preceding year) on 30 November for partnerships, and 11 months after the start of the current accounting period for companies; and
the balancing payment on 30 June the following year for

partnerships, and sixth month after the closing of the accounting period for companies.

VAT (IVA)

The Value Added Taxes applies on transfers of goods, provisions of services made in Italy in connection with the operations of an enterprise, professional activities and imports. However, the following business activities are exempt from VAT:

- credit and finance;
- insurance;
- foreign currency transactions;
- transfers of shares, bonds or other securities;
- tax collection;
- lotteries;
- bets, events, and competitions;
- acting as a representative or agent for the above operations;
- non-financial lettings;
- transfers of gold;
- urban public transport and ambulances;
- postal and telegraph services; and
- medical services.

Exports of goods are not taxable.

The rates of VAT are as follows:

- standard rate 22%;
- reduced rate 10%:
- hotel services;
- restaurants, etc.; and
- certain food products.
- reduced rate 5%:
- services regarding health-social cooperatives, disabled or very elderly people.
- reduced rate 4% :
- agricultural products; and
- basic foods.

Payment of VAT is as following:

periodic payments: an organisation providing services and having an annual turnover in excess of €400,000 and a commercial or industrial organisation with an annual turnover in excess of €700,000 are required to pay IVA monthly. Organisations with an annual turnover below the figures above can pay IVA quarterly with a 1% increase;

final payment: for all taxpayers the payment has to be made on 16 March.

Stamp duty (Imposta di registro)

Stamp duty is payable on any document produced to transfer ownership of land and buildings or the transfer of a business. These documents must be registered pursuant to civil law. Stamp duty payable varies from 1% to 8% depending on the type of transfer. It is also possible to voluntarily register a document that is not required under the civil code. For voluntary registration and operations liable to VAT, stamp duty of €168 is levied.

Municipal tax on real estate (Imposta Municipale Unica -IMU)

That annual tax is calculated on ownership of land and buildings. Rates are determined by municipalities and vary between 0.4% and 0.7%. Tax liability is calculated on the value of land and buildings.

Stamp tax (Imposta di bollo)

This tax varies between €2 and €16 and is payable on certain legal document and accounting books.

Taxes on mortgages and registration of land (Imposte ipotecarie e catastali)

Taxes are payable on transfers, inheritance and gifts of land and buildings and also on mortgages. The rate of tax on mortgages is 2% and on the registration of land is 1%. In some cases, a fixed amount of €200 is paid for each tax.

Treaties for the avoidance of double taxation

Italy has a wide range of double tax treaties. The wide double-taxation treaty networks cover almost all the industrialised countries and a number of others.

Benefit distribution (national withholding taxes, international tax exemption options)

Dividends paid by resident companies to other resident companies are not subject to withholding tax. However, a final withholding tax of 26% is applied to dividends paid by a resident company to a non-resident company without a permanent establishment in Italy. Tax treaties usually reduce the above percentage of the withholding tax.

The withholding tax on dividends is reduced to 1.375% when the beneficial owner of the dividends is a company that is subject to corporate income tax in another European Union Member Country, or in another Country of the European Economic Area that allows an adequate exchange of information with the Italian tax authorities.

Tax treatment of losses

Losses in Italy may be carried forward with no time limits, but each future profit can be reduced only for the 80% of the available loss. For example, in the case of €1,000 loss in the year 2012 and €1,000 profit in the year 2013, the profit in 2013 can only be reduced by €800). The remaining €200 loss could be used in the future.

Employer obligations (salary taxes, social security)

Employment income is taxable in respect of the year in which it is received. It also covers benefits in kind, reimbursed expenses and luncheon vouchers. Receipts of social security benefit and insurances are subject to special taxation rules, as are redundancy payments.

The Italian Social Security System provides a wide range of benefits including old-age pensions and disability benefits. The amount of benefits depends on the length of time the worker has contributed to the Italian welfare system and to the level of their earnings.

The Italian Social Security offers all people working in Italy (E.U. citizens or workers from outside the EU), whether they are employed, self-employed, professionals or entrepreneurs, the opportunity to obtain the following benefits by paying national insurance contributions:

- illness and maternity leave;
- unemployment benefit;
- mobility benefit;
- family allowances; and
- pensions.

Social security contributions are made by both the employee and the employer. The total social security rate is around 40% of the employee's gross compensation (the rate depends on the work-activity performed by the company, the number of employees of the company, the employee's position), and is shared as follows:

employer's charge is around 30%; and
employee's charge is around 10%.

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