BACCIARDI and PARTNERS
international law firm

GUIDE ON DOING BUSINESS IN ITALY

Author: **Lorenzo Bacciardi, LL.M.**

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PART I: THE ITALIAN ECONOMIC CLIMATE

1.1 *What are the most relevant economic data to consider while investing in Italy?*

With a GDP of over € 1.7 trillion and a population of over 60 million, Italy is the world's 9th largest economy.

Italy's control over public finance has been among the most solid in the Eurozone in the last 7 years. Since 2012 the deficit has been consistently below the 3% ceiling, and Italy had the highest primary surplus on average (1.1%) during the 2009-2016 period.

Italy is one of the world's most iconic destinations, combining an unmatched cultural heritage and striking sceneries with one of Europe's top performing and most diversified economy.

The export of goods and services continues to provide a decisive and positive contribution to the fate of the Italian economy: in the first half of 2018, in fact, it contributed to the formation of GDP by over 31% and the forecasts are for a further increase in 2019 up to 32%.

Italy is the 2nd largest manufacturer in Europe; 5th largest manufacturer in the world; 9th largest exporter worldwide, with almost € 500 billion of export annually (goods and services).

Italy has radically improved its business environment through government reforms and Italian business dynamism. Thanks to the improved competitiveness, Italy has been welcoming more and more investors.

The Italian production structure is made up of many small and medium-sized enterprises. The different realities of excellence are both at the level of a single company and of productive districts.

PART I: THE ITALIAN ECONOMIC CLIMATE

Over the last decade, Italian companies have been innovating, modernizing and creating new specializations, making Italy one of Europe's champions in export trade. Building upon its highly competitive and innovative industry, with export growing 7.4% in 2017, Italy is the 9th largest exporter in the world, selling goods for € 448 Billion in value (2.9% worldwide market share - as of Oct. 2017) and maintaining one of the few export trade surpluses for goods (€ 47.8 Billion in 2017) of developed countries.

The number of companies interested in exports is also significant. In 2017, there were 216.000 exporting companies in Italy, more than 20.000 of those surveyed in 2016. With an increase especially for medium and large companies. The average exported value has also increased over the last five years.

1.2 *Are there any restrictions on foreign investment (including authorizations required by central or local government)?*

Generally, there are no restrictions on foreign investment. The Italian Trade Agency (ITA), which is the government body whose mission is to foster Italian investment and trade relations with foreign countries, set up a dedicated foreign investment department.

The department focuses on giving assistance to companies and entrepreneurs wishing to set up a new business in Italy. It offers free services including:

- Guidance at the early stages of the investment decision-making process.
- Information on the market opportunities in Italy and Europe.
- Information on the tax and legal framework, operating costs and the incentives available.
- Advice on the best locations.
- Introductions to potential partners and to service providers.

The ITA's mission is to build a unique and integrated portfolio of investment opportunities in Italy.

Certain investment opportunities identified by the legislator must be notified to the Italian Council of Ministers Presidency, following which the state makes its decision, which includes the faculty to oppose and/or apply a veto and/or require further conditions to implement the investment.

Business sectors subject to such notification requirements are those with assets and relationships of strategic importance to the national interest in the energy, transport and communications sectors, and deeds or transactions within the same group. Such limitations also apply to Italian investors.

1.3 *Are there any exchange control or currency regulations?*

Italy has no foreign exchange control system. There are no restrictions on currency transfers. However, there are reporting requirements. Banks must report transactions over € 1.000,00 due to money laundering and terrorism financing concerns. There are other reporting requirements under Legislative Decree (Decreto legislativo) No. 231/2007 (Decree 231/2007).

Cash transactions of more than € 3.000,00 are prohibited (section 49, Decree 231/2007).

PART II: DOING BUSINESS IN ITALY WITHOUT A LEGAL PRESENCE IN THE COUNTRY

2.1 MAKING DIRECT SALES WITHOUT A WRITTEN SUPPLY AGREEMENT - GENERAL TERMS

2.1.1 *What are the formalities a foreign seller must complete in your jurisdiction in order to make sure that its terms and conditions of sale are binding and enforceable towards local purchasers? Are these conditions enforceable towards non-commercial parties?*

Preliminary remarks

Articles 1341 and 1342 of the Civil Code state particular rules regarding effectiveness of «unbalanced terms» included in general terms of contracts drafted by one party and not negotiated with the other party or included in pre-printed contract forms ("Unbalanced Clauses").

SALES TO PROFESSIONAL PURCHASERS (B2B SALES)

General Conditions of Sale that are regulated by the Italian laws and by the CISG

Italy is a signatory to the 1980 United Nations Convention on the International Sale of Goods ("CISG"). The CISG applies to international sale contracts with professional purchasers (i.e. not consumers) that are governed by Italian laws, unless the application of the CISG is expressly excluded.

Article 11 of the CISG, which overrides Italian laws (including those on Unbalanced Clauses), states that *"a contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form"*.

Therefore, the general terms and conditions of a foreign seller may apply to a sale made in Italy without a written sale agreement (e.g. over the phone) even if they have not been expressly accepted in writing by the purchaser, provided that the latter has had a chance to examine them, and has actually accepted, before entering into the sale agreement. Nonetheless, it is always advisable to

have such general terms accepted in writing by the purchaser before entering into any verbal or written sale agreement.

General Conditions of Sale that are regulated only by Italian laws

If the CISG does not apply, the general terms and conditions of sale drafted by the foreign seller and not negotiated with the Italian purchaser are binding on the latter only if he was aware of them, or has had the possibility to become aware of them, when entering into the sale contract (article 1341 of the Civil Code).

However, even if the purchaser accepts in writing such general terms, the Unbalanced Clauses are not valid unless (a) the purchaser declares in writing that he has explicitly accepted them and (b) such declaration is rendered by the purchaser in accordance with the formalities required under articles 1341 and 1342 of the Civil Code and the relevant case law.

The list of the Unbalanced Clauses includes, amongst others, provisions stating: the exemption from (or limitation of) liability of the seller; the right of the seller to withdraw from the contract; the right of the seller to suspend the execution of the contractual obligations; deadlines the purchaser must comply with under penalty of losing his/her contractual rights; limitation to the right to raise exceptions/objections; arbitration and choice of forum.

For EU sellers (other than Danish ones) making sales in Italy, it is worth noting that the above-mentioned provisions on Unbalanced Clauses may not apply where article 11 of EC Regulation 593/2008 ("Rome I Regulation") applies. Said article states:

"A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.

A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time".

Sales to Consumers (B2C Sales)

Italy has enacted and implemented laws protecting consumers, most of which apply irrespective of whether the seller is based in Italy or abroad. In particular, consumers enjoy the protection granted by the provisions of the Consumer Code (Legislative Decree 206/2005 and successive amendments).

The Consumer Code sets out a list of unfair terms, rather similar to the unfair terms in consumer contract listed in the EEC Directive 93/13, providing an indicative and non-exhaustive overview of those contractual terms which, being presumed to be unjust and detrimental to the consumer, are null and void.

The seller is entitled to prove that they are not unfair, since they have been individually negotiated with the consumer. However, some other terms are always considered unfair, and, therefore, null and void even if individually negotiated.

The Consumer Code also encompasses specific consumer-protection provisions regarding:

- distance contracts (e.g. e-commerce sales) and off-premises contracts (e.g. door-to-door sales)
- products safety and liability for damage caused by defective products
- legal guarantee of conformity and commercial guarantees for consumer goods

2.2 MAKING DIRECT SALES WITH A WRITTEN SUPPLY AGREEMENT

2.2.1 *What are the clauses a foreign seller should integrate in a written sales agreement (or in its general terms and conditions) and the reasons why?*

(a) Retention of title: *Is this provided for in your jurisdiction? What are the conditions to make it enforceable towards local purchasers and third parties?*

In Italy the retention of title is admitted by articles 1523-1526 of the Civil Code and by other laws containing specific provisions on the matter.

According to the Italian laws, a retention of title clause ("ROT") must be agreed upon in writing, at the very latest, at the time the parties enter into the sale contract.

In order to make the ROT enforceable towards third parties, the sale agreement containing the ROT must bear a certified date of signature, and the third parties must be placed in a position to become aware of the existence of the ROT; for certain types of goods - such as immovable properties and production machinery or equipment - this is possible through the transcription of the ROT in special public registers.

In addition, on the basis of the Legislative Decree n° 231/2002, the ROT is enforceable by the seller against the creditors of the purchaser only if recalled in the relevant invoices, which must have a certified date preceding that of the seizure of the goods and which must be duly registered in the accounting records of the seller.

Finally, according to the case law, the ROT is not valid if it is inserted only in the general terms and conditions of sale, in so far as this does not allow for the goods

on which the ROT is placed to be sufficiently identified. Thus, the ROT must necessarily be agreed upon on each occasion, with reference to each individual sale contract.

(b) Interest and penalty clause: *Are these clauses enforceable in your jurisdiction? Can they be reduced or annulled? What are the consequences if this clause is not integrated in the agreement? What is the legal rate in your jurisdiction?*

Interest

Legislative Decree n° 231/2002, which implemented in Italy the EU Directives 35/2000 and 7/2011, states the interest rate that apply if a late payment occurs in a commercial transaction (i.e. a B2B sale).

According to article 1284 of the Civil Code, the Ministry of the Treasury fixes the interest rate applicable in all other cases, including sales involving consumers (i.e. B2C sales and C2C sales).

The parties are free to agree interest rates other than the legal ones, but the agreement must be in written form, otherwise it is null and void.

Penalty clause

Penalty clauses are provided for and admitted by articles 1382-1386 of the civil code. The purpose of the penalty clause is agree in advance an amount payable in case of breach, or delayed fulfillment, of a contractual obligation.

The amount payable under the penalty clause represent the maximum the amount payable in case of breach or delayed fulfillment of the contractual obligation in question, unless the right to obtain reimbursement of additional damages is expressly reserved in the clause.

The amount due under the penalty clause can be equitably reduced by the court in case:

- the breaching party has partially fulfilled the obligation under the penalty clause; and/or
- the amount due under the penalty clause is manifestly disproportionate in consideration of the interest of the performing party to obtain the fulfilment of the obligation forming the subject of the penalty clause.

(c) Applicable law and competent jurisdiction: *Are these clauses enforceable in your jurisdiction? What are the consequences if such clauses are not integrated in the agreement?*

Applicable law

The parties to an international sale contract are generally allowed to choose the law applicable to the contract. The choice is enforceable in Italy under article 57 of the Law n° 218/1995 (Italian statute on private international law) and also under the 1980 Rome Convention, the 1955 Hague Convention and the EC Regulation 593/2008 (Rome I Regulation) where such Conventions and/or Regulation apply.

However, the choice of a foreign law in consumer sales cannot deprive consumers domiciled in Italy of the protection afforded to them by mandatory provisions of the Italian legislation, with particular reference to the Consumer Code.

Competent jurisdiction

The parties to an international sale contract are generally allowed to agree that any dispute arising from the contract shall be resolved by a court outside Italy.

Italian courts are obliged to respect the choice of the parties, under the EU Regulation 1215/2012 (if the seller is established in an EU Member State), the Lugano Convention of 30/10/2007 (if the seller is established in Norway, Iceland or Switzerland) and article 4 of the Law n° 218/1995 (in all other cases).

In this respect, article 4 of the Law n° 218/1995 states that the jurisdiction of Italian courts may be derogated from by an agreement in favour of a foreign court if such derogation is evidenced in writing and the action concerns alienable rights.

The choice of a foreign court may not be valid and/or enforceable with reference to sales contracts with consumers domiciled in Italy, under the EU Regulation 1215/2012 (if the seller is established in an EU Member State), the Lugano Convention of 30/10/2007 (if the seller is established in Norway, Iceland or Switzerland) and articles 33 and 36 of the Consumer Code (in all other cases).

In summary, according to the EU Regulation 1215/2012 and the Lugano Convention of 30/10/2007:

- The consumer may bring proceedings against the other party to a contract either in the courts of the State in which that party is domiciled or, regardless of the domicile of the other party, in the courts of the State in which the consumer is domiciled;
- Proceedings may be brought against a consumer by the other party to the contract only in the courts of the State in which the consumer is domiciled.

Based on articles 33 and 36 of the Consumer Code, the jurisdiction of the court where the consumer has its residence or domicile cannot be derogated from to the detriment of the consumer.

If the foreign seller and the Italian purchaser do not make a choice on the law applicable to the sale contract and/or to the court to which the possible disputes are to be referred, then such law and court must be identified on a case-by-case basis in accordance with the provisions of the Law n° 218/1995 and of the Conventions or EU Regulation that are to apply.

2.3 MAKING SALES USING COMMERCIAL INTERMEDIARIES

2.3.1 *What types of commercial intermediaries exist in your jurisdiction?*

In Italy, the most commonly used commercial intermediation agreements are:

Franchising agreement: an agreement between two legally and economically independent parties whereby one party (the franchisee) acquires from another party (the franchisor), against payment of consideration, a set of intellectual property rights related to trademarks, trade names, shop signs, know-how etc. and joins a system (network) constituted by a number of franchisees operating in the territory, for the purpose of distributing specific goods and/or services.

Distribution agreement: a «framework contract» between two legally and economically independent parties whereby one party (the supplier) and another (the distributor) agree that the distributor shall sell - in a given territory, in its own name and on its own account - the supplier's products, which he will purchase through separate sale contracts.

Commercial agency agreement: an agreement between two legally and economically independent parties whereby one party (the principal) appoints another party (the agent) to promote on a continuing basis the sale of the products marketed by the principal.

2.3.2 *What legislation applies in your jurisdiction with regard to the above-mentioned types of distribution agreements?*

Franchising:
Franchising is governed in Italy by the Law 129/2004.

PART II: DOING BUSINESS IN ITALY WITHOUT A LEGAL PRESENCE IN THE COUNTRY

In order to set up a franchise network, the franchisor must have already tested its commercial formula on the market.

The franchisor must at all times behave towards the prospective franchisee with loyalty, fairness and good faith and must provide the prospective franchisee with any data and information the latter deems necessary or useful for the purposes of signing the franchising agreement, except in case the disclosure encompasses information that is strictly confidential or that violates rights of third parties.

At least 30 days before the signing of a franchising contract, the franchisor must provide the prospective franchisee with a complete copy of the agreement to be signed, together with annexes including the following:

- most relevant information regarding the franchisor (if the prospective franchisee so requests, a copy of the franchisor's balance sheets for the last three years must be provided);
- an indication of the trademarks used within the franchising system, including details relating to their registration or filing, or to the license granted to the franchisor by the third party who owns the trademarks, or any documentation proving the effective use of the trademark in the system;
- a brief description of the elements characterizing the activity of the franchising;
- a list of the franchisees currently operating in the network, as well as a list of the franchisor's direct outlets;
- an indication of the variation, year by year, of the number of franchisees, including their location during the last three years, or from the date of the setting up the franchisor's business should it be less than three years old;
- a short description of any judicial or arbitral proceeding raised in relation to the franchising system against the franchisor and concluded during the last three years, whether initiated by franchisees, private parties or public authorities.

The franchising agreement must indicate:

- the amount of investments and other possible entry fees that the franchisee shall bear before beginning its activity;
- the manner of calculating and paying royalties, as well as the possible indication of the minimum turnover to be achieved by the franchisee;
- the existence of any exclusive territorial rights granted to the franchisee;
- details of the know-how provided by the franchisor to the franchisee;
- details of the services offered by the franchisor in terms of technical and commercial assistance, setting-up and furnishing of the store and training;
- the conditions for the renewal, termination or assignment of the agreement.

The franchising agreement may be stipulated for a fixed or for an indefinite term. If the franchising agreement provides for an indefinite term, the franchisor must guarantee the franchisee a minimum term in order to allow the latter to depreciate/amortize its investments, which in all cases must not be less than three years.

Distribution agreement:

There is no specific legislation regarding distribution agreements.

According to Italian case law, a distributor's exclusivity cannot be implied from the contract itself. Therefore, if the parties enter into a distribution agreement without specifying that the distributor has exclusive rights, then the latter will, in principle, have no exclusivity.

However, if the distributor actually acts and behave as an exclusive distributor, then it may be considered as being exclusive even in the absence of a specific clause to that effect.

In principle, the fact of granting exclusivity to the distributor implies that

the supplier must not appoint other distributors or commercial agents in the contractual territory nor make direct sales of products to local customers.

Also, the distributor's obligation not to market competing products cannot be implied from the distribution contract, and it must be expressly agreed upon between the parties.

Such agreement may be a tacit (or oral) agreement, and it can be inferred from elements suitable to demonstrate that the parties actually wished the distributor not to deal with competing products.

The distribution agreement may be stipulated for a fixed or for an indefinite term.

If the agreement is for an indefinite term, a reasonable notice period must be provided by the party wishing to terminate the relationship, since Italian courts have applied to distribution agreements article 1569 of the Civil Code on supply agreements and article 1725 on the contract of mandate, both of which require that an appropriate notice is given by the terminating party. If the parties have fixed the minimum notice period in the distribution contract, courts tend to respect their choice.

Commercial agency agreement:
The main rules on commercial agency agreements are contained in articles 1742-1753 of the Civil Code.

A peculiar characteristic of the Italian system is the presence of Collective Agreements (Accordi Economici Collettivi - AEC) concluded between the organizations of principals and agents. In principle, collective agreements do not apply to contracts between a foreign principal and an Italian agent (or between a foreign agent and an Italian principal), as they apply only where both parties

belong to the associations which signed them or where they are incorporated by reference into the agency agreement.

The commercial agent is entitled to a remuneration, usually consisting of a commission. In the absence of any agreement, a commercial agent shall be entitled to the remuneration that is customarily allowed in the place where he/she carries out his/her activities.

The commission is due to the agent on transactions concluded during the term of the agency agreement:
- where the transaction has been concluded as a result of his/her actions;
- where the transaction is concluded with a third party which he/she has previously acquired as a customer for transactions of the same kind;
- where he/she is entrusted with either a specific geographical area or group of customers and where the transaction has been entered into with a customer belonging to that area or group.

The commission is due to the agent on transactions concluded after the agency agreement has terminated:
- if the transaction is mainly attributable to the activity carried out by the agent during the period covered by the agency agreement and if the transaction was entered into within a reasonable period of time after that contract is terminated;
- if the order of the customer reached the principal or the agent before the date of termination of the agency agreement.

In the absence of contractual provisions to the contrary, based on article 1748 of the Civil Code, the right to commission arises when the principal performs the sales contract, normally by delivering the goods. The parties are free to contractually postpone this term, but only to a point not later than the moment in which the

customer fulfills, or would have to fulfill, his/her obligation. It is common practice to make use of this option and to provide within the agency agreement that the right to the commission arises only when the customer pays for the goods.

If the agency agreement is concluded for an indefinite term, either party may terminate the same by providing the other party with a notice period.

An agency agreement for a fixed period, which continues to be performed after its expiry, becomes an indefinite term agreement.

Based on article 1750 of the Civil Code, the minimum notice period is one month within the first year of duration of the agreement, two months during the second year, three months during the third year, four months during the fourth year, five months during the fifth year and six months during the sixth year or thereafter. Unless otherwise agreed, termination is effective at the end of the calendar month in which the notice period expires.

The Collective Agreements, where applicable, require the parties to observed different terms.

According to Article 1743 of the Civil Code, the agent cannot act, in the same area and for the same type of business, for competitors of the principal. This implies that even in the absence of a contractual provision prohibiting the agent to sell competing products, the law prevents him/her from doing so.

However, the above rule is not mandatory. The parties are free to derogate from such provision and permit the agent to deal with products that are in competition with those of the principal.

The parties may also agree a post-contractual non-competition obligation.

However, the relevant clause is valid only to the extent that it is concluded in writing and relates to the same geographical area, customers and products as the agency agreement.

The duration of the obligation cannot exceed a period of two years after termination of the contract and, for agents who perform their activity individually, or as a partnership, or as corporation with a sole partner, or as corporation of commercial agents, it must be remunerated by the payment of an indemnity.

If the amount of the indemnity, or the method for its calculation, has not been agreed between the parties, the amount will be determined by the courts taking into account:

- the average of the commission received during the course of the contract;
- the reasons for termination of the contract;
- the extension of the geographical area assigned to the agent;
- the circumstance of being a single-brand agent.

Since the courts have wide discretionary power for determining the amount, it is highly recommended to expressly state in the contract the criteria for calculating indemnity.

According to article 1751 of the Civil Code, upon termination of the agency agreement, the agent is entitled to a goodwill indemnity if the following conditions are met:

- the agent has brought new customers or has considerably increased business with existing customers and the principal continues to derive substantial benefits from the business with such customers; and
- the payment of such indemnity is equitable, having regard to all circumstances and in particular to the commission lost by the agent on business with such customers.

The goodwill indemnity is not due:

- where the principal terminates the contract for a breach by the agent of such importance that the relationship cannot continue, not even temporarily;
- where the agent terminates the contract, unless termination is justified by circumstances for which the principal is responsible or by circumstances regarding the agent, such as age or illness, under which he/she cannot be reasonably requested to continue his/her activity;
- where, by virtue of an agreement with the principal, the agent assigns his/her rights and duties under the agency agreement to a third party.

The amount of the goodwill indemnity cannot exceed a sum equal to a yearly indemnity calculated on an average of the commission earned by the agent in the last five years of duration of the relationship (or in the shorter period of duration of the relationship, if it lasts less than five years).

Case law on the matter shows courts' decisions that are not at all homogeneous.

In some cases, no indemnity has been granted to the agent where the agent had demonstrated an increase of the commission accrued, since the agent had not given sufficient evidence of the development of new customers.

In other cases the maximum amount (one year commission on the average of the last five years) has been granted without an in-depth evaluation of the various circumstances.

However, in most cases the courts have granted the agent an indemnity ranging from 30% to 80% of the maximum amount, taking into account the importance of the customers procured by the agent, the impact of the principal's trademark and advertising, the advantages for the principal, the duration of the relationship and other similar case-specific circumstances.

PART III: DOING BUSINESS IN ITALY WITH A LEGAL PRESENCE IN THE COUNTRY

3.1 DOING BUSINESS IN ITALY THROUGH A REPRESENTATIVE OFFICE OR A BRANCH OFFICE OF THE FOREIGN PARENT COMPANY

3.1.1 *What are in your jurisdiction the differences between starting up a representative office compared to a branch office or a subsidiary of a foreign company?*

The representative office in Italy of a foreign parent company ("RO") is the simplest and most straightforward form of presence by the foreign parent company in the Italian jurisdiction. The RO is not regarded as a separate legal entity from its parent company.

The RO allows the foreign parent company to have an office in Italy and carry out through such office ancillary and preparatory activities prior to entering the Italian market, such as the gathering of information from the relevant market and prospected clients, or the execution of advertising, marketing and promotional activities.

The RO cannot engage in any activity involving the purchase or the sale of products or the provision of services for consideration.

As the RO, the branch office in Italy of a foreign parent company ("Branch") is not regarded as a separate legal entity from its parent company, whereas an Italian subsidiary of a foreign parent company is ("Subsidiary"). The obligations incurred through the RO or the Branch can be, therefore, enforced on the assets of the foreign parent company, even if they are located abroad.

Conversely, as the Subsidiary is a separate legal entity, its liability is limited to its own assets. The shareholders will therefore not be personally affected

by the liabilities of the Subsidiary beyond the amount of subscribed capital.

The funding of the Branch may be carried out by having the foreign parent company making funds available to the Branch, whereas the starting up of a Subsidiary, whether as a limited liability company ("SRL") or a joint stock company ("SPA"), requires a minimum capital to be paid by the foreign parent company.

It may be advisable to consider opening a Branch in Italy when the Italian operations are expected to incur losses during the initial years, which can then be offset against profits earned by the foreign parent company from other activities.

3.1.2 *What formalities must be fulfilled for the registration of a RO?*

The registration of the RO in Italy does not imply the involvement of any particular local authority, but it simply requires the legal representative of the foreign parent company and/or the local representative of the RO to file a communication with the Repertorio delle notizie Economiche ed Amministrative (R.E.A.), held by the Italian company registry, whereby the foreign parent company informs the local Italian company registry that a local office in Italy was opened.

This does not imply formal registration of the foreign parent company and/or of the RO with the company registry in Italy.

In addition, the RO shall be registered under the social security authorities, only if the RO foresees the employment of local employees, while instead it does not have to be registered with the Italian tax authorities since the RO is not a tax person for Italian tax purposes.

3.1.3 *What formalities must be fulfilled for the setup of a Branch?*

In the jurisdiction of the foreign parent company.
In order to register a Branch in Italy, the following documents must be prepared in the jurisdiction of the foreign parent company:

- corporate resolutions: The board of directors of the foreign parent company must formally adopt resolutions deciding to open the Branch and appoint in Italy a legal representative for the purposes of managing the Branch and representing the foreign parent company in dealings with third parties as well as in legal proceedings in connection with the activities of the branch. The resolution must also include the address in Italy where the Branch will physically be located;
- a certified copy of the registration certificate of the foreign parent company within the foreign Companies' Register or at the Chamber of Commerce;
- a certified copy of the Article of Incorporation and By- Laws of the foreign parent company.

The above documents must be certified and legalized by means of the "Apostille" procedure provided for by the Hague Convention of October 5th, 1961. An Italian sworn translation is also required.

In Italy
In order to register a Branch in Italy, the documents prepared in the jurisdiction of the foreign parent company must be translated into Italian by a certified translator and then deposited within the office of an Italian notary public, who shall in turn file the same documents with the competent Italian Companies Register.

While submitting the documents to the Italian notary, a certified signature of the Branch's representative must also be acquired.

In addition, a VAT and tax ID number must be sought no later than 30 days from the beginning of operations. At the same time, the representative of the Branch must present the VAT office with a declaration as to the beginning of the activities, valid for VAT purposes.

3.1.4 *Why would you advise a foreign parent company to set up a RO or a branch and not a subsidiary in Italy, or vice versa?*

- **PROs**
  - Both the RO and the Branch have no minimum capital requirements; thus, the foreign parent company is not obliged to pay in any start-up capital and both the RO and Branch do not need to comply with requirements such as a board of directors or shareholders' meetings.
  - The RO and the Branch benefit from the reputation of the foreign parent company.
  - A Branch producing losses during the initial years may allow the foreign parent company to use said losses to offset revenues derived by the parent from other activities.
- **CONs**
  - The foreign parent company is fully liable for the actions of the RO and of the Branch and any debts it may occur.
  - A Branch's annual filings will reveal financial information about the foreign parent company that the latter may prefer to keep confidential. This does not apply to the RO.
  - Since a Branch usually maintains limited assets within the Italian territory, local market players may be reluctant to enter into transactions with such entity. This does not apply to the RO.

3.1.5 *Is a RO or Branch authorized to act before the court, to engage people, etc.?*

Yes. A local representative must be designated for purposes of representing the RO or the Branch in Italy in dealings with third parties and legal proceedings.

3.1.6 *What is the liability of the legal representative of the RO/Branch?*

The legal representative of a RO/Branch has the same liability towards third parties as the director of an Italian company.

3.1.7 *Is there an automatic liability of the foreign parent company for the operations or acts of the RO/Branch?*

Yes. The head office of the foreign company is always entirely liable for all undertakings of the RO or of the Branch office in Italy.

3.1.8 *Which language will the documents be in?*

Branches and RO are subject to Italian regulations on the use of languages and thus all documents required by law must be drafted in Italian.

3.1.9 *What are the accounting requirements for a RO/Branch?*

A Branch has the obligation to keep a separate set of accounts yet it is not required to submit a copy of these. The Branch must also keep VAT records in accordance with Italian tax rules with any profits it earns being subject to Italian corporate tax. As a permanent establishment, a Branch must file its own corporate income tax return together with the annual accounts of the foreign parent company.

This does not apply to the RO. The RO will have to start up an extremely simplified accounting system, aimed at sorting out the costs that the same incurs in Italy during its limited operations in Italy. The RO does not have an obligation to file an income tax return in Italy and does not have to file the balance sheet of the foreign parent company to the Italian company registry.

3.2 DOING BUSINESS IN ITALY THROUGH A SUBSIDIARY OF THE FOREIGN PARENT COMPANY

3.2.1 *What are the advantages of establishing a Subsidiary compared to establishing a Branch?*

As the Subsidiary and the foreign parent company are separate legal entities, the foreign parent company is not exposed to any liabilities of the Subsidiary. In contrast, a foreign company remains fully liable for all the commitments of its Branch. Obligations incurred through a Branch can be enforced on the assets of the foreign company, even if they are situated abroad.

A Subsidiary offers a significant degree of flexibility from a structural and governance stand point.

Although taxation rules are very similar for both, a Subsidiary can benefit from several tax advantages:

- the ability to repatriate or distribute net profits with little or no dividend withholding tax: in fact, subsidiaries in most cases qualify as "parent companies" under the EU Parent-Subsidiary Directive;
- subsidiaries can benefit from the advantages afforded under the double tax treaties concluded by Italy.

Annual filing requirements are less stringent for subsidiaries than for branches. A Branch's annual filing will reveal financial information about the foreign parent company that it may prefer to keep confidential.

In addition, it should be borne in mind that, in some cases, the registration of a Branch may be compulsory when a foreign parent company wishes to participate in Italian public contract tenders.

3.2.2 *Main characteristics of the company forms existing under the Italian jurisdiction.*

A foreign investor wishing to set up an enterprise in Italy may choose from several types of business entities. The most popular forms of are:

- a Limited Liability Company (S.r.l.);
- a Corporation (SPA).

In theory, foreign investors could also choose to incorporate an Unlimited Partnership[1] (Società in Nome Collettivo) or a Limited Partnership[2] (Società in Accomandita Semplice) or a Partnership Limited by Shares[3] (Società in Accomandita per Azioni). However, in practice, said business entities are rarely used by foreign investors entering the Italian market.

3.2.3 *Which of the company forms is used most frequently in Italy?*

Investors most frequently use SRL and Spa forms as business vehicles.

3.2.4 *Which company form is used most frequently in the case of small or family businesses?*

Small or family businesses very often select an SRL as the ideal vehicle for doing business in Italy.

In fact, the SRL is equivalent to a private limited company where capital participation is represented by quotas instead of shares. The SRL may have one or more quota holders.

The provisions applicable to an SRL are simpler in comparison to those applicable to an SPA. Indeed, most of the rules applicable to an SRL are not compulsory

and, therefore, can be derogated by the parties, consequently enhancing self-ruling and entrepreneurial skills.

As opposed to an SPA, the participants in an Italian SRL may contribute to the capital of the company by means of their work or services, know-how, good-will and other personal rights, as long as the participants, at the time of the contribution, provide the company with an adequate insurance policy or bank guaranty covering the value of the contributed assets.

The quota-holders have the greatest freedom in choosing the form of corporate governance which best meets their needs.

Generally speaking, the corporate governance of Italian subsidiaries is entrusted to either a sole director or to multiple directors.

In the latter case, Italian subsidiaries may adopt either a board of directors, who may also delegate specific powers to a managing director, or multiple directors acting severally or jointly and unanimously.

The sole director or the directors may be foreign citizens and do not necessarily need to be resident in Italy. Foreign companies maintaining Italian subsidiaries

1. An unlimited partnership is a partnership whose partners have unlimited liability for all the acts and transactions entered into by the partnership. Any of the partners may be appointed as directors of the partnership. Italian law generally restricts the transfer of a partner's interest in the unlimited partnership.
2. A limited partnership has a combination of limited and unlimited liability. There are two categories of partners: general partners who have unlimited liability and special partners who are liable only to the extent of their capital contributions to the partnership. Only general partners may be appointed as directors of the partnership.
3. The structure and characteristics of a partnership limited by shares are similar to those of a limited partnership, except that the capital contribution of the partners is represented by shares and generally, the law relating to joint-stock companies applies.

should keep in mind that foreign directors of Italian companies are required to obtain a Tax ID number, which can be applied for at the competent Italian Revenue Office or at the Italian consulate in the concerned foreign director's home state.

The articles of association of an Italian SRL may validly state that profits and losses of the SRL can be shared and distributed to quota-holders in accordance with a ratio that does not correspond to the percentage of ownership rights of each quota-holder. Thus, an Italian SRL owned 50 - 50 by two quota- holders could validly distribute profits and losses according to a 60 - 40 ratio, or indeed any other ratio. Article 2468 of the Italian Civil Code.

Finally, it is possible as from 2012 the incorporation in Italy a Società a responsabilità limitata semplificata ("Simplified SRL"), which is a simplified limited liability company.

While an SRL must be established with a share capital of at least € 10.000,00 by either individuals or legal entities through a public deed drawn up by a Notary Public, a Simplified SRL is established:

i. with a share capital equal to at least € 1,00 but less than € 10.000,00, 100% of which must be paid up front;
ii. through the filing of the so-called "standard" Articles of Association (approved with Ministerial Decree n. 138/2012): as a result, the costs associated with the drafting of the Articles of Association as well as their subsequent registration with the Company Registry are drastically reduced.

The Italian legislator has also passed a set of laws designed to aid the establishment and development of innovative start-up companies, providing for several incentives which include: tax incentives for startups, corporate benefits and exceptions to bankruptcy law provisions, cost reductions for the setting up of a new company and employment rules separated from general labour law.

3.2.5 *What are the main formalities a foreign company has to comply with in order to establish a Subsidiary?*

The legal steps involved in establishing a subsidiary are similar for most types of company structure and usually consist of the following steps:

a) Name checking and name reservation;

b) Drafting of Company Articles and Memorandum of Association, which must include:

i. the full personal or company name, date and place of birth or formation, domicile or registered office and citizenship details of each shareholder or quota-holder;

ii. details of the municipality in which the company's registered office and any secondary offices, are situated;

iii. the company purpose;

iv. the amount of the subscribed and paid-up capital;

v. the value attributed to assigned credits and goods;

vi. company rules on functioning, administration;

vii. representation and duration.

c) Pre-payment of 25% of the share capital;

d) This usually involves the paying in of 25% of the share capital (100% in the case of a single person SRL or single person SPA), with an accumulating bank account opened in the name of the company to be established. In the case of an SRL, the payment may be replaced by an insurance policy or bank guarantee for the corresponding amount. The bank will issue a certificate, which must be delivered to the notary on the date of execution of the incorporation deed, confirming that the paid-up amount of the capital is in the bank account.

e) Appraisal report on contributions of credits or goods in kind;

f) The shareholders or quota-holders may also make a contribution in kind to the company consisting of assets other than cash, provided that such

assets have an economic value (e.g. real estate, shares in another company, a claim for the payment of an amount of money, etc.).

g) Execution of the Memorandum of Association in front of an Italian notary public;

h) Submission of deed of incorporation and of other relevant documents to the Companies' Register by the appointed notary public;

i) Registration of the company with the Companies' Register and awarding of a company registration number;

j) Application for any government authorizations required for particular activities;

k) Registration with local VAT authority and application for a VAT identification number;

l) Opening of the operating bank accounts;

m) Execution of the cash capital contribution and/or the contribution in kind.

3.2.6 *What are the costs of establishing a subsidiary in Italy?*

Legal fees may result as being in the region of € 2.000,00 for an SRL and € 4.000,00 for an SPA, while notarial fees may amount to around € 1.500,00 with other registration fees being in the region of € 600,00 - € 700,00.

3.2.7 *How long does it take to establish a subsidiary in Italy?*

A Subsidiary can be fully established and operative within approximately two weeks. Generally speaking, the setting up of formalities takes around 7 days, with registration formalities requiring a further 7 days.

3.2.8 *Is there specific legislation with regard to the liabilities of the founders and the directors of the most used company form?*

Although the shareholders of an SRL or SPA are separate legal persons, and their

potential liability is normally limited to their subscription, the shareholders can be held responsible if the same act on behalf of, and use the name of, the company during negotiations with third parties prior to the legal entity being fully registered within the Company Registry held by the competent local Chamber of Commerce.

The directors of an SRL or SPA can also be held liable in case of improper or negligent execution of their tasks as directors, violation of Italian corporate laws or the charter of the company. A director may be held liable if s/he had a direct or indirect personal interest in a decision and obtained an unjustified advantage to the detriment of the company as a result of that decision.

Directors are frequently found liable for submission of misleading financial statement or distribution of sham dividends. The main corporate offences in this field of legislation are set up within the relevant articles of Italian Civil Code and of Italian Criminal Code, as well as of the Legislative Decree n. 231/2001.

Directors are bound to ensure full safety and hygiene on the premises of the company as well as on any production work-storage site used by the company, in compliance with Legislative Decree n. 81/2008.

Within consumer law, directors may be held liable should they be found in violation of the legal protection afforded to consumers, in compliance with the Italian Consumer Code provided for by Legislative Decree n. 206/2005.

Bankruptcy law is also important, since directors can be found liable in those cases where the company falls into pre-insolvency status followed by subsequent bankruptcy. The most recent reform on bankruptcy law aims at anticipating the occurrence of the corporate crisis by providing alert systems that can prevent corporate crisis from becoming irreversible as well as at giving space to the out-of-court settlement tools.

The implementation of an efficient and timely assessment of the financial status of the company is an adequate tool and solution to ensure the directors may preventively detect insolvency situations.

PART IV: REAL ESTATE

4.1 *Who do you turn to in order to close a valid real estate purchase agreement?*

To draft and close a valid real estate purchase agreement, you normally turn to an attorney and a notary public. The attorney is responsible for structuring the transaction from a legal and contractual point of view, while the notary must handle all the formalities connected with the execution of the notarial deed by way of which the property title and rights are transferred from the seller to the purchaser.

The Real estate purchase agreements are thus executed by public instrument whereby the deed of sale is drafted by an Italian notary public and is signed before the notary himself.

It is customary, although not obligatory, for the seller and buyer to sign a preliminary contract known as a "contratto preliminare di compravendita" or "compromesso" which sets out essential details of the agreement, such as the purchase price, payment terms, financial sources and, most importantly, the purchase completion date.

The only obligatory contract that must in all cases be signed by both the buyer and seller in relation to the purchase of real estate in Italy is the "contratto di compravendita". Such contract may be signed either by the parties personally or by their duly appointed representatives holding the necessary power of attorney and is usually executed before a notary public.

Upon signature of the final real estate contract, the notary public delivers both the seller and the buyer with a certified copy of the real estate contract. Starting from the execution date of the purchase contract, the buyer becomes the lawful owner of the real estate with respect to the seller.

The notary public is then required by law to register the original copy of the purchase contract with the Land Registry (Conservatoria dei Registri Immobiliari) and only from the date of said registration does the buyer become the lawful owner of the real estate with respect to any third parties.

As a final step, once the purchase has been completed, the seller must provide the buyer either with a certificate of habitability, in cases where the real estate in question has been purchased for residential purposes, or with a certificate confirming the purpose for which the property may be used, where the real estate has been purchased as commercial property.

4.2 *What are the costs related to the real estate purchase agreement?*

A variety of fees (also called closing or completion costs) are payable when you buy a property in Italy. These vary considerably according to the purchase price, whether the property is new or old, whether the purchaser is buying via an agent or privately, and whether it has employed a lawyer or other professionals.

The fees associated with buying property in Italy may include registration tax, land registry tax, value added tax (VAT), notary's and estate agent's fees, and mortgage completion costs. Before signing a preliminary contract, it is advisable to check exactly what fees are payable and have them confirmed in writing.

However, in respect to residential properties only, the buyer (who must not be a company) has the option of choosing to pay the above taxes on the cadastral value rather than on the actual purchase price. This allows him/her to save approximately half the previously payable costs.

- *Registration Tax*

Registration tax (imposta di registro) is the main tax on the transfer of ownership

of property and is levied at a rate of 2 or 9 per cent applicable on either the cadastral value (valore catastale) of the property declared by the parties in the purchase deed or the property sale price. The amount payable depends on whether the property constitutes the first or the second home of the purchaser, whether it is a new home and whether the purchaser is resident, as per below:

- On his/her first home, a purchaser is eligible for a reduced tax of 2 per cent. The property must be his/her principal home for residential use and be located in his/her present or future municipality of residence (or in the municipality where s/he has or plans to have his/her main place of business) and must not be classified as a 'luxury' home.

- The registration tax for non-residents, who are not willing to transfer their residency to Italy, and those buying a second home is 9 percent.

• *Land Registry Tax*

Land registry tax (imposta catastale) is payable on all property purchases and the amount payable ranges from € 50,00 to € 200,00, depending on certain conditions.

• *Mortgage Fees*

There are fees associated with mortgages (spese istruttoria). All lenders charge an arrangement fee for setting up a loan, usually around 1 percent of the loan amount. There is also a mortgage tax (imposta ipotecaria) and a fee (imposta sostitutiva) payable to the notary (notaio) for registering the charge against the property at the registry (catasto).

Most lenders also impose an 'administration' fee of around 1 percent of the loan value with it being compulsory to take out insurance cover with the lender against fire, lightning strikes and gas explosions.

- *Notary*

Notary fees will also be due and will vary according to the price of the real estate declared on the purchase contract, amounting to between one and one and a half percent of the price of the real estate declared in the purchase contract, plus VAT, if applicable.

- *Real Estate Agent*

Furthermore, buyers making use of the services of a real estate agent will also be required to pay commission to the same, the rates of which range from one to three percent of the price of the real estate. As this rate is usually open to negotiation, buyers are recommended to agree on the relevant real estate agency rate at the very start.

4.3 *Is there in Italy legislation that can slow down the purchase process (e.g. environmental legislation requiring preliminary soil examinations)?*

No, apart from some very specific cases of minor significance

4.4 *Is there imperative law in Italy with regard to the rent of offices, industrial real estate or commercial real estate? Can you give a summary of the major stipulations of these regulations?*

Italian rental and lease contracts are governed by Articles 1571-1614 of the Italian Civil Code, by Law n° 392 of 07/02/1978 and Law Decree 333 of 11/07/1992, as modified by Law 359 of 08/08/1992, with the latter establishing minimum terms and maximum rent charges, as well as rent adjustment limitations.
The current legal provisions cover and regulate two main categories of immovable assets:

- premises used for the purpose of dwelling, and
- premises used for purposes other than dwelling.

The minimum term for premises used for dwelling purposes is fixed at four (4) years. A landlord may only serve a disdetta - a registered letter of notice of termination to be sent at least six months before contract expiry - to coincide with the end of the standard 4 year-period.

Depending on the specific kind of lease contract entered into, the right of the landlord to terminate the contract may be subordinated to the existence of a just cause provided for by proper Italian laws governing lease agreements for dwelling purposes.

A tenant is instead always free to terminate the lease contract, provided that s/he sends the landlord a six months prior notice by registered letter with return receipt. Failure to do so automatically renews the contract for another 4 years.

The minimum term for premises used for purposes other than dwelling is fixed at six (6) years, while lease contracts concerning hotels shall have a minimum term equal to (9) years. Also, in this case, a landlord may only serve a disdetta - a registered letter of notice of termination to be sent at least twelve (12) months before contract expiry - to coincide with the end of the standard 6- or 9-year period. Failure to do so automatically renews the contract for another 6 or 9 years.

Tenants of properties leased for commercial use in sectors where there is contact with users or the general public, may, according to the nature of their activities, be entitled to goodwill indemnity should the contract be terminated by the landlord for reasons other than default, notice of termination or termination by tenant, or due to tenant insolvency.

Tenants have right of first refusal on re-renting the property once the original rental contract terminates by reason of expiration.

Should ownership of the property be transferred, the new landlord will be held to respect the first refusal rights of an existing tenant where the same carries out activities in contact with the public, is not in default with payment and has not sent notice of termination.

4.5 *Are there any formalities to fulfill in order to enforce lease agreements towards third parties?*

All rental contracts of more than 30 days in length must be registered within 30 days of their commencement and are subject to a proportional registration tax of 2% of annual rent.

PART V: EMPLOYMENT

5.1 *Are there any specific regulations with regard to employment matter?*

The field of employment legislation has been the object of wide reform with the approval of Law n. 92/2012, which introduced new provisions with regards to flexible employment contracts, modified dismissal regulations and reformed the social security and unemployment benefit system.

Employment legislation was further reformed with Law 183/2014 (referred to as "jobs Act") and by the following related enforcement decrees.

Collective bargaining agreements (at national, local and company level) that result from the negotiation between the trade unions and the associations representing the companies operating in a business are often enabled by law to integrate and even derogate from provisions of the law.

The most common types of employment contracts are:

- Employment for an indefinite period.
  The type of relationship considered "usual" by law, and presumed to exist in the absence of a different and valid choice made by the parties, is that of an "employee for an indefinite period". With a view of protecting the worker, this contract does not require any special form, although written forms are generally used.
- Fixed-term employment contract.
  In addition to employment for an indefinite period, the parties may opt for a fixed-term employment contract up to 24 months maximum.
  For the first 12 months of employment, there is no need to indicate any reasons in order to make use of this type of contract.
  In order to renew the employment contract beyond the first 12 months, technical, production or replacement reasons must exist. If the employment relationship continues beyond the thirtieth day from the expiry date, in

the case of a contract lasting less than 6 months, or beyond the fiftieth day from the expiry date, in the other cases, the contract is transformed into an indefinite employment contract from the expiry of the aforesaid terms.

Upon commencement of the employment, an insurance cover encompassing business risks must be arranged with the Istituto Nazionale Infortuni sul Lavoro [National Worker's Compensation Institute] (INAIL) and several compulsory registrations must be perfected.

The employee must also be registered with the Istituto Nazionale per la Previdenza Sociale [National Social Security Institute] (INPS). The employer must open a social security account for the payment of contributions due for its employees and, at the time of appointment, the employer has to provide INAIL and the competent employment office with all the necessary information. In some cases, preventive measures exist.

5.2 *Applicable legislation according to the type of employment (differences between employment by a local company or by a head office for the local branch)*

In principle no differences exist with regards to the labor law and social security applicable to employees employed by the foreign parent company and operating at the premises of the Italian Branch or directly by the Italian Subsidiary.

5.3 *Dismissal requirements and formalities*

Both parties to the employment contract can terminate the employment relationship on written notice of termination, which may provide for a notice period or not (depending on the reasons for the termination). An employer cannot terminate the employment at will (unless during the probation period).

An employer should always have a valid reason for withdrawing from the employment contract, as in the absence of such its withdrawal will be invalid. The termination must be served in writing (otherwise it is null) and must disclose the reasons for the dismissal.

Individual dismissal may take place for subjective reasons connected with the conduct of the employee, or objective situations, irrespective of whether or not s/he is at fault.

Different procedures and compensation can apply for unlawful dismissals depending on the hiring date of the employee and his rank. The main distinction is between employees hired before 7 March 2015 and after that date, and between employees hired as white collar, blue collar and middle managers (quadri) and employees ranked as executives (dirigenti).

Notice periods for dismissals and resignations are provided by the national collective bargaining agreements and vary based on seniority and rank.

Collective dismissal may depend solely on causes relating to the company, such as resizing or transformation of the business activities for economic or organizational reasons, and is subject to special trade union procedures.

In all cases of termination of employment, the worker is entitled to severance pay (T.F.R.).

Italian rules applicable to employment with cross-border elements

The applicable labor law in cases containing cross-border elements (a foreign employer, a foreign employee, a foreign law choice...) is mainly governed by the terms of the Regulation (EC) No 593/2008 (Rome I) or by the terms of the

Convention on the law applicable to contractual obligations signed in Rome on 19 June 1980.

Parties to a cross border employment relationship can, under certain conditions, choose a law other than Italian law, although such choice cannot deprive the Italian employee of the protection given by the normally applicable Italian mandatory rules.

When no choice is made, the law of the country where the employee usually performs the labor is applied regardless of the fact that it concerns employment by a branch (with no separate corporate personality) or by a subsidiary (with a separate corporate personality). The normally applicable law will thus be the Italian labor law.

Italian social security contribution

The Italian social security law is of public order and an employee is subject to Italian social security law when employed in Italy by an employer established in Italy, or when the employer is established abroad but the employee is employed under a RO or a Branch in Italy.

The relevant EU regulations 883/2004 and 1224/2012 concerning social security require that the employee is subject to the law of the country where s/he works in.

An important exception however exists in the case of the posting ("secondment") of an employee who is employed in one country but temporarily works in another country. In fact, an employee employed under an Italian employer temporarily working abroad is allowed to remain subject to the Italian social security system, provided that the working activities abroad do not extend to a period exceeding 12 months.

5.4 *What are the main immigration rules applicable to foreign nationals intending to work or invest in Italy?*

Foreign employees that are not EU citizens must have a residency permit to work in Italy. Employees or their employers can request the permit at the Sportello Unico per l'Immigrazione.

Application procedures vary according to the type of employment. The period covered by permits also vary. The number of permits that are issued is limited. Exceptions are made for qualified employees and seconded employees.

Italy has also recently passed a new set of laws providing for an 'investor visa' for qualifying foreign nationals intending to reside in Italy. These are eligible to apply for said Visa under the following conditions:

- Investment of a minimum of 2 million euros in bonds issued by the Italian government, retaining the investment for at least 2 years;
- Investment of a minimum of 1 million euros in shares issued by Italian companies, retaining the investment for at least two years;
- Investment of a minimum of 1 million euros in the form of a charitable gift to sustain a project of public interest.

The Investor Visa will grant a residence permit of two years, renewable upon expiration for an additional maximum three-year period provided that the investment is not withdrawn. Family members of the foreign investor can obtain family permits allowing them to remain in Italy.

PART VI: TAXATION

6.1 CORPORATE INCOME TAX

6.1.1 *When is a company subject to tax in Italy?*

Tax resident companies

A company is deemed to be resident in Italy for tax purposes when its legal seat, place of effective management or main business activity is located in Italy for the greater part (that is, at least 183 days) of the fiscal period.

Italian resident companies are subject to Italian taxation on their world-wide income.

Non-tax resident companies

Non-resident companies are subject to Italian corporate income tax (IRES) and regional production tax (IRAP) only on their Italian sourced income, that is only for the taxable income generated from their Italian permanent establishment (PE), if any.

The Italian legislator has recently replaced the domestic definition of PE with the one provided by BEPS Action 7. Moreover, under the new PE provision, a significant and continuous economic presence in the Italian territory in a way that it does not result in a substantial physical presence in the same territory may anyhow constitute a PE.

This implies the possibility of a digital PE presence in Italy even in the case where a foreign company does not have a physical presence in the Italian territory to the extent other factors indicate that it has a significant and continuous economic presence in Italy (e.g., revenues, number of customers etc.).

6.1.2 *What are the main taxes that potentially apply to a business vehicle subject to tax in Italy (including tax rates)?*

Corporate income tax (IRES)

The IRES taxable base is determined according to the worldwide taxation principle. Income is taxed in Italy to the extent that it is legally attributable to an Italian resident entity regardless of where the income is produced.

IRES is charged on the total net income reported in the company's financial statements as adjusted for specific tax rules.

The IRES standard rate is 24%.

The Italian budget law 2019 introduced the possibility to reduce the IRES standard rate from 24% to 15%, if the company meets certain conditions (so called MINI IRES).

Regional production tax (IRAP)

IRAP is a regional tax on productive activities. The IRAP taxable base is generally calculated as the difference between business income and business expenses excluding interest payments. Some specific costs are not deductible.

The IRAP standard rate applicable for manufacturing or trading companies is 3.9%. This may however slightly vary from region to region.

6.1.3 *How are Dividends paid to foreign corporate shareholders taxed?*

Dividends paid to a non-resident corporation are generally subject to a 26% final withholding tax unless the rate is reduced under a double taxation treaty (DTT), if applicable, or the dividends qualify for an exemption under Directive 2011/96-EU on the common system of taxation applicable to EU parent companies and subsidiaries, as amended by Council Directive 2014/86/EU (Amended Parent-Subsidiary Directive).

6.1.4 *How are Interests paid to foreign corporate shareholders taxed?*

Italian-sourced interests paid to a non-resident is generally subject to a 26% final

withholding tax. The withholding tax can be reduced under a DTT or eliminated under Directive 2004/76/EC, amending Directive 2003/49/EC on interest and royalty payments (Amended Interest and Royalty Directive), if applicable.

6.1.5 *How are Royalties paid to foreign corporate shareholders taxed?*

Royalties paid to a non-resident company are subject to a 30% withholding tax calculated (generally) on 75% of the gross royalty, resulting in an effective tax of 22.5%. The withholding tax can be reduced under a DTT or eliminated under the Amended Interest and Royalty Directive, if applicable.

6.1.6 *Are there any transfer pricing rules?*

A resident enterprise's business income is assessed on the basis of the arm's length value of the goods transferred, services rendered or services received, if that income arises from transactions with non-residents that:

- Directly or indirectly control the resident company.
- Are under the control of the resident company.
- Are controlled by the same entity that controls the resident company.

The concept of "control" is broadly interpreted by the Italian tax administration and courts.

The OECD guidelines are generally followed to determine the arm's length price. Both traditional methods (comparable uncontrolled price, cost-plus and resale price methods) and profit-based methods (such as the transactional net margin method) are used and may be acceptable based on the specific circumstances.

Transfer pricing documentation is not mandatory. However, a taxpayer can obtain protection against penalties for a transfer pricing adjustment by maintaining

appropriate documentation and disclosing that it is in possession of the documentation by checking the relevant box in the annual income tax return.

6.1.7 *What are the latest developments on Italian corporate tax legislation?*

On 28 December 2018, the Italian Government adopted the Legislative Decree transposing the EU Anti-Tax Avoidance Directive (ATAD) in the Italian legislation.

Generally, the Decree contains new rules with reference to:

Deduction of interest expenses
The Decree replaces Article 96 of the Italian Tax Code (ITC) regarding interest expense deduction rules. The new language rephrases the existing 30% earnings before interest, taxes, depreciation and amortization (EBITDA) limitation rule with some changes, one of the main changes being the reference to a tax adjusted EBITDA (and no longer to an accounting EBITDA).

The final version of the Decree abolishes a number of minor exceptions by making the ordinary 30% EBITDA rule fully applicable to real estate companies and, more in general, in the case of expenses associated with the issuance of certain debt securities.

Exit taxation
The new rule reiterates the existing exit taxation provision (Article 166 ITC) with some exceptions. Among the various differences with the old rule, the Decree no longer allows the deferral of capital gain taxation on migrations to EU or European Economic Area jurisdictions.

Inbound migrations of foreign companies or individual entrepreneurs
The new rule reiterates the existing provision (Article 166-bis ITC) by clarifying

the tax basis recognized by Italy upon entry. The final version of the Decree also makes this provision applicable to taxpayers other than companies, like individual businesses.

CFCs

The new rule mainly restates the existing one (Article 167 ITC). The final version of the Decree clarifies the concept of "passive income" by including the income derived from the sale of goods to related parties and by clarifying the concept of "low-value services" by reference to Italian transfer pricing regulations.

Dividends and capital gains

The Decree introduces some changes to the existing rules applicable to Italian companies deriving foreign dividends and capital gains from the disposal of foreign subsidiaries.

New rules on hybrid mismatches

The Decree introduces a new set of anti-hybrid mismatch rules aimed at contrasting the phenomena of "double deduction" and "deduction without inclusion" derived from conflicts in the qualification of certain arrangements or transactions between one or more tax jurisdictions.

Digital Service Tax

The Italian budget law 2019 (the Law) introduces a "new" Digital service tax" (DST).

The entry in to force of such new DST is conditional upon the issuance by the Minister of Economy and Finance - MEF - of a secondary legislation. Therefore, such new DST is expected to come into force after June 2019.

The DST seems to be aimed at targeting revenues from digital services such as:

a) the placing on a digital interface of advertising targeted at users of that interface;
b) the making available to users of a multi-sided digital interface, which allows users to find other users and to interact with them and which may also facilitate the provision of underlying supplies of goods or services directly between users
c) the transmission of data collected about users and generated from users' activities on digital interfaces

Taxable entities are businesses undertaking that, during a taxable year (defined as a solar year), individually or at the group level realizes:
i. a total amount of worldwide revenues reported for the relevant taxable year exceeding € 750.000,00; and
ii. a total amount of taxable revenues within the Italian territory during the relevant financial year exceeding € 5.500.000,00.

Tax rate is 3% of the relevant revenues.

Revenues from Digital Services are located based on user location in the Italian territory.

The DST is collected by way of self-declaration by the taxable person (no WHT is applicable) to be filed 4 months after the end of each taxable year. The DST due for each quarter must be paid to the tax authority 1 months after each quarter.

Foreign taxpayers - performing business activities in Italy without a permanent establishment and a VAT identification number - that in a tax period are subject to the DST have to ask the Italian Revenue Agency for the DST identification number pursuant to the guidelines that in the next months will be issued by the IRA.

6.2 INDIVIDUAL INCOME TAX

6.2.1 *In what circumstances is an employee taxed in Italy and what criteria are used?*

Tax resident individuals
For income tax purposes, an individual is deemed to be resident in Italy if they are enrolled on the list of the Italian resident population, or are resident or domiciled in Italy for more than 183 days in a year. Italian residents are taxed in Italy on their worldwide income.

Non-tax resident individuals
Non-residents are taxed only on income of an Italian-source (double tax treaties may apply). Employment income is considered as sourced in Italy if the work is carried out in the Italian territory.

Taxes on employment income
Income from employment is ordinarily subject to taxation through withholding tax (at progressive tax rates) applied directly by the Italian employer.

If no Italian employer exists, employment income must be included in the employee's tax return subject to ordinary rules. This may be the case of an individual resident or working in Italy who are employed by a non-resident entrepreneur.

The progressive tax rates applicable to taxable income are:

- Less than € 15.000,00: 23%.
- Above € 15.000,00 and less than € 28.000,00: 27%.
- Above € 28.000,00 and less than € 55.000,00: 38%.

- Above € 55.000,00 and less than € 75.000,00: 41%.
- Above € 75.000,00: 43%.

A special regime is applicable for inbound employees and, if all the relevant requirements are met, 50% of their Italian sourced income from employment is tax exempt.

Another special regime may be applied to inbound researchers and highly skilled employees, providing for tax exemption on 90% of their Italian sourced income from employment.

Under certain conditions, nonresident individuals moving their tax residence in Italy, who have not been resident in Italy for at least nine of 10 fiscal years prior to the year in which the individual moves his/her tax residence to Italy, may apply for a € 100.000,00 lump-sum tax on their income earned abroad with the possibility of extending the tax regime to family members (with a flat rate of € 25.000,00).

Tax Incentives on investments

There are ongoing tax incentives being launched by the Italian Government to enhance foreign business investments and reduce the tax burden for businesses. One of the major tax incentives launched by the Italian Government is certainly the Patent Box Regime for R&D companies.

This regime allows R&D companies to remain exempt from tax on 50 per cent of income deriving from the exploitation of selected intellectual property (IP). It also allows R&D companies to remain partially exempt from tax on capital gains derived from the sale of that IP, provided that at least 90 per cent of the same capital gains are reinvested into other assets of the same type.

Taxes on income derived by independent contractor

As of January 2019, the Italian legislator has also introduced a flat tax at a rate of 15% on income derived by independent contractors and/or sole entrepreneurs that are subject to Italian individual income tax (IRPEF). Basically, said flat tax replaces entirely the progressive individual income tax rates that would have otherwise been applicable, provided that the revenues derived by said individuals do not exceed € 65.000,00 in the given year.

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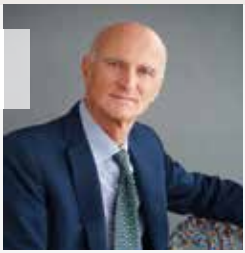

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