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DOING BUSINESS IN ITALY

1. Introduction and legal system

The Italian legal system is a civil law system.

Italy is a founding member of the European Union (**EU**). The body of European Community law is effective in Italy, either directly or by incorporation.

Italy adheres to several international treaties and conventions, including the UN Convention on the International Sale of Goods (**CISG**).

Italy is the 9th world exporter of goods and the 13th importer.

The Italian economic structure relies mainly on services and industry sector. Indeed, two-thirds of Italy's GDP is contributed by the services sector (including wholesales, retails and transports sub sectors), while approximately 29% of national income is derived from manufacturing and construction industry, mainly run by small and medium-sized family-owned enterprises. The strongest industrial sectors are machinery and clothing / textiles. Agriculture contributes to the remaining share of total GDP.

Attracting foreign investments has been an important factor in the economic and social development of the country, in addition to being one of the priorities of the Italian government.

Given the exceptional situation caused by Covid-19 outbreak, the Italian government has issued and might continue to issue several emergency legislations derogating certain provisions of framework legislation such as the Italian Civil Code. Given the exceptional and temporary nature of these emergency legislation, it has not been considered in this document (except for a few cases).

Moreover, due to the extraordinary situation in Ukraine, the European Union has adopted several regulations against Russia and Belarus, concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. These regulations alter and deeply compromise the commercial relations between Italy, Russia and Belarus. Even if the panorama of sanctions is constantly changing, for those who invest in Italy, it is recommended to regularly monitor regulatory changes on the developments of sanctions, in order to evaluate suspensions of relationships with Russian or Belarusian parties.

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2. Type of business vehicles

2.1. Overview

The most common forms of business vehicle used by foreign companies to conduct business in Italy are two different types of companies: the joint-stock company (*società per azioni*, **S.P.A.**) and the limited liability company (*società a responsabilità limitata*, **SRL**). According to the civil law system adopted in Italy, partnerships are also classified as companies, but they are seldom used by foreign investors.

Since both the SPA and the SRL are legal entities in their own right, the shareholders are in no way responsible for the company's debts. This, however, is subject to a specific limitation if all of the equity is owned by one person. Where an insolvent company has only one shareholder, this shareholder is responsible without limitation for the company's obligations that arose during the period of sole ownership if the relevant capital contributions have not been properly effected or until the relevant disclosure formalities concerning the identity of the sole shareholder have been made in compliance with specific provisions of Italian law.

Italian lawyers often refer to the equity in SRLs as "quota" and to the equity holders as "quota holders", reflecting a distinction made by Italian law. In very broad terms, SPA shares are indivisible units in principle of equal nominal value, and may be issued in different classes. In comparison, SRL equity shares are not necessarily of equal nominal value and may not be issued in different classes. For the sake of simplicity, we will use "share" and "shareholders" for both type of companies.

2.2. S.P.A. (Italian Joint Stock Company)

2.2.1. General information

A SPA is the preferred legal form for large businesses on the basis that, among other reasons, Italian corporate law provides for a wide variety of ways in which the company can raise finance.

2.2.2. Registration formalities

The requirements for the incorporation of a company in the form of an SPA involve compliance with several provisions of substantive law. In the first instance, the deed of incorporation, including the by-laws, must be executed by the founders (or persons holding powers of attorney for them) before a notary public, and the notary public is required to file the registration application of the company with the competent Register of Enterprises within 10 days from the signature of the deed of incorporation.

Registration, incorporation, and other minor taxes must be paid on incorporation and on each filing of the required company's documents.

The company only legally exists following its registration with the Register of Enterprises and its status as a legal entity distinct from its shareholders becomes effective only subject to such registration.

The timing for the above registration procedure often depends on the Register of Enterprises. In our experience, the entire incorporation process of an SPA by a foreign investor should normally be completed within 10/15 working days from the day on which the Italian representatives / consultants entrusted with its incorporation receive the necessary documentation. However, please note that considering the current exceptional situation caused by the epidemiological emergency the incorporation process could be longer than usual.

2.2.3. Corporate capital

The minimum corporate capital for a SPA is 50,000 Euro.

Contributions to the corporate capital of a SPA may be made in cash, or (if the articles of association allow so) in kind or in receivables:

- Contributions made in cash

  Where there is more than one shareholder, each shareholder must pay up at least 25% of the relevant amount at the time of the execution of the deed of incorporation; the remaining 75% may be called by the directors at any time;

  where there is only one shareholder, contributions must be paid in full in a single instalment at the time of incorporation of the company. Failure to do so may result in the unlimited liability of the sole shareholder for the obligations of the company.

- Contributions made in kind or in receivables:

  A shareholder may contribute to the corporate capital of a SPA by transferring ownership or the right to use assets that are capable of valuation. Contributions in kind may not be made in the form of the performance of work or services.

  If the contribution is made in kind, it must be on the basis of a valuation made, in the case of a SPA, by an expert appointed by the Court. Only if certain specific conditions are met, a valuation is no longer required or otherwise can be issued by an independent expert appointed by the contributing party (and not by the competent Court)[1].

2.2.4. Restrictions on the rights that can attach to shares

Shares confer upon their holders certain rights as provided by the articles of association of the company or by law.

In 2014, article 2351 of the Italian Civil Code was amended[2] to allow the company's articles of association to provide for the creation of shares with multiple (up to three) voting rights, this overruns the principle of one share one vote.

Moreover, shares may be divided into different classes, each of which may give the shareholder different rights. The articles of association of an SPA may permit the grant to some shareholders of a higher or lower number of shares representing a portion of the capital of the company which is not equal to the value of their actual equity contributions. In this way, it may be possible to consider other benefits given by a shareholder to the company, which cannot be formally treated as a contribution in kind, such as work and services. However, the aggregate value of the contributions made by all the shareholders must not be less than the company's share capital.

2.2.5. Management structure

There are three types of corporate governance system for a SPA:

(i) Traditional corporate governance system, composing of:

- a shareholders' meeting, which is entrusted with decision-making functions for the company's most important decisions;

[1] Pursuant to the Legislative Decree no. 142 of 4 August 2008, implemented pursuant to Directive 2006/68/EC.

[2] Pursuant to the Law Decree no. 91 of 2014, which was later converted and enacted by Law no. 116 of 2014.

- a board of directors or a sole director, which performs the function of management and representation of the company; and
- a board of statutory auditors, with a compliance function.

(ii) a unitary / one-tier system (*sistema monistico*), which is introduced recently, where the directors are supervised by a committee composed of some of its members, who have special requirements of independence and professionalism; and

(iii) a two-tier system (*sistema dualistico*), which is also introduced recently, where the directors are appointed and monitored by a supervisory board that has certain powers and responsibilities which would otherwise have been exercised by shareholders' meetings under the traditional system, such as approving the financial statements.

In all three corporate governance systems, the company may entrust an external auditor or auditing company to exercise the compliance function, instead of having a board of statutory auditors.

2.2.6. Restrictions on foreign shareholders and directors

EU citizens and EU companies are treated as Italian in all respect, and they may, therefore, incorporate a SPA or hold shares of a SPA under the same rules provided for Italian citizens or entities.

In the case of non-EU-based citizens or entities, there must be a specific condition of reciprocity with the state where such citizens or entities come from. Therefore, a non-EU-based company or citizen may become a shareholder or director of a SPA to the extent that a reciprocal right exists for Italian parties in the jurisdiction of the prospective shareholder or director. The condition of reciprocity is verified by the competent offices of the Ministry of Foreign Affairs. As of the date of this memo, citizens of the US, China, the UK etc. satisfy the condition of reciprocity.

Certain restrictions on the nationality of directors will apply in specified sectors, for example, at least two thirds of the directors of trust companies – including the chairman and the managing director – must be Italian citizens.

In any event, foreign directors must obtain an Italian Inland Revenue Code number.

2.2.7. Directors' liability

Directors of a SPA may be liable for a breach of their fiduciary duties to the company and its shareholders; they may also be liable to third-party creditors for a breach of their duties of safeguarding the company's assets.

In the first case, the corporate action against directors may be brought by the company within five years of termination of office, following a resolution passed by the shareholder's meeting or by the board of statutory auditors with a majority of two-thirds of its members.

A corporate action can also be brought against directors by minority shareholders. In these circumstances, the claim is structured as a 'derivative' action brought by the minority shareholders in the name of the company and for the benefit of the company and its shareholders as a whole.

Furthermore, in the event that the directors, through negligent or malicious acts, directly damage an individual shareholder, the aggrieved shareholder may bring a liability action within five years of the completion of the act that has caused the damage.

On the other hand, in the event of the directors' liability towards the company's creditors, the action may be brought by the creditors, within five years, when the company's assets are insufficient to satisfy their claims.

2.2.8. Reporting requirements

SPAs are required to prepare annual accounts, including a balance sheet, a profit and loss statement, a financial statement, and related notes; few exceptions regarding the content of the annual accounts are provided for micro and small enterprises.

The annual accounts must be confirmed by the company's statutory auditors and submitted by the board to the shareholders' meeting, who must approve them by ordinary shareholders meeting within 120 days of the end of the relevant financial year. This period may be extended up to 180 days in certain circumstances.

Thereafter, the company's balance sheet needs to be filed with the Register of Enterprises within 30 days from its approval and must be attached to its annual tax return. The company's balance sheet then becomes publicly available to the public. Third parties will have access to the balance sheet on the government database, against payment of a moderate fee.

Certain acts or events give rise to filing requirements with the Register of Enterprises, including, for example, any changes regarding the company's directors, articles of association, and corporate capital.

2.3. S.r.l. (Italian limited liability companies)

2.3.1. General information

The SRL may be the most suitable legal form for certain small and medium-sized commercial businesses. In particular, the costs of incorporating and managing an SRL are generally lower than for a SPA. This appeals to many entrepreneurs who wish to start up their own businesses and do not yet have sufficient funding to incorporate a SPA.

With the purpose of encouraging business initiatives, the Italian Government has also introduced a particular sub-type of SRL (i.e., the so-called "simplified" SRL), which – upon the occurrence of certain requirements – may benefit from a simplified incorporation procedure regime as well as from certain tax relief and financial incentives, as better set forth below. Furthermore, the parties to a joint venture may prefer to incorporate the joint venture entity as a company limited by quotas which offer a flexible organisational structure.

2.3.2. Incorporation and registration formalities

Incorporation and registration formalities and requirements for an SRL are similar to those for a SPA. Therefore, the deed of incorporation (including the by-laws) has to be executed by the incorporating shareholders (or persons holding powers of attorney for them) before a notary public. Once an SRL has been incorporated, the notary public who has overseen the incorporation is required to file the registration application of the company with the competent Register of Enterprises within 10 days of the signature of the deed of incorporation. The company only legally exists following its registration with the Register of Enterprises and its status as a legal entity distinct from its shareholders becomes effective only on such registration.

Same as for a SPA, registration, incorporation, and other minor taxes must be paid on incorporation and each filing of the company's documents with the competent offices; the notary public assisting the incorporation of the SRL is personally liable, jointly with the incorporators, for the payment of the registration tax and other duties on incorporation.

The entire incorporation process for an SRL by a foreign investor should normally be completed within 5/10 working days from the day on which the Italian representatives/consultants entrusted with its incorporation receive the necessary documentation. However, please note that considering the current exceptional situation

caused by the epidemiological emergency the incorporation process could be longer than usual.

2.3.3. Corporate capital ("Quotas")

As per general rule, the minimum corporate capital for a regular SRL is 10,000 Euro. However, an exception to this rule has been introduced in 2013[3], allowing the incorporation of an SRL with a capital of at least 1 Euro provided that, upon incorporation, it is fully paid in cash.

SRL capital is divided into quotas. Quotas, unlike shares in a SPA, are not represented by a negotiable instrument, which means that the transfer of quotas must be effected by the execution of a notarial deed and that the transfer only takes effect towards third parties once it has been registered with the competent Register of Enterprises.

2.3.4. Quotas for cash consideration

Where there is more than one shareholder, each shareholder must pay up at least 25% of the relevant amount at the time of the execution of the deed of incorporation; the remaining 75% may be drawn down by the directors at any time.

Where there is only one shareholder, contributions must be paid in full in a single installment at the incorporation of the company. Failure to do so may result in the unlimited liability of the sole shareholder for the obligations of the company.

Flexibility is created by the types of contributions which may be made to an SRL. A shareholder may contribute to the corporate capital of an SRL by transferring ownership or the right to use any assets which are capable of valuation (including, for example, goodwill, trademarks, patents, know-how, and other similar rights).

Unlike SPA, a shareholder may also contribute to the performance of work and services. In doing so, the relevant shareholder will have to provide the company with a bank guarantee or an insurance policy in order to secure his/her obligations to perform such work and services.

If the contribution to the corporate capital of an SRL is made in kind, it must be on the basis of a valuation made by an expert (a statutory auditor or an audit firm listed in the relevant registers) appointed by the shareholders themselves (and not by the competent Court as is the case for SPAs).

2.3.5. Restrictions on the rights attached to quotas

The rights of a shareholder are generally dependent upon the value of the contribution that such shareholder made to the company's corporate capital. However, the articles of association may provide that the shareholdings are allocated on a non-proportional basis.

The articles of association may also permit the grant to a particular shareholder of further rights above and beyond those which the shareholder would have received simply by virtue of his/her quota holding. These rights may include, by way of example, an entitlement to a higher proportion of any dividends declared by the company or additional management rights. In any case, such special rights do not attach to the quota itself and, therefore, they are not automatically transferred in case of transfer of the quota.

2.3.6. Restrictions on foreign shareholders and directors

[3] Introduced by Law Decree No. 76 of 2013 (converted and enacted by Law No. 99 of 2013) which has amended article 2463 of the Italian Civil Code.

Citizens of states of the EU or companies located in a State of the EU are treated as Italian citizens or entities in any legal aspect and they may, therefore, incorporate an SRL or hold quotas of an SRL under the same rules provided for Italian citizens or entities.

In the case of non-EU-based citizens or entities, there must be a specific condition of reciprocity with the state where such citizens or entities come from. Therefore, a non-EU-based company or citizen may become a shareholder of an SRL to the extent that a reciprocal right exists for Italian entities in the jurisdiction of the prospective shareholder. As at the date of this memo, citizens of the US, China, the UK etc. satisfy the condition of reciprocity.

There are no restrictions on the nationality of directors. However, also with reference to the appointment of directors, in the case of non-EU citizens, the condition of reciprocity mentioned above shall apply.

In any event, foreign directors must obtain an Italian Inland Revenue Code number.

2.3.7. Management and supervising structure

An SRL enjoys great flexibility in respect of its organisational structure. Shareholders can also hold management positions in the company, without the need to appoint one or more directors.

Conversely, shareholders may adopt a formal decision-making structure to be responsible for all management issues; in particular, at the date of incorporation, the incorporators may decide that the SRL should be managed either by a board of directors, by two or more directors acting jointly or severally, or by a sole director.

When the management of the company is entrusted to two or more persons, a board of directors will have been formed, unless the articles of association allow the company to be managed by two or more directors acting jointly or severally. Moreover, if permitted by the articles of association, the shareholders may also elect a sole director who shall have such authority and responsibility as the shareholders may delegate.

An SRL may appoint a control body (i.e., a board of statutory auditors or a sole statutory auditor) and/or an external legal auditor.

Unless otherwise provided in the by-laws, the control body is composed of a sole statutory auditor.

On the contrary, SRLs must appoint a control body or a legal auditor in case:

(a) they are required to draw up consolidated annual accounts;

(b) they control a subsidiary required to have its financial statements audited; or

(c) for two consecutive financial years, they exceeded two out of the three thresholds provided for by article 2477 of the Italian Civil Code, namely:

  (i) total assets of 4,000,000 Euros;

  (ii) annual turnover of 4,000,000 Euros;

  (iii) an average of 20 employees employed during the fiscal year.

2.3.8. Directors' liability

Directors of an SRL are jointly liable to the company for damages as a result of the breach of their duties as required by the law or by the SRL's articles of association; they may also be liable to third-party creditors for breach of their duties when it comes to safeguarding of company's assets.

A corporate action can also be brought against directors by each shareholder.

All the above without prejudice for the right to damages granted to each shareholder and to any third party directly damaged by wilful or negligent acts of the directors.

Shareholders who have intentionally decided or authorized acts detrimental to the company, to the other shareholders, or to third parties, shall be jointly liable with the directors for any damages awarded.

2.3.9. Reporting requirements

SRLs are required to draw up annual accounts, including a balance sheet, an income statement, a financial statement, and related notes; few derogations regarding the content of the annual accounts are provided for micro and small enterprises.

The annual accounts, after the presentation by the directors and confirmation by statutory auditors (if any), must be approved by an ordinary shareholders' meeting within 120 days of the end of the relevant financial year. This period may be extended to 180 days in certain circumstances.

Thereafter, the company's balance sheet needs to be filed with the Register of Enterprises within 30 days from its approval and must be attached to its annual tax return.

Certain acts or events must be filed with the Register of Enterprises, including, for example, any changes regarding the company's directors, articles of association, and corporate capital.

2.4. Simplified SRL

As mentioned above, for the purpose of encouraging business initiatives, the Italian Government has introduced a particular sub-type of SRL - the so-called "simplified SRL" - which, subject to compliance with certain requirements, may benefit from certain tax reliefs and simplified incorporation formalities.

A "simplified SRL" must comply with the following essential requirements[4]:

(i) the entire corporate capital must be held, upon incorporation, by natural persons who are at least thirty-five years old at the time of incorporation, and fully paid in cash;

(ii) the SRL must be incorporated and then governed through, respectively, a deed of incorporation and articles of association consistent with the relevant standard models issued by the Italian Ministry of Justice, jointly with the Ministry of Economy and Finance and the Ministry of Economic Development;

(iii) certain additional disclosure formalities must be complied with in connection with the corporate documents and the company's website.

Should the above requirements be met, the "simplified" SRL may benefit from the following simplifications and tax reliefs:

(i) the SRL's corporate capital may be comprised between 1.00 and 10,000.00 Euro;

(ii) no notarial fees will be borne by the shareholders in connection with the incorporation of the SRL; and

(iii) shareholders will be exempted from paying certain stamp duties and other incorporation-related taxes to be usually paid for the incorporation of "normal" SRLs.

[4] Pursuant to article 2463-bis of the Civil Code (firstly introduced by Law Decree No. 1 of 2012, converted and enacted by Law No. 27 of 2012, and then amended by Law Decree No. 76 of 2013, converted and enacted by Law No. 99 of 2013).

Without prejudice to the provisions of art. 2463-bis of the Italian Civil Code, the regulations provided for ordinary SRL are applied, insofar as they are compatible.

2.5. Innovative Start-up

Through Legislative Decree No. 179 of 2012 (as converted and enacted by Law No. 221 of 2012 as subsequently amended), the Italian Government has introduced a new type of business form – the so-called "Innovative Start-up" – with the purpose of encouraging the development of new business initiatives with particular regard to the technology sector.

An innovative start-up is therefore a joint-stock company, also established as a cooperative, whose shares or quotas representing the share capital are not listed on a regulated market or on a multilateral trading system, and whose exclusive or main corporate purpose is the development, production, and marketing of innovative products or services with a high technological value.

In fact, the obtainment of the status of Innovative Start-up(s) may benefit from certain simplified corporate formalities as well as tax reliefs as briefly summarized below. In addition, the Innovative Start-up cannot be subject to bankruptcy proceedings except for proceedings for the settlement of over-indebtedness and liquidation of assets.

To obtain the status of "Innovative Start-up", a legal entity must, *inter alia*:

(1) have the form of stock company (i.e., SPA or SRL), also in the cooperative form;

(2) be not-listed companies;

(3) be newly incorporated or have been incorporated by no more than 60 months before submission of the application to obtain such status;

(4) not have been incorporated as a result of mergers, demergers, or transfer of business and/or business units;

(5) be registered in a special ad hoc section of the competent Register of Enterprises;

(6) be resident in Italy, in an EU member State or in a foreign State adhering to the Agreement on the European Economic Area;

(7) have at least a production unit or a branch located in Italy;

(8) starting from the second year, have an annual turnover of less than Euro 5,000,000.00;

(9) be prohibited from distributing dividends;

(10) have as its exclusive or main corporate purpose the development, production, and/or marketing of technologically innovative products or services[5];

(11) have met one out of the following 3 requirements: (i) R&D expenses are equal to at least 15% of the higher between turnover and production costs; (ii) at least 1/3 of the employees have obtained a Ph.D. degree or 2/3 of the employees have obtained M.D. degree; (iii) the company is the owner or licensee of at least one registered patent or software.

As mentioned, the obtainment of the "Innovative Start-up" status allows the relevant legal entity (and their investors) to enjoy certain tax reliefs and other simplified corporate formalities, such as:

[5] In addition to the technological start-ups, the Law Decree no. 83/2014, as converted into Law no. 106/2014 has also provided for start-ups operating in the tourism sector.

- exemption from payment of certain costs and taxes connected with the incorporation process;
- additional flexibility with respect to certain mandatory equity/re-capitalization requirements/terms;
- additional flexibility as to the corporate governance of the legal entity, as well as the issue of corporate financial instruments;
- possibility of exploiting *ad hoc* advertisement and promotion instruments made available by ICE Agency (Italian agency for the promotion of Italian businesses abroad);
- tax reliefs with respect to equity financial instruments issued by the legal entity in favor of employees, directors, and/or collaborators on a permanent basis;
- additional flexibility with respect to the possibility of entering fixed-term employment contracts;
- non-application of Italian bankruptcy legislation, being applicable to the rules governing the management of over-indebtedness only.

The same above-mentioned legislation has introduced another new type of business form strictly connected with the development of the Innovative Start-up: the so-called "Certified Incubator".

In brief, the Certified Incubator is a stock company or a cooperative having as its corporate scope the provision of services instrumental to the setting-up and development of "Innovative Start-up(s)". Upon the occurrence of certain requirements, Certified Incubators may benefit from tax reliefs, financial incentives, and simplified corporate formalities/procedures very similar to the ones briefly illustrated with respect to the Innovative Start-up(s).

Finally, Law Decree no. 3 of 2015 has "cloned" the provisions mentioned above with reference to the Innovative Start-ups and extended most of the benefits provided for thereby to a new type of company, the so-called "Innovative SMEs" (Small and Medium Enterprises – *PMI* in Italian).

2.6. Branch

A branch is an operational or administrative unit (such as a laboratory, workshop, factory, subsidiary, representative office, etc.) located where an enterprise carries out stable economic activities.

It differs from a secondary headquarter because it cannot represent an enterprise before third parties. Also, the constant presence of legal representatives is not required in a branch.

A branch may be set up either by a foreign company or by an Italian company, and it has to be registered in the Economic and Administrative Index (REA) at the competent Chamber of Commerce.

The formalities for setting up a branch in Italy by a foreign company are relatively simple, although they involve a certain amount of translation. To register a branch, an online

application digitally signed by the legal representative of the enterprise has to be submitted within 30 days after the date of commencement of business[6].

Moreover, to register a branch in Italy, the following documents are required[7]:

- for EU enterprises: a certificate containing basic information of the enterprise (such as the legal representatives' names) issued by the registration institution of the same nationality as the enterprise, which is equivalent to the Italian Chamber of Commerce. A sworn Italian translation will also be required.
- from non-EU enterprises: a certificate of existence of the enterprise issued by the Italian Embassy of the country where the enterprise has its registered office, scanned, digitally signed, and submitted by the legal representative of the enterprise.

2.7. Secondary headquarter

The secondary headquarter of a foreign company, located in Italy, has two main distinctive features: (a) permanent structures, where business activities are carried out or a branch of the company is registered; (b) permanent representation office, where a legal representative is entitled to represent the company and negotiate with third parties on its behalf.

To register a secondary headquarter, an online application should be submitted within 30 days after the deed of incorporation of the headquarter is filed at a public notary's office, and within 45 days after the date of the deed[8]. The online application has to be digitally signed by the notary.

Moreover, in order to register a secondary headquarter in Italy, the following documents are required[9]:

- the deed of incorporation, and corresponding filing report at an Italian notary's office; the current by-laws of the company, translated into Italian. The translation has to be certified by an Italian court;
- if the foreign company is based in an EU member State, the public notary can file, instead of the current by-laws, a statement (signed by himself/herself or a company legal representative) concerning the registration of the company in the EU member state business register, accompanied by a sworn translation into Italian.

2.7.1. Parent company liability

The company which directs or co-ordinates a group of companies is potentially liable to the shareholders of those group companies for damage to profitability and/or the value of their contributions, as well as to creditors of those companies, to the extent that the parent company acts otherwise than in the interest of a subsidiary or breaches the principles of proper management. A parent company will not be liable, however, if the act or omission can be shown to have led to a concrete and direct advantage/benefit also for the subsidiary deriving from the global strategy pursued at the group level.

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[6] Based on the information publicly made available by the Chamber of Commerce of Milano Monza Brianza Lodi. Different Chambers of Commerce might require slightly different procedure and/or documents.

[7] Please see footnote no. 7 above.

[8] Based on the information publicly made available by the Chamber of Commerce of Milano Monza Brianza Lodi. Different Chambers of Commerce might require slightly different procedure and/or documents.

[9] Please see footnote no. 9 above.

2.7.2. Listing on the Italian stock exchange

Listing on the Italian MTA (*Mercato Telematico Azionario*), which is the main regulated financial market in Italy, is achieved through the admission clearance procedure of the Borsa Italiana, the Italian stock exchange. In order to meet the free float requirement which must be at least equal to 25% of the corporate capital (although this varies depending upon the listing market or market segment), a listing is usually accompanied by a public offer of the company's shares. The offering of shares to the public requires the publication of a prospectus to be drafted in accordance with the Commission Delegated Regulation (EU) 2019/980 of 14 March 2019; this must be approved by Consob, the Italian financial market regulatory authority.

2.7.3. Charging of assets

Italian laws provide for two main instruments to establish security over an asset: pledge and mortgage, both of which are governed by the general principles of the Italian Civil Code. A pledge may be created*, inter alia*, over shares and quotas.

Furthermore, Italy implemented the European Directive no. 2002/47/CE relating to "financial security agreements", providing comprehensive regulations for the setting-up and enforcement of collateral over cash and securities, which applies to agreements entered by certain entities.

Italian law provides that a company may not, directly or indirectly, grant loans and / or guarantees for the purchase and the subscription of its own shares, unless certain specific conditions (especially in terms of additional corporate actions to be carried out) are met (these include the passing of a resolution at an extraordinary shareholders' meeting, the preparation by the directors of a report describing the transaction and the reasons for it and carrying out the transaction at arm's length).

3. Real estate

3.1. Legal definitions and rights

There are no specific restrictions that apply to foreign ownership or occupation of real estate in Italy.

Land and buildings are registered in the Land Registry (Registri Immobiliari), which provides evidence to third parties of both property and other in rem rights over the real estate asset.

Ownership, as provided in the Italian civil code, is the right according to which the owner is entitled to enjoy and dispose of the property asset fully and exclusively, within the limits and with observance of the duties established by the legal order (e.g. expropriation of property affecting national production or of predominant public interest).

Ownership can also be limited by different real estate rights of use (*diritti reali di godimento*), expressly provided by law as *numerus clausus*:

- a **surface right** (*diritto di superificie*) is the right to build up and maintain a building above land owned by someone else;
- an **emphyteusis right** (*diritto d'enfiteusi*) is the right to enjoy the property with the duty to improve it and to pay to the owner a ground rent (*rendita enfiteutica*) with a sum of money or a number of natural products;
- a **usufruct** (*diritto d'usufrutto*) is the right to enjoy the property, limited to compliance with its intended use (*destinazione d'uso*) determined by the owner, and the restraint to alienation over the property. It is a temporary right because its term is for the life of the tenant or for 30 years if the tenant is a legal entity;
- a **right of use** (*diritto d'uso*) is a limited type of usufruct giving the right to use the property and get the fruits from the ground (limited to the needs of their own or their family);
- a **right of housing** (*diritto d'abitazione*) is the right to live in a house (limited to the needs of their own or their family);
- a **land easement** (*servitù prediale*) is a burden imposed over land in favor of neighboring land;

Real estate can also have a mortgage (*ipoteca*) over it: a guarantee over the property covering the obligations that should be performed by the owner and it does not determine loss of possession. Mortgages can be voluntary or mandatory and shall be registered in the same Land Register as the real estate property.

3.2. Ownership right

There are two forms of ownership rights:

- **Full ownership right (*Diritto di Proprietà*)**

  When a natural or legal person owns real estate property individually and exclusively.

- **Co-ownership right (*Diritto di Comproprietà*)**

  When two or more natural or legal persons co-own real estate, each of them has a "notional portion" (quota). Acts of management or disposal of the real estate require respectively a simple majority and a two-thirds majority of the co-owners. Each co-owner may freely dispose of his/her separate entitlement.

A special form of co-ownership, condominium (Condominio), is in relation to certain common areas of a building divided into units, implying: (a) the indivisibility of the common parts; (b) the obligation to approve a condominium regulation; and (c) the need to nominate an administrator.

3.3. Sale of real estate property

A real estate sale and purchase transaction are usually carried out through (i) a letter of intent, (ii) a subsequent preliminary agreement, and (iii) a final sale and purchase agreement:

(i) letter of intent

The letters of intent are not binding (except for exclusivity periods, confidentiality and jurisdiction, if and when these terms are provided) since they're aimed at summarising the common intents of the parties involved in carrying on possible future negotiations.

(ii) preliminary agreement

The preliminary agreement does not determine yet the transfer of ownership of the property, but it obliges both parties to sign the final contract in front of the notary.

Pursuant to Article 2932 of the Italian Civil Code, if one party breaches the preliminary agreement and refuses the execution of the final agreement, the fulfilling party may request the enforcement of the preliminary sale and purchase agreement, obtaining a judgment having the effect of transferring the property.

Preliminary agreements can also be registered at the Land Registry.

As far as the content of the preliminary agreement is concerned, parties usually provide for a standard set of representations and warranties to be inserted in the pre-closing fulfilments of the final sale and purchase deed. Such representations and warranties usually cover:

- the capacity of the parties to enter into the agreement;
- title and ownership;
- lack of burdens or liens on the asset;
- compliance with applicable laws or regulations;

With particular reference to the warranties typically given by the seller, it should be pointed out that some of them are directly provided for by law, by way of example, consider the following:

- title of property (Article 1483 of the Italian Civil Code).
- defects of property (Article 1490 of the Italian Civil Code).

Warranties can be introduced (for example, the existence of fit for use certificate, compliance with urban planning and building permits), limited or excluded by the parties. Pursuant to Article 1491 of the Italian Civil Code, the seller will not be liable for the defects of the property in case, upon the execution of the agreement, the purchaser was aware of them or, failing that, in case such defects were easily recognizable by the same.

(iii) final sale and purchase agreement

The sale and purchase agreement shall be notarised for registration of the deed in the Land Registry, in order to give evidence of the transfer to third parties and to protect the purchaser against any third-party claim, and in the cadastral registers (*catasto terreni* and *catasto fabbricati*) for tax purposes.

Furthermore, the following documents are required to validly transfer a real estate asset (including but not limited to):

- building titles (which shall be at least mentioned)
- cadastral plan of the asset;
- destination of use certificate (if the asset is land or appurtenance of a premises exceeding 5,000 square meters);

3.4. Real estate leases

3.4.1. Overview

Real estate leases for commercial purposes are mainly subject to Law no. 392 of 27 July 1978 (Law 392/1978), which provides mandatory[10] limits on the lease agreement, such as the duration of the lease, renewal, and withdrawal, and the execution methods. Agreements that derogate from Law 392/1978, which are not favorable to the tenant, are null and void. However, certain exceptions[11] may apply to the lease agreements for non-residential properties with an annual rent higher than Euros 250,000.

No particular formal requirements are provided under Law 392/1978 for non-residential leases. Nevertheless, real estate lease agreements are usually executed as a deed in writing even if just to permit registration with the tax authority. On the other hand, under the Italian Civil Code, lease agreements for a duration of more than 9 years shall be in writing (otherwise the agreement is null and void) and registered with the public register.

3.4.2. Term of lease

As regards the duration of a real estate lease agreement, the minimum mandatory terms are the following:

- not lower than 4 years for residential property;
- not lower than 6 years for commercial property; and
- not lower than 9 years for hotels.

Indeed, parties could set a shorter term if the property or the activity is for temporary use.

The maximum duration limit of a lease agreement is 30 years, pursuant to Article 1573 of the Italian Civil Code.

3.4.3. Expiration and termination of lease

After the first term, the agreement is automatically renewed for another term equal to the first term unless either party provides the other with a 6 month prior written notice of its intention not to renew the lease.

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[10] Pursuant to the first paragraph of Article 79 of Law 392/1978.

[11] Pursuant to Article 18 of the Law Decree *Sblocca Italia*, i.e. Law Decree no. 133 of 12 September 2014, converted by Law no. 164 of 11 November 2014.

Upon expiration of the first term, the landlord may be entitled to refuse the renewal of the lease only in particular cases listed in Article 29 of Law 392/1978.

A tenant may, in any case, terminate the lease agreement in case of the occurrence of "critical reasons" (*gravi motivi*) and provided that the landlord is provided with at least 6 months prior notice via registered letter.

"Critical reasons" refer to the occurrence of events that fall beyond the tenant's control, are unforeseeable by the tenant itself, and occurred after the execution of the lease agreement that makes the lease relationship excessively burdensome for the tenant.

3.4.4. Rent

Rent may only be increased to the extent of the variation of the consumer price index (ISTAT-FOI) as published by ISTAT on an annual basis.

3.4.5. Tax

Registration tax and VAT may apply depending on the nature of the lessor and of the property rented. Stamp duty may apply on the rent deed at a fixed rate of Euro 45.

For example, when an Italian company rents a commercial property, 22% of VAT and 1% of registration tax will apply.

Conversely, the rent of the residential property is subject to VAT (at the reduced rate of 10%) on the option of the landlord, if the latter is the construction company, and to registration tax at a fixed rate of Euros 67. In all other cases, the rent of the residential property is subject to registration tax at the rate of 2%.

3.4.6. Assignment and subletting of lease

In cases where a tenant intends to assign or sublet a lease, in general, the consent of the landlord is required.

As a result of the subletting or of the assignment of the lease agreement, the subtenant or the cessionary takes over all tenancy obligations and the tenant should be liable for the same, jointly with the subtenant, in favor of the landlord.

3.4.7. Maintenance and repair of the property

As established in Article 1576 of the Italian Civil Code, the tenant is obliged for, at its own care and expense, ordinary maintenance of the leased premises, while the landlord has to perform the extraordinary maintenance. However, the parties may agree otherwise, except for the obligations concerning the maintenance of the structural parts of the leased premises which pertains, in any case, to the landlord.

3.4.8. Improvements to the property

Pursuant to Articles 1592 of the Italian Civil Code, the tenant is not entitled to an indemnity for any improvements (*miglioramenti*) to the property, unless otherwise agreed.

Furthermore, additions (*addizioni*) to the property added by the tenant can be removed, provided that the removal does not cause damages to the property or the landlord decides not to keep them.

3.4.9. Consequence of non-payment

In case a tenant fails to pay monthly rent within a term of 20 days or fails to pay service charges when the unpaid amount exceeds two months' rent, the tenant will be deemed to have breached the contract. The Italian Civil Procedure Code provides for special

procedures (*i.e., sfratto per morosità* and *sfratto per finita locazione*) in order for the landlord to get back the premises within a shorter time period.

In case of tenant insolvency, the receiver can withdraw from the agreement at any time, giving the landlord fair compensation for early termination (in case the parties do not reach an agreement, compensation is decided by a judge[12]).

[12] Pursuant to Article 80 of the Insolvency Law.

4. Employment

4.1. Overview

In recent years, important reforms of the Italian labour market have been carried forward, following the so-called "Fornero reform" (Law no. 92 of 2012) and Law no. 183 of 2014, better known as the "Jobs Act". In particular, a lot of novelties have been introduced with the purpose to increase flexibility for the employer and to reduce the risks connected to dismissals making the costs forecastable under the legal framework of new protections and rules (most recently, the latest reform occurred with the so-called "Decreto Dignità" Legislative Decree no. 87 of 2018, converted by Law no. 96 of 2018).

4.2. Employee relations

Italian labour law is highly protective of the rights of employees, particularly those who are less qualified. By way of example, should an employee successfully challenge his / her dismissal from a company employing more than 15 employees, the Court may, in given circumstances, order his / her reinstatement on the payroll.

There are also a large number of trade unions operating at both national and local levels, with whom an employer must liaise and consult in relation to various rights and entitlements of their workforce.

Employment relationships are regulated by articles 2096 to 2129 of the Italian Civil Code and by Law no. 300 of 20 May 1970. These provide a complete set of obligations with which employers and employees must comply during the employment relationship.

Staff dispatching, fixed-term employment relationships, and manpower are dealt with by the Legislative Decree no. 81 of 2015 and by the so-called "*Decreto Dignità*". Under the old regime an employer could hire employees on a fixed term employment contract for demonstrated technical, organisational and productive reasons only. While it is now possible to insert an expiration date to a new employment contract for a maximum duration of 12 months without having to declare any specific reason. After the first 12-month period has expired, the contract may be extended for one of the following reasons: (i) temporary and objective needs, unrelated to the ordinary activity of the company or the need for replacing other employees and (ii) needs to be connected to temporary, significant and unpredictable events in ordinary business activity. The most important limitation is that the fixed-term contracts cannot be extended for more than 24 months, including any extension and renewal. Without prejudice to the above general rule, a further fixed-term contract between the same parties, with a maximum duration of 12 months, may be entered into at the territorially competent "*Direzione territoriale del lavoro*".

4.3. Contracts of employment

Except for some specific cases in which an employment contract has to be in written form in order for it to be valid, i.e. ((i) sports employment contract, (ii) fixed-term employment contracts and (iii) contracts to contain a probation period or non-compete covenant), a written contract is not required for the establishment of the employment relationship. Nonetheless, the employer must communicate in writing to the employee of the main terms and conditions of the employment within 30 days following the commencement date: (i) company/personal details of employer and employee; (ii) place of work to which the employee is assigned to; (iii) date of employment; (iv) duration of the employment relationship (depending on whether it is an open-ended or fixed-term employment relationship); (v) the enrolment and job duties; (vi) remuneration; (vii) working time; (viii) annual holidays; (ix) probation period (if any); and (x) notice period in case of termination

(some of the above-mentioned elements are usually defined by the applicable National Collective Bargaining Agreement).

The above-mentioned Jobs Act has introduced a new type of contract, the so-called "Increasing Protection Contract". On one hand, workers receive increasing levels of job protection over time as they continue to work for the same employer. In the first few years of the contract, the employer has more flexibility to terminate the worker's employment, but as the worker's tenure with the company increases, their job protections increase as well. On the other hand, this contract provides the cases when the employee must be reinstated after dismissal, for example:

- in case of discriminatory dismissals;
- when dismissals are null and void by express provision of law;
- in case of oral dismissals, where the court finds that there is no justification for dismissal on the grounds of the employee's physical or mental disability;
- in the case of disciplinary dismissals in relation to which it is directly proven in court that the material fact alleged against the employee does not exist.

4.4. Collective lay-offs and business transfers

Work councils at a company level and trade unions established in the relevant district must be informed and consulted in advance in case an employer decides to implement a collective lay-off procedure[13] and/or undertake the transfer of a business or branch involving more than 15 employees[14]. In both instances, the consultation and notification requirements may have significant timing implications and the relevant trade union may obtain a court order to ensure compliance in case the employer fails to comply with the same.

Under Italian legislation, employees may only be lawfully dismissed when "just cause" or "justified grounds" exist.

The term "just cause" refers to any "serious breach of duties by the employee which renders the continuation of the employment relationship impossible". Some examples of just cause are theft, serious insubordination, unjustified and repeated absences, as well as other misconducts seriously undermining the fiduciary relationship with the employer.

The term "justified grounds" refers to either (i) a less serious breach of duties by the employee (subjective justified grounds) or (ii) an objective reason relating to the employer's need to reorganize its production activities or workforce, for example, redundancy (objectively justified grounds).

As mentioned above, the Jobs Act reform was aimed at reducing the hypothesis of reinstatement and clarifying the consequences of unfair dismissal. In particular, the law provides that when the dismissal is declared unlawful, employees are entitled to compensation equal to 2 month's salary for each year of service, with a minimum of 6 months and a maximum of 36 months[15]. While, when the dismissals have been declared unlawful due to procedural violations, such as being notified incorrectly, the indemnity amounts to 1 month's salary for each year of service with a minimum of 2 months and a maximum of 12 months.

[13] Pursuant to the Law no. 223 of 1991.

[14] Pursuant to Article 47 of the Law no. 428 of 1990.

[15] Pursuant to the so-called "Decreto Dignità".

Notwithstanding the above, the Italian Constitutional Court's decisions have created uncertainty in relation to the consequences and costs of dismissal of employees. With judgment no. 194 of September 26, 2018, and judgment no. 150 of June 24, 2020, the Italian Constitutional Court has declared that the above-mentioned provision, which limits the parameter of the calculation of compensation, is unconstitutional because the compensation is merely based on the seniority of an employee without taking into account other relevant elements and circumstances (e.g., size of the company, number of employees, parties' behaviors and conditions). More recently, with judgment no. 59 of April 1, 2021, the Constitutional Court has sentenced that if the competent Judge holds that the objective reasons for the dismissal do not exist (i.e. the fact of dismissal is obviously groundless), the unique applicable remedy is the reinstatement of the employee's position, the Judge may not order payment of compensation instead of reinstatement.

4.5. Work permits

Work permit and visa are required for non-EU citizens to work in Italy. Citizens of some non—EU countries with which Italy have a bilateral or multilateral treaty, may enter Italy for business or tourism purpose and stay for a maximum of 90 days in every 180 days period.

Processing time for work permits depends on the kind of permit applied for and on the city where the application is filed. Generally, it may take from one to four months.

The direct hiring of non-EU citizens by an Italian company is subject to the availability of work quota, which is approved by the Italian government on an annual basis.

4.6. Recent developments according to the 2022 Budget Law

The 2022 Budget Law has provided for a number of innovations in the area of employment.

The covid-19 pandemic has created extraordinary experience, following which the system of protection against involuntary unemployment is now based on the Extraordinary Wages Guarantee Fund (Cassa Integrazione Guadagni Straordinaria), which is extended to all enterprises with more than 15 employees.

Moreover, the 2022 Budget Law, contains a very wide range of measures that also affect the pension system, incentives to companies that hire redundant workers, income for citizens, active labour policies, disability, the promotion of equal pay for men and women, and the promotion of vocational training policies.

With regard to pension reform, the 2022 Budget Law essentially maintains the original structure, which was already implemented by the 2012 'Fornero' reform, but modifies some of the conditions for access to early retirement. The so-called 'quota 100' pension is now replaced by 'quota 102', according to which, in order to be eligible for early retirement, the sum of age and years of contribution must be equal to more than 102, e.g. an employee is eligible for early retirement at the age of 64 with at least 38 years of contributions.

However, early retirement in the presence of specific requirements remains unchanged, i.e., female employees may retire at the age of 58; and early retirement option for workers at the age of 63 and above who find themselves in particular situations of weakness (the 'social' APE pension advance).

5. The Italian antitrust regime

5.1. Overview

Subject to certain exemptions, Italian Antitrust Law prohibits agreements between undertakings that have the purpose or effect of substantially reducing, preventing or distorting competition within the Italian market or within a substantial part of it. Both the prohibition and the exemptions are almost identical to those provided by the Treaty on the Functioning of the European Union (TFUE). While it is still possible for a company to notify the existence of a restrictive agreement to the Italian Antitrust Authority (the "Authority") in order to obtain an exemption, the policy and practice of the Authority are to refuse all such applications. Moreover, Italian Antitrust Law prohibits unilateral conduct of dominant undertakings which act in an abusive manner.

In 2007, the Authority published a Leniency Notice that is, in many respects, similar to the corresponding notice published by the European Commission in 2006. It covers horizontal secret agreements. The main differences are that under the 2007 Leniency Notice, immunity is granted if the information/evidence provided is "decisive" in the evidencing infringement (the threshold is, therefore, higher than that set by the European Commission Notice), and that the Authority has a wider discretion in arriving at the level of any reduction in the fine.

Undertakings that are found guilty of engaging in anti-competitive behaviors may be subject to administrative sanctions by the Authority. The Authority is empowered to set a deadline within which undertakings concerned are required to cease the infringing behavior and remedy the infringements. In case of serious violations, the Authority may also impose a fine of up to 10% of the turnover of each undertaking during the financial year prior to the notification of the final decision. The Authority must consider the gravity and duration of the violation when setting the amount of the fine.

In 2014 the Authority published its first fining guidelines. These guidelines are similar to those adopted by the EU Commission with some notable exceptions. In particular, the adoption and implementation of an effective compliance program in line with the best European and national practices is considered one of the mitigating circumstances leading to a reduction of the fine. The undertakings under investigation may make commitments to the Authority. If the commitments are accepted, the Authority will close the investigation without imposing fines. Settlements are not available in Italy.

In 2018 the Authority published its guidelines on antitrust compliance programs. The guidelines identify the adoption and implementation of a compliance program as a mitigating circumstance in the calculation of fines for anti-competitive behavior. Specifically, the guidelines allow for a reduction of up to 15% of the fine in the event the antitrust compliance program is adopted before the beginning of an investigation and a more limited reduction, of up to 5% of the fine, for compliance programs implemented during the investigation. These reductions are applicable to fines imposed as a result of anti-competitive arrangements and abuses of a dominant position under both the EU and Italian competition provisions.

The victim of antitrust infringements may bring compensation actions before the Civil Courts. Antitrust private enforcement is also available to consumers and class actions have been introduced in the Italian legal system not least so that consumers may seek compensation for loss suffered as a result of anti-competitive practices. Unlike other European legislations, the Italian Antitrust Law does not provide any criminal or administrative sanction on individuals involved in anti-competitive infringements. However, certain conduct, which constitutes a cartel (including bid rigging) may be subjected to the Italian Criminal Code.

5.2. The transposition of the ECN+ Directive

On 30 November 2021, Legislative Decree No. 185/2021 was adopted, transposing Directive (EU) 2019/1 (the "ENC+ Directive"), which aims to ensure more effective enforcement of EU competition law by national competition authorities (the "NCAs").

The Decree amends domestic antitrust law (Law 287/1990) by providing for a number of prerogatives and investigative powers and endowing the Italian antitrust authority (AGCM) with new tools aimed at strengthening its investigative and sanctioning powers.

Generally speaking, the reform therefore provides for the prerogative of the AGCM to set its own priorities for action, on the issues it considers to be of greatest importance, a strengthening of the independence of the AGCM, its members and its staff, and an extension of its investigative and sanctioning powers.

With reference to powers of investigation, the reform allows the AGCM to carry out unannounced inspections in premises other than those where the business activity is carried out, including the residences of directors and other staff members and to be able to question any person who may be in possession of information of interest for the purposes of the investigative phase and finally the possibility of taking relevant information, on any form of support, being able to access the virtual data of the companies during the inspections.

With respect to the sanctions system, the new rules on the one hand provide incentives for companies to cooperate with AGCM during the investigation phase; and on the other hand, increase the sanctioning powers in the event that the company obstructs the investigation phase or fails to provide the requested information, with a penalty that increases for each day of delay in complying with such obligations.

Finally, the same sanctions are provided for directly against natural persons if they obstruct the investigation phase or provide incorrect and misleading information in response to specific requests.

6. Intellectual property

Intellectual property rights are protected under both civil law and criminal law. Protection of patents, trademarks, utility models, designs and trade secrets are regulated by legislation D.L vo 30/2005 – Industrial Property Code ("IPC"), while copyright is regulated by a separate act (L. 633/1941).

6.1. Trademarks

Under IPC, trademark holders may obtain protection by applying for registration with the Italian Office of Patents and Trademarks ("UIBM"). UIBM only verifies whether the mark complies with basic criteria set by the IPC (principally, distinctiveness and non-deceptiveness), without performing any novelty assessment.

Decree no. 33 of 2010 has recently implemented an administrative trademark opposition procedure that represents further protection for trademark owners. The opposition procedure may be used to enforce some (but not all) of the grounds for refusal (e.g., the existence of earlier identical or similar registered trademarks and lack of consent to the use of the name, portrait, and reputed mark).

Registration is renewable every 10 years. Rights granted with the registration may expire if the trademark is not used for more than five consecutive years. Protection is also granted to unregistered trademarks on the condition that the same are well-known among Italian consumers.

Italy is a signatory state of both the Madrid Convention and of the Madrid Protocol and has implemented the TM directive. Furthermore, Italy has applied the Council Regulation (CE) 40/94 (as amended).

6.2. Patents and utility models

Patents and utility models protect inventions that satisfy general requirements such as novelty, the need for an inventive step, and industrial applicability. Utility models require lower inventive steps than patents.

Patent and utility model applications are submitted to UIBM. Since 1 July, 2008, patent applications are also subject to substantive examination. A patent lasts for a maximum of 20 years, while a utility model lasts for 10 years, both with effect from the date of application.

A Patent applicant is also allowed to submit a simultaneous application for utility model protection if the patent application is rejected. The IPC also provides for the possibility that a court decision may convert a patent into a utility model and vice versa.

If the owner of a patent does not exploit the invention within 3 years from registration, the IPC provides for a mechanism of a compulsory non-exclusive license for the benefit of any interested third party.

When the invention is created in the course of an employment agreement, the employer is entitled to patent the invention, but it may be subject to the payment of a fair premium to the employee if the inventive activity was not contemplated or foreseen as part of the employment nor rewarded with a specific remuneration.

Italy is a party to the Paris Convention, the Patent Cooperation Treaty, and the European Patent Treaty. Additionally, Italy is a party to the EU enhanced cooperation on Unitary Patent Protection and has signed and ratified the Unitary Patent Court Agreement.

6.3. Copyright

Under law no. 663/1941, copyright in an intellectual work belongs to its author. Copyright arises on the creation of the work and no formalities are required in order to obtain such protection. The right of economic exploitation lasts until seventy years after the author's death.

An author is entitled to both exploitation rights (reproduction, performance, communication, etc.) and moral rights (i.e. the rights to claim the paternity of the work, to oppose any change to it that may harm the author's reputation, and to decide whether to publish the work or not). Economic rights may be transferred to third parties, whereas moral rights are not assignable.

Italy is a signatory state of the Berne Convention and the Universal Copyright Convention. Moreover, it has implemented the European Directive 2001/29/EC on copyright and related rights online. The legislative process for the implementation in Italy of Directive (EU) 2019/790 is currently underway.

6.4. Designs and models

UIBM grants the registration of national designs and models that are (i) novel and (ii) have "individual character", this latter requirement means that an informed user has to receive a different impression from the general impression held in connection with earlier designs or models.

Italian law grants a five-year term of protection to registered designs and models, renewable up to a maximum duration of twenty-five years.

Designs may be also eligible for copyright protection when they "have a creative character and an artistic value". While the creative character requirement simply refers to the fact that the work must bear the author's personal print, pursuant to the settled Italian case law, the artistic value occurred only in high-level design works that had been publicly acknowledged as such in public exhibitions, catalogs, etc.

Nevertheless, please note that such a general principle carved out by Italian case law has been somehow challenged by two recent rulings issued by the EU Court of Justice. Indeed, with the ruling Levola Hengelo BV v Smilde Foods BV- CJEU, 13 November 2018, Case C-310/17), EU Court of Justice set the common rule that 2D and 3D designs can be protected under copyright law if they are an original expression of the author and the work is "*expressed in a manner which makes it identifiable with sufficient precision and objectivity, even though that expression is not necessarily in permanent form*". With case ruling Cofemel – Sociedad de Vestuario SA v G-Star Raw CV - CJEU, 12 September 2019, Case C-683/17), the EU Court of Justice further clarified that EU member States cannot request a higher level of originality of a design to grant copyright protection, such as the 'artistic value' originally required by Italian case law,

Italy is a signatory of the Paris Convention and the Locarno Convention.

6.5. Know how

Commercial, technical and industrial information is protected under articles 98 and 99 IPC if they satisfy three requirements: (i) they are secret, i.e. not known by the public; (ii) they have an economic value insofar they are secret; (iii) they are subject to adequate measures to keep them secret. The owner of the know-how is entitled to act against any third party's appropriation and use.

6.6. Unfair commercial practices

Italian law prohibits (i) misleading and comparative advertising between traders and (ii) the protection of third-party competitors and consumers against unfair commercial practices (**UCP**).

Misleading and comparative advertising regulations prohibit any kind of advertising that can alter the economic behavior of those to whom it is addressed to or is likely to damage a rival.

A trade practice becomes unfair (and thus a UCP), if it is contrary to the requirements of professional correctness and distorts or is likely to distort the economic behaviour of a customer.

The competent authority to enforce UCP and misleading and comparative advertising is the 'Competition and market authority" (AGCM), which may act ex officio or upon complaint. AGCM also has investigative powers and may inhibit the continuation of UCP and issue penalties.

7. Commercial Agreements

7.1. Agency Agreements

Agency agreements are governed primarily by the Italian Civil Code and Directive 653/86/CEE.

Fundamentally, an agency contract provides for one party to undertake tasks of promoting on behalf of the other in a specified area, on a permanent basis, and for a fee.

The essential characteristics of an agency relationship are:

(a) autonomy of the agent in the organization of the activity to be carried out on behalf of the principal. He/she has to organize the means of his / her work and to assume the risks which he/she may incur; and

(b) the agent acts in a stable way, assuming the obligation (not the faculty) to cooperate with the principal on a permanent and professional basis.

Upon termination of the agency relationship, the agent is entitled, in certain circumstances, to an indemnity. Payments will be due under the indemnity if:

(a) the agent has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with those customers; and

(b) the payment under the indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.

Payments under the indemnity will not be due upon termination of the agency relationship if:

(a) the principal withdraws because of a serious breach of the contract by the agent;

(b) the agent withdraws except where the principal may be deemed liable for the agent's withdrawal; and

(c) the agent, in agreement with the principal, assigns the agreement to another agent.

When entering into agency agreements, it is advisable to pay close attention to all the formal and substantive requirements that such an agreement must comply with, in order to avoid incurring the risk of re-qualification of the relationship with the agent (e.g., the agent could be re-qualified as an employee of the company).

7.2. Distribution Agreements

Distribution agreements are one of the most common contractual arrangements used by foreign companies which have no Italian subsidiaries/branches for marketing their products or services in Italy.

In broad terms, a distribution agreement may be characterised as an agreement whereby a product manufacturer or service provider appoints another entity or person (i.e., the distributor having all the necessary expertise and knowledge of the relevant field) as its official distributor for promoting, marketing and sale of such products and/or services to customers in a defined territory. In addition, the distributor undertakes to promote, market, and distribute the relevant products and/or services in favor of the customers in this territory by acting in its own name and on its own behalf (and, thus, as an independent dealer).

The most relevant and commonly negotiated contractual clauses which characterize the agreement itself are:

(1) the "exclusivity clause", whereby, on the one hand, the product manufacturer or service provider undertakes not to appoint any other distributor in the same territory and, on the other, the distributor undertakes not to distribute any product/service which may be in competition with the products/services distributed under the distribution agreement;

(2) the "territory clause", whereby the parties to the distribution agreement define the territory within which the distributor shall be entitled to act as a distributor of the relevant products/services and in which they undertake not to distribute these products/services outside the territory; and

(3) the "minimum quantities clause", which may be inserted in order to impose on the distributor of the obligation to purchase (from the relevant product manufacturer or service provider) and distribute a minimum amount of products/services in order for him/her to continue to act as an (exclusive) distributor in the territory on the same terms and conditions.

It should always be remembered that competition law has a part to play in such agreements, for example, the prohibition of conduct which constitutes abuse by an undertaking of the economic dependence of another undertaking on the former.

In this respect, Italian law provides that abuse of economic dependence may consist of the unfair refusal by the dominant undertaking (i.e. the supplier) to sell to, or purchase from, the dependent undertaking (i.e. the distributor) goods or services; or the imposition by the dominant undertaking on the dependant undertaking of contractual conditions which are unreasonably excessively onerous; and the arbitrary interruption by the dominant undertaking of its commercial relationships with the dependent undertaking (also by an arbitrary refusal to extend or renew the relevant agreement upon its lawful expiration).

Any such abuse gives rise to liability on the part of the abusing undertaking.

7.3. Franchising Agreements

Franchising is regulated in Italy under Law no. 129 of 2004. This defines franchising as a contract whereby an entrepreneur (franchisor) assigns to another entrepreneur (franchisee), in return for payment, a set of industrial or intellectual property rights. The Law sets out requirements relating to the form and the content of a franchising agreement. In brief, franchisor and franchisee remain distinct and autonomous from each other, but the franchisee is included in a system made up of a plurality of franchisees, distributed throughout the territory, with the aim of marketing certain goods and services. Moreover, it envisages some obligations of the franchisor and of the franchisee and establishes rules relating to the pre-contractual phase of franchise regulations.

The Italian Association of Franchising has drafted a code of ethics aimed at obliging franchisors that are members of the association to adopt rules of conduct founded on the principles of propriety and professionalism.

8. E-commerce

E-commerce is mainly governed by Legislative Degree no. 70/2003 which implemented EC Directive No. 2001/31/CE (the "Directive on Electronic Commerce").

The law is aimed at the promotion of the development and free movement of information technology business and commercial activities and services between the EC Member States and, to this end, sets out certain specific measures and requirements to be complied with by those persons or entities carrying out their business or commercial activities through IT information technology, including electronic commercial communications and e-commerce (the so-called "service providers").

Among the most relevant obligations imposed on service providers are certain specific information requirements aimed at ensuring that each consumer is able to access a minimum amount of information about the service provider (including for e-commerce purposes), including, *inter alia*: (a) the name and geographic address of the service provider; (b) contact details of the service provider; (c) the registered office of the service provider; (d) supervisory authorities overseeing the activities of the service provider (if any); (e) professional qualifications of the service provider or professional bodies to which it belongs; (f) its VAT number (if any) or other pertinent tax data / information, (g) a clear and unequivocal indication of the prices and fees of the various information society services provided, indicating whether they include taxes, delivery costs and other additional elements to be specified; (h) indication of the activities permitted to the consumer and to the recipient of the service as well as the contractual references where an activity is subject to authorisation or the service is provided on the basis of a licence agreement.

Italian law also prescribes further information that service providers must include on commercial communications launched online.

For transactions carried out on the basis of B2C (*business to consumer*), the transaction is also potentially subject to the general Italian law requirements (which enact the relevant EC Directive) on distance selling and on consumers' rights (the "**Consumer Code**", please refer to section 10 for details)[16], which provides, *inter alia*, the following:

(a) stringent pre-contractual information obligations of the trader *vis-à-vis* the consumer (trader identity and address, payment modalities, right of withdrawal and relevant deadlines, term of the agreement, etc.); (b) material transparency requirements when the agreement is entered into through electronic means and provides for the consumer to pay upon ordering; (c) strengthened consumer's right of withdrawal (the consumer is entitled to withdraw within 14 days from execution of the agreement and the trader has to reimburse all payments received within 14 days from the notice of withdrawal); (d) risk of loss or damage to the goods staying with the customer only when it gets the actual possession of the goods.

Finally, alongside the consumer's ordinary judicial protection, the Consumer Code now also provides for the Antitrust Authority to monitor and ensure application of the Consumer Code.

[16] Pursuant to the Legislative Decree no. 206 of 2005, as amended by Legislative Decree no. 21/2014 implementing Directive 2011/83/EU.

9. Personal data protection

In order to lawfully process personal data in compliance with applicable data protection laws and regulations in Italy, any natural or legal person that carries out the processing of personal data is required, before the processing begins, to perform all the activities required by Regulation (EU) n. 2016/679 (hereinafter the "***GDPR***") and Legislative Decree no. 196/2003 (hereinafter, the "***Italian Privacy Code***"), as well as with the decisions and guidelines issued by the Italian Data Protection Authority and the European Data Protection Board.

In particular, the GDPR became enforceable as of 25 May 2018 and replaced the 1995 Data Protection Directive (Directive 95/46/EC); it was conceived from the precise needs of legal certainty, harmonization, and greater simplicity of the provisions regarding the processing of personal data as a necessary and urgent response to the challenges posed by technological developments and new models of economic growth.

The GDPR applies to process of data of natural persons (the "data subjects") carried out by data controllers or data processors located in the EU, as well as data processing of data subjects who are in the EU, carried out by data controllers or data processors located outside the EU when offering goods or services in the territory of EU or monitoring the behavior of individuals in the EU.

The following main definitions are provided under the GDPR:

- **personal data**: any information relating to an identified or identifiable natural person ("*data subject*"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- **data controller**: the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;
- **data processor**: a natural or legal person, public authority, agency, or other body which processes personal data on behalf of the controller.

In particular, the GDPR regulates the processing of personal data, defined as any operation or set of operations which are performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

The GDPR has introduced important innovations in the field of the protection of personal data such as, by way of example: (i) the concept of accountability of the data controller, (ii) the concepts of "privacy by design" and "privacy by default", as well as a risk-based approach and the adequacy of security measures, (iii) data protection impact assessment and data breach notifications, (iv) more stringent rules concerning the appointment of data processors and sub-processors (if applicable), (v) the provisions for the appointment of a data protection officer, (vi) more transparent provisions on information notice and consent, and (vii) new rights to data subjects.

In addition to the above, following the enactment of the GDPR, on 19 September 2018, Legislative Decree No. 101/2018 came into force and repealed the provisions of the Italian Privacy Code deemed to be incompatible with the GDPR. Specifically, the above-mentioned Legislative Decree No. 101/2018 adapted national legislation to the provisions of the GDPR

and introduced new provisions to, as well as supplemented and amended, the Italian Privacy Code.

The revised Italian Privacy Code is therefore intended to perform a function of completion and implementation of the rules of the GDPR, pursuing the objective of regulatory simplification and clarity of interpretation of the regulatory system.

As far as the sanctioning scheme is concerned, the GDPR significantly increased the level of administrative fines established in the EU national legislation, harmonizing it. Non-compliance with data protection laws and regulations can therefore theoretically lead to the application of administrative fines up to Euro 20,000,000, or in case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher, as well as the impossibility to use (even in court) the data illegally obtained or processed and, in some specific and serious cases, criminal sanctions may be imposed.

Furthermore, unlawful data processing may lead to an obligation to compensate damages caused to the data subject(s) affected and, even more important, data unlawfully processed cannot be used in court or otherwise.

10. Product Liability

10.1. Overview

In 2005, all EU consumer protection legislation (including, inter alia, Directive No. 85/374/ECC concerning liability for defective products as well as Directive No. 2001/95/EC concerning general product liability) and pre-existing Italian law (including, inter alia, Presidential Decree no. 224 of 1988 on liability for defective products and Legislative Decree no. 172 of 2004 on general product liability) was consolidated by the Consumer Code (as defined above).

The Consumer Code imposes a stringent liability regime with respect to product safety and product liability. This primarily applies to: (a) manufacturers of products established in the EC; (b) importers of products in the EC; (c) intermediaries of product manufacturers; and (d) distributors of products.

The product safety rules under the Consumer Code impose a series of specific obligations and requirements on those (mentioned above) involved in the manufacturing, supply, and distribution chain. Breach of those rules may lead to criminal sanctions. For example, manufacturers, importers and distributors are obliged (a) to market only safe products; (b) to provide consumers with the relevant information to enable them to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use; (c) to act with due care to ensure compliance with all applicable safety requirements; (d) to immediately inform the competent authorities of any action required to prevent risk to the consumer whenever they know or ought to know that a product poses a risk that has not already been explained.

The rules also impose an onerous liability regime on manufacturers, importers, and distributors of products since they will be liable for any damage caused by defects in the products manufactured and/or distributed by them.

In practice, consumers have tended not to invoke the provisions of the Consumer Code given the difficulties associated with the burden of proof they must meet before a manufacturer, importer or the distributor can be held liable. Instead, they have tended to rely on actions founded on general contractual and tortuous principles.

In 2015, to implement Directive 2013/11/EU (Directive on consumer ADR), the Consumer Code has been amended so as to provide for a particular ADR procedure that offers - on a voluntary basis - a simple, fast, and low-cost out-of-court solution to disputes between consumers and traders. The parties remain free to interrupt the procedure anytime as well as to do not accept the proposed solution, which is not binding, and to submit their claim to ordinary courts.

10.2. The recent reform of the Italian Consumer Code

The rules of the Consumer Code have recently been amended by Legislative Decree No 170 of 4 November 2021, implementing Directive (EU) 2019/771.

The provisions of Decree 170 apply to contracts for the sale of movable tangible goods by a seller to a consumer ("B2C"), concluded both in traditional and online form.

The scope of application of Decree 170 also includes B2C contracts for the sale of movable tangible goods that incorporate, or are interconnected with, a digital content or a digital service where the absence of such content or service would prevent the performance of the proper functions of the goods, regardless of whether such content or service is provided by the seller himself or by a third party ("Goods with Digital Elements").

11. Bribery and Corporate Crime

11.1. Introduction to 231 Decree

Legislative Decree no. 231 of 2001 (the "231 Decree") is the basis of Italian law dealing with corporate crime. Its scope was initially limited to offenses against the Public Administration (for example, bribery and fraud involving public bodies, etc.). However, this has been substantially extended, in addition to implement the OECD Convention on bribery and the EU Market Abuse Directive, and now covers, among other issues: (a) corporate crime; (b) crimes connected with the subversion of democratic order and financing of terrorism; (c) market abuse (abuse of inside information and market manipulation); (d) transnational crimes; (e) health and safety at work breaches; (f) money laundering, including self-laundering, and related crimes; (g) cybercrimes; and (h) crimes associated with a breach of copyright; (i) organised crimes; (j) crimes against industry and trade; (k) environmental crimes; (l) employment of illegally staying third-country nationals; (m) tax crimes.

In particular, the 231 Decree introduced the concept of "organisational negligence" for which an entity can be liable for failure to introduce adequate measures to prevent the offences mentioned above from being committed. In turn, this means that legal entities are now directly and independently subject to both pecuniary and restrictive sanctions as a consequence of offences committed by individuals linked to the entity because of their employment or some other activity.

Pursuant to the 231 Decree, as a consequence of the commission of the captioned crimes in the interest or to the benefit of corporate entities, such corporate entities may be subject to the following penalties, depending on the crime concerned:

(a) monetary sanctions which may range up to € 1,550,000 ;

(b) suspension or interdiction measures (i.e., prohibition to carry out entrepreneurial activities, suspension or revocation of any authorisations or licences connected with the crime committed, prohibition to execute agreements with the Public Administration, non-eligibility to or revocation of tax benefits, contributions, relief funds, prohibition to advertise goods or services);

(c) forfeiture of any proceeds acquired by those corporate entities through the crime;

(d) publication of the relevant court decision.

The 231 Decree expressly provides that corporate entities can be exempted from, or limit, their possible administration liability by adopting and effectively implementing suitable organization and management and control model capable of preventing the commission of crimes of the kind of the one committed (hereinafter, the "Model"). Moreover, in order to guarantee punctual compliance with the Model as well as its updating, the supervision on the implementation and updating of, and compliance with, the above-mentioned Model should be attributed to an ad hoc body of that corporate entity's, which was also provided with the necessary initiative and control powers (also referred to as "supervision body" or "compliance officer"– "organismo di vigilanza").

11.2. Crime of corruption

In addition to the foregoing, in November 2012, Italy adopted the so-called Anticorruption Law (Law no. 190 of 6 November 2012) containing provisions that concern both the public and private sectors and Legislative Decree no. 231 of 2001 . In this regard, the Anticorruption Law extended the corporate liability of companies pursuant to Legislative Decree no. 231 of 2001 to the new crime of "corruption in the private sector".

11.3. Recent developments of 231 Decree

On 14 July 2020, Legislative Decree No. 75 of 14 July 2020 ("Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law") was issued, which has provided for certain amendments to the administrative liability of entities under 231 Decree.

In particular, Legislative Decree 75/2020 amended Legislative Decree 231/2001 by, on the one side, introducing new types of offences that are prerequisites for the administrative liability of entities and, on the other side, modifying their previous scope of applicability.

Recently, two Legislative Decrees relevant to the administrative liability of entities have entered into force. They directly amend Legislative Decree no. 231 of 2001 and the Italian Criminal Code:

1) Legislative Decree no. 184/2021, which amends the body of legislation relating to offences concerning non-cash payment instruments, providing, in the event of the commission of that offence, a special penalty discipline;

2) Legislative Decree no. 195/2021 which, in implementation of Directive (EU) 2018/1673 on combating money laundering by means of criminal law, has had an impact with reference to Legislative Decree 231 and the Criminal Code, amending the regulations on the liability of entities. In essence, the offences of receiving stolen goods, money laundering, use of money, goods or benefits of unlawful origin and self-laundering are now punished not only if committed intentionally, but also if committed negligently and contraventions.

12. Visa and residence permit

12.1. Overview

Broadly speaking, in order for a citizen from a country outside the Schengen area (the "foreign citizen") to obtain the right to stay (permanently or temporarily) in Italy, two mandatory steps are required: (i) the issuing of a valid Visa, relevant for the specific purpose of his or her stay; (ii) and the subsequent issuing of a Residence Permit.

The entry into Italian territory of a foreign citizen is mainly subjected to the provisions of Consolidated Act no. 286/1998 and subsequent amendments, and to Presidential Decree no. 394/1999. Furthermore, entry for certain purposes is usually subject to the limitation of the so-called *quota system,* although there are some exceptions to this rule.

Under article 5 of the Presidential Decree no. 394/1999, the application for Visa must be accompanied by the passport or other travel document recognized as equivalent, as well as by the documentation required for the type of visa requested.

Indeed, under Annex A of the Ministry Decree no. 850 of 11 May 2011 a different number of Visas may be issued to foreign citizens entering Italy (*e.g.*, for visits, for business and tourism, for attendance of a course for study or certified professional training, for work, for family reunification, and for elective residence). Additionally, under Article 11 of Consolidated Act no. 286/1998, the Residence Permit is issued, when the prerequisites are met, for the reasons and duration indicated in the entry Visa.

Please find below the most relevant purposes for (and type of) Visa and Residence Permit issued for transferring or doing business in Italy.

Please also note that what follows is a summary of those Visa/Residence Permit types which could be of main interest for business purposes. It should not be taken as an exhaustive source of information with respect to Italian immigration law. The details below may, on the basis of the single case scenario, be further supplemented by other provisions (e.g., circular letters of the Ministry of Internal Affairs). Also, the approach to immigration law matters might vary on the basis of the relevant competent immigration offices ("Questura").

12.2. Visa for autonomous (Freelance) work

The Visa for autonomous work allows entry in Italy, for the purpose of a short or long term stay, for a fixed or indefinite period, to the foreign citizen who intends to exercise professional or working activity of a "non-subordinate nature" (*e.g.,* industrial, professional, craftsmanship and commercial) as well as to constitute companies or partnerships or to become company officers.

In order to obtain such an entry Visa, foreign citizens must show sufficient documentation to prove:

a) that they have adequate resources for the exercise of the activity that he or she intends to undertake in Italy;

b) to be in possession of the requisites envisaged by Italian law for the exercise of the professional activity, including, any further requirements possibly needed in case of regulated professions;

c) to be in possession of a certificate from the competent authority dated not prior to three months declaring that there are no reasons to prevent the issue of the authorization or license required for the exercise of the activity that the foreigner intends to carry out;

d) that they have suitable accommodation and an annual income, from legit sources, in excess of the minimum amount provided by law (e.g., for 2023 the amount is Euro 15, 500) for exemption from participation in social security contributions.

Once in Italy, as the first step, the foreign citizen will have to apply, within 8 days from the date of entry in Italy, for issuing the Residence Permit for autonomous work.

The duration of the Residence Permit for autonomous work varies according to the work activity and anyway cannot exceed the duration of 2 years in case of issuance of the first Residence Permit, and 1 to 2 years in case of renewal of the Residence Permit.

12.3. Visa for innovative Start-ups

Since 2013, with the publication of the so-called "*Decreto Flussi*" (Decree no. 297 of 19 December 2013), a specific form of autonomous work Visa has been added in Italian Law specifically concerning innovative start-ups.

Although this kind of Visa is still subjected to the *quota system*, it is connected to an *ad hoc* pool rather than the general one envisaged for all autonomous work Visa requests.

In compliance with the aforementioned requirements for the autonomous work Visa and Residence Permits (which still apply), foreign citizens from outside the EU who intend to establish an innovative startup company in Italy may apply for this special "*Italia Startup Visa*".

Accordingly, in order to establish an innovative start-up in Italy (which notion is provided in article 25 paragraph 2 of the Law Decree no. 179/2012) further requirements are due, which are:

a) the obtaining of authorization from the Technical Committee for "*Italia Startup Visa*";

b) documentation proving the availability of financial resources, dedicated to the innovative startup, ascertained or certified, of not less than 50,000 Euro;

c) a statement of commitment signed by the legal representative of a certified startup incubator, in case the non-EU foreign citizen has received the availability of a certified incubator to welcome him or her in its facilities for the establishment of an innovative startup;

d) availability of suitable accommodation, pursuant to article 26, paragraph 3, of Legislative Decree 286/98 (also through hotel reservations or accommodation provided by third parties);

e) an income, acquired in the previous financial year in the country of residence, of an amount higher than the minimum level foreseen by the law for exemption from participation in health expenditure.

The duration of "*Startup Visa*" is one year.

It is worth noting that, a single innovative startup may only allow Visa applications up to a maximum of five individuals unless, exceptional circumstances related to the nature of the business project require otherwise (however, not more than ten individuals will be allowed).

12.4. Visa for subordinate employment

"Subordinate employment" Visa allows foreign citizens who work as a subordinate to enter Italy, for the purpose of a short or long-term stay, for a fixed or indefinite period.

Visas for subordinate employment (open-ended, fixed-term, seasonal) are obtained only after the authorization ("*nulla osta*") for employment has been issued by the Immigration Office. In order to establish a subordinate working relationship with a foreign citizen residing outside Schengen area, in fact, the employer (Italian or a foreigner legally residing in Italy) must submit a nominative request for work authorization to the competent Immigration Office of the province where the work activity will take place.

In addition to the nominative request for work authorization, the employer must submit the following, after verification, to the competent office:

a) appropriate documentation relating to the modalities of accommodation for the foreign worker;

b) the proposal for a residence contract[17] with specification of the related conditions, including the commitment to payment by the same employer of the expenses of return of the foreign citizen to his/her home country;

c) declaration of commitment to communicate any variation concerning the employment relationship.

Within 8 days of entering Italy, the foreign citizen has to sign a "residence contract" and apply for a Residence Permit.

This Residence Permit for subordinate working reasons has a maximum duration of 2 years if the employment contract is permanent; and 1 year if the employment contract is fixed-term, which may be renewed.

We note that under article 27 of Act no. 286/1998, foreign citizens performing highly skilled work or highly qualified work through the use of technological tools that allow them to work remotely are granted with further ease on formal requirements. Indeed, for these subjects, in the case the activities are carried out in Italy, work authorization and Residence Permit are not required after obtaining of the entry Visa, as long as it is not granted for a time exceeding 1 year and provided that the holder has valid health insurance, covering all risks in the national territory and that they are in compliance with the relevant tax provisions. Furthermore, these subjects are exempted from the limitation provided by the *quota system*.

We also note that under the aforementioned article 27, the *quota system* does not apply to managers or highly specialized personnel of companies.

12.5. Visa for inter-corporate transfer

The entry and stay in Italy for the purpose of carrying out services of subordinate employment within the framework of intra-corporate transfers for periods exceeding 3 months is allowed, for a foreign citizen who require to enter Italy as: (i) managers; (ii) specialized workers, (iii) trainees are not subjected to the *quota system*.

The hosting entity (*i.e.*, office, branch or representative office in Italy of which the worker will be transferred) shall submit a nominative request for authorization of the intra-corporate transfer to the prefecture-territorial office of the Immigration Office where the hosting entity has its registered office.

The request has to indicate:

17 The residence contract for subordinate work is a regular work contract that must be stipulated at the Immigration Office ("*Sportello Unico per l'Immigrazione*") which allows the issuance of a Residence Permit for work reasons.

a) that the hosting entity and the enterprise established in the third country belong to the same company or group of companies;

b) that the worker has worked for the same company or for an enterprise belonging to the same group of enterprises for a period of at least three uninterrupted months preceding the date of the intra-corporate transfer;

c) the employment contract and, if necessary, a letter of assignment showing: (i) the duration of the transfer and the location of the hosting entity; (ii) that the worker will hold a management, specialized worker, or trainee position in the hosting entity; (iii) the salary and other terms and conditions of employment during the intra-corporate transfer; (iv) that, at the end of the intra-corporate transfer, the transferee will return to an entity belonging to the same company or to an enterprise of the same group established in a third country;

d) the possession of the qualifications, professional experience and educational qualification;

e) the details of the foreign citizen's valid passport or equivalent document;

f) the commitment to fulfill the social security and welfare obligations under Italian law, save as provided by any social security agreements with the country of origin.

g) if the foreign citizen undergoes training activities, the individual training plan containing the duration, the training objectives, and the conditions of development of the training;

h) if the foreign citizen engages in a regulated profession, the possession of other necessary certificates or licenses as specifically required by Italian law.

The hosting entity is obliged to communicate any change in the employment relationship that affects the conditions for admission to the Immigration Office.

Within eight days of entering Italy, the foreign citizen has to declare his/her presence at the Immigration Office that issued the authorization for the purpose of obtaining the Residence Permit.

The maximum duration of the intra-corporate transfer is 3 years for managers and specialized workers and 1 year for workers in training.

12.6. Business Visa

The business Visa allows entry into Italy, for the purpose of a short stay, to a foreign citizen who intends to travel for economic-commercial purposes, for contacts or negotiations, for learning or testing the use and operation of capital goods purchased or sold under commercial contracts and industrial cooperation.

In order to obtain a business Visa, the foreign citizen must provide sufficient documentation to prove

a) its status as an economic-commercial operator;

b) the purpose of the trip for which the Visa is requested;

c) the possession of adequate economic means of support, in any case not less than the amount established by the Ministry of the Interior with the directive referred to in art. 4, paragraph 3 of the Consolidated Act no. 286/1998 and subsequent amendments and additions;

d) the availability of accommodation, through hotel reservation or declaration of hospitality, provided by an EU citizen or a foreigner regularly residing in Italy;

e) health insurance, according to the Decision of the Council of 22 December 2003, in the terms and conditions established by the relative Guidelines.

The business Visa, in the presence of similar requirements, may also be issued to persons accompanying the applicant for documented business reasons.

A foreign citizen who has entered Italy with a Business Visa is not required to obtain a Residence Permit, but he or she may stay in the national territory only for a period equal to that provided for in the Visa itself, which may not, however, exceed three months.

12.7. Elective Residence Visa

The Elective Residence Visa allows foreign citizen who intends to move to Italy and is able to sustain themselves without working to enter Italy. Accordingly, a person who has this type of visa is not allowed to work in Italy.

We note that elective residence legislation permits the foreign citizens holding this type of Visa to move freely in Schengen countries in compliance with some requirements that are less strict than the one generally applicable (i.e., quota system).

To this end, the foreign citizen will have to provide adequate and documented guarantees regarding the availability of a house to be chosen as a residence, and autonomous, stable, and regular economic resources, which can reasonably be expected to continue in the future.

These resources, in any case not less than three times the amount defined by the Minister of Internal Affair[18], defining the means of subsistence for the entry and residence of the foreign citizen in Italy, must come from the ownership of substantial income (pensions, annuities), possession of a real estate, ownership of stable economic and commercial activities or other sources other than employment.

A similar Visa may also be issued to cohabiting spouses, minor children, and adult children who are economically dependent, provided that the aforementioned financial capacities are also deemed adequate for the latter.

The foreign citizen has to apply for Residence Permit within 8 days of his or her arrival.

The Residence Permits' duration ranges from 90 days up to one year (renewable for a term of up to 5 years). After 5 years, the foreign citizen may apply for a permanent residence permit. The Visa and the permit may be issued also for the spouse, if cohabitant, for minor children, and also for adult children (if cohabiting and economically dependent), if these financial resources are adequate also for these latter. That said, we note that the foreign citizen holding this kind of Visa and subsequent Residence Permit is not allowed to work in Italy.

[18] Pursuant to Table A annexed to the directive of the Minister of Internal Affair of 1 March 2000.

13. Litigation System

13.1. Civil proceeding

Italian civil justice is structured as a three-tier court system. Civil litigation in Italy is considered to be lengthy and cumbersome, though quite cheap when compared to certain common law jurisdictions. First-tier trials may last from one to three years, and after appeal (if any), the parties may still go before the Court of Cassation, which may lead the overall duration of any dispute to last for several years.

With the issuance of the enabling act[19], the Italian Government has implemented the Civil Trial Reform. Among the purposes of the reform, there is the fulfillment of the commitments made with the European Union in terms of justice reforms, pursuing the objective of cutting the duration of civil trials by 40% by redesigning various aspects of the current model, from mediation to the discipline of the various levels of judgment, with interventions also of an organisational nature such as those on the establishment of the Family Court.

From a general perspective, the reform of the civil proceeding is structured along three complementary lines:

i. emphasizing the use of alternative dispute resolution (ADR) instruments;

ii. making the necessary improvements to the civil proceedings;

iii. intervene in the enforcement process and special procedures.

13.2. Arbitration/Alternative dispute resolution

Businesses resort very often to "ad hoc" arbitration, having included standard arbitration clauses in contracts and company by-laws. The costs of arbitration in Italy are higher than those of court trials. In the case of arbitration managed by arbitral institutions, the costs can be estimated, whereas in "ad hoc" arbitration proceedings costs are less predictable. The arbitrators may grant provisional measures only to suspend the shareholders' resolutions. This limitation means that the party who intends to seek an injunction should apply the ordinary courts, even in the presence of the arbitration clause in the contract. Invalid arbitration awards may be appealed before the Court of Appeals. It is possible to submit labor and administrative disputes for arbitration, on the condition that arbitration agreements are included in the relevant contract and comply with the legislation.

Mediation is slowly growing as an effective dispute-resolution method in Italy. In 2003, substantial benefits in commercial and corporate disputes (stamp duty exemption, enforceability of the settlement, suspension of the limitation period) were introduced for mediations conducted by accredited mediators. A similar scheme was introduced in 2010, with regard to all civil and commercial matters, that requires attorneys to inform clients about alternative dispute resolution. Telecom companies and banks are adopting non-binding arbitration or quasi-mediation schemes (conciliazione paritetica) in standard contracts with consumers, as agreed with consumer associations. Since 2016, a number of civil and commercial disputes (including family business transfer covenants, leases of business, insurance contracts, and banking and finance contracts) must go through a preliminary mediation meeting with an accredited mediator before going to court.

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[19] Pursuant to the Law no. 206 of 26 November 2021 - Official Gazette no. 292 of 9 December 2021.

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