

Law stated as 22-Sept-2022

Subject	Response
CORPORATE	
<p>What are the two most common types of entity formed by inbound investors and what is the preferred type of company called?</p>	<p>The two most common types of entities formed by inbound investors in Italy are limited liability companies (società a responsabilità limitata S.r.l.), and joint stock companies (società per azioni S.p.A).</p> <p>Alternatively, but less frequent than the two types of companies above, the foreign company may establish an Italian branch.</p>
<p>How long does it typically take to form/register the entity?</p>	<p>For both companies and branches, after having executed all the document and sent them in original to the relevant recipients, the incorporation usually requires around six to eight business days (it mostly depends on the processing time of filing of the incorporation deed executed before the Notary Public with the Register of Enterprises, as well as by the completion of other formalities, eg, the release by the competent Tax Office of the VAT Number for the newly incorporated company).</p>
<p>Is a bank account required before the company can be formed? If so, how long does that typically take?</p>	<p>Generally speaking, a bank account is not identified as a requirement for the incorporation of an Italian company but it is actually necessary to operate.</p> <p>Under a practical perspective, the incorporating company usually makes a wire transfer of the initial share/quota capital to the Notary's bank account in escrow. The relevant amount is then released and transferred by the Notary's bank account to the company's bank account once opened.</p> <p>The opening of the bank account usually takes 5/7 business days from the receipt by the bank of the required documents.</p>
FOR A COMPANY	
<p>Minimum share capital for the most common type of local company</p>	<p>S.r.l.: at least EUR1. In case the initial corporate capital is lower than EUR10,000 the relevant contributions shall be mandatorily made in cash and fully paid in.</p> <p>S.p.A.: at least EUR50,000.</p>



<p>Is a local resident director required by corporate law (note: not including any tax considerations as to substance etc)?</p>	<p>A local resident director is not required to validly incorporate an Italian company. However, each director shall have an Italian Fiscal Code (<i>i.e.</i>, a social security number), which may be requested by filing a specific form with the Italian Tax Office.</p> <p>In addition, each director must be provided with a digital signature device (so called 'smart card') issued by an authorized entity, necessary to file within the Register of Enterprises certain type of documents (<i>e.g.</i>, minutes of the board of directors or shareholders meeting, etc), and accomplish certain formalities vis-à-vis public entities (<i>e.g.</i>, public tenders).</p>
<p>Is a local shareholder required?</p>	<p>No, a local shareholder is not required.</p>
<p>Is an audit required?</p>	<p>S.p.A.: a panel of statutory auditors is always required. If the By-laws entrust the audit on the accounts to the panel of statutory auditors, all members must be enrolled to the accountants register; should the audit on accounts be demanded to an external auditing company, it is sufficient that at least one of the effective and one of the alternate members of the panel of statutory auditors are enrolled to such register.</p> <p>S.r.l.: the appointment of a specific auditing body (<i>i.e.</i>, statutory and/or external auditor) is mandatory only if the company:</p> <ul style="list-style-type: none"> - is required to draft the consolidated financial statements - controls a company required to carry out the statutory audit - has exceeded for two year in a row at least one of the following thresholds: <ul style="list-style-type: none"> - profits and loss accounts higher than EUR4,000,000 - statements of assets and liabilities higher than EUR 4,000,000 - total number of employees higher than 20.
<p>Is disclosure of beneficial ownership required?</p>	<p>Pursuant to Legislative Decree no. 231/2007 (Italian Anti-Money Laundering Decree) it is required to disclose the beneficial ownership each time a company carries out specific</p>



	<p>activities before certain third parties (eg Notary Public, banks, Poste Italiane S.p.A., insurance companies, etc).</p> <p>The process of incorporation of a NewCo, requires the disclosure of the beneficial ownership to the Notary Public.</p> <p>On May 25, 2022, the decree of the Ministry of Economics implementing the Ultimate Beneficial Owners Register for companies and other private legal entities (“UBO Register”) has been published in the Italian Official Journal. The UBO is a public register in which will be included all the data concerning beneficial ownership to be disclosed by the above-mentioned subjects.</p> <p>The deadline to disclose beneficial ownership data/information will depend on when the implementing regulations will be issued.</p>
Registration with the local tax authorities	VAT number will be given directly by the local Tax Office to the company during the registration process with the Register of Enterprises.
EMPLOYMENT	
General environment	Any dismissal must be justified and grounded on certain reasons.
Unfair dismissal maximum damages (length of service needed for this to apply)	<p>In case of unfair dismissal, usually the labour courts apply an economic sanction. It is an indemnity which varies within certain different ranges depending on: (1) company's headcount; (2) employee's hiring date; and (3) employee's level of classification.</p> <p>The company could be condemned to reinstate the employee, paying an addition indemnity, only in few cases of unfair dismissal provided by law and in case of void dismissal.</p>
Maximum statutory notice from employer	Italian law does not directly provide a maximum notice period. Generally, it is regulated by the National Collective Bargaining Agreement (NCBA) and it may vary depending on the working seniority and the level of classification of the employee. The only exception to the notice period is provided in case of dismissal or resignation for cause or communicated during the probationary period which are immediately effective upon their receipt by the other party.



<p>Collective agreements/Works Councils common?</p>	<p>The application of NCBA is convenient (not mandatory) because it generally provides a complete discipline of the employment relationship - the Italian employment contracts are generally very short documents as they can refer to NCBA for any matter not specifically addressed in the contract.</p> <p>Typically, a company chooses a NCBA specifically tailored on the business sector.</p> <p>Even if not applied, in case of claim, the NCBA are taken into account to compare possible less favourable provisions of the individual employment agreement.</p> <p>Works Councils are common in companies with more than 15 employees.</p>
<p>Maximum working hours</p>	<p>Usually, the working time in Italy is of 40 hours per week (equal to 8 hours per day if divided in 5 days). Part-time is allowed only in case of specific agreement. Overtime is allowed only within the maximum limit of 250 hours per year and subject to an extra payment.</p>
<p>Minimum paid time off</p>	<p>4 weeks per year.</p>
<p>Requirement for Pension Plan</p>	<p>Pension plans are managed by the Italian National Institute of Social Security. There are also supplementary funds to which employer can accede.</p>
<p>Remote Working/Cross-Border Working, especially in regards to COVID-19</p>	<p>Following the pandemic, remote working (without specific constraints in terms of place of work and working hours) is increasingly common in Italy. Pursuant to the law (Law n. 81/2017), smart working must be mandatorily regulated by an individual written agreement between the employer and the employee, regulating a number of aspects (<i>e.g.</i>: duration, employer's disciplinary power, equipment, disconnection measures, etc.).</p>
<p>Overview</p>	<p>Pursuant to the Italian law, individual employment relationships are regulated by individual agreements that must comply with certain provisions of the Italian Constitution, the Italian Civil Code, a number of special laws (in particular Law No. 300 of 1970, so-called "Workers' Statute") and, as a general rule, of the applicable national collective bargaining agreements.</p>



STOCK OPTIONS	
Can you grant under the overseas parent's company's option plan? If so, is a local sub-plan required?	<p>Yes, it is possible to grant stock options to Italian employees under the overseas parent's company option plan.</p> <p>Even if a sub-plan is not mandatorily required, it could be advisable to prepare a local sub-plan (or at least carry out a review for compliance of the parent's company option plan), so to double-check the conformity of the latter with Italian mandatory provisions (eg, tax or employment laws and regulations).</p>
Is it the cultural norm?	No, even if it is becoming increasingly common, in particular with regards to start-ups.
Is there a tax benefit to employees?	The acquisition gain is treated as an employment income. However, there is a tax benefit for the employer given that such gain will benefit from an exemption of social contribution charges under certain conditions.
PRIVACY	
Regulator	Garante per la protezione dei dati personali (Garante).
Notification requirements	<p>Following the entry into force of the GDPR, the Italian Data Protection Code (Legislative Decree No. 196/2003) does not provide for notification formalities applicable to certain processing activities. Indeed, notification formalities were provided under the former legislation, but were repealed by Legislative Decree No. 101/2018, which adapted the Italian Data Protection Code to the GDPR.</p> <p>The GDPR however introduced the obligation to notify data breaches to the competent supervisory authority within 72 hours from the discovery of the personal data breach, unless it is unlikely that the data breach will result in a risk to the rights and freedom of the data subjects. The notification to the Garante must be made by means of the online service available on the Garante's website, which also provides several tools to support data controllers in their obligations in the event of a data breach (e. g. a self-assessment procedure to identify the actions to be taken).</p> <p>Additionally, the Italian Data Protection Code provides that the authorization of the Garante must be obtained in some specific cases (such as,</p>



	secondary processing of particular categories of personal data for purposes of scientific research or statistic purposes).
Other considerations	<p>The main areas where the Italian Data Protection Code provides for specific requirements are the following: processing of employees' personal data, processing of genetic data, biometric data or data concerning health, the legal basis applicable to processing of personal data (including health and genetic data) for the purposes of scientific research in the medical, biomedical or epidemiological field; processing of personal data relating to criminal convictions and offences (for which a Decree of the Ministry of Justice is expected to be issued soon); rights concerning deceased people; cases where data controllers may refuse to comply with a request of exercise of rights from the data subject. Additionally, in 2021 the Italian Data Protection Code was amended to include a high-speed reporting system for revenge porn victims.</p> <p>The Italian Data Protection Code contains also the provisions implementing the ePrivacy Directive (Directive 2002/58/EC), including the rules governing placement of cookies, processing of traffic and geolocation data.</p>
TAX	
Corporation Tax	24% (corporation tax) + 3,9% (regional tax)
VAT (sales tax)	22% (standard rate)
National Insurance/Social Security Contributions	Between 35% and 40% for employers. Between 20% and 25% for employees.
Capital gains	<p>Individuals</p> <p>The substitute tax rate applied on the capital gains deriving from the sale of qualified or non-qualified participations stands at 26%.</p> <p>Companies</p> <p>Capital gains on the transfer of shareholdings, under certain conditions, are 95% exempt from taxation. The legal conditions for exemption are the following:</p> <p>i. uninterrupted holding from the first day of the 12th month preceding that of the transfer; holdings acquired more recently will be deemed to be transferred first (LIFO basis)</p>



	<p>ii. classification of holdings as fixed asset investments from the first balance sheet closed during the period of ownership</p> <p>iii. tax residence of the subsidiary in a country or territory other than those with a preferential tax system</p> <p>iv. carrying out of actual commercial activities by the subsidiary.</p>
<p>Dividends</p>	<p>Individuals</p> <p>For dividends received as of 1 January 2018, the 26% withholding tax applies, regardless of the size of the shareholding held.</p> <p>However, for distributions of profits resolved from 1.1.2018 to 31.12.2022 and formed from profits produced up to the financial year current on 31.12.2017, the previous taxable percentages continue to apply:</p> <ul style="list-style-type: none"> - 40% of the dividend if the profits were produced up to the financial year current on 31.12.2007; - 49.72% of the dividend if the profits were generated from the financial year following that in progress on 31.12.2007 until the financial year in progress on 31.12.2016; - 58.14% if the profits are formed from the financial year following the one in progress on 31.12.2016 until the financial year in progress on 31.12.2017 <p>Companies</p> <p>Dividends received by Italian corporations deriving from holdings in companies resident in Italy for fiscal purposes are taxed at 5% of their amount (since 95% is excluded from taxation).</p>
<p>Technology company tax advantages</p>	<p>Bonus for investments in R&D activities, technological innovations, and patent box.</p> <p>For R&D activities a tax credit amount of 20% of the eligible expenses, up to a maximum of EUR 4 million.</p>



	<p>For technological innovation activities, the tax credit is recognised separately at a 10% rate of the relevant basis of calculation, up to a maximum of EUR 2 million. For the achievement of an ecological transition or digital innovation 4.0 objective, the credit measure increases to 15%.</p> <p>These tax credits are non-taxable tout court.</p> <p>Patent box relief consists in the possibility of increasing by 110% the deduction of costs incurred in relation to the eligible intangible assets.</p>
IMMIGRATION	
Requirements	<p>As a member of EU, EU/EEA/EFTA citizens can live and work in Italy without any work permit.</p> <p>For EU citizens who are willing to stay in Italy for more than 90 days is required the registration with local Town-hall.</p> <p>For Non-EU citizens, the regulation varies depending on (i) the length and (ii) the nature of the activity.</p>
Timing	<p>As regards the length, there are two types of stay:</p> <p>Short-term stay (ie, up to 90 days in any 180-day period in Schengen): in this case, citizens of visa waiver countries (eg, USA, Australia, Japan) can enter with no visa for tourism, missions, business, invitations, religious reasons, transit, transport, sport competitions and study; citizens of other countries (eg, China, India, Russia) need a Schengen C visa.</p> <p>Long-term stay (ie, more than 90 days in Italy): in this case work permit and/or a National D visa is required, regardless the reason of stay.</p>
Brexit	<p>During the transition period (ie, until to December 31, 2020) UK citizens registered in Italy before the end such period should be able to work in Italy as all EU citizens (same treatment of Italian workers).</p> <p>After December 31, 2020, UK citizens will be non-EU nationals and any Italian company looking to hire a non-EU national needs to follow Italian</p>



	Immigration Law where the employee requires a work permit, work visa and residence permit.
Visa Types	<p>Non-EU citizens who intend to live and work in Italy for more than 90-days need a long-term visa and residence permit. Different types of work visa can be obtained:</p> <p>i. Hiring of Non-EU workers is subject to limited quotas annually released by the Government. An exception to the quota limitations is provided in case of highly skilled workers (ie, 3-year University Diploma, minimum 1-year contract and a remuneration of non-less than EUR25,000 per year) who can obtain the so-called Blue Card Permit, which could be used also in other EU countries, after 18 months from issuance</p> <p>ii. autonomous workers visa, subject to limited quotas for individuals who intent to work independently as a consultant, or to practice as a licensed profession (ie, doctors, architects, or attorneys)</p> <p>iii. assigned workers visa for workers assigned to Italian company (in case of posting of work). This type of visa is not subject to any quota.</p> <p>In addition to the above categories, there are special categories of workers who can work in Italy on assignment for temporary periods (eg, assignments pursuant to a service agreement, foreign professors, researchers, journalists, athletes, artists, and nurses).</p>
Work visa: before the UK entity is trading	Information unavailable or not applicable
Tier 2 work visas: once the UK entity is trading	Information unavailable or not applicable
MERGERS AND ACQUISITIONS	
What structure is commonly used for the acquisition of a local company?	Acquisition of whole, or part, of the share/quota capital (<i>i.e.</i> , share deal), or of certain assets (or business or business units as going concern – azienda o ramo d’azienda) of the company (ie, asset deal).
Is there a merger concept under local law?	<p>Yes, the concept of merger is established in sections 2501 and ff. of the Italian Civil Code, which include the definition, the features, and the steps to be followed to carry out a merger process.</p> <p>Italian law generally distinguishes between merger by absorption and merger by incorporating a new company.</p>



<p>Is there a local transfer tax on the sale of shares? If so, a brief description of how it is calculated.</p>	<p>Yes: Italian taxes applicable are (i) Tobin tax and (ii) registration tax. On capital gains, please refer to "Tax" section below.</p> <p>i. Tobin Tax applies to the sale of shares and participating financial instruments issued by listed companies as follows:</p> <ul style="list-style-type: none"> - sale of shares that are not traded on regulated markets and multilateral trading systems: 0.20% of the transaction value (ie, of the amount paid) - sale of shares traded on regulated markets and multilateral trading systems: 0.10% of the transaction value (ie, of the amount paid). <p>Tobin tax does not apply to transfers of quotas of limited liability companies.</p> <p>ii. Registration tax on share deal: EUR200 (does not depend on transaction value).</p>
<p>Does the share acquisition require a notary to be engaged?</p>	<p>S.r.l: the transfer of quotas does not mandatorily require the presence of the Notary Public since the relevant deed may be executed also before a qualified and authorized accountant. However, the common market practice is to execute the deed before a Notary Public.</p> <p>S.p.A.: the most common forms of acquisition of shares (endorsement, or so-called transfer) require the authentication of the Notary (or other authorities, if any special law requires so). In case of dematerialized shares, the presence of the Notary Public is not necessary.</p>
<p>Employment: Is there any requirement to consult with employees and/or employee representatives / representative bodies such as works councils prior to closing the Proposed Transaction?</p>	<p>Pursuant to Italian Law (Article 47, Law no. 428 of 1990) the parties must comply with a procedure of consultation with trade unions in case of transfer of business in which are employed more than 15 employees, even if less than 15 employees are transferred.</p>
<p>Employment: If the transaction is structured as an asset acquisition, do employees generally transfer automatically on an asset acquisition (as opposed to share acquisition) by operation of law?</p>	<p>Yes, according to Article 2112 of the Italian Civil Code, after the transfer of business the employment relationships continue automatically with the transferee, and the employees retain all rights they had prior the transfer of business.</p>
<p>Are there any antitrust notifications/approvals required?</p>	<p>In Italy, the control of concentrations for competition purposes is enforced by the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato, or ICA) according to</p>



	<p>Law no. 287/1990 (the Italian Competition Law). Pursuant to article 16 Para. 1, of the Italian Competition Law, a concentration must be notified with the ICA prior to its implementation if:</p> <ul style="list-style-type: none"> - The aggregated annual turnover achieved in Italy by all undertakings concerned by the transaction exceeds EUR517 million; and - The individual annual turnover achieved in Italy by each of at least two of the undertakings concerned by the transaction exceeds EUR31 million. <p>Both thresholds are adjusted annually by an amount equal to the national GDP price deflator index.</p> <p>Moreover, pursuant the newly introduced Article 16, para. 1-bis (by law no 188 of August 5, 2022, “2021 Annual Competition Law”), if the transaction does not exceed the turnover thresholds indicated above, the ICA may require the parties to the concentration to notify the concentration within 30 days from the request, including after closing, if the following cumulative conditions are satisfied:</p> <ul style="list-style-type: none"> - one of the two turnover thresholds indicated above is exceeded or the combined worldwide turnover of all the undertakings concerned exceeds EUR5 billion; and - the transaction could raise serious competition concerns in the national market or in a substantial part thereof, taking into account the possible detrimental effects on the development of small enterprises characterized by innovative strategies; and - the transaction was completed less than 6 months before the request <p>The notion of undertaking and of undertaking concerned by the concentration is equivalent to that under Council Regulation (CE) 139/04. (EUMR). The 2021 Annual Competition Law has also fully aligned the rules on calculation of turnovers, the substantive test for appraisal of concentrations (SIEC) and the criteria to distinguish full-function joint ventures from</p>
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	<p>partial-function joint ventures with those of the EUMR.</p>
<p>Is there anything else that an international buyer should be aware of at the outset, cultural or otherwise? In most jurisdictions there are certain sectors (eg banking, media/broadcasting, defence, sports clubs) where regulator approval/notification may be required in advance / following a change of control.</p>	<p>Pursuant to Legislative Decree N. 177/2005, Article 1 of law. N. 249/97 and implementing regulations of the Italian Authority for Communications (AGCO), specific rules and anti-concentration limits apply to mergers and acquisitions of relevant shareholdings in the media/broadcasting and communications sector. Further, changes of control over companies operating in the media and communications sector must always be notified with the AGCOM, irrespective of the size or turnovers of the undertakings involved.</p> <p>A regime for foreign investment review is set forth under Law Decree No. 21/2012 (converted into Law No. 56/2012 FIR). The FIR assigns the Government special powers (so-called golden powers) to veto or impose conditions on certain resolutions or transactions made by foreign investors (including EU investors in certain cases) relating to Italian companies operating in certain strategic sectors. In particular, the Italian Government may exercise its golden powers in the following sectors: (1) defense and national security (which includes broadband electronic communication services based on 5G technology); (2) energy; (3) transport; (4) communications; and (5) other new sectors included in the regime in the following years (water, health, sensitive data and information, electoral infrastructure, finance and insurance, artificial intelligence and other technologies, aerospace infrastructure, agri-food and steel, dual-use products, freedom and pluralism of media). Further, Law Decree No. 21/2022 (Decree Ukraine) made the emergency regime introduced by Government Decree n. 23/2020 become permanent and introduced new procedural rules, including a pre-notification procedure and the concurrent obligation of the target company to notify the transaction under the FIR, either jointly with the buyer(s) or separately. Notably, the rules made permanent by the Ukraine Decree provide, inter alia, that even genuinely intra-EU transactions of acquisition of control, or acquisitions of minority (non-controlling) stakes in “strategic” assets in</p>



	<p>Italy by non-EU investors must be priorly communicated to the Government under the FIR. From a general standpoint, please consider that specific regulatory requirements such as notifications and/or approvals may be required in specific sectors such as banking and insurance. Therefore, we would generally advise to consult a lawyer in advance on a case-by-case basis.</p>
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