

March 31, 2026

MEMO ON ITALIAN CORPORATIONS

The most common forms of Italian corporations (*“società di capitali”*) are:

- (i) Joint Stock Companies (*Società per Azioni – S.p.A.*); and
- (ii) Limited Liability Companies (*Società a responsabilità limitata – S.r.l.*).

S.p.As. are usually used for listed companies or bigger not listed companies since this type of company is more flexible as to equity structure and issuance of debt, equity or other financial instruments. S.r.l.s are mostly used for small and medium-sized businesses, for wholly-owned subsidiaries of multinationals and for start-ups since the corporate governance rules applicable to such companies are less restrictive than those applicable to S.p.A.s.

The main difference between such types of companies is that the equity of S.r.l.s is divided into quotas, which are an intangible portion of the corporate capital not represented by a certificate, while the equity of S.p.A.s is divided into shares (tangible securities, represented by share certificates).

The shares of S.p.A.s may be transferred through endorsement of the relevant share certificates; the quotas of an S.r.l. by means of the execution of a notarial deed of transfer which will be filed by the Notary with the competent Register of Enterprises.

In any case, both S.p.A.s and S.r.l.s may be transformed into the other type of company through a resolution of the share/quotaholders' meeting adopted with mandatory increased majorities. Conversion of an S.r.l. into an S.p.A. is subject to the condition that the S.r.l. meets the minimum corporate capital requirements of an S.p.A.

The common feature of S.p.A.s and S.r.l.s is that both shareholders of S.p.A.s and quotaholders of S.r.l.s are not liable for the companies' obligations, although quotaholders of S.r.l.s may be held jointly liable with the directors if they resolved or authorized the carrying out of acts or transactions detrimental to the company, its quotaholders or any third party.

1. MAIN DIFFERENCES BETWEEN S.P.A.S AND S.R.L.S AND COMMON FEATURES

The main differences between S.p.A.s and S.r.l.s and their common features are summarized in the chart below.

		S.p.A.s	S.r.l.s
1	Corporate capital	<p>Minimum: EUR50,000.00</p> <p>In case the company has more than <u>one shareholder</u>, the 25% of minimum capital and the share premium must be immediately paid in; if the company has a <u>sole shareholder</u> the entire amount of minimum capital must be immediately paid in.</p>	<p>Minimum: EUR1¹</p> <p>Same as S.p.A.s. In addition also in case the initial stock capital is less than EUR10,000, and greater than EUR 1, the entire amount of the minimum capital must be immediately paid in.</p>
2	Capital contributions	<p>The capital contributions may be made <u>in cash</u> or <u>in kind</u>. In such latter case the contributions are subject to a specific evaluation procedure and must be fully paid in.</p>	<p>In case the initial stock capital is less than EUR10,000, and greater than EUR 1, only cash contributions are allowed.</p>
3	Financial instruments	<p>The <u>company</u> can issue (i) <u>different categories of shares</u>, (ii) shares with <u>no voting rights or limited voting rights</u> up to 50% of the share capital, (iii) shares and <u>special instruments</u> issued to employees of the company or of the controlled companies, (iv) <u>participating instruments</u> granting certain administrative and/or economic rights without voting</p>	<p>An S.r.l. may issue (i) <u>special individual rights to individual quotaholders or to a limited group of quotaholders</u> regarding the administration of the company or the distribution of profits or limited voting rights (such individual rights may be wider or more limited compared to the rights granted to the other quotaholders, and even in such case the right to vote can be excluded) (ii) <u>debt</u></p>

¹ Note however that in order to avoid immediate need for recapitalization it is advisable to provide a newly incorporated S.r.l. with at least EUR10,000/EUR15,000 as corporate capital. This amount would be used to cover start-up costs.

		<p>rights and not being part of the share capital; (v) <u>bonds and convertible bonds</u> with certain limitations.</p>	<p><u>securities</u>, which may be subscribed only by professional investors subject to prudential supervision pursuant to applicable special laws, (iii) quotas offered to the public as financial products through <u>crowdfunding</u> platforms, within the limits set by Regulation (EU) 2020/1503.</p> <p>When a S.r.l. is qualified as SMEs², the by-laws may also provide for (i) <u>different categories of quotas</u> with differentiated rights, (ii) <u>quotas with no voting rights, limited voting rights, or voting rights that are non-proportional to the participation, or limited to specific matters, or conditional upon the occurrence of specific objective conditions</u> – without any quantitative limit on the share capital; (iii) the <u>acquisition of own quotas</u>, when carried out in implementation of incentive plans providing for the assignment of quotas to employees, collaborators, members of the management body, or providers of works or services, including professional services, (iv) offer of their quotas to the public through <u>capital-raising portals</u> within the broader limits set by applicable Italian special laws – a regime wider than that available to all S.r.l. as abovementioned.</p>
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² The SMEs are enterprises which (i) employs fewer than 250 people, and (ii) which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

			Innovative SMEs ³ and innovative startups ⁴ incorporated as S.r.l. may additionally issue <u>participating financial instruments (PFI)</u> granting certain administrative and/or economic rights, excluding voting rights on decisions reserved to quotaholders, also in exchange for contributions including works or services by quotaholders or third parties (work for equity plan).
4	Voting rights	May not be proportional to the shares owned in the company.	Same as S.p.a.s.
5	Special Rights	Different classes of shares (providing different shareholders' rights) may be established.	In S.r.l.s that do not qualify as SMEs, it is not possible to establish different classes of quotas; however, the company's by-laws may grant specific special rights to individual quotaholders.

³ An innovative SME is a limited company which (i) complies with the size parameters provided for SMEs, and (ii) meets at least two of the three innovation requirements, that are (a) expenditure on research, development and innovation amounting to at least 3% of the greater of the cost and total value of production; (b) qualification of the personnel (either a minimum of 1/5 of the total workforce must hold a PhD, or a minimum of 1/3 must hold a Master's degree); and (c) ownership of rights (such as industrial property rights or rights relating to computer programs).

⁴ An innovative startup is a (i) a SME; (ii) it has been established for no more than sixty months; (iii) it is resident in Italy or in one of the Member States of the European Union or in States party to the Agreement on the European Economic Area, provided that it has a production site or a branch in Italy; (iii) starting from the second year of activity of the innovative start-up, the total value of annual production, as shown in the latest financial statements approved within six months of the end of the financial year, does not exceed €5 million; (iv) it does not distribute, and has not distributed, profits; (v) its sole or main corporate purpose is the development, production, and marketing of innovative products or services with high technological value, and it does not carry out agency or consulting activities as its main business; (vi) it was not formed as a result of a merger, demerger, or transfer of a business or business unit; (vii) it meets at least one of the following additional requirements: (a) research and development expenses are equal to or greater than 15% of the greater of the cost and total value of the innovative start-up's production; (b) it employs, as employees or collaborators in any capacity, a percentage equal to or greater than one-third of its total personnel with a PhD or a university degree who have carried out certified research activities for at least three years at public or private research institutes in Italy or abroad, or a percentage equal to or greater than two-thirds of its total personnel with a master's degree; (c) is the owner, depositary, or licensee of at least one industrial property right relating to an industrial or biotechnological invention, a semiconductor product topography, or a new plant variety, or is the owner of the rights relating to an original computer program registered in the Special Public Register for Computer Programs, provided that such property rights are directly related to the corporate purpose and business activity.

			Where the S.r.l. qualifies as an SME, an innovative SME, or an innovative start-up, the by-laws may freely provide for different classes of quotas carrying different rights for quotaholders.
6	Transferability	Participation is freely transferable unless the by-laws provide restrictions. However, the transferability of S.p.A.'s participation may be locked up for the first five years.	Same as S.p.A.s, with the difference that the lock-up period may be longer or may be extended beyond the five-year limit applicable to S.p.A.s.
7	Corporate governance structure	The most common form of corporate governance for S.p.A.s is the <u>traditional form</u> (<i>i.e.</i> the company is managed by a board of directors or a sole director and the management is subject to the statutory auditors' control). Italian law provides for other two management and control systems: the <u>one tier form</u> (the company is managed by a board of directors and is supervised by a special control committee) and the <u>two tier form</u> (the company is managed by a management board and is supervised by a supervisory board). Since the traditional form is the most common corporate governance form we will refer only to such form in the lines below.	The company can be managed by a board of directors, two or more directors granted with single and joint signature authority and a sole director.
8	Duration of the office of directors	Not more than 3 years.	Depending on the by-laws and on the decision of the quotaholders

9	Written resolutions	Not allowed.	Allowed both for the quotaholders and directors' meetings.
10	Meetings without a call notice	<p>Allowed both for the shareholders and directors' meetings subject to the conditions set forth by law and the by-laws. The shareholders' meeting shall be generally deemed validly constituted if all shareholders are present. Similarly, the board of directors shall be deemed validly constituted if all directors and auditors are present or have been informed of the meeting, even if the call-notice formalities provided for in the by-laws are not observed. The directors' meetings can be held without a call notice only if the by-laws provide for such possibility.</p> <p>If allowed by the by-laws, both shareholders' and board of directors' meetings may also be held exclusively by means of teleconference.</p>	Same as S.p.A.s.
11	Controls	The shareholders are required to appoint a panel of statutory auditors (Internal auditing) composed either by three or five regular members, plus two mandatory substitute auditors.	The appointment of a control body (internal or external) is mandatory only in certain cases provided by law. The control body is composed by a sole statutory auditor or by a sole external auditor unless otherwise provided by the by-laws of the company.

12	External auditing	Statutory auditors may also carry out accounting control activities without the need to appoint an external auditor if the company (i) is not required to draft consolidated financial statement, (ii) is not an entity of public interest, (iii) the statutory auditors are all qualified accountants (iv) the bylaws provide for such possibility.	Same as S.p.A.s.
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2. OTHER GENERAL INFORMATION ON ITALIAN CORPORATIONS

2.1. Incorporation procedure

The main incorporation steps are:

- (i) Payment of the contributions. Please see lines 1 and 2 of the above chart;
- (ii) Signature of the incorporation deed and the by-laws. Equity-holders shall execute in the form of a public deed, before an Italian Notary Public, the incorporation deed and the bylaws of the new company, filing the proof of payments of the contributions (they may appear before the notary public in person or may be represented: in this case the notary public will check their power of attorney);
- (iii) Registration with the Register of Enterprises. After its execution, the notary public shall register the deed of incorporation and the by-laws with the Register of Enterprises and the local Tax Authority. The incorporation process is deemed completed upon filing of the deed of incorporation and the by-laws with the Register of Enterprises.

2.2. Companies' names

The company name is an essential element of the incorporation deed, under penalty of nullity of the company. According to the Italian Civil Code, a joint stock company shall include in its name the expression "*società per azioni*" or the abbreviation "*S.p.A.*" and a limited liability company the expression "*società a responsabilità limitata*" or the abbreviation "*S.r.l.*".

The company name does not require any approval, but it shall comply with the following few rules:

- (iv) it shall be new, not identical or confusingly similar to that of another company or individual enterprise;
- (v) it may be invented or real and it may contain the name of the shareholders;
- (vi) some words (e.g. bank, insurance) may be used only by companies undertaking the related business.

2.3. Directors' requirements

Directors must be 18 years old and there are no nationality restrictions or requirements that directors must meet. However, foreign people can only be appointed as directors provided that Italian citizens are allowed to act as directors (or similar offices) in the country of those foreign persons, under the principle of reciprocity (Article 16, preliminary provisions, Italian Civil Code).

In addition, the appointment of legal entities as directors is not expressly allowed under Italian law, but it is not prohibited. The Italian Association of Notaries Public stated that there is no reason to prohibit the appointment of a legal entity (i.e. a management company) as a director of either a joint stock company or a limited liability company. In such cases the management company shall designate an individual – termed the 'representative' – who is personally charged with the management of the joint stock company or limited liability company.

The representative and the management company shall jointly assume the duties and civil liabilities of the directors of a joint stock company or limited liability company as provided by Italian law.

2.4. Director's liability

Directors must act in the best interest of the managed company and in compliance with the obligations set out by applicable law and the company's by-laws.

The Civil Code sets out certain specific obligations (for example, to draft the annual financial statements, to enter into transactions, to regularly keep the corporate books, and so on). In addition, there are general duties binding on each director, such as the (*Italian Civil Code*):

- (i) duty of care;

- (ii) duty to inform the other directors and the shareholders;
- (iii) duty to act advisedly (for example, with the appropriate skill and professionalism);
- (iv) duty to monitor the other directors.

Directors may have civil liability duties towards:

- (i) the company, if they have caused damage to that company due to the breach of the law, the company by-laws, or the general duties;
- (ii) the company's creditors, if the directors have breached the specific rules regarding the preservation of the corporate assets, and those assets are insufficient to pay the creditors off;
- (iii) each shareholder and each third party, if the third party has suffered direct damage from an act performed with fraud or gross negligence by the directors.

In addition, directors shall establish and ensure an organizational, management and accounting structure appropriate to the nature and size of the company, also in order to timely detect the signal of a financial and economic crisis, as well as the loss of the going concern and take without delay the necessary measures.

The directors can be convicted for certain crimes if they disclose false or confidential information concerning the company, if they prevent the supervision of the company's operations by the statutory auditors, if they make fraudulent acts affecting the value of the company's quotas, transactions producing damages to the creditors of the company, etc.

2.5. Meetings held outside of Italy and teleconference

Equity-holders and directors' meetings can be held outside Italy if the bylaws expressly so allow. They can also be held in the form of a video-teleconference or by other electronic means, provided that certain conditions set forth by law are met.

2.6. Winding-up procedure

The equity-holders' meeting must pass a resolution on the winding-up of the company and must appoint a liquidator. The liquidator carries out the liquidation and his or her powers are limited to those necessary for this purpose. Once the process is complete, the liquidator must draft a final

financial statement to be filed with the Register of Enterprises. The shareholders or quota holders can object to the final financial statement within 90 days of filing. If no objections are received, assets can be distributed to the shareholders or quotaholders.

2.7. Direction and coordination activity

Under Italian law a parent company may be held liable towards the equity-holders and creditors of its subsidiary for the damages suffered by the latter solely in case the following three conditions are met:

- (i) the parent company must exercise “direction and coordination” over its subsidiary;
- (ii) exercising such activity, the parent company must also violate “the principles of the correct corporate and entrepreneurial management” and damage the integrity of the assets of its subsidiary;
- (iii) the parent company omits to eliminate the damages caused to the subsidiary and the damage of the subsidiary is not offset by any benefit to the parent company or the group.

The “direction and coordination” activity consists of a series of directives and instructions imparted by the parent company – as well as by other companies part of the same group – to the subsidiary, which have the effect to influence the operations and the management decisions of the subsidiary. In case a company holds the majority of the corporate capital of another company, there is a (rebuttable) presumption that direction and coordination is present.

3. MAIN DIFFERENCES BETWEEN S.R.L.S AND BRANCH AND COMMON FEATURES

		S.r.l.s	Branch
1	Legal Personality	S.r.l.s are separate legal entities distinct from its quotaholder(s), with its own capital and assets.	A branch has no legal personality since it is an extension of the foreign parent company.
2	Liability	The liability of S.r.l.s’ quotaholder(s) is limited to his/their contributions.	The parent company is fully liable for debts and obligations of the branch, since the branch is part of the parent company itself.

3	Incorporation/Registration Procedure	S.r.l.s require the collection of certain information and documentation (including documents to be notarized before a foreign notary and apostilled, depending on the place of signature) and a notarial deed for the incorporation / registration. They additionally require registration with the Italian Companies' Register.	The foreign company must first prepare (and apostille where required) certain documents — including the articles of association, a certificate of good standing issued by the competent authority in the country of origin, a resolution by the relevant corporate body approving the opening of the branch, and the deed of appointment of a permanent representative (<i>istitore</i>) with the relevant powers, all accompanied by certified Italian translations. These documents must then be submitted before an Italian notary, who formalizes the opening of the branch and arranges for its registration with the Companies Registry.
4	Governance and Management	<p>S.r.l.s are managed by directors (<i>amministratori</i>) under Italian law. S.r.l.s may adopt different governance models.</p> <p>The company can be managed by a sole director (<i>amministratore unico</i>), by multiple directors acting individually (<i>amministratori disgiuntivi</i>), or by a collective board of directors (<i>consiglio di amministrazione</i>), whose decision-making rules are defined in the by-laws. This flexibility allows quotaholders to tailor the governance structure to the size and needs of the business.</p> <p>The directors of an S.r.l. may be foreign nationals and non-residents. Italian law permits such appointments provided that the principle of reciprocity applies, meaning that Italian citizens would enjoy equivalent rights in the foreign national's country of origin.</p>	<p>A branch is managed by a legal representative, acting on behalf of the parent company and appointed pursuant to the parent company's by-laws and applicable laws.</p> <p>In other words, a branch does not have a corporate governance system of its own, since it lacks separate legal personality. Instead, the parent company must appoint a legal representative in Italy to manage the branch's activities and represent it towards third parties. The legal representative of the branch is known as "<i>istitore</i>" (a commercial manager under Italian civil law) to handle day-to-day operations.</p> <p>The branch's legal representative may be foreign nationals and non-residents. Italian law permits such appointments provided that the principle of reciprocity applies, meaning that Italian citizens would enjoy equivalent rights in the foreign national's country of origin.</p>

5	Accounting and Reporting	S.r.l.s' directors are required to keep the statutory accounts of the S.r.l. which shall be approved annually by the quotaholder(s) and filed with the Italian Companies' Register.	The foreign parent company shall keep accounts related to the Italian branch but there are no statutory accounts of the branch to be approved; the branch is only required to file the parent company's statutory accounts (translated into Italian) with the Italian Companies' Register.
6	Employment	S.r.l.s may employ staff directly in Italy; the employment relationship would be in force between the employee and the S.r.l.s.	A branch can employ staff in Italy, but employment contracts are formally entered into by the foreign parent company through the branch, since the branch is part of the parent company, and not a separate legal entity.