



Agenzia nazionale per l'attrazione
degli investimenti e lo sviluppo d'impresa SpA

Doing Business in Italy

Invitalia is the Italian national agency for inward investments and economic development. Its mission is to promote the country's competitiveness – in particular in the Southern Regions – and support growth in strategic sectors.

Its main objectives are:

- Supporting inward investments*
- Boosting innovation and growth*
- Improving the economic opportunities in the Regions.*

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Doing Business in Italy

Background

In principle, foreign investors wishing to start up a new business in Italy may operate subject to conditions of treatment reciprocity, i.e. when a similar right is granted to Italian investors operating in the State of origin of the concerned foreign investor. Verification of such treatment reciprocity prior to starting a business in Italy is not necessary whereby the foreign investor:

- Is a citizen of a Member State of the European Union
- Is a citizen of one of the States of the European Economic Area (i.e. Iceland, Liechtenstein, and Norway)
- Is a citizen of a country holding a specific international agreement with Italy - i.e. agreement governing international investment, treaty of friendship and trade, or other such agreements
- Has – as individual – refugee or stateless person status.

In order to verify whether the required reciprocity conditions are actually met, see the individual “Country Reports” issued by Italy’s Ministry of Foreign Affairs (MAE) on:

http://www.esteri.it/MAE/IT/Ministero/Servizi/Stranieri/Elenco_Paesi.htm

For the official list of treaties held with Italy, see the online database published by MAE on:

<http://itra.esteri.it/itrapgm/>

Starting a business

Foreign investors can set up a business activity in Italy by:

- Establishing as a one-man enterprise (*ditta individuale*)
- Establishing an Italian company
- Establishing a secondary registered office (*sede secondaria*) or branch (*filiale*) of a foreign company
- Opening a representative office (*ufficio di rappresentanza*) of a foreign company.

Further details on the above options are provided on the following pages.

Regulatory reference

Regardless of the method selected to start up a business activity in Italy, foreign framework investors will be supported by a legislative and regulatory framework acknowledged as one of the most advanced and dynamic in Europe, and primarily based on:

- The body of corporate law set out in the Italian Civil Code, extensively reformed in 2003;
- The Unified Text on Financial Intermediation - TUIF (“Testo Unico in materia di intermediazione finanziaria – namely Legislative Decree 58/1998 as amended and supplemented), which includes specific provisions for listed companies. The above Legislative Decree was repeatedly amended aimed at harmonising the national law with the legislations of Member States concerning financial markets and tender offers;
- Legislation on legal persons liability (Legislative Decree 231/2001, as amended);
- Legislation on personal information protection (Legislative Decree 196/2003 , as amended and supplemented);
- Legislation on workplace safety and hygiene (Legislative Decree 81/2008, as amended and supplemented);
- Legislation on fire prevention and electrical systems safety (Presidential Decree 577/1982, Legislative Decree 139/2006 and Law 46/1990, as amended and supplemented) as well as environmental legislation (Legislative Decree 152/2006, also known as the Environmental Code, as amended and supplemented).

Registering the business

- Companies established in Italy by natural persons or foreign legal persons, and/or
- Foreign company’s secondary registered offices

shall be registered in the competent Register of Enterprises (*Registro delle Imprese*); whereas

- One-man enterprises established by a foreign investor
- Foreign company’s branches
- Foreign company’s representative offices

shall be registered with the competent Economic and Administrative Index (*Repertorio Economico-Amministrativo (REA)*).

The relevant Register of Enterprises and REA offices are set within the Chamber of Commerce, Industry, Crafts and Agriculture (CCIAA) relevant for the site where the company, secondary registered office, one-man enterprise, branch or representative office are located, respectively.

As to registration procedures, as of 1 April 2010 a business may be started via on-line transmission of a single communication (*Comunicazione Unica, i.e.*, Single Notification), either to the Register of Enterprises or REA, accordingly. The Single Notification includes all information on the business to be started, as well as all relevant information for tax, welfare (social security) and insurance purposes, to be transmitted by the Register of Enterprises or REA to:

- The Revenue Agency, for Tax ID number and VAT number application
- INAIL (Workers' Compensation Authority), for insurance purposes
- INPS (National Social Security Institute), for employee or self-employed worker registration.

The Single Notification may be directly sent by the investor as long as he/she possesses:

- A digital signature device (smart card, CNS – National Service Card, CRS – Regional Service Card, CIE – Electronic ID Card, Business Key) that can be purchased at CCIAA (or other accredited institutions at Agenzia per l'Italia Digitale – AID - - that is, the Italian agency promoting the digitization of Public Administration)
- Credentials to use the TELEMACOPAY service, which allows all administrative procedures to be completed at the relevant Chamber of Commerce (credentials are received 48 hours after stipulating the contract downloaded at <http://starweb.infocamere.it/starweb/index.jsp>, which also indicates contract application and delivery procedures)
- Software applications to fill out and transmit files, available for free download at www.registroimprese.it on the "COMUNICAZIONE UNICA" page
- PEC address, meaning a Certified E-Mail address. PEC is issued by the Providers registered in the Public List held by AID available on:

www.digitpa.gov.it/pec_elenco_gestori

Should the investor not intend to directly send the Single Notification, he/she can entrust a qualified professional (Notary Public, certified accountant) to digitally sign and transmit the "Single Notification for Business Establishment" on line. For such purpose, the investor shall grant non authenticated proxy (*procura*), as per the "procura" form enclosed with the Ministry for Economic Development (*MiSE*) Bulletin n. 3616/C dated 15 February 2008.

As by law, specific deeds may only be filed with the competent Register of Enterprises by a Notary Public. Therefore, whereby the investor does not grant proxy to a Notary Public for the whole Single Notification transmission, such Notification may be managed by several signers, as the relevant software application allows for a single file to be shared by several persons or

professional offices, also via e-mail, thus simplifying compiling and signing functions performed in different moments.

Once sent to the competent Registry of Enterprises or REA by the investor, the Single Notification is subject to a series of binding checks. In the event of negative outcome, the Single Notification shall be considered inadmissible and the system will immediately notify the user at his/her PEC address.

Alternatively, should all checks be successfully passed, the Single Notification will immediately be recorded and the relevant receipt will be issued, thus authorising immediate business establishment¹. For such purpose, the receipt will be sent to the company's PEC and, whereby the applicant is a representative, to the PEC address from which the Single Notification was sent.

¹ Unless the regulation applicable to the specific type of business to be established requires additional licenses or authorisations

Starting a Business in Italy by...

...Establishing an Italian Company

Italy's corporate law primarily differentiates between:

Partnership

- Partnerships, generally characterised by:
 - Unlimited joint and several liability of partners for company obligations
 - Each partner acts as a director of the company with managing powers
 - Non-transferability, either *inter vivos* or *mortis causa*, of the partner status except whereby authorised by all other partners; and

Corporations

- Corporations, generally characterised by:
 - Legal personality, autonomous from company owners' personality
 - Limited liability for company owners, i.e. each owner's liability is limited to the cash or assets he/she has contributed to the company
 - Separation of ownership and managing powers; hence company owners are not necessarily also company directors, and directors are not necessarily company owners
 - Ownership as freely transferable, either *inter vivos* or *mortis causa*.

Limited liability company

The most widespread types of companies in Italy are: Società per Azioni – S.p.A. (companies with liability limited by shares) and Società a responsabilità limitata – S.r.l. (companies with liability limited by quotas).

Both types of companies are to be established via a Memorandum of Association (or Deed of Incorporation) – either a unilateral instrument (whereby there is one founder only) or a contract (in the case of multiple founders). The document is complemented with the Articles of Association (or By-Laws) of the company, i.e. the set of rules governing the company's operations through its existence. Whereby company's owners should decide to change one or more of such rules over the years, the Articles of Association shall be consistently amended, whilst the Memorandum of Association shall remain unchanged over time. Accordingly, consideration shall always be ensured to the Articles of Association currently in force.

Società per Azioni (S.p.A.)

A *Società per Azioni* is the primary form of corporation, i.e. it best meets the needs of enterprises requiring significant capital.

Share Capital and Shares

S.p.A. share capital may not be lower than € 120,000.00, and is divided into “shares”, which can be even dematerialized securities.

The share capital amount is determined at the moment the S.p.A. is incorporated and shall be subscribed by those establishing the company. In the event of a single founder, one subscription only will therefore exist; in the event of multiple founders, all shall subscribe (varying) portions of share capital until the whole capital has been subscribed.

Via capital subscription, each shareholder undertakes to pay the portion of capital subscribed upon execution of the Memorandum of Association. Payment can take place either by money contribution to the S.p.A. (to its cashier or onto a current account in the company’s name) or, whereby expressly provided in the Memorandum of Association, via in-kind contribution or contribution of receivables, whose value shall be equal to the amount of capital subscribed.

In the case of multiple founding shareholders, those paying the capital subscription in cash are not required to pay the entire amount of their share(s) up front. They are entitled to deposit at least 25% initially and agree to pay the remaining 75% at a subsequent date consistently with the managing body’s request.

Conversely, whereby paid in kind or via transfer of receivables, the share capital is to be paid in its entirety.

In the event of a single founder, he/she shall pay the entire share capital subscription up front, regardless of whether payment is in cash or in kind (i.e. goods or receivables).

Any share premium the founding shareholders might wish to pay for the shares shall be paid in its entirety upon S.p.A. establishment.

Once the Memorandum of Association has been filed with the competent Register of Enterprises and the S.p.A. company therefore has been incorporated, the company may issue shares representing its own share capital.

Corporate Bodies

Shareholders' Meeting

The Shareholders' Meeting is the S.p.A. sovereign corporate body, i.e. the forum within which its shareholders form their will as to the company, then implemented by the managing body. The shareholders pass resolutions collectively. Resolutions legitimately passed during the meeting are binding for all shareholders, including those absent and those who voted against the resolution passed; nevertheless, in some cases it is possible for such parties to withdraw from the company, following procedures established by law.

Managing Body

The managing body is responsible for company management. In performing ordinary and extraordinary management tasks, it is not bound to seek approval from shareholders for its actions, except for corporate administration acts expressly subject to shareholders' approval as by law.

In any event, the managing body composition depends on the corporate governance model adopted by the company, even if under the so-called "ordinary" model (which is the more common one) the company management is entrusted to a managing body, either composed of multiple directors (i.e. Board of Directors) or a single director (i.e. Sole Director). The Board of Directors may delegate some of its administrative powers to an executive committee or to a Managing Director. The Managing Body may be also a corporate body, unless further legal provisions setting forth restriction or requirements related to certain type of companies.

Control Body

The control body is responsible for overseeing company management and/or auditing its accounts, although the latter may also be entrusted to an independent auditing firm.

Within the so-called "ordinary" model of corporate governance management control is entrusted to a Board of Auditors composed of either 3 or 5 statutory auditors and 2 alternate statutory auditors, while accounts are audited by an external auditor or auditing firm enrolled in the Register of Auditors.

Società a responsabilità limitata (S.r.l.)

A Società a responsabilità limitata (S.r.l.) – i.e. company the liability of which is limited by quotas – has a much more streamlined corporate structure than an S.p.A., particularly due to the broader freedom that Italian law grants to the founding quotaholder(s) in establishing its functioning, organisation and other features and adapting them to their specific needs. Indeed, the Memorandum and Articles of Association may derogate from much of the legislation governing an S.r.l.

Capital and Quotas

S.r.l. capital may not be lower than € 10,000.00 and is divided into “quotas”. The amount of capital is determined at the time the S.r.l. is incorporated and (likewise S.p.A.s) shall be subscribed in its entirety by founding quotaholder(s). Quotas are dematerialized.

Like S.p.A.s, in the case of multiple founders, those paying the subscription of capital in cash are not required to pay the entire amount of their quota; they may deposit 25% initially and agree to pay the remaining 75% at a subsequent date upon the managing body’s request. Conversely, sole quotaholder is required to pay its capital contribution in its entirety, likewise multiple quotaholders intending to make in-kind contributions or contributions of receivables.

Any premium on quotas shall always be fully paid up front.

Unlike S.p.A.s, quotaholders may also contribute the value of services to be provided to an S.r.l. by one or more of them. The subscribed capital shall be paid in its entirety by those quotaholders electing to contribute the value of their services; such contribution shall take the guise of a formal undertaking by the quotaholders to provide such services to the S.r.l.

Each S.r.l. quotaholder holds only one quota, which represents a varying portion of subscribed capital. In the case of sole quotaholder, his/her quota represents the whole capital.

Unless otherwise specified in the Memorandum of Association, the value of each quota is calculated proportionately to the value of the quotaholder’s contribution to the company, and his/her rights (e.g. voting rights, and the right to share in profits) are also proportionate. For instance, if a quotaholder holds 60% of an S.r.l. capital, he/she is the owner of a quota equal to 60% of total capital, is entitled to 60% of the company’s earnings, and his/her vote represents 60% of the quorum required for passing quotaholders’ resolutions.

Nevertheless, quotaholders may establish – either in the Memorandum of Association or, subsequently, in the Articles of Association – quotas not proportionate to the value of the contribution to the company, and may also establish special rights for specific quotaholders.

Corporate Bodies and Governance

Quotaholders' Meeting

Quotaholders may take decisions provided for by law or company's Articles of Association in the collegial manner typical of Shareholders' Meetings. However, the Articles of Association may also provide for such resolutions (unless related to specified matters) to be taken through more streamlined procedures, such as written consultation or written consent.

Management Body

Unless otherwise specified in the Articles of Association, S.r.l. management is entrusted to one or more shareholders appointed by the quotaholders themselves.

As such, an S.r.l. may be managed by a Sole Director or by multiple Directors. In the latter case, the company may adopt one of the following administration systems: (i) Board of Directors; (ii) Several Management; (iii) Joint Management.

The Managing Body may be also a corporate body, unless further legal provisions setting forth restriction or requirements related to certain type of companies.

The Articles of Association may establish that multiple administration systems be used, each for a specific set of issues for which the managing body is called upon to decide. In any event, all directors' decisions shall be documented in a dedicated corporate book.

Control Body

In S.r.l.s. management control and accounts auditing are entrusted to a Board of Auditors or a Sole Auditor.

Control Body is not mandatory, except if certain circumstances occur, that is if the company:

- has got a capital equal or more than Euro 120,000.00; or
- must keep a consolidated balance; or
- controls a company obliged to statutory audit; or
- for two years has exceeded the following limits: (i) total assets of the balance sheet: Euro 4,400 million; (ii) revenues from sales and services: Euro 8,800 millions Euros; (iii) workers employed on average during the year: 50 units.

Whenever the company may got an income or a net worth equal or higher than Euro one million, the Control Body must be a Board of Auditors, not a sole Auditor.

The Statutory Audit will be carried out by the Control Body, unless the Quotaholders's Meeting deliberate to entrust it to an Auditor or an Auditor Firm; any revocation must be approved only by the resolution of quotaholders, according by the law.

Recently, in addition to the ordinary model, other two new types of S.r.l. have been introduced:

- a. Low capital S.r.l. (*Società a responsabilità limitata a capitale ridotto*) – “**S.r.l.c.r.**”; and
- b. Simplified S.r.l. (*Società a responsabilità limitata semplificata*) – “**S.r.l.s.**”.

The main differences among ordinary S.r.l. and a S.r.l.c.r. or a S.r.l.s. are the following:

(i) S.r.l.c.r. can be only incorporated by individuals (a wholly-owned S.r.l.c.r. is allowed); therefore, legal entities (such as companies) are excluded. Quotaholders of a S.r.l.s. can be only individuals (not corporations or other entities) who are less than 35 years old. Conversely, an ordinary S.r.l. can be incorporated by individuals as well as legal entities;

(ii) S.r.l.c.r. or S.r.l.s. capital may not be lower than Euro 1.00 and higher than 9,999.99. Conversely, the capital of an ordinary S.r.l. may not be lower than Euro 10,000.00;

(iii) S.r.l.c.r. or S.r.l.s. capital contributions can be carried out in cash only. Conversely, in the event of ordinary S.r.l., in-kind contributions, contributions of receivables, and contributions of services may be also made. In particular, in cash contributions towards the S.r.l.c.r. or S.r.l.s. have to be paid-in directly to the Managing Body when the company is being incorporated. It implies that the Managing Body must attend the company's incorporation before the Notary Public in order to immediately accept its charge and it has to formally state, before the Notary, that the corporate capital has been paid-in.

The foregoing is different from an ordinary S.r.l., whereby in the latter case, preliminary to the execution of the Memorandum of Association, the founders shall open a temporary account with a bank, and shall deposit there the future company's capital, so that the Notary Public needs only the bank's receipt in order to assess the corporate capital existence and deposit. As a consequence the directors can accept their relevant charge also once the company has been incorporated.

(iv) Directors of S.r.l.s. should be necessary company's quotaholders, while Directors of S.r.l.c.r. should be natural persons, quotaholders or less. Otherwise, Directors of the ordinary S.r.l. may be individual or corporate entity, quotaholders or less.

...Opening an Italian Branch

Foreign company branches are separate – though not legally autonomous – units of the company itself; as a matter of fact, with regard to the company head office, branches enjoy both organisational and decision-making autonomy.

An Italian branch of foreign company enables the company to operate in Italy with a more streamlined, cost-effective structure than if a full subsidiary were established in the Country. Furthermore, a foreign company can utilise a branch to conduct the same business in Italy as abroad – impossible whereby the foreign company were merely to open a representative office, unable to conduct any direct production-related activities.

As far as internal organisation is concerned, we need differentiate between a branch proper and a secondary (registered) office.

A foreign company's secondary office is usually managed and represented by a permanent company representative having general power of attorney (known as an "istitutore", as invested with a "procura institoria"), who conducts business for the secondary office on behalf of the company and handles its external relations in the Country.

Conversely, a branch proper – at least in principle – is managed and legally represented by the managing body and legal representative of the foreign company, although, in practice, companies frequently appoint a local manager (istitutore) to run the branch.

For tax purposes, both secondary offices and branches are considered as permanent establishments and are therefore subject to taxation. They shall thus keep their own books, submit VAT and income tax returns to tax authorities (Revenue Agency) each year, and file the annual report of the foreign company with the relevant Chamber of Commerce.

...Opening a Representative Office

Whereby a foreign company wishes to get a feel for the Italian market before locating a business or aims to promote its business, a representative office may be opened in Italy.

Current Italian legislation does not provide an official definition of “representative office”. It is therefore standard practice to refer to the OECD Model Convention to avoid double taxation and prevent tax evasion (affecting Article 162 of the Italian so-called Revenue Tax Consolidated Act, Presidential Decree no. 917/1986).

And it is always standard interpretative practice to distinguish between a “mere” representative office and a representative office that does not merely perform representation functions.

What is a “mere” representative office?

It is the fixed place of business of a foreign company in Italy engaged only and exclusively in marketing and promotional activities, or scientific or market research, or other information gathering activities. In other words, a “mere” representative office merely plays an auxiliary or preparatory role for the foreign company to enter the Italian market, and may not conduct production-related or commercial activities.

As such, for tax purposes, a “mere” representative office is not considered a “permanent establishment” of the foreign company and is therefore not subject to taxation. Accordingly, such an office is not required to keep books, publish financial statements or file income tax or VAT returns. It is, however, required to maintain ordinary accounts in order to document expenses (e.g. personnel costs, office equipment, etc.) to be covered by the foreign company’s head office.

The establishment of a “mere” representative office shall be simply reported to the relevant REA based on the location where the concerned office is to be started. The filing shall be carried out by the legal representative of the foreign company, endowed with an Italian Fiscal Code (or by an attorney-in-fact with special power of attorney and Italian Fiscal Code), through Single Notification. Upon receipt by REA, the Revenue Agency will provide the “mere” representative office with ad-hoc Fiscal Code.

What distinguishes a “representative office that does not merely perform representation functions”?

First, while such an office may not engage in production-related or commercial activities, it, unlike a mere representative office, may provide third parties with non-commercial or preparatory services to the company’s business (i.e. display, purchasing and storing goods,

gathering information, advertising, research, and other ancillary or preparatory activities). Of course, governance of the relationship between this kind of representative office and third parties shall be agreed between the third party and the foreign company establishing the office.

Consequently, it is standard interpretative practice to consider such a non-mere representative office as a permanent establishment and thus subject to taxation. As such, in addition to being registered with the competent REA and possessing a Fiscal Code, the office shall also obtain a VAT number from the competent Revenue Agency office. The filing shall be carried out by the legal representative of the foreign company endowed with an Italian Fiscal Code (or by an attorney-in-fact with special power of attorney and Italian Fiscal Code) through Single Notification. Upon receipt by REA, the Revenue Agency will provide the “non-mere” representative office with ad-hoc Fiscal Code.

Unlike a “mere” representative office, it shall also keep separate books, file VAT and income tax returns each year and file the foreign company annual report with the relevant Chamber of Commerce.

Notary Public in Italy

In Italy, a Notary Public² is a public official. Hence the documents prepared by an Italian notary are public instruments, i.e. documents backed by public faith and credit and, as such, having special legal validity. A document certified by an Italian Notary Public is considered proof (i.e. it shall be considered true, also by courts) unless found to be false.

Thus, a Notary Public certifies that the document is consistent with the intention of the parties and complies with mandatory laws (i.e. provisions of law that may not be superseded by parties' will). Notaries Public also guarantee the veracity and legality of documents drawn up before them, providing personal assurance to clients as to contract legal soundness or other instrument being executed.

In Italy, Notaries Public are self-employed professionals, providing impartial service for which they are legally liable. They have extensive training in legal and fiscal matters and may practise their profession only after passing a national selective exam. It is therefore no coincidence that, as discussed in greater detail in previous sections, in the area of corporate law (as well as property and inheritance law), the Italian legal system requires notarisation for documents for which it is essential to ensure the highest degree of legality, as well as certify the identity of parties involved and content conformity with parties' intentions. Furthermore, as notarisation requirements are established by law, the notary service rates are also set by law.

Notaries Public in Italy fall within the category of civil law notaries – rather than common law notaries typical of the Anglo-American tradition and merely responsible for authenticating the signatures of those appearing before them. Therefore, as an Italian Notary is required by law to protect the interests of all parties involved in executing the instrument concerned, such parties do not need additional legal counsel – unlike in common-law countries – in order to verify document legal validity. That ultimately results in considerable savings on professional fees and a significantly reduced risk of subsequent disputes over the document validity.

² For a detailed analysis of the Notary Public profession in Italy, see the website "Consiglio Nazionale del Notariato"- www.notariato.it.