italy

ANTONELLI COCUZZA & ASSOCIATI

Studio Legale

Antonelli Cocuzza & Associati

Contact:	Roberto Tirone
Address:	Via San Giovanni Sul Muro n. 18 20121 Milano, Italy
Tel:	+39-02-866096
Fax:	+39-02-862650
Email:	studio@antonellicocuzza.it
Web:	www.antonellicocuzza.it

Partners

Piercarlo Antonelli (Senior Partenr) Claudio Cocuzza (Senior Partner) Giulia Comparini (Senior Partner) Alessandra Tarissi (Partner) Roberto Tirone (Junior Partner)

Associates

Alessandro Barzaghi, Maria Grazia Colombo, Raffaele Gammarota, Barbara Glaspie, Enrico Raso, Stefania Sansò, Teresa Basile, Michele Gioffrè, Lorenzo Lentini.

Our History

The law firm Antonelli Cocuzza & Associati was founded in 1993. The initial partnership between Piercarlo Antonelli and Claudio Cocuzza rapidly developed in response to the changing needs of the market for legal services , in particular that of the modern business enterprise striving to find a balance between professionalism, efficiency and interpersonal relationships on the one hand, and specialization and the need to cover a wide range of services on the other.

Having a wealth of experience in large leading legal firms with international frameworks, the two founders wanted to promote the growth of a new "local" name in a market which is flooded with Anglo Saxon style and image. One of our prime objectives was to find the right balance between the everincreasing business need for efficiency and the traditional role of lawyers based on personal trust.

Our Services

We represent both Italian and non-Italian clients, primarily corporate entities engaged in a great variety of business field.

We offer to our clients comprehensive legal advice and services in a variety of general commercial matters, including:

- counsel and general advice on legal matters;
- assistance in drafting, negotiating and updating general commercial agreements (distributorship, agency, franchising, licensing and the like) and standard terms and conditions;
- organization of sales networks;
- general counsel and advice in selecting the best business structure to meet clients' objectives under a legal and tax point of view, drafting the necessary documentation and assisting the implementation of all the required formalities;
- advice and assistance in M&A transactions, banking and securities regulations, corporate restructuring, including recapitalizations, issuance of bonds and debentures, cross-border transactions, particularly joint-ventures.

- assistance and counsel in obtaining regulatory approvals;
- counsel, advice, assistance in labor law matters;
- assistance and advice on commercial, industrial and residential property investment, including property acquisition and disposition, retail, leasing, management, construction, financing and development in real estate transactions;
- representation in Court and in front of Arbitral Tribunals

Our Areas of Specialization

Many of our clients have large internal legal staffs, and they retain us for work requiring resources not maintained in-house and for counsel and advice on matters being handled internally. Others, such as non-Italian companies that have not developed Italian legal staff, ask us to look after much of their general legal work.

We are engaged in a broad range of legal work with emphasis on:

- commercial transactions
- corporate matters
- merger and acquisition
- labor law
- real estate transactions
- competition and antitrust
- national and international litigation before Italian Courts and domestic and foreign Arbitral Tribunals

Our Mission

We have the ambition to foresee our clients' needs, anticipating the issues with a full understanding of all the potential hazards. We believe that truly cost-effective legal services in today's market are best delivered through close relationship with clients.

Therefore, we approach each matter with a clear focus on our clients' objectives and with a technical understanding of the business involved. Our object is to

relate to the legal and business environments in which our clients make their decisions.

Our Organization

Our objective is to assist our clients in achieving their goals by consistently providing legal services which are innovative, timely and efficient. Therefore, we constantly invest in people, resources and technology.

All our attorneys are admitted to practice in Italy and many of them also acquired ample skills and experience in Anglo Saxon countries, through university recognitions (L.L.M., M.C.J.), training courses and professional activities.

We maintain constantly up-to-date office equipment and libraries to permit us to respond quickly and cost-effectively to our clients' needs.

Our offices are equipped with a fully integrated computer system which allow us to get access to the most updated technical instruments for modern communication (email, internet) and professional research (legal and business databases).

italy | **corporate law**

Regulations and Rules

The Italian Civil Code (articles 2247-2548) is the main source of rules of Corporate law.

Types of Companies

Italian Companies are mainly divided into two different types: Partnerships (Società di Persone) with unlimited liability of the Shareholders and Business Corporations (Società di Capitali) with limited liability of the Shareholders.

There are two main types of Partnership:

- Società in Nome Collettivo (General Partnership);
- Società in Accomandita Semplice (a Limited Partnership with sleeping and active partners)

There are, also, two main Business Corporations:

- Società a Responsabilità Limitata (Limited Liability Company);
- Società per Azioni (Joint Stock Company)

The Liability of Shareholders in the Company (in each essential) type.

GENERAL PARTNERSHIP (S.N.C.)

All members of a General Partnership are jointly and severally liable for the obligations of the company. However, creditors of the General Partnership can claim payments from the partners only after having started and terminated (without obtaining the full payment of their credit) all remedies against the General Partnership.

LIMITED PARTNERSHIP (S.A.S.)

With sleeping and active partners: in a Limited Partnership there are partners with unlimited liability (active partners) and partners with limited liability (sleeping partners). Sleeping partners do not manage the Limited Partnership and are liable only to the extent of their contribution. Active partners manage the Limited Partnership and have an unlimited liability.

LIMITED LIABILITY COMPANY (S.R.L.)

In a Limited Liability Company only the company is liable for the company's obligations.

JOINT STOCK COMPANY (S.P.A.)

In a Joint Stock Company only the company is liable for the company's obligations.

Please note that both S.P.A. and S.R.L. stock capital can be held by a sole "quotaholder"/shareholder. In case of insolvency of the company the sole "quotaholder"/shareholder shall be personally liable for all obligations of the company arisen thorough the period during which the quotas/shares belonged to such sole "quotaholder"/shareholder if the capital contribution have not been paid in full or if the required disclosures have not been completed.

Share Capital (Minimum and Minimum Paid in Amount)

We shall limit our comments here to Business Corporations.

S.R.L.

The capital stock in an S.R.L. is identified as "quotas" and cannot be represented by share certificates. The capital stock of a S.R.L. is divided into quotas on the basis of the number of the persons that have subscribed the capital stock of the company: each quotaholder is the owner of one single quota corresponding to the portion of the capital stock subscribed. Therefore each

quota can be of different amounts depending on the amount of the capital stock subscribed by the quotaholder. The quotas are freely transferable to third parties, but the By-Laws can limit or exclude their transferability. The minimum amount of capital required for the incorporation of a S.R.L. is Euro 10.000,00 and Quotaholders must pay to the company at the time of the incorporation the 25% of the capital stock (the residual amount can be paid when it is needed according to the circumstances). In case of sole quotaholder, the capital stock must be paid in full: if it is not, the quotaholder is unlimited liable for the company's obligations.

S.P.A.

The capital stock in an S.P.A. is represented by share certificates: share certificates have the same nominal value and give to the owners the same rights. Share certificates are freely transferable to third parties, but the By-Laws or the law can limit or exclude their transferability. The minimum amount of capital required for the incorporation of a Joint Stock Company is Euro 120.000,00, and Shareholders must pay to the company at the time of the incorporation the 25% of the capital stock (the residual amount can be paid when it is needed according to the circumstances). In case of sole shareholder, the capital stock must be paid in full: if it is not, the shareholder is unlimited liable for the company's obligations.

Classes of Shares (Registered, Bearer, Preferred, Ordinary)

S.R.L.

Unless the By-laws state otherwise, the corporate rights of each quotaholder are proportional to the quota subscribed and quotas are determined in proportion to the amount of capital contribution. Nevertheless, the By-Laws may provide that a single 'quotaholder' be endowed with particular rights regarding the administration of the company or the distribution of profits. An S.R.L. has no share certificates nor classes of quotas.

S.P.A.

Shares are always registered shares (bearer shares are not allowed, except for "azioni di risparmio",shares with limited rights). Normally, the company issues ordinary shares that give to the owner the full right to vote at the Shareholders meeting. The company can also issue special categories of shares that give to owner particular administrative or patrimonial rights according to the by laws. The main categories of special shares are the following:

- preferred shares (they give to the owner special patrimonial rights);
- "azioni di rismarmio" (they give to the owner special patrimonial rights but the owner has not the right of vote);
- with particular duties of the owner (the owner must execute particular personal duties in favor of the company);
- employees shares: certain categories of employees, according to an incentive plan provide by the company, have the right to buy a number of share at a special price;
- dividend bearing shares (they give to the owner special patrimonial rights but the owner has not the right of vote);
- related to the business (they give to the owner particular patrimonial right on the basis of the company trend);
- with limited voting rights;
- redeemable shares (the company has the right to buy the shares back).

Corporate Governance

An Italian Corporate reform that allows S.R.L. and S.P.A. companies to choose among various systems of governance came into effect in 2004. We shall hereby describe only the most common systems of governance.

The S.R.L. and the S.P.A. are normally governed by a Shareholders Meeting and by a Board of Directors. An S.P.A. and an S.R.L. (as to S.R.L., where at least two of the following thresholds are reached if (i) it has a capital stock of at least Euro 120.000,00 or (ii) it has 50 or more employees or if it has – during two consecutive years – assets of more then Euro 3.124.999,99 or operating revenus of more then 6.249.999,99) must, also, appoint a statutory Board of Auditors that supervises the management of the company. The By-laws of an

S.P.A. and of an S.R.L. can provide that the supervision of the accounts of such companies be done either by external auditors or by the statutory Board of Auditors.

Shareholders Meetings

DECISIONS RESERVED TO THE SHAREHOLDERS

The Quotaholders (and the sole quotaholder) and Shareholders (and the sole shareholder) meeting can adopt resolutions regarding matters reserved to their competence by the By-laws (and in an S.R.L. also resolutions on matters that one or more directors or several Quotaholders or Shareholders who represent at least one third of the capital stock put forth for their approval).

The principal powers reserved to the competence of the Quotaholders (or of the sole quotaholder) and of the Shareholders (or of the sole sharholder) are the following:

- approval of the balance sheet and distribution of the profits;
- number of directors and their appointment (and appointment of the President of the Board of Directors) or their revocation;
- appointment and revocation of the auditors and of the president of the Board of Statutory Auditors (and of the President of the Board of Directors) or of the external auditor;
- compensation of the directors;
- authorization to the Board of Directors to start or carry on activities in competition with the company;
- authorization to the Board of Director to delegate its powers in case the By-laws do not provide such authorizations;
- directors' Liability and related actions
- modifications of the By-laws;
- decisions to perform operations which result in substantial modification of the corporate object as determined in the By-Laws or a relevant modification of the right of quotaholders and Shareholders (only applicable to S.R.L.);
- the appointment of the liquidator and the criteria to be followed for the liquidation;

- the revocation of the liquidation;
- the decisions to be taken in case of reduction of the capital stock;
- the early termination of the Company;
- the application for the receivership administration (amministrazione controllata).

The Quotaholders/Shareholders decisions must be registered in the book of the Quotaholders or Shareholders decisions.

The minutes of the resolutions taken by the Quotaholders/Shareholders meeting must be signed by the president of the assembly and by a secretary. In case of a S.R.L. or S.P.A. with a sole quotaholder/shareholder, the decisions of the sole quotaholder/shareholder must be signed by the same. In case of extraordinary meetings the minutes must be drafted by the Notary Public.

The Shareholders meeting and the Quotaholders meeting must be convened at least once a year for the approval of the accounts within 120 days from the end of the fiscal year (this term can be extended to 180 days in case of particular events).

Please note that in an S.R.L., the By-laws can provide that the decisions of the quotaholder are taken either by (i) a resolution of the Quotaholders Meeting or (ii) by means of written resolution or (iii) on the basis of express written consent. In any case the documents underwritten by the Quotaholders (i.e., written resolution or express written consent) must clearly present the subject of the decision and the consensus of the Quotaholders.

Changing the By-Laws

Amendment of the by Laws requires adoption of a resolution by the Shareholders or by the Quotaholders meetings.

The by laws can provides that the Board of Directors has the power to increase the capital stock without the resolution of the Quotaholders/Shareholders meeting. However, the reduction of the capital stock must always be decided by resolution of the Quotaholders/Shareholders meeting.

Decision-Making Bodies

Directors are appointed by the Shareholders or Quotaholders meeting.

An S.R.L. can appoint – depending on the provisions of the By-laws – a sole Director, a Board of Directors, a number of autonomous Directors. The Board of Directors can be formed by two or more Directors.

An S.P.A. can appoint – depending on the provisions of the By laws –a sole Director or a Board of Directors. The Board of Directors can be formed by two or more Directors.

The By-laws may state that the management is entrusted also to individuals that are not quotaholders of the company

The Board of Directors, with appropriate resolution, may delegate its powers (please, note that there are matters that cannot be delegated) to one or more of its members (i.e. managing directors). Some powers can be also be delegated, by means of special proxies, to third parties.

The sole Director or the Board of Directors or the President of the Board of Directors as the case may be is the usual legal representative of the company.

The first Director(s) must be indicated in the articles of the association.

The compensation of the member of the Board of Directors shall be resolved by the Shareholders/Quotaholders meeting.

Directors that do not respect their duties may be sanctioned on the basis of the administrative, criminal and civil legislation.

Directors are liable vis-à-vis the company for the consequences of the breach of their mandate as well as vis-à-vis each shareholder or quotaholder or third parties for damages caused by them to the shareholders or Quotaholders or third parties.

Annual Accounts-Financial and Operating Results: Duties and Liabilities

The balance sheet of the company must be prepared at the end of each fiscal year. by the sole director or by the board of directors (together with the management report and notes to the financial statements). The fiscal year may not exceed 12 months, except for the first one which, however, cannot exceed 18 months. The fiscal year does not necessarily coincide with the calendar year. The balance sheet must be sent to the board of auditors (if appointed) not later than 30 days before the date fixed for the Shareholders or Quotaholders approval. The balance sheet shall remain available at the Company's office (together with the report of the board of auditors, if appointed) for the 15 days prior to the date fixed for the Quotaholders approval.

The balance sheet must by approved by the Quotaholders within 120 days of the end of each fiscal year. However, such date can be postponed upon occurrence of the following events (i) should the Company be required to adopt consolidated accounts or (ii) should particular conditions related to the management and the structure of the Company require a longer term: in these cases the balance sheet can be approved within 180 days from the end of the fiscal year.

Not later than 30 days from the date of approval of the balance sheet, it must be filed with the competent Companies Register together with the list of the actual Quotaholders and of the other persons having rights on the quotas.

Quoted Companies (exceptions to the general rules for privately held companies)

Only Joint Stock Companies can be quoted. Quoted companies are mainly governed by the Civil Code and by the TUF (Testo Unico della Finanza - D.lgs 58/1998). The main difference between non quoted and quoted companies is the supervision by a public entity (Consob) of the quoted companies. Also, quoted companies have a general duty of communication of any relevant operation or situation concerning the company. Specific rules concerning the Shareholders meeting, the Board of Directors, the Board of Auditors must be applied. Generally, a body of legislation concerning quoted companies is relevant and modifies significant aspects of the company's life.

italy | **tax law**

General Notes and Significant Developments

Italian Tax law is very complex and in constant change. A major reform occurred recently and is not entirely completed. It will result in the issuance of a Tax Code.

CORPORATE INCOME TAX

Tax rate and Income Determination

With effect from January 1, 2004, Italy abandoned its previous taxation system introduced in the 1970s and established IRES, the new corporate tax. For corporations, the main characteristics of the reformed tax system are:

- reduction of corporate income tax rate to 33%, applied on the difference between income considered as taxable and costs allowed as a deduction, derived within a certain period of time called the taxable period;
- for IRES purposes, the taxable period coincides with the company's financial year, as provided by the law or by the articles of association. Otherwise, the taxable period coincides with the calendar year;
- exemption of capital gains arising from the disposal of qualified participations in Italian and foreign corporations;
- abolishment of the full imputation system on distribution of corporate profits, i.e., the dividend tax credit, and introduction of a 95% exemption on dividend distributions;
- introduction of a group taxation regime for Italian/foreign corporations belonging to the same group to consolidate their tax base at the level of the Italian parent;
- introduction of the so-called 'thin capitalization rule' whereby a debt/equity ratio aims to avoid thin capitalization of Italian corporations.

Capital gains realized from a participation in resident or non-resident companies do not form part of the taxable base, on condition that:

- the participation be classified as a financial asset in the first financial statement closed during the period of ownership;
- the subsidiary actually carries on a regular business activity;
- the subsidiary is not resident in a territory with a preferential tax regime or it can be demonstrated that no tax benefits were obtained from the shares;
- the participation is held without interruption from the first day of the twelfth month preceding the sale.

Ninety-five percent of the dividends distributed by Italian resident corporations do not form part of the taxable income for the accounting period, with the exception of dividends distributed by companies residing in countries with a preferential tax regime. The companies may also be non-residents and in the winding-up phase.

Deductions

Generally speaking, costs are allowed as a deduction if, and to the extent that, they are entered in the profit and loss account and they form part of the taxable base during the taxable period in which such an imputation is made. Notwithstanding this general principle, the following costs are admitted in deduction:

- costs not included in the profit and loss statement of the accounting period in question, on condition that they have been entered in the profit and loss account of a previous financial year, and that their deduction has been postponed under the provisions included in Legislative decree no. 344 dated 12th December 2003;
- costs which cannot be entered in the profit and loss account, but are deductible according to provisions of law.

As regards the taxation of the remaining 5% of the distributed dividends, the costs related to managing the participation shares are totally deductible.

For the purpose of discouraging enterprises from resorting to borrowed capital in order to obtain tax benefits, a limit is set to the deductibility of interest expense related to credit lines guaranteed or granted by a shareholder and its related parties, who directly or indirectly hold a participation of not less than 25% of the corporate capital, on condition that:

- the ratio between the average level of the financing and the accounting net equity related to the shareholder or its related parties, plus the capital contribution, be greater than four to one (for the first year of application this ratio must not be greater than five to one);
- the company demonstrates that its debt is due to its own credit capability.

This provision does not apply to enterprises whose turnover does not exceed the thresholds provided for the application of sector studies. A tax loss arises when during a certain taxable period deductible negative items exceed in value taxable positive items of income. One may carry forward tax losses for five taxable periods but may not carry tax losses back. One may carry forward tax losses generated in the first three years of activity without any limit.

Corporate Residence

Corporations are subject to IRES on their worldwide income, so-called 'unlimited taxation'. Non-resident entities are subject to IRES only on income considered sourced in Italy ("limited taxation"). Resident corporations include joint stock companies (società per azioni), limited liability companies (società a responsabilità limitata), and partnerships limited by shares (società in accomandita per azioni). Resident corporations also include companies formed under foreign jurisdictions which, for most of the taxable period, have their statutory office, place of effective management, or main object of their business in Italy.

Italy considers income derived by non-Italian resident corporations through an Italian permanent establishment to be sourced in Italy and, as such, subject to corporate income tax (IRES). Apart from some specific exceptions, the definition of permanent establishment provided by the Consolidated Tax Code (CTC)

mirrors substantially that provided by the OECD Model Convention. Calculating the aggregate income of non-resident corporations with a permanent establishment in Italy follows the same rules applicable to Italian resident corporations. It also occurs on the basis of appropriate profit and loss accounts relating to the management of the permanent establishment. For the permanent establishments of foreign corporations, however, the CTC provides for a limited 'force of attraction'. Other items of income sourced in Italy are, regardless, attributed and included in the aggregate income of the Italian permanent establishment, for:

- gains and losses on assets destined for, or in any event related to, the business activity engaged within the territory of Italy;
- capital gains on disposals of participations in Italian resident corporations and partnerships;
- profits distributed by Italian resident corporations.

The limited force of attraction does not apply if the foreign corporations are resident in countries which concluded a tax treaty with Italy. Therefore, income attributable to the permanent establishment is limited to income actually derived through the permanent establishment.

Branch Income

Italy does not tax the repatriation of profits generated through an Italian permanent establishment.

Group

Italy allows companies belonging to the same group to benefit from the consolidation of taxable income. Basically, each company determines its taxable base separately, but before calculating the tax at the 33% rate, the taxable income of each company is aggregated within only one of the companies, which then files a consolidated tax return and makes a single tax payment for all the companies of the group. In this way, profits and losses of the individual companies are added together and the tax credits of loss-making companies immediately offset the debts of the money-making ones. The consolidation system is optional and its rules are different for national and international consolidation.

Tax Incentives

For tangible fixed assets the ordinary depreciation rate is increasable up to twice during the first year of utilization and the subsequent two years. For second-hand tangible assets such benefit is claimable only during the first year of utilization. For newlisted corporations the IRES tax rate is reduced to 20% if the admission to negotiation requires a public subscription of new shares for an amount which increases the company's net worth by at least 15% of the net worth resulting from the last statutory financial statements.

Other Taxes

The regional tax on business activities (IRAP) is a local tax. It is applicable during each taxable period on the value of production generated. Non-Italian resident corporations are subject to IRAP only on the value of the production generated through Italian permanent establishments.

The Italian value-added tax (VAT) system conforms fully to European Union VAT rules. In principle, the system ensures that VAT is borne by the ultimate consumer only and that, at the upper level, input VAT is deducted by the suppliers of goods and of services. VAT is charged on any supply or service deemed to be made or rendered within the Italian territory. The ordinary VAT rate is set at 20%.

Transfer tax (Imposta di registro) is due on specific contracts if formed in Italy, and contracts including those formed abroad, regarding the transfers or leases of business concerns or immovable properties situated within the Italian territory. The taxable base and rates depend on the nature of the contracts and on the status of the parties. When transferring immovable properties, cadastral and mortgage taxes also apply. These are due for formal transcription in the public registers. The tax base matches that of the transfer tax, with tax rates set respectively at 1% and 2%. Transfer tax, cadastral and mortgage taxes are imposed as a lump sum of 129.11 € on transfers of immovable properties subject to VAT. Alternatively, transfer tax rates may vary from 4% up to 15% depending on the type of real property. Any owner, resident or non-resident, of real properties located within Italian territory must pay annually the municipal tax on immovable property (ICI). The taxable base equals the sum of the

estimated value for the type and class of immovable property, as determined by the Cadastral Office, i.e. the cadastral income and a given multiplier. The municipality where the immovable property is located sets the tax rate at not less than 0.04%, and no more than 0.07%.

Withholding Taxes

There are three main withholding taxes applicable at source on certain payments: dividend withholding tax, withholding tax on interest, and withholding tax on royalties.

Dividends paid to Italian resident corporations, or to Italian permanent establishments of non-resident corporations, are not subject to withholding tax. Dividends paid to non-resident corporations without, or not through, an Italian permanent establishment, from substantial and non-substantial participations in Italian corporations are subject to a 27% final withholding tax. The withholding tax rate is reduced to 12.5% for dividends from "azioni di risparmio"' (shares with limited rights). Reduced rates are possible under many tax treaties Italy has concluded with the recipients' country of residence.

In principle, interest from bank accounts and deposits, certain bonds, and similar securities are subject to withholding tax at rates of 27% or 12.5%. These taxes, if any, on interest received by Italian residents generally consist of an advanced payment of income tax due by the recipients. As such, gross interest must be included in the recipient's tax base and the withholding tax deducted from the aggregate taxable income. If non-Italian residents receive interest from bank accounts and deposits through an Italian permanent establishment, no withholding tax is due. Interest and other profits from certain bonds issued by the state, by banks and by Italian-listed corporations are subject to a 12.5% substitute tax. If Italian resident corporations receive interest from such bonds no substitute tax is due. If residents in countries listed in the so-called 'White List', i.e., those with adequate exchanges of information with the Italian tax authorities, receive interest from such bonds, not through an Italian permanent establishment, no substitute tax is due.

Italy has initiated legislation to fully implement the provisions of the EU Directive on Interest and Royalties. This abolishes withholding taxes on payments of certain interest between corporations resident in different EU member states. Royalties paid to Italian resident corporations, or to Italian permanent establishments of non-resident corporations, are not subject to withholding tax. In principle, royalty payments to non-Italian residents are subject to a 30% final withholding tax. Under certain conditions, the tax base may receive a 25% flat deduction. The withholding tax rate, if due, can be reduced under any tax treaties Italy has concluded with various foreign countries.

Tax Administration

Taxpayers must report their annual income to the tax authorities. Italian resident corporations must file their tax returns in most cases within 10 months of the end of the relevant financial year.

For each taxable period, the payment of IRES and IRAP is generally based on two advance payments and on one balance payment:

- the first advance payment is due when the balance for the previous year is paid;
- a second advance payment is due in the eleventh month of the relevant taxable period;
- the remaining balance payment is due within 20 days from the beginning of the sixth month following the end of the relevant taxable period.

INDIVIDUAL TAXES

Territoriality and residence

Personal Income Tax (IRE) is regulated by the Consolidated Tax Code (TUIR). Progressive tax rates apply, with a maximum rate of 39% and minimum tax rate of 23%. For individual taxpayers, the taxable period coincides with the calendar year.

Italian resident individuals are subject to IRE on their worldwide income. Non-Italian resident individuals are subject to IRE only on certain items of income considered of Italian source. Individuals are considered Italian residents if, for the greater part of the calendar year, they are registered in the Italian civil registry or have their residence or domicile in Italy, as defined by the civil law ('residence' is the place of habitual abode; 'domicile' is the place where an individual has his/her main center of vital interests).

Gross Income

The requirement for applying IRE is the ownership of income falling within one or more of the following categories:

- Income from real estate;
- Income from capital, e.g., dividends, interest;
- Income from employment, e.g., salaries, wages;
- Income from independent work, e.g., professional fees;
- Business income;
- Miscellaneous income (capital gains from disposal of shares, securities, etc.)

Each of the above-indicated categories of income has different rules for determining the amount of taxable income. The overall taxable income equals the sum of the net income of each category. Exempt income and income subject to final withholding taxes (interest from bonds or dividends) fall outside the computation of the overall taxable income. Regarding employment income, taxable income includes any compensation, in cash or in kind, including gifts, received during the taxable period in connection with the employment activity. Under certain conditions, some fringe benefits for employees are not considered taxable income. These include stock options, stock grants, canteen food, transportation between home and work, education and training provided by the employer to benefit all employees, recreation, health, and religious purposes and social assistance. Certain types of income, such as indemnities for termination of employment, are taxed separately at reduced rates. Under certain conditions, employment income deriving from an activity performed abroad is taxable, regardless of the actual salary received, on the basis of figurative salaries determined annually by ministerial decree.

Tax Rates and Deductions

As of January 1 2005, tax rates applicable to aggregate income are the following:

Taxable Income	Rates
Up to 26,000	23%
26,000 Euro – 33,500 Euro	33%
Over 33,500 Euro	39%

In addition, a 4% solidarity surcharge tax is due for the portion of income exceeding 100.000 Euro. The above indicated rates are applied to the overall taxable income after subtracting certain types of income taxed separately, and after deducting certain personal expenses and other allowances (e.g. specific medical expenses, checks for dependent spouse, health insurance premiums and family deductible tax burden). Net IRE due is obtained by subtracting additional certain tax deductions from gross IRE (e.g. interest on loans for dwelling house, specific medical expenses).

Other Taxes

Statutory Social Security Contributions are treated as a class of compulsory insurance managed mainly by public bodies and concerning sickness, maternity, pensions, retirement, unemployment and accidents at work. Both the employer and the employee pay social security contributions in the form of a tax applied on the gross amount of salaries and wages. Rates vary according to the type of business and the categories of employee.

Regional tax on business activities, (IRAP), is a local tax applied on the value of the production generated by persons carrying out a business activity in a given Italian region (the same tax involves also corporations).

Inheritance and gift tax were abolished in 2001. Subsequently, only gifts made to persons not having a certain degree of relationship with the donor are subject to other indirect taxes i.e. transfer tax, cadastral, and mortgage taxes.

italy | **foreign investment**

Generally, Italy does not have specific laws that provide limitations for foreign investment in Italy.

Investments or new businesses can be forbidden only for reasons of public order, public health or other similar general principles.

Registration with Governments, Authorities and Permits

EU CITIZENS AND EU COMPANIES

According to the EU regulations, EU citizens and EU companies have the same rights of the Italian citizens or companies.

NON EU COMPANIES

Generally, non EU companies can (i) become partners of Italian companies, (ii) incorporate Italian companies and/or (iii) permanently operate in the Italian territory. In facts, even though the law states that non EU companies can incorporate Italian companies, participate in Italian companies or permanently operate in the Italian territory only if they prove that an Italian company can do the same in their country ("principle of reciprocity"), most of the countries allow Italian companies to incorporate local companies, participate in local companies or permanently operate in the country, with the consequence that – as the principle of reciprocity is respected – foreign companies are normally allowed to incorporate Italian companies and/or participate in Italian companies and/or permanently operate in Italy.

NON EU CITIZENS

Generally, non EU citizens can (i) become partners of Italian companies, (ii) incorporate Italian companies.

In fact, even though the law states that non EU citizens can become partners of Italian companies only if they prove that an Italian citizen can do the same in the country of the foreign citizen ("principle of reciprocity"), most of the countries allow Italian citizens to become partners of local companies, with the consequence that – as the principle of reciprocity is respected – foreign citizens are normally allowed to become partners of Italian companies.

In any event, a non EU citizens belonging to a country that do not respect the principle of reciprocity, can become partner of an Italian company after having obtained a residence permit.

Non EU citizens, in order to incorporate an Italian company or in order to be appointed as member of a company's Board, must (i) previously obtain a residence permit (exceptions are provided by many international conventions) and (ii) prove that they (a) dispose of satisfactory economical resources, (b) meet the requirements of Italian law to start the specific business and (c) have a certificate of his/its country that states that there are not obstacles to issuance to him/it (by Italian authorities) of the eventual public authorizations related to starting the business.

Transfer of Dividends, Interest and Royalties Abroad

Italy does not restrict the transfer of dividends, interest and royalties abroad. According to Italian fiscal laws, foreign citizens with fiscal residence in Italy or companies incorporated in Italy or foreign companies without fiscal residence in Italy but with a permanent establishment in Italy, must pay taxes in Italy, according to the legislation applicable to the Italian citizens or companies.

This means that all income of the foreign citizens or companies, wherever generated, will be taxed according to Italian laws. International tax treaties can provide exceptions to this principle or provide tax credits or refunds.

Dividends, interest and royalties paid to foreign citizens or foreign companies without fiscal residence in Italy are taxed by Italian authorities through a withholding tax.

Repatriation Procedures and Restrictions

Capital, dividends, interest and royalties are freely transferable to and from Italy, and foreign citizens are not subject to any restrictions on their repatriation. Please note that transfers in excess of EUR10,329.14 must be declared to the Italian Foreign Exchange Office to prevent money laundering.

Foreign Personnel (Permits)

NON EU CITIZENS

The Italian employer who wishes to hire a non UE citizen must apply for a foreigner work permit to a branch of Ministry of Labor and Social Security ("Sportello Unico per l'Immigrazione) providing the following documents:

- documents that state where the foreign employee will reside;
- a copy of the work contract.

Once the work permit has been obtained, the employer must apply for a further authorization ("nulla osta") to be issued by the Police ("Questura").

Once this latter authorization has also been obtained, the non EU citizen, with the work permit and the authorization of the Police, can apply for an entrance visa to the Italian Embassy or Consulate of his home country.

Once the entrance visa is obtained, the non EU citizen can legally enter Italy and, within 8 days, he must apply for a residence permit (which will be valid for two years).

Once he obtains the residence permit, the non EU citizen must apply for an authorization from the Police Department of the town where he resides ("Questura"), providing a valid passport.

EU CITIZENS

Only a residence permit is required.

italy | **labor law**

Italian law and case law is very protective of the employees. Labor contracts can be oral or written and their configuration is normally a matter of facts. Also, the elements and the characteristics of a labor contract are often determined by factual elements. The behavior of the parties has, therefore, much relevance in understanding the kind of contract in which the parties entered into.

Employment Contracts

CLASSES

The most frequently types of labor contract applied in Italy are the following:

- full time/part time without fixed term
- full time/part time fixed-term

COST OF DISMISSAL AND WRONGFUL DISMISSAL

As general rule, an employee can be dismissed only for just cause or for justified reason. Two main laws govern unfair dismissals: the first applies to unfair dismissals of employees working in companies with more than 15 employees and the second applies if the employer employs less than 16 employees.

Employers with less than 16 employees: in cases of unfair dismissal, the employee has the right to obtain – in terms of damages - an amount between 2.5 and 6 months salary (such amount can be higher as consequence of the seniority of the dismissed employee).

Employers with more than 15 employees: in cases of unfair dismissal, the employee has the right to obtain (i) the reinstatement in the job and (ii) the payment of an amount – in terms of damages – equal to the unpaid salary from the date of the dismissal until the date of the reinstatement. Such amount cannot be less than 5 months salary.

The dismissed employee, however, can choose, instead of being reinstated in office, to terminate the labor contract obtaining an amount equal to 15 months salary (to which it must be added the amount indicated at the above letter (ii)

Executive employees (Dirigenti): In case of unfair dismissal of executives they have the right to obtain an amount proportional to the salary, as computed according to the Collective agreement applicable to the dismissed executive employee (most of the Collective agreements provide a range between an amount equal to the salary due to the dismissed employee during the notice period increased of two months salary and 22 months salary. If the executive employee has particular seniority and/or is over 46 years old, additional monthly salaries could be due).

Directors: directors are not employees and in the event of revocation of their mandate the damage to be paid to them in case of unjustified revocation depends on the ordinary civil law rules.

Employees' Representative and Union Representation

Trade Unions represent the employees in various matters. One of the principal activities of the Trade Union is to reach agreements with the Employers Associations in order to periodically renew the Collective Agreements, mainly with reference to the level of salaries, una tantum, benefits and – more generally, to obtain further rights in favor of the employee.

Trade Unions may have representation inside companies so as to better supervise the correct implementation of the employer's duties and to assist the local employees and ensure the protection of their rights provided by the law and by the Collective Agreements.

Employees of each company have the right to appoint their Trade Union representatives. Such representatives cannot be transferred to other offices of the company and they have the right to obtain paid and unpaid leave to allow them to perform their duties as Trade Union representatives and to reach a better coordination between the company's Trade Union and the National Trade

Union. The employer (if the company hires more then 200 people) must provide (i) space (within the company) to the Trade Union where the latter can carry on its activity and (ii) a notice board at the disposal of the Trade Union.

Collective Bargaining Agreements. Other Agreements

The Collective Agreements can be National, Regional or ad hoc for a particular company.

Collective Agreements bind all employees and employers that belong to the Trade Union that entered into the Collective Agreement and employers and employees that formally entered in a company's Collective Agreement.

If both parties (employer and employee), therefore, entered – directly or indirectly - into a Collective Agreement they are bound to apply such Collective Agreement.

However, even though the parties did not enter into a Collective Agreement, the jurisprudence states that the Collective Agreements even if they do not bind the parties are a parameter to evaluate the conformity of the salaries with the principle of the Constitution that states that the retribution must be proportional to the quantity and quality of the employee's work and anyway sufficient to ensure to the employee and his family a dignified life.

Wages and Other Types of Compensation

CLASSES OF WAGES

Employees are normally paid by monthly salaries (the annual salary must be paid in 13/14/15, depending on the applicable Collective Agreement).

Collective Agreements state the minimum salary due to each level of employment (workers, 1st level employees, 2nd level employees etc). The level of the employment depends on the kind of work that the employee performs.

If the employee have a salary in an amount higher than the minimum, the difference is called "superminimo". Sometime the Collective Agreement provides that it is, also, due to the employee a "una tantum".

Employees can also be paid partially with a fixed remuneration and partially through a commission arrangement.

Furthermore, employees can obtain stock options, cash prizes, or fringe benefits (remuneration in kind).

The employer must always pay social contributions by which employees (i) are insured against illness, damages suffered during the working hours and (ii) when they will retire, will obtain a pension.

MINIMUM SALARY IN 2005

The minimum salary depends on the applicable Collective Agreement and it is different for each industrial sector (Commerce, Industry etc) and according to rank (1st, 2nd 3rd etc).

COST OF OVERTIME HOURS

The ordinary working hours are 40 per week. Extraordinary hours can be required to the employees only for temporary and particular needs of the company and only when the employees agree on working them.

Retribution of the extraordinary worked hours is normally higher than for ordinary ones and is calculated by increasing the base hourly salary by a percentage stipulated by the applicable Collective Agreement.

Employment Regulations

The Civil Code and many special laws govern employment matters. The most important rules concern the dismissal procedure and the consequences of a wrongful dismissal are contained in the Law 300/1970 and in the Law

604/1966. An important reform of the labor law was adopted in 2003 with the law n. 276 ("Legge Biagi").

This new law allows the company to enter into the so called "contratti a progetto" (a temporary collaboration linked to the execution of a project), staff leasing, job sharing (the same obligation is carried on by several employees in different time) and other atypical contracts.

Social Security

Cost of contributions is borne by the employer and the employee, although the payments are made to the Public Entities by the employer. The part of contributions borne by the employee is withheld from the employee's salary, then paid over by the employer. .

Employers, when they hire an employee, must communicate to a Public Entity called INPS the hiring of the employee and must pay to INPS the contributions throughout the time that a salary is paid.

The employer is liable for a lack or a delay in the payment of contributions. The omission of a contribution payment could also involve a criminal sanction. The payment of the contribution must be made within the 16th of the month following the payment of the salary. Within the same term the employer must send to INPS a document listing the amounts due.

By March 15 of each year the employer must deliver to the employee a document listing the contributions and the salary paid in the previous year.

Health and Safety

ESSENTIAL DUTIES FOR THE COMPANY

The employer must adopt all necessary measures to prevent any psycophysical damage to employees and employees must respect the employer's prescriptions.

Among other duties, the employer must

- identify and apply fire regulations (also, if needed install fire doors etc) and first aid regulations, appointing employees who will be in charge of emergencies;
- inform the employees of the risks related to the company's activity and their solutions or methods for a safe work;
- arrange an appropriate system of signs in the working place concerning the risks of the area and the protection that the employees must adopt.

MAIN REGULATIONS ON THIS

Many laws govern this matter. The most important laws are listed hereinafter: D.lgs 626/94, L. 300/1970; Article 2807 Italian Civil Code, DPR 547/55, DPR 164/56, DPR 303/56, D.lgs 277/91, DPR 459/96, D.lgs 494/96, DPR 222/2003.

italy | **real estate**

Types of Ownership

Full ownership over real estate granting the exclusive right to make use and dispose of the real estate;

Joint ownership over real estate granting the joined right to make use and dispose of the real estate;

Rights in rem over real estate, such as a life estate or usufruct (granting the beneficiary the right to use the property of a third party for a time without damaging or diminishing it, although property may naturally deteriorate over time), easement (granting the beneficiary the right to use or control the land owned by another person or an area above or below for a specific limited purpose), right of building (which grants the beneficiary the ownership of the construction erected on the land owned by another person with exclusion of any right of the beneficiary on the land);

Personal rights over real estate (e.g. lease agreements)

Land Register

Registration in the Land Registry (Conservatoria dei beni immobiliari) makes available to the public all data concerning the real estate transactions. As a result, the information on the Land Registry is considered to be known to all, making contractual rights so registered enforceable against third parties. Registration takes place at the Land Registry of the province where the immovable property is located and concerns the title and a short summary of the registered deed. Registration in the Land Registry 'finalizes' the transaction as regards third parties: which means that the seller cannot validly transfer the property to any third party after the transfer to the first purchaser has been duly

registered. There is another public record office, the Cadastral Archives, which: (i) lists and identifies all national land and (ii) contains details of all properties located in each municipality.

Transfer Formalities

Property purchase transactions in Italy may be governed simply by a single document covering all aspects of the transaction: the Deed of Conveyance. The signature of the Deed of Conveyance is usually preceded by the signature of a preliminary agreement or a purchase option especially in cases when the purchase is conditioned to a series of circumstances (such as the completion of the building construction by the seller or the issuance of specific building authorizations by the competent authorities). The aim of the preliminary agreement is to make sure that all the conditions come into effect before the signature of Deed of Conveyance. If not, since the preliminary agreement's binding effect is limited to the obligation of the parties to sign the definitive agreement, the property ownership is not considered in any case as transferred to the purchaser by the preliminary agreement, but only by the definitive agreement which takes the form of a public deed entered into before a Notary. Indeed, to be valid any transfers of property and mortgages over property must be made by public deed before the Notary.

Mortgages

The mortgage is the most effective type of security for creditors. It is constituted by means of a registration in the Land Registry. The main rights the mortgage attributes to the creditors are the following:

- expropriation right to be exercised on the immovable property given as a guarantee;
- prior right: the creditor has the right to be satisfied before other creditors in the event of sale of the property given as a guarantee

Other important forms of security

- The "Credito fondiario": it is a regime involving property-specific security where the amount lent is not greater than 80% of the value of the property (including the value of the works to be performed on the same);
- an assignment of rental income in favor of the lender;
- a pledge over the shares;
- a pledge over the designated rental income and other designated deposit accounts;
- a pledge over the property insurance policies;
- a pledge over the VAT receivables.

Restrictions on Acquisition

According to Italian law there are no specific restrictions on foreign individuals or entities that wish to invest in real property in Italy.

Pre-emption Right if Applicable

The State is granted a legal pre-emption right on the transfer of property and in rem rights on certain real estate considered of historical or environmental value.

Special Legal Protections for Parties

PURCHASE AGREEMENT

Generally, both parties can terminate the agreement in case of serious reasons. The most frequent cases of Buyer's termination of the contract are the following:

- the title is void;
- the property is subject to easements and does not comply with zoning, building and other regulations (if unknown at the signature of the contract);
- taxes have not been paid (if unknown at the signature of the contract);
- mortgages and charges registered against the property (if unknown at the signature of the contract).

Specific clauses in order to allow the (anticipated) termination of the contract can be, also, inserted in the contract.

Construction and Use Restrictions

Before building for commercial purposes, it must be ascertained whether the land has been appropriately zoned as part of the general town planning scheme and any implementation plans suitable for the building of medium/large retailing stores and/or commercial centers. (i) If yes, a building permit may be obtained. (ii) If not, it is necessary to ascertain whether is possible to propose to the local Municipality, once the property has been purchased, a sub-division plan (piano di lottizzazione) to be approved by the local municipality and enter into a special agreement with such public authority whereby the owner of the land undertakes to build the buildings for commercial use in compliance with the sub-division plan within a certain time limit and consequently obtain a building concession. Then it must be submitted a request from the local government the relevant authorization required to carry out the retail trading activities in the proposed building. Upon obtaining of the building permit and the authorization to trade, it is possible to begin construction.

Finally, it must be underlined that urban commitments can be imposed by local authorities.

Leasehold Types

- usufruct;
- use;
- emphyteusis;
- easement;
- commercial and business lease agreements;

Lease Formalities

COMMERCIAL LEASE AGREEMENTS

Notarization is not required for commercial lease agreements not exceeding a nine years period, and these leases are valid even by oral, as opposed to written, agreement. The agreements whose duration exceeds a nine year period must be

in writing and, if notarization is required, must be signed before the Notary Public according to the Law.

BUSINESS LEASE AGREEMENTS

In order to start the commercial activity, after the signature of the business lease agreement, the Tenant must file an application with the competent local municipality asking for the temporary transfer in its name of the authorization owned by the owner of the branch of business. The content of the application follows the rules of applications requested for small size retailing structures. The retailer is entitled to start the activity immediately after the filing of the application. The Municipality is, in any case entitled within, 30 days from the application filing, to issue a statement or order prohibiting the activity upon verification that none of the requisites for exercising a retailing activity are satisfied by the Tenant. In such case the Tenant must cease its activity if started before the aforementioned period of 30 days. Therefore, in any case, it might be wiser for the Tenant not to start any activity before 30 days from the application. At the end of the business lease the owner of the business shall have the authorization retransferred in its name.

Lease Restrictions

COMMERCIAL LEASE

Term: The mandatory minimum term provided by Law 392/1978 is 6 years (9 for the hotels). If the parties agree a shorter term or do not agree any term, the lease is deemed to be for 6 years. Commercial leases cannot exceed 30 years. The lease agreement is automatically renewed for further periods of six years each unless terminated by either party giving to the other party a 12 months prior written notice before expiration of each term (18 months for hotels). However the Law governing such matters (Law 392/1978) grants the Landlord the right to deny the automatic renewal of the agreement after the first 6 years term in the following cases:

- If the Landlord intends to make residential use of the premises for himself, spouse or certain relatives.

- If the Landlord intends to use the premises to run its own business or the business of his spouse or certain relatives.
- If the Landlord needs to demolish and rebuild the premises or carry out a radical restructuring.

In all the aforementioned cases in order to terminate the agreement Landlord shall give 12 months prior written notice (18 for hotels) to the Tenant. To avoid the risk of early termination of the agreement because of the Landlord's refusal to renew the agreement, parties usually provide in the agreement the Landlord waives its right to deny the automatic renewal of the lease after the first 6 years term.

Goodwill indemnity: should the commercial lease agreement be terminated for reasons not due to the tenant, the latter is entitled to receive from the landlord a goodwill indemnity.