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Cajola & Associati has a tradition of excellence as to the quality of the legal services provided to our clients. Established in Milan in 1966 by Avvocato Alberto Cajola, Cajola & Associati is a domestic and international general legal practice.

Our clients are public and privately held industrial, commercial as well as financial businesses, involved in complex corporate and financial transactions and dispute resolution proceedings.

The firm has a wide experience in all legal aspect of life of companies since their incorporation and start up of their businesses including the negotiation and settlement of joint venture agreements, supplies of goods and services, agency, distribution and franchising agreements, as well as equity based and asset based transactions and their related tax aspects.

Our team of professionals have developed a specific expertise in takeovers and mergers, and in the buying and selling of businesses.
The firm practice is also concerned with issues of domestic & cross border contracts, corporate, corporate finance, banking, taxation, corporate restructuring, real estate and construction, intellectual and industrial property, information technology, aviation and EU Law.

As well, the Firm assists its clientele on subject matters involving regulatory compliance and periodic mandatory filings before the main public bodies (UIC, ISVAP, CONSOB and Banca d'Italia etc.).

Cajola & Associati also provides specialized and general legal representation in any kind of civil and commercial disputes and litigations on matters as such as tax law, labor law, social security law, agency, distributorship, as well as intellectual and industrial property rights, advertising, media law, transport & insurance, product liability and arbitration.

In the area of Intellectual property, our team of IP lawyers deals with major cases relating to the enforcement and prosecution of trademark and patent rights, copyrights, industrial design and web domain name rights on behalf of both domestic and foreign IP right-holders.

Specifically, we advise companies with the implementation of preventative strategies aiming at protection of their IP rights against infringement and unfair competition, representing them before governmental authorities and custom administrations and coordinating, if necessary, an activity of intelligence within the national territory and abroad.

Moreover, the Firm advises and represents companies and individuals on legal matters regarding properties and estates situated in Italy or affected by domestic law.

Furthermore, we provide legal counselling and representation on any aspect of the areas of labour, Employment & industrial relations regulating relationship with personnel.

In this area, the firm enjoys a broad experience in collective and individual labour related claims, social security claims, and arbitration proceedings concerning employees and managers.

Our primary commitment has always been the devotion to giving legal assistance and representation of the highest quality to our clients. We accomplish this purpose within the perspective that legal problems are essentially business problems for our clients. Our assistance consists in giving them practical advices and fast responses, anticipating their needs.

When the matter requires specialized expertise in different areas of the law, our lawyers use to work together to ensure the highest standard of skills, knowledge and creativity.

Our policy is to provide our clients with the best possible legal services, and to enable them to solve their problems at hand, at a cost effective price.

Italy

Corporate Law

Cajola & Associati

1.1. Regulations and rules

Since 1 January 2004, Italy has enacted new rules for company formation, start up, organization and administration [1].This reform has brought Italian company law into line with that of other most advanced countries, introducing simplifications and greater flexibility for corporate decision-making. The new rules have replaced those, which had been in place for 60 years. The key element of the reform is self-regulation, which allows companies vast powers to establish specific rules in their By-Laws and Articles of incorporation, without too many strict, pre-defined mandatory requirements. Other examples of flexibility can be found in the many financial tools available as well as in the different corporate governance forms.

The reform amended and supplemented portions of the Italian Civil Code and modified Italy's Unified Text of provisions on financial intermediation, which now include specific provisions for listed companies[2].

Overall the 2004 reform successfully introduced changes to the structure of limited companies which simplify and speed up the procedures for establishing a business, new financial instruments for companies to create special categories of shares and new rules providing greater flexibility and choice in corporate governance.
Corporate responsibility for groups clarifying issues related to liability, transparency and publicity.

1.2. Types of business associations and liability of shareholders

Prospective foreign investors wanting to set up a business in Italy with a more permanent presence other than establishing a mere representative office or a branch may decide to incorporate a company.

By considering doing so, they will need to choose the most suitable organizational structure in accordance with the nature of their businesses.

Foreign investors are free to adopt any of the forms of business entities available to Italian citizens. The type of entity chosen will largely depend on the strategy to be adopted, as well as on management, financial and taxation considerations.

1. Legislative Decree No. 6/2003

2. Civil code, Articles 2257 through 2510 and Act No. 58/1998, known as "TUF". TUF has been significantly amended by means of Act No. 262/2005, which provides rules aimed to safeguard savings.

1.3. Capital Companies and Partnerships

Types of business associations may be classified in two categories created by the law, depending on the circumstance that they are organized on a stock capital basis (*"società di capitali"* or capital companies) or on a personal basis (*"società di persone"* or partnerships).

The difference between the two categories is that only the capital companies are regarded as having a legal entity entirely separate and distinct from the individuals who compose it, with the capacity of continuous existence or succession and having as capacity that of taking holding and conveying property.

A capital company's liability is normally limited to its assets and the stock or quota holders are protected against personal liability in connection with the business of the company.

There is an exception to the above distinction that is represented by a rarely used business association structure, the so called *"società in accomandita per azioni"* or Partnership Limited by Shares that is a form of company organized on a stock capital basis, where two category of shareholders exist: Those who enjoy the shield of corporate privilege of this business association and do not respond on a personal basis for the obligations of the limited share partnership *("soci accomandanti")* and those who are instead entrusted with the management of the company and are as well personally liable for the obligations (*"soci accomandatari"*).

The main types of business associations provided for in the Civil code are the following.

1.4. Capital Companies

Only the Corporation (Società per Azioni) and the Limited Liability Company (Società a Responsabilità Limitata) possess full and separate legal identity. Foreign investors usually choose one of these two structures to minimise potential liability exposure. Società per Azioni and Società a Responsabilità Limitata may be deemed respectively close to the Public and Private Companies in United Kingdom, as well as to the Corporation and Limited Liability Companies in the United States of America.
Capital companies are:

1.5. Limited Liability Company
("Società a Responsabilità Limitata – S.r.l.")

Small or medium-sized enterprises may adopt the Limited liability company form to run their businesses in Italy.

This form of business association - with a minimum capital contribution required of € 10,000[3] - enjoys a great degree of internal flexibility in terms of management and control that makes it attractive to closely held enterprises. This flexibility leaves the stockholders free to develop their organizational structure and to some extent their own management rules and principles.

Stockholders are not personally liable for debts of a Limited liability company, unless the following circumstances concur altogether:

A. Sole Stockholder Company
B. Insolvency of the company
C. Stock contributions have not been fully paid in, rules concerning payment of the stock or rules regarding duty of legal publicity have not been observed.[4]

In the above circumstances, the stockholder is personally liable for debt of the company.

The contribution of a stockholder may be cash, property and services as long as a contribution can be financially evaluated. Participation of a member is a quota that cannot be represented by shares.

3. Civile code, Article 2463.
4. Civile code, Articles 2462 and 2464.

1.6 Corporation
("Società per Azioni – S.p.a.")

In a Corporation, the capital holdings of members are represented by shares. The Corporation has the same major features as the corporate form in most other countries.

A Corporation is governed by the shareholders at the general meeting, by the directors and the board of statutory auditors. Its statutory regulation provides that circulation of corporate capital is a relevant factor in order to classify:

A. Companies without outstanding shares held by public investors (Closely Held Corporations)

B. Companies with outstanding shares held by public investors, namely, companies issuing stock shares that are traded on regulated markets or circulating in the market on a relevant scale, that means circulating among Italian issuers with net capital not less than € 5 million and with a number of shareholders or bondholders greater than 200). Specific rules are provided for these public companies.[5]

There is a minimum capital contribution required of €50,000.[6]

1.7. Partnership Limited by Shares
("Società in Accomandita per Azioni – S.a.p.a.")

Very rarely used[7], this structure has the same features of Limited partnerships and stock companies.

Their share capital consists of stocks and shareholders are divided into two groups: general partners, who manage the company and have unlimited, collective and contingent liability; and limited partners, whose exposure to debt is limited to the shares each underwrote, and who cannot carry out management activities within the company.

In case of plurality of Directors, the appointment of a new director is subject to the approval of the other Directors.[8]

5. Civil code, Article 2325bis and TUF.

6. Civil code, Article 2327.

7. Save for a noteworthy exception, that is "Giovanni Agnelli & C. S.a.p.a.", the holding company of "Fiat Group".

8. Civil code, Article 2457.

1.8. Partnerships

Partnerships are not legal entities distinct from its members, although they may acquire property and assume obligations in their own trade name. They are:

(a) Simple Society
("Società semplice")

Rarely used, the main feature of this business structure would be used for the exclusive purpose of non commercial economic activities, such as for instance the management of small real estate property or agricultural activities.

(b) General Partnership
("Società in Nome Collettivo")

The partners have unlimited liability for the partnership's obligations.[9] A general partnership may not have a corporate partner. An SNC may transact business, acquire, hold property, sued and be sued in its own trade name. It must operate under a business name that includes the name of one or more or the partners and indicates the partnership relationship. No minimum level of capital contribution is required, and contributions may be in the form of cash, property or services. The consent of all partners is required for the transfer of a partnership interest.

Partnership profits and losses are distributed in proportion to each partner's contribution, unless otherwise stated in the partnership agreement. Any stipulation in the partnership agreement limiting the extent of a partners' losses is void.

(c) Limited Partnership
("Società in Accomandita Semplice")

A Limited Partnership must be composed of at least one partner with unlimited liability and at least one partner with liability limited to the extent of the partner's capital contribution.[10] The partner with limited liability may not participate in a partnership management. Several Court decisions have held that a corporation may not be a partner in a partnership management. Trade name of the partnership must include the name of at least one general partner and indicate that is a limited partnership. Unless stated differently in the partnership agreement, the interest of a partner may be transferred only by the votes of partners representing a majority of the partnership's capital. In general, provisions relating to General Partnerships apply to limited partnerships as well.

9. Civil code, Article 2291.

10. Civil code, Article 2313.

1.9. Share capital
(Minimum and Minimum paid in amount)

A. Amount of stated capital in corporations (s.p.a.) and capital contributions - The minimum amount required is € 50,000. Nevertheless companies existing on January 1, 2004 does not have to comply with such new rule until their duration stated in the By-Laws elapses.

As a condition of the incorporation, shareholders must subscribe the entire stated capital. Shareholders shall pay upon subscription at least 25% of the stated capita (if there is a sole shareholder, deposit of the stated capital as a whole is required). The term for restitution to the company of the percentage deposited in the bank for subscription of the shares has been reduced to 90 days. If the shares have not been entirely paid in, it is not possible for the company to increase its stated capital.

B. Amount of stated capital in limited liability companies (s.r.l.) and capital contributions - The minimum amount required is € 10,000.

In case of simplified or reduced capital S.r.l. companies, the minimum amount upon their inception can be between € 1 and 9,999, however each year 20% of the profit achieved must be accounted for in a specific statutory reserve until an amount of € 10,000.

The same rules concerning the entire subscription of the stated capital, the payment of the 25% of the stated capital and the eventual contributions in kind apply. Differently from corporations contribution of a quota-holder may be also intellectual property and labour services as long as the contribution may be economically appraised.

Contributions by members of limited liability companies cannot be represented by shares, nor they can be publicly traded. If the Articles of incorporation do not provide differently, participation of the members is determined in proportion with the contribution. The Articles of incorporation may provide for granting to single members of special rights relating to the management of the company or the distribution of profit.[11]

1.10. Classes of shares

(a) Stock shares in Corporations - Corporations are generally authorized according to their By-Laws to issue different classes of stock, which may differ in their right to dividends, their voting rights and their right to share.

The i of shares with no par value is now allowed in Italy. Shares may be linked to a fraction of the stated capital, as well as it is possible for Limited liability companies. The only requirement is to make express reference about it in the By-Laws.

Nominal shares are transferable upon authenticated signature. Bearer shares are transferred with delivery of the certificate. Power to exercise corporate rights is transferred upon signature. If the share transfer is conditioned the acceptance by either the other shareholders or the Board of Directors, By-Laws shall provide that in the event that such acceptance is denied:

I. The company and/or its shareholders undertake to purchase the share; or

II. The seller has a right to withdraw at expense of the company and/or its shareholders.[12]

In order to be enforceable stock transfer restrictions must be mentioned on the stock certificate.

Issue of redeemable shares is now permitted.[13] Redeemable shares may be relevant in the event that participation in the stock capital is connected to a specific relationship from outside the company.

In case of assignment of shares, the transferor is jointly and severally liable with the transferee for a period of three years from the date of the transfer for payments still due on the shares.

11. Civil code, Article 2468.

12. Civil code, Article 2355bis.

13. Civil code, Article 2437sexies.

1.11. Principal classes of shares

The following are the principal classes of shares:

A. Common Stock – Full voting rights, save for those shares issued for specific corporate business activities

B. Stock having different rights If there is specific provision in the By-Laws it is possible to create categories of stock having different rights even with reference to a predetermined and actual level of losses

C. (Stock and other instruments for to the benefit of employees – The extraordinary general meeting has the power to determine assignments, rules, rights, eventual expiration terms and facility for repurchase

D. Non-voting Stock – They have no voting rights. Such shares may be only issued by companies whose shares are traded on the Stock exchange for an amount of stock capital not greater than 51%.

E. Stock of participation to a determined business – Financial instrument of participation, whose rights must be specifically predetermined.

A corporation may authorize – not more than 51% of stock capital – specific stock without voting rights, with restricted voting rights, with limited or subordinated voting rights.[14]

Stock for the benefit of employees or issued pursuant to services or work carried out by shareholders or third parties may carry the right to vote on specific arguments of particular interest for the rights of the stock itself and a member of the controlling board may represent them.

The mandatory deposit with consequent prohibition of withdrawal of the shares for a corporate meeting has been eliminated.

1.12. Shares representing assets dedicated to specific business

Corporations may dedicate and link a proportion of the stock,(not more than 10% of the stock capital), to the results of a determined area of business (with the exclusion of business activities with a reserved statutory regulation).[15]
To that extent, a corporation may:

A. Set up one or more assets specifically dedicated to the realization of a specific business (a single business or an entire business activity to be carried out along with the main business activity of the company).

B. Establish that financial resources necessary for carrying on the activity have to come from the specific business itself

The purpose of this regulation is to allow for split management and and to enable different activities and businesses to be valued independently.

Possible purposes are:

A. Disposition of assets – Setting up of a separate corporate entity internal to the company, without the need to deal with rules and regulations of the Civil Code applicable to de-merge of companies, therefore without bearing related costs (i.e. investment of corporate equity in financial speculations aimed at risk diversification). Where there is provision in the Bylaws offsetting out the criteria for calculation of income and expenditure for the specific business, the issuance of stock directly linked to results of the specific business is permitted.

B. New contributions and need of new resources for developing a new project – Separate accounting for the specific business activity is mandatory (Contributors may decide on the basis of the substance and the content of the single project or operation)

A specific resolution of the Shareholders Meeting is necessary in order to bind some assets to a specific business. The meeting shall determine:

I. The object of the business

II. Assets involved

III. Financial and economical business plan (in order to determine congruity, criteria of management, expected result, guaranties etc.)

IV. Contributions specifically undertaken and financial instruments issued for the operation

V. Appointment of an auditing company in case the corporation issues equity securities publicly traded and offered to non professional investors

VI. Rules of accounting of the specific business.

The resolution must be filed with the Companies Registry. Actual creditors may file an objection within two months from the filing.

14. Civil code, Article 2351.

15. Civil code, Article 2447bis.

1.13. Debt Securities

Corporations are allowed to issue debt securities offered to the market for subscription. The decision to issue debt securities as a financial instrument, may be led by the:

A. Preference of raising financial resources without granting new subjects the right to vote and without altering corporate control

B. Necessity of financing projects or operations, which only need a temporary financing

C. Circumstance that the purchase of equity stock is not a soundinvestment during a particular period of time.

Issuance of equity security instead may sound convenient for raising permanent resources, acquiring new resources without paying additional financial costs, or financing the stock capital without being subject to statutory limitations provided for the issuance of debt securities.

Unless otherwise provided by either the certificate of incorporation or the bylaws, the Board of Directors may adopt the resolution for issuance of debt securities. The extraordinary general meeting may vote for issuance of convertible bonds. To be enforceable, the resolution of issuance must be entered in the minutes of the meeting and must be filed in accordance with the regulation established for By-Laws amendments.[16]

The threshold for the issue of debt security has now been raised to an amount equal to twice the aggregate of the stock capital, of the legal reserve and of the available reserves as shown on the last approved balance sheet. It would seem possible to make reference to the subscribed stock capital and not to the stock capital paid in, since the law is silent in this respect.

The following situations are not subject to the above limitations:

A. Bonds issued in excess that are subscribed by professional investors subject to prudential control in accordance with specific regulations and that are traded among non professional purchasers (situation where bond subscribers are liable for the solvency of the company).

B. Bonds backed by first mortgage over real estate owned by the company up to 2/3 of their value

C. Authorization by governmental authority.

Rules and regulations concerning convertible bonds has not changed (extraordinary General Meeting + stated capital increase for an amount equal to the shares to issue in conversion). Stated capital must be entirely paid in.

16. Civil code, Articles 2410 and 2436.

1.14. Corporate governance

A. Corporate governance in Limited Liability Companies

In Limited Liability companies, the By-Laws may contain a provision that management is undertaken by a:

I. Sole Director

II. Board of Directors, whose members exercise their actions jointly. In this case statutory rules regulating management of partnerships apply to Limited Liability Companies.[17] Therefore:

- ∴ Unanimous consent of all the Directors is required for company's actions
- ∴ Single Directors cannot carry out any action on their own, save when there is necessity to avoid damage to the company.

III. Board of Directors, whose members may act individually. In this latter case:

- ∴ Each Director may exercise her/his office individually
- ∴ The power to manage the company belongs to any stockholder with unlimited liability.

Certain company's actions (annual financial reports drafting, merger or de-merger plan and capital increase plan drafting) may only be exercised by the Directors altogether, by way of majority quorum or the different quorum that the By-Laws of the company may set forth.[18]

In Limited Liability companies, even if Directors exercise their activity jointly, it cannot be said that the Board is a collective body. In fact there may be a provision in the Articles of Incorporation of Limited liability companies establishing that Directors' resolutions must be adopted by way of written consultation or by way of express written consent (even via fax or e-mail if bearing signature). The statutory provisions of consultancy and of written consent imply that an action is undertaken by a single Director and that resolutions are adopted without the need for a meeting of the Board of Directors.

B. Corporate governance in Corporations

In Corporations, different models of corporate governance may be adopted. By-Laws may regulate more freely the internal organization of the Board competent for management, its functioning, the circulation of information among its members and the members of the Board of Auditors. If By-Laws do not provide otherwise the model of corporate governance and control applied is still represented by the traditional system.

1. Traditional System

The reference model is the traditional system (General Shareholders' Meeting, Board of Directors, Executive Committee, Board of Auditors and external auditing when required by the Law).

Under the new system, the accounting control previously attributed to the Board of Auditors is now attributed to an external Auditor or an Auditing Company.

17. Civil code, Articles 2257 and 2258.

18. Civil code, Article 2473.

A Provision of the Civil Code establishes that the office term for appointed directors is the same office term set of directors appointed by the time of their election.[19] In case of conflict of interest, the executive director shall refrain from undertaking operations and shall empower the Board of Directors for their enforcement. If a resolution would have not been approved without the vote of the director in conflict of interest, such resolution may be challenged within 90 days, and during this period of time operations carried out with bona fide third parties are valid.

Directors and members of the Board of Auditors *"...must act with the same professionalism and diligence required by the nature of the action undertaken"* [20].Such standard does not require Directors to be necessarily experts on accounting, finance and any other sector of management and governance of the enterprise, rather it means that their decisions shall be informed and pondered, based on knowledge and on a calculated risk, and not on irresponsible and negligent improvisation.

2. Dualistic System (German tradition)

It may be established on By-Laws that governance of the company is exercised by the Management Board, which is appointed by the Supervisory Board (with the exception of the first election resulting from the certificate of incorporation). Management Board can assign specific executive powers to one or more of its members.

Rules regulating relationship between Board of Directors and the Executive Committee, and directors in general apply to this corporate model. Management Board cannot remain in office for more than three consecutive fiscal years. It may be however be confirmed and removed for "good cause" by the Supervisory Board.

General rules apply to individual claims against members of the Management Board, as well as to claims raised by the Supervisory Board against them. When the resolution is adopted by 51% of its members, the member of the Management Board against whom the claim has been raised, is automatically removed from office.

The Supervisory Board, which exercises general supervision over activity of the company, is elected by the General Shareholders' Meeting (with the exception of the first election resulting from the certificate of incorporation). Both effective (those holding office) and supplemental (substitutes) members are elected. Supplemental members are those who replace effective members in case one or more of these latters resign or cannot otherwise attend her/his duties.

Its membership has to be no less than three. Their office lasts three fiscal years. At least an effective and a supplemental member have to be auditors members of the Roll of Auditors. It is not possible to be member of the Management and of the Supervisory Board at the same time. The Supervisory Board exercises supervision over:

I. Compliance with legal and accounting rules and regulations

II. Corporate operations, reporting any unlawful act.

Moreover, once a year the Board reports to the Management Board.

Members of the Supervisory Board share joint and several liability with members of the Management Board for acts and omissions of the latter, whenever the activity of supervision of the Board could have avoided damages.

3. Monistic System (British Tradition)

By-Laws may set forth that a Board of Directors have the duty of corporate management, but a Committee appointed internally will be appointed for the purpose of supervising the management.

This system of governance must be explicitly set out in By-Laws. There is a close connection between the Board of Directors and the Committee for supervision of the management, in fact only those who have been previously elected members of the Board of Directors may serve as members of the Committee.

The Board of Directors set the number of members for the Committee (not less than three, if the company solicits investment at large). Half of the members at least must be independent, and further standards and by ethical codes are set by business associations or by legal entities of management of trading markets. It is not allowed to serve at the same time as member of the Committee for supervision of the management and as member of any other Executive Committee.

Further, it is not permitted for a member of a Committee for supervision of the management to have specific assignments, powers or offices regarding the management of the company. At least one director, among members of the Committee for supervision of the management must be an auditor member of the Roll of Auditors. The same powers and duties of the Board of Auditors are attributed to the Committee.

19. Civil code, Article 2386.
20. Civil code, Article 2704.

1.15. Shareholders Meetings and amendments to the By-Laws

The General Meeting may be called at any place within the municipality where the company has its own registered office, unless the Bylaws provide otherwise.
The Meeting has to take place once a year within the 120th day after closing of the corporation's fiscal year. By-laws may set a longer period of time not exceeding 180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company. In this latter case Directors have to make mention of the deferral in their report.[21]

The following powers previously reserved to the extraordinary general Meeting may be assigned to the Board of Directors, to the Board of Auditors or to the Management Board, if any:

A. Issue of non convertible bonds or of financial instruments without voting rights
B. Merger with a wholly owned company
C. Creation or suppression of secondary offices
D. Attribution of powers of attorney
E. Capital reduction due to a shareholder's withdrawal
F. By-Laws amendments in compliance with statutory regulations
G. Transfer of the registered office within the national territory.

Companies without outstanding shares held by public investors may avoid formalities and requirements established for the call of the meeting (notice on the Official Gazette 15 days before the meeting).

By-Laws may allow calls through means of communication that guarantee the effective knowledge of the call at least 8 days in advance on the date scheduled (Certified letter with receipt, fax are proper means; some doubts about e-mails with automated reading receipt message).

Shareholders are not allowed to call the meeting solely on arguments concerning the competence of Directors.

Upon petition by 10% of the Shareholders, the Tribunal may also call the general meeting, but only if the management did not call it without justification.

Quorum and majorities for the resolution of the Shareholders Meetings of a corporations are different among closely held and publicly traded corporations. They may be summarized as follows.

FIRST CALL

[A] Companies without outstanding shares held by public investors (closely held corporations)

1. Ordinary General Meeting

In order to effectuate corporate business a quorum of 50% of shares entitled to vote must be represented. Unless Bylaws provide otherwise, shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote.

Call formalities need not to be observed if the meeting is attended by:

I. Shares representing the entire capital
II. The majority of Directors
III. The majority of members of the Board of Auditors

Absentees must be given immediate notice about adopted resolutions. Participants may claim they have not been sufficiently informed on the argument.

2. Extraordinary General Meeting

Unless Bylaws provide otherwise a quorum of 50% of shares entitled to vote must be represented and shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote.

[B] Companies with outstanding shares held by public investors (publicly traded corporations):

1. Ordinary General Meeting

Same rules as above

2. Extraordinary General Meeting

A quorum of 50% of the shares (entitled or not to vote) must be represented and shareholders' actions must be approved by 2/3 of the shares represented at the meeting.

21. Civil code, Article 2428.

SECOND CALL

If the above quorum required for the first call of the shareholders' meeting are not met, the meeting has to be recalled on another day, within 30 days.

[A] Companies without outstanding shares held by public investors (closely held corporations)

Only resolutions on arguments to the order of the day of the first meeting may be adopted, with the following quorum:

1. Ordinary General Meeting

No minimum quorum required

2. Extraordinary General Meeting

A quorum of more than 1/3 of the shares must be represented and shareholder actions must be approved by 2/3 of the shares represented at the meeting.

By-Laws may increase quorum required, but not for annual financial reports approval, appointment and revocation of corporate management.[22]

A quorum of at least 1/3 of the shares representing the stated capital is required for passing a resolution on the following arguments:

I. Change of the corporation's purpose
II. Modification of form of business association, anticipated winding up, extension of duration for the company
III. Revocation of the winding up procedure
IV. Transfer of the registered office abroad
V. Issue of preferred stock

[B] Companies with outstanding shares held by public investors (publicly traded corporations)

Same quorum set above for those companies which do not solicit investment at large, with the exception of those Extraordinary General meetings with calls subsequent to the second one, where a quorum of at least 1/5 of the shares must be represented to effectuate corporate business.

22. Civil code, Article 2369.

1.16. Company's decisions and Quotaholders Meetings in Limited Liability Companies

The powers and attributions of stockholders are set forth in Bylaws.[23] Stockholders shall decide on issues brought to their attention by one or more directors or by 1/3 of shareholders, and on the following matters:

A. Balance sheet approval and dividend distribution
B. Election of Directors
C. Election of Board of Auditors and/or external Auditor
D. Amendments to articles of organization
E. Resolutions concerning substantial modification to the corporate purpose or concerning relevant modification to the rights of stockholders.[24]

There are no specific formalities for adoption of a company's decision. However, there must be a writing wherein the will of stockholders, the matter subjected to decision and consent of stockholders are certified.

The written decision must be reported in the Book of Stockholders' Decisions. This rule evidences that decisions over company's operations do not have necessarily to be adopted by a collective body as long as the above requirements are met.

In order to adopt company's resolutions a quorum of 50% of the stock must be represented.[25] Shareholder actions must be approved by the majority of the stock represented at the meeting, save for those actions concerning:

A. Substantial modification to the corporate purpose
B. Relevant modification to the rights of stockholders.

The above actions must be approved by 50% at least of the stock of the company.

It is important to remark that extraordinary meetings are not required anymore for Limited Liability Companies.

23. Civil code, Article 2479.
24. Civil code, Article 2479.
25. Civil code, Article 2479.

The Articles of incorporation of Limited liability companies set forth rules for the call of quota-holder Meetings, with the formalities necessary to ensure information about the arguments subject to discussions (fax and e-mails are proper means of transmission). In absence of specific provisions on the matter, the call must be delivered via registered letter with receipt sent to stockholders at least 8 days before the date set for the meeting. No formalities are required when the entire stock is represented at the meeting and all the Directors and Auditors are either present or informed and no one objects that the discussion over the matter should not take place.[26]

1.17. Decision-making bodies

[A] Qualification and powers of Directors

The management of the company exclusively belongs to the directors, who perform the actions necessary to the achievement of the corporate object. In corporations, the management of the company may be entrusted to non shareholders. It cannot be entrusted to entities other than individuals.[27]

If more than one person is entrusted, they constitute the Board of Directors. The Board of Directors selects the chairman among its members, unless she/he is appointed by the Shareholders Meeting.

If the By-Laws or the Shareholders Meeting allows so, the Board of Directors may delegate its functions to an executive committee composed by one or more of its members. The Board of Directors set out the content, the limits and the modalities for the exercise of delegated powers. Even when delegates, the Board of directors may always give guidelines to the delegated bodies and bring back anytime power delegated.

On the basis of the information received, the Board of Directors assess the adequacy of the corporate organization, management and accounting structure of the company; it reviews the strategic and industrial plans of the company assessing as well the general trend of the management.

Not all of its functions can be delegated, as for instance the drawing up of annual account, the decisions about issuance of debt securities, the power to increase the stock capital etc.[28]

The delegated bodies take care that the organizational, administrative and accounting structures are adequate to the nature and the size of the company and report to the board of Directors and to the Board of Auditors as the By-Laws set forth and at least every six months, on the general trend of the management and on its expected evolution, as well as on most relevant transactions entered into by the company or by its subsidiaries.

The directors are required to act being informed. Each director may request the delegated bodies to report to the Board about the management of the company.

The powers of representation granted to the directors by either the By-Laws or the Shareholders Meeting are of general character.

26. Civil code, Article 2479bis.
27. Civil code, Article 2380bis.
28. Civil code, Articles 2420ter, 2423 and 2443.

[B] Liability of Directors

The directors are liable to:

I. The company, if they have not exercised due care over the general management of the company, they have not done what they could for preventing damages to the company to occur, and they have not fulfilled their duty with the professionalism and diligence required by the nature of the action undertaken. A claim of their responsibility may be promoted by resolution of the General Shareholders' Meeting. With reference to the balance sheet, without previous notice, a claim of responsibility may be carried out during discussion about balance sheet approval by shareholders representing 1/1000 of the stock capital and within the five years subsequent to their removal from office. Outside the General Shareholders' Meeting, even a minority of shareholders may make the claim (1/5 of the stock capital for companies which do not issue capital of risk and 1/20 of the stock capital for the others)

II. [Creditors of the company, whenever the preservation of the stock assets is not guaranteed and the stock assets are not sufficient to satisfy their credits. In case of bankruptcy, the claim for responsibility may be initiated by the bankruptcy administrator, and in case of extraordinary administration, by the extraordinary administrator.

III. The single shareholder or the third may carry out a claim for damages within five years.

[C] Fiduciary duties

As the provisions of the Civil code sets forth, the Directors of a company are required to perform their mandate and to carry out their duties with the diligence of a good pater familias.[29] They must fulfil the duties that the law and the By-Laws establish with the diligence required by the nature of the appointment and by their specific skills. Directors are jointly and severally liable to the company for damages arising from the non observance of such duties, save for functions vested solely in the executive committee or in one or ore executive directors.

They are in any event jointly and severally liable if, being aware of prejudicial acts, the directors did not act as they could to prevent their performance or to either eliminate or reduce their harmful consequences.

Liability for acts or omissions of directors does not extend to that director who, being without fault, has had her/his dissent entered without delay in the minute book of the meetings and resolutions of the Board of Directors and has immediately given notice to the Board of Auditors.

29. Civil code, Articles 1710 and 2392. The standard refers to the diligence thwat a normally diligent director would use under the same circumstances.

[D] Restrictions on Directors

Interdicts, bankrupts and those who have been sentenced to a penalty entailing interdiction even though temporary, from public office or incapacity to exercise managerial functions, cannot be appointed as directors and if appointed they forfeit their office.[30]

Also, according to the provisions of the Civil Code[31], directors cannot act as unlimited liability shareholders in competing ventures, neither can they carry on a concurrent business activity on their own or on behalf of third parties, nor as directors or general managers in competing ventures, unless with explicit authorization by the General Shareholders Meeting.

The directors must inform the other directors and the Board of Auditors of any interest they have on their own behalf or on behalf of third persons in a specific transaction of the company, by specifying its nature, terms, origin and relevance.

In case of interest by a managing director, she/he must abstain from the transaction remitting it to the Board of Directors and giving notice about it at the first appropriate Meeting.
The relating resolution by the Board must adequately justify the reasons and the convenience of the transaction for the company.

[E] Removal of Directors

Removal of a director can be effected by a resolution from a Shareholders Meeting.

In case of corporations, when in the course of the fiscal year a vacancy of one or more directors occurs, the others provide for their replacement by resolution approved by the Board of Auditors provided that the majority is always constituted by directors appointed by the Shareholders Meeting.
If vacancies of the majority of the directors appointed by the Meeting occur, those who remain in office shall call the Shareholders Meeting to provide for filling the vacancies.[32]

In case of Limited liability companies, there are no specific provisions that the civil code sets forth. Consequently, provisions of the By-Laws have to regulate replacement of the directors.

30. Civil code, Article 2382.

31. Civil code, Article 2390.

32. Civil code, Article 2386.

1.18. Annual accounts - Financial and operating results: Duties and Liabilities

The Meeting for approval of the annual balance sheet has to take place once a year within the 120th day after closing of the corporation's fiscal year. By-laws may set a longer period of time not exceeding 180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company. In this latter case Directors have to make mention of the deferral in their report.[33]

[A] Auditors in Corporations: the Board of Auditors

Only one out of the three or five of the effective members (and one of the supplemental members) of the internal Board of Auditors must be an auditor member of the Roll of Auditors; other members may be chosen among members of other professional categories or among professors in juridical or economical sciences.

According to the statutory provision of the Civil Code[34], the Board of Auditors exercises a control of Law and Bylaws regulation compliance and over principles of fair management. In other words its duty is to exercise administrative and legal control, while duty of control over accountancy, which characterized the activity of the Board, has been eliminated.

Members of the Board of Auditors have to attend both the Board of Directors' and the General Shareholders' meetings, as well as meetings of the Executive Committee. They are removed if they do not attend without justification two consecutive meetings during a fiscal year. The supervisory board must meet at least each 90 days and may meet through the use of electronic means (e.g. videoconferences).

When some shareholders report an unlawful action by Directors, the Tribunal cannot intervene if the General Shareholders' Meeting substitutes members of the Board of Directors and of the Board of Auditors as a whole, and elect new members of adequate professionalism for curing eventual illegality.

The following cannot be elected members of the Board of Auditors:[35] those who are in the condition listed on Article 2382 (Insanity etc.), parent and relatives within the 4th degree of company's Directors, Directors of the company, parent and relatives within the 4th degree of either controlling or controlled company's Directors; those who are bound to either the company or to controlling/controlled companies by an employment relationship, a continuative consulting relationship, a remunerated service activity, or by other economical interested relationship that affect their independency.

Among other duties, members of the Board of Auditors have also to certify that a bond issuance does not override legal limitation.[36]

33. Civil code, Article 2428.
34. Civil code, Article 2403.
35. Civil code, Article 2399.
36. Civil code, Article 2412.

[B] Accounting Supervision

Supervision over accounting has to be exercised by an external auditor, who cannot be member of the Board of Auditors. His appointment may be mentioned in the Certificate of incorporation or he may be elected by the General Shareholders' Meeting.
Accounting supervision over companies with outstanding shares held by public investors has to be exercised by an auditing company.

Accounting supervision over companies without outstanding shares held by public investors and required to have consolidated financial statements may be exercised by an auditor.

Accounting supervision over companies without outstanding shares held by public investors and not required to have consolidated financial statements may be exercised by an auditor as well. In this latter situation, however, By-Laws may provide that accounting supervision is exercised by the Board of Auditors, whose members shall be in this case only auditors members of the Roll of Auditors.
The auditor is elected by the General Shareholders' Meeting, takes his office for three years and may be removed only for "good cause". His activity of control consists in:

I. Drafting a specific auditing report
II. Communicating to the Supervisory Board about the existence of any fact deemed to be blamed.

The auditors are required to:

I. Verify quarterly during the fiscal year regularity of accounting and fairness of accounting methods applied
II. Express with specific report an opinion over the annual balance sheet and the consolidated balance sheet
III. Document the activity carried out on a specific book as provided by statutory regulation on mandatory bookkeeping.

The auditing activity is in conflict with the office of member of the Supervisory Board of:

I. The company
II. Controlling/controlled companies

and with other activities listed in the relevant provisions of Civil code.[37]

[C] Auditors in Limited Liability Companies

In a Limited Liability company, an external Auditor and the internal Board of Auditors exercise accounting supervision. Election of the Board of Auditors is mandatory whenever:

I. The stated capital of the company is in the amount equal or superior to the minimum amount (€50,000) of stated capital required for Corporations
II. Thresholds set forth in Civil Code, Article 2435bis, allowing a company to file simplified annual financial reports are exceeded for two consecutive years.[38]

If the above thresholds have not been exceeded for two consecutive fiscal years the company is not compelled to maintain the Board of Auditors.

Rules of the Civil Code regulating election and functioning of the Board of Auditors of Corporations apply to Limited Liability Companies as well.

1.19. Corporate governance issues for Publicly Traded Companies

Pursuant to the general principles indicated by CONSOB (which is the Italian Security Exchange Commission), the managing bodies of publicly traded companies must adopt rules ensuring substantive and procedural transparency and the fairness of the business transactions with related parties and disclose them in the management report. For this task, they may be assisted by independent experts on the basis of the nature, value or characteristics of the business transaction.

The above provisions apply to business transactions directly entered into or through subsidiaries and regulate such transactions in terms of powers, decision, reasonableness and documentation. The supervising body exercises its control over the transaction and has to report to the Shareholders Meeting.

37. Civil code, Articles 2399 and 2409quinques.

38. Civil code, Article 2477.

Tax Law

Cajola & Associati

2.1. Corporate Income Tax (IRES)

Corporate income tax (IRES) is regulated by the Unified Text on direct Taxes (“Testo Unico Imposte Dirette”).[1] Italian resident corporations are subject to IRES on their worldwide income. Non-Italian resident corporations are subject to IRES only on Italian source income.

As of January 1, 2004, the imputation system previously in force has been abolished and replaced with the so called ‘partial exemption’ method, under which corporate profits are subject to income tax at the level of the company and partially exempted at the level of the shareholders. In addition, other significant measures have been introduced, e.g. reductions in corporate income tax, the participation exemption regime and the domestic tax consolidation regime.

2.2. Taxable persons, tax rates and taxable period

Corporate Income Tax (IRES) applies to resident and non-resident corporations. Resident 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 Corporations (“Società per azioni - Spa”), Limited liability companies (“Società a responsabilità limitata – Srl”), and Partnerships limited by shares (”Società in accomandita per azioni- Sapa”).

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.

Resident partnerships not limited by shares, are not subject to IRES. Such partnerships, namely “società in nome collettivo - Snc”, or “società in accomandita semplice - Sas”, are considered transparent entities. For tax purposes, their income is attributed to the partners and subject to tax accordingly.

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.

IRES is levied at a flat rate of 24%.[2]

2.3. Regional tax on business activities (IRAP)

Regional tax on business activities, “Imposta regionale sulle attività produttive – IRAP”, is a local tax applied on the value of the production generated in each taxable period by persons carrying out business activities in a given Italian region. Non-Italian resident corporations are subject to IRAP only on the production generated through Italian permanent establishments. Rates may vary, though they range around 3.9%.

1. Act No. 917/86.

2. Act No. 917/86.

2.4. Indirect taxes Value Added Tax (VAT)

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 22%.[3]

2.5. Transfer tax

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.

A transfer tax of 3% applies ordinarily to purchases of companies' business branches.

3. Act No. 633/72.

2.6. Municipal tax on real estate

Any owner, resident or non-resident, of real properties located within Italian territory must pay annually the municipal tax on immovable property, "Imposta Municipale Unica - IMU)". This tax is levied at two rates 0.4 % on the value main residences and 0.76% on the value of most other properties. Local authorities can slightly change these rates within their district by + or - 0.2%, by issuing local regulations.

The main residence (Abitazione principale) reduced rate of tax (0.40%) is only applicable to actual, habitual abode (Dimora) of the taxpayer and his family, provided this appears on public records (Residenza anagrafica).

For most residential units, IMU tax will be levied on a statutory property value, calculated by multiplying the land registry income (as it was in the official Italian land registry records for the relevant property on 01.01.2012) by 5 and then by 160. Different figures apply to offices, factories and shops.

2.7 Inheritance tax and gift tax

On December 24, 2007 new rules were enacted to regulate inheritance and gift taxes.[4]

The inheritance and gift tax is imposed on the value of the share of each beneficiary. The rates vary depending on the relationship between the deceased and the beneficiary, as well as the non-taxable threshold amount.

Inheritances of spouses and direct descendants or ascendants are subject to inheritance tax at a rate of 4% on the amount exceeding €1,000,000 per beneficiary.

Transfers to brothers or sisters are taxed at 6% on the amount exceeding €100,000 per beneficiary.

Transfers to relatives up to the fourth degree or relatives-in-law up to the third degree are taxed at 6% on the entire amount of their inheritance.

Any other transfer is taxed at 8% on the entire amount.

4. Act No. 244/07.

Italy

Labour Law

Cajola & Associati

4.1. Overview

Employment relationships are regulated by the Constitutional principles, the provisions of the Civil code, those of the so-called "Statute of Workers" *("Statuto dei Lavoratori")*[1] and by other statutory regulations.

Terms and conditions of employment are also periodically established by the so called Collectively Bargained Labour Agreements (CCNL) that have been entered for the different professional categories.

In case of conflict between the provisions of an employment contract and the provisions of law, those of law always prevail.

In addition, the Italian Constitution contains several general principles of labour law. Among these are Article 1 that states that "Italy is a democratic Republic founded on labour", Article 4 that sets forth "the Republic recognises to every citizen the right to work", Article 35 "the Republic protects work in all its forms and applications".

Some more specific constitutional principles of law, largely used by the Courts, are:

A. Article 36 about fair remuneration, maximum working hours, weekly and annual paid vacation

B. Article 37 about protection of women and minors on the job

C. Article 38 about social insurance for old age, illness, invalidity, industrial diseases and accidents

D. Article 39 on Freedom of Association

E. Article 40 on the right to strike.

Among the relevant statutory regulations, the Parliament passed on May 13th, 2014 a new statutory regulation, officially referred to as Act N° 78/2014, which amends some of the statutory regulations currently governing the Italian labour market.

This new Job Act comes as a partial amendment to the Matteo Renzi's Law Decree No. 34 which was enacted on March 20th, 2014.

1. Act No. 300/70.

4.2. The current types of employment relationship

There is no general requirement for an employment contract to be in writing. Statutory law sets forth that contracts of employment are deemed to be for an indefinite period of time, unless the statutory regulations provide otherwise.[2]

The Job Act provides for fixed terms employment contracts.
These contracts are subject to the following rules:

A. The 20% Rule: Any company in Italy will only be able to have 20% of their workforce on fixed terms contracts.

B. Exempt from this regulation will be employers with under 5 staff members and those companies operating in the research field.

If a company is over the 20% limit then:

A. The company will be unable to hire new employees on fixed term contracts. (They will be able to once they are within the legal limits)

B. There will be financial sanctions equivalent 20% of the salary for the 1st fixed time worker breaching the threshold, increasing to 50% of the salary for each additional breach. The sanction applies for each contractual month.

The 20% limit number will be calculated from January 1st of the year the Fixed Term contract employees were taken on.

Regarding renewal of Fixed Term contracts the following "4 x" rule applies: Fixed Term Contracts can only be extended 4 times within any given 24 month period including any renewals or extensions of contracts.

Italian Employers will no longer be required to provide a technical, organizational and productive reasons for hiring staff with fixed term contracts or for renewing or extending them.

With the new Labour Decree public and private companies operating in the scientific research field will be able to renew Fixed Term Employment Contracts on an indefinite basis – even beyond the 36 month period limit set for all other companies.

Women on fixed term contracts will be entitled to the same maternity leave rights as permanent female employees. In addition, women on fixed term contracts – who have taken maternity leave in the midst of their contract – will have their maternity leave counted as 'working months'.

Regarding apprentiship contracts, companies in Italy with more than 50 employees cannot have more than 20% of their workforce employed on apprenticeship contracts. A written training schedule is a requirement for all apprenticeship contracts.

2. Act No. 230/62.

4.3. Collective Bargaining Agreements

Unions can freely negotiate collective agreements at provincial, regional and national levels. Collective agreements and accords must be registered with the National Council of Economy and Labour - CNEL within 30 days after they have been entered by the parties.

The provisions of the collective agreements are binding for the employers of the category of workers falling into the agreement[3] and prevail over the employment agreement that the employer and the employee have entered, save for those contractual provisions more favourable to the employee.

The so-called economic agreements are instead those covering some categories of self-employed (i.e. commercial agents, some doctors working for the National Health Service, etc, also known as *lavoratori parasubordinati)*.

Collective bargaining can regulate all aspects of the employer-employee relationship, except those that the law sets forth.

Collective agreements do not entitle the workers' representatives to any co-determination right, but only to the right to be informed and consulted about the most important decisions of the company.

4.4. Suspension of the employment contract

A provision of the Civil code[4] establishes the suspension of the employment relationship, occurring under the following circumstances:

A. Industrial accident sustained by the worker

B. Her/his illness

C. Maternity of the worker (two months before and three months after childbirth).

Sick employees are entitled to retain their job position and seniority, as well as their salary for a period of up to six months or more, depending on their job category and the related applicable CCNL.

3. Act No. 936/86.

4. Civil code, Article 2110.

4.5. Discharge

A preliminary distinction must be made between fixed-term and indefinite term contracts. As far as fixed-term contracts are concerned, termination is automatic at the end of the specified duration or on completion of the specified task.[5]

Nevertheless, according to the provisions of Civil Code, the employer may terminate the contract earlier for "just cause".[6]

The Civil Code provides that each contracting party (the employer and the employee) of a contract of indefinite duration can terminate it, provided the notice period is respected, or without any notice in case of just cause.[7]

According to domestic Law an employee can be dismissed for the following reasons:

A. Just cause *(Giusta Causa)* meaning a serious breach of the employee by her/his duties or other behaviour that prevents the working relationship to be carried forward

B. Justified grounds *(Giustificato Motivo)* meaning with that either:

   I. A subjective reason that is a breach by the employee of his /her duties, which is not as substantial as to constitute Just Cause. The breach may consist, for instance, in failure to follow important instructions given by the management, material damages to machinery and equipment, low performance (the grounds for dismissal being "subjective reason")

   II. An objective reason whereby the employer needs to reorganize its own business structure or the workforce through redundancies.

Dismissals must always be in writing and detail the reasons for dismissal. Failure to do so makes the dismissal ineffective.

5. Act No. 230/62.

6. Civil code, Article 2119.

7. Civil code, Articles 2118 and 2119.

Should the employee believe to have been unfairly dismissed, he/she can challenge the decision in court and the employer must observe the following rules:

If the company employs up to 60 workers in total throughout Italy, or up to 15 in a single working unit, the employer may choose between reinstating the dismissed employee or paying an indemnity (between two and half, and six months' pay).

Under all other circumstances, the employee is entitled to reinstatement and compensation for damages amounting to five months' salary at least.

Failure to reinstate an unfairly dismissed employee usually results in an award of 15-month salary plus compensation for damages against the employer.

Employees dismissed for reasons other than Just Cause are entitled to a notice period. Employers may exempt the employee from working during the notice period by paying him/her an indemnity equal to the salary payable during the notice period. Such an indemnity is liable to social security charges.

Under the provisions of the "collective dismissal procedure", whenever redundancy involves five employees at least within a 120 day period of time and an employer with fifteen or more employees, the company must preliminary consult with the trade unions.

Termination without grounds is limited to trial periods, domestic workers, employees who have reached retirement age and directors.

Dismissals on the grounds of political opinion, trade union membership, sex, race, language or religious affiliation are null and void. Furthermore, members of workers' committees may not be dismissed or transferred for one year following termination of their duties on the committee without the authorization of the relevant regional trade union organization. This provision applies to directors and domestic workers as well.

Dismissal on the grounds of pregnancy, if the dismissal takes place between the conception and the end of the female employee's statutory period of absence on confinement leave or unpaid leave, until the child reaches one year of age, is also expressly prohibited.

Dismissal on the grounds of marriage is also prohibited. Protection against unfair dismissal of managerial employees is regulated by collective agreements.

In case of unjustified dismissal, remedies are different according to the size of the firm: employers having more than 15 employees (or five in the agricultural sector) in anyone establishment, branch, office or autonomous department, and employers having more than 60 workers, wherever located, are required to reinstate the dismissed employee, and to pay damages at a rate of not less than five monthly salary payments.

Alternatively, the employee can refuse reinstatement and request payment of damages equal to 15 monthly pay. If the employer invites the employee to return to work and the employee does not take up the offer within 30 days, the contract is automatically terminated.

Where there are fewer than 15 employees in a unit or fewer than 60 employees in total, the employee unfairly dismissed has no right to reinstatement, but is entitled to compensation ranging from 2, 5 to six times the monthly pay.

The employees of charity, union or political organizations are not entitled to be reinstated (Law nr. 108/90).

The contract of employment may also be terminated by the resignation of the employee, provided a notice period is respected.

However, an employee may resign with immediate effect in circumstances that Civil code Article 2119 specifies, like:

A. Non-payment of wages or social security contributions
B. Closure of the enterprise
C. Failure to be included within the category or grade corresponding to the work effectively being undertaken
D. Refusal to grant due holidays
E. Unilateral changing of the employee's duties with a corresponding reduction in wages
F. Offences by the employer against the duty to safeguard the physical and psychological well-being of the employee (Civil code, Article 2087).[8]

Specific provisions of statutory law[9] on collective dismissals, provides for special procedures of information and bargaining with unions before terminating contracts, and special indemnities for the employees that are to be made redundant, according to EU directives.

8. Civil code, Article 2087.

9. Act No. 223/91.

4.6. Severance pay (TFR)

For any termination of the contract of employment, on whatever ground, even for dismissal for just cause or resignation, the employee is entitled to receive from the employer a severance payment, which is usually referred to as "TFR - *Trattamento di Fine Rapporto*".

TFR is deemed to be a part of salary, must be set aside every year and kept by the employer, based on the formula of 7,5% of every year's salary, plus revaluation according to a composed index of 75% of price index increase +1,5%.[10]

The TFR may be partially paid off in advance, upon occurrence of the following two conditions:

A. The employee has reached eight years of service

B. She/he intends to purchase her/his household's residence, or needs to withdraw the TFR for health care, extended leave for child care or educational leave.[11]

4.7. Equality

The Italian Constitution[12] sets forth the principle of equality of all citizens before the law *"without difference of sex, race, language, religion, and political views, personal and social position"*.

Italy has also ratified the International Agreement of Economic, Social and Cultural Rights (New York, 16 December 1966).[13]

Statutory law also sets aside any agreement or action by the employer, constituting discrimination for reasons of sex, race, language, religion, political opinion.[14] Equality between men and women at work is specifically recognised and guaranteed by the Law.[15]

Other provisions of statutory law provide for affirmative action to encourage equal opportunity for women in accessing to employment and during employment. Dismissals for discriminatory grounds as such as political and union views, religion, participation in union activities are prohibited.[16]

Likewise, dismissals for discriminatory reasons, such as race, sex, language, political and union views, and religion are null and void and requires always the reinstatement of the dismissed worker.[17] Other kinds of discrimination as such as age discrimination, handicap discrimination and AIDS base discrimination are forbidden. [18]

A law on sexual harassment at work does not exist, though, there is case law on unfair dismissal based on this ground. The Constitutional Court has ruled that equality is a fundamental right of foreigners as well.

For citizens of European Union member Countries, Article 48 of the EEC Treaty abolishes all discrimination at work, wage and other conditions of work. Law nr. 40/98 establishes equality between other foreign workers legally resident in Italy and Italian workers.

10. Act No. 297/82.
11. Act No. 63/00.
12. Italian Constitution, Article 3.
13. Through the enactment of Act No. 88/77.
14. Act No. 300/70.
15. Act No. 903/77.
16. Acts No. 125/91 and 604/66.
17. Act No. 108/90.
18. Acts No. 104/92 and 135/90.

4.8. Social Security System

The *"Cassa Integrazione Guadagni"* is a State fund within the scope of the National Social Security Institute. It was established in 1954[19], with a view to protecting the workers' earnings in the event the enterprise has difficulties.

The Italian social security, managed by INPS, is compulsory and provides comprehensive benefits for all employees.

The social security costs, which are calculated on gross earnings, are jointly financed by the contributions of employees and employer.

Employers have to pay two-thirds of contributions and employees are responsible for the remaining third.

As far as wage compensation funds are concerned, domestic labour law sets forth special provisions for guaranteeing workers wages in case of a temporary lay-off or temporarily reduced company activity not attributable to the employer or to the employees or caused by the general economic situation.

A Wage Compensation Fund ("CIG – Cassa Integrazione Guadagni") is available to industrial workers.

The employer provides 80% of gross wage for hours not worked, and is subsequently reimbursed by INPS.

An Extraordinary Wage Compensation Fund *("CIGS - Cassa Integrazione Guadagni Straordinaria")* helps to secure employment once production resumes in a restructured, reorganized or converted company.

Only companies employing 15 or more employees are eligible for CIGS. Compensation equals 80% of the worker's gross wage for hours not worked, and is payable in a 12 month continuous period.

The *"Cassa Integrazione Guadagni"* is mostly used in cases of suspension or temporary reduction of business activity of a company for reasons beyond market fluctuations and includes suspension of activity in the building industry due to weather damages.

4.9. Pension System

The Italian compulsory state pension system is financed by social contributions paid by the employer during one's working life, and is based on actuarial fairness.

The retirement age ranges between 62 and 67 years.

Retirement in the private sector is possible for workers after 20 years of contribution and at 67 years and 10 months of age.

It is possible to retire anyway, if 42 years and ten months for males and 41 years and ten months for females of social security contribution have been achieved.

Alternatively, up to 2021, workers can retire when the sum of their age (62) and their total number of years of pension contributions (38) adds up to 100, or having contributed 42 years and ten months for male workers and 41 years and ten months for female workers.

The reform includes incentives for workers who decide to continue working, although currently eligible for a public pension.

Such incentives provide for a compensation equal to 32.7% of the salary of the worker who has decided to continue working.

Integrative pension schemes in Italy are voluntary for workers and companies alike.

The law guarantees freedom for individuals to subscribe to supplementary pension schemes, while leaving companies are free to choose whether to set up their own funds.

Nearly all funds are based on a fixed contribution rate.

Regarding disbursement, beneficiaries can generally withdraw up to 50% as a lump sum then the entire or remaining amount as an annuity.

19. Act No. 788/54.

4.10. Severance pay scheme

In 2005 a new statutory regulation was enacted[20] to the purpose of redefining, starting from January 1, 2008 the entire statutory regulation applicable to supplementary pension schemes for employees of private companies.

The main features of the new regulation are the following:

A. Increasing the amount of financing flows dedicated to supplementary pension schemes

B. Harmonization of the supervision system applicable to the entire supplementary pension sector

C. New taxation regime applicable to pension funds

D. Monitoring of the management of the financial resources arising from the workers contribution

E. New financing system though the contribution by the employee of its severance pay (so called *"TFR"*).

Specifically, the statutory regulation provides that the employee is entitled to choose within a six months term, at his discretion, as whether:

I. Leaving the accrued severance pay within the employing company

II. Contributing it to a pension fund

If such six months period elapses without any election by the employee, the accrued severance pay shall be contributed by the employing company to the pension fund mentioned in the relevant labour agreement based on his/her implicit consent.

20. Legislative Decree No. 252/05.

Italy

Foreign Investment

Cajola & Associati

3.1. Registrations and Permits

There are not specific statutory regulations in Italy providing limitations on foreign investment in the Country. In principle, foreign investments as well as domestic investments can be forbidden only for reasons of public order, public health or other general principles of law.

[A] EU Citizens and EU companies

In accordance with the general principles of EU, foreign EU citizens and EU companies enjoy the same treatment and protection of law as domestic ones.

[B] NON EU Companies

As long as the reciprocity of treatment with another Country is observed, foreign companies are generally allowed to operate, to maintain representative offices or permanent establishments, to incorporate subsidiaries and to participate to domestic business concerns in Italy.

3.02. Transfer of dividends, interest and royalties abroad

Transfer of dividends, interest and royalties abroad is not restricted. As tax statutory regulations set forth, foreign citizens with fiscal residence in Italy or companies incorporated in Italy or foreign companies without fiscal residence in Italy but having there a permanent establishment, are taxable subjects in Italy and have to pay taxes in accordance with the relevant tax statutory regulations applicable. Definition of permanent establishment substantially matches the definition that Article 5 of the OECD Model Convention (double taxation) establishes.

Dividends, interest and royalties paid to foreign citizens or foreign companies without fiscal residence in Italy, but with a permanent establishment, are taxed through a withholding tax.

3.3. Withholding taxes on foreign investments
(dividends, interest and royalties)

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

[A] Dividend withholding tax

Dividends received from the 1st of January 2012 by individuals outside the scope of a business activity are subject to a 20% withholding tax in settlement of whereby they concern non qualifying holdings. Qualifying holdings consist of shares (other than savings shares) and any other investment in the capital or equity of a company to which voting rights are linked in the ordinary Shareholders'.

Meeting exceeding 2% or 20%, if the securities are traded on a regulated market, or 5% or 25% in other cases.

Dividends received from the 1st of January 2012 by individuals outside the scope of a business activity regarding a qualifying holding in Italian companies are not subject to withholding tax, whereas those regarding foreign companies are subject to a 20% withholding tax on account for the taxable portion of profit – i.e. 49.72% of the total (with a consequent filing requirement and deduction of any credit for taxes paid abroad), net of any withholding tax applied in the foreign country.
In applying the withholding, account is taken of double taxation agreements which could provide for the reduction or elimination of the tax.

If dividends are distributed to a foreign company resident in a State under a privileged tax regime (tax havens), they shall be subject to taxation in full, unless the taxpayer receives a positive response to an opinion request (interpello) from the Revenue Agency.

From the 1st of January 2012, dividends received by parties other than individuals not resident in Italy are generally subject to a 20% withholding tax in settlement. However, whereby non resident parties are companies or entities subject to corporate income tax in the countries entered in the so-called white list, the rate is equal to 1.375%.

Reduced rates are possible under any tax treaties, Italy has concluded with the recipients' country of residence.

The withholding tax is not due, in line with the EU Parent-Subsidiary Directive, for dividends paid by Italian resident corporations to its EU parent company. The benefit is subject the parent's current ownership dating back at least one year, of no less than 25% of the Italian subsidiary's share capital.

[B] Withholding tax on interest

Interests on current accounts and deposit accounts with banks, as well as bonds and similar securities, received by people resident in Italy for tax purposes is subject to a withholding tax of 20%, generally applied on account (gross interest is included in taxable income and the withholding is deducted from the gross tax). However, whereby the interest is received by residents outside the scope of a business activity, the withholding tax is applied in settlement and interest is not part of the overall taxable income.

Interests on current and deposit accounts, as well as bonds and similar securities, received by non-residents is not subject to any withholding tax, with the exception of persons resident in tax havens, for whom a 20% withholding tax applies.

In compliance with the EU Interest and Royalties Directive, withholding tax is not due on interest paid by companies resident in Italy for tax purposes or by permanent establishments in Italy of companies resident in the European Union to (i) resident companies, or (ii) permanent establishments of companies resident in other Member States of the European Union. In accordance with the Directive, the benefit is applicable if requirements concerning minimum holdings are fully met.

The withholding tax rate may be reduced under any tax treaties Italy has concluded with various foreign countries.

In line with the provisions of the EU Directive on Interest and Royalties, the withholding tax on interest payments is not levied if these payments are made by Italian resident companies or by Italian permanent establishments of EU resident companies to affiliated (i) companies resident, for tax purposes, in another EU Member State or to (ii) permanent establishments of companies resident, for tax purposes, in another EU Member State. In line with the above-mentioned Directive, the benefit is applicable if certain shareholding requirements are satisfied.

[C] Withholding tax on royalties

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.

In line with the provisions of the EU Directive on Interest and Royalties, the withholding tax on royalty payments is not levied if these payments are made by Italian resident companies or by Italian permanent establishments of EU resident companies to (i) companies resident, for tax purposes, in another EU Member State or to (ii) permanent establishments of companies resident, for tax purposes, in another EU Member State. In line with the above-mentioned Directive the benefit is applicable if certain shareholding requirements are satisfied.

3.4. Tax treaties

In order to avoid double taxation, Italy has concluded tax treaties with the following Countries:

Albania	Georgia	Mexico	Sweden
Algeria	Germany	Morocco	Switzerland
Argentina	Greece	Mozambique	Tanzania
Australia	Hungary	New Zealand	Thailand
Austria	India	Norway	The Netherlands
Bangladesh	Indonesia	Oman	Trinidad & Tobago
Belgium	Ireland	Pakistan	Tunisia
Brazil	Israel	Philippines	Turkey
Bulgaria	Ivory Coast	Poland	Ukraine
Canada	Japan	Portugal	United Arab Emirates
China	Jugoslavia	Romania	United Kingdom
Cyprus	Kazakhstan	Russia	U.S.A.
Czechoslovakia	Kuwait	Senegal	Uzbekstan
Denmark	Lithuania	Singapore	Venezuela
Ecuador	Luxembourg	South Africa	Vietnam
Egypt	Macedonia	South Korea	Zambia
Estonia	Malaysia	Soviet Union	
Finland	Malta	Spain	
France	Mauritius	Sri Lanka	

The treaties generally provide more favourable tax treatment of Italian non-residents than the treatment provided under local Italian law.

Most of these treaties are based on the OECD Model Convention.

3.5. EU Parent-Subsidiary Directive

Italy has fully implemented the EU Parent-Subsidiary Directive for the abolition of double taxation on corporate profits generated by an EU subsidiary, and distributed to an EU parent resident in another EU Member State.[1]

According to the rules on taxation of dividends, dividends received by Italian parent corporations are 95% exempt from IRES regardless of the size of the underlying shareholding, and of the relevant holding period.

Dividends paid by Italian subsidiaries are exempt from withholding tax, provided that the EU parent corporations hold, for an interruptive period of one year, a direct shareholding of at least 25% in the Italian subsidiaries. Italy has not yet implemented the Directive 123/2003 regarding, amongst the other, the reduction of the relevant threshold to 20%.

3.6. EU Merger Directive

Italy has fully implemented the EU Merger Directive regarding the tax ramifications arising from mergers, divisions, transfers of assets and exchange of shares between EU-resident corporations.[2]

In line with the EU Merger Directive, Italian tax law specifies the conditions under which income, profits and capital gains from the above indicated business reorganizations - occurring between Italian and other EU-resident corporations - are deferrable.

1. EU Directive No. 435/90.
2. EU Directive No. 434/90.

3.7. EU Directive on Interest and Royalty Payments

The EU Directive on Interest and Royalty Payments provides for the abolishment of withholding tax on payments of certain interest and royalties between corporations resident in different EU Member States.[3]

The benefit of the exemption from withholding tax on payments made in favour of EU beneficiaries is subject, amongst the others, to the following conditions:

A. The recipient is the beneficial owner of the interest and royalties payments. To this end, the recipient is regarded as the beneficial owner only if it receives the payment for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person

B. The interest and royalties payments are made:

    I. By a company which directly holds at least 25 per cent of the voting rights in the ordinary shareholders meeting ("Voting Rights") of the company which receives the payment.

    II. To a company which directly holds at least 25 per cent of the Voting Rights in the company which makes the payments.

    III. To a company whose Voting Rights are directly held for a percentage not less than 25 per cent by a third company which also directly holds said minimum percentage in the company which makes the payments and in the company which receives the payments.

C. The minimum 25 per cent stake at point (ii) above is held without interruptions for at least 12 months.

For the purposes of the exemption, the beneficial owner of the payments shall have to attest its residence through a certificate issued by the Tax Authorities of its State of residency.

The implementing Decree provides that the exemption is applicable on interest accrued or royalties payable as from January 1, 2004.

In addition, the Legislative Decree introduces a withholding tax of 30% on payments made to non-Italian residents deriving from licences of industrial, commercial and scientific equipments.

3.08. Repatriation procedures and restrictions

Capitals, dividends, interests and royalties are freely transferable to and from Italy, and foreign citizens and business concerns are not subject to any restrictions on their repatriation. Transfers exceeding € 10,329.14 must however be notified to the Italian Foreign Exchange Office in accordance with the statutory regulations on money laundering.

3. EU Directive No. 434/03.
See also the implementing Legislative Decree No. 143/05.

3.09. Foreign Personnel

Foreign citizens can enter our territory for tourism, for study, for family reunification and in order to integrate into the labour market, within the limits established by entry flows.

[A] Entry of foreign nationals coming from the European Union

It is regulated by the Schengen agreements which made it possible to build a common area of free movement among the signatory States and eliminated border controls. In this case, the foreigner who holds a permit of residence, is exempt from a visa for stay not exceeding three months, upon the condition that he does not enter Italy for subordinate work, for self-employment or for apprenticeship.

[B] Entry of third-Country nationals

The foreigner must hold a visa that authorizes his entry and that must be sticked on his passport or on another travel document. Some States are exempt from the obligation of visa for tourism. Visas are issued by Italian embassies and consulates in the country of origin or in the country in which the foreigner is regularly residing.

The foreign national who legally enters Italy must apply for the permit of residence within eight working days. This document will bear the same reasons for stay as those stated in the visa.

[C] Purpose of entry and visas

It is possible to legally enter and stay in Italy for:

[1] Tourism

In order to enter into our Country the foreign national must show a valid passport upon crossing the border. This kind of permit does not allow to perform a job.

[2] Study

A visa for study can be applied for at the Italian Embassy in the foreigner's country of residence. Its validity is equivalent to the length of the course he/she intends to follow; in any case, it must not exceed one year.

[3] Family reunification

It is possible be granted this permit when the applicant is a regularly residing foreigner who holds a residence card or valid permit of residence for subordinate work, for self-employment, for asylum or for religious reasons: its duration must not shorter than one year.

[4] Work

Upon his entry into Italy, the foreign national must hold a visa for work that is issued keeping into account entry flows quotas established by decrees that are issued every year.
Permits for work relate to subordinate work, self-employment and seasonal work.

In order to establish a permanent, fixed-term or seasonal subordinate work relationship with a third-country national who resides abroad, the Italian or regularly residing foreign employer must submit a ad hoc request for authorization, bearing the name of the person, to the "Single Desk for Immigration" that is competent in the place where the job will be performed.

The foreign national who intends to carry out an industrial, professional, craftsmanship or commercial permanent self-employment job, or intends to establish a joint-stock or partnership company or to take up posts in a company must possess the moral and professional requirements that law requires from Italian citizens for performing their activities.

The foreign national who is already on the Italian territory for any other reason, on certain occasions and within the limits established, can perform a job activity by applying for the conversion of his title of residence to the competent local police headquarters (Questura).

The holder of a permit of residence for study or training can perform:

A. A subordinate job, once he has obtained the authorization from the competent Single Desk for Immigration and the conversion of his permit of residence

B. A self-employment activity after the requirements for self-employment entry have been tested and after the permit of residence has been converted

C. The holder of a permit of residence for seasonal work can perform permanent subordinate work, and having his permit of residence subsequently converted, only if the previous year he had got a permit of residence for seasonal work and, upon its expiration, he has gone back to his country of origin

Italy

Real Estate

Cajola & Associati

5.1. Types of ownership

Real estate law is governed mainly by the Italian Civil Code, and by special laws for specific issues.

Real estate development projects and renovation works require approval by local authorities entailing administrative licenses and permits.

Real estate assets may be:

A. Stand-alone assets

B. Part of a joint property *('condominio')*. Specific provisions of the Italian Civil Code (ICC) apply to assets forming part of a co-property

C. Part of a going concern. Rules relating to the transfer of a business apply.

There are four titles for classifying real estate assets:

I. Full ownership

II. Long lease

III. Lease of business

IV. Usufruct and Right of Common.

5.2. Land Registers

The databases of real estate registration in the Land Registers *(Conservatoria dei Beni Immobiliari and Catasto)* make available to the general public all the information regarding any real estate transaction. As a result, the information on the Registers is - by operation of the law – deemed to be known to all, making contractual rights so registered enforceable against any parties. Registration of a conveyance deed takes place at the Land Register of the province where the real estate property is located and regards the title and a short summary of the registered deed.

5.3. Transfer formalities

The agreements for purchasing or selling real estate properties, and creating or transferring real estate rights, must be in writing. These agreements are enforceable following registration with the local Land Register.

A real estate sale in Italy is void unless the seller holds a valid administrative building concession for the property. Purchase contracts can be:

A. Preliminary contracts

B. Final contracts

C. Forward sale agreements

Preliminary contracts are the most common since both parties must fulfill certain conditions (eg, the satisfactory outcome of the necessary title searches) before entering into the final contract.

5.4. Construction

Recent Legislative Decree 20 June 2005 no. 122 has provided for a regulation aimed to protect purchasers of real estate under construction.

Real estate under construction are deemed those buildings for which the construction permit has been released and whose building procedure is ongoing or those building whose construction procedure is at stage which does not enable the release of the fitness for use certificate.
In particular the above mentioned Legislative Decree provides for:

A. The obligation of the construction company to file a performance bond for an amount equal to the amount paid by the purchaser, the obligation for the construction company to deliver an insurance policy aimed to cover the purchaser from eventual risks for defects showed up following the execution of the purchase contract; specific provisions to be inserted in the purchase contract;
B. A specific regulation for situations of financial crisis of the construction companies
C. The creation of a fund aimed to provide the reimbursement of the purchasers which have suffered a loss upon bankruptcy of the construction company.

5.5. Leasehold types and formalities

A. Residential agreements

Specific provisions regulate residential rental agreements and apply to all properties except those seen as having historical, artistic, archaeological or ethnic significance.

There are two general types of rental agreements:

I. Unregulated agreements: the parties can determine the rental rate and any periodic increase. These agreements run for four years, renewable, with some exceptions, for additional four-year terms
II. Regulated agreements: these must comply with the standards terms and conditions, national and local, of standard agreements negotiated between landlords associations and the main tenants associations.

In both cases, tenants may terminate their agreement at any time, but must give six-months prior written notice to their landlord.

Clauses and agreements either indicating a term exceeding that set by law, or a rental rate higher than that declared in the written and registered rental agreement, or in the standard agreement, are null and void.

B. Rental agreements for commercial properties

Rental agreements for commercial properties follow separate specific rules.

Commercial properties include those for industrial, commercial, tourist, business, workshop or similar use.

Commercial rental agreements must be for a minimum term of six years, or nine years for hotels and similar businesses.

These are automatically renewed for another six, or nine- year term, unless either party gives the other twelve months, 18 months for hotels, prior written notice of its intention to leave.

Also, a landlord can deny renewal upon expiration of the first contractual term if he/she needs to use the property:

I. As his/her own domicile
II. For productive activity carried out by himself/herself or by a close relative
III. To carry out substantial restructuring of the property

The rent is set by the parties, subject to any periodic increase required by law.

If the landlord terminates the rental agreement other than for just cause, he/she must give the tenant compensation for the loss of goodwill, equaling 18 months' rent, or 21 for hotels leases.

Compensation doubles if the landlord then rents out the same property within one year to someone in the same or a similar business as the original tenant.

There is no right to compensation if the property is for:

I. Businesses without direct contact with the general public
II. Professional business or temporary activity
III. Secondary properties in railway stations, ports, airports, highways, service areas, hotels and tourist resorts.

Any provisions or agreement limiting the contractual term set by law or introducing terms favoring the landlord in violation of the rent control (equo canone) law are null and void.

5.6. Real estate investment funds

The regulatory framework for real estate funds sets out:

A. Terms and conditions for real estate assets contribution to closed-end real estate investment funds

B. Terms of real estates assets contributions from, or sales of real estates assets to, managing company shareholders of the relevant fund, or companies affiliated with the managing company.

The investment fund can hold, at most, real estate of its managing group equaling 60% of the fund's aggregate value.

It can take up loans amounting to 60% of the value of the real estate assets held. Also, it can hold interests in real estate companies active in construction.

5.7. Financing acquisition

Type of Acquisition Vehicle

The acquisition of real estate assets is through a special purpose vehicle.

Limited liability companies *(S.r.l. - Società a responsabilità limitata)* are used especially for tax reasons.

Security Package

A customary security package in a real estate acquisition would include:

A. Pledge on the shares or quotas of the vehicle

B. Mortgage for the acquired estate

C. Pledge on the bank accounts of the company holding the estate

D. Pledge on the VAT receivables for the tax authorities

Also, under Italian banking law, mortgages granted to secure mortgage loans are not subject to claw back action if mortgage registration takes place at least ten days before the bankruptcy declaration.

5.8. Financial Assistance Rules

Italian law prohibits financial assistance from a company to a buyer for the latter's acquisition or subscription of the company's shares.

This applies to all types of limited liability companies, making it illegal to directly use the target's assets to finance the acquisition or to secure the loan received by the buyer.

This provision remains in full force after the updating of Italian company law in 2004.

With the 2004 Company Law, merger-based leverage buy-out transactions are legal in Italy, subject to compliance with the Italian Civil Code. This applies to mergers between companies, one of which has incurred debt in order to purchase a controlling stake in the other, if, as a result of the merger, the latter's assets are an implicit guarantee or source for the repayment of the debt.

Certain formalities apply when implementing a merger between an acquiring company that has incurred debt and the target company.

The merger plan must indicate the sources of funds available to the company after the merger for meeting its obligations. The directors must show that the surviving company has sufficient funds to repay the acquisition debt and file a business and financial plan giving details of such sources.

5.9. Due diligence checks

Due diligence verifications in real estate transactions cover various items relating to:

A. Encumbrances, restrictions on the seller's freedom of sale

Before purchasing real estate, prospective buyers should conduct an appropriate ownership (cadastral) search to ensure against encumbrances, in particular of mortgages or easements.

B. Archaeological restrictions

Italy's Ministry of Culture1 has a pre-emptive right to the sale or transfer of any real estate property in Italy with historical or archeological value or significance.

Perspective purchaser of real estate properties with historical or archeological value or significance must notify the Ministry of any transfer or sale involving such properties. Statutes or contractual provisions may also establish such pre-emptive rights.

C. Town planning restrictions

Each Italian municipality decides the permitted use of real estate properties under its jurisdiction in keeping with local laws and regulations.

Inter vivos (inherited) property deeds, involving partition of co-owned so-called diritti reali (rights enforceable against third parties), are null without a certificate from the local authorities stating the property's intended destination. The certificate is mandatory for establishing or transferring any real estate rights, irrespective of type or destination. It must mention the intended destination of the property in accordance with local area regulations. Any subsequent change in the destination or use of the property requires the local authorities' advance approval. The certificate provides any prospective buyer with information on the terms, conditions and limits applying to the property under sale.

D. Constructions Permits

These are required only for:

I. Construction of new buildings

II. Urban restructuring

III. Restructuring works modifying the structure, size and/or use of a property

Other real estate works do not require prior authorization if the relevant local authorities receive administrative notice.

E. Environmental Issues

Italian environmental regulations are for public safety.

Some provisions relate to reclaiming polluted land or facilities. If pollution levels exceed the legal threshold, the owner or occupier of the polluted property or the party responsible for the pollution is liable.

He/she must bear all the costs necessary for reclaiming the area or implementing specific safety measures preventing future pollution. The reclamation process must respect administrative procedures and periodical reviews. Failure to implement the reclamation plan may result in fines and even criminal liability.

Disclaimer

While this chapter has endeavoured to go into length about the basic requirements imposed on companies in Italy by the current legislation, this is only intended to provide a glance at the legislation. Any business interested in setting up in Italy is advised to first consult legal and accounting professionals for individual advice and not rely on the content of this chapter.