

STARTING A BUSINESS IN ITALY

A number of reforms have been made recently to streamline and simplify the procedures required to start and operate a business in Italy, in particular by reducing both the minimum capital requirement and the paid-in minimum capital requirement and by streamlining registration procedures.

A business may be operated either as a sole trader or as a company. Both entities are governed by the Italian **civil code**.

A person may conduct a business either as an individual, or through the setting up of a new company or the purchase of shares in an existing company.

This is **open to Italian citizens and European and non-European nationals**.

- Natural or legal persons from **EU** countries and countries making up the European Economic Area (Iceland, Liechtenstein, Norway) are treated as Italian nationals, without limitations on their capacity to conduct a business.
- For those coming from countries **outside the EU** and the European Economic Area, natural individuals must have a valid residence permit or be nationals of a country where reciprocal arrangements apply.

The conditions applicable to non-Italian nationals and further details concerned with reciprocal arrangements are all available online at the Italian Foreign Office www.esteri.it/mae/it/ministero/servizi/stranieri/condizreciprocita.

In addition to the detailed information described above, there is also a link to the International treaties archive.

A **Notary** (“*Notaio*”) can complete all the **legal** procedures required for starting a business by overseeing all the **legal steps** necessary for incorporating a company and sending all the required documentation electronically to the **Business Register** (*Registro delle Imprese*).

1. Establishing a representative office in Italy (local office)

Representative offices -which are not legal entities of a foreign company in Italy- **are characterized by two factors:**

- a local **presence to promote the company** and its products/services **and to perform other non-business operations;**
- the local unit **does not require a permanent representation** (it does not represent the foreign company vis-a-vis third parties).

Local offices must be registered with the Economic and Administrative Index (**REA**, *Repertorio Economico Amministrativo*) **at the Chamber of Commerce, attaching**

the following documents:

- if the company is incorporated in an **EU country**: a certificate indicating the company details and the legal representatives of the company issued by the foreign equivalent of the Register of Companies in Italy, that must be translated into Italian by a sworn translator.
- If the company is incorporated in a **non-EU country**: a statement of the existence of the company issued by the Italian Embassy in the country where the company has its registered office.

TAX ISSUES

If the representative office is used only for the following purposes:

- storage, display or delivery of goods belonging to the foreign company;
- purchasing goods or obtaining information for the foreign company;
- conducting preliminary activities assisting the business activities of the foreign company;

it would not be considered a permanent establishment from a tax perspective.

2. Establishing an Italian branch of a foreign company

An Italian **branch/secondary registered office** may be a representative of the foreign company's core business including a **permanent establishment in Italy** with decision-making powers.

This should be distinguished from the setting up of a completely new company used by the foreign party to conduct its business in Italy indirectly (which can be a subsidiary, "*filiale*" in Italian, of an existing foreign company), and secondly, from the conduct of a business in Italy without a permanent establishment as described above.

The Italian branch office is not a separate legal entity and the **parent company** is **responsible** for its initiatives.

Details of the branch office must be registered with the Business Register (*Registro delle Imprese*).

The registration of a branch office **is governed by the Ital-**

ian civil code (*Codice Civile*).

The foreign entity **first needs to appoint a legal representative**.

The deed of appointment, the certificate of incorporation (memorandum of association), the articles of association and the registration details of the foreign company must be registered with the Business Register in the area in which the branch office is located.

Where foreign companies have more than one branch office in Italy, the publication requirements involving the filing of the above-mentioned documents only need to be satisfied for the first Italian branch.

All documentation must have been issued by a public authority with sworn translation into Italian.

These documents **must be filed with an Italian Notary** (or with a District Notarial Archive). The notary will draft a specific notarial deed with the documents listed above as annexes, to be registered by the Notary and filed with the Business Register.

If the branch office is not registered in this way, directors or anyone acting in the name and on behalf of the company will have unlimited liability for all company contractual obligations.

The foreign company and its directors will be liable for company obligations contracted in Italy in its name (except for European companies given that European principles of freedom of establishment apply).

TAX ISSUES

The **overall income** of a permanent establishment in Italy of a company residing abroad is determined according to the rules governing the determination of the company income, as if it were a company domiciled in Italy.

3. Setting up a company (independent company or subsidiary of a foreign company)

Italy offers a wide range of choice of legal forms for setting up companies depending on the company's organizational model, its commercial objectives, the level of capital to be committed, extent of liability and tax and accounting implications.

Companies: main types

There are four main types of companies in Italy:

- *Società a responsabilità limitata* (S.r.l.) – limited liability company;
- *Società a responsabilità limitata semplificata* (S.r.l.s.) – simplified limited liability company;
- *Società per Azioni* (S.p.A.) – stockholding companies (company limited by shares);
- *Società in accomandita per Azioni* (S.a.p.A.) limited partnership (“partnership limited by shares”).

Setting up a *Società a Responsabilità Limitata - Limited liability company* (S.r.l.)

This form of the limited liability company is the most widely used in Italy because of its **organizational flexibility** and **limited liability**.

- Although in the past it was intended for small companies, it is now also used for much larger and more active businesses.

Shareholders will not be personally liable for company obligations, even if acting in the name and on behalf of the company.

COMPANY FORMATION

To make the best use of the flexibility of the S.r.l., allowing shareholders to shape the company to be as well-adapted as possible to the pursuit of its specific objectives, it is important to pay attention to the preparation of the **Articles of Association**.

The articles of association must be drawn up by a notary, who is then required to file them with the Business Register.

The form of **management** is extremely flexible. Alternatives include appointing a Sole Managing Director, a Board of Directors, or even a form of management where Directors are not appointed as a board and where they can exercise their powers jointly or separately, or, depending on the corporate governance model, jointly and others separately. Special rights may be assigned to particular

shareholders, including administrative rights or the right to the distribution of profits.

SHARE CAPITAL

The **minimum share capital** of a limited liability company is **€1**:

- when setting up limited liability companies with **share capital equal to or greater than €10,000**, at least **25%** of the share capital must be **paid** to the directors on the signing of the Articles of Association (the remainder may be paid later) although contributions in kind must be made in full;
- when the value of the share capital is **between €1 and €10,000**, **contributions may only be in cash** and must be paid up in full on subscription;
- when its share capital on set up is less than €10,000, the company will be obliged to set aside a sum to be allocated to reserves representing at least one fifth of the profits shown in the Financial Statements. The obligation will not be met if the joint value of reserves and capital has reached €10,000.00.

The reserve can only be used for the allocation to share capital and to cover any losses with the obligation to reinstate it when it goes below the above threshold.

Even if the company has been set up with only one shareholder, the full amount of the share capital must be paid.

The **transfer of shares** may be limited and even prohibited; in which case, each shareholder will be entitled to withdraw from the company, obtaining a reimbursement for his/ her share.

Setting up a *Società a Responsabilità Limitata Semplificata - Simplified limited liability company* (S.r.l.s.)

The simplified limited liability company (S.r.l.s.) is a form of “S.r.l.” recently introduced to encourage entrepreneurship.

The **shareholders** of an “S.r.l.s.” may only be **individuals** (natural persons), not companies or other bodies. The S.r.l.s. may also be composed of a single shareholder. Unlike the “ordinary S.r.l.” there is a minimum **share capital** of €1, up to a maximum of €9,999.99.

The **capital** must be **fully paid in cash** to the administrative body at the time the company incorporation.

The **memorandum of association** must be drafted as a public deed by a **notary** in accordance with a standard model prescribed by law. Therefore, there are no “articles of association” in a technical sense; there are only standard clauses indicated in the fixed standard model (prescribed by law).

No notarial fees are due to the notary.

Setting up a *Società per Azioni* - Stockholding company - company limited by shares – (S.p.A.)

The company limited by shares is the main type of trading company best suited to substantial investments with a large number of shareholders.

It is also the compulsory type for those companies wishing to be listed on the stock exchange.

The two key features are the **limited liability** of all members and the **division** of the **share capital** into **shares**.

A stockholding company will pay its expenses and debts with its own assets, i.e. with its own capital and economic resources.

Shareholders are not liable for the debts with their personal property or funds. Consequently, in the event of financial difficulties and therefore of “insolvency”, the company may fail, but the shareholders or sole shareholder cannot be made bankrupt on that basis and may only lose the value of their shares and thus the money they have invested in the company.

With regard to the **audit** of the accounts, the deed of incorporation must provide for the appointment of a Board of Auditors (“*Collegio Sindacale*”), an audit firm (“*società di revisione*”) or an auditor (“*revisore*”).

It oversees the administration of the company and ensures compliance with the law and the articles of association. The control exerted by the Statutory Auditors relates to

the substance as well as the form of the administration although they do not have the power to investigate the merits of the directors’ management or their market valuations.

COMPANY FORMATION

A stockholding company will be formed on the basis of a **public deed** drawn up by a **notary**. The latter will be required to record the deed and register the company at the Business Register in whose area the Company’s Registered Office is located.

The Company’s existence will only be recognized if it is registered with the Business Register.

The notary will be required to upload the Deed of Formation and other necessary or appropriate company documents in the competent office of the Business Register as part of the registration process.

SHARE CAPITAL

The **share capital** is divided into **shares** with a **minimum nominal value of €1 each**.

The shares are **freely transferable**.

It is normal practice to issue physical share certificates although in listed companies it is also permissible for shares to be in the form of simple accounting records, defined as “dematerialized shares”.

On formation, the stockholding company requires **minimum share capital** of **€50,000.00**, of which **at least 25%** (twenty five percent) (amounting to €12,500) to be **paid** to the directors.

If the company has only **one shareholder** the share capital must be paid up in full immediately on formation.

The amount of the share capital must be stated in the memorandum of association.

Shares do not have to reflect shareholders’ overall investment in the company.

Setting up a *Società in accomandita per azioni* partnership with shares (S.a.p.a.)

There are two categories of partners in a limited partnership:

- **general partners** who have the responsibility of **directors in law**, who have **unlimited personal liability** (*accomandatari*);
- **partners with limited liability** who are excluded from taking part in the administration and whose liability is restricted to their investment in the share capital (*accomandanti*).

As in the company limited by shares, investments are delineated by shares while, like a limited partnership, the management of the company is conducted by directors with unlimited liability (albeit secondary) for the company's obligations.

PARTNERSHIP: NATURE AND MAIN TYPES

The partnership does **not** have a **legal personality** although it is still a form of **company** (*società*) under Italian law.

A partnership is characterized by the **personal commitment** of each **partner** to their work as a whole within the partnership. The individual partners are personally **liable** for the liabilities of the company (including their private assets) and each acts for the whole business. Possibilities for imposing limitations on individual partners' liability are restricted.

The main types are:

- ***Società in nome collettivo*** (S.n.c.) (general or unlimited partnership);

The company's **business name** must contain the name of at least one of the partners and an indication that it is an unlimited partnership.

The **members** have **unlimited liability** for partnership obligations and there can be no agreement to the contrary.

When seeking repayment of debts owed by the partnership, creditors must first enforce them against the partnership before applying to the members. The unlimited

partnership is subject to bankruptcy law with the contemporaneous bankruptcy of all partners.

The partners generally have separately exercisable **powers of administration** and **representation**. If agreed, powers of administration may be reserved to some members only.

- ***Società in accomandita semplice*** (S.a.s.) (limited partnership)

The limited partnership has two categories of partners:

- **general partners** (*soci accomandatari*), who are responsible for the administration and management of the company and who have unlimited liability for the fulfillment of partnership obligations;
- **limited partners** (*soci accomandanti*), who are not directors and will be liable for partnership debts within the limits of the investment made in the partnership, subject to certain exceptions governed by law.

The partnership **name** (business name) must contain the name of at least one general partner and an indication that it is a limited partnership.

If a limited partner's name is included in the partnership name, he or she will have unlimited liability, jointly and severally with the general partners, for partnership debts.

Limited partners cannot perform acts of administration or negotiate or do business in the name of the partnership, except when granted a special power of attorney for specific business activities. Any limited partner who disregards this prohibition will take on unlimited liability for all partnership debts and may be excluded from the partnership itself.

COMPANIES: NATURE AND MAIN TYPES

	S.p.A.	S.r.l. - S.r.l.s.	S.n.c.	S.a.s.
Type of company	Medium-sized and large companies / listed companies	Small and medium-sized companies with a limited number of shareholders	Partnerships set up to conduct commercial and non-commercial activities	Partnerships set up to conduct commercial and non-commercial activities
Minimum share capital	€50,000	€1	No minimum	No minimum
Liability for company obligations	Limited to the company assets	Limited to the company assets	Unlimited for all shareholders	Unlimited for general partners Limited for sleeping partners
Board of Statutory Auditors/ Audit	Compulsory	Optional / Compulsory according to art. 2477 c.c.	Not provided for	Not provided for

4. Buying assets

Alternatively, a foreign enterprise may wish to purchase **assets** directly.

Sometimes what is being bought is an **entity** encompassing a complex of **assets** (movable and immovable property, equipment, trademarks, patents, etc.) intended for business activities.

By law, the purchase of an enterprise can only be effected by means of **public notarial deed** or a **private deed certified by a notary**.

The sale of a business is generally a single transaction which would permit the continuation of the business by a third party.

The transaction may involve the entire organization, several businesses owned by the same vendor or a single business division. The business can be sold as a going concern although in such a case the express consent of the transferor is required. Otherwise it may be that only the business assets or division are sold and not the enterprise as a whole.

Anyone selling a business will be barred from starting up a new one within five years from the sale whose objects, location or other features mean that it is likely to be confused by customers with the one sold.

Except as otherwise agreed, the buyer will be entitled to run the company's entire business not including elements of a personal nature.

5. Accounting and audit requirements

Accounting requirements

All companies, be they companies with share capital or partnerships, are required to keep **books** and **records of accounts**, as well as keep in order all original documents sent and received for each concern.

The accounting documents must be **kept for no less than ten years**.

- Companies with share capital are also required to prepare their annual Financial Statements and to file them with the Register of Companies, within 30 days from its approval by shareholders.
- Partnerships are required to draw up an annual report indicating profit and loss for tax purposes, although there is no filing obligation with the Register of Companies.

PREPARATION AND KEEPING OF ACCOUNTING RECORDS

Accounting records may be kept directly by the business at their premises, or by other persons at their respective offices.

There are two main compulsory accounting systems available depending on the company's characteristics and the amount of income declared in the previous year: one ordinary and one simplified (suitable for small entities with a simple organization). The businessperson (whether an individual or a company) is required to keep the **books** and **records of accounts** according to the provisions of the Italian Civil Code and the tax regulations.

Accounting books can also be kept electronically.

Audit requirement

Auditing is required for:

1. S.p.A.;
2. S.r.l. exceeding two of the following limits in 2 consecutive years:
 - total assets of: EUR 4,400,000;
 - sales and services revenues of: EUR 8,800,000;
 - average number of employees during the year: 50.
 Or, should the S.r.l. control a company subject to statutory audit;
3. All companies drawing up consolidated Financial Statements;
4. Listed companies;
5. Banks, stock broking companies, fund management companies, regulated financial institutions.

The audit of the financial statements (“*revisione legale dei conti*”) shall be performed in accordance to the **Italian Law** (Art. 2409 bis of the Italian Civil Code) and the **auditing standards** issued by the Italian Institute of Chartered Accountant (CNDCEC, *Consiglio Nazionale dei Dottori Commercialisti ed Esperti Contabili*) which equate with the International Standards on Auditing (ISAs) issued by the International Federation of Accountants (IFAC).

In addition, before being applicable, the Italian auditing standards need to be approved by the Italian Stock Exchange Authority, **CONSOB** (*Commissione Nazionale per le Società e la Borsa*).

Conduct of the audit

In Italy, an audit can be performed by the Board of Statutory Auditors (“*Collegio Sindacale*”) which may be in charge of both **supervision of compliance** with the law and the Articles of Association and with the **statutory audit** of the **financial statements**.

However, the two tasks can be also split and assigned to two different bodies: the supervision can be given to the *Collegio Sindacale* and the audit of the financial statements (including the quarterly checks on the accounts) can be given to an audit firm or an auditor.

The separation of these two tasks is compulsory for listed companies and companies required to prepare consolidated financial statements.

Term of the audit engagement

The auditors are appointed for a 3 year-term for non-listed companies and for a 9 year-term for listed companies. The audit firm cannot be appointed for more than one 9-year term.

6. Trademarks

It is possible to obtain **legal protection** of a **trademark** in Italy in order to distinguish goods and services of one organization from those of another and to create an identity, a strong connection between the brand and the company. Registering a trademark prevents others using the same sign in commercial activities in the relevant territory.

ITALIAN APPLICATION

It is possible to apply for **protection** of a trademark in Italy, **limited in geographic area and specific product class**. A trademark’s owner has the right to its exclusive use and can prevent third parties from using an identical or similar mark for identical or similar products or services if it is likely to cause confusion. If the trademark also has a famous reputation, then this right is extended also to dissimilar services or products.

Trademark registration applications can be made at the Italian office of trademarks and patents.

Ufficio Italiano Brevetti e Marchi.

www.uibm.gov.it

EUROPEAN APPLICATION

It is possible to request trademark protection throughout the European Union (from Italy), meaning that a trademark can be registered, transferred, withdrawn, invalidated or expire and its use can be protected throughout the whole EU Community.

Registration of an EU trademark can be applied for at the Office for the Harmonization in the Internal Market (OHIM, based in Alicante, Spain).

Office for the Harmonization in the Internal Market
<https://oami.europa.eu/>

Any natural or legal person from any country in the world may file an application for an EU trademark.

The applications can be filed either directly at the OHIM or at any of the national patent and trademark offices of the 27 Member States of the European Community or the Benelux Trade Mark Office.

- the company's being declared invalid;
- the reduction of its share capital below the legal minimum;
- being unable to pay off the stake of a shareholder who has withdrawn from the company, following a resolution passed by the shareholders' meeting; or
- other reasons mentioned in the incorporation deed and in the Articles of Association.

Except for situations when the winding up of the company takes place on its natural expiry date and for the reasons stated in its incorporation deed, the winding up becomes **effective** only from the **date of the publication** in the Register of Companies (*Registro delle Imprese*) of the Directors' statement setting out the reasons for the liquidation, or from the publication date of the shareholders' resolution for the liquidation of the company, passed at the shareholders' meeting.

Additional notes on the Business Register and the Notaries

The **Business Register** (*Registro delle Imprese*) is part of an extensive information system containing details of entrepreneurs, Italian companies and subsidiaries of foreign companies.

The objective of the Register is to publish consistent and reliable quality information, making it available to all businesses operating in Italy.

The Business Register is managed by the **Chambers of Commerce**.

It is a single system of publication for the whole of Italy although it is administered through provincial offices. Italian provinces are based around the most important towns.

A search of the Business Register database (www.registroimprese.it/) will provide sufficient details to confirm the existence of an enterprise.

7. Dissolution and liquidation of business entities

The **dissolution** of a company limited by shares follows a three- step **process**, as follows:

- determining and acknowledging the motivation for winding up the company;
- carrying out of the liquidation activities;
- cancellation of the company from the Register of Companies.

Reasons for dissolution are common to all types of companies, for example: the expiration of the legal duration of the company, achievement of the company's objectives or the impossibility of achieving them, or to reflect the will of the shareholders to do so. Other reasons for winding up may be provided for in the incorporation deed and in the Articles of Association.

There are some reasons for dissolution that are particular to specific company types. For companies limited by shares, winding up can be triggered by:

- the company's impossibility to function;
- the repeated lack of action by its shareholders;

Following registration and the payment of fees, a more thorough search can be conducted and **Office Copies** ("*Visura*") downloaded.

An Office Copy is a document providing official confirmation that the company exists including details of Financial

Statements and a log of historical events.

The Business Register is the public record of companies across all sectors and includes company data relating to creation, modification, financial statements, representation powers, change of shareholders, and dissolution.

A **Notary** in Italy has the **position of a public officer** and has authority to act in company matters generally. Notaries are **independent professionals** the quality of whose work is safeguarded by important guarantees, and is subject to public oversight.

They are also required by law to take out public-liability insurance with a minimum coverage currently of €3,000,000. The National Council of Notaries has also made provision for a guarantee fund, financed directly by notaries themselves, giving clients the possibility of redress in the case of losses resulting from the fraudulent or negligent conduct of public notaries not covered by insurance.

Approximately five thousand Italian notaries can be found online at the following URL:

Consiglio Nazionale del Notariato

www.notariato.it/en/trova-notaio

As with other professionals, notaries are legally bound to carry out checks on their clients, including non-Italian nationals, by completing formalities required by money-laundering laws.

Details of these procedures can be found on the website of the State Treasury

www.dt.tesoro.it/it/prevenzione_reati_finanziari/anti-riciclaggio/normativa_riferimento.html