Doing Business in Italy

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1. Introduction

"Doing business in Italy" is a guide published by EY Italy with the purpose of providing general information on the Italian business, legal and tax environment to foreign entities wishing to invest in Italy, either through greenfield or brownfield projects.

While the EY organization carried out the best possible effort to maintain the truthfulness, accuracy and completeness of the information provided, this report may not be updated at the time of reading, due to fast-changing laws, regulations and, in general, the business and political context. Therefore, we strongly encourage the reader to consult their trusted professionals before making any decision related on the matters provided herein.

1.1. Foreign investment in Italy: latest data[1]

The EY Europe Attractiveness 2022 study found out that in 2021 Italy had the largest increase in foreign direct investment in Europe.

The transformation of business models and the overhaul of supply chains triggered by the COVID-19 pandemic are leading to a revision of the criteria and methods of investment management by international players who are focusing strongly on Italy. In fact, in 2021, Italy registered a growing interest from foreign investors, with as many as 207 direct investment projects, corresponding to a growth of 83% compared with 2020. With these numbers, Italy ranks in the top 10 countries for foreign investments among European countries. The first time in many years.

1.2. Which sectors have attracted the most foreign capital?[2]

The main target industries have been the software and IT services sector with a 15% share, followed by transportation and logistics with 14% and B2B services with 12%.

In terms of growth in the number of foreign direct investments compared with 2020, best performance is found in the machinery and equipment sector (up by 233%), agribusiness and consumer goods (up by 214%), and automotive and transport equipment (up by 171%). In contrast, the attractiveness of the telecommunications (down by 57%) and electronics (down by 25%) sectors has been declining over the past year.

Going into the specifics of the breakdown by business functions, the analysis shows that 69% of the foreign investments directed to Italy are aimed at strengthening the sales force and marketing functions, and are, therefore, mostly aimed at meeting local consumer needs. The remaining 31% of foreign investments target Italian know-how (mainly production processes and research and development) and are, thus, designed for higher value-added activities.

1.3. Future outlook: main sectors and investment drivers[3]

About 60% of the respondents evaluate Italy's ability to continue attracting investment as improving, placing it fourth among European countries that will be able to increasingly attract investments. The greatest interest in future investment in Italy comes from investors active in technology and telecommunications (83%), consumer and retail (73%), and B2B services (60%).

1 "Gli investitori esteri puntano sull'Italia", EY Italy, 22 June 2022, © 2022 EY Italy.

2 Ibid.

3 Ibid.

But what are the main drivers of foreign investment in Italy? In first, place there is the size of the Italian market, the third largest in absolute terms within the European Union (EU), as indicated by 70% of the respondents. The same percentage also reported a limited degree of competition of several sectors of the national economy compared with other European countries, often characterized by the presence of larger companies.

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2. Entering in Italy
How to establish your presence in Italy

Updated in November 2022

Italy offers several options to a foreign investor, being he, she or it a natural person or a legal entity or body (for the sake of simplicity, the **Foreign Investor**) wishing to establish his, her or its presence in the country. Indeed, the investor can carry out business as an individual entrepreneur (*imprenditore individuale*) or through a vehicle. This vehicle can be established as a representative office, a branch or a subsidiary, or can be acquired through a transaction involving either the shares or quotas of an existing Italian company or one of its business segments.

Please note that, in Italy, the process of establishing a foothold in the country involves, besides the Foreign Investor's own staff, corporate officers and his, her or its legal consultants, other subjects which may have a different and yet important role in the process.

The Notary Public (*Notaio*) is a public official whose main function is to grant public trust (i.e., the value as legal evidence or *prova legale*) to the deeds he or she draws up. Therefore, it is assumed that the contents of a public deed (*atto pubblico*) drawn up by a Notary Public are true regarding: the origin of the document; the statements of the parties included in the deed; and the other facts and circumstances that the Notary reports to have occurred in his or her presence or to have carried out. For the purpose of this chapter, the Notary Public has a crucial role in the incorporation of companies – a process that allows for the company to be operational on the same day of the public deed or in the following days.

The Companies Register (*Registro delle Imprese*) is kept within each Chamber of Commerce (*Camera di Commercio*) in Italy, and can be defined as the "Civil Status Office" for companies and enterprises. The Companies Register, indeed, provides all the information (incorporation, changes, or extinction) for any enterprise in any legal form and active in any industry that has a registered office or local units in Italy.

The Companies Register makes available all the main information of the company (corporate name, the by-laws, the management body and, the registered office), as well as all the events that occurred after the incorporation (e.g., amendments to the by-laws and, changes in the corporate bodies). Therefore, the Companies Register, provides a comprehensive frame of the legal situation of each enterprise and constitutes an essential repository for the analysis of economic and entrepreneurial development indicators per each geographical area of reference.

The Beneficial Owner (*Titolare Effettivo*) is, according to Legislative Decree no. 231 of 21 November 2007 (the Anti-Money Laundering Law or **AML Law**) the natural person on whose behalf a certain transaction or activity is carried out; or for a legal entity the natural person that owns or controls such entity or is its beneficiary. The AML Law provides that professionals, including lawyers and Notaries Publics, as well as financial institutions, such as banks, must perform a customer due diligence (*adeguata verifica della clientela*) to determine whether the funds to be used in a transaction have a lawful origin. Please note that the identification of the beneficial owner and the customer due diligence is an important preliminary step for activities, such as the opening of a bank account and/or becoming a client of a law firm or a Notary Public. Please note that following the entry into force of Ministerial Decree no. 55 of 11 March 2022, legal entities, such as companies, are under the obligation to communicate information on its beneficial owner to the competent Companies Register.

This chapter aims at providing an outline of the various options available to a Foreign Investor for establishing its presence, through the set-up of a new vehicle or through a transaction involving an Italian company or its business segment.

2.1. Possible vehicles available

To enter Italy by establishing a new vehicle, the prospective Foreign Investor has several options at his, her or its disposal. In fact, he, she or it can elect to establish either: a representative office; an Italian branch of a Foreign Investor; or establish an Italian subsidiary.

Without any prejudice to any documentation and/or information which is provided for the purposes of establishing a new vehicle in Italy, to effectively commence and operate a business in Italy, an authorization or license issued by a Public Authority may be required. Please note that the regime for the issue of the relevant authorization or license may vary according to the industry and/or the place in which the Foreign Investor envisages to carry out its activities.

2.1.1. Representative office – process and rules for its establishment

The representative office is not a legal entity independent from the Foreign Investor. A representative office can only engage in the promotion of the products and/or services of the Foreign Investor, in other non-business activities, such as contacting potential clients, as well as in the performance of market analysis and collection of the relevant information for the entry of the Foreign Investor into the Italian market. Please note that any Foreign Investor, both incorporated within the EU and in non-EU countries – may establish a representative office in Italy.

Under Italian tax law, the representative office is not considered a permanent establishment in the country. Therefore, it is not subject to Italian taxes.

The Foreign Investor must appoint a representative for the representative office (the **representative**) whose identification information shall be entered into the Companies Register and obtain an address in Italy. In addition to the above, the Foreign Investor and the Representative must possess an Italian Fiscal Code.

In summary, the process for establishing representative offices can involve the assistance of a Notary Public. The opening of the representative office is notified to the Companies Register within the competent Chamber of Commerce with a notice enclosing the following documentation:

- An excerpt from the Companies Register-equivalent certifying the incorporation and existence of the Foreign Investor which includes its by-laws as well as the identification details of the shareholders, directors, and legal representatives.
- A decision by the board of directors or the sole director which: (i) specifies that the Foreign Investor intends to open a representative office and not a subsidiary or a branch, and that such an office will not run any business in Italy – but will perform market research; (ii) authorizes the opening of the representative office in Italy at the address provided; and (iii) appoints the Representative.
- Forms for the Italian Fiscal Code for the representative offices and the Representative and for the obtainment of a certified email address (*posta elettronica certificata*) for the representative office.
- A copy of the identification document or passport of the Representative.

Please note that all the documentation above must be notarized and apostilled (or subject to legalization by the Italian diplomatic or consular offices). In case the relevant documentation is drawn up into a foreign language, a sworn translation (*traduzione asseverata*) in Italian is required.

The establishment of a representative office entails the following steps:

- The application to obtain an Italian Fiscal Code for the representative office. (Please note that this step requires that the Representative already has, in turn, his or her own Italian Fiscal Code.)
- The registration of the representative offices within the competent Companies Register.

Once the representative office is registered within the Companies Register, it can begin its operations.

2.1.2. Branch office – process and rules for its establishment

A branch office, or simply branch, is a permanent establishment through which a Foreign Investor can carry out its business activities or similar ones in Italy, without being required to incorporate a legal entity. A branch is not, indeed, an independent legal entity from the Foreign Investor. Although it is independent from a tax standpoint and is therefore required to pay in Italy the taxes related to the revenues produced within the country, the Foreign Investor is responsible for its activities.

Please note that in specific circumstances (e.g., the participation by the Foreign Investor to certain public procurement tender procedures), the opening of a branch office in Italy may be required.

The Foreign Investor may elect to establish a branch office in Italy by means of an extraordinary resolution of the competent corporate body according to the by-laws of the Foreign Investor itself (usually the shareholders' or quotaholders' meeting).

This resolution should provide: an address in Italy to be used as the seat of the branch; and the appointment of an attorney in charge of designating an officer in charge of the branch (*preposto alla sede secondaria*) (**Branch Officer**) and the power he or she is endowed with.

In summary, the process for establishing a branch involves the following steps:

- Drafting of the minutes of the shareholders' or quotaholders' meeting resolving on: (i) the opening of a branch in Italy at a certain address, while also providing information on the business activities to be carried out there; (ii) the appointment of the Branch Officer; and (iii) the grant to the Branch Officer of the relevant powers to implement the resolution.
- Obtaining an Italian Fiscal Code for the Branch Officer.
- Collecting true copy of the by-laws of the foreign entity (i.e., the document containing information, including the company name, address, purpose and, governance).
- Collecting the other documents needed at the Italian level such as copy of the latest annual financial statements of the foreign entity, and certificate of inscription of the foreign entity with the local Companies Register-equivalent or court.
- Obtaining an Italian Fiscal Code and VAT Registration Number.

Please note that all the documentation mentioned above must be notarized and apostilled (or subject to legalization by the Italian diplomatic or consular offices) and filed with an Italian Notary Public and with the Companies Register. In case the relevant documentation is drawn up into a foreign language, a sworn translationin Italian is required.

By virtue of the registration, the Foreign Investor and its directors shall be considered liable for the obligations undertaken in Italy by the branch.

2.1.3. Subsidiary — process and rules for its establishment

The subsidiary is an independent vehicle fully owned by the Foreign Investor existing and incorporated under the laws of Italy. Under Italian law the Foreign Investor may choose from several types of legal entities, including partnerships, companies and/or consortia, depending on the organizational model the Foreign Investor intends to implement; on the business objectives he, she or it intends to pursue; and, on the amount of capital he, she or it intends to commit; as well as on the liability and tax implications. In our experience, Foreign Investors wishing to establish their own subsidiary usually incorporate a new company (the **NewCo**).

In Italy, there are two main legal forms for a company:

- The joint-stock company (*Società per Azioni or S.p.A.*) (**SpA**).
- The limited liability company (*Società a responsabilità limitata or S.r.l.*) (**Srl**).

With reference to the SpA, the articles of association must be drawn up in a public deed by a Notary Public and shall contain, under Article 2328 of the Italian Civil Code (**Civil Code**) the following information:

1. The personal identification information of the shareholders as well as their citizenship and/or country of incorporation (in case the Foreign Investor is a legal entity) and place of residence.
2. The NewCo name and the municipality in which the registered office of the NewCo is located along with its secondary offices.
3. The business activity of the NewCo as set out in its corporate object.
4. The corporate capital — the amount endorsed and paid in, — and the number of and the possible nominal value of the shares. (The minimum share capital for a NewCo SpA is € 50,000.)
5. The value attributed to the capital contribution in kind and as credit.
6. The provisions concerning the profits distribution.
7. The benefits granted to the founding shareholders.
8. The system of corporate governance to be adopted.
9. The number of members in the board of statutory auditors.
10. The appointment of the first members of the management body and the board of statutory auditors.
11. The amount of the expenses incurred in the incorporation to be charged to the NewCo.
12. The term of the NewCo.
13. The by-laws, which provide the rules governing the functioning of the NewCo, are an integral part of the articles of association.

With reference to the Srl, Article 2463 of the Civil Code, the articles of association for a NewCo, must also, be draw up by a Notary Public. The articles of association of an Srl NewCo must include the following:

1. The personal identification information of the quotaholders as well as their citizenship and/or country of incorporation (in case the Foreign Investor is a legal entity) and place of residence
2. The NewCo name, its designation as an Srl and the municipality in which the registered office of the NewCo is located along with its secondary offices
3. The business activity of the NewCo as set out in the corporate object

4. The amount of the corporate capital endorsed and paid in, which must not be lower than € 10,000[4]
5. The value attributed to the capital contribution by each quotaholder, including the value attributed to the contribution in kind and of credits
6. The quotas attributed to each quotaholder
7. The provisions related to corporate governance, including, its management and its legal representation
8. The persons in charge in management and, possibly, the person in charge of auditing the accounts of the company
9. The amount of the expenses incurred in the incorporation to be charged to the NewCo

In addition to the provision above on the incorporation of an Srl NewCo, a Foreign Investor may establish simplified Srl (**SrIs**). Pursuant to Article 2463-***bis*** of the Civil Code, the articles of association of an SrIs shall be drawn up by a Public Notary according to a standard template adopted by the Ministry of Justice – together with the Ministry of the Economy and the Ministry of Economic Development. The articles of association must include:

- The personal identification information of the quotaholders as well as their citizenship and/or country of incorporation (in case the Foreign Investor is a legal entity) and place of residence.
- The NewCo name, its designation as an SrIs and the municipality in which the registered office of the NewCo is located along with its secondary offices.
- The amount of the corporate capital, equal to an amount between at least € 1 and € 10,000, which must be endorsed and fully paid in at the moment of incorporation.
- The information under items 3 (corporate object), 6 (quotas attributed to each quotaholder), 7 (corporate governance), and 8 (management body and legal auditors) listed with reference to the articles of association of an Srl.
- The date and time of execution of the deed.
- The directors of the SrIs.

To proceed with the incorporation of the NewCo, both as an Srl (SrIs included) as well as a SpA, under Article 2329 of the Civil Code it is required that: the entire corporate capital has been endorsed (*sottoscritto*)[5]; the provisions on contribution are duly observed; and the relevant authorizations for the business activity of NewCo have been obtained beforehand.

The Notary Public, who drew up the articles of association, shall file it, along with the relevant documentation, for registration within 10 days at the Companies Register competent for the NewCo's registered office.

The registration within the Companies Register grants NewCo legal personality and therefore, the segregation of the company's assets from those belonging to its shareholders and quotaholders.

Please note that the subsidiary, – as an independent legal entity from the Foreign Investor – is therefore, subject to Italian tax requirements for the activities carried out in Italy.

4 For the sake of completeness, please note that it is possible to incorporate an Srl NewCo with € 1 as corporate capital. In this case the contribution must be made in cash and must be fully paid in at the moment of drawing up the articles of association.

5 Please note that for an SrIs, the corporate capital must be also fully paid in.

2.1.4. Differences between representative offices, branch offices and subsidiaries

The differences between representative offices, branches offices and subsidiaries can be summarized as follows:

Features	Subsidiary	Branch	Representative Office
Independent legal entity from the Foreign Investor	Yes	No	No
Business activity	As provided in the corporate object	Same as the one carried out by the Foreign Investor	Only promotional and market research, and information-collection activities.
Minimum Corporate Capital Requirements	Srl: € 10,000[6] SpA: € 50,000	None	None
Tax subject in Italy	Yes	Yes, for revenue accrued from the activities in Italy of the branch	No

2.2 Mergers and Acquisitions

As stated above, mergers and acquisitions transactions (**M&A**) is one of the tools available to a Foreign Investor to establish his, her or its presence in Italy by acquiring an existing company or a line of business. 2021 has been a fruitful year for M&A in Italy, both in terms of number of transactions as well as deal value. About 705 transactions have been closed during 2021 for an aggregate value of approximately € 85.5 billion[7].

Hot industries for M&A in 2021 have been industrials and chemicals (27.7%), consumer goods (18.7%), technology (12.5%), energy & utilities (9.8%), business services (7.9%)[8], pharma, medical & biotechnology (7.9%) . From a geographical point of view, most of the transactions have involved a companies based in the North of Italy[9].

Please note that, without aiming at disincentivizing cross-border M&A, the Italian government, by means of Law Decree no. 21 of 15 March 2012 (as subsequently amended), has attributed itself special powers for protecting Italian interests in certain sectors of the economy, in particular from speculative investments (the so-called **Golden Power**).

This paragraph is aimed at providing an outline of the main features of the acquisition of an existing company or a line of business, as well as the Golden Power regime.

2.2.1. Acquisition of an Italian company

The acquisition of an Italian company (**Share Deal**) entails the purchase of shares or quotas into the target company. Therefore, the Foreign Investor becomes the owner of the target company which maintains its assets and liabilities, as well as all the related rights and obligations. The terms and conditions of the transaction, such as, among others, those related to payment terms, the conditions precedents (if any), the representations and warranties and related indemnification obligations, non-competitioned obbligations shall be specifically agreed and included in a "share or quota purchase written agreement" (the **Share Agreement**).

Once the conditions precedents set out in the Share Agreement have been fulfilled or have occurred, the parties can give execution to the Share Agreement, by transferring the relevant share or quota. The transfer of shares or quotas can be carried out in the following modalities:

- The endorsement (*girata* for SpA shares only). The seller materially puts their signature before the name of the purchaser on the registered share certificate. The endorsement is certified by a public officer (including a Notary Public) and the transfer of the shares is effective upon recording the purchaser into the Shareholders' Ledger (*Libro Soci*) of the target SpA.
  Please note that only the purchaser who acquired the share following an unbroken chain of endorsements is entitled to request the enrollment into the Shareholders' Ledger.

6 Please note that for a Srls the corporate capital can be between € 1 and € 10,000
7 "M&A in Italia – Review 2021 e Preview 2022", EY Advisory S.p.A., Gennaio 2022, © 2022 EY Advisory S.p.A.
8 Ibid.
9 Ibid.

- The transfer (SpA shares only). The target company (whose shares are transferred), on the request of the purchaser or the seller who must present a notarized transfer deed, registers the name of the purchaser on the Shareholders' Ledger and on the share certificate itself or issues a new share certificate with the name of the purchaser.
- The deed of transfer (Srl quotas only). The seller and the purchaser must execute a deed of transfer of quotas, whose signatures are certified by a Notary Public, which must be filed by the Notary Public to the competent Companies' Register within 30 days.

In case a Public Notary is involved, the transfer of the share or quota can be carried out as a public deed, or notarized as a private deed (*scrittura privata autenticata*).

A Share Deal does not entail a change of the employer. Therefore, there are no normally legal obligations to notify or carry out a consultation with the labor unions prior to the execution of the agreement implementing the Share Deal (unless differently provided for by the applicable national bargaining labor agreements).

In general, Share Deal entails that all the obligations undertaken by the target company remain valid and effective. However, please note that, certain agreements, particularly those which could be deemed critical for the business of the target, may provide for a change of control clause, (*i.e.*, the right of the counterparty to outright withdraw or terminate the agreement in case of change of the controlling shareholder or quotaholder of the relevant counterparty).

Furthermore, a Share Deal may concern the transfer of the entire corporate capital or a portion of the same corporate capital (majority or minority acquisitions). In this regard, a shareholder or quotaholder agreement may be appropriate for regulating the corporate governance of the target company following the acquisition.

Indeed, the relationship between majority and minority shareholder or quotaholder is important for the proper running of the company. In this respect, the Civil Code grants the minority shareholder or quotaholder with certain rights to protect him, her or it vis-à-vis the majority shareholder or quotaholder, in particular, by way of example:

1. The right to request the call of the shareholders'or quotaholders' meeting
2. The right to take part to the shareholders' or quotaholders' meeting
3. The right to request the postponing of the meeting in case adequate information is not provided in advance
4. The right to be informed and to be consulted
5. The right to report to the judicial authority in case of serious irregularity which could harm the company
6. The right to bring forth the liability claim vis-à-vis the management body of the company
7. The right to challenge the resolutions adopted in breach of law and/or the by-laws
8. The right to withdraw from the company by selling his, her or its shares or quotas, where certain extraordinary transactions are performed

However, the existence of the above rights, may not be as effective to prevent conflicts between minority and majority shareholders or quotaholders on matters of corporate governance, and the direction of the business activities. Therefore, to prevent such conflicts and encourage a more proactive engagement in the life of the company, a shareholder or quotaholder agreement is suggested to be implemented.

These agreements are binding only for the shareholders or quotaholders who adhere to the same. Except for publicly listed companies, where such arrangements must be declared at the opening of the Shareholders' Meeting, the non-adhering shareholders or quotaholders or the company itself could not be aware of the existence of such agreements.

Pursuant to the Civil Code, a shareholder or quotaholder agreement is an agreement in any form aimed at stabilizing the ownership structure or the corporate governance by: (i) regulating the voting rights in the shareholder or quotaholder meeting; (ii) imposing limits on the transfer of shares; and (iii) regulating the exercise of a dominant influence but only for a term of five years. A shareholder or quotaholder agreement envisaging items (i) and (ii) may be in force for an indefinite term, but then the shareholders or quotaholders are entitled to withdraw with a 180-day prior written notice. Please note that the Civil Code does not provide any other remedy for breach by any of the adhering shareholders or quotaholders of the provisions contained within the shareholder or quotaholder agreements besides compensation for damages.

Please note that, in our experience, in case of the purchase of a majority or minority stake in the target company within the context of the Share Deal, a shareholder or quotaholder agreement is normally executed either as a stand-alone agreement enclosed to the Share Agreement or as specific provisions of the relevant Share Agreement.

2.2.2. Acquisition of an Italian line of business

The acquisition of a line of business (**Asset Deal**) may follow different structures among others:

1 The outright acquisition of the line of business together with all related contracts, employees, assets and liabilities

2 The contribution of the line of business (including all related contracts, employees, assets and liabilities) into a NewCo (new company)

Independently from the structure chosen, an Asset Deal may entail the following consequences:

- The purchaser and the seller shall be jointly liable for the obligations registered within the accounting records of the business transferred.
- The purchaser becomes the successor (*successore*) in all the agreements that are not of a personal nature. However, please consider that some agreements may require the prior approval by the relevant counterparty before the assignment of the contractual relationship.
- In case the company transferring its business employs more than 15 employees, a **consultation procedure with the labor unions** must be carried out at least 25 days before the finalization of a binding agreement between the parties.

The agreement transferring the line of business (which normally contains all the terms agreed by the parties) to the Asset Deal, must be either drawn up as a public deed or as a notarized private deed and the Notary Public must file the relevant deed at the competent Companies Register within 30 days.

Please note that in case of contribution of a line of business into a NewCo, the seller will firstly transfer the business (including all the contracts, employees, assets and liabilities) to a NewCo that will then be acquired by the purchaser in a Share Deal.

2.2.3. Government authorization for foreign direct investment – the so-called "Golden Power"

- Under Law Decree no. 21/2012, the Golden Power is essentially the power of the Italian Government, exercised by the Presidency of the Council of Ministers, to intervene when it deems it necessary in corporate decisions to be implemented by enterprises belonging industries of strategic and of national interest. By using the Golden Power, the Italian State can, *inter alia*, veto certain transactions and/or corporate resolutions, or impose specific conditions to the transactions.

The industries or assets of strategic and national interest are the following: (i) defense and national security; (ii) 5G broadband or cloud technology based electronic communication services; (iii) energy (including hydroelectric and exploitation of geothermal resources concessions); (iv) transportation and telecommunications. In addition, Law Decree no. 21/2012 also considers the following factors, provided under Regulation (UE) 2019/452: (a) critical infrastructure including energy, transport, water health, communications, media, data processing, storage, aerospace, defense, electoral or financial infrastructure; (b) critical technologies and dual use, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technology, nanotechnology and biotechnology; (c) critical inputs such as energy, raw materials and food security; (d) access to and the ability to control sensitive information, including personal data; and (e) the freedom and pluralism of media.

The Golden Power concerns transactions aimed at (1) the purchase, under any title, of quota or share interest, (2) the implementation of corporate resolutions or other corporate measures that affect the ownership or the control of strategic assets, or (3) the executions of agreements concerning assets and/or services deemed of particular strategic significance for national interests.

For the industries above, the Golden Power applies to companies operating in the sectors above that have the intention to change its shareholders' structure by the implementation of specific corporate resolutions, or by means of the sale of its corporate interests.

This process, pursuant to Law Decree no. 21/2012, envisages the transmission of a notice to the Presidency of the Council of Ministers and may end, with a tacit or expressed approval to the transaction, or with the imposition of a veto or of certain conditions in case the transaction is deemed to be harmful to the national interest. The subject under the obligation to transmit the notice to the Presidency of the Council of Minister varies according to the transaction:

- In case of purchase of share or quota interest, the notice shall be delivered by the purchaser.
- In case of the implementation of corporate resolutions and the execution of agreements concerning assets and/or services deemed of strategic significance for national interests, the notice shall be delivered by the company that implements the resolution or the parties of the agreement.

In general terms, the notice must be transmitted promptly according to the industry and the transaction envisaged. Therefore the moment of transmission of the notice varies according to the sector. At the same time, the notice transmitted must be complete. It must include complete and detailed information on the transaction, and include the reasons under which it is not deemed to be harmful for national interest. In other words, it should demonstrate, through a detailed business plan, that the investment does not have a speculative nature, but it is carried out within the scope of a mid-term to a long-term strategy, aimed at developing the company's footprint within the market, and enhancing the management and the existing workforce; as well as keeping or increasing the number of workers employed. If the transaction is aimed at acquiring companies that perform activities deemed strategic for the state, a joint notice to the Presidency of the Council of Ministers is recommended, by the seller and the purchaser.

In summary, under Law Decree no. 21/2012, the government has the following powers:

1. **Prescriptive powers.** The government may impose specific conditions precedents for the acquisition under any title of shares or quotas in companies that carry out activities of strategic interests.
2. **Veto powers**. The government may veto the adoption of certain corporate resolutions or the approval of certain transactions by the relevant corporate bodies.
3. **Opposition powers**. The government may oppose to the acquisition, under any title, of shares or quotas in companies that carry out activities of strategic importance. This power is enforced only in exceptional cases in which there is a risk for the national interest that cannot be covered by the undertaking of specific engagements and/or by the imposition of specific conditions.

Breach of the Golden Power notification obligation may subject the company to certain material penalties, which vary according to the transaction to be carried out.

For the acquisition of shares or quotas:

- Suspension of the rights related to ownership of the relevant shares or quotas transferred
- Obligation to transfer the acquired shares or quotas within a year
- Administrative fine amounting up to the double of the value of the transaction and not lower than 1% of the aggregate revenue accrued by the companies involved
- Additional penalties to be charged to the purchaser

For corporate resolutions:

- The resolutions adopted in breach of the obligation to carry out the Golden Power notification are null and void
- The reinstatement of the *ex-ante* status quo
- An administrative fine amounting up to the double of the value of the transaction and not lower than 1% of the aggregate revenues accrued by the companies involved
- Additional penalties imposed on the company that adopted the resolution

Recently, due to an increase of Golden Power Notices following the amendments to the Law Decree no. 21/2012 implemented during the COVID-19 pandemic, the Presidency of the Council of Ministers has adopted, on 1 August 2022, a decree which aims at strengthening and streamlining its activities in this regard. This decree provides, *inter alia:*

- The amendment of the Decree of the President of the Council of Ministers of 6 August 2014 related to the coordination activities of the Presidency of the Council of Ministers, and updates it according to the changes in legislation and current administrative practices.
- Under Article 6, in case the competent Public Administrations (PA) and/ or the competent Ministries do not request within a certain term, that the decision on the exercise of the Golden Power should be subject to a resolution of the Council of Ministers, the relevant decision is entrusted to the Coordination Group within the Presidency of the Council of Ministers. Please note that, in this case, the relevant decision may include recommendations for the parties involved in the transaction.
- Under Article 7, the establishment of a pre-notice procedure (*pre-notifica*) enabling the parties involved, without any prejudice to their obligation to submit the notice, – if necessary – to transmit an information notice to the Presidency of the Council of Ministers related to the transaction they wish to carry out. To obtain certain information whether the same transaction falls within the scope of Golden Power. Within 30 days from the prenotice, the Department of Administrative Coordination within the Presidency of the Council of Ministers may allow the transaction, by providing some recommendations, or may inform the parties that the notice for the relevant transaction is required.
- Under Article 11, a simplified procedure is established for intragroup transaction. In the absence of prejudice to national interest, the Minister involved in the procedure transmits a motivated resolution of non-exercise of the Golden Power to the Coordination Group and to the Department for Administrative Coordination who will then notify the parties.

Please note that once the notice has been transmitted, the preparatory procedures depend on the sector involved (***e.g.***, defense, energy and transport) and the type of transaction to be carried out (***e.g.***, purchase, corporate resolution, or contractual agreement). In any case, in case of a transaction that is deemed to fall within the scope of the Golden Power, caution is advised.

3. Operating in Italy
How to be compliant with Italian laws and regulations

Updated in November 2022

Once a Foreign Investor has established his, her or its presence in Italy, either by establishing a new vehicle or by acquiring an existing one, the Foreign Investor must carry out its activities in compliance with Italian laws and regulations. Due to the extensive scope of Italian laws on matters of compliance, in this chapter we have selected certain legal subject matters which we deem to be the most important for prospective Foreign Investors in Italy.

3.1 Corporate governance

With reference to corporate governance, the provisions of the Civil Code enable the shareholders and the quotaholders with the freedom to determine the contents of the by-laws, provided that their contents is not in contrast with the law. In summary, for both Srl and SpA (each, the **company**), the by-laws set out the rules and the process of corporate governance of the company. They should provide the rules concerning the functioning of the corporate bodies their powers rights and duties; and the rules for their appointment and dismissal, as well as the provisions related to management and legal representation.

This paragraph shall provide a summary of the main topics of corporate governance for SpA and Srl companies, as well as a brief outline of the criminal or administrative liability for legal entities.

3.1.1. Overview of the corporate structure of an Italian joint-stock company (*società per azioni or S.p.A.*)

For an SpA, the reform of Italian corporate law of 2003 has established three systems of corporate governance:

1. Traditional system. It is based on a shareholders' meeting, a management body and a control body.
2. Dualistic or two-tier system. It is based on a shareholders' meeting, a supervisory board (*consiglio di sorveglianza*), appointed by the shareholders' meeting and a management board – (*consiglio di gestione*), appointed by the supervisory board. This structure has German-law influences.
3. Monistic or single-tier system. It is based on a shareholders' meeting, a board of directors (appointed by the shareholders' meeting), and a management control committee (*comitato per il controllo sulla gestione*). This structure has Anglo-saxon law influences.

This paragraph will provide a summary of the main features of each system, by highlighting the powers, duties and responsibilities of each corporate body.

The traditional system

Under Article 2364 of the Civil Code, the ordinary shareholders' meeting must be convened at least once a year at the company's registered office, to resolve upon: (i) the approval of the financial statements within 120 days from the end of the financial year (180 days for companies required to approve consolidated financial statements); (ii) the appointment and dismissal of the management body; (iii) the appointment of the board of statutory auditors and its chairman, and the legal auditor; (iv) the resolution on the liability claim vis-à-vis the management body; and (v) other matters and the grant of a specific authorization for the performance of certain activities by the management body as envisaged by the by-laws; (vi) the procedural rules of the shareholders' meeting.

By contrast, the extraordinary shareholders meeting, resolves, according to Article 2365 of the Italian Civil Code, upon amendments to the by-laws currently in force; on the appointment, the replacement and the powers of the liquidators and on any other matter attributed by law. Please note that Article 2375 envisages that the minutes of the extraordinary shareholders meeting shall be drawn up by a Notary Public.

The management of the company under the traditional system is attributed to the management body, which can be composed by a sole director or by a board of directors. In case there is a board of directors, the by-laws shall provide the minimum and maximum number of possible members, leaving the shareholders free to determine their composition. If the management body is constituted by a board of directors, according to Article 2380-***bis*** of the Italian Civil Code, the Directors elect among their number a chairman. The management body, as a board of directors or as a sole director, oversees carrying out the activities deemed necessary to implement the corporate object. The power of representation of the company granted to the managing body is determined by the by-laws or by the resolution of appointment.

The management body has a term of appointment of three renewable financial years, expiring on the date of calling of the shareholders' meeting for the final financial year of their tenure. It may be subject, at the discretion of the by-laws, to specific requirements on the matter of integrity, professionalism and independence.

The board of statutory auditors is composed by three to five standing members and two alternate auditors. They are appointed for a term of three financial years by the shareholders' meeting. Under Article 2397 of the Civil Code, at least one of the standing members of the board of statutory auditors and one of the alternate auditors must be among the chartered legal auditors, while the remaining members can be chosen can be chosen from the following professionals:

1. Lawyers
2. Qualified accountants
3. Labor consultants or among full university professors in economic or legal subject matters

The board of statutory auditors, under Article 2403 of the Civil Code, oversees compliance with the law and the by-laws as well as the observance of good management practices. Additionally, the board of statutory auditors, may carry out, in any moment, inspections and/or other control activities, may ask the management body for information on the ongoing activities of the company and has the power to inform the competent Court – in case, there is a grounded suspicion that the management body has acted in breach of applicable laws and of the by-laws.

The dualistic or two-tier system.

The dualistic/two-tier system is based on a corporate structure in which powers, duties and responsibilities are shared between the shareholders' meeting, the supervisory board, and the management board. The auditing of the accounts is entrusted to a legal auditor or to an auditing company.

Under Article 2364-***bis*** of the Civil Code, in a two-tier system, the ordinary shareholders' meeting has the power to resolve upon: (i) the appointment and dismissal of the members of the supervisory board; (ii) their remuneration; (iii) their liability vis-à-vis the shareholders; (iv) profit distribution; and (v) the appointment of the legal auditor of the company.

The reduction of powers of the shareholders entails that the supervisory board is endowed with greater powers of control, similar to those of the statutory auditors, as well as powers related to the direction of the management of the company, similar to those of the shareholders. In fact, the supervisory board, pursuant to Article 2409-***terdecies*** of the Italian Civil Code, is granted the following powers:

to appoint and to dismiss the members of the management board – unless the by-laws grant such powers to the shareholders;

- To approve the financial statements
- To oversee compliance with the law and the by-laws as well as the observance of good management practices
- To bring forth the liability claim vis-à-vis the management board
- To inform the competent court in case there is a grounded suspicion that the management board has acted in breach of applicable laws and of the by-laws
- To report to the shareholders meeting at least once a year on its supervision activities
- To resolve upon strategic transaction and to approve the financial and industrial plans drawn up by the management board

The supervisory board is appointed for a term of office of three financial years and at least one of its members must be chosen from the chartered legal auditors. Moreover, the by-laws may provide for specific requirements on the matter of integrity, professionalism, and independence.

Under Article 2409-*novies* of the Italian Civil Code, the management board is appointed by the supervisory board. Its membership must not be lower than two members and must be within the numbers provided under the by-laws. Its members cannot be members of the supervisory board.

The management board is exclusively in charge of the management of the company and performs its activities for the purpose of implementing the corporate object.

As stated above, the dualistic system provides for a greater separation between the shareholders and the corporate bodies in charge of the management of the company.

The monistic or single-tier system

The monistic or single-tier system is based on the allocation of the management and control functions within a board of directors which contains a management control committee, which is required to perform functions that are essentially similar to those attributed to the board of statutory

auditors in the traditional system. This corporate structure is defined as monistic or single-tier, since management and control functions are not structurally segregated.

The board of directors is exclusively in charge of the management of the company and perform its activities for the purpose of implementing the corporate object. At least one of its members must have one of the independence requirements for statutory auditors, as well as those provided under corporate associations and specific code of conduct.

The provisions of the Civil Code on the management body in the traditional system shall apply to the board of directors in the monistic system where compatible.

The management control committee is composed of directors in possession of the integrity and professionalism requirements that do not have specific delegation of powers. Moreover, at least one of the members of the committee has to be a registered chartered legal auditor. The number of members of the management control committee is determined by the board of directors and for listed companies, it cannot be lower than three.

The management control committee:

- Appoints among its members its chairman
- Oversees the adequacy of the corporate structure and the management-accounting system
- Performs other duties attributed to the same by the board of directors, in particular with reference to the relationship with the legal auditor of the company

3.1.2. Overview of the corporate structure of an Italian limited liability company (*società a responsabilità limitata or S.r.l.*)

The corporate structure of an Srl includes the quotaholders' meeting, the management body, and/or, where certain requirements are met, a Control Body or Legal Auditor.

The quotaholders' meeting shall, under Article 2479 of the Civil Code, resolve upon: (i) the approval of the financial statements and the distribution of profits; (ii) the appointment and dismissal of the management body; (iii) the appointment of the Control Body/Legal Auditor; (iv) the amendments to the articles of association; and (v) the decisions concerning a substantial change of the corporate object as envisaged in the by-laws or of the rights of the quotaholders. Please note that the minutes of the resolutions by the Quota-holders Meeting amending the by-laws shall be drawn up by a Notary Public.

Under Article 2475 of the Civil Code, the management body is exclusively in charge of the management of the company and shall perform its activities in pursuit of the company's corporate object. The management body can be composed of a single member, the sole director, or by more members, in this case, the board of directors.

The management body has the general representation of the company in relation to third parties.

According to Article 2477 of the Italian Civil code, the by-laws of the Srl may also provide the powers and duties of a Control Body or the appointment of a legal auditor. Unless the by-laws provide for a board of statutory auditors, there is only a sole control body (***sindaco unico***). The appointment of a control body/legal auditor is mandatory if the company:

1. Is under the obligation to draw up consolidated financial statements
2. Controls a subsidiary that is under the obligation to audit its accounts
3. For more than two consecutive financial years has exceeded at least one of the following thresholds:
   - € 4 million as assets in the balance sheet
   - € 4 million in revenues
   - 20 employees employed as average

In case of a sole control body, the general rules concerning the board of statutory auditors in a SpA shall be applied.

3.1.3. Legislative Decree 231/2001. Criminal and administrative liability of legal entities

Legislative Decree no. 231 of 8 June 2001 (**Legislative Decree 231/2001**) establishes a specific regime for the criminal or administrative liability of a legal entity, which includes companies, associations, and other legal persons. Therefore, Legislative Decree 231/2001 overcame the principle set out in Article 27 of the Italian Constitution concerning the personal nature of criminal liability, as well as the traditional view that only a person can commit crimes, an expression of the ancient proverb "societas delinquere non potest" (i.e., a company cannot be held criminally liable).

A legal entity may incur in criminal liability under Legislative Decree 231/2001, if the offense has been perpetrated by persons in position of top management, with powers of representation or their subordinates, but only in case the top management did not perform its supervision duties or they avoided the existing management and control model. The crime must also be perpetrated in the interest or for the benefit of the legal entity. To prevent the legal entity from incurring criminal liability, the entity may adopt specific organizational, management and control models (the Model 231) based on specific rules of conduct. To exclude the criminal liability of the organization, it is necessary that the 231 Model is adopted and effectively applied. The culpability of the legal entity is assumed when an organizational, management and control model has not been adopted or when its inefficiency has been proved.

Therefore, the adoption and implementation of the Model 231 is strongly suggested to exempt the legal entity from liability. Under Article 6 of Legislative Decree 231/2001, the Model 231 must: (i) identify the activities in which crimes may be perpetrated; (ii) envisage adequate measures and protocols for the adoption of decisions by the legal entity for the purpose of crime-prevention; (iii) provide processes for the management of financial resources for the purpose of crime-prevention; (iv) provide for the obligation to notify the Supervision Body; and (v) provide disciplinary penalties for breach of the Model 231.

Under Legislative Decree 231/2001, a legal entity may be held responsible for the following crimes: (i) fraud against the State and or the EU Institutions for the purposes of obtaining public subsidies (Article 24); (ii) cybercrimes and unlawful data processing (Article 24-bis); (iii) organized crime offences (Article 24-ter); (iv) embezzlement and corruption of public officials (Article 25); (v) counterfeiting of money and payment cards or identifying marks or instruments (Article 25-bis); (vi) offences against trade and industry (Article 25-bis.1); (vii) corporate crimes (Article 25-ter); (viii) terrorist offences or crimes related to the subversion of democracy (Article 25-quarter); (ix) mutilation practices on female genitalia (Article 25-quater.1); (x) crimes against individual personality (Article 25-quinquies); (xi) market abuse (Article 25-sexies); (xii) manslaughter or serious personal injury due to breach of the provisions on the health and safety on the workplace (Article 25-septies); (xiii) fencing, money laundering or use of cash, goods or benefits of unlawful origin (Article 25-octies); (xiv) crimes related to payment services other than cash (Article 25-octies.1); (xv) crimes on breach of copyright (Article 25-novies); (xvi) persuasion to not render or to render false statements to the judicial authorities (Article 25-decies); (xvii) environmental crimes (Article 25-undecies); (xviii) employment of illegal residents (Article 25-duodecies); (xix) racism and xenophobia (Article 25-terdecies); (xx) fraud in sport competitions or illegal gambling (Article 25-quaterdecies); (xxi) tax-related crimes (Article 25-quinquiesdecies); (xxii) contraband (Article 25-sexesdecies); (xxiii) crimes against cultural heritage (Article 25-septiesdecies); and (xxiv) laundering of cultural assets, damaging and looting of cultural heritage (Article 25-octiesdecies).

Legislative Decree 231/2001 provides for the following penalties:

- **Fine** (*sanzione pecuniaria*). Fines are imposed by determining the number of quotas (from 1 to 1,000) according to seriousness of the offense and the degree of criminal liability of the legal entity, while the amount for each quota (from € 258 to € 1,549) depends on the economic conditions of the legal entity at issue.
- **Disqualification sanction** (*sanzione interdittiva*). These are applicable if the legal entity accrued an important profit due to the actions of its top management (or due to serious organizational deficiencies) or in case of repetition of the offenses. Disqualification sanctions range from the prohibition of the advertisement of goods and services to a ban contracting with the Public Administration, and finally, to the ban from carrying out the relevant business activity.
- **The publication of the judicial decision of conviction** (*pubblicazione della sentenza di condanna*). The judicial decision of conviction is published in case the legal entity is sentenced to a disqualification sanction. It is published by affixion in the Municipality where the deciding court is located, where the crime was committed, and where the legal entity has its registered office.
- **The seizure of the crime's proceeds or profits** (*confisca*). The judge always orders in case of conviction the seizure of the crime's proceeds or profits, net of the part which may be returned to the victim (*danneggiato*). In case such assets cannot be seized, the seizure may affect cash amounts, assets or other benefits for a value equal to the crime's proceeds or profits.

3.2 Labor law

In Italy, a natural person may work for a company, either as a self-employed worker (*lavoratore autonomo*) as a collaborator (*collaboratore*) or as an employee (*lavoratore subordinato*).

Although the contract between the company and a self-employed worker or a collaborator may be based on the provisions of Italian civil law, in this paragraph we will cover the specific provisions governing the relationship between the employer (*datore di lavoro*) and its employees.

3.2.1. Overview of Italian employment law

Employment law is a set of rules aimed at governing the employment relationships, (i.e., the rights and obligations of both the employer and the employee). Employment law is a specific branch of Italian civil law. In addition to legislation both at a national and a regional level, great importance is granted to labor unions, national collective bargaining agreements (**NCBAs**) and other collective bargaining agreements.

In Italy, employees are divided into levels which determine: (i) the remuneration; (ii) the duties; and (iii) the level of autonomy and responsibility; and (iv) the NCBA that can be applied to the employment contract. The employees can be classified in executive (*dirigente*), middle-manager (*quadro*), white-collar (*impiegato*) and blue-collar (*operaio*).

Executives are the employees who, while reporting directly to the entrepreneur or other manager expressly delegated for this purpose, carry out high level company activities which entail broad autonomy and discretion as well as initiative. They have the power to issue directives to the whole company or to its autonomous units and its employees. The qualification as executive entails the participation and cooperation, along with the relevant responsibilities, in the activities aimed at pursuing the interest of the company and its social utility.

Middle managers are the employees who, excluding executives, carry out, within corporate structures of an adequate size and complexity, managerial functions that are important for the development and the implementation of the corporate purpose – within, however, defined corporate strategies and programs. They hold decisional discretionary powers and responsibilities in the management and coordination of resources (both financial resources and materials, as well as human resources) within sectors or services of particular operational complexity.

Employees are classified as blue-collar (*operaio*) or white-collar (*impiegato*) depending on the tasks and duties assigned. They normally report to middle managers.[10]

3.2.2. Hiring of Italian employees

Italian law does not impose a specific form for employment contracts. However, in practice, most agreements are formalized in writing, usually through specific templates drawn up by the employer. On the other hand, employment agreement for executives or middle managers, may provide specific terms and conditions that are specifically negotiated. Without prejudice to the above, specific elements of the employment relationship, such as noncompete clauses, or probation period, should be set out in written form according to law. The others shall be communicated within specific terms to each employee, as established by the recently approved Legislative Decree no. 104/2022 the so-called Transparency Decree (**Decreto Trasparenza**).

Following the acceptance of the terms, the employer shall notify the competent Employment Center (*Centro per l'Impiego*) within 24 hours before the commencement of the work activities. Such notifications also have the purpose of fulfilling the obligations of the employer to inform the relevant social security authorities, the *Istituto Nazionale della Previdenza Sociale* (**INPS**) and the *Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro* (**INAIL**).

3.2.3. Hiring foreign employees

3.2.3.1 EU, EEA and Swiss nationals

EU, European Economic Area (**EEA**) and Swiss nationals do not need specific permits to work in Italy. An EU, EEA or Swiss national who intends to reside and work in Italy must enroll with the Office of Records of the Resident Population in Italy (*Anagrafe Nazionale della Popolazione Residente*) if his or her stay exceeds 90 days.

3.2.3.2. Non-EU nationals and immigration requirements

Non-EU nationals must enter Italy with a "National Type D Visa" if they intend to carry out professional activities. In this context, a professional activity is intended as "work" and differs from travel to Italy under a "business" status. If a foreign worker comes to Italy to perform work activities, he or she needs a National Type D Visa even if the duration of the stay does not exceed 90 days. Determining whether an activity falls within the "professional or work" category or "business" category typically requires a case-by-case assessment.

The type of permit and visa required, as well as the procedures to obtain the immigration clearances, differ according to the nature of the work to be performed (e.g., as a self-employed worker or an employee).

10 Please note that blue-collar and white-collar employees are further divided into multiple levels in the light of the applicable NCBA.

The procedure for obtaining an employment visa for a foreign national is initiated by the prospective Italian employer which must first submit an application to the Italian Immigration Office (*Sportello Unico per l'Immigrazione*) for a work permit (*Nulla Osta al Lavoro*). The approval and issuance of such authorization usually takes up to three months (90 days).

Italian work permits are typically issued subject to the availability of the quotas, which are released on a yearly basis by the Ministry of Internal Affairs, by means of a specific regulation, the so-called "*Decreto Flussi*." However, executives and highly qualified employees who are eligible to apply for the EU Blue Card residence permit (ex-Article 27-quater of the Immigration Decree no.286/98) are exempted from this numerical limitation.

To obtain the EU Blue Card, an individual must prove at least three years of university education through a Declaration of Value (*Dichiarazione di Valore*), which is issued by the Italian Consulate in the country where the university was attended. In addition, some restrictions are imposed on the employment contract with the Italian company. This contract must have a minimum validity of one year and grant a minimum annual gross compensation of approximately € 25,500.

As soon as the Immigration Office issues the work permit, the document is automatically sent to the competent Italian Consulate abroad. The employee is then allowed to request the employment visa at the Italian Consulate in his or her last country of residence.

After the employment visa is obtained, the individual must sign the Residence Contract within eight days after his or her arrival in Italy. The signature of the Residence Contract allows the individual to start work activities. Subsequently, a Residence Permit (*Permesso di Soggiorno*) for employment reasons must be requested.

Under certain conditions, a holder of a residence permit for employment reasons may engage in self-employment activities and vice versa, if the activity for which the Residence Permit was requested remains the predominant activity.

Foreign nationals may engage in the following self-employment activities in Italy:

- They may be directors of companies (i.e., members of corporate boards).
- They may pursue freelance or other professional activities.

In both cases, foreign nationals must obtain a Self-employment Visa (*Visto di Lavoro Autonomo*).

3.2.3.3. Other immigration permits

Family members who accompany a non-EU foreign national to Italy or wish to join a foreign national in Italy who obtain a family residence permit are entitled to perform work activities in Italy.

Permit of stay for study reasons entitles the holder to work up to 20 hours per week. These permits are convertible into permits for employment reasons within the quota limits. However, if a foreigner graduates from an Italian university, the conversion is not subject to the quota restriction. The conversion of the permit for study reasons into a permit for employment reasons is mandatory to perform a full-time work activity.

3.2.4. The role of National Collective Bargaining Agreements and Labor Unions

The NCBA is an agreement negotiated and signed by the trade unions of both employers and employees for each sector. In any employment relationship there is usually an underlying applicable NCBA. In summary, the NCBA regulates the elements of the labor relationship that the law expressly defers to the same, or those aspects that, although regulated by the law, the parties deem useful to be governed by the NCBA.

In practice NCBAs provide the standard point of reference for all workers in a particular business sector, even if the employee in question is not a member of a trade union. The NCBAs establish a minimum salary and the minimum terms that all employment agreements in the relevant sector must comply with. Indeed, an employment contract cannot provide terms and conditions below those set out in the applicable NCBA.

In general terms, the relevant employer is free to choose the NCBA to be applied to his, her or its workforce. However, it is important to choose the right NCBA according to the employer's business activity to avoid possible claims by the employees.

Please note that a different NCBA applies to executive-level employees.

3.2.5. Main provisions of employment agreements

Article 2094 of the Civil Code states that the employee is "*a person who undertakes against remuneration, to cooperate in the enterprise providing its intellectual and manual labor under the employment, and under the direction of the entrepreneur*." Therefore, the core of the relationship is the subjection of the employee to the powers of control and direction of the employer which entails a limitation of his or her autonomy in the performance of

his or her duties as well as the integration of his or her activities within the business organization. Therefore, the employee undertakes to not compete with the relevant employer, during the term of the employment, and to keep confidential the business information disclosed to him or her.

The main features of the employment agreements are listed below.

Open-ended agreements
According to Article 1 of Legislative Decree no. 81/2015, the main form of employment relationship is the open-ended agreement (*contratto a tempo indeterminato*). This agreement does not have specific formal requirements under Article 4 of the same Legislative Decree.

Fixed-term agreements
Another form of employment agreement is governed by Articles 19 to 29 of Legislative Decree no. 81/2015 which rules the fixed-term agreement (*contratto a tempo determinato*). This agreement provides for a specific limitation on its term due to specific reasons that must be included in the contract. In general terms, it is possible to execute a fixed-term agreement under justified technical or productive reasons or to replace other employees.

Under Article 19 of Legislative Decree no. 81/2015 and as amended by Legislative Decree no. 87/2018 (*Decreto Dignità*), the fixed term agreement has a duration of maximum 12 months. This term may be extended to a maximum of 24 months only for some specific reasons listed by the law, i.e.:

- Temporary objective requirements which are not included in the normal activities
- For the purpose of replacing other employees
- Needs connected to the significant and non-schedulable increases in the normal business activity
- Special reasons provided by the NCBA

The fixed-term employment contract may be extended with no reasons, if the term is within the 12 months. The contract may be extended up to 24 months, if the reasons listed above are met. Moreover, the employment contract may be renewed up to four times if the reasons listed above are met.

Employees hired on a fixed-term basis are granted a precedence right in case of new hirings by the relevant company for the same position. This right expires within one year from the end of the employment relationship.

Please note that the law establishes that the number of employees hired on fixed-term contracts shall not exceed the 20% of the average number of employees hired on an open-ended basis during the year of reference, unless provided differently under the applicable NCBA.

Part-time employment agreements
Please note that in general terms, the law provides that full-time work comprises a maximum of 40 hours per week and eight hours per day, unless differently provided under the applicable NCBA. The relevant NCBA may also regulate part-time employment agreements as follows:

- On a horizontal basis, with reduced daily working hours
- On a vertical basis, with full-time work limited to certain periods during the week, month or year
- On a mixed basis, with a combination of the previous methods

Staff lease agreements
The staff lease relationship involves three different subjects and, namely: the employee; the work agency duly authorized by the Ministry of Labor and Social Policies (*Ministero del Lavoro e delle Politiche Sociali*) – who is the effective employer of the employee; and the "user", empowered to exercise the direction and control powers over the employee, while the disciplinary powers rest within the labor agency.

Under Legislative Decree no. 81/2015, in general terms:

- Staff leasing agreements should be mandatorily in writing.
- The leased staff should be granted the same treatment and conditions and have the same economic rights of the user's own employees.
- The user and the work agency are jointly liable for the payment of the remuneration and the social security contribution of the leased staff.

Apprenticeship
The apprenticeship is an agreement aimed at promoting the training and the employment of young people. Under the apprenticeship agreement, the employer undertakes to provide training to the apprentices, in accordance with the limits envisaged in the applicable NCBAs and the regional law.

The agreement must be made in writing and should establish an individual training plan of the prospective employee.

Probation period
Employment agreements may provide for a probation period, which must be agreed in writing by the parties. Almost all NCBAs envisage a maximum duration for the probation period, which varies according to the level of qualification of the employee, but it cannot be longer than six months. Please note that illness or injury suffered by the employee interrupt the probationary period.

For fixed-term contracts, the term of the probation period shall be proportionate to the term of the employment relationship. However, without prejudice to the terms of the NCBA, the parties are free to determine the duration of the probation period, given that it is not equal or longer than the term of the fixed-term contract.

Mandatory Hirings
Under Italian law, the employers that overcome certain size threshold are subject to an obligation to hire persons belonging to certain social or physically disadvantaged categories (e.g., people with disabilities, wartime orphans or widows, etc.). Under Law no. 68/1999, private sector employers are required to hire "disadvantaged persons" belonging to different categories.

The number of persons that should be hired varies according to the size of the workforce:

- One mandatory hiring for employers with a workforce of between 15 and 35 employees
- Two mandatory hirings for employers with a workforce of between 36 and 50 employees
- 7% of the workforce for employers with more than 51 employees

Please note that failure to comply with the mandatory hirings above could be sanctioned.

Noncompete agreement
Under Article 2105, the employee undertakes, during the term of the employment agreement, the obligation to be faithful to the employer and shall not carry out any activity in competition with the same nor disclose information related to the organization and processes of the company.

For the period after the end of the employment relationship, a noncompete agreement may be executed or a noncompete clause may already have been negotiated in the employment agreement (for the sake of simplicity, the Noncompete). The Noncompete shall provide:

- The scope of work activities that the former employee shall refrain from carrying out
- The territorial restrictions to his or her activities
- A fair consideration for the Noncompete obligation which can be established as a fixed amount or as a percentage of his or her salary
- The term of the Noncompete that cannot be greater than five years from executive-level employees or three, for all other employees

Social benefits
Under Italian law and the applicable NCBA, employees are entitled to certain benefits connected to the service within the employer company:

- **Vacation leave**. Besides the right to a weekly rest and to annual paid vacation leave; such rights under Article 36, paragraph 5 of the Italian Constitution, cannot be waived. Article 2109 of the Civil Code provides that the weekly rest should be a day per week (normally Sundays), and that the paid vacation leave is granted by the employer according to the needs of the enterprise and the interest of the employees themselves. The length of the annual vacation leave is determined according to the applicable NCBA.
- **Sickness or Injury leave.** In case of sickness or injury, unless the applicable NCBA does not provide otherwise, under Article 2110 of the Civil Code, the employee should be granted a salary or an indemnity for a period and for an amount provided by law and/or the applicable NCBA. During the term of sick or injury leave, the employee cannot be dismissed by the employee.

3.2.6. Termination of the employment relationship

Under Italian law, the main reasons allowing the withdrawal of the employer from the employment relationship with an individual employee (*licenziamento individuale*) are just cause or for justified reason.

If an employer with certain staffing requirements intends to dismiss more than five employees within a certain term (*licenziamento collettivo*) a special procedure with the involvement of the trade unions must be carried out.

Dismissal for just cause
The just cause consists in an event which does not allow the continuation of the employment relationship — even on a temporary basis, such as gross misconduct by the employee — and has a serious effect on the trust relationship between an employer and its employee. Under Article 2119 of the Civil Code, the employer is entitled to terminate the agreement immediately after the disciplinary procedure, without giving any notice period to the employees.

Dismissal for justified subjective reason
The justified subjective reason consists in a breach of the employee's contractual obligation, which is, however, less serious than under just cause. In this case, the employer can terminate the relationship after the disciplinary procedure by granting a notice period provided by the applicable NCBA, or by paying an indemnity in lieu of notice.

Dismissal for justified economic reason
The dismissal for justified economic reason is grounded on the economic situation of the employer which relates to the production, organization or proper functioning of the business activity. Also, this dismissal provides that the employee is entitled to the notice period, or the indemnity in lieu of notice.

As stated above, this dismissal does not involve the conduct or behavior of the employee, but is founded on "technical, organizational and productive reasons" and is, therefore, related to the business activities of the employer.

Dismissal notice and notice period
Dismissal and resignation notices should be made in writing, and in certain cases, with a specific online procedure.

The duration of the notice period in case of dismissal depends on the level of qualification of the employee and on the NCBA applied.

Collective dismissals
Under Italian law, collective dismissals are governed by Law no. 233/1991. Pursuant to Article 24 of Law no. 233/1991, the procedure for collective dismissals shall be carried out by all companies or enterprises which employ more than 15 employees, and which intend to make redundant at least five employees within 120 days, in one more plants or facilities located within the same province, following a reduction or change of operations or activities, or their shutdown.

Moreover, collective dismissals require the mandatory involvement of the trade union company representatives *(rappresentanze sindacali aziendali*), if any, and the labor unions.

Additional preventive information obligation has been recently introduced for companies staffed with at least 250 employees in case of dismissal of more than 50 employees.

Severance pay
Upon the end of the employment relationship, either following a dismissal or a resignation, the employee is entitled, in addition to the other statutory payments, also to a severance pay (*trattamento di fine rapporto* – the **TFR**), which is a deferred salary. In particular, the TFR is a deferred salary, that is computed by considering all the remuneration that the employee has accrued during the employment relationship and dividing such amount by 13.5.

The TFR is accrued by each employee, irrespective of the type of relationship (open-ended or fixed-term contract), for the whole duration of the agreement and the amounts are increased each year based on the cost-of-living index during the reference year published by the *Istituto Nazionale di Statistica* (ISTAT).

The TFR is normally paid by the employer at the end of the relationship, but the employee may ask the employer to pay it monthly to a private pension fund, for the purpose of accruing a higher pension at the moment of retirement.

3.2.7. Labor disputes with employees

Employment disputes may cover different matters, such as request of different classification of the contract (usually, from an autonomous contract to a subordinate one), challenges of dismissals, pay differences, employee benefits, violation of the rules on temporary contracts, misappropriation of trade secrets and confidential information, unfair competition, demotion, damages, and joint liabilities.

Labor litigation is mainly ruled by the Italian Code of Civil Procedure and by specific laws.

The structure of the judicial procedure for labor disputes is aimed at a quick resolution of the litigation, compared with the other general civil procedures.

Prior to the Court involvement, the parties might attempt an at out-of-Court settlement also with the involvement of the local labor office and/or of the trade union. Disputes between workers and employers are often settled before the trial, or at the very beginning of it, thought the signature of a specific settlement agreement. A prior attempt at conciliation remains mandatory in the case of dismissal of an employee hired before 7 March 2015.

In the labor process:

1. The judge is obliged to attempt the settlement of the dispute at the first hearing.
2. The judge is granted with wide powers, compared with other kind of judicial trials.
3. Each party must adduce all the evidence they have in support of the request at the first submission of the memorandum.

Once the writ of summons has been filed to the Court by the plaintiff, the judge schedules the first hearing, and the applicant must notify it to the defendant.

The defendant must submit to the Court the relevant memorandum of defense within 10 days before the first hearing.

The first hearing constitutes the core of the procedure and creates the first contact between the parties and the judge. Parties must appear in person to allow the judge to interview them freely, to attempt to conciliate the dispute and to make a settlement or conciliatory proposal to the parties.

If the conciliation attempt fails, then the judge arranges the hearing of the witnesses (if any) and might eventually order the parties to file notes, and schedules the hearing for discussion. At the end of this hearing the judge issues the sentence.

Under the Italian law, the judicial decision that orders the employer to pay sums in favor of the employee is provisionally enforceable and may be suspended only by the Court of Appeals (*Corte d'Appello*) if a very serious harm may be caused to the employer.

Appeals against first instance court judgments must be lodged within the Court of Appeals. Judgments issued from the Court of Appeal can be challenged in the Supreme Court (*Corte di Cassazione*).

Arbitration is uncommon for labor-related disputes.

The Fornero Procedure (Rito Fornero)
Law no. 92/2012 (the so-called **Fornero Law**) introduced a new specific legal proceeding (the so-called *Rito Fornero*), faster than the ordinary labor procedure, for employees hired before 7 March 2015 by companies with more than 15 employees who intend to challenge the dismissal.

This procedure, which consists of two successive phases, is very fast as:

1. All formalities not essential to the establishment of a complete process are eliminated
2. Very tight deadlines are set for the various phases of the procedure

Furthermore, the management of these disputes must have priority over the others and the Courts reserve specific days in the agenda for the hearings of such disputes.

The decision served at the end of the Fornero Procedure can be opposed by the losing party by filing a lawsuit before the same Court within 30 days. Then, the opposition hearing will be scheduled and conducted pursuant to the common rules for ordinary proceedings.

3.3 Environment, health and safety on the workplace

3.3.1. Environmental law issues

3.3.1.1. Key environmental principles and laws

Until February 2022, the Italian Constitution did not contain any express provision related to environmental protection. However, the Constitutional Court – the highest court in the Italian legal system – stated long before the recent constitutional reform that a general principle of environmental protection could be acknowledged by means of interpretation of the constitutional principles on the protection of landscape (Article 9, paragraph 2) and human health (Article 32 paragraph 1).

With Constitutional Law no. 1 of 11 February 2022, new provisions related to environmental protection have been introduced in the Italian Constitution. More specifically, the afore-mentioned constitutional law amended Articles 9 and 41 of the Constitution providing that:

- The state "***protects the environment, biodiversity and ecosystems, also in the interest of future generations.***" (Article 9, paragraph 2)
- Economic activity is free and "***it cannot be carried out in opposition to social utility or in such a way that could harm health, the environment, safety, freedom and human dignity***" (Article 41, paragraph 2).
- The law establishes "***programs and controls to ensure that public and private economic activities could be directed and coordinated for social and environmental purposes***" (Article 41, paragraph 3).

As a member of the EU, Italy has also implemented many principles of the European regulatory framework.

Legislative Decree no. 152 of 3 April 2006 (the **Environmental Code**) is the main Italian legislation on the matter and defines the regulatory framework applicable to different matters concerning environmental protection, such as emissions into the atmosphere, wastewater discharge, waste disposal, hazardous substances, and soil contamination.

In particular, Article 3-*ter* of the Environmental Code establishes the most relevant principles governing environmental protection, as follows:

- The "polluter pays" principle, according to which the polluter must bear the cost of the measures necessary to reduce or remove the pollution he, she or it caused.
- The precautionary principle allows the competent Authority to act when there is a possibility that a phenomenon, product or process may have harmful effects identified by a scientific evaluation.
- The prevention principle, which enables action to be taken to protect the environment at an early stage. It is not only a matter of repairing damage after it has occurred, but also of preventing it from happening. Therfore, this principle is not as far-reaching as the precautionary principle.
- The sustainable development principle, that includes, development that meets the needs of the present generations without compromising the opportunity for future generations to satisfy their own needs.

3.3.1.2. The environmental permits

As a rule, any new economic activity or modification of an existing activity that has a potential impact on an environmental compartment (soil, air and water) requires a permit. The main environmental authorizations in Italy are

the following:

- The Environmental Impact Assessment (*Valutazione di Impatto Ambientale or VIA*) can be defined as the prior assessment of the potential environmental effects of a project. This kind of authorization replaces all the authorizations, licenses and opinions normally required under the environmental legislative framework (Article 5, paragraph 1 of the Environmental Code). This authorization is issued by the Ministry of Ecological Transition for projects under the State jurisdiction, or by the Regions – or other bodies designated by the Regions – for projects under regional jurisdiction. The procedure is activated upon the application by private citizens with the submission of a final project and an assessment of its environmental impact.
- The Integrated Pollution Prevention and Control Permit (IPPC) (*Autorizzazione Integrata Ambientale or AIA*) is required for all companies that intend to carry out activities that fall under the scope of the IPPC legislation (Part II, Annex VIII, of the Environmental Code), such as energy activities, the chemical industry and metal processing. The IPPC adopts an integrated approach, where all environmental aspects are considered at the same time, together with site-specific issues. This permit replaces all the authorizations listed in Part II, Annex IX of the Environmental Code, such as those permits related to air emissions, wastewater discharges and waste. IPPCs are issued by the Ministry of Ecological Transition for activities falling under the competence of the State (Part II, Annex XII of the Environmental Code), by Regions – or other bodies designated by the Regions, usually provinces/metropolitan cities – for activities at a local level (activities listed in Annex VIII but not included in Annex XII).
- The Single Environmental Authorization (*Autorizzazione Unica Ambientale or AUA*), introduced by Presidential Decree no. 59 of 13 March 2013, applies to small-and medium-sized enterprises, and installations not subject to IPPC regulations. It replaces the authorizations listed in Article 3 of the same decree – wastewater discharges, atmospheric emissions, and noise pollution. The Single Environmental Authorization is issued by a dedicated office for productive activities (*Sportello Unico Attività Produttive or SUAP*) in cooperation with the competent province or metropolitan city and has a (renewable) term of 15 years.

3.3.1.3. Environmental liability

In Italy, violations of environmental laws are punished with administrative or criminal sanctions, depending on the significance of the offenses, according to a classification established by law. As a general principle, criminal liability is personal. Companies can only be held liable on administrative charges.

In the case of environmental damage, the "polluter pay" principle – which applies to all companies, regardless of size or industrial process – provides that only the polluter must pay for the environmental remediation of the site. In any case, the polluter must be identified on the basis of a direct link. The causal link criterion aims to establish a clear relationship between the actions of the person or company and the environmental damage that has occurred. Liability for environmental damage may be excluded if the person or undertaking can prove the absence of such connections.

A landowner that is not responsible for the environmental damage is not required to carry out remediation activities. Nevertheless, they are free to take care of the remediation at their own expense and then claim compensation from the polluter.

According to Legislative Decree 231/2001, the company, as clarified by case law, may be excluded from liability if it can prove that it had previously adopted all the measures necessary to prevent the offence, including the adoption and implementation of Model 231. The adoption of the Model 231 after the offence has been committed enables the company to reduce the fine and, in some cases, to avoid disqualification sanctions (*sanzioni interdittive*).

According to general principles, corporate directors and other officers may be held personally liable for environmental crimes or breaches of environmental law committed by the company if they were acting in the capacity of the company's legal representative. This liability has a criminal or administrative nature, depending on the relevant provision of law violated. However, the delegation of functions within the company may be effectively used to shield the company's officials from such liability. Therefore, companies may delegate, through a power of attorney, functions on environmental matters to certain individuals, who will consequently take on the responsibility that would otherwise fall upon the company's legal representatives.

3.3.2. Health and safety on the workplace law issues

3.3.2.1. Key health and safety principles and laws

The aim of the regulations governing health and safety in the workplace is to prevent or to reduce the workers' exposition to risks arising from their work activities, and to prevent accidents or injuries at work. Legislative Decree no. 81 of 9 April 2008 on health protection and safety in the workplace (the Health and Safethy Law or **HSE Law**) is the main Italian legislation on the matter, setting out the legislative framework applicable to several matters concerning health and safety on the workplace (HSE), such as employer's duties, appointment of the subjects having HSE roles, and criminal and administrative sanctions.

Pursuant to Article 3 of the HSE Law, the regulations contained therein apply to all economic sectors and all kinds of workplace risks. The provisions of the HSE Law apply to all companies in which at least one employee is employed.

The key principles on which HSE legislation is founded are:

- Assessment of health and safety risks in the workplace
- Removal or reduction of work-related risks
- Carrying out of periodic health monitoring of employees
- Employee's safety training
- Periodic consultation of worker's safety representatives
- Implementation of the necessary safety measures
- Monitoring of the efficacy and of the implementation of safety measures in the workplace

3.3.2.2. Key duties of the employer

According to Article 18 of the HSE Law, the employer has many safety-related tasks, including, but not limited to:

- The appointment of the designated doctor entrusted with the health surveillance.
- The appointment of the head of the prevention and protection service.
- The provision to the employee with the requested personal protective equipment (*Dispositivi di protezione individuale or dpi*)
- The implementation of measures on the monitoring of risk situations
- The draft of the risk assessment document according to article 28 of the HSE Law
- The implementation of fire prevention measures

The draft of the risk assessment document is one of the most relevant obligations of the employer. Such tasks, as well as the appointment of the head of the prevention and protection service, cannot be delegated by the employer with a power of attorney. The risk assessment must be updated whenever there are changes in the production process or work organization that are relevant to the health and safety of workers, or when it is deemed necessary (***e.g.***, in relation to technological developments or following the occurrence of serious accidents at the workplace).

Please note that, according to Article 55 of the HSE Law, lack or the incompleteness of the safety documentation, or the failure to appoint any of the bodies or individuals tasked with an HSE role may result in administrative fines or criminal penalties.

3.3.2.3. COVID-19 and health and safety on the workplace

Due to the COVID-19 pandemic, new provisions regarding health and safety on the workplace have been introduced in relation to such disease.

Among the most important tasks, it should be noted that the employer is required to:

- update the risk assessment document in relation to the biological risk related to the possible spread of COVID-19 at the workplace.
- adopt a safety protocol that incorporates the guidelines contained in the Anti-Contagion Security Protocol (*Protocollo di Sicurezza Anti-contagio or PSA*) signed on 30 June 2022 between Italian Government, the employer's organizations and the trade unions.

Furthermore, according to the PSA, the employer must inform all workers and anyone entering the workplace of the risk of COVID-19 infection and the precautionary measures to be taken.

It should be noted that, according to national guidelines, the employer must ensure the daily cleaning and periodic disinfection of workplaces and common areas, while the use of safety masks in the workplace is still recommended but no longer mandatory.

3.4 Antitrust or competition law

3.4.1. Overview of the legal framework in Italy on antitrust or competition law matters

Before entering into any agreement involving more than a company or planning a concentration by means of an M&A, it should be verified whether the transaction falls within the scope of the Law no. 287 of 10 October 1990 (the **Competition and Fair Trading Act**), which shall be interpreted in compliance with EU competition principles, and applies to:

1. Agreements restricting freedom of competition
2. Abuses of dominant position
3. Concentrations

Any conduct which is potentially able to restrict competition may be examined by the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato or the AGCM*), which – as an administrative independent authority in charge of applying Articles 101 and 202 of the Treaty on the Functioning of the European Union (the **TFEU**) – has the power to inflict fines, prohibit harmful mergers, and impose measures aimed to mitigate their negative impact on competition.

Although it is only mandatory to provide the AGCM with a notice in the cases specifically described below, it is a good practice to voluntarily notify any of the aforesaid agreements and concentrations to the AGCM, which provides a specific template to be filled out with all relevant information and documents needed for the authority to proceed with an antitrust investigation.

3.4.2. Restrictive agreements and practices

Under the Competition and Fair Trading Act, restrictive agreements and practices are described as those accords, concerted practices, or any decision having as their object or effect appreciable prevention, restriction, or distortion of competition by:

1. Directly or indirectly fixing purchase or selling price or any other trading conditions.
2. Limiting or preventing production, markets, investment, or development.
3. Sharing markets or sources of supply.
4. Applying different conditions to equivalent transactions with other parties engaged in the same trade, putting them at a competitive disadvantage.
5. Making the conclusion of contracts, subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject matter of such contracts.

Such agreements are void under Italian law, and the AGCM is entitled to impose a fine of up to 10% of the turnover achieved in the last financial year by the undertakings involved in the infringement. Each infringer may also be subject to civil actions for ascertaining the infringement, the declaration of the nullity of the agreement and the compensation of damages.

Nevertheless, if certain conditions are met, the AGCM is empowered to authorize agreements which restrict competition for a limited period.

To enjoy this kind of exemption, the relevant undertakings must demonstrate that: (i) their agreement improves supply conditions on the market; (ii) the restrictions on competition are necessary to achieve the aforesaid positive impact; (iii) the agreement provides a substantial benefit for the consumer; and (iv) no relevant portion of the market would be excluded from competition.

A notice to the AGCM is due before implementing a potentially restrictive agreement only if the same concerns the media and communications sector. However, an undertaking can either file an authorization request to qualify for the exemption described above, or voluntarily notify the intention to implement an agreement as a good corporate practice, since no further investigation can be initiated if the authority doesn't proceed with an investigation within 120 days from the notice.

Nevertheless, in accordance with EC Regulation no. 1/2003 of the Council of 16 December 2002, the AGCM may not assess the merits of prior notices submitted by undertakings as for Community-level agreements.

EU competition regulations (such as Regulation (EU) 330/2010 and the new Regulation (EU) 720/2022 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices or the Vertical Restraints Block Exemption), are directly applicable in Italy. Both the AGCM and the national courts take into account communications by the European Commission on the application of competition law.

The infringement of Italian competition law is not directly related with criminal sanctions, but certain anti-competitive conducts may, nevertheless, be relevant under the Italian Criminal Code (such as boycotts, market manipulation through the misuse of price-sensitive information, and speculation on the price of consumer goods).

3.4.3. Abuse of dominant position

The mere dominant position on a relevant market does not entail an abuse. But the dominant firm must not enact conducts with distorting effects on market competition.

The abuse of dominant position is prohibited under Article 3 of the Competition and Fair Trading Act, which provides with a non-exhaustive list of abusive conducts, such as:

- To impose unjustifiable burdensome purchase or selling prices or other contractual conditions
- To limit or restrict production, market outlets or market access, investment, technical development or technological progress
- To apply to other trading partners dissimilar conditions for equivalent transactions, thus placing them at an unjustifiable competitive disadvantage
- To make the closing of contracts subject to supplementary obligations in disadvantage of the other parties that, by their nature or according to commercial practice, have no connection with the main subject-matter of such contracts

Article 3 also applies to public firms and State-controlled firms, but it is unapplicable to undertakings running general economic interest businesses or holding a legal monopoly, limited to what is strictly necessary in order to successfully perform their tasks.

The AGCM may order to cease an abusive conduct; impose on undertakings fines up to 10% of their total turnover, or suspend the firm's activity for up to 30 days. Furthermore, the infringer may also be subject to civil actions for the ascertainment of the infringement, the declaration of the nullity of the agreement and the compensation of damages.

A specific case of abuse of dominant position is given when the anti-competitive conduct is applied in relation to undertakings that are in a situation of economic dependence on the infringer. The dominant undertaking may be found liable, if it refuses to supply or to purchase, imposes unfair trading conditions, or unfairly ceases the commercial relationships. Any agreement that forms the basis of the abuse is null and void and may give rise to the aforesaid sanctions and fines.

3.4.4. Merger control powers

M&A may be prohibited if the outcome of such operations is able to reduce competition on a lasting basis by the creation or strengthening of a dominant position in the relevant market.

The transactions which may be relevant under Italian merger control regulation are:

- The merger of two or more previously independent businesses through a stable change of control
- The acquisition of the sole or joint control over all or part of a business
- The creation of a concentrative joint venture

The control over a business is manifested by the power of exercising a decisive influence over it either by the means of contractual agreements, of the acquisition of rights over shares, or by any other adequate means.

Whenever a concentration is planned, the involved undertakings must provide the AGCM with a notice if the aggregated annual turnover achieved in Italy by all undertakings involved in the transaction exceeds € 517 million, or the individual annual turnover achieved in Italy by each of at least two of the undertakings concerned by the transaction exceeds € 31 million. The thresholds above are reviewed by the AGCM on a yearly basis.

If a concentration meets the two turnover thresholds set by Italian regulation, it must be notified even if it is a foreign-to-foreign transaction.

If the transaction is implemented prior to the completion of the authority's investigation, ACGM may order the responsible parties to implement measures to restore condition of effective competition and remove any distortive effects.

Nevertheless, an M&A transaction, which is found to restrict competition after the ACGM investigation, may be authorized by the Authority provided that the original transaction project is amended in order to remove the distortive aspects.

When evaluating the legitimacy of a transaction, the AGCM adopts an EU-oriented approach, weighing up the potentially harmful effects and the possible efficiencies generated by the transaction, considering, ***inter alia***, the structure of the relevant markets, the financial strength of the involved undertakings and the evolution of supply and demand.

Specific industries (e.g., credit institutions, other financial companies, and insurance companies) are subject to distinct merger control regulations under Italian law.

3.5 Intellectual property rights

Italy is a member of the EU and a party to all main European and international agreements (specifically, the TRIPs Agreement) relating to intelectual property (**IP**). Therefore, the Italian regime is substantially consistent with the other European countries.

Italy recognizes the following rights:

- Copyrights in original works, including databases and computer programs.
- Neighboring rights, including right to artistic performances, phonograms, video grams and broadcasts.
- Patents, including patents applied to Italy in accordance with the European Patent Convention (**EPC**). In addition to patents the Italian system also allows the filing and the grant of utility models, a 10 year exclusive right on product technological improvements.
- Industrial designs, including registered and unregistered community designs.
- Trademarks, including EU trademarks and trademarks applied for Italy by means of international registration, geographical designations, protected geographical indications and marks of origin.
- Topographies of integrated circuits.
- One-of-a-kind databases (sui generis protection).
- Trade secrets and know-how.
- Domain names.

The Italian Patent and Trademark Office (*Ufficio Italiano Brevetti e Marchi or UIBM* – website: www.uibm.gov.it) is the national authority managing the filing of patents, utility models, designs and trademarks, as well the record of license agreements.

The requests for registering Copyrights (even if not mandatory) can be addressed to the copyright register service within the Ministry of Culture (the General Direction of Libraries and Copyright or, in Italian, Direzione Generale Biblioteche e Diritto d'Autore – website: www.librari.beniculturali.it).

3.5.1. Copyright protection

As a party to all major international treaties and agreements, Italy protects works under the terms of these treaties and agreements. Original (***i.e.***, independently created by its author) works are subject to copyright protection without any additional formalities or conditions. There are no limitations as to the types of works that may be subject to copyright protection. In addition, since 2001 industrial designs (even for serial products) can be protected via copyright if the design can be considered creative and having an artistic value.

The latter requirement is usually interpreted (and confirmed by the Supreme Court judgement no. 7477/2017 of 23 March 2017) in recognition of the acquisition of a market value of the design per se so high as to transcend the value related only to its functionality. According to this approach famous designs were recognized under copyright in Italy, such as the FLOS Arco lamp, the PANTOM chair, the MOONBOOT shoes and recently the VESPA motorbike.

3.5.2. Patents and utility models

The requirement and conditions for the grant of a patent are the same as under the EPC. The UIBM does not execute any validity examination and any national patent application is usually granted in one year from the filing date.

In fact, the validity requirement is treated at the enforcement level, when an infringement proceeding is started before the IP specialized civil Courts (called ***Sezione Imprese***). In this situation the judges (supported by a court expert) will firstly evaluate the validity and the effective scope of protection. The patentee can have the option even to file a claims' limitation request during the litigation proceeding). This is a clear difference in relation to the dual system of specific jurisdictions (such as China and Germany). For what concerns the infringement issues, the judicial criteria are consistent with the jurisprudence of the EU countries. Recently, the IP code adopted a specific definition of "contributory infringement" (Article 66, paragraph 2-*bis*).

Few matters are regulated only by national law, such as the employees' invention regime (see below at paragraph 3.5.4), and the role and scope of protection of the utility model (completely different from the Chinese and German rules), being de facto a protection for innovations not considered as inventions under the EPC requirements.

It is worth to note that on 1 January 2023 the Unitary Patent System will start for all the 24 Member States and that the Patentee will have the opportunity to opt out until 31 March 2023.

3.5.3. Design

Design protection is really one of the fastest growing tools of protection in Italy.

Statistically, Italy is the second European country of origin of applications within the European Union Intellectual Property Office (**EUIPO**).

The requirements of validity (novelty and individual character) are the same in all EU.

Likewise for the patents and in the EUIPO, the designs are registered without any validity examination.

The Italian jurisdiction is reported as the second country in EU for litigation cases.

3.5.4. Employees creations

Employee creations are regulated differently in Italy:

- **For patents and know how.** If the employee is contractually committed to R&D activities, the patent belongs as a matter of law to the company and only in cases of a lack of a proper contractual indemnification, the employee may claim an equitable award (that is frequently ignored by the company's HR department and subject to very high levels of compensation in the case of litigation). If the employee is not related to the R&D activities, the patent right belongs to him or her. The company only has a right of first refusal, if exercised within three months of the employee's filing. A peculiar situation exists regarding universities, where the law recognizes a type of "professor privilege" for all university employees for non-privately committed innovations. Accordingly the employee has the right and full freedom to negotiate licenses and transfers without any control by the university. Such rule is under revision and such a privilege could be modified and strongly limited.
- **For design and copyright software**. The law simply gives the automatic ownership rights to the company, if not regulated differently, without any indication of an equitable award for the employee. Such situations may generate potential requests by the employee to be treated in the same manner as in the patent field, even if no court case has been officially reported yet.

3.5.5. Trademarks

Similar to design, the local validity rules are fully harmonized with EU rules. For the design, Italy is the second European Trademark applicant after Germany before the EUIPO.

The national applications for registrations are managed by UIBM, that also offers an opposition proceeding.

In addition to harmonized issues, it should be noted that significant respect to the reputation of a trademark is given in cases of conflict between patronyms. The Italian courts are quite generous in granting an enlarged scope of protection (even when not expressly claimed by the trademark owner) in cases of proven reputation within Italy.

3.5.6. Enforcement

Italy was one of the first EU countries to implement the Enforcement Directive (Directive 2004/48/EC). The Italian civil IP enforcement system is often not properly understood and appreciated by foreigners due to a lack of available information and misleading press statements. Since the implementation of the IP Courts in 2003 (the number of which now stand at 11, if foreign entities are involved), judges are committed to giving care and attention to IP cases.

Regarding timing issues, is should be noted that:

- In Italy, any IP right may be already enforced during the application period (it is not necessary to wait for the grant).
- In 90% of the cases in Italy the enforcement starts with preliminary proceedings (preliminary injunctions), taking about seven to nine months for patent cases and three to four months for design or trademark cases.
- Evidence search orders are usually granted ***ex parte*** within one week. Italian Courts were the first to issue "cross border evidence collection orders" in full compliance with Regulation (EU) 1783/2020 previously Regulation (EU) 1206/01, aiming to collect evidence from several EU member states via one proceeding.

Regarding remedies issues, it should be noted that:

- The ordinary proceeding takes about 2.5/3 years.
- Italy usually grants publication orders even on the website of the alleged infringer (this is much more effective than magazine/newspaper publications).
- The damage value recognition is quite satisfactory, frequently applying the repayment of profit principle or the doubling of applied royalty rates. Thanks to the ***ex-parte*** search orders, all economic turnover is readily identified before the ordinary proceedings.
- Additionally Italy, recognizes "moral prejudice," usually defined as 50% of the damaged economic value to be added.

Each of these elements demonstrate that Italy can be considered an efficient starting hub that can form a strategic part of an EU enforcement plan.

In addition, effective on 1 April 2023, the Unified Patent Court system will start its activities for the Unified Patents. Italy will operate with a local division based in Milan with the possibility to issue EU-wide injunctions for all the 24 Members States.

Criminal enforcement is also available and very cost effective for both the preliminary seizure order and the custom interventions. But the timing of the main proceedings is unpredictable.

3.6 Other compliance

In addition to the points of attention highlighted above and in the following sections, the Italian legal system provides for specific laws and regulations governing specific industries, as well as regulating authorities. In this section, we have elected to cover, as an example of the complexity of such laws and regulations, the topics of consumer law, and the main laws and regulations governing the life sciences industry in Italy.

3.6.1. Consumer Law

3.6.1.1. Overview of Italian consumer law

In Italy, the protection of consumers' and users' rights is currently regulated by the Italian Consumer Code (***i.e.***, Legislative Decree no. 206 of 6 September 2005, as amended).

The Italian Consumer Code is divided in six parts, which are the following:

- Part I – General Provisions
- Part II – Education, Information, Advertising
- Part III – Consumer Relationship
- Part IV – Safety and Quality
- Part V – Consumers' Associations and Access to Justice
- Part VI – Final Provisions

To give a general overview about the legislative scenario concerning Consumer Law in Italy, this paragraph summarizes the most relevant provisions contained in the afore indicated parts – in particular, parts from "I" to "V", except for part "IV" on product safety and quality – which is regulated by specific provisions according to the kind of product at issue.

3.6.1.2. The Italian Consumer Code. Part I: General provisions

Part I of the Italian Consumer Code outlines the concept of "consumer" or "user" for the purposes of the legal

framework established by the Code and identifies their fundamental rights.

Pursuant to Article 3 of the Consumer Code, the "***consumer***" or "***user***" is defined as "***the natural person who is acting for purposes which are outside their trade, business or profession***". In addition, the "***consumer***" or "***user***" can be identified as "[...] ***any natural person to whom the commercial information is directed.***"

The consumer's fundamental rights which are protected by the rules of the Consumer Code, are related to:

- Health protection
- Safety and quality of products and services
- Adequate information and correct advertising
- Consumer education
- Fairness, transparency and equity in contractual relations
- Promotion and development of free, voluntary, and democratic associations between consumers and users
- Supply of public services according to standards of quality and efficiency.

3.6.1.3. The Italian Consumer Code. Part II: Education, Information, Advertising.

Articles 5 to 17 of the Code provide information obligations concerning the contents of products to be sold within the Italian territory in favor of the consumer. For example, the product shall bear on its packaging:

- The legal name or classified name of the product
- The name or the corporate name, the brand and the indication of the producer's registered office, or the registered office of an importer established in the territory of the European Union
- The country of origin, if located outside of the EU territory
- The indication of any material or any substance added to the product that may be harmful to humans, animals or the environment
- The materials used and the production methods where these are significant for the quality or characteristics of the product
- The instructions, precautions, and the intended use, where useful for the purposes of use and safety of the product.

Such information must be clearly visible and written in the Italian language, and in a legible manner.

The Italian Consumer Code also regulate advertising and the so-called "unfair commercial practices". In this respect, the Code imposes on the "trader", (***i.e.***, "***any natural or legal person who is acting for purposes related to his trade, business or profession, or his intermediary***") several constraints.

Firstly, advertising shall be, among other things, evident and, therefore, clearly recognizable, truthful and correct. Besides the rules of the Consumer Code, advertising in Italy is regulated by other law provisions and regulations, such as the Civil Code, the Code of Marketing Communication issued by the Advertising Self- Regulation Authority (*Istituto di Autodisciplina Pubblicitaria or IAP*) and Legislative Decree no. 145/2007 (on misleading and comparative advertising). It is important to stress that advertising is regulated by other sources of law, which impose several and specific restrictions (including, in some cases, banning it altogether) depending on the products advertised (e.g., specific rules govern alcohol advertisement, drugs or medical devices advertisements and gambling advertisements).

Focusing on the measures provided for by the Consumer Code, consumers and their associations and organizations are allowed to ask the AGCM to inhibit every kind of misleading, deceptive or unlawful comparative advertising, which is considered an unfair commercial practice, as it will be further expanded below. Indeed, if the authority finds the advertisement to be in breach of the relevant provisions under Part II of the Consumer Code, it shall prohibit any further advertising not yet been made public or order the cancellation of the currently ongoing advertisement(s) in addition to the imposition of a fine.

According to Article 20 of the Consumer Code, unfair commercial practices are those "***contrary to the requirement of trader diligence***" and which "***materially distort or are likely to distort the economic behavior with regard to the product of the average consumer whom they reach or to whom they are addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers***".

Unfair commercial practices can either be "***misleading***" or "***aggressive***".

Pursuant to Article 21 of the Consumer Code and following provisions, any practice containing false information and/or capable to deceive the average consumer in relation to, ***inter alia***, the existence or nature of a product; its main characteristics (including its composition, risks, availability and after-sale costumer assistance), the price or the way the same is calculated, the consumer's rights, shall be regarded as ***misleading***. In any case, "***a commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.***" As a consequence, the (misleading) omission of material information that the average consumer needs may also be considered as a misleading commercial practice.

A commercial practice shall be deemed aggressive, under Article 24 of the Consumer Code "***if, in its factual context, taking account of all its features and circumstances, through harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct vis-à-vis the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise***".

The AGCM has the power, ***ex officio*** or at the request of any interested party, to take legal action against unfair practices, ordering, among other measures, their cessation with the elimination of their effects and the traders to publish a corrective statement.

3.6.1.4. The Italian Consumer Code. Part III: Consumer Relationship

Part III of the Code is aimed at regulating the contractual relationship between trader and consumer, providing the latter with an adequate contractual protection. This protection is enshrined in a set of general principles and rules, of which the most relevant are listed here. For example, pursuant to Article 35 of the Consumer Code, the written clauses of an agreement between trader and consumer shall be drafted "***in a clear and comprehensible manner.***"

Pursuant to Article 36 of the Consumer Code, the so-called "***unfair clauses***" (*clausole vessatorie*) (***i.e.***, those clauses that lead to a significant imbalance between consumers' contractual duties and rights) are null and void, unless specifically negotiated between the producer and the consumer. In this respect, Article 33, paragraph 2, provides a list of clauses that are presumed to be unfair, unless proven otherwise. Such a list includes, by way of example, clauses that "***provide for the extension of the consumer's adherence to clauses that he did not have the opportunity to know before the conclusion of the contract.***"

In addition, to ascertain whether certain clauses are unfair or not, in case of agreement entered with consumers by executing a pre-drafted form or a standard contract aimed at uniformly regulating certain contractual relations, the trader shall bear the burden of proving that the contract terms have been individually negotiated with the consumer as it will be further expanded below – even though they have been prepared unilaterally by the trader.

There are also specific unfair clauses which are always null and void, even if properly negotiated between the parties (***e.g.***, Article 36, paragraph 2, of the Consumer Code).

Such clauses shall be null and void in any case if they have the purpose or effect of:

- Excluding or limiting liability of the trader in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of the relevant trader.
- Excluding or limiting legal actions of the consumer against the trader or another party in the event of total or partial non-performance or inadequate performance by the trader.
- Providing for an extension of the consumer's acceptance to terms that he/she was not informed about prior to the execution of the contract.

Furthermore, pursuant to Article 66-***bis*** of the Italian Consumer Code, for civil disputes pertaining to contracts regulated under Sections I to V, Chapter I, Part IV of the Code, "***the mandatory territorial jurisdiction is of the court of the place of residence or domicile of the consumer, if located in the*** (Italian) ***territory.***"

In addition to the rules above, specific provisions apply to the so called "distance contracts" (*contratti a distanza*). Pursuant to Article 45 of the Consumer Code, "***Distance contract"*** means "***any contract concluded between the trader and the consumer through an organized distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time of execution of the agreement.***"

The rules of this category of contracts have been significantly changed by the Legislative Decree no. 21 of 21 February 2014, implementing Directive 2011/83/EU, that only applies to those contracts executed after 13 June 2014.

These amendments to the Consumer Code establish that, in addition to the information duties outlined above, information regarding the withdrawal right, and terms and conditions for its exercise form "***an integral part***" of the agreement; "***and shall not be altered unless the contracting parties expressly agree otherwise***". Moreover, such information duties are subject to specific formal requirements. Information shall be made available to the consumer "***in a way appropriate to the means of distance communication used in plain and intelligible language***" and "***the trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails the activation of a button or a similar function, the button or similar function shall be labeled in an easily legible manner only with the words – order with obligation to pay – or a corresponding unambiguous formulation*** [...]. ***If the trader has not complied with this [provision], the consumer shall not be bound by the contract or order.***"

With respect to the right of withdrawal, pursuant to Article 52 of the Consumer Code, "***the consumer shall have a period of 14 days to withdraw from a distance contract, without giving any reason***". The commencing date of the withdrawal term of 14 days depends on the agreement (e.g. service contracts and sales contracts). If the trader fails to properly inform the consumer about his or her withdrawal rights, the term will be extended to 12 months from the end of the initial withdrawal term.

If the consumer exercises the withdrawal right, the trader shall reimburse the consumer of "***all payments received*** [...]***, including, if applicable, the costs of delivery without undue delay and in any event no later than 14 days from the day on which the trader is informed of the consumer's decision to withdraw from the contract***".

On the other hand, the consumer shall return the goods to the trader, unless the latter offers to collect them, "***without undue delay in any event no later than 14 days from the day on which the consumer communicated his decision to withdraw to the trader.***"

The consumer shall be liable "***for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods***", unless "***the provider has failed to provide notice of the right of withdrawal.***"

Finally, Article 61, paragraph 1 of the Consumer Code provides that, unless otherwise agreed by the parties, "***the trader shall deliver the goods to the consumer without undue delay and at the latest, within 30 days from the date the contract was signed.***" Pursuant to its paragraph 2, "***The delivery obligation shall be deemed fulfilled upon the transfer of the physical possession or control of the goods to the consumer.***"

As a general rule, pursuant to Article 63 of the Consumer Code, in contracts that place on the trader the obligation to arrange the shipment of goods, the risk of loss of or damage to the goods, due to causes not attributable to the seller, is transferred to the consumer only at the time when the latter, or a third party designated by him and other than the carrier, takes physical possession of the goods.

3.6.1.5. The Italian Consumer Code. Part V: Consumers' Associations and Access to Justice

Part V of the Consumer Code recognizes the right of association for consumers. In Italy, consumers' most representative associations (***e.g.***, **Codacons**) are registered in the national list provided for by Article 137 of the Consumer Code.

Part V also governs access to justice. In this respect, Law no. 31 of 12 April 2019 has replaced the class action procedure under Article 140-***bis*** of the Consumer Code with a new one regulated by Articles 840-***bis*** to 840-***sexiesdecies*** of the Italian Civil Procedure Code.

In particular, the new class action rules were explicitly designed to encourage the use of this procedure by an increasing number of stakeholders (not only consumers), and to make the overall system more user-friendly and efficient.

The new class action rules have significantly broadened the range of rights that can be exercised through "***collective proceedings***" (i.e., the objective scope of class actions), as well as the groups of people who can commence class actions proceedings and the entities that may be sued (***i.e.***, the subjective scope of class actions). Currently, a class action may be filed whenever "***homogeneous individual rights***" have been violated by "***companies***" or "***entities managing public services or utilities***."

Moreover, the new class action rules provide that class actions are subject to an admissibility test and must be adjudicated by the judicial chambers specialized in corporate matters within the ordinary Civil Court (which are typically located in the capital of each Region).

The holders of homogeneous rights may now request to join the class action – and therefore be added to the proceedings – either: (i) within the timeframe set out in the Court order declaring the class action admissible (***i.e.***, from 60 to 150 days from the date the order of admissibility is published, pursuant to Article 840-***quinquies*** of the Italian Civil Procedure Code) or (ii) within the timeframe set out in the judgement on the merits upholding the class action (***i.e.***, from 60 to 150 days from the date the decision is published, pursuant to Article 840-sexies of the Italian Civil Procedural Code).

Following the judgment upholding the class action, the Court will issue a decree that:

- Admits or rejects each request for joinder
- Quantifies the sums due to each class action plaintiff
- Orders the defendant(s) to pay the quantified sums

The decree is notified to the defendant(s), the class action plaintiffs, and the attorneys representing the parties and the joint representative of the rights-holders. It becomes final within 30 days from its notice.

The defendant(s), the joint representative of the rights-holders and the plaintiffs' lawyers may challenge the decree within 30 days, by filing an appeal. Additionally, any right-holder who joined the class action and is not satisfied with the Court's decision may withdraw its request for joinder before the decree becomes final, and then file an individual claim.

3.6.1.6. The Italian Consumer Code: future amendments – New Deal for Consumers

Finally, the Italian Consumer Code is going to be modified by virtue of the upcoming decrees implementing the so-called "Omnibus Directive" or "Enforcement and Modernization Directive," i.e., Directive (EU) 2019/2161, effective on 7 January 2020. It is part of the so-called "New Deal for Consumers" and will amend four consumer protection directives:

- Unfair Commercial Practices Directive (2005/29/EC)
- Unfair Contract Terms Directive (93/13/EEC)
- Consumer Rights Directive (2011/83/EU)
- Price Indications Directive (98/6/EC)

The Omnibus Directive introduces significant obligations for any business selling products and services online to consumers. The purpose of the Omnibus Directive is to update a coherent yet outdated regulatory framework in light of the technological innovations witnessed in recent years. It aims to:

- Ensure greater transparency online regarding prices
- Remove excessive burdens on businesses
- Adequately inform users about the criteria for classifying offers on platforms
- Provide more effective sanctions in case of infringements

The main changes in law provided for by the Omnibus Directive are the following:

- **Article 1 (Amendments to Directive 93/13 / EEC).** One of the measures, and the most feared by businesses, concerns the adjustment of the range of penalties in consumer protection legislation, which has been deemed so far insufficient from a global perspective. In particular, the provision states that: "***Member States shall ensure that, when sanctions are to be imposed pursuant to Article 21 of Regulation (EU) 2017/2934*** [by the AGCM for Italy], ***they may be pecuniary in nature, imposed through administrative or judicial proceedings, or both, and for a maximum amount at least equal to 4 percent of the seller's or supplies's annual turnover in the Member State or Member States concerned***"; or, pursuant to paragraph 5, equal to € 2 million if turnover annual information are not available.
- **Article 2 (Amending Directive 98/6/CE).** This article introduces specific rules on discounts (defined as "***announcements of a price reduction***"), which have never been adequately regulated at the European level, until now. Pursuant to its paragraph 1, discount announcement must provide the lowest price applied by the trader for a given period (not less than 30 days) before the discount is applied. On the other hand, other provisions in this Article defer different choices to the Member States, including the way in which the price is indicated.
- **Article 3 (Amending Directive 2005/29/CE).** The marketing practices which promote "***a good, in one Member State, as being identical to a good marketed in other Member States, while that good has significantly different composition or characteristics, unless justified by legitimate and objective factors***" are included among the list of misleading commercial practices. This provision is aimed at tackling unjustified cross-border differentiation of the goods sold. In case of cross border distribution, the trader must render specific declaration trader on compliance or justifying its, his or her non-compliance with such conditions. In addition, further cases of misleading omissions are the failure to inform the consumer regarding (i) the terms of payment, delivery and execution – if they differ from the obligations imposed by trader diligence, or (ii) whether the third party offering the products is a trader or not, based on the third party's own declaration — for products offered on online marketplaces) trader. Other changes to the law implemented by this Article relate to transparency in user searches and to consumer reviews.
- Article 4 (Amending Directive 2011/83/UE). This Article intervenes on informational transparency, withdrawal and other consumer rights in the case of distance or off-premises contracts. Most importantly, it strengthens consumer rights when "***the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader***" (so-called "monetization" of personal data). Addittionally, the information obligations on the trader in the various cases of sale of goods in general, as well as digital content and services, are strengthened. On the additional information requirements related to contracts concluded on online marketplaces, the Omnibus Directive requires to provide, by way of example and without any limitation, (i) the parameters used in presenting online searches, (ii) whether the third-party provider is a trader or not (with related inapplicability of consumer law), (iii) the application of the voluntary loss of the withdrawal right. Finally, Article 4 also focuses on user generated content, ***i.e.***, content created or published by users (such as reviews and comments) on the trader's portal or platform: in this case, the Directive requires the trader to "refrain" from their use and to provide for a right of "portability" of such content, in the case of withdrawal by the consumer.

Under the 2021 Italian European Delegation Act (Law no. 127 of 4 August 2022), Italy has commenced the process for transposing the contents of Directive (EU) 2019/2161 into the Italian legal system, based on the following principles:

a. To implement into the Consumer Code all the amendments and additions necessary for the transposition of the provisions of the Omnibus Directive.

b. To coordinate the rules on the indication of prices, to be introduced in the Consumer Code.

c. To review and adapt the apparatus of administrative penalties, already provided for in the Consumer Code, to the matters covered by the Omnibus Directive, through the provision of sanctions that are effective, dissuasive, and proportionate to the seriousness of the violations.

d. To establish that the sanctioning powers referred to in Articles 1, 3 and 4 of the Omnibus Directive shall be exercised by the AGCM, also in relation to the cases of exclusive national importance.

e. To provide that the maximum amount of penalties imposed shall be at least equal to 4% of the trader's annual turnover in the relevant Member State(s) concerned.

f. To establish the specific manner for indicating the price, both in case of price reductions for products placed on the market for less than 30 days, as well as in case of progressively increased price reduction. The goods that may deteriorate or expire rapidly are excluded from the scope of these rules. By virtue of this principle, the term for the exercise of the withdrawal right within the context of contracts executed during unsolicited home visits and excursions organized to sell products is extended to 30 days. Furthermore, it is expressly provided that in the same cases, any exclusion of such right shall not apply.

Based on the above, in the following months, the Italian government shall adopt the proper decrees to implement the Omnibus Directive in the Italian legal system.

3.6.2. Life sciences

3.6.2.1. Product compliance: medical devices and in vitro diagnostic medical devices

Medical devices (**MDs**) and in vitro diagnostic medical devices (**IVDMs**) play a key role in saving lives by providing innovative healthcare solutions to ensure the diagnosis, prevention, monitoring, prediction, prognosis, treatment or mitigation of diseases. For these reasons, the medical device sector is essential in providing health care to citizens and plays an important role in the Italian, European and global economies.

The first regulation of MDs dates to the 1990s, when three European directives on the subject were issued (Directive no. 90/385/EEC, 93/42/EEC and 98/79/EEC), all of which were duly transposed into Italian law.

Recently, the legislation has been further amended to adapt it to the advances and market needs of the last 20 years. The priority of the European legislative intervention was to ensure a robust, transparent, and sustainable regulatory framework and to maintain a high level of safety while supporting innovation. As a result, two new regulations on MDs and IVDMs came into force in May 2017, bringing significant changes in the regulatory asset.

With Regulations (EU) 2017/745 (the Medical Devices Regulation or MDR) and 2017/746 (the In Vitro Diagnostic Regulation or IVDR), a system has been implemented providing the development of the joint assessment process for designation of Notified Bodies (i.e., the organization designated by an EU Member State to assess the conformity of certain MDs and IVDs before they are being placed on the market), designation of expert panels and publication of harmonized standards, as well as many guidance documents aimed to help economic operators to comply with their obligations under the Regulations.

In particular, the new provisions of the MDR:

- Extend the definition of "medical device" to include devices that do not have an intended medical purpose (such as contact lenses and infra-red) and devices designed for the "prediction and prognosis" of a disease or other health condition. To allow for better traceability and facilitate the possible withdrawal of devices that present a safety risk, a new classification for certain devices and the Unique Device Identification (UDI) coding are introduced.
- Establish stricter supervision by notified bodies.
- Expand the European Database on Medical Devices (EUDAMED) to provide more efficient access to information on approved MDs.
- Introduce important innovations for the economic operators involved in the medical device market, including the manufacturer, the importer, and the distributor, as well as the compliance officer. New responsibilities and additional obligations are introduced to deepen the technical documentation and provide a more rigorous system, not only for clinical evaluation but also for post-market surveillance.

3.6.2.2. Product compliance: pharmaceutical products

In addition to MDs, the protection of citizen" health is achieved through safe, effective, and quality medicines.

In Italy, the pharmaceutical sector is regulated by Legislative Decree No 219/2006, implementing Directive 2001/83/EC on medicinal products for human use.

The Legislative Decree unifies and updates national legislation, bringing it into line with the provisions of EU Directives on medicines. According with the law, the *Agenzia Italiana del Farmaco* (the Italian Medicines' Agency or **AIFA**), as the national authority responsible for the regulatory activity of medicines in Italy, is committed to ensuring that all citizens, regardless of social and economic conditions, receive appropriate medicines, promptly and uniformly throughout the country.

Access to medicines requires an evaluation and authorization process that can take place either at national or European level. Indeed, to be marketed in Italy, a pharmaceutical product must have obtained a marketing authorization (the *Autorizzazione all'Immissione in Commercio or AIC*) from AIFA or the European Commission.

Except in specific cases, the AIC is valid for five years, renewable for a further five years or indefinitely. The AIC is issued following a scientific evaluation of the quality, safety and efficacy requirements of the medicine. The authorization procedures under European legislation are different, as explained in detail in paragraph 3.6.2.4.

3.6.2.3. Administrative and authorization compliance: medical devices and in vitro diagnostic medical devices

As mentioned in paragraph 3.6.2.1, Regulation (EU) 2017/745 has introduced relevant obligation and procedures for the "economic actors" involved in the medical device market. New features concern the administrative activities performed by "manufacturers", "importers" and "distributors", as well as "compliance officers". Each one of them subject to a different administrative and authorization regime.

In detail:

- **Manufacturers.** A manufacturer is the natural or legal person who manufactures or refurbishes a device or makes it designed, manufactured or refurbished, and markets it under his, her or its own name or trademark. If the device is materially manufactured by the supplier, the manufacturer is called an "original equipment manufacturer" (OEM), while the buyer who subsequently affixes his, her or its name or trademark is called a "virtual manufacturer" (VM). Both undertake legal responsibility for the product and are required to draft the "manufacturer's technical file". The manufacturer must also ensure that the devices comply with the general performance and safety requirements, as well as its suitability for the use and the evaluation of any side effects. Once the clinical data has been collected, the conformity assessment must then be carried out through a Notified Body that issues the relevant EU certificate for higher class devices. To legally affix the CE mark (a mark affixed on the products that certifies that it complies with EU safety, health, and environmental requirements) and sell their products in EU market, MDs must be classified according to potential risks associated as follow:
  - Class I Low/medium risk
  - Class IIa Medium risk
  - Class IIb Medium/High risk
  - Class III High risk
- **Importers and distributors.** They are required to verify the conformity of the device with the MDR and to cooperate with the competent authorities to eliminate or reduce the risks that may arise related to the devices placed on the market. In addition to importers and distributors, the Regulation strengthens the role of the "authorized representative", a person appointed by a non-EU manufacturer and authorized by him to act on his, her or its behalf within the EU. In this regard, the MDR provides for the obligation to formally check the documentation proving the compliance of the MD, the registration of the same in EUDAMED and the registration of the manufacturer. The "authorized representative" is also jointly and severally liable with the manufacturer for any defective MD on the market.
- **Compliance officers.** Lastly, the Regulation introduces the new role of the "Person Responsible for Regulatory Compliance" (PRRC), who must be designated by manufacturers and authorized representatives to supervise the manufacturer's or authorized representative's compliance with the legislation, reporting any aspects of nonconformity.

3.6.2.4. Administrative and authorization compliance: pharmaceutical products

As mentioned in the previous paragraph, to protect public health and ensure high quality, safe and effective medicines for citizens, pharmaceutical products must be authorized before they can be placed on the market. The Italian and EU regulatory systems provide different ways to obtain such authorization.

- **National procedure.** According to Italian law, AIC obtained by national procedure is valid only in Italy. AIFA checks the conformity of the documentation submitted by the companies, and ascertains that the pharmaceutical product is manufactured according to good manufacturing practice, that its components are suitable, and that the control methods used by the manufacturer are satisfactory. With the support of the Technical-Scientific Commission (*Comitato Tecnico-Scientifico or CTS*) and the *Istituto Superiore di Sanità* (*ISS*), AIFA evaluates the data submitted by pharmaceutical companies concerning the chemical-pharmaceutical, biological, pharmaco-toxicological, and clinical characteristics of each product, to ensure its safety and efficacy requirements. These assessments are continuously carried out for the entire life cycle of the

medicine and for each subsequent amendment to the authorization.

- **Centralized procedure.** The centralized procedure constitutes a single process for the entire territory of the EU. According to this approach, pharmaceutical companies apply for authorization to the European Medicines Agency (EMA), the EU body responsible for evaluating medicinal products to be placed on the European market. Under this procedure, the Agency's Committee for Medicinal Products for Human Use (CHMP) carries out a scientific evaluation and provides the European Commission with an opinion on granting of the marketing authorization. Once granted by the European Commission, the centralized authorization is valid in all EU Member States. Please note that the use of the centralized procedure is mandatory for the most innovative medicines, including those for rare diseases. However, most medicinal products authorized in the EU do not fall under the centralized procedure and, therefore, are authorized by the national competent authorities (NCAs) of the Member States.

When a pharmaceutical company wants to obtain authorization for a medicinal product in several Member States, one of the following procedures can be used:

- **Decentralized procedure.** This procedure is applicable when the pharmaceutical product has not yet been authorized in any EU Member State and does not fall within the scope of the centralized procedure. Thus, a company may apply for simultaneous authorization of a medicinal product in more than one EU Member State.
- **Mutual recognition procedure.** Companies that have a medicinal product authorized in one of the Member States may apply for recognition of that authorization in other EU countries of the EU. This procedure allows Member States to use their respective scientific assessments.

Considering the above, it is possible to state that the issue of "compliance" – ***i.e.***, the conformity of business activities to procedures, regulations, legal provisions and codes of conduct – is a "value" promoted and regulated by national and European legislators. With specific reference to MDs and pharmaceutical products, the "economic operator" can avail himself of various forms of "compliance protection" to ensure the satisfaction of his, her or its own subjective legal situations. These activities include both judicial and extrajudicial protection.

4. Data protection

Updated in November 2022

4.1 Introduction

On 27 April 2016, the European General Data Protection Regulation 2016/679 (**GDPR**) was signed into law and on 25 May 2018, entered officially in force in all EU Member States.

Designed to grapple with the realities of global, ubiquitous data in the internet era, the EU's new data protection legislation should provide increased legal certainty for both individuals and organizations processing data and ensure greater protection for the individual in general. Specifically, the GDPR's purpose is to ensure high protection of data and to achieve regulatory harmonization within the EU to avoid dissimilarities in the management of personal data in order to make the market safer for users and more competitive for businesses.

Moreover, the GDPR set out several principles and requires organizations not only to adhere to the principles set out in the GDPR, but also to demonstrate their level of compliance. Most important principles are:

- The principles of lawfulness, fairness, and transparency
- Purpose limitation
- Data minimization
- Accuracy
- Storage limitation
- Integrity and confidentiality
- Accountability

One of the best ways to make sure these principles are implemented is to make sure that the internal privacy governance structure is set up correctly and comprehensively.

With the help of strong technical and organizational measures every organization can demonstrate compliance with the GDPR.

What about in Italy?
Italy harmonized its legal framework to GDPR through Legislative Decree no. 101/2018, which entered into force on 19 September 2018, amending several provisions of Legislative Decree no. 196 of 30 June 2003 (the **Privacy Code**) and repealing those sections directly conflicting with the GDPR. It is a single text that incorporates into a single body of law the previous regulations on the matter, inspired by the introduction of new guarantees for citizens, the rationalization of existing rules and the simplification of fulfilments.

Moreover, Legislative Decree no. 51/2018 has implemented Directive (EU) 2016/680 on the protection of natural persons with regards to the processing of personal data by the competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offenses. For this reason, the Italian Data Protection Authority is in charge of monitoring the compliance of data controllers and processors with the data protection laws.

The Italian Data Protection Authority's opinions, together with the GDPR, the Privacy Code and the European Data Protection Board's opinions, contribute to forming the data protection framework in Italy.

4.2 Legal considerations on impacts and obligations for companies.

The entry into force of the GDPR has had a major impact on the companies' privacy responsibilities. As mentioned above, the GDPR introduced the principle of accountability, which states the responsibility of the controller in making sure all privacy rules are adhered to and require the latter to be able to demonstrate compliance.

Furthermore, the GDPR requires organizations to deploy appropriate technical and organizational measures, such as, for instance, documenting processes and policies, keeping a register of all personal data processing, a mandatory appointment of a data protection officer (**DPO**)

for large scale personal data processing and on other specific circumstances (Article 37, GDPR), evaluation of the risk that may arise from the processing of personal data through the performance of data protection impact assessments (**DPIAs**); and the adoption of a privacy organizational model that clearly define internal roles and responsibilities. Special attention is given to (industry) code of conducts and self-certification, data breach notification, and transparency requirements.

Given the above, it is clear that the GDPR and the Italian Privacy Code imposes various obligations on companies concerning their activities, such as:

A. Records of processing

The GDPR requires organizations to create and maintain a record of processing activities containing the minimum information listed in Article 30 of the Regulation. Even processors[11] have responsibilities under the law and will be held accountable. Some of these responsibilities include the appointment of a Data Protection Officer and create and maintain a record of all the processing activities performed on behalf of the data controller.

B. Data Protection Impact Assessment

GDPR introduces DPIAs to evaluate and address high risks to rights and freedom of individuals arising from the processing of their personal data. When "high risk data processing" is identified, the GDPR expects the data controller to perform a DPIA aimed at identifying and adopting more suitable measures to lower and address these risks. The assessment should be performed prior to the start of the processing of personal data and should focus on topics, such as the systematic description of the processing activity, the identification of a suitable legal base, and the evaluation of necessity and proportionality of the processing operations. It is important to note that the Italian Data Protection Authority issued a specific measure on the point containing a list of types of processing operations ,subject to a mandatory performance of DPIA.

C. Data protection by design and by default

The GDPR introduces the concepts of "Privacy by Design" and "Privacy by Default", requiring organizations to consider privacy issues from the earliest stage of any new project. Organizations need to consider privacy at the initial designing stage and throughout the development process of new products, processes or services that involve processing personal data. To increase successful implementation of this principle, clear policies, guidelines, and work instructions related to data protection should be developed and a privacy specialist should be available to assist the company in applying these requirements throughout the whole development process.

D. Personal data breach notifications

For the GDPR, the security of the personal data is central and includes the need to make sure that the data is properly safeguarded against loss, theft and, unauthorized access. The GDPR requires data controllers, whenever a personal data breach occurs, to notify the competent Data Protection Authority within 72 hours from the breach discovery. Moreover, if the security breach is also likely to result in a high risk for the rights and freedom of individuals, then these individuals should also be informed of the breach. In Italy, as of 1 July 2021, the notification of a personal data breach must be sent to the Italian Data Protection Authority by means of a special online procedure, made available on the Authority's online services portal.

E. Security of processing

The need to adopt proper information security measures to ensure the confidentiality, integrity, availability and resilience of processing systems and services means that the controller and processor must implement technical and organizational measures to ensure a level of security appropriate to the risk, including: (i) the pseudonymization and encryption of personal data; (ii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and (iii) a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.The data controller and the data processor shall take steps to ensure that any natural person acting under the authority of the data controller or the data processor who has access to personal data does not process them except on instructions from the data controller.

F. Appointment of Data Protection Officer

According to the principle of accountability, GDPR obliges companies to appoint a Data Protection Officer (**DPO**) in certain circumstances. The DPO is an expert in data protection law, and competent in information security with the task of supervising and verifying the effectiveness of the measures that the data controller has developed and structured to protect personal data. It is a right of the data subject to contact the DPO and therefore, the information notice must include the indication of the ways in which data subjects can contact the DPO.

11 According to the Article 4, items (7) and (8) of the GDPR, 'Controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law. "Processor" means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

According to Article 37, paragraph 7 of the GDPR, public and private entities must inform the Data Protection Authority of the name of the DPO, if appointed.
The Italian Data Protection Authority has made available on its website an online procedure for the communication, change and revocation of the DPO. This procedure is the only one that can be used to submit, change and revoke the DPO's contact details. Communications made through different contact channels with the Italian Supervisory Authority (***e.g.***, email and mail) are not considered.

4.3 UE sanction regulations

The GDPR details the fines that can be levied to companies for violating the Regulation. The maximum fines depend on the "category" of violation. For less serious violations, the maximum is €10 million or 2% of annual worldwide turnover of the preceding year (whichever is higher). For more serious violations this goes up to € 20 million or 4%. Adherence to an approved code of conduct or an approved certification mechanism may be used as an element by which to demonstrate compliance with the GDPR and Italian Privacy Code.

For example, the Italian Supervisory Authority issued a Provision on 12 September 2019 approving the Code of Conduct for Information Systems Managed by Private Entities on Consumer Credit, Reliability and Punctuality of Payments by which the relationship with the Credit Information Systems (*Sistemi di Informazione Creditizia or SIC*) as used by banks, financial intermediaries and other private entities that, in the exercise of a commercial or professional activity, grant a deferred payment of consideration for the supply of goods or services) was regulated.

5. Real estate in Italy

Updated in November 2022

5.1 Purchasing real estate in Italy

Italian real estate assets are registered in the Cadastral Registry (*Catasto*). All transfers of ownership of Italian real estate assets (as well as encumbrances, restrictions, mortgages and easements) are registered at the Agency of Territory Registry (*Agenzia del Territorio – Servizi di pubblicità Immobiliare – Ufficio del Territorio*). The registries are roughly one per province and are public.

Individuals can purchase Italian real estate assets:

- Directly, under their own personal name, in joint name together with their spouse or co-purchasers, and in the name of their children.
- Indirectly, through a previously existing or a newly formed Italian company, or through a previously existing or a newly formed foreign company.

The purchase proposal
After having visited the property and verified connected documents with the support of professionals, a purchase proposal *(proposta di acquisto)* is made by the prospective buyer to the seller.

Usually, a deposit is requested to be paid, to put the property out of the market.

The purchase proposal is usually irrevocable and thus, binds the buyer in the purchase of the property but it does not bind the seller until the moment the seller formally accepts it. The purchase proposal should contain all the terms and condition of the transaction. Specific conditions (such as approval of the bank to finance the acquisition and regularization of potential issues) may also be included. The proposal is finalized in a contractual agreement (preliminary agreement) as soon as the proposer has knowledge of the acceptance of the offer by the owner.

Preliminary agreement
The terms of the transaction are usually confirmed by the parties in the form of a preliminary sale and purchase agreement *(contratto preliminare di compravendita)*.

The preliminary sale and purchase agreement does not transfer the right over the property but it obliges the parties to execute, by an agreed fixed date, the definitive deed of sale and purchase.

By entering into a preliminary sale and purchase agreement, the buyer and the seller are mutually exchanging promises to sell and to buy the property and agreeing the essential terms of the sale.

Such agreements are not compulsory and are usually executed in the form of a private agreement, which binds only the signatory parties.

Generally, preliminary agreements provide that the buyer must pay the seller a deposit toward the final purchase price.

Deed of sale and purchase
Within the timeframe agreed in the purchase proposal and preliminary agreement, the parties shall execute the definitive public deed of sale and purchase before a Notary Public. The transfer deed transfers legal title over the property.

Payments due at the signing of the definitive public deed are:

- The balance of the purchase price if a deposit has been paid at the preliminary agreement
- The Notary Public's fees
- The taxes arising from the transaction (the taxes due will be deposited by the Notary Public at the time of the registration.)

Notably, the Notary Public's fees and the taxes will be paid directly to the Notary Public who acts on behalf of the State and has the obligation to pay the received amount to the competent offices.

The notary will then have the responsibility of formally registering the change of ownership at the Cadastral Registry and filing the purchase deed at the Agency of the Territory.

5.2 Leasing real estate in Italy

The following paragraph analyzes the commercial lease agreement only.

According to the Italian law, the commercial lease agreement is regulated by the Italian Civil Code and Law no. 392/1978 (expressly set forth for the lease, the so called "*Equo Canone Law*") which contains mandatory provisions.

Please note that in connection with lease agreements with a yearly rent higher than € 250,000 (excluding those buildings recognized as having an historical value), the parties are free to negotiate terms and conditions of the lease.

The most common provisions in a commercial lease agreement are:

- **Term:** The minimum term of duration of the agreement is set forth for a period of 6 years for commercial use and 9 years for hotel use. Upon expiration, the agreement is automatically renewed on the same terms and conditions for the same duration, unless either party gives notice not to renew at least 12 months (or 18 months in the case of hotels) in advance. Please note that the landlord, upon the expiration of the first term, may only refuse to renew the lease for strict reasons listed in the above-mentioned law.
- **Price:** The parties are free to determine the amount due for the lease, that may be annually adjusted by a maximum of 75% of the variation in the ISTAT index.
- **Maintenance:** Generally, unless otherwise agreed, the landlord is responsible for extraordinary maintenance while the tenant is responsible for the ordinary one.
- **Sublease:** According to Article 36 of Law no. 392/1978, the sublease or the assignment of the agreement is not permitted unless the business is also transferred.
- **Pre-emption right:** According to Article 38 of the Law no. 392/1978, and under certain conditions (such as the circumstance that the property is open at the public), in case that the landlord intends to transfer the property, the tenant has a pre-emption right. In such regard, the landlord shall notify the tenant the purchase price and the other conditions of the sale. The tenant may exercise the pre-emption right within 60 days from the receipt of the landlord's notice.
- **Indemnity for loss of goodwill:** In the case of termination of the commercial lease agreement, not depending on the tenant's breach or withdrawal notice from the tenant (and under certain conditions), the latter has the right to obtain an indemnification equal to 18 monthly instalments of the last rent paid. (In the case of hotel use, the indemnity is equal to 21 monthly installments.)

6. Public procurement procedures or public tender offers (appalti pubblici) and project finance in Italy

Updated in November 2022

6.1 Public procurement procedure or public tender offers (*appalti pubblici*) in Italy

Public procurement in Italy is governed by the Public Contract Code (Legislative Decree n. 50/2016 – *Codice dei Contratti Pubblici*), which aims to ensure uniform implementation of the EU Directives on public procurement:

i. Directive 2014/23/EU on the award of concession contracts

ii. Directive2014/24/EU on public procurement in the ordinary sectors

iii. Directive 2014/25/EU on procurement in "special sectors", (i.e., water, energy, transport and postal services)

The three Directives above are not intended to impose a common regulatory regime in the field of procurement, since Member States are allowed to introduce their own procedural or substantive provisions to the extent that these are not in conflict with the fundamental principles resulting from EU law, such as non-discrimination and equal treatment, fair competition, proportionality, and transparency.

As a result, the Public Contract Code is based on the aforementioned principles, but has a wider scope and contains provisions that are not contained in the EU Directives.

The Code establishes rules on the provision of goods and services, and on public works contracts and concessions awarded by public contracting authorities or other entities, or bodies subject to public procurement legislation as defined by the Code (Article 3).

From 2020 onward, new provisions impacting on public procurement, both temporary and permanent, have been adopted to deal with the COVID-19 outbreak to simplify and speed up tender procedures, with a special attention to the National Recovery and Resilience Plan (*Piano Nazionale di Ripresa e Resilienza* or ***NRRP***) and the Complementary National Plan (*Piano Nazionale Complementare or* ***PNC***), as a part of the economic recovery package Next Generation EU.

6.1.1. Requirements for taking part in a public tender offer

Ensuring access of both UE and third-country economic operators to the markets of public procurement and concession is one of the most important policy objectives of the EU. In fact , the EU has committed itself under several international agreements (such as the Agreement on Government Procurement and bilateral Free Trade Agreements with Procurement Chapters) to grant the opening of procurement opportunities for economic operators of several third countries.

Nevertheless, the International Procurement Instrument (**IPI**) adopted by the EU has recently introduced measures limiting non-EU companies' access to the EU public procurement market – if their governments do not offer similar access to public tenders to EU companies seeking business.

According to the Public Contract Code, Italian contracting authorities must allow economic operators established in the EU to participate in bidding procedures, while third-country (i.e., non-EU Member States), contractors shall receive treatment that is no less favorable than the one accorded to economic operators established in Italy by the relevant third-country contracting authorities, according to the reciprocity principle.

Overall, economic operators willing to participate in a tender procedure under Italian law must satisfy the following criteria:

1. Suitability to pursue the professional activity: Contracting authorities may in fact require economic operators to be enrolled in a professional or trade register.

2. Economic and financial standing: Contracting authorities may impose requirements in order to ensure that economic operators have the necessary economic and financial capacity to perform the contract
3. Technical and professional ability: Contracting authorities must need to ensure that economic operators possess the necessary human and technical resources, and experience to perform the contract to an appropriate quality standard in accordance with the state of the art in the industry.

Such criteria are identified by each contracting authority or entity and shall be related and proportionate to the subject matter of the contract, with respect to the principles of equal treatment, transparency, and rotation.

6.1.2. Outlook on public tender procedure

Public contracts in Italy are awarded based on a competitive award procedure, which must be transparent and non-discriminatory and respect the principles of economic procurement and proportionality, fairness, and equal treatment.

The Code provides the following four main categories of procedures to award public contracts:

1. Open procedure, in which all interested economic operators may submit a bid.
2. Restricted procedure, in which a call for competition is published and the contracting authority selects a limited number of the interested bidders to submit an offer.
3. Negotiated procedure (with or without publication of contract notice) which allows contracting authorities to negotiate the terms of the contract with a limited number of economic operators.
4. Competitive dialogue, in which a contract notice is published and the contracting authority conducts a dialogue with the economic operators admitted to the procedure with the aim of identifying and defining one or more suitable alternatives capable of meeting the needs and requirements of the contracting authority.

6.1.3. Award of the procedure and execution of the agreement

According to the Code, the award may take place based on the basis of two mandatory award criteria: the lowest price criterion and the economically most advantageous bid.

The contracting authority evaluates the proposals or offers received based on of one of the aforementioned criteria, takes an awarding decision and notifies it to the tenderers as soon as possible, including the reasons why it has decided not to award a contract for which there has been an invitation to tender or a call for tender was published.

The award becomes effective after the verification of the general moral requirements in accordance with Article 80 (with the aim of excluding from the tender entities that have been convicted of certain types of crimes with an unappealable judgment, that have failed to pay social security contributions or taxes, or have been found guilty of professional misconduct, etc.), as well as economic and financial standing and technical and professional abilities declared by the economic operator upon taking part in the call for offers.

During the performance of the contract the contractor must provide its services in accordance with the provisions of the contract, the specifications and the terms provided in the tender.

Contracts may be modified during their execution without a new procurement procedure in according with Article 106 (modification of contracts during their term).

All the disputes relating to public procurement procedures, including those relating to the annulment of contracts, fall within the competence of administrative courts.

6.1.4. Subcontracting requirements

Subcontracting is a contract by which the contractor entrusts third parties with the performance of a part of the services, supplies or works covered by the main contract and is regulated by Article 105 of the Public Contract Code.

It is regarded as an essential instrument for encouraging the participation of small-and medium-sized companies in public procurement, and for allowing businesses to better manage their contracts, reducing costs and risks.

The Public Contract Code indicates, among the necessary conditions for subcontracting the prior authorization of the contracting authority and the indication in the tender offer made by the bidder of the works, services, supplies or parts thereof that he intends to subcontract. The contractor canno't subcontract and have the contract performed by other third parties without prior authorization from the contracting authority.

Subcontractors must prove possession of the general requirements under Article 80 of the Public Contract Code.

As of 1 November 2021, the percentage limits on subcontracting are no longer in effect to bring national legislation in line with the EU Regulations. Moreover, the prohibition for the contractor to subcontract to economic operators that participated in the procedure has been removed, along with the need to indicate the third group of subcontractors in the tender for all types of contracts.

6.2 Project finance

6.2.1. The Italian market for infrastructures: issues and perspectives

The development of the infrastructure sector has experienced years a strong growth of private and public contributions in recent years.

The most important action adopted by the EU to rebuild a stronger, greener and innovative Europe is the recently approved NRRP, which has made available a large amount of funds. Further details on the scope of and the resources engaged under the NRRP are provided under paragraph 6.3.

Notwithstanding the overly detailed and fragmented regulatory framework, making competition and market participation more difficult, and the low infrastructures endowments, Italy represents a very attractive country for specialized investors to invest and consolidate their position.

6.2.2. Public-private partnerships and project finance

The definition of public-private partnership (**PPP**) is widely used for many different types of long-term contracts between public authorities and private companies for the provision of public assets, where the PA and the private companies share the risks and benefits of the realization and management of a public asset or of the performance of a public service.

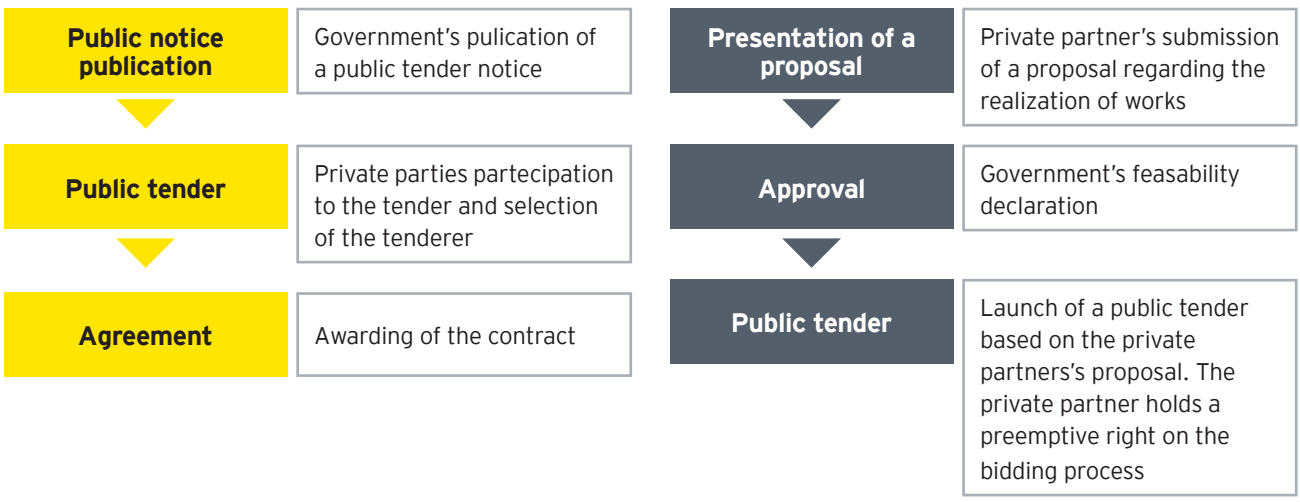
In PPPs, public authorities agree to make recourse to private companies over a long period of time, for the construction of "public assets," which the private party realizes, utilizing the cash flow deriving from the management of the same asset.

In this context, the Public Contract Code, providing for the legislation on public contracts defines PPPs as those contracts whereby one or more public authorities entrust to one or more partner, for a period determined in relation to the duration of the investment's amortization or to the methods of financing arrangements, a set of activities consisting in the construction, operation maintenance and management of a work for its availability, or its economic exploitation, or the provision of a service related to the use of the work itself, with assumption of risk according to the methods identified in the contract, by the private partner.

According to the national legislation PPPs also include a wide range of contracts, such as project finance, concession, financial lease, "availability contract" *(contratto di disponibilità)* and any other procedure for implementation of works or services in partnership with corporation.

Pursuant to the Public Contract Code there are two main different project financing procedures, the first one is based on a public proposal, while the second is based on a private proposal. Please refer to the diagram below for a general summary of the relevant project financing procedures.

With reference to project finance based on private proposal, the main law provision regulating the said procedure is Article 183, paragraph 15 of the Public Contract Code. In summary, private undertakings (the so-called promoters) may submit proposals regarding the awarding of PPP contracts that are not present in the Public Administration's planning instruments.



The process consists of the following stages:

- Submission of the proposal
- Evaluation of the same
- Statement of feasibility
- Launch of the public tender

In particular, pursuant to Article 183, paragraph 15 of the Public Contract Code, the promoter must submit a proposal containing several documents, including, but not limited to: (i) technical feasibility project; (ii) draft concession; (iii) certified Economic Financial Plan and specification of the characteristics of the service.

6.2.3. The procedure for awarding Project Finance proposal under Article 183, paragraph 15 of Legislative Decree no. 50/2016

Within a specific mandatory term, the Public Authority assesses its feasibility of the project, inviting, if necessary, the promoter to submit amendments to the same. Please note that failure to carry out such modifications shall entail that the relevant project cannot be positively evaluated.

Then, the relevant feasibility project is included in the planning instruments and scheduled for approval. For this purpose, the relevant Public Authority may require the promoter to make additional changes, on pain of rejection of the same. Jointly with the documents that make up the proposal, the feasibility project is, then, the basis of the tender to which the promoter is invited to submit an offer.

Moreover, the procedure described above grants to the promoter a right to waive the compensation of the expenses incurred in the preparation of the concession proposal. If this right is exercised, the promoter will become the successful bidder, and therefore be awarded the contract with the relevant Public Authority.

As a result, holding a project finance procedure significantly reduces the risk that the services for which the relevant procedure was commenced may remain un-awarded due to a lost bid. At the same time, such procedures ensure that the promoter will be able to exercise the expense waiver right – in case the procedure is awarded to a possible different successful bidder. The risk for the promoter itself of seeing its initiative thwarted, as well as of failing to recover the relevant costs and resources used in the preparation of the required documentation for the public procedure, is greatly reduced.

6.3 The Italian National Recovery and Resilience Plant (NRRP)

The Italian NRRP envisages an integrated plan of reforms and investments. Reforms are intended to be the adoption of functional measures:

- To ensure the thorough implementation of investments, by removing administrative, regulatory, and procedural barriers
- To ensure Italy's socio-economic recovery from the pandemic
- To enable a virtuous process of innovation

The success of the NRRP rests upon two elements: a dynamic production system and a smart PA. Since the success of the NRRP relies on the cooperation between public and private sectors, private entrepreneurs must become the partner of the PA. The involvement of the private sector should allow for the creation of innovation networks with the capacity to implement the reforms and carry out the investments required to breathe new life in the social and economic system.

The roles are the following:

- The PA has the responsibility to overhaul and streamline its bureaucratic process for establishing easier business conditions and for providing innovative services for private business.
- Private businesses must seize the opportunities provided under the NRRP to offer innovative and quality services on the market.
- NRRP encourages the creation of public-private networks supporting the innovation ecosystems that provide the greatest value for Italy.

The NRRP has been established within the scope of the EU's Next Generation EU (**NGEU**), a € 750 billion fund allocated by the EU. The purpose of the NGEU is to support the Member States to recover from the ongoing COVID-19 pandemic, and ensure a more equitable, sustainable, and resilient environment for the next generation of EU residents. The main component of the NGEU is the Recovery and Resilience Facility (**RRF**) which has a term of 6 years – from 2021 to 2026 – and which engages € 672.5 billion (€ 312.5 billion as subsidies and € 360 billion as subsidized loans).

Pillars	Objectives
1. Digital transformation	1. Growth, work and inclusion
2. Smart, sustainable, and inclusive growth and jobs	2. More than 37% green transition
3. Policies for the next generation	3. In accordance with specific objectives
4. Health and resilience	4. More than 20% digital transformation
5. Social and territorial cohesion	
6. Green transition	

The NGEU envisages that each Member State should develop their plans and implement them within 2026. Each Member State's plan has to be based on six pillars and pursue four main objectives.

The resources allocated by the Italian Government to the NRRP are € 235.1 billion (the **NRRP Resources**) divided in the following components:

- € 191.5 billion from the RRF (€ 122.6 billion as subsidized loans and € 68.9 billion as subsidies).
- €13 billion from the React EU program. The Recovery Assistance for Cohesion and the Territories of Europe (React EU) supports investment projects that foster crisis-repair capacities, and contribute to a green, digital and resilient recovery of the economy, including support for maintaining jobs, short-time work schemes and support for the self-employed; and can also support job creation and youth employment measures, healthcare systems and the provision of working capital and investment support for small-and medium-sized enterprises.
- € 30.6 billion from the Complementary Fund – i.e. additional funds provided by the Italian government, obtained through a multi-year national budget deviation that will be allocated to project that, while worthwhile, are excluded from NRRP-backed projects due to their implementation timeframe and/or complexity.

The NRRP is intended to develop along three main axes, agreed upon at the European level: (1) digitization and innovation, (2) ecological transition; and (3) social inclusion. Action along these axes is aimed at repairing the social and economic damages caused by the COVID-19 pandemic, at overcoming the structural weaknesses of the Italian economy, and to accompany the nation along a path of environmental and ecological transition. In addition, the NRRP should reduce territorial, generational and gender gaps substantially.

About 40% of the NRRP Resources shall be allocated to the development of the *Mezzogiorno* Region of Italy (i.e., Southern Italy) and significant funds shall be provided to combat gender inequality – empowerment of women and fight against gender discrimination, and to promote youth inclusion – enhancing skills, know-how and employment opportunities.

The NRRP is further articulated along six missions, (***i.e.,*** areas of intervention) identified in compliance with the six pillars of NGEU. The six missions are:

1. **Digitization, innovation, competitiveness, culture and tourism** (21.29% of the NRRP Resources): This mission envisages: (i) the digital transformation and the streamlining of the PA; (ii) the creation of high-speed network for covering the entire nation to reduce the digital gap and spreading 5G networks; (iii) the promotion of the digital transition and the adoption of innovative technologies and of digital skills in the private sector in order to enhance the "Made in Italy" and the development of Italian enterprises on international markets; (iv) the enhancement of cultural and historic locations and landmarks by overhauling their security and accessibility, with particular attention to rural or remote areas as well as the revitalization of the tourism industry through a digital and sustainable approach; and (v) the enhancement of the earth observation systems for monitoring outer space and strengthening the skills for the space economy.
2. **Green revolution and ecological transition** (29.75% of the NRRP Resources): This mission envisages: (i) the strengthening of separate waste collection and the processing and recycling plant for the purposes of improving circular economy and waste management; (ii) the streamlining of authorization procedures for renewable energy and expanding its presence in the nation, including the adoption of hydrogen-based solutions for research, manufacturing and its use in factories and transportation; (iii) the enhancement of the investments on the smart grid for strengthening the capacity, reliability and security in the power grid and for reducing the losses in water distribution; (iii) the grant of incentives for the improvement of the energy efficiency of building in order to improve social and urban life by reducing emissions and restoring public buildings; (iv) the implementation of investments to combat climate change and hydrogeological instability through regeneration, monitoring and prevention activities.

3. **Infrastructures for sustainable mobility** (13.38% of the NRRP Resources): This mission envisages: (i) the establishment of a modern and accessible rail network for improved movement of persons and goods, in particular through the expansion of the high-speed rail; and (ii) the regeneration and modernization of existing rail infrastructure, improvement of rolling stocks and upgrade of regional train lines, metropolitan hubs and connection all over the nation.
4. **Education and research** (14.38% of the NRRP Resources): This mission envisages: (i) the building, regeneration and safety of nurseries and schools to improve the education offering from early childhood; (ii) the building of modern schools, connected and innovation-focused, with ultra-fast networks, new classrooms and laboratories; (iii) the improvement of staff training related to STEM skills, enhancing the role of universities and revitalize the role of vocational schools; and (iv) the support to researchers in skill development, in particular in the area of digital technologies and ecological transition.
5. **Inclusion and cohesion** (12.6% of the NRRP Resources): This mission envisages: (i) the overhauling of the job market and professional training increasing the employment rate by promoting active work policies and enhancing job centers; (ii) the increase of the participation of women in the job market and the support of women-led business activities; and (iii) the investment to reduce occasions of exclusion and social degradation by regenerating public areas and by promoting cultural and sport activities, with specific interventions in favor of disabled or non-self-sufficient persons.
6. **Healthcare** (8.6% of the NRRP Resources): This mission envisages: (i) the improvement of hospital facilities and the spread of local healthcare facility to guarantee primary and intermediate medical treatment, also for the frail and the elderly; (ii) the overhaul of digital infrastructure, the strengthening of data collection, processing and analysis tools to ensure the spread of the Electronic Health Record and to provide Essential Levels of Assistance.

To access the NRRP Resources, and, therefore, obtain the public funding, a prospective participant must either: (i) answer to a public call notice/announcement; (ii) apply for tax incentives as provided under financing regulations; or (iii) respond to call for expressions of interest. The public procurement procedures related to the NRRP are published on the website www.italiadomani.gov.it and the relevant PA competent from time to time for NRRP activities.

During the selection process the prospective participant will have to meet a series of specific selection and eligibility criteria and requirements, including:

- NRRP specific priorities and principles which are articulated according to the relevant mission
- General requirements common for all selection procedures
- Specific requirements which are provided, on a case-by-case basis, under the relevant public call notice or announcement, or funding regulation

7. Litigation in Italy

Updated in November 2022

This chapter is aimed at providing a brief outlook of the Italian civil litigation systems and the credit collection procedure. It is worth to be noted that since January 2023, the Italian Civil Procedure Code could be modified to offer a more efficient way to manage the litigation process.

7.1 Outlook on the Italian civil litigation system

The Italian legal system is based on the civil law tradition while the judicial proceedings follow the so-called "Inviolable Judicial Rights" (*Diritti Giudiziali Inviolabili*), namely the principles guaranteed by the Constitution that must govern judicial proceedings: the principle of due process; the right of defense; the principle of cross-examination; the principle of the equality of the parties to proceedings; the principle of impartiality of the judge and the obligation to state the legal and factual grounds for the adoption of a judicial decision.

The judicial activities of a judge, as well as the investigation and prosecution activities of a public prosecutor, are exercised by members of the judiciary (*Magistratura*), while the administrative function, such as the office of court clerk, is carried out by employees of the Ministry of Justice.

Judicial activity can be broken down into the following areas:

1. **Ordinary civil and criminal:** Jurisdiction over ordinary civil and criminal matters is exercised by members of the judiciary, which are judges and public prosecutors. The former is in charge of deciding judicial matters, while the latter is in charge of investigating and prosecuting.
2. **Administrative:** Jurisdiction over administrative matters, including any dispute vis-à-vis the Italian PA, is exercised by the regional administrative courts (*Tribunali Amministrativi Regionali or TAR*) and by the Council of State (*Consiglio di Stato*) in last instance.
3. **Accounting:** Jurisdiction over the management of public funds and their proper accounting, and related matters is exercised by the State Auditors' court (*Corte dei Conti*) with offices located all over the Italian territory. In general terms, each office houses besides the judges, its own general prosecutor.
4. **Military:** Jurisdiction in military affairs is exercised by the military courts (*Tribunale Militare*), the military appeals court and, the surveillance military court. Investigation and prosecution in the military jurisdiction are entrusted to military prosecutors for military courts, general military prosecutors for military appeals court, and the general military prosecutor for the Supreme Court.
5. **Taxation:** Jurisdiction over taxation matters is exercised by the Provincial/Regional Taxation Commissions (*Commissione Tributaria Provinciale/ Regionale*) and the District Taxation Commissions.

Regarding the ordinary civil and criminal jurisdiction, the Italian Court System envisages three instances of judgment. Please note that unless provided all the judges are so-called career officials of the judiciary (*Magistrato di Carriera*).

First instance judgements involve the following judges:

- Justices of the Peace (*Giudici di Pace*): They who are honorary (non-career officials or *Magistrati Onorari*) judges and hear minor civil and criminal matters; and
- Courts or Tribunals (*Tribunale*): The court is usually competent for all cases that are not within the jurisdiction of another judge (***e.g.***, the Justice of the Peace) and for those that are devolved to its exclusive jurisdiction (***i.e.***, status and capacity of persons, false claims, enforcement, and labor and social security law).

Second-instance judgements are brought before the Courts of Appeal (*Corte d'Appello*) which are competent for appeals challenging the first instance decision on factual grounds and the interpretation of the law.

The third and final instance of judgement is the Supreme Court (*Corte di Cassazione*) which is competent for claims related to the incorrect enforcement of the law at the highest level and the decisions of the Supreme Court are instrumental in ensuring a consistent construction of the legal provisions.

The Italian judiciary system envisages the following prosecutors (who, like the judges, are career officials of the judiciary), guaranteeing the correct ascertainment of the material truth:

- Chief Public Prosecutor of the Court (*Procuratore della Repubblica presso il Tribunale*) and their deputies (*Sostituti Procuratori*) carry out investigations and prosecute case in first instance trials.
- Chief Public Prosecutor at the Court of Appeal (*Procuratore Generale presso la Corte d'Appello*) and their deputies (*Sostituti Procuratori Generali*).
- Chief Public Prosecutor at the Supreme Court (*Procuratore Generale presso la Corte di Cassazione*) and his or her deputies (*Sostituti Procuratori Generali*).

7.2 Civil and commercial litigation

In Italy, the civil and commercial litigation has specific domestic jurisdiction management rules.

For any question involving foreign entities regarding intellectual property, antitrust, corporate law, public tenders, EU supply relationships the jurisdiction is limited to 11 courts in Italy.

For any different matter, the jurisdiction is the ordinary one (26 districts).

7.3 Credit collection

The credit collection procedure in Italy requires the existence of a title which enables the creditor to ask the competent court the commencement of such proceeding. Such titles may be, ***inter alia***, a judicial decision, a cheque, or a bill (of exchange). To allow their creditor to collect their credit within a relatively short period of time, the Italian Legislator has fixed a short proceeding – which usually lasts a few months – and is followed by an injunction decree issued by the Court which orders the debt to be paid, in addition to interest as well as a part of the legal expenses.

The Court with jurisdiction to issue the injunction decree is determined based on the value of the claim (*Competenza per Valore*) and on the location where the payment obligation arose, or where the debtor has its residence (*Competenza per Territorio*).

Regarding the first element, (i.e., the value of the claim), the Justice of the Peace has jurisdiction, pursuant to Article 7 of the Italian Code of Civil Procedure (the **Civ Pro Code**), for cases related to movable property with a value not exceeding € 5,000 (Article 7, Civ Pro Code). (Please note that this threshold shall be increased to € 10,000 following the entry into force of the amendments to the Civ Pro Code.). For all other matters not within the jurisdiction of the Justice of the Peace, the Court, under Article 9, paragraph 1, of the Civ Pro Code, shall be competent to adjudicate.

On the other hand, with reference to territorial jurisdiction, Article 18, paragraph 1, of the Civ Pro Code grants jurisdiction on a certain matter to the Judge of the place where the defendant has his residence or domicile, and if unknown, the place where he has his abode. If the defendant has no residence or abode within the territory of the Italian Republic or if it is unknown, the judge of the place where the plaintiff resides, under Article 18, paragraph 2, shall have jurisdiction.

Please note that the rules on jurisdiction above allow for the determination of the general forum (*Foro Generale*), i.e., the judicial authority that having its seat in a certain territory has general jurisdiction over disputes. However, there are also the so-called "optional forums" (*Foro Facoltativo*), i.e., another Court in which, as an alternative, the plaintiff can bring forth a claim. An example of the optional forum, under Article 20 of the Civ Pro Code, concern proceedings related to obligations, where a claim can be lodged either within the Court of the place where the obligation arose (*forum obligationis*) or where it is to be performed (*forum solutionis*). To obtain the injunction decree (*Decreto Ingiuntivo*), under Article 633 of the Civ Pro Code, the creditor should provide the Judge with written evidence regarding the debt's existence. The creditor should, in other words, prove that the goods or the service have been regularly supplied or rendered to the debtor.

When the creditor is a professional, an entrepreneur or a company, the written evidence required pursuant to Article 634 of the Civ Pro Code may also be provided in the form of a copy of the invoices, especially when the debt is related to services rendered.

Article 641 of the Civ Pro Code provides that once the request for an injunction decree has been filed, the Judge must make a ruling within 30 days and may:

1. Request additional evidence: If the judge considers the request insufficiently motivated, he or she invites the plaintiff to provide it. If the requesting party does not comply with the invitation or does not withdraw the request, the judge rejects the application by means of a justified decree.
2. Reject the request. If the prerequisites for the issue of the decree are lacking (***e.g.,*** the claim is deemed to be not due), the judge rejects the requests. He or she will also reject it if he or she considers the claim to be unproven, or if the plaintiff fails to provide the additional evidence requested. However, the rejection does not

prevent the aggrieved party from pursuing it again. No appeal is available against rejection.

3. Grant the request and issue the injunction decree. If the request is well grounded, the judge accepts it and issues the injunction decree. The decree contains an order to the debtor to either pay or deliver what the plaintiff requests.

Article 641 of the Civ Pro Code provides that, in case the injunction decree has been issued by the competent Court, the debtor, commencing on the day in which the injunction decree has been formally served to him, may challenge (*Opposizione*) it within a period of 40 days. Where no such opposition has been made, the creditor may commence proceedings for the enforcement of the injunction decree.

Alternatively, should, for any reason, the debtor decides to challenge the injunction decree, under Article 645 of the Civ Pro Code, a "challenge proceeding" (*Giudizio di Opposizione, i.e.,* a regular trial), which follows the ordinary civil procedure rules, is established. The main issues discussed in such a trial are the legitimacy of the order (mainly formal aspects), the existence of the debt and whether it is collectable.

It is worthwhile to point out that in order to discourage debtors from filing groundless challenges for the purpose of delaying as much as possible the payment of what is effectively due, Italian law provides an instrument which seems to be quite efficient. In case the challenge is not based on relevant circumstances proven in writing which have occurred prior to the injunction decree (***e.g.***, a written complaint regarding the quality of goods or services), the Court may authorize the creditor to collect his credit without having to wait the end of the proceeding.

In case of failure by the debtor to spontaneously pay the relevant amount due, the creditor, pursuant to Article 480 of the Civ Pro Code, may notify him, her or it a request to pay the amount due within 10 days along with the warning that noncompliance with such requests shall entail the commencement of the enforcement proceedings. In Italy, there are three types of enforcement proceedings:

a. Enforcement of an obligation to pay a sum of money

b. Specific enforcement of an obligation to deliver a movable or immovable property

c. Enforcement of an obligation to perform (or not to perform) a specific act

The most relevant of the three ordinary types of enforcement is the enforcement of an obligation to pay a sum of money, which can be carried out in different manners, according to the kind of the debtor's assets that the creditor wants to seize.

Therefore, the Civ Pro Code provides for different rules concerning the most important distraint and forced liquidation of:

- Personal movable assets in possession of the debtor
- Personal movable assets in possession of third parties
- Claims
- Real estate
- Real estate property in co-ownership
- Real estate property owned by third persons

The same Code also provides for some common provisions which are applicable to any form of enforcement of an obligation to pay a sum of money. According to these rules, in an enforcement proceeding, the debtor is heard only for the purpose of allowing him to comment on the creditor's plans for enforcement and to possibly make alternative proposals. If he, she or it wishes to challenge the enforcement, he, she or it must institute a separate proceeding.

Following the commencement of the enforcement procedure, the liquidation of the debtor's assets is carried out with the distraint of his or her property.

After a proceeding to force the liquidation of the debtor's assets is commenced with a distraint of the debtor's property. The distraint on the debtor's assets is carried out by a Judicial Officer or Bailiff (*Ufficiale Giudiziario*) who opens a file within the Court where the assets are located. An Enforcement Judge (*Giudice dell'Esecuzione*) is appointed to supervise the entire proceedings. The distraint and forced liquidation of assets are carried out in several steps:

1. The debtor's goods are distrained.
2. Other creditors may intervene.
3. The debtor's assets are liquidated.
4. The creditor is paid, or the proceeds from the liquidation of the debtor's assets are distributed among the creditors.

8. Taxation in Italy

Updated in November 2022

8.1 Corporate income tax

Companies that are resident in Italy are subject to the corporate income tax (*Imposta sul Reddito delle Società or IRES*) on their worldwide income. For the year 2022, the corporate tax rate is 24%. A 3.5% surcharge applies to banks and other financial entities for which the aggregate corporate tax rate is 27.5%.

In addition to IRES, resident (and non-resident) companies are subject to a regional tax on productive activities (*Imposta Regionale sulle Attività Produttive or IRAP*) for their income originating in Italy. For manufacturing companies, IRAP is imposed at a standard rate of 3.9% on the "***net value of production,***" which depends on the relevant business activity. However, please note that different rates may apply to specific businesses (e.g., banks and other financial entities and holding companies – i.e., companies whose main or exclusive activity is holding shares or quotas in other companies – are subject to 4.65% rate). In addition, each Region may increase or decrease the rate of IRAP by a maximum of 0.9176 percentage points, and companies generating income in more than one Region are required to allocate their tax base for IRAP purposes among the various Regions in the IRAP tax return, (i.e., a pro-quota payment per Region).

Tax returns filing and payment procedure
The income tax returns for companies having a fiscal year corresponding with the calendar year must be filed by 30 November of the following year. On the other hand, income tax returns for companies with a fiscal year not corresponding with year must be filed by the end of the 11th month of the following year. Companies must make advance payments of their corporate and local tax liability based on either a forecast method or a specified percentage of the tax paid for the preceding year.

IRES and IRAP must be paid in accordance with the following schedule: (i) the first advance payment due for the current fiscal year, amounting to 40% of the tax paid for the previous year, must be paid by the same date as the balance due for the previous fiscal year (***i.e.***, last day of the sixth month following the end of the previous fiscal year); (ii) the second advance payment of 60% must be paid by the last day of the 11th month following the end of the fiscal year; and, (iii) the balance payment must be paid by the last day of the sixth month following the end of the fiscal year.

Statute of limitations
A company may be subject to a tax assessment up to the end of the fifth year following the year of filing the relevant tax return (The previous term was the fourth year following the year of the filing of the tax return.) In addition, the applicable statute of limitations is now extended to seven years for a failure to file any tax return (The previous term was five years).

Limitations on interest deductions
For companies other than banks and other financial entities, the deductibility of net interest expenses is determined in accordance with an EBITDA test. Under this test, net interest expenses (i.e., interest expenses exceeding interest income) are deductible only up to 30% of the Tax EBITDA, and the excess can be carried forward indefinitely and used for later fiscal years in which the 30% of the Tax EBITDA is higher than the net interest expense for the year.

The 30% Tax EBITDA rule may also apply at a domestic tax group. The excess of interest expenses at the level of one entity may be deducted by the group if other members have a corresponding amount of excess Tax EBITDA. Excess interest income and excess of 30% Tax EBITDA of any fiscal year can be carried forward for five years to offset interest expenses in any following fiscal year.

Relief for losses
For corporate income tax purposes only, losses may be carried forward with no time limit and deducted from income of the following periods for a total amount equal to 80% of the taxable income (or for lower sum if the tax-losses do not reach 80% of the amount of taxable income

for the relevant period). Losses incurred in the first three years of an activity may also be carried forward for an unlimited number of tax periods, and without the threshold of 80% of taxable income. The three-year time limit is computed from the company's date of incorporation.

To qualify for an unlimited loss carryforward, such losses must derive from a new activity, (i.e., an activity which, within the context of a larger corporate group, none of the member companies within the same group, has previously carried out). Tax losses (and other tax attributes) of a company may not be carried forward in case of "change of ownership and change of business" unless a vitality test is met, a test to demonstrate that each company is not just an "***empty box***" used to transfer tax losses and non-deductible interest, thus offsetting taxable income of other companies involved in the merger.

Notional interest deduction
The Italian notional interest deduction (**NID**) or allowance for corporate equity (**ACE**) allows Italian enterprises (including Italian branches of foreign businesses) to claim a 1.3% deduction from taxable income corresponding to an assumed "notional return" on qualifying equity increases contributed after the 2010 fiscal year. Such deduction may offset the annual taxable income but may not generate a loss.

Any unused excess can be carried forward without time limitations. Qualifying equity increases mainly include contributions in cash (also in the form of a waiver shareholder debt) and the allocation of profits to available reserves. Qualifying equity decreases include any transfer of cash made to the shareholder such as dividend distributions and repayment of capital reserves, or the provision of loans to affiliated companies or acquisitions of shares or quotas in affiliated companies and line of businesses from affiliated companies.

Domestic tax consolidation
A domestic consolidation regime is available only for companies resident in Italy. To qualify for consolidation, more than 50% of the voting rights of each subsidiary must be owned, directly or indirectly, by the common Italian parent company. The choice of implementing a domestic consolidation is binding for three fiscal years. However, if the holding company loses control over a subsidiary, the relevant subsidiary must be immediately excluded from the consolidation. Tax consolidation includes 100% of the subsidiaries' profits and losses, even if the subsidiary has other shareholders.

Domestic consolidation may be limited to certain entities, leaving one or more otherwise eligible entities outside the group filing. Tax losses realized before the choice of tax consolidation can only be used by the company that suffered such losses. Tax consolidation also allows net interest expenses (exceeding 30% of a company's EBITDA) to be offset with excess EBITDA of another group company.

Dividends paid within domestic consolidation are subject to the ordinary 1.2% tax to be computed on the income of the recipient.

Transfer pricing
Italy imposes transfer-pricing rules on transactions between resident and non-resident affiliated companies. Under these rules, intragroup transactions must be carried out at fair market value and at arm's length. No penalty applies because of transfer pricing adjustments if the Italian company complied with Italian transfer-pricing documentation requirements. These documents allow the verification of the consistency of the transfer prices set by the multinational enterprises with the arm's-length principle.

On 23 November 2020, the Italian tax authorities issued new instructions regarding the contents and validity of the elective transfer pricing documentation to adopt the Base Erosion and Profit Shifting (BEPS) Action 13 deliverable. Such documentation consists of the following documents:

- Masterfile: The Masterfile collects information regarding the multinational group.
- Country-Specific Documentation: The Country-Specific Documentation contains information regarding the enterprise.

Please note that Country-by-Country Reporting (CbCR) is due at certain conditions of business size.

Withholding tax on dividend and interest paid abroad
The payment of dividends and interests abroad is subject to a 26% withholding tax. Under certain conditions, such withholding tax may be reduced according to the applicable international treaty, if any, or exempted in the case of a recipient resident in the EU, according to the applicable EU Directives, (i.e., Directive 90/435/EEC, recasted in Directive 2011/96/EU, and Directive 2003/49/EC).

8.2 Value-Added Tax

Value-Added Tax (**VAT**) applies to the following transactions:

- supplies of goods or services made in Italy by a taxable person
- purchases by a tax subject of goods from another EU Member State
- reverse-charge services received by a taxable person in Italy (i.e., services for which the recipient is liable for the VAT due)
- the import of goods from outside the EU, regardless of the status of the importer

The VAT rates are:

- the standard rate –22%
- reduced rates –4% (food, drinks and agricultural products), 5% (certain food products), 10% (supply of electric power and natural gas for household use, medicines, activities for restoring certain real estate assets for certain good and services)
- zero-rated –0%.

The standard rate of VAT applies to all supplies of goods or services unless a specific measure provides for a reduced rate, the zero rate or an exemption.

Special VAT schemes are applicable, ***inter alia***, to (i) tour operator business, (ii) margin schemes for the sellers of secondhand goods, works of art, antiques or collectibles, (iii) publishers, and (iv) telecommunication providers.

Recovery of VAT
A tax subject may recover the input tax, which is VAT charged on goods and services provided to the same for business purposes. Input tax is generally recovered by being deducted from output tax, i.e., VAT charged on sales. A valid tax invoice or customs document must generally accompany a claim for input tax.

The time limit for a taxable person to reclaim input tax in Italy is within the submission of the annual VAT returns for the year in which the relevant invoice is received. A refund may be claimed annually or quarterly if specific conditions are met. If the tax subject meets the conditions to claim both annually and quarterly, it may choose either. If the conditions for requesting a refund are not met, the VAT credit may be carried forward to offset output tax in the following VAT fiscal year.

VAT returns and payments
All Italian taxable persons must submit an annual VAT return. The VAT return period is the calendar year. The annual VAT return must be filed from 1 February through 30 April of the following year. Italian taxable persons calculate VAT payments on a monthly or quarterly basis, depending on turnover, and pay the VAT.

All taxable persons must communicate to the Tax Authority, on a quarterly basis, the data on periodic VAT payments, irrespective of their obligation to pay the VAT on a monthly or quarterly basis.

VAT may be paid on a quarterly basis if the turnover achieved during the previous year (or anticipated for the first year of activity) does not exceed € 400,000 for sales of services or € 700,000 for sales of goods. An advance payment is due by 27 December of the current year. Different methods are available to determine the advance payments (forecast, historical or transactions carried out). The balance payment of the VAT due for the month of December is due by 16 January of the following year.

8.3 Employment income

Employment income is income derived from work performed for an employer. It includes any compensation, either in cash or in kind, received during a tax year in connection with employment, including any payments received as shares, as acts of generosity, or as reimbursement for expenses incurred in the accruement of the income. Benefits in kind are valued for tax purposes at the "normal value", (i.e., their market value), as defined by the Italian tax code (Decree of the President of the Republic no. 917/1986). For certain benefits in kind, the Italian tax code provides specific rules for determining the applicable tax value.

All compensation received in connection with employment is considered employment income, even if the compensation is paid by a third party (e.g., the legal employer's parent company).

Employment income may also include income known as "income deriving from a collaboration" unless the activity is performed by an individual who is registered for VAT purposes, and income accrued from his or her activities as director, auditor and contractor (***i.e.***, external consultant and/or freelance professional).

An Italian employer, qualifying as a withholding tax agent, must withhold income taxes monthly from payments of gross employment income, including benefits in kind. Employment income is also subject to social security contributions. The same rules apply to the determination of the tax base for both income tax and social security contributions.

The following items are not included in the taxable employment income:

- Mandatory contributions paid by an employer and by an employee for social security as provided by law.
- Contributions, up to a ceiling of € 3,615.20, paid by an employer or an employee to entities or funds for the sole purpose of medical assistance according to NCBAs, or company agreements and regulations.
- Goods provided to and services rendered for the employee if the overall value of goods and benefits does not exceed € 516.46 per year (for the 2022 tax year and subsequent years, the limit will be € 258.23).
- Business trip daily indemnity, up to a maximum of € 46.48 for trips within Italy and up to € 77.47 for trips abroad if the employer reimburses only the travel expenses.
- Certain benefits in kind, including meals in factory cafeterias and transportation services provided to most employees, up to certain amounts and under specified conditions.

Additional tax exemptions may be granted for some benefits in kind if the employer sets up welfare plans (so-called flexible benefits plans) for all employees or categories of employees.

Nonresidents are subject to tax on income from employment derived from services performed in Italy and pensions paid by the state or by Italian residents.

Employees who transferred their tax residency from 30 April 2019 are eligible to benefit from the special tax regime, if they meet certain conditions. The following are the main conditions:

- The taxpayers qualify as non-tax resident in Italy for at least two years (instead of the previous five years) prior to the transfer to Italy.
- The taxpayers commit to be Italian tax residents for the following two years and to work mainly in the Italian territory.

If all the conditions provided by the Law-Decree no. 34/2019 are met, from the 2020 tax year, the taxable employment income originating in Italy of the employee who qualifies for this special tax regime is reduced to 30% of the total amount that would be normally charged in the tax year in which the employee becomes Italian tax resident and for the following four years. Under a different measure, a 90% reduction applies to taxpayers who transfer their residency to certain regions of Southern Italy.

8.4 Social security contributions

Italian law provides for a comprehensive system of social insurance covering the following:

- Disability, old age and survivorship
- Illness and maternity
- Unemployment and "mobility"
- Family allowances
- Healthcare
- Labor injuries
- Professional diseases

The system is controlled by the government, with various sections administered by separate public institutions, most notably, the INPS. NCBAs provide for compulsory additional coverage through pension and health funds. Both employers and employees usually make contributions to these funds.

Contributions

Employees: In general, social security contributions are payable at varying percentages of gross remuneration, depending on the employee's qualification level and the employer's activity sector.

In general, employees' social security contributions range from approximately 9% to 10% of their gross remuneration. Employees must make an additional 1% contribution on the part of gross remuneration exceeding the threshold of € 48,279 for 2022.

The employer's share of his, her or its employee's contributions ranges from approximately 27% to 32%.

Employees with no record of social security contributions before 1 January 1996, are subject to pension contributions on gross income — up to a maximum of € 105,014 for 2022.

Self-employed individuals: Self-employed individuals, directors and consultants must enroll within the so-called *Gestione Separata* of the INPS, unless other specific rules apply (e.g., certain professionals, such as lawyers, engineers and accountants, are required by law to enroll in specified pension plans).

The contributions to INPS are calculated at a flat rate of 25.98% for self-employed persons or consultants and at a flat rate of 33.72% for directors. If the individual already contributes to another mandatory social security system or if he or she is retired, the applicable flat rate is 24%. In all the above mentioned cases, the flat rates apply on annual income up to a maximum of €105,014 for 2022.

In addition, foreign citizens, such as nonresident directors, must enroll in the INPS.

Under certain circumstances, a totalization agreement may provide an exemption from the social security contributions.

Totalization agreements

To avoid double taxation of income with respect to social security contribution and to ensure benefit coverage across several countries, Italy has concluded totalization agreements with various jurisdictions. In addition, an EU Regulation on social security has been adopted, (i.e., Regulation no. 833/2004), which coordinates the social security regime across the EU Member States, including all of the new Member States as well as Iceland, Liechtenstein, Norway and Switzerland.

Italy has entered into totalization agreements with the following jurisdictions.

Most of Italy's totalization agreements allow an employee temporarily seconded abroad to remain covered under the social security scheme in his or her home country for a two-year period that may be extended to five years or more.

Please consider that in this regard the agreement with the United States does not provide a fixed term of coverage. In addition, Italy's totalization agreements with the United States and certain countries do not cover all the mandatory social security contributions payable in Italy. As a result, US and other foreign companies must pay minor contributions in Italy.

Argentina	North Macedonia
Australia	San Marino
Bosnia and Herzegovina	South Korea
Brazil	Tunisia
Canada and Quebec	Turkey
Cape Verde	United States
The Channel Islands*	Uruguay
Croatia	Vatican City
Israel	Venezuela
Monaco	Former Yugoslavia**

*The Channel Islands consist of Alderney, Guernsey, Herm, Jersey and Jethou

**This treaty applies to Montenegro and Serbia

9. The EY organization

At EY, our purpose is ***Building a better working world.*** The insights and quality services we provide help build trust and confidence in the capital markets and in economies all over the world. We have leaders who team up to deliver on our promises to all our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

In a world that's changing faster than ever, this purpose acts as our 'North Star', guiding our more than 300,000 professionals and providing the context and meaning for the work we perform every day.

We help digital pioneers fight data piracy, we guide governments through cash flow crises; we help unlock new medical treatments with data analytics, and we pursue high quality audits to build trust in financial markets and businesses. In other words, we work with entrepreneurs, companies, and sovereign countries to solve their most pressing challenges.

We believe a better working world is one where economic growth is sustainable and inclusive. We work continuously to improve the quality of all our services, investing in our professionals and in innovation. And we're proud to work with others – from our clients to all the stakeholders – to use our knowledge, skills and experience to help fulfill our purpose and create positive change.

9.1 Exceptional client services at a glance

At EY, we're really focused on three things that we believe set us apart: our purpose, our global integration, and our culture of exceptional client service. In a competitive environment, methodologies and services can be replicated – but how you deliver them and your culture cannot be. Clients can really see the difference in how they are assisted and supported. So, we focus on highest-performing teams delivering exceptional client service.

Exceptional client service is about being connected, responsive, and insightful. Being insightful means looking beyond the obvious to understand what the problem really is. Being connected means knowing how to ask the right person the right question to reach the right perspective on the problem. Being responsive means being deeply committed to using this understanding to achieve a relevant, practical, and precise solution. It is a simple but powerful mindset.

EY exists to help to create long-term value for clients, for the people and for society, and to build trust in the capital markets. Enabled by data and technology, our multicultural and diverse teams in over 150 countries create such trust through assurance and help clients grow, transform and operate in an efficient and sustainable manner.

At EY organization, our teams aim to ask better questions to find new answers for the complex issues facing our world today and bring together the skill and expertise to help our clients achieve their ambitions.

Through EY four highly integrated service lines — Assurance, Consulting, Strategy and Transactions, and Tax — and our deep sector knowledge, we help EY clients to capitalize on new opportunities and assess and manage risk to deliver responsible growth. Our high-performing, multidisciplinary teams help them fulfill regulatory requirements, keep investors informed and meet stakeholder needs.

9.1.1. Law

At EY organization, we can provide clients with the detailed guidance they need to navigate the increasingly complex legal environment of the global economy. Our lawyers understand the complex tax, regulatory and commercial laws of today's economy. With our multidisciplinary, one-stop shop approach, we help reduce the gap between business advisors and legal counsel, increasing efficiency and speed to market, while reducing costs.

Serving companies across borders, EY sector-focused, multidisciplinary approach means that we offer highly integrated and detailed advice you can trust. Throughout the service, our lawyers take time to understand clearly what matters to the client. With centrally managed cross-border teams and single responsible country contacts, we can assist businesses around the world.

Focusing on broad client services that are specifically tailored to address clients' increasingly complex business needs, we offer client solutions in close collaboration with colleagues from other service lines to help ensure the full benefits of a multi-disciplinary approach. The key differentiators for our client services are top quality, international coverage, operational efficiency, and multi-disciplinary collaboration.

- Corporate & M&A**:** our Corporate & M&A law practice has a deep experience with Italian and foreign clients in the field of ordinary and extraordinary corporate transactions including mergers and acquisitions and joint ventures
- Banking & Finance: our Banking & Finance legal team offers a complete assistance on banking law, finance law and capital markets leveraging on the EY multidisciplinary methodology
- Business Restructuring: our Insolvency & Restructuring practice has a long-standing experience in procedures involving business restructuring and bankruptcy and insolvency proceedings
- Labor & Industrial Relations: we are considered to be a leader in advising Italian and foreign companies in all legal services related to labour market, industrial relations and social security matters both in the daily management and the litigation phase
- Infrastructure & Project Finance: our team of professionals is highly experienced in financial law, administrative law, corporate and civil law
- Healthcare & Lifesciences: we assist Italian and international pharmaceutical, biomedical, biotechnological and healthcare companies
- Real Estate: the team provides a broad range of legal services to different categories of domestic and international clients such as real estate investment companies, real estate management companies, real estate funds, construction companies, special servicers and Real Estate Owned Companies (REOCOS)
- Energy & Efficiency: professionals with extensive experience gained in civil law, corporate law, contract law, public law and in energy regulatory profiles
- Intellectual Property: our IP team supports primary national and international clients in the development, acquisition exploitation and protection in Italy of their property rights on intangible assets as well as in the IPRs protection in front of the competent authorities
- IT & Data Protection: our team provides legal assistance on personal data protection and technology matters
- Litigation & Credit Collection: our team helps and advises on judicial and extrajudicial management of the disputes in the areas of civil, commercial, banking and corporate law
- Administrative & Public Law: we offer assistance to both national and regional central purchasing bodies and provide support to companies and bodies that have moved from the private contract regime to that of public evidence
- The Entity Compliance & Governance: our compliance team provides assistance on all company law matters related to the establishment, the life and dissolution of companies, branches and rep. offices in Italy and, internationally, in more than 140 Countries
- Private Client Service: a team dedicated to the most serious and delicate matters involving Family wealth transition and management of Family businesses.

9.1.2. Consulting

Consulting at EY is building a better working world by realizing business transformation through the power of people, technology and innovation. Due to the fast-changing nature of work activities, we are all being asked to adopt new behaviors — to be more innovative, more agile, more collaborative, and so much more.

Business today is anything but usual. We feel that there is an urgent demand that we look ahead through new lenses, reframe the future and ask new and different questions:

- How do you create customer intimacy without proximity?
- Where does employee centricity meet the future of work?
- How can technology at speed create competitive advantage?
- Where does innovation at scale meet the new "S-curve" of growth?

By placing humans at the center, leveraging technology at speed and enabling innovation at scale, our clients are transforming to realize long-term value for the people, businesses and society as a whole.

In Consulting, our guiding principles steer the behaviors and mindset needed to accelerate collaboration, self-learning, innovation and problem-solving to deliver long-term value to our clients, our people and EY. Together, we are building capabilities across businesses, technology and people:

- Business Consulting**:** our Global Business Consulting Leadership Team exists to drive an unprecedented level of teamwork and collaboration to support clients in

driving long-term value through transformation and to attract, develop and retain world class professionals. Our Business Consulting Competencies house our leading-class capabilities in Business Transformation, Finance, Supply Chain and Risk that our clients need in order to design and deliver long-term value through transformation.

- Technology Consulting: in Technology Consulting (TC), we deliver long-term value to our clients, our society and our teams by applying the power of technology, data and ecosystems to unlock human potential and transform businesses. EY is committed to the technology and data agenda and we have made a $1b investment in new technology solutions, innovation and the EY ecosystem to better serve our clients.
- People Advisory Services (PAS): The world continues to change as a result of developments in globalization, demographics, technology and regulation. These disruptive forces require organizations and their people to change rapidly. At the same time, it is getting harder to source, manage, motivate and retain talent while controlling costs. PAS helps our clients harness their people agenda – the right people, with the right capabilities, in the right place, for the right cost, doing the right things. We help our clients gain a competitive advantage, working with them to cultivate impactful people, human resource and organizational alignment across all critical business crossroads.

9.1.3. Strategy and Transactions

We help clients manage the crisis and stabilize their business in the short-term and we also help them to navigate downturns and position themselves for recovery or to look beyond to enable transformation through corporate strategy and transactions, M&A and divestments.

Strategy and Transactions enables clients to navigate complexity by reimagining their eco-systems, reshaping their portfolios and reinventing themselves for a better future. With EY connectivity across the globe and scale, we drive corporate strategy, capital allocation and transaction advisory through execution to enable fast-track value creation. We support the flow of capital across borders and help bring new products and innovation to the market. In doing so, we enable our clients to build a better working world by fostering long-term value.

How organizations manage their capital today will define their competitive position tomorrow. We help create social and economic value for clients and assisting them in making more informed decisions on strategically managing capital and transactions through our Sub-Service Lines:

- Transactions and Corporate Finance: Transactions and Corporate Finance (TCF) combines Transaction Diligence (TD), Valuation, Modeling and Economics (VME), and Lead Advisory. Given the longstanding and deep relationships of these practices with our clients, we believe this new sub-service line will allow to drive further growth for our already successful practice and to continue to be key drivers of innovation within our business.
- EY-Parthenon**:** EY-Parthenon is our Strategy consulting sub-service line under Strategy and Transactions. In the spirit of our broader NextWave agenda, this sub-service line aims to create a distinctive, global, leading-class strategy practice, that provides long-term value to our clients, our people and EY. EY-Parthenon houses three strategic practices, which contain EY market-leading methodologies and the development of technical capabilities and talent, supported by our global learning and development curriculum.
- International Tax and Transaction Services (ITTS)**:** International Tax and Transaction Services is a joint venture with the Tax Service Line. ITTS helps clients navigate the tax implications of their business to make decisions that align with the long-term corporate strategy across the full transaction life cycle. Every transaction has tax implications, be it an external acquisition, sale, restructuring, or an internal change such as the implementation a new operating model to generate more value, the determination of the IP strategy of a business, or ensuring that the services provided within a group are priced appropriately. It brings a powerful, tax perspective to our Strategy and Transactions proposition.

9.1.4. Assurance

Assurance teams serve the public interest by promoting trust and confidence in business and the capital markets.

Our Assurance services — comprising Audit, Financial Accounting Advisory Services (FAAS) and Forensic & Integrity Services — address risk and complexity while identifying opportunities to enhance trust in capital markets. Audit teams serve the public interest by providing high-quality, analytics-driven audits with independence, integrity, objectivity and professional skepticism. FAAS and Forensics' teams help protect and restore enterprise and financial reputations, help support the finance function in enhancing decision-making and efficiency and help address the risks and opportunities arising from climate change and sustainability issues.

Global Assurance's purpose is to inspire confidence and trust to help enable a complex world to work. We do so by protecting and serving the public interest, promoting transparency, supporting investor confidence and economic growth, and nurturing talent to provide future business leaders for the global marketplace. This translates to a service offering for our clients that supports them in building stakeholders' confidence and trust, managing regulatory responsibilities and driving long-term, sustainable growth.

- Audit: our tailored external audit services help build trust and confidence through transparency, clarity and consistency. We have more than 94,900 professionals worldwide based in over 150 countries. Audit services involve reporting on the fairness in all material respects with which a client's audited financial statements are presented, in compliance with applicable financial reporting frameworks.
- Climate Change and Sustainability Services (CCaSS)**:** Climate Change and Sustainability Services (CCaSS) is part of EY sustainability vision. As the sustainability core for EY, multidisciplinary teams of over 2,500 people helps clients understand the risks and opportunities arising from climate change and sustainability issues, across climate and decarbonization, ESG and sustainability and environment, health and safety.
- Financial Accounting Advisory Services: our FAAS practice supports our clients in determining, monitoring and disclosing the financial and non-financial reports to their stakeholders. With approximately 7,500 professionals in 25 regions, our multidisciplinary teams work with clients on projects such as managing accounting and reporting challenges, transaction accounting, corporate governance, corporate treasury services and audit remediation. Our team helps clients identify, measure, report, audit and assesses how social, ethical and environmental opportunities and risks could impact business performance and address their stakeholder reporting requirements.
- Forensic & Integrity Services: dealing with complex issues of fraud, regulatory compliance and business disputes can detract the energies and resources required efforts to succeed. Better management of fraud risk and compliance exposure is, therefore, a critical business priority – no matter the size or industry. With approximately 5,000 forensic professionals around the world, we can assemble the right multidisciplinary and culturally aligned team to work with our clients and their legal advisors. Our work is aimed to give our client the benefit of our broad sector experience, our deep subject-matter knowledge and the latest insights from our work worldwide.

9.1.5. Tax

Our tax professionals offer services across all tax matters to help our clients thrive in this era of rapid change. At EY, we combine exceptional knowledge and experience with the people and technology platforms that make an ideal partner for the companies' tax-related needs. Indeed, EY has a significant experience in business tax, international tax, transaction tax and tax-related issues associated with natural persons, tax compliance and reporting, and tax laws and regulations.

In the Tax Service Line, we are building a better working world by helping companies understand governments' policy issues and comply with tax, legal and regulatory obligations including making decisions that can reduce risk, leverage technology and deliver sustainable value.

Our tax professionals combine agility, diverse thought, technical experience, and the power of technology and analytics to provide exceptional value to our clients. In a rapidly changing business and tax environment, we develop dynamic purpose-led leaders with innovative thinking and an entrepreneurial spirit.

- Business Tax Services (BTS): BTS is home to high performing global teams including EY Private Tax, our domestic specialty practices (incorporating Quantitative Services, Tax Policy and Controversy, Customer Tax Operations and Reporting) and Business Tax Advisory (incorporating Digital Tax Administration Services).
- Indirect taxes: Indirect taxes affect the supply chain and the financial system. Our network of dedicated indirect tax professionals combines technical knowledge with industry understanding and access to technologically advanced tools and methodologies. We identify risk areas and sustainable planning for indirect taxes throughout the tax life cycle, helping our clients meet their compliance obligations and your business goals around the world.
- Tax Technology and Transformation (TTT): TTT is the architect of the connected intelligent tax function and we help deliver tax technology and transformation services designed to improve the operational effectiveness of our clients' tax function and the efficient services of EY tax technical services.
- Global Compliance and Reporting (GCR): GCR helps companies achieve greater control, efficiency and value across tax and finance. We integrate EY tax and financial services to become a trusted collaborator for our clients. Through our leading-in-class technology and unsurpassed global team, we provide a wide range of in-house and outsourcing services, enabling our clients to focus on their strategic business priorities.
- International Tax and Transaction Services (ITTS): it is comprised of three practices: International Corporate Tax Advisory (ICTA), Transaction Tax Advisory (TTA) and Transfer Pricing (TP). ITTS helps financial sponsors, private capital enterprises and multinational corporations to proactively address challenges by bringing globally connected services to all tax aspects of their business and investment models, corporate structure, treasury management and overall tax and transaction strategy.

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EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

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