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Please find below an overview of the main Italian Corporate, Tax and Labor law provisions which may be helpful to better understand the consequences of any decisions that may be taken to conduct a business activity in Italy.

Please note that the following memorandum is only intended to provide some basic information and does not purport to exhaustively cover the areas addressed.

Moreover, you will find some general comments and suggestions on how to improve the Italian corporate and business structure to minimize possible corporate and tax risks and to maximize the tax benefits.

1. Foreign Investment Regulations

No prior authorization is required for the formation of an Italian company, except in certain limited circumstances such as the case of companies proposing to operate in certain sectors, such as banking and insurance, mining, land, sea and air transportation. Foreign nationals can subscribe to the capital of an Italian company with the same rights as Italian nationals as long as the reciprocity condition is fulfilled\(^ 1\). Foreign investments are only registered for statistical purposes.

The Italian exchange control system has been significantly deregulated. Currently only very limited exceptions exist to the free movement of funds in connection with regular business transactions.

2. Funding of the Italian Operation

The Italian operation may be financed by using one or more of the following methods:

(a) equity capital;
(b) loans from the parent company (or head office in the case of a branch) or from affiliate companies;
(c) local borrowing from Italian banks and/or from financial institutions authorized to grant loans in Italy;
(d) sale of goods on open account with delayed payment terms;
(e) debt issuances;
(f) accumulation of retained earnings.

As mentioned above, there are no restrictions on the investment of equity capital in an Italian subsidiary. Equally, there are no restrictions on the remittance of equity capital (endowment) to a branch.

There is no restriction for an Italian subsidiary or branch of a foreign company in borrowing from Italian banks. Such loans may have to be backed by guarantees of the parent company, if so requested by the lending bank.

Financing an Italian subsidiary through retention of earnings is perfectly feasible. Not only there are no retained earnings (or undistributed profits) taxes even for closely held companies, but the self-

\(^1\) Under Italian law (Article 16 of the Italian Provisions on the Law in General - introducing the Italian Civil Code) except in those cases provided for under specific legislation, a foreign national is allowed to enjoy the same civil rights granted to an Italian citizen on condition of reciprocity.
financing is encouraged through a reduction of the taxable basis for corporate income tax (IRES) purposes, as better explained below.

3. Corporate Aspects

I. Branch

To establish a branch office in Italy, the appropriate corporate body of the non-Italian company (the “Company”) shall adopt a corporate resolution to approve the opening of the branch, the appointment of the branch manager and the determination of the latter’s authority. The resolution shall then be duly notarized and, if applicable, legalized by means of “Apostille”, pursuant to The Hague Convention of October 5, 1961. Such corporate resolution, together with (i) a certified copy of the Company’s By Laws and Articles of Incorporation, as well as (ii) a Company’s Certificate of Good Standing issued by the competent foreign authorities, must be translated into the Italian language and filled with the deeds of an Italian Notary Public. Moreover, applications for the VAT number of the branch office and for the Italian tax ID number of the branch manager shall be filed with the competent tax offices. Finally, in order to duly complete the registration of the branch, the Italian Notary Public shall file the above mentioned documentation with the competent Register of the Enterprises and Chamber of Commerce.

A branch office is not required to have a minimum capital. Usually, however, the Company grants the branch office with a fund (Endowment Fund) for the branch’s operations.

Under Italian law, a branch office is considered as a “part” of the Company and not as a separate legal entity, except for tax purposes (please, see below).

As a fully functional business entity, a branch office is managed by the so-called “branch manager” which is granted with all the necessary powers to conduct the branch operations. Such powers must be duly published in Italy by filing a copy of the relevant delegation of powers’ resolution with the competent Chamber of Commerce. The branch manager is personally liable vis-à-vis third parties for any obligations undertaken on behalf of the Company (through the branch) until the publicity formalities and relevant filings to be made upon establishment of the branch have been duly executed (e.g. filing of branch manager’s powers with the Register of the Enterprises, etc.). The branch manager does not need to be an Italian citizen nor to reside in Italy.

A branch may also enter into contracts, hire and terminate employees, and maintain its own banking relationships and accounting books. Any relationship between the branch office and its employees, distributors, or other local third parties, is treated as a domestic transaction subject to Italian law.

A branch office must keep the same accounting books as a subsidiary, namely the journal ledger, the inventory book and the depreciable assets book. In addition thereto, the branch must file the Company’s yearly financial statements with the competent Register of the Enterprises, which is the one having jurisdiction over its place of registration. The above information are accessible to the general public.

Although made for mere tax purposes, the branch generally also draws-up its Assets & Liabilities Statement and the Profit & Loss Account in order to support the calculation of the income tax due for the relevant financial year.
II. Subsidiary in the form of commercial company

II.1. Types of Italian companies

The main types of limited liability commercial companies, in Italy, are the joint stock companies (Società per Azioni - S.p.A) and the limited liability companies (Società a Responsabilità Limitata - S.r.l.).

The S.r.l.-type company is intended as a model for closely held small/medium-size private companies, while the S.p.A.-type company has been conceived as a model for large private companies and for public companies (i.e., companies generally owned by a large number of shareholders, where the interests of the minority shareholders and of the public deserve much more protection and attention than any other interest involved).

In both said types of company the liability of the stockholders is limited to the amount of capital subscribed by the same. Although part of the applicable regulations is common, said two types of companies are ruled by different sets of regulations which result in the adoption of different By-Laws.

Moreover the legislator introduced in 2012 a new simplified type of S.r.l., Società a Responsabilità Limitata Semplificata (S.r.l.s.), with the purpose of encouraging access to the business activities.

II.2. Incorporation and registration

Both S.p.A.-type and S.r.l.-type companies are established by executing the Articles of Incorporation and the By-Laws of the company before a Notary Public. Upon their execution, within the following 20 days, the Notary Public shall file the incorporation documents with the competent Chamber of Commerce (together with the forms for the acceptance of office duly executed by the directors and of the statutory auditors, if any). Such filing with the competent public authority, and the subsequent registration by the latter, duly finalize the incorporation procedure.

The subsidiary can be incorporated by one or more stockholders. In case of a subsidiary with a sole stockholder, it is necessary, in order to preserve the limited liability protection in case of insolvency of the company, to comply with the following requirements:

(i) payment in full of the due capital contributions;

(ii) duly fulfillment of the required information and disclosures duties vis-à-vis third parties and in particular the Register of the Enterprises concerning the fact that the company is owned by a sole stockholder.

Moreover, in case of a subsidiary with a sole stockholder:

(i) the sole stockholder is unlimitedly jointly liable for any transaction which is carried out in the name of the subsidiary before the completion of the incorporation procedure (i.e. before the enrolling of the subsidiary with the competent Register of the Enterprises), together with the person who actually carried out said transaction;

(ii) any contract between the subsidiary and the sole stockholder, as well as any transaction made by the subsidiary in favor of the same, is subject to specific requirements. In case of lack of said requirements, said contracts/transaction cannot be effective vis-à-vis the subsidiary’s creditors and third parties.

The subscribers may either attend personally or be represented by an attorney in fact before the Notary Public. In the latter case, a power of attorney to empower representatives to act on behalf of the subscriber is required. Such power of attorney shall be duly notarized and legalized by the
competent Italian Consulate or by means of “Apostille” pursuant to The Hague Convention of October 5, 1961, if applicable.

Although it is possible to incorporate S.p.A.- type and S.r.l.- type companies for an indefinite duration, our suggestion is to set it for a definite duration. Please consider that the duration term must be set upon incorporation and can very well exceed every living person’s life expectancy.

II.3. Capital

The minimum stated corporate capital for S.r.l. - type companies is equal to € 10,000 while for the S.r.l.s. should be included between € 1 and € 9,999. For the S.p.A. - type companies the minimum stated corporate capital is equal to € 50,000.

The corporate capital must be fully subscribed at the time of incorporation and a sum equivalent to at least 25% (twenty-five percent) of the amount of the subscribed capital must be deposited with an authorized bank in Italy prior to the incorporation. If the company is incorporated by a sole stockholder, or in the cases of the S.r.l.s., the entire amount must be deposited by the latter as above described.

The deposit may be returned to the company after completion of the incorporation procedure, further to a proper company’s resolution and upon specific instructions provided to the bank by a duly authorized individual.

II.4. Name

There are no legal restrictions as to the name of an Italian company, although said name must always include the indication of the type of the company, i.e. if the company is a S.r.l. - type, a S.r.l.s. - type or a S.p.A. - type company.

There is no administrative prior review procedure concerning use of conflicting names by others. However, the adoption of corporate names identical or similar to those used by competing enterprises should be avoided as it could be attacked as an act of unfair competition.

II.5. Registered Office

The registered office is deemed to be the legal domicile of the company. The registered office does not need to necessarily be the same as that of the business headquarters (i.e. the administrative office).

II.6. Shares and Quotas

The subscriber’s equity in the corporate capital of an S.p.A. is represented by a certain number of shares which are negotiable instruments and are usually (but not necessarily) documented and represented by share certificates. In addition to the general possibility of creating new kind of shares, the Articles of Incorporation may also provide shares featuring specific tools in case of losses of the company (called deferred shares).

Each subscriber’s equity in S.r.l. - type companies is represented by a quota (i.e., a percentage) of the entire capital of the company. The quota is not represented by share/quota certificates.

II.7. Shareholders and Quotaholders’ Meetings

Shareholders meetings and Quotaholders’ meetings may be, depending on the items of the agenda, either of ordinary or special nature and are usually called by the managing body to be held in Italy or elsewhere as provided under the By-Laws. Special Shareholders’ and Quotaholders’ meetings shall be held before a Notary Public.
An ordinary Shareholders’/Quotaholders’ meeting shall be convened, at least, once a year for the approval of the yearly balance sheet, within 120 days from the fiscal year end or, whether such possibility is provided for by the company’s By-Laws, within 180 days from the fiscal year end, if the company is required to draft consolidated financials or in case of justified reasons related to the company’s purpose or corporate structure.

Shareholders and Quotaholders may be represented at the meetings by proxy. If allowed by the By-Laws of the S.r.l. company, Quotaholders’ resolutions may be adopted also by means of the written consent or written consultation method in lieu of the meeting (unless the decision concerns a major item, such as the amendment of the By-Laws, the reduction of capital, or other items expressly identified by the law or the company’s By-Laws).

Quorum and majorities necessary to pass resolutions are stated by law, but, within certain limits, may be differently regulated by the By-Laws.

II.8. Corporate Governance

(a) in S.p.A.-type companies:

The corporate governance of the S.p.A., can now be shaped in three alternative forms, i.e.:

(i) traditional structure, consisting of a managing body, [i.e. a Sole Director (Amministratore Unico) or a Board of Directors (Consiglio di Amministrazione)] and a Board of Statutory Auditors (Collegio Sindacale) or,

(ii) two-tier (dualistic) structure, consisting of a managing board (Consiglio di Gestione) elected, and supervised, by a supervisory board (Consiglio di Sorveglianza) or

(iii) one-tier (monistic) structure, consisting of only the Board of Directors provided that an internal committee is established for the control of the management (Comitato per il Controllo sulla Gestione). Unless otherwise provided for in the by-laws, the said internal audit committee is appointed by the Board of Directors.

It is worth noting the enhancement of the control function as an essential element of the administration, in all three alternative structures available.

The analysis below focuses on the rules governing the traditional system, as this system remains the most exploited in the commercial practice.

The traditional structure, as anticipated above, provides for (i) a managing body, specifically a Sole Director or a Board of Directors, and (ii) a Board of Statutory Auditors. In particular:

(i) Management: S.p.A. - type companies are managed by and act through either a Sole Director or a Board of Directors, composed of two or more members, as provided for by the By-Laws. The By-Laws may indicate the minimum and maximum number of directors, whereas the actual number for each term of office is established upon election by the Shareholders within the limits set forth in the By-Laws.

The managing body may delegate - to some extent - some of its duties to (i) one or more managing directors, or (ii) an executive committee, consisting of two or more of its members, or to (iii) one or more attorneys-in-fact. The managing body, among the others, (i) retains the authority for any decision concerning the management of the company, (ii) can issue directives to the delegated members, (iii) can revoke their appointment, and (iv) supervises and controls periodically the proper administrative
and accounting procedures, the compliance requirements and the management
decisions adopted by the delegated members.

There are neither nationality nor residency requirements for being directors as long as
the reciprocity condition is fulfilled. For practical reasons including concerning the
signing of the corporate minutes and other paperwork, it is advisable that at least one
director is an Italian resident.

The directors’ term of office is set by the Shareholders’ resolution appointing them.
However, in S.p.A. - type companies, the term of office may be set for a maximum of
three fiscal years, but it can be renewed. The Shareholders’ resolution appointing the
directors shall resolve also upon the relevant compensation (if any).

In case the company is managed by a Board of Directors, a Chairman of the Board of
Directors has to be appointed by the Shareholders.

Each director must accept his/her office by signing a specific form to be filed with the
competent Chamber of Commerce.

Directors may not be represented by proxy at the meetings of the Board of Directors,
but may participate by means of audio-video conferences if and under the terms
provided for by the company’s By-Laws.

(ii) Board of Statutory Auditors: this is the corporate body entrusted with the legal
compliance and control-function over the company. The Board of Statutory Auditors
consists of three or five standing members, plus two additional deputy members
appointed to act as standing auditors in the event one of former ceases from office. At
least one standing and one deputy member have to qualify as a certified public
accountant (Revisore), while the other members may be appointed among certified
public accountants, lawyers, business consultants (commercialisti), accountants
(ragionieri) and labor consultants (consultenti del lavoro) - enrolled with the relevant
Role - or university professors in economic or legal matters.

The primary duty of the statutory auditors are to supervise the management of the
company, paying attention, in particular, to the appropriate accounting and
administrative organization of the latter, to establish proper procedures to ensure
compliance with the law and the By-Laws, and prevent any deviation from correct
management principles.

(iii) Legal Audit: it has to be entrusted by a Shareholders’ resolution to an outside
certified public accountant, or to an auditing firm, with the only exception of those
“closed” companies which are not required to draft consolidated financial statements,
in which case the Board of Statutory Auditors may be entitled to carry out the
auditing activity, if this possibility is specifically contemplated by the By-Laws of the
company; in this case please note that each member of the Board of Statutory
Auditors has to be qualified as a certified public accountant.

(b) in S.r.l.-type companies:

(i) Management: according to some commentators, S.r.l.- type companies can be
managed by the Quotaholders. However, it is common practice that also Srl-types of
companies are managed by and act through either a Sole Director or a Board of
Directors, composed of two or more members, as provided for by the By-Laws. In
this case, almost the same rules applicable to S.p.A. - type of companies apply.
(ii) **Controlling Body and Legal Audit of the Accounts:** the appointment of an internal controlling body (*organo di controllo*) is mandatory only if:

a) the company must prepare consolidated financial statements;

b) the company controls another company whose accounts are subject to legal audit by mandatory provision of law; or

c) any two of the following conditions are met for two consecutive fiscal years:
   
i) total assets exceeding EUR 4,400,000;
   
ii) sales exceeding EUR 8,800,000;
   
iii) average work-force exceeding fifty employees.

The internal controlling body (a sole statutory auditor or a board of statutory auditors) is an internal independent body, in charge for the supervision of the management, i.e. to supervise the company’s compliance with the laws, the by-laws and the principle of fair business management in particular with respect to the adequacy of the organizational, accounting and administrative structures of the company. In addition, when the appointment of an internal controlling body is mandatorily required due to the fact that any of the above conditions is met, the audit on the company’s accounts (*revisione legale dei conti*) is automatically entrusted to such body (in such case, all auditors must be certified public accountants), unless the By-laws provide for that the audit on the company’s accounts shall be carried out by an external certified public accountant or auditing firm (*revisore/società di revisione*).

More in particular, the By-laws regulate the choice among:

(a) a board of statutory auditors (to be composed of 3 or 5 standing members and of at least 2 deputy members; at least one standing member and one deputy member must be certified public accountants; other members may be appointed among certified public accountants, lawyers, business consultants (*commercialisti*), accountants (*ragionieri*) and labor consultants (*consultenti del lavoro*) - enrolled with the relevant Role - or university professors in economic or legal matters;

(b) a sole statutory auditor, or

(c) an external certified public accountant or auditing firm.

The Statutory Auditor must attend Board of Directors’ and Quotaholders’ meetings, or justify his absence. In case the decisions of these corporate bodies are adopted, according to the By-Laws, by means of written consultation or consent expressed in writing, it is advisable to regulate also the formalities necessary to guarantee the participation of the statutory auditors and their right to be duly informed.

**II.9. Company’s Books**

Both S.p.A.- and S.r.l.-type companies are required to keep corporate and accounting books in compliance with the law.

At the end of each fiscal year, the directors and the statutory auditors, if appointed, must draw-up the following documents:

(i) an Assets & Liabilities Statement;
(ii) a Profit & Loss Account;
(iii) an Explanatory Note;
(iv) a report of the directors on the management of the company;
(v) a report of the statutory auditors.

This set of documents represents the balance-sheet documentation to be approved by the Quotaholders [with the exception of doc. under (v) above], and then published and filed with the competent Chamber of Commerce.

4. Tax Aspects

Carrying out an activity in Italy requires a full and accurate evaluation of all its tax implications, which cannot be entirely illustrated in such a concise report. However, the following paragraphs illustrate those general features of the Italian tax system which foreign investors may be interested to know when approaching the Italian market.

I. Direct taxes

The applicable taxes in Italy on profits earned by a corporation or by a branch of a foreign legal entity are the corporate income tax (IRES) and the local income tax (IRAP) which have the features described below.

I.1. Corporate income tax: IRES (“Imposta sul reddito delle società”)

A business enterprise is subject to IRES at the rate of 27.5% on its net taxable income. A reduction of the IRES rate from 27.5% to 24% will be effective from fiscal years beginning on or after 01.01. 2017. As a consequence of such reduction (in light of the 95% domestic participation exemption on dividend income), also the withholding tax on outbound dividends distributed by Italian companies to qualifying EEA companies will be decreased from 1.375% to 1.20% (i.e., 24% times 5%), with effect from fiscal years 2017.

IRES is calculated on a taxable basis calculated as difference between the revenues generated by the business activity and the related costs as recorded in the annual Profit & Loss Account by making the necessary adjustments as stated by the Italian tax law.

Precisely, under Italian tax rules, the deduction of certain costs and expenses for income tax purposes is governed by specific provisions.

As a general principle, costs and expenses can be deducted only if they are actually connected with the activity carried out by the taxpayer and they can be deemed as economically reasonable (principle of inherence).

The deduction of business expenses for income tax purposes is allowed on an accrual basis (with some exceptions).

In addition, costs and other expenses, to be deductible for tax purposes, must be entered in the Profit & Loss Account pertaining to the financial year in which they become certain or ascertainable.

Some of the rules in determining the taxable income are here below briefly commented.
I.1.1. Restrictions on interest deduction

As for the deduction of interest expenses, the Italian legislation provides that net interest expenses (i.e., the excess of interest expenses, other than capitalized interest expenses, over interest income) are deductible up to 30% of the company’s Gross Profit (“Qualifying Gross Profit”) that is determined by grossing up the company’s EBITDA - i.e., the difference between the Gross Revenues and the Costs of Production, not including depreciation and amortization - with financial lease expenses, whether or not the latter are related to loans granted or guaranteed by related parties. The net interest expenses amount which exceeds the Qualifying Gross Profit in a specific fiscal year (“Surplus”), can be carried forward to the following fiscal years, unlimitedly, and deducted to the extent that in such fiscal years the same company shows an unused Qualifying Gross Profit. As a matter of fact, the interest expenses are never lost for tax purposes but, in the worst scenario, they are brought forward for an unlimited period of time.

The carry-forward is subject to some restrictions in case of merger and other business combinations.

In case of tax consolidation, excess interest expenses over each fiscal unit member’s respective qualifying Gross Profit (or any interests carried forward) can still be deducted in the fiscal year in which they have been generated as long as, at the level of the group, there is a sufficient excess of “group qualifying Gross Profit” (the sum of excess qualifying Gross Profits exceeding the interest expenses of other fiscal unit entities).

Before 2016, for the purpose of computing the deductible amount of tax consolidated group net interest expenses, also (30% of) non-resident controlled companies’ Gross Profits could be taken into account, to the extent they exceeded the interest expenses borne by the same companies.

The 2015 tax reform package includes amendments to the rules regarding interest deduction, which will be effective starting from fiscal year 2016. Based on the new provisions:

(a) the group qualifying Gross Profit will no longer include foreign controlled companies Gross Profits;

(b) however, each resident company’s Gross Profit will include the amount of dividends collected in the same fiscal year from its non-resident controlled companies. For the purpose of these new tax provisions, foreign controlled companies are meant the subsidiaries where the Italian resident parent company owns the majority of the voting rights for the ordinary shareholders’ meetings.

However, in case of a fiscal unit (concerning corporations that have elected for the domestic tax consolidation regime), only the excess of net interest expenses accrued after the election for this regime by one company can be offset against the unused excess group qualifying Gross Profits.

Finally, interest expenses are not deductible for IRAP purposes (exceptionally, starting from fiscal year 2017, only banks and other financial entities - other than insurance companies - are allowed to deduct all of their interest expenses from both IRES and IRAP purposes. Until 2016, bank and other financial entities have been allowed to deduct up to 96% of their interest expenses). However, 10% of IRAP (comprehensively referred to IRAP paid on net interest expenses) is deductible for IRES purposes.

I.1.2. Participation exemption

Capital gains realized by Italian resident companies on sale of shares of resident or non-resident companies are subject to corporate income tax, on a tax basis equal to 5% (thus resulting a final taxation of 1,375% = 5% x 27.5%; as anticipated, such tax rate will decrease to 1,20% starting from fiscal year 2017) provided that:
(a) the participation was recorded as a financial asset in the statutory balance sheet referring to the first year of holding;

(b) the seller has held the participation for at least the previous twelve months not less than one-year period;

(c) the company whose shares are transferred carries out an actual commercial activity (such condition is not met if the assets of the subsidiary are primarily represented by real estate not used in the business activity, unless said company is listed on a stock exchange market, in which case the condition is deemed met by operation of law);

(d) the company whose shares are transferred is not resident in a tax-haven jurisdiction. Such condition can be waived if the transferor company has obtained a ruling by the Italian Tax Authorities acknowledging that, through such participation, the transferor company did not achieve the result of localizing income in a tax-haven jurisdiction.

The conditions under (c) and (d) shall be met in regard to an uninterrupted period ranging from the beginning of the third fiscal year prior to the fiscal year in which the transfer of the participation takes place.

With reference to holding companies, the conditions under (b) and (c) above must be verified with reference to all participated companies and can be deemed met if they occur with respect to those participation which represent the greater part of the net equity value of the holding company.

Dividends and liquidation proceeds distributed by resident (and, provided that certain conditions are met, also from non-resident companies), can benefit from a 95% exemption in the hands of the Italian corporate shareholder (however, the exemption does not apply if the distributing company is a resident of a tax haven jurisdiction).

I.1.3. Notional interest deduction (“ACE”)

Italian companies and Italian branches of non-resident companies are entitled to benefit from a deduction from the taxable income corresponding to a deemed “notional return” on “qualifying” equity increases accrued from fiscal year 2011 onwards. For the branch offices, the benefit is computed on the increase of the relevant endowment fund.

The notional return is calculated at a rate of 4.75% (the notional rate for fiscal year 2013, 2014 and 2015 was, respectively, 3%, 4%, and 4.5%). Starting from 2017, the Ministry of Finance will determine the applicable ACE rate by 31 January of each year, taking into account government bonds’ average yields and a risk premium.

A deduction of the notional yield cannot result in a tax loss for the company; it can only zero the company’s taxable income. Therefore, if, in a given fiscal year, the notional return is higher than the company’s net taxable income, the company will declare no income in that year and will carry forward the excess of notional yield to the following years (without time limitations). Alternatively, the company may obtain a tax credit equal to the IRES rate multiplied by the amount of the excess notional return. Such credit will offset the IRAP (regional tax on productive activities) due by the company.

Among the “qualifying” equity increases, it is worth mentioning the contributions in cash and the accumulation of retained earnings (i.e. the profits that the shareholders’ meeting resolves to retain in the net equity of the company).

Specific anti-avoidance rules aimed at preventing the duplication of the tax incentive can apply.
I.1.4. Dividends distribution

I.1.4.1. Dividends paid to resident shareholders companies

Dividends paid by a resident company to resident shareholders companies are not subject to withholding tax and can benefit from 95% exemption in the hands of the recipient (i.e., only 5% of the dividends received are subject to tax, thus resulting a final taxation of 1.375% = 5% x 27.5%; as anticipated, such tax rate will decrease to 1.20% starting from fiscal year 2017).

I.1.4.2. Dividends paid to non resident shareholders

According to domestic provisions, dividends paid to non resident shareholders are subject to 26% withholding tax.

Non-resident shareholders are entitled to claim a refund of the withholding tax equal to the amount of foreign taxes paid on the same dividend. Such refund, however, cannot exceed 1/4 of the Italian withholding tax. The refund is subject to the filing of a statement issued by the foreign tax authorities confirming that those dividends were subject to tax in the country of residence of the recipient.

Dividends (out of profits accrued from fiscal year 2008) paid to a company, subject to corporate tax in a country belonging to the European Union and to the European Economic Area included in the white list (to be contained in a ministerial decree not yet issued, primarily based on the effective exchange of information with the Italian tax authorities), are subject to 1.375% withholding tax. which will be decreased to 1.20 starting from fiscal year 2017. Provided that certain conditions are met (e.g. primarily the tax residence in one of the signing countries and, where applicable, the beneficial ownership condition), the recipient of the dividends is entitled to claim the application of the reduced withholding tax rate set forth by a Tax Treaty against double taxation, if existent.

In addition to the above, following the implementation of the EC Parent-Subsidiary Directive (Council Directive 90/435/EEC of 23 July 1990), dividends paid to qualifying EU parent companies are not subject to withholding tax. To qualify for the exemption from withholding tax, the parent company must meet the following requirements:

(a) Residing for tax purposes in an EU member state

(b) Having one of the legal forms listed in the Annex to the Directive

(c) Subject to one of the taxes listed in the Annex to the Directive, without the possibility of benefiting from an exemption, unless temporarily or territorially limited

(d) Having held at least 10% of the capital of the subsidiary for at least one uninterrupted year

Under an anti-abusive provision, the parent-subsidiary regime is not available for dividends received by companies controlled by persons who are not residents of an EU member state, unless the recipient could prove that it was not established only for the purpose of benefiting from the special regime for EU outbound dividends.

Please note that the provisions set forth in the Parent-Subsidiary directive are not applicable to a branch, since the branch is assumed to remit its profits to its headquarter and, therefore, there is no distribution of dividends.

Same exemption applies, under certain conditions, to dividends distributed to Swiss-based parent companies (which do not benefit from beneficial tax regimes).
I.1.5. Royalty Payment

Royalties paid to non-resident recipients are subject to 30% withholding tax calculated (if certain conditions are met) on 75% of the gross amount, resulting in a final withholding tax of 22.5%.

Double tax treaties usually provide reduced withholding tax rates if certain conditions are met.

No withholding tax is levied on royalties paid to an entity resident of an European Union (EU) member state where the EU Interest-Royalties Directive (2003/49) applies.

I.1.6. Interest

Interest paid to non-resident companies are subject to a 26% withholding tax.

Double tax treaties usually provide reduced withholding tax rates if certain conditions are met.

No withholding tax is levied on interest paid to an entity resident of an European Union (EU) member state where the EU Interest-Royalties Directive (2003/49) applies.

I.1.7. Net Operating Losses (“NOLs”) carried forward

For IRES purposes, losses can be carried forward with no time limit and offset against the income of the following years up to 80% of the taxable income of any fiscal year by both a branch office and a subsidiary. Losses incurred in the first three years as of the incorporation of the company are not subject to 80% restriction.

Certain restrictions on the carry-forward may apply in several cases, among whom it is worth mentioning the following: (i) change of control and activity of the company incurring the losses, (ii) mergers and other business combinations, (iii) election for the domestic tax consolidation regime, (iv) application of the rules regarding the non-operating companies.

I.1.8. International standard ruling and advance ruling on new investments

Foreign investors have the opportunity to obtain, by means of Italian Tax Authority rulings, certainty about the tax consequences of their business in Italy. In particular, two types of rulings may serve such purpose:

(i) the “international standard ruling”, which has recently been re-designed, specifically in regard to its scope of application, covers not only the intra-group transfer pricing regime, but also the attribution of profits and losses to permanent establishments (“PE”), the advance analysis of the elements and circumstances which may lead to the identification of a PE within the Italian territory, the identification of the rules to be applied to the distribution and the receipt of dividends, royalties, interests and other items of income arising from non-resident taxpayers. The effectiveness of such rulings become effective starting from the fiscal year during which the ruling is released and is extended to the four subsequent fiscal years.

(ii) the “advance ruling on new investments”, which has been introduced in 2015, and offers foreign investors the opportunity to request the Italian Tax Authority for advance ruling on new investments. The scope of such ruling includes business restructuring transactions, and may lead to the exclusion of the risk of re-characterization of any transactions as abusive. Foreign investors allowed to submit a request for such advance ruling by the Italian tax Authorities will be only those investors whose investment plan is valued at least Euro 30 million and to the extent that there will be positive results in terms of employment. The ruling by the Tax Authorities is released within 120 days from the date of request (such deadline can be postponed by 90 days where the Tax Authorities need to obtain additional information from the foreign investor).
I.1.9. **Country-by-country report**

Since the beginning of fiscal year 2016, Italian parent companies of multinational groups with a consolidated turnover exceeding € 750 million are required to draft a country-by-country report aimed at providing the Italian Tax Authority with relevant information about the foreign subsidiaries’ profits, income, taxes paid and accrued and other information supporting that a business activity is actually carried out by such companies.

The provision also applies to Italian subsidiaries, holdings of multinational groups, in case their foreign parent company that is required to draft the consolidated financial statements resides in a foreign jurisdiction that either (a) has not implemented a similar reporting obligation, or (b) does not grant the exchange of information with respect to the information related to the country-by-country report, or (c) does not comply with the obligation to exchange the information related to the country-by-country report.

Failure to comply with such new reporting obligation may result in tax penalties ranging from € 10 to 50 thousand.

I.1.10. **Others**

According to Italian tax rules, the tax period corresponds to the financial year as it results from the incorporation deed. Only in case the deed of incorporation does not provide for any indication or the length of the financial year is higher than two years, the tax period would take the length of the calendar year.

In case of a subsidiary, any date of the calendar can be selected as year-end date of the fiscal year. Changing the closing date of the fiscal year requires a resolution of a special shareholders’ meeting.

As far as a branch is considered, and bearing in mind that same is not required to file an individual balance sheet for corporate purposes, the length of the financial year, and thus the tax period, will necessarily coincide with the tax period of the parent company. Nevertheless, in order to avoid any discussion over this matter, it could be worth mentioning in the deed of incorporation that the branch will adopt the same financial year-end of the parent company.

Italian law does not provide for any withholding tax on the profits remitted abroad by a branch.

There is no additional or higher corporate income tax on branch profits to compensate for the absence of a dividend withholding tax.

There is no accumulated earnings tax.

I.2. **Local Tax: IRAP, the local tax on productive activities (“Imposta regionale sulle attività produttive”).**

In addition to IRES, business enterprises, whether organized as a branch or as a subsidiary (either in the form of a joint stock/limited liabilities company), are subject to a local income tax at a rate of 3.9% (higher rates may apply on a regional basis).

Such tax is named IRAP (Imposta Regionale sulle Attività Produttive) and is applied on a taxable basis represented by the difference between Gross Revenues and the Costs of Production, not including financial costs. In the past, labor costs were not deducted for IRAP purposes, but starting from fiscal year 2015 labor costs related to workers on a permanent-basis became deductible. Alternatively, a tax credit amounting to 10% of the gross IRAP due, is available to enterprises which did not have employees during each fiscal year. Finally, starting from fiscal year 2016, also 70% of the labour costs incurred by enterprises in relation to the employment, for at least 120 days during a given fiscal year, of seasonal workers will be deductible for IRAP purposes.
Capital gains deriving from the sale of tangible and intangible assets are included in the tax base for IRAP purposes, except for capital gains deriving from the sale of going concerns, which are instead exempt from the tax.

IRAP paid in the fiscal year is deductible for IRES purposes, but only up to 10% of the relevant amount provided that the company incurs interest expenses exceeding interest income. VAT

Both a branch and a subsidiary are subject to value added tax (VAT) and are required to keep VAT books and file VAT returns.

The registration for VAT purposes is made for both the subsidiary and the branch by simply filing a request with the VAT office within 30 days of establishing the business vehicle in Italy. Normally, the filing of the request for the VAT registration is made by the public notary at the time of the incorporation of the subsidiary and of the registration of the branch.

The VAT number is attributed on the same day the request of registration is filed. Said number should appear on all documents relating to VAT.

In general, VAT is a turnover tax levied at each stage of the supply of goods and services and also on imports. VAT liability arises on the supply of non-exempt goods and services made by a taxable entity and on the importation of goods made by any person.

VAT is generally due at the time of delivery of goods and of supply of services (i.e., output VAT). The taxpayer is entitled to a credit for the VAT charged by its suppliers (i.e., input VAT) or the VAT paid upon importation of the goods, provided that the purchase of the goods and services is related to its business activity.

While the liability for accounting for VAT rests with the entity supplying the taxable goods or services, the actual economic burden is borne by the final consumer who has not the right to recover the tax paid.

In case, at the year-end, the input VAT is higher than the output VAT, the taxpayer is entitled to ask for the refund of such VAT provided that certain conditions are met. The actual refund by the tax administration can take some months.

II. Other

II.1. Indirect taxes

Other minor taxes on certain documents (e.g. stamp duty) or on certain transactions (e.g. registration tax) apply equally to a branch and a subsidiary.

II.2. Statute of limitation for tax assessment purposes

The ordinary statute of limitation for tax assessment purposes has been four fiscal years (following the fiscal year during which the income tax return is filed) and five years in case of omitted tax return. Starting from fiscal year 2016, the statute of limitation has been extended to five and seven fiscal years respectively.

Such extension balances the repeal of the provision, applicable to prior fiscal years, according to which, under certain circumstances, the statute of limitation could be doubled in presence of a criminal violation.
5. Labor Law Aspects

I. Employees’ classification

According to the provisions of law and the Collective Bargaining Agreements (“CBA” or “CBAs”), in Italy employees are divided into four categories, as follows:

- “dirigenti”, (“managers”), qualified by the performance of management functions;
- “quadri”, (“middle managers”) an intermediate category between managers and impiegati;
- “impiegati”, (“white collars”) qualified by the performance of technical administrative functions;
- “operai”, (“blue collars”).

II. Italian Labor Laws and applicable National Collective Bargaining Agreements

Employment relationships are governed in great detail by Italian law and collective bargaining agreements. Italian labor legislation generally favors the employee. Most legal provisions dealing with union rights do not apply so long as no more than 15 employees are employed in a given working unit.

(i) Legal Structure

The Constitution prevails over all other national laws (which include Parliament Acts, other statutory provisions and regional laws). The first article of the Italian Constitution states that “Italy is a democratic Republic founded on work”. Other Constitutional provisions, which directly regulate labor matters are: article 35 (broad statement on protection of labor rights and interests); article 36 (specific provision on individual employee rights, with reference to compensation, maximum daily working hours and paid holidays); article 37 (protection of women and minors, with mention to non discrimination); article 38 (specific constitutional provision on the disabled and related labor matters); article 39 (Trade union rights); article 40 (provision on strikes); article 41 (freedom to engage in private business, provided it is not in contrast with social utility and it does not cause damages to security, freedom, human dignity); article 46 (right of employees to cooperate, within certain limits, to the management of the firm).

There are several statutes, regulations, and administrative interpretations, which altogether govern local labor law in Italy. The most important are: The Civil Code (articles 2060-2246); Law No. 300/1970 (Workers’ Statute); Law No. 604/1966, Law No. 276/2003, Law No. 92/2012 and, more recently, the 2015 Jobs Act Reform that has been implemented through a number of decrees, the most important of which are Legislative Decree No. 81 / 2015 (that reorganized employment contracts and other provisions on freelance work), Legislative Decree No. 23/2015 (new provisions on protection granted in case of unlawful dismissal), Legislative Decree No. 148/2015 (new provisions on social shock absorbers).

(ii) Collective Bargaining Agreements

National Labour Collective Agreements (“CBA” or “CBAs”) apply to employers and employees affiliated to, respectively, the employers’ associations and the unions that signed the collective agreements; National Labour Collective Agreements also apply in case employers and employees have de facto applied the provisions of collective agreements or have incorporated their terms by express written contractual reference, included into the individual employment agreements. Some statutes also expressly promote the application of national collective agreements. In practice, Italian employees expect that the employer will abide by the provisions of the applicable collective
bargaining agreement almost as a matter of law. Collective agreements cover almost all aspects of the employment relationships (minimum salary, employees’ categorization, annual and other leaves, such as sickness, military, absence etc., disciplinary procedure, termination matters, Union rights, etc.).

III. Directors and executives (“dirigenti”)

Directors are not deemed employees of the company. They are assimilated to outside professionals. However, please note that corporate offices may be granted to employees as well (usually to “dirigenti”, the highest-ranking employees).

IV. Working-time

In April 2003 (Legislative Decree No. 66/2003) Italy implemented the European Directive on working time. Previously working time was regulated by provisions enacted over the course of several decades.

Most collective agreements also include detailed provisions on working time. The new law tried to avoid dramatic changes, providing much room for collective agreements provisions.

The ordinary working week should not exceed 40 hours and the average weekly total (referring to a period not exceeding 4 months) of ordinary work and overtime should not exceed 48 hours. Collective agreements may allow to balance periods of more intense work, with periods during which less work is performed (on a timeframe up to 6 or 12 months, in case of objective or technical reasons).

Employees are entitled to a minimum daily rest of 11 hours. Where the working day is longer than six hours employees are entitled to a break, in accordance with collective agreements (most collective agreements provide lunch breaks). If no collective agreement provisions apply, employees are entitled to at least a ten minutes break.

Overtime is usually regulated by collective agreements. Absent applicable provisions of the collective agreements, overtime is possible if agreed upon between an employer and an employee and not exceeding 250 hours per year. Overtime is also allowed in order to meet exceptional production needs (when it is not possible to hire new employees). It is also possible in case of force majeure or anyway when by not performing overtime a serious risk may occur. Overtime is also possible in view of trade fairs and similar special events (but certain special notices must be given to works councils and authorities). Overtime must be compensated with the increases provided for by collective agreements.

Night work is work performed (also in part) during a night period (which period includes also the hours between midnight and 5 a.m.). Night workers are those employees that normally work at least three hours during a night period or that work at night for at least 80 working days per year. Only employees who are physically fit for night work can be assigned to it. Pregnant employees are automatically excluded from night work. Under certain circumstances, employees who have children or who assist disabled persons may refuse to perform night work. Employers seeking to establish night work must first consult with works councils or trade unions.

The Italian Constitution states that workers have the right to weekly rest breaks and yearly holiday periods and may not renounce this right. The law provides that employees are entitled to a paid annual leave of at least four weeks. Most collective agreements include detailed provisions on annual holidays. Employees are also entitled to 11 national public holidays. Bank holidays in Italy are: January 1; January 6; April 25; Easter Monday; May 1; June 2; August 15; November 1; December 8; Christmas and Boxing Day (December 26);. In addition, the local Saint’s day is considered a holiday by most CBAs. The weekly rest period must normally take place on Sundays, although there are exceptions.
The law provides for a number of derogations, most notably regarding employees classified as “dirigenti”, who are the highest category of employees under Italian law.

V. Termination

Termination of employees is subject to very strict legal requirements. In case of a dismissal being held unfair in Court, an employee - depending on the size of the employer and on the seriousness of the breach by the employer - will be entitled to different remedies, ranging from reinstatement, plus damages, to the payment of damages only.

(i) General rules. Notice Period

As a general rule, termination of an employment relationship for an indefinite term is subject to notice by the employer (in case of dismissal) or by the employee (in case of resignation). In either case the employee is entitled to severance compensation (T.F.R.).

The length of the notice period is governed by applicable CBAs and generally varies within a range of 15 days and 12 months in accordance with the employee’s length of service and grade.

An employer or an employee may elect to terminate the contract without prior notice, but in this case s/he must pay to the other party an indemnity equivalent to the salary otherwise payable during the notice period.

(ii) Dismissal by the Employer

Summarised below are the following types of dismissal:

- individual dismissal without need of showing “giusta causa” (just cause) or “giustificato motivo” (valid reason);
- individual dismissal for “giusta causa”;
- individual dismissal for “giustificato motivo”;
- collective dismissal.

A. Individual dismissal without need to show “giusta causa” or “giustificato motivo”

This type of dismissal is applicable only to: (a) employees who qualify for old age pension or that are 70 or older; (b) employees during probationary period; (c) apprentices after completion of the training period; (d) dirigenti (dirigenti usually have remedies based on collective agreement provisions though); (e) domestic workers.

B. Individual Dismissal for “giusta causa”

The employee is dismissed with “giusta causa” where his misconduct “makes the prosecution of the employment relationship impossible” (Art. 2119 Civil Code). Examples of “giusta causa”, stated by the Courts, are theft, riot and serious insubordination. In these cases, an employee may be dismissed without notice and without any indemnity in lieu of notice.

C. Individual Dismissal for a “giustificato motivo”

“Giustificato motivo” (a valid reason) for dismissal is either a serious breach of the contract by the employee, or any objective reason relating to the company’s organisational requirements.
A serious breach of the employee’s duties (known in Italian as “giustificato motivo soggettivo”) has been found by the courts, by way of example, in case of (1) failure to follow material management directions; (2) material damage to machinery and equipment; (3) execution within the factory premises of work for the employee’s benefit or for the benefit of third parties; (4) unjustified and repeated absences.

Objective reasons (known in Italian as “giustificato motivo oggettivo”) may consist, by way of example, in the following: (i) new equipment which requires different specialisation or a lesser number of workers; (ii) closing of branches or product lines which make it impossible to use redundant personnel for other duties.

D. Collective Dismissal

A collective dismissal occurs when an undertaking which consistently employs more than 15 individuals, dismisses at least five employees working in one or more business units in a period of four months (120 days) as a result of “a reduction or a transformation of activity or type of work”.

(iii) Resignation

An employee who wishes to terminate a contract for an indefinite duration must give notice to his employer. The notice required varies according to the length of service and category of the employee.

Resignation and termination by mutual consent of an employment relationship shall be effective only after a validation is filed through an online system managed by the Ministry of Welfare.

(iv) Challenging a dismissal

The employee can challenge the grounds of dismissal within 60 days. The employee may do so in any of the following ways:

- s/he may file an action before Labour Courts. Such action must be preceded by a conciliation’s attempt before a Labour Provincial Office.
- s/he may challenge dismissal under any applicable CBA procedures;
- s/he may seek assistance from the union and have unions raise the issue informally with the employer on his/her behalf.

The law provides for different kinds of remedies, available to employees who are unlawfully terminated, depending on: the reason of the dismissal; the employer’s headcount; the employee’s hiring date (before or after March 7, 2015).

All employers and employees (including executives) and any hiring date

Reinstatement with full back-pay

The law provides that dismissal is null and void under the following circumstances:

- Dismissal for discriminatory reasons;
- Dismissal communicated orally;
- Dismissal in breach of provisions protecting marriage, maternity and paternity.
Under the circumstances mentioned above, an employee is entitled to be reinstated and receive payment of remuneration from the time of dismissal to the time of reinstatement, with a minimum of 5 months salary, deducted what the employee may have earned from other sources in the meantime. The employer will have to pay social security contributions on these amounts.

Within 30 days from an order of reinstatement, an employee may unilaterally opt for the payment of an indemnity equivalent to 15 months’ salary (indemnity not subject to social security contribution) in-lieu-of reinstatement. This indemnity is paid on top of salary from the time of dismissal to the time the employee requests the indemnity.

**Large-size employers: employees hired before March 7, 2015**

**Reinstatement with capped back-pay**

Under the following circumstances, a court shall reinstate dismissed employees in their jobs, awarding damages equal to salary that was not paid from the time of termination to the time of reinstatement, with a maximum limit of 12 months, plus social security contributions, and deducting what the employee earned from other jobs or might have earned had he diligently searched for another occupation:

- employees dismissed for disciplinary reasons, if a court finds that the disciplinary allegations: (i) concern facts that do not exist; (ii) concern breaches that, according to the CBA and disciplinary rules, are not punishable with dismissal but with a different disciplinary sanction,
- employees who became unfit to perform their duties as a result of accidents at work or occupational illness, if they could have been assigned to different, even lower duties;
- disabled employees who became unfit to perform their duties as a result of a worsening of their disability or of an organizational change, if their permanent impossibility to be re-employed in other duties has not been certified by the Sanitary Commission (ASL);
- employees dismissed for excessive illness.

**Reinstatement at the discretion of the Court, with back-pay capped at 12 months salary, or, alternatively, indemnity between 12 and 24 months salary**

In case a court finds that the justified objective reason that constitutes the reason of dismissal is manifestly non existent, the court may reinstate the employee in his job, awarding damages equal to the salary that should have been paid from the time of termination to the time of reinstatement, with a maximum of 12 months plus social security contributions and deducting what the employee earned from other jobs or might have earned had he diligently searched for another occupation. Within 30 days from an order of reinstatement, the employee may unilaterally opt for the payment of an indemnity equivalent to 15 months of salary (indemnity not subject to social security contribution) in-lieu-of reinstatement. This indemnity is paid on top of salary from the time of dismissal to the time the employee requests the indemnity.

In all other cases, namely when the objective reason exists but is not sufficient to justify termination, a court will award an indemnity worth between 12 and 24 months of remuneration.

**Indemnity between 12 and 24 months salary**

In case of employees dismissed for disciplinary reasons, if a court finds that a just cause or a justified subjective reason exists but is not sufficient to ground the termination, the court shall award an indemnity between 12 and 24 months of salary, quantified by taking into account several factors, such as the seniority of the employee and the size of the business. Instead, reinstatement does not apply.
Indemnity between 6 and 12 months salary

A court shall award an indemnity between 6 and 12 months of salary in case of a breach of procedural requirements in the following cases:

- employees dismissed for disciplinary reasons, in case of breach of the provisions governing the disciplinary procedure;
- employees dismissed for objective reason, if a court finds that there was a breach of: (i) the requirement to state the reasons of dismissal in the dismissal letter; or (ii) the pre-dismissalconciliation procedure.

If the dismissal is not only affected by a procedural breach, but also by a lack of material reasons of termination, the remedies for the latter, as illustrated above, shall apply.

Large-size employers: employees hired after March 7, 2015

Reinstatement with capped back-pay

In case a court finds that disciplinary allegations grounding a dismissal concern facts that are manifestly inexistent, it shall reinstate the dismissed employee and award an indemnity equal to salary between the time of termination and the time of actual reinstatement, with a maximum of 12 months salary plus social security contributions and deducting what the employee earned from other jobs.

Indemnity based on seniority, between 4 and 24 months salary

In all cases where a court finds that the reason of a dismissal does not constitute a justified subjective reason or a justified objective reason or just cause - and except for cases considered under the previous paragraph - the court shall not have the authority to reinstate the dismissed employee, but shall award an indemnity equal to 2 months of salary per each year of seniority of the employee, with a minimum of 4 and a maximum of 24 months of salary.

Indemnity based on seniority, between 2 and 12 months salary

A court shall not have the authority to reinstate the dismissed employee, but shall award an indemnity equal to 1 month of salary per each year of seniority, with a minimum of 2 and a maximum of 12 months, in the following cases:

- employees dismissed for disciplinary reasons, if a court finds that there was a breach of disciplinary procedural rules;
- employees dismissed for a justified objective reason, when the dismissal letter does not contain the reasons of termination.

If the dismissal is not only affected by a procedural breach, but also by a lack of material reasons of termination, the remedies for the latter, as illustrated above, shall apply.

Settlement offer

Within 60 days from the time of dismissal, in order to avoid risks associated to a claim raised in court by an employee, the employer may offer to the dismissed employee an amount equal to 1 month of salary for each year of seniority, with a minimum of 2 and a maximum of 18 months. Such amount is not subject to income tax and social security contributions and has to be offered by means of a bank draft. If the employee accepts the offer, the employment relationship is terminated at the date of dismissal and the employee waives all rights to challenge it.
**Small-size employers: employees hired before March 7, 2015**

**Indemnity between 2.5 and 6 months salary**

If a court finds that the dismissal is not based on a just cause or justified objective or subjective reason, the employee is entitled:

- to being rehired; or
- to receive an indemnity ranging from 2.5 to 6 months of salary.

The option between a) and b) above is up to the employer. The exact number of months of salary is determined by the court taking into consideration factors such as the size of the enterprise and the employee’s seniority. The maximum indemnity can be increased up to 14 monthly wages in particular circumstances.

**Small-size employers: employees hired after March 7, 2015**

**Indemnity based on seniority, between 2 and 6 months salary**

In all cases where the court finds that the reasons of dismissal do not constitute a justified reason or a just cause, it shall not have the authority to reinstate the dismissed employee but shall award an indemnity equal to 1 month of salary for each year of seniority of the employee, with a minimum of 2 and a maximum of 6 months.

**Indemnity based on seniority, between 1 and 6 month salary**

A court shall award an indemnity equal to 0.5 months of salary for each year of seniority of the employee, with a maximum of 6 months, in the following cases:

- employees dismissed for disciplinary reasons, if a court finds that there was a breach of disciplinary procedural rules;
- employees dismissed for a justified objective reason, when the dismissal letter does not contain the reasons of termination.

If the dismissal is not only affected by a procedural breach, but also by a lack of material reasons of termination, the remedies for the latter, as illustrated above, shall apply.

**Settlement offer**

Within 60 days from the time of dismissal, in order to avoid risks associated to a claim raised in court by an employee, the employer may offer to the dismissed employee an amount equal to 0.5 months of salary for each year of seniority, with a minimum of 1 and a maximum of 6 months. Such amount is not subject to income tax and social security contributions and has to be offered by means of a bank draft. If the employee accepts the offer, the employment relationship is terminated at the date of the dismissal and the employee waives all rights to challenge the dismissal.

**VI. Mandatory placement of disabled employees**

Specific statutes expressly promote the social integration of disabled persons (but even of female employees), their inclusion and employment integration. This is particularly by means of positive discrimination known as *collocamento obbligatorio* or compulsory placement, and *collocamento mirato* or targeted placement.
In general, all employers operating in Italy who employ more than 15 employees, must employ certain quotas of disabled employees, as follows: 1 employee in companies with headcount between 16 and 35; 2 employees in companies with an headcount between 36 and 50; at least 7% of the headcount in companies with headcount of more than 50 employees.

Disabled employees are entitled to the same terms and conditions of employment generally provided for by the law and the collective agreements.

Moreover, employees who become disabled as a result of a work-related accident or an occupational disease may not be dismissed.

The law also provides the possibility for financial incentives for employers who hire disabled persons.

VII. Strike

The right to strike is guaranteed by the Italian Constitution “within the limits established by the law” but a law has been enacted only with regard to strikes in the so-called essential services. As a result, strikes are mainly regulated on the basis of principles derived from case law.

Provisions concerning notification, decision making, length and other procedural matters related to strikes are ‘governed’ by practice, and may vary significantly.

Solidarity strikes in support of strikes by other workers are permissible.

The Constitutional Court initially held that political strikes were against the law, but subsequently adopted a more liberal approach to the matter.

Lockouts are prohibited. Employers are contractually liable for lost wages if they cease or suspend work. The Constitutional Court however ruled that lockouts are not a crime.

VIII. Immigration laws

On the basis of the ILO Convention of June 1975, ratified by the Republic of Italy in 1981, equal treatment and full equality of rights for Italian workers is provided to EU citizens and to legally established non-EU citizens and their families.

Law No. 286 of 1998, as subsequently amended, is the statutory reference for immigration matters. Specific regulations call for the implementation of numerous procedural aspects.

(i) Non-Italian EU workers require only a stay permit and are entitled to the same rights as Italian workers.

(ii) Non-EU workers require both stay and work permits. They are entitled to the same rights as Italian workers. Non-EU workers may be entitled to all the benefits as Italians, but they are subject to special administrative procedures.

Save for some exceptions, foreigners (i.e. non-EU citizens) can enter Italy provided they have: (a) a valid identification document (passport or equivalent); and (b) when necessary, a valid visa. Visas are issued by Italian consular authorities competent for the country of origin or place of residence of the applicants.

Applicants must provide evidence: (a) concerning the purposes for which they want to enter in Italy; (b) concerning the fact they have sufficient means to support themselves throughout their stay in Italy.

Presidential Decree n. 179 of 2011 provides that, for residence permits issued to non-EU nationals for one year or more, applicants must sign a so-called Integration Agreement. This requirement is a point-
based system, where each foreigner is initially granted 16 points and must obtain 30 points within the first two years of their residence, in order to be able to renew and maintain their permit.

**Work Permits**

In case of foreigners who want to immigrate for work-related reasons, visas are issued only if the following conditions are met, depending on the relevant situations:

Employers who want to hire foreigners must obtain a prior authorization by the Sportello Unico per l’Immigrazione (Immigration Office) and, in order to do so, they must: (a) offer evidence concerning lodging arrangements for the foreigner and guarantee payment of travel expenses in case the foreigner needs to be re-patriated; (b) furnish a draft of the future employment agreement and prove that terms and conditions of the latter are not lower than those set forth by CBAs. Authorizations for employment with foreigners on an indefinite term are issued within a maximum number determined yearly by the Italian Government.

Foreigners willing to carry out a self-employed activity in Italy must prove that they meet the mandatory requirements to perform such activity, as per Italian law. Moreover, they must also prove they have lodging accommodations and that they have sufficient income to support themselves. The law specifically includes among self-employed activities cases where foreigners hold a corporate office in an Italian company and actually perform their activity in Italy.

Stay and work permits are valid up to one year in case of fixed-term employment, and two years, in case of employment of an indefinite term. These permits may be renewed, but the application must be filed at least 90 days before the expiry date of the last permit, or 60 days in the case of a fixed-term permit.

(iii) Special provisions apply to visa and permits in particular cases among which: (a) seasonal workers; (b) executives and highly specialized employees of Italian subsidiaries or branches or representative offices of companies located in countries which are members of the WTO; and (c) employees paid by foreign employers, temporarily transferred to Italy in order to perform services in favour of Italian entities or individuals, under an agreement between the latter and their employer.

**IX. Social security**

Social security contributions must be paid for all employees working in Italy (exceptions are set forth by the relevant EU Regulation No. 883/2004 -mainly in favor of EU citizens-, and by the provisions of several international social security treaties).

The Social Security Institute (I.N.P.S.) is the governmental agency managing the governmental scheme of social security.

Both employers and employees are required to effect mandatory contributions for:

- pension;
- disability;
- unemployment;
- national health service.

The amount of contributions varies, depending on the activity performed by employers, on their headcount and on the classification of each employee, but the total is usually in the range of 40% of
remuneration. Employers have to withhold and pay the portion of contributions due by employees, while the portion due by employers has to be calculated on the basis of gross remuneration and paid in addition to it.

X. Health and safety rules

Under general provisions of the Italian civil code, employers must implement all those measures which, based on the specific features of their activity, as well as based on experience and technology, are necessary in order to safeguard the physical integrity and the moral personality of their employees.

Employees are entitled, also through their representatives (that may, but need not, be the same appointed to the works councils) to check compliance with all applicable laws in this field, and promote measures to safeguard their health and physical integrity.

In 2008 a new statute was enacted (Legislative Decree 81/2008, hereinafter the Occupational Safety Code), subsequently amended by other provisions.

The Safety Code is applicable to the generality of employers and employees, with some exceptions, and purports to make employers responsible for the health and safety of employees in every aspect which directly or indirectly relates to their work or their presence at the workplace.

Failure to comply with health and safety provisions may entail the criminal liability of the employer.

Furthermore, companies that fail to comply with health and safety provisions may incur the sanction of prohibition to exercise the company’s business as well as to be prevented from participating in bids for public contracts.

The Occupational Safety Code identifies those individuals who are to be considered as the legal representative of the employer for safety issues (especially within complex organizations) and to what extent he may delegate his functions in safety matters.

The Safety Code also identifies a number of other individuals and their respective obligations: the Person Responsible for the Preventive and Protective Service (so called “RSPP”), appointed by the employer in order to coordinate the protection and prevention services; the persons in charge of first aid, fire fighting and evacuation of the workplace; the Company Physician, appointed by the employer in order to cooperate with the same in evaluating all the occupational risks and who has the duty of carrying out the medical surveillance on the employees; the Workers’ Representative for Safety (the so called “RLS”), elected by the employees in order to represent them for all aspects concerning health and safety at the workplace.

In the occupational Safety Code, general obligations and responsibilities of the employer are foreseen together with rights and obligations of employees and employees’ representatives. In order to ensure the actual implementation of safety regulations, the Occupational Safety Code requires periodical meetings (at least, once a year) between the employer and those appointed to safety-at-work duties.

In particular, the employer must assess all the risks present at the workplace and draft the relevant risks evaluation document (so called “DVR”), the content of which is regulated by the law: the DVR shall include an evaluation of all risks to the safety and health of workers, with details on, among others, the choice of work equipment, chemical substances or preparations used in the productive process and other safety measures adopted at the workplace. The evaluation of risks must include those connected to group of workers exposed to specific risks, as well as work-related stress, risks for pregnant women and risks connected to gender, age and geographical origin and those related to the specific type of employment contract through which the working activity is performed. Risks assessment is performed by the employer with the cooperation of the RSPP and of the company’s Physician, and upon consultation with the Workers’ Representative.
Moreover, the employer must give appropriate information and training to all employees (including those hired by means of a fixed term contract), arranging mandatory training courses (the minimum duration of which must be 4, 8 or 12 hours, according to the company’s risk level). Such courses must be refreshed periodically.

The Safety Code sets forth specific provisions applicable to contracts (contratti d’appalto), with specific obligations for both the principal and the contractor. If the activity of the contractor is carried out within the principal’s premises, all companies involved must: co-operate to implement measures to prevent and protect all workers against risks at the workplace and accidents during contracted work activities; co-ordinate procedures to prevent and protect workers against said risks. In particular, the principal must draft a combined risk assessment document (so called “DUVRI”) that specifies the measures adopted to eliminate or, if this is not possible, to reduce to a minimum risks due to interference between the activities of the companies involved.

6. Investing in Italy: the newest incentives

Doing business in the Italian market is a successful choice for several reasons.

Italy takes pride in its unique tradition and territory, a long-standing entrepreneurship culture, not to mention extensive know-how and competitive advantages in different industries.

With a view to enhancing investments in businesses operating in Italy from a wide perspective, different legislative measures have been adopted in various areas, all with this common ambition.

This regulatory action has been mainly aimed at granting greater simplification and certainty, at supporting also smaller businesses in financing their activities, and at promoting innovation and valuable ideas.

I. Simplification

Important steps have been taken in governing the relations with Public Authorities more easily and efficiently.

The compliance with definite terms by Public Administration is assured by establishing an automatic compensation system, which is activated whenever the competent public authority fails to finalize its procedures within the prescribed deadline: for every day of delay the Public Administration shall pay a certain indemnification amount to the interested party.

A key objective is to streamline procedures and reduce bureaucratic burdens. For instance, building permits may be obtained by submitting the relevant request through a “one-stop shop” service.

Another matter that has been conveniently addressed is the overloaded judicial system: mandatory Alternative Dispute Resolution has been introduced for several civil and commercial proceedings, such as those regarding lease agreements, gratuitous bailments, leases of business, insurance, financial and banking services contracts.

II. Access to Finance

A fundamental topic legislation has focused on favoring access to finance for small and medium enterprises.

In particular, this profile has been empowered both in the area of bank loans and in enhancing alternative means of financing SMEs.
The first profile consists in three main measures:

(i) The Central Guarantee Fund, implemented in 2000, which facilitates SMEs in accessing financial services by providing the relevant surety, grants access to several categories of businesses; moreover, application procedures have become more accessible, thanks to online submission.

(ii) The State can supply SMEs free grants in order to partially cover interest costs on loans raised to purchase equipment and, according to most recent law, software and technology.

(iii) Cassa Depositi e Prestiti can provide lending institutions up to EUR 5 billion of its “separate management” to fund concessional rate loans to SMEs.

The second direction considered is to guarantee easier access to funding channels alternative to bank loans, and especially financial instruments’ issue.

For non-listed companies being Italian joint-stock companies (Società per Azioni), the Italian Civil Code sets out a maximum limit for the issuance of bonds of twice the sum of capital stock, legal reserve and available reserves, unless the bonds to be issued (i) are aimed at being traded on regulated markets or multilateral trading facilities or (ii) are convertible. In such a case, the limit set forth above does not apply.

As to non-listed companies being limited liabilities companies (Società a Responsabilità Limitata), the Italian civil code does not set out a maximum limit (as per the Società per Azioni), but states that the first subscription of bonds must be made by professional investors subject to prudential supervision.

The Law Decree no. 83 of June 22, 2012 (converted in Law no. 134 of August 7, 2012) and the Law Decree no. 179 of October 18, 2012 (converted in Law no. 221 of December 17, 2012) opens different financing options to SMEs: financial bills (“cambiali finanziarie”), ordinary bonds and subordinated or profit-sharing bonds, i.e. the so-called “Mini Bonds”.

For the issuance of the “cambiali finanziarie”, the following conditions must be met: SMEs have to be assisted in the issuance of these instruments by a sponsor; the latest financial statements must be audited; the financial instruments must be sold and circulate only among accredited investors.

III. “Innovative start-ups”

Encouraging innovation is crucial for economic growth and a great driver of progress; useful and profitable ideas have always been indissolubly linked to business.

In this light, a new set of corporate provisions has been introduced in 2012 to regulate “innovative start-ups”.

Innovative start-ups can be incorporated in the form of S.r.l. or S.p.A. (or cooperative company) and are not listed on stock exchange.

These companies are characterized by an exclusive or prevailing core business represented by the development, production and trade of products or services of high technological value.

Incorporation under this regimen entails the enjoyment of several corporate benefits, as well as tax and labor and social security contribution concessions.
To be noted that during the entire start up period the company cannot distribute profits; this is aimed at strengthening the company’s asset structure and favoring the investment of the same profits in the research and development activities.

As an exception to the general rule, the replenishment of losses exceeding one third of corporate capital can be postponed for 12 months, and if losses have affected the mandatory minimum corporate capital, the decision on recapitalization can be suspended until the end of the next fiscal year.

In terms of access to equity and credit, several provisions ensure greater flexibility and more opportunities.

For all types of innovative start-ups, access to the aforementioned Central Guarantee Fund is granted for free and with a simplified procedure; from an equity standpoint, these companies have the chance of employing crowdfunding web portals to offer shares and quotas to the public.

Additionally, further advantages are accorded to innovative start-ups incorporated as limited liability companies (S.r.l.), which can benefit from certain provisions that are generally set forth for the S.p.A. company type.

S.r.l. innovative start-ups can create different categories of quotas, or also hybrid financial instruments (“strumenti finanziari partecipativi”), which shape diverse rights, thus better achieving adaptability to the needs of quotaholders and of the company.

Other exceptions concern the possibility of acquiring their own quotas (under certain conditions) and of offering them to the public, also through the aforesaid crowdfunding system.

Lastly, for all company types, an exemption is granted from administrative fees of enrolment on the Register of the Enterprises, as well as from payment of annual fees to the Chamber of Commerce up to 4 years from registration.
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