

# Doing Business in Italy

2010



## Contents

1. Introduction.....	2
2. Business environment.....	3
3. Foreign investment.....	6
4. Setting up a Business.....	9
5. Labour .....	18
6. Taxation.....	23
7. Accounting & reporting.....	28
8. UHY firms in Italy .....	32
9. UHY offices worldwide .....	32

# 1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Italy has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at February 2010.

We look forward to helping you do business in Italy.

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## **2. Business environment**

### **The Italian constitution and government**

Italy is a republic divided into regions, provinces and municipalities. The Parliament is the legislative body of the Republic and consists of a Senate and Chamber of Deputies. Its members are elected by popular vote to five-year terms of office.

The president of the Republic is elected for a seven-year period by parliament and must be an Italian citizen of at least 50 years of age. The president has many political duties, but minimal political power.

The government of ministers holds executive power and parliament may delegate legislative power to it for specific matters within defined limits. In emergencies, the government of ministers may issue temporary decrees, which are subject to parliamentary ratification or veto.

The regional governments have legislative power in certain areas, such as health and hospital services, local taxes, urban planning and transportation.

### **The Domestic Market**

#### **Population**

Italy has approximately 57 million inhabitants, with an average population density of 189 people per square kilometre (490 per square mile). The population is predominantly Roman Catholic.

#### **Area**

The country covers an area of 301,266 square kilometres (approximately 116,300 square miles). Rome is the capital city. Other large cities include Milan, Naples, Turin and Genoa. Milan and Turin and Veneto region are the main industrial centres of the country.

#### **The economy**

Italy's economy is based primarily on the transformation of raw materials, which are usually imported, into finished products to satisfy domestic and foreign demand. Investment opportunities are encouraged and the government, regions and provinces offer investment incentives, many of which encourage industrialisation in the southern part of the country.

Italy's economic development varies greatly from region to region. The north is highly industrialised with a good infrastructure and a highly

trained workforce. The south ranks low in those characteristic indicators and significant incentives are offered to investors to develop in the area.

The Italian economy consists of three major sectors: large private companies, the public sector and the small business sector.

### **Essential industries**

Italy ranks among the seven most industrialised countries in the world. Italian industry consists of a few large companies and many small and medium-sized enterprises specialised in a variety of activities. Industry is presently declining due to high labour costs compared to those of less industrialised countries, while service activities are expanding.

Service activities represent about 60% of gross domestic product (GDP) and include commerce, transportation, communications, property rental, banking and insurance.

The manufacturing industry represents about 30% of GDP and includes construction, textiles and apparel, machinery, chemicals, pharmaceuticals, non-metal minerals and transportation vehicles.

The agriculture industry represents about 4% of GDP; its principal products are wheat, rice and other cereals, vegetables, fruits, wine, olive oil and dairy produce.

### **Employment environment**

The Italian labour market is characterised by a shortage of skills in some sectors and notable unemployment in others. The level of employment varies significantly between regions, although official statistics do not reflect the situation accurately due to the high level of unofficial employment (the official average unemployment rate for 2009 is 8.5% of the active population).

Employees are classified by law into four categories: workers (operai); low-ranking white collar workers (impiegati); high-ranking white collar workers (quadri); and executives (dirigenti). The law specifically protects lower-ranking employees.

### **Prices and interest rates**

Italy's efforts to meet the Maastricht convergence criteria for the European Monetary Union (EMU) have resulted in a stabilisation of prices and a decrease in interest rates to historical lows.

The inflation rate as at 31 December 2009 was 1%.

## **Foreign trade and the balance of payments**

Italy is a member state of the EU and also adheres to the EMU. The country is a significant net importer of energy, chemicals and ferrous and non-ferrous metals, and is a significant net exporter of manufactured goods and textiles.

Italy's foreign trade in merchandise shows a low surplus, while services and transfers produce consistent surpluses.

## **Financial system**

The central bank, the Bank of Italy, stabilises the money supply and supervises banking and credit institutions.

Historically, the Bank of Italy's primary concern was to assure the stability of the credit system. It currently encourages the merger of the smallest banking institutions with larger institutions and promotes the technological evolution of banks, assisting them in the modernisation of the payment system.

The banking system, supervised by the Bank of Italy, consists primarily of:

- Ordinary banks, which include private companies and the subsidiaries and branches of foreign banks and
- Co-operative people's banks (banche popolari), which are generally active within provinces or regions.

A Bank Deposit Insurance Fund (Fondo Interbancario di Garanzia dei Depositi) was created in 1987 to cover deposits in measures appropriate to different balances. Banks that participate in the fund hold 99% of Italy's customer deposits. They must meet standards of capital adequacy, asset quality and bad debt ratios set by the fund.

Banks are competing by engaging in new activities and acquiring interests in other financial activities, such as merchant banking, leasing, factoring, management of investment portfolios, payment services and information technology.

### 3. Foreign investment

Italy encourages foreign investment by offering foreign-owned entities the same incentives, primarily subsidised loans, cash grants and tax credits, available to entities owned by Italian nationals. Financial assistance and advice are available from banks, special credit institutions, state agencies and specialised consultants. Foreign investors may obtain other incentives from local (regional and provincial) authorities and the EU.

#### Exchange controls

Foreign exchange restrictions and controls were abolished in May 1990 following the implementation of legislation intended to align Italian regulations with the EU directive on the free movement of capital.

For statistical purposes, banks file details of foreign exchange transactions for inbound and outbound movements of funds with the Financial Information Center (Unità di Informazione Finanziaria) controlled by Bank of Italy. Transactions of less than €15,000 are aggregated with other transactions for reporting purposes, while those above this amount are reported separately.

Individuals and legal entities are classified as residents or non-residents for exchange control purposes. The following are regarded as residents:

- Italian citizens having their habitual abode in Italy, as well as corporate bodies, associations and organisations having their centre of activity in Italy
- Italian citizens having their habitual abode abroad if they are employed in Italy or carry out business or professional activities in Italy more than occasionally
- Foreign citizens having their habitual abode in Italy if they are employed in Italy or carry out business or professional activities in Italy more than occasionally
- Corporate entities, associations and organisations having their centre of activity abroad if they have a permanent establishment in Italy through which they carry out activities in Italy.

Entities that maintain current accounts or deposits with banks must notify them of changes in their residence classification.

Non-residents may enter freely into the following transactions:

- Transfer payments for exports, credit instruments, securities and other assets denominated in Euros or in foreign currencies

- Maintain with banks transferable accounts and deposits in Euros and foreign currencies (these accounts and deposits are known as conti esteri)
- Sell certain financial products and services in Italy.

### **Investment incentives**

The numerous and varied incentives are generally directed to enhance the economic development of the country and, in particular, to accelerate the industrialisation of southern Italy, including Sicily and Sardinia (Mezzogiorno), and of certain localities in central and northern Italy that are recognised as depressed areas. Incentives are also available to encourage technological innovation and to assist in the development of exports. Incentives take the form of subsidised loans, cash grants, leasing assistance, tax credits and subsidised labour costs.

Industrial enterprises, trading companies, service enterprises, artisans, consortia (groups of entities) and wholesale trade centres are eligible for incentives to invest in the construction of new plants, the expansion of existing plants, the development of abandoned factories, plant modernisation, company reorganisations, industrial conversions, services, research projects and innovative initiatives. Most incentives are obtained through special credit bank departments and state agencies, which assess the feasibility of business plans and the creditworthiness of the entrepreneurs.

Many incentives are specially designed to assist investments in the Mezzogiorno. Incentives available in other regions are not as extensive as those in the Mezzogiorno. Recently, incentives to the Mezzogiorno areas are being diminished due to EU rules.

### **Sources of finance for foreign investors**

The sources of finance used by Italian entities are also available to foreign investors. The primary sources of finance for new enterprises are subsidised loans and medium-term loans at fixed or variable market rates.

### **Importing and exporting**

Because Italy follows the principles of the General Agreement on Tariffs and Trade (GATT), and the regulations of the EU customs union and other international agreements, most goods may be freely imported. Existing restrictions are intended to protect the EU economy, so that the importation of certain items requires advance authorisation.

Exports are generally unrestricted. Exporters must comply with the requirements to submit a customs office declaration.

Special export insurance is available from the Agency for Export Credit Insurance (SACE) for exports of durable goods – machinery, equipment and transport vehicles – as well as for services, studies and design projects, and for civil engineering works carried out abroad.

To encourage such exports, funding is available from special credit bank departments and state agencies in the form of medium-term loans at low interest rates.

### **Registration of intellectual property**

Through the Central Patent Office (Ufficio Centrale Brevetti), Italian law provides patent protection for novel innovations, such as creative inventions and utility models, which are suitable for industrial application.

Foreign individuals may obtain patents for industrial inventions or utility models on the same terms as Italian citizens.

### **Licensing arrangements**

Licensing offers a means of profiting from inventions without the need to invest substantial capital and risk economic failure.

Foreign entities may find licensing arrangements attractive in Italy because the government imposes no exchange control limitations on the transfer of royalties abroad.

## 4. Setting up a Business

Foreign investors who intend to conduct commercial activities in Italy can choose from a wide range of legal entities. Effective from April 1, 2010, communications to Tax Authority, Register of Companies and Labour Authorities will be made through the so called “Sole Communication” that will grant shortest time to set up a business in Italy with respect to the current situation. We describe below the structure of the most common business entities.

Personal companies without limited liability status:

- Snc (*società in nome collettivo* – general partnership): a partnership where all partners are jointly liable for all of the firm’s debts and obligations
- Sas (*società in accomandita semplice* – limited partnership): a partnership with two different categories of partners; silent partners (*soci accomandanti*) - liability is limited to the extent of their per capital contribution; or general partners (*soci accomandatari*) - jointly liable for all debts and obligations of the partnership.

Companies with legal personality and limited liability status:

- SpA (*società per azioni* – corporation): in which the participants’ equity is represented by shares
- Srl (*società a responsabilità limitata* – limited liability company): in which the capital stock is represented by quotas and not by shares
- Sapa (*società in accomandita per azioni* – limited partnership by shares): this combines some of the features of both a limited partnership and a limited liability company. It is a company in which at least one member has unlimited liability while the liability of remaining members is limited to the extent of their share capital subscriptions.

### ‘Ltd type’ SpA and Srl

Both SpA and Srl have a legal personality. The shares of a SpA may be quoted on the stock exchange; the quotas of a Srl may not. The shares of a SpA are generally freely transferable; the quotas of a Srl may be restricted by the articles of incorporation. The annual financial statements of a SpA and a Srl must be published.

The minimum capital stock for a SpA is Euros 120,000, while for a Srl it is Euros 10,000.

## Single owner

Both SpA and Srl can be formed by a sole shareholder. The sole shareholder, whether a legal or natural person, usually has limited liability for the company's obligations. However, the limited liability benefit is lost if certain formalities are not met. Therefore, it is normally advisable to have a minimum of two shareholders.

## Corporate law

Corporate law is provided mainly by the Civil Code.

The SpA-type company will be able to choose from among three different models of corporate governance based on a group of three bodies: management body, management control body and audit body:

1. A "two level" or dualistic model, whereby the conduct of the business rests with the Board of Management ("Consiglio di gestione") and control is carried out by the Board of Surveillance ("Consiglio di sorveglianza"), that has some attributions of the general meeting of a Spa adopting the traditional model (i.e. approval of the financial statements). The members of the Board are appointed by the shareholders;
2. A "one level" or monistic model, whereby the conduct of the business rests with the Board of Directors ("Consiglio di Amministrazione"), appointed by the shareholders; control is carried out by the Management Control Committee ("Comitato per il controllo sulla gestione"), composed of the members of the Board and appointed by the latter.

In both cases, accounts are controlled by an auditing company or auditor;

3. A traditional model: the following is a summary of the most relevant provisions under the 'traditional' model, which is by far the most used in practice; i.e. the Srl-type company (the most common company type in Italy) will be able to apply only the 'traditional' model.

## SpA

Under the 'traditional' model, the corporate structure is made up as follows:

- Board of directors
- Board of statutory auditors
- Registered auditor/auditing firm.

## **Board of Directors (Management Body - Organo di gestione)**

A SpA can be administrated by a sole director or by a board of directors.

In this latter case, one of them is appointed as chairman. It is recommended that at least one of the directors appointed is a local resident, as it may simplify a number of procedures (eg. signature of annual tax return and social contribution returns). Otherwise a local proxy-holder must be appointed.

The directors need to be individuals. With the exception of those appointed with the articles of incorporation, directors are elected by the shareholders' resolutions. A director's term of office may not exceed three years, but it may be renewed.

In the instance of the resignation of the majority of directors, the whole board is void and a shareholders' meeting must be called to appoint a new board. Directors can be removed by a resolution of the shareholders.

A board meeting is duly constituted if the majority of directors are present, unless the articles of association provide for a larger quorum. Under the by-laws, attendance may be permitted via telecommunications. Resolutions are passed when approved by the simple majority of those present unless provided otherwise. Directors may not vote by proxy.

The directors' remuneration or compensation, including a possible share of the profits, is normally set out in the articles of association or fixed by the shareholders in a general meeting.

## **Managing directors**

The board of directors can delegate some of its members to perform specific tasks. If the delegation is given to one or a few directors, they are appointed as managing directors.

The following powers may not be delegated in any instance:

- To draw up the financial statements
- To increase the share capital
- To call the shareholders' meeting in the case of losses higher than one-third of the share capital and to ask the court to reduce share capital
- To prepare merger or de-merger projects.

The management structure of the company often includes general directors (*direttori generali*). These are employees who assist the board of directors in the exercise of its functions and are empowered to represent the company. The Civil Code extends the regulations on the responsibility of the directors to the general directors.

### **Legal representative**

The articles of incorporation appoint the directors who may represent the company. Failing this, the company is represented by the directors appointed by the shareholders' meeting. If no such appointment has been made, the board of directors may specify who is entitled to represent the company or may reserve this right to itself. Usually, however, the chairman and the managing directors are entitled to be legal representatives.

### **Statutory Auditors (Management control body - Organo di controllo sulla gestione)**

The board of statutory auditors (*collegio sindacale*) is compulsory for a SpA. It comprises three or five effective members (*sindaci*) and two alternates. The members cannot be employees or directors or close relatives of directors; they cannot be statutory auditors of subsidiaries, parent companies or companies under joint control.

The remuneration of the members of the board is determined either in the articles of association or by the shareholders in a general meeting. The first members of the board are elected for three years and they cannot be removed by the shareholders' meeting unless there is fair cause.

The board of statutory auditors must meet every 90 days, optionally via telecommunications. The board of statutory auditors is duly constituted if the majority of statutory auditors are present, and resolutions are passed when approved by the absolute majority of those present.

The most specific duty of the board of statutory auditors in a SpA is to control the management of the company in respect of the law and its articles of association; however, articles of association of SpAs, which are not listed and are not required to prepare consolidated financial statements, may provide that the board of statutory auditors is also performing the periodical 'Accounting control' (every three months) and the examination of the annual financial statements in accordance with recommended auditing standards, with a view to express an opinion thereon.

### **Registered Auditor /Auditing firm (Audit body - Organo di controllo contabile)**

Unless otherwise provided by the articles of association and as permitted by the law (see above) the most specific duty of the Registered Auditor / Auditing firm is to perform the 'Accounting control' as defined above.

The 'Audit body' is appointed by the shareholders' meeting after the board of statutory auditors has reported. The Shareholders' Meeting sets the remuneration to be paid for the entire term of office.

Ineligibility rules described in respect of the board of statutory auditors also apply to individual components of the 'Audit body'.

The term of office is three years and can be renewed no more than twice.

### **General meeting**

Shareholders' meetings are classified as ordinary (*assemblea ordinaria*) or extraordinary (*assemblea straordinaria*): the difference between these classifications concerns the decisions that can be taken and the legal requirements needed for the taking of such decisions.

In any case, an annual general meeting must be held within 120 days of the company's financial year-end.

The normal business of an ordinary meeting is:

- Approval of the financial statements
- Election of directors and the members and chairman of the board of statutory auditors
- Determination of their remunerations, unless already determined by the articles of incorporation
- Discussion of all other matters relating to the performance of the company and the responsibility of the directors and statutory auditors.

The ordinary shareholders' meeting is duly constituted with the attendance of a number of shareholders representing at least half the share capital; resolutions are passed with the absolute majority.

An extraordinary meeting is required to deal with such matters as:

- Changes in the articles of incorporation
- The issue of bonds
- The elections of liquidators.

Resolutions of the extraordinary shareholders' meeting are passed with the positive vote of a number of shareholders representing more than half of the share capital.

### **Srl**

This is the more common company type in Italy. The 'traditional' model described above generally applies also to a Srl, with a number of simplifications in respect of a SpA and a large degree of flexibility as regards the internal decision-making process and the allocation of responsibilities between quota holders and director(s).

However, the law expressly states that quota holders are entitled to vote on the following:

- Approval of the financial statements
- Appointment of directors
- Appointment of statutory auditors or an auditor
- Changes to the articles of association
- Material change in the company's purpose.

Quota holders' meetings are duly constituted if quota holders representing at least half of the capital are present. Resolutions are passed when approved by absolute majority. In the event of changes to the articles of association and resolutions involving a material change in the company's purpose, resolutions are passed when approved by a number of quota holders representing at least a half of the capital. Other particular features regarding Srls are listed below:

- Board of directors' and quota holders' resolutions can be taken by consent expressed in writing, without a formal meeting being held;
- Directors can be appointed for an undefined period;
- Unless differently stated in the by-laws, a board of statutory auditors or a registered auditor/auditing firm is generally not required if (a) the company's capital is less than the minimum share capital required for SpA-type companies, €120,000; or if (b) the company has not exceeded two of the following parameters in the first year of operations or, after that, for two consecutive years: total assets reported in the balance sheet, €4,400,000; revenues from sales and services, €8,800,000; average employees during the year, 50 units;
- Both management control and audit functions are normally carried out by the board of statutory auditors, if required;
- No distinction exists between ordinary and extraordinary shareholders' meeting.

### **Minutes**

All of the meetings held by shareholders or quota holders, the board of directors and statutory auditors must be printed in specific books provided by law and properly stamped before their use. Determination of a sole director must be printed in a specific book too.

### **Joint ventures**

Several forms of joint ventures may operate in Italy. Examples range from participating (unincorporated) associations to consortia for special

purposes to the most flexible form of temporary co-operation among enterprises joined by contract to carry out projects or deliver services.

### **Branches of foreign corporations**

A foreign corporation that forms an Italian branch (*sede secondaria*) is subject to Italian law because a branch, unlike a subsidiary, is not an entity separate from the company that is responsible for its obligations. At the time that the branch is formed, the foreign company must notify the local court and provide the names of the resident persons representing the company in Italy. It must file specified documents relating to the creation of the branch with the Register of Enterprises. Registration with the local chamber of commerce is also required.

### **Antitrust law**

Free competition is protected (as well as the provisions of the Rome Treaty) by the rules dictated by the Italian antitrust law, which is modelled after the European provisions.

The enforcement of said Italian law is ensured by an “*ad hoc*” Authority (“*Autorità Garante della Concorrenza e del Mercato*”).

Other Authorities have been created in order to control the compliance with antitrust law provisions in specific sectors (telecommunications, energy, etc.).

### **Privacy law**

The protection of personal data provided by a private individual or a company has been introduced by a Legislative decree, called “Privacy Code”.

The Code states that the concerned party is entitled to the protection of rights that refer to the existence and communication of personal and sensitive data, the knowledge of data processing procedures, the invention and access to its own data and, finally, the objection of their processing.

The processing of personal data destined to systematic communication or spreading may be entrusted to a person, company, public administration and any other agency, association or body.

Data processing must be carried out by adopting such safety measures and technical means as may guarantee safety and confidentiality. These measures include the Programmatic Document on Safety (so called “DPS”), by which the person in charge of the processing defines its policies for the safety and protection of personal data, by indicating the safety measures already adopted and those to be adopted, in order to guarantee a suitable level of protection of personal data.

Failure to adopt the safety measures is an offence with a specific penalty system.

### **Administrative liability of legal entities**

The Decree 231/2001 has introduced in the Italian legal system the rule that liability arises not only on the head of the individual and actual perpetrator of the offence, but for legal entities as well.

Before the enforcement of the Decree, entities could be held liable only under the civil ground and chargeable to pay fines in the event of the perpetrator insolvency.

The Decree sets forth a sort of liability “exemption” in favour of the entities able to prove “to have adopted and effectively implemented the appropriate organisational, management and control models in order to prevent offences as the one occurred.”

The control system, as set forth by the norm, is optional and not compulsory. However, it is evident that in the event of an adverse sentence under the criminal code the entity could be punished with sanctions as provided for by the Decree, while, on the other hand, shareholders could take action against the company’s directors for negligence in the prior arrangement of the organisation, management and control model in order to take advantage of the “exemption” clause.

The representative associations of entities draw up guidelines on which each entity may start to implement its specific organisational, management and control Model.

### **Bankruptcy and proceedings for distribution among creditors**

According to the Italian bankruptcy law, an individual entrepreneur or a company, which is in a state of insolvency (i.e. when due to non-performance and/or other external factors, he appears to be unable to regularly fulfil his obligations), is declared bankrupt by the court of the place where the enterprise has its main office.

A bankruptcy procedure consists of the liquidation of the bankrupt’s assets and subsequent integral or partial paying off of creditors.

This procedure, however, does not apply to small entrepreneurs (i.e. persons, individually or jointly carrying out trade, who, also alternatively, did not make investments for over three hundred thousand euros and / or did not obtain average gross earnings of the last three years for a total amount of over two hundred thousand euros and/or did not hold liabilities, even if not expired, for a total amount of euro five hundred thousand euros).

The bankruptcy adjudication deprives the bankrupt administration of its assets. When bankruptcy involves companies, the law lays down provisions for the behaviour of directors, general managers, and the members of control bodies, liquidators and shareholders.

An arrangement with creditors may be reached during ("*concordato fallimentare*") or before the bankruptcy procedure ("*concordato preventivo*").

In the arrangement during the bankruptcy procedure, the proposal may be submitted by one or more creditors, by a third party or by the bankrupt company. Such proposals may provide for the subdivision of creditors into classes; different treatments for creditors belonging to different classes, indicating the reason for such differentiation; the restructuring of debts and the settlement of credits in whatever form; a report of a business consultant has to be attached to the plans concerning the restructuring of debts and the settlement of credits.

## 5. Labour

### Employment environment

The Italian labour market is characterised by a shortage of skills in some sectors and notable unemployment in others. The level of employment varies significantly between regions, although official statistics do not reflect the situation accurately due to the high level of unofficial employment (the official average unemployment rate for 2009 is 8.5% of the active population).

Employees are classified by law in four categories: workers (*operai*); low-ranking white collar workers (*impiegati*); high-ranking white collar workers (*quadri*); and executives (*dirigenti*). The law specifically protects lower-ranking employees.

Employers may choose to recruit workers if they have registered with a local labour office (*ufficio di collocamento*) and appear on a local unemployment list.

To enterprises employing more than 35 people, the law requires the hiring of a specified proportion of disabled workers.

During the last years a major reform of employment and the labour market was introduced and was aimed at expanding employment and overtaking restrictions and the stifled nature of the labour market.

The main features provide the following additional forms of employment:

- Job on call: the 'job-on-call' contract is an employee contract, and can be on either a term or permanent basis. This can be used for discontinuous or intermittent work performed according to needs identified in collective contracts or, provisionally, by the Labour Ministry;
- Job-sharing: the job-sharing contract is defined as one 'whereby two workers assume joint and several liability for a single and identical work obligation';
- Staff leasing: within certain limits and under certain conditions, companies can now use the services of people who are not their own employees. A staff leasing contract can be entered into by any user who requests personnel from an authorised provider. The agency is required to pay the mandatory social security, healthcare and workers' compensation contributions, but the landlord and the lessee are jointly and severally liable for the worker's wages and social-security treatment;

- Entry-level contracts: the purpose of this contract is to enable certain kinds of people to enter or re-enter the labour market via an individual training or retraining project;
- Apprenticeship contracts: under this scheme the employer's social security charge is reduced by a fixed percentage.

The main characteristics of the above contracts are the flexibility in the staff management and, in some cases, the reduced security charge below normal labour relationships.

## **Working conditions**

### **Wages and salaries**

Minimum wages are fixed by nationwide collective bargaining agreements between unions, the Association of Italian Enterprises and the government. The resulting contracts, which have force of law, establish minimum wages for entire industries, whether or not a particular employer or employee was party to the negotiations. In addition to national contracts, companies also negotiate their own terms (*contratti integrativi*), usually in the year after national contracts are negotiated.

Annual salaries are paid in 13 or 14 instalments, depending on which national collective contract applies. The 13th instalment is paid at the end of December and the 14th, if due, is paid in June.

### **Working hours, holidays and vacations**

A 40-hour working week is considered standard for all employees. Overtime is generally permitted, but is limited by law to two hours a day and must be authorised by the company's personnel department. These limits may be reduced by collective bargaining agreements.

Overtime rates must exceed normal rates and companies must pay the national social security system a 15% wage penalty for hours from 41 to 48 per week and 20% for hours exceeding 48.

In addition to 10 national holidays, each city celebrates the feast day of its patron saint. Italy also has four non-specific holidays, which workers may take at their convenience, with certain limitations to ensure the smooth running of the factory, and two days worked, but paid at special rates. Three weeks of vacation are compulsory during the first two years of employment. Thereafter, four weeks are usually given to both office and factory personnel.

## **Termination of employment**

The statutory notice to be given on termination of employment varies considerably according to seniority and the category of the employee. The minimum notice period varies from 15 days to six months. The statutory notice must also be observed by the employee, who must give notice to the employer in accordance with the periods provided by law. If the employee leaves employment without giving proper notice, the employer may retain an indemnity proportional to the notice period.

Dismissal is possible in cases of serious misconduct, but in practice it is difficult to establish that such misconduct has occurred. If a court finds that a dismissal was unfair, the employer concerned must either reinstate the employee or pay additional compensation. Disputes concerning termination of employment can prove difficult and expensive.

All employees are entitled by law to receive deferred compensation payable at the end of their employment relationship. The employer must annually accrue an amount that can be alternatively maintained between company's liabilities or, upon employees' request, paid into supplementary welfare bodies. The annual accrual amounts to the employee's yearly total compensation divided by 13.5. The unpaid balance is increased in each of the subsequent years at a rate of 1.50% plus 75% of the cost of living index. This amount, known as *Trattamento di Fine Rapporto* (TFR), must be paid within six months of the termination of employment. The employee may request an advance payment of a portion of TFR to buy their first home or for certain extraordinary medical expenses.

## **Trade unions**

Approximately half of all Italian workers belong to some trade union. The percentage varies, however, from sector to sector. The right to form unions and the right to strike are constitutionally granted prerogatives.

The three main unions are: *Confederazione Generale Italiana dei Lavoratori* (CGIL); *Confederazione Italiana Sindacati Lavoratori* (CISL); and *Unione Italiana del Lavoro* (UIL).

Each union usually represents a political party and has the opportunity to negotiate directly with the government and the Association of Italian Enterprises (*Confindustria*) for national collective agreements, which are valid for an entire industry.

### **Special requirements for foreigners**

Prospective employers who hire foreigners must secure work permits from the Labour Ministry and supply proof that the foreign employee has certain qualifications not possessed by unemployed Italians. Managers and other executives of foreign-owned companies are generally assumed to have those qualifications.

It may take three or four months for a foreigner to obtain a work permit from an Italian embassy abroad. Employers who hire foreigners (as well as Italians) without work permits may be subject to monetary or criminal penalties or both.

EU citizens seconded to Italy do not require work permits. A work permit for secondment is generally requested for non-EU citizens. However, international agreements may modify this requirement.

### **Social security**

The compulsory social security insurance scheme managed by the National Institute for Social Security (INPS) covers all employees and their families, including foreigners, with a wide range of benefits. The following are the primary benefits offered to all workers:

- Old age pension after at least 20 years of contributions (pensionable age is 65 for men and 60 for women), disability pension and surviving dependents' pension
- Unemployment benefits
- Sickness benefits
- Maternity benefits
- State-subsidised medical care
- Insurance against accidents and occupational diseases
- Subsidies in the event of labour redundancy resulting from a temporary financial crisis or similar situation.

Contributions to the National Medical Insurance Scheme, which provides medical assistance to employees and their families, is paid as part of local tax due on income (IRAP). Medical assistance, depending on the employee's income, covers hospitalisation in a public hospital, a family doctor, some medicines and certain medical tests and examinations. The National Medical Insurance Scheme may also reimburse medical costs sustained abroad if approved in advance.

Social security contribution rates vary depending on the type of business and the category of the employee. Some contributions are payable on total gross salaries and others are subject to a wage or salary ceiling; the average

contribution is approximately between 36.19% to 42.27% depending on the type of business. Of this approximately 8.89/9.19% is paid by the employee.

With a few exceptions, the contributions are based on gross earnings paid in cash or in kind.

INPS contributions must be paid on the 16th day of each month.

### **Insurance**

There is a compulsory public insurance for employees, called INAIL (*Istituto Nazionale Assicurazioni Infortuni sul Lavoro*). Rates normally applicable to a trading company vary from 0.5–1.3% of the gross annual salaries, depending on the degree of risk incurred by the employee. For example, employees who have to use a car for their job pay a higher premium.

The INAIL contribution is paid once a year on 16 February. Managers' funds are paid on a quarterly basis on the 10th day of the following month the reference period.

A foreigner entering Italy with a work permit is subject to the Italian social security scheme: EU regulations and international bilateral agreements, however, may modify this obligation.

## 6. Taxation

Italian taxation can be understood by examining the taxation of both companies and individuals.

### Corporation taxes

Income taxes applicable to a limited liability company in Italy include the following taxes:

*IRES (Imposta sul Reddito delle Società)*: national corporate income tax was set at 27.5%. Losses can be carried forward and deducted from future profits, normally for five years, except for losses realised in the first three years from the incorporation of the company, which can be carried forward without any limitation of time during the life of the company.

*IRAP (Imposta sul Reddito delle Attività Produttive)*: regional tax on productive activities at 3.9%. It is charged on the 'net value production' in commerce and manufacturing. The net value of production is determined by the gross turnover plus the increase in stock trade and work in progress less expenses of production (depreciation included). An important feature of this tax is that both tax interests paid and payroll costs are not deductible. 10% of IRAP can be deducted for IRES purposes.

The following tax returns must be filed:

- Annual VAT (*Imposta sul Valore Aggiunto*) base data return
- Annual VAT return
- Annual income return
- Annual IRAP report
- Annual return of payments subject to withholding tax
- Intrastat report: monthly, quarterly or annually, depending on the amount of transactions.

Tax payments are due as set out below:

Income taxes due by the company: two advance payments plus a balance payment. The balance payment and the first advance are due within the 16<sup>th</sup> day of the sixth month from the end of the financial year. The second advance is within the eleventh month of the financial year. As of 31 December 2009, advances are calculated on 100% of IRES and IRAP from the fiscal year 2005. The first advance amounts to 40% of the total, while the second amounts to 60%.

VAT: monthly or quarterly, depending on turnover, on the 16th day of each month.

Withholding taxes and social contributions on salaries, commissions and professional fees paid: monthly, on the 16th day of each month.

Stamp tax on a company's books (*Imposta sulle Vidimazioni*): annually by 16 March (€309.87 if stock capital is lower than €516,456.90; otherwise, €516.46).

Tax and social security payments due by VAT registered entities are required to be made electronically, whatever or not an intermediary is involved.

### **Gross income**

Gross income for tax purposes consists of income recorded in the company's financial statements, adjusted for requirements of the tax law.

### **Business income**

Business income includes income from a trade, interest, royalties, dividends and capital gains.

### **Capital gains**

Capital gains are defined as the sale proceeds less net book value. There is a non-favourable tax rate for corporations earning capital gains that may be included in taxable income; however, either entirely in the year realised or in equal annual instalments over a five-year period, at the taxpayer's discretion. No interest is due on the deferral of the tax liability.

### **Participation exemption**

Under certain conditions, the 95% of capital gains realised in disposition of participations held in companies subject to IRES is excluded from taxable income.

### **Rents**

Taxable income from real property, including farming land and buildings not used for business purposes, is computed based on a cadastral system (*catasto*), in which all land and urban buildings are classified according to their estimated ordinary average income. The deemed income is calculated by multiplying the basic values assigned in the cadastral records by applicable rates, which are periodically revised.

### **Dividends from resident companies**

95% of dividends received by a resident company from another resident or non-resident company are excluded from taxable income.

### **Dividends from non-resident companies**

Dividends from subsidiaries situated in countries that have privileged tax systems are fully taxable for IRES.

### **Interest and royalties**

Interest and royalties received by corporations from any source must be reported at their gross amount before withholding tax is deducted.

### **Other foreign source income**

Other foreign source income is included in taxable income for corporate income tax purposes.

### **Treatment of groups of companies**

The option for group taxation is irrevocable for a minimum period of three years. The option must be exercised by the controlling company and by its subsidiaries and is subject to various obligations and covenants.

Worldwide group taxation has also been introduced and is applicable to Italian controlling companies quoted on the stock exchange or owned by shareholders not controlling other companies.

### **Tax Transparency**

The option for the tax transparency is irrevocable for a minimum period of three years. The option must be exercised by the controlling companies and by their subsidiary.

Whether limited companies (resident or non-resident under certain conditions provided by the law), controlling a resident limited company, make the option for the tax transparency, the shareholders will be subject to income's taxation, careless about a dividends distribution.

The option can be chosen only if all partners are limited companies, with participation not lower than 10%, and not higher than 50%.

### **Non-resident companies**

Non-resident companies are liable to Italian taxation only on income arising within Italy.

The following categories of income are deemed to be from Italian sources:

- Income from business activities conducted through a permanent establishment in Italy, which includes capital gains or losses on the disposition of goods or assets, including shares, employed in, or in

any way related to, the business activities conducted in Italy even if not earned through the Italian permanent establishment;

- Income from land and buildings located in Italy;
- Income from capital, such as dividends paid by Italian companies, interest paid by individuals and entities resident in Italy, and income paid by the Italian permanent establishments of non-residents;
- Income from professional or artistic activities performed in Italy;
- Income from Italian partnerships, whether or not such income is distributed;
- Royalties from the licensing of trademarks or trade names, industrial inventions, creative work and such other items, when such royalties are paid by Italian residents or by the Italian permanent establishment of non-residents.

### **Branches**

A branch of a foreign corporation (*sede secondaria*) is subject to IRES and IRAP on all income arising or deemed to have arisen within Italy.

Although a branch is generally taxed under the laws applicable to Italian corporations, the tax law provides certain advantages and disadvantages for a branch. The main advantage is that profits may be remitted to the foreign company free of withholding tax.

### **Individuals**

As of 1 January 2007, personal income tax is applied to individuals on a progressive basis, with rates ranging from 23 – 43%. Tax deductions are also available. In addition, a regional tax of up to 1.4% and a local communal tax of up to 0.8% are applied on all individuals' income.

In order to ensure the payment of IRPEF (individuals' taxation), the law establishes a rule whereby all employers have to withhold part of the salary and pay it to the Tax Authorities on behalf of their employees and on account of the tax eventually due by the latter.

Dividends received by individuals are included in the taxable income to the extent of 49.72% of the amount distributed.

### **Taxation of expatriates and non-residents**

Foreigners are generally taxed according to their resident status. If they meet the criteria for residency in any financial year, they are taxed on worldwide income. Individuals not considered resident are taxed on Italian source income only.



## 7. Accounting & reporting

### Accounting principles

Italian accounting requirements are governed by civil law. The regulations of April 1991, and subsequent modifications, prescribe the presentation of a true and fair view of the company's financial and economic situation.

The Civil Code provides detailed guidance concerning the classification of accounts and the format of financial statements as well as a general guidance concerning accounting principles to be adopted.

Within this context, the *Consigli Nazionali dei Dottori Commercialisti e dei Ragionieri* (National Councils of Doctors of Commerce and of Accountants) have undertaken to establish accounting principles, which normally conform to international generally accepted accounting principles, by issuing a series of pronouncements that expand on the requirements of the Civil Code and cover matters not contained in the code. The pronouncements do not establish principles or encourage practices that are prohibited by the Civil Code.

A review of these pronouncements started in 2004 alongside the introduction of the corporate reform law.

The above Councils are members of the International Accounting Standards Committee (IASC).

### Year-end financial statements

At the setting up of a limited liability company, the company must define the closing year-end date.

Every year, at the end of the accounting period, the directors must prepare the annual financial statements (balance sheet, profit and loss account and explanatory notes), together with a report thereon. The annual financial statements and the directors' report must be prepared with the format and timing stated by regulations of the Italian Civil Code.

At least 30 days before the shareholders' meeting which will discuss them, the directors' report and the annual financial statements must be communicated to the board of statutory auditors (if existing), and who shall also prepare a report thereon.

The financial statements, together with the directors' and board of statutory auditors' reports, must be deposited at the registered office of the company at least 15 days before the shareholders' meeting and, no longer than 30 days after the meeting, must be filed with the register of

commercial enterprises, together with a copy of the shareholders' resolution of approval, for possible inspection by the public.

### Condensed year-end financial statements

Unless they have issued securities marketed on regulated markets, companies may prepare their financial statements in condensed form, when they have not exceeded two of the following requirements in the first year of operations or, after that, for two consecutive years:

- Total assets reported in the balance sheet: Euro 4,400,000
- Revenues from sales and services: Euro 8,800,000;
- Average employees during the year: 50 employees.

### International Accounting Standards

A law decree issued in February 2005 has introduced the application of IAS according to the following simplified scheme:

Entity	Required financial statements	From FY 2006
Listed companies		
Issuers of financial instruments among the public	Ordinary	IAS compulsory
Banks and other financial intermediaries	Consolidated	IAS compulsory
Insurance companies	Ordinary	IAS compulsory if listed
	Consolidated	IAS compulsory
Companies authorised to present condensed financial statements	Ordinary	Excluded from IAS
Others	Ordinary	Excluded from IAS
	Consolidated	IAS facultative

## **Other accounting and company law requirements**

The following company books have to be maintained:

- Shareholders
- Minutes of the shareholders' meeting
- Minutes of the board of directors
- Minutes of the board of auditors
- Annual accounts book.

The following accounting books must be kept (other books may be requested by special legislation):

- General ledger
- VAT sales register
- VAT purchases register
- Depreciable assets.

## **Auditing**

In general terms, audit activity can be split into two different categories: (i) Accounting controls - examination of the annual financial statements in accordance with recommended auditing standards, with a view to express an opinion thereon, and (ii) Management controls or Corporate surveillance - review of the company's business with respect to the law and the statutes.

Under the 'traditional' corporate model (section 4, 'Setting up a business'), the audit activity can be carried out either by a board of statutory auditors or by a registered auditor/auditing firm or a combination of these entities.

Companies, which are not listed and are not required to prepare consolidated financial statements, may, as a general rule, appoint the board of statutory auditors to perform both functions (i) and (ii); in other cases, the 'Accounting controls' function is allocated, by law or by articles of association, to registered auditors/auditing firms.

Listed companies, state-controlled companies, municipality-controlled companies, large consortia, insurance companies, brokers, (securities traders), publishing companies and others must be audited by a special class of auditing firms registered with the National Commission for Companies & Stock Exchange (CONSOB). The auditing firm is appointed by the shareholders for three years and may be reappointed only for two successive three-year terms.

Auditors are required to be independent. They are personally liable for the accuracy and truthfulness of their statements and, with the directors, are jointly liable for the directors' actions or omissions whenever it can be shown that a loss could have been avoided if the auditors had performed their duties properly.

Please refer to section 4 above for other details.

### **Auditors' reports**

#### **Accounting controls**

Reports on 'Accounting controls' follow a similar format to those adopted internationally by all major independent auditing firms.

#### **Management controls**

Reports on 'Management controls' – which under the 'traditional' model are issued solely by the board of statutory auditors – normally follow a special format recommended by the national accounting bodies.

## 8. UHY firms in Italy

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## 9. UHY offices worldwide

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