

Economic opportunities and company models in Italy



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The opportunities arising from economic investment in Italy should be considered along with favourable factors such as an advanced know-how system, highly qualified human resources and a strategic geographical position between the Mediterranean area and continental Europe. A foreign investor might be particularly interested in a sole proprietorship, an Italian company or a branch of a foreign company.

Company types

Italian company types can be partnerships (without juridical personality) or corporations (with legal personality). A joint stock company (*Società per azioni*, SpA) and a limited liability company (*Società a responsabilità limitata*, Srl) can better adapt to the interests and purposes of foreign investors.

In the SpA, participation is represented by shares and a minimum share capital of €50,000 is required. In this corporate structure, the main activities of the company are reserved to specific bodies (mainly the shareholders meeting, the management body and the control body). However, bodies and their respective functions vary according to the system adopted by the company. A SpA can adopt the traditional system or, as alternatives, the so-called dualistic system (where more power is given to the control body) or the monistic system (where more power is given to the administrative body).

The Srl requires a minimum capital of €10,000. Capital is not represented by shares but by participation. The owners meetings have wider powers of decision; the administration body may have a different subdivision of power among the administrators; and a control body is mandatory only in some circumstances.

The recently introduced simplified limited liability company (*Società a*

responsabilità limitata semplificata, Srls) offers benefits in terms of costs. The minimum required capital is a symbolic €1 and the upper limit is €9,999.

Joint ventures can be set up through a contractual agreement or an ad hoc corporation. The shareholders of such a corporation will be liable only to the extent of their participation, even in case of insolvency of the corporation.

A sole shareholder also can establish a corporation. The shareholder's liability is limited to the extent of the corporate assets but if the company becomes insolvent, the shareholder's liability will be unlimited if: (i) the full amount of contributions stated in the articles of association has not been paid; (ii) the publicity required for a sole shareholder has not been made.

When a corporate group is constituted, the holding company is liable for any damage caused to the assets of the subsidiaries deriving from operations made against their interests.

Requirements for foreigners

Under Italian law, foreigners enjoy the same rights as Italian citizens in the field of investments. Thus an Indian company (or individual) can incorporate and hold shares in Italian companies.

If an Indian company wishes to acquire an existing Italian business by means of buying the company's shares, it will have to follow formal requirements which differ based on the type of company, as well as the procedures specifically agreed for the transfer of shares.

For a Srl, in the "traditional" transfer procedure a notary authenticates the deed of transfer and deposits it with the register of enterprises. However, it is also possible to transfer Srl shares through an electronic document. For this, the seller and the buyer each need a digital signature and have to be assisted by a special

intermediary, who will register the document in the register of enterprises.

Under Italian law, a foreign company is subject to the law of the country where it was established. However, Italian law applies if the seat of the management or if the principal object of the company is located in Italy.

If a foreign company wants to establish one or more branch offices with permanent representation in Italy, each branch will be subject to Italian law with regards to the business activity and the publication of company documents. The rules for SpA will apply unless the foreign company adopts another company type.

Foreign companies may also open representative offices in Italy. A representative office cannot conduct business activities but may play auxiliary or preparatory roles, such as promoting the activities of the represented company.

Finally, it should be noted that Italy and India have a double taxation avoidance agreement as well as other agreements and memorandums of understanding in the field of investments and business development. The eventual resolution of tensions in bilateral relations of recent years will give even more impulse to the development of economic relations and win-win cooperation. Above all, the relaxation of diplomatic tensions would restore the mutual trust and cooperation which have historically marked relations between Italy and India also, and in particular, from a cultural point of view, with impressive results.

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