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Italy

Prepared by Lex Mundi member firm, Chiomenti

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INDEX

CHIOMENTI
STUDIO LEGALE

CHIOMENTI
STUDIO LEGALE

CHIOMENTI
STUDIO LEGALE

1 THE COUNTRY AT A GLANCE

A natural bridge between the Mediterranean and Europe, Italy is one of the most prominent members of European Union. It acts as a base for commercial and trade links with the emerging countries of the eastern and western Mediterranean as well as with the central-eastern parts of Europe. Northern Italy is located in the centre of Europe and plays a significant role in that part of the continent's economic exchange activities. Italy is bordered by France, Switzerland, Austria and Slovenia and its population is approximately 60 million. Italian is the official language and regional dialects are spoken throughout the country.

Italy is one of Europe's biggest agricultural producers and is also one of its leaders in services, industry and technology, with a long tradition of innovation. Creating jobs, cutting taxes, enhancing competitiveness and reducing the budget deficit and debt have been the focus of recent Italian governments.

Rome, Italy's capital and largest city, plays a leading role on the institutional side while Milan plays a prominent role in business. In addition to Rome and Milan, there are several large cities, including Turin, Naples, Venice and Genova. The national railway system extends throughout Italy and into neighbouring countries and consists of a regular and high-speed train lines' network. Italy is traversed by a number of highways and state and provincial roads and the Italian road network is linked to those of other European countries. Italian highways provide very good access to the country's largest towns and cities.

Due to Italy's geographical position, sea transport plays an essential role in the country's foreign trade. Genova, Livorno, Trieste, Ravenna, La Spezia and Naples are the most important Italian ports. La Spezia and Taranto are two naval bases of significant importance. Currently, there are over 100 airports operating in Italy, including a number of international and regional airports. Rome's Fiumicino and Milan's Malpensa are the major international air hubs. The other major international airports are Milan Linate, Venice Tessara and Bologna Borgo Panigale.

Italy has been engaged over the past ten years in a process of economic liberalization mainly in the energy, gas, transportation and telecommunications sectors with a view of enhancing competition, efficiency and quality of service. The government continues to own shares in corporations in a range of sectors including banking, energy production and distribution, and transportation.

Italy's communications system is modern and well developed. The country has fully automated telephone, telex and data services, and high-capacity cable systems; the country has the third-highest mobile phone penetration rate in the world.

Italy, along with other countries from the European Union (the "EU") adopted the Euro as its new currency in January 1999. As such, monetary policy is set by the European Central Bank in Frankfurt, Germany. The introduction of the new coins and bills in January 2002 has been quite smooth.

2 GENERAL CONSIDERATIONS

2.1 DIPLOMATIC RELATIONS

Italy is a member of most of the United Nations' specialized and related agencies. Italy has established diplomatic relations and conducts business with nearly every country in the world. Italy has a wide consular network in the world. Most major cities in Italy have consulates from the world's leading nations. Almost every country has in Rome its own diplomatic representation.

There are no travel restrictions to or within the country except on a case by case basis where visas may be required depending on a traveller's country of origin.

2.2 THE CONSTITUTIONAL ASSET

Italy is a democratic Republic. The 1948 Constitution rules the life of the Democracy through the three Powers of the democratic Italian State: (i) the Parliament, sovereign of the legislative power, a bicameral organ consisting of the Chamber of Deputies (*Camera dei Deputati*) and the Senate (*Senato della Repubblica*); (ii) the Council of Ministers (*Consiglio dei Ministri*), headed by the President of the Council of Ministers (*Presidente del Consiglio*), (iii) the free, neutral and independent judicial power headed by an independent Court system including the Constitutional Court (*Corte Costituzionale*) as further discussed in Section 2.2.3 below.

2.2.1 The President and the Government

The President of the Republic is elected by a joint session of Parliament, with the addition of the representatives of the Republic's regions, and holds a seven-year term. The powers of the President include (i) the appointment of the President of the Council of Ministers and, on his/her recommendation, the Ministers, (ii) the dissolution of Parliament and (iii) the ratification of international treaties. The day-to-day functioning of the Government is in the hands of the President of the Council of Ministers and the Ministers, jointly forming the Council of Ministers. The President of the Council, who is normally the leader of the party with the largest representation in the Parliament, co-ordinates the action of the Ministers. The Council of Ministers (mostly, but not necessarily composed of members of Parliament) sets and oversees the implementation of the Government's general political agenda and must retain the confidence (*Fiducia*) of both houses of Parliament.

2.2.2 The Parliament

The Italian Parliament consists of the Chamber of Deputies and the Senate of the Republic elected by popular suffrage for five-year terms of office. Pursuant to legislation enacted in 2005, the electoral system is on proportional basis. The Senate also includes former Presidents of the Republic and several other persons appointed for particular life merits according to special constitutional provisions. Legislative bills may originate in either Houses and must be passed by a majority in both. Citizens must be 25 years of age or older to vote for Senators; in all other elections, all citizens over age 18 are eligible to vote.

2.2.3 The Judicial System

The judicial system is based on Roman Law comprising of the following areas: civil, criminal, constitutional, administrative, accounting, military and tax.

The civil and criminal areas constitute the system's ordinary function. Such ordinary system has generally two levels of judicial review: first instance Tribunals and appellate Courts. Decisions of the appellate Courts related to civil and criminal matters (only as to issues of law) can be submitted to the syndicate of the Supreme Court of Italy (*Corte di Cassazione*).

The administrative, accounting, military and tax areas constitute the system's specialized functions. Such specialized system has generally two levels of review: first instance Tribunals and appellate Courts or other bodies. Regional Administrative Courts (*Tribunali Amministrativi Regionali*) and the Council of State (*Consiglio di Stato*) are examples of first instance Tribunals and an appellate body with jurisdiction over administrative matters.

The constitutional matters are subject to the jurisdiction of the Constitutional Court (*Corte Costituzionale*) which also examines legislation and decides whether it conforms to the Constitution and adjudicates on conflicts among the three branches of government (legislative, executive and judicial), between the Republic and its Regions or among different Regions.

The average duration of a trial is between 9 months and 3 years. An appeal can add up to 2-3 years to the litigation process. To the extent recognized by other countries, Italian decisions can generally be enforced outside the country. Reciprocally, foreign decisions can also be enforced in Italy. Italy is a party to several international conventions which govern recognition and enforcement of foreign decisions, such as:

- The Brussels Convention on Recognition and Enforcement of Judgments in Civil and Commercial Matters of September 27, 1968 which is now superseded by the European Regulation no. 44/2001 of December 22, 2000, concerning jurisdiction, recognition and the enforcement of judgments in civil and commercial matters.

- The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.

In addition, the Italian legal system provides a variety of forms of alternative dispute resolution such as arbitration, mediation, conciliation and recognition of the related international conventions.

3 GENERAL LEGAL CONSIDERATION

3.1 ENVIRONMENT

The public is increasingly sensitive to environmental protection undertakings and regulations. This attitude translates into greater awareness and activism. From a government standpoint, enforcement actions tend to be more stringent due to the combined pressure of public opinion and EU regulations.

Italy has ratified numerous international environmental agreements including those related to air pollution, Antarctic-marine living resources, Antarctic seals, biodiversity, climate change, desertification, endangered species, environmental modification, hazardous wastes, law of the Sea, marine dumping, ozone layer protection, ship pollution, wetlands and whaling. Regionally, Italy is party to the European Wild Birds Directive and the Council of Europe, under which dozens of biogenetic reserves have been designated.

Among the major pieces of Italian environmental legislation we can recollect (1) the legislative decree no. 152 of 12 April 2006 - the Environmental Code, which contains major provisions with respect the main environmental sectors such as the contaminated sites cleaning up procedures, the waste treatment and waste disposal, air emissions regulation, water use and distribution, environmental impact assessment.

Following the adoption of EU directive no. 96/61/CE on the prevention and reduction of pollution, the Italian government has enacted the legislative decree (2) no. 59 of 18 February 2005 which sets forth the procedure for the granting of the Environmental integrated permit (a sole permit which substitutes the main existing environmental permits necessary for the carrying out of certain industrial activities duly detailed under attached I to the mentioned legislative decree).

With respect to the Kyoto Protocol implementation and the subsequent obligations undertaken by the States, in January 2005 the European Union Greenhouse Gas Emission Trading System (EU ETS) commenced its operation as the largest multi-country, multi-sector Greenhouse Gas Emission Trading System world-wide.

Its activity is based on Directive 2003/87/EC, which entered into force on 25 October 2003. Allowances traded in the EU ETS will not be printed but held in accounts in electronic registries set up by the different EU Member States.
(3) Italy has implemented CO2 allowance system by means of legislative decree no. 216 of 4 April 2006 no. 216 which sets forth the procedure for the issuance of the relevant authorization to emissions and provides for the rules for CO2 allowance trading.

Among the other important pieces of environmental legislation, the following are noteworthy:

- Italian law no. 447 of 26 October 1995 on noise pollution;
- Law no.257 of 26 February 1992 containing rules on the termination of the use of asbestos containing material;
- Presidential Decree 8 September 1997, no.357 – regulation of implementaion of EU directive 92/43/CEE on the protection of natural habitats and of wild flora and fauna;
- Law no. 36 of 22 February 2001 (and Decree of the President of the Council of Ministries 8 July 2003) on electric and electromagnetic pollution.

3.2 INTELLECTUAL PROPERTY

3.2.1 Laws and Rules

Italy has enacted two major pieces of legislation for the protection of intellectual property, and namely:

Legislative Decree n. 30 of February 10, 2005 (the so-called "Industrial Property Code"); and

Law n. 633 of April 22, 1941 - as subsequently amended – the "Copyright Law".

Italy has entered into the following conventions and treaties:

(i) Paris Convention for the Protection of Industrial Property (Stockholm text), signed on March 20, 1883;

(ii) Berne Convention for the Protection of Literary and Artistic Works (Paris text), signed on September 9, 1886;

(iii) Madrid Agreement concerning the International Registration of Marks (Stockholm text), signed on April 14, 1891;

(iv) Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Lisbon text and Stockholm Integration), signed on April 14, 1891;

(v) Universal Copyright Convention (Paris text), signed on September 6, 1952;

(vi) Nice Agreement concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (Geneva text), signed on June 15, 1957;

(vii) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Stockholm text), signed on October 31, 1958;

(viii) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, signed on October 26, 1961;

(ix) International Convention for the Protection of New Varieties of Plants (Geneva text), signed on December 2, 1961;

(x) Locarno Agreement establishing an International Classification for Industrial Designs, signed on October 8, 1968;

(xi) Patent Cooperation Treaty (PCT), signed on June 19, 1970;

(xii) Strasbourg Agreement concerning the International Patent Classification, signed on March 24, 1971;

(xiii) Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, signed on October 29, 1971;

(xiv) European Patent Convention (EPC), signed on October 5, 1973;

(xv) Brussels Convention relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, signed on May 21, 1974;

(xvi) Budapest Treaty on the International Recognition of the Deposit of microorganisms for the Purposes of Patent Procedure, signed on April 28, 1977;

(xvii) Nairobi Treaty on the Protection of the Olympic Symbol, signed on September 26, 1981;

(xviii) Protocol relating to the Madrid Agreement concerning the International Registration of Marks, signed on June 27, 1989;

(xix) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), signed on April 15, 1994;

(xx) WIPO Copyright Treaty (WCT), signed on December 20, 1996;

(xxi) WIPO Performances and Phonograms Treaty (WPPT) signed on December 20, 1996;

(xxii) Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs, signed on July 2, 1999.

3.2.2 *Patents, Trademarks, Copyright Protection*

Patent and trademark applications are filed with the Italian Patents and Trademarks Office, either directly or through local offices. In particular, patents are granted for a period of twenty years from the filing date and cannot be extended. Conversely, legal protection for trademarks lasts for ten years and may be perpetually renewed for further ten year terms.

Copyright protection is generally granted for the lifetime of the author plus seventy years following his death, and in the event of collective works, the copyright protection lasts seventy years after the death of the last co-author. Know-how is protected by several provisions of:

(i) the Italian Civil Code related to unfair competition,
(ii) the Italian Criminal Code, and
(iii) the Industrial Property Code.

3.2.3 The economic rights

The assignment of economic rights related to a patent or trademark must be registered with the Italian Patent and Trademark Office in order to be effective vis-à-vis third parties. Pursuant to article 196 of the Industrial Property Code, the assignment of patent or trademark rights shall be recorded with the Italian Patent and Trademark Office by filing a simple declaration of transfer executed by the assignor and the assignee, specifying in detail the list of the rights transferred, without notarial formalities.

General rules on licensing of intellectual property rights include:

- Italy has neither regulatory guidelines for licenses nor a system of governmental approval for intellectual property licensing or payment of royalties. Evidence of the assignment or license of copyrights must be given in writing.

- The Italian intellectual property laws provide for particular requirements/exceptions related to certain products, such as, new varieties of plants and pharmaceutical products which are subject to a strict administrative licensing procedure.

- In Italy, there are no specific provisions on payment of royalties. Provisions on transfer pricing are to be taken into account when transactions between related companies are to be carried out.

- Local antitrust and/or competitions laws do apply to licenses.

- In general terms, typical agreements between foreign companies and their wholly owned subsidiaries are licensing agreements.

4 FINANCIAL FACILITIES

4.1 BANKING INSTITUTIONS

Banking and financial activities are regulated in Italy by Legislative Decree No. 385 of September 1, 1993 (the "Banking Law"), which implements in Italy the EU Banking Directives setting forth the regulatory and supervision regime for banks.

Banking activities (i.e., the collection of savings from the public and the granting of credit) may be conducted only by banks authorized to perform such activities pursuant to the Banking Law. The Banking Law requires the authorization of the Bank of Italy in order to conduct banking activities in Italy, while EU banks (i.e., banks having registered office (*sede legale*) and head office (*amministrazione centrale*) in an EU State other than Italy) may operate under the so-called "Mutual Recognition" framework (i.e., they can act in Italy availing themselves of the authorization granted to them in their home country, without any obligation to establish a branch in Italy, provided that the Bank of Italy has been duly informed by the competent authority of the home EU member State).

Banking supervision is performed by the Bank of Italy, which has the power, among other things, to issue banking regulations in accordance with the guidelines set forth by the Inter-ministerial Committee for Credit and Saving (Comitato Interministeriale per il Credito ed il Risparmio – CICR).

Please note that the Bank of Italy has recently amended the Regulation No. 263 of 27 December 2006, named "*New regulations for the prudential supervision of banks*", introducing a set of specific provisions concerning, inter alia, banks' internal control system. Banks shall implement these provisions within July 1, 2014.

4.2 FINANCIAL INTERMEDIARIES

In addition to banks, the Banking Law provides for several types of entities which may grant loans vis-à-vis the public provided that they are enrolled with the "Register" held with the Bank of Italy pursuant to Article 106 of the Banking Law. Financial intermediaries are subject to certain information and control requirements by the Bank of Italy.

Registration with the "Register" is subject to the following requirements:

(a) the relevant financial intermediary shall be incorporated in the form of joint-stock company (*società per azioni*), partnership limited by shares (*società in accomandita per azioni*), limited liability company (*società a responsabilità limitata*) or co-operative company (*società cooperativa*);

(b) the registered office and the headquarters (*direzione generale*) are located in Italy;

(c) the paid-up share capital shall not be less than the minimum capital set forth by Bank of Italy in relation to the activity to be carried out ;

(d) the delivery of a plan relating to the initial activity and the organizational structure, together with the deed of incorporation and the by-laws;

(e) the shareholders and the corporate officers (*esponenti aziendali*) shall satisfy, respectively, certain integrity requirements and certain integrity, experience and independence requirements;

(f) absence of any relationship between the intermediaries or other entities of the its group and other entities which may impede the effective course of the supervisory function;

(g) the corporate object shall be limited to the granting of loans under whatever form (*attività di concessione di finanziamenti sotto qualsiasi forma*), issuance of electronic money, carrying-out of payment services and investment services (provided that they are registered with the relevant registers) and any other matter permitted by the law as well as any other connected and instrumental activity.

The microcredit (*microcredito*), i.e. loans up to Euro 25,000, may be granted by special entities enrolled with an *ad hoc* register pursuant to Article 111 of the Banking Law, vis-à-vis the public (excluded, *inter alia*, joint-stock company and limited liability company) and subject to certain conditions.

Payment services activities are regulated by Legislative Decree No. 11 of January 27, 2010 (implementing EU Directive 2007/64 - Payment Services Directive, so called "PSD"), and are reserved to banks, electronic money institutes and payment institutions. The European Central Bank, national central banks, the Italian State and any other EU member States, national, regional and local public administrations and Poste Italiane may carry out payment services.

4.3 INSURANCE AND REINSURANCE ACTIVITIES

Insurance and reinsurance activities are regulated in Italy by Legislative Decree No. 209 of September 7, 2005 (the "Insurance Code"), which implements in Italy the EU Insurance

Directives setting forth the regulatory and supervision regime for insurances and reinsurances (both for life insurance and for non-life insurance).

Insurance and reinsurance activities may be conducted only by companies authorized to perform such activities pursuant to the Insurance Code. The Insurance Code requires the authorization of ISVAP in order to conduct insurance and reinsurance activities in Italy, while companies duly registered in an EU State other than Italy may operate under the "Mutual Recognition" framework, similarly to what is provided for banks and described in section 4.1 *supra*).

4.4 INVESTMENT SERVICES AND ASSET MANAGEMENT ACTIVITIES

Legislative Decree No. 58 of February 24, 1998 (the "Financial Law") which provides for the regulation of investment services and activities, asset management and exchanges, implemented in Italy the relevant investment directives of the EU.

The Financial Law has, *inter alia*, implemented in Italy the EU Directive "MIFID", on the provision of investment services.

Under the Financial Law, investment services and activities include, following the implementation of the MIFID Directive, the following activities, where concerning financial instruments:

(i) reception and transmission of orders;

(ii) execution of orders for clients;

(iii) dealing for own accounts;

(iv) portfolio management;

(v) investment advisory;

(vi) subscription and/or placement with firm commitment underwriting or standby commitments to issuers;

(vii) placement without firm or standby commitment to issuers;

(viii) management of Multilateral Trading Facilities.

Investment services may be performed by investment firms and banks (while portfolio management may be carried out also by asset managers). With the exception of EU-investment firms and banks, which, similarly to what provided for the carrying out of banking activities,

may operate under the "Mutual Recognition" framework, investment firms must be authorized by the Commissione Nazionale per le Società e la Borsa ("Consob") – the Italian Exchange Commission – in consultation with the Bank of Italy.

Collective asset management activities are reserved to asset management companies, which are authorized by the Bank of Italy, in consultation with Consob.

Both investment firms and asset management companies are subject to supervision exercised by the Bank of Italy and Consob. While the former supervises the risk management and the financial stability of the intermediary, Consob supervises the compliance with disclosure requirements and the soundness of customer relationships.

On 16 May 2012, Italy completed the implementation process for the "Undertakings for Collective Investment In Transferrable Securities ("UCITS IV Directive"). On that date, the Legislative Decree of 16 April 2012, No. 47, transposing the Directive in Italy, was implemented through regulations made by the Bank of Italy and the CONSOB. Enacted on 13 July 2009, the UCITS IV repealed Directive 85/611/CEE and was to enter into force in member states' national legislation on 1st July, 2011.

The Directive aimed at:
(i) improving the efficiency of the financial markets;
(ii) enhancing competition conditions among undertakings for collective investment in transferable securities;
(i) ensuring a greater protection for unit-holders.

The Directive has introduced in the Italian jurisdiction a relevant number of new measures (also amending and supplementing Financial Law), *inter alia*:
(i) management companies may now create and manage harmonized undertakings for collective investments in transferable securities (UCITS) in host member states;
(ii) UCITS may also be merged on a cross-border basis;
(iii) UCITS may have master-feeder structures, where a feeder UCITS invests at least 85% of its assets in another master UCITS;
(iv) the KIID replaces the simplified prospectus;
(v) the notification procedure between national competent authorities are simplified.

Following the UCITS IV, in 2011, the European Authorities issued the "Alternative Investment Fund Management Directive", 2011/61/EU ("AIFMD"). As opposed to the UCITS legislation, the AIFMD is not focused on the "product" but on "manager" regulation.
In particular, the AIFMD regulates the marketing and the management of funds (other than UCITS) within the EU. The AIFMD and its implementing regulation, subjects fund managers to an authorisation or registration requirement as well as to a number of ongoing obligations including, in relation to investor disclosure, regulatory reporting, appointment of a depositary and limits on remuneration. The AIFMD is effective in all EU Member States since July 22,

2013. The AIFMD creates a passport for EU AIFMs authorised under the directive to market units or shares in their EU AIFs to professional investors in all EU Member States without needing to comply with any further local requirements. The directive could potentially introduce (as early as 2015) a passport for non-EU AIFMs/AIFs.
On July 3, 2013 a consultation paper has been published by the Italian Ministry of Economy (the "MEF") setting forth the main amendments to the Financial Law for the purpose of implementing. Please note that, notwithstanding the expiration of the implementation deadline of July 22, 2013, the AIFMD has not been implemented in Italy.
Moreover, on July 26, 2013 a joint communication has been issued by the Italian Regulators (i.e. Bank of Italy and Consob) aimed at providing a number of indications and clarifications on the rules which should apply until the Italian rules implementing the AIFMD will enter into force, also with respect to the notification / authorization requirements that must be complied with in order to market AIFs in Italy and/or operate on a cross-border basis by way of establishment or under the freedom to provide services (the "Joint Communication"). The contents of the Joint Communication are in line with those set out under the consultation paper on the transitional provisions applicable in relation to the AIFMD transposition (the "Transitional Provisions"), which had been previously issued by the MEF.

4.5 MARKETS AND EXCHANGES

The organization and management of regulated markets for financial instruments is an entrepreneurial activity and may be performed by joint stock companies, which may also operate as no-for-profit companies (Market Management Companies). The establishment, organization and management of regulated markets by Market Management Companies must be authorized by Consob pursuant to the Financial Law.

Market Management Companies are enrolled in a register maintained by Consob and are subject to its supervision. In particular, Consob (i) ensures that market rules are in conformity with the Financial Law and EU legislation and that such rules maintain the transparency of the market, the orderly conduct of trading and the protection of investors and (ii) for this purposes, may require Market Management Companies to amend market rules in order to eliminate any inconsistency with the above objectives.

In particular, the following regulated markets have been authorized:

(a) Borsa, which is divided into Sections: Mercato Telematico Azionario (MTA), for the trading of shares, convertible bonds, pre-emptive rights and warrants; SeDeX, for the trading of the securitized derivatives;; Electronic open-end funds and securitised derivative financial instruments market (ETFplus); Mercato Telematico delle Obbligazioni (MOT), for the trading of bonds other than convertible ones, Government securities, Euro-bonds, structured bonds, covered bonds, ABS and other debt securities and instruments tradable in the monetary market; Electronic investment

vehicles market (MIV), for the trading of shares, convertible bonds, warrants and pre-emptive rights of investment companies and real estate investment companies;

(b) Mercato degli Strumenti Derivati (IDEM), for the trading of derivative financial instruments regulated by the Financial Law;

(c) Mercato Telematico all'ingrosso dei Titoli di Stato (MTS), for the wholesale trading of Treasury Bonds; managed by Società per il Mercato dei Titoli di Stato - MTS S.p.A.; and

(d) Mercato TLX, for the trading of Treasury Bonds, corporate bonds, asset-backed securities, fund shares, sovereign bonds, managed by TLX S.p.A.

The markets (a) and (b) are managed by Borsa Italiana S.p.A. ("Borsa Italiana"), the first market managing company established in Italy.

Borsa Italiana is responsible for the organization and management of the Italian Stock Exchange. The Company, founded in 1997 following the privatization of the exchange and operational since 2nd January, 1998. Following the agreement signed in June 2007, Borsa Italiana is part of the London Stock Exchange Group and is responsible for:

- defining the rules and procedures for admission of intermediaries;
- defining the rules and procedures for admission and listing on the market for issuing companies;
- overseeing transaction activities; and
- supervising the listed companies' disclosure.

Borsa Italiana's primary objective is to ensure the development of the managed markets, maximizing their liquidity, transparency and competitiveness while pursuing high levels of efficiency and profitability.

Borsa Italiana's shareholders include issuing companies as well as domestic and international intermediaries including the most important Italian banks. Its current privatized structure configures Borsa Italiana as a market management body endowed with operational autonomy and flexibility.

Borsa Italiana organizes and manages the Italian stock market with the participation of domestic and international brokers who operate in Italy or from abroad through remote membership, using a completely electronic trading system for the real-time execution of trades.

4.6 BANK ACCOUNTS AND GRANTING OF LOANS TO FOREIGN INVESTORS

There is no specific legal requirement to open an account with an Italian banking institution in order to conduct investments in Italy. However, anti-money laundering legislation has set certain limitations for the use of cash in an investment. More specifically, transferring of cash (or bearer's bankbooks or stocks to bearer) with an aggregate value equal to or exceeding €1,000 is prohibited and, therefore, must unavoidably be effected via a banking institution or other authorized intermediary. This provision *de facto* implies that any investor conducting business in Italy needs to have a bank account, which can be maintained by a non-Italian entity.

A non-resident person is free to open a bank account in Italy. In general terms, there are no restrictions on the use of a bank account by a foreign customer. The bank must only verify the non-resident's identity and capacity according to his/her national law. Further, in order to comply with anti-money laundering provisions, banks must (i) require identification information of their clients and of the possible beneficial owner of the transaction and also the purpose and (ii) obtain information on the purpose and intended nature of the business relationship.

There are no legal prohibitions on an investor receiving bank loans, which are freely negotiated between a bank and an investor, subject to applicable provisions of law, which include usury legislation, which sets forth certain thresholds for the interest rates and other forms of remuneration applicable to financing transactions.

4.7 SECURITY INTERESTS

In the normal course of business, in order to make available loans to investors, banks may require that the relevant investor grants in their favour a security interest.

The following paragraphs outline the security interests which are customarily adopted under Italian law transactions, in respect of the following assets:

(a) shares/quotas: the security over shares/quotas can be taken only by means of a pledge. In case of shares in order for the pledge to be enforceable against third parties, the pledgee must take delivery of the certificates representing the shares (possession is an essential requirement to perfect a pledge under Italian law), but it is possible to satisfy the requirement by delivering the shares to a third party custodian. The registered shares are pledged by means of the endorsement/annotation made on the certificate to be authenticated and recorded in the shareholders' book. In case of quotas, in order for the pledge to be enforceable against third parties, the parties must enter into a notarised agreement and the pledge agreement must be deposited with the relevant Companies' Register. Dividend and voting rights are for the benefit of the secured creditor but this can be excluded by the parties in the agreement creating and governing the pledge;

(b) bank accounts: under Italian law, a security over bank account could be taken by means of a pledge over the claims of the holder of the bank account toward the account bank (i.e., over the credit balance of the relevant bank accounts) ("Pegno di Saldo di Conto Corrente"). Pursuant to Article 2800 of Italian Civil Code, in order to make the pledge enforceable against third parties, the debtor of the pledged claims must be notified of the creation of the pledge or must accept it with a written statement having a date certain at law (data certa). The pledge shall be perfected for an amount which is equal to the balance of the account at the time when the notice/acceptance statement is provided;

(c) receivables: a security over receivables may be granted as a pledge or by means of an assignment of receivables by way of security. In both cases, as in case of pledge over the bank accounts, in order to perfect the security interest, a notice of the pledge or of the assignment must be served to the relevant debtor - or, alternatively, the relevant debtor may acknowledge the pledge or the assignment - by means of an instrument bearing date certain at law (data certa). This notice establishes the debtor has been notified (the debtor must be notified to make it enforceable against the debtor) and protects the priority of the security toward third parties;

(d) real estate: the security over real estate can be taken only in the form of a mortgage. The security document must be notarised and the mortgage must be registered with the land registry. Registration of the mortgage with the land registry is a requirement of perfection of the mortgage (i.e., the security interest does not exist until registration is made). The mortgage does not involve the transfer of the ownership of the real estate;

(e) trademarks: the security over trademarks can be taken by a pledge. The pledge agreement over trademarks must be notarised and the security must be registered with the Ufficio Italiano Marchi e Brevetti. The procedure for registration and perfection of the security interest may be lengthy;

(f) plants/machinery/inventory: Article 46 the Banking Law provides for a "special lien" in order to create a security interest over plants, machinery, inventory and certain other movables inherent to the financed business concern. The security agreement must be notarised and the lien must be registered in a public register held with the court where the debtor has its registered office.

In addition to the above, under Italian law, a party may grant a personal surety (*fideiussione*) in order to guarantee the performance by a third party debtor of its payment obligations, undertaking toward the relevant creditor to indemnify it in case of the relevant debtor's default. Under Italian law, if such surety is granted as security for future obligations of the relevant debtor, it shall expressly provide for a maximum cap up to which the surety shall operate.

4.8 DECREE 170

Italian Legislative Decree 21 May 2004, No. 170 ("Decree 170") implemented EU Directive 2002/47/CE on Financial Collateral Arrangements. Decree 170 provides for special provisions applicable to security over financial collateral, aimed at fostering the perfection and enforcement of financial collateral arrangements. It applies to the following contracts:

(a) title transfer agreements (i.e. contracts where the ownership of the collateral passes to the collateral taker for the purpose of securing the performance of the financial obligations, provided that the collateral or equivalent assets will be transferred back to the guarantor when the obligations are discharged); and

(b) security agreements (i.e. contracts where the collateral taker gains physical possession or control of the collateral, but does not become the owner of it),

provided that (i) the collateral agreement is in writing, (ii) the security is granted and such granting is evidenced in writing and (iii) the parties fall within one of the following categories:

(i) public entities;

(ii) European Central Bank, Central Banks of the European Union, BIS, Multilateral Development Banks, IMF, EIB;

(iii) supervised financial institutions (credit entities, investment services companies, insurance companies etc.);

(iv) central counterparties (*controparti centrali*), settlement agents (*agenti di regolamento*)and clearing houses (*stanze di compensazione*); and

(v) legal persons other than the entities referred to above (but not natural persons), provided that the other party to the agreement is one of the entities mentioned above.

The proof of the granting of the security shall identify the date on which the security is created and the subject of the collateral. For this purpose, pursuant to Decree 170, the registration of the financial instruments in the dedicated accounts opened by financial intermediaries and the annotation of cash in the relevant account are sufficient. The collateral must consist, among the others, of cash, financial instruments (inter alia, traded shares, bonds, securities) or pecuniary claims arising from loans granted by credit entities.

Pursuant to Decree 170, if the security agreement so provides, the guarantor and the beneficiary of the security may conventionally regulate the replacement, in whole or in part, of

the financial collateral during the life of the agreement, within the limit of the collateral originally posted. In addition, the parties may agree upon an obligation to post additional collateral or top up the existing collateral in case of fluctuations (i) in the value of the principal secured obligation as a consequence of a fluctuation in the current market values or in the value of the collateral or (ii) in the value of the principal secured obligation, for reasons other than those in (i) above.

Decree 170 has introduced a number of innovations to the legal regime of security agreements in case of an insolvency of the guarantor.

Under Decree 170, enforcement may be carried in three ways:

i) sale;

ii) appropriation (of collateral other than cash); or

iii) set-off.

No prior notice, court authorisation or waiting period is needed to enforce the security interest. The parties, however, will have to act in accordance with the terms and conditions of the security financial collateral agreement. Appropriation is possible only if the parties have expressly agreed such possibility in the relevant collateral agreement, together with the valuation, or the relevant valuation criteria, of the financial instruments. The secured creditor must promptly inform the debtor (or the receiver/competent body of the liquidation/reorganisation procedure in an insolvency scenario) of the terms of the enforcement and the proceeds arising therefrom and shall return to the debtor any amount in excess of its claim.

5 IMPORT - EXPORT REGULATIONS

5.1 CUSTOMS REGULATIONS

Italy is a signatory of the General Agreement on Tariffs and Trade ("GATT") since 1950 and is a member of the World Trade Organization since it came into being on 1 January 1995.

Italy is also a founding member of the European Union (EU). The EU is based on a customs union, which entails:

- the elimination of all customs duties and other restrictions on imports and exports between EU Member States (goods can be transferred from one EU Member State to another without completing customs formalities);

- the application of a common customs tariff to goods imported from outside the EU;
- the common commercial policy.

Regulation (EEC) 2913/92 of October 12, 1992, as amended, (the "*Community Customs Code*"), Regulation (EEC) 2454/93 of July 2, 1993, as amended, (the "*Implementing Regulation*") and Regulation (EC) No. 2658/87 of July 23, 1987, as amended, (the "*Community Customs Tariff*") are the main instruments comprising the legislative framework for customs administration in the EU Member States. They are directly applicable in all EU Member States and have primacy over the national law of the Member States.

However, Community customs law is executed by the national authorities of the Member States.

The Community Customs Code consists of 253 articles relating to, among other things, its scope of application, factors on the basis of which duties are applied (customs tariff, tariff classification, origin of goods and customs value), provisions applicable to goods brought into the customs territory of the Community (entry, presentation to customs, unloading, temporary storage and transit), the different customs procedures (release for free circulation, external transit, customs warehouses, inward processing, processing under customs control, temporary importation, outward processing, export, internal transit, free zones and free warehouses, re-exportation, destruction and abandonment), provisions on goods leaving the customs territory of the Community, privileged operations (such as duty relief, returned goods and products of sea fishing and other products taken from the sea), customs debt (security, incurrence, recovery, repayment and remission of duties) and appeals. Please note that Regulation (EC) 450/2008 of April 23, 2008 has introduced a modernized customs code that will replace the Community Customs Code, once the necessary implementing provisions are adopted and made applicable, at the latest by 24 June 2013. In the interim period the Community Customs Code applies.

Detailed provisions necessary for the implementation of the Community Customs Code are set out in the Implementing Regulation. At the national level, implementing measures are also contained in the Consolidated version of the provisions relating to customs duties (*Testo unico delle disposizioni legislative in materia doganale,* TUDL) approved by Decree No 43 of the President of the Republic of 23 January 1973.

For the purpose of the Community Customs Tariff, goods are classified in the Combined Nomenclature (CN), a system of classification of goods based on the Harmonized System (HS) of the World Customs Organization, with further EU subdivisions.

Through the common commercial policy the EU has exclusive competence for negotiating tariff and trade agreements with third countries, granting unilateral preferences and adopting measures to protect trade such as anti-dumping measures, countervailing measures and

safeguard measures. The EU may also initiate investigations under the "Trade Barriers Regulation" and start WTO Dispute Settlement proceedings.

On January 1, 2001, the Italian legislature formed a customs agency in order to enhance the dynamic administration of trade. Such agency is a public entity with judicial powers and broad administrative discretion and autonomy. Economic operators wishing to import or export a product in or from Italy may request the customs agency to issue binding tariff information (BTI) or binding origin information (BOI).

The territories of the EU Member States together form the customs territory of the EU. However, the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio, although being in Italy, are excluded from the EU customs territory.

5.2 EXPORTS

In general, there are no specific restrictions on exports. However, EU Regulations and Italian law also provide specific restrictions with respect to the export of certain goods such as, for example, arms and dual use goods, pharmaceutical products and national treasures and works of art.

5.3 IMPORTS

As mentioned above, the EU Member States have fixed a Community customs tariff with conventional duty rates, but also apply preferential rates on the basis of association agreements, free trade agreements or general tariff preferences. All the various measures applicable to goods are included in the Integrated Tariff (TARIC). The TARIC includes the provisions of the combined nomenclature but also additional provisions specified in Community legislation such as tariff suspensions, tariff quotas, tariff preferences and trade defence measures (anti-dumping, anti-subsidy, safeguards).

In general, import barriers are limited to those justified by political and sanitary reasons.

6 STRUCTURES FOR DOING BUSINESS

6.1 GOVERNMENTAL PARTICIPATION

The Italian economy is a market-based economy. The European political and economic common space has determined the almost total liberalization of the commercial and industrial foreign investments. The government is still present in certain industries such as, for example, defence and certain other sectors which provide essential public services.

Typically, governmental control over a company is exercised through a so-called "golden share" participation, *i.e.* by means of specific control rights which are not necessarily based upon a majority shareholding by the government. In light of the fact that golden share participations violate existing EU regulations and for other policy reasons, the Italian government has almost concluded a full privatization process for state-owned companies.

6.2 JOINT VENTURES

The first step to establish a joint venture in Italy is usually the execution of a joint venture agreement, setting forth the terms and conditions of the alliance between or among the parties.

In the event that a new company is established for the joint venture, prospective shareholders may consider several factors when selecting the type of company to be incorporated and management policies to be followed.

There are no restrictions as to the type of entities which can be established for a joint venture. Both stock companies (*Società di Capitali*) and partnerships (*Società di Persone*) may be used as corporate vehicles by the joint venture parties. Therefore, incorporation procedures and related costs and fees mostly depend upon the type of entity selected by the parties.

The corporate vehicle may be managed and/or represented by foreigners without restrictions; Italian law requires only directors to obtain a Italian social security number before accepting their designation as directors of an Italian corporate entity.

Under commercial praxis, business is divided into large, small and medium-sized ("SMEs") and micro enterprises:

- Employees: a maximum of 10 employees for micro companies, 50 employees for small companies, and 250 for medium-sized ones;
- Turnover: a maximum turnover not exceeding 2 million euro for micro business, 10 million euro for small and 50 million euro for medium-sized companies;
- Shareholding: the beneficial company may not be more than one quarter participated (25%) by companies or groups not failing within the category of small to medium-sized company.

6.3 LIMITED LIABILITY COMPANIES

In Italy, there are two types of companies which are customary used for the expansion of foreign businesses. Such companies are the *Società per Azioni* (*S.p.A.*) and the *Società a Responsabilita' Limitata* (*S.r.l.*).

(a) *Società per Azioni*

S.p.A. is arguably the most common business form for medium and large companies with significant investments. Incorporation of a S.p.A. is effected by means of a public deed drafted by a notary public; such deed must then be filed with the Companies Register maintained by the competent Chamber of Commerce within 20 days from the date of incorporation. The minimum statutory capital of a S.p.A. is €120,000 (25% of such capital must be paid in upon incorporation). Further, a S.p.A. may issue shares, bonds and other financial instruments of debt or risk, if duly authorized and permitted by its bylaws.

As for corporate governance of a S.p.A., three basic alternatives are available:

(i) The management of the company may be entrusted to a Board of Directors or to a Sole Director, appointed by shareholders. The shareholders also appoint a Board of Statutory Auditors that has supervisory powers over the company's management and its accounts. All members of the Board of Statutory Auditors must be accounting experts registered in a special register. Alternatively, external auditors may be appointed.

(ii) The bylaws may provide for a Board of Directors appointed by the shareholders, which, in turn, elects from within its members an Audit Committee (*Comitato di Controllo*). An external auditing body must supervise the company's accounts.

(iii) The bylaws may provide for a Supervisory Board (*Consiglio di Sorveglianza*) appointed by shareholders. The Supervisory Board is in charge of supervising the company's management. Moreover, the Supervisory Board appoints a Management Board (*Consiglio di Gestione*) which manages the affairs of the company. If resolved upon by shareholders, an external auditor is appointed to supervise the company's accounts.

(b) *Società a Responsabilità Limitata*

S.r.l. is the legal form most suitable for small and medium companies with a limited number of shareholders. The minimum statutory capital for a S.r.l. is €10,000 (25% of such capital must be paid in upon incorporation, alternatively is possible to substitute the payment with an insurance policy or a bank guaranty of the same amount).

Shareholders may be appointed as directors of the company and its management can be entrusted to either one director or to a Board of Directors, as prescribed by the bylaws. A Board of Statutory Auditors is not required unless the company's capital exceeds €120,000 or, if for two consecutive years, two of the following three threshold limits are exceeded:

- Total assets (as per the latest financial statements) exceeding €4,400,000;
- Revenues from sales in excess of €8,800,000;
- Average number of employees during the preceding fiscal year higher than 50.

The organizational documents must be drafted by a notary public who, within 20 days from the signature, must file such documents with the competent Companies Register.

In general, the main costs associated with the formation of an Italian company (with standard bylaws) are related to Public Notary and legal fees. The same costs are applicable for the establishment of a branch.

The procedures for the establishment of a S.p.A. and a S.r.l. (in their simple standard forms) ordinarily may take from one to two weeks.

Both the *S.p.A.* and the *S.r.l.* may be incorporated by a sole shareholder or by a number of shareholders. The same procedures and provisions mentioned above with reference to companies with a number of shareholders are applicable to a sole shareholder.

Specific disclosure is required in the case of a sole shareholder; otherwise, such shareholder would become fully liable for the company's obligations.

6.4 PARTNERSHIPS

In Italy the term *Società* or company includes all profit-making entities, *i.e.* partnership-type entities (*Società di Persone*) and stock companies (*Società di Capitali*).

Partnership-type companies are *Società Semplice*, *Società in Nome Collettivo*, and *Società in Accomandita Semplice*. Such companies are characterized by the joint and unlimited liability of the partners, with the exception of A*ccomandanti* in the case of *Società in Accomandita Semplice* (see below paragraph 6.5). Following is a description of the main characteristics of the two main types of partnership-type entities, the *Società Semplice* and the *Società in Nome Collettivo*.

(a) *Società Semplice*

The *Società Semplice* is a partnership-type company which may be used for non-commercial activities (in particular, agricultural activities), characterized by the joint and unlimited liability of its shareholders.

Unless otherwise prescribed by its bylaws, the management of the *Società Semplice* is severally entrusted to each of its shareholders. No minimum capital is required for its incorporation and its profits are taxed at the partner's level.

(b) *Società in Nome Collettivo*

The *Società in Nome Collettivo* is the most common partnership-type company which may be used for commercial activities. In a *Società in Nome Collettivo*, all shareholders are jointly and severally liable for the third-party obligations of the company. The incorporation of such company is not subject to particular formalities, unless certain assets are contributed by shareholders (*e.g.* real estate or registered assets). No minimum capital is required for its incorporation.

One or more directors may manage the company. Their powers may be unlimited unless certain formalities are fulfilled by filing specific documentation with the Companies Register held by the Chamber of Commerce.

6.5 OTHER TYPES OF COMPANIES

Two other types of companies may be incorporated in Italy. Such companies categorize partners for purposes of management duties and liability. In a *Società in Accomandita*, there are two main categories of partners: (i) the *Accomandanti* which are exposed to limited liability since such partners are not allowed to perform any management acts on behalf of the company and (ii) the *Accomandatari* which manage the company and are held fully and jointly liable for any acts they perform on behalf of the company.

A*ccomandanti* are comparable to contributing/financial partners, while A*ccomandatari* may be considered as managing partners.

The participations in the *Società in Accomandita* may be in the form of shares (*Società in Accomandita per Azioni*) or may be simply recorded in the stakeholders' register kept by the company (*Società in Accomandita Semplice*).

6.6 SUBSIDIARIES/BRANCHES/REPRESENTATIVE OFFICES

Italian subsidiaries of foreign companies are subject to the provisions of law applicable to national entities. Certain requirements related to disclosure and holding company liability (in case of operations executed for the sole benefit of the group) are applicable. In general, Italian corporate law applies to those entities incorporated in Italy or that have in Italy their main office (*sede dell'amministrazione*) or the center of their interest (*oggetto principale*).

Pursuant to Italian law, a branch office (which is an alternative to the establishment of a subsidiary) is an entity with no independent legal status, and as such forms part of its foreign parent company. Therefore, all requirements pursuant to parent company legislation must be fulfilled together with applicable requirements provided by Italian law for foreign owned branches. In particular, certain parent company documents must be filed in Italy (*e.g.*, current bylaws and corporate resolutions authorizing the establishment of the branch office). In

addition, a branch office must file with the Companies Register information related to the agents permanently representing the company in Italy, with specific reference to their management and/or representative powers.

A representative office can be easily established in Italy (it has no corporate structure or procedures for incorporation) and may be convenient from a fiscal stand point. However, such office is subject to a number of important operational limits. For example, representative offices may not be active in product marketing. Moreover, customary activities for a representative office are limited to collecting information, conducting market research and promoting the foreign enterprise's name and brand.

6.7 TRUSTS AND OTHER FIDUCIARY ENTITIES

The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition was ratified pursuant to Italian Law No. 364 of 16 October 1989, and came into force on 1 January 1992. As there is no domestic legislation relating to trusts, they can only be established in Italy in accordance with the Hague Convention and subject to a foreign law. Due to lack of domestic legislation, case law has developed with respect to trusts. There have been over seventy judgements relating to trust in Italy in the past few years.. The Italian Parliament has approved a complete set of tax provisions on trust in Italy pursuant to law No. 296 of 27 December 2006.
Ultimately, Article No 2645 *ter* of the Italian Civil Code offers the opportunity to separate part of an individual's own estate (represented by real estate and other "registered assets") to attribute such assets to purposes recognized by the Italian legal system, for a maximum period of ninety years. The allocation must be made by the transferor or third parties and neither the assets nor the income produced by them can be claimed by third parties for purposes other than those assigned.

S*ocietà Fiduciarie* (fiduciary companies) are recognized in Italy to the extent that they are authorized pursuant to the provisions of the Ministerial Decree of January 16, 1995. Such decree provides for specific capitalization and corporate requirements which must be fulfilled by the fiduciary companies in order to perform their activity in Italy.

7 REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

7.1 FOREIGN INVESTMENTS

In general, foreign investments in Italy are not restricted with the exception of owning and operating aircrafts or ships: these must be under control and management of Italian or EU citizens or companies. However, please note that any acquisition of a considerable

shareholding in certain corporations (such as, for example, banks and insurance companies) must be approved by the competent Authorities.

7.2 ANTITRUST LAWS

The basic antitrust legislation is contained in Law No. 287/90 of 10 October 1990 (Competition Act), which provides for the protection of competition on the national market and Presidential Decree No. 217 of 30 April 1998, which regulates investigation procedures pursuant to the Competition Act.

The Italian Antitrust Authority (*Autorità Garante della Concorrenza e del Mercato*, IAA) is mainly responsible for controlling:

- concentrations;
- agreements that prevent, restrict or distort competition; and,
- abuses of dominant position.

Furthermore, the IAA is competent for misleading and comparative advertising and conflicts of interest of officials working for the Italian Government.

Decisions issued by the IAA can be challenged before the Lazio Regional Administrative Court (*Tribunale Amministrativo Regionale per il Lazio*, TAR Lazio) within 60 days from their notification to the filing parties. The judgments of TAR Lazio can be appealed before the Administrative Supreme Court (*Consiglio di Stato*).

The Italian antitrust rules are not applicable if the transaction falls within the scope of EU antitrust provisions.

In Italy, offences against the Competition Act are not subject to criminal penalties.

(a) *Concentrations*

Joint venture arrangements, mergers and acquisition of control (whether direct or indirect) of companies or business entities through the purchase of shares or assets, by contract or other means, may be subject to prior scrutiny of the IAA which may prohibit the implementation of such transactions if it determines that the proposed transaction unlawfully limits competition.

Concentrations in specific economic sectors may require multiple filings to different authorities, each of them analyzing and assessing different aspects of the transaction. These sectors are the banking and financial sector, the telecommunications, radio and television broadcasting sector and the insurance sector.

The Italian provisions concerning concentrations are widely modelled on European merger legislation and practice. The 'one-stop shop' principle applies. The IAA follows, in principle, the guidelines set forth in the European Commission's notices relating to concentrations subject to Regulation (EC) 139/2004.

Prior notification to the IAA is required if both the following two criteria are met:

(i) The aggregate total turnover in Italy of all the companies involved (*i.e.*, the Italian turnover of the purchaser and the target) exceeds €482 million in the aggregate; and,

(ii) The domestic turnover of the target company or business to be acquired exceeds €48 million[1].

The term "turnover" means sales made in Italy in the previous financial year by the involved companies and their respective groups.

Informal guidance may be requested from the IAA. During the pre-notification phase, the parties may submit a written description of the transaction to be discussed with the Authority's officials.

Notification must be done through the completion of a form which must be filed immediately upon execution of the merger or purchase agreement. No filing fee is required. Within 30 days from receipt of the form, the IAA can launch an in-depth investigation if it believes that the proposed transaction may create or strengthen a dominant position on the Italian market with the effect of eliminating or restricting competition significantly and on a lasting basis. In such case, the authority is required to issue its decision within 45 days from the date of opening of the investigation. If, on the contrary, the IAA decides that the transaction does not give rise to competition concerns, it must communicate its approval to the parties within 30 days from its receipt of the form.

Contrary to EU antitrust approval, which must be obtained prior to the closing of a transaction, an acquisition or a merger can be implemented in Italy prior to the decision of the IAA. However, the IAA, upon launching an investigation, may instruct the parties to suspend the implementation of the transaction pending its final decision.

The IAA can clear or prohibit a concentration. In addition, it can make the approval of a concentration subject to structural or behavioural commitments by the parties to remedy any resulting distortion of competition.

In the case of failure to notify, the IAA can impose on the parties responsible for the notification a fine of up to 1 per cent of their annual worldwide turnover. The IAA can also

[1] The thresholds are updated by the Italian Antitrust Authority on a yearly basis.

impose fines ranging between 1 per cent and 10 per cent of the annual worldwide turnover of the business forming the object of the concentration if a prohibited concentration is implemented or an order by the IAA to restore conditions of effective competition and remove the effects that caused the distortion has not been complied with.

(b) *Agreements that prevent, restrict or distort competition*

Article 2 of the Competition Act, similar to Article 101 of the Treaty on the Functioning of EU, provides that agreements are prohibited between undertakings, which have as their object or effect an appreciable prevention, restriction or distortion of competition within the national market or within a substantial part of it. The prohibition applies for example to price-fixing or market sharing cartels.

An investigation may be started by the IAA on its own initiative, or following a complaint by an undertaking, a public agency or a private individual.

Companies being investigated may submit commitments within three months of the opening of a proceeding. If the IAA accepts the commitments, they will become compulsory and the proceeding will be closed without reporting an infringement. In the event of a failure to comply with commitments the Authority may impose an administrative fine of up to 10% of turnover.

Since February 2007 a leniency programme is in place. A company will not receive any fine if it is the first to submit voluntarily information or evidence as to the existence of an agreement, if such information or evidence is decisive for the finding of an infringement. A reduction of no more than 50% of the fine may be applied if the submitted evidence significantly strengthens, by its very nature or its level of detail, the evidence already in the possession of the IAA.

(c) *Abuses of dominant position*

The abuse by one or more undertakings of a dominant position within the domestic market or in a substantial part of it is prohibited. Examples of such abuse include imposing unfair purchase or selling prices or other unfair contractual conditions, and limiting or restricting production, markets or investment, technical development or progress. Companies being investigated may submit commitments within three months of the opening of a proceeding into abuses of a dominant position. If the IAA accepts the commitments, they will become compulsory and the proceeding will be closed without reporting an infringement. In the event of a failure to comply with commitments the Authority may impose an administrative fine of up to 10% of turnover.

7.3 ENVIRONMENTAL REGULATIONS

Please see Chapter 3.1.

7.4 GOVERNMENT APPROVALS

No specific governmental approvals are required to operate businesses in Italy, unless such businesses conduct regulated activities such as media and telecommunication, production or distribution of energy (gas and/or electricity), or banking, insurance, investment services, and related financial services. In such cases, governmental authorities issue specific authorizations for the performance of such activities (see section 4 *supra*).

7.5 LICENSES/PERMITS

Licenses and permits may be required in connection with certain specific activities such as the production or distribution of food products or health care products.

8 OPERATION OF A BUSINESS

8.1 ADVERTISING

There are general regulations on misleading and comparative advertising (the latter is allowed only to a certain extent) and specific restrictions on the promotional activities related to specific products (such as tobacco, prescription drugs and alcohol) and professional services (such as legal services). Furthermore, television and radio advertising must not (i) offend human dignity or religious or idealistic beliefs, (ii) evoke racial, sexual or citizenship discrimination, (iii) lead the public to behave in a dangerous way. Mostly, the media adheres to an advertising self regulatory system referred to as the *Istituto dell'Autodisciplina Pubblicitaria* which aims to guarantee an honest, truthful and appropriate advertising.

8.2 BUSINESS ETHICS/CODES

In general, commercial activities must be conducted in compliance with Italian law. Further, depending on the activity performed by the investor, professional codes of conduct, specific ethics codes or contract models adopted by professional and trade associations may be applicable (i.e. for professional, financial or banking services, franchising networks), although such provisions are usually not binding. As for accounting, national accounting principles must be followed by the investor (Please see Section 3 above).

In addition, please note that, according to Legislative Decree no. 231/2001, the companies operating in Italy may be subject to administrative sanctions for certain crimes committed by the company's officers in the interest of the company (including, crimes against the Public Administration, crimes against the health and safety of workers, market abuse, corporate crimes, etc.). In such case, unless the company proves that it adopted appropriate models of internal control aimed to prevent the officers' crimes, the company may be subject to

monetary fines and other sanctions, including the prohibition to carry out the business and the prohibition to negotiate with the Public Administration.

8.3 CONSUMER PROTECTION LAWS

In recent years, several regulations have been adopted in order to implement EC directives related to consumer rights (certain of these provisions have been incorporated into the Consumer Protection Code). There are specific provisions which protect consumers mainly in respect of (i) contracts negotiated outside the business premises, (ii) distance contracts, (iii) unfair contractual terms with a seller or supplier, and (iv) damages caused by defective products. Further, consumer protection is generally assured by providing the consumer with (i) an adequate knowledge of the terms of the transaction to be concluded, (ii) the right to revoke the contract for a specific period subsequent to its execution, and (iii) the inversion of the burden of proof.

8.4 CONSTRUCTION

Specific authorizations such as building permits and concessions must be requested from regional or local administrative authorities, depending on the features and the location of the work. Interior works may be commenced without any authorization, as long as notification is provided to local authorities. Specific limitations may apply for construction activities in areas which are protected by general land-use restrictions.

Time necessary to obtain permits, concessions and authorizations varies according to the relevance of the works and to the administrative authorities involved.

8.5 CONTRACTS

An investor can freely enter into local contracts taking into consideration Italian investment regulations and bilateral/multilateral treaties on international investments signed by Italy and the country of the investor.

Investment contracts can be governed by a foreign law if such law is applicable according to relevant conflict rules, which include a choice of law by parties to the contract. However, Italian regulations provide for mandatory provisions which are also applicable to contracts governed by foreign laws.

8.6 PRICE CONTROLS

In general, there are no administrative controls over prices. However in certain sectors of the economy such as public services (transport, energy, and gas) or tobacco retailing, prices are regulated or fixed by public authorities.

8.7 PRODUCT REGISTRATION

With the exception of specific industries (such as, for example, pharmaceuticals and medical devices), no prior registration is required for the marketing and sale of products in Italy. However, in order to be sold in the market, products must be in compliance with all relevant national and EC provisions in terms of product safety, ingredients, packaging and consumer instructions.

8.8 REDUCTIONS OR RETURN ON CAPITAL

In general, there are no restrictions on the movement of capital; in certain (limited) cases, a preliminary communication to the competent authorities is required.

8.9 SALE OF GOODS

In order to sell products to customers, a commercial permit must be obtained from a local authority. For specific activities and services related to public safety, marketing and sale must be in compliance with the provisions of the T.U.L.P.S. (Consolidated Act on Public Safety). Further, as a general rule, premises must be in compliance with hygienic and sanitary provisions related to the products which are sold or to the services which are offered.

8.10 TRADE ASSOCIATIONS

In Italy there are numerous trade associations although membership in such associations is not compulsory. In contrast, membership in professional organizations is required for individuals providing certain professional services (such as lawyers, architects and doctors). Both trade associations and professional organizations usually require the payment of annual fees. Mandatory trade practices for members are often stipulated, however, such practices may be in breach of competition rules if they involve price fixing or the formulation of commercial strategies for members.

9 CESSATION OR TERMINATION OF A BUSINESS

9.1 TERMINATION

The so-called *Società di Capitali* (*S.p.A.*, *S.a.p.a.* and *S.r.l.*) may be terminated voluntarily or upon occurrence of specific events prescribed by the law or set forth in the company's certificate of incorporation. Termination is implemented pursuant to a three—phased procedure:

(i) Preliminary Phase – Upon occurrence of an event of termination, an extraordinary meeting of the shareholders (or a judge, as the case may be) must appoint one or more receivers. The directors of the company must deliver to the receiver(s) (x) the

company's assets and books, and (y) updated financial statements from the date of the latest approved balance sheet and the date of termination;

(ii) Liquidation Phase – The receiver(s) may implement all ordinary or extraordinary transactions aimed at winding up the company's business, in order to pay the company's creditors and distribute the remaining assets to the shareholders; and

(iii) Final Phase – Once the company's assets have been liquidated, the receiver(s) will draft a final balance sheet and, if the company still has assets after satisfaction of all of its creditors, a distribution plan. Finally, the receiver(s) will distribute the assets to the shareholders and request the company to be cancelled from the competent Companies Register.

9.2 INSOLVENCY/BANKRUPTCY

The Italian insolvency legislation is currently set forth by Royal Decree No. 267 of 16 March 1942, as amended and supplemented in 2005, 2006, 2007 and 2013. In Italy, the courts play a central role in the insolvency process and out-of-court restructurings have been infrequent in the past. Though some uncertainties remain, the afore mentioned reforms have gone a long way to introducing into Italian insolvency practice the opportunity for distressed debtors to resolve temporary financial difficulties through settlements with creditors and contracting new financing.

The primary aim of the bankruptcy proceedings is to liquidate the debtor's assets for the satisfaction of creditors, with a view to ensuring an equal treatment (*par condicio*) to all creditors. On the other side, the extraordinary administration procedure is also aimed to restructure the business and maintain employment and these aims often have been balanced by the sale of businesses as going concerns and ensuring that employees are transferred along with the businesses being sold.

Under Italian law, a company may be declared insolvent by a court only, based on its insolvency (insolvenza). Insolvency occurs when a debtor (i.e. a company) is no longer able to regularly meet its obligations as and when they become due on a permanent, rather than temporary, basis. The following restructuring and bankruptcy alternatives are available under Italian law for companies facing financial difficulties:

(i) *Restructuring outside of judicial process*. In Italy, restructuring generally takes place through the formal judicial process because of the more favourable conditions for the debtor and the fact that informal arrangements put in place as a result of a non-judicial restructuring are vulnerable to being reviewed by a court in the event of a subsequent insolvency and possibly challenged as voidable transactions. However, in cases where a company is solvent, but is facing financial difficulties, it may be possible for the

company to enter into an out-of-court arrangement with its creditors (*concordato stragiudiziale*), which may safeguard the existence of the company;

(ii) *Court-supervised pre-bankruptcy composition with creditors* (*concordato preventivo*). Prior to the declaration of bankruptcy, any company that is in a distressed condition (*stato di crisi*) may make a proposal for a composition with its creditors (*concordato preventivo*), in order to avoid a declaration of bankruptcy and the initiation of liquidation proceedings. Application for pre-bankruptcy composition shall be filed with the competent Court. Only the distressed company (and not its creditors) can file for pre-bankruptcy composition and the filing must be approved by its board of directors. Applications for a pre-bankruptcy composition must be based on a composition plan. The plan may include: (a) debt restructuring and payment of credits through any means, including assignment of assets, assumptions of the debt (*accollo*) and other extraordinary transactions, such as the granting to creditors, and companies formed or owned (in whole or in part) by creditors, of shares, bonds, including convertible bonds, or other financial and debt instruments; (b) the assignment of the debtor business to third parties including creditors, and companies formed or owned (in whole or in part) by creditors, or to be formed during implementation of the plan, the shares of which are to be attributed to creditors as a result of the plan; (c) the division of creditors into classes according to like legal position and homogenous economic interest; and (d) differential treatment of creditors belonging to different classes. The application for pre-bankruptcy composition must be accompanied by, amongst others, a report drafted by an eligible professional. The composition plan is approved with the favourable vote of creditors representing the majority of credits entitled to vote. If there are different classes of creditors, approval of the composition plan requires the favourable vote of creditors representing the majority of credits admitted to each class. Secured creditors shall be excluded from voting on the composition plan, except to the extent that they renounce their security interest. During the pendency of concordato preventivo proceedings, all actions by creditors are stayed. During the implementation of the arrangement, the company is managed by the debtor but under the surveillance of an official appointed by the court, and under the supervision of the court. If the concordato preventivo fails, the company could be declared bankrupt by the court and enter bankruptcy (*fallimento*) proceedings (described below, part IV);

(iii) *Debt restructuring agreements* (*accordi di ristrutturazione dei debiti*). Companies may: (a) reach an agreement with their creditors representing at least 60% of all claims; and (b) following publication in the companies register, submit the agreement to the Court for approval. Application to the Court to obtain approval for the restructuring agreements shall be filed by the debtor. As for the pre-bankruptcy composition, the filing must be approved by the debtor's board of directors and creditors are not entitled to take the initiative for a 60-day period starting from the date of publication of the restructuring agreement and. Restructuring agreements may include a wide range of provisions such as rescheduling of debts, partial debt forgiveness, transfer of assets to creditors,

conversion of credits into equity, and refinancing of the company with the purpose of permitting a restructuring and the continuation of the debtor's business. All creditors are not required to receive the same treatment as each is free to evaluate the debtor's proposals and to autonomously protect its own position. The restructuring agreement must be accompanied by an expert's report regarding the feasibility of the restructuring agreement with particular reference to the debtor's ability to ensure the regular (i.e. complete) payment of creditors not adhering to the restructuring agreement. Following a restructuring agreement, there is no dispossession and the debtor remains entitled to manage its business. If a restructuring agreement is not implemented, the adhering creditors would be able to terminate it for non-performance in accordance with the provisions set out in the Italian civil code on contracts.

(iv) *Restructuring plans (piani di risanamento)*. Acts, payments and securities/guarantees granted on the debtor's assets, provided they are made in implementation of a plan that appears to be capable of permitting the restructuring of the debtor's indebtedness and to ensure the rebalancing of its financial condition and the rationality of which is attested in accordance with the provisions of Article 2501-bis, fourth paragraph of the Italian civil code, are exempt from bankruptcy claw back. Restructuring plans are not under any form of judicial control or approval and, therefore, no application is to be made to the Court or other supervising authority. An expert's reasonableness attestation is required in relation to a restructuring plan. The expert must be either an auditor or an auditing company enrolled in a special register and, according to the prevailing opinion, is appointed by the company and not by the Court. Creditors are not required to receive the same treatment as they are free to evaluate the debtor's proposals and to autonomously protect their own position. Restructuring plans do not require the consent of a specific majority of all outstanding claims. Following a restructuring agreement, there is no dispossession and the debtor remains entitled to manage its business. No Court or creditors' appointed officer is contemplated nor any Court's supervision.

(v) *Extraordinary administration for large companies (amministrazione straordinaria delle grandi imprese in crisi)*. Under Italian law, large industrial and commercial enterprises may avail themselves of special administration proceedings. The purpose of the administration proceedings is to rehabilitate a company in financial distress in light of the significance of the company's technical, commercial and productive value and to maintain employment. Pursuant to the Legislative Decree No. 270 of 8th July 1999, the requisites to be admitted to *amministrazione straordinaria* are (i) a number of employees equalling at least 200 in the year before the procedure was commenced; (ii) debt equal to at least two-thirds of its total assets and two-thirds of its total income generated by sales and services for the last fiscal year. The effects of the procedure consist of: (i) the adoption of a rehabilitation program which might alternatively be (a) a program of corporate restructuring (lasting a maximum of two years); or (b) a program of asset disposals (lasting a maximum of one year); (ii) stay of actions by creditors; (iii)

appointment by the Government of one or three receivers (*commissario straordinario*) to substitute the existing management in the company's operations. The court must assess the prospects of the plan's success in light of reports submitted by the receiver/s; the court then either issues a decree to place the enterprise under the administration procedure or orders judicial liquidation.

New extraordinary administration proceedings have been enacted (*amministrazione straordinaria delle grandi imprese in crisi* ex Law Decree no. 347 of 23 December 2003, as subsequently amended) and are available to insolvent companies having more than 500 employees in the year before the procedure was commenced and debt (including those from outstanding guarantees) equal to at least € 300 million. This recent legislation represents a refinement of the old proceedings as it expedites the admission to extraordinary administration for the companies which satisfy the aforementioned conditions. The substantial effects of the procedure, however, remain unchanged, the main difference being that the claw-back provisions apply also in case of a restructuring program authorized by the Government.

(vi) *Bankruptcy proceeding (fallimento)*. A commercial entity may be deemed insolvent when it is unable to pay its debts as they fall due (Article 5 of the Insolvency Act). A request to declare a company bankrupt and to commence a bankruptcy proceeding (*fallimento*) for the liquidation of a company can be made by the company, the creditor(s) or a public prosecutor. Upon the declaration of bankruptcy: (i) subject to certain exceptions, all actions of creditors are stayed and creditors must file claims within a defined period; (ii) the administration of the company and the management of its assets pass from the debtor to the receiver; and (iii) any act made by the company after a declaration of bankruptcy is ineffective with respect to the creditors. The bankruptcy proceeding is carried out and supervised by a court-appointed receiver, a deputy judge and a creditors' committee. The Court declaring the bankruptcy has the control over the entire procedure and has the exclusive jurisdiction with respect to all the actions arising from and related to the bankruptcy procedure. The deputy judge is empowered to control the regularity of the procedure and reports to the Court with respect to any matter subject to the jurisdiction of the Court. The receiver is empowered to manage the business of the debtor under the control of the deputy judge and of the creditors' committee and is in charge of (i) forming the list of the creditors, on the basis of their respective priority rights, (ii) assessing the number and status of the debtor's assets, (iii) managing and liquidating the assets, (iii) terminating or continuing the contracts to which the bankrupt company is party, (iv) initiating any action to set aside and revoke the transactions carried out during the so called "suspect period", (v) satisfying the creditors in accordance with their respective priority rights and to the extent the liquidation of the assets allows it, (vi) initiating any action against the former directors and auditors of the insolvent company, (vii) notifying the public prosecutor of any criminal liability of which he becomes aware of; and (viii) drafting the liquidation plan of the debtor's estate. The creditors' committee, constituted by 3 or 5 members

appointed by the deputy judge among the creditors in order to represent the various groups of creditors and taking into account the actual possibilities of repayment of the respective claims. The committee controls the activity carried out by the receiver and gives the relevant authorizations with respect to the performance of the receiver's material acts. The proceeds from the liquidation are distributed in accordance with statutory priority. Italian insolvency law provides for priority to the payment of certain preferential creditors, including employees and the Italian treasury.

In Italy, as in other jurisdictions, there are so-called "claw-back" actions (*azioni revocatorie*) under Italian law that may give rise to the revocation of payments or the setting aside of grants of security interests made by the company prior to the declaration of bankruptcy. In a bankruptcy proceeding (fallimento), Italian law provides for a claw-back period of up to one year. A bankruptcy receiver can request that certain transactions of the debtor during the one year-period preceding the declaration of bankruptcy be declared ineffective. In case of infra-group transactions, the claw-back period can be extended to up to five years. In any case, it should be noted that: (i) under article 64 of Royal Decree no. 267/1942, all transactions for no consideration, depending on certain circumstances, are ineffective vis-à-vis creditors if entered into by the bankrupt entity in the two-year period prior to the bankruptcy declaration, and (ii) under article 65 of Royal Decree no. 267/1942, payments of receivables becoming due on the day of the insolvency declaration or thereafter are ineffective vis-à-vis creditors, if made by the bankrupt entity in the two-year period prior to the bankruptcy declaration.

(vii) *Post-bankruptcy composition with creditors (concordato fallimentare)*. A bankruptcy (*fallimento*) can be terminated prior to the receiver's liquidation by a company filing a petition to the insolvency court for a post-bankruptcy composition with creditors (*concordato fallimentare*). The proposal may provide for (a) the division of the creditors into different classes, in accordance with their similar juridical position and economic interests; (b) the differential treatment for creditors belonging to different classes, giving evidence of the reasons of the different treatment; (c) the restructuring of the debt and the satisfaction of the creditors by specific technical or legal means, including the assumption of the debt (*accollo*), merger or any other corporate transaction, such as the assignment to creditors, or to companies in which they hold an interest, of shares or quotas (i.e, "debt to equity swap"), or bonds, including those convertible into shares or other financial instruments and debt securities; (d) the partial payment of the secured creditors (subject to the condition that said partial payment is not lower than the amount that could be recovered through the sale of the secured asset, on the basis of the value estimated by an independent expert); (e) the transfer to a third party (the "*assuntore*") of the assets of the debtor and of actions (including the claw-back and indemnity actions) filed by the receiver in the interest of the procedure. The proposal is deemed approved if it receives the favourable vote of the creditors which represent the

majority of the claims admitted to vote. If the proposal provides for different classes of creditors, the proposal is deemed approved if it receives the favourable vote of the creditors which represent the majority of the claims admitted to vote in each class. The *concordato fallimentare* is effective with respect to all creditors, which were creditors for title, fact, reason or cause prior to the opening of the bankruptcy procedure, including those who have not filed a request of participation to the procedure.

It should also be noted that the EU Council Regulation no. 1346/2000 of May 29, 2000 contains conflicts of law rules replacing the various national rules of private international law in relation to insolvency proceedings within the European Union. In particular, such Regulation provides (a) that the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (*lex fori*) and *(b)* the automatic recognition of the insolvency proceedings in all the other Member States.

10 LABOR LEGISLATION, RELATIONS AND SUPPLY

10.1 EMPLOYER/EMPLOYEE RELATIONS

Under Italian Employment law, terms of employment are governed by (a) statutory law, (b) national collective agreements, (c) supplemental agreements at company level and (d) individual employment contracts.

(a) *Statutory law*

The Italian civil code contains several provisions related to the duties of the employee, loyalty obligations, confidentiality, disciplinary sanctions, social security, termination of the employment relationship and indemnities (severance payments), non-competition clauses during and after the employment relationship and rights of employees upon transfer of undertakings. In addition to such provisions, certain laws contain provisions applicable to dismissal, social security and other aspects of the employment relationship.

(b) *National Collective Agreements*

National Collective Agreements ("*Contratti Collettivi Nazionali di Lavoro*") are negotiated on a national level from time to time (usually every 4 years, although the economic terms are negotiated every 2 years) by unions and the association of employers. Each industry or trade has a specific National Collective Agreement, which applies to individuals employed in that particular industry or trade. Furthermore, Executive-level employees ("*Dirigenti*") are subject to a different agreement than non-Executive level employees. The employer may freely choose

which National Collective Agreement should be applicable, but usually the agreement referring to the industry sector or trade to which the company belongs is utilized.

National Collective Agreements contain provisions related to salary, job duties, seniority increases, seniority bonus, working time, vacations, sickness leave, parental leave, grievance procedures, transfers, secondment, termination of the employment relationship (notice periods, justification, form of the dismissal), pension schemes, social security, arbitration, union representation and other matters.
National Collective Agreements generally provide for more favourable conditions than statutory provisions or, in other cases, such agreements stipulate specific rules for the application of the general statutory rules (as in the case of disciplinary sanctions and grievance procedures). They do not have the status of law but, in practice, are generally applied and are therefore considered binding upon all employers (further, in the event of litigation, such agreements are usually applied by Labour Courts).
Therefore, in order to determine which rules are applicable to a specific employment relationship, both statutory law and National Collective Agreements must be considered.

(c) *Company Level Collective Agreements*

National Collective Agreements may be supplemented by agreements at the company level ("*contratti integrativi*"). The purpose of such supplemental agreements is to regulate areas which are partially covered or not covered by the National Collective Agreements, such as for example work conditions and additional benefits.

(d) *Individual employment agreements*

Collectively with the National Collective Agreements and supplemental agreements (if any), the employment relationship is governed by the individual employment agreement which contains the salary applicable to the relevant employee, including any additional compensation over and above the minimum levels set forth in the National Collective Agreement in consideration of the employee's capability and performance.
As a result of the detailed regulation of the employment relationship by statutory law and National Collective Agreements, often the scope of individual employment agreements is limited and mainly provides for the improvement of the basic economic terms.
Please note that individual employment agreements cannot derogate from the provisions of law and National Collective Agreements to the detriment of the employee.

10.2 EMPLOYMENT REGULATION

Pursuant to Section 36 of the Italian Constitution, an employee is entitled to receive a salary proportional to the quantity and quality of his/her working activities. Such salary must be "sufficient" in order to assure a dignified life to him/her and his/her family.

The sufficiency level of the salary (*i.e.* the minimum wage) is determined by the applicable National Collective Agreement. An employment contract cannot reduce such salary below the minimum level established by the aforementioned collective agreement.

In Italy, the normal working hours must not exceed 40 hours per week. National Collective Agreements can impose further restrictions on working hours. Overtime pay is due for overtime work. The relevant rates are set forth by Collective Agreements.

Executive-level employees are not subject to the regulation on working time.

The duration of the annual holidays is determined by law. However, National Collective Agreements may provide for a more favourable treatment. Employees are entitled to a minimum 4-week paid vacations. There are at least 12 Bank Holidays. Individual agreements may not stipulate a detrimental treatment for employees related to holidays.

In case of sickness, employees have the right to retain their position for the period of time which is set forth by the applicable National Collective Agreement. During such leave, employees are entitled to be paid their whole salary or part of their salary. The relevant costs are mainly covered by the social security system.

Executive-level employees in sickness leave are entitled to retain their position and to be paid their whole salary for a period of 12 months. However, the company will pay such salary and related social security contributions.

There are no specific restrictions related to the citizenship of the employees hired by an Italian company. Recruitment of personnel on the basis of citizenship is considered discriminatory and it is illegal.

10.3 HIRING AND FIRING REQUIREMENTS

Under Italian law, an employer may not be forced to hire a specific number of employees although the numerical threshold (in particular, more than 15 employees) has several labour law implications generally unfavourable to the employer (*e.g.* dismissal regulations, mandatory placement of disabled workers and transfer of business undertaking). An employer is neither obligated to hire a minimum number of nationals nor did to have them assign to specific positions.

(a) *Hiring*

As a general rule, an employer may directly recruit employees and execute employment contracts provided that, upon hiring of such employees and within the day before the start of the employment, the employer provides the communications due to the competent labour

Office "*Ufficio di Collocamento*", to the State Social Security Administration ("INPS") and to the National Insurance Institute for Accidents in the Workplace ("INAIL") which will proceed to establish the insurance profile of the employee in connection with pension schemes, health and safety insurance, accidents at work insurance, maternity, unemployment benefit and other events.

Furthermore, companies employing at least 15 employees have a mandatory obligation to hire disabled workers and other protected categories (such as orphans and refugees) in a number ("*quota*") proportional to the total number of workers employed.

(b) *Dismissal*

Under Italian law, the employer's ability to dismiss an employee is very limited. Dismissal is allowed only for (i) just cause or (ii) justified reasons.

With respect to the dismissal of Executive employees, while statutory law does not provide for just cause, the relevant National Collective Agreements grant Executives additional protection, since they require as well a reasonable ground for the termination of employment.

In case of dismissal for just cause (*i.e.,* in the event of material misconduct of the employee and in any other case when the employment relationship cannot continue, even temporarily), termination of the employment relationship takes place immediately and no notice period must be given by the employer, provided however that the termination letter is provided in writing.

In case of dismissal for justified reasons (*i.e.*, for contractual breaches by the employee that do not constitute just cause for dismissal or for external and objective circumstances which prevent the continuation of the employment relationship such as bankruptcy of the employer, closing down of the production department where the employee works), the termination by the employer in writing must comply with the notice period provided by the applicable National Collective Agreement in accordance with the category and the seniority of the employee.

An employer may elect not to have the employee work during the notice period and, instead, to terminate the employment relationship immediately. In such case, the employer is required to pay an indemnity in lieu of notice. The amount of such indemnity is equal to the salary due during the notice period, and it is calculated on the basis of the average monthly salary received by the employee during the last three years (or during the shorter period of employment), including all benefits encompassed in the employment package.

The employer, in case of dismissal for just cause as well as in case of dismissal for justified reasons, must promptly give written notice of dismissal to the employee, indicating the reasons

for such dismissal. If such notice is not provided, the dismissal is void. Failure by the employer to give proper termination notice will make the employer liable for damages.

In case of dismissal based on objective-economic reasons, the employer who employs more than 15 employees, before communicating the dismissal to the employee, is also required to implement a preliminary procedure before the competent local Labour Office ("*Direzione Territoriale del Lavoro*"). Such procedure aims at verifying if it possible to reach a settlement agreement between the parties.

Certain employees, such as pregnant women or disabled employees are granted additional protections against dismissal. In such cases, the employer must prove that there is justification for dismissal which is not related to the specific condition or status (*e.g.*, pregnancy, disability) of the employee.

In case of sickness, the employment relationship may not be terminated unless a certain period of time provided for in the relevant National Collective Agreement has elapsed.

Notwithstanding the general principle whereby the termination of the employment relationship by the employer can take place exclusively for just cause or justified reason, Italian law provides for a procedure called "collective dismissal" which applies when all the following requirements are met:

(i) the company employs more than 15 employees;

(ii) the dismissal will involve 5 or more employees in a period of time not exceeding 120 days;

(iii) the employees to be dismissed work in the same production unit or in other production units within the same province;

(iv) the reasons for dismissal must be based on (a) a reduction or transformation of the operations or activities of the company, or (b) the shutdown of the company.

10.4 LABOUR PERMITS

Non-EU nationals who have a job offer in Italy, or wish to work in Italy, either temporarily or permanently, must obtain a work visa before coming to Italy. As a general rule, a work visa may be applied for only if the individual is able to enter the yearly 'quotas' of immigrant visa established every year from the Italian Government.

Notwithstanding the foregoing principle, Italian immigration law provides for a special work visa which can be granted only to certain categories of employees. As opposite to the work visa addressed above, this type of visa is not restricted by any quota. However, to be eligible for

this work visa some particular requirements must be met (e.g. the employee must be (i) an Executive or a high-skilled employee with a seniority in his own country of at least 6 months and must demonstrate that he/she is employed by a foreign company who is seconding him/her to an Italian branch, a subsidiary or an affiliated legal entity of the foreign company, or (ii) a professor or a lecturer at university, (iii) a professional translator or interpreter,(iv) an artist or musician, (v) a professional nurse hired by public and/or private hospital, etc.)

There are three main stages in the procedure related to visa and work permits for non-EU citizens:

(i) the Italian legal entity must apply for a work authorisation to the local immigration office (i.e. the local office of the district where the foreign employee will be employed);

(ii) once the work authorisation is issued, a prospective employee applies for a work visa at the Italian consulate in his/her country of residence in order to enter Italy

(iii) the employee (and family members), within 8 days of their arrival in Italy, apply for a Permit of Stay at the Immigration Office where they intend to reside.

The foregoing procedure may take approximately 2 to 3 months to complete, if no issues arise in respect thereto (see also Chapter 15).

10.5 SAFETY STANDARDS

Health and safety in the workplace are mainly governed by Legislative Decree No. 81/2008, as subsequently amended and integrated. According to such regulation, employees are entitled to participate in the safety and protection system implemented by the company, by, among other things, appointing a representative and attending special safety training courses organized by the employer. Additional obligations must be satisfied by the employer (e.g., drafting the "risk assessment" document and appointing a competent physician). In the event of breach of workplace health and safety obligations, the employer is subject to civil and criminal liability.

10.6 UNIONS

Under Italian law (Section 14 of the Workers' Statute), employees are entitled to establish union committees, to join trade unions and to perform union activities within the company (e.g., right to assemble and union permits).

Pursuant to Sections 15 and 16 of the Workers' Statute, discrimination against employees on the basis of their exercise of union rights and activities is prohibited. Furthermore, according to Section 19 of such law, if the company employs more than 15 workers, such employees are entitled to request the election of union representatives in the workplace ("*Rappresentanze Sindacali Aziendali ed Unitarie*").

In Italy, unions are legal and recognized by the government. The most representative unions are the following:

(a) *Employees*

(i) CIGL ("*Confederazione Generale Italiana del Lavoro*)
(ii) CISL ("*Confederazione Sindacati Lavoratori Italiani*")
(iii) UIL ("*Unione Italiana del Lavoro*")
(iv) UGL ("*Unione Generale del Lavoro*")

(b) *Employers*

(i) CONFINDUSTRIA
(ii) CONFCOMMERCIO

Other independent and minor Unions represent the interests of employees belonging to specific employment sectors.

11 TAXATION ON CORPORATIONS

11.1 INCOME TAX

(a) *Taxable persons*

Italian corporate income tax (*Imposta sul Reddito delle Società* - "IRES") is levied on the following persons:

- joint stock companies (*S.p.A.*), limited liability companies (*S.r.l.*), partnership limited by shares (*S.a.p.a.*), cooperative and mutual insurance companies, European Companies (*Societá Europee*) and European cooperative companies (*Societá Cooperative Europee*) resident in Italy;
- public or private entities other than companies (including trusts), resident in Italy having as their sole or main purpose the conduct of a business activity;
- public or private entities, other than companies, and trusts, resident in Italy, not having as their sole or main purpose the conduct of a business activity;
- non-resident companies and entities of every kind (including partnership and trusts), with or without legal personality.

According to the worldwide taxation principle, all income realized by companies deemed to be resident in Italy for fiscal purposes, is taxed in Italy as business income, regardless of the source.

Companies are deemed to be resident in Italy if, for the greater part of the tax year, they have in Italy either their (i) legal seat, or (ii) place of management, or (iii) main business purpose. Moreover, according to certain residency presumptions set forth by the Italian Tax Code (*Testo Unico delle Imposte sui Redditi – "TUIR"*), a foreign company comes to be considered resident in Italy if it controls an Italian resident company and, at the same time, is either (i) controlled by an Italian resident person (company or individual) or (ii) managed by a board of directors or other governing body composed for the majority of Italian resident persons.

Furthermore, foreign company would be presumed to have its place of effective management in Italy and, therefore, to be resident in Italy for tax purposes if certain conditions are met. The above presumption can be rebutted by the foreign company, if it is able to prove that its place of effective management is located outside of Italy instead.

Non-resident companies and entities of every kind are subject to corporate income tax ("IRES") only on income derived from Italy.

(b) *Calculation of IRES*

(i) Taxable base

The taxable base for IRES purposes is the worldwide income shown in the profit and loss account, as adjusted in order to take into account the relevant provisions set forth by the Italian Tax Code.

Pursuant to such provisions, the taxable business income must be determined based on the following principles:

- "booking principle": deduction is only granted for costs and expenses actually accounted for in the company's profit and loss account;

- "inherence principles": costs and expenses are deductible if, and to extent, they relate to business activities generating taxable income; and

- "accrual basis principle": costs and expenses are deductible in the tax year in which they are realized (*i.e.* only when there is the certainty and the objective determination of their amount).

Tax losses can be carried forward indefinitely. However, the tax losses cannot be used to offset more than 80% of the taxable income in any of the following tax year. A specific rule applies to

tax losses accrued during the first 3 years of business. In this last case, provided that the tax losses refer to a new business activity, they may be carried forward without limitations and set off in full against the taxable income of any subsequent tax year.

(ii) Rates

The ordinary corporate income tax rate is 27.5%. Provided that certain conditions are met, companies carry on certain types of activities in the fields of energy production and supply are subject to corporate income tax at a current rate of 38%. This last rate (38%) also applies to the so called "*non-operating entites*" (see below).

(c) *Non-operating entities*

Non-operating entities are taxed on a deemed minimum income. In this respect, resident companies, commercial partnerships and permanent establishments of non-resident entities are deemed to be non-operating in case their total turnover (other than extraordinary income) and their increase in inventory is lower than the amount resulting from the application of certain percentages (ranging from 2% to 15%) to the value of certain assets. Starting from 2012, this special tax regime applies also in case the abovementioned persons either: (i) declared fiscal losses for three consecutive tax periods; or (ii) declared fiscal losses in two of the last three tax periods, and the taxable income of the third tax period is lower than the deemed income resulting from the application of the parameters above.

In case this particular regime should apply, the deemed income of a non-operating entity may not be lower than the sum of following amounts: (a) 1.50% of the value of the participations in in resident and non-resident companies; (b) 4.75% of the value of real estate and ships in owned or leased by the entity (lower, rates apply to certain types of real estate); and (c) 12% of the value of other business assets in owned or leased by the entity.

This special tax regime does not apply in several cases (*e.g.* companies during their first tax year of activity, companies subject to bankruptcy proceedings, companies whose shares are listed on a regulated market, etc.)

(d) *Filing and Payment*

The tax system is based on self-assessment. The tax year for corporate income tax purposes is the financial year of the company, as determined by the law or its by-laws or, if it is not specified, the calendar year. The tax return of companies must be filed electronically within 9 months from the end of the financial year.

IRES is normally paid as two advance payments for the current tax year, based on the tax paid for the preceding tax year. The balance payment shall be paid at the time the tax return is filed. Any excess tax paid may either be carried forward or refunded.

(e) Tax *Consolidation*

Both the domestic and worldwide consolidation regimes are available under the Italian tax regime.

(i) Domestic Tax Consolidation

The option for domestic tax consolidation can be exercised by controlling companies and controlled companies included in the consolidation.

A company is controlled by another company if the latter has directly or indirectly the majority of the voting rights in the general shareholders meeting of the former; moreover, certain conditions must be met for the "control" test to be satisfied.

Under domestic consolidation, all taxable income of controlled companies, with certain adjustments, is aggregated and taxed at the level of the controlling company, regardless of the level of shareholding. Only losses incurred after the exercise of the option can be consolidated with the profits of other group companies; losses incurred before such exercise may be used only at the level of the company that incurred them.

Each consolidated company must file its tax return with the tax administration without calculating the taxes due and the controlling company must file the consolidated tax return with the taxes due on an aggregate basis.

Once the option is exercised, it is irrevocable for 3 tax years and is renewable for periods of 3 years.

(ii) Worldwide tax consolidation

The option for worldwide consolidation may be exercised by a resident controlling company provided that certain conditions are met.

Such controlling company must request a ruling from the tax authorities during the first year to which the consolidation should apply. Once the option is exercised, it is irrevocable for 5 tax years and is subject to renewal for periods of 3 years.

Under this regime the income of controlled companies (recalculated according to Italian tax provisions) is imputed to the controlling company in proportion to its profits entitlement. Losses incurred before the exercise of the option cannot be used in the consolidation.

(f) *Participation exemption*

Capital gains on sale of shares, similar financial instruments and interests in partnerships are exempt from corporate income tax purposes for 95% of their amounts, if all of the following conditions are met:

(a) the shares are held, without interruption, from the first day of the twelfth month prior to the month in which the sale occurs (shares purchased most recently shall be deemed to have been sold first);
(b) the shares are accounted for as "fixed assets" (or equivalent accounting classifications) in the first statutory financial statements closed during the period in which the shares are held;
(c) the company whose shares are sold is not resident of a state or territory which has a privileged tax regime;
(d) the company whose share are sold performs an effective business activity (such condition must not be verified for listed companies).

Conditions under points (c) and (d) must be met, at least, from the beginning of the third tax year preceding the date of disposal. Real estate companies (other than real estate trading companies and real estate building companies) are deemed not to perform an actual business activity and therefore not able to meet condition under point (d). It is worth mentioning that capital losses realized on the disposal of shares that would benefit from the participation exemption regime on the capital gains are not be deductible for IRES purposes.

There is no minimum shareholding required for benefit of such partial exemption regime.

(g) *Deductibility of interest expenses*

Interest expenses accrued in a given tax year are deductible up to the amount of interest income and similar proceeds accrued in the same tax year; any excess interest is deductible up to an amount equal to 30% of the gross operating profit deriving from the core business.

The gross operating profit relevant for deductibility purposes is construed as the difference between production income and costs, excluding, increased of the depreciations and the financial lease rentals on capital equipment.

Any interest expenses exceeding the above threshold may be carried forward and deducted in the following tax years (with no time limitation) within the same limit of 30% of the annual the gross operating profit.

The above provisions do not apply to banks, insurance companies and other financial entities (except for companies whose prevailing activity is that of assuming participations in companies active in sectors other than credit or finance), and the parent companies of banking and insurance groups. Special rules are provided for entities joining the tax consolidation regime. This provision applies also to other finance costs deriving from loan, financial lease, issuance of

bonds and similar financial instruments, excluding interest for deferred payments in relation to commercial debts and including interest for deferred payments in relation to commercial credits.

(h) *Option for flow-through taxation*

Resident companies whose shares are held by resident companies can opt to be treated as partnerships for tax purposes, provided that each shareholder holds voting rights and profits entitlement of at least 10% and no more than 50%.

The option may be exercised even by non-resident shareholders only in case certain conditions are met.

The income of the flow-through company is imputed to its shareholders in proportion to their profits entitlement. Losses incurred by the flow-through company after the exercise of the option are imputed to each shareholder (1) in proportion of its profits entitlement and (2) within the limit of the equity held by the shareholder in the flow-through company.

Once exercised, the option is irrevocable for three tax periods.

(i) *Inter-company dividends*

Dividends paid by a resident company to another resident company are exempt from taxation for the 95% of their amount.

In case of dividends from a non-resident company, the same exemption applies (95%) if the distributing company is not resident in black listed countries (or countries that are not included in the to-be-issued *white-list* – please see par. 14.2. below).

(l) *Extraordinary Transactions*

In the event that extraordinary transactions (e.g. mergers, de-mergers, asset contributions) are carried out, the higher values attributed to the financial assets recorded in the relevant balance sheet may, at the choice of the tax payer, be subject to a substitutive tax.

(m) Transfer pricing

Transactions between resident entities and non-resident entities must be evaluated at their arm's length value, as defined in the Italian Tax Code and in the OECD guidelines, in case the non-resident entity is (i) controlled directly or indirectly by the resident enterprise; or (ii) controls directly or indirectly the resident enterprise; or (iii) is controlled directly or indirectly by the same entity which controls the resident enterprise.

11.2 REGIONAL TAXES

Companies are also subject to a regional tax on productive activities ("IRAP") that is levied on the net value of the production derived in each Italian region.

For commercial and manufacturing enterprise, the taxable base is the difference between the operative revenues in the tax year and the costs of production. The costs of personnel are deductible only partially, in accordance with the applicable provisions. In general, losses on bad debts and interest paid are not deductible.

Special rules are provided for (i) industrial holding companies, (ii) banks and financial entities and (iii) insurance companies.

The standard rate is 3.9%. The filing of the tax return and the payment of IRAP follow the rules applicable for corporate income tax (see paragraph 11.1 (d)).

11.3 REGISTRATION DUTIES AND OTHER TAXES

Registration tax is due on deeds and contracts which are subject to registration in public registers or which are voluntarily registered in such registers. Rates vary according to the nature of the deed or contract from 0.5% to 8% (15% on sale of agricultural land). As a general rule, if a transaction is subject to Value Added Tax ("VAT") registration tax is applicable at the fixed rate of Euro 168,00 (Euro 200 starting from 1 January 2014).

Companies which have real estate properties situated in Italy are subject to municipal real estate tax ("IMU") at a rate of 0.76% which may slightly vary depending on the municipality.

The transfers of the ownership of shares and other participating instruments issued by companies resident for fiscal purposes in Italy are subject to the Financial Transaction Tax (the so-called Tobin Tax).

The tax rate is 0,2% (0,22% for the current year 2013) of the value of transaction and is reduced to 0,1% (0,12% for the current year 2013) for the transfer taking place as a result of transactions effected in regulated markets or in multilateral trading facilities.

The tax is payable by the person to which the ownership of shares, participating financial instrument and securities representing equity investment is transferred.

The Financial transaction tax applies to the transfer of the ownership of securities representing equity investment, regardless of the place of residence of the issuer of the certificate and of the place where the contracts has been concluded.

The tax does not apply to the transfer of the ownership taking place by inheritance or gift. Are also excluded from tax the transfers of the ownership of shares traded on regulated market or in a multilateral trading facilities issued by companies with average capitalization lower than 500 million euro.

As to the indirect taxes applicable to real estate properties transactions, please see point 11.8 below.

11.4 VAT

VAT applies to the supply of goods and services within Italy by a taxable person and to the importation of goods by anyone. Companies are always considered taxable persons.

According to the "territoriality" principle, sales of goods are deemed to be realized in Italy if the goods at stake are located in Italy at the time of the sale. When the abovementioned goods are transported or dispatched, the sale is deemed to be realized in Italy in case the transportation commences therein.

Starting from 1 January 2010, as a general rule, the place of supply concerning services carried out in favour of other taxable persons (so-called "business-to-business") is Italy only in case the recipient of the services is established in Italy. Conversely, as a general rule, the place of supply with respect to services provided to final customers (the so called "business-to-customer") is Italy whether or not the services are supplied by a taxable person established in Italy.

The deduction of input VAT is subject to the condition that goods and services purchased are used for taxable transactions. VAT on certain goods and services are always unrecoverable (e.g. motor vehicles, foods and drinks and hotels).

The deduction of input VAT arises when the tax becomes chargeable and, accordingly, the tax authorities become entitled to claim the tax.

VAT becomes chargeable when goods and services are deemed to be supplied.

The annual tax return must be filed electronically within 9 months from the end of the financial year, together with the income tax return. The VAT due must be paid monthly or quarterly according to the turnover with a balance payment to be made within the same term provided for the payment of the balance of the income tax.

The VAT credit arising from the annual VAT can be (i) carried forward without any limits, (ii) offset against other taxes within the limit of Euro 516.456,90 for each financial year, or (iii) claimed for refund upon certain conditions.

The general rate is 22%. Reduced rates range from 10% to 4%.

11.5 NON RESIDENT COMPANIES

International double taxation is relieved with an ordinary foreign tax credit system with a per-country limitation.

With respect to non-resident companies, the Italian taxable income is made up only of income produced in Italy. Specific rules apply for each type of income (e.g. business income is deemed to be realized in Italy in case it is derived from activities undertaken in Italy through a permanent establishment; income from capital is deemed to be produced in Italy when it is paid by the Italian State, by parties resident in Italy or by a permanent establishment located in Italy).

Approximately 82 income tax treaties are currently in force in Italy and such treaties follow the Organization for Economic Co-operation and Development ("OECD") Model. Treaty abuse is usually prevented through "subject to tax" and "beneficial ownership" clauses.

11.6 WITHHOLDING TAXES

Dividends paid by a company resident in Italy to another resident company are not subject to any withholding tax upon distribution.

Dividends paid to a non-resident company, are subject to a 20% final withholding tax and the recipient can claim in Italy the refund of the tax paid in his/her country of residence to the extent of the one-fourth of the applied withholding tax.

Dividends paid to a non-resident company, which is resident in a country (i) belonging to the European Union or to the European Economic Area and (ii) is included in the countries' *white list*, are subject to a 1.375% final withholding tax.

The abovementioned rate of withholding may be reduced (up to 0%) in accordance to the provisions set forth by (i) tax treaties to avoid double taxation and (ii) the EC Parent Subsidiary Directive.

Interest paid on bonds issued by Italian resident companies are subject to a withholding tax at a rate of 20%. In case of non-resident bondholders, withholding tax rates may be reduced under applicable double taxation treaties.

Interest paid on bonds issued by the Italian State are subject to a substitute tax at a rate of 12.5%.

A 20% substitutive tax is levied on interest and proceeds from bonds issued *inter alia* by banks, companies listed in regulated markets of a country belonging to European Union or to the

European Economic Area and included in the countries' *white list*, the Italian State and any other local public entities. The same provisions apply to bonds listed in regulated markets.

It is worth to be noting that exemptions from withholding or substitute tax are provided in case of interests arising from bonds issued by the Italian State, banks or listed companies, if paid to: (a) foreign central banks and entities which manages, inter alia, the official reserves of a foreign State, (b) international body or entity set up in accordance with international agreements which have entered into force in Italy; (c) residents of countries that allow the exchange of information, with the exception of black-listed countries or territories outside the European Union; or (d) institutional investor", whether or not subject to tax, which is established in a country which allows for a satisfactory exchange of information with Italy.

Interests on deposit accounts and current accounts with banks and post office paid to resident company are subject to a withholding tax at a rate of 20% (with some exceptions). Such interests are always tax-exempt in case they are paid to non-resident persons.

Interest on financing paid to a resident company is not subject to withholding tax. A 20% withholding tax is levied on interest paid to a non-resident company without a permanent establishment in Italy.

Reduced rates are available under tax treaties.

Royalties paid to a resident company are taxed as business income (*i.e.*, not subject to withholding tax). Royalties paid to a non-resident company are subject to a 30% final withholding tax (levied on the 75% of taxable amount) which can be reduced under tax treaties.

Under the domestic law provisions implementing the European Community Interest and Royalties Directive, upon certain specific conditions being met, interest and royalty payments arising in Italy are exempt from any Italian tax applicable those payments, provided that (i) the beneficial owner of the interest or royalties is a company of another EU Member State or a permanent establishment situated in another EU Member State of a company of an EU Member State (ii) the interest and royalty payments are made between two entities that can be classified as *associated companies*.

In order to be classified as *associated companies* for the purposes of the European Community Interest and Royalties Directive as implemented in Italy, one of those associated companies shall hold directly at least 25% of the voting rights of the other company or a third EU company shall hold directly at least 25% of the voting rights of both the two entities.

11.7 CONTROLLED FOREIGN COMPANIES (CFC) AND ASSOCIATED FOREIGN COMPANIES

The CFC legislation applies to all resident taxable entities holding a qualified participation in foreign entities resident in *black-listed* countries (or countries that are not included into the to-be-issued *white-list* – please see par. 14.2. below).
This regime applies also to any controlled foreign company, even if not established in a State included in the *black-list*, if such company at the same time: i) is subject to an effective taxation lower, by more than a half, than the Italian one if it were resident in Italy, and ii) derives more than 50 per cent of its proceeds from passive income or intra-group services. However, this provision does not apply if the Italian taxpayer is able to prove to the Italian tax authorities that the CFC's establishment was not a merely artificial arrangement aimed at achieving an unfair fiscal advantage.

If CFC rules apply, the Italian resident shareholder is taxed on its share of the CFC's profits, regardless of the distribution of dividends.

Similar rules also apply in case of foreign associated companies.

11.8 INDIRECT TAXES APPLICABLE TO REAL ESTATE PROPERTIES TRANSACTIONS

With regard to indirect taxes applicable to real estate properties transactions, it is worth to noting that different rules apply with reference to commercial and residential buildings.

The sale of residential immovable properties realized by taxable persons is in principle VAT exempt. There are, however, some exceptions to this general rule.

The first exemption concerns the sale of residential immovable properties realized by (i) constructors or (ii) other entities that carry out refurbishment works directly or through contract work, in case the abovementioned sale occurs within the first 5 years from the date of completion of the construction or refurbishment works.

In this case, the sale of residential immovable properties is subject to VAT with the rate (22%, 10% or 4%) depending on the type of the properties that has been sold and other circumstances.

Furthermore, residential immovable properties transferred after the first 5 years may also be subject to the VAT regime (instead of the VAT-exemption regime), upon the exercise of the relevant option by the seller (constructors or other entities that carry out refurbishment works) in the relevant deed of transfer of the ownership of the residential immovable property before the Notary public.

In addition, even the sale of residential immovable properties which qualify as "social housing" may be subject to the optional VAT regime at the reduced 10% rate, instead of the the general VAT-exempt regime. In order to benefit the optional regime at stake, it must be exercised and stated in the relevant deed of transfer of the immovable property before the Italian Notary public.

The sale of commercial buildings the general rule is in principle VAT exempt. However, the standard rate of 22% applies in the following cases:

(i) sale of commercial buildings within 5 years from the date of completion of construction or refurbishment works by the business entities that have built the property or that have carried out substantial refurbishment works directly or through contract work;

(ii) sale of commercial buildings for which the seller exercises the option to apply the VAT regime. The optional VAT regime must be exercised and stated in the relevant deed of transfer of the immovable property before the Italian Notary public.

Whether the sale of immovable property is subject to VAT, the registration tax is levied at a lump sum of Euro 168 (Euro 200 starting from 1 January 2014). In this case, even the mortgage and cadastral taxes are due at a total lump sum of Euro168 (Euro 200 starting from 1 January 2014).

If the sale of immovable property is not subject to VAT, the registration tax varies according to the property transferred. The standard rate is 7% (15% for agricultural land). In addition, mortgage and cadastral taxes are levied on the transfer of immovable property normally at a total rate of 3% (4% in the case of commercial property).

Starting from 1 January 2014, the standard rate (7%) will be increased to 9% and shall also apply for agricultural land and building areas. A reduced rate of 2% shall apply to transfers of immovable properties qualifying as first dwelling. Furthermore, mortgage and cadastral taxes currently levied at a total rate of 3% (4% in the case of commercial property), shall be levied at a lump sum of EUR 50 each. Finally, in case the transaction is subject to VAT, registration, mortgage and cadastral taxes shall be levied at a lump sum of EUR 200 each.

Specific rules for VAT and registration tax purposes also apply for leasing agreements of commercial and residential buildings.

11.9 SOCIETÀ D'INVESTIMENTO IMMOBILIARE QUOTATA (SIIQ)

Italian tax Law provides a special tax regime for real estate investment vehicles which qualify as *Società d'investimento immobiliare quotata* (SIIQ). This special regime applies to ordinary joint stock companies that fulfil (and maintain) certain requirements in terms of the business activity

and shareholding rules. In particular, the SIIQ regime is available – upon election – to Italian resident joint stock companies whose prevailing business activity is the rental of real estate and whose shares are listed in the Italian Stock Exchange (SIIQ Company). The SIIQ regime can also apply to a non-listed resident joint stock company, provided that certain requirements are met.

In case some of the SIIQ regime requirements are not met for two consecutive fiscal years, such regime will terminate.

The SIIQ regime election shall be made before the end of the fiscal year preceding the fiscal year in which the SIIQ regime will start to be applied. As an effect of such election, the real estate owned at the end of the fiscal year in which the election is made is realised at its fair market value. The relevant capital gain (net of any capital loss) may be subject to an *ad-hoc* 20% substitutive tax, payable in up to five yearly instalments of equal value. The above fair market value will be recognised for tax purposes starting from the fourth fiscal year after the election takes place.

The income deriving from the rental activity will be fully exempt from IRES and IRAP and the dividends paid out of profits deriving from the rental activity would be fully taxable and subject to an *ad-hoc* 20% withholding tax, such a withholding tax should be reduced or even eliminated by the applicable tax treaty.

Dividends paid to, among other investors, other SIIQ Companies, or pension funds or investment funds will be exempt from withholding tax.

Vice-versa, the income deriving from the other activities would be fully subject to IRES and IRAP and the dividends paid out of profits deriving from such other activities would be subject to the ordinary rules for dividends.

12 TAXATION ON INDIVIDUALS

12.1 INCOME TAX

Individuals are subject to individual income tax ("IRPEF") that is a progressive tax which applies to the aggregate taxable income of the taxpayer.

12.2 TAXABLE PERSONS

Resident individuals are subject to IRPEF on their worldwide income. Non-residents are taxable on their Italian source income.

An individual is deemed to be resident in Italy if for the greater part of the tax year (*i.e.* at least 183 days) one of the following conditions is met:

- registration in the Italian civil registry;
- residence in Italy, as defined in the Italian civil code (e.g. place of habitual abode); or
- domicile in Italy, as defined in the Italian civil code (i.e. place where an individual has established his principal centre of business and interests, the centre of vital interests).

Income from partnerships resident in Italy is attributed to each partner in proportion to the participation to profits, without regard to the actual distribution of profits.

12.3 TAXABLE INCOME

The following categories of income are included in the taxable base for IRPEF purposes:

- income from real estate;
- Income from capital;
- Income from employment;
- Professional income;
- Business income; and
- Miscellaneous income.

The aggregate taxable income is calculated by adding the net income from each category; only losses arising from conducting a business or exercising a profession may be deducted.

Exempt income and income subject to a final withholding tax are not taken into consideration in determining aggregate income.

Capital gains on the disposal of shares and other securities may be subject to a substitute tax.

Payments on termination of employment and capital gains on the disposal of a business may, at the taxpayer's option, be taxed separately.

12.4 ALLOWANCES, CREDITS AND DEDUCTIONS

(a) *Allowances and Credits*

Personal allowances have been replaced with a tax credits system. Several amounts may be credited against the tax due on aggregate income depending on family circumstances, the amount and the category of income derived and the possession of dwellings.
Other credits equal to 19% of certain personal expenses are granted (e.g. medical expenses, interest paid on mortgage loans on owner-occupied dwellings, gifts).

(b) *Deductions*

The Italian tax law allows only the deduction of expenses related to business income and professional income. No deductions are allowed for expenses related to the production of income from capital or employment.

Several deductions from total income are provided in respect of expenses not directly deductible in calculating the separate categories of income (e.g. periodic alimony payments to a divorced or separated spouse).

A deduction is granted for social security contributions paid in accordance with the law or voluntarily paid to the mandatory pension plan.

12.5 CALCULATION OF TAXES

The taxpayer shall determine total income resulting from the aggregate amount of each category of income (on the basis of specific rules). Total income may be reduced by deductions and losses from previous tax periods resulting in taxable income.

In order to calculate the gross tax, progressive rates (depending on the brackets of income) are levied on taxable income. Other amounts (credits) are set off against the gross tax (net tax due). The net tax is further reduced by advance withholding taxes (if any) and advance payments.

12.6 CAPITAL GAINS

(a) *Business gains*

Capital gains realized in the course of a business or profession are included in the taxable base and subject to ordinary taxation. Capital gains realized upon the disposal of business are not subject to IRAP.

Alternative tax regimes are applicable depending on the period of ownership of the business. Capital gains, including goodwill, realized on the disposal of a business owned for at least 3 years may be subject to tax, at the taxpayer's option, in the year of realization and in the subsequent four years. Capital gains, including goodwill, realized upon the disposal of a business owned for more than 5 years are taxed separately (*i.e.* such capital gains are not included in the taxable base).

(b) *Shares and other securities*

Capital gains on disposal of shares realized by resident individuals, regardless of whether the shares are held outside of Italy, are subject to a 20% substitute tax levied in case of "non-qualified" participation. A 50,28% exemption applies to capital gains on the disposal of "qualified" participation (49,72% is included in the taxable base for IRPEF purposes).

A participation is qualified if the shareholder holds more than 2% of the voting power or 5% of the capital in listed companies, or more than 20% of the voting power or 25% of the capital in other companies.

Upon taxpayers' election, one of the following regimes is applicable to capital gains:

(i) Tax return regime ("*Regime della Dichiarazione*"): overall capital gains realized in the fiscal year, net of any incurred capital losses, shall be reported in the income tax return and are subject to 20% substitutive tax;

(ii) Non-discretionary investment portfolio regime ("*Risparmio Amministrato*"): upon taxpayer's election, capital gains realized on transfer or redemption of the shares is subject to 20% substitutive tax if shares are deposited with banks, financial companies or other authorized intermediaries. The participation holder is not required to declare the gains in its annual income tax return;

(iii) Discretionary investment portfolio regime ("*Risparmio Gestito*"): if the participation is part of a portfolio managed by an Italian asset management company, capital gains are calculated in order to determine the annual net accrued result of the portfolio. The annual net accrued result of the portfolio, even if not realized, is subject to a 20% substitute tax that is levied by the asset management company. Any losses to the investment portfolio accrued at year end may be carried forward against net profits accrued in each of the following fiscal years, up to the fourth year. Under such regime the holder of the participation is not required to declare the gains in its annual income tax return.

12.7 RATES

The following rates apply to taxable income and capital gains:

Taxable income (Euro)	**Rate %**
Up to 15,000	23
15,000 – 28,000	27
28,000 – 55,000	38

55,000 – 75,000	41
Over 75,000	43

The above rates are increased by a regional surcharge ranging between 1.23% to 2.03% depending on the region. The rate may be further increased by the municipal and provincial surtax, determined by each municipality and province at an aggregate rate up to 0.8%.

12.8 FILING AND PAYMENT REQUIREMENTS

(a) *Taxable period*

For individual taxpayers, the tax year is the calendar year (i.e. January 1st – December 31st).

(b) *Tax returns*

Taxpayers who derive taxable income in excess of certain limits must file an annual tax return between May 1 and June 30 of the year following the tax year in which the income is derived (September 30 for electronic filing).

(c) *Tax assessment*

In principle, the self-assessment method is used. The tax authorities are allowed to issue tax assessments notices to taxpayers who have not filed a tax return or whose tax return has not been filed in accordance with law. In such cases, the tax authorities have the power to adjust the taxpayer's income on the basis of gathered information. Taxpayers and tax authorities are allowed to arrange for a settlement covering the amount of taxes and penalties due.

(d) *Payment of taxes*

Two advance payments of IRPEF shall be made by the taxpayer during the tax year. The balance of the tax due, based on the results shown in the annual tax return, must be paid by June 16th of the following year. Any excess tax is refundable.

12.9 INHERITANCE AND GIFT TAX

Transfers of any valuable assets as a result of death or donation are taxed as follows:

- Transfers in favour of the spouse and of direct descendants or ascendants are subject to a 4% inheritance and gift tax applied on the value of the inheritance/gift exceeding Euro 1,000,000 per beneficiary;

- Transfers in favour of brothers or the sisters are subject to a 6% inheritance and gift tax on the value of the inheritance/gift exceeding Euro 100,000 per beneficiary;

- Transfers in favour of all other relatives up to the fourth degree or relatives-in-law up to the third degree, are subject to a 6% inheritance and gift tax on the entire value of the inheritance/gift.

Any other transfer is subject to an inheritance and gift tax applied at a rate of 8% on the entire value of the inheritance or the gift.

12.10 REAL ESTATE TAX

The IMU (*Imposta Municiplae Unica*) is levied on the ownership of immovable properties (buildings, development land, rural land) located in Italy. This tax is calculated on the deemed value of the property as established by the Italian tax authorities, at a general rate of 0.76 percent. This rate can be reduced, particularly for properties used by individuals as their principal residence, or may be increased up to 1.06 percent depending on each municipality.

The relevant taxation applicable to immovable properties is currently under discussion in the Italian Parliament. Consequently, the ownership of properties might be taxed in a substantial different way starting from 2014.

A similar tax (IVIE - *Imposta sul valore degli immobili situati all'estero*) is levied on foreign real estate properties with reference to all individuals who qualify as tax resident of Italy and own real estate properties located abroad. This tax is calculated on the purchase cost of the property, with some exceptions, at a general rate of 0.76 percent. Wealth tax already paid in the country where the property is located may in principle be deducted from tax due in Italy as tax credit.

12.11 SOCIAL SECURITY AND WELFARE SYSTEM CONTRIBUTIONS

A complicated system of social insurance covering life insurance, health, maternity, disability, unemployment and family allowances is in effect for all employees. The contributions are withheld from the employees' salaries. The total employee contributions are generally approximately 10% of the employment income, depending on the type and size of the business and the rank of the employee. A system of social insurance covering life and health insurance is also in effect for taxpayers engaged in a business or profession. The amount of contributions made varies according to earnings.

12.12 STOCK OPTION, PROFIT SHARING AND SAVINGS PLANS

With respect to Stock Option Plans the value of the shares is included in the taxable base and therefore it is fully taxable. In addition it is worth noting that the value of the shares offered to all employees, if no higher than Euro 2,065.83 is excluded from taxation.

12.13 DIVIDENDS

A 50,28% exemption for individual shareholders holding the participation in a business capacity. Individual shareholders not holding the participation in a business capacity are also entitled to the 50,28% exemption if they own "qualified" participation (otherwise, a 20% final withholding tax).

12.14 TAX TREATIES

Please refer to paragraph 11.5 above.

12.15 TERRITORIALITY RULES

Resident individuals are subject to IRPEF on their worldwide income. Non-residents are taxable on their Italian source income.

12.16 WEALTH TAX

There is no wealth tax in Italy.

12.17 WITHHOLDING TAXES

Salaries and other remuneration from employment paid by companies, businesses and professionals are subject to an advance withholding tax, which is creditable against the recipient's income tax liability. The tax is withheld applying the ordinary income tax rates corresponding to the brackets adjusted according to the period for which the payment is made.

Professional fees paid by companies, businesses and professionals are subject to an advance withholding tax at the rate of 20%.

Interest on loans is subject to a 20% advance withholding tax, which is creditable against the recipient's income tax liability.

A substitute tax of 12.5% applies to interest on Italian state bonds and similar bonds.

12.18 NON-RESIDENTS INDIVIDUALS

Non-resident individuals are subject to IRPEF on income from Italian sources, (according to rules applicable to resident individuals). Capital income and professional income are subject to

a final withholding tax or to a substitute tax (otherwise, a tax return shall be filed and the income is subject to taxation at the ordinary IRPEF rates).

Interests paid to non-residents on deposit accounts with banks and post offices are exempt. Interests paid to non-residents on bonds issued by the Italian State, banks or listed companies are exempt if the beneficial owner is a resident of a country with which Italy has an adequate exchange of information system. In order to benefit from this exemption, the non-resident must deposit the bond with a resident bank or other authorized intermediary.

Income from employment (including pensions) is subject to taxation in Italy if the work is performed in Italy. Pensions, similar allowances and termination payments are also subject to taxation in Italy if paid by the Italian State, persons resident in Italy or by Italian permanent establishments of non-residents.

Income from a business conducted in Italy is only taxable if it is earned through a permanent establishment. Income from a profession carried on in Italy by a non-resident is subject to a 30% final withholding tax if the payer is a withholding agent. Income from a profession includes directors' fees paid by a resident company.

13 TAXATION ON OTHER LEGAL ENTITIES

13.1 INCOME TAX

Non-commercial entities resident in Italy (*i.e.* public or private entities other than companies not having as their sole or main purpose the conduct of a business activity) are subject to IRES.

(a) *Taxable base*

The aggregate taxable income of a non-commercial entity consists of (i) income from real estate assets, (ii) income from capital, (iii) business income and (iv) miscellaneous income, excluding tax exempt income and income subjected to final withholding tax or to a substitute tax.

In any case, certain items are not included in the total income of non-commercial entities (e.g., funds resulting from occasional public collections). The computation of taxable income is similar to the computation for individuals. Non-commercial entities are required to maintain separate accounts for any commercial activity. Special rules apply to Socially-Useful Non-Profit Organizations (ONLUS).

(b) *Rate, filing and payment*

The rate is 27.5%. Filing and payment requirements follow the rules applicable to companies.

(c) *Territoriality rules*

Non-commercial entities resident in Italy are subject to income tax according to the worldwide taxation principle. The requirements to be considered as resident in Italy and the applicability of tax treaties follow the rules applicable to companies.

(d) *Withholding Taxes*

A 20% final withholding tax is levied on dividends paid to non-resident non-commercial entities and the recipient can claim in Italy the refund of the tax paid in his/her country of residence to the extent of the one-fourth of the applied withholding tax.

Dividends paid to a non-commercial entity, which is resident in a country (i) belonging to the European Union or to the European Economic Area and (ii) is included in the countries' *white list*, are subject to a 1.375% final withholding tax.

13.2 REGIONAL TAXES

Non-commercial entities are subject to IRAP even if they exclusively carry on non-commercial activities. In such case, the taxable base for IRAP purposes is the remuneration paid by the entity to (i) employees and other persons treated as employees for income tax purposes and (ii) independent workers who conduct such activity on a non-habitual basis. Only certain costs of personnel are deductible.

If non-commercial entities also carry on commercial activities, the taxable base for IRAP purposes in respect of the latter activity is calculated according to the rules applicable to companies.

The standard rate is 3.9%.

13.3 VAT

Non-commercial entities are taxable persons for VAT purposes only if, and to the extent that, they carry on a commercial activity habitually.

The deduction of input VAT is restricted to VAT paid for the purchase of goods and services which are used for taxable transactions and it is subject to the condition that the non-commercial entity maintains separate accounting for the commercial activity.

As for the application of VAT, filing, payment, and rates, the rules provided for companies apply.

13.4 TAXATION OF TRUSTS

Both resident and non-resident trusts are subject to IRES and, where applicable, IRAP, in accordance with the ordinary rules. As a consequence, trusts shall be taxed in different ways depending on whether (i) the trust would qualify as a commercial or not-commercial entity and on whether (ii) the trust would qualify resident or non-resident in Italy for fiscal purposes.

Trusts should also qualify as a "person subject to tax" for the purposes of (most of the) double tax treaties executed by Italy.

In case of trusts that (i) have identified beneficiaries and (ii) can be qualified as “flow-through trust”, the income originated by the trust is first determined in the hands of the trust; the net income is then attributed to the beneficiaries of the trust, based on the percentage resulting from the institutional documents (or, if such a percentage cannot be identified, in equal parts).

In case of individuals, the attributed income would qualify as capital income and would not be subject to any withholding tax but would be fully subject to IRPEF in the hands of the recipient.

14 GENERAL TAX REMARKS

14.1 RULINGS

In case of uncertainty regarding the correct interpretation of tax provisions, a taxpayer may ask for a ruling by filing a written request with the tax authorities. The tax authorities must issue a written and motivated reply within 120 days. A reply is only binding on the tax authorities for the case submitted. If no reply is provided within 120 days, it is assumed that the tax authorities agree with the interpretation of, or the tax treatment proposed by, the requesting taxpayer and no penalties can be applied.

Special ruling procedures are provided with respect to the deductibility of expenses, multinational companies (controlled foreign companies) and anti-avoidance provisions.

14.2 ANTI-AVOIDANCE

Italian tax law does not provide a general anti-avoidance rule allowing the tax authorities to disregard all tax-motivated transactions. Tax avoidance is dealt with through specific provisions intended to counter specific tax avoidance practices.

The main anti-avoidance rule provides that the tax authorities may disallow the tax advantages obtained through any act or transaction carried out without valid economic reasons for the

purposes of circumventing obligations or prohibitions contained in Italian law and for obtaining a tax saving. This applies only if the tax advantage results from:

- mergers, spin-offs, transformations, liquidations and distributions to shareholders of reserves not consisting of profits;
- contributions to companies and transactions for the transfer or utilization of business assets;
- transfers of debt claims and tax credits;
- EU mergers, divisions, transfers of assets and exchanges of shares;
- transactions pertaining to securities and financial instruments;
- certain classifications in financial statements;
- transfer of goods or supply of services carried out among entities which opted for the group taxation;
- payments of interest and royalties eligible for the exemption under a specific European Directive, if made to a person directly or indirectly controlled by one or more persons established outside the European Union; and
- transactions between resident entities and their affiliates resident in tax havens and concerning the payment of an amount under a penalty clause.

The above operations can be disregarded for tax purposes only if the tax authorities inform the taxpayer about the reasons for the application of the anti-avoidance provision before the issuance of the tax assessment notice. In this lapse of time, the taxpayer has the right to explain to the Italian tax authorities the reasons why the aforementioned transactions have not been undertaken for the purposes of circumventing obligations or prohibitions contained in Italian law and for obtaining a tax saving.

Anti-tax haven legislation applies to prevent the use of tax haven jurisdictions. In particular, costs and expenses are not deductible if they arise from transactions with companies resident in a non-EU Member State with a preferred tax regime. A list of states and territories with a preferred tax regime has been issued. The deduction is allowed if the resident company can prove that the non-resident company actually and mostly carries on a business activity or that the transactions have a business purpose and have in fact been concluded.

The anti-tax haven legislation applies to the transactions with companies resident of a country different from those included in the *white-list* which has not yet been issued.

Taxpayers may ask for advance rulings on the applicability of these anti-avoidance provisions.

An anti-avoidance provision applies to Italian nationals who transfer their residence to countries that are included in a specific black list (or in countries different from those included in the to-be-issued *white-list*). Accordingly, an Italian national is deemed to be resident in Italy if he/she emigrates to a black listed country regardless of whether he/she cancelled his/her

name from the Italian civil registry. This is a refutable presumption and the burden of proof that the residence is actually outside Italy is on the taxpayer.

The absence of a general anti-avoidance provision has not prevented the raising of a jurisprudential anti-abuse principle (the so called *abuso del diritto*).

In fact, according to the Italian Supreme Court (*Corte Suprema di Cassazione*), it shall be classified as *abusive* the economic operation realized with the main purpose to obtain tax advantages through the manipulation and alteration of the negotiating schemes.

This anti-abuse principle, even if not explicitly set forth by any tax provision, allows the Italian Tax Authorities to challenge all the economic transaction carried out by the taxpayer in case the aforementioned transactions are deemed to be aimed to obtain an undue tax advantage.

15 IMMIGRATION

15.1 IMMIGRATION CONTROLS

On October 26, 1997, Italy joined the Schengen system after a gradual process of adjusting to the common visa regime provided by the Convention Implementing the Schengen Agreement. While strengthening the common external border, there was a parallel and gradual removal of internal border controls, providing total freedom of movement within the signatory states of the Schengen Agreement. This resulted in the establishment of what has become known as the Schengen Area.

Admission to Italian territory through the external borders of the Schengen Area is permitted only to foreigners who:

a. seek entry through a border crossing point;
b. are in possession of a valid passport or equivalent recognised travel document permitting them to cross the border;
c. are in possession of documents substantiating the purpose and the conditions of the planned visit and have sufficient means of support, both for the period of the planned visit and to return to their country of origin (or to travel in transit to a Third State);
d. are in possession of a valid entry or transit visa, if required;
e. are not prohibited from entering due to an alert in the Schengen Information System; and
f. are not considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties, under Italian law or the law of another Schengen State.

If any of the aforementioned conditions are not satisfied, an alien may be denied entry by border authorities regardless of whether such alien is in possession of a valid entry or transit visa.

15.2 IMMIGRATION REQUIREMENTS/FORMALITIES

All foreigners who enter Italy legally, including those who are not required to hold a visa, must comply with the rules governing the stay of foreigners in Italy. Such foreigners shall report their presence on Italian territory to the local Police Precint ("*Questura*") of the province in which they are staying within 8 working days of their date of entry, and apply for a residence permit ("*Permesso di Soggiorno*"). Any alien requesting such residence permit is required to be fingerprinted.

An alien is authorized to stay in Italy solely by virtue of such residence permit, which is issued for the reason and the period indicated on the visa.

15.3 VISAS

A visa, which comprises a special "stamp" affixed to the applicant's passport or other valid travel document, is an authorisation granted to an alien to enter the territory of the Italian Republic or that of any other Contracting Party for transit or visit purposes. It is issued on the basis of criteria relating to the preservation of good international relations and to the protection of national security and public order.

Authority to issue visas for entry to the Italian Republic is vested in the Italian Ministry of Foreign Affairs and its network of accredited diplomatic and consular officers, which are responsible for ascertaining that any applicant satisfies the requirements for obtaining a visa. Such visa is issued by the diplomatic or consular mission with territorial jurisdiction over the place of residence of the alien applicant.

The possession of a visa does not automatically entitle an alien to enter Italy, because border authorities may always refuse entry if an alien does not possess adequate means of subsistence or is unable to provide full details regarding the circumstances of the stay in Italy, or for reasons of security or public policy.

No visas (and no extension of any previously issued visas) may be granted to foreigners who are already on Italian territory.

Visas are divided into three main categories:

(a) Uniform Schengen Visas (USV): valid for all territories of the Contracting Parties; such visa may be:

- an airport transit visa (type A);
- a transit visa (type B); or
- a short-stay or travel visas (type C), valid for up to 90 days, for single or multiple entry.

(b) Limited Territorial Validity Visas (LTV): such visa is valid only for the Schengen State that issued the visa (or for other Schengen States that are named) without any possibility of access to or transit through the territory of any other Schengen States.

(c) Long stay or "national" (NV) Visas: such visa is valid only for visits that are longer than 90 days (type D), with one or more entries, in the territory of the Schengen State that issued the visa, and to transit through the territory of other Schengen States for a period not exceeding five days.

Visa applications must be in writing, providing all details required by the special visa application form which must be signed by the applicant, and accompanied by one passport-size photograph. As a rule, foreigners applying for visas must visit the diplomatic or consular offices in person to be interviewed regarding the reasons and circumstances of the visit. Applications must be accompanied by a valid travel document together and any required supporting documents.

Such documentation, depending on the type of visa requested or which the diplomatic mission may issue, shall state:

- The purpose of the visit;
- Means of transportation for the return trip;
- Means of support during the journey and stay; and
- Accommodation arrangements.

Once the visa application is accepted on the basis of the documentation provided by the applicant and the results of the interview, which is ordinarily conducted directly and in person, the diplomatic mission performs certain statutory preliminary security checks.

(d) Types of Entry Visa: The Interdepartmental Degree of July 12, 2000 introduced 20 types of entry visa, as well as the requirements and the conditions for granting such visas: adoption, business, medical treatment, diplomatic, accompanying dependent, athletic competition, invitation, non-dependent employment, dependent employment, mission, religious grounds, re-entry, choice of residence, family reunion, study, airport transit, transit, transport, tourism, working holidays, job-seeking (abolished).

Finally, please note that the nationals of certain non-EU countries do not require a visa for visits up to a maximum of 90 days, for reasons of tourism, missions, business, invitations or participation in athletic events. Such countries include the United States, Canada, Israel and New Zealand).

16 EXPATRIATE EMPLOYEES

16.1 EDUCATION

All types of schools are available in Italy which has a very well developed public school system and a rather good private school network. School attendance is compulsory from the age of 6 to 14.

Any minor living in Italy is entitled to join the Italian public school system on the same terms and conditions applicable to Italian citizens. Student visas allow foreigners to attend professional, training and university courses.

The Italian education system is structured as follows:

(a) Pre-school ("*Scuola dell'infanzia*")
Not compulsory. Children between the age of 3 and 5 may attend pre-school.

(b) Primary school ("*Scuola primaria o elementare*")
Compulsory. Primary school students are from 6 to 11 years old.

(c) Junior high school ("*Scuola secondaria di primo grado*")
Compulsory. Junior high school students are from 11 to 14 years old.

(d) Secondary upper school ("*Istituti secondari di secondo grado*")
Not compulsory. Such school is structured according to the following branches: - Classic Gymnasium ("*Liceo Classico*");- Scientific Gymnasium ("*Liceo Scinetifico*");- Language Gymnasium ("*Liceo Linguistico*");- Art Gymnasium ("*Liceo Artistico*");- Technical schools ("*Istituti Tecnici*"); and- Vocational schools ("*Istituti professionali*")

Completion of studies at the foregoing secondary upper schools is a prerequisite for University enrolment.

(e) University

Students are entitled to choose any faculty. However, in many faculties the "*numerus clausus*" is applied. Therefore, the applicant must take a selective entry test.

16.2 TAX LIABILITY

Please see above Chapters 11 and following.

16.3 WORK CONTRACTS AND WORK PERMITS

Please see Chapter XIII, Section 5 (*Labour Permits*) and Chapter XVI, Section 3 (*Visas*) for a discussion of the prerequisites and procedures for obtaining a work visa in Italy.

(a) *Independent Work Visa*

This type of visa allows entry for a short, fixed-term long visit or open-term long visit to foreigners who intend to exercise a professional activity on an independent basis. The entry to Italy with this type of visa is authorized within the number of quotas established by decree each year, save for specific categories of workers who, because of their job or other requirements as provided by the law, can enter the country irrespective of the annual quotas threshold. Therefore, save for the few exceptions mentioned above, normally applications for this type of visa can only be accepted if there is still availability of authorized positions. A director of registered companies is considered from an immigration law perspective as an independent worker and normally, given its high-level position, can successfully apply for entrance to Italy with no restriction of the aforesaid annual quotas. Therefore, provided that a director will not act as a dependent employee (in addition to his/her position as director), such director shall apply for an independent work visa. An employment contract is mandatory, instead, if a consultant is hired by an Italian company as subordinate employee (*lavoratore subordinato*).

(b) *Dependent work visa*

This type of visa allows entry for a short, fixed-term long visit or open-term long visit to foreigners who are employed by seasonal or occasional businesses (agriculture, hotels etc.). The entry to Italy with this type of visa is authorized within the number of quotas established by decree each year, save for the applicable exceptions already referred to in preceding section (a) above. Therefore applications for this type of visa can only be accepted if there is still availability of authorized positions unless extraordinary circumstances can apply. An employment contract (inclusive of the economic treatment granted) is required.

(c) *Secondment visa*

The secondment procedure is followed when an employee remains on the payroll of the home country employer but is transferred to work for the Italian representative office or company. The application has to be made in the name of the Italian company and the visa is not restricted by any quota, provided that a service agreement, between the seconding and the Italian host company, justifies the employee's secondment to Italy. In the frame of EU legislation (EU Reg. no. 883/2004, sections 11 to 16 and supplementary regulation no. 987/2009, sections 14 to 21), secondment to Italy is allowed for a period of up to 2 years renewable for a further period of 2 years (maximum 4 years) at the discretion of the local

labour office. Certain subjective eligibility requirements may also be required. For extra-EU workers, normally duration of the secondment will depend on the social security protection (bi/multi-lateral) convention applicable between Italy and the country of origin of the seconded employee. In the lack of such convention, the normal duration of extra EU worker's secondment is of 2-years (save for potential extensions if duly authorized). A secondment letter is also required. A foreign seconded employee shall be subject to certain minimum standards of employment (e.g., minimum wage, holidays, overtime work etc.) applicable to a comparable Italian employee.

The process, timing and competent authorities involved are slightly different depending on the work activity to be performed (dependent employment, independent employment or secondment).All applications for a work visa require at least the following documents (1 original plus 1 copy):

(i) passport or official travel document valid at least 3 months beyond the validity date of the visa requested;
(ii) visa application form duly completed, to be signed by the applicant; and
(iii) one recent passport size photograph.

According to the type of employment, further documents may be required (such as employment contract, secondment letter, educational degree and/or certificate issued by the Italian Chamber of Commerce).