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Dottori Commercialisti e Revisori Legali



CORPORATE TAX LAW IN ITALY

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FORM OF ENTITY

Società a responsabilità limitata (S.r.l.)

Separate and distinct legal entity. A S.r.l. can be managed by:

- a sole director;
- a board of directors, composed by 2 or more members;
- two or more directors acting jointly or severally.

Directors can also be quota-holders. Directors are elected by the quota-holders with a proper decision.

ENTITY SET UP

Società a responsabilità limitata (S.r.l.)

Typical documents include: (i) a list of Italian company's quota-holders and all information regarding the foreign company wishing to incorporate it; (ii) power of attorney, notarized and apostilled, if necessary, issued in favor of the persons who are requested to carry out the incorporation meeting in Italy; (iii) certificate of existence and good standing of the quota-holders; (iv) specific information about the company management; (v) Italian Fiscal Code of the Italian company's directors and of the auditing body (if any) (at this respect, please note that any non-Italian citizen director must request the issuance of an Italian tax code); (vi) bylaws and deed of incorporation of the company, which must have the specific requirements provided by the Italian Civil Code.

At least 25 percent of the contributions in cash of the corporate capital must be deposited in a temporary deposit, in proportion of the interest underwritten by each quota-holder and all of the capital must be duly underwritten; otherwise, the incorporation meeting cannot take place. The remaining contributions of the corporate capital must be paid in when requested by the board of directors or the sole director. In case of sole quota-holder, the entire amount of the corporate capital must be paid in at time of incorporation.

Società per azioni (S.p.A.)

Typical documents include: (i) a list of Italian company's shareholders and all the information regarding the foreign company wishing to incorporate it; (ii) the company shareholder's ledger and shares' certificates; (iii) Italian Fiscal Code of the Italian company's directors and of the auditing body (please note that any non-Italian citizen director must request the issuance of an Italian tax code); (iv) bylaws and deed of incorporation of the company, which must have specific requirements provided by the Italian Civil Code.

The entity setup is subject to the following: (i) the share capital must be entirely underwritten; (ii) the provisions contained in Articles 2342, 2343 and 2343-ter of Italian Civil Code must be respected; (iii) the authorizations and the other conditions provided by special laws for the incorporation of the company, in relation to its particular purposed, shall apply.

Branch office

- Not a separate legal entity from its parent company
- However, it still has the power to permanently represent the parent company in Italy
- It is autonomous with respect to the way in which it organizes its activities in Italy
- It has decision-making ability to carry on the business of its parent company in Italy
- 1 or more persons are granted with the ability to represent the branch office in Italy (the so-called "preposto/i")
- It is taxed on its earnings at a corporate level. Once the gross profits have been taxed in Italy at the branch level, they can

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be transferred to the parent company (foreign headquarter) without further Italian taxation (technically they are not dividends since the net profit of an Italian branch already belongs to the parent company)

- Typical charter documents include, but are not limited to, the following: registration with the appropriate Companies' Register, issuance of an Italian fiscal code and VAT code for the branch office, issuance of an Italian fiscal code for the legal representative(s) of the branch office, statement of new activity in Italy, a resolution adopted by the competent corporate body of the parent company upon the incorporation of the branch and granting of powers to the *preposto*.

Representative office

- Not a separate legal entity from its parent company
- It does not have the power to represent the parent company in Italy
- It can only carry out promotional and advertising activities in Italy, receive and provide information on behalf of the parent company, carry out scientific research activity, create relationships with possible clients and monitor the Italian market
- Cannot bind the parent company to any 3rd party
- It is not subject to taxation in Italy (by definition a representative office does not carry out a business activity), and
- Typical charter documents include: registration with the Economic and Administrative Register (REA) and issuance of an Italian fiscal code for the representative office and for its legal representative

MINIMUM CAPITAL REQUIREMENT

Società a responsabilità limitata (S.r.l.)

Minimum capital requirement of EUR 10,000. It is possible to incorporate a S.r.l. with a corporate capital of less than EUR 10,000 provided that:

- The corporate capital is at least equal to EUR 1
- The entire amount must be paid in cash by the directors of the company and
- A special reserve is formed to fill the gap in the capital with the future profits of the company.

Società per azioni (S.p.A.)
EUR 50,000.

LEGAL LIABILITY

Società a responsabilità limitata (S.r.l.)

Quota-holders of a corporation are generally not liable for the debts of the corporation. According to Italian law, their liability is limited to their contributions. The quota-holders are jointly liable with the directors in case they have intentionally decided or authorized the performance of harmful activities on the company, the quota-holders or third parties.

Società per azioni (S.p.A.)

No personal liability of the shareholders.

The different allocation of the corporate rights to shareholders is not allowed.

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TAX PRESENCE

Società a responsabilità limitata (S.r.l.)

Its earnings are taxed at a corporate level and quota-holders are taxed on any distributed dividends.

INCORPORATION PROCESS

Società a responsabilità limitata (S.r.l.)

The S.r.l. may be incorporated either by contract or unilateral act and the articles of association shall be drafted by way of a public deed. Therefore, the incorporation meeting takes place before an Italian Notary Public and provides for, *inter alia*, the filing and registration of the articles of association (and the annexed bylaws) with the competent Chamber of Commerce/Companies' Register.

BUSINESS RECOGNITION

Società a responsabilità limitata (S.r.l.)

Well regarded and widely used. The most common corporate entity in Italy for small- to medium-sized businesses, especially due to the flexibility in management.

SHAREHOLDER MEETING REQUIREMENTS

Società a responsabilità limitata (S.r.l.)

The articles of association of an S.r.l. may provide that the decisions of the quota-holders are taken by way of written consultation or written consent. In the absence of this kind of provision in the articles of association and:

With reference to some items expressly provided by Italian law, *ie*:

- The amendments of the articles of association
- The decision to carry out the transactions entailing a substantial amendment of the corporate purpose or a substantial amendment of the rights of the shareholders)
- In case of a decrease in the corporate capital for losses or
- When requested by 1 or more directors or a number of quota-holders representing at least 1/3 of the corporate capital, the decisions are taken by way of a quota-holder's meeting.

Quota-holders are required to, at a minimum, approve the company's financial statements each year.

Società per azioni (S.p.A.)

A shareholder's meeting must be called at least once a year, in order to resolve upon the approval of the Financial Statements of the company. It is not possible to adopt written resolutions.

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BOARD OF DIRECTOR MEETING REQUIREMENTS

Società a responsabilità limitata (S.r.l.)

The articles of association of a S.r.l. may provide that the decisions of the board of directors are taken by way of written consultation or written consent.

Directors are required to, at a minimum, approve the company's draft financial statements each year.

Auditing body

- The S.r.l. is obliged to appoint an auditing body which can consist of either:
 - In a board of 3 effective members and 2 alternate members or
 - In a sole auditor or
 - In an external auditor.
- The following requirements/thresholds need to be met:
 - The company is required to prepare the consolidated financial statements
 - The S.r.l. controls a company which is subject to the legal auditing by an external auditor
- For 2 consecutive financial years, the company has exceeded at least 1 of the following thresholds:
 - The assets resulting from the balance sheet are equal to EUR 4 million
 - The profits are equal to EUR 4 million
 - The average number of the personnel employed by the company is 20 employees
- The obligation to appoint an auditing body in a S.r.l. ceases if, for 3 subsequent financial years, none of the aforementioned numeric limits have been exceeded.

For Società per azioni (S.p.A.):

The auditing body is mandatory in the joint stock companies, in the form of a board of statutory auditors.

It is composed by 3 effective auditors and 2 alternate auditors, appointed by the shareholder's meeting (with the exception of the first statutory auditors, appointed by the deed of incorporation).

The effective auditors must receive a remuneration for their office.

ANNUAL COMPANY TAX RETURNS

Società a responsabilità limitata (S.r.l.)

The S.r.l. must annually file tax returns with the Italian tax authority; the most common are (not exhaustive list):

- Corporate income tax return
- Regional income tax return
- VAT return and
- Withholding agent tax return

Moreover, other periodical (i.e., monthly or quarterly) tax declarations could be due, depending on the actual activity carried

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out; such as the Intrastat form or communication of any transactions with counterparties originating from the list of black listed countries.

BUSINESS REGISTRATION FILING REQUIREMENTS

Società a responsabilità limitata (S.r.l.)

The filings are made when required by law.

The financial statements must be filed each year after their approval by the shareholders' meeting, within 30 days from the approval itself.

BUSINESS EXPANSION

Società a responsabilità limitata (S.r.l.)

If a S.r.l. expands beyond a certain point (please refer to the Auditing body topic under Board of director meeting requirements) the company must appoint an auditing body, in the form of either a board of statutory auditors, or a sole statutory auditor, or an external auditor.

EXIT STRATEGY

Società a responsabilità limitata (S.r.l.)

The limited liability company dissolves (i) for the expiration of the company's term; (ii) for the achievement of the corporate purpose or for the occurred impossibility to achieve it, unless the quota-holder's meeting, called with no delay, does not resolve upon the relevant bylaws amendments; (iii) for the impossibility to operate or for the continuous inactivity of the quota-holder's meeting; (iv) for the decrease in the corporate capital below the legal minimum required, unless what is provided by Articles 2447 and 2482-ter of Italian Civil Code; (v) in cases foreseen by Articles 2437-*quater* and 2473; (vi) in case the quota-holder's meeting resolves so; (vii) for the other causes provided in the bylaws or the deed of incorporation; (viii) in case a judicial or controlled liquidation procedure (the so-called "*procedura di liquidazione giudiziale e controllata*") is commenced.

The effects of dissolution are determined at the date of registration, at the Companies' Register, of the declaration by which the directors of the company ascertain the causes of dissolution (with reference to the case described under number (vi) above, at the date in which the relevant minutes will be filed with the companies' register).

Società per azioni (S.p.A.)

The joint stock company dissolves (i) for the expiration of the company's term; (ii) for the achievement of the corporate purpose or for the occurred impossibility to achieve it, unless the shareholder's meeting, called with no delay, does not resolve upon the relevant bylaws amendments; (iii) for the impossibility to operate or for the continuous inactivity of the shareholder's meeting; (iv) for the decrease in the share capital below the legal minimum required, unless what is provided by Articles 2447 and 2482-ter of Italian Civil Code; (v) in cases foreseen by Articles 2437 and 2473; (vi) in case the shareholder's meeting resolves so; (vii) for the other causes provided in the bylaws or the deed of incorporation.

The effects of dissolution are determined at the date of registration, at the Companies' Register, of the declaration by which the directors of the company ascertain the causes of dissolution (with reference to the case described under number (vi) above, at

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the date in which the relevant minutes will be filed with the companies' register).

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Approval of financial statements (both at quota-holders' and directors' level).

DIRECTOR / OFFICER REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.) Italian Fiscal Code

Directors are required.

Officers are not applicable.

According to a recent change in Italian corporate law, individuals assuming the office of directors of a limited liability or joint stock company are obliged to declare, before their appointment, the absence of the causes of ineligibility stated under article 2382 of the Italian Civil Code. Article 2382 of the Italian Civil Code states that the following persons cannot be appointed as directors and, if appointed, must cease from their office: (i) individuals who are subject to disqualification (*interdetti*), (ii) individuals who are subject to disablement (*inabilitati*), (iii) individuals who have filed bankruptcy or (iv) individuals who have been sentenced to punishment which entails interdiction from public offices or incapacity to assume managerial offices (*uffici direttivi*).

LOCAL CORPORATE SECRETARY REQUIREMENT

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The Italian entity shall appoint a legal representative who may be also a foreign individual.

None beyond the required directors. However, in practice, the transactions are easier if at least 1 of the directors is located in Italy.

LOCAL OFFICE LEASE REQUIREMENT

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not mandatory. The Italian entity may be domiciled at the bookkeeper office.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

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Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not applicable for this jurisdiction.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Allowed, for a limited period of time.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not allowed.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

For certain jurisdictions, it could be necessary to assess whether reciprocity condition is satisfied.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

For shareholders or directors coming from certain jurisdictions, it could be necessary to assess whether reciprocity condition is satisfied.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Società a responsabilità limitata (S.r.l.)

- The limited liability company is managed by an administrative body, appointed by the quota-holder's meeting (except for the first directors, who are appointed in the deed of incorporation).
- Directors are elected by the quota-holders and are the highest authority in the management of the company. A S.r.l. can be managed by:

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- A sole director or
- A board of directors, composed by 2 or more members, or
- Two or more directors acting jointly or severally.
- Directors can also be quota-holders.
- The directors are jointly liable towards the company for damages arising from the failed observance of their duties, imposed by law and by the deed of incorporation for the management of the company. However, directors proving to be not in fault and having opposed to that specific transaction to be carried out, are deemed as not liable.
- The remuneration for their office is not mandatory.

Società per azioni (S.p.A.)

- The joint stock company is managed by an administrative body, appointed by the shareholder's meeting (except for the first directors, who are appointed in the deed of incorporation)
- It is possible to choose among (i) a sole director or (ii) a board of directors
- The directors must fulfil their duties, in accordance with the provisions set forth by the law and the articles of associations, and with the diligence required by the type of appointment and their specific competences. They are jointly liable towards the company with respect to the damages arising from the non-fulfilment of such duties, provided that they are not specific powers of the executive committee or they are concrete functions exercised by 1 or more directors. They are jointly liable if, being aware of negative facts, they did not what they could to prevent the carrying out of such facts or to eliminate or mitigate the harmful consequences thereof. The directors of a joint stock company are also liable towards company's creditors for the failed compliance with the obligations concerning the assets' integrity
- The remuneration for their office is not mandatory.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Quota-holders, directors, members of oversight body (e.g., members of the board of statutory auditors, if any in the case of S.r.l., mandatory for the S.p.A.), and proxy-holders (if any) are publicly identified, since they are registered with the Companies' Register. Registration of the special proxy-holders is not mandatory (except in certain cases, where, for instance, the attorney is granted with banking powers and banks could require the registration of the attorney's powers with the Companies' Register).

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The minimum and maximum number of directors are specified in the bylaws. For directors, generally the minimum number is 1 (in this case, the management body of the company consists of a sole director).

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

1 quota-holder is sufficient.

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REMOVAL OF DIRECTORS OR OFFICERS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Removal of directors is generally allowed by a vote of quota-holders should the relevant director be appointed for an unlimited period of time and without prejudice to an adequate notice period. Should the relevant director be appointed for a fixed period of time, they can be removed for “just cause” with a resolution of the quota-holders. In case of absence of a just cause, the quota-holders meeting can remove such director, but compensation for damages will be due.

REQUIRED AND OPTIONAL OFFICERS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Applicable (e.g., attorney in fact).

BOARD MEETING REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The articles of association of a S.r.l. may provide that the decisions of the board of directors are taken by way of written consultation or written consent. Written resolutions are not allowed for the S.p.A.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The quora required for the meetings are provided by the Articles of Association or by law.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The bank account may be opened even after the incorporation. In this case, the necessary sum to set-up the company (i.e., the corporate capital) can be kept in escrow by the Notary Public on his trust bank account and then can be transferred onto the Italian entity's bank account when the latter is opened. The bank account is local.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

In an S.r.l., the appointment of the auditing body is not mandatory under Italian law, except for the cases described in the Auditing body topic under Board of director meeting requirements.

In the S.p.A. the auditing body is necessary.

The relevant books must be kept.

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REQUIREMENT REGARDING PAR VALUE OF STOCK

Società a responsabilità limitata (S.r.l.)

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

In order to resolve upon the increase in the corporate capital of a S.r.l. or S.p.A., a proper extraordinary quota-holders meeting must be held in front of the Italian Notary Public. The relevant decision is approved with the majorities provided by the articles of association.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Società per azioni (S.p.A.)

The funds can be divided between corporate capital and share premium.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Can be provided for in the bylaws within certain limitations.

OBTAINING A NAME AND NAMING REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

The choice of the name for a limited liability is free; however, we suggest:

- to avoid choosing names which are equal or very similar to those of competitors companies and
- to carry out preliminary researches at the Italian Companies' Register.
- Finally, the name of the company must include the legal form (i.e., "S.r.l." or "S.p.A.," as the case may be).

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Not applicable for this jurisdiction.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

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The By-laws and the Deed of Incorporation can be amended with a quotalholder's/shareholder's meeting to be held before the Notary Public.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Depends on the specific business of the corporation.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Società a responsabilità limitata (S.r.l.) and Società per azioni (S.p.A.)

Applicable, if required but the shelf companies are not usual under Italian law.

CONTACTS



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