

Corporate law

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LaLBA – *Languages for Business Administration*

Business and commercial law



**Fondazione
UniverMantova**

Company registration

What are the legal requirements?

What legal requirements exist when registering a company in Italy, and what you must do before you begin operating as a business?

There are many forms and documents that must be submitted before opening your doors, so be careful to pay close attention to the following information.

Company registration

What are the legal requirements?

Public deed of incorporation / company bylaws

Before heading to a public notary, it is necessary to draft and execute a public deed of incorporation including the company's bylaws.

This legally documents the creation of your company and therefore you must include such information as the company name and address. This can be handed in to the notary by the quota holders or authorized representatives of the company.

This action includes notarial fees and the registration tax which must be paid within 20 days

Company registration

What are the legal requirements?

Corporate books and accounting books

The law regarding corporate and accounting books is set by the Italian Civil Code, and registration is done through a notary or Register of Enterprises.

Limited liability companies (SRL) must keep corporate books such as a minute book of board of directors' meetings and a minute book of board of Statutory Auditors.

Both books must be valid for authentication. Other companies must have 2 accounting books - journal and inventory. You can buy these books at specific stores or through a notary public with no need for authentication.

Company registration

What are the legal requirements?

Government grant tax

Government tax must be paid yearly by each company. The amount depends on the amount of the company's social capital.

If the social capital is under 516,456,90 EUR, the government tax amounts to 309.87 EUR.

If above, the necessary tax to be paid is 516.46 EUR. The payment is done through the Tax Revenues Authority (Agenzia delle Entrate)

Company constitution

The notary will not legalise the deed of incorporation unless the corporate capital is subscribed and paid-in in the minimum legal proportion.

The deed of incorporation must include the following:

- (1) Corporate name.*
- (2) Registered office and local branches.*
- (3) Information on the share/quota holders and their stake in the company.*
- (4) Corporate purpose.*
- (5) Amount of the corporate capital.*
- (6) Information on the shares.*
- (7) Rules concerning the management.*
- (8) Information on the directors and, if any, the statutory auditors and the auditing firm and their appointment.*
- (9) Value attributed to the in-kind contributed credits and/or assets.*
- (10) Rules on distributions.*
- (11) Term of office of directors, statutory auditors and auditing firm.*
- (12) Duration of the company.*
- (13) Amount of expenses necessary for incorporation.*

Company constitution

Notary will deposit the articles of incorporation at the Companies' Register; request for registration

Companies' Register registers the corporation

With the registration, a corporation acquires legal personality

For transactions before registration in the name of the corporation, the persons that have acted have unlimited and joint liability towards third parties. After registration the corporation can approve the transactions set forth above

Company constitution

The deed of incorporation is publicly available and any amendments to it must be notarised and filed with the RoE.

The company must also open accounting and corporate books and records, and make a filing with the VAT office.

Shareholders' agreements can be executed among the share/quota holders. They are not publicly available save for shareholders' agreements concerning issuers of financial instruments that are widely held by the public.

Company constitution (INCORPORATION)

Once the Corporation is registered and has thus acquired legal personality, it can be declared void only in the following cases:

- (1) articles of incorporation not in the public act form (atto pubblico)*
- (2) illegal corporate purpose*
- (3) absence in the articles of incorporation of any indication as to name, equity contributions, share capital, corporate purpose.*

Company constitution (INCORPORATION)

Effects of registration / voidness:

- *declaration that a corporation is void is without prejudice to the acts performed after registration of the Corporation*
- *the decision declaring the corporation void shall appoint the liquidators to wind up the corporation*

Company registration

What are the legal requirements?

Registration through **Comunicazione Unica**

Companies are required to electronically file a single notice to the Register of Enterprises. The documentation must include forms requested by the following organizations:

- 1) Registro Impreso ,*
- 2) Agenzia delle Entrate*
- 3) by INPS and INAIL .*

In addition, the company has to present a certified email address with the registration documents. After registration the company will receive the documentation within 7 days. These documents include a tax identification number, VAT number and registration paperwork from Social Security Register (INPS) and Accident Insurance Office (INAIL).

Company registration

What are the legal requirements?

*Notify the competent **Labor Office***

Before hiring personnel, the company must notify the Provincial Office (Ispettorato nazionale del lavoro).

This must be done at least one day before the employee starts working.

Business vehicles in Italy

*The main business vehicles are **companies** and **partnerships**, but companies are more commonly used than partnerships (except for small businesses) as, in principle, a company's shareholders are not jointly liable for the company's obligations and responsibilities.*

The main forms of Italian business vehicles used in Italy (società di capitali) are the:

- **Limited liability company** (Società a responsabilità limitata) (Srl)
- **Joint stock company** (Società per azioni) (SpA)
- **Company limited by shares** (Società in accomandita per azioni) (SapA)

Business vehicles in Italy

The Italian types of partnerships (società di persone) are the:

Simple partnership (Società semplice) (Ss).

General partnership (Società in nome collettivo) (Snc).

Limited partnership (Società in accomandita semplice) (Sas).

Source of Corporate law in Italy

Civil Code of 1942 (as amended from time to time)

Applies to all corporations

Major reform in 2003/2004

Legislative Decree No. 58/1998 (as amended from time to time);

CONSOB Regulations and Communications

Applies to listed and publicly-held corporations

Listed Market Rules and Corporate Governance Code (2015; “comply or explain” rule)

Applies to listed corporations

Court decisions and legal doctrine (not binding)

Limited Liability Company

SRL - Societa a responsabilita limitata

This is a typical type of company foreigners choose when starting a small business in Italy.

Along with at least one shareholder, the minimum investment of 10,000 EUR is required for this type of company.

Limited Liability Company

SRL - Societa a responsabilita limitata

At least 2,500 EUR (a quarter) must be paid as a deposit upon incorporation. In the case of only one shareholder, the deposit as the start-up capital must be paid in full.

Capital is considered acceptable both in cash and kind, however capital in kind requires evaluation by a registered auditor.

Limited Liability Company

SRL - Societa a responsabilita limitata

Shareholders generally hold limited liability to the extent of their contribution and the capital is strictly split into interests without the possibility to list on the stock exchange market.

Limited Liability Company

SRL - Societa a responsabilita limitata

Companies can choose whether they want to have one director, 2 or more directors who have independent powers, or a board of directors.

Additionally, a board of statutory auditors must be created who will monitor and maintain the accounting of the company, including transactions, balance sheets and financial statements.

Limited Liability Company

SRL - Societa a responsabilita limitata

General aspects of SRL

The SRL is the most common company with share capital in Italy, generally established as small or middle company often run by family members or by a few shareholders which act as directors as well.

SRL's structure is flexible and adjustable to the shareholders' needs.

The SRL is a limited liability legal entity. As such:

- 1) it may own any type of assets;*
- 2) the shareholders are not liable for its obligations (with an exception explained below).*

The SRL is regulated by the Italian Civil Code, by the Articles of Association and the By-Laws.

In order to establish a SRL, the prospective shareholders need to appear before a Notary Public.

Limited Liability Company

SRL - Societa a responsabilita limitata

SRL: shareholders

Shareholders of a SRL may be individuals or legal entities.

The shareholders are not liable for the debts of the SRL: their liability is limited to the contributions paid-in in the SRL (whether in kind or money). The only exception to this rule being the SRL with a sole shareholder: if the sole shareholder fails to perform the contributions and to inform the general public of this status, the limited liability is not applicable.

Each shareholder which is not a director of the SRL has the right to have access to any documents, contracts and communications of the SRL.

Also, each shareholder may ask the Court to remove a director who is acting against the interests of the SRL and may start a lawsuit for damages suffered by the SRL due to the director's misconduct.

Limited Liability Company

SRL - Societa a responsabilita limitata

SRL: exit from the company

Shareholders are meant to be bound to the company and they can not withdraw from that relationship as they please. The possible exits from a SRL are the following:

1) sale of the share: this requires contractual agreements with a third party (sale and purchase agreements, put/call option rights or tag/drag along rights) keeping in mind possible limitations, such as the pre-emption right, provided for in the by-Laws:

2) withdrawal right: it is subject to specific conditions established by the law or by the By-Laws (e.g. shareholders assembly decisions affecting the scope of the company or the rights of the shareholders, no-term company duration);

3) exclusion from the company: the By-Laws may provide a list of events which trigger the shareholder assembly's right to exclude a shareholder from the SRL;

4) winding-up of the company: this leads to the extinction of the company.

Limited Liability Company

SRL - Societa a responsabilita limitata

SRL: shares

Shareholders' contributions are represented by shares (quota under Italian law): a percentage of the entire share capital of the company whose value is in proportion to the paid-in contribution. The shareholder's rights are proportional to the owned share but the By-Laws may provide otherwise.

In principle, shares can be freely transferred to third parties, but the By-Laws usually provide limitations such as pre-emption right, lockdown period, internal approvals.

In case of a capital increase, each shareholder has an option to acquire the new capital in proportion to the owned share in order to avoid dilution.

Limited Liability Company

SRL - Societa a responsabilita limitata

SRL: corporate governance

SRL comprises two main bodies:

(1) the shareholders assembly

(2) management body.

Under certain circumstances, there might be an internal or external auditor.

Limited Liability Company

SRL - Societa a responsabilita limitata

Shareholders assembly

The shareholders form the shareholders assembly whose main powers are the following:

- (1) appointment of the managing body;*
- (2) appointment of the internal or external auditors;*
- (3) approval of the balance sheets;*
- (4) dividends distribution;*
- (5) decision about the winding-up of the company;*
- (6) amendments to the By-Laws.*

The shareholders assembly is summoned by the managing body with a written communication setting agenda, place, date and time of the meeting.

Limited Liability Company

SRL - Societa a responsabilita limitata

Shareholders assembly

The shareholders assembly is validly held when at least half of the share capital is present. Decisions are taken by simple majority of the share capital present at the assembly but certain matters, such as amendments to the By-Laws, require the positive vote of half share capital and the presence of a Notary Public.

The By-Laws may set higher majorities.

If the entire share capital is present, the managing body is present or informed and noone challenges the agenda, a shareholder assembly can be held with no previous written convocation (assemblea totalitaria under Italian law).

Limited Liability Company

SRL - Societa a responsabilita limitata

Managing body

The managing body of the SRL can be either:

a Sole Director (Amministratore Unico under Italian law);

a Board of Directors (Consiglio di Amministrazione under Italian law);

Directors with joint or sever powers (Amministrazione Congiunta o Disgiunta under Italian law)

The managing body has the duty to manage the company in a profitable and compliant way.

The By-Laws may set limitations on the Board of Directors powers: for example, decisions on extraordinary matters (such as sale and purchase of businesses as a going concern or participating interests) could be attributed to the shareholders assembly.

Limited Liability Company

SRL - Societa a responsabilita limitata

Managing body

When a Board of Directors is appointed, the Directors elect a Chairman who acts as legal representative of the company. Usually, the Board of Directors appoints one or more Managing Director(s) (Amministratore Delegato under Italian law) with powers limited to specific areas, activities or functions.

The Board of Directors meeting is usually summoned by the Chairman with a written communication stating the agenda, place, date and time of the meeting . The Board of Directors meeting is validly held when at least half of its members are present. Decisions are usually taken by simple majority of the present directors but the By-Laws may provide for higher majorities.

The managing body is not directly liable for the company's debts. However, shareholders and creditors may sue the managing body in order to recover damages if the SRL's debts are consequence of its negligence or willful misconduct.

Limited Liability Company

SRL - Societa a responsabilita limitata

Auditors

SRL are obliged to appoint auditors only if the company:

drafts a group balance sheet;

controls a company obliged to appoint auditors;

overcomes for two consequential years two of the following limits: (i) € 4.400.000,00 as net worth, (ii) € 8.800.000,00 as revenues and (iii) 50 employees.

The statutory auditing body of the SRL can be a Sole Statutory Auditor (Sindaco Unico under Italian law), a Board of Statutory Auditors (Collegio Sindacale under Italian law) or an external auditor..

Joint Stock Company (SPA - Societa per azioni)

If you have plenty of capital and want to start an SPA company, a minimum investment of 50.000 EUR is necessary for start-up.

A quarter of the capital needs to be deposited before the incorporation of the company.

Joint Stock Company (SPA - Societa per azioni)

This business type requires at least 1 shareholder, with the capital normally divided into shares with the possibility of listing them on the stock exchange.

When there is only a single shareholder in the company, all of the start-up capital must be paid at once before incorporation.

Joint Stock Company (SPA - Societa per azioni)

Each year the shareholders must hold an ordinary meeting with the aim of improving financial statements.

The company also needs to have its own accounting system supervised by the board of statutory auditors.

Joint Stock Company (SPA - Societa per azioni)

The management of that type of company can differ depending the preferences of those involved. There are 3 possibilities:

- *Traditional board - formed by a single director*
- *A board of directors*
- *A management board - which is assigned by the supervisory committee (supervisory committee is elected by the shareholders)*

Partnership Limited by Shares (SAPA - Societa in accomandita per azioni)

This type of a partnership requires two or more partners. Partnership Limited by Shares has similar conditions to the limited partnership.

Limited liability requirement goes to at least one of the partners and and at least one of the partners must act as a general member. Minimum requirement for capital is not required while capital is divided into shares rather than quotas

Set up a company by a sole shareholder/quotaholder

S.p.A. and S.r.l. companies may be set up by means of a sole shareholder/quotaholder, which may be an individual, a company (even a foreign one) or a public entity.

The principle of the perfect separation of assets is applicable; therefore, in the event of insolvency, the sole shareholder/quotaholder shall not fulfill the company's obligations by means of their personal assets.

An exception to this rule is applicable in the event of activities performed before the registration of the incorporation deed with the Companies' Register, in which event the sole shareholder/quotaholder is unlimitedly liable

Furthermore, it is provided that upon incorporation, and/or any capital increase, the sole shareholder/quotaholder shall pay all contributions in cash. The missed payment of such contributions entails, also, the unlimited liability of the sole shareholder/quotaholder.

Set up a company by a sole shareholder/quotaholder

The sole shareholder/quotaholder shall be indicated on the company documents and correspondence (but not in the corporate name), and registered in the Companies' Register. If this information is not provided the shareholder/quotaholder will be unlimitedly liable for the corporate obligations.

All the agreements between the company and the sole shareholder/quotaholder, as well as the transactions performed by the company in favour of the sole shareholder/quotaholder, may be enforceable vis-à-vis the creditors of the company if they have been listed in the Board of Directors' meetings minutes Book or if they have been drawn up by means of a written deed, having a fixed date prior to the possible distrait.

Types of partnership

Italian law regulates three types of partnership:

- the **Simple Partnership** (“Società semplice”, S.s.). The simple partnership may not be used to carry out business activities and is not discussed here,*
- the **General Partnership** (“Società in nome collettivo”, S.n.c.), and*
- the **Limited Partnership** (“Società in accomandita semplice”, S.a.s.).*

These kinds of Partnerships do not have a legal personality. The partners have unlimited liability, with the exception of the Limited Partners of a Limited Partnership. However, creditors' claims must be first applied to the assets of the partnership before invoking the liability of the partners.

A partnership is created by a contract between two or more partners. The partnership agreement must be drafted in the form of a public deed or a legalized private deed.

Corporate entities may be partners of Italian partnerships. No minimum capital is required and contributions can be made in cash, in kind or in personal activity of the partners.

General Partnership (SNC - Societa in nome collettivo)

If you are planning to set up a company based on a partnership, at least 2 individuals or legal entities are required to sign an agreement document.

You don't need a sufficient amount of capital while establishing the partnership. All members are general members and hold full liability and management responsibility.

General Partnership (SNC - Societa in nome collettivo)

The company's business name must contain the name of at least one of the partners and an indication that it is an unlimited partnership.

The members have unlimited liability for partnership obligations and there can be no agreement to the contrary. When seeking repayment of debts owed by the partnership, creditors must first enforce them against the partnership before applying to the members. The unlimited partnership is subject to bankruptcy law with the contemporaneous bankruptcy of all partners.

The partners generally have separately exercisable powers of administration and representation. If agreed, powers of administration may be reserved to some members only.

Limited Partnership

(SAS - Societa in accomandita semplice)

The main conditions for setting up a limited partnership are the same as for the general partnership, except that at least one of the partners has to be limited and, accordingly, hold limited liability to the extent of his contribution to the company.

The other partner has to be general, owning full liability for the obligations.

Limited Partnership

(SAS - Societa in accomandita semplice)

The limited partnership has two categories of partners:

***general partners** (soci accomandatari), who are responsible for the administration and management of the company and who have unlimited liability for the fulfillment of partnership obligations;*

***limited partners** (soci accomandanti), who are not directors and will be liable for partnership debts within the limits of the investment made in the partnership, subject to certain exceptions governed by law.*

The partnership name (business name) must contain the name of at least one general partner and an indication that it is a limited partnership.

If a limited partner's name is included in the partnership name, he or she will have unlimited liability, jointly and severally with the general partners, for partnership debts.

Limited partners cannot perform acts of administration or negotiate or do business in the name of the partnership, except when granted a special power of attorney for specific business activities. Any limited partner who disregards this prohibition will take on unlimited liability for all partnership debts and may be excluded from the partnership itself.