

How to invest in Italy

Operational modalities of investments and the exercise of economic and entrepreneurial activities in Italy. Let's consider:

- the purchase of a property
- the establishment of a share of the company or the purchase of any single share.

We'll verify:

- the operating procedures of the investment
- the aspects of the certification and advertising.

Our presentation project is in the form of panel discussions with questions and answers and hopefully, with continuous interaction with the audience.

Anti-money laundering legislation and related issues

This consists of a series of requirements for transparency, explicitness and the traceability of all financial transactions.

Foreign investment and, in general, relationships with foreign countries regarding the coexistence of different laws are the subject of particular attention for the purposes of this discipline.

Keep in mind the essential rule to make all payments through publicly authorized intermediaries, using funds regarding which at any time you can easily prove the origin.

Activities for selecting the property

“Do-it-Yourself”

Professionals registered in the public bulletin boards.

Intermediaries authorized and listed in public registers.

Documents required for the purchase of a property.

- **Titles of origin** (in case of division and succession/inheritance, the act by which it was previously purchased with dividends or by the deceased must be produced.)
- Copies of the **declaration of succession** with the **original death certificate of the deceased**
- **cadastral certificate made out correctly**
- a showing of **tax benefits, if any** (the 1st House - Small-IATP Rural Properties - Tax Credit)
- a copy of the **preliminary contract**, if any, registered with F23 for payment;;
- a showing of the **price and payment terms**
- If there is a **mortgage:contact details** of the **lending bank**.
- **photocopies of checks already issued or payment transfers made.**

Documents required for the purchase of a property: For NATURAL PERSONS

- copies of identification documents and social security number;
- residence permits, if foreigners;
- birth certificate, residence, citizenship, marital status, entitlement to citizenship rights;
- an extract summary of the marriage certificate for married persons;

Documents required for the purchase of a property: For COMPANIES– ENTI

- certificate of incorporation
 - copy of the articles to date;
 - copies of identification documents and the tax code of legal representatives;
 - any shareholder resolutions put to the book, with an exhibition of the complete book;
 - Certificate of Incorporation + staff regulations + affidavit of an attorney for foreign companies (legalized /apostilled)
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- **Documents required for the purchase of a property: For BUILDINGS**

- indication if constructed before **September 1, 1967**;
- copies of all relevant:
 - **licenses, concessions**
 - **planning permission**
 - **Building permits**;
 - **Applications for tax amnesty, with related payment slips**;
 - **Licenses / concessions / permits to build in amnesty already granted**;
 - certificates of regularity plants or a showing of any exclusion of warranty;
 - **cadastral** plan with office protocol conforming to the condition of the premises;
 - **certificate of viability / related demand**;
 - **Energy Performance Certificate prepared by an engineer** (required by law and dated before the start of negotiations);

Documents required for the purchase of a property: For LAND

- **Certified urban destination in the original**, up to date and not earlier than one year;
 - **Receipts of the communication notices** of the sale required to be made to **persons entitled to first refusal or a written declaration of their waiver**(otherwise requires the approval in place)
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CIVIL AND TAX COMPLIANCE SUBSEQUENT TO ENTERING INTO THE ACT

ACT	Conservatory	Advertising against third parties	Land Agency
	Cadastre	Change property heading	
	Registry Office	Tax payments	Revenue Agency

CONSERVATORSHIP AND ADVERTISING/PUBLICATION

The conservation activities of the land registry is important for the functioning of the housing market, because it is aimed **at making public the acts of:**

- transfer / creation / modification of rights *in rem* on real estate, or binding acts of nature, so-called "Prejudicial"
- granting mortgages

in order to allow third parties to be aware of:

- the person who is the holder of the property
- the "liens" pending on the property

<p>The Transcript declared value</p>	<p>The property is transferred as a result of the consent of the parties, the transcript makes it enforceable against third parties transferring the right, already taken place as a result of the contract.</p> <p>The purchaser has an interest in making the transcript in order to "secure" their rights against third parties. In fact, when more than 1 person has conflicting rights on the property, the person who transcribes first, wins.</p> <p>The transcript represents one option for the party, but the public official who has drawn up the act has an obligation to cure it.</p>
<p>The Inscription constitutive value</p>	<p>The mortgage is established through registration in the land register, and expires, <i>inter alia</i>, by being deleting therefrom.</p> <p>The order number (RG / year) which is given at the time of registration determines the amount of the mortgage. Between multiple mortgages on the same property, the one registered first prevails.</p> <p>The inscription mortgage gives the lender the right to expropriate the mortgaged property even if it has been sold to a third party with a recorded document subsequent to the mortgage.</p>
<p>The Annotation</p>	<p>Formalities ancillary to a previous transcription, registration or annotation (<i>eg</i>, declaration of annulment proceedings, cancellation, subrogation ...)</p>

LAND REGISTER (CADASTRE): inventory of real estate in the national territory.

- Horizontal Archive - called CATASTO LAND - including the list of all the land that is agricultural in nature or still vacant-;
- Archive vertical - called CATASTO BUILDINGS - consists of the construction of a civil, industrial, commercial and rural nature.

Cadastral PARCEL

- Continuous portion of an area of land, belonging to the same owner, characterized by the same quality or class, and the same destination.

URBAN REAL ESTATE UNITS

- Portion of a building, an entire building or group of buildings or urban area, capable of functional autonomy and income.

<p>The Land Registry (land registry parcels) <i>origin and history of changes</i></p>	<p>identification register location quality of crop class of productivity consistency (surface) manor house and agricultural incomes registered holders (personal data and type of law and quotas)</p>
<p>Building Registry (urban real estate units) <i>origin and history of changes</i></p>	<p>identification register address category class of profitability consistency (number of rooms - m2 - m3) cadastral income floor level(data, type of law and quotas)</p>

Documents required to form a company.

- Copy of identification documents and tax id numbers of shareholders and directors;
- Proof of members' marital status (in the case of married persons in joint possession of goods it is opportune to introduce in place of the spouse, which will require a copy of the identity document)
- Indication of the name and seat of the company being formed
- Corporate Purpose
- Amount of total share capital and a receipt for payment of 25%
- Contributions from shareholders
- Listing of the managing partners and representatives and their powers
- special agreements to be inserted in place.

How to under take these activities in Italy for non-residents: Representative Office

The Italian legislation does not contain a definition of a representative office (or *bureau de liaison* in French terminology) of a foreign company in Italy, for the interpretative practice refer to the OECD mode (Organization for Economic Cooperation and Development.)

The representative office performs merely an ancillary function and is preparatory to the company's entrance into the market and is the most streamlined form of direct entrance into the Italian market. In fact, it allows you to promote directly in the territory with low cost of deployment and management and without acquiring, unlike other solutions outlined, tax liability in the foreign country.

By reason of the fact that, as has been said, the representative office appears as a mere cost center (usually fully deductible for the parent) which does not produce any income, it does not qualify, however, even as a permanent establishment and the same is not subject to the same obligations required of a branch office: this means that the foreign company is not required to file articles of incorporation and budgets. However, it remains obligatory to publish the company in the Register since its establishment must be reported to update the so-called Repertoire of Economic and Administrative news (REA).

How to under take these activities in Italy for non-residents: Branches with permanent representation

The notion of the branch with permanent representation involves three main concepts:

- administrative and economic dependence;
- operational stability;
- representation with respect to external parties.

The Italian Supreme Court has repeatedly affirmed that one may recognize the establishment of a branch office with permanent representation by a foreign entity if an integral part of the core business is made on Italian soil, head office located abroad, with a significant degree of operational autonomy and whose management is entrusted to a person entitled to act for and on behalf of the foreign company on an ongoing basis.

The branch office of a company incorporated abroad is subject, pursuant to art. 2508 of the Italian Civil Code, to the provisions of Italian law on advertising of social acts:

- will be required to register with the applicable Register of Companies
- will be required to publish the identities of the people who remain to represent it in Italian territory and will be required to file the articles of incorporation and budgets.

Setting up a company: the principle of reciprocity.

The verification of the existence of the so-called reciprocity principle is sanctified in Article. 16 of the law introducing the Civil Code, itself an essential element to be examined before any other evaluation.

In fact, that article provides that “the foreigner is eligible to enjoy civil rights granted to citizens, subject to reciprocity and subject to the provisions contained in special laws” and that “this provision also applies to foreign legal persons.”

There is reciprocity when a foreign country grants to an Italian citizen the same or very similar rights as that which apply to one of its own nationals in Italy. The absence of the condition of reciprocity affects legal capacity or, in other words, acts without this condition of reciprocity must be regarded as “suffering from radical invalidity, irreconcilable, not subject to prescription, discoverable by anyone who is interested and by the courts”.

In the context of the constitution and/or shareholding in relation to foreign natural persons not legally residing in Italy or foreign legal persons, the verification of the presence or absence of the condition of reciprocity is submitted to the Italian Ministry of Foreign Affairs.

Moreover, in some cases it is necessary to conduct some verification of reciprocity: This refers, for example, to nationals of EU member states, or countries with whom Italy has signed an international agreement in the area of civil rights, or of the member countries of EFTA (Iceland, Norway, Liechtenstein).

In general, to verify the existence, or not, of the condition of reciprocity with the various foreign countries, you can consult the list of countries against which this report applies: as evidence of the existence of reciprocity lies with the foreign shareholder concerned, it seems appropriate to verify the existence by the aforementioned requirement directly with our Ministry of Foreign Affairs.

Setting up a company: compliance requirements

In our hypothesis of establishing a corporation in Italy, you must first locate the corporate form most suited to the needs of business that intends to develop here;

- the SpA, whose minimum capital of 120,000 Euros is represented by shares in which the presence of a collective controlling body is mandatory
- the s.a.p.a., analogous to the S.p.A., but for the presence of limited partners and general partners
- the S.r.l. (Ltd. partnership), whose minimum capital is € 10,000 and in which the need for a monitoring body (also single-member constituency) is subject to passing some size limitations.

It places a priority on the need to define the content of the agreements that will regulate the operation of the legal company: in essence, will be called text-laws (by-laws).

Prior to appearing before the notary to sign the memorandum, it will be necessary to verify and eventually request/integrate a variety of documents and certificates required in this case. In particular, all the participants in the memorandum of association must previously be provided with an Italian tax id number.

In practice, however, it is often preferred to appoint a proxy – an Italian professional - invested with sufficient power, with powers of attorney specially translated and legalized, who, appearing before a notary for the constitution, avoiding the same public official acquiring the documents cited above - memorandum and resolution of the Board/ shareholders - in the forms that show the translation and legalization: it is these obligations that often lead to a considerable increase in time.

Legalization and apostil

More specifically, the foreign authentic instruments must be legalized by the Italian consulates abroad or by diplomatic missions or consular posts. Recognized exceptions to that rule are those acts which come from countries with which bilateral or multilateral treaties are in force which expressly provide for exemption from legalization and apostil, or countries that adhere to the Hague Convention of October 5, 1961, which provides for the replacement of the legalization (as described above) with the above-mentioned formula of apostil.

The legalization consists of the certificate, issued by a consular or other Italian diplomatic authority abroad (always Italian), that the official notary to the Act has suitable legal qualifications and that the subscription by the same as affixed is authentic.

The legalization is generally performed on a document that has already undergone the affidavit process; the latter consists in the certified translation of the document written in a foreign language and is issued either by the diplomatic missions or consular posts or, as happens more often, by a translator issuing an affidavit in compliance with the oath and is entered in a list format with the court in whose jurisdiction is the office of the competent Register. The need to legalize or apostil a foreign public document is very closely linked to the effectiveness of the act in our country: a foreign public document without legalization or apostil is, in fact, considered in the same way as an unauthenticated Italian private document.

Unlike true legalization, **affixing the apostil** is a simplified procedure always aimed at giving legal value to acts created abroad. It can be adopted on the part of all countries that are parties to the Hague Convention of October 5, 1961 and is also aimed at certifying the legal status of the official foreign public notary.

In this case, the power of attorney issued by the Argentinean company must be legalized by the Italian diplomatic representatives in Argentina.

If the social structure of "new.co" is formed exclusively by a foreign company, since this is the establishment of Srl sole shareholder, the share capital must be paid in full into a special escrow account payable to the company being established. In conjunction with the signing of the memorandum in the form of a public deed, the VAT number of "new.co" will be requested and, thereby (if not simultaneously), the tax code is assigned with the filing of the Register of Companies where the company has its registered office.

The obligations of the parties involved in the identification foreseen by the regulations on money laundering are borne by the professionals involved in the different constitutive phases (accountant or lawyer, solicitor, etc.).

The Registrar of Companies and practical information

public notice	delineating that instrument of economic information and registry certification
legal disclosure	for all information recorded at (art. 2193 c.c.)

–This is to guarantee and protect the companies, which can be raised against third parties (declarative advertising) the ability to know the facts, absolutely, and the same third parties, within the entrepreneurial world, come in contact with respect to the balance sheet, to the certainty of the corporate powers members, the proper conduct of commercial transactions

–At times, advertising in the Register may have the power to establish a legal effect (constitutive publication) as in the case of joint stock companies or limited liability companies, which only exist as a result of registration

ordinary section listed companies, medium to large sole proprietorships, the EEIG, public entities with economic activity, etc.

special sections small business owners, farmers, simple partnerships, craft enterprises, etc.

ACTS WHICH MUST BE ENTERED

- Establishment of branch offices of the company
- Transferring shares (SRL)
- Transfer of ownership of the company (Article 556 of the Civil Code and Law 310/1993)
- Acts of incorporation and amendments thereto
- Acts relating to the appointment, confirmation and termination administrators
- Acts of mergers and de-mergers (splits)
- Acts regarding insolvency proceedings
- Network contracts
- Transfer of offices abroad enterprises to counter national and international tax evasion
- SOA (Society of certification bodies) Claims for public works