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How to establish a wholly owned subsidiary in Italy: a guide for foreign investors

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For a foreign company seeking to establish a permanent presence in the Italian market, incorporating a wholly owned subsidiary is one of the main ways to conduct business directly in Italy while maintaining full control over the local operation.

Depending on the size of the investment, the organizational structure and the objectives of the transaction, the Italian company may primarily be incorporated as:

- a **Società a responsabilità limitata (S.r.l.)**, or
- a **Società per Azioni (S.p.A.)**.

In both cases, the subsidiary is an Italian legal entity separate from its foreign parent company and may be managed by a **Sole Director** or as provided for in its Articles of Association, by a **Board of Directors**.

1. The reciprocity requirement for foreign investors

One of the first aspects to be considered is the so-called **reciprocity requirement**.

Pursuant to Article 16 of the General Provisions on the Law - the so-called *Preleggi* to the Italian Civil Code - a foreign individual or legal entity is entitled to enjoy the civil rights granted to Italian citizens subject to reciprocity, without prejudice to any provisions contained in special laws.

In practical terms, where applicable, it is necessary to determine whether an Italian individual or legal entity would be entitled to exercise an equivalent right in the foreign investor's country of origin, including the right to establish or participate in a commercial company.

The assessment must therefore be carried out on a case-by-case basis, also considering any exemptions provided for under the applicable legislation. Where the reciprocity requirement is satisfied, or where it does not need to be verified, the foreign investor may establish a company in Italy under the same rules applicable to Italian investors.

2. Incorporation before an Italian Notary

The company is incorporated through a **public deed executed before an Italian Notary**.

The Deed of Incorporation is the document through which the founding shareholder - normally the foreign parent company in the case of a wholly owned subsidiary - formally establishes the new Italian company.

Depending on the corporate form selected and the characteristics of the transaction, the deed must identify the founding shareholder or shareholders, specifying their corporate or individual name, State of incorporation or date and place of birth, domicile or registered office and nationality, as well as, where applicable, the number of shares allocated to them.

The deed must also specify the name of the Italian company, the municipality in which its registered office and any secondary offices are located, the activities constituting its corporate purpose, the amount of subscribed and paid-up capital and the ownership interests or, in the case of an S.p.A., the number, any par value and characteristics of the shares and the rules governing their issuance and circulation.

The deed must also regulate any value attributed to receivables or contributions in kind, the rules governing the distribution of profits and, where applicable, any benefits granted to promoters or founding shareholders.

From a corporate governance perspective, it must specify the management system adopted, the number of directors, their respective powers and the persons authorized to represent the company.

Where required by law or by the corporate structure selected, the deed must also identify the members of the supervisory body, the first directors, statutory auditors or members of the supervisory board and, where applicable, the individual or entity entrusted with the statutory audit of the company's accounts.

Finally, the deed must indicate, at least approximately, the overall amount of incorporation expenses to be borne by the company and the duration of the company. Where the company is established for an indefinite period, the conditions and statutory time limits governing a shareholder's right of withdrawal must also be addressed.

3. The Articles of Organizations / By-laws

The **Articles of Organizations / By-laws - Statuto** - set out the company's operating rules in greater detail and more extensively than the Deed of Incorporation.

The Articles of Association are attached to the Deed of Incorporation and filed with the competent **Companies Register held by the Chamber of Commerce**. They are therefore publicly accessible and have binding effects on the shareholders and, where relevant, on third parties dealing with the company.

The Articles of Association contain detailed provisions governing the relationships among shareholders and the effects of those rules vis-à-vis third parties.

Common provisions may include, for example, **rights of first refusal, rules governing shareholders' meetings and meetings of the Board of Directors, tag-along and drag-along clauses, special classes of quotas or shares and the rights attached to them, exit provisions, quorum requirements, veto rights and special majority requirements.**

4. Corporate name and trademark protection

The new company must have its own **corporate name**.

Registering the corporate name as a trademark is not a requirement for incorporating the company. However, trademark registration may be advisable where the corporate name coincides with the brand under which the business intends to operate, as it enables the company to benefit from the specific intellectual property protection arising from trademark registration.

The availability of the corporate name and the availability of the corresponding trademark therefore address different legal requirements and should be assessed separately as part of the investment project.

5. Registered office of the Italian company

The company must have a **registered office in Italy**.

The registered office determines, among other matters, the territorially competent Chamber of Commerce and the place of reference for maintaining the company's corporate and accounting records in accordance with the applicable rules.

A change of address within the same municipality may, where permitted by the Articles of Association, be approved by the company's management body, either the Board of Directors or the Sole Director.

Moving the registered office to a different municipality, on the other hand, entails an amendment to the Articles of Association and normally requires a shareholders' resolution to be adopted in the form prescribed by law before a Notary.

6. Defining the corporate purpose

Attention should be paid to the drafting of the **corporate purpose**, namely the description of the activities that the new company will be authorized to carry out.

The corporate purpose should be broad enough to include the company's principal activity and any reasonably foreseeable ancillary or instrumental

activities, while remaining consistent with the activities that the company intends to conduct.

This is particularly important in regulated industries. Certain activities may require prior authorizations, licenses, registrations or other requirements imposed or verified by authorities such as, depending on the circumstances, the **Bank of Italy, CONSOB, Chambers of Commerce or other competent regulatory authorities**.

The applicable regulatory framework should therefore be assessed before incorporation or, in any event, before the company begins carrying out the relevant activities.

7. Share capital: S.r.l. and S.p.A.

The applicable capital requirements vary depending on the corporate form selected.

An **S.r.l.** may be incorporated with share capital below EUR 10,000 and, subject to the conditions provided for by law, with capital starting from **EUR 1**.

From a practical standpoint, however, a higher capitalization - frequently at least EUR 10,000 - may be appropriate depending on the company's commercial credibility, initial financing requirements and the nature of its business.

Where the share capital of an S.r.l. is below EUR 10,000, specific rules apply to contributions and the accumulation of the statutory reserve.

For an **S.p.A.**, the minimum share capital is **EUR 50,000**.

Where the company is incorporated with a **sole shareholder**, as is typically the case for a subsidiary wholly owned by its foreign parent company, cash contributions must be paid in full upon incorporation.

Where there is more than one shareholder, as a general rule at least **25% of the cash contributions** must be paid upon incorporation, together with any share premium, without prejudice to any additional rules applicable depending on the type of contribution.

8. Governance: Sole Director or Board of Directors

The Italian company may be managed by a **Sole Director** or by a **Board of Directors**, as provided for in the Deed of Incorporation and Articles of Association.

Directors may also be selected from among the shareholders and are not required to be Italian citizens.

For each director, at least the following information must generally be provided: full name, date and place of birth, nationality, residential address and **Italian tax identification number - codice fiscale**.

The structure of signing and representation powers should be determined at the incorporation stage, identifying the directors who will have authority to represent the company and, where appropriate, any limits or rules governing the exercise of those powers.

9. Documentation concerning the foreign shareholder

An Italian company may be wholly owned by a **foreign company**.

Where the shareholder is an individual, the information generally required includes full name, date and place of birth, nationality, residential address, Italian tax identification number and a copy of a valid identification document, usually a passport.

Where, as is more commonly the case for a wholly owned subsidiary, the shareholder is a foreign legal entity, the documentation must identify the company's name, State of incorporation, registered office, the corporate information required by the Notary and details concerning its legal representation.

The foreign parent company will also normally be required to obtain an **Italian tax identification number - *codice fiscale***.

For non-resident entities, the relevant procedure may require the filing of **Form AA5/6**, signed by the legal representative and accompanied by a copy of his or her identification document.

10. When the legal representative of the parent company does not travel to Italy

The physical presence in Italy of the foreign parent company's legal representative is not necessarily required.

If the legal representative cannot personally appear before the Italian Notary, the foreign company may grant a **special power of attorney - *procura speciale*** - to a representative authorized to execute the Deed of Incorporation on its behalf.

The power of attorney must be prepared in a form suitable for use in Italy. Depending on the country of origin, it may be drafted bilingually, including Italian, or translated into Italian, notarized by a local Notary Public and **apostilled**, where applicable.

Alternatively, the document may be formalized through the competent **Italian Consulate**, in accordance with the procedures applicable in the relevant country.

The same requirements may apply to other foreign corporate documents requested by the Notary. Before incorporation, it is therefore advisable to identify precisely which documents must be produced, which must be notarized, which require an apostille and which must be accompanied by an Italian translation.

11. Planning the incorporation before entering the Italian market

Establishing a wholly owned subsidiary in Italy involves considerably more than simply executing a deed before a Notary.

The choice between an S.r.l. and an S.p.A., the level of capitalization, the governance structure, the corporate purpose, the allocation of powers, any applicable regulatory requirements and the preparation of the foreign parent company's documentation should all be coordinated with the **tax, administrative and operational aspects of the investment**.

Advance planning also makes it possible to identify any licenses or authorizations that may be required, assess the reciprocity requirement where relevant and properly arrange Italian tax identification numbers, powers of attorney, translations, notarizations and apostilles before the scheduled incorporation date.

EXP Legal assists foreign companies and international investors in establishing and managing subsidiaries in Italy, supporting clients in selecting the appropriate corporate structure, preparing the necessary documentation, coordinating the incorporation process with the Italian Notary and assessing the corporate and regulatory requirements necessary to commence business operations in Italy.