

大成 DENTONS

Manufacturing in Italy



Foreword

Dear Readers,

The Dentons Europe offices cover a legendary territory for manufacturing and industrial projects, including Spain and France to the west, Russia, Kazakhstan and Uzbekistan to the east, Germany, Poland, Hungary and other Central European countries in the middle and from Italy to Turkey to the south. This territory offers a vast population with strong purchasing power and excellent infrastructure, combined with vast workforce resources and industrial expertise.

Dentons Europe has been at the forefront of the first industrial projects going east after the fall of the Berlin wall, actively advising on greenfield and brownfield projects as well as on acquisitions and joint ventures when Central European countries—Romania, Czech Republic, Slovakia and Poland—joined the European Union. We are now actively witnessing Asian investors' interest for manufacturing in Europe.

The legal environment in the countries we cover has greatly evolved. It is a strong advantage to have been present in some of the emerging economies of Eastern Europe, Caucasus and Central Asia for the past 20 to 30 years, as the legacy legal systems in these countries can still be felt, in particular with regard to land acquisition and environmental norms. Today many jurisdictions, including in Western Europe, offer state aid and tax incentives to attract the best manufacturing projects.

We are well placed to help you choose your entry doors to the European Union and to Eurasia.

We hope the Manufacturing Guide you have selected will be of interest. It aims to give you a general overview of key checkpoints for this jurisdiction. Do not hesitate to contact me or the authors of this guide for any further information.



Pirouzan Parvine

Partner Manufacturing Sector

Leader for Dentons Europe

pirouzan.parvine@dentons.com

+33 6 42 24 07 25

Credentials in Italy

US multinational industrial group (production of electronic components): Assisting on a complex negotiation with the Trade Unions and the Works Council before the MISE - Ministry of Economic Development - for the stabilization of more than 200 temporary employees working in a plant in Italy's North-East and for the utilization of alternative schemes of flexibility with regard to the hiring of employees.

US multinational fashion and manufacturing group: Assisting on a restructuring operation involving the complete shutdown of a plant in northern Italy with a mass redundancy plan.

US multinational fashion and manufacturing group: Assisting on the negotiations with the trade unions and works councils based in different Italian plants, with regard to the achievement of several trade unions' agreements concerning production awards, flexibility in working time, incentive schemes and benefits, etc.

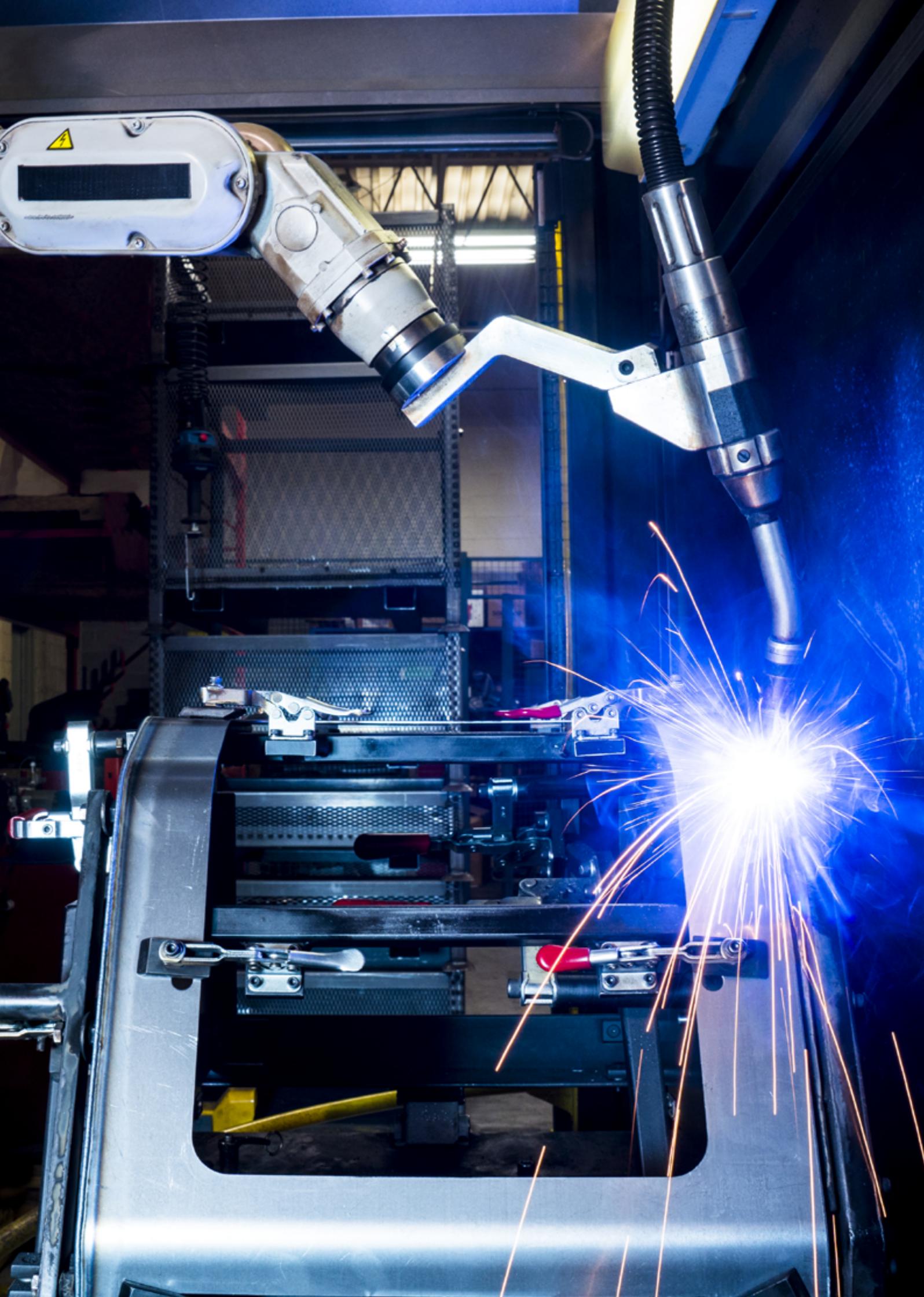
French multinational industrial group: Assisting with re-drafting the code of ethics, the disciplinary code and policies related to the monitoring of employees' activities and the implementation of internal procedures for the use of electronic devices.



Contents

- 07 ... Italy and the European Union**
- 08 ... Preparing to manufacture:** greenfield and brownfield projects
 - A. Corporate vehicles
 - B. Real Estate, Construction and Insurance
 - C. Administrative law – dealing with authorities – including anti-bribery laws
 - D. Employment
 - E. Tax and State aid
 - F. Protecting your intellectual property and complying with data privacy obligations
- 24 ... Operating**
 - A. Connecting to utilities
 - B. Health and Safety
 - C. Trade unions
 - D. Industrial Risk & Insurance
 - E. Commercial and Insolvency related risks related to suppliers
 - F. Defending your intellectual property
 - G. Regulation compliance
 - H. Competition law investigations
 - I. Tax investigations
 - J. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in Italy

- 36 ... Acquiring and selling a plant
(buy side & sell side key check points)**
- A. Share deals & Asset deals
 - B. Real Estate
 - C. Third party suretyship on the plant
 - D. Employment & Trade Unions
 - E. Specifics for distressed assets
 - F. Merger control
 - G. Tax risks
 - H. Intellectual Property & Technology acquisition
- 44 ... Closing down – moving away manufacturing
from Italy**
- 46 ... Contacts**



Italy and the European Union



European Union (EU) access: Since Italy is a founding member of the EU, if you set up a company in Italy, you may use it to do business in other EU member states.

Furthermore, Italy has entered into a significant number of bilateral investment treaties, which grant Italian companies access to major non-EU markets.

As far as the product regulation is concerned, free movement of goods is one of the key elements for the functioning of the European Market. In this regard, the harmonization of technical legislation at the European level is fundamental, and Italy focusses on implementing the EU legislation together with a national statutory framework in compliance with the EU directives, in particular in the manufacturing market.

A hand holding a pen over a document with a grid pattern, overlaid with a blue and orange bokeh background.

Preparing to manufacture: greenfield and brownfield projects



A. Corporate vehicles

Type of companies

Two types of companies are commonly incorporated by foreign investors in Italy: a Limited Liability Company (which in Italy is referred to as a “società a responsabilità limitata”, in brief “S.r.l.”) and a joint-stock company (which in Italy is referred to as a “società per azioni”, in brief “S.p.A.”) Both types of companies can be: (a) set up by a sole quotaholder/shareholder or by more shareholders; and, (b) used as a joint-venture vehicle for partnerships between Italian and foreign investors. No special type of company is reserved for foreign investors.

Differences between S.r.l. and S.p.A.

An S.r.l. is characterized by a greater level of flexibility, and quotaholders are entitled to a wider autonomy in shaping the company according to their needs through the provision of different rules within the company’s by-laws; SPA is governed by a major number of mandatory provisions. In principle, an S.r.l. is the type of entity which better fits smaller companies and/or companies, which have a smaller number of quota holders. An S.p.A. is the corporate vehicle which is more suitable for companies having a widely spread share capital or which intend to get access to capital markets. Consistently, S.p.A. rules offer a larger variety of equity and/or financial instruments for the investment in the relevant corporation.

An S.r.l.’s corporate capital is divided into “quotas” (i.e., a portion of the capital). Quotas are not incorporated in share certificates but merely represent a percentage of the overall capital. Consequently, each quotaholder owns only one quota, the value of which may vary depending on the portion of the corporate capital owned by the same.

While under certain circumstances the corporate capital of an S.r.l. can also be €1.00 (i.e., Simplified Limited Company), in general, the minimum amount of the corporate capital of an S.r.l. is €10,000. Under Italian laws, it is generally allowed the contribution of any asset capable of economical evaluation as well as of activities and/or services (“prestazione di opere e servizi”).The corporate capital of an S.p.A. is instead divided into shares, which may (but do not necessarily have to) be represented by share certificates. The minimum amount of the share capital of an S.p.A. currently is €50,000. Contributions upon

incorporation of an SPA or subscription of newly issued shares can be made in cash or in kind, (contributions of going concerns and receivables are considered contributions in kind.).

Directors' liability towards the company

There are no restrictions on the citizenship of officers and directors; however, for the purpose of serving as directors of an Italian company, foreign citizens are required to apply for an Italian tax code. In accordance with Italian law, directors must consistently manage the company in the corporate interest (i.e., they have to pursue the company's own interest and not the individual interest of its shareholders). Directors may not be held liable for the damages suffered by the company during their management as a result of incorrect and/or difficult business choices made, provided that such choices are part of the range of appropriate choices.

B. Real Estate, Construction and Insurance

Manufacturing projects in Italy may imply:

- The acquisition of an existing building or land for construction of the relevant manufacturing plant;
- The execution of a financial lease agreement concerning a manufacturing plant by means of which the lessor owns the relevant asset and leases it to the lessee, who pays the relevant instalments for the term provided in the agreement with an option to purchase the plant at the end of the financial lease (or even prior to such term, if so agreed by the parties);¹

- The commercial lease relevant to an existing building entered into for a minimum term of six years, thereafter automatically renewed for further periods of six years. Please note that in case of commercial leases having a term longer than nine years, the relevant deed must be executed before a notary public and then filed with the competent Real Estate Registries (Conservatoria dei Registri Immobiliari);
- The acquisition of an on-going business or on-going business branch;
- The lease of an on-going business or on-going business branch;
- The execution of a construction agreement pertaining to the manufacturing facility to be built.

Construction contracts

Please find here below a brief summary of the main things to watch out for in the context of construction agreements.

Authorizations

In the context of a construction agreement, prior to the start of the relevant works, various permits and/or exemptions from zoning plans might be required before the competent authorities. With reference to building authorizations and permits, please refer to Section C below.

1. Please note that the financial lease agreements are structurally different from the "built-to-suit lease" contracts existing under French law; the latter category of agreements, indeed, is not of common use in Italy and the relevant terms and clauses – such as duration, rent, purchase option for the tenant at the end of the lease, et cetera - are negotiated on a case-by-case basis and in compliance with the provisions set forth under law no. 392/1978 (the Italian tenancy law).



Consideration and payment mechanism

The price agreed upon by the parties can be:

- A fixed lump sum referring to the entire works (except in case of variations to the project); or
- Determined on the basis of separate prices for certain parts of the works.

The compensation is usually paid based on a document stating the works' progress (the so-called SAL – stato di avanzamento lavori) indicating the activities completed at that point in time (generally, on a periodic basis or a milestone basis).

Market practice is that each SAL payment is initially reduced by a percentage (customarily equal to 10 percent), to be retained by the client by way of security against future remediation obligation of the contractor upon testing.

Such retentions, net of the costs related to remediation works, if any, shall be paid to the contractor upon signing of the positive final testing of the works.

Market practice is that the contractor delivers to the client at the execution of the construction agreement a performance bond, namely a guarantee which is equal to a part of the price (customarily 10 percent of the price) and which covers the obligations bearing on the contractor under the construction agreement. Usually the parties agree that such performance bond shall be returned to the contractor upon positive testing of the works.

Variations (varianti)

The Italian civil code provides that, in the context of a construction agreement, the variations ordered by the client cannot exceed one sixth of the agreed price or entail material changes to the relevant works. In case of variations necessary due to changes in the law, the contractor is entitled to withdraw from the agreement and receive a reasonable indemnity if the relevant costs exceed one-sixth of the agreed total compensation. The client can also terminate the agreement if variations are material by paying the contractor a fair compensation.

The above provision can be departed by the parties, who may agree on a different discipline regulating the execution of the variations.

Furthermore, the Italian civil code provides that the contractor is also entitled to request some variations to the project ordered by the client in case those are necessary to carry out the relevant works in a workmanlike manner.

In such respect, where the original project has been approved already by the Municipality with the issuance of a building permit, the variations at hand can be obtained by means of the submission of a self-declaration, called SCIA, where "the variations do not affect the zoning and volumetric parameters, do not alter the destination uses and the building qualification as well, do not affect the profile of the building in case of existence of a heritage restraint pursuant to legislative decree no.42/2004, and where the variations do not entail an infringement with the prescriptions set forth within the building permit" (article 22, paragraph 2 of Presidential Decree no. 380/2001). Otherwise, the project should apply for a new building permit.

Guarantees provided under the law

The client is covered by legal guarantees that apply from the date of acceptance of works and whose scope covers:

- The potential collapse of the building due to serious construction defects for a period of 10 years following the signing of the testing minutes certifying the positive completion of the works—so-called ten-year guarantee or “garanzia decennale postuma”
- The hidden or latent defects for a period of two years starting from the signing of the testing minutes certifying the positive completion of the works—so-called “garanzia per vizi occulti”

Insurance

Customarily, the contractor shall take out and maintain, at its care and costs, the following insurance policies:

- A contractor’s all risks insurance policy (CAR) to be valid and effective as from the date of the works’ commencement, up to the sign of the minutes of positive final testing
- An employees and/or staff insurance policy (RCO)
- A third parties’ civil liability insurance policy (RCT)
- A car civil liability insurance policy in relation to all the vehicles owned or used by the contractor (RCA)
- All risks insurance policies concerning the equipment owned and/or used.

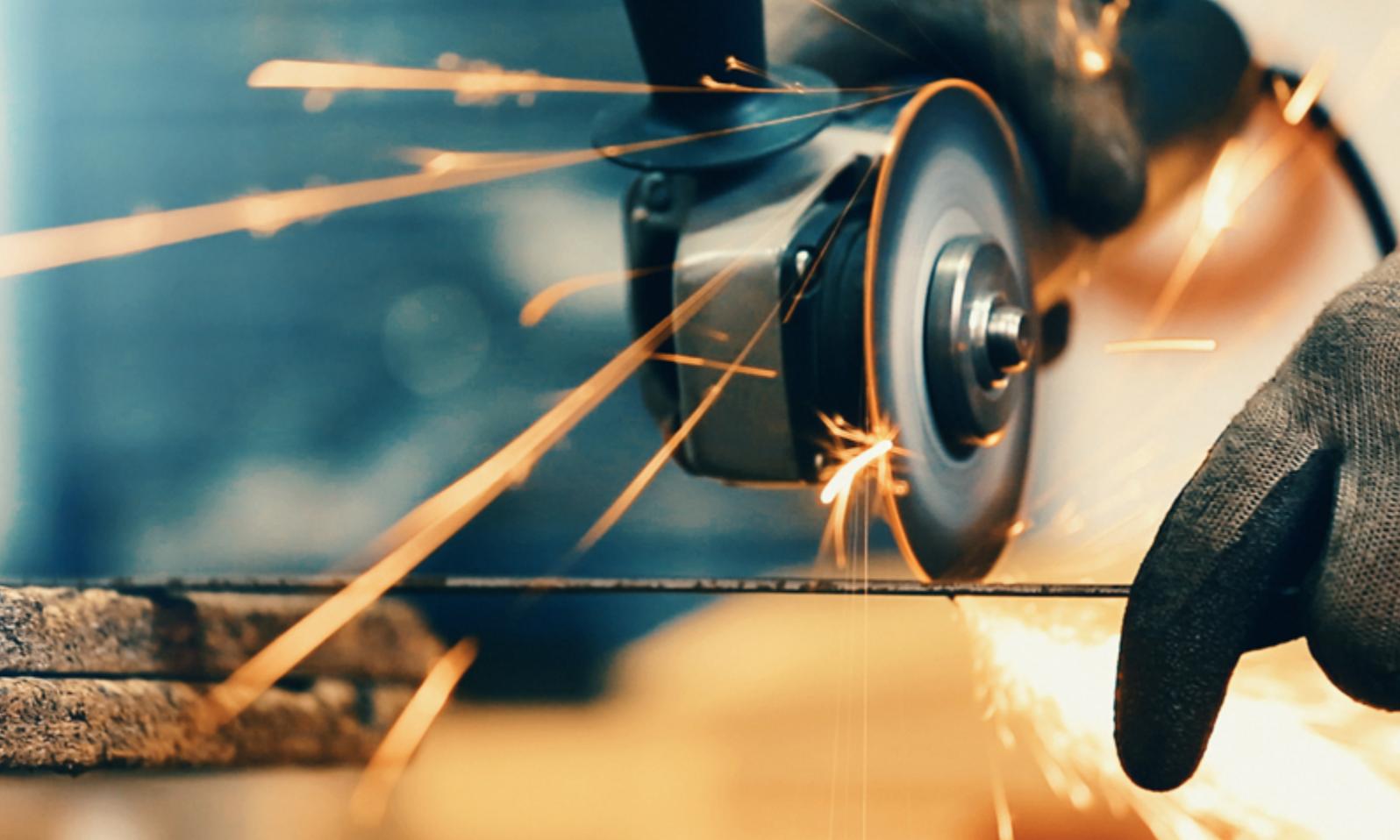
In addition to the foregoing, the contractor shall also take out and maintain insurance policies related to the compulsory guarantees mentioned under letter d) above, i.e.

- A ten-year insurance policy (polizza decennale postuma) covering the potential collapse of the building due to serious construction defects for 10 years following the signing of the testing minutes certifying the positive completion of the works, having a cap equal to, at least, the costs of rebuilding the works
- A hidden defects insurance policy (polizza per vizi occulti) covering the hidden or latent defects for a period of two years starting from the signing of the testing minutes certifying the positive completion of the works.

Statute of limitations

In the context of construction agreements, further to the normal statute of limitations for contractual breaches provided by the Italian Civil Code (equal to 10 years), the following specific statute of limitations shall apply:

- With regard to hidden defects (article 1167 of the Italian Civil Code): the contractor may be summoned within two years from the date of delivery of the works, provided that it is served a notification within 60 days from discovery and, at any rate, within two years from the acceptance of the works (please note that such a guarantee cannot be enforced if works were accepted and defects were known or recognizable, unless the contractor concealed their existence with malice).
- With regard to serious defects (article 1169 of the Italian Civil Code): The contractor may be summoned within 10 years from the date of delivery of the works, provided that it is served a notification by the client within one year from the discovery of such serious defects, and the relevant claim is filed within one year from such notification.



Sub-contractors

The contractor, if authorized by the client, can appoint third subject as sub-contractors in order to carry out some portion of the works contemplated under the construction agreement. In such a case, the contractor will remain liable vis-à-vis the client for the actions made by the sub-contractors. The construction agreement may provide for a list of sub-contractors pre-approved by the parties in order to allow the appointment of sub-contractors without the prior consent of the client..

C. Administrative law – dealing with authorities – including anti-bribery laws

Construction of a building is subject to the obtainment of a prior building title (with specific reference to the building permit).

According to Italian law, the works authorized by the building permit (so-called “permesso di costruire”) shall start within one year from its issuance, and they shall be concluded within three years from the date of the beginning of the works. In any case, the applicable law provides the possibility to apply for a renewal of the building permit (before its expiration) where the relevant building works did not start or were not formally concluded within the aforesaid deadlines due to exceptional circumstances.

For the sake of completeness, it should be noted that, after the building permit has been legally obtained, it can be subject to withdrawal by the planning authority within eighteen months from the date of issuance, and a third party can also file an appeal/ recourse against the building permit within sixty days from the date of beginning of the works on the site (such principle is currently affirmed by most of the administrative Courts).

It is also important to underline that the Company must be very careful in dealing with the Public Administration in order to obtain the building permit. Notably, the Company and their affiliates shall avoid any action which could be read as bribery toward the public officers (i.e. paying them or favoring them in obtaining any kind of privilege), as this misconduct is punished by the Italian Criminal Code with up to 10 years of imprisonment (see Article 319, 321).

On this purpose, it is advisable that the Company provides specific anti-bribery procedures in order to minimize the risk of the crime. These procedures should be applied within the compliance program pursuant to Legislative Decree no. 231/2001 (Modello 231).

D. Employment

Basic obligations as an employer in the manufacturing sector:

If an employer intends to invest in Italy in the manufacturing sector, the following are the basic obligations to be considered:

Select candidates and hire them according to the correct category:

- In Italy there are four categories of employees: a) blue-collar employees (“Operai”); b) white-collar employees (“Impiegati”); c) middle-managers (“Quadri”); and d) executives (“Dirigenti”)

Depending on the type of contract, sign written contracts with employees:

- Employment contracts do not necessarily need to be in writing, nevertheless there are some particular agreements or clauses for which a written contract is expressly required by law (such as fixed-term, probationary period, non-compete covenant, etc.)
- The indefinite term employment contract is the usual form to be used when you hire employees; however, it is also possible to use fixed-term contracts or temporary workers under certain specific terms and conditions stated by the law and the applicable NCBA, which is a Collective Bargaining Agreement (please see below) usually applied in the manufacturing business sector. Moreover, these flexible forms of employment (fixed-term contracts and temporary workers) are usually used in the manufacturing business.

Comply with the relevant statutory rules and, if applicable, with the NCBA:

- NCBA's are private contracts executed between a Trade Union and an employer's association and set out the main terms and conditions for individual employment contracts. Each industry sector has its own NCBA; others may have lower level collective bargaining agreements (such as company-based or plant collective bargaining agreements). Collective bargaining agreements are not a statute, but a private contract and, therefore, their application is not compulsory.

Pay the employees' salary and social security contributions on time:

- With regard to remuneration, in Italy there is no minimum wage legislation. The minimum wage set by the NCBA is applied to the employment relationship. If an NCBA is not applied, the employer must, in any event, pay the employee an adequate salary, which is usually determined on the basis of the minimum wage paid to same-category employees under the relevant business sector NCBA. The annual fixed salary is usually paid in 13 or 14 monthly instalments; such additional monthly instalments are respectively paid with the December and July monthly salaries.

Consider other incentive/collective benefits:

- In addition to the basic remuneration, the employer may also consider other benefits such as profit-sharing agreements based on the company's results and on personal skills of the employees. If the agreement is based on the increase of the company's results, under certain conditions and terms the benefits granted are exempted from social charges and benefit from a favorable income tax

Consider policies/codes of ethics/disciplinary codes:

- Policies and codes of conduct are not mandatory but usually implemented, in particular in the manufacturing business, in order to give clear instructions to employees on their behavior at work. In this case, the disciplinary code (or the relevant rules provided for by the NCBA) must be properly displayed: They must be posted in a place that is accessible to all employees

Register the company and all employees with the Italian National Social Security Authority (INPS) and Italian National Authority for Work-Related Accidents (INAIL):

- Employment income is subject to personal taxation (known as IRPEF) at progressive rates, depending on the extent of the remuneration. The employees' taxes are actually paid by the employer, who is obliged to withhold the relevant amount from salary. Social security contributions are also actually paid by the employer by withholding the employee part of contributions from his/her salary.
- Please consider the following tax and social security rates:



Standard income tax rates	Between 23 percent and 43 percent
Social security contributions (total)	Approx. 40 percent
Social security contributions borne by the employee	Approx. 10 percent
Social security contributions borne by the employer	Approx. 30 percent
Social security contributions borne by the employer	Approx. 30 percent

- Comply with all administrative requirements under Italian law, such as keeping the Employment Book Register (Libro Unico del Lavoro)
- Obtain work permits for foreign employees, where necessary.

E. Tax and State aid

Key Corporate taxation

Corporate Income Tax (CIT)	24 percent (IRES) Surtax of 10.5 percent for dormant companies
Regional tax on productive activities (IRAP)	Generally 3.9 percent (regional authorities may decrease or increase these rates to 0.92 percent)
Value Added Tax (VAT)	22 percent (General rate)/10 percent/4 percent
Personal Income Tax	Progressive rate (top rate 43 percent over €75,000)
Tax depreciation on real estate	Depreciation is determined by applying the coefficients periodically established by the Minister of Finance (rates for buildings vary between 3 percent and 5 percent.)
Registration tax on share capital	A lump-sum registration tax of €200 is levied on cash contribution to the capital of resident company.
Registration tax on share transfer	Transfers of shares, bonds and similar securities based on contracts executed in Italy before a public notary are subject to a lump-sum registration tax of €200 (this tax is also payable where a contract executed abroad or with different formalities is presented to an Italian registration office or an Italian court.)
Financial Transaction Tax (FTT)	Transfers of property rights on shares issued by Italian resident companies are subject to a financial transaction tax at the rate of 0.2 percent on the value of the transaction (the transfer of quotas of Limited Liability Company (SRL) are specifically excluded from the application of FTT).
Transfer of a 'going concern' or branch of a business	Outside the VAT scope (a lump-sum registration tax of €200 apply and if the going concern or the branch of a business transferred include a real estate assets, the transfer deed is also subject to mortgage and cadastral taxes at the lump sum of €200 each.
Withholding tax on dividends (subject to reductions/exemptions under international tax treaties)	26 percent (general rate) 1.2 percent when beneficial owner is subject to tax in an EEA country that exchanges information 0 percent for qualifying EU companies (EU Parent-Subsidiary Directive)
Withholding tax on interests (subject to reductions/exemptions under international tax treaties)	26 percent (general rate) 12.5 percent on government/public bonds 0 percent for associated EU companies (EU Interest and Royalties Directive)
Withholding tax on royalties (subject to reductions/exemptions under international tax treaties)	30 percent (on 75 percent of gross amount) 0 percent for associated EU companies (EU Interest and Royalties Directive)



Main rules

- **Corporate income tax:** Italy has a standard corporate income tax of 24 percent. The taxable base is the worldwide income shown in the profit and loss account prepared for the relevant financial year according to company law rules and adjusted according to tax law provisions. The tax basis can be reduced through multiple deductions provided for by the tax law provisions.
- **Capital gains tax:** Capital gains are generally included in the company's taxable income for the fiscal year during which these gains are realized. (If the property being sold has been held for at least three years, capital gains may be included, at the company's option, in their entirety for the year in which they are realized or in equal instalments for the current and following tax years, but not beyond the fourth year).
- **Tax consolidation regime:** This regime allows the tax consolidation of the profits and the losses within the group entities.
- **Participation exemption:** There are special rules applicable to capital gains from the alienation of shares, financial instruments assimilated to shares and interests in resident companies or partnerships, which are exempt from tax for 95 percent. The exemption applies, provided (i) the participation has been held at least from the first day of the 12th month preceding the alienation, (ii) the participation is classified as a financial asset in the first balance sheet closed after the acquisition and (iii) at least since the beginning of the third financial year preceding the alienation, the participated company has been engaged in an active trade or business (i.e. it has an operational structure suitable for manufacturing and/or sales activity in connection with goods and/or services which potentially generates revenue).
- **Value added tax:** Value added tax is neutral for companies having commercial activities. Those companies collect the tax on their own sales and deduct the tax they have paid on purchase of goods and services. The net VAT payable is the difference between collected VAT and deductible VAT. VAT Credits can be reimbursed under certain conditions. Exports (outside of the European Union) are VAT-exempt. Italian value-added tax has different rates: 22 percent (standard rate); 10 percent and four percent (reduced rate, generally applicable to certain sectors and products specifically identified by the tax provisions).
- **Customs regime:** There is a uniform customs regime throughout the European Union so that goods can move freely within the area. Goods imported from a country outside the EU are liable to duties payable upon entry into the European Union; Goods exported outside the EU are exempted from custom duties in general.
- **Carrying forward tax losses:** Losses can be carried forward indefinitely but, unless incurred during the first three years of activity, losses can only offset up to 80 percent of taxable income of the relevant year.



Exemptions and beneficial tax regime

The Italian tax system offers several incentives investments such as:

- **R&D tax credit:** Until the tax year ongoing on December 31, 2020, qualifying companies which incur (annually) at least €30,000 of qualifying research and development (R&D) expenses, benefit from a tax credit equal to 50 percent of R&D expenses exceeding the average R&D expenditures that the company has incurred in fiscal years 2012, 2013 and 2014, up to €20 million per tax year. The credit is also available to resident companies and Italian permanent establishments of non-resident companies which carry out R&D activities under contracts concluded with resident entities and entities resident in an EEA country or in a country which allows for an adequate exchange of information with Italy.
- **Incentives for investment in the innovative start-up companies:** Companies investing in an innovative start-up company (i.e. companies which meet all the requirements required by the Italian tax law) may deduct from their taxable income 30 percent of the amount invested. The maximum deduction is set at €540,000 each year. To benefit from the tax incentive, the investor must maintain the equity participation in the innovative start-up company for at least three consecutive tax years, and the investment in each innovative start-up company may not exceed €2.5 million per tax year.
- **Patent box regime:** Resident and qualifying non-resident persons deriving business income in Italy which carry on R&D activities, either directly or through research contracts signed with non-related companies, universities, research institutions or equivalent entities may be exempt, for corporate tax purposes, on the 50 percent of the income derived from the exploitation or the direct use of a software protected by copyright, patents, designs, models, processes, formulas and information deriving from industrial, commercial or scientific know-how which is legally protected. The amount of qualifying income is calculated according to the ratio between the qualifying R&D expenditures to develop the IP and the total cost for the production of the IP. The election applies for a period of five years, and it is deemed to be renewed at the end of each period, unless expressly revoked.
- **Allowance for corporate equity (ACE):** Resident companies are entitled to deduct from their corporate income tax base a notional yield on qualifying equity increases deriving from cash equity contributions, waivers of financial receivables and undistributed profits set aside as reserves other than non-disposable reserves, as compared to the company's equity as at December 31, 2010. The qualifying equity increases are net of the decreases of the company's equity triggered by distributions or assignments to the shareholders. The notional yield is 1.5 percent from tax year 2018.

- **Accelerated depreciation:** The acquisition cost of qualifying new tangible assets purchased between January 1, 2018 and June 30, 2019 is increased by 30 percent for depreciation purposes (40 percent for qualifying tangible assets purchased before 1 January 2018.)
 - **Attractive tax rules for inbound expatriates:** Employment or professional income derived by researchers who have been working abroad for at least two years and who start working in Italy, becoming resident in Italy for tax purposes and are exempt for 90 percent from income tax and fully exempt from the regional tax on productive activities (IRAP) for the four tax years following the return in Italy.
 - Individuals who, after continuously residing for at least five years in a foreign country, transfer their tax residence to Italy and intend to reside there for at least two years, may benefit from a 50 percent exemption from income tax on their employment and self-employment income.
 - Individuals transferring their tax residence to Italy, after residing abroad for at least nine of the previous 10 tax years, may opt for the application of a substitute tax (equal to €100,000 per year) on their foreign income.
 - Elimination of double taxation: Italy has concluded numerous bilateral tax treaties to eliminate or reduce double taxation situations.
- Things to watch out for**
- **Transfer pricing:** Arm's length principle applies to transactions between associated companies. Failure to apply the arm's length principle can result in readjustment of profits. In order to avoid transfer pricing adjustments, companies can apply for advance pricing agreement with the tax authorities (so-called APA). Furthermore, taxpayers submitting to the tax authorities adequate supporting documentation on how the corporate transfer prices were determined enjoy a penalty protection system, i.e. they are not subject to penalties (100 percent to 200 percent of the higher tax assessed) if the tax assessment results in a transfer pricing adjustment.
 - **Thin capitalization rules:** As a general rule, interest expenses are fully deductible up to an amount equal to interest income accrued in the same tax period.
 - Any excess over that amount is deductible to the extent of 30 percent of "gross operating income" (earnings before interest, taxes, depreciation and amortization, EBITDA). Any excess of interest expenses over the above threshold (i.e. 30 percent of EBITDA) may be carried forward for deduction in the following tax periods.
 - **Controlled foreign company (CFC) rules:** A company is a CFC only if it is subject to a lower level of taxation in the territory in which it is resident. If the tax of the resident country is less than 50 percent of the corresponding Italian tax (combined corporate income tax rate [IRES] and the regional tax on productive activities rate [IRAP]) then the company is subject to a "privileged" level of taxation, underlying the application of Italian taxes to the said profits. Under the safe harbor provisions, CFC income is not taxable in Italy if 1) the non-resident entity predominantly carries on an actual business in the market of the country where it is located or 2) the participation in the non-resident entity does not achieve the localization of income in tax haven countries or territories.
 - **General anti-avoidance rule (GAAR):** Under article 10bis of L 212/2000, one or more transactions constitute abuse of law where they lack economic substance and, even if formally consistent with tax law, they are essentially aimed at obtaining undue tax savings. Transactions are deemed to be lacking

economic substance where they consist of facts, acts and contracts, also interconnected, which do not generate significant effects other than tax savings. Undue tax savings consist of tax benefits, even if not immediate, obtained in contrast with the purpose of tax provisions or the principles of the tax system. However, transactions do not constitute abuse of law where justified by valid and non-marginal non-tax reasons, including those aimed at improving the business organization or structure.

State aids

Southern Special Economic Zones in Italy:

The Decree of the President of the Council of Ministers No. 12 of 25 January 2018 – which contains implementing rules with respect to special economic zones (zone economiche speciali, SEZ), as provided by Law Decree No. 91 of June 20, 2017, has entered into force on February 27, 2018.

In particular, this “set” of measures, aimed at encouraging both the businesses already operating in this area and new ones, to bet on the South, provide for the creation of SEZ in each of the six southern regions (Campania, Basilicata, Puglia, Calabria, Sicily and Sardinia) and defines the rules for the establishment of SEZs, including interregional SEZs, their duration (from seven to 14 years, with the possibility of an extension for a further seven years) and the applicable criteria for the identification and delimitation of the SEZ area and for access of qualifying enterprises.

Enterprises operating in the ZES will benefit from simplified procedures and favorable tax incentives, including an enhanced regional tax credit for enterprises maintaining their activities in SEZs for at least seven years following that in which a qualifying investment is made (in particular, the maximum amount of costs eligible for the tax credit per single investment project [equal to 45 percent for small

enterprises, 35 percent for medium enterprises and 25 percent for large enterprises] is increased up to €50 million in relation to certain new business assets purchased until December 31, 2020).

EU State aid rules apply in Italy (i.e. article 107 – 108 TFEU).

According to EU State aid law a measure granted by the State or through State resources amounts to State aid incompatible with the internal market irrespective of the form it takes provided that:

- (i) It favors certain undertakings or the production of certain goods on a selective basis;
- (ii) It affects trade amongst member states; and
- (iii) It distorts or threatens to distort competition.

State aid measures must be notified to the EU Commission and cannot be implemented before the EU Commission’s authorization. There are limited exceptions to such rule.

Whenever the EU Commission ascertains that a State aid has been illegally granted, the aid is recovered from the beneficiary company (to this amount legal interests must be added).

State aids conditions and risks of infringements

To prevent companies doing business in the Internal Market from receiving selective advantages that distort competition, the TFEU contains a general prohibition of State aid aimed that aid granted by a member state or through State resources does not distort competition and trade within the EU by favoring certain companies or the production of certain goods.

EU State aid control requires prior notification of all new aid measures to the Commission. Member states must wait for the Commission’s decision before they



can put the measure into effect. There are a few exceptions to mandatory notification, for example: (i) aid covered by a Block Exemption (giving automatic approval for a range of aid measures defined by the Commission), (ii) “de minimis” aid not exceeding €200,000 per undertaking over any period of three fiscal years (€100,000 in the road transport sector) or aid granted under an aid scheme already authorized by the Commission.

The Commission is obliged to open a formal investigation under Article 108(2) TFEU where it has serious doubts about the aid’s compatibility with EU State aid rules, or where it faces procedural difficulties in obtaining the necessary information. The decision to initiate this procedure is sent to the relevant member state and summarizes the factual and legal bases for the investigation and includes the Commission’s preliminary assessment, outlining any doubts as to the measure’s compatibility with EU state aid rules.

The Commission adopts a final decision at the end of the formal investigation. There is no legal deadline to complete an in-depth investigation, and its actual length depends on many factors, including the complexity of the case, the quality of the information provided and the level of cooperation from the member state concerned compatibility with EU state aid rules.

If the Commission has taken a negative decision in the context of aid that has already been paid out, the Commission requires the member state to recover the aid with interest from the beneficiary.

F. Protecting your intellectual property and complying with data privacy obligations

Preliminary note: As a general rule, intellectual property rights do not extend beyond the territory where the protection has been required and granted (through the filing of a specific application to the relevant IP office). Therefore, your question list before entering into Italy is:

Do I have the right IP protection level in Italy/Europe?

- Do I have patent, trademark, design protection in Italy?
- If not, can I still get an extension of my home-based IP rights to Italy/Europe? (so-called “priority right claiming”?)

Which IP protection can I get in Italy/Europe?

- Patents (Italian and/or European patents, also with unitary effect: when in force, the unitary patent will have unitary character throughout the territories of the 26 participating EU member states)
- Trademarks (Italian and/or EU trademarks)

- Designs (Italian and/or Community registered designs)
- Unregistered designs
- Copyright (including both economic and moral rights) converting also computer programs “as such” (Software)
- Trade secrets/Know-How
- Unfair competition

Are there any third-party IP rights that could bar my business?

- Performing a prior art search and/or freedom to operate (FTO) analysis

How can I use “Made in Italy”?

Is my sector regulated? Has such regulation any impact on IP protection and/or IP strategy?

Some examples of regulated industry with an impact on IP protection

- Life Sciences
- Cosmetics
- Alcoholic beverages
- Food
- Tobacco
- Telecoms, IT and software industries
- Green technology

Understand data privacy laws in Italy/Europe

- What kind of data do I have?

Personal and non-personal data

- What are the legal consequences of the nature of the data I collect and/or process?
- Where is my data processor located?

- Only personal data is subject to GDPR and national data privacy law, am I compliant herewith to collect and/or process personal data (including transfer of data protection outside the EU)?

How can we assist you to protect your IP?

- Protection of your IP in Italy/Europe
- Extending your IP protection, providing advice on how to apply for an Italian/European registration of your IP at the relevant Offices
- Assisting you on creating your IP

Negotiating and drafting your collaboration, R&D, co-development, co-ownership

Determination of the owner of the IP (single owner, co-owner)

Clearance search for trademarks

Freedom to Operate analysis for patents and designs

Patentability assessment of your inventions

Registrability assessment of your designs and trademarks

Patent, trademark, design filing (before national office, EPO, EUIPO, WIPO)

Drafting IP and/or non-compete clauses in the employment contracts of your employees to ensure compliance with Italian law on employee’s inventions

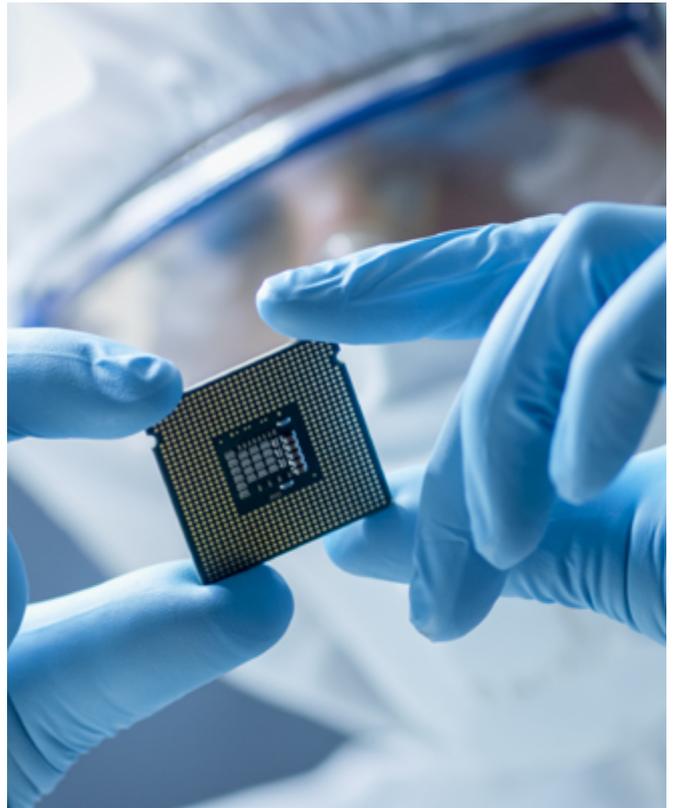
- Negotiating and drafting your NDAs (Non-Disclosure Agreements) to protect your trade secrets and know how
- Review of your personal data portfolio and ensuring compliance with GDPR and national data privacy law

How can we assist you on the exploitation of your IP?

- Drafting and negotiating your IP exploitation agreements
- Tech Transfer and License's agreements out and in
- Assignments
- Co-existence agreements
- MTA (Material Transfer Agreements)
- IP consultant agreements
- Confidentiality agreements

Ensuring compliance with regulations applicable to your sector with an impact on the exploitation of your IP

Creation of security measures' plan and IT tools to maintain your trade secrets confidential within your company, with your business partners, towards third parties



Operating





A. Connecting to utilities

As to all utilities (e.g. electricity, natural gas and water) the connection occurs on the local grid, on the basis of standard terms and conditions, as well as connection tariffs (in order to cover physical connection and meters costs), on the basis of connection agreements to be entered into with the local monopolistic grid/aqueduct concessionaire.

As to the pricing of electricity and natural gas, it can be negotiated with suppliers, that are company independent from the local grid concessionaire, under an electricity or natural gas (or combining the two) supply agreement needs to be entered into, other than the connection agreement.

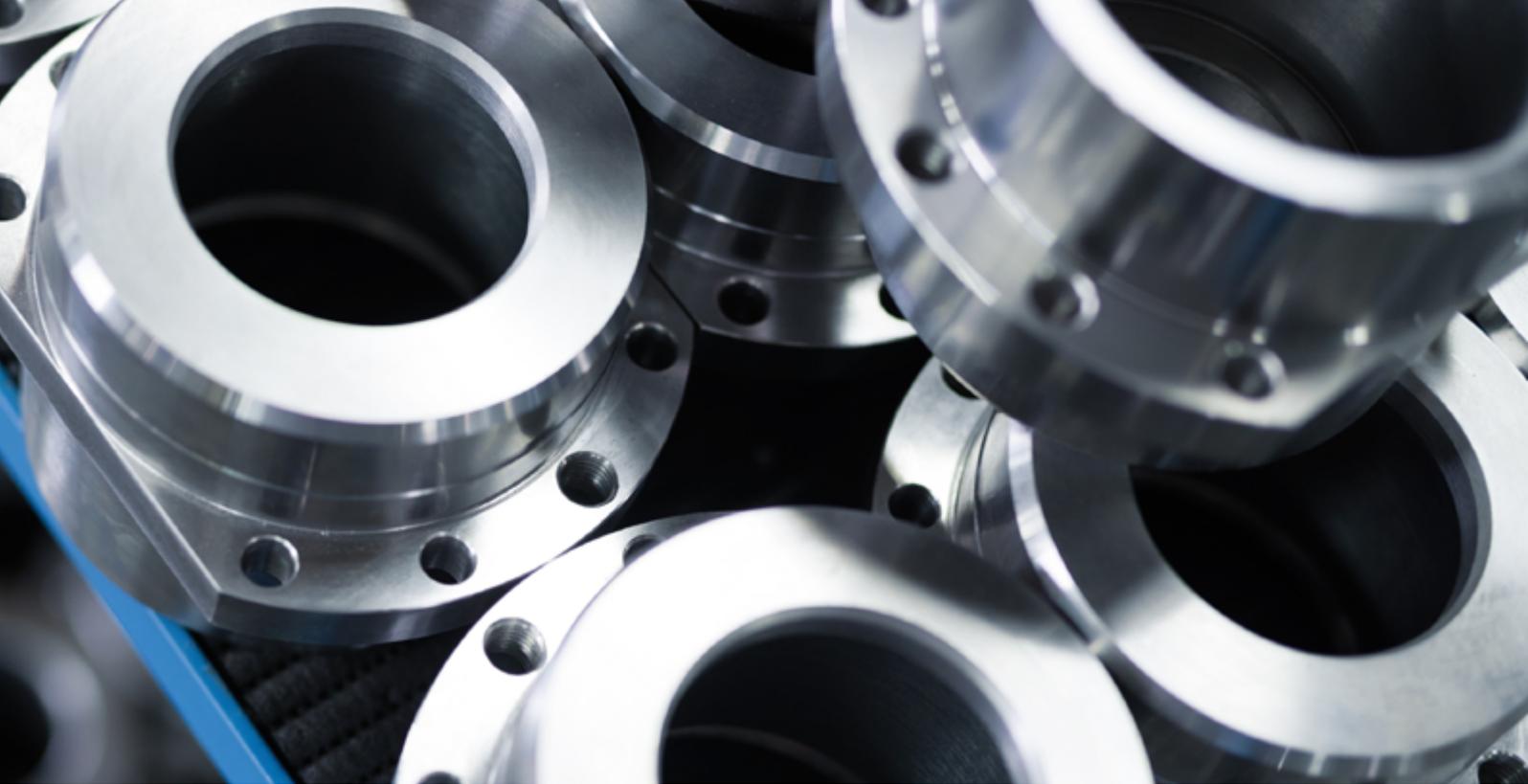
When it comes to water and sewage services, the relevant tariff is not negotiable and is an integral part of the connection agreement to the local aqueduct, whilst regulated at a local level by the national public utilities services independent authority (ARERA).

B. Health and Safety

Basic obligations as an employer in the manufacturing sector

Comply with all requirements under Italian law regarding health and safety in the workplace. In particular, the most sensitive areas to be considered in this regard are the following:

1. Safety at work, i.e. protection of employees during the production phases (e.g. regular maintenance of the equipment, machines, etc.)
2. Continuous control of the employees' health (e.g. periodic health visits, i.e. at the beginning of the working activity and on a regular basis)
3. Check of the work conditions in the offices (e.g. limits to videos exposure, working hours, night work, shifts, etc.)
4. Compulsory insurance for the employees
5. Mandatory trainings for employees on health and safety at work



Set out the mandatory documents related to occupational risks and hazards and take appropriate measures to protect health and safety at work. Notably, the employer must adopt some health and safety policies and in particular the Risk Assessment Document (so called “DVR – Documento di Valutazione dei Rischi”) which contains a description of the business activities of the company and the assessment of the potential risks for employees at the workplace during the performance of the business activities. All Italian companies must comply with this obligation, although small companies (i.e. employers with less than 10 or 50 employees) can draft the DVR using particular standardized guidelines prepared by the Ministry of Employment.

C. Trade unions

Organization of Trade Unions and Works Councils in Italy

Pursuant to the Italian Workers’ Statute (Law no. 300/1970), the right to set out a Trade Union organization or to adhere to it is legally guaranteed to each employee, independently from the size of the employer.

With regard to the possible Works Council which can be put in place, currently there are two different bodies under Italian law:

- The Works Council called “RSA - Rappresentanza Sindacale Aziendale”, which is provided directly by the Workers’ Statute of 1970, according to which

the employees are entitled to set out a RSA through an election process carried out by the employees enrolled in the relevant Trade Unions, if the Company employs more than 15 employees.

- The Works Council called “RSU, Rappresentanza Sindacale Unitaria”, which is a body provided (not by the law, but by specific and more recent) agreements between the main Italian Trade Unions and the Employers’ Associations, which discipline in-depth the ways of constitution, election and regulation of this representative body. Hereinafter, the NCBA usually provide for specific procedures which detail the mode of operation of the RSU within the specific business sector.

Trade Unions’ and Works Councils’ rights

As a general rule, in each plant involving at least 50 employees, the Trade Unions and Works Councils are entitled to be informed and/or consulted with regard to the following topics:

- (i) The current status and the expected trend of the general economic status of the Company
- (ii) The situation, structure and foreseeable evolution of the level of employment within the Company, and also the relevant measures to be put in place in the case of Company’s crisis
- (iii) The important decisions of the Company which may affect the general organization of the work.

Moreover, under Italian law there are some further legal provisions which directly rule the participation of Trade Unions and Works Councils with regard to some specific matters, as follows:

- Collective dismissals
- Transfer of undertaking (or a part thereof), provided that the transferor employs more than 15 employees
- Particular crisis situations where social benefits are necessary (for example, the filing of Governmental Salary Support, so called "CIG – Cassa Integrazione Guadagni" or particular collective agreements providing for a reduction of the work hours and salaries, so called "Solidarity Contracts - Contratti di Solidarietà")
- Night work
- Collective holidays
- Monitoring of employees through electronic systems
- Use of staff-leasing contracts

D. Industrial Risk & Insurance

Legal aspects of reacting to an industrial incident, key aspects of dealing with the insurer and other third parties involved in the incident

1. Incident Management

In this phase the purpose is to manage the general immediate consequences of the industrial incident, which may have two types of consequences for said company, which:

may suffer losses in relation to the industrial event (either material or immaterial). In that case:

- The company must notify its insurers involved in the insurance program of the event and of its potential consequences.

- The company may have to implement interim protective measures in order to mitigate its losses.

may bear liability of the industrial event towards third parties (either companies or individuals) for losses suffered in relation to the industrial event. In that case:

- The company must notify its insurers involved in the insurance program of the event and of its potential consequences.

On this basis, a "Crisis unit" must be created with a double purpose:

- Internal, for the implementation of the interim protective measures created to mitigate the losses and to resume activity as soon as possible.
- External, for the victim support. Industrial incident's victims must be provided with material assistance and all the information needed about claims process and compensation. The external purpose includes also the incident communication and the media relation.

2. Assessment of possible legal actions

In this phase, which must be implemented shortly after the previous one, the purpose is to prepare future legal actions of the company and its insurers against potential liable contractors or third parties. It must be verified the possibility to consider them liable of the industrial events. As a consequence:

- The company may be compensated either on the basis of contractual liability (Article 1453 of the Italian Civil Code) or tort liability (Article 2043 of the Italian Civil Code) for losses suffered in relation to the industrial event and for the costs incurred as consequences.
- The insurers may be compensated as subrogated into the rights of their insured to the extent of the insurance indemnity paid.



In order to shift the consequences of the industrial events, the company and its insurers shall:

- Assess which contractual parties or third parties may be held liable for the industrial incident and its consequences
- Start summary proceedings in order to be provided by a judicial expert opinion and to assess the causes of the incident and its financial consequences (article 696 of the Italian code of civil procedure)
- Evaluate the possibility to start proceedings on the merits against liable contractors (based on Article 1453 of the Italian civil code) or third parties (based on Article 2043 of the Italian civil code), considering the outcomes of the summary proceedings.

3. Claims management

In the phase, which must be implemented at the same time of the previous one, the purpose is to assess the possible consequences of the industrial incident, which may trigger the liability of the company vis-à-vis the victims. (The latter may

be entitled to be fully compensated for their loss according to Article 2043 of the Italian civil code).

To this end, it must be created a “Claims Management Unit” for the following purposes:

- Implement the “Claims management process” established ahead of the industrial incident (loss appraisal process, etc.).
- Set up, within the Claims management unit of a “Steering Committee” (incl. a loss manager, alongside with liability experts): touch point of the insurers, providing information and updates regarding settlements signed and/or payments made.
- Notify events/claims to all the insurers involved in the insurance program (i.e. different lines of insurance – coinsurance – reinsurance) and, if applicable, to the broker.
- Rule on victims’ compensation, by implementing the Claims management process in view of reaching a decision regarding compensation, upon authorization of the Steering Committee.
- Set up a “Payment Committee” (incl. representatives of the Steering committee and the insurers) in order to pay reserves or settlement indemnities upon authorization of the Steering Committee, and to keep track of such payments in view of recourse actions.

E. Commercial and Insolvency related risks related to suppliers

The bankruptcy of the supplier has an impact on creditors’ claims.

Indeed, if creditors hold a claim against the bankrupt supplier, they shall file for the admission of their credit to the Bankruptcy Court.

The bankruptcy receiver and the bankruptcy judge shall evaluate the legitimacy, the amount and the type of claim.

Creditors may oppose against the liquidation statement in the bankruptcy proceeding approved by the Bankruptcy Judge according to the creditors' filings and the report of the Bankruptcy receiver.

F. Defending your intellectual property

Enforcement before Italian courts and European courts and offices (Italian IP Courts, EPO and EUIPO), also through cross-border orders and (ex parte) preliminary/interim measures

- Oppositions/Nullity against third parties' trademarks, patents, designs infringing your rights
- Infringement actions
- Declarations of non-infringement
- Misappropriation of trade secrets and breach of confidentiality
- IP contractual disputes
- Unfair competition

Validity defense before Italian courts and European courts and offices (Italian IP Courts, EPO and EUIPO)

- Trademark, patent, design, software and copyright revocation actions
- Entitlement actions

Employees' inventions disputes

Alternative Dispute Resolution (ADR) and Jury

- Arbitration (ICC, WIPO, etc.)
- Mediation
- Design Jury
- Advertising Jury

How can we assist you to defend your IP – Press issues

- Representation before Italian (criminal) courts to file defamation actions
- Assisting you to maintain your e-reputation
- Monitoring social networks activities and posts (also with the specific assistance of the Postal Police)

G. Regulation compliance

In principle, most categories of products commercialized within the EU are regulated by EU pieces of legislation (i.e. Directives and Regulations) aimed at harmonizing the regulatory framework and facilitating the free circulation of products within the EU. These pieces of legislation set forth, among others, the main obligation of the manufacturers/distributors to obtain the CE marking certifying that the products comply with any applicable legislation.

Having said that, product regulation concerning general safety issues for most products commercialized in Italy is provided by Part IV – Title I (i.e. art. 102 – 110) of Legislative Decree no. 206/2005 (so called "Consumers' Code"). The above section of the Consumers' Code implemented the Directive 2001/95/UE concerning the products' general safety and other related EU pieces of legislation.

- General safety issues for certain categories of products (including for example medical devices and medicinal products, foods, toys, electrical products, etc.) are regulated by other specific EU and Italian pieces of legislation and are subject to further specific constraints and requirements.
- The relevant provisions of the Consumers' Code regarding the products' general safety include, among others, the following:

- All products (excluding those specific categories for which an ad hoc product regulation is provided, as aforesaid) must be safe (safety must be assessed considering the product's reasonable use and any other relevant element) and free from unacceptable risks for consumers and users, and must not endanger the consumers/users' health and safety.

Manufacturers (as well as distributors, within the limits of their role in the supply chain) must:

- Supply to the consumers all relevant information and warnings to correctly use the products and avoid the potentially associated risks.
- Adopt adequate measures to avoid the potential risks for consumers' health (including if necessary the recall/withdrawal from the market, spot-checks, evaluation/registration of complaints, etc.) and the relevant information to all involved consumers.

If they are aware that any product may pose unacceptable risks to consumers, immediately inform the competent authorities (see next point) and collaborate with them to carry out the necessary corrective actions.

Specific Italian regulatory authorities, including in particular the Ministry of Economic Development and the Ministry of Health, have:

- Surveillance, control, inspection and investigation powers, mainly aimed at safeguarding the consumers' health and safety; based on these, said authorities may carry out at any time specific controls upon any product, also through a) inspections at the manufacturing and packaging premises and warehouses, b) requests of information to all involved parties, c) request of product samples to be tested to check their safety

The power to adopt, for any product which they deem unsafe and/or which may somehow pose unacceptable risks to consumers/users, specific urgent corrective measures, including the following:

- (i) To request specific warnings/precautions to be added to the products packaging and/or specific info to be given in an adequate manner to all involved consumers
 - (ii) For products considered potentially dangerous, to temporarily prohibit the commercialization or offer for sale of the products, for the time necessary to carry out any necessary assessment, and/or to order certain amendments to the products to render them safe and compliant with the applicable legislation
 - (iii) For products considered actually dangerous, to prohibit the commercialization and adopt the measures necessary to guarantee that this prohibition is respected; for dangerous products which are already on the market, if any other measure is deemed insufficient, to order the recall/withdrawal of the product from the market and the information to the consumers on the recall-associated risks, with costs to be borne by the manufacturers/distributors.
- The power/duty to inform and coordinate with the EU Commission and/or with other involved EU regulatory authorities, especially when the risk for the consumers is deemed serious (also through the so-called Rapex System, disciplined by the Directive 2001/95/UE concerning the products' general safety).



H. Competition law investigations

Competition law investigations often start with unannounced dawn raids by the Italian Competition Authority (ICA) to the company site.

In case of dawn raids, personnel should be instructed to ask inspectors to show their identity cards and the ICA decision authorizing them to carry out the inspection and to state its purpose; the in-house counsel should be contacted immediately; personnel should fully cooperate with the inspectors; the company has the right to take copies of all documents taken by or shown to the inspectors.

During the proceedings the company has the right to submit written briefs and to be heard in the final hearing; the file of the proceedings is confidential.

The investigation may end with the ICA ascertaining anti-competitive behavior. In such case the ICA may order to fine the company for an amount up to 10 percent of its worldwide turnover, depending on the severity and duration of the violation.

Expect from very serious violations (e.g. hard-core cartels) companies can submit commitments to eliminate competition concerns. The Authority can choose whether to make these commitments mandatory and close the proceeding without ascertaining the infringement.

Against the ICA's decision, the company may propose an appeal before the First Instance Regional Administrative Tribunal, and the judgement can be appealed to the Second Instance Court (Consiglio di Stato).

I. Tax investigations

Rights, obligations and key tips in case of tax authorities' investigations.

General rules

Formal vs Substantial tax audit: A formal tax audit is carried out electronically on virtually all tax returns and checks whether formal (or prima facie) mistakes (e.g. miscalculations, actual payment of the accounts claimed, etc.) have been committed. A substantial audit of tax returns is carried out on a sample basis, according to the criteria established for each year by a DM of the Ministry of Economy and Finance. The tax authorities have wide powers to obtain any relevant information from the taxpayer, including the right to summon him, ask for additional information and documents, visit his premises and make whatever examinations they deem necessary to determine that the tax return complies with tax law.

Period: For the fiscal year that was current on December 31, 2016 (i.e. 2016 for taxpayers that adopt the calendar year as the fiscal year) and the following fiscal years, the tax office has five years from the end of the tax year in which the tax return was filed to

send a notice of deficiency. The statute of limitations is seven years if no return was filed. (For the tax years preceding the tax year ongoing on December 31, 2016, the time limit for tax assessment is four years in general and five years if no return was filed).

In the case of filing an amended tax return, the statute of limitations with respect to the amended elements of the return starts running again from the filing of the amended returns.

The company may be assisted by a counsel throughout the audit.

The activities performed during the audit and the findings arising from such activities must be summarized in the tax audit report, a copy of which is formally provided to the taxpayer tax audit. The report is delivered to the tax assessment team of the competent Revenue Agency office for evaluation which, unless exceptional cases of urgency arise, cannot issue the tax assessment before 60 days from when the tax audit report has been served upon the taxpayer (i.e. time period in which the taxpayer has the right to file written observations with the tax assessment teams of the Revenue Agency).

Voluntary disclosure: In order to reduce a potential tax liability, the taxpayers can amend the tax return with regard to any omissions and the relevant payments, but only if no formal tax assessment has been served by the tax authorities. A voluntary disclosure is effective only when taxpayers have spontaneously paid the taxes due, the interest accrued and the reduced penalty and submitted the amended tax return (where is required to correct the omissions).

In the case of an assessment which cannot be challenged successfully before the tax courts, or if the taxpayer estimates that tax proceedings may not be appropriate, a number of measures to reduce administrative penalties charged by the tax authorities

or to prevent tax litigations may be considered, namely:

- Voluntary disclosure of tax violations
- Settlement of tax assessment by agreement with the Revenue Agency (Accertamento con adesione)
- Waiver of the appeal against a tax assessment already served (Acquiescenza)
- Settlement of penalties (preserving the taxpayer's right to appeal against the tax assessment in respect of the computation of the taxable base and the tax due)
- Settlement during tax proceedings (Conciliazione giudiziale).

J. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in Italy

Company's compliance rules: The Legislative Decree no. 231/2001

The Legislative Decree no. 231/2001 (Decree) is aimed at encouraging companies to adopt compliance programs (so called Models) to prevent the commission of certain crimes (as listed below) by the directors, managers or their subordinates, or other third parties (such as partners and agents) (Individuals) in the interest or to the advantage of the company. The company's liability is in addition to the criminal liability of the person who committed the offence.

The adoption of the Model is optional and not compulsory, but it is strongly advisable to minimize the risk of the direct corporate liability.

In fact, in the event an individual commits one of the applicable crimes in the interest, or to the advantage of the company, the company may be subject to the following sanctions:

- (i) Monetary sanction: up to €1.5 million
- (ii) Prohibitive sanctions: in particular, the prohibition to exercise the business activity, the suspension or revocation of authorizations, licenses or concessions, prohibition on dealing with the public administration, the exclusion from public administration funding, the contribution or financing and possible revocation of those already granted and the prohibition on advertising goods or services
- (iii) Confiscation of the price/profit resulting from the crime
- (iv) Publication of the criminal conviction judgment.

The Decree applies to the Italian companies, associations and also to companies registered abroad, but operating in Italy through a branch.

The list of the offences provided by the Decree has been expanded in the course of the years and includes several crimes, such as crimes committed against public administrations (eg. bribery), bribery among private individuals, corporate crimes, market abuse crimes, manslaughter and serious injuries due to violation of health and safety in the work place, money laundering crimes, IT crimes, criminal conspiracy crimes, crimes regarding the falsification of identifying signs and marks, crimes against industry and commerce, crimes breaching copyright laws, environmental crimes, racism and xenophobia.

The company may be able to rely on a defence and be exempted from liability if it proves that (article no. 6 of the Decree):

- (i) A Model of management, organization and control suitable for preventing crimes has been adopted and effectively implemented prior to the commission of the crime.



- (ii) A Supervisory Committee (in Italian "Organismo di Vigilanza," "OdV") with autonomous right of initiative and of control with independent powers of action and control has been appointed (it monitors also the effectiveness, the adequacy and the validity of the Model, and suggests its updates).
- (iii) Evidence is given that the Model has been fraudulently eluded by the Individuals that committed the offence.
- (iv) The Committee has carried on an adequate monitoring activity.

Anti-bribery

The "Autorità Nazionale Anticorruzione" (ANAC) has been designated as the national anti-corruption Authority for Italy and coordinates the anti-corruption policies in order to prevent bribery.

Nowadays ANAC has not only the power to coordinate public administrations in their compliance policies, but it has also the power to supervise public contracts and receives reports of criminal offences by the public officials (whistleblowing).

ANAC has also adopted guidelines which provides the anti-corruption policies for the public administrations in their different areas of activities.

The anti-corruption authority has finally settled agreements with the Italian Public Prosecutor offices in order to rapidly exchange information.

Moreover, Law Decree no. 62 of April 16, 2013, introduced the Code of Public Officials' Conduct.

According to the anti-corruption polices, the following practices are generally prohibited:

- (i) To give to the public officials (or to the person in charge of a public service), directly or indirectly, economic benefits or facilitations
- (ii) To give to the public officials (or to the person in charge of a public service), directly or indirectly, gifts or other economic benefits (e.g. hospitalities, buckets, dinners, meals, discounts, promotions, etc.); please note that, according to the law, giving low value gifts could also be considered as corruption by the Public Prosecutor. Recently, for example, the Public Prosecutor Office of Milan has considered a Christmas basket and some payments of conventions/meetings as bribery.

Anti-money laundering

In Italy money laundering is a criminal offence provided by article 648-bis of the Italian Criminal Code, which punishes the individual who intentionally substitutes or transfers money, goods or other things of value deriving from an intentional crime or carries out, in relation to that benefit, any transactions in such a way as to obstruct the identification of their provenance. In 2015 the offence of self-money laundering was introduced.

The Legislative Decree no. 231/2007 was also introduced in order to prevent the commission of money laundering. The system for preventing money laundering is now based on cooperation between financial institutions and the administrative authorities. In fact, article no. 35 of the Decree states that the financial and bank intermediaries have to report the "suspicious operations" to the Authorities of Control, the UIF of the Bank of Italy.

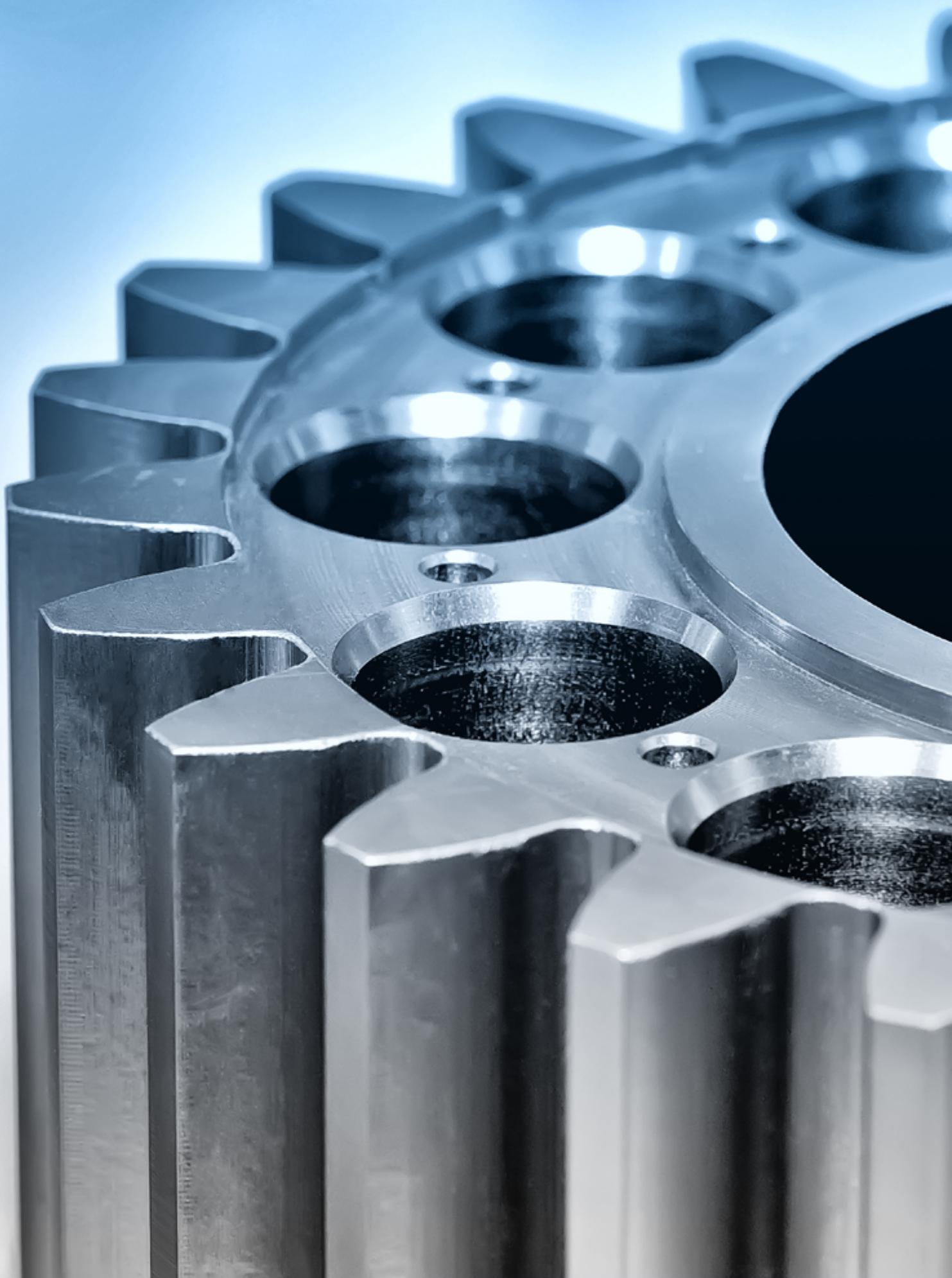
The Decree provides criminal sanctions (article 55) and administrative sanctions (articles 56-58) for those who do not respect the measures provided by the Decree.

Whistleblowing system

The Law no. 179/2017 modified the Legislative Decree 231/2001 (see point A) and provided measures in order to protect the whistleblowers who report offences or irregularities/violations of the 231 Model in the private company.

The 231 Model (if adopted by the company) has now to provide with:

- (i) More than one channels for the whistleblower's reports which guarantee the confidentiality of the whistleblower (one of these channels also has to be based on technological tools, e.g. a dedicated e-mail account)
- (ii) The prohibition of discriminatory actions against the whistleblowers related to their reports
- (iii) Sanctions for those who adopted the abovementioned discriminatory measures and for the whistleblowers who carry out reports totally ungrounded.





Acquiring and selling a plant (buy side & sell side key check points)



A. Share deals & Asset deals

Investments in real estate assets in Italy – including manufacturing plants – can be completed through:

- (1) An asset deal, structured as either an acquisition of a real estate asset or an acquisition of an on-going business / ongoing-business branch; or
- (2) A share deal, i.e. the acquisition of the shares/quotas of a company which owns a real estate asset.

As preliminary remarks, please note that:

- Foreign investors are not restricted from purchasing real estate assets and/or companies' shares/quotas in Italy, subject to the principle of reciprocity and a bilateral agreement entered into between Italy and the foreign investor's country of reference.
- All deed transferring real estate assets (through an asset deal or a share deal) must be executed through a notarial deed or a private deed authenticated by a notary public.
- Any deed of transfer of a real estate asset shall be filed with the competent Real Estate Register (Conservatoria dei Registri Immobiliari).
- A preliminary purchase agreement can precede the final deed of transfer. In case such a preliminary purchase agreement regards a real estate asset, it may also be filed with the Real Estate Register (Conservatoria dei Registri Immobiliari) in order to protect the purchaser against subsequent filing of third parties' rights or subsequent sales of the same asset to other third parties.
- Unless otherwise agreed by the parties, breaches to representation and warranties must be notified within eight days from the relevant discovery and a one-year limitation period applies from the date on which the buyer takes possession of the property.

In addition to the above, please find in the following paragraphs the main differences between an asset deal and a share deal. Please bear in mind that tax aspects may also have to be considered when choosing between a share or asset deal for a manufacturing plant acquisition.



Asset deals' main pros & cons:

Asset deals do not entail any risk not directly related to the purchased asset.

Cherry picking is possible: If the asset deal is structured as an acquisition of an on-going business / ongoing-business branch, there is no automatic transfer of all the assets and liabilities pertaining to the transferred business. Indeed, the parties may agree to exclude specific assets and liabilities (with the exception of the employment contracts, if any). If the asset deal is structured as an acquisition of a real estate asset, the purchaser can circumscribe the perimeter of the acquisition (e.g. excluding from the transaction certain portions of the asset). In this regard, however, please note that cherry picking of employees is not possible, because all the employees operating in the going concern to be transferred must be mandatorily transferred.

No automatic transfer of contracts pertaining to the transferred plant, save for (i) with respect to the acquisition of an on-going business or ongoing-business branch: eventual employment contracts, in respect of which the purchaser is legally obliged to step into and to take over the related liabilities; (ii) with respect to the acquisition of a real estate asset: lease agreements and janitor agreements (or equivalent contracts).

Share deals' main pros & cons:

Cherry picking is not possible: All the assets and liabilities related to the purchased shares/quotas are transferred.

An extensive due diligence covering all legal aspects relating to the shares/quotas of the target company, existing debts, receivables, liabilities, contracts, financial statements, and the company books shall be carried out (also in connection to the negotiation of the indemnity provisions inserted in the agreements regulating the deal).

B. Real Estate

Prior to the purchase of a real estate asset, it is essential to carry out a due diligence exercise in order to verify, inter alia:

- a. The ownership title to the asset
- b. Any limitation and/or encumbrance and/or lien and/or restraint bearing on the asset (e.g.: mortgages and other privileges, right of way easement, etc.)
- c. Any restriction to the transferability of the asset (e.g. statutory pre-emption rights in favor of the State in case of real estate assets with historical/ landscape value)
- d. Any pending and/or threaten litigation concerning the asset

- e. Building titles allowing the construction of the asset
- f. Environmental issues
- g. The occupancy status of the asset (e.g. lease agreement in force)
- h. Any janitor agreements relevant to the asset
- i. in case of a newly built asset, the relevant ten-year warranty (*decennale postuma*) to secure it against any structural collapse or serious defects and, in addition to the foregoing, with exclusive reference to the transfer of an on-going business:
- j. Commercial authorizations, trade licenses and other public permits necessary to carry on the business
- k. All the contracts concerning the business, including employment agreements.

Please note that, within the context of the due diligence, it is highly recommendable to appoint a notary public to run the Real Estate Register's investigations and provide an updated twenty-year notarial report (*relazione notarile ventennale*) attesting and fully clarifying the ownership title to the asset and the existence of mortgages, liens, easements and other third parties' rights bearing on the asset, if any.

Furthermore, please note that in case the asset is burdened with a pre-emption right in favor of the State, the relevant purchase deed must be firstly served on the relevant public authority (*Soprintendenza delle Belle Arti*) and the transfer is conditional upon not exercising the State's pre-emption right.

Please consider that, in order to be transferred validly, a real estate asset shall:

- a. Be compliant with the "continuity of filings" rule, i.e. have an uninterrupted chain of ownership whereby all the previous acquisition deeds proved to have been properly filed
- b. Be compliant with the applicable town planning regulations and the relevant cadastral plans
- c. Be compliant with the relevant building authorizations
- d. Be provided with a valid energy performance certificate (APE) and the relevant urban destination certificate (CDU) (mandatory only in case the transfer concerns a plot of land or a building with an appurtenance area exceeding 5,000 square meters).

Please consider that, in case a real estate asset is purchased by means of a share deal, in addition to the foregoing, during the relevant due diligence exercise over the target company, particular attention shall be drawn to:

- a. The limitations provided by the target company by-laws (e.g. previous approval of corporate bodies or other shareholders/quotaholders, pre-emption rights, etc.)
- b. Shareholders/quotaholders' agreements (*patti parasociali*)
- c. Liens bearing on the shares/quotas of the target company (e.g.: pledge on shares/quotas).



C. Third party suretyship on the plant

Securities are released by executing a deed of release and carrying out certain formalities, if required, such as the delivery of certain documents proving the solvency of the debtor.

A mortgage, granted pursuant to a deed of mortgage, shall be registered by the Italian public notary, in the competent Land Register. This formality is a constitutive element (not merely declarative) of the security, necessary in order for the mortgage to come into existence and to be enforceable, giving the creditor the right of expropriation and priority over the proceeds of its sale.

A pledge, may be granted over different assets (such as shares, bank accounts, movable goods etc.). Normally, the secured pledge shall be granted through a notarized deed or private deed authenticated by the Italian notary public.

Usually, the deed of release is executed only by the secured parties (or by the security agent in their name and on their behalf) and, depending on the type of security, it may have to be executed before a notary public, and registered in the relevant registers,

as for the granting of the securities. When more than one security interest is to be released and filings with different public records or registers are required, it might be more expedient to execute a deed of release for each security interest requiring a filing.

Through the execution of the deed of release, the secured parties give their irrevocable consent to liberate the asset from the security.

D. Employment & Trade Unions

Basic obligations that an employer must take into account in the manufacturing sector:

Buying assets or purchasing an organized part of a business usually results in the automatic transfer of the employees' contracts to the buyer and sometimes in the reorganization of the business, which may entail a redundancy process.

In both cases, Trade Unions and Works Council have a specific role, which must be taken into consideration by the employer, and in particular:

- **Transfer of business:** If the transfer of business implies a transfer of undertaking under the TUPE rules, the Trade Unions and Works Councils must be informed at least 25 days before the transaction and they can ask for a meeting in order to be kept posted on the reasons of the transfer.
- **Collective dismissals:** The Trade Unions and Works Councils must be informed with a written letter and they must be consulted in a joint examination on the reasons of the collective dismissal and the selection of the employees to be made redundant in a 75-day procedure (which is halved if the number of redundant employees is less than 10).

E. Specifics for distressed assets

In the context of an insolvency proceeding, according to article 107 of Italian Bankruptcy Law, sales have to follow a specific procedure.

In fact, since the declaration of bankruptcy or the admission to any other insolvency proceedings, the debtor assets are managed by the procedure “body” which may be respectively composed by the bankruptcy Court, the official receiver, the judicial receiver, the bankruptcy judge and the creditors’ committee.

In order to execute the wind-up plan, the official receiver or the judicial receiver, also in collaboration with an expert, adopts a procedure where three characteristics are necessary:

1. **Competitiveness** of the procedure
2. **Evaluations** of assets made by experts (except when assets have moderate value)
3. **Appropriate publicity** to guarantee the highest information and participation of the interested parties, at least 30 days before the beginning of the competitive procedure.

The payment of the price can be made in several instalments.

The official receiver or the judicial receiver can suspend the sale if a better offer comes for an amount not less than 10 percent of the prior price.

F. Merger control

Under Italian Law n. 287/1990 merger operations are subject to a duty of prior notification to the Italian Competition Authority (ICA) provided that they exceed the following thresholds:

- (i) The combined Italian turnover of all the undertakings concerned exceeds €495 million; and

- (ii) The Italian individual turnover of at least two of the undertakings concerned exceeds €30 million.

A transaction is considered as a merger operation whenever there is a change of control in the operation of an undertaking.

Failure to give prior notice of the transaction to the ICA triggers the imposition of a fine.

The ICA will give a decision either clearing the operation unconditionally or subject to remedies or forbid the transaction.

Unlike EU Competition law, under Italian Competition law there is no duty to standstill, and the transaction can be implemented after the filing to the ICA but in this case the parties bear the risk of demerging.

G. Tax risks

Key risks to identify and statute of limitation attached to tax liabilities.

Key risks

- **Tax liabilities related to the acquisition of a business:** The buyer should also consider that, only in the case of an acquisition of a business (and not in the case of a purchase of single assets), it will be jointly and severally liable with the seller for any taxes, interests and penalties pertaining to the business transferred and which derive from:
 - (i) any breach relating to the year of the acquisition or in the two previous years, or
 - (ii) any breach resulting from a tax audit carried out in the year of the acquisition or in the two previous years, even if such penalties relate to previous years. However, the buyer will be liable only up to an amount equal to the value of the business. In order to ring-fence the buyer’s liabilities, both parties may request a certificate to the Italian tax authorities that specifies the amount of the business-related tax liabilities pertaining to the business and existing on the

acquisition date. Once this certificate is issued, the buyer's exposure will be limited to the liabilities resulting therefrom. The buyer will not assume any tax liability of the seller if the Italian tax authorities do not issue the certificate within 40 days of the application.

- **Statute of limitation attached to tax liabilities:** From the fiscal year in progress as at December 31, 2016, the Italian tax authorities are entitled to make an assessment in relation to corporate taxes (IRES and IRAP), VAT and WHT returns up to the end of the fifth calendar year following the year in which the tax return was filed or the end of the seventh calendar year following the year in which the tax return would have been filed, for an omitted return.
- **Registration duties:** On the transfer of residential properties exempted from VAT, registration tax applies at 9 percent tax rate (2 percent tax rate in case of primary residence) and to cadastral and mortgage taxes (at the fixed amounts of 50 for each tax); Sales of residential property subject to VAT are subject to registration, cadastral and mortgage taxes (at the fixed amounts of €200 for each type of tax). Both in the case in which the sales of commercial real estate is subject to VAT or not, the sale is subject to registration tax (at the fixed amounts of €200) cadastral and mortgage taxes (at a cumulative 4 percent rate: 1 percent [cadastral] + 3 percent [mortgage]).
- **Value added tax:** The sale of Italian properties may be subject to VAT, depending on the type of immovable property [residential or commercial], its cadastral category, the status of the seller and on whether the seller could be qualified as "construction/refurbishment company" pursuant to the Italian tax law.
- **Tax regime of a REIF:** If certain requirements are met, REIF are exempt from corporation income tax on the profits derived from their real estate activities.

H. Intellectual Property & Technology acquisition

IP due diligences (patents, trademarks, designs, software, copyright, trade secrets and know-how)

- Legal IP due diligences (existence, ownership, maintenance, enforceability)
- Technical IP due diligences (validity, FTO)
- Business IP due diligences (sufficient and adequate protection to conduct business)

Negotiating and drafting the representations and warranties

Negotiating and drafting of IP Security and pledge agreements

Post-closing actions



Closing down

– moving away
manufacturing
from Italy





IP

In certain cases, maintenance, protection and enforcement of IP rights require their effective use in the territory.

Competition

When planning to establish a manufacturing business in Italy a company must make sure to comply with the Italian Consumer Code provisions concerning unfair commercial practices in case it makes direct supplies to consumers.

Corporate

In case of lease agreements entered into for the purpose of running manufacturing activities, the terminating party shall serve the counterpart a 12-month prior notice with respect to the expiry date of the lease in order to validly terminate it (being understood that the parties can agree on break options entailing the tenant to withdraw from the lease at any time by serving the counterpart relevant prior notice).

Regardless of the parties agreeing on any break option, please note that the tenant is at any time entitled to withdraw from the lease on basis of “serious grounds”, by serving the landlord prior notice of at least six months. The definition of “serious grounds” is not expressly provided by the law; however, Italian case law has stated that “serious grounds” shall (i) be unknown and unforeseeable at the time of execution of the lease agreement; (ii) go beyond the tenant’s control and do not fall in his sphere of risk; (iii) have

a substantially negative impact on the tenant’s commercial position, thus rendering the continuation of the lease overly burdensome for the tenant.

Employment

If a company needs to consider a reduction of the work force or to move away from Italy, it is worth underlining that currently the Italian legislation is under discussion at the Parliament with regard to these key issues:

- Increase to the indemnity in some cases of unjustified dismissal: In case of unjustified dismissal of employees employed under the Employment Reform of 2015 (so called Jobs Act, applicable only to employees hired after March 7, 2015), the maximum indemnity, for employers employing more than 15 employees within the business unit or more than 60 employees in total, is equal to a minimum of six months up to a maximum of 36 months. For employers which do not fall within the mentioned threshold, the indemnity is now equal to a minimum of three months up to a maximum of six months.
- Limits to the outsourcing and protection of the workforce for companies that benefit from a State aid: Italian or foreign companies operating in Italy that decide to outsource (in whole or in part) in an extra-UE Country the activity in relation to which they received State aid, are bound to return such aid (plus interest), and they are subject to a sanction from two up to four times the amount of the aid received, should the outsourcing occur within five years from the termination of the supported activity. The company will also be under the duty to return the aid (but no sanction will apply) if it decreases the workforce of more than 10 percent (justified objective reasons of termination shall be excluded).

Please note that the two aforementioned rules shall apply from July 14, 2018.

Contacts



Contacts

Sector Leader



Pirouzan Parvine
Manufacturing Sector
Leader Europe/Partner
D +33 6 42 24 07 25
pirouzan.parvine@dentons.com

Key contact



Davide Boffi
Partner
D +39 02 726 268 00
davide.boffi@dentons.com

Contributors



Antonella Brambilla
Partner
D +39 02 726 268 00
antonella.brambilla@dentons.com



Federico Vanetti
Partner
D +39 02 726 268 00
federico.vanetti@dentons.com

Dentons Italy LLC

Via XX Settembre, 5
Rome, 00187
Italy

Piazza degli Affari 1
Milan, 20123
Italy

ABOUT DENTONS

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.

dentons.com

© 2020 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.