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ESTABLISHING A BUSINESS ENTITY IN ITALY

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1. Types of Business Entities

1.1 Premises

The Italian law provides multiple forms of organizational structures in order to do business in Italy, which differ from one another due to the extent of the liability undertaken by their participants. In particular, certain business organizational forms allow the participants to limit their personal liability (such as the "società per azioni" – a type of company similar to the Joint Stock Company – or the "società a responsabilità limitata" – similar to the Limited Liability Company), as opposed to others which do not limit the liability of the participants (among which the "società semplice" and the "società in nome collettivo," operating similarly to a partnership) or which provide for limitations to the personal liability only for certain classes of stakeholders (i.e. the "società in accomandita semplice" and "società in accomandita per azioni").

Most foreign investors generally enter the Italian market through the organizational structures that provide a limited liability for the participants. Discussed below are the two most common types of corporate entities that provides such limited liability, i.e. the "Società per Azioni" ("S.p.A.") and the "Società a responsabilità limitata" ("S.r.l."), including a simplified type of the S.r.l., the "Società a responsabilità limitata semplificata" ("S.r.l.s."). In each of these types of corporations, in fact, the maximum extension of the shareholders' personal liability is limited to the amount of their equity interest.

1.2 Description of the types of entities available in Italy, through which to conduct business.

1.2.1 "Società per Azioni" (S.p.A.)

The *Società per Azioni* represents the main corporate vehicle generally utilized for investments of higher significance and value, either by foreign and domestic investors.

A minimum capitalization of Euro 50.000 (fifty thousand) is required to set up an S.p.A. The capital of the S.p.A. is subdivided into shares and is required to be fully subscribed, although only 25% of its value may be paid in at the time of incorporation. The remaining subscription price will have to be paid up upon request of the administrative body of the company, in one or more installments.

As mentioned above, the S.p.A. confirms the general principle of the limited liability of its shareholders in case of insolvency of the company, which will be limited to the maximum amount of the share capital actually subscribed by each shareholder. This principle finds an exception in the event that the S.p.A. is set up, or is subsequently owned, by a sole shareholder. In such cases, the sole shareholder may be held personally and unlimitedly liable, unless such sole shareholder does pay up in whole the entire share capital and fulfils certain publicity

requirements disclosing to the public the sole ownership in the company.

The main provisions regarding the governance and the capital of an S.p.A. are regulated by the articles of association, which are approved by the shareholders at the time of incorporation and may be amended only by a resolution of the extraordinary meeting of the shareholders, requiring enhanced voting majorities.

In addition to the above, it should be remarked that stricter legal provisions have been established by the Italian Civil Code with respect to those particular S.p.A.'s whose stock is traded on one of the official regulated markets or is highly capitalized and diffused on the market.

1.2.2 "Società a Responsabilità Limitata" (S.r.l.)

The Società *a responsabilità limitata* is the most commonly used form of limited liability company in Italy, with a minimum capitalization requirement of Euro 10.000 (ten thousand).

On the other hand, the equity participation in the S.r.l.'s capital is not represented by shares, but by quotas. Such quotas are "immaterial", i.e. they cannot be incorporated into certificates, with the result that the circulation and the transfer of the same are subject to more strictly formal requirements.

In general terms, the S.r.l. is characterized by a greater freedom granted in favor of the quotaholders to set forth the internal organizational rules of the company, and to create a very flexible structure adaptable to their peculiar needs.

The flexibility of its structure, along with the sensibly lower costs required for the incorporation and management of the S.r.l., as opposed to the S.p.A., makes the former the most suitable and commonly utilized corporate form to start and run small/medium size businesses.

Pursuant to a recent modification to the Italian Civil Code, it is now allowed to constitute the S.r.l. with a corporate capital lower than 10.000,00 Euro, save that the following limitations will apply: 1) the equity contributions must be paid only in cash and fully paid to the persons that are entrusted with the administration of the company; 2) an amount correspondent to one fifth of the net profits must be set aside as legal provision until the S.r.l.'s net assets will approach 10.000,00 Euro; 3) the legal provision can be only used for ascribing it to the corporate capital, or to cover possible losses, and must be always replenished if reduced.

1.2.3 "Società a Responsabilità Limitata Semplificata" (S.r.l.s.)

The *Società a responsabilità limitata semplificata* is a particular kind of S.r.l. that has been introduced by the Legislative Decree n. 1/2012, under article 2463 bis of the Italian Civil Code.

The purpose of the introduction of such company is to foster new enterprises and small business, by simplifying the incorporation proceedings and by reducing the capitalization requirement.

The act of incorporation must be drafted in compliance with the standard model approved by Decree of Justice and the equity contribution can be limited to the minimum amount of Euro 1,00, that must be completely subscribed and directly paid-in, in cash, to the administrative body at the time of incorporation.

Further limitations in respect to the ordinary S.r.l. structure are: (a) the founder quotaholder(s) must be individual(s), (b) the inter vivos transfer of quotas can only be executed with other individuals, and (c) the capital can only be raised up to the maximum limit of Euro 9.999,00.

1.2.4 The Simple Investment Company

The Italian "*Simple Investment Company*" (SIS – *Società investimento semplice*) represents a new type of company, introduced by the Law Decree of 30 April 2019 n. 34, so called "*Growth Decree*" (*Decreto Crescita*).

This is a new investment vehicle, aimed at facilitating the raising of capital for Small and Medium Enterprises – SME (*Piccole Medie imprese* - PMI).

The new type of company stands as an innovative Collective Investment Scheme (*OICR – Organismo di Investimento Collettivo del Risparmio*), which according to the provisions of Article 27, paragraph 1 of the "*Growth Decree*", has to be in the form of an Investment Company with fixed capital, which is necessarily a Joint Stock Company (*SPA – Società per Azioni*) and must comply with the following conditions:

(i) The company name has to contain the indication of "*simple investment company for fixed capital shares*";

(ii) The registered office and general management of the company have to be located in the territory of the Italian Republic;

(iii) The recourse to the financial leverage is not permitted. This means that the company must not buy or sell financial assets for an amount greater than the capital held;

(iv) The share capital has to be at least equal to that provided for by article 2327 of the Italian civil code, i.e. at least 50 thousand Euros, notwithstanding the provisions of article 35-bis, paragraph 1, letter c of the Consolidated Law on Financial Intermediation (TUF);

(v) Net worth cannot exceed € 25 million.

Furthermore, the legislator, with a view to guaranteeing functionality and internal stability, and the solvency of the *Simple Investment Company* (SIS); prescribes:

(i) The Mandatory of the conclusion of insurance policy on professional civil liability appropriate to the risks related to the activity carried out;

(ii) That the SIS has an adequate system of governance and control to ensure the safe and prudent management and compliance with the provisions provided.

Thanks to the requirements the SISs must have, they present themselves as a particularly lean investment vehicle with less operational complexity and for this reason, take advantage of some simplification compared to the rest of the companies whose activity consists in raising financial capital.

In fact, the Growth Decree, establishes that the implementing provisions under article 6, paragraphs 1, 2 and 2-bis of the TUF, which contains a whole series of very restrictive and binding obligations in terms of transparency, publicity and controls by the supervisory bodies (Bank of Italy and CONSOB), do not apply to SIS. This means that an important part of the secondary legislation issued by the Bank of Italy and the CONSOB, to which the Investment

Companies are normally subjected, will not be applied to the SISs, with the consequent simplification of their activity and their management.

Further simplification is set in the matter of the requirements pertaining to the subjects who hold a participation in a SIS. In fact, this subject, pursuant to the new art. 35-undecies TUF, must possess exclusively the requisites of honorableness prescribed by art. 14, with the exclusion of the requirements to demonstrate competence in the financial industry.

Finally, the legislator provided one more limit to the SISs. Subjects that control a SIS directly or indirectly through subsidiaries or parent companies or are subject to common control also by virtue of shareholders' agreements or contractual obligations pursuant to Article n. 2359 of the Italian Civil Code, may constitute a new SIS only within the overall limit of 25 million Euros. A similar limit is also set for subjects who perform administration, management and control functions in one or more SISs.

The above has been established because, in the opinion of experts, this new type of company could favor the concealment of large investment projects, which with the new legal entity would be fragmented through the "serial" establishment of SISs.

1.3 Groups of Companies

As one of the results of the reform of the Company law approved with Legislative Decree January 17, 2003, n.6, ("Reform"), the Italian legal system now regulates certain aspects connected to the common practice of organizing business activities through the establishment of groups of companies.

While the law does not directly define the term "group of companies", it refers to the concepts of "activity of direction and co-ordination of companies," of "coordinating company" (i.e. the mother company) and of "coordinated company" (i.e. the controlled company or subsidiary). Furthermore, the law does not indicate or list the actual cases in which the activity of direction and coordination of companies is deemed to exist, but it sets forth only a few general rebuttable presumptions of its existence. More precisely, the activity of coordination and direction is presumed to be exercised towards those companies subject to consolidation in the balance sheet of another company or subject to the control of another company pursuant to the definition of "control" indicated by the Italian Civil Code. Accordingly, a similar presumption of law applies when the actual direction and coordination of companies is exercised by virtue of specific contractual provisions among companies (i.e. domination contracts, shareholders agreements), as well as of clauses set forth in their respective articles of association.

The approach of the legislator has been practical. Instead of construing a fixed definition of group of companies, it has taken into consideration the most typical effects connected to the relevant phenomenon (i.e. the coordination and direction of one company over another) and has left to the case law and the scholars the task of interpreting and updating from time to time the actual definition of such activity. At the same time, the new provisions of law have had the merit to finally recognize the phenomenon of groups and to finally confirm that the activity of coordination and direction is lawful so long as it is practised properly. Prior to the Reform, the lawfulness of such practice was highly debated among Italian scholars and case law.

It should be noted that the new provisions of law have restricted and sanctioned only any

possible abuse of such activity, providing a specific duty for the directors of the coordinated company to supervise and control the proper conduction of such practice. More precisely, the Italian Civil Code now provides, inter alia, for: (i) a specific liability of the coordinating company; (ii) the introduction of a specific "duty of transparency" for the coordinated companies; (iii) specific cases in which the shareholders of the coordinated companies are entitled to withdraw from such companies; and (iv) new dispositions concerning the practice of shareholders' financing.

1.3.1 Liability of the Co-Coordinating Company

The coordinating company may be held liable vis-à-vis the (minority) shareholders or the creditors of the coordinated companies whenever: (i) the coordinating company, while exercising the activity of direction and coordination, acts in its own interests and in violation of any criteria of correct and proper management; and (ii) such acts cause damages to the value of the shareholding of the coordinated company or to its profitability, or otherwise cause damage to the integrity of the equity and of the overall assets of the coordinated company representing the main guarantee for such company's creditors.

The aforementioned liability is excluded when: (i) said acts, and the prejudices caused to the single coordinated company, are outweighed by the overall practical advantages arising from such acts in favour of the entire group of companies; (ii) the damages to the shareholders or the creditors of the coordinated company is fully eliminated by the coordinating company, also by means of instruments or measures adopted with this specific purpose (e.g. cash injections in the coordinated company for an amount equal to the - presumed - damage only in order to exclude the aforementioned liability).

The importance of the above provisions may be better appreciated considering that, in the event that the coordinating company is found liable according to the above, such liability shall not be limited to the value of the equity interest owned by the coordinating company in the coordinated company but will follow the ordinary liability rules. Moreover, such liability may be extended to any person who participates in the performance of the harmful act or otherwise obtains advantages by such act (within the limit of the actual benefit obtained). This latter provision further extends the number of individuals/entities that could be found liable (e.g. coordinated company's directors, auditors, other shareholders, creditors, and the like).

1.3.2 Duty of Transparency

The Reform has introduced a special legal regime of publicity in relation to the groups of companies. In particular, it is now required to fully disclose to third parties the status of coordinated company, by mentioning such status on any document and correspondence of the coordinated company. Furthermore, both the coordinating and the coordinated companies are required to be registered into a specific section of the Registrar of Companies.

Directors not complying with the aforementioned duties can be held personally liable for the damages that the lack of knowledge of the coordinated status has caused to the shareholders or to any third parties (primarily the company's creditors). Moreover, the directors of the coordinated company are further obliged

to: (i) report the main financial data of the coordinating company on the balance sheet of the coordinated company; (ii) indicate in the directors' report (to be attached to the balance sheet) all the relationships and transactions (and their relevant business and economic effects) undertaken with the coordinating company and/or any other company belonging to its group; (iii) justify the decisions taken by the managing body of the coordinated company every time the same are influenced by the coordinating company.

1.3.3 Rights of Withdrawal

To protect the minority shareholders of coordinated companies from prevailing resolutions passed by the majority shareholder expressing the will of the coordinating company and which may be prejudicial for the interest of the former, the Reform has introduced specific provisions entitling such minority shareholders to withdraw from the coordinated company. Such rights may be exercised when resolutions are passed changing the corporate purpose of the coordinated company or the actual business (and consequent financial risk) connected to its activities, or when the direction and coordination activity starts or ceases, and such circumstances determine a change of such risk.

The above-mentioned causes of withdrawal cannot be excluded by the by-laws (which in turn may provide for further causes of withdrawal). The terms and conditions of the exercise of the withdrawal are regulated by the general rules set forth for the withdrawal within the S.p.A. and the S.r.l.

1.3.4 Provisions Concerning the Financing from Shareholders

One of the most sensitive aspects of groups of companies which may lead to abusive and fraudulent practices against creditors and third parties relate to the financial relationships among the companies belonging to such groups.

The inherent risk registered in this case is the attempt to abuse the corporate veil and to make recourse to financing methods instead of adequately capitalizing the coordinated company in order for the mother-company to limit its direct liability.

With the aim of limiting this practice, the Reform has introduced general provisions aimed at guaranteeing higher protection of the third parties' credit rights. The general rule introduced by the Reform in this regard states that: (i) any reimbursements of financing made available by the shareholder(s) to the participated company are subordinated to the actual payment of any other debt of the company, and that (ii) any reimbursement of such financing occurred in the year preceding the declaration of bankruptcy of the participated company shall be revoked (by the trustee of the bankruptcy proceeding). However, it should be pointed out that this general rule shall apply only for those loans and financing granted to the company at a time in which there was an excessive difference between the net equity of the company and its indebtedness (i.e. equity/debt ratio), or it would have been more reasonable to execute a direct equity contribution rather than granting loans.

1.4 Branches – Stable Organization

Foreign companies that establish one or more branch offices with permanent representation within the Italian territory are subject – for

each of such branch offices – to file in the Corporate Register legalized copies, furnished with sworn translations of (i) the Foreign Company's incorporation deed and articles of association (in case of an EU foreign company, the articles of association can be substituted by a certificate issued by the competent register of companies); (ii) notarized copy of the minutes of the Foreign Company's competent body that has resolved to establish the branch office(s), filed with an Italian Public Notary; (iii) the name, place and date of birth, residence in Italy of the person(s) who permanently represent(s) the company and the power assigned to such person(s).

Until the above-mentioned formalities have been fulfilled, the person(s) who act in the name and on behalf of the company are unlimitedly liable, jointly and severally with the company for its obligations, despite the limited liability of the company in the country of residence.

The ongoing activity of the branch implies the duties of filing the annual financial statements of the foreign company, and the profit and loss account of the branch. The branch must file with the Italian tax authority the tax return pertaining to the income produced in Italy.

The branch has no minimum capital requirement, rather is generally provided by the foreign company with an endowment fund.

1.5 Matters to be considered when choosing a particular business entity type

The S.p.A. equity participation represented by shares rather than quota makes this type of company preferred to the S.r.l for confidentiality reasons, as the names of the shareholders are not registered on the Corporate Register and for the easier circulation of the ownership of the property rights.

The S.p.A. structure and functioning makes them more suitable also in case of widespread corporate participation.

On the contrary, the S.r.l. is preferred for the lower capitalization requirements, greater governance flexibility, higher possibility of participation of the business owner(s) in the management of the company and in the conduct of the business activity. Thus the S.r.l. is the most suitable company structure for businesses when ownership and management responsibilities stay with the same persons.

Higher capitalization requirements, more sophisticated and less flexible governance provisions, need to appoint statutory auditors (regardless the size and financial dimension of the company, as described below), make S.p.A. the appropriate type of company for large size business enterprises. Furthermore, only S.p.A. qualifies for listing in the stock market.

Thanks to the special regulations governing the S.r.l.s., this type of company represents the most suitable structure for the conduct of small businesses.

Share capital represented by shares rather than percentage quota participation in the value of the capital makes the S.p.A. preferable for confidentiality reasons, circulation of property rights and in case of large shareholders' participation.

For either of the above reasons, the S.r.l. is usually considered the best company type for companies with one sole shareholder or where the shareholders are also active in the business management.

S.r.l. is the usual type of companies chosen for the incorporation of Italian subsidiaries of foreign companies.

2. Steps and Timing to Establish

2.1 Brief overview of steps to incorporate/constitute each

2.1.1 S.p.A.

To incorporate an S.p.A., the shareholders – either in person or by proxy – shall appear before a Notary Public who will be required to draft the public deed of incorporation, which must contain the following main information (i) name of the founding shareholders and respective equity; (ii) name of the company and municipality where the headquarter is located; (iii) company's object; (iv) amount of subscribed and paid capital; (v) number and type of issued shares; (vi) value of contributions in kind; (vii) criteria for distribution of profits; (viii) governance rules and administrative body composition and powers to represent the company; (ix) composition of the statutory auditor board and appointment of its members; (x) duration of the company.

The Notary Public shall verify, inter alia, that (i) the company's capital has been fully subscribed; (ii) at least 25% of the capital has been paid up (unless it has been subscribed by a sole-shareholder, in which case the capital will have to entirely be paid up); and (iii) any governmental authorization or other condition, required by any applicable law in order for the company to validly carry out its activities, have been obtained or met. The documents attesting the incorporation of the company shall then be filed with the competent Registrar of Companies within 20 days from incorporation and, once it will be filed, the company shall acquire full legal personality.

2.1.2 S.r.l.

The procedure for the incorporation of an S.r.l. is very similar to the procedure described for the S.p.A. Likewise, the same rules apply as regards the cases in which the company is incorporated, or is subsequently owned, by a sole quotaholder.

2.1.3 S.r.l.s.

The incorporation procedure of the S.r.l.s. differs from the other companies only for the fact that the incorporation deed must meet the minimum standard content required pursuant to Chart A of the Ministry of Justice Decree no. 138/2012.

Moreover, the incorporation deed of the S.r.l.s. is free of stamp and registry duties, and also of notary fees.

3. Governance, Regulation, and Ongoing Maintenance

3.1 Brief summary of regulation of each type and ongoing maintenance, reporting requirements

3.1.1 S.p.A.

a) Shareholders' Meetings

The main decisions regarding the S.p.A.'s activities, structure and governance, are generally passed by resolution of the shareholders' meeting, which represent the highest corporate body of this form of company.

The shareholders' meetings are classified as (i) ordinary or (ii) extraordinary, depending on the resolution to be adopted and on the relevant matter.

With the sole exception of the companies adopting the dualistic system of governance, which will be illustrated below, the ordinary meeting shall resolve, inter alia, on the:

1. approval of the yearly financial statements and the related decision on profits/losses destination;

2. appointment and revocation of the directors and management body;
3. appointment and revocation of the auditors and of the chairman of the board of auditors and, should this be the case, the individual or the entity entitled to exercise the accounting control;
4. compensation of the directors and auditors (unless this has already been set out in the incorporation deed);
5. liability action against the directors and against the auditors.

The ordinary shareholders meeting of an S.p.A must be held at least once a year (in order to approve the balance sheet of the company). The extraordinary meeting shall resolve on matters of higher significance and relevance for the life of the S.p.A., as the amendments to the articles of association or the appointment (and determination of powers) of the liquidators of the corporation. Extraordinary meetings shall be held before a notary public and require higher majority quorums than those required for ordinary meetings in order to validly pass the relevant resolutions.

The right to vote is regulated under Article 2351 of the Italian Civil Code, that states the general principle "one share, one vote".

However, the Bylaws may derogate to this principle and provide for the creation of non-voting shares, as well as limited voting shares according to particular topics, or subject to not merely potestative conditions. The value of these "different" shares may not exceed half of the share capital.

Following the amendments introduced by Law Decree no. 91 of June 24, 2014, the Bylaws may provide for the creation of shares with multiple voting rights also limited to particular topics or subject to not merely potestative conditions (s.c. "azioni a voto plurimo"). Each multiple voting share may entitle the holder to express up to a maximum of three votes.

The new provisions about multiple voting shares do not apply in case of special laws applicable to the Company and in any case of listed companies.

b) Administrative Body

The governance of an S.p.A. can be exercised through three different systems: (i) the "traditional" system, composed of a board of directors, or a sole director, and a board of auditors; (ii) the "monistic" system, composed of a board of directors and its internal body named control committee; or (iii) the "dualistic" system, composed of an administrative board and a surveillance board.

b.1) The Traditional System

The traditional system of corporate governance of an S.p.A. is based on the simultaneous presence of two separate bodies, i.e. (i) the administrative body (board of directors or a sole director), which oversees the management of the company, and (ii) the board of statutory auditors, which is mainly in charge of controlling the management of the company and the compliance of the company's activities with the law and the by- laws.

Directors are appointed by the shareholders' meeting for a term not exceeding three years. The appointment can be renewed. The directors are not required to be Italian citizens or permanent resident in Italy.

Furthermore, individuals who have been declared legally incapable or bankrupt, as well as those who have been sentenced to a penalty entailing interdiction from public offices, even if temporary, or inability to exercise managerial functions, may not be appointed as directors.

The board of directors may delegate part of its own powers either to an executive committee, composed of some of its members, or to one or more of its members (managing directors), or both. The directors so delegated are held to a periodical and broad duty of information towards the board of directors and the board of statutory auditors, with respect to the general performance and prospects of the company, as well as to the most relevant transactions entered into on behalf of the company and of any subsidiary controlled by the latter. Finally, it should be specified that the delegation of powers to the managing director/s or to the executive committee does not imply that the board of directors renounces such delegated powers, but only that the principle of the collegial exercise of said powers is waived. Thus, the board of directors will always retain a parallel competence and power in addition to those granted to the managing director/executive committee.

As regards the board of statutory auditors, it is composed of three or five statutory auditors, plus two alternate auditors. The statutory auditors are appointed by the shareholders' meeting and stay in office for a term of three years. They cannot be revoked, except that for just cause.

The main duties of the statutory auditors consist in the control of the company's activities and their compliance with the law and the by-laws, as well as in the control that the company is properly managed and that the organizational, administrative, and accounting system of the company is adequate to its actual needs. With this aim, the statutory auditors are entitled to proceed, also on an individual basis, with inspections and controls on the management of the company, and they are also entitled to require information from the directors with respect to specific transactions or to the actual performance of the company.

The statutory auditors are jointly liable with the directors for the facts or omissions carried out by the directors, provided that the adverse effect or damage caused by such facts or omissions would have not occurred, had they supervised the directors' activities in compliance with their duties.

According to the law, the control on the accounts and on the financial statements of the company, is performed by an external auditor (either an individual professional or a company), exception made for those cases in which the company is not obliged to consolidate its balance sheets. In such cases, in fact, the by-laws of the company may assign such duties to the board of statutory auditors.

b.2) The Dualistic System

In the dualistic system, a relevant part of the corporate governance passes from the shareholders to an independent professional body, namely the surveillance board. On the other hand, the management of the company is entrusted to an administrative board, which shall be composed of at least two members, appointed by the surveillance

board. The administrative board is the only body ultimately liable for pursuing the company's purpose and, apart from only few exceptions, it will be governed by the same provisions set forth for the board of directors within the traditional system.

The surveillance board shall be composed of at least three members (among which at least one effective and one substitute member must be enrolled in the professional registrars of auditors), to be appointed upon resolution of the shareholders' meeting. The surveillance board is entitled, on one side, to supervise and control the management of the company (function granted in the traditional system to the board of auditors), and, on the other side, to exercise most of the functions which in the traditional system are granted to the competence of the shareholders' meeting.

Therefore, the surveillance board shall, inter alia, appoint and revoke the administrative board, determine its remuneration, approve the balance sheets and exercise on behalf of the company any liability actions against the administrative board, or any of its members.

As to the shareholders, the dualistic system substantially limits the extent of their power to the appointment of the surveillance board, as well as to the resolution upon the main guidelines and the general objectives of the company's activities and upon the major material amendments to the company's by-laws or the major events regarding the structure and the life of the company (e.g. dissolution, mergers, de-mergers, change of the corporate form or of the company's stock capital).

Finally, as opposed to the traditional system, any S.p.A. adopting the dualistic system must be subject, without exceptions, to the accounting surveillance of an external auditor.

Based on the above, it can be concluded that, among the three governance systems in exam, the dualistic system achieves the most significant separation between the competence of the beneficial owners of the company and that of its governance bodies. For these reasons, the dualistic system seems to be particularly suitable for those companies in which the administration of the company is to be granted to independent and professional managers with no (or very few) interferences on the part of the shareholders. On the other side, the dualistic system does not seem to be advisable for small-medium size companies, in which a strong participation of the shareholders in the day to day management of the company is generally registered.

b.3) The Monistic System

The monistic system does not provide for a clear distinction between an administrative body and a surveillance body with duties of control of the management of the company; in fact, both the functions are carried out by the board of directors, although through different bodies established within such board. In fact, the monistic system assigns the management of the company to the board of directors, while the supervision over such management is granted to a different corporate body named the audit

committee, to be appointed by the board of directors itself, among its members.

The audit committee is entrusted with all the powers and duties typically assigned to the board of statutory auditors within the traditional system, such as the control of the management of the company and the control of the compliance with the laws and the company's by-laws. Furthermore, as to the accounting control, also in the monistic system such control is not qualified as a duty of the audit committee and shall be exercised by an external auditor.

It is worth mentioning that, in case of adoption of the monistic system, at least half of the members of the board of directors must meet the independence requirements provided for statutory auditors by the Italian Civil Code or by the codes of conduct issued by trade associations or by the relevant market management companies.

3.1.2 S.r.l. and S.r.l.s.

The articles of association can establish the precise limits of the competence of each corporate body, with significant differences from company to company. More precisely, the quotaholders shall resolve on any matter referred to them by the law or by the articles of association, as well as on any matter referred to them by the administrative body or by part of the quotaholders. The matters reserved by the law to the exclusive decision of the quotaholders are: (i) the yearly approval of the financial statements and the related decision on profits/losses destination; (ii) the appointment and revocation of the members of the administrative body; and (iii) the amendments of the articles of association (for which a quotaholders' meeting before a notary public is mandatory).

The voting right in S.r.l. and S.r.l.s. is attributed to each member in proportion to its participation in the Company. Such general rule may be derogated by the Bylaws, which may attribute to certain quotaholders an increase of their voting rights (e.g. multiple vote, casting vote), or a limitation to the same (i.e. limited or conditioned vote).

The administrative body is the competent body for the ordinary and extraordinary management of the company and can be composed of (i) a sole director, (ii) a plurality of directors, with managing powers that can be exercised either jointly or severally or both, or, alternatively (iii) of a board of directors.

No restrictions to the duration and renewability of the office of directors are provided by the law.

Furthermore, the S.r.l. structure grants flexibility also regarding the appointment of the controlling body. The appointment of, alternatively, a sole statutory auditor, a board of statutory auditors, or of an external auditor is not mandatory, unless: (A) the company must consolidate its financial statements; (B) the company controls a company obligated to external audit control; (C) the company exceeds, for two subsequent financial years, at least two of the following minimum financial thresholds: (i) the total assets in the assets and liabilities statement exceed Euro 4.400.000; (ii) the total earnings from sales of goods and services exceed Euro 8.800.000; (iii) the average human resources employed during each financial year exceeds 50 units.

3.2 Requirements for local shareholding/directors

As a preliminary remark, it should be noted that no restriction and/or limitation exists in Italy with respect to foreign investments and in relation to the ownership of Italian companies' equity by foreign investors and business operators.

The same applies to foreign directors.

3.3 Minority shareholders' rights and protection

The minority shareholders' rights and protection are represented by the following instruments.

3.3.1 Right of inspection and control

i) S.p.A.

In the S.p.A. the rights and duties of inspection and control are generally reserved to the controlling body.

In addition, the shareholders have the right to report all the facts deemed to be in breach of the company and /or shareholders' interests to the Board of Auditors that will have to take such facts in consideration in its inspection. If the facts are reported to the Board of auditors by several shareholders representing 1/20 of the company's equity, or 1/50 in case of company admitted to the risk capital market, the Board will have to investigate such facts, and present its conclusions and proposals to the shareholders' meeting, without delay.

Moreover, the shareholders representing 1/10 of the company's equity, or 1/20 in case of company admitted to the risk capital market, may ask for a judicial inspection and control on the management of the company, in case of grounded suspect of serious irregularity carried out by the administrative body, that may damage the company or one or more controlled companies.

ii) S.r.l.

Each quotaholder of the S.r.l. has a personal and direct control of the management activity, as to them are conferred the rights to: (a) obtain from the directors' information on the management, and (b) examine, also by means of consultants of trust, the corporate books and the documents relating to the management of the company. In case of rejection to grant the right of control or in case such right is thwarted by the directors, the shareholder can obtain appropriate court orders issued as a matter of urgency.

3.3.2 Right to appeal against shareholders' resolutions

Absent, dissenting, or abstained shareholders – representing 5/100 of the company's equity, or 1/1000 in case of company admitted to the risk capital market for S.p.A. or without thresholds for the S.r.l. (or the different percentage set forth by the company's by-laws) – can appeal before the Court against assembly resolutions and request their cancellation, in case of non-compliance of the same with the law or the articles of association/by-laws. Same right of appeal is granted in case of (a) missing convocation of the meeting, (b) missing minutes of the meeting, (c) impossible or illicit resolution, (d) resolution modifying the company's object into an impossible or illicit activity.

The shareholders not reaching the above-mentioned thresholds, or not having right of vote, can claim the reimbursement of the damages suffered as a consequence of the illegitimate resolution.

4. Foreign Investment, Thin Capitalization, Residency, and Material Visa Restrictions

4.1 Any significant barriers to entry for an offshore party

No specific restrictions or barriers are generally provided under Italian Law for offshore business and investments.

Therefore, all the requirements generally provided for both Italian and foreign investments are applicable to offshore parties, such as the compliance of the company's purpose with Italian law provisions, compliance with regulations provided for specific activities such as, for example, banking, insurance, gold trading, military and defense activities and preliminary issuing of any necessary clearance and administrative authorization.

Some limitations may derive from the application of the state to state reciprocity principle

4.2 Any capitalization obligations

The minimum capitalization requirement has been described above under the incorporation proceedings paragraph.

Specific rules are provided by the law with regard to the compulsory actions to be taken in case the financial statement reports losses that absorb the company's equity over a fixed debt/equity ratio.

If, as a consequence of losses, the company's capital has diminished by more than one-third, the shareholders' meeting must be convened to take the opportune actions.

If the company is not recapitalized, or the loss is not reduced to less than one-third within the following fiscal year, the company's capital must be reduced in proportion to the losses that have been ascertained.

If, as a consequence of losses accruing, the capital is reduced below the minimum required, the shareholders' meeting must be immediately convened in order to resolve either the reduction of the capital for losses, and the immediate increase of the capital to an amount not lower than the minimum required, or, the conversion of the company into a structure that is consistent with the existing capitalization, or the winding up of the company.

4.3 Any special business or investment visa issues

Pursuant to Art. 26 of Law July 25, 1998, nr. 286, the individual who either establishes a commercial, industrial, professional or artisan business in Italy, or is a shareholder of a commercial company or partnership or is appointed as member of the administrative body of a commercial company, is entitled to be granted a VISA for independent work.

The Visa is issued by the consular authorities competent for the residence of the applicant, provided that; (i) the business activity or the company is duly registered with the competent Corporate Register, is active and in good standing; (ii) the individual has a yearly income higher than the income that qualifies for exemption to the social security contribution (as of today Euro 8.400,00); (iii) the individual has a suitable and long term residential accommodation in Italy; (iv) a Police clearance is granted.

4.4 Any restrictions on remitting funds out of the jurisdictions (withholdings, etc.)

Fiscal earnings treatment on outgoing capital: Pursuant to Art 27 of the Presidential Decree nr. 600 of 1973, save any different provision contained in applicable international conventions to avoid double taxation, profits distributed by companies having their offices in Italy, to nonresident

shareholders are subject to a withholding tax equal to 20%.

Italy has signed double taxation conventions with eighty-four countries, pursuant to which the payment of dividends to a receiver resident in one of those countries (and subject to the receiver of the dividends is the actual beneficial owner) is subject to the maximum withholding tax indicated in the applicable convention, that, on a case by case basis, varies from 5% to 15%.

The provisions mentioned above do not apply to dividends paid to receivers that are income taxpayers in the EU white-listed member states (or in European Economic Area - EEA). Such receivers, pursuant to Art. 3 of Presidential Decree nr. 600 of 1973, are in fact subject to a 1.375% withholding tax.

Pursuant to the so called "Mother-Daughter Directive" (i.e. 435/90/CEE), the distribution of dividends is not subject to any withholding tax, in case the following conditions are met: (i) both payer and receiver are resident in two EU member States; (ii) the stockholding is not lower than 25%; (iii) the Italian company is an S.p.A or a S.r.l. (plus other minor and less used types of company listed in the Directive); (iv) the companies are subject to income taxation; (v) the stockholding belongs to the Mother Company for not less than twelve months.

Specific anti-elusive provisions exist in order to avoid that the Mother company constitutes a fictitious entity that hides the ultimate stockholding of a non-resident entity.

5. Startup entities

By Law no. 221/2012, Italy has been one of the first European countries to adopt a special regulation for Startup entities, aimed to support and facilitate economic activities with a high scientific and technological value.

To benefit from the special Startup regulation, a company must meet the following mandatory requirements:

- to be constituted in the form of a s.p.a., s.r.l., s.a.p.a., cooperative company, European company;
- not derive from the sale of a business entity or a branch of the same;
- to have as exclusive or prevalent corporate purpose the development, the production and the marketing of innovative products or services of high technological value;
- to have its headquarters in Italy;
- not be quoted on a regulated market;
- to prohibit the distribution of profits for a period of four years from the constitution;
- to maintain an annual value of the production not exceeding 5 million Euros.

The above-mentioned company must also have one of the alternative requirements listed below:

- to incur research & development expenditures equal to or greater than 15% of the higher value between cost and total value of the production;
- to have at least 1/3 of the workforce holding a PhD or a degree with a 3-years certified research activity or, alternatively, 2/3 of the workforce holding a Master's degree;
- to hold as owner or as licensee an industrial patent title (patent, trademark, model, copyright, etc.) relating to the sectors of industry, biotechnology, semiconductors, plant varieties and recorded software.

All companies that meet these requirements may apply for the registration in the special section of the Italian Corporate Register dedicated to Startup companies. In this way, they will benefit from the favorable regulation

provided for losses of the share capital under the legal minimum as well as non-submission to insolvency proceedings (except for the composition of the over-indebtedness crisis).

Furthermore, by way of derogation from the general corporate law, the following advantages are extended to Startup constituted in the form of s.r.l.:

- Shareholdings: It is possible to provide for categories of shareholdings with additional rights for the member, also derogating from the principle of proportionality, as well as categories of shareholdings with limited voting rights, excluded or subject to particular conditions.
- Public offers: shareholdings may be offered to the public in the form of financial products, including through the use of online fundraising portals.
- Operations on participations: the related prohibition does not apply, provided that the transaction is carried out for the purpose of incentive plans involving the assignment of shareholdings to employees, directors, service providers - including professional ones -.
- Financial instruments: It is possible to issue financial instruments bearing equity or administrative rights (excluding voting rights) following the services rendered by the members or third parties (including professional consultants).

Additional advantages are provided for tax and contribution purposes, in favor of the company and other persons involved in the Startup:

- For the Company: exemption from paying the stamp duty, the costs of registration to the Corporate Register and the annual right to the Chamber of Commerce; tax credit for the hiring of highly qualified staff.
- For directors, employees, and associates: under certain conditions, employee's income arising from the assignment of participated financial instruments is exempted from direct taxes and contribution duties.
- For external employees or consultants: incomes from the assignment of financial instruments issued in relation to works or services rendered – even of a professional nature – are not included in the taxable income.
- For investors: natural persons or companies who invest in the Startup's capital will benefit from an IRPEF deduction or a deduction from the taxable income of the IRES.

In conclusion, it is worth mentioning a recent innovation introduced by Law Decree no. 3 of January 24, 2015, converted in Law no. 33 of March 24, 2015, concerning the Startup constitution.

Following this legislative novelty and the implementing decrees issued by the Ministry of Economic Development, an online wizard – alternative to the ordinary constitution before a Public Notary – can be accessed, which allows the computerization of the constitutive acts of the innovative Startup. However, in order to benefit from this simplification, the following conditions and procedure must be respected:

- the Company must be constituted in the form of s.r.l.;
- the Article of association and the Bylaws must be filled in full compliance with the standard model attached to the ministerial decree;
- the act must be digitally signed by each of the subscribers;

- the digitally signed e-documents (Article of association and Bylaws) must be submitted for the registration to the relevant Corporate Register, within 20 days from the subscription;
- the Corporate Register conducts the conformity checks, after which the Startup is registered in the special section of the Corporate Register.