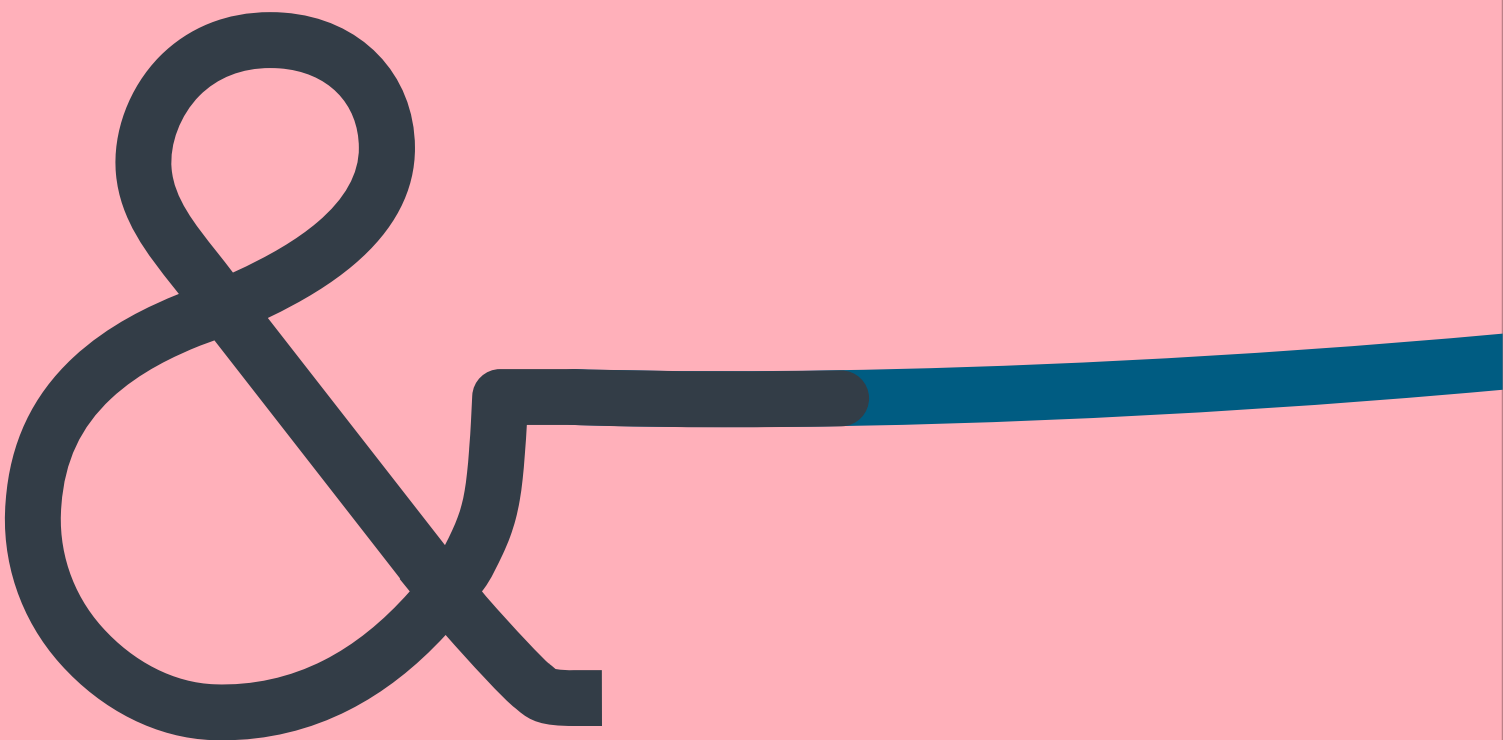


Bird & Bird

Setting up a business in Italy

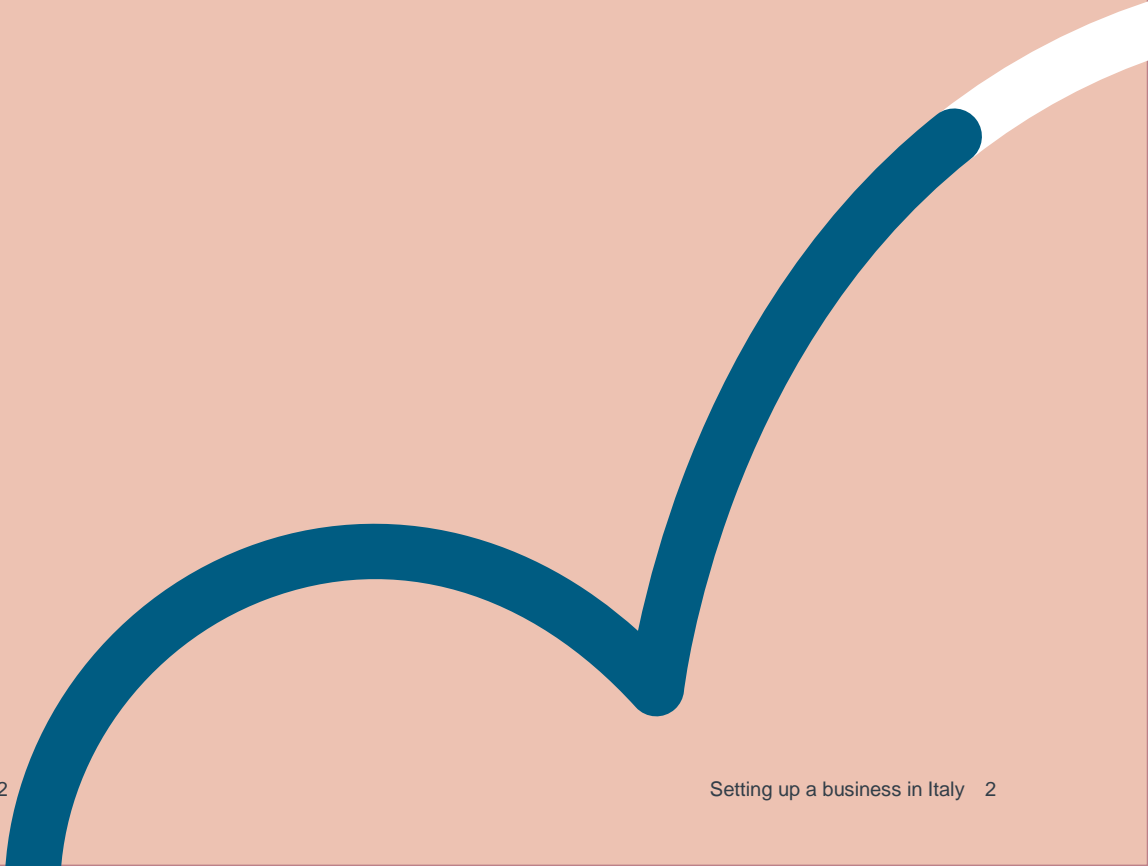
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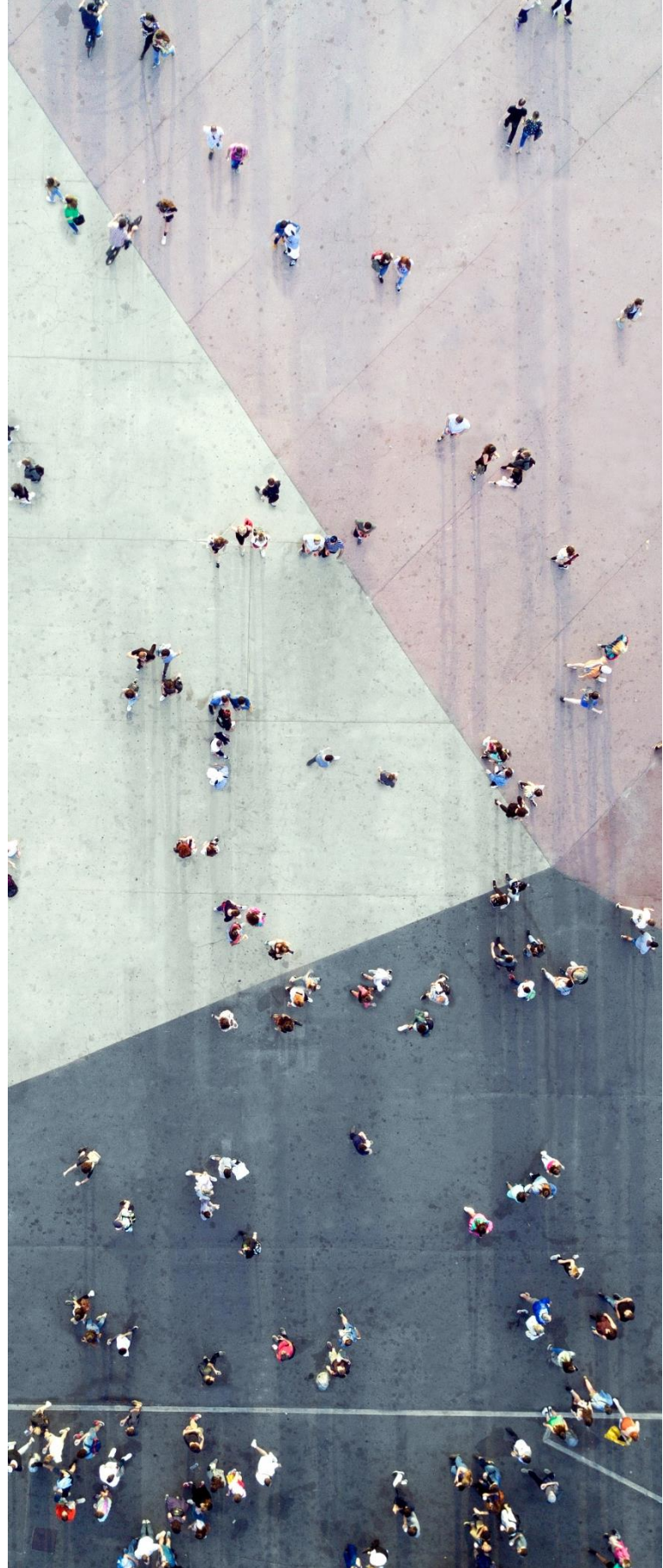
“Bird & Bird have a global reach, can navigate the issues and implications of a course of action in overseas jurisdictions, and help us drive towards strategic aims in complex areas.”

Chambers Global, 2022



Setting up a business in Italy

Italy ranks among the most industrialised countries in the world. Investment opportunities are encouraged, and the government, regions and provinces offer investment incentives. Italy encourages foreign investment by offering foreign-owned entities the same incentives, primarily loans, cash grants and tax credits, available to entities owned by Italian nationals.





Bird & Bird is praised for its ability to navigate through “articulated and complex topics, and it can handle critical business situations.”

Chambers Europe 2022, Italy

Choice of legal entity

A foreign company can carry on business in Italy either by incorporating an Italian registered subsidiary company or by registering an Italian establishment (e.g., a branch), which is considered an extension of the foreign company.

Subsidiary	Branch
<p>Limited liability at subsidiary level:</p> <ul style="list-style-type: none"> limited liability companies (“Società a responsabilità limitata – S.r.l.”); or joint stock companies (“Società per azioni – S.p.A.”). 	Parent company retains direct liability.
Separate legal entity entitled to contract in its own name and on its own behalf.	Parent accounts show Italian revenue.
<p>Minimum share capital:</p> <ul style="list-style-type: none"> for a S.r.l. company: €10,000 or a lower amount must be at least equal to €1,00 (in such latter case specific rules apply). for a S.p.A. company: €50,000. 	N/A.
<p>Legal fees to incorporate an Italian subsidiary are usually between €6,000 and €7,000, plus VAT if applicable and 4% mandatory bar contribution. Legal fees do not include notarial fees, which vary according to the type of company to be incorporated (generally amounting to approx. €2,000/3,000). There are also fees of other advisors required for registration purposes.</p>	<p>Legal fees to register a branch are usually between €5,000 and €5,500, plus VAT if applicable and 4% mandatory bar contribution. Notarial costs (generally amounting to approx. €2,000/3,000) and fees of other advisors required for registration purposes to be added.</p>
<p>Directors do not need to be Italian nationals. Any director or legal representative which is not an Italian citizen must apply for an Italian fiscal code. According to the latest modifications to the Italian Civil Code, before being appointed any director (either for a S.r.l. or a S.p.A.) shall submit a statement declaring the absence of any of the reasons of ineligibility provided under the Italian Civil Code as well as the lack of any interdiction measures adopted by any member State of the European Union against him. Our fee for this kind of assistance is €800 per each fiscal code, plus VAT if applicable and 4% mandatory bar contribution.</p>	<p>No need for Italian attorneys-in-fact. Any legal representative which is not an Italian citizen must apply for an Italian fiscal code. Our fee for this kind of assistance is €800 per each fiscal code, plus VAT if applicable and 4% mandatory bar contribution.</p>
Meetings do not need to be held in Italy.	No need for meetings.
Italian company accounts need to be prepared and filed to the local Chamber of Commerce.	The branch is not required to prepare Financial Statements, but it needs to keep the accounting books. The Financial Statements of the parent company need to be filed at the local Chamber of Commerce.
Higher annual filing and accounting costs.	Lower operational costs.

Subsidiary	Branch
Can benefit from double tax treaties.	In principle branches are not entitled to apply for the benefit of treaty provisions, however, some treaty provisions do refer to branches and, thus, having a branch determines the difference in tax treatment.
Intra-group transactions require arm's length principle.	Transactions with parent and other group subsidiaries. branches require arm's length principle.
Corporate Income Tax at 24% rate. Regional Tax at 3.9% rate (different rates may apply depending on the Region and industries).	Corporate Income Tax at 24% rate. Regional Tax at 3.9% rate (different rates may apply depending on the Region and industries).
<p>Lately the Italian regulatory framework has introduced a new set up process for Italian companies, allowing to undertake the incorporation via on-line videocalls directly between the perspective shareholder/s and Italian notaries public. As of today, on-line incorporation seems limited to companies having their legal seat in Italy which are incorporated exclusively by means of contributions in cash.</p> <p>This new set up process is still in the process of being implemented by Italian notaries.</p>	<p>On-line branch incorporation might be possible through an "interconnection system" across different EU local Chambers of Commerce.</p> <p>This system would allow local Chambers of Commerce to communicate and exchange information on the parent company and the branch / subsidiary to be incorporated.</p> <p>Despite the above-mentioned system would significantly improve cost-effectiveness as well as time-management issues connected thereto, yet such an "interconnection system" is still in the process of being implemented by EU local Chambers of Commerce.</p>



Employment

Italian employees have minimum statutory rights including the payment of a salary based on the level/position of their employment and in compliance with the minimum salaries set forth by the collective agreements, maximum working hours and minimum annual holiday entitlements.

Employees also have statutory protection against being “unfairly dismissed” (the consequences of which may differ having regard to the overall number of employees of the company) and they are protected against discrimination (including age, race, sex, disability, religion, belief, and sexual orientation discrimination).

Employers cannot contract out of the statutory requirements or avoid them by hiring the employee as a consultant since the authorities will look at the reality of the relationship.

For larger employers (with more than 15 employees) there is a legal obligation to recruit a certain number of disadvantaged employees (i.e., disabled employees and other protected categories).

There are certain formalities to be fulfilled before recruiting an employee whereby the employer must notify the employment office at least one day in advance of the first working day of each employee. In this respect, before starting operating in Italy, it is advisable to engage a payroll provider who can take care of all the administrative fulfilments and of the mandatory communications to the Labour Authorities.

The employer must also comply with provisions on health and safety at work, set forth by Legislative Decree No. 81/2008.

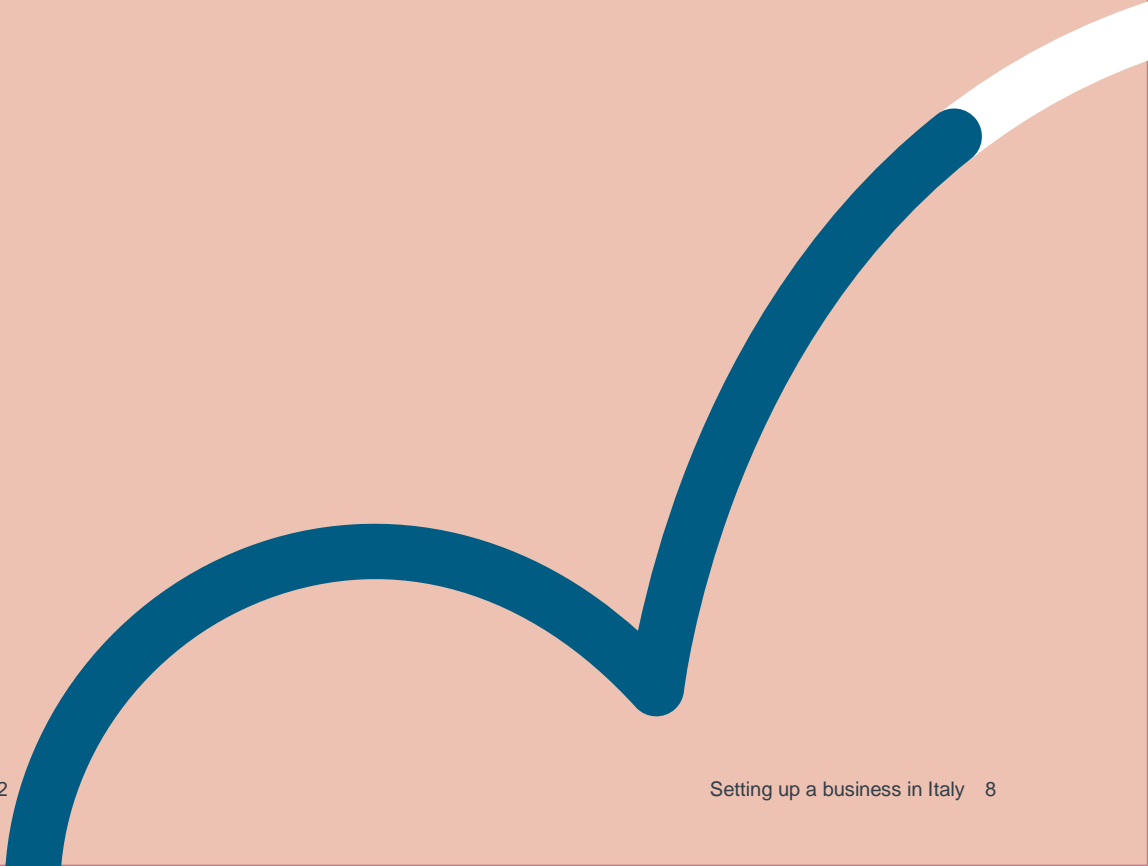
Non-European nationals will generally require a working visa issued by Italy’s Immigration Office.

Finally, the employer must withhold income tax and the employee’s contribution to social security from their salary and pay its quota of social security contributions on top of the gross salary and of insurance premiums (approx. 30% on top of the salaries).



Bird & Bird has “excellent expertise and tremendous client service mindset.”

Chambers Europe 2022, Italy



Setting up a business in Italy

Commercial Contracts

There is considerable freedom in Italy for all types of collaboration, licensing, and distribution agreements.

EU legislation applies in Italy and regulates consumer protection, sales agents, distance selling, government procurement, e-commerce, direct marketing, and the privacy of personal data.

Italian law (in particular the Consumer Code, Legislative Decree no. 206/2005) restricts certain consumer contract terms, including limits on liability.

EU and Italian competition law prohibit anti-competitive behaviour (e.g., price fixing) where there is an appreciable effect on trade in Italy and/or between EU Member States.

Non-EU companies should be aware of any industry specific laws that apply to their businesses and for which EU legislation requires a licence or authorisation to access the EU market, e.g., electrical goods, chemical products, medical and pharmaceutical products, and financial products. Often, these laws are based on EU legislation and are relatively consistent across the EU.

Data Protection/Privacy

Currently the processing of personal data in Italy is regulated by:

- General Data Protection Regulation 2016/679 (“GDPR”).
- Legislative Decree no. 196 (“DP Code”), dated 30 June 2003 as amended by Legislative Decree No. 101/2018.
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Privacy and Electronic Communications Directive). This directive will be repealed and replaced by new Regulation.

Any processing must be performed by minimising the use of personal data and, as a general obligation, personal data must be:

- processed lawfully and fairly.
- collected and recorded for specific, explicit, and legitimate purposes and used in further processing operations consistent with these purposes.
- accurate and, when necessary, kept updated.
- relevant, complete, and adequate in relation to the purposes for which they are collected or subsequently processed; and
- kept in a form that permits the identification of the data subject for no longer than is necessary for the purposes of the collection or the subsequent processing.

Failure to comply with the data protection regulations can trigger both criminal and administrative sanctions, as well as a liability to reimburse damages suffered by the data subject. In fact, the GDPR imposes several obligations on data controllers to lawfully process personal data. Among others, data controllers must:

- provide the data subjects with prior information on the processing of their personal data.
- designate a data protection officer in case where:
 - the processing is carried out by a public authority or body, except for courts acting in their judicial capacity.
 - the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or
 - the core activities of the controller or the processor consist of processing on a large scale of special categories of data pursuant to Article 9 and personal data relating to criminal convictions and offences.

- carry out an assessment of the impact for the processing of personal data that involves a high risk to the rights and freedoms of natural persons.
- conclude contracts or other legal agreements under Union or Member State law with the data processor where processing is to be carried out on behalf of a controller.
- obtain, if necessary, the data subject's consent.
- guarantee that they will exercise the right of the data subjects.
- implement technical and organisational measures to ensure a level of security appropriate to the risk of the processing of personal data; and
- provide for various filings.

The scope of such obligations may vary depending on the nature of the processing or on the data controllers' sector of activity.

Setting up a business in Italy

Real Estate

Most companies setting up in Italy will lease their premises rather than buy them. Leases can be for 6 years (9 years only for hotels and theatres). Leased premises usually require fitting-out by the tenant at its own cost. The tenant will be responsible for reinstating the premises at the end of the lease unless the tenant and the landlord otherwise agree.

The landlord will generally agree to tenant's termination rights with prior notice (6 to 12 months). The landlord will usually require collateral security, including a cash deposit of 3-6 months' rent and/or a bank guarantee of the same amount (with a possibility of replacing this with a parent company guarantee with the agreement of the landlord).

Intellectual Property

Business names need more than the protection afforded by registering at the Register of Enterprises of the Italian Chambers of Commerce. Company and brand names should be registered as trademarks. This can be done on a:

(i) national basis through the Italian Trademark and Patent Office; (ii) Europe-wide basis through the European Union trademark scheme; or (iii) worldwide basis through the WIPO- administered Madrid System for the International Registration of Marks (international trademark registration must cover Italy to be enforceable in Italy). However, under certain conditions, Italian law guarantees protection also to non- registered trademarks.

Industrial designs and utility models can also be protected through their registration in the Italian Trademark and Patent Office, on an EU-wide basis or on an international basis through WIPO offices (international registration must cover Italy to be enforceable in Italy). EU law also guarantees 3 years of protection for unregistered design.

Similar solutions can be adopted in relation to patent protection. Patents can be applied for at the Italian Trademark and Patent Office or through an EU-wide single process (although the patents granted are national and are not centrally enforceable; however please note that a possible new, different "European unitary patent" could be obtained in the near future after the approval of the UP/UPC package by EU Member States) or through the PCT (Patent Cooperation Treaty

administered by WIPO) that makes it possible to seek patent protection for an invention simultaneously in a large number of countries (including Italy) by filing a single international patent application. An interesting peculiarity of the Italian system to be borne in mind is the possibility to enforce patent applications.

Trade secrets and know how are highly protected by Italian law, provided that the relevant requirements are met. Therefore, it is advisable to undertake some internal due diligence to check how the information is handled by the company.

Original and creative works of mind can be also protected in Italy pursuant to the Italian Copyright Law (Law no. 633 dated 22 April 1941). No specific formality, registration or public filing is required by the law to obtain copyright protection. The simple creation of the work and its material fixation are the sole requirements provided for by the law.

Due the introduction of the so-called Patent Box regime, it is possible, provided that certain conditions are met, to benefit from tax relief in respect of the income generated by intellectual property rights such as patents, designs, knowhow, and software.

Business Model Design

Alongside legal challenges, whatever the nature of your international ambitions the planning process requires some key questions to be addressed:

- Is internationalisation a feasible option, and are you ready for it?
- What is your internationalisation strategy, and how will you prioritise which markets to target?
- What business model will be most effective for driving profitable growth?
- Will you require business partners, and how do you plan to find them?
- What will your penetration strategy be for your selected markets?
- How will you build the infrastructure and operating model required to support your move into the new markets?
- How will you execute the plan and implement the business model?

Wherever your starting point, our consultancy arm OXYGY can help you answer these questions and

create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

Contact us

If you would like further information on setting up business in Italy, please e-mail our Set up Desk at new.company@twobirds.com and we will contact you within 24 hours.

This summary gives general information only as of June 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



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