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SWITZERLAND GLOBAL ENTERPRISE

ITALY
Legal Provisions

Compiled by:

Swiss Business Hub Italy

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GENERAL REMARKS

The purpose of this document is to give an overview of trade-related legal provisions and regulations, particularly those relevant for small and medium sized Swiss companies operating from outside the target country. It outlines the current state of legislation and, to the extent possible, its practical application.

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CUSTOMS LAW AND DUTIES

Italy is bound by the EU Customs Tariff (TARIC - Integrated Tariff of the European Community). Customs issues are managed by the competent 'Agenzia della Dogane'. The agency works closely with the respective EU institutions: www.agenziadoganemonopoli.gov.it

Products which are imported into Italy are subject to a VAT (IVA) of actually 22%. Reduced rates apply at 10% for specific goods such as pharmaceuticals, hotels, restaurants, transportations and 4% on food and e-books. More information can be found here: http://www.s-ge.com/en/customs-database-worldwide-customs-tariffs

IMPORT REGULATIONS / NON-TARIFF RESTRICTIONS

To a large extent, imports from Switzerland are customs-free based on the free trade agreements. However, certain goods are not covered by the agreement and a specific check is recommended. Since 2009, sanitary control of animal products originating from Switzerland has been abolished. For products of vegetal origin, the submission of the declaration 'Nulla Osta sanitario' is required.

PRODUCT REGISTRATION AND TECHNICAL STANDARDS

Italy protects licenses, trademarks and copyrights. These must be registered with the 'Ufficio Italiano brevetti e marchi' attached to the 'Ministero dello sviluppo economico' – Ufficio Italiano brevetti e marchi: www.uibm.mise.gov.it

Note: Food, cosmetic and medical products still need to be registered with the competent authorities before being put on the market in Italy/EU.

Cosmetics: The CPNP (Cosmetic Products Notification Portal) is an online database created to implement EC Regulation 1223/2009 on cosmetics. This regulation requires the responsible person and/or the distributor of cosmetic products to submit information about the product into CPNP which is then made available to the authorities in the EU member states.

Medical Devices: Since May 2021, Switzerland is considered a 'third country' referring to the EU Medical Device Regulation MDR 2017/745. This means Swiss manufacturers must appoint a European Authorized Representative to export their devices to the EU. If manufacturers have offices in European countries, these can be used as EU Authorized Representative. Further, labeling needs to be adjusted.

Food: The registration hast to be done through an 'OSA - Operatore Settore Alimentare' with an organization in Italy or the EU. Swiss Business Hub has a directory of experts for registration.

Italy applies the harmonized EU standards. For products not covered by these standards, ISO standards do apply. However, to verify the relevant standards currently in force, one can refer to 'UNI – Ente nazionale Italiano di normazione' www.uni.com

The competent entity for technical standards for the electrical, electronic and telecommunication sector is the "Comitato elettronico italiano" which is the official body recognized by the Italian

government and the EU to define standards and product rules – 'CEI – Comitato elettronico italiano' www.ceiweb.it

The labelling requirements vary depending on the products but follow the EU directives. In general, labels should include information regarding origin, identity, quality, composition and conservation of the product. **The use of Italian language is mandatory.**

CURRENCY REGULATIONS AND OTHER TRANSFER RESTRICTIONS

Italy belongs to the Economic and Monetary Union of the European Union. In 1999, the Euro € became real currency and single monetary policy under the authority of the European Central Bank has been adopted. Italy also follows the EU directives on the prevention of money laundering, tax evasion and terrorist financing. Consequently, all cash transactions are limited to EUR 4.999 (status 2025). In another attempt to fight tax evasion and to make traceable all transactions, all commercial activities and shops are required to offer electronic payments.

Since 2007, any person entering or leaving the EU with EUR10.000 or more in cash is required to declare the sum to the competent authorities.

COMMERCIAL REGISTER AND OTHER SOURCES OF COMPANY INFORMATION

There are several online databases, which offer this kind of service. A good source with official data is usually the local Chamber of Commerce with their online service https://www.registroimprese.it/

Partner-checks with financial information is available via Swiss Business Hub Italy.

LEGAL FORMS OF COMPANIES

Italian Civil Code provides the basis for different types of companies. Italy offers a range of legal forms for setting up companies depending on the company's organization model, its business objectives, the level of capital to be committed, the extent of liability of the founders as well as tax and accounting implications. Italy's corporate law primarily differentiates between Corporations and Partnerships.

Limited liability companies *società a responsabilità limitata* or *S.r.l.* and *società per azioni* or *S.p.A.* are generally characterized by:

- legal personality, autonomous from company owners' personality;
- limited liability for the company owners, i.e. each owner's liability is limited to the equity or assets he/she has contributed to the company;
- separation of ownership and managing powers; hence the owners of the company are not necessarily also the directors of the company, and directors are not necessarily company owners;
- Ownership as freely transferable either inter vivos or mortis causa;

- minimum share capital EUR 10,000.

Partnerships società in nome collettivo or *S.n.c.* and *società in accomandita semplice* or *S.a.s.* are generally characterized by:

- unlimited joint and several liability of the partners for the company's obligations;
- each partner of the *società in nome collettivo* acts as a director of the company with managing powers;
- non-transferability, either inter vivos or mortis causa of the partner status except whereby authorized by all other partners;
- Tax transparency;
- no minimum share capital

To open an Italian company, the founder shall execute the Memorandum and Articles of Association (By-Laws) before an Italian public notary. The incorporation process can be carried out by distance through a power of attorney.

There is the possibility to incorporate a simply *società a responsabilità limitata semplificata* or *S.r.l.s.* with a minimum share capital of 1,00 Euro.

REGULATIONS GOVERNING SALES AGENTS AND COMMERCIAL REPRESENTATIVES

There are various models which can be interesting for Swiss companies to work with sales agents or commercial representatives on the Italian territory.

- hiring own staff with/without branch in Italy
- subsidiary in Italy
- contractual collaboration with agents (3rd party, exclusive and non-exclusive)

The right model should always be checked with a registered fiduciary (Dottore Commercialista) to avoid non-compliance especially with tax- and labor laws and the aspect of the permanent establishment. As previously mentioned, that Italian jurisdiction has an elevated complexity and therefore the collaboration with experts is highly recommendable.

ENTRY CONDITIONS FOR STAFF PERFORMING MAINTENANCE OR REPAIR SERVICES

Swiss citizens enjoy the right to freedom of movement in/to Italy in identical conditions to those that apply to citizens of the European Union, based on the agreement on the freedom of movement between the Swiss Confederation and the European Community. According to the above-mentioned agreement, for a stay up to 90 days, an identity card or Swiss passport will be sufficient to enter Italy. Swiss citizens have the right to reside in Italy for a superior period than three months. However, this requires their registration process for residence in Italy and registering with the next official Swiss representation.

Specific rules apply for the posting of workers to Italy (distacco transnazionale) for a max. period of 90 days. The registration of those workers shall be done before their mission. Information can be found

on http://www.distaccoue.lavoro.gov.it .Swiss Business Hub Italy offers support in the registration process through experts.

PROTECTION OF INTELLECTUAL PROPERTY

Italy is a party to all major international agreements, including the WIPO Patent Cooperation Treaty and other WIPO-administered treaties. The main laws regarding the protection of intellectual property rights in Italy are the Civil Code and the Industrial Property Code, which have incorporated the major legislative elements from the European and international legislation.

PROCEDURES FOR COLLECTING PAYMENT

To collect outstanding debts, it is always advisable to reach an out-of-court settlement because lawsuits in Italy can be very lengthy, arduous and costly. On the legal side, Italy has two options for legal action against debtors: a quick order compelling payment or a thorough action on the merits. It is possible to execute a claim based on an enforceable order, such as an order compelling payment (Decreto ingiuntivo) or a judgment. Also, the conditional sales including a reservation of property rights is not an alternative as any dispute requires legal steps. It is therefore recommendable to agree contractually about pre-payments which is quite common in business relationships or introduce limitations on further sales until outstanding debts are reduced ore entirely paid.

ENFORCING COMMERCIAL CONTRACTS AND RESOLVING DISPUTES

Substantial commercial disputes are generally decided by the ordinary courts. However, an increasing number of disputes are now submitted to arbitration, which generally guarantees a faster procedure. Mediation is not common. At the same time, Italian jurisdiction has a high complexity and considerable delays. The arbitration process has been gaining increasing importance in Italy and arbitration agreements are nowadays the norm in international transactions. It also allows the user of other languages than Italian.

OVERVIEW OF PUBLIC PROCUREMENT SYSTEM

Generally, Swiss companies can participate in public tenders without having offices in Italy. At the same time, Italy has some 20.000 contracting authorities and despite efforts of consolidating the different touchpoints and platforms, also for economies of scale, the system of public procurement is mostly decentralized. It is recommendable to collaborate with local experts and partners. On one side to monitor in a structured way upcoming tenders, on the other side, to obtain administrational and

legal support when participating in tenders. Major Public/Government Procurement Portals (G2B) are: CONSIP - the National Procurement Body of Italy owned by the Italian Ministry of Economy and Finance (online Portal MEPA or Aquisti in Rete PA -tenders in Italian, general Instructions available in English).

SOURCES OF INFORMATION AND REFERENCES

Expert	Baldessarelli & Partner, I-39012 Merano
	https://fiscalconsulent.com/
EDA	https://www.eda.admin.ch/countries/italy/de/home.html
Eur-Lex - (EU-Law)	www.eur-lex.europa.eu/en/index.htm
Italian Ministry of Work	https://www.lavoro.gov.it/Pagine/default.aspx
Italian Ministry Economic Dev.	https://www.mise.gov.it/index.php/en/
Italian Ministry of Justice	https://www.giustizia.it/giustizia

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