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AR Factsheet

ITALY



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ITALY

Business structure. What types of business structures are there?

- In Italy, there are two main types of companies: partnerships and capital companies:
- **Partnerships:**
 - **Società in nome collettivo (S.n.c):** Unlimited liability of partners; Must be registered in the ordinary section of the Registro delle Imprese.
 - **Società Semplice (S.s.):** Unlimited liability of partners; Must be registered in the special section of the Registro delle Imprese.
 - **Società in accomandita semplice (S.a.s):** Unlimited liability of only the declared unlimited partners ('socio accomandatario'); Must be registered in the ordinary section of the Registro delle Imprese.
- **Capital Companies:**
 - **Società a responsabilità limitata (S.r.l):** A minimum capital of EUR 10,000; Registered at the Registro delle Imprese; Limited liability of partners.
 - **Società di capitali (S.p.a):** A subscribed minimum capital of EUR 50,000; Registered at the Registro delle Imprese; Limited liability of partners.
 - **Società in accomandita per azioni (S.a.p.a):** Registered at the Registro delle Imprese; Limited liability of partners ('soci accomandanti'); Unlimited liability of partners ('soci accomandatari'); A minimum capital of EUR 50,000.

Data sources. Where can I find information about a company?

- Corporate information is available at Registro delle Imprese, the Business Register of the Italian Chambers of Commerce: www.registroimprese.it

Credit Checks. Where can I find financial information about a business?

- You can obtain information on the financial state of affairs for companies and industry at Registro delle Imprese. There are also numerous private reporting agencies offering credit checks.



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Judgment Search. Can I find out if a business already has a judgment against it?

- Normally you find this information in a credit report. Credit reports are offered as a service online.

Contracting. How do businesses contract with each other and which documents do you need if you have to go to court?

- A claimant is free to choose which evidence it wishes to submit in support of the claim, but as a minimum, it is advisable to have at least the following available:
 - Copy of the Contract (including your Terms and Conditions)
 - Copy Invoices/Credit Notes
 - Proof of Delivery (CMR). – If there are no CMR documents signed by the debtor, an abstract from the accountancy book authenticated by a notary will suffice.

Retention of title

- Retention of title clauses are generally allowed under Italian law.
- To be enforceable, retention of title must be documented (in writing) and bear a date certain at law ('**data certa**'), which is obtained, for example, by way of notarisatio. In the case of machines, retention of title must be registered at the office of the court's clerk in the jurisdiction where the machines are located, to be enforceable. For registered movable goods (such as cars, ships and airplanes), retention of title must be registered on the relevant register.
- In addition, the retention of title previously agreed in writing by the seller and the buyer is effective against third party creditors of the buyer if:
 - The retention of title is confirmed in the individual sale invoices relating to successive supplies of goods.
 - These invoices bear a date certain at law ('**data certa**') prior to any enforcement by third parties.
 - These invoices have been regularly recorded in the accounting entries.

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PRE-LITIGATION

Letter before action. Do you have to send a demand letter to a debtor before going to court?

- Before going to court, and even before filing the claim to the enforcement authority, a warning notice to the debtor's registered address is mandatory.
- The warning notice should contain:
 - The name of the creditor and the basis of the claim
 - The total amount of the claim, including any penalty interests
 - Prescription on how to transfer the payment, i.e. bank account etc.
 - A warning that the claim will be enforced through the enforcement authority in case the claim is not settled within from the date of the notice
 - Information on how the object to the claim if not acknowledged by the debtor.
- If this measure has been taken and the payment still has not been made after the two-week notice period (according to the law), the creditor may file for enforcement.

Can you claim interest and collection costs from customers if their payment is late?

- If the contracting parties have not agreed this in the contract, then statutory default interest and collection costs are applicable.
- The creditor may in addition to the claim demand to recover from the debtor:



- Penalty interest of the claim: 8,00 % (the present rate from 31st of December 2018). The reference rate is reviewed every 6 months.

LITIGATION

Limitation period. How much time do you have before you must start legal proceedings?

- The ordinary statute of limitation is 10 years.
- In case of indemnification for torts, the statute is reduced to **five years (two years** for action regarding the circulation of vehicles and ships). The five-year term also applies to actions for refunding interest or in corporate law matters.
- B2B agreements of sale of goods, freight, shipment assurance and brokering commissions have a statute of limitation of **one year**.
- The above terms are mandatory, and such terms start from the date on which the right may be exercised. In case of legal action, the statute of limitation is interrupted until the judgment, after which it starts to run again.

ADR. What forms of Alternative Dispute Resolution are available and are they compulsory?

- The following ADR methods are commonly used:
 - Mediation; and
 - Arbitration
- The target is to drive parties to an agreement. In Italy, Mediation was indicated by the law as a necessary step for some matters before starting a judgment (binding mediation). It is optional for other kinds of matters (optional mediation) and necessary during some procedures in accordance with the order of the judge (judicial mediation). Mediation could be a convenient alternative because the whole proceeding should be concluded in three months. The costs are lower than an ordinary proceeding and both parties are directly involved in the search for a satisfactory solution. The agreement issued by successful mediation is as enforceable as that of a judgment.
- The parties could agree to entrust the dispute to an Arbitration hearing. An arbitration clause must be included explicitly in the contract (it must not be presumptive); otherwise, the competency of the arbitration may be called into question after the dispute. The arbitration must be convenient for both parties, managed by arbitrators that both parties trust and be able to achieve a majority easily. Decisions taken by arbitrators (award) must pass the certification of the court in order to be effective between the parties. It will always stay a private act, with the same effects as a judgment.



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Court Proceedings. What forms of court proceedings are available, and do you need legal representation?

- ▶ The Italian judicial system adheres to a civil law system. For credit collections, refer to the Italian Civil Code (**'Codice Civile'**), which contains and implements all the rules of commercial law, and Civil Action Code (**'Codice di procedura Civile'**) which governs civil trials in Italy. The judicial organisation foresees several kinds of judges, according to the amount of credit involved:
 - Justice of the Peace (for an amount below EUR 5,000)
 - Tribunal (for an amount above EUR 5,000).
- ▶ Traditionally, any legal action starts in the court district of the debtor or in the court district foreseen in the agreement signed by both parties. Ordinary civil action is rarely used to collect credit founded on a written document such as an invoice.
- ▶ The civil actions are very long and can last for several years. It is also expensive due to the lawyers' fees, witness examinations and evidence analysis involved in the case. The main purpose of the ordinary civil action is to determine the existence of the credit that is due and the relations between the parties. If the credit is based on written documents, the law allows you to use a faster and less expensive procedure called the summary judgment (**'Decreto ingiuntivo'**), which requires only limited intervention from a judge unless the debtor opposes the petition. These are the most common ways of collecting credit in court.
- ▶ Due to the complexity and length of time for Italian Court proceedings it is recommended that you seek legal representation, although this is not mandatory.

Time frame. How long does it take before you can get a judgment against a debtor?

- ▶ The average duration of legal action in Italy is 10–12 months.
- ▶ An ordinary civil action can take two to three years depending on the complexity of the case.

How much does it cost to go to Court?

- ▶ Court fee: EUR 125.00
- ▶ All other costs are dependent on the outstanding principal amount. There are different fees that can apply during the proceedings, which makes it difficult to predict the total costs.
- ▶ In addition to this, costs of witnesses and/or experts might also arise.



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Enforcement of a court judgment. How do you enforce domestic/overseas judgments?

- The enforcement in debt requires an act of the creditor to be signed by the bailiff, who will notify the debtor and any third party.
 - This document must confirm the details of the creditor and the credit, the list of goods or monies subjected to the enforcement (the debtor cannot dispose of them) and the domicile election of the creditor in the city of the court.
 - The enforcement can refer to different types of credits, such as bank accounts, goods located at a third party and, based on limits fixed by the law, any salary and retirement pension.

Insolvency

- Based on the elements required by law, insolvency proceedings can be started at the court nearest to the head office of the debtor, following the request filed by the debtor, creditors or the public prosecutor (**'ex officio'**).
- The main types of insolvency proceedings in Italy are bankruptcy (**'fallimento'**) and judicial composition with creditors (**'concordato preventivo'**).
- **Bankruptcy:**
 - In Italy, not all debtors can be declared bankrupt. According to Italian law, small debtors such as individual shops and small-scale farmers cannot be declared bankrupt. Neither can small owner-managed firms where the personal work outweighs the value of the goods involved. A creditor can ask for bankruptcy of the debtor if the credit is more than EUR 30,000, and the debtor has a minimum turnover of EUR 200,000. The debtor should also not have been removed from the Chamber of Commerce for more than one year. After the check of all petitions filed at the court within the term fixed, the debt situation will be fixed with a judge's sentence, and the very long procedure of the liquidation of the bankrupt debtor's assets can take place.
- **Composition with creditors:**
 - To avoid bankruptcy, the debtor can ask the court directly to be admitted to the insolvency proceedings. The debtor's petition must include how much the debtor can pay to the creditors as a percentage of their debt. It is foreseen that the debtor has to offer at least 20% to the unsecured creditors. This offer must be approved by the majority of the creditors (considering the amount of each credit) and should then be validated by the court. After that, the insolvency practitioner starts to liquidate the assets according to the payment plan.



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The information in this document is accurate to our knowledge as of July 2019

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