DOING BUSINESS IN Italy

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**Business Structures:**
What types of business structures are permitted?

The most frequent business structures are the following:

- **Joint stock company (Società per azioni - S.p.A.)** for which the minimum corporate capital is EUR 50,000. The corporate capital is divided into shares;

- **Limited liability company (Società a responsabilità limitata - S.r.l.)** for which the minimum corporate capital is EUR 1. The capital is divided into quotas, which are not represented by certificates, and can be assigned only through a notarized deed.

**Taxation:** Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

The following taxes are applied on companies’ incomes:

- IRES at a rate of 24%;
- IRAP at a rate of around 4%.

For the application of income taxes the following criteria are also taken into account:

- Thin capitalization rules (interest costs on loans are deductible within the limit of 30% of the EBITDA);
- Transfer pricing rules (intercompany sales must be carried out at market values);
- Double tax agreements;
- Capital gains and dividends are subject to tax at a rate of 26%;
- Withholding taxes are equal to 20%.

The main indirect taxes are:

- V.A.T. at a rate from a minimum of 4% to a maximum of 22%;
- Registration Tax that can be applied in a fixed amount (EUR 200) or at a rate from a minimum of 1% to a maximum of 15%;
- Mortgage and Cadastral Taxes that can be applied at a fixed amount (EUR 200) or at a rate of 3%. There are also local taxes on real estate at a rate about of 0.7% on the land registry or market value.

**Immigration:** Summarize immigration laws, including visas available for foreign employees.

Non-EU citizens entering Italy for employment reasons must comply with the entry quotas established in the Ministry decrees as indicated in articles 3 and 4 of Legislative Decree no. 286/1998 and must be provided with the following two documents: (i) a valid passport or an equivalent document; and (ii) an entry visa. There are different types of visas, but the main ones for business purposes are the following:

- **Business VISA** that allows persons travelling for business purposes to enter Italy for a short-term stay. They can stay in Italy for three months at the most and, during this time, they shall only perform some activities, such as conducting negotiations and making contacts for business purposes.
- **Working VISA** that allows persons to stay in Italy for a longer period for work reasons.
- **Start-up VISA** that allows persons to stay in Italy when they set up innovative start-ups.

Under Art. 26-bis of Legislative Decree no. 286/1998, Non-EU individuals investing: i) at least EUR 2 million in government bonds (this investment must be kept for at least 2 years); or
In recent years, the Italian government's policy of attracting and facilitating foreign investments has been confirmed with the setting up of the National Agency for Inward Investment Promotion and Enterprise Development S.p.A. (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa S.p.A. - Invitalia). However, limitations on foreign investments may be provided in consideration of the reciprocity rule and golden power rule.

Reciprocity rule: Art. 16 of the Provisions on the Law in General (Disposizioni sulla legge in generale) provides that foreign citizens enjoy the civil rights attributed to citizens on condition of reciprocity and subject to the provisions contained in special laws. This provision also applies to foreign legal entities. It is not necessary to verify the existence of the condition of reciprocity if one of the following conditions is met:

- The investor is an EU member national or a member national of the European Economic Area (EEA);
- The investor is a non-EU citizen who resides in Italy and holds a residence card (carta di soggiorno) or a due staying permit (permesso di soggiorno) issued for employment, self-employment reasons, or for the exercising of an individual enterprise, for family reasons, for humanitarian reasons, and for study reasons; or
- The investor is an individual, has the status of stateless (apolido) person or refugee, and has been a resident for at least three years.

Golden power rule: under Law Decree no. 21/2012, converted with amendments into Law no. 56/2012, certain 'golden share' rules have been introduced in respect of privatized companies in certain sensitive sectors. In cases where fundamental interests of national defence or security may be materially affected, the Italian Government may:

ii) at least EUR 1 million in shares of an Italian company (this investment must be kept for at least 2 years); or iii) a minimum of EUR 1 million in charitable donations to support an Italian public interest project in the field of culture, education, immigration or scientific research, may obtain a two-year residence permit in Italy instead of a renewable quarterly residence permit and without being subject to entry quota restrictions for non-EU nationals. This is known as “Golden Visa”.

Such individuals shall meet certain requirements listed in the Decree (e.g. they must prove that they are owners and/or beneficiaries of amounts corresponding to the above-mentioned investments). As far as EU workers are concerned, they are subject to the EU legislation foreseen in EU Regulation 492/2011, which guarantees the free movement of workers.

Foreign Investment Review and Issues: Does the government review and approve foreign investments? What factors are considered?

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Establish specific conditions for the purchase of an interest relating to the security of procurement and of information, the transfer of technologies, and export controls;

Veto the purchase of an interest in the voting share capital in any such company that may jeopardize defence or national security;

Veto the adoption of resolutions by the shareholders or by the board of directors of any such company relating to certain extraordinary transactions.

The Government will periodically identify assets (including networks, facilities, and relationships) that are considered to be strategic for the national interest in the fields of energy, transportation, and communications.

For civil, criminal and labor matters the following courts will decide:

Court of Cassation (Corte di Cassazione) is the highest court. It is located in Rome. It checks the due application of law by the court of appeal, but cannot overrule the construal of facts and evidence given by the Courts of Appeal.

Courts of Appeal (Corti d’Appello) hear appeals from the Courts of the First Instance, enforces foreign decisions, decides on some competition matters. It decides on civil, criminal and employment matters.

Courts of the First Instance (Tribunali) decide at first instance on civil and criminal matters while it hears appeals against the decisions of Justices of the Peace (Giudice di Pace), which is competent for cases provided under Art. 7 of Italian Code of Civil Procedure.

For administrative matters jurisdiction is attributed to:
- Council of State (Consiglio di Stato) that is an appeal court for administrative matters;
- Local Administrative Tribunals (Tribunali Amministrativi Regionali – TAR) that decide at first instance.

Court of Accounts (Corte dei Conti), Local and Regional Tax Commissions (Commissioni Tributarie Provinciali e Regionali) decide on in public accounts and taxation matters. The parties may also agree to submit contractual and non-contractual disputes (unless otherwise provided by law) to arbitration, which in general guarantee a faster procedure.

Dealing with the Government:
Identify major issues when dealing with local and federal governments.

A certified notice of commencement of activity must be submitted to Registry of Enterprises or the relevant Municipality before the company can start operating.

Dispute Resolution and Court Systems: Summarize the court system, including the use of juries and arbitration.

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Arbitration may be:
- Submitted to specialized institutions that adopt their own specific rules for the procedure.
- Ad hoc where the parties or the arbitrators establish the rules of the procedure.

Commercial disputes are in general submitted to arbitration since it is faster than the ordinary proceeding. Should the parties in an arbitration not choose the procedural rules to be applied the arbitration may be held according to the rules of the Italian Code of Civil Procedure.

Art. 317 of the Italian Criminal Code punishes with imprisonment a public officer who, abusing his or her office or authority, forces someone to unjustly give a promise to him or to a third person money or any other utilities.

Pursuant to Arts. 318 to 321 and 322-bis of the Italian Criminal Code, bribery is sanctioned as a criminal offence and punished with imprisonment.

Furthermore, if the party committing these criminal offences is a person serving the company as representative, or holding an administrative or senior executive position within the body or an organizational unit of the same, as well as a person actually exercising the management and control of the same or a person under the direction or supervision of one of the persons mentioned above, the company may be held liable under Legislative Decree no. 231/2001. If the company is considered liable, the penalties that may be applied are the following:
- Fines;
- Disqualification: this may be disqualification from exercising any activity; suspension or cancellation of authorizations, licenses or concessions serving to commit the unlawful act; prohibition on entering into contracts with public bodies, unless done so in order to obtain a public service; exclusion from aid, loans, contributions or subsidies and possible cancellation of those already granted; prohibition on advertising goods or services;
- Seizure;
- Publication of the decision.

This liability may be waived if the company demonstrates that:
- It has adopted an organizational and management model capable of preventing offences provided in the decree;
- The task of overseeing compliance with the model and updating the same has been delegated to a body vested with powers to act of its own initiative and conduct monitoring;
- The persons who have committed the offence fraudulently circumvented the organizational and management model; or
- There has been no omission or insufficient oversight on the part of the monitoring body.

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Foreign Corrupt Practices: What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country?

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| Types of transaction: How may businesses combine? | - Purchase of quotas or shares, respectively, in the case of a limited liability company or in the case of a joint-stock company;  
- Public offering;  
- Transfer of a going concern (azienda) or part of a going concern;  
- Merger; and  
- Demerger |
| --- | --- |
| Competition Law: How do laws impact competition? | Competition matters are regulated by:  
- Arts. 101 and 102 of the Treaty on the Functioning of the European Union;  
- Law No. 287/1990 (Italian Competition Law) that applies to agreements restricting competition and to concentrations having a national dimension. If the restrictions on competition have a transnational dimension, the EU legislation shall apply.  

Italian Competition Law sanctions agreements restricting competition (intese), concentrations and abuses of dominant positions.  

Agreements restricting competition occur when companies, instead of competing with other ones, agree to coordinate their behavior on the market in order to prevent, restrict or significantly distort market competition. In order to combat cartels, the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato - AGCM) has adopted leniency programs, which apply to self-declared companies that provide evidence of their infringements.  

Concentrations occur when two companies merge or one takes control over another and they raise prices or impose disadvantageous conditions on counterparts. Concentrations must be notified to AGCM when the total turnover achieved at national level by all the companies concerned and the total turnover achieved individually at national level by at least two of the companies concerned exceeds certain thresholds, as updated annually by AGCM (EUR 492 million and EUR 30 million in 2017) provided that the concentration does not fall within the competence of the EU Authority.  

Abuse of dominant position occurs when a company behaves in a significantly independent manner from competitors, suppliers and consumers as it dominates its market. An abuse of a dominant position is punished where such company exploits its power to the detriment of consumers or prevents competitors from operating on the market, thereby causing harm to consumers. |
**Employment Relations:** Briefly summarize major laws impacting employment and employee relations.

Employment law in Italy is based mainly upon the following sources:

- EU law (e.g., Working time Directive, Temporary or agency work Directive);
- The Italian Constitution of 1948;
- Statutory legislation (e.g., Legislative Decree no. 23/2015, which is part of the so-called “Jobs Act”, Law no. 300/1970 which is the so-called “Workers’ Statute”, Law no. 604/1966);
- Administrative regulations;
- Customs.

All the relevant sources that are listed above are in order of priority. National collective agreements, on the other hand, are not statutory sources of law, but are private contracts between Trade Unions and employers' associations and are not legally binding on all employers. They are only binding (i) on companies that are members of the relevant employers’ associations; (ii) if reference is made to them in individual contracts or (iii) if employers voluntarily apply their terms. However, in practice, most Italian companies decide to apply the national collective bargaining agreements to their employees.

**Statutes and regulations:** What are the main laws and regulations governing business combinations?

The most important law regulating business combinations is the Civil Code. There are also various laws and regulations that apply to business combinations, the most important of which are:

- Legislative Decree No. 58/1998, i.e. the Italian Financial Act, (Testo Unico della Finanza), implemented also with regulations issued by Consob (the Italian authority responsible for regulating the Italian securities market) and by the Bank of Italy;
- Law No. 287/1990, on the protection of competition and the market (Italian Competition Law);
- Law No. 300/1970, on the protection of employees;
- Royal Decree No. 267/1942, on insolvency proceedings and bankruptcy.

Furthermore, EU laws and regulations may be applied to relevant transactions, if executed between companies of two or more EU countries.

**Governing Law:** What law typically governs the transaction agreements?

Transactions are normally governed by an agreement between the seller and the buyer to be executed pursuant to the provisions of the Civil Code and the other applicable laws. The by-laws may provide further limitations on the right to transfer the holdings (shares or quotas). Transfers of quotas must be certified by a notary public and the transfer filed at the competent Registry of Enterprises. Transfer of shares must be executed before a notary public, who will endorse the relevant shares certificates.
The Civil Code also provides that agreements for the transfer of a going concern (azienda) or part of it must be in writing and must be filed at the Registry of Enterprises. Public offerings are governed by Art. 101-bis and following of the Italian Financial Act and the Consob Regulations, which define a purchase or exchange public offering as one addressed to more than 150 subjects and having a securities value amounting to at least EUR 5 million.

As regards mergers and demergers, the most important rules are contained in the Civil Code. Art. 2501 of the Civil Code provides that mergers can be effected by setting up a new company or by the absorption of one or more other companies into another company. However, particular rules apply in the case of leveraged buyout operations, namely mergers in which one of the companies has contracted debts to purchase the other company, when as an effect of the merger the assets of such latter company represent the general security for or the source of repayment of said debts, as well as in the case of absorption of wholly owned companies and the absorption of 90% owned companies.

Article 2506 of the Civil Code provides that a demerger occurs when a company transfers all of its assets and liabilities to more than one company, whether pre-existing or newly incorporated, or part of its assets and liabilities, in such a case also to one company only, and the relevant shares or quotas to its members. Some of the provisions concerning mergers are applicable to demerges, with necessary adjustments.

**Filings & Fees:** Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?

Stamp duty (imposta di bollo) is due on business combinations at a fixed amount. In case of an asset deal transfer, registration tax (imposta di registro) is due by the buyer as follows:
- For goodwill a tax equal to 3%;
- For real estate and building land a tax equal to 9%;
- For agricultural lands a tax equal to 15%.

**Information to be Disclosed:** What information must be made public in a business combination? Does this depend on the structure used?

As regards the transfer of shares, quotas, going concern (azienda) or part of it, there are no mandatory rules on information that must be disclosed for the execution of these agreements. However, Art. 1337 of the Civil Code contains a duty of the parties to act in good faith during the negotiations for the execution of any kind of agreement. The courts have held that one of the duties covered by this good faith principle is the duty to inform the other party of all the information necessary to form an opinion on the agreement. In case of mergers and demergers, the project, the financial statements for the previous financial years of the companies participating in the operation and the merger or demerger balance sheet of the companies shall remain deposited at the companies’
Disclosure of substantial shareholdings: What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

Notification requirements for substantial shareholdings are provided for listed companies. In particular, anyone who participates in the share capital of a listed company must inform the company and Consob:
- Should the threshold of 3% be exceeded if the company is not a small and medium-sized enterprises (SME) (if the company is a SME the threshold is 5%);
- Should the thresholds of 5, 10, 15, 20, 25, 30, 50, 66.6, and 90% be reached or exceeded;
- Should the investment fall below the above-indicated thresholds.

Such communication must also be made should the thresholds be reached or exceeded, or the holding falls below them, as a result of changes in the share capital. This communication must be given within four business days of the date of the transaction leading to the obligation (regardless of the date on which it is executed), or from the date on which the party obliged to make a disclosure has been informed of events that involve changes in the share capital that will cause the reaching or exceeding of a relevant threshold.

Moreover, whoever, following acquisitions or increased voting rights, holds a stake greater than the 30% threshold or holds more than 30% of the voting rights of the same, shall promote a takeover bid addressed to all security holders for all the securities admitted for trading on a regulated market in their possession. In companies other than SMEs, the offer can be promoted also by anyone who, subsequent to acquisitions, comes to hold a stake greater than the threshold of 25%, where there is no other shareholder with a higher stake.

A bidder coming into possession, following a global takeover bid, of a holding of at least 95% of the capital represented by securities in an Italian listed company shall have the right to squeeze-out the remaining securities within three months of expiry of the time limit for bid acceptance, if the intention to exercise said right was declared in the takeover bid document.

Duties of directors and controlling shareholders: What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Directors have a general duty to perform their office in compliance with the law and the company’s by-laws, acting with due diligence. In the event of a breach of these duties, directors can be liable towards the company, as well as towards its members. Furthermore, directors must inform other directors and the board of statutory auditors of any interest they have on their own behalf or on behalf of third parties in a transaction of the company, specifying the nature, terms, origin and relevance thereof. In case of a managing director he must abstain from the transaction involving the board of the transaction; in case of a sole director, he must report also during the first useful
shareholders meeting. In the circumstances abovementioned the resolution of the board of directors must adequately justify the reasons and the convenience for the company of the transaction.

In the event of non-compliance with the above or if the resolutions of the board of directors are adopted with the determining vote of any directors in a conflict of interest situation, the resolution, if it could cause detriment to the company, may be challenged by the directors and by the board of statutory auditors within 90 days of the date of its adoption. If the information requirements mentioned above have been met, persons who have consented to the resolution with their votes cannot challenge it. In any event, rights acquired by third parties in good faith on the basis of acts performed in implementation of the resolution are preserved.

Directors are liable for damages to the company for their actions or omissions and also for any damage that may be caused to the company as a result of the use for their own benefit or that of third parties of data, information or business opportunities obtained in connection with their appointment.

Under Art. 104 of Italian Financial Act, in the event of public offerings, unless express authorization from the shareholders’ meeting has been obtained, the company cannot oppose the public offering. In any event, directors and the general managers are liable for any act performed by them.

Approval and appraisal rights:
What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

An extraordinary shareholders’ meeting (a quotaholders’ meeting in case of S.r.l.) must resolve on any transaction that may involve amendments to the company’s by-laws (in particular mergers and demerger). The by-laws may reserve to the shareholders’ meeting (quotaholders’ meeting in case of S.r.l.) further items. A withdraw right is granted to any shareholder who has not consented to the amendment of the company’s corporate purpose, to any operation that causes any amendment in the company’s by-laws or any relevant amendment to shareholder rights.

As regards the appraisal rights, Art. 2501-sexies of Civil Code provides that for mergers and demerger, one or more experts for each company participating in the transaction must draw up a report on the adequacy of the exchange ratio of shares or quotas, indicating the valuation methods adopted to establish the proposed exchange ratio and the values resulting from the application of each method and any difficulties in valuation. Furthermore, the report must contain an opinion on the adequacy of the methods followed to establish the exchange ratio and the relevant importance attributed to each of them in establishing the value adopted. In any other transaction, shareholders may make their own appraisal.
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<th><strong>Hostile transactions:</strong> What are the special considerations for unsolicited transactions?</th>
<th>A public offering is considered hostile when the directors do not agree to its execution. In any event, they are liable for any acts and operations performed in this regard.</th>
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<td><strong>Break-up fees – frustration of additional bidders:</strong> Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders?</td>
<td>Break-up fees may be agreed by the parties in a letter of intent or in a preliminary agreement. Furthermore, party who breaks off the negotiations without any reasonable cause may be considered liable for pre-contractual liability under Art. 1337 of the Civil Code, which provides that the parties have a duty to conduct negotiations in good faith.</td>
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<td><strong>Government influence:</strong> Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?</td>
<td>Particular regulations may be applied to banks, financial intermediaries and insurance companies. There are also anti-Mafia regulations that are applicable to all companies, in particular to those operating in the areas of public works or service tenders or public aid, or which carry out business in locations with a particularly high risk of Mafia infiltration.</td>
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<td><strong>Conditional offers:</strong> What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?</td>
<td>Under Italian law there is no limitation on the conditions that may be inserted in a business transaction.</td>
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<td><strong>Financing:</strong> If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?</td>
<td>If the buyer needs to obtain financing in order to execute a transaction, this would be provided as a condition precedent for the transaction or the financing agreement would be executed at the same time as the transaction agreement.</td>
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<td><strong>Minority squeeze-out:</strong> May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?</td>
<td>The only possibility of squeeze-out is provided by Art. 111 of Italian Financial Act, under which a bidder coming into possession, following a global takeover bid, of a holding of at least 95% of the capital represented by securities in an Italian listed company has the right to squeeze out the remaining securities within three months of the expiry of the time limit for bid acceptance, if the intention to exercise said right was declared in the takeover bid document. Where more than one class of securities is issued, the right to squeeze out exists only for classes of securities for which the 95% threshold is reached.</td>
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<td>Cross-border transactions: How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?</td>
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<td>The same rules provided for national transactions are applied to cross-border transactions. However, EU law shall apply with reference to competition matters, as well as EU Council Regulation No. 139/2004 on the control of concentrations. From a corporate tax standpoint, mergers, divisions, partial divisions, transfers of assets and exchanges of shares involving an Italian company and a company of another EU Member State, have to be considered fiscally neutral according to the “EU Merger Directive” (Council Directive 2009/133/EC of October 19, 2009).</td>
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<th>Waiting or notification periods: Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?</th>
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<td>Notice must be given to AGCM in the case of a concentration exceeding the thresholds. If the AGCM considers that a concentration may be forbidden, within 30 days of receiving the notification or of being informed thereof by any other means, it shall commence the investigations. When formal notification is received of a concentration in respect of which the AGCM deems the investigation unnecessary, it shall notify the companies concerned of its conclusions on this matter, within 30 days of receiving notification.</td>
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<th>Sector-specific rules: Are companies in specific industries subject to additional regulations and statutes?</th>
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<td>In specific circumstances (mainly concerning the industry and nature of the business carried out by the companies involved in the transaction), Italian mergers and acquisitions may be subject to the supervision or authorization of other Italian authorities, such as AGCM, the Italian Insurance Regulatory Authority - IVASS (Istituto per la Vigilanza sulle Assicurazioni), the Bank of Italy (which supervises the activities of banks and financial intermediaries), Consob (which supervises the activities of investment companies), the Italian Electronic Communications and Media Authority, AGCOM (Autorità per le Garanzie nelle Comunicazioni), and the EU Central Bank.</td>
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<th>Tax issues: What basic tax issues are involved in business combinations?</th>
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| Share deal: the transfer of shares may allow the seller to mitigate its capital gains tax, through participation exemption rules. If these rules can be applied, only 5% of the capital gain will be taxed.  
Asset deal: the buyer of a business is responsible for its tax payables. The buyer may limit its liability by obtaining a certificate from the Italian tax authorities showing the tax liabilities and debts under Art. 14 of Legislative Decree no. 472/1997. The liabilities transferred would thus be limited to those listed in the certificate, if any. The sale of assets normally produces a taxable capital gain for the selling company. If the assets have been held for more than 3 years the capital gain can be spread over 5 years. Registration tax (imposta di registro) is due from the buyer on goodwill of the going concern acquired for a minimum of 3% and a maximum of 15%.  
Transfer taxes: VAT is not payable on the transfer of shares or
quotas. In case of transfer of quotas, no transfer tax is due. In case of transfer of shares, the buyer has to pay a transfer tax on the price of transfer equal to 2%.

Losses carry forward: in an asset deal there are no limitations on carrying forward losses while in a share deal certain limitations may exist (e.g. loss may be carried forward if the buyer continues to carry out the same activity performed by the target acquired for 100%).

Due diligence reviews: an important part of the due diligence process is an in-depth review of the tax affairs of the potential target company by the advisers to the buyer.

Tax consolidation groups: in Italy a parent company resident in Italy can opt for tax consolidation groups regime.

Corporate restructurings: business combinations consisting of mergers, split-offs, contributions in kind, exchange of shares and other corporate re-organizations are subject to a neutral tax regime. Should extraordinary transactions be simply aimed at circumventing taxes, the Tax Authorities may claim the payment of the taxes due and avoided.

Applicability of Italian TUPE Regulations: The transfer of certain assets of a company ("Company") to a new owner ("Buyer") under an asset purchase agreement constitutes a transfer of going concern (azienda) according to Art. 2112 of Civil Code and, where the transferor employs more than 15 employees, it is also governed by Art. 47 of Law no. 428/1990, which implemented TUPE Directives (TUPE).

General Legal Consequences arising from Italian TUPE Regulations:

All employees allocated to the going concern or going concern division are transferred to the Buyer automatically by operation of law.

All rights and liabilities of the transferred employees continue to exist vis-à-vis the Buyer.

The Buyer is bound to apply the economic and legal treatment provided for by National Collective Bargaining Agreements or by plant-level agreements already existing and applied in the transferor Company at the transfer date (if any), unless they are replaced by other collective agreements applicable to the Buyer. This substitution occurs only between collective agreements of the same level. Furthermore, according to some Court decisions, the substitution is automatic at the time of the transfer; however, other Court decisions have held that the substitution becomes effective only after a plant-level collective agreement is reached during the Trade Union information and consultation procedure - see

Labour and employee benefits: What is the basic regulatory framework governing labour and employee benefits in a business combination?
The Company and the Buyer are jointly and severally liable in relation to all pecuniary obligations to the transferred employees at the time of the transfer.

Please also note that pursuant to Art. 2112 of Civil Code, the transfer of going concern (azienda) does not represent a reason to dismiss employees, therefore the transferee is not entitled to dismiss employees based only on the transfer. Please note also, however, that dismissals for other reasons remain possible. Rights of Employees (e.g. Objection Right)/Timing of Notifications:

Pursuant to Art. 2112 of Civil Code, the employee, whose conditions of work suffer a significant change in the three months following the transfer of going concern, can resign according to Art. 2119, para. 1, of Civil Code. Therefore, such employee can resign and is entitled to receive payment in lieu of notice (the length of the notice period and of the amount of the payment in lieu is generally fixed by the NC-BAs and is proportional to the length of service and tasks of the employee).

According to Law. no. 300/1970 (the Workers’ Statute) the transfer of a representative of the Works Council (so called “dirigente sindacale”) is subject to the authorization (nulla osta) of the Trade Union of which the representative is a member. According to some Court decisions, this authorization is not required in case of the transfer of all the employees of the Company or of a defined part of the Company, as for example a plant, whereas it may be required if only a limited number of the employees of the Company or of a plant are transferred.

Restructuring, bankruptcy or receivership: What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Under Italian law, bankruptcy is a compulsory winding up procedure to be commenced should the company be insolvent. A receiver appointed by the court may transfer, through competitive procedures by means of experts, on the basis of appraisals, of which adequate publicity is ensured to the interested subjects, individual assets or a going concern (azienda) of the company or part of it, as well as them. Furthermore, Royal Decree no. 267/1942 (the Bankruptcy Law) provides for other procedures if the company is not insolvent but is in state of crisis, such as a composition among its creditors. In this respect a composition plan must be submitted to the court for the continuation of the company’s business and that may provide for debt restructuring and credit satisfaction, the attributing the activities of the company to an assumptor, which may even be constituted by the company’s creditors the splitting of the creditors into different classes; and a possible different treatment for creditors belonging to different classes. The
| Anti-corruption and sanctions: What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations? | Also in case of business combinations, the provisions listed in the reply to the above question (i.e. Foreign Corrupt Practices) shall apply. | composition plan may also be submitted without these details reserving the right to provide them within a certain period of time otherwise bankruptcy will ensue (concordato in bianco). It is also possible for debt restructuring to be voluntarily requested by the company, namely an agreement executed by the company and its creditors representing at least 60% of the debt amount in order to ensure due payment. The content of such an agreement is not provided by law and, therefore, it can include any kind of sale of assets, shares, quotas or going concern. |