



SETTING UP A BUSINESS

Moving on from property purchase, *Avv. Fabio Pucciarelli* explains the options available in starting your own enterprise

I have heard it is difficult for a foreigner to start a business in Italy. Is this true?

If you already live in Italy or are planning to move there and considering establishing your own business, the Italian legal system provides a selection of structural options available to best shape your new venture.

One option would be registration as a sole proprietorship, providing you with complete governance independence as well as 100% of the profits from your business. However, you would also be personally liable for all the debts and obligations of your enterprise, placing your present or future assets at risk of loss, including a possible declaration of insolvency .

Sharing the risks and the profits of the business is therefore a natural alternative. The first possibility to consider is the formation of a partnership. This type of collective enterprise is commonly used to operate a commercial farm or business. Simplicity of structure, flexibility of management and lower operating costs are among the positive, practical aspects that normally characterise a partnership and frequently lead to its selection as the legal structure of a business with several owners. On a negative note, however, each partner remains personally liable for all the obligations and debts of the partnership.

By far the safest way to undertake a commercial or agricultural collective activity is through the formation of a corporate entity. Such a structure limits your ultimate risk and personal obligations to the actual amount of the investment made into the corporate entity.

This entity could be either:

i) *a joint stock company* – typically involving a larger number of investors and requiring a minimum underwritten capital investment of 120,000 euro; or

ii) *a limited company* – typically chosen by those who want to run a small to medium-sized enterprise with fewer investors and more limited capitalization.

Recently enacted legislative changes, primarily the **Reform Law of 2003**, have dramatically reshaped the main characteristics and requirements of limited companies, leading to strong growth in the usage of this particular corporate structure.



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Advantages of a Limited Company

The Reform Law of 2003 has on one hand left untouched the main structural elements which provide considerable shareholder protection:

i) *a legal status* which defines a limited company as a legal entity totally different and distinct from its partners; and

ii) it gives *total and exclusive responsibility* to the company for the obligations and the debts undertaken in its name and on its behalf by the director/s. On the other hand, the recent changes have strengthened and improved many aspects of the structure with the net effect of delivering greater operational and governance flexibility than the strict discipline of a joint stock company.

This increased agility becomes more evident when considering that the governance power over the limited company can be given not only to an entire board of directors deciding by majority vote, but also to any individual director of the board who is therefore empowered to make independent management decisions. Governance can also be placed in the hands of a sole director, normally an owner, when not stated otherwise by the Articles of Association.

Given that the operational and governance parameters of the limited company are stated by the Memorandum and the Articles of Association, the owners have significant flexibility to structure their company in accordance with their needs. The notary entrusted with drawing up the formation documents will conduct a thorough legal review

to ensure compliance with applicable law. Regardless of the governance model utilized, a general power of control and audit on the company business must be provided to each owner, particularly to those individuals who have no governance role.

A minimum capital investment of 10,000 euro is required to start a limited company. This contribution can be of cash (a minimum of 25%), but it can also be contributed in-kind or be comprised of credits. The Reform Law of 2003 now permits the contribution of any valuable assets and even labour. In addition, the new law stipulates that should the 25% cash contribution not be available, the contribution obligation can be either warranted or substituted by a bank guarantee or an insurance policy.

In summary, your choice of a legal structure is critical and should be dictated by careful consideration of the characteristics and needs of your particular business in consultation with your lawyer. 