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Partnering Structures in Italy

Giampaolo Girardi

INTRODUCTION

- Italy is the 7th largest economy in the world and the 4th in the European Community;
- Personal relationships are essential for the Italian business culture
- The US investors need to be very careful in choosing their partners and advisors;
- The Legislative Decree number 6 of January 17th, 2003, has changed the obsolete legislation of 1942 for companies, introducing new rules that granted simplifications and flexibility in company governance and corporate decisions making;
- The new rules are in force since 2004 and have brought Italy into line with that of other most advanced countries.

Società Semplice (SS), Società in Nome Collettivo (SNC) and Società in Accomandita Semplice (SAS)

- Società Semplice: simple and uncommon; partners' liability without limits;
- Società in Nome Collettivo: partners administrators and unlimitedly liable for company's obligations;
- Società in Accomandita semplice: two type of partners: accomandatari, who are administrators and unlimitedly liable; accomandanti, who are liable in the limit of the amount of capital paid in;
- Strengths: lack of formalism, speed in decisions, disjunctive administration granted to all partners;
- Weaknesses: difficult to look at investment due to the possibility for partners to act without control.

Società a responsabilità limitata (SRL)

- Minimum Capital required Euro 10.000,00;
- Public deed of statute stipulated before a notary public that also provides the deposition of a public record at the Register of Enterprises;
- If not differently ruled by the deed, quotas circulate freely but usually the quota holders have a right of pre-emption in case of sale to third parties;
- Governance: sole director or board of directors;
- Quota holders meeting to be arranged at least once a year for approving annual balance sheet;
- Recent legislation has introduced the possibility of written votes;
- Statutory auditors required if capital exceed Euro 120.000,00 or certain limits established by law.

Società per azioni (SPA)

- Minimum Capital required Euro 120.000,00;
- Shares may have different rights;
- Closed SPA does not have recourse to capital market;
- Open SPA does have recourse to capital market but is not part of a regulated market;
- Public SPA does have recourse to capital market and issue shares that are listed on regulated markets;
- Public deed of statute stipulated before a notary public that also provides the deposition of a public record at the Register of Enterprises;

Società per azioni (SPA)

- Governance: traditional system: sole director or board of directors and statutory auditors;
- Governance: dualistic system: management board and supervisory board;
- Governance: monistic system: board of directors and supervisory committee;
- In case of consolidated accounts, law requires that accounting control is performed by a registered auditor or auditor firm;
- Shareholders agreements must be public in case of public SPA.

Joint ventures

- **Associazione in Partecipazione:** the business is managed by an individual or a partnership or a company that is solely responsible toward the client and brings into the business another company or individual that is compensated with participation of profits;
- **ATI – Associazione Temporanea di Imprese:** temporary association for certain businesses where two or more individuals or companies have different quotas and responsibility; the contract of association determines quotas and responsibility and is stipulated before a notary public;
- **Joint Stock Ventures:** different groups or companies incorporate in a new joint stock company.

Branch of a foreign company

- The branch enjoys a certain independence from the mother company, but it has not a separate legal existence;
- Advantages are: possibility of taking back profits, no need of new shareholders, no need of meetings, just a local branch director;
- It is not a solution since it is not separated and liabilities of the branch are the mother company's responsibility, and cannot incorporate local people in shares or quotas and is subject to Italian laws on taxes and book keeping;
- Different rules applicable to any single company can generate confusion in the company administration.

Agency or distribution agreement

- US exporters must be aware that the European legislation for agent and distributors is completely different from US;
- European legislation cannot be derogated and grants very high standard of protection for self-employed commercial agents who sell or purchase goods on behalf of the principal;
- In the case of disputes, clauses governed by a different body of law, will not be applicable in European Courts;
- Caution in hiring and/or appointing an agent or distributor.