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BUSINESS LAW

Here we look at Business Law in Italy by speaking exclusively to Prof. Avv. Antonino Longo, partner of FLA Floresta, Longo & Associates Law Firm. Antonino mainly concentrates on corporate law, providing extraordinary and strategic operations consultancy as well as giving extrajudicial and in-court aid to companies and public bodies.

Can you provide some detail about the Italian tax system and the corporate regimes that attract business to Italy?

With reference to the Italian tax system.

Companies doing business in Italy are subject to a number of taxes, including the corporate income, tax (IRES), VAT, the regional tax on productive activities (IRAP) and others. Nevertheless, the Italian Government has recently issued some tax incentives as the new patent box regime for intellectual property under which a taxpayer can partially exclude certain qualifying income derived from the licensing or direct exploitation of intangibles; or enterprises that invest in certain research and development credit activities during the next 4 years may be entitled to benefit from a tax credit calculated on an incremental basis, up to 5 million per year.

With reference to the Italian corporate regimes.

Partnerships ("società di persone") and companies ("società di capitali") represent the two main categories of legal entities, which may be incorporated under Italian law. The most important difference between them is that partnerships' assets and liabilities are only partially segregated from the assets and liabilities of their members, while companies' assets and liabilities are completely segregated.

Foreign companies usually choose, for setting up their own business in Italy, the second category of entity, because the basic principle governing all types of the aforementioned companies is that only the company is liable with its assets for its obligations. The liability of the shareholders is therefore limited to the amount paid in, or to be paid in, as corporate capital. This is different from a partnership, where partners are in principle liable without limit for the partnership's obligations.

Furthermore, the main chosen company is the limited liability company (called "società a responsabilità limitata" or "S.r.l."), which is suitable for companies with few shareholders (even a sole shareholder), has a slim management structure and required a low budget to be incorporated (just 10,000.00 Euros).

Can you share some of the common challenges involved when a company merges with another in Italy?

In most cases there is the problem of determining the exchange ratio that means the number of shares of which each shareholder has to be entitled after the merger.

Given that when two or more companies merger together is made to create new company value, determining the contribute that each company put in the merger is essential to define the participation of each new shareholder.

With reference to the tax system.

The extraordinary transaction of merger is governed by the principle of fiscal neutrality. According to this principle, merger is a fiscal neutral transaction for the purposes of income tax, no subject to VAT and subject to the taxes act as a fixed amount.

In particular the Italian law, for the purpose of income tax, includes:

- that the company merger does not realize any new profit or loss of the assets;
- irrelevance for the resulting company or to the merging company of the merger differences (surpluses / deficits);
- the change of their original shares do not generate any income for the shareholders (subject to the adjustment of hypotheses)

What are the options for companies who experience financial difficulties in Italy?

We suggest opting for the arrangement (called "concordato"): a solution tool of corporate crisis that is implemented through an agreement between the debtor company and creditors, whose will is expressed by creditors' majority, aimed to the corporate reorganization and debt restructuring.

The agreement is binding for all creditors, including those who are dissenting; it is promoted and perfected through a procedure in front of the Court where the company is based.

The arrangement is a process of voluntary jurisdiction which aims to approve a proposed agreement by the borrower and by creditors, with constitutive effects to the creditors absent, dissenting or forgotten.

Has there been an increase in corporate law litigation due to the global economic climate?

For sure, the global economic climate has effected the way to make business, creating new business relationships between local and international companies and comporting, as consequence, debt restructuring issues. With reference to the aforementioned issues, our firm has been involved in several debt recovery cases, pushing us to hire new

specialized professionals and invest in staff training concerning the debt recovery matters.

What are the most common structures for corporate funding in Italy? What are the advantage of the most common funding methods?

As I mentioned before, limited liability company structure is preferred upon the other structures due to a slim management structure, easy procedures in order to be incorporated and segregated assets that allow the partners to not risk more than their investments.

What are the legal remedies available to companies who are involved in a contract dispute? How can your firm help?

One of the remedies that we suggest is to settle the disputes with the counterpart, it is the fastest way to solve the issues. If, for any reason, there is not space for a settlement, most of the contracts foresee a dispute clause that states which Court has to be appealed.

In other cases, when it is required, we achieved a strong expertise arbitration.

I am quite proud to say that we are point of reference for the main companies in our territory in this field, having in our law firm a dedicated department that deals with the drafting of the international and local contracts and disputes.

Is there anything else to add?

As I mentioned before, FLA law Firm is a structured firm with more than 60 professionals (lawyers and accountants) that provides high quality consultancy to our clients. From the multinational company to the small entrepreneur, FLA law firm drives you to successful business from more than 10 years. **LM**

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