



IR GLOBAL - MEET THE MEMBERS

Italy

IR Global - The Future of Professional Services

IR Global was founded in 2010 and has grown to become the largest practice area exclusive network of advisors in just a few years, this incredible success story has seen the network awarded Band 1 status by Chamber & Partners, recommended by Legal 500 and has been featured in publications such as The Financial Times, Lawyer 360 and Practical Law amongst many others.

The group's founding philosophy was based on bringing the best of the advisory community into a sharing economy; a system, which is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

MULTI-DISCIPLINARY

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

NICHE EXPERTISE

In today's marketplace, both local knowledge and specific practice area / sector expertise is needed. We select just one firm, per jurisdiction, per practice area ensuring the very best experts are on hand to assist.

VETTING PROCESS

Criteria is based on both quality of the firm and the character of the individuals within. It's key that all of our members share a common vision towards mutual success.

PERSONAL CONTACT

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

CO-OPERATIVE LEADERSHIP

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups who focus on network development, quality controls and increasing client value.

ETHICAL APPROACH

It is our responsibility to utilise our business network and influence to instigate positive social change. IR founded Sinchi a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities / tribes around the world.

STRATEGIC PARTNERS

Strength comes via our extended network, if we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR or someone else.



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FOREWORD BY EDITOR, NICK YATES

Innovative Italy tastes FDI success

Italy is an easy choice for international investors looking for a foothold in Europe or further expansion across the continent. It combines world famous cultural heritage with beautiful scenery and a Mediterranean climate.

Aside from these more obvious assets, Italy is also one of the economic powerhouses of Europe. With a gross domestic product (GDP) of more than 1.7 trillion euros and a population of over 60 million people, it is the world's ninth largest economy and the fourth largest in Europe.

Italy is the second largest manufacturer in Europe and the ninth largest exporter in the world, sending EUR500 billion of goods and services abroad on an annual basis. It has world-respected industries in automotive, fashion and pharmaceuticals among others.

Despite these impressive numbers, Italy has been hampered by allegations of corruption and lack of transparency in its political system and government departments. In response to this, the country has undergone a series of self-imposed reforms in an attempt to win back the full respect of the international business community.

The reforms have worked, and Italy is now ranked tenth globally and fifth in the EU, by the 2018 A.T. Kearney Foreign Direct Investment(FDI) Confidence Index. It rises three spots from 2017 and is now ahead of The Netherlands and Sweden. This is an impressive achievement for a country that could not make the top 25 just five years ago.

The A.T. Kearney report suggests that 'localisation', or the practice of shifting a company's management, operations, production, or marketing to local markets, has become an in vogue international business strategy.

Italy has tried to take advantage of this trend, with the introduction of its Industria 4.0 initiative, a national plan for innovation launched in January 2017. The initiative puts an emphasis on manufacturing, and it returns industrial policy to the top of the government's agenda. The plan offers support to improve competitiveness, digitise new processes, boost productivity, promote new skills, and ultimately attract more foreign investment.

Recent figures from the Italian Trade Agency (ITA) show that this initiative is already starting to take effect, placing Italy fifth in Europe for inward FDI investment flows in 2017 (USD17 billion). Companies owned by foreign investors now employ more than 1.2 million people in Italy, with 500,000 of those in manufacturing.

An investment opportunities report from ITA highlights the powerful economic clusters within Italy's regions that are proving so attractive to FDI.

The aerospace cluster in Piedmont consists of 280 small and medium-sized enterprises (SMEs) and employs 14,800 people. It generates EUR3.9 billion of turnover and is responsible for 17 per cent of national exports.

The cluster also includes 200 private and public research and development (R&D) centres, seven innovation hubs and four science and technology parks. The Piedmont region ranks first in Italy for private investment in R&D, and third for hi-tech patents.

As another example, Tuscany is one of the world's leading regions for research into vaccines, oncology,

cardiovascular, neurology, bio-robotics and biomaterials. The Pharma cluster in Tuscany consists of 370 life sciences firms employing 19,000 people (42 pharma, 80 biotech, 120 medical devices and 128 software and services). It is responsible for EUR8 billion of turnover and 7.5 per cent of regional GDP.

This is complemented by a similar level of success in Lombardy, where the research heavy areas of biotech and biomed are receiving substantial investment. There are 816 biomedical enterprises in the region, employing more than 40 per cent of Lombardy's health industry workforce.

Much of this regional success is down to the government's innovative approach to attracting FDI, as evidenced by the Industria 4.0 initiative. In this report you will hear from Italian professionals with expertise in various areas of law. We include articles that explain in more detail some of the personal and corporate tax advantages available to foreign investors interested in Italy, and we also explore the critical issues that must be understood once the decision to invest is made, such as efficient corporate governance and effective due diligence.

CONTRIBUTORS

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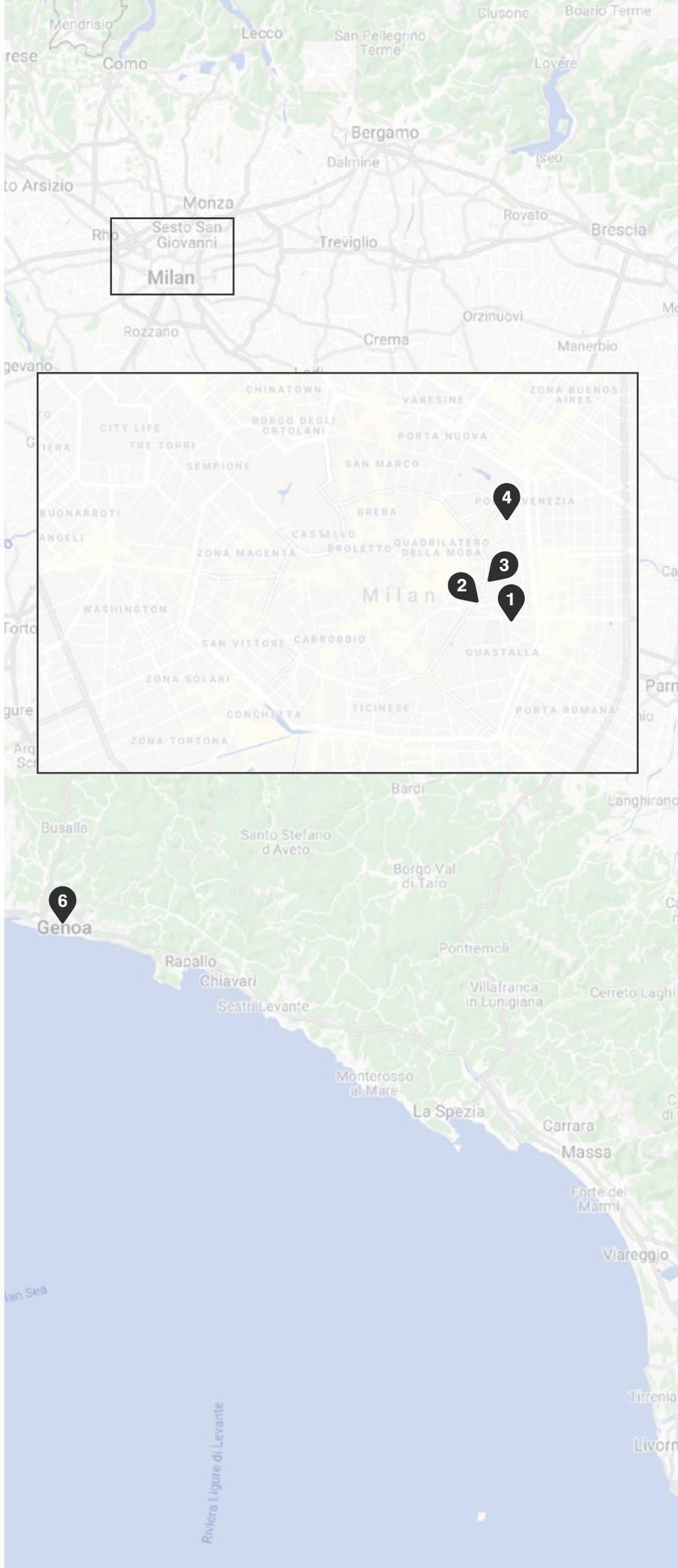
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SL|M
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Member Firms in Italy

IR Global members in Italy are located in key cities throughout the country including Milan, Genoa, Turin and Florence consisting of leading legal, accountancy and financial advisers. They are recommended exclusively by practice area thus ensuring that our members have the highest quality niche expertise available to them.

Whether it's an incorporation of a company, managing a subsidiary, new tax incentives or conducting commercial due diligence, our Italian representatives are on hand to provide you with a high-quality service that suits your every business need.

Member firms featured here retain a global support network across 155+ jurisdictions via their IR Global membership, sharing a common vision of working collaboratively to achieve unrivalled results. Please see the full list of Italian member firms below and on the IR Global website via bit.ly/2z-KpEkn.

Abbatascianni Studio Legale e Tributario

abbatascianni.eu

1 Bacciardi and Partners

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5 Studio Legale Cordeiro Guerra & Associati

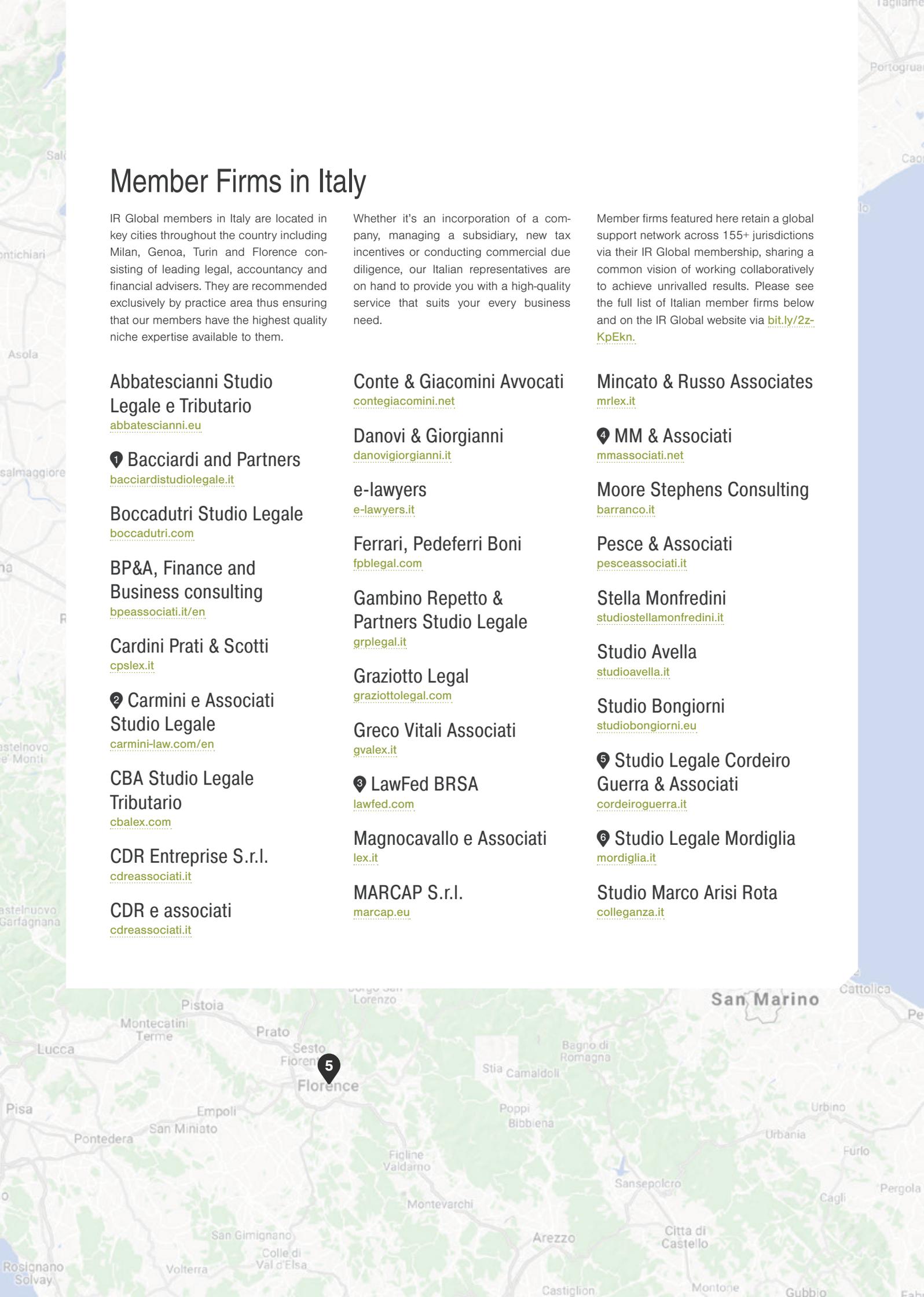
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Lorenzo Bacciardi is the managing partner and the head of the cross-border corporate law department at Bacciardi and Partners, specialising predominantly in domestic and cross-border corporate law; establishment of representative offices, branches, subsidiaries and joint ventures in Italy and abroad; cross-border M&A transactions; expatriation of Italian personnel and inpatriation of foreign personnel in Italy.

He is particularly experienced in corporate issues related to outbound investments made by Italian clients abroad and to inbound investments made by foreign clients in Italy. He has been a guest speaker in a number of important seminars and conferences both in Italy and overseas, presenting on his areas of expertise.

In November 2010, he was elected Chairman of the Euro-juris International Business Group, an office he held until October 2014. In January 2013, he joined the Alliance of Merger & Acquisition Advisors and its International Committee.

In September 2017, he won the 2017 IR Global member of the year award voted for by fellow members of IR Global.

Lorenzo holds a Juris Doctor degree from the University of Urbino School of Law and a Master of Laws (LL.M.) in International Corporate Transactions and International Taxation from the Temple University James E. Beasley School of Law in Philadelphia, USA

Bacciardi and Partners is a business law firm based in Italy, with offices in Pesaro and Milan, focusing on cross-border commercial, corporate and M&A transactions, employment, tax and customs law.

Bacciardi and Partners maintains more than forty years of proven experience and operates with a team of over 16 professionals, providing strategic advisory to Italian and foreign companies to plan and implement cross-border transactions.

Bacciardi and Partners also maintains an M&A division dealing with the management of Merger and Acquisitions and Corporate Finance, domestic and cross-border transactions. The firm was recently named as Law Firm of the Year for cross border commercial transaction during the Legal Community Italian Award 2018 held in Rome on the 20th of July 2018.

CORPORATE GOVERNANCE

The importance of managing Italian subsidiaries correctly

Foreign companies with subsidiaries in Italy must ensure they have complied fully with corporate governance regulations, particularly those related to the deployment of foreign executives. Failure to do so can lead to significant legal issues.

Subsidiaries in Italy can be formed either as “Società per Azioni” (Spa) or as “Società a responsabilità limitata” (Srl). The Spa and Srl are Italian corporate entities whose shareholders’ liability is limited to the capital contribution each shareholder makes (Italian subsidiaries).

The corporate governance of Italian subsidiaries is entrusted to either a sole director or to multiple directors. In the latter case, Italian subsidiaries may adopt either a board of directors, who may also delegate specific powers to a managing director, or multiple directors acting severally or jointly and unanimously.

Foreign companies maintaining Italian subsidiaries should keep in mind that foreign directors of Italian companies are required to obtain a Tax ID number, which can be applied for at the competent Italian Revenue Office or at the Italian consulate in the concerned foreign director’s home state.

Foreign companies maintaining Italian subsidiaries, often decide to second one of their existing executives, and grant them powers to run the daily operations of the company (seconded executive). If the seconded executive is a European citizen, the EU employer will need to comply with specific administrative formalities provided for by the Italian Legislative Decree n. 136/2016, which implemented the European Directive n. 2014/67/UE.

No visa will be necessary if the seconded executive is a European citizen, but if they are not a European citizen, then a specific visa and permit will be required to enter, stay and work in the Italian territory. Italian laws provide for specific visas and permits in favour of non-EU executives, including intra-company secondment which allows non-EU executives to enter the Italian territory for three or five years, provided that specific requirements set forth by the applicable Italian legislation are met.

As to the labour formalities, foreign companies are recommended to enter into a specific secondment letter with the seconded executive setting forth the terms and conditions of the secondment in Italy, as well as into a secondment agreement with the Italian subsidiary setting forth the obligations of the two companies in connection with the secondment.

It is recommended that these letters be translated into the Italian language, in case the competent Italian authorities ask for such documents to be exhibited.

Once the seconded executive is in Italy, the competent corporate body of the Italian subsidiaries may appoint them as either a director or as proxy (istitore), and convey the necessary managing powers in order to allow them to run the daily operations.

To this end, a proper resolution is normally required whereby the appointment as director and the delegation of powers are perfected, or a special power of attorney in favour of the seconded executive is granted when the same is appointed as proxy (istitore).



CARMINI E ASSOCIATI STUDIO LEGALE

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Carmini e Associati Law Firm was established in 1999 by Stefano Carmini. He has expertise in several areas of law and the economy, and spent 15 years with a renowned law firm in Milan before setting up his own firm. Carmini e Associati Law Firm possesses a wide competence in corporate, commercial and tax law, and has developed judicial skills in such areas, linked to the above-mentioned fields.

Carmini e Associati Law Firm can rely on the support of a number of professional offices, with proven expertise in various areas of law, through consolidated cooperation. This enables Carmini e Associati Law Firm to offer its clients a wide range of services and assistance, with a high degree of integration between the different disciplines.

Carmini e Associati Law Firm pursues a client-oriented approach, providing professional references to its clients, and attentive, professional care tailored to their specific needs.

TAXATION

New Italian tax incentives

Italy has recently introduced several new initiatives aimed at making the country an attractive proposition for companies and high net worth individuals.

Step Up legislation

Legislation due to take effect in 2019, will fully implement EC Directive n 2016/1164, by revision of article 166 bis of the Presidential Decree n. 917/1986.

This legislation, known as 'step up', refers to the revision of certain entry taxes currently applicable to the assets of companies or individuals entering the Italian tax jurisdiction. Its major purpose is to limit Italian taxation to the capital gains generated while a company has its fiscal residence in Italian territory.

Following the adoption of this legislation, the right to apply 'Step Up' will be expressly granted, not only for formal transfer of residence, but also for transfer of assets and liabilities, including intangibles.

This is provided that, as a consequence of the transfer, the state of origin is no longer entitled to tax the transferred assets and liabilities, nor the incomes they give rise to. This will apply even in the case that such a transfer is the result of extraordinary operations, such as a foreign entity being merged through incorporation into an Italian company, or a foreign entity turning a foreign permanent establishment into an Italian resident entity. The Step Up legislation shall be immediately enforceable for the transfer of assets from 'cooperative' countries. Transfers from black-listed jurisdictions shall be subject to a previous agreement with the Italian Revenue Agency.

The new rules will result in very important benefits for companies that transfer their business to Italy. They will be able to take advantage of higher tax-deductible amortisations on the assets admitted to the Step Up programme, and benefit from a real 'tax jump' when the capital gains on those assets are no longer subject to an exit tax in their state of origin.

Flat tax

In addition, in 2017, a flat substitutive tax on foreign income was introduced, which limits the effects of the Italian worldwide taxation principle. This tax regime has already been chosen by several individuals, including famous sportsmen.

The new regime provides for a payment of a flat tax on foreign income, equal to EUR100,000 per year, in lieu of the ordinary income and equity tax required by Italian law, without prejudice to the regular tax for the Italian sourced income.

Therefore, it allows new residents exemption from reporting requirements on foreign income and from disclosure of foreign investments, and from succession duties on all assets held abroad. The preferential tax regime does not allow the taxpayer to benefit from a foreign tax credit, or to benefit from double tax treaties, however, in order to avoid any disadvantage, the taxpayer can cherry pick certain foreign countries to leave out of the scheme.

Such a regime is exclusively meant for individuals, previously not resident in Italy, who transfer their tax residence to Italy. The scheme may last for up to a maximum of 15 years and can be extended to family members, by paying a substitute tax of EUR25,000.

The flat tax scheme must be valued carefully on a case-by-case basis, with regard to confidentiality issues.

New residents from outside the EU may go through a simplified procedure to get the necessary visas, meeting certain requirements. These simplified procedures are much faster than the ordinary ones, closing within 30 days of application.

Data from the first quarterly report of 2018 issued by the Italian Ministry of Economic Development, shows the program has been quite successful. 341 applications have been submitted since 2014, with an approval rate of 54.8 per cent.



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Ruggero Rubino Sammartano is a partner of LawFed BRSa, a mid-size commercial firm with more than 50 years of experience in trans-border transactions and litigations. LawFed BRSa represents various foreign governments, state companies, large multinationals and foreign and Italian corporate clients.

One of its main practice areas since its beginning is national and international arbitration.

Ruggero has good experience of international relationships thanks to the time spent working at international law firms in London, New York, Paris and Munich. His practice is focused inter alia on arbitration and in general on litigation in domestic and international disputes. With his team he advises clients in litigation concerning international trade, M&A, construction projects, sales representatives and distribution agreements, pharma and biomedical contracts. He builds strong ties with his clients which last over the years, making him an interface for foreign shareholders.

Ruggero speaks English, French, German and Spanish in addition to Italian. This helps him to quickly immerse himself in the different cultures that he regularly works with. He has lectured at legal conferences and written in the field of arbitration and mediation.

LawFed BRSa is a nationwide law firm acting through some partners also in tax advising.

BRSa is for Bianchi Rubino-Sammartano & Associati. It belongs to the LawFed group of firms which aims at covering the Mediterranean and the Middle East. LawFed BRSa is involved in domestic litigation, international litigation, and arbitration, and negotiations in the field of contracts, construction law, mergers and acquisitions, sales of goods and joint ventures, using English, German, French and Spanish.

LawFed BRSa represents large national and multinational corporations as well as foreign governments and public companies. It has a network of correspondents in a great number of jurisdictions. The firm has been active through its construction group in large international construction projects like dams and highways in Africa, Middle East, Asia, and Europe and through its corporate group in corporate matters such as in mergers and dismissals, in multi fora disputes, in joint ventures and corporate litigation.

DISPUTE RESOLUTION

An evolution in dispute resolution

There are many things that contribute to Italy's status as an attractive destination for inward investment. Chief among those is its position at the heart of the European Union (EU), both geographically and economically. As the EU has evolved, so has Italy and its institutions, becoming more business friendly and welcoming to inward investment.

One of the key changes seen during the last twenty years is in the legal sphere, specifically the complexity of dispute resolution proceedings. The ability to resolve a dispute easily and fairly is a major concern for any foreign investor. The last thing they want is to be mired in a costly dispute for years, while they need to focus on expanding their business.

This was previously a problem in Italy, but things have now changed, and the general trend shows that the number of cases which are decided each year exceeds those newly instituted, thus suggesting an acceleration of the speed of proceedings. According to official figures, the number of pending court proceedings has been reduced in the last ten years by about 30 per cent. In major courts such as Milan, the economic capital of the country, proceedings are solved quicker than before. In addition to this, documents in English, unless challenged by the counterparty, are often accepted with a simple translation and, in certain cases, even without it.

Mediation and arbitration

If these improvements are deemed insufficient by investors, there is also a much improved mediation and arbitration process in Italy. No other country in the EU has seen more mediations attempted and successfully concluded than Italy, in fact all the other EU member states together cannot compete with Italy in this arena.

Mandatory mediation in certain sectors has helped to strengthen this phenomenon. When the parties agree to sit down and discuss the situation during mandatory mediation, the majority of attempts end up with an agreement, which is a win-win solution. When mediation is not appropriate, the easiest way to overcome the problem is arbitration. This may resolve the dispute in a satisfactory manner, limiting, to the maximum extent possible, interference from local courts.

Thanks to the New York Convention, an arbitral award can often be enforced even more easily than a court judgment. This entirely depends on identifying one's priorities very clearly from the very beginning, selecting the right arbitrator and the right Counsel and the arbitral institution to administer the arbitral proceedings. The right arbitration

rules may allow arbitrators to be much more effective than the large majority of other arbitral proceedings in terms of duration, quality and costs.

The Italian way

The great majority of arbitral proceedings in Italy are decided within 12 months, which is the time limit. Each party does not need to appoint its own arbitrator, except in very large disputes, therefore a sole arbitrator – if properly selected – may have a constructive dialogue with the counsel of both parties. This avoids the risk of having two partial arbitrators out of three and reduces the costs by about two thirds.

Clear provisions as to the evidence are to be stated in the rules. In order to benefit from a full review of the merits, the seat of the arbitration and the basic procedural law of another arbitration friendly country must be carefully selected. The final and main point is the selection of a good arbitrator.

The greatest attention and close cooperation from all interested parties, is then a must.

These basic premises set Italy apart from other jurisdictions, and can contribute to the country's attractiveness to investors. It is, however, still important is to watch the conduct of the proceedings carefully.

There are three areas which are critical to every dispute;

1. The drafting of the dispute resolution clause
2. The negotiation of a possible solution before the dispute
3. The strategy at the beginning of the litigation mechanism.

The ultimate goal for the client is to win and to be able to obtain what it claims. There are many factors to be taken into account and the selection of people with a significant experience at an international level may help the client to make good choices. No case is the same and the expectations from clients from different jurisdictions also vary, based on their legal tradition.

Our firm has assisted foreign clients in Italy and Italian clients abroad for many decades. This double experience helps us to understand the mentality of all the actors within an international dispute in a better way. We devote great attention to strategy and cost-benefit analysis, enabling us to give clients the best possible advice, and to help them make the right decisions at an early stage of any investment. This should ensure they enter into a good business relationship with reliable people.



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Alessandro is the Founding Partner and Managing Partner of the Firm MM Associati, where he practices in tax consultancy and assistance for commercial, industrial and financial companies.

He specialises in the areas of tax planning and corporate reorganisation, as well as tax matters concerning operations of acquisition, merger and demerger, with an emphasis on tax consultancy.

MM Associati is a Milan-based tax and corporate consultancy firm. They provide integrated services with the objective of enabling domestic and international clients to obtain a clear view of the variable set of regulations that affect the corporate decision-making process, while using fiscal and company efficiency as a competitive tool.

The service provided by MM Associati deals with fiscal matters relevant to its domestic and international clients, alongside matters relating to multinational group taxation.

COMMERCIAL DUE DILIGENCE

Conducting effective due diligence in Italy

The acquisition of companies cannot only be based on the analysis of financial statements, but requires a complete analysis of the current prospects of the target company and its direction, in the context of environmental and market trends.

For this purpose, it is essential to conduct a commercial due diligence analysis. Such analysis will ensure the collection and verification of corporate, patrimonial, financial, economic, management and environmental information, relating to the target company, increasing the investors' confidence in their investment.

Commercial due diligence is, in the case of M&A operations, carried out in order to offer a complete view of the entity being acquired. The main objective is to better determine the value of the company to be transacted. The primary benefit of conducting commercial due diligence is that it allows the buyer to make informed decisions during a potential acquisition and determine whether an acquisition of the target company is likely to yield a profitable long-term investment. At the same time, it can also be used by the buyer to provide comfort and reassurance to his bank, or other lenders, that the business will not fail.

Commercial due diligence is therefore usually carried out by a third-party prior to the start of negotiations, and provides a complete view of the activity of the target company, highlighting potential risks and potential growth.

The type of due diligence completed, is often determined based on specific requests made by the applicant, and also on the basis of the characteristics of the target company.

The common objectives are to verify that the business complies with the one proposed by the seller and meets the investors' parameters. It also monitors and evaluate all risk factors, while allowing the buyer to understand if there are competitive advantages that the buyer can use.

The areas under investigation typically concern the business, and include product and market, structure, plus operating procedures and organisation charts. It also covers a company's financial position and analysis of customer and supplier know how.

After defining the above-mentioned objectives, it is necessary to identify the phases of the process to be followed, in order to carry out a complete analysis. The whole process is based on the collection of detailed information.

Once the necessary information has been collected, the objectives are achieved through the implementation of various different levels of analysis, including;

- Analysis of the market and of the sector in which the target company operates (market mapping, segmentation and sizing)
- Analysis of demand drivers and key purchase criteria
- Analysis of customer portfolio development and customer referencing
- Analysis of market positioning, business performance and sustainability of strategy
- Analysis of industry dynamics and competitor behaviour
- Analysis of pricing and margins, including projection sensitivities
- Analysis of revenue and gross margin modelling

The third party in charge should then prepare a commercial due diligence report containing the information required for a potential acquisition. This commercial due diligence report is likely to highlight critical issues and affect the planned acquisition operation. This may lead to the adjustment of price, modification of the subject of the transaction, or the insertion in the contract of additional guarantees. In extreme cases, it may result in the negotiation being blocked.

Blocking negotiations is an extreme hypothesis that occurs when, in the context of the commercial due diligence, potential liabilities and risks, higher than the benefits obtainable from the acquisition of the company, emerge.



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Francesco Navarrini is a tax lawyer enrolled in the College of Advocates of Florence and admitted to practice before Supreme Courts. He mainly deals with Italian and international tax law, criminal tax law, contractual law and corporate law.

Francesco teaches tax law at the School of Specialisation for Legal Professions of the University of Florence and is an author of various articles in tax law and co-author of the book *Diritto tributario internazionale. Istituzioni* (International tax law. Fundamentals) edited by Prof. Roberto Cordeiro Guerra and published by CEDAM (Padua) in 2016. He is member of the Tax Chamber of the Province of Florence, associated to the UNCAT national network.

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As the founding Partner of Cordeiro Guerra firm, Roberto has over 35 years of experience in assisting Italian and foreign individuals, companies and multinationals in tax litigations and tax audits specifically in relation to direct and indirect VAT issue and transfer-pricing policies. He also assists multinational groups on their tax structuring in relation to aspects such as corporate reorganisation, private equity, M&A and real property acquisition. Moreover, he teaches tax law at the University of Florence.

Cordeiro Guerra & Associati is a professional association established in 2003 with offices in Florence and Milan, specialised in tax law. Their qualified team of professionals – lawyers (avvocati) and certified public accountants (dottori commercialisti) – is able to offer a high level of advice, assistance and litigation expertise across domestic, European and international tax law. This specialisation has been developed through long-term professional experience.

FOREIGN DIRECT INVESTMENT

Incentives for inward investment in Italy

Italy has recently introduced a number of incentives designed to attract foreign investors. These wide-ranging reliefs cover intellectual property, individual residency and corporation tax and have already proven to be very popular among companies and foreign groups interested in investing in Europe.

Patent Box

Italy's Patent Box regime is a great example of the innovation shown by the tax authorities, aimed at rewarding companies that undertake significant research and development. It allows those companies to exclude from the IRES (Corporate Income Tax) and the IRAP (Regional Income Tax) taxable base, a percentage of the income attributable to intellectual property. This Patent Box regime aims to preserve, increase and develop the value of intangible assets located in Italy - crucial for a healthy economy with a highly-skilled workforce.

Enhanced tax-deduction on acquisitions

Besides the Patent Box scheme, our legal system also provides incentives to promote company investments in new tangible and intangible capital goods, through the increase of the cost of acquisition. For the purposes of income tax, acquisitions of instrumental material carried out by certain companies, can be subject to an increase of 40 per cent of the acquisition cost, for tax purposes. The consequent increase in the annual depreciation charge is tax-deductible. There is a further incentive for investments in tangible material goods supporting the technological transformation of the company. This incentive allows an increase of 150 per cent of fiscal cost of acquisition, so that companies can obtain a substantial benefit by amortising expenditure for tax purposes at 250 per cent of the actual cost incurred.

Large investments

The Italian tax authorities have also devoted particular attention to foreign companies that intend to carry out large investments of no less than EUR30 million within the Italian State's territory. As long as those investments have significant repercussions on employment in the field of operation, the Italian Revenue Agency will make a specific tax ruling in relation to the fiscal implications of the operation intended to be conducted.

This will include the fiscal treatment of the company's investment plan and the fiscal treatment of any extraordinary transactions that are envisaged for the realisation of this plan. It will also assess whether or not the company can access any specific schemes provided by the tax system. Consequently, this mechanism will give certainty to the relationship with the financial authority, preventing possible issues.

New residents

Of particular interest to high net worth foreign individuals, is the new tax regime for 'New Residents', which provides a substitute tax regime reserved for people who transfer their place of residence to Italy. These subjects may opt to use the substitute tax regime for any income produced abroad, provided that they have not been qualified as Italian tax residents for at least 9 of the past 10 years.

Italian tax shall be determined by a lump sum, irrespective of the amount of the foreign income received, that being EUR100,000 for each tax period in which they remain resident in Italy. This amount is reduced to EUR25,000 for each tax period for family members exercising this option, in conjunction with the new resident.

The substitute tax regime provides a total exemption from inheritance and gift tax for transfers relating to goods held across borders. Upon succession by a benefactor, only the goods possessed in the Italian territory will be relevant for the purpose of determining the inheritance tax due in Italy. Moreover, the spouse and immediate relatives would benefit from an exemption of EUR1 million, and the application of a favourable tax rate of 4 per cent on the value exceeding the deductible.

Corporate income tax

In the 2019 Italian Budget, additional measures are envisaged, including the reduction of corporate income tax (IRES) for companies investing in capital goods and in the recruitment of new permanent staff. The tax deduction of the profits reinvested by the companies will be up to 15 per cent of the current IRES rate of 24 per cent.



ITALY

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Michele Mordiglia is specialised in maritime and international law and has acquired vast experience as legal counsel in the matter of environmental damages, contractual disputes, shipping and litigation.

He is usually engaged in cargo claims and ships' arrest as counsel for important Italian and International companies connected to the shipping world. Michele has been involved also in corporate transaction, sales contracts, sale of shares and transfer of business.

He attended as speaker various seminars on maritime and international law, in Italy and abroad, the last of which in Qingdao for the 4th Annual World Congress of Ocean-2015 (WCO-2015).

Recently Michele was appointed as Arbitrator in connection with maritime disputes in Italy. He graduated in law from the Genoa University in 1980 and received his doctoral degree by presenting a work on General Average. In 2014 Michele was admitted as counsel to the Supreme Court of Cassation.

He writes and negotiates in English, but also speaks some French.

Studio Legale Mordiglia ("SLM") was founded by Aldo Mordiglia, Michele's father, in 1950 and is generally recognised as one of the Italian leading law firms in Shipping and International law.

The firm, which counts 25 professionals in the offices of Milan and Genoa, assists its clients on contentious and non-contentious matters involving Italian, European and International law. Based on long established and close relationships with leading firms in other jurisdictions, SLM is able to provide assistance and representation in all European countries and virtually all over the world.

SLM is a full services firm practicing almost all areas of civil and commercial law. While shipping, transport, logistic and international trade remain the core business of the firm, the partners also have specific knowledge and expertise of various industry sectors, such as regulatory matters, customs, finance and the environment.

ASSET SEQUESTRATION

Ship Arrest: Securing shipping assets pending claims on the merits

Ship arrest is a civil law admiralty procedure that involves imposing a warrant of arrest on a ship under debt enforcement proceedings. It is a useful way to secure moveable assets for creditors, ensuring they remain in Italy pending dispute on the merits.

Applicable law

Italy is a signatory to the 1952 Brussels Convention on ship's conservative arrest. According to art. 2 of the Convention a vessel flying the flag of a Contracting State can be arrested only in connection with maritime claims, as listed at art. 1.1 of the same Convention. Under Italian law and pursuant to article 6 of the Code of Navigation, the security rights on a vessel are governed by the law of the ship's flag. Where the Italian law applies, article 552 of the Code of Navigation provides for a list of claims giving rise to a maritime lien in the vessel, and the freight for the voyage, during which the claim arose.

Arrest of sister/associated ships

Sister/associated ships can be arrested only if they are owned by the same debtor. Italian Courts are very reluctant to pierce the corporate veil, as it is a settled rule that each company has its separate and autonomous business capability, liable therefore for its own debts only and with its own assets. It has been held by the Italian courts that, under article 3(1)(2) of the 1952 Brussels Convention, it is possible to arrest a ship when the shares of the owning company are owned by the same companies or person(s) owning the ship in respect of which the maritime claim arose. The burden of proof on ownership is on the arrestor.

Claims from memorandums of agreement/ship repair/construction contracts

Since Italy is a signatory to the 1952 Brussels Convention, ships flying the flag of contracting states can be arrested for the maritime claims enumerated in article 1.1. of the Convention only. Ships flying the flag of non-contracting states can be arrested for any claim whatsoever, including those listed in article 1 of the Convention.

The ship arrest procedure

Any domestic or foreign ship may be arrested in the jurisdiction of the authority of a Court, or an appropriate judicial authority in respect of any maritime claim only, as listed at art. 1.1 of the 1952 Brussels Convention, and essentially no other claim. A ship within the same jurisdiction cannot be arrested more than once by the same claimant.

One claimant may apply for a ship arrest after ensuring that the claim form has been issued. The application and an affidavit that must follow should contain the nature of the claim or counterclaim, the amount of security sought, and proof that the claim has not been gratified or fulfilled. It should also contain the name of the ship, and the nature of the property to be arrested, which must include the name and port of registry and the ownership of the ship.

If the authority finds it is right to arrest, the ship becomes a security for the determined compensating costs and an object to be sold to satisfy the claim. However, this hardly ever takes place as the owner usually manages to satisfy the requirement for security by offering a letter of undertaking.

Lodging security to anticipate/prevent arrest

The Italian Rules of Civil Procedure do not contemplate the possibility of applying to the competent court in order to anticipate/prevent a ship's arrest by lodging security.

Securing the claim

The arresting party can insist on a cash deposit or bail bond, which are the normal forms of security under Italian law. However, the court may authorise the release of the ship against other forms of security such as a bank guarantee.

Letter of guarantee

A protection and indemnity (P&I) letter of undertaking is not, strictly speaking, within the category of suitable securities as accepted by Italian Courts, but if the parties agree for the release of the vessel against this form of security, the Court will have no objection. If a guarantee is required, it must be provided by a domestic primary bank or another acceptable guarantor.

Further security options

The Italian Rules of Civil Procedure also provide for the possibility to apply to the competent Court for the conservative arrest, even beside third parties, for any money, property or assets owned by the debtor. The claimant must prove the so called *fumus boni iuris*, namely *prima facie* evidence of the claim; and the so-called *periculum in mora*, namely the actual risk of the claim remaining unsatisfied if the arrest is not granted.

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