



A NEW AGE FOR ITALIAN STARTUPS

Italian law no. 221 of 17 December 2012 (the *Start Up Law*) implemented an innovative regime for start up businesses.

DEFINITION OF STARTUP AND CERTIFIED INCUBATOR

Start Up

A start up is qualified for the advantages under the Start Up Law if all the following requirements are met:

- Majority of the corporate capital held by individuals for at least 24 months after incorporation;
- Not listed;
- Incorporated and operative from no longer than 48 months;
- Main seat in Italy;
- From the second year of activity, income not exceeding Euro 5 million;
- No distribution of profits;
- Corporate purpose focused on the development, production and commercialization of innovative services and products with a high technology value;
- Not resulting from a merger, de-merger, spin off or a business transfer.

In addition, the startup shall:

- Invest in research and development at least 20% of the higher between the costs and the income; or
- Employ highly qualified personnel in a percentage equal at least to one third of its employees; or
- Hold or be a licensee of intellectual property rights connected to its activity.

Certified incubator

Under the Start Up Law, an incubator is qualified for the advantages under the Start Up Law if all the following requirements are met:

- Having appropriate premises where startups may be hosted;
- Having adequate equipment for startups;
- Being managed by individuals with recognized expertise in business innovation;

- Having relationships with universities, research centers, public institutions and financial partners carrying out activities and projects connected to startups;
- Having adequate and longstanding experience with startups.

SPECIAL SECTION IN THE COMPANIES' REGISTER

In order to benefit from the favorable regime provided by the Start Up Law, newly formed companies have to be registered in a special section of the Companies' Register.

The application for the registration includes the most important information concerning the business, which have to be constantly updated. The same information shall be available on home page of startups' web site.

APPLICABLE LEGAL FRAMEWORK

Corporate law exceptions for startups

Special regime in case of losses exceeding one third of the corporate capital

- Under Italian law, Italian companies must comply with a certain ratio between losses and corporate capital;
- Start Up Law grants a year delay for the recovery of losses exceeding one third of the corporate capital (including in the event the corporate capital falls below the minimum legal amount).

Quotas of limited liability company having different rights

- By-laws of startups having the form of s.r.l. (società a responsabilità limitata—limited liability company) may provide for quotas (i.e. dematerialized stock) bearing different rights (by way of example it is possible to provide for quotas with no voting rights or with voting rights only on specific subjects).

Exception to financial assistance prohibition

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- An exception to financial assistance prohibition is available in the event of stock incentive plans in favour of the startup employees.

Work and fee for equity

- By-laws of the startups and certified incubators may provide for the issue of financial instruments in exchange for the contribution by shareholders or third parties of work or services, with economic or administrative rights, excluding voting rights.

TAX BENEFITS

The Start Up Law also provides for a specific tax regime for investments in startups:

- For years 2013, 2014 and 2015, for Italian individual income tax (IRPEF) purposes, an amount equal to 19% of the investment made in startup companies up to the maximum amount of Euro 500,000 per each fiscal year may be deducted from the income;
- For years 2013, 2014 and 2015, for Italian corporate income tax (IRES) purposes, an amount equal to 20% of the investment made in startup companies up to a maximum of Euro 1,800,000 for each fiscal year may be deducted from the income;
- General exemption for startup companies for the payment of stamp duties and annual duties to be paid to the Companies' Register.

CROWD-FUNDING FOR STARTUPS

US crowd-funding model has been introduced in the Italian legal system. The Start Up Law provides that fund raising may be organized through on-line portals managed by investment companies and banks registered with a specific register held by CONSOB (the independent authority supervising stock exchanges).

SPECIFIC FIXED TERM EMPLOYMENT AGREEMENTS

The Start Up Law implemented a specific regime for fixed term employment agreements entered into by startup companies, with significant derogations to the general regime.

Fixed term employment agreements may be executed without specifying the economic, productive or organizational reasons for such measures, as long as the employee carries out his job in the context of the startup business.

There is no minimum duration of the fixed term employment agreement; the maximum duration of such agreements is equal to 36 months (renewable for further 12 months).

The salary may include a variable part linked to the

achievement of production profitability objectives by the company or efficiency levels by the employee.

There is no ratio to be complied with between fixed term employment agreements and unlimited employment agreements.