
Practical Guide for EU, EEA and Swiss Lawyers on Service and Establishment

ITALY

SEPTEMBER 2018

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Structure	Information received
1.1. Registration with Host Bar	<p>Pursuant to Directive 98/5/CE, implemented in Italy by D. Lgs. 2 February 2001 n. 96</p> <p>Register with the Italian Bar Association (Bar of the District of establishment) which records in its appropriate Register every lawyer who submits the following documents:</p> <ul style="list-style-type: none">a) Application form <p>The application form can be downloaded from the website of each Italian local Order (Bar of the District where the EU lawyer has permanently established his residence or professional domicile). The relevant address of the local Order can be found at the following link of the Consiglio Nazionale Forense: http://www.consiglionazionaleforense.it/web/cnf/consigli-degli-ordini-degli-avvocati/cerca-ordini.</p> <ul style="list-style-type: none">b) Certificate of citizenship of a Member State of the European Union or substitute declaration;c) Certificate of establishment (residence) or substitutive declaration or declaration of the moment with indication of professional domicile;d) Certificate of registration to the professional organization of the Member State of origin, issued on a date not earlier than three months from the date of submission, or substitutive declaration. <p>The Registration fees includes:</p> <ul style="list-style-type: none">1) the tax for the government concession (concessione governativa) € 168,00 (una tantum);2) the Registration tax (tassa di iscrizione) is variable depending on of each local Order (circa between € 130 and € 300);

	<p>The membership fees include the annual registration fee. Its cost is also variable depending on the decision of each local Order (circa between € 150 and € 350).</p> <p>Relevant national provisions:</p> <ul style="list-style-type: none"> - Article 3 of the Legislative decree no. 96 of 2 February 2001, provides for the relevant rules consistent to the provision set in Article 3 of the Directive 98/5/CE
1.2. Title	<p>The lawyer must practice under the home title.</p> <p>Article 2 of Legislative decree no. 96 of 2 February 2001, provides a list of professional qualification that citizens of the Member States can use in Italy for practice the profession of lawyer.</p>
1.3. Salaried practice	<p>Article 5 of Legislative Decree No 96 of 2 February 2001 provides the relevant rules related to Article 8 Directive 98/5. In particular, it establishes that the rules on incompatibilities concerning the exercise of the profession of lawyer shall apply also to the lawyer established. The provision referred to in the fourth paragraph of art. 3 of the Royal Decree-Law n. 1578 of 1933 also applies to lawyers bound by a work contract to a corresponding institution, in the Member State of origin, to those indicated in that provision. In this respect, the salaried practice is limited.</p>
1.4. Legal Form and Shareholding	<p>Must correspond with the core principles laid down for Italian lawyers: no MDPs, no ABSs and no participation of non-lawyers.</p> <p>The exercise of legal profession in company form is allowed through the constitution of companies of persons, of capital or cooperatives.</p> <p>According to art. 4 bis of the Law n. 247 of 2012 the companies must be composed of member that are:</p> <ul style="list-style-type: none"> - for at the least two-thirds of the share capital and voting rights; - registered lawyers or registered lawyers and different professionals; - management body must be constituted only by members and, in its majority, by lawyers. <p>The practice of the profession of lawyer through a trust company or third person is forbidden.</p> <p>Lawyers are allowed to participate in more companies.</p> <p>Relevant national provisions</p> <ul style="list-style-type: none"> - art. 4-<i>bis</i> of Law no. 247 of 31 December 2012 (incorporated by art.1 paragraph 141, b) of the Law no.124 of 4 august 2017) rules the practice of the profession of lawyer in corporate form; - Legislative decree no. 96 of 2 February 2001, Title II (practice law in company form) and Title III, Chapter II (practice law in company form by Eu lawyers)
1.5. Joint Practice	<p>As group of lawyers permitted (associazione professionale).</p> <p>According to art. 4 of Law no. 247 of 31 December 2012, the legal profession can be exercised individually or in association between lawyers. In any case, the legal mandate is conferred personally on the lawyer.</p> <p>The participation in that associations is also allowed for specific categories of professionals.</p>

	<p>The lawyer associations are registered in a special register of the Local District Bar.</p> <p>Lawyers can be part of more associations.</p> <p>Relevant national provisions</p> <ul style="list-style-type: none"> - art. 4 of Law no. 247 of 31 December 2012 rules the association between lawyers and multidisciplinary; - Legislative decree no. 96 of 2 February 2001, Title III, Chapter I (practice law in association form by Eu lawyers)
1.6. Areas of Activity	<p>Representation of clients before all courts and administrative authorities. Advise in the law of home and host state and European and International law.</p> <p>Relevant national provisions:</p> <ul style="list-style-type: none"> - Art. 8 (judicial actions) and art. 9 (practice before the High Courts) and art. 10 (extrajudicial actions) of Legislative decree no. 96 of 2 February 2001 provide the relevant rules related to art. 5 of the Directive 98/5/CE
1.7. Practice Rules	<p>The established lawyer must act together with an Italian lawyer in order to represent clients in front of the Court, and other bodies.</p> <p>An agreement is necessary between the established lawyer and Italian lawyer. The latter has responsibility to the judicial authority for the professional behaviour of the established lawyer.</p> <p>This exception does not apply in case of extrajudicial actions (see point 1.6).</p> <p>Relevant national provisions</p> <ul style="list-style-type: none"> - Art. 8 (judicial actions) and art. 9 (practice before the High Courts) of Legislative decree no. 96 of 2 February 2001
1.8. Principle of Double Deontology	<p>As established lawyer you are subject to the regulations not only by your home bar but also by your host bar.</p> <p>Relevant national provisions:</p> <ul style="list-style-type: none"> - art. 5 paragraph 1 of Legislative decree no. 96 of 2 February 2001; - art. 3 of Deontological Code of 31 January 2014 according to art. 6 paragraph 1 of the Directive 98/5/CE;
1.9. Disciplinary proceedings	<p>The established lawyer is subject to disciplinary penalties in case of non-compliance with Italian rules of professional conduct.</p> <p>Before to begin disciplinary proceeding the Home Member State of established lawyer is informed</p> <p>Relevant national provisions</p>

	<ul style="list-style-type: none"> - art. 11 (Disciplinary proceeding) of Legislative decree no. 96 of 2 February 2001, according to art. 7 of the Directive 98/5/CE; - Title IV, art. 38 to art. 56 of the (Royal Decree) Law no. 1578 of 27 November 1933, - Title V (Disciplinary proceeding), art. 50 to art. 63 of Law no. 247 of 31 December 2012 - Regulation no.2 of 21 February 2014 (Disciplinary proceeding)
1.10. Insurance (professional indemnity insurance, social security, etc.)	<p>Professional Indemnity Insurance: must comply with the rules for Italian lawyers.</p> <p>Relevant national provisions</p> <ul style="list-style-type: none"> - art. 5 paragraph 3 of Legislative decree no. 96 of 2 February 2001; - art. 12 of Law no. 247 of 31 December 2012
1.11. Fees	Italian rules apply, in general lawyer and client can agree on a fee.
1.12. Continuing Legal Education	<p>The established lawyer is required to attend permanent training courses where such attendance is mandatory for the Italian lawyers.</p> <p>Relevant national provisions:</p> <ul style="list-style-type: none"> - art. 13 of Law no. 247 of 31 December 2012; - art. 25 of Deontological Code of 31 January 2014; - Title VI, art. from 57 to 68 of the (Royal Decree) Law no. 1578 of 27 November 1933. - art. 5, paragraph 4 of Legislative decree no. 96 of 2 February 2001; - art. 11 of Law no. 247 of 31 December 2012.
1.13. Bar	<p>By registration, you become member of the local bar, in a specific section.</p> <p>For the documents required, see point 1.1</p> <p>Relevant national provisions</p> <ul style="list-style-type: none"> - art. 6 (Registration) of Legislative decree no. 96 of 2 February 2001

<p>1.14. Conditions for the Acquisition of the Title of a 'National Lawyer'</p>	<p>Provision of legal services in the Italy as an established European lawyer for at least three years or compensation measure.</p> <p>a) Three years' practice under home State professional title: see Article 10 of Directive 98/05/EC</p> <p>According to art. 12 of Legislative decree no. 96 of 2 February 2001, the lawyer that demonstrate the regular and effective provision of legal services for at the least three years is exempted from the aptitude test; exempted procedure is regulated by Legislative decree no. 96 of 2 February 2001, art. 13 and art. 14.</p> <p>Or b) Pass the aptitude test :</p> <p>According to art. 22 of Legislative decree no. 206 of November 2007 on recognition of professional qualifications (as modify by Legislative decree no 32 of February 2016) it is compulsory to pass an aptitude test.</p>
<p>2. Services</p>	
<p>2.1. Under home title & representation before courts</p>	<ul style="list-style-type: none"> • Service under your home title – before courts and administrative authorities. • In carrying out judicial activities he must act in agreement with a professional of the host State qualified to practice the profession with the title of lawyer, with no limitation with respect to extrajudicial activity; • To be able to exercise before the Corte di Cassazione and the other higher jurisdictions, besides having to act in agreement with a professional of the host State, must demonstrate that he has been practicing in the European Community for at least 12 years, including those already practiced as a lawyer established. <p>Relevant national provisions</p> <ul style="list-style-type: none"> - Article 2 of Law no. 31 of 9 February 1982 provides the rules for lawyers admitted to the exercise of professional activities with a temporary nature, according to art. 4 of the Directive 77/249 - Art. 8, Art. 9 and Art. 10 of the Legislative decree no. 96 of 2 February 2001
<p>2.2. Deontology</p>	<p>You are subject to the rule in the host state and subject to disciplinary supervision of the bar.</p> <p>Relevant national provisions</p> <ul style="list-style-type: none"> - Art.3 of Deontological Code of 31 January 2014; - art.3 of Law no. 247 of 31 December 2012; - art.3 of Legislative decree no. 96 of 2 February 2001
<p>2.3. Fees</p>	<p>Italian rules apply.</p>

	<p>Relevant national provisions</p> <ul style="list-style-type: none"> - art. 13 of Law no. 247 of 31 December 2012; - art. 25 of Deontological Code of 31 January 2014; - title VI, art. from 57 to 68 of the (Royal Decree) Law no. 1578 of 27 November 1933
<p>3. Acquisition of the national lawyer's title</p>	
<p>3.1. Via Establishment Directive</p>	<p>See above point 1.14 (a)</p> <p>Relevant national provisions:</p> <ul style="list-style-type: none"> - art. 12, art. 13 and art 14 of Legislative decree no. 96 of 2 February 2001
<p>3.2. Via Professional Qualification Directive</p>	<p>Pass the aptitude test: See above point 1.14 (b)</p> <p>Art. 46 of Law no. 247 of 31 December 2012 provides new rules for the aptitude test. However, the new system has not yet entered into force.</p> <p>The Lawyer examination consists of two parts, written and oral. The written test takes place in a single annual session, in the middle of December, three consecutive days, during which the candidates must draw up:</p> <ul style="list-style-type: none"> - an advise on civil law (chosen between two tracks), - an advise on criminal law (also chosen between two tracks), and - a judicial act, which the candidate can choose between matters of civil law, criminal law or administrative law. - The candidates have 6 hours to complete each written test. During the written tests, the candidates can use only Codes (no case law). <p>The candidate who passes the writings tests is admitted to the oral test, i.e. an interview concerning 7 subjects, among which 5 are mandatory (Procedural Civil Law, Criminal Procedural Law, Civil Law, Criminal Law and Deontology) and two additional are optional (to be chosen among Constitutional Law; Administrative Law; Labour/Social Law; Commercial Law; European Union Law and International Private Law; Tax Law; Ecclesiastical Law; Judicial and Penitentiary System).</p> <p>The test cost: 50 euros of fixed costs plus 12.91 euros of fees.</p> <p>In addition to theoretical study of legal subjects, legal training result very useful in order to prepare the written test and the drafting of the judicial act.</p> <p>An advice for the preparation is the attendance of specialisation schools for the legal professions (not mandatory). It could be useful to consult the manuals for the preparation of the lawyer exam, for sale in specialised bookshops. In any case, the main advice is to study a lot.</p> <p>Relevant national provisions:</p> <ul style="list-style-type: none"> - art. 22 of Legislative decree no. 206 of November 2007 - art. 46 of Law no. 247 of 31 December 2012 (Aptitude test) - art. 49 of Law no. 247 of 31 December 2012 (transitional rules for the aptitude test)

4. Practicalities

<p>4.1. Practical information</p>	<ul style="list-style-type: none"> • You can find information on the court system, addresses, contacts and opening hours of all Italian courts under: https://www.giustizia.it • Contacts to and information on the organization of the Italian Bar are available under: http://www.consiglionazionaleforense.it • Information about application form and registration costs could be found out surfing on the Italian Local Order (e.g. https://www.ordineavvocatiroma)
<p>4.2. National organisation</p>	<p>The members of the register of lawyers constitute the Bar (Ordine degli Avvocati).</p> <p>The Bar's organisation includes local Bars and the National Bar Council (Consiglio Nazionale Forense). These are public associative bodies whose purpose is to ensure compliance with the professional law through regulatory functions and delivering opinions.</p> <p>Lawyers' associations are independent, but subject to the supervisory power of the Ministry of Justice according to Article 24, paragraph 3, of Law no. 247 of 31 of December 2012.</p> <ul style="list-style-type: none"> - Ministry of justice: has a political and organizational role in the judicial administration and has a supervisory power on the Lawyers' associations. - National Bar Council: 'Consiglio Nazionale Forense' is the public national body that represent the whole Italian lawyers and it is based at the Ministry of Justice. The mandate is for 4 years and its members cannot be re-elected for more than two consecutive years. National Bar Council has jurisdictional power for disciplinary proceedings. Every three years the National Bar Council convenes the National Conference (Congresso nazionale forense) that is the highest representation of Italian lawyers - Local Bars: (e.g. 'Ordine degli Avvocati di Roma') are the public local body where all the lawyers practicing in the district are enrolled. The Local Bars include: <ul style="list-style-type: none"> - Members Assembly, - Council; - the Treasurer, - the Secretary - the President - the Board of Auditors <p>CNF and Bars have regulatory and supervisory powers in order to guarantee the correct and effective exercise of lawyers' traineeship and to establish and promote events for the continuing training of lawyers. The Bars also maintain and preserve the professional registers.</p>
<p>4.3. Reference to national legislation with</p>	<ul style="list-style-type: none"> - Legislative decree no. 96 of 2 February 2001 - Law no. 31 of 9 February 1982 - Deontological Code of 31 January 2014

other languages available + links	
4.4. Reference to existing national guides	<p>Access and exercise to the profession for foreign lawyers:</p> <ul style="list-style-type: none"> - Legislative decree no. 96 of 2 February 2001 - Law no.247 of 31 December 2012 - Legislative decree no.206 of 9 November 2007
4.5. Reference to services available for lawyers in that jurisdiction	N/A
4.6. Contact information	<p>According to art. 6 of Legislative decree no. 206/2007 the National Contact point is:</p> <p>Dipartimento per le Politiche Europee Address: Largo Chigi, 19 – 00187 Rome Italy Telephone number: +39 (0)6.67791 Fax (0)6.6779.5342/5326</p> <p>Contact point, the EU, EEA or Swiss lawyer should contact for information at national level: info@politicheeuropee.it</p> <p>Only for official communications info.politicheeuropee@pec.governo.it</p>