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Breaking New Ground in Italy

Baker & McKenzie

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Abstract
[Excerpt] The purpose of this booklet is to provide, in summary form, a general understanding of Italian Labour Law and immigration rules. It is not intended to be a comprehensive analysis but, rather, it highlights the most important provisions in these fields. The law is stated as at August 1, 2006.

Keywords
Italy, labor law, employment, legislation, public policy, working conditions, immigration, discrimination

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General Introduction

The purpose of this booklet is to provide, in summary form, a general understanding of Italian Labour Law and immigration rules. It is not intended to be a comprehensive analysis but, rather, it highlights the most important provisions in these fields. The law is stated as at August 1, 2006.

1. Governing Rules

Scope of Italian Labour Law

Statutory rules governing employment relationships apply not only to Italian but also to foreign employees, by operation of private international law principles, subject to public order limitations. Collective Bargaining Agreements ("CBA" or "CBAs") apply insofar as the parties belong to the signatory unions or if they are referred to in the individual employment contract. Courts have held CBAs implicitly applicable in cases where the parties had in fact performed their obligations as provided for by the CBAs, although they had not formally agreed to make CBAs applicable by reference in their relationship.

Labour Relationship Rules

Sources of law which govern employment relationships are the following:

- the Constitution (Arts. 5 and 35 to 40);
- the Civil Code (Arts. 2060 to 2134);
- specific laws (e.g. Law n. 604 of 1966 and Law n. 108 of 1990 on individual dismissals; Law n. 300 of 1970, the Workers' Charter, establishing, among other things, workers' basic privacy and union rights; Law n. 297 of 1982 on severance compensation and Law n. 223 of 1991 on collective dismissals);
- Recently, the Italian legislator introduced statutory reforms affecting most areas of labour law. The most import reform is known as the Biagi Reform of 2003, enacted by Legislative Decree n. 276 of 2003, which pursued the following objectives: the creation of a transparent and efficient labour market

capable of increasing employment opportunities and offering equal access to regular quality employment; the implementation of a co-ordinated strategy aimed at combating the structural weaknesses of the Italian economy: unemployment among young people, the concentration of unemployment in the South of Italy, the low rate of participation by women and the elder in the labour market.

Non-statutory governing rules are established in:

- CBAs;
- Shop level agreements;
- Individual employment agreements.

As far as this briefing is concerned, when a CBA is mentioned, reference is made to the CBA for employees of commercial employers (*Contratto Collettivo Nazionale di Lavoro per i dipendenti da aziende del terziario della distribuzione e dei servizi*) unless otherwise expressly indicated.

2. Immigration Requirements

General Considerations

On the basis of the ILO Convention of June 1975, ratified by the Republic of Italy in 1981, equal treatment and full equality of rights for Italian workers is provided to EU citizens and to legally established non-EU citizens and their families.

Law n. 286 of 1998, which is still the statutory reference for immigration issues, has been amended in October 2003. Specific regulations call for the implementation of numerous procedural aspects. To date, Italy has implemented all relevant EU legislation governing immigration issues.

Save for some exceptions, foreigners (i.e. non-EU citizens) can enter Italy provided they have: (a) a valid identification document (passport or equivalent); and (b) when necessary, a valid visa. Visas are issued by Italian consular authorities competent for the country of origin or place of residence of the applicants.

Applicants must provide evidence: (a) concerning the purposes for which they want to enter in Italy; (b) concerning the fact they have sufficient means to support themselves throughout their stay in Italy.

Work Permits

In case of foreigners who want to immigrate for labour related reasons, visas are issued only if the following conditions are met, in connection with relevant situations:

- Employers who want to hire foreigners must obtain a prior authorization by the Italian immigration office (known as the *Sportello Unico per l'Immigrazione*, a local branch of the Ministry of Internal Affaires); and, in order to do so, they must: (a) offer evidence concerning lodging arrangements for the foreigner and guarantee payment of travel expenses in case the foreigner returns to his home country; (b) furnish a draft of the future employment agreement and prove that terms and conditions of the latter are not lower than those set forth by CBAs. Special provisions apply in case of seasonal workers. Authorizations for employment with foreigners on an indefinite term are issued within a maximum number determined yearly by the Italian Government.

- Foreigners willing to carry out a self-employed activity in Italy must prove that they meet the mandatory requirements to perform such activity, as per Italian law. Moreover, they must also prove they have lodging accommodations and that they have sufficient income to support themselves. The law specifically includes among self-employed activities cases where foreigners hold a corporate office in an Italian company and actually perform their activity in Italy.

- Special provisions govern the issuance of permits in particular cases, among which: (a) executives and highly specialized employees of Italian subsidiaries or branches or representative offices of companies located in countries which are members of the WTO; and (b) employees paid by foreign employers, temporarily transferred to Italy in order to perform services in favour of Italian entities or individuals, under an agreement between the latter and their employer.

Stay Permits

Within eight days from entering Italy, foreigners must apply for a stay permit to the Foreigners' Department at the local *Questura* (police offices). A stay permit cannot be valid for longer than: (a) nine months, in case of seasonal work; (b) one year for any other type of working activity. Renewals of non-seasonal permits are possible, provided the foreigner maintains an employment relationship and an application is filed at least thirty days in advance of the expiry of the prior permit.

3. Terms of Employment

Form of the Employment Agreement

There is no general provision in the law to the effect that the employment agreement must be in writing, although a recent provisions require the employer to provide the employee with certain information, concerning the employment agreement, in writing (see here below, section "Content of the employment agreement"). An agreement in writing is however required: (a) to establish a part-time and a fixed term work relationship; (b) to establish a supply of workmanship; (c) to establish a work by objectivest agreement; and (d) under most CBAs.

It is also important to highlight that certain, optional clauses of an employment agreement must be in writing, which are: (a) the one providing for probationary period; and (b) non-compete / non-solicitation clauses.

Fixed Term – Indefinite Term

Generally speaking, individual employment agreements are usually entered into for an indefinite period of time. However, Legislative Decree n. 368 of 2001, implementing the EU Directive 1999/70/CE, provides that it is possible to execute fixed terms contracts for technical, production, organisational or substitution reasons, which must be specified in the agreement.

A fixed term contract can only be renewed once and may not exceed a maximum duration of 3 years, inclusive of any renewal. The maximum duration may be extended to 5 years for agreements with employees classified as executive managers (*dirigenti*).

According to the law, fixed term employment is prohibited in the following circumstances:

- to replace workers on strike;
- unless collective agreements provide otherwise, in companies where: (a) collective dismissals have taken place within the previous 6 months, affecting similar job profiles; (b) where employment relationship have been suspended; (c) where working hours have been reduced, with recourse to social shock absorbers;
- if the safety-at-work risk evaluation, provided for by specific regulations, has not been carried out.

The number of employees that may be employed on a fixed term basis by any one employer is determined by CBAs.

Where a fixed term agreement continues after its initial term or after the term of renewal, the employer must pay the employee an additional amount, on top of salary, at a rate of 20% for the first ten days, and 40% per day thereafter.

A fixed term agreement will be converted into a contract for an indefinite period: (a) if its initial term is less than 6 months and the employment relationship continues for more than 20 days beyond the expiry date; (b) if its initial term exceeds 6 months and the employment relationship continues for more than 30 days after the expiry date; (c) if its initial term is less than 6 months and the parties enter into a new, fixed term agreement within 10 days from the expiry date of the first contract; (d) if its term exceeds 6 months, and the parties enter into a new, fixed term agreement within 20 days after expiry date of the first contract; (e) if the parties enter into two subsequent fixed term agreements, without any interruption.

The main distinction between agreements for fixed term and indefinite term is that, upon expiration of the agreement for a definite term, the employer does not

need to give notice of the dismissal to the employee. However, as for indefinite term agreements, fixed term ones can be terminated before the expiry date only for just cause.

On the basis of the non-discrimination rule provided for by the law, fixed term employees may not be treated in a less favourable manner than comparable indefinite term employees. In other words, fixed term employees will be granted the same rights and benefits provided for all other employees, such as holidays and deferred compensation.

Part-time Work

This form of employment is regulated by Legislative decree n. 61 of 2000, as partially amended by the Biagi Reform.

According to the law, part-time agreements must be in writing and must exactly specify the working hours and duties to which the employee is assigned.

There are 2 forms of part-time agreements, namely:

- horizontal part-time, in which the reduction of the working hours is referred to daily work (e.g. 4 hours per day instead 8 hours per day);
- vertical part-time, in which the reduction of hours is the result of less working days over a certain period of time.

CBAs may contain additional provisions, governing aspects such as:

- duties of part-time employees;
- maximum number of working hours;
- cases in which overtime or supplementary work may be requested.

With the employee's consent, working hours as set in the part-time agreement may be modified. It must be noted though that the employee's refusal to the change of working hours can neither be considered a breach of the agreement nor a reason for dismissal.

Part-time employees have the same rights and benefits as full-time employees, including salary, vacations and social security, proportional to their working hours.

Part-time employees have priority in the event the employer seeks to hire full-time employees, for the duties and employment category to which the part-time employees were assigned.

Other Terms of Employment

The Biagi Reform, with the intent to create more flexibility in the Italian labour market, provides for a new set of labour agreements, by tracing general regulations while leaving more detailed aspects to be addressed by the CBAs.

The most important new forms of employment, provided by the Biagi Reform, are:

Supply of Workmanship (*Somministrazione di lavoro*)

Supply of workmanship is a trilateral contract based on which an employee, hired and paid by an authorized work agency, performs his working activity for a third party, known as a user.

Supply of workmanship can be performed either for a definite or indefinite period of time.

Supply of workmanship for an indefinite term is permissible under the following circumstances:

- consulting and assistance in the software business, including design and maintenance of intranet and extranet networks, web sites, computerized systems, software development and data entry;
- cleaning and reception services;
- transportation of persons and logistic services, to and from a business site;
- management of libraries, parks, museums, archives, warehouses, purchasing offices;
- management consulting, certification activity, personnel management and development, research and selection of personnel;
- marketing, market analysis, sales organisation;
- call-enter management, start-up activities (in specific geographical areas);

- construction work within a factory site; installing or disassembly of machinery; for specific manufacturing activities, especially in the building industry and shipyard activities, where personnel with skills different from those of the employees usually employed are required;
- in other cases provided for by CBAs.

Instead, supply of workmanship for a fixed term is possible when "technical, productive, organizational or replacement reasons" occur.

This form of employment is prohibited:

- to replace employees on strike;
- unless collective agreements provide otherwise, in companies where: (a) collective dismissals have taken place within the previous 6 months, affecting similar job profiles; (b) where working hours have been reduced, with recourse to social shock absorbers;
- if the safety-at-work risk evaluation of the workplace, provided for by specific regulations, has not been carried out.

The relationship between the work agency and the employee is regulated by the same provisions governing employment respectively for an indefinite or fixed term. Employees hired on an indefinite term are entitled to an allowance during the time of non-work between two assignments with different users.

The activity of the work agency's employees takes place under the direction and supervision of the user, but disciplinary powers remains with the work agency.

Employees on assignment are not included in the user's organization headcount, except for occupational safety matters, and are entitled to terms and conditions of employment that, overall, are not lower than those applicable to employees of the same level of the user, performing equivalent duties.

The user is jointly and severally liable with the work agency for the payment of salary and social security contributions due to the employees.

Work by Objectives (*Lavoro a Progetto*)

This agreement may be entered into for self-employed work of a mainly personal nature, which must be based on one or more specific projects or work plans or

phases of a work plan, determined by the principal, and autonomously performed by the self-employed individual, irrespective of the time necessary to perform the working activity.

The provisions on work by objectives do not apply to: (a) occasional work, i.e. work not exceeding 30 days in one year, or work whose compensation does not exceed Euro 5,000.00 in one year; (b) registered professions, which require enrolment with a bar or professional association; (c) self-employed individuals of non-profit sport associations and companies; (d) members of the board of directors or other governing or supervising company boards; (e) retired individuals who are entitled to old age pension.

A work by objectives agreement terminates when the project or work plan, specified in the agreement, has been achieved or completed.

Work by objectives agreements that have been entered into without identifying a specific project or work plan are deemed to be subordinate employment agreements.

On call work (*Lavoro intermittente*)

On-call work is the agreement according to which an employee commits himself to be available to work for an employer, upon call. On-call work can be concluded for an indefinite period of time or for a fixed term.

On-call work is permitted in cases provided for in CBAs; or, where CBAs are silent on the issue, by specific regulations of the Ministry of Welfare. Unemployed individuals younger than 25 or older than 45, who are registered with unemployment lists, may also be hired through this form of contract.

On-call employees are entitled to an allowance for those periods during which they guarantee that they shall be available and shall respond to the employer's call; and are entitled to terms and conditions of employment that, overall and in proportion to their effective performance, are not lower than those applicable to other employees.

Job sharing (*Lavoro Ripartito*)

Job sharing is an agreement by which two employees jointly and severally undertake to perform the same employment obligation. Each employee is directly and personally liable to perform the entire work relationship. Resignation or dismissal of one employee causes the termination of the entire agreement.

Job sharing employees are entitled to terms and conditions of employment that, overall and in proportion to their effective performance, are not lower than the terms and conditions applicable to same level employees of the employer, performing equivalent duties.

Content of the Employment Agreement

Under the law, the following information must be given in writing to employees at the time of hiring or of any amendment of prior conditions:

(a) identity of the parties to the employment agreement;

(b) place of work; absent a fixed or prevailing place of work, an indication that the employee is employed in different places;

(c) starting date;

(d) the duration of the agreement and whether it is for a definite or indefinite term;

(e) the duration of probation, if provided for;

(f) classification, level and category of the employee or a summary description of duties;

(g) initial salary and relevant components, with a specification of the periods used as a basis for payment;

(h) the duration of paid holidays to which the employee is entitled and the modalities to determine and benefit of holidays;

(i) working hours;

(k) notice in case of termination.

Individual employment agreements must also contain provisions which are not less favourable to the employee than those contained in CBAs and shop agreements. In fact, Courts will unhesitatingly modify an individual employment agreement if its terms are less favourable than those in the CBAs.

Probationary Period

Employment agreements can be made subject to a probationary period, which must be executed in writing at the time of hiring.

During probation, either party is free to terminate the agreement. Thus, an employer may dismiss an employee without notice but severance compensation must be paid. If the employee continues to work after probation, he becomes hired permanently, and the probationary period must be taken into account when calculating seniority.

The length of the probationary period is usually fixed by the CBAs. For example, CBAs in the industrial and commercial business fields provide (subject to some exceptions) that probation cannot exceed the limits shown in the following schedule:

Industrial Business Field

Blue collar workers	12 working days
White collar Level I to V	3 months
White collar Levels VI and VII	6 months

Commercial Business Field

Quadri and level I	6 months
Levels II and III	60 working days
Levels IV and V	45 working days
Levels VI and VII	30 working days

For managers (*dirigenti*) in any business field, the probationary period cannot exceed 6 months.

Probation may also be provided for in part-time and fixed term agreements.

Categories of Employees

According to article 2095 of the Civil Code, there are four categories of employees:

- *dirigenti* (executive managers), qualified by the performance of managerial functions;
- *quadri* (middle managers) an intermediate category between *dirigenti* and *impiegati*, introduced by Law n. 190 of 1985;
- *impiegati* (white collars) qualified by the performance of technical administrative functions;
- *operai* (blue collars).

CBAs provide for different classes (*livelli*) of *impiegati* and *operai*, with different duties and salary levels. Other categories are provided for by specific CBAs, such as, for instance, *funzionari* and *intermedi*.

Apprenticeships

The Biagi Reform introduced new rules for apprenticeship, which in part must be integrated by other provisions, namely on the educational aspects of this form of employment, enacted at a local level by the various Regions of Italy. Apprenticeship agreements must be in writing and must contain an individual, educational plan, part of the working experience to be performed by the apprentice.

Employers are entitled under the law to pay apprentices a reduced salary, within certain limits, and are eligible for various forms of relief, including a reduction in social security contribution charges.

The Biagi Reform calls for three different types of apprenticeships:

Apprenticeship fulfilling the right/duty to education and training (*apprendistato per l'espletamento del diritto-dovere di istruzione*)

The purpose of this agreement is to enable an apprentice to obtain a professional qualification, by alternating work activity and study, in line with the recent mandatory schooling reform (Law n. 53 of 2003). This type of agreement may be executed for 3 years and is open to young people who are at least 15 years of age.

Apprenticeship leading to a qualification (*apprendistato professionalizzante*)

This agreement allows the apprentice to achieve a qualification both through job training and the acquisition of basic or technical – professional skills. Employers may use this agreement to hire young people from the age of 18 to age 29, in all business fields.

The particulars of this type of apprenticeship are set out by the CBAs, in view of the qualification that has to be achieved by the apprentice. At any rate, the duration must be at least 2 years and cannot exceed 6 years.

Apprenticeships leading to a diploma or complementing a higher educational program (*apprendistato per l'acquisizione di un diploma o per percorsi di alta formazione*)

Purpose of this agreement is to enable an apprentice to achieve an advanced level diploma or a university degree and is open to individuals from the age of 18 to age 29, in all business fields. The duration of this agreement will be set by Regional legislation.

Confidentiality & Restraints Against Competition

During employment, the employee may not disclose information concerning the organisation and production methods of his employer. As a matter of principle, professional know-how acquired by an employee through an employment relationship can be freely used in later jobs.

After termination of employment, the employee can use his experience, but must still keep confidential any trade and scientific secrets that he has acquired by him during his employment. This duty of confidentiality only applies to information which can be identified as secret, and not to knowledge which the employee might have learnt from a different source. In other words, experience can be used, whilst secret information cannot.

The unlawful disclosure of professional secrets or disclosure of scientific or industrial secrets are criminal offences punishable either by a fine or by imprisonment of up to two years.

Agreements aiming to restrict the use of acquired experience are normally valid, provided that they do not completely forbid the employee from using his qualities and experience in subsequent employment and that certain legal requirements are met.

Non-competition agreements are enforceable, but must be limited in their duration. They cannot exceed 5 years from termination of employment for managers (*dirigenti*), or 3 years for other employees. Their validity is subject to compliance with the following conditions:

- the agreement must be in writing;
- adequate compensation must be paid;
- the object, the duration and the geographic scope of the restriction must be specifically determined. The aim of this provision is to allow the parties to agree freely upon the restriction, but to avoid the possibility of an employee being prevented from using his professional capacities by an unreasonably restrictive clause.

Several Court decisions have stated that non-competition agreements are void, if they do not leave the employee with the possibility to apply for another job and/or, if the compensation for the restriction is not comparable with the suffered loss of earnings arising from it.

Solicitation of customers or employees and other post-employment covenants are also considered enforceable, provided that the agreement complies with the same formalities as non-competition clauses. However, if the former employee becomes a competitor and is guilty of solicitation of clients, customers or supplies of his ex-employer, he may be subject to sanctions for unfair competition, whenever the solicitation activity is performed by means of behaviour deemed "unlawful" or contrary to ordinary commercial practice.

4. Working Conditions

Working Hours

According to Legislative Decree n. 66 of 2003, normal working hours are set at 40 hours per week. CBAs may call for lower weekly hours or provide for a so-called multi-period time system, which enables an employer to exceed the 40 hour weekly limit, provided that the average number of hours worked over a period of time not exceeding one year, still equals 40 hours per week or the lower number called for in the CBA. In most business fields, weekly working hours are spread over a 5 day period (Monday to Friday).

In any case, the maximum number of working hours over a 7 day period may not exceed 48 hours, including overtime. This limit of 48 hours is calculated on an average basis, referring to a period not exceeding 4 months. CBAs may raise this timeframe up to 6 or 12 months, in case of objective or technical reasons. If the maximum number of working hours is exceeded, the employer must notify to the Labor Office.

It is important to notice that Legislative Decree n. 66 of 2003 does not contain a provision which specifically sets the maximum number of working hours per day. This limit may in any case be determined indirectly, in 13 hours per day, since the employee is entitled to 11 consecutive hours of rest every 24 hours.

There are employees to whom the limitations on the maximum number of working hours do not apply. Among these are:

- Executive managers and the highest level of white collars;
- employees performing functions having a non-continuous nature or mere caretaking/custodial duties.

Night work is also regulated; and, according to article 2108 of the Civil Code, it must be remunerated with higher salary than daytime work. The maximum duration of night-time work is set at 8 hours each 24 hours, calculated on average over a period of time indicated in the CBAs. In order to utilize night-time work, the employer must first carry out a consultation with union representatives within the company and, in certain cases, notify the local labour inspectorate.

Furthermore, certain categories of employees are exempt from the duty to perform night work, i.e.: (a) female employees with children under the age of 3; (b) male and female employees who are in charge of disabled individuals.

Working hours as fixed by the employer must be shown in a prominent location within the company's premises, so that access can be assured to all employees (usually they are shown in an appropriate showcase). The employer must indicate in the payroll, for each employee and each day, the number of worked hours, overtime, if any, and relative compensation.

Overtime

Overtime is the time worked in excess of normal working hours (as indicated above). In cases where CBAs provide for normal working hours at less than 40 hours per week, hours worked up to 40 hours are not deemed overtime but supplementary time and do not give right to overtime pay. For example, if the CBA calls for 37 hours per week, any hour worked from 37 to 40 hour per week is considered supplementary work and is not paid as overtime, whereas any time worked over 40 hours per week is paid as overtime.

According to the law, use of overtime must be "limited" and cannot exceed 250 hours per annum or the lower limit provided for in the CBAs. These limits may be exceeded only in exceptional cases.

Female employees are exempt from overtime work during pregnancy and until their child is one year of age.

Overtime must be paid separately and in an increased amount provided by CBAs. Alternatively or additionally, employers may benefit from compensative time off.

Salary

Salary payable to employees is made up of several items, as specified by the CBAs. In general, all amounts paid to the employee on a regular basis are considered part of salary.

The main items included in salary are:

- base salary;

- indemnity for cost-of-living increases (paid in an invariable fixed amount);
- periodic increases linked to seniority.

If paid on a regular basis, other items, such as commissions, production bonuses, indemnities or allowances, qualify as part of salary. These additional items may or may not be provided for by the CBAs. The distinction between items included and not included in salary is important for the purposes of determining: (a) which items must be accounted for in calculating the amount due as severance compensation; and (b) the taxable basis for social security charges and withholding taxes.

Minimum salary is determined by the applicable CBA and varies in accordance with the level and age of the employee. In practice, market salaries usually exceed the base salaries of the CBAs.

CBAs usually provide for 13th (Christmas bonus) and 14th monthly instalments, to be paid to employees in an amount equal to the monthly salary, at Christmas and on July 1 each year.

When employment is terminated at any time during the year, the employee is entitled to receive a *pro rata* share of such 13th and 14th month bonus.

According to article 37 of the Italian Constitution, a female employee is entitled to the same compensation as a male employee, provided that duties performed are identical or of equal value.

It is common practice on the employer's side to pay salary by means of bank cheques, cashier cheques or bank transfers. The employer must also deliver to the employee a payslip detailing all items included in the salary that is being paid.

Overtime, night work and work performed during holidays entitle the employee to additional remuneration, determined by the CBAs.

By way of example, in the commercial business field, increase in normal salary is as follows:

- 15% in case of overtime from the 41st hour up to the 48th hour per week and 20% over the 48th hour;
- 30% in case of work during holidays;
- 50% for night-time work.

Managers and the highest level white collars are not entitled to overtime compensation, as their salary is deemed to include it.

Holidays and Time Off

All employees are entitled to 1 paid day off per week, which is usually Sunday. It is mandatory to take one day off every 6 working days.

Banking holidays in Italy are: January 1; January 6; April 25; Easter Monday; May 1; June 2; August 15; November l; December 8; Christmas and Boxing Day (December 26);. In addition, the local Saint's day is considered a holiday by most CBAs.

Employees who work on holidays falling on a week day are entitled to additional compensation. Minors may not work on holidays. If work is performed on a Sunday, the employee is entitled to a compensatory day off.

According to Legislative Decree n. 66 of 2003, all employees are entitled to paid vacations, for at least 4 weeks per year. An employee cannot waive his right to paid vacations, nor can he opt to convert holidays into cash. No minimum seniority is required to be entitled to paid vacations. If the employee has worked less than 12 months, the length of paid vacations is pro-rated to the months actually worked.

Unless otherwise stated by CBAs, holidays must be taken for at least two consecutive weeks during the calendar year. The remaining two weeks may be taken during the following 18 months. Holidays fixed by CBAs, in excess of the 4 weeks provided by the law, may be taken even after the limit of 18 months from when they accrue or be converted into cash.

Paid vacations to which the employee is entitled to are calculated on the basis of the time actually worked, by also taking into account: absence due to illness or maternity, matrimonial leave, paid days off and probationary period, during which time right to paid vacations accrues.

Company Rules

Rules established by the employer with regard to work organisation in the company are not subject to any public authority's prior approval. However, the employer's discretion in establishing company rules is not unfettered, since the

work organisation must be consistent with the preservation of (a) health and safety of working conditions; and (b) employees' individual and collective rights.

Work Organisation

The employer has the responsibility and, within the frame of mandatory provisions of law, also the discretion of managing the work organisation, issuing directives to employees. Employees' personal and collective rights cannot be affected by the work organization implemented by the employer. The following, for example, would be deemed a violation of the employee's rights:

- moving an employee to a different location without serious reasons;
- downgrading an employee's duties and/or salary;
- requiring employees to work beyond the maximum working hours as established by the law;
- actions affecting employees' personal, political or union rights.

If employees refuse to comply with lawful employers' directives, they may be subject to disciplinary sanctions, provided that certain procedural requirements are complied with.

Disciplinary Sanctions

Employers may apply only those disciplinary sanctions expressly provided by the law. These sanctions are:

- oral warning;
- written warning;
- a fine, which cannot exceed four hours' pay;
- suspension of the employee for a period not exceeding 10 days;
- dismissal with notice;
- dismissal without notice.

The sanction applied must be consistent with the actual seriousness of the employee's misconduct. A disciplinary code, containing a description of breaches and related

sanctions, may be enacted by the employer and must be affixed within the company, in a way to enable employees to view its content, under the penalty of disciplinary sanctions being null and void.

In order to apply a disciplinary sanction, the employer must follow a specific procedure, the main steps of which are:

- the employer must inform the employee in writing of the misconduct he is alleged to have committed;
- the employee has the right to file a defence, either orally or in writing, within the term provided by the CBAs, in any event not less than 5 days;
- sanctions can be applied only once the term, granted to the employee for his defence, has lapsed;
- disciplinary proceedings must be commenced within a reasonable time from the moment when the employer becomes aware of the employee's misconduct;
- the application of disciplinary sanctions can be challenged either before the Labour Court or before a special Labour Arbitration Panel;
- the Labour Court/Arbitration Panel may: (a) confirm the sanction; (b) reduce it (if it is not consistent with the seriousness of the employee's misconduct); or (c) cancel the sanction (if the prescribed procedure has not been followed, or the misconduct with which the employee has been accused is not proved by the employer).

In any case, any conservative disciplinary sanction (i.e. all those mentioned above, with the exclusion of dismissal) cannot be taken into account after 2 years from when they have been applied.

Ensuring Safety

Under general provisions of the Civil Code, employers must implement all those measures which, based on the specific features of their activity, as well as based on experience and technology, are necessary in order to safeguard the physical integrity and moral personality of their employees.

Employees are entitled, also through their representatives (that may but need not be the works councils) to check compliance with all applicable laws in this field, and promote measures to safeguard their health and physical integrity.

In 1955, an initial body of more detailed provisions of law was enacted, which, as subsequently amended, still today provides a detailed regulation of many technical aspects concerning safety and hygiene on the workplace.

In 1994 a new statute was enacted (hereinafter the Law), implementing several European Union directives and setting forth both a general discipline of safety on the workplace, as well as providing some new and additional detailed technical regulations. A number of other statutes have, from time to time, been enacted, addressing specific issues.

The Law is applicable to the generality of employers and employees, with some exceptions; and purports to make employers responsible for the health and safety of employees in every aspect which directly or indirectly relates to their work or their presence at the workplace.

The Law also identifies who is to be considered as the legal representative of the employer for safety issues (especially within complex organizations) and to what extent he may delegate his functions in safety matters. General obligations and responsibilities of the employer, consisting namely in the evaluation of risks and implementation of prevention measures and procedures, to be illustrated in a specific safety evaluation report, are foreseen together with rights and obligations of employees and employees' representatives. In order to insure the actual implementation of safety regulations, the Law requires periodical meetings between the employer and those appointed to safety-at-work duties.

Processing of Employees Data

A specific body of laws (hereinafter the Privacy Law) regulates personal data protection in general and processing of personal data of employees.

The scope of the Privacy Law goes well beyond the one touched on in this booklet, and may affect companies in other aspects of their organization and daily activities (e.g. also in dealings with customers, suppliers etc.).

In very general terms, the Privacy Law applies to personal data, and concerns computerized as well as non computerized processing of data in Italy. Data are

all personal information concerning individuals, legal entities, identified or identifiable, also indirectly, through reference to any type of information, including code numbers.

A person or an entity intending to process personal data (the Processor) must notify this intent to a specific public Authority for personal data processing (the Authority) and obtain authorization.

The persons/entities whose data are being processed must be properly informed of a number of issues listed by the Privacy Law and their consent must be obtained, although some exceptions apply.

Strict limitations apply to the processing, communication and disclosure of certain data, defined as sensitive.

As a result of the enactment of the Privacy Law, employers should establish internal procedures to assure compliance with the Privacy Law, including: (a) the monitoring of safety of data processing; (b) the appointment of individuals in charge of certain tasks and definition of their duties; (c) procedures and forms to be used for the purpose of collecting and processing information and obtaining the employees' consent.

Sick Leave and Sick Pay

Employees who have successfully completed their probationary period cannot be dismissed if absent due to illness or accident, unless the absence exceeds 180 days within one calendar year (so-called *periodo di comporto*). This rule is dictated by CBAs applicable for the commercial business field, whereas other CBAs may dictate similar rules, but different duration of the grace period.

While on sick leave, the employee is entitled to receive a daily indemnity equal to his average daily pay. Such indemnity is paid partially by the employer and partially by the Italian social security institution, INPS.

It's important to note that:

- absence due to sickness is taken into account when calculating seniority;
- holidays, probationary period and notice period are suspended during sick leave;

- according to Legislative Decree n. 276 of 2003, an employee, affected by a cancer pathology, is entitled to convert his employment agreement from full-time to part-time.

Maternity Leave and Pay

The main law which regulates maternity leave is Legislative Decree n. 151 of 2000, the provisions of which apply both to subordinate employment relationships and self-employed individuals.

Two periods of maternity leave are provided for:

- mandatory leave: from 2 months preceding the expected date of delivery and to 3 months after the actual date of delivery;
- optional leave: for an additional 6 months after the end of mandatory leave.

Mandatory leave is taken into account when calculating seniority, whereas optional leave is not taken into account for the purpose of calculating entitlement to vacations, 13th and 14th month salaries and severance compensation.

Furthermore: (a) the initial term of mandatory leave may be anticipated in certain cases (for example, if the concerned employee has health problems or performs burdensome duties), as the final term may be postponed, up to a maximum of 7 months; (b) employees may decide to postpone the commencement of mandatory leave up to 1 month from the expected date of delivery (in order to benefit from 4 months of leave after birth), provided that authorization is obtained from a specialized doctor of the National Sanitary Unit (ASL).

Paternity rights are also provided for by Legislative Decree n. 151 of 2001. Both male and female employees may benefit from parental leave in the amount of 10 months for each child, to be taken within the first 8 years from birth. This leave is in addition to the mandatory leave mentioned above and may be taken on an ongoing or fractioned basis, with certain limitations provided for by the law.

During mandatory leave, the employee is entitled to 80% of salary, paid by INPS and anticipated by the employer. During optional leave, salary entitlement is 30%.

Employees are entitled to a number of rights and benefits, relating to maternity (and paternity), the most important of which are:

- female employees may not be dismissed during pregnancy or in the first year following delivery;
- in case of resignation in the first year following delivery, the employee's decision must be certified by the local Labour Office in order to be effective;
- upon returning to work following childbirth, a woman is entitled to the same duties she performed prior to maternity or to others that are equivalent;
- she must be permitted, throughout the child's first year, to interrupt her work twice a day (for 1 hour each time or for a continuous 2 hour period) in order to nurse her child; these hours are taken into account for the purposes of completion of the daily mandatory working hours, and must be regularly paid;
- when the child is under the age of 3, the employee may remain home whenever the child is ill;
- the employee may refuse to perform overtime or night-time work until her child has reached 1 year of age.

Social Security Contributions

Social security contribution rates vary according to the employee's employment level and the employer's business field. An example of the current rates are as follows:

Sectors	Categories of Employees	Total Rate %	Rate Charged to the Employee %
Industrial Companies employing up to 15 employees	Blue collars	39.77	8.89
	White collars	37.55	8.89
	Managers	35.39	8.89

Sectors	Categories of Employees	Total Rate %	Rate Charged to the Employee %
Industrial Companies employing more than 15 and up to 50 employees	Blue collars	40.97	9.19
	White collars	38.75	9.19
	Managers	35.69	8.89
Industrial Companies employing more than 50 employees	Blue collars	41.27	9.19
	White collars	39.05	9.19
	Managers	35.69	8.89
Commercial Companies employing up to 50employees	Blue collars	37.87	8.89
	White collars	40.69	8.89
	Managers	35.19	8.89
Commercial Companies employing more than 50 and up to 200 employees	Blue collars	39.07	9.19
	White collars	39.07	9.19
	Managers	35.49	8.89
Commercial Companies employing more than 200 employees	Blue collars	39.07	9.19
	White collars	39.07	9.19
	Managers	35.49	8.89

The above mentioned rates do not include social security contributions to be paid to I.N.A.I.L., a government agency that insures employees for accidents on the work place and professional sickness. I.N.A.I.L. rates are calculated with reference to salary and on the level of risk associated to the duties performed by the employee.

For industrial companies, the rate of I.N.A.I.L. contributions rang from 10% to 58%, whereas for commercial companies, the rate ranges from 13% to 160%.

5. Transfers of Business

The transfer of a business and the transfer of an undertaking are regulated by article 2112 of the Italian Civil Code, as subsequently amended due to the implementation of various EU directives and more recently also by the Biagi Reform.

Article 2112 of the Italian Civil Code provides that employment agreements with the transferor automatically continue with the transferee. Transferred employees maintain their seniority rights together with their existing terms and conditions of employment, if the transferee is not already bound by the provisions of the transferor's CBA. The transferee is jointly liable with the transferor for all employee claims existing at the time of transfer and related to the employment relationship. However, it should be noted that the liability of the transferee can be waived with the consent of the relevant Trade Union, either directly or by way of settlement signed before the Labour Office. Article 2112 does not apply to companies subject, at the time of transfer, to bankruptcy, controlled administration or similar proceedings. Those employees whose agreements do not continue with the transferee will have priority to any new jobs created by the transferee in the following year.

The law also specifies that a transfer of a business or an undertaking does not constitute a reason to terminate an employment agreement.

For the purposes of the law, a "business" is "an organized economic activity, with or without the aim of profit, which exited before the transfer and which keeps its own identity during the transfer"; whereas an "undertaking" is "a functional independent division of an organized economic activity, as identified by the transferor and transferee at the time of transfer". Usufruct or leases of businesses are also deemed to be the transfer of a business for the purposes of the Law.

The Biagi Reform introduced a new paragraph to article 2112, in which joint and several liability of the transferor and the transferee is expressly provided in the event that a contract (*contratto di appalto*) is executed with the transferred business or undertaking. In particular, the transferor and the transferee – respectively the principle and the contractor - are jointly and severally liable to pay salary and social security contributions due to the contractor's employee, within one year from the end of the contract.

A specific consultation procedure between the employer and the unions, as provided for by Law n. 428 of 1990 as subsequently amended, has to be carried out before the transfer, in the event the employer employs more than 15 employees. The unions must be notified of the intention to transfer at least 25 days prior to the execution of a binding agreement between the transferor and transferee; and, upon request of the unions, the transferor and transferee must start and take part in negotiations. The negotiations are considered concluded if no agreement is reached within the next 10 days.

Although mergers do not always technically constitute a transfer of a going concern, but simply a continuation of it, labour courts tend to give a wide interpretation of the law and have ruled that the notice to the unions is necessary also in case of mergers. Labour Courts can issue compliance orders to effect the above procedure.

Failure to comply with the consultation procedure mentioned above may constitute an anti-trade union behaviour, sanctioned by the Workers' Charter.

6. Sex Discrimination

Equal Rights and Treatment

Italian laws dealing with equal rights and treatment, i.e., Law n. 903 of 1977 and Law n. 125 of 1991, prohibit all types of discrimination based on a person's sex or marital status or pregnancy in respect of appointments, transfers, promotion, dismissal or other less favourable treatment. The laws apply to all types of businesses and at all levels within an organisation. They also apply to issues such as compulsory retirement ages, the right of both men and women to have time off work when their children under 3 years of age are sick, and equal family allowances are paid to husbands or wives.

Italy has also implemented all relevant EU legislation on discrimination, including: (a) Directive 2000/43/CE, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; (b) Directive 2000/78/CE, establishing a general framework for equal treatment in employment and occupation; (c) Directive 2002/73/CE, implementing the principle of equal treatment for men and women in the field of employment, professional training, and work conditions; (d) Directive 2004/113/CE, implementing the principle of equal treatment for men and women in the access to and the supply of good and services.

For example, relevant statutory provisions consider discrimination:

- refusing to offer employment for sex-related reasons;
- refusing to employ a woman on the grounds that duties involve heavy lifting, where there is no CBA permitting such discrimination;
- prohibition to require a woman to undergo a pregnancy test before employing her;
- dismissing a woman on grounds of her pregnancy;
- not taking into account maternity leave when calculating seniority;
- granting different employment levels for men and women doing substantially the same work;
- not recognizing paternity rights.

Italian laws also prohibit sex discrimination on an indirect basis – e.g. by the choice of selection criteria or discriminatory arrangements for deciding who should be offered a job. However, an employer can resist an indirect discrimination claim if it can be shown that the criteria or arrangements are justified for non-sex reasons. There are certain exceptions provided for in the law. It is interesting to note that the Italian courts have drawn a distinction between the selection procedures and discrimination at the time of hiring. In the former case, the courts have normally ordered the employer to refrain from discriminating so that all applicants have the same chance of being selected for the job in question. In the latter type of case, the courts have tended (wherever possible) to order the employer to employ the person discriminated against.

Whenever the non-discrimination rules have been violated, the employee or the trade union are entitled to request the local courts to order the employer to cease the discrimination and remove its effects. The court order is automatically provided with a levy for enforcement which cannot be revoked until the court has issued its final decision on the matter. If the employer persists with the discriminatory behaviour in breach of the court's order, there is the possibility of criminal sanctions, fines or even imprisonment.

There is no maximum to the compensation that the court can award to the employee who has suffered from sex discrimination. However, he/she must prove damages suffered in accordance with normal principles of evidence applicable under Italian law.

Equal Pay

Italian law provides that women are entitled to the same compensation as men if they perform the same job.

This principle of equal pay is also enforceable through Article 137 of the Treaty of Rome (which is directly binding in Italy), the Equal Pay Directive (which Italian courts have held is directly enforceable in Italy), and ILO Convention No. 100 which is enforced in Italy. The concept of equal value is not expressly defined, but most courts and legal commentators take the view that it relates to professional and job skills, and not to their economic profitability. Where employers seek to classify or evaluate jobs, they must not choose criteria for doing so which are unique to men or women. Even where such criteria are not chosen, employers must not apply criteria in such a way that they indirectly discriminate against women.

If an employee's agreement has infringed the equal pay principle, the relevant part of the agreement is considered null and void, with the application of minimum salary as provided for in the CBA. In addition, the employee may be entitled to be paid compensation in respect of the pay differential in question for a period back to the date when the discrimination first occurred. There is no maximum on back-pay. In addition, the Court can award further compensation in respect of damage suffered by the employee, if such damage can be proven.

7. Mandatory Placement of Disabled Employees

According to Law n. 68 of 1999, which reformed provisions governing mandatory placement, any employer who employs more than 15 employees must hire a certain number of disabled individuals, as following:

- 1 employee with headcount from 15 to 35;
- 2 employees with headcount from 36 to 50;
- At least 7 % of workforce, with headcount of more than 50 employees.

According to the law, disability concerns:

- individuals whose working capabilities are reduced by more than 45 % as a consequence of physical or mental handicaps;

- individuals whose working capabilities are reduced by more than 33% as a result of an accident at work;
- individuals with serious physical disabilities;
- individuals disabled in war or service.

Employers who fall under mandatory placement rules must file a periodical prospectus to the labour authorities, detailing disabled workforce in charge. At certain conditions, employers may execute special agreements with the labour authorities, exempting them from all or part of their obligation to hire disabled individuals. Economic relief may also be obtained, for example a reduction in social security contributions. Failure to comply with mandatory placement provisions may be fined.

In order to promote more work opportunities for the disabled, the Biagi Reform has established the possibility to create special cooperatives, further to an agreement between labour authorities and employers' and employees' unions.

8. Termination of the Agreement

Introduction

As a general rule, termination of an employment relationship for indefinite duration is subject to notice by the employer (in case of dismissal) or by the employee (in case of resignation). In either case the employee is entitled to severance compensation.

The length of the notice periods is governed by applicable CBAs and generally varies within a range of 15 days to 12 months, in accordance with the employee's length of service and employment level. The amount of severance compensation also varies in accordance with the same factors. The notice period starts to run either the first or the sixteenth day of each month.

An employer or an employee may elect to terminate the contract without prior notice, but in this case he must pay to the other party an indemnity equivalent to the salary otherwise payable during the period of notice. In such a case the contract is deemed to remain in existence during the notice period, even though the employee has been allowed/required to leave prior to expiration of the notice period.

Gardening leave, which occurs when an employer requests an employee not to attend work but continues to pay him, is not specifically regulated under Italian law. Certain labour courts have ruled that such a leave is actually against principles of Italian labour law, as it may jeopardize the employee's professionalism, if done without a reason. An employer can instead always waive an employee's obligation to perform work during the notice period, although he is still under a duty to continue to pay the employee.

Dismissal

The rules of the Civil Code covering dismissal are today, in practice, replaced by Law n. 604 of 1966, by the Workers' Charter entered into force in 1970, by Law n. 108 of 1990 and, more recently, by Law n. 223 of 1991.

Dismissals made on the basis of political creed or religious belief, membership to a labour union, or participation in union activities, including strikes, are always void.

Summarised below are the different cases of dismissal:

- individual dismissal without need of showing just cause (*giusta causa*) or justified reason (*giustificato motivo*);
- individual dismissal for just cause (*giusta causa*);
- individual dismissal for a justified reason (*giustificato motivo*);
- collective dismissal.

Individual dismissal without need of showing just cause (*giusta causa*) or justified reason (*giustificato motivo*).

This type of dismissal, governed by the Civil Code, is applicable only to: (a) employees who qualify for old-age pensions or who are over 65 years of age who opted to continue to keep on working; (b) employees during probationary period; (c) executive managers (*dirigenti*).

Individual dismissal for just cause (*giusta causa*)

The employee is dismissed with *giusta causa* where his misconduct "makes the prosecution of the employment relationship impossible". Examples of *giusta causa* are theft, riot and serious insubordination. In these cases, an employee may be

dismissed without notice and without any indemnity in lieu of notice. However, pursuant to a strict interpretation of section 7 of the Workers' Charter, a disciplinary procedure must be followed before the dismissal. In any event the employee must receive severance compensation (*T.F.R.*).

Individual dismissal for a justified reason (*giustificato motivo*)

Giustificato motivo for dismissal is, according to Law n. 604 of 1966, either a serious breach of the contract by the employee, or any objective reason relating to the company's organisational requirements.

A serious breach of the employee's duties has been found by the courts in case of: (a) failure to follow material management directions; (b) material damage to machinery and equipment; (c) execution within the factory premises of work for the employee's benefit or for the benefit of third parties; (d) unjustified and repeated absences; (e) repeated absences on days subsequent to holidays or vacation; (f) imprisonment, (g) repeated sickness which frustrates the correspondence between work performed and salary paid.

While objectives reasons may be qualified, by way of example, as the following: (a) new equipment which requires different specialisation or a lesser number of workers; (b) closing of branches or product lines which make it impossible to use redundant personnel for other duties.

In these cases, the employee is entitled to receive notice and severance compensation upon termination. An employer's failure to show just cause or justified reason will render the notice of dismissal null and void.

The employee can challenge the grounds for dismissal within 60 days of the date he received notice of the reasons for discharge. The employee may do this in one of the following ways:

- he may file an action before Labour Courts, after preliminarily attempting to settle the controversy through a specific procedure in front of a conciliation board at the local Labour Provincial Office;
- he may file a challenge under any applicable CBA procedures.

The employee is entitled to the protection provided by Law n. 604 of 1966, the Workers' Charter and Law n. 108 of 1990, when it is found that no just cause or justified reason existed for his discharge. The type of protection depends on the employer's headcount, as follows:

Real guarantee of employment

This protection is available when the employer employs more than 15 employees in the territorial area or, in any event, more than 60 employees. Under article 18 of the Workers' Charter, an employee discharged without just cause or justified reason is entitled: (a) to reinstatement, and (b) to receive compensation for improper dismissal equal to any wages or benefit lost from the date of dismissal to the date of reinstatement and, in any case, no less than five months' salary. In lieu of reinstatement and at the employee's option, within 30 days from the date of the judgment declaring the improper dismissal, he may request the payment of additional compensation equal to fifteen months' salary.

The employee who does not return to work within 30 days from the date the employer notifies the employee he may return to work, or who does not require the additional compensation in lieu of the reinstatement, may be dismissed by the employer.

Obligatory guarantee of employment

This protection, provided for by Law n. 604 of 1966, is available when the employer employs up to 15 employees and in any other case (except for those cases mentioned above in which the rules of the Civil Code are applicable) in which the real guarantee of employment is not applicable.

In these cases, following a court's decision stating that the dismissal is not based on a just cause or justified reason, the employee is entitled: (a) to being rehired; or (b) to receive an indemnity ranging from 2.5 to 6 months salary. The exact number of months of salary is determined by the court taking into consideration such factors as the size of the enterprise, the employee's seniority. The maximum indemnity can be increased in particular circumstances.

Collective Dismissal

The general provisions concerning collective dismissals are to be found in Law n. 223 of 1991, as recently amended by Legislative Decree n. 110 of 2004.

Collective dismissal is defined by the law as occurring when an undertaking, which consistently employs more than 15 individuals, dismisses at least 5 employees working in one or more production units in a period of 120 days as a result of "a reduction or a transformation of activity or type of work". Provisions on collective dismissals also apply to undertakings ceasing activity.

Law n. 223 of 1991 requires an employer, intending to carry out a collective reduction of personnel, to initially to consult with labour unions and shop workers committees, by notifying them with information concerning the number, position and professional skills of redundant employees and the time schedule for implementation of the dismissals, as well as the technical, organisational and production reasons justifying the dismissals and the possible means of reducing any negative social impact. In certain cases, upon commencing the consultation procedure mentioned above, the employer must also pay to the Italian Social Security Institution INPS, an amount equal to 1 month's unemployment benefit (*indennità di mobilità*) for each redundant employee.

Within 7 days from receipt of such notification of dismissals, unions are entitled to start a consulting procedure with the employer in order to examine the reasons leading to dismissal and to find any possible alternative solution to avoid redundancies (for example, by evaluating the possibility of using personnel for different tasks and positions). This procedure cannot last more than 45 days.

The employer or the unions must then give the Provincial Labour Office written communication of the result of the consulting procedure and, eventually, the reasons which led to a negative outcome.

In the event an agreement is not reached, the Chairman of the Provincial Labour Office calls the parties together a second time in order to examine the redundancies and attempt to reach an agreement. This second phase of the process must be completed within 30 days.

Only when an agreement is reached or at the end of the consultation procedure described above, may the employer proceed with dismissal, by providing the

concerned employees with written notice. The employer must also send a detailed list of the dismissed employees to the Provincial Labour Office, specifying each employee's name, place of residence, qualifications, position in company, age, family status, as well as the criteria adopted in selecting redundancies, i.e.: (a) family conditions; (b) seniority; and (c) technical and production requirements.

Dismissed employees have the right to be rehired when the employer hires new employees, for the same duties, within a calendar year of their dismissal.

Resignation

An employee who wishes to terminate a contract for an indefinite duration must give notice to his employer. The notice required varies according to length of service and category of the employee.

An employee may also terminate the contract without prior notice, but in this case he must pay the employer an indemnity in-lieu-of notice. However, if resignation is due to a just cause (*giusta causa*), no notice is due by the employee who will still be entitled to the related indemnity.

Severance Compensation (*T.F.R. – Trattamento di fine rapporto*)

Severance compensation is calculated on the basis of the employee's salary, by computing not only base salary, but also any other compensation periodically paid to him – e.g. commissions, regular bonuses, thirteenth and fourteenth monthly salary etc. (but excluding what is paid by way of reimbursement of expenses or one-time payments). In particular, salary includes the equivalent amount of all fringe benefits granted to employees.

According to Law n. 297 of 1982, severance compensation is equal to the amount resulting from adding up, for each year of service, the salary paid during such years, divided by 13.5. During each year of service, the portion of accrued severance compensation is set aside by the employer on the books and, on December 31 of each year, it is revaluated at a fixed rate of 1.5%, plus 75% of the cost of living index variation, registered each year.

9. Employee Representatives

Employees have a constitutional right to organise themselves into unions (Constitution, Arts 39, 40). The Workers' Charter also contains provisions on union rights and specifically introduced works councils, known as RSA (*Rappresentanze Sindacali Aziendali*). Various forms of industrial democracy are specifically provided for in the Workers' Charter, such as workers' meetings and referendum, union information, union contributions and availability of premises for union activity.

RSA - RSU

RSA are meant to represent employees in their relationships with employers in enterprises having more than 15 employees. RSA are the workplace representatives of unions in the productive units, with the purpose of organising the unions' force and preventing unfounded claims spread among the employees.

RSA may be set up by employees affiliated either (a) to those unions with the largest representation, or (b) to those signatory of CBA applied in the productive unit. Members of RSA cannot be moved to another plant unless the union agrees, and can have paid time off not less than 8 hours per month, plus an unpaid extra 8 days a year, for participation in drafting CBA or unions' conventions. The above permits must be granted to at least one member of each RSA set up in enterprises employing more than 200 employees.

RSA are entitled to be given a proper place for their meetings, located inside the plant or nearby, as well as a notice-board whereby they may inform, through press releases or any other means, employees of matters of labour and union concern. Except as otherwise provided by the CBA, RSA may convene employees' meetings even during working hours, within the limit of 10 hours a year, for which the salary is guaranteed, provided the agenda is related to union or labour matters. RSA may also raise a referendum related to the above matters, to which all the employees belonging to the concerned plant or category are entitled to participate.

Alternatively to RSA, employees' representatives may constitute within the Company another form of works council, known as RSU (*Rappresentanze Sindacali Unitarie*). RSU representatives are elected directly by all employees for a period not less than tree years. The establishment of an RSU (where all unions participating in

an election are represented) entails the waiver of the participating unions to their statutory right to form an RSA (and if an RSA already exists, the RSU will take its place). RSU have substantially the same union rights as a RSA, mentioned above.

RSA and RSU may consist of a variable number of members, depending on the total number of workers employed by the company or in the relevant working unit (as a general rule, at least one member of RSA or three members of RSU for companies/working units with 200 workers or less). Workshop agreements may provide for a larger number of representatives to be appointed.

European Work Councils

The EU Directive 94/45/CE on European work councils was implemented in Italy with Legislative Decree n. 74 of 2002. The mentioned EU directive is also the object of an agreement, entered into on November 6, 1996, between the employers' associations of the major industrial, banking and financial companies and the Unions, known as *Accordo Interconfederale per il recepimento della Direttiva*, which dictates rules applicable to all companies registered with the association subscribing the agreement.

These provisions apply to:

- companies which employ at least 1000 employees within the European Union and 50 employees in at least 2 EU member states;
- company groups having the following characteristics: (a) headcount of 1000 employees; (b) at least 2 companies located in different EU member states; (c) at least 1 company of the group employing 150 employees in 1 EU member state and another company with 150 employee headcount in a different EU member state.

The provisions call for a detailed consultation procedure, to be carried out between employers and union representatives, for the purpose of constituting and defining the role of European works councils, together with the implementation of other procedures within the company or group, for the purpose of informing and consulting with employees on issues falling within the area of competence of these works councils.

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