



Maltese Italian
Chamber of Commerce
Chamber of Commerce recognised by the Italian Government pursuant to Act number 518 dated 1 July 1979

Di Giovanni & Partners
professionisti nella consulenza per passione

How to set up a limited liability company without a notary In Italy

a guide to the formation of an innovative company



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NOTARY

A notary, or notaio, in Italy is a public officer, appointed by the state and whose role is to authenticate and attest acts. The notary works within the law, with families and businesses to create appropriate legal solutions that satisfy both the law and the aims of both parties, thus discouraging any future litigation.



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he certifies the identity of the subjects
who are part of constituting the
company

he verifies the conformity to the rules
governing the life of the company (the
constitutive and social statute) to the rules
of law

Starting from 2000, with the abolition of the judicial approval procedure, the notary has remained the only professional to whom one can refer for the establishment of a company: the notary's intervention is not limited to the drafting of documents, but after their conclusion, the notary takes care of a whole series of formal obligations - essentially deposits at the Chamber of Commerce - to allow the new company to be registered in the Business Registry.

The computerization of the communication processes with the Chambers of Commerce has greatly reduced the bureaucratic process for the achievement of the registration in the Business Registry, while the role of the notary remains indispensable.

This can lead to a slowdown in the establishment phase of a new company and certainly represents an important cost that a new company can struggle to support.

In this scenario there are some legislative interventions through which it has been possible to manage acts of the life of the companies without the intervention of the notary.

NOTARY



the shares of a limited liability company can be transferred without the presence of a notary, using the digital signature
(art. 36 § 1-bis of the Decree-Law n. 112/2008)



the deed of incorporation of an innovative start-up can be created or modified by deed signed with a digital signature, in accordance with the standardized model, adopted by decree of the Ministry of Economic Development
(art. 4, § 10-bis, of the Decree-Law 3/2015)



This possibility is only permitted for the "**innovative limited liability company**" also known as "**innovative start up**", a new company form introduced by the Decree Law of 13 May 2011, no. 70

This company is a real limited liability company and what defines it is the fact that for **its innovative social object and high technological value**, **it is registered in the special section of the Business Registry dedicated to innovative startups.**



The registration in the special section of the Business Registry makes it possible for this type of company to receive **particular benefits: the best known benefit is the possibility to carry out the procedure of setting up the company directly online and without a notary**, by connecting with the business register of the place in which the company is established.

The only requirement is that each member has a digital signature

digital signature is an electronic signature device that allows, through a system of verification of public and private binary keys, the unambiguous identification of the subject to whom the "signature" is issued.



In addition to the necessity of an innovative and high value technological social object, the company must comply with other requirements, **some even after his constitution.**

Among the various advantages the establishment of an innovative Co. Ltd receives, in addition to the possibility of completing the process of setting up online, there are **tax deductions for investors** (also as founding members) **and other facilities**



The corporate object - which describes the activities that the company plans to carry out - in the case of innovative startups, **must consist in the deed of incorporation in particular in the**

development

production

marketing

of innovative products or services
with high technological value

The Ministry of Economic Development (MiSE) has developed guidelines for the drafting of the corporate object according to which the company's main activity could be described as follows

"The company's object is the development, production and marketing of innovative products or services of high technological value, and more specifically: mainly the development, production and marketing of an innovative [good or service] of ... [follows the description of the good / service developed, product and marketed by the company]. This [good / service] is innovative because ... [follows the description of the innovative character of the good / service or the innovative method through which it is developed, produced and marketed], and is of high technological value because ... [follows the description of the technology on which the good / service is based] "

In addition the company can carry out secondary activities in the field of innovation and technology, like

- 📌 development, production and marketing
 - of online platforms, mobile applications or other web tools in general;
 - of hardware and software solutions;
 - of ICT devices in general;
 - of SEO solutions and services for the development, positioning and promotion of websites and mobile applications;
 - of hardware and solutions software in the areas of ICT, Internet of Things (IoT) and robotics;
 - of IT and telematic services;
 - services based on the logic of the "sharing economy" (or sharing economy), also using hardware and software devices;
 - of VoIP applications; software with use of

In addition the company can carry out secondary activities in the field of innovation and technology, like

- 📌 collection, processing, publication and sale of information relating to user activity and behavior;
- 📌 organization and management of conferences, meetings, congresses and fairs;
- 📌 technical assistance, consultancy and training with respect to the aforementioned products and services.

The company may also carry out **activities other than those typical of startups, but in this case the prevalence ratio in favor of the corporate object must be clearly highlighted typical of a startup.**

For this reason, activities that are subject to specific regulation cannot be described and added, as secondary activities, on the basis of which the law prescribes that they must also be activities carried out primarily, exclusively or prevalently

MAIN CHARACTERISTICS

all the joint-stock companies (also in the form of a cooperative) known by Italian law **can obtain the status of innovative startup**: it follows that partnerships cannot obtain the status of innovative startup.

Anyone can create an innovative Co. Ltd, provided that he has reached the age of majority.

The company may have a **single member** (and in this case it will be unipersonal) **or two or more persons may be part of the corporate structure**, both natural persons and legal entities (or another company), **also foreign and non-resident in Italy**

the company must comply with these additional requirements:

- ☒ it must have its business and interests in Italy or in one of the member states of the European Union or in States that are party to the Agreement on the European Economic Area, provided they have a production site or a branch in Italy;
- ☒ must not have distributed profits and, in the case of new constitution, it cannot distribute it for 4 years;
- ☒ starting from the second year, it cannot have an annual production value of more than 5 million euros; be established starting from an extraordinary demerger or merger transaction, or deriving from a sale of a company or business unit;
- ☒ must have exclusive or prevalent corporate purpose, development, production and marketing of innovative high-tech products or services.

In addition to the joint ownership of all the requirements mentioned above, **the innovative startup must have one of the following additional requirements:**

- ☒ expenses in research and development must be equal to or higher than 15 per cent of the highest value between cost and total value of production. This requirement is shown by producing a provisional budget document that must be confirmed at the time of filing the financial statements at the end of the economic year;
- ☒ must employ as employees or collaborators in any capacity, in a percentage equal to or greater than the third of the total workforce, of personnel holding a research doctorate or who is conducting a research doctorate at an Italian or foreign university, or in holding a degree and having carried out, for at least three years, certified research activities at public or private research institutes, in Italy or abroad or, in a percentage equal to or greater than two thirds of the total workforce, of personnel in possession of graduate degree;
- ☒ must have at least one industrial property right for an industrial, biotechnological invention, a topography of a semiconductor product or a new plant variety or rights related to an original computer program registered in the special public register for computer programs. These privatives must be directly related to the corporate purpose and business activity

The innovative Co. Ltd **must also periodically demonstrate that it retains the requirements:** in fact, to maintain the status of innovative startup it is necessary that every 6 months (and however, within 30 days from the filing of the financial statements at the end of the financial year) the company sends a communication to maintain the status of innovative startup to the Chamber of Commerce by completing the Declaration document for the possession of the requirements of innovative startup.

The registration to the special section of innovative startups has a maximum duration of 5 years from the date of incorporation. At the end of this period, the company automatically loses the status of innovative startup and is subjected to the discipline of ordinary companies.

The loss of one or more of the requirements listed above, however, involves the immediate decay of the status of innovative startup.

Failure to send the Notice of Maintenance requirements for innovative startup within 30 days of approval of the financial statements and in any case by June 30 of each year will result in the loss of status.

Why to choose an innovative Co Ltd

the right to extend the period of c.d. "postponement" of the losses (from the end of the financial year following the end of the second following year) and, in cases of reduction below the legal minimum, to allow the recapitalization decision to be postponed until the end of the following year

the right to use institutions admitted only to the Public Limited Company, in particular the free determination of the rights attributed to the shareholders, through the creation of categories of units also without voting rights or with voting rights not proportional to the shareholding, or the issue of participative financial instruments

the right to offer the public shares in innovative startups set up in the form of CO. LTD, making it easier to access the capital regardless of the chosen legal form

the right to waive the absolute prohibition of transactions on its shareholdings if the operation carried out in implementation of incentive plans that provide for the assignment of financial instruments to employees, collaborators, members of the administrative body or providers of works, including professional services (stock options and work for equity)

the **only disadvantage** associated with the establishment of the innovative CO. LTD is **the inability to distribute profits for 5 years**: if this happens, the company leaves the special register and, from the following year, will no longer be able to enjoy the advantages indicated above

the simplified Co. LTD

In the Italian regulatory landscape, there is another corporate structure that, though presenting the characteristics of the limited liability company, **presents some elements of differentiation.**

Since 2012 the **simplified CO. LTD** has been introduced (also known as CO. LTDS): this is a new type of limited liability company introduced by art. 2463-bis of the Civil Code, for the establishment of a minimum capital of 1 euro and maximum of 9,999.99 euros that must be paid to the administrator of the company that issues receipts.

The deed of incorporation is drawn up by a notary, without the need for fees if the standard model prepared by the Ministry of Economic Development is used.

Only natural persons and non-juridical persons can be members, while the administration can be entrusted to a single member or to several persons, even if they are not members



	CO. LTDS	STANDARD CO. LTD formed by a notary	INNOVATIVE CO. LTD
special requirements	no one	no one	entry in the Innovative Startup Registry
minimum share capital	1 euro contribution just in cash	10.000 euro contribution in cash, goods or services	1 euro contribution in cash, goods or services
maximum share capital	9.999 euro	no limits	no limits
suitability of the shareholders	only individuals	both individuals and legal entities	both individuals and legal entities
method of constitution of the company and amending acts	deed	deed	telematic procedure without a notary



EXPENSES	CO. LTDS	STANDARD CO. LTD formed by a notary	INNOVATIVE CO. LTD
fee for notary deed	there is no fee for the notary	1300 - 2000 euro	there is no fee for the notary
Chamber charges	130-150 euro	130-150 euro	130-150 euro
registration fee	200 euro	200 euro	200 euro
expenses for stamps	there in no need to affix stamps	16 euro each 100 lines of deed	there in no need to affix stamps
approval company books	360 euro	360 euro	360 euro



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