

How to set up in Italy

MIFID Firm

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up in Italy.

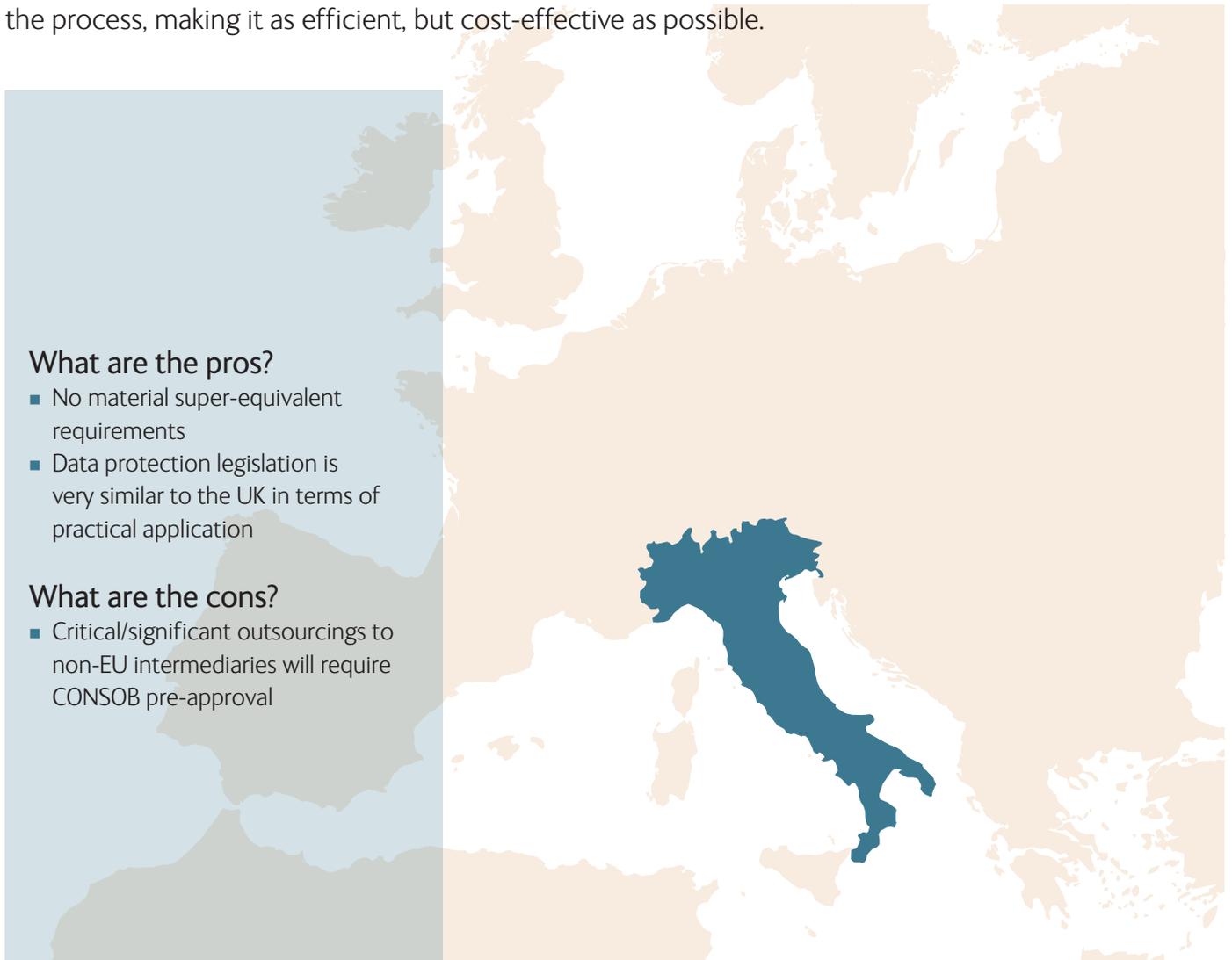
Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- No material super-equivalent requirements
- Data protection legislation is very similar to the UK in terms of practical application

What are the cons?

- Critical/significant outsourcings to non-EU intermediaries will require CONSOB pre-approval



Subsidiary (MiFID Investment Firm)

Licence/Passport Process

- Information on the application process is available here: [CONSOB Regulation No. 16190/2007](#) (CONSOB Regulation)
- The process is iterative and involves submission of an application form providing the information listed under Article 7 of CONSOB Regulation plus numerous supporting documents to the [Commissione Nazionale per le Società e la Borsa](#) (“CONSOB”) for review
- A pre-submission meeting with CONSOB is required (and is recommended in any event)
- Timetable is around 9-12 months (including preparation time)
- Ongoing contribution fees apply.
- CONSOB does not allow any outsourcing that would involve the delegation of functions to the extent that would be considered to undermine the conditions with which the investment firm must comply in order to be and remain authorised

Conduct of business Prudential rules

- Italian requirements will apply – based on MiFID (copy-out)
- CRR/CRD IV requirements will apply
- No material super-equivalent requirements albeit certain derogations have been exercised (as in all Member States).

Corporate governance

- Systems and controls requirements are based on CRD IV/MiFID requirements
- “Mind and management” will have to be located in Italy, such that day-to-day decision making and key risk functions are located in Italy. (For subsidiaries of international groups, CONSOB appreciates that direction can be set at group level and that employees/management can have dotted line reporting lines outside the legal entity.)
- Integrity, professionalism and independence requirements provided by the Ministry of the Economy and Finance apply to managers, directors and auditors. Integrity requirements provided by the Ministry of the Economy and Finance apply to holders of at least 10% of the firm’s share capital or of the voting rights
- Minimum three directors – a majority of them should be non-executive directors (likely with at least two independent non-executive directors)
- No other specific quantitative requirements, although in practice all executive directors will need to be domiciled in Italy
- All board meetings must take place in Italy
- Executive directors should be Italian speakers.

Regulatory environment

- CONSOB is relatively open to discussion on key issues (albeit cautious/conservative) – regulatory approach is “risk based” such that the most intensive/intrusive regulation is focused on high-risk firms.

Subsidiary (MiFID Investment Firm)

Tax

- 27.5% (24% from 2017) corporate tax rate and 3.9% (4.65% for companies operating in the financial sector) regional tax on productive activities apply
- Dividends paid to non-resident company generally are subject to 26% final withholding tax (with a potential refund of the foreign tax paid on the dividend up to 11/26ths of the Italian withholding tax) unless the rate is reduced under a tax treaty or the dividends qualify for an exemption under the EU Parent-Subsidiary Directive. A domestic final withholding tax of 1.375% (1.20% from 2017) applies to dividends distributed to shareholders resident in EU or EEA countries
- Transfer pricing rules and shell companies regime may apply
- The personal income tax is progressive, rising to a top rate of 43% for income exceeding €75,000, plus local surcharges
- See also a [comparative table](#) of the main taxes and reliefs relevant to setting up a financial services business.

Employment law

- CRD IV remuneration requirements apply
- Notice in case of dismissal – from 15 days to 12 months depending on level and length of service
- Unfair dismissals risk – progressive employment protection depending on length of service. There must be substantial grounds justifying the dismissal, ie performance, conduct, redundancy and the correct process must be followed. If an employee is unfairly dismissed he/she may seek compensation, reinstatement or reengagement. The maximum award of compensation is two years total remuneration package.

Data protection

- Italian Legislation is based on EU directives and regime is very similar to the UK in terms of practical application. The opt-in regime is generally provided.

Outsourcing

- Many Italian financial institutions have outsourcing arrangements
- Information on critical/significant outsourcings should be made available to CONSOB upon request. CONSOB pre-approval and cooperation agreements between supervisory authorities are required for outsourcings of portfolio management services to non-EU intermediaries
- Appropriate oversight will be required per MiFID requirements (including regular audits/reviews and information on the outsourced activities, plus detailed outsourcing agreement)
- Firm remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing.

Corporate

- Firm should be incorporated as a joint stock company
- Capital minimum requirements will apply
- Board of auditors and external auditors must be appointed
- No major issues to flag.

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