

# The Role of the Notary in Corporate and Commercial Transactions (Italy)

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Practice notes | **Maintained** | Italy

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A Practice Note on the role, duties and liabilities of an Italian notary. The Note further addresses the form of notarial deeds with an explanation of when notarisation and legalisation (or apostillisation) is required, the signature block for authenticated private instruments, costs of a notary and e-notarisation.

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The remit of the role of notary is extremely broad. Notaries are involved in the most important transactions in Italy including the following:

- Real estate transactions (including the sale and purchase of real estate properties and the set-up of mortgages).
- Commercial and corporate transactions (such as, the incorporation of public limited companies (*società per azioni* (SPA)) and private limited companies (*società a responsabilità limitata* (SRL)) (see [Practice Notes, Main Characteristics of an SRL and SRLS \(Italy\): Main Characteristics of a Società a Responsabilità Limitata \(SRL\)](#) and [Main Characteristics of an SPA and SAPA \(Italy\): Main Characteristics of an SPA](#), the transfer of shares of an SPA and quotas of an SRL (see [Practice Note, Key Documents for Acquiring a Private Company \(Italy\): Closing \(or Completion\)](#)), deeds of merger, de-merger and conversion, amendments to the articles of association of an SPA or an SRL).
- Inheritance law (such as making a will, bequests under such wills).

This Practice Note explains the role of the notary in Italy in the context of corporate and commercial transactions. It considers the role, responsibilities and obligations of the notary and the probative value of notarial deeds. The Note also addresses the costs incurred in working with a notary and the requirements for the use in Italy of public deeds notarised abroad.

## The Role of the Notary in Italy

[Law no 89/1913](#) (Notaries Act (*Legge Notarile*)) defines notaries as "public officers" (*pubblici ufficiali*), appointed to:

- Execute deeds or authenticate private instruments and last wills (*testamenti*).
- Give such deeds public trust (that is, the trust of deeds issued by a public authority empowered to issue or authenticate official documents).
- Store them to allow the issue of copies, certificates and excerpts over time.

Law no 89/1913 sets out a list of additional competencies attributed to notaries (such as, the competence to execute deeds of acceptance and waiver of inheritance) and includes a catch-all provision under which the notary has the powers attributed to them by any other Italian statute aside from Law no 89/1913 (such as drafting the minutes of general meetings of a public and a private limited company, recording in the Real Estate Registries preliminary agreements (*contratti preliminari*) relating to real estate and drafting of the European certificates of inheritance).

Notaries:

- Make sure that the notarial deed complies with Italian law. Notaries are not allowed to receive deeds that are expressly forbidden by Italian law or manifestly contrary to morality or public order ([Article 28, Law no 89/1913](#)).
- Verify all the elements of the notarial deed including:
  - the identity and entitlement of the parties;
  - the legal capacity of the parties to dispose of the property or right at stake; and

- where foreign parties are involved, the representative powers and the compliance of the deed with Italian law (see [Controls Performed by the Italian Notary on the Foreign Deed](#)).

By so doing, notaries guarantee that:

- Notarial deeds are fully compliant with the provisions of Italian law.
- The public register in which the notarial deed is recorded contains true and verified data and information.

Under Article 47 of the Notaries Act notaries must act in the interests of all the parties (not only the party that has appointed them) and must interpret the intention of all the parties and suggest the legal solution most suited to the transaction.

## Duties and Liabilities of the Notary

Duties of the notary include the following:

- Duty not to execute or authenticate deeds expressly prohibited by Italian law or manifestly contrary to morality or public order (*Article 28, Notaries Act*).
- Duty to assess the identity of the parties (*Article 51, Notaries Act*).
- Duty to personally assess the intention of the parties (*Article 47, Notaries Act*) and to advise the parties on the legal instrument most appropriate to fulfil their needs and intentions. On this latter point case law has extended the duties of the notary to provide adequate information and legal advice on the most appropriate legal instrument for the parties (see *Supreme Court of Cassation, Decisions no 15726 (2 July 2010), no 26369 (16 December 2014) and no 12482 (18 May 2017) and United Sections of the Supreme Court of Cassation, Decision no 13617 (31 July 2012)*).
- Duty to remain up-to date on the legal developments and market practice by participating to educational activities.

Notaries can only practice and provide assistance in the administrative territory where they are assigned, which normally corresponds to the territory of an Italian Region (see [Finding a Notary in Italy](#)).

## Consequences of Breach of Duties

Notaries can be held liable for breach of duties. They may face:

- Civil liability (see [Civil Liability](#)).
- Criminal Liability (see [Criminal Liability](#)).
- Disciplinary Liability (see [Disciplinary Liability](#)).

### Civil Liability

Notaries are liable for the damages caused to the parties by:

- Providing services that do not comply with the law.
- Their negligence.
- Refusing to provide their services without just cause.

Any civil liability is covered by an insurance policy with Lloyd's of London which has been entered into by the National Council of Notaries and covers all Italian notaries.

### **Criminal Liability**

Criminal liability arises as a result of, among others, falsification of public documents, embezzlement, corruption and abuse of powers.

When a criminal offence is committed by a notary, the latter is prosecuted (or can be prosecuted, depending on individual crimes) for such offence.

In addition, the National Council of Notaries has created a guarantee fund (now compulsory by law) made up of compulsory contributions from all Italian notaries. The fund is aimed at compensating parties who have suffered monetary loss as a result of criminal offences which cannot otherwise be covered by insurance.

### **Disciplinary Liability**

Disciplinary liability may arise from the breach of duties concerning professional conduct and ethics (such as the duty to provide assistance exclusively in the territory of assignment and the duty to be up to date with legal development). It may cause the suspension or, in the most serious cases, the removal from the office. It is assessed by inspections carried out by the Notarial Council, the Ministry of Justice and by Public Prosecutor's offices. Sanctions are imposed by independent regional disciplinary boards, chaired by a qualified judge.

In addition, every two years the Ministry of justice inspects:

- All the deeds entered into or authenticated by each Italian notary during that two-years period.
- The registers (*repertori*) held by each Italian notary (the registers are certified by the notarial archive (*archivi notarili*)) which contain details of all the deeds entered into or authenticated by the notary.

Purpose of the inspection is to verify that all notarial deeds comply with Italian law.

If any deed is not in compliance with Italian law, the deed may be declared null and void and the notary subject to disciplinary sanctions.

## **Finding a Notary in Italy**

Notaries must only provide their services within one of the 20 Italian Regions where the notary seat is located. For example, if a notary seat is located in Milan, that notary can carry out its activity within the entire Lombardy Region but not beyond. However, a notary in Milan may still accept instructions from clients outside of the Lombardy region.

The consequences of the notary carrying on activities outside of the territory where their seat is located are that:

- The notarial document is null and void.
- The notary is subject to disciplinary sanctions (see *Disciplinary Liability*).

The easiest way to find a notary in Italy is to visit the National Council of Notaries website (<https://www.notariato.it/en/trova-notaio>).

To find a notary within the European union one should visit the European Directory of Notaries (EDN), an online database created by the Council of Notaries of the European Union (CNUE), on the following website: <https://notaries-directory.eu/en>.

## Form of Notarial Deeds in Italy

Notarial deeds are either:

- Public deeds (*atti pubblici*).
- Authenticated private instruments (*scritture private autenticate*).

Reference to notarial deeds in this Note is to both, public deeds and authenticated private instruments.

In most cases, the notarial deed is required for recording in a public register to make a contract enforceable against third parties. The public registries are:

- Real Estate Registries (*Pubblici Registri Immobiliari*).
- Companies House (*Registro delle Imprese*).
- Civil Status Registries (*Registri di Stato Civile*).

For more information see *Practice Note, Executing Contracts in Italy: Private Instruments, Authentication and Public Deeds*.

## Shared Characteristics of Notarial Deeds

Notarial deeds have two specific features:

- They have strong evidentiary value. Unless an accusation of forgery (*querela di falso*) is made:
  - a public deed proves absolutely that the document was made by the public official (*Article 2700, Civil Code*) and constitute full proof of the declarations made in it by the parties and of the other acts carried out by the public official or performed in their presence.
  - an authenticated private instrument proves absolutely that the signature has been affixed in the presence of the notary, after verification of the identity of the signatory (*Article 2703, Civil Code*) and constitute full proof of the declarations made in it by the parties and of the other acts carried out by the public official or performed in their presence.

- Notarial deeds allow the start of enforcement proceedings immediately without the need to go through a civil trial (which can last several years).

For more information on the evidentiary value of public deeds and authenticated private instruments, see [Practice Note, Executing Contracts in Italy: Private Instruments, Authentication and Public Deeds](#).

Also, there is no distinction between a public deed and an authenticated private instrument in terms of the notarial activity or liability: both types are recorded in the register (*repertorio*) of the notary and are subject to inspection (see [Disciplinary Liability](#)).

In common law systems, public notaries authenticate the signature and certify the capacity of the signatory and the date and place of the signature without carrying out an assessment of the compliance of the deed with the applicable law.

There is no equivalent to the Italian public deed in common law systems.

## Differences Between Public Deeds and Authenticated Private Instruments

There are two main differences between a public deed and an authenticated private instrument as follows:

- Notaries must comply with special formalities relating to the form of the public deed under the Notaries Act. By way of example the public deed:
  - must contain, in the heading, the words "ITALIAN REPUBLIC"; and
  - is subject to strict rules in the case of parties falling into special categories (for example, persons who declare to the notary that they do not know the Italian language or are unable to read and write it).
- Authenticated private instruments are not subject to such special formalities.
- Public deeds must be executed simultaneously by all the parties and the notary. There are two exceptions to this rule:
  - in the case of shareholders' and board meetings of companies with share or quota capital held entirely by means of telecommunications, the public minutes of the meeting may be signed only by the notary public (and not also by the Chairperson of the meeting); and
  - the online formation of an SRL or a simplified private limited company (*società a responsabilità limitata semplificata* (SRLS)). Not being in the same physical place the parties cannot sign simultaneously. For more information on the online formation of an SRL or an SRLS, see [Practice Note, Main Characteristics of an SRL and SRLS \(Italy\): Online Formation of an SRL](#).
- Authenticated private instruments may be signed by the parties and authenticated by the notary at different times (although the instrument only takes effect in law from the date of the last signature authenticated). This can be useful in all those cases where a simultaneous execution by all parties to a contract is not possible (for example, when one of the parties is travelling for business purposes).

## Certified Copies of Notarial Deeds

If any party to a public deed or an authenticated private instrument requests a copy of such instrument to the executing or authenticating notary, the latter must deliver such copy (which is normally a certified copy).

The certified copy issued by a notary is "authentic" and consists of the reproduction of the original document (paper or computer) certified as being in conformity with the original by the notary and provides certification with full legal value:

- Of conformity of the copy to the original document.
- That the document exists at a certain date and time.

The purpose of the certified copy is to circulate a non-original document with the advantage of facilitating legal negotiation and commercial relations without being forced to present original documents that may be difficult to collect.

### Signature Block for Authenticated Private Instruments

Below is the standard formula for the authentication of the signature of a party to an authenticated private instrument.

The below formula assumes that the party signing the authenticated private instrument is a company and that a natural person with representative powers executes the document on behalf of the company.

The certification of the capacity and authority may slightly change where the signatory is a natural person or a partnership (*societa di persone*) or a foreign entity:

<p><i>Signing authentication</i> I, the undersigned, .....  Notary Public in .....  do hereby certify that the signature subscribed to the foregoing document is the genuine signature of .....  ..... ..... born in .....  on ..... and that said person, whose personal identity I, the Notary, am certain of, signed the foregoing document before me</p>	<p><i>Autenticazione della sottoscrizione</i> Il sottoscritto ..... .....  .....  Notaio in .....  certifico che la firma apposta al sujesteso documento è la firma autentica di ..... .....  nato a ..... .....  il ..... e che la predetta persona, della cui identità personale io Notaio sono certo, ha firmato il suesteso documento innanzi a me</p>
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in his/her capacity as Director and/or Legal Representative of ..... ..... (the "Company")	nella sua qualità di Amministratore e/o Legale Rappresentante della . ..... ..... (la "Società")
having its registered office at ..... ..... and registered with the Register ..... .....	con sede in ..... ..... ..... e iscritta al Registro .....
under the number ....., with full power to engage the Company, according to ..... ..... ..... .....	al numero ..... ..... , munito dei poteri necessari per impegnare la Società, in base a ..... ..... .....
Date: .....	Data: .....
Notary's signature: .....	Firma del notaio: .....

## When is a Notary Required in Italy?

In most cases, a notarial deed is required for the purpose of the instrument being recorded in a public register (see [Form of Notarial Deeds in Italy](#)).

Below is a non-exhaustive list of deeds in commercial and corporate transactions which must be in the form of a notarial deed for registration at Real Estate Registries or Companies House.

Powers of attorney must have the same form (authenticated private instrument or public deed) as the form of the deed that the attorney will execute.

### Public Deed

- Deeds of incorporation of an SPA and an SRL.
- Minutes of general meetings of an SPA or SRL for the amendment of the articles of association.
- Deeds of transfer of shares of an SPA or quotas of an SRL or of endorsement of shares of an SPA.

- Deeds of merger, demerger or conversion (*trasformazione*) and resolutions for the increase or reduction of the share (or quota) capital.
- Resolutions at general meetings of an SPA or an SRL for the issuance of bonds, financial instruments and debt securities.
- Minutes of deposit of the foreign deed with a notary (see [Filing of the Foreign Deed with an Italian Notary](#)).

#### **Authenticated Private Instrument**

- Contracts for the transfer and lease of a business as going concern.

#### **Authenticated Private Instrument or Public Deed**

- Contracts for the transfer of the ownership title on real estate properties.
- Contracts for the lease of real estate properties with a term longer than nine years.
- Contracts for the granting of guarantees on equity investments and real estate properties.

## **Notarisation of Documents in Italy for use Abroad**

To use an original or certified copy of an Italian notarial deed abroad, the notarial deed or its certified copy must either be:

- Apostilled (see [Apostillisation](#)).
- Legalised (see [Legalisation](#)), when apostillisation is not available.

However, in some cases, neither the apostillisation nor the legalisation is required (see [Cases where neither Legalisation nor Apostillisation is Required](#)).

## **Notarisation of Documents by Foreign Notaries for use in Italy**

Deeds drawn up by a foreign notary may need to be used in Italy for various purposes (for example, to update public registers (such as the Real Estate Registries and the register at Companies House)).

To be used in Italy, a deed drawn up by a foreign notary must meet the following requirements:

- Originate from a foreign authority with characteristics and functions similar to those of the Italian notary.
- Comply with the legislation of the country where the deed is formed (the foreign deed does not need to have the same formal requirements as those imposed by Italian law for the same type of deed).
- Produce the same effects in the country where the deed is formed as those sought to be produced in Italy.
- Be legalised or apostilled (see [Legalisation](#) and [Apostillisation](#)) other than where legalisation or apostillisation is not required (see [Cases where neither Legalisation nor Apostillisation is Required](#)).

- Be translated in Italian (see *Translation of the Foreign Deed*).
- Be filed with the Notarial archives or with an Italian notary (see *Filing of the Foreign Deed with an Italian Notary*).

## Legalisation

Legalisation certifies that:

- The public official who has executed the deed or has authenticated the signature is a public official.
- The signature by the public official is authentic.

Legalisation does not require verification that the content of the deed complies with the law (for deeds drawn up by foreign notaries to be used in Italy, the verification of the legality of the content is carried out by the Italian notary in the Italian region where the foreign deed is filed (see *Controls Performed by the Italian Notary on the Foreign Deed*)).

### Competence for the Internal Legalisation

Where a deed drawn up in Italy that is to be used outside Italy is legalised (internal legalisation), the authorities competent to carry out the legalisation are:

- For judicial deeds (that is, all those issued by the Ministry of Justice, including court deeds) and notarial deeds (including those issued by the Notarial archives), the office of the public prosecutor (*pubblico ministero*) at the competent court.
- For all the other deeds, the *prefettura* (that is the local representative of the Ministry of Interior).

The Companies House register is the exception as they legalise their own acts directly.

### Competence for the External Legalisation

Deeds and documents drawn up outside Italy by foreign authorities to be used in Italy are legalised by the Italian diplomatic or consular representations in the country where the deed or document is formed (external legalisation).

The law of the country where the foreign deed is to be used (for example Italy) may set out exceptions to the need to legalise deeds and documents. Under Italian law exceptions deriving from international laws or agreements are permitted (*Article 33(5), Decree of the President of the Republic no 445/2000*). The most important exception to the legalisation requirement is the apostillisation introduced by the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Hague Convention).

## Apostillisation

For countries adhering to the Hague Convention, the formality of legalisation is replaced by the apostillisation.

The apostillisation consists of a specific annotation (a special stamp strictly in accordance with the model annexed to the Hague Convention), to be affixed on the original of the foreign document by the competent authority of the country where the deed or document was formed.

The apostillisation certifies the authenticity of the signature, the quality of the signatory and, if necessary, the authenticity of the stamp or seal affixed to the document.

An up-to-date list of the signatory countries to the Hague Convention and competent authorities is available on the website: [www.hcch.net](http://www.hcch.net).

In Italy (that is for documents formed in Italy to be used abroad), the competent authorities are the same as those competent for the internal legalisation (see [Competence for the Internal Legalisation](#)).

## Cases where neither Legalisation nor Apostillisation is Required

Pursuant to the Brussels Convention of 25 May 1987, ratified by Italy with [Law no 106/1990](#), all forms of legalisation or equivalent formality (such as the apostillisation) have been abolished in the relationships among Belgium, Denmark, France, Ireland, Italy, Latvia and Estonia.

On the basis of bilateral conventions, also administrative documents from Austria, Germany and Hungary are exempt from legalisation and apostillisation.

## Translation of the Foreign Deed

Before being filed with an Italian notary, a foreign deed must be translated into Italian.

All sections of the foreign deed filed with the Italian notary must be translated. If the foreign deed is in the form of an authenticated private instrument also the formula of the authentication of signatures must be translated (see [Signature Block for Authenticated Private Instruments](#)) to make sure that the foreign notary or public officer has carried out all the required checks. An exception to the translation obligation relates to the apostillisation: it needs not to be translated as its content is specifically set out in the Hague Convention.

If the foreign deed to be filed with the Italian notary has not been translated in Italian before the filing with the Italian notary, the translation in the Italian language can be performed and signed, alternatively:

- By the same notary, if the notary declares to know the foreign language.
- By an expert selected and appointed by the parties, if the notary does not know the foreign language.

## Filing of the Foreign Deed with an Italian Notary

The filing of a foreign deed is accomplished with the delivery of the foreign deed by a party in the hands of the Italian notary. Before accepting to take the filing of the foreign deed, the Italian notary must verify that it complies with Italian law, from both a formal and substantive point of view (see [Controls Performed by the Italian Notary on the Foreign Deed](#)).

The Italian notary must acknowledge the receipt of the foreign deed by drawing up a minute of deposit (*verbale di deposito*) by public deed. The translated foreign deed (in the original or certified copy) is attached to the minute of deposit. The minute of deposit is signed both by the Italian notary and by the person filing the foreign deed.

There is one exception to the obligation to file foreign deeds with an Italian notary, that is when a foreign deed (for example, a power of attorneys executed abroad) is attached to a public deed or an authenticated private instrument executed by an Italian notary.

Foreign deeds attached to a public deed or an authenticated private instrument executed by an Italian notary do not need to be filed with an Italian notary and the minute of deposit is not required, provided that this attached foreign deed is legalised or apostilled (if required) and translated in Italian language.

### **Controls Performed by the Italian Notary on the Foreign Deed**

Before accepting the foreign deed in deposit, the Italian notary must verify that the foreign document:

- Complies with the provisions of Italian law (for example, the notary must verify that the deed formed abroad does not contain any clause prohibited or considered illegal under Italian law).
- Is either legalised or apostilled (unless neither legalization nor apostillisation is required).

## **Legalising Copy Documents**

The legalisation of copies of documents is not permitted. Only originals or certified copies (see [Certified Copies of Notarial Deeds](#)) can be legalised.

## **Italian Notary Fees**

Since 2007 there are no statutory criteria in Italy for the determination of the notary fees. Notary fees are freely negotiated and normally take into account the complexity and value of each deal.

## **E-Notarisation**

A public deed may also be executed entirely in electronic form. The electronic public deed is the mandatory form of deeds for the execution of procurement contracts for works, services and supplies with the Public Administration. In any other case the parties may decide (but are not bound) to enter into a public deed in electronic form.

In the case of an electronic public deed:

- The parties sign the electronic document containing the deed itself and any annexes thereto, each with their own digital signature.
- The notary affixes their digital signature (which contains the notary's signature and seal) to the computer document digitally signed by the parties.

The electronic public deed is stored electronically by means of a special regulatory storage system maintained by the National Council of Notaries and administered by Notartel SPA.

The main advantages of the electronic public deed include:

- The possibility for parties living in different locations to go to their own notary and execute the deed, allowing the exchange of the digitally formed document between the two notaries in a very short timeframe.
- The preservation of the deed through the most advanced disaster recovery systems, which can protect the original from any risk of damage.
- The possibility of responding to the specific needs of individuals who interact via voice synthesisers with the external world, both to provide and to acquire information.

Exist various types of electronic signatures, the legal validity of which varies and is indicated in the [Legislative Decree 82/2005](#) (the "Digital Administration Code" or "CAD"). For more information on the regulation regarding the use and recognition of electronic signatures both at EU and at a national level see [Practice Note, Executing Contracts in Italy: Electronic Signatures](#).

## E-Copies of Notarial Deeds

It is now possible to obtain an electronic certified copy of a notarial deed, digitally signed by the notary. An electronic certified copy has the same validity as a paper certified copy.

To receive a certified copy of a notarial deed the parties will no longer need to physically go to the notary's office. The copy will circulate instantly.

## EU Public Documents

Under the Regulation on Public Documents ((EU) 2016/1191) certain EU public documents (such as, a certificate of birth, a certificate of marriage or a certificate of death) are exempt from legalisation.

The Regulation on Public Documents covers public documents issued by the authorities of a member state of the EU and filed with the authorities of another member state, in a limited number of areas relating to the life of individuals (such as birth, marriage or death), rather than businesses or corporate entities. It removed previous administrative formalities like the legalisation or apostillisation of public documents. It also introduced multilingual standard forms as translation aids of public documents concerning several areas covered by the Regulation (see [Legal Update, Free movement of EU citizens: Regulation \(EU\) 2016/1191 on recognition of public documents across EU published in Official Journal](#)).

For background information on the Regulation on Public Documents, see [Legal Updates, European Commission proposes Regulation to exempt public documents from legalisation](#) and [Free movement of EU citizens and businesses: European Commission proposal for Regulation simplifying acceptance of certain public documents in the EU](#).

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