

ENTERPRISE: LEGALITY AND SAFETY



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INTRODUCTION

The profitable collaboration with the Chamber of Commerce, Industry, Handicrafts and Agriculture still goes on in order to ease the knowledge and the respect of rules on behalf of foreigner entrepreneurs, along the manufacturing activity as well as towards consumers of products.

The “Guida per la creazione di nuova impresa” (Guide to the setting up of a new undertaking), presented by the Prefect to the foreign Consuls, was deeply appreciated also by the associations of the representatives of employers and by the associations for immigrants.

Through the new publication “Impresa: legalità e sicurezza” (“Enterprise: legality and safety”) it was deemed necessary to go into some subjects which had just been previously pointed out, focusing the attention on the need to harmonize the activities of enterprises with aspects of legality and safety.

Therefore, during the year 2010, subjects such as the money transfer- considering also to the new rules established by L.94/2009 and by the Legislative Decree 141/2010, the protection of trade marks and patents, the prevention, safety and hygiene in workplaces and in foodstuff premises were taken into exam, in order to achieve the aim of creating the necessary conditions to an increasingly strong social and cultural integration of foreigner people, with particular attention to entrepreneurs.

A specific study was consecrated to safety of products and materials currently used and which were found most frequently counterfeited with negative consequences for consumers health.

In order to realize this Guide, the contribution given by the Agenzia delle Entrate, by the Azienda Sanitaria di Firenze, by professionals and experts on patents who collaborate with the Chamber of Commerce, Industry, Handicrafts and Agriculture within the free Service of orientation on trade marks and patents.

It is necessary to underline, at last, that the collaboration among different Bodies taking part in the various procedures, represents, once more, a surplus value which strengthens the system of legality and of integration at the same time, within the framework of the activities carried out by the Public Administration as a whole.

The translation in English, Spanish and Chinese represents a further element of attention with regard to the communities that are present in the territory of the province for a better information about the rules to be respected.

The edition on line on the sites www.immigrazione.regione.toscana.it and www.fi.camcom.it will allow its immediate updating during the year.

I thank all those who gave their contribution to the drawing up of the Guide and, in particular, to the Chamber of Commerce that, by its financial support, made this publication possible.

Paolo Padoin
Prefetto della Provincia di Firenze
The Prefect of the Province of Florence

HOW TO SEND MONEY ABROAD LEGALLY AND SAFELY

What to do

In Italy saving handling, credit making and the activities connected to it among which the financial intermediation, are regulated by law and controlled by an Authority that supervises money flows and financial means: the Bank of Italy.

In order to send money abroad from Italy, there are **three formal means** whose activities and products are regulated by specific laws and supervised by the Bank of Italy that are **banks, money transfer operators** and **Post Offices**.

The **advantages** linked to transferring money through a formal channel are:

- The presence of a *written contract* that sets out rights and duties of both the intermediary and the client. The intermediary is therefore responsible for the sold service and what is written in the contract can be impugned before the Supervisory Body or before the Courts.
- In order to send money abroad through formal channels, an identity document is needed, as it is established by a specific law on money transfer that also represents an instrument of protection as it guarantees the registration of the contract to the person that sends money.
- A safe money delivery, clear costs and timeframes which are regulated by the written contract.

In Italy there are three main operators that carry out money transfer services abroad.

Banks

Banks send money through an international system which, as a matter of facts, almost all the banks in the world are connected to. Any bank can in fact transfer money directly to any other bank connected to it (through a current account previously opened between the two, thanks to an *interbank agreement*) or, indirectly, using another bank which works as a link (called *correspondent bank*). When the link is direct, the system is very swift and simple and the two banks communicate almost immediately the operation transferring money on their common current account. On the contrary, when the link is indirect, the first communication is between the sending bank and its correspondent. Once this latter has received the amount of money, it transfers it to the bank where money was addressed in order to deposit it on the bank current account of the recipient.

Post

There are two different ways to send money through the Italian Post. The first one, simpler and swifter, is through a commercial agreement that the Italian Post Offices have undersigned with Money Transfer Operator MoneyGram. As a matter of facts, on the basis of this agreement Post Offices are an agent of MoneyGram; in this case, therefore, addressing to a Post Office desk to send a remittance is like addressing to a MoneyGram Agency.

The Post Offices use a communication system to send money through postal services in all the Countries in the world that is similar to the one used by banks.

It is therefore possible to send money from any Italian Post Office to any other Post Office in all Countries in the world. The system is quite more complex and slower therefore than using the agreement with MoneyGram to send money.

Money transfer operators

Money Transfer Operators (MTO) are registered in Italy in a special register, “Elenco”, hold by the Bank of Italy that is available also *online* in order to check if the intermediary offering this service is authorized or not. Be careful in having the exact name of the operator, because sometimes the one we see is the name of the brand, while in the register only the true name of the operator appears.

Nowadays Money Transfer Operators are active all over the world and dispose of a widespread net of desks and agents. Delivery timeframes are very quick, almost immediate and money transfer is a very simple operation (just an identification document and cash money are needed). Once the MTO has received the amount of money from the client, the intermediary gives a code to the sender that is to be communicated to the final beneficiary and at the same time, the operator sends a message to his / her agent in the Country of destination.

By means of this code the final recipient can withdraw money almost immediately.

This mechanism works in the same way also when someone sends money from any of the Countries where MTO are present to Italy.

For entrepreneurs : how to open a money transfer

Those financial agents, individuals or societies, that offer exclusively the payment service consisting in the transfer of funds through the collection and delivery of the amount of money to be transferred, are qualified as “Money Transfer Agents”.

Requirements

In order to carry out a Money Transfer activity in Italy it is necessary to be enrolled in the **Register of financial agents**, set up by the Bank of Italy. Neither preliminary exam nor payment of fee is required in order to be enrolled.

All the physical persons regularly domiciled in Italy,- that is Italian citizens or those Nationals belonging to one of the E.U Countries or to a third Country (art.2 Legislative Decree 286/1998)

- can be enrolled under condition of:
- Possession of degree of high school, triennial degrees of professional qualification, issued by the Ministry of Public Education (State Professional Schools);
- Possession of requirements of honorability (art.109 of Law on Banks, regulated by the Ministry Decree D.M. 517/1998).

In order to be enrolled, non E.U. Nationals are required to send a certified copy of the School Degree together with the sworn translation of the same. A Certificate of “*valore in loco*” stating the total length of the program of studies, issued by the Representative Foreign Authority in Italy of the Country where the Degree was awarded, or by the Italian Consular Authority in the country where the Degree was attained, is needed as well. All these documents must be lodged in original or in certified copy.

All the companies that have a legal seat in Italy and all the stable organizations in Italy of Companies with their legal seat abroad can be enrolled in the Register if following requirements are fulfilled:

- juridical form and assets requirements as established by the Italian Civil Code;
- legal and administrative seats placed in the Italian territory;
- description of the activity of the agency carrying out financial activity in the company’ s aim.

The agency activity must be carried out in an exclusive way. The Company’ s social aim may imply also other activities only if they are functional and / or connected to the primary agency activity or openly defined as compatible;

- In case the agency activity is limited to money transfer such a limitation must be expressed in the Company’ s aim. Money transfer activity is compatible with other non financial activities;
- Requirements of honorability on behalf of partners and of those who carry out administrative, directive, managerial tasks (art. 109 of the Banking Laws, regulated by DM 516 and 517 of December 30th, 1998);
- The activity must be carried out by subjects enrolled in the Register of agents in financial activity (all the identification data of those subjects and their number of enrolment must be written in the enrolment application)

How to be enrolled

The application must be lodged filling out and undersigning on the Website of the Bank of Italy.

Use Form BI/AG-A for an individual and use form BI/AG-B for a Company.

Compatible Activities

The MTO can carry out any other non financial activity (commercial, industrial and of service) if allowed by the specific sector rules. For example: forwarding services, travel agency, telephone services.

The activity of money exchange is compatible with the money transfer activity if this latter is limited to the service of money transfer only, as this specific aspect is strictly connected to money exchange itself. The enrolment in both Registers is required, as well.

Fulfilments and duties

Within a year since the enrolment in the register all the enrolled subjects must send a declaration of genuine real running of the agency activity to the Bank of Italy, through the form BI/AG-VIG, under penalty of withdrawal, pointing out the name of the firm, the fiscal codes and the proposing intermediaries bank codes "ABI".

For the years following the first one this communication has to be sent within March the 30th of each year.

Using the same form, the enrolled individual or legal representatives of the companies already enrolled must assess the permanency of requirements of honorability to the Bank of Italy.

Individuals already enrolled must assess the loss of requirements of honorability to the Bank of Italy as well as any change regarding those data given during the enrolment in the register (within 30 days since the variation took place, using form BI/AG-VAR-A).

The legal representative of the company (or of the Stable Organization in Italy of the Foreign Company) must assess any change regarding those data given during the enrolment in the Register (within 30 days since the variation took place, using form BI/AG-VAR-B).

The Agents in financial activity are compelled to withdraw all the banknotes and coins in Euros from free circulation if they are suspected to be false and to send them straight respectively to the Bank of Italy and to the Istituto Poligrafico e Zecca dello Stato (Mint).

The agents in financial activity are committed to observe all those measures aimed to anti money laundering: identification of their clients, registration of any operation, report of any suspicious operation.

In particular MTO must acquire and keep a copy of the permit to stay if the client committing the operation is a non E.U. National. In case the client does not possess a permit to stay, MTO must report it in separate note to the local Public Security Authority transmitting the details of the person involved. In case of non fulfilment of this measure the authorization to carry out the financial activity is revoked (art.20 L.94/2009).

Violations and sanctions

Anyone who carries out, in a professional way, the activity of financial agency towards the public without being enrolled in the Register under article 3 paragraph 1 of the Decree is punished with imprisonment ranging from six months to four years and a fine ranging from €2.065,82 to €10.329,14 (art.7 DM 485/2001).

For any violation of the rules contained in the Banking Law text, the procedure of sanctions is applied as established by art.145 of the Banking Law Text.

Remember that, except for genuine banks (art. 133 of the Banking Law Text) it is forbidden to use words such as “bank” , “money-counter” or “credit” or “savings” or any other word, even foreign words, that might deceive users about the legitimacy of the bank to run the activity. Whenever one wants to advertise an individual company name, it is necessary to report also the exact full details name and surname of the natural person enrolled in the Register and the relative enrolment number.

Nonetheless, the word “credit” , or locutions derived from it, can be used if, in the Company’ s name, the specific indication of “agency in financial activity” or “Agent in financial activity” was foreseen, defining so the exact nature of the working activity carried out by the natural person.

Information about timeframes of the procedure, enrolment and striking off the role, as well as about the duties to report against enrolled natural persons in the Registers or Professional Roles can be attained through the internet <http://www.bancaditalia.it/vigilanza/albi-elenchi/ageattfin> or calling the help desk number 064792 9393.

Important notice

On September ,the 4th 2010 the Legislative Decree n.141 dated 13 August 2010 implementing the Directive 2208/48 EC was published. It reforms the discipline of the consumer credit agreements.

For the agents in financial activity the Decree raises the standards of access and it establishes the institution of a new Register (containing a particular section consecrated to those agents who carry out payments services only) whose care is given to a special Organism.

In order to ensure a proper shift to the new system, the rules foresee special transitory provisions on whose basis the Bank of Italy will stop the new enrolments of agents in financial activity in the Register since the sixtieth day following the entry into force of the present Decree (and therefore since November the 18th 2010) and until the constitution of the new Organism (apart from those agents who carry out payments services only).

Until the constitution of this Body, the Decree of the Minister of Economy and Finance, nr.485, dated 13 December 2001 keeps on being applied to the agents already enrolled.

Once the Organism is constituted, the Bank of Italy stops the running of the Register of agents in financial activities as it is established by article 3 of the Legislative Decree n.347 dated 25 September 1999.

What to avoid

It is possible to transfer money abroad also through a series of informal channels, that is without using operators or channels checked by the Supervising Authorities on flows and financial instruments. These channels imply friends, relatives and acquaintances who go back home and who can take money there, as well as organized nets, bands of intermediaries that represent real parallel bank systems utilizing data processing systems to transfer money, but without any contract and therefore without any guarantee that the remittance was done as agreed.

The Hawala system

These parallel bank systems assume different denominations according to the different areas of provenience.

In China the system is defined the “Chop Shop” or “Fei-Ch’ ien” (or “Fei quian” , that, in short, means “Flying coin”), in the Indian sub - continent it is defined as “Chiti” or “Hundi” , in the American - Latin world the phenomenon is called “Stash House” (which is the one also diffused in the north of America). In the Islamic world it is known as the “Hawala” , which is also the name commonly used to describe the phenomenon in general terms.

In Asian countries and Middle East, the origin of these systems is connected to the need to ease the implementation of commercial activities in areas where the offer of bank services was, and sometimes still is, absent or almost inexistent. In all the above mentioned countries the functioning of this system is nearly the same.

As a matter of fact in the hawala system, four main characters play the roll: the commissioner, that is the one who wants to transfer remittance; the recipient, the one that is going to receive the remittance eventually, and then two further operators (the hawaladar), who take a commission for each carried out transaction. In fact, if a person wants to send money from Italy to his / her Country of origin, this latter has just to give the amount of money to be transferred into the hands of a local “hawaladar” , who is then going to contact a correspondent in the Country of origin, who will let the recipient receive the agreed amount net of the provision. In order to make the system run, without risk of interception while giving money in Italy, the final recipient receives a symbol, an object or the latter is given a password, that has to be referred or delivered to the other “banker” in order to cash money. The two illegal bankers will balance in the Country of origin their debt / credit through inverse transactions or through cash money.

Intermediaries generally operate in bazars, food shops, laundries, travel agencies, that is inside of legally authorized activities. As a matter of fact, today, the “havala system” is essentially based on gold: the money exchange rates are established on the basis of gold value, the most reliable means of exchange in many Countries. The **disadvantages** and the risks connected to money transfer through informal channels are numerous. Even if, sometimes, the use of an intermediary can appear cheaper and easier (above all if it is a friend or a relative in charge of bringing money abroad) the total lack of a written contract, of identification documents, and of other formalities, makes the risk that the money transfer won’ t take place as agreed very high.

- *Costs* can be imprecise and increase strongly according to the commission, to the rate exchange applied, to the form the amount of money was delivered to the recipient (for instance it can be in cash or deposited on a bank account), to the speed of the transfer and to the capability of the sender to give information about the recipient (for example bank account number). The final cost of money transfer operations is unclear and not transparent.
- Even delivery *times* can vary with regards to what established at the beginning of the bargain. It occurs just like in the cost rise where there is no guarantee measure, as the agreement is not written but only based on trust.
- Money can be *lost or stolen*: the absence of a written contract and of an insurance hinders money recovering.
- Money can be used in order *to finance illegal or criminal activities*.
- Money can be *seized at the Customs* because deemed suspicious.

These international informal funds transfer mechanisms can be easily used, for their own nature, not only to transfer remittances abroad periodically but also to accomplish money laundering operations and to finance illegal and criminal activities.

According to the Italian Law, the “hawala” system can be considered as a form of bank and financial misuse (according to articles 130 and 132 of the Legislative Decree nr.385/1993). Therefore the seizure of the money at the Customs or from a bank account made available by people belonging to the same Country of origin is licit because these remittances can be considered, in part, as goods deriving from illegal collection and, as such, evidence of crime.

As the operation is mainly made by phone and not through an official money transfer system, it doesn’ t imply tax declaration, so tax evasion is a main consequence. The absence of this money inflow into the formal economic circuit means to renounce to a series of opportunities for the person sending money (for instance, credit access while depositing money at a bank) and for the person receiving money (always with regards to one’ s bank position and possible access to credit) and for both Countries’ economic systems, considering these remittances could be used to generate development inside one’ s own community.

MARKS AND PATENTS

A business and its trademarks.

On the subject of intellectual property, foreign national citizens have the same rights as Italian citizens. Intellectual property rights are characterised by the attribution of exclusivity to the patentee of a creation of the mind and can be broken down into three categories:

- Technological creations
- Commercial creations
- Artistic creations

The principal modes of protection for technological, commercial and artistic creations are, respectively, the patent, the brand and the registration of designs and models.

Why protect intellectual property?

The protection of exclusivity guaranteed by trademarks, designs and models, patents for inventions and the protection against competition has, in fact become an obligatory step for the entrepreneur who intends to defend himself against the phenomenon of counterfeiting, reinforce his own position in the marketplace, improve in terms of competition and boost the very component of the business that, constituted by intangible goods, represents an out-and-out added value in the modern economy.

What is a business trademark?

A “trademark” is any sign that is subject to being represented graphically, in particular, words, including persons’ names, designs, letters, figures, sounds, the shape of the product or its packaging and the chromatic combinations or tonalities, provided that it is worthy of distinguishing products or services of one business from those of other businesses.

- “Defend your idea”

Thanks to an agreement between the Chamber of Commerce, patenting authorities and trade associations and also to the collaboration between professionals in this sector, it is possible for anyone to apply for and freely utilise the information services with regards to trademarks and patents, before registering or submitting them.

In fact, a **Free Orientation Service on Trademarks and Patents** is available. Apart from offering initial free guidance, it also allows businesses, should they so desire, to avail of any further consultations at particularly favourable rates.

Appointments with consultants are managed by the Patent Office, in the Chamber of Commerce, using an online procedure that allows one to request an orientation meeting, by visiting the following web page www.fi.camcom.it/pages/orientamento-brevettuale

Making preliminary investigations as to whether the trademark is registerable can be useful to avoid future costs arising from opposition or warnings on the part of businesses that already have identical or similar trademarks for the same products. Apart from legal costs, other costs that would need to be met are for the selection of the new trademark, new registration and new publicity expenditure.

It is in fact illegal to adopt as a company, a trade name or corporate name, emblem and business domain name, that is the same as or similar to the brand of another company if, due to the identity or affinity between the business activity of the holders of said brands and the products or services for which the brand is adopted, there is a risk of confusion for the public that could also consist in a risk of association between the two brands.

Anteriority research prior to registering a trademark.

- **Why do the research**

The reasons for which it is important to carry out this research are several and while it is commonly thought to simply add ulterior costs to the registration process, in reality it means avoiding potentially much higher costs in the future.

- Don't compromise the marketing strategy
Often the marketing strategy is developed without having considered the possibility that the chosen trademark is not registerable in the countries of interest.
- Reduce the risk and cost of legal action
Registering a trademark without conducting research carries a high risk of facing opposition or warnings from third party holders of identical or similar trademarks already registered for the same products and therefore, the risk of facing high legal costs and lengthy proceedings that could prevent the use of the trademarks. In the event that one's own trademark needs to be retrieved, apart from the legal costs incurred, there are also the costs of researching a new brand, a new registration process and particularly damaging to the company, all the incidental charges for example, advertising, packaging, labels etc as well as the requirement to revise any licensing or endorsement agreements.
- Choosing the most appropriate protection tool
This allows one to judge whether to register the trademark on a national, and/or community and/or international level.

- **What to do before conducting the research**

- Identify the products of interest
Consider the products and services of actual or future interest, or those that could be subject to possible licences
- Identify the markets and therefore countries of interest
- Check for the availability of an Internet site and verify that there are no conflicts with names of other businesses. It is opportune to ascertain that, especially in the case of business trademarks, the relative domain name is free for registration.

The novelty of a trademark can also be compromised by the pre-existence of the name of a company that offers the same products or services of interest.

- Choosing the type of research
Decide upon the research criteria: identity, similarity, such a choice also depends on how the proposed trademark is presented (descriptive, figurative etc).

Can I do the research on my own?

A lot of clients are of the view that the research is a simple affair and don't consider that there are three fundamental elements that limit the possibility of conducting the research alone:

- The incompleteness of free data banks
Some databases are free and accessible *online*, for example the database relating to community trademarks is easy to consult but does not permit one to carry out a detailed analysis and thus limits the research to simple identity and does not allow one to research products alone. Therefore, the dangerously similar trademarks do not emerge: for example, a research for FANTASIA will not show up FANTASY.
- The knowledge of national legislation
Legislation varies from country to country and results from research carried out are interpreted differently in every country.
- The interpretation of the data:
 - Identifying the level of similarity between trademarks; visual, phonetic and conceptual
 - Validating anterior trademarks, considering the priority, potential opposition or actions of pending cancellations
 - The possibility that an anterior trademark can be cancelled for non-usage
 - Identifying the level of similarity or affinity between products and services

After registration? The research continues

After registration of the trademark it is advisable to endorse a national, European and worldwide surveillance service. This in fact, allows one to be informed about the registration of all new trademarks that are identical or similar to one's own in the range of products and/or services produced or supplied by the holder, with the purpose of undertaking the necessary actions (warnings, oppositions etc) to defend one's own trademark and especially one's market.

Designs and Models

What is a design or a model?

By design (bi-dimensional) and model (tri-dimensional), we mean the external visible aspect of a product. The internal elements of a product that have no external function are therefore excluded from the notion of designs or models. In other words, the design or model only refers to the aesthetic characteristics of a manufactured product and not to those of a technical or functional nature.

The design or model is relevant for a vast range of industrial, fashion and handicraft products: from jewels to household accessories, to cars, from fabrics to furniture.

Why protect designs or models?

A design or a model increases the value of a product, making it more attractive in the eyes of the consumer. The aesthetic aspect of the product can sometimes represent the only reason for its success. In this light, the protection of designs and models should be utmost in the commercial strategy of a business.

How does one protect a design or a model?

To be protected in accordance with current legislation in Italy, the model or design needs to be registered with the Italian Patents and Trademarks Office (Ufficio Italiano Brevetti e Marchi www.uibm.gov). The paperwork can also be submitted to any Italian Chamber of Commerce.

If you wish to protect your design or model, it is absolutely imperative to keep it secret until the moment of the application for registration for same. Italian legislation nevertheless allows a so-called “grace period” for the registration. This means that when a design or model has been made accessible to the public (for example in the event of a trade fair) it is still possible to proceed with registration provided that it happens within 12 months of the initial disclosure of same.

What rights are granted with registration?

The registration of a design or model gives the holder the exclusive right to use it and the right to impede the copy or imitation of same. In particular, the holder of a design or model can prevent third parties from the manufacturing, supplying, marketing, exporting or the use of a product in which the design or model is incorporated or it has been applied without permission.

Let's suppose for example that your business has come up with a mobile phone with an innovative shape and has proceeded with the registration of same, obtaining the exclusive rights on mobile phones having this particular aspect. In the event that you discover that a competitor is manufacturing, selling or importing mobile phones with a shape that is substantially similar to your product, you could oppose such activities and in some cases obtain compensation for damages sustained due to the use of the model without your consent.

How long does the protection of the design or model last?

The registration of a design or model lasts initially for 5 years and can be renewed for further periods of 5 years, up to a maximum of 25 years.

Is it possible to register more than one design or model in the one application?

In a single application it is possible to request the registration of more than one design or model, on the condition that they refer to the same product category. Such a solution undoubtedly allows huge savings. A “multiple” registration is especially geared towards favouring the registration of designs or models, like for example those of fashion creations, that are generally proposed in numerous versions by the same creator and have, and by their very nature and the nature of the market to which they are destined to be marketed or exploited, a very short life.

Counterfeiting and how to fight it

The reasons for counterfeiting: voluntary counterfeiting

Intellectual property constitutes a business asset of enormous value, since it attributes to the holder the right to exclude others from the work carried out. Whoever therefore, uses all the same someone else's intellectual property, commits an act of counterfeiting. We can define as *voluntary counterfeiting*, when one knowingly makes a profit from the non-authorised exploitation of someone else's right.

Involuntary counterfeiting

Another more subtle and dangerous form of counterfeiting exists, one that we don't often think about, but which can have an even worse impact than the first form. It is what we can define as *involuntary counterfeiting*.

Intellectual property rights are considered intangible assets and they enjoy a proprietary type of protection: they are protected *erga omnes*, against everything, just as tangible assets are.

Whoever violates a right of intellectual property can receive an order to not repeat the counterfeiting, and if he/she does so out of negligence or fraudulently, he/she can be ordered to pay compensation for damages. In a lot of systems however, economic consequences exist regardless of negligence or fraud. In Italy for example, the return of profits is expected.

The counterfeiter

Based on this distinction between voluntary and involuntary counterfeiting, and taking into consideration previous relations between the holder of the right and the counterfeiter, three different types of counterfeiter can be identified: the unknown counterfeiter, the sly counterfeiter and the involuntary counterfeiter.

- **The unknown counterfeiter**

It is possible that the counterfeiter is unknown to the holder of the intellectual property right: the patent is published, the trademark is registered and/or used, the literary and artistic works are also made public (otherwise there would be no protection in place for these). Publicity means that unknown third parties can copy whatever the right protects. In such cases, the only protection is that of a judiciary nature.

- **The sly counterfeiter**

It is possible however that the counterfeiter is a person who has, or has had, relations with the right holder. For inventions, it could be the business to which the prototype production project was assigned, that then goes on to manufacture the product without the holder's authorisation. For trademarks, it could be the agent or the distributor who works in a far off market which, over the course of the relationship, uses the trademark as a corporate name (not yet registered in that State), registers the trademark and, at the end of the relationship intends to block the market, his case strengthened by the fact that, for reasons particular to the laws of that country, his right is not easily attackable or if it is at all, only by facing high costs.

- **The unwitting counterfeiter**

In this last example, if, after the termination of relations with a distributor, the holder of a trademark continues to sell the product in that market, he could himself become a counterfeiter. While it is impossible to be familiar with legislation in all countries across the globe, it is always possible to have

a consultant in each country where one operates, if sales are profitable enough to justify such an investment.

Contractual solutions

The grey areas that exist in this field prompt the need to pre-emptively regulate the aspects that could be a source of controversy by means of written contracts, especially when the exploitation of rights is not limited to one state, but happening on an international scale.

The contractual tools available are many in number and varied in nature. Among these, one of the more important is the ***confidentiality agreement***, which should be signed prior to initiating negotiations for the conclusion of contracts relating to the rights of intellectual property. This is to avoid communicating to the opposite party information that could be used to their advantage if the main deal should not be closed.

Judiciary solutions

The holder of intellectual property rights that have been counterfeited can take action in three different ways:

Opting for ***civil proceedings*** the holder can take the precautionary route to reach an interim order in a short amount of time, without however an adjudication that condemns the defendant to pay damages, or on the merits of the matter, obtaining every protection provided by legislation but over a longer period of time. Usually, both forms of action follow one another.

Opting for ***criminal proceedings***, if an offence has taken place, the holder can file a complaint with the appropriate Director of Public Prosecution Office. Taking this route has its pros and cons. Apart from the possibility that the accusation could be considered slanderous, it could happen that the Director of Public Prosecution Office does not take immediate action. If however, sufficient evidence is provided even to obtain an interim order, this route can prove to be very useful because, for example, it permits one to overcome the confiscation ban at fairs, as held down by civil law.

By opting ***for administrative proceedings*** for example, one can activate customs measures.

The civil route is the route most often taken, both because the timeframe is (relatively) reasonable and because it permits one to obtain protection even if there are no presuppositions that an offence has taken place.

Civil actions: cautionary proceedings

The principal cautionary measures are descriptions, technical pre-emptive consultations, confiscation, court injunctions and negative verification of counterfeiting, all of which are to be requested by recourse to the specialised departments for industrial and intellectual property in the twelve Italian courts that offer such a service (Bari, Bologna, Catania, Firenze, Genova, Milano, Napoli, Palermo, Roma, Torino, Trieste, Venezia).

The ***description*** has a probatory function, as it permits the claimant to pre-establish proof of violation of his right. It involves a claim being made so that a judicial official, as a rule accompanied by a technician, goes to the place where the counterfeiting is taking place and verbally describes what he/she sees. The description is necessary, for example, when the counterfeited items are not yet on the market, or when the counterfeiting is not related to the finished product but to the means of production. It is also useful to obtain documented information that is otherwise unavailable (detection of suppliers, distributors, points of sale to which the description extends, client listings, accounting paperwork).

Technical pre-emptive consultations have the role of investigating counterfeiting and the eventual extent of damages. It is requested according to the standard regulations of interim orders and allows an independent evaluation on behalf of a technician nominated by the Court. The technician can also attempt to reconcile the parties, who will be motivated to do so by the possible reduction of costs (in respect of the cause) and by the impartiality of the proposing party (commissioned not by either party but by the Judge).

Confiscation, apart from its probationary function, blocks the marketing of the goods or services that the claimant retains as illicit. Both the description and confiscation can also pertain to objects belonging to parties that have not been identified in the appeal, provided that they involve objects produced, offered for sale, imported, exported or put on the market by those against which the above-mentioned proceedings have been taken and provided that said objects are not for personal use.

The **court injunction** is an order that the judge directs to the counterfeiter to discontinue any illicit behaviour. This is usually enforced by means of setting a default penalty, that is, a sum to be paid in case the Judge's order is violated.

The **negative verification of counterfeiting** is a request to the courts by the party who fears that he/she is considered to be a counterfeiter by the holder of industrial property rights. Instead of waiting for the holder to take precautionary action or similar, and thus remain uncertain of the outcome for what could be a long period of time, this route can move things forward and a cross-examination can be brought in front of the judge.

Civil action proceedings

In the field of intellectual property, interim orders are the principal form of defence against counterfeiting. Nevertheless, these are often followed by a lawsuit. This is deemed necessary when the rights holder not only wants the counterfeiting action to be terminated but also wants compensation for damages incurred.

A **counterfeiting action** can be put forward in order to obtain a verification of illicit behaviour on the part of the defendant, compensation for damages incurred, restitution of the counterfeiters earnings and any further civil sanctions outlined by law (for example: the publication of the sentence and the destruction of the items constituting the violation).

It is also possible to put forward **invalidity actions** of someone else's rights, **forfeiture actions** of someone else's rights and **reclaim actions** to ascertain the right to registration or to patent is the entitlement of a party other than he/she who has filed the application. This last action can be put forward within two years of the publication of patent grant.

Actions of negative verification of counterfeiting can be put forward by means of precautionary measures by those who have been accused or who fear that they will be accused of carrying out acts of counterfeiting.

Compensation for damages

The violation of intellectual property rights falls under the general category of **unlawful behaviour outside the terms of a contract**. Consequently, due to special rules and general regulations, any losses incurred, that is, the **damages that emerge**, are reimbursable. Included are costs incurred for the acquisition of proof (private investigators, market research etc.) for extrajudicial legal protection, for technical expenditure (surveys etc), for counteracting the unlawful activity (promotional expenditure necessary to bring sales figures back to the levels prior to the counterfeiting, fees for communications or cautions etc.), for market penetration projects that have been thwarted by the counterfeiting, including any related promotional costs and loss of earnings, that is the **loss of profit** that has been

caused by the counterfeiting; it is possible to obtain an evaluation of the amount equitable to the damages incurred if the rights holder is unable to prove the exact total of expenditure; the damages can be reduced if there is a concurrence of negligence on the part of the injured party.

In the evaluation of damages the judge needs to take into consideration all the pertinent aspects such as the negative economic consequences, including loss of earnings of the aggrieved rights holder, the earnings gained by the offending party and, in certain cases, aspects other than those of an economic nature, such as moral damages suffered by the injured party. The sentence that provides for compensation of damages can outline a settlement of an **overall sum** established on the basis of the deeds of cause and the presumptions deriving from same. In such cases, the loss of profit is calculated as a figure not inferior to that of the licence fee that the offender should have paid, if he/she had obtained a licence from the aggrieved rights holder.

In any case, the aggrieved rights holder can request the **repayment of earnings** gained by the offender, as an alternative to compensation for loss of profits or in so far as these exceed such compensation.

Over and above compensation for damages, civil sanctions such as the following can also be requested:

- A **court injunction** against the production, marketing and use of items constituting the violation of right;
- A **definitive order for the withdrawal of trade** of those same items, towards the proprietor or whoever has access to them, and also against any intermediary, that is part of the ruling, of which the services have been used to violate the industrial property right.
- A **default penalty**, that is a sum owed for every violation or non-compliance subsequently noted and for any delay in the carrying out of the court injunction proceedings;
- The **destruction** of all items constituting the violation of right, if there are no particular reasons for objection, at the cost of the offender. If the destruction of the items is detrimental to the national economy, then said destruction cannot be ordered and the rights holder can only pursue compensation for damages.
- A **temporary withdrawal from trade** of the products constituting the violation of industrial property rights, with the possibility of reintegration following the imposition of adjustments that guarantee the respect of said rights, if the products are susceptible, upon adequate modification, to legitimate use.
- **Allocation of ownership** of the objects produced, imported or sold in violation of the rights and the specific means used univocally to produce them or implement the protected method or process;
- **Confiscation**, at the cost of the offender, until the extinction of the title, of all objects and means of production, with the possibility for the industrial property rights holder to request that the confiscated items are awarded a price that, in the absence of an agreement between the parties, will be established by the judge.

Focus: the Protection of Industrial Property in the United States of America and in China

The driving instrument in relation to the definition of industrial property rights at an international level and of their mutual recognition is the Agreement on Trade Related Aspects of Intellectual Property Rights, or more simply the TRIPS Agreement, adopted in the World Trade Organisation (WTO) in 1994.

The Combined Chamber of Commerce, that is part of the Chamber System, together with Italian Chambers of Commerce abroad, constitute the principal tool of support for Italian business overseas (www.cameremiste.it).

The United States of America

American legislation for the protection of patents and trademarks not only fights against counterfeiting but is one of the most advanced systems in the world at the present time.

Industrial Inventions

- The principle of “First to invent”: whoever comes up with an invention first prevails and it does not matter who was the first to register the patent
- United States Patent and Trademark Office (USPTO) is the referential Federal Organisation, dependent on Federal Government’s Department of Commerce. Registration of patents takes place at the USPTO, but in cases whereby the interested party is resident abroad, he/she must elect domicile in the United States or must bestow the mandate to a patent attorney. Federal legislation is the only legislation, unlike the situation in relation to trademarks, to regulate American law in relation to patents.
- Duration: 20 years from the date of request
- If the owner of the invention is a small business or an independent inventor, he/she can enjoy half-price rates.

Trademarks

- The Trademarks Department of the United States Patent and Trademark Office is the body responsible, on a federal level, for the registration of business trademarks and their administration.
- Differing from patent law, the federal law in relation to trademarks coexists with the trademark regulations in place across the various States of the Union. The main difference is that federal registration gives protection to federal trademarks right across the national territory.
- Ten-year duration: renewable at expiry if the trademark is still in use.
- Principles: registration does not create rights; it is the effective use that legitimises the right. American legislation does not allow one to register a trademark unless they use it.
- The acceptance of a registration application is subject to the payment of the deposit tax which varies in relation to the number of types and products or services for which one is requesting protection. Maintenance taxes for registered trademarks still in use are also payable.

China

Chinese legislation for the protection of patents and trademarks is far more recent (the first patent law was established in 1985) and therefore still in transformation. The regulations however are similar to ours following the adherence to the W.T.O. There are administrative solutions, effective customs, as well as specialised judges with international training.

Let us look at the fundamental characteristics of the Chinese system:

- The administrative management of intellectual property is entrusted to the State Intellectual Property Office (S.I.P.O.) in Beijing.
- The duration of protection for Industrial Property titles are:
 - Patents for inventions - 20 years;
 - Utility models - 10 years;
 - Ornamental models/designs -10 years.
- Judicial proceedings are administered, like in Italy, in the appropriate specialised departments established in Beijing, Shanghai, Tianjin, Guangdong, Jiangsu and in the Special Economic Zones of Shenzhen and Zhuhai.
- Proceedings are predominantly documental and seldom are witnesses called. Proof obtained through subjects who are not authorised to carry out trade activity in China is not valid and, furthermore, the Courts only recognise original documents (for this reason foreign documents must be translated and authenticated by a notary).

The Chinese market has a large interest in exportation. Good practices to follow in order to operate in China therefore are:

- Register one's trademarks and designs in China, monitoring and enhancing one's portfolio;
- Register Chinese versions of one's trademarks;
- Carefully select and check one's trading partners, stipulating accurate contracts;
- Adopt efficient defensive strategies, reacting immediately to any illicit activity
- Acquire information to combat the hijacking phenomenon (*piracy*).

By *hijacking*, we mean the registration of a trademark or of another intellectual property right by a usurper without the conclusion of using it effectively, but with the aim of blackmailing the rights holder even through judicial action.

The effects:

- The impossibility of registering one's trademarks;
- The risk of being summoned to civil proceedings for counterfeiting, with court injunction and compensation for damages
- Loss of goodwill, substantial damages and trademark image;
- According to Chinese law, the introduction of someone else's trademark in a company name does not constitute trademark counterfeiting. It is a strategy often used to reinforce the position of the *hijacker* of a trademark, in the litigations against the rights holder.

The solutions:

- Register Chinese versions of one's trademark as well, in all the various transliterations;
- Monitor the national register and the local bulletins of registered trademarks;
- Examine the specialised local papers and catalogues;

- Collect proof of usurpation to be used in court;
- Act immediately to cancel usurpatory trademarks without waiting for the problem to arise;
- Consider, in certain cases, the possibility of surrendering to blackmail by acquiring the trademark from the usurper, if this turns out to be the most convenient solution.

PREVENTION, HYGIENE, AND SAFETY IN WORKPLACES

Before setting up an undertaking

Before setting up a business or an undertaking it is compulsory to communicate the starting of the activity to the “Comune” (Municipality) where it is placed. Undertakings with more than three workers that want to adapt premises or buildings to workplaces, must notify it to the Body of territorial inspection (Functional Unit for Prevention Hygiene and Safety at work “UF.PISLL.” at ASL.), describing the product of the work activity and the features of premises and systems (art. 67 Legislative Decree 81/08).

This communication of “initial assessment” represents a useful opportunity for the employer, in order to obtain help on behalf of professional operators of UF - PISLL to carry out the difficult task of running the business respecting all the technical principles established to protect workers health and safety.

Buildings are registered at the “Comuni” (Municipalities) and for each of them it is specified if the rooms are destined to a working activity or a living purpose. As the productive activities imply sometimes hazards that interfere with living aims, it is forbidden to use the premises in a way different from their original destination of use: if a shed is registered for industry it is forbidden to subdivide it and use a part of it as a house.

Excess of dampness, little air recycling, lack of natural light etc., can cause health problems, easing the onset of common diseases and strengthening the effects of toxic substances (smokes, powders, steams etc.) used or produced during the working activity.

Before setting up a working activity it is necessary to control that workplaces guarantee good hygienic conditions for the workers (art.63 Legislative Decree 81/08 and joint IV).

The premises and workplaces must:

- Not be placed in basements;
- Be provided with windows that can be opened ensuring so air recycling and natural light (or, in particular circumstances, these features can be guaranteed by adequate alternative equipments);
- For rooms destined to manufacturing, walls must be at least 3 meters high;
- Be well dried without water drains;
- Have at their disposal hygienic services in good conditions and proportionally adequate to the number of workers.

Those who set up an undertaking must also take care of hygiene and safety of workplaces, implementing, in particular, obligatory regulations in force regarding the prevention and the protection against hazards, in order to render the workplace safe and riskless for workers health.

The recent regulation concerning workers safety and health in workplace (Legislative Decree 81/2008,

later modified through Legislative Decree 106/2009) establishes that each employer must draw up an assessment document on hazards identification.

This document is drawn up by specialized technicians in the safety sector on workplace (by now undertakings with less than 10 workers can make a self-certification).

This document is drawn by employers with the help of the Responsible of the service for Prevention and Protection (RSPP), a technical role that the employer must appoint for any business activity. The employer himself, in the greatest part of small undertakings, can be the responsible for this service as a RSPP, under condition he has attended a specific training organized by the Unions.

By the document concerning “the assessment of hazards on workplace”, the employer must show he/she has taken into consideration all the hazards present on workplace and inherent to activities carried out by employees, partners or relatives present in the undertaking (art.17 Legislative Decree 81/08).

The document of hazard assessment must therefore contain:

- A report about the evaluation of all hazards for safety and health, the toxicological files of all the chemicals used during the working activity and the environmental evaluations possibly tested by sampling (regarding noise, chemicals etc.);
- The detection of the measures of prevention and of protection and of the measures for individual protection adopted;
- The roles within the management that must provide to it. They must have at their disposal staff and units provided with congruous skills and powers;
- The appointment of the Responsible for the Protection and Prevention Service;
- The detection of tasks that might expose the workers to specific risks and that require a recognized professional skill, specific experience, adequate training and formation.

In case detected and estimated hazards might provoke professional diseases, the employer must appoint a competent physician and make the workers exposed to such hazards be subject to prevention health care and follow up.

Moreover the employer must

- appoint the staff for first aid (APS) and for the fire-fighting services (AAI).
- In case two or more undertakings engage activities in the same shed, they must all cooperate to draw the hazards assessment concerning the whole shed, sharing the responsibility of the running of the systems and facilities in common, and considering the risks interfering among different activities (noise, chemical agents, goods movement etc.) and in establishing emergency and fire fighting plans: in this case, it is advisable to appoint the same representative (RSPP) for all the firms.

Workers must designate or appoint a Workers Representative for Safety (RLS) within Trade Unions who shall be present during all the checking phases of safety measures implementation. For some activities it is necessary to address to the Fire Brigade for the prevention of fire.

In order to receive the information about all the necessary fulfilments for the chosen activity, it is advisable to address to professionals enrolled in Registers (architects, geometers, engineers, i.e.) or to Professional categories and trade associations.

Hygiene in workpremises

Mess favours injuries in workplaces and increases hazards in case of emergency. Little hygiene and infestation lead to the risk of infective diseases.

All the rooms in the workplace must be kept carefully clean - to guarantee workers hygiene and good health - and to avoid animal infestations, such as mice and beetles.

In order to ease cleanliness in workplaces, this latter must be kept in order, avoiding so to stockpile material everywhere, keeping therefore only the material for the strict use in the working area, and storing the rest in the storage or on deposit shelves. Shelves, working tables and machinery must be kept clean. Hygienic services and canteens as well as hygienic accessories (taps and fittings, sinks, frames etc.) must be given particular care. It is forbidden to cook in areas without a specific sanitary authorization.

Refectories where workers can store, heat and consume precooked foodstuffs are allowed.

The hygiene of the refectories is statutory and it is essential to prevent infective diseases such as enteritis, gastritis, hepatitis.

Safety of electric plants

The electric systems in bad conditions imply risk of electrocution and may cause fires.

In order to avoid these hazards the following main rules must be respected (art. 80 Legislative Decree 81/80):

- in order to ensure the good functioning of the protections, the system must be protected by high sensitivity differential power switches that interrupt the current while implementing or in case of damage;
- it is necessary that the system is very skillfully made by highly skilled firms that shall issue the certificate of conformity when works are over. It is forbidden to modify the electric system by one's hands or by oneself, by adding plugs or lamps etc.;
- plugs, sockets, switches must be intact, tubes and cables that come out of the walls must be repaired or replaced;
- electric boards and panels must be easily reachable in order to detach quickly the current in case of emergency, and no material must be stockpiled before them.

Prevention against the hazard of fire

Each firm must implement all measures aiming at the prevention of fires (art. 46 Legislative Decree 81/08).

The first principle to apply is to reduce, as much as possible, the amount of flammable materials. Therefore liquid gas cylinders can't be present, if not strictly connected and necessary to productive phases (and not for cooking), and the material present on the spot must be only the one strictly necessary to production.

If several undertakings share the same shed, the stored material could attain, as a whole, such quantities to require specific firefighting measures. If more than 25 workers work in the same shed or if the stored material weighs more than 50 quintals (fake leather or large amounts of fabrics- more than 100 rolls approximately) or more than three liquid gas cylinders, then, the "Certificato di Prevenzione Incendi

“(C.P.I) (Certificate of Prevention against the Hazard of Fire) issued by the Fire Brigade is required. Each undertaking must be endowed with suitable and extinguishing media (extinguishers or fire hydrants in good working order). All undertakings present in a same shed must establish a common emergency plan as well as fire fighting measures.

The most common extinguishing medium is the extinguisher, that must be checked each six months by specialized firms (generally proposed by the seller). At the check, a checking plate is put on the extinguisher with the date of the latest check.

The extinguisher must be kept in an easily reachable place and it must be detectable by everybody. In workplaces direct flame stoves (such as gas or kerosene) can't be kept, while if it is necessary, electric heaters can be used.

Safety of machinery

- All parts of machines that can cause accidents (instruments of work, of movement or of transmission) must be protected and the protections can't ever be removed during the working phase (art.70 of the Legislative Decree 81/80 and joint V);
- The new machines bought in Europe and put into the market are already endowed with all necessary protections and can't be modified;
- As far as machinery used in leather working, the most common problems are with the use of:
 - **Sizing roller machine:** it can cause damage if fingers get stuck in the rollers, and this is why it must be provided with protection placed before the roller itself.
 - **Banner Shearing machine:** it can cause serious damage if activated only by one hand while arranging the pieces by the other hand. This is why they are provided with a double command to activate by both hands at the same time; machines that are not provided with double command can't be used at all. Deactivating the double command, for instance blocking one of the two buttons by an adhesive tape, constitutes a serious crime.
 - **Sewing machine:** the entering area of the endless belt on the pulley must be protected by a carter.

Material storage

Hazards of accident do not concern only the machines but also the materials used for the work that must be deposited properly in order not to fall on workers or to hinder the transit and exit ways. Shelves must be well fixed to the wall and heavy materials (such as leather or fabric rolls), should be kept in lower layers or anyway in a very stable position.

The resistance of charges of intermediate floors used as storage must be checked and certified and the indication of the maximum charge per square meter admitted must be clearly advertised.

Incorrect postures

When a worker is engaged in a long sit-in activity (like working at a sewing machine or at leather mounting) it is important to sit on embedded seats and adjustable chairs, in order to work with the back in a right straight position. Working on the floor, too, sitting in very low stools or small benches, and laying materials on the ground, can cause damages to articulations and favour infections. Incorrect positions are highly prejudicial during pregnancy and they are not allowed.

The use of mastics

Some solvents used to glue the leather are highly damaging and have caused serious illnesses among workers in this sector.

Inhalation of solvents steams can be particularly dangerous for children and women during pregnancy.

Nowadays, among the different mastics available on the market, it is possible to choose the ones with less toxic and volatile solvents, as for instance, water products, latex and bi-adhesive ribbons.

In any case, while buying mastics, it is always necessary to check the toxicological composition of the product and check the correct ways of use to avoid any possible exposure of workers to hazards. For instance, products containing volatile solvents must be utilized by law on desks endowed with steams aspirators. Women during pregnancy and children must not breath these toxic steams and they can't stay in places where these substances are used.

Protection of women workers during pregnancy and maternity leave

The law concerning the protection of women during pregnancy and maternity leave (Law 151/2001) prohibits to carry out unsafe works, such as those implying incorrect or tiring postures while working, and the use of dangerous chemical agents, or implying risk of infection, during pregnancy and puerperium.

The law compels to remove all the possible harmful factors for women at work and if it is not possible it compels to move them from the harmful workplace, possibly enjoying also the opportunity of an anticipated leave, keeping the employ and 80% of the retribution awarded by the ENTI PREVIDENZIALI (Social Security Institutions).

Required documents

The running of an undertaking implies the existence of compulsory documents guaranteeing the respect of those duties concerning the prevention of hazards on workplace for employees. The following documents are mainly necessary:

- *Declaration of the grounding of the electric system*: the grounding of the electric system must be reported to ISPESL (Higher Institute for the Prevention and Safety in Workplaces), using the special form distributed by this same Institute. The declaration form must be kept at the undertaking' s files in order to be shown in case of control.
- *Injuries Register*: it is the register to note the injuries and it can be bought at stationery shops; it must be validated by the local ASL, PISLL Office and kept at the firm' s. All the cases of injuries occurred to the employees at workplace must be transcribed in this register.
- For undertakings with less than 10 employees this document can be drawn up in a simplified way.
- *Sanitary Documentation*: this documentation must be set forth should from the hazards evaluation the necessity rise to have workers undergo medical visits; it must be kept by the specialist appointed by the firm, with respect of privacy and professional secret.

Waste elimination

Waste collection and elimination is subject to specific law provisions prescribing that:

- solid urban waste (RSU), that is to say the ones coming from home activities, must be collected in rubbish skips;
- waste deriving from work activities, by the other hand, cannot be eliminated through common collection in rubbish skips, but they must be eliminated following specific procedures, according to their injuriousness. For instance, leather retails, fabric, paper, plastic, wood for stocking, can be collected and taken to the ecological stations arranged by the Comuni, according to specific procedures. Other production waste, as tanks with mastic rests, must be collected through authorized firms, filling out a specific charge / discharge register.

What happens to those who violate the rules concerning hygiene and safety in workplaces

The Body of control (which is the ASL) that detects a possible violation sends a “Prescription Sheet” to the trespasser, containing the measures to be adopted and the timeframes to be respected to regularize the situation. If the trespasser complies within the prescribed time limits, the payment of an administrative fine is admitted. If the trespasser doesn’ t comply, the procedure follows its course, and possible penal fines can be much higher.

In case of particularly high risk (for instance high hazard of fire and explosion due to the presence of numerous gas cylinders or great quantities of goods stored without respect of adequate prevention measures for firefighting) in order to avoid crimes which would imply more serious consequences, the premises and the undertaking itself may be put under judicial preventive seizure.

The Major, too, in the name of the interest of the community, can emit ordinances aiming at erasing conditions of danger, imposing, for instance, the stoppage of the electric energy supply, the voiding of the premises, etc.

HYGIENE AND SAFETY IN FOODSTUFF ACTIVITIES

Producers of food must guarantee the hygiene of foodstuffs during all the stages of the manufacturing process, from primary food production, (production, breeding or cultivation of primary products, including harvesting, hunting and fishing, milking, and all the phases that proceed slaughtering) until the sale or the placing of food products to the final consumers disposal.

All producers must follow general regulations on hygiene of foodstuffs.

The “OSA” who are operators in the field of foodstuffs (apart from those working in primary food production) apply the principles of HACCP (Hazard Analysis and Control of Critical Points) introduced by the Codex Alimentarius (collection of international regulations of foodstuffs laid down within the works of the United Nations for Food and Agriculture.)

These principles prescribe a certain number of requirements that must be met along the cycles of production, transformation and distribution to allow, thanks to the Hazards Analysis, the detection of the critical points whose control is essential to guarantee food safety.

Through the word hygiene associated to foodstuffs one means the array of those measures and conditions necessary to prevent hazards and to guarantee the fitness of foodstuffs for human consumption.

Safety related to foodstuffs means the guarantee that food products have not any dangerous effect on the health of final consumers, as a consequence of their preparation for consumption.

In order to guarantee safety of foodstuffs for the whole food chain, an integrated strategy is needed.

Each OSA taking part to the food chain must guarantee that safety is never compromised. Safety of foodstuffs is the result of different factors: the Law which must establish the minimum standards; the “ASL” (Health Department on the territory) that carries out official controls to check the compliance on behalf of OSA.

The effective implementation of procedures, based on the principles of HACCO analysis, implies the collaboration and full commitment of all the workers for foodstuff businesses. To this end their training is essential and necessary. HACCP system is an instrument that aims at helping the operators in the foodstuffs sector and achieve an higher level of safety.

This system is considered as a mechanism of self-control and self assessment and it shouldn't replace the official checks.

How to set up a food business

The setting up of an undertaking, either a laboratory or a factory involved in

producing, processing or packaging and storing foodstuffs (laboratories but also restaurants, bars and gastronomies) implies the presentation of a “DIA” - Declaration of Starting Up an activity or Initial Assessment to be lodged and notified at the “SUAP” Office of the competent Municipality, that sends all the documents within 5 days to the organized bodies on the territory (Functional Unit for Hygiene and Public Health).

The territorial Offices of ASL are committed to control the effective compliance with the hygienic and sanitary requirements of different businesses, together with other bodies of control such as the Units Against Adulteration (NAS) and the Police of the Municipality.

The premises destined to the preparation, administration and sale of foodstuffs must meet specific hygienic and sanitary requirements, generally listed in the “Regolamento di Igiene degli Alimenti e Bevande” (Regulation of Hygiene of Foodstuffs and Drinks) of the competent Municipality, specific for the activity one wishes to carry out. As far as the structural requirements for premises are concerned, they are mainly listed in the Building regulation of each competent Municipality. As to Florence, these two documents can be found, together with the “Piano di Somministrazione” (Plan of Distribution) on the following sites:

<http://www.comune.firenze.it/comune/regolamenti/IGIENE.doc>

<http://www.comune.firenze.it/comune/regolamenti/edilizio/RE2009.pdf>

http://www.comune.firenze.it/comune/regolamenti/piano_somministrazione2009.doc.)

Through a professional qualified technician (an architect, a geometer or an engineer for example), it is advisable to ask for clarifications to the ASL using the procedure which foresees a preventive advise for Derogations to the Building Code “Deroghe del Regolamento Edilizio” (Preventive Building Advice according to art.82 p.6 L.R.1/2005) or for clarifications about changes inside the rooms, change of type of production, or for a starting up of an activity with insufficient or doubtful requirements (Preventive Hygienic and Sanitary Advice according to the Communitarian Regulation 852/04)

Hygienic and sanitary requirements of the premises for the preparation and supply of foodstuffs

The premises for the preparation, supply and sale of food (defined primary foodstuffs) must be properly ventilated and lighted in natural ways, whereas natural lighting or/and ventilation wouldn't be sufficient, they must be integrated by artificial ones.

In premises where cooking is authorized, suitable means of smoke removal must be arranged (suction hood and chimney flue) according to the regulations established by each Municipality (for the Municipality of Florence, according to article 104 of the Building Plan and to article 14 of the Hygiene Foodstuffs and Drinks Regulation) and in the respect of Communitarian Rules.

These premises must be equipped with adequate fixtures and fittings to allow food processing, guaranteeing so hygiene and safety in the various phases of the process (stockpiling, preparation, cooking, fitting out, supplying).

An equipment and facilities layout must be realised, that is a plan detailing all the tools, utensils and facilities present inside the premises.

The premises must be kept clean, easy to wash and sanitized (clean and disinfected).

The sewage system must be certified, as well as soapy and clear waters drains. The draining systems procedures must be defined as well as the ways to clean and sanitize the premises where the draining systems are placed

Hygienic and sanitary requirements of “accessory” premises

The “accessory” premises are the storeroom, the warehouse, the changing room for employees, the bathrooms for the clients and for the employees and the parts outside the building (such as the courtyard, gardens and terraces).

The dimensions of the changing room must correspond to the parameters established by the Municipal Building Regulation: if there are 10 or more employees, two separate rooms (one for men and the other one for women) must be destined to changing rooms.

The changing rooms must be properly ventilated and lighted and furnished with closets with double compartment, that can be washed and disinfected, with the exclusive and personal use of each employee.

In the warehouse/storage, all the goods must be placed on shelves fixed at least 30 centimeters far from the floor. Any material which is not strictly connected with the activity inside the premise and facilities is not allowed.

The number of toilets is functional to the type of production: The minimum number is one (1) which must be reserved to staff only.

Bathrooms must be endowed with an access area with automatic washbasin, and the hygienic and sanitary facilities and equipment (liquid soap dispenser, paper roll dispenser and pedal control baskets).

If there are parts outside the building, these shall be maintained clean and in order, and particular care shall be given to the fight against pests.

Training and HACCP self control system

According to HACCP the Self-assessment plan is a compulsory document that each food business must possess, give evidence of having knowledge of, and implement to its own business.

It consists of a general part that identifies the business and of a procedural part which must be carried out by OSA (the registration of the freezers and fridges temperature, the procedure for the registration of suppliers, the procedures for the control of pests).

The implementation of the plan is particularly important because food hygiene and safety mainly depend on it.

OSA (food handlers) training is very important, too, and it is ruled out by the Regione Toscana. By the Resolution 1388 dated December the 27th, 2004, the obligatoriness of the sanitary card, required for all those handling and trading foodstuffs, for students of School for Hotels Trade "Scuola Alberghiera", chemists and herbalists was abolished (art.14 law 283 dated April, 30th, 1962, art.37 DPR 327/80).

Educational paths and Training - now compulsory for anyone working in food industry-must take place and be implemented according to ways established by the Regional Regulation (DGR 559/2008) in the field of education, instruction, orientation, professional training and work.

At the end of each course, after passing the individual learning test, the participant must be given a certificate of frequency by the training company.

The OSA and /or the responsible for the self-assessment in the field of foodstuffs must have complied with the training activity duty before starting the activity. The OSA operators are committed to guarantee the training of the staff working in the undertaking with an unlimited worktime contract. The training must be carried out by specific classes foreseen by DGR559/2008.

The duty to train the staff consecrated to the alimentary sector must be met within 180 days since the opening of the work activity or since the hiring date.

In order to guarantee the knowledge of basilar information, a 4 hours training course must be carried for the new recruits before starting work by the entrepreneur or by the responsible of self-assessment, under condition they are duly trained. It's the entrepreneur's duty to guarantee such a training and the education as soon as possible, before the beginning of the working activity.

For further information about the operators working in the field of foodstuffs:

http://www.asf.toscana.it/images/download/prevenzione/dp-schedainfoalimentare_rev4.pdf

The ASL activity: the control of foodstuffs

The ASL (Health Territorial Department) is the competent Authority on the territory to guarantee the minimum standards of safety in foodstuffs.

By means of experts, technicians and specialists, it carries out the “CUA”- Official Control on food businesses. After the supervision, the experts issue to the OSA a copy of the report, where the controls made are listed, as well as the non-compliances and the timing for their resolution.

The prescriptions of the report must be respected in the various parts, especially the “measures to adopt”; the report must be kept and exhibited to the official supervising bodies during following controls.

Some non-compliances are subject to penalties according to Legislative Decree 193/07 by sanctions ranging from 1.000 to 6.000 Euros. The resolution of the non - compliances within the prescript terms, gives a positive outcome and implies the dismissal of the procedure.

The non compliance with the resolution of non conformities and times implies a 2.000 Euros penalty.

Other kinds of measures might follow the Control (Orders of Stopping the activity or Limitative Orders), whose non compliance is punishable with fines ranging from 2.000 to 3.000 Euros.

In case of non-compliance, another report is drawn and time at trespasser's disposal to fulfill is halved.

The stoppage of the business activity can be decided straight during the supervising control on the premise if certain and/or potential hazards for food safety and consequently for public health are detected (for instance infestation of crawling insects and rodents in the premises or facilities of the business; the lack of preliminary conditions such as the lack or the temporary interruption of water supply; very bad conditions as far as the cleaning is concerned, imply the loss of the running of the public undertaking on behalf of the OSA).

The document regarding the temporary stoppage can also be produced in a subsequent time, drawn up after evaluations formulated by the Office and notified to the OSA on behalf of the control staff.

SAFETY OF GOODS AND EUROPEAN COMMUNITY TRADE MARK

An economic operator is supposed to offer safe goods on the market and to meet the safety requirements established for the different kinds of produced products.

The Chambers of Commerce carry out functions concerning the conformity of goods with the aim to protect the consumer.

The Communitarian Regulation and the provisions of the specific Italian laws guarantee the general safety of goods placed on the market.

A product is considered to be safe when it is riskless or it presents only very low risks, compatible with the use of the product and acceptable within a context of high health protection and people's safety.

The European Community has identified some categories of goods characterized by frequent risks in their use, therefore minimum safety standards have been laid down by specific Directives concerning both products for professional and industrial use, and products destined to the final consumers.

European Community trade mark (“CE” trade mark)

For some products, the European Community trade mark is mandatory, the trade mark is the indication of conformity of the product to essential safety standards laid down by one or more Community Directives referred to the product itself.

Among the goods that must be provided with the CE trade marks there are several categories of products such as toys, electric and electronic products, sunglasses and prescription glasses, gas or pressure fittings, devices for individual protection and lifts.

The CE trade mark is neither a mark referring to the quality nor to the origin and it doesn't mean “made in Europe”.

The mark CE means that the product is made in compliance with UE Regulations and Laws; by affixing the mark, as a matter of fact, the producer guarantees, under his own responsibility, that the product is suitable for sale on the whole Economic European Area that is in the 27 UE Member States. and in the FETA Countries (Iceland, Norway, Lichtenstein and Turkey).

The CE trade mark allows undertakings to access the whole united market without acquiring previous individual authorizations by the single National Authorities, reducing thus the costs and the duties of the conformity assessment. The CE trade mark informs in fact that the product underwent to the appropriate assessment procedure before being placed on the market. This means that the producer has checked that the product meets all the foreseen basic requirements i.e. in the field of health, safety, respect of environment, or if it has been controlled by a notified Body charged with the assessment of conformity. The CE trade mark must be fixed in a visible, readable and indelible way on the product and on the identification label.

The distributor must check the presence of both the trade mark and of the necessary documents kept in the technical dossier regarding the product.

If the product is imported from a third Country, the importer must check that the non EU producer has carried out all the necessary fulfilments and that the documents are available upon request.

The consumer is reassured by the presence of the CE trade mark that can be found at the moment of the purchase.

Products of large consumption that need not to be identified by the CE trade mark are i.e. wood furniture, armoured doors, frames, rolling blinds, gardening tools, watches, non-electric musical instruments, mattresses, scissors, knives, kitchenware, textile, bath furniture, flooring, coatings and coverings, footwear, suitcases.

General Rules

In addition to the numerous European Directives and Regulations that aim at determining common procedures for goods trading within the Economic European Area, in Italy there is the Consume Code(Leg. D. 206/2005) that establishes a group of measures regarding the safety of goods, the system of controls and the coordination among the Bodies concerned, and whose target is also the exchange of information. It lays down also the sanctions that vary from fines of different value to the arrest according to the seriousness of the breaching.

Rules of specific sectors

Footwear

The D.M 11.04.96 (Ministerial Decree dated November, the 4th, 1996) establishes that all footwear placed on the market must have a trade mark containing information on the composition of the three parts of footwear, that are the upper, the inside coat and the sole.

Toys

The D. Lgs. (Legislative Decree) 313/91 establishes that a toy can be placed on the market for sale only if it is in compliance with all the standards of safety and if it is manufactured according to the harmonized regulations UNI-ENI.

The CE trade mark must be affixed on the toy together with the identification of the producer or of the responsible for the placing on the market of the good, as well as instruction and warnings about its use.

Electric products

Law 79/77 establishes that the low voltage electric material must be in compliance with the UNI-ENI Regulations and properly done from a safety point of view.

The presence of the CE trade mark is mandatory together with the identification of the producer or of the responsible for its placing on the market, as well as the statutory instructions and warnings.

Sunglasses

The D. Lgs (Legislative Decree) 475/92, doesn't only classify sunglasses as fashion accessories, but also as “ individual protection devices” (1st category) and therefore destined to ensure a proper protection against the harmful action of sunrays.

Before being placed on the market, sunglasses must be provided with the CE trade mark, and a note informing about the screen degree of the lens and about the kind of sun filter.

Information on co2 emissions and new cars consumptions

The D.P.R. 84/2003 has defined some fulfillments for producers and retailers of new cars, regarding the information about fuel consumption

and emission of CO2 to give the consumers, through labels reporting both the consumption for different cycles and the CO2 emissions.

Lighters

A wrong use of lighters as toys on behalf of children causes 1.550-1900 injuries and 34-40 casualties per year in the 25 member States of E:U.

In order to prevent such accidents, there are children safety devices whose application has been compulsory for the last ten years in the United States, in Canada, in Australia and in New Zealand. Since the implementation of safety standards for children protection in the United States, a 60% decrease in the number of accidents was registered.

APPENDIX

Useful addresses in the province of Florence

Camera di Commercio, Industria, Artigianato e Agricoltura

www.fi.camcom.it

Ufficio Nuove Imprese e Incubatori di Impresa

Volta dei Mercanti, 1 - 2° piano, 50122 Firenze, tel. 055.2795555 - fax 055.2795570;

nuoveimprese@fi.camcom.it

L'ufficio riceve su appuntamento dal lunedì al venerdì (telefonare nell'orario 8.30-13; 14-15)

Registro Imprese

Piazza Mentana 1 - Piano terreno, tel. 199 503030; fax 055.2795390/311;

registro.imprese@fi.camcom.it

Orario di apertura: lunedì-venerdì, 9-13; 14-17

Osservatorio anticontraffazione

Segreteria dell'Osservatorio, Volta dei Mercanti, 1 - 50122 Firenze, tel. 055-2795550 055-2795572

promozione@fi.camcom.it

Unioncamere Toscana

Via Lorenzo il Magnifico, 24, 50129 Firenze, tel. 055-46881, fax 055-4684052; www.tos.camcom.it

info@tos.camcom.it

Vivaio di Imprese

Servizi gratuiti per sostenere chi vuole creare attività imprenditoriali e di lavoro autonomo

Via della Sala 141, tel.: 055.3434284; fax: 055.3434287; www.vivaioimprese.it

info@vivaioimprese.it

Orario di apertura:

lunedì, 14.30-18.30, presso Incubatore Firenze, via della Sala 141

martedì, 16 -20, presso Incubatore Firenze, via della Sala 141

mercoledì, 10-14, presso Villa Bandini Q3, via del Paradiso 5

giovedì, 9-13, presso la Camera di Commercio, Volta dei Mercanti 1 (IV piano)

venerdì, 9-13, presso Villa Bandini Q3, via del Paradiso 5

Prefettura di Firenze

Sportello Unico per l'Immigrazione

Via A. Giacomini 8 - Tel. 055-27831

www.immigrazione.regione.toscana.it/lenya/paesi/live/enti/sui/suifi.html

Agenzia delle Entrate

tel. 055-50.51.41, fax 055-50.51.43.63; www.agenziaentrate.it

Orario di apertura (Ufficio locale 1, Via S. Caterina d'Alessandria 23; Ufficio locale 2, V.le Spartaco Lavagnini 27; Ufficio locale 3, Via Panciatichi, 20): lunedì-venerdì, 8.30-12.30; martedì e giovedì, 14.45-16.45.

Direzione Provinciale del Lavoro

Viale S. Lavagnini 9, tel. 055.460441, fax 055.472620; www.lavoro.gov.it/Lavoro/DPL/FI/dpl-Firenze@lavoro.gov.it

Orario di apertura: lunedì-venerdì, 9-12.30; martedì e giovedì anche 14.45-16.45

INPS

Viale Belfiore 28/a, tel. 055.4975320; www.inps.it

Orario di apertura: lunedì-venerdì, 8.30-12.30; giovedì 14.30-17

Sportello Unico Comunale Immigrazione

Via Pietrapiana 53, piano terreno, tel. 055.2769604; 055.2769632; immigr@Comune.firenze.it

Orario di apertura: lunedì e venerdì, 9-12.30; mercoledì 9-12; martedì e giovedì 9-12 e 14.30-17.30.

Information and assistance about money transfer**Banca d'Italia**

<http://www.bancaditalia.it/vigilanza/albi-elenchi/ageattfin>

Help desk: tel. 06 4792 9393

www.mandasoldiacasa.it

Information and assistance about marks and patents**Ufficio Italiano Brevetti e Marchi**

www.uibm.gov

Camera di Commercio di Firenze

Servizio di orientamento gratuito su marchi e brevetti, Volta dei Mercanti 1, 50122 Firenze, Tel.055.2795221/293/249, fax:055.2795346

brevetti@fi.camcom.it

Information and assistance about prevention, hygiene and safety

INAIL

Via delle Porte Nuove 61, tel. 055.32051; fax: 055.3205503; www.inail.it
firenze@inail.it

Orario di apertura: lunedì-venerdì, 8.30-12.30; giovedì, 8.30-12.30; 14.30-17.30

Comando Provinciale dei Vigili del Fuoco

Via G. La Farina 28, 50100-Firenze, Tel: 055.24901

www.vigilidelfuoco.it

Orario di apertura: lunedì-venerdì 9-11, giovedì 14.30-16.30

Istituto Superiore per la Prevenzione e la Sicurezza nei luoghi di Lavoro (Ispesl)

Via G. La Pira, 17, 50121-Firenze, tel. 055.289681, fax. 055.210882; www.ispesl.it/Firenze
ispeslfi@yahoo.it

Orario di apertura: lunedì-venerdì 10.00-12.00

Unità Funzionale Prevenzione igiene e sicurezza nei luoghi di lavoro Zona Firenze

Segreteria

Via della Cupola, 64 - 50145 Firenze (Firenze)

Orari: da lunedì a venerdì ore 9:00 - 13:00

Telefono: 055.342331; Fax: 055.301293

Email: pisll.fi@asf.toscana.it

Unità Funzionale Prevenzione igiene e sicurezza nei luoghi di lavoro Zona Mugello

Segreteria

Viale 4 Novembre, 93, 50032 Borgo San Lorenzo (Firenze)

telefono: 055.8451625 fax: 055.8451628

Orari: da lunedì a venerdì ore 9:00 - 13:00

Unità Funzionale Prevenzione igiene e sicurezza nei luoghi di lavoro Zona Nord Ovest

Segreteria

Via Righi, 4 - 8, 50019 Sesto Fiorentino (Firenze)

telefono: 055.4498401-2 fax: 055.4498397

Orari: da lunedì a venerdì ore 9:00 - 13:00

Unità Funzionale Prevenzione igiene e sicurezza nei luoghi di lavoro Zona Sud Est

Segreteria

Via Chiantigiana, 37 - 50126 Firenze

telefono: 055.6534704-25 fax: 055.6532383

Orari: lunedì, mercoledì e venerdì ore 9:00 - 13:00

Unità Funzionale Igiene e Sanità Pubblica Zona Firenze

Uffici amministrativi

Via di San Salvi, 12 - 50135 Firenze (FI)

Orari: Lunedì, mercoledì e venerdì dalle 9:00 alle 13:00

Telefono: 055.6263608; Fax: 055.6263629

Email: igiensanitapubblica.fi@asf.toscana.it

Unità Funzionale Igiene e Sanità Pubblica Zona Mugello

Ufficio amministrativo

Viale IV Novembre, 93 - 50032 Borgo San Lorenzo (Firenze)

Orari: Da lunedì a venerdì ore 9:00 - 13:00

Telefono: 055.8451639-640; Fax: 055.8451631

Email: igiennesanitapubblica.mugello@asf.toscana.it

Unità Funzionale Igiene e Sanità Pubblica Zona Nord Ovest

Ufficio amministrativo

Via Righi, 8 - 50019 Sesto Fiorentino (Firenze)

telefono: 055.4498357-360; fax: 055.4498367

Orari: da lunedì a venerdì ore 9:00 - 13:00

Email: ispnordovest@asf.toscana.it

Unità Funzionale Igiene e Sanità Pubblica Zona Sud Est

Ufficio amministrativo

Via Poggio della Pieve, 5 - 50012 Bagno a Ripoli (Firenze)

telefono: 055.6534420 – 421; fax: 055.6534423

Orari: Da lunedì a venerdì 9:00 - 13:00

Email: igiennesudest@asf.toscana.it

SUAP IN the province of Florence

La Provincia di Firenze svolge attività di Coordinamento degli uffici **SUAP** comunali, secondo quanto disciplinato dal Protocollo d'intesa per il consolidamento e la valorizzazione della rete provinciale degli sportelli SUAP della provincia di Firenze.

Per gli indirizzi dei SUAP dei comuni del territorio provinciale, vedi

http://suap.055055.it/index.php?option=com_content&view=article&id=67&Itemid=87

Sportello Unico Attività Produttive

<http://suap.comune.fi.it/>

Piazza Artom, 17 e 1/A, Firenze

Orario di apertura: lunedì e mercoledì, 9- 13; giovedì, 15-17

- Strutture Ricettive: tel. 055.32.83.559; 503-643-509; fax 055.32.83.597
- Attività estetiche (acconciatori, estetisti, tatuaggi e *piercing*): tel.055.32.83.551/554, fax 055-32.83.597
- Impianti Distribuzione Carburanti: tel. 055.3283641, Fax 055.32.83636
- Somministrazione di alimenti e bevande e panificazione; tel. 055.3283525, fax 055.32.83.542
- Commercio al dettaglio in sede fissa: tel. 055.32.83.721, fax 055.32.83.592
- Commercio su aree pubbliche e mercati: tel. 055.328.3502; 055.328.3550; 055.328.3518
- Industria e artigianato, tel. 055.32.83.529, fax 055.32.83644

Information and assistance about safety of goods

Camera di Commercio di Firenze

Ufficio Attività Ispettive

Concorsi a premio, sicurezza generale ed etichettatura dei prodotti

Via Arnolfo 26 - 50121 Firenze

Tel. 055 6529984 Fax 055 6241519

ufficio.metrico@fi.camcom.it

Guida alla sicurezza dei prodotti elettrici a bassa tensione

http://www.fi.camcom.it/guide_operative_online.asp?ln=&idtema=1&page=informazioni&index=4&idtemacat=1&idcategoria=624

Presidenza del Consiglio dei Ministri

<http://www.governo.it/GovernoInforma/Dossier>

Ministero della Salute

<http://www.salute.gov.it/sicurezzaChimica/sicurezzaChimica.jsp>

Ministero dello Sviluppo Economico

http://www.sviluppoeconomico.gov.it/organigramma/dossier.php?nodo=28&id_dossier=99&sezione=organigramma&gruppo=&tema_dir=tema2

Commissione Europea - Rapid Alert System for non-food consumer products (RAPEX)

http://ec.europa.eu/consumers/safety/rapex/index_en.htm

Camera di Commercio Industria Artigianato e Agricoltura
Piazza dei Giudici, 3 - 50122 Firenze
Tel. 05527951 - www.fi.camcom.it