

Executive Summary

of the new Italian legislation on innovative startups

20th October 2014

Italian Ministry of Economic Development
Minister's Technical Secretariat

A new industrial policy for economic development and competitiveness

Vision and legislative process

Italy's Startup Act aims to create favorable conditions for the establishment and the development of innovative enterprises in order to contribute significantly to economic growth and employment, especially youth employment. It also fosters a knowledge spillover in the whole economic fabric and, more specifically, supports a new Italian production oriented towards high-tech and high-skill sectors. Not only that: supporting innovative entrepreneurship contributes to greater social mobility; strengthens the links between universities and businesses; and makes people more incline to take business risks.

To reach these goals, the Italian Government has worked since 2012 on the creation of a complete and coherent legislation directed towards the development of an ecosystem of innovative startups with high technological content. Such work has culminated in the Decree Law 179/2012 on "*Further urgent measures for Italy's economic growth*".

[Law 221/2012](#) includes many of the policy proposals put forward in the [Restart, Italia!](#) Report – a report elaborated by a [task force](#) of 12 experts, which was set up in April 2012 by the Minister of Economic Development – as well as suggestions coming from a vast consultation with the main players making up the Italian startup ecosystem. With the Law in question, a definition of **innovative startup**, that is a new innovative enterprise of a high technological value, has been introduced into the Italian legal system. For the very first time, this type of enterprise could draw upon an exhaustive corpus of regulations (articles 25-32) which launched new instruments and support measures regarding subjects which have an impact on the whole lifecycle of a company: from its incorporation to its growth, development and maturity stages. All this was achieved without distinguishing between sectors or introducing age limits for entrepreneurs.

By creating a regulatory framework which is congruent with the needs of all the players involved in the startup ecosystem, Law 221/2012 transcends a simple law-making exercise. It is an organic and coherent policy for which public support for innovative entrepreneurship represents a new way to think about industrial policy-making.

Far from being static, the policy for innovative startups is constantly evolving and developing. Thus, the last paragraph of this report focuses on additional measures which,

despite not forming part of the original package of regulations, have enriched the framework of governmental initiatives in place to support innovative startups and their ecosystem.

Definition, promotion and monitoring

The newly approved legislation recognizes that innovative startups are important for the promotion of sustainable growth, technological development and employment – in particular youth employment. Furthermore, this kind of companies contributes to developing a new business culture, creating an environment which is more favorable to innovation, increasing social mobility, as well as attracting to Italy investments and talented people from abroad. The legislation does not refer just to the digital sector, but embraces innovative startups of high technological value established across all sectors.

Definition of innovative startup: the above-cited support measures are aimed at companies with shared capital, including cooperatives the shares or significant registered capital shares of which are not listed on a regulated market nor on a multilateral negotiation system. These companies must also meet the following requirements:

- ✓ have been operational for less than 4 years;
- ✓ have their headquarters in Italy;
- ✓ have a yearly turnover lower than 5 million euros;
- ✓ do not distribute profits;
- ✓ develop and commercialize innovative products or services of high technological value;
- ✓ are not the result of a merger, split-up or selling-off of a company or branch;
- ✓ be of innovative character, which can be identified by *at least one* of the following criteria:
 1. at least 15% of the company's expenses can be attributed to research and development activities;
 2. at least 1/3 of the total workforce are PhD students, the holder of a PhD or researchers; alternatively, 2/3 of the total workforce must hold a Master's degree;
 3. the enterprise is the holder, depositary or licensee of a registered patent (industrial property) or the owner of a program for original registered computers.

Already established companies: companies which were already established upon the coming into force of Law 221/2012 (19 December 2012) and which meet the requirements provided by the law in question, may register at the special section of the Companies Registry and are entitled to the same benefits as innovative startups. These benefits apply for a four-year period if the company was established in the two previous years, to a three-year period if the company was established in the three previous years, and to a two-year period if the company was established in the four previous years¹. Support measures apply to newly established companies for the first four years of activity, provided that they meet the aforementioned requirements.

Definition of “innovative startup with a social goal”: it fulfills all the requirements that apply to ordinary startups. However, an innovative startup with a social goal operates in specific domains that have a considerable social value according to the Italian legislation².

Definition of a “certified incubator”: the startup incubator or accelerator must verify [specific requirements](#) concerning the startup’s physical structures, management, facilities and, above all, its track record, are fulfilled. In this way, the law aims to identify the structures that are able to offer efficient incubation services in Italy. Certified incubators can benefit from some instruments provided for by the law (e.g. they are exempted from registration fees → *see page 7*; they can use stock options to remunerate workers, as if they were innovative startups themselves → *see page 8* they have priority access to tax credit for hiring highly qualified personnel → *see page 8*; they have simplified access to guarantees on bank loans → *see page 8*).

Registration: [innovative startups](#) and [certified incubators](#) must subscribe to a **specific online directory** created for this purpose at the Chambers of Commerce, which is where usually companies must register. This public registration procedure allows the company to gain visibility and to be controlled by the competent authorities; moreover, such registration makes it possible to monitor and evaluate the impact of the new legislation in terms of

¹ Decree Law no. 76/2013 abolished the 60-day time-frame established by primary legislation (i.e. the time it took for the Decree to be ratified in law) which applied to pre-existing companies if they wanted to apply for the innovative startup status through self-certification

² Article 2, paragraph 1, of Decree-Law no. 155 of 24 March 2006, regulating social enterprises, lists such specific areas: social work, health care and social care, education and training, environmental protection, promotion of cultural heritage, social tourism, undergraduate and post-graduate education, cultural services, non-academic training, services for the social enterprises of entities of which 70 per cent is composed of social enterprises. As we shall see later, in the case of investment in an innovative startup with a social goal, the tax incentive granted to investors is increased.

economic growth and employment.

Monitoring and evaluation: with the aim of putting in place an “evidence-based policy”, the corpus of regulations on startups provides for a structured system to monitor and evaluate this new policy. Moreover, from the 1st of March 2014, the Minister of Economic Development must report to the Italian Parliament annually on the impact of the measures in question³.

³ On the 1st of March 2014, the Minister of Economic Development discussed the first “*Annual Report to the Parliament on the startup law*”. The Report collected the analysis of the Monitoring and Evaluation Committee set up with the [Ministerial Decree approved of 31 January 2014](#).

Benefits of the new legislative framework

1. **No registration fees:** unlike most companies, innovative startups are exempt from the payment of stamp duty and fees incurred due to the obligation of registering to the company register, as well as the payment of the annual fee due to the Chambers of Commerce. In addition, as clarified in the [Circular 16/E](#) issued by the Italian Revenue Agency on the 11th of June 2014, the exemption from such fees could be interpreted as a general waiver, covering all the actions carried out by the innovative startups after the subscription to the company register, such as incentivised capital increases.
2. **Flexible corporate management:** innovative startups registered as limited companies can assign non-voting or preferred stocks.
3. **Exemption from the regulations on companies reporting systematic losses and dummy companies:** during their first few years of activity, innovative, high-risk companies may record losses. If the available capital is insufficient, such losses may have a direct impact on the company's share capital. Where losses result in the share capital being reduced by over 1/3, the shareholders' meeting must lower the capital proportionally to the losses recorded by the following financial year. A 12-month extension is applied to innovative startups, during which the capital can be reduced proportionally to the losses. While ordinary companies must lower capital by the following financial year, startups can do this for up to two financial years after they suffered losses. Moreover, regulations concerning non-operational dummy companies which constantly make a loss, do not apply to startups. These regulations provide for the allocation of a set minimum income on a flat-rate basis. Such exceptions to ordinary regulations allow startups to complete the launch stage and recover from the losses incurred in early stages of their growth.
4. **Tailored made labor law:** for new recruitment in startups, it is possible to stipulate easily renewable contracts of different lengths - from a minimum of six months to a maximum of 36 months. As an exception to the maximum time-frame of 36 months, it is possible to stipulate a new fixed-term contract which lasts up to the end of the fourth year of a startup's life. By the end of the four-year period, the fixed-term contract is automatically changed to an open-ended one.
5. **Flexible remuneration system:** salaries due to workers employed in innovative startups can have a variable component, depending on the overall performance of the

company or other targets set by the parties.

6. **Remuneration through stock options and work for equity scheme** ([Guide](#)): in order to foster loyalty among management, employees and suppliers such as lawyers and accountants, startups and incubators may offer them capital shares by way of additional remuneration. The revenues resulting from these financial instruments are tax deductible for both fiscal and contributory purposes. In other words, innovative startups and certified incubators may make use of instruments such as stock options and work for equity schemes on even better terms than big companies listed on the Stock Exchange.
7. **Tax credit for hiring highly qualified personnel** ([Implementing Decree](#); [Guide](#)): priority access is granted to facilitations for the employment of highly qualified personnel in innovative startups and certified incubators. The relief consists in a 35% tax credit for the cost of hiring with an open-ended contract highly qualified personnel.
8. **Tax incentives for corporate and private investments in startups** made by people (19% tax credit) or legal entities (20% fiscal deduction) for the years 2013, 2014, 2015 and 2016 ([Implementing Decree](#)). These incentives apply both in case of direct investments in startups and in case of indirect investments by the means of other companies investing predominantly in startups. Tax concessions are greater if the investment concerns startups with a social goal or those operating in the energy sector (25% tax credit for people or 27% fiscal deduction for legal entities).
9. **Equity crowdfunding**: in July 2013, CONSOB – the equivalent of the American SEC⁴ – has published a *“Regulation on the raising of venture capital by innovative startups through on-line portals”*. In so doing, Italy has become the first country in the world to have introduced a specific set of rules on equity crowdfunding, allowing innovative startups to raise capital, also from abroad, through [certified web portals](#).
10. **Fast-track, simplified and free-of-charge access for innovative startups and certified incubators to the Fondo Centrale di Garanzia**, a Government Fund that supports access to credit through guarantees on bank loans ([Implementing Decree](#); [Guide](#)). The guarantees covers 80% of the bank loans up to a maximum of 2,5 million euros and it is provided through a simplified fast-track procedure.

⁴ Commissione nazionale per le società e la borsa (CONSOB) is the Italian Securities and Exchange Commission (SEC).

11. More targeted **support to the process of internationalisation** provided by the Italian Trade Promotion Agency (“ICE”, [dedicated website](#)), including assistance in legal, corporate and fiscal activities, as well as real estate and credit matters. In addition, innovative startups can benefit from free-of-charge participation to selected international fairs and events, as well as to international initiatives aimed at favouring the matching with potential investors. A “[Startup service card](#)” has been released by the Agency, granting 30% reductions on its assistance services.
12. **“Fail fast” procedure**: the aim of this measure is to avoid that the entrepreneur is “stuck” for ages because of the liquidation procedure and allow him to start a new business project as soon as possible without suffering reputational and financial cost.

Additional support measures

In addition to the instruments forming part of the original package of regulations, the Italian Ministry of Economic Development is engaged in the following:

1. promoting, with the collaboration of the Ministry of Foreign Affairs, the Ministry of Labour and the Ministry of Interior, a visa policy dedicated to extra-UE innovative entrepreneurs, as a strategic way to attract in Italy investment and highly qualified human capital.

Launched on the 24th June 2014 by the Italian Ministry of Economic Development, **Italia Startup Visa** has introduced a rapid and simplified mechanism for granting working visas to applicants intending to set up a new innovative startup in our country ([official web site](#) and [guidelines](#) for the Italia Startup Visa program).

2. drawing up, with the collaboration of the Italian Ministry of Education, University and Research, a pilot project for the creation of **Contamination Labs**, the aim of which is to offer university students from Southern regions (including Campania, Puglia, Calabria and Sicily) a stimulating environment in which to develop innovation projects with a business dimension. These spaces will enable students from different academic backgrounds to interact, while promoting entrepreneurship, innovation, an interdisciplinary perspective and new models of learning.