1. **Does an employer need a reason in order to lawfully terminate an employment relationship? If so, what reasons are lawful in the jurisdiction?**

As far as individual dismissals are concerned, Italian Labour Law provides two different kinds of dismissal: the dismissal for “just cause” and the dismissal for “justified reason”.

(i) **Dismissal for “just cause”**
According to section 2119 of the Italian Civil Code, a permanent employment contract can be immediately terminated without giving any notice or payment in lieu of notice for gross misconduct committed by the employee (defined by Italian law as “just cause”). In particular, section 2119 provides that each of the contracting parties may withdraw without any notice if a cause occurs which does not allow the continuation of the
employment relationship (even on a provisional basis).

(ii) Dismissal for a “justified subjective or objective reason”
According to Law 604/1966, as amended by Law 108/1990, an open-ended employment contract may be terminated by the employer for “justified reason”, which can be:

(i) “subjective”, occurring in case of a serious violation by the employee of his/her contractual obligations, but not so serious as to represent a “just cause” for dismissal; or

(ii) “objective”, i.e. a reason concerning the production or the organisation of the working activity in the enterprise.

A dismissal for “subjective” or “objective” reasons does not give the employer the right to terminate the employment contract without notice.

Note that Laws no. 604 of 15 July 1966 and no. 108 of 11 May 1990 exclude ‘justified reason’ for the dismissal of “Dirigenti” (i.e. the highest category of employee, mainly defined in Italy in the applicable collective agreement and corresponding to, for example, top managers or executives). To protect executives against dismissals, almost all National Collective Bargaining Agreements (“NCBA’s”) for executives require that their dismissals need to be ‘fair’. As a general rule, according to Supreme Court’s decisions an executive’s dismissal is considered fair only when it is not based on false, arbitrary, discriminatory, or non-existent reasons.

It should be highlighted that the Legislative Decree no. 23 of 4 March 2015 has introduced new regulations in Italy for unlawful dismissals that apply to all levels of employees - except executives - hired on a permanent basis from 7 March 2015. In particular, the Legislative Decree has introduced a “dual track system” in Italy as in the event of an unfair dismissal, newly-hired employees are subject to the generally less protective regulations recently entered into force, whilst for employees hired before 7 March the prior and more protective labour regulations continue to apply. However, the reasons for termination of employment are the same for all employees.

2. **What, if any, additional considerations apply if a worker’s employment relationship is terminated?**
**is terminated in the context of a business sale?**

When the whole (or part) of the business is transferred, all employees belonging to the business being transferred have an automatic right to be transferred to the incoming employer.

The transfer is not a valid reason for dismissal. Therefore, the transferor cannot dismiss the employees on the grounds of the transfer (i.e. the dismissal will be considered null and void and the employment relationship will continue with the transferee). Any dismissal made in connection with the transfer will be considered null and void unless there is a reason that according to general rules would justify it. Therefore the transferor may dismiss the employee for an organisational reason which entails changes to the workforce (restructuring resulting in job losses) but this cannot be based solely on the transfer of business. In addition, the transfer does not prevent an employee from being dismissed for just cause, for example, where the employee has committed an act of gross misconduct.

3. **What, if any, is the minimum notice period to terminate employment?**

Under Italian Law the notice period – which is provided only in case of dismissal with justified reason – vary depending on the NCBA applied by the employer and on the seniority and level of the employee.

4. **Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

Yes, the employer can pay monies out to a worker to end the employment relationship instead of giving notice. This is commonly done in some cases (e.g. the termination of the executives) as there is the risk that the employee falls sick, thus suspending the laps of the notice period.

In fact, according to Italian Labour Law, during sickness the employees are entitled to keep their job position for the maximum duration provided by the NCBA, during which their salary is paid partly by INPS (the National Social Security Body) and partly by the employer.
This means that the dismissal would be effective only when the sickness period ends.

5. **Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, what are the requirements of that procedure or procedures?**

According to Italian law the dismissal must always be in writing and there are various procedures to be followed depending on the type of termination, the size of the company and the date of hiring of the employee/his or her level. In particular, the procedures are the following: (i) disciplinary procedure; (ii) procedure for dismissal for objective reason; (iii) collective redundancy procedures.

(i) disciplinary procedure

The employer must promptly provide the employee with a written description of the objectionable behaviour or conduct.

The employee has the right to respond within 5 days (or the timeframe set out under the applicable NCBA) via a “justification letter”. The employee can also request a meeting with the employer if he/she wishes to provide his/her response orally and can be accompanied by an employee representative.

The employer can dismiss the employee following (i) the employee’s failure to respond to the charges laid against him/her within the above 5 days (or the timeframe set out under the applicable NCBA) or (ii) immediately following the receipt by the employer of the justification letter. In particular, the employer should explain why the employee’s justifications are not acceptable.

(ii) procedure for dismissal for objective reasons

According to Law no. 604 of 15 July 1966 as modified by Law no. 92 of 28 June 2012, the employer must communicate in advance its intention to proceed with individual dismissal to the Labour Office of the employee’s workplace copying the same employee and explaining the reasons for the termination. This procedure applies only to the dismissal of employees hired before 7 March 2015 and employed by companies having sixty-one or more employees in the whole Italian territory or sixteen or more employees
in a single business unit or in more business units within the same municipality ("Comune"). This procedure does not apply to “Dirigenti”.

Within seven days from the receipt of the above communication, the Labour Office summons the parties before the Conciliation Office for a meeting in which the parties will attempt to reach an agreement. The procedure will terminate by and not later than twenty days starting from the day in which the Labour Office sent the communication of summoning.

In case the parties reach an agreement, the employee may have access to a social security cushion which provides unemployed with a monthly indemnity that is now called ‘NASPI’ (Nuova Assicurazione Sociale Per l’Impiego) that has replaced the ASPI (Assicurazione Sociale Per l’Impiego) from 1 May 2015.

Should not the parties reach an agreement or, in any case, after seven days have elapsed without any summoning communication by the Labour Office, the employer can serve the dismissal.

The served dismissal is effective from the day the communication of the intention to serve the dismissal was sent, without prejudice for the employee’s right to notice period.

iii) collective redundancy procedures

The procedure provided by the law lasts maximum 75 days.

It is possible that the NCBA may provide a previous and additional consultation to be implemented before the one provided by the law.

The employer should notify the staff representatives and the relevant (external) Trade Unions of the decision to proceed to the collective dismissal. If there are not staff representatives, the notification has to be sent to the Trade Unions of the sector most representatives on a national level. If there is no existing works council, there is no obligation on the Company to organise elections for one. Same notification has to be sent also to the competent Labour Office.
The Company is not required to inform employees generally or to ask them to elect employee representatives.

The dismissals may be served within a period of 120 days from the conclusion of the procedure unless the parties have agreed a longer term.

Under a labor profile, no approvals are required to close a unit/business. The trade unions have no veto powers on the redundancy project.

The collective dismissal procedure applies also to “Dirigenti” (previously excluded from the application of the procedure) but it does not apply to fixed-term workers and temporary workers.

6. **How, if at all, are collective agreements relevant to the termination of employment?**

   The collective agreements are relevant for:
   
   - calculating the severance pay and the indemnity in lieu of notice period, if any;
   - calculating the indemnity to be paid to executives (“Dirigenti”) in the event of unfair dismissal (so called “supplementary indemnity”);
   - checking if the NCBA provides a specific sanction for the challenged misconduct (e.g. warning, fine, suspension or dismissal) and the timing of the disciplinary procedure.

7. **Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

   Apart from the procedures above mentioned and related to individual or collective redundancy (according to which the employer must inform/deal with the Labour Office at local/regional/central level depending on the case), in general the employer is not required to obtain the permission or inform any third party when terminating an employee. However, some NCBAs (e.g. those for metal engineering companies) specify
that works council members can only be dismissed with the prior consent of the union(s)
to which they belong. The sanction is case of breach is the reinstatement of the
employee and the payment of damages.

Employers are not required to inform or get the authorisation of any labour authorities
when dismissing for severe misconduct or poor performance.

8. **What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

In the event of a discriminatory dismissal the employees will be entitled to reinstatement
and to the payment of all remuneration lost during the period from dismissal until
reinstatement deducting the salary the employee earned whether employed in a
different workplace (the so-called aliunde perceptum), subject to a minimum of five
months of salary. The employee will have the option to forego the right to be reinstated
in lieu of payment of an indemnity equal to fifteen months of salary. The same
consequences would apply in the event the employee is dismissed as a consequence to
his/her reaction to harassment.

9. **What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

The risk for the employer is the reinstatement of the employee and the payment of
additional damages suffered for the discrimination or harassment.

10. **Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

Employees who have successfully completed the probationary period are entitled to
specific protection in case of null and void/unfair dismissal.

As to the first category, the dismissal is deemed null and void and the employee must be
reinstated in the company and receive the payment of damages (all remuneration lost
during the period from dismissal until reinstatement, subject to a minimum of five months of salary) in the following cases:

i. Dismissal served in oral form;

ii. Dismissal based on a discriminative reason (above);

iii. Dismissal grounded on a determining unlawful reason pursuant to section 1345 of Italian Civil Code;

iv. Dismissal null and void according to other mandatory law provisions (e.g. pregnancy, maternity leave etc...).

According to case law, the same consequences regarding the dismissal grounded on discriminatory reasons also apply in case of dismissal served by the employer exclusively in reprisal or retaliation of the employee’s exercise of his/her legitimate rights concerning the employment relationship.

The above protection applies to all employees regardless of the level, the size of the employer and the date of hiring.

For other types of dismissal, the sanctions vary depending on the type of dismissal, the size of the employer, the date of hiring and his/her level.

i. Disciplinary dismissal (just cause or justified subjective reason)
For employers having up to 60 employees in the whole Italian territory or up to 15 in a single business unit or in several business units within the same municipality ("Comune") the employer could be ordered to:

1. re-hire the dismissed employee under a new employment contract; or, alternatively

2. pay the dismissed employee an indemnity (i) ranging from 2.5 to 6 months’ gross salary for employee hired before 7 March 2015 or (ii) equal to 1 month’s salary per year of service, with a minimum of 2 and a maximum of 6 month’s salary.
The law sets out various criteria which the judge should utilise to quantify the indemnity, including: (a) the number of employees working for the employer; (b) the company's size; (c) the employee's length of service; (d) the parties' behaviour; and (e), the employment conditions in the local market.

It is up to the employer to choose between re-hiring the employee and paying the indemnity under (ii) above.

If the employer has sixty-one or more employees in the whole Italian territory or sixteen or more employees in a single business unit or in more business units within the same municipality (“Comune”), as above the consequences vary depending on the date of hiring.

- **Employees hired before 7 March 2015**

  According to section 18 of the Workers' Statute, the employer has to reinstate the employee unfairly dismissed should the Judge ascertain that the 'justified subjective reason' or the 'just cause' does not occur because: (i) the contested behaviour is groundless or; (ii) the contested behaviour could have been sanctioned with a conservative measure according to the applicable collective bargaining agreement.

  In this case, the employee has the right to be reinstated, and the employer has to pay him/her an indemnity equal to the salary due between the date of the dismissal and the date of the effective reinstatement with a maximum of twelve months of salary deducting the salary the employee earned whether employed in a different workplace (the so-called aliunde perceptum) or the salary the employee could have earned if she/he would have found an employment using the ordinary diligence (so-called aliunde percipiendum).

  Should the Judge ascertain that the ‘justified subjective reason’ or the ‘just cause’ does not occur for different reasons than those set out at points (i) and (ii) above, the employee is entitled to a payment of an allowance ranging from a minimum of 12 month’s salary to a maximum of 24 month’s salary.

- **Employees hired from 7 March 2015**

  According to the provisions entered into force in 2015, the newly hired employees have the right to be reinstated only in a specific case of disciplinary dismissal (i.e. dismissal
for ‘just cause’ and for ‘justified subjective reason’). Specifically, the reinstatement will be available only when it is proved that the “material fact” upon which the dismissal was based did not occur. In this case the reinstatement should be implemented together with an indemnity equal to the lost salary from the date of dismissal until the reinstatement with a cap of 12 month’s salary deducting the salary the employee earned whether employed in a different workplace (aliunde perceptum) or the salary the employee could have earned if she/he would have found an employment using the ordinary diligence (aliunde percipiendum). The employee will also have the right to choose the 15 month’s salary indemnity in lieu of reinstatement.

In all the other cases, the employee will be only entitled to a monetary compensation, equivalent to two monthly remuneration per year of service (subject to a minimum of 4 month’s salary – in order to protect the employee at the beginning of the employment relationship – and a maximum of 24 month’s salary).

It is worth highlighting that if the employer has up to sixty employees in the whole Italian territory or up to fifteen in a single business unit or in more business units within the same municipality ("Comune"), the sole remedy applicable to the employee would be the increasing indemnity as the reinstatement is excluded for employees of ‘small companies’ (with the exception of dismissal for ‘discriminatory’ reasons). In this regards, the indemnity payable by those employer is only half of the increasing indemnity indicated above, with a maximum of 6 month’s salary.

ii. Individual redundancy
The sanction for unlawful individual dismissal varies depending on the date of hiring and the size of the employer.

- Employees Hired before 7 March 2015

If the employer has up to sixty employees in the whole Italian territory or up to fifteen in a single business unit or in more business units within the same municipality ("Comune"), it is ordered to re-hire the employee with a new employment contract, or, alternatively, pay him/her an indemnity ranging from 2.5 to 6 month’s salary, depending on the employee’s qualification, length of service and behaviour as well as on the employer’s size and type of business, the market’s conditions and the parties' behavior before the dismissal. This indemnity can be increased to up to ten months of salary for an employee with ten years of service and up to fourteen month’s salary with twenty or
more years of service.

It is up to the employer whether to re-hire the employee or pay the indemnity. If the employer has sixty-one or more employees in the whole Italian territory or sixteen or more employees in a single business unit or in more business units within the same municipality (“Comune”), according to section 18 of the Workers' Statute, in the event the fact on which the termination was based is 'manifestly groundless' the employees has the right to be reinstated and to the payment of an indemnity for the remuneration lost, with a 12 months cap. In all the other cases, the employee is entitled to a payment of an allowance ranging from a minimum of 12 month's salary to a maximum of 24 month's salary.

It is worth underling that the employees is entitled to reinstatement and to the monetary compensation for the remunerations lost (with a 12 month’s salary cap) also in case the employer serves the individual dismissal: (i) in violation of the sickness leave during which the employee is entitled to keep her/his job (so-called periodo di comporto) or (ii) unlawfully grounding the dismissal for objective reasons on the employee’s physical unsuitability for working.

- Employees hired from 7 March 2015

The employee does not have any right to be reinstated, being entitled only an increasing monetary compensation (two monthly remuneration per year of service, with a minimum of 4 until 24 month’s salary).

Eventually, in the event the employer serves the individual dismissal unlawfully grounding the dismissal for objective reasons on the employee's physical unsuitability for working, the employee will be entitled to reinstatement and to the payment of all remuneration lost during the period from dismissal until reinstatement, subject to a minimum of five month’s salary.

The Legislative Decree no. 23 of 4 March 2015 does not specifies the sanction for the dismissal served in violation of the sickness leave during which the employee is entitled to keep her/his job (so-called periodo di comporto). As this kind of dismissal is directly related to the health protection guaranteed by Italian Constitution (section 32), according to certain authors the employee should maintain the right to reinstatement.
On the contrary, other authors argue that the absence of any provision on this issue implies that the only remedy available to the employee would be the payment of the increasing monetary compensation (two monthly remuneration per year of service, with a minimum of 4 until 24 month’s salary). It will be therefore fundamental to wait for the first case law on this issue.

iii. Collective redundancy

- Employees hired before 7 March 2015

As anticipated above, Law no. 223 of 23 July 1991 provides that in the event that the employer does not comply with all the steps set forth for the procedure for collective dismissals, the employer shall pay the employee an indemnity ranging between a minimum of 12 month’s salary to a maximum of 24 months of salary.

If selection criteria are violated, the provisions set forth in section 18, paragraph 4 of the Workers' Statute (Law no. 300 of 20 May 1970) shall apply, and the employer shall (i) reinstate the employee unfairly dismissed; and (ii) pay him/her an indemnity equal to the salary due between the date of the dismissal and the date of the effective reinstatement, with a maximum of twelve months of salary deducting the salary the employee earned whether employed in a different workplace (the so-called aliunde perceptum) or the salary the employee could have earned if she/he would have found an employment using the ordinary diligence (so-called aliunde percipiendum).

- Employees hired from 7 March 2015

Similarly to the dismissal for ‘economic reason’, also the employees unlawfully dismissed in the framework of a collective layoff shall be entitled only to the monetary compensation above mentioned (1 month’s salary per year of service seniority, from a minimum of 4 until 24 month’s salary), being the right to reinstatement limited to the dismissal communicated orally.

Specifically, the monetary compensation will be the only remedy also in the event the employer does not comply with the criteria governing the selection of the employees to be made redundant (as anticipated, under Italian Law the selection of the employees to be dismissed in a collective layoff should follow the criteria provided for by the agreement reached during the consultation procedure with Unions or, in the event of a
negative outcome, the employer must follow the criteria provided for by Law no. 223 of 23 July 1991: family dependants, seniority, and technical, productive or organizational matters). As far as collective dismissals are concerned, ‘new’ and ‘old’ employees will have a very different protection as in case of violation of the selection criteria the employees hired prior to the entry into force of the new regulations will have the right to be reinstated and to the payment of an indemnity for the remuneration lost, with a 12 months cap.

iv. Executives
If the dismissal is judged to be unfair, the executive is entitled to a supplementary indemnity payment provided by the applicable national collective bargaining agreement, ranging from a minimum to a maximum number of months of salary. In addition the executive could be entitled to receive other months of salary depending on his/her age at the moment of the dismissal, as determined by the applicable national collective bargaining agreement.

Regarding the executives, the Law no. 161 of 30 October 2014 has introduced specific sanctions for unlawful dismissal in case of collective redundancy involving them. In particular, in the event the dismissal of the executive is in breach of either the procedure or the selection criteria the employer shall pay him/her an indemnity ranging from 12 up to 24 monthly salaries, ‘unless the national collective bargaining agreements provide different provisions on the amount of said indemnity’.

The employees hired on a fixed-term basis cannot be dismissed before the expiry of the term except for just cause. Failure to do so will entitle the employee to the payment of the salary until that date.

Italian Law provides several cases in which the employer is prevented from dismissing employees (executives, too) as the dismissal is deemed null and void:

- Pregnancy: A female employee may not be dismissed from the beginning of pregnancy up to one year after the child’s birth, except in the cases of: (i) ‘just cause’ according to section 2119 of the Italian Civil Code; (ii) termination of the business by the enterprise; (iii) termination of the employment contract for expiration of the fixed-term; or (iv) termination of the employment relationship during the probationary period. The same rules apply to the father-employee who
takes benefits from paternity leave for the whole length of such leave and up to the time the baby is 1 year old.

- Care child: Dismissal as result of the employee’s request to take parental leave or to take leave to care for a sick child is null and void.

- Marriage: an employer cannot dismiss a female employee from publication of a notice of marriage to one year after the wedding date, unless the dismissal is grounded on: (i) a ‘just cause’ according to section 2119 of the Italian Civil Code; (ii) termination of the business by the enterprise; (iii) termination of the employment contract for expiration of the fixed-term; or (iv) termination of the employment relationship for unsuccessful result of the probationary period.

In addition, according to Section 5, paragraph 2 of the Law no. 223/1991 the employer must ensure that he does not make a disproportionate number of women redundant. In particular an enterprise cannot make redundant a percentage of women higher than the percentage of women employed in the job categories concerned.

11. **Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

In Italy the specific legislation on whistleblowing currently in force only covers civil servants (Law no. 190/2012) and, following a rather recent Legislative Decree (no. 72/2015), employees in banks and financial institutions. Therefore, in general the employees in the private sector have to rely only on the general Italian law contained in the Constitution, the Civil Code, the Criminal Code, the Labour Code (Workers’ Statute) and the Data Protection law.

**Public sector employees**

Civil servants have explicit protection against dismissal, disciplinary action, or other forms of retaliation or discrimination because he/she had made a protected disclosure under the Civil Servants Law (Law No 190/2012). Specifically, the employee “cannot be sanctioned, dismissed or be subject to any discriminatory measure, directly or indirectly, having any impact on her/his working conditions for reasons that are connected (directly or indirectly) to the disclosure”.

Indeed, the civil servant will have the right to be reinstated and according to the Civil Servants Law, “the adoption of any discriminatory act has to be communicated to the Public Function Department”.

If disciplinary action is taken against the employee (e.g. fine, suspension) as a retaliatory measure due to the whistleblowing, the court will annul the sanction. The employee might also seek to obtain damages (e.g. reputational damages) but these will need to be proved.

Private sector employees
A dismissal of an employee in the private sector for reasons that are connected (directly or indirectly) with the disclosure of wrongdoing or malpractice may be deemed unfair (in particular, it may be considered a “retaliatory dismissal”).

There is a degree of tension between (i) employees’ right to give information and express their opinions on the employer’s business (a variation of the principle of freedom of expression, provided to all citizens under section 21 of the Italian Constitution) and (ii) their duties to their employer to preserve their employer’s confidential information and not to infringe the employer’s “personality rights” (e.g. not to undermine its reputation) and duty of loyalty to their employer. Courts seek to balance these conflicting interests in the context of whistleblowing. As a result of this balancing test, courts tend to regard employees’ disclosure of wrongdoing or malpractice as lawful provided that the following three principles are satisfied:

- the disclosure must be based on facts which are true or which the informant believes in good faith to be true. The inclusion of facts which do not meet this test could jeopardise the protection available to the employee;
- the way in which the employee makes the disclosure must be civil, restrained and expressed in a balanced way;
- the employee’s reason for making the disclosure must be to pursue a suitable interest – e.g. the collective interest of fellow workers, his/her own interest or the wider public interest. However, if the whistleblower’s disclosure is not merely motivated at damaging the employer’s reputation, then his/her disclosure might go beyond what is permitted under the right to information and the right of criticise another’s actions.

In a nutshell, provided that the whistleblower lawfully made the disclosure, he/she may
have the right to be reinstated and the employer will have to pay the employee an indemnity equal to the amount of salary he/she would have been entitled to from the date of dismissal to the date of effective reinstatement, with a minimum indemnity of 5 months’ salary. Alternatively, the employee can waive his/her right to reinstatement and will be entitled to an indemnity equal to 15 months’ salary (with a minimum indemnity of 5 months’ salary) and compensation for lost salary covering the period from termination to the date of the court judgment.

12. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

In the event of dismissal for justified reason or collective redundancy, the employees are entitled to the notice period or to the relevant indemnity in lieu.

In addition, in each case of termination the employer must pay:

- the indemnity in lieu of holidays and time off not accrued but not used;
- the severance pay (the “Trattamento di Fine Rapporto”, also known as TFR),

that for the sake of clarity corresponds to about 7.41% of the overall remuneration earned from time to time by the employee during the employment relationship and that therefore should not be considered as a “real” cost as it should have been already been put aside year by year by the Company in the balance sheet of the Company (unless the employee opted for the transfer of the relevant amount to a specific complementary pension fund).

13. **Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply.**

Yes, under Italian law it is possible to sign a settlement agreement where the employee validly waives his rights in return for a payment. However it is necessary that the settlement agreement is executed in front of specific bodies (i.e. Labour Office, Unions, Court).
In fact, according to Section 2113 of the Italian Civil Code, where the subject-matter of the waivers/settlement concern the individual’s employment rights arising from mandatory provisions of law (such as the right to challenge the termination) or collective agreements or arrangements concerning the employment relationship, such waivers will be invalid unless the agreement is signed before a competent body (trade union, labour council or labour court). If not signed before such bodies, the waivers/settlements will be considered invalid and can be challenged within 6 months from (i) the date of termination of employment or (ii) from the date of the waiver/settlement if agreed post-termination of employment.

In Italy the employer does not have to offer the employee financial consideration in exchange for (i) agreeing to enter into the agreement and (ii) in order to obtain an effective waiver of claims/withdrawal from started litigation. However, this is very common in practice as an incentive to obtain the employee’s consent to the agreement. In this regards, the employer may offer the employee an “incentive to leave” payment. This amount is deemed to be “efficient” from an economical perspective both for the employer and the employee as it benefits from a full exemption from social security contributions and from a more favourable taxation treatment.

It is worth noting that employees hired as from 7 March 2015 benefit from a “quick settlement procedure” introduced by the Legislative Decree no. 23/2015. In particular, the quick settlement agreement consists of an offer by the employer to the employee, made within 60 days from the date of the dismissal, to pay compensation equal to 1 month’s salary per year of service, with a minimum of 2 and a maximum of 18 months compensation (for “small” companies the indemnity is reduced at a half and the maximum is 6 month’s salary).

This indemnity is not subject to tax or social security contributions and will be immediately paid by the employer via a ‘cash cheque’. If the offer is accepted by the employee, all rights to object to his/her dismissal will be waived. In the same settlement agreement, the parties could also decide to waive all rights in relation to the employment relationship, but any amount granted for such waivers will be subject to ordinary taxation and social security contributions as provided for under Italian Law.

14. **Is it possible to restrict a worker from working for competitors after**
the termination of employment? If yes, describe any relevant requirements or limitations.

Under Italian Law (Section 2125 of the Italian Civil Code) the post-employment non-compete covenants may be deemed valid and enforceable only if they:

1. are specified in writing;
2. set forth a specific consideration in favour of the employee;
3. have a limited scope and geographical extent;
4. have a specific duration, that shall not exceed three years (five years for “Dirigenti”).

In order to assess the validity of a non-competition covenant, it is necessary to ascertain whether the combination of its terms, extents and conditions prevents or not the employee from finding another employment and/or violates the employee’s right to preserve his/her professionalism.

Case law indicates that the following conditions need to be taken into account when making such evaluation:

1. the contents of the covenant (particularly with regard to the scope and the geographical extent, to be assessed jointly); and
2. the skill and experience of the employee.

The assessment must also take into account the amount of the consideration paid to the employee for his/her non-competition obligations. The law does not provides for a specific amount of the consideration and the case law require that the compensation is “congruous” having regards to restrictions imposed to the employee’s professionalism and his/her right to work. Therefore the compensation has to be evaluated on a case by case basis, in the light of the other terms agreed (i.e. duration, scope, geographical extent and the skill and experience of the employee).

15. **Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

   According to section 2105 of the Italian Civil Code each employee – whatever is his/her
job title or category – must «nor divulge information pertaining to the organization and method of production of the enterprise, nor use it in such a manner as may be prejudicial to the enterprise». Therefore, the confidentiality obligation automatically follows the employment relationship.

For post-termination period, the parties might enter into a confidentiality agreement. However, it would be advisable to duly specific all the information that should be kept confidential as a too general clause might render the agreement difficult to enforce.

16. **What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?**

In my opinion, the most common difficulties are:

1. serving a termination for poor performance, due to the burden of proof lying on the employer.

   For example, the Supreme Court has held that the dismissal of an executive for poor performance is fair when: (a) the executive agrees (in his/her contract or during the employment relationship) to achieve specific targets or objectives, and the executive is required to achieve such targets or objectives; (b) the executive does not reach the targets in the agreed timeframe, thereby breaking his/her contractual obligations; (iii) the employer is able to prove that the targets have not been reached due to the negligence of the employee in the performance of his/her job.

   The above difficulties can be mitigated at least by asking the executives to agree specific targets in writing.

2. proving that in the framework of an individual redundancy the employer could not assign the employee to another position: in fact, this requirement has recently become more strict as according to section 2103 of the Italian Civil Code as amended by the Legislative Decree 81/2015 the employee can now also be assigned to duties belonging to a lower level in accordance with the applicable CBA (without affecting the ‘staff category’ to which he/she belongs) where organisational changes have an impact on the employee’s position.
The employer can mitigate this risk through a deeper assessment of any possible vacant position available in the company.

3. proving that in the framework of a collective redundancy the employer correctly applied the selection criteria as the law does not clearly specify any hierarchy between them in order to choose the employees involved.

The employer can mitigate this risk specifying as much as possible how the selection criteria were applied.

4. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

The Italian Labour Law was radically and widely reformed in 2015, so we do not expect any major legal changes especially in terms of dismissal. In terms of impact, indeed the reform recently enacted should enable the employers to approach termination of employment (for employees hired from 7 March 2015) having more clearly in mind the possible monetary consequences of an unfair dismissal, this facilitating the creation of a budget by the company.