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Dispute Resolution

in 45 jurisdictions worldwide

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Litigation

1 Court system

What is the structure of the civil court system?

Hierarchy

The Italian civil court system is based on a hierarchy structured as outlined below. Cases are heard in the first instance by the following:

- the justice of the peace, who sits as a single judge; and
- the high court, which, depending on the case at issue, may sit either as a collegium of three judges (in particular in corporate and bankruptcy matters and in case of specialised divisions) or as a single judge.

In the second instance a decision by justices of the peace may be appealed before the high court, and a first-instance decision by the High Court may be appealed before the courts of appeal, which act as a collegium of three judges.

The highest degree is occupied by the Italian Supreme Court of Cassation, which acts as a collegium of five justices, except in cases of peculiar issues (matters of jurisdiction, issues on which the case law of the Supreme Court has shown material difference of opinions or important points of law) where it acts as a collegium of nine justices.

After a comprehensive review of the judicial districts in 2012, which abolished hundreds of justices of the peace and several high courts or branches thereof, the Italian civil court system consists now of 178 offices of justices of the peace and 166 high courts.

The high courts of the major cities have specialised divisions for specific civil law matters, such as intellectual property, corporate and family law.

There are 29 courts of appeal (almost one per region), and one Supreme Court, located in Rome.

Jurisdiction

Like other legal systems, the Italian civil court system allocates jurisdiction (namely, the power to settle a dispute) on the basis of the value and subject matter of the lawsuit, and the territory.

Value and subject matter of the lawsuit

The value of the lawsuit is that as determined by the parties in their requests to the judge. Based on the value, the competence of the judges of first degree are divided as follows:

- justices of the peace are competent in lawsuits involving moveables with a value not exceeding €5,000, and claims for damages originating from circulation of vehicles and ships, with a value not exceeding €20,000; and
- high courts have competence regarding any claims whose value exceeds those indicated above for justices of the peace, or when the value may not be determined by the parties.

The subject matter criterion entails that, should litigation concern one or more specific issues (indefeasible rights, obligations, status or family issues, leases, etc), then a judge will have exclusive jurisdiction regardless of the suit's value. In other words, the subject matter criterion prevails over the value criterion. The following rules apply:

- justices of the peace have exclusive jurisdiction over any litigation concerning:
  - the determining boundaries and compliance with distances governed by law (concerning, for instance, trees and fences);
  - use of communal facilities among owners of apartments; and
  - complaints among neighbours about noise, smoke, heat, emissions, vibrations, etc, above the accepted levels;
- high courts have exclusive jurisdiction over any litigation concerning:
  - taxes;
  - status and capacity or individuals;
  - rights deriving from honorific titles;
  - complaints of document forgery; and
  - enforcement proceedings;
- courts of appeal are competent for antitrust claims and the recognition and enforcement of foreign judgments and awards; and
- the Supreme Court has exclusive jurisdiction over certain matters, including questions of jurisdiction.

Territorial jurisdiction

Italian first-degree courts are divided among different districts. The following criteria apply in order to determine which court has jurisdiction:

- for individuals, the court having jurisdiction is that of the residence, or of the domicile, or, if these are unknown, of the abode of the defendant. The law provides some exceptions and remedies when the individual does not have domicile in Italy;
- for legal entities, unless the law provides otherwise, the court having jurisdiction is that of the place where they have their registered offices, or alternatively, where they have their plants or a representative duly authorised to sue and to be sued.

Some special rules apply, and take precedence over the above. These include the following:

- for disputes concerning indefeasible rights, leases, branch of businesses, among other things, the court having jurisdiction is that of the place where the immoveable property is located;
- for disputes involving questions of possession, the court in the area where the fact has taken place will have jurisdiction;
- for inheritance disputes, the competent court is the court where the deceased had his or her last domicile; and
- for enforcement proceedings, the place where the moveables or the immoveables are located; in case of a credit of the debtor vis-à-vis a third party, the place where the third party resides, or for obligations to do or not to do, the place where the obligation should be fulfilled.

The law allows for an elective forum for disputes concerning obligations; in these cases the plaintiff can sue the defendant before the court of the place where the obligation has been undertaken or should have been fulfilled.

In any case, the parties – unless the case is covered by one of the special rules above – may agree in writing to submit their dispute to a specific judge.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

The judge must settle the dispute taking into account exclusively what the litigants submit to the court. In order to do so, the judge has to schedule specific deadlines for the submission of briefs of argument, documents and other evidence (such as witnesses).

In principle, judges do not have an inquisitorial role in civil proceedings; however, they can issue search orders – regarding both individuals and goods – or enquire after written information concerning acts and documents from public administration. They also have the power to summon a witness to testify and to decide the case after the oath of the parties.

There are no juries in civil actions.

3 Limitation issues

What are the time limits for bringing civil claims?

The Italian Civil Code provides for different statutes of limitation depending on type of right that give grounds to the dispute.

The ordinary statute of limitation is 10 years.

In case of indemnification for torts the statutes is reduced to five years (two years for actions regarding the circulation of vehicles and ships). The term of five years applies also to actions for refunding interests or in corporate law matters. Agreements of sale of goods (to persons other than consumers), freight, shipment assurance and brokering commissions have a statute of limitation of one year.

The terms above are mandatory and the parties may not agree on different periods. Such terms start from the date on which the right may be exercised. Before the end of the terms, the parties must have started a legal action or at least have carried out an action to interrupt them, by sending a default notice to the counterparty (in which case the prescribed period resumes). In case of a legal action, the statute of limitation is interrupted until the judgment, and after that it starts to run again.

A relevant party must expressly object to its falling within a particular limitation period. Should this not be the case, the judge may not ex officio take this event into consideration.

The statute of limitation may also be suspended in specific cases provided for by law (for instance, obligations between spouses are suspended during their marriage).

In some cases, such as purchase of defective goods or contract for new buildings, Italian law provides for a forfeiture period by which notice of the claim must be given (respectively, eight days from the purchase date or one year from the delivery of the building).

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Before starting a litigation, the claimant may voluntarily opt to attempt to resolve the dispute in an amicable way through qualified mediators, pursuant to Legislative Decree 28/2010 (see question 34).

There is no step available to the claimant to assist in bringing an action, such as a pre-action exchange of documents.

5 Starting proceedings

How are civil proceedings commenced?

The commencement of a civil proceeding takes place by serving the other party with a writ of summons. Certain kinds of action, such as protective remedies, injunctions, requests for seizure, attachments or enforcement orders, labour litigations, start by filing a petition to the competent court.

The first writ must contain a representation of facts and legal arguments related to the action.

6 Timetable

What is the typical procedure and timetable for a civil claim?

The writ of summons must contain, inter alia, advice for the defendant to present itself in front of the judge at the first hearing, whose date is to be indicated by the plaintiff. The date of the hearing must be not earlier than 90 days after the service of the writ (150 if it is a foreign defendant). The court may confirm the date as indicated in the writ or postpone it.

Within 10 days of service, the plaintiff must file the writ of summons with the court clerk.

Within 20 days before the first hearing, the defendant must file his or her statement of defence, pointing out his or her counterclaims and any other objections which may not be ascertained ex officio by the judge (jurisdiction, offset, statute-barred claim). Should he or she decide only to object the arguments of the claimant, the statement of defence may be filed directly at the first hearing.

In this hearing, the parties will discuss the case; upon request of any of the parties, the judge will give the subsequent terms for the contemporaneous exchange of writings. In particular, they consist of 30 days starting from the date of the hearing for the first writing that can specify or amend the previous claims, objections and reliefs; a further 30 days for the writings indicating evidence; and 20 days for the indications of counter-evidence.

After this exchange there may be a further evidentiary step; if, however, this is unnecessary, the judge, considering the case ready to be decided, establishes a final hearing to consent to the parties to specify their final claims.

The parties have 60 days to file a written brief that summarises their pleadings and 20 days for their response. In some cases, instead of the responses, the judge can convene a hearing or preclude the whole final exchange of writings, allowing an oral summary of the case. At the end of this proceeding the judge, without any mandatory time limit, issues his judgment.

In case of petition, the claimant files with the competent court his or her deed; the judge will schedule the hearing by decree and the claimant will have to serve the petition to the defendant together with the decree. Procedural terms vary depending of the kind of proceedings.

7 Case management

Can the parties control the procedure and the timetable?

Upon discretion of the judge, the parties, on the basis of valid reasons, may ask the court to anticipate or defer the hearing and to suspend the proceeding.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no duty on the parties to preserve documents and other evidence pending trial. The parties are not obliged to share relevant documents, unless an order by the judge is issued upon other party's request.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The parties may not file any confidential correspondence between counsels regarding possible settlement of the case. As specifically provided in the lawyers code of professional conduct, the only correspondence that the parties can produce is the correspondence between counsel regarding the execution of the obligation from a party to another one. Furthermore, the parties can produce correspondence sent by opposite party's counsel only if it regards a confirmation of the performance of obligations.

According to prevalent case law (both Italian and EU), advice from in-house counsel may not be qualified as privileged. This rules applies also to foreign in-house lawyers involved in Italian civil proceedings. In any case, according to their code of conduct, in-house counsel must also keep confidential all information that they become aware of until the end of their mandate.

10 Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

In Italian civil proceedings, there is no exchange of written evidence from witnesses and experts before the trial.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence may be presented in a trial either orally or in writing. Oral evidence consists of testimony, confession and oath. Written evidence consists of documents and witness statements.

Experts may be either court-appointed or appointed by any of the parties. The court-appointed expert is considered as an auxiliary of the judge, and helps him to clarify the technical issues of the claim. The contributions of the experts are not considered as evidence.

Testimonies and statements of witnesses may be authorised by the court only upon the request of the party with the specification of the name and the questions to be asked. In any case, the judge is not obliged to authorise them.

On the other hand, there is no need for a judge's authorisation for the production of documents, which the parties are free to attach to their briefs. Upon a party's request, the judge may order that certain documents be presented by the parties or by third parties (such as invoices or accounting book). If the right to disclosure is disputed, the court may order the relevant documents to be seized.

12 Interim remedies

What interim remedies are available?

Parties to a dispute can demand interim remedies either before the proceeding has been initiated or during the proceeding. The remedy will be requested from the court competent to decide on the merits. Should a justice of the peace have jurisdiction, the interim remedy must be requested to the relevant high court.

Different kinds of interim remedies are provided for by law. Some of them are clearly defined: different kinds of seizures, report of new works and of potential damage, and pretrial technical investigation. If a situation does not fall within any of these remedies, a general remedy (paragraph 700 of the Italian Civil Procedure Code) shall apply; in such a case, the judge may adopt those remedies that are deemed more suitable to the circumstances of the case.

All the remedies share some common features: they are granted on the basis of a summary inquiry; therefore, the court has the authority to revoke them if the circumstances on the basis of which they have been granted are otherwise verified during the proceeding; and they are granted if two conditions are satisfied (the burden of proof lies on the claimant):

- presence of the fumus boni iuris (that is, prima facie existence of the right claimed); and
- presence of a periculm in mora (that is, a concrete risk, linked to the delay, for the right claimed).

In some cases (for instance, when service to the counterparty could entail delays that could jeopardise the right of the claimant) the court may decide inaudita altera parte, and re-establish the necessary dialogue with both parties in a second phase.

Certain remedies (in particular, seizures and attachments) are temporary, hence they must be followed by an action for the merit (otherwise the measure become ineffective) and are destined to be confirmed or revoked by the final judgment. Other remedies may or may not be followed by the merit.

In addition, the parties may demand an injunction during the proceeding, which shall be ordered by the court in the case of uncontested sums.

Italian courts have the power to adopt interim remedies (necessarily ante causam), with reference to persons not having residence or domicile within the country, if they have jurisdiction as to the merit of the dispute or the interim remedy has to be applied or carried out within the country (sections 31 and 32 EU Regulation 44/2001). Furthermore, while sections 64 to 71 of the Law 218/1995 (which applies between Italy and non-EU countries) do not take into consideration interim remedies as foreign decisions to which the law recognises effectiveness within the country, section 31 et seq of EU Regulation 44/2001 recognises the effectiveness of the interim remedies adopted within another EU member state (with certain limited exceptions to protect the right to defence of the counterparty).

13 Remedies

What substantive remedies are available?

Italian law establishes a series of remedies to protect civil rights.

From a contractual perspective, in the event of a breach of an agreement with obligations on both parties, or when a debtor fails to exactly fulfil his obligations (which arise from a contract or otherwise), the creditor has the right to:

- terminate the agreement (if the breach is serious) or seek for its performance; and, in addition
- obtain compensation for the debtor's failure to fulfil duly or promptly his or her obligation.

Compensatory damages consist of:

- any direct damage – either to creditor's assets or not – that the creditor suffered as a consequence of the debtor's failure to exactly fulfil his or her obligation; and
- any loss of profitability, that is, all the losses of income directly connected to the debtor's failure to exactly fulfil his or her obligation.

From a tort law perspective, the person suffering an unfair damage – due to either negligence or fraud – has the right to claim damages against the person who caused that damage. Even in this case, the unlawful conduct gives the injured party the right to seek compensation for the damages suffered as a direct consequence of the unlawful behaviour. The compensatory damages consist of both any direct damage – which in this case may be either economic or non-economic (moral and biological damages) – and any loss of profitability.

In both cases (contractual and tort liabilities), if the damages suffered are difficult to assess, the judge has the power, to determine the amount of the compensation on an equitable basis.

The Italian civil court system does not provide for punitive damages as a general rule, and in case of recognition of foreign decisions they are not admissible, since they contrast with internal public policy. Notwithstanding this, the system provides some meaningful exceptions:

- section 96 of the Italian Civil Procedure Code sets forth that if the losing party has initiated or continued a civil proceeding in gross negligence or bad faith (that is, when the conduct integrates an abuse), the judge can condemn him or her to pay the winning party, in addition to legal fees and the compensation of the damages, a sum determined on an equitable basis, as a sanction for his or her violating behaviour;
- section 614bis of the Italian Civil Procedure Code sets forth the possibility for the court – except where such measure is manifestly unequal – to integrate an order to cease or refrain from certain behaviours, or an order to behave in a certain way, with a requirement to pay a sum of money for any violation of the order or for any day of non-compliance. Should the person to whom the court's order is addressed not comply with it, the beneficiary enjoys an enforceable title which allows him to proceed immediately for the payment of the relevant sum; and
- section 12 of the Law 47/1948 establishes monetary compensation in cases of libel.

In addition to the above, Italian law provides for further remedies, such as protection of property rights; protection of possession (that is, returning things to a party's possession, stopping any harassment which limits a person's right to enjoy his or her real estate rights); the protection of heirs to whom the law recognises a right to receive a part of the inheritance; and others.

14 Enforcement

What means of enforcement are available?

The main kinds of enforcement are as follows, depending on the kind of claims:

- obligations to pay a certain amount of money: the creditor may satisfy his interests on the debtor's assets (real estate assets, moveables – including money – held either by him or by another person), which are attached by a public bailiff and then sold. The money obtained from the sale is then delivered to the creditor up to the satisfaction of his credit;
- an obligation to deliver a specific moveable or real estate: the creditor may seek for the compulsory delivery of such asset;
- an obligation to do (fungible activity): the creditor may proceed by engaging someone else to do the work, imposing all the expenses on the debtor;
- an obligation to do (non-fungible activity, that is, an activity that must be carried out exclusively by the debtor): although this activity cannot be forcedly imposed, the judge may impose on the debtor the payment of a sum of money for any violation or for every day of delay in its fulfilment;
- an obligation to enter into an agreement (for instance, in case of preliminary agreement): the court may pronounce a sentence which produces the same effects as the execution of the agreement.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Processes are held privately and thus only involve the parties, their attorneys and the judge. However, there is an important exception: the hearing during which the parties discuss their case is public under penalty of nullity, unless the judge orders to hold the hearing in private, should the case involve national security, public order or morality reasons.

The documents of the proceedings (pleadings, briefs, witness statements, etc) are available only to parties involved in it. On the contrary, judgments are public and the publication takes place through their deposit with the clerks' office.

16 Costs

Does the court have power to order costs?

The judge has the power to order costs.

By way of principle, the litigation costs, which are usually estimated by each party independently, are imposed on the losing party. The legal counsel to the parties submits to the court their statements of the costs; the judge may exclude the payment of certain costs, should he or she consider them excessive or unnecessary.

Furthermore, if both parties partially lose or there are serious and exceptional reasons specifically indicated in the judgment, the judge can offset, either totally or partially, the costs between the parties.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

The amount of legal fees is agreed upon by the parties. Nothing prevents parties from agreeing that compensation of the attorneys be calculated as a percentage of the value of the litigation, or be totally excluded in case of defeat (though such a scenario is unlikely).

The attorneys, as well as judges, notaries and clerks of the court, are prohibited from buying (under penalty of nullity) any claims or credits that represent the subject matter of a dispute in which they are directly involved.

Theoretically, the law does not exclude the possibility for third parties to finance the person seeking or involved in a process; however, this practice has rarely been seen in practice.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

The parties may take out insurance policies to cover their legal costs. The parties may also take out insurance policies for civil liability; such policies would cover what the insured owes to a third party as a consequence of a liability, if and when ascertained, including legal costs. In such a case, legal costs will be borne by the insurance company, capped at one-quarter of the sum insured; should the amount to be paid to the other party exceed the sum insured, then legal costs shall be equally divided between the insured and the insurance company.

19 Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Under Italian law two kinds of class action may be brought.

Suits against the public administration

Legislative Decree 198/2009 states that holders of relevant interests, or even associations and committees, which are homogenous to multiple consumers or users, are entitled to take legal action against those public administrations or dealers of public services which caused some direct, real and actual damages to them, whether such damages are due to breach of a deadline, a failure to adopt compulsory general administrative acts, and violation of obligations setting the qualities and modalities to use public services or violation of

qualitative or economic standards. Individual consumers and users can join the plaintiff. This action is not addressed to claim damages – which is regulated by the general rules – but to force the public administration to remedy any violation or incorrect conduct through a legal order of the administrative courts.

Protection of consumers rights

Pursuant to section 140-bis of the Consumer Code, each consumer, even through associations to which he gives a mandate or committees to which he belongs, has the power to ascertain liabilities, claim damages and request restitutions. This form of class action is given to consumers or users sharing the same situation, or using the same good or service, or damaged by the same unfair trade practices or anti-competitive behaviours, and who claim their rights against the same firm. The final judgment is binding for all the consumers or users that were part of the process, and so it binds those consumers or users that subscribed to or joined the action.

20 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

The parties can request that the court re-examine the merits of a first-instance decision, and their request can be limited to matters of fact and law.

The appealing party must indicate in his or her writ the specific part of the decision to be appealed and the changes to the reconstruction of the facts made by the judge of first instance, as well as the circumstances of the breach of law.

An appeal must be presented within 30 days of the service of the sentence or – should no service have been made – within six moths from its publication.

Further to a recent reformation (Law 134/2012), in the course of the first hearing, the judge of second instance evaluates the grounds of the appeal. Should the appeal, on a prima facie basis, not have a reasonable probability of being admitted, then it will be declared inadmissible. If this happens, the first-instance decision may be challenged before the Supreme Court.

Sentences pronounced in the second instance can be contested before the Supreme Court only for matters of law (for example, lack of jurisdiction, lack of motivation or insufficient or contradictory motivation, violation or wrong application of law). The factual circumstances established at the appeal stage are final. Parties can challenge second-instance decisions within 60 days from the service of the sentence or – should no service have been made – within six months of its publication.

Only in extraordinary cases (fraud, false evidence, etc) may a decision by the Supreme Court be challenged.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

The procedure of recognition and enforcement of foreign judgments is regulated by the following:

- EU Regulation 44/2001: judgments in civil and commercial matters issued by a judge of an EU member state;
- the Lugano Convention of 1988: judgments in civil and commercial matters issued by judges of Iceland, Norway and Switzerland; and
- bilateral conventions between Italy and, inter alia, Argentina, Brazil, Egypt, Kuwait, Moldova and Tunisia.

To the cases above, section 64 et seq of Law 218/1995 applies. Foreign judgments are recognised in Italy, without any further procedure being necessary, should each and any of the following requirements be met:

- applying the rules on jurisdiction laid down under Italian law, the foreign judge would have had jurisdiction;
- the writ of summons instituting the proceedings was duly served and the defendant's right to be heard was respected;
- the parties appeared in the foreign proceedings (or a party's absence was formally declared under foreign law);
- the judgment is final and definitive under foreign law (pending the foreign proceedings, the interested party may only apply before Italian courts to seek interim measures);
- the judgment is not in conflict with an Italian judgment that is final and definitive;
- no proceedings on the same subject matter and between the same parties are pending before an Italian court; and
- foreign judgment is not contrary to Italian public policy.

The court of appeal located where the applicant seeks enforcement has jurisdiction over this matter.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

EU Regulation 1206/2001 regulates the procedure for obtaining oral or documentary proof in Italy for use in civil proceedings that are pending in EU member states (except for Denmark).

Furthermore, the Hague Convention of 1970 on the taking of evidence abroad in civil or commercial matters, ratified by Italy, regulates the procedure for obtaining oral or documentary evidence for use in civil proceedings that are pending in one of the countries where the convention is in force.

Further, sections 69 and 70 of Law 218/1995 apply. The court of appeal, through decree, declares the enforceability of foreign decisions ordering the taking of evidence from individuals resident or domiciled in Italy. Upon authorising the request, the court of appeal transmits the file to the competent judge.

To be accepted, the request for obtaining evidence must not contradict the mandatory provisions of Italian law.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

No. Italian arbitration law is not based on the UNCITRAL Model Law.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The agreement must be in writing. Disputes over indefeasible rights (citizenship, divorce and other family law issues) and certain disputes over labour and social security benefits or contributions issues cannot be settled through arbitration.

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Arbitrators can be one or more, provided that the panel has an odd number of members.

Should the parties appoint an even number of arbitrators, the president of the competent high court will appoint an additional arbitrator.

If parties do not express otherwise, the panel will consist of three arbitrators.

Each party designates one arbitrator and the third one is appointed by mutual agreement of the parties. Should the third arbitrator not be appointed by the parties, he is designated by the president of the high court. Regardless, if the arbitration agreement does not set forth that the arbitrators have to be designated by the parties, the interested party can request that the president of the high court appoint the panel.

Each party can challenge the designation of an arbitrator through a claim to the president of the high court within the mandatory term of 10 days from the service of the appointment, or from when the reason for challenging the appointment became known.

26 Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The arbitrators can decide how to conduct the arbitration, according to the rules, if any, established by the arbitration agreement and, in any case, in compliance with the rules of fair process, which are compulsory under Italian law.

27 Court intervention

On what grounds can the court intervene during an arbitration?

Courts can intervene in the process of an arbitration upon request of any of the parties to designate and substitute one or more arbitrators and decide on challenges to arbitrators' appointment. They also decide on the arbitrators' remuneration and costs in case of conflict among parties and arbitrators. Finally, courts may extend the deadline for issuing the final award. The above powers may be expressly excluded by agreement of the parties.

Furthermore, courts have to support the arbitrators in the process of taking evidence and have the exclusive power to issue interim relief.

28 Interim relief

Do arbitrators have powers to grant interim relief?

No, this is expressly excluded by Italian Civil Procedure Code. Only the courts may issue interim relief.

29 Award

When and in what form must the award be delivered?

Parties may agree on a specific time limit for issuing the award. Should no agreement be made, the award will be issued within 240 days of the last acceptance of appointment by the arbitrators. However, the deadline can be extended:

- with a joint request of the parties to the panel; or
- upon an application by a party or by an arbitrator before the competent court, for a maximum of 180 days, if there is the need to take evidence, conduct independent expertise, issue a partial award or replace an arbitrator.

The award must be in writing and must be approved by a majority of the arbitrators. Within 10 days of being signed by the last arbitrator, the award must be sent to each party.

30 Appeal

On what grounds can an award be appealed to the court?

A party may appeal before the courts an award for nullity or revocation.

The award will be considered null if:

- the arbitration agreement is void;
- the panel was not appointed in compliance with the arbitration agreement (provided that this objection was raised during the arbitration);
- the arbitrator did not have the powers to act in this capacity;
- the award decides on issues that were not raised by the parties or concerns issues that may not be submitted to arbitration;
- it does not contain the signatures of the arbitrators or the grounds of the decision;
- the deadline for the award had expired (provided that this objection was raised during the arbitration);
- the arbitrators failed to comply with any mandatory formal requirements;
- a formal award between the same parties and with the same subject matter already exists and it states the opposite of the new one;
- the rules of fair process were not complied with;
- it does not decide on the merit of the arbitration;
- it is contradictory;
- it does not take position on any specific issues or objections of the parties; or
- the award does not comply with Italian public policy.

The challenge of the award based on the breach of law or rules is admitted only if it is explicitly stipulated in the agreement or in the law.

The appeal for nullity must be presented before the competent court of appeal within 90 days of the service of the award or – should no service have been made – within one year from the last signature of arbitrators.

The award may be revoked if:

- it is the outcome of a fraud by a party or an arbitrator;
- it is grounded on false evidence; or
- material evidence is found after the award.

These appeals need to be filed before the competent court of appeal within 30 days of the discovery of the new circumstance above.

Finally, an award may be subject to a third party objection when:

- its contents are detrimental to the third party's rights; or
- the third party is a creditor or assignee of any of the parties and the award is the result of a fraud between the parties.

No time limits apply to this objection.

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Two kinds of arbitration exist:

- ritual arbitration, where the award has the same effect as the court's judgment. The party, in order to have an award enforced in Italy, shall deposit the award together with the arbitration agreement at the clerk's office of the competent court. The court, after a formal check, declares the award to be enforceable. Should any party not fulfil it, the other may seek an enforcement procedure; and
- informal arbitration: the award does not have the binding force of a judgment, but is qualified as an agreement between the parties. Hence, it cannot be automatically enforced through the same procedure established for the ritual arbitration award, but, given its contractual nature, any party may sue the non-fulfilling party for any breach of the agreement.

Foreign awards are enforceable in the Italian territory through a peculiar procedure for the exequatur. A party seeking the enforcement of

a foreign award applies to the president of the court of appeal of the district where the counterparty resides (and the Rome Court of Appeal if the latter does not reside in Italy), by depositing the award and the arbitration agreement (with their Italian translations). The judge, after a formal check, declares its enforceability, unless the subject matter of the arbitration could not be subject to an arbitration agreement under Italian Law, or the award embodies clauses that conflict with public policy. Then, the award becomes an enforceable title, subject to the provisions of law established for its enforcement.

Finally, in 1968 Italy ratified the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. Under this treaty, all signatory states share a faster and easier procedure to make awards issued in one of the member states enforceable in all the others.

32 Costs

Can a successful party recover its costs?

The winning party may recover the costs (same procedure as before the courts).

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Most common ADR processes are:

- conciliation held before the Italian Securities Authority (CONSOB);
- arbitration in banking and finance disputes;
- conciliation concerning consumers' rights; and
- the 'joint negotiation' (a popular process between a company and one or more consumer associations in respect of disputes involving more than one consumer sharing the same cause of action).

Under Italian practice, ADR processes have never been widely used.

Update and trends

The use of alternative means of dispute resolution in Italy seems to have decreased recently, after several years of increasing popularity.

The provision set forth by Legislative Decree 28/2010 demanding mandatory attempts at mediation was declared contrary to the Italian Constitution by the Constitutional Court in 2012 (for formal reasons); now, it is just a faculty of the parties. Even though parties may benefit economically from opting for mediation, the process is quite uncommon. Further, attempts at conciliation in labour litigation before starting an action is no longer mandatory.

Arbitration – due to its high costs for the parties – is still limited to major issues.

34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

After a decision of the Constitutional Court (Decision No. 272/2012), the party intending to start a legal proceeding is no longer obliged to seek an amicable resolution through qualified mediators.

The parties, however, may voluntarily choose to turn to mediation under Legislative Decree 28/2010. In such a case, they will enjoy the associated tax benefits. Lawyers must inform their clients of this possibility before starting legal proceedings.

Courts and tribunals cannot compel the parties to participate in an ADR process.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

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