



# ICLG

The International Comparative Legal Guide to:

## **Litigation & Dispute Resolution 2019**

**12th Edition**

A practical cross-border insight into litigation and dispute resolution work

Published by Global Legal Group, in association with CDR, with contributions from:

A&L Goodbody  
Akin Gump Strauss Hauer & Feld LLP  
Arcas Law  
Arendt & Medernach SA  
Bae, Kim & Lee LLC  
Bär & Karrer  
Blake, Cassels & Graydon LLP  
Bloomfield Law Practice  
Borenus Attorneys Ltd  
Browne advocati  
Candia Advocates and Legal Consultants  
Chiuariu & Associates  
Clayton Utz  
Covington & Burling LLP  
Eric Silwamba, Jalasi and Linyama  
Legal Practitioners

EsenyellPartners Lawyers & Consultants  
Ferbrache & Farrell LLP  
GrayRobinson, P.A.  
Hamdan AlShamsi Lawyers & Legal Consultants  
Hughes Hubbard & Reed LLP  
Kammeradvokaten/ Poul Schmith  
Laude Esquier Champey  
Lennox Paton  
Linklaters LLP  
Miller & Chevalier Chartered  
Morgan, Lewis & Bockius LLP  
Mulla & Mulla & Craigie Blunt & Caroe  
Munari Cavani  
Nagashima Ohno & Tsunematsu  
Norburg & Scherp  
Oblin Attorneys at Law

Oon & Bazul LLP  
Pinheiro Neto Advogados  
Potter Anderson & Corroon LLP  
Rahmat Lim & Partners  
RELEVANS Law Firm  
Rui Bai Law Firm  
Sárhegyi & Partners Law Firm  
SyCip Salazar Hernandez & Gatmaitan  
V. D. Ikonomidis and Associates  
Law Firm  
Wijn & Stael Advocaten  
Woods LLP





#### Contributing Editors

Greg Lascelles and Julia Steinhardt, Covington & Burling LLP

#### Sales Director

Florjan Osmani

#### Account Director

Oliver Smith

#### Sales Support Manager

Toni Hayward

#### Sub Editor

Amy Norton

#### Senior Editors

Caroline Collingwood  
Rachel Williams

#### CEO

Dror Levy

#### Group Consulting Editor

Alan Falach

#### Publisher

Rory Smith

#### Published by

Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

#### GLG Cover Design

F&F Studio Design

#### GLG Cover Image Source

iStockphoto

#### Printed by

Stephens & George  
February 2019

Copyright © 2019  
Global Legal Group Ltd.  
All rights reserved  
No photocopying

ISBN 978-1-912509-56-0

ISSN 1757-2789

#### Strategic Partners



## General Chapters:

1	<b>Key Considerations for Parties in Foreign Proceedings Seeking to Access Evidence from Third Parties Based in England and Wales</b> – Greg Lascelles & Julia Steinhardt, Covington & Burling LLP	1
2	<b>Commencing a Class Action in the Netherlands</b> – Koen Rutten & Jordy Hurenkamp, Wijn & Stael Advocaten	5

## Country Question and Answer Chapters:

3	<b>Australia</b>	Clayton Utz: Colin Loveday & Scott Grahame	9
4	<b>Austria</b>	OBLIN Attorneys at Law: Dr. Klaus Oblin	18
5	<b>Belgium</b>	Arcas Law: Joost Verlinden & Lieselot Verdonck	25
6	<b>Brazil</b>	Pinheiro Neto Advogados: Renato Stephan Grion & Guilherme Piccardi de Andrade Silva	32
7	<b>British Virgin Islands</b>	Lennox Paton: Scott Cruickshank & Phillip Baldwin	41
8	<b>Canada – Québec</b>	Woods LLP: Marie-Louise Delisle & Louis Sévénio	56
9	<b>Canada – Excluding Québec</b>	Blake, Cassels & Graydon LLP: Erin Hoult & Josianne Rocca	63
10	<b>China</b>	Rui Bai Law Firm: Wen Qin & Lei Yang	71
11	<b>Denmark</b>	Kammeradvokaten/ Poul Schmith: Henrik Nedergaard Thomsen & Kasper Mortensen	77
12	<b>England &amp; Wales</b>	Covington & Burling LLP: Greg Lascelles & Julia Steinhardt	85
13	<b>Finland</b>	Borenus Attorneys Ltd: Kristiina Liljedahl & Caius Honkanen	97
14	<b>France</b>	Laude Esquier Champey: Olivier Laude & Ana-Maria Constantinescu	104
15	<b>Germany</b>	Linklaters LLP: Dr. Christian Schmitt & Dr. Kerstin Wilhelm	113
16	<b>Greece</b>	V. D. Ikonmidis and Associates Law Firm: Vassilios Ikonmidis & Georgia Patili	120
17	<b>Guernsey</b>	Ferbrache & Farrell LLP: Martin Jones & Alison Antill	127
18	<b>Hungary</b>	Sárhegyi & Partners Law Firm: Dr. András Lovas & Dr. Viktória Perényi	134
19	<b>India</b>	Mulla & Mulla & Craigie Blunt & Caroe: Siddharth Thacker	142
20	<b>Ireland</b>	A&L Goodbody: Caoimhe Clarkin & Marcus Walsh	150
21	<b>Italy</b>	Munari Cavani: Raffaele Cavani & Bruna Alessandra Fossati	161
22	<b>Japan</b>	Nagashima Ohno & Tsunematsu: Koki Yanagisawa	169
23	<b>Korea</b>	Bae, Kim & Lee LLC: Kap-You (Kevin) Kim & John P. Bang	177
24	<b>Luxembourg</b>	Arendt & Medernach SA: Marianne Rau	185
25	<b>Malaysia</b>	Rahmat Lim & Partners: Jack Yow & Daphne Koo	192
26	<b>Netherlands</b>	Wijn & Stael Advocaten: Koen Rutten & Carlijn Tjoa	199
27	<b>Nigeria</b>	Bloomfield Law Practice: Michael Abiiba & Azeezat Ogunjimi	206
28	<b>Philippines</b>	SyCip Salazar Hernandez & Gatmaitan: Ramon G. Songco & Anthony W. Dee	213
29	<b>Romania</b>	Chiuariu & Associates: Dr. Tudor Chiuariu	220
30	<b>Russia</b>	Morgan, Lewis & Bockius LLP: Dmitry Ivanov & Grigory Marinichev	226
31	<b>Serbia</b>	Browne advokati: Vesna Browne	234
32	<b>Singapore</b>	Oon & Bazul LLP: Sean La'Brooy & Kaili Ang	242

Continued Overleaf ➔

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

#### Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.



## Country Question and Answer Chapters:

33	<b>Slovakia</b>	RELEVANS Law Firm: Alexander Kadela & Tomáš Bardelčí	249
34	<b>Sweden</b>	Norburg & Scherp: Fredrik Norburg & Pontus Scherp	259
35	<b>Switzerland</b>	Bär & Karrer: Matthew Reiter & Dr. Alain Grieder	266
36	<b>Turkey</b>	EsenyelPartners Lawyers & Consultants: Selçuk Sencer Esenyel	274
37	<b>Uganda</b>	Candia Advocates and Legal Consultants: Candia Emmanuel & Geoffrey Bwire	281
38	<b>United Arab Emirates</b>	Hamdan AlShamsi Lawyers & Legal Consultants: Hamdan AlShamsi	290
39	<b>USA – Delaware</b>	Potter Anderson & Corroon LLP: Jonathan A. Choa & John A. Sensing	297
40	<b>USA – Florida</b>	GrayRobinson, P.A.: Leora Freire & Leslie Arsenault Metz	305
41	<b>USA – Maryland</b>	Miller & Chevalier Chartered: John C. Eustice & Michael N. Khalil	312
42	<b>USA – New York</b>	Hughes Hubbard & Reed LLP: Chris Paparella & Justin Ben-Asher	318
43	<b>USA – Pennsylvania</b>	Akin Gump Strauss Hauer & Feld LLP: Michael W. McTigue Jr. & Marie Bussey-Garza	326
44	<b>USA – Virginia</b>	Miller & Chevalier Chartered: John C. Eustice & Brian A. Hill	333
45	<b>USA – Washington, D.C.</b>	Miller & Chevalier Chartered: Brian A. Hill & John C. Eustice	340
46	<b>Zambia</b>	Eric Silwamba, Jalasi and Linyama Legal Practitioners: Lubinda Linyama & Joseph Alexander Jalasi	346

## EDITORIAL

Welcome to the twelfth edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

Two general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting litigation and dispute resolution work.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 44 jurisdictions, with the USA being sub-divided into seven separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Greg Lascelles and Julia Steinhardt of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

Alan Falach LL.M.  
Group Consulting Editor  
Global Legal Group  
[Alan.Falach@glgroup.co.uk](mailto:Alan.Falach@glgroup.co.uk)

# Italy

Raffaele Cavani



Munari Cavani

Bruna Alessandra Fossati



## I. LITIGATION

### 1 Preliminaries

#### 1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

Italy is a civil law jurisdiction. Rules on civil procedure are stated by the Code of Civil Procedure.

#### 1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The Italian civil court system is as outlined below.

First instance cases are heard by: (a) the justice of the peace, who sits as a single judge; or (b) the high court, which, depending on the case at issue (in particular in case of specialised divisions), may sit either as a collegium of three judges or as a single judge.

In the second instance: (a) decisions by justices of the peace may be appealed before the high court; and (b) a first-instance decision by the high court may be appealed before the courts of appeal, established by a collegium of three judges.

The highest degree is occupied by the Supreme Court of Cassation, 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.

The high courts of the major cities have specialised civil divisions, which deal with matters concerning labour law, family law, corporate and commercial law (including intellectual property) and bankruptcy law.

#### 1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

See question 1.2.

A trial in first instance lasts approximately three to four years; in second instance, from one to four years; while a proceeding before the Court of Cassation lasts from five to eight years. Amongst the expedited trial procedures, it is worth mentioning the injunction of monetary payments which is based on an overdue amount

evidenced in written form. In this proceeding, the Court shall issue a payment order against the debtor within 60 days of its issuance.

#### 1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

Parties may agree upon exclusive jurisdiction clauses in writing, unless in case of matters for which the Civil Procedure Code provides for the mandatory jurisdiction of a specific judge (see question 6.1).

#### 1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

By way of principle, the litigation costs, which are usually estimated by each party independently, are imposed on the losing party. Legal counsels submit to the court their statements of the costs; the judge may exclude the payment of certain costs deemed excessive or unnecessary.

Furthermore, if both parties partially lose or the case has never been handled before or there is a change in the case law on the subject, the judge can offset, either totally or partially, the litigation costs between the parties.

Non-participation to both mediation and negotiation could negatively affect the decision of the judge regarding litigation costs.

#### 1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

Nothing prevents parties from agreeing that the compensation of the attorneys be calculated as a percentage of the value of the litigation, or be totally excluded in the event of defeat (although such a scenario is unlikely).

#### 1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

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 has rarely been seen in practice.

### 1.8 Can a party obtain security for/a guarantee over its legal costs?

Under the Italian laws, there are not any specific rules or regulations in terms of litigation funding. Moreover, please note that Italian lawyers cannot enter into a “*pactum de quota litis*” with their clients (i.e., an agreement by which a client promises to his/her lawyer a portion of the proceeds should the case be successful).

## 2 Before Commencing Proceedings

### 2.1 Is there any particular formality with which you must comply before you initiate proceedings?

In certain matters, parties have to seek an out-of-court settlement by means of qualified mediators. Parties may also settle their dispute amicably by a written negotiation with the support of their lawyers (so-called “*negoziazione assistita*”).

### 2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

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

The ordinary statute of limitation is 10 years.

In case of indemnification for torts, the statute is reduced to five years (two years for actions regarding the circulation of vehicles and ships). The five-year term also applies to actions for refunding interest or in corporate law matters. B2B agreements of sale of goods, freight, shipment assurance and brokering commissions have a statute of limitation of one year.

The above terms are mandatory, and such terms start from the date on which the right may be exercised. In case of a legal action, the statute of limitation is interrupted until the judgment, after which it starts to run again.

## 3 Commencing Proceedings

### 3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

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 or labour litigations, start by filing a petition to the competent court.

Main means of service are judicial officers, mail service or the lawyers themselves.

The service is considered to be properly carried out upon the receipt by the receiving party. In case of mail service, in any case the writ is deemed to be served after 10 days from its sending.

Should a service be made outside Italy and in an EU country, the writ of summons must be translated in the language of the recipient and served pursuant to Regulation CE No. 1393/2007. For service in a country outside the EU, unless in case of a bilateral convention between Italy and the relevant country, the Hague Convention of November 15, 1965 shall apply.

Should a service of foreign proceeding be made in Italy, the preferred method is represented by the *Ufficio unico degli ufficiali giudiziari* pursuant to the Hague Service Convention of November 25, 1981. Such office sits at the Court of Appeal of Rome.

### 3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Parties can demand interim remedies either before the proceeding 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 are clearly defined: different kinds of seizures; reports of new works and of potential damage; and pre-trial technical investigation. If a situation does not fall within any of these remedies, a general remedy (paragraph 700 of the 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 during the proceeding; and they are granted if the following two conditions are satisfied (the burden of proof lies on the claimant):

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

In some cases (e.g., when service to the counterparty could jeopardise the claimant’s right) the court may decide *inaudita altera parte*.

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

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

### 3.3 What are the main elements of the claimant’s pleadings?

The claimant’s pleadings must contain a representation of facts and legal arguments related to the action, as well as 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.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

The pleadings may be amended exclusively as a consequence of the content of the statement of defence and within the term of the first writ of defence (to be filed with the court within 30 days from the first hearing).

### 3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings can be withdrawn upon the consent of both parties (personally or by means of their attorneys). The withdrawal may be declared either orally before the judge during a hearing or with written notice exchanged between the parties. Should the withdrawn pleadings be lawful, the judge dismisses the legal dispute. As for the consequences, the party who proposes the withdrawn pleadings must pay the legal fees occurred by the other party/ies, unless all the parties agree otherwise. The judge rules on the liquidation of the legal fees and such decision cannot be opposed.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The statement of defence must point out the counterclaims of the defendant and any other objections that may not be ascertained *ex officio* by the judge (i.e., jurisdiction, offset, statute-barred claim).

### 4.2 What is the time limit within which the statement of defence has to be served?

At least 20 days before the first hearing, the defendant must file his or her statement of defence. Should he or she decide only to object the arguments of the claimant (and not other objections that may not be ascertained *ex officio*), the statement of defence may be filed directly at the first hearing.

### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The defendant is entitled to summon third parties in a pending proceeding, by serving to them a writ of summons. To this end, the defendant must specify his or her intention to summon the third parties in the statement of defence, to be filed at least 20 days before the first hearing.

### 4.4 What happens if the defendant does not defend the claim?

The court verifies whether the service of the claim is correct and, in this case, declares the *absentia* of the defendant, which is allowed in Italy.

### 4.5 Can the defendant dispute the court's jurisdiction?

The defendant can dispute the court's jurisdiction under penalty of forfeiture in the statement of defence to be filed at least 20 days before the first hearing.

## 5 Joinder & Consolidation

### 5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

The proceeding does not necessarily take place between the original parties. A third party might intervene on its own initiative or may be called by the parties (see question 4.3) or by order of the judge.

### 5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The consolidation of different proceedings is required when there is a risk of possible conflicts of *res judicata*. Hence, it takes place (and it is mandatory) when the proceedings concern the same subject matter. In case of linked cases, consolidation is discretionary and may occur only in case of a favourable decision by the competent court.

### 5.3 Do you have split trials/bifurcation of proceedings?

The split of proceedings may take place in case of voluntary joinder or objective consolidation (i.e. when, on initiative of the claimant, several trials have been accumulated in the same proceeding, respectively for their subject matter or for an identity of the parties). The court can split proceedings, upon joint request of all parties or on its own initiative, when it is deemed necessary, due to the fact that the continuation of the joint discussion of the trial may delay or make the proceeding more onerous.

## 6 Duties & Powers of the Courts

### 6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

The Italian civil court system allocates jurisdiction on the basis of: (a) the value; (b) the subject matter of the lawsuit; and (c) the territory.

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 is allocated as follows:

- justices of the peace are competent in lawsuits: (i) involving movables with a value not exceeding €5,000; and (ii) 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, then a judge will have exclusive jurisdiction regardless of the suit's value: 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 of 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
- cassation has exclusive jurisdiction over certain matters, including questions of jurisdiction.

About territorial jurisdiction, Italian first-degree courts are divided among different districts. The following criteria apply 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 is not domiciled in Italy; and
- 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 mandatory jurisdiction:

- for disputes concerning, rights *in rem*, the court having jurisdiction is that of the place where the immovable 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 assets are located; in the case of a credit of the debtor in relation to a third party, the place where the debtor 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.

#### **6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?**

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

In principle, courts do not have an inquisitorial role in civil proceedings; however, they can issue search orders, enquire after written information concerning acts and documents from public administration or summon a witness to testify and to decide the case upon the oath of the parties.

Parties can demand an interim application (see question 3.2) and the cost consequences are the same of the proceeding (see questions 1.5 and 1.6).

#### **6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?**

Courts are not entitled to issue any sanction, but the court will take such behaviour into account in its decision.

#### **6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?**

Courts have the power to strike out a part of a statement of the claimant or of the defendant, or of their lawyer, if this part is improper or offensive expression.

#### **6.5 Can the civil courts in your jurisdiction enter summary judgment?**

Pursuant to applicable rules of law, the judge, after a brief evaluation of the case, can decide to proceed with a summary judgment. At the first hearing the parties shall indicate, under penalty of forfeiture, evidence and counter-evidence, unless the judge grants a postponement of the hearing and gives two mandatory terms for the writings indicating evidence (15 days) and for the indications of counter-evidence (a further 10 days).

#### **6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?**

The court may stay the proceedings in any case in which it or another judge should firstly settle a dispute, the definition of which has consequences on the decision of the case.

The courts may stay also at the joint request of all parties.

In addition, the courts have the power to discontinue a proceeding in case of death or loss of capacity before the submission of the first writ of any party, of the death or other impediment of the lawyer.

## **7 Disclosure**

#### **7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?**

There is no duty on the parties preserving documents and other evidence pending trial. The parties are not obliged to share any relevant request and are free to disclose evidence or not. There is no step available to the claimant to assist in bringing an action, such as a pre-action exchange of documents.

There are restrictions on the disclosure of documents containing sensitive and personal data, as well as secret documents covered by legal privilege.

An electronic document, subscribed with a digital signature, satisfies the legal requirement of written form.

In terms of evidence, the document itself is freely estimated, taking into account its objective characteristics of quality and safety.

## 7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

The parties may not file any confidential correspondence between counsel regarding the possible settlement of the case. As specifically provided in the lawyers' code of professional conduct, the only correspondence that the parties can file is the correspondence between counsel regarding the fulfilment of the obligation from a party to another one.

According to leading case law, advice from in-house counsel may not be qualified as privileged. This rule 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 all information that they become aware of confidential until the end of their mandate.

## 7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

Parties can request the judge to order third parties to produce documents or to take measures aimed at gathering evidence.

## 7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The court can order disclosure by the other party or a third party. However, parties may challenge the disclosure of documents if they have a legitimate reason to do so (legal privilege, medical secrecy or bank secrecy).

## 7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

With respect to disclosure, Italian law provides no duty of disclosure or discovery similar to common law jurisdictions.

# Evidence

## 8.1 What are the basic rules of evidence in your jurisdiction?

The basic rule of evidence entails that the party who wants to assert a right in court must prove the facts on which it is based. The burden of proving a fact rests on the one who invokes precisely that fact in support of its argument.

## 8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

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

Experts may be either court-appointed or appointed by any of the parties. The contributions of the experts are not considered as evidence.

## 8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

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.

## 8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

The expert witness is ordered by the judge to allow the acquisition of important information related to specific knowledge which is necessary to the court as guidance for its decision.

The rules relating to experts are set forth by the codes of civil and criminal procedure and by the regulations for their implementation, including sanctions in case of non-compliance with the duties that the experts must comply with. The expert is awarded by the court. The expert commits to duly respond to the "question" that the judge asks.

# Judgments & Orders

## 9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

The judicial measures (i.e. acts of the court) may be judgments, orders or decrees.

A judgment is the judge's ruling that decides on the merits of the case or of a part of it, or of one or more procedural issues.

An order regulates the development of the trial, and is pronounced before both parties.

Also, the decree regulates the development of the trial, but it is not pronounced before both parties.

## 9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Local courts have the power to determine the amount of the indemnification on an equitable basis, if it is difficult to assess the damages.

As a general rule, Italian civil courts do not provide for punitive damages, unless the recognition of foreign decisions on punitive damages is needed. Notwithstanding this, the system provides some meaningful exceptions:

- if the losing party has initiated or continued a civil proceeding in gross negligence or bad faith, 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;
- the court – unless the measure is manifestly unequal – can integrate an order to cease or refrain from certain behaviours, 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 that allows him or her to proceed immediately for the payment of the relevant sum; and
- monetary compensation in cases of libel.

Local courts have the power to order costs (see questions 1.5 and 1.6).



### 9.3 How can a domestic/foreign judgment be recognised and enforced?

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

- EU Regulation 1215/2012;
- 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 other countries.

Foreign judgments are recognised in Italy, without any further procedure being necessary, should all 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;
- the judgment is final and definitive under foreign law;
- 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
- the foreign judgment is not contrary to Italian public policy.

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

### 9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

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 judgment or – should no service have been made – within six months from its publication.

In the course of the first hearing, the judge evaluates the grounds of the appeal. Should the appeal, on a *prima facie* basis, not have a reasonable probability of being admitted, it will be declared inadmissible. In this case, the first-instance decision may be challenged before the Supreme Court only for matters of law (lack of jurisdiction, lack of motivation or insufficient or contradictory motivation, violation or wrong application of law). To the contrary, factual circumstances established at the appeal stage are final.

## 10 Settlement

### 10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

See questions 1.1 and 2.1.

## II. ALTERNATIVE DISPUTE RESOLUTION

### 1 General

#### 1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The most popular method of alternative dispute resolution (“ADR”) is represented by arbitration. Italian law provides for the following two types of arbitration:

- 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.

As for the number of arbitrators, if parties do not express otherwise, the panel will consist of three arbitrators.

Each party designates one arbitrator, and the third arbitrator is appointed by mutual agreement of the parties.

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:

- upon a joint request of the parties; 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 other most common ADR processes in Italy 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).

#### Mediation

Mediation on specific matters (*inter alia*, the right to seek compensation for: damages resulting from libel or medical liability; financial, bank and insurance agreements; condominium, rights *in rem*, divisions and inheritance disputes; lease agreements; company leases; and family agreements) is mandatory in civil and commercial proceedings.

Parties seeking judicial relief in the above-mentioned matters are required to seek a prior amicable resolution through qualified mediation organisations. For any matters other than the foregoing, mediation is only voluntary.

Should the parties fail to seek ADR and, on the contrary, start a legal proceeding, the court must invite them to proceed the mediation and give them 15 days to submit their request to the mediation organisation.

At the first hearing, the parties decide whether to continue the mediation procedure (this cannot last longer than three months, unless both parties agree to renounce such term), and whether they can find common ground to amicably solve their dispute. If no agreement is reached or the parties at the first hearing decided not to continue the proceeding, they are free to devolve their dispute to the competent court.

The mediator draws up a report certifying the outcome of the proceeding and the agreement reached by the parties, if any. The agreement concludes the mediation, and is challengeable in the case of invalidity or nullity. An agreement reached in a mandatory mediation is immediately enforceable. In the case of voluntary mediation, an agreement will be immediately enforceable only if each party has been assisted by a lawyer; otherwise, parties shall submit the agreement to the court for its formal approval in order to make it enforceable.

#### Negotiation

Negotiation is mandatory in matters regarding: damages resulting from circulation of vehicles and ships; and requests of payment for any amount lower than €50,000, not including matters covered by the mandatory mediation.

The party who intends to start a legal action in any of the such matters, must invite in writing the counterparty to negotiate an amicable solution of the issue with the assistance of his/her lawyer.

The counterparty, within 30 days, may accept or decline the invitation in order to reach an amicable agreement; if he/she rejects the invitation or does not respond to it, the party is entitled to start the legal action (as to the consequences on the litigation costs in case of non-participation to the negotiation, see question 1.5).

### 1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

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.

Mediation was introduced in 2010 – by Legislative Decree No. 28 – to relieve the burden affecting the Italian judicial system and to make dispute resolution faster, easier and cheaper.

Negotiation is regulated by Decree-law No. 132 of September 10, 2014 as amended by Law No. 162 of November 10, 2014.

### 1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

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.

### 1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

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 the arbitrators' appointment. Courts may also extend the deadline for issuing the final award. The above powers may be expressly excluded by agreement of the parties.

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

### 1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

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;
- 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
- it does not comply with Italian public order.

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 provided by 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 the fraud of 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 latter, 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.

## 2 Alternative Dispute Resolution Institutions

### 2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

ADR processes have never been widely used in Italy.



#### Raffaele Cavani

Munari Cavani  
Corso Monforte, no. 16  
Milan  
Italy

Tel: +39 02 36 64 25 00  
Email: [raffaele.cavani@munaricavani.it](mailto:raffaele.cavani@munaricavani.it)  
URL: [www.munaricavani.it](http://www.munaricavani.it)

Raffaele Cavani is a founding partner of the Firm.

Qualified to plead before the Supreme Court, his practice includes both litigation and non-contentious work.

He deals mainly with corporate and commercial law matters, mergers, acquisitions and private equity, international contract issues, antitrust and competition law.



#### Bruna Alessandra Fossati

Munari Cavani  
Corso Monforte, no. 16  
Milan  
Italy

Tel: +39 02 36 64 25 00  
Email: [alessandra.fossati@munaricavani.it](mailto:alessandra.fossati@munaricavani.it)  
URL: [www.munaricavani.it](http://www.munaricavani.it)

Bruna Alessandra Fossati is a partner of the Firm. She deals mainly with civil litigation and arbitration, commercial and corporate law matters. In addition, she has built up a vast experience in the areas of libel, unfair competition, industrial and intellectual property and civil liability.



Studio Legale Munari Cavani provides consultancy and litigation services in all the principal branches of civil, corporate, commercial and business law.

With offices in Milan, Rome and Paris, Munari Cavani boasts a dynamic, agile and efficient structure which operates with a carefully balanced number of highly selected team members in a working environment, based on the triple pillars of commitment, culture and reciprocal co-operation.

Reliability and creativity are key to the Firm's approach.

The Firm has a strong international orientation which has been nurtured through the setting up of a vast network of local lawyers in various countries, thereby enabling us to offer global solutions to address the specific needs of our clients in a range of jurisdictions.

### Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [info@glgroup.co.uk](mailto:info@glgroup.co.uk)