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Legal Guides

Litigation & Dispute Resolution 2021

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

14th Edition

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1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

Italy is a civil law jurisdiction. Rules on civil procedure are stated in 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. In addition, the Civil Procedure Code provides for precautionary and interim proceedings to obtain urgent legal defence in specific situations that cannot wait for the outcome of an ordinary judgment. After the precautionary claim has been lodged, however, it will be necessary to introduce an ordinary proceeding that could confirm or reject the outcome.

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 counsel submit to the court their statements of the costs; the judge may exclude the payment of certain costs deemed excessive or unnecessary.

Each time a party introduces a proceeding, and also declares the hypothetical value of the lawsuit and a fee, the so-called "single contribution" measured on the declared value must be paid.

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 in 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).

In the last six months, anyway, there has also been an increase in litigation funding in Italy thanks to international funds that want to achieve investment opportunities.

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.

See the second paragraph of question 1.6.

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

Under Italian law, there are no 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; and on the other hand, agreements between a lawyer and his/her client are admitted if they are based on the achievement of the goals, but with respect to the condition that the fees are proportional to the activity carried out).

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. It should also be considered that in certain cases the period of 10 or five years, depending on the right to be claimed, may also be suspended for a certain period (when the relationship between the parties to be in court is of a particular nature: for example, between spouses or company and board members for the whole period of their relationship). In case of 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 receipt of 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 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. If the defendant is resident abroad but of Italian nationality, it will also be possible to use the consular assistance. The embassy of the defendant's State will take care of the service procedure.

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 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. At least 90 days must necessarily elapse between the day of notification and the first hearing, if all the parties are resident in Italy.

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). The requests set out in the writ of summons can be modified, as long as what is requested in the amendment is connected with the objective that was also set out in the summons.

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). Specifically, summons of third parties, the exception of jurisdiction and counterclaims may not be made in subsequent judicial deeds.

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/her statement of defence. Should he or she decide only to object to 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/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 permitted in Italy. If the judge finds a defect that leads to voidness in the notification of the writ of summons, he will set the plaintiff a peremptory deadline to renew it.

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. In case of voluntary intervention, the party may intervene to claim against all (or only some) parties a right which depends on the title or subject matter of the proceedings. However, the party who intervenes must accept the status and terms of the trial.

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 amalgamated 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.

(Please note that the entry into force of the provision that provided for a significant expansion of the value and subject matter jurisdiction of the justice of peace, originally scheduled for October 31, 2021, has been delayed to October 31, 2025.)

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

- justices of the peace are competent in lawsuits: (i) involving movable property 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 of boundaries and compliance with distances governed by law (concerning, for instance, trees and fences), the use of communal facilities among owners of apartments, complaints among neighbours about noise, smoke, heat, emissions, vibrations, etc. above the accepted levels, and the interests and accessories due as a result of the late payment of social security benefits;
- 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 second instance are competent as sole instance judges for certain matters, among the most notable the recognition and enforcement of foreign judgments and awards, and trials regarding the determination of equitable compensation due to the unreasonable length of a trial; and
- the Supreme Court of Cassation has exclusive jurisdiction over certain matters, including questions of jurisdiction.

Regarding 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. These criteria must be assessed with respect to the defendant.

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 that of the place where the succession has been opened, namely the place the deceased had his/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 as 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 sanctions, 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?

Where law defines the competence of a sole judge, the plaintiff can request in his/her petition that the proceedings be held

with summary cognition, and the appointed judge shall evaluate the meeting of said criterion and the suitability of said simplified procedure with respect to the complexity of evaluation of the defences provided by the parties. A summary judgment will result in a simplified investigation phase, which will take place in only one hearing, and the reduction of non-essential procedural formalities.

Provided the above-mentioned criterion is met, even without request from the plaintiff, 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 courts 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 court may also stay the proceedings following the joint and motivated request of all parties.

The courts must discontinue the proceedings (despite the difference in terms, the discipline is the same as the stay) in case of death or loss of capacity of any party or of their lawyer; this possibility is subject to different provisions depending on the stage the trial has reached.

The proceedings shall be extinguished if the court is presented a formal withdrawal of acts (see question 3.5). The same regime is applied following the procedural inactivity of all the parties at various stages of the trial.

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.

Electronic documents are regulated by Italian Legislative Decree No. 82/2005 as electronic representations of acts, facts or data having legal value.

Their probatory value depends on how the documents are obtained; for example, the electronic document signed with an advanced electronic signature, qualified or digital, formed in compliance with the technical rules, which ensure the identification of the author, integrity and unchangeability of the document, has the effectiveness provided by Article 2702 of the Italian Civil Code ("*The private writing makes full proof, until a formal complaint of falsehood, of the origin of the statements by the person who signed it, if the person against whom the writing is produced recognizes the signature, or if it is legally considered as recognized*"). The use of the signature device is presumed to be traceable back to the holder, unless he proves otherwise.

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.

The Italian Code of Criminal Procedure provides that the lawyers of a company, but only external counsel and not in-house counsel, may refuse to share the information of which they have become aware for reasons of their office, and therefore to share privileged documents.

At the same time, Article 200 of the Code of Criminal Procedure, which is also applicable in civil proceedings by virtue of Article 249 of the Code of Civil Procedure, provides that when ministers of religious confessions, lawyers, authorised private investigators, technical consultants and notaries, doctors and surgeons, pharmacists, midwives and any other person exercising a health profession are heard as witnesses, they may not be forced to depose what they know by reason of their ministry.

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. The judge may decide to summon the third party to hear him/her before imposing the order of exhibition and again, the third party may oppose the order of exhibition for justified reasons.

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). The judge may also require the public administration to provide documents or information that could not otherwise be obtained when necessary for the decision of the case.

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

Some documents, even before they are restricted, may not be produced by some people who may invoke the exception of professional or state secrecy and therefore oppose the release of the required documentation.

8 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 party 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 at trial either orally or in writing. Oral evidence consists of witness statements, formal interviews, 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 appointed by the judge, typically chosen between the experts enrolled in registers kept by the court itself; if not, the judge is required to refer to the court President, and to justify his/her decision. The expert commits to duly respond to the "question" asked by the judge.

9 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.

The statement of judge is the motivated ruling that decides on the merits of the case, of a part of it, or of one or more procedural issues.

Ordinances and decrees both regulate the development of the trial. While ordinances are pronounced before both parties and should always be motivated, decrees are not pronounced before both parties and should necessarily be motivated only if specifically prescribed by law.

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/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/her violating behaviour;
- the court – unless the measure is manifestly unequal – can integrate an order to cease or refrain from certain behaviour, 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/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 (which regulates the recognition and enforcement of civil and commercial judgments issued by courts of EU Member States);
- the Lugano Convention of 2007 (which regulates the recognition and enforcement of civil and commercial judgments issued by Icelandic, Norse and Swiss courts); and
- bilateral conventions between Italy and other countries.

Foreign judgments are recognised in Italy, without any further procedure being necessary, should all 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 under the provisions of the law of the foreign country where the trial took place 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/her writ of appeal the specific part or parts of the decision to be appealed and his/her required variations to the findings of fact made by the judge of first instance, as well as the circumstances from which an eventual breach of law arises and its relevance to the appealed decision.

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.

During 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; this possibility is excluded for civil trials in which the participation of a public prosecutor is mandatory and if the appealed judgment was issued as a result of a summary cognition procedure. In this case, the first-instance decision may be challenged before the Supreme Court only for matters of law (reasons pertaining to lack of jurisdiction or competence, violation or wrong application of the law, nullity of the judgment or the procedure); however, if the inadmissibility is based on the same factual reasons that supported the first-instance judgment, 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 2.1 and 11.1.

11 Alternative Dispute Resolution

11.1 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 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 a 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).

On July 1, 2020, the simplified arbitration procedure established by the Milan Chamber of Arbitration ("MCA") came into force. The simplified procedure automatically applies to the new MCA procedures introduced from July 1 in which the value of the application is less than €250,000, unless one party disagrees: in this case, the ordinary arbitration rules apply.

The simplified procedure can, in any case, be applied to all arbitrations regardless of the economic value if all parties, at least in the initial arbitration phase, have agreed to do so.

The simplified procedure provides that the decision is always entrusted to a single arbitrator. Times are halved compared to ordinary arbitration (three months for the filing of the award); the number of pleadings is significantly reduced and there will be, at most, a single hearing. If in ordinary proceedings, the time required to reach an award is on average 10–12 months, with the new instrument the time will be reduced to about six months.

The costs are reduced on average by 30% both for MCA fees and for the single arbitrator's fees.

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 legal proceedings, the court must invite them to proceed with 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.

A party who intends to start a legal action in any such matters must invite in writing the counterparty to negotiate an amicable solution to 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).

11.2 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.

11.3 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.

11.4 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 (with the exception of corporate arbitration, in which the arbitrator has the power to suspend the corporate resolution).

11.5 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?

For the enforceability of the award, it is necessary to file the award in court and the judge, after having ascertained its regularity, will declare it enforceable. 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 fraud between the parties. No time limits apply to this objection.

The refusal to carry out a mediation may be taken into account by the judge for the purposes of the decision, and, in particular, for the settlement of court fees.

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

Generally, each territorial circumscription of the court has an ADR entity (in Italy, for example, there are arbitration chambers or mediation bodies, which must be authorised by the Ministry of Justice).

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