Arbitration procedures and practice in Italy: overview

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A Q&A guide to arbitration law and practice in Italy.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

To compare answers across multiple jurisdictions visit the Arbitration procedures and practice Country Q&A Tool.

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Use of arbitration and recent trends

1. How is commercial arbitration used and what are the recent trends?

Use of commercial arbitration

Arbitration is common for multi-jurisdictional commercial transaction disputes in the corporate, construction, energy and real estate sectors. According to data from the Milan Arbitration Chamber, among the cases it managed in 2014:

- 31% were related to corporate.
- 17% were related to construction.
- 9% were related to supply contracts.
- 6% were related to rent/sale/concession of company assets, banking and insurance.
- 5% were related to real estate.

Business transactions with an international component are increasingly falling into the scope of applicable arbitration clauses rather than court proceedings. Foreign investors have developed some skepticism towards ordinary proceedings conducted in Italy due to the length of proceedings and to some extent and in some cases, the lack of preparation of the judges. In contrast, commercial arbitration can be preferable because it:

- Can easily be conducted in English or any other language chosen by the parties (there is no language barrier) and in a more international fashion.
- Can usually be concluded within a few years.
- It is managed by highly qualified/expert arbitrators.

However, some clients are not particularly satisfied or convinced with arbitration. For example, because:

- They fear that private counsels appointed as arbitrators will not comply with the independence and impartiality obligations.
- Of the high costs associated with arbitration.

Recent trends

Court litigation is still the most common dispute resolution mechanism in Italy. However, arbitration is increasingly being used. Arbitration is also being encouraged by the Italian legislator in an attempt to relieve the backlog faced by ordinary judges. On 10 November 2014, the law introducing urgent measures aimed at alleviating the ordinary jurisdiction's backlog was approved (Act No.
162/2014 (Unblocking Italy Decree) (Decreto sblocca Italia). According to the Decree, one of the suggestions for speeding up the dispute resolution process would be to allow the parties to continue disputes pending before the Italian first instance court and/or Court of Appeal in arbitration. However, so far this has not found a practical application and it will be some time before we will know if the Decree really works. In any event, the Unblocking Italy Decree shows the Italian legislator’s favour for arbitration as a method of alternative dispute resolution.

Advantages/disadvantages

The principal advantages of arbitration when compared to court litigation are:

- **Speed/efficiency.** Unless the evidence-taking phase is particularly complicated, in arbitration, the award will be issued within a couple of years. Court litigation can take up to a minimum of three to four years for the first instance decision.

- **Quality/expertise.** Court litigation does not guarantee that the dispute will be examined by a judge with significant expertise in the specific industry or sector. However, with arbitration the parties can appoint arbitrators and select them after assessing their relevant professional experience in specific matters.

- **Confidentiality.** Although this obligation is not expressly mentioned in the Code of Civil Procedure, confidentiality is often included in the arbitration clause (to engage the parties to keep the arbitration confidential) and is included in most of the regulations of the main arbitral institutions.

The principal disadvantage of arbitration compared to court litigation relates to costs. Arbitration costs are quite high, especially in international and ad hoc arbitrations. Conversely, the cost of court litigation in Italy is rather modest.

Legislative framework

Applicable legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

Arbitration is regulated by Articles 806 to 840 of the Code of Civil Procedure. These provisions were last amended in 2006 by Legislative Decree No. 40 dated 2 February.

The Italian jurisdiction has not expressly adopted the UNCITRAL Model Law. However, many of the principles of the UNCITRAL Model Law can be found in Italian law.

Mandatory legislative provisions

3. Are there any mandatory legislative provisions? What is their effect?

All provisions of the Code of Civil Procedure are mandatory. However, only disputes concerning rights of which the parties can freely dispose of can be arbitrated, unless the law expressly prohibits that some rights can be decided by arbitration (see Question 4).

4. Does the law prohibit any types of disputes from being resolved via arbitration?

The general rule is only disputes concerning rights which can be freely disposed of by the parties can be arbitrated, unless the law expressly states otherwise (Article 806, Code of Civil Procedure).

Therefore, all disputes can be arbitrated with the exception of:

- Disputes concerning rights that the parties cannot dispense with (that is, rights strictly pertaining to the individual such as marriage, citizenship, parenthood and nationality).

- Disputes that cannot be arbitrated under specific laws. For example, disputes concerning legitimate interests (and not subjective rights) are reserved to the jurisdiction of administrative courts and therefore cannot be arbitrated.

Arbitration awards can only be challenged according to three specific methods (Article 827, Code of Civil Procedure) (see Question 28). Arbitrators cannot issue interim measures (Article 818, Code of Civil Procedure) (see Question 26, Interim measures).
Limitation

5. Does the law of limitation apply to arbitration proceedings?
The ordinary terms of expiry apply to claims brought in arbitration proceedings. These are:

- Ten years for contractual claims.
- Five years for tort liability claims.

Under Article 2943 of the Civil Code, the above terms become interrupted once the notice of arbitration is served on the opposing party or on the arbitral institution, respectively, depending on the type of arbitration started. In any event, the term will be considered interrupted from the date the claimant unequivocally shows his intention to start the arbitration.

While the arbitration is pending, the expiry term will stop running from the date when the notice of arbitration is notified until the award deciding on the merit cannot be challenged anymore or the decision on the setting aside of the award becomes res judicata (already judged) (Article 2945, Civil Code).

Arbitration organisations

6. Which arbitration organisations are commonly used to resolve large commercial disputes?
Italy is not considered a preferable venue for international arbitrations and foreign investors are still generally sceptical of choosing Italy as a seat. Therefore, arbitrations seated in Italy are mostly ad hoc and domestic.

In Italy, the Milan Chamber of Arbitration administers national and international disputes and it is by far the most commonly used institution. A very few cases seated in Italy have been administered by the Paris International Chamber of Commerce.

For transnational disputes, companies often recourse to the:
- International Chamber of Commerce (ICC) Rules.
- UN Commission on International Trade Law (UNCITRAL) Rules.
- London Court of International Arbitration (LCIA) Rules.

The Milan Chamber of Arbitration is the most commonly used institution to administer international arbitrations seated in Italy. In few cases, the ICC has also been referred to.

See box, Main arbitration organisations.

Jurisdictional issues

7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?
While arbitration is pending, if a party denies the tribunal’s jurisdiction to hear the dispute (based on the content or extension of the arbitration clause or the valid constitution of the arbitral tribunal) the tribunal’s competence will be decided by the arbitrators themselves (Article 817, Code of Civil Procedure). The objection on jurisdiction should be raised in the first submission after the arbitrators’ acceptance of the relevant appointment. If a party fails to do so, it will not be able to challenge the award for these reasons unless the dispute cannot be referred to arbitration (see Question 4).

Arbitration agreements

Validity requirements

8. What are the requirements for an arbitration agreement to be enforceable?
Substantive/formal requirements

Under Italian law, an arbitration agreement will be enforceable if it is (Article 807 and 808, Code of Civil Procedure):

- In writing. The requirement of the written form will be met if the parties’ intention is expressed by way of telegraph, telefax or e-mail if it conforms to the rules concerning telephonic transmission and reception of documents.
- It specifies the object of the dispute.

If the above requirements are not met, the arbitration agreement will be null and will not be enforceable.

The arbitration agreement should also include the appointment of arbitrators or set out the relevant number and the appointment procedure (Article 809, Code of Civil Procedure). However, the agreement will not be null/unenforceable if this requirement is not fulfilled. If the parties fail to comply with this provision, the appointment of arbitrators is regulated by Article 810 of the Code of Civil Procedure, which makes reference to the intervention of the President of the relevant court.

Separate arbitration agreement

A separate arbitration agreement is not required (Article 808, Code of Civil Procedure). Parties can therefore choose to have disputes arising out of their contract decided by arbitrators by either:

- Including an arbitration clause in the main contract.
- Entering into a separate agreement.

Italian law does not specifically address whether an arbitration clause incorporated in a contract only by reference to another document can be enforced to resolve disputes arising under the contract. However, some case law does not exclude that the mere reference in a contract to an arbitration clause contained in a different contract can be enforced, if the reference is unequivocally made to the same contract and dispute resolution method.

Unilateral or optional clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

According to very dated case law, unilateral or optional clauses are, technically, enforceable. The reasoning behind this was that unilateral or optional clauses were treated as a standing offer, irrevocable by the offeror, under Article 1331 of the Civil Code. However, many commentators have criticised this approach and claimed that these clauses could not be enforced. The main reason for such opposition was that most of these clauses were imposed by public entities to weaker contractors within public tenders. Today, the issue is still highly debated.

10. In what circumstances can a third party that did not sign the contract incorporating the arbitral clause in question be compelled to arbitrate disputes relating to the contract in question?

Italian law does not expressly address the application of an arbitration clause to non-signatories parties. Therefore, the general rule is that arbitration clauses only bind the signatories.

The application of "piercing the corporate veil" of a company (or group of companies) is still somewhat debated in Italy. However, some courts have held that an arbitration agreement could be extended to third-party beneficiaries of a contract which contains an arbitration clause, or in the case of an assignment of a contract containing an arbitration agreement.

11. In what circumstances is a third party that did not sign the contract incorporating the arbitral clause in question entitled to compel a party that did sign the contract to arbitrate disputes relating to the contract?

In the case of contract assignment, the third party (the assignee) that did not sign the contract is entitled to compel "the assigned" signatory party to arbitrate disputes relating to the contract containing the arbitration clause.

Separability

12. Does the applicable law recognise the separability of arbitration agreements?
The autonomy of arbitration clauses are established in paragraph 2 of Article 808 of the Code of Civil Procedure. As a result, the validity of a separability clause must be assessed separately from the validity of the contract which it refers to.

**Breach of an arbitration agreement**

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

**Court proceedings in breach of an arbitration agreement**

If the claimant starts court proceedings in breach of a valid jurisdiction clause, the respondent can object to the court's jurisdiction to hear the dispute in its statement of defence (paragraph 1, Article 819-ter, Code of Civil Procedure). However, if the respondent does not object to the lack of jurisdiction in the indicated timeframe, the jurisdiction of the arbitrators hearing the dispute will be excluded in favour of the jurisdiction of the relevant court.

The arbitrators’ competence will not be excluded when either the:

- Same dispute is pending before ordinary courts.
- Dispute deferred to the arbitrators is connected to a dispute pending before the ordinary courts.

Therefore, arbitration can be started even if the same dispute is already pending before the ordinary courts.

**Arbitration in breach of a valid jurisdiction clause**

A party can challenge the arbitrators’ competence to hear the dispute based on the inexistence, invalidity or ineffectiveness of the arbitration clause in the first submission after the arbitrators accept their appointment (paragraph 2, Article 817, Code of Civil Procedure).

If the party fails to challenge the competence of the arbitrators within the indicated timeframe, the award cannot be challenged for these reasons, unless the dispute cannot be deferred to arbitration (see Question 4).

14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

Local courts generally do not grant injunctions to restrain proceedings started overseas in breach of an arbitration agreement.

**Joinder of third parties**

15. In what circumstances can a third party be joined to an arbitration or otherwise be bound by an arbitration award?

**General rules**

In general, voluntary intervention/joinder of a third party to an arbitration dispute is permitted provided consent of all parties to the proceedings is obtained (including the third party itself and the arbitrators) (paragraph 1, Article 816-quinquies, Code of Civil Procedure). However, consent of all parties is not mandatory (and therefore the joinder of a third party is always allowed) when either the:

- Intervention of the third party is intended to sustain the claims of one of the existing parties, and the third party has its own interest in doing so (paragraph 2, Article 105, Code of Civil Procedure).
- Joining party is a necessary party (litisconsorte necessario) to the proceedings under the Italian law.

In addition, Article 111 of the Code of Civil Procedure applies to arbitration proceedings, pursuant to the last paragraph of Article 816-quinquies. Therefore, where the right under dispute is assigned to a third party, the arbitration will continue among the original parties. However, the subrogee in the disputed right (that is, the third party) is entitled to intervene or be joined to the proceedings. The arbitral award issued to the original parties to the proceedings will also be effective in relation to the subrogee in the disputed right, regardless of whether it is a party to the proceedings. As a consequence, the subrogee will be entitled to challenge the arbitration award.

**Corporate law rules**
The Corporate Arbitration Law (Legislative Decree 17 January 2003, No. 5) concerns corporate arbitrations on matters falling within the scope of corporate law (arbitration related to companies, shareholders, shareholders’ meetings and so on). Article 35 of the Corporate Arbitration Law regulates the intervention of third parties in corporate arbitration proceedings and recalls Articles 105, 106 and 107 of the Code of Civil Procedure. When the above provisions are combined with Article 35, the following rules apply:

• Any third party can voluntarily intervene in a corporate arbitration.

• Any shareholder can be joined in the proceedings at the request of one of the parties and for the purpose of keeping one of the original parties indemnified. As a result, the joining party can be held liable instead of the original party.

• Any shareholder can be joined by order of the tribunal, when the matter under dispute is common to the joining shareholder (that is, intervention can be ordered when the third party’s action is related to the action which gave rise to the dispute). The rationale of this provision is to avoid multiple actions and inconsistent arbitral awards.

Article 35 does not expressly provide for the consent of the parties or arbitrators in the third party’s rejoinder. Therefore, consent from the parties or arbitrators is not a requirement for third parties or shareholders to be joined to a corporate arbitration. Parties can join third parties and/or shareholders in an arbitration dispute until the first hearing.

Arbitrators

Number and qualifications/characteristics

16. Are there any legal requirements relating to the number and qualifications/characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in, your jurisdiction in order to serve as an arbitrator there?

An arbitration tribunal can consist of one or more arbitrators, but the number must be uneven (paragraph 1, Article 809, Code of Civil Procedure). If the arbitration clause provides for an even number of arbitrators, an additional arbitrator will be appointed by the President of the court where the arbitration is seated.

Individuals lacking legal capacity (minors or mentally disabled individuals) cannot be appointed as arbitrators (Article 812, Code of Civil Procedure).

Generally, Italian law does not require any specific characteristic or admission to the bar to act as an arbitrator in our jurisdiction. However, individuals employed in certain entities can only act as arbitrators if they are authorised by the relevant entity they belong to, for example:

• Judges can only be appointed with the consent of the Higher Judiciary Council (Consiglio Superiore della Magistratura) (Article 14, Law No. 97 of 2 April 1979).

• State employees must be authorised by the relevant public administration (Article 61, DPR 10 January 1957 No. 3).

Without the relevant authorisation, the appointment as an arbitrator will not be valid.

Independence/impartiality

17. Are there any requirements relating to arbitrators’ independence and/or impartiality?

Article 815 of the Code of Civil Procedure is intended to guarantee the independence and the impartiality of arbitrators. Article 815 provides an exhaustive list of grounds for challenging an arbitrator.

In particular, an arbitrator can be challenged when:

• The arbitrator lacks the qualifications expressly agreed by the parties.

• The arbitrator has an interest in the proceedings.

• The arbitrator (or his/her spouse) is a relative up to the fourth degree or lives with one of the parties, one of the legal representatives or its counsel.

• The arbitrator (or his/her spouse) is involved in pending proceedings or has serious hostility against one of the parties, their legal representatives or their counsel.
The arbitrator:
- is an employee or a partner of one of the parties;
- does business which might affect his/her independence in relation to one of the parties, or with a company controlled by that party, or with its controlling entity or with a company subject to common control; or
- is a guardian or curator of one of the parties.

- The arbitrator has provided advice, assistance or defence to one of the parties at an earlier stage of the proceeding or has testified as a witness.

See also Question 18, Removal of arbitrators.

A party can only challenge the arbitrator that it has appointed or contributed to appoint when the challenge is grounded on reasons discovered after the appointment.

The challenging procedure must not suspend the arbitration proceedings, unless otherwise decided by the arbitrators. However, if the challenge is accepted, the activity performed by the challenged arbitrator will be ineffective.

Appointment/removal

18. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of arbitrators

When appointing an arbitrator, each party must (Article 810, Code of Civil Procedure):
- Notify the other party in writing that the arbitrator has been appointed.
- Invite the other party to do the same within 20 days of receiving the notification.

If there is no response to the notification, the party that notified the invitation can request that the appointment be made by the President of the court where the arbitration is seated.

Removal of arbitrators

If the arbitrator(s) fail or are delayed in carrying out an act related to their duties, they can be replaced by the parties or a third party, as set out in the arbitration agreement (Article 813-bis, Code of Civil Procedure). Alternatively, if the arbitrator(s) does not perform his/her duties within 15 days of receiving the formal notice in the registered letter, either party can request the President of the court where the arbitration is seated to declare the arbitrator’s removal and proceed with the substitution.

In addition, an arbitrator can be challenged when he/she does not have the characteristics expressly agreed by the parties, or when his/her independence and impartiality cannot be guaranteed (Article 815, Code of Civil Procedure) (see Question 17).

Procedure

Commencement of arbitral proceedings

19. Does the law provide default rules governing the commencement of arbitral proceedings?

The main provisions relating to the commencement of proceedings are the same as those relating to the appointment of arbitrators (see Question 18, Appointment of arbitrators).

Article 816 of the Code of Civil Procedure regulates the identification of the arbitration’s seat in cases where the parties have failed to determine it.

Applicable rules
20. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Applicable procedural rules

For arbitration seated in Italy, it is likely that the arbitrators will follow Italian procedural rules (under a civil law system). However, in international arbitration (that is, arbitration conducted in a foreign language, between foreign parties, with foreign arbitrators and regulated by the regulations of foreign arbitral regulations), the parties are likely to choose a more international procedure (that is, based on a common law style). In any event, in international arbitration cases Italian procedural law would still need to be applied to regulate basic issues such as the:

- Interpretation of the arbitration clause.
- The relevant application of the arbitration clause to connected contracts.
- Any challenge of arbitral awards rendered in Italy.

Article 816-bis of the Code of Civil Procedure allow the parties to determine, in either the arbitration agreement, or a separate written agreement prior to the commencement of the arbitration proceedings:

- The procedural rules the arbitrators must comply with.
- The language of the arbitration.

Without such an agreement, the arbitrators can determine the procedural rules and the language of the arbitration as they see fit.

The only limit to the parties’ autonomy (and the arbitrators where no procedural rules are decided on) is the principle that the right to be heard must be guaranteed to each party (see Decision No. 23670 of the Supreme Court of 6 November 2006; Decision No. 473 of the Supreme Court of 12 January 2006).

Default rules

There are no default rules governing procedure and the parties are allowed to determine the governing procedure. If the parties do not agree on the procedural rules, the arbitrators can apply the procedural rules they retain to be more suitable.

Arbitrator's powers

21. What procedural powers does the arbitrator have under the applicable law? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

Under the applicable law, the arbitrators can (Article 816-ter, Code of Civil Procedure):

- Collect witness’ statements.
- Require the assistance of an expert.
- Request the public administration to provide the necessary information in order to solve the dispute.

However, arbitrators do not have coercive powers. As a consequence, if a witness refuses to appear, the arbitrators can only ask the President of the court where the arbitration is seated to order the witness to appear before the arbitration tribunal. The lack of coercive powers also induces many commentators to argue it is impossible for an arbitrator to order the disclosure of documents.

Under Article 210 of the Code of Civil Procedure, in court proceedings the judge can order the disclosure of documents to the parties or third parties. However, in arbitration this rule is applied towards the parties only (not in relation to third parties).

Evidence

22. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?
Scope of disclosure

In Italy, disclosure does not apply or it applies in a very restricted way compared to common law jurisdictions. This rule applies especially in court (although with a number of limitations if compared to the common law disclosure) but also to arbitration proceedings.

Parties’ choice

The parties can establish the procedural rules that the arbitrators should comply with (Article 816-bis, Code of Civil Procedure). However, under Italian law disclosure is much more limited than in common law jurisdictions.

Confidentiality

23. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Although Italian law does not specifically address the scope of confidentiality in arbitration proceedings, scholars maintain that a duty of confidentiality is implied in every arbitral agreement. In any event, practitioners (both counsels and arbitrators) are usually bound by professional confidentiality.

Moreover, the parties can provide for confidentiality in their arbitration agreement. This can be done either:

• Directly, by explicitly requiring the proceedings to be carried out under a confidentiality regime.
• Indirectly, by referring to the rules of an arbitral institution that provides for the confidentiality within arbitration.

The extension of this obligation to third parties (witnesses, experts, and so on) is highly debated. Generally, third parties are not bound to the confidentiality obligation unless they expressly agree such be bound. However, this matter is not settled.

Courts and arbitration

24. Will the local courts intervene to assist arbitration proceedings seated in its jurisdiction?

Local courts may intervene to assist with arbitration proceedings if this is required by the parties or the arbitrators. This could be the case where, for example:

• It is necessary to order the appearance of a witness.
• It is necessary to issue an interim order.

Pending arbitration, all applications must be made to the court that would have jurisdiction over the dispute under Italian Law if the arbitration agreement did not exist.

25. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Risk of court intervention

The main risk of a local court intervening is related to timing and delays. However, the risk is mitigated by the fact that local courts can only intervene in pending arbitration proceeding if the matter relates to certain issues. Such matters could include:

• When the parties need to obtain interim orders.
• When arbitrators need to be appointed in cases where the defendant fails to appoint its arbitrator.
• When the arbitrators appointed by the parties cannot agree on who is to be the chairman of the tribunal.

Delaying proceedings

A party can resort to the courts any time provided it is appropriate and allowed by law. This can result in delays for the arbitration
proceedings. However, access to local courts is limited to specific issues (see above, Risk of court intervention).

Remedies

26. What interim remedies are available from the tribunal?

Interim measures

Arbitrators cannot order an interim order for the seizure of property or other interim measure unless the measure is specifically provided by law (Article 818, Code of Civil Procedure). An example of such a measure is Article 35 No. 6 of the Corporate Arbitration Law, which allows arbitration tribunals to suspend the enforcement of a shareholders’ resolution when the resolution is challenged. However, when seeking interim measures the parties must generally resort to ordinary competent courts.

Some scholars (very few in the Italian arbitral community) have claimed that arbitration tribunals would not be prevented from issuing interim measures, provided that such measures do not entail enforcement activities. This approach is highly debatable and it is more of a theoretical nature rather than a practical one. As a matter of fact, it is quite difficult to imagine interim measures that do not entail enforcement activities. These commentators affirm that arbitrators would not be prevented from issuing interim measures (and the parties could instruct the arbitrators with the powers to do so). However, they do not address the problem of the relevant enforcement that, in fact, remains to be settled. In other words, even assuming that the line of arguments of this doctrine finds some grounds, the problem of the enforcement of such interim measure could not be easily overcome in Italy.

Ex parte

Arbitration tribunals are prevented from issuing any sort of interim measure (see above, Interim measure).

Security

Arbitrators can subject the arbitration to the advance payment of the predictable costs, requesting the parties to provide for such payment within a certain timeframe during the arbitration proceedings (Article 816-septies, Code of Civil Procedure). Should the parties not proceed accordingly, they would no longer be bound to the arbitration agreement in respect of the dispute for which the arbitration started.

It is unlikely for arbitrators to request a security for their fees. However, no specific provision prevents them from doing so.

27. What final remedies are available from the tribunal?

In general, arbitral tribunals can award damages, interests, costs and declaratory reliefs. However, under Italian law arbitral tribunals cannot issue interim relief orders, although this matter is not entirely settled (see Question 26, Interim measure).

The final award given by the tribunal can be:

- **Condemnatory.** This is aimed at ordering an action, such as the payment of a sum of money.
- **Declaratory.** This is aimed at ascertaining a given situation.
- **Constitutive.** This is aimed at constituting the effects of a given legal situation.

The final award must comply with the non ultra petita rule (that is, it must only relate to the matter to be decided) and must not be contrary to public order.

Appeals

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of appeal/challenge

Under the Code of Civil Procedure, the tribunal's award can be appealed on the basis of (Article 827, Code of Civil Procedure):
• Recourse of nullity.
• Revocation.
• Third party opposition.

The conditions and specific grounds for appeal are outlined below (see below, Grounds and procedure). No other means of recourse against the award are admissible under Italian law.

Grounds and procedure

**Nullity.** A challenge for nullity must be filed with the Court of Appeal of the district where the arbitration was seated (Article 826, Code of Civil Procedure). A challenge for nullity should be submitted within 90 days of the notification of the award and in any event, by no later than one year from the date of the last signature by arbitrators.

Under the Code of Civil Procedure, the grounds for nullity are as follows (Article 829):

• The arbitration agreement was invalid.

• Invalid appointment of arbitrators (provided this objection was raised during the arbitral proceedings).

• The award was rendered by an individual with no legal capacity.

• The award exceeded the scope set out in the arbitration agreement, or was decided on the merits of the dispute which, in all other cases, such merits could not be decided.

• The award does not provide its reasoning, decision or has not been signed by one of the arbitrators.

• The award was rendered after the expiry of the prescribed time limit.

• During the proceedings the formalities prescribed by the parties under express sanction of nullity were not complied with and the nullity has not been cured.

• The award is contrary to a previous award which is no longer subject to recourse or to a previous judgment with the effect of res judicata between the parties (provided such award or such judgment has been submitted in the proceedings).

• Due process was not respected in the arbitration proceedings.

• The (final) award does not decide the merits of the dispute and the merits of the dispute should have been decided by the arbitrators.

• The award is contradictory.

• The award did not decide all of the claims and objections raised by the parties in conformity with the arbitration agreement.

The parties can include additional grounds for recourse in the arbitration agreement. In particular, in the arbitration agreement the parties can provide for the possibility of challenging an award based on an error of law (paragraph 3, Article 829, Code of Civil procedure). In any event, the challenge to an award which is contrary to public order is always permitted.

For the grounds that concern the proceedings (that is, the second, sixth, seventh and ninth bullets above) the party that caused the issue raised (or party who waived the right to oppose it during arbitration proceedings) cannot challenge the award on that ground.

If the Court of Appeal decides to set aside the award on the basis of the fifth, sixth, seventh, eighth, ninth, eleventh or twelfth grounds above, the court will decide the merits of the dispute, unless the parties have specifically agreed otherwise in the arbitration clause. However, if one of the parties resides abroad, the Court of Appeal can only decide the merits of the dispute if the parties:

• Have provided for this in the arbitration agreement.

• Parties jointly request to the Court of Appeal to proceed accordingly.

**Revocation.** Under the Code of Civil Procedure, the award can be revoked on the following grounds (Article 831):

• In the case of wilful misconduct by the counterparty.

• Where the award was based on false evidence and the falsity was established after the award was given.
• Where, after the award was given, the party seeking revocation finds decisive documents which could not be presented at the proceedings due to force majeure or wilful misconduct of the counterparty.

• In the case of wilful misconduct by the arbitrators.

**Third party opposition.** A third party can oppose the award where it jeopardises its rights (Article 404, Code of Civil Procedure).

**Excluding rights of appeal**

Italian law does not authorise the parties to waive any rights of appeal or challenge to an award by agreement before the dispute arises, except in relation to cases of nullity (see above, Grounds and procedure: Nullity).

**29. What is the limitations period applicable to actions to vacate or challenge an international arbitration award rendered?**

The limitation period applicable to recourse of nullity for international arbitration awards seated in Italy is 90 days from the date the party receives notification of the award. In any event, recourse of nullity cannot be proposed after one year from the last signature of the award by the arbitrators. (Article 828, Code of Civil Procedure).

The limitation period applicable to revocation and third party opposition is 30 days after the event that gives rise to the grounds mentioned above has been discovered (Articles 325 and 326, Code of Civil Procedure).

**Costs**

**30. What legal fee structures can be used? Are fees fixed by law?**

Italian law does not expressly address the issue of costs in arbitration.

In ad hoc arbitration proceedings, the relevant Ministerial guidelines are applied by the arbitrators. Therefore, the arbitrators’ fees generally depend on the value of the dispute.

However, if the arbitration is administered by the Milan Chamber of Arbitration, the fees set out in the relevant regulation apply. In these proceedings, the fees will vary depending on the composition of the arbitral tribunal (for example, whether there is a sole arbitrator or a panel of three arbitrators).

**31. Does the unsuccessful party have to pay the successful party’s costs? How does the tribunal usually calculate any costs award and what factors does it consider?**

**Cost allocation**

Under Italian law, the losing-party principle applies. As a result, the losing party should bear the entire costs of the arbitration, and if it loses the case entirely, it should also refund the winning party for any relevant costs.

However, in practice, due to the increasing complexity of the disputes (that often include counterclaims) it is fairly common for the losing party to be ordered to pay the arbitration costs and reimburse only a portion of the opposing party’s costs. In addition, where a counterclaim is raised and this is accepted, it is common for the legal costs to be split among the parties.

**Cost calculation**

Usually the parties submit their own costs calculation, which is subsequently referred to and reviewed by the arbitration tribunal.

**Factors considered**

When calculating costs, the arbitral tribunal generally considers the:

• Complexity of the disputes.

• Amount of work done.

• Procedural/substantial issues dealt with.
Enforcement of an award

Domestic awards

32. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

Enforcement in local courts

An arbitration award made in Italy can be enforceable in local courts. The requirements for enforcing an award for an arbitration seated in Italy are set out in Articles 824-bis and 825 of the Code of Civil Procedure. From the date of signing, the award will have the same effects as of a judicial decision (Article 824-bis). However, the exequatur is still required (Article 825).

Exequatur procedure

Pursuant to Article 825 of the Code of Civil Procedure, the party seeking to enforce the award must deposit the original or a certified copy of the award in the local court where the arbitration was seated, together with the original or a certified copy of the arbitration agreement. Once the court has verified the authenticity of the award, it will grant a leave of enforceability (inaudita altera parte). The court will not review the merits of the decision. Once recognised as enforceable, the award can be registered or annotated by the party intending to do so.

Contesting the decree

If a party intends to contest the decree, it must file its appeal with the Court of Appeal within 30 days of receiving the notice that the decree has been issued. In such a case, the Court of Appeal will hear both parties.

Foreign awards

33. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Italy is party to the following international treaties relating to the recognition and enforcement of foreign arbitration awards:

- UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). This was acceded on 31 January 1969 without any reservations or declarations.

- Convention on the Execution of Foreign Arbitral Awards 1927. This entered into force on 12 February 1931. Italy is bound by this Convention for the commercial relationships with the jurisdictions that did not sign the New York Convention.

- European Convention on International Commercial Arbitration 1961 (Geneva Convention). This has come into force in Italy on 3 August 1970, with no reservation or declaration.

- ICDID Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. This entered into force on 28 April 1971.

34. To what extent is a foreign arbitration award enforceable?

Foreign arbitration awards are enforceable through the New York Convention, which applies to the recognition of any foreign award. Chapter VII, Title VIII of Book Four of the Code of Civil Procedure provides the relevant rules for the recognition, enforcement, and opposition to foreign arbitral awards. In particular, these provisions implement Article III of the New York Convention.

The following procedure applies to the enforcement of an arbitration award:

- The party seeking enforcement in Italy must file a petition with the President of the competent Court of Appeal within the district court where the counterparty resides (if the counterparty resides abroad, the Court of Appeal of Rome will be competent).

- The party must also deposit the original award together with the original or a certified copy of the arbitration agreement. All documents must be in Italian (translated if necessary).

- Once the President of the Court of Appeal has verified the authenticity of the award, it will declare it to be enforceable in Italy unless it finds that either:

  - the matter should not fall in the scope of application of an arbitration clause under Italian law; or
• the award is contrary to public policy.

The first stage of the recognition proceedings is carried out without hearing the party against which enforcement is sought. The award is considered immediately enforceable following the decree from the President of the Court of Appeal.

If a party intends to dispute the decree, it must file its appeal within 30 days of receiving notice that the decree has been issued. The party opposing the decree of enforceability must demonstrate the existence of the circumstances under Article 840, paragraph 3 of Code of Civil Procedure. This provision sets out the grounds for denying the recognition and enforcement of the award and is similar to the grounds within Article V of the New York Convention. The Court of Appeal cannot resort to any grounds on its own initiative if they are not raised by the party opposing the enforcement of the award. However, the Court of Appeal can refuse to grant enforceability on its own initiative if it finds that either:

• The matter could not fall within the scope of application of arbitration clauses under Italian law.

• The award is contrary to public policy.

The decision of the Court of Appeal may be subject to further appeal to the Court of Cassation.

35. What is the limitations period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

The limitation period applicable to actions to enforce foreign awards is ten years (Article 2946, Civil Code).

Length of enforcement proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

The length of enforcement proceedings depends on the type of enforcement being sought. Enforcement on real estate assets, for example, can take no less than six years to conclude. However, this estimate is likely to increase when other creditors join the proceedings.

Generally, the fastest way to recover the relevant credit and finalise the enforcement is to attack the debtor's credits towards third parties. The speed of the enforcement procedure depends on the court's backlog where the enforcement is sought (for example, the smallest courts can take from six months to one year delay, while larger courts can take up to two years). However, once the credits are attacked, the debtor cannot dispose of them, so this method is likely to put strong pressure on the debtor.

Reform

37. Are any changes to the law currently under consideration or being proposed?

No changes to the law are currently under consideration.

Main arbitration organisations

Milan Chamber of Arbitration

Main activities. Arbitration and other ADR mechanisms.


Associazione Italiana Arbitrato

Main activities. Participation in the drafting of multilateral arbitration conventions.

W www.arbitratoaia.org/
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