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Litigation and enforcement in Italy: overview

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A Q&A guide to dispute resolution law in Italy.

The country-specific Q&A gives a structured overview of the key practical issues concerning dispute resolution in this jurisdiction, including court procedures; fees and funding; interim remedies (including attachment orders); disclosure; expert evidence; appeals; class actions; enforcement; cross-border issues; the use of ADR; and any reform proposals.

Law stated as at 01-Jun-2021

Resource Type

Country Q&A

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Main dispute resolution methods

1. What are the main

**dispute
resolution
methods
used in
your
jurisdiction
to resolve
large
commercial
disputes?**

Large commercial disputes are generally decided by the ordinary courts. However, an increasing number of commercial disputes are now submitted to arbitration, which generally guarantees a faster procedure. Mediation is not common.

Strictly speaking, the court has limited powers to manage and control proceedings, under the rules set out in the Italian Code of Civil Procedure (Civil Procedure Code). For example, no case management hearing is provided for in civil proceedings.

The judge is however free to evaluate the evidence provided

by the parties, and decide on its admissibility.

There is no online platform or system for the online resolution of disputes. To the best knowledge of the authors, no reform in this direction is currently being evaluated. Some courts have been using remote hearings and enhanced written hearings to reduce the physical presence in the courtroom.

Court litigation

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

In principle, the limitation period for bringing a claim is related to the

underlying statutory right.

The standard limitation period is ten years. This for example, where monetary claims are concerned. However, shorter limitation periods apply in the following cases:

- Claims arising from torts: five years (unless the tort is considered a criminal offence, in which case the limitation period is the same as that provided under Italian criminal law for the prosecution of the crime).
- Claims related to dealings between companies: five years.
- Claims for the recovery of legal interest due on a sum and claims related to salaries that must be paid

annually: five years.

- Claims related to insurance matters: two years.
- Claims related to shipping matters: one year.

The limitation period starts to run from the date on which the relevant right can be exercised or, in tort, when the injured party is in a position to know of the damage and of the author of the damage.

The limitation period can be interrupted by serving the counterparty with a written notice asking for the fulfilment of the relevant claim or by filing a civil complaint with the court.

The parties cannot derogate from the above limitation periods. A party can only waive a limitation period once it has lapsed.

Court structure

3. In which court are large commercial disputes usually brought? Are certain types of disputes allocated to particular divisions of this court?

Large commercial disputes are usually brought before the courts of first instance (*tribunali*), which in principle have jurisdiction to hear:

- Any disputes exceeding a value of EUR5,000.
- Disputes relating to immovable property (regardless of value).
- Any matters concerning interim measures.

Disputes involving IP, competition and corporate matters are allocated to

specialised divisions of the courts of first instance.

Decisions issued by the courts of first instance can generally be appealed before the courts of appeal (*corti di appello*). Appeal proceedings may lead to a complete re-examination of the case and no preliminary leave is needed for a first instance decision to be challenged.

Decisions issued by the courts of appeal can be generally challenged before the Italian Supreme Court (*Corte di Cassazione*). The Italian Supreme Court essentially verifies the proper application of the law by the court of appeal, but cannot overrule the interpretation of facts and evidence given by the court of appeal, nor can a re-examination of the case be allowed at this stage.

Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of audience/requirements

Lawyers admitted to the Italian Bar have rights of audience to conduct any cases (civil, criminal or administrative), including large commercial disputes. The only exception relates to proceedings before the Italian Supreme Court, for which a specific qualification is required. This

qualification can be obtained through an examination after accruing at least five years' experience as a lawyer.

Admission to the Italian Bar is subject to the following requirements:

- Obtaining a law degree.
- Passing the relevant examination.

Generally, a party cannot represent itself in court proceedings, unless the proceedings relate to movable property and the value of the claim does not exceed EUR1,100. However, a lawyer registered with the Italian Bar can represent himself or herself in any court proceedings.

Foreign lawyers

EU lawyers are entitled to conduct cases in Italy if they are registered with the Italian Bar as "foreign lawyers established in Italy" and are assisted by an Italian lawyer.

After three years, they are considered as Italian lawyers and can practise in Italy without any assistance.

Non-EU foreign lawyers cannot practise in Italy, unless they meet the requirements for admission to the Italian Bar.

Fees and funding

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

In principle, lawyers and their clients can agree to various legal fee structures, provided that their agreement is concluded in writing.

The most common legal fee structures are:

- Hourly rates, which generally vary according to the seniority and

specialisation
of the lawyers
involved in the
case.

- Estimated fees with a cap.
- Flat fees.
- Contingency fees, which must not be based on the disputed asset or right (even partially). The type of contingency arrangement in which the lawyer gets in full or in part the right/asset under dispute (*patto di quota lite*) is forbidden under Italian law. By contrast, a success fee can be agreed between counsel and client.

If no agreement has been reached, Italian law provides for a mandatory fixed tariff system, which sets out the amount of fees due by the client for every stage of the proceedings

(including extra-judicial acts).

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

In principle, each party pays for its own costs until the end of the proceedings. Once the proceedings are completed, the judge, on passing the decision, can order the unsuccessful party to refund the winning party's costs. However, the judge can also apportion legal costs between the parties on justified grounds (see [Question 22](#)).

Although third-party funding is not prohibited under Italian law, it is rarely used in the ordinary

court litigation field. However, parties are increasingly resorting to third party funding in arbitration cases.

Insurance

In principle, insurance agreements can cover litigation costs. In particular, insurance agreements against malpractice (for example, taken by directors and medical professionals) are fairly common and usually provide for a capped coverage of legal costs.

Court proceedings

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain

circumstances?

In principle, all documents filed by the parties in the context of legal proceedings are confidential.

Additionally, if documents filed with the court are particularly sensitive, the parties can request the use of specific storage methods.

Hearings before civil courts are not public under Italian law, unless they are scheduled for the final discussion of the case.

Decisions can only be consulted by the public for study or research purposes.

Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there

penalties for failing to comply?

The court cannot impose any rules on the parties in relation to pre-action conduct, except in cases where the assisted negotiation procedure and the mediation procedure are mandatory before commencing civil proceedings (*see Question 30, Arbitration*).

Main stages

9. What are the main stages of typical court proceeding s?

Starting proceedings

Typical civil court proceedings are commenced with the issuance of a writ of summons, through which the claimant sues the defendant before the court. The writ of

summons must include, among other things:

- The subject matter of the claim.
- A description of the facts.
- The legal grounds on which the claim is based.
- There is currently no option to commence a litigation on an online platform. However, the filing of the writ of summons is now generally made electronically by a telematics system.

Notice to the defendant and defence

The writ of summons must be served on the defendant. There is a mandatory period of 90 days between the date of service and the first hearing (150 days if the

defendant is served abroad).

The defendant has until 20 days before the first hearing to enter an appearance and file a statement of defence. The statement must include the defendant's position in relation to the facts described by the claimant in the writ of summons. Within the same time limit and under penalty of forfeiture, the defendant must state his or her counterclaims (if any).

The defendant is entitled to enter an appearance in less than 20 days before the hearing but will be prevented from raising certain objections or to bring counterclaims.

If any of the parties fails to enter an appearance, the proceedings continue in their absence.

Subsequent stages

After verifying the regular appearance

of the parties, the judge (if required by the parties) must grant the following deadlines:

- A 30-day deadline to file a brief amending or clarifying the relevant claims, objections and conclusions within the limits provided by law.
- A further 30-day deadline to file a brief submitting new documents or making a new request for direct evidence.
- A further 20-day deadline to file a brief challenging the counterparty's requests for evidence and making opposing requests for indirect evidence.

A second hearing is scheduled to discuss

the admissibility of the requests for evidence submitted by the parties. At the end of this hearing, the judge either gathers the evidences admitted or directs the parties to submit their closing arguments.

Once evidence is collected, the parties must submit their closing arguments and file the final briefs as follows:

- A first brief within 60 days of the date of referring the case for decision.
- A second brief of response within the following 20 days.

There is no mandatory time limit for passing judgment under Italian law.

Judgments are generally passed within six months after the filing of the final briefs.

All briefs and relevant documentation

except the introductory ones (that is, the writ of summons and the statement of appearance) must be filed electronically with the court. The introductory briefs can still be filed either electronically or physically with the court.

Interim remedies

10. What steps can a party take for a case to be dismissed before a full trial? On what grounds can such applications be brought? What is the applicable procedure?

There is no procedure of this type under Italian law. However, there are cases in which proceedings are settled quickly (for example, when the

judge lacks jurisdiction or competence or when the decision on the merits is precluded because of prejudicial or preliminary issues).

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A defendant cannot apply for an order for the claimant to provide security for its costs under Italian law.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

In principle, before a full trial, a party is entitled to ask the court of first instance to order the following interim measures:

- Seizures, which aim to preserve specific assets whose ownership or possession is disputed or to freeze the debtor's property.
- Mandatory and prohibitory injunctions (for example, ordering a party to comply with outstanding obligations or to restore the status quo).

The above measures can be ordered under a summary procedure if the following conditions are met:

- The applicant has a prima facie case (*fumus boni iuris*).

- There is a risk that the applicant will not be adequately satisfied on the merits if the debtor's financial or material conditions deteriorate (*periculum in mora*).

Prior notice/same-day

In urgent cases, at a party's request, the judge can issue interim measures without prior notice.

Mandatory injunctions

Mandatory interim injunctions to compel a party to do something are available.

Right to vary or discharge order and appeals

Once an interim measure has been issued without prior notice, the judge will schedule a hearing for the parties to appear and for the case to be debated. The applicant will notify the

respondent, who is entitled to file a statement of defence either before or during the course of the hearing.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent) ?

Availability and grounds

Specific interim remedies to preserve assets are:

- Judicial seizure, which is aimed at preserving specific assets whose ownership or possession is disputed.
- Preventative seizure, which is aimed at freezing the

debtor's
property if
there is a
reasonable
risk that the
assets will be
dissipated
while
judgment is
pending.

These measures are
available if certain
conditions are met
(see *Question 12*,
[Availability and
grounds](#)).

Prior notice/same-day

In urgent cases, at a
party's request, the
judge can order
interim attachment
measures without
prior notice to the
defendant, but such
orders are
uncommon.

Main proceedings

If proceedings are
pending abroad, and
the Italian courts do
not have jurisdiction
on the merits,
interim measures
can be requested
before the Italian
court where the
seizure is to be
enforced.

Preferential right or lien

Once an interim attachment measure is ordered, any subsequent transfer of the seized assets is ineffective against the applicant. If the applicant is successful on the merits, it is entitled to enforce its right over the seized assets.

Damages as a result

The applicant may be liable for the damages suffered by the defendant if the attachment proves to be groundless.

Security

The court can authorise the seizure if the applicant provides security for any potential subsequent indemnification.

14. Are any other interim remedies commonly available and obtained?

Other interim remedies are

available to collect evidence before the start of ordinary judicial proceedings, in cases where the length of these proceedings may jeopardise the collection of evidence and affect defence rights.

In particular, interim remedies may involve the following:

- Hearing witnesses, where there is a concern that they will not be able to testify in the near future.
- Assessment by a court-appointed technical expert of the state of property that could be damaged in the near future.

In addition, urgent precautionary measures (*provvedimento d'urgenza*) are available under Article 700 of the

Civil Procedure Code. This is an exceptional residual remedy that is only available when no other standard interim remedies are available or adequate.

Final remedies

15. What remedies are available at the full trial stage? Are damages only compensatory or can they also be punitive?

At the end of a full trial, the Italian courts can order the unsuccessful party to:

- Provide specific performance (for example, by fulfilling outstanding obligations or restoring the status quo).
- Refrain from doing something or

discontinue an ongoing breach.

- Indemnify the successful party for damages suffered.

Regarding indemnification, the Italian civil liability system is in principle compensatory. The aim of indemnification is to compensate direct consequential losses suffered by the innocent party. Therefore, the Italian courts do not currently award punitive damages.

However, the Italian Supreme Court has recently held (in a judgment handed down on 5 July 2017) that a foreign judgment awarding punitive damages (a US judgment in that case) does not violate any principle of Italian civil law, and can therefore be recognised and enforced in Italy. This decision may have (and is expected to have) a material impact on

the whole civil liability system.

Evidence

Document disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

No set disclosure phase before or during the judicial proceedings is provided under Italian law. However, the Italian system provides for procedural tools by means of which the parties can ask the court to order the counterparty to produce certain specific documents.

The scope of such measures is rather narrow as the documents need to

be clearly identified.

"Fishing expeditions" are not usually allowed and courts rarely uphold requests for orders of production. The concept of civil law privilege, (*secret professionnel*) (see [Question 17](#)) is relied on in practice.

In particular, on the petition of a party, the court can order one of the parties or third parties to disclose a specific document that is deemed essential for the resolution of the pending dispute, provided that this does not cause any serious prejudice to the parties concerned.

Under the Civil Procedure Code, the petition must be filed within the same deadlines as those established for requesting evidence (see [Question 9, Subsequent stages](#)) and third parties can challenge the disclosure order. The relevant document must be filed in electronic form.

A party can only refuse to produce documentation without negative consequences being inferred when:

- Doing so would result in a serious damage for the party ordered to produce or for third parties.
- The documentation is covered by professional secrecy (*Article 200, Criminal Procedure Code*) which generally covers:
 - Priests;
 - lawyers;
 - party-appointed experts;
 - private investigators;
 - doctors;
 - pharmacists;
 - nurses; and
 - public officers

holding

state

secrets.

- Bank secrets are not encompassed by the provision, however the courts seem increasingly keen to safeguard the privacy rights of bank's clients who are not involved in the dispute.

(Articles 210 and 118, Civil Procedure Code).

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

No comparable concept of "privilege" as it is understood in common law jurisdictions exists in the Italian legal system.

Instead, there is an obligation imposed on the attorney to preserve the confidentiality of the information obtained in the exercise of the legal profession, and the corresponding right not to disclose this information. This duty has the effect of immunity from forced disclosure.

Compliance with the above duty of confidentiality towards the attorney's client is enforced by the imposition of a sanction on the non-complying attorney, which might result in a suspension from practising law for one to three years, under Article 28 of the Lawyers' Code of Conduct. However, under Italian law,

confidentiality
breaches do not
result in the
inadmissibility of the
documentation
produced.

Under the Lawyers'
Code of Conduct, it
is forbidden to
disclose in court
both:

- Documents
and
correspondence
between
lawyers
marked as
confidential.
However,
documents
filed in breach
of such a ban
can be still
examined by
the judge.
- Communications concerning
discussions on
out-of-court
settlement.

In-house counsel are
not enrolled with the
Lawyers' Bar so they
should not be
considered to be
subject to the
relevant Code of
Conduct.

**Other non-
disclosure
situations**

Under the rules on professional secrecy, a lawyer cannot disclose information acquired while assisting a client (*Lawyers' Code of Conduct*).

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they only submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

As a general rule, witnesses give oral evidence on specific questions formulated by the parties in their deeds to the extent such topics have been admitted by the court.

In some cases, if the parties agree and depending on the

nature of the dispute, the court can allow witnesses to give written evidence, but this is still very uncommon.

Right to cross-examine

Lawyers are not allowed to cross-examine witnesses in court and the parties' counsel are only allowed to communicate with the witnesses through the judge. The judge is the only person entitled to ask questions and request clarifications on the disputed facts.

Third party experts

19. What are the rules in relation to third-party experts?

Appointment procedure

The court can appoint one or more experts, whose task is to answer specific questions raised by

the court on technical issues.

Role of experts

Experts must be independent and impartial. They refer exclusively to the court.

Right of reply

The parties can appoint their own experts, who will interact with the court-appointed expert(s) throughout the technical investigation and reply to their findings.

Fees

The fees of the court-appointed expert are allocated by the court between the parties at the end of the proceedings.

As a general rule, the unsuccessful party must pay in full or in the majority of the costs. However, the judge can, for justified reasons, apportion the costs between the parties.

Appeals

20. What are the

**rules
concerning
appeals of
first
instance
judgments
in large
commercial
disputes?**

Which courts

Challenges against first instance judgments issued by the courts of first instance must be filed with the court of appeal (*corte di appello*). No leave from the court of appeal nor from the lower courts is needed before filing an appeal.

Grounds for appeal

There is no limit on the grounds for appeal that a party can raise and a full review of the merits of the case is allowed.

Time limit

An appeal must be started within either:

- 30 days of the date on which the judgment is served by

one party on the other.

- Six months of the date of publication of the judgment, if the judgment has not been served.

Class actions

21. Are there any mechanisms available for collective redress or class actions?

Under the Consumer Code, consumers or users can start a class action (individually or through an association) for compensation of damages arising from:

- Unfair or anti-competitive commercial practices.
- Defective products.
- Breach of contract.

Italy has adopted so far a standard "opt-in" mechanism, meaning that consumers and users can join pending class action proceedings by filing a specific declaration. If they fail to do so, they cannot benefit from the final judgment in the proceedings.

However, the class action rules have been recently reformed by Law No. 31 of 12 April 2019. The entry into force of the new set of rules has been postponed to 19 May 2021 and it will replace the rules for class actions under the Consumer Code.

The new regime applies to all types of claims and the new rules are included in the Civil Procedure Code (*Articles 840-bis and subsequent*).

The action can be brought by each member of the class and also by non-profit organisations and associations

registered in a public list at the Ministry of Justice.

The "opt-in" mechanism still applies, although it has been partially modified. In particular, the new regime now provides for a second chance for class members to be admitted following the delivery of the judgment on the merits.

Costs

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

The court awards the costs of the proceedings in its final judgment, determining which party must bear the costs and to what extent. As a general principle, the unsuccessful party must pay all or most of the costs.

Alternatively, the court can decide to apportion the costs in cases where there is a partially adverse outcome for all the parties involved or where the proceedings involved disputed legal issues.

Costs are awarded by the court in accordance with a ministerial regulation establishing the fees due for each phase of the proceedings on the basis of the value of the dispute. Additionally, the court can:

- Order one party to pay further legal costs to the other party in the case of

procedural
misconduct or
vexatious
litigation.

- Order the successful party to refund the unsuccessful party's legal costs if the final judgment reflects a settlement proposed during out-of-court mediation before the trial (see *Question 30, Mediation*) or by a party or the judge during the trial.
- The court does not have any power to control the costs incurred by the parties throughout the proceedings.

23. Is interest awarded on costs? If yes, how is it calculated?

Interest is awarded on costs at the rate established by the Ministry of the Economy. The rate for 2021 is set at 0.01% per year.

Enforcement of a local judgment

24. What are the procedures to enforce a judgment given by the courts in your jurisdiction in the local courts?

Before enforcing a judgment, the judgment creditor must first:

- Ask the clerk's office of the court that issued the judgment to affix on the judgment a special stamp called "*formula esecutiva*" (this is the official order

to the bailiff to enforce the judgment).

- Serve the debtor with a formal request to pay the amount due within a period of not less than ten days after the formal request is served.

In the case of non-payment by the deadline indicated in the formal request, the creditor can start enforcement proceedings by:

- Seizing the debtor's assets, including movable assets and real estate. These assets will then be auctioned under the judge's directions to enable the creditor to recover his or her credit through the auction proceeds.

- Freezing the debtor's funds and/or credits owned by a third party. The judge will then allocate these funds and/or credits to the creditor.

Cross-border litigation

25. Do local courts respect the choice of governing law in a contract? If yes, are there any national laws or rules that may modify or restrict the application of the law chosen by the parties in their contract? What are the rules for determining what law will apply to non-contractual claims?

Contractual choice of law

No choice of law and non- contractual claims

In most cases, the Italian courts respect the choice of governing law of the parties.

The question of the applicable law to contractual and non-contractual jurisdiction is also governed by Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) 864/2007 on the law applicable to non-contractual obligations (Rome II), which must be applied by Italian Courts.

In terms of contractual obligations, Rome I confirms the parties' freedom of choice with regard to the applicable law.

Where the parties have not made any choice, the criteria

set out under Article 4 of Rome I apply.

In terms of non-contractual obligations, although Rome II recognises the freedom of choice of the applicable law (*Article 14, Rome II*), the general criteria under Article 4 apply in most cases. The applicable law to non-contractual obligations arising out of a tort (except for different criteria under Rome II itself) is the law of the country where the damage occurs.

Finally, Italian law prevails in certain cases and fields of law regardless of the parties' choice. For example, Italian law will prevail in cases involving the following matters:

- Anti-trust.
- Labour.
- Social security.
- Art and cultural heritage.
- Bills of exchange.

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

The parties are generally entitled to submit any dispute arising out of an agreement to the exclusive jurisdiction of an Italian or a foreign court. To be valid and effective, a choice of jurisdiction clause must meet at least one of the following requirements:

- Be agreed in writing.
- Be in a form that is compliant with the practices of the parties

in their
business
relationship.

- Be in a form permitted by the relevant commercial practices.

A jurisdiction clause can only regulate the parties' waivable rights.

However, there are circumstances in which the Italian courts have exclusive jurisdiction, regardless of the parties' choice (for example, in disputes concerning real estate located in Italy or certain labour matters).

In Italy, Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation) applies. The Recast Brussels Regulation confirms the freedom of choice of the parties in terms of jurisdiction. Unless there is such

a choice, the criteria under Article 4 and so on apply.

27. If a party wishes to serve foreign proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction a party to any international agreements affecting this process?

The service of proceedings in EU member states is governed by Regulation (EC) 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters

(Service of Documents Regulation).

For service outside the EU, the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention) will apply.

Under both the Service of Documents Regulation and the Hague Service Convention, the service of a document from one country to another must be effected through the central authority designated by the relevant country for this purpose. The party can then choose to request the service by post or by process agent.

To serve documents in Italy from another country, the party must send the Italian central authority a copy of the document with the relevant Italian translation and a

form included as an attachment, as prescribed by the Service of Documents Regulation or the Hague Service Convention. The Italian central authority will then ask the competent bailiff to serve the recipient in accordance with Italian rules of civil procedure.

Other methods of service can be used in Italy, including (*Service of Documents Regulation; Hague Service Convention*).

- Direct service through an Italian bailiff.
- Transmission of documents through consular or diplomatic channels between member states' central authorities.
- Service through diplomatic or consular agents (only where the

document
must be
served on a
citizen of the
same member
state
requesting the
service).

- Service through postal services.

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial

matters (within the EU) and the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention) (outside the EU) apply to:

- Requests to the competent court of another member state to obtain evidence.
- Requests for permission to obtain evidence in another member state.

Under both the Taking of Evidence Regulation (1206/2001) and the Hague Evidence Convention, each member state must designate a central authority responsible for supplying information to the courts and for seeking solutions to any difficulties regarding the transmission of requests to collect evidence.

Under the Hague Evidence Convention, the central authority will instruct the courts to proceed with activities relating to the taking of evidence. Under the Taking of Evidence Regulation, which applies to requests between EU member states (excluding Denmark), requests are generally transmitted directly by the court before which the proceedings are held or planned (that is, the requesting court) to the court of the member state collecting the evidence (that is, the court receiving the request).

Both the Taking of Evidence Regulation and the Hague Evidence Convention set out the requirements that a request must meet. For example, a request must indicate:

- The name and address of the parties to the proceedings.

- The nature and subject matter of the case.
- A description of the taking of evidence to be carried out.

Requests are executed in accordance with the law of the requested member state. The parties and their representatives (if any) are usually entitled to be present.

The Taking of Evidence Regulation will be repealed and replaced by Regulation (EC) 2020/1783 starting from 1 July 2022, particularly with the aim of promoting the use of digitisation and modern technology to speed up processes and reduce costs and delays for citizens and businesses.

Enforcement of a foreign judgment

29. What are the procedures

to enforce a
foreign
judgment in
your
jurisdiction
?

EU judgments

The recognition and enforcement of EU judgments in Italy are governed by the Recast Brussels Regulation (1215/2012).

Certain matters are excluded from the scope of the Recast Brussels Regulation (*Article 1, Recast Brussels Regulation*).

No special procedures or declarations of enforceability are required. For enforcement purposes, the applicant must provide the enforcement authority with both a:

- Copy of the judgment.
- Document certifying that the judgment is enforceable, containing an

extract of the judgment and the relevant information on costs and interest.

A certified translation of both the judgment and certificate is required.

The enforcement procedure is governed by Italian law.

Non-EU judgments

In the absence of any applicable convention, the recognition and enforcement of non-EU judgments (including US judgments) in Italy are governed by Law 218/1995, which sets out the requirements for recognition and enforcement.

The following requirements must be met:

- The court that issued the judgment was competent (including

under Italian law).

- Fundamental defence rights have not been violated.
- The decision is final and binding according to the applicable foreign laws.

Recognition will be denied if any of the following applies:

- There was a violation of due process (for example, the defendant did not appear in the proceedings because the writ of summons was not served on him or her in due time and in due form).
- A contrary decision was passed by an Italian court in relation to the same parties and the same matter.
- A proceeding concerning the same parties

and the same subject matter is pending before an Italian court.

- The judgment is contrary to the fundamental principles of the Italian legal system.

To enforce a foreign judgment, any interested party can ask an Italian court to ascertain that the requirements for recognition are met, and file the following documents with the court:

- A certified copy of the judgment, duly apostilled (or legalised).
- A court certificate confirming that the judgment is final and binding between the parties (that is, no remedies or appeals are available).
- A certified translation

into Italian of
the judgment
and the
certificate.

The enforcement
procedure is
governed by Italian
law.

The above
provisions do not
apply if there is a
specific convention
in force between
Italy and the state in
which the judgment
was issued.

Foreign arbitral awards

The recognition and
enforcement of
foreign arbitral
awards in Italy are
governed by Articles
839 and 840 of the
Civil Procedure
Code, which
incorporate the
provisions of the UN
Convention on the
Recognition and
Enforcement of
Foreign Arbitral
Awards 1958 to
which Italy is a party.

The applicant must
file:

- The award
(original or
certified copy).

- The arbitration clause (original or certified copy).
- A certified translation into Italian of the award and the clause.

Recognition (*exequatur*) is granted by the President of the court of appeal if both the:

- Subject matter of the dispute can be subject to arbitration under the relevant provisions of Italian law.
- Award does not contain provisions that violate the fundamental principles of the Italian legal system.

The court order granting *exequatur* must be served on the other party, who can challenge the recognition within 30 days on the following grounds:

- The arbitration agreement was not valid.
- Defence rights have been violated.
- The award was issued on matters not included in the arbitration clause.
- The arbitral tribunal or the proceedings did not comply with the agreement between the parties, or with the applicable law.
- The award is not binding between the parties or was stayed or declared invalid by a competent authority in the state in which the award was issued.

Alternative dispute resolution

30. What are the

**main
alternative
dispute
resolution
(ADR)
methods
used in
your
jurisdiction
to settle
large
commercial
disputes? Is
ADR used
more in
certain
industries?
What
proportion
of large
commercial
disputes is
settled
through
ADR?**

The main ADR methods in Italy are:

- Private settlement.
- Conciliation before the courts.
- Arbitration.
- Mediation.

Other specific forms of conciliation, before specific competent authorities, are available for certain

matters. For example, Legislative Decree No 179 of 2007 provides for the establishment of a mediation and arbitration chamber within the Italian Securities and Exchange Commission for disputes between investors and brokers. In addition, in 2009 Legislative Decree No. 385/1993 (*Testo Unico Bancario*) introduced an ADR system in the banking and financial sector (*Arbitro Bancario Finanziario*).

Arbitration

The parties can agree to arbitrate contractual and non-contractual matters (involving the parties' alienable rights), unless the law expressly provides otherwise.

Arbitration proceedings can be either:

- Ad hoc (that is, the parties establish the rules governing the

arbitration proceedings or delegate to the arbitrators the power to establish these rules).

- Institutional (that is, the parties submit their dispute to a specialised institution that has its own specific rules).

If the arbitration procedure is not governed by the rules of an arbitration institution or the parties have not set out the applicable rules, the Italian Code of Civil Procedure contains rules governing domestic arbitration proceedings. Under these rules, a third party can join the proceedings with the consent of the original parties and the arbitrators. However, intervention is only permitted if the third party has an interest in supporting the case of one of the

original parties, and
in cases of
compulsory joinder.
Arbitrators cannot
issue interim
measures.

In large commercial
disputes, the main
ADR method
continues to be
arbitration, as it is
usually a faster
procedure compared
to judicial
proceedings
(although more
expensive).

The cases in which
arbitration was most
used in 2019 were
those relating to:

- Corporate matters (36%).
- Construction law (10%).
- Supply of goods or services (16%).
- Rent, sale and concession of a business (5%).
- Sale and purchase Agreements (5%).
- Cooperation and advisory (about 7%).

- Industrial matters (6%).
- Leasing (1%).
- Real estate (2%).
- Agency (2%).
- Banking (2%).
- Entrustment agreements (2%).
- Insurance (2%).

Further, on 1 July 2020, Italy's leading arbitral institution, the Milan Chamber of Arbitration, issued its new rules on the Simplified Arbitration Procedure. As clarified by the Milan Chamber itself, the newly introduced rules are aimed at providing users with a streamlined arbitration with reduced scales of fees.

The Simplified Arbitration Procedure will apply to:

- Arbitrations commenced after the entry into force of the new rules (1 July 2020):

- if the value of the claims filed by the claimant does not exceed EUR250,000; and
- unless one of the parties opts out in the request for arbitration or in the reply to the request for arbitration.
- All arbitrations, regardless of the value of the claims, if the parties have agreed to opt in either in the arbitration agreement or at a later stage, until the filing of the reply to the request for arbitration.

Mediation

To reduce the workload of Italian courts, Legislative Decree 28/2010 provides that, in certain matters, the parties must first try to settle their dispute through mediation before commencing judicial proceedings (mandatory mediation). The mediation procedure must be administered by a qualified body registered on the list of the Ministry of Justice.

The assisted negotiation procedure, introduced in 2014, is another mandatory out-of-court settlement procedure that must be used by the parties in certain circumstances before commencing judicial proceedings.

The disputes in which mediation was most used in 2019 were those relating to:

- Other proceedings for which mediation is not mandatory (16.3%).
- Property interests (15.4%).
- Condominium (14.1%).
- Banking (about 12.3%).
- Leasing (12%).
- Insurance (8.4%).
- Partition (5.6%).
- Legal succession (5.2%).
- Damage compensation for medical liability (4.1%).
- Finance (3.6%).
- Loan for use (1.4%).
- Damage compensation for defamation in the press (0.8%).
- Company lease contracts (0.7%).
- Business inheritance

agreements
(0.1%).

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

Arbitration can only be used if the parties have entered into an arbitration agreement or have included an arbitration clause in an agreement.

Recourse to mediation (or assisted negotiation) is mandatory before commencing certain proceedings (*see Question 30, Mediation*).

Otherwise, recourse to mediation is voluntary.

Legislative Decree 28/2010 introduced provisions under which the judge can

refer the parties to mediation whenever he or she deems it necessary or appropriate. Parties that do not comply with the judge's request cannot proceed with court proceedings.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential ?

Arbitration

The Civil Procedure Code contains specific rules on witness evidence. Arbitrators can:

- Take a deposition at a witness's premises.
- Authorise written testimonies.
- Ask the president of the court of the arbitration venue to order a witness to appear for testimony.
- Be assisted by technical experts.
- Obtain written information from the public administration

In institutional arbitration, the collection of evidence is governed by the specific rules of each institution.

The rules of the arbitration institution usually provide for the confidentiality of all the information and documents used in the procedure.

Under the Arbitration Rules of the Milan Chamber

of Arbitration, all entities involved in an arbitration procedure must ensure the confidentiality of the proceedings and of the arbitral award, unless they must use this information to protect their rights. For research purposes, the Milan Chamber can publish the arbitral award in an anonymous format, unless one of the parties has opposed publication during the procedure.

Mediation

Mediation bodies are usually bound by confidentiality obligations. Additionally, information acquired during the mediation procedure must not be used in ordinary proceedings relating (even only partially) to the same subject matter which are commenced or continued after the failure of the mediation procedure, unless the relevant party gives its consent for

this disclosure
(*Legislative Decree*
28/2010).

**33. How are
costs dealt
with in
ADR?**

Arbitration proceedings are rather expensive and the costs are much higher than in ordinary judicial proceedings. The fees for the administration of the procedure and for the arbitral tribunal are usually determined according to the value of the dispute, and in accordance with the fee schedule of each arbitration chamber (in the case of institutional arbitration).

The costs of mediation procedures are quite low, but vary considerably depending on the rules of the specific mediation body.

34. What are the main bodies that offer ADR services in your jurisdiction ?

The main bodies that offer ADR services are the chambers of commerce and the local private mediation bodies accredited by the Ministry of Justice.

The most credited Chamber is the Milan Chamber of Arbitration.

Ministerial Decree No 34/2017 provides for the establishment of arbitration chambers within the Bar Associations.

The aim of this reform is to substantially reduce recourse to ordinary justice by promoting arbitration at a lower cost.

There are many mediation bodies. One example is ADR Center, which

appears first on the list of the Ministry of Justice.

Proposals for reform

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

Some years ago a panel was appointed by Parliament (*Commissione Alpa*) with the aim of drafting the proposed text of reform of arbitration and mediation proceedings.

However, there is no information about whether and when the reform will be adopted by Parliament. The key points of the proposed reform are as follows:

- Arbitrators will have the power to adopt interim

and
precautionary
measures if
this is allowed
by the
applicable
arbitration
rules (in the
case of
institutional
arbitration).

- It will be possible to challenge arbitral awards directly before the Supreme Court of Cassation (therefore skipping opposition before the court of appeal), if expressly provided for by the parties.
- The number of matters that can be subject to arbitration will be increased.
- The number of cases in which the parties must first attempt to settle by mediation will be increased.

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Professional qualifications

s. Admitted to pleading before the Supreme Court of Italy, 2010; Admitted to the Italian Bar; Member of the Rome Bar

Areas of practice.

Dispute resolution; restructuring and insolvency.

Non-professional qualifications

s. LLM,
University of
Miami
School of
Law, Coral
Gables (FL),
2002; Law
Degree, La
Sapienza
University,
Rome, Italy,
1993-1997

Experience

- Advising important Italian and foreign companies in complex litigations and arbitrations, as well as in insolvency procedures.
- Has worked for an

important US law firm in Wilmington (US), as a member of the litigation and arbitration department, and for the Delaware Supreme Court (US).

- Wide experience both in the extra-judicial phase, including conciliation procedures, and the judicial phase

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- Representing and assisting clients before the ordinary courts, including proceedings relating to interim measures, and before special authorities, including the specialised branches for intellectual property

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*Chamb
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Languages.

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Professional qualification

s. Admitted
to pleading
before the
Supreme
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Italy, 2014;
Admitted to
the Italian
Bar, 2001

Areas of practice.

Dispute resolution; restructuring and insolvency.

Non-professional qualifications

s. Law Degree, La Sapienza University, Rome, Italy, 1998

Experience

- Advising primarily national and international financial institutions as well as multinational companies on every aspect of litigation, including pre-litigati

s risk
assessment,
in civil,
financial,
commercial,
banking,
insolvency
and
aviation law.

- Significant expertise in financial litigation with specific reference to derivative transactions, in contentious matters against local entities and private companies

nies as well as cross-border (UK) litigation.

- Advising banking institutions, investment funds and multinational companies on the extraordinary administration and bankruptcy procedures (both national and international), with a particular focus on the aviation

n
sector.

- Providing assistance with respect to ordinary and provisional proceedings on energy matters and relating agreements (EPC and O&M agreements, first demand guarantees, performance bonds, and so on).
- Assisted a world leading tobacco

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team.

Languages.

Italian,
English

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Professional qualifications

s. Admitted to the Italian Bar, 2000

Areas of practice.

Arbitration; corporate.

Non-professional qualifications

s. LLM, Comparative and International Private Law, Humboldt Universität, Germany, Berlin, 1999; PhD, Comparative and International Private Law, Humboldt Universität, Germany, Berlin, 2005; Law Degree, summa cum

laude,
"LUISS -
Guido Carli"
University,
Italy, Rome,
1997

Experience and recent transactions

- Significant experience in the field of national and international, commercial and investment arbitration proceedings, both institutional and ad hoc, acting both as counsel and as arbitrator, and active

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specifi
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countries and
on
Eastern
Europe
.

- Pro bono partner at Legance coordinating the corporate social activities of the firm.
- Nominated by *Who's Who Legal: Litigation 2014 and 2015* as "one of the world's leading practitioners in this field".
- Nominated by

Who's Who Legal: Arbitration 2015 and 2016 as being "among the world's leading commercial arbitration experts".

- Nominated by *Who's Who Legal: Arbitration 2017 as being "among the world's leading arbitration specialists" and in Who's Who Legal: Arbitration – Future*

Leader

s.

- Counsel to Ufficio Centrale Italiano (UCI) (the National Italian Insurance Bureau) against the Versicherungsverband Österreich (VVO) (the National Austrian Insurance Bureau) in arbitration proceedings, in connection with

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law)
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UNCIT
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Arbitra
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Rules
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law).

- Counsel to an Italian multinational group in a complex international arbitration pending before the International Chamber of Commerce (ICC) seated in Paris, in connection with the enforcement and termination of a distribution agreement

ment
with a
Chinese
dealer.
The
matter
is
complicated
by the
existence
of
parallel
litigation
in
China
(pending).

Languages.

Italian,
English,
German,
French,
Spanish

**Professional
associations**

/memberships. ICC
International
Court of
Arbitration;
ICC
Commission;
ICC Task
Force on
Emergency
Arbitrator
Proceedings;
co-founder
of Arbit (the

Italian forum of arbitration practitioners); co-chair, arbitration working group of ASLA (the Association of Italian Law Firms); member; Council of AIA

(*Associazione Italiana per l'Arbitrato*).

Publications

. Author and co-author of numerous articles and commentaries, including:

- "*Partial award on jurisdiction or preliminary issues not immediately challengeable before Italian courts (Italian court*

*of
cassati
on)";
Practic
al Law,
2016.*

- *"Italian
courts
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al Law,
2016.*
- *"Gettin
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Arbitra
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2016" /
"Italy",
Law
Busine
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Resear
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2016.*
- *"L'arbit
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per
attrarr
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investi
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in
Italia" -*

*La
Voce,
21 July
2015.*

- *"L'arbitrato societario allargato i confini" - Il Sole 24 Ore, 20 September 2015.*

- *"Getting the Deal Through: Arbitration 2015" / "Italy", Law Business Research, 2015.*

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Professional qualifications

s. Admitted to the Italian Bar, 2004

Areas of practice.

Dispute resolution; restructuring and insolvency.

Non-professional qualifications

s. LLM Degree, New York University School of Law, US, 2006; Law Degree, maxima cum laude, Bari University, Italy, 2001

Experience

- Assisting and representing a

number of international and Italian companies operating in a variety of industrial and commercial sectors in disputes concerning civil, commercial, banking and finance matters.

- Representing clients in disputes, including urgent and interim measures

proceedings, concerning agency, distribution, supply and commercial lease agreements, international sale of goods contracts, unfair competition, product liability, trademark and patent infringement.

- Assisting Italian clients in certain corporate litigations

(representing both directors and companies).

- Assisting Italian and international companies, funds and financial institutions on complex issues, including international issues, and in litigations relating to the main insolvency proceedings in Italy.
- Assisting

leading companies in the aviation sector, as well as companies operating in connected sectors, such as oil companies and service companies, in contentious and non-contentious matters. In particular, assisting:

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- Assisting clients in maritime law cases and, in particular, in seizures involving ships and sale of ships under insolvency proceedings.

Languages.

Italian,
English, Farsi

Publications

. Author of articles on international insolvency law issues.

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Professional qualifications

s. Admitted to the Italian Bar, 2000

Areas of practice.

Dispute resolution; restructuring and insolvency; real estate.

Non-professional qualifications

s. Master's in Insolvency, Just Legal Service, Italy, Milan, 2006 – 2007; Master in Arbitration, Chamber of National and International Arbitration of Milan, Italy, 2000 – 2001; Specialisation Course in Procedural Law,

University of
Milan, Italy,
1998 – 1999;
Law Degree,
University of
Pavia, Italy
1991 – 1997

Experience

- Litigation (before the court and in arbitration proceedings) in disputes concerning civil and corporate law, insolvency law, real estate, banking and financial law.
- Assisting and advising in insolve

ncy
proceedings
(extraordinary
administrations,
bankruptcy
proceedings
and composition
with creditors).

- Experience in various types of Italian and international arbitration proceedings.

Languages.
Italian,
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END OF DOCUMENT

RESOURCE ID 3-502-1581
RESOURCE HISTORY

**CHANGES MADE TO
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This resource is
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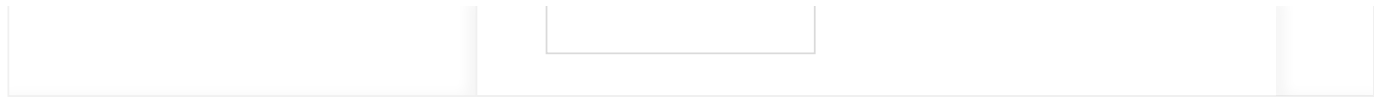
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