

IBA ARBITRATION COMMITTEE

Subcommittee on Recognition and Enforcement of Arbitral Awards

COUNTRY REPORT ON LOCAL REQUIREMENTS FOR THE EXTENSION OF AN ARBITRATION CLAUSE TO, AND ENFORCEMENT OF AN ARBITRAL AWARD AGAINST, A NON-SIGNATORY

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In completing this survey, we ask the respondents to consider the question of non-signatories in a broad manner. That is, please consider situations where (i) a party applies to a court to compel arbitration against a non-signatory, (ii) the arbitral tribunal extended the arbitration clause to a non-signatory, and the non-signatory, or another party to the arbitration, seeks to resist enforcement, or to set aside the award, on the basis that the arbitration clause should not have been extended to the non-signatory, and (iii) where the award creditor attempts to enforce the award against a non-signatory that was not a party to the arbitral proceedings and the award.

Italy		
I. General	(Yes/ No /NA)	Comments, if any.
I.1	Yes	<p>In Italy, arbitration (both domestic and international) is primarily governed by Articles 806-832 and 839-840 of the Italian Code of Civil Procedure (“CCP”).</p> <p>Article 807, para 1, CCP provides that the agreement whereby the parties agree to submit an already existing dispute to arbitration (so-called submission agreement, <i>compromesso</i>) “<i>must be in writing and must indicate the subject matter of the dispute</i>”.</p> <p>Article 807, para 2, CCP clarifies that the written form requirement is also met when the parties express their will by means of electronic devices.</p>

		<p>Articles 808 and 808-<i>bis</i> CCP provide that the arbitration clause contained in a contract and the non-contractual arbitration agreement must be evidenced in writing.</p> <p>Article 4, para 2, of Italian Law No. 218 of 31 May 1995 (Italian Private International Law - PIL) also provides that any agreement derogating from Italian jurisdiction in favour of, inter alia, foreign arbitration must be evidenced in writing.</p>
I.2	<p>Please describe the basic requirements for a valid international arbitration agreement in the country for which you are reporting and cite the relevant legislative, regulatory, or jurisprudential basis for these requirements.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>Beside the written form (see Section I.1 above), the basic requirements for a valid international arbitration agreement are the following:</p> <ul style="list-style-type: none"> • legal capacity of the contracting parties; • arbitrability of the subject matter of the dispute (see Article 806 CCP); • submission agreements must indicate the subject matter of the dispute (Article 807, para 1, CCP); • non-contractual arbitration agreement must contain a clear indication of the subject matter of the disputes submitted to arbitration (Article 808-<i>bis</i> CCP); • arbitration clauses contained in standard contractual terms must be specifically approved in writing (Articles 1341-1342 of the Italian Civil Code, “CC”). <p>Please note that arbitration clauses contained in</p>

			consumer contracts are presumed to be unfair and therefore null and void, until proven otherwise (Article 33 of Italian Legislative Decree No. 206 of 6 September 2005, Consumer Code).
I.3	In the country for which you are reporting, do courts/arbitral tribunals generally decide the issue of the scope <i>rationae personae</i> of the arbitration clause (or, in other words, the issue of who are the parties to the arbitration agreement, including the issue of extending the arbitration agreement to a non-signatory) on the basis of a specific applicable law or on the sole basis of a factual analysis of the case without reference to an applicable law?		In Italy, courts and arbitral tribunals generally decide the issue of the scope <i>rationae personae</i> of the arbitration clause on the basis of a specific applicable law.

I.3a	<p>If courts/arbitral tribunals generally decide the issue on the basis of a specific applicable law, what law do they apply to decide the issue?</p> <p>[For example, the applicable law could be:</p> <ul style="list-style-type: none"> • The law of the seat of arbitration. • The governing law of the contract. • The law of the place where the award might ultimately be sought to be enforced. • Transnational norms/international law. • The law reached at through a conflict of laws analysis.] <p>[Please provide your response in the comments column, provide any citation to relevant legislation or jurisprudence, and limit your response to one paragraph.]</p>	<p>The answer to the question of what law is applicable to the assessment of the scope <i>ratione personae</i> of an arbitration clause is not uniform, in view of the variety of situations that may come into play for the purposes of extension of the arbitration clause.</p> <p>That said, in general terms, the law governing the relevant contract (<i>lex contractus</i>) also governs the scope of the arbitration agreement, including its extension to third parties, due to assignment, subrogation or other cases of extension. If the seat of arbitration is in Italy (<i>lex arbitri</i>), but the <i>lex contractus</i> is not Italian law, courts/arbitral tribunals must also look at the mandatory provisions of the <i>lex arbitri</i> which, in case of contrast with the <i>lex contractus</i> shall prevail.</p>
I.3b	<p>Does the legislation of your jurisdiction contain any directive in this respect?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>Article 14 of Regulation (EC) No. 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) provides:</p> <p>“1. <i>The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.</i></p> <p>2. <i>The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can</i></p>

		<p><i>be invoked against the debtor and whether the debtor's obligations have been discharged.</i></p> <p><i>3. The concept of assignment in this Article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims?'</i></p> <p>Article 15 of Rome I Regulation provides:</p> <p><i>"Where a person (the creditor) has a contractual claim against another (the debtor) and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether and to what extent the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship".</i></p>
I.4	<p>Is the question of whether parties agree to arbitrate ultimately decided by arbitrators as opposed to courts in the country for which you are reporting? Please cite the relevant legislative, regulatory, or jurisprudential basis for your answer.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>Yes</p> <p>Article 817 CCP provides that "[w]here the validity, content or scope of the arbitration agreement or the regular appointment of the arbitrators be challenged during the course of the arbitration, the arbitrators shall decide on their own jurisdiction". This provision, jointly with Article 819-ter CCP (according to which no claim for invalidity or ineffectiveness of the arbitration agreement may be brought before the local courts if the arbitration proceedings is pending), codifies the so-called Kompetenz-Kompetenz principle, according to which arbitrators, like judges, have the right to decide on their own jurisdiction, by evaluating the validity and</p>

			effectiveness of the arbitration agreement.
I.5	<p>Is there anything in the <u>legislation</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of relevant legal theories, jurisprudence, and examples.]</p>	Yes	<p>As a general rule, arbitration clauses are only binding on the parties to the relevant agreement (Article 1372 CC). Non-signatories are generally not bound by an arbitration clause that they have not accepted. In case of a principal/agent relationship (<i>rappresentanza</i>, Articles 1387 ff. CC), the principal shall be considered a party and not the agent.</p> <p>Moreover, arbitration proceedings cannot be generally extended to third parties without the consent of all existing parties and the arbitrators (Article 816-<i>quinquies</i>, para 1, CCP).</p> <p>However:</p> <ul style="list-style-type: none"> (i) in certain cases of “circulation” of the contract containing the arbitration clause, the third party may be also bound by the arbitration clause; (ii) intervention of a third party in pending arbitration proceedings is exceptionally admitted without the consent of all existing parties in the case of intervention only aimed at supporting the position of an existing party and in the case of compulsory joinder (Article 816-<i>quinquies</i>, para 2, CCP). <p>The scope <i>ratione personae</i> of an arbitration clause contained in the Articles of Association of a company is</p>

			governed by specific rules (see Section I.5.a below).
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<p>I.5a</p>	<p>If your answer to question <u>I.5</u> is yes, please cite and describe the applicable rules contained in any relevant legislation or regulations.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>As an exception to the general principle that the arbitration clause is only binding on the parties to the relevant contract, it can be noted that:</p> <ul style="list-style-type: none"> • in case of a principal/agent relationship (<i>rappresentanza</i>, Articles 1387 ff. CC) the principal is bound by the arbitration clause; • universal successors of a signatory are also bound by the arbitration clause. <p>As an exception to the requirement that the intervention or joinder of third parties in pending arbitration proceedings is agreed to by all existing parties, Article 816-<i>quinquies</i>, para 2, CCP, provides that “<i>the intervention provided by Article 105, paragraph 2</i> [i.e., voluntary intervention in support of the position of an existing party, so-called <i>intervento adesivo dipendente</i>], and <i>the intervention of a third party in case of compulsory joinder</i> [<i>liticonsorzio necessario</i>, Article 102 CCP] <i>are always admissible</i>”. Moreover, if in the course of the proceedings the contested right is transferred to a third party, the proceedings continues between the original parties, but the transferee can voluntarily intervene in the proceedings without the need of the parties’ consent (Articles 816-<i>quinquies</i> and 111 CCP).</p> <p>Finally, the arbitration clause contained in the Articles of Association of a company binds not only the company and its shareholders, but also</p>
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			its managers (directors, liquidators and statutory auditors), by virtue of their acceptance of the relevant mandate (Article 34(3)-(4) of Legislative Decree 17 January 2003, No. 5).
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I.6	<p>Is there anything in the <u>jurisprudence</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of the relevant legal theories, jurisprudence, and examples.]</p>	Yes	<p>The Italian jurisprudence has identified additional cases of extension of an arbitration clause to non-signatories, in addition to those provided by law and illustrated at Section I.5 above.</p>
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<p>I.6a</p>	<p>If your answer to question <u>I.6</u> is yes, please cite and describe the applicable tests or rules applied by the courts of the country for which you are reporting.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>According to Italian jurisprudence, an arbitration clause may be extended to non-signatories in the following cases:</p> <ul style="list-style-type: none"> • contract in favour of a third party (Article 1411 CC), if the beneficiary wants to accept the benefit; • subrogation by a creditor in its debtor's rights (Articles 1201 ff. CC and Article 2900 CC); • assignment of contract (Article 1406 CCP); • subsequent contracts arising from a framework contract (see Court of Rome, 28 May 2015, No. 12029, concerning the extension of the arbitration clause contained in a framework contract between the bank and a non-consumer client to the subsequent swap contracts). <p>Conversely, it is generally considered that the parties of contracts connected with another contract containing an arbitration clause are not bound by the latter, unless there is a specific reference to it in their contract. The same principle applies to sub-contracts and derivative contracts.</p> <p>With specific reference to guarantee contracts, a guarantor is not bound by the arbitration agreement between the principal debtor and the creditor and may not initiate arbitration against the principal debtor and the creditor without their</p>
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			<p>consent (Italian Supreme Court 12 July 2007, n. 15603; Court of Appeal of Naples, 25 June 1997). However, if the guarantee contract is governed by Italian law, the guarantor may raise an <i>exceptio compromissi</i> against the creditor, as could be done by the principal debtor (Article 1945 CC).</p> <p>It is debated whether the arbitration clause contained in a contract can be also extended to the assignee of a credit arising out of the same contract. According to the Italian Supreme Court, there is no automatic takeover of the assignee in the arbitration agreement. Accordingly, the assignee cannot invoke the arbitration clause against the assigned debtor. Conversely, the assigned debtor (who concluded the arbitration clause with the assigning creditor) can invoke the arbitration agreement against the assignee (see the decisions of the Italian Supreme Court: 28 December 2011, No. 29261; 21 March 2007, No. 6809; 21 November 2006, No. 24861; 19 September 2003, No. 13893).</p> <p>Finally, the parties may expressly provide that the arbitration agreement is open to thirds parties who want to join it (Article 1332 CC, so-called “<i>open contract</i>”).</p>
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<p>II. Specific Legal Theories Concerning Non-Signatories</p>	<p>(Yes/No/NA)</p>	<p>Additional comments, if any.</p>
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II.1	<p>Can the assignment or assumption of a contract containing an international arbitration agreement commit the non-signatory assignee to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	<p>The assignment of a contract entails the succession of a new party (transferee) in the overall active and passive legal position of one of the original contracting parties (transferor). Consequently, the majority view is that the assignment also encompasses the obligations arising out of the arbitration clause concluded by the original parties, which is thus binding on the transferee. However, although the transferee is bound by the arbitration agreement in case the remaining original party (“<i>ceduto</i>”) commences an arbitration against it, the opposite is not entirely true. Namely, should the transferee wish to commence an arbitration against the residual original party (“<i>ceduto</i>”), the latter might invoke the non-binding nature of the arbitration agreement with the transferee because the original arbitration agreement was binding only between the original parties and the <i>ceduto</i> did not give its consent to arbitrate against a third party (the transferee).</p>
II.1.a	<p>If your answer to question <u>II.1</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Article 1406 CC provides that “[e]ither party may assign to a third party its obligations under a contract with mutual obligations, if the latter have not yet been performed, provided that the other party consents thereto”.</p> <p>Article 808, para 2, CCP provides that an arbitration clause is a contract autonomous from the</p>

contract in which it is contained.

According to the majority opinion in Italian case law, the autonomy of the arbitration clause is not sufficient to exclude the succession of the assignee in the relationship arising out of the arbitration agreement, and this on the grounds that the assignment of the contract determines the transfer from the assignor to the assignee of the contractual rights and obligations as a whole (see the decisions of the Italian Supreme Court, 28 October 2011, No. 22522; 21 June 1996, No. 5761).

However, according to some decisions, the assignment of contract under Article 1406 CC, does not automatically entail the succession of the transferee in the arbitration clause contained in it: the transferee may be bound by the arbitration clause only if all the parties so agree, or if there is a “functional link” between the clause and the assigned relationship (Italian Supreme Court, 22 December 2005, No. 28497. See also Italian Supreme Court, 7 March 2003, No. 13893).

II.1.b	<p>If your answer to question <u>II.1</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. 		/
II.2	<p>Can incorporation by reference (i.e., where a contract incorporates an arbitration clause contained in a separate document) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	<p>Article 808, para 1, CCP admits that the arbitration clause is contained in a separate document and included in the contract by reference (<i>per relationem</i>).</p> <p>However, in order for the clause to bind the parties, specific conditions must be met.</p>
II.2.a	<p>If your answer to question <u>II.2</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Regarding the execution of arbitration agreements “<i>per relationem</i>”, the traditional view is to consider it valid only when the parties expressly mention the relevant clause in the contract, although without necessarily restating its contents (so-called <i>relatio perfecta</i>). Conversely, a generic statement according to which all terms and conditions of another contract or document apply (so-called <i>relatio imperfecta</i>) is not considered sufficient.</p> <p>See, <i>ex plurimis</i>, Italian Supreme Court, 15 May 2009, No. 11529; Italian Supreme Court, 4 January 2017, No. 81.</p> <p>A special rule applies to arbitration clauses contained in standard contractual terms</p>

			(Article 1341 CC) or in contracts executed by adherence to forms prepared by one contracting party (Article 1342 CC). Pursuant to Articles 1341 and 1342 CC, arbitration clauses contained in general conditions are effective only if they have been expressly approved in writing by the party other than the one that drafted the contract. Italian case law tends to apply these provisions restrictively (see, e.g., Italian Supreme Court, 3 September 2007, No. 18525, according to which the required approval must refer to the relevant clause number or title).
II.2.b	<p>If your answer to question <u>II.2</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	/	
II.3	<p>Can an arbitration clause commit a non-signatory third-party beneficiary of a contract to international arbitration in the country in which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	The contract between two parties in favour of a third party, containing an arbitration clause, binds the third-party beneficiary. The third party may decide not to take advantage of the benefit, but, if it does, the choice of arbitration in case of future disputes is extended to it.

II.3.a	<p>If your answer to question <u>II.3</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>Under Italian law, the reference provision for contracts in favour of third parties is Article 1411 CC according to which: “<i>A stipulation in favour of a third party is valid if the stipulator has an interest in it.</i>”</p> <p><i>Unless otherwise agreed, the third party acquires the right against the promisor as a result of the stipulation. [...]</i></p> <p><i>In case of revocation of the stipulation or refusal of the third party to take advantage of it, the performance remains for the benefit of the promisor, unless it results otherwise from the will of the parties or from the nature of the contract”.</i></p> <p>According to the case law, the arbitration clause contained in a contract in favour of a third party binds the third party if the latter has expressed the will to take advantage of the stipulation, since it is considered that the third party’s will cannot concern but all the contractual clauses as a whole. See Italian Supreme Court, 10 October 2000, No. 13474; Italian Supreme Court, 18 March 1997, No. 2384; Court of Milan, 13 May 2021, No. 4021. Court of Milan, 24 April 2020, No. 2568.</p>
II.3.b	<p>If your answer to question <u>II.3</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. 	/

	[Please provide your response in the comments column and limit it to one paragraph.]		
II.4	<p>Can a theory of agency (i.e., where an agreement containing an arbitration clause has been entered into by a person who expressly or impliedly did so as a representative of a non-signatory) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	In the case of a principal/agent relationship, if the agent has the authority to bind the principal, the real party to the contract executed by the agent is the principal. Therefore, the principal is bound by the arbitration clause contained in the contract.
II.4.a	<p>If your answer to question <u>II.4</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Under Italian law, a person or entity (the agent) may have the authority to enter into a contract in the name and on behalf of another person or entity (the principal). In this case, the contract executed by the representative is binding on the principal (see Articles 1387 ff. CC). A principal/agent relationship (<i>rappresentanza</i>) can be voluntarily established by the parties or by the law.</p> <p>Article 1388 CC provides that “[a] contract entered into by an agent on behalf of and in the interest of the principal, within the limits of the authority conferred upon him, is directly effective as against the principal”. The principal is therefore bound by an arbitration clause contained in a contract executed by the agent having the authority to do so in the name and on behalf of the principal.</p> <p>In this respect, Article 808, para 2, CCP provides that “[t]he power to enter into the agreement includes the power to agree on the arbitration clause”.</p> <p>If the agent has no authority to represent the principal, the principal is not bound by the contract (and the arbitration</p>

			clause). However, according to the “theory of appearance” (<i>principio dell'apparenza</i>), in cases of apparent authority, if the counterparty believes in good faith that such authority exists and the appearance is attributable to the principal, the arbitration clause may be invoked against the principal.
II.4.b	<p>If your answer to question <u>II.4</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		/
II.5	<p>Can a theory of estoppel, good faith, or abuse of right (i.e., where a party benefitting from, and acting in accordance with, a contract containing an arbitration clause is estopped from claiming that it is not bound by certain provisions of the contract) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	<p>Under Italian law there is no general theory of estoppel.</p> <p>Exercising rights deriving from a contract containing an arbitration clause is only relevant, for the purposes of the application of the arbitration clause, in cases codified in law, e.g.: contract in favour of a third party (see Section II.3.a above); fictitious interposition (see Section II.8 below).</p>
II.5.a	<p>If your answer to question <u>II.5</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		/

II.5.b	<p>If your answer to question <u>II.5</u> is no, please:</p> <ul style="list-style-type: none">• Cite and describe the applicable rules contained in any relevant legislation or regulations.• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	Please see Section I.5 above.
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II.6	<p>Can “implied consent” (i.e., where a party’s active participation in the negotiation, execution, performance and/or termination of a contract containing an arbitration clause provides evidence for its intent to consent to arbitration) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	<p>As stated in Section I.5 above, under Italian law the general principle is that arbitration clauses are only binding on the parties who expressly agreed to them.</p> <p>On this premise, a significant and active role in the deal or a holding/subsidiary relation between companies are not considered relevant for the purposes of extending the arbitration clause to non-signatories.</p> <p>However, if a fictitious interposition can be recognized, pointing to the third party as the real party of the contract, or it is possible to refer to the appearance doctrine, the third party may be bound by the arbitration clause. These cases will be discussed in Section II.8 below.</p>
II.6.a	<p>If your answer to question <u>II.6</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		/
II.6.b	<p>If your answer to question <u>II.6</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		Please see Section I.5 above.

II.7	<p>Can piercing the corporate veil or the alter ego doctrine (i.e., where, typically due to misuse or abuse of rights or fraud, the separate legal form of a non-signatory that uses its dominating authority over a signatory is disregarded so that both are treated as a single entity) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	<p>A situation of extension to a non-signatory party of the arbitration clause contained in a contract may occur when the disputes involve a corporate entity and applicable law allows the “piercing of the corporate veil”.</p> <p>Italian law (applicable to companies incorporated in Italy) does not admit the piercing of the corporate veil, unless there is evidence of an abuse of the legal personality of the company (which may occur in very exceptional cases).</p>
II.7.a	<p>If your answer to question <u>II.7</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Under Italian law, an abuse of legal personality of a company may occur when a majority shareholder <i>de facto</i> dominates the management of the company and uses it for its own benefit, in breach of the legal provisions safeguarding the independence and correct management of the company (so-called <i>socio tiranno</i>).</p> <p>In similar cases, the company’s shareholder may be bound by an arbitration agreement entered into by the company.</p> <p>In one case, the <i>socio tiranno</i> has been held bound by the award rendered against the company (see Court of Lucca, 13 January 2016).</p>
II.7.b	<p>If your answer to question <u>II.7</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. 		/

	<ul style="list-style-type: none"> Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.8	<p>In the country for which you are reporting, are there any other legal theories that can be used to commit a non-signatory to international arbitration?</p>	Yes	<p>Under Italian law, a non-signatory may be committed to international arbitration also in case of fictitious interposition (<i>interposizione fittizia</i>) and under the theory of appearance (<i>principio dell'apparenza</i>).</p>

II.8.a	<p>If your answer to question <u>II.8</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Fictitious interposition is a type of simulation (<i>simulazione</i> - sham contract). It occurs when there is a discrepancy between the formal and the “real” parties to a contract, and all the parties agree that the contract shall have effects between the “real” parties (Article 1414, para 2 CC: “<i>If the parties have intended to conclude a contract other than the apparent one, the simulated contract is effective between them, provided that the requirements of substance and form are met</i>”). In this case, the “real” non-signatory party may be bound by the arbitration agreement contained in the contract.</p> <p>The theory of appearance (discussed under Section II.4.a above in the context of principal/agent relationships) is a general principle of the Italian legal system. According to this theory, if a person relies in good faith on an apparent reality, this person may invoke the legal rights arising out of this apparent reality against the person who created it. This principle may also have the effect of extending an arbitration clause to a non-signatory.</p>
III. Enforcement of an Arbitral Award against a Non-Signatory		(Yes/No/NA)	Additional comments, if any.
III.1	Have there been court cases in the country for which you are reporting where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories?	NA	To enforce a foreign arbitral award in Italy, first of all, the petitioner must obtain from the competent court a declaration that the award meets the requirements to be recognised and enforced in

		<p>Italy (<i>exequatur</i>). <i>Exequatur</i> proceedings are <i>ex parte</i> and are governed by Article 839 CCP. Pursuant to Article 840 CCP, after issuance of the <i>exequatur</i>, the counterparty has 30 days from its service to challenge it. The grounds for revoking the <i>exequatur</i> and deny recognition and enforcement to the foreign arbitral award are those set out in Article V of the New York Convention (i.e., (a) invalid arbitration agreement, (b) defendant not having been given proper notice of the arbitration or having been unable to present his case, (c) award outside or exceeding the scope of the arbitration agreement, (d) composition of the arbitral tribunal not in accordance with the arbitration agreement, (e) award not having become binding or having been set aside or suspended in country where it was made).</p> <p>To the best of our knowledge, we are not aware of any court cases where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories.</p> <p>That said, we note that a party wishing to object the enforcement of an award on such grounds would likely invoke letter (c) of Article V of the New York Convention (award outside or exceeding the scope of the arbitration agreement).</p>
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III.1.a	<p>If your answer to III.1 is <u>yes</u>, please explain which provision(s) of the New York Convention, or any other bilateral or multilateral convention on the enforcement of arbitral awards, was (were) relied upon as the basis for the application/objection.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		/
III.1.b	<p>If your answer to III.1 is <u>yes</u>, please explain whether set-aside/enforcement was finally granted or refused, and the court's reasons for reaching this result.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		/
III.2	<p>Have there been court cases in the country for which you are reporting in which the enforcement of an award was requested against a non-signatory third party (a company/individual/state that was a non-signatory to the arbitration agreement and not a party to the arbitral proceedings/award)?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	<p>To the best of our knowledge, we are not aware of any court cases where the enforcement of an award was requested against a non-signatory third party that was also not a party to the arbitral proceedings and the arbitral award.</p> <p>However, please note that:</p> <ul style="list-style-type: none"> – if the applicant tries to obtain an <i>exequatur</i> against a third party that was not involved in the arbitral proceedings, then its application should be rejected for lack of the necessary formal requirements; – if the applicant obtains an <i>exequatur</i> and then tries to enforce the award against a third party that was not involved in the arbitral proceedings nor in the <i>exequatur</i> proceedings, the third party may oppose the enforcement pursuant to Article 615 CCP for lack of a valid title to commence enforcement proceedings over the third party's assets.

III.2a	If the answer to III.2 is <u>yes</u> , please explain on what legal basis the enforcement was requested. [Please provide your response in the comments column and limit it to one paragraph.]		/
III.2b	If the answer to III.2 is <u>yes</u> , please explain whether the enforcement was finally granted/refused and the court's reasons for reaching this result. [Please provide your response in the comments column and limit it to one paragraph.]		/
IV. Miscellaneous		(Yes/ No /NA)	Additional comments, if any.
IV.1	Is there anything else that a party considering the issue of the extension of an arbitration clause to a non-signatory should take into account with respect to the country for which you are reporting? [Please provide your response in the comments column and limit it to one paragraph.]	No	All relevant issues were discussed in the previous Sections.
IV.2	Is there anything else that a party considering trying to enforce a foreign arbitral award against a non-signatory should take into account with respect to the country for which you are reporting? [Please provide your response in the comments column and limit it to one paragraph.]	No	All relevant issues were discussed in the previous Sections.

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