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IBA ARBITRATION COMMITTEE

Arbitration Guide

ITALY

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

The use of arbitration in Italy is steadily increasing, but court litigation is still by far the most common dispute resolution mechanism.

The perceived principal advantages of arbitration are:

- speed – especially if compared with court proceedings, which in Italy may be extremely lengthy;
- expertise – arbitration is mostly used for complex disputes which may require specific know-how;
- ability to appoint the arbitrators – the right of each party to appoint an arbitrator is perceived as a guarantee that each party's arguments will be taken into due consideration;
- neutrality – especially in disputes involving parties of different nationalities who are not confident in submitting the dispute to local courts; and
- confidentiality – even if the issue is not entirely settled in Italy.

The perceived principal disadvantages of arbitration are:

- high cost – in Italy court fees are relatively low if compared to the fees of arbitrators, which may be quite high particularly in ad hoc arbitrations, where it is not infrequent that arbitrators' fees are calculated as a percentage of the amount in dispute; and
- complexity – especially for those not familiar with arbitration procedures.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitration is ad hoc, but the use of institutional arbitration is steadily increasing.

Most arbitration seated in Italy is domestic. Recourse to arbitration by Italian parties in international transactions is very frequent, but in this case the seat is very often abroad.

The Milan Chamber of Arbitration has gained a very solid reputation both for domestic and international arbitration over the past 25 years and is frequently used for international disputes.

(iii) What types of disputes are typically arbitrated?

According to the last available statistics by the Milan Chamber of Arbitration, corporate disputes are the most arbitrated, followed by disputes arising from the rental, sale and purchase of company assets and branches, supply agreements and construction disputes.[1]

(iv) How long do arbitral proceedings usually last in your country?

Pursuant to Article 820 of the Civil Procedure Code (CPC), unless otherwise agreed by the parties, arbitrators must render the award within 240 days of their appointment. The term is automatically extended by a further 180 days when: (i) there is the need to collect evidence; (ii) a technical expert is appointed by the arbitral tribunal; (iii) a partial award is rendered;

1 Milan Chamber of Arbitration, Arbitration Facts & Figures, available at: **www.camera-arbitrale.it/en/arbitration/arbitration-facts-figures.php?id=354**.

or (iv) there is a change in the composition of the arbitral tribunal or the sole arbitrator is replaced. The term may be further extended with the agreement of the parties or by a reasoned decision of the presiding arbitrator.

In practice, the duration of arbitral proceedings depends on the complexity of the case and the deadline is usually extended by the parties in the more complex cases.

According to the last available statistics,[2] awards in proceedings administered by the Milan Chamber of Arbitration are rendered, on average, 13 months after the filing of the request for arbitration.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Foreign nationals can act both as counsel and arbitrator in Italian arbitrations, without restrictions.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

Arbitrations with the seat in Italy are governed by Italian arbitration law, which is contained in Title VIII of the Fourth Book of the CPC (Articles 806-840). These provisions – which were last amended in October 2022[3] – allow for significant party autonomy and, for the most part, operate only insofar as the parties have not adopted specific rules, including by reference to arbitration rules.

The arbitration reform enacted in 2006 eliminated the differences between international and domestic arbitration. Since 2006, the applicable rules are, therefore, the same for both categories of arbitral proceedings (with one small exception, which is discussed in the following question).

Italian law is not based on the UNCITRAL Model Law. However, many of the principles of the Model Law are recognized in Italian law.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

As mentioned above, in 2006 Italy removed the distinction between domestic and international arbitration. The only remaining difference relates to the power of domestic courts in case of annulment of the award. Under Article 830.2 CPC, if one of the parties was a foreign resident when the arbitration agreement was signed, the Court of Appeal has the power to decide on the merits of the dispute after the annulment of the award only if that was explicitly provided for in the arbitration agreement or if the parties jointly ask the Court of Appeal to do so. The opposite rule applies for domestic arbitrations.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Italy is a party to the following international treaties relating to arbitration:

- The 1927 Geneva Convention on The Execution of Foreign Arbitral Awards (entered into force on 12 February 1931);

2 *Ibid.*

3 Legislative Decree No. 149/2022 of 18 October 2022 (LD 149/2022).

- The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (entered into force on 1 May 1969);
- The 1961 European Convention on International Commercial Arbitration (entered into force on 1 November 1970) and
- The 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (entered into force on 28 April 1971).

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

LD 149/2022 introduced a new Article 822 CPC according to which 'when the arbitrators are called to decide according to the rules of law [rather than *ex aequo et bono*], the parties, in the arbitration agreement or in a written document predating the commencement of the arbitration, may indicate the rules or a foreign law as the law applicable to the merits of the dispute. In the absence of such a choice, the arbitrators shall apply the rules or the law identified in accordance with the conflict criteria which they deem applicable'. In essence, in the absence of an express choice by the parties, the arbitrators are granted broad discretion in the identification of the applicable conflict of law rules, without being bound to apply predetermined rules or criteria.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

Pursuant to Articles 807 and 808 CPC, arbitration agreements must: (*i*) be made in writing; and (*ii*) specify the object of the dispute. Article 807 specifies that the requirement of written form is also complied with when the agreement of the parties is exchanged by fax, email, telegraph or telex. Arbitration agreements are null and void if not made in writing.

Article 809.2 CPC provides that the arbitration agreement must contain the appointment of the arbitrators or provide for the number and the manner in which they are to be appointed.

In addition, Article 4.2 of Law 218/1995 on Private International Law provides that the jurisdiction of Italian courts may be derogated from in favour of a foreign court or arbitral tribunal if such derogation is evidenced in writing.

According to Articles 1341(1) and 1342(2) of the Italian Civil Code (CC), arbitration clauses contained in standard contractual terms (*condizioni generali di contratto*) or predetermined forms (*moduli o formulari*) are effective only if they are 'expressly approved in writing' by the party other than the one who drafted the contractual document.

Except for the formal requirements above, there are no further specific requirements for an arbitration agreement to be binding and enforceable under Italian law.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Italian courts tend to enforce arbitration agreements and therefore to stay court proceedings when an arbitration agreement is invoked. Pursuant to Article 808-*quater* CPC, agreements to arbitrate must be interpreted broadly. This means that, in case of doubt, the arbitration agreement must be construed as giving the arbitral tribunal jurisdiction over all disputes arising from the contract or from the relationship to which the agreement relates.

The Italian Supreme Court held that when a contract contains both an arbitration clause and a forum selection clause, the judge must construe the parties' intention also considering the general principle of *favour arbitrati* enshrined in Article 808-*quater* CPC.[4]

The invalidity of the arbitration agreement is a ground for the setting aside and refusal of enforcement of an award.

The practice of Italian courts is more problematic when a provisionally enforceable *decreto ingiuntivo* (injunctive decree) is issued in relation to a matter subject to arbitration. A *decreto ingiuntivo* is an order to pay issued *ex parte* by an Italian court when the claim is based on written evidence. A *decreto ingiuntivo* may be provisionally enforceable. Faced with an *ex parte* request for a provisionally enforceable *decreto ingiuntivo*, courts will not raise the arbitration exception of their own motion, with the consequence that the issue will have to be raised by the party relying on the arbitration agreement in the subsequent proceedings to contest the *decreto ingiuntivo*, at which point, however, the *decreto* might be provisionally enforceable. The proceedings on the merit to contest the *decreto ingiuntivo* may last several months.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tier clauses are not very common. However, their use increased as a consequence of the new impulse given to mediation by Legislative Decree of 4 March 2010, No. 28 (see response to question (ii) of section XVII). Pursuant to Article 5.5 of Legislative Decree No. 28, if the law or the contract provides for a preliminary mediation or conciliation attempt, the judge, or the arbitrators, upon request of one of the parties, shall order the parties to file the request for mediation or conciliation before the competent authority and shall resume the proceedings after three months (ie, the maximum duration established by Article 6.1 of the Decree No. 28 for the mediation proceedings). Article 5.1-*bis* of Legislative Decree No. 28 explicitly provides that the mediation or conciliation attempt (if agreed by contract or provided for by the law) is a condition of admissibility of the action before the judge or the arbitrators (*condizione di procedibilità*).

Courts have held that multi-tier clauses are enforceable and failure to follow the steps provided for therein is a bar to bringing the action before an arbitral tribunal *(improcedibilità*).[5]

(iv) What are the requirements for a valid multi-party arbitration agreement?

Article 816-*quater* CPC provides that if two or more parties are bound by the same arbitration agreement, each one may request that all or some of the other parties be summoned in the same proceedings, if: (*i*) the arbitration agreement provides for the appointment of all the arbitrators by a third party; (*ii*) all the parties agree on the appointment of the arbitrators; or (*iii*) the respondents agree to appoint an equal number of arbitrators as the claimants or agree to the appointment of their arbitrators by a third party. If this mechanism fails, the claimant must initiate separate arbitration proceedings against each respondent. Moreover, Article 816-*quater* CPC provides that if the mechanism fails and the participation to the proceedings of all parties to the dispute is required by law (*litisconsorzio necessario*), the arbitration agreement becomes inoperative and the parties must go to court.

Finally, pursuant to Article 838-*bis* CPC on corporate arbitration, arbitration clauses contained in the articles of association of a corporation must provide for the appointment of all of the arbitrators by a person or entity external to the corporation. This provision is aimed at avoiding the problems connected with multiparty arbitrations between shareholders or between shareholders and the corporation (for example, conflicting interests of the parties involved).

4 Court of Cassation, 14 October 2016, No. 20880; Tribunal of Milan, 26 November 2020, No. 7692.

5 Tribunal of Busto Arsizio, 27 October 2003, in (2003) Rivista dell'arbitrato 477.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

There is no specific provision in the CPC on this point. Some very old decisions[6] and a more recent decision of the Court of Cassation[7] declared such an agreement to be enforceable. However, this approach has been criticised by scholars and the issue is not entirely settled.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

The general rule is that arbitration agreements bind only the signatories. The theories of *alter-ego*, veil-piercing and the group of companies' doctrine are not entirely settled in Italy. However, some courts have extended arbitration agreements to non-signatories in cases of: (*i*) third-party beneficiaries of a contract containing an arbitration agreement;[8] (*ii*) assignment of a contract containing an arbitration agreement;[9] (*iii*) assignment of a credit deriving from a contract containing an arbitration agreement;[10] (*iv*) succession of companies;[11] and (*v*) disputes arising from connected transactions.[12]

Case law also permits arbitration in relation to contracts which do not contain an arbitration clause, but refer to an arbitration clause contained in a different document (reference by *relatio perfecta*). Conversely, the mere reference to a document containing an arbitration clause, and not specifically to its clause (reference by *relatio imperfecta*), is usually not considered sufficient to establish the parties' consent to arbitration.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

If the parties have made no express choice of the law governing the arbitration agreement, Italian courts will apply the conflict of law rules applicable to contractual obligations and, in particular, Article 4.4 of the Rome I Regulation, which refers to the law of the country with which the arbitration agreement is 'most closely connected'. Arguably, in most cases, such law would be the law of the seat of the arbitration.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

The seat of the arbitration is unrelated to the venue of the arbitration's meetings/hearings. In this respect, Article 816.3 CPC clarifies that, unless otherwise provided by the parties in the arbitration agreement, the arbitrators may conduct the hearings, gather evidence, deliberate and sign the award in locations different from the seat of the arbitration and even abroad.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

There is no specific case law yet on this issue. However, there are no rules forbidding that blockchain and NFT related disputes be brought to arbitration.

6 Court of Appeal of Milan, 21 November 1941; Court of Cassation, 19 October 1960, No. 2837; Court of Cassation, 22 October 1970, No. 2096.
7 Court of Cassation, 22 May 2015, No. 10679.
8 Court of Cassation, 10 October 2000, No. 13474.
9 Court of Cassation, 22 December 2005, No. 28497.
10 Court of Cassation, 21 March 2007, No. 6809.
11 Court of Cassation, 28 March 2007, No. 7652.
12 Court of Cassation, 19 December 2000, No. 15941.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

According to Article 816-*quarter* a valid arbitration agreement may become 'inoperable' in a multi-party arbitration if the mechanisms for the appointment of the arbitrators established in Article 816-*quarter* (see section III (iv) above) fail and the dispute is characterized by a *litisconsorzio necessario*.[13] In that case, the arbitration cannot proceed (it shall be declared '*improcedibile*') and the dispute must be brought to court.[14]

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

The notion of 'arbitrability' is set forth in Article 806.1 CPC ('Arbitrable disputes'), according to which the parties can submit to arbitration all disputes except for disputes (*i*) concerning rights that cannot be freely disposed of (*diritti indisponibili*) and (*ii*) those that cannot be arbitrated under specific laws.

'Non-disposable rights' relate to matters for which Italian law grants a right of action to the public prosecutor such as, for example, rights pertaining to the status and capacity of individuals, matrimonial relationships, and 'very personal rights' (*diritti personalissimi*) such as the right to the integrity of the body or to the name (Articles 5 and 6 CC). There are also other disputes that, although pertaining to 'disposable rights', are not arbitrable pursuant to express prohibitions set out in statutes (in particular, certain categories of individual labour disputes and insolvency disputes). Non-arbitrability is therefore the exception to the rule that all disputes may be submitted to arbitration.[15]

Arbitrability is considered a matter of jurisdiction rather than admissibility.

If the issue of arbitrability arises before the arbitrators, they will decide according to the *competence-competence* principle enshrined in Article 817.1 CPC (see point (iii) below). If, on the other hand, arbitration proceeding have not been instituted yet and the issue of arbitrability is brought before a state court (where the existence of an arbitration agreement is invoked) the court shall decide (Article 819-*ter*.1 CPC).

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

Pursuant to Article 819-*ter*.3 CPC, when arbitral proceedings are pending, the courts must refrain from deciding on jurisdiction. In this case, the arbitrators have exclusive competence to verify their own powers (*competence-competence*).

Under Article 819-*ter*.1 CPC the objection to the jurisdiction of a court based on an arbitration agreement must be raised in the first response brief. By the same token, pursuant to Article 817.2 CPC, the objection to the jurisdiction of the arbitrators must be raised in the first brief filed after the appointment of the arbitrators.

The right to arbitrate is considered waived if the objection to the jurisdiction of the court is not raised, in court proceedings, within the deadline set by Article 819-*ter*.1 CPC mentioned above.

13 According to Article 102(1) CPC :'if a decision must necessarily be rendered towards a plurality of parties, these parties shall act as claimants or be called as respondents in the same court proceeding'. Examples of *litisconsorzio necessario* are disputes over the termination of a multi-party contract; the validity of a shareholders' meeting resolution; the right of a property commonly owned by multiple parties.

14 Massimo Benedettelli, *International Arbitration in Italy* (Kluwer Law International 2020) para 4.21-4.39.

15 For a more detailed discussion on 'arbitrability' of disputes under Italian law see the 'Report on the Comparative Study on "Arbitrability" under the New York Convention' (IBA 2016) available at: **www.ibanet.org/document?id=Subcommittee-on-Recognition-and-Enforcement-of-Arbitral-Awards-Arbitrability-Sept-2016.**

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

As noted above, arbitrators can decide on their own jurisdiction. The principle of *competence-competence* is recognised by Articles 817.1-2 and 819-*ter*.3 CPC. As explained above, pending an arbitration proceeding, the parties may not file a court action contesting the validity or the enforceability of the arbitration agreement.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Arbitrators are selected according to the rules contained in the arbitration agreement.

Pursuant to Article 810.2 CPC, if the appointment of the arbitrators is not dealt with in the arbitration agreement or if the mechanisms foreseen by the parties cannot work due to the action or obstruction of one of the parties, the other party may request the intervention of the president of the court of first instance (*Tribunale*) at the seat of the arbitration. According to Article 810.3 (as amended by LD 149/2022), when courts are called to appoint an arbitrator, they shall do so according to standards of 'transparency, turnover and efficiency'. To that effect, courts are now required to publish the appointments on their websites.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Article 813.1 CPC provides that arbitrators shall accept their appointment in writing by signing the arbitration agreement or the minutes of the first meeting. LD 149/2022 introduced a new provision to Article 813.1 CPC, according to which the acceptance must be accompanied, under penalty of nullity, by a declaration in which the arbitrators shall disclose any circumstance relevant for a challenge under Article 815 CPC (see point (iii) below) or indicate the absence thereof. Article 813.1 CPC also specifies that disclosure is a continuing legal obligation as the arbitrators are obliged to '*renew*' the declaration if new relevant circumstances arise throughout the proceedings.

If the arbitrator fails (*i*) to render a declaration or (*ii*) to disclose circumstances that may lead to a challenge, the parties may request – within ten days of the arbitrator's acceptance or of the discovery of the omitted circumstances – the removal of the arbitrator. The request shall be filed with the president of the court of first instance (*Tribunale*) at the seat of the arbitration who – after having heard the arbitrator and the parties – shall decide with a non-appealable order.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Article 812 CPC provides that persons lacking legal capacity (for example, minors or mentally disabled persons) cannot serve as arbitrators.

Article 815.1 CPC provides that a person may not serve as arbitrator and may be challenged if he or she:

- lacks the qualifications indicated by the parties;
- has an interest in the case;
- (or his or her spouse) is a relative, or lives with, a party, one of its legal representatives or its counsel;
- (or his or her spouse) is involved in a case pending against, or has a serious enmity with, one of the parties, one of its legal representatives or counsel;

- is an employee or a partner or does business which might affect his or her independence vis-à-vis one of the parties, with a company controlled by that party, with its controlling entity or with a company subject to its common control; furthermore, if he or she is a guardian or a curator of one of the parties or
- has given advice, assistance or acted as counsel to one of the parties in a prior phase of the same case or has testified as a witness.
- LD 149/2022 has introduced in Article 815 CPC a new general ground for challenge, which is 'the existence of serious reasons of convenience, which may affect the arbitrator's independence or impartiality'.
- Arbitrators must comply with the ethical duties of the professional association to which they belong (if any).

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

Article 61.2 of the Code of Conduct of the Italian Bar Association provides that lawyers shall not act as arbitrators if (*i*) they have professional relations with one of the parties or (*ii*) they had such relations in the past two years, or if (*iii*) one or more conditions listed in Article 815 CPC (challenge of arbitrators) occur. Article 61.3 of the Code of Conduct also provides that lawyers acting as arbitrators must disclose any relationship, fact and event that might affect their independence.

The IBA Guidelines on Conflicts of Interest in International Arbitration (Conflicts of Interest Guidelines) are quite frequently followed by Italian arbitration practitioners.[16] According to the 2016 Report on the Reception of the IBA Arbitration Soft Law Products: 'In Italy, Conflicts of Interest Guidelines were referenced in 53 per cent of arbitrations in which conflicts of interest issues arose at the time of the constitution of the arbitral tribunal […]. Practitioners acting as counsel or arbitrators consulted the Conflicts of Interest Guidelines frequently when deciding to take on or make an appointment or make disclosure'[17].

As to the application of the Conflicts of Interest Guidelines by national courts, according to the IBA Report: 'In […] Italy there appeared to be no cases referencing the Conflicts of Interest Guidelines' since 'judicial courts tend not to apply or refer to the Conflicts of Interest Guidelines at all'.[18]

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

LD 149/2022 introduced an entirely new discipline on arbitral interim measures, which constitutes a paradigm shift with respect to the anachronistic prohibition contained in the old version of Article 818 CPC according to which 'arbitrators [could] not grant attachments or other interim measures, except if otherwise provided by the law'. LD 149/2022 has reversed the situation. The amended Article 818 CPC now provides that '[t]he parties may, also by reference to arbitration rules, confer to the arbitrators the power to grant interim measures in the arbitration agreement or in a separate agreement in writing prior to the commencement of the proceedings'. Article 818 CCP further provides that if the parties have agreed to grant the arbitral tribunal the power to issue interim measures, that power 'shall be exclusive'. No exceptions are contemplated. This means that, once the arbitral tribunal has been constituted, the parties can no longer seek interim relief from national courts.[19]

16 The Milan Chamber of Arbitration has established the practice to invite prospective arbitrators to read carefully the IBA Guidelines before compiling their declaration of independence pursuant to Article 20 of the Arbitration Rules.

17 IBA Arbitration Guidelines and Rules Subcommittee, *Report on the Reception of the IBA Arbitration Soft Law Products*, available at https://www.ibanet.org/document?id=Subcommittee-on-Arbitration-Guidelines-and-Rules-IBA-soft-law-products-Sept-2016, § 118.

18 *Ibid,* § 165.

19 Article 818.2 CPC states that 'before the acceptance of the sole arbitrator or the constitution of the arbitral tribunal, the request for interim relief shall be filed with the competent judge pursuant to Article 669-*quinquies*', ie, with the judge which would have been competent to adjudicate the merits of the dispute in the absence of an arbitration agreement.

The CPC provides no limitations as to the types of interim measures that can be issued by arbitrators, nor does it impose specific requirements as to the form of the tribunal's decision.

As stated above, courts are prevented to grant interim measures if the parties have agreed to confer such power to the arbitral tribunal. The intervention of national courts is however contemplated *after* the issuance of the interim measures, for their challenge and enforcement. According to Article 818-*bis* CPC, the arbitral tribunal's decision to grant or deny interim measures may be challenged before the Court of Appeal of the district in which the arbitration is seated. The challenge must be filed within 15 days from the notification of the measure issued by the arbitral tribunal, and the Court of Appeal must render a decision on the challenge (which is non appealable) within 20 days. The grounds for the challenge of interim measures are the same as those provided for arbitral awards.[20]

Article 818-*ter* CPC provides that interim measures issued by arbitral tribunals shall be enforced pursuant to Articles 669-*duodecies* and 677 ff. CPC, which respectively govern the enforcement of interim measures issued by national courts and judicial seizures.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Italian courts have the power to grant interim measures in support of arbitral proceedings only before the constitution of the arbitral tribunal.

An interim measure issued before the constitution of the arbitral tribunal will remain in force also during the arbitral proceedings, unless the arbitral tribunal – upon request by a party – revokes it or modifies it.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

Italian courts may provide evidentiary assistance/provisional relief in support of arbitration in two main instances. First, a party may seek an order for the preservation of evidence (Articles 692-699 CPC). In particular, a court may hear a witness or order the inspection of a place or a good if that evidence risks not being available in the future. These forms of interim relief can be sought only before the constitution of the arbitral tribunal. Second, if a witness refuses to appear before the arbitral tribunal, the arbitrators may seek an order from the President of the court of first instance *(Tribunale*) at the seat of the arbitration compelling the witness to appear before the arbitral tribunal (Article 816-*ter*.3 CPC).

(iv) Are decisions by emergency arbitrators enforceable in your country?

Pursuant to Article 818-*ter* CPC, interim measures issued by 'arbitrators' are enforceable. According to authors, there should be no obstacle in interpreting the reference to 'arbitrators' in Article 818-*ter* CPC as extending to emergency arbitrators.[21] However, there is no case law yet on this issue.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

Italian courts, as courts in other civil-law jurisdictions, do not have the power to issue 'anti-suit injunctions' aimed at preventing a party to an arbitration agreement from commencing or continuing court proceedings in other jurisdictions. By the same token, Italian courts would not recognize and enforce anti-suit injunctions issued by foreign courts (or arbitral tribunals) in relation to parallel court proceedings initiated in Italy.[22] On the other hand – especially after the introduction

20 See section XII (i) below.

21 Andrea Carlevaris, 'La legge-delega per la riforma dell'arbitrato: verso il riconoscimento dei poteri cautelari degli arbitri?'(2022) Rivista di diritto internazionale 163. Fabio Santacroce, Andrea Melchionda, 'Thou Shalt Have the Power to Grant Interim Relief: The Reform of the Italian Regime on Arbitral Interim Relief' (2023) Journal of International Arbitration 491-492.

22 In this respect see case C-185/07 *Generali Assicurazioni Generali SpA v. West Tankers* [2009].

of the new Article 818 CPC (see section VI (i) above) – nothing seems to prevent arbitral tribunals seating in Italy from issuing anti-suit injunctions concerning foreign court proceedings initiated by one of the parties to the arbitration.[23]

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Orders for the production of documents issued by an arbitral tribunal (seated in Italy or abroad) are not enforceable before Italian courts.[24] Italian courts, however, have jurisdiction to issue interim measures in aid of foreign-seated arbitrations (eg, order a pre-trial expert opinion or a pre-trial inspection) if the measure shall be enforced in Italy.[25]

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

There is no specific rule on disclosure or discovery in arbitration. Since it is an issue of procedure, it is left to the agreement of the parties or to the arbitrators. In purely domestic arbitrations, disclosure or discovery is very rare. In international arbitration, disclosure or discovery is more common, especially if one of the parties and its counsel come from a common law system.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

There are no specific limits. However, discovery in Italian arbitration proceedings will generally not be particularly extensive and intrusive.

(iii) Are there special rules for handling electronically stored information?

There are no specific rules. However, parties and arbitrators should be aware that the handling of electronically stored information might be restricted by some provisions of Legislative Decree of 30 June 2003, No. 196 which implemented in Italy Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

There is no specific rule on confidentiality. However, confidentiality seems to be generally considered as an implied term of the arbitration agreement.

23 In this respect see case C-536/13 *"Gazprom" OAO v Lietuvos Respublika* [2015].
24 Laura Salvaneschi, *Arbitrato* (Zanichelli 2014) 447.
25 Tribunale di Genova, 4 July 2019 (2019) Rivista dell'arbitrato 753.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There are no specific provisions. However, the arbitral tribunal may adopt specific measures to protect trade secrets and confidential information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

There is no specific rule.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The use of the IBA Rules on the Taking of Evidence in International Arbitration (IBA Evidence Rules) is not common in purely domestic arbitrations. However, their use, or at least reference to them, is steadily increasing in international arbitrations seated in Italy.

According to the 2016 '*Report on the Reception of the IBA Arbitration Soft Law Products*', the IBA Evidence Rules were referred to in approximately 45% of the international arbitrations in Italy.[26]

The Court of Appeal of Milan, in the case *Alstom Ferroviaria S.p.A. v. Pluvalor International Inc*[27] held that the arbitral tribunal correctly applied Article 9.2 of the IBA Evidence Rules, thereby impliedly acknowledging that the application of these Rules is fully within the arbitral tribunal's procedural discretion.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Under Article 816-*bis* CPC, arbitral tribunals have the power to govern the hearings as they deem appropriate, subject to any rules agreed by the parties. However, arbitrators must always respect due process, giving the parties a reasonable and equivalent opportunity to be heard.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

Traditionally, witness testimony in Italy was exclusively oral. However, the use of witness statements is becoming more common. Cross examination is still perceived as inappropriate by traditional Italian lawyers inexperienced in international arbitration. Therefore, particularly in traditional domestic arbitrations, it is usually the arbitral tribunal that questions the witnesses on the basis of questions formulated in written form by each party's counsel.

26 IBA Arbitration Guidelines and Rules Subcommittee, 'Report on the Reception of the IBA Arbitration Soft Law Products' available at **www.ibanet.org/document?id=Subcommittee-on-Arbitration-Guidelines-and-Rules-IBA-soft-law-products-Sept-2016,** § 30 (the percentage refers to the arbitrations in which the Italian practitioners responding to the survey where involved at the time).

27 Court of Appeal of Milan, 11 July 2012, No. 3571/2009.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

There are no specific rules on who can or cannot appear as a witness in arbitral proceedings, nor are there any mandatory rules on oath or affirmation.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

In court proceedings the party or a person specially connected with one of the parties cannot be heard as a witness. However, this rule does not apply to arbitral proceedings, even though in traditional domestic arbitration such persons are usually treated differently from ordinary witnesses. In any event, arbitrators are free to assess the evidence of witnesses in light of their relationship with the parties and/or neutrality with respect to the outcome of the proceedings.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

There are no rules on the presentation of expert testimony or on the formal requirements regarding the independence and/or impartiality of expert witnesses.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

In arbitrations involving complex technical issues, it is fairly common that arbitrators appoint a technical expert. This possibility is explicitly foreseen by Article 816-*ter*.5 CPC which allows arbitrators to be assisted by one or more technical experts who can be either individuals or companies.

The expert appointed by the arbitrators is considered an assistant of the arbitral tribunal and his/her evidence is usually given considerable weight.

In arbitration (unlike in court proceedings), there is no requirement that experts be selected from a particular list.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

As in court proceedings, also in arbitration, witnesses may be heard together. In general, witness conferencing is guided by the arbitrators. There are no particular formalities.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

When the arbitration is complex and involves significant monetary amounts, arbitral tribunals usually appoint an arbitral secretary. There are no specific rules on this.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

Italian lawyers acting as counsel or arbitrators must comply with the Code of Conduct of the Italian Bar Association which contains some specific provisions on arbitration (see section V (iv) above).

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

LD 149/22 has introduced new Article 127-*bis* CPC according to which judges may decide to hold court hearings by video-conference, except if the hearing requires the presence of someone other than the parties, their counsel, the public persecutor and the judge's assistants (eg witnesses). That provision does not apply to arbitration proceedings. However, it is submitted that, according to the broad procedural discretion granted to arbitrators by Article 816-*bis* CPC (see section IX (ii) above) – arbitrators seating in Italy have the power to conduct remote hearings, including hearings involving witnesses and experts.[28]

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

The formal requirements of awards are listed in Article 823 CPC, which provides that awards must be made in writing and decided at least by a majority of the arbitrators. The chairman does not have a casting vote in case of disagreement between the members of the tribunal.

The award must contain:

1. the names of the arbitrators;
2. the place of arbitration;
3. the names of the parties;
4. the arbitration agreement and the parties' prayers for relief;
5. a summary reasoning;
6. the conclusions or dispositive section (*dispositivo*) which must contain the final decision on the matter;
7. the signature of the arbitrators. The signature of the majority is sufficient, but if the decision is not unanimous, the award must mention that it was made with the participation of all the arbitrators and that certain arbitrators were either unwilling or unable to sign and
8. the date of the signatures.

Pursuant to Article 829 CPC, the award is null and void if it does not contain the requirements listed in 5, 6 and 7 above.

There is no limitation as to the types of permissible relief.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

There is no general legal basis under Italian law to award punitive or exemplary damages. Accordingly, arbitrators cannot award punitive damages if Italian law is applicable to the merits of the case. Until recently, Italian case-law also established that foreign decisions awarding punitive damages were not entitled to recognition in Italy as they were considered to be in contrast with Italian public policy. By judgment No. 16601 of 5 July 2017, the Italian Supreme

28 In this respect see also Giacomo Rojas, Benedetta Moro, 'ICCA Projects - Does a Right to a Physical Hearing Exist in International Arbitration? National Report – Italy', available at **https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Italy-Right-to-a-Physical-Hearing-Report_1.pdf.**

Court, in plenary session, overturned this jurisprudence. It first acknowledged that, under Italian law, civil liability has a 'multifunctional' nature and, in specific circumstances, it pursues a sanctioning objective which goes beyond the simple compensatory/restorative function. As a consequence, the Court held that there is no ontological incompatibility between punitive damages and the Italian legal system. The Court, however, specified that a foreign decision awarding punitive damages must satisfy certain requirements to pass the public policy scrutiny. Precisely, punitive damages must be grounded on a clear and express legal provision which must stipulate their maximum amount in order to make them predictable. Moreover, those punitive damages must be proportional to the compensatory damages awarded and to the unlawful conduct at bar.

As to interest and compound interest, Italian law contains no restrictions.

(iii) Are interim or partial awards enforceable?

An interim or partial award that contains a final decision on the merits is immediately enforceable.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Arbitrators may issue dissenting opinions to the award. There are no specific rules on the form and content of such opinions.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

There is no specific rule on awards by consent. In principle, there are no obstacles under Italian law for the making of such awards, although some scholars contest their admissibility under Italian law.

Proceedings can be terminated if the parties settle the dispute or, in case of suspension pursuant to Article 819-*bis* CPC, if proceedings are not resumed within the term fixed by the arbitrators or within a year from the lapse of the cause of suspension.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Pursuant to Article 826 CPC, within a year from the rendering of the award, each party may request the arbitrators: (*i*) to correct omissions or clerical and computational errors; and (*ii*) to supplement the award with one of the elements required for the validity of the award listed in Article 823 CPC nos. 1, 2, 3 and 4 (see response to question (i) of this section). The decision correcting or supplementing the award must be issued within 60 days of the request.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Italian arbitration law contains no specific rule on cost allocation. If the arbitration agreement is silent in that respect, arbitrators generally apply the 'costs follow the event-rule', which also applies to ordinary court proceedings pursuant to Articles 91 ff. CPC.

(ii) What are the elements of costs that are typically awarded?

Arbitrators' fees, institutional administrative expenses (if any) and expert and legal fees.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

Parties may agree on the costs and expenses of the arbitral tribunal in the arbitration agreement. Alternatively, they may agree to resort to the valuation of a third party, which often is an arbitral institution. In the absence of a specific contractual provision or rule, arbitrators decide on their own costs and expenses. Pursuant to Article 814 CPC, the decision of the arbitrators on their expenses and fees is not binding on the parties. If the parties contest the decision, the arbitrators' expenses and fees will be fixed by the president of the court of first instance (*Tribunale*) of the place of the seat of the arbitration.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The arbitral tribunal has discretion to apportion the costs between the parties on the basis, for example, of the final outcome of the proceedings and the behaviour of the parties during the proceedings.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

See the response to question (iii) of this section.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

The grounds for setting aside an award are set out in Article 829.1 CPC. They are the following:

1. the arbitration agreement was invalid;
2. the arbitrators were not appointed according to the provisions contained in the CPC;
3. the award was rendered by an arbitrator who lacked legal capacity;
4. the award exceeds the scope of the arbitration agreement;
5. the award does not set out the reasons on which the arbitrators based their decision, or does not contain the dispositive part, or the signature of the arbitrators;
6. the award was rendered after the expiration of the time-limit set by Article 820 CPC (see response to the question in section I (iv) above);
7. the formalities required by the parties under express sanction of nullity have not been complied with, and the nullity has not been cured;
8. the award is contrary to a previous award or a previous court judgment which is res judicata between the parties, provided that such award or judgment has been produced during the proceedings;
9. due process has been violated during the arbitration proceedings;
10. the award closes the proceedings without deciding the merits of the dispute and the arbitrators were required to decide the merits;
11. the award contains contradictory decisions;
12. the award has not decided on some of the claims or objections raised by the parties which fell within the scope of the arbitration agreement and
13. the award has violated public policy.

Pursuant to Article 828 CPC, challenges on the above grounds must be filed within 90 days of the service of the award before the Court of Appeal of the place of the seat of the arbitration. If the award is not served, the challenge can be made within six months from the date of the last signature of the arbitrators.[29]

Article 831.1 CPC provides for two additional extraordinary grounds for challenge:

- revocation, which is possible in very serious circumstances such as fraud by a party or an arbitrator, forgery of evidence or discovery of fundamental evidence intentionally concealed by a party;
- the opposition by a third party whose rights have been prejudiced by the award, eg a creditor or an assignee of one of the parties when the award is the result of willful misconduct or fraudulent collusion to that party's detriment.

Such extraordinary challenges must be raised before the Court of Appeal of the place of the seat of the arbitration within 30 days of a party becoming aware of one of the above-mentioned circumstances.

Challenge proceedings may last from one and a half year to three or four years. According to a survey, between 2010 and 2014 the average duration of these proceedings was 1,577 days.[30]

Challenge proceedings do not stay the enforcement of the award. However, pursuant to Article 830.4 CPC, at a party's request, the Court of Appeal may stay the enforcement if there are compelling reasons for doing so (eg the risk of irreparable harm).

Italian courts tend to support the finality of arbitral awards and the grounds for setting aside tend to be interpreted restrictively.[31] According to data collected by the Court of Appeal of Genova, around 91% of the challenges of awards filed before that court between 2005 and 2015 were rejected.[32] According to another study, the percentage of awards successfully challenged before the Courts of Appeal of Milan, Genova, Turin and Brescia in the period 2010-2014 is not higher than 4%.[33]

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Pursuant to Article 829.2 CPC, a party is precluded from raising grounds for setting aside that it contributed to cause or that it waived, and cannot challenge the award for a violation of a procedural rule that it failed to raise as soon as it had the opportunity to do so.

Parties are not allowed to waive their right to challenge an award in advance (eg in the arbitration agreement), but may waive such right after the award is rendered. However, according to scholars, not all grounds for setting aside may be waived. In particular, according to authors, parties cannot waive their right to challenge an award for serious violations of due process and violations of public policy. In addition, pursuant to Article 831.1 CPC, parties cannot waive their right to bring an action for revocation of the award. There are no specific formal requirements for the validity of the waiver.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Article 829.3 CPC, provides that a party cannot appeal an award for error of laws, unless: (*i*) the parties agreed to such an appeal; (*ii*) the appeal is permitted by a mandatory law (this is the case for arbitrations relating to certain categories of employment disputes); or (*iii*) the arbitrators ruled on a preliminary issue (*questione pregiudiziale*) that lacked subject-matter arbitrability.

29 Before the modification introduced by LD 149/2022 to Article 828, this term was of one year.

30 Laura Barison, 'Un'indagine statistica sull'impugnazione del lodo arbitrale nazionale' (2015) Rivista dell'arbitrato 404.

31 See, for instance, Court of Cassation, 8 October 2008, No. 24785 holding that an award may be set aside on ground No. 5 of Article 829 CPC only if the award provides no reasoning at all or it is so poorly written that it constitutes failure to explain the reasons upon which the award is based. Similarly, according to Italian scholars, the notion of the public policy exception in domestic set aside proceedings only covers fundamental principles underlying the social, economic and political order on which the Italian legal system rests, while in the past this notion has been interpreted as encompassing all provisions of domestic mandatory law (see Court of Cassation, 4 May 1994, No. 4330).

32 See Piero Bernardini, 'Un significativo contributo alla migliore conoscenza del sistema italiano dell'arbitrato' (2016) Rivista dell'arbitrato 568.

33 Barison (n. 30).

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Pursuant to Article 830.2 CPC, the Court of Appeal will remand the dispute to arbitration if the award was set aside on grounds listed in numbers 1, 2, 3, 4 and 10 of Article 829 CPC (see question (i) of this section).

If the award is set aside on other grounds, the Court of Appeal also decides on the merits, unless otherwise agreed by the parties. However, the opposite principle applies if, at the time of entering into the arbitration agreement, one of the parties resided abroad. In this case, the Court of Appeal may decide on the merits only if so provided in the arbitration agreement or if jointly requested by the parties.

(v) Is there a specialist arbitration court in your jurisdiction?

No.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

Italian courts do apply the principle of *iura novit curia* and they are, therefore, free to also apply rules of law not invoked by the parties (Article 113.1 CPC). Italian arbitration law does not contain a similar provision. Some commentators, referring to the principle of award-judgment equivalence (Article 824-*bis* CPC), are of the opinion that the principle of *iura novit curia* (in this case *iura novit arbiter*) may also be applied by arbitrators.[34] This seems to be also the position of Italian courts.[35] A commentator, however, is of the opinion that 'a more nuanced approach seems preferable in the context of an international arbitration seated in Italy'.[36] According to this commentator, arbitrators should always give the parties 'the opportunity to plead on the relevant issues so as to safeguard their right to the *contradictoire* [due process]'.[37]

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

According to Article 813-*ter* CPC, an arbitrator can be held liable for damages only in case of willful misconduct (*dolo*) or gross negligence (*colpa grave*) and only with respect to the following grounds: (*i*) he/she omits or delays acts that he/she was bound to carry out and was removed from office on this grounds; (*ii*) he/she resigned without just cause; *(iii)* he/she fails to render the award within the time limits fixed by the law. An arbitrator may also be found liable for the events listed in Article 2 of Law 13 April 1988, No. 117 concerning civil liability of court judges, ie when, by 'inexcusable negligence' (*i*) he/she manifestly disregarded the law; (*ii*) he/she affirmed or denied a fact whose existence is unequivocally denied or affirmed by the record. Pursuant to Article 813-*ter.*2 and 3, a liability claim cannot be filed when the arbitral proceedings are still pending (unless the claim is grounded on the removal of the arbitrator from office) or, once the award has been rendered, only if and when the award has been annulled on the same grounds for which damages are sought. According to Article 813-*ter*.4, if the arbitrator's breach is due to 'gross negligence', the claimable damages are capped to three times his or her fees. No cap is provided in case of 'willful misconduct'.

34 Salvaneschi (n. 24) 743.

35 See Court of Appeal of Genoa, 27 August 2019, No. 1215 which, in rejecting an action to set aside an award, found that according to the principle of *iura novit arbiter*, an arbitrator – as a court judge – is free to give a different legal qualification to the facts and to the causes of action brought forward by the parties and, consequently, to base his/her decision on legal grounds different from those erroneously pleaded by the parties.

36 Benedettelli (n. 14) para 7.46.

37 *Ibid*.

Italian arbitration law contains no specific provisions with respect to the immunity of experts, translators, interpreters and/or other participants in arbitration proceedings.

(ii) Does this immunity, if any, extend to criminal liability?

The provisions on civil liability contained in Article 813-ter CPC do not extend to criminal liability.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

For domestic awards (that is, arbitrations seated in Italy), the party seeking enforcement must file certified copies of the award and the arbitration agreement with the court of first instance (*Tribunale*) at the seat of arbitration. The court will simply verify the compliance of the award with the formal requirements and issue a decree of enforceability of the award (Article 825.1 CPC).

For foreign awards (that is, arbitrations seated in a foreign country), the party seeking recognition and enforcement must file a request before the president of the Court of Appeal in the place where the other party resides or, if that party does not reside in Italy, before the Court of Appeal of Rome. Certified copies of the award and the arbitration agreement (with a translation into Italian if in another language) must be filed with the request. The award is declared immediately[38] enforceable by decree subject to *ex officio* review by the President of the Court of Appeal: (*i*) that the award complies with the formal requirements; (*ii*) that the dispute is arbitrable under Italian law; and (*iii*) the award does not violate public policy (Article 839 CPC).

Pursuant to Article 840 CPC, the presidential decree granting recognition and enforcement of the foreign award may be challenged before the Court of Appeal on the grounds provided for by Article V of the New York Convention.

The challenge does not automatically stay enforcement. However, pursuant to Article 840.2 (as amended by LD 149/2022) the instructing judge may – upon request by the challenging party – stay enforcement for 'serious reasons' ('*gravi motivi*').

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

If an *exequatur* is obtained, the award will acquire the same effects as an enforceable domestic judgment and, if it is not spontaneously complied with, the winning party may commence enforcement proceedings (for example, the attachment of property) against the defaulting party.

(iii) Are conservatory measures available pending enforcement of the award?

According to scholarly opinion, pending enforcement of the award, the Court of Appeal may grant conservatory measures. Such measures may be requested by the party that obtained a decree of recognition and enforcement which has been challenged as well as by the party whose request for enforcement was rejected and who challenged the rejection.

38 LD 149/2022 has amended Article 839 CPC, which now expressly provides that the decree granting the *ex parte* application for recognition renders the award 'immediately' enforceable.

Moreover, pursuant to Article 840.4 CPC, if the enforcement proceedings are suspended pending a setting aside proceeding, the Court of Appeal, upon request of the party seeking enforcement, may order the other party to provide suitable security.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Italian courts tend to adopt a rather restrictive interpretation of the grounds for refusing enforcement. Enforcement is therefore generally granted without any particular problem. According to data collected by the Court of Appeal of Milan, out of 38 requests for recognition and enforcement of foreign awards filed from 2005 to 2012, only 3 were rejected.[39]

Article 840 CPC does not permit the enforcement of a foreign award set aside by the courts at the place of arbitration. Although there is no precedent, it could be argued that enforcement could nonetheless be granted if the foreign judgment setting aside the award was rendered on grounds that would make the judgment unenforceable in Italy.

Should an award be set aside by the courts of the seat after the Italian court decision granting the *exequatur*, this circumstance may be used as a defence during enforcement proceedings or as a ground for revocation of the *exequatur* pursuant to Article 395.2 CPC.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

Enforcement of a foreign award can take from between six to eight months. However, if the enforcement is challenged, the proceedings on the challenge to the enforcement before the Court of Appeal may take up to three/four years. The judgment of the Court of Appeal may be challenged before the Supreme Court.

Italian law does not explicitly provide for a time-limit for seeking enforcement of an award. However, according to scholarly opinion, the statute of limitations for the enforcement of a final court judgment (*actio judicati*) applies also to arbitral awards. Therefore, enforcement of an award should be sought within ten years of the date on which the award became binding upon the parties.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

There are no codified rules on sovereign immunity and Italian courts tend to follow the prevailing approach of other countries based on general international law in favour of a restrictive immunity both for jurisdiction and enforcement. As to arbitration, the prevailing view is that the acceptance of an arbitration agreement is tantamount to a waiver of immunity from jurisdiction, which extends to proceedings for the declaration of enforceability of the award. When it comes to enforcement of the award on assets of the foreign state or entity, the courts will grant enforcement only on assets that are not used for a sovereign purpose. On this point, Italian courts, like those of most other countries, tend to follow a fairly prudent approach and to prefer to err in favour of granting immunity from execution.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

No.

39 Data presented during the III Annual Conference – Milan Chamber of Arbitration, 16 November 2012.

(iii) Are there any requirements for arbitrations involving sovereign entities?

The new Code of Public Contracts[40] contains a specific discipline of arbitration deriving from the execution of contracts relating to works, services, supplies and design between private parties and the State or a company held by the State. In particular, Article 213 of the new Code provides, *inter alia*, that (*i*) an arbitration clause may be included in a public contract only upon a motivated authorization by the contracting authority; (*ii*) the presence of an arbitration clause shall be specifically indicated in the invitation to tender; (*iii*) the arbitral tribunal must be constituted by three members and the president of the tribunal must be appointed by the 'Arbitration Chamber for Public Contracts' instituted by '*ANAC*' (the State anti-corruption authority), which shall select the president amongst a closed list of arbitrators; (*iv*) the award can be always appealed for errors in the application of the law.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Italy is a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention). The ICSID Convention was signed on 18 November 1965 and entered into force on 28 April 1971.

Italy was also a party to the Energy Charter Treaty (ECT), signed on 17 December 1994 and in force as of 16 April 1998. However, on 31 December 2014 Italy notified the ECT Depository of its intention to withdraw from the ECT. Italy's withdrawal, which pursuant to Article 47.2 of the ECT took effect on 1 January 2016, was officially justified by Italy's need to revise its monetary contribution to international organizations due to budgetary constraints. It is worth noting that, by virtue of the ECT's Article 47.3 (the so called 'sunset provision'),[41] the protection offered by the ECT continues to apply for a 20-year period running from the effective date of withdrawal.

It bears mentioning that on 19 May 2015 Italy signed the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention). The Mauritius Convention has not been yet ratified by Italy. By entering the Mauritius Convention, States consent to the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration in relation to investor-State arbitrations (whether or not initiated under the UNCITRAL Arbitration Rules) arising from bilateral or multilateral investment treaties concluded before 1 April 2014 (ie the date on which the UNCITRAL Rules on Transparency took effect).

(ii) Has your country entered into bilateral investment treaties with other countries?

According to the United Nations Conference on Trade and Development (UNCTAD), currently there are 52 Bilateral Investment Treaties (BITs) in force between Italy and other countries[42].

It bears mentioning that Italy, in furtherance of the EU Commission's policy, has terminated all its intra-EU BITs.

In August 2022 Italy adopted a new Model BIT.[43] The current model, *inter alia*, includes definitions of 'investor' and 'investment' which seek respectively to avoid 'treaty shopping' and to clarify the economic requirements that an investment must possess to qualify for protection under a BIT. The Model BIT also specifies the content of the Fair and Equitable Treatment (FET) standard by listing specific measures deemed to be a violation of FET. Moreover, it contains provisions aimed to safeguard the State's right to regulate in the public interest. It also leaves open the possibility that

40 The new Code of Public Contract was enacted by Legislative Decree of 31 March 2023, No. 36.

41 Article 47.3 of the ECT: 'The provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party by Investors of other Contracting Parties or in the Area of other Contracting Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from the Treaty takes effect for a period of 20 years from such date'.

42 See **http://investmentpolicyhub.unctad.org.**

43 **https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/6438/download.**

investor-State disputes be settled by a multilateral investment court or be subject to a multilateral appellate body, if and once established.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

There is no published decision of which we are aware. However, it is submitted that in the light of the CJEU decisions in *Achmea*[44] and *Komstroy,*[45] intra-EU investor-state arbitration awards would be denied recognition and enforcement in Italy.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The main and more recent works on arbitration are the following:

- Massimo Benedettelli, *International Arbitration in Italy* (Kluwer Law International 2020).
- Daniele Mantucci (ed), *Trattato di diritto dell'arbitrato* (Edizioni Scientifiche, 2020).
- Laura Salvaneschi, Andrea Graziosi, *L'arbitrato* (Giuffrè, 2020)
- Massimo Benedettelli, Claudio Consolo, Luca G. Radicati di Brozolo (eds), *Commentario breve al diritto dell'arbitrato nazionale ed internazionale* (CEDAM 2017).
- Federico Carpi (ed), *Arbitrato* (Zanichelli 2016).
- Laura Salvaneschi, *Arbitrato* (Zanichelli 2014).
- Carmine Punzi, *Disegno sistematico dell'arbitrato* (CEDAM 2012).
- Sergio La China, *L'arbitrato. Il sistema e l'esperienza* (Giuffrè 2011).
- Mauro Rubino-Sammartano, *Il diritto dell'arbitrato. Disciplina comune e regimi speciali* (CEDAM 2010).
- Segio Menchini S (ed), *La nuova disciplina dell'arbitrato* (CEDAM 2010)

As to law reviews:

- *Rivista dell'Arbitrato*, Giuffrè.
- *Diritto del Commercio Internazionale – The Law of International Trade,* Giuffrè.

44 Case C-284/16 *Slowakische Republik v. Achmea* BV [2018].
45 Case C-741/19 *République de Moldavie v Komstroy LLC*. [2021].

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

There is an increasing number of arbitration educational events and conferences in Italy. The Associazione Italiana per l'Arbitrato (AIA) and the Milan Chamber of Arbitration are particularly active on this front. The updated list of events organised and sponsored by AIA and Milan Chamber of Arbitration may be found on their web-sites.[46] ArbIt (the Italian forum for arbitration and ADR) is also very active in organising educational events and conferences on arbitration and ADR.[47]

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Yes. Arbitration has become a real alternative to court proceedings especially for international disputes and complex commercial, corporate and construction cases.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

As of 2010, mediation must be performed prior to the commencement of judicial proceedings in numerous civil and commercial matters including, for instance, property rights, inheritance, medical malpractice, insurance contracts, defamation, banking and financial agreements etc.[48] Lawyers are under a professional duty to inform clients about mandatory mediation. Mediation proceedings have a duration of maximum three months from the filing of the request. Parties are required to attend a first meeting with a professional mediator to discuss the possibility to resolve their dispute amicably. If a party fails to appear at the first mediation meeting without good cause, it may be subject to sanctions in the subsequent court proceedings. If mediation is unsuccessful, the parties may proceed to litigation. If, on the other hand, a settlement agreement is signed by the parties and their counsel, that agreement shall have the same effect of a court decision.

Approximately 80% of all mediation proceedings in Italy concern mandatory mediation. According to statistics of the Italian Ministry of Justice, in 2022 more than 160,000 mandatory mediations were initiated. Only in 51.8% of cases the respondent accepted to participate to the mediation process and of these 51.8% cases only 28.9% ended with an agreement. According to the same statistics, the average duration of a successful mediation proceeding in 2022 was 186 days compared to the 878 days of an average civil case before an Italian court. Interest for voluntary mediation is also growing. The Milan Chamber reports that about 24% of its cases in 2022 relate to voluntary mediation.[49]

(iii) Are there any noteworthy recent developments in arbitration or ADR?

On 18 October 2022, the Italian Government enacted LD 149/2022 with the aim of increasing the efficiency of civil judicial proceedings and revising the discipline of alternative dispute resolution mechanisms. The reform introduced by LD 149/2022, which applies to proceedings instituted after 30 June 2023, includes several amendments and additions to Title VIII of the Fourth Book of the CPC, containing the general rules on Italian arbitration law (Articles 806-840 CPC). The most significant developments, concern the arbitrators' duties of disclosure (see section V (ii) above), the discipline of interim measures (see section VI (i) above) and a new provision on the substantive law applicable to the merits of the dispute (see section II (iv) above). LD 149/2022 has also moved into the CPC (new Articles from 838-*bis* to 838-*quinquies*) the discipline of company law arbitration which was previously regulated by Articles 34-37 of LD 5/2003.

46 **https://arbitratoaia.com; www.camera-arbitrale.it.**
47 **www.forumarbit.it.**
48 Mandatory mediation was originally introduced by Legislative Decree of 4 March 2010 No. 28, later amended by Legislative Decrees of 21 June 2013 No. 69, of 24 April 2017, n. 50 and of 21 May 2018, n. 68.
49 See **www.camera-arbitrale.it/en/mediation/mediation-facts-and-figures.php?id=405**

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

See section XVIII (iii) above.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

There is no specific rule or case-law in Italy on third-party funding. Third party funding is, however, developing and some arbitral institutions have enacted rules in that respect. For instance, Article 43 of the Milan Chamber of Arbitration provides that parties shall disclose the existence of a funding agreement and the identity of the funder.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Italy is bound to apply the sanctions implemented by the EU, including the recent sanctions against Russia provided for by Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, and Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

There is no specific court decision relating to the impact of the sanctions against Russia on international arbitration proceedings. There is however some case-law relating to the 1990 UN embargo against Iraq. In particular, in a 2015 decision the United Sections of the Italian Court of Cassation have ruled that an arbitration clause included in a contract between an Italian party (seller of armaments) and the government of Iraq (buyer) had become null and void as a consequence of the embargo which – being '*jus superveniens* of a clear international public policy nature'- rendered the dispute 'non-arbitrable'.[50]

50 *Government and Ministries of the Republic of Iraq v. Armamenti e Aerospazio SpA et al.*, Supreme Court of Cassation of Italy, Case No. No. 23893, 24 November 2015, (2016) 41 Yearbook Commercial Arbitration 503-506.