

## GUIDE TO ARBITRATION PLACES (GAP)

# ITALY

CHAPTER PREPARED BY

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[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

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ES [DELOS CLÁUSULAS MODELO](#)  
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### JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ⊞ |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Key places of arbitration in the jurisdiction?	Milan, Rome.
Civil law/common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Not required by law. However, lawyers have an ethical duty of confidentiality that applies also in the context of an arbitration. In addition, the Code of Ethics of the National Bar Association (“ <b>Code of Ethics</b> ”) has a specific provision on arbitration, imposing a duty to maintain the confidentiality of arbitration proceedings on any lawyer acting as arbitrator (the Code of Ethics applies also to foreign lawyers acting in Italy pursuant to Art. 3(3)). Arbitral institutions also tend to impose a duty of confidentiality on the parties, their counsels, arbitrators and experts. Recently, subject to the parties’ consent, the publication of awards has been encouraged by arbitral institutions.
Requirement to retain (local) counsel?	No.
Ability to present party employee witness testimony?	The law does not prevent parties from presenting employees as witnesses.
Ability to hold meetings and/or hearings outside of the seat?	Yes.
Availability of interest as a remedy?	Yes.
Ability to claim for reasonable costs incurred for the arbitration?	Yes.
Restrictions regarding contingency fee arrangements and/or third-party funding?	<p>The Italian Civil Code and the Code of Ethics require that a lawyer’s compensation be proportional with the services offered. While the compensation can be proportional with the estimated value of the dispute (determined <i>ex ante</i>), Article 25 of the Code of Ethics explicitly prohibits compensation consisting of the attribution of part or all of the proceeds of the litigation/disputed assets. Hence, contingency fees are not admitted.</p> <p>Third-party funding is not regulated by Italian law. We are not aware of any specific judicial precedent, though use of third-party funding is becoming increasingly prevalent in Italy. The Milan Arbitration Chamber requires parties to disclose the existence of a third-party funder.</p>
Party to the New York Convention?	Yes (with no reservations).
Party to the ICSID Convention?	Yes.

Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	The standard time-limitation for civil actions (including contractual) is 10 years. In the case of a non-contractual civil action, the statutory limitation period is 5 years. Other shorter time-limitation periods apply in special circumstances.
Other key points to note?	<p>As of 1<sup>st</sup> March 2023, Italy has amended Article 818 of the Code of Civil Procedure. Contrary to prior to the revision, this provision now allows arbitrators to issue interim measures if the parties expressly agree to this in the arbitration agreement or in a subsequent document.</p> <p>There is also a distinction between the so-called <i>arbitrato rituale</i> and <i>arbitrato irrituale</i>. Although both kinds of arbitration represent forms of alternative dispute resolution, only the <i>arbitrato rituale</i> produces an award which is equivalent to a judicial decision and falls under the scope of the New York Convention of 1958. In the context of an <i>arbitrato irrituale</i> the parties ask the arbitrator/s to issue a decision which is equivalent to a contractual determination. In circumstances where the parties do not comply with the award, this amounts to a contractual breach and the winning party shall start ordinary court proceedings.</p>
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2022, if available?	53.1
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2023, if available?	0.67 (2023).

## ARBITRATION PRACTITIONERS' SUMMARY

Date of arbitration law?	<p>The rules concerning arbitration in general (applicable to international and domestic arbitration) are contained in Articles 806-840 of the Code of Civil Procedure.</p> <p>The recent Legislative Decree no. 149/2022 reformed the civil justice system, whilst also introducing several significant modifications to the arbitration regime contained in the Code of Civil Procedure. These modifications entered into force as of 1<sup>st</sup> March 2023.</p> <p>Special types of arbitration are regulated by different laws. Following the 2022 reform, arbitration in corporate matters is currently regulated by the new Articles 838 <i>bis</i> to 838 <i>quinquies</i> of the Code of Civil Procedure, which substantially reproduce the provisions previously set forth in Legislative Decree no. 5/2003. Furthermore, the Italian Code of Public Contracts of 2016 provides specific regulations concerning arbitration proceedings in public works. On 1<sup>st</sup> April 2023, the new Code of Public Contracts has entered into force. However, the new Code of Public Contracts substantially reproduces the same arbitration provisions of the 2016 Code, with no material modifications.</p>
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Generally, Italy has incorporated most of the principles of the UNCITRAL Model Law (pre-2006 version) within the Code of Civil Procedure. However, there is one major difference, namely that arbitrators seated in Italy can be held liable for gross negligence/serious misconduct ( <i>colpa grave</i> ).
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Not officially. Arbitration-related matters (e.g., opposition to the enforcement of the arbitral award) are dealt with by the Courts of Appeal of the district where the arbitration is seated. However, in practice, the reality is that these matters are almost always addressed by the same sections of the Courts (e.g., the First Section of the Milan Courts of Appeal).
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes, either by State courts or emergency arbitrators.
Courts' attitude towards the competence-competence principle?	According to Article 816 of the Code of Civil Procedure, which enucleates the <i>Kompetenz-Kompetenz</i> principle, arbitrators can decide on their own jurisdiction. Italian courts abide by this principle.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	No, as the reasoning is expressly provided for as an essential requisite of the award by Article 823 of the Code of Civil Procedure.
Grounds for annulment of awards additional to those based on the criteria for the recognition and	Yes, in case of arbitrations seated in Italy, the Parties may agree that arbitral awards may be challenged in case of violations of rules of law (Code of Civil Procedure, Art. 829 para. 3). Further, awards

enforcement of awards under the New York Convention?	may be challenged if not all arbitrators have participated in the deliberations and if the award is not signed by all arbitrators without an explicit dissent or other justification of the non-signatory.
Do annulment proceedings typically suspend enforcement proceedings?	In the context of annulment proceedings, according to Article 830 of the Code of Civil Procedure, a party may ask the court to suspend the enforcement of the award. In assessing whether to suspend the enforcement of the award, the court will consider whether there are serious reasons ( <i>gravi motivi</i> ).
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	A party may oppose the decree granting enforcement of a foreign award which was annulled at the seat. Pursuant to Article 840 of the Code of Civil Procedure, the award becomes unenforceable in Italy.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	<p>According to Article 816 <i>bis</i> of the Code of Civil Procedure, the Arbitral Tribunal can conduct the proceedings in its discretion, as long as the parties have a fair and equal opportunity to present their case.</p> <p>Following the wide application of the special regime introduced with COVID-19, the 2022 reform of the civil justice system introduced a general permission for courts to hold remote hearings (Art. 127 <i>bis</i> of the Code of Civil Procedure). It is within the court's discretion to decide on the modalities of the hearing. Even though the courts may provide for remote hearings provided that the attendance of persons (<i>i.e.</i> witnesses) other than the lawyers, the parties, the public prosecutor or the experts appointed by the judge are not required, in practice if all the parties and the arbitral tribunal consent, virtual hearings are possible also in case of evidence-taking which requires the attendance of third parties. This is widely accepted, especially in case of institutional arbitrations.</p>
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	<p>In the case of a contract that falls within the scope of application of the Code of Public Contracts (generally, a contract subject to a tender procedure), any arbitration agreement must receive the prior approval of the body governing the State entity party to the Contract (Code of Public Contracts, Art. 209). In the absence of such approval, the arbitration agreement is considered null and void. In practice, the tender will reflect whether the public contract contains an arbitration clause and it should contain a separate authorization concerning the arbitration clause. In case the tender documentation does not contain the authorization providing for the arbitration clause, it is advisable for any interested party to contact the administration requesting a copy of the document. In any event, the party winning the public contract may oppose the arbitration agreement within 20 days of winning the contract, and the arbitration agreement will be considered to have never come into existence (Code of Public Contracts, Art. 209).</p> <p>In relation to contracts that remain outside of the scope of application of the Code of Public Contracts, no specific provision restricts the ability of the State, or State entity, to resort to</p>

	arbitration, or limits the enforceability of the awards (other than the general principles on immunity, to the extent applicable).
Is the validity of blockchain-based evidence recognised?	Yes. The validity of blockchain-based evidence is confirmed by Article 8 <i>ter</i> of the Law Decree no. 135 of 14 December 2018 (converted by Law no. 12 of 2019).
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Article 8 <i>ter</i> of the Law Decree no. 135 of 14 December 2018 (converted by Law no. 12 of 2019) recognizes contracts that are recorded on a blockchain. While there is no case law, nothing suggests that this should not apply also to arbitration agreements and/or awards.  Concerning an award recorded on a blockchain, there is no case law on the implementation of Law no. 12 of 2019 and it is questionable as to how the party seeking enforcement might satisfy the requirement of providing the <i>original</i> of the award.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	To the best of our knowledge, there is no case-law on this matter. However, since Article 8 <i>ter</i> of the Law Decree no. 135 of 14 December 2018 (converted by Law no. 12 of 2019) recognizes electronic contracts (" <i>Smart contracts</i> ", which " <i>meet the requirement of written form after the digital identification of the parties involved</i> "), one may maintain that the written form prescribed under Article II of the 1958 New York Convention is complied with.
Other key points to note?	ϕ

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

While there is no explicit reference, Italian arbitration law incorporates the principles set forth in the 1985 version UNCITRAL Model Law. Italian arbitration law has not been subject to a thorough reform since February 2006, prior to the enactment of the 2006 version of the UNCITRAL Model Law. The reform of the civil justice system, in force as of 1<sup>st</sup> March 2023, grants the power to arbitrators to issue interim measures, thereby aligning Italian arbitration law to the UNCITRAL Model Law in this respect also.

##### 1.1.1 If yes, what key modifications if any have been made to it?

Following the 2022 reform of the civil justice system, which allowed arbitrators to grant interim measures, the only major difference from the UNCITRAL Model Law concerns the possibility for parties to invoke the arbitrators' liability in case of gross negligence/serious misconduct (*colpa grave*), or in case of unjustified resignation (Article 813-ter of the Code of Civil Procedure).

#### 1.2 When was the arbitration law last revised?

The last comprehensive revision of Italian arbitration law was completed in February 2006, with Legislative Decree 40/2006. Since then, Parliament and Government have sporadically intervened to regulate some specific aspects only. However, the Legislative Decree no. 149/2022, in force as of 1<sup>st</sup> March 2023, has introduced several significant modifications to the arbitration regime contained in the Civil Code of Procedure.

### 2. The arbitration agreement

#### 2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In the absence of a choice of law agreement regarding the arbitration clause, the Italian courts apply the law of the seat as the law governing the arbitration agreement.

#### 2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

According to Article 816 of the Code of Civil Procedure, if the parties have failed to designate the seat of the arbitration, the arbitrators will have to designate it. In fact, the indication of the seat of the arbitration is required for the award to be valid (Code of Civil Procedure, Art. 829). If the clause contains a reference to a "venue" or "place" but does not expressly designate a seat, this is generally considered to be an implied consent to designate the seat.

Furthermore, Article 816 of the Code of Civil Procedure lays the criteria to determine the seat of an arbitration. In the absence of an indication, the seat will be at the place where the arbitration clause was contracted. If the clause was contracted abroad, Rome will be the seat of the arbitration.

#### 2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes. The principle of separability of the arbitration agreement is expressly recognized by Article 808 of the Code of Civil Procedure.

#### 2.4 What are formal requirements (if any) for an enforceable arbitration agreement?

In general, Articles 807-808 of the Code of Civil Procedure require the arbitration agreement to exist in writing and to describe its scope of application.

Article 807 of the Code of Civil Procedure specifies that an agreement stipulated via telefax or email is recognized as existing in writing.

Furthermore, an arbitration agreement does not have to exist in one unique document. For instance, the Italian Supreme Court ("*Corte di Cassazione*") has ruled that an exchange of letters containing respectively the proposal to defer a dispute to arbitration and its acceptance constituted a valid arbitration agreement.<sup>1</sup>

However, if the arbitration agreement is included in the general terms and conditions of one of the parties, or if the contract is stipulated via a form produced by one of the parties, the other party must specifically approve the arbitration clause (Civil Code, Arts. 1341-1342). Hence, the simple demonstration that the opposing party had access to the document bearing the arbitration clause will not be sufficient to qualify it as a valid arbitration agreement.

If a contract is regulated by the Code of Public Contracts, any arbitration agreement must receive the approval of the body governing the State entity party to the Contract (Code of Public Contracts, Art. 209). In the absence of such approval, the arbitration agreement is null and void.

## **2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?**

Compared to other countries, such as France where the Courts are willing to extend an arbitration clause towards non-signatories if, for instance, they acquired substantive rights and obligations arising out of the main contract, Italy takes a stricter stance concerning the applicability of an arbitration agreement towards third parties. Generally, an arbitration agreement cannot be effectively extended to a third party.

There are two main exceptions to this principle. First, if the contract containing the arbitration agreement is transferred during the course of the arbitration, the transferee can be compelled to join the arbitration proceedings (Code of Civil Procedure, Arts. 816 *quinques* and 111). Second, a third party to an arbitration agreement can be compelled to join arbitration proceedings if the arbitration clause was contained in a contract stipulated in the interest of the third party and the latter has benefitted from the execution of the contract (Civil Code, Art. 1411).

In the case where the third party to the arbitration agreement wishes to intervene in the proceedings (*i.e.*, voluntary intervention), the third party may do so provided that the parties in the arbitration and the arbitral tribunal express their agreement (Code of Civil Procedure, Art. 816 *quinques*). Scholarly writing disagrees as to whether each arbitrator has to consent to the voluntary intervention or whether the majority of the arbitral tribunal is sufficient to validly accept a voluntary intervention.<sup>2</sup>

Finally, a third party may force its entry into the arbitration proceeding, without the agreement of the parties and the arbitral tribunal, if the third party is the holder of a right that is dependent or connected to the right held by one of the parties and the third party wishes to intervene in support of one of the parties, *e.g.*, a sub-contractor (Code of Civil Procedure, Art. 816 *quinques*).<sup>3</sup>

Special rules on joinder and third-party notice are provided for in corporate arbitrations, to allow the participation of all shareholders and other related parties in the proceedings.

## **2.6 Are there restrictions to arbitrability? In the affirmative:**

The restrictions on arbitrability are set out in general terms by Article 806 of the Code of Civil Procedure. This provision only allows arbitration when the parties have full disposal of the rights at stake and unless

<sup>1</sup> Italian Supreme Court, decision no. 1989 of 2000.

<sup>2</sup> M.V. Benedettelli, C. Consolo, L.G. Radicati Di Brozolo *et. al.*, *Commentario breve al diritto dell'arbitrato nazionale ed internazionale*, CEDAM, 2017, p. 269.

<sup>3</sup> M.V. Benedettelli, C. Consolo, L.G. Radicati Di Brozolo *et. al.*, *Commentario breve al diritto dell'arbitrato nazionale ed internazionale*, CEDAM, 2017, p. 270.



otherwise provided by law. For instance, disputes concerning the civil status of physical persons, parenthood, separation and/or divorce and its economic consequences, tax issues, some labour and consumers' disputes or disputes requiring the presence of a prosecutor cannot be deferred to arbitration.

### **2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?**

There are limitations to arbitrability regarding specific domains; these vary and are regulated by individual provisions in different statutes.

Concerning employment law, Article 806 of the Code of Civil Procedure sets out a principle of non-arbitrability of employment disputes, unless where permitted by law or by national contracts.

Concerning antitrust disputes, these can be deferred to arbitration according to both Italian law and European law. Similarly, disputes between private parties revolving on the application of the European regulation no. 139/2004 (so-called EC Merger Regulation) can be deferred to arbitration.

Most corporate law, securities transactions and IP disputes are arbitrable.

### **2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?**

The limitations to arbitrability can also extend to specific persons. In relation to consumers, according to the EU Directive 93/13 (transferred into Italian law by the Consumer Code, Art. 33.2.v-bis, Legislative Decree 6 September 2005, no. 26), an arbitration clause inserted in a consumer contract is presumed to be abusive and cannot be efficiently enforced against the consumer against his/her will. Clearly, once the dispute has originated, the consumer and the professional can convene to defer the specific dispute to arbitration, following the standard requirements put forward by Article 807 of the Code of Civil Procedure.

Concerning State entities, a distinction needs to be made. There are no particular preclusions preventing the State, or State entities in general, to stipulate an arbitration agreement, as long as the State or its entity is acting as a private party in a contract (unless in the case of an investment arbitration). Arbitration is also open to disputes that would normally fall under the jurisdiction of the administrative court, as long as they concern rights of which the parties have full disposal.

In case of a contract falling under the scope of the Code of Public Contracts (generally, the contracts that are assigned via a public tender), Article 209 of the Code of Public Contracts dictates that any arbitration clause requires the prior approval of the body representing the State entity party to the contract. Without the prior and separate authorization of the relevant body, the arbitration agreement is null and void (Code of Public Contracts, Art. 209) and the dispute cannot be deemed arbitrable.<sup>4</sup> The public tender will reflect whether such an approval was granted and the tender documentation should include the authorization to insert the arbitration clause. In case the tender documentation does not contain the separate authorization, it is advisable to interested bidders to contact the relevant administration.

In any event, the party winning the contract may choose to denounce the arbitration clause within 20 days from winning the public tender. In that case, the arbitration agreement is deemed to have never come into existence (Code of Public Contracts, Art. 209).

Article 209 of the Code of Public Contracts is only applicable to disputes deriving from the *execution* of a public contract. Hence, a dispute deriving from the attribution of the contract falls under the standard provisions of the Code of Civil Procedure and the arbitration clause inserted in the tender can be held valid

<sup>4</sup> M.V. Benedettelli, C. Consolo, L.G. Radicati Di Brozolo *et. al.*, *Commentario breve al diritto dell'arbitrato nazionale ed internazionale*, CEDAM, 2017, pp. 542-544.

even in the absence of a prior approval.<sup>5</sup> In sum, the validity of the *same* arbitration clause can depend on the nature of the dispute.

### 3. Intervention of domestic courts

#### 3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

When a matter covered by an arbitration agreement has been brought to court, the defendant must object to the court's competence in the first statement of defence (Code of Civil Procedure, Art. 819 *ter*). If the party fails to raise the objection, it is deemed to have waived its right to resort to arbitration in relation to the claim that is litigated in front of the national court (the arbitration agreement will remain enforceable for other, different claims).

However, in case of a prompt objection from the defendant based on the presence of a valid arbitration agreement, the court will deny its competence and end the litigation. The court's order upholding or denying its competence can only be challenged in front of the Italian Supreme Court (Code of Civil Procedure, Arts. 819 *ter*, 42 and 47).

Hence, the courts would not stay their proceedings, waiting for a determination from the Arbitral Tribunal, but they should declare their lack of competence in the presence of a valid arbitration clause.

#### 3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Although arbitrators now have the power to grant any type of enforceable interim relief (Code of Civil Procedure, Art. 818), it is debated whether anti-suit injunctions are considered to be legitimate under Italian law. In fact, according to the majority opinion, anti-suit injunctions are not valid under EU law and, therefore, not valid under Italian law.

In particular, civil law systems, such as Italy, have historically disregarded or refused to accept anti-suit injunctions that restrain the defendant from prosecuting proceedings before their courts on the ground that such injunctions infringe the judicial sovereignty of courts. Even with the new permission to issue interim measures, it is likely that Italian courts, also by virtue of the *Kompetenz-Kompetenz* doctrine, will retain their power at least to assess the validity of the arbitration agreements and, therefore, their possible jurisdiction, before leaving the claim to the arbitral tribunal's jurisdiction.<sup>6</sup> This view is consistent with the European Court of Justice's approach to the issue. In particular, it is worth mentioning that in *West Tankers* (case C-185/2007, 2009), the European Court of Justice found that the Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters precluded the application of an anti-suit injunction directed to an Italian court and issued by an English court that wanted to preserve an arbitration proceeding already commenced in London. According to the majority opinion, this prohibition persists under the governance of EU Regulation no. 1215/2012 (Bruxelles 1-bis).

<sup>5</sup> M.V. Benedettelli, C. Consolo, L.G. Radicati Di Brozolo *et. al.*, *Commentario breve al diritto dell'arbitrato nazionale ed internazionale*, CEDAM, 2017, p. 545.

<sup>6</sup> See e.g. M. V. Benedettelli, *Le anti-suit injunctions nell'arbitrato internazionale: questioni di legittimità e opportunità*, Rivista dell'Arbitrato, 2014, p. 701; F. Pombo, *Arbitration and Anti Suit Injunctions in the Case Law of the European Court of Justice*, in M.A. Fernández-Ballesteros, D. Arias Lozano (eds), *Liber Amicorum Bernardo Cremades*, Wolters Kluwer España, 2010, p. 975-991.

### 3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

According to the Italian Code of Civil Procedure: *“the parties determine the seat of the arbitration within the Republic”* (Code of Civil Procedure, Art. 816). Hence, according to Italian law, the arbitration is deemed national if it has its seat within the Republic or foreign if the seat is located outside.<sup>7</sup>

In the case of an arbitration seated outside the Republic (*i.e.*, a foreign arbitration), the Italian courts are not competent to intervene during the proceedings.<sup>8</sup>

However, there might be an exception to this rule in relation to interim measures that have to be enforced in Italy. In that case, Article 10 of the Law no. 218 of 31 May 1995 dictates that Italian courts are competent to grant interim relief. Italian courts may also support foreign courts and/or arbitral tribunals in activities concerning the summoning of witnesses and/or other orders requiring the exercise of public force. However, this hardly ever occurs.

Regarding the issue of anti-suit injunctions, these are not contemplated in the Italian legal system and an Italian court would not issue an anti-suit injunction in favour of a foreign arbitration (see Answer no. 3.2).

## 4. The conduct of the proceedings

### 4.1 Can parties retain foreign counsel or be self-represented?

Parties are not required to retain counsel in an arbitration proceeding and can represent themselves freely. If parties decide to seek assistance in the proceedings, they are not required to retain a lawyer; parties can be assisted by any capable physical person who will be able to represent parties in the proceedings.

Hence, parties are free to retain foreign counsel (Code of Civil Procedure, Art. 816 *bis*).

### 4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Article 815 of the Code of Civil Procedure provides the exhaustive list of reasons that can justify a challenge against an arbitrator.

In particular, Article 815 dictates that an arbitrator can be challenged when:

- (i) the arbitrator does not have the qualifications that the parties had agreed on;
- (ii) the arbitrator, personally or via an entity he/she controls, has an interest in the case;
- (iii) if the arbitrator, or his/her spouse, or any relative up to the fourth degree lives, or has a renowned friendship, with one of the parties, their legal representative and their counsel;
- (iv) if the arbitration of his/her spouse has a renowned enmity towards one of the parties, their legal representative and their counsel;
- (v) if the arbitrator is employed by one of the parties or provides regular consultations to one of the parties or shares any patrimonial relations with one of the parties that could generate suspicion as to the impartiality of the arbitrator;

<sup>7</sup> L. Salvaneschi, V. Allavena, A. Carlevaris *et. al.*, “Contenzioso Civile: Arbitrato”, *Itinera Guide Giuridiche Ipsa*, Wolters Kluwer Italia, 2020, p. 7.

<sup>8</sup> L. Salvaneschi, V. Allavena, A. Carlevaris *et. al.*, “Contenzioso Civile: Arbitrato”, *Itinera Guide Giuridiche Ipsa*, Wolters Kluwer Italia, 2020, p. 442.

- (vi) if the arbitrator has provided legal advice to one of the parties previously in the same matter, or has been called to testify in the same matter; and
- (vii) in case of so-called strong reasons of convenience, such as to affect the independence or impartiality of the arbitrator (*"gravi ragioni di convenienza, tali da incidere sull'indipendenza o sull'imparzialità dell'arbitro"*). This hypothesis was re-introduced by the 2022 reform of the civil justice system.

Arbitral Chambers are free to implement stricter regulations in relation to the impartiality and independence of the arbitrators. For instance, the Arbitral Chamber of Milan requires arbitrators to submit a declaration of independence and impartiality when accepting their role (Deontological Code of Arbitrators, Arbitral Chamber of Milan, Art. 7).

When lawyers act as arbitrators, they are also subject to a specific provision in the Code of Ethics that includes requirements in terms of independence and impartiality (Code of Ethics, Art. 61).

#### **4.3 On what grounds do courts intervene to assist in the constitution of the Arbitral Tribunal (in case of *ad hoc* arbitration)?**

Courts can intervene, on a party's motion, to assist in the constitution of the arbitral tribunal, whenever the seat of arbitration is in Italy.

Article 810 of the Code of Civil Procedure states that a respondent in an arbitration has twenty days to appoint its arbitrator from the receipt of the notification of the claimant's appointment. If the respondent does not make an appointment within the 20-day period, the respondent is considered to have irrevocably lost its right to appoint its arbitrator.

In that case, the claimant may ask the national courts to nominate the respondent's arbitrator. In particular, the claimant will address its motion to the president of the court that has competence over the seat of the arbitration. If the seat has not been identified yet, the claimant will seize the president of the court which is competent over the place where the arbitration agreement was signed, or, should the proceedings be seated abroad, the claimant will address the President of the Court of Rome (Code of Civil Procedure, Art. 810).

Article 810 of the Code of Civil Procedure obliges the judicial authorities who appoint arbitrators to do so in accordance with criteria that ensure transparency, rotation and efficiency. To this purpose, the notices of appointment shall be published on the websites of the judicial offices.

#### **4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?**

Yes, courts have the power to grant interim measures in connection with arbitrations, unless the parties have granted such power to the arbitral tribunal. If this is the case, the courts retain the power to grant interim measures until the arbitral tribunal is constituted. It is indeed common for these types of measures to be granted *ex parte*.

#### **4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

Yes. The conduct of the arbitration is regulated by the Code of Civil Procedure. The Code of Civil Procedure is organized as follows:

- Title VIII, Section IV, Chapter III (Code of Civil Procedure, Arts. 816-819) on the conduct of *ad hoc* proceedings;
- Title VIII, Section IV, Chapter IV (Code of Civil Procedure, Arts. 820-826) on the award;

- Title VIII, Section IV, Chapter VI (consisting of one single article: Code of Civil Procedure, Art. 832) on the conduct of administrated arbitrations.

In particular, Article 816 *bis* of the Code of Civil Procedure outlines the main principles that apply to the conduct of arbitration proceedings. The article stresses that parties may identify in their arbitration agreement the procedural rules under which the proceeding should be administered. In the presence of such indication, the arbitrators must abide by the parties' choice.

If the parties have not determined, prior to the commencement of the arbitration, the procedural rules applicable to the proceeding, Article 816 *bis* grants arbitrators the power to regulate the conduct of the proceeding, provided that both parties have a fair and equal opportunity to present their case.

Furthermore, if the parties refer to the rules of an arbitral institution, Article 832 of the Code of Civil Procedure clarifies that in case of incompatibility between a provision contained in the arbitration agreement and the rules under which the parties have submitted the dispute, the arbitration agreement must prevail.

#### **4.5.1 Does it provide for the confidentiality of arbitration proceedings?**

The law does not expressly impose a duty of confidentiality in relation to arbitration proceedings.

As stated, the Code of Ethics requires counsel to maintain the confidentiality of any information they acquired in the course of the arbitration. The Code of Ethics also refers to arbitration proceedings specifically, requiring attorneys to maintain confidentiality even if they are acting as arbitrators (Code of Ethics, Art. 61).

Also, in their arbitration rules, both the Milan Chamber of Arbitration and the Rome Chamber of Arbitration establish a duty of confidentiality that applies to any employee of the Chamber, the arbitral tribunal, counsels, parties and expert witnesses (Milan Arbitration Chamber, Arbitration Rules, Art. 8; National and International Arbitration Chamber, Rome Bar Association, Rules on the Conduct of the Proceedings, Art. 8). Finally, the publication of the award for academic reasons is allowed by both Chambers under strict conditions:

- (i) the award must be redacted in a way that the identification of the parties becomes impossible; and
- (ii) neither party must have objected to the publication within 30 days from the notification of the award.

#### **4.5.2 Does it regulate the length of arbitration proceedings?**

The Italian Code of Civil Procedure provides for a strict timeline of arbitration proceedings. Article 820 of the Code of Civil Procedure states that, unless otherwise agreed by the parties to the proceedings, the arbitrators must render the award within 240 days from the constitution of the arbitral tribunal.

An extension of 180 days is automatically granted by the same article in some specified cases:

- (i) the arbitral tribunal needs further evidence;
- (ii) an expert is appointed;
- (iii) the arbitral tribunal issues either a non-final or a partial award;
- (iv) the composition of the arbitral tribunal is modified.

Other than in these four cases, the arbitral tribunal cannot by itself extend the timeframe to render the award. If more time is needed, the arbitral tribunal must request the parties to grant a written extension. Without the agreement from both parties, the arbitral tribunal must contact the president of the competent local court to obtain an extension (before the expiry of the term).

If the arbitral tribunal fails to obtain an extension and does not render an award within the prescribed time-period, any party may require the arbitral tribunal to consider its mission extinguished (Code of Civil Procedure, Art. 821). The proceedings will be considered terminated and any award rendered after the party's motion will be considered void (Code of Civil Procedure, Arts. 820, 821 and 829). Failure to produce an award within the required timeframe may lead to the personal liability of the arbitrators (Code of Civil Procedure, Art. 813 *ter*).

#### **4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

The law states that the arbitrators may hold hearings, and more broadly accomplish every step of the arbitration proceeding, in a place other than the seat, even abroad (Code of Civil Procedure, Art. 816). More generally, in the absence of specific stipulations in the arbitration agreement, the arbitrators are the masters of the proceedings and they can decide on how and where to hold the arbitration.

According to the usual interpretation of Article 816 *bis* of the Code of Civil Procedure, the arbitrators are free to conduct the proceedings remotely, provided that each party has a fair and equal opportunity to present its case, and that parties have not reached a different agreement in the arbitration clause.

Following the wide application of the special regime introduced with COVID-19, the 2022 reform of the civil justice system introduced a general permission for courts to hold remote hearings (Code of Civil Procedure, Art. 127 *bis*). It is within the court's discretion to decide the modalities of the hearing. Even though the courts may provide for remote hearings provided that the attendance of persons (*i.e.* witnesses) other than the lawyers, the parties, the public prosecutor or the experts appointed by the judge are not required, in practice if all the parties and the arbitral tribunal consent, virtual hearings are possible also in case of evidence-taking which requires the attendance of third parties. This is widely accepted, especially in case of institutional arbitrations.

#### **4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

The new Article 818 of the Code of Civil Procedure, which entered into force on 1<sup>st</sup> March 2023, provides the possibility for arbitrators to issue interim measures where the parties give express consent in their arbitration agreement or in a subsequent document. Alternatively, parties can rely on their choice to the applicable arbitration rules entitling the arbitrators to grant such measures.

Should the parties' agreement provide for the arbitrators' power to issue interim measures, the jurisdiction of the state courts would be limited to interim measures that have been requested before the acceptance of the mandate by the sole arbitrator or the constitution of the arbitral tribunal (Code of Civil Procedure, Article 818, third paragraph). Also note that acceptance of the mandate by an emergency arbitrator may qualify as "constitution of the arbitral tribunal" as intended by the provision.

Following the constitution of the arbitral tribunal, the arbitrators shall have exclusive jurisdiction to issue interim measures. However, state courts shall maintain a supervisory power over the implementation of the measures and decide on any challenges.

#### **4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

Article 247 of the Code of Civil Procedure does not allow the testimony of anyone bearing an interest in the case. However, the article is not applicable to arbitration and, in practice, it is common to encounter employees testifying in arbitration procedures.

Parties to the arbitration agreement can agree on the evidentiary rules to be applied (Code of Civil Procedure, Art. 816 *bis*). Failing specific agreements between the parties, the arbitral tribunal will determine the

applicable rules of evidence (e.g., by referring to the Code of Civil Procedure or to the IBA Rules on the Taking of Evidence).

#### **4.5.6 Does it make it mandatory to hold a hearing?**

The law does not indicate a hearing as a mandatory element in an arbitration proceeding. The arbitrators are the masters of the proceedings and are free to decide the way in which the proceedings are conducted (Code of Civil Procedure, Art. 816 *bis*). However, the arbitral tribunal has to ensure that both parties have a fair and equal opportunity to present their case.<sup>9</sup>

In any event, if the parties have foreseen the conduct of a hearing in the arbitration agreement, the arbitral tribunal would be obliged to respect the parties' request.

#### **4.5.7 Does it prescribe principles governing the awarding of interest?**

No. The application of interest and the determination of the interest rate would depend on the law applicable to the merits. As a rule, under Italian law compound interest is not allowed.

#### **4.5.8 Does it prescribe principles governing the allocation of arbitration costs?**

No express provision regulates the allocation of the costs in arbitration. In Italy, it is common in civil litigation that the losing party must reimburse the litigation costs and legal fees of the opponent (pursuant to the *costs follow the event* principle). The same generally applies to arbitration, while the tribunal may allocate costs as it deems appropriate in the award, and the parties are free to decide on the applicable rules as to the allocation of arbitration costs.

### **4.6 Liability**

#### **4.6.1 Do arbitrators benefit from immunity to civil liability?**

No. Unlike under the UNCITRAL Model Law, Article 813 *ter* of the Code of Civil Procedure provides that arbitrators can be liable, other than in case of intentional wrongdoing, for gross negligence (*colpa grave*). That would include rendering the award beyond the final deadline (Code of Civil Procedure, Art. 813). The same article specifies that arbitrators can also be deemed liable in case of an unjustified resignation.

#### **4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?**

In general, the exact criminal law regime in arbitration proceedings is unsettled. There are no specific crimes related to arbitration and due to the principle of prohibition to apply infractions by analogy in criminal law, there are some areas of concern related to criminal liability and arbitration.

Although the Italian Supreme Court has qualified arbitration as equivalent to a judicial proceeding,<sup>10</sup> arbitrators do not qualify as public officers and, for that reason, they cannot be found guilty of corruption in judicial proceedings under the current criminal code.<sup>11</sup> Other forms of corruption, however, cannot be excluded, depending on a case-by-case analysis, and without prejudice to the general prohibition to apply infractions by analogy in criminal law.

Concerning witness testimony, witnesses are legally obliged to provide testimony to an arbitral tribunal. Should they decide not to appear in the proceedings, the tribunal may seize the local court to obtain a court order compelling the witness to appear. Failure to appear in these circumstances would result in criminal sanctions.

<sup>9</sup> Italian Supreme Court, decision no. 2201 of 2007.

<sup>10</sup> Italian Supreme Court, decision no. 14649 of 2017.

<sup>11</sup> Tribunal of Milan, investigating judge (G.I.P.), decision no. 28512 of 2017.

In any case, witnesses and experts do not take an oath prior to their deposition. The crime of false testimony is not applicable in relation to arbitral proceedings,<sup>12</sup> but may entail civil liability.

## 5. The award

### 5.1 Can parties waive the requirement for an award to provide reasons?

No. Article 829 of the Code of Civil Procedure explicitly states that an award that does not provide sufficient reasoning may be annulled by national courts on a party's motion.

### 5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Parties may waive the right to seek the annulment of the award only once the award has been rendered. Any agreement to waive the parties' right to seek annulment entered into prior to the award is void (Code of Civil Procedure, Art. 829).

### 5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

In general, there are no atypical mandatory requirements.

For the sake of completeness, we refer to the distinction between *arbitrato rituale* and *arbitrato irrituale*. While the first falls within the usual meaning of arbitration, *arbitrato irrituale* is a unique feature of Italian law.

The notion of *arbitrato irrituale* is introduced by Article 808 *ter* of the Code of Civil Procedure. It differs from *arbitrato rituale* as the outcome of the procedure is not an award. In fact, the objective of an *arbitrato irrituale* is to resolve a dispute with a binding contractual agreement rather than an award.

The binding contractual agreement is delivered by the arbitral tribunal, as an award would be, but does not constitute an enforceable title (see Civil Code, Art. 1372). If any party wishes to enforce the award, it would have to obtain an executory title from a court, commencing an ordinary proceeding for breach of contract.

### 5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No. Parties may not seek to appeal an award (*i.e.*, no *révision au fond*).

However, the parties may request national courts to annul the award in case of an alleged violation of the laws governing the merits, if they had included special provision for this in the arbitration agreement (Code of Civil Procedure, Art. 829).

Further, third parties who have an interest may oppose the award in front of national courts (Code of Civil Procedure, Art. 831, *i.e.*, "*opposizione di terzo*").

### 5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

The law does not provide for a special time-limit to obtain the recognition and enforcement of an award. The general time-limit to enforce a judicial decision is ten years.

Once a party seeks to obtain the enforcement of an award, in the case of a domestic award, parties need to submit a specific motion before the court of first instance ("*tribunale*") of the seat of the arbitration. The applicant must provide a certified copy of the award as well as a certified copy of the arbitration agreement

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<sup>12</sup> Criminal Code, Art. 372.



(Code of Civil Procedure, Art. 825). The court of first instance will proceed to a verification of the formal requirements of the award and grant a certificate of enforceability.

In case of a foreign award, the criteria of the New York Convention apply. The parties also need to submit a specific motion but before the Court of Appeal of the district in which the other party has its residence/registered seat. If the other party is not based in Italy, the motion must be submitted before the Court of Appeal of Rome. The party wishing to enforce a foreign award must provide a certified copy of the award and of the arbitration agreement, both translated in Italian. During this procedure, which at this stage is *ex parte*, the court will proceed to a verification of the formal requirements of the award and grant a certificate of immediate enforceability, provided that it is not contrary to the Italian public order and that the subject matter of the dispute is arbitrable in Italy (Code of Civil Procedure, Art. 839). Once the court has issued its order granting, or denying, enforcement of the award, the order may be challenged within 30 days (Code of Civil Procedure, Art. 840) – see 5.8 below.

#### **5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

No. However, parties may move to suspend, or prevent, the enforcement of the award at any moment during the annulment proceeding (Code of Civil Procedure, Art. 830). In order to grant the party's motion, the court will have to consider the presence of serious reasons justifying the suspension of the enforcement, evaluating the economic prejudice that the party seeking to annulment of the award could suffer, along with a *prima facie* analysis of the grounds for annulment.<sup>13</sup>

#### **5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?**

Yes, on a party's motion. If the party who wishes to enforce the award in Italy has obtained a recognition of the foreign award, the party who seeks to suspend the enforcement has 30 days to challenge the decision recognizing the award.

According to Article 829 of the Code of Civil Procedure, the annulment of the award at the seat constitutes a reason to suspend its enforcement in Italy. Hence, on a party's motion, an award annulled at the seat is unenforceable in Italy.

If annulment procedures are ongoing at the place of the seat, the party must still initiate a challenge within 30 days of the decision recognizing the award. The party may then move for a stay of the Italian proceedings pending a final determination by the courts of the seat. Italian courts must grant such a stay (Code of Civil Procedure, Art. 840).

#### **5.8 Are foreign awards readily enforceable in practice?**

In general, Italian courts are willing to receive and enforce foreign awards. The grounds on which the recognition of a foreign award can be refused are exhaustively enumerated by the New York Convention, Article V, and Articles 839-840 of the Code of Civil Procedure. These are:

- Invalidity of the arbitration agreement. In this context, it is worth noting that Italy considers that the capacity of physical persons is regulated by their national law, while the capacity and representation of juridical persons is regulated by the laws of the place of incorporation.<sup>14</sup>

<sup>13</sup> Italian Supreme Court, decision no. 4060 of 2005.

<sup>14</sup> L. Salvaneschi, V. Allavena, A. Carlevaris *et. al.*, "Contenzioso Civile: Arbitrato", *Itinera Guide Giuridiche Ipsos*, Wolters Kluwer Italia, 2020, p. 538.

- Absence of due process, which Italian courts may decide on at their own motion.<sup>15</sup>
- Violation of the arbitration agreement *ratione materiae* or *ratione personae*.
- Non-conformity of the constitution of the arbitral tribunal and of the procedure with the parties' agreement, provided that the non-conformity caused a real prejudice to the party challenging the recognition.
- Non-arbitrability of the dispute. Italian courts have to refer to Article 806 of the Code of Civil Procedure to verify the arbitrability of the dispute<sup>16</sup> and they may decide on the non-arbitrability of the dispute at their own motion.
- Non-conformity with the public order. However, the interpretation of the notion of public order must be restrictive: Courts may only refer to domestic public order, and the judges must assess the violation at the moment their decision is rendered and not at the date of the award.<sup>17</sup>

As of 1<sup>st</sup> March 2023, the reform of the civil justice system expressly provides for immediate enforceability where the President of the Court of Appeal declares the recognition of a foreign award, requiring performance by the unsuccessful party (*con contenuto di condanna*), examples include: fulfilling outstanding obligations or restoring the status quo, refraining from doing something or discontinuing an ongoing breach, or indemnifying the successful party for suffered damages.

## 6. Funding arrangements

### 6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such restrictions?

As a rule, contingency fees are not permissible. Attorneys can accept a remuneration based on a percentage of the value of the case, but it may not vary in relation to the outcome of the case (Code of Ethics, Art. 25).

Concerning third-party funding, the practice is not prohibited by Italian law. However, to the best of our knowledge there are no judicial cases defining the limits of third-party funding in Italy.

In practice, funding of arbitration cases by lawyers and/or by third-party funders are still quite limited in Italy, even though use of third-party funding is becoming increasingly prevalent in Italy and there seems to be a growing market for third-party funders.

## 7. Arbitration and technology

### 7.1 Is the validity of blockchain-based evidence recognised?

Yes. The legislator has recognized the evidentiary value of blockchain-based evidence under Article 8 *ter* of the Law Decree no. 135 of 14 December 2018 (converted by Law no. 12 of 11 February 2019). The Article incorporates Article 41 of the EU Regulation 910/2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market, specifying that blockchain-based evidence has the same juridical value that is granted to electronic timestamps by the EU Regulation. In particular, a piece of evidence cannot be excluded because it is in an electronic form.

<sup>15</sup> L. Salvaneschi, V. Allavena, A. Carlevaris *et. al.*, "Contenzioso Civile: Arbitrato", *Itinera Guide Giuridiche Ipsa*, Wolters Kluwer Italia, 2020, p. 539.

<sup>16</sup> Italian Supreme Court, decision no. 7995 of 1990.

<sup>17</sup> L. Salvaneschi, V. Allavena, A. Carlevaris *et. al.*, "Contenzioso Civile: Arbitrato", *Itinera Guide Giuridiche Ipsa*, Wolters Kluwer Italia, 2020, p. 545.

## **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

Yes. Italy is at the forefront in the admission of blockchain-based evidence. Article 8 *ter* of the Law Decree no. 135 of 14 December 2018 (converted by Law no. 12 of 2019) expressly confirms the legal value of blockchain-based evidence. Furthermore, it recognizes contracts that are recorded on a blockchain. While there exists no case law on this issue yet, nothing suggests that the law should not apply to an arbitration agreement.

## **7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

The answer to the question is has not been settled.

While Article 8 *ter* of the Law Decree no. 135 of 14 December 2018 (converted by Law no. 12 of 2019) recognizes electronic contracts and documents, there is no case law on the implementation of such rule and the requirement for the party seeking enforcement to provide the *original* of the award.

## **7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

First, it is important to stress that under Italian law, the arbitrators' signatures in an award are amongst the essential elements of its validity (Code of Civil Procedure, Arts. 823 and 829). An award that does not bear the arbitrators' signatures is null and cannot be enforced (Code of Civil Procedure, Arts. 823 and 829).

Legislative Decree no. 82 of 2005 (as modified by Legislative Decree no. 179 of 2016, which implemented EU Regulation no. 910/2014) officially recognises the validity of electronic signatures in Italy. These are now considered fully equivalent to handwritten signatures.<sup>18</sup> The same is true at the level of the European Union, as per the EU Regulation no. 910/2014. The Decree and the EU Regulation no. 910/2014 specify the requirements that an electronic signature must meet to be deemed valid.

In both cases, whereas a signature that has been inserted using encrypted electronic keys authenticated by a third-party certificate bears full legal recognition, inserting the image of a signature (e.g., by scanning a model signature and pasting it at the end of a document) may not be recognized as a valid signature according to Italian or European law (Legislative Decree no. 82/2005, Art. 24; EU Regulation no. 910/2014, Articles 2, 25, 26 and Annex 1).

According to Article 25(3) of the EU Regulation no. 910/2014, a Member State is obliged to recognize the validity of an electronic signature that has been issued in another Member State, in accordance with the technical requirements set forth in the Regulation.

Hence, while to the best of our knowledge there is no case law on the matter, an arbitral award that has been electronically signed in compliance with the provisions of Legislative Decree no. 82/2005 or EU Regulation no. 910/2014 should be considered as an original for the purposes of recognition and enforcement in Italy.

## **8. Is there likely to be any significant reform of the arbitration law in the near future?**

Italy has introduced Legislative Decree no. 149 of 2022, directed at reforming the Italian Code of Civil Procedure, including amendments to several arbitration provisions. The new rules apply to arbitration proceedings commenced as of 1<sup>st</sup> March 2023.

The Legislative Decree introduces a new Article 818 of the Code of Civil Procedure, which provides for the possibility for arbitrators to issue such measures where the parties provide express consent in their

<sup>18</sup> Italian Supreme Court, decision no. 22871 of 10 November 2015.

arbitration agreement or in a subsequent document. Alternatively, parties can rely on their choice of applicable arbitration rules entitling the arbitrators to grant such measures. Following its constitution, the Arbitral Tribunal has exclusive jurisdiction to issue precautionary measures. However, State courts maintain supervisory power over implementation of the measures and determine challenges to them (which are limited to cases in which the parties are entitled to challenge the award for breach of public policy). This empowerment of arbitrators is a major change in Italian arbitration law.

The Legislative Decree also addresses some interpretation, practical and coordination issues.

Under the new provision of Article 822 of the Code of Civil Procedure, the parties have the power to indicate in the arbitration agreement (or any other written document made before the commencement of the arbitration) a foreign law applicable to the merits of the dispute (failing which, the arbitrators should apply the ordinary conflict of laws rules).

Furthermore, the Decree reduces the time limit for challenging an award that has not been notified to the losing party from one year to six months, following the last arbitrator's signature (Code of Civil Procedure, Art. 828, second paragraph). Where the award has been notified, the time limit remains at 90 days.

In addition, under a revised provision of Article 839 of the Code of Civil Procedure, a winning party may immediately enforce a foreign award requiring performance by the other party upon the President of the Court of Appeal issuing a decree declaring the effectiveness of the award (also, pending the possible challenge of enforcement by the losing party).

One change that has immediate application is a provision of the Legislative Decree guaranteeing the impartiality and independence of arbitrators. In particular, a party may request the removal of an arbitrator where there are so-called strong reasons of convenience, such as to affect the independence or impartiality of the arbitrator (Code of Civil Procedure, Art. 815, first paragraph, no. 6-*bis*,) and arbitrators must disclose, at the time of acceptance of their appointment, facts that are relevant to their impartiality and independence, under penalty of their appointment being annulled (in the event of non-disclosure) and forfeiture of the appointment (in case of absent or incomplete disclosure) (Code of Civil Procedure, Art. 813, first paragraph).

Finally, the Legislative Decree lays down criteria, aimed at ensuring transparency, turnover and efficiency, to be met by the judicial authorities who appoint arbitrators (Code of Civil Procedure, Art. 810, third paragraph).

## 9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules are to a large extent compatible with local arbitration law. However, the full limitation of liability provided for under Article 17 of the Delos Rules shall be read in conjunction with Article 813 *ter* of the Code of Civil Procedure, which provides that arbitrators can be held liable, other than in case of intentional wrongdoing, for gross negligence (*colpa grave*), including for rendering the award beyond the final deadline as well as in case of unjustified resignation.

## 10. Further Reading

Suggested readings:

- A. Malatesta, *Interim Measures and International Commercial Arbitration: Some Thoughts on the Concurrent Jurisdiction*, Rivista dell'Arbitrato, 2023, No. 2.
- R. Tiscini, *La riforma Cartabia del processo civile. Commento al D. lgs. 10 ottobre 2022 n. 149*, in *Quaderni di Judicium*, Pacini Giuridica, 2023;
- L. Salvaneschi, *Arbitrato e tutela cautelare della prova (passato - presente - futuro)*, in Rivista dell'Arbitrato, 2022, No. 2;

- A. Briguglio, A. Panzarola, A. Carosi, A. Carlevaris, M. Benedettelli, E. Marinucci, L. Salvaneschi, B. Sassani, *Commento ai principî in materia di arbitrato della legge di delega n. 206 del 21 novembre 2021, art. 1, c. 15*, in *Rivista dell'Arbitrato*, 2022, No.1;
- E. Z. Galli Fonseca, *Obbligo di disclosure e imparzialità dell'arbitro*, in *Rivista Trimestrale di Diritto e Procedura Civile*, 2022;
- F. Ferrari, *The law applicable to the merits under the new Italian arbitration law: a tale of missed opportunities*, *Diritto del Commercio Internazionale*, No. 4, 2022.
- D. Mantucci, *Trattato di diritto dell'arbitrato*, ESI, 2021;
- G. Verde, *Lineamenti di diritto dell'arbitrato*, Giappichelli, 2021;
- F. Marrella, N. Soldati, *Arbitrato, contratti e commercio internazionale. Studi in onore di Giorgio Bernini*, Giuffrè, 2021;
- E. Zucconi Galli Fonseca, *Diritto dell'arbitrato*, Bononia University Press, 2021;
- M. Benedettelli, *International arbitration in Italy*, Kluwer law international, 2020;
- F. Danovi, *L'arbitrato. Una giurisdizione su misura*, Giuffrè, 2020;
- L. Salvaneschi, V. Allavena, A. Carlevaris *et. al.*, *Contenzioso civile: arbitrato*, Itinera Guide Giuridiche Ipsa, Wolters Kluwer Italia, 2020;
- L. Salvaneschi, A. Graziosi, *L'Arbitrato*, Giuffrè, 2020;
- E. Zucconi Galli Fonseca, C. Rasia, *Arbitration law in Italy. Domestic and international perspectives*, CEDAM, 2020;
- M.V. Benedettelli, C. Consolo, L.G. Radicati Di Brozolo *et. al.*, *Commentario breve al diritto dell'arbitrato nazionale ed internazionale*, CEDAM, 2017;

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> , with offices and a case team?	The most important Italian arbitral institution that deals with both domestic and international arbitration proceedings is the Milan Chamber of Arbitration (CAM).
Main arbitration hearing facilities for in-person hearings?	The CAM offers its premises for holding in-person hearings, both in Milan (Via Meravigli, 7) and in Rome (Via Barnaba Oriani, 34).
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	Milan: Internet & Copy (Via S. Agnese, 12) Rome: Mail Boxes Etc. (Via G. Castellini, 1) ME.GA. EDP Fotocopie Parioli (Via A. Bertoloni, 23-25)
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Optima Juris ( <a href="https://www.optimajuris.com/">https://www.optimajuris.com/</a> ), which serves the cities of Rome, Florence, Milan, Naples, and Venice International Court Reporters ( <a href="https://internationalcourtreporters.com/locations/italy/">https://internationalcourtreporters.com/locations/italy/</a> ) Global Voices ( <a href="https://www.globalvoices.com/it/trascrizioni-legali/">https://www.globalvoices.com/it/trascrizioni-legali/</a> )
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	L&D Traduzioni Giuridiche ( <a href="https://www.ld-traduzionigiuridiche.com/">https://www.ld-traduzionigiuridiche.com/</a> ) Studio Interpreti Milano ( <a href="https://www.studiointerpreti.it/?lang=it">https://www.studiointerpreti.it/?lang=it</a> ) CSE ( <a href="https://www.interpretariato.it/">https://www.interpretariato.it/</a> ) Associazione Italiana Traduttori e Interpreti Giudiziari (for the research of professionals: <a href="http://www.interpretigiudiziari.org/index.php">http://www.interpretigiudiziari.org/index.php</a> ) PromoEst ( <a href="http://www.promoest.com/">http://www.promoest.com/</a> ) LexTranslate ( <a href="https://www.lextranslate.com/it/">https://www.lextranslate.com/it/</a> )
Other leading arbitral bodies with offices in the jurisdiction?	φ