Dispute Resolution
Around the World

Italy
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1. Legal System

The Italian legal system is founded on the Constitution (which came into force in January 1948), on national and regional legislation (laws, codes, decrees and regulations) and on EU legislation.

Legislation

Legislative powers lie with:

(a) the Parliament, that consists of two Houses: the House of Deputies and the House of Senior Representatives which are both elected for five years;

(b) the Government, although exercisable only on an emergency basis or within the limits conferred by Parliament; and

(c) the Regions, whose legislative powers are limited both geographically and in scope to the matters that the Constitution does not specifically reserves to the Parliament. Additional areas of legislative authority are expected to be transferred to the Regions under a “devolution” plan currently under consideration by Parliament.

The main body of Italian laws is contained in seven codes: the Civil Code, the Code of Civil procedure, the Criminal Code, the Code of Criminal Procedure, the Maritime Code, the Privacy Code, the Consumer Code, and the Code of Intellectual Property.

2. Courts

There are two separate and independent court systems in Italy: courts with special jurisdiction and courts with ordinary jurisdiction.

Courts with Special Jurisdiction

There are a number of courts with special jurisdiction to determine claims in specific areas, including administrative law, tax, military matters and public waters.
Courts with Ordinary Jurisdiction

Courts with ordinary jurisdiction (civil or criminal) deal with all matters not dealt with by the courts with special jurisdiction. They are presided over by career magistrates/judges.

There are two levels of courts with ordinary jurisdiction: the courts of first instance and the courts of appeal. Both can examine questions of fact and law. The Supreme Court serves as a court of final appeal which examines questions of law only. The territory is divided into 26 districts having several courts of first instance and one Court of Appeal each. The Supreme Court is in Rome.

The civil courts with ordinary jurisdiction are as follows:

*Justice of the Peace.* This court is competent to hear any dispute not exceeding €5,000.00 for movable property or €20,000.00 for personal injury claims arising out of motor or ship accidents. Further, regardless of the value of the dispute, the Justice of Peace has jurisdiction over the cases connected with setting of boundaries, and other real estate matters.

*Civil Tribunal.* This court has general jurisdiction at first instance over civil claims other than those allocated to the Justice of Peace. It also hears appeals from the Justice of Peace. In larger cities civil tribunals have specialist divisions (e.g., bankruptcy and family law divisions).

Cases are usually heard and decided by a single judge or by a panel of three judges in exceptional cases. Since July 2003 litigation concerning trademarks, patents, copyright and IP cases in general has been reserved to a limited number of tribunals in the territory, each covering one or more Regions.

*Court of Appeal.* This court has appellate jurisdiction over decisions of civil tribunals but in some cases (e.g., proceedings for the recognition of foreign judgments, enforcement of Italian Antitrust Law) acts as a court of first instance. Judgments are given by a panel of three judges.
Supreme Court. The Supreme Court is the court of final appeal and its judgments are given by a panel of five judges. This court does not rehear the facts and only determines issues of law.

Constitutional Court. The Constitutional Court determines the constitutional legitimacy of laws and enactments having the force of law adopted by Parliament and regions. Furthermore, the Court passes judgment on conflicts of powers within the State, between State and regions, and between regions.

3. Legal Profession

A lawyer must pass a bar examination before being entitled to appear before the courts. Nevertheless, within certain monetary and territorial limits, a trainee can assist clients before the lower courts (Justice of Peace and Civil Tribunal) with Bar authorization. A lawyer needs to have been qualified for at least eight years before he can appear before the Supreme Court. The legal profession is organized on the basis of local bars for each district. Each local bar is governed by a council, and the council is governed by a national bar.

4. Litigation

Civil proceedings are governed by the Code of Civil Procedure, which came into force in 1942 and has undergone several reforms in the intervening years.

Mandatory mediation procedure

By way of implementation of the European Mediation Directive 2008/52/EC, Italy introduced, by Legislative Decree No. 28 of 4 March 2010, a mediation procedure for resolving civil and commercial disputes.

Effective as of 20 March 2011, the new mediation process became mandatory for disputes involving: rights in rem; asset division; inheritance; family agreements; leases; loans; business leases; insurance and banking contracts and other financial contracts; tort
actions on defamatory statements in the media; and medical malpractice. From 20 March 2012, mediation will also be mandatory for disputes involving compensation damages due to car and nautical accidents and co-ownership of real estate.

The mediation procedure may be conducted only before authorized mediation bodies, included in a register held by the Ministry of Justice. Mandatory mediation is a precondition for proceeding with a Court action. The Judge will not consider and decide the case unless the parties have previously tried to resolve the dispute by mediation. In the event the parties fail to try to settle the dispute by mediation, at the first hearing the Judge will refer the parties back to mediation and defer the next hearing by four months, i.e. after the expiration of the deadline to complete the attempt to mediate.

The mediator may submit a written proposal of settlement of the dispute to the parties, and has to do so upon their joint request. If the mediation process is successful, the mediator drafts the settlement agreement which will then, upon application of one of the parties, be validated by the President of the Court in which the mediation body is registered, to verify its compliance with the law. Upon such validation, the settlement agreement will become fully enforceable.

The Law has consequences for the subsequent litigation proceeding in the event of the failure of the mediation procedure. If the judgment of the Court corresponds to the proposal of the mediator, the winning party that declined the mediator’s proposal will not be allowed recovery of its costs and attorney fees. Furthermore, the Judge may draw elements of evidence against the party that refused to participate to the mediation without a just cause.

**Commencing Proceedings**

Subject to the completion of the above-mentioned mandatory mediation procedure, civil proceedings are generally commenced with service of a writ of summons by the claimant on the defendant. The
writ of summons is drafted and signed by legal counsel with authority (by power of attorney) to sign on behalf of his client.

The writ of summons must contain all the elements necessary to identify the claim and causes of action. Between service of the writ of summons and the date given for the first hearing, the defendant has at least 90 days (or 150 days in the case of a defendant residing abroad) to prepare its defence.

The writ of summons must be filed at the court after service in order for the case to be entered on the court register and assigned to a specific judge.

Defence

The defendant’s defence must be filed with the court on or before the date of the first hearing. If the defendant intends to file a counterclaim or join third parties to the litigation, the defence and counterclaim and/or third party claim must be filed with the court no later than twenty days prior to the date of the first hearing.

First Hearing

First hearings are generally held in the Judge’s chambers and are attended only by the parties’ counsel. At the first hearing, the Judge checks the documents filed by the parties and ask for further clarifications, also indicating issues that he deems opportune to treat immediately. Upon request of the parties, the Judge sets the date of a next hearing, at which the parties are required to appear in person or through a legal representative; on such occasion the Judge may question the parties and will attempt to promote a settlement of the dispute.

Evidence

The evidence that can be adduced by the parties is regulated in detail. Witnesses must be heard in court. Upon all parties’ request and if required by the nature of the dispute or by any other specific
circumstances, the judge may allow written depositions. The parties must identify in advance the names of their witnesses and submit a list of the questions to be asked of each of them. The Judge decides on the admissibility of witnesses, determines which questions are to be put to the witnesses and addresses the questions to the witnesses. A party cannot cross-examine the other party’s witnesses. However, each party may request the Judge to ask the witnesses to provide more precise information, although the Judge has complete discretion as to whether to ask further questions. When it is necessary to ascertain specific circumstances regarding the case, the Judge may order inspections and appoint an expert in order to carry out technical analysis or examinations which, however, are not binding on the Judge.

The Court’s Decision

Once the evidentiary phase is closed, the Judge fixes a hearing date at which he invites the parties to state their final claim and defence by way of written submissions. Oral submissions are rare, except in employment cases.

There is no equivalent to default judgments. The Judge must always decide a case based on the evidence provided by the parties.

A judgment given at first instance is provided with levy of execution. The parties are usually served with a written abstract of the judgment. The full text of the judgment, including detailed reasoning, is usually made available to the parties only after taxation of costs.

Special Rules

Special procedural rules are applicable to disputes concerning labor, leases and agricultural cases.

From 1 January 2004, special rules governed the litigation of cases involving company law, including relations between shareholders, officers’ liability, investment services such as asset management, tender offers, stock exchange transactions, certain banking activities
and financing of public projects. These special rules have been abolished as of 4 July 2009 and are now applicable only to the proceedings commenced before that date.

**Remedies**

**Orders for Payment or Delivery Up**

A party who is a creditor for a certain sum of money or with a right to delivery up of goods who is able to provide written evidence of its claim may apply for an interim order for payment or delivery up against the defendant. The defendant may file a defence or appeal within 40 days of service of the order on him. If the order is granted on the basis of promissory notes or notarised deeds or where a delay might seriously impair the petitioner’s rights then the order may be declared immediately enforceable. Otherwise, the order becomes final and enforceable if the defendant fails to file a defence or appeal.

Orders for payment or delivery up of goods can also be obtained during pending proceedings, where the claimant can provide written proof of its right, or where the order is limited to the amount acknowledged as due by the other party.

**Interim Relief**

A claimant may apply to court for interim relief whenever it is necessary to take urgent measures to avoid the claimant’s rights being prejudiced. The claimant must give the court fair evidence of its rights and of the damage which would be caused by delay. Applications for interim relief may be filed both before starting a lawsuit and during the course of proceedings. If interim relief is granted prior to proceedings being issued, proceedings must be issued within a deadline fixed by the Judge, and no later than sixty days from the date of notice of the grant of the interim relief to the claimant.
Interim remedies include:

(a) injunctions to restrain the defendant from carrying out a certain activity;

(b) freezing orders to restrain a defendant from removing certain assets, including money in bank accounts, and preserving assets for the claimant;

(c) sequestration of goods whose ownership or possession is in dispute; and

(d) sequestration of documents, registers, books or other documents for the purpose of securing evidence.

Recovering Legal Costs

As a general rule the court orders the losing party to pay the legal costs and fees incurred by the successful party. The amount of costs is assessed at the end of the proceedings and included in the judgment. If there is more than one losing party the court orders each one to pay legal costs and expenses and damages in proportion to their respective role in the case. Costs incurred as a result of one party failing to comply with the duty to act fairly during the course of litigation may be ordered. Cost liabilities may be set-off between the parties in part or in full. The court may also disallow some of the costs incurred by the successful party if they are considered excessive or unnecessarily incurred.

Appeals

All appeals against a judgment are of right, and leave to appeal is not required.
Appeal

An ordinary appeal may be lodged against a judgment given at first instance, except:

(a) when excluded by a statutory provision;
(b) when excluded by the agreement of the parties;
(c) when the judgment has been given in accordance with the rules of equitable justice rather than the rules of substantive statutory law; or
(d) when the judgment has been given by a Justice of Peace pursuant to the rules of equitable justice.

A cross-appeal can be made by the defendant with its response to the appeal. New claims may not be made in appeal proceedings. New evidence is inadmissible unless the court considers it essential to the final decision or is satisfied the evidence could not have been produced before for reasons beyond the control of the party seeking to rely on it.

Petition for Cassation

A petition to the Supreme Court can be filed against an appeal judgment or a judgment at first instance when it is not subject to appeal. A petition for cassation can only be brought on one or more of the following grounds:

(a) jurisdiction;
(b) breach of the rules governing venue;
(c) breach or wrong application of statutory provisions;
(d) nullity of the judgment or of the proceedings; or
(e) lack of, insufficiency or contradiction in the reasons of the judgment on a decisive issue which had been raised during the
proceedings by the parties, or which should have been raised by the court of its own motion.

The petition to the Supreme Court will be rejected if:

(a) the challenged judgment has decided an issue of right in conformity with the Court of Cassation jurisprudence and the grounds of petition *prima facie* do not justify either confirming or changing the current jurisprudence; and

(b) fair trial principles have been clearly respected.

The defendant/respondent may file a counter-petition. New documents are not allowed, except those needed to prove that the judgment is null and void or that the petition or the counter-petition is admissible. The Court of Cassation may set aside the judgment, remand the case to another court for a re-trial or dismiss the petition.

Petition for Revocation

Appeal judgments and judgments rendered at first instance against which no ordinary appeal can be made may be attacked by a petition for revocation. The grounds for which revocation is allowed are limited to situations where:

(a) the judgment was the result of mistake or fraud;

(b) the judgment has been rendered on the basis of false evidence;

(c) after the judgment, decisive documents have been found which a party could not produce in the proceedings;

(d) the judgment is in conflict with another judgment, unless the existence of that other judgment was argued before the court and the court found that no conflict exists; or

(e) the judgment is affected by fraud on the part of the judge.
Revocation proceedings are started by summons and are heard by the same court that gave the judgment under attack. If the court allows the petition it not only sets aside the judgment but it also reconsiders the merits of the case.

**Third-Party Opposition**

Third-party opposition is a remedy granted to someone whose rights are prejudiced by a judgment given in proceedings to which he was not a party. The judgment attacked by the third-party must be final or at least enforceable. This remedy can also be granted to the assignee or to the creditor of a party to the proceedings, if the decision under attack is a result of fraud or conspiracy to damage the assignee or the creditor.

**5. Enforcement of Judgments**

Any judgment and/or interim relief order can be enforced by means of enforcement proceedings. In the case of enforcement of monetary claims, in order to commence enforcement proceedings, the judgment creditor must send a notice to the judgment debtor informing him that enforcement proceedings will be commenced should the judgment debtor not comply with the creditor’s notice (to pay) within ten days. Once the ten-day term has expired and the debtor has failed to comply the creditor can ask the court bailiff to seize the debtor’s assets and/or real estate. The assets or the real estate seized are then assigned to the creditor or sold at auction. Specific rules apply to enforcement proceedings aimed at having a specific object released or delivered and/or obliging the debtor to carry out a specific activity or preventing the debtor from carrying out a specific activity.

**Recognition and Enforcement of Foreign Judgments**

Foreign judgments are automatically recognised in Italy provided that the following requirements are complied with:

(a) the court that gave the foreign judgment had jurisdiction over the case;
(b) the procedural documents commencing the foreign proceedings were properly served on the defendant and his rights of defence were respected;
(c) the parties entered a formal appearance or judgment by default was granted pursuant to law;
(d) the foreign judgment is no longer capable of appeal;
(e) the foreign judgment is not contrary to any final judgment rendered by an Italian court;
(f) no litigation on the same subject and between the same parties, initiated before the foreign litigation, is pending before an Italian court; and
(g) the foreign judgment is not contrary to Italian public policy.

However, if a party objects to the automatic recognition of the foreign judgment, or whenever it necessary to commence enforcement, the interested party can begin proceedings before the Court of Appeal for the recognition and enforceability of the foreign judgment. The Court of Appeal’s decision on the matter can be appealed to the Supreme Court.

6. **Arbitration**

Arbitration is increasingly used as an alternative to court proceedings. Arbitration proceedings are classified into four categories:

(a) arbitration;
(b) mandate to settle;
(c) foreign arbitration; and
(d) arbitrations administrated by pre-established regulations.
Each is governed by a separate set of rules. The majority of the rules are found in the 1942 Italian Code of Civil Procedure.

It is worth noting that the Legislative Decree No.40 dated 2 February 2006 abrogated the preceding provisions of the Code of Civil Procedure relating to international arbitration (“arbitrato internazionale”). As a result, any arbitration presenting elements of internationality (i.e. one of the parties having its residence or registered office outside of Italy) is now governed, by the same rules of a domestic arbitration.

The reform of 2006 has also introduced a new category of arbitration (i.e., “arbitrations administrated by pre-established regulations”), thus giving formal recognition to the so-called “institutional” or “administered” arbitrations, i.e., arbitrations managed and governed by formal institutions such as a permanent arbitration organisation or a Chamber of Arbitration.

Italy is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards and co-operates with international organisations in the promotion of arbitration.

Role of the Courts in Arbitration

Whenever a dispute is reserved to arbitration the courts are required to decline jurisdiction. However, the courts retain jurisdiction to grant interim relief such as injunctions or freezing orders.

Institutional and Ad Hoc Arbitration

Institutional arbitration is mainly handled by the Chambers of Arbitration which have been established by Chambers of Commerce and other private entities. Such Chambers of Arbitration give assistance in drafting arbitration clauses for contracts and in researching questions of arbitration, conciliation and other related issues of private justice, including through their web sites. The activity of Chambers of Arbitrations, which is increasingly growing, includes
the resolution of disputes in a quick and efficient way by means of arbitration and mediation, including on-line mediation.

From a multi-jurisdictional point of view, whilst most Chambers of Arbitration in Italy are concerned only with domestic matters, the Chamber of Arbitration of Milan and the Chamber of Arbitration of Venice play an important role in resolving international disputes.

The Chamber of Arbitration of Milan has gained an increasing good reputation for its ability to count on reliable arbitrators and mediators and to work in several different languages as English, French and Italian.

The Chamber of Arbitration of Venice is mainly concerned with disputes arising out of commercial relationships with Eastern Europe, Austria, Germany, and the Middle and Far East. The Chamber is composed of seven Italian members and seven foreign members representing Austria, France, Germany, Greece, Spain, Switzerland and Hungary Ad hoc arbitration also regularly takes place in Italy by appointing arbitrators, usually from among well-known lawyers and law professors, to resolve disputes which are referred to arbitration pursuant to an arbitration provision in a contract or otherwise.

**Enforcement of Arbitration Awards**

In order for a foreign arbitration award to be enforced in Italy it must be filed with the Court of Appeal of the place of residence of the other party (if it is in Italy) or with the Court of Appeal in Rome (if the other party resides abroad).

The court will only check the formal requirements of the award and will not identify any defects in the award which may entitle the parties to appeal. The Court will then issue an enforcement order following which the award becomes equivalent to a judgment capable of enforcement.

An arbitration award given in Italy is immediately binding on the parties. To enforce it, an original or a certified copy of the award must
be submitted to the tribunal of the district in which the arbitration award was given, together with the original, or a certified copy, of the arbitration agreement. The tribunal will then issue an enforcement order.

7. Alternative Dispute Resolution

Mediation is developing rapidly as a means of resolving domestic disputes. As already mentioned above (section 4), as of March 20, 2011 a new mediation process became mandatory for disputes involving rights in rem; asset division; inheritance; family agreements; leases; loans; business leases; insurance and banking contracts and other financial contracts; tort actions on defamatory statements in the media; and medical malpractice. From March 20, 2012, mediation will also be mandatory for disputes involving: compensation damages due to car and nautical accidents and co-ownership of real estate.

The new legislation provoked forceful opposition from the Bar associations, on the grounds of violation of the right of free access to justice and of rights to a defence, due in part to the allegedly inadequate selection of mediators. The constitutional legitimacy of the Law is currently under examination by the Constitutional Court.

ADR is also strongly fostered by the Chambers of Commerce, notably that of Milan, which has organized Conciliation Centres and established rules of procedure. The Conciliation Centres of the Chambers of Commerce provide venues for the mandatory conciliation meetings provided for by Italian law in the case of disputes with sub-contractors and also those with consumers. Additional private organizations provide ADR services.

Relationship of ADR with Litigation and the Courts

In labour case and cases involving sub-contractors, the parties have the right to go through ADR procedures before they may apply to court.
The Code of Civil Procedure also provides for conciliation during court proceedings, upon request of the parties. Any settlement agreement entered into before the Judge is binding and enforceable in the same way as a judgment of the court.

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