



Italy: Arbitration

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This country-specific Q&A provides an overview of the legal framework and key issues surrounding arbitration law in the **Italy** including arbitration agreements, tribunals, proceedings as well as costs, awards and the hot topics concerning this country at present.

This Q&A is part of the global guide to Arbitration.

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1. **What legislation applies to arbitration in your country? Are there any mandatory laws?**

The Italian Civil Procedural Code, Articles 806 – 840, governs arbitration proceedings in Italy. The last significant amendment to these arbitration rules was approved on 2 February 2006 by Legislative Decree No. 40, which – among other things – clarified the procedure for the appointment of arbitrators in multi-party proceedings, the consequences of failure to pay arbitrators' fees and the right of the parties to challenge an arbitration award on the basis of breach of the principles of law only if it is expressly provided for by the arbitration clause.

The main mandatory provisions concerning arbitration proceedings are in relation to due process: the parties and the arbitrators can decide the rules for the proceedings that they consider appropriate but all the parties must be given the same rights to defend themselves.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Italy is a signatory to the New York Convention and ratified it on 31 January 1969 without any reservation to its general obligations. The Convention entered into force in Italy on 1 May 1969.

3. **What other arbitration-related treaties and conventions is your country a party to?**

Italy is a party to the 1927 Geneva Convention on The Execution of Foreign Arbitral Awards, to the 1961 European Convention on International Commercial Arbitration as well as to the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

Italian law governing both national and international arbitration proceedings is the same. The only difference arises when a party wants to challenge an award. In this case, if the parties are Italian, then the Court of Appeals will, if it declares the arbitration award null and void, decide the merits of the case. However, if one of the parties is foreign, the Court of Appeals cannot decide on the merits of the case.

Italian arbitration law is not based on the UNICITRAL Model Law, however, the principles governing the Italian law that applies to arbitration proceedings are similar to those of the Model Law. The main differences are that Italian law does not contain an exclusion on the liability of arbitrators and the right of the arbitrator to grant interim measures is excluded by Italian law.

5. Are there any impending plans to reform the arbitration laws in your country?

No, there are not, at the moment, any impending plans to reform the arbitration laws.

6. What arbitral institutions (if any) exist in your country?

In Italy there are several arbitration institutions. The most well-known arbitration institution is the National and International Chamber of Commerce of Milan. Other well-known arbitral institutions are the Italian Association for Arbitration (AIA) and the Arbitral Chamber of the Chamber of Commerce of Rome (CCIAA).

7. What are the validity requirements for an arbitration agreement under the laws of your country?

In order to be valid and enforceable in Italy, an arbitration clause must be agreed in writing and contain the scope of the subject matter of the dispute. Oral arbitration agreements are not valid under Italian law.

8. Are arbitration clauses considered separable from the main contract?

Under both Italian law and case law, arbitration clauses are autonomous from the main contract; the validity of an arbitration clause is therefore assessed independently from the underlying contract.

9. Can claims under more than one contract be brought in the one arbitral proceeding? Can an arbitral tribunal with its seat in your country consolidate separate arbitral proceedings under one or more contracts, and, if so, in what circumstances?

No, in principle it is not possible to file claims arising from different contracts and different arbitration clauses in the same arbitral proceeding. However, if the arbitration clauses are exactly the same, and the relevant contracts are connected, it could be possible to consolidate arbitral proceedings.

10. How is the law applicable to the substance determined?

The merits of the dispute are decided in accordance with the applicable law under the contract. If the parties have not chosen the applicable law, it is determined in accordance with the conflict of laws rules.

11. Are any types of dispute considered non-arbitrable? What is the approach used in determining whether or not a dispute is arbitrable?

Under Italian law disputes concerning the following are not arbitrable: rights which the parties cannot dispose of (e.g. rights strictly pertaining to the individual such as marriage, citizenship, parenthood and nationality)

and those that cannot be arbitrated under specific laws (e.g. employment disputes, disputes regarding tax issues, disputes reserved to the administrative courts).

The question of whether a dispute is arbitrable is decided under Italian law.

12. In your country, are there any restrictions in the appointment of arbitrators?

Pursuant to article 812 of the Italian Civil Procedural Code, only persons legally capable can act as arbitrators. Moreover, a person cannot be appointed as an arbitrator if he/she has an interest in the outcome of the case, there is a conflict of interest resulting from professional or family relationships with the parties or he/she has advised, assisted or defended one of the parties at an earlier stage of the proceeding or has testified as a witness.

13. Are there any default requirements as to the selection of a tribunal?

The parties are free to appoint the arbitrators and to decide whether there should be one or more arbitrator, but the number of arbitrators must, in any event, be odd. If the arbitration clause provides for an even number of arbitrators, an additional arbitrator will be appointed by the President of the Court where the arbitration proceeding has its seat, unless the parties agree otherwise. If the agreement does not specify the number of arbitrators and the parties cannot agree on this, the arbitral tribunal will be made up of 3 arbitrators. If one of the parties does not appoint its arbitrator, the arbitrator will be appointed by the President of the Court where the arbitration has its seat, unless otherwise agreed by the parties.

14. Can the local courts intervene in the selection of arbitrators? If so, how?

The President of the Tribunal where the arbitration proceeding has its seat can be requested by a party to intervene in the following cases:

- the parties agree in the arbitration clause that the arbitrator(s) are to be appointed by the court;
- a party fails to appoint (or replace) its arbitrator;
- the parties indicate an even number of arbitrators and they do not agree on an additional arbitrator;
- where a challenge and application for disqualification of the arbitrator is filed.

15. Can the appointment of an arbitrator be challenged? Can an arbitrator be disqualified? What is the procedure for such challenge?

The appointment of an arbitrator can be challenged if the arbitrator lacks the qualifications expressly required by the parties in the arbitration clause, or in the case of conflict of interest and when his/her independence and impartiality cannot be guaranteed.

The challenge is filed with the President of the Tribunal of the place where the arbitration proceeding has its seat, within ten days after the appointment of the arbitrator has been notified to the other party or from the date when the party discovered the ground for the challenge, if later. The Tribunal, having heard the challenged arbitrator, issues a non-appealable order.

Moreover, unless otherwise agreed by the parties, if an arbitrator fails in, or delays, the performance of its duties, the parties (or a third party, if it is provided for by the arbitration clause) can agree to replace him/her. In addition, if the arbitrator does not perform his/her duties within 15 days from receiving a formal notice, each party may ask the President of the Tribunal where the arbitration proceeding has its seat to remove the arbitrator and to appoint a replacement.

16. **Are arbitrators immune from liability?**

Pursuant to article 813 bis of the Italian Civil Procedural Code, arbitrators are liable for damages resulting from (i) their intentional or gross negligence in delaying their duties, or (ii) unjustified withdrawal, or (iii) intentional or gross negligence that caused delay in rendering the award within the provided deadline.

17. **Is the principle of competence-competence recognised in your country? What is the approach of local courts towards a party commencing arbitration in apparent breach of an arbitration agreement?**

The principle of competence-competence is recognised under Italian law in Articles 817 and 819 ter of the Italian Civil Procedural Code.

Pursuant to Article 817 of the Italian Civil Procedural Code, if an objection regarding the jurisdiction of the arbitral tribunal is raised, the same arbitral tribunal decides on it. The objection must be raised in the first response brief, otherwise the objection is considered waived and the party may not seek the setting aside of the award on that ground. An award can be always set a side when under Italian law the dispute is not arbitrable, notwithstanding the fact whether such an objection was raised or not.

18. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods of which the parties should be aware?**

Arbitration proceedings are considered to be commenced at the date on which the other party is served with the notice of appointment of arbitrator or of the request for appointment of arbitrator.

There are no special limitation periods for arbitration proceedings; the ordinary terms of limitation apply. The limitation period is interrupted once the above mentioned notice is served.

19. **What is the applicable law (and prevailing practice) where a respondent fails to participate in the arbitration? Can the local courts compel parties to arbitrate? Can they order third parties to participate in arbitration proceedings?**

The arbitral tribunal cannot force a party that does not want to appear in the arbitration proceeding to do so. However, once the arbitral tribunal is established and all the formal requirements regarding the service of the relevant deeds and the principles of due process are respected, the arbitral tribunal examines the case and renders an award regardless of the fact that a party failed to participate in the proceeding. Arbitrators cannot order a third party to participate in arbitration proceedings.

20. **In what instances can third parties or non-signatories be bound by an arbitration agreement or award (e.g. by joinder)?**

Under Italian law, third parties or non-signatories can join the proceedings if all the parties and the arbitrator(s) agree on it. Joinder is always allowed if it is necessary to sustain the claims of one of the existing parties and it is in the interest of the joining party to intervene or if the joining party must be a party to the proceedings (litisconsorte necessario) to render an effective award.

In addition to the above, some Italian case law supports the view that an arbitration clause is also enforceable and valid against a third-party who has rights under the contract, and assignees of the contract.

21. **What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?**

Under Italian law arbitrators are not allowed to issue orders for the seizure of property or other interim measures, unless it is expressly provided for by law. For instance, in the case of corporate arbitration, Article 35(5) of Legislative Decree, 17 January 2003, no. 5, arbitrators can order the suspension of the effect of a shareholders' resolution. The ordinary Courts are allowed to issue interim measures pending the constitution of the arbitral Tribunal and during the arbitral proceedings.

22. **Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence?**

There are no particular rules governing the evidentiary matters in arbitration under Italian law. Pursuant to article 816 bis of the Italian Civil Procedural Code, prior to the commencement of the proceeding, the parties are free to agree on the rules governing the arbitration proceedings. In the absence of such an agreement, the arbitrators may regulate the proceedings in any way that they consider appropriate.

The local courts may assist the arbitrators if a witness refuses to appear before the arbitral tribunal. In such a case, the arbitrators may ask the President of the Tribunal where the arbitration has its seat to order the witness to appear in front of the arbitral Tribunal.

23. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

Arbitrators must comply with the ethical duties of the professional association which they belong to (if any) and counsel and attorneys acting as arbitrators must comply with the Code of Ethics and Conduct of the Italian Bar Association.

24. **How are the costs of arbitration proceedings estimated and allocated?**

The arbitration fees are estimated on the tariff that applies to the professional association to which the arbitrators belong, taking into account the complexity and the value of the disputes.

The allocation of the costs is decided by the arbitral Tribunal; under Italian law the general principle, pursuant to which the losing party bears the costs of the proceedings, applies although it could be possible to, in whole or in part, set off the costs between the parties if specific reasons exist.

25. **Can interest be included on the principal claim and costs incurred?**

According to Italian law, interest can be awarded by the arbitrator.

26. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?**

The Italian Civil Procedural Code does not contain provisions regarding the type of remedies available to the parties in arbitration. The only limitation is that arbitral tribunals cannot issue orders for seizure of property or other interim measures, unless expressly provided for by law (see response to question 21 above).

In general, arbitrators can render awards that are condemnatory (order a payment or an action), declaratory (award setting out the rights of the parties) and constitutive (setting out the effects of a given legal situation on

the relationship of the parties).

27. What legal requirements are there in your country for the recognition of an award?

Under Italian law, any award issued in Italy is automatically recognized if it meets the requirements of art. 823 of the Italian Civil Procedural Code, namely that the award must be in writing, signed and decided by majority of the arbitrators. The award is null and void if it does not contain a summary of the reasoning, the final decision and the arbitrators' signature. The signature of the majority is sufficient, provided that it is noted that the decision was taken in the presence of all the arbitrators and that it states expressly that the other arbitrators were either unwilling or unable to sign.

The recognition of non-Italian awards is governed by the relevant conventions ratified by Italy.

28. Can arbitration proceedings and awards be appealed or challenged in local courts? What are the grounds and procedure?

Under Italian law an award can be appealed before the competent Court of Appeals if certain conditions are met.

Pursuant to Article 829 of the Italian Civil Procedural Code, an award can be challenged if:

- the arbitration agreement was invalid;
- the arbitrators were not duly appointed;
- the award was rendered by an arbitrator with no legal capacity;
- the award exceeds the scope of the arbitration agreement;
- the award does not contain the summary reasoning, the final decision on the matter and the signature of the arbitrators;
- the award was rendered after the time-limit expired;
- the formal requirements laid down by the parties with express sanction of nullity were not complied with and the nullity has not been cured;
- the award is contrary to a previous award or judgment having the force of res judicata between the parties provided that the said award or judgment has been brought to the attention of the arbitrators during the proceedings;
- the parties did not receive due process during the proceedings;
- the award does not contain a decision on the merits of the dispute that should have been decided;
- the award contains contradictory decisions;
- the arbitrators did not decide on some of the claims or objections raised by the parties which fell within the scope of the arbitration agreement;
- the award is contrary to the public policy.

In addition the parties can agree in the arbitration agreement that the award may be challenged also if a party considers that it was not decided according to the rules of law applicable to the merits.

The challenge must be filed with the Court of Appeal of the district in which the arbitration has its seat, within ninety days of the service of the award on the challenging party and in any case no later than one year from the date of the last signature of the arbitrators.

Other extraordinary remedies exist under Italian law:

- revocation pursuant to Article 831 of the Italian Civil Procedural Code (in case of wilful misconduct/fraud by a party or an arbitrator, or discovery of decisive documents, which could not be submitted in the proceeding);
- challenge by a third party whose rights are prejudiced by the award.

29. **Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?**

The parties are not allowed to waive their right to challenge an award in advance. However, a party can waive this right after the issue of the award. A party is also precluded from raising grounds for setting aside that were caused by the same party and cannot challenge the award for a violation of a procedural rule that it did not raise at the first opportunity it had.

30. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

There are no special rules that apply to the enforcement of an award against a state or state entity.

31. **Are there rules or restrictions on third-party funders in your country?**

There are no rules under Italian law governing third-party funders.

32. **Is there a concept in your country providing for class-action or group arbitration? If so, are there any limitations to the arbitrability of such claims or requirements that must be met before such claims may be arbitrated?**

There are no provisions under Italian law that provide for class-action or group arbitration.

33. **Is diversity in the choice of arbitrators (e.g. gender, age, origin) actively promoted in your country? If so, how?**

There are no such measures. According to the statistics of the Milan Chamber of Arbitration, in 2015 only 14% of the arbitrators were women.

34. **Is emergency arbitrator relief available in your country? Is this actively used?**

Italian law does not provide for emergency arbitration.

35. **Have measures been taken by arbitral institutions in your country to promote transparency in arbitration?**

In order to promote transparency, some arbitral institutions publish anonymous awards on their websites.

36. **Are efforts being made by arbitration institutions or local courts to impose strict deadlines for the rendering of awards?**

Under Italian law the award should be issued within 240 days from the appointment of the arbitrators. This

term is automatically extended for a further 180 days in some cases provided by the law (the collection of evidence, appointment of a technical expert, change in the composition of the tribunal or where a partial award is rendered).

The parties can in any case agree on a different deadline and also on its extension. An extension can also be granted by the President of the court of first instance where the arbitration is seated, if requested by one of the parties.

37. **Have steps been taken in your country to publish reasoned decisions on arbitrator challenges and provide more insight into the drivers behind arbitrator selection by institutions?**

The more relevant arbitral decisions are published in legal magazines and also on the websites of arbitration institutions.

38. **Are there arbitral laws or arbitration institutional rules in your country providing for simplified procedures for claims under a certain value?**

The Italian law does not expressly provide for simplified arbitral procedures, however, some arbitration institutions set out a simplified procedure. For example, the Arbitral Chamber of the Chamber of Commerce of Rome provides for the simplified arbitration with a single arbitrator when the value of the dispute does not exceed Euro 150.000,00.