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The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2012

A practical cross-border insight into litigation & dispute resolution

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Italy

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Italy got? Are there any rules that govern civil procedure in Italy?

The Italian legal system is a civil law system and has its roots in Roman law. Civil law is based on a written and codified legal system consisting of abstract rules, which Judges must apply to the particular cases brought before them. Case law precedents are not binding and have only a persuasive value.

The main legal sources of civil procedure law in Italy are: the Italian Constitution; the Civil Procedure Code (“CPC”), extensively amended lastly by Law no. 69/2009; the Italian international private law (Law no. 218/1995); European Regulations directly applicable such as the EU Regulation no. 44/2001 on “*jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*”, the EU Regulation no. 861/2007 on the “*European small claims procedures*” and the EU Regulation no. 1896/2006 on the “*European order for payment procedure*”; and international multi or bilateral conventions to which Italy is a party. Until July 2009, Legislative Decree no. 5/2003 provided a special civil procedure for company-related claims. Such Legislative Decree has now been repealed by Law no. 69/2009 and applies only to proceedings introduced before 4 July 2009.

By Law no. 99/2009, special proceedings have been introduced for “class actions”. These proceedings entered into force in January 2010. Another means of collective protection is provided for in articles 139 and 140 of the Consumer Code (introduced by Law no. 281/98), which allow Consumers Associations to seek on behalf of consumers an injunctive order prohibiting conducts affecting the rights of consumers (e.g. the motion to prohibit use of unfair terms – oppressive clauses – in consumer contracts).

1.2 How is the civil court system in Italy structured? What are the various levels of appeal and are there any specialist courts?

In Italy, civil jurisdiction is the responsibility of “ordinary” courts, so-called by article 102 of the Italian Constitution. Such provision prohibits the institution of “extraordinary or special” courts. However, the creation of special divisions dealing with particular matters inside the ordinary courts (e.g. intellectual property, labour, family, etc.) is allowed. Ordinary court Judges are selected by public examination. There are, however, also so-called “honorary”

Judges, who are appointed without examination and are selected amongst lawyers and civil servants. Honorary judges cannot deal with matters of particular importance.

There are three different instances of jurisdiction: in the first instance, and depending on the value and on the subject matter, claims are brought before the Justice of the Peace or before the Tribunal. Tribunals are composed by one judge or a panel of three judges (depending on the kind of claim); the court of second instance for the judgments of the Tribunal is the Court of Appeal, which sits in a panel composed of three Judges. The Tribunal is the court of second instance for appeal over judgments of Justices of the Peace; at the top of the judicial system is the Supreme Court of Cassation, which sits in Rome and decides only on the correct application and interpretation of law.

The Constitutional Court is a separate body and is in charge for the judicial review of legislation. This can be either direct or indirect, upon request of a certain number of citizens or of a lower court.

1.3 What are the main stages in civil proceedings in Italy? What is their underlying timeframe?

Civil proceedings generally develop through four stages. The initial stage, for the formal institution of the case, consists of service of a writ of summons upon the defendant, which is followed by the appearance (or non-appearance) of the defendant before the Court, by means of a statement of defence. A minimum term of 90 days must be granted to the defendant for appearance (extended to 150 days if the defendant resides abroad). After the case is formally instituted the initial hearing is held, when the Judge checks compliance of the formal requirements for the correct institution of the case. The second stage is aimed at delimiting the object of the dispute and the evidence to be gathered. To this end, the parties are granted terms of, respectively, 30, 30 and 20 days, for the filing of three briefs (a brief containing better particular of claims; a brief in reply which also contains the party’s evidentiary requests; and a brief in reply to the adverse party’s requests on evidence). A second hearing is held at this stage, when the Judge decides on the evidence requests by the parties. If these are admitted, in full or in part, the third stage commences, aimed at the gathering of the evidence (generally merely consisting of fact witness examination). If the case involves issues for which expert advice is required, the Judge may appoint a Court expert. The time required to complete the evidentiary stage varies depending on the complexity of the case and on the type of evidence admitted, and can last from 2-3 months up to 12 months. The Judge thereafter sets a final hearing in which the parties submit the summary of their conclusions and are granted a term of 60 for the filing of final briefs and a further term of 20

days for replies. The Judge then issues the final decision.

In order to reduce the timeframe of civil proceedings, Law no. 69/2009 has introduced a summary procedure, which plaintiffs can opt for in alternative to the ordinary one when a complex or full evidentiary phase is not needed. Such procedure is simpler and swifter. It is initiated by an application to the court, which sets the first hearing and a term for the defendant's appearance. In their first defences, parties must disclose all their requests and objections and file all relevant documents. At the first hearing, the judge skips any formality, admits the means of evidence he deems more appropriate and decides the case by means of an order.

1.4 What is Italy's local judiciary's approach to exclusive jurisdiction clauses?

Clauses derogating the venue provided by civil procedural rules (i.e. the parties agree that the dispute has to be decided by a specific Italian court) or the Italian jurisdiction (i.e. the parties agree that the dispute has to be decided by a foreign Court) are quite common in Italy and, provided that they comply with certain formal and substantive requirements, Italian courts are bound to apply them.

As regards the clauses derogating the venue, the agreed venue shall be concurrent with others, unless it is expressly specified to be exclusive. On the contrary, when two parties agree to derogate Italian jurisdiction, the agreed jurisdiction of the foreign court shall be exclusive, unless it is expressly provided otherwise.

1.5 What are the costs of civil court proceedings in Italy? Who bears these costs?

Costs of civil court proceedings in Italy are proportional to the value of the claim and consist of: a filing fee ("*contributo unificato*"), which is born by the claimant. If the defendant files a counter claim and - as a result thereof - the value of the action increases, the defendant is also bound to pay a filing fee. Other costs related to civil court proceedings are those payable in connection with service of the writ of summons, registration of the judgment, and service of the judgment. In the event where the Court appoints Court Experts to deal with specific issues, the Expert's fees are initially jointly paid by both parties and, at the end of the proceedings, are subject to the same rule applicable to the allocation of legal fees and costs.

The rule on legal fees and costs is that costs follow the event, i.e. the Judge will order the unsuccessful party to reimburse the litigation costs incurred by the successful party (article 91 CPC) in the amount liquidated by the Judge. The Judge may set off the costs, if the parties are both partly successful, if the case involves the examination of complex matters or new principles of law or there are "*other serious and exceptional reasons*" that must be specifically indicated in the judgment (article 92, para. 2, CPC, as last amended by Law no. 69/2009).

The Judge may order the reimbursement of costs incurred by a party (regardless of whether this is successful or not) due to the other party's infringement of the duty to act loyally and fairly in the proceedings (article 92 CPC). Article 91 CPC, as amended by Law no. 69/2009, now provides that in cases where the successful party refused - without good reasons - a settlement proposal in an amount not higher than that awarded with the final judgment, the Judge may order the successful party to bear all legal costs incurred by the other party after the settlement proposal was made.

Legislative Decree no. 28/2010 - which introduced the mediation procedure to the Italian legal system - provides some new rules related to legal costs. Particularly, the winning party might not be

able to recover all the legal expenses, if the Court's final determination is the same as that proposed by the mediator in the mediation procedure stage.

1.6 Are there any particular rules about funding litigation in Italy? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

There are no specific rules funding litigation in Italy. Under certain circumstances, the law provides for financial support in the form of legal aid ("*gratuito patrocinio*"), regulated by Presidential Decree no. 115/2002. Legal aid is available to those whose yearly income is lower than €10,628.16, provided that the disputed case is not manifestly groundless. Where legal aid is granted, lawyers fees and any other cost will be paid by the State. Moreover, the beneficiary is exempted from paying certain fees (e.g. registry fees, judicial mortgage and land registry fees).

Another example of funding litigation is provided by article 93 CPC, which allows lawyers to sponsor their clients by anticipating all costs of the proceedings until its final outcome. If they win the case, they are personally entitled to obtain reimbursement from the losing party.

Since 2006, contingency and conditional fees arrangements are permissible in Italy, provided that the agreement between lawyer and client is executed in writing. However, the Italian Parliament is discussing whether to re-introduce the prohibition of contingency fee agreement and fixed fees according to a legal tariff.

The Italian legal system does not provide for security for costs.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Besides the formal requirements of writ of summons and statement of defence (see questions 3.3 and 4.1), no formality must be complied with before commencing proceedings. However, labour disputes (and other similar disputes, e.g. those between principal and agent) cannot be litigated in court unless the parties have tried to find a settlement before a conciliation panel.

Pursuant to Legislative Decree no. 28/2010, starting from 21 March 2011, the parties are obliged to apply for a previous mediation procedure before commencing judicial proceedings, if the claim relates to certain matters (i.e. property rights, condominium, separation, hereditary succession, family pacts, lease agreements, loan for use, lease of business, damages resulting from circulation of vehicles and boats, medical responsibility, defamation through the press or other advertising means, insurance, banking and finance contracts). Should the plaintiff not apply for mediation, the Judge defers the first hearing by four months and sets a 15-day-deadline by which the parties must apply for mediation. Failure to apply for mandatory mediation should be objected to by the defendant, under penalty of forfeiture, or detected by the Judge on own motion, no later than the first hearing.

Parties' lawyers are obliged to inform their client on the above as well as on the possibility to access to tax benefits set forth by articles 17 and 20 of the Decree no. 28/2010, should they settle the claim using said mediation procedure.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The Italian legal system provides for two different kinds of limitation periods: the statute of limitation (“*prescrizione*”); and forfeiture (“*decadenza*”). Both of them are treated as a substantive law issue and regulated by the Italian Civil Code (C.C.).

For tort claims, the limitation period is five years from the time of the event, but a shorter limitation period applies to certain claims (e.g. claims for torts related to the circulation of vehicles, which is two years). For contract claims, the general limitation period is ten years. No limitation period is provided for action for a declaration of nullity, whereas the limitation period for annulment action is five years. For certain contracts, the limitation period can be shorter (e.g. for defects in the sale of goods, the limitation period is one year from delivery; for defects in building contracts, it is two years from conveyance).

Articles 2941-2942 C.C. provide that the statute of limitation period may be suspended in several circumstances. In such cases, the suspension period is not taken into account when calculating the limitation period. The statute of limitation may be even interrupted by several events, provided by articles 2943-2945 C.C. In such cases, a new limitation period begins as a result of interruption.

Pursuant to article 2964 C.C., forfeiture cannot be suspended or interrupted, unless otherwise provided.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Italy? What various means of service are there? What is the deemed date of service? How is service effected outside Italy? Is there a preferred method of service of foreign proceedings in Italy?

Proceedings are commenced by service of a writ of summons upon the defendants or, depending on the disputed matter and on the Court which has jurisdiction, by filing an application with the Court which is then served upon the defendant together with the Court’s order setting the first hearing.

Service is generally performed by a Court bailiff on the plaintiff’s request and, in certain cases, can be effected directly by the lawyer. Service can be made by hand delivery or by mail. Specific means of service are set in case the recipient cannot be traced.

Finally, in some cases, defensive briefs can be served by fax (Legislative Decree no. 5/2003 for corporate proceedings) or by certified e-mail (see article 137 CPC, as amended by Law no. 69/2009).

Outside Italy, service in the EU and/or within the EU is regulated by EU Regulation no. 1393/2007 (replacing EU Regulation no. 1348/2000), which provides as the main way to perform services, the transmission and service of judicial documents in civil and commercial matters from one Member State to another through Authorities specifically appointed in each Member State.

Outside the EU, services can be performed according to bilateral or multilateral international Conventions (i.e. the Hague Convention of 15 November 1965).

Services upon foreign States must be performed through diplomatic channels: thus, the plaintiff will have to serve the writ of summons either upon the embassy of the foreign State in Italy (through the Italian Minister of Foreign Affairs), or directly upon the Minister of

Foreign Affairs of the foreign country (through the Italian embassy in that country).

3.2 Are any pre-action interim remedies available in Italy? How do you apply for them? What are the main criteria for obtaining these?

Italian courts can issue pre-action interim remedies (e.g. freezing orders, provisional seizures) in advance of a judgment on the merits in the so-called *ante causam* procedures. The party seeking an interim remedy shall file a motion with the court. Interim remedies can be granted, on the applicant’s request, and if the relevant conditions are met, on an *ex parte* basis. A hearing is, thereafter, set for the appearance of the defendant, whereupon the remedy is confirmed, amended or revoked. If the Judge deems that the remedy cannot be given *ex parte*, it is granted or denied upon hearing both parties.

Requisites for obtaining interim remedies are the “*fumus boni juris*” (i.e. the applicant shall give adequate *prima facie* evidence of his right), and the “*periculum in mora*” (i.e. the applicant shall satisfy the Judge that he would suffer an irreparable damage due to the time required for the decision on the merits to be issued through ordinary proceedings).

Decisions granting interim remedies can be challenged before the Court Full Bench which, upon hearing the parties, confirms, revokes or amends the remedy.

3.3 What are the main elements of the claimant’s pleadings?

The writ of summons must include: the name of the Court before which the action is brought; the names and addresses of the claimant and of the defendant; the object of the claim, the complaint and the allegation of facts; the relief sought; the type of evidence that the plaintiff intends to use in support of his claim; and the date of the first hearing and the warning to the defendant to file its statement of defence by 20 days before the first hearing in order to bring counterclaims, join third parties to the proceedings or raise those objections which cannot be examined by the judge on own motion. Article 163 CPC, as amended by Law no. 69/2009, provides now that the plaintiff must inform the defendant that objections of lack of territorial venue can be raised only 20 days before the first hearing.

Pursuant to article 164 CPC, if the writ of summons does not contain any of the mandatory elements set forth by article 163 CPC, the Judge sets a peremptory term which the plaintiff must complete. If the plaintiff does not comply with the Judge’s order, the proceeding expires.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The parties cannot substantially amend their pleadings. However, at the first hearing, the plaintiff is allowed to raise new claims or objections, which are a consequence of the defendant’s defences; moreover, all parties at the first hearing may specify or amend their pleadings and request the court a term for filing a brief (also see the answer to question 1.3) containing better particulars and/or clarifications of the original statements and requests.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The statement of defence must include: all procedural objections and defences on the merits based on facts and law; and the type of evidence that the defendant intends to use in support of the defence. Law no. 69/2009 has introduced a new rule whereby the defendant shall specifically object to facts presented by the plaintiff, lest they are considered as acknowledged and no evidence thereon is to be submitted by the plaintiff.

The defendant is also entitled to bring counterclaims (included defences of set-off) and to declare that he intends to join third parties to the proceedings. Based on recent case-law, if the counterclaim is brought against a co-defendant, the latter must be joined as a third party to the proceeding, even if he/she is already a named party to the proceedings.

In any case, the counterclaim and the third party claim must be filed with the Court no later than twenty days prior to the date of the first hearing.

4.2 What is the time limit within which the statement of defence has to be served?

The statement of defence needs not to be served. It has to be filed with the Court within 20 days before the first hearing, unless for particularly urgent matters where terms may be reduced by the Court, upon request of the plaintiff, by up to half. In case the defendant does not intend to bring counterclaims or join third parties or raise objections which cannot be examined by the Judge on own motion (e.g. objections on limitation periods), the statement of defence may be filed by the first hearing.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

Each party may join a third party to existing proceedings, rather than commencing separate proceedings against that party. In this regard, see question 5.1.

4.4 What happens if the defendant does not defend the claim?

If the defendant fails to defend the claim without taking part in action, the proceedings continue in his/her absence and the defendant is declared "party in default" (*contumace*). However, the defendant in default is allowed to appear at any time before the final hearing, but he/she is foreclosed from activities which had to be performed in the previous stage of the proceedings (e.g. a defendant in default cannot file motions on evidence if he/she appears after the relevant deadlines have expired). This rule can be derogated, only if the defendant proves that he/she is not responsible for failing to timely appear.

4.5 Can the defendant dispute the court's jurisdiction?

Yes, the defendant can dispute the Court's jurisdiction at any time during the proceedings, as can the Judge. Lack of jurisdiction of Italian Courts over foreign defendants must be raised in the first defence.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party may be joined into ongoing proceedings: i) on judge's motion, when the cause of action is common to the third party and the judge deems appropriate or necessary to render a decision also towards such party; or ii) on claimant's or defendant's motion, if the cause of action is common to the third party or they claim to have a right to be guaranteed by said party. Finally, a third party may join an ongoing proceedings on a voluntary basis, in order to bring a claim related to existing proceedings or to support one of the parties to the proceedings.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Consolidation of two sets of proceedings is allowed and can be ordered by the Judge on own motion or upon a request by either party. Consolidation can be ordered when two (or more) sets of proceedings are pending before the same Court and relate to the same claim or closely connected claims.

Consolidation cannot be ordered when the proceedings to be consolidated are pending in different stages and in the judge's opinion consolidation does not allow the claim to be fully and appropriately treated.

5.3 Do you have split trials/bifurcation of proceedings?

The split of trials is allowed only when two or more claims were originally brought or were subsequently consolidated in the same proceedings and the Judge, on his own motion or upon parties' application, deems that the joint treatment of the consolidated proceedings may delay the proceedings and the issuance of the final judgment.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Italy? How are cases allocated?

Cases are allocated amongst Italian Courts based on the value and/or nature of the claim and, as far as the territorial venue is concerned, based on geographic criteria.

Justice of peace hear claims on movables worth no more than €5,000.00, claims for damages caused by circulation of vehicles worth no more than €20,000.00, claims related to the setting of land boundaries and other very specific kinds of claims without limits as to the value (i.e. claims related to interests accrued for delayed payment of social security benefits). All other claims are brought before Tribunals.

Cases are allocated by the President of the Tribunal on a random basis. However, in larger Courts with more than one division, cases are allocated by the President of the Tribunal depending on the nature of the dispute (e.g. family, company matters). Special divisions exist for intellectual property disputes and for employment matters. Within the divisions, the cases are, again, allocated to the Judge on a random basis.

6.2 Do the courts in Italy have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Italian courts have a general power of case management, even though the main stages of proceedings are regulated in details by law.

Parties have only limited ability to make interim applications in respect of the management of the case. Applications which can be made by the parties may consist, for example, in motion to reconsider the decision on the appointment of a Court Expert or in motion to set a hearing to discuss specific issues arisen during the course of a court expertise.

Other interim applications that the parties can make, but which are not strictly related to the management of the case, consist in motions seeking payment injunctions in the event where the dispute relates to a credit, which is not disputed or is based on certain written evidence or is adequately proved based on the evidence gathered at the end of the evidentiary phase.

During the proceedings the parties can also apply for interim remedies, subject to the same conditions required for *ante causam* interim remedies (see question 3.2, above).

Interim applications have no impact on the general rule whereby costs follow the event (see question 1.5, above).

6.3 What sanctions are the courts in Italy empowered to impose on a party that disobeys the court's orders or directions?

Under article 388 of the Code of Criminal Law, failure to comply with a court's order or direction is considered a crime and provides specific sanctions. Law no. 69/2009 has now introduced article 614 *bis* CPC, which allows the Judge - upon either party's request - to impose a pecuniary sanction on the other party in case of non-compliance with a judgment ordering a party to do, or abstaining from doing, something.

6.4 Do the courts in Italy have the power to strike out part of a statement of case? If so, in what circumstances?

Italian courts do not have the power to strike out part of a statement of case. The case is generally decided in its entirety at the end of the proceedings, unless the Judge deems to resolve at the outset preliminary issues, the decision of which may bring to the immediate dismissal are case (e.g. statute of limitation; lack of jurisdiction or territorial venue).

6.5 Can the civil courts in Italy enter summary judgment?

The Civil Procedure Code allows an expedited route for relief to creditors holding qualified evidence of monetary claims (typically, invoices and registration in the creditor's accounts). The payment injunction ("*decreto ingiuntivo*") is issued without the appearance of the debtor after the Judge has summarily examined the request. It becomes enforceable in the absence of formal opposition by the debtor within 40 days. If the debtor files a formal opposition within the deadline, ordinary court proceedings on the merits are commenced. Even in the event of opposition, the payment injunction may be declared immediately enforceable if certain conditions are met.

It is worth noting that an order for payment may be asked based on EU Regulation no. 1986/2006, which applies to civil and commercial matters in cross-border cases.

Finally, as mentioned above, Law no. 69/2009 has introduced a summary procedure, regulated by article 702 *bis - quater* CPC, which is named "*procedimento sommario di cognizione*" (see question 1.3 above).

6.6 Do the courts in Italy have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The Judge may order the stay of proceedings when the decision over another related claim is essential for the determination of the case. The Judge may also stay the proceedings on both parties' application, for a time not longer than four months.

The Judge does not have any power to discontinue the proceedings on a discretionary basis. The circumstances causing discontinuance of the proceedings are: i) death or loss of parties' capacity; and ii) counsel's death or loss of capacity. After discontinuance is declared, the party entitled to continue the proceedings shall reinstate the action within a given term - which is now set in three months as a result of the reform introduced by Law no. 69/2009 - otherwise the proceedings are extinct.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Italy? Are there any classes of documents that do not require disclosure?

The Italian procedural system does not provide for a general obligation to disclose. The principle is that each party shall prove the claim on the basis of the evidence he/she decides to submit (documents, request for witnesses, etc.). However, the disclosure of documents may be ordered by the Judge on own motion or on either party request, provided that the documents are determinant for the decision of are specifically identified (a generic request for disclosure is non-admissible).

7.2 What are the rules on privilege in civil proceedings in Italy?

The Italian legal system has no concept of 'legal privilege' as such. However, Italian law has rules protecting confidentiality and secrecy of information, which are mostly based around the qualifications of the person holding the information (e.g. court-appointed experts; accountants, save in relation to the activity of balance sheet certification; public notaries and certain public authorities such as the Bank of Italy; and health professionals, priests and any other professional expressly indicated under the law) and at times upon the type of document containing the information. For instance, lawyers benefit of a legal privilege in relation to facts learnt in the management of a file and in respect of correspondence exchanged with a counterparty's lawyer when this relates to settlement negotiations.

7.3 What are the rules in Italy with respect to disclosure by third parties?

The Judge, on own motion or on either party request, may order the disclosure of documents to third parties. In doing so, the Judge shall ensure that the rights of the third party are not prejudiced.

7.4 What is the court's role in disclosure in civil proceedings in Italy?

The court's role in disclosure is limited to the issuance of disclosure orders (see questions 7.1 and 7.3).

7.5 Are there any restrictions on the use of documents obtained by disclosure in Italy?

No obligation for disclosure exists in Italy and, with the exceptions mentioned in questions 7.1 and 7.3, documents are filed with the court at the parties' discretion and, once disclosed, can be used without restrictions (e.g. the party adverse to the one who submitted the document in a given case may use that document in different proceedings). In certain circumstances, the party may seek a protective order restricting the use of the documents submitted. In addition, documents which relate to personal data and, as such, are covered by the legislation on privacy (e.g. medical records) are subject to the restrictions provided by the Privacy Code (i.e. Legislative Decree no. 196/2003). As a general rule, the parties may process and disclose third parties' personal data, should this processing be necessary for defend rights in a legal claim and for no longer than is necessary therefore.

8 Evidence

8.1 What are the basic rules of evidence in Italy?

The main rule is that each party has the burden to prove the facts substantiating his claim or defence. In certain cases, the burden of proof is shifted (e.g. in claims for damages caused by the exercise of a dangerous activity, the plaintiff needs to prove damage and causation and the defendant has the burden of proving that all adequate measures were adopted to avoid damage to occur).

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The main types of evidence are documentary evidence and oral evidence (through the examination of fact witnesses or the formal interrogation or oath of the party). Law no. 69/2009 now allows the filing of affidavits by fact witnesses (see question 8.3 below). Witness evidence is admissible with limitations (for example, the existence of certain type of contracts or amendments to certain contracts cannot be given through oral evidence).

Other admissible evidence consists of inspections of premises, assets or individuals.

Expert evidence is not admissible in Italy as evidence may only relate to facts and not to opinions. Reports by experts can, however, be filed by the parties, although they are freely evaluated by the Judge. In addition, experts can be appointed by the Judge to assist in evaluating matters which specific expert knowledge and, in such case, the parties may appoint their own experts.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Specific rules govern the taking of fact witness evidence and provide that fact witnesses are to be heard on specific written questions previously submitted by the party and admitted by the Judge. The witness is questioned on those questions only and

cannot be cross-examined, although either party or the Judge may seek clarifications from the witness.

Witnesses are called by means of a summons whereby they are asked to appear at a given hearing to be questioned. Witnesses are not provided in advance with the list of questions they are to answer on.

Law no. 69/2009 by amending article 257 *bis* CPC granted the Judge - with the agreement of both parties - the power to order a witness to file a written affidavit. In this case, the witness shall answer to the questions listed in a form and return the form to the clerk office. Witnesses refusing to do so must justify the refusal otherwise they may be imposed with a fine. The Judge can always order the witness to appear before the court to be heard.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Italy?

Given that the rule on evidence is that each party shall substantiate his own claim or defence by providing the evidence he deems fit, the Court's role is quite limited. With the exception mentioned above in respect of order for disclosure, the Judge cannot order the acquisition of evidence that the parties have not sought (or in respect of facts that the parties have not submitted to the Judge) and cannot prevent the parties from filing documentary evidence, if the submission is made within the relevant deadline. However, it is in the Judge's discretion to decide if non-documentary evidence (e.g. fact witnesses) is, or is not, admissible and relevant for the decision of the case.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Italy empowered to issue and in what circumstances?

The Judge may issue three different types of judgments: "declaratory judgments", by which he states on the existence or non-existence of certain disputed juridical relationships or facts; "constitutive judgments", by which he gives rise to a new legal situation or modifies or extinguishes a former one (e.g. judgments voiding a defective contract); and "performance judgments", by which he orders a party to perform a payment in favour of another party or orders a party to do or to abstain from doing something. Courts may also issue "temporary injunctions for payment or for delivery of goods"; provisional judgments or decrees in advance of a judgment on the merits, to guarantee that the subsequent judgment will be effective. Finally, a wide range of interim measures may be adopted by courts by means of temporary orders (see question 3.2).

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Courts have no powers to issue rulings on damage and interest unless the party has specifically requested them. As regards the costs of litigation, see question 1.5.

9.3 How can a domestic/foreign judgment be enforced?

Enforceable domestic judgments are enforced through specific enforcement proceedings, which provide for the attachment of the debtor's real property, movable assets and receivables. Foreign judgments need to be recognised in Italy prior to being enforced in

the Italian territory. For judgments rendered in an EU Member State, the procedure is governed by EU Council Regulation no. 44/2001. For other foreign decisions, the procedure is governed by Law no. 218/1995, unless an International Convention (like, for instance, the Lugano Convention) or a Bilateral Treaty applies. In both cases, the procedure to obtain recognition of a foreign enforceable judgment is quite simple, is aimed at assessing that certain formal and substantive requirements are met and does not require the case to be reconsidered on the merits.

9.4 What are the rules of appeal against a judgment of a civil court of Italy?

The losing party to a partial or final judgment can challenge the decision before the Court of Appeal (the Tribunal in the event of decisions issued by Justices of the Peace). No leave to appeal is required. All claims and objections raised in first instance can be referred to the Court of Appeal and any error the appellant asserts has been made by the first instance court can be grounds for an appeal. In appeal stage, no new objections can be raised and the parties may not produce new evidence. The appellate court issues a new judgment, which replaces that of the first instance court. Second instance decisions can be challenged before the Supreme Court which, with very limited exceptions, cannot rule on the merits of the case but only decides on issues of law and procedure.

Law no. 69/2009 introduced new restrictions for filing a motion to challenge before the Supreme Court. Pursuant to article 360 *bis* CPC, a motion to challenge is declared inadmissible if: a) the appealed decision is in line with previous jurisprudence of the Supreme Court; and b) the complaint alleging violation of the fair trial principles is manifestly groundless.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of dispute resolution are available and frequently used in Italy? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

i. Arbitration

Arbitration allows parties to derogate the State courts jurisdiction substituting it with one or three arbitrators chosen by the parties; the arbitrators issue an enforceable arbitration award; it is regulated by articles 806-840 of the civil procedure code, reformed by Legislative Decree 40/2006 and Law no. 183/2010 (the latter regarding employment arbitration).

ii. Conciliation/Mediation

In Italy, the terms “conciliation” and “mediation” are generally used with the same meaning, with reference to all those procedures of settling a dispute away the process, before a third neutral party who helps parties to reach a final agreement. Many types of conciliation are available: judicial and non-judicial conciliation (whether the third party is a judge or just a mediator); voluntary and compulsory conciliation (depending on whether parties are forced by law to attempt conciliation or not).

As mentioned above, Law no. 28/2010 introduced a mediation procedure which is now mandatory when the claim refers to certain specific matters. In this regard, see question 2.1 above.

iii. Ombudsman

Ombudsman was introduced in the private relations of commercial

enterprises, as a service to customers. Particularly important is the Banking Ombudsman, instituted in 1993 by the Italian Banking Association. Ombudsman is not governed by any particular set of rules; it generally is administered by private or public bodies which have their own regulation.

iv. Amicable settlement (so-called “*transazione*”)

Articles 1965-1976 of the Italian Civil Code regulate amicable non-judicial settlement of disputes, governed by the general principles of contract law.

v. Preventive technical expert advice (“*consulenza tecnica preventiva ai fini della composizione della lite*”)

Article 696 *bis* CPC (introduced by Law no. 80/2005) has introduced this new ADR method, aimed at settling disputes regarding the determination of the specific amount of credits accrued by the non-fulfilment of contractual or extra-contractual obligations. In such case, upon parties’ request, the Judge appoints an expert who shall attempt conciliation as a mediator.

1.2 What are the laws or rules governing the different methods of dispute resolution?

Arbitration is regulated by articles 806-840 CPC, as amended by Legislative Decree no. 40/2006 and by Law no. 183/2010 (the latter regarding employment arbitration). Mediation and Ombudsman are not governed by any particular set of rules; they are administered by private or public bodies which have their own regulation. However, mediation has received an express recognition by Legislative Decree no. 5/2003 on corporate litigation which introduced, among other rules, the mediation for corporate matters. Mandatory mediation is governed by the Legislative Decree no. 28/2010.

1.3 Are there any areas of law in Italy that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Disputes involving public matters, such as criminal and family law matters or claims on inalienable rights, are considered non-arbitrable and the parties cannot use mediation. Special mediation proceedings are provided to resolve certain family disputes.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court - pre or post the constitution of an arbitral tribunal - issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Italy in this context?

Arbitrators cannot issue provisional remedies. However, the parties may ask the Court with jurisdiction to issue such measures.

Judges may intervene in support of the arbitration procedure, when the latter is likely to result in a stalemate (e.g. arbitrators’ appointment – 810 CPC; witnesses’ refusal to appear before the judges – 816 *ter*).

Unlike UK courts, Italian judges cannot issue orders such as anti-suit injunctions. If the defendant objects to the existence of a valid and effective arbitration clause, the Judge can only dismiss the case, should the objection be upheld.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Italy in this context?

Pursuant to article 824 *bis* CPC (as amended by Legislative Decree no. 40/2006), an arbitration award “has the same effects as a judgment rendered by a national court”.

The arbitration award may be challenged only based on the grounds set forth by article 829 CPC (e.g. the arbitration agreement is null and void). Also, pursuant to article 831 CPC, the arbitration may be revoked and is subject to third party opposition.

Article 803 *ter* governs the “*arbitrato irrituale*” (non-ritual arbitration), which is typical of the Italian legal system only. In this case, the award (“*lodo irrituale*”) is binding only on a contractual level and may not be enforced according to article 825 CPC. Also, the “*lodo irrituale*” may be challenged only on those grounds that are provided by article 808 *ter*.

As regards mandatory mediation (see question 2.1 above), the minutes of the proceeding that contain the agreement reached may be enforced, at the request of one of the parties.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in Italy?

The major arbitration institutions in Italy are the Arbitral Chamber of the Italian Association for Arbitration (A.I.A.), the Milan Arbitration Chamber instituted by the Milan Chamber of Commerce and the Rome Arbitration Chamber instituted by the Rome Chamber of Commerce. The Chambers of Commerce also provide mediation services. ADR is also administered by all Italian sports federations.

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Arbitration awards are binding on the parties and enforceable. Article 824 *bis* CPC, as lastly amended by Legislative Decree 40/2006, provides that arbitration awards have “the same effects of a judgment rendered by a national court”. However, arbitration awards need to be declared enforceable by means of a court decree.

Any other agreement reached through mediation or conciliation is generally binding on the parties and enforceable in accordance with ordinary contract law principles, unless otherwise provided by law.

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

The long-standing policy debate on the use of ADR in Italy has currently entered a phase of consolidation, overcoming the old sense of diffidence that brought courts to oust alternatives to civil justice. As we anticipated in question 2.1 of the Litigation section,

pursuant to Legislative Decree no. 28/2010, starting from 20 March 2011, the parties will be obliged to apply for a previous mediation procedure in front of a conciliation panel as a necessary condition of pursuing the proceedings, in the event that the claim refers to certain matters such as: property rights, condominium, separation, hereditary succession, family pacts, lease agreements, loan for use, lease of business, damages resulting from circulation of vehicles and boats, medical responsibility, defamation through the press or other advertising means, insurance, banking and finance contracts. Moreover, according to article 16 of the Decree no. 28/2010, only those mediation bodies that are included in the register by the Ministry of the Justice and that are authorised by the latter are allowed to carry out the mandatory mediation procedure. In this regard, with the Decree of the Ministry of Justice of 18 October 2010, the Government has set out criteria and procedures for registration and maintenance of the mediation bodies and has provided a list of authorised trainers in mediation under the above-mentioned article 16 of Decree No. 28, 2010. Among those criteria, the following could be mentioned: (i) the financial and organisational capacity of the body; (ii) adequate insurance coverage for potential liabilities of the body arising from the performance of mediation; (iii) the repute of the members of the bodies; (iv) the transparency of administrative and accounting organisation; (v) independence, impartiality and confidentiality in the performance of mediation, and the compliance with the law and the regulation of the Decree no. 28/2010; and (vi) the number of mediators, not less than five, who have declared their willingness to perform the functions of mediation for the body.

In addition to the above, since Law no. 580/1993 (on reorganisation of the Italian Chambers of Commerce), ADR methods have been increasingly perceived as a real alternative to court proceedings. The Chambers of Commerce have become ADR providers for disputes between businesses or businesses and consumers.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Italy?

Besides the reform introduced by Legislative Decree no. 28/2010 on the mandatory mediation (mentioned in question 3.1 above), the main development - which is also relevant for traditional dispute resolution - is the entry into force in January 2010 of the new law on “class actions” in Italy. The new class action procedure, which allows consumers to group together in order to bring court claims, can be considered a dispute resolution method alternative to individual claims. In short, the new law has introduced a new article (article 140 *bis*) in the Consumer Code which provides that, “individual, homogenous rights of consumers and users” may be enforced through class actions, in relation to contractual claims, claims for product-related damage and claims for damage related to unfair competition practices.

The impact of the new class action law is yet to be seen: only two class actions; have been declared admissible at the time of writing this article.

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