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Italy





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A. Legislation and rules

A.1 Legislation

Arbitration in Italy continues to be governed by articles 806 to 840 of the Italian Code of Civil Procedure (“ICCP”), which have been significantly impacted and amended by the reform enacted with Law No. 80/2005 and Legislative Decree No. 50/2005.³ Specifically, domestic and international arbitration are governed by articles 806 to 832 ICCP, while the enforcement of foreign awards is governed by articles 839 and 840 ICCP. As noted below, reforms are expected in the coming years.

A.1.1 The work of the Alpa Commission

On January 2017, as the first step towards a wide reform of arbitration in Italy, the Commission for the Reform of Arbitration, chaired by Professor Guido Alpa, acting on the basis of a request of the Ministry of Justice, issued a draft reform proposal. This represents the first attempt to reform Italian arbitration law in 11 years, following previous reforms implemented in 1983, 1994 and 2006.

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³ See “The Baker McKenzie International Arbitration Yearbook,” 2016-2017 edition, pages 243-244, for the relevant analysis.

The proposed reform is intended to meet the new challenges raised by the increased number of arbitration cases, as well as to manage regulatory changes and gaps that have emerged in practice. Indeed, the reforms are aimed at speeding up arbitration proceedings, in addition to extending and clarifying the scope of arbitration.

The most significant innovations of the proposed reforms include: (i) in cases where the award is challenged for breach of law, the parties should be able to skip lower courts and challenge the award directly before Italy's Court of Cassation; (ii) the institutional arbitral tribunals should be granted the power to issue interim measures; (iii) the scope of application of arbitration proceedings in relation to employment disputes will be broadened and clarified; (iv) disputes involving public administrative bodies should be submitted to arbitration; and (v) arbitration of disputes involving consumers should generally be allowed.

Although the draft law was submitted by the Alpa Commission in January 2017, there has not been any significant developments and it is still hard to foresee the timing of its submission to the parliament and subsequent approval.

A.1.2 Arbitration in contracts with public entities

Legislative Decree No. 50 of 18 April 2016 reorganized the regulation of contracts with and/or between public entities and provided, at articles 209 and 210, special rules applicable in case of arbitration.

In particular, with article 210 of the Decree, a special arbitration chamber was instituted at ANAC (the National Anti-Corruption Authority), having jurisdiction over controversies relating to public contracts for works, services and supplies.

The members of the arbitration chamber sitting board are chosen by ANAC from professionals with specific competence in public contracts, in view of ensuring the independence and autonomy of the chamber.



The chamber keeps a list of eligible arbitrators, enrolling suitably qualified lawyers, engineers, architects, university professors and public managers, who are deemed to have specific competence in the field. A parallel list is kept by the chamber as regards eligible experts. The lists are updated every three years. During the time in which they are enrolled in the respective list, and for three years thereafter, eligible arbitrators and experts cannot assist in any way the subjects who were parties to the cases they assisted.

The list of ongoing and decided cases is published on ANAC's website and includes their description of the case, as well as the names and compensation of the arbitrators and experts.

The compensation of the arbitrators was fixed by Ministerial Decree of 31 January 2018, which became effective in May 2018, provided for five brackets linked to the worth of the case, with a maximum compensation of more than USD 110,000 for the whole arbitral tribunal.

Under article 209 of Legislative Decree No. 50/2016, the controversies deriving from the performance of public contracts for works, services, supplies, bids concerning projects or planning, may be submitted to arbitration, on the condition that the bid documents or invitation to bid specifically included a proposal for arbitration. The winner of the bid may, in any case, refuse to consent to arbitration within 20 days of the adjudication.

Arbitration under Legislative Decree No. 50/2016 is administered by the special arbitration chamber indicated at article 210, and the rules of procedure are set on the same article 209, with wide reference to the arbitration rules contained in the Italian Code of Civil Procedure.

A.2 Institutions, rules and infrastructure

Although several local arbitration institutions are operating in Italy, institutional arbitration is mainly handled by the Chambers of Arbitration, where a leading role has been assumed by the Chamber of

Arbitration of Milan (“CAM”) with respect to both domestic and international disputes.

Another prominent arbitration institution is the Italian Arbitration Association in Rome (AIA), which plays an important role in the interaction with many international arbitration institutions, such as the ICC and AAA. It also provides academic guidance through the editing of the most important Italian arbitration law review, “Rivista dell’Arbitrato.”

B. Cases

B.1 Bill of lading and unsigned arbitration clause

It is often disputed before the Italian courts whether a bill of lading signed only by the issuer, containing a general reference to the terms and conditions of the transport contract, including *inter alia* an arbitration clause, is sufficient to establish the competence of the arbitrators, even when the transport contract or the bill of lading have not been signed by both parties.

In the past Italian courts have consistently ruled that the bill of lading (given its nature of a credit instrument representing the goods transported, and as such unilaterally drafted by the carrier), cannot satisfy the formal requirements of the New York Convention on the recognition and enforcement of foreign arbitral awards. Therefore, although its signing implies the recipient’s acceptance of the maritime transport contract, it cannot be considered as acceptance of an arbitration clause for foreign arbitration unless express and specific reference is made to said clause according to article II of the Convention.⁴

⁴ Court of Cassation, judgment No. 12321 of 18 May 2018.



B.2 Arbitration clauses do not extend their scope to connected disputes which lack a common cause of action

The Supreme Court ruled that, in cases where multiple claims are brought before the arbitrators, if only some of them are subject to the arbitration clause, it is not possible to consolidate all of them before the arbitrators. The ones for which the ordinary courts are competent should be separated and decided by these courts.

The losing party in an arbitration challenged the award before the Court of Appeals, claiming that the grounds of the decision were not supported by logical reasoning. The Court of Appeals rejected the claim and the Supreme Court confirmed the decision, stating that an arbitration award cannot be challenged for defects of the grounds, unless the grounds are totally absent or so poor that it is impossible to understand the rationale of the decision.⁵

B.3 Definition of *ordre public* barring recognition of foreign arbitral awards

With this important decision, the Court of Appeals gave a precise definition of *ordre public*, the breach of which is one of the few cases where a domestic or international arbitration award may be challenged by the losing party.

The Court stated that not all the mandatory rules of law are to be considered falling under the definition of *ordre public*, but only the fundamental principles that characterize the ethical or legal features of the Italian legal system. In the present case, the court ruled that article 2744 of the Civil Code, which prohibits the parties from agreeing that a pledged asset kept as a guarantee can be simply acquired by the creditor in case of default of the other party, does not set a principle of *ordre public*, but it is only aimed at protecting the individual interest of the weaker party of a contract. Therefore, if the application or the interpretation of an arbitral award is disputed, the arbitrators are fully

⁵ Court of Cassation, Judgment No. 26553 of 22 October 2018.

entitled to render the award and their decision cannot be challenged for violation of *ordre public*.⁶

B.4 Informal arbitration is not subject to jurisdiction review

The matter of this case was an “informal” arbitration (“*arbitrato irrituale*”), a special format of arbitration provided for by the Italian law, in which the parties agree that “the dispute should be decided by the arbitrators by contractual decision” (article 824 *bis* of the Code of Civil Procedure). In such a case, where the award is not tantamount to a judgment but rather a contract, it is not possible to file an appeal before the Supreme Court an award on the grounds of lack of jurisdiction of the decision on the validity of an arbitration clause. The Court stated that the party which challenges the validity of an arbitration clause for informal arbitration

does not bring a question of jurisdiction of the ordinary courts, but rather challenges the admissibility of the question, as the parties have chosen to settle by consent the dispute, waiving the judicial protection.⁷

C. Diversity in arbitration

Arbitration in Italy continues to be dominated by men, the majority of whom are older law professors.

A number of entities administering arbitration in Italy have signed up to the Pledge,⁸ by which they have committed to actively promote women’s participation in arbitration.

Signatories to the Pledge include more than 1,890 companies, states, arbitration entities, university professors and law firms.

The General Secretary of the Chamber of Arbitration of Milan (“CAM”) is one of the members of the Steering Committee.

⁶ Court of Appeals at Palermo, Judgment No. 805 of 17 April 2018.

⁷ Court of Cassation, Judgment No. 21942 of 10 September 2018.

⁸ <http://www.arbitrationpledge.com>



CAM publishes yearly information as to the number of women arbitrators involved in the cases they administer. The data published for the year 2017 showed an increase in women's appointment as arbitrators, although this is largely limited to cases in which the appointment had been done directly by CAM. Only 29 of the 195 arbitrators appointed in 2017 were women, and of these, 26 of the 29 were appointed directly by CAM, two by other authorities, and only one by the parties to an arbitration.⁹

⁹ <https://www.camera-arbitrale.it/upload/documenti/statistiche/statistiche-arbitrato-2017.pdf>