

INSIDE ARBITRATION: ARB-ITALIA: ITALY'S CONTINUING COMMITMENT TO ARBITRATION

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Legal Briefings

In litigation-saturated Italy, arbitration has often been cited as an attractive alternative form of dispute resolution. However, its uptake has been somewhat slower than anticipated. Legislators and arbitral practitioners have taken various steps in the past years to promote an arbitration-friendly culture at both a domestic and international level in Italy. Arbitration is indeed entirely possible, effective and available for solving both domestic and international disputes in Italy, and statistics show that slowly but surely arbitration is gaining increased importance. Significantly, on 8 June 2019 the Milan Chamber of Arbitration ("**CAM**") published its new arbitration rules which have been brought in line with other leading institutions. As such, it is hoped that Italy's arbitral caseload may soon pick up the pace.

MOVING AWAY FROM LITIGATION

Italy's preferred form of dispute resolution to resolve commercial disputes has traditionally been and remains domestic litigation. This is notwithstanding the Italian justice system's reputation for being slow with a considerable backlog of cases, with an average duration of judicial proceedings (both first and second instance proceedings) lasting for more than seven years.¹ At an international level in cross-border disputes, parties have been known to leverage the Italian court's inefficiency to their advantage to defeat a jurisdiction agreement, dubbed the 'Italian torpedo'. By bringing an action in Italy, the court of the member state in whose favour the jurisdiction clause is drafted must then wait until the Italian court, as the first court seized, has dealt with the jurisdictional dispute. In many cases, the resulting delay and expense leaves the 'torpedoed' party with little option but to settle. While EU Regulation no. 1215/2012 (Bruxelles / Bis) (the Recast Brussels Regulation) has succeeded in reducing the frequency of such actions,² the Italian court nevertheless remains clogged with cases.

Arbitration is an obvious alternative route to the oversubscribed and inefficient Italian court. Consequently, arbitration is of particular growing importance and interest in Italy, and is becoming more widely used than in previous decades.

ITALY'S ARBITRATION LAW

Arbitration is practised in Italy at both a domestic and international level. While the Italian arbitration legislation is not expressly based on the UNCITRAL Model Law, its principles are nevertheless incorporated.³

The law governing Italian arbitration is found in Book IV, Section VIII of the Italian Code of Civil Procedure ("**CPC**"). Articles 806 to 840 of the CCP apply to all arbitral proceedings which are seated in Italy. An arbitration will be deemed to be "international" where the parties to the proceedings have different nationalities or are domiciled in different countries, provided that the arbitral seat is within Italy. All other arbitrations with their seat in Italy will be deemed "domestic". Italian parties are free to choose a seat of arbitration other than in Italy.

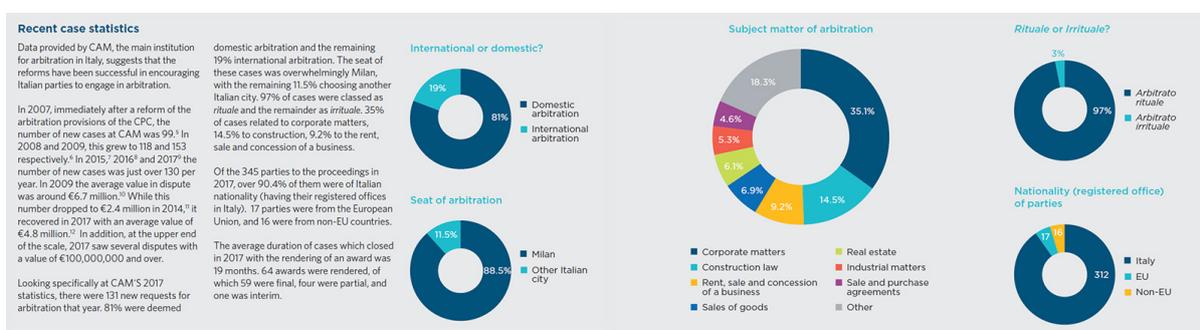
The CPC provides for two 'types' of arbitration in Italy: *arbitrato rituale* ('formal' arbitration) and *arbitrato irrituale* ('informal' arbitration). *Arbitrato rituale* is by far the most common and ordinary type of arbitration in Italy. These proceedings are governed by the CPC and, as with any normal arbitral procedure, the aim of *arbitrato rituale* is to produce an enforceable award at the end of the proceedings. *Arbitrato irrituale*, on the other hand, is a unique and alternative procedure which results in a contractually binding, but not enforceable, award. If a party does not comply with the *arbitrato irrituale* award, the other party can start legal proceedings before the competent court of first instance for breach of contract against the breaching party.⁴

All provisions in the CPC governing arbitration are mandatory for Italian-seated arbitrations. However, parties are free to determine the rules of the arbitration and also the language, provided that they comply with the due process requirement, namely the equal right of the parties to be heard and to defend themselves.

Various Italian bodies/institutions now offer sophisticated sets of procedural rules aimed at attracting domestic and international parties. The most prominent example of this is the CAM which can conduct arbitrations entirely in English. The Piedmont Arbitration Chamber is also gaining recognition, although we understand that this is currently an Italian-language only institution. International arbitrations seated in Italy are usually administered by the CAM or the ICC. "Ad-hoc" arbitrations, where the arbitration has no additional procedural rules and is run purely according to the provisions contained in the CPC, are relatively common in Italy. Arbitrators are mostly prevented by the CPC from granting interim relief, but preliminary relief and interim measures in support of arbitration can be requested from the Italian courts.

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The key difference in which the CPC rules apply to domestic and international arbitrations is found in the way domestic and international arbitral awards are recognised and enforced. Enforcement of domestic awards requires the filing of a request with the court of the relevant Italian seat. Having conducted a formal review of the award, the relevant Italian court declares enforceability by decree. In the case of an award rendered outside of Italy, the request for enforcement must be filed with the President of the Court of Appeal. The President will order the recognition and enforcement of the award if it is satisfied that the award is in line with formal requirements, does not infringe public policy grounds, and that the dispute is arbitrable under Italian law. In relation to recognition and enforcement of foreign awards rendered in commercial arbitrations (including UK and US awards), the provisions of the CPC reflect the rules of the New York Convention on the Recognition and Enforcement of Arbitral Awards (1958) ("New York Convention"), to which Italy is a signatory. Italy is also a party to the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards, the 1961 European Convention on International Commercial Arbitration and the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.



The Italian legislators have demonstrated a firm commitment to promoting arbitration as a favourable means of dispute resolution, having reformed the arbitration provisions in the CPC in 1983, 1994, and most recently in 2006. Further, the introduction of procedural provisions applicable specifically to company disputes via Legislative Decree no. 5/2003 is thought to be an attempt to encourage the resolution of company law matters by arbitral tribunals, thus helping to lighten the case load of the Italian justice system.

The ICC's 2018 dispute resolution statistics demonstrate that ICC administered arbitration is a popular choice among Italian parties. Italian was the fifth most frequent nationality in new cases. There were 87 Italian parties in total, 38 of which were claimants and 49 were respondents.

While the recent number and value of cases reported by CAM suggests that arbitration practice may have plateaued slightly and that fewer large-scale disputes are being arbitrated within Italy itself at present, CAM's statistics nevertheless demonstrate that parties are waking up to the possibility of international arbitration in Italy. With an increased quantity of disputes to be resolved, Italy's 'arbitration machine' could be up and running at full speed. This would, of course, also assist in relieving the burden on the saturated Italian courts.

2019 CAM RULES REFORM

The increase in arbitration caseload in Italy may not be far away. CAM's new arbitration rules, which were published in June 2019 and entered into force as of 1 March 2019, provide for an even more efficient system of administration of arbitral proceedings. They apply to arbitration proceedings commenced after 1st March 2019, unless the parties have agreed under Article 832 of the CPC that the arbitration proceedings shall be subject to the arbitration rules in force at the time of the stipulation of the arbitration clause (in which case, CAM may refuse to manage the proceedings). The 2010 Rules remain in force for all proceedings initiated up to 28 February 2019.

Crucially, it appears that the new rules attempt to align CAM with those of the leading institutions in international arbitration and their best practices. The main new features involve the arbitral tribunal having the power to adopt interim and provisional measures of protection with binding contractual effect on the parties (Article 26). Another key introduction is the concept of an emergency arbitrator (Article 44), who also has the power to issue provisional measures.

The rules also strengthen the standard of transparency and impartiality of the entire procedure, and include a special provision addressing these issues in connection with third-party funding. Further, the rules cater for scenarios such as the replacement of the arbitral tribunal (Article 23). They also include a duty to act in good faith during any phase of the proceedings (Article 9).

These revisions can only help to enhance and promote Italy as a worthy venue of international arbitration proceedings.

COMMENT

Although Italy cannot yet be considered a major arbitral hub, its practice is slowly but surely solidifying, both on the domestic and international front. The tradition of litigating commercial disputes in the domestic courts is deeply rooted in Italian legal culture and shifting away from the status quo has proven more difficult than perhaps expected. Nonetheless, legislators and arbitration practitioners continue to make great efforts to promote a new arbitration-friendly culture for parties seeking to resolve their commercial disputes. CAM's issuance of its revised set of arbitration rules last month demonstrates Italy's continued determination and commitment to this cause.

In particular, by bringing the CAM Arbitration Rules in line with rules of major international organisations such as the ICC and the LCIA, arbitral practitioners are aiming not only at increasing the practice of arbitration itself in Italy, but also promoting Italy as a potential seat of arbitration for foreign parties. This can be deemed as a welcome development, as bringing big international cases within the sphere of Italy-seated tribunals is likely to also encourage domestic parties to consider arbitration as a plausible alternative to the traditional litigation waitlist. It is hoped that the arbitration players of Italy will soon see the fruits of their labours with increased numbers of disputes trickling before arbitral tribunals, rather than stagnating in front of the already overstretched Italian judicial system.

[More Inside Arbitration](#)

1. <http://arbitrationblog.kluwerarbitration.com/2015/12/18/the-strange-case...>
2. Article 31 of the Brussels Recast Regulation provides that, where the court upon which jurisdiction is conferred by an exclusive jurisdiction clause is seized, a court in any other Member State must refuse to hear the matter until the “chosen” court declines jurisdiction. This 'anti-torpedo' provision thus acts to get around strategic attempts by parties to bring cases in the Italian courts, in circumstances in which the court of another Member State has prima facie exclusive jurisdiction. This is in contrast to the original Brussels Regulation, which gave priority to the Member State court first seized of a dispute.
3. As of 2016, CAM has introduced a procedure which regulates services for arbitrations conducted in accordance with UNCITRAL. The arbitral institutions provide assistance to follow the UNCITRAL Model Law at the parties' request.
4. https://eguides.cmslegal.com/pdf/arbitration_volume_i/cms%20gta_vol%20i_..., pp. 464-465.
5. www.camera-arbitrale.it/upload/documenti/statistiche/2007-2012-cam-arbit...
6. Ibid.
7. www.camera-arbitrale.it/upload/documenti/statistiche/2015-cam-arbitratio...
8. www.camera-arbitrale.it/upload/documenti/statistiche/2016-cam-arbitratio...
9. www.camera-arbitrale.it/upload/documenti/statistiche/2017-cam-arbitratio...
10. www.camera-arbitrale.it/upload/documenti/statistiche/2007-2012-cam-arbit...
11. www.camera-arbitrale.it/upload/documenti/statistiche/2014-cam-arbitratio...
12. www.camera-arbitrale.it/upload/documenti/statistiche/2017-cam-arbitratio...

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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