

Introduction

On 28 September 2022, the Italian Council of Ministers approved a series of legislative decrees (the Reform) providing for an extensive reshaping of the civil justice system. The purpose of the Reform, in accordance with the Recovery Plan for Europe, was to simplify and increase the overall efficiency of the Italian legal system. Among the extensive amendments, of particular importance is the reform to the arbitration section of the Italian Code of Civil Procedure (ICCP).

In this respect, the Reform constitutes the first major change to the ICCP since 2006, when the Italian system was, for the first time, partially aligned with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Commercial Arbitration. As will be shown below, the convergence with the Model Law is now almost complete, the result being that Italy now has a more coherent, complete and modern arbitration law.

Duty of Disclosure and Independence of Arbitrators

The arbitration system is built on trust, with the parties placing their faith in the arbitrators to resolve their disagreements in an objective and independent manner. As a result, the Reform provided for a set of rules aimed at strengthening the independence and impartiality of arbitrators and ensuring transparency of the appointment procedure. In fact, arbitrators will be required to disclose, upon acceptance of their appointment, any factual circumstances that may call into question their impartiality and independence. Failure to make the declaration thus constitutes grounds for invalidating the acceptance of the appointment. There is also a case of disqualification that is triggered when, at the time of accepting the appointment, the arbitrator has failed to declare the circumstances that – pursuant to Article 815 ICCP – may be invoked as grounds for a challenge. Furthermore, the appointments of arbitrators made by the judicial authority shall be governed by criteria that ensure transparency and efficiency.

While the Reform incorporates a standard practice already widely adopted by the institutional rules of arbitral chambers, its impact will be substantial in relation to *ad hoc* arbitrations, where no duty of disclosure and independence of arbitrators is provided failing parties' agreement.

Provisional Measures

Prior to the Reform, Italy was one of the few countries in the world where arbitral tribunals were not empowered to grant provisional measures. The now-repealed wording of Article 818 ICCP was unequivocal – “The arbitrator cannot order seizures or other provisional measures”. The Reform has brought a major change in this respect. The new Article 818 ICCP introduces the possibility for the parties to give the arbitrators the power to issue provisional measures. Parties' consent in this respect can be either specified in the arbitration clause or, as would predominantly be the case, indirectly expressed through a reference to institutional rules.

Furthermore, Article 818 ICCP clearly provides for the exclusive power of arbitrators to order interim measures, thus excluding ordinary courts' concurrent power. Should the parties confer this power to arbitrators, ordinary courts might only intervene prior to the constitution of the arbitral tribunal, and to ensure the proper enforcement of the measure(s) ordered by the arbitrators.

The change brought by the Reform, in this respect, can be considered undoubtedly impactful – it aligns Italy with other major arbitral European jurisdictions, including France, the UK, Germany, Austria and Spain.

Proceedings' Migration Between Arbitral Proceedings and Ordinary Proceedings

The Reform regulates, for the first time in the Italian legal system, the migration between arbitral proceedings and ordinary proceedings.

Pursuant to Article 819-quarter ICCP, as amended, the proceeding commenced before ordinary courts is automatically remitted to the arbitral tribunal if the court declines its jurisdiction and if “the interested party proceeds with the appointment of the arbitrators within three months after the conclusion of the ordinary proceeding”. Accordingly, the same applies to the “*traslatio iudicii*” from arbitration proceedings to ordinary proceedings.

Against this backdrop, the legal effects of the notice of arbitration (and the writ of summons) are preserved, including any consequence in respect of statute limitations. Furthermore, the evidentiary material already collected by the remitting tribunal can be used by the remitted tribunal for reaching its decisions as supplementary evidence.

Other Amendments

The Reform also introduces other amendments to Italian arbitration legislation:

- The substantial and procedural effects of the notice of arbitration are equated to the effects of the writ of summons
- The parties are expressly granted the power to choose a law other than Italian law as the law applicable to the merit
- The term for challenging the arbitral award is reduced from one year to six months, thus equating it to the one-year term for challenging ordinary courts' decisions
- The legal regime for corporate arbitration, introduced in 2003, is incorporated in the ICCP
- The order for the recognition of a foreign arbitral award issued by the Court of Appeal shall be immediately enforceable

Conclusion

The Reform truly represents a milestone for Italian arbitration law. Arbitrations seated in Italy are now on the right track to become a valid alternative to State Court proceedings, and they now enjoy a greater degree of autonomy and independence from ordinary proceedings, compared to the past.

Furthermore, Italy will be now aligned with other major arbitral jurisdictions in respect of several aspects of the arbitral proceeding, including the power for arbitrators to issue provisional measures, and the duties of disclosure and independence for tribunals' members.

In conclusion, these amendments will deeply contribute not only to improving the efficiency of the civil justice system, but also to increasing Italy's appeal as a more attractive and potentially fast-growing seat in the international arbitration market.

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