

## Dispute Resolution

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A Q&A guide to dispute resolution law in Italy.

The country-specific Q&A gives a structured overview of the key practical issues concerning dispute resolution in this jurisdiction, including court procedures; fees and funding; interim remedies (including attachment orders); disclosure; expert evidence; appeals; class actions; enforcement; cross-border issues; the use of ADR; and any reform proposals.

### Use of arbitration and recent trends

**1. How is commercial arbitration used in your jurisdiction? What proportion of large commercial disputes is settled through arbitration? What are the recent trends? What are the general advantages and disadvantages of arbitration compared to court litigation in your jurisdiction?**

#### Use of commercial arbitration

A relatively small number of commercial disputes are settled through arbitration, compared to the number of disputes entrusted to the ordinary courts. However, an increasing number of disputes have been settled through arbitration in the last couple of years, particularly commercial disputes involving joint stock companies.

This trend is due to a combination of different factors. On the one hand, the reform of Italian arbitration law undertaken in 2006 has rendered arbitration and, more generally, alternative dispute resolution (ADR) methods more attractive than previously. On the other hand, the ordinary justice system is facing a number of general problems, which are reducing its effectiveness and, as a consequence, discouraging parties from resorting to court proceedings. The following are a few examples of the problems pertaining to the judiciary:

- The excessive length of proceedings.
- Lack of specialisation of judges.
- Obstacles in enforcing court judgments.

## Main dispute resolution methods

### 1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

Most disputes are settled by litigation (ordinary proceedings), that is, they are decided by a court of first instance and by an appeal court if the unsuccessful party decides to challenge the judgment. Large commercial disputes may also be settled also in summary proceedings (see Question 9, Starting proceedings).

One of the recent changes relates to the legislative decree of 1 September 2011 no. 150, which cancelled the special proceedings formerly applicable to certain corporate disputes.

## Court litigation

### Limitation periods

### 2. What limitation periods apply to bringing a claim and what triggers a limitation period?

Limitation periods are regulated by the Civil Code, as opposed to procedural law.

The ordinary limitation period is ten years, triggered by the non-exercise of the right in question. The limitation period starts running from the day on which the right becomes enforceable, irrespective of the knowledge by the party. Shorter or longer periods may apply, depending on the nature of the substantive right at issue.

The ordinary ten-year period generally applies to breaches of contract or agreement. However, some rights arising from specific types of contract are subject to a much shorter limitation period. The limitation period applicable to tort claims is five years from the date damage occurs as a result of the tortious act.

### Court structure

### 3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

Disputes concerning civil and commercial matters are decided by:

- Justices of peace.
- Court of first instance.
- Appeal courts, which hear appeals from justices of peace and courts of first instance.
- The Court of Cassation, which hears appeals of appeal courts decisions. This is the highest court in Italy.

Courts of first instance usually have competence in large commercial disputes. Justices of peace can hear small cases only.

Courts of first instance and courts of appeal comprise specialised divisions. In this respect, legislative decree of 24 January 2012 no. 1 (Decree no.1) broadened the competence of the courts' divisions specialised in industrial and intellectual property law. These divisions are now competent to hear the following matters, among others:

- Shareholder disputes.
- Challenges to corporate resolutions.
- Disputes concerning copyright.
- Class actions as regulated by the Italian Consumers' Code (see Question 21).
- Subject to certain conditions, disputes relating to public contracts and supply agreements.

However, this decree has a validity term of only 60 days. Therefore, all the reforms contained therein are subject to the confirmation and/or modification by law, to be issued by the end of May 2012.

The answers to the following questions relate to procedures in courts of first instance.

### **Rights of audience**

**4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?**

#### **Rights of audience/requirements**

Parties must be represented and assisted by a lawyer before all courts.

To practise as a lawyer, an individual must have all of the following:

- A university degree in law.
- Two years' experience as a trainee in a law firm.
- A qualification gained in an examination organised by the Ministry of Justice.

To appear before the Court of Cassation, a lawyer must have practised for 12 years.

#### **Foreign lawyers**

Foreign lawyers can practise law in Italy if the professional qualifications in their country of origin are recognised in Italy under EU law. However, they can plead cases in court only alongside an Italian lawyer.

### **Fees and funding**

**5. What legal fee structures can be used? Are fees fixed by law?**

Law firms use several types of fee structure, with billing by hourly rate being the most common among law firms focusing on international work. Although task-based billing is allowed, it is rarely used.

Before the enactment of Decree no. 1, if the firm and the client did not otherwise determine the billing criteria, the tariff scale set periodically by the national bar association (Consiglio Nazionale Forense) applied. The tariff scale set maximum and minimum rates for each type of legal service. Decree no. 1 cancelled the compulsory minimum and maximum professional rates, although judges will most likely continue using them as helpful criteria to calculate the legal expenses to be paid by the parties to legal proceedings (see Question 22). Decree no.1 is subject to confirmation by the end of May 2012 (see Question 3).

**6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?**

## **Funding**

Theoretically, litigation can be funded by the parties in dispute or by a third party. However, third party funding is not a common practice in Italy.

Litigation costs are borne by the parties. Each party must pay in advance the relevant fees to bring a claim or initiate certain stages of the proceedings. Once the judgment is issued, the costs must generally be paid by the unsuccessful party although this varies in practice (see Question 22).

The parties also pay the lawyers' fees. The court may decide that a party is also liable for the other party's fees.

## **Insurance**

Italian law allows for insurance to cover legal expenses.

## **Court proceedings**

### **7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?**

Hearings during which the case is debated are normally conducted in public, but judges have the discretion to impose confidentiality restrictions for reasons of safety, public order and legal practice. During the debate, if the public hearing requirement is infringed, either party can apply to have the judgment declared void.

All other hearings, including those involving the giving of evidence, are strictly confidential, as are all documents which the parties and their lawyers submit to the court. Third parties cannot examine the parties' files.

### **8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?**

In certain cases, the parties must comply with rules on pre-action conduct. For example, legislative decree of 4 March 2010 no. 28 (Decree no. 28) introduced mandatory pre-trial mediation for certain types of dispute. Failure to comply with this requirement prevents the party from starting court proceedings. Disputes relating to the following matters are concerned, among others:

- Property rights.
- Inheritance.
- Lease.
- Bailment.
- Insurance agreements.
- Banking and financial agreements.
- Joint ownership.

Claims arising from subcontracted supply agreements must be submitted to conciliation before the competent chamber of commerce. Labour cases are no longer subject to the mandatory conciliation requirement, although the parties are free to take advantage of pre-trial conciliation (Law of 4 November 2010 no. 183).

## **9. What are the main stages of typical court proceedings?**

### **Starting proceedings**

Ordinary court proceedings are initiated by a writ of summons, following which they are opened and conducted by a judge. At a very early stage of proceedings, the parties must submit their definitive demands and objections, present their claims, and file and request the relevant evidence.

As an alternative, large commercial disputes can be settled by summary proceedings, which are quicker than ordinary proceedings and give the judge more discretionary powers in relation to conducting the proceedings. Summary proceedings are possible only if the case does not require a complex examination of evidence by the judge.

### **Notice to the defendant and defence**

In ordinary proceedings, a writ of summons is served on the defendant. The writ must state the date of the first hearing, which must be at least 90 days after the date of service. If this requirement is not complied with, the writ is void.

The defence must be stated in a brief and the relevant documents must be filed no later than 20 days before the first hearing. The judge may vary this term in summary proceedings.

### **Subsequent stages**

At the first hearing the parties discuss the case and, at their request, the judge authorises them to file the:

- First brief within 30 days, to specify their respective claim(s) and defence.
- Second brief no more than 30 days after the first brief, to reply to the initial claim(s) and defence, and to submit evidence.
- Third brief no more than 20 days, later to submit evidence in response to evidence submitted by the opposing party.

At the hearings that follow the first hearing, the judge hears evidence and authorises the parties to exchange final pleadings. Following the final hearing, the judge issues a decision.

### **Interim remedies**

## **10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?**

Italian law does not allow for a summary judgment to strike out a claim. However, a trial may end at an early stage if the claim is invalid (for example, if the claimant does not have the right or standing to bring a claim) or has not submitted correctly (for example, the claim is not signed by the lawyer).

## **11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?**

In some cases a court may ask for security to cover the potential damage arising from the enforcement of interim injunctions.

## **12. What are the rules concerning interim injunctions granted before a full trial?**

### **Availability and grounds**

Interim measures can be granted before a full trial, provided that both:

- The claimant's right seems well-grounded (*fumus boni iuris*).
- The rights of the claimant may be jeopardised by waiting for the full trial to resolve the issue (*periculum in mora*).

### **Prior notice/same-day**

Interim injunctions can be granted without prior notice to the defendant, if to do otherwise might jeopardise the successful implementation of the measures. The judge grants the order and sets the date for the hearing. The judge has the option of making the order provisionally enforceable. In urgent cases, the order can be obtained on the same day.

### **Mandatory injunctions**

In addition to prohibitory interim injunctions, Italian law allows for interim injunctions that compel a party to act.

## **13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?**

### **Availability and grounds**

Interim attachment orders are available to preserve assets pending judgment, provided that a preliminary and summary examination of the case shows that:

- The claims filed by the claimant in the main proceedings are likely to be well grounded.
- The claimant alleges and provides summary evidence that the time necessary to complete the main proceeding could irrevocably jeopardise its rights.

### **Prior notice/same-day**

In urgent cases, the judge may grant interim measures without prior notice to the defendant and on the same day. The application must be filed with the trial court.

### **Main proceedings**

Interim attachment orders can be granted in support of substantive proceedings that are taking place in a foreign jurisdiction.

### **Preferential right or lien**

Interim measures create a preferential right in favour of the claimant over the seized assets.

### **Damages as a result**

The claimant is liable for damages suffered by the defendant as a result of seizure of assets if the claims are found to be groundless.

### **Security**

The claimant may be required to provide security for the damage that may be caused to the defendant in case its claims are found groundless.

## **14. Are any other interim remedies commonly available and obtained?**

Italian law provides for other interim remedies, which parties can request before and during the main proceedings. The most common interim injunction is an order of payment. A creditor can obtain this

order if its claim is substantiated by written evidence, such as invoices, contracts and correspondence. An order of payment is immediately enforceable if supported by certain forms of evidence provided for by law (such as a notarised deed), or if the judge accepts other urgent reasons submitted by the creditor.

A party can request the trial court to issue interim measures if there is a risk that changes to real estate (for example, a new building) may damage the party's property.

A party can ask for a witness's testimony to be heard if he is gravely ill and may die before the evidence stage.

In addition, a party can request interim measures if it may be impossible to give effect to its rights by the time the dispute is resolved. Such requests are common in trade mark and other IP disputes, in which the party that has suffered loss or damage usually asks the judge to order its counterparty to cease infringement and remedy its effects.

## Final remedies

### **15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?**

Damages are the most common remedy sought and awarded at the full trial stage. A claimant in ordinary proceedings can obtain indemnity for all damage caused by another individual. If the court upholds the claim, the defendant is usually required to pay a sum of money. Damages are compensatory, rather than punitive.

A party can claim damages in relation to:

- Expenses incurred as a consequence of the other party's unlawful behaviour.
- Loss of profits.
- Loss of opportunity.
- Damage to commercial reputation.

Other remedies can be granted, depending on the parties' claims and the kind of right the trial has dealt with, for example:

- Orders of payment.
- Injunctions.
- Orders to comply with a certain rule.

## Evidence

### Disclosure

### **16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?**

The parties must disclose all documents which are necessary for the presentation of evidence. There are detailed rules on this procedure. In particular, the judge can order the parties and any third parties to disclose specific documents necessary for the trial. However, a party must request this order, and the judge can reject it if disclosure would cause damage to the holder of the document. Judges can order wider discovery only in trade mark and patent cases.

On a party's request, a judge can issue an order of disclosure, even in relation to documents that are secret or confidential (see Question 17). If a confidential or secret document is disclosed by a party, any party who suffers harm from the disclosure can claim compensation.

### **Privileged documents**

**17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?**

### **Privileged documents**

Communications with in-house lawyers are not protected by privilege.

The letters sent by the parties' lawyers to each other to reach an out-of-court settlement cannot be filed in the trial only if expressly defined as "confidential correspondence between lawyers". However, this rule is set out in the lawyers' ethical code only and a more general "without prejudice principle" is not recognised under Italian law.

### **Other non-disclosure situations**

Parties can file only documents which they consider important and which are not confidential. However, documents and information deemed secret within the meaning of the Code of Criminal Procedure cannot be used in civil proceedings. This includes:

- Professional and state secrets.
- All communications between lawyers and clients, or between the lawyers of the parties in dispute.

### **Examination of witnesses**

**18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?**

### **Oral evidence**

The court examines witnesses, asking direct questions concerning the facts of the case and the questions asked by the defence counsel. Witnesses of fact cannot be cross-examined.

Witnesses must give evidence unless the law provides otherwise, as in the case of:

- Adults without legal capacity.
- Minors.
- Individuals sharing a common interest with a party.
- Individuals convicted of certain criminal offences.

Witnesses can refuse to give evidence if the facts on which they are questioned involve a state or professional secret.

Law of 18 June 2009 no. 69 introduced the concept of written evidence. The parties can now ask the judge that the examination of the witnesses be carried out through an applicable form. The form must be submitted duly signed and the judge, after examining the written evidence, may order the witness to appear before him to complete the evidence.

Italian law does not allow witnesses to give evidence indirectly using technology, such as television or videoconferencing.



## **Right to cross-examine**

Cross-examination of witnesses is not allowed under Italian law.

## **Third party experts**

### **19. What are the rules in relation to third party experts?**

#### **Appointment procedure**

If a technical issue arises during trial, the judge can appoint a third party expert from a register maintained by the court. The judge calls the expert at a hearing and presents him with the technical questions to be answered.

The parties can appoint their own experts by filing a brief through which they declare that the court expert will be assisted by a party expert in their own interest.

#### **Role of experts**

A court-appointed expert provides the court with independent technical advice in his field of expertise.

The expert can:

- Carry out investigations.
- Ask the parties for clarification.
- Obtain information from third parties when authorised by the judge.
- Attend hearings to clarify specific issues as expressly requested by the judge.

The party's appointed experts can assist the court expert in these activities.

#### **Right of reply**

After receiving the draft court expert's report within the term scheduled by the judge, the parties (directly or through their own experts) can submit to the court expert remarks to the draft, which are then included in the court expert's final report, along with the comments of the court expert's to the parties' remarks.

#### **Fees**

Normally the judge requires that a sum of money to cover the court expert's fees be advanced by the party which requested the technical investigation. The judge orders the losing party to pay all of the fees paid and expenses incurred by the successful party, including the fees due to the court expert and the parties' experts (see Question 22).

## **Appeals**

### **20. What are the rules concerning appeals of first instance judgments in large commercial disputes?**

#### **Which courts**

A party can appeal a first instance judgment before a court of appeal, which can reconsider the case in its entirety. Appeal court's decisions can be appealed to the Court of Cassation (the Italian Supreme Court).

#### **Grounds for appeal**

Italian law does not limit the number of grounds on which a first instance decision can be appealed. In

submitting its appeal, the appellant provides a brief summary of the facts and specifies its reasons for appealing against the first instance judgment. The only restriction is that the appellant cannot bring claims other than those already brought at first instance. The appeal court re-examines and rules on all of the claims brought before the court of first instance and re-submitted by the appellant.

Appeal court's decisions can be appealed to the Court of Cassation only on specific grounds; parties can submit a limited number of objections based strictly on the interpretation and application of the law and never on matter of facts.

### **Time limit**

A party can appeal a first instance judgment within 30 days of its service or, if judgment is not served, within six months of the judgment being published. The opposing party is entitled to file a brief and can also file a counter-appeal up to 20 days before the first hearing. New evidence cannot be submitted to the appeal court unless it is considered indispensable to the case.

## **Class actions**

### **21. Are there any mechanisms available for collective redress or class actions?**

Class actions were introduced by the Finance Act 2008 and modified several times, most recently by Decree no. 1. Currently class actions are only available in relation to consumer law matters.

Class action can be brought by:

- Each individual consumer member of the class.
- The associations to which the consumer(s) gave a proper mandate.
- The committees of which the consumer(s) are members.
- The following rights can be enforced by a class action:
  - Contractual rights of a class of consumers and/or users who are in a homogeneous position towards the same company.
  - The homogeneous rights of the final consumers and/or users of a product against the manufacturer.
  - The homogeneous rights of the consumers and/or users aiming at the compensation for the damage suffered because of unlawful commercial acts and/or commercial conducts infringing competition law.

There are currently no specific rules on the funding of class actions.

## **Costs**

### **22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?**

As a general rule, the unsuccessful party must pay both parties' costs. However, this rule can be (and usually is) derogated from by the court, which determines the percentage of costs to be paid by each party and the terms of payment.

Costs comprise court and lawyers' fees, out-of-pocket expenses and general expenses equal to 12.5% of the lawyers' fees. However, the judge can reduce or ignore expenses and fees which he considers

excessive.

In addition, the judge can take into consideration the parties' approach to the case and their behaviour before and during the proceedings.

Where the successful party rejects without a good reason a settlement offer and is awarded in the final judgment less than the settlement offered, the successful party will have to pay the costs accrued after the submission of the refused settlement proposal (Law of 18 June 2009 no. 69).

### **23. Is interest awarded on costs? If yes, how is it calculated?**

Interest on costs is awarded only if the parties so request in a specific claim in their writ of summons or brief. Unless the parties provide otherwise in the underlying agreement from which the dispute arose, interest is calculated at an annual rate set by the Ministry of the Economy. The rate for 2012 is 2.5%.

In relation to commercial disputes between companies over delayed payments, a higher rate of interest applies under Directive 2000/35/EC on combating late payment in commercial transactions, which was implemented in Italy by Decree-Law 231/2002. From January to June 2012, the rate is 8%. An agreement providing a higher rate is void if it is not executed in writing or if it exceeds mandatory legal limits.

Interest accrues on obligations arising from the relevant sum of money from the date on which the creditor notifies the debtor of its claim.

## **Enforcement of a local judgment**

### **24. What are the procedures to enforce a local judgment in the local courts?**

Before commencing enforcement proceedings, a party must serve a preliminary writ of enforcement on the other party, which must comply with the order within ten days. If the party in question fails to comply with the order within the specified time, enforcement proceedings can begin.

If the order provides for the payment of an amount of money, the creditor is entitled to apply for the attachment of the debtor's assets. The attached assets are sold and the proceeds are used to pay the amounts due to the creditor, including interest, all legal expenses and fees. The attached assets can be transferred to the creditor in certain cases.

The law also provides for orders to:

- Require a party to deliver goods or transfer real estate.
- Require a party to desist from doing something.
- Prevent a party from doing something.

## **Cross-border litigation**

### **25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?**

Italian courts respect the right of parties to stipulate the governing law. In deciding a contractual dispute, the judge must apply the law chosen by the parties. The parties and the relevant specialist

bodies can provide the judge with the relevant rules to be applied. The only case where the judge may decide the case according to Italian law is if the judge is unable to establish the applicable foreign rules.

Employment contracts can be governed by Italian law only and a provision to the contrary is void.

## **26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?**

Parties to a contract can specify a choice of jurisdiction, provided that both:

- The choice is recorded in writing.
- The relevant dispute does not concern rights which the parties are not entitled to renounce under mandatory provisions of Italian civil and commercial law.

The choice of jurisdiction is effective only if it identifies a competent judge to decide the case.

If a contract includes a valid and binding choice of jurisdiction, the local court must respect it. However, the choice of jurisdiction applies only to civil and commercial claims excluding claims relating to:

- Tax, customs and administrative law.
- The status or capacity of an individual.
- Wills, inheritance and matrimonial law.
- Bankruptcy and insolvency procedures.
- Social safety.
- Arbitration.

At the first stage of proceedings, the parties can file a petition with the Court of Cassation to settle a dispute in relation to the choice of jurisdiction.

## **27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?**

Serving proceedings in Italy from a foreign country is regulated by international conventions and EU law, depending on the foreign state in question.

Service of judicial and extra-judicial documents in the EU member states is governed by Regulation (EC) 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (Service of Documents Regulation). Under the Service of Documents Regulation, EU member states must designate entities with authority to receive applications for proceedings (receiving agencies) and to transmit such applications to other member states (transmitting agencies). Documents must be transmitted directly between agencies, accompanied by a standard form in one official language of the member state where the documents must be served. Documents can be transmitted by any appropriate means which ensures that the document as received is faithful to the content of the original and all information is easily legible. No legal certification is required.

In Italy, the receiving agency is the Office of the Bailiffs. The Italian receiving party must accept all documents with an attached Italian translation. The Office of the Bailiffs serves the document according to Italian law or the terms requested by the transmitting agency, unless such terms are inconsistent with Italian law.

Italy has ratified several bilateral conventions in relation to service of proceedings from non-EU countries, for example, with Argentina, Brazil and Switzerland.

**28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?**

Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters is intended to improve, simplify and expedite co-operation between courts. It applies in all EU member states except Denmark. The Regulation provides for the taking of evidence by the requesting court and the subsequent transmission of the evidence to the requesting court. The requesting court is either:

- The court before which proceedings have commenced or are pending.
- The court of another member state which is competent to take evidence.

This Regulation also provides for a central body which is responsible for supplying information and resolving difficulties which may arise in respect of a request.

**Enforcement of a foreign judgment**

**29. What are the procedures to enforce a foreign judgment in the local courts?**

The procedure for enforcing a foreign judgment in Italy depends on whether the judgment was issued by a court of an EU member state.

Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation) provides that any judgment, decision and measure of any kind which meets certain requirements and issued by a judge of an EU member state and enforceable in that state is automatically recognised in the Italian jurisdiction.

An enforcement petition must be submitted by the interested party to the competent Italian court of appeal (determined with reference to the place of enforcement or the domicile of the party against which enforcement is sought) only if:

- Someone objects to the existence of the requirements for automatic recognition.
- The unsuccessful party does not comply with the decision and it is necessary to enforce the decision.
- The enforcement petition must be accompanied by both:
  - A copy of the judgment, which must satisfy certain conditions to be confirmed as valid and authentic.
  - A certificate issued by the competent authority of the member state where a judgment was issued.

No legal certification of these documents is required.

The judgment must be declared enforceable immediately and without review on satisfaction of the above formalities. The party against which enforcement is sought can appeal the enforceability decision within one month of service or within two months if the party is domiciled in a member state other than that in which the decision was issued.

In relation to judgments issued by courts of a non-EU state, including US judgments, Law 218/1995 sets

out the principle of automatic recognition only for the definitive judgments and under certain conditions. A party can obtain a declaration of enforceability from the relevant appeal court by filing an enforcement petition as described above.

## **Alternative dispute resolution**

### **30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?**

The only ADR methods provided by Italian law are mediation, conciliation and arbitration.

According to some studies conducted by the National Union of Chambers of Commerce (Unioncamere), the last few years showed an increase in the use of mediation and conciliation. In 2011 more than 7000 mediation proceedings have been conducted by the mediators of the Chambers of Commerce. An increase has been registered particularly in the fields of consumer law, e-commerce and telecommunications.

In addition to the mandatory mediation (see Question 8), the parties can submit the case to a mediation body which meets the requirements under Degree n. 28 and helps them reach a settlement agreement. The mediators must be registered at a proper register. The most used mediation bodies have been established within the Chambers of Commerce. The mediation procedure lasts four months maximum.

In addition to mediation, arbitration is commonly used and is particularly popular with companies as a means of resolving a dispute in the shortest possible time. Parties can refer all disputes to arbitration, except those relating to rights which the parties are not entitled to renounce under mandatory provisions of civil and commercial law.

### **31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?**

Pre-court mediation is compulsory in relation to certain disputes (see Question 8). Other than that, a court cannot compel parties to submit their disputes to arbitration or mediation.

### **32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?**

In ADR procedures evidence is given according to the same principles as in litigation. Parties can file only documents which are considered relevant by the arbitrators or mediators and which are not confidential. Arbitrators or mediators do not look for evidence directly; the evidence must rather be provided or requested by the parties.

Documents and information deemed secret within the meaning of the Code of Criminal Procedure are inadmissible in ADR. The consensual basis of arbitration proceedings allows parties to establish particular evidentiary rules in an arbitration clause, including restrictions on evidence.

Mediation and arbitration are strictly confidential.

### **33. How are costs dealt with in ADR?**

Generally, arbitration is more expensive than litigation. In addition to the costs of the procedure itself, the parties must pay the arbitrators' and lawyers' fees. The costs and arbitrators' fees are determined in the arbitration award and all parties are jointly liable for payment.

Mediation costs are considerably lower and are determined by the National Union of Chambers of Commerce. Costs depend on the actual value in dispute. According to the most recent studies of National Union of Chambers of Commerce, the average cost of a mediation proceeding conducted by the Chamber of Commerce is about EUR14,400 (as at 1 March 2012, US\$1 was about EUR0.7). This does not include lawyers' fees, which must be paid separately by each party to mediation.

### **34. What are the main bodies that offer ADR services in your jurisdiction?**

ADR services are mainly offered through the Chambers of Commerce. There are 105 Chambers of Commerce, which are represented by the National Union of Chambers of Commerce (Unioncamere), which is located in Rome (see [www.unioncamere.gov.it/www.conciliazionecamerecommercio.eu](http://www.unioncamere.gov.it/www.conciliazionecamerecommercio.eu)). 103 mediation and conciliation chambers and 66 arbitration chambers have been established within the Chambers of Commerce.

## **Proposals for reform**

### **35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?**

Since many of the reforms described above have been adopted during 2011 and at the beginning of 2012, there are currently no pending proposals for substantial reform.