

# Arbitration

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By Micael Montinari, Marco Bellezza, Pietro Masi, Davide Petris and Matteo Magistrelli

A Q&A guide to arbitration law and practice in Italy.

The Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

## 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.

In general, arbitration clauses are commonly used by companies, particularly in cross-border

agreements. This shows the favourable approach of businesses to arbitration.

### **Recent trends**

Recently, an increasing number of commercial disputes has been settled by arbitration. Although there are no national statistics, according to data provided by the Arbitration Chamber of Milan, from 2005 to 2010 the number of disputes concerning corporate matters submitted to arbitration increased by 27%, while the number of arbitrations in the field of service agreements increased by 19%.

In the same period, arbitration has been used mainly by national joint stock companies in relation to:

- Corporate matters.
- Service agreements.
- Industrial property disputes (disputes related to licence and distribution agreements, trade mark and intellectual property rights).
- Lease, sale or transfer of a company branch.

According to the same statistics the average duration of arbitration has been one year.

### **Advantages/disadvantages**

Generally speaking the main advantages of arbitration in Italy can be summarised as follows:

- Arbitration is less time consuming than normal court proceedings. Statistics show that the average length of an ordinary court proceeding is one year and three months for the first instance decision and seven years and three months for the highest court decision, while the average length of an arbitration before the Arbitration Chamber of Milan is around one year.
- Arbitrators often have specialised knowledge on the matters in question, which ensures better quality of the awards.
- The procedure is generally less formal and the procedural rules can be determined directly by the parties.

Despite the specific actions taken recently by different arbitration bodies to reduce the costs of arbitration proceedings, the main disadvantage of arbitration remains its costliness. The costs of arbitration are significantly higher than those of court litigation.

### **Arbitration organisations**

#### **2. Which arbitration organisations are commonly used to resolve large commercial disputes in your jurisdiction?**

The commonly used arbitration institutions are the following:

- Arbitration Chamber of Milan (Camera arbitrale di Milano) ([www.camera-arbitrale.it](http://www.camera-arbitrale.it)).
- Arbitration Chamber of Rome (Camera arbitrale di Roma) ([www.cameraarbitralediroma.it](http://www.cameraarbitralediroma.it)).
- International Chamber of Commerce (ICC) Arbitration Chamber (Camera arbitrale della Camera di Commercio internazionale) ([www.cciitalia.org/arbitrato.htm](http://www.cciitalia.org/arbitrato.htm)).
- Mediation and Arbitration Chamber of Sport (Camera di conciliazione e arbitrato per lo sport) ([www.coni.it](http://www.coni.it)).
- ANPAR Arbitration Chamber (Camera arbitrale dell'Associazione nazionale per l'arbitrato e la conciliazione) ([www.anpar.it/2010/arbitrato](http://www.anpar.it/2010/arbitrato)).
- Arbitration Chamber of the Fashion and Textile sector (Camera arbitrale della Federazione tessile e moda) ([www.sistemamodaitalia.com](http://www.sistemamodaitalia.com)).

### **Legislative framework**

## Applicable legislation

### 3. What legislation applies to arbitration in your jurisdiction? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The provisions applicable to arbitration are set in a dedicated section of the Italian Code of Civil Procedure (CCP). These provisions have been widely modified by Legislative Decree No. 40 of 2 February 2006, issued with the aim of making arbitration more attractive for the parties.

The CCP provides for two different kinds of arbitration:

- Informal arbitration (arbitrato irrituale).
- Formal arbitration (arbitrato rituale).

The main difference between informal and formal arbitration lies in the effectiveness of the award: while the award arising out of an informal arbitration has contractual force only, the award issued in a formal arbitration has the force of a court judgment as far as its effect and enforceability are concerned. Despite the relatively recent reform in the field of arbitration (see Question 1, Use of commercial arbitration), the Italian legislature has adopted neither the UNCITRAL Model Law nor any other foreign examples.

## Mandatory legislative provisions

### 4. Are there any mandatory legislative provisions? What is their effect?

The CCP sets out mandatory rules in relation to arbitration procedure (arbitrato rituale). The main mandatory rules are as follows:

- The principle of party equality must always be observed.
- Arbitration cannot concern personal rights such as the right to personal integrity, right to live and to be healthy. Disputes concerning labour contracts can be subject to arbitration only in cases expressly allowed by law or by collective labour agreements.
- An arbitration clause must be in writing and must identify the subject matter of the dispute.
- Arbitrators cannot grant interim measures.
- Arbitration awards must comply with the Italian public order.
- A clause depriving the parties of the right to challenge an arbitration award is null and void.

## The law of limitation

### 5. Does the law of limitation apply to arbitration proceedings?

The law of limitation applies to disputes subject to arbitration. Limitation periods are set out in the Italian Civil Code (Civil Code) and the relevant rules are mandatory (the parties cannot limit or extend the limitation period). The ordinary limitation period is ten years but shorter or longer periods may apply depending on the nature of the substantive right at issue.

The commencement of an arbitration suspends the limitation period (Civil Code). However, the limitation period recommences when the arbitration award has become definitive (*res judicata*).

## Arbitration agreements

## Validity requirements

### 6. What are the requirements for an arbitration agreement to be enforceable?

#### Substantive/formal requirements

To be enforceable, an arbitration agreement must be in writing. In addition, the agreement must clearly define the matters to be resolved by arbitration (for example, all disputes arising out of a specific contract).

Separate arbitration agreement

An arbitration clause in the underlying contract is valid and sufficient. The substantive and formal requirements are the same as described above.

#### Separability

### 7. Does the applicable legislation recognise the separability of arbitration agreements?

The applicable legislation recognises the separability of arbitration agreements. Therefore, the validity of an arbitration agreement is evaluated separately from the underlying contract.

#### Joinder of third parties

### 8. In what circumstances can a third party be joined to an arbitration, or otherwise be bound by an arbitration award?

A third party can join an arbitration procedure voluntarily, subject to both the parties' and arbitrators' consent, when either (CCP):

- A third party has an autonomous right conflicting with or depending on the rights disputed in the arbitration.
- A third party, having a qualified interest, intends to support one of the parties to the arbitration.

A third party cannot be compelled to join an arbitration.

According to a general principle of Italian law, a judgment or an arbitral award can be binding only on the parties, their heirs and their assignees. Other third parties are not bound by an arbitration award.

## Arbitrators

#### Number and qualifications/characteristics

### 9. Are there any default provisions in the legislation relating to the number and qualifications/characteristics of arbitrators?

According to Italian law, the number of arbitrators must be odd.

However, the parties can freely agree in the arbitration clause or agreement on an uneven number of arbitrators, in which case the President of the competent civil court will appoint an additional arbitrator. Should the parties fail to determine or disagree on the number and/or their appointment, the President of the competent civil court shall appoint three arbitrators.

Regarding the characteristics of the arbitrators, Italian law does not provide any requirement other than legal capacity. However, the parties can require specific qualifications or characteristics through the arbitration clause or agreement and their absence is one of the grounds on which an arbitrator can be removed (see Question 11). Generally, even absent specific requirements in the arbitration clause, the parties tend to appoint high profile legal experts such as university professors.

## **Independence/impartiality**

### **10. Are there any requirements relating to independence and/or impartiality of arbitrators?**

Generally the arbitrators must be independent, neutral and impartial with respect to the parties and their interests in the arbitration. The CCP does not provide a dedicated rule on the independence of arbitrators. However, it does state that the lack of independence is a ground on which the parties can request the removal of an arbitrator (see Question 11, Removal of arbitrators).

The regulations of domestic arbitration organisations (see Question 2) contain more extensive rules aimed at ensuring the independence, neutrality and impartiality of arbitrators. For example, these regulations often require that arbitrators declare their independence in a signed statement before their appointment.

## **Appointment/removal**

### **11. Does the applicable legislation contain default provisions relating to the appointment and/or removal of arbitrators?**

#### **Appointment of arbitrators**

The parties can freely agree that the following persons can appoint arbitrators (CCP):

- The parties themselves.
- The President of the competent civil court.
- A designated third party.

When the parties appoint the arbitrators, each party shall serve on the other party a notice of appointment indicating the arbitrator(s) elected. On receipt of the notice, each party shall within the following 20 days, serve a counter-notice indicating the arbitrator(s) they have elected. If a party fails to serve notice or the counter-notice, the other party can file a petition before the competent court requesting appointment of the arbitrators by the President of the court.

The arbitrators must accept the appointment in writing.

#### **Removal of arbitrators**

An arbitrator can be removed by the parties in the following circumstances:

- The arbitrator does not have the specific qualifications required by the parties in the arbitration agreement.
- The arbitrator has a personal interest in the matter (or is a director of a legal entity that has such an interest).
- The arbitrator or his spouse is a relative of one of the parties, or of one of the authorised representatives of the parties, or of one of the lawyers representing the parties.
- The arbitrator is party to pending litigation involving one of the parties, their legal representatives or lawyers, or has hard feelings towards such persons.
- The arbitrator has a working or business relationship with or is a legal tutor of one of the parties, if that relationship may compromise his independence.
- The arbitrator has been, in another stage of the proceeding:
  - a counsel or lawyer for one of the parties; or
  - a witness.

An arbitrator can be removed through a petition by the affected party to the President of the competent civil court within ten days starting from the arbitrator's appointment.

## Procedure

### Commencement of arbitral proceedings

#### **12. Does the applicable legislation provide default rules governing the commencement of arbitral proceedings?**

Italian law does not provide default rules governing the commencement of arbitration. According to legal commentators and case law, the notification of the notice of appointment of the relevant arbitrators to the counterparty (see Question 11, Appointment of arbitrators) commences the arbitral proceedings.

Specific provisions can be provided by parties in the arbitration agreement. Some arbitration organisations also provide guidance on this matter in their regulations.

### Applicable rules

#### **13. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?**

##### **Applicable procedural rules**

The parties can freely determine the procedural rules that apply. Generally the parties do not set out all the procedural rules in the arbitration agreement, but rather select a set of arbitration rules provided by one of the arbitration organisations. The arbitration rules of the Arbitration Chamber of Milan are the most commonly chosen.

Absent parties' agreement, arbitrators can follow the procedural rules they deem most appropriate. In practice, arbitrators comply with the main procedural rules set out by the CCP for court proceedings and the specific few rules concerning arbitral proceedings.

##### **Default rules**

The CCP has a few default provisions governing arbitration proceedings (see above, Applicable procedural rules).

### Arbitrator's powers

#### **14. What procedural powers does the arbitrator have? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?**

The powers of the arbitrator generally resemble those of the ordinary judge. Thus, the arbitrator can:

- Assert his competence.
- Resolve all issues entrusted to him.
- Manage the hearing (for example, set the terms for the defensive activities of the parties).
- Admit evidence requested by the parties.
- Order the disclosure of specific documents and the attendance of witnesses proposed by the parties. This power is not granted by law, but comes from the general flexibility of arbitral proceedings and can be expressly provided by regulations of arbitration institutions.
- Request the assistance of a technical expert.

The arbitrator does not have the power to enforce his decisions in the manner that a judge can, as he cannot directly count on the assistance of the force of law for the order's enforcement (for example, he cannot order that the Police seize documents that the party refuse to disclose).

Where a witness refuses to attend a hearing to testify, the arbitrator can ask the President of the competent court to order the witness to appear before the arbitral tribunal.

## Evidence

**15. What documents must the parties disclose to the other parties and/or the arbitrator(s)? How, in practice, does the scope of disclosure compare with disclosure in litigation? Can the parties determine the rules on disclosure?**

### Scope of disclosure

Under Italian law, disclosure has a different meaning from that provided under the common law (for example, US statutes).

According to the CCP, in ordinary court proceedings the parties only have the right to request the disclosure of specific documents (to be clearly identified in the relevant request) for the purpose of giving evidence of facts that cannot be proved otherwise.

The scope of disclosure is the same in arbitral proceedings, unless the parties provide otherwise in the arbitration agreement.

### Parties' choice

Generally the parties are free to determine procedural rules, including in relation to evidence and disclosure. For example, they can provide for more extensive disclosure.

In practice, it is rare that parties provide for rules of disclosure derogating from the position under the CCP (see above, Scope of disclosure).

## Confidentiality

**16. Is arbitration confidential?**

Arbitration is confidential. Confidentiality extends to the:

- Identities of the parties to the arbitration.
- Subject matter of the dispute.
- Documentation filed.
- Final award (except when the award is enforced or appealed, as in these cases the outcome of the arbitration is known to the court deputy).
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The breach of the duty of confidentiality by one of the parties leads to the contractual liability of that party. The infringement of confidentiality obligations by a third party (for example, an arbitrator) triggers the third party's non-contractual liability.

## Courts and arbitration

**17. Will the local courts intervene to assist arbitration proceedings?**



Generally, the competent court exercises a co-operative role and not an intrusive one.

The following examples illustrate the courts' willingness to support arbitration proceedings:

- The court can appoint the arbitrators or the President of the arbitral tribunal.
- A party cannot start a court proceeding to ascertain the validity of the arbitration clause while an arbitration proceeding is pending.
- An arbitrator can ask the President of the competent civil court to order a witness to testify before the arbitral tribunal.
- During the arbitration proceeding the parties can ask the competent civil court to order an interim measure, without this suspending the arbitration proceeding.

## **18. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?**

### **Risk of court intervention**

Except for the circumstances in which a local court can assist an arbitral proceeding (see Question 17), a local court generally does not intervene in an arbitration.

### **Delaying proceedings**

A party cannot delay proceedings by frequent court applications.

## **19. What remedies are available where a party starts court proceedings in breach of an arbitration agreement, or initiates arbitration in breach of a valid jurisdiction clause?**

### **Court proceedings in breach of an arbitration agreement**

If a party starts court proceedings in breach of an arbitration agreement, the other party must raise an objection before the court no later than in its first statement of defence. If the party does not raise an objection in a timely manner, the court proceedings can validly continue.

### **Arbitration in breach of a valid jurisdiction clause**

If a party starts arbitration in breach of an arbitration agreement, the other party must raise an objection before the tribunal no later than in its first statement of defence. The arbitrators then assess the matter and if they declare that they lack jurisdiction, the matter must be re-commenced in an ordinary court.

If the party does not object within the applicable deadline, the dispute will be validly resolved through arbitration.

## **20. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?**

The local courts do not have the power to restrain proceedings started overseas in breach of an arbitration agreement.

## **21. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?**

The concept of kompetenz-kompetenz is recognised. Following the reform in 2006, arbitrators have an



exclusive competence to decide on their jurisdiction.

## Remedies

### 22. What interim remedies are available from the tribunal?

#### Security for costs

The tribunal cannot award security for costs.

#### Security or other interim measures

Under the CCP, the tribunal does not have the power to issue interim measures. However, the procedural rules of some arbitration organisations empower the tribunal to issue interim measures provided they are not forbidden by the applicable mandatory rules.

#### Other

See above, Security or other interim measures.

### 23. What final remedies are available from the tribunal?

In its final award, the tribunal can:

- Make a declaration on the merits of the case.
- Award any type of damages provided by law (punitive damages are not allowed under Italian law).
- Order the payment of interest, legal fees and costs.

The tribunal cannot grant injunctions.

## Appeals

### 24. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties effectively exclude any rights of appeal? Rights of appeal/challenge

An arbitration award can be appealed:

- On procedural grounds.
- On its merits.

**Procedural grounds.** An arbitration award can be declared null and void by the competent court of appeal (that is, the court of appeal that has jurisdiction over the seat of arbitration) on the following grounds (together, procedural grounds):

- The arbitration agreement is void.
- Arbitrators were not appointed in compliance with the applicable mandatory rules.
- Arbitrators lack legal capacity (that is, capacity to enter into a contract).
- The arbitration award concerns matters other than those mentioned in the arbitration agreement.
- The arbitration award breaches some mandatory formal requirements.
- The award has been issued after the expiration of the time limit provided by law (240 days from

the appointment of either the arbitrator or the tribunal, unless the parties specify an extended time limit).

- Arbitrators did not comply with the formal requirements considered by the parties as a condition for the validity of the award.
- The award conflicts with a former judgment or arbitration award, which is binding on the same parties.
- The principle of party equality has been breached.

**Appeal on the merits.** An arbitration award can be appealed on its merits but only if the parties have expressly provided for this in the arbitration agreement. In this case, an appealing party would argue that the tribunal has misinterpreted the legal rules applicable to the subject matter of the dispute. The court of appeal cannot re-examine the factual circumstances of the case and the parties' argument.

### **Grounds and procedure**

To appeal an award, the unsuccessful party must serve a writ of summons on its counterparty within:

- One year starting from the day when the award is signed by all the arbitrators.
- 90 days starting from the day when the aggrieved party received the arbitration award, where the award is served on that party through a bailiff.

For grounds of appeal see above, Rights of appeal/challenge.

### **Excluding rights of appeal**

The parties cannot exclude the right of appeal on procedural grounds. The right of appeal on the merits of the case must be provided for by the parties. Therefore, it does not need to be excluded.

### **Costs**

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

Although the fee schedule issued by the National Bar Association of Lawyers has been abrogated recently by Legislative Decree No. 1/2012, many lawyers that do not charge an hourly fee continue to use the fee schedule. Otherwise, lawyers can freely negotiate their fees with their clients, including contingency fees (these must be expressly provided for in a written agreement).

#### **26. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?**

##### **Cost allocation**

In theory, the unsuccessful party bears entirely any arbitration institution's fees, the arbitrators' fees and the successful party's attorney's fees. However, in practice the tribunal normally allocates these costs equally between the parties and each party pays its respective attorney's fees.

##### **Cost calculation**

The costs of the arbitral proceedings differ depending on whether it is an ad hoc or institutional arbitration:

- **Ad hoc arbitration.** Although the fee schedule issued by the National Bar Association of Lawyers has been abrogated, arbitrators' fees are still determined according to it (in practice, all arbitrators are lawyers). Fees are calculated on an hourly basis and in accordance with the value of the claim. In addition, a fee is payable for the services of the secretary of the arbitration (this

is the person appointed by the tribunal to facilitate and organise the arbitration proceeding).

- **Institutional arbitration.** Arbitrators' fees and the fees of the chosen arbitration institution are fixed by the respective institution. The fees are publicly available on the arbitration institutions' websites. In general, the amount of the fees increases proportionally to the value of the dispute.

### **Factors considered**

When allocating costs, the tribunal can take the following factors into consideration:

- Procedural behaviour of the parties before and during the arbitration proceedings.
- Legal grounds of the parties' claims and objections.
- Degree of co-operation in reaching an amicable settlement of the dispute and any terms of the settlement proposed by each party.

## **Enforcement of an award**

### **27. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?**

A formal arbitration award (see Question 3) has the same effect as a court judgment. To enforce an arbitration award, the successful party must:

- File a petition to the court which has jurisdiction over the seat of arbitration.
- Attach to the petition:
  - the original or a certified copy of the award; and
  - the original or a certified copy of the document containing the arbitration agreement (for example, a contract).

Once the successful party has fulfilled the above requirements, the court declares the arbitral award enforceable. This declaration of the court can be challenged by the other party within 30 days but only on the grounds of non-compliance with the prescribed formalities (for example, the award does not specify the parties to the proceedings or the venue of the arbitration).

### **28. To what extent is an arbitration award made in your jurisdiction enforceable in other jurisdictions? Is your jurisdiction party to international treaties relating to this issue such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?**

In essence, this depends on the jurisdiction in which the enforcement proceedings are to take place and the relevant procedural rules of that country.

Italy adopted the New York Convention in 1969. Therefore, an award made in Italy is enforceable in foreign jurisdictions that are party to the New York Convention.

### **29. To what extent is a foreign arbitration award enforceable in your jurisdiction?**

The enforceability of a foreign arbitration award can be denied only on the following two grounds:

- The award contains a provision conflicting with Italian public order.
- The dispute could not be settled by arbitration under Italian Law.
- To enforce a foreign arbitration award in Italy, the party must:
  - File a petition with the President of the competent court of appeal (that is, the court of appeal that has jurisdiction over the place of the applicant's domicile or, if the party is not domiciled in Italy, the Court of Appeal in Rome).

- Attach to the petition:
  - the original or a certified copy of the award; and
  - the original or a certified copy of the document containing the arbitration agreement (for example, a contract).

If the award and/or arbitration agreement is not drafted in Italian, a certified translation must be provided.

Once the successful party has fulfilled the above requirements, the court declares the arbitral award enforceable. This declaration of the court can be challenged by the other party within 30 days on the following grounds:

- The party to the arbitration agreement was under some incapacity under the applicable law or the arbitration agreement is void under the governing law chosen by the parties.
- The party against whom the award is to be enforced was unable to properly present its case.
- The award deals with matters not specified in the arbitration agreement.
- There has been some procedural irregularity.
- The award is not binding on the parties or has been cancelled or suspended by a competent authority of the state in which it has been issued.
- The award contains a provision conflicting with Italian public order.
- The dispute resolved is not arbitrable under Italian Law.

### **30. How long do enforcement proceedings in the local court take? Is there any expedited procedure?**

The time frame depends on several factors such as:

- Efficiency of the court where the enforcement proceedings take place.
- The type of property to be attached, if any.
- The location of any property to be foreclosed.

Typically, enforcement proceedings take nine to 18 months.

There is no expedited procedure to enforce an arbitration award.

## **Reform**

### **31. Is the legal framework in relation to the above likely to change in the next decade?**

Substantial reform in the next decade is unlikely. The last substantial reform occurred in 2006.

## **Main arbitration organisations**

### **Arbitration Chamber of Milan (Camera arbitrale di Milano)**

**Main activities.** Managing arbitration and mediation proceedings.

**W** [www.camera-arbitrale.it/index.php?lng\\_id=7](http://www.camera-arbitrale.it/index.php?lng_id=7)

### **Arbitration Chamber of Rome (Camera arbitrale di Roma)**

**Main activities.** Managing arbitration and mediation proceedings.

**W** [www.cameraarbitralediroma.it/](http://www.cameraarbitralediroma.it/)

**ANPAR Arbitration Chamber (Camera arbitrale dell'Associazione nazionale per l'arbitrato e la conciliazione)**

**Main activities.** Managing arbitration and mediation proceedings.

**W** [www.anpar.it/2010/arbitrato](http://www.anpar.it/2010/arbitrato)

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