

Italy - Arbitration (Title VIII of Book IV of the Italian Code of Civil Procedure)

Italy

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1 **Italy - Arbitration (Title VIII of Book IV of the
Italian Code of Civil Procedure)**

2 Chapter I - Submission to Arbitration and Arbitration
Clause

3 Article 806 - Submission to Arbitration

4 The parties may have the disputes arising between them
decided by arbitrators, with the exception of the disputes
provided for in Articles 409 and 442, 1 those concern-
ing issues of personal status and marital separation and
those other disputes which may not be the subject of a
settlement.

5 Article 807 - Form of the Submission to Arbitration

6 The submission to arbitration shall, under penalty of nul-
lity, be made in writing and shall indicate the subject mat-
ter of the dispute.

7 The written form requirement is considered complied
with when the intention of the parties is expressed by
telegram or telex .

8 The submission to arbitration is subject to the provisions
governing the validity of contracts which go beyond ad-
ministration in the ordinary course of business.

9 Article 808 - Arbitration Clause

10 The parties may establish in their contract or in a sepa-

rate document that the disputes arising out of the con-
tract be decided by arbitrators, provided that such dis-
putes may be the subject of a submission to arbitration.
The arbitration clause shall be contained in a document
meeting the formal requirements for a submission to ar-
bitration according to Article 807, paragraphs 1 and 2

The disputes indicated in Article 409 may be decided 11
by arbitrators only if this is provided for in the collective
labour contracts and agreements, on the condition, un-
der penalty of nullity, that this occurs, without prejudice
to the parties' right of recourse to the judicial authorities.
The arbitration clause contained in collective labour con-
tracts and agreements or in individual labour contracts
is null and void when it authorizes the arbitrators to de-
cide ex aequo et bono or when it declares the award not
to be subject to recourse.

The validity of the arbitration clause shall be evaluated 12
independently from the underlying contract; neverthe-
less, the capacity to enter into the contract includes the
capacity to agree to the arbitration clause .

Article 809 - Number and Manner of Appointment of Ar- 13
bitrators

There may be one or more arbitrators, provided that their 14
number is uneven.

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| 15 | The submission to arbitration or the arbitration clause shall contain the appointment of the arbitrators or establish their number and the manner in which they are to be appointed. | Failing this, the party which has made the request may petition the President of the Court (tribunale) in whose district the arbitration has its seat, to make the appointment. If the parties have not yet determined the seat of arbitration, the petition is presented to the President of the Court (tribunale) in the place where the submission to arbitration or the contract to which the arbitration clause refers has been executed or, if such place is abroad, to the President of the Court (tribunale) of Rome . The President, having heard the other party where necessary, shall issue his order against which there shall be no recourse. | 20 |
| 16 | Where an even number of arbitrators is indicated, the additional arbitrator shall be appointed by the President of the Court (tribunale) in the manner specified in Article 810, unless the parties have agreed otherwise. Where the number of arbitrators is not indicated and where the parties do not agree thereon, there shall be three arbitrators and, failing their appointment, the President of the Court (tribunale) shall proceed therewith in the manner specified in Article 810, unless the parties have provided otherwise . | The same provision is applied where the submission to arbitration or the arbitration clause has entrusted the appointment of one or more arbitrators to the judicial authority or where, if entrusted to a third party, that third party has failed to act. | 21 |
| 17 | Chapter II - The Arbitrators | Article 811 - Replacement of Arbitrators | 22 |
| 18 | Article 810 - Appointment of the Arbitrators | Where, for whatever reason, all or some of the arbitrators appointed are unable to act, they shall be replaced in accordance with the procedures established for their appointment in the submission to arbitration or in the arbitration clause. If the party responsible for the appointment, or the third party, fails to act or if the submission to arbitration or the arbitration clause is silent on the question, the provisions of the preceding Article | 23 |
| 19 | Where, in accordance with the provisions of the submission to arbitration or of the arbitration clause, the arbitrators are to be appointed by the parties, each party, by means of a bailiff's notification may inform the other party of its appointment of an arbitrator or arbitrators and request said other party to name its own arbitrators. The party so requested shall, within twenty days, serve notice of the personal data regarding the arbitrator or arbitrators appointed by it. | | |

shall apply.

24 Article 812 - Capacity to Act as Arbitrator

25 The arbitrators may be Italian or foreign nationals.

26 Minors, incapacitated and mentally disabled persons, bankrupts and persons barred from public office cannot be arbitrators.

27 Article 813 - Acceptance and Duties of the Arbitrators

28 The acceptance of the arbitrators shall be in writing and may result from their signatures on the submission to arbitration.

29 The arbitrators shall render their award within the time-limit set by the parties or by law; if they fail to do so and the award is set aside on this ground, the arbitrators shall be held liable for damages. They shall likewise be liable for damages if, after accepting their appointment, they relinquish the office without just cause.

30 Unless the parties have agreed otherwise, the arbitrator who omits or delays to carry out an act related to his office, may be replaced by agreement between the parties or by the third party so empowered in the submission to arbitration or in the arbitration clause. Failing this, after a period of fifteen days from notice sent by registered mail to the arbitrator demanding that he take

action, each of the parties shall have the right to petition the President of the Court (tribunale) in whose district the arbitration has its seat. The President, having heard the parties, shall issue an order against which there shall be no recourse and, where he ascertains the omission or the delay, shall declare the arbitrator discharged and proceed to replace him .

Article 814 - Rights of the Arbitrators 31

32 The arbitrators shall be entitled to the reimbursement of their expenses and to a fee for services rendered except where they have waived their right to same at the time of their acceptance or in a subsequent written statement. The parties shall be jointly and severally liable for payment subject to the right of mutual recovery.

33 Where the arbitrators themselves fix the amount of the expenses and of the fee, their decision shall not be binding upon the parties if they do not accept it. In this case, the amount of the expenses and of the fee shall be determined, upon the arbitrators' petition and after hearing the parties, by an order of the President of the Court (tribunale) specified in Article 810, paragraph 2, against which there shall be no recourse.

The order shall be enforceable against the parties. 34

Article 815 - Challenge of the Arbitrators 35

The party can challenge the arbitrator not appointed by 36

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| | it for the reasons indicated in Article 51. | | |
| 37 | This challenge shall be made by petition to the President of the Court (tribunale) indicated in Article 810, paragraph 2, within the peremptory time-limit of ten days after the appointment has been notified or from the time the ground for the challenge came to the party's knowledge, if later . The President, having heard the challenged arbitrator and, where necessary, having made summary enquiries, shall issue an order against which there shall be no recourse. | | |
| 38 | Chapter III - The Proceedings | | |
| 39 | Article 816 - Course of the Proceedings | | |
| 40 | The parties shall determine the seat of the arbitration within the territory of the Republic; failing this the arbitrators shall decide thereon at their first meeting . | | |
| 41 | The parties may establish the rules of procedure to be observed by the arbitrators in the submission to arbitration or in the arbitration clause or in a separate writing, provided that same precedes the commencement of the arbitration proceedings. | | |
| 42 | Failing such regulations, the arbitrators may regulate the proceedings as they best see fit. | | |
| 43 | In any case, they shall set time-limits for the parties | | |
| | | to produce documents and briefs and to present their replies. | |
| | | The taking of evidence may be delegated by the arbitrators to one member of the panel. | 44 |
| | | All issues arising in the course of the proceedings shall be decided by the arbitrators [ABROGATED: before the award is rendered] by an order which is not subject to filing [with the Magistrate's Court] and may be revoked, with the exception of the case specified in Article 819. | 45 |
| | | Article 817 - Objection of Lack of Jurisdiction | 46 |
| | | The party which, during the arbitration proceedings, fails to raise the objection that the other party's pleadings exceed the limits of the submission to arbitration or of the arbitration clause, may not, on this ground, challenge the award for nullity. | 47 |
| | | Article 818 - Interim Measures of Protection | 48 |
| | | The arbitrators may not grant attachment or other interim measures of protection. | 49 |
| | | Article 819 - Incidental Issues | 50 |
| | | If during the course of the proceedings a question arises which, according to law is not arbitrable, the arbitrators, if they deem that the matter submitted to them depends | 51 |

upon the resolution of said question , shall stay the proceedings [ABROGATED: and shall order that the parties file a request before the competent court].

52 In all other cases, the arbitrators shall decide all questions arising in the course of the arbitration proceedings .

53 In the case specified in the first paragraph , the time-limit set in Article 820 shall be suspended until the day on which one of the parties shall serve notice upon the arbitrators of the judgment in the incidental issue once it has become res judicata; if fewer than sixty days remain before the expiry of the time-limit, then said time-limit shall automatically be extended to sixty days.

54 **Article 819-bis Connected Cases (Connessione)**

55 (This Article is included for the first time)

56 The jurisdiction of the arbitrators is not excluded by the fact that the dispute referred to them is connected with an action pending before the court .

57 **Article 819-ter Hearing of Witnesses**

58 (This Article is included for the first time)

The arbitrators may hear the witness by requesting him to appear before them or decide to hear his statement at his home or office, if he agrees. They may also decide to hear the witness by requesting him to give written answers to questions within the time-limit established by them .

Chapter IV - The Award

Article 820 - Time-Limit for the Decision

Unless the parties have agreed otherwise, the arbitrators shall render their award within one hundred and eighty days of acceptance of their appointment. If there are several arbitrators and they did not all accept at the same time, the time-limit begins to run from the last acceptance. Where a challenge against an arbitrator is filed, the time-limit shall be suspended until a decision is made on the challenge and it shall be interrupted where it is necessary to replace an arbitrator.

Where evidence must be taken or an interlocutory award has been rendered , the arbitrators may extend the time-limit once only and for not more than one hundred and eighty days.

In case of the death of one of the parties, the time-limit is extended by thirty days.

The parties may agree in writing to an extension of the time-limit.

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| 66 | Article 821 - Relevance of the Expiry of the Time-Limit | arbitration clause and of the issues submitted for decision; | |
| 67 | The expiry of the time-limit indicated in the preceding Article may not be raised as a ground for setting aside the award if the party, before the deliberation of the award resulting in the decision (dispositivo) by the majority of the arbitrators, has failed to notify the other parties and the arbitrators of its intention to raise the objection of the termination of the arbitrators' authority. | 3) a brief statement of the reasons; | 75 |
| | | 4) the decision of the issues (dispositivo); | 76 |
| | | 5) the indication of the seat of the arbitration and of the place or the manner in which it was deliberated; | 77 |
| | | 6) the signatures of all of the arbitrators, with the indication of the day, month and year of their signature; the arbitrators may sign in a place other than the place of deliberation, as well as abroad. If there is more than one arbitrator, they may sign in different places without having to meet personally again. | 78 |
| 68 | Article 822 - Rules for the Deliberation [of the Award] | | |
| 69 | The arbitrators shall decide their award according to the rules of law unless the parties have, through any expression whatsoever, authorized them to settle the dispute ex aequo et bono . | However, an award signed only by the majority of the arbitrators shall be valid provided that mention is made that it was deliberated in the presence of all the arbitrators and that it states expressly that the other arbitrators were either unwilling or unable to sign. | 79 |
| 70 | Article 823 - Deliberation of and Requirements for the Award | | |
| 71 | The award shall be deliberated by a majority vote of the arbitrators personally meeting together. It shall then be set down in writing. | The award shall be binding on the parties from the date of the last signature. | 80 |
| 72 | It shall contain: | Article 824 - Place of Decision | 81 |
| 73 | 1) the names of the parties; | ABROGATED: [The award shall be decided in Italy.] | 82 |
| 74 | 2) the indication of the submission to arbitration or of the | Article 825 - Filing of the Award | 83 |

84 The arbitrators shall prepare the award in as many original copies as there are parties and shall serve notice thereof upon each party by delivery of an original copy, or by sending it by registered mail, within ten days from the date of the last signature .

85 The party intending to have the award enforced in the territory of the Republic shall file an original copy of the award or a certified copy thereof , together with the submission to arbitration or the document containing the arbitration clause or an equivalent document in original or in certified copy , with the Registry (cancelleria) of the Magistrate's Court (pretura) of the district in which the arbitration has its seat [ABROGATED: within one year of receipt of the award].

86 [ABROGATED: This time-limit is peremptory.]

87 The Magistrate (Pretore), after ascertaining that the award [ABROGATED: has been filed within the time-limit and] meets all formal requirements, enforces it by decree. The award which has been declared enforceable shall be registered in all cases where a judgment of the same content would be subject to registration. [ABROGATED: The Magistrate's decree confers on the award the same effects as those of a judgment.]

88 The Registry (cancelleria) shall notify the parties of the filing and of the Magistrate's decree provided for in Article 133, paragraph 2.

A recourse against the decree [ABROGATED: of the Magistrate] denying enforcement of the award may be filed by petition with the [ABROGATED: President of the] Court (tribunale) within thirty days of notification; the Court (tribunale), meeting in chambers and after having heard the parties, shall issue an order against which there shall be no recourse.

Article 826 - Correction of the Award

On the request of a party, the award may be corrected by the same arbitrators who have rendered it, where there have been omissions, material errors or miscalculations

The arbitrators, having heard the parties, shall take action within twenty days. The decision shall be communicated to the parties, also by registered mail, within ten days from the date of the last signature .

If the award has already been filed, the petition for correction is presented to the Magistrate (pretore) of the place where the award has been filed. The provisions of Article 288 are applicable in so far as they are compatible .

Chapter V - Means of Recourse

Article 827 - Means of Recourse

The award may only be subject to recourse for setting

aside, for revocation or third party opposition .

97 The recourse may be filed irrespective of the filing of the award .

98 The award partially deciding on the merits of the dispute may be challenged immediately, whereas the award which decides some of the issues without resolving the dispute may be challenged only together with the final award .

99 Article 828 - Recourse for Setting Aside

100 A recourse for setting aside may be filed with the Court of Appeal of the district in which the arbitration has its seat , within ninety days of notification of the award .

101 [ABROGATED: The Magistrate (pretore), Court (tribunale) or Court of Appeal have jurisdiction over the recourse for setting aside according to whether the case which has been decided would have fallen within the jurisdiction of the conciliator, Magistrate or Court (tribunale).]

102 No recourse may be filed after one year from the date of the last signature .

103 The request to correct the award does not suspend the time-limit for filing a recourse; however, the parts of the award which have been corrected may be challenged

within the ordinary time-limit, which begins to run after notification of the decision on the correction .

Article 829 - Grounds for Setting Aside 104

Notwithstanding any waiver, a recourse for setting aside may be filed in the following cases: 105

1) if the arbitration agreement is null and void; 106

2) if the arbitrators have not been appointed according to the provisions laid down in Chapters I and II of this Title, provided that this ground for setting aside has been raised in the arbitration proceedings; 107

3) if the award has been rendered by a person who could not be appointed arbitrator according to Article 812; 108

4) if the award exceeds the limits of the submission to arbitration or fails to decide one or more items in the submission to arbitration or contains contradictory provisions, subject to the provisions of Article 817; 109

5) if the award does not comply with the requirements of Article 823, paragraph 2, numbers 3), 4), 5), and 6) subject [in regard to number 6] to the provisions in the third paragraph of said article 110

6) if the award has been rendered after the expiry of the time-limit indicated in Article 820, subject to the provisions of Article 821; 111

112 7) if during the proceedings, those formalities laid down under penalty of nullity for the proceedings for the ordinary courts have not been observed, provided the parties had requested their observance according to Article 816 and if the nullity has not been cured;

113 8) if the award is contrary to a previous award which is no longer subject to recourse or to a previous judgment having the force of res judicata between the parties, provided that this objection has been raised in the arbitration proceedings

114 9) if the principle “audietur et altera pars” (principio del contraddittorio) has not been respected in the arbitration proceedings

115 A recourse for setting aside may also be filed where the arbitrators did not decide according to rules of law, unless the parties have authorized them to decide ex aequo et bono or they have declared that there may be no recourse against the award.

116 In the case provided for in Article 808, paragraph 2, the award is subject to recourse also for violation and misapplication of collective labour contracts and agreements

117 Article 830 - Decision on the Recourse for Setting Aside

118 The Court of Appeal , when granting the recourse, is-

sues a judgment declaring the award null and void when the defect affects only a part of the award which is separable from the others, it shall declare the partial nullity of the award .

Unless all of the parties have declared a contrary intention, the Court of Appeal shall decide also on the merits, if the case is ready for decision, or it shall remand the case with an order to the instructing judge (istruttore), if the decision on the merits requires the taking of further evidence . 119

While the case is pending, the Court of Appeal may, on the request of a party , make an order staying enforcement of the award . 120

Article 831 - Revocation and Third Party Opposition 121

[ABROGATED: Where no recourse for setting aside may be filed and] Notwithstanding any waiver, the award may be revoked in the cases indicated at Article 395, number 1), 2), 3), and 6) within the time-limit and according to the formalities provided for in Book II. 122

If the cases mentioned in the first paragraph arise during the setting aside proceedings, the time-limit for filing a request for revocation shall be suspended until notification of the judgment on the setting aside . 123

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| 124 | The award is subject to third party opposition in the cases indicated in Article 404 . | Article 833 - Form of the Arbitration Clause | 132 |
| 125 | The request for revocation and third party opposition shall be filed with the Court of Appeal of the district in which the arbitration has its seat . | The arbitration clause contained in general conditions of contract or in standard forms is not subject to the specific approval provided for in Articles 1341 and 1342 of the Civil Code. | 133 |
| 126 | The Court of Appeal may consolidate setting aside, revocation and third party opposition proceedings, unless the stage reached by the proceedings filed first does not allow an exhaustive discussion of and decision on the other recourses . | The arbitration clause contained in general conditions incorporated into a written agreement between the parties is valid, provided that the parties had knowledge of the clause or should have had such knowledge by using ordinary diligence. | 134 |
| 127 | Chapter VI - International Arbitration | Article 834 - Rules Applicable to the Merits | 135 |
| 128 | (This chapter is included for the first time) | The parties may agree among themselves upon the rules which the arbitrators shall apply to the merits of the dispute or provide that the arbitrators shall decide ex aequo et bono . If the parties are silent, the law with which the relationship has its closest connection shall apply. | 136 |
| 129 | Article 832 - International Arbitration | In both cases the arbitrators shall take into account the provisions of the contract and trade usages. | 137 |
| 130 | If at the date of signing the arbitration clause or submission to arbitration at least one of the parties has its domicile (residenza) or principal place of business (sede effettiva) abroad, or if a substantial part (parte rilevante) of the obligations arising out of the relationship to which the dispute refers must be performed abroad, the provisions of Chapters I to V of this Title shall apply to arbitration in so far as they are not derogated from by this Chapter. | Article 835 - Language of the Arbitration | 138 |
| 131 | The provisions of international treaties shall in any case be applicable. | Unless the parties have provided otherwise, the language of the arbitration is determined by the arbitrators, taking into account the circumstances. | 139 |
| | | Article 836 - Challenge of the Arbitrators | 140 |

141 The challenge of the arbitrators is governed by Article
815, unless the parties have provided otherwise.

142 Article 837 - Deliberation of the Award

143 The award shall be deliberated by a majority of the
votes of the arbitrators meeting in personal conference
or in video conference, unless the parties have pro-
vided otherwise, and shall be subsequently set down in
writing.

144 Article 838 - Recourse

145 Unless the parties have agreed otherwise, the provi-
sions of Article 829, paragraph 2, Article 830, paragraph
2 and Article 831 shall not apply to international arbitra-
tion.

146 Chapter VII - Foreign Awards

147 Article 839 - Recognition and Enforcement of Foreign
Arbitral Awards

148 The party wishing to enforce a foreign award in the Re-
public shall file a petition with the President of the Court
of Appeal of the district in which the other party has its
domicile; if that party has no domicile in Italy, the Court
of Appeal of Rome shall have jurisdiction.

149 The petitioner shall supply the original award or a cer-
tified copy thereof, together with the original arbitration

agreement or an equivalent document, or a certified
copy thereof.

If the documents specified in the second paragraph are
not written in Italian, the petitioner shall in addition pro-
duce a certified translation thereof. 150

The President of the Court of Appeal after having ascer-
tained the formal regularity of the award, shall declare
by decree the enforceability of the foreign award in the
Republic unless: 151

1) the subject matter is not capable of settlement by ar-
bitration (*la controversia non potesse formare oggetto di*
compromesso) under Italian law; 152

2) the award contains provisions contrary to public pol-
icy. 153

Article 840 - Opposition 154

An opposition may be filed against the decree grant-
ing or denying enforcement of the foreign award by fil-
ing a writ of summons with the Court of Appeal within
thirty days of communication of the decree denying en-
forcement or notification of the decree granting enforce-
ment. 155

After the filing of the opposition, the proceedings shall be
held in accordance with Article 645 and following in so
far as they are applicable. The Court of Appeal decides 156

in a judgment subject to recourse before the Supreme Court (Corte di Cassazione).

157 The Court of Appeal shall refuse the recognition or the enforcement of the foreign award if in the opposition proceedings the party against which the award is invoked proves the existence of one of the following circumstances:

158 1) the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the State where the award was made;

159 2) the party against which the award is invoked was not informed of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case in the proceedings;

160 3) the award decided upon a dispute not contemplated in the submission to arbitration or in the arbitration clause, or exceeded the limits of the submission to arbitration or of the arbitration clause; nevertheless, if the decisions in the award which concern questions submitted to arbitration can be separated from those concerning questions not so submitted the first can be recognized and enforced;

4) the composition of the arbitration tribunal or the arbitration proceedings was not in accordance with the agreement of the parties or, failing such an agreement, with the law of the place where the arbitration took place; 161

5) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the State in which, or under the law of which, it was made. 162

If an application for the setting aside or suspension of the effects of the award has been made to the competent authority indicated at number 5) of the third paragraph, the Court of Appeal may adjourn the decision on the recognition or enforcement of the award; on the request of the party seeking enforcement it may, in the case of suspension, order the other party to give suitable security. 163

Recognition or enforcement of a foreign award shall be refused also where the Court of Appeal shall ascertain that: 164

1) the subject matter is not capable of settlement by arbitration (la controversia non potesse formare oggetto di compromesso) under Italian law; 165

2) the award contains provisions contrary to public policy. 166

167 In all cases, the provisions of international treaties shall be applicable.

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