# The Legal 500 Country Comparative Guides

## Italy: Litigation

This country-specific Q&A provides an overview to litigation laws and regulations that may occur in Italy.

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1. **What are the main methods of resolving commercial disputes?**

   The main methods of resolving commercial disputes in the Italian jurisdiction are i) proceedings before the ordinary Judge; ii) arbitration, if the contract underlying the dispute contains an arbitration clause; iii) mediation procedure, in the presence of a third-party conciliator who has the task of helping parties reach an agreement (procedure regulated by Legislative Decree 28/2010); iv) assisted negotiation procedure, which takes place in the presence of the parties and their respective attorneys, but without a third party conciliator (procedure regulated by Law 162/2014).

2. **What are the main procedural rules governing commercial litigation?**

   Commercial disputes are not regulated by special procedural laws if compared to other civil subjects. Therefore, it is necessary to distinguish which dispute resolution method was used.

   In case of ordinary proceedings, the proceedings start with a writ of summons to appear at the first hearing before the Judge entitled to adjudicate ratione loci. During the first hearing, the judge checks if the appearance in court is in accordance with law and, if requested by the parties, fixes three time limits to file briefs related to means of giving or obtaining evidence, simultaneously setting the hearing for the admission of the means of evidence (oral testimony, technical expertise, etc…). Once the evidence gathering phase is completed, the judge sets a hearing in order to give the parties the possibility to specify submissions, fixing a time limit for final briefs. The judgment is provisionally enforceable, but the provisional enforceability shall be suspended by the court of appeal in case of serious and reasonable grounds (art. 283 of the Italian Code of Civil Procedure).

   Arbitration has a smoother procedure and may be ritual or not; in the first case the arbitration award produces the same effects as the ordinary Judge’s ruling, with the exception of enforceability, which is subordinated to a decree of the Court in whose district the arbitration seat is located; in the second case the arbitration award has the effects of a contractual determination and as such can be annulled, when the flaws provided for by the law occur, by initiating ordinary merits proceedings  before the ordinary Judge.

   Preventively resorting to mediation procedure is mandatory in some subjects (lease, loan, lease of business, insurance, banking and financial contracts) and constitutes a prerequisite of admissibility of the action. Should the parties reach an agreement, the record of such agreement is an enforceable title, just like a judgement or an arbitration award.

   In case of assisted negotiation procedure the parties must first sign an assisted negotiation agreement, in which they set the subject of the negotiation and the deadline within which the negotiation must take place. Also in this case, the agreement record constitutes an enforceable title.

3. **What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?**

Commercial disputes are treated in the first instance, like any civil litigation, by the ordinary court responsible for value, matter and territory (Giudice di pace or Tribunale). The decisions of the Giudice di pace can be challenged before the Tribunale which has territorial competence, while the decisions of the Tribunale can be challenged before the territorially competent Corte d'Appello . The appeal before the Corte di Cassazione can be lodged against the decisions of the court of second instance, but only for the matters of law strictly provided for by article 360 of the code of civil procedure.

Among the commercial disputes some subjects fall under the competence of the Tribunale delle Imprese, a section specializing in the field of business law established in the courts and courts of appeal which are located in the capital of each region, with the exception of Lombardy, Trentino Alto Adige and Sicily (where there are two locations) and Valle D'Aosta (where there are no offices, as the competence is in Turin).

The Tribunale delle Imprese has jurisdiction over disputes relating to legal proceedings concerning, industrial property and unfair competition, employees' inventions, protection of company secret information, compensation for expropriation of industrial property rights, disputes over copyright, disputes regarding agreements, abuse of dominant position and mergers, disputes relating to the violation of the antitrust legislation of the European Union.

The Tribunale delle Imprese is also competent to adjudicate disputes concerning: a) corporate relations, liability actions, opposition of company creditors related to several matters; b) the transfer of corporate investments or related rights; c) the shareholders' agreements; d) the liability actions brought by the creditors of the subsidiaries against the companies that control them; e) the reports concerning the subsidiaries pursuant to art. 2359, paragraph 1, n. 3) of the civil code, the companies exercising the management and coordination activities pursuant to art. 2497-septies of the civil code and the cooperative societies pursuant to art. 2545-septies of the civil code.

Based on Law 31/2019 starting from November 19 2020 the Tribunale delle Imprese will also be competent for proceedings regarding class action. In particular, according to Art. 840ter of the Code of Civil Procedure, the application for class action shall be filed exclusively before the Tribunale delle Imprese where the defendant is based.

The procedure shall be governed by summary proceedings pursuant to Art. 702 bis of the Code of Civil Procedure and shall be defined by a judgment which shall be issued within thirty days following the oral discussion of the case.

4. **How long does it typically take from commencing proceedings to get to trial?**

   Between service of summons and the first hearing 90 or 150 days shall lapse, depending on whether the defendant is domiciled in Italy or abroad.

   On average, ordinary proceedings then take about 300 days to get to the taking of evidence phase. Less than half the time is required in case of arbitration.

5. **Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?**

   Only the hearing in which the case is discussed is public under penalty of nullity. All other hearings, such as for example those for the taking of evidence, are not public. In any case, the Judge may order that the discussion hearings take place behind closed doors, if there are reasons of State security, public order or good morals.

   The documents are available only to the parties concerned and to their respective counsels.

6. **What, if any, are the relevant limitation periods?**

   Commercial disputes are generally subject to an ordinary 10-year limitation period. However, for some issues (for example, in general, rights deriving from corporate relationship) there is a limitation period of five years.

   Particular attention has to be paid to specific contracts, under which the rights are subject to particularly short limitation periods (for example, rights relating to transport contracts are debarred in one year or eighteen months if the carriage starts or finishes outside Europe).

7. **What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?**

   As mentioned, in some matters (lease, loan, lease of business, insurance, banking and financial contracts), the mediation procedure is a prerequisite of admissibility of the action. Likewise, the assisted negotiation procedure is a prerequisite of the admissibility of the action for payment requests, for any reason, for amounts not exceeding € 50,000.00.

   In any case, if one of those compulsory procedures is not performed, at the first hearing the Judge orders the relevant procedure to be carried out within a deadline. Failure to comply leads to the rejection of the claim.

8. **How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?**

Commercial proceedings generally start by serving the writ initiating the proceedings, which is normally a summons or, in certain cases (e.g.: labour proceedings; precautionary proceedings), a motion to the court and the decree scheduling the first hearing. The service is made by the process server. Under certain conditions lawyers  can also perform service on their own.

9. **How does the court determine whether it has jurisdiction over a claim?**

Every court can determine ex officio if it has jurisdiction over a claim at any stage and level of the proceedings, as provided by Article 37 of the Italian Code of Civil Procedure.

The jurisdiction has to be determined according to the provisions in force at the moment of the submission of the claim, as set forth at Article 5 of the Italian Code of Civil Procedure, according to which any subsequent change in the factual or legal circumstances is irrelevant for this purpose.

At EU level, Reg. 1215/2012 establishes the rules applicable in the fields of jurisdiction and recognition and enforcement of judgments in civil and commercial matters.

Moreover, in relation to international private law, Law No. 218/1995 establishes the criteria for determining the existence of Italian jurisdiction (Articles 3-12).

10. **How does the court determine what law will apply to the claims?**

Law No. 218/1995 also provides for the criteria for determining the applicable law (Articles 13-19) in international disputes taking place in Italy.

In particular, Article 13 of said Law considers the cases in which it is possible (or not) to take into account the reference made by foreign private international law to the law of another State.

In any case, as provided by Article 14, the assessment of foreign law is carried out ex officio by the judge, who can ask for the collaboration of experts.

If the judge cannot determine the contents of the indicated foreign law, even with the help of the parties, the law referred to by the applicable connecting factors for the same hypothesis shall apply.

Lacking other available connecting factors, Italian law should apply.

In any case, foreign law is not applied if its effects are contrary to public order (Article 16), and the Italian provisions that must be applied in spite of the reference to foreign law in

consideration of their object and purpose (so called “necessary application rules”) prevail regardless of the reference to foreign law (Article 17).

Usually, in contractual disputes, the Court will apply the law chosen by the parties.

11. **In what circumstances, if any, can claims be disposed of without a full trial?**

According to the Italian Code of Civil Procedure, some claims can be settled without a full trial.

In particular, as provided by Article 633 et seq. of the Code of Civil Procedure, at the request of the creditor of a determined sum of money (or of a certain quantity of fungible goods, or at the request of the person entitled to the delivery of a particular movable thing), the competent judge can issue – in general – an order to pay or deliver (in the form of a decree) if written evidence of the claimed right is provided. The decree becomes enforceable if the debtor does not challenge it within the term of 40 days from the service, thus starting ordinary proceedings. The decree is declared provisionally enforceable if the claim is based either on a credit instrument or on an act received from a notary public or another public official, as well as if there is a risk of serious prejudice due to the delay or if the debtor has recognized his debt in writing.

Moreover, Article 702 bis of the Italian Code of Civil Procedure provides for a summary trial, which can be started in cases where the court sits as a single judge and the taking of evidence process appears simple and swift to carry out. The judge provides in the most appropriate manner for the acquisition of the relevant means of proof, omitting any formality that is not essential to the proceedings.

12. **What, if any, are the main types of interim remedies available?**

The main kind of interim remedies provided by Italian law are the protective/precautionary measures (“procedimenti cautelari”), which may be applied for both ante causam and/or during the ordinary proceedings. The general rules to be applied to all these remedies, if not expressly waived, can be found at Article 669 bis et seq. of the Italian Code of Civil Procedure. The main protective/precautionary measures provided by Italian law are the judicial/conservation seizure, the preventive expert assessment and the contingency orders.

Moreover, upon request of the interested party of first-degree proceedings, the judge can order the payment of the sums that have not been contested by the counterparty (Article 186 bis) and/or issue an injunction order if the requirements set forth at Article 633 et seqq. of the Code are met (please see above) (Article 186 ter). These measures can be revoked by the judge who issued them but may remain effective in case of termination of the proceedings.

**After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?**

Following the submission of the claim by the plaintiff and the statement of appearance by the defendant, at the first hearing the judge – if required to do so even by only one of the parties involved – grants the following peremptory subsequent terms to the parties, as provided by Article 183 of the Italian Code of Civil Procedure:

– a 30-day term for the filing of briefs limited to the clarification or modification of the claims, exceptions and conclusions already proposed;

– a further 30-day term to reply to the above, to raise the consequent objections, to indicate the means of proof and to file documents;

– a further 20-day term to offer the sole rebuttal evidence.

14. **What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?**

In civil proceedings, the submitted documents are available and accessible both to the judge and to all the counterparties from the time of their formal filing in court. Generally, as provided by consolidated case-law, the right of defence prevails over the right to privacy/confidentiality (e.g., the filing by the employee of reserved company documentation is admitted for the sole purpose of defending himself in an appeal against his unjustified dismissal; the filing of documents containing the counterpart's or third parties' personal data is also admissible, if the submission is related to the right of defence of the filing party).

In any case, according to the Forensic Deontological Code (Article 48), the correspondence between lawyers qualified as personal and confidential cannot be filed or reported in court.

In relation to the above, the correspondence between lawyers containing settlement proposals can never be filed in court. The correspondence between lawyers can be filed in court only if it constitutes completion and proof of an agreement and if it ensures the fulfillment of the requested services.

15. **How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?**

The Code of Civil Procedure provides for both oral (Article 244 et seq.) and written (Article 257 bis) witness evidence. Oral witnessing before the judge is the commonly used one.

13.

According to Article 253 of the Code, the judge questions the witness on the facts on which

he or she is called to testify; the judge may also address to the witness, ex officio or at the request of a party, all the questions deemed useful to clarify the facts. In any case, unlike criminal trials, it is forbidden to the parties to directly question witnesses.

If there are discrepancies between the depositions of two or more witnesses, the judge, on the request of a party or ex officio, can order the comparison between/among them (Article 254).

However, upon agreement of the parties and taking into account the nature of the case and any other circumstances, the judge may order to take the deposition asking the witness to answer in writing to the relevant questions within the fixed deadline.

16. **Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?**

Expert evidence is provided by Articles 191 et seq. of the Code of Civil Procedure. The expert is chosen and appointed by the court, which also formulates the questions to be submitted to the expert at the hearing fixed for his or her appearance and oath. If strictly necessary, two or more experts can be appointed.

According to Article 194 of the Code, the expert attends the hearings to which he or she is invited by the judge, he or she performs the requested technical inquiries and he or she may be authorized to request clarification to the parties, to take information from third parties and to make layouts, moulds and surveys.

In any case, the parties can always intervene in the expert operations personally or through their own technical consultants and/or lawyers and can submit observations and requests to the expert. The expert must provide a report to the Judge containing his or her answers.

As set forth at Article 195 of the Code, the draft of the report must be sent by the expert to the parties within the deadline established by the judge, who also establishes the deadline by which the parties must send to the expert their final observations on the report and the deadline by which the expert must file the final report.

17. **Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?**

Final and interim decisions are subject to appeal.

According to the general rules governing appeals, first instance decisions can be challenged for incorrect or incomplete findings of fact or violation of law, whereas appeals before the Corte di Cassazione are limited to lack of jurisdiction, lacking, insufficient or contradictory motivation or violation or wrong application of law.

Appeals against first instance decisions issued by the Giudice di Pace and the Tribunale can be lodged before the Tribunale and the Corte d'Appello respectively. The second instance decisions may be appealed before the Corte di Cassazione.

Appeals shall be lodged within 30 days (60 days in case the appeal is addressed to the Corte di Cassazione) from the day on which the final decision is served or, in the absence of service, within six months from its publication.

Specific rules are set out for appeals against precautionary measures or against decisions based on mere equity, for revocation and for third party appeals.

18. **What are the rules governing enforcement of foreign judgments?**

Reg. (EU) 1215/2012 governs enforcement of judgements in civil proceedings instituted on or after 10 January 2015 before the courts of the EU Member States, while recognition of judgements instituted before that day are still subject to Reg. (EU) 44/2001. The main principle is that any enforceable "judgment given in a Member State shall be recognised in the other Member States without any special procedure being required" (article 36.1).

Specific rules are set forth by the 1968 Brussels Convention, applying to the territories of the EU Member States which fall within the territorial scope of that Convention and which are excluded from Reg. 1215/2015 pursuant to Article 355 of the TFEU, and by the 2007 Lugano Convention governing the recognition in Italy of decisions rendered in Iceland, Norway and Switzerland.

In the absence of a multilateral or bilateral treaty (which Italy has entered into with Argentina, Brazil, China, Egypt, Kuwait, Lebanon, Moldova, Morocco, Russia, Tunisia and Turkey), recognition and enforcement of other foreign decisions is governed by Law 218/1998. Pursuant to article 64 the foreign judgement can be recognized to the extent that it complies with certain requirements (competence of the issuing court; fair trial; judgment must be final and not conflicting with other final decisions issued by an Italian court or with Italian public policy principles; absence of other previously lodged proceedings in Italy on the same course of action).

19. **Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?**

The general rule is that court costs (including possible court appointed experts' fees) and lawyers' fees are borne by the loser. Under certain circumstances (e.g.: if both parties lose partly, the leading case law on the matter has changed, or the matter discussed is absolutely new) the judge can order that each party bears partly or totally its own legal expenses.

The “victory rule” might also be departed from depending on the behaviour the parties had during the mediation or negotiation phase.

Winning party’s lawyers’ fees and costs must be borne by the loser in the amount determined by the judge pursuant to the Italian Lawyers Fee Statute (DM 37/2018), in proportion to the amount in dispute and with the exclusion of those costs which the judge considers unnecessary and excessive. Such amount might not fully cover the fees and expenses agreed by the winning party with its counsels, especially in case of contingency or hourly fee arrangements.

20. **What, if any, are the collective redress (e.g. class action) mechanisms?**

Law 31/2019 has modified class action by adding 15 new articles in the Italian Civil Procedure Code which shall enter into force on November 19  2020. This collective redress mechanism shall replace the previous one (which is governed by article 140 bis of the Consumer Code), and shall enable any non-profit organization, association or their members having homogenous interests to those pursued by the class to file a class action against the author of an harmful behaviour in order to determine its liability and to obtain compensation. Only the associations registered at the Ministry of Justice and authorized by the Government shall be able to implement this action.  After the publication of the class action, anyone which considers their rights violated shall be able to join the action within 60 days.

21. **What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?**

If authorized by the Judge, any party can bring action against a third party in pending proceedings, to the extent that such party has a legal position that is objectively connected to the matter under discussion, or the legal position of such party is connected to the pending proceedings, being a decision on such concern either preliminary or subsequent to the decision of such proceedings.

Any party that has a legal position that is objectively connected to proceedings pending between third parties or depending on the cause of action brought in such proceedings can intervene in it on its own motion so that such legal position is enforced against those third parties.

Any party having a legal interest in the outcome of proceedings pending between third parties can voluntarily intervene, to support the position of one of them.

Should the Judge consider appropriate that pending proceedings involve also a third party bearing a legal position connected to the matter under discussion, he can order such party to intervene.

Consolidation of different proceedings is possible when proceedings on the same cause of action have been lodged separately or when the matters discussed in the separate proceedings are connected.

22. **Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

According to Italian Law the client, i.e. the party obliged to pay the attorney's fees within the private professional relationship with his or her counsel, is not necessarily the party that issues the POA required to represent the party at court, but the person who hired the lawyer asking for his or her assistance. As a consequence, third parties are allowed to fund litigation.

Since only parties may be ordered by judges to bear the costs of litigation, a client who is not also a party to the proceedings cannot be made liable by the judge for the relevant costs.

23. **What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?**

Surely the greatest disadvantage of an international trade dispute in Italy is the time it takes to get a judgement. In fact, about 800 days are required to obtain a first instance ruling , about 1000 days for a second degree judgement and about 1300 days for a decision of the Corte di Cassazione. This problem is so overwhelming that the regulation 44/2001 has been recasted in order to avoid unfair procedural practices (one of which was to start cases in Italy in advance, the ill reputed "Italian Torpedo"). A further problem lies in the chronic lack of material resources for judges (whose number is, however, adequate).

The main advantage, however, could be found in the cost of commercial proceedings, significantly lower than the European average.

24. **What, in your opinion, is the most likely growth area for disputes for the next five years?**

The most likely growth area for disputes in Italy for the next 5 years seems to be linked to the development of new technologies and social media and to privacy and data protection issues.

In fact, new factispecies of civil liability emerge daily in the field of IT law, so far not particularly regulated at national level.

Moreover, the recent entry into force of the General Data Protection Regulation (GDPR) (EU) 2016/679 involves some onerous obligations, in particular for companies and businesses, and provides for fines up to 4% of global revenue.

On the other hand, GDPR recognizes to individuals new particular rights over their personal

data, increasing the responsibilities and liabilities of controllers and processors, regardless of their geographic location.

It is therefore clear that adaptation to the new EU legislation is as necessary as burdensome for many national companies, and in particular for small and medium-sized businesses.

25. **What, in your opinion, will be the impact of technology on commercial litigation in the next five years?**

Technology has already had a significant impact on commercial litigation in Italy through the implementation of the Telematic Civil Trial system since 2015, whereby service and submission of deeds and consultation of the case-file is now almost entirely operated by Lawyers from their computers, with significant reduction of costs and increase of efficiency.

After the outbreak of COVID-19 the Italian legislator has provided that commercial litigation can take place via remote connections, using Skype for Business or Microsoft Teams platforms.

Algorithm will certainly impact (through platforms like Globality, LexOO and the like) in the counsels' selection process by middle scale international companies. A.I. will surely have an impact in studying and preparing the case, but much less significant than in other non contentious areas (such as DD). Human Lawyers, although benefitting from the support of A.I., will most likely still retain their crucial, value adding role in recommending the litigation strategy. The impact will therefore be very significant, although occurring in manners different from those which are most commonly predicted.

26. **How have the courts in your jurisdiction dealt with the COVID-19 pandemic and have you seen particular types of disputes arise as a result of the pandemic?**

The outbreak of the pandemic led the Italian Legislator to issue a provision (DL 18/2020) that ordered that all hearings which were scheduled between March 9 and May 11 2020 in all civil proceedings pending before any court be postponed to another hearing date to be rescheduled after May 11 2020, and that all procedural time limits relating to those proceedings be suspended, with some exceptions such as for example those cases in which a delayed discussion of the matter could seriously harm one of the parties.

These provisions also delegated to the single courts the adoption of organizational measures aimed at complying with health requirements, including the limitation of public access to the courts; the adoption of binding guidelines for the setting and conducting of hearings; conducting public civil hearings behind closed doors; the provision that civil hearings which do not require the presence of persons other than the lawyers, the parties and auxiliaries of the judge, may be held through remote connection; the postponement of hearings after June 30 2020 in civil proceedings, with some exceptions including urgent civil matters; the possibility for certain types of hearings to be conducted only on the basis of written briefs.

This latter method of conducting civil cases is currently the most frequently used.

With the exception of urgent matters, the outbreak of COVID-19 has suspended legal proceedings almost completely, so that currently there are no particular types of disputes arising as a result of the pandemic. In view of the resumption of court proceedings, while some sectors of the legal profession have publicized – raising strong criticism – the willingness to take on civil liability disputes arising from negligent exposure to contagion, or even against the PRC, the most authoritative representatives of the legal sector have instead emphasized the existence of a general obligation to renegotiate the contents of contracts where a dispute arises concerning the liability for non-fulfillment or the continuity of contractual relationships, and the hope that courts will take on a more mediation-oriented role to help parties find an agreed solution to those disputes.