Report on "Italy"

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ITALY

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1. An Introduction to the Judicial System

Civil procedure in Italy is essentially governed by the Code of Civil Procedure of 1942, as subsequently amended (hereinafter “CCP”). The extent and scope of jurisdiction of the Italian courts as well as the conditions and procedure for recognition and enforcement of foreign judgments are dealt with in the Private International Law Act of 1995 (hereinafter the “Act”). Finally, a number of important provisions on some procedural matters, most notably evidence, are also contained in the Civil Code (hereinafter “CC”).

In addition to domestic sources, Italy is a party to a number of international conventions on civil procedure. Among these, the most significant are the Brussels Convention of 1968 on jurisdiction and enforcement of judgments rendered in the EU countries and the New York Convention of 1958 on recognition of foreign arbitration awards.

Italian civil proceedings are typically divided into three stages. The first stage, which is commonly called the “introduction stage” (fase introduttiva), aims at making clear who the litigants are, and which court will hear the case. The second stage, which is usually referred to as “preparatory stage” or “instruction stage” (fase di trattazione od istruttoria), deals with the preparation of the case for its final disposition. In this second stage, which is the most time-consuming, the matter or matters in dispute are defined, claims and defences are stated, evidence supporting them is offered and accepted. Finally, the third stage, which is known as the “decision-making stage” (fase decisoria), is where the claims and defences are examined and the decision rendered by the court. In a number of cases, the dividing line between the second and third stage is particularly visible, because the second stage is conducted

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by a single judge (giudice istruttore), while the decision is rendered by a panel made up of three judges (collegio). The majority of cases, however, are determined by a single judge who is responsible both for the preparation and the decision of the case.

Like in most civil law jurisdictions, the judicial hierarchy in Italy is made up of three levels of courts. The judgment of the first instance court, usually a Tribunal (Tribunale), may be appealed to a second instance court, i.e., generally the Court of Appeal (Corte di Appello). The decision by the Court of Appeal may be further submitted for judicial review to the Court of Cassation, the Italian Supreme Court (Corte di Cassazione).

Civil proceedings in Italy have a number of specific features. The most important ones are dealt with below. As will be seen, a number of these distinguish the Italian system from common law jurisdictions and, in some respects, also from other civil law jurisdictions.

**Case Management by the Parties.** Civil litigation in Italy is said to be “in the hands of the parties.” This means that the proceedings are at all stages dependent on the parties’ initiative. To take a procedural step, the litigants may file applications, request time periods and extensions. Often, the court has no discretion as to whether to grant an extension or permit a certain step. It is a right of the parties to obtain it. Nor have courts any power to impose sanctions on recalcitrant parties. Based on the same rationale, the scope of the decision by the court is strictly limited within the claims and defences of the litigants. Similarly, the court must, in principle, substantiate its decision based solely on the evidence offered by the parties.

This is different from what happens when control of cases is handed over to the courts. In these jurisdictions the cases, once started, will be conducted at the speed and on the dates which the court thinks appropriate and it is up to the court to identify the issues to be resolved and to fix the order in which it will resolve them.

As a result, litigating in Italy may be a lengthy process, most often involving a considerable number of hearings and stretching over a long period of time. Lawyers generally attend the hearings only when important oral evidence is offered or at the final oral pleading, leaving the rest to their juniors.

**No Trial; Written Evidence.** A single concentrated and uninterrupted presentation of all evidence bearing on the dispute, which in common law countries is known as the “trial,” is virtually unknown in Italian civil litigation. This is most often made up of multiple hearings usually fixed at considerable intervals one from the other where the case is prepared and evidence is discussed and taken. Prior to each hearing, the litigants may exchange written memoranda and written replies to their opponent’s memoranda. In these, every single question, i.e., the relevance of every single fact on which a witness is called to testify, is discussed in a sometimes disproportionately extensive way.
On the other hand, the Italian system places a greater importance on evidence offered by documents and court-appointed experts than on that offered by witnesses. A large proportion of civil cases are actually determined without hearing oral testimony. Defenders of this system argue that, apart from the risk of being bribed, witnesses are often unreliable since their memory is often weak and they may be, whether consciously or not, influenced by the litigants. For these reasons, oral evidence is generally allowed only when written evidence is either unavailable or not reliable. Accordingly, the “instruction stage” results in practice in the mere exchange of written memoranda, the oral part of the litigation being little more than a formality.

**Principle of Equal Footing and Independence of Judges.** The Italian system is greatly concerned with the principle of equality of the litigants. The parties are almost invariably placed on an equal footing, i.e., are granted the same rights and opportunities. If a party is granted a time period to take a procedural step, e.g., to file an application for further evidentiary submissions, the other party may usually do the same. Also, no order or decision, whether interim or final, is usually taken by the court prior to hearing all litigants concerned. *Ex parte* orders, even when the urgency of the matter would allow or even command them, are rare. As to the inequality of financial resources, judicial costs are comparatively low with respect to other jurisdictions. This is so particularly for minor cases or for those involving a typically “weak” party (such as proceedings on employment matters). Another protection for the financially weaker party lies in the fact that the costs of unreasonably expensive representation will not be recoverable.

To ensure the fair and just management of cases, the courts must be impartial. This is also a traditional concern of the Italian procedural system. Impartiality means in the first place that the judicature must be “independent,” notably from political power, large corporations, and lobbies. To ensure this, judges are neither elected nor appointed in Italy, unlike in other jurisdictions. Rather, they have to win a national contest based on their knowledge of the law. For the same reasons, lawyers’ and judges’ careers are separate. Finally, the rigid allocation of cases among the various first instance courts is designed to prevent “forum shopping,” i.e., to prevent a party from bringing the dispute before a court of its own choice, potentially favourable to it.

2. Initiating and Responding to Proceedings

2.1. Steps Required before Proceedings can be Initiated

There is no general requirement that notice of an intent to bring an action be given by one party to the other before proceedings are instituted.
In particular cases, where no specific time limit for the performance of an obligation is established, in the event of failure by a party to comply with this obligation, the other party, if it wishes to bring an action to obtain redress, has first to serve a last reminder to the defaulting party. If the latter fails to perform within 15 days of this service, the action may be started (Article 1453 of the CC).

2.2. Formalities

As a rule, each party to civil proceedings has to be represented by a lawyer (Article 82(2) of the CCP). In the Italian legal phraseology, this is referred to as “legal assistance.” Only in specific cases, essentially for claims not in excess of approx. € 500 or in some labour proceedings, can the party waive any legal assistance and plead on its own (Article 82(1) of the CCP).

Generally, legal papers must be signed by the lawyers. To sign papers, the lawyers must be admitted to practice before the court where the case is pending. Lawyers admitted to practice before one court may apply for admission before another court. Only lawyers with at least ten years of experience may plead before Italy’s highest court, i.e., the Court of Cassation (Article 82(3) of the CCP).

Unlike in other countries, there is no general requirement for a person, particularly an alien, to give security for costs to be able to sue in Italy. The provision which allowed courts to so request in some situations (Article 98 of the CCP) has been held as contrary to constitutional principles and therefore repealed.

2.3. Capacity

Both individuals and business entities, whether Italian or foreign, may bring actions in Italy and, more generally, be part of litigation proceedings without having to meet particular pre-suit requirements.

However, in a number of cases, a person, in order to be party to proceedings, has to be represented by another person. This is called “legal representation.” So, typically, minors must be represented by their parents, mentally disordered persons by their guardians, companies and other business entities by their legal representatives.

In order to bring an action in Italy, a person has to have a qualified “interest” (Article 105 of the CCP). This means that the proceedings must be designed to obtain a practically useful objective for the claimant (e.g., recovery of a sum of money) which cannot be achieved other than through these proceedings.

2.4. Beginning Proceedings

Civil proceedings are initiated when a person, the plaintiff (attore), serves a summons (atto di citazione) to another person, the defendant (convenuto). Unlike in other legal systems, where a claim form is in the first place lodged with the court, the service of
the summons to the defendant usually takes place prior to its filing with the relevant court. Exceptions to this principle, however, apply to some special proceedings, where the first step is filing of an application or petition (ricorso) with the relevant court (see paras 4 and 7).

2.4.1. The Requirements of the Summons

As well as setting out the details both of the court with which it will be filed and of the plaintiff and the defendant, the summons has to comply with some most specific requirements, failing which it may be held as void (Article 163 of the CCP).

More specifically, the plaintiff must in the summons clearly state its complaint, i.e., (i) type of relief sought (claim for damages, delivery of a specific chattel, vacation of a resolution of the board of directors of a company, etc.) which is technically referred to as petitum; and (ii) the facts and rules of law supporting the claim (which is usually called causa petendi), including any documents and other evidentiary means by which the defendant intends to prove its allegations. Additionally, the summons has to specify the date when the first hearing will take place along with the “proper” summons, i.e., the formal request that the defendant (i) file its statement of defence with the designated court no later than 20 days prior to the date set for the first hearing and (ii) appear before that court on the chosen date (Article 163(3) no. 7 of the CCP).

The date for the first hearing is chosen by the plaintiff among the weekdays which are specifically set at the beginning of the year by each court for the first hearing of new cases. In determining the date of the first hearing, however, the plaintiff must ensure that between the day when the summons is served to the defendant and the date of the first hearing there shall be no less than (i) 60 days, if the summons is served in Italy, and (ii) 120 days if the summons is served abroad. These may be reduced to respectively 30 days and 60 days when the matter is of particular urgency (Article 163bis of the CCP).

2.4.2. Service of the Summons and Filing with the Court

The service of the summons is effected by the court’s bailiff (ufficiale giudiziario) in one of several ways authorized by the CCP (Articles 137 et seq. of the CCP). This is usually done either by way of physical delivery to the domicile of the defendant if this is within the district of the court, or by registered mail if the domicile is outside such district. If the domicile of the defendant is abroad, the service is made by registered mail with the assistance of the Ministry of Foreign Affairs (Article 142 of the CCP).

No later than 10 days after service, the plaintiff has to file the summons together with the relevant complaint with the designated court, thereby entering its “formal”
appearance in the proceedings (*costituzione in giudizio*, not to be confused with the *comparsa in giudizio*, i.e., the appearance in court at the first hearing, which is dealt with in para. 5 below) (Article 165 of the CCP). No later than two days after the filing of the summons, the clerk enters the case into the general register of the court and passes the file on to the president of the court in order for him to appoint a judge to prepare the case for the decision (*giudice istruttore*, hereinafter simply referred to as the “judge”) (Article 168bis of the CCP). The file is then passed on to the designated judge who will be responsible for the instruction stage and, in the majority of cases, also the decision-making stage (see para. 6.3 below).

2.5. Responding to Proceedings

2.5.1. Time for Response

Once the summons is served, the defendant has to file its statement of defence, otherwise it will be declared in default (see para. 5 below). This statement of defence is commonly called the “answer” (*comparsa di risposta*).

The answer of the defendant has to be filed no later than 20 days prior to the date of the hearing set in the summons (Article 166 of the CCP). A filing at a later stage, including at the first hearing, is however allowed. Nonetheless, if the answer is filed later than the rules require, the defendant waives its right to call a third party into the proceedings and to make any counterclaims (see para. 2.5.2 below).

2.5.2. Form of Response

In its answer, the defendant shall (i) raise any preliminary or prejudicial motions, (ii) state all its defences, pleas and conclusions regarding the merits of the case, including any submissions of documents and/or requests for any other evidentiary means, (iii) make any counterclaims and specify whether it intends to call a third party into the proceedings (Article 167 of the CCP).

Preliminary or prejudicial motions (*eccezioni preliminari o pregiudizialii*) deal with the compliance by the plaintiff with procedural rules governing the institution of the proceedings. These are all “conclusory” motions, i.e., if they are granted, the case is disposed of without examination of the merits (see also para. 4 below). These motions typically include challenging the propriety of the forum, alleging failure by the plaintiff to satisfy the minimum requirements for the summons, challenging the means of service of the summons, etc. Some of these motions must be included in the answer otherwise they shall be deemed to be waived. These are (i) the motion for dismissal of the case in favour of a foreign court or, according to prevailing scholarly opinion, an arbitrator or arbitration panel, whether domestic, international or foreign (for these distinctions, see para 12 below); and (ii) the motion challenging propriety of territorial “competence” of the court (see para. 3 below). All other
preliminary or prejudicial motions may be raised at any time prior to the decision-making stage. However, in some cases, the defendant may be held to have tacitly waived these motions.

As regards the merits of the case, the answer should clearly indicate which matters or allegations set out in the complaint are challenged as well as the relevant defences and evidentiary means or requests to support them. Defences are conventionally divided into “negative” (or “simple”) defences, and “assertive” defences or “exceptions” (eccezioni). Negative defences maintain that a fact asserted by the plaintiff is not true (e.g., there has been no failure by the defendant to perform the obligation in dispute). Assertive defences allege facts that would permit the defendant to avoid liability even if the facts asserted by the plaintiff were true (for example: the failure by the defendant to perform was due to force majeure and does not give rise to the defendant’s liability).

Finally, the defendant must state in its answer any counterclaim and specify whether it intends to summon a third party into the proceedings (i.e., the insurance company in a tort case). As mentioned above, if this is not included in the answer, or if the answer is filed later than the 20 days prior to the date of the first hearing, the defendant is deemed to have waived any right to make such applications.

3. Jurisdiction and Venue

3.1. Courts

As in most civil law jurisdictions, the judicial hierarchy in Italy is made up of three levels of courts, called “grades” or “instances” (gradi od istanze). Courts of first instance are the Tribunals (Tribunali) or, in minor cases, the Justices of Peace (Giudici di Pace). Courts of second instance are the Courts of Appeal (Corti d’Appello), if the first instance decision was rendered by a Tribunal, or the Tribunals, if the first instance decision was rendered by a Justice of Peace. Finally, the Court of Cassation (Corte di Cassazione), placed at the top of the hierarchy, is the court of last instance. Through its essentially “judicial” review of judgments or orders by lower courts, it ensures the uniform interpretation and application of the law in Italy.

3.1.1. Justices of Peace have first instance jurisdiction (technically, the Italian legal phraseology uses the word “competence”: see para. 3.2 below) over the following cases: (i) actions relating to moveables having a value not in excess of approx. € 2,600; (ii) actions for damages caused by road accidents if the claim is not in excess of approx. € 16,000; (iii) actions concerning some specific matters related to immovable property, such as disputes on land boundaries, on the use of common parts of co-owned flats, on neighbourhood relationships, etc. (Article 7 of the CCP).
3.1.2. **Tribunals** have first instance jurisdiction over all cases which are not expressly allocated to other courts, i.e., essentially Justices of Peace. Tribunals also have exclusive jurisdiction in matters relating to some type of taxation, status and capacity of individuals, honorific rights, and any actions having an undetermined value (Article 9 of the CCP). Finally, Tribunals act as second instance courts for decisions by Justices of Peace (Article 341 of the CCP).

3.1.3. **Courts of Appeal** have second instance jurisdiction over decisions made by the Tribunals (see para. 8.2 below). They also have first instance jurisdiction in proceedings for recognition of foreign judgments and foreign awards (see para. 12 below).

3.1.4. **Court of Cassation** has jurisdiction over applications for review of second instance and, in some cases, first instance decisions. Its review is merely judicial, i.e., limited to questions of law (see para. 8.2 below). The Court of Cassation also has the power to resolve conflicts of jurisdiction and competence between the various courts at lower levels. (see, e.g., para. 3.2.2 below).

All the above-mentioned courts are referred to as “ordinary courts”. There are also a small number of “special courts”, such as the ones dealing with tax matters.

To achieve efficient management of cases, Italian territory is divided into various judicial districts (carnoscrizioni giudiziarie), which define the territorial scope of each court. The district of each court of a higher level encompasses the districts of various lower courts. More specifically, the Court of Cassation, which sits in Rome, is a single court whose jurisdiction covers the whole of the national territory; each Court of Appeal has jurisdiction over a distretto (the national territory consisting of some 25 distretti), each Tribunal over a circondario (each distretto comprising an average of 5-10 circondari); each Justice of Peace over a comune.

Civil cases are always tried by professional judges. Juries are totally unknown in Italian civil litigation. In specific matters, courts (generally the Tribunals) are assisted by professionals in various fields (e.g., in a dispute concerning real property). Apart from these cases, the Tribunals sit with one or three members depending on whether a case falls within a category of specific cases requiring a three-judge adjudicating panel. This category of cases includes: certain issues arising from insolvency or similar procedures, certain corporate actions (e.g., action to seek vacation of a resolution by the board of directors or shareholders’ meeting), actions concerning the validity of a testament, actions for divorce and certain other family law proceedings. The Courts of Appeal sit with three members and the Supreme Court with five members, all of whom are professional judges.
3.2. General Principles of Jurisdiction and Venue

Traditionally, Italian law of civil procedure distinguishes between “jurisdiction” (giurisdizione) and “competence” (competenza).

“Jurisdiction” is essentially the power to hear and decide cases (i) by Italian, as opposed to foreign courts, (ii) by civil courts, as opposed to, e.g., administrative or criminal courts, (iii) by the “ordinary” courts, as opposed to the “special” courts. Accordingly, one distinguishes between Italian jurisdiction and foreign jurisdiction; between civil jurisdiction and, e.g., administrative jurisdiction; between ordinary jurisdiction and special jurisdiction.

“Competence” is traditionally defined as the portion of jurisdiction which is allocated to each court. This allocation of jurisdiction among the various courts is made on the basis of three criteria: territory, subject matter, and value of the case.

It is important to distinguish whether an issue, typically raised in a preliminary or prejudicial motion, concerns jurisdiction or competence. By way of example, when the defendant claims that the court has to dismiss the case in favour of a foreign court, this is a question of jurisdiction. On the contrary, if the defendant maintains that the action should have been brought before the Tribunal of Milan instead of the Tribunal of Rome, this is question of competence.

The ways in which both jurisdiction and competence are allocated in Italy will be discussed in more detail here below.

3.2.1. Jurisdiction

(a) Italian vs. Foreign Jurisdiction

The most important issue which may arise regarding jurisdiction, particularly with respect to cross-border disputes, comes down to the question of whether the jurisdiction of Italian courts exists. In this respect, a distinction has to be drawn according to whether conventional provisions or domestic provisions apply.

Conventional provisions are mainly contained in European Regulation no. 44/2001, of 22 December 2000 (“the Regulation”), which superseded the Brussels Convention of 1968 on Jurisdiction and Enforcement of Foreign Judgments; with regard to domestic provisions, the most important are those set out in Articles 3–12 of the Act (see para. 1 above for a definition).

European Regulation on Jurisdiction. The Regulation aims at apportioning jurisdiction among the various EU countries (sometimes having regard directly to
single courts), with respect to those disputes on civil or commercial matters which qualify as “EU disputes”.1

The basic rule for jurisdiction is the domicile of the defendant (Art. 3 of Regulation).

Sections 2 to 7 of the Regulation provide a strict list of alternative courts, so that—only mentioning the more important—a defendant can be sued before an Italian court:

(i) with respect to actions involving contractual obligations, if the obligation in dispute has to be performed in Italy;
(ii) with respect to tort liability, if the tort occurred or the damages arose within the Italian territory;
(iii) in the event of more than one defendant, when the Italian court has jurisdiction over at least one defendant and there is a counterclaim, or a party is called as a guarantee or the “attracted” case is connected to the main one (Article no. 6 of Regulation);
(iv) for proceedings started by consumers, if they are resident in Italy (Article no. 16 of Regulation).

Domestic Rules on Jurisdiction. The basic principle is that the jurisdiction of Italian courts exists, further to the hypotheses set forth in the Regulation, if the defendant is domiciled in Italy or has here a representative with the power to sue or be sued in Italy on its behalf (Article 3.1 of the Act).

Moreover, pursuant to Article 3.2 of the Act, Italian jurisdiction also exists based on the criteria which are used to allocate “competence” among the domestic courts. Italian jurisdiction exists, for example, with respect to actions arising from insolvency or similar procedures, if the bankruptcy has been declared by an Italian court; with respect to actions involving financial arrangements between spouses, if these arrangements have been made in Italy; and so on (Article 20 et seq. of the CCP).

In addition to the above cases, the Italian jurisdiction exists:
1. over “preliminary” questions, i.e. questions that have to be determined in order to adjudicate on the question submitted by the parties, i.e. the “main” question, provided that the court has jurisdiction over this main question (Article 6 of the Act);

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1 A dispute is a “EU dispute” when one of the following conditions is satisfied: (i) the defendant is domiciled or has its place of business in the EU territory; (ii) the parties to the dispute, one of which is domiciled in an EU country, have agreed to submit the dispute to a court of an EU country; (iii) with respect to a particular set of situations, when the distinguishing element of the case is located within the EU, e.g. actions in rem when the immovable property is here located, etc.
2. with reference to urgent proceedings to be executed in Italy (Article 10 of the Act);
3. whenever the defendant does not formally challenge the Italian jurisdiction in his/her first defensive brief (Article 4 of the Act).

3.2.2. Competence

As mentioned above (para. 3.1), there are three criteria for allocating jurisdiction among the various first instance courts: subject matter, value and territorial forum or “venue.” Depending on their subject matter and value, cases are heard by either Tribunals or Justices of Peace. The apportionment of competence between these two courts has been outlined in para. 3.1 above. The criteria to determine the proper venue are more complex and will be dealt with here below.

The general rule is that proper forum is the court of the district where the defendant is domiciled. If the defendant is domiciled abroad, the relevant forum is the court of the district where the plaintiff is domiciled. In case of corporate entities and other legal persons, the proper forum is where such a person has its place of business or seat. Specific rules apply to particular matters, e.g., the proper forum for disputes arising from bankruptcy and similar procedures is the court which has granted the petition for bankruptcy (Article 18 et seq. of the CCP).

The litigants may agree to derogate from the proper forum, except in a number of cases where no derogation is permitted. These include, inter alia, proceedings for enforcement of a judgment, divorce and other matrimonial cases, and certain special proceedings (Article 28 of the CCP).

The point in time when a motion challenging the competence of the court may be raised varies depending on the criterion or criteria (subject matter, value or venue) on which that motion is based. Motions based on subject matter or value of the case may be raised by the parties or the court on its own motion no later than at the first hearing (Article 38(1) of the CCP). Motions challenging the propriety of the forum may, subject to some exceptions, be raised by the defendant only in its answer (Article 38(2) of the CCP).

Issues concerning competence may be raised in two different ways according to whether they are raised by one of the litigants or by the court. If one of the litigants raises the issue, the motion must first be decided by the court before which the proceedings are pending. If the decision of the court is only concerned with this question (i.e. the decision does not resolve the merits of the case), it may be submitted for review only to the Court of Cassation (Article 42 of the CCP). If the merits have also been determined, the party has an option to either request that the Court of Cassation review the issue of competence, or to follow the normal appellate channels (see para 7 below). If the court on its own motion raises the question of competence, the court shall refer the case to the court which it deems to be proper.
If this court also has doubts as to the lower court's competence, the case is remitted to the Court of Cassation for a final decision on this issue (Article 45 and 47(4) of the CCP).

4. Motions and Other Applications and Submissions

4.1. Non-Conclusory Motions

Generally, there is no particular term to denominate applications to the court, except when these are made to institute proceedings. In this respect, one essentially distinguishes between “summons” (atto di citazione) and “recourse” (ricorso), depending on whether the first pleading is first served to the other party or filed with the court. First instance and appeal proceedings are usually instituted by way of a summons, whereas some special proceedings (e.g., summary proceedings) and any application for judicial review to the Court of Cassation are commenced through the filing of a ricorso (which for purposes of the present study, is simply referred to as an “application” or “petition”: see, e.g., para. 7 and 8.2 below).

Applications during proceedings may, depending on their contents, take the form of requests (richieste), demands or submissions (istanze), or motions (eccezioni). The applications are non-conclusory when they do not purport to seek a final disposition of the case. The CCP contemplates a number of non-conclusory applications, such as the request for admission of new evidentiary means, application for adjournment of a hearing or for resuming proceedings after these have been stayed, etc.

4.2. Conclusory Motions

Motions are conclusory when, if granted, they would lead to the disposition of a case without examination of the merits. Conclusory motions are commonly known as “exceptions” (eccezioni). These are most often related to the proceedings being regularly instituted by the plaintiff. The most significant conclusory motions include challenging compliance of the summons with the requirements prescribed by the law, challenging jurisdiction of the Italian courts, and competence of the designated court. These motions and the consequences to which they give rise have been dealt with in para. 3 above. Another typical motion is one alleging the expiration of a statute of limitation. However, civil law scholars tend to regard this as a defence on the merits rather than a proper motion (see also para. 11 below).

5. Pre-Trial Practice

As seen in para. 2.4.1 above, the date of the first hearing is chosen by the plaintiff and notice is given to both the defendant and the court. At the first hearing the
judge charged with the preparation of the case must make sure that the proceedings have been regularly instituted and that the parties are in attendance. If both parties fail to appear, the judge sets a date for a new hearing. If they fail to appear at this second hearing, the case is struck from the court’s record. If only the defendant fails to appear, the proceedings will continue without him. If the defendant has also failed to file its statement of defence, the judge will declare it in default (Articles 181 and 182 of the CCP). As will be discussed in para. 6.2 below, the default of the defendant does not generally allow any default judgment to be entered by the court but merely leads to some procedural consequences that affect the way orders of the court shall be provided to the defaulting party (Article 290 et seq. of the CCP). If the plaintiff fails to appear, the proceedings shall continue only on a motion by the defendant (which typically happens when the defendant has made a counterclaim).

At the first hearing, the parties may clarify and where necessary amend their claims, defences and conclusions. The plaintiff may also state any defences with respect to any counterclaim made by the defendant in its answer. Any of the litigants may also request that the judge authorize the filing of written memoranda containing amended claims, defences and conclusions. To this effect, the judge prescribes a maximum 30-day deadline. In the same order, the judge sets the date for a hearing where the relevance and admissibility of the evidentiary means requested by the parties will be discussed (Articles 183 and 184 of the CCP).

5.1. Administrative Rulings Including Scheduling Orders

The judge charged with the instruction of the case has all powers necessary to ensure that the case is promptly and fairly prepared for its final disposition. To this end, the judge sets dates for hearings, prescribes time limits for the parties or one of them to make applications, motions or submissions, and conducts or oversees the evidence-taking activities (Article 175 of the CCP).

5.2. Gathering Evidence

The instruction stage consists of a number of separate hearings often stretching over a long period of time. This stage may be further divided into two sections: the first aims at identifying which means of evidence will be admitted, whereas the second deals with the proper “taking” of evidence, e.g., hearing of witnesses, presentation of experts’ findings, etc. Each of these two sections may involve a number of hearings.

As mentioned above in para. 2.4.1, the judge sets a date for the hearing to decide on the admission of evidence. At this hearing the judge may either admit the whole or some of the evidentiary means requested by each of the litigants or, on motion by one party, set another hearing and authorize the filing of new documentary evidence and any requests for admission of additional evidentiary means. In doing so,
the judge also prescribes a time limit for each party to challenge the new requests made by the other party (Article 184 of the CCP).

6. Hearings and Trials

6.1. Evidentiary Issues

As mentioned in para. 1 above, provisions concerning evidence are found both in the CCP (Article 191 et seq.) and in the CC (Article 2696). These two sets of rules make it clear that the Italian system places a greater importance on documentary evidence and the evidence of court-appointed experts than on evidence offered by witnesses. The main reasons for this traditional mistrust of oral evidence have been illustrated in para. 1 above.

6.1.1. Formal Requisites for Presentation of Evidence

The burden of proving that a statement (claim, motion, defence) is true generally lies with the party making it (Article 2697 of the CC). However, in certain circumstances, the evidential burden is "reversed," i.e., shifted on to the other litigant. This is usually done by way of a "presumption." For example, there exists a presumption that a party to a contractual agreement is liable if it fails to duly and timely perform any of its obligations. As a result, the plaintiff need only prove that the defendant failed to perform one or more obligations. If this is successfully done, the defendant must give evidence that the performance of the obligation was impossible, (e.g., due to force majeure) and that, accordingly, no liability arose.

Another important rule concerning evidence is that the court can only rely on the evidence offered by the parties and accordingly shall refrain from investigating the facts which it deems relevant to the case. However, there exist a few important exceptions to this principle. In practice, the most significant is the possibility for the court to appoint an expert (Articles 61 and 191 of the CCP). Other exceptions include the power of the court to order the inspection of persons, places or things (Article 118 of the CCP), to order the testimony of persons referred to by a witness as having knowledge of any facts of the case (Article 257 of the CCP), or to interrogate the parties informally at any time of the proceedings (Article 117 of the CCP).

Before being taken, some evidentiary means (typically oral testimony), have first to be admitted. In order to qualify for admission, they have to meet two requirements or "tests," i.e. the "admissibility" test and the "relevance" test. Evidence is admissible if the law does not specify that it is not. Examples of non-admissible evidence are the testimony of a person that has a qualified interest in the proceedings (Article 246 of the CCP) or, generally, any written statement by a witness.
Evidence is relevant when it is probative of a fact that is both disputed and relevant to the case. Admissibility and relevance represent however only minimum requirements. This means that the judge may dismiss an application to call a witness if he has grounds to believe that the witness is not reliable or simply if he deems this testimony to be unnecessary (see para. 6.1.2 below under the heading “Witnesses”).

Finally, as regards the “standard of proof,” which in the Italian system is referred to as the “probative value” of the evidence (valore probatorio), the general rule is that it is within the discretion of the judge to appreciate such value (prudente apprezzamento del giudice: Article 116 of the CCP). This does not mean that the judge is free to weigh the evidence arbitrarily. Rather, the use of such powers has to be “reasonable.” Typically, the court may base its findings on particular evidence while disregarding other evidence, provided that a detailed explanation for this is given and appears to be logical. On the contrary, any insufficient or self-contradictory substantiation gives rise to grounds for review by higher courts. There are, however, important exceptions to the principle of the judge’s discretion, where the probative value is already assessed by the law and therefore binds the judge. For example, if a party makes a sworn statement (which is denominated an “oath,” see below in this paragraph) asserting that a fact is true, the court is bound to accept this and resolve the matter accordingly even if it has doubts as to the statement being really true. Evidentiary means having the effect of binding the judge are called “legal evidence.” Public deeds and private papers (see para. 6.1.2 below) also fall within this category.


**Documentary Evidence.** Italian law distinguishes between “public deeds” (atti pubblici) and “private papers” (scritture private). The first are documents drafted by a notary or other public official. Public deeds provide legal evidence of two things: first, that the document has been drafted by the person who signed it or appears to have signed it; secondly, that the statements and the actions that the notary states as having been made or taken before him have been effectively made and taken (Article 2700 of the CC). Private papers are documents drafted and signed by a party. A private paper provides evidence that the person who signed it or appears to have signed it was effectively the author of the whole document, provided that one of the following conditions is satisfied: the signature is recognized by the party as being its own, or it has been certified by a notary public as being the signature of the party (Article 2703 of the CC).

It must be stressed that neither public deeds nor private papers provide evidence that the statements made in them are true. So, if a notary public certifies that a person handed over a paper to him declaring that this contained his self-written will, the public deed setting out this statement does not provide any evidence that
the will was actually written by the declarant. However, public deeds or private papers often contain confessions, which do provide strong evidence that the fact which has been confessed is true. This is based on the maxim that nobody will normally make a statement which is disadvantageous to him (e.g., that he has received payment of a sum of money) if this statement is not true. Additionally, public deeds and private papers cannot be used if the other party manages by way of a special procedure to show that they were, in whole or in part, forged.

Other "legal" documentary evidence includes accounting books of business entities (to some extent), photographs and recordings. Examples of "non-legal" documentary evidence are a facsimile or a document written by a third party. These are not conclusive evidence because the judge has discretion in assessing whether, e.g., the fax machine from which the fax has been sent was really operated by the person who claims to have done so, or whether the document was really drafted by the third party.

Witnesses. As mentioned in para. 1 above, unlike systems where evidence provided by witnesses is extremely important, oral testimony is given minor weight in Italian civil litigation.

In the first place, there are a number of provisions in the CC that restrict the admissibility of oral testimony (Article 2721 et seq. of the CC). Particularly, oral evidence is not permitted to prove the existence and contents of a contract which (i) has to be in writing for its validity (e.g., a gift), unless the party wishing to use oral evidence also proves that the document was lost without its fault; (ii) has a value in excess of 2.6 Euro, this provision being however of little practical importance since the court may, at its discretion, and based on the nature of the contract, the relationship between the parties as well as any other circumstances, admit oral evidence; (iii) contradicts or supersedes a contract made in writing by the same parties at a later date.

Before being heard, witnesses have to be admitted by the court. To this end, each party files a list of both the persons that they wish to call to testify and the facts on which each witness is to be questioned. Generally, witnesses are not allowed to give testimony on matters of opinion. On motion by one of the litigants, the judge shall grant a time period for applications for new witnesses in response to the evidentiary requests by the other party. The court shall dismiss the persons who cannot be heard as witnesses based on a legal provision or are called to give evidence on facts which are not capable of being proven by oral evidence. The judge may also refuse to hear witnesses whose testimony he deems unnecessary (Article 244 et seq. of the CCP).

Witnesses are heard at a hearing. Written depositions or affidavits by witnesses are not permitted, nor is there such a thing as the exchange of "written statements." If all witnesses cannot be heard at the same hearing, the court has to fix another hearing. If oral evidence cannot be given at the hearing because the witness is either
not physically able to attend it or exempted from attendance by a domestic or international law provision, the judge has a duty to go to the place where the witness is and hear the testimony there (Article 255 of the CCP). If a witness fails to attend the hearing, a subpoena may be issued (Article 255 of the CCP). If still recalcitrant, the witness may be taken to court by force.

Witnesses are heard separately and under oath. They are questioned by the judge, who cannot depart from the matters set out by the parties in their applications. The parties and their counsels are forbidden from questioning or cross-questioning the witness, though they may request the judge to ask specific questions (Article 253 of the CCP). Their evidence is usually taken down in the form of summaries dictated by the judge to the court clerk.

**Interrogatory of the Parties.** The parties have to appear at the first hearing so as to allow the judge to ask them any informal questions thought appropriate (*interrogatorio informale*: Article 180 of the CCP). At any time during the proceedings, the judge can order the parties to appear for informal questioning (Article 117 of the CCP). Each of the parties may request that the judge question the other party formally (*interrogatorio formale*). The procedure for testimony by witness also applies to formal interrogatory of the parties, except that the party has no duty to tell the truth (Article 230 of the CCP). By requesting an interrogatory of its opponent, a party may hope to obtain a confession by it. A confession is a statement by a party of one or more facts which are against its case and in favour of the opponent's. The confession provides "legal" evidence of the facts confessed. Specific rules for capacity and matters capable of being proved by confession apply (Article 2730 et seq. of the CC).

**Experts.** If the judge thinks it appropriate, the assistance of an expert can be requested for either the whole of the proceedings, or for specific issues (Article 61 of the CCP). In practice, the judge appoints the expert if one or both litigants so request. Experts are generally appointed from among those entered in the court's registry of experts.

When appointing the expert, the judge also authorizes each party to appoint its own expert. The party-appointed experts have a similar role to that of their counsels. They have no obligation to give impartial advice to the court. They may attend the inquiries of the court expert and make any comments that they think appropriate. They may also attend any hearing attended by the court expert, raise any objection to the latter's findings and present their own findings (Article 201 et seq. of the CCP).

The judge may be present at the inquiries conducted by the expert. In this case, the findings are presented by the expert orally at the hearing. If the judge did not attend the inquiries, which is usually the case, a detailed written report of the inves-
tigations conducted has to be made by the expert, including the comments made by the parties and their experts during the inquiries (Article 195 of the CCP). The expert may also be summoned to the hearing to be asked any questions which the parties’ counsels and experts think appropriate.

However, the judge is not bound by the findings of the expert. If these are disregarded, which is not frequent, the reasons for this must be given in the grounds for the judgment.

**Presumptions.** Italian law distinguishes between two types of presumptions: “legal” presumptions (presunzioni legali) and “simple” presumptions (presunzioni semplici). Legal presumptions, like common law presumptions, are defined by the law. They may be rebuttable (semplice) or non-rebuttable (assolute), depending on whether they have the mere effect of shifting the burden of proof or provide by themselves conclusive evidence of the fact or facts to which they relate. The simple presumptions are situations where the court may infer, based on common experience, a certain consequence from a fact which is publicly known or undisputed. The evidence they usually provide is not conclusive but merely circumstantial.

**Party’s Sworn Statements or “Oaths”**. A party’s oath (giuramento) is a sworn oral statement made by a party that one or more of the facts alleged by it in support of its case are true. A party’s oath provides “legal” evidence, i.e., once the oath is made, the fact stated as true must be considered conclusively proven and cannot be any longer challenged by the other litigant. However, in case of perjury, the declarant is liable to criminal prosecution and civil damages. Also, specific rules for capacity and matters capable of being proved by oath apply (Article 2736 et seq. of the CC).

Each litigant may at any time request that the other party affirm under oath that one or more specific facts supporting its case are true. The party requested to make the oath may (i) either make it or (ii) “refer” it back to the opponent, i.e., request that the opponent affirm under oath that the facts alleged by it are true. For example, if the plaintiff maintains that the agreement in dispute was made on 31 December and the defendant maintains that it was made on 1 January, the plaintiff may challenge the defendant to swear that the date of the agreement was 1 January. The defendant may do so and win the case on this specific issue, though be potentially liable for perjury, or request that the plaintiff swear that the date of the agreement was 31 December. If the oath is referred back, the plaintiff may either make it and win the case (and face potential criminal liability in case of perjury), or dismiss it and lose the case.
6.2. Default Judgment

Contrary to some countries, if the defendant fails to file its statement of defence and to appear at the first hearing (see para. 2.5 above), no default judgment can be obtained by the plaintiff. The same applies when the plaintiff fails to both file the summons with the court and appear at the first hearing (see para. 5 above).

In these circumstances, the judge shall simply declare the relevant party “in default.” As seen in para. 5 above, if the defendant is in default the proceedings shall continue without it. If the plaintiff is in default, the proceedings may continue only on motion of the defendant. In either case, no conclusion as to the merits of the case can be drawn from such a default (although a defaulting litigant, unable to present claims or defences, has little chance of success as the litigation moves forward). Also, the litigant in default may make its formal appearance at any time during the instruction stage until the decision is rendered. If it does so, it must however “accept” the proceedings “as they are” at the time of appearance, and is not entitled to make any application or take any procedural steps for which the relevant deadline has expired (Article 290 et seq. of the CCP).

6.3. Final Judgments and Orders

When all evidence has been taken, or even earlier if the judge considers the case to be sufficiently “instructed,” the case enters the last stage, i.e., the decision (Article 187 of the CCP). To this end, the judge requests that the parties state orally their conclusions before him (precisazione delle conclusioni) and grants a 60-day time period for the filing of their “final pleadings,” usually setting out all claims, motions, defences and conclusions (comparse conclusive). Once the final pleadings are filed, each party has another 30-day time period for the filing of pleadings in response to the final pleadings of the other (memorie di replica) (Article 190 of the CCP). The court has to file its judgment within the following 60 days (Article 275 of the CCP). No sanctions are however available if the court fails to meet this deadline. As a result, it is often disregarded.

If the case is one requiring a three-judge panel for its decision (see para. 4 above), the procedure for decision is divided into four steps (Article 275 et seq. of the CCP). First, the judge charged with the instruction acts as “rapporteur” and gives a brief narrative of the proceedings, specifying which are the undisputed facts and the issues of both fact and law in dispute. Secondly, the president of the court requests that the parties read their conclusions. However, this step may be, and usually is, waived by the parties. Thirdly, the panel resolves in camera. The decision is taken by a majority vote. The rapporteur votes first and the president last. The president drafts and signs the proper “verdict” (dispositivo) and usually leaves it to the rapporteur to
draft the rest of the judgment, i.e., the grounds for decision (motivazione). Fourthly, the judgment is filed with the court's clerk.

When the court concludes a case, the relevant decision usually takes the form of a proper judgment (sentenza). This is the case, e.g., when the court resolves the merits of the case or when, though not addressing the merits, it grants a motion raised by the defendant challenging its jurisdiction or competence, e.g., dismissing the case in favour of a domestic or foreign arbitration. Such judgments may be reviewed for the grounds and in the ways detailed in para. 8 below. When the court does not dispose of the case, e.g., it confirms it has jurisdiction over the case and refers it back to the judge for preparation, the relevant decision usually takes the form of an “order” (ordinanza). Orders are also the usual way in which the judge gives directions for the management of the case (e.g., when he adjourns hearings) or responds to application by the parties (e.g., when he admits evidentiary means which are admissible and relevant) (Article 176 of the CCP). Some orders may be challenged, usually before the three-judge panel (if there is one) or the president of the court. Some orders are not subject to challenge.

6.4. Consent Judgment

The principle governing the decision-making activity of the courts is that the judgments shall be based solely on the law. Only in a few cases can a ruling be grounded on principles of justice and equity rather than strict provisions of law (giudizio secondo equità). This is the case only if both parties so request and proceedings do not relate to any public policy matters (Article 114 of the CCP).

As result, if the litigants reach an amicable settlement during the proceedings, the court cannot incorporate this settlement into the judgment and make it enforceable. In this case, the plaintiff usually makes a formal statement whereby it is no longer interested in the court resolving the dispute (rinuncia agli atti). If such statement is accepted by all parties, the proceedings are “extinguished,” i.e., terminated (estinzione del processo: Article 306 of the CCP). Another option would be for both parties to cause the proceedings to be stayed and then terminated due to their inactivity, i.e. the failure of both of them to take the procedural steps required by the court (Article 307 of the CCP).

However, the termination of the proceedings does not prevent the same action from being started again. In this case, the opponent may nonetheless challenge this on the basis of the settlement reached (Article 310 of the CCP).

7. Special Proceedings

The proceedings which have been illustrated so far are referred to as “ordinary proceedings.” In addition, Italian civil procedure contemplates a number of “special
proceedings” (provedimenti sommari: Articles 633 et seq. of the CCP). Please note that the CCP also considers the recognition and enforcement of arbitration awards to be “special” proceedings (for these see para. 12 below).

The most significant ones may be broadly divided into two categories, depending on their objective. The first category includes “fast-track” or “summary proceedings” applying to cases which may be conducted more expeditiously on the basis of the existence of a strong prima facie likelihood of success (procedimenti sommari). The second includes all procedures aiming to obtain “interim” injunctions so as to preserve the status quo pending proceedings on the merits of the case (such as attachment orders: procedimenti cautelari). So, these are in addition to, rather than in place of, proceedings on the merits.

7.1. Injunctions (“Summary Proceedings”)  
Summary proceedings aim at speeding up the judicial machinery in those cases where there is strong evidence that the claim is well-founded, so that the ordinary proceedings would be unnecessarily lengthy and cumbersome for the claimant.

Summary proceedings are essentially available with respect to claims (i) for specific sums of money or amounts of goods, (ii) for the delivery of specific moveables and (iii) for the payment of professional fees based on publicly available tariffs. In these cases, if the claim is supported by written evidence, summary proceedings may be started (Article 633 of the CCP).

These are instituted by the claimant filing a “request for an injunctive order” with the court (richiesta di decreto ingiuntivo). If the court is satisfied that the claim is one which qualifies for summary proceedings and it is supported by written evidence, the court orders the defendant to pay the requested sum of money, deliver the moveable, etc. This injunctive order takes the form of a “decree” (decreto ingiuntivo). Once the injunctive order is issued, the defendant has a 40-day time period to object to it (opposizione). This is done by serving a summons on the claimant and filing it with the court (al decreto ingiuntivo). The proceedings then follow the ordinary routine (Article 638 et seq. of the CCP).

As a rule, injunction orders are not enforceable pending the 40-day time period for objection by the defendant. However, when evidence that any delay may cause serious harm is provided, the court may declare the order immediately enforceable (Article 642 of the CCP). If so, the defendant must first execute the order and then it may challenge it.

7.2. Remedies against Assets (“Interim Orders”)  
The Italian system contemplates the possibility of obtaining different types of interim relief, i.e., orders pending the proceedings on the merit of the case (provedimenti
The most important interim orders may be divided into two categories depending on the nature of the relief sought: (i) attachment orders, i.e., orders by which assets are seized by the court (generally called *sequestri*); and (ii) so-called "Article 700 CCP-injunctions" (*provvedimenti d'urgenza*), which may in turn have the most various contents (orders, e.g., that a magazine be withdrawn, an advertisement removed, etc.). These interim orders may also be sought before proceedings on the merits are commenced (Article 669ter of the CCP).

7.2.1. Requisites to Application

In order to obtain an interim order, two basic requirements have to be fulfilled: (i) the claim on the merits must have a good *prima facie* likelihood of success (*fumus boni iuris*); (ii) there must be evidence that one or more assets of the defendant will be dissipated so as to make the enforcement of the judgment, once rendered, more difficult (*periculum in mora*) (Article 671 of the CCP). If the application is for a "700 CCP" injunction, the second requirement involves evidence that any delay in responding to the demand for justice by the claimant may cause "imminent and irreparable" harm to it (Article 700 of the CCP).

7.2.2. Requisites to Issuance

In order to obtain an interim order, the claimant has to file an application with the court having jurisdiction on the merits of the case. If the court is satisfied that the two requirements in para. 7.1.2 above are met, it issues the interim order (Articles 669bis and 669ter of the CCP).

The interim order may be granted *inter partes* or *ex parte*. If the time necessary to summon the opponent to the hearing may prevent the enforcement of the interim order requested, the court shall grant it *ex parte*. In this case, it sets the date for a hearing and a time period for the interim order as well as the relevant summons to be served by the claimant to the other party. If there is no such exceptional urgency, the court shall notify the defendant of the application and order the parties to appear before it at a date set within a few days. If the order is granted before the start of proceedings on the merits, the court sets a time period no greater than 30 days for the beginning of the proceedings. Any kind of evidence, both oral and written, may be used by the parties to support their arguments, the usual restrictions to oral evidence not applying to interim proceedings (Article 669sexies of the CCP).
7.3. Other Special Proceedings

7.3.1. Interpleaders and Deposits

An interpleader procedure as such is not available in Italy. However, the party in possession of a property (e.g., a rented flat) to which two or more parties claim title may bring an action against one or both of them, e.g., in order to require the "owner" to make necessary repairs to the property. The issue of ownership will then have to be settled by the court as a preliminary question.

A procedure similar to the interpleader is the "judicial attachment" (sequestro giudiziario). This is applied for when the litigants claim title over one or more assets, movable or immovable, and there is a likelihood that the assets in dispute will perish or diminish or be otherwise prejudiced pending the proceedings on the merits (Article 671 of the CCP). As a result of this application, which may be made by either of the parties, the court will usually appoint a receiver of the assets. The attachment order is obtained through interim proceedings. Accordingly, the procedure set out in para. 7.2 above applies.

7.3.2. Intervention

Once the proceedings are commenced, a third party may, and—under certain circumstances—must, intervene in them.

Italian civil procedure distinguishes between three types of intervention: (i) "voluntary intervention", when a third party claiming an interest in the subject matter of the case files an application to intervene in the pending suit (Article 105 of the CCP); (ii) "intervention requested by a party", when a litigant requests that the suit be extended to another person from whom it wishes to be held harmless, typically a guarantor (e.g., the insurer) (Article 106 of the CCP); (iii) "intervention ordered by the court", when the court considers that the case pending before it is common to another person and thinks it appropriate to extend the proceedings to include the third party (Article 107 of the CCP). In some cases, the court has a duty to so extend the proceedings, e.g., in some family law proceedings (Article 102 of the CCP).

The intervention in all three situations takes place by way of a filing by the intervening party of a pleading, having broadly the same requirements as the statement of defence through which the defendant enters appearance in the proceedings: see therefore para. 2.5 above (Article 267 et seq. of the CCP).

7.3.3. Class Claims

As a general rule, "class actions" are not permitted before Italian courts.
Recent legislation on consumer protection has entitled a number of consumers’ associations to sue persons (typically, corporations or other business entities) in order to protect the interests of consumers, i.e., the so-called “collective” interests. Their ability to represent consumers in court is limited. They may, e.g., bring suits to seek the withdrawal of a defective product from the market but cannot, e.g., claim damages caused to the health of individuals, because the right to obtain monetary redress is deemed to have a strictly personal nature.

7.3.4. Shareholders Derivative Claims

Shareholders of corporations or members of partnerships, societies and other legal persons are not permitted to enforce rights pertaining to these entities and on their behalf.

In certain circumstances, however, shareholders representing a certain proportion of the stock may institute particular corporate proceedings before the court, particularly in cases involving negligent conduct of the directors or statutory auditors (e.g., Article 2409 of the CC).

8. Post-Trial Proceedings, Applications and Appeals

As illustrated above in para. 3.1, the Italian judicial system contemplates three stages of instances. Accordingly, a first instance judgment (typically a sentenza by a Tribunal) may give rise to two consecutive reviews, i.e., by the Court of Appeal, on any issues of both fact and law that the appellant wishes to have re-examined, and by the Court of Cassation, which quashes the decision if it finds that it is affected by errors of law. Appeal and review by the Court of Cassation are referred to as “ordinary” types or “means” of review or “recourse” (mezzi di ricorso ordinari). These will be dealt with in para. 8.1 and 8.2 below.

A first instance judgment becomes “final” (or res iudicata) essentially when it is no longer subject to appeal before the Court of Appeal (or review by the Court of Cassation, in those cases where a direct “leapfrog” review may be sought). This happens when no filing for appeal has been made on expiry of: (i) a 30-day period starting from the date of service of the judgment, if the judgment has been served by a party (typically, the party wishing to enforce it) to the other; or (ii) a one-year period starting from the date of filing of the decision with the court’s clerk by the judge, if no service of the judgments has been made (Article 325(1) of the CCP).

A second instance decision (typically a sentenza of the Court of Appeal) becomes final essentially when it is no longer subject to review by the Court of Cassation. This happens under the same conditions set out above for the first instance decision, except that the period for filing a petition for review in case of service of the judgment is 60 days instead of 30 (Article 325(2) of the CCP).
On expiry of the above-mentioned time periods, the decision becomes final and its ruling has almost the status of a "rule of law." If a decision proves to be affected by specific defects considered to be particularly serious, it may then be challenged even after becoming final. The types of review for this are called "extraordinary" means of review or "recourse" (mezzi di ricorso straordinari). These are essentially two, i.e., "revocation" (revoca) and "third party's challenge" (opposizione di terzo). Revocation and third party's challenge will be dealt with in para. 8.3 and 8.4 below.

The question of whether a judgment is final must not be confused with the question of whether the judgment is "binding," i.e., enforceable. Based on a recent reform, both first instance and second instance judgments are now, in principle, immediately enforceable. With respect to both types of decisions, however, a stay of enforceability may be obtained in certain circumstances (Article 337 of the CCP).

8.1. Application to Alter and Modify Outcome

At any time, clerical errors, omissions, or wrong calculations which affect the accuracy of a judgment may be corrected by the court on motion of either party, or on its own motion. The procedure for removing the error is simple and expeditious, particularly if both parties jointly request this (Article 287 et seq. of the CCP).

8.2. Appeals

Appeal is the only type of review where the merits of the case may be wholly re-examined, with respect to both fact and law issues. Indeed, an appeal need not be based on the existence of a specific defect or error of the decision.

First instance decisions are generally subject to appeal, except in very limited cases (e.g., when the decision was based on equity: see para. 6.4 above) (Article 339 of the CCP). Both litigants have the right to appeal against the decision.

A party may begin appeal proceedings by serving a summons to the respondent and filing one with the appellate court (which is the Court of Appeal or, in some cases, the Tribunal: see para. 3.1 above). As mentioned, contrary to any other types of review, including the extraordinary ones (see para. 8.3 and 8.4 below), the appeal can be based on reasons relating to both fact and law. This means that the appellant may claim that the decision is wrong, e.g., because it has been based on a fact that was not true or because the court giving the decision has erroneously construed or applied a rule of law.

The parties to an appeal, particularly the appellant, cannot state new claims. However, claims for interest accrued or damages suffered as of the date of the judgment shall not be regarded as new. Neither may new motions be raised, except for those which may be raised by the court on its own motion (e.g., that the agreement in dispute is null and void). Finally, new evidentiary means are generally not admitted,
unless the court considers them to be essential to resolve the appeal (Article 345 of the CCP).

The court hearing the appeal may either dismiss it, in which case the first instance decision will be confirmed, or rule that the appeal is, in whole or in part, well-founded. In this case, depending on the grounds on which the appeal is based, the appellate court shall either reverse, in whole or in part, the decision by making a new ruling or, less frequently, refer the case to the first instance court for a new decision. This occurs, for example, when the Court of Appeal rules that the Tribunal does have jurisdiction over the case (Article 352 et seq. of the CCP).

8.2.2. Review by the Court of Cassation

Appellate decisions and non-appealable first instance decisions may be submitted to the Court of Cassation for review. The parties to the first instance proceedings before the Tribunal may, once the decision is rendered, agree to waive the appeal and directly seek review by the Court of Cassation (Article 360(2) of the CCP).

Review by the Court of Cassation is restricted to errors of law (Article 360 of the CCP). These errors are traditionally divided into "procedural errors," i.e., errors affecting procedural matters, and "substantive errors," i.e., those affecting the ruling on the merits. Errors are procedural when, e.g., they concern matters of jurisdiction or competence, or when the grounds for decisions are missing, insufficient or self-contradictory. Errors are substantive when one or more law provisions have been erroneously applied, construed or disregarded by the court.

The essential purpose of an application for judicial review is to have the decision under attack "quashed," i.e., set aside, thereby paving the way for a fresh examination of the matter. So, if the petition is successful, in whole or in part, the Court of Cassation will quash the decision (in whole or in part) and "remit" (i.e., refer) the case to another court of the same level as the one which made the judgment. In certain circumstances, typically when it finds that no Italian jurisdiction exists, the Court of Cassation simply quashes the judgment under review without any remittance to a lower court (Article 382(3) of the CCP). If the petition is dismissed, the decision under attack becomes final. If the reasoning set out in the judgment under review was erroneous, but this has not affected the correctness of the court's findings, the Court of Cassation will rectify the reasoning without setting aside the judgment (Article 384 of the CCP).

When a case is referred to a lower court for a new examination, new proceedings have to be started within one year (Article 392 of the CCP). The scope of review by the new court is restricted to that part of the judgment which has been set aside. The court is bound to the rule of law stated by the Court of Cassation, though the quashing of the previous decision does not mean that the new decision will arrive at different findings.
8.2.3. Revocation

Revocation may be sought with respect to appellate decisions and non-appealable decisions. Contrary to appeal and review by the Court of Cassation, any application for revocation is filed with the court which made the decision (Article 398 of the CCP).

Two types of revocation exist: ordinary revocation and extraordinary revocation. Technically, the first is an “ordinary" means of review (application must be made within 30 days of service of the judgment), alternative to review by the Court of Cassation. The second is an “extraordinary" means of review and may be enforced against final decisions (for the difference between ordinary and extraordinary means of review see introduction to this para. 8).

“Ordinary revocation" may be obtained when the decision is either (i) affected by errors of fact unequivocally evidenced by the court's file, or (ii) inconsistent with a final judgment rendered between the parties prior to the decision (Article 395 (4) and (5) of the CCP).

“Extraordinary revocation” is granted when, after becoming final, the decision proves to be wrong due to (i) fraud by one of the litigants or by the judge himself, or (ii) its dependence on evidence later declared to have been false, or (iii) the discovery of documentary evidence which was unavailable at the time of the proceedings due to force majeure or conduct of the other party (Article 395 (1), (2), (3), and (6) of the CCP).

8.2.4. Third Party Challenge

This means of recourse may only be used by those third parties who would have been entitled to intervene in the proceedings but failed to do so (see para. 7.3.2 above). The decision must be challenged before the same court which rendered it. If the application is successful, the judgment becomes unenforceable with respect to the challenging party, though it generally continues to have effect between the original litigants (Article 405 of the CCP).

There exist two different types of third party challenge: “ordinary challenge" and "revocatory challenge." An ordinary challenge may be raised by third parties whose rights are prejudiced or otherwise impaired by the final decision. There is no specific time limit for this application (Article 404(1) of the CCP). A "revocatory challenge" is available only to the creditors and successors in the interest of a litigant. To obtain the "revocation" of the decision, the challenging creditor or successor has to prove that the decision is affected by fraud of the parties, or of one of them. Application for a revocatory challenge must be filed within 30 days of the discovery of the fraud (Article 404(2) of the CCP).
9. Recovery of Litigation Expenses

The final decision also awards costs. Interim orders usually delay the award of costs until the final judgment is rendered. Costs may be divided into "judicial costs," i.e., costs for judicial activities, and "legal costs," i.e., costs for legal representation (essentially attorney's fees). Depending on the type of activity required by the case, judicial costs may be proportional to the value of the case or on a fixed tariff.

The basic principle of awarding costs is that both judicial and legal costs "follow the losing party" (Article 91 of the CCP). This is different from, e.g., the U.S. system, where the party winning a lawsuit is usually not allowed to collect attorney's fees from the losing party.

Courts have much discretion in awarding costs. The winning party may, e.g., be denied the recovery of costs for unnecessary judicial activities or for unreasonably expensive legal representation. Also, courts are expressly authorized to disregard the general principle if the situation so commands (Article 92(2) of the CCP). For example, this is the case when the financial situation of the two parties differ substantially, e.g., when large corporations sue or are sued by individuals. In these circumstances, the court may apportion costs equally between the winning party (the corporation) and the losing party (the individual) or even debit them wholly to the first.

10. Enforcement of Foreign Awards, Judgments, and Orders

The provisions governing the recognition and enforcement of foreign decisions are now contained in the Act (see para. 1 for a definition). The new rules have amended the previous regime (Article 797 et seq. of the CCP, now repealed) in various respects, so as to make the recognition and enforcement of foreign decisions more expeditious.

The Act distinguishes between recognition (dealt with in Articles 64 et seq.) and enforcement (Article 67). In most cases, a party wishing to avail itself of a foreign decision in Italy will need to enforce it. This is most notably the case when the decision orders the payment of a sum of money (or a specific performance) and such payment or performance must be executed in Italy. In some cases, however, a simple recognition may be sufficient. This is, e.g., the case in divorce proceedings. For example, a party, declared by a foreign judge to be divorced and wishing to remarry in Italy, need only have his or her unmarried status recognized in Italy. This is done by requesting that the relevant public official mention the foreign decision in the relevant register of marriages, as no enforcement as such is technically necessary.

As regards recognition, the principle is that a decision is recognized in Italy if its recognition is not challenged by the other party. This principle is called "automatic recognition" (Article 64 of the Act). Anyone interested in challenging such recogni-
tion may do so by filing an application with the Court of Appeal of the district where the decision is to be enforced. In such a case, the Court of Appeal shall review the decision and either grant the recognition, if the decision fulfils certain requirements, or deny it, if it does not. These requirements may be divided into two categories, depending on whether they relate (i) to the compliance by the foreign proceedings with certain procedural provisions of the foreign country or (ii) to the compatibility of the foreign decision with certain Italian law provisions and principles.

As regards the first set of requirements, a foreign decision qualifies for recognition in Italy if

(i) the summons and first pleading instituting the proceedings have been regularly served to the defendant according to the law of the foreign country,
(ii) each of the litigants has entered appearance in the proceedings in accordance with this law and the essential rights of defence have been complied with, and
(iii) the decision has become final in the foreign country. As regards the second category of conditions, a foreign decision qualifies for recognition if

(iv) the foreign court did have jurisdiction over the case based on one of the criteria set out in the Italian law provisions on jurisdiction,
(v) the decision is neither contrary to nor incompatible with, nor has effects which are contrary to or incompatible with, any Italian final decision or
(vi) any Italian public policy provisions or principles;
(vii) in case the same action is pending in Italy, the foreign proceedings have been commenced before the domestic ones (both sets of requirements are listed under Article 64 of the Act).

In certain circumstances, the Act provides for a relaxation of these requirements. So, for example, if the foreign decision relates to the capacity of individuals or the existence of family legal relationships, the decision is automatically recognized if it has been rendered (i) either by the authorities (judicial or others) of the country whose law is applicable according to the Italian conflict of law provisions, or has effect, i.e., is enforceable, in that country; or (ii) by the authorities (judicial or other) of any other country, provided the decision is not contrary to public policy provisions or principles and essential rights to defence have been observed (Article 65 of the Act). Similarly, if the decision has been rendered in non-contentious proceedings (e.g., joint application by the spouses for separation), recognition is automatically granted if the decision has been rendered by the authorities set out under number (i) above or by any other authority which had the power to do so on the basis of one of the criteria set out in the relevant Italian law provisions (Article 66 of the Act).

If the decision has been rendered by a court of an EU country, the conditions for recognition (and enforcement: see below in this paragraph) are also mitigated. These
are set out under European Regulation no. 44/2001, of 22 December 2000 ("the Regulation"), which superseded the Brussels Convention of 1968 on Jurisdiction and Enforcement of Foreign Judgments. In addition to identifying common criteria for the distribution of jurisdiction among the EU countries (see para. 3.1 above), the Regulation further aims at favouring the circulation of the decisions within the EU territory (so-called "Community space", spazio comunitario in Italian). The two main differences with respect to the ordinary regime are that, to qualify for recognition, the court rendering the decision need not have had jurisdiction on the basis of the domestic criteria and the decision need not be final in the country where it has been rendered.

As regards the enforcement of a foreign decision, any party wishing to obtain enforcement must file an application with the Court of Appeal of the district where the decision is to be enforced. As seen above, a party wishing to challenge the enforcement must file a similar application. The conditions to qualify for enforcement are the same as those required for recognition. If the court is satisfied that the conditions are fulfilled, it declares the foreign decision enforceable in Italy (Article 67 of the Act).

11. Pitfalls—Special Considerations

The large majority of claims must be enforced within a certain time period established by law provisions. These are commonly referred to as statutes of limitation (prescrizione). Generally, the time period is 10 years starting from the day when the claim to be enforced has arisen (so called prescrizione ordinaria: Article 2946 of the CC). However, there are a number of special actions where a shorter time applies. For example, claims resulting from tort liability shall be enforced no later than 5 years from the occurrence of the tort (2 years in the event of a road accident) (Article 2947 of the CC). The deadline for “prescrizione” is interrupted by any request for damages or for enforcement of the rights, and it is in any event suspended during the litigation.

Contrary to common law systems, however, Italian authors and case law tend to characterize statutes of limitation as being a substantive issue and do not deal with it when examining procedural matters.

12. Arbitration

The Italian legal system contemplates three types of arbitration: (i) domestic arbitration, when the place of arbitration is located in Italy and the case has no “foreign element,” i.e., no connection with any other countries; (ii) international arbitration, when the place of arbitration is located in Italy, but (a) one of the parties is domi-
ciled or has its place of business abroad, or (b) the obligations in dispute are mostly to be performed abroad; (iii) foreign arbitration, when the place of arbitration is abroad, irrespective of whether the case presents a foreign connection (other than the choice of a foreign arbitration) or is wholly domestic.

12.1. Recognition of Arbitration Agreements

To qualify for recognition by Italian courts, an arbitration agreement or clause must be in writing, be signed by the parties, and show the parties' common intention to submit the dispute at issue to arbitration. If the contract to which the agreement relates is included in a standard form (Article 1341(2) of the CC) or is entered into by a consumer (Article 1469bis et seq. of the CC), the agreement or clause must further be approved by the other party or the consumer by way of a separate signature.

Disputes relating to a number of public policy matters cannot be submitted to arbitration. For example, actions arising from employment contracts or relating to the status or capacity of individuals or family relationships cannot be submitted to arbitration (Article 806 of the CCP and, with respect to foreign arbitration, Article 4(2) of the Act).

12.2. Recognition of Arbitration Awards

In cases involving either domestic or international arbitration, the party wishing to enforce the award must file a copy of it with the Tribunal of the district where the place of arbitration is located. The Tribunal shall satisfy itself that the formal requirements have been complied with and declare the award enforceable in Italy (Article 825 of the CCP).

With respect to foreign arbitration, the party wishing to enforce a foreign award in Italy must file a petition for recognition, together with a copy of the award and of the arbitration agreement, with the Court of Appeal of the district where the other party has its domicile or place of business. If this is abroad, the petition has to be filed with the Court of Appeal of Rome. After having verified that the award has met all formal requirements, the President of the Court of Appeal declares it to be enforceable in Italy unless it finds that the dispute was not suitable for arbitration according to Italian law, or the award, or part of it, is contrary to Italian public policy provisions (Article 839 of the CCP).

12.3. Challenges to Arbitration

Arbitration awards may only be challenged on limited grounds. Broadly, these grounds relate to certain serious infringements of procedural rules or lack of certain essential requirements in the award. As a result, erroneous reconstruction of the facts of the
case or erroneous application or construction of the law by the arbitrator(s) does not normally constitute good cause for review.

Challenges to arbitration awards differ in some respects depending on whether the arbitration is domestic/international, on the one hand, or foreign, on the other. For foreign awards, the relevant provisions of the CCP (i.e., Articles 839 and 840) incorporate the corresponding rules of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

**Domestic Awards and International Awards.** The main ground on which a setting aside of domestic or international awards may be based is nullity of the award. Less significant are the other two types of challenge contemplated by the CCP, i.e., revocation and third party challenge. Broadly, the rules applicable to these are the same that apply to judicial decisions (see paras. 8.2.3 and 8.2.4 above).

An award is null and void when the court having jurisdiction for review (i.e., the Court of Appeal; see below in this para.) finds any of the following:

(i) the arbitration agreement or arbitration clause is null and void;
(ii) the rules governing the appointment of arbitrators has been disregarded or the award has been rendered by someone who should not have been permitted to be the arbitrator;
(iii) the award fails to resolve one or more of the matters in dispute or is self-contradictory;
(iv) the award does not contain certain formal requirements (e.g., signature of all arbitrators, grounds for decision, etc);
(v) the award is contrary to an existing award or to a judicial decision rendered between the parties and already final;
(vi) the rights of defence have not been observed;
(vii) the award is based on principles other than law, i.e., equity, unless the parties expressly authorized this (this applies to domestic arbitration only) (Article 829 of the CCP).

The application for nullity has to be filed with the Court of Appeal of the district where the arbitration took place. This filing has to be made within 90 days of service of the award to the other party. If the Court of Appeal finds that the award is null, it may resolve the case on the merits if it considers the case ready for decision. Otherwise it refers it to a judge for the “preparation” stage, unless all parties jointly request that the case is deferred again to arbitration (Articles 828 and 830 of the CCP).

**Foreign Awards.** The decision by the President of the Court of Appeal to declare a foreign award to be enforceable in Italy (see above in this section) may be challenged within 30 days of service of this decision to the other party. This procedure also applies when the President of the Court of Appeal has found that the award did
not qualify for enforceability based on one of the two reasons set out in para. 12.2 above. In such a case, the action must be started by the party wishing to enforce the award within 30 days of receiving notice of the decision. The review by the Court of Appeal may be further challenged before the Court of Cassation on the basis of ordinary grounds (Article 840 (1) and (2) of the CCP).

Foreign awards are only set aside on the following grounds (Article 840(3) of the CCP):

(i) one of the parties to the arbitration agreement had no capacity to enter this agreement according to the law of the country of which it is a national or the agreement was otherwise not enforceable according to (a) the law chosen by the party as the governing law or, if no choice has been made, (b) the law of the country where the arbitration took place;

(ii) the defendant in the arbitration procedure was not given notice of the arbitration and was therefore not allowed to make its defence;

(iii) the award has been rendered on a matter falling outside the scope of the arbitration agreement;

(iv) the arbitrators have been appointed in a way which is contrary to any provisions of the arbitration agreement or, in the absence of any such provisions, in a way contrary to the law of the country where arbitration took place;

(v) the award has not yet become binding on the parties or its enforceability has been vacated or stayed by an authority of the country where the arbitration took place.

13. Mediation ("Alternative Dispute Resolution")

ADR (Alternative Dispute Resolution) is becoming increasingly common in Italy, though specific regulations do not yet exist.

A common form of ADR is what is usually referred to as "irritual arbitration." (arbitrato irrituale). This is when the parties in dispute charge a person (mediator) to propose an amicable settlement of the controversy. This often raises the question of whether the findings of the mediator are a mere proposal or have, to some extent, a binding character. It also often happens that the parties to a contract agree that an element of the contract be determined by a third person, who usually has a particular expertise (e.g., price adjustment in an agreement for the transfer of a business to be determined by an audit firm). Finally, it is also fairly common that, litigation in Italy being a rather lengthy process, the respective counsels of the parties encourage their clients to seek an amicable settlement that may be incorporated in a compromise (transazione). Once reached, a compromise may be challenged only in specific cases (Article 1969 et seq. of the CC).
It should also be mentioned that the CCP contain some provisions aimed at favouring negotiation by the parties, thereby avoiding litigation. For example, Article 183 of the CCP provides that at the first hearing the judge shall seek to reconcile the parties if the matter in dispute so allows. An attempt to reach an amicable settlement is compulsory if the proceedings concern employment matters (Article 410 of the CCP).