

Freie Universität



Berlin

International Arbitration from an Italian Perspective

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Legance
AVVOCATI ASSOCIATI

Legislative framework

- Italian Code of Civil Procedure (CCP) – Sections 806-840, as lastly amended in 2006. The provisions of the CCP apply to both domestic and international arbitration. An exception is provided for the recognition and enforcement of awards, as the rules applicable to Italian and foreign awards differ to a considerable extent.
- Legislative Decree n. 5/2003 on corporate arbitration
- New York Convention on Recognition and Enforcement of Foreign Awards (ratified in 1969)
- European Convention on International Commercial Arbitration (ratified 1970)
- Geneva Convention on International Commercial Arbitration (ratified in 1970)
- Washington ICSID Convention (ratified 1971)



Reforms

➤ 1983 Reforms

First attempt to reduce the rigidity of the CCP by excluding Italian nationality as a basic requirement for the appointment as an arbitrator.

➤ 1994 Reforms

Introduction of new rules regarding international arbitration in compliance with international conventions, in particular with the New York Convention.

➤ 2003 Reforms

Introduction of special provisions for arbitration in corporate matters.

➤ 2006 Reforms

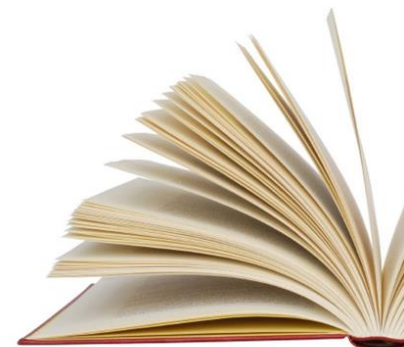
Re-drafting of all previous CCP provisions on arbitral proceedings, aiming to promote and improve recourse to arbitration as an alternative to judicial proceedings.

The Italian legislation does not follow strictly the UNCITRAL Model law, but is substantially in line with international standards.

However, pursuant to the Italian legislation, arbitrators do not have the power to issue interim measures. They may, nevertheless, issue orders though not immediately enforceable as a matter of law.

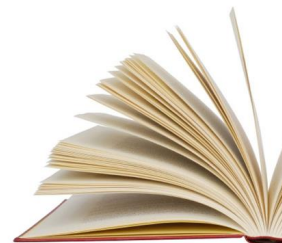
Provisions of the CCP 1/2

- Sections 806-808 *quinquies* CCP: general rules on the arbitration agreement (*i.e.* formal requirements, arbitrability, effects and interpretation of the arbitration agreement) and on free arbitration (*arbitrato irrituale*).
- Sections 809-815 CCP: arbitrators (*i.e.* number, appointment, replacement, incapacity, acceptance, loss, liability, rights and challenge of arbitrators).
- Sections 816-819 *ter* CCP: details on the procedure (*i.e.* seat, procedural rules, evidence, proceedings).



Provisions of the CCP 2/2

- Sections 820-826 CCP: award (*i.e.* timing, content, effects and correction).
- Sections 827-831 CCP: challenge of the award (*i.e.* grounds for setting aside, appeal, revocation and third party opposition).
- Section 832 CCP: international arbitrations pursuant to pre-established rules.
- Sections 839-840 CCP: recognition and enforcement of foreign awards and procedure for opposing such recognition and enforcement.



Administered Arbitration

- Pursuant to section 832 of the CCP, the parties may opt for *ad-hoc* arbitration or administered arbitration.
- If the institution refuses to administer the arbitration, the arbitration agreement remains effective and the provisions of the CCP apply.



Recognition and enforcement of foreign awards

- The relevant Italian provisions (Section 839-840 CCP) comply with the provisions of the New York Convention.
- Two-folded procedure: *exequatur* phase and opposition phase.
- Application needs to be filed with the President of the Court of Appeal of the place where the counterparty is domiciled or if the counterparty is not domiciled in Italy, with the President of the Court of Appeal of Rome.



Recognition and enforcement of foreign awards

- Upon assessment of the formal requirements, the President of the Court of Appeal must declare the award enforceable, unless he establishes *ex officio* that:
 - the subject-matter of the dispute cannot be settled by arbitration under Italian law; or
 - the award is contrary to public policy.



Recognition and enforcement of foreign awards

- The order that grants the recognition and enforcement of the award may be challenged before the Court of Appeal based on the grounds set forth by Section 840 of the CCP.
- The grounds for refusal under Section 840 of the CCP are the same provided for by the New York Convention. Section 840 CCP provides that international conventions prevail over Italian law.
- The decision of the Court of Appeal may be challenged before the Court of Cassation on limited grounds.



Corporate arbitration

- There are special rules on corporate arbitration, provided by Legislative Decree n. 5/2003. Those rules are applicable to disputes on corporate matters:
 - between shareholders; or
 - between shareholders and companies; or
 - concerning directors, statutory auditors and liquidators.



Italian Arbitration Association (AIA)

- The Italian Arbitration Association was founded in 1958 under the auspices of the ICC Italy. AIA collaborates with the ICC headquarters in Paris and from 2011 it is involved in the Committee on Arbitration through AIA President and AIA Secretary General.

- AIA's activities include:
 - Promotion of arbitration themes, through national and international conferences, seminars and courses for business operators.
 - AIA administers arbitral proceedings based on the AIA Arbitration Rules, which have been revised several times over the year, until the most recent that will enter into force in January 2016.



Milan Chamber of Arbitration



- The Milan Chamber of Arbitration (CAM) is a special branch of the Milan Chamber of Commerce and specializes in commercial dispute resolution.
- CAM is the most important Italian institution that administers arbitral proceedings pursuant to the CAM Rules 2010.
- Awards rendered in 2015: 69 (2014: 61).

Statistics CAMERA ARBITRALE MILANO (2015)

- **131 new cases** (2014: 148 - 2013: 167)
- **14 months average duration** of the proceedings
- **Euro 3,769,515 average value** of the dispute
- **40%** of the arbitrations have a **value over Euro 1,000,000**
- **41% panel and 59% sole arbitrator**

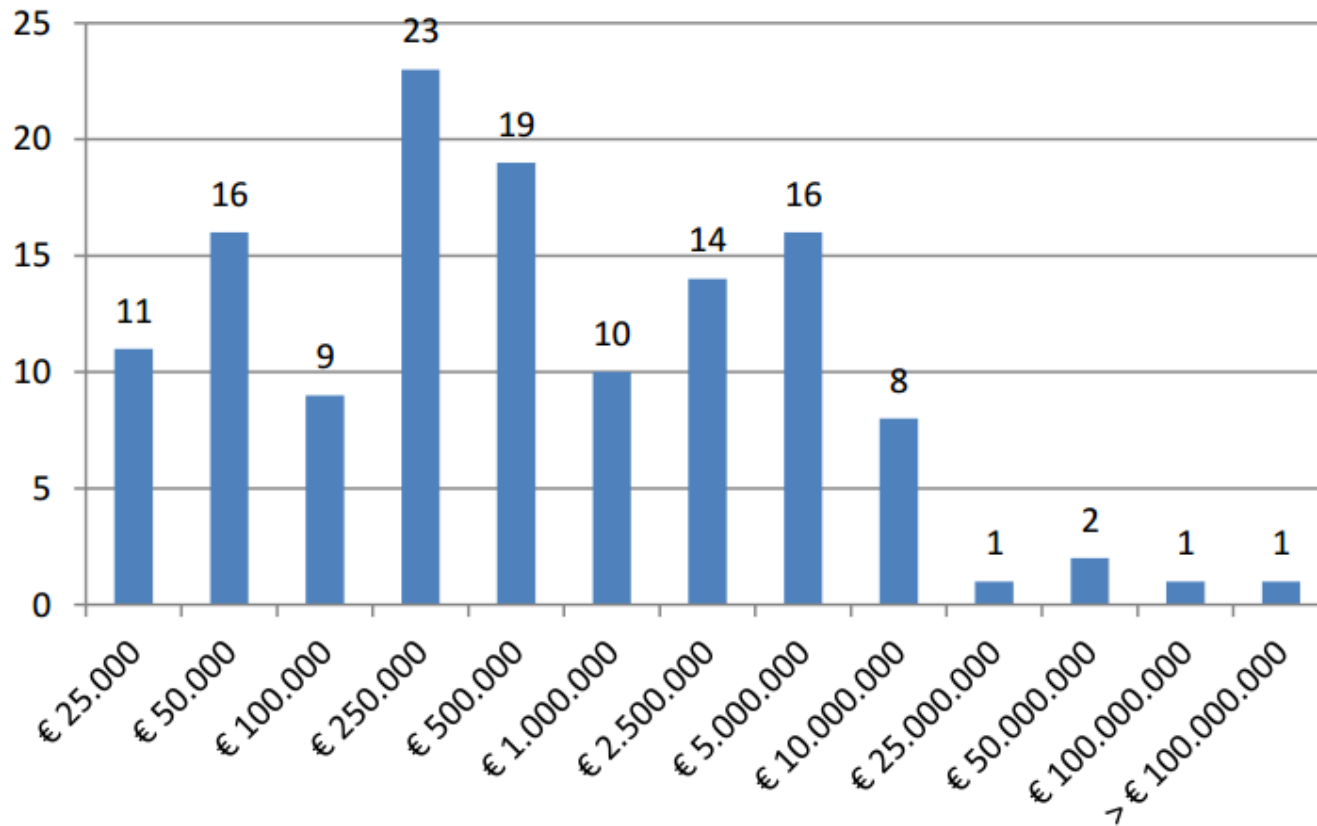
Statistics CAMERA ARBITRALE MILANO (2015)

2015 Outcome

Proceedings closed in 2015	151	100%
Awards	68	43,8%
Filed – Abandonment of the claim	51	34,2%
Settled	14	9,5%
Joined to other proceedings	5	3,4%
Closed – Non-payment of the fees	13	8,9%

Statistics CAMERA ARBITRALE MILANO (2015)

Value



Statistics CAMERA ARBITRALE MILANO (2015)

Subject matters of the disputes

Subject Matter	Number	Percentage
Corporate Matters	38	26%
Construction and Service outsourcing	34	18%
Supply Contracts	13	10%
Commercial Cooperation	10	8%
Real Estate	7	5%
Rent, Sale and Concession of a company branch	6	5%
Intellectual Property	6	5%
Transportation	6	5%
Leasing	5	4%
Buy and Sell Agreements	3	2%
Banking and Insurance	3	2%
Agency	2	2%
Other	12	9%

Statistics INTERNATIONAL CHAMBER OF COMMERCE (2015)

Parties

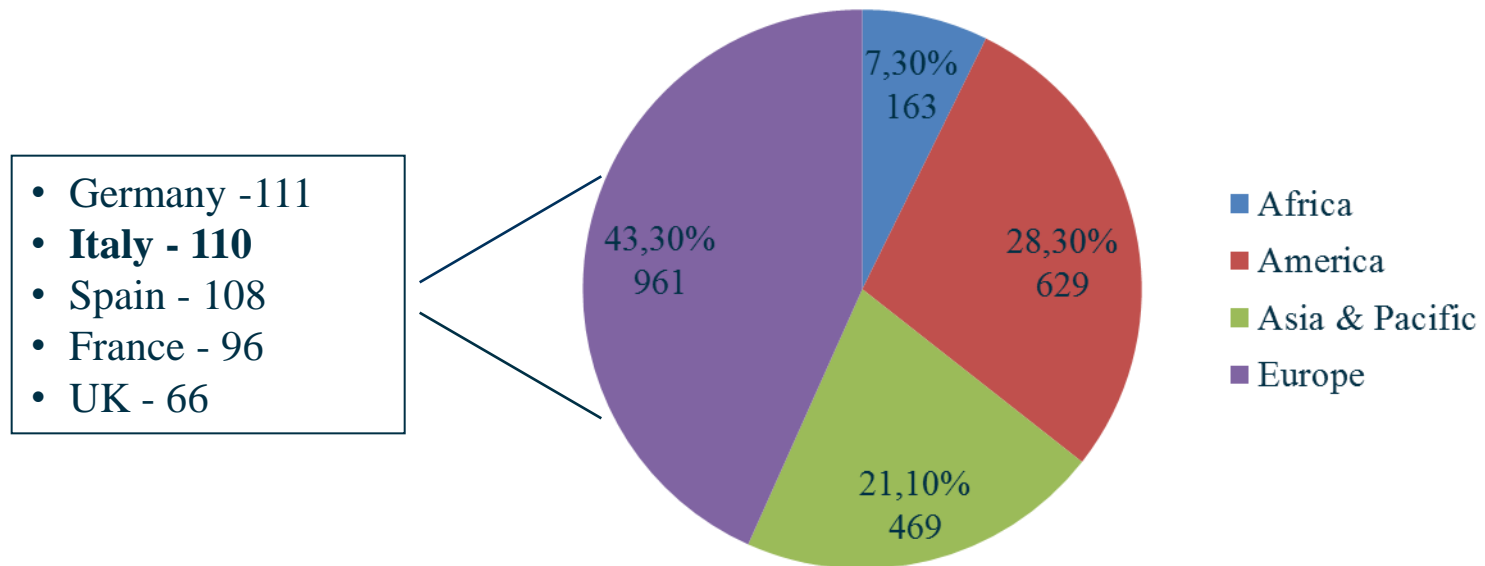
801
arbitrations

2.283
parties

275 «*multi-
party*»
arbitrations

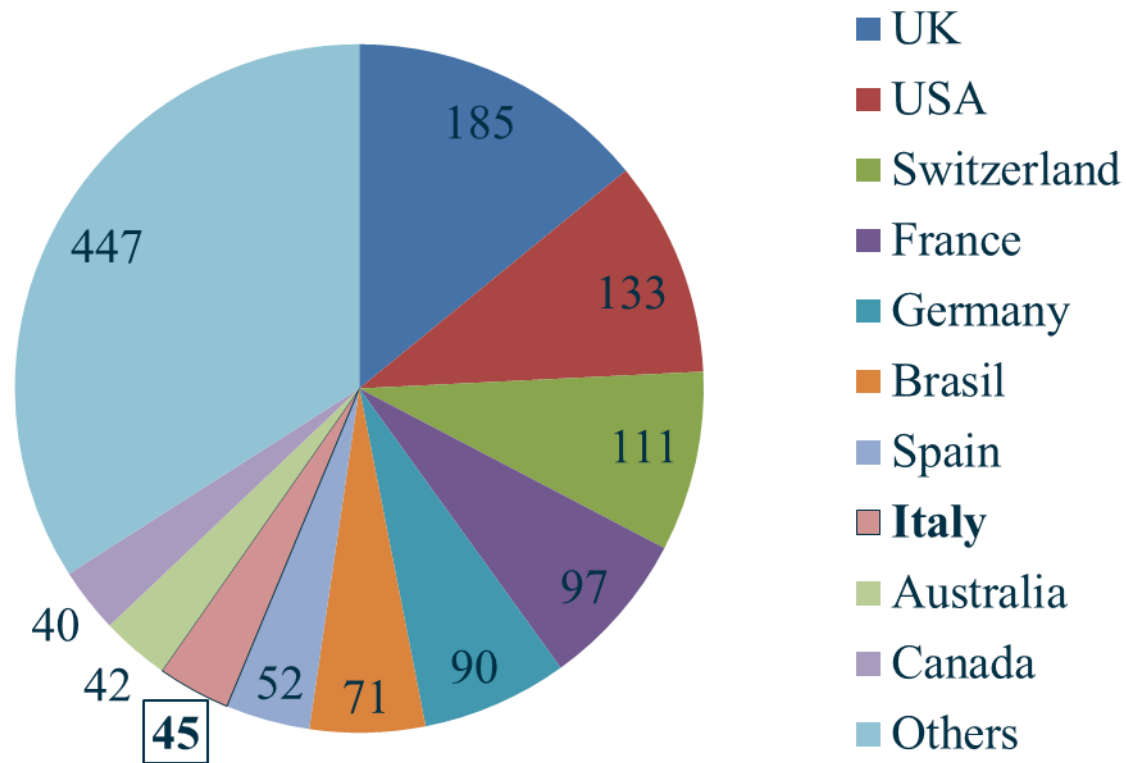
Statistics INTERNATIONAL CHAMBER OF COMMERCE (2015)

Parties



Statistics **ICC** INTERNATIONAL CHAMBER OF COMMERCE (2015)

Arbitrators' Nationality



Statistics INTERNATIONAL CHAMBER OF COMMERCE (2015)

- **110 Italian parties** of ICC arbitrations = 4,82%
(3th position behind USA and Germany)
 - 2014: 79 Italian parties = 3,56% (5th position)

- **8 arbitrations with seat in Italy** = 1% (15th position)
 - 2014: 6 proceedings = 1,2% (16th position)

- **45 Italian arbitrators** = 3,42% (8th position)
 - 2014: 36 Italian arbitrators = 2,71% (10th position)



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