



•ALERT•

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# The Italian reform of civil proceedings - what's new in Arbitration

On 25 November 2021, the Italian Parliament has approved the Delegation Law no. 206/2021, which sets out the principles that the Government shall follow in the reform of the civil proceedings to be enacted within one year. The aim of the reform is to **simplify** and **improve the efficiency** of the Italian civil proceedings and reduce their overall duration. Article 1, paragraph 15 of the Delegation Law is wholly dedicated to arbitration. The reform intends to make arbitration a more attractive dispute resolution method, and to build a more transparent and efficient system.

## **ARBITRATORS' POWER TO GRANT *INTERIM* MEASURES**

Paragraph 15, subparagraph (c) of the Delegation Law enables the Government to empower arbitrators to grant *interim* measures. This is an innovation for the Italian framework, which will overcome the prohibition currently set forth in Article 818 of the Italian Code of Civil Procedure. However, arbitrators will only have this power if expressly given to them by the parties in the arbitration agreement or in a subsequent agreement. Hence, on one side, the reform seems to have considered the demands of arbitration practitioners to remove such a ban, which contributed to limit Italy's appeal as a seat for international arbitration. On the other side, however, the innovation appears to be mitigated by the fact that arbitrators would be vested with this power only if **expressly agreed by the parties**.

When the parties will give to arbitrators the power to issue provisional measures, the ordinary courts shall retain their power only with respect to applications for interim measure filed **before the acceptance** of the appointed arbitrators. This is a remarkable change: the system would shift from the exclusive jurisdiction of the courts on interim measures to the exclusive power of the arbitrators, and would become more "arbitration-friendly" than many foreign legal systems, which leave to the parties the choice of the authority to address.



The Delegation Law does not provide any guideline on the recognition and enforcement of the interim measures. We should wait for the decrees of the Government on the matter.

## **THE APPOINTMENT OF ARBITRATORS**

Paragraph 15, subparagraph (a) of the Delegation Law provides for (i) the right of the parties to **challenge** the arbitrators for "serious reasons of convenience" and (ii) the obligation for the arbitrators, when accepting the appointment, to make a **declaration** containing all the relevant circumstances to such a purpose. If the arbitrator omits such a declaration, the acceptance will be invalid. If he/she makes the declaration but fails to indicate the circumstances referred to in Article 815 of the Italian Code of Civil Procedure (lack of qualifications or interest in the case or connection with the parties, their representatives or their lawyers), he/she shall forfeit his/her assignment.

These provisions, aimed at strengthening the guarantees of **impartiality and independence** of arbitrators, seem in fact superfluous, given that disclosure requirements are already provided for in international best practices (IBA Guidelines on Conflicts of Interest in International Arbitration, General Standard 3) and in arbitration rules of major Italian and international institutions (Art. 20 CAM Arbitration Rules; Art. 11(2) ICC Arbitration Rules; Art. 13 SIAC Rules).

However, the introduction of these requirements might be useful for *ad hoc* arbitrations, which represent a huge part of arbitral proceedings in Italy.

Paragraph 15, subparagraph (h) requires that the appointment of arbitrators **by the judicial authority** shall be based on criteria of transparency, rotation and efficiency.

The intent to guarantee the quality in the appointment of arbitrators is, again, agreeable, however:

- the scope of the rule seems limited to *ad hoc* arbitrations;
- the provision does not make any reference to the expertise of arbitrators;
- only the decrees of the Government will clarify if lists of arbitrators, among whom the Court might choose, will be implemented.

## OTHER PROVISIONS

The other principles established in the Delegation Law are the following:

- the enforceability of the decree with which the president of the Court of Appeal declares the effectiveness of a foreign award which includes an order of payment shall be expressly provided;
- the parties will have the power to indicate and choose the applicable law. The reintroduction of this (obvious) provision is due to the need to determine the applicable law in international arbitrations;
- the term for challenge for annulment of an arbitration award will be reduced from one year to six months;
- as for corporate arbitration, currently regulated by legislative decree no. 5/2003, the relevant provisions shall be moved in the code of civil procedure; also, the Government shall provide that the order of suspension of the resolution of the shareholders meeting could be challenged;
- the so-called "*traslatio iudicii*" from arbitration proceedings to ordinary proceedings and vice-versa will be regulated.

The Law no. 162/2014 has already regulated the transfer of actions from judicial proceedings to arbitration proceedings in order to reduce the workload of the Courts and it is not completely clear why the reform should encourage the transfer of the dispute from arbitration proceedings to judicial proceedings, when the declared goal of the reform is the reduction of judicial disputes.

The outcome of the reform seems to be positive: alongside some redundant provisions, the effort to reorganize the matter and, above all, the removal of the prohibition for arbitrators to grant precautionary measures are to be welcomed. Of course, how the mentioned principles will be translated in practice is up to the Italian Government and the assessment of their successful application, to bring Italy among the more appealing countries for arbitration, will have to be verified in practice.

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