

# Italy

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## Institutional Arbitration: The Italian Perspective

### I. Introduction: Institutional as Opposed to *ad hoc* Arbitration

Arbitration is a consensual process driven by the parties' agreement. The parties can agree to refer a dispute to arbitration either *ex ante*, by a clause in the underlying, commercial contract (*clausola compromissoria*), or *ex post*, in a specific submission agreement designed to deal with a pre-existing dispute (*compromesso*).

The legal seat of the arbitration, which can also be agreed by the parties, provides the overarching governing law of the proceedings (*lex arbitri*). In Italy, as elsewhere, the parties have the option of having their arbitration supervised by an arbitral institution, or of conducting an *ad hoc* arbitration, without institutional supervision and support.

#### I.1 Role of Arbitral Institutions

Institutional arbitration offers parties a convenient, pre-packaged means of resolving their dispute. The arbitral institution's role is not to resolve the dispute itself, but rather to provide administrative support to the arbitral tribunal, which adjudicates the dispute. By choosing institutional arbitration, the parties also incorporate the arbitral rules of that institution in their agreement to arbitrate, which then govern the conduct of the proceedings.

A number of organisations offer institutional arbitration services. Among the best-known commercial arbitration institutions are the International Court of Arbitration of the International Chamber of Commerce ("ICC"), the London Court of International Arbitration ("LCIA") and the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC"). Although these institutions are headquartered in Paris, London and Stockholm, they are each capable of supervising and administering arbitrations around the world.

In addition to these organisations, a number of arbitral institutions focus on particular countries or regions (*e.g.*, the Hong Kong Arbitration Centre and the Cairo Regional Centre for Arbitration, which are specialised in administering disputes in Asia and Africa), specific industries (*e.g.*, the London Maritime Arbitration Association, which administers maritime disputes), or the resolution of disputes in specific legal practice areas (*e.g.*, the World Intellectual Property Organization and the International Centre for the Settlement of Investment Disputes, which administer intellectual property disputes and investment treaty disputes).

The role of the institution in the arbitral process varies depending on the institutional rules and the *lex arbitri*, but it typically includes the following:

- oversight of the parties' and the arbitral tribunal's proper application of the institution's own rules;<sup>1</sup>
- assistance in the appointment of the arbitral tribunal including, where appropriate in:
  - fixing the number of arbitrators where this has not been otherwise agreed by the parties;<sup>2</sup>
  - confirming the appointment of the party-nominated arbitrators;<sup>3</sup>
  - appointing an arbitrator in lieu of a party-nominated arbitrator where a party has failed to make a timely nomination;<sup>4</sup>

- appointing the chairman of the tribunal, where the party-appointed arbitrators are not able to agree upon one, or where this is provided for in the arbitral rules or agreement of the parties;<sup>5</sup> and
- replacing an arbitrator whose appointment has been successfully challenged by a party, or whom the institution deems unable to serve as an arbitrator;<sup>6</sup>
- determination of the seat of the arbitration if not otherwise agreed by the parties;<sup>7</sup>
- approval of the terms of reference governing the appointment of the arbitral tribunal;<sup>8</sup>
- consolidation of parallel arbitral proceedings;<sup>9</sup>
- extension of time limits for the rendition of the final award<sup>10</sup> and, in the ICC system, approval of any award;<sup>11</sup> and
- determination of the fees and expenses of the arbitral proceedings.<sup>12</sup>

In order to submit a dispute to institutional arbitration, it is necessary to use precise language in the agreement to arbitrate. Each arbitral institution has its own model arbitration clause. The ICC's is as follows:

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

Practice varies among arbitral institutions as to whether they are prepared to administer a dispute governed by a set of rules other than their own.

For instance, pursuant to Article 1(2) of the ICC Rules, the ICC Court “*administers the resolution of disputes by arbitral tribunals, in accordance with the Rules of Arbitration of the ICC,*” and indeed it is the “*only body authorized to administer*” those rules. Conversely, the SCC may administer the SCC Rules as well as “*other procedures or rules agreed upon by the parties,*”<sup>13</sup> while the LCIA may act as administrator in arbitrations conducted pursuant to “*the UNCITRAL Rules or any other arbitration, mediation or conciliation rules.*”<sup>14</sup>

## I.2 *Ad hoc* Arbitration

An *ad hoc* arbitration is one where parties agree on particular, non-institutional rules to govern the arbitration rather than conduct it under the supervision of a specialist institution. While parties themselves may devise a bespoke set of arbitral rules to govern the arbitration, it is more common for *ad hoc* arbitration agreements to incorporate a pre-existing set of non-administered rules, such as the 2010 UNCITRAL Arbitration Rules or the 2007 CPR Rules for Non-Administered Arbitration, selected by the parties. These rules offer some of the certainty of institutional rules, without the necessity of submitting the dispute to the supervision of an arbitral institution.

Parties should expect both pre-existing *ad hoc* and institutional rules to provide, in a simple and comprehensive fashion, the procedural framework within which to conduct the proceedings. These rules typically govern:

- the appointment and removal of arbitrators;<sup>15</sup>
- the joinder of additional parties to the arbitration<sup>16</sup> or the consolidation of two or more arbitrations into a single proceeding;<sup>17</sup>
- the granting of interim measures by the arbitral tribunal;<sup>18</sup>
- the conduct of the hearing;<sup>19</sup> and
- the time limit within which the arbitral tribunal must render its final award<sup>20</sup> and the procedure for seeking its correction.<sup>21</sup>

Absent any reference to *ad hoc* or institutional rules in the agreement to arbitrate, the arbitration will be conducted under the default provisions of the *lex arbitri*.

Because there is no institution supervising an *ad hoc* arbitration, if an issue arises prior to the constitution of the arbitral tribunal (for instance, in respect of nominating an arbitrator or seeking interim relief) or during the proceedings (for instance, in respect of removing an arbitrator or postponing the time limit for the rendition of the final award), the parties have recourse only to the courts of the State prescribed by the *lex arbitri*.

### I.3 Advantages of Institutional Arbitration

The significant advantages of institutional arbitration are the certainty of the arbitral process and the professional support provided by the arbitral institution. The institutional rules represent a well-trodden path, offering certainty and transparency to the parties. The rules also undergo periodic revision in order to ensure that they take account of developments in the law and practice of international arbitration.

The support of the arbitral institution is critical to ensure that the arbitral process is conducted as expeditiously and reliably as possible. By exercising its supervisory powers, the institution can help minimise recourse to State courts, particularly at the outset of the proceedings, where disputes may arise before the arbitral tribunal is constituted.

The institution's role in overseeing the arbitral process can help ensure the quality of the arbitration. The institutions have access to a wide pool of experienced arbitrators and, indirectly, the institution's involvement can offer weight to any award made. This may help with enforcement, either through voluntary compliance or enforcement.

### I.4 Institutional Arbitration in Italy

The number of international institutional arbitrations has grown significantly in recent years.<sup>22</sup> In Italy, for example, institutional arbitration has become a popular means to resolve commercial disputes, growing from about 500 institutional arbitrations commenced in 2006, to over 800 institutional arbitrations commenced in 2009.<sup>23</sup>

There are two major Italy-based organisations offering institutional services similar to those offered by the ICC, LCIA and SCC:

- the Italian Arbitration Association (“AIA”), established in 1958 under the auspices of the Italian Committee of the ICC; and
- the Chamber of Arbitration of Milan (“CAM”), established in 1985 as a special branch of the Milan Chamber of Commerce.

The 2006 reform of Italian arbitration law introduced for the first time in Italy specific statutory provisions dealing with institutional arbitration. Pursuant to Article 832 of the Italian Code of Civil Procedure (“c.c.p.”):

1. The agreement to arbitrate may refer to a set of pre-existing arbitration rules.
2. If there is a conflict between the agreement to arbitrate and the arbitration rules to which the agreement to arbitrate refers, the agreement to arbitrate shall prevail.
3. If the parties have not agreed otherwise, the arbitration rules in force at the time of the commencement of the arbitration shall apply to the proceedings.
- [...]
5. The arbitration rules may contemplate further grounds to challenge and replace arbitrators in addition to those already set forth in the statute.
6. If the arbitral institution refuses to administer the arbitration, the agreement to arbitrate remains effective, but [Articles 806-831 c.c.p.] shall apply.

Article 832 applies insofar as the parties, the arbitrators or the institution have fixed the legal seat of the arbitral proceedings in Italy (*i.e.*, insofar as Italian law is the *lex arbitri*). It is not a requirement of an Italy-seated arbitration that it be supervised by an Italian institution. On the contrary, parties are free to incorporate into their agreement to arbitrate the arbitration rules of any institution, whether based in Italy or not, and even to conduct the proceedings on an *ad hoc* basis.

Where the parties have opted for an institutional arbitration in Italy, the proceedings will be conducted under three different sets of rules:

- the institutional arbitration rules incorporated in the agreement to arbitrate (and, where appropriate, any departure from those rules agreed by the parties);
- Article 832; and
- the mandatory rules of Italian arbitration law.

## II. Institutional Arbitration and Article 832 c.c.p.

### II.1 Temporal Conflict of Institutional Arbitration Rules

Institutional arbitration rules are subject to periodic revision in order to keep up with the most recent trends in international arbitration. It is not infrequent that, when a dispute arises, the institutional rules that existed when the parties executed their arbitration agreement have been amended.

Article 832, paragraph 3, c.c.p. addresses this issue, providing that, unless the parties have agreed otherwise, “*the arbitration rules in force at the time of the commencement of the arbitration shall apply to the proceedings*”. The rules of the ICC, AIA and CAM follow a similar approach.<sup>24</sup>

Thus, parties intending to arbitrate their disputes in Italy under the version of an institution’s rules existing at the time of the arbitration agreement must specifically agree to that arrangement. Otherwise, the default provision referred to above will apply.

### II.2 Amendments to Institutional Arbitration Rules

The parties to an agreement to arbitrate may wish to have their disputes supervised by an institution, but to depart from certain provisions of that institution’s rules.

An example that frequently occurs in practice concerns the inclusion in the arbitration agreement of deadlines intended to expedite the constitution of the arbitral tribunal. An arbitration clause that we recently came across provided:

To initiate the arbitration process, [party A] shall give written notice to [party B] nominating an arbitrator and stating the specific nature of the claim, the factual basis of its position and the relief requested. In such case, [Party B] shall appoint another arbitrator within 14 days after receipt of the written notice. The arbitrators so appointed shall appoint a third arbitrator to be president of the arbitration tribunal within 7 days [...].

The arbitration procedure shall follow the Rules of the Arbitration Court of the International Chamber of Commerce (ICC Rules). The arbitration shall be conducted in Milan, Italy.

The time limits provided in that clause were difficult to reconcile with the procedure for the constitution of the arbitral tribunal under the 1998 ICC Rules (to which the parties had submitted). These rules required the ICC Court to “*confirm*” the party-nominated arbitrators before they could nominate a third arbitrator, who would also be subject to “*confirmation*” by the ICC Court.

On this basis, party B objected to the procedure contemplated in the arbitration clause, even though Article 832, paragraph 2, c.c.p. could not be clearer in providing that, “*if there is a conflict between the agreement to arbitrate and the arbitration rules,*” the arbitration agreement prevails.

The ICC Court agreed with party B, refusing to follow the fast-track procedure stipulated in the arbitration clause for the constitution of the tribunal, and took the time it needed to complete the scrutiny of the party-nominated arbitrators before confirming them. As a result, the constitution of the arbitral tribunal took more than 2 months from the commencement of the arbitration, *i.e.*, well beyond the 21 days envisaged in the arbitration clause.

This example illustrates the fact that arbitral institutions may not be prepared to waive certain features of their rules, even where the *lex arbitri* explicitly provides that, in case of conflict, the parties’ agreement “*shall prevail*”.

### II.3 Refusal of the Institution to Administer the Arbitration

In extensively tailoring institutional arbitration rules, the parties risk the refusal of the institution to administer the proceedings. While we are not aware of any such case in practice, it is possible that an institution would refuse to administer a proceeding where the parties’ alterations to the rules affect the rules’ fundamental features.

Given that arbitration is essentially a consensual process, the institution may find that an arbitration agreement purporting to incorporate institutional rules, while simultaneously prescribing an alternative procedure, is inherently inconsistent, and thus, unenforceable. For example, if the parties to a dispute were to provide for ICC arbitration, but denied the ICC Court the right to scrutinise the award or to confirm arbitrators, the ICC could well refuse to administer the arbitration.

Article 832, paragraph 6, c.c.p. provides in such cases that “*the agreement to arbitrate remains effective*”, but the arbitration “converts” from an institutional, to an *ad hoc* proceeding. Of course, nothing would prevent the parties from reacting to the institution’s refusal by either amending the agreement to arbitrate or incorporating other rules into it.

### III. Institutional Arbitration and Mandatory Rules of Italian Law

Articles 806-831 c.c.p. set forth the default rules applicable to arbitral proceedings with an Italian seat, insofar as the parties’ agreement to arbitrate does not contemplate any specific arbitration rules, but simply states, for instance, “*Arbitration: Italy*”.

These rules include provisions that one would expect to find in any *lex arbitri*:

- the scope of arbitrable disputes (Article 806);
- the notion, form and interpretation of an agreement to arbitrate (Articles 807-808-*quinquies*);
- the constitution of the arbitral tribunal and the grounds for challenging and removing any of its members (Articles 809-815);
- the conduct of the proceedings and the taking of evidence (Articles 816-*bis* and 816-*ter*);
- the competence of the arbitral tribunal to rule on its own jurisdiction (Article 817); procedural issues concerning multiparty disputes (Articles 816-*quarter* and 816-*quinquies*), set-offs (Article 817-*bis*), interim measures (Article 818), stays of proceedings (Article 819-*bis*), and *lis alibi pendens* (Article 819-*ter*);
- the making of the award (Articles 820-826); and
- the grounds for challenging arbitral awards (Articles 827-831).

Although some of these rules are mandatory and apply to arbitral proceedings having their legal seat in Italy, most of them apply only in default of institutional or *ad hoc* rules chosen by the parties.

Below, we consider the statutory provisions from which parties may not depart when selecting Italy as the seat of their arbitration, and the impact that these provisions might have on the institutional arbitration rules selected by the parties.

#### III.1 Due Process

Pursuant to Article 816-*bis* c.c.p., the arbitral tribunal must conduct the proceedings in accordance with recognised principles of due process, and ensure that each party has reasonable and equal opportunities to present its case.<sup>25</sup> Virtually all jurisdictions that have an arbitration law include a provision to this effect,<sup>26</sup> as do all recognised institutional arbitration rules.<sup>27</sup>

Pursuant to Article 829, paragraph 1, No. 9, c.c.p., a tribunal’s failure to comply with these provisions constitutes one of the few grounds for setting aside an arbitral award.<sup>28</sup>

#### III.2 Impartiality and Independence of Arbitrators

Institutional arbitration rules tend to provide only general guidance as to the impartiality and independence of the arbitrators. For instance, Article 11(1) of the ICC Rules provides that “*Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration*”.<sup>29</sup> In contrast, Article 815, paragraph 1, c.c.p. lays down specific grounds on which the impartiality or independence of an arbitrator may be challenged. These include cases where an arbitrator:

- has an interest in the dispute, either directly or through an entity, association or corporation of which he is a director (Article 815, paragraph 1, No. 2);
- has a close family or *de facto* relationship with one of the parties, their counsel or legal representatives (Article 815, paragraph 1, No. 3);
- is a party to a pending lawsuit against one of the parties, their counsel or legal representatives (Article 815, paragraph 1, No. 4);
- has a professional relationship with one of the parties that is of such a nature as to call into question his impartiality and independence (Article 815, paragraph 1, No. 6); or
- has given legal advice or provided an expert opinion or testimony on the dispute to a party (Article 815, paragraph 1, No. 6).

Article 832, paragraph 5, c.c.p. provides that the arbitration rules may contemplate “*further grounds to challenge and replace arbitrators*”. It is unclear whether and, if so, to what extent parties may opt out of any of the grounds for challenge set forth in Article 815 c.p.c.

Parties must raise any challenge under Article 815, paragraph 1, c.c.p. within “*10 days from the date when the arbitrator being challenged was nominated or when the party making the challenge was informed of the facts and circumstances on which the challenge is based*” (Article 815, paragraph 3, c.c.p.). The imposition of a time limit for challenging arbitrators is consistent with the need to achieve certainty in the composition of the arbitral tribunal, but is difficult to reconcile with the supposedly mandatory nature of the specific grounds for challenging arbitrators set forth in Article 815, paragraph 1, c.c.p.

Challenging an award on the grounds of an arbitrator’s alleged lack of impartiality or independence is statutorily premised on the party’s having raised the issue in the underlying proceedings (Article 829, paragraph 1, No. 2, c.c.p.). This seems to support the conclusion that all of the Article 815 grounds are waivable.

Interestingly, among the grounds contemplated in Article 815, there are few that the 2004 IBA Guidelines on Conflict of Interest in International Arbitration explicitly characterise as “*waivable*.” For instance, paragraph 2.3.8 of the IBA Guidelines treats the arbitrator’s “*close family relationship*” with “*one of the parties or with a manager, director or member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or with a counsel representing a party*” (Article 815, Paragraph 1, No. 3) as a waivable conflict of interest—that is, a conflict that the parties may agree does not constitute grounds for challenging an arbitrator.

It would thus appear that any evaluation of the arbitrators’ impartiality and independence should be made with reference to the circumstances of the case (as is also suggested by Article 11 of the ICC Rules), and not by abstract reference to the list provided by Article 815.

### III.3 Arbitral Interim Measures

Before referring a dispute to arbitration, or during the course of the arbitral proceedings, a party may seek to obtain interim measures from the arbitral tribunal or State courts. The availability and scope of such measures can vary depending on the rules applicable to the arbitration and the nature of the relief sought.

Several institutional arbitration rules empower arbitrators to grant interim relief.<sup>30</sup> However, pursuant to Article 818 c.c.p., “*Arbitrators may not grant attachments or other interim measures, unless otherwise provided by law*”. At present, the only exception to the prohibition in Article 818 c.c.p. with respect to the granting of interim relief is Article 35, paragraph 5, of Legislative Decree No. 5, dated January 17, 2003, which empowers arbitrators to suspend the effectiveness of a shareholders’ resolution pending final adjudication of a dispute relating to its validity.

Italian scholars have characterised Article 818 c.c.p. as an unquestionably mandatory provision of Italian arbitration law. In 2009, the Italian Supreme Court endorsed this position,<sup>31</sup> and an ICC tribunal having its seat in Italy recently refused to grant certain interim relief sought by the claimants, noting that:

Claimants have based their request for interim measures on Article 23(I) [1998] ICC Rules [...]. However, since, pursuant to Article 16 SPA, the arbitration takes place in [Italy], it is governed by the provisions of the *lex loci arbitri* contained in Articles 806 et seq. Italian [Code of Civil Procedure]. Since Article 818 Italian [c.c.p.] constitutes mandatory law from which the Parties cannot derogate by agreeing on the [1998] ICC Rules, the Tribunal is of the view that Claimant’s request is primarily governed by Article 818 Italian CPC and only subsidiarily by Article 23(I) ICC Rules. [T]he Tribunal concludes that it is not entitled to grant interim measures under Article 818 CPC and thus dismisses Claimant’s Request for Interim Measures.<sup>32</sup>

Parties intending to arbitrate their disputes in Italy should be mindful of the restrictions imposed on arbitrators pursuant to Article 818 c.c.p. They should also be aware that Article 818 c.c.p. would not preclude them from resorting to the State courts, in Italy or elsewhere, to obtain interim measures prior to or during the arbitral proceedings, and that Italian courts have proven to be more efficient and

expeditious than one might expect in granting a wide range of highly effective relief, including on an *ex parte* basis.

Some institutional arbitration rules explicitly recognize a party's right to seek interim measures from a State court, and specify that by doing so, the parties are not waiving their agreement to arbitrate. Thus, Article 28(2) of the ICC Rules provides:

Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal.<sup>33</sup>

There are at least two grounds that may arguably be invoked to challenge arbitral interim measures granted in the form of partial awards:

- Article 829, paragraph 1, No. 4, c.c.p. (*i.e.*, the award may be set aside if the tribunal exceeds its powers), insofar as the interim measures fall outside the scope of the power granted to the arbitral tribunal under the *lex arbitri*; and
- Article 829, paragraph 3, c.c.p. (*i.e.*, the award may be set aside if it is contrary to public order), provided that the notion of public order is interpreted in a way that encompasses any violation of Italian mandatory law (including Article 818 c.c.p.).

#### III.4 Challenges to the Award

To preserve the finality of the arbitral process, institutional arbitration rules normally exclude the parties' right to challenge awards rendered in proceedings conducted in accordance with the institution's rules. These provisions are effective only insofar as they are permitted by the *lex arbitri*. Thus, pursuant to Article 34(6) of the ICC Rules, "*the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.*"<sup>34</sup>

In Italy, the grounds for challenging an arbitral award are set out in Article 829, paragraph 1, c.c.p. These include: (a) the invalidity of the arbitration agreement; (b) the appointment of the arbitral tribunal in breach of the rules agreed upon by the parties; (c) the rendition of an award that deals with issues not falling within the scope of the arbitration agreement; and (d) breaches of due process.

Article 829, paragraph 1, c.c.p. applies "*notwithstanding any waiver by the parties*". Thus, insofar as Italy is concerned, waivers of the grounds for challenging an award provided by institutional arbitration rules are of little or no value.

In this area, the only statutory provision that is not mandatory relates to the parties' ability to challenge an award for violation of the applicable substantive law. Article 829, paragraph 3, c.c.p. provides that awards "*may be set aside on the grounds of violation of law only to the extent that the parties have so agreed*".

#### III.5 Liability of the Arbitrators

Article 40 of the ICC Rules contemplates a limitation of liability clause whereby:

The arbitrators [...] shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.<sup>35</sup>

Pursuant to Article 813-ter c.c.p., arbitrators are liable *vis-à-vis* the parties to the extent that they have acted willfully (with *dolo*) or with gross negligence (*colpa grave*). This is a mandatory provision of the *lex arbitri*, which is intended to limit the operability of exclusion of liability clauses like the ICC's.

#### III.6 Notification of the Award

Institutional rules may include provisions dealing with the notification of the award. For instance, pursuant to Article 34 of the ICC Rules, "*Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitral tribunal [...]*"<sup>36</sup>

Pursuant to Article 828 c.c.p., an award may be challenged within one year from the date when it

is made or 90 days from when the party has received notification of the decision. The notification of the award by the institution does not trigger the 90-day time limit, because it is premised on the interested party's willingness to "accelerate" the proceedings, rather than on the initiative of the arbitral institution.<sup>37</sup>

#### IV. Conclusions

Parties are free to decide whether to have their arbitral proceedings administered by a specialist institution or not. The advantages of administered arbitrations have been outlined above. The growing number of institutionally-administered arbitrations shows the increasing awareness of the importance of having a professional and trustworthy institutional framework for the conduct of arbitral proceedings.

Arbitral institutions are engaged in a constant effort to provide up-to-date answers to commercial actors' concerns, by offering prompt and competent assistance to arbitrating parties. Given the long experience that most institutions have in international arbitration, awards rendered in institutional arbitrations are likely to enjoy a smoother path through enforcement than those issued in *ad hoc* arbitrations.

The continuing and growing success of institutional arbitration depends on the attitude of the *lex arbitri* to institutional arbitration. Italy offers a modern arbitration law that regulates both *ad hoc* and institutional arbitration. Parties wishing to arbitrate their disputes in Italy can also rely on Italian internationally trusted institutions such as the AIA and CAM.

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#### Endnotes

- 1 Article 1 of the Statutes of the ICC Court; Article D of the Constitution of the LCIA Court; Article 1 of the SCC Rules.
- 2 Article 12(2) of the ICC Rules; Article 5(4) of the LCIA Rules; Article 12 of the SCC Rules.
- 3 Article 13 of the ICC Rules; Article 7 of the LCIA Rules.
- 3 Articles 12(3)(4) of the ICC Rules; Article 7(2) of the LCIA Rules; Article 13(3) of the SCC Rules.
- 5 Article 12(5) of the ICC Rules; Article 5(6) of the LCIA Rules; Article 13(2)(3) of the SCC Rules.
- 6 Article 15 of the ICC Rules; Article 11 of the LCIA Rules; Article 17(1) of the SCC Rules.
- 7 Article 18 of the ICC Rules; Article 16(1) of the LCIA Rules; Article 20(1) of the SCC Rules.
- 8 Article 23(3) of the ICC Rules.
- 9 Article 10 of the ICC Rules; Article 11 of the SCC Rules.
- 10 Article 30(2) of the ICC Rules; Article 37 of the SCC Rules.
- 11 Article 33 of the ICC Rules.
- 12 The overall costs of an arbitration can be determined by reference to the amount in dispute (as in the ICC system; *see, e.g.*, Appendix III to the ICC Rules) or the time spent by the arbitrators and institution's staff members (as in the LCIA system; *see, e.g.*, the LCIA Schedule of Arbitration Costs).
- 13 Article 1 of the SCC Rules.
- 14 Article D(1)(b) of the Constitution of the LCIA.
- 15 Articles 12-15 of the ICC Rules; Articles 5-11 of the LCIA Rules; Articles 7-14 of the UNCITRAL Rules.
- 16 Article 7 of the ICC Rules; Article 22(1)(h) of the LCIA Rules; Article 17(5) of the UNCITRAL Rules.
- 17 Article 10 of the ICC Rules.
- 18 Article 28 of the ICC Rules; Article 25 of the LCIA Rules; Article 26 of the UNCITRAL Rules.
- 19 Article 26 of the ICC Rules; Article 19 of the LCIA Rules; Articles 28 and 31 of the UNCITRAL Rules.
- 20 Article 30(1) of the ICC Rules; Article 37 of the SCC Rules.
- 21 Article 35 of the ICC Rules; Article 41 of the SCC Rules; Article 38 of the UNCITRAL Rules.

- 22 For instance, the ICC received a total of 793 new cases in 2010. Between 2000 and 2010, the ICC's workload grew by 40%. ICC 2010 Statistical Report.
- 23 Istituto per l'Arbitrato e il Diritto Commerciale, *Quarto Rapporto sulla diffusione della giustizia alternativa in Italia*, 2010, p. 31.
- 24 Article 6(1) of the ICC Rules; Article 39(2) of the CAM Rules; Article 39(1)(1)-(2) of the AIA Rules.
- 25 According to the Italian Supreme Court, the principle of due process entails the parties' right to (a) be afforded equal opportunity to present their cases, (b) access the case file, (c) submit briefs and rebuttals within given time limits, (d) have the opportunity to review promptly any motions and requests filed by the counterparty, and (e) examine the evidence and findings of the proceedings. *See, e.g.*, Italian Supreme Court, Judgments No. 19949, dated September 26, 2007; No. 1496, dated February 2, 2001; No. 6288, dated May 16, 2000; No. 3632, dated April 8, 1998.
- 26 Article 33(1)(a) of the English Arbitration Act; Article 1510 of the French *Nouveau Code de Procédure Civile*; and Section 24 of the Swedish Arbitration Act. *See also* Article 18 of the UNCITRAL Model Law.
- 27 Article 22(4) of the ICC Rules; Article 2(3) of the CAM Rules; Article 25(1) of the AIA Rules. *See also* Article 14(1)(i) of the LCIA Rules; Article 19(2) of the SCC Rules.
- 28 *See also* Article V(1)(b) of the New York Convention.
- 29 Article 11(1) of the ICC Rules; Articles 18(2) and 19(1) of the CAM Rules; Article 14(2) of the AIA Rules. *See also* Article 5(2) of the LCIA Rules; Article 14(1) of the SCC Rules.
- 30 Article 28(1) of the ICC Rules and the new Emergency Arbitrator Rules in Appendix V of the ICC Rules; Article 22(2) of the CAM Rules; Article 19(1) of the AIA Rules.
- 31 Italian Supreme Court, Judgment No. 9909, dated April 27, 2009.
- 32 The award is unpublished.
- 33 Article 28(2) of the ICC Rules; Article 22(2) of the CAM Rules; Articles 18 and 19 of the AIA Rules. *See also* Article 25(3) of the LCIA Rules; Article 32(5) of the SCC Rules.
- 34 Article 34(6) of the ICC Rules; Article 30(5) of the AIA Rules. *See also* Article 26(9) of the LCIA Rules; Article 40 of the SCC Rules.
- 35 Article 40 of the ICC Rules; Article 31 of the LCIA Rules; Article 48 of the SCC Rules.
- 36 Article 31(2) of the CAM Rules; Article 34(3) of the AIA Rules. *See also* Article 26(5) of the LCIA Rules; Article 36(4) of the SCC Rules.
- 37 Italian Supreme Court, Judgment No. 17420, dated August 30, 2004.

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