

The Reform of Italian Arbitration Law

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On November 25, 2021, the Italian Parliament passed the long-awaited Enabling Act for “the efficiency of the civil trial” as one of the conditions attached to the Next Generation EU funding. Among its provisions, this law amends part of the Italian arbitration law with a view toward making arbitration in the country more appealing to individuals and foreign investors. Worthy of particular attention are the amendments regarding (1) the independence and impartiality of arbitrators, and (2) the arbitral tribunal’s power to grant interim relief.

Up until now, the Italian Code of Civil Procedure (CPC) has not compelled arbitrators to disclose any fact or circumstance that would reasonably call into question their impartiality and independence. This is not to say, though, that Italian law neglects impartiality and independence on the part of arbitrators. To the contrary, Article 815 CPC enumerates several situations where arbitrators can be challenged for specific circumstances that are likely to give rise to justifiable doubts about their unbiased judgment. However, the Enabling Act aims at shoring up this reactive guarantee by introducing a proactive duty of disclosure, which directly burdens the arbitrators appointed. Specifically, Article 15(a) of the Act calls for an express mandate for arbitrators to disclose, upon acceptance of their appointment, any situation that may give grounds for a challenge under Article 815 CPC. Along those lines, Article 15(a) also introduces broad grounds to challenge an arbitrator for any “severe reason of suitability.” Through these amendments, the Government commits to enhance the guarantee of fairness of the parties’ fact- and law-finder at the very outset of proceedings, thus avoiding the costs associated with a challenge.

Arguably, the Enabling Act’s most important innovation is contained in Article 15(c) and relates to the arbitrators’ power to grant interim relief. To date, with the only exception of corporate law disputes, no arbitral tribunal whose seat is in Italy is vested with the power to provide provisional relief. Article 818 CPC leaves no room for doubt by proscribing any provisional remedies rendered by an

arbitral tribunal. The magnitude of this provision is reflected, for instance, by Article 26 of the Milan Chamber of Arbitration's (CAM) Rules, which point out that the arbitral tribunal may issue interim measures unless "barred by mandatory provisions applicable to the proceedings." Article 15(c) enables the Government to empower arbitrators to grant interim relief as long as parties manifest the intent of achieving this end. Therefore, arbitrators will have the power to issue conservatory measures, subject to the Italian *lex arbitri*, if the arbitration agreement expressly provides so as well as references institutional rules that contemplate such a power (like the above-mentioned CAM's Rules). Understandably, Article 15(c) specifies that a national court issues the interim measures if a party seeks them before the arbitral tribunal has been fully appointed. Of course, the enforceability of said interim relief remains a prerogative of national courts. Lastly, Article 15(c) directs the Government to create a new appeal as of right whereby a party may challenge the arbitral tribunal's decision regarding the requested interim relief before a national judge. However, said appeal can be brought exclusively for errors of law enumerated in Article 829(1) CPC, which currently warrants an appeal designed to void the final award. It follows that a national judge will not be allowed to hear the appeal if the party avers errors of fact.

While awaiting the implementing regulations issued by the Government, these changes represent a desirable modernization of the Italian arbitration law and should therefore be hailed. However, while they bring Italy up to the speed of countries that are legally more appealing to foreign investors, it remains to be seen whether they will be sufficient to effectively attract foreign investors or prove to be too late or too timid.