ITALY

Global litigation guide

About

Welcome to The Global Litigation Guide (the **"Guide"**) which has been prepared by DLA Piper's civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper's guide to Legal Professional Privilege and (coming soon) DLA Piper's guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

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Italy

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Overview of court system

Italy's legal system follows the civil law tradition, where codified statutes are of primary importance.

The Italian civil court system is organized into a three-tier structure:

- Courts of First Instance;
- Courts of Appeal; and
- the Supreme Court (Court of Cassation).

Proceedings before the courts are conducted exclusively in Italian. Codified laws prevail over case law; in Italy judgments have only argumentative value, not precedent value.

There are specialized courts for industrial property and corporate matters. Every Italian city has a Court of First Instance and there are 26 Courts of Appeal.

Rules on jurisdiction are set out in the Italian Code of Civil Procedure (Italian Code). These rules determine which Court of First instance a particular case should be filed in. The territorial jurisdiction of the Courts of Appeal depends on the location of the Court of First Instance that issued the decision to be appealed. The seat of the Court of Cassation is unique, as it is fixed in Rome.

On October 17, 2022, Law Decree No. 149 of October 10, 2022 was issued, in which the Italian government reformed the Italian Code to speed up ordinary proceedings, which were generally considered to take too long.

It is now expected that proceedings before the Court of First Instance should take a maximum of two years, while appeal proceedings should take a maximum of one year.

Limitation

As a general rule, contract claims are subject to a ten year limitation period, beginning on the date on which the rights under the contract could have been enforced. For tort claims, the limitation period is five years from the date when the event giving rise to the tort claim occurred.

Procedural steps and timing

Legal representation for civil proceedings is mandatory except for disputes:

- for which the *giudice di pace* is competent. The *giudice di pace* is a judge of first instance who is competent for disputes below a certain value (EUR10,000 or EUR25,000) depending on the subject matter of the dispute) and / or disputes concerning specific subject matters; and

- where the amount in dispute either (i) does not exceed EUR1,100; or (ii) exceeds EUR1,100 but in light of the nature and amount of the dispute, the *giudice di pace* expressly authorizes a party not to be represented by an attorney.

Writ of summons

In Italy, civil proceedings start when the claimant serves a writ of summons, either through the use of a bailiff or, if the defendant has a certified e-mail address (PEC), by sending the writ via email.

In some proceedings, the claimant is required to file a petition before the Court which will be decided by the Judge who will issue a decree; the petition and decree are then served on the defendant.

The writ / petition will summon the defendant to appear at a hearing on the date indicated by the claimant in the writ. The writ must also contain the following information:

- details of the court before which the claim is filed;
- all the relevant information required to identify the claimant and the defendant;
- a description of the subject matter of the claim;
- an indication of statutory requirements to be fulfilled as a condition of admissibility of the writ, if required;
- a clear and specific description of the factual and legal grounds of the claim and the relative conclusions;
- an indication of the evidence on which the claimant intends to rely or request in the proceedings (for example, a party may request that witnesses are heard on specific topics or an expert is appointed by the court) and, in particular, an indication of the documents which the claimant exhibits with the writ of summons;
- the name of the lawyer(s) acting and the power of attorney; and
- an invitation to the defendant to file its statement of defense and to appear at the hearing, with the warning that, where the defendant intends to: (i) raise a counterclaim; (ii) join a third party to the proceedings; or (iii) raise objections based on procedural deficiencies or merit which the judge cannot raise *ex officio*, it must file its statement of defense at least 70 days before the date of the first hearing.

The first hearing

Between the date of the first hearing and the date of the service of the writ of summons on the defendant, there must be a period of at least 120 days if the place of service is in Italy, or 150 days if the place of service is abroad. When setting the date of the first hearing, the claimant must ensure it complies with these timeframes otherwise the court will declare the writ of summons null and void. Although the claimant schedules the first hearing by indicating the intended date in the writ of summons, judges may postpone the date of the hearing *ex officio* depending on their workload and / or calendar.

Parties to the dispute must attend the first hearing. The judge may also request or allow the summoning of a third party to the proceedings, scheduling a further hearing to allow this summons if necessary. The judge may also question the parties and use this hearing as an opportunity to explore the possibility of an amicable settlement between the parties.

Before the first hearing, the judge will verify certain preliminary procedural issues, such as the successful service of the writ of summons on all parties and the capacity of the claimant to bring the claim.

Before the first hearing, the parties are given three consecutive terms (a first term of 40 days before the date of the first hearing, a second term of 20 days and a final term of ten days before the hearing) to simultaneously: (i) file supplemental written submissions particularising or modifying the prayers for relief and the objections outlined in the writ of summons and / or in the statements of defense; and (ii) supplement the evidence requests they have made, respectively, in the writ of summons and / or the statement of defense.

Once these preliminary stages have been completed, various scenarios may follow:

- If the judge deems the dispute ready to be determined, the hearing for the submission of the parties' final prayers for relief is immediately scheduled;

- If the judge deems the dispute not to be complex, it may order an expedited procedure to be followed rather than the ordinary procedure. Alternatively, if the dispute involves disposable rights and the judge considers one party's arguments to be made out whereas the opposing party's are not, it may issue an order in favor of the first party. The order thus rendered is immediately executable but it is not covered by the *res iudicata* effect;
- Should the judge deem the dispute not ready to be determined, a hearing will be scheduled to decide whether the evidence requested by the parties will be admitted or refused. At the same time, the judge will schedule further hearings, and define the issues to be decided at each hearing. At these hearings, the judge will decide on these issues and then the evidence-taking phase begins.

The taking of evidence

Where the judge deems the dispute not ready to be determined, the judge sets the timing, place and method for the taking of evidence, taking account of the existing procedural schedule. For example, if witness testimony is admitted, the judge will set a hearing for the witness(es) to render their testimony. If the taking of evidence needs to take place outside the court's district, the judge will delegate that step to a judge in the relevant location unless, exceptionally, at the parties' joint request, the president of the tribunal confirms that the original judge shall travel for the taking of the evidence.

The judge taking the evidence decides (by issuing an order) all of the issues which arise during the evidence-taking phase. The taking of evidence is recorded in minutes, drafted under the judge's supervision.

Once the evidence-taking phase is concluded and the judge considers the evidence which has been collected is sufficient to support the case, it submits the case for decision.

The final hearing

The hearing for the parties to submit their final prayers for relief will usually take place within one year or, in some instances, two years after the decision of the judge that the dispute is ready to be determined or the conclusion of the evidence-taking phase. The parties are then granted 60 days from the date of the hearing to file their conclusive briefs, 30 days thereafter for written closing submissions and 15 days thereafter to file the reply briefs. The judge's decision is issued within 60 days of the parties filing their reply briefs. The decision is temporarily enforceable, notwithstanding any appeal.

If the matter is appealed, the appeal judge may stay, in whole or in part, the enforceability or execution of the judgment, with or without seeking a bond. However, the judge may only grant a stay upon receipt of a motion filed by one of the parties either with the main appeal or the incident appeal, i.e. when there are serious and well founded reasons to do so and there is a real possibility that one of the parties may become insolvent.

Debt collection

In addition to ordinary proceedings, there is a simplified judicial procedure aimed principally at commercial debt collection. Such debt collection is obtained through the issue of a payment injunction (*Decreto Ingiuntivo*) by the competent court. The procedure applies to debts which are:

- quantified in their amount;
- due and payable (*liquidi* and *esigibili*); and
- supported by written evidence.

As part of this simplified judicial procedure, the judge normally proceeds, without the knowledge of the alleged debtor, to a brief assessment of the documentation filed. Where the legal requirements referred to above are met, the judge will issue an order for payment which becomes enforceable if the debtor fails to oppose it within 40 days from service of a certified copy of the order where the debtor is situated in Italy, or 50 days where the debtor has its registered office elsewhere in the European Union, and 60 days in all other cases. If the debtor serves the creditor with opposition in the form of an ordinary writ of summons indicating that it will oppose the order, the proceedings will follow the ordinary procedural steps and timings referred to earlier in this section. Even where an opposition writ or summons is served, provisional enforcement of the judgment may be granted if certain legal requirements are met.

Disclosure and discovery

There is no obligation of discovery under Italian law.

This means that the parties are not obliged to share relevant documents unless an order to this effect is issued by a judge. Such orders can only be made when a party specifically requests a document to be disclosed and the judge deems such disclosure necessary. No such order can be issued by the court on its own initiative.

A party wishing to request the disclosure of specific documents must file the request within the three consecutive terms set by the judge to file supplemental written submissions and evidence requests (namely, the first term of 30 days from the date of the first hearing or any subsequent date that the judge deems appropriate, the second term of 30 days and the final term of 20 days). Each document request should:

- specifically identify the document(s) requested;
- prove that the party making the request has no access to the requested document(s) and that there are no alternative ways to get access to it; and
- explain why that document is relevant and material to the case.

The judge can permit the filing of all documents, even confidential documents between lawyers.

A party receiving a document request is not obliged to disclose the document requested. In practice, disclosure only occurs when the documents requested do not harm the disclosing party's case.

Default judgment

If the defendant does not file the statement of defense 70 days before the date set in the writ of summons or such date as the judge has specified, the court will verify whether the claim was properly served. If proper service can be established, the judge will declare the defendant's contumacy (i.e. the defendant's failure to appear to contest an action). Despite the defendant's contumacy and lack of participation in the proceedings, the claimant is still required to prove its case. A judge will therefore assess the merits of the claimant's claim and issue a judgment if the claimant discharges its burden of proof. The judgment will then be served on the defendant, who can appeal it according to the general rules governing appeals.

The judgment must be challenged within 30 days of notification or within six months of publication (if no notification was made).

Appeals

An appeal must be filed within six months from the date on which the judgment is published (i.e. filed at the registrar's office of the rendering judge) or, if a certified copy of the judgment is served at the request of a party, within 30 days from the date of service. Where a judgment is appealed, the case will be revisited by the Court of Appeal. The parties are not permitted to introduce new claims, and further evidence is either not admissible or is admissible only to a very limited extent.

The appeal may be declared inadmissible if it is manifestly unfounded.

An appeal does not suspend the effect of the judgment. However, the appealing party may request that the judgment is suspended on the grounds that it will create irreversible damage and the appeal is likely to be well founded.

During the appeal, the case is completely re-examined but no new documents may be filed.

The timeframe for the Court of Appeal to decide an appeal varies depending on the district. Usually, larger districts (such as Rome and Milan) take longer. On average, it takes the Court of Appeal no less than 36 months from the date on which the First Instance Court gave judgment.

A Court of Appeal decision can be challenged before the Supreme Court, but only on grounds of law (whether substantive or procedural). The timeframe for appealing a Court of Appeal decision is:

- six months from the date on which the appellate judgment is published (i.e. filed at the registrar's office of the rendering judge); or
- if a certified copy of the judgment is served at the request of a party, within 60 days of the date of service.

In principle, the Supreme Court does not review a decision on the facts.

The timeframe for the Supreme Court (Court of Cassation) to decide on appeals ranges from 36 to 48 months.

Interim relief proceedings

Italian law provides for, and clearly defines, different kinds of interim measures. They include:

- protective measures, which are sought pre-action, and are temporary in nature such that they need to be confirmed or revoked by the final judgment; and
- anticipatory measures, which remain effective even if they are not followed by an action on the merits.

Parties may seek interim relief measures both during the proceedings and prior to their commencement. Where a protective interim relief measure is granted before the commencement of the proceedings, the claimant must commence an action on the merits within the timeframe set by the judge, which shall not exceed 60 days from the adoption of the interim measure. Otherwise, the interim measure becomes ineffective.

An interim measure may be granted after a brief and concise evaluation of the case, which takes place during a hearing in which both parties are invited to participate. Generally, an interim measure will be granted where the claimant proves the presence of the following two conditions:

- the *fumus boni iuris*, that is a prima facie case of the right claimed; and
- the *periculum in mora*, that is a well founded risk that the right which the interim measure seeks to safeguard may be irreparably harmed whilst the dispute is pending.

In some cases, the court may provisionally decide interim relief requests without holding any hearing and so without involving the defendant (i.e. ex parte). In these cases, the courts would then re-establish the necessary dialogue (and due process) with both parties in a second phase after the interim measure is rendered. In this second phase, a hearing will be scheduled within 15 days of the interim measure order being granted, and the claimant must serve the defendant with the request and order of appearance within eight days of the order. These timeframes are tripled in cases where service is required to be made abroad. Once the other party is involved and heard, the measure will be: (i) confirmed; (ii) modified; or (iii) revoked.

The duration of interim relief proceedings varies depending on the measure requested and on the specificities of each case. The timeframe can range from approximately one to 18 months. However, where the proceedings are ex parte, the judge may take just a couple of days to order the relief.

The order granted pursuant to an interim relief application can be appealed within 15 days from either (i) the date of the hearing at which the order was rendered, or (ii) when the order was communicated or served to the party, whichever is the earlier.

No other quick or informal ways to obtain an interim relief judgment exist in Italy. Parties must be represented by an attorney during such proceedings.

The Italian Code lists three typical and one general interim measure. The three typical interim measures are:

Seizure (*sequestro*): This normally will involve either:

- a judicial attachment which may be used on (i) movable or immovable assets when the relevant ownership is in dispute, or (ii) documents (a) from which evidentiary elements can be taken, (b) when the right of exhibiting them is controverted, and (c) it is necessary to store them temporarily - *Sequestro Giudiziario*; or
- a preservation order which may be issued on any asset of the debtor, in circumstances where there are grounds to believe that the debtor might deplete such assets to the creditor's detriment - *Sequestro Conservativo*. Further details on seizure are set out in Prejudgment attachments and freezing orders.

Denouncement of new work and feared damages: As to the former, a party who has grounds to fear that its ownership, rights in rem or possession over land will suffer imminent damage as a result of new work commenced by a third party can denounce such new work, and ask the court to issue an order preventing the work from continuing or otherwise addressing the applicant's concerns. Equally, when the grounds to fear imminent damage is due to a building, tree or another dominant item, the applicant may request the court to grant an order that seeks to eliminate the risk of such damage; and

Measures of preventive investigation: These measures can be ordered by the court prior to the commencement of the main proceedings. They are aimed at securing evidence in advance, thereby avoiding the risk of such evidence subsequently becoming

unavailable. Typical preventive investigation measures include: (i) examination of witnesses when there are grounds to believe that such witnesses will not be available at the hearing due to a terminal illness, (ii) inspection of objects or places, and (iii) technical examination.

The two most commonly used measures are seizure and the procedures of preventive investigation.

If a situation cannot be remedied by the usual interim measures provided for by law, it is possible to request a general remedy (Article 700 of the Italian Code). The party wishing to apply for such a general remedy must follow the same procedure and satisfy the same requirements as for the typical interim relief measures. The content of such a general remedy is established by the court on a case-by-case basis according to the precautionary need which must be met.

Prejudgment attachments and freezing orders

In Italy, there are no prejudgment attachments or freezing orders. However, some interim measures, such as seizure (*sequestro*, also referred to in Interim relief proceedings), have the same effect as a prejudgment attachment or freezing order and prevent a defendant from dealing with the assets seized.

In order for a seizure to be granted, the applicant will need to meet the same requirements for all the other interim measures, namely:

- *fumus boni iuris*, which is a prima facie case of the right claimed; and
- *periculum in mora*, which is a well founded risk that the right which the interim measure seeks to safeguard may be irreparably harmed whilst the dispute is pending.

As with all other interim measures, the request is to be filed:

- before ordinary proceedings have started, with the judge who would be competent to hear the ordinary proceedings. If a foreign judge would be competent for the ordinary proceedings, the request is to be filed with the judge in the place where the measure is to be enforced; and
- pending the ordinary proceedings, with the judge that is in charge of the ordinary proceeding.

As with all other interim measures, the seizure can be granted ex parte whenever participation by the other party in the hearing would endanger the positive outcome of the measure. In such circumstances, a hearing must be scheduled no later than 15 days after the measure is granted. At the hearing, the measure can be confirmed, amended or revoked.

Assets which may be seized, by service or with the assistance of a judicial office, include movable and immoveable assets and claims on third parties, with the exception of all those goods whose seizure is forbidden by the law (e.g. furniture that is necessary for the debtor and the debtor's family to live).

As with all other interim measures, the judge granting the seizure shall set a timeframe, which shall be not longer than 60 days, within which a claim on the merits must be commenced. Where this timeframe is not adhered to, the interim measure will become ineffective.

There is no specific provision that sets out the liability of a creditor for any damage caused to the debtor by an interim measure. However, the general rule regarding responsibility for causing losses to third parties contained in Article 96 of the Italian Code may apply. Therefore, if the party who requested the seizure loses the substantive proceedings and it is deemed to have acted in bad faith or with gross negligence, it may be held responsible for all the damages caused to the other party. Moreover, a creditor may be held responsible for any damages caused to the debtor by the seizure if: (i) it is later found that the right for which the seizure was granted does not exist, and (ii) the creditor acted without due diligence.

In addition to seizures and other interim measures which have similar effects, at the request of a party within ordinary proceedings, a judge can order the payment of sums or the delivery of assets before the conclusion of the proceedings. Such orders may be made when: (i) the sums are not disputed by the parties, (ii) the conditions required for a seizure referred to above are met, or (iii) at the end of the evidence phase the judge deems that the claimant's right to payment or the delivery of assets has been proven. The purpose of such orders is to enable enforceable decisions on certain matters to be made in a shorter time than the judge may need to reach a final decision. These orders allow the party to commence an enforcement procedure, in line with normal enforcement proceedings.

Costs

The unsuccessful party is generally ordered to pay the other party's legal costs (including attorneys' fees). The amount to be paid is decided by the court and usually represents only a proportion of the legal costs actually incurred.

If the losing party has commenced or carried on civil proceedings in gross negligence or in bad faith, the successful party can claim damages caused by the other party's behaviour (per Article 96 of the Italian Code) together with a fine of between EUR500 and EUR5,000.

As a general rule, Italian law does not provide for punitive damages.

Court fees vary depending on the amount in dispute and the stage of the proceedings (i.e. first instance, appeal or appeal to the Supreme Court (*Cassazione*)). They range from approximately EUR40 to EUR 4,000.

Class actions

The following three types of rights can be protected through a class action:

- contractual rights of a group of consumers or end-users who are all in the same position with a particular company;
- similar rights that end-users of a given product or service have with a particular manufacturer, even in the absence of a direct contractual relationship; and
- similar rights to the restoration of losses suffered by consumers and end-users due to wrongful commercial practices or anticompetitive practices.

Italian law provides for two different types of class action proceedings:

- the ordinary regime under Articles 840-*bis* et seq. of the Italian Code that enables consumers and / or non-consumers to seek compensation for damages and / or restitution from undertakings or public service operators or utilities providers that have harmed their rights; and
- the new regime for representative actions under Articles 140- *ter* et seq. of the Italian Consumers' Code, which grants consumers an enhanced protection against domestic and cross-border infringements in a broad range of areas such as product liability, data protection, travel and tourism, GDPR, and financial services, etc.

Both types of class action are subject to a common procedure consisting of three different phases: (i) an initial phase, which investigates the admissibility of the claim brought against the defendant on a preliminary basis, (ii) a second phase where, after the merits of the case have been assessed by the Court, a judgment upholding or dismissing the case is issued, and (iii) a final phase where the court determines the amounts eventually due to each and every class member who had opted into the class action.

Depending on the difficulty and complexity of the case brought by the claimant, a class action in first instance proceedings may last at least 30 to 36 months.

In particular, whilst it may take up to 12 to 18 months for a judgment on the merits of the case to be rendered by a First Instance Court, the liquidation phase may take at least 18 to 24 months depending on the overall number of class members who opted into the class action.

Since the entry into force of the regime of class action proceedings provided for in Article 140-*bis* of the Italian Consumers' Code in late 2009, Italy has adopted an opt-in model for class actions. According to both the current regime for class action and the newly adopted regime for representative actions, customers are allowed to opt into the class action in two different phases, namely: (i) immediately after the release by the Court of the order declaring the class action to be admissible, and (ii) after the Court has entered judgment on the merits of the case.

According to Italian law, a judgment on the merits of a case is binding on all customers who have joined a collective action. However, customers who opt into a class action do not become parties to the proceedings. It follows that, except for the cases provided for by Article 840 *decies* of the Italian Code (that, according to Article 140 *novies* of the Italian Consumers' Code, also apply to representative actions) a judgment dismissing a claim brought in the interest of customers whose rights have been affected by illicit conduct of a defendant, cannot be appealed individually by each class member but only by the party who had initially brought the class action.

According to the ordinary regime for class action under Article 840-*bis* et seq. of the Italian Code, standing to start a collective action is conferred on each class of member whose rights have been affected by defendant's illicit conduct, and non-profit or associations listed in the public registry kept by the Italian Ministry of Enterprises and Made in Italy.

Conversely, consumers are not entitled to bring a representative action on their own. Representative actions may only be brought by qualified entities, even without being previously mandated by consumers.

In particular, domestic representative actions can be started by (i) national associations of consumers or users included in the list referred to in Article 137 of the Italian Consumers' Code, (ii) non-Italian entities designated by Member States to bring cross-border representative actions before the court of a Member State other than the one on which they were designated, and (iii) national independent public bodies referred to in Article 3, paragraph 6 of EU Regulation 2017/2394.

Cross-border representative actions may only be brought by national independent public bodies or consumer associations (or users) which comply with the requirements for the registration in the special section of the list referred to in Article 137 of the Italian Consumers' Code as provided for by Article 140 *quinquies* of the Italian Consumers' Code.

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