Italy

Studio Legale Giorgetti

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

Decree-Law No. 95 of 6 July 2012 dissolved the Italian Private Insurance Regulatory Authority (ISVAP) and replaced it with the Institute for the Supervision of Insurance (IVASS or *Istituto per la vigilanza sulle assicurazioni*); a newly formed department at the Bank of Italy. IVASS operates based on organisational, financial and accounting autonomy from the Bank of Italy, as well as on the basis of transparency and cost-effectiveness, in order to ensure the stability and smooth operation of the insurance system and consumer protection. In this perspective, IVASS took over all functions of the former body, ISVAP, including supervision of transparency and fairness in the activity of insurers, intermediaries and other insurance market participants. To the contrary, the register of insurance experts and the Italian Information Centre, providing information to parties entitled to compensation following a motor accident that has occurred in an EU Member State, have been transferred to an independent public authority: the Concessionaire for Public Insurance Services (CONSAP).

Moreover, few other government bodies regulate insurance and reinsurance companies as COVIP which is the independent administrative authority that supervises the proper functioning of the pension fund system, or Consob, which has as its objectives the protection of investors and the efficiency, transparency and the development of the securities market.

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

According to Italian Law, only public companies, cooperatives and mutual insurance companies or equivalent foreign companies can practice insurance and reinsurance and therefore apply to the IVASS for an authorisation to underwrite insurance and reinsurance in Italy. A notable exception are Lloyd's syndicates that were specially authorised by way of the Industry Ministry Decree 02.07.1986 because of their particular historical status.

New insurance and/or reinsurance companies wishing to do business in Italy shall seek and obtain the IVASS's authorisation order (if the undertaking has its head office in Italy) or by a formal acknowledgment of the certification issued by the competent authority of the state where the company has its registered office. The newly authorised insurance and/or reinsurance company can start operating only after IVASS's authorisation or the formal acknowledgment has been published in the Italian Official Journal.

To apply for authorisation, the insurance and/or reinsurance company must submit to the IVASS a technical file containing:

a) a certified copy of the memorandum and articles of incorporation listing the insurance/reinsurance classes of insurance. The insurer will write with the caveat that, in Italy, it is prohibited to set up a company having exclusive scope to write insurance business abroad. If within the declared classes of business the compulsory motor or vessel liability insurance is listed, then the insurer shall produce a side letter undertaking the obligation to become a member of the Italian Bureau (*Ufficio centrale italiano*) and of the Motor Guarantee Fund (*Fondo di garanzia per le vittime della strada*);

b) evidence that the memorandum and articles of association have been deposited with the Registrar of Companies;

c) a scheme of operations and a technical report drawn up pursuant to the IVASS's regulations, providing the names of the persons charged with administration, management and internal control and corporate governance, as well as the names of the natural or legal persons who directly or indirectly have control of the capital or who qualify as holdings, with an indication of the share capital detained;

d) proof that the company has a share capital or guarantee fund, fully paid up, sufficient to meet the business plan liabilities and evidence that the company has the mandatory minimum organisation fund in accordance to ISVAP Orders No. 97/1995 or 98/1995, or both, fully paid up; and

e) for foreign companies, proof of the appointment of a general representative, who shall be domiciled in Italy for the appointment. Should a company be appointed as general representative, its registered office shall also be in Italy.

The application is refused if it is incomplete or when requests of further information or documents are not satisfied in a timely manner or when no proof is given that the share capital, the guarantee or the organisation funds are actually and immediately available to the applicant company. Furthermore, an authorisation or licence is denied whenever the persons charged with the administration, management and internal control functions do not meet the mandatory professional, good repute and independence requirements.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Foreign insurers based in an EU Member State can write business in Italy directly under the freedom of services principle, in accordance to EU legislation and national implementation rules. Foreign insurers which are not based or do not have a General Representative in an EU Member State are forbidden from underwriting risks directly on the basis of the freedom of services principle, but they can still underwrite reinsurance risks without limitation.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Yes, in Italy, freedom of contract is constrained by public order and legal rules.

First of all, the governing law for mass risk insurance contracts shall be either the Italian law or, if the contract has international elements of contracts, one of the laws permitted by the Italian set of rules on conflict of laws.

In addition, insurance being regarded as a social contract, there are a number of mandatory laws governing the drafting and content of insurance contracts, the marketing and negotiations aimed at protecting the consumers and, in some cases, also the professional policy holder. Such mandatory rules are part of the internal public order hence they are applicable regardless of the governing law of the contract, which may well not be Italian law.

Last, but not the least, the Private Insurance Code forbids some classes of insurance (e.g., insurance which have as their object the transfer of risk of payment of administrative penalties or criminal penalties and those concerning the price of ransom in the case of kidnapping, mutual companies set up with the scope of collecting contributions and then distributing the assets so accrued between the survivors at a due time, or the beneficiaries of the departed).

1.5 Are companies permitted to indemnify directors and officers under local company law?

Article 12 of the Decree Law 07.09.2005 No. 209 prohibits insurance contracts from indemnifying directors and officers for administrative or criminal penalties due for a breach of law.

1.6 Are there any forms of compulsory insurance?

Yes, a number of special laws impose compulsory insurance to be undertaken with either private insurance companies or public insurers.

A typical example of compulsory insurance placed with private insurers is the compulsory motor insurance for motor vehicles and boats which cannot be tacitly renewed and cannot be underwritten for a period longer than a year; any eventual policy provision in contrast are considered null and void.

In addition, there are some areas where compulsory financial guaranty can be given by way of an insurance contract (e.g., tour operators) or where specific activities (e.g., engineers designing or testing public works or hunters) can be performed or carried out only by the person holding an insurance meeting the minimum law requirements.

At other times, compulsory insurance has to be stipulated with a public insurer such as, for example, the National Institute for the Insurance of Accidents at Work (INAIL from its Italian acronym), or a mutual insurance contract taken out with a private insurer through a public contracting entity. This is the case of the Italian Gas Committee (*Comitato Italiano Gas*) who collects the users' small premiums for the insurance against the risks arising from the use or abuse of the gas distributed via networks or pipelines by public utilities companies.

Finally, an obligation to take out insurance can be found in the National Collective Contracts of Work (CCNL from its Italian acronym) concluded between trade unions and the Industrial Association for some specific industries.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

Italian law is rather protective towards the insured, on the basic consideration that he/she is the weaker negotiating party and the court's case law fully mirrors such a legislative approach. As a matter of fact, in addition to standard consumers' protection rules, there are a number of specific mandatory law rules providing for the content of some clauses and how these should be presented and drafted; contract clauses conflicting with such provision might be attacked in a court of justice and almost invariably declared null and void and substituted by the relevant law provision.

2.2 Can a third party bring a direct action against an insurer?

No. The third party has no privity to the insurance contract; thus third parties have no right of action.

Only exceptionally and in very limited cases, when the policyholder or the insured entity remains inactive with the actual danger of having the right to indemnity time-barred, a third party (potentially a creditor of the insured) can subrogate itself – according to article 2900 of the Civil Code – into the policyholder or insured rights and claim the insurance coverage, but still on the latter's behalf.

Further exceptions to this general rule are the special provisions of Law of No. 990/69 on "Compulsory Motor Accident Insurance" where the third injured party has a direct action against the insurer of the liable driver or against his own insurer according to the direct indemnification procedure as set forth in article 145, 2nd paragraph of the Private Insurance Code.

2.3 Can an insured bring a direct action against a reinsurer?

In Italy, no policyholder or non-signatory to a reinsurance agreement has any privity to the reinsurance contract, hence he/she has no consequential right of action. The sole rare exception would be a policy incorporating a "cut-through" clause providing a limited direct action against the reinsurer/s for the case in which the Ceding Insurer should have become insolvent.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

The conclusion of an insurance contract is often preceded by the completion of a proposal form prepared by the insurer. The prospective insured shall answer truthfully and completely to avoid being sanctioned with the total loss of the right to the indemnity for wilful non-disclosure according to article 1892 of the Civil Code or with the partial loss of the right to the indemnity for negligent non-disclosure according to article 1893 of the Civil Code.

A court's case law retained that all information requested by the insurer into the proposal form must be deemed as essential and a non-disclosure or a false statement in response to a query therein contained qualifies the misrepresentation as wilful with the total loss of the indemnity; on the other hand, circumstances not mentioned in the questionnaire prepared by the insurer would *prima facie* be considered as non-material. In this latter case, the insurer can always try to prove that the non-disclosure was material and relevant to the decision of underwriting the risk.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

Misrepresentation and non-disclosure are relevant if material to the insurer's consent to write the risk; so in principle, the insured has the duty to inform the insurer of all material information concerning the proposed risk. In case of misrepresentation or non-disclosure, it is the insurer's onus to prove that the information was material and it was withheld or misrepresented wilfully or with gross negligence with the scope of getting the insurer's consent to write the risk at the obtained economical terms and contractual conditions.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

Upon payment of the indemnity, the insurer is subrogated by operativity of the Law (article 1916 c.c.) into all rights of the insured against any third liable parties, up to the indemnity paid, plus the adjustment costs.

To prevent the third party or the insured to prejudice of the insurer's right to the recovery, the insurer must put the third party on notice of the occurred subrogation so that the latter shall be obliged toward the new creditor.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

The parties are free to choose the jurisdiction there including an arbitration clause to derogate the ordinary court jurisdiction, unless such a clause would be in conflict with the law. An example of the parties' freedom limitation is *vis-à-vis* the choice of the international jurisdiction that, with reference to insurance, shall be made in accordance with articles 8 to 13 of EU Regulation No. 44/2001.

Within the Italian Republic, the territorial and value jurisdictions are determined in accordance to the general provisions of the Civil Procedure Code. Currently, first instance cases, the value of which do not exceed €5,000 (or in cases of motor accidents a value not exceeding €20,000), can be brought only in front of the Judge of Peace (*Giudice di Pace*) whereas all other cases are brought in front of the competent territorial tribunal (*Tribunale*). In Italy there are no jury trials.

3.2 How long does a commercial case commonly take to bring to court once it has been initiated?

Usually, the first instance in a Tribunal lasts from two to three years; half of this time in front of a Judge of Peace.

The appeal equally lasts between two to three years; whereas cases heard at the Supreme Court of Cassation can be decided between 24 and 30 months from the date in which the case was recorded with the court clerk.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

In general, the burden of proof in a court of justice rests with the claimant, and the defendant shall substantiate his or her case only if the claim has been proved. The claimant is free to decide what documents he/she wants to produce and what he does not want to disclose. For this reason Italian Tribunals do not, in general, have the power to order disclosure/discovery or inspection of documents with the limited exception that, on *ex-parte* specific application, it might be possible to get an order for the disclosure of a specific document. The courts have a wide discretion in deciding if the requested order is necessary and if the piece of evidence cannot be offered by the applicant in other ways. The court can also, *ex officio*, order Public Authorities or Public Offices to release certified copies of documents or information that the court considers necessary for the decision of the case; such power is very rarely exercised. Because insurance contracts have to be proved in writing, usually the insured shall produce the policy or any other pertinent documents to demonstrate the insurance contract existed, that the premium had been paid and that an insured event occurred.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

The Common Law discovery is unknown in Italy; therefore, the party can legitimately withhold disclosure of advices or documents.

Furthermore, correspondence between the client and the lawyer is under professional privilege. Any draft or documents produced in the course of settlement negotiations are also covered by privilege. Any *ex-parte* application to have a court order for the disclosure of such documents would almost certainly be dismissed.

A special application of these general rules is provided by article 3, 2 codicil of the Legislative Decree No. 28/2010 in case of a controversy that failed to be conciliated during a mediation. In such case, documents and information exchanged are confidential to those proceedings.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Under Italian Civil Procedure, the witnesses' exam is done within the trial and their exam is run by the judge. Upon an *ex-parte subpoena*, the court can order the witnesses to appear and give evidence. If the witness does not appear, the judge can order the police to find the witness and bring him/her to the courtroom. Moreover, the judge can fine the reticent witness if he/she does not speak the truth. Civil judges can charge the witnesses of the crime of false statement and in this case, the civil case is suspended and the court file is passed to the Office of the Public Prosecutor for the proper criminal investigations. The underling civil proceeding will start again only when the criminal case has been decided by a definitive and unappellable judgment.

4.4 Is evidence from witnesses allowed even if they are not present?

Yes, the witness could give testimony in writing and send the statement to the court clerk in accordance to article 257-*bis* c.p.c. This way of gathering evidence never took off as it was not really favoured by the judges who like to examine directly the witnesses and, in any event, was subject to the parties' agreement. Other special cases of written statement admitted in court are in conjunction to the terminal illness of the witness preventing him/her to appear in court or with the witness death before he/she could render testimony in court.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

In Italy, expert witnesses are unknown: a witness can testify only on facts and cannot render opinions, views or judgments. Technical issues are dealt with and decided by way of an expert witness (*Consulenza Tecnica d'Ufficio*). The judge decides if an independent expertise is necessary; if so, a specific hearing is fixed to swear the court expert and to instruct him about the scope and object of the expertise. The court appoints one expert and each of the parties appoints one expert. The court-appointed expert will make the tests/inspections deemed necessary and then produces a written draft report to which the parties' experts can contribute by way of producing memos, information and commenting or criticising the document. Then the court expert will produce the written final report with answers to all the parties' observations/criticisms. Should one or both parties be in disagreement with the court-appointed expert, the latter may be called to orally answer to the party's questions at court or can be instructed to draft a supplement to his/her report. This further technical document closes the expertise phase.

4.6 What sort of interim remedies are available from the courts?

The court can order any interim suitable relief in cases of urgency when the applicant proves the risk of suffering a major and irreparable harm; such innominate urgent measures can be awarded also on an *ex-parte* basis.

Besides these urgent measures, both before or during the proceedings, courts can grant order:

(i) seizing real estate or goods when their ownership is disputed;

(ii) seizing documents or order collection of written examination of witness in view of preserving them for the subsequent discovery;

(iii) the judiciary custody of properties, money or credits in cases when the claim is *prima facie* grounded and the defendant might no longer be able to meet the court award at the end of the case; and

(iv) the appointment of a court expert to investigate and collect evidence or with the scope of attempting a conciliation between the parties.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

In Italy, in general, judgments can be appealed both for breach of procedural and/or substantial rules. The only exception to that are the Judge of Peace's decisions made on an equitable basis in very low value cases which are immediately definitive.

The appeal is not subject to any prior authorisation and it is made at the territorially competent Tribunal or Court of Appeal.

The appeal procedure strongly limits the opportunity of introducing new evidence, even if some limited exceptions exist. The courts cannot fully review the first instance decision on appeal but are constrained by the arguments and criticisms made in the writ of appeal; so any part of the judgment that is not specifically targeted by an appeal argument became definitive.

The appeal does not suspend the enforceability of the first instance decision but, in limited cases of significant and irrecoverable harm, an application can be made and the appeal judge, following a special hearing in the Chambers, has the power to suspend first instance enforceability until the appeal judgment is rendered.

Appeal decisions can be further appealed to the Court of Cassation (*Corte di Cassazione*) but only on limited grounds concerning the wrong use or interpretation of substantial or procedural rules; no new evidence or factual review is permitted in this instance.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Interests can be recovered but the petitioner must specifically claim for the head of damage.

Unless a specific interest rate was contractually pre-agreed, the legal rate shall apply. The legal interest rate was set by the 11/12/2015 Department of Justice Decree and the rate for 2016 is 0.2 per cent *per annum*.

This system has been integrated by Law No. 162/2014, which in redrafting article 1284 of the Civil Code indicated that legal interest after a litigation is started shall be the same for the cases of late or non-performance of contractual pecuniary obligations, and, therefore, determined pursuant to article 5, paragraph 2 of Legislative Decree No. 231/2002. Thus, for the period 01.01.16–01.01.2017, the annual rate is 8.2 per cent.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

The basic rule is that costs follow the events, so the winning party can expect to receive an award towards defence costs but the courts have a wide discretion in deciding if, and how much, legal costs are recoverable. In insurance litigation, it was customary for a successful defendant insurer to see the costs made even with the losing claimant on the basis that the policy interpretation was difficult and it was equitable to have each party bearing its own costs. This has recently changed and the courts have a duty to award the costs, or at least a minimal part of them, to the successful insurer.

If the case is only upon the different amount due, the debtor can make a formal or informal offer to the creditor before litigation is started, putting the latter on notice. Should the creditor accept the offer, no litigation ensues; but should the case end in a court of justice, the judge will, in the final award, determine if the offer was (i) timely, (ii) economically adequate, and (iii) complete, having taken into consideration all heads of damages. Should the judgment find that the offer made was appropriate, then all litigation costs and a fine will be put on the claimant who refused the offer; to the contrary, if the offer was untimely, inadequate or incomplete then the litigation costs might be reduced at the court's discretion.

Payment into courts are rare and are treated in the same way as the offers made prior to the litigation has begun.

4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

Law No. 162/2014 for motor accident and payment of sums not exceeding €50,000, unless it is a dispute concerning contractual obligations arising from contracts concluded between professionals and consumers, introduced a new pre-condition to have access to the Italian courts: the parties shall have to try to solve the controversy through the effort of an independent lawyer acting as a facilitator. If such ADR should fail then the parties can act in court.

This novelty does not apply to the controversies where a formal mediation is a precondition to having a right to act in a court of justice (e.g., med mal, D&O, professional error or omissions, insurance claims and the like).

If the parties cannot prove having attended either the negotiated phase or to the compulsory mediation, their actions shall be declared inadmissible.

Despite the negotiated phase in front of the independent facilitator, in all cases where no compulsory mediation took place, the court has the option to order a mediation even during the proceedings when having evaluated the dispute, the discovery and the parties' behaviour, considers that an out of court conciliation might be possible and preferable to a judgment.

4.11 If a party refuses to a request to mediate, what consequences may follow?

If one of the parties does not participate to the facilitated negotiation or to the mediation, in actions where these are a pre-condition to the right to sue, then the court can order the parties either to start the facilitated negotiation or to mediate. Within the same order, the courts puts on hold the proceeding until the three-month period for the facilitated negotiation or mediation is over.

The court can impose a penalty and use the party litigious behaviour as an equitable concurring argument in deciding how to award the litigation cost between the parties if the party refused to participate to the facilitated negotiation or to a mediation, or the party unreasonably refused to conciliate when the mediator made a conciliation proposal.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

The Law No. 162/2014 enhanced the principle of party autonomy in how to handle litigation to the point that, on the parties agreements, cases pending in court at the date of September 13th 2014 could be removed from the court's general roster and assigned to a formal arbitral panel, or to an umpire, who shall run the case from the same stage it had in court. The arbitration award so rendered will have the very same value and effects of a judicial judgment. Unfortunately, such measure had little or no practical use as the litigating parties rarely agreed to arbitrate a case that was already ongoing in a court of justice.

In Italy there are two methods of arbitration.

The first method is the formal arbitration and the award has a nature of a court judgment and is subject to appeal at the competent territorial Court of Appeal. This proceeding is regulated by the Civil Procedure Code and the decision is rendered in accordance with the strict rule of law.

The second arbitration is informal and the award has the nature of a contract and therefore can only be challenged for error, illegality, fraud or excess of power of the arbiter/s in making the award.

The differences in the procedural and evidentiary requirements with the formal arbitration are substantial, as the informal arbitration is not procedurally regulated so that the parties can decide their own rules in the arbitration clause.

In Italian policy wording, it is somewhat rare to encounter clauses providing for formal arbitration even if this procedure can guarantee a first instance decision in a relatively short time (between six months and a year in the vast majority of the cases) against the lengthy proceedings in a court of justice (two/three years and sometime even ten years).

Informal arbitrations are, however, quite common in property and/or business interruption insurance. There, the costs of the procedure are usually high and reflect the work done in the loss-adjustment process which usually is concluded within a few months.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

There is no special wording to be put into contract, as the clause compromising the litigation in arbitration can be contained even into a side letter or can be agreed before, or after, a dispute has arisen. What is relevant is that the language used clearly shows the intention to arbitrate and the agreement must be in writing and signed by the interested parties.

If the arbitration agreement is incorporated into an insurance policy because it is a derogation to the ordinary jurisdiction of the courts of justice, the clause shall have to be expressly approved and signed twice in accordance to the provisions of article 1341 of the Italian Civil Code.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

Courts might refuse to enforce an arbitration clause for a number of reasons:

(i) the arbitration is agreed on a matter which cannot be arbitrated or it is in a domain regulated by norms of internal public order;

(ii) the arbitration is not properly worded or agreed in writing, or whoever signed it did not have the power to compromise the dispute in arbitration or the clause has not been expressly approved and signed twice in accordance to article 1341 of the Italian Civil Code provisions; and

(iii) the arbitration clause is included into a printed standard mass contract or into a document non-negotiable by the consumer.

In all these cases, and a few less frequent others, the court would consider vexatious the arbitration clause (and therefore null and void) in accordance to the general consumer protection rules.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

The party to an arbitration can always make an *ex-parte* application to the court to get a seizure or arrest order or any other interim conservative measures, as the arbiters have no power to issue such interim forms of relief. To the contrary, arbitrators have the necessary authority to deal with all procedural and/or discovery issues which can be resolved by the arbitration proceeding.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

The obligation for the arbitration panel, or the umpire, to give reasons for the award exist for both the formal and informal forms of arbitration, the difference is the extent and rigidity of this duty.

In formal arbitrations, the award shall always contain the rationale grounding the decision; should the arbiter/s omit to issue the opinion, the award can be attacked in court and be annulled.

In informal arbitrations, the parties can agree that the reasons for the award can be succinct or argued by reference to documents and/or oral discovery. In these cases of concise rationale, what would be the minimum opinion to ground and legitimate the award can easily become an issue for a court to decide upon.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

Here, again, the difference between formal and informal arbitration is important.

In formal arbitrations, the award is always appealable in accordance to article 829 of the Italian Civil Procedure Code, so that the losing party can enter an appeal before the competent territorial Court of Appeal within 90 days from the date in which the service of the award took place. The appeal has two volleys, the first one is deemed to have the award set aside as null and void and the second volley is deemed to have the case tried again on the merits even if based on the very same facts and discovery examined by the arbitration tribunal. There are rather limited grounds to attack the award for nullity, the most important are:

(i) the invalidity of the arbitration clause;

(ii) if the arbitrators were appointed in breach of the applicable procedure, provided that the issue was timely raised in the arbitration;

(iii) if the arbiter decided on matters which were outside the scope of the arbitration clause or did not decide on an issue/s on which a decision was required;

(iv) if the award was missing the opinion or the reasons given were contradictory or the arbiter/s signature/s at the bottom of the award is/are missing;

(v) if the award was issued after the time granted by the parties or by the law to complete the proceeding and make the award;

(vi) if the award is contrary to a previous definitive decision of a court of justice, which was brought to the arbiter's/arbiters' attention during the proceedings; and

(vii) if the arbiter/s did not respect the procedural rules, the due process and/or the right of defence during the proceedings.

In informal arbitrations, the award is always appealable, unless the party into the arbitration clause declared it non-appealable.

The reasons to challenge the informal arbitrations in court for nullity are material or calculation errors, illegality, fraud or excess of power of the arbiter/s in making the award.

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Alessandro P. Giorgetti graduated from Milan State University in 1983 with a degree in private international law and was admitted to the Milan Bar the same year. Six years later he studied commercial law at Robinson College, Cambridge University. Currently he is member of the special Bar for the High Courts and a chartered arbitrator and mediator at the Chamber of Arbitration and Mediation at the CONSOB, the Italian controlling body for the financial markets.

Mr. Giorgetti is an expert in Italian product liability litigation abroad, especially for medical devices and mechanical machinery. Notwithstanding this specialisation, he is also active in financial institutions litigation, D&O and professional liabilities, with a special emphasis on medical malpractice. He also practices in the field of reinsurance litigation, acting as principal consultant or litigator in cases involving Italian cedants.

He is an active member of the Defence Research Institute, of the IADC, IBA and the Association of Fellows and Legal Scholars of the Center for International Legal Studies in Salzburg, Austria.

Mr. Giorgetti has authored several articles in legal journals, as well as book chapters on Italian law and in 2008 he published the book, Il contenzioso di massa in Italia, Europa e nel Mondo (Mass Litigation in Italy, Europe and Around the World), with a focus on class actions and collective redress.

STUDIO LEGALE GIORGETTI

Studio Legale Giorgetti was founded by Avvocato Luigi Giorgetti in 1922 when the firm first became involved in insurance law in which it is now specialised.

The firm is based in Milan, Italy's centre of financial and international legal work.

Studio Legale Giorgetti is retained by nearly all international loss adjusting firms in Italy; other clients include Lloyd's syndicates, major Italian and foreign insurance and reinsurance companies as well as insurance intermediaries, but the firm also boasts clients in the banking, industrial, commercial and sporting spheres.

The firm offers a wide range of legal services from court litigation and arbitration to straight-forward negotiations and ADR. In fact, despite the specialisation in litigation – including forum shopping and choices of law issues – Studio Legale Giorgetti recognises that if and when settlement presents measurable economic and practical advantages over trial, it must be pursued with the same dedication and aggression as a court litigation.