

Italian Code of Civil Procedure

Book Four

Title VIII Arbitration¹

Chapter I. Submission to Arbitration and Arbitration Clause

Article 806

SUBMISSION TO ARBITRATION

The parties may have disputes which have arisen between them decided by arbitrators, with the exception of the disputes provided for in Articles 409 and 442, those concerning issues of personal status and marital separation and those other disputes which may not be the subject of a settlement.

Article 807

FORM OF THE SUBMISSION TO ARBITRATION

The submission to arbitration shall, under penalty of nullity, be made in writing and shall indicate the subject matter of the dispute.

The written form requirement is considered complied with when the intention of the parties is expressed by telegram or telex. (1)

The submission to arbitration is subject to the provisions governing the validity of contracts which go beyond administration in the ordinary course of business.

Article 808

ARBITRATION CLAUSE

The parties may establish, in their contract or in a separate document, that the disputes arising out of the contract be decided by arbitration, provided such disputes may be the

subject of a submission to arbitration. The arbitration clause shall be contained in a document meeting the formal requirements for a submission to arbitration according to Article 807, paragraphs 1 and 2.

The disputes indicated in Article 409 may be decided by arbitrators only if this is provided for in the collective labour contracts and agreements, on the condition, under penalty of nullity, that this occurs without prejudice to the parties' right of recourse to the judicial authority. The arbitration clause contained in collective

¹ Source: www.camera-arbitrale.com

labour contracts or agreements or in individual labour contracts is null and void when it authorizes the arbitrators to decide

Article 809

NUMBER AND MANNER OF APPOINTMENT OF ARBITRATORS

There may be one or more arbitrators, provided that their number is uneven. The submission to arbitration or the arbitration clause shall contain the appointment of the arbitrators or establish their number and the manner in which they are to be appointed.

Where an even number of arbitrators is indicated, the additional arbitrator shall be appointed by the president of the tribunal in the manner specified in Article 810, unless the parties have agreed otherwise. Where the number of arbitrators is not indicated and where the parties do not agree thereon, there shall be three arbitrators and, failing their appointment, the president of the tribunal shall proceed therewith in the manner specified in Article 810, unless the parties have provided otherwise.

ex aequo et bono or when it declares the award not subject to recourse. The validity of the arbitration clause shall be evaluated independently from the underlying contract; nevertheless, the capacity to enter into the contract includes the capacity to agree to the arbitration clause.

Chapter II. The Arbitrators

Article 810

APPOINTMENT OF THE ARBITRATORS

Where, in accordance with the provisions of the submission to arbitration or of the arbitration clause, the arbitrators are to be appointed by the parties, each party, by means of a bailiff's notification, may inform the other party of its appointment of an arbitrator or arbitrators and request said other party to name its own arbitrators. The party so requested shall, within twenty days, serve notice of the personal data regarding the arbitrator or arbitrators appointed by it.

Failing this, the party which has made the request may petition the president of the tribunal in whose district the arbitration has its seat, to make the appointment. If the parties have not yet determined the seat of arbitration, the petition is presented to the president of the tribunal of the place where the submission to arbitration or the contract to which the arbitration clause refers has been concluded or, if such place is abroad, to the president of the tribunal of Rome. The president, having heard the other party where necessary, shall issue an order against which there shall be no recourse.

The same provision is applied where the submission to arbitration or the arbitration clause has entrusted the appointment of one or more arbitrators to

the judicial authority or where, if entrusted to a third person, that third person has failed to act.

Article 811

REPLACEMENT OF ARBITRATORS

Where, for whatever reason, all or some of the arbitrators appointed are unable to act, they shall be replaced in accordance with the procedures established for their appointment in the submission to arbitration or in the arbitration clause. If the party responsible for the appointment, or the third party, fails to act or if the submission to arbitration or the arbitration clause is silent on the question, the provisions of the preceding Article shall apply.

Article 812

CAPACITY TO ACT AS ARBITRATOR

The arbitrators may be Italian or foreign nationals. Minors, incapacitated and mentally disabled persons, bankrupts and persons barred from public offices cannot be arbitrators.

Article 813

ACCEPTANCE AND DUTIES OF THE ARBITRATORS

The acceptance of the arbitrators shall be in writing and may result from their signatures on the submission to arbitration.

The arbitrators shall render their award within the time-limit set by the parties or by law; if they fail to do so and the award is set aside on this ground, the arbitrators shall be held liable for damages. They shall likewise be liable for damages if, after accepting their appointment, they relinquish the office without just cause.

Unless the parties have agreed otherwise, the arbitrator who omits or delays to carry out an act related to his office may be replaced by agreement between the parties or by the third party so empowered in the submission to arbitration or in the arbitration clause. Failing this, after a period of fifteen days from notice sent by registered mail to the arbitrator demanding that he take action, each of the parties shall have the right to petition the president of the tribunal in whose district the arbitration has its seat. The president, having heard the parties, shall issue an order against which there shall be no recourse and, where he ascertains the omission or the delay, shall declare the arbitrator discharged and replace him.

Article 814

RIGHTS OF THE ARBITRATORS

The arbitrators shall be entitled to the reimbursement of their expenses and to a fee for services rendered, except where they have waived their right to same at

the time of their acceptance or in a subsequent written statement. The parties shall be jointly and severally liable for payment, subject to the right of mutual recovery.

Where the arbitrators themselves fix the amount of the expenses and of the fee, their decision shall not be binding upon the parties if they do not accept it. In this case, the amount of the expenses and of the fee shall be determined, upon the arbitrators' petition and after hearing the parties, by an order of the president of the tribunal specified in Article 810, paragraph 2, against which there shall be no recourse.

The order shall be enforceable against the parties.

Article 815
CHALLENGE OF THE ARBITRATORS

The party can challenge the arbitrator not appointed by it for the reasons indicated in Article 51.

This challenge shall be made by petition to the president of the tribunal indicated in Article 810, paragraph 2, within the peremptory time-limit of ten days after the appointment has been notified or from the time the ground for the challenge came to the party's knowledge, if later. The president, having heard the challenged arbitrator and, where necessary, having made summary enquiries, shall issue an order against which there shall be no recourse.

Chapter III. The Proceedings

Article 816
COURSE OF THE PROCEEDINGS

The parties shall determine the seat of the arbitration within the territory of the Republic; failing this, the arbitrators shall decide thereon at their first meeting.

The parties may establish the rules of procedure to be observed by the arbitrators in the submission to arbitration or in the arbitration clause or in a separate writing, provided that same precedes the commencement of the arbitration proceedings.

Failing such regulation, the arbitrators may regulate the proceedings as they best see fit.

In any case, they shall set time-limits for the parties to produce documents and briefs and to present their replies.

The taking of evidence may be delegated by the arbitrators to one member of the panel.

All issues arising in the course of the proceedings shall be decided by the

arbitrators by an order which is not subject to deposit and may be revoked, with the exception of the case specified in Article 819.

Article 817
OBJECTION OF LACK OF JURISDICTION

The party which, during the arbitration proceedings, fails to raise the objection that the other party's pleadings exceed the limits of the submission to arbitration or of the arbitration clause, may not, on this ground, challenge the award for nullity.

Article 818
INTERIM MEASURES OF PROTECTION

The arbitrators may not grant attachment or other interim measures of protection.

Article 819
INCIDENTAL ISSUES

If during the course of the proceedings a question arises which according to law is not arbitrable, the arbitrators, if they deem that the decision submitted to them depends upon the resolution of said question, shall stay the proceedings.

In all other cases, the arbitrators shall decide all questions arising in the course of the arbitration proceedings.

In the case specified in the first paragraph, the time-limit set in Article 820 shall be suspended until the day on which one of the parties shall serve notice upon the arbitrators of the judgment in the incidental issue once it has become

Article 819-bis
CONNECTED CASES (connessione)

The jurisdiction of the arbitrators is not excluded by the fact that the dispute referred to them is connected with an action pending before the court.

res judicata; if less than sixty days remain before the expiry of the time-limit, then said time-limit shall automatically be extended to sixty days.

Article 819-ter
HEARING OF WITNESSES

The arbitrators may hear the witness directly by requesting him to appear before them or decide to hear his statement at his home or office, if he agrees. They may also decide to hear the witness by requesting him to give written answers to questions within the time-limit established by them.

Chapter IV. The Award

Article 820

TIME-LIMIT FOR DECISION

Unless the parties have agreed otherwise, the arbitrators shall render their award within one hundred and eighty days after acceptance of their appointment. If there are several arbitrators and they did not all accept at the same time, the time-limit begins to run from the last acceptance. Where a challenge against an arbitrator is filed, the time-limit shall be suspended until a decision is made on the challenge and it shall be interrupted where it is necessary to replace an arbitrator.

Where evidence must be taken or a non-final award has been rendered, the arbitrators may extend the time-limit once only and for not more than one hundred and eighty days.

In case of death of one the parties, the time-limit is extended by thirty days.

The parties may agree in writing to an extension of the time-limit.

Article 821

RELEVANCE OF THE EXPIRY OF THE TIME-LIMIT

The expiry of the time-limit indicated in the preceding article may not be raised as a ground for setting aside the award if the party, before the deliberation of the award resulting in the decision.

Article 822

RULES FOR THE DELIBERATION

The arbitrators shall decide their award according to the rules of law, unless the parties have, through any expression whatsoever, authorized them to settle the dispute

Article 823

DELIBERATION OF AND REQUIREMENTS FOR THE AWARD

The award shall be deliberated by the majority vote of the arbitrators personally meeting together. It shall then be set down in writing.

It shall contain:

- (1) the names of the parties;
- (2) the indication of the submission to arbitration or of the arbitration clause and of the issues submitted for decision;
- (3) a brief statement of the reasons;
- (4) the decision of the issues (

Article 824
PLACE OF DECISION

(abrogated by Article 16, Law 25/1994)

dispositivo) signed by the majority of the arbitrators, has failed to notify the other parties and the arbitrators of its intention to raise the objection of the termination of the arbitrators' authority.ex æquo et bono.dispositivo);

(5) the indication of the seat of the arbitration and of the place or the manner in which it was deliberated;

(6) the signature of all the arbitrators, with the indication of the day, month and year of their signature; the arbitrators may sign in a place other than the place of deliberation, as well as abroad. If there is more than one arbitrator, they may sign in different places without having to meet personally again.

However, an award signed only by the majority of the arbitrators shall be valid provided that mention is made that it was deliberated in the presence of all the arbitrators and that it states expressly that the other arbitrators were either unwilling or unable to sign.

The award shall be binding on the parties from the date of the last signature.

Article 825
FILING OF THE AWARD

The arbitrators shall prepare the award in as many original copies as there are parties and shall serve notice thereof upon each party by delivery of an original copy, also by sending it by registered mail, within ten days from the date of the last signature.

The party intending to have the award enforced in the territory of the Republic shall file an original copy of the award or a certified copy thereof, together with the submission to arbitration or the document containing the arbitration clause or an equivalent document, in original or in certified copy, with the registry of the court (tribunale) of the district in which the arbitration has its seat.

The court, after ascertaining that the award meets all formal requirements, declares the same enforceable by decree. The award which has been declared enforceable may be registered (trascritto) in all cases where a judgment of the same content would be subject to registration.

The registry shall notify the parties of the filing and of the court's decree in the manner provided for in Article 133, paragraph 2.

A recourse against the decree denying the enforcement of the award may be filed by petition with the court within thirty days of notification; the court, meeting in chambers and after having heard the parties, shall issue an order against which there shall be no recourse.

Article 826
CORRECTION OF THE AWARD

On the request of a party, the award may be corrected by the same arbitrators who have rendered it, where there have been omissions, errors or miscalculations.

The arbitrators, having heard the parties, shall take action within twenty days. The decision shall be communicated to the parties, also by registered mail, within ten days from the date of the last signature.

If the award has already been filed, the petition for correction is presented to the court (

Chapter V. Means of Recourse

tribunale) of the place where the award has been filed. The provisions of Article 288 are applicable in so far as they are compatible.

Article 827
MEANS OF RECOURSE

The award may only be subject to recourse for nullity, for revocation or third party opposition.

The recourse may be filed irrespective of the filing of the award.

The award partially deciding on the merits of the dispute may be challenged immediately, whereas the award which decides some of the issues without resolving the dispute may be challenged only together with the final award.

Article 828
RECOURSE FOR NULLITY

A recourse for nullity may be filed with the court of appeal of the district in which the arbitration has its seat, within ninety days of notification of the award.

No recourse may be filed after one year from the date of the last signature.

The request to correct the award does not suspend the time-limit for filing a recourse; however, the parts of the award which have been corrected may be challenged within the ordinary time-limit, which begins to run after notification of the decision on the correction.

Article 829
GROUNDS FOR NULLITY

Notwithstanding any waiver, a recourse for nullity may be filed in the following cases:

- (1) if the arbitration agreement is null and void;
- (2) if the arbitrators have not been appointed according to the provisions laid down in Chapters I and II of this Title, provided that this ground for setting aside has been raised in the arbitration proceedings;
- (3) if the award has been rendered by a person who could not be appointed as arbitrator according to Article 812;
- (4) if the award exceeds the limits of the submission to arbitration or fails to decide one or more items in the submission to arbitration or contains contradictory provisions, subject to the provisions of Article 817;
- (5) if the award does not comply with the requirements of Article 823, paragraph 2, numbers (3), (4), (5) and (6), subject to the provisions in the third paragraph of said article;
- (6) if the award has been rendered after the expiry of the time-limit indicated in Article 820, subject to the provisions of Article 821;
- (7) if during the proceedings those formalities laid down under penalty of nullity for the proceedings before the ordinary courts have not been observed, provided the parties had requested their observance according to Article 816 and if the nullity has not been cured;
- (8) if the award is contrary to a previous award which is no longer subject to recourse or to a previous judgment having the force of *res judicata* between the parties, provided that this objection has been raised in the arbitration proceedings;
- (9) if the due process principle (*principio del contraddittorio*) has not been respected in the arbitration proceedings. A recourse for nullity may also be filed where the arbitrators did not decide according to rules of law, unless the parties have authorized them to decide *ex aequo et bono* or have declared that there may be no recourse against the award.

In the case provided for in Article 808, paragraph 2, the award is subject to recourse also for violation and misapplication of collective labour contracts and agreements.

Article 830
DECISION ON THE RECOURSE FOR NULLITY

The court of appeal, when granting the recourse, issues a judgment declaring the award null and void; when the defect affects only a part of the award which is separable from the others, it shall declare the partial nullity of the award.

Unless all of the parties have declared a contrary intention, the court of appeal shall decide also on the merits, if the case is ready for decision, or it shall remand the case with an order to the instructing judge (*istruttore*), if the decision on the merits requires the taking of further evidence.

While the case is pending, the court of appeal may, on request of a party, make an order staying enforcement of the award.

Article 831

REVOCATION AND THIRD PARTY OPPOSITION

Notwithstanding any waiver, the award may be revoked in the cases indicated in Article 395, numbers (1), (2), (3) and (6), within the time-limit and according to the formalities provided for in Book II.

If the cases mentioned in the first paragraph arise during the nullity proceedings, the time-limit for filing a request for revocation shall be suspended until notification of the judgment on the nullity.

The award is subject to third party opposition in the cases indicated in Article 404.

The request for revocation and third party opposition shall be filed with the court of appeal of the district in which the arbitration has its seat.

The court of appeal may consolidate setting aside, revocation and third party opposition proceedings, unless the stage reached by the proceedings filed first does not allow an exhaustive discussion of and decision on the other recourses.

Chapter VI. International Arbitration

Article 832

INTERNATIONAL ARBITRATION

If on the date of signing the arbitration clause or submission to arbitration at least one of the parties has its domicile or actual place of business abroad, or if a substantial part of the obligations arising out of the relationship to which the dispute refers must be performed abroad, the provisions of Chapters I to V of this Title shall apply to arbitration in so far as they are not derogated from by this Chapter.

The provisions of international treaties shall in any case be applicable.

Article 833

FORM OF THE ARBITRATION CLAUSE

The arbitration clause contained in general conditions of contract or in standard forms is not subject to the specific approval provided for in Articles 1341 and 1342 of the Civil Code.

The arbitration clause contained in general conditions incorporated into a written agreement between the parties is valid, provided that the parties had knowledge of the clause or should have had such knowledge by using ordinary diligence.

Article 834

RULES APPLICABLE TO THE MERITS

The parties may agree among themselves upon the rules which the arbitrators shall apply to the merits of the dispute or provide that the arbitrators shall decide ex æquo et bono.

In both cases the arbitrators shall take into account the provisions of the contract and trade usages.

If the parties are silent, the law with which the relationship has its closest connection shall apply.

Article 835

LANGUAGE OF ARBITRATION

Unless the parties have provided otherwise, the language of the arbitration is determined by the arbitrators, taking into account the circumstances.

Article 836

CHALLENGE OF THE ARBITRATORS

The challenge of the arbitrators is governed by Article 815, unless the parties have provided otherwise.

Article 837

DELIBERATION OF THE AWARD

The award shall be deliberated by a majority of the votes of the arbitrators meeting in personal conference or in video conference, unless the parties have provided otherwise, and shall be subsequently set down in writing.

Article 838

RECOURSE

Unless the parties have agreed otherwise, the provisions of Article 829, paragraph 2, Article 830, paragraph 2 and Article 831 shall not apply to international arbitration.

Chapter VII . Foreign Awards

Article 839

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

The party wishing to enforce a foreign award in the Republic shall file a petition with the president of the court of appeal of the district in which the other party has its domicile; if that party has no domicile in Italy, the court of appeal of Rome shall have jurisdiction.

The petitioner shall supply the original award or a certified copy thereof, together with the original arbitration agreement or an equivalent document, or a certified copy thereof.

If the documents specified in the second paragraph are not written in Italian, the petitioner shall in addition produce a certified translation thereof.

The president of the court of appeal, after having ascertained the formal regularity of the award, shall declare by decree the efficacy of the foreign award in the Republic unless:

- (1) the subject matter is not capable of settlement by arbitration under Italian law;
- (2) the award contains provisions contrary to public policy.

Article 840

OPPOSITION

An opposition may be filed against the decree granting or denying enforcement of the foreign award by filing a writ of summons with the court of appeal within thirty days of communication of the decree denying enforcement or notification of the decree granting enforcement.

After the filing of the opposition, the proceedings shall be held in accordance with Article 645 and following in so far as they are applicable. The court of appeal decides with a judgment subject to recourse before the supreme court.

The court of appeal shall refuse the recognition or the enforcement of the foreign award if in the opposition proceedings the party against which the award is invoked proves the existence of one of the following circumstances:

- (1) the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the State where the award was made;
- (2) the party against which the award is invoked was not informed of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case in the proceedings;
- (3) the award decided upon a dispute not contemplated in the submission to arbitration or in the arbitration clause, or exceeded the limits of the submission

to arbitration or of the arbitration clause; nevertheless, if the decisions in the award which concern questions submitted to arbitration can be separated from those concerning questions not so submitted, the former can be recognized and enforced;

(4) the composition of the arbitration tribunal or the arbitration proceedings was not in accordance with the agreement of the parties or, failing such an agreement, with the law of the place where the arbitration took place;

(5) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the State in which, or under the law of which, it was made.

If an application for the setting aside or suspension of the effects of the award has been made to the competent authority indicated at number 5) of the third paragraph, the court of appeal may adjourn the decision on the recognition or enforcement of the award; on the request of the party seeking enforcement it may, in the case of suspension, order the other party to give suitable security.

Recognition or enforcement of a foreign award shall be refused also where the court of appeal shall ascertain that:

(1) the subject matter is not capable of settlement by arbitration under Italian law;

(2) the award contains provisions contrary to public policy.

In all cases, the provisions of international treaties shall be applicable.