



March 2006

BRIEFING

New civil procedure code

Summary

Italy's new civil procedure code, which came into effect this month, changes the judicial landscape significantly. The code, which should speed up judicial proceedings, consolidates hearings; introduces new procedural deadlines and evidentiary requirements, and new time limits for parties' activities in the proceedings; and allows ordinary proceedings to commence according to the rules for corporate litigation. Parties must now submit completely developed defences at an earlier stage than before.

The judicial landscape in Italy changed significantly this month with the coming into force of the new civil procedure code (CPC), which should (among other effects) speed up judicial proceedings in Italy. Parties are also required to submit completely developed defences at an earlier stage than before.

Law 80 of 14 May 2005 (the competitiveness law) and law 263 of 28 December 2005 came into effect on 1 March 2006 and have significantly altered both ordinary and interim judicial proceedings, inter alia, by:

- extending the notice period for appearing in court and consolidating judicial proceedings;
- introducing new procedural deadlines and evidentiary requirements;
- introducing new time limits for parties' activities in the proceedings; and
- allowing ordinary proceedings to commence according to the rules for corporate litigation.

The main effect of these changes is that parties are now required to submit completely developed defences at an earlier stage than before. They will therefore need to provide their counsel with sufficient information in a timely manner, or else run the risk that pertinent evidence is not admitted by the court.

Most importantly, a defendant must inform his lawyer promptly after being served with a writ of summons to immediately assess the most effective defence(s), which must substantially be entirely presented in the first reply.

The reform also provides for new interim proceedings and a new tool in dispute resolution (the anticipatory expert report).

Extending the notice period and consolidating judicial proceedings

Revised article 163-*bis* CPC extends the term between the date of notification of the summons by the plaintiff and the first court appearance from 60 to 90 days (as explained below, filing the answer by the defendant would normally occur 20 days before such first court appearance). Where the summons must be notified outside of Italy, this term is extended from 120 to 150 days.

This extension is coupled, however, with the consolidation of judicial proceedings: the new 'first appearance of the parties' hearing, under article 183 CPC (also called the 'article 183 hearing'), incorporates the activities previously performed in two separate hearings.

The goal of the new article 183 CPC is to avoid hearings (including evidentiary hearings) considered to be purely dilatory and unnecessary to reach a ruling on the case. To avoid waste of both time and procedural resources the judge in the first appearance of the parties hearing:

- must ascertain that there are no procedural defects, inviting the parties' counsel to regularise pleadings and documents where needed;
- may request clarification of the facts from the parties and deal with the parties' objections, which may be

raised and decided ex officio (ie matters that the judge can decide even if not specifically required by the parties); and

- if requested, may authorise the plaintiff to call third parties to the case.

The requirement that the parties attempt a conciliation (*tentativo obbligatorio di conciliazione*) is now optional and granted only on joint request of the parties, upon which the judge sets a hearing date for the parties' appearances in person.

New procedural deadlines and evidentiary requirements

The new regime of procedural deadlines directly affects (primarily) the defendant. The defendant must not only bring all of its counter- and cross-claims 20 days before the first hearing, as under the old rules, but must also raise certain objections regarding procedural and substantive issues within the same time limit.

All parties must produce their documents and indicate any evidence (or request for evidence) in the terms set by the judge at the first hearing.

The new provisions regarding evidentiary matters are also aimed at reducing the length of trial. The hearing provided for in the former article 184 CPC, at which the parties requested and discussed the admission of evidence, has been eliminated. This request must now be made in the first written defence or within the term set by the judge at the article 183 hearing.

The direct consequence of significantly reducing procedural deadlines and eliminating the article 184 evidentiary hearing is that both parties must be more complete in their first written defences. They must submit completely developed defences at an earlier stage than was previously required. In essence, to avoid preclusions, most of the procedural and factual defences must be effectively submitted in the first written defence.

It should be noted that the system of deadlines may be quite different in the event the parties have to commence the alternative proceedings according to the new procedural rules applying to corporate litigation (see below).

New time limits for parties' activities in the proceedings

Parties must develop their defences within new time limits (30+30+20 days).

Upon the request of the parties, the judge assigns:

- a 30 day term to file pleadings that contain only amendments and specifications to pleadings, objections and requests already provided by the parties;
- a further 30 day term to contest new pleadings or objections or to contest pleadings or objections amended by the counterparty, and to submit objections derived from the pleadings and counterparty objections – the parties may also submit further evidence or file documents, within the same time limit; and
- a further 20 day term to the parties for the sole purpose of providing evidence in rebuttal.

Right to commence proceedings under corporate litigation rules

Alternatively, parties may commence proceedings under the rules for corporate litigation (*rito societario*) instead of ordinary civil proceedings. The plaintiff must invite the defendant to participate in corporate litigation in the summons. The defendant must demonstrate its acceptance or refusal of the plaintiff's proposal in its first written defence.

The new corporate litigation rules, which were also created to streamline the judicial process, have a pre-trial phase in which defensive pleadings are exchanged without any court involvement, after which a request is made to the court to schedule a hearing. After the hearing request has been made, the president of the court may nominate the judge who will decide the case on the basis of what has emerged (and possibly streamlined) from the parties' pre-trial phase pleadings.

New rules concerning interim proceedings

These changes are aimed at creating new interim proceedings that are faster and protect the parties' right to an effective defence. While previously all interim

proceedings were *always* followed by ordinary proceedings that would confirm or revoke the interim measures issued by the judge, the new rules provide that with respect to specific interim measures (ie restraining orders or other urgent interim measures under article 700 CPC) commencement of ordinary proceedings is no longer strictly required.

In other cases, after interim measures are granted, the parties have 60 days within which they must commence ordinary proceedings.

The interested party must now choose between appealing against or requesting the revocation of interim measures. Interim measures may be revoked where there is a change of circumstances after the issuance of the measure (where relevant facts are discovered after the interim measure has been issued) or where ordinary proceedings are not commenced after the interim measure is issued. The term for appeal of interim measures has been extended from 10 to 15 days following their issuance.

Expert anticipatory report

The anticipatory expert report, a new dispute resolution feature, may be used to determine the amount in controversy before pleadings have been filed. Before the expert files his/her report with the court, he must also attempt to settle the case between the parties. If the parties agree to the terms of the expert's report, the judge records the settlement, which is fully enforceable.

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