Which country's law applies?

Itália

1 Sources of the rules in force

The sources of private international law in Italy are domestic law, European Union regulations and the international conventions to which Italy is a signatory.

1.1 National rules

In Italy, issues of private international law are governed by Law No 218 of 31 May 1995, which replaced sections 16 to 31 of the general legal provisions placed at the beginning of the Civil Code (*Codice Civile*).

1.2 Multilateral international conventions

Complete list of multilateral conventions in force

For the multilateral conventions in force in Italy please see the attached list(13 Kb) PDF (13 Kb) it.

1.3 Principal bilateral conventions

Non-exhaustive list of the bilateral conventions most frequently applied by the courts

The bilateral conventions that applied in the past to private international law issues arising between Italy and other individual Member States of the European Union have been superseded by the Community legislation adopted in the same field. The regulations that are applied most frequently are Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters; Council Regulation (EC) No 1206 /2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters; Council Regulation (EC) No 2201 /2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility; and Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

For issues between Italy and non-member countries, the most frequently applied bilateral conventions are those on legal aid and on the recognition and enforcement of judgments which are in force with Argentina (Rome, 9 December 1987), Brazil (Rome, 17 October 1989), the Russian Federation and the other states of the former USSR (Rome, 25 January 1979), the republics of former Yugoslavia (Belgrade, 7 May 1962), some of the United Kingdom's former dominions, including Australia and Canada (London, 17 December 1930), Switzerland (recognition and enforcement of civil and commercial judgments, Rome, 3 January 1933, and damages for road accidents, Rome, 16 August 1978), Bulgaria (Rome, 18 May 1990), Romania (Bucharest, 11 November 1972) and Turkey (Rome, 10 August 1926).

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

To what extent and under what circumstances?

Under Italian law a court must apply the conflict-of-law rules to the case before it of its own motion: it must identify the law that is applicable without being confined to any pleadings on the subject by the parties (*iura novit curia*). For researching foreign law, the judge can obtain assistance from the Ministry of Justice, and also through the London Foreign Law Convention of 1968.

2.2 Renvoi

When the conflict-of-law rules of the court hearing the case designate a foreign law, it may happen that the conflict-of-law rules in that foreign law themselves designate another applicable law ('*renvoi*').

For example: to govern the capacity of an English national residing in France, the French conflict rule designates English law. The English conflict rule, however, refers to the law of the country of residence, i.e. French law.

What happens in Italy in such a case? What happens where Italian law designates the law of another state, which in turn refers to Italian law, or to the law of a third country?

Each time that Italian law designates the law of another state, which in turn refers to the law of a further state, the *renvoi* will be accepted and the law of the further state applied only in the following cases:

(1) if the law of the further state accepts the *renvoi*;

(2) if the *renvoi* is to Italian law.

Renvoi does not occur when the applicable foreign law was chosen by the parties or relates to the form of acts, or in the case of non-contractual obligations.

2.3 Change of connecting factor

What happens if the connecting factor changes, e.g. in the case of a transfer of movables?

The above rules apply.

2.4 Exceptions to the normal application of conflict rules

May the courts refuse to apply the applicable foreign law of referral where it is inconsistent with international public policy? And are there statutes or other national rules that prevail over the conflict rules (overriding provisions, in the sense of '*lois de police*')?

Under Italian law (Article 16 of Law 218/1995) the court cannot apply the foreign law of referral if its effects are 'contrary to public policy' (*contrari all'ordine pubblico*). This is usually understood to mean 'international public policy'. Capacity and other conditions for entering into a civil union are governed by the domestic law of each party to the union at the time that the union is contracted. If, however, the applicable law does not allow for civil union between adults of the same gender, Italian law applies (Article 32-*ter* of Law 218 of 1995).

In cases of conflict of laws (Article 17 of the above Law), Italian law prevails and no departure is allowed, notwithstanding a reference to the foreign law, if that is required by the purpose and scope of the provisions of Italian law (these are 'overriding mandatory provisions', in Italian *norme di applicazione necessaria*).

2.5 Proof of foreign law

Roles of the judge and the parties

It is the responsibility of the judge to establish the foreign law; he or she can obtain help from the parties, the universities, or the Ministry of Justice.

What modes of proof are accepted?

As modes of proof of the foreign law, use can be made of the instruments indicated in international conventions, information provided by the foreign authorities via the Ministry of Justice, and opinions of experts or specialist bodies.

What happens if the foreign law cannot be ascertained?

If possible the court will apply the law identified by other connecting factors that come into play in cases of the particular kind. Failing this, Italian law applies.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Article 57 of Law 218/1995 states that the law applicable to contractual obligations is the law indicated in the Rome Convention of 19 June 1980.

Generally speaking that convention establishes that the law applicable to a contract is the law chosen by the parties.

If no choice has been made, the law that applies is the law of the state with which the contract is most closely connected, subject, however, to the application of any other international conventions that may relate to the specific obligation (e.g. the 1955 Hague Convention on the sale of movable goods will apply in preference to the Rome Convention of 1980).

The application of the law designated by an international convention or by the will of the parties can, however, be refused if it would be incompatible with public policy (for example, if it is incompatible with mandatory rules or safety provisions).

Following the implementation of Regulation (EC) No 593/2008 (the 'Rome I Regulation'), contract cases of a cross-border nature which involve EU Member States are no longer subject to the rules laid down in the international conventions but are governed by that Regulation.

The Regulation provides that the main criterion for determining the law applicable to a contractual relationship is the choice of the parties. However, the law selected by the contracting parties cannot restrict the application of overriding mandatory provisions in the legal system with which the contract is most closely connected.

Where no choice has been made, the Regulation provides a series of specific connection criteria for individual types of contract. For example:

a contract for the sale of goods is governed by the law of the country where the seller has his or her habitual residence;

a contract relating to a tenancy is governed by the law of the country in which the property is situated;

a contract for the provision of services is governed by the law of the country where the service provider has his or her habitual residence.

Jurisdiction and the recognition and enforcement of judgments in such matters is governed by Regulation (EU) No 1215/2012 (the 'Brussels Ia Regulation' or 'Brussels I bis Regulation').

3.2 Non-contractual obligations

Law 218/1995, cited above, specifies the rules applicable in the following cases of noncontractual obligations:

unilateral promise (law of the state in which the promise is made);

credit instruments (the Geneva Conventions of 1930 on bills of exchange and promissory notes, the Geneva Convention of 1931 regarding cheques; whereas for other credit instruments, the primary obligations are governed by the law of the state in which the instrument is issued);

agency (law of the state in which the representative has his or her business establishment or in which he or she primarily exercises other powers);

obligations arising from the law (law of the place in which the event occurred that gave rise to the obligation);

liability in tort/delict (law of the state in which the event occurred, but where requested by the victim, the law of the country in which the event giving rise to the damage occurred; and if citizens of only one state are involved, the law of that state applies).

Following the implementation of Regulation (EC) No 864/2007 (the 'Rome II Regulation'), cases of a cross-border nature involving EU Member States are subject to that Regulation. It provides that obligations arising from tort/delict, from liability arising out of dealings prior to the conclusion of a contract, from liability incurred while managing the affairs of another and from unjust enrichment are governed by the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred. The parties may make a choice of law on the basis of an agreement entered into after the occurrence of the event giving rise to the damage.

Jurisdiction and the recognition and enforcement of judgments in such matters is governed by Regulation (EU) No 1215/2012 (the 'Brussels Ia Regulation' or 'Brussels I bis Regulation').

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

Personal status and capacity and the existence and content of personal rights, including the right to a name, are governed by the domestic law of the interested party, except for the rights that derive from family relationships, to which the referral rules laid down by Law 218/1995 apply on a case-by-case basis.

3.4 Establishment of parent-child relationship, including adoption

Filiation and citizenship are acquired on the basis of the national law of the parents or one of the parents at the time of birth. The parent-child relationship and the personal and financial relationships between parents and child, including parental responsibility, are governed by the national law of the child at the time of birth.

However, in spite of these references to other laws, the foreign law will be overridden by the Italian legislation enshrining the principle that there is one status of 'child' (and thus that children born to married and unmarried couples are to be treated equally), conferring parental responsibility on both parents, requiring both parents to provide for the child's maintenance, and empowering the courts to adopt measures restricting or removing parental responsibility in cases of conduct detrimental to the child.

When an application is made to an Italian court for the adoption of a child, giving the child the status of a legitimate child, Italian law applies (Law 184/1983). Articles 29 *et seq*. of Law 184/1983 contain, *inter alia*, a particular rule for cases where the adoption of foreign children is requested by persons resident in Italy, which implements the requirements in the Hague Convention of 29 May 1993 concerning international adoption.

For other conflict-of-law rules, Article 38 of Law 218/1995 contains detailed provisions on different scenarios.

Jurisdiction and the recognition and enforcement of judgments relating to parental responsibility are governed by Regulation (EC) No 2201/2003.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

In matrimonial matters the personal relationships between spouses are regulated by the law of nationality of the spouses, if they have the same nationality, and otherwise by the law of the state where most of their married life is spent.

The law applicable to personal relationships extends as a general rule to the matrimonial property regimes governing joint or separate ownership of property, but here exceptions can be made where so agreed by the spouses or in other cases specifically provided for by law.

Italian law also recognises unions between persons of the same gender (*unioni civili*, 'civil unions'), subject to almost exactly the same legal rules as marriage, excluding the right to adopt. Civil unions are regulated by the law of the state in which the union was entered into, unless one of the parties asks the court to apply the law of the state where most of their life together is spent. The law applicable to property regimes is also that of the state in which the civil union was entered into, but it is possible to register an agreement between the parties that the law applicable is to be the law of a state in which at least one of them resides, or whose nationality he or she possesses.

A marriage entered into abroad by an Italian citizen with an individual of the same gender has the effect of a civil union governed by Italian law.

Judicial separation and divorce, and the dissolution of a civil union, are regulated by Regulation (EU) No 1259/2010, which takes precedence over Law 218 /1995. This permits spouses (or civil partners) to designate the applicable law, provided it is one of the following: the law of the state where they are both resident; the law of the state where they last resided together, if one of them still resides there at the time of the agreement; the law of the state of nationality of either of them; or the law of the court hearing the case. If the parties have not concluded an agreement, the same connecting factors apply in order of priority (the first takes precedence over the second, and so on).

Lastly, it is possible for persons who are not married or in a civil union to enter into cohabitation agreements. These are regulated by the law of the nationality of the couple, if they have the same nationality, and failing that by the law of the state in which most of their life together is spent.

Family maintenance obligations are regulated in line with the Hague Convention of 2 October 1973.

Jurisdiction and the recognition and enforcement of judgments relating to matrimonial matters are governed by Regulation (EC) No 2201/2003.

3.6 Matrimonial property regimes

In Italy the general principle is that matrimonial property is held jointly (*comunione dei beni*).

The spouses may instead opt for an alternative system, such as one where they each own their own property separately (*separazione dei beni*), or another arrangement they establish by agreement between them.

3.7 Wills and successions

It is necessary to differentiate between two periods.

Where the opening of the succession (*apertura della successione*) took place before 17 August 2015, the succession is regulated by the national law of the deceased at the time of death. While still alive, a testator can, by means of a statement in the will, make the succession subject to the law of the country in which he or she resides; if he or she is an Italian national, this choice does not affect the rights of heirs resident in Italy who are entitled by law to a share of the estate (*legittimari*, Article 46 of Law 218/1995).

For successions opened on and after 17 August 2015, Regulation (EU) No 650/2012 applies, and replaces the arrangement outlined above. These successions are regulated by the law in the deceased's habitual place of residence at the time of death. A testator may dispose that the law to govern his or her succession is to be the law of the state whose nationality he or she possesses at the time of making the choice or at the time of death. The Regulation also introduced the European certificate of succession, which confirms the holder's status as heir, legatee or executor in the various Member States.

3.8 Real property

Immovables, movables (it does not appear useful in this context to insist on detailed rules on intangibles).

Property and other rights *in rem* are governed by the law of the state in which the property is situated.

In the case of immovable property situated in an EU Member State, Regulation (EU) No 1215/2012 (the 'Brussels Ia Regulation' or 'Brussels I bis Regulation') applies: it establishes that for rights *in rem* in immovable property, the courts of the Member State in which the property is situated have jurisdiction.

3.9 Insolvency

Italian law does not make any express provision for the law applicable where there is a conflict of laws relating to insolvency.

Uniform rules on conflicts of laws between the EU Member States are laid down in Regulation (EU) No 848/2015. This provides for insolvency proceedings to be opened in the Member State where the debtor's centre of main interests is situated; the law applicable to insolvency proceedings and to their effects is that of the Member State within the territory of which such proceedings are opened.

List of the Multilateral Conventions to which Italy belongs

1. MARRIAGE, SEPARATION, DIVORCE

Hague Convention of 1 June 1970 on the recognition of divorces and legal separations.

Council of Europe Convention on preventing and combating violence against women and domestic violence, opened for signature in Istanbul on 11 May 2011 (Law No 77 of 27 June 2013).

2. PATERNITY AND ADOPTION

Munich Convention of 5 September 1980 on the law applicable to surnames and forenames.

Hague Convention of 29 May 1993 on protection of children and co-operation in respect of intercountry adoption.

3. MINORS

Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants.

Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

Luxembourg European Convention of 20 May 1980 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children.

Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (Law No 101 of 18 June 2015).

4. MAINTENANCE OBLIGATIONS IN FAMILY RELATIONSHIPS

New York Convention 20 June 1956 on the Recovery Abroad of Maintenance.

Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations.

Hague Convention of 2 October 1973 on the law applicable to maintenance obligations.

5. CITIZENSHIP AND STATELESSNESS

New York Convention of 28 September 1954 relating to the status of stateless persons.

Geneva Convention of 28 July 1951 relating to the status of refugees and New York Protocol of 31 January 1967.

6. SUCCESSION

Washington Convention of 26 October 1973 providing a uniform law on the form of an international will.

Hague Convention of 2 October 1973 concerning the international administration of the estates of deceased persons.

7. CONTRACTUAL OBLIGATIONS

Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.

8. INTERNATIONAL TRADE

Hague Convention of 15 June 1955 on the law applicable to international sales of goods.

Vienna (UN) Convention of 11 April 1980 on contracts for the international sale of goods.

Geneva Convention of 19 May 1956 on the contract for the international carriage of goods by road.

9. CREDIT INSTRUMENTS

Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes and for the settlement of certain conflicts of laws.

Geneva Convention of 19 March 1931 providing a uniform law for cheques and for the settlement of certain conflicts of laws.

10. NON-CONTRACTUAL OBLIGATIONS

Paris Convention of 29 July 1960 on third party liability in the field of nuclear energy (and additional protocols).

Brussels Convention of 29 November 1969 on civil liability for oil pollution damage.

11. ARBITRATION

New York Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards.

European Convention of 21 April 1961 on international commercial arbitration.

12. JUDICIAL ASSISTANCE AND COOPERATION

Hague Convention of 1 March 1954 on civil procedure.

Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

Hague Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters.

Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.

13. TRUSTS

Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition.

Coordination between the rules of international conventions, in particular uniform rules of law, and the corresponding domestic rules of private international law, is ensured by Article 2 of Law 218/1995, whereby the fact that a situation or relationship is within the scope of domestic law does not prejudice the application to the same case of the international conventions in force for Italy.

Last update: 22/12/2021

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