

Practice: when Italian makes sense

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Italian is the natural language of an arbitration when the contract was drafted in Italian, when the parties and their witnesses are Italian or Ticinese and when the documentary evidence is mainly Italian. These conditions are met in many disputes typical of the Lugano market. They include shareholder disputes within Italian family groups with Swiss holding companies, disputes between Ticino and Lombard companies over supply and distribution contracts, construction and engineering disputes in the cross-border region and disputes over the management of family wealth. In such cases an arbitration in Italian with a seat in Lugano avoids translation costs, allows witnesses to testify without interpreters and enables the parties to choose arbitrators fluent in both Swiss and Italian law.

Italian is less suitable when the parties come from different language areas, when the contract is in English, as is usual in commodity trading and finance, or when the dispute will be governed by English law under standard forms such as those of GAFTA or FOSFA, which Chapter F.II discussed. In those cases English prevails, and Lugano competes with Geneva, Zurich and London on other grounds, such as neutrality, cost and the quality of local counsel. The language question is therefore a question of fit. The availability of Italian as an equal language in Swiss arbitration law and institutional rules gives Lugano an option that other Swiss seats can offer only with difficulty, because few of their arbitrators and counsel can conduct a hearing in Italian.

1 Italy and the enforcement of awards

An award made in Lugano is enforceable in Italy under the New York Convention of 10 June 1958, to which both countries are parties. Chapter H.IV explained that arbitration is excluded from the Lugano Convention and described the Italian arbitration reform of 2023. Italian courts have

long experience with the recognition of Swiss awards. An award in Italian spares the party seeking enforcement the certified translation that Article IV of the New York Convention requires when an award is not in the official language of the enforcing state.¹ The same applies in reverse to Italian awards enforced in Ticino, where the competent cantonal authorities work in Italian. For cross-border disputes between Ticino and Lombardy the combination of a Lugano seat, the Italian language and the New York Convention thus offers a framework that is efficient in practice.

Essentials. Swiss arbitration law leaves the language of proceedings to the parties and, failing agreement, to the arbitral tribunal. The Swiss Rules of International Arbitration, in force since 2004 and last revised with effect from 1 June 2021, are published in English, French, German and Italian, which are also the languages accepted for the notice of arbitration. Challenges against international awards go to the Federal Supreme Court, which accepts submissions in English. For domestic arbitrations seated in Ticino, the Court of Appeal in Lugano is the competent cantonal court. An award in Italian made in Lugano is enforceable in Italy under the New York Convention without translation.

2 Notes

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (New York Convention), SR 0.277.12, Art. IV(2), <https://www.droit-bilingue.ch/de-it/0.2/0.27/0.277.12-IV-7.html>. ↩

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