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The Legal 500 Country Comparative Guides

Italy
SHIPPING

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Italy.

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ITALY
SHIPPING

1. What system of port state control applies in your jurisdiction? What are their powers?

Italy is a party to the Paris Memorandum of Understanding on Port State Control signed on 26 January 1982 (the "**Paris MoU**"). Pursuant to the Paris MoU, each contracting State must maintain an effective system of port state control to ensure that foreign merchant ships calling at, or anchored off, a port of its State comply with certain international standards. These provisions have been endorsed by Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009, which was transposed into the Italian law system by Legislative Decree No 53 of 24 March 2011. Local Harbour Masters are the relevant Italian authorities in charge of port state control at national level. The activities are also co-ordinated by the 6th Division of the Italian General Command of the Harbour Master Corps Office. Generally, the powers of such authorities in Italy include notification of deficiencies, verification for the rectification of deficiencies, inspections, and formal prohibitions to sail, as well as refusal of access and detentions. In particular, according to Articles 578-584 of the Italian Navigation Code, Italian authorities responsible for Port State Control activities have the power to conduct administrative investigations aimed at determining the causes and liabilities arising out of any marine casualty.

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

As for wreck removal, Italy has not ratified the Nairobi International Convention on the Removal of Wrecks, 2007. As a consequence, Article 73 of the Italian Navigation Code shall apply in this matter. Such provision gives broad discretion to Maritime Authorities to issue orders for wreck removal. In addition, Regulation (EU) No 1257/2013, which entered into force in 2013 and has been applicable from 31 December 2018, sets out new rules on ship recycling by providing common evaluation standards in accordance with the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 2009 (even if the latter has not yet entered into force in Italy).

As for pollution, Italy is a State member of the following International Conventions:

- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, and Intervention Protocol 1973;
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IFC Convention), 1971, and Supplementary Fund Protocol;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), 1972, and the London Convention Protocol 1996;
- the International Convention for the Prevention of Pollution from Ships (MARPOL Convention 1973/78) and 1997 Protocol;
- the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969, and Protocols 1976 and 1992;
- the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention), 1990;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention), 2001.

In 2014, as a result of several amendments and supplements to the existing Environmental Code (Legislative Decree No 152/2006), Italy adapted its legislation by Legislative Decree No 112/2014 to comply with Directive 2012/33/EU. The Environmental Code imposes a general clean-up obligation on the party liable for pollution of the sea. If this obligation is not met, remediation or depollution is carried out by the public administration, which can claim the relevant costs from the liable party. In addition, Directive (EU) 2019/883 has established a framework against the negative effects

from discharges of waste from ships by requiring Member States to provide adequate waste-reception facilities in all ports, including recreational ports and marinas. Legislative Decree No 197/2021 – transposing the Directive (EU) 2019/883 on the waste-reception service in ports – entered into force on 15 December 2021. On 13 October 2022, the Ministry of the Environment and Energy Security (formerly, Ministry for Ecological Transition) adopted Ministerial Decree No 389, aimed at approving the "*Emergency response plan for the defence of the sea and coastal areas from pollution due to hydrocarbons and other hazardous and toxic substances*".

3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

The limits on sulphur content of fuel oil used in the Italian territorial waters are set out in art. 295 of the Environmental Code (Legislative Decree No 152/2006) in line with the provisions of the Directive 2016/802/EU. According to such provisions, Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas (as well as in their exclusive economic zones and pollution control zones) if the sulphur content of the marine fuels by mass exceeds 0,50% as from 1 January 2020, regardless of the vessel's flag. Pursuant to the above-mentioned art. 295 of Environmental Code, as of 2020 a maximum sulphur content of 0,10% by mass shall apply, provided that European Union member States bordering the same sea areas have provided for the application of the same or lower sulphur contents. The use of marine fuels with a sulphur content greater than 0,10% by mass on vessels at berth is prohibited. Further limits are set out in art. 295 of Environmental Code in relation to specific cases. Art. 296 of the Environmental Code establishes the penalties applicable to breaches of the relevant rules.

The 79th session of the IMO Marine Environment Protection Committee (MEPC) has designated the Mediterranean Sea as an Emission Control Area (ECA) for Sulphur Oxides and particulate matter, under MARPOL Annex VI. In this ECA, the limit for sulphur in fuel oil used on board ships shall be 0,10% by mass as of 1 May 2025.

4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

With regard to collision, Italy is a State member of the following International Conventions:

- the Convention for the Unification of certain Rules of Law with respect to Collisions between vessels, 1910 (Brussels Collision Convention);
- the International Convention for the Unification of certain Rules relating to Penal Jurisdiction in matters of Collision or other Incidents of Navigation, 1952 (Collision/Penal Convention);
- the International Convention on certain Rules concerning Civil Jurisdiction in matters of Collision, 1952 (Collision/Civil Convention);
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs).

As far as the domestic law is concerned, whenever the criteria provided for by the Collision/Civil Convention are not applicable, the relevant provisions of the Italian Navigation Code shall apply.

With regard to salvage, Italy ratified the 1989 London Convention on Salvage in 1996 and applies it as a general rule. As a consequence, the provisions of the London Convention de facto prevail over the rules laid down in the Italian Navigation Code in relation to salvage.

5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

Italy is not party to the LLMC 1976 although its ratification and that of the 1996 Protocol was authorized with Law 23 December 2009 n.201.

Limitation of liability is governed by the relating provisions in the code od navigation. Its art. 275 states that the limitation sum is between 1/5 and 2/5 of the ship's value.

Italy implemented Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 requiring owners of ships over 300 tons to maintain insurance to cover maritime claims subject to limitation under the LLMC 1996.

It took place with Legislative Decree n.111/2012 which incorporates the provisions of LLMC 1976/96 and makes the rules on limitation under the code of navigation applicable only to ships not exceeding 300 tons.

The issue which followed and is still debated is whether the provisions of LLMC 1976/96 were made applicable in Italy or limitation is available only to ships not exceeding 300 tons.

The legal uncertainty is reflected by a Court decision holding that, given the contents of Legislative Decree 111/2012 regarding the entry into force of the provisions of the LLMC/1976/96, which in fact has not been ratified yet, the rules of limitation in the code of navigation are to be extended by analogy to ships over 300 tons.

6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Cargo claims may be secured by way of a conservative arrest of the relating ship.

Italy is party to the 1952 Arrest Convention. The 1999 Arrest Convention is in force, but Italy is not among the ratifying parties.

A vessel can be arrested with respect to the maritime claims set out in Article 1(1) of the 1952 Arrest Convention. If the vessel flies the flag of a State which is not a party to that Convention, it can be arrested in accordance with the general rules of the Italian Navigation Code and of the Italian Code of Civil Procedure.

The maritime claims pursuant to art.1 (1) of the 1952 Arrest Convention are indicated in a numbered list. Among such list there is also, under letter f, the maritime claim regarding "*loss or damage to goods and baggage transported by ship*" which grants the receiver right to arrest the vessel to secure their claim.

The arrest of a ship is possible even if the substantive case is to be decided abroad or in arbitration.

7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

A power of attorney is required. If issued in Italy, it may be written down at the edge or at the bottom of the application of arrest, with the signature being certified by the lawyer to whom is granted.

If issued abroad, it must be notarized and, unless the 1987 Brussels Convention on suppression of legalization between EU member States is applicable, it must be apostilled pursuant to the 1961 The Hague Convention.

The original is required; however, a pdf may be considered sufficient by the Court.

8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

Italy is party to the 1926 Convention on Maritime Liens and Hypothecs. The code of navigation (c.n.) sets out rules that correspond to those of the Convention, including the maritime liens, which are listed in art. 552 c.n. and reflect those in art. 2 of the 1926 Convention. However, in Italian law a maritime lien is granted also in respect of claims of social insurance institutions and of crew maintenance and repatriation.

Because the scope of application of Italian domestic law is, pursuant to art. 6 c.n., limited to ships flying the Italian flag, whilst the 1926 Convention applies to ships flying the flag of contracting States, the Convention should prevail over domestic law where there is a conflict.

In addition to the maritime liens recognized by the 1926 Convention, and by the c.n., there are also civil law liens, possessory in nature, that apply to ships, as set out in article 2756 civil code.

9. Is it a requirement that the owner or demise charterer of the vessel be liable in

personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

In Italian law ships may be arrested to secure claims against their registered owners.

However, if the claim is secured by a maritime lien, a ship may be arrested even if the registered owner is not the debtor. If the 1952 Arrest Convention applies, its art. 3(4) allows the arrest of the ship even if the registered owner is not liable in respect of the maritime claim relating to that ship.

The provision under art. 3(4) of the 1952 Arrest Convention continues to give rise to conflicting interpretations regarding the possibility to arrest of a ship not owned by the debtor.

A ship may be arrested even if the claim is against her bunkers, her cargo or her appurtenances.

10. Are sister ship or associated ship arrests possible?

Under the 1952 Arrest Convention the arrest of sister ships is permitted. That is also the case if Italian law and not the 1952 Arrest Convention applies, as any asset of the debtor may be capable of being arrested.

11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

Counter security is discretional upon the Court. If the claim is dismissed and the arrest is lifted, the arrestor who acted without ordinary prudence may be ordered to pay damages. The damages for wrongful arrest can be calculated on the basis of the gains that could have resulted from the employment of the vessel on a specific period as per the relevant charter party for the period during which the vessel remained under arrest.

12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

In order to obtain the release of an arrested vessel a P&I Club LOU is accepted by the Court if it is agreed by the parties, otherwise a cash security or a bank guarantee would be required.

In case a guarantee is not provided it would be necessary to challenge the grounds and legitimacy for the arrest order issued by the court asking for its revocation. This can be requested, by the owner or any interested party, at a special hearing normally scheduled a few days after the date of the arrest. The hearing may be anticipated upon request of the resistant party.

13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

To commence enforcement proceedings an enforceable title is required, such as an enforceable judgment, a certified deed relating to obligations to pay amounts of money, or deeds executed before a notary or other authorized public officer.

Enforcement proceedings are commenced by means of an injunction to the debtor to fulfil the obligations under the enforceable title. Thereafter the ship is seized.

Hypotheques rank after costs related to the proceeding for the sale of the vessel, maritime liens and are followed by the statutory liens listed in the civil code.

14. Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?

A bill of lading is a document which constitutes evidence of the agreement between the carrier and the shipper. It is valid as a cargo receipt and outlines the responsibilities of each party.

The carrier could be easily identified especially if an in-house bill of lading is issued with the specific indication of the name of the maritime company or if the bill is signed by the master of the ship or on his behalf. However, the identification cannot be that easy and further analysis should be made, for example, in case of a charter party where the parties may intend that the charterer act as contractual carrier, and this could be reflected in the charterparty or in the bill of lading.

The carrier is liable under the bill of lading. The ship-owner can be liable when acting as either a contractual carrier or an actual carrier. Whenever the ship-owner is the contractual carrier, the ship-owner benefits from the terms and conditions of the bill of lading involving limitations of liability. However, the ship-owner acting as an actual carrier can likewise benefit from the terms and conditions of the bill of lading and, therefore, from the

liability limitations provided for therein, if the bill of lading contains a properly drafted Himalaya clause according to which the carrier's servants and subcontractors can benefit from the same limitations of liability set forth in the bill of lading.

15. Is the proper law of the bill of lading relevant? If so, how is it determined?

Within Italian jurisdiction and before the Italian Courts the proper law of the bill of lading is relevant and it is a contractual choice determined by the parties. In general, the choice of law is identified in a clause which can be found printed on the back of the bill of lading. However, it may be that there is no choice of law and, in that case, the governing law of the bill of lading is to be determined by applying the criteria set out in the Regulation EC/593/2008 ("*Regulation Rome I*")

16. Are jurisdiction clauses recognised and enforced?

As a general principle Italian Courts recognise and enforce law and jurisdiction clauses contained in bills of lading. This has been stated by several decisions of the Italian Courts.

17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

Italian Courts would recognise and enforce a law and arbitration clause of a charterparty incorporated into the relevant bill of lading. This occurs provided that in the bill of lading there is a specific and clear reference to the charterparty which allows the identification of that charterparty precisely, for example by mentioning the date and place where the charterparty was issued.

18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

Italy is party to the most important international instrument concerning bill of lading, having ratified the Brussels Convention relating to Bills of Lading of 25 August 1924 and the protocols of 1968 and 1979 thereto (the Hague-Visby Rules). As far as the relationship between the provisions set out by the regime of the Hague-Visby Rules and the Italian Code of Navigation, it is to say that the former are considered as a special law which supersedes the application of the latter. On the other hand Italy has decided not to not ratify the Hamburg Rules and has not ratified yet the Rotterdam Rules.

19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

Italy ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards through Law No 62/1968. The Convention entered into force in Italy on 1 May 1969. Recognition and enforcement of foreign awards are governed by Articles 839 et seq of the Italian Code of Civil Procedure. In particular, after the recent amendments to the Italian Code of Civil Procedure, there is an immediate enforceability of the decree recognizing the award. The party against whom recognition is sought may appeal against the recognition. This is foreseen by Art. 840 paragraph 2 of the Italian Code of Civil Procedure according to which, following the opposition, the Court of Appeal can suspend the enforceability or the enforcement of the award. It is worth noting that, actually, the grounds under which the enforcement of an award may be refused are substantially the same as those provided in the New York Convention under art. 5.

20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

Time limits for commencing a suit within Italian jurisdiction are different depending on the different claim which is brought before the Court.

The general rules regarding time limits for contractual claims is 10 years starting from the day the claimant is aware of the breach of the contract. There are shorter time bar for specific and particular contracts such as insurance, lease, employment.

As to the claims in tort the general rule provides for a time limit of 5 years starting from the day of the fraudulent or negligent act. It is relevant to say that, in any event, if the fraudulent or negligent act consists of a criminal offence the relating time bar will apply.

With more specific reference to time limits in shipping a number of examples follow:

- Two years for damages arising out of collision and remuneration from salvage operations.
- Three years for damages arising out of pollution.
- Carriage of goods by sea: six months for loss or damage to the cargo for a domestic transport and one year if the port of loading or the port of discharge is outside Europe or Mediterranean. Countries. In any event for a contract of carriage regulated by the Hague-Visby Rules there is a one year time bar which can be avoided only by serving a writ of summons.
- Passengers' claims regulated by the Regulation n. 392/2009: time bar of two years for damages arising out of death/personal injury or for the loss of or damage to luggage. The time limit can be interrupted and suspended for a maximum of five years.

21. Does your system of law recognize force majeure, or grant relief from undue hardship? If so, in what circumstances might the Covid-19 pandemic enable a party to claim protection or relief?

The Italian Civil Code does not provide a real definition of force majeure, although it does provide for some institutions whose application presupposes the occurrence of events that can be linked to the concept of force majeure. In particular, without prejudice to the relevance of any specific contractual clauses, reference is made to the following institutions: (*i*) a supervening impossibility of performance for reasons not attributable to the debtor (Articles 1218, 1256 and 1463 of the Italian Civil Code) and (*ii*) a supervening hardship in performance (Articles 1467 et seq of the Italian Civil Code).

Usually, the contracts include detailed force majeure clauses, according to which a force majeure event is defined as an unexpected event, action or circumstance that: (*i*) is not reasonably foreseeable by the affected party at the time of the conclusion and/or execution of the contract; (*ii*) is beyond the reasonable control of the affected party; (*iii*) cannot be attributed to the affected party; and (*iv*) prevents the affected party from fulfilling its contractual obligations.

Considering the criteria outlined above, the Covid-19 pandemic appears to have been – especially at the beginning – an event of force majeure. The Italian legislature itself clarified that the compliance with the containment measures connected with the Covid-19 pandemic must always be assessed in order to exclude the debtor's liability.

However, today the Covid-19 pandemic can no longer be deemed an unexpected / unforeseeable. As a consequence, the exclusion of the Covid-19 pandemic from the cases provided for in force majeure clauses has become increasingly common in contracts currently under negotiation.

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