

Settlement and alternative dispute resolutions

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Court proceedings in Italy

- Average duration of Court proceedings:
 - first instance: 3 years
 - appeal proceedings: 4 years
 - Court of Cassation: 3 years

Court proceedings in Italy

- Legal costs recoverable usually do not exceed 60% of the actual costs incurred;
- Risk of insolvency of the opposing party pending Court proceedings – difficulties in obtaining guarantees if strict evidence of risk of insolvency of the debtor can not be given to the Court

Court proceedings in Italy

- Duration of proceedings, costs and risks of insolvency of the opposing party are negative issues that lead to the opportunity to seriously try and settle cases before commencing Court proceedings
- Out of Court settlement negotiations can be instituted even in the course proceedings after full disclosure of documents and evidence

Alternative dispute resolution

- Arbitration
- Mediation
- Restructuring agreements
- Pre-bankruptcy agreements

Arbitration

- Arbitration may be chosen by the parties in the contract or even when the dispute arises

Mediation

- Mediation has been introduced in Italy since March 2011
- Attempt of mediation is compulsory for several matters, including insurance and financial contracts and from March 2012 will be compulsory also for damages arising from circulation of vehicles and crafts. Mediation can be asked also for other matters if the parties agree.
- Only the subjects authorized by the Ministry of Justice may carry on mediation proceedings

Mediation

- If mediation for compulsory matters is not previously instituted the proceedings are suspended
- The opposing party is requested to join mediation proceedings upon application filed by the opposing party

Mediation

- To date, only in 28% of the cases the party requested accepts to attend mediation proceedings. 60% of such cases are concluded with settlement in front of the mediator
- Refusal to join mediation proceedings without valid justification may only be negatively evaluated in the following Court proceedings. This is not considered a serious risk of losing the case for the party refusing mediation

Mediation

- If no agreement is reached by the parties, the mediator issues a settlement proposal
- If the settlement proposal is refused, the party is considered responsible by the Judge for costs also in case of success in the following Court proceedings if the Judge agrees with the proposal of the mediator

Restructuring agreements

- Restructuring agreement may be concluded in case of insolvency
- Restructuring agreement can be concluded with the approval of at least 60% of the amount of the credits

Restructuring Agreements

- Restructuring agreement must be supported by evidence of an expert attesting its feasibility
- Restructuring agreement: creditors not approving the proposal may insist for payment of 100% of their credits

Pre-bankruptcy settlement agreements

- The insolvent party may apply to the Court asking for payment of a certain percentage (no minimum percentage provided for by the law) of the un-preferred claims and usually 100% of the privileged credits
- Pre-bankruptcy settlement agreements are to be approved by at least 50% of the amount of the credits and is binding also for the creditors refusing the proposal