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The power of arbitrators to grant precautionary measures by way of the parties' reference to the arbitration rules

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As is well known, as of 28 February 2023, Legislative Decree no. 149/2022 (the so-called **Cartabia Reform**), entered into force.

The Cartabia Reform is notable for the introduction of a new **Article 818** to the Italian Code of Civil Procedure, entitled '**Precautionary Measures**'. This development **endowed arbitrators with the power to grant precautionary measures**, thereby aligning Italian law with the prevailing international legal framework.

The revised Article 818 of the Code of Civil Procedure stipulates, in its new version, that '*The parties, **also by referring to arbitration rules**, may grant the arbitrators the power to issue precautionary measures, either in the arbitration agreement or by a written deed prior to the commencement of the arbitration proceedings*'.

The **debate** that ensued **focused** on the question of **whether an arbitration clause that had been stipulated prior to the Reform**, and which made **reference to arbitration rules that had been subsequently amended** to grant arbitrators the power to issue interim measures (in line with the Reform), should be interpreted as conferring precautionary powers to arbitrators (or not).

In other words, the question arose as to whether the clause's reference to the arbitration rules could be interpreted in a flexible and broad manner.

The Court of Milan recently ruled on this point in an **order** dated **4th January 2025**.

In this decision, the Court of Milan held that the arbitral jurisdiction to issue precautionary measures **is excluded in the event that the arbitration clause was stipulated prior to the entry into force of the Cartabia Reform**. This principle remains applicable even in instances where the arbitration rules cited by the clause have undergone amendments subsequent to the Reform, thereby enabling the issuance of precautionary measures.

The Court of Milan's stance is founded upon an evaluation of the **intentions of the parties at the time the arbitration agreement was executed**, that is, at a juncture when the arbitrators' jurisdiction over precautionary measures was not foreseen.

The Dispute Resolution Department

The Dispute Resolution Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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