

February 2025

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

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

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.

For further information please contact: LitigationArbitration@legance.it or your direct contact at Legance.

Contacts

Milan Via Broletto, 20 – 20121 – T +39 02 89 63 071

Rome Via di San Nicola da Tolentino, 67 – 00187 – T +39 06 93 18 271

London Aldermary House, 10 – 15 Queen Street – EC4N 1TX – T +44 (0)20 70742211

info@legance.it – www.legance.com

The firm

Legance is an independent Italian law firm with expert, active and result-oriented lawyers, with a strong team spirit that has permitted a flexible and incisive organisational model that, through departments active in all practice areas of business law, offers the right balance between the specialist and the lawyer as a global consultant. Legance comprises more than 400 lawyers, working in its Milan, Rome and London offices, and has a diverse and extensive practice covering the following areas: Administrative; Banking & Finance; Compliance; Corporate Finance; Data Protection and Data Law; Debt Capital Markets; Dispute Resolution; Employment and Industrial Relations; Energy & Infrastructure; Environmental; Equity Capital Markets; ESG and Impact; EU, Antitrust and Regulation; Financial Intermediaries Regulations; Food; Insurance; Intellectual Property; Investment Funds; Life Sciences & Healthcare; Non Performing Loans; Real Estate; Restructuring and Insolvency; Shipping, Aviation and Transportation; Tax; Telecommunications, Media and Technology; White Collar Crimes. For more information, please visit our website: www.legance.com.

Disclaimer

The only purpose of this Newsletter is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice.

*This Newsletter is sent to persons who have provided their personal data in the course of professional relations, meetings, seminars, workshops or similar events. You may also receive this newsletter because Legance was authorized. You may finally receive it, because you have engaged Legance. If you wish not to receive the newsletter anymore, please write an email to newsletter@legance.it and you will be removed from the list of recipients. Until you cancel yourself from the list of recipients your personal data will be processed on paper or electronically for purposes which are related to the existing professional relations, or for information and divulgation reasons, but are not communicated to third parties, unless such communication is imposed by law or strictly necessary to carry out the relation. Data controller is **Legance – Avvocati Associati**. The list of the data processors is available if you write an email to clienti.privacy@legance.it. In any event, you are entitled to your rights as set forth in the current data protection legislation. All the above requests must be forwarded by mail privacy@legance.it.*

Legance - Avvocati Associati and its partners are not regulated by the Solicitors Regulation Authority ("SRA") and the SRA's compulsory insurance scheme does not apply to them (they are instead covered by equivalent Italian insurance). A list of the partners of Legance - Avvocati Associati is open to inspection at the office of its London branch at Aldermary House 10-15 Queen Street - EC4N1TX, and also on the following website <https://www.legance.com/professionals/>.