

## Arbitration - Italy

### New Law on Implementing EU Mediation Directive

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#### Introduction

On June 19 2009 Parliament enacted Law 69/2009, introducing various amendments to the Code of Civil Procedure. The law entered into force on July 4 2009.

Article 60 empowers the government to issue statutory instruments on mediation and conciliation in civil and commercial matters and thereby to implement the EU Mediation Directive (2008/52/EC). The directive deals only with mediation in cross-border disputes, but Italy is also implementing it with reference to purely national disputes.

According to Article 12 of the directive, the EU member states must implement the provisions within three years (ie, before May 21 2011). The new law invites the government to adopt the relevant statutory provisions within six months (ie, before December 19 2009).

The law is not the first to regulate mediation in Italy. Mediation has been on the statute book since 1993 and its importance has grown continuously. However, the first detailed regulation on mediation proceedings was not enacted until 2003, when Legislative Decree 5/2003 was passed. The law came into force on January 1 2004 and is usually referred to as the Law on Corporate Disputes (for further details please see "[The Growth of Mediation](#)").

#### Key Provisions

The new law lists the general principles that the statutory provisions should enact. As a cornerstone - and following the recommendation in the directive - the law provides that mediation, while aimed at resolving disputes in a non-contentious manner, must not preclude free access to justice.

In implementing the directive, the law extends the provisions in the legislative decree on mediating corporate disputes to mediation generally. It provides that mediation must be carried out by professional and independent institutions that are devoted to the performance of mediation services. These institutions will be listed in a registry maintained by the Ministry of Justice. Such a registry already exists - it was created under the legislative decree - and lists over 40 institutions that may conduct the special corporate mediation process provided for therein.

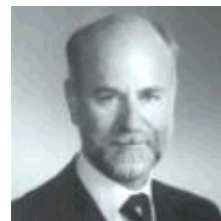
The law provides that these institutions shall include, as of right, mediation agencies set up by Italian chambers of commerce. Furthermore, it confirms the existing right of bar councils and professional bodies to set up their own mediation institutions (attached either to the courts or to the relevant professional council, respectively). These professional mediation institutions are entitled to be listed in the registry.

Mediators may have recourse to expert witnesses in special matters and mediation institutions may conduct mediation online. The mediation service of the Milan Chamber of Arbitration has already established an online mediation service (for further details please see "[Milan Chamber of Arbitration Expands International and Online Mediation Services](#)").

The law requires the ministry to issue rulings on mediation fees and provides that such tariffs may be increased if a mediation process is successful. The ministry established tariffs for corporate mediation in 2004; the same structure is likely to be followed and may be updated. However, institutions that are not agencies of public entities, such as

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chambers of commerce, will be free to determine their own mediation fees.

The law introduces what appears to be a statutory offence of professional malpractice. Lawyers will have a duty to advise clients, before commencing court proceedings, about the possibility of approaching mediation institutions and entering into mediation.

The law also provides that parties which opt for mediation will enjoy fiscal benefits. It is likely that, as under the 2003 legislation, these benefits will take the form of exemption from stamp duty and registration tax (within certain limits) in cases where the settlement reached by the parties is enforceable as a judgment.

It is expected that, as under the 2003 decree, a mediator will be empowered to issue a recommended solution to a dispute if no agreement can be reached and if all parties so request. The parties must state whether they are prepared to accept the recommendation; if not, they must state their reasons. If the judgment issued in the subsequent court proceedings is the same as the mediator's recommendation, this may affect the allocation of costs. The court can refuse to award costs if the winning party previously rejected the mediator's recommendation, and it may even order the winning party to pay the losing party's costs and court fees.

The law requires that rules be enacted within the framework of applicable codes of professional ethics to guarantee mediators' neutrality, independence and impartiality in the performance of their functions.

An agreement reached by parties in mediation will be binding on them; when certified by a court, it will also be enforceable. Therefore, the relevant party will be entitled to levy execution and obtain a mortgage on real property. The measures on enforceability are contained in both the directive and the 2003 decree.

## Comment

Institutional and *ad hoc* mediation are rapidly developing in Italy. Their growth has been aided not only by the legislation on corporate disputes, which gave official status to mediation institutions, but also by a greater awareness of mediation among Italian judges, which has stimulated initiatives in court-referred mediation. In 2008 the Court of Milan launched a project whereby judges invite parties to attempt mediation with one of a list of accredited mediation providers (for further details please see "[Surveys Reveal Further Spread of Arbitration and Mediation](#)").

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