

Mediations in Italy: Overview

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A Practice Note providing an overview of the key legal issues that need to be considered, from an Italian law perspective, when mediating a civil dispute.

Mediation is a flexible, voluntary, and confidential form of alternative dispute resolution (ADR). In a mediation, a neutral third party assists parties to work towards a negotiated settlement of their dispute, with the parties retaining control of the decision on whether or not to settle and on what terms. Given its nature, the way mediations are conducted across jurisdictions vary, depending on different factors such as the local approach to mediation, the applicable law, complexity of the issues involved, the characters of the parties, and the value of the dispute. For a counsel engaged in mediation, a deeper understanding of these factors is critical for a successful outcome.

This Note explains the key issues that need to be considered, from an Italian law perspective, when mediating a civil dispute. In particular, it covers:

- The attitude of the courts towards mediation.
- Whether mediation is perceived as an effective means of dispute resolution by the business community.
- The laws on mediation, including pre-action requirements for parties to mediate before initiating litigation (regardless of any contractual obligation to refer their disputes to mediation).
- The disputes considered suitable for mediation.
- Whether the limitation period stops running when parties attempt to settle their disputes through mediation.
- How the mediation process works (including issues related to costs, confidentiality obligations of the parties and the mediators, timing of mediation, selecting a mediator, agreement to mediate, time frame for mediations, and legal representation at mediations).
- Whether judges (retired or serving, or both) can act as mediators.
- Court-annexed, judicial, and online mediations.
- The main institutions providing mediations services, including appointment of mediators.

For more on the key challenges and considerations in cross-border mediation, see [Cross-border mediations: overview](#).

Judicial Attitude Towards Mediations

Along with arbitration, mediation is an alternative dispute mechanism commonly used in Italy. However, mediation is not commonly used in relation to cross-border disputes.

Although mediation has gained recognition over the last ten years, judicial proceedings are still preferred. According to a study conducted by the Ministry of Justice, 166,511 new civil and commercial mediations were commenced in 2021. In comparison, in the same year, 2,627,065 court cases were pending in relation to the following subjects: civil litigation, labour, family law, and non-contentious jurisdiction disputes.

The success rate of mediation is increasing in Italy. According to a [study](#) (in Italian) by the Ministry of Justice, the average resolution rate in 2021 for parties settling in mediation (commenced before institutions) was 45.8%.

Italian law allows judges to encourage parties to opt for mediation proceedings at any time during a dispute (Article 2, Legislative Decree no. 28 of 2010) (L.D. 28/2010). However, this power has rarely been used as most judges are not encouraged to send the parties to mediation. Only 16% of the mediations finalised in 2021 were court-ordered (excluding mandatory mediation).

Costs Consequences of Refusing to Mediate

Local courts cannot compel parties to mediate. However, L.D. 28/2010, which introduced the Italian mediation model, provides for mandatory mediation before court hearings for certain types of dispute.

The parties to all civil disputes arising in the following areas must participate in an initial mediation session before they will be heard in courts:

- Disputes relating to real estate divided into several units (*condominio*).
- Rights *in rem* (*diritti reali*).
- Division of assets.
- Trust and real estate.
- Family covenants.
- Landlord and tenant disputes.
- Leases of commercial property (*affitto di aziende*).
- Motor vehicle and nautical accidents.
- Medical malpractice
- Libel.
- Insurance contracts.
- Banking and financial contracts.

Failure to participate in mediation without justification, in cases where a mediation attempt is a pre-condition of access to the court, is sanctioned by L.D. 28/2010. Article 8 (4-bis), which allows the court to consider the extrajudicial conduct of the party in the mediation process and, in particular, to use the party's non-participation as evidence. The judge will then sanction any party who has no justification for not going to mediation, by ordering them to pay to the *Agenzia delle Entrate* (a public body under the supervision of the Ministry of Economy and Finance) an amount corresponding to the court fees due for the trial (*contributo unificato*) (Article 8 4-bis, L.D. 28/2010).

Commercial Attitude Towards Mediation

Commercial parties are still reluctant to engage in mediation. However, when they do, they typically opt for institutional mediation. Institutional mediation allows parties to benefit from the provisions of L.D. 28/2010.

Mediation and Arbitration

When appropriate, the parties engage in mediation before an arbitration; however, multi-step clauses or med-arb clauses are not commonly used in commercial contracts involving at least one Italian company.

Laws on Mediation

In Italy, the mediation procedure in civil and commercial disputes is governed by the following laws:

- L.D. 28/2010, which regulates the procedure for compulsory mediation and the relationship between statutory mediation and judicial proceedings.
- Ministerial Decree no. 180/2010 (M.D. 180/2010), which regulates the accreditation of mediators and mediation providers, and the amount of mediation fees.

On 26 November 2021, Parliament passed a law authorising the government to introduce a reform of the code of civil procedure, to be implemented by 24 December 2022 (Law no. 206/2021). The law is designed to improve the efficiency of civil proceedings, and to increase the use of alternative dispute resolution mechanisms, such as mediation. The implementing Legislative Decree no. 149/2022 (L.D. 149/2022) was passed by the government on 10 October 2022. The changes to the mediation process will take effect on 30 June 2023.

International Treaties on Mediation

L. D. no. 28/2010 has adopted EU Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. The law has transposed several aspects of the EU Directive into the Italian rules on mediation.

Mediation as a Pre-Condition to Litigation

Italian Law follows the so-called opt-out mediation model (L.D. 28/2010) (see *Costs Consequences of Refusing to Mediate*). In other words, for certain categories of disputes, parties mandatorily have a mediation session after which they are free to opt out of the mediation process, without negative consequences, and initiate litigation proceedings. The 2022 Reform, due to come into effect on 30 June 2023, is expected to increase the number of matters subject to mandatory mediation (see *Laws on Mediation*).

Effect on Limitation Period

Serving the parties with the mediation request has the effect of interrupting the limitation period (Article 5(6), L.D. 28/2010).

Disputes Unsuitable for Mediation

Italian law does not identify disputes not suitable for mediation. Under L.D. 28/2010, mediation is permitted for any dispute concerning disposable rights in civil and commercial disputes.

Mediation Agreement

In Italy, the parties do not usually enter into a written mediation agreement before the start of the mediation process. However, if the parties opt to use a mediation provider, they are deemed to accept the mediation rules and regulations of the selected provider. The rules are approved by the Ministry of Justice and normally address:

- The mediator's role.
- The scope of the mediation process.
- The criteria for appointing a mediator.
- Mediation meetings.
- Duties and responsibilities of the parties.
- Amount of mediation fees and criteria for determining them.

Standard Clauses for Mediation Agreement

In Italy it is not common to execute a written mediation agreement.

Timing of Mediation

Parties usually enter mediation before court proceedings have commenced. If the proceedings have already commenced, then the court will ask the parties to consider mediation, usually after the first hearing.

Article 6 of L.D. 28/2010, provides that the duration of the mediation proceedings should not be more than three months, though the term is not compulsory. Therefore, if legal proceedings have commenced, the judge will postpone the case for three months from the date set by the court for the filing of the mediation application. Should the mediation last longer, the parties will jointly apply to the judge to postpone the hearing.

Choosing a Mediator

If the parties commence an institutional mediation, the mediation provider's officer will choose the mediator among those listed in the provider's list of registered mediators approved by the Ministry of Justice. The list of mediators is normally published on the mediation provider's website.

Conduct of Mediation

In Italy, mediation governed by L.D. 28/2010 cannot be ad hoc mediation.

The mediation process under L.D. 28/2010 follows these steps:

- The request for mediation must be submitted to an accredited public or private mediation provider with territorial jurisdiction.

- The secretary to the selected mediation provider will appoint an accredited mediator from its roster of mediators.
- The mediation provider will then send an official communication to the defendant with the date and the location of the initial meeting, and the name of the appointed mediator.
- If both parties are present during the initial session, the mediator will explain to the parties what the mediation procedure is and how it can benefit them, and then ask the parties and their lawyers to discuss whether they wish to proceed with the mediation.
- If the parties agree to proceed with the mediation, they can have as many meetings as they agree upon with the mediator. Each mediation session normally lasts from one to three hours.

Facilitative or Evaluative Mediation

The mediation model in Italy is facilitative. Mediation is defined as the activity performed by an impartial third party that aims to assist two or more parties in finding an amicable settlement to a dispute, including the formulation of a settlement proposal.

If the parties fail to reach an amicable settlement, the mediator may, at their discretion, issue a non-binding written proposal for the resolution of the dispute. However, if requested by all parties, the mediator must issue a non-binding written proposal.

Mediators do not have the power to render binding decisions or judgements.

Time Frame for Mediations

In Italy, mediation takes place over several sessions. Based on data from the Ministry of Justice, the average duration of mediation in 2021 was 175 days.

The duration of the mediation process is three months (Article 6, L.D. 28/2010) (see *Timing of Mediation*).

Professional Advisers in Mediations

When mediation is a precondition for court proceedings, the presence of the parties' lawyers is mandatory (Article 8, L.D. 28/2010).

Lawyers are not required to attend voluntary mediation proceedings. However, if the parties want the mediation agreement to be automatically enforceable, it must be signed by their lawyers. The lawyers' role is to attest and certify that the agreement complies with the relevant mandatory rules and public order.

According to a 2021 study of the Ministry of Justice, only 14% of voluntary mediations took place without the assistance of a lawyer.

Other Attendees at Mediations

Once the mediation session has started, the mediator may call on technical consultants enrolled in the registers kept by the court (Article 8, paragraph 1 and 8, L.D. 28/2010).

Judges as Mediators

Under the Civil Procedure Code, judges are permitted to promote a conciliation before examining the case (Article 185). This general provision has never been seriously applied, as judges have never placed much confidence in dispute mediation, probably due to their training and cultural background.

A recent legislative amendment inserted a new provision into the Civil Procedure Code (Article 185-bis) which authorises the judge to formulate a settlement proposal, without limiting their power to rule on the dispute.

Mediator's Role After an Unsuccessful Mediation Attempt

L.D. 28/2010 does not include any provisions in this respect. However, see *Mediator*.

Court-Annexed, Judicial, and Online Mediations

For judicial mediations see *Judges as Mediators*.

Online mediations have become popular during the COVID-19 pandemic and at the time of writing remain the most widely used mediation method. Several mediation providers offer online mediation as a default option. However, the parties can require that mediation be conducted in person.

Online mediation is suitable for all types of dispute with no exceptions. Zoom is the most common digital platform used. Unlike a typical mediation, the parties and the mediator will not meet in person. In Italy, a caucus is a common tool used by mediators either in person or online, with the aid of breakout rooms. When mediation is conducted online, handwritten signatures are replaced by lawyers' digital signatures.

Costs

Mediation costs (such as filing and provider's fees) are jointly and severally due from each party who participates in the proceedings and are predetermined by law according to the value of the dispute (Article 16, M.D. 180/2010).

Confidentiality

Mediation Proceedings

All parties attending a mediation session are bound to confidentiality in relation to statements made or information acquired during the mediation and must sign a confidentiality agreement (Article 9, L.D. 28/2010).

Mediator

The mediator must keep all statements and information acquired during the mediation proceedings confidential (See *Mediation Proceedings*). The mediator cannot be compelled to testify before the judiciary or any other authorities about the content of statements and information obtained during the mediation (Article 10, L.D. 28/2010).

Exceptions

A statement made in mediation can only be disclosed in court proceedings if the party who made the statement consents to the disclosure.

Documenting a Settlement

A mediation procedure may end with a settlement agreement (Article 11, paragraph 1 L.D. 28/2010).

In most cases, the lawyers will draft the agreement and the parties, the mediator, and the lawyers, if present, will sign it.

Disposal of Court Proceedings

The parties will notify the court that they have reached a settlement and request the judge to terminate the proceedings (Article 306, Civil Code).

Enforcing Settlements

If an amicable settlement is reached, the settlement agreement (*conciliazione*) is automatically enforceable if signed simultaneously by:

- The parties.
- The parties' lawyers, who will attest and certify that the agreement complies with the relevant mandatory rules and public order.
- The mediator, who will certify the authenticity of the parties' signatures.

The settlement agreement (arrived at as a result of compulsory mediation) constitutes an enforceable title and has the same effect as a court judgement (Article 12 L.D. 28/2010). A settlement agreement enables a claimant to immediately start enforcement proceedings if the debtor fails to meet their obligations.

By contrast, a settlement agreement reached outside a mediation procedure governed by Legislative Decree no. 28/2010 is not an enforceable title. Therefore, to make the agreement enforceable the parties must file a petition with the court and start court proceedings for breach of contract.

Mediation Institutions and Centres

Mediation providers are public or private entities registered with the Ministry of Justice (M.D. 180/2010). The list of mediation providers is available on the website of the Ministry of Justice.

In Italy, there are several mediation providers able to handle mediation in English. The most well-known is the mediation centre of the Milan Chamber of Commerce.

Accreditation Schemes for Mediators

The accreditation system for prospective mediators is demanding (Article 4(3), M.D. 180/2010). Mediators must:

- Hold a bachelor's degree or, alternatively, be members of a professional association.

- Not have been convicted of any criminal offence.
- Not be disqualified from public office.
- Not have been subject to any sanctions or disciplinary measures.
- Not be subject to preventive measures.
- Have attended a theoretical and practical training course of at least 50 hours, held by an accredited mediation training provider.

Mediators cannot join more than five mediation providers' rosters (Article 6(3), M.D. 180/2010).

Mediators must attend at least 18 hours of continuing education courses every two years, and participate in at least 20 mediations with accredited mediation providers (Article 18(2)g, M.D. 180/2010).

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