

CIVIL JUSTICE REFORM

1. Introduction

As already mentioned in our previous *Newsletter* (available [here](#))¹, on 25 November 2021 the Chamber of Deputies approved the bill entitled "*Delegation to the Government for increasing the efficiency of civil trials, reviewing alternative dispute resolution mechanisms and taking urgent measures for rationalising the procedures regarding rights of individuals and families as well as enforcement procedures*" (the "**Delegation Law**"). The Delegation Law (Law 26 November 2021, no. 206) was then published on the Official Journal on 9 December 2021.

The Delegation Law implements the reform of the civil justice, on the one hand, by setting forth the guidelines and principles that the Government will be required to follow in adopting the implementation legislative decrees and, on the other hand, by directly amending certain provisions of law.

The most significant amendments regarding arbitration and alternative dispute resolution (ADR) mechanisms are analysed below.

2. Arbitration

The Delegation Law sets forth principles and guidelines for the amendment of arbitration rules.

2.1. Regarding **precautionary measures** in arbitration procedures, the Delegation Law provides for:

- **the possibility for arbitrators to issue precautionary measures**, in case this is provided for in the arbitration agreement or in a subsequent written document and "*unless otherwise provided by law*";
- the possibility of **challenging such precautionary measures** - once issued - before the Judge, for the sole reasons referred to in Article 829, paragraph 1, of the Italian Code of Civil Procedure and if it is contrary to public policy;
- the **supervision of the Judge** over the implementation of the precautionary measure.

2.2. The Delegation Law strengthens the **guarantees of impartiality and independence** of arbitrators, by means of:

- re-introducing the right to recuse the arbitrator for serious grounds of expediency;
- establishing the arbitrator's obligation, at the time of acceptance of the appointment, to disclose the facts relative to his/her impartiality and independence, under penalty of: (i) invalidity of the acceptance in the event of non-disclosure; and (ii) forfeiture of the appointment if the disclosure should prove incomplete with regard to the grounds for recusal set forth under Article 815 of the Italian Code of Civil Procedure;

¹ Such Newsletter analysed the most significant amendments regarding first instance proceedings and review proceedings, as well as the other measures provided for by the Delegation Law.

- setting forth criteria that ensure transparency, turnover and efficiency, which must be met by the judicial authorities who appoint the arbitrators.

2.3. The Delegation Law fixes some interpretation, practical and coordination issues, including:

- recognising the power of the parties, in the event of a decision to be taken according to law, to indicate and choose the **applicable law**;
- providing for the **enforceability** of the decree by means of which the President of the Court of Appeal declares the effectiveness of the foreign award with condemnatory content;
- reducing to **six months** the time limit for challenging the award on grounds of invalidity;
- the inclusion of the discipline of **corporate arbitration** in the Code of Civil Procedure², also providing for the possibility of challenging the relevant preliminary measures;
- setting forth a clear regulation of **translatio iudicii** between arbitration and judicial proceedings, and vice versa.

3. ADR: mediation and assisted negotiation

The Delegation Law also deals with alternative dispute resolution mechanisms (mediation and assisted negotiation) with the purpose of enhancing their use. In this regard, the principles and guidelines of the reform provide for, *inter alia*:

- the adoption of a consolidated act ("**Testo Unico**") of alternative instruments to the jurisdiction;
- reorganising and widening the regulation regarding **tax incentives** for mediation;
- the extension of **mandatory mediation** prior to disputes on franchising, joint ventures ("*associazione in partecipazione*"), consortiums, service, network, subcontracting, supply agreements, and partnerships ("*società di persone*");
- favouring the **participation of** the parties in mediation procedures and the possibility to be represented by an attorney ("*procuratore*"), with knowledge of the facts, only for "justified reasons";
- the possibility for the parties to establish that the **report of the expert** appointed during the mediation procedure may be submitted in front of the Court;
- favouring **mediation ordered by the judge** ("*mediazione delegata*"), enhancing the value of disputes settled in mediation or, in any case, through settlement agreements, also for the purposes of career advancement of Judges;
- strengthening the training and education of mediators;
- the possibility that, upon agreement of the parties, mediation and assisted negotiation may be conducted **electronically** or in any case remotely;

² Currently provided for by Legislative Decree no. 5 of 17 January 2003.

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- the extension of assisted negotiation to labour disputes, even though assisted negotiation does not constitute a requirement for the admissibility of a judicial proceedings;
- the provision of a single **model of assisted negotiation agreement**, drawn up by the National Bar Association ("*Consiglio Nazionale Forense*");
- the possibility for the parties to carry out **out-of-court investigations** as part of the assisted negotiation, which may then be used in the subsequent judicial proceedings.

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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:

Stefano Parlatore

Partner

T. +39 06.93.18.271 /
+39 02.89.63.071
sparlatore@legance.it

Daniele Geronzi

Partner

T. +39 02.89.63.071
dgeronzi@legance.it

Cecilia Carrara

Partner

T. +39 06.93.18.271
ccarrara@legance.it

Daria Pastore

Partner

T. +39 06.93.18.271
dpastore@legance.it

Giorgio Tombolini

Senior Associate

T. +39 06.93.18.271
gtombolini@legance.it

or your direct contact at Legance.

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