

# Giovanni De Berti - Mediation Profile

## Current Position and Background

Giovanni De Berti is founding partner of De Berti Jacchia Franchini Forlani, with offices in Via San Paolo 7, 20121 Milan, Italy, Tel. +39 02 725541, Fax +39 02 72554700, Email: g.deberti@dejalex.com, Website: www.dejalex.com.

He read law at Milan State University (LL.D., cum laude, 1962) and at the Council of Legal Education, London (1967 / 1969).

He is an Avvocato, admitted to the Italian Bar (1965) and to the Italian Supreme Court (1979), and a Barrister-at-law (Gray's Inn) in England and Wales, called 1970 (non-practising).

Admitted to practice to the Italian Bar since 1963. From 1963 to 1965 trainee at Prof. Cesare Grassetti Law Firm, Milan; from 1965 to 1967 associate at Heimann Law Firm, Milan and London; from 1969 to 1975 associate and then partner at Graziadei Law Firm, Milan and Rome; since 1975 partner at De Berti Jacchia Law Firm, Milan, Rome (1983), Brussels (1990) and Moscow (1995).

His professional practice has been devoted to commercial and corporate matters, contract drafting, mergers and acquisitions, stock purchase agreements, joint ventures, leasing, purchasing and selling of goods, supply of services, agency and distribution, construction, media and entertainment, product liability, as well as litigation, arbitration and mediation in these and other subjects.

## Experience

Since 2002, Giovanni De Berti has been acting as mediator and attorney in institutional and ad hoc mediation proceedings.

Recent mediation appointments include:

- mediator, upon request by both parties, in an institutional arbitration where he was acting as sole arbitrator (arb-med), in a dispute for breach of a construction contract for a chemical plant (2009 - € 3,000,000)
- mediator in a dispute relating to subcontract for supply of boiler pumps (2008 - € 2,500,000)
- counsel in mediation proceedings on a dispute between a multinational television producer and an Italian associate producer relating to the production of a television format (2008)
- mediator and then sole arbitrator (med-arb) in a dispute between a multinational industrial group and a national automobile club relating to the performance of a contract for the supply of a new EDP system of client management (2007 - € 4,200,000)
- mediator in a post-acquisition dispute between a multinational industrial group and a leading engineering group (2006 - € 2,500,000)
- mediator in various disputes between telecommunication companies and corporations or consumers relating to supply of telecommunication services (2002-2006)
- mediator in a dispute between a city council and an environmental agency in relation to the construction of, and amendments to, a long-term contract for the management of the city water system (2005 - € 6,000,000)
- counsel in mediation proceedings at the Italy–China Business Mediation Centre in a dispute between an Italian supplier and a Chinese purchaser of chemical products (2005)
- counsel to a Japanese car manufacturer in mediation proceedings in a product liability dispute, instructed after the negative outcome of the first instance judgment (2005)

## Mediation Style

Giovanni De Berti is a facilitator. He believes in helping the parties to be open to each other, to see the dispute as a common problem to be solved together and to cooperate in this solution. He does not expect the parties to become selfless, self-denying or generous towards each other just because of his ability,

rather to understand that it is easier to find a solution if one puts oneself in the other party's position. Mutual friendliness is not required, even less cordiality, rather good faith, civil behaviour and an open mind. He believes that the parties must feel that the mediator is really involved in what he is doing, that he is not performing a role without really caring for the parties, their needs or feelings. This should not be limited to the normal time of the meetings: he nearly always 'phones the parties (usually their attorneys) (a) between meetings, ostensibly to enquire whether homework is being performed, actually to make them feel that he is keen to know that matters are progressing and to help if need be; (b) after a successful conclusion of the mediation, to make sure that the settlement has been performed; (c) after an unsuccessful mediation, to enquire whether the parties are still negotiating, offering to resume mediation if either party would wish to try again (but maybe is loth to take the initiative) and generally to show that he was and is truly concerned with the solution of the dispute. He wants to transmit the feeling that mediation is an attitude of the mind, not a cold professional technique. He is happy when he can - as he usually does - make the attorneys share this attitude. Admittedly this is less easy with the parties, but attorneys can be a real support to the mediator's efforts. The mediator had the feeling, in many occasions, that the attorneys were happy to have somebody who would make their clients understand the reality of their position in a way that was somewhat impossible for them.

### **Main Practice Areas**

Giovanni De Berti has been practising mediation mainly with regard to disputes concerning building and construction contracts, contracts for supply of goods, machinery and technology, follow up of mergers and acquisitions, as well as disputes between business and consumers

### **Professional Affiliations**

Giovanni De Berti is an Accredited Mediator with:

Centre for Effective Dispute Resolution (CEDR)

Chamber of Arbitration of Milan

Chartered Institute of Arbitrators, Fellow

China Center for the Promotion of International Trade / China Chamber of International Commerce (CCPIT/CCOIC) Mediation Center

International Centre for Dispute Resolution (ICDR)

Italy-China International Business Mediation Centre, Milan and Beijing

Milan Bar Mediation Institution

### **Training and Education**

#### **Mediation Education and Training**

Giovanni De Berti is constantly updating his preparation and skills by attending continuing professional education events, reading and studying books, articles and case law on mediation, with special emphasis on cross-cultural aspects. Activities of continuing education in international mediation include:

- International Mediation Interest Group, Geneva, 1 September 2008
- World Forum of Mediation Centres, Milan, 28-29 March, 2008
- International Mediation Interest Group, Geneva, 3 September 2007
- World Forum Mediation Centres, New York, 6-7 July 2007
- Australasia Forum for International Arbitration (AFIA), 13th Symposium, Hong Kong, 8 March, 2007
- L'emotività nella conciliazione (Emotions in Mediation), Chamber Arbitration Milan, November 2006
- World Forum Mediation Centres, Dublin, 8-9 September 2006
- International Mediation Interest Group, Geneva, 4 September 2006
- Teoria e pratica della conciliazione in material societaria (Theory and Practice of Corporate Mediation), Training Course, Chamber Arbitration Milan, March 2006

- European Mediation Congress, CEDR, London, 7 November 2005
- Training Course for Mediators, Italy-China International Business Mediation Centre, Chamber Arbitration Milan, November 2005
- World Forum of Mediation Centres, Amsterdam, 4-5 March 2005
- World Forum of Mediation Centres, Paris, 4-5 June 2004
- Mediation Practice – Experience and Perspectives of Evaluative and Equitable Mediation, Chamber Arbitration Milan, 18 December, 2003
- European Mediation Congress, CEDR, London, 20 November 2003
- World Forum Mediation Centres, Milan, 24-25 January 2003
- World Forum Mediation Centres, Hong Kong, 1-2 April 2002
- Mediator Skills Training, CEDR, August 2002
- Conciliazione/Mediazione – Tecniche fondamentali (Mediation - Fundamental Skills), Chamber Arbitration Milan, November-December, 2001
- World Forum of Mediation Centres, Geneva, 16-17 November 2001
- Mediation, Justice et Entreprise

### **Teaching and Mentoring**

Giovanni De Berti is regularly sharing and contributing his knowledge and experience in domestic and international training events. He has a number of professional affiliations and is founding member and Vice President of InMedia, an association for the promotion of mediation.

Recent speaking and teaching engagements include:

- Avvocati e giudici nella conciliazione (Lawyers and Judges in Mediation), Milan Bar Mediation Institution, 23 April, 7 and 22 May 2009
- Why to Choose Mediation, Chartered Institute of Arbitrators European Branch, Spring Meeting, Milan, 21 March, 2009
- The Use and Abuse of the Caucus and other Mediators' Tricks, and Does the Future belong to Court-annexed or Court-connected Mediation, World Forum of Mediation Centres, Lausanne, 31 January, 2009
- Il ruolo dei difensori delle parti nella conciliazione (Role of Party Counsels in Mediation), European Court of Arbitration, Milan, 18 November 2008
- The view from civil law jurisdictions - Varied experiences and moving targets, CIArb Mediation Symposium, London, 24 September, 2008
- Arbitrato e conciliazione: due modi di risolvere le controversie, anche rotariane (Arbitration and Mediation: two ways of Resolving Disputes, including Rotarian ones), Rotary Club Milan North West, Milan, 11 September 2008
- Court Referred Mediation on the Continent, 5th Annual Mediation Seminar, CIArb London Branch, London, 2 July, 2008
- Risoluzione delle controversie – Italia e Cina scelgono le vie alternative (Dispute resolution – Italy and China choose alternative means), Le Fonti Publisher, Milan, 18 June, 2008
- Mediator, Mock Mediation, Mediation Training Course, Milan Bar Mediation Institution, 6 June, 2008
- International Dispute Resolution, Workshop in “Legal Aspects of Doing Business with China”, UIA – ACLA Seminar, Milan, 12 April, 20

### **Publications**

Recent publications include:

Contributions for Arbitration, Italy to the Newsletter of the International Law Office, in <http://www.internationallawoffice.com>, namely:

New Law on Implementing EU Mediation Directive, July 2009

Milan Chamber of Arbitration Expands International and Online Mediation Services, January 2009

Surveys Reveal Further Spread of Arbitration and Mediation, June 2008

The Growth of Mediation, July 2006

Italy-China Mediation Centre Opens in Milan, February 2006

The European Draft Directive on Mediation, *Juriste International*, 2005-2, p. 53

Arbitration and Mediation in Italy, in *The Metropolitan Corporate Counsel*, August 2002