

Editorial

Dear Reader,

It gives me particular pleasure to present to you issue no. 8 of our GGI Practice Group Litigation and Dispute Resolution (LDR) Newsletter well ahead of the GGI European Regional Conference in Berlin, since the law firm FPS, where I am partner, will have the honour to be amongst the hosts of this conference.

Thanks to the great response of so many of you, once again this new issue is full of highly interesting articles. They cover such different areas as conflict management in Italy, legal issues in connection with blockchain companies, an overview on Austrian litigation, litigation against foreign companies and international organisations from the Dutch perspective, the history and purpose of common law courts of

equity, the introduction of a 3% web tax in Italy, the legal effects of expert determination in Australia, the legal impact of Brexit and recent reforms in Italian insolvency law.

The varied topics in this issue certainly showcase the wonderful members of our Practice Group, and the quality of the meetings we have had since the publication of our last newsletter (autumn 2017) prove the international strength of our group. For the Practice Group meeting in Vienna, we gathered 33 participants from 18 different countries – a truly global reach, and many participants confirmed after the conference, that the meeting was a great success and that they left with valuable new information, which they would not have gained in any other one-day training course. We are immensely



proud of our international LDR network!

Our next Practice Group Meeting will be held during the GGI Regional Conference in Berlin (19 - 22 April 2018). Enjoy discussing current legal topics on litigation and dispute resolution in Berlin. Enjoy the vibrant, colourful and creative atmosphere of the German capital. Meet the 'GGI family' and make good new contacts.

I look forward to seeing you there!

Dr Karl Friedrich Dumoulin
Global Vice Chairperson of the
GGI Litigation & Dispute Resolution
Practice Group

Negotiation of conflict management tools: what negotiator are you?

By Dr Mariagiulia Signori

When managing a conflict within the Italian system, it must first be verified whether an Alternative Dispute Resolution (ADR) instrument – such as negoti-

ation, mediation or arbitration – may be used before being forced to go to court. The idea of using ADR techniques is to find a solution between the parties without going to court. My dear colleagues from Australia, Andrew Lacey and Na-

than Jones, discuss in detail the ADR process 'Expert determination' in their article on page 9.

Among the various ADR techniques, negotiation is the only one in which an impartial third participant does not

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seek to facilitate discussions between the parties, as in the case of mediation; instead, the process is handled directly by the parties and their representatives.

Accordingly, resolving a conflict using this method is more complex than it may seem.

The renowned Harvard University professor Howard Raiffa (who created the innovative Program on Negotiation) defined negotiation as ‘a situation in which two or more parties recognise that different values exist among them’.

His colleague, Professor Sebenius, identified six major errors committed during negotiations that can undermine and even result in the failure of the process.

These errors are committed when one party – or its representatives – ignore the other party’s problems, allow their economic interests to prevail over their other interests, focus on the parties’ positions and not their interests, insist on seeking common ground, ignore better alternatives to a negotiated settlement and, finally, harbour prejudices regarding the other party and improperly assess them.

In order to avoid these errors, professionals must keep an open mind and be willing to change their point of view as they analyse each case, focusing on all parties to the conflict and not just on their clients.

Clearly, this is not easily done and goes against the natural tendency in all of us to view negotiation as a distinctive aspect of our profession and to see ourselves as having our own distinctive conflict management styles. Some take a competitive approach, while others are collaborative; some avoid direct conflict, while others are accommodating.

Within this framework, the new negotiation techniques proposed increas-

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ingly suggest that professionals change approaches, switching from conflict to cooperation and taking a dual view of the situation, thus permitting observation and understanding of the dynamics of the conflict.

This makes it easier to identify the right questions to ask the client so as to achieve a clearer understanding of actual relationships between the parties and change the perspective on the situation.

Professionals must also refrain from expressing an opinion to the people they are dealing with in order to understand the parties to the conflict, identifying their true interests and needs by listening to them.

The purpose of structuring negotia-

tions in this manner is to create an environment of trust and empathy at the negotiating table where strategies can be flexibly integrated. Creating a collaborative atmosphere helps the other party understand that we respect their positions, even if they differ considerably from ours.

Finally, in this context professionals must always explain to their clients the best and worst alternatives to a negotiated settlement. The goal of presenting these opposite alternatives is to bring to light sustainable prospects for both parties and identify feasible solutions, and thus to reach an agreement that is satisfactory to all parties, who come out believing that they have won.