ADVANT Altana | Beiten | Nctm

DISPUTE RESOLUTION & MEDIATION
争议解决与调解

CHINA ROADSHOW

17 MARCH 2025 – 21 MARCH 2025

MEDIATION
调解

MEDIATION 调解

WHAT IS IT? 什么是调解?

Civil And Commercial Mediation Is An Alternative Dispute Resolution Proceedings

民事和商事调解是一种替代性争议解决程序

WHAT DOES IT CONSIST OF? 调解包括哪些内容?

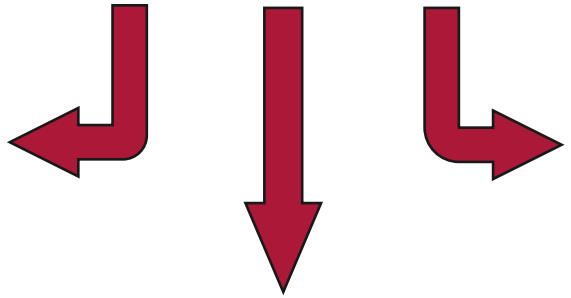
An Informal Proceedings Whereby The Parties Are Assisted By A Mediator (I.E. A Neutral And Independent Third Party) In Order To Reach A Settlement Agreement Which Is Mutually Satisfactory

在调解人（即中立和独立的第三方）的协助下，双方达成相互满意的和解协议的非正式程序

MANDATORY MEDIATION 强制调解

The Parties Must Attempt To Settle The Case Within A Mediation Proceedings
双方必须尝试在调解程序内解决案件

WHEN 当
REQUIRED BY CONTRACTUAL OR STATUTORY CLAUSES
合同或法定条款有要求

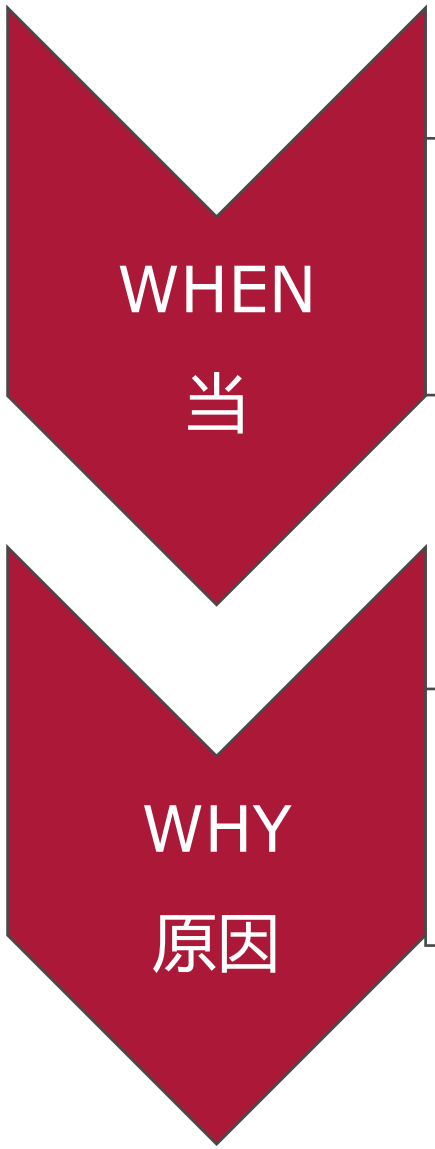


WHEN 当
ORDERED BY A JUDGE
法官对此作出决定

IN CASE OF 如果
DISPUTES INVOLVING 争议涉及

- Property rights (ownership, usufruct, real estate transactions, etc.); 财产权（所有权、用益权、房地产交易等）;
- Division and inheritance succession; 财产分割和继承;
- Family agreements; 家庭协议;
- Lease and loan agreements; 租赁和贷款协议;
- Business leases; 商业租赁;
- Compensation for damages relating to medical and healthcare liability; 与医疗和保健责任有关的损害赔偿;
- Defamation through the press or other means of publicity; 通过新闻或其他宣传手段进行的诽谤;
- Insurance, banking, and financial contracts; 保险、银行和金融合同;
- Joint Venture Agreements, Partnerships (AIP, società di persone), Consortium, Franchising agreements; Supply agreements. 合资协议、合伙（AIP、società di persone）、财团、特许经营协议；供应协议。
- Condominium matters. 公寓事务。

VOLUNTARY MEDIATION 自愿调解



- ANY DISPUTES INVOLVING PARTIES' DISPOSABLE RIGHTS
- 任何涉及当事人可处置的权利的争议

- QUICK TIMELINES
- 快速的时间表
- CERTAIN AND REDUCED COSTS
- 确定的并相对较低的成本

The mediator is a professional with requirements of:
调解员是专业人员，必须具备的资质有：

- INTEGRITY 诚信
- COMPETENCE 能力
- NEUTRALITY 中立性
- IMPARTIALITY 公正性

CARRIES OUT THE MEDIATION
WITHOUT HAVING THE POWER TO ISSUE JUDGMENTS OR BINDING DECISIONS
进行调解
无权作出判决或具有约束力的决定

THEIR TASK IS TO HELP THE DISPUTING PARTIES FIND A **MUTUALLY SATISFACTORY SOLUTION TO THE CONFLICT**, GUIDING THEM TOWARD A SHARED AGREEMENT AND THUS AVOIDING THE NEED TO GO TO COURT
旨在帮助争议各方找到**双方都满意的冲突解决方案**，引导他们达成共同协议，从而避免诉诸法庭

THE MEDIATION REPORT, WHICH REFLECTS THIS AGREEMENT AND IS APPROVED BY THE PRESIDENT OF THE COMPETENT COURT, SERVES AS AN **ENFORCEABLE TITLE FOR THE PARTIES.**
反映上述共同协议并经主管法院院长批准的**调解报告**是**各方可以主张执行的**。

MAIN ADVANTAGES OF MEDIATION 调解的主要优势 (1/2)

- Mediation is **fast**, with a maximum duration of 4 months compared to an average of 10 years to reach a final judgment in a civil lawsuit.

  调解**速度快**，最长只需 4 个月，而民事诉讼平均需要 10 年才能做出最终判决。

- Mediation is **economical**, with costs significantly lower than those required for a civil lawsuit, including legal fees, expert reports, consultations, and especially the hidden costs.

  调解有**经济上的优势**，其费用大大低于民事诉讼所需的费用，包括律师费、专家报告费、咨询费，尤其是隐性费用。

- Mediation is **positive**, promoting dialogue and allowing for the maintenance of postive relationships with the other party (for example, a business can avoid losing a customer, a condominium resident can avoid compromising good neighborly relations, ect.).

  调解是**积极正向的**，它可以促进对话并允许与另一方继续保持良好的关系（例如企业可以避免失去客户，公寓居民可以避免损害睦邻友好关系等）。

MAIN ADVANTAGES OF MEDIATION 调解的主要优势 (2/2)

- Parties who pay the mediation fee are granted a **tax credit**, in the case of a successful mediation, equal to the mediation fee paid, up to a maximum of €500. In the case of an unsuccessful mediation, the tax credit is reduced by half.

  在调解成功的情况下，支付调解费的各方可获得与所支付的调解费等额的**税收减免**，最高减免额为 500 欧元。如果调解不成功，减税额度减半。

- The mediation agreement report is **exempt from the registration tax** up to a value of €50,000. Any amount exceeding this limit will be subject to the tax only for the excess value.

  调解协议报告**免征登记税**，最高金额为 50,000 欧元。超过此限额的部分只需缴纳超额部分的税款。

MEDIATION IN GERMANY 在德国的调解 (1/2)

- Less common 不常见
- No mandatory mediation 无强制性调解
- Mediation only optional 调解只是选择性的
- Mediation by judges or persons (often attorneys) acting as mediators
  由法官或担任调解员的人（通常是律师）进行调解
- Agreements mostly 协议居多:
  - settlements recorded by courts
    法院记录的和解
  - settlements recorded by attorneys
    由律师记录的和解

MEDIATION IN GERMANY 在德国的调解 (2/2)

- No benefits (no tax credits, etc.) 无益处（无税收抵免等）
- Duration of court proceedings 法院诉讼程序的时间
  - first instance judgment after filing of lawsuit 提起诉讼后的一审判决
    - Amtsgericht (Local Court): approx. 7,1 months 地方法院：约 7.1 个月
    - Landgericht (Regional Court): approx. 13,1 months 州法院：约 13.1 个月
  - second instance 二审
    - Landgericht: approx. 8,2 months 州法院：约 8.2 个月
    - Oberlandesgericht (Higher Regional Court): approx. 10,7 months 高院：约 10.7 月
  - third instance 三审
    - Bundesgerichtshof (Federal Court of Justice): approx. 1 year 联邦法院：约 1 年

ARBITRATION PROCEEDINGS 仲裁程序

ALTERNATIVE DISPUTE RESOLUTION → *OUT-OF-COURT PROCEEDINGS*
非诉讼纠纷解决方式 → 庭外程序

PRIVATE NATURE: 私法本质:

- CONSENSUALLY CHOSEN BY THE PARTIES 由各方当事人协商一致选择
- BEFORE A PRIVATE ARBITRATOR / ARBITRATION PANEL 由私人仲裁员/仲裁小组仲裁

RITUAL ARBITRATION **正式（仪式）仲裁**	**OR** **或**	**IRRITUAL ARBITRATION** **非正式（非仪式）仲裁**
THE AWARD HAS THE FORCE OF A DECISION AND BECOMES **ENFORCEABLE** 裁决具有决定的效力并**可强制执行**		THE AWARD HAS **NEGOTIATING NATURE AND EFFECTS**, THUS IT CAN'T BE ENFORCEABLE BUT IT MAY BE USED TO APPLY FOR AN INJUCTION OR AS DOCUMENTARY EVIDENCE 裁决具有谈判性质和效力，因此不能强制执行，但可用于申请起诉或作为书面证据
ACCORDING TO LAW **根据法律**	**OR** **或**	**IN EQUITY** **根据权益**
ARBITRATORS MUST APPLY ONLY THE RULES OF THE **GOVERNING LAW** 仲裁员必须只适用**准据法的规则**		ARBITRATORS MAY DEVIATE FROM THE STRICTNESS OF THE RULE OF LAW AND REFER TO **BROADER USAGES OR PRINCIPLES OF JUSTICE**, HAVING REGARD TO THE CONCRETE CASE 仲裁员不必完全适用严格的法律规则，在考虑到具体案件的情况下，参考更广泛的用法或司法原则

INTERNATIONAL ARBITRATION 国际仲裁

QUALIFYING CRITERIA 资格标准:	
SUBJ **主观**	INVOLVES PARTIES HAVING THEIR RESIDENCE OR SEAT IN DIFFERENT STATES 涉及住所或席位在不同州的当事人
OBJ **客观**	1. INVOLVES INTERNATIONAL ECONOMIC INTERESTS 涉及国际经济利益 2. CROSS-BORDER NATURE OF ONE OR MORE OBLIGATIONS UNDER THE CONTRACT 合同规定的一项或多项义务具有跨国性质 3. DEVOLUTION OF THE DISPUTE RESOLUTION TO AN INTERNATIONAL INSTITUTION 将争端解决移交给国际机构

INSTITUTIONAL ARBITRATION **机构仲裁**	**OR** **或**	**AD HOC ARBITRATION** **临时仲裁**
THE PARTIES CHOOSE AS RULES APPLICABLE TO THE ARBITRAL PROCEEDING THE ONES ADOPTED BY A PARTICULAR ARBITRAL INSTITUTION. 当事人选择某一仲裁机构通过的规则作为仲裁程序的适用规则。		THE PARTIES DON'T SELECT A PARTICULAR INSITUTION BUT THEY AGREE A CLAUSE WHICH GOVERNS THE PROCEDURE AND THE RULES APPLICABLE THERETO, WHICH ARE, THEREFORE, SPECIFICALLY OUTLINED IN RELATION TO THE CONCRETE CASE. 当事人并不选择特定的机构，而是商定一个条款，规定适用的程序和规则，因此，该条款是针对具体案件的具体规定。

MAIN ADVANTAGES OF ARBITRATION 仲裁的主要优势

- ARBITRATION IS **PRIVATE** AND **CONFIDENTIAL**

  仲裁是**非公开**和**保密**的

- ARBITRATION **PROVIDES ONLY FOR ONE INSTANCE**

  仲裁**只进行一次审理**

- ARBITRATORS' **FEES MAY BE SUBSTANTIAL**

  仲裁员**费用可能很高**

- **FULL COST REIMBURSEMENT** OF ALL ATTORNEYS' FEES

  所有律师费**全额报销**

- ARBITRATION PROCEEDINGS CAN BE CONDUCTED IN **ANY LANGUAGE**

  仲裁程序可以**任何语言**进行

- STATE COURT PROCEEDINGS ARE PUBLIC PROCEEDINGS

  诉讼是公开程序

- STATE COURT PROCEEDINGS PROVIDE GENERALLY FOR THREE INSTANCES

  诉讼一般规定是三审

- STATE COURT FEES ARE MORE MODERATE

  诉讼的收费较为适中

- COST REIMBURSEMENT OF ATTORNEYS' FEES IS LIMITED

  律师费报销是有限制的

- STATE COURT PROCEEDINGS ARE GENERALLY CONDUCTED IN THE LANGUAGE OF THE COUNTRY WHERE THE COURT IS LOCATED

  诉讼一般以法院所在国的语言进行

ENFORCEMENT OF THE FOREIGN ARBITRAL AWARD
外国仲裁裁决的执行

THE **NEW YORK CONVENTION** HAS SIMPLIFIED THE REGIME FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS AND HARMONISED THE RELEVANT NATIONAL LAWS, ESTABLISHING:

《纽约公约》简化了承认和执行外国仲裁裁决的制度，并协调了相关的国家层面的法律，建立了：

MINIMUM FORMAL REQUIREMENTS
最低形式要求

LIST OF MANDATORY CASES FOR REFUSAL
必须加以拒绝的情形列表

THE POSSIBILITY FOR THE CONTRACTING STATES TO ADOPT A **MORE FAVOURABLE SYSTEM OF ENFORCEMENT**
公约缔约国可能采纳**更有利执行的制度**

FOREIGN AWARD DOMESTICATION PROCEDURE
外国裁决在国内的承认与执行程序

UNDER ITALIAN LAW IN ORDER TO ENFORCE A FOREIGN AWARD IT IS MANDATORY TO HAVE SUCH AWARD DOMESTICATED UNDER THE PROCEDURE SET OUT IN SEC. 839 OF THE ITALIAN CODE OF CIVIL PROCEDURE ("**ICCP**").
根据意大利法律，如需执行外国裁决，必须按照《意大利民事诉讼法》（"ICCP"）第 839 条规定的程序将该裁决进行国内化。

THE PROCEDURE SET FORTH BY ART. 839 ICCP PROVIDES THAT A PARTY WISHING TO ENFORCE A FOREIGN AWARD IN ITALY SHALL FILE AN APPLICATION BEFORE THE PRESIDENT OF THE COURT OF APPEAL IN WHOSE DISTRICT THE OTHER PARTY RESIDES.
《意大利民事诉讼法》第 839 条规定的程序，希望在意大利执行外国裁决的一方当事人应向另一方当事人所在地区的上诉法院提交申请。

THE APPLICANT SHOULD FILE: 申请人应提交:

- THE AWARD IN ITS ORIGINAL OR CERTIFIED COPY; 裁决书原件或经认证的副本;
- THE ARBITRATION AGREEMENT, OR AN EQUIVALENT DOCUMENT (I.E. THE AGREEMENT WHICH PROVIDED FOR THE ARBITRATION CLAUSE), BOTH IN ORIGINAL OR IN CERTIFIED COPY.
  仲裁协议或同等文件（即规定了仲裁条款的协议）的原件或经认证的副本。

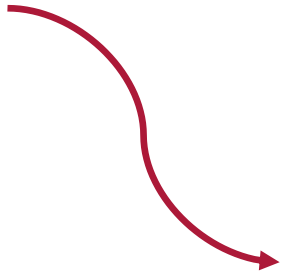
THEREAFTER, THE PRESIDENT OF THE COURT OF APPEAL, HAVING ASCERTAINED THE FORMAL REGULARITY OF THE AWARD, SHALL DECLARE BY DECREE THE EFFECTIVENESS OF THE FOREIGN AWARD IN ITALY, UNLESS:
此后，上诉法院院长在确定裁决在形式上合法后，应通过法令宣布外国裁决在意大利有效，除非

- THE DISPUTE COULD NOT BE THE SUBJECT OF AN AWARD UNDER ITALIAN LAW; 根据意大利法律该争议不能成为裁决的标的;
- THE RELEVANT AWARD CONTAINS PROVISIONS CONTRARY TO PUBLIC POLICY. 相关裁决包含违反公共政策的条款。

ENFORCEMENT OF THE AWARD 仲裁裁决的执行

ONCE OBTAINED THE AWARD DOMESTICATION, THE APPLICANT SHOULD SERVE THE RELEVANT DECREE TO THE OPPOSING PARTY WHO CAN APPEAL THE RELEVANT DECISION **WITHIN 30 DAYS** UNDER SEC. 840 ICCP FOR THE REASONS STATED THEREIN. ELAPSED THE 30 DAYS TERM (OR THE OPPOSITION FILED UNDER SEC. 840 ICCP IS DISMISSED), **THE APPLICANT CAN ENFORCE THE AWARD**

获得裁决国内化后，申请人应将相关法令送达对方当事人，对方当事人可根据《国际民事诉讼法典》第 840 条**在30天内**就相关裁决提出异议并在上诉程序中陈述理由。30天期限届满（或根据《国际民事诉讼法典》第 840 条提出的异议被驳回）后，**申请人可执行裁决**。



UNDER ITALIAN LAW, THE ENFORCEMENT OF A PAYMENT OBLIGATION IS OBTAINED THROUGH THE **SEIZURE OF THE DEBTOR'S MOVABLE/PROPERTY ASSETS OR RECEIVABLES.**

根据意大利法律，通过**扣押债务人的动产/财产或应收账款**来强制执行付款义务。

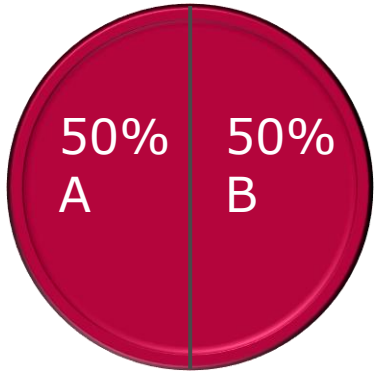
PRELIMINARY INJUNCTION 临时禁令

- Application at state court 向州法院提出申请
- State court (only) generally hears opposite side before issuance of PI
  州法院（仅）在签发临时禁令前一般会听取对立方的意见
- PI may be issued in written proceedings 可在书面程序中签发临时禁令
- PI is immedicably enforceable 临时禁令可立即执行
- Underlying side may file objection against PI (or denial of PE)
  被诉方可对临时禁令提出异议（或拒绝 PE）
- Hearing of first instance 一审听证
- Judgment of first instance 一审判决
- Appeal possible 可上诉
- Hearing of second instance 二审听证
- Final judgment of second instance 二审最终判决

PRELIMINARY INJUNCTION 临时禁令

Important instrument in shareholder disputes in international JVs 国际合资企业股东纠纷中的重要工具

Example JV: 合资企业举例:



Managing Director ("**MD**") A
股东 A 方的董事总经理

Shareholder dispute 股东纠纷

Shareholder B requests shareholders to resolve 股东 B 请求股东解决

- MD A shall be removed　A 方的董事总经理应被免职
- MD B shall be appointed　应任命 B 方的董事总经理

1 March 2025	➢ Shareholder meeting: dispute if **MD** A has been replaced by MD B 股东大会：关于 A 方董事总经理是否被 B 方董事总经理取代的争议纠纷
3 March 2025	➢ Party B files for PI　B方申请临时禁令
5 March 2025	➢ PI is denied 临时禁令被驳回
6 March 2025	➢ Party B files objection B方申请异议
16 March 2025	➢ Oral hearing 庭审
18 March 2025	➢ Judgment of 1st instance: 一审判决:　A has been removed **MD**　A方董事总经理被罢免 B has been appointment **MD**　任命B方董事总经理
	➢ Party B files arbitration proceedings B方申请仲裁程序
26 March 2025	➢ Party A files appeal against judgment of 1st instance A方对一审判决提起上诉
26 May 2025	➢ Oral hearing in 2nd instance 二审庭审
2 June 2025	➢ Judgment of 2nd instance: judgment of 1st instance confirmed 二审判决：确认一审判决
15 February 2026	➢ Arbitral award: 仲裁裁决:　A is still **MD** A方董事总经理继续任职 B has not been appointed B方未被任命
	➢ Party A may sue Party B for damages caused by MD B　A方可就B方董事总经理造成的损失起诉B方

SPEAKERS
演讲人

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FOCUS ON / 业务领域

- China Desk / 中国事务部
- Corporate and Commercial / 公司及商业事务
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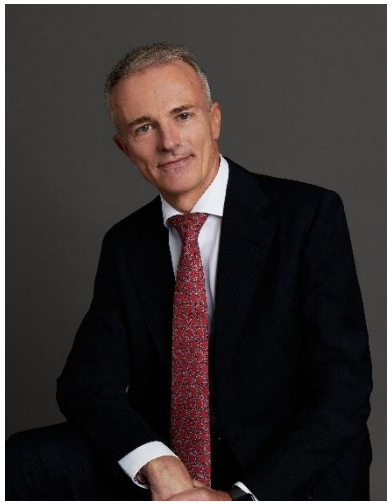
ADDITIONAL INFORMATION / 补充信息

Insa Cornelia Müller-Trucksaess is Partner at ADVANT Beiten in Munich and a member of the Corporate/M&A practice group. She advises national and international clients on mergers and acquisitions and private equity transactions. She has many years of experience with complex, especially cross-border transactions. In addition to her focus on the mobility sector, Insa Cornelia Müller-Trucksaess has particular expertise in the renewable energy and telecommunications sectors. She is deputy chair of the supervisory board of DPE Investment Gesellschaft mbH.

伊萨·科耐利亚·穆勒女士是昂帆百达律师事务所慕尼黑分所的合伙人，也是公司/并购业务部的成员。她为国内外客户提供并购和私募股权交易方面的咨询服务。她在复杂交易，尤其是跨境交易方面拥有多年经验。伊萨·科耐利亚·穆勒女士不仅专注于移动领域，还特别擅长可再生能源和电信领域。她还担任DPE Investment Gesellschaft mbH 监事会副主席。

GUIDO BARTALINI



Italian Attorney at law | Partner
意大利执业律师 | 合伙人

FOCUS ON / 业务领域

- China Desk / 中国事务部
- Corporate and Commercial / 公司及商业事务
- Arbitration / 仲裁
- Dispute Resolution / 争议解决

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ADDITIONAL INFORMATION / 补充信息

Guido Bartalini has extensive experience in out-of-court and court assistance of domestic and international clients with commercial and financial issues and domestic and international arbitrations.

Guido Bartalini律师在庭外和法庭协助国内和国际客户解决商业和金融问题以及国内和国际仲裁方面拥有丰富的经验

He is also member of the China Desk at ADVANT Nctm and he advises Chinese clients and Italian clients having interests in China.

此外，他还是昂帆安启建律师事务所中国业务部的成员，为中国客户和在中国投资的意大利客户提供咨询服务。

Guido manages the Legal Desk - internationalisation of the Consortium of Network Companies of the North West District 33 and is the external legal advisor of the Italian National TV Artists.

Guido Bartalini律师负责管理西北区 33 网络公司联盟的国际化法律服务台，并担任意大利国家电视艺术家的外部法律顾问。

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Italian | English | French | **Chinese** | Spanish

意大利语 | 英语 | 法语 | **中文** | 西班牙语

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ADDITIONAL INFORMATION / 补充信息

Hermes Pazzaglini heads the Shanghai office of ADVANT Nctm. His professional practice is focused on the relations between Italy, mainland China and Hong Kong. In this ambit he has extensive experience in mergers and acquisitions, contract law, corporate and commercial matters, litigation and arbitration, labour law and commercial law. He has managed a number of corporate transactions in China for European clients as well as assisting major Chinese privately held and state-owned companies in the European market.

杨慕华律师是昂帆安启建律师事务所上海办事处的负责人。他的业务领域专注在意大利、中国大陆和香港之间的关系。就此他在并购、合同法、公司和商业事务、诉讼和仲裁、劳动法和商法方面拥有丰富的经验。他曾在中国为欧洲客户负责多项公司交易，并在欧洲市场为中国大型民营和国有企业提供协助。

He is one of the few Italian arbitrators on the panels of South China International Arbitration Center (Hong Kong), the Shanghai International Arbitration Center, the Shenzhen Court of International Arbitration, the Chinese European Arbitration Centre and the Xi'an Arbitration Commission.

他是华南国际仲裁中心（香港）、上海国际仲裁中心、深圳国际仲裁院、中国欧洲仲裁中心和西安仲裁委员会为数不多的意大利籍仲裁员之一。

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