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Justice

Mediation, the EU Directive and the Attorney's Deed

May 21, 2011 marked the date by which EU countries were obliged to transpose into national law EC Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil and commercial matters.

The European Directive defines mediation and mediators, details procedures for enforcing agreements reached through mediation and emphasizes the confidential nature of mediation. Several countries have complied with the transposition deadline. At the request of the French government, the *Conseil d'Etat* issued a report on July 29, 2010, entitled "Developing Mediation within the European Union". The government also submitted the draft text of the order transposing the Directive and the decree on out-of-court dispute settlements to public

consultation. The consultation process ended on May 27, 2011. These steps demonstrate a concern for transparency and a willingness to adapt French law to promote mediation. Without doubt, mediation is a genuine opportunity for both private individuals and corporations to resolve their disputes other than by litigation. Mediation is an alternative dispute method used regularly in the English-speaking world, especially for disputes within and between corporations. The process is structured and effective and employs a pragmatic and non-confrontational approach to conflicts.

Independence, neutrality and impartiality

This dispute resolution method fulfills a genuine demand from both private individuals and corporations to negotiate confidential and rapid solutions to their disputes, guided by a competent professional

mediator who is independent (no conflict of interest), neutral (not taking sides) and impartial (favors neither one nor the other in dispute). Parties voluntarily choosing mediation retain control of their dispute and its potential solutions. They no longer have to submit to a court ruling, but are able to resolve their dispute whether it is legal or otherwise. The parties may choose the form their agreement will take: simply oral, a compromise with *res judicata* effect or a court-approved agreement. Agreement reached after mediation may also take the form of an Attorney's Deed (*l'acte d'avocat*), introduced by the French Law of March 28, 2011. This is a private deed signed by the parties and countersigned by the lawyers present during mediation. Mediation terminating with an Attorney's Deed further strengthens the process and combines confidentiality, security and effectiveness.

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