

# Alternative Dispute Resolution in China

## *A Brief Introduction of Mediation*

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The Chinese people value harmony and attach great importance to alternative dispute resolution (“ADR”) mechanisms, especially mediation. Mediation has been the primary vehicle of resolving disputes in China for thousands of years. After the People’s Republic of China was established in 1949, the traditional system of mediation was formalized in China, with the adoption of a set of laws that provided for the establishment of People’s Mediation Committees in communities and workplaces to mediate disputes involving individuals for free.<sup>2</sup> Currently, China has over 820,000 People’s Mediation Committees nationwide with 5 million mediators who resolve 8 to 9 million disputes annually.<sup>3</sup> Accordingly, the Civil Mediation Law was enacted last year and went into effect on January 1, 2011 to regulate and encourage mediation activities of the People’s Mediation Committees. The Civil Mediation Law stipulates that an agreement reached as a result of such mediation is legally binding upon the parties to the mediation. Either party may request a People’s court to confirm the validity of such an agreement if they regard it necessary.<sup>4</sup>

Meanwhile, the Supreme Court has been promoting the use of mediation in the judicial system. In July 2009, it issued the *Opinions of the Supreme People’s Court on the Establishment and Improvement of Conflict & Dispute Resolution Mechanism to Link up Litigation and Non-Litigation* (“the Opinions”), which states that the People’s courts shall encourage and support industry associations, social organizations, government-funded institutions and similar entities to establish and/or improve functions and mechanisms for the mediation of relevant disputes. The Opinions confirm that the agreements setting forth the parties’ rights and obligations which are reached as a result of mediation by commercial mediation organizations or other entities with mediation functions shall be recognized as civil contracts if both parties sign or seal the agreements. In June 2010, the Supreme Court issued a notice, requiring that mediation shall precede trials as the first attempt to solve disputes in most lawsuits.<sup>5</sup> The notice also indicates that mediation should expand from civil cases to certain criminal cases and cases where administrative agencies are defendants.<sup>6</sup> In late March, 2011, upon the request of the parties to a

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  - 2 See The Provisional General Rules of China for the Organization of People’s Mediation Committees (1954); Constitution of the People’s Republic of China, Article 111 states that ‘People’s Mediation Committees are working committees under grassroots autonomous organizations’ – Residents Committee, Villagers Committee – whose mission is to mediate civil disputes’; Organization Ordinances for People’s mediation Committees (1989).
  - 3 See China Broadcast Network, *Civil Mediation Law to Go in Force Today; Experts Explains Major Points*, January 1, 2011, available at <http://news.qq.com/a/20110101/000411.htm>.
  - 4 Civil Mediation Law of the People’s Republic of China (2010), art. 31 &33.
  - 5 Wang Huazhong, Mediation can help settle rising disputes, CHINA DAILY, June 29, 2010.
  - 6 Ibid.
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settlement agreement which was reached as a result of the mediation presided by a community People's Mediation Committee, the People's Court of Beijing Chaoyang District made a ruling to confirm the validity of the settlement agreement.<sup>7</sup> This was the first precedent made in Beijing. According to the court's ruling, the mediation agreement was concluded based on the parties' autonomy and intention.

Mediation also has a very important position in the arbitration field. It is connected with arbitration mainly in two ways. First, cases may be mediated during an arbitration process. For example, after submitting an arbitration application, the parties may settle the dispute among themselves through conciliation. Alternatively, before an award is made, an arbitration tribunal may, at its own discretion, attempt to mediate the case. Second, an arbitration tribunal may be requested to make an award based on the agreement which is reached in the conciliation process in order to have the agreement enforced. According to Article 49 of the Arbitration Law of the People's Republic of China ("the Arbitration Law"), the parties may apply to an arbitration tribunal for an award based on the conciliation agreement. Apart from the Arbitration Law, the arbitration institution rules also confer the tribunals' the right to make an award based on conciliation agreements. For example, under the China International Economic and Trade Arbitration Commission ("CIETAC") Arbitration Rules, where the parties have reached a settlement agreement among themselves through negotiation or conciliation without involving CIETAC, either party may request CIETAC to establish a tribunal to render an award in accordance with the terms of the agreement. In such proceedings, generally the tribunal will consist of a sole arbitrator with normal arbitral rules not applied to achieve a timely award.

ADR plays a vital role in solving the disputes in the offshore arbitration arena for Chinese companies. In the year 2010, our team from Zhong Lun Law Firm represented a holding company registered in Hong Kong in an arbitration procedure before the International Center for Dispute Resolution of American Arbitration Association. Through repetitive and arduous negotiations, the team eventually reached a settlement agreement with the counterparty winning roughly USD 2.5 million in compensation for the client.

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<sup>7</sup> See Legal Evening News, March 24, 2011.