

Zheng Sophia Tang
z.tang@leeds.ac.uk
January 7, 2014

Mediation in China

Mediation in China has a very long history, because Chinese have the culture to resolve disputes amicably. Chinese mediation usually lacks regulation and needs modernization. There is a relevantly old article on china mediation in the eve of modernization.

<http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2913&context=californialawreview>

China mediation traditionally is based on the respect of authorities. Mediators are usually judges, arbitrators, government officials, or someone with high reputation in the community. Most mediators do not have appropriate training in either law or mediation skills. The parties are not reaching agreements with the help of mediator but they usually surrender to the mediator's proposal. Or they reach a resolution due to the community/moral pressure.

Settlement between private parties over a dispute that does not include a lot of money may be made informally. This is a way to show amicable resolution and friendship. Chinese tradition does not prefer clear-cut options. A vague settlement may make both parties feel comfortable. Parties may not agree on details, especially on the compensation upon failure to perform/enforce, such as interest upon delayed payment or penalty for non-performance. There is uncertainty even after settlement, but this raises very little concern to the parties. A definite agreement may lead to delay or failure of mediation. Usually, where one party insists clarify and definite answers, the other would suspect his sincerity and blame him as the mediation breaker due to his attitude.

Many Chinese civil mediation is done by judges as a pre-trial process. Definite settlement will be reached fairly easily in these cases.

The traditional style is inappropriate for commercial mediation. Modernization aims to abandon the authority-based style and focus more on the commercial interest and free bargain. Since mediation is rarely used in big cases, there is no evidence to show whether the behaviour is changed in cases involving a lot of money, where the parties and counsels are usually more sophisticated.

In 1987, the first foreign-related commercial mediation institute—CCPIT/CCOIC Beijing Mediation Centre was established, which was renamed as CCPIT/CCOIC Mediation Centre since January 2001. Afterwards, the Centre has established 42 local mediation centres in China. The Centre also cooperates with foreign mediation institutes to build joint mediation centres, such as China-Italy Business Mediation Centre, US-China Business Mediation Centre, China-Korea Business Mediation Centre, etc. International Cooperation is also established between the Hong Kong, UK, Greece, Singapore and Japan.

In 2010, the Standing Committee of the 11th National People's Congress in its 16th meeting adopted the PRC Mediation Act to improve mediation practice. This Act entered into force from 1 Jan 2011. A Chinese version can be accessed here: http://www.gov.cn/flfg/2010-08/29/content_1691209.htm.

Zheng Sophia Tang is Associate Professor of Business Law, Barrister (Middle Temple), Accredited Mediator (ADR Group), Centre for Business Law and Practice, University of Leeds