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Prominent development for Commercial Mediation – a way forward to facilitate the resolution of international trade disputes

- Background

China has ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) in 2022. By becoming a contracting state, China affirmed its commitment to promoting cross-border mediation as a viable and enforceable method for resolving international commercial disputes.

As a further step, the Chinese Ministry of Justice issued the Regulations on Commercial Mediation of the People's Republic of China (Draft for Public Solicitation of Comments)(the "Draft Regulations"), which are a concrete step toward aligning domestic law with China's international obligations and global ADR standards. Furthermore, China also signed the Convention on the Establishment of the International Organization for Mediation (the "IOMed").

I. Regulations on Commercial Mediation

On May 27, 2025, the Ministry of Justice issued the Regulations on Commercial Mediation of the People's Republic of China (Draft for Public Solicitation of Comments) (the "Draft Regulations") seeking public input until June 25, 2025. The Draft Regulations, as the first attempt to nationally codify commercial mediation procedures, are of great importance in shaping the legal framework of commercial mediation, which will boost the development of commercial mediation practice and efficient settlement of commercial disputes.

Prior to the issue of the Draft Regulations, there are two main documents regarding commercial mediation, the *"Several Opinions on Establishing and Improving Dispute Resolution Mechanisms that Connect Litigation and Non Litigation"* issued by the Supreme People's Court in 2009 and the *"Opinions on Further Deepening the Reform of Diversified Dispute Resolution Mechanisms in People's Courts"* issued by the Supreme People's Court in 2016. The Draft Regulations is the first regulatory text on commercial mediation at the national level in China, which fills the legal gap in China's commercial mediation system.

As an effective dispute resolution mechanism, commercial mediation has become one of the ideal means of international commercial dispute resolution due to its flexibility, confidentiality, and efficiency.

"The United Nations Convention on International Settlement Agreements Resulting from Mediation ("the Singapore Convention") was effective from 2020, China has signed the Convention though the Convention has not yet come into effect for China. In order to align with the Convention, China is exploring the establishment of domestic legal mechanisms that are compatible with the Convention. The Draft Regulations aim to achieving the effectiveness of cross-border enforcement of international settlement agreements to facilitate the resolution of international trade disputes.

1. Key content of the Draft Regulations

The Draft Regulations consist of several aspects in relation to establishment of commercial mediation organizations, qualifications of commercial mediators, principles of commercial mediation and legal liabilities etc.

Scope of the Draft Regulations :

The Draft Regulations apply to voluntary commercial mediation in civil and commercial disputes, excluding administrative or criminal matters.

Establishment of commercial mediation organizations :

- **Requirements of commercial mediation organizations**

Non-profit legal entities can establish commercial mediation organizations, which greatly relaxes the requirements for establishing commercial mediation organizations. The initiator of a commercial mediation organization shall have a standardized name, a domicile and articles of association, necessary assets, and at least 5 commercial mediators.

- **Procedure for establishment**

- 1) The applicant shall apply to the judicial administrative department of the city level people's government where it is located, submit a registration application and relevant materials.
- 2) The department accepting the application shall conduct a preliminary examination within 20 working days from the date of acceptance, and submit the examination opinions to the judicial administrative department of the people's government of the province, autonomous region, or municipality directly under the Central Government.
- 3) The judicial administrative departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall conduct an examination within 10 working days after receiving the examination opinions and make a decision on whether to approve registration. If registration is granted, a registration certificate shall be issued to the applicant. If registration is not allowed, provide the applicant with a written explanation of the reasons.

Qualifications of commercial mediators

The Draft Regulations clarify that commercial mediators shall meet one of the following conditions:

- (1) Obtained legal professional qualification through the national unified legal professional qualification examination and engaged in commercial mediation work for at least 3 years;
- (2) Engaged in legal, arbitration, notarization work or served as a judge or prosecutor for at least 3 years;
- (3) Having relevant professional knowledge in law, economics, science and technology, engaged in legal or economic trade work, and possessing intermediate or higher professional titles or equivalent professional levels;
- (4) Engaged in commercial mediation work for at least 3 years and holding a bachelor's degree or above before the implementation of this regulation.

Public officials who also serve as commercial mediators shall comply with relevant regulations.

It is worth noting that commercial mediators shall participate in training in accordance with relevant regulations.

Principles of commercial mediation

Though the Draft Regulations do not stipulate detailed procedural rules of mediation process, relevant principles have been established. Principles of autonomy and confidentiality have been stressed in the Draft Regulations. For principle of autonomy, the beginning of mediation lies in the parties' application through mutual agreement. If one party explicitly refuses mediation, the mediation shall not be carried out. In addition, if the parties do not agree to continue the mediation, the mediation shall be terminated. For principle of confidentiality, the Draft Regulations clearly stipulate that commercial mediation organizations and mediators have a confidentiality obligation regarding information obtained during the mediation process.

Enforceability of commercial mediation agreements

The parties may apply for judicial confirmation of the commercial mediation agreement to the competent people's court

The parties may request the arbitral tribunal to make an award based on the relevant content of the commercial mediation agreement;

The parties may apply to a notary institution for a notarized document with compulsory enforcement effect on the commercial mediation agreement providing a payment obligation and a commitment from the debtor to accept compulsory enforcement.

The Draft Regulations make it clear that through judicial confirmation, arbitration linkage, and notarization, the compulsory enforcement of mediation agreements is guaranteed, making commercial mediation a

dispute resolution procedure that is not only efficient, and flexible, but also has legal enforcement protection by the law.

2. Impact on enterprises

As another dispute settlement mechanism other than litigation and arbitration, mediation has its advantages of high efficiency and convenience. Thus, enterprises shall carefully consider whether to include commercial mediation as the dispute resolution mechanism in commercial agreement, and also consider and choose a suitable commercial mediation organization for mediation process.

II. Establishment of the IOMed

Another event marked a milestone for mediation in China. ***The Convention on the Establishment of the International Organization for Mediation*** is an international convention formulated for the establishment of International Organization for Mediation (the "IOMed"). The Convention was signed by representatives of **33 countries** in Hong Kong on May 30, 2025.

As the world's first intergovernmental legal organization dedicated to resolving international disputes through mediation, the IOMed may mediate disputes between countries, countries and foreign investors as well as international commercial disputes between private entities based on the voluntary consent of the parties. The establishment of the IMOed has filled the gap in the field of international mediation mechanisms.

Organizational structure of the IOMed

The organizational structure of the IOMed includes a Council, a Secretariat, a Panel of mediators (interstate mediation group and general mediation group), and subsidiary or advisory bodies.

The Council is the decision-making body of the IOMed, responsible for making policy decisions and formulating the overall strategy of the IOMed based on consensus through consultation. It is composed of one representative from each contracting party.

The Secretariat is responsible for the daily management of the IOMed, consisting of the Secretary General, one or few Deputy Secretaries General, and other necessary officials and staff.

The IOMed will maintain two Panels of Mediators:

- The Panel of State-to-State Mediators for mediating disputes between states;
- The General Panel of Mediators for mediating commercial disputes between a State and Nationals of Another State, and disputes between Private Entities.

The IMOed is expected to operate in early 2026, which will boost cross-border commercial disputes settlement between states, states and foreign investors and make it more convenient for enterprises to settle the commercial dispute and carry out business operations.

The Draft Regulations and the establishment of the IOMed both shape the legal framework of commercial mediation systems in China. The improvement of solid legal systems for commercial activities will attract more foreign investment and cross-border commercial transactions. The current Draft Regulations do not stipulate relevant provisions in regard to the IOMed, corresponding alignment with the IOMed can be considered to be added in the Draft Regulations.

Conclusion

As the first administrative regulation in China specifically regulating commercial mediation activities, the Draft Regulations are of great significance to optimize the business environment, promote commercial disputes alternative settlement mechanisms. This marks a new stage of legal framework of diversified dispute resolution mechanisms in China. With the future promulgation of the Draft Regulations, clear guidance will be provided for enterprises to effectively resolve commercial disputes through mediation.

Asiallians will keep you updated for further development of the Regulations on Commercial Mediation.

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