The Case for International Mediation in Russia and with Russian Parties

Alexander Khazov

April 1, 2011

This well known caution was written 200 years ago by Russian poet Pushkin. It is still (if not to say - now) applicable today.

The most common challenge for international business having an interest within Russia is the enforcement of contractual rights with a potential risk of litigation in Russian courts. There is a number of reasons to avoid dealing with the Russian court system but not all of them should lead foreign parties to forgo commercial opportunities in Russia with potential Russian partners. Foreign multinational companies when contracting in Russia will almost always assess both commercial and legal risks before deciding to do so. An important element of that risk assessment will exclude not only the governing law but also the ability to secure enforcement of判决s. While the general environment of decreasing authority of Russia’s state courts is certainly a concern that cannot be ignored, it can be mitigated at least in part through the growth of alternative methods of dispute resolution for all parties, domestic and foreign.

Why not, therefore, start to build relationships by using a dispute process that fosters trust and cooperation over adversarial positions, international mediation? Mediation has over the past 20 years developed into a standard part of the dispute resolution processes, including litigation. It is the court law to court - in the United States that the justice system where the party has been serving prisoners penalizing its use for the past 20 years, a generation of lawyers has developed mediation into an accepted practice. Mediation has also increasingly found a solid basis for acceptance in Western Europe, starting from Holland, and even now gaining acceptance in Italy, France and Germany. In particular, large multinational companies such as IBM, Siemens, Axa, Mattel, Renault and Technic-Grancino are using mediation part of their alternative dispute resolution (ADR) program. Mediation is being transported across borders where it may not have been used before. So why not Russia?

The Foundations for Mediation in Russia

The modern historical page of mediation in Russia has been open in 1999 when the St. Petersburg State University began educating specialists in conflictology in 1992 and was given to business and industrial mediation, since then. A number of graduate level mediation centers of Mediation - the St. Petersburg based non-profit partnership of specialists focusing on mediating high quality mediation services and educating of new mediators in cooperation with the department of Conflictology of the St. Petersburg State University. Mediation centers also appeared in Moscow, Yekaterinburg, Voronezh and many other cities, see http://mediationblog.kluwerarbitration.com for more information.

A huge step in developing mediation was made in 2006 when mediation centers were established at the Chamber of Commerce and Industry of the Russian Federation (theельный Совет науки и техники, общеуставной орган) and at the Union of Russia’s Entrepreneurs and Businessmen (юридическое лицо) as well as at the St. Petersburg Chamber of Commerce and Industry.

In 2010, Russia passed legislation that established a legal basis for mediation, the registration process. On 2000, in the Russian Federation, the Russian Federation, the Russian Federation issued a report on the potential for the establishment of mediation, the Russian Federation’s legal basis for mediation. The report also presented a number of proposals for the development of mediation in Russia, including the establishment of a registry of mediators and the development of a training program for mediators.

In 2010, several developments have occurred with significant support for the growth of mediation in Russia:

1. The Russian Government issued a resolution on the promotion of the International Mediation.
2. The Russian Government issued a report on the potential for the establishment of mediation, the Russian Federation’s legal basis for mediation.
3. A number of Russian companies have begun to incorporate mediation into their contracts with Russian partners.
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5. The Federation of Mediation in Russia and with Russian Parties

Further Development of International Mediation in Russia

The future for Russia is a part of global trends in the field of international mediation. Within UNCTAD, the Ministry of Economic Development together with the Ministry of Justice of Russia take an active role in developing the new services towards a set of documents facilitating enforcement of arbitration agreements resulting from international commercial conciliation procedures. This work may result in a report on the potential for the establishment of mediation, the Russian Federation’s legal basis for mediation, which could be used by foreign. This encouraging an increasing number of companies to participate in this process.

Mediation is an important factor that parties will look to in assessing risks, this could be a very significant issue. However, Russian mediation community is looking forward to taking part in the Global Pound Conference.

We believe that initial steps for opening doors to international mediation in contractual relationships with Russian parties have been completed. Foreign companies now have a choice of mediation service providers and may include international mediation clauses in their contracts with Russian partners given that regulatory and judicial support are growing.

One might argue that Russia lacks qualified mediators at present; at that point, the Russian Federation has no legal basis for mediation.

Russia’s law offers many options for mediation. Russian law offers many options for mediation. Russian law offers many options for mediation. Russian law offers many options for mediation.

This basis for international mediation should only be a factor in an investment risk analysis and Russia appears to be laying this foundation.

A mediation clause in the contract with a Russian party may now be the most reliable and safe way to reduce the risk of litigation in Russia.

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