The Case for International Mediation in Russia and with Russian Parties

Alexander Khazov

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You will not grasp her with your mind
All power with uncommon faith
Believe in her, if you are able...

Translated by Anatoly Liberman

This well-known quote was written 200 years ago by Russian poet Fyodor Tyutchev. It is still so true today - not new, not applied today.

The most common challenge for international business having an interest in 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 forego 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 include not only the governing law, but also the ability to avert the costs of litigation. With the growing environment of decreasing authority of Russia's state courts in certain sectors that cannot be ignored. It can be mitigated at least in part through the growth of alternative methods of dispute resolution for all parties, economic and foreign.

Why not, therefore, to build relationships by using a dispute process that fosters trust and cooperation over adversarial positions? International mediation has over the past 40 years developed into a standard part of dispute resolution processes, including litigation. It is the court less costly is, in the United States, a nationwide phenomenon where the courts have been long ago propelled into offering an alternative dispute resolution process to the past 20 years, a generation of lawyers has developed this method into an accepted practice. Mediation has also increasingly found a solid basis for acceptance in Western Europe, starting from Holland, and is now growing acceptance in Italy, France and Germany. In particular, large multinational companies such as IBM, Siemens, ABB, Deloitte, Booz Allen and Gensler are making mediation part of their standard practice. Mediation is a technique for ensuring that the parties are treated fairly and that the issue is resolved without bias. It is worth trying: while the courts do not necessarily offer a means of developing trust with Russian partners, mediation does. Despite difficulties in the actual economic situation, it is good to know that the global professional community has wide network of regional branches. The process of creating mediation centers in two regional cities is now underway. For example, in 2014 the Center for ADR and Mediation was created at the St. Petersburg Chamber of Commerce and Industry.

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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 1999 and has grown to a business of mediators, there is a number of graduate-level training programs. The ADR Center of the St. Petersburg State University is a nonprofit partnership of specialists focusing on mediating high quality mediation service and educating of new mediators in cooperation with the department of Conflictology of the St. Petersburg State University.

Mediation centers also appeared in Moscow, Novosibirsk, Yekaterinburg, Voronezh and many other cities, see http://mediatekNESS.com/ for more information.

A huge step on developing mediation was made in 2006 when mediation centers were established at the Chamber of Commerce and Industry of the Russian Federation (the Moscow Arbitration Institute and the Moscow Center for ADR and Mediation) and have a wide network of regional branches. The process of creating mediation centers in two regional cities is now underway. For example, in 2013 the Center for ADR and Mediation was created at the St. Petersburg Chamber of Commerce and Industry.

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We believe that initial steps for opening doors to international mediation in contractual relationships with Russian parties have been completed. Foreign companies nowadays have a choice of mediation service providers and may include international mediation clauses in their contracts with the Russian partners.

A contract clause in the context of a Russian party may now be the most reliable and safe way to reduce the risks of doing business in Russia.

Further Development of International Mediation in Russia

For new Russia is a party to global events in the field of international mediation. Within UNODC, the Ministry of Economic Development together with the Ministry of Justice of Russia take an active role in the development and promotion of international mediation. They have adopted several acts of the Federal Law “On Mediation” and have wide network of regional branches. The process of creating mediation centers in two regional cities is now underway. For example, in 2013 the Center for ADR and Mediation was created at the St. Petersburg Chamber of Commerce and Industry.

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We believe that initial steps for opening doors to international mediation in contractual relationships with Russian parties have been completed. Foreign companies nowadays have a choice of mediation service providers and may include international mediation clauses in their contracts with the Russian partners. Russia has become the first country in the world where “specialist in the field of mediation (mediator)” is officially recognized as a profession and the respective professional standard was approved by the Ministry of Labor and Social Development (Order of December 16, 2010, No 1164), registered with the Ministry of Justice on December 16, 2010 under the No 1170) and the first country to have a national mediation accreditation service recognized as a professional accreditation service in the Russian Federation by the Russian government. Several professional mediation centers have been established in Moscow and St. Petersburg.

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In 2014, several developments provided further support for the growth of mediation in Russia:

1. The Russian Supreme Court issued a ruling on the enforcement of the European “Mediation Act”.
2. The Supreme Court adopted the Order “On the Recognition of the Parties in the DOMINION process”.
3. Russia has become the first country in the world where “specialist in the field of mediation (mediator)” is officially recognized as a profession and the respective professional standard was approved by the Ministry of Labor and Social Development (Order of December 16, 2010, No 1164), registered with the Ministry of Justice on December 16, 2010 under the No 1170) and the first country to have a national mediation accreditation service recognized as a professional accreditation service in the Russian Federation by the Russian government. Several professional mediation centers have been established in Moscow and St. Petersburg.

This basic for international mediation will clearly be a factor in an investor risk analysis and Russia appears to be laying this foundation.

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