

The People's Mediation Law of China has been in force for 10 years

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On 28 August 2010, the Standing Committee of the National People's Congress promulgated the People's Mediation Law of the People's Republic of China ("Mainland China"). The People's Mediation Law came into effect on 1 January 2011.

Those who are familiar with the latest ADR development of Mainland China know that People's Mediation is not the only form of mediation practised in Mainland China. Apart from People's Mediation, there are other major forms of mediation such as Judicial/Court-connected Mediation, Administrative Mediation and Arbitration Mediation. In recent years, the Mainland Chinese government has encouraged the development of other forms of mediation, namely, Professional/Industry Mediation, Lawyer Mediation and Commercial Mediation.

To celebrate the 10th anniversary of the People's Mediation Law, I (though not being a Mainland Chinese) would like to make use of this blog entry to share the People's Mediation Law with readers of Kluwer Mediation Blog, mediation practitioners and mediation trainers.

For the purpose of this blog entry, I take the approach of understanding of the major terms of the People's Mediation Law and then setting out what I have captured from the legislation rather than dealing with the provisions one by one. It is my intention to let the readers read into the mediation values of community mediation in Mainland China so that when the opportunity of providing their mediation services in Mainland China arises, they will be able to connect with the parties more effectively and efficiently. Since I do not practise Mainland Chinese law, I do not profess to be knowledgeable in the interpretation of Mainland Chinese legislation and thus have reminded myself of not imposing my values on the mechanism of the People's Mediation Law.

The purposes of the People's Mediation are to resolve the community disputes in a timely fashion and to maintain the harmony as well as stability of the society. The People's Mediation services are provided to the public free of charge through the People's Mediation Committees in different geographical areas of the country. The People's Mediation Committees are funded by the government and they are also guided by the country's administrative and/or judicial organizations. It is expressly provided that women should be included in the People's Mediation Committees and ethnic minorities should be included in the People's Mediation Committees in areas with a population of ethnic minorities.

Disputing parties take part in the mediation on a voluntary basis and they should be treated equally. The participation in the People's Mediation is without prejudice to the parties' rights in other forms of dispute resolution processes such as arbitration, administration determination and litigation.

The People's Mediator is either a member of the People's Mediation Committee or a person appointed by the People's Mediation Committee. A People's Mediator should be impartial and have enthusiasm in mediation work. Ethically, they must not show bias and must not insult the parties during the mediation. They are prohibited from making use of the mediation to ask for or receive advantages from the parties. Disclosure of a party's personal data or trade secret is taken as a serious misconduct.

In the course of mediation, if the People's Mediator feels that the parties are highly conflicting and criminal acts may be committed, the People's Mediator should take precautionary measures and where necessary, report the matter to the Police or the relevant authorities.

The People's Mediation Law does not spell out an accreditation mechanism. However, the People's Mediators should have a certain level of education and knowledge on policy and judicial issues. The People's Mediation Committee should provide training to the People's Mediator from time to time. While the People's Mediators under the People's Mediation Committee will not receive remuneration, those with exceptional achievements will be acknowledged and/or decorated. That said, if a People's Mediator in discharge of his/her mediation services suffers from loss of wages, he/she should be appropriately subsidized. If a People's Mediator gets injured or dies in the course of providing mediation services, he/she or the family members should be suitably compensated.

The mediation can be initiated by the People's Mediation Committee or one of the parties. No mediation shall be conducted if one party clearly indicates refusal of the mediation services. Upon agreeing to take part in the mediation, the parties may select a People's Mediator or accept the appointed People's Mediator. Each party has the right to terminate the mediation. The parties may require the mediation to be conducted in private or openly. Each party may express his/her wishes in accordance with the self-determination principle and a settlement, if reached must be of a voluntary nature.

A People's Mediation may be conducted by a single mediator or several mediators. Depending on the nature of the parties, the People's Mediator may, with the consent of the parties, invite the relatives, neighbours, colleagues of the parties and professionals/experts to participate in the mediation.

During the mediation, parties are expected to state the facts relating to the dispute. They have to respect the People's Mediator and follow the ground rules so that the process will be in an orderly manner. The parties are obligated to respect the other party.

In terms of mediation style, a People's Mediator may use a persuasive approach and he/she may explain the law and national policies to the parties in the course of mediation.

The People's Mediation Committee should set up mediation archives to include the records made by the People's Mediators as well as the mediated settlement agreements. A People's Mediator should record the circumstances of the mediation.

A mediated settlement agreement, if reached can be in verbal or written form. If it is a verbal mediated settlement agreement, it takes effect on the day when it is reached. A written mediated settlement agreement takes effect when (1) each party pens the signature, affixes seal or fingerprint; and (2) the People's Mediator pens the signature and affixes the seal of the People's Mediation Committee, onto it. If the parties find it necessary, they may ask the court to confirm the mediated settlement agreement within 30 days from the day when the mediated settlement takes effect. If for whatever reason the court refuses to confirm the validity of the mediated settlement agreement, the parties may take part in further mediation with a view to varying the terms of the mediated settlement agreement.

As a mediator, I am hesitant to give comments on the arrangements under the People's Mediation Law without first understanding the rationale behind it and the mediation culture of Mainland China although some of such arrangements are new to me. As a practitioner, I find it helpful to have some knowledge on the People's Mediation Law because I am regularly involved in mediation cases with parties from Mainland China. My humble knowledge on the People's Mediation Law enables me to alert that the term "mediation" may be perceived differently by different parties. It also helps me explain my practice style to users better.

I would like to end this post by wishing all the readers and fellow mediators a healthy and wealthy Year of the Ox! Even if one does not celebrate Chinese New Year, one may consider celebrating Valentine's Day. Not every day is a Groundhog Day. As mediators, we are sufficiently creative to make ourselves and the parties positive even when we are entering into the second year of Covid.