

Kluwer Mediation Blog

The Case for International Mediation in Russia and with Russian Parties

Alexander Khazov (Khazov, Kashkin & Partners Law Office) and Wolf Jürgen von Kumberg (ArbDB Chambers, London) · Friday, April 1st, 2016

??????????????????,
 ??????????????????????
 ? ???????????????????,
 ? ?????????????????????!

Fyodor Tyutchev, Russian poet, 1803–1873

You will not grasp her with your mind
 Or cover with a common label,
 For Russia is one of a kind —
 Believe in her, if you are able...

translated by Anatoly Liberman

This well-known quatrain was written 150 years ago by Russian poet Fyodor Tyutchev. It is still (if not to say – more) 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 forego commercial opportunities in Russia or with potential Russian partners.

Foreign multinational companies when contracting in Russia will attempt to 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 resolve the dispute short of litigation. 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 40 years developed into a standard part of the dispute resolution processes, including litigation, in the

common law countries – in the United States and the United Kingdom where the Courts have been strong proponents promoting 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 is now gaining acceptance in Italy, France and Germany. In particular, large multinational companies such as GE, Siemens, Axo Nobel, Bombardier and Northrop Grumman are making mediation part of their corporate dispute resolution system and include the mediation clauses into their contracts. Thereby the concept of 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 1993 when the St.Petersburg State University began educating specialists in conflictology in 1993 and has given birth to hundreds of mediators since then. A number of graduates later established a League of Mediators – the St.Petersburg based non-profit partnership of specialist focusing on rendering 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 [here](#) 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 [Panel of Mediators in Conciliation Proceedings](#)) and at the Russian Union of Industrialists and Entrepreneurs (the [United Service of Mediation](#)). These two organizations together facilitate business processes for the major part of the Russian companies and have wide network of regional branches. The process of creating mediation centers in their regional bodies is now underway. For example in 2014 the [Center for ADR and Mediation](#) was created at the St. Petersburg Chamber of Commerce and Industry.

In 2010, Russia passed legislation that established a legal basis for mediation, a [Federal Law No 193-FZ](#) “On the alternative dispute resolution procedure involving mediator (mediation procedure)”.

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

1. the Russian Supreme Court issued a [report](#) on applying of the Federal Law “On Mediation” ;
2. the Supreme Commercial (Arbitrazh) Court of Russia issued one of the most significant [ordinances](#) regarding mediation #50 dated 18.04.2014 “On the reconciliation of the parties in the arbitration 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 15, 2014. N 1041n, registered with the Ministry of Justice on December 29, 2014 under the No 35478), and
4. the first center for Russian-speaking mediators was certified as [Qualifying Assessment Program](#) by the International Mediation Institute .

This basis for international mediation will clearly be a factor in an investors 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.

Further Development of International Mediation in Russia

For now Russia is a party to global events in the field of international mediation. Within UNCITRAL the Ministry of Economic Development together with the Ministry of Justice of Russia take an active role in discussing the new moves towards a set of documents facilitating enforcement of settlement agreements resulting from international commercial conciliation procedures. This work may result in a [convention on enforceability of settlement agreements](#), which could be ratified by Russia, thus encouraging users to consider mediation as a viable solution, at least for their disputes connected with foreign trade activities. Given enforcement of mediated settlements is an important factor that parties will look to in assessing risk, this could be a very significant move.

Moreover, Russian mediation community is looking forward to taking part in the [Global Pound Conference Series](#) that promise to cover the widest international ADR spectrum ever.

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 clause in their contracts with the Russian partners given that legislative and judicial support are growing.

One might argue that Russia lacks qualified mediators or at least that there is not enough reliable information about them. The latter is true, but the situation starts changing. It is good to know that the global professional standards are now available in Russia. The International Mediation Institute (the directors of AAA/ICDR, JAMS, CEDR, ICC are members of IMI Board) certified the Moscow based [Center for Promoting of Mediation and ADR \(SOMEDIARS\)](#) as a Qualifying Assessment Program in 2014.

This allows Russian-speaking mediators to be certified under globally proven standard in mediation. It is worth noticing that the professional standards adopted by some Russian mediation providers are very close to those of IMI and some of the advanced Russian mediators are certified by IMI.

It is not a secret that historically Russia has never been absolutely transparent for the rest of the world. The Russian poet Fyodor Tyutchev suggested to reject any attempts to apply ordinary rational approach and rely on intuition – the easiest way to increase the level of understanding and trust is to simply believe in Russia and Russian partners. Despite of the difficulties of such suggested solution in the actual economic situation, it is worth trying: while the courts do not necessarily offer a means of developing trust with Russian partners, mediation can do better.

In fact, for the time being international commercial mediation seems to be the only mechanism that provides a neutral means for ordinary business people to deal with their commercial disputes themselves without becoming dependent upon the positions or whims of authorities or perceived idiosyncrasies or tricks of the “imperfect” legal system. Mediation also provides multinational companies with a positive way to mitigate the risks of doing business in Russia. While it is still developing as an effective tool, we must remember that it took decades to take firm footing in places like the United States, but is now an accepted part of the legal landscape. There is no reason with the proper encouragement from all stakeholders for this not to be the case in Russia.

The author is very indebted to Michael McIlwrath, Natalia Gaidaenko Schaer and Roman Khazov for helpful comments and amendments to the article.


To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).


Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The circle is divided into four colored segments: blue, green, red, and white.

This entry was posted on Friday, April 1st, 2016 at 12:05 am and is filed under [Russia](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.