**Extra-judicial Mediation System and Practice in China**

Mediation in China can be divided into three categories: mediation supervised by the people’s court, mediation supervised by an arbitral tribunal and mediation without the supervision of a court or arbitral tribunal. The first two categories of mediation share many similarities. Both of them are conducted by particular institutions in accordance with statutory proceedings, and the settlement agreements reached have the same binding force as judicial judgments. These two categories of mediation, because of their "quasi-judicial" nature, are usually collectively referred to as "judicial mediation". Usually such bodies are decision making—and a mediation must give only the parties control over decisions.

Besides judicial mediation there are many other forms of mediation, which also help resolve disputes and lift the heavy caseload of the courts and arbitration institutions. These forms of mediation can be collectively described as "extra-judicial mediation". Extra-judicial mediation, which provides parties with more alternative dispute resolution mechanisms, plays a very important role in today’s fast-growing economy.

Extra-judicial mediation has been established for a long time and widely accepted in practice. It can be informal or hosted by a professional mediation institution. The nature of disputes which are capable of being settled by mediation can be civil, commercial and administrative. Generally speaking, extra-judicial mediation has three distinct aspects: first, party autonomy is highly respected. It is the parties’ decision whether to submit their dispute to mediation and the scope of the dispute to be mediated. The mediator must respect the parties’ will and never force them to make a decision. Second, mediation is a totally independent proceeding. It is not a part of a judicial procedure and its existence and rules do not rely on other legal proceedings. Third, unlike a court judgment or an arbitral award, the result of an extra-judicial mediation is not enforceable. Last, the submission to mediation is made without prejudice to the parties’ rights to seek further legal relief from the court or arbitration.

**I. The typical forms and main features of extra-judicial mediation**

Currently, China has not established unified extra-judicial mediation legislation; the relevant provisions are scattered through various laws, regulations and rules. Therefore, there is no uniform classification of extra-judicial mediation. However, according to the Several Opinions on Establishing and Improving the Resolution System for Disputes by Linking Litigation and Non-litigation Cases [(1)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1)("**Several Opinions**") issued by the Supreme People’s Court, typical forms of extra-judicial mediation include: people’s mediation, commercial mediation, administrative mediation, employment dispute mediation and industry mediation.

A. People’s Mediation

People’s mediation is the most widely-used and most distinctive mediation in China. People’s mediation is carried out by people’s mediation committees to help parties voluntarily reach settlement agreements through consultation by persuasion, guidance and other methods. People’s mediation can resolve property and personal disputes.

People’s mediation committees are self organized groups and are widely established throughout the country. According to the Law of the People’s Republic of China on People’s Mediation [(2)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1), village committees and residents’ committees must establish people’s mediation committees while enterprises and public institutions may establish people’s mediation committees as needed. It is reported that at the end of 2010, the number of people’s mediation committees was 818,100, the number of mediators was 4,668,900, and the number of cases resolved by people’s mediation exceeded 8,418,400.[(3)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1) No fees may be charged for mediation by the people’s mediation committees. The government at or above the county level must give support and guarantee the work of people’s mediation which is financed by local village and residents’ committees.

In order to address the enforceability of agreements reached at people’s mediation, the Supreme People’s Court issued the Several Provisions of the Supreme People’s Court on Procedures for Judicial Confirmation of People’s Mediation Agreements [(4)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1) ("**Several Provisions**") in March 2011. This provides an effective means to make mediated agreements enforceable, and standardizes procedures for judicial confirmation. The Several Provisions sets out the jurisdiction of the court, the application procedure, for the judical confirmation of settlement agreements reached during people’s mediation. As long as the court has confirmed the agreement, a party can apply to the same court to enforce it if the other party refuses to perform either completely or partially. It is worth noting that the people’s court does not charge parties for the trial of confirmation cases. The details of the judicial confirmation mechanism will be discussed later in this article.

B. Commercial Mediation

Commercial mediation refers to mediation conducted by professional commercial mediation institutions of civil disputes between natural persons, or organizations[(5)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/%22%20%5Cl%20%22#1). Commercial mediation, known for its efficiency and flexibility, is the most professional form of extra-judicial mediation. Currently there is no specific law regarding commercial mediation, and the mediation institutions themselves make their own rules. In China, there are two main kinds of mediation institutions: one is derived from arbitration institutions – such as the Beijing and the Guangzhou Arbitration Commissions which both provide independent mediation services. The other kinds are independently established mediation institutions, e.g., the China Council for the Promotion of International Trade ("**CCPIT**") (also known as "China Chamber of International Commerce") Conciliation Center ("**CCPIT Conciliation Center**"). After more than 20 years of development, the CCPIT Conciliation Center has now become the most famous commercial mediation institution in China. Over 40 sub-council conciliation centers have been set up in provinces, municipalities and autonomous regions throughout the country, constituting a nationwide conciliation network. Meanwhile, the CCPIT Conciliation Center has also successively signed cooperation agreements and established cooperative relations with relevant institutions in countries and regions such as the United States[(6)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1), Germany[(7)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1), France, Sweden, Italy, Canada[(8)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1), Korea[(9)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1), and Japan. This article uses the Conciliation Rules of the CCPIT Conciliation Center as an example of the commercial mediation system in China.

Any commercial dispute can be submitted to commercial mediation. The parties may apply for mediation by submitting a written request whether or not they have a written mediation agreement. When the request for mediation is accepted, the parties appoint their mediators, which can be chosen from a list of mediators provided by the CCPIT Conciliation Center. Generally, the panel for a case consists of two mediators, unless the parties agree on the appointment of a sole mediator or the CCPIT Conciliation Center considers it beneficial to add one more mediator to the panel. During mediation, the mediators can meet each party separately or together. If the parties reach a settlement agreement, upon their request, the mediators may record the agreement with their signatures and the official seal of the CCPIT Conciliation Center. The settlement agreement is like a civil contract, which cannot be enforced as easily as a court order.

Where the parties are not able to settle, the CCPIT Conciliation Center specifically restricts the mediation proceeding from being used in other judicial proceedings. Article 29 of the Mediation Rules of the China Council for the Promotion of International Trade/China Chamber of International Commerce [(10)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1)("**Mediation Rules**") provides that if mediation is unsuccessful, the mediator shall not participate in subsequent arbitration of the same dispute unless the parties agree otherwise. Article 31 of the Mediation Rules says that, if the mediation is unsuccessful, no party may, in following proceedings of the same dispute, take any proposal or suggestion, which is put forward, recommended, recognized or readily accepted by the mediator or any party during the course of mediation, as the basis for appeal or defense.

C. Administrative Mediation

There is no particular definition of administrative mediation which generally refers to mediation activities hosted by administrative organizations. The scope of administrative mediation is very wide. In general, disputes that can be submitted to administrative mediation fall into two categories: one includes administrative or civil disputes between a person, an entity and an administrative organization, and civil disputes about the governance duties of administrative organizations between persons or entities.

The most frequently-seen examples of administrative mediation include: (1) mediation hosted by local government, e.g., the mediation of disputes about rural land use issues by the government at the village level, or relating to land expropriation and housing demolition; (2) mediation hosted by the Administration for Industry and Commerce departments over contracts; (3) mediation conducted by police over public security and traffic accident cases; and (4) mediation conducted by the marriage registration office.For example, regarding marriage registration mediation, Article 32 of the Marriage Law of the People’s Republic of China [(11)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1)provides that if one party alone desires a divorce, the organization concerned may carry out mediation or the party may appeal directly to a people’s court to start divorce proceedings.

There is no unified legislation governing administrative mediation. Besides the two main administrative procedure laws which touch upon administrative mediation, i.e., the Administrative Litigation Law of the People’s Republic of China [(12)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1) and the Law of the People’s Republic of China on Administrative Reconsideration [(13)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1), mediation is also regulated in specific rules regarding employment, social security, public security, medical care and health, natural resources, environmental protection, public transportation, quality monitoring and control and other civil affairs. For instance, Article 9 of the Law of the People’s Republic of China on Penalties for Administration of Public Security[(14)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1) provides that, "in respect of acts against the administration of public security, such as brawling and damaging or destroying another person’s property, which are caused by civil disputes, if the circumstances are relatively minor, the public security institute may deal with them via mediation"; Article 46 of the Regulations on Handling Medical Accidents[(15)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1)states that "either the medical institution or the patient may, through consultation, settle disputes on civil liability such as compensation for medical accidents; if they are unwilling or fail to consult, may apply for mediation to the health administration department, or may directly bring a civil lawsuit before the People’s Court."

D. Employment dispute mediation and industry mediation

The Law of the People’s Republic of China on Mediation and Arbitration of Labor Disputes [(16)](http://www.chinalawinsight.com/2011/10/articles/dispute-resolution/extrajudicial-mediation-system-and-practice-ipart-i-of-iii/##1)effective May 1, 2008, specifically addresses employment dispute mediation. In a case where there is a dispute between the employer and the employee, either party may apply for mediation to an employment dispute mediation commission established within an enterprise, the local level of the people’s mediation committee or other bodies with employment dispute mediation functions established in towns or villages or districts. A party may apply for labor dispute mediation in writing or orally. If a settlement agreement has not been reached within 15 days from the date of the receipt of application for mediation, either party may apply for arbitration. For the purpose of clarity, mediation is not a necessary step for the settlement of employment disputes, and one can immediately apply for arbitration.

Industry mediation is conducted by industrial associations over complaints against their member’s industrial activities. One of the most common is conducted by the China Consumers’ Association for disputes between consumers, manufacturers and retailers.

Notes:

1、The Several Opinions on Establishing and Improving the Resolution System for Disputes by Linking Litigation and Non-litigation Cases was issued by the Supreme People’s Court on August 4, 2009.
2、The Law of the People’s Republic of China on People’s Mediation was adopted at the 16th session of the 11th Standing Committee of the National People’s Congress on August 28, 2010, and was effective on January 1, 2011.
3、Wang Gongyi, People’s Mediation is a Crucial Mechanism for Resolving social Disputes,Judicature of China, Vol 8, 2005.
4、The Several Provisions of the Supreme People’s Court on Procedures for Judicial Confirmation of People’s Mediation Agreements was adopted at the 15th Meeting of the Judicial Committee of the Supreme People’s Court on March 21, 2011 and was effective on March 30, 2011.
5、Jia Kun, Who Moved the Cheese of Commercial Mediation in China-On the Obstacles and Prospective of Development of Commercial Mediation in China , Commercial Mediation and ADRby the CCPIT Conciliation Center, page 33, Vol. 44.
6、Sino-US Commercial Dispute Conciliation Center
7、Beijing-Hamburg Conciliation Center
8、CCBC-CCPIT Joint Conciliation Center
9、Sino-Korean Commercial Dispute Conciliation Center
10、The Mediation Rules of the CCPIT/China Chamber of International Commerce was adopted at the First Chairman’s Session of the 6th Meeting of the Mediation Center under the China Council for the Promotion of International Trade/China Chamber of International Commerce on January 5, 2005.
11、The Marriage Law of the People’s Republic of China was adopted at the 3rd Session of the 5th National People’s Congress on September 10, 1980, and was amended according to the Decision on Amending the Marriage Law of the People’s Republic of China adopted at the 21st Meeting of the Standing Committee of the Ninth National People’s Congress on April 28, 2001.
12、The Administrative Litigation Law of the People’s Republic of China was adopted at the Second Session of the 7th National People’s Congress on April 4, 1989, and was effective on October 1, 1990.
13、The Law of the People’s Republic of China on Administrative Reconsideration was adopted at the 9th session of the ninth National People’s Congress on April 29, 1999, and was effective on October 1, 1999.
14、The Law of the People’s Republic of China on Penalties for Administration of Public Security was adopted on August 28, 2005 at the 17th session of the Standing Committee of the 10th National People’s Congress of the People’s Republic of China on August 28, 2005, and was effective on March 1, 2006.
15、The Regulations on Handling Medical Accidents was promulgated by the State Council on April 4, 2002, and was effective on September 1, 2002.
16、The People’s Republic of China on Mediation and Arbitration of Labor Disputes was adopted at the thirty-first session of the tenth Standing Committee of the National People’s Congress on December 29, 2007, and was effective on April 1, 2008.