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## Russian President's Bill (Draft Law) on Mediation – Is a New Epoch of ADR beginning in Russia?

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Unlike arbitration which is quite solidly supported by legislation (the law of the Russian Federation “On International Commercial Arbitration”, which is almost completely based on the UNCITRAL Model Law, was adopted in 1993. The Federal Law “On Arbitration Courts” governing domestic arbitration entered into force in 2002), mediation in Russia lacks adequate legal framework. The Commercial Procedure Code and the Labor Code expressly declare that disputes can be resolved by mediation, but many important issues are not yet specified in law. Furthermore, there are no guarantees of confidentiality of the procedure and no prohibition to call for mediators as witnesses of what they have learnt of during the mediation procedure. The enforceability of a settlement agreement concluded as a result of mediation has not been clearly specified.

In 2005 a working group of the Russian Chamber of Commerce and Industry, consisting of some prominent legal practitioners and scholars, worked out a draft law on commercial mediation which was based on the UNCITRAL Model Law on International Commercial Conciliation and also adapted to Russian reality. Then a number of authorities such as the Russian Union of Industrialists and Entrepreneurs further worked on the draft law and made some amendments, in particular, expanding its scope of application to any civil matters. The draft law was subject to the Council of Europe expertise and was approved by it. It was introduced into the State Duma (the lower chamber of the federal parliament) but got held up for more than three years, which was disappointing for many specialists.

A new development overshadowed these past events. On 11 March 2010 the Russian President Dmitry Medvedev introduced into the State Duma a bill (draft law) “On Alternative Procedure of Dispute Settlement with Participation of Mediator (Mediation Procedure)” together with a complementary bill “On Amending Certain Legislative Acts of the Russian Federation in View of Adopting a Federal Law “On Alternative Procedure of Dispute Settlement with Participation of Mediator (Mediation Procedure)”. The bill is in many ways similar to the said draft law and to the UNCITRAL Model Law but is more scrupulous in some respects, especially with regard to the qualification standards for mediators and in the establishment and function of the self-governing organizations of mediators.

An obvious urge for this initiative is the judicial system being overwhelmed with work: average caseload of a commercial judge amounts to 55 cases per month and in some courts even 100 cases per month. A tremendous number of 25 million cases have been heard by Russian state courts in 2009. What is more, the procedural legislation establishes limited terms for hearing a case (usually

a few months or even less), and judges must render final decisions within such terms. This alarming situation threatens to compromise the quality of dispute resolution through official state court procedure.

The scope of application of the President's bill encompasses mediation in civil, commercial, labor and family disputes. Mediation cannot take place if its results can infringe upon the rights of third parties or public interests (in particular, in bankruptcy proceedings).

The bill provides regulation mostly with regard to connection between mediation and litigation or arbitration. Thus, the bill provides for a number of amendments to procedural legislation. In particular, it specifies the modalities of commencing a mediation procedure when a dispute is already at court, entering into the mediation agreement, establishing procedural guarantees of confidentiality of the mediation procedure and concluding mediated settlement agreements and conditions of its approval by court. The commencement of mediation will interrupt the limitation period. A mediator may not be called as a witness with regard to the facts which became known to him/her as a result of his/her activities as a mediator. Also, the bill confirms the legal effect of mediation clauses in contracts.

Furthermore, the bill proclaims that disputes can be mediated by any person with full legal capacity and with no previous record of convictions. However, those who position themselves as professional mediators must be at least 25 years old, have higher education and pass appropriate mediation training according to the program approved, as prescribed by the Russian Federal Government. The bill also provides for special amendment to the Federal law "On Advertising" to encompass those who failed to pass special professional training and have had no appropriate certificate issued by an NGO that is licensed in training mediators. Such people may not advertise themselves as professional mediators.

The bill does not consider mediation to be an entrepreneurial activity. At the same time it expressly stipulates that mediators and corporate mediation providers bear responsibility towards the parties for damages caused while exercising their activities as prescribed by civil law. The bill also states that public officials may not be mediators.

The bill also provides for self-regulation of the mediator community. There is no indication to government licensing of mediators or similar mechanisms. Both individual professional mediators and mediation services corporate providers may establish and join self-regulated organizations and introduce certifications. Such organizations must have at least 100 individual members and/or 20 NGOs providing mediation services.

The law does not appear to "aggressively" implement mediation in Russia, nor does it establish statutory grounds for a compulsory mediation procedure or provide for specific penalties for failure to participate in mediation, for abuse of rights and opportunities related to such procedure, and it does not set up particular incentives to use mediation. Mediated settlements are not endowed with expedited enforceability by notarization or other means other than approval by court. However, perhaps the first legislative steps should better be cautious and not too rigorous, as the mediation practice in Russia is so far very limited. It is clear that adoption of the law grounded on such bill will contribute to the development of ADR techniques in Russia, both in domestic and international disputes. The mere existence of a special federal law on mediation will increase confidence and trust in this method of dispute resolution.

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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 background is accented with horizontal lines in blue and green.

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