

## CHIEF EDITOR'S NOTE ON MEDIATION IN THE BRICS COUNTRIES

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DOI: 10.21684/2412-2343-2017-4-2-4-5

**Recommended citation:** Dmitry Maleshin, *Chief Editor's Note on Mediation in the BRICS Countries*, 4(2) BRICS Law Journal 4–5 (2017).

Mediation is a way to resolve disputes through a process that is an alternative to court proceedings. It is strongly influenced by the cultural particularities of a country. There is a difference in how mediation is realized in Western and non-Western societies. In Europe and the United States, mediation has for some time now been a part of the official program of civil justice organization and in both it is supported by the state authorities. Mediation is seen as one of the measures that assists in improving the dispute resolution system and easing the caseloads of the courts. On the other hand, in non-Western societies mediation has been a way to resolve disputes since far back in time before contemporary court systems were introduced. It is a part of their cultural tradition. The main difference between the two models is that while Western mediation is an additional option, non-Western mediation is the original and most important way to resolve disputes.

In the BRICS countries, mediation has been a traditional way of resolving disputes for many years. In addition to their historical experience of mediation, these countries have introduced modern measures to improve the realization of mediation in a contemporary way. Here follows a brief summary of those measures.

The **Brazilian** Mediation Law was enacted in 2015. Together with the new Brazilian Civil Procedure Code (2016) it regulates mediation in Brazil. There is judicial and non-judicial mediation. The judge must recommend judicial mediation, preferably, in disputes in which it is necessary to preserve or make good an interpersonal or social relationship, or when the decisions of the parties entail material consequences for third parties.

In **Russia**, the first legislation on mediation was introduced in 2011. Federal Law “Alternative Procedures for Dispute Settlement with Participation of a Mediator (Mediation Procedure)” (2011) establishes the procedure for mediation. Mediation procedure can be applied after the occurrence of disputes transferred for consideration in civil proceedings and proceedings in arbitrazh (commercial) courts. Mediation procedure is not applied to collective labor disputes nor to disputes that can affect the rights of third parties not participating in the mediation procedure, or public interests. Mediation may be undertaken according to the mutual will of the parties, on the basis of the principles of voluntariness, confidentiality, cooperation and equal rights of the parties, and the impartiality and independence of the mediator.

Mediation in **India** is informal. A mediator can be anyone who has received special training. Once the parties agree to go through mediation they have two months to reach a resolution, otherwise the case goes back to the courts.

Dispute resolution in the form of mediation has a long tradition in the history of **China**. It has been the main source of dispute resolution there since time immemorial. According to the philosophy of Confucianism, mediation can help to establish and maintain social stability.

The People’s Mediation Law of the People’s Republic of China was enacted in 2010. The administrative department for justice under the State Council is responsible for providing guidance on the people’s mediation work nationwide. The basic-level people’s courts provide operational guidance to the people’s mediation committee in mediating disputes among the people.

The people’s mediation committee is a community-based organization established for the mediation of disputes among the people. The villagers committees and the residents committees set up the people’s mediation committee. Enterprises and public institutions set up the people’s mediation committee as needed. The people’s mediation committee comprises three to nine members. Committee members are elected through meetings held by the villagers. The committee members of the people’s mediation committee serve a three-year term and may be re-elected and re-appointed.

Mediation has long existed in the customs of the traditional communities and tribes of **South Africa**. Formal contemporary legislation there consists of the Rules of Voluntary Court-Annexed Mediation that were enacted in 2014.