

Promotion of Mediation in the New Century through Legislation

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Alternative dispute resolution (ADR) developed very quickly in the last century. With litigation being viewed as expensive and lengthy, ADR is known for its low cost, efficiency, flexibility and user-friendliness. Various forms of ADR have been developed to accommodate different types of disputes. The Chinese culture attaches great importance to the application of mediation to resolve disputes; however, mediation has also been widely used by other countries. Entering the new century, we have witnessed another round of wave for the promotion of mediation for various types of disputes. People are starting to seriously consider the means to promote mediation in the society.

One issue brought up for discussion is the necessity of mediation legislation. Legislation practice varies in different countries; different scholars may also hold different views on the necessity of mediation legislation. On the one hand, in the early stage, mediation legislation can serve as a research and education process; through the legislation process, the public shall have the chance to get to know the functioning of the mediation. Some scholars thus consider that the existence of mediation legislation shall help to promote the awareness of mediation in

the society and offer effective guidance to the parties in the mediation process. On the other hand, mediation is totally a voluntary procedure; the disputing parties shall be in full control of the whole mediation process and the result; the mediators are there only to help the two disputing parties to communicate with each other. Some scholars thus emphasize the voluntariness and flexibility of the mediation process and are very concerned that the existence of mediation legislation may decrease the flexibility of the process and destroy the whole mechanism in the end.

When evaluating the views above, we can see that both views do not preclude the possibility and necessity of mediation legislation. The essence lies in how to balance the need to offer guidance for mediation and the maintenance of flexibility in the mediation process. In this regard, we may suggest that mediation legislation, once made, shall generally touch on general principles and fundamental rules for mediation, such as confidentiality and voluntariness, and leave detailed mediation procedures to the mediators.

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