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Introduction: Mediation, Conciliation and Arbitration in China

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Panel 5: Mediation, Conciliation and Arbitration in China

Introduction

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China is opening its doors to outside commerce like never before. Variously styled as “socialist modernization” or “socialist democracy,” China’s renewed efforts indicate that its goal truly is to stimulate its economy by modernizing industry and agriculture, speeding development of science and technology, and increasing its level of trade with the West. As part of this trend, China’s “socialist legal system” is undergoing major reform as well.

Unfortunately, trade and commerce sometimes lead to disputes. Thus, among the most important aspects of any legal or commercial system are its methods for resolving commercial disputes. This principle is also true in China.

People with international business experience often observe that nonjudicial dispute resolution is the norm in China,1 and among Asian nations generally. As a result, foreign trade and foreign investment contracts in China usually have arbitration clauses.2

China’s dispute resolution process is well developed. It involves several steps. These are negotiation, conciliation followed by non-binding recommendations, and then, if necessary, formal arbitration.3 Mediation and conciliation are also developed means of resolving dis-

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1. See, e.g., Jianxin, Mediation, Conciliation, Arbitration and Litigation in the People’s Republic of China, INT’L BUS. LAW. 395 (1987) (“settling disputes by smoothing away discord and negotiation and mediation are traditional ways we Chinese have always used to solve civil disputes”).


3. Id.
Due to United States common law tradition, dispute resolution focuses on litigation and judicial processes. But, as American trade continues to increase in China and elsewhere, American lawmakers have recognized the need for United States institutions to honor dispute resolutions reached through non-judicial processes, and the need to foster non-judicial methods of dispute resolution. This conference reflects the same recognition by the program's sponsors, participants and attendees.

The United States Court of Appeals for the Ninth Circuit recently noted that the strong federal policy favoring arbitration "applies with equal force to international contracts." To this end, Congress adopted the Convention on Recognition and Enforcement of Foreign Arbitral Awards. China acceded to the Convention in 1987.

The state of California has also indicated a policy favoring alternative methods for resolving international commercial disputes. In 1988, the state legislature enacted comprehensive provisions for arbitration and conciliation covering a broad range of international disputes.

More than mere legal recognition of alternative dispute resolution is needed to assist clients, and foster international trade. Business people, their attorneys and other advisors must be versed in, and comfortable with, the practicalities of resolving disputes through alternative forums. For these reasons, lawyers and business people alike will discover a wealth of useful and practical information in the following discussions on international commercial dispute resolution.

4. In 1986, for example, China had over six million mediators. Jianxin, supra note 1, at 395.