

## Arbitration - Italy

### Where East meets West: the Italy-China Business Mediation Centre

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The Italy-China Business Mediation Centre for the resolution of commercial disputes among Italian and Chinese companies was set up following a cooperation agreement signed on December 7 2004 between the Italy-China Chamber of Commerce, the Chamber of Arbitration of Milan and the Mediation Centre of the China Council for the Promotion of International Trade in Beijing.

The centre became operational in November 2005 and is the first bilateral mediation centre serving commercial dispute resolution needs between a major European country and China. It is a bilateral entity with two offices, one in Beijing and one in Milan.

#### Aims

The purpose of the creation of the centre is to capitalize on the experiences of leading mediation service providers in both Italy and China. The complexity of the commercial relationships between the two countries, which have intensified exponentially over the last decades, requires expertise in managing disputes rapidly, confidentially and inexpensively.

#### Services

Due to its dual nature, the centre provides mediation services to entrepreneurs operating between Italy and China. Namely, the centre:

- makes it possible to deal with complex issues in a collaborative and informal manner aimed at satisfying the parties' real interests;
- provides a neutral venue where the parties to a dispute can discuss their mutual problems in private;
- provides qualified professionals specially trained to mediate commercial disputes, specifically Italian-Chinese disputes;
- is available to enterprises in Italy and China to assist the parties at every stage of the mediation; and
- contributes towards preserving and developing commercial relationships between both countries by spreading the knowledge and use of mediation as a tool for overcoming cultural and legal differences.

#### Mediation clause

The centre's standard mediation clause is as follows:

*"Parties agree to submit all disputes arising in connection with this agreement to the mediation attempt managed by the Italy-China Business Mediation Center at the Chamber of Arbitration of Milan for the Italian side and the Mediation Center of the China Council for the Promotion of International Trade in Beijing for the Chinese side to solve the dispute with a mediation agreement in accordance with the Rules adopted by the same Italy-China Business Mediation Center."*

Parties may also agree to implement a multi-step clause, prescribing tiered procedures in case of a dispute. In the event that the parties cannot agree on a way to

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resolve the dispute in mediation, the clause provides for arbitration under the Arbitration Rules of the Chamber of Arbitration of Milan:

*"Parties agree to submit all disputes arising in connection with this agreement to the mediation attempt managed by the Italy-China Business Mediation Center at the Chamber of Arbitration of Milan for the Italian side and the Mediation Center of China Council for the Promotion of International Trade in Beijing for the Chinese side to solve the dispute with a mediation agreement in accordance with the Rules adopted by the same Italy-China Business Mediation Center.*

*If the attempt fails, all disputes arising out of or in connection with the present contract shall be submitted to the Chamber of Arbitration of Milan and shall be finally settled under the Rules of Arbitration of the Chamber of Arbitration of Milan by one or more arbitrators appointed in accordance with the said Rules.*

*The seat of the arbitration shall be ...*

*The language of arbitration shall be ... in accordance with (i.e. Italian) law".*

Since the clause was introduced, a great number of Italian firms and companies dealing with China have inquired about and inserted this clause into their contracts.

## **Mediation Rules**

The centre's Mediation Rules respect the fundamental features of mediation: voluntary participation, informality, confidentiality and the presence of a neutral, independent and impartial third party capable of steering the parties towards a mutually acceptable solution in a timely and inexpensive manner. In all regards, the rules compare favourably with those of other well-established mediation centres. The rules are simple, flexible and informal. They expressly provide that all information relating to mediation proceedings shall be kept confidential by the mediators, the centre, the parties and all the participants involved in the mediation process, except where disclosure is required under the applicable law.<sup>(1)</sup>

## **Mediation process**

The parties select a mediator from the centre's panel of mediators and choose between Beijing and Milan for the venue of the meetings. In certain cases, meetings have been held, alternatively, in both cities. The sessions may be conducted in Chinese, Italian or English.

Mediation begins by filing a simple submission form with either the Milan or Beijing Secretariat.<sup>(2)</sup> If the other party agrees to mediate the dispute, both parties proceed to select a mediator on the basis of background information provided, on request, by the centre. In view of the bilateral nature of the centre, "the parties shall decide through consultation whether they seek a single mediator or a joint team of one Chinese and one Italian mediator".<sup>(3)</sup> In any event, the parties choose their mediators from the centre's panel, thus ensuring the selection of mediators trained specifically to manage commercial disputes and Italian-Chinese disputes.

After the selection of the mediator(s), the mediation begins in earnest. As is normal in these proceedings, the mediator must actively facilitate the resolution of the dispute, including meeting with the parties individually so that sensitive commercial issues may be broached openly and confidentially. The mediator may appoint experts (when needed, and with the consent of the parties) and demand production of additional evidentiary materials, and must always observe the centre's Ethical Code of Conduct for Mediators.<sup>(4)</sup>

## **Code of conduct**

The code provides that mediators are to be "properly trained and shall maintain and update their education and practice in mediation skills. Mediators shall refuse appointment to mediation to a mediation for which they are not qualified".<sup>(5)</sup> This enduring obligation is fundamental to the centre's continued success, and a necessary step towards ensuring the future excellence of the class of its mediators and fostering continued confidence in the centre by both Italian and Chinese companies.

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## **Endnotes**

(1) Article 9.

(2) Article 3.

(3) Article 4.1.

(4) Article 6.

(5) Code of Conduct, Article 1.

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