

Conciliation in Action in China and CIETAC's Practice

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Abstract

Confucius taught that 'harmony is valuable' and this belief has permeated dispute resolution in Chinese culture for centuries. The 'conciliation' process has supported this Confucian belief and the term 'conciliation' has been synonymous with the term 'mediation', as used in Western culture. This article explains the role of conciliation/mediation and attempts to dispel the sometimes negative image of dispute resolution on the mainland.

I. Origin and Meaning of Mediation in China

In some legal systems, a distinction is drawn between 'conciliation' and 'mediation' depending on whether or not the third-party neutral comes up with recommendations or proposals in respect of the terms of settlement. In China, there is no such distinction. As the word 'conciliation' is used in the Arbitration Rules of the China International Economic and Trade Arbitration Commission (CIETAC), for the sake of consistency I will use 'conciliation', which is not differentiated from mediation.

China is home to conciliation. The generation and development of conciliation in China enjoys profound ideological and social bases and is attached to the noble desire to establish a harmonious society. The ideological basis of conciliation in China is Confucius' teaching that 'harmony is valuable'. The philosophy of 'spreading moral education so as to eliminate the need for litigation' was the overriding rationale by which rulers were meant to govern

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