Starting in 2011, Mediation Will Apply as an Alternative Extrajudicial Procedure for Dispute Resolution in Russia

On July 27, 2010 Russia President Dmitry Medvedev signed Federal Law No. 193-FZ, "On the Alternative Dispute Resolution Procedure by Way of Mediation (a Mediation Process)" (the Mediation Law). According to its drafters, the Mediation Law is intended to develop alternative dispute resolution (ADR) methods in Russia involving independent mediators and reduce the burden on Russia’s judicial system.

Under the Mediation Law, entities involved in a private legal relationship may agree that a likely (or de facto) dispute will best be resolved through a mediator, i.e., an independent individual acting as an intermediary. A mediation agreement must be executed in writing (e.g., as a mediation clause) and may apply to a dispute arising out of civil, labor or domestic relations. However, to qualify for mediation, any such dispute must not affect the rights and interests of any third parties that are not involved in the mediation process or collective labor disputes.

Mediation may be carried out by a professional or nonprofessional mediator, and on a paid or unpaid basis.

A nonprofessional mediator must (i) possess full legal capacity, (ii) be more than 18 years of age and (iii) have no criminal record. A professional mediator is subject to stricter requirements — he or she must (i) be at least 25 years of age, (ii) have advanced professional
education and (iii) complete a mediator training course. However, the Mediation Law does not clarify in which area a professional mediator must receive advanced education, nor does it impose any legal capacity requirements or requirements related to the mediator’s criminal record. It would be reasonable to assume that Russia’s government will spell out professional mediator training program requirements and introduce additional selection criteria applicable to prospective professional mediators.

Under the Mediation Law, the parties to a mediation agreement shall voluntarily submit a dispute to the mediator for consideration and may agree not to go to court in order to resolve the dispute during the mediation process. In essence, the Mediation Law introduces the concept of a waiver into Russia’s legal system. However, if a party deems it necessary to protect its rights, it may still file a statement of claim with a court at any time.

Generally, the mediation period may not exceed 60 days. The parties to a dispute may agree with the mediator on a longer dispute resolution period of not more than 180 days. However, if the parties request the mediator’s assistance after the dispute has already been referred to the court, such a period may not exceed 60 days because in that case the proceedings will be suspended and the consideration of the dispute will be postponed for the period of the mediation process.

The adoption of the Mediation Law has already triggered amendments to Russia’s Civil Code and Procedure Codes.

The Mediation Law, as well as the resulting amendments to other Russian legislation, will go into effect on January 1, 2011. Although there are still issues to be clarified with respect to its applicability, the Mediation Law represents an important step towards further development of the judicial and extrajudicial systems of dispute resolution in Russia.

If you would like to learn more about the new amendments or have any questions in relation to Russia’s new ADR procedure, please contact your primary Squire Sanders lawyer or one of the individuals listed in this Alert.