



ABOUT COMMERCIAL MEDIATION

A METHOD OF RESOLVING COMMERCIAL DISPUTES WITH THE ASSISTANCE OF A COMMERCIAL MEDIATOR ACTING AS AN INTERMEDIARY

The commercial mediation mentioned here is a method of resolving disputes apart from the court, which is conducted in a legal order and procedure. Unlike negotiation and reconciliation among parties in the process of contract implementation, commercial mediation is a way of resolving disputes apart from the courts involving an intermediary entity, which is the Commercial Mediator.

Commercial Mediators act as an intermediary to assist parties in resolving disputes. Commercial Mediators include Ad-hoc Commercial Mediator and Commercial Mediators of Commercial Mediation Organizations. A commercial mediator is a person who registers to be a commercial mediator at the Department of Justice where he or she resides (or where he or she temporarily registers in the case of foreigners) according to a statutory procedure. The commercial mediator of the commercial mediation organization is the person considered by that organization to become a commercial mediator. Commercial mediation organization includes Commercial Mediation Center and Arbitration Center which concurrently carry out commercial mediation activities.

FOR RESOLVING COMMERCIAL DISPUTES

Under current Vietnamese law, any dispute under the jurisdiction of commercial arbitration can also be resolved by commercial mediation. That is, (i) disputes between parties arising from commercial activities, (ii) disputes between the parties in which at least one party is engaged in commercial activities and (iii) other disputes which are prescribed by law to be resolved through commercial mediation.

In order to resolve disputes by commercial mediation, the parties need an agreement on dispute settlement by this method, called a "mediation agreement". Mediation agreement may be established in the form of a mediation agreement provision in a contract or in a separate agreement. The parties may agree to settle disputes by mediation before or after a dispute, or at any time of the dispute resolution process. However, unlike resolving by arbitration, the parties in the mediation agreement may agree or refuse to mediate even though the mediation agreement has been set up.

SUCCESSFUL MEDIATION RESULT BINDS THE PARTIES

During the mediation process, if the parties attains a mediation agreement on the settlement of all or part of the dispute, the Commercial Mediator will make a written record thereof. The written record of successful mediation result is valid for the parties in accordance with civil law. That is, the successful mediation result becomes binding on the parties as other contractual agreements; the party that fails to perform or improperly performs the successful mediation result shall be liable for violating the contractual obligations against the other party.

However, like any other contractual agreement, the successful mediation result itself in the procedure of settling commercial mediation disputes is not enforceable like an effective judgment or arbitral award.

SUCCESSFUL MEDIATION RESULT RECOGNIZED BY COURT CAN BE ENFORCEABLE

When attaining successful mediation result through commercial mediation's dispute settlement procedure, the parties may voluntarily implement the result of that mediation without having to carry out any further procedures. However, in order to ensure that each party will fulfill its obligations under the successful mediation results, the parties may also request the Court to recognize the result of such mediation. If one party fails to perform or fails to comply with the successful mediation result, the other party may also request the Court to recognize the result of successful mediation. The successful mediation result through a dispute settlement process recognized by the Court can be enforced as an effective court judgment or an arbitral award.

In order to be recognized by the Court, successful mediation results through dispute settlement procedure by commercial mediation must meet the following conditions:

1. The parties joining the mediation agreement have full civil act capacity.
2. The parties joining the mediation agreement are persons with rights and obligations towards the content of the mediation agreement. In case the content of the mediation agreement is related to the rights and obligations of a third party, it must be agreed by that third party.
3. One or both parties submit application to request the Court to recognize the result.
4. The results of successful mediation are completely voluntary, and must neither violate prohibitory provisions of law and contravene social morality, nor aim to avoid obligations with the State or third party.

Commercial mediators, with their professional qualifications and majors, will ensure that the results of successful mediation meet the conditions for recognition by the Court.

COMMERCIAL MEDIATION HAS MANY OTHER ADVANTAGES

Confidentiality

Similar to the method of settling disputes by commercial arbitration, the disputed parties and the mediator joining the process of settling a commercial mediation dispute are also obliged to keep the relevant information of the dispute confidential to any individual, organization or state agency, unless the disputed parties have other agreements or the law defines differently. Furthermore, the mediator must keep the information of one party, observed through separate exchanges or meetings, confidential from the other party, unless that party agrees to share it.

Flexibility

Procedures for resolving disputes by commercial mediation are more flexible than procedures for resolving disputes by arbitration. The mediator has the right to actively contact, exchange or meet separately with each party to the dispute; each disputed party may also actively propose to contact, exchange or have private meetings with the mediator. The mediator and the disputed parties may agree on the time and place of the mutual meeting(s). The mediation process may also be terminated at any time when one or more parties declare that they do not wish to continue the mediation process or the mediator finds that continuing the process will not result in a successful mediation.

Unsuccessful mediation does not effect settling dispute by arbitration or court afterward

When the settlement of a commercial mediation dispute does not result in a successful conciliation, any document or information that can only be obtained through mediation is not used as evidence in court proceedings, arbitration proceedings or other proceedings afterward. The parties shall not request the mediator to be a witness in any proceeding related to a dispute that has been through mediation or any other dispute proceedings arising from that same transaction. This helps the parties to express their opinions, views or make suggestions in commercial mediation procedures without worrying that they may be used against them in other proceedings afterward.