

**DECREE**

**On commercial mediation**

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*Pursuant to the June 19, 2015 Law on Organization of the Government;*

*Pursuant to the June 14, 2005 Commercial Law;*

*At the proposal of the Minister of Justice;*

*The Government promulgates the Decree on commercial mediation.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation and subjects of application**

1. This Decree prescribes the scope, principles, order and procedures for dispute resolution by commercial mediation, commercial mediators, commercial mediation institutions, Vietnam-based foreign commercial mediation institutions, and state management of commercial mediation activities.

Disputing parties' self-mediation or request for mediation by other agencies, organizations or individuals other than commercial mediators, commercial mediation institutions or Vietnam-based foreign commercial mediation institutions defined in this Decree may be carried out under the agreements of the parties in accordance with law, and are not regulated by this Decree.

2. This Decree applies to commercial mediators, commercial mediation institutions, Vietnam-based foreign commercial mediation institutions, the state management agency in charge of commercial mediation, and other organizations and individuals involved in commercial mediation activities.

**Article 2. Disputes to be resolved through commercial mediation**

1. Disputes arising from commercial activities.

2. Disputes between parties at least one of them is engaged in commercial activities.

3. Other disputes which are prescribed by law to be resolved through commercial mediation.

### **Article 3. Interpretation of terms**

1. *Commercial mediation* means a method of resolving commercial disputes agreed upon by involved parties with the assistance of a commercial mediator acting as an intermediary in accordance with this Decree.

2. *Mediation agreement* means an agreement between involved parties on the resolution through mediation of disputes which are likely to arise or have arisen.

3. *Commercial mediator* may be an *ad hoc* commercial mediator or a commercial mediator of a commercial mediation institution who is selected by involved parties or appointed by a commercial mediation institution at the request of involved parties to assist them in dispute resolution in accordance with this Decree.

4. *Successful mediation result* means an agreement reached by disputing parties on the resolution of part or the whole of an arising dispute.

5. *Institutional commercial mediation* means a form of dispute resolution at a commercial mediation institution in accordance with this Decree and the Mediation Rule of such institution.

6. *Ad hoc commercial mediation* means a form of dispute resolution conducted by an *ad hoc* commercial mediator selected by involved parties in accordance with this Decree and the agreement of the parties.

### **Article 4. Principles of dispute resolution through commercial mediation**

1. Disputing parties shall participate in mediation on an entirely voluntary basis and are equal in terms of rights and obligations.

2. Information relating to a mediation case shall be kept confidential, unless otherwise agreed upon in writing by involved parties or otherwise prescribed by law.

3. Mediation agreement contents must neither violate prohibitory provisions of law nor contravene social morality, nor aim at shirking obligations nor infringe upon rights of a third party.

### **Article 5. State policies on commercial mediation**

1. Disputing parties are encouraged to use commercial mediation to resolve their disputes in commercial activities and other disputes which are prescribed by law to be resolved through commercial mediation.

2. It is encouraged to mobilize all resources for commercial mediation activities and training to build capacity for commercial mediators and commercial mediation institutions.

### **Article 6. Conditions for dispute resolution through commercial mediation**

A dispute shall be resolved through commercial mediation if involved parties so agree. The parties may reach agreement on dispute resolution through mediation before or after a dispute arises or at any time in the process of dispute resolution.

## **Chapter II**

### **COMMERCIAL MEDIATORS**

#### **Article 7. Criteria for a commercial mediator**

1. A person who fully satisfies the following criteria may act as a commercial mediator:

a/ Having full civil act capacity as prescribed by the Civil Code; having good moral qualities and prestige, and working in an independent, impartial and objective manner;

b/ Possessing a university or higher degree and having at least 2 years' working experience in the discipline he/she has studied;

c/ Having mediation skills and knowledge about law, business and commercial practices and relevant issues.

2. A commercial mediator may conduct commercial mediation in the capacity as an *ad hoc* commercial mediator or a commercial mediator of a commercial mediation institution in accordance with this Decree.

3. A commercial mediation institution may set criteria for its commercial mediators which are higher than those prescribed in Clause 1 of this Article.

4. The accused or defendants or those who are serving criminal sentences or have not had their criminal records expunged or are serving the administrative measure of consignment to a compulsory education institution or compulsory detoxification establishment may not act as commercial mediators.

#### **Article 8. Registration of *ad hoc* commercial mediators**

1. A person who fully satisfies the criteria for a commercial mediator specified in Clause 1, Article 7 of this Decree and wishes to become an *ad hoc* commercial mediator shall register with the provincial-level Department of Justice of the locality where he/she permanently resides. A

foreigner shall register with the provincial-level Department of Justice of the locality where he/she temporarily resides.

2. A requester for registration to be an *ad hoc* commercial mediator shall send 1 set of dossier to the provincial-level Department of Justice, comprising:

a/ A written request for registration to be an *ad hoc* commercial mediator, made according to a form issued by the Ministry of Justice;

b/ A certified copy, or a copy enclosed with the original for comparison, of his/her university or higher degree;

c/ Papers proving his/her working experience of at least 2 years in the discipline he/she has studied, certified by his/her employer.

Papers issued by foreign agencies or organizations or notarized or certified in foreign countries must be consularly legalized in accordance with Vietnamese law, unless they are exempted from consular legalization under a treaty to which the Socialist Republic of Vietnam is a contracting party.

3. Within 7 working days after receiving a complete and valid dossier, the provincial-level Department of Justice shall add the name of the registration requester in the list of *ad hoc* commercial mediators and post the list on its e-portal; in case of refusal, it shall notify the reason in writing. The person whose request is rejected may lodge a complaint or initiate a lawsuit in accordance with law.

4. A person who no longer acts as an *ad hoc* commercial mediator shall send a written notice thereof to the provincial-level Department of Justice of the locality where he/she has registered to act as an *ad hoc* commercial mediator, which shall remove his/her name from the list of *ad hoc* commercial mediators.

5. An organization or individual that detects an *ad hoc* commercial mediator who no longer satisfies the criteria specified in Clause 1, Article 7 of this Decree or violates Article 10 of this Decree shall notify such to the provincial-level Department of Justice of the locality where he/she has registered, which shall consider and remove his/her name from the list of *ad hoc* commercial mediators.

#### **Article 9. Rights and obligations of commercial mediators**

1. A commercial mediator has the following rights:

a/ To accept or refuse to carry out commercial mediation activities;

b/ To refuse to provide information relating to a dispute, unless the information provision is agreed upon in writing by involved parties or required by law;

c/ To enjoy remuneration for commercial mediation activities as agreed upon with disputing parties;

d/ Other rights as prescribed in this Decree and relevant laws.

2. A commercial mediator has the following obligations:

a/ To comply with law and the codes of ethics and conduct applicable to commercial mediators; to work in an independent, impartial, objective and honest manner;

b/ To respect the agreement reached by involved parties if such agreement neither violates law nor contravenes social morality;

c/ To keep confidential information about the disputes of which he/she mediates the resolution, unless otherwise agreed upon in writing by involved parties or prescribed by law;

d/ To notify involved parties of his/her competence and mediation remuneration and costs before conducting mediation;

dd/ To refrain from acting as a representative of or an advisor for any of involved parties or concurrently acting as an arbitrator for the same dispute of which he/she is mediating or has mediated the resolution, unless otherwise agreed upon by the parties;

e/ Other obligations as prescribed in this Decree and relevant laws.

### **Article 10. Prohibited acts of commercial mediators**

1. Disclosing information about disputes or clients they know in the mediation process, unless otherwise agreed upon by disputing parties in writing or prescribed by law.

2. Violating the code of ethics applicable to commercial mediators.

3. Receiving or demanding any sum of money or benefit from involved parties in addition to remuneration and costs already agreed upon.

4. Other prohibited acts as prescribed by law.

## **Chapter III**

### **ORDER AND PROCEDURES FOR COMMERCIAL MEDIATION**

#### **Article 11. Mediation agreement**

1. Mediation agreement may be established in the form of a mediation clause in a contract or of a separate agreement.

2. Mediation agreement shall be established in writing.

### **Article 12. Selection and appointment of commercial mediators**

1. Involved parties shall reach agreement on selecting a commercial mediator from the list of commercial mediators of a commercial mediation institution or from the list of *ad hoc* commercial mediators publicized by the provincial-level Department of Justice.

2. The appointment of a commercial mediator via a commercial mediation institution must comply with the Mediation Rule of this institution.

### **Article 13. Rights and obligation of disputing parties in the mediation process**

1. Disputing parties have the following rights:

a/ To select the mediation order and procedures, commercial mediators, and venue and time for mediation;

b/ To accept or refuse mediation; to request suspension or termination of mediation;

c/ To request mediation to be conducted publicly or behind closed doors;

d/ To express their wills and decisions on mediation contents;

dd/ Other rights as prescribed in this Decree and relevant laws.

2. Disputing parties have the following obligations:

a/ To truthfully present circumstances of their dispute, and provide information and documents relating to the dispute at the request of the commercial mediator;

b/ To comply with the successful mediation result;

c/ To pay remuneration and costs for commercial mediation, unless otherwise agreed upon;

d/ Other obligations as prescribed in this Decree and relevant laws.

### **Article 14. Mediation order and procedures**

1. Involved parties may select to apply the Mediation Rule of a commercial mediation institution for conducting mediation or reach agreement on the mediation order and procedures. If the parties do not reach such agreement, the commercial mediator may conduct mediation according to the order and procedures he/she finds suitable to the circumstances of the dispute and the aspirations of the parties, which are accepted by the parties.

2. The resolution of a dispute may be mediated by one or more than one commercial mediator as agreed upon by involved parties.

3. At any time in the mediation process, a commercial mediator may put forth proposals for dispute resolution.

4. The venue and time of mediation may be agreed upon by involved parties or selected by the commercial mediator in case the parties reach no agreement thereon.

#### **Article 15. Successful mediation result**

1. When attaining a successful mediation result, involved parties shall make a written record thereof. This record is binding on the parties in accordance with the civil law.

2. A written record of successful mediation result must contain the following principal contents:

a/ Grounds for conducting mediation;

b/ Basic information of involved parties;

c/ Major circumstances of the dispute;

d/ Agreement reached and solution;

dd/ Other contents as agreed upon by the parties in accordance with law.

3. A written record of successful mediation result must bear the signatures of the involved parties and the commercial mediator.

4. If unable to attain a successful mediation result, involved parties may either continue the mediation or request an arbitration or a court to resolve their dispute in accordance with law.

#### **Article 16. Recognition of successful mediation results**

A written record of successful mediation result shall be recognized in accordance with the civil procedure law.

#### **Article 17. Termination of mediation proceedings**

A mediation proceeding shall terminate in the following cases:

1. Involved parties have attained a successful mediation result.

2. The commercial mediator finds it unnecessary to continue the mediation after consulting involved parties.

3. At the request of one or more than one disputing party.

### **Chapter IV**

## **COMMERCIAL MEDIATION INSTITUTIONS**

## **Article 18. Commercial mediation institutions**

Commercial mediation institutions include:

1. Commercial mediation centers that are established and operate in accordance with this Decree.
2. Arbitration centers that are established and operate in accordance with the law on commercial arbitration and carry out commercial mediation activities under Article 23 of this Decree.

## **Article 19. Commercial mediation centers**

1. Commercial mediation centers shall be established in accordance with this Decree and have the legal person status and own seals and bank accounts.
2. Commercial mediation centers shall operate not for profit.
3. Commercial mediation centers may establish branches and representative offices at home and abroad.
4. The organizational structure of a commercial mediation center shall be stated in the Charter of the center. The chairperson of a commercial mediation center must be a commercial mediator.

## **Article 20. Names of commercial mediation centers and their branches and representative offices**

1. The name of a commercial mediation center must be in Vietnamese, containing the words “Trung tam hoa giai thuong mai” (commercial mediation center), which must be neither identical to nor confused with the name of another licensed commercial mediation institution; and must not violate historical, cultural and ethical traditions or fine customs and practices of the nation.

A commercial mediation center may use an abbreviated name or a transaction name in foreign language.

2. The name of a branch of a commercial mediation center must contain the word “Chi nhanh” (branch) and the name of the center.
3. The name of a representative office of a commercial mediation center must contain the words “Van phong dai dien” (representative office) and the name of the center.

## **Article 21. Procedures for establishment of commercial mediation centers**

1. A Vietnamese citizen who fully satisfies the criteria for a commercial mediator specified in Clause 1, Article 7 of this Decree and



wishes to establish a commercial mediation center shall send 1 set of dossier to the Ministry of Justice, comprising:

- a/ A written request for establishment of a commercial mediation center, made according to a form issued by the Ministry of Justice;
- b/ A list of the center's founders;
- c/ Papers proving the founders' full satisfaction of the criteria for a commercial mediator specified in Clause 1, Article 7 of this Decree;
- d/ The draft Mediation Rule of the center.

The contents of the center's Mediation Rule must not contravene law.

2. Within 30 days after receiving a valid dossier, the Ministry of Justice shall grant an establishment license to the commercial mediation center; in case of refusal, it shall notify the reason in writing. The person having his/her request for establishment of a commercial mediation center rejected may lodge a complaint or initiate a lawsuit in accordance with law.

## **Article 22. Registration of operation of commercial mediation centers**

1. Within 30 days from the effective date of the decision on grant of its establishment license, a commercial mediation center shall send a dossier for operation registration to the provincial-level Department of Justice of the locality where its head office is located. Past this time limit, if the center fails to register its operation, its establishment license shall be invalidated, unless it has a plausible reason.

2. A dossier for operation registration of a commercial mediation center must comprise:

- a/ A written request for operation registration, made according to a form issued by the Ministry of Justice;
- b/ A certified copy, or a copy enclosed with the original for comparison, of the center establishment license;
- c/ Papers proving the center's head office.

3. Within 15 days after receiving a valid dossier, the provincial-level Department of Justice shall grant an operation registration certificate to the commercial mediation center; in case of refusal, it shall notify the reason in writing. The provincial-level Department of Justice shall send a copy of such operation registration certificate to the Ministry of Justice.

4. A commercial mediation center may start to operate on the date it is granted an operation registration certificate and use its seal in accordance with law.

5. Within 30 days after being granted an operation registration certificate, a commercial mediation center shall publish in 3 consecutive issues of a central daily or a newspaper of the locality where it registers its operation the following basic information:

a/ Name and head-office address of the center;

b/ Operation areas of the center;

c/ Serial number, issuer and date of issuance of the operation registration certificate;

d/ Starting time of the center's operation.

### **Article 23. Commercial mediation activities of arbitration centers**

1. An arbitration center which has been licensed and registered under the law on commercial arbitration that wishes to carry out commercial mediation activities shall send 1 set of dossier to the Ministry of Justice, comprising:

a/ A written request for addition of commercial mediation activities, made according to a form issued by the Ministry of Justice;

b/ The draft Mediation Rule of the center.

Within 15 days after receiving a valid dossier, the Ministry of Justice shall issue a decision on addition of commercial mediation activities for the arbitration center; in case of refusal, it shall notify the reason in writing. The arbitration center shall register the change of contents of its operation registration certificate with the provincial-level Department of Justice of the locality where it has registered its operation.

2. Founders who submit a dossier for establishment of an arbitration center and want the arbitration center to concurrently carry out commercial mediation activities shall enclose the dossier with a draft Mediation Rule.

3. The contents of the Mediation Rule of an arbitration center must not contravene law.

4. The order and procedures for establishment of an arbitration center, registration of operation of an arbitration center, and change of contents of the establishment license or operation registration certificate of an arbitration center must comply with the law on commercial arbitration.

## **Article 24. Rights and obligations of commercial mediation institutions**

1. A commercial mediation institution has the following rights:
  - a/ To carry out commercial mediation activities;
  - b/ To provide training in mediation skills for commercial mediators;
  - c/ To collect remuneration and other lawful fees related to commercial mediation activities;
  - d/ To develop criteria for commercial mediators and a process of selecting commercial mediators, making a list of commercial mediators, and removing names of commercial mediators from the list;
  - dd/ To appoint commercial mediators at the request of involved parties;
  - e/ Other rights as prescribed in this Decree and relevant laws.
2. A commercial mediation institution has the following obligations:
  - a/ To make and publicize a list of its commercial mediators and send it to the Ministry of Justice and provincial-level Department of Justice of the locality where it has registered its operation within 7 working days from the date it is granted the operation registration certificate, or from the effective date of the decision on addition of commercial mediation activities for the arbitration center, or from the date the list of commercial mediators is changed;
  - b/ To pay remuneration and other costs to commercial mediators;
  - c/ To issue its own codes of ethics and conduct applicable to commercial mediators;
  - d/ To formulate, issue and publicize the Mediation Rule and mediation remuneration rates;
  - dd/ To report on its organization and operation to the provincial-level Department of Justice of the locality where it has registered its operation on an annual basis and upon request;
  - e/ To archives files and provide information on mediation results at the request of disputing parties or competent state agencies;
  - g/ Other obligations as prescribed in this Decree and relevant laws.

## **Article 25. Branches of commercial mediation centers**

1. Branch is a dependent unit of a commercial mediation center and shall operate in the operation areas stated in the center establishment license.

2. A commercial mediation center shall take responsibility before law for the operation of its branch, and appoint a commercial mediator to act as the branch's head.

3. Within 15 days after deciding to establish a branch, a commercial mediation center shall send 1 set of dossier for registration of the branch's operation to the provincial-level Department of Justice of the locality where such branch will be located, comprising:

a/ A written request for registration of a branch's operation, made according to a form issued by the Ministry of Justice;

b/ The branch's establishment decision issued by the center.

Within 10 days after receiving a valid dossier, the provincial-level Department of Justice shall grant an operation registration certificate to the branch and send a copy of this certificate to the Ministry of Justice.

4. In case a commercial mediation center establishes its branch outside a province or centrally run city where it has registered its operation, within 7 working days after its branch is granted an operation registration certificate, the center shall send a written notice of the branch's establishment to the provincial-level Department of Justice of the locality where it has registered its operation.

5. The branch of a commercial mediation center may use a seal in accordance with law.

#### **Article 26. Change of names or head-office addresses of commercial mediation centers**

1. If wishing to change its name or head-office address from a province or centrally run city to another, a commercial mediation center shall send 1 set of dossier of request for the change to the Ministry of Justice, comprising:

a/ A written request for the change, made according to a form issued by the Ministry of Justice;

b/ Papers relevant to the change.

Within 15 days after receiving a dossier of request for the change, the Ministry of Justice shall issue a written approval of the change; in case of refusal, it shall notify the reason in writing.

2. Within 15 days from the effective date of the Ministry of Justice's written approval of the change of the name of a commercial mediation center, the center shall send a written request for change of its name in its operation registration certificate to the provincial-level Department of Justice of the locality where it has registered its operation. Within 7

working days after receiving the center's written request, the provincial-level Department of Justice shall issue a decision to change the name of the center in its operation registration certificate.

3. Within 20 days from the effective date of the Ministry of Justice's written approval of the change of the head-office address of a commercial mediation center from a province or centrally run city to another, the center shall register operation with the provincial-level Department of Justice of the locality where its new head office is located. The order and procedures for operation registration must comply with Clauses 2 and 3, Article 22 of this Decree.

Within 7 working days after being granted a new operation registration certificate, the commercial mediation center shall send a written notice thereof to the provincial-level Department of Justice of the locality where it has registered its operation before the change of its head-office address. The provincial-level Department of Justice shall issue a decision to revoke the operation registration certificate already granted to the center.

4. In case a commercial mediation center changes its head-office address within a province or centrally run city, within 7 working days from the date of the change, the center shall send a written notice thereof to the Ministry of Justice and provincial-level Department of Justice of the locality where it has registered its operation.

**Article 27. Re-grant of establishment licenses or operation registration certificates of commercial mediation centers or operation registration certificates of branches of commercial mediation centers**

1. In case the establishment license or operation registration certificate of a commercial mediation center or the operation registration certificate of the branch of a commercial mediation center is lost, burnt, torn or rumpled or otherwise destroyed, the center or branch shall send a written request for re-grant to the competent agency that has granted such license or certificate.

2. Within 10 days after receiving the written request, the Ministry of Justice shall re-grant an establishment license to the commercial mediation center. Within 5 working days after receiving the written request, the provincial-level Department of Justice shall re-grant an operation registration certificate to the commercial mediation center or branch.

**Article 28. Representative offices of commercial mediation centers**

1. Representative office is a dependent unit of a commercial mediation center, which is established to seek and promote opportunities of commercial mediation activities. A representative office may use a seal in accordance with law.

2. A commercial mediation center shall take responsibility before law for the operation of its representative office.

3. Within 7 working days after establishing its representative office or changing the address or head of its representative office, a commercial mediation center shall send a notice thereof to the provincial-level Department of Justice of the locality where it registers operation.

If establishing its representative office outside a province or centrally run city where it has registered its operation, the commercial mediation center shall send a notice thereof to the provincial-level Department of Justice of the locality where its representative office is established and provincial-level Department of Justice of the locality where it has registered its operation.

#### **Article 29. Overseas branches and representative offices of commercial mediation centers**

Within 30 days after obtaining a competent foreign authority's permission for establishment of an overseas branch or representative office or terminating the operation of an overseas branch or representative office, a commercial mediation center shall send a written notice thereof to the Ministry of Justice and provincial-level Department of Justice of the locality where it has registered its operation.

#### **Article 30. Revocation of establishment licenses or operation registration certificates of commercial mediation centers or operation registration certificates of branches of commercial mediation centers**

1. A commercial mediation center may have its establishment license revoked in the following cases:

a/ It repeats a violation related to commercial mediation for which it has been administratively sanctioned under the law on handling of administrative violations;

b/ It does not carry out any commercial mediation activity within 5 consecutive years after being granted an establishment license;

c/ It fails to register operation with the provincial-level Department of Justice of the locality where its head office is located within 30 days from the effective date of the decision on grant of its establishment license, unless it has a plausible reason.

2. An organization or individual that detects a commercial mediation center falling into any of the cases subject to revocation of establishment license shall notify such to the provincial-level Department of Justice of the locality where the center registers its operation for the latter to verify. If finding that the center falls into any of the cases subject to revocation of establishment license specified in Clause 1 of this Article, the provincial-level Department of Justice shall send a written request enclosed with relevant papers (if any) to the Ministry of Justice for revocation of the establishment license, stating the reason.

3. Within 15 days after receiving the written request from the provincial-level Department of Justice, the Ministry of Justice shall consider and revoke the establishment license of the commercial mediation center.

Within 7 working days from the effective date of the Ministry of Justice's decision on revocation of the establishment license, the provincial-level Department of Justice that has granted the operation registration certificate to the commercial mediation center shall issue a decision to revoke such certificate.

4. The branch of a commercial mediation center that repeats a violation related to commercial mediation for which it has been administratively sanctioned under the law on handling of administrative violations shall have its operation registration certificate revoked. The provincial-level Department of Justice that has granted the operation registration certificate to the branch shall revoke such certificate.

### **Article 31. Termination of operation of commercial mediation centers or commercial mediation activities of arbitration centers**

1. A commercial mediation center shall terminate operation in the following cases:

a/ It terminates operation at its own discretion;

b/ Its establishment license is revoked under Clause 1, Article 30 of this Decree.

2. In case of operation termination under Point a, Clause 1 of this Article, at least 30 days before the date of operation termination, a commercial mediation center shall send a written notice thereof to the Ministry of Justice and provincial-level Department of Justice of the locality where it has registered its operation.

Within 60 days after deciding to terminate operation, the commercial mediation center shall pay off all debts and other asset liabilities, liquidate contracts and fulfill the cases it has accepted, unless otherwise agreed upon.

3. Within 10 days after completing the activities specified in Clause 2 of this Article, the commercial mediation center shall send a written report thereon to the Ministry of Justice and provincial-level Department of Justice of the locality where it has registered its operation. Within 7 working days after receiving the center's report, the Ministry of Justice shall issue a decision to revoke the establishment license. Within 5 working days from the effective date of the Ministry of Justice's decision on revocation of the establishment license, the provincial-level Department of Justice shall issue a decision to revoke the operation registration certificate of the center.

4. In case of operation termination under Point b, Clause 1 of this Article, within 60 days from the effective date of the Ministry of Justice's decision on revocation of the establishment license of a commercial mediation center, the center shall pay off all debts and other asset liabilities, liquidate contracts and fulfill all the cases it has accepted, unless otherwise agreed upon.

5. An arbitration center shall terminate commercial mediation activities in the following cases:

a/ It terminates operation under the law on commercial arbitration;

b/ It terminates commercial mediation activities under its Charter;

c/ It does not carry out any commercial mediation activity within 5 years from the effective date of the Ministry of Justice's decision on addition of commercial mediation activities;

d/ It repeats a violation related to commercial mediation for which it has been administratively sanctioned under the law on handling of administrative violations.

6. The termination of operation of an arbitration center under Point a or b, Clause 5 of this Article must comply with the law on commercial arbitration. The payment of the center's obligations must comply with Clause 2 of this Article.

7. In case an arbitration center terminates operation under Point c or d, Clause 5 of this Article, the Ministry of Justice shall issue a written document to revoke the decision on addition of commercial mediation activities for the center. Within 10 days from the effective date of such document, the arbitration center shall register the change of contents of its operation registration certificate with the provincial-level Department of Justice of the locality where it has registered its operation. The order and procedures for the change of contents of operation registration certificates must comply with the law on commercial arbitration. The payment of the center's obligations must comply with Clause 4 of this Article.



## **Article 32. Termination of operation of branches or representative offices of commercial mediation centers**

1. The branch of a commercial mediation center shall terminate operation in the following cases:

a/ Under the center's decision;

b/ The center terminates operation under Clause 1, Article 31 of this Decree;

c/ Its operation registration certificate is revoked under Clause 4, Article 30 of this Decree.

2. Within 30 days from the date of termination of operation of its branch, a commercial mediation center shall send a written notice thereof to the Ministry of Justice, provincial-level Department of Justice of the locality where the center has registered its operation and provincial-level Department of Justice of the locality where the branch has registered its operation.

3. The representative office of a commercial mediation center shall terminate operation under the center's decision or when the center terminates operation under Clause 1, Article 31 of this Decree. At least 10 days before the date of termination of operation of its representative office, the commercial mediation center shall notify such to the provincial-level Department of Justice of the locality where it has registered its operation and provincial-level Department of Justice of the locality where its representative office is located.

## **Chapter V**

### **OPERATION OF VIETNAM-BASED FOREIGN COMMERCIAL MEDIATION INSTITUTIONS**

#### **Article 33. Conditions for and forms of operation of Vietnam-based foreign commercial mediation institutions**

1. Foreign commercial mediation institutions that are lawfully established and operate in foreign countries and respect the Constitution and laws of the Socialist Republic of Vietnam may operate in Vietnam in accordance with this Decree.

2. Foreign commercial mediation institutions may operate in Vietnam in the following forms:

a/ Branches of foreign commercial mediation institutions (below referred to as branches);

b/ Representative offices of foreign commercial mediation institutions (below referred to as representative offices).

### **Article 34. Branches and representative offices of Vietnam-based foreign commercial mediation institutions**

1. Branch is a dependent unit of a foreign commercial mediation institution, which is established to carry out commercial mediation activities in Vietnam in accordance with this Decree. A foreign commercial mediation institution shall take responsibility before Vietnamese law for the operation of its branch. The foreign commercial mediation institution shall appoint a commercial mediator to be head of its branch. The head of a branch shall act as the authorized representative of a Vietnam-based foreign commercial mediation institution.

2. Representative office is a dependent unit of a foreign commercial mediation institution, which is established to seek and promote opportunities of mediation activities in Vietnam in accordance with this Decree. The foreign commercial mediation institution shall take responsibility before Vietnamese law for the operation of its representative office.

3. The name of a branch of a foreign commercial mediation institution must contain the word “Chi nhánh” (branch) and the name of the institution.

The name of the representative office of a foreign commercial mediation institution must contain the words “Van phong dai dien” (representative office) and the name of the institution.

Names of branches or representative offices of foreign commercial mediation institutions must comply with Clause 1, Article 20 of this Decree.

### **Article 35. Rights and obligations of branches and representative offices of Vietnam-based foreign commercial mediation institutions**

1. Rights and obligations of a branch

a/ To rent a working office to serve its operation;

b/ To recruit Vietnamese and foreign employees in accordance with law;

c/ To open Vietnam dong and foreign currency accounts at banks licensed to operate in Vietnam to serve its operation;

d/ To transfer its incomes abroad in accordance with Vietnamese law;

dd/ To have a seal as prescribed by law;

e/ To operate for proper purposes and within the scope and period stated in its establishment license;

g/ To appoint mediators to conduct mediation as authorized by the foreign commercial mediation institution;

h/ To provide commercial mediation services;

i/ To archive files and provide copies of written records of mediation results at the request of disputing parties or competent state agencies;

k/ To report on the organization of commercial mediation activities to the provincial-level Department of Justice of the locality where it has registered its operation on an annual basis and upon request;

l/ Other rights and obligations as prescribed by law.

2. Rights and obligations of a representative office

a/ The rights and obligations specified at Points a, b, c, dd, e and l, Clause 1 of this Article;

b/ To seek and promote opportunities of commercial mediation activities in Vietnam;

c/ To refrain from carrying out commercial mediation activities in Vietnam; to carry out only activities to promote and advertise commercial mediation activities in accordance with Vietnamese law;

d/ To report on its organization and activities to the provincial-level Department of Justice of the locality where it is located on an annual basis and upon request.

### **Article 36. Grant of licenses for establishment of branches or representative offices of Vietnam-based foreign commercial mediation institutions**

1. A foreign commercial mediation institution that wishes to establish a branch or representative office in Vietnam shall send 1 set of dossier to the Ministry of Justice, comprising:

a/ A written request for establishment of a branch or representative office, made according to a form issued by the Ministry of Justice;

b/ A certified copy of the paper proving the lawful establishment of the institution, issued by a competent foreign authority;

c/ A written introduction of the institution's operation;

d/ The decision appointing a commercial mediator to be the head of the branch or representative office;

dd/ A list of commercial mediators and staff members expected to work at the branch; or a list of staff members expected to work at the representative office.

3. Foreign-language papers accompanying the written request for establishment of a branch or representative office must have Vietnamese translations which are certified in accordance with Vietnamese law.

Papers issued by foreign agencies or organizations or notarized or certified in foreign countries must be consularly legalized in accordance with Vietnamese law, unless they are exempted from consular legalization under a treaty to which the Socialist Republic of Vietnam is a contracting party.

4. Within 30 days after receiving a valid dossier, the Ministry of Justice shall grant an establishment license to the branch or representative office of a foreign commercial mediation institution; in case of refusal, it shall notify the reason in writing.

### **Article 37. Registration of operation of branches or announcement of establishment of representative offices of Vietnam-based foreign commercial mediation institutions**

1. Within 60 days from the effective date of the decision on grant of its establishment license, a branch shall send 1 set of dossier for operation registration to the provincial-level Department of Justice of the locality where it is located. Past this time limit, if the branch fails to register operation, its establishment license shall be invalidated, unless it has a plausible reason.

2. A dossier for operation registration must comprise:

a/ A written request for operation registration, made according to a form issued by the Ministry of Justice;

b/ A certified copy, or a copy enclosed with the original for comparison, of the branch's establishment license;

c/ Papers proving the branch's office.

3. Within 10 days after receiving a complete and valid dossier, the provincial-level Department of Justice shall grant an operation registration certificate to the branch. The branch may start operation on the date it is granted the operation registration certificate.

Within 7 working days after granting the operation registration certificate to the branch, the provincial-level Department of Justice shall send a copy of this certificate to the Ministry of Justice.

4. Within 7 working days from the effective date of the decision on grant of its establishment license, a representative office shall send 1 set of dossier notifying its establishment to the provincial-level Department of Justice of the locality where it is located, comprising:

a/ A notice of the establishment of the representative office;

b/ A certified copy, or a copy enclosed with the original for comparison, of the representative office establishment license.

**Article 38. Change of names, heads or addresses of branches or representative offices of Vietnam-based foreign commercial mediation institutions**

1. A branch that wishes to change its name or head or change its address from a province or centrally run city to another shall send 1 set of dossier of request for the change to the Ministry of Justice, comprising:

a/ A written request for the change, made according to a form issued by the Ministry of Justice;

b/ Papers relevant to the change.

Within 15 days after receiving a valid dossier, the Ministry of Justice shall issue a written approval of the change; in case of refusal, it shall notify the reason in writing.

2. Within 15 days from the effective date of the Ministry of Justice's written approval of the change of its name or head, a branch shall send a written request for the change of its name or head in its operation registration certificate to the provincial-level Department of Justice of the locality where it has registered its operation. Within 7 working days after receiving the branch's written request, the provincial-level Department of Justice shall issue a decision to change the name or head of the branch in its operation registration certificate.

3. Within 20 days from the effective date of the Ministry of Justice's written approval of the change of its address from a province or centrally run city to another, a branch shall register operation with the provincial-level Department of Justice of the locality where it moves to. The order and procedures for operation registration must comply with Clauses 2 and 3, Article 37 of this Decree.

Within 7 working days after being granted a new operation registration certificate, the branch shall send a written notice thereof to the provincial-level Department of Justice of the locality where it has registered its operation before the change of its address. The provincial-level Department of Justice shall issue a decision to revoke the branch's operation registration certificate.

4. A representative office that wishes to change its name or head or change its address from a province or centrally run city to another shall, within 7 working days after deciding on the change, send a written notice thereof to the Ministry of Justice and provincial-level Department of Justice of the locality where it is located.

**Article 39. Re-grant of establishment licenses or operation registration certificates of branches or licenses for establishment of representative offices of Vietnam-based foreign commercial mediation institutions**

1. In case its establishment license or operation registration certificate is lost, burnt, torn or rumped or otherwise destroyed, a branch or representative office of a Vietnam-based foreign commercial mediation institution shall send a written request for re-grant to the competent agency that has granted such license or certificate.

2. Within 10 days after receiving the written request, the Ministry of justice shall re-grant an establishment license to the branch or representative office of a Vietnam-based foreign commercial mediation institution. Within 5 working days after receiving the written request, the provincial-level Department of Justice shall re-grant an operation registration certificate to the branch of a Vietnam-based foreign commercial mediation institution.

**Article 40. Revocation of establishment licenses or operation registration certificates of branches or establishment licenses of representative offices of Vietnam-based foreign commercial mediation institutions**

1. The branch of a Vietnam-based foreign commercial mediation institution may have its establishment license revoked in the following cases:

a/ It repeats a violation related to commercial mediation for which it has been administratively sanctioned under the law on handling of administrative violations;

b/ It does not carry out any activity stated in its establishment license within 5 consecutive years from the date it is granted this license;

c/ It fails to register operation within 60 days from the effective date of the decision on grant of its establishment license, unless it has a plausible reason.

2. The representative office of a Vietnam-based foreign commercial mediation institution shall have its establishment license revoked in case it repeats a violation related to commercial mediation for which it has

been administratively sanctioned under the law on handling of administrative violations.

3. An organization or individual that detects a branch or representative office falling into any of the cases subject to revocation of establishment license shall notify such to the provincial-level Department of Justice of the locality where such branch or representative office is located for the latter to verify.

If having grounds to believe that the branch or representative office falls into the case specified in Clause 1 or 2 of this Article, the provincial-level Department of Justice shall send a written request enclosed with relevant papers (if any) to the Ministry of Justice for revocation of its establishment license, stating the reason.

4. Within 15 days after receiving the written request from the provincial-level Department of Justice, the Ministry of Justice shall consider and decide to revoke the branch's or representative office's establishment license.

5. Within 15 days from the effective date of the Ministry of Justice's decision on revocation of the establishment license of the branch of a Vietnam-based foreign commercial mediation institution, the provincial-level Department of Justice of the locality where such branch has registered its operation shall issue a decision to revoke its operation registration certificate.

#### **Article 41. Termination of operation of branches or representative offices of Vietnam-based foreign commercial mediation institutions**

1. A branch or the representative office of a Vietnam-based foreign commercial mediation institution shall terminate operation in the following cases:

a/ Under the institution's decision;

b/ The institution terminates operation overseas;

c/ It has its establishment license revoked under Clause 1 or 2, Article 40 of this Decree.

2. In case of operation termination under Point a or b, Clause 1 of this Article, at least 30 days before the date of operation termination, the branch or representative office shall send a written notice thereof to the Ministry of Justice and provincial-level Department of Justice of the locality where it is located.

Within 60 days from the date of operation termination, the branch or representative office shall pay off all debts and asset liabilities; liquidate

labor contracts; and fulfill all cases it has accepted, unless otherwise agreed upon.

3. Within 10 days after completing the activities specified in Clause 2 of this Article, the branch or representative office shall send a written report thereon to the Ministry of Justice and provincial-level Department of Justice of the locality where the branch has registered its operation or the representative office is located. Within 7 working days after receiving such report, the Ministry of Justice shall issue a decision to revoke the establishment license of the branch or representative office; or the provincial-level Department of Justice shall issue a decision to revoke the operation registration certificate of the branch.

4. In case of operation termination under Point c, Clause 1 of this Article, within 60 days from the effective date of the Ministry of Justice's decision on revocation of its establishment license, the branch or representative shall pay off all debts and asset liabilities, liquidate labor contracts, and fulfill all cases it has accepted, unless otherwise agreed upon.

## **Chapter VI**

### **IMPLEMENTATION PROVISIONS**

#### **Article 42. State management of commercial mediation**

1. The Ministry of Justice shall assist the Government in performing the unified state management of commercial mediation nationwide, and has the following tasks and powers:

a/ To draft and submit to competent state agencies for promulgation or promulgate according to its competence documents detailing and guiding the law on commercial mediation;

b/ To grant and revoke establishment licenses of commercial mediation centers; to grant and revoke establishment licenses of branches or representative offices of Vietnam-based foreign commercial mediation institutions; to approve the change of contents of establishment licenses of commercial mediation centers; to approve the change of contents of establishment licenses of branches of Vietnam-based foreign commercial mediation institutions; to add commercial mediation activities for arbitration centers;

c/ To publicize the list of commercial mediators and the list of commercial mediation institutions nationwide;

d/ To promulgate, and guide the uniform use of, forms of documents and papers relating to commercial mediation;



dd/ To take measures to support development of commercial mediation activities; to formulate a master plan on development of commercial mediation institutions nationwide; to propagate and disseminate laws and provide professional guidance on commercial mediation;

e/ To examine and inspect, settle complaints and denunciations, and handle violations of the law on commercial mediation;

g/ To perform international cooperation in the field of commercial mediation;

h/ To perform other tasks and exercise other powers as prescribed in this Decree and relevant laws.

2. Provincial-level People's Committees shall, within the ambit of their competence, perform the state management of commercial mediation activities in localities.

Provincial-level Departments of Justice shall assist provincial-level People's Committees in performing the state management of commercial mediation organization and operation in localities, and have the following tasks and powers:

a/ To register operation of commercial mediation centers and register the change of contents of their operation registration certificates; to register the change of contents of operation registration certificates of arbitration centers; to register operation of branches of commercial mediation centers or branches of Vietnam-based foreign commercial mediation institutions and register the change of contents of their operation registration certificates; to revoke operation registration certificates of commercial mediation centers or their branches; to revoke operation registration certificates of branches of Vietnam-based foreign commercial mediation institutions;

b/ To register and make lists of *ad hoc* commercial mediators, and remove names of *ad hoc* commercial mediators from such lists;

c/ To update and publicize lists of *ad hoc* commercial mediators and commercial mediation institutions on their e-portals; to review, compile statistics of, and report on annual data on commercial mediators in localities;

d/ To propagate and disseminate laws and provide professional guidance on commercial mediation;

dd/ To examine and inspect, settle complaints and denunciations, and handle violations related to commercial mediation activities in localities according to their competence;

e/ To report on commercial mediation activities in localities to provincial-level People's Committees and the Ministry of Justice on an annual basis and upon request;

g/ To perform other tasks and exercise other powers under decisions of provincial-level People's Committee chairpersons or as authorized by the Minister of Justice in accordance with this Decree and relevant laws.

3. Ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, coordinate with the Ministry of Justice in performing the state management of commercial mediation.

**Article 43. Effect**

This Decree takes effect on April 15, 2017.

**Article 44. Implementation responsibility**

Ministers, heads of ministerial-level agencies, heads of government-attached agencies, and chairpersons of provincial-level People's Committees shall implement this Decree.-

*On behalf of the Government*

Prime Minister

NGUYEN XUAN PHUC