



Special Alert

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New mechanism for mediation to resolve civil affairs and administrative complaints

Law No. 58/2020/QH14 on mediation and dialogue at courts has been adopted on 16 June 2020 by the National Assembly, creating a new mechanism to assist in the settlement of civil disputes and administrative complaints (the “**Court Mediation Law**”). It is due to take effect from 1 January 2021, and expected to provide an effective method to save time for dispute resolution. Notable points of the new law are discussed below.

Mediation time and scope of mediation

The mediation and dialogue will be conducted before the court accepts a petition in relation to civil, marriage and family, business, commercial or labour lawsuits, or for recognition of divorce by consent, or administrative lawsuits which fall under the jurisdiction of the courts in accordance with the 2015 Civil Procedures Code (the “**CPC**”) and the 2015 Law on Administrative Procedures (the “**LAP**”).

Principles of mediation and dialogue at courts

Mediation and dialogue at court are conducted on the following main basis:

- (a) Voluntarily participation in mediation and dialogue;
- (b) Respect of the voluntary agreement of the concerned parties; not to force the parties to make an agreement contrary to their will;
- (c) Equality of the parties participating in the mediation and dialogue;
- (d) Contents of a mediation agreement must not: (i) violate the prohibited provisions of the law, (ii) be contrary to social morality, (iii) for the purpose of avoiding any obligation to the State or

- any authority, organization and individual, or (iv) infringe the lawful rights and interests of any authority, organization and individual; and
- (e) Confidentiality of all information related to mediation and dialogue.

Mediators at courts

The following persons may act as mediators:

- (a) A person who was a judge, verifier, court clerk, prosecutor or controller of the procuracy, enforcer enforcing civil judgments, Inspector before his/her retirement;
- (b) Lawyers, experts or other professionals with at least 10 years of experience in the sector of his/her practice; and
- (c) Other persons who have knowledge of customs and traditions, and is reputable in the community.

Persons who fall within the above categories must then satisfy all of the following conditions to become mediators:

- (a) Be a Vietnamese citizen with a permanent residential address in Vietnam;
- (b) Have experience and skill on mediation, dialogue;
- (c) Voluntarily carry out the mediation, dialogue task; and
- (d) Have a certificate of professional training in mediation and dialogue as regulated by law.

Persons wishing to become mediators must satisfy the above conditions and apply for the mediator appointment of the chief justice of the provincial people's court.

A term of a mediator is 3 years and maybe be extended.

Confidentiality

The confidentiality of information in mediation and dialogue at courts has been stipulated quite specifically compared to other mediation and dialogue mechanisms, particularly:

- (a) The mediator, participating parties; other authorities, organizations, individuals invited to participate in the mediation and dialogue must not disclose information they learn during the mediation and dialogue process, except where otherwise agreed by the party providing such information;
- (b) During the mediation and dialogue, recording of sound, video and minutes of mediation and dialogue are prohibited. The record of settlement is only made in order to recognize the result of mediation and dialogue. The mediator and participating parties are permitted to take notes for mediation and dialogue and are required to keep such notes in confidence; and
- (c) Authorities, organizations and individuals may not use the presentation of parties during mediation and dialogue procedures as evidence in the process of handling cases in

accordance with provisions of laws, except for the following circumstances:

- (i) the presenting party agrees to use its presentation during mediation and dialogue procedures as evidence; or
- (ii) such presentation must be used as evidence in accordance with the provisions of law.

The authority, organization, and/or individual is responsible for their failure to comply with the regulations of confidentiality.

Costs of mediation and dialogue

The cost of mediation and dialogue shall be ensured by the state budget, except for the following cases when it will be borne by the participating parties:

- (a) A legal entity or individual files a petition for resolution of business or commercial disputes having a price quota;
- (b) The cost incurred when conducting mediation and dialogue in case the parties agree to organize the mediation and dialogue at a place other than at the court's head office; the cost for the mediator to check the status of the assets in relation to the dispute and complaints which are out of the territorial scope of the province where the court has jurisdiction to settle the case; and
- (c) Cost of foreign language interpretation.

Sequence and procedures of mediation and dialogue and recognition of the result

After filing a petition to the competent court, the petitioner has the right to choose to pursue mediation and dialogue under the Court Mediation Law before his/her case is considered and accepted through the court proceedings in accordance with the CPC and the LAP.

- (a) If the petitioner agrees to conduct mediation and dialogue or does not send any response to the court after its second notification, the court assigns a judge to be in charge of the mediation and dialogue. The mediator may be selected by the parties or, in limited circumstances, be appointed by the judge; and
- (b) If the petitioner does not agree to conduct mediation and dialogue, the court transfers his/her case for court proceedings in accordance with the prevailing laws on procedure.

The time-limit for mediation and dialogue is no more than 20 days from the date of appointing a mediator. This time-limit may be extended no more than 30 days in respect of complex cases or no more than 2 months upon the agreement of the parties. The mediation and dialogue conducted by the mediator can take place in one or more meetings, at or out of the court's head office. However, the meeting to recognize the result of mediation and dialogue must be held at the head office of the court having jurisdiction to the relevant cases.

The mediation and dialogue will be terminated in the following cases:

- (a) The mediation and dialogue are successful;
- (b) The mediation and dialogue are unsuccessful when:
 - (i) the parties can not reach an agreement on the whole contents of the dispute; or
 - (ii) the parties only agree on a part of the dispute but that is related to other dispute parts;
- (c) A party or both parties do not agree to continue conducting the mediation and dialogue or are still absent after the second proper notification on the mediation and dialogue;
- (d) During the mediation and dialogue, the case is found to fall under categories not to be conciliated in accordance with the Court Mediation Law;
- (e) A party requests to apply for interim injunctive relief during the mediation and dialogue; or
- (f) A petitioner withdraws the application.

If the mediation and dialogue are successful (see item (a) above), and upon request of the parties, the mediator will send the minutes, together with accompanying documents to the court for consideration and to obtain a decision on recognizing the successful result of mediation and dialogue.

If the mediation and dialogue are otherwise terminated, the mediator will send the application together with accompanying documents (except for the confidential information as stipulated by the Court Mediation Law) to the court to consider and accept or handle in accordance with the CPC and the LAP. The judge who is in charge of mediation and dialogue must not be involved in the settlement of that case through court proceedings under the civil and administrative procedure.

Effectiveness of the decision recognizing a successful mediation and dialogue

In general, the decision recognizing a successful mediation and dialogue will be immediately effective and may not be appealed or protested against in accordance with the appeal proceedings under provisions of the CPC and the LAP. However, the decision recognizing a successful mediation and dialogue may be re-considered at the complaint of the related parties or the petition of the procuracy if there are grounds to believe that such agreement breaches one of the conditions for recognition of the successful mediation and dialogue stipulated in Article 33 of the Court Mediation Law.

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