



VIET NAM SOCIETY OF INTERNATIONAL LAW
Assoc. Prof. Nguyen Hong Thao (Editor in Chief)

INTERNATIONAL LAW AND ACTUAL ISSUES IN VIET NAM



YOUTH PUBLISHING HOUSE



Mediation - A trend for commercial dispute resolution in the integration period

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Abstract: *Civil and commercial dispute settlement through mediation is now becoming a global trend because of its advantages in terms of time, cost, possibility to maintain relationships among disputants and confidentiality of information. The article highlights advantages of mediation and its application in Vietnam.*

Keywords: *mediation, civil and commercial dispute settlement*

I. Context

Civil and commercial dispute settlement through mediation is now becoming a global trend because of its advantages in terms of time, cost, possibility to maintain relationships among disputants and confidentiality of information. According to a study by World Bank, mediation of commercial disputes is an important solution to support the promotion of business environment and to enhance economic growth. With international commercial disputes, mediation is considered a solution to overcome cultural and jurisdictional barriers¹. Mediation is an indicator of the Doing

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¹ World Bank (2017), Handbook for mediators, page 9.

Business index to compare competitiveness in national business environment².

Mediation out of litigation process is a voluntary dispute settlement measure. This measure is not only an alternative dispute resolution but also a measure to save time, cost and provide a greater control over outcomes and confidentiality³. Mediation helps businesses address complicated disputes which often take much time if settled by traditional litigation procedure. With such advantages of mediation, up to 176 economies with different legal systems have accepted voluntary mediation⁴.

Mediation is a dispute settlement method which has developed for a long time in Europe⁵. The viewpoint to promote alternative dispute resolution (ADR), including mediation, was initiated by the European Union. In 2008, the European Union's Parliament promulgated the Directive on application of mediation in civil and commercial cases for the member countries and set forth fundamental principles for mediation's existence and development in the Union⁶. Countries wishing to join the European Union are supposed to accept voluntary mediation⁷. In line with

² Simeon Djankov et al, *Courts*, Research papers supporting the methodology (Doing Business) of World Bank, <http://www.doingbusiness.org/methodology/~media/GIAWB/Doing%20Business/Documents/Methodology/Supporting-Papers/DB-Methodology-Courts.pdf>. Mediation is an index of the Enforcing Contract indicator of Doing Business report.

³ World Bank, Doing Business – Enforcing contract, Good Practices, Using Alternative means to resolve disputes, <http://www.doingbusiness.org/data/exploretopics/enforcing-contracts/good-practices#Computerization%20and%20court%20efficiency>, accessed on May 27, 2019

⁴ *supra* note 3

⁵ Chris Poole (March, 2015), *The Future Mediation*, <https://www.mediate.com/articles/PooleFutures.cfm>, accessed on May 28, 2019

⁶ European Justice, *EU overview on mediation*, https://e-justice.europa.eu/content_eu_overview_on_mediation-63-en.do, accessed on May 28, 2019; Chris Poole (March, 2015), *The Future Mediation*, <https://www.mediate.com/articles/PooleFutures.cfm>, accessed on May 28, 2019

⁷ World Bank (2017), *op. cit.*, page 7.

this spirit, the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam (EVFTA) has set forth the institution of investment mediation⁸, which is now considered an innovation in resolving investment disputes⁹.

Recently, the United Nations Convention on International Settlement Agreements Resulting from Mediation was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on June 26, 2018, and 48 countries signed in Singapore on August 7, 2019 (hereinafter referred to as the “Singapore Convention”)¹⁰. The Convention came to effect afterward¹¹. The overall objective of the Singapore Convention is to create an international mechanism to implement successful mediation agreements for international disputes. The Convention’s recognition of mediation with mediators’ participation as an international commercial dispute settlement method has promoted the credibility of mediation. The existence of the Singapore Convention will create a more effective legal

⁸ *Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam (EVFTA)*, Chapter 15, Article 15.4, Annex 15-C: Mediation Mechanism.

⁹ Delegation of the European Union to Vietnam, *Guide to the EU-VIETNAM Free Trade Agreement*, pp. 70-71.

¹⁰ General Assembly Adopts the United Nations Convention on International Settlement Agreements Resulting from Mediation, website of the United Nations Commission on International Trade Law, <https://uncitral.un.org/en/news/general-assembly-adopts-united-nations-convention-international-settlement-agreements-resulting>, accessed on May 28, 2019.

¹¹ Jan O’Neill (November 19, 2018), *The new Singapore Convention: will it be the New York Convention for mediation?*, Thomson Reuters, <http://disputeresolutionblog.practicallaw.com/the-new-singapore-convention-will-it-be-the-new-york-convention-for-mediation/>, accessed on May 28, 2019; Herbert Smith Freehills LLP (June 27, 2018), *New convention on the enforcement of mediation settlement agreements approved*, Lexology, <https://www.lexology.com/library/detail.aspx?g=72195327-b8cd-4013-8c4c-43b5941de836>, accessed on May 28, 2019; Cara Wong, *46 countries sign international mediation treaty named after Singapore*, The Straits Times, <https://www.straitstimes.com/singapore/key-facts-about-the-singapore-convention-on-mediation>, accessed on October 15, 2019.

framework than the enforcement of arbitration awards or court judgments¹².

II. Advantages of mediation

In a survey conducted by the American Arbitration Association, 87% of the surveyed companies are found "satisfied", "very satisfied", or "extremely satisfied" with mediation¹³. Resolving disputes by mediation is considered a "win-win" method. A great number of studies and analyses have illustrated the advantages of mediation, including either disputes in local scope or international ones. The following summarizes some advantages of mediation:

- i. Justice is determined by the disputants themselves;
- ii. Information of the dispute is kept confidential effectively;
- iii. Disputes can be settled quickly;
- iv. The mediation saves cost as compared to other dispute settlement methods, such as court or arbitration;
- v. The disputants can control escalation of the dispute and maintain a business relationship;
- vi. Mediation process is friendly.

1. Why can justice be determined by the disputants themselves?

According to the foregoing survey by the American Arbitration Association, the high proportion of satisfaction with mediation probably resulted from the disputes being resolved by the disputants themselves rather than depending on an independent decision by arbitration or court. In addition, it may stem from the fact that there is no winner or loser in

¹² Ministry of Justice (April 2019), *Draft Report on research result of studying the United Nations Convention on International Settlement Agreements Resulting from Mediation*, page 2.

¹³ Thomas Gaultier (2013), Cross-Border Mediation: A New Solution for International Commercial Dispute Settlement?, *NYSBA International Law Practicum*, Vol. 26, No. 1, page 48.

mediation, since the final target of this method is "win-win". Even in case of unsuccessful mediation, the outcomes obtained by the disputants through discussion and negotiation during mediation process are still valuable. The disputants may understand each other's points of view in the dispute. Moreover, the disputants may have the opportunity to review and evaluate their own strength and weakness in the dispute so that they can come up with a suitable solution¹⁴.

In order to ensure that justice is established by the disputants themselves, mediators only play a facilitative role, assisting the disputants to determine the optimal solution in the mediation process¹⁵, whether the process is conducted by Facilitative, Evaluative, Directive or Transformative method (see Box 1)¹⁶.

Box 1: Mediation methods

Facilitative mediation: The parties will discuss with each other. The facilitative mediator will focus to assist the parties to communicate with each other, convey the messages between parties, help each party to understand their current position in the dispute, encourage the parties to analyze opinions for resolutions creatively and quickly.

Evaluative mediation: The evaluative mediator will point out his or her assessment on the strong or weak position proposed by each side of the dispute. The evaluative mediator may give some recommendations or provide opinions to each party on their mediation plan so that the parties can choose the optimal one.

Directive mediation: The directive mediator plays the role of a facilitative mediator but at the same time, the mediator persuades the parties to choose the fairest solution for the parties as an evaluative mediator.

Transformative mediation: Transformative mediator will practice as a facilitative mediator but more focus to empower each of the parties and encourage each party to recognize the other party's point of view.

¹⁴ *ibid*, page 49.

¹⁵ *ibid*, page 39.

¹⁶ *ibid*, pp. 39-40.

2. How to keep the confidentiality of the dispute during mediation?

Keeping the case confidential is regarded as the most considerable advantage of mediation compared to other methods of dispute resolution. Confidentiality in mediation is comprised of two criteria, namely: (i) mediation mechanism requiring the non-disclosure of the dispute details to any third party; (ii) mediators are obligated to keep confidential each party's opinions or points of view in relation to the dispute without disclosure to the other party. Consequently, the information provided by the disputants during mediation cannot be used as evidence in other dispute settlement methods.

In arbitration and court methods, each disputant usually must accept having their information and documents of the case disclosed to third parties (such as court or arbitral tribunal, etc.) to protect their rights and interests. Such information and documents must be sent to the court or arbitral tribunal and also to the other disputant¹⁷. In principle, arbitration settlement is not open¹⁸ and court trials can be held in private in some special cases to protect business secrets¹⁹; however, information of the case might risk being disclosed to numerous persons involved in arbitration or court settlement. Still, most of court cases are held publicly. Meanwhile, mediation will usually be handled by one mediator; thus, the information is not to be exposed to more than one person. The mediator is accountable to the mediation rules, code of conducts of the mediation centers or legal normative regulation on confidentiality.

A professional mediator is liable for keeping information, he will only disclose to other disputant when the disputant whose information is disclosed accepts or wishes to do so. Such assurance will encourage the disputants to share with the mediator all dispute details on which they wish to rely on for settlement.

¹⁷ Law on Commercial Arbitration 2010, Article 12; Civil Procedural Code 2015 (CPC 2015), Article 70, clause 9; Article 96.

¹⁸ Law on Commercial Arbitration 2010, Article 4, clause 4.

¹⁹ CPC 2015, Article 15, clause 2; Article 267.

3. Can disputes be settled quickly?

Statistically, dispute settlement under arbitration or court procedures usually lasts from several months to several years, subject to the complexity of cases²⁰ since the duration required for dispute settlement depends mainly on the decision of the court or arbitral tribunal. Meanwhile, the dispute settlement may be shortened when disputes undergo mediation process because the process almost depends on agreements of disputants and the mediator(s)'s facilitation. Usually, mediator discusses with disputants about the mediation schedule in a short period to encourage the disputants to concentrate on settling the dispute within the scheduled period (usually within one day). The longer it takes for the mediation, the lesser possibility of success the dispute settlement will have because of the impact of other factors during dispute settlement. Mediators may ask the disputants to make preparation for their points of view and evidence in advance to achieve successful mediation.

4. The mediation saves cost as compared to other dispute settlement methods, such as court or arbitration

The fee for dispute settlement under mediation method is usually lower than that of resolving disputes under arbitration or court methods. Even in the cases where the disputants can successfully settle their disputes through court-annexed mediation²¹, the disputants are still subject to 50% of the first-instance court fee applied for standard settlement procedure²². Meanwhile, out-of-court mediation will be much more cost-effective since such expense to resolve the dispute is often paid to one to three mediators' work in a short period of time. Mediation fees depend on certain criteria, such as mediation schedule of fee, facilities of each mediation center, the profile of mediators but they are generally more economical for the disputants than settling dispute by arbitration or court. In addition, some

²⁰ Nguyen Hung Quang (April 2017), *"Enforcing contract"*, Report on the Diagnosis of Vietnam Economic Growth, Central Economic Commission (CEC), Media Information Publishing House, page 220.

²¹ The mediation session held prior to the first-instance trial.

²² CPC 2015, Article 147, clause 3.

modern mediation centers have introduced online mediation to further shorten the time and reduce the cost for this method.

5. The disputants can control escalation of the dispute and maintain the business relationship

Mediation is a method of dispute settlement in which the disputants can control escalation of the disputes thanks to settlement time management, process, fees, confidentiality, etc. Through mediation, the disputants can achieve their goals of dispute settlement while minimizing unwanted threats for themselves and maintaining the credibility and business relationship among disputants. The disputants are entitled to terminate the mediation process at any time, either by concluding a successful agreement or selecting other dispute settlement methods. This is also a particular advantage of this method compared to other dispute settlement methods.

6. Dispute settlement procedure is friendly

Vietnamese culture in particular and Asian culture in general encourages the disputants to seek voluntary mediation to resolve disputes rather than bringing the case for trial “*vo phuc dao tung dinh*” (*It is unfortunate to engage in court proceedings*). As mentioned above, the mediation procedure is not as rigid as those of arbitration or court. Mediation is a process in which the disputants “*determine justice themselves*”. Therefore, the disputants themselves shall discuss the sequence of mediation with the mediator. The mediator only acts as a facilitator for the disputants to reach an agreement throughout the process²³. He/she is responsible for appropriately coordinating the mediation procedures so that each party may feel comfortable during the process, leading to less tension among the disputants during dispute settlement.

In mediation method, the disputants or their representatives are the key dispute resolvers. Lawyers or legal consultants only act as dispute

²³ Decree 22/2017/ND-CP, Article 13 and Article 14.

settlement assistants. Legal debates are often discouraged in mediation to avoid unnecessary tension in mediation process. However, the advice by lawyers and legal consultants is still essential for each party to better understand their legal position as well as that of the other party/parties and assess the possibilities of resolving the dispute if mediation was unsuccessful.

III. Tendency of dispute settlement by mediation in Viet Nam's practice

Dispute settlement under court procedures has been recognized as being time-and-cost consuming in Viet Nam. The World Bank's annual Doing Business Reports for more than ten years (from 2004-2020) shows that the duration for contractual dispute settlement in the first-instance court of Viet Nam is 400 days or more (including approximately 250 days for case settlement at court and 150 days of judgment enforcement) and the dispute settlement cost accounts for 29% of the value of the case²⁴. On average, about 2.5% to 3% of the total number of cases handled by the tribunal system annually is overdue²⁵. Moreover, unofficial expenses in the court settlement tend to increase²⁶. With regard to dispute settlement by arbitration, statistics of Vietnam International Commercial Arbitration Center (VIAC) show that the average time for resolving a dispute is 153 days²⁷. This practice pushes businesses to seek other dispute settlement methods, including illegal one²⁸.

²⁴ World Bank, Doing Business, <https://www.doingbusiness.org/en/data>, accessed on October 24, 2019.

²⁵ Nguyen Hung Quang (April 2017), "Enforcing contract", in Report on the Diagnosis of Vietnam Economic Growth, Central Economic Committee, Information and Communications Publishing House; page 217.

²⁶ VCCI, *Provincial Competitiveness Index (PCI) 2015 - Evaluate the Quality of Economic Management to Promote Business Development*, pp. 91 - 92.

²⁷ Ba Tu - Bich Ngoc Nguyen (May 6, 2016), Arbitration shares the burden with the courts, Vietnam Business Forum, <http://enternews.vn/trong-tai-chia-se-ganh-nang-voi-toa.html>, accessed on May 28, 2019.

²⁸ *supra* note 27; page 236.

A recent analysis of correlation between contract enforcement and economic growth in Viet Nam based on statistical data has showed that the practice of contractual dispute settlement in Viet Nam significantly affects the business environment. This practice requires Viet Nam to come up with new methods for dispute settlement which are more flexible to meet business demands of enterprises as well as to attract development investment capital²⁹.

Vietnamese usually says “*Civil matters depend on the parties’ will*”. It shows that settling disputes by negotiation and mediation has existed for a long time in the dispute settlement culture of Viet Nam. In fact, a number of small contract disputes, family disputes or land disputes have been settled through mediation or conciliation (with the participation of the elderly and prestigious persons in the community and family). So far, the number of disputes settled by grassroots conciliation organizations is much greater than that settled by tribunal system³⁰. Grassroots conciliation is recognized as “*reducing the number of cases to be filed to the People’s Court for settlement, saving time and cost for the State and people, contributing to promoting the socio-economic development*”³¹.

Dispute settlement by professional mediation has been stipulated in a number of legal normative documents such as Vietnam Maritime Code, Commercial Law, Labor Code, Land Law, Law on Protection of Consumers’ Rights, etc.³². Particularly, Resolution No. 49/NQ-TW of the Politburo dated June 2, 2005 on the Judicial Reform Strategy to 2020 has set out the task of “*encouraging the settlement of some disputes through negotiation, mediation, arbitration, etc.*”

²⁹ *ibid*, page 237.

³⁰ Ministry of Justice (2012), Statement on the Grassroots Mediation Law Project, page 2.

³¹ *Ibid*.

³² Ba Tu – Bich Ngoc Nguyen, *op. cit.*; Nguyen Hung Quang – Toan Le (2014), A historical overview of Vietnamese land law and dispute resolution, *Resolving Land Dispute in East Asia: Exploring the limits of laws*, pp. 275-290; John Gillespie (2014), Narrating land disputes in three Vietnamese communities, *Resolving Land Dispute in East Asia: Exploring the limits of laws*, pp. 219 – 314.

In the light of Resolution No. 49/NQ-TW, the amended Civil Procedure Code 2015 (**CPC 2015**) has introduced new provisions to promote court-annexed mediation and out-of-court mediation. In particular, Chapter XXXIII CPC 2015 provides for the specific mechanism for recognizing minutes of successful out-of-court mediation. Decree No. 22/2017/ND-CP of the Government dated February 24, 2017 on commercial mediation prescribes the scope, principles, 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 (Decree 22/2017/ND-CP)³³. In general, CPC 2015 and Decree 22/2017/ND-CP have recognized several advantages of mediation as analyzed above, namely: the confidentiality of case's information and the preservation of disputants' reputation³⁴; dispute settlement procedures are agreed upon by the disputants³⁵; the documents on successful mediation results are considered for recognition in accordance with the civil procedure laws³⁶.

On January 22, 2018, the Supreme People's Court (**SPC**) issued Plan No. 11/KH-TANDTC on innovation piloting, strengthening mediation and dialogue in civil and administrative dispute resolution in Hai Phong. After a pilot period in Hai Phong with a high rate of successful mediation and dialogue, SPC continued the pilot implementation in 16 provinces and cities to facilitate the development of the Law on Court-annexed Mediation and Dialogue³⁷. If this Law is passed in 2020, mediation will be introduced widely.

With the policy on international integration, Viet Nam's Free Trade Agreements (FTAs) have provided regulations on settling disputes by

³³ Decree 22/2017/ND-CP, Article 1.

³⁴ *ibid*, Article 4, clause 2 and Article 9, clause 2, point b.

³⁵ *ibid*, Article 13 and Article 14.

³⁶ *ibid*, Article 16; CPC 2015, Chapter XXXIII (Article 416 - 419).

³⁷ SPC (April 12, 2019), *Introduction to the Draft Law on Court-annexed Mediation and Dialogue (Summary)*, International Workshop on the Project of Law on Court-annexed Mediation and Dialogue, page 3.

mediation such as EVFTA³⁸, Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations³⁹, etc. At the end of 2018, Viet Nam was elected as an official member of UNCITRAL⁴⁰. Taking over the new role, Viet Nam needs to promote mediation – one of the important issues recognized in the performance results of the Working Group II: UNCITRAL's Arbitration and Mediation/ Dispute Settlement. In particular, studying and engaging in the Singapore Convention are necessary tasks of the Government to promote commercial mediation in Viet Nam.

IV. Opportunities for developing professional commercial mediation

As analyzed above, the practice of Viet Nam's commercial dispute settlement is now urging Viet Nam to improve the legal framework on mediation, implementation of international treaties on trade and investment, and facilitate the development of different dispute resolutions. It is recommended to continue improving the following issues:

1. Developing commercial mediators

So far there have been 7 out-of-court commercial mediation organizations in Viet Nam, including 4 commercial mediation centers and 3 commercial arbitration centers that also serve commercial mediation⁴¹.

³⁸ *Delegation of EU to Vietnam, op. cit*, Chapter 15, Annex 15-A.

³⁹ *Agreement on Dispute settlement mechanism under the Framework Agreement on Comprehensive economic cooperation between the Republic of India and the Association of Southeast Asian nations*, Article 5

⁴⁰ Viet Nam was elected as a member of UNCITRAL at the 73rd Session of the United Nations General Assembly held on December 18, 2018; Y Tho (February 6, 2019), Remarkable diplomatic events of Viet Nam in 2018, Cong ly E-newspaper, <http://congly.vn/thoi-su/nhung-su-kien-ngoai-giao-viet-nam-noi-bat-nam-2018-285908.html>, accessed on May 28, 2019.

⁴¹ Four commercial mediation centers include: Vietnam International Commercial Mediation Center (VICMC), Vietnam Effective Commercial Mediation Center, Susan Mediation Center (SMC) and West Mediation Center (WMC), and 3 arbitration centers

More 80 qualified persons have registered as ad-hoc commercial mediators in 6 provinces and centrally-run cities⁴². More than 80 qualified persons have registered as ad-hoc commercial mediators in 6 provinces and centrally-run cities⁴³. Thus, after nearly 2 years of implementing Decree 22/2017/ND-CP on commercial mediation, the number of commercial mediation organizations and mediators is still modest and their presence has not been available in many provinces and cities of Viet Nam.

2. Requirements on time of mandatory training for mediators

For efficient development of mediation activities, it is required to have mediators professionally and methodically trained on mediation skills. In the United Kingdom, most of the mediation centers accept mediators who experience at least 40 hours of theoretical and practical training. The Austrian Republic requires at least 200 hours of training for a mediator, as provided in the Mediation Training Act⁴⁴. In the United States, each state has its own requirements for training mediators to be recognized by the Court, but the general requirement is 20 hours of training at minimum⁴⁵. The applicable regulations of Viet Nam do not provide the required time for mediator's training. It is only regulated that commercial mediators must experience training and taking courses on commercial

with commercial mediation function include Vietnam International Arbitration Center (VIAC), Thinh Tri Commercial Arbitration Center (TTCAC), Southern Trade Arbitration Center (STAC).

⁴² Portal of Judicial Support Department, List of mediators in provinces and cities, <http://btp.moj.gov.vn/Pages/hoa-giai-vien.aspx>, accessed on May 27, 2019

⁴³ Portal of Judicial Support Department, List of mediators in provinces and cities, <http://btp.moj.gov.vn/Pages/hoa-giai-vien.aspx>, accessed on May 27, 2019

⁴⁴ James South (April 2009), *Development of commercial mediator skills training in England and Wales*, <https://www.mediate.com/articles/southJ1.cfm>, accessed on May 27, 2019

⁴⁵ Legal Studies, *Court-Certified Mediator Qualification Requirements in the US*, <https://legalstudiesms.com/learning/court-certified-mediator-qualification-requirements/>, accessed on May 27, 2019

mediation held by domestic and foreign organizations⁴⁶. In fact, most of commercial mediation centers and arbitration centers have not yet set forth any required training time for mediators. In 2018, the International Finance Corporation (IFC) collaborated with the Center for Effective Dispute Resolution (CEDR) of the United Kingdom to organize a training program on commercial mediation for a duration of 40 hours. According to the subjective assessment of the author, this training program has laid the foundation for the development of professional commercial mediation in Viet Nam. IFC and CEDR-trained mediators are now mainly involved in commercial mediation activities at the Vietnam International Commercial Mediation Center (VICMC), a member of Vietnam Society of International Law, and Vietnam Mediation Center (VMC) under Vietnam International Arbitration Center (VIAC). Out of the two centers, VICMC is the one that has specific requirements and conditions on required training for mediators.

3. Strengthening legal provisions on ensuring confidentiality in mediation

As analyzed above, the principle of confidentiality protection in mediation is considered an advantage of this method. This principle is stipulated in Decree 22/2017/ND-CP on commercial mediation⁴⁷ and also in the draft Law on Court-annexed Mediation and Dialogue⁴⁸. To ensure the implementation of this principle, mediation centers or arbitration centers should clearly and particularly address the confidentiality in their mediation rules, code of ethics, and code of conduct for mediators. At present, only few mediation centers and arbitration centers intensify this

⁴⁶ Official Letter No. 4001/BTP-BTTP of the Ministry of Justice dated October 18, 2018 guiding the registration of commercial mediators

⁴⁷ *World Bank, Doing Business, op. cit*, Article 4, clause 2; Article 9, clause 2, point c; and Article 10, clause 1

⁴⁸ Draft law on Court-annex Mediation and Dialogue dated March 29, 2019, Article 3, clause 3; Article 4, <https://vbpg.toaan.gov.vn/webcenter/portal/htvb/chi-tiet-vbdt?dDocName=TAND064545>, accessed on May 27, 2019

principle such as VICMC or VMC⁴⁹. In order to enhance this principle in mediation, it also requires the improvement of laws on criminal and administrative sanctions in relation to keeping confidentiality in mediation.

4. Ensuring quick settlement of disputes

As another advantage of mediation is to resolve the disputes quickly. So far, VICMC has been the only center that has publicly applied mediation mechanism with short time of settlement, reasonable fee corresponding to mediation duration and also the first center that establishes online mediation⁵⁰. To further shorten the time required for dispute settlement and ensure the enforcement of successful settlement agreements, it also requires improvement and development on legal provisions related to the recognition for implementation of successful mediation agreements.

5. Completion of legal framework on mediation

In order to promote mediation in Vietnam, legal regulations on mediation should be consistent, especially provisions on favorable conditions for mediation, recognition of successful mediation agreement, time bar in relation to mediation, criteria for mediators. As analyzed above, these matters are inconsistent and unclear in various legal documents, such as Civil Procedure Code 2015, Decree 22/2017, Law on Grassroots Mediation and Land Law⁵¹. For example, the time for mediation under

⁴⁹ Mediation rules of Vietnam International Commercial Mediation Center (VICMC), Article 10.2, Article 14.2 and Article 19; Mediation rules of Vietnam Mediation Center (VMC), Article 9.1 and Article 11

⁵⁰ VICMC, Schedule of Fee, <http://www.vicmc.vn/>.

⁵¹ Nguyen Hung Quang (2018), *Court – A mainstay for out-of-Court mediation*, Court Journal, <https://tapchitoaan.vn/bai-viet/phap-luat/toa-an-diem-tua-cho-hoa-giai-thuong-mai-ngoai-toa-an>, accessed on May 28, 2019; Do Van Dai – Pham Thi Thuy, *Impact of mediation duration on the statute of limitations*, People's Courts Journal No. 01/2019, page 6; Thy Hang - Huyen Trang (January 18, 2018), *An important "milestone" of commercial mediation in Viet Nam*, Vietnam Business Forum, <http://enternews.vn/dau-moc-quan-trong-cua-hoat-dong-hoa-giai-thuong-mai-viet-nam-123665.html>, accessed on May 28, 2019

Decree 22/2017 is not exempted from the time bar of the Civil Procedure Code 2015 while the time for mediation under the draft Law on Court Annexed Mediation and Dialogue is exempted. The laws do not say clearly the scope of court jurisdiction in reviewing the successful mediation agreement for recognition⁵². In addition, procedures for recognizing out-of-court mediation results are relatively complicated and time-consuming⁵³.

V. Conclusion

With the practical trend of using mediation to resolve business-commercial disputes, as well as to promote the development of mediation in Viet Nam, the legal framework and policies of Viet Nam for judicial activities in general and commercial dispute resolution in particular (including commercial dispute mediation) need to be further enhanced according to the aforementioned analysis and recommendations. In addition, intensive research and training activities on alternative dispute resolution (ADR) should be encouraged at legal training institutions in Viet Nam so that knowledge of mediation can be popularized in the Viet Nam society.

VICMC is a commercial mediation practicing center in collaboration with Viet Nam Society of International Law (VSIL); thus, the center will have many opportunities to participate in researching and disseminating dispute settlement resolutions through mediation and other ADR in Viet Nam. VICMC's founding members are experienced law practitioners, law professors and in-depth national and international law researchers, which will help to continually improve VICMC's mediation quality.

In parallel with the development of mediation activities at court, the development of VICMC and other mediation centers and arbitration centers will promote the development of ADR in Viet Nam in general as well as mediation activities in particular, contributing to the improvement of the business environment in Viet Nam.

⁵² *Ibid*

⁵³ *Nguyen Hung Quang, op. cit*, Chapter XXXIII (Article 416 - 419); *Agreement on Dispute Settlement, op. cit*, page 3.