

## Comments on the Law on Court-annexed mediation and dialogue 2020

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*On June 16, 2020, the National Assembly passed the Law on Court-annexed mediation and dialogue (**Law on CAMD**) which shall officially come into effect on January 1, 2021. Law on CAMD is established to provide individuals and organizations an additional option for dispute resolution method and expected to minimize the case backlog pressure for the Court. In this Legal Newsletter, NHQuang would summarize and comment on the major regulations and principles of this Law for an overview of the statute.*

### **The scope of court-annexed mediation and dialogue**

The Law on CAMD governs 2 activities including: court-annexed mediation and court-annexed dialogue. Court-annexed mediation is applied for civil cases and matters<sup>1</sup> while court-annexed dialogue is applied for administration lawsuits<sup>2</sup>. 2 differences can be found between mediation, dialogue activities under the Law on CAMD and those under the Civil Procedure Code and the Law on Administrative Procedure, namely:

(i) The dispute settlement body (mediators with regard to court-annexed mediation and dialogue, Judges for mediation, dialogue activities in proceedings); and

(ii) Time of dispute settlement (court-annexed mediation and dialogue is conducted *before the Court accepts a case for settlement*<sup>3</sup>, whereas mediation and dialogue in proceedings is conducted *after the Court accepts a case for settlement and before the first-instance trial is held*<sup>4</sup>).

It should be noted that the Law on CAMD shall not apply to the mediation and dialogue activities governed by other laws<sup>5</sup> (some other laws also stipulating mediation, dialogue include Law on

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<sup>1</sup> Law on CAMD, Article 1, clause 2, Article 2, clause 2

The disputes include disputes on civil, marriage and family, business, commerce, and labor matters; Petitions for recognition of voluntary divorces (collectively referred to as civil cases and matters) under the Civil Procedure Code within the jurisdiction of the court.

<sup>2</sup> Law on CAMD, Article 1, clause 2, Article 2, clause 3

The lawsuits against administrative decisions or act under the Law on Administrative Procedure within the jurisdiction of the court.

<sup>3</sup> Law on CAMD, Article 1, clause 2

<sup>4</sup> Civil Procedure Code 2015, Article 205, clause 1

<sup>5</sup> Law on CAMD, Article 1, clause 3

conciliation at grass-roots level, Law on Commercial Arbitration, Labor Code, Law on Intellectual Property, Law on Protection of Consumers' Rights).

Court-annexed mediation	Court-annexed dialogue
<ul style="list-style-type: none"><li>• Mediation activities are conducted by mediator before the Court accepts a <b>the civil case/matter</b> for settlement to support the involved parties to reach an agreement on resolution of civil matters.</li></ul>	<ul style="list-style-type: none"><li>• Dialogue activities are conducted by mediator before the Court accepts an <b>administrative lawsuit</b> for settlement to support the involved parties to reach an agreement on resolution of the administrative claim.</li></ul>

There are different perspectives about the scope of court-annexed mediation and dialogue during the law-making process. *According to the first perspective*, Law on CAMD should be limited to the scope and subjects including civil disputes, administrative lawsuits subject to the Court's jurisdiction and there are petitions, written requests asking the court to settle such cases under the Civil Procedure Code and the Law on Administrative Procedure. This way of provision shall help to reduce the number of disputes that the court is supposed to accept and handle; be compatible with the facilities conditions and the number of mediators; not overlap or contradict with the available mediation and dialogue mechanisms and hence, there is no need to amend other relevant laws.

*The second perspective* encourages to expand the scope of the Law on CAMD to civil disputes, administrative lawsuits which are subject to the Court's jurisdiction, but the parties select to follow court-annexed mediation and dialogue mechanism instead of litigation procedures. This way of provision shall facilitate and encourage the involved parties to choose mediation and dialogue for settling their disputes without overlapping or contradicting the applicable legal mechanisms.

After considering the foregoing arguments, the National Assembly has decided to draft the law in line with the first perspective.

### **Costs for court-annexed mediation and dialogue**

During law making, there is an opinion that the State should be responsible to ensure the budget for court-annexed mediation and dialogue and should not collect any fees from the involved parties to encourage their use of mediation and dialogue for dispute resolution, especially at the time when the Law on CAMD has just taken effect and it takes time to come into the daily life. If a dispute can be successfully settled by court-annexed mediation and dialogue, that dispute does not have to undergo first-instance trial, appellate trial, cassation review and revision procedures under the laws on litigation procedure and shall save a massive amount for the State budget in the case that the involved parties voluntarily comply with/implement the successful mediation and dialogue result<sup>6</sup>. The practical mediation pilot program shows that the costs for

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<sup>6</sup> Statement No. 28/TTr-TANDTC on Law on CAMD, page 12

dispute settlement by court-annexed mediation and dialogue reduce by 80% compared to those to settle the same case under first instance trial<sup>7</sup>.

On the flip side, there is another opinion that while maintaining a financial regime to support and encourage the parties to select court-annexed mediation and dialogue, the State should collect fees in some specific situations with reasonable amount to have the parties share financial burden with the State budget.<sup>8</sup>

After considering and assessing the impacts of the foregoing opinions, the People's Supreme Court provides the following regulations which reconciles the 2 opinions:

*The costs for court-annexed mediation and dialogue are ensured by the State budget, except for the following cases where the parties participating in court-annexed mediation and dialogue procedures shall bear the costs:*<sup>9</sup>

- (i) *Costs for court-annexed mediation regarding business/commercial disputes with certain amounts of value;*
- (ii) *Costs arising when the involved parties agree to select the location for mediation and dialogue outside the Court house;*
- (iii) *Costs arising when mediators are supposed to examine the status of the assets involved in civil cases and matters or administrative lawsuit and such assets locate beyond the administrative boundaries of the province where the Court having the jurisdiction to settle the dispute is based;*
- (iv) *Cost for interpretation;*

### **Confidential principle<sup>10</sup>**

Ensuring the confidentiality of cases is the major advantage of the mediation method in compared with other methods for dispute resolution. The confidentiality in mediation includes 2 aspects: (i) the mediation mechanism must ensure that the case information are kept confidential and not disclosed to any third parties; (ii) the mediators must keep confidential the point of view of each party on dispute resolution and must not disclose to any other party involved in the dispute. On the basis of the foregoing 2 aspects, the Law on CAMD stipulates that the information provided by the parties in mediation shall not be used as the evidence in other dispute resolution procedures<sup>11</sup> (this provision will relieve the cautiousness of the parties

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<sup>7</sup> Statement No. 28/TTr-TANDTC on Law on CAMD, page 12

<sup>8</sup> Statement No. 28/TTr-TANDTC on Law on CAMD, page 13

<sup>9</sup> Law on CAMD, Article 9

<sup>10</sup> Law on CAMD, Article 4

<sup>11</sup> Law on CAMD, Article 4, clause 3

involved in mediation). However, the Law on CAMD also provides exceptions for this provision, i.e., if a statement/document submitted by the parties is subject to the scope of information stipulated by the applicable Criminal Code, such information can still be utilized as evidence in accordance with the provisions of this Code<sup>12</sup>.

**Note:**

*All analyses and comments herein are for reference only. This article is not considered as an official legal opinion to apply in any specific case. For further particular advices, please contact us directly.*

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Nguyen Hung Quang, *Comment on Research report assessing the pilot program of court-annexed mediation and dialogue in Viet Nam and Draft Law on Court-annexed mediation and dialogue*, UNDP\_TANDTC, Workshop dated May 15, 2020, page 3

<sup>12</sup> Law on CAMD, Article 4, clause 3, point b

Nguyen Hung Quang, *Comment on Research report and Draft Law on Court-annexed mediation and dialogue*, UNDP\_TANDTC, Workshop dated May 15, 2020, page 3 and 4