

COMMERCIAL MEDIATION IN VIETNAM: PARTY AUTONOMY, SETTLEMENT ENFORCEMENT AND INSTITUTIONAL DEVELOPMENT

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ABSTRACT

Commercial mediation offers enterprises a consensual, confidential and potentially relationship-preserving alternative to adversarial dispute resolution. This article analyzes Vietnam's legal framework for commercial mediation, focusing on Decree No. 22/2017/ND-CP, the Civil Procedure Code 2015 and relevant commercial-law principles. The discussion distinguishes the mediator's facilitative role from adjudication, examines party autonomy and procedural fairness, and evaluates the legal significance of written settlements and judicial recognition. It identifies practical constraints including limited awareness, uncertainty about the interaction of mediation with pending proceedings, uneven mediator competence, and difficulties translating agreement into reliable performance. The article proposes clearer guidance on settlement drafting, screening for voluntariness and power imbalance, professional standards, institutional transparency and coherent judicial practice. It also emphasizes that the current consolidated legal status of Decree No. 22/2017/ND-CP must be checked because official legal databases record partial expiry of some provisions.

Keyword: *Commercial mediation; alternative dispute resolution; settlement; enforceability; party autonomy; Vietnam.*

1. INTRODUCTION

Commercial disagreement is unavoidable in markets characterized by complex supply chains, long-term distribution agreements, construction contracts and cross-border services. Disputes impose not only litigation costs but also lost management time and damage to commercial relationships. Mediation responds to these costs by allowing parties to structure their own settlement with help from a neutral third party.

Vietnam formalized an institutional approach to commercial mediation in Decree No. 22/2017/ND-CP. The broader legal context includes the Civil Procedure Code 2015 and the Commercial Law 2005. This framework opens opportunities for consensual resolution but also requires careful distinction between private mediation services, conciliation before the courts and judgments or decisions that are immediately enforceable.

This paper uses doctrinal analysis and comparative policy insights from the UNCITRAL Model Law on International Commercial Mediation. It examines how voluntary

participation, confidentiality, neutrality and enforcement interact, and argues that the credibility of mediation depends on the quality of procedural safeguards and settlement documentation, not merely the existence of institutions.

2. NATURE AND LEGAL FRAMEWORK OF COMMERCIAL MEDIATION

Mediation differs from arbitration because a mediator does not normally issue a binding determination of rights and obligations. The parties control whether an agreement is reached and ordinarily determine its substantive terms. Arbitration and litigation can provide authoritative outcomes even when one party objects. Mediation instead seeks an agreement that is acceptable to both parties and supported by their voluntary commitment.

Decree No. 22/2017/ND-CP establishes the basic institutional framework for commercial mediation, including principles, mediators and mediation organizations. The Civil Procedure Code 2015 provides procedures relevant to court recognition of successful out-of-court mediation

under applicable conditions. Because the official legal database identifies Decree No. 22/2017/ND-CP as partially expired, publication-quality analysis of any individual provision should be based on a current consolidated text and not the unamended 2017 instrument alone.

The legal architecture requires separation between three questions: whether a mediation process was properly conducted, whether the resulting agreement is valid under substantive contract principles, and whether the agreement can receive a form of judicial recognition that facilitates enforcement. A favorable answer to the first question cannot automatically resolve the other two. Parties and advisers should examine legality, capacity, specificity and enforceability before signing.

3. PARTY AUTONOMY, NEUTRALITY AND PROCEDURAL FAIRNESS

Party autonomy is the distinctive advantage of mediation. Participants can choose a mediator, identify the issues to be discussed, agree upon procedures and explore commercial solutions beyond what a court might order. They may restructure payment schedules, adjust delivery obligations or preserve future cooperation. However, autonomy is meaningful only when both sides can participate freely and with sufficient information.

A mediator's neutrality should be evaluated in relation to financial interests, prior professional relationships and the circumstances of appointment. Disclosure of potential conflicts at the outset protects both the process and the legitimacy of the settlement. It is also necessary to preserve clarity regarding the mediator's function: facilitation and reality testing are compatible with neutrality, but undisclosed advocacy for one party is not.

Confidentiality encourages frank discussion but should not be treated as absolute. Contracts and institutional rules should distinguish private communications, joint-session statements, pre-existing evidence and disclosures that are legally mandated. A document does not become permanently insulated from all legal processes merely because it was shown during mediation. Clear ground rules prevent strategic misunderstanding and help preserve confidence.

Disparities in bargaining power may be substantial when a large purchaser negotiates with a small supplier facing imminent insolvency. The mediator should not replace a party's judgment, but can support balanced participation through caucuses, opportunities for independent advice, realistic scheduling and verification that proposed obligations are understood. Procedural fairness and self-determination are complementary rather than competing objectives.

4. FROM NEGOTIATED AGREEMENT TO EFFECTIVE PERFORMANCE

A settlement may be commercially attractive yet legally fragile. Vague language such as 'the parties will endeavor to cooperate' cannot reliably govern payment, release of claims or transfer of assets. Effective drafting identifies the parties, disputes covered, exact obligations, deadlines, currency and payment mechanisms, consequences of default, tax responsibilities and the legal treatment of pending proceedings.

Where judicial recognition is contemplated, the parties should examine applicable procedural criteria before assuming that recognition will be available. The Civil Procedure Code's regime for recognizing successful out-of-court mediation has its own requirements and limitations. It should not be conflated with the recognition of arbitral awards or with routine contractual enforcement. The appropriate legal route depends on the settlement's content and procedural posture.

A properly drafted agreement must also address contingencies. If settlement performance requires third-party consent, regulatory approval or transfer of registered property, the instrument should indicate who obtains authorization and what happens if it is refused. Confidentiality clauses should not obstruct necessary disclosures to courts, auditors or public authorities. These issues are frequently more consequential than the wording of aspirational statements about amicable resolution.

International disputes add language, governing-law and enforcement complexities. The 2018 United Nations Convention on International Settlement Agreements Resulting from Mediation, commonly called the Singapore Convention, offers an important comparative framework, but its application to any given state depends on that state's treaty status and reservations. Analysis should not assume that every foreign mediated

settlement is enforceable through this mechanism in Vietnam.

5. INSTITUTIONAL CAPACITY AND ACCESS TO MEDIATION

Mediation institutions need transparent fee structures, robust conflict checks, reliable records and clear ethical procedures. Mediation may be relatively inexpensive, but the costs of experienced advisers, expert valuation and management participation can still be considerable. Businesses should receive realistic explanations of costs, likely stages and the limitations of the mediator's role.

Professional competence extends beyond knowledge of negotiation techniques. Mediators handling construction or shareholder disputes need familiarity with commercial accounting, corporate authority, security interests and relevant sectoral regulation. Where a specialized issue lies outside the mediator's expertise, the process should provide a route for expert input rather than relying on intuition or institutional reputation.

Awareness also matters. Parties may agree to mediation clauses without knowing how to activate them, how a mediator is appointed when one side refuses cooperation, or whether limitation periods continue to run. Better model clauses and accessible institutional guidance could reduce uncertainty. Training for lawyers and company legal officers would help integrate mediation into dispute-management planning before relations deteriorate.

6. REFORM DIRECTIONS

First, guidance should distinguish more clearly among pre-dispute mediation clauses, agreements to mediate after a dispute, mediated settlement contracts and judicial recognition decisions. A single generic label 'mediation agreement' can conceal materially different legal effects. Model instruments should explain the consequences of withdrawal and partial settlement.

Second, settlement recognition practice should be made more predictable through accessible, anonymized court decisions and procedural guidance. Predictability does not require automatic acceptance of every privately drafted term; courts must retain the ability to assess voluntariness, legality and third-party rights.

What matters is that parties understand the substantive and evidentiary tests in advance.

Third, mediator accreditation and continuing development should emphasize conflicts of interest, informed consent and the documentation of complex settlements. Institutions should publish ethical rules and transparent complaint processes. Training should include the identification of coercion, financial pressure and information asymmetry.

Fourth, policy should encourage proportionate use of online mediation. Remote meetings reduce travel costs but introduce risks of identity uncertainty, confidentiality breaches and unequal digital access. Secure communication channels, verification of authority to settle and procedures for technical interruption should become standard operational safeguards.

Finally, future statutory refinement should be empirically informed. It would be premature to infer mediation's success rate without reliable data. Aggregate anonymized information on case types, duration, settlement rates and subsequent performance could reveal which interventions materially improve access to effective dispute resolution.

7. CONCLUSION

Commercial mediation provides a flexible complement to adjudication in Vietnam, particularly where preserving business relationships and customizing outcomes are valuable. Its promise rests on voluntariness, neutrality, professional competence and enforceable, carefully drafted settlements. Policy reform should prioritize clarity about the legal status of mediated agreements, predictable recognition procedures, accessible institutional rules and safeguards for unequal bargaining situations. These improvements would make mediation a dependable dispute-management choice rather than a procedural formality.

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