



FAQ ON MEDIATION IN SOUTHEAST ASIA

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INTRODUCTION

Mediation is a confidential, fast, flexible, and cost-effective dispute resolution ("DR") method based on the mutual consent of the involved parties. Breaches of contract, business torts and many other disputes can be successfully submitted and resolved through mediation. Companies, contractors, individuals, banks, real estate owners, and government bodies — or any combination thereof — can initiate and be parties to a commercial mediation.

The parties often find a solution to their dispute through mediation, thanks to a structured process undertaken at a tempo set by a mediator, who remains neutral and impartial throughout. The principle is to unearth the parties' common interests, communicate, compromise, and have the parties achieve a mutually satisfactory outcome, one that is not imposed by the courts.

Through this process, the parties are thus given greater agency and decision-making power to resolve their dispute. The parties often arrive at a mutually beneficial solution, and to a mediated settlement agreement ("MSA").

Disputing parties may decide together to pursue this path of dispute resolution at any stage before legal action is enjoined. A judge may further recommend mediation at any stage of legal proceedings in a process known as "judicial" or "court-supervised" mediation. If both parties agree, mediation may even be started after proceedings have begun. If the mediation fails, a judge can still adjudicate the dispute.

Private parties increasingly choose mediation as an alternative to a trial, at least as a first step. If successful, mediation can help prevent a potentially lengthy, costly, and time-consuming process, with "private" or "conventional" mediation.

Mediation and its benefits are increasingly recognised in Southeast Asia (notably in Singapore), where the mediation process fits perfectly into the judicial landscape and complements traditional legal recourse.

Mediation is a constructive and less adversarial means of resolving commercial disagreements, especially as protracted court action sours otherwise fruitful and mutually beneficial business dealings. In business litigation, it amply provides for the continuation of projects, serves as a salve for relatively minor contractual conflicts, and helps preserve business relationships. Mediation often gives rise to more robust and ambitious contractual relationships.

MEDIATION GOES MAINSTREAM: THE SINGAPORE EXPERIENCE

In Singapore, mediation has advanced to mainstream. The signing of the Singapore Convention on Mediation ("SCM") on 7 August 2019 has raised expectations that mediation will soon gain international acceptance.

By providing a uniform and efficient framework for the enforcement and invocation of international settlement agreements resulting from mediation, the SCM provides parties to an international commercial dispute with an alternative to litigation and arbitration.

Singapore's success with the mediation as an alternative dispute resolution ("ADR") process results from a coordinated strategy by multiple stakeholders and agencies.

It began in the 1990s, with the Singapore Courts pushing for ADR to become the non-adversarial method of dispute resolution. Mediation was identified as one form of ADR.

In 1997, the Singapore Mediation Centre was established to focus on developing the use of mediation as a form of dispute resolution. Since then, the Supreme Court has worked closely with the Singapore Mediation Centre to resolve cases by mediation.

Private sector initiatives were undertaken to increase the knowledge and awareness of Mediation, including the Singapore Mediation Lecture series. First conceived by Loong Seng Onn, former Executive Director of the Singapore Mediation Centre, and Francis Goh, International Mediator and Partner at Harry Elias Partnership, in 2010 as a platform to educate the public about the practice of mediation, the Singapore Mediation Lecture series was a joint



initiative by Harry Elias Partnership, the Singapore Mediation Centre and the Singapore Management University. The series has now run through 10 editions.

In 2014, the Singapore International Mediation Centre was formed to promote international mediation in cross-border commercial transactions.

The same year, the Singapore International Mediation Institute (“SIMI”) was set up as the premier independent professional standards body for mediation in Singapore and the region. The SIMI Credentialing Scheme is a professional standards scheme developed by SIMI to recognize the experience of professional mediators. This was a significant innovation because it provided a robust framework to ensure that the public could identify high-quality mediators. Such transparency and standards are important to establish trust in mediation as a dispute resolution process.

It was important that legislation be put in place to promote and support the use of mediation.

The Mediation Act 2017 was promulgated to clarify the common law rules of confidentiality and admissibility in the context of mediation. In addition, a party was given the right to seek a stay of court proceedings to bring an agreement to mediate. The Mediation Act 2017 also provided that a mediated settlement agreement could be registered as an Order of Court and enforced accordingly.

This provided much needed 'bite' for the mediation process.

To maintain standards of mediation, this course of action is only available to Designated Service Providers, which are, among others, the Singapore Mediation Centre, the Singapore International Mediation Centre, and SIMI Certified Mediators.

The Singapore Rules of Court 2021 were gazetted on 1 December 2021 and commenced operation on 1 April 2022. The new Rules of Court were intended to modernize the litigation process, and one of the key changes included Order 5, which provided that "a party to any proceedings has the duty to consider an amicable resolution of the party's dispute before the commencement and during the course of any action or appeal." Order 21 provides, among other things, that the Court may disallow or reduce a successful party's costs or order that party to pay costs where a party has not discharged the duty to consider an amicable resolution of the dispute.

The SCM added an international flavor to mediation in Singapore. Singapore signed the SCM on 7 August 2019 and ratified it on 12 September 2020. This allows parties involved in cross-border commercial disputes to go directly to the Courts of countries that have signed and ratified the SCM to enforce their mediated settlement agreements (Sword) or to raise a defence that the matter in dispute had already been settled (Shield).

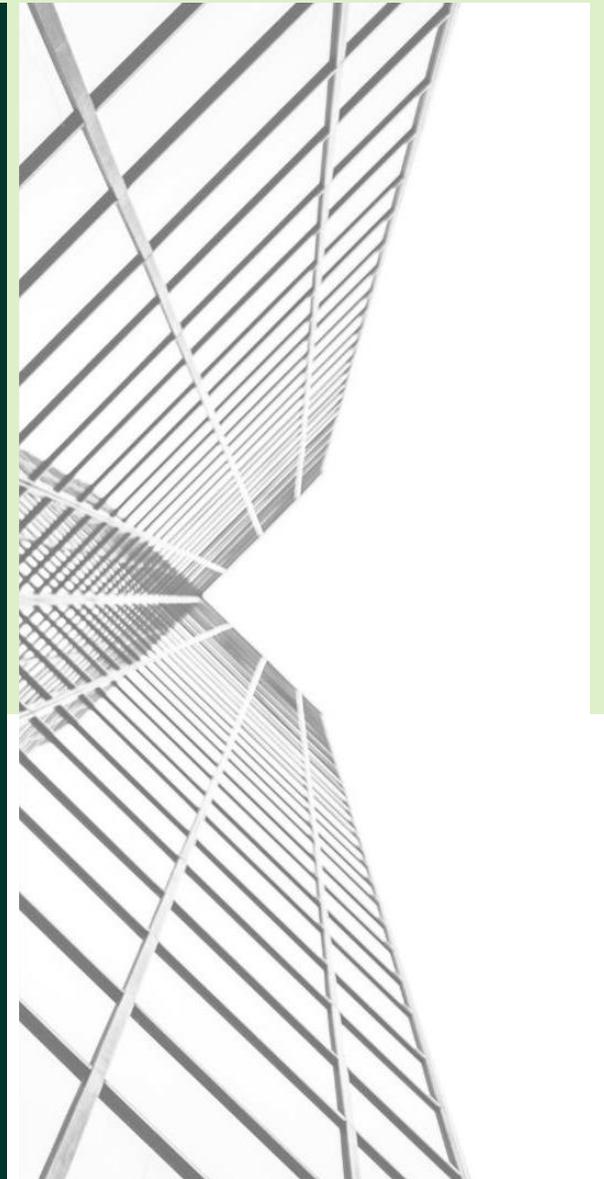
Given the rising trend in Singapore, it is believed that more countries in South-East Asia will see the benefits of mediation and take decisive steps to bring mediation mainstream in their jurisdictions. Furthermore, as more countries in Southeast Asia sign and ratify the SCM, we will see what is better quoted in the words of the Honourable Chief Justice Sundaresh Menon of the Supreme Court of Singapore, the Golden Age of mediation!

COMPARATIVE FRAMEWORK

The mediation process is not overly regulated in Southeast Asia, allowing it to preserve its hallmarks and most attractive qualities: the autonomy of the parties and the freedom it brings to adjust the content of any settlement agreement duly reached.

On the other hand, laws are valuable to regulate the training of mediators and ensure that mediation is given an integral and complementary role alongside the judicial system and other alternative dispute resolution mechanisms.

This mediation FAQ provides comprehensive and up-to-date insights into the spectrum of mediation regulations across Southeast Asia. It will prove to be an invaluable tool that is welcomed by litigating lawyers, attorneys and notably the general counsels working in a wide range of cross-border practices and companies facing disputes, alike.



BANGLADESH

1. What are the laws, rules and regulations that govern mediation in Bangladesh?

The legal mechanism for mediation in Bangladesh is still developing. Mediation was introduced by an amendment in 2003 to the Code of Civil Procedure 1908 ("CPC") as an ADR mechanism for civil matters.

Bangladesh International Arbitration Centre ("BIAC") has its own Mediation Rules, 2014 and Code of Conduct, 2014. It suggests that BIAC-compliant mediation be pursued before a dispute is referred directly to the BIAC for resolution. Additionally, any dispute shall be referred to BIAC for settlement through mediation in accordance with BIAC Mediation Rules before such dispute is submitted to court or arbitration.

Under the provision, at the initial filing stage of a civil suit, the Court shall adjourn the hearing and refer the dispute to mediation. The Court either mediates the dispute itself or refers it to a legal-aid officer or to professional mediators. If the mediation is successful and a settlement agreement is reached, the Court will accept the settlement agreement and pass a judgement accordingly. If the mediation is unsuccessful, the Court will resume regular civil proceedings.

Further, Order 23 of the CPC allows parties to withdraw a civil suit at any stage of the trial. Under Order 23, if the Court is satisfied that the suit is adjusted or satisfied through a compromise between the parties, the Court will record the agreement and pass a decree.

In Bangladesh, an out-of-court settlement is also possible in certain criminal cases. Under Section 345 of the Code of Criminal Procedure 1898 ("CRPC"), certain minor offences may be compounded by aggrieved parties. Some offences under Section 345 (1) of the CRPC may be compounded by the parties, even outside the Court. However, the offences under Section 345 (2) of the CRPC can only be compounded with the permission of the Court. Therefore, in respect of such offences, an application seeking permission to compound the offence must be made to the Court.

Moreover, the Bangladesh Labour Act 2006 ("BLA") also allows parties to resolve their disputes through ADR. In relation to labour disputes, parties

are mandatorily required to try and resolve their disputes through one of the ADR mechanisms under the BLA before approaching the Labour Court.

a) What are the different types of mediation in Bangladesh?

Both court-annexed mediation and private commercial mediation are mediation methods used in Bangladesh. However, no specific law or legal provision regulates out-of-court or private mediation.

b) What qualifications does a mediator need in Bangladesh? How is a mediator appointed?

According to Section 89A of the CPC, any "suitable person" can be appointed as a mediator, except for government officials and individuals with conflicts of interest, such as parties' legal representatives.

c) Is Bangladesh a party to the Singapore Mediation Convention?

No.

d) Are there any other considerations or special treatments for mediation under the law?

Pursuant to Section 89A of the CPC, when a dispute is referred to mediation, the Court adjourns litigation proceedings until the mediation procedure is over.

Additionally, if the mediation is successful, under the CPC, the Court will refund the parties any court fees already paid.

2. At which stages of a dispute can mediation be used?

Since mediation is a voluntary process, it can be used at any stage of a dispute. According to Section 89A of the CPC, parties are allowed to mediate once litigation proceedings have been initiated at any stage of the proceedings, including the appeal stage.

3. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

The use of mediation as an ADR mechanism remains rare in Bangladesh. However, mediation is becoming more common for civil disputes, particularly for commercial, property, contractual and tortious matters.

4. Are there any mediation bodies or forums in Bangladesh?

There is no statutory body regulating mediation in Bangladesh. The BIAC is a non-profit organisation that provides mediation services with its panel of mediators.

Additionally, another non-profit organisation, the Bangladesh International Mediation Society ("BIMS"), was created in 2017. BIMS promotes mediation by organising training sessions and workshops in collaboration with international ADR organisations.

5. Do you generally see mediation in dispute resolution clauses in contracts in Bangladesh, either as a stand-alone provision or as a pre-requisite for arbitration or litigation?

It is still uncommon to see mediation in dispute resolution clauses in Bangladesh law-governed contracts, either as a stand-alone provision or as a pre-requisite for arbitration or litigation. However, mediation may be inserted into a dispute resolution clause as a pre-requisite mechanism for arbitration in certain agreements governed by foreign law.

6. Do you see mediation as a rising phenomenon in Bangladesh? Is mediation advocacy on the rise with lawyers and other professionals?

Mediation is a new ADR mechanism in Bangladesh. Nevertheless, we have been observing a gradual rise in interest in mediation among professionals in the legal field.

Furthermore, we have also seen a rise in interest among professionals in acquiring international accreditation for mediation from international ADR institutions.

7. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in Bangladesh?

No.

8. Do courts in Bangladesh give orders to execute settlement agreements issued from successful mediations?

Pursuant to Section 89A of the CPC, the courts will refer a civil dispute for mediation. If the mediation is successful, the courts usually allow settlement agreements by the parties to form part of a decree or order, and pass judgements accordingly.

CAMBODIA

1. What are the laws, rules and regulations that govern mediation in Cambodia?

The Act amending the Civil Procedure Code (No.32) B.E. 2563 ("Act") was published in the Royal Gazette on 8 September 2020 and came into force on 7 November 2020. The Act introduced a legal provision allowing a party to a dispute to request in-court civil mediation even before a complaint is filed with the Court.

a) What are the different types of mediation in Cambodia?

Out-of-court, private and court-supervised mediation both exist in Cambodia.

b) What qualifications must a mediator have in Cambodia? How is a mediator appointed?

This is not regulated yet.

c) Is Cambodia a party to the Singapore Mediation Convention?

No.

d) Are there any other important considerations or special treatments for mediation under the law?

In the event parties can reach a mutual agreement in an in court civil mediation, the mediator refers the a to the Court, which determines whether the solution found by the parties adheres to the principle of good faith, is not contrary to the law, and is in conformity with the parties' true intentions.

Upon this determination, the Court will allow the parties to sign a settlement. The parties have the option to request the Court to render a judgement that will reflect the settlement agreement.

If the Civil Court renders a judgment that reflects a settlement agreement between the parties, there is, in principle, no right of appeal against this judgement — except in cases of fraud or violation of the rules of public order.

2. At which stages of a dispute can mediation be used?

Mediation can be used at any stage of a dispute.

3. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

Mediation is expected to grow in many areas of civil disputes, particularly commercial.

4. Are there any mediation bodies or forums in Cambodia?

The government's Justice Service Centers ("JSC") provide mediation services at the local commune council level for small civil disputes on debts, contracts, land borders, farming issues and slander.

The Ministry of Justice's mediation and Local Justice Department, in collaboration with non-governmental organisations such as the Cambodian Center for Mediation ("CCM"), provides mediation training.

5. Do you generally see mediation in dispute resolution clauses in contracts in Cambodia, either as a stand-alone provision or as a prerequisite for arbitration or litigation?

It is rare to come across stand-alone mediation clauses in contracts, although they may figure in international commercial contracts as an ADR before litigation or arbitration.

6. Do you see mediation as a rising phenomenon in Cambodia? Is mediation advocacy on the rise among lawyers and other professionals?

Even if mediation has traditionally been used to solve disputes in a non-structured way in small communities, Cambodia has yet to establish and nurture a culture of mediation across the country's professionals, particularly in the legal profession.

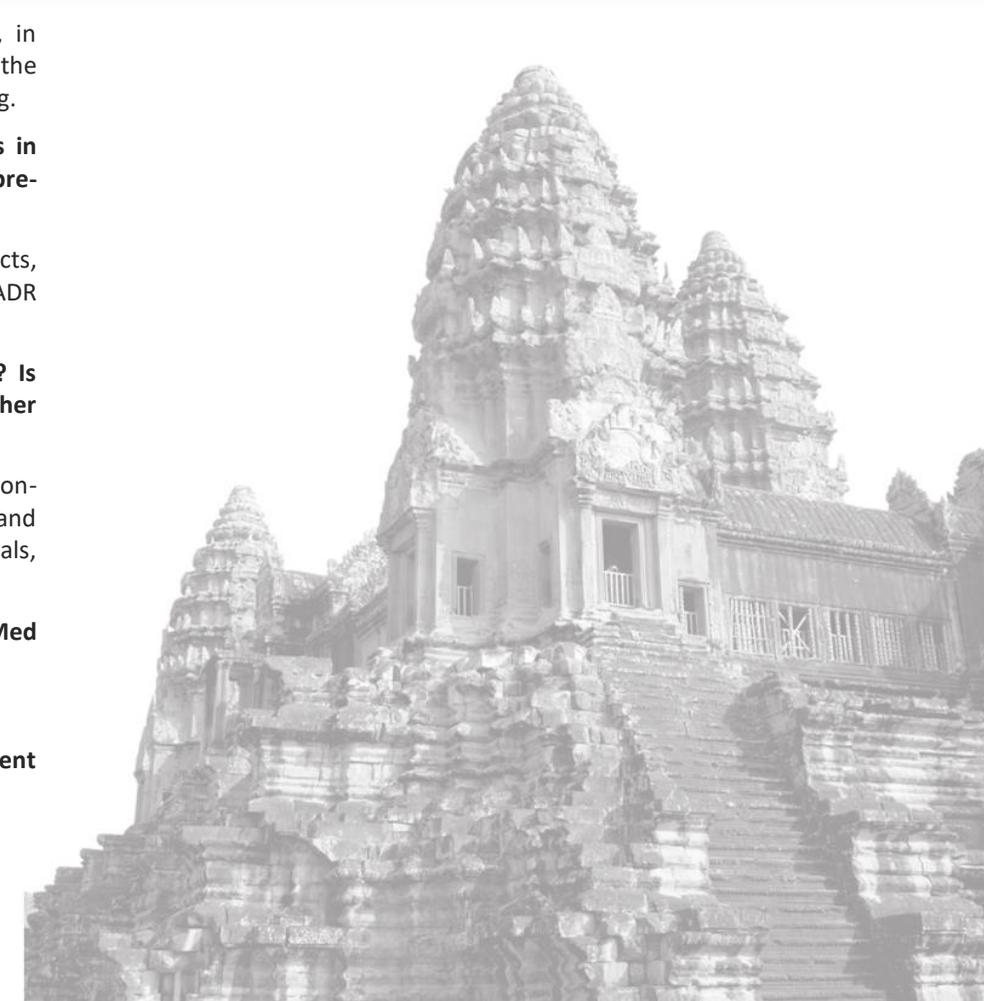
7. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in Cambodia?

No.

8. Do courts in Cambodia give orders to execute settlement agreements issued from successful mediations?

If a court renders a judgment that reflects a mediated settlement agreement between the parties, then orders are made to execute the court judgement.

In other cases, the mediated settlement agreement has the legal value of a contract between the parties. The parties have the option to strengthen the enforceability of the settlement agreements by requesting the Court to incorporate it as a settlement deed, which has the same executorial force as a final and binding court decision.



INDONESIA

1. What are the laws, rules, and regulations governing mediation in Indonesia?

Mediation is generally regulated under Supreme Court Regulation No. 1 of 2016 concerning mediation in Court Procedure ("SCR 1/2016"), and Law No. 30 of 1999 concerning Arbitration and Alternative Disputes Resolutions ("Law 30/1999").

a) What are the different types of mediation in Indonesia?

There are two types of mediation.

Firstly, mediation in Court, which should be the first attempt for all civil disputes submitted in the Court to be resolved through mediation. The first step lasts up to 30 days of court-ordered mediation.

Secondly, there is mediation outside the Courts as a form of ADR. In this case, civil disputes can be settled by the parties through ADR, including through mediation, based on the good faith of the parties.

Note: mediation of legal disputes in certain sectors is regulated by separate laws and regulations, including disputes pertaining to labour, industrial relations, environmental issues, and the financial sector.

b) What qualifications does a mediator need in Indonesia? How is a mediator appointed?

It depends on the type of dispute and the economic sector it involves. For example, a mediator in Court (SCR 1/2016) must be a judge or hold a mediator certificate issued by the Supreme Court or by an agency accredited by the Supreme Court.

For disputes in industrial relations, the mediator must be an officer in the labour authority office.

In general, a mediator may be appointed by the parties in dispute based upon their agreement, or the mediator is appointed by the relevant authority, such as a high court.

c) Is Indonesia a party to the Singapore mediation Convention?

No.

d) Are there any other important considerations or special treatments for mediation under the law?

For court mediation, if the plaintiff is found to be in bad faith by the mediator and reported as such by the mediator to the judge, the complaint submitted by the plaintiff will be declared to be unreceivable.

For civil cases, the judge will always encourage the parties to settle until the judge finally decides the dispute or complaint.

Accordingly, the parties may request a settlement attempt during the case examination, upon which the judge will act as a mediator and the hearing will be adjourned for 14 days.

2. At which stages of a dispute can mediation be used?

Mediation can be used at any time until the dispute is resolved by the judge, including the pre-hearing and hearing stages.

3. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

Mediation has been used in general civil cases, including but not limited to family, torts, labour, environment, forestry, human rights and consumer protection disputes.

4. Are there any mediation bodies or forums in Indonesia?

Yes, including the Indonesian National Mediation Center (Pusat Mediasi Nasional ("PMN")), the Indonesian Institute for Conflict Transformation ("IICT"), the Indonesian National Board of Arbitration ("BANI"), and the Indonesian Capital Market Arbitration Board ("BAPMI").

5. Do you generally see mediation in dispute resolution clauses in contracts in Indonesia, either as a stand-alone provision or as a pre-requisite for arbitration or litigation?

It remains uncommon to see mediation in dispute resolution clauses in contracts in Indonesia.

6. Do you see mediation as a rising phenomenon in Indonesia? Is mediation advocacy on the rise among lawyers and other professionals?

Mediation has traditionally been considered part of the court process with the mandatory stages and actions prescribed by law.

Outside the court, mediation conducted in good faith and voluntarily by parties to settle their dispute rarely happens in practice.

7. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in Indonesia?

No.

8. Do the courts in Indonesia give orders to execute settlement agreements issued from successful mediations?

Based on the submission of the settlement agreement by the mediator, the court may record the agreement as a settlement deed, deemed as a final and binding court decision.



LAO PDR

1. What are the laws, rules and regulations that govern mediation in Lao PDR?

a) What are the different types of mediation in Lao PDR?

The Law on Economic Dispute Resolution No 51/NA, 22 June 2018 governs dispute resolution and mediation. For high - value commercial disputes, the Court has the prerogative to mediate the proceedings between litigants so they may reach an agreement.

In addition, the Law on Civil Procedure (Law on Civil Procedure No 13/NA, 4 July 2012) requires litigants to conduct mediation with the local mediation committee or district or provincial justice divisions for certain disputes, such as ownership rights over animals, road access, divorces, land disputes, commercial and juvenile cases, labour disputes and administrative relations.

Parties must first attempt to resolve and settle a dispute through mediation before approaching the Lao courts. If there was no such attempt to settle the dispute through prior mediation, the Court might reject the filing.

b) What qualifications does a mediator need in Lao PDR? How is a mediator appointed?

There are two types of mediators:

Lao mediator:

- Be qualified, ethical and honest;
- Possess necessary technical knowledge supported by a proper certificate;
- Have at least five years of experience;
- Never sentenced to a prison term by a court for committing an intentional offence;
- Trained on the resolution of economic disputes; and
- Be in good health.

Foreign mediator:

In addition to the qualifications required for Lao mediators, foreign mediators must have the following qualifications:

- Respect the Constitution, laws and regulations of the Lao PDR;
- Be authorized to work in or reside permanently in the Lao PDR lawfully; and
- Have a good knowledge of the Lao language and respect Lao customs and traditions.

The Minister of Justice appoints all Lao and foreign mediators.

c) Is Lao PDR a party to the Singapore Mediation Convention?

No.

d) Are there any other considerations or special treatments for mediation under the law?

No.

2. At which stages of a dispute can mediation be used?

The Law on Civil Procedure provides that mediation can be conducted at any stage of the dispute proceedings. It may be instituted before or after the case is filed with the Court.

3. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

Mediation has been used in disputes relating to labour, intellectual property and land.

4. Are there any mediation bodies or forums in the Lao PDR?

Yes, including the Village Mediation Committee, District or Provincial Justice Divisions, and the Central or Provincial Offices of Economic Dispute Resolution.

5. Do you generally see mediation in dispute resolution clauses in contracts in the Lao PDR, either as a stand-alone provision or as a pre-requisite for arbitration or litigation?

Mediation is typically featured in dispute resolution clauses for contracts between Lao individuals or entities.

In contracts between foreign investors and Lao investors, it is uncommon to see provisions on mediation.

6. Do you see mediation as a rising phenomenon in the Lao PDR? Is mediation advocacy on the rise among lawyers and other professionals?

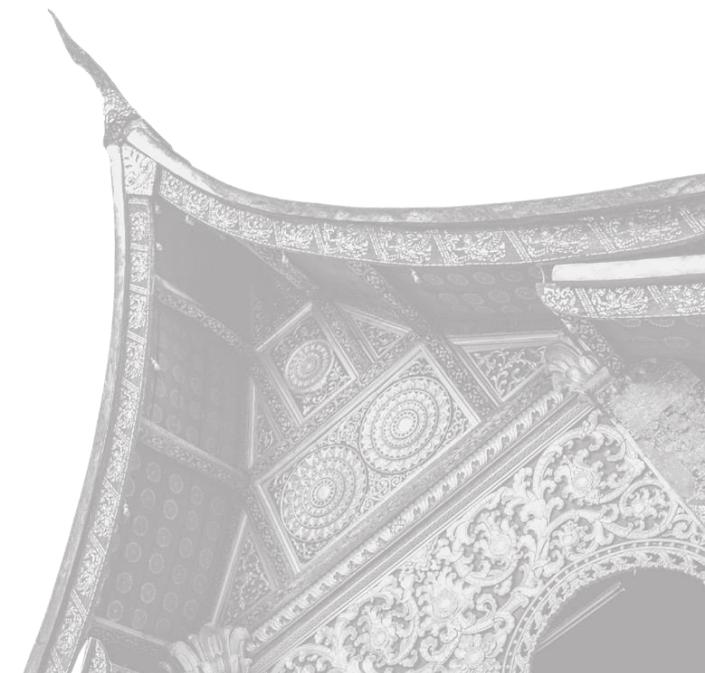
Yes, we have seen an increase in mediation for contracts governed by Lao PDR law.

7. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in the Lao PDR?

No.

8. Do courts in the Lao PDR give orders to execute settlement agreements issued from successful mediations?

A settlement agreement or memorandum originating from a successful mediation must be certified through a final court order to be enforced.



MYANMAR

1. What are the laws, regulations, rules or practices that govern mediation in Myanmar?

a) What are the different types of mediation in Myanmar?

There is no specific law on mediation. However, the Code of Civil Procedure 1908 ("CPC") provides for mediation or conciliation in Myanmar.

Under Section 89A of the CPC, the Court may refer some parties to mediation to settle a civil dispute. In such cases, a mediator is appointed by the Court to help the parties arrive at a decision. The Court may refer the following cases to mediation:

- a) cases prescribed to be mediated by any law or by any notification issued by the Supreme Court;
- b) cases voluntarily referred to mediation by disputant parties. If the parties to mediation reach an agreement, the parties shall apply to the Court to verify the agreement.
- c) The Court shall pass an order or a decree as it deems fit, following the relevant provisions of Order 23 Rule 3 of the CPC. Order 23 Rule 3 states that if the Court is convinced a suit has been compromised in part or whole, or the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement or compromise to be recorded. Thereafter, the Court will either pass a decree in accordance with the agreement or will decree that all further proceedings in the suit be based on the terms of the said agreement or compromise with the parties to apply to carry the same into effect.
- d) Under Criminal Procedure Code 1898 ("CrPC"): Section 345 of the CrPC sets forth a list of offences that are compoundable. Compoundable offences are those that can be compromised, such as when the complainant agrees to take back the charges levied against the accused. For compoundable offences, a compromise or settlement may be reached between the complainant and the accused to drop charges or to proceed with the case. Non-

compoundable offences are more serious offences in which the parties cannot compromise.

- e) Settlement of Labour Disputes Law 2012 ("SLDL"): Under the provisions of the SLDL, the relevant state or regional government in Myanmar shall form a Conciliation Body. An employer or worker may register individual disputes relating to his grievance to the Conciliation Body. If he is not satisfied with the conciliation made according to stipulated measures, such party may apply to the competent Court in person or to a legal representative. The relevant Conciliation Body shall, in respect of the collective disputes shall carry out as follows:
 - reach a settlement within three days, (not including the official holidays), from the day of knowing of or receipt of such dispute;
 - concluding mutual agreement if the settlement is reached before the Conciliation Body. However, the practical functioning of this Conciliation Body is unknown at present.

Under the SLDL as well as the Standard Employment Template, employers (with more than 30 employees) are also required to form a Workplace Coordination Committee ("WCC") with two representatives of workers elected by them and two representatives of the employers. The WCC necessarily mediates and coordinates terminations and exits of employment.

b) What qualifications does a mediator need in Myanmar? How is a mediator appointed?

At present, appropriate candidates from a field of well-trained judges and judicial officers are currently assigned to mediate, and the parties are not allowed to choose the mediator. There is no specific provision on mediator qualifications or appointments.

c) Is Myanmar a party to the Singapore mediation Convention?

No.

d) Are there any other considerations or special treatments for mediation under the law?

Failure to comply with a mediation order will be addressed in accordance with the Code of Civil Procedure and a court may issue orders as it feels appropriate.

At present, mediation is allowed only once. If the mediation fails, the complaint must proceed in accordance with the Code of Civil Procedure.

2. At which stages of a dispute can mediation be used?

Mediation may be used prior to a hearing or after a case has reached the Court for the pre-trial or pre-hearing stages.

3. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

The following cases are classified as mediation cases:

- Family disputes;
- Financial disputes; and
- Commercial disputes.

Other cases may be handled at the discretion of the parties.

4. Are there any mediation bodies or forums in Myanmar?

Yes. The Working Committee for the Settlement of mediation and the mediation Centre were formed by the Supreme Court of Myanmar for the implementation of mediation agreements.

5. Do you generally see mediation in dispute resolution clauses in contracts in Myanmar, either as a stand-alone provision or as a pre-requisite for arbitration or litigation?

We have rarely seen mediation clauses being used as a dispute resolution mechanism in Myanmar. It is still not widely used in Myanmar.

6. Do you see mediation as a rising phenomenon in Myanmar? Is mediation advocacy on the rise among lawyers and other professionals?

We have seen some traction with respect to mediation in Myanmar.

On 1 March 2019, two district courts and two township courts launched a pilot court-led mediation initiative by the Supreme Court with the cooperation of the Japan International Cooperation Agency ("JICA"). In this initiative, the Supreme Court aimed to implement mediation as the first step to resolving family, financial and commercial disputes. To date, this approach is being implemented by all courts in the Yangon and

Mandalay regions, one district court and township court in Nay Pyi Taw Union Territory and the Bago Region.

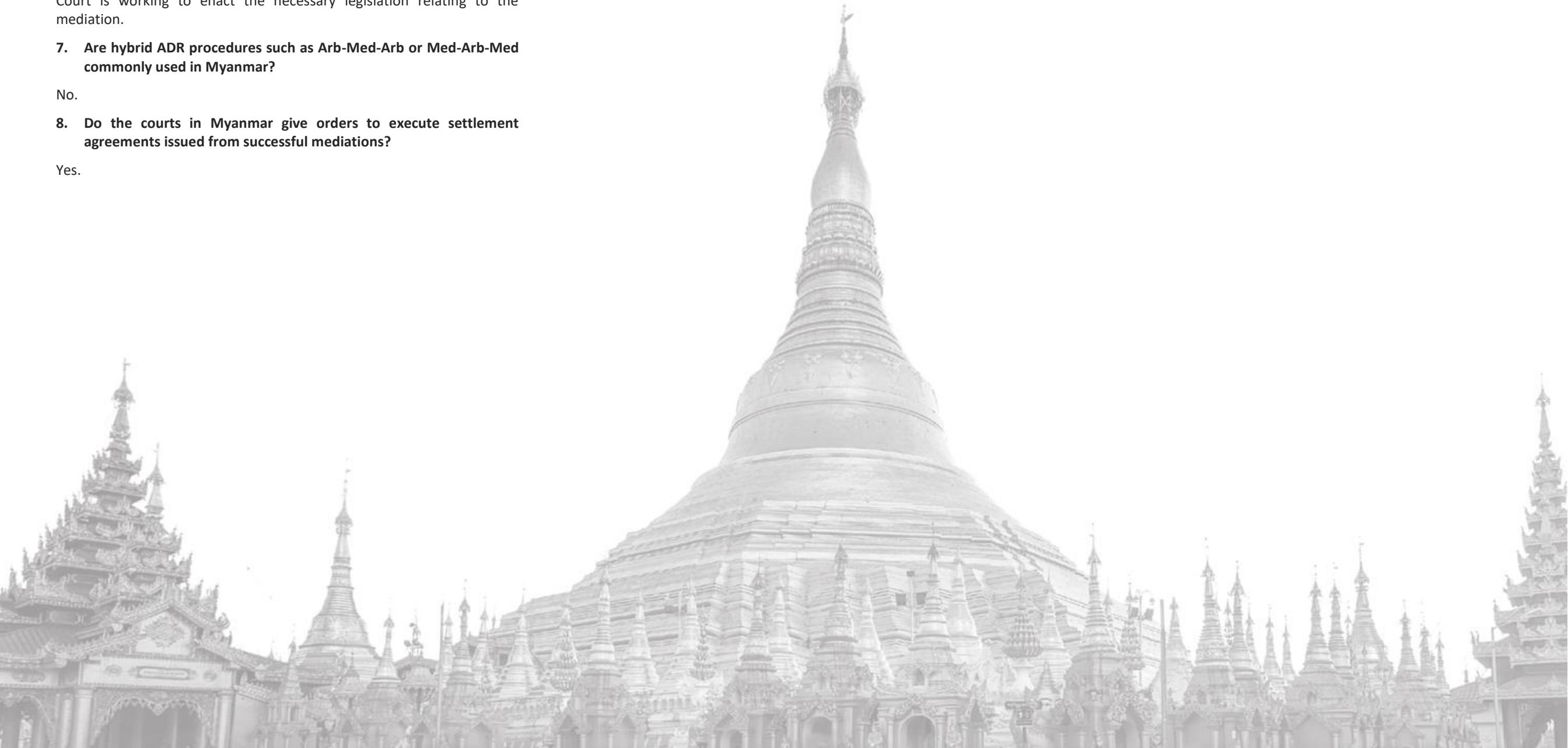
In collaboration with JICA, the Supreme Court is training mediation officers and drafting the mediation Officer Code of Conduct. The Supreme Court is working to enact the necessary legislation relating to the mediation.

7. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in Myanmar?

No.

8. Do the courts in Myanmar give orders to execute settlement agreements issued from successful mediations?

Yes.



SINGAPORE

1. What are the laws, rules and regulations that govern mediation in Singapore?

a) What are the different types of mediation in Singapore?

The mediation framework is well established in Singapore.

There is the potential for mediated settlement agreements in cross-border commercial disputes to be internationally enforceable. The Singapore Mediation Act (“**Mediation Act 2017**”) came into force on 1 November 2017, and the Singapore Convention on Mediation Act 2020, which came into effect on 12th September 2020. These Acts allow parties to apply to the Singapore Courts to record their mediated settlement agreement as an Order of the Court. This potentially allows parties to achieve the same outcome (an enforceable Order of the Court) in a more time and cost-efficient manner through mediation.

Since 2012, a "presumption of ADR" was introduced in the Singapore Courts. In this initiative, all civil cases were automatically referred to mediation or other forms of ADR unless one or more party opted out. The Singapore Rules of Court 2021's latest iteration was gazetted on 1 December 2021 and came into operation on 1 April 2022. The new Rules of Court were intended to modernize the litigation process, and one of the key changes included Order 5, which provided that "a party to any proceedings has the duty to consider an amicable resolution of the party's dispute before the commencement and during the course of any action or appeal." Order 21 provides among other things, that the Court may disallow or reduce a successful party's costs or order that party to pay costs where a party has not discharged the duty to consider an amicable resolution of the dispute.

Mediation is generally accepted as a form of ADR in Singapore. There are three broad categories. Court annexed mediation, private commercial mediation and mediation under specific bodies (e.g., employment matters are mediated under the auspices of the Tripartite Alliance for Dispute Management and community disputes under the Community Mediation Centre).

b) What qualifications does a mediator need in Singapore? How is a mediator appointed?

The usual route for qualifying as a commercial mediator is to attend the accreditation course offered by the Singapore Mediation Centre (“**SMC**”). Other bodies such as the Singapore International Mediation Centre (“**SIMC**”), offer their specialized accreditation courses. The SIMI Credentialing Scheme is a professional standards scheme developed by SIMI to recognize the experience of professional mediators. This was a significant innovation as it provided a robust framework to ensure the public could identify that good quality mediator.

c) Are there any other considerations or special treatments for mediation under the law?

Section 8 of the Mediation Act 2017 allows the Court to order a stay of proceedings pending the completion of a mediation.

Section 12 of the Mediation Act has provided a novel mechanism for a privately mediated settlement agreement to be converted into a court order. This unique mechanism is meant to attract parties to use the mediation process with the assurance of finality and enforceability of their mediated settlements. The expedited enforcement mechanism is currently available only to Designated Mediation Service Providers, including the Singapore Mediation Centre, Singapore International Mediation Centre, WIPO Mediation and Arbitration Center and the Tripartite Alliance for Dispute Resolution, or mediations conducted by a SIMI Certified Mediator.

Under the Singapore Convention on Mediation Act 2020, a party can apply to the court to stay proceedings because the matter has been the subject of a mediated settlement agreement and apply to have their international settlement agreement registered as an Order of the Court.

2. At which stages of a dispute can mediation be used?

Mediation is a voluntary process, and it can be deployed at any stage of a dispute.

The most common scenario is that parties attempt mediation after proceedings have begun at the stage when pleadings and discovery have been completed.

3. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

Employment Law, Intellectual Property Laws and Matrimonial Law have seen big increases in the use of mediation.

Civil cases in the Courts have required parties to mediate since 2012, and this cuts across a broad range of cases.

International commercial mediation is seeing a rise given the emergence of the Singapore Convention on Mediation.

4. Are there any mediation bodies or forums in Singapore?

The main bodies or agencies driving the development of mediation in Singapore are:

- SMC is Singapore's leading provider of alternative dispute resolution services, including its core mediation services.
- SIMC is Singapore's which provides world class international commercial mediation services.
- SIMI is the premier independent professional standards body for mediation in Singapore and the region.
- Singapore International Dispute Resolution Academy (“**SIDRA**”) is the regional hub dedicated to training and educational excellence in negotiation and dispute resolution.

5. Do you generally see mediation in dispute resolution clauses in contracts in Singapore, either as a stand-alone provision or as a pre-requisite to arbitration or litigation?

At present, anecdotal evidence suggests that not enough contracts have specific mediation clauses as a term on the contract.

Most contracts have a clause requiring parties to negotiate in good faith as part of a multi-tier dispute resolution clause. The Singapore Court of Appeal authoritatively ruled that strict compliance with multi-tier dispute resolution clauses was required as a precondition to arbitration. The Court observed that substantial compliance with such clauses was not sufficient

to discharge the obligations under the clauses. International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another [2013] SGCA 55

Given the attitude of the Courts and the legislation supporting mediation as a dispute resolution process, mediation clauses will be enforceable by the Singapore Courts.

Mediation clauses should be built into contracts. We will see an increase in this trend in coming years, taking the form of a stand-alone clause or a pre-requisite to litigation or arbitration, or as a hybrid (e.g., the Arb-Med-Arb Clause of the SIAC/SIMC).to arbitration. The Court observed that substantial compliance with such clauses was not sufficient to discharge the obligations under the clauses. International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another [2013] SGCA 55

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6. Do you see mediation as a rising phenomenon in Singapore? Is mediation advocacy on the rise with lawyers and other professionals?

Yes, mediation is widely accepted in Singapore as a preferred form of dispute resolution process.

The new Rules of Court were intended to modernize the litigation process, and one of the key changes included Order 5, which provided that a party to any proceedings has the duty to consider an amicable resolution of the party's dispute before the commencement and during the course of any action or appeal." Order 21 provides that the Court may disallow or reduce a successful party's costs or order that party to pay costs if a party has not discharged the duty to consider an amicable resolution of the dispute.

This places the responsibility squarely on the lawyers and other professional involved in dispute resolution to be educated with mediation

best practices and to keep in mind the best interests of the disputing party. The lawyer of the future in Singapore will, of necessity, be a mediation advocate.

7. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in Singapore?

Yes, increasingly so. The SIAC and SIMC have jointly launched an ARB-MED-ARB that is gaining popularity.

8. Do courts in Singapore give orders to execute settlement agreements issued from successful mediations?

Yes, the Courts in Singapore are very supportive of Mediation, and this is demonstrated in local legislation as well as decided cases.

In the reported case of Chan Gek Yong v Violet Netto [2018] SGHC 208 the Court considered a case where the central thrust of the defendants' striking out applications was that it would be an abuse of the process to allow the Main Suits to continue as the parties had already reached an amicable settlement at the SMC. The parties had signed a Settlement Agreement titled "Settlement Deed Suit No 750/2012/G and Suit No 751/2012/L", Mediation No. SMC/MC-225 of 2016, on 29 September 2016 ("**the Settlement Agreement**"), before two SMC-appointed mediators. The Court had to consider whether there was any duress or illegitimate pressure during the mediation and the signing of the Settlement Agreement as well as the application of the '*doctrine of non est factum*'. After considering all the circumstances of the case, the Court concluded that the mediation settlement agreement must be honored.



THAILAND

1. What are the laws, rules and regulations that govern mediation in Thailand?

a) What are the different types of mediation in Thailand?

The Dispute Mediation Act B.E.2562 (2019)

Mediation was first codified in Thailand's Code of Civil Procedure 1934.

The first comprehensive law regarding mediation in Thailand was adopted in 2019. The Dispute Mediation Act ("The Act") Provisions on Civil Dispute mediation are contained in Chapter 2 of the Act and Chapter 3 deals with Criminal Dispute Mediation. Chapter 4 deals with Criminal Dispute Mediation at the Inquiry Stage and Chapter 5 covers Public Sector Dispute Mediation. The Act allow parties to mediate both civil and criminal disputes.

Civil Dispute

If a party wishes to resort to mediation for their dispute the party must apply to the relevant forum, which will ask the other party whether they would like to engage in mediation too. Only then can a mediation take place.

Civil dispute mediation under the Act is not permissible if it relates to (i) a right as regards to personality or (ii) a family right or (iii) ownership in immovable property.

Civil dispute mediation is permissible in the following cases:

- i. a dispute related to and other than disputes relating to ownership;
- ii. a dispute between heirs related to the property to be obtained by way of succession;
- iii. other disputes as prescribed in the Royal Decree; and
- iv. A dispute, other than (i), (ii) and (iii), for which the amount of claim does not exceed THB 5,000,000 (USD\$147,991) or does not exceed the amount prescribed in the Royal Decree.

Dispute mediation proceedings will terminate a matter when (i) the mediation is settled under a settlement agreement or (ii) a party

withdraws from the mediation or (iii) the mediator considers that further mediation is not useful and renders an order for termination of the mediation.

Criminal Dispute

Criminal dispute mediation is permissible in the following cases:

- i. compoundable offences; and
- ii. petty offences under certain sections of the Criminal Code and other petty offences not affecting the public as prescribed in the Royal Decree.

When the parties have concluded a criminal settlement agreement, it shall be deemed that the right to initiate a criminal action is extinguished in respect of the parties who have concluded such agreement.

Under the Civil Procedure Code ("CPC"), prior to filing a civil case, a party may file a motion requesting the Court to conduct a voluntary mediation. If the other party agrees to the mediation, the Court will appoint a mediator. If the mediation is successful, the parties can request the Court to render a settlement judgment to give effect to the settlement agreement. The mediation is not subject to any court fee, and the 'Court's order is final. Further, the Court has the power to instigate mediation regardless of the stage of the litigation process. The Court will appoint a mediator and supervise the mediation process. If the dispute is settled under a settlement agreement and such agreement is in accordance with the law, the Court will render a settlement judgment.

For criminal offences occurring in any District that are compoundable offences and do not relate to sexual offences, if an injured person and an offender agree to mediation, the District Chief of that district or the Deputy District Chief assigned by the District Chief may act as a mediator. If the parties settle the dispute in writing and comply with a settlement agreement, the right to initiate a criminal action is extinguished.

b) What qualifications does a mediator need in Thailand? How is a mediator appointed?

Under the Dispute Mediation Act B.E.2562 (2019), a person registered as a mediator must have successfully completed the mediation training under the program certified by the Commission on National Development of Justice Administration under the law on national development of

justice administration; and be a person possessing experience in areas beneficial to the mediation of disputes.

For criminal disputes, the mediator under the Act must be the District Chief or the Deputy District Chief.

c) Is Thailand a party to the Singapore Mediation Convention?

No.

d) Are there any other considerations or special treatments for mediation under the law?

Under the Dispute Mediation Act B.E.2562 (2019), in case of a civil dispute, either party may file with the Court a request for the enforcement of the settlement agreement or may file a case again if another party breaches the settlement agreement.

In case of criminal dispute mediation, the inquiry officer, the Public Prosecutor or the Court may temporarily suspend the proceedings if the Rights and Liberties Protection Department notifies them of the mediation proceeding of such a criminal dispute.

The CPC allows a debtor to file a motion requesting the Court to conduct voluntary mediation and to conclude a settlement agreement even if the creditor has not yet filed a claim against the debtor. Once the settlement agreement has been made, the Court can render a settlement judgement. If there is a failure to perform in accordance with the settlement agreement, the other party may proceed to enforce the settlement agreement without initiating a new case.

2. At which stages of a dispute can mediation be used?

Mediation is a voluntary process, and it can be conducted at any stage of a dispute.

3. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

Employment law, Consumer Law and Family Law have seen increases in the use of mediation.

4. Are there any mediation bodies or forums in Thailand?

The Thai Arbitration Institute (“TAI”), Thailand Arbitration Center (“TAC”), and the Thai Chamber of Commerce are reputed mediation bodies in Thailand.

5. Do you generally see mediation in dispute resolution clauses in contracts in Thailand, either as a stand-alone provision or as a pre-requisite for arbitration or litigation?

Yes, it is common to come across mediation clauses in contracts in Thailand, particularly as a pre-requisite to arbitration or litigation.

6. Do you see mediation as a rising phenomenon in Thailand? Is mediation advocacy on the rise with lawyers and other professionals?

Yes. The Thai judiciary encourages parties to conduct mediation for all types of civil disputes. In consumer cases, employment cases and family dispute cases, mediation is mandatory.

7. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in Thailand?

While there are no specific provisions regarding hybrid procedures, the parties are free to use them to settle their dispute.

8. Do courts in Thailand give orders to execute settlement agreements issued from successful mediations?

Yes. Section 32 of the Dispute Mediation Act B.E.2562 (2019), Section 20 Ter, Section 138 and Section 272 of CPC and Section 61/2 of the State Administration Act B.E.2534 (1991) allow parties to file a motion requesting the enforcement of a settlement agreement.



VIETNAM

1. What are the laws, rules and regulations that govern mediation in Vietnam?

a) What are the different types of mediation in Vietnam?

The legal framework governing mediation in Vietnam includes:

- Labour Code 2019 came into force from 1 January 2021 (“**Labour Code 2019**”)
- Civil Procedure Code 2015 came into force from 1 July 2016 (“**CPC 2015**”)
- Law on Land 2013 came into force from 1 July 2014 (“**Law on Land 2013**”)
- Law on Commercial Arbitration 2010 came into force from 17 June 2010
- Decree No. 22/2017/ND-CP on commercial mediation came into force from 15 April 2017 (“**Decree 22**”)
- Law on mediation and Dialogue at Court 2020 came into force on 1 January 2021.

Mediation is classified into two types in Vietnam:

▪ **ADR**

Civil disputes may be settled by way of commercial mediation where the parties agree on settling the dispute by mediation. Under Decree 22, such agreement can be reached either before or after the dispute or at any time during the dispute settlement process.

At the parties' request during an arbitration, the arbitration tribunal may conduct mediation to settle a commercial dispute.

▪ **Court-annexed mediation**

Except for a few civil disputes (e.g., claims for compensation for damage caused to State properties, disputes arising from civil transactions which are contrary to law, or social ethics or dispute settled under simplified procedures) where mediation is not permissible, the Court shall conduct mediation as a pre-trial measure under the CPC 2015.

Except for a few individual labor disputes (e.g. dispute relating to the disciplinary measure of dismissal or arising from unilateral termination of a labour contract, relating to the payment of compensation for loss and damage or payment of allowances upon the termination of a labour contract) where mediation is not permissible, individual labor disputes must pass through procedures for mediation prior to a petition to the labour arbitration or a court to resolve the dispute under Labour Code 2019.

Disputes in relation to rights and obligations of land users must be settled through a mediation process conducted by the People's Committee at the site where the land in question is located before being settled by the Court under Law on Land 2013.

b) What qualifications does a mediator need in Vietnam? How is a mediator appointed?

Depending on nature of the dispute, mediators must have various qualifications. Below are key qualifications required of mediators:

Commercial mediator

- Having full capacity for civil acts; having good ethical qualities and reputation, and being independent, impartial and objective;
- Having University or higher qualifications and having worked in the trained field for two or more years; and
- Having mediation skills, and knowledge in law, trade, business practices and relevant fields.

There is no specific process for a commercial mediator to be appointed but ad-hoc commercial mediators must register at the Department of Justice of the province or city under the central authority where the person resides permanently.

Court mediator

- A Vietnamese citizen who is permanently residing in Vietnam, loyal to the Fatherland and the Constitution of the Socialist Republic of Vietnam, has full legal capacity, good moral qualities, is exemplary in the observance of the law;
- Used to be a Judge, Court Examiner, Court Clerk, Procurator, Procurator Inspector, Civil Judgment Executor or Inspector; having at least 10 years of experience as a lawyer, expert, or professional; being

knowledgeable about customs and traditions and having prestige in the community;

- Having experience and skills in mediation or dialogue.
- Having attended to training courses provided by a training facility of the Supreme People's Court, unless he/she has been a Judge, Court Examiner, Court Clerk, Procurator, Procurator Inspector, Civil Judgment Executor, or Inspector.

A qualified court mediator shall be appointed upon a decision of the competent Court.

Labour mediator

- Being a Vietnamese citizen, and having the full legal capacity for civil acts, and good health and ethics;
- Having a university-level degree or higher and at least three (3) working years in the sectors in relation to the labour relationship; and
- Not subject to prosecution for criminal liability or having finished a sentence but not yet absolved or removed from the record.

A qualified labour mediator shall be appointed upon a decision of the Chairman of the People's Committee at the provincial level.

c) Is Vietnam a party to the Singapore Mediation Convention?

No.

d) Are there any other considerations or special treatments for mediation under the law?

Settlement agreements of court-annexed mediation are final and will be recognized by the Court for enforcement.

Settlement agreements of mediation during arbitration are final and will be recognized by the tribunal and will have the same validity as an arbitration award.

The court shall recognize settlement agreements by way of commercial mediation for enforcement at the request of a party to such settlement agreement.

2. At which stages of a dispute can mediation be used?

Court-annexed mediation must be conducted as a pre-trial step. ADR mediation can be conducted at any stage of a dispute.

Labour law, land law, commercial law and investment law have seen increases in the use of mediation.

3. Are there any mediation bodies or forums in Vietnam?

The Vietnam mediation Center ("VMC") and the People's Committees at local levels for disputes relating to rights and obligations of land users.

4. Do you generally see mediation in dispute resolution clauses in contracts in Vietnam, either as a stand-alone provision or as a pre-requisite to arbitration or litigation?

It is usually a pre-requisite to the initiation of arbitration or litigation.

5. Do you see mediation as a rising phenomenon in Vietnam? Is mediation advocacy on the rise with lawyers and other professionals?

ADR mediation is new in Vietnam and only six disputes have been settled at the VMC since its establishment on 27 April 2018. Even so, ADR mediation has gradually become a new trend in dispute resolution in Vietnam.

6. Are hybrid ADR procedures such as Arb-Med-Arb or Med-Arb-Med commonly used in Vietnam?

At the parties' request during arbitration, the arbitration tribunal may conduct mediation to settle commercial disputes.

Presently, the Vietnam International Arbitration Center ("VIAC") and VMC offer Arb-Med-Arb between VIAC and VMC. However, this hybrid procedure is not commonly used in Vietnam.

7. Do the courts in Vietnam give orders to execute settlement agreements issued from successful mediations?

Yes, settlement agreements of court-annexed mediation are final and recognized by the Court for enforcement.

8. In which areas of law, and for which types of disputes, has mediation traditionally been used? In which areas is it expected to increase?

Settlement agreements of mediation during arbitration are final and will be recognized by the tribunal with the same validity as an arbitration award.

Settlement agreements of by way of commercial mediation shall be recognized by the Court for enforcement at the request of a party to such a settlement agreement.



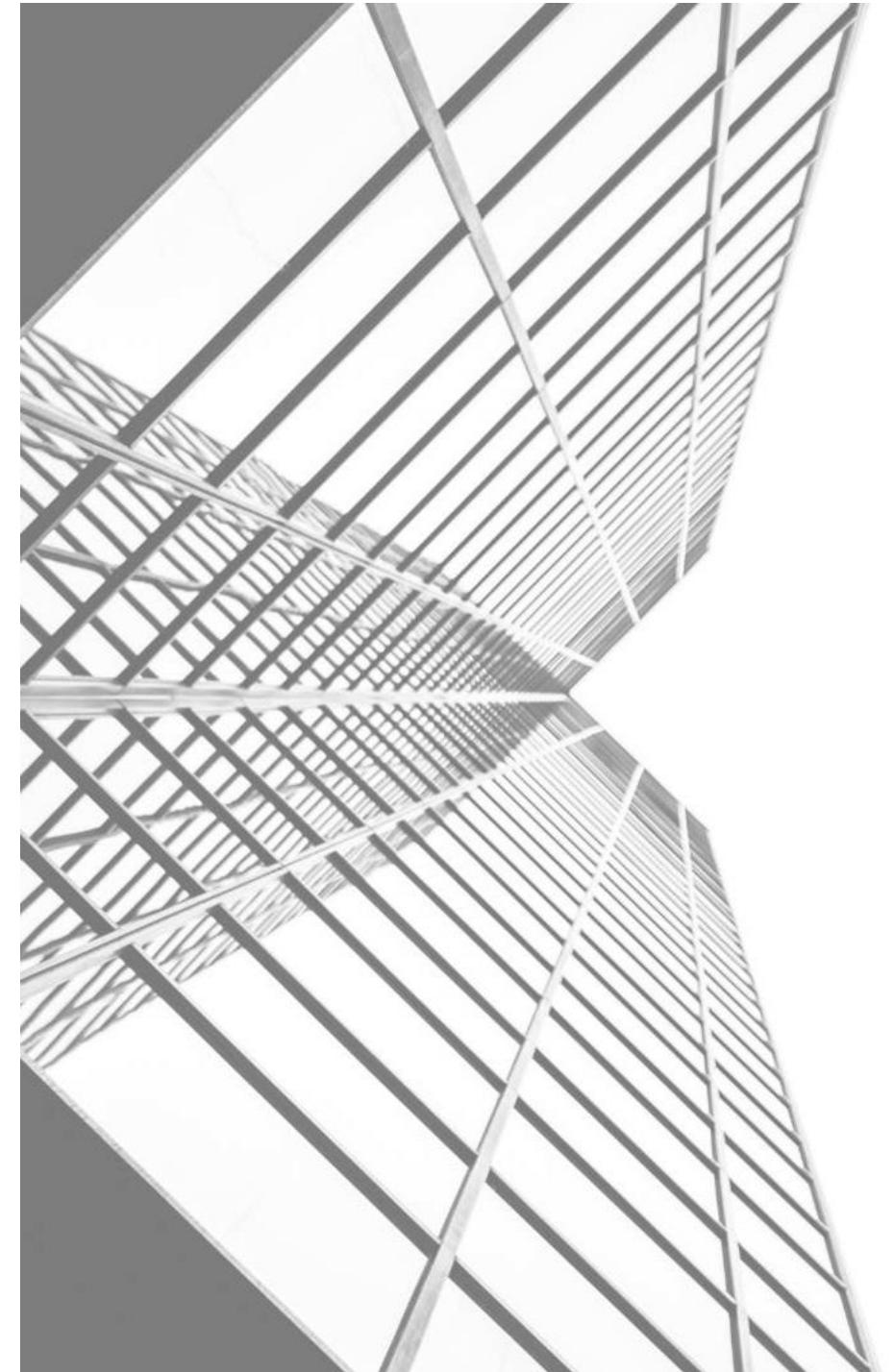
CONCLUSION

As this review of mediation practices shows, mediation is taking root in each regional jurisdiction, providing a viable solution for parties to manage and resolve their disputes outside the conventional frameworks of litigation and as an alternative to arbitration.

Mediation allows parties to resolve their disputes in a non-adversarial manner. It allows parties to autonomously reach amicable settlements based on their interests in a timely and cost-efficient way. There is a growing trend for companies to choose mediation, as it facilitates the maintaining of business relationships will be enforceable in the courts of the countries that have ratified the SMC. The SMC was adopted to emulate for mediation the success of arbitration, and mediated settlements acquire enforceability in any jurisdiction that has ratified the convention: the judge will assist in their application, as if it were a judgment rendered by a national court. While more countries will need to become signatories to give the SMC more force, it is a positive development in the support of mediation as a process

Mediation is fast, confidential and pacifies commercial and of social relations. In business litigation, it allows the continuation of projects and the preservation of business relationships and often even gives rise to more solid and ambitious contractual relationships.

We trust this comparative guide will help you navigate the exciting and rapidly evolving mediation landscape in Southeast Asia. With this guide, you are-positioned to take full advantage of mediation to manage and resolve your disputes whenever and wherever they may rise.



HARRY ELIAS DISPUTE RESOLUTION PRACTICE

Our dispute resolution capability covers the full spectrum of legal recourse and alternative dispute resolution processes, including pre-litigation advisory, Mediation, arbitration, and litigation at all levels of the Singapore Courts, including the Singapore International Commercial Courts.

Our reputation as one of the leading dispute resolution practices remains well supported by the outstanding and recognized portfolio of high-value dispute resolution cases in Singapore. Led by our experienced partners, we are supported by a team of dynamic lawyers and paralegals. Having developed distinct understanding, responsiveness, and knowledge in a myriad of dispute resolution cases across industries and sectors, our lawyers are able to provide excellent advisory and arbitration services.

Over the years, we have worked with some of the most prominent players including local and international individuals, banks, financial institutions, and corporations. Our clientele, much like the disputes and legal issues we experience daily, is diverse and multi-faceted. Our litigation and dispute management lawyers are the best choice when it comes to resolving disputes strategically in Singapore.

We understand it is often in the best interests of our clients to negotiate commercial settlements or resolve disputes through Mediation. Our dispute resolution teams practice mediation advocacy to manage complex legal issues and move matters to a commercial resolution wherever possible. We also have trained mediators who are accredited as Principal Mediators and Associate Mediators with the Singapore mediation Centre who bring

Mediation best practices into the dispute resolution process.

Fluent in delivering dispute resolution solution to legal issues across a wide spectrum of practices and sectors, our lawyers in Singapore are consulted for high-value, cross-border and significant matters. Our experience covers:

- Commercial and contractual disputes
- Private client, trusts and estate disputes
- International commercial mediation
- International arbitration
- Construction and infrastructure disputes
- Land disputes
- Banking and financial disputes
- Tortious disputes including medical and professional negligence
- Defamation
- Minority oppression and applications under the Companies Act
- Applications to Court in support of the arbitration process and enforcement of awards
- Judicial review



DFDL DISPUTE RESOLUTION PRACTICE

Recent years have seen the runaway growth of domestic and foreign investments in the emerging markets of Southeast and South Asia and this has naturally resulted in the exponential rise of commercial disputes. As a full-service legal and tax advisory firm, we provide end-to-end services to support our client's dispute resolution needs.

Given our in-depth and intuitive understanding of the markets where we operate, for over two decades in some cases, we are uniquely equipped to help our clients navigate, overcome and avoid contentious challenges wherever possible.

Our Regional Dispute Resolution Practice, comprising local and international legal advisers, serves clients with the same high standards and exemplary quality of service that they expect from DFDL. Drawing upon substantial expertise, our advisers use a collegial approach to determine which process best suits client for their resolution of potential disputes.

We handle both conventional and alternative dispute resolution matters.

Our team focuses on legal recourse and alternative processes, such as Mediation, arbitration, pre-litigation and litigation. We cover numerous practice areas, such as contracts, construction, land, international trade, labour issues, insolvency and bankruptcy.

Our advisers have acted as mediators and participated in many arbitration proceedings. When the courts cannot be avoided, our clients benefit from DFDL's advocacy expertise across various jurisdictions.

Our team embodies decades of comprehensive on-the-ground expertise comprising DFDL's highly regarded advisers with broad sector-

specific specializations and competencies in numerous areas. These include corporate and commercial, regulatory and compliance affairs, banking and finance, real estate and construction, restructuring and insolvency, energy and infrastructure, employment and tax together forming a comprehensive suite of services tailored to our clients' needs.

Our key services include:

- Commercial and contract disputes
- General civil and criminal proceedings
- Employment disputes
- Financial services disputes
- Bankruptcy and insolvency disputes
- Insurance disputes
- Real estate disputes
- Succession related disputes for high net-worth individuals
- Trademark and intellectual property disputes
- White-collar crime
- Tax disputes



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