

Commercial Mediation in Vietnam: An Overview of the Legal Framework, Enforcement Mechanisms and Key Advantages for Resolving Business Disputes

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Statutory Recognition of Commercial Mediation in Vietnam

Commercial mediation provides a flexible and collaborative way for companies to resolve disputes without resorting to formal arbitration or litigation. In Vietnam, it has been recognised in legislation for many years. Article 317 of the Commercial Law 2005 ("Commercial Law") lists four methods for resolving commercial disputes: negotiation, mediation, arbitration and court litigation. Mediation is also encouraged in the Law on Commercial Arbitration 2010 ("Law on Commercial Arbitration") and is integrated into court proceedings by the Civil Procedure Code 2015 ("Civil Procedure Code").

To create a dedicated framework, the Government promulgated Decree No. 22/2017/ND CP on Commercial Mediation ("Decree 22"), which took effect on 15 April 2017 and was amended by Decree No. 112/2025/ND-CP, effective 29 May 2025. Decree 22 draws on the UNCITRAL Model Law on International Commercial Conciliation 2002 and establishes detailed rules on commercial mediators, mediation institutions, procedures and enforcement.

This article outlines the current legal framework and the practical advantages of commercial mediation in Vietnam.

Key Legal Sources

Commercial Law & Civil Procedure Code

1. **Forms of dispute resolution:** Article 317 of the Commercial Law states that commercial disputes may be resolved by negotiation, mediation, arbitration or court litigation. The provision signals legislative support for mediation as an equal alternative to arbitration and court proceedings.
2. **Recognition mechanism:** Chapter XXXIII of the Civil Procedure Code provides a mechanism for courts to recognise out-of-court mediation agreements. The recognition converts a mediated settlement agreement into a court judgment and makes it enforceable under the Law on Enforcement of Civil Judgments. Legal commentary notes that this mechanism secures the enforceability of mediated settlements.

Decree 22 on Commercial Mediation

Decree 22 is the central instrument regulating commercial mediation in Vietnam. Key provisions include:

1. **Scope of disputes:** Article 2 provides that commercial mediation may resolve (i) disputes between parties arising from commercial activities; (ii) disputes where at least one party engages in commercial activities; and (iii) other disputes designated by law. Article 3.1 of the Commercial Law defines "commercial activities" as profit-seeking activities such as the sale of goods, provision of services, investment and commercial promotion.
2. **Principles:** Mediation must be voluntary and parties are equal in rights and obligations. All information relating to a mediation case is confidential unless otherwise agreed in writing or required by law. The contents of a mediation agreement may not violate prohibitions, contravene social morality, shirk obligations or infringe third party rights. State policy encourages the use of commercial mediation and the mobilisation of resources for mediator training.
3. **Conditions for mediation:** A dispute can only be mediated if the parties have agreed to mediation. The agreement may be concluded before or after a dispute arises or at any time during dispute resolution, but must be established in writing.
4. **Commercial mediators:** Article 7 requires a mediator to have: (i) full civil capacity, good moral character, independence and impartiality; (ii) a university degree; (iii) at least two years' working experience in the discipline studied; and (iv) skills and knowledge in mediation, law and commercial practice. Mediation may be conducted by *ad hoc* mediators or mediators affiliated with a commercial mediation institution. Persons under criminal investigation, serving sentences or subject to administrative measures may not act as mediators.
5. **Commercial mediation institutions:** Decree 22 recognises commercial mediation centres established under the decree and arbitration centres authorised to conduct mediation. These centres must operate on a not-for-profit basis; have legal personality, their own seals and accounts; and may establish branches or representative offices.
6. **Mediation procedure & settlement agreement:** The parties may agree on the mediation procedure or adopt the rules of a mediation centre. When a mediation is successful, the parties must sign a written mediation settlement agreement that states the grounds for mediation, background information, principal contents of the case, agreements reached and implementation measures. The agreement is valid and binding under civil law. If mediation is unsuccessful, the parties may refer the dispute to arbitration or litigation. The settlement agreement can be submitted to court for recognition; once recognised, it is enforceable as a final judgment.

International Instruments & Developments

1. **EU-Vietnam Investment Protection Agreement ("EVIPA"):** Annex 10 of the EVIPA is titled "*Mediation Mechanism for the resolution of disputes between investors and parties.*" It states that the objective of this mediation mechanism is to facilitate a mutually agreed solution through an expeditious procedure with assistance of a mediator. Under Article 2 of Annex 10, either disputing party may request commencement of a mediation procedure at any time, and the request must be addressed to the other party in writing. The inclusion of this dedicated mediation mechanism in the investment protection agreement illustrates the importance placed on mediation in investor-state disputes.
2. **Singapore Convention on Mediation:** The United Nations Convention on International Settlement Agreements Resulting from Mediation ("**Singapore Convention**") entered into force on 12 September 2020. Vietnam has not yet acceded to or ratified the convention and therefore is not a party to the Singapore Convention. The Vietnam International Commercial Mediation Center ("**VICMC**") notes that from 12 September 2020, settlement agreements between Vietnamese and Singaporean businesses can be recognised and enforced in Singapore. Accession would allow Vietnam-based mediated settlement agreements to be enforceable in other member states.
3. **Ongoing improvements:** A 2025 seminar organised by the University of Da Nang and VICMC highlighted the need to perfect the legal framework, improve mediator training, increase public awareness of mediation and establish a statistical system for evaluating mediation efficiency. These initiatives aim to promote mediation as a humane and efficient dispute resolution method and reduce the burden on the judiciary.

Advantages of Commercial Mediation

Advantages over litigation and arbitration

Mediation allows parties to design their own process. They can choose the mediator, the language of the mediation, the meeting venue and the procedure. Mediation sessions can take place at a time and location agreed by the parties, and there are no rigid procedural requirements. Flexibility enables parties to tailor the procedure to the specific dispute and cultural context.

Compared to court litigation or arbitration, mediation is generally quicker and more cost effective because the process is not constrained by court schedules and can resolve disputes within weeks or days. Cost savings arise from shorter proceedings and lower administrative expenses.

Both Decree 22 and practice materials underscore confidentiality. Information related to the mediation must be kept confidential unless the parties agree otherwise or the law requires disclosure. Mediation sessions are held privately and even information shared with the mediator by one party may be kept confidential from the other party.

Mediation also encourages open communication, compromise and win-win solutions. Mediation focuses on mutual understanding rather than adversarial confrontation. In complex supply chains or joint ventures, preserving commercial relationships may be more valuable than a binding victory.

Mediation enables parties to propose innovative solutions beyond the remedies available in court. The parties are free to propose legal solutions, draft the settlement agreement and decide on the result at the mediation session. This autonomy allows outcomes that align with commercial realities and can include structured payment terms, renegotiation of contracts or joint ventures.

Although mediation is voluntary, a successful mediation leads to a written settlement agreement that is binding under civil law. The parties may request court recognition of the agreement; once recognised, the agreement is enforceable

as a final judgment. This mechanism provides certainty similar to arbitration while preserving the benefits of mediation. It is important to note that recognition currently applies only to mediation conducted under Decree 22; settlements mediated abroad are not automatically enforceable in Vietnam.

Challenges and Considerations

Despite the many advantages, commercial mediation in Vietnam faces several challenges:

1. Limited scope

- Decree 22 restricts mediation to commercial disputes and those where at least one party engages in commercial activities.
- Cross border disputes mediated by foreign institutions are not covered by the recognition mechanism. Vietnam has yet to accede to the Singapore Convention, limiting international enforceability.

2. Non-binding unless recognised

- A mediated settlement agreement is binding under civil law, but is not enforceable by state power unless recognised by a court.
- Parties must therefore voluntarily comply or seek court recognition.

3. Need for skilled mediators

- Decree 22 sets strict qualifications for mediators (degree, experience, knowledge and integrity), but there is currently no national accreditation system.
- The pool of mediators may lack practical experience, especially in complex cross border disputes.

4. Dependence on party goodwill

- Mediation succeeds only when both parties participate in good faith, and can fail if one party is uncooperative or uses mediation to delay proceedings. In such cases, parties must turn to arbitration or court, incurring additional time and cost.

5. Unclear statute of limitations

- Decree 22 does not address whether the statute of limitations is tolled during mediation. Practitioners have noted uncertainty in calculating limitation periods and recommend that parties consider this risk when opting for mediation.

Outlook and Recommendations

Commercial mediation in Vietnam has benefited from a comprehensive legal framework and increasing governmental support. Decree 22 provides clear rules on mediators, institutions and procedures, while the Civil Procedure Code 2015 creates a mechanism to convert settlements into enforceable judgments. Businesses are advised to incorporate mediation clauses in their contracts and choose reputable mediation institutions. With continued reforms and professionalisation, commercial mediation can become a mainstream dispute resolution mechanism in Vietnam.

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