

Kluwer Mediation Blog

Vietnam Series: Four Key Features of the Commercial Mediation Framework

Nadja Alexander (Editor) (Singapore International Dispute Resolution Academy) · Thursday, August 9th, 2018



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In the first few months of this year I found myself returning to Vietnam a number of times thanks to Vietnamese initiatives in commercial mediation. Most recently I was involved in workshops hosted by the Vietnam Business Lawyer's Club, the Judicial Academy and the International Finance Corporation (IFC). Given the mediation activity in Vietnam and previous Kluwer posts on aspects of Vietnamese mediation, this post offers an overview of the main features of Vietnam's legal and institutional framework for commercial mediation.

Vietnam has taken enormous strides towards enhancing its legal and regulatory framework for commercial mediation. The recent advancements within the mediation framework come at a critical time for the Vietnam, which experienced 6.8 per cent GDP growth in 2017 and has seen strong private sector growth as a result of the transition from a centrally planned economy to a market economy in the last two decades. With an increase in the private sector generally comes an increase in the volume of commercial disputes, potentially burdening courts and increasing case backlogs. Mediation will therefore be an important lever in the judicial works in Vietnam, and can help to prevent a flood of litigation which might otherwise delay access to commercial justice. Here we provide an overview of the key features of the regulatory and legal framework for commercial mediation in Vietnam. It follows the recent [post](#) on mediator settlement proposals under the Rules of Mediation of the [Vietnam Mediation Centre](#) and also last year's [post](#) dedicated to mediator qualifications in Vietnam.

The four key features relate to mediator qualifications and requirements for foreign mediators,

institutional mediation rules and enforceability of mediated settlement agreements. They are drawn from the following instruments: [Decree No. 22 on Commercial Mediation](#), Chapter XXXIII of the amended Civil Procedure Code of Vietnam, and the [Rules of Mediation of the Vietnam Mediation Centre](#).

1. *Qualifications for Commercial Mediators in Vietnam.* Decree No. 22 On Commercial Mediation, issued in 2017 and based on the UNCITRAL Model Law on International Commercial Conciliation, establishes the qualifications necessary to practice as a commercial mediator in Vietnam. These qualifications include:

- a. holding a university degree, with at least two years of experience in the mediator's field of training;
- b. having mediation skills and training, and an understanding of law, business, and commerce; and
- c. being of good moral character.

Mediation institutions and service providers may establish additional criteria for their registered mediators. These may include mediation training, for example. Mediators must be registered either at an approved mediation organization such as the Vietnamese Mediation Centre or with Department of Justice. These measures constitute a high bar for commercial mediators, and indicate an interest on the part of the government to professionalize the practice of commercial mediation in Vietnam.

2. *Recognition of Foreign Commercial Mediation Centers in Vietnam.* The Decree on Commercial Mediation permits the operation of foreign mediation institutions and centers within Vietnam, so long as they are legally established in their country of origin and comply with Vietnamese law and Constitution. The Decree recognizes two distinct modes of operation for foreign mediation institutions: "branches" of foreign commercial mediation institutions may provide mediation services in Vietnam, and "representative offices" may conduct business development, and promote mediation practice in Vietnam. However, it seems unclear from the Decree whether foreign commercial mediators practicing in Vietnam under a foreign commercial mediation centre branch are subject to the same qualification requirements as Vietnamese mediators.

3. *The Vietnam Mediation Centre and the VMC Mediation Rules.* The Vietnam International Arbitration Centre [launched the Vietnam Mediation Centre](#) in May 2018, and published new Mediation Rules which went into effect on 1 July 2018. The Vietnam Mediation Centre is the first organization of its kind to go into operation in Vietnam. It is expected to significantly strengthen the practice of mediation and make dispute resolution services in Vietnam more appealing and favorable to international investors and clientele. The [Mediation Rules](#) contain provisions related to the style of mediation the Vietnamese government seeks to promote, which [encourage settlement proposals by the mediators](#), but restrict adjudication or arbitration by mediators unless it is provided upon the agreement of the parties.

4. *Recognition and Enforcement for Mediated Settlement Agreements.* One of the principal issues for parties in mediation proceedings is the question of enforcement. In 2015, Vietnam passed a revised version of the Civil Procedure Code which provides for court recognition of successful out-of-court mediated settlement proceedings (Chapter XXXIII). Parties may submit their written settlement agreement to the relevant court for recognition within six months from the date on which the agreement was reached. The court will consider several factors for recognition,

including whether the parties to the agreement are the parties with enforceable rights and obligations stemming from the mediation, and whether the mediated settlement agreement is voluntary and comports with Vietnamese law. After the court determines to recognize the agreement, the settlement agreement becomes enforceable as a civil judgement under Vietnamese courts. It is noteworthy that at this time, Vietnamese courts do not recognize mediated settlement agreements reached in proceedings overseas.

Given the significant economic growth and growing cross-border trade in Vietnam, this newly established legal and institutional framework is timely.

For foreign investors and traders, however, commercial mediation will really become a viable dispute resolution option when Vietnamese courts recognize mediated settlement agreements reached in overseas proceedings. For Vietnam, a next step in this direction could be the adoption of the draft [Singapore Convention on Mediation](#) which expected to be finalized at the end of this year with the signing ceremony due to take place in the second half of 2019.

The Singapore Convention is significant as it will facilitate, for the first time, the enforcement of international commercial settlement agreements resulting from mediation. The draft Convention applies to “international agreements resulting from mediation” and concluded “in writing” by parties to resolve a “commercial dispute”. In short it applies to cross-border commercial mediation scenarios where mediated settlements are not otherwise enforceable via a consent arbitral award or a court order.

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