

## MEDIATION

### 1. What is the importance of mediation?

The Court of Justice is in charge of the administration of justice for the people. Its primary goal is to have disputes settled with convenience, speediness and fairness. In addition to having disputes settled by means of hearing and rendering judgment, mediation is a method to resolve disputes which is commonly adopted by courts of many countries. Mediation is a dispute resolution mechanism that can enable a convenient, speedy and efficient settlement. In mediation, the disputing parties may achieve a mutually satisfactory settlement in which there is no loser or winner from the outcome. In mediation, both parties can emerge as the winners with a win-win solution that can preserve their long-term relationship. Last but by no means, the least, settlement of dispute by mediation also can lead to a more peaceful and harmony society, reduce the number of cases going through the trial process, and provide a chance for people participation in the dispute settlement process.

### 2. What is mediation?

Mediation is a means of dispute resolution facilitated by a neutral third person who assists the parties in finding mutually acceptable solutions. If the parties reach an amicable solution, they may enter into a binding and enforceable compromise agreement.

### 3. What are the main characteristics of mediation?

1. There is a dispute or difference that has arisen;
2. It involves two or more parties;
3. A neutral third person facilitates the negotiation process without making a decision on the dispute matter;
4. The parties consent to facilitation by the neutral third person; and
5. The outcome of the mediation rests solely on the decision of the parties.

### 4. What kinds of disputes are suitable for mediation?

The kinds of disputes suitable for the mediation comprise;

1. Civil and commercial disputes;

2. Compoundable criminal disputes; and
3. Other disputes which can be settled through mediation.

## **5. Who is the mediator?**

“Mediator” is a neutral third person whom the parties agree to help facilitating their negotiation to achieve an amicable solution. In the court-annexed mediation, the mediator may be a lay qualified person, a court official or a judge.

## **6. What are the types of mediation?**

1. Out-of-Court Mediation is the mediation for pre-litigation dispute. Even though a plaint has been filed and the dispute is during the litigation process, the disputing parties can also agree to carry out the mediation without any court involvement. In such case, the mediation is still considered to be an out-of-court mediation.

2. Court-annexed mediation is the mediation conducted while the cases are still pending in court. A mediation may be arranged by the court to seek for a mutually acceptable solution for the pending cases. If parties can reach an agreement as a result of the mediation, the parties may then withdraw the plaint or enter into a compromise agreement. Such agreement may be proffered to the judges responsible for the relevant case; the judges then may render a judgment on agreed-terms. In the case that the parties can settle only some of the issues in dispute, the court will conduct the proceeding for the remaining issues.

## **7. What is the mediation process?**

1. To enter into an out-of-court mediation, the parties to the dispute may appoint a neutral third person to facilitate them in finding a mutually acceptable resolution for the dispute. In the appointment of the neutral third person, the parties may consult each other and agree as to the person to be appointed, or may request an organization to arrange the mediation for them. For example, the parties may request the Mediation Center, the Alternative Dispute Resolution Office, the Office, of the Judiciary to provide the necessary services.

2. To enter into a court-annexed mediation, the parties may agree to enter into the mediation process, or the court may deem appropriate to conduct the mediation prior to the

hearing dates, such as the day of determination of disputed issues or the day of taking evidence, or later dates. Any party desires to enter into the mediation can contact the Mediation Centers of the Courts of Justice nationwide.

## **8. The Mediation Process**

### 1. Preparation stage

- The mediator has to study the basic information of the disputes from the case files or inquire the disputing parties.

### 2. Opening stage

- The mediator will make his or her opening statement which includes introduction of himself or herself and the persons participating in the mediation, building up the amicable atmosphere, explaining his or her roles and the mediation process as well as all necessary ground rules.

### 3. Interest-finding stage

- From information and facts given at the caucus of the disputing parties or the joint meeting of the parties, the mediator has to find out what is the interest of each of the disputing parties.

### 4. Solution-finding stage

- The mediator will try to reduce the number of disputed issues, and exploring possible options for solution.

## **9. The period to refer the disputes to court-annexed mediation**

Mediation prior to the hearing dates (before the day of determination of issues or the day of taking evidence): The Court may arrange the mediation to be conducted from the date of filing of the plaint unit the first hearing date.

Mediation on or after the hearing date (the day of determination of issues or the day of taking evidence): On such date or any other date, if the parties agree to mediate, either by their own initiative or the invitation of the court, the Court may order in the court's memorandum of proceeding to refer the case to the Mediation Center of that Court. The parties then contact the Mediation Center to fix the date for mediation.

## **10. What are the consequences of mediation?**

1. Whether or not the parties can settle their dispute, the mediation is terminated. Unless otherwise agreed by the parties, all facts and evidences occurred during the mediation cannot be referred in the court proceeding.

2. The mediation process is confidential. Unless otherwise agreed by the parties, both the mediator and the disputing parties shall not disclose any information or specific conditions negotiated in the mediation to any third person.

## **11. How long does the mediation take?**

The time necessary for the mediation depends on the complexity of the disputes, but it usually takes 1-6 months.

## **12. Do the parties incur any costs for conducting the mediation?**

Currently, the parties will not incur any costs or fees both in the in-court mediation and court-annexed mediation carried out by the Mediation Center of the Court of Justice.

## **13. What are the benefits of mediation?**

The mediation not only benefits the parties, but also enhances the efficiency of the court proceeding. The benefits are, for example:

1. Saving time and cost;
2. Attaining solution suitable for the parties' needs;
3. Preserving relationship between the disputing parties as to the confidentiality of mediation process;
4. Obtaining an enforceable settlement agreement;
5. Reducing or abolishing the number of disputed issues;
6. Being not prejudice to the parties' rights to continue court proceedings;
7. Reducing the number of cases proceeding to the hearing stage;

8. Reducing workload of the judges, so that the judges can spend more time on complicated cases;
9. Facilitating the continuous trial; and
10. Reducing the number of appeal cases as the disputes are settled.

#### **14. How to start the mediation process when the court action is still pending?**

To start out-of-court mediation, parties to the dispute may agree to have a neutral third person mediate their disputes. Otherwise, the parties may seek help from an organization providing mediation service such as the Mediation Center of the Alternative Dispute Resolution Office, the Office of the Judiciary, etc.

To start court-annexed mediation, parties to the dispute may contact the Mediation Center of the Courts of Justice nationwide and request the Center to conduct the mediation process either before the hearing date or during the court trial, notwithstanding that the case is in the Court of First Instance, the Court of Appeal, or the Supreme Court.

#### **15. How to prepare for the mediation process?**

- Gathering information, facts, and other related evidences regarding the dispute.
- Ensuring that the person representing the parties have an authority to settle such dispute.
- Cooperating with the officers or the mediator in the inquiry of information and facts of the dispute.

#### **16. Currently, what offices of the Office of the Judiciary are responsible for mediation?**

- The Alternative Dispute Resolution office; and
- The Mediation Center of the Courts of Justice nationwide

#### **17. How to contact the Alternative Dispute Resolution Office, the Office of the Judiciary?**

The Alternative Dispute Resolution Office, the Office of the Judiciary  
5<sup>th</sup> Floor, Criminal Court Building, Ratchadaphisek Road,  
Chatuchak, Bangkok 10900

Telephone: 0-2541-2298-9 Fax: 0-2513-5732

E-mail: [thaiarbitration@inet.co.th](mailto:thaiarbitration@inet.co.th)

**18. Is a lawyer needed in the mediation?**

It depends on the wish of the parties. If the parties decide to represent themselves in mediation, they can always do so because the parties have full authority to negotiate and settle the disputes by themselves.

**19. Do the parties have to file a written answer or appear before the Court to comply with a summons after the commencement of mediation process?**

If the dispute referred to mediation is not settled, the disputing parties where required to appear before the Court have to strictly comply with the summons and the defendant still has to file a written answer where such prescribed period has not expired. However, the parties may file a motion requesting to extend the prescribed period, or adjourn the date of proceeding on the ground that their dispute is under the mediation process.

**20. Is there any difference between in-court and out-of-court settlement? If so, what is the difference?**

Out-of-court settlement is the settlement that the parties reach in their negotiation and reduce the terms of settlement into a written instrument called “a compromise agreement” which will afterwards represent the new rights and obligations to be complied by the parties. If any party fails to comply with such agreement, it will be a basis for enforcement procedure against such party.

In-court settlement is the settlement that the parties reach in course of or during court proceedings by entering into a compromise agreement. The parties may then request the court to render a judgment on agreed-terms. Such agreement incorporated in the judgment may be enforced without initiation of the new lawsuit if a party fails to comply with the terms of the settlement.

**21. Is there any difference between settlement of dispute and withdrawal of a plaint? If so, what is the difference?**

The settlement of dispute can be conducted both in-court and out-of-court and the parties are obliged to comply with the compromise agreement. On the other hand, the withdrawal of a plaint will effectively terminate the pending case and no further proceeding is required.

**22. Is the case brought to the lawsuit terminated where the parties come to an agreement during the course of trial?**

If the dispute is settled through mediation either by ways of compromise, withdrawal of a plaint or judgment on agreed-terms, the lawsuit is consequently terminated.

**23. Do the parties need to pay for court fees and lawyer fees where the case is settled in mediation?**

Where a plaint has been withdrawn, the Court may order to partially refund the Court fees to the parties, without ordering to pay the lawyer fees.

Where the parties come to a compromise, the Court may order to partially refund the Court fees. As regard to lawyers fees, the parties may agree in the compromise agreement that the lawyers fees of both parties fall upon themselves or the lawyer fees from one party is borne by another party.

*Settlement of dispute by mediation is*

*The most justifiable outcome*

*as the parties decide*

*the outcome for themselves.*