

## **Mediation procedure in Mongolia**

Mediation a method of alternative dispute resolution parties to any agreement should consider, aside from arbitration. Mediation is essentially a negotiation facilitated by a neutral third party. Unlike arbitration, which takes a form more similar to trial, mediation doesn't involve decision making by the neutral third party, but seeks to find a mutually acceptable resolution or compromise between the parties. Mediation procedures can be initiated by the parties or may be compelled by legislation, the courts, or contractual terms. When parties are unwilling or unable to resolve a dispute, one good option is to turn to mediation. Mediation is generally a short-term, structured, task-oriented, and "hands-on" process.

In Mongolia the institution of mediation was established by adoption of the Law on Mediation in 2012. Pursuant to Law, mediation may be used in civil legal disputes, individual labor disputes and disputes arising from family relationships, and in some other disputes only if specified by law.

In mediation, the disputing parties work with a neutral third party, the mediator, to resolve their disputes. The mediator facilitates the resolution of the parties' disputes by supervising the exchange of information and the bargaining process. The mediator helps the parties find common ground and deal with unrealistic expectations. The mediator may also offer creative solutions and assist in drafting a final settlement. The role of the mediator is to interpret concerns, relay information between the parties, frame issues, and define the problems. Unlike the litigation process or arbitration, where a neutral third party (judge or arbitrator) imposes a decision over the matter, the parties and their mediator ordinarily control the mediation process – deciding when and where the mediation takes place, who will be present, how the mediation will be paid for, and how the mediator will interact with the parties.

A mediator is a specialized person, who is certified and registered in the list of mediators. Anyone with higher education may attend training courses for mediators and become a certified and registered mediator. However, currently most certified and registered mediators are usually lawyers or persons with certain legal or economic background. Law on Mediation provides presence of mediation centers at courts of first instance. Law also permits government authorities, NGOs and professional associations to have medication centers in accordance with their direction of professional activity, provided that certified and registered mediators are employed.

Mongolian Law on Mediation: The purpose of Mongolian law on Mediation is to regulate the legal basis for resolving legal disputes by non-judicial means with the support of mediator and to regulate relations concerning mediation. According to Article 3.1 of Law on Mediation, the mediation can be used in civil litigation, individual labor dispute and disputes arising from family relationships.

Mediation in a dispute arising out of relations other than those specified in above may be used only if specified by law. Mediation may be used for litigation in the civil court and arbitration in the court proceedings after dispute had arisen. Disputes arising out of the relationship specified in article 3.1 of Law on Mediation shall not be used to reconcile the rights, legitimate interests or

an interest of a third party, who does not involve mediation, or to interfere with the public interest. The arbitration may determine whether an intermediary is involved in the dispute settlement process.

The mediation shall be based on the following principles:

- To be implemented on voluntary basis;
- To keep the confidentiality of participants in the mediation process;
- To have a neutral position in the mediator;
- Participation equally with parties in the mediation process.

The court shall be obliged to remit the parties to the dispute and provide the mediator with the opportunity to reconcile the parties to each stage of the proceedings before and after the civil case and to reconcile the mediator. Conclusions of family disputes arising from family relationships other than those specified in Article 132.4 of the Civil Procedure Law shall be regarded as one of the preliminary court proceedings which is mandatory.

Mediator: A mediator may be employed to settle the disputes arising from the legal relationship of the sector in accordance with directions of state and non-governmental organizations and professional associations. The mediator specified in Article 8.1 of Law on Mediation shall be a specialized recruiting agent registered in the list of mediators who shall have obtained higher education, recruited and intermediary training and obtained a certificate of competence and conduct recruiting on the issue. Parties shall have the right to challenge the mediator if the mediator has provided legal advice, disclosure of the law and serious breach of the code of conduct by a mediator. It is prohibited for the parties to meet the mediator, not to knowingly with the adverse side, to make a mistake in the neutral position of the mediator, by reconciling with the act or inaction, such as requesting or requiring the mediator to act in the dispute. The mediator shall not disclose the information acquired under his/her job duties when performing his/her duties. The person who disclosed information revealed during the mediation process shall be liable under Law on Mediation.

Participants in Mediation process: The participants of the mediation process shall be parties, their legal representatives, guardians, custodians, third parties and other affected persons. Two or more parties and one or more intermediaries may participate in mediation.

In the mediation process, the parties shall be represented in person or through a representative. Unless otherwise stated in the law, parties may obtain assistance from lawyer, translator, interpreter and other persons during mediation process. The mediation shall be conducted in a designated hall or other place agreed upon by the parties to ensure the closed procedure of the operation.

Period of mediation: Mediation shall be conducted within 30 days and may be extended once at the request of the parties. The proceedings shall begin with the consent of the parties to agree upon the use of mediation by the mediators themselves or by the mediator of the mediation after

the application of the civil case to the mediators referred to in Articles 7 and 8 of this Mediation law.

If you are planning to draft a dispute resettlement clause, we recommend including mediation mechanism in the clause which is effective way to prevent from complicated court proceedings.

If you need more information or have any inquiry, please feel free to contact V.Bolormaa, Partner and Advocate of Absolute Advocates Law Firm by [bvolodya@gratanet.com](mailto:bvolodya@gratanet.com) or 976 99085031.