

**LEGAL STUDY ON THE MEDIATION PROCESS
IN CIVIL AND COMMERCIAL MATTERS**

PhD DISSERTATION

NAN AYE AYE CHU

**DEPARTMENT OF LAW
UNIVERSITY OF YANGON
MYANMAR**

MAY 2024

Abstract

Mediation is a process of dispute resolution which saves cost and time and is conducted either in court-annexed mediation centers or in private mediation centers. It generally consists of six types and is widely performed in India by the Code of Civil Procedure 1908, the Civil Procedure ADR and Mediation Rules, 2003 and the Mediation Act 2023. In Singapore, it is carried out under the Rules of Court 2021 and the Mediation Act 2017. In the United Kingdom however, since there are no special laws relating to mediation, the Civil Procedure Rules 1998 and the Court of Appeal Mediation Scheme 2017 are used. In Myanmar, as in the UK, there is no special statute concerned with mediation. Nevertheless, Myanmar courts implement mediation under the Code of Civil Procedure 1908 and the Court-led Mediation Manual 2022. In the initiation stage of a court-annexed mediation, mediation is identified as being either mandatory mediation or voluntary mediation. The mediation process itself consists of five stages which are fundamental to the practice of mediation. There will be an enforcement phase for the successfully mediated settlement agreement after these five steps. In a court-annexed or court-led mediation process, it has been noticed that issues often arise with regard to mandatory mediation, the requirement of confidentiality and with the enforcement of the mediated settlement agreement. This thesis will focus on the implementation of a more effective method of mediation in Myanmar through the amendment of some items contained in the Court-led Mediation Manual and the enactment of a special law on mediation.

Legal Study on the Mediation Process in Civil and Commercial Matters

Contents

| | Pages | |
|------------------------|--|-----|
| Acknowledgement | | |
| Abstract | | |
| Abbreviations | | |
| Introduction | | |
| Chapter 1 | Nature of Mediation | |
| 1.1 | Development of Mediation | 1 |
| 1.2 | Meaning of Mediation | 14 |
| 1.3 | The Role of Mediator | 17 |
| 1.4 | Types of Mediation | 33 |
| 1.5 | Benefits of Mediation | 36 |
| 1.6 | Prohibited Suits for Mediation | 38 |
| Chapter 2 | Identification of Mediation | |
| 2.1 | Mandatory Mediation | 44 |
| 2.1.1 | Automatic Mediation for Certain Matters | 47 |
| 2.1.2 | Court-Referred Mediation | 57 |
| 2.1.3 | Quasi-Compulsory Mediation | 61 |
| 2.2 | Voluntary Mediation | 73 |
| Chapter 3 | Fundamental Processes in Mediation | |
| 3.1 | Opening Statement | 78 |
| 3.2 | Joint Session | 82 |
| 3.3 | Caucus or Separate Session | 84 |
| 3.4 | Final Negotiation | 89 |
| 3.5 | Closure or Closing | 90 |
| 3.6 | Enforcement of the Mediated Settlement Agreement | 95 |
| Chapter 4 | Challenges in Implementation of the Mediation Process | |
| 4.1 | Challenges in Mandatory Mediation | 113 |
| 4.2 | Application of Fundamental Mediation Process | 125 |
| 4.3 | Confidentiality in the Whole Mediation Process | 133 |
| 4.4 | Enforcement of International Mediated Settlement Agreements | 144 |

Conclusion

References