ALTERNATIVE DISPUTE RESOLUTION (ADR): A NEW TREND OF ECONOMIC CONFLICTS SETTLEMENT

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ABSTRACT

In the process of international commerce activities, the parties always face to the disputes. However, the problem is how to not only settle the disputes affect and fast but also keep the good relationship between the parties. Alternative Dispute Resolution (hereinafter refer to ADR) is a selected priority by the parties to solve disputes in peace. ADR becomes the international trend to settle the dispute because of its advantages in comparison with other methodologies such as court with complicated litigation. Therefore, via this paper, I will analyze the characteristics of ADR and also the trend of ADR around the world nowadays. In the end, I will give the conclusions about ADR and recommendations for using ADR better in the next future.

Keywords: ADR, economic dispute, settlement, trend, international, Vietnam.

INTRODUCTION

Mediation is slowly becoming a more favorable alternative to resolving commercial disputes around the world, with the help of a neutral, independent and impartial person commonly referred to as a mediator. Mediation is seen primarily as an alternative to court (Alternative Dispute Resolution, or ADR). ADR is sometimes taken to refer to mediation; however, on other occasions, the term may also include arbitration, conciliation and a range of other processes. The term 'mediation' is often misunderstood by the legal community and the general public, because it is defined both as the general term (covering all forms of dispute settlement

processes, which also includes conciliation) and it is also interchangeably used as a specific term that excludes conciliation as a process.

In addition to serving as a potential means of avoiding the expense, delay, and uncertainty associated with traditional litigation, ADR also is intended as a vehicle for improving communication between the parties. ADR provides a forum for creative solutions to disputes that better meet the needs of the parties.

Using ADR to solve the Disputes of commerce is popular for some near decade and becoming a trend around the world. In Vietnam, Mediation is known such a long time ago but ADR is still a new methodology and not popular yet. April 2017, the Government granted the Decree 22/2017/ND-CP, it official recognizes Mediation/ADR as a way to solve the commercial disputes. After that, there are many mediation centers have established in Vietnam. This fact is demonstrating that ADR/Mediation is the trend to settle disputes not only in the world but also in Vietnam.

LITERATURE REVIEW

Definition of ADR

ADR as a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons ('the mediator') to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose a solution to the dispute upon the parties involved.

The term "alternative dispute resolution (ADR)" means any procedure, agreed to by the parties of a dispute, in which they use the services of a neutral party to assist them in reaching agreement and avoiding litigation.

Classification

Types of ADR include arbitration, mediation, negotiated rulemaking, neutral fact finding, and mini-trials. With the exception of binding arbitration, the goal of ADR is to provide a forum for the parties to work toward a voluntary, consensual agreement, as opposed to having a judge or other authority decide the case.

Mediation is known a popular type of ADR. There are three major styles of mediation: Facilitative, evaluative, and transformative. Facilitative mediation, also referred to as 'traditional mediation', is a professional mediator's attempts to facilitate negotiation between the parties in conflict and does not include legal advice, recommendations, suggestions or consultation on settlement. In evaluative mediation mediators are more likely to make recommendations and to express opinions. Instead of focusing primarily on the underlying interests of the parties involved, evaluative mediators may be more likely to help parties assess the legal merits of their arguments and make fairness determinations. Transformative mediation, meanwhile, focuses on empowering disputants to resolve their conflict and encouraging them to recognize each other's needs and interests. There are also many types of mediation centers. Free-standing (private) mediation centers or programs are organized without any court connection or component. They are usually run by a Chamber of Commerce, NGO, Trade Association, international or for-profit organization. Agreements arising out of private mediations are enforced like contracts. Court-annexed mediation centers have ADR programs or practices authorized and used within the court system and controlled by the court, but are not part of it. Cases are referred to mediation by courts only.

The salient features of each type are as follows:

In negotiation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution. (NB – a third party like a chaplain or organizational ombudsperson or social worker or a skilled friend may be coaching one or both of the parties behind the scene, a process called "Helping People Help Themselves" – see Helping People Help Themselves, which includes a section on helping someone draft a letter to someone who is perceived to have wronged them.

In mediation, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does not impose a resolution on the parties. In some countries (for example, the United Kingdom), ADR is synonymous with what is generally referred to as mediation in other countries.

In collaborative law or collaborative divorce, each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties reach agreement with support of the attorneys (who are trained in the process) and mutually agreed experts. No one imposes a resolution on the parties. However, the process is a formalized process that is part of the litigation and court system. Rather than being an Alternative Resolution methodology it is a litigation variant that happens to rely on ADR like attitudes and processes.

In arbitration, participation is typically voluntary, and there is a third party who, as a private judge, imposes a resolution. Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration. This is known as a 'Scott Avery Clause'. In recent years, the enforceability of arbitration clauses, particularly in the context of consumer agreements (e.g., credit card agreements), has drawn scrutiny from courts. Although parties may appeal arbitration outcomes to courts, such appeals face an exacting standard of review

Beyond the basic types of alternative dispute resolutions there are other different forms of ADR:

1. Case evaluation: a non-binding process in which parties present the facts and the issues to a neutral case evaluator who advises the parties on the strengths and weaknesses of their respective positions, assesses how the dispute is likely to be decided by a jury or other adjudicator.
2. Early neutral evaluation: a process that takes place soon after a case has been filed in court. The case is referred to an expert who is asked to provide a balanced and neutral evaluation of the dispute. The evaluation of the expert can assist the parties in assessing their case and may influence them towards a settlement.
3. Family group conference: a meeting between members of a family and members of their extended related group. At this meeting (or often a series of meetings) the family

becomes involved in learning skills for interaction and in making a plan to stop the abuse or other ill-treatment between its members.

4. Neutral fact-finding: a process where a neutral third party, selected either by the disputing parties or by the court, investigates an issue and reports or testifies in court. The neutral fact-finding process is particularly useful for resolving complex scientific and factual disputes.
5. Ombuds: third party selected by an institution – for example a university, hospital, corporation or government agency – to deal with complaints by employees, clients or constituents.

Disputes and Settlement of Dispute by ADR

In general, to solve the dispute by ADR methodology, the parties need have Mediation/Arbitration Clauses in Commercial Contracts. The vast majority of commercial contracts lack mediation/arbitration clauses that will automatically be in effect should a dispute arise. Lawyers should be trained to draft such clauses in commercial contracts. In addition, professional development programs in drafting contracts should be promoted through the Vietnamese Bar Association and related law associations. The International Chamber of Commerce (ICC) issued 'Mediation Guidance Notes' for use by parties, whether or not they are members of the ICC. In Vietnam, Decree 22/2017/ND-CP is certainly a positive development for the business community, despite some drawbacks. However, there are no legal restrictions for commercial disputes to be dealt with outside the restrictive boundaries of the Decree.

In fact, there are many advantages for the business community to choose a private facilitative mediation process rather than attempting to resolve disputes through a court-annexed system or through the courts. One of the advantages is that private facilitative mediation tends to move more quickly because it can take place when the parties choose to move forward rather than based on a court's schedule. It also gives businesses the flexibility to determine when meetings will take place rather than adhere to bureaucratic guidelines. Most judges worldwide follow the convention that mediations are confidential and that mediators cannot be subpoenaed as a witness. There are no guarantees of confidentiality in the Decree or in a court-annexed or

litigation process, which opens proceedings up to the public. It is often in the interests of a business to keep conflicts private, as even a hint of trouble could tarnish a company's reputation. Moreover, private mediation allows greater autonomy because it enables parties to have a bigger say in the outcome. Overall, a confidential mediation process allows businesses to find some common ground more quickly and develop an agreement with a 'win-win' approach, rather than a 'win-lose' situation.

RESEARCH METHODOLOGIES

Methodological basis

The methodology is the reasoning of the method that involves the system of methods, worldview, and humanity of people using methods and principles to solve the problems posed.

The method of scientific research is divided into a general methodology for science and methodology for each science subject. The general methodology is based on the philosophy of Mac-Lenin. Methodology for each science subject is specific methods based on the object of study of each science subject and has appropriate research methods.

Research Methods

To study the topic, I will use a combination of theoretical research methods such as analysis-synthesis method, interpretation-inductive method, statistically method, comparativeness method ... to go from study the actual developments to generalize and evaluate the general trend.

RESULTS AND DISCUSSION

The advantages and disadvantages to using ADR

Advantages include the fact that it usually takes far less time to reach a final resolution than if the matter was to go to trial. Usually (but not always), it costs significantly less money, as well. Furthermore, in the case of arbitration the parties have far more flexibility in choosing what rules will be applied to their dispute (they can choose to apply relevant industry standards, domestic law, the law of a foreign country, a unique set of rules used by the arbitration service, or even religious law, in some cases).

The parties can also have their dispute arbitrated or mediated by a person who is an expert in the relevant field. In an ordinary trial involving complicated and technical issues that are not understood by many people outside a relevant industry, a great deal of time has to be spent educating the judge and jury, just so they can make an informed decision. This large time investment often translates into a great deal of money being spent. Both sides might have to call expert witnesses, who may charge very large fees for their time. If an arbitrator has a background in the relevant field, however, far less time needs to be spent on this, and the parties can get to the actual issues of the case much sooner. And then, the parties can economy the money to settle disputes.

There are some disadvantages, as well. Generally, arbitrators/mediators can only resolve disputes that involve money. They cannot issue orders requiring one party to do something, or refrain from doing something (also known as injunctions). They cannot change title to property, either. Also, some of the safeguards designed to protect parties in court may not be present in ADR. These might include the liberal discovery rules used in U.S. courts, which make it relatively easy to get evidence from the other party in a lawsuit.

Also, there is very limited opportunity for judicial review of an arbitrator's decision. While a large arbitration service could, if it so chose, have some kind of process for internal appeals, the decision is usually final and binding, and can only be reviewed by a court in limited cases. This generally happens when the original arbitration agreement is found to be invalid. Because both parties must voluntarily agree to arbitration, if the consent of one party is obtained by fraud or force, it will not be enforced. Also, if the decision of the arbitrator is patently unfair, it will not be enforced. This is a difficult standard to meet. The fact that the arbitrator made a decision that the court would not have made is not, by itself, a basis to overturn the decision.

A court might also overturn an arbitrator's decision if it decided issues that were not within the scope of the arbitration agreement.

It is important to consider these advantages and disadvantages before agreeing to arbitration, or any other kind of alternative dispute resolution. Chances are, you have already agreed to arbitration in many situations, without even knowing it. Many lease agreements and employment contracts have mandatory arbitration provisions, and they will usually be enforced, as long as certain standards are met (generally, they must not deprive a person of a constitutional right, and they should be reciprocal).

The reality of using ADR in the World

In recent decade, ADR is used popular around the World, especially in developed countries. In this paperwork, I will show some country (both developed and developing country) to illustrate this fact.

Firstly, in Canada

In the 1990's Canada saw the beginning of a "cultural shift" in their experience with ADR practices. During this time, the need was recognized for an alternative to the more adversarial approach to dispute settlement that is typical in traditional court proceedings. In 2014, the Supreme Court of Canada stated in Hryniak v Mauldin that "meaningful access to justice is now the greatest challenge to the rule of law in Canada today… The balance between procedure and access struck by our justice system must reflect modern reality and recognize that new models of adjudication can be fair and just." However, in the decades leading up to this declaration there had already been a number of experiments in ADR practices across the provinces.

One of the first and most notable ADR initiatives in Canada began on January 4, 1999, with the creation of the Ontario Mandatory Mediation Program. This program included the

implementation of Rule 24.1, which established mandatory mediation for non-family civil case-managed actions. Beginning in a selection of courts across Ontario and Ottawa in 1999, the program would be expanded in 2002 to cover Windsor, Ontario's third largest judicial area. Until this point, opposition to mandatory mediation in place of traditional litigation had been grounded in the idea that mediation practices are effective when disputing parties voluntarily embrace the process. However, reports analyzing the effectiveness of Ontario's experiment concluded that over all mandatory mediation as a form of ADR was able to reduce both the cost and time delay of finding a dispute resolution, compared to a control group. In addition to this, 2/3's of the parties surveyed from this study outlined the benefits to mandatory mediation, these included:

1. providing one or more parties with new information they considered relevant;
2. identifying matters important to one or more of the parties;
3. setting priorities among issues;
4. facilitating discussion of new settlement offers;
5. achieving a better awareness of the potential monetary savings from settling earlier in the litigation process;
6. at least one of the parties gaining a better understanding of his ADR in Administrative Litigation 157 or her own case; and
7. at least one of the parties gaining a better understanding of his or her opponent's case."

In other provinces, the need for ADR to at least be examined as an alternative to traditional court proceedings has also been expressed. For instance, in 2015 Quebec implemented the New Code, which mandated that parties must at least consider mediation before moving to settle a dispute in court. The New Code also codified the role of the mediator in the court room, outlining that mediators must remain impartial and cannot give evidence on either party's behalf should the dispute progress to a judicial proceeding. In 2009, a report showed that Manitoba's experience with their Judicially Assisted Dispute Resolution program, an ADR initiative where the court appoints a judge to act as a mediator between two disputing parties who both voluntarily wish to pursue JADR.

One of the main arguments for ADR practices in Canada cites the over clogged judicial system. This is one of the main arguments for ADR across many regions, however Alberta in particular suffers from this issue. With a rising population, in 2018 Canada had the highest ratio for population to Superior Court Justices, 63,000:1. The national average on the other hand is nearly half that, with one Justice being counted for every 35,000 Canadians.

In India

Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonization mandates of UNCITRAL Model. To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, (CPC) 1908 has also been amended and section 89 has been introduced. Section 89 (1) of CPC provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement.

Due to extremely slow judicial process, there has been a big thrust on Alternate Dispute Resolution mechanisms in India. While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach.

A study on commercial dispute resolution in south India has been done by a think tank organization based in Kochi, Centre for Public Policy Research. The study reveals that the Court-annexed Mediation Centre in Bangalore has a success rate of 64%, and its counterpart in Kerala has an average success rate of 27.7%. Further, amongst the three southern states (Karnataka, Tamil Nadu, and Kerala), Tamil Nadu is said to have the highest adoption of dispute resolution, Kerala the least.

Arbitration and Conciliation Act, 1996

Part I of this act formalizes the process of Arbitration and Part III formalizes the process of Conciliation. (Part II is about Enforcement of Foreign Awards under New York and Geneva Conventions.)

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The contract regarding which the dispute exists, must either contain an arbitration clause or must refer to a separate document signed by the parties containing the arbitration agreement. The existence of an arbitration agreement can also be inferred by written correspondence such as letters, telex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defense in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement.

Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator – reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award.

The period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court.

Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation. Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator. When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both. Note that in the US, this process is similar to mediation. However, in India, mediation is different from conciliation and is a completely informal type of ADR mechanism.

Other kind of ADR in Indian is Lok Adalat. Etymologically, Lok Adalat means "people's court". India has had a long history of resolving disputes through the mediation of village elders. The current system of Lok Adalats is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, whereby mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they thinks fit. These are usually presided by retired judge, social activists, or members of legal profession. It does not have jurisdiction on matters related to non-compoundable offences. While in regular suits, the plaintiff is required to pay the prescribed court fee, in Lok Adalat, there is no court fee and no rigid procedural requirement (i.e. no need to follow process given by [Indian] Civil Procedure Code or Indian Evidence Act), which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular courts. Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok Adalat if one party applies to the court and the court sees some chance of settlement after giving an opportunity of being heard to the other party. The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An

important aspect is that the award is final and cannot be appealed, not even under Article 226 of the Constitution of India [which empowers the litigants to file Writ Petition before High Courts] because it is a judgement by consent. All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court. Permanent Lok Adalat for public utility services. In order to get over the major drawback in the existing scheme of organisation of Lok Adalats under Chapter VI of the Legal Services Authorities Act 1987, in which if the parties do not arrive at any compromise or settlement, the unsettled case is either returned to the back to the court or the parties are advised to seek remedy in a court of law, which causes unnecessary delay in dispensation of justice, Chapter VI A was introduced in the Legal Services Authorities Act, 1987, by Act No.37/2002 with effect from 11-06-2002 providing for a Permanent Lok Adalat to deal with pre-litigation, conciliation and settlement of disputes relating to Public Utility Services, as defined u/sec. A of the Legal Services Authorities Act, 1987, at pre-litigation stage itself, which would result in reducing the work load of the regular courts to a great extent. Permanent Lok Adalat for Public Utility Services, Hyderabad, India. The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws, and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat. Lok Adalat is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases. Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

In United Kingdom

In the United Kingdom, ADR is encouraged as a mean of resolving taxpayers' disputes with Her Majesty's Revenue and Customs. In the regulated sectors, finance, telecoms and energy,

ADR providers exist. Outside of the regulated areas there are schemes in many sectors which provide schemes for voluntary membership. Two sets of regulations, in March and June 2015, were laid in Parliament to implement the European Directive on alternative dispute resolution in the UK.

Alternative Dispute Resolution is now widely used in the UK across many sectors. In the communications, energy, Finance and Legal sectors, it is compulsory for traders to signpost to approved ADR schemes when they are unable to resolve disputes with consumers. In the aviation sector there is a quasi-compulsory ADR landscape, where airlines have an obligation to signpost to either an approved ADR scheme or PACT - which is operated by the Civil Aviation Authority.

On 1st October 2015, the UK adopted The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information); Regulations 2015 into law, which set out rules in relation to ADR and put measures into place to widen the use and application of ADR.

In United States of America

SECNAVINST 5800.13A established the DON ADR Program Office with the following missions:

- Coordinate ADR policy and initiatives;
- Assist activities in securing or creating cost effective ADR techniques or local programs;
- Promote the use of ADR, and provide training in negotiation and ADR methods;
- Serve as legal counsel for in-house neutrals used on ADR matters; and,
- For matters that do not use in-house neutrals, the program assists DON attorneys and other representatives concerning issues in controversy that are amenable to using ADR.

The ADR Office also serves as the point of contact for questions regarding the use of ADR. The Assistant General Counsel (ADR) serves as the "Dispute Resolution Specialist" for the DON, as required by the Administrative Dispute Resolution Act of 1996. Members of the office

represent the DON's interests on a variety of DoD and interagency working groups that promote the use of ADR within the Federal Government.

International convention on Mediation

The Singapore Convention on Mediation is complemented by the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation (2018), which was developed by UNCITRAL in parallel to the Singapore Convention. This provides States with the flexibility in implementing the cross-border enforcement mechanism and achieving a comprehensive legal framework on mediation.

The Convention is a landmark instrument, prepared by the United Nations Commission on International Trade Law (UNCITRAL), and adopted in December last year by the UN General Assembly. By providing for the first-time a cross-border enforcement mechanism for settlement agreements that result from mediation, the Convention brings certainty and stability to the international framework on mediation, thereby promoting more prosperous, stable and sustainable international trade relationships among States and regions. The Convention will undoubtedly enhance the use of mediation and will therefore foster access to justice.

The reality of using ADR in Vietnam

In Vietnam, ADR is existed in form of Negotiation, Arbitration and Mediation. Negotiation is the priority to use when parties have disputes. This methodology is regulated in many Vietnamese laws to solve the conflict in civil socialization.

Arbitration is known many years ago. First legal document recognized arbitration as measure to solve disputes is the Arbitration Ordinance 2003, and then Arbitration Law 2010. There are some Arbitration Center has established, for example Vietnam International Arbitration Center (VIAC). Although arbitration has many advantages in compare with court but until now, when has conflict or dispute, almost people in Vietnam still sue the court instead of arbitration. In recent year, the number of cases used arbitration is increasing day by day because of the

promoting of the arbitration center, training and social media. Moreover, the reason makes the enterprises use arbitration is knowing more about the advantages of arbitration and the new regulations of Civil procedures Code 2015 about recognizing and implementing the awards of arbitrators. Besides, Vietnam is the member of the New York Convention 1958, so people include foreign people believe more in arbitration.

Mediation is known and used in Vietnam long time ago but in commerce field, it becomes official methodology to solve commercial disputes just two years ago, from 2017 when the Vietnam Government enacted the Decree 22/2017/ND-CP guiding implementation of commercial mediation. And now, draft of law on annex – court mediation is making by National Assembly. There are about five mediation centers issued license to work now in Vietnam. The authority and experts in this field try to train mediation skills and knowledge to everybody know and use more this measure to solve the disputes. When mediation is used more, the burden of court system will decrease.

CONCLUSION AND RECOMMENDATION

In conclusion, with the many advantages, ADR is known and used more day by day around the world, include Vietnam also. It has become the new trend to solve conflicts and disputes in global.

In Vietnam, it is recommended that established policies be developed for individual stakeholders to initiate particular measures to develop ADR and implement measures to increase the awareness of ADR in the business and academic community as a viable option to resolve disputes. For example, academic institutions can be part of a community outreach to resolve minor community disputes without giving legal advice, or become sponsors for the establishment and operation of mediation centers under Decree 22. These institutions could also implement an internship program through their existing clinical education programs to train law students with an accredited mentor through apprenticeship programs developing practical skills in negotiation and mediation. Besides, the vast majority of commercial contracts

lack mediation clauses that will automatically be in effect should a dispute arise. Thus, lawyers should be trained to draft such clauses in both civil and commercial contracts.

The International Chamber of Commerce (ICC) issued 'Mediation Guidance Notes' for use by parties, whether or not they are members of the ICC. Therefore, the nations should refer this guiding to apply mediation measure more consensus and easy to recognize and implement.

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