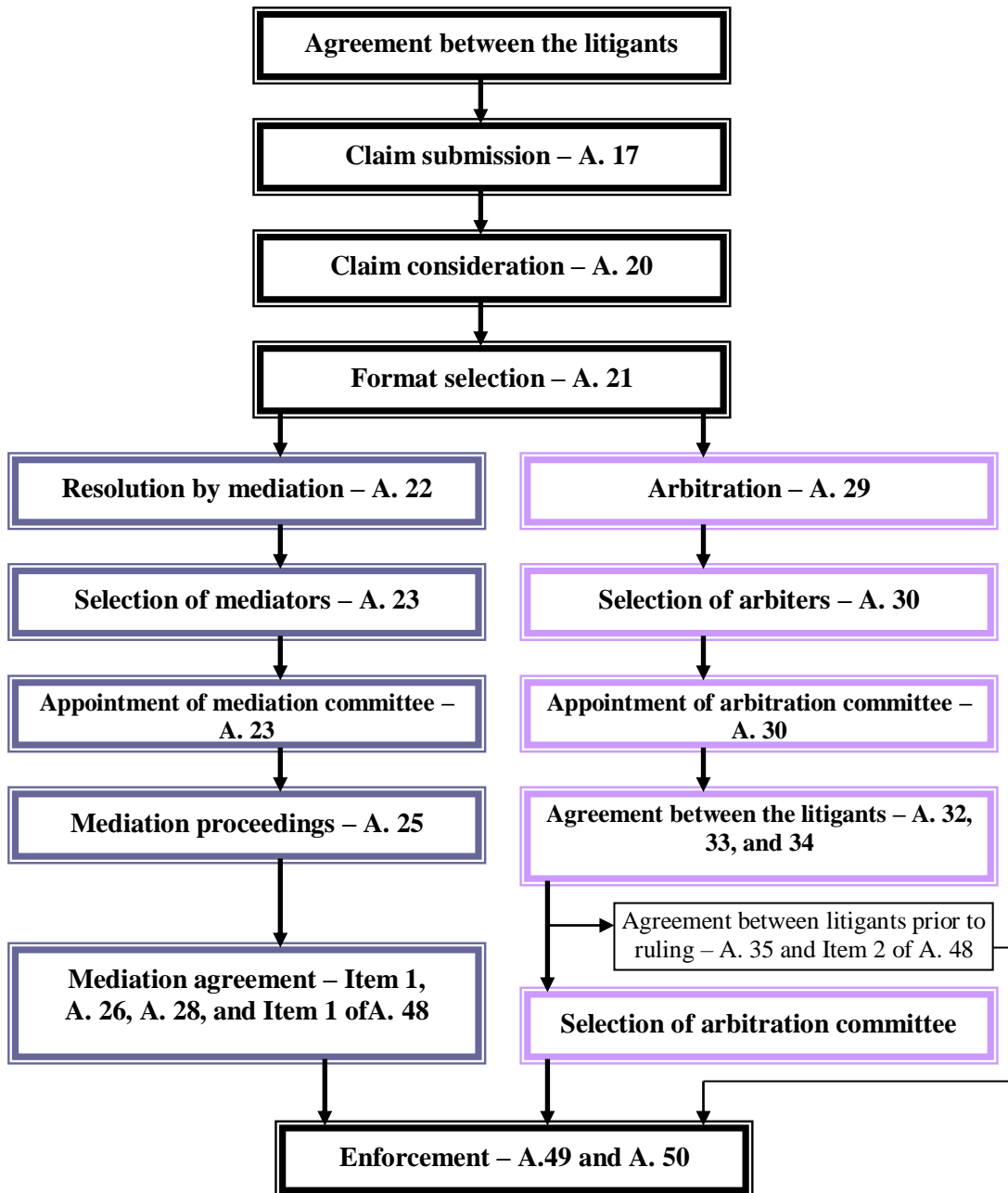
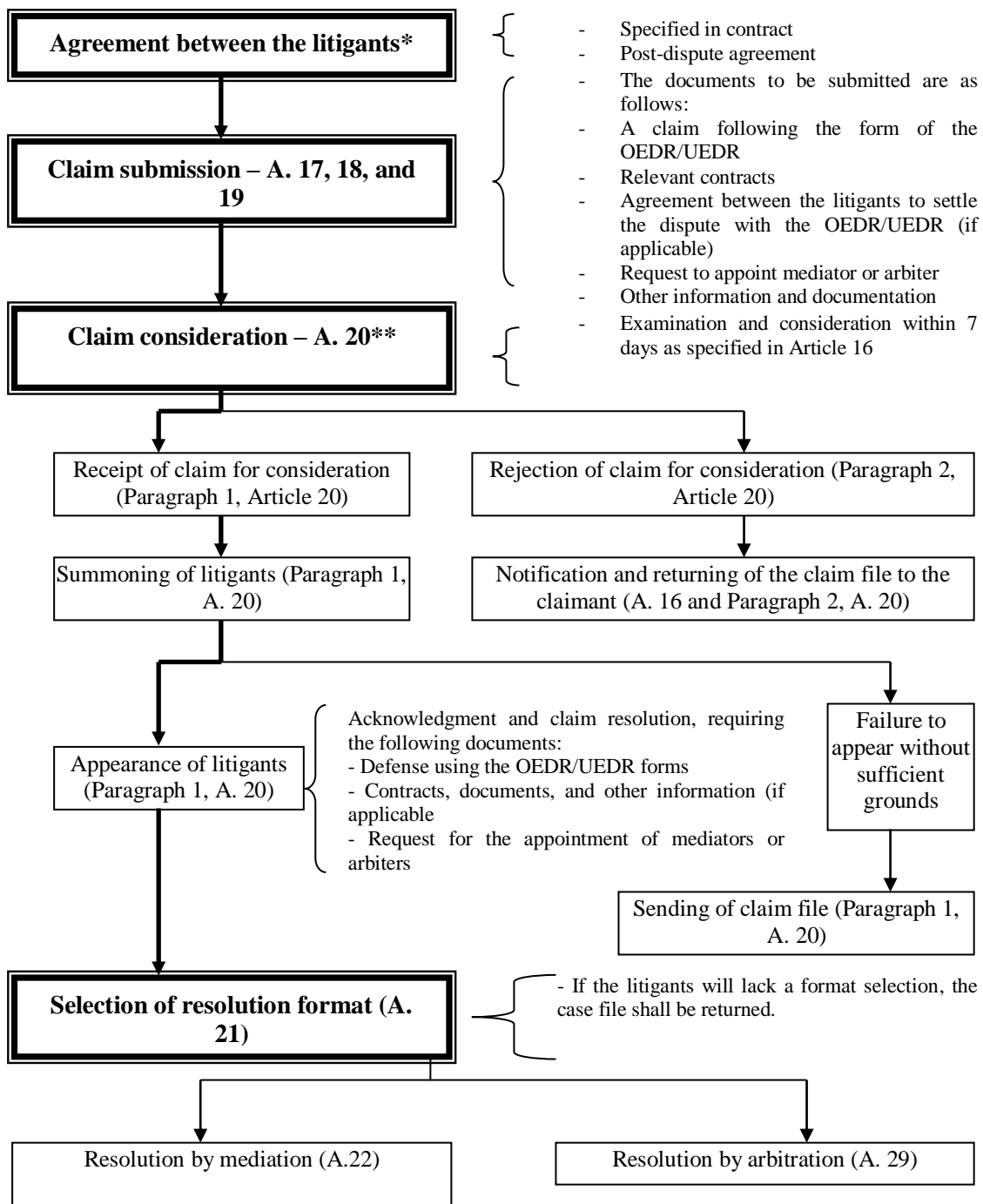


## Diagram of Brief Process for Economic Dispute Resolution



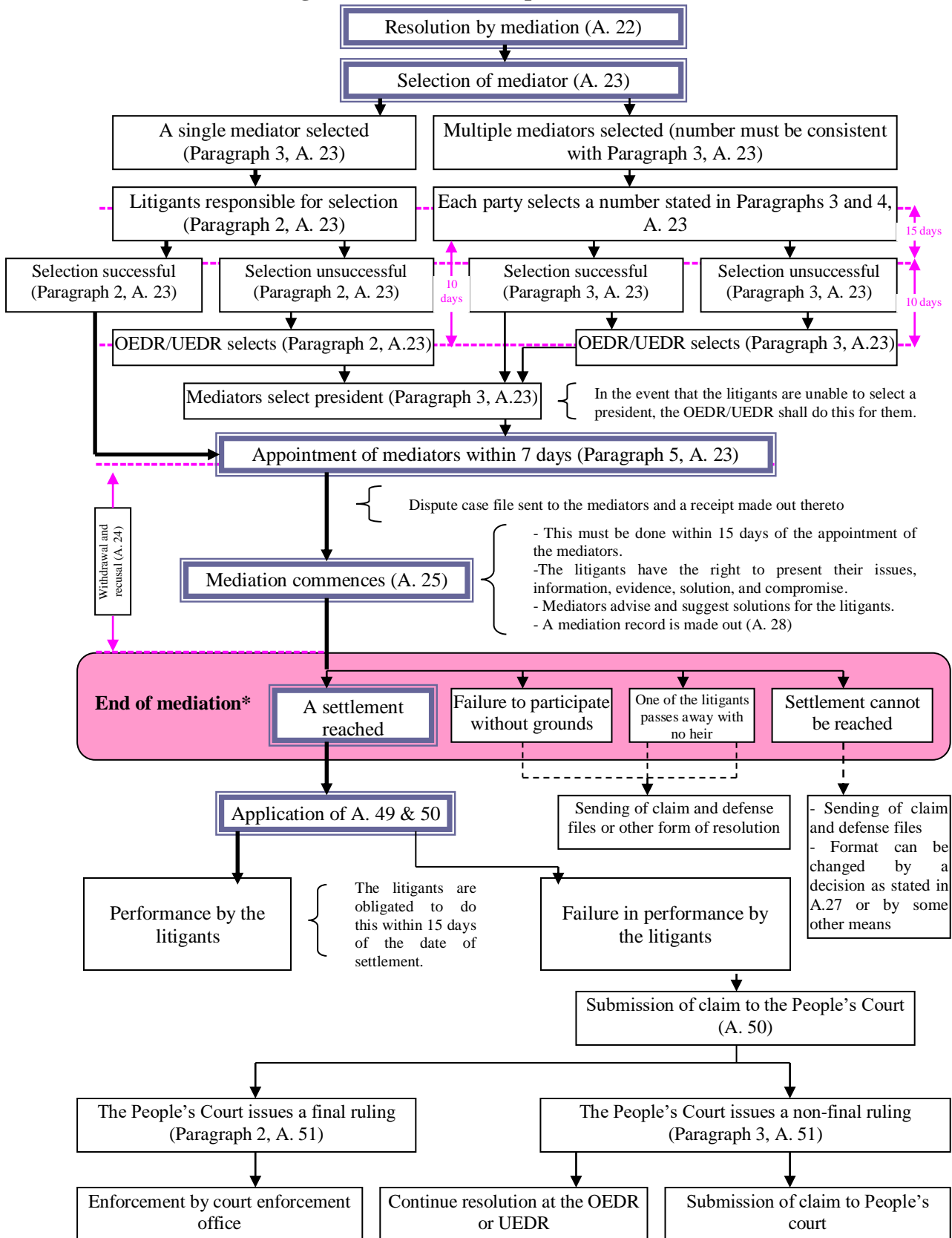
## Diagram of Economic Dispute Claim



\* In practice, the stages may be different from those depicted in the diagram. See Item 2, Chapter 4 for details.

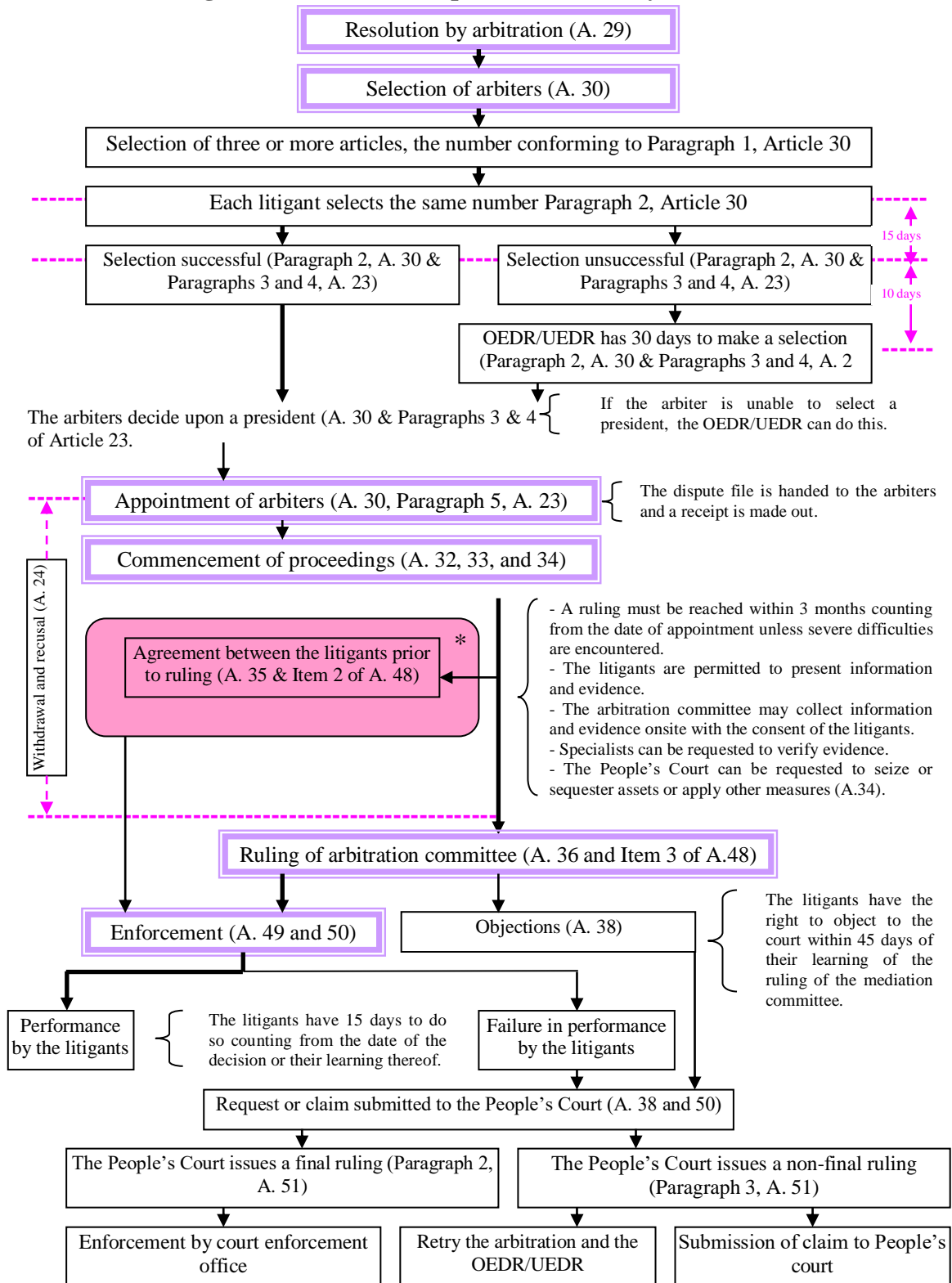
\*\* In practice, claim consideration may be different from those selected in the diagram. See Item 2, Chapter 4 for details.

## Diagram of Economic Dispute Mediation Claim



\* See Item 5, Chapter 5 for further details on ending mediation

## Diagram of Economic Dispute Resolution by Arbitration



\* See Item 6, Chapter 5 for further details on ending mediation prior to ruling (still uncertain)

**Key**



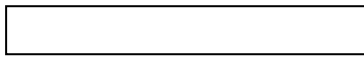
Claim submission stage



Main stage of dispute resolution by mediation



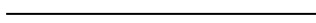
Main stage of dispute resolution by arbitration



Minor stage



Ordinary procedure



Extraordinary procedure



Time period



Time limit



Explanation

\*

Footnote

**OEDR**

Office of Economic Dispute Resolution

**UEDR**

Unit of Economic Dispute Resolution

**(A. OO)**

Reference to article of Law on Economic Dispute Resolution

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## Foreword

When a society develops and expands, the means of exchanging goods and services are transformed from natural methods to the business methods of those of a market economy. This is fraught with difficulties and complexities. For example, trade, construction, logistics, insurance, barter, consignments, loans, loans of assets, services, banking, advertising, legal consulting, and other forms of investment. Currently, the business sector comprises domestic and international business. Operating a business generates jobs, develops personnel with expertise in multiple fields, allowing socio-economic development, expansion, and national revenues to grow.

Currently, socio-economic development is seeing rapid growth and changes in many, some good and others less so, bringing about disputes one individual and another, between an individual and a legal entity, and between legal entities amongst themselves and these need to be tackled using methods and procedures which are correct and suitable.

Dispute resolution in court is consideration by the judicial tribunal of a People's Court and based on the case proceedings of the court according to the claim or a request from one of the litigants making a request against the other litigant without their permission. In such cases, the courts shall seek out all conditions and methods to bring about an amicable agreement between the two litigants as specified by the laws and regulations of the Lao PDR.

Within the procedure for the case mediation of a court shall be efforts for the two litigants to agree of their own accord before each instance of case procedure is taken using through the use of the State legal personnel with the correct authority.

For case resolution through mediation in the courts of some countries<sup>1</sup>, this is considered to be alternative dispute resolution (ADR) because both litigants voluntarily agree to the mediation and the judges perform this role alone – simply playing a central role and facilitating case procedure without the need for State legal personnel and the committee does not read this book, which shows a stark difference from mediation in the Lao PDR.

Out-of-court disputes or ADRs are a form of dispute resolution whereby both litigants voluntarily choose the method of resolution between themselves with the case being conducted on an equal basis by, for example, negotiation or consultation, mediation, or involving decisions made by labor unions.

Overall, there are many forms of dispute resolution in the Lao PDR, such as negotiations or discussions, village level mediation, and mediation by the Office of Economic Dispute Resolution (OEDR) or a unit of economic dispute resolution (UEDR).

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<sup>1</sup> For which we are taking Japan as a lesson and example (see simple case medication in court, KOBE: the judges do not have a central role in the resolution but act rather as facilitators to monitor the correctness of the procedure and any documents in need of correction).

This book shall delve deeply into economic dispute resolution by the OEDR and UEDRs.

## **Chapter 1**

### **Background of Economic Dispute Resolution**

#### **1. Background of Economic Dispute Resolution in the Lao PDR**

##### **1.1 Overall situation prior to the founding of the OEDR or a UEDR**

In 1986, the government of the Lao PDR underwent a monumental transformation, moving from centralized management mechanisms to give birth to and boost a multi-sectoral economy able to operate according to market mechanisms through State management and adjustment – transforming itself from a natural economy into a goods-based, open-door economy, and improving policies to promote both domestic and overseas investment to attract foreign investors to invest in the Lao PDR so as to develop and gradually modernize the international economy to develop the agricultural and industrial sectors while at the same time improving and transforming the management methods of the Lao PDR, thus promulgating a new Constitution and new laws and regulations to support investment.

The transformations from a natural economy into a market economy (New Economic Mechanisms – NEM) in 1986 allowed the economy of the Lao PDR to expand rapidly and gradually open up to liaisons and cooperation with many other countries. The State is managing society using objective laws and many laws have been approved and amended so that they may be consistent with realities within the country, region, and the world.

##### **1.2 Foundation and Development of the OEDR**

Ever since the Lao PDR put in place market economic mechanisms in 1986, policies were developed for domestic and foreign trade in 1986, domestic and foreign investment expanded, and a plethora of new private enterprises sprouted up and expanded fast. In pace with this, we saw an increase in economic disputes in accordance with socio-economic expansion. This necessitated the Lao PDR to set up a new organization charged with the duty of resolving the disputes arising over the following periods:

###### **A. 1<sup>st</sup> Period: 1989 – 1994**

This was the initial period following the founding of the Office of Dispute Resolutions of the Lao PDR (OEDR) at the end of 1989, being named the Economic Mediation Organization pursuant to Presidential Decree 146/P, dated 28 1989, under the organization and operations of the Ministry of Economics, Planning, and Finance. During this period, this was only set up at central levels with the equivalent status as a department operating under the Ministry of Economic Planning, and Finance and as departments under the management of the Ministry of Economics, Planning, and Finance. At that time, this organization was the only central level organization with a status of that of a department managed by the Ministry of Economics, Planning, and Finance with a leading role in the ministry in advising business units, construction companies, and the regular

management and performance of business contracts. Its scope of responsibilities, rights, and duties in economic dispute resolution had yet to be defined in detail.

## **B. 2<sup>nd</sup> Period: 1994-2005**

During this period, domestic and overseas investment was on a rising trend, which demanded an economic mediation organization with clear responsibilities, rights, and duties to keep up with the socio-economic development of the time. For this reason, the Prime Minister (PM) issued Decree 106/PM, dated 15 July 1994, on Economic Dispute Resolution to act as a fundamental piece of legislation, transforming from a mediation system run by central level personnel through the central dispute resolution organization itself through the use of head offices to the use of judicial sectoral management offices, thus having two levels – a main central office and local level legal offices.

At central level, there is an Organization of Economic Dispute Resolution (OEDR) with a status of that of departments operating under Ministry of Justice and divided into three divisions: the Administration Division; the Economic Dispute Resolution Management Division; and Legal Division.

At local level, the OEDR has branches named “OEDR branches”, the Director of which having equal status to a provincial department deputy director and operating under the Provincial Department of Justice (DoJ). These branches are made up of two units: the Administration Unit and the Unit of Economic Dispute Resolution (UEDR). There were four OEDR branches nationwide: the Central Regional Branch located in Savannakhet, established on 17 July 1997, the Northern Regional Branches located in Luang Prabang, established on 30 November 1997, and in Oudomxay, established on 4 August 2003, and finally the Southern Regional Branch, located in Champasak province and established on 1 November 2004.

## **C. 3<sup>rd</sup> Period: 2005-2010**

During this period, socio-economic development was expanding rapidly, allowing the Lao PDR to link up regionally and globally, becoming a member of ASEAN, kicking off negotiations to become a member of the World Trade Organization (WTO), and participating as party to a number of international conventions and treaties. The Lao PDR therefore deemed that this socio-economic was to be ongoing and parts of Decree 106/PM, dated 15 July 1994, on Economic Dispute Resolution were to be used as a reference but were self-contradictory and many issues were inaccurate, some issues lacking any specification at all. Owing to this, the MoJ liaised with the relevant sectors and agreed upon the issues still lacking specification and Law 02/NA, dated 19 May 2005, was issued to act as a reference for systems and organizations to be used in economic dispute resolutions, of which there are two levels – central and local levels. Local branches adjusted to conform to this law and their name was changed from ‘OEDR branches’ to Units for Economic Dispute Resolution (UEDR).

## **D. 4<sup>th</sup> Period until 2010 through to present day**

As things now stand at present, cooperation, production, and trade at regional and global levels have been expanding so certain sections and articles of the Law on Economic Dispute Resolution but this 2005 became once again inconsistent with this expansion so the Lao PDR amended it to 06/NA, dated 17 December 2010, which allowed the OEDR to operate according to the law, changing its name from the “Office of Economic Dispute Resolution” to the “Organization of Dispute Resolution (OEDR)”, changing the name of the “Legal Division” to the “Juristic Division”, and setting up one more division – “the Division of Economic Dispute Resolution Monitoring Division. At local level, no changes were made.

The OEDR has now expanded its UEDR network with seven new branches being established – in four northern provinces (Phongsaly, established on 5 June 2013, Houaphan, Louang Namtha, and Xiengkhouang, established on 13 May 2014), one new office for the Central Region located in Vientiane, and two more branches in the southern provinces (Khammouane, established on 27 October 2014 and Salavan, established on 16 October 2014. This means that there are now 11 UEDRs nationwide: Phongsaly, Oudomxay, Louang Namtha, Houaphan, Xiengkhouang, Luang Prabang, Vientiane, Khammouane, Savannakhet, Champasak, and Salavan.

Currently, economic dispute resolution is performed through mediation or arbitration. The method to be used is up to the litigants – arbitration, for example. In 2010, 24 resolutions took place, 12 between a foreign entity and a domestic entity and 12 between one domestic entity and another. In 2015, 36 economic resolution disputes were held, 17 between domestic entities and foreign entities and 16 between one domestic entity and another. This shows that the number of economic resolutions has jumped up hugely – 80% for mediation and a further 20% of requests of advice.

Therefore, when combining these, the economic development of the Lao PDR and its foreign and domestic and investment economic disputes are inevitable, as is shown below in 2010-2016, during which there was a rising trend, as depicted in the tables below showing the statistics for economic disputes:

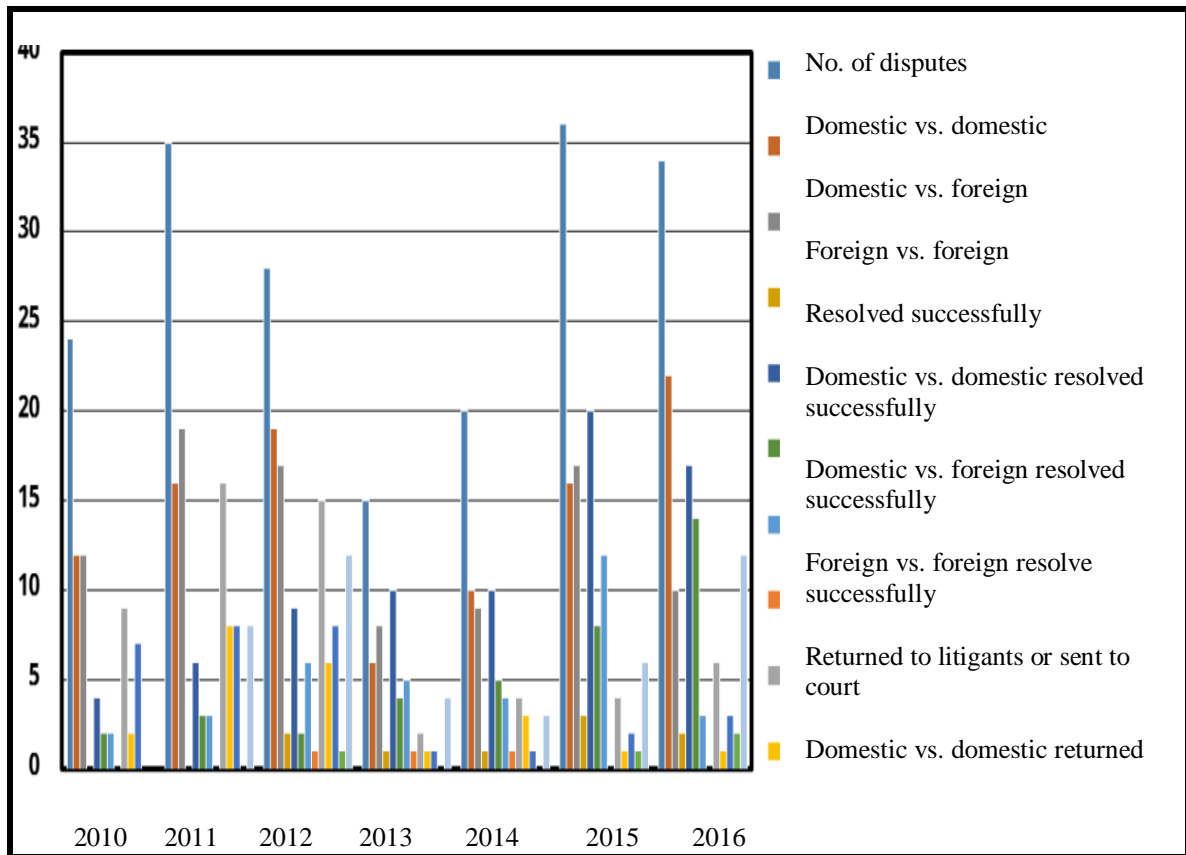
**Table Showing Statistics on Economic Disputes at the OEDR**

No.	Dispute		8						
			2010	2011	2012	2013	2014	2015	2016
1	Domestic litigant against another domestic litigant	Total disputes	24	35	28	15	20	36	34
		Disputes between two domestic litigants	12	16	9	6	10	16	22-
		Disputes between a domestic and foreign litigants	12	19	17	8	9	17	10
		Disputes between two foreign litigants	0	0	2	1	1	3	2
2	Disputes which have been resolved	Successfully	4	6	9	10	10	20	17
		Disputes between two domestic litigants	2	3	2	4	5	8	14
		Disputes between a domestic litigant and a foreign litigant	2	3	6	5	4	12	3
		Disputes between two foreign litigants	0	0	1	1	1	0	0
3	Disputes sent back to the litigants or referred to a court	Sent back to the litigants or referred to a court	9	16	15	2	4	4	6
		One domestic litigant against another	2	8	6	1	3	1	1
		Domestic litigant against foreign litigant	7	8	8	1	1	2	3
		One foreign litigant against another	0	0	1	0	0	1	2
4		Brought over from previous year	0	8	12	4	3	6	12

Remark: The statistics for 2016 are counted from 6 September up until 8 September 2016

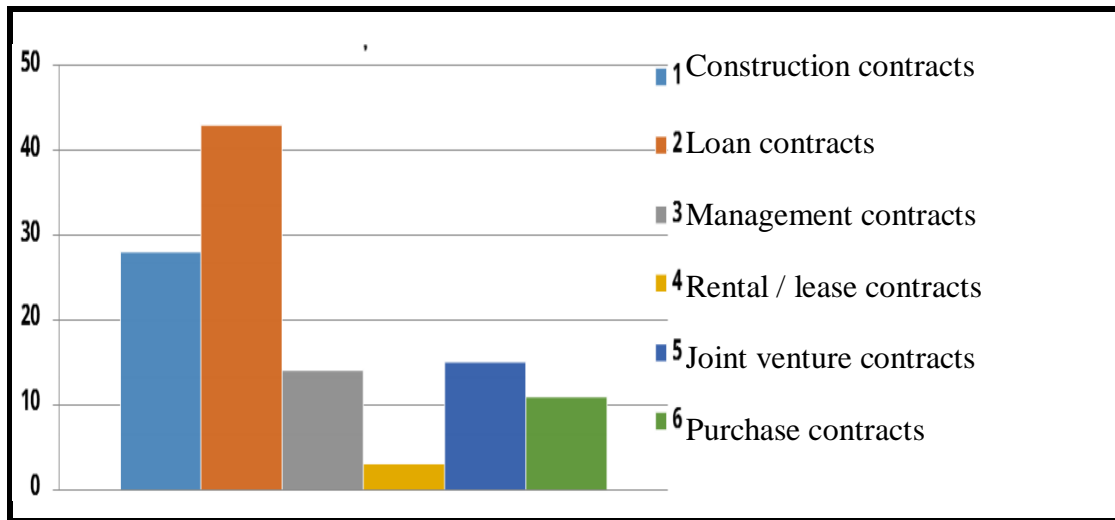


## Statistics on Economic Dispute Resolution by the OEDR



Statistics on Economic Disputes per Contract from 2012 until February 2016		
No.	Type of Dispute	No. of Disputes
1	Construction contracts	28
2	Loan contracts	43
3	Service contracts	14
4	Rental / lease contracts	3
5	Joint venture contracts	15
6	Purchase contracts	11

## Statistics on Economic Disputes per Contract from 2012 until February 2016



## 2. Participation of the Lao PDR in the 1958 New York Convention

### 2.1 Meaning

The New York Convention recognizes and enforces foreign economic arbitral awards and is abbreviated to “the 1958 New York Convention”. It entered into force on 10 June 1958 in New York, United States of America (Annex 1). This convention is a fundamental piece of international legislation which recognizes and enforces economic arbitral awards in the territories of other State Parties arising from disputes between individuals and/or legal entities. It shall also apply to domestic arbitral awards between individuals in the State where their recognition and enforcement are sought but the relevant State Party must recognize in writing that the litigant is seeking recognition of their arbitral award. The number of State Parties has been gradually growing and there are now 156 countries party to this convention<sup>2</sup>.

Each State Party shall recognize arbitral awards over economic disputes which are binding and enforce them in accordance with the law and regulations of the country responsible for enforcing them under the conditions specified in this convention. No conditions may be made to create difficulties or collect excessive processing fees, expenses for the recognition and/or enforcement of an economic arbitral award, and/or the enforcement thereof in accordance with this convention.

In general, following the participation of the Lao PDR as a State Party to the 1958 New York Convention, arbitral awards have been made by the committees of other State Parties. If the Lao PDR is not participating as a State Party to the convention, in the event of an economic dispute, exclusively the laws of the Lao

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<sup>2</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

PDR must be followed and the matter may not be taken to another country for enforcement.

## **2.2 Necessity to be Party to the 1958 New York Convention**

The Lao PDR needs to be party to the 1958 New York Convention in order to protect the rights and interests of both domestic and/or foreign investors in the event that an arbitral award has been made in the territory of another State Party and that such is recognized and enforced in the Lao PDR or enforced in the territory of the other State Party, both as a means of confirmation and assurance for foreign investors – for example – who require certainty that the legal provisions and regulations applied are consistent with this convention as the status of the Lao PDR as a State Party.

The 1958 New York Convention also acts as an incentive for foreign investors to invest or operate businesses in the Lao PDR in the knowledge that any disputes arising in contractual performance associated with trade, investment, services, and so forth shall be ruled on by the committee of the foreign country in question and a request may be made for such and its enforcement in the Lao PDR. Therefore, the Lao PDR has been participating as a State Party to this convention ever since 15 September 1998 pursuant to Notice 2425/PMO<sup>3</sup>.

## **2.3 Benefits of Being Party to the 1958 New York Convention**

The benefits received from being party to the 1958 New York Convention are to protect and boost investment between the Lao PDR and other countries. It is also beneficial to the Lao PDR from the perspective of international law as it provides policies to help open up and cooperate economically with other countries, facilitate the enforcement of foreign arbitral awards, allow businesspeople confidence with respect to dispute resolution, and also strengthen the Law on Economic Dispute Resolution.

In order to protect and boost investment between the Lao PDR and other countries while at the same time facilitating trade for investors in the event of a dispute, the Lao PDR can refer back to the 1958 New York Convention and enforce it in the Lao PDR as specified in Article 52 of the Law on Economic Dispute Resolution, which states that the Lao PDR shall recognize and enforce the arbitral awards of the committees of other countries along with international law when the following conditions have been met in full:

- 1) The litigants must hold a nationality of one of the State Parties of the 1958 New York Convention on the Recognition and Enforcement and abide by the arbitral awards of the arbitrating nation and international law.
- 2) It must not conflict with the Constitution or any relevant legal regulations of the nation, public order, and/or the environment.

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<sup>3</sup> See Annex 1 for further details.

- 3) According to Item 2, Article 38, a litigant which has debts, assets, business operations, shares, deposits, and/or other forms of savings in the Lao PDR<sup>4</sup> must undertake to perform any economic or specific agreement, verdict of a foreign court or arbitration committee, and/or a foreign arbitral award for any such dispute.

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<sup>4</sup> Law on Economic Dispute Resolution (amended in 2010), Article 52

## Chapter 2

### Economic Dispute Resolution

#### 1. Information on Economic Dispute Resolution

##### 1.1 Meaning

*Economic dispute resolution* refers to the solving of problems where there is disunity and where the rights and interests of the litigants are affected through contractual violation and/or the operation of production and/or business in such a way that leads to damages. There can be claims and requests made to consider resolving all kinds of problems, such as civil claims, requests for mediation and/or arbitration, and so forth.

The resolution of economic disputes by the OEDR or UEDR takes place through alternative dispute resolution (ADR), which is a means of resolving errors concerning interests arising from contractual violations concerning production or business – for example – but also extending to trade, investment, services, and so forth – through the voluntary arbitration and/or mediation of the litigants and may shed light upon both litigants as agreed in a contract or after a dispute has taken place. The litigants enter into this voluntarily at OEDR or UEDR level to consider and summarize the dispute in question. The dispute would be economic or commercial as specified by the Law on Economic Dispute Resolution<sup>5</sup> and come at the request of one or both of the litigants for consideration.

##### 1.2 Importance

Economic dispute resolutions are important for resolving disputes concerning the rights and interests of the litigants should an economic dispute between them arise. They are resolved by the OEDR or a UEDR in accordance with the Law on Economic Dispute Resolution, which shows that:

- It is a dispute resolution system created by the State and recognized internationally, thus making an important contribution to reducing the number of cases taking place at the People's Court.
- It gradually transforms the dispute resolution system into one which is international, creates conditions, and facilitates matters for the OEDR and UEDRs as mediators and arbiters in their resolution of economic disputes.
- It resolves problems appropriately to their circumstances and based on the volition of the litigants without there being coercion, discrimination by gender, race, religion, nationality, ethnicity, socio-economic status, language, educational level, age, beliefs, or area of residence or bias. It is free of external interference, bases itself on virtue, takes into consideration the litigants, encourages compromise, and takes into consideration the legal and regulatory bases of the litigants.

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<sup>5</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 2, Article 2

- It acts as an additional judicial, humanitarian, and concise procedure without an excessive amount of stages, thereby reducing costs and time.
- Disputes raised for consideration must be confidential unless permission is granted by the litigants.
- They make an important contribution to sustainable public order and socio-economic growth.

### **1.3 Aims**

The aim of economic dispute resolution is for it to be resolved and any economic requests made to the OEDR to be resolved through consideration consistently with the law and regulations. They must also be consistent with the true circumstances of the litigants

The aims for resolving an economic dispute are as follows:

- 1) To resolve the dispute between the litigants peacefully, fairly, and speedily<sup>6</sup>, meaning that the economic dispute resolution shall aim to resolve problems therein within a satisfactory length of time for the litigants without bias or unnecessary delays;
- 2) In order to reinstate the rights and interests violated and to resolve the economic dispute and so as to reinstate the rights and violated interests of the aggrieved party; and
- 3) To maintain peace and order in society.

## **2. Principles, Formats, and Scopes of Rights for Economic Dispute Resolution**

### **2.1 Principles for Economic Dispute Resolution**

Economic disputes are resolved according to the following principles:

- 1) Justice and consistency with the law;
- 2) The volition of the litigants;
- 3) The equality of the litigants;
- 4) The independence and equality of the arbiters and/or arbitration committees;
- 5) The language used; and
- 6) Confidentiality.<sup>7</sup>

#### **2.1.1 Assurance of Justice and Consistency with the Law**

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<sup>6</sup> Law on Economic Dispute Resolution (amended in 2010), Article 1

<sup>7</sup> Law on Economic Dispute Resolution (amended in 2010), Article 1

When resolving economic disputes, the mediators or arbiters must ensure justice and consistency with legal regulations.<sup>8</sup>

The principles of justice and consistencies with the law must ensure two things: Firstly, the mediators or arbiters must provide equality and equal rights to the litigants, act transparently, not fall subject to bias or influence, not create difficulties to resolving the dispute, not demand money or other personal gain from the litigants, and not use coercion against the litigants and secondly, any agreements made by the arbiters or verdicts made by the judges or arbitration committee must be legal, consistent with fact, and enforceable.

### **2.1.2 Volition of the Litigants**

When resolving an economic dispute, each party shall have equal and voluntary rights under the law, which shall be fundamental and absolute. Therefore, the Law on Economic Dispute Resolution specifies that “The litigants shall have the right to take a dispute to the OEDR or a UEDR for resolution without any form of coercion from any individual or organization<sup>9</sup>.” This means that that the litigants wishing to allow the OEDR or UEDR to consider the resolutions based on which to resolve their dispute’.

### **2.1.3 Equality of the Litigants**

In the resolution of an economic dispute, each litigant shall have equal rights under the law without discrimination by gender, race, nationality, ethnicity socio-economic status, educational level, age, religion, area of residence, and such like.

Foreigners, aliens, and stateless persons doing business in the Lao PDR are treated equally as Lao civilians unless otherwise stated by law<sup>10</sup>.

This equality in dispute resolution under the law for the litigants is shown by the following:

- 1) In the specification or selection of a location for the dispute resolution to take place (sometimes this is written into the contract or the litigants may agree to hold the dispute domestically or overseas).
- 2) The format of the dispute shall be decided by the OEDR or UEDR.
- 3) The selection or recusal of the arbiters or arbitration committee;
- 4) The request of information and evidence; and/or
- 5) The enforcement of the outcome of the economic dispute.

### **2.1.4 Independence and Equality of the Arbiters and/or Arbitration Committee**

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<sup>8</sup> Law on Economic Dispute Resolution (amended in 2010), Article 9

<sup>9</sup> Law on Economic Dispute Resolution (amended in 2010), Article 10

<sup>10</sup> Law on Economic Dispute Resolution (amended in 2010), Article 11

When resolving an economic dispute, the arbiters and/or arbitration committee shall perform their duties independently, with equality, and transparently under the law and regulations.

*Independence* refers to the performance of the duties of an arbiter or arbitration committee independently and in accordance with the law without interference from other persons or organizations.

*Equality* refers to the ethical performance of the duties of a mediator or arbitration committee without favoritism and based on the facts of the dispute which arose and evidence which is solid in accordance with the law.

### **2.1.5 Language Used**

The language used in a dispute at the OEDR or a UEDR, unless otherwise stated in the contract or agreed between the litigants, during the dispute resolution shall be Lao language and another language may also be used through an interpreter<sup>11</sup>. This means that all disputes brought for resolution at the OEDR or a UEDR must take place in Lao. If either or both parties are unfamiliar with Lao, they may use their own language(s) through an interpreter.

### **2.1.6 Confidentiality**

During an economic dispute resolution, the information and evidence presented during the arbitration and/or verdict must be kept confidential.

The arbiters, arbitration committee, litigants, and other participants do not have the right to disclose the content of this dispute to external persons without the express permission of the other litigant<sup>12</sup>.

Litigants, other participants, mediators, and arbitration committee do not have the right to disclose the content of a dispute to another person without the permission of the other litigant. Neither do they have the right to use this information for personal gain in order to violate the rights and interests of another person. In the event that such a violation occurs, resulting in damages to the State, society, the person in violation shall be subject to reeducation, disciplinary measures, fines, and/or undergo legal proceedings and pay compensation for the damages incurred.

Other than that described above, during an economic dispute resolution at the OEDR or a UEDR, a specialist may also be required and the mediators and/or arbitration committee must have definite knowledge and expertise in this specialized area, being able to prove that they passed the relevant curriculum/a and/or having experience of at least five years<sup>13</sup>.

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<sup>11</sup> Law on Economic Dispute Resolution (amended in 2010), Article 13

<sup>12</sup> Law on Economic Dispute Resolution (amended in 2010), Article 14

<sup>13</sup> Law on Economic Dispute Resolution (amended in 2010), Article 44



*Specialized evidence* shall refer to evidence which is consistent with the terms and conditions which the mediator and/or arbitration committee issuing the verdict and resolving the dispute in accordance with fact. The litigants themselves shall select the knowledgeable arbiters and/or arbitration committees because economic disputes arising have special unique points, a different nature, different aims, and can be complex. Dispute procedure therefore takes place in accordance with the law and with science, is consistent with fact, and dispute resolutions are able to reach the aims of the litigants. The mediator and/or arbitration committee must also have specialized knowledge and experience in the relevant field.

Example: A dispute arises concerning the failure to perform a transportation contract. The litigants may select a mediator or arbitration committee which is familiar with the any regulations, difficulties, and damages related to the transportation of goods.

## **2.2 Format**

In an economic dispute resolution performed by the OEDR of the Lao PDR, the dispute being raised may arise from production or business as desired by the litigants and their dispute. It cannot be a dispute which is appearing or has already been adjudicated in the People's Court. It must also not conflict with legal regulations concerning national security, public security, and/or the environment<sup>14</sup>.

## **2.3 Scopes of Rights for Economic Dispute Resolution**

The scope of rights for economic dispute resolution by the OEDR comprise disputes over production or business with the volition of the litigants. The dispute must not already have been adjudicated or currently being adjudicated at the People's Court, a final ruling cannot have been issued for it, and it must not be in violation of legal regulations concerning national security, public order, and/or the environment.<sup>15</sup>

## **3. Dispute Resolution Facilitators**

### **3.1 Mediators and Arbitration Committees**

An *mediator* is a person selected by the litigants, OEDR, or a UEDR from a list of eligible mediators and arbiters and plays a central role in facilitation, assistance, and counseling for the arbitration of a given economic dispute<sup>16</sup>.

An *arbitration committee* is a group of people selected by the litigants, the OEDR, or a UEDR and from a list of eligible arbiters and arbitration committees which issues an arbitral award on a given economic dispute<sup>17</sup>.

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<sup>14</sup> Law on Economic Dispute Resolution (amended in 2010), Article 15

<sup>15</sup> Law on Economic Dispute Resolution (amended in 2010), Article 16

<sup>16</sup> Law on Economic Dispute Resolution (amended in 2010), Item 2, Article 3

<sup>17</sup> Law on Economic Dispute Resolution (amended in 2010), Item 3, Article 3

A mediator or arbitration committee can be administered or ad hoc – administered meaning that the employees of the OEDR or an UEDR appointed by the Ministry of Justice (MoJ) and ad hoc, meaning that they have specialized knowledge and experience in a definite field, such as construction, accounting, and so forth and represent a State or private sector office, organization, unit or volunteering foreigner or alien appointed by the MoJ as selected and requested by the OEDR<sup>18</sup>.

### **3.2 Standards for Mediators and Arbitration Committees**

Mediators and arbitration committees who are Lao citizens must meet the following conditions:

- They must be of good character, ethical, and honest.
- They must have knowledge in a specialized area and the relevant certificate to prove this.
- They must have accumulated at least five years' experience.
- They must have received training in economic dispute resolution.
- They must be in good health<sup>19</sup>.

The standards and conditions for foreign mediators and arbitration committees are detailed in separate regulations.

### **3.3 Rights and Duties of Mediators and Arbitration Committees**

The rights and duties of mediators and arbitration committees are as follows:

- To receive or reject an economic dispute;
- To act independently over the dispute;
- To ensure that the dispute is resolved justly, fast, and transparently;
- To act correctly in accordance with professional ethics;
- To collect information and evidence onsite;
- To receive remuneration as agreed by the litigants;
- To maintain confidentiality unless the information needs to be provided to another relevant body in accordance with legal regulations; and
- To pay taxes to the government in accordance with the law<sup>20</sup>.

### **3.4 Rules for Mediators and Arbitration Committees**

Mediators and arbitration committees must not behave as follows:

- Disclose information concerning the content of the dispute known to them without having received permission or unless the law states otherwise;
- Use the information known to them for personal gain or to damage the rights and interests of others;

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<sup>18</sup> Law on Economic Dispute Resolution (amended in 2010), Article 43

<sup>19</sup> Law on Economic Dispute Resolution (amended in 2010), Article 44

<sup>20</sup> Law on Economic Dispute Resolution (amended in 2010), Article 46

- Act unfairly or create difficulties for the dispute resolution;
- Receive or demand money or other interests from a litigant;
- Participate in a dispute resolution which affects the interests of themselves, their husband or wife, or close relative;
- Be biased in the performance of their duties;
- Coerce a litigant; and/or
- Exhibit other behavior in violation of the law<sup>21</sup>.

Mediators and arbitration committees in violation of the above in the performance of their duties with intent shall face reeducation, be relieved of their duties as a mediator or arbiter and – according to the severity of the case – if the offence is criminal, they may face case proceedings in accordance with the law<sup>22</sup>.

#### **4. Participants in an Economic Resolution**

Many participants in an economic dispute resolution relate to and are associated with the dispute and there may be many of such people, such as the litigants, representatives, third parties, specialists, translators, interpreters, and witnesses.

##### **4.1 Litigants**

*Litigants* refer to the parties in dispute over the economic matter and include the person lodging the request and the person against whom it is lodged<sup>23</sup>.

Other than individuals, organizations can also be litigants. If it is organized in such a way, it must be a legal entity registered under the laws of the Lao PDR or under those of a relevant country.

##### **4.1.1 Rights of Litigants**

Litigants have the following rights:

- To lodge requests with the OEDR or a UEDR when its rights and interests are violated or questioned by another person, including rights which have been altered, added, in which case the request may be withdrawn in part or in full;
- To submit a defense to the OEDR or UEDR when a claim has been made against them and to accept or reject the claim;
- To request the recusal of a mediator or arbiter when this individual is deemed to be associated or have interests associated with the dispute;
- To seek and present evidence and put this together in their claim or defense in order to clarify the dispute. They may also request viewing of the documents

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<sup>21</sup> Law on Economic Dispute Resolution (amended in 2010), Article 57

<sup>22</sup> Law on Economic Dispute Resolution (amended in 2010), Article 70

<sup>23</sup> Law on Economic Dispute Resolution (amended in 2010), Article 3

in the case file, contradict them, and/or question them if there is deemed to be a problem or they are unclear or suspicious;

- To request OEDR or UEDR via a court order the sequestration or seizure of assets when deemed necessary.
- To appear to give testimony, request the collection of information and evidence, request the questioning of witnesses, appoint specialists, and visit the site of the dispute and so forth;
- To present a third party or attorney to participate in the resolution of the dispute; and/or
- To demand that the results of the economic dispute resolution are enforced.

#### **4.1.2 Obligations of the Litigants**

The litigants have the following obligations:

- To present evidence and clarify the matter of dispute;
- To act in accordance with the results of the economic dispute resolution; and
- To act in accordance with other obligations as specified by law<sup>24</sup>.

#### **4.1.3 Rules for Litigants**

Litigants must not behave as follows:

- Falsifying relevant documents or information;
- Coercing, deceiving, and/or defrauding the mediator, arbitration committee, or the specialists;
- Pay bribes or provide interests to the mediator, arbitration committee, or the specialists; and/or
- Exhibit other behavior in violation of legal violations<sup>25</sup>.

Individuals or organizations which incur damages against the State, society, or another person shall face reeducation, disciplinary measures, fines, or prosecution depending on the severity of the case and pay compensation for the damages incurred<sup>26</sup>.

## **4.2 Representatives**

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<sup>24</sup> Law on Civil Procedure (amended in 2012), Article 72

<sup>25</sup> Law on Economic Dispute Resolution (amended in 2010), Article 58

<sup>26</sup> Law on Economic Dispute Resolution (amended in 2010), Article 70

An *agent* shall refer to a person who performs the rights and obligations in a dispute. There are two types of representatives – *agents by law* and *agents by appointment*.

#### **4.2.1 Agents by Law**

An *agent by law* shall refer to an individual participating in an economic dispute who has been appointed to protect the legitimate rights and interests of a litigant. Agents by law have the right to act in the name of the participant each time the dispute is in session<sup>27</sup>.

#### **4.2.2 Agents by Appointment**

An *agent by appointment* shall refer to an individual participating in an economic dispute and who has been appointed by a litigant as specified in the contract of mandate<sup>28</sup>. Representatives by appointment have the right and obligation to take action, participate, and report to the litigant on their participation in the dispute.

#### **4.3 Third Parties**

A *third party*, organization, or enterprise participating in an economic dispute to protect its rights and interests relating to a dispute which is already underway may not make a separate claim or defense directly but must participate in the proceedings of the dispute as claimant or defendant<sup>29</sup>.

#### **Rights and Obligations of Third Parties**

Third parties comprise third parties who have lodged their own claim and third parties who have not lodged their own claim.

Third parties who have lodged their own claim shall have the following rights and obligations:

- They may participate in the dispute as claimant or defendant.
- They may participate in resolving the dispute in accordance with the claim of the litigant.
- They must apply the same rights and obligations as the litigants except in that they shall not be subject to alterations, additions, reductions, or withdrawals or have the right to know the claim or agreement [of the existing litigants] or the arbitral award of the arbitration committee<sup>30</sup>.

#### **4.4 Specialists**

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<sup>27</sup> Law on Civil Procedure (amended in 2012), Article 86

<sup>28</sup> Law on Civil Procedure (amended in 2012), Article 91

<sup>29</sup> Law on Civil Procedure (amended in 2012), Article 75

<sup>30</sup> Law on Civil Procedure (amended in 2012), Article 76

A *specialist* in an economic dispute resolution is an individual with knowledge, skills, expertise, and experience in a given subject field and such is acknowledged by a relevant institute or organization. This person is able to clarify an issue relating to their specialized field.

Third parties may participate in the resolution of an economic dispute at the request of a litigant or arbitration committee if there is a delay or difficulty in the weighing up or assessment of evidence concerning the dispute.

A specialist must use evidence to prove their findings within the scope specified. After having provided such proof, the specialist must then create a summary for on their opinions and send this within the specified time. They shall also be responsible for this summary. The proof may be given by multiple persons and on multiple occasions. If the proof needs to be reviewed, more specialists than on the previous occasion may be appointed instead<sup>31</sup>.

#### **4.4.1 Rights of Specialists**

Specialists have the following rights:

- To demand further information and evidence to prove that they are correct and to ensure clarity;
- Be remunerated and repaid for any expenses incurred in finding the evidence to prove their point;
- Explain their proof and make additions and adjustments to the results if deemed that new evidence affecting the proof comes to light; and

#### **4.4.2 Obligations of Specialists**

Specialists have the right to:

- Verify evidence and testimonies in their specialist field;
- Send summaries of their evidence verifications at the times specified;
- Appear to give explanations as summoned; and
- Take responsibility for their explanations and maintain confidentiality over the results of their verifications<sup>32</sup>.

#### **4.5 Translators and Interpreters**

A *translator* or *interpreter* is an individual with the knowledge, skills, and experience in the translation of one of the languages of the litigants who are unfamiliar with Lao or another agreed language which one of the litigants is

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<sup>31</sup> Law on Civil Procedure (amended in 2012), Article 82

<sup>32</sup> Law on Civil Procedure (amended in 2012), Article 83

unfamiliar. Translators and interpreters must take responsibility for their translations and are obligated to maintain confidentiality<sup>33</sup>.

#### **4.5.1 Rights of Translators and Interpreters**

Translators and interpreters have the following rights:

- To be aware of and conduct research the area concerning the dispute prior to translating it;
- To receive remuneration for their translation in accordance with regulations; and
- To receive protection from threats to their life, health, honor, and/or assets about the translation in accordance with the law and regulations.

#### **4.5.2 Obligations of Translators and Interpreters**

Translators and interpreters have the following obligations:

- To translate the verbal and documentary content accurately;
- To perform their translations and interpreting as appointed; and
- To take responsibility for their translations and maintain confidentiality<sup>34</sup>.

#### **4.6 Witnesses**

A *witness* refers to an individual with knows about or actually saw dispute or circumstances. Deaf, mute, the mentally disadvantaged, the insane, children under the age of majority, and relatives of one of the litigants may appear to give testimony but shall not be considered a witness<sup>35</sup>.

##### **4.6.1 Rights of Witnesses**

A witness shall have the following rights:

- To give testimony;
- To view the testimonies which have already been given;
- To request alterations and additions to the record of their testimony;
- To complain about wrongful acts made by the arbiter or arbitration committee; and
- To receive protection from threats to their life, health, honor, and/or assets about their testimony in accordance with the law and regulations.

##### **4.6.2 Obligations of Witnesses**

Witnesses have the following obligations:

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<sup>33</sup> Law on Civil Procedure (amended in 2012), Article 84

<sup>34</sup> Law on Civil Procedure (amended in 2012), Article 85

<sup>35</sup> Law on Civil Procedure (amended in 2012), Article 80

- To appear as summoned;
- To provide an accurate summary of the facts;
- To take responsibility in accordance with the law over any falsehoods given or a refusal to give testimony;
- The testimony of a witness may be taken at their own abode if necessary or if they are elderly, disabled, or unable to appear to give testimony for some other reason.

Individuals claiming that a witness is lying must explain their reasoning to the witness, stating the full name and address of the witness clearly and be liable for the expenses incurred by the witness in having to appear a second time to resolve the matter in accordance with the law and regulations<sup>36</sup>.

## **5. Organizations Responsible for the Management and Inspection of Economic Dispute Resolution**

### **5.1 Organizations Responsible for Economic Dispute Resolution**

The organizations responsible for economic dispute resolution are the OEDR and the UEDR. On a professional level, these have a social and legal nature and operate under the management of the justice sector with the role to create conditions for and facilitate matters of litigants, arbiters, and arbitration committees in resolving economic disputes<sup>37</sup>.

#### **5.1.1 The OEDR**

The OEDR is an organization operating within the MoJ with a leadership role on behalf of the Minister of Justice for managing and running economic dispute resolutions between one organization and another, one organization and an individual, and one individual with another individual – both domestic and foreign – who have requested the OEDR to assist with, resolve, and manage the arbitration by an OEDR or UEDR mediator or arbitration committee, who may be administered or ad hoc, of the OEDR or an UEDR. The management of provincial level offices liaise over economic dispute resolution with foreign countries and internationally, conduct research to improve regulations and laws concerning economic dispute resolution in order for superior levels to consider<sup>38</sup>.

#### **A. Rights and Duties of the OEDR**

The OEDR has the following rights and duties:

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<sup>36</sup> Law on Civil Procedure (amended in 2012), Article 81

<sup>37</sup> Law on Economic Dispute Resolution (amended in 2010), Article 39

<sup>38</sup> Decision of the Minister of Justice on the Organization and Operations of the Office of Economic Dispute Resolution and Units of Economic Dispute Resolution, 2008, Article 2



- To study and propose amendments to laws and regulations concerning economic dispute resolution for superior levels to consider;
- To study and propose to the Minister of Justice the appointment of arbiters and arbitration committees to add to the list of mediators and arbiters and to propose their dismissal from this list;
- To publicize and educate people on laws and regulations concerning economic dispute resolution.
- To consider the appointment, dismissal / and or replacement of mediators and arbiters to deal with each dispute in accordance with legal regulations;
- To manage and facilitate matters for economic dispute resolution within its jurisdiction;
- To create, strengthen, and upgrade technical workers for the workforce of the OEDR and UEDRs, arbiters, and arbitration committees;
- To liaise with the litigants and coordinate with the relevant entities to facilitate matters for economic dispute resolution;
- To cooperate with foreign countries, the region, and the world on economic dispute resolution as assigned by superior levels;
- To summarize, evaluate, and report on its activities to the MoJ; and
- To perform other rights and duties as specified in law and regulations<sup>39</sup>.

### **5.1.2 UEDRs**

UEDRs play a leadership role on behalf of the OEDR, Provincial and Vientiane Capital Departments of Justices (DoJs) and administration offices in the management and running of economic dispute resolutions between one organization and another, an organization and an individual, and one individual and another – both domestic and overseas – who have requested that the UEDR resolve disputes and manage UEDR arbiters and an arbitration committee for – either administered or ad hoc – and liaise with foreign and international economic dispute resolution bodies as deemed proper by the OEDR and provincial and Vientiane Capital authorities<sup>40</sup>.

#### **A. Duties of UEDRs**

UEDRs have the same rights and duties as the OEDR as stated in Item 5.1.1. As for the right to propose the appointment and dismissal of mediators and arbiters from their list of arbiters, they must propose this to the OEDR for consideration<sup>41</sup>.

## **5.2 Organizations Managing Economic Dispute Resolution**

### **5.2.1 MoJ**

In the management of economic dispute resolution, the MoJ has the following rights and duties:

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<sup>39</sup> Law on Economic Dispute Resolution (amended in 2010), Article 41

<sup>40</sup> Decision of the Minister of Justice on the Organization and Operations of the Office of Economic Dispute Resolution and Units of Economic Dispute Resolution, 2008, Article 2

<sup>41</sup> Law on Economic Dispute Resolution (amended in 2010), Article 42

- To study and create strategies, plans, laws, and regulations concerning economic dispute resolution for the government to consider;
- To issue decisions, orders, instructions, and notices concerning economic dispute resolution;
- To guide and manage the organization and budgets of the OEDR;
- To guide and monitor the running of economic dispute resolutions; and
- To train and upgrade the capacities, ethics, and specialization of OEDR and UEDR workers, arbiters, and arbitration committees.
- To propose to the Prime Minister the appointment, dismissal, and transfer of the Director-General of the OEDR;
- To appoint, dismiss, and transfer Deputy Director-Generals of the OEDR and Directors and Deputy Directors of UEDRs without having to liaise with the parties concerned;
- To appoint or dismiss arbitration committees to or from their list of arbiters of the OEDR or UEDR;
- To coordinate with the parties concerned to manage economic dispute resolutions;
- To cooperate regionally and internationally concerning economic dispute resolution;
- To summarize, evaluate, and report on the running of economic dispute resolutions; and
- To perform other rights and duties as specified by law and in regulations.

### **5.2.2 Provincial DoJs**

In its management of economic dispute resolution, the DoJ shall have the following rights and duties:

- To appoint or dismiss arbitration committees to or from the list of arbiters of the at the request of the OEDR or a UEDR;
- To publicize, disseminate, and provide training on regulations concerning economic dispute resolution;
- To guide and manage the organization and budgets of UEDRs falling within its scope of responsibility;
- To guide and monitor the economic dispute resolution activities within its scope of responsibility;
- To receive, examine, and resolve requests made by individuals, legal entities, or organizations concerning economic dispute resolutions handled by the UEDR;
- To guide the summary, evaluation, and reporting of the UEDR for the OEDR and reports to the MoJ; and
- To perform other roles and duties as specified by law and in regulations<sup>42</sup>.

### **5.3 Organizations Inspecting Economic Dispute Resolution**

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<sup>42</sup> Law on Economic Dispute Resolution (amended in 2010), Article 62

Organizations inspecting economic dispute resolution comprise internal organizations, which constitute a group of organizations managing economic dispute resolution, and external organizations, comprise the National Assembly (NA), the State Inspection Authority (SIA), and the Office of the Public Prosecutor<sup>43</sup>.

The inspection or these inspection bodies aims to monitor, collect information and evidence concerning the implementation of the policies, duties, responsibilities of the OEDR and UEDRs, and assess the work being performed to request changes thereto, the main content being:

- The implementation of the law and regulation concerning economic dispute resolution;
- Requests from individuals and legal entities concerning economic dispute resolution;
- Warnings issued by the OEDR and UEDRs concerning economic dispute resolution;
- Operation of the OEDR and UEDR;
- Responsibility and behavior concerning the utilization of budgets by the OEDR and UEDRs; and
- Responsibility and behavior concerning the staff of the OEDR and UEDRs, the mediators, and the arbitration committees<sup>44</sup>.

With respect of their knowledge of inspections to take place, inspections are carried out according to a regular schedule, inspections with advance notice, and sudden inspections, based on the necessity of the situation or matter at hand. There are two separate types of such inspection organizations.

### **5.3.1 Internal Inspection Bodies**

An *internal inspection body* is an inspection organization which is part of the vertical hierarchy of the MoJ and at central level is MoJ Inspection Department and at local level is the Provincial DoJ<sup>45</sup>, Which have to follow regular plans, perform inspections as ordered or requested or suddenly with no advance notice. The content and targets of internal inspections<sup>46</sup> are the implementation of policies, laws, plans, rights, and duties, responsibility with respect to the management and administration economic dispute resolutions, specific and technical regulations, and managerial principles in accordance being consistent with the justice sector.

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<sup>43</sup> Law on Economic Dispute Resolution (amended in 2010), Article 63

<sup>44</sup> Law on Economic Dispute Resolution (amended in 2010), Article 64

<sup>45</sup> Law on Economic Dispute Resolution (amended in 2010), Article 60

<sup>46</sup> Law on Inspections, 2007, Article 14

### 5.3.2 External Inspection Bodies

An *external inspection body* is a State organization or the same level of hierarchy as the organization being inspected. They are known as organizations with the right, duty, and responsibility to conduct inspection and can act at the request of an individual or organization in the event that a an issue is deemed to be unclear or opaque. Organizations with the right to inspect economic dispute resolution include the NA, the SIA, and the Office of the Public Prosecutor<sup>47</sup>.

*External inspections* refer to monitoring and inspection, investigation, and the collection of information and evidence to verify whether or not something is correct with respect to the behavior of the OEDR or an UEDR . External inspections are used when there is a problem, risk, or when the case does fall with in the roles and responsibilities of the internal inspection body.

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<sup>47</sup> Law on Economic Dispute Resolution (amended in 2010), Item 2, Article 63

## Chapter 3

### Costs Involved with Economic Dispute Resolutions

#### 1. Information on the Costs Involved with Economic Dispute Resolutions

##### 1.1 Meaning

The costs involved for economic dispute resolution are an obligation which the responsible litigant must pay to bring a case for economic dispute resolution. Both litigants must pay a deposit to the OEDR or UEDR prior to the economic dispute resolution taking place.

Processing fees and administrative fees shall be collected by the OEDR or UEDR for use in the activities of the economic dispute resolution. The collection thereof must take place in accordance with the Regulations for the Collection of Processing and Administrative Fees<sup>48</sup> promulgated for each period and may also be collected at independent rates nationwide consistently with the level of socio-economic growth during that period and the pay for those who have performed work to implement it. Although the law specifies that this must be agreed between the litigants and the arbiters or specialists, they must be at a reasonable level and the OEDR or UEDR closest to the economic dispute resolution must also be informed. The collection of these fees acts as remuneration for the arbiters, who will have travel as an arbiter or arbitration committee to arbitrate the case for the litigants.

##### 1.2 Importance

Costs for economic dispute resolutions are of great importance and can facilitate matters for the economic dispute resolution of the litigants themselves. Therefore, the litigants must hand over a correct State budget or deposit to the OEDR or UEDR in full and on time.

##### 1.3 Aims

Costs involved in economic dispute resolution have the following aims:

- To contribute to the incomes of the specialists and the State budget;
- To facilitate matters for the economic dispute resolution; and
- To remunerate the arbiters, arbitration committee, and experts who have implemented the dispute for the litigants.

#### 2. Costs Involved with the Economic Dispute Resolution

The costs involved with the economic dispute resolution comprise processing fees, service fees, and remuneration<sup>49</sup>.

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<sup>48</sup> Presidential Decree 003/NP, dated 26 December 2012, on the Collection of Processing and Service Fees

<sup>49</sup> Law on Economic Dispute Resolution (amended in 2010), Article 53

## 2.1 Processing Fees

### 2.1.1 Meaning

Processing fees for economic dispute resolution are an obligation to be paid into the State budget<sup>50</sup>.

### 2.1.2 Regulations for Collection

The regulations for the collection of economic dispute resolution processing fees are the same as those for the collection of any other processing fees as promulgated for each period. They currently follow Presidential Decree 003/NP, date 26 December 02 the Collection of Processing and Service Fees, these rates being as follows<sup>51</sup>:

	Value of dispute	Kip per dispute
1.	50,000,000 kip or less	200,000
2.	50,000,000 – 100,000,000 kip	300,000
3.	100,000 – 500,000,000 kip	500,000
4.	500,000,000 – 1,000,000,000 kip	1,000,000
5.	1,000,000,000 kip or over	2,000,000

### 2.1.3 Responsibility for the Collection and Payment of the Processing Fees

It is the responsibility of the OEDR or UEDR to collect economic dispute resolution processing fees. Once the economic dispute resolution has taken place, it means the litigants have agreed to an economic dispute resolution at the OEDR or a UEDR by making their claims and defenses correctly and in full, the processing fees of the arbiters must be recorded and they must be remunerated (Annex 2). The recipients and payers of such fees shall sign that it has been truly paid and receive for the purposes of reporting, management, and inspections, these must be complete and paid into the State budget.

The litigant losing the case is responsible for the payment of processing fees or it can be agreed for each litigant to pay half each prior to the economic dispute resolution proceedings<sup>52</sup> at the rates for economic disputes first presented to the OEDR or UEDR for the economic dispute resolution opt for the usual means of deciding this, the person making the claim shall pay the processing fees first in accordance with regulations and following the arbitral award, the party losing the case must pay the processing fees in full as stated according to the decision made by the arbitration committee<sup>53</sup>.

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<sup>50</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 1, Article 54

<sup>51</sup> Presidential Decree on the Collection of Processing and Service Fees (2012), Article 88

<sup>52</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 3, Article 54

<sup>53</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 4, Article 54

## **2.2 Service Fees**

### **2.2.1 Meaning**

Service fees are for services during economic dispute resolutions. They are fees paid by the litigant requesting the specialist and must be deposited with the OEDR or UEDR when making the request in order to pay the arbiters for their services and also include the delivery of summonses, photocopying, the holding of meetings, and so forth<sup>54</sup>.

### **2.2.2 Regulations for Fee Collection**

Service fees for economic dispute resolution cover both the arbitration methods and the arbitral award and are collected in accordance with the regulations promulgated for that period. Service fees for economic dispute resolution are paid at 150,000 kip per resolution<sup>55</sup>.

In the event that the service fees collected are in excess of the regulations concerning processing fees and service fees for each period as specified by the OEDR or UEDR, the person requesting them must be informed as they will be responsible for paying the excess.

### **2.2.3 Responsibilities for the Collection and Payment of Services**

The collection of service fees for economic dispute resolution is the responsibility of the OEDR or UEDR, which will also collect fees for the time spent submitting the request to the OEDR or UEDR<sup>56</sup>. A record of this is then made out and a receipt issued (Annex 2) bearing the signatures of both the recipient and the payee as evidence for use in reporting, management, and inspections that everything is complete. Service fees for economic dispute resolution are first paid by the person requesting the service when submitting their request. After the arbitration committee has issued its arbitral award, the payment of services shall be paid as adjudicated. Arbitration fees shall be based on the result of the arbitration.

## **2.3 Remuneration**

### **2.3.1 Meaning**

Remuneration in economic dispute resolution is a cost to compensate the arbiters or arbitration committee, specialists, and such like – for example – pay for the interpreters, translators, and witnesses as agreed by the litigants. This must be deposited with the OEDR or UEDR so that they may be paid at a later stage after the dispute is complete.

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<sup>54</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 1, Article 55

<sup>55</sup> Presidential Decree on the Collection of Processing and Service Fees (2012), Article 92

<sup>56</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 2, Article 55

### **2.3.2 Regulations for Collection**

The collection of remuneration in economic dispute resolution is not provided for in any laws or specific regulations and is something to be agreed between the litigants and the arbiter or arbitration committee and the OEDR or UEDR where the economic dispute resolution is taking place shall be informed<sup>57</sup>.

In reality, there are two ways that remuneration can be collected, as follows:

- In the event that the litigants decide to have only one arbiter, the litigants shall then agree the fee with the arbiter and inform the OEDR or UEDR where the dispute is taking place. The litigants will then pay the agreed fee or half each and deposit it with the OEDR or UEDR. After having completed the arbitration, the arbiter shall then receive their fee.
- In the event that the litigants opt for a three-person committee. A fee must be agreed with each arbiter or the arbitration committee as a whole as agreed between them (meaning that each person selected takes responsibility for themselves) in order to resolve the economic dispute the arbiters or arbitration committee. The arbiters or arbitration committee then perform the arbitration and each person agrees to their fees or a third party or the presiding arbiter can also decide on this and the OEDR shall collect this money, deducting 10% for their share of the work and the arbiters or arbitration committee shall only receive their fees after the arbitration is complete and an arbitral award issued.

### **2.3.3 Responsibilities Concerning the Collection and Payment of Remuneration**

The OEDR or UEDR where the dispute is taking place is responsible for collecting the remuneration within 15 days of the appointment of the arbiters, arbitration committee, or specialists. Then, the OEDR or UEDR shall issue a receipt (Annex 2) to the litigants and when the arbitration is complete and an arbitral award has been issued, the OEDR or UEDR shall pay this remuneration to the arbiters, arbitration committee, or specialists using a check / banker's draft (Annex 3).

The litigants shall be responsible for the payment of this remuneration as agreed with the arbiters or arbitration committee and pay this fee to the OEDR or UEDR where the arbiter or arbitration committee where the dispute is taking place prior 15 days in advance of its commencement or at any time after the appointment of the arbiters in order to ensure that the fee is paid.

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<sup>57</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 2, Article 56



**Table Concerning the Remuneration of Arbiters and Arbitrations**

No.	Payment	Fees paid in economic dispute resolution					
		Processing fees		Service fees		Remuneration	
		Arbitration	Arbitral award	Arbitration	Arbitral award	Arbitration	Arbitral award
1	Payer	Claimant	Claimant	Claimant	Claimant	As agreed between them or half each	Each litigant agrees to pay for the arbiter selected by them
2	Time	Prior to proceedings	Prior to proceedings	When submitting the claim	When submitting the claim	15 days prior to proceedings or after the appointment of the arbiters	15 days prior to proceedings or after the appointment of the arbiters
3	Location	At the OEDR or the UEDR where the dispute is taking place	At the OEDR or the UEDR where the dispute is taking place	At the OEDR or the UEDR where the dispute is taking place	At the OEDR or the UEDR where the dispute is taking place	At the OEDR or UEDR where the dispute is taking place	At the OEDR or UEDR where the dispute is taking place
4	Amount	According to the rates specified in the regulations	According to the rates specified in the regulations	150,000 kip	150,000 kip	As agreed by the litigants and arbiters	As agreed by the litigants and arbiters
5	Person responsible	Pay half each or according to the result of the arbitration	According to the arbitration	As agreed	According to the arbitration	Each party takes responsibility for themselves	Each party takes responsibility for themselves
6	Reference information	Article 54 of the Law on Economic Dispute Resolution and Article 92 of Presidential Decree 003/NP, dated 26 December 2012.	Article 54 of the Law on Economic Dispute Resolution and Article 92 of Presidential Decree 003/NP, dated 26 December 2012.	Article 55 of the Law on Economic Dispute Resolution and Article 92 of Presidential Decree 003/NP, dated 26 December 2012.	Article 55 of the Law on Economic Dispute Resolution and Article 92 of Presidential Decree 003/NP, dated 26 December 2012.	Article 56 of the Law on Economic Dispute Resolution	Article 56 of the Law on Economic Dispute Resolution

Remark: In the event that something has been agreed in advance, then that which has been agreed should be followed despite it conflicting with Items 1 to 5 of this table.

### 3. Management and Inspection of Costs in Economic Disputes

#### 3.1 Management

Processing fees, service fees, and remuneration are different. For example, processing at the OEDR are paid at the Cabinet Office of the MoJ for its management in accordance with regulation. This means that the processing fees paid by the claimant are paid to the ministry using a one-stop system but in practice, this has been found to cause difficulties because the claimant does not wish to pay these fees at the MoJ. Therefore the Cabinet Office takes the invoice and passes this on to the OEDR so that it may collect and manage these fees instead. They are then paid to the MoJ each month. In the case of UEDRs, the UEDR shall be at the DoJ and operate under the DoJ is managing these fees in accordance with regulations.

Service fees and remuneration are managed by the OEDR or UEDRs which collects them and uses them in accordance with regulations, meaning that following the collection of service fees and remuneration, the OEDR or UEDR manages and utilizes them for matters such as the sending of summonses, photocopying, the holding of meetings<sup>58</sup>, and the remuneration for the arbiters, arbitration committee, specialists, and other expenses. The OEDR or UEDR shall pay these after the arbitration is complete.

#### 3.2 Inspections

Inspections of the payment of processing fees, service fees, and remuneration are performed by the courts in the following three ways –regular inspections, inspections with advance notice, and sudden inspections.

*Ordinary inspections* are conducted according to a schedule and are clearly specified. They may be monthly, quarterly, or biannually and this schedule must be inspected or there must be at least one inspection per year.

Inspections with advance notice are extraordinary inspections but 24 hours' notice must be given to the OEDR or UEDR.

Sudden inspections are unplanned inspections whereby no advance notice is given but are performed as a matter of urgency when deemed necessary<sup>59</sup>.

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<sup>58</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 1, Article 55

<sup>59</sup> Law on Economic Dispute Resolution (amended in 2010), Article 65

## Chapter 4

### Submission of Claims, Consideration, and Format Selection

#### 1. Submission of Claims

##### 1.1 Meaning

A request (or claim) for economic dispute resolution are documents which an individual or legal entity – domestic or overseas – wishes the OEDR or UEDR to rule on gains received from contractual violation and/or production and business or wishes for them to issue an arbitral award based on what has been agreed between the litigants<sup>60</sup>.

##### 1.2 Importance

In economic disputes, the claim is a document of great importance as it is a document which shows that the litigant with the intent to take the dispute for economic dispute resolution at the OEDR or UEDR and can therefore be considered a legal starting point, which makes it important in the economic dispute resolution process.

For cases where the claim in an economic dispute is a document which shows the rights and interests of the person submitting it, if there is no claim to resolve, the OEDR or UEDR shall not be able to take the case for consideration and resolution.

For a matter where the dispute is economic, the claim shall include the basic documents concerning the dispute for consideration exclusively of each issue specified in the claim.

##### 1.3 Aims

The aims of a claim for economic dispute resolution are to show the intent of the litigant for the OEDR or UEDR to consider and resolve the dispute raised peacefully, justly, and speedily in accordance with laws and regulations.

##### 1.4 Content

The claimant shall write out the content of their claim. This can be done by filling out a specific form (Annex 4) provided by the OEDR or UEDR or the litigant can simply write out the claim themselves.

Fundamentally, the content of a claim must include the main content specified in Article 19 of the Law on Economic Dispute Resolution, as follows:

- The full name, age, occupation, nationality, current address, and head offices of the litigant or their representative;
- The disputed issue;

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<sup>60</sup> Law on Economic Dispute Resolution (amended in 2010), Article 2

- The amount involved in the dispute; and
- The proposal of the litigant<sup>61</sup>.

In practice, the OEDR shall provide a special claim form for economic dispute resolution, which, in addition to the main content above, must also contain information on the background and history of the dispute, how long it has been taking place, and what formats have already been used to resolve it

#### **1.4.1 General Details of the Litigant**

General details of the litigant are their full name, age, occupation, nationality, current address and location of the litigant or representative. The litigant must include this in their claim so that the relevant officials of the OEDR or UEDR may contact them and use the information to create their case file, claim file, and/or economic dispute file along with any information or testimonies of the wrongdoings involved in the dispute.

#### **1.4.2 Issues Leading to the Dispute**

The issues leading to the dispute are content which the litigants write out briefly as being the cause for the economic dispute to arise. This should include the disputes between the litigants concerning contractual performance, production and business, trade, investment, services, and so forth.

#### **1.4.3 Amount of Money Involved in the Dispute**

The litigants must write out the amount of involved money involved in the dispute. In the event that the litigants cannot agree about this, the arbiter or arbitration committee and litigants shall together undergo a bidding process so that it may be clear during the economic dispute. It can also be determined on a case-by-case basis.

#### **1.4.4 Repeated Dispute Resolutions**

Economic disputes in the past used to be a situation concerning an economic dispute which has taken place already and one of the litigants submits a second claim. This litigant must write out in brief, the methods, stages, and organization which facilitated the economic dispute resolution in addition to the content required to making an economic dispute resolution claim.

#### **1.4.5 Presentations of the Litigants**

A presentation of a litigant is something written by a litigant concerning the scope, stages, and appropriate methods for the impending economic dispute resolution so as to request the OEDR and UEDR the basis they wish to use for the proceedings, such as the stages and nature of the hearing, methods for debt repayments, securities to be deposited in place of debts, and location of debt repayment. Generally speaking, a presentation of a litigant includes the various issues they wish the OEDR or UEDR to consider.

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<sup>61</sup> Law on Economic Dispute Resolution (amended in 2010), Article 19

### **1.4.6 Formats for the Dispute Resolution**

The litigant submitting the claim to the OEDR or UEDR may select a method of economic dispute resolution for the arbitration or arbitral award either by checking the box or by writing out a brief request for the OEDR or UEDR. This should be included in the form for appointing arbiters or arbitration committees depending on the case and economic dispute. They should do this when submitting their claim or adjustments to their claim by economic dispute resolution.

## **2. Agreements between the Litigants**

The agreement between the litigants shows their intentions made voluntarily<sup>62</sup> without coercion by another individual, legal entity, or organization, irrespective of whether such coercion is direct or indirect, and its purpose is for use in the economic dispute resolution at the OEDR or an UEDR.

The agreement must be entered into voluntarily by the litigants and is used in two situations – the agreement as stated in the contract and the agreement after the economic dispute resolution.

### **2.1 Agreement as Stated in the Contract**

This agreement – just as with a contract, entered into voluntarily – shows the mutually agreed intentions of the litigants concerning the impending economic dispute resolution and includes its format for resolution in order to be presented directly to the OEDR or UEDR, also showing their production, business, and/or trade contract clearly.

In general, the agreement stated in the contract shall concern production and business or trade. If either party is to alter the format of the economic dispute when it has been submitted, it must be agreed between the litigants that the economic dispute format is to be changed and a separate record shall be made of this.

### **2.2 Agreement after the Economic Dispute Resolution**

The agreement pursuant to the economic dispute resolution shows the intention of the litigants concerning the economic dispute arising from a contractual violation concerning production and business or trade to be resolved by the OEDR or UEDR based on the agreement between the litigants, irrespective of whether the litigants have already stated this in the contract. Even if something is stated in the contract, the arbitration agreement (agreement after the economic dispute resolution) shall also state it. There are two types of arbitration agreement – an agreement made before a claim is submitted and an agreement made thereafter.

#### **2.2.1 Agreements Made Prior to the Claim**

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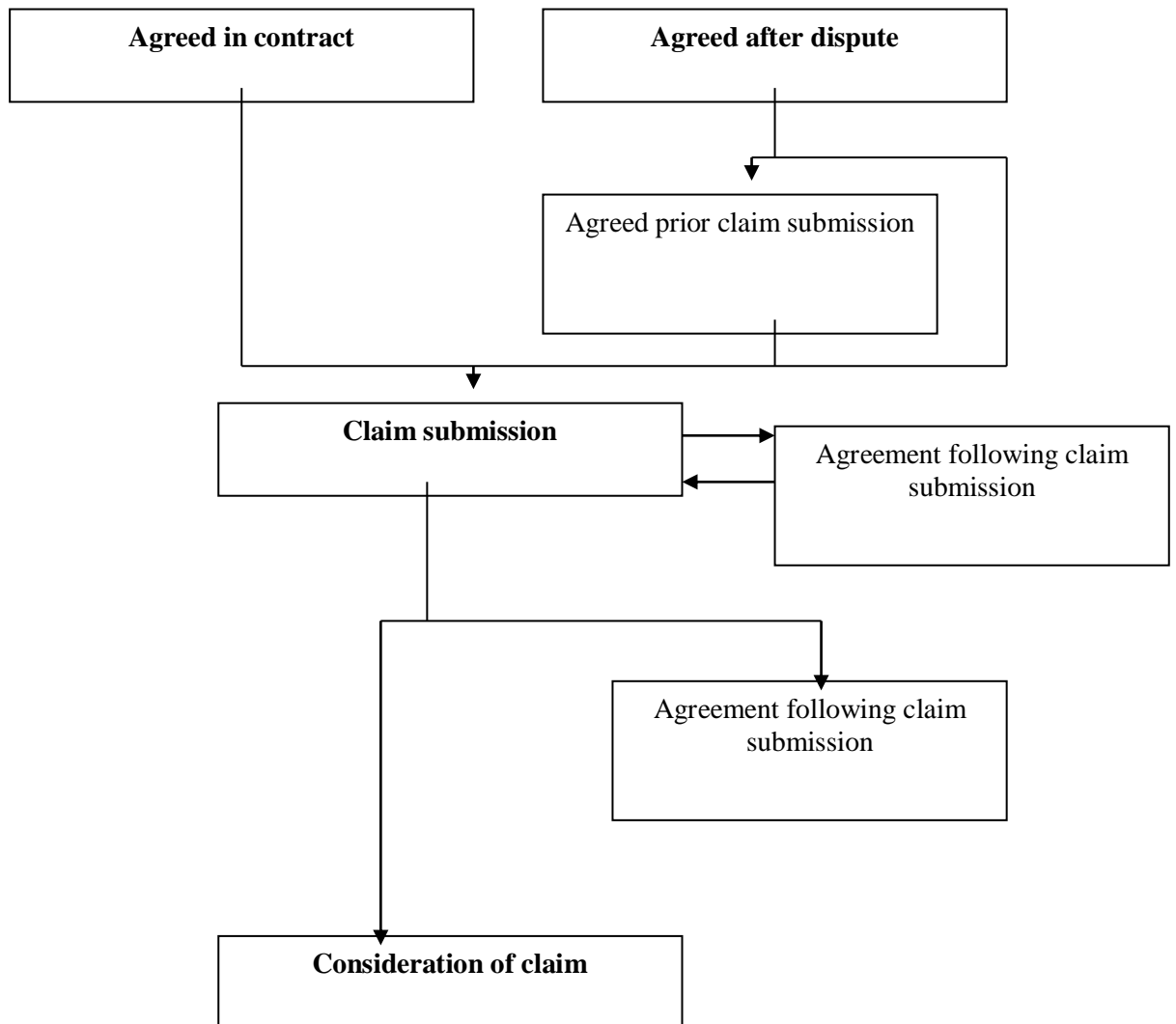
<sup>62</sup> Law on Economic Dispute Resolution (amended in 2010), Item 2, Article 8 and Article 10

An agreement made before the claim is submitted is an agreement made by and between the litigants voluntarily. The dispute is taken to the OEDR or UEDR after the dispute has arisen and a record is made that this agreement is attached prior to the submission of the claim. When an agreement is made prior to the submission of the claim, the litigants can also agree to make an agreement concerning the format of the impending economic dispute through mediation or of their own accord.

### **2.2.1 Agreements Made after a Claim has been submitted.**

An agreement made after a claim has been submitted is an agreement entered into by the litigants voluntarily to take the matter for resolution at the OEDR or UEDR following the dispute. This shows that in submitting the claim, the claimant acknowledges that there will be a claim made by the other litigant and that this claim or defense. Alternatively, if the claim is accepted by the other litigant forthwith, the OEDR or UEDR shall consider how to rectify the situation and together create a format for the resolution of the claim and an agreed solution, such as by mediation or of their own accord.

### Diagram Depicting the Agreement of the Litigants



### 3. Documentation

The submission of documentation to the OEDR or UEDR for them to consider is of great significance to the economic dispute resolution as such documents act as a fundamental reference for the OEDR or UEDR and the arbiters or arbitration committee for use in handling the dispute and considering the stages as specified in the Law on Economic Dispute Resolution.

Overall, the documents to be submitted to the OEDR or UEDR are as follows:

1. A claim;
2. The relevant contracts;
3. If there is one, a written agreement by the litigants engaging in the economic dispute to be resolved by the OEDR or UEDR; and

## 4. Information or other forms of documentary evidence<sup>63</sup>.

### **3.1 Claim**

The claim is the fundamental document which leads to the OEDR or UEDR to dispute and consider the matter. This must include the details of the claim as stated in Item 1 above.

### **3.2 Relevant Contracts**

A relevant contract is a contract entered into between the two parties concerning production or business, such as investment, trade, services, and such like concerning economic matters and following contractual performance, a dispute arises over a violation or in connection with such contracts.

### **3.3 Agreement between the Litigants**

An agreement between the litigants refers to a document agreed between them for the OEDR or UEDR to consider and resolve in detail as stated in Item 2 above.

### **3.4 Information and Documentary Evidence**

Other information or documents which constitute evidence refer to documents which relate to the investment, trade, services, and so forth and are associated with the economic dispute, examples including records, contracts of mandate, receipts, invoices, and other evidence concerning the litigants and so forth.

## **4. Submitting Claims and Claim Consideration Procedure**

### **4.1 Submitting Claims**

Claim submission is of great important to economic dispute resolution because it is the starting point for requesting the OEDR or UEDR to consider a resolution.

Claim submission is the taking of a claim for economic dispute resolution and is accompanied by documentation, which is also submitted to the OEDR or UEDR, to mediate or arbitrate over a dispute which has arisen.

Claims made to the OEDR or UEDR may be submitted in one of two ways:

#### **4.1.1 Submitting a Claim by Oneself**

When a claim is submitted by oneself, it means that one or both of the litigants personally deliver it to the OEDR or UEDR by themselves.

#### **4.1.2 Claim Submission through an Agent**

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<sup>63</sup> Law on Economic Dispute Resolution (amended in 2010), Article 18



## **A. Claim Submission through a Representative by Law**

When a claim is submitted through a representative, they must take the claim and accompanying documentation and submit these to the OEDR or UEDR. They shall have the automatic right to make the claim without the appointment or assignment of either litigant, as follows:

- One of the litigants is not of sound mind, is mentally challenged, is deaf, is mute, or is deceased. This could be the husband wife, or heir;
- One of the litigants is missing and has already appointed someone to look after their assets;
- They are a relative and guardian of an heir and have the right to look after and control the heritage of a heritage owner who is deceased or declared as being deceased by a court and nobody has been appointed to look after this; and/or
- A spouse who is representative with respect to their marital assets and debts.

## **B. Claim Submission through an Agent**

The submission of a claim by an agent by law refers to their taking the request and relevant documentation and submitting it to the OEDR or UEDR of a person holding the right to request by appointment or mandate granted by the litigant and could be one of the following:

- An attorney;
- An employee, committee of an organization or enterprise holding power of attorney over disputes concerning the organization or enterprise in question;
- A sole individual who has been granted power of attorney by both litigants in the dispute; An individual who has been appointed by a litigant as an agent within the scope of the relevant economic dispute; and/or
- Relatives of the litigant or third parties who hold power of attorney.

### **4.1.3 Location for Claim Submission**

The location for claim submission shall be the location of the litigant making the claim with all the correct documentation and submitting it to the OEDR or UEDR<sup>64</sup> where the litigant deems convenient and as agreed.

In the event that the litigants cannot agree, they may make their claim accompanied by all the correction documentation and submit it to the OEDR or UEDR where the dispute occurred.

## **4.2 Procedure for Claim Consideration**

### **4.2.1 Claim Receipt**

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<sup>64</sup> Law on Economic Dispute Resolution (amended in 2010), Article 17

A claim is a process whereby a claim accompanied by documentation is received by the OEDR, or UEDR and a record is made of the person submitting the claim, the date of submission, a brief outline of the claim and all the documentation. A case file with a registration number is made up and the initial accompanying documentation is placed therein.

- The receipt of claims and such documents is significant in the economic dispute resolution procedure because it is the starting point of the dispute at the OEDR or UEDR.

#### **4.2.2 Claim Consideration**

Following the receipt of an economic dispute resolution claim accompanied by all the correct documentation, the OEDR or UEDR, in addition to examining the claim and accompanying documentation, also has the duty to put together a case file for the economic dispute resolution claim to be proposed to the OEDR or UEDR director for their consideration, as follows:

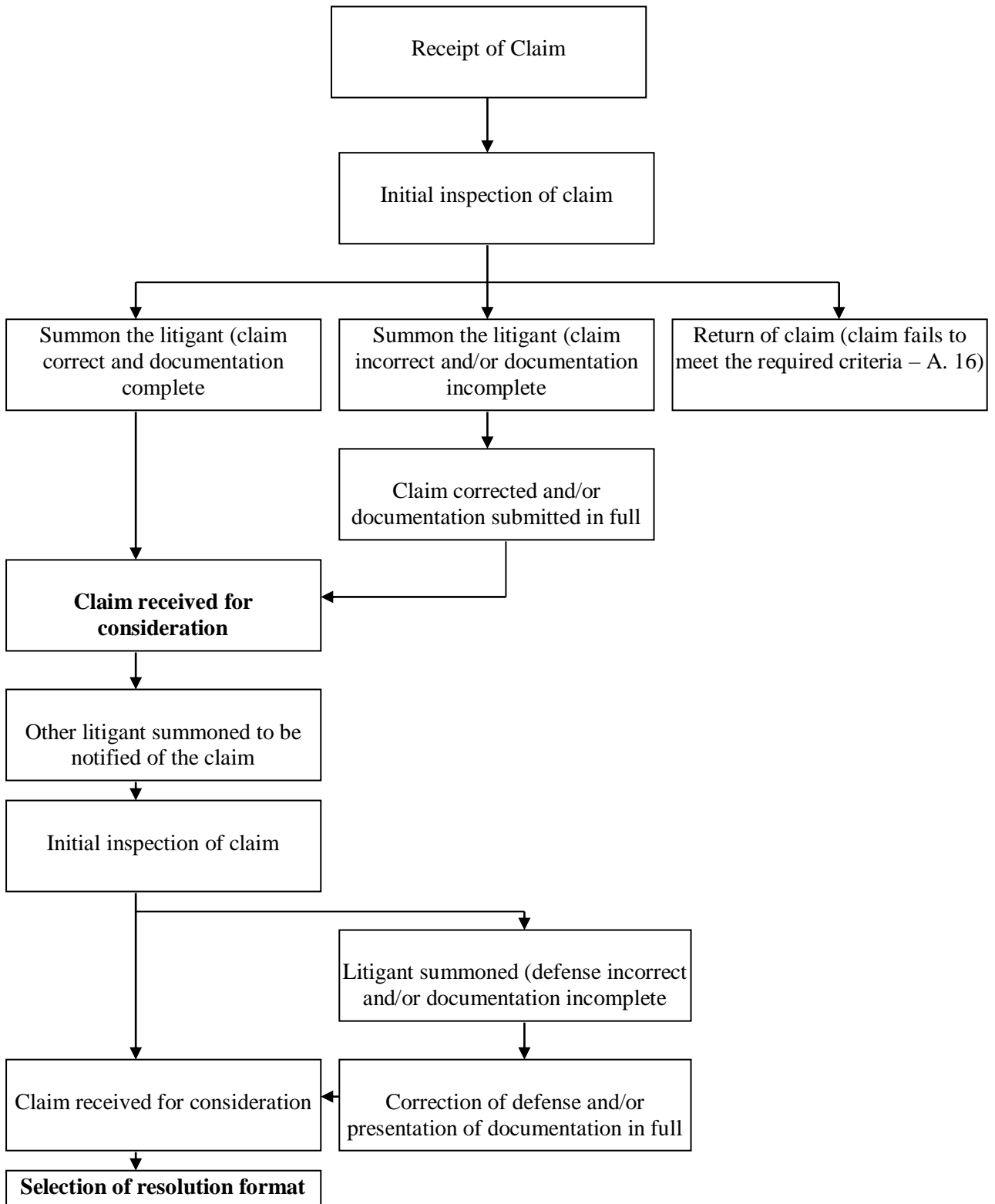
- 1) The case file is submitted to the division or unit in charge of economic dispute resolution first for their examination. They then report the results of their examination to the OEDR or UEDR director so that the other litigant may be informed (Annex 5) and for them to check that the claim and case file are correct, complete, and usable during the dispute at the OEDR or UEDR in accordance with the relevant laws and regulations.
- 2) The case file is then returned to the relevant division or unit for it to notify the claimant whether the content of their claim, the necessary information and evidence in the case is complete, and their claim is complete or if it is deemed that further information, including the agreement between the litigants concerning the economic dispute at the OEDR or UEDR<sup>65</sup>, the format selection, and whether to have a single arbiter or arbitration committee.
- 3) The case file is then returned to the division or unit so that the case file and results may be sent in writing to the claimant if it is deemed that the economic dispute is inconsistent with the scope of rights, duties, and/or responsibilities of the OEDR or UEDR based on their examination and report on the management of the economic dispute. This must therefore be considered and the claimant notified within a period of seven working days<sup>66</sup>.

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<sup>65</sup> Law on Economic Dispute Resolution (amended in 2010), Article 16 gives specifications for economic disputes brought for consideration at the OEDR or UEDR: 1) It must be an economic or trade dispute; 2) The litigants must have entered into a contract; 3) The litigants must enter the dispute resolution voluntarily; 4) It cannot be a dispute which is currently in process at the People's Court or one for which a final ruling has already been given; and 5) It cannot be a dispute which violates the legal regulation of the nation, public order, or the environment.

<sup>66</sup> Law on Economic Dispute Resolution (amended in 2010), Article 20

### Diagram Depicting the Consideration of the Request



## **5. Summoning the Litigants**

The summoning of the litigants involves the issuance of official documents by the OEDR or UEDR to the participants of the economic dispute resolution.

A summons is an official document in the economic dispute resolution process as it is a fundamental document issued to one or both of the litigants requiring them to appear before the relevant OEDR or UEDR officials in order that the dispute may be resolved. For example, a summons may be issued for a claim by economic dispute, for the litigant making the claim to resolve their economic dispute or the other litigant. It gives clear instructions and gives an explanation or is accompanied by evidence or regular or additional documentation concerning the claim case file.

In the event that the litigant summoned fail to appear pursuant to a summons, the OEDR or UEDR shall issue a second summons and if the summoned litigant still fails to appear as stated in the summons, the OEDR or UEDR shall issue a third and final summons. For the issuance of summonses each time, the OEDR or UEDR where the economic dispute is to take place shall consider the matter based on the nature and special circumstances of the claim and the litigants. If the summoned litigant fails to appear before the relevant OEDR or UEDR officials, they shall create a summary report concerning their failure to appear to the director of the OEDR or UEDR of them to decide upon on a case-by-case basis.

A summons shall be sent to the location of the litigant provided and may be done as follows:

- Delivery by a OEDR or UEDR official;
- Delivery via the village office where to the litigant resides;
- Delivery via post or telecommunications; and/or
- Electronic delivery, such as email.

## **6. Claim Resolution and Consideration Procedure**

### **6.1 Claim Resolution**

Claim resolution refers to the use of one's right to contest an issue in writing made by one of the litigants after they have appeared at the OEDR or UEDR pursuant to their summonses. This shows that the other litigant acknowledges that they are involved in an economic dispute with the claimant concerning their interests due to a contractual violation and/or production and business.

The defendant shall write out their defense in accordance with the economic dispute resolution form of the relevant economic resolution center (Annex 8) and send this to the division or unit at the OEDR or UEDR.

The defendant may submit a defense if they deem that the claim requires an obligation to be performed for them so that the OEDR or UEDR may consider resolving the matter together (Annex 9).

### **6.2 Receiving a Defense**

When a defense is received, it is accompanied by documentation from the OEDR or UEDR and it is registered who is submitting their defense, the date, month, and year, the initial claim, and a brief outline of the defense along with the accompanying documentation. It is then placed in the case file and this makes up the initial defense file.

### **6.3 Consideration**

Upon receiving the defense accompanied by all the necessary documentation, the division or unit of the OEDR or UEDR, in addition to examining the initial defense and accompanying documentation, has the duty of putting together a case file for the defense to be submitted to the director of the OEDR or UEDR for consideration, as follows:

- 1) The defense case file is then returned to the division or unit in charge of the economic dispute for them to examine it and report on the results of their examination to the OEDR or UEDR director in order that the litigants may be summoned and the defense acknowledged provided that the defense is correct, complete, and usable during the dispute to be resolved at the OEDR or UEDR in accordance with the relevant laws and regulations.
- 2) The defense case file is then returned to the administration unit or division for it to inform the litigants of any corrections which need to be made to the defense file. If anything is missing from the defense or any necessary information or evidence, including the explanation, or if anything is unclear concerning a necessary issue to the case, it shall be deemed that further evidence is required.

## **7. Assembly of Case File for the Economic Dispute**

The assembly of the case file is of great significance as it is the first step in resolving the economic dispute and is done via mediation or verdict as agreed by the litigants.

The economic resolution case file essentially sums up the relevant documents, information, and evidence of the litigants to point out their rights and contestations in order to protect any rights or interests which may have been violated so that the OEDR or UEDR may take them for consideration and resolution.

An economic dispute case file shall contain the following:

- 1) The case file for the claim of the economic dispute; and
- 2) The case file for the defense of the economic dispute accompanied by the documents, information, and evidence which relate to the litigant.

In practice, assembling the case file for a dispute simply amounts to taking the claim case file and defense case file for the economic dispute and putting them together in a single case file (Annex 10).

## **8. Selection of Resolution Format**

Selecting the resolution format for the dispute is another stage for which the litigants must exercise their rights. They must select an economic dispute resolution format, which could be mediation or arbitration as agreed by the litigants as mutually agreed<sup>67</sup>.

Selecting the economic dispute format is of great importance because it acts as a road map showing the rights agreed. Selection a dispute resolution format is based on the mutual agreement of the litigants. Also, selecting this format is of great importance in determining the resolution procedure.

Overall, the litigant may agree over the economic dispute resolution format by checking the box for contracts concerning production, business, and trade. It is no necessary to select a format when the claim is submitted but it can be (Annex 11).

In the event that the litigants cannot agree on the case format, the relevant officials of the OEDR or UEDR shall have the duty and responsibility to facilitate this and provide appropriate technical information for the litigants so that they may agree on the issue. In the event that the litigants still cannot agree, the OEDR or UEDR officials must make up a summary report concerning their problem and submit this to the director of the OEDR or UEDR for consideration and agreement concerning the sending of the claim and defense economic dispute case files to the litigants.

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<sup>67</sup> Law on Economic Dispute Resolution (amended in 2010), Article 21

## Chapter 5

### Dispute Resolution by Mediation

#### 1. Information on Dispute Resolution by Mediation

##### 1.1 Meaning

Dispute resolution by mediation is a process which takes place between a mediator and the litigants aimed at bringing the litigants to a compromise and a mutual understanding using a neutral mediator, who facilitates matters and provides assistance and consultation to find a solution, thus ending the dispute at a basic level voluntarily by litigant and this may take place for district-level cases. This means that they are resolving the dispute on their own through compromise, negotiation, and consultations. Mediation may have one or multiple mediators – all neutral<sup>68</sup>.

##### 1.2 Importance

Economic dispute resolution by mediation is of great importance to the litigants as it gives them the chance to resolve the dispute amicably and confidentiality, solidarity, and transparency are maintained and it saves on expenses for the litigants. Therefore, this form of resolution remains important for dispute resolution processes in society. It also contributes to consensus and helps society live peacefully.

Confidentiality is of great importance to the litigants because when running their own business, there may be secrets which they do not want disclosed to the public during the dispute – things which may affect their business operations and lose credibility and customer confidence. Therefore, the litigants may opt for the format of mediation in order to agree and end the dispute away from the public eye. Also, mediation brings the two litigants together of their own accord without having to resort to consultants, legal counsel, thus adding yet another benefit for both litigants. Furthermore, during economic dispute resolution by mediation, information and documents presented during the mediation must be kept confidential<sup>69</sup>. The mediator, litigants, and other participants do not have the right to disclose any information externally without the consent of the other litigant. Information from the mediation is kept confidential and may not be used as evidence in arbitrations or court proceedings and the mediator also does not have the right to disclose information from the mediation to others.

Solidarity is also maintained and this is important for the litigants because they will be satisfied with each other, thus leading to an end to the dispute voluntarily. This makes both parties feel a greater sense of solidarity to each other than if they had done otherwise and can also lead to their doing further business together. Furthermore, once a dispute has come to an end through mediation voluntarily, if the litigants had not had a dispute prior to this, both parties gain the advantage of being able to do further business together.

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<sup>68</sup> Law on Economic Dispute Resolution (amended in 2010), Article 22

<sup>69</sup> Law on Economic Dispute Resolution (amended in 2010), Article 14

In dispute resolution by mediation, it is up to the litigants to find a solution to end their dispute backed up by a neutral mediator. Once it has been agreed to end a dispute, the litigants must abide by the results agreed stringently and forthwith. The litigants shall not have the right to the appeal or cassation of a mediation record. It is therefore deemed that the economic dispute between the two parties is fast and saves time.

Dispute resolution through mediation is not performed according to a strict process or regulations and misses out many stages. In addition, during mediation, if the OEDR or UEDR calls for the summons the litigants to mediation but one of them fails to appear, the mediation ends then and there so it is different from court proceedings, which have multiple instances – first instance, appeal, and cassation – in order to arrive at an enforceable ruling (if appeal or cassation is requested by the litigants<sup>70</sup>). In general, the time allotted for consideration is short – just 15 months<sup>71</sup>. Therefore, it is deemed that economic dispute resolution using mediation is both fast and economical.

During dispute resolution by mediation, the litigants have to verify their information and evidence before the dispute may come to an end. It is up to the litigants to specify such matters themselves. The litigants have to pay processing fees, service fees<sup>72</sup>, and remuneration. The remuneration for the mediator depends on the dispute and the litigants can agree this with the mediator in order that it may be specified but in the event that the case moves on to court proceedings, the litigants shall pay court deposit fees not exceeding 200,000 kip<sup>73</sup> per time. Court fees include State tax, expenses for the judicial council for visiting the scene of certain incidents, documentary fees<sup>74</sup>, and photocopying fees. This means that it depends on the value of the claim. Large claims will be expensive and small claims less so. The evidence for case proceedings in court has multiple instances and each instance may incur additional expenses but if it is taken into account that case proceedings in court are on the rise and at each instance, additional expenses may be incurred, depending on the information and evidence of the case being complete or not and whether the judges require further evidence and information. In comparison, the dispute resolution process by mediation is probably the cheaper that taking the dispute to court.

In addition, for mediation, it is also important for the litigants to be free to negotiate and find their own solution. Nothing is set in stone and they can take as long as they like with the mediator assisting as a consultant for each party to facilitate matters for both parties well. Mediation can be of a technical nature and mediators are usually selected from someone in a specialized vocation, which could be economics, design, law, accounting, and such like, in order to build confidence in the litigants and the selection of their arbiter is suitable so that the dispute may be resolved.

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<sup>70</sup> Law on Civil Procedure (amended in 2012), Articles 262 and 290

<sup>71</sup> Law on Civil Procedure (amended in 2012), Article 30

<sup>72</sup> Law on Economic Dispute Resolution (amended in 2010), Article 53

<sup>73</sup> Law on Civil Procedure (amended in 2012), Article 156

<sup>74</sup> Law on Civil Procedure (amended in 2012), Article 155



### 1.3 Objectives

Economic dispute resolution by mediation aims for the litigants to agree to end the dispute voluntarily using a neutral mediator.

### 1.4 Similarities and differences between economic dispute mediation by mediation at the OEDR or UEDR and dispute mediation at the People's Court

#### Similarities

	<b>Dispute mediation at the OEDR or UEDR and dispute mediation by the People's Court</b>
Not overly strict or formal	This dispute resolution method is friendly, meaning that the litigants are able to negotiate and find a mutually acceptable solution. There is a neutral mediator or judge to explain anything so that the litigants can accept each other's conditions.
Solidarity remains intact	When a joint agreement is issued, both litigants will be able to maintain their relationship better and continue to cooperate in business further.
Saves time	With mediation, it is up to both of the litigants to bring and end to the dispute together and take the results to the mediation for performance forthwith.
A record is made out of the results of the mediation	The litigants may not appeal or cassation.

#### Differences

	<b>Dispute mediation by the OEDR or UEDR</b>	<b>Mediation in court</b>
<b>Mediators</b>	The mediator is selected from a list which is sourced from multiple bodies and appointed by the Minister of Justice. In general, they will be selected voluntarily by both parties.	The judge is a person who has been appointed by the NA Standing Committee and has the right to rule on cases. <sup>75</sup>
<b>Taking the dispute to undergo the mediation process</b>	Mediation based on the volition of the litigants	The judge has the right to accept cases for all stages of mediation in case proceedings and at each instance.
<b>Performance and enforcement of mediation resolution</b>	The litigants are responsible for their own performance. If they fail to perform the settlement, the aggrieved party shall have the right to submit a claim with the court in order for the court to issue a final ruling of the mediation resolution and send this to the office or court resolution enforcement unit for enforcement <sup>76</sup> .	The court shall issue an order for the enforcement of the mediation resolution and send the case file to the office or court resolution enforcement unit for enforcement <sup>77</sup>
<b>Confidentiality</b>	Any information or documents submitted during the mediation must be kept confidential. The mediator, litigants, and other participants do not have the right to disclose this to an external individual without the consent of the litigants <sup>78</sup> .	The mediation may be used as information for case consideration but not as evidence.

## **2. Selection, Appointment, Withdrawal, and Recusal of the Mediator**

### **2.1 Selection of Mediator**

There are two ways to select a mediator: by the litigants using the mediator agreed in a contract or otherwise:

<sup>75</sup> Law on the People's Court (amended in 2009), Article 45

<sup>76</sup> Law on Economic Dispute Mediation (issued in 2010), Article 51 (When issuing a court ruling which upholds a mediation resolution, the court must check the mediation proceedings at the OEDR or UEDR were performed correctly in accordance with the law, that the resolution does not conflict with any conventions to which the Lao PDR is party, and that it does not affect national security, public order and/or the environment. Simply inspecting the format fails to delve deeply into the content.

<sup>77</sup> Law on Civil Procedure (amended in 2012), Article 201

<sup>78</sup> Law on Economic Dispute Resolution (amended in 2010), Article 14

Provided that both parties can agree this in a contract, it means that if a dispute occurs in the future, it can be resolved by the OEDR or UEDR. In doing this, the litigants may agree to select the format for the dispute resolution by mediation. They may select the number of mediators or sometimes the litigants may select a mediator in their contract. Therefore, when resolving economic disputes by mediation in the future, the litigants simply need to come into the OEDR or UEDR to inform them of what they are aiming for with their agreement. The OEDR or UEDR shall then ask the litigants once again about format selection, the number of mediators, and who those mediators are to be. Once the litigants have confirmed their agreement to this in a contract, the OEDR or UEDR shall act according to their wishes. Once this has been settled in a contract and given to the litigants for them to submit their documentation in accordance with the form issued by the OEDR, the OEDR or UEDR shall coordinate with the mediator selected by the litigants and hand the case file for the mediation over so that the dispute resolution may commence.

In the event that an dispute arises between the litigants specified in the contract, provided that it is an economic dispute concerning their business dealings between each other, the litigants shall take the dispute for resolution at the OEDR or UEDR irrespective of whether such is stated in the contract.

When the litigants appear at the OEDR or UEDR and have stated their objectives in resolving their economic dispute by mediation, sometimes this can lead to one of the litigants wishing to submit a claim. Sometimes it can even lead to both litigants wishing to do so. After the OEDR or UEDR have received the request and the claimant has submitted their documentation for their claim to the OEDR or UEDR, the OEDR or UEDR shall summon the defendant to inform them and instruct them on how to write a defense and submit all the correct documentation in accordance with the OEDR or UEDR form. The OEDR or UEDR may summon both litigants multiple times in order to obtain an agreement from the litigants on the format for the resolution, the number of mediators and who these mediators are to be.

In the event that both parties cannot agree on a format for the resolution or on the number of mediators, the OEDR issue a summons to both litigants for them to discuss the matter and come to an agreement on this so that the dispute mediation may commence. The litigants may select a format and the number of arbiters for the resolution. For example, if one selects the format of mediation and the other of arbitration or if one selects one mediator and the other selects three, the OEDR or UEDR shall issue summonses multiple times to bring the litigants to agreement.

Having summoned one or both litigants multiple times and they fail to appear without sufficient grounds or if one litigant appears pursuant to the summons, following consultations, the litigants will not be able to agree on the resolution format or the number of mediators so the OEDR or UEDR shall be unable to move forward and shall send the claim file, defense file, and the accompanying documentation back to the litigants.

In the even that the two parties are able to agree on the format for the resolution and the number of mediators, the OEDR or UEDR shall issue a decision to be placed in

the case file for consideration and resolution and attribute a registration number to this case file.

Pursuant to the Law on Economic Dispute Resolution, selecting the mediators or mediation committee may be done as follows:

### **2.1.1 Selection of a Single Mediator**

The OEDR or UEDR allows the litigants to agree upon a single mediator from the list of mediators and the OEDR arbitration committee. After the litigants have made their selection, they have to create a document and submit it bearing the signature of the mediator in question for the OEDR or UEDR within 15 days of the agreement on the arbitration<sup>79</sup> (Annex 13) to give the OEDR or UEDR the time to appoint a mediator for the next stage.

In the event that the mediator is not selected within 15 days, the OEDR or UEDR shall select a mediator for them within 10 days counting from the date on which notice is received from the litigants or after the above time for selection has expired.

### **2.1.2 Selection of Three or More Mediators**

In order for the litigants to agree on their selection of the three mediators, the OEDR or UEDR shall propose that the litigants select one mediator each from the list of mediators and an arbiter within 15 days counting from the date on which the litigants agree to resolve the case using the mediation format. Once one mediator each has been selected by the two parties, a third mediator needs to be selected from the list of mediators and arbiters or the OEDR or UEDR to act as president of the mediation committee within 15 days counting from the end of the 15 days expiration period<sup>80</sup>.

After the president of the mediation committee has been selected, a document must be made up for the OEDR or UEDR bearing the signatures of the agreed mediators in order that the mediation committee may be appointed for the next state in accordance with the request of the litigants (Annex 14).

If the two parties wish to resolve the matter using three, five, or seven mediators, the method for selecting them shall be the same as if they were only using three.

In the event that a mediator or mediation committee president cannot be selected within the time limit of 15 days, the OEDR or UEDR shall select one within 10 days counting from the date on which notice is received by the litigants or from the final date of the abovementioned expiration period.

## **2.2 Appointment of Mediators**

### **2.2.1 Rights Involved with the Appointment of Mediators**

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<sup>79</sup> Law on Economic Dispute Mediation (amended in 2010), Paragraph 2, Article 23

<sup>80</sup> Law on Economic Dispute Mediation (amended in 2010), Paragraph 3, Article 23

The appointment of mediators is the right and duty of the OEDR or UEDR. After the litigants have selected one, three, or more mediators or after the OEDR or UEDR have selected one for them, the OEDR or UEDR must issue a decision to appoint the mediator or mediation committee within 7 days of receiving the list of mediators or mediation committee members (Annexes 15 and 16). In practice, prior to appointing the mediators, the OEDR or UEDR shall ask the person to appoint the mediators what the intentions and targets of the mediators to be appointed are first, whether or not they can be appointed as mediators, and whether or not the mediators will receive a remuneration fee. Once the mediators have responded, the OEDR or UEDR shall appoint them. Alternatively, if one of the mediators is unable to receive the agreed remuneration fee, they shall be rejected as a mediator. In practice, in the event the rejection of a mediator takes place under the following circumstances:

- 1) They are not confident that they have the technical knowledge;
- 2) They are unable to accept the remuneration fee offered by the litigants;
- 3) They are busy with some other duty in another province or overseas; and/or
- 4) They suddenly pass away.

In the event that a mediator is rejected as specified in one of the four items above, the OEDR or UEDR shall inform the litigants so that they may select a new mediator (Article 23 of the Law on Economic Dispute Resolution).

### **2.2.2 Handing over of the Case File to the Appointees**

After the OEDR or UEDR have appointed their mediator or mediation committee, they hand the case file over to them. This must be done using the OEDR model (Annex 17) in order that the mediator or mediation committee may then go on to resolve the dispute.

## **2.3 Withdrawal and Recusal**

The terms *withdrawal* and *recusal* are specified in the Law on Economic Dispute Mediation as the mediator has the role of bringing about justice and is neutral in resolving the dispute for the litigants. Therefore, when the mediator is performing this role, if it is deemed that there is something suspect with respect to fairness and neutrality, they can withdraw themselves as mediator. In the event that the mediator fails to withdraw themselves, the other litigant may force their recusal from their role as mediator in order that the economic dispute resolution may proceed.

The mediator or a member of the mediation committee may withdraw or face recusal from their appointment up until mediation proceedings.

### **2.3.1 Withdrawal**

A mediator has the right to withdraw from the mediation in the event that they are a relative of one of the litigant, they have associated interests, a dispute arises between them and one of the litigants, or if they find themselves unable to perform their

duties<sup>81</sup>. Whatever Paragraph 1, Article 24 of the Law on Economic Dispute Resolution may state about the right of the mediator to withdraw, the mediators are individuals with a neutral role and must be fair to the litigants. Therefore, the mediators must withdraw from their role as mediator if they deem that there is something suspect or unfair for the litigants, such as their having associated interests or their being the spouse or close relatives of one of the litigants<sup>82</sup>.

The law provides for withdrawal in order to ensure that the dispute proceedings go ahead fairly, transparently, and equitably and to avoid bias in the dispute while enhancing the ethics of the mediators.

In the event that they request withdrawal, the mediator must make out a written document requesting their intention to withdraw and the reasons thereto. They must then submit this to the OEDR or UEDR for consideration. After the OEDR or UEDR have examined and considered the situation and believes that there are sufficient grounds for withdrawal, the OEDR or UEDR shall state this intention of the mediator to the mediators who remain (in the event that there are three mediators) and the two litigants in order that they may select a new mediator and have them appointed instead. In practice, withdrawal requests are based on the submission of a request because this would show the intentions of the mediator as a condition for the OEDR to be able to select and appoint a new mediator to replace them or for the OEDR or UEDR to issue a decision to replace them with another mediator without actually having to issue a document canceling the appointment of the mediator or their request for withdrawal. The selection and appointment of a new mediator can take place as stated in Article 23 of the Law on Economic Dispute Resolution.

### **2.3.2 Recusal**

Just as a mediator may withdraw of their own accord, the litigants also have the right to request their recusal if they deem that the mediator is a relative of the opposing party, they have associated interests, a dispute arises between them and one of the litigants, or the mediator is unable to perform their duties<sup>83</sup>. Such circumstances constitute grounds for either litigant to suspect that the mediator resolving the dispute is not acting fairly.

In the event of such a recusal of a mediator by one of the litigants, the party that is requesting such must make out a document stating their intentions along with the grounds for the recusal in writing and submit this to the OEDR or UEDR for consideration (Annex 18). After the OEDR or UEDR have studied and considered the matter, if they deem that there are insufficient grounds for recusal, such as the litigant wanting the mediators all to be women or all to be men or simply dislikes the mediator, the figure or their looks, the OEDR or UEDR shall keep the mediator or mediation committee in place and explain their reasons for not permitting the recusal. Then, the mediator or mediation committee may continue further with proceedings.

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<sup>81</sup> Law on Economic Dispute Mediation (amended in 2010), Paragraph 1, Article 24

<sup>82</sup> Law on Economic Dispute Mediation (amended in 2010), Item 5, Article 57

<sup>83</sup> Law on Economic Dispute Mediation (amended in 2010), Paragraph 2, Article 24

In the event that the OEDR or UEDR deem that there are sufficient grounds and meet the criteria stated in Paragraph 2, Article 24 of the Law on Economic Dispute Resolution, the OEDR or UEDR shall notify the mediator facing recusal and the remaining mediators (in the event that there are three) along with the other litigant so that a new mediator may be selected and appointed to replace the former mediator or the OEDR or UEDR may issue a decision replacing the former mediator without having to issue a document canceling the entire mediation committee. As regards the selection and appointment method for the new mediator, Article 23 of the Law on Economic Dispute Resolution should be followed.

### **3. Mediation Process**

The mediator or mediation committee must commence proceedings within 15 days of their appointment<sup>84</sup>. Economic dispute mediation must take place exclusively in the presence of both litigants or their legally valid agents. Therefore, overall, the OEDR or UEDR handles economic disputes as follows:

#### **3.1 Preparation for Mediation**

##### **3.1.1 Initial Preparations**

After the receiving the case file for the economic dispute from the OEDR or UEDR, mediator, or mediation committee, it will face an initial examination in order to encourage and create the conditions to encourage and create conditions conducive for the litigants to come to an agreement, as follows:

- 1) The mediator or mediation committee examines the dispute for which it responsible and determine what the issues are, who the litigants are, in what type of business they are engaging, the cause of the dispute, the claims and issues of the claimant they desire settled, and so forth.
- 2) Each litigant is then summoned once again if it is deemed that the dispute still has a main issue which is unclear. The mediator will coordinate with the staff of the OEDR or UEDR to issue such summonses for each of the litigants or their agents and any other relevant persons in order that they may make any additions. If, however, it is necessary to summon the two litigants in together to meet and discuss the matter, that is also possible because they are still trying to determine the wishes of each party and information on the means specified to assist each litigant. Each litigant has the obligation to cooperation and it is up to them to find or provide the relevant information and evidence.

If it is deemed that there is a main point still requiring clarification, further information must be collected. The mediator must consult with and request this from the litigant to whom this issue pertains. The mediator may also collect further information and evidence with the consent of the litigant.

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<sup>84</sup> Law on Economic Dispute Mediation (amended in 2010), Paragraph 1, Article 25

- 3) The date, time, and location must be specified for the dispute to be resolved. If the mediator deems that the content of each main issue in the case file of the dispute is incomplete or insufficient and when the mediation has taken place, the mediator may then inform and coordinate with the OEDR or UEDR officials to prepare summonses for the litigants or their agents in order that mediation may commence.
- 4) If coordination is to take place with the OEDR or UEDR for the summonses for the litigants, their agents responsible, or another participant, then it must take place three working days in advance of the mediation session.

### **3.1.2 Session Preparation**

Preparing a mediation session is the duty, role, a responsibility of the record keeping, who must inspect everything in detail, such as:

- The tidiness of the mediation room;
  - The full attendance of the litigants and persons associated with the meeting by registering all participants;
  - Summonses of the litigants, their agents, and other participants (if applicable);
  - Summonses of the mediator or mediation committee sitting on the panel.
- Record keeper sets up meeting room<sup>85</sup>
- The preparation of the mediation record

The record keeper must announce the tidiness of the meeting room before all present and prepare to take a record of the meeting.

## **3.2 Mediation Proceedings in Session**

### **3.2.1 Opening of session and announcement of name list and content**

- Announcement of the full names of mediator or full name of the president and mediation committee (in the event that there are three mediators) as agreed by the OEDR on the appointment of mediators of the economic dispute;
- Announcement of full name of record keeper;
- Announcement of Economic Dispute No.: ... /OEDR.ED, dated: ..., dispute concerning: ..., and the time, date, and location of the proceedings of the economic dispute mediation;
- Announcement of full names of person making the request (claimant) or their agent holding power of attorney, age, occupation, nationality, current address, and the location of business operations of the person making the request.

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<sup>85</sup> Remark: The participants must act as follows: Refrain from using a telephone, speaking impolitely, and being rude and the litigants must present their issues logically.



- Announcement of the right to withdrawal or recusal of a mediator by a litigant or any participant (in the event of a withdrawal during a mediation session, the mediation shall be adjourned to a new date<sup>86</sup>. Provided that there is no such withdrawal or recusal, the mediator or mediation committee shall commence mediation proceedings.

### 3.2.2 Mediation

A) The mediator or mediation committee shall act as follows:

- Allow the claimant to present their case first;
- Allow them to explain the business operations the causes for the dispute;
- The issues of economic dispute;
- The claimant presents the information and evidence in their possession; and
- Presentation of their method for resolving the dispute.

After their request has been heard, the mediator shall request that the person against whom the request is being made (defendant) presents the following:

- Resolution of request;
- Explanation and notification concerning the issues which have arisen;
- Presentation of the information and evidence in that order (if applicable); and
- Presentation of method to resolve the dispute for the claimant.

In the event that there is a third party, witness, and/or attorney, the mediator shall call upon them to present their opinions in that order. The interpreters usually accompany their litigants.

Following mediation and having heard the facts of the case, the litigants are asked to present their means of resolving the issue. The mediator or mediation committee shall perform the role as a neutral mediator and reach a compromise between both parties in order that both parties may come to a positive agreement.

During mediation, if mediator or litigant deems that there remains main issue or something suspect which is unclear, they shall call for additional information to be collected, the mediator or litigant shall consult with and make further agreements with each other because this issue relates to expenses in addition to the remuneration for the mediators and the litigants agreed in advance. Therefore, this must be agreed by both litigants. The mediator shall then be able to collect the additional information and evidence. The collection of such information or evidence constitutes grounds for adjournment to a new date. Alternatively, if each main point of the dispute is clear, the mediator shall present their opinion and a solution and means of resolution for

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<sup>86</sup> If necessary or in the event of force majeure which prevents the mediator from continuing proceedings, such as their withdrawal or recusal by a litigant or other participant, or sudden and severe injury or sickness, if new information or evidence is discovered by either party which prevents the continuation of the mediation, if one of the litigants has to go overseas and is unable to attend and their agent by law is unable to decide, such shall constitute grounds for the mediation to be suspended or adjourned. Such suspensions and adjournments are based on Articles 215 and 216 of the Law on Civil Procedure, 2012.

proposal to both litigants to help them find middle ground and come to an agreement (but the mediator or mediation committee shall not have the right to rule on the dispute). In the event that both parties are unable to agree during the session but one of the litigants still wishes for the OEDR or UEDR to continue with the mediation, the mediator or mediation committee may proceed with the mediation one more time in an effort for the litigants to agree but there shall be no more than three attempts at mediation.

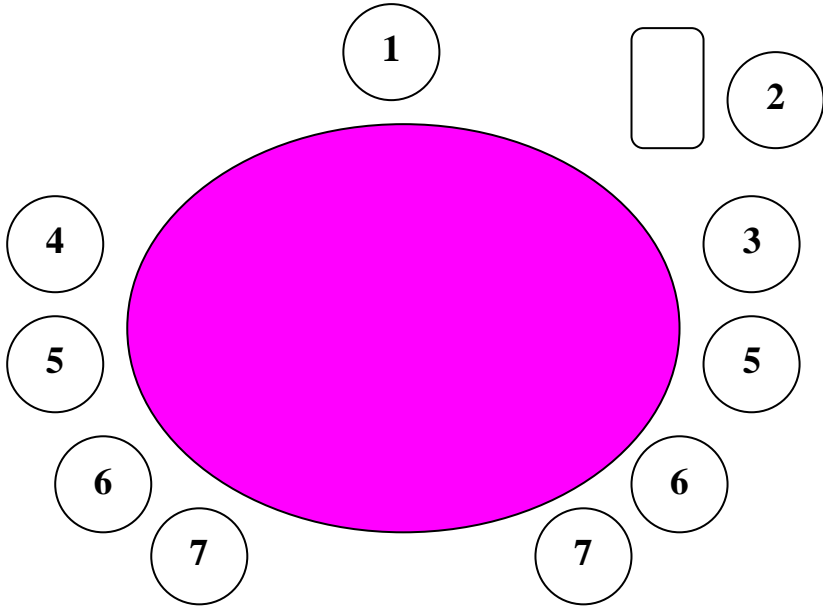
B) If possible, the mediator should issue a mediation decision in addition to specifying their means for enforcement.

C) In the event that an agreement cannot be found, it is considered that one of the causes leading to the end of the mediation stated in Article 26 of the Law on Economic Dispute Resolution has occurred, meaning that the economic dispute undergoes the following:

- In the event that the two parties are unable to agree during the mediation and voluntarily alter the dispute form from mediation to arbitration, Paragraph 1, Article 27 of the Law on Economic Dispute Resolution should be followed. The mediator shall take create a record of the mediation that it has come to an end (the details on the proposals and means of altering the format for economic dispute resolution to arbitration as stated in Item 5.3.1).
- In the event that the two parties are able to agree, the request for mediation is withdrawn and terminated, meaning that the litigants have no desire to continue with the dispute using a mediator.

D) After the mediation has come to an end, irrespective of whether it has succeeded or not, the record keeper shall create a record of the request and the mediators shall read out to the content of this record for all to hear. This is then signed by the participants for use as evidence.

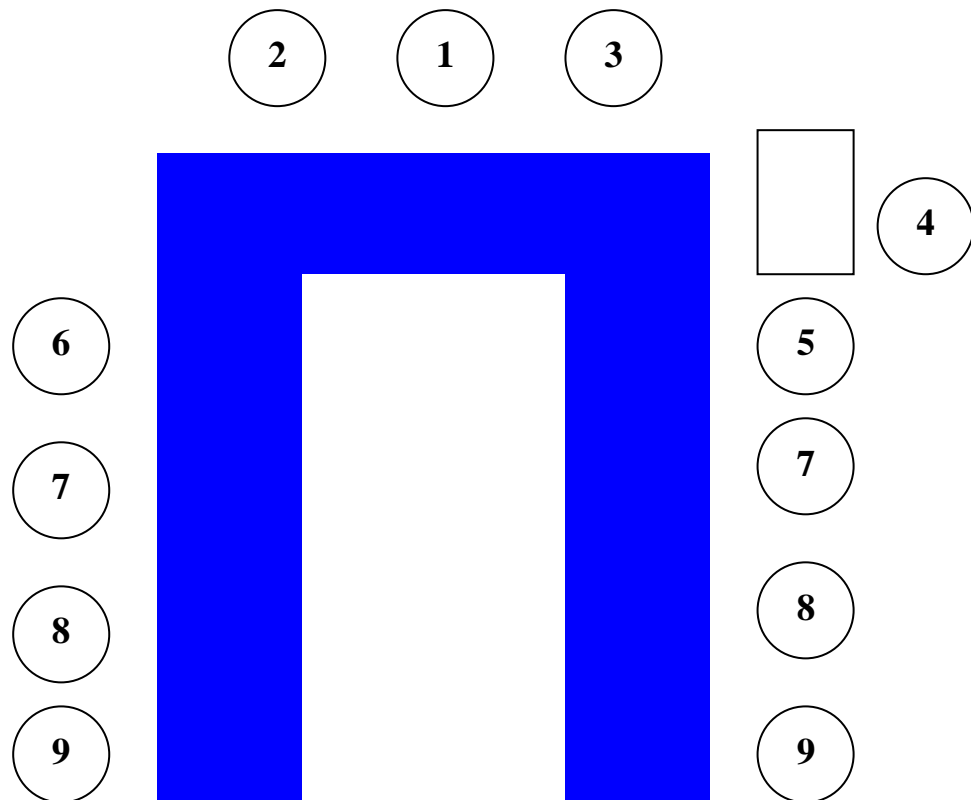
**Diagram depicting seating positions for an economic dispute session to be resolved by resolution with a single mediator**



Key:

- 1. Mediator
- 2. Record keeper
- 3. Claimant or agent thereof holding power of attorney
- 4. Defendant or agent thereof holding power of attorney
- 5. Interpreter (if applicable)
- 6. Third party (if applicable)
- 7. Attorney (if applicable)

## Mediation using three mediators



Key:

1. President
2. Mediation committee member
3. Mediation committee member
4. Record keeper
5. Claimant or agent thereof holding power of attorney
6. Defendant or agent thereof holding power of attorney
7. Interpreter (if applicable)
8. Third party (if applicable)
9. Attorney (if applicable)

**Remark:** The setup of the mediation room for an economic dispute at the OEDR or UEDR sometimes uses a round table (0) as displayed here but some places use a U-shaped setup (U). This depends on what is more convenient and appropriate for the room in question.

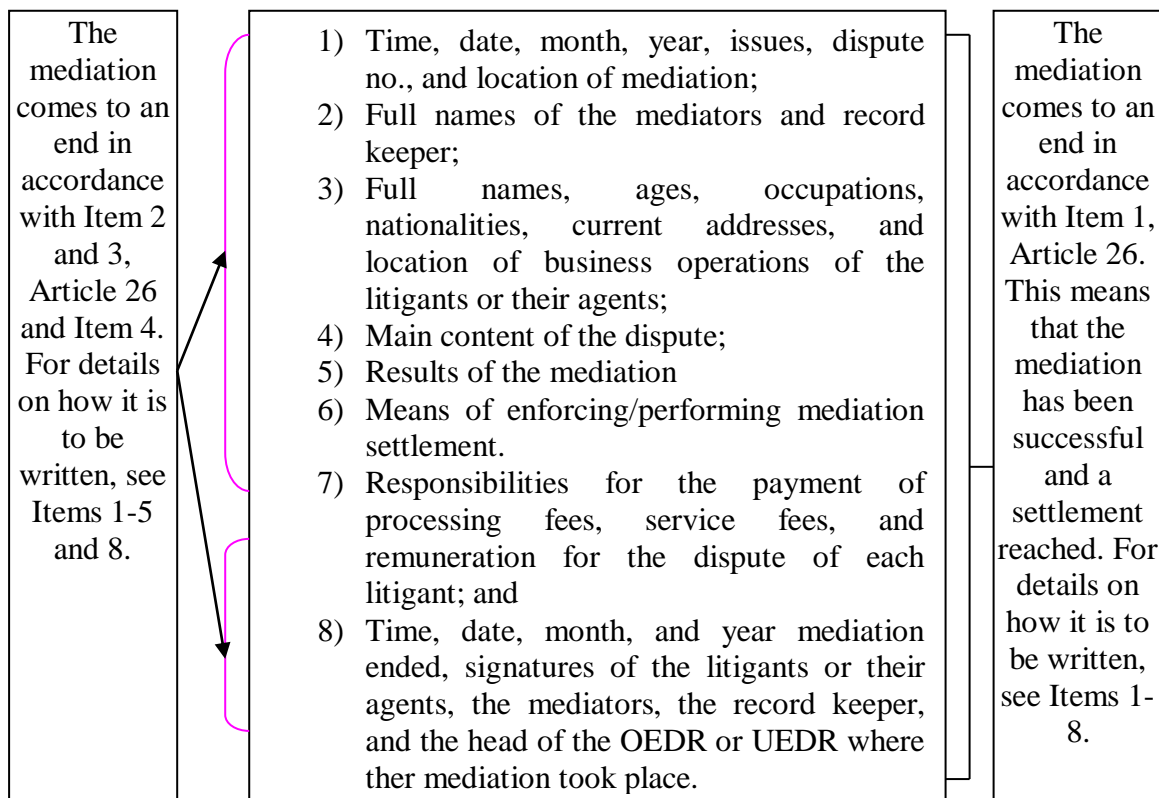
### 4. Mediation Records

The creation of a mediation record is one of the important tasks for the economic dispute resolution. A record must be made out and signed by all participants in order to record the mediation in writing in accordance with Article 28 of the Law on Economic Dispute Mediation and the mediation record form used by the OEDR or

UEDR (Annexes 19 and 20). It is referred to as “An economic dispute mediation record”. Irrespective of whether the mediation was successful or not, a record thereof must be made out. Close attention must be paid to including all the main points, as follows:

- 1) The record keeper must prepare a form to record the mediation.
- 2) The record keeper must concentrate hard on listening and keeping an accurate and complete record in accordance with the main points presented by the litigants.
- 3) It must be written cleanly, attractively, clearly, and concisely and match the main points presented by the litigants.
- 4) Having completed it, the record keeper must then read it out to all participants and ask them to sign it.
- 5) Four copies of the mediation record should be made out – one for each litigant, one to be placed in the case file, and one to be retained (unless there are multiple litigants).

**The mediation record along with its main content is as follows:**



The writing of mediation records must be based on a case-by-case basis at the end of the mediation. Mediation records are therefore divided into two types – records of a successful settlement and records of cases where the litigants were unable to agree.

Mediation which follows Item 1, Article 26 is mediation which has been successful. Therefore, when making out a mediation record, the record keeper must follow Item 1,

Article 26 for the mediation to end properly. Therefore, when making out a mediation record, the record keeper must write out the content specified in Items 1-8 of Article 28, Law on Economic Dispute Resolution, in full (according to the format of the above mediation record). Mediation sometimes has to take place several times to reach a settlement because if the initial mediation proceedings fail, if both litigants still wish for the OEDR or UEDR to facilitate mediation a second or third time, the OEDR or UEDR may continue to do so. In the event the mediation proceedings have taken place multiple times until finally, a settlement is reached, the record keeper must create a mediation record for each time based on Article 28 and using the OEDR form. If the mediation takes place multiple times and a settlement can still not be reached, a record is made out, which can be written according to Items 1-5 and Item 8. Items 6 and 7 may also be included after the mediation has come to an end and a settlement has been reached (for further details, see Item 5.1).

A mediation record for when a settlement cannot be reached is recorded as having ended pursuant to Items 2-4 of Article 26. For example, if one or both of the litigants fails to participate in the mediation without sufficient grounds and it shall be considered that a settlement could not be reached and if one of the litigants dies and has no heir, including cases where they have withdrawn their claim as specified in Article 26, the mediation record shall follow Items 1-5 and 8. Items 6 and 7 shall be left empty with no entries (for further details, see Item 5.3).

After the mediation record has been made, it must be read out for all participants to hear and both litigants, the mediator or mediation committee, and the record keeper must sign it. The director of the OEDR or UEDR at which the mediation took place must also sign.

## **5. End of Mediation**

There are four ways the mediation can end, as follows:

- 1) A settlement is reached between the litigants;
- 2) One of the litigants fails to participate without sufficient grounds;
- 3) The litigants are unable to agree; and
- 4) One of the litigants passes away and has no heir.

### **5.1 Successful Settlement Reached by the Litigants**

Mediation proceedings are a significant process in resolving problems within the justice system and in economic dispute resolution. If both litigants can agree by themselves through compromise, the mediation committee shall create a written record thereof signed by the litigants along with any witnesses who participated, mediators, the record keeper, and the director of the OEDR or UEDR where the proceedings took place.

When the litigants are able to reach a settlement and there is a mediation record signed by the OEDR or UEDR director, the case is closed. The litigants may choose to use these results to resolve a further economic dispute by themselves or have it enforced by a court ruling enforcement body.

In the event that the litigants can perform this by themselves, they shall have the obligation of performing the economic dispute settlement as stated therein within 15 days counting from the date the settlement is reached.

In the event that one of the litigants fails to perform the settlement of the mediation, thereby disadvantaging the other litigant, they shall have the right to file a claim with the People's Court to consider and issue a final ruling and enforce it. When the People's Court issues such a final ruling, the People's Court must state on the ruling that it is final along with the results of the economic dispute mediation for the court enforcement office of the Provincial DoJ to enforce.

**The content of a record should be as follows:**

- 1) Time, date, month, year, issues, dispute no., and location of mediation;
- 2) Full names of the mediators and record keeper;
- 3) Full names, ages, occupations, nationalities, current addresses, and location of business operations of the litigants or their agents;
- 4) Main content of the dispute;
- 5) Results of the mediation
- 6) Means of enforcing/performing mediation settlement.
- 7) Responsibilities for the payment of processing fees, service fees, and remuneration for the dispute of each litigant; and
- 8) Time, date, month, and year mediation ended, signatures of the litigants or their agents, the mediators, the record keeper, and the head of the OEDR or UEDR where the mediation took place.

**5.2 Non-Participation of a Litigant without Sufficient Grounds**

The OEDR or UEDR must determine whether or not the litigant truly has sufficient grounds. They may, for example, not have been aware of the claim or have gone overseas. The OEDR or UEDR must give the litigant the opportunity to come and explain such grounds if they only find out about it afterwards. Alternatively, they can send an agent or legal entity to go in their place. If so, the agent must hold power of attorney in accordance with the law and must have the right to perform such activities of their own accord on behalf of the person in question.

**5.3 Litigants Unable to Agree**

After the proceedings have taken place multiple times and the litigants are still unable to agree, the mediation ends. In the event that the mediation fails to lead to a settlement, if the litigants still wish to resolve the matter, then they may continue by changing the format of the resolution from mediation to arbitration by an arbitration committee or submitting a claim with a court.

In the event that the litigant chooses to resolve the dispute by arbitration by an arbitration committee, the mediator or mediation committee which facilitated the mediation proceedings may not be a member of the arbitration committee.

**5.3.1 Right to Change Resolution Format**

When the OEDR or UEDR agree to accept a claim for consideration during dispute resolution proceedings, the litigants shall have the right to change the format from mediation to arbitration provided there is such a decision from the arbitration committee.

If the litigants wish to request that the OEDR or UEDR change the format in accordance with the decision of the arbitration committee, submit a claim to the court, the OEDR or UEDR must make out a signed record in order to ensure the wishes of the litigants and prepare for the arbitration committee selection process.

### **5.3.2 Changing the Resolution Formant**

Changes to the economic dispute resolution format take place after the litigants have failed to agree during mediation and are requesting the OEDR or UEDR to change the format to one run by an arbitration committee.

In addition, if one of the litigants disagrees with the resolution and ruling proceedings of the OEDR or UEDR, they have the right to file a claim with the People's Court for consideration.

### **5.4 A Litigant Passes away without an Heir**

Each time there is an economic dispute mediation, the litigants must be accompanied by two participants along with any witnesses but if mediation takes place and one of the parties passes away without having an heir, the mediation shall come to an end.

If one of the litigants passes away without having an heir, the mediation shall be considered finished:

- If either litigant passes away but has an heir, if that heir wishes to continue with the resolution, they may do so but if they reject the idea of continuing proceedings, the mediation shall come to an end.

For example: Mr. A and Mr. B have signed a purchase contract whereby Mr. A has to pay half of the price in advance, after the contract is signed, Mr. B is to hand over the goods to Mr. A but later on Mr. A passes away suddenly, Mr. B shall claim the rest of the money from Mr. A's children and may submit a claim with the OEDR or UEDR for mediation. In this event, if Mr. A's child reject inheritance of the debt and fail to settle the debt or do not show their intentions to participate with the mediation, it shall be considered complete.

In the event that the deceased has granted rights to another person or another agent to continue with the mediation proceedings, the proceedings may continue because each mediation must have both litigants present together.

According to the Law on Economic Dispute Resolution amended in 2010, no specification is given concerning the withdrawal of a litigant's claim without evidence that they voluntarily wish to do so in the event that both parties are able to come to a settlement and a request is made for the claim to be withdrawn, the mediation shall come to an end.



The withdrawal of a litigant's claim may take place at any time during economic dispute resolution proceedings. When the claimant displays their intent not to continue with the proceedings further, the OEDR or UEDR shall no longer have the authority to facilitate mediation or arbitration.

The OEDR or UEDR must make out a record of the agreement between the two parties as to how they are to proceed according to the wishes of both parties.

## Chapter 6

### Dispute Resolution by Arbitration

#### 1. Information on Dispute Resolution by Arbitration

##### 1.1 Meaning

Economic dispute resolution by arbitration is a process to correct an error over interests. The litigants both select the methods and arbitration format voluntarily and select the arbitration committee but if they are unable to do so, the OEDR or UEDR shall do this for them to consider the issues and reach a ruling.

Dispute resolution by an arbitration committee is a decision of the arbitration committee for an economic dispute resolution<sup>87</sup> to resolve an economic dispute concerning interests between two legal entities, a legal entity and an individual, two individuals, both domestic and foreign, arising from a contractual violation, production and business operations<sup>88</sup> whereby the litigants select the arbitration format, which is stated in a contract. Alternatively, in the event of a dispute and both parties are ready to select a format, they visit the OEDR or UEDR or after a claim and defense have been submitted, both parties will be ready to select an arbitration format.

Economic dispute resolution by arbitration grants the authority to the arbitration committee to exercise the rights granted to them and in accordance with the law, which is shown by whether the OEDR and UEDR have accepted to the claim of the litigant or not. The format for the dispute resolution and the selection of an arbitration committee is not subject to appeal – the ruling must be strictly enforced.

##### 1.2 Importance

The socio-economic expansion of our country into a market economy which can compete in terms of production and business in terms of marketing, the quality of goods, copyright and patents, failures in contractual performance, and the promotion of goods before their specified times has affected this production and business and in practice, it is impossible to avoid disputes but if these disputes can be resolved well and correctly in accordance with the claims submitted by business operators, it will encourage both domestic and foreign investors to invest in the Lao PDR more. In the event that a dispute arises, all economic entities wishing to resolve the dispute equitably under the law and consistently with the international conditions for dispute resolution – now that the Lao PDR has become a World Trade Organization (WTO) and ASEAN Economic Community (AEC) member – both domestic and foreign businesspeople interested in investing in the various sectors of the Lao PDR may do so in the knowledge that in the event that a dispute arises, it has to be resolved in time and in accordance with the law. Many government bodies are working hard towards finding solutions and methods to resolve disputes for litigants. Disputes can be

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<sup>87</sup> Law on Economic Dispute Resolution (amended in 2010), Article 29

<sup>88</sup> Law on Economic Dispute Resolution (amended in 2010), Article 2

resolved based on evidence and the law using the arbiters of the OEDR or UEDR, meaning that:

- The rights, legitimate interests, and legitimate interests of the litigants participating in proceedings and rulings shall be protected;
- The OEDR or UEDR must ensure that individuals, legal entities, and organizations along with all members of the public follow the law correctly and speedily, maintain confidentiality, save on expenses, and have technical support and consistency. Litigants coming to voluntary settlements forms a basis for this kind of resolution and this has become extremely popular in economically developed and developing countries. In addition, it is a means of avoiding delays in dispute resolution and of avoiding having to submit a claim with a court, which drags things out, wastes money, and can affect the reputation of the litigants.
- Disputes can be resolved peacefully and fairly and this is also a means of encouraging production and business to expand and connect regionally and internationally. It is also a means of building a climate which is conducive to domestic and foreign investment and contributing to national socio-economic development.

### **1.3 Objectives**

Economic dispute resolution by arbitration to resolve disputes over errors concerning interests, which are caused by contractual violations and production and business between litigants, aims to resolve disputes amicably, speedily, and fairly.

## **2. Selection, Appointment, Handing over of the Dispute Case File, Withdrawal, and Recusal of the Arbitration Committee**

### **2.1 Selection, Appointment, and Handing over of the Case File**

#### **2.1.1 Arbitration Committee Selection**

In the event that dispute resolution takes place using the ruling of an arbitration committee, three or more arbiters must be selected and agreed to by the litigants but the number of arbiters must always be odd<sup>89</sup>.

The selection of the arbitration committee by the litigants shall take place once the litigants are in agreement. As for the selection of the dispute resolution format for the ruling, each litigant has the right to select however many arbiters they please provided that it is an odd number and there are at least three.

Once the litigants have agreed on a selection for an arbitration committee of three people, each party shall select one arbiter within 15 days of the agreement. Having selected this arbiter, the two arbiters selected shall select a third arbiter to act as

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<sup>89</sup> Law on Economic Dispute Resolution (amended in 2010), Article 30

president within 15 days. In the event that two arbiters are selected and a third arbiter cannot be agreed upon, the third arbiter to act as president shall be selected by the OEDR or UEDR within 10 days. In the event that both the litigants and arbitration committee are unable to agree upon the arbiters or arbitration committee within 15 days, the OEDR or UEDR shall select one for them within 10 days counting from the date on which the litigants notify them thereof or of the final day of the time limit specified above.

In the event that there are to be more than three arbiters, follow the same principle applied for three arbiters<sup>90</sup>.

The arbiters, like mediators, include full-time and acting arbiters. The full-time arbiters are OEDR or UEDR employees selected by the Minister for Justice. Acting arbiters can be any individual from head offices, an organization, State and private businesses, foreigners, and aliens. These individuals must participate voluntarily and have been appointed by the Minister of Justice as selected and requested by the OEDR<sup>91</sup>.

The arbiters must be of good character, ethical, honest, and knowledgeable in a definite specified field and have verification for this. They must have been approved and have at least five years experience. They must never have been deprived of their liberty by a court due to an intentional offence. They must have passed a training course on economic dispute arbitration and be in good health<sup>92</sup>. Then, the OEDR or UEDR shall add them to their list along with a brief outline of their background so that the litigants may make their selections based on the law and regulations. Arbiters must be approved by the MoJ.

The selection of the arbitration committee shall follow the principles and for the selection of mediators as specified in Item 2.1.2, Chapter 5.

### **2.1.2 Appointment of Arbitration Committee**

The appointment of the arbitration committee is based on the request of the arbiters selected by the litigants (Annex 14). Counting from the OEDR or UEDR receive the request, the arbiters must be appointed within 7 days (Annex 22).

The appointment of the arbiters, irrespective of the case, must have received the written approval of the arbitration committee and the litigants before being signed by the OEDR or UEDR. In economic dispute resolution, the arbitration committee must be appointed within 7 days counting from the date on which the list of arbiters is requested for appointment by the litigants<sup>93</sup>.

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<sup>90</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraphs 3 and 4, Article 23 and Article 31

<sup>91</sup> Law on Economic Dispute Resolution (amended in 2010), Article 43

<sup>92</sup> Law on Economic Dispute Resolution (amended in 2010), Article 44

<sup>93</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 5, Article 23

The appointment of the arbitration committee shall take place in accordance with the same principles as for mediators as specified in Item 2.2.1, Chapter 5.

### **2.1.3 Handing over the Dispute Case File**

The OEDR or UEDR shall hand of the economic dispute case file to the arbitration committee once it has been selected and appointed. This shall be done in writing in order for the dispute resolution proceedings to commence in accordance with the law (Annex 23).

The economic dispute case file consists of the claim and defense files being combined as follows:

- The claim file consists of a claim, a request for the appointment of an arbitration committee, and other documents.
- The defense file consists of a defense, a request for the appointment of an arbitration committee, and other documents.

## **2.2 Withdrawal and Recusal of the Arbitration Committee**

### **2.2.1 Withdrawal**

An arbiter or arbitration committee shall have the right to withdraw from the economic dispute by issuing a decision in the event that they are a relative, have associated interests, are in a dispute with one of the litigants, or are unable to perform their duties<sup>94</sup>. Notwithstanding that the law specifies that withdrawal is the right of the arbitration committee, the law also prohibits arbiters or arbitration committees from participating in disputes in which they have associated interests or are the spouse or close relative of one of the litigants<sup>95</sup>.

An arbiter or arbitration committee may also withdraw if they feel that their own feelings on the matter conflict with the law. Their obligations as an arbiter or arbitration committee is something they must do. In the event that an arbiter or arbitration committee refuses to withdraw and one of the litigants has no way of knowing about this problem, the arbitration committee's participation shall be in conflict with the law and regulations and affect the equality of their ruling. Therefore, even if a ruling has been issued, an dissatisfied litigant still retains the right to submit the case to the People's Court to object the ruling of the arbitration committee. They must do this within 40 days<sup>96</sup>

The recusal of an arbiter or arbitration committee shall be the right of the litigants if they deem that an arbiter or a member of the arbitration committee is a relative, has

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<sup>94</sup> Law on Economic Dispute Resolution (amended in 2010), Article 23

<sup>95</sup> Law on Economic Dispute Resolution (amended in 2010), Article 31 and Item 5, Article 57

<sup>96</sup> Law on Economic Dispute Resolution (amended in 2010), Article 38

associated interests, has entered into a dispute with one of the litigants, or is unable to perform their duties. Recusal is not voluntary – the litigants have the right to the recusal of the arbiter or a member of the arbitration committee.

Withdrawal takes place according to the same principles as with mediation as stated in Item 2.3.1 of Chapter 5.

### **2.2.2 Recusal**

The recusal of an arbiter or arbitration committee is the right of the litigants if they deem that the arbiter or arbitration committee is a relative, has associated interests, has entered into a dispute with one of the parties, or is unable to fulfill their duties.

Recusal takes place according to the same principles as with mediation as stated in Item 2.3.2 of Chapter 5.

In the event of such a withdrawal or recusal, a new arbitration committee must be selected as stated in Article 23 of the Law on Economic Dispute Resolution.

## **3. Reaching a Ruling**

### **3.1 Preparations for Examining the Dispute Case File**

The preparations for examining the dispute case file kick off with examining the claim and dispute files to check that they are complete, their targets are clear, and the objectives of their claim are certain, detailed, and clear as specified by law. In addition, all the necessary documents associated with the dispute must be attached. Furthermore, it must be checked whether the dispute meets the conditions for consideration at the OEDR or UEDR<sup>97</sup>. Then, the arbiter or arbitration committee shall proceed by issuing summonses or invitations to the litigants, preparing questions for the main issues, and requesting that the litigants submit any additional evidence or documents as specified by law.

### **3.2 Examining the Dispute Case File**

Examining the dispute case file means considering whether or not all the information and evidence submitted has been placed in the dispute file (the claim file combined with the defense file) in detail, in full, objectively, comprehensively, clearly, and transparently by the arbitration committee to rule on the case in order that all the events of the dispute may be summarized and so that it may consider an arbitral award during the session at the OEDR or UEDR at the time specified and in accordance with the law.

When examining the dispute case file, the arbitration committee must commence from the date on which it received the file in order to find information and evidence which is complete, comprehensive, objective, and concise to ensure that the dispute resolution made by the arbitration committee is fair. Therefore, the examination of the

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<sup>97</sup> Law on Economic Dispute Resolution (amended in 2010), Article 16

dispute case file requires a detailed and concise method, which can be achieved by examining each piece of evidence submitted in full. The information and evidence is based on what the litigants have submitted in full when requesting the arbitration. It is, however, also based on true circumstances. Whatever the case, this information and evidence is based on what the litigants have submitted in full in order to request arbitration but it is based on true circumstances. In practice, however, the claim and defense files submitted to the arbitration committee are being done poorly owing to one of the litigants lacking basic legal knowledge or lacking an attorney or legal consultant to help them in preparing this information and evidence to submit their claim or defense to the arbitration committee, leading to it being incomplete. Therefore, the arbiters have to declare such information and evidence as being incomplete so when examining the dispute case file, they are charged with the duty of taking a neutral position in order to facilitate matters for, assist, and advise on dispute resolution. The law states that the arbitration committee announces the reasoning, witnesses, and evidence prior to coming to a ruling because the trial, reasoning, and evidence submitted by the litigants gives them the opportunity to present their information, evidence, and reasoning in order to support their claim or defense. Issuing a ruling without first an explanation, reasoning, witnesses, and evidence constitutes a rejection of justice. When things have been explained and the reasons, witnesses, and evidence heard by the litigants in full, the arbitration committee may question the witnesses and the evidence. If there is nothing to question, the arbitration committee may close consideration of the dispute.

### **3.3 Submission of Information and Evidence by the Litigants and Collection and Verification of Evidence**

#### **3.3.1 Submission of Evidence by the Litigants**

When the litigants have submitted their claim and defense, they must submit their information and evidence in full to request that the arbitration committee issues an arbitral award<sup>98</sup>. Following this, the arbitration committee shall receive the claim file but must check the evidence submitted by the litigant by collecting and collating all the evidence submitted by the litigant and examining, picking out, weighing it up, and assessing it. This is based on three types of evidence – physical, documentary, and testimonial. In the event that any information or evidence of both or one of the parties is incomplete, insufficient, or unclear, the arbitration committee shall request that the litigants provide their information and evidence in full or clarify the main points which remain unclear to the arbitration committee using a summons (Annex 7) to invite the litigant so that they may give testimony in face-to-face (Annex 24 on ordinary and face-to-face testimonies). In addition, they may take the testimonies of third persons and witnesses (if applicable). In the event that the litigants lack any of the information or evidence, they must submit as much evidence and information as possible to the arbitration committee

In the event that the evidence is complete, the arbitration committee responsible shall examine and check the entire claim file and defense files in detail along with the information and evidence of each litigant. The committee shall then decide whether or

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<sup>98</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 1, Article 32

not the evidence of each party is complete, sufficient, and clear. If so, it shall issue an arbitral award in accordance with the law and regulations.

### **3.3.2 Collection of Evidence by the Arbitration Committee**

The arbitration committee does not have the right to collect evidence directly because when going out and collecting evidence, this must first have been agreed to by the litigants<sup>99</sup>. In the event that they are collecting information and evidence on the arbitration committee itself, it means that they do not require the consent of the litigants or have to make a request to either. The arbitration committee may present information and evidence which is unclear with the consent of the litigant.

The collection of evidence by the arbitration committee requires them to summon the relevant individual in to give testimony. This person could be a litigant, third party, witness, or other relevant individual. The individual must appear to give testimony to the arbitration committee in order to clarify the targets of their claim or defense. Relevant individuals must also be questioned according to the main points the arbitration committee wishes to prepare. The individual summoned to give testimony has the right to point out any additional matters in writing and submit these to the arbitration committee. If the litigant is illiterate or does not wish to appear to give testimony before the arbitration committee directly, they do not have to. Having given testimony, the arbitration committee shall read it out to the individual, who shall then sign or thumbprint it.

In addition to the collection of evidence from relevant individuals, the arbitration committee may coordinate with relevant bodies to obtain copies of documents relevant to the dispute. They may inspect any issues of the dispute at the site of the dispute to see things for themselves – for example, construction and factories. When the arbitration committee collects information and evidence or visits the site of the dispute, they must create the following definite plan – specify participants, budgets, matters to be inspected, and a schedule with their work clearly demarcated. When an onsite inspection takes place, the litigants must be present along with representatives of the village office and/or other relevant body. The litigants are responsible for the expenses incurred and the committee member shall summarize their expenses in writing and this shall be checked by the arbitration committee.

### **3.3.3 Verification of Evidence**

In the event that a piece of evidence requires verification, the arbitration committee shall have the right to request a specialist to do so<sup>100</sup>. Evidence during economic dispute resolution with an arbitration committee comes from multiple sources. It could come from the litigants, for example. Certain evidence is of a technical nature and the arbitration committee may be unable to understand it clearly and the litigants and/or arbitration committee may wish to understand it clearly, in which case a specialist may need to be brought in to verify the evidence clearly.

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<sup>99</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 2, Article 32

<sup>100</sup> Law on Economic Dispute Resolution (amended in 2010), Paragraph 3, Article 32



Therefore, a specialist must be requested to verify the evidence due to its being unclear or suspect. Examples include handwriting, signatures, and seals for assets or locations as requested by the litigant or arbitration committee. The arbitration committee shall lodge a request with the relevant body or specialist to provide proof or verification. Precisely what is being requested for proof or verification must be specified in detail along with the time of verification and the documentation to be verified to clarify matters for the litigants and/or other relevant persons.

After the litigants have submitted their evidence and the arbitration committee decides to collect and/or verify a piece of evidence in accordance with Items 5.2.1, 5.2.2, and 5.2.3 of Chapter 6, the arbitration committee shall check it, pick things out, and highlight things from all the evidence submitted by the litigants. All evidence of both parties requested by the opposing party must be presented to them to point things out or contest things and to express their opinions in order that it may be used as a basis for the arbitration committee to specify the events of the dispute accurately and according to fact. The arbitration committee shall only pick out the evidence which is useful and relevant to the events of the dispute. Such evidence shall be included in the conclusion section of the arbitration committee's ruling.

Any evidence which does not act as a basis for the ruling of the arbitration committee must also be included in the conclusion. The reasons for any evidence a litigant is unable to provide as a reference for the ruling of the arbitration committee must also be stated.

### **3.4 Time Limit for Ruling**

Dispute resolution by arbitration must be completed within three months, counting from the date on which the arbitration committee is appointed unless the case is especially complex due to the submission of evidence or other such reason but the OEDR or UEDR ruling on the economic dispute must inform the litigants of the reasons for the delay<sup>101</sup>.

### **3.5 Application of Measures to Protect Interests**

During the consideration of the dispute, if one of the litigants requests the issuance of a seizure or sequestration order or some other measure to protect their assets, if necessary, the arbitration committee shall decide on whether to do so and send the relevant document to the People's Court for it to consider issuing such an order. It must do this within 7 days counting from the date on which the request was made<sup>102</sup>.

If, however, the Law on Economic Dispute Resolution does not grant the arbitration committee the authority to make a decision on the issuance of an order concerning the application of such measures directly, it retains the right to request that the relevant

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<sup>101</sup> Law on Economic Dispute Resolution (amended in 2010), Article 33

<sup>102</sup> Law on Economic Dispute Resolution (amended in 2010), Article 34

People's Court issue the order in question. A commercial judicial council at the People's Court shall issue the order based on the law<sup>103</sup>.

The OEDR or UEDR applies such measures in order to protect these interests because mostly, the litigant who is the debtor tends to sell, hide, utilize assets which are securities, damage them, and so forth in order to avoid having to repay the debt to the litigant who is the creditor. Such measures are also used to ensure performance of the arbitral award of the arbitration committee. It is an effective means of enforcement and also ensures that the debt is repaid to the creditor in full.

#### **4. Settlement Prior to Ruling**

If a settlement is reached prior to the ruling, it means that one of two things have occurred – a settlement has been reached by the litigants outside of the OEDR or UEDR or the litigants have come to a settlement during the proceedings with the arbitration committee.

##### **4.1 Settlement of the Litigants during Arbitration Proceedings**

While the arbitration committee is considering the dispute, the litigants still have the right to bring a solution forward prior to the ruling. This must be done in writing and be signed by both litigants. The arbitration committee and director of the OEDR or UEDR handling the case shall then resolve the economic dispute (Annex 25). If the litigants can reach a settlement prior to the ruling, it holds the same legal weight as a ruling of the arbitration committee<sup>104</sup>.

##### **4.2 Settlement of the Litigants outside the OEDR or UEDR**

A settlement of the litigants outside the OEDR or UEDR means that the litigants are ready to withdraw from the dispute case file issued by the OEDR or UEDR without the arbitration committee having to issue a ruling.

#### **5. Ruling and Content thereof**

##### **5.1 Ruling**

After the arbitration committee has collected the main information and the litigants have provided their evidence clearly and in full, the arbitration committee may request that the litigants and third parties .... If upon re-summarizing the claim and defense case files or the dispute case file along with the final opinion on the information and evidence submitted, it is all deemed to be complete and there are no further documents required or if there remains evidence which has yet to be submitted or is unable to be brought in and submitted ... This is to ensure that the ruling of the arbitration committee considers and rules on the case correctly and fairly. It also avoids and protects against the litigants bringing in new evidence to present or submit in order to object to a ruling of the arbitration committee for the matter to be taken up

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<sup>103</sup> Law on Economic Dispute Resolution (amended in 2010), Item 3, Article 38

<sup>104</sup> Law on Economic Dispute Resolution (amended in 2010), Article 35

in court. If the arbitration committee hurries to assemble the information and evidence and the litigants and third parties ... If it has been presented in full, the arbitration committee shall be able to reach a ruling in accordance with legal regulations.

The ruling of the arbitration committee is final as regards the rights and obligations of the litigants. This ruling must therefore lie within the scope of the claim and defense of the litigants. In the event that the arbitration committee lacks cannot reach an absolute consensus, the ruling shall take place by majority vote. The ruling of the arbitration committee shall be read out in the presence of both litigants or their agents and shall take effect forthwith<sup>105</sup>.

In the event that one of the parties is not present to hear the ruling pursuant to a summons without reason, the arbitration committee has the right to read it out in their absence. Once the arbitration committee has reached its ruling, the litigants must be notified thereof and this shall mean that the ruling of the arbitration committee takes effect from the date on which the ruling reaches the litigant.

When the arbitration committee has ruled and read the ruling out to the litigants and the litigants have heard it, a copy of the ruling must be sent to the litigants but if a copy has yet to be sent, the ruling of the litigants shall not yet take effect. Therefore, the ruling of the arbitration committee takes effect on the date on which all litigants are aware of it.

Furthermore, if the information and evidence is complete, the arbitration committee may issue a ruling without the presence of both litigants under the following circumstances:

- Both litigants have provided all their documents clearly to the arbitration committee to be ruled on in absentia;
- One of the litigants informs the arbitration committee that they shall not attend and fails to do so without apparent reason; and/or
- Neither litigants wishes to attend and hear the ruling without apparent reason.

After the arbitration committee has agreed upon a ruling for the two parties, it shall inform the litigants thereof and send a copy of the ruling to the litigants. Then, the ruling of the arbitration committee shall take effect when all litigants have been made aware of it.

## **5.2 Content of Ruling**

The ruling shall contain the following content:

- 1) The time, date, month, year, issues, and reference number of the dispute and the location at which the ruling was made;

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<sup>105</sup> Law on Economic Dispute Resolution (amended in 2010), Article 36

- 2) The full names of those on the arbitration committee and the record keeper;
- 3) The full names, ages, occupations, nationalities, current addresses, and location of business operations of the litigants or their agents;
- 4) The main content of the dispute, the conclusion, and the references for the ruling;
- 5) The ruling itself;
- 6) The responsibilities of each litigant to pay processing fees, remuneration, and services fees; and
- 7) The signatures of those on the arbitration committee, the record keeper, and the director of the OEDR or UEDR where the economic dispute proceedings took place.

Four copies of the ruling (Annex 26) must be made out – one to be retained, one to be placed in the case file, and one for each litigant.

## **6. Objecting to a Ruling**

The ruling of the arbitration committee takes effect from the date it is issued or the date upon which the litigants are made aware of it when one or both litigants fail to appear pursuant to their summons. The law therefore grants them the right to object to the People's Court if they deem the ruling is incorrect for consideration in accordance with the law.

The litigants shall have the right to request this of the People's Court for a period of 40 days counting from their becoming aware of the ruling and under the following circumstances:

- 1) The litigants did not agree for the arbitration committee to rule on the case or if this agreement is null;
- 2) The members of the arbitration committee are inconsistent with the agreement of the litigants, the law, and/or legal regulations;
- 3) The proceedings leading to the ruling were inconsistent with legal regulations and/or the regulations concerning the dispute as agreed by the litigants in their contract;
- 4) The information or evidence used by the arbitration committee as a basis for their ruling has been falsified and/or the arbitration committee received money, assets, or other gains, thus affecting the equality of the ruling;
- 5) The dispute does not fall within the scope for resolution as specified by law; and/or

6) The ruling is in excess or falls short of the claim of the litigant<sup>106</sup>.

After a commercial judicial council for the provincial People's court has received the request from the litigant to object to the ruling of the arbitration committee of the OEDR or UEDR, it shall consider the matter within 15 days and examine the dispute proceedings to check that they were correct in accordance with the law and regulations and also to any conventions to which the Lao PDR is party. It must also check that it does not affect national security, public order, or the environment. If deemed correct, the court shall issue a final ruling to be enforced. This final ruling takes effect forthwith and there is no right of appeal. If it is deemed that the OEDR or UEDR have violated the law, the court shall not approve it and the litigant shall have the right to force the OEDR or UEDR to correct it or submit a claim with a court for consideration in accordance with the law<sup>107</sup>.

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<sup>106</sup> Law on Economic Dispute Resolution (amended in 2010), Article 38

<sup>107</sup> Law on Civil Procedure (amended in 2012), Article 42

## **Chapter 7**

### **Enforcing the Results of an Economic Dispute Resolution in the Lao PDR**

#### **1. Information on Enforcing the Results of an Economic Dispute Resolution**

##### **1.1. Meaning**

Enforcing the results of an economic dispute resolution includes use of the mediation agreement, settlements between the litigants prior to ruling, and the ruling of an arbitration committee. In order to enforce the results of an economic dispute, to verify or recognize the ruling of an arbitration committee over an economic dispute overseas to be enforced correctly and successfully in practice with the volition of the litigants and through enforcement as specified in the settlement between the litigants or according to the final ruling of the arbitration committee means the payment of money, materials or other assets to a litigant in the event of a violation.

##### **1.2 Importance**

The enforcement of economic dispute resolutions is of great importance to the processes for State management, public management by rule of law, socio-economic development, and justice. Therefore, it is important to build confidence and credibility for the public to make use of law enforcement.

Mechanisms to build strict justice and effective law enforcement require objectivity in the process to build the State into one protected by the law as then we can achieve peace and order in society. To this end, the law must be complete and there must be strict mechanisms of deal with violations thereof, especially the latter. The law enforcement measures for economic dispute resolutions are to protect the legitimate rights and interests of the public and build confidence, credibility, and honesty among society. If the results of economic dispute resolutions are not enforced, it will for the litigant, they will not be compensated for their losses or returned what is owed to them and so forth. This, in turn, dissuade them from using money and assets to conduct business operations and trade and may also cause public discontent that the law is not being applied strictly and is not in force. If when people submit complaints and claims to various organizations to have their interests reinstated and nothing happens, it will affect public order and peace in society.

##### **1.3 Aims**

The enforcement of economic dispute resolutions has the following objectives:

- To enhance the effectiveness of the law;
- To protect of the legitimate rights and interests of the litigants, thus leading to compensation for damages being paid;
- To contribute to peace in society, public order, and justice; and
- To achieve the objectives of litigants who request dispute resolution.

## **2. Enforcing the Results of Economic Dispute Resolutions in the Lao PDR**

The enforcement of economic dispute resolutions refers to the ruling actually being carried out in practice with respect to a dispute over interests between two legal entities, a legal entity and an individual, and two individuals of Lao or foreign nationality due to a violation of contract and/or business operations, which can be resolved at the OEDR or a UEDR.

After an economic dispute has been resolved by the OEDR or UEDR and one of the litigants has obligations to the other to perform the results of mediation or the ruling of an arbitration committee, this performance can take place in two ways – the litigants performing it of their own accord and the court law enforcement office having to enforce it<sup>108</sup>.

### **2.1 Performance by the Litigants**

This means that the duties of the DoJ or unit are simply monitoring the dispute resolution performance.

The litigants are obligated to commence performance of the economic dispute resolution of their own accord and voluntarily within 15 days of receiving the results of the dispute resolution, of the settlement, or of the ruling<sup>109</sup>. When performing the economic resolution, the litigants may do so at the OEDR or UEDR in the presence of the OEDR or UEDR officials or elsewhere but they must submit any documents concerning performance to the OEDR or UEDR to placement in the dispute case file.

#### **2.1.1 Responsibility for Performance**

Enforcement is the duty of the DoJ or performance monitoring unit for the dispute resolution. The internal officials of the DoJ or unit are responsible for issuing the summonses to the litigants to appear and perform the economic dispute resolution and for studying and monitoring the results of the dispute resolution, such as a record, a settlement reached prior to the ruling, a ruling of the arbitration committee on time. Assets and materials being returned to the litigant must be monitored and the litigants must be encouraged to perform the economic dispute resolution agreed by them at the OEDR, UEDR, or outside thereof.

#### **2.1.2 Performance of the Results of the Dispute Resolution**

The results of a dispute resolution issued shall be sent to the DoJ or performance monitoring unit.

Once the litigants have agreed to perform the dispute resolution, the officials of the DoJ or unit must create a record to acknowledge their performance thereof. The content of this record (Annex 28) must be detailed with respect to the means of

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<sup>108</sup> Instructions 226/ MJ, dated 26 March 2014, of the Minister of Justice on the Enforcement of Economic Dispute Resolutions, Item III

<sup>109</sup> Law on Economic Dispute Resolution (amended in 2010), Article 49

performance and the obligations of the litigants pursuant to the economic dispute resolution. This record must also be signed by the litigants or their agents and copies must be made – one for each of the litigants and one to be retained at the OEDR or UEDR for use as evidence. Once the litigant has agreed that their rights and obligations pursuant to the dispute resolution have been performed sincerely and in full, the OEDR or UEDR shall issue an order to close the dispute case file and issue a copy to each litigant, also retaining a further copy at the OEDR or UEDR for use as evidence (Annex 29).

In the event that a litigant is unable to perform the results of the economic dispute resolution, the DoJ or dispute resolution performance monitoring unit shall create a record thereof and sign it to acknowledge that the performance of the dispute resolution remains incomplete as evidence for the litigants to prepare for it to be sent to the People's Court.

## **2.2 Enforcement by the Court Ruling Enforcement Office**

### **2.2.1 Submitting a Claim to the Court**

When a party becomes aggrieved owing to a failure in performance of the economic dispute resolution, they may submit a claim to the Provincial People's Court where the OEDR or UEDR is located in order for it to issue a final ruling on enforcing the dispute resolution result<sup>110</sup>.

When filing a claim with the People's Court for consideration, it shall issue a final ruling to enforce performance of the economic dispute resolution. This shall be made out according to the court's form. When the documentation is complete, it may be submitted to the Provincial People's Court where the OEDR or UEDR which resolved the dispute is located.

### **2.2.2 Court Consideration Process**

The issuance of a final ruling by the People's Court on an economic dispute resolution must be considered fast. Once the request has been made by the litigant, the People's Court shall issue the final ruling within 15 days.

In its consideration of the final ruling, the People's Court must check that the dispute proceedings have followed the law and regulations along with any conventions to which the Lao PDR is party. It must also check that it does not affect national security, public order, and/or the environment. If deemed to be correct, the People's Court shall issue a final ruling for enforcement. This ruling of the court shall take effect forthwith and may not be appealed.

In the event that the People's Court deems that the economic dispute resolution is in violation of the law and/or regulations, it shall not issue a final ruling upholding it; as in the following circumstances:

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<sup>110</sup> Law on Economic Dispute Resolution (amended in 2010), Article 50



- One of the litigants lacks capacity to act;
- The results of the dispute conflict with the laws used as a reference for the resolution or are inconsistent with the laws of the Lao PDR;
- One of the litigants lodges an objection to the ruling of the arbitration committee as specified in the Law on Economic Dispute Resolution;
- The final ruling has not yet taken effect upon the litigants, has been canceled or suspended by the court, or is inconsistent with the law; and/or
- The dispute resolution results is unenforceable by the OEDR under the laws of the Lao PDR<sup>111</sup>.

### **2.2.3 Stages of Enforcement**

A final legal ruling from the court shall be taken for enforcement according to the following legal stages:

#### **A. Sending of the final enforcement ruling**

After the relevant People's Court has issued a final ruling on the results of the economic dispute resolution, it must inform the litigants and send this final ruling to the Provincial DoJ within 30 days<sup>112</sup>.

#### **B. Pre-enforcement study**

The official enforcing the final ruling of the People's Court must study it in detail in order to understand it and prepare conditions for enforcement according to the correct legal stages.

#### **C. Summoning of the litigants to discuss performance**

Prior to the performance in practice, within ten days counting from the date of the court ruling, the official shall summon the litigants in to their office to notify, advise, support, and explain the situation to them. They shall also set a time limit and means of performance based on the true economic circumstances of the litigant so that the final court verdict goes ahead in accordance with the time limit of 50 days as specified by law. After the discussion, the litigants may come to an agreement or not with respect to the relevant methods (debt repayment). When implementing the final ruling, the official of the People's Court must create a record each time that the litigants are summoned as a reference for performance in practice.

The ruling enforcement official must also explain the legal measures applied for enforcement if the litigant fails to cooperate.

During the performance of the court ruling, the head of the office or ruling enforcement unit may apply legal measures, such as issuing an order for the seizure or sequestration, or confiscation of assets in the event that they deem that the litigant

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<sup>111</sup> Law on Civil Procedure (amended in 2012), Article 42

<sup>112</sup> Law on Judgment Enforcement (amended in 2008), Article 23

performing the court ruling has a hidden agenda or does not wish to perform the ruling.

#### **D. Enforcement in practice**

The official enforcing the court ruling shall do so after having discussed the means of performance to the litigants and the true economic capacity of the litigant. The official enforcing the ruling shall then create a record to act as a reference for performance in practice. Within 60 days, if the litigant performing the court ruling has done so in full, the performance of the court ruling shall come to an end.

In the event that the litigant fails to perform the ruling, intends to delay performance, or the performance of the ruling remain incomplete, the office or court ruling enforcement office shall apply measures, such as the inspection of the inventory of assets, the issuance of a seizure or sequestration order, the issuance of an order for deductions to be made from their salary or income as payment, the issuance of a transfer order, or an order to fine the litigant responsible for performing the court ruling, depending on the case.

Before the office or court ruling enforcement unit issues an order for the seizure or sequestration of assets, the head of the office or court ruling enforcement unit must issue an order to inspect and create an inventory of the assets of the litigant and coordinate with the parties concerned, especially the village office, the police, the asset owner, or the litigant in question in order to inspect and create the inventory of what types of assets there are, in what quantities, and their location. After the inspection is complete, the official enforcing the court ruling shall create a record of the assets inspected in practice along with a detailed inventory. They shall then sign these documents and request that all participants also do so. In the event that the assets of the litigant are in a different province, the office or court ruling enforcement unit responsible shall request the office or court ruling enforcement unit responsible where the assets are located are truly there and truly belong to the litigant. These are then added to the inventory in detail or they may enforce the ruling themselves instead<sup>113</sup>.

Once the official enforcing the court ruling has inspected the assets and created a detailed inventory, they may issue an order for the seizure or sequestration thereof. Once the assets have been seized or sequestered, the official enforcing the ruling shall assess and announce the sale thereof to pay off the debt.

The value of the assets shall be assessed by an arbitration committee appointed by the Vientiane Capital Mayor or Provincial or District Governor. When assessing the value of the assets, the asset owner must be present. If the owner fails to appear after the arbitration committee has assessed their value, they shall make a record of the their assessment of the value of the assets and inform the asset owner and officials within 7 days<sup>114</sup>.

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<sup>113</sup> Law on Judgment Enforcement (amended in 2008), Article 28

<sup>114</sup> Decree 158/Gov., dated 4 March 2013, on the Assessment, Auctioning, and Handing over of Assets to Enforce a Court Ruling, Article 17

After having assessed the value of the assets, their auctioning shall be announced province-wide in accordance with Decree 158/Gov., dated 4 March 2013, of the government on the Assessment, Auctioning, and Handing over of Assets to Enforce a Court Ruling.

#### **E. End of performance**

The performance of the final court ruling shall end under the following circumstances:

- The litigant has performed the court ruling in full;
- The debtor has forfeited their rights (in the event that the debtor receives a summons but fails to appear before the office enforcing the court ruling without sufficient grounds, their rights shall be forfeit); and/or
- The litigant passes away without any assets or rights or obligation to an heir as specified by law.

When the ruling of the court has come to an end, the head of the enforcement office or of the court ruling enforcement unit shall issue an order to close the case and inform the litigants, Director of the Office of the Public Prosecutor, the Standing Committee of the elected Regional Assembly, and the local authorities<sup>115</sup>.

### **3. Recognition and Enforcement of the Rulings of Foreign Arbitration Committees**

Now that we have opened up economically and forging business partnerships, disputes can arise but the resolution thereof depends on the volition of the contracting parties and where they are based – domestically or abroad. If the litigants opt for a dispute resolution by a foreign arbitration committee, the performance and/or enforcement of its ruling shall take place in another country. Recognition of the ruling of the arbitration committee of that foreign country shall be based on the agreement between the two countries. In order for the ruling to be recognized, depends on its performance in that country and various protocols and conventions. The Lao PDR is party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Item 1, Article 1 of which states that *“This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought”*. This means that the Lao PDR shall accept the rulings of foreign arbitration committees provided that the country in question is party to this convention. Similarly, the ruling of the OEDR or UEDR of the Lao PDR may be taken for enforcement in all countries party to this convention. In order to remain consistent with true circumstances, the law of the Lao PDR states

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<sup>115</sup> Law on Judgment Enforcement (amended in 2008), Article 29

that specifically in the Law on Economic Dispute Resolution amended in 2010 and the Law on Civil Procedure amended in 2012.

In order for the ruling of a foreign arbitration committee to be applied, performed, and enforced in the Lao PDR, it must first pass the stage of recognition by the People's Court of the Lao PDR. Claims and consideration of a court for the issuance of a ruling on such recognition shall take place in accordance with the following stages:

### **3.1 Claim Submission**

An individual or legal entity wishing to request that the court considers recognizing the ruling of a foreign arbitration committee and enforce it in the La PDR must submit a clearly explained claim stating their details and those of the other litigant. They must also explain the dispute and the amount of the debt and/or outstanding assets along with their signature. In addition, the claimant shall submit the any documents on past performance, such as the ruling of the foreign arbitration committee, verification issued by the foreign court concerning the effective and final ruling, any relevant conventions to which the Lao PDR is party, and any other documents concerning the claim (any documents in a foreign language must be translated and the translation notarized by the Public Notary Office along with the documents attached thereto<sup>116</sup>. Once these documents have been submitted in full, they must be submitted to and approved by the MoJ so that it may be inspected by the Supreme People's Court and send to the People's Court with the jurisdiction to consider the matter in accordance with the law and regulations<sup>117</sup>.

### **3.2 Court Consideration Stage**

When the People's Court receives such a request for the recognition of a ruling of a foreign arbitration committee, it must consider the case internally within 30 days and summon the litigant to notify them and for them to give their explanation to the court.

The People's Court may consider whether the ruling of the foreign arbitration committee can be recognized or not.

When considering recognizing the ruling of the foreign arbitration committee, the court must check whether the litigant holds the nationality of a country party to the 1958 New York Convention and whether the ruling was issued by a foreign or international arbitration committee. The ruling must not conflict with the Constitution or any laws or regulations concerning national security, public order, and/or the environment. As for the litigant who is obligated to pay compensation in the form of assets, activities, shares, deposits, and or other assets in the Lao PDR, after having been inspected, if the claim is correct in accordance with the above conditions, the Supreme Court must issue a ruling recognizing the ruling of the foreign arbitration committee<sup>118</sup>.

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<sup>116</sup> Law on Civil Procedure (amended in 2012), Article 364

<sup>117</sup> Law on Civil Procedure (amended in 2012), Article 363

<sup>118</sup> Law on Economic Dispute Resolution (amended in 2010), Article 51

The People's Court shall consider not recognizing the ruling of a foreign arbitration committee if upon inspection, one of the following circumstances comes to light:

- No final ruling has yet been made and proceedings are still underway;
- The losing party failed to participate in the arbitration proceedings and they took place in their absentia;
- The case handled by the foreign court does not fall within the jurisdiction of the People's Court of the Lao PDR;
- The ruling conflicts with the Constitution or laws of the Lao PDR; and/or
- Any other relevant issue concerning the ruling of the foreign court<sup>119</sup>.

When the People's Court has considered recognizing the ruling of the foreign arbitration committee or not, it must issue a ruling to be sent to the litigants. In the event that the litigant is dissatisfied with the ruling of the court in recognizing or not recognizing the ruling of the foreign arbitration committee, they have the right of appeal within 20 days of receiving news of the ruling.

If the ruling is appealed, the court must send the case file to the appellate court to consider the request for appeal<sup>120</sup>.

### **3.3 Ruling Enforcement Process**

After an effective court ruling has been reached, the relevant People's Court shall send the case file to the DoJ where the court is located in order for it to be enforced. When enforcing the court ruling, the DoJ shall apply the same legal process specified for court ruling enforcement above in Item 2.2.3.

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<sup>119</sup> Law on Civil Procedure (amended in 2012), Articles 362 and 366

<sup>120</sup> Law on Civil Procedure (amended in 2012), Article 368