

## **Taiwan's civil procedure and court-annexed mediation**

1. When the parties apply for court-annexed mediation, the judge or court administrator is responsible for handling the mediation proceeding, including scheduling the court-annexed mediation, and designating the mediators. If there are any jurisdictional errors or other matters that should be corrected (e.g., fail to pay the litigation expenses), they will be ordered by a ruling of the judge or court administrator. After entering the mediation proceeding, the mediators will conduct the mediation. If the mediation is successful, the mediation transcript will be made, the judge or court administrator will review and seal the mediation transcript and the refund (in order to encourage the parties to mediate, the refund fee will be 2/3); if the mediation is not successful, the mediation proceeding will be ended (see flowchart).
2. To initiate an action, a complaint shall be submitted to the court, the case assignment personnel shall distinguish between the claim value and the type of the case, and the cases

shall be divided into compulsory mediation case (Article 403 of the Code of Civil Procedure) and non-mandatory mediation case.

(1) If it is a compulsory mediation case, the judge or court administrator is responsible for handling the mediation proceeding, including scheduling the court-annexed mediation, designating the mediators. If there are any jurisdictional errors or other matters that should be corrected (e.g., fail to pay the litigation expenses), they will be ordered by a ruling of the judge or court administrator. After entering the mediation proceeding, the mediators will conduct the mediation. If the mediation is successful, the mediation transcript will be made, the judge or court administrator will review and seal the mediation transcript and the refund (in order to encourage the parties to mediate, the refund fee will be 2/3); if the mediation is not successful, the case will be sent to the summary court (summary proceeding case) or the civil court division (ordinary proceeding case) after making the

mediation transcript (see flowchart).

(2) If it is a non-mandatory mediation case, the courts have different practices. Some courts directly assign the case to litigation case; some courts will exclude the infeasible for pretrial mediation case or unnecessary mediation case, such as an action for a forming judgment, an action for a declaratory judgment, mediation by another legally authorized mediatory agency before an action initiate or the parties indicate that they are unwilling to mediate the case, and classify the other cases as pretrial mediation cases. After consultation by telephone, both parties agree to the mediator (Article 420 of the Code of Civil Procedure), then enter the mediation of proceeding (1) above. ( see flowchart).

(3) The unsuccessful mediation will be sent to the summary court or the civil court division, and be heard by the judge after assigning the case. Prior to the first oral argument session (or preparation session), the judge should investigate whether the plaintiff's action is lawful

according to the complaint. Those who can be corrected if they are found to be unlawful, such as the lack of authority as an agent or initiation of an action, the judge shall order such defects to be corrected within a designated period of time. And the plaintiff's failure to comply with the correction or its defects may not be corrected (such as death before the action) are not necessary to specify the date of oral argument session and notify the defendant; the complaint shall be directly rejected by a ruling.

- (4) If there is nothing to be corrected, the judge shall order the parties to submit a preparatory pleading or answer with complete indications in accordance with the provisions of Article 265 to Article 267, within the period of time such judge designates, and may also order them to specify or state in detail the evidence which they propose to use with regard to a certain matter. The judge may order the parties to formulate and simplify the issues on the date of oral argument session or the date of the preparatory proceeding, then order the parties to submit a pleading

summarizing the result of the formulation of the issues. If it is necessary to take evidence, the judge may order the parties to appear in person and exam them according to the result of the issues, and the parties may submit documents, objects, witnesses or taking evidence methods such as inspections, expert testimony, etc.

3. The court may seek settlement at any time irrespective of the phase of the proceeding reached- (Article 377 I of the Code of Civil Procedure), and the judge may advise the parties to reach a settlement on the date of the trial (Article 378 and 379 of the Code of Civil Procedure), or in accordance with the provisions of Article 420 I of the Code of Civil Procedure, the mediation shall be transferred after the consent of the both parties, and the date of the mediation shall be arranged. The procedures for transferring mediation may be settled by the judges themselves, or designate the mediators to mediate cases. Some courts specially set up judges to handle the mediation cases, and the judges will direct the mediation. If mediation is successful, then make the mediation transcript

and refund (in order to encourage the parties to mediate, the refund fee will be 2/3); if the mediation is not successful, the case will be returned to the former judge to continue the litigation proceedings (see flowchart).

## Compulsory and non-mandatory court-annexed mediation operating flowchart

(The party of the civil case submit a complaint)

