

Public Nuisance Disputes Mediation Act

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Environmental Protection Administration of the Republic of China on Taiwan

English Translation¹

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Chapter 1: General Provisions

Article 1

In order to fairly, promptly and effectively handle public nuisance disputes, to safeguard the rights and interests of the people, and to improve social harmony, the Public Nuisance Disputes Mediation Act (hereinafter “this Act”) is hereby enacted.

¹ Translators’ note: This translation is for informational purposes only and does not represent the binding law of the Republic of China. The binding law appears only in the national language--Chinese. Therefore, for purposes other than acquiring information, reference must be made to the original Chinese version of this Act.

In translating this Act, the translators did not depart from the original Chinese text. Accordingly, ambiguities present in the translation are also present in the original.

In the Chinese version of this Act, each paragraph is referred to as a “section” (*hsiang*). Bracketed text indicates translator additions for the purpose of increasing clarity.

Article 2

The term “public nuisance” as used in this Act refers to [human activities which] destroy the living environment, damage or endanger public health, including water pollution, air pollution, soil pollution, noise, vibration, malodor, wastes, toxic substance pollution, subsidence, radioactive pollution and other [activities] designated as such via public announcement by the Responsible Agency at the central government level [Environmental Protection Administration of the Executive Yuan ("TEPA")].

The term “public nuisance disputes” as used in this Act refers to civil disputes arising from public nuisances or the threat of public nuisances.

Article 3

[The parties to] public nuisance disputes may, in accordance with the provisions of this Act, apply for mediation, re-mediation and arbitration.

Chapter 2: Organizations Handling Public Nuisance Disputes

Subchapter 1: Mediation Council

Article 4

Each provincial (municipal) government and county (city) government shall establish a public nuisance mediation council (hereinafter “mediation council”) to handle public nuisance disputes.

Article 5

Each mediation council shall consist of from nine to twenty-one members; among these one shall be designated the chief-member.

The chief-member of the mediation council of a provincial (municipal) government shall be the governor (of the province)/mayor (of the municipality) or another appropriate person designated by the governor/mayor; the chief-member of the mediation council of a county (city) government shall be the magistrate (of the

county)/mayor (of the city). Other members of each mediation council shall be selected and appointed by the governor/mayor or magistrate/mayor [respectively] among the representatives of relevant agencies, scholars/experts on environmental protection, law and medicine, as well as upright citizens; the scholar/experts and upright citizen members shall constitute no less than two-thirds of the members of the whole council.

Article 6

The term for each mediation council member shall be three years; a member may be re-appointed after the expiration of a term.

Should a member absent his/herself from the council, [his/her] successor shall serve for the rest of the original term.

Article 7

Each member of a mediation council shall independently exercise his/her duties in accordance with law. A member may not be dismissed during his/her term unless one of the following situations occurs:

1. [The member is] subjected to final sentences of a prison term or more by a court of law;
2. [The member is] declared bankrupt or legally incompetent;
3. [The member is] a civil servant that has been dismissed or suspended pursuant to [relevant] disciplinary procedures; or
4. [The member is] unable to carry out [his/her] duties due to mental or physical handicaps.

Article 8

The organic rules of the mediation council of a provincial (municipal) government shall be proposed by the provincial (municipal) government and submitted to the Executive Yuan for approval prior to promulgation; the organic rules of the mediation council of a county (city) government shall be proposed by the county (city) government and submitted to the provincial government for approval

prior to promulgation.

Subchapter 2: Arbitration Council

Article 9

TEPA shall establish a public nuisance disputes arbitration council (hereinafter “arbitration council”) to arbitrate disputes over public nuisance damage claims unresolved per the mediation and re-mediation procedures.

Article 10

The arbitration council shall consist of one chief-member and from seven to eleven members.

The members of the arbitration council shall be selected by the TEPA Administrator from those individuals possessing expertise in environmental protection, law, medicine, or [other] relevant disciplines, as well as respected upright citizens; [member selections shall be] submitted to the Executive Yuan for approval prior to appointment.

Article 11

The chief-member of the arbitration council shall serve full time and shall possess the qualification of attorney-at-law or a judge; other members may serve part time.

Article 12

The organic rules of the arbitration council shall be proposed by the TEPA and submitted to the Executive Yuan for approval prior to promulgation.

Article 13

Articles 6 and 7 of this Act shall apply, where appropriate, to [members of] the arbitration council.

Chapter 3: Handling Procedures

Subchapter 1: Mediation and Re-mediation

Article 14

A party to a public nuisance dispute may apply for mediation, with an application form, to the municipality mediation council or county (city) mediation council under the jurisdiction of which the public nuisance dispute or related damages arose.

One-third of the members of the mediation council shall constitute a quorum; upon the agreement of the parties, however, a public nuisance dispute may be directly mediated by one or several members of the council.

Article 15

The chief-member shall serve as chairman when the mediation council convenes; when the chief-member cannot attend a council meeting, a member of the council shall be elected to serve as [temporary] chairman.

Article 16

The arbitration council shall designate a mediation council to conduct mediation upon application by a party to a dispute, or a provincial (municipal) government, or a county (city) mediation council, if one of the following situations occurs:

1. The origin of a public nuisance dispute or related damage covers several provinces (municipalities), counties (cities);
2. Two or more mediation councils disagree on the jurisdiction of a dispute;
3. The mediation council with jurisdiction cannot mediate the dispute on *de jure* or *de facto* grounds; or
4. It is not clear which mediation council shall have jurisdiction because of poor delineation of territorial jurisdiction.

No objection can be made against the designation of jurisdiction made in accordance with the preceding Section.

Article 17

A member of each mediation council shall voluntarily recuse his/herself when the dispute at issue involves his/her interests or those of his/her family.

Article 18

Should an application for mediation be considered illegal, the mediation council shall reject the application with reasons. Where the illegality can be corrected, however, the mediation council shall order the applicant to make the necessary corrections within a specific time-period.

The preceding Section shall apply when an application [for mediation] is found to be illegal during the process of mediation.

Should a mediation council determine that it lacks jurisdiction over an application [for mediation], the mediation council shall transfer the application to a mediation council with jurisdiction [over the application].

Article 19

More than two persons sharing common interests in a public nuisance dispute may jointly apply for mediation.

During the process of mediation, a third person claiming to share common interests with a party involved [in mediation] may, upon the approval of the mediation council, join the [ongoing] mediation process as a party.

The mediation council shall consider the opinions of the original parties when granting the approval mentioned in the preceding Section.

Article 20

More than two persons sharing common interests in a public nuisance dispute

may elect, among themselves, one or more persons to apply for mediation or proceed with mediation on behalf of all.

The person(s) elected [in accordance with the preceding Section] may be replaced, [or their numbers] supplemented or reduced.

The election prescribed in Section 1 above, and the replacement, supplementation and reduction prescribed in the preceding Section of this Article, shall be conducted in writing. In addition, the corresponding person(s) [subject to these actions] shall be notified.

Article 21

Should the mediation council consider that it is appropriate for two or more persons sharing common interests in a public nuisance dispute to elect among themselves one or more persons to proceed with the mediation, the mediation council may advise or assist them in doing so.

Article 22

The person(s) selected in accordance with the two preceding Articles may not withdraw application for mediation, reach an agreement, or agree upon a mediation proposal without a special authorization in written form by those who have selected them in the first instance.

Article 23

The mediation shall proceed in public, unless the mediation council decides that the mediation will be hindered [if conducted] in a public forum and this decision is agreed to by all parties [to the mediation].

Article 24

A mediation council may request assistance from relevant agencies to investigate evidence.

Where the investigation prescribed in the preceding Section can only be done by a court of law, the mediation council may request assistance from a court of law.

The court, when [acting upon] such a request, shall have all the powers of a competent court of law with regard to investigation of evidence.

Article 25

For the purposes of verifying the origins and responsibilities of a public nuisance dispute, a mediation council may entrust a responsible agency for environmental protection, other relevant agencies, organizations and groups, or experts and scholars possessing professional knowledge, with responsibility to conduct necessary verifications. All expenses for the verifications shall first be borne by the government. If later a party or parties is/are found responsible for the damages arising from the public nuisance dispute, the responsible party(ies) shall reimburse the government.

Article 26

The mediation council shall sincerely and amicably provide parties with appropriate advice and assist [the parties] in reaching an agreement.

When an agreement is reached by the parties, a mediation is achieved.

Article 27

Should the parties have difficulty in reaching an agreement, the mediation council shall, taking all factors into consideration and striving for a balance of the interests of all parties, propose a mediation proposal upon the approval of more than one-half of the council members and specify a time period of less than 45 days within which the mediation council advises the parties to accept the proposal. When necessary, the time period specified may be extended up to another forty-five (45) days.

Should the parties involved fail to express dissent [to acceptance of the proposal] during the time period specified under the preceding Section, the mediation proposal shall be deemed accepted by all parties and the mediation concluded.

Where a party of more than two persons with common interests consists of one or several persons who have expressed dissent [to acceptance of the proposal]

during the time period specified in accordance with Section 1 of this Article, the mediation proposal shall not bind on these [dissenting] persons. The mediation proposal shall, however, be considered as accepted by the rest of the party. Should the person(s) who has/have expressed their dissent to [acceptance of] the mediation proposal within the specified time period constitute more than one-half of the total number of individuals in a party, the mediation shall be regarded as unachievable.

The mediation council may make the mediation proposal public while advising the parties to accept the proposal in accordance with Section 1 of this Article.

Article 28

Whenever a mediation is achieved, [the mediation council] shall prepare a mediation accord and submit [the accord] within 7 days of the achieved mediation to the competent court² for approval.

If the mediation accord does not contravene applicable laws and regulations, the court shall approve the accord at its earliest convenience and return the accord to the mediation council for delivery to the parties.

When the court cannot approve the mediation accord because the mediation procedure or the contents of the mediation accord contravene applicable laws and regulations, the court shall inform the mediation council of the reasons [for the inability to approve the accord]. Where the inability to approve the accord can be corrected, the court shall specify a specific time period for correction [before disapproval].

Article 29

A mediation accord shall contain the following items and be signed by the parties and the council members present; a mediation proposal deemed as a successful mediation in accordance with Article 27 of this Act shall be signed by those council members who agreed with the proposal:

1. The name(s) and residential (or business) address(es) of the parties; where the parties are juristic persons or organizations, the names [of the persons or

² Translators' note: The court with jurisdiction over the dispute or the damages arising therefrom.

organizations], representatives [of the persons or organizations] and principal business address(es);

2. Where the parties have representative(s) or agent(s), the name(s) and residential address(es) (or business address(es)) of the representatives/agents;
3. The subject matter of the mediation;
4. The contents of the achieved mediation;
5. The place where the mediation was conducted; and
6. The date that the mediation concluded.

Article 30

A mediation accord approved by the court shall have the same effect as a final civil decision by a court of law; the parties may not bring a suit in a court of law over the same subject matter [(*res judicata*)]; the mediation accord may serve as legal title for enforcement.

Industries may conclude environmental protection compacts with local residents or local governments to prevent public nuisances.

In the event of breach, the compact prescribed in the preceding Section once notarized may serve as legal title for enforcing those matters so specified in the notarized compact without entering into mediation.

Article 31

When there is reason for finding a mediation approved by a court of law void or voidable, a party to the dispute may bring an action to declare the mediation void or voidable in the court of law which approved the mediation.

The action mentioned in the preceding Section shall be filed in the court within 30 days of the delivery of mediation accord approved by the court.

Article 32

The parties may apply for re-mediation of subject-matter which the mediation council of the county (city) government failed to resolve in [the original] mediation.

An application for re-mediation shall be submitted, with the application form, to the original mediation council of the county (city) government within 14 days of the delivery of notification of unachieved mediation.

The county (city) mediation council shall, upon receiving the application for re-mediation, promptly deliver a photocopy of the application to the other party(ies) to the dispute and transmit the entire mediation file with the application and other relevant documents to the mediation council of the provincial government.

The parties may apply for mediation of subject-matter which the mediation council of the municipal government failed to resolve in [the original] mediation with the original mediation council. Such an application for mediation shall be deemed an application for re-mediation.

The provisions on mediation procedures shall apply to re-mediation where appropriate.

Subchapter 2: Arbitration

Article 33

[Parties may] apply for arbitration of a dispute over damage claims arising from public nuisance when unresolved through mediation or re-mediation by the mediation council of the provincial (municipal) government.

An application for arbitration shall be submitted to the original mediation council of provincial (municipal) government; Sections 2 and 3 of the preceding Article shall apply [in such cases] where appropriate.

Article 34

Arbitration shall be conducted by an arbitration tribunal which shall be composed of 3 to 5 members of the arbitration council designated by the chief-member of the council.

The decision of an arbitration tribunal shall be made by a majority of the tribunal members.

Where more than three tribunal member opinions exist on the amount of damages to be awarded [in the arbitration], and no one opinion enjoys majority support, the vote for the opinion constituting the highest amount of damages (the most advantageous to the applicant) shall be added to the votes for the opinion granting the next highest amount of damages (the next most advantageous), and then the second next highest and so on until a majority of the tribunal member opinions are represented.

Article 35

The arbitration tribunal shall hear from the parties and conduct necessary investigations of the facts before it renders the arbitration decision mentioned in the preceding Article.

Article 36

The arbitration tribunal shall render its arbitration decision within three months of the [date] application is made by the parties and delivered to the parties; such time period may be extended for another three (3) months when necessary.³

Article 37

An arbitration decision shall contain the following items, in addition to the signatures of the tribunal members:

1. The name(s) and residential (or business) address(es) of the parties; where the parties are juristic persons or organizations, the names [of the persons or organizations], representatives [of the persons or organizations] and principal business address(es);
2. Where the parties have representative(s) or agent(s), the name(s) and residential address(es) (or business address(es)) of the representatives/agents;

³ Translators' note: The original Chinese text is unclear as to the procedure to follow should application and delivery occur on different dates.

3. Conclusions of law;
4. Facts;
5. Reasons; and
6. Date of the decision.

An original copy of the arbitration decision shall be delivered to the parties within 10 days of [the issuance of] the decision.

Article 38

Whenever the parties reach an agreement during the arbitration process, the arbitration tribunal shall prepare an Agreement; Articles 28 to 31 shall apply [in such cases] where appropriate. The arbitration shall be concluded when the Agreement is achieved.

Article 39

Where the parties [in arbitration] have not initiated a civil action in a court of law over the same dispute within 20 days of delivery of an original copy of the [associated] arbitration decision, or have subsequently withdrawn such a civil action, the arbitration decision shall be deemed an Agreement among the parties [to the dispute].

Where an arbitration decision is deemed an Agreement in accordance with the preceding Section, the arbitration tribunal shall, within 7 days of the expiration of the time-period mentioned in the preceding Section, submit the arbitration decision to the court for approval.

Where appropriate, Sections 2 and 3 of Article 28, and Articles 30 and 31 shall apply to the situations described in the preceding Section.

Article 40

The provisions of Articles 17 to 22 and Articles 24 and 25 shall apply where appropriate to arbitration proceedings.

Chapter 4: Supplementary Provisions

Article 41

Prior to approval of a mediation accord, an Agreement, or an arbitration decision by a court of law, the parties may, relying on the mediation accord, the Agreement or the arbitration decision, apply to the court of law for provisional seizure or provisional disposal to secure enforcement or to avoid the increase of damages.

While making the application prescribed in the preceding Section, the parties may submit a mediation accord, an Agreement, or an arbitration decision as a substitute for cause for provisional seizure or provisional disposal. For those who use an arbitration decision as substitute for cause for provisional seizure or provisional disposal, no pledge is required [for the application for provisional seizure or provisional disposal].

The provisions of the Civil Procedures Act concerning provisional seizure and provisional disposal, not including Article 529 thereof, shall apply to the situations prescribed in the preceding two Sections.

Should the court of law disapprove a mediation accord, an Agreement, or an arbitration decision, the parties may apply for revocation of the decree of provisional seizure or decree of provisional disposal.

Article 42

A public nuisance dispute with regard to which investigatory hearings in a court of the first instance are concluded may not be subject to mediation, re-mediation or arbitration.

Where [parties to] a public nuisance dispute have filed [the dispute] in a court of the first instance and have also applied for mediation, re-mediation or arbitration

[of the dispute] in accordance with this Act, the court may, before the mediation, re-mediation or arbitration succeeds, suspend the litigation proceeding with an interlocutory order. Where the mediation, re-mediation or arbitration is approved by a court of law, the action filed shall be deemed withdrawn.

Where the parties have filed a public nuisance dispute in accordance with the Act on Mediation at Villages, Towns and County (City) Governments for mediation and have also applied for mediation, re-mediation or arbitration [of the dispute] in accordance with this Act, the preceding Section shall apply.

Article 43

Applicants for mediation, re-mediation and arbitration in accordance with this Act may be assessed mediation fees, re-mediation fees, arbitration fees, verification fees and evidence investigation fees.

The measures for assessing the fees mentioned in the preceding Section shall be proposed by TEPA and submit to the Executive Yuan for approval before promulgation.

Article 44

The Executive Yuan shall set up the Emergency Public Nuisance Dispute Management Team to handle public nuisance dispute emergencies and to safeguard public interests and social security. The Team shall designate a convenor; the convenor shall be the Vice Premier of the Executive Yuan.

Each provincial (municipal) government as well as each county (city) government shall establish an Emergency Public Nuisance Dispute Management Team to actively handle public nuisance dispute emergencies. Such a Team shall designate a convenor; the convenor shall be the Governor (of the Province)/Mayor (of the Municipality) or other appropriate person designated by the Governor/Mayor, or the Magistrate/Mayor of the County/City respectively.

Article 45

The organic rules of the Emergency Public Nuisance Dispute Management Team of the Executive Yuan shall be promulgated by the Executive Yuan.

The organization of the Emergency Public Nuisance Dispute Management Teams of the provincial (municipal) government and of the county (city) government shall be promulgated by the relevant provincial (municipal) government and county (city) government.

Article 46

TEPA may establish a Task Force for Handling Public Nuisance Disputes (“Task Force”) the members of which shall consist of designated representatives from the Ministry of the Interior, Ministry of Legal Affairs, Ministry of Economic Affairs, Ministry of Transportation and Communication, Government Information Office of the Executive Yuan, Sanitation Administration of the Executive Yuan, Agriculture Commission of the Executive Yuan, Labor Relations Commission of the Executive Yuan, as well as TEPA. The Task Force shall perform the following functions:

1. Coordinate relevant agencies to propose/study methods and strategies for dealing with public nuisance disputes; and
2. Provide necessary assistance to provincial (municipal) governments and county (city) governments in handling public nuisance disputes.

The Task Force mentioned in the preceding Section shall designate a convenor; the convenor shall be the TEPA Administrator.

Article 47

The organic rules of the TEPA Task Force for Handling Public Nuisance Disputes shall be proposed by TEPA and submitted to the Executive Yuan for approval before promulgation.

Article 48

TEPA, the environmental protection department (bureau) of the provincial (municipal) government, as well as the Responsible Agency for environmental protection at the county (city) government level, shall designate full-time personnel to perform the following functions:

1. Handle public nuisance petitions;
2. Conduct necessary investigations and provide instructions and advice for handling public nuisance petitions; and
3. Guide and assist petitioners in applying for mediation, re-mediation, or arbitration in accordance with the provisions of this Act.

Village (town, county, city, borough) offices may, when necessary, recruit full-time personnel to perform the functions mentioned in the preceding Section.

Article 49

The provisions of the Civil Procedures Act shall apply, where appropriate, to documents delivered in accordance with this Act.

Article 50

The Implementation Rules for this Act shall be proposed by TEPA and submitted to the Executive Yuan for approval before promulgation.

Article 51

This Act shall come into force upon the date of enactment.