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Alternative Dispute Resolution Center Manual

A Guide for Practitioners on Establishing
and Managing ADR Centers



Investment Climate Advisory Services of the World Bank Group



World Bank Group
Multilateral Investment
Guarantee Agency



THE WORLD BANK

With funding from FIAS, the multidonor investment climate advisory service

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Abbreviations

ADR	alternative dispute resolution
AFCR	Albanian Foundation for Conflict Resolution and Reconciliation of Disputes
AoM	Association of Mediators of Bosnia and Herzegovina
BiH	Bosnia and Herzegovina
CAMC-O	Commercial Arbitration, Mediation, and Conciliation Center of Ouagadougou (Burkina Faso)
CAM Santiago	Santiago Chamber of Commerce
CCBC	Brazil-Canada Chamber of Commerce
CCMA	Commission for Conciliation, Mediation, and Arbitration (South Africa)
CEDR	Centre for Effective Dispute Resolution
CEMA	Euro-Mediterranean Mediation and Arbitration Center (Morocco)
CIMAT	Tangiers International Mediation and Arbitration Center (Morocco)
CIRC	Canadian Institute for Conflict Resolution
CRCICA	Cairo Regional Center for International Commercial Arbitration (Egypt)
EC	European Commission
EWMI	East-West Management Institute
FIAS	Facility for Investment Climate Advisory Services
ICC	International Chamber of Commerce
IFC	International Finance Corporation
IMI	International Mediation Institute
KCDR	Karachi Center for Dispute Resolution (Pakistan)
MIGA	Multilateral Investment Guarantee Agency
NGO	nongovernmental organization
NMI	Netherlands Mediation Institute

OECD	Organisation for Economic Co-operation and Development
PBA	Pakistan Banks Association
SEED	Southeast Europe Enterprise Development program
SMC	Serbian Mediation Center
SPB	State Bank of Pakistan
SUNSGLO	Center for the Study of the United Nations System and the Global Legal Order
UMA	Uniform Mediation Act
UNCITRAL	United Nations Commission on International Trade Law

INTRODUCTION

IFC and Alternative Dispute Resolution

Businesses have a very simple and straightforward approach to resolving disputes. They need disputes resolved quickly and efficiently. In the globalized world of commerce, this is not always possible because of the legal and procedural complexities surrounding formal dispute resolution. Thus, businesses, along with legal experts and visionaries across the world, have started changing the dispute resolution landscape to accommodate these growing needs by introducing less formal procedures for dispute resolution. These procedures are known collectively as Alternative Dispute Resolution (ADR). A few years ago, the International Finance Corporation (IFC), the key player in private sector development in new and emerging markets, started supporting commercial ADR through a number of projects to accelerate this change worldwide. In particular, IFC has partnered with local governments, justice ministries, lawyers' associations, business membership organizations, international mediation experts, and donors.

Since 2005, ADR projects sponsored by IFC have been established in 16 countries.¹ These projects have adopted different models and approaches best suited to the unique dispute resolution landscape.

As a result of its growing experience and project portfolio, and as part of its effort to share knowledge and expertise, IFC has developed an ADR Center Manual ("the Manual"), an updated and upgraded version of the 2005 Pilot Project Management Manual. The Manual is intended to guide practitioners

1. Countries include Albania, Bosnia and Herzegovina (two projects), Burkina Faso, Cambodia, Egypt, Macedonia, FYR, Montenegro, Morocco, Pakistan, Papua New Guinea, Serbia, Solomon Islands, Southern Sudan, Tonga, and Vanuatu.

in establishing new ADR Centers or improving existing ADR Centers. Specifically, the Manual:

- Summarizes best practice guidelines in the establishment of an ADR Center
- Provides a rich body of case studies incorporating IFC and non-IFC–related ADR Centers globally, and
- Provides a comprehensive appendix of pro forma documents for use by ADR Centers.

The Manual is accompanied by an updated electronic Case Management System/Database and a User Manual explaining how to install and use the system.

The ADR Manual is not prescriptive, but rather is a working tool that provides options for the practitioner to consider where relevant. Many different types of models may be used to implement ADR in a given jurisdiction, such as a court-connected model that is established within the court system, or a free-standing model that is completely independent of the courts. The guidelines offered in the ADR Manual are not intended for one particular model. Rather, they are generic in form and are meant to be adapted to suit the particular context. Where possible, the specific requirements of a particular model have been included, but this is not possible for all permutations. A series of case studies offer the practitioner a rich body of experience to help guide the establishment of a workable model.

Often the viability of a permanent ADR Center will be tested in a pilot project. The specifications for establishing a pilot project differ from the generic considerations offered in the ADR Manual. Appendix A provides a more detailed guide on how to establish a pilot project.²

2. All information in the boxes, figures, and tables in this updated Manual is based on IFC/SEED (2005) and IFC experience with various ADR Centers around the world, unless specifically noted in the source line.

CHAPTER 1

Types, Benefits, and Models of Delivery of ADR

Types of ADR

The formal justice system routinely deals with disputes through litigation. ADR focuses on alternative ways of dealing with disputes.

The role of the third party neutral often determines the type of ADR process to be used. ADR processes normally fall into one of four different categories:

- Adjudication-based (the decision is imposed by a judge or an arbitrator)
- Recommendation-based
- Facilitation-based (the parties themselves try to reach agreement with the help of a neutral)
- Hybrid

Table 1.1 lists the different types of ADR processes that may fall into each category.¹

In adjudication-based processes, the role of the third party neutral is to make a decision for the parties after some form of hearing or decision-making process. That decision is binding on the parties by consent or through the operation of law.

With recommendation-based ADR processes, the third party neutral does not make a decision for the parties. Rather, the neutral will make suggestions to the parties regarding how the dispute may be resolved.

1. The *ADR Guidelines* (IFC 2011) provide a full description of these terms and/or processes. It is important to note that in some jurisdictions, the terms “conciliation” and “mediation” are used interchangeably, whereas in other jurisdictions, the third party neutral plays a more advisory role in conciliation than in mediation.

TABLE 1.1 The Four Categories of ADR Processes

Adjudication-based	Recommendation-based	Facilitation-based	Hybrid
Arbitration	Conciliation	Mediation	Dispute resolution boards
Adjudication	Early neutral evaluation	Stakeholder dialogue	Ombudsman process
Expert determination			Med/arb (mediation/arbitration), con/arb (conciliation/arbitration), arb/med (arbitration/mediation)

In facilitation-based processes, the neutral has no formal role in determining the terms under which the dispute may be resolved. Rather, the neutral guides the process to be followed by the parties in attempting to find their own resolution of the dispute.

Hybrid processes combine two different roles for the neutral. An example of a hybrid process is med/arb (mediation/arbitration), where the third party neutral initially mediates between the parties and attempts to help the parties reach resolution. In the event the parties fail to resolve the dispute, the third party neutral will then assume the role of arbitrator and determine the outcome of the dispute on behalf of the parties.

The primary ADR processes considered in this manual are mediation and arbitration. In mediation, the third party neutral (mediator) assists the parties in dispute to come to agreement. The third party neutral has no decision-making powers. Rather, the third party neutral guides the process to be followed by the parties in attempting to resolve the dispute. In arbitration, the third party neutral (arbitrator) listens to evidence presented by the parties in dispute and makes a determination regarding the outcome.²

Benefits of ADR

The impact of ADR in resolving commercial disputes and releasing funds into the economy is real. The benefits of ADR can be summarized into three broad categories, as shown in table 1.2.³

2. The *ADR Guidelines* (IFC 2011) provide a more detailed explanation of the different ADR processes and the role of the third party neutral.

3. Adapted from the *ADR Guidelines* (IFC 2011).

TABLE 1.2 The Benefits of ADR

Type of benefit	Benefit
Individual benefit	<ul style="list-style-type: none"> • Cheaper redress • Resolution of dispute more quickly than mainstream court processes • In recommendation- and facilitation-based processes, retention of decision making with the parties rather than referral to a third party • In recommendation- and facilitation-based processes, a reduction of the need to enforce proceedings to ensure that parties will comply with an agreement, since the parties enter into their agreements consensually.
Private sector benefit	<ul style="list-style-type: none"> • Enhance private sector development by creating a better business environment • Lower direct and indirect costs of enforcing contracts and resolving disputes • Lower transactional costs so that resources are not diverted from the business • Reinforce negotiation-based methods of doing business, depending on the process.
Institutional benefit	<ul style="list-style-type: none"> • Enhance good public sector governance by reducing the backlog of disputes before the courts and improving the efficiency of the court system • Provide better access to justice through a greater choice of dispute resolution methods • In particular jurisdictions, improve the reputation of the court system in providing effective resolution of disputes.

The Growing Trend for ADR

The movement to introduce mediation into judicial systems in North America, Europe, and other industrialized nations is accelerating.

In the United States, numerous laws firms and companies have committed to using ADR prior to litigation. Mediation is also mandatory in a number of states, including California, Florida, Oregon, and Texas.

In Europe, the European Parliament and the Council have approved measures encouraging the use of extra-judicial dispute resolution procedures and recognizing the important role the courts play in promoting mediation (Directive 2008/52/EC of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters).

The United Kingdom amended its civil procedure rules in 1999, introducing the use of alternative dispute resolution procedures where appropriate, and empowering the courts to order the stay of proceedings pending the use of ADR procedures.

The movement toward ADR is taking root more slowly but is noticeably on the increase in developing countries, which are also turning to mediation in attempts to expedite the resolution of commercial disputes and enhance access to justice (box 1.1).

In Africa, demand to use mediation to settle commercial disputes is growing. Nigeria has established a multi-door courthouse system and Burkina Faso has established commercial courts empowered to stay proceedings to allow for mediation.

Table 1.3 illustrates the spread of mediation, using data drawn from IFC-supported ADR Centers.

ADR is not an elixir for all the contract enforcement barriers created by an inefficient or ineffectual legal system. Given this reality, it is important to consider the model for delivering the ADR service where ADR is identified as a possible remedy for particular difficulties being experienced.

Models for ADR Delivery

The delivery of ADR may be part of a justice reform program or fall within the realm of the free market.

Justice Model

Justice models for ADR delivery include both court-annexed and court-referred models. Court-annexed models may be defined as “ADR programs or practices

BOX 1.1 An ADR Success in a Country Relatively Unfamiliar with Mediation

Bosnia and Herzegovina

In southeastern Europe, the average time to get a contract enforced by a court is nearly 1.5 years (520 days). In Bosnia and Herzegovina, a country relatively unfamiliar with mediation, the results of the 2004 pilot project were particularly significant in demonstrating how disputes can be resolved quickly and successfully to the satisfaction of both parties.

Of the first 156 cases mediated, 106—or 65 percent—were successfully mediated, in an average time of 1.4 hours. The average time the judge spent in working with the mediation case, from briefing parties to writing court settlements, was 2.5 hours. (The financial value of the transactions involved amounted to about 1.6 million euros.) Voluntary fulfillment of the first 70 commercial mediation agreements happened in 87 percent of the cases, in an average of seven days. Most of the party-respondents to a questionnaire indicated that mediation was an appropriate way to resolve a dispute, even in cases where there was no agreement.

The percentage of cases resolved successfully is expected to rise significantly as mediators become more experienced and as parties come to the mediation with full “negotiating authority” and better knowledge of what is involved.

TABLE 1.3 The Impact of Mediation

Country	Institution	Model	Period	Cases settled through mediation
Albania	Center in the District Court of Dures	Court-connected	2004–09	344
Macedonia	Skopje Mediation Center	Free market	2004–09	80
Montenegro	Center for Mediation	Court-connected	2004–09	300
Pakistan	Karachi Center for Dispute Resolution	Initially court-connected	2007–10	1,036
Serbia	Center for Mediation	Public-private partnership (court-connected model)	2004–09	1,845

Source: IFC-supported ADR Centers.

authorised and used within the court system and controlled by the court. Cases are referred to mediation by the courts only. Often judges or other court officials serve as mediators. An agreement arising out of the court-annexed program is enforceable as a court order” (IFC/World Bank Group 2006, p. 22).

Court-connected models may be defined as ADR Centers that are “linked to the court-system but are not part of it. Cases are either referred by the appropriate courts or from out of the courts. Agreements arising out of the court-connected mediation are usually enforceable as court orders” (IFC/World Bank Group 2006, p. 23). Box 1.2 describes two examples of the justice model.

In the justice model, the primary mode of ADR is mediation. The ADR process may include the steps presented in table 1.4.

In some instances, mediation is rendered mandatory by law and/or court rules. In effect, the court outsources the ADR function to an ADR Center. If the dispute remains unresolved, the dispute may either be arbitrated in some instances or referred back to the court for determination. Most jurisdictions utilize this model to deal with labor and family disputes (box 1.3). Alternatively, parties may refer disputes directly to the ADR Center. In such instances, steps one to four are replaced with a referral by the parties to the ADR Center. Thereafter, steps five, six, and seven would be followed.

BOX 1.2 Examples of the Justice Model in Southeastern Europe

Albania

The court-annexed mediation center in the District Court of Durrës, Albania, was established in 2009. The center is located within the court and all mediations referred to it by the court are administered by Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR). In this model, the judge invites the parties to use mediation where relevant. If the parties agree, the case is referred to the mediation center. The center’s coordinator appoints a mediator or the parties select a mediator from the list of mediators certified by AFCR.

Bosnia and Herzegovina

The mediation centers connected to the Sarajevo Municipal Court and the Basic Court of Banja Luka initially dealt only with court-referred disputes. Now managed by the Association of Mediators of Bosnia and Herzegovina (AoM), the centers also deal with disputes referred directly from the private sector.

TABLE 1.4 Steps in the Justice Model

Step	Process
One	Parties refer the dispute to a court for determination.
Two	An appropriately trained judge considers whether the dispute is one that may be referred to mediation.
Three	The court invites the parties to use mediation—normally in writing, and followed by an information-sharing session. If either party refuses mediation, the dispute will be determined by the court in the ordinary manner.
Four	If both parties consent to the mediation process, the court refers the dispute to an appropriate ADR Center.
Five	The ADR Center enters the dispute into the case administration system and appoints a mediator. The ADR Center contacts the parties to arrange a date and time for the mediation session.
Six	The mediator attempts to resolve the dispute through mediation. The mediation normally takes place at the ADR Center.
Seven	If the dispute is resolved, the parties enter into a settlement agreement. A copy of the settlement agreement is forwarded to the court and the court may close its file.
Eight	If the dispute remains unresolved, the dispute is referred to the court for determination by a judge in the normal manner.

Free-standing Model

ADR Centers can be removed from court structures altogether and be established within the private sector. These models take different forms, but tend to be either connected with a Chamber of Commerce or to be freestanding (box 1.4).

BOX 1.3 More Examples of the Justice Model**Serbia**

The Serbian Mediation Center (SMC) was opened in Belgrade in 2006 as a result of a private-public partnership among the Serbian Ministry of Justice, the National Bank of Serbia, the Belgrade Bar Association, and the NGO Child Right's Center. IFC initiated the negotiations. In Serbia, judges are empowered to mediate disputes that come before the courts. The SMC developed a manual to train judges as to how to recognize cases suitable for mediation and mediate such cases.

South Africa

The Commission for Conciliation, Mediation, and Arbitration (CCMA) in South Africa is a statutory dispute resolution body established in 1996 under the terms of the Labour Relations Act, 1995. The CCMA deals only with labor-related disputes by rendering conciliation and arbitration services to parties who refer their disputes directly to the CCMA.

BOX 1.4 Examples of Free-standing and Chamber-Connected Centers**Burkina Faso**

The Commercial Arbitration, Mediation and Conciliation Center of Ouagadougou (CAMC-O) is a free-standing private arbitration and mediation center established in 2005 by Burkina's Chamber of Commerce. Its operations are funded by the Chamber of Commerce and it receives referrals directly from parties in the private sector.

Chile

The Arbitration and Mediation Center of the Santiago Chamber of Commerce (CAM Santiago) was established in 1992 with the support of the Chilean Bar Association and the Chilean Confederation of Production and Commerce, and was the first arbitration institution in the country. To complement arbitration services, the Center introduced mediation services to the private sector in 1998. Arbitration remains the most common ADR method in Chile and at CAM Santiago. There is no provision in law allowing courts to refer disputes to mediation. Accordingly, CAM Santiago does not conduct court-referred mediations.

Egypt

The Cairo Regional Center for International Commercial Arbitration (CRCICA) is an independent nonprofit regional organization. In 2001, the Mediation and ADR Center was set up as a branch of CRCICA. The Center provides international arbitration, mediation, conciliation, and other ADR services, including training and ADR promotion in the region.

Chamber-connected models are established by or in conjunction with a Chamber of Commerce within a particular jurisdiction. Parties refer disputes directly to the ADR Center. Other free-standing models involve neither the courts nor a chamber but are set up as independent, private organizations.

The primary distinction between the private model and the justice model is the manner in which the dispute enters the dispute resolution system. Rather than the courts or judges playing a role, the parties to a dispute elect to refer the dispute directly to the ADR Center for resolution. For example, a provision in a commercial contract may require the parties to undergo mediation before referring the dispute to court.

Private ADR Centers may utilize mediation and/or arbitration and/or hybrid ADR processes in attempting to resolve the dispute. They may also take disputes referred by the parties themselves, or by the courts. The typical steps utilized by a private ADR Center offering both mediation and arbitration are summarized in table 1.5.

There are many permutations of the broad steps outlined in table 1.5. What is critical is that the ADR Center is established with a view to being able to render the services required to deal effectively with any dispute that is referred to the ADR

TABLE 1.5 Steps Typically Used by a Private ADR Center

Step	Process
One	One of the parties to a dispute (referring party) approaches the ADR Center and requests a mediation.
Two	The ADR Center provides a list of names of available mediators from which the parties may elect their mediator.
Three	The parties provide the ADR Center with all the relevant documents pertaining to the dispute, and the ADR Center provides this information to the mediator.
Four	The ADR Center, in consultation with the parties and the chosen mediator, determines the date and place when the mediation will take place. The ADR Center may offer premises for conducting the mediation. A few hours or a number of days may be allocated for the mediation, depending on the complexity of the matter and the number of parties involved.
Five	If the dispute is settled through mediation, the parties enter into a Settlement Agreement. Often the ADR Center will keep a copy of the Settlement Agreement on file for its records.
Six	If the dispute remains unresolved, the referring party may request that the matter be arbitrated by the ADR Center, if this is the agreed process to be followed by the parties (for example, in terms of the contract between the parties). Alternatively, the parties may agree to arbitration. If the parties do not agree to arbitration , they may follow the recognized route for resolving disputes in that jurisdiction (for example, approaching the court for a court order).
Seven	Once again, the parties will elect an arbitrator. The arbitrator will conduct the arbitration on a date and at a time as agreed between the parties.
Eight	The arbitrator adjudicates the matter and provides an arbitration award, which is normally binding between the parties through operation of law or by agreement of the parties.

BOX 1.5 Mediation Institutions by Country

The 140 economies surveyed by IFC in 2010 have the following mediation institutions:

- Free-standing institutions, 41 percent (58 economies)
- Court-annexed mediation, 25 percent (35 economies)
- Court-referred mediation, 11 percent (15 economies).

Only nine countries (three in Latin America and the Caribbean, three in East Asia and the Pacific, and three OECD nations) operate a mandatory mediation system. In a few countries, such as Taiwan, China, ADR is mandatory for litigation up to a certain value threshold (under \$3000, or NT\$100,000).

Center. In other words, the core functions of an ADR Center must be identified in light of the steps discussed above and the structure of the ADR Center must be such that it can perform its core functions efficiently and cost-effectively.

This ADR Manual has not been written with a focus on any type of model. Rather, it aims to establish generic guidelines that practitioners may adapt. In adapting these guidelines, practitioners should take into account the specific ADR model in use. Where possible, this manual has made provision for the distinction between the justice model and the free-standing model, but not for distinctions within each of these categories. Interestingly, of 140 economies surveyed by IFC in 2010, more than 41 percent have utilized the free-standing model in establishing mediation institutions (box 1.5).

Legal Landscape

In jurisdictions where there is no culture of ADR and the legal system is inoperable, there is little incentive for defendants to engage in an ADR process voluntarily. For ADR to be successful, a number of factors need to be in place, such as the enforceability of settlement agreements, confidentiality of process, standards for the inadmissibility of evidence, and the enforcement of without prejudice principles. Endeavoring to establish an ADR Center in an environment presenting systemic barriers to its success would be futile. Rather, consideration should be given to whether such barriers can be addressed through a broader justice reform program embarked upon as a parallel process, or before steps are taken to establish an ADR Center.⁴

4. Before determining the manner in which ADR should be introduced in a particular jurisdiction, it is critical to make an initial survey of the dispute resolution landscape. While the *ADR Guidelines* provide a more detailed diagnostic approach to this aspect, and should be utilized by any practitioner or institution endeavouring to establish an ADR Center, a brief summary of some of the issues that may arise are discussed in this chapter.

BOX 1.6 Legislating the ADR Process in the Balkans

The business, legal, and political environment in the Balkans region clearly indicated the need for ADR. The introduction of ADR, and more specifically mediation, was seen as an important step in judicial reform in most of the countries. Although the media was full of negative comments regarding the courts and judges, a significant level of trust by the public in the courts and formal legal procedures prompted ADR advocates to include the legal framework as one of the first steps in introducing ADR. In most countries in the region, some initiatives were undertaken to formalize mediation. Albania passed a law on Mediation in Dispute Settlement in 2003 (Official Gazette No. 9090). Bosnia and Herzegovina adopted a Law on Mediation Procedures at the state level in July 2004 (Official Gazette of Bosnia and Herzegovina, 37/2004). Serbia adopted the Law on Mediation in February 2005. This legislation provided a culturally appropriate invitation to engage in ADR. Without official authorization, parties in the Balkans were somewhat reluctant to engage in ADR.

Most of these laws are in accordance with the United Nations Commission on International Trade Law (UNCITRAL), Uniform Mediation Act (UMA), the Model Law on International Commercial Conciliation, 2001, and the Council of Europe Recommendation for Mediation in Civil Matters 2002.

Having the ADR process legislated means that parties can utilize mediation before lodging a dispute in court.

As a general rule, in common law countries, a legislative framework has not always been seen as necessary for ADR to operate since the principles of confidentiality, without prejudice, and the enforceability of settlement contracts are well established in general law. In common law jurisdictions, mediation is included when the courts themselves update their civil procedure rules.

In countries that operate under civil law, the situation is different. Experience in many of these jurisdictions suggests that for a number of reasons, it may be necessary to pass a law setting out the principles under which the relevant ADR process can operate before ADR will be seriously considered by all stakeholders (box 1.6).

According to the World Bank Group's *Investing Across Borders* (IAB) 2010 report,⁵ a vast majority of the countries have enacted a specific commercial arbitration statute or a chapter in a civil code setting out detailed provisions governing commercial arbitrations in the country. Of the 87 economies included in the IAB report, only 7 do not have specific consolidated legislation on arbitration, but even those have some provisions scattered throughout civil codes or other laws. In comparison, only 34 percent of the 87 surveyed countries have a formal law regulating commercial mediation; most are civil law countries.

5. World Bank (2010a).

CHAPTER 2

Operational Requirements of an ADR Center

The guide offered in this ADR Manual is not prescriptive. Rather, it describes options for consideration in establishing ADR Centers, whether the initiative is part of justice reform or is emerging from the private sector. This chapter illustrates the different functions to be performed by an ADR Center within this context, as well as the structure that an ADR Center may take to perform such functions. Often, ADR Centers are initially established as a pilot project to determine feasibility. For more detailed information on conducting a pilot court-referred ADR project, see appendix A, which focuses on an IFC project in Bosnia and Herzegovina. Appendix B describes another IFC project in Pakistan. Appendix C presents a case study of how Colombia has successfully used alternative dispute resolution.

Functions of an ADR Center

Broadly, an ADR Center performs two functions: case intake and administration, and process management once a case has been registered. Following on from the steps in an ADR process discussed in chapter 1, an ADR Center may perform some or all of the following functions (depending on the model utilized).

Identification of Cases

With court-annexed or court-connected ADR Centers, the court plays a role in referring disputes to the ADR Center for mediation. It is recommended that the relevant court attempt to identify at least an initial 400 cases for potential mediation to launch an ADR Center/initiative.¹ Objectively verifiable criteria should be

1. It is assumed that only a quarter of the cases that receive a letter of invitation to mediate will actually participate in the mediation. Starting with 400 referrals would leave 100 cases to be mediated. For details of these assumptions, see appendix A.

established by the court to assist in determining which cases should be referred for mediation. For instance:

- The parties indicate a willingness to consider settlement.
- The parties have an ongoing commercial relationship.
- The dispute does not concern complex legal matters.
- The dispute concerns a relatively small sum of money.

When the ADR Center is established as a private model, it is the parties who will determine whether to refer a dispute to the ADR Center.

Invitation to Attend Mediation and Pre-trial Meeting

When the court has identified a dispute suitable for mediation, it should send a letter to the parties to the dispute inviting them to participate in the mediation. The invitation letter should include an explanatory brochure on mediation and invite the parties to consider the possibility of utilizing mediation to settle their dispute. The steps in a mediation should also be explained to the parties. The letter should specify that the parties have a certain time period within which to notify the court of their intention to participate in the mediation, failing which the court will deal with the dispute through the normal litigation process.

Where one or both parties indicate that they are willing to consider mediation, the parties should be invited to attend a pre-trial meeting with the relevant judge. At the meeting, the parties should further discuss the nature of the mediation process and what it entails. The parties must be encouraged to ensure that the representatives attending the mediation have a mandate to engage in discussions regarding possible resolution of the dispute. Appendix D contains a model code of conduct for mediators.

If one or both parties indicate that they are not willing to consider mediation, the court administrator may complete a court case intake form (see appendix E.1) indicating such refusal. This form will form part of the court papers.

Referral of Dispute by Parties

Where the parties agree to participate in the mediation or have elected to refer their dispute to an ADR Center, the parties should be requested to complete a dispute referral form (appendix E.2). The dispute referral form will be submitted to the ADR Center, either by the court or by the parties themselves. The dispute referral form usually contains information regarding:

- The parties to the dispute
- The nature of the dispute

- The complexity of the dispute
- The type of mediator and/or arbitrator required.

Screening of Disputes by the ADR Center

The ADR Center may wish to screen the dispute to determine whether there are any jurisdictional, contractual, or other barriers to proceeding with ADR, particularly in cases in which the parties directly refer the dispute to the ADR Center. For example, in instances in which a commercial contract between the parties dictates that the parties attempt to resolve a dispute regarding a particular provision of the contract through mediation, the screening process should ensure that the relevant sections of the contract are in fact in dispute. This information can be obtained from the referral forms utilized by the parties when they refer the dispute to the ADR Center.

Logistical Arrangements and Notice of Set Down

Once the ADR Center has received the referral form from the parties, the ADR Center can make arrangements to conduct the mediation or arbitration. These include:

- Opening a dispute file and assigning a case number. Where the court has referred the matter to the ADR Center for mediation, the court's case number should be reflected on the file.
- Entering the details of the case on the case management system.
- Appointing a mediator or arbitrator. This is either done by the ADR Center without input from the parties, or the parties may be given an opportunity to indicate a preference as to who will mediate or arbitrate. A list of the ADR Center's mediators and arbitrators can be given to the parties in this instance.
- Contacting the parties to arrange a suitable date, time, and place for the mediation. Parties must then be notified of when and where the mediation or arbitration is to take place (appendix E.3). The Agreement to Mediate Form should also be sent to the parties at this stage (appendix E.4).
- Where the parties are being charged a fee for the ADR process, they should be notified of the fee. It is preferable that the fee for the process be paid before the process takes place. This should be indicated to the parties in the Notice of Set Down Form (appendix E.3).

Conducting the ADR Process

The steps in a typical mediation process are presented in figure 2.1.

FIGURE 2.1 Steps in a Typical Mediation Process

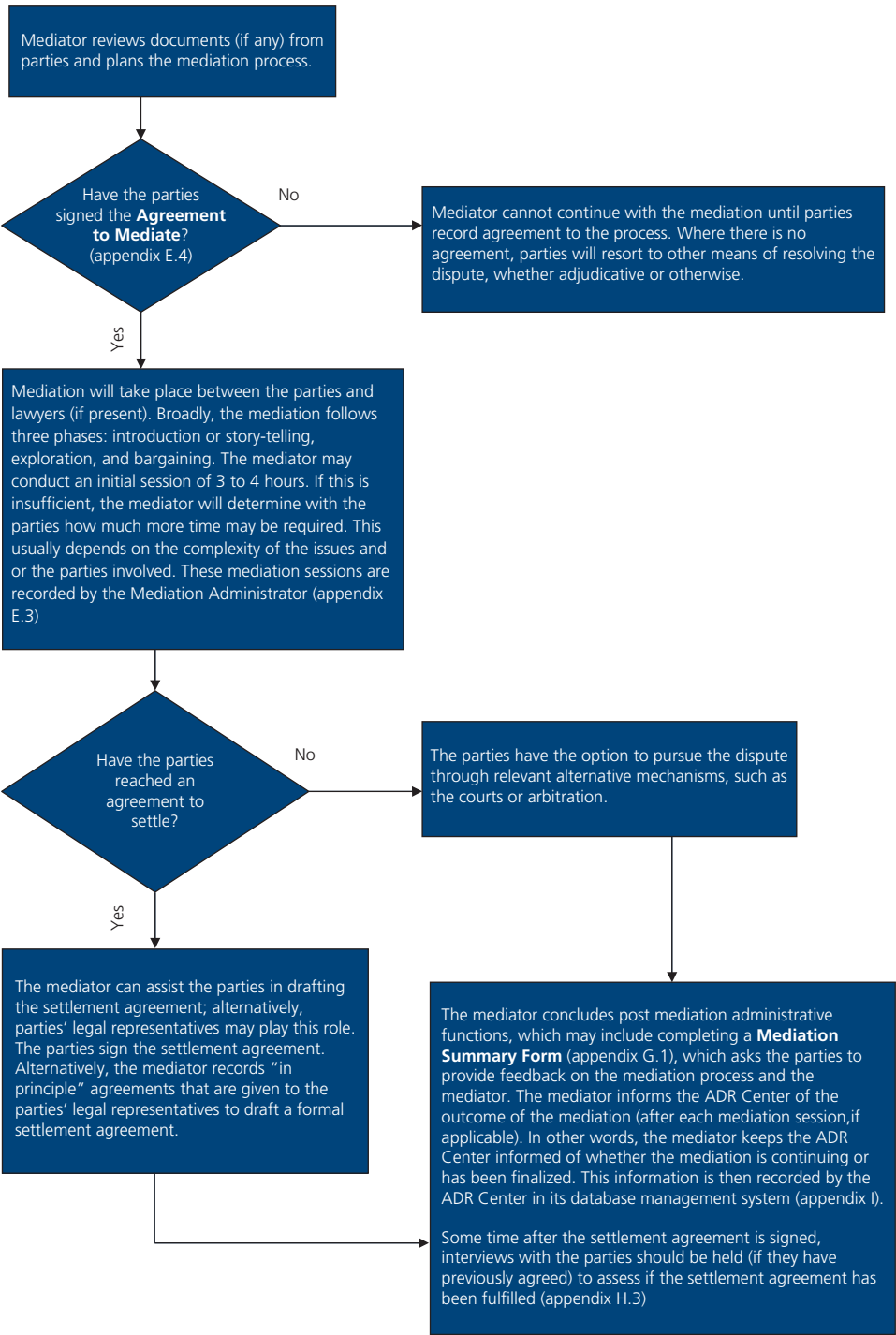


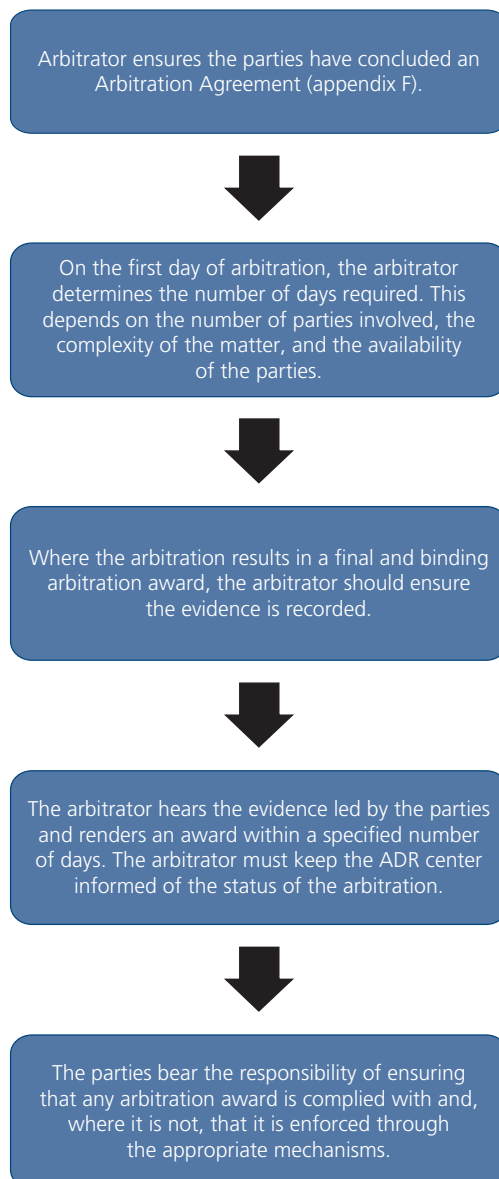
Figure 2.2 presents the steps in a typical arbitration.

There are many different ways to mediate a dispute, with arbitration proceeding more according to a set formula of steps than mediation.

Post Mediation Administration

The mediator should complete and sign the Mediation Summary Form immediately after the parties have signed the settlement agreement or the dispute has been

FIGURE 2.2 Steps in a Typical Arbitration Process



referred back to court. The mediator should forward the Mediation Summary Form (appendix G.1) to the ADR Center. If there is a mentor observing the process, the mentor should complete a Mentor Evaluation Form (appendix G.2). The mediator who is being observed should complete a Mediator-in-Training Self-Evaluation Form (appendix G.3).

Where the dispute was referred by the court, the ADR Center will complete the Referral to Court Form (appendix E.5). The form should be sent to the court within seven days of conclusion of the mediation.

Post ADR Process Party Responsibilities

If the law requires that the court ratify the settlement agreement, it is the parties' responsibility to have this done. If court ratification is not required by law, neither the court nor a judge can demand a copy of the settlement agreement. Normally, mediation agreements are confidential to the parties and the mediator. It is up to the parties themselves to take the necessary action to implement the mediated agreement. In many jurisdictions, the mediated agreement is dealt with as a civil contract between the parties and is enforceable as such.

The functions to be performed by the ADR Center are summarized in figure 2.3.

Organizational Structure of an ADR Center

The size of the ADR Center and the number of personnel required will obviously depend on a number of factors, particularly the number of disputes being dealt with and the financial sustainability of the ADR Center itself. A generic organogram is presented in figure 2.4.

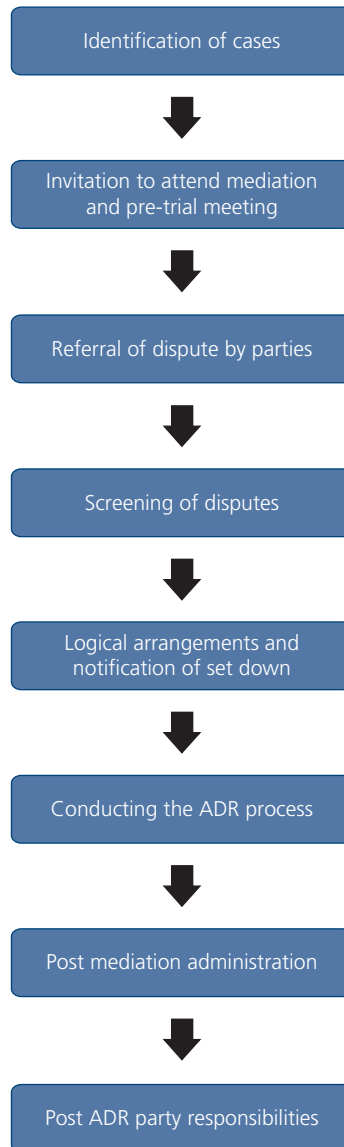
This organogram will be truncated if the ADR Center has a very small case load or is starting as a pilot project and requires some time to build capacity.

The structure of an ADR Center can be considered in terms of four categories: management, administration, third party neutrals, and oversight/advisory board. Table 2.1 summarizes roles and responsibilities of positions within each category.

Physical Structure of an ADR Center

When establishing or building an ADR Center, access to finance and access to space should be established in advance.

There is no one perfect physical locale within which dispute resolution processes may take place. An ADR does not necessarily need a prescribed locale with a specific

FIGURE 2.3 The Functions of the ADR Center

layout and physical resources. In the discussion that follows, it is assumed that the culture is such that parties prefer processes to take place indoors.

Given the above, the following is a guide regarding the type of space that is desirable when establishing an ADR Center:

- A reception area in which parties may be greeted by a receptionist and directed to the appropriate room within which their matter will be dealt.

FIGURE 2.4 Generic Organogram of an ADR Center

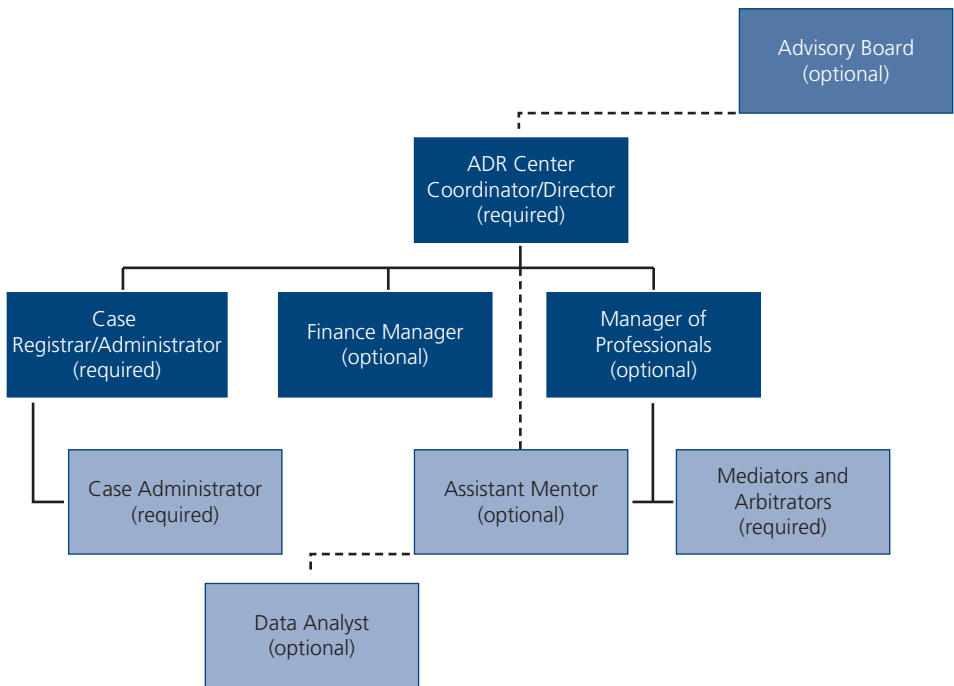


TABLE 2.1 The Roles and Responsibilities of ADR Center Managers, Administrators, Third Party Neutrals, and Board Members

Management	
ADR Center Coordinator/Director	<ul style="list-style-type: none">• Establish ADR Center, including locating and negotiating arrangements for suitable facility and equipment• Represent center to third parties• Set up and maintain financial management system• Establish working relationships with relevant stakeholders, including accreditation bodies, training organizations, judiciary, and government• Conduct overall supervision and management of staff• Manage implementation of awareness strategies and other projects identified• Prepare all management reports required in law and/or by oversight boards• Oversee training sessions for potential mediators, judges, and others• Ensure that adequate monitoring and evaluation systems are in place and are being adhered to• Serve on Advisory Board (where relevant)

(continued next page)

TABLE 2.1 (continued)

Case Registrar/ Administrator	<ul style="list-style-type: none"> • Oversee day-to-day management of disputes • Develop case administration system • Develop case administration flow for data capturing by case administrator • Develop screening functions for case administrator • Implement reporting systems • Liaise with clients regarding case administration where necessary
Financial Manager	<ul style="list-style-type: none"> • Fulfill overall budgeting and financial functioning • Develop and implement budgets • Establish a sustainable financial model, including the feasibility of charging fees for particular services offered • Comply with financial reporting requirements
Manager of Professionals	<ul style="list-style-type: none"> • Manage all third party neutrals, employed or contracted • Manage the recruitment and selection process, including establishing a set of criteria for the recruitment of third party neutrals • Responsible for the content, standards, and quality of mediation and arbitration training and coaching • Responsible for the manner in which ADR processes are conducted by the professional employed or utilized by the ADR Center • Mentor mediators in training where relevant
Administration	
Assistant Case Administrator	<ul style="list-style-type: none"> • Report to the case registrar/administrator • Liaise with parties and coordinating case intake process • Screen cases where relevant • Finalize venue, date, and time for process • Liaise with third party neutral • Record outcome of the process • Liaise with court where necessary
Assistant Mentor	<ul style="list-style-type: none"> • Assist and report to the manager of professionals on all aspects regarding training • Provide mentorship for third party neutrals • Support the mentor
Data Analyst	<ul style="list-style-type: none"> • Determine what data should be captured by the ADR Center to meet all reporting requirements in terms of finances, monitoring and evaluation, and administration • Capture the necessary data • Prepare the necessary reports • Implement the appropriate case management system
Professionals	<ul style="list-style-type: none"> • Conduct regulated by a Code of Conduct (see appendix D) • Either employed by the ADR Center or contracted as independent contractors (or a combination)

(continued next page)

TABLE 2.1 *(continued)*

Oversight/Advisory Board (consisting of representatives from stakeholder groups, such as the justice ministry, industry associations, mediator group representatives)	<ul style="list-style-type: none">• Give advice on and oversees the policies and procedures• Review progress• Review evaluation results
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The reception area can also be utilized to store files and filing cabinets. However, where possible, it is preferable to have a separate room to accommodate filing cabinets and client files.

- A separate room within which mediations and arbitrations may take place. The reason for two separate rooms is that recording equipment may be required for arbitrations, and unless such equipment is mobile, it is difficult to continually move the recording equipment. The rooms should be at least 5 meters by 5 meters in size and the walls relatively soundproof to prevent the parties from being distracted by outside noises, or outside parties from hearing confidential information. Each room should be able to accommodate easily a large oval or round table with an adequate number of comfortable chairs. There are often at least five people present at a process in which a commercial dispute is being dealt: the two parties and their representatives, and the third party neutral. The table and chairs should be able to accommodate these role players comfortably.
- At least one other caucus room for parties to spend time in while the third party neutral is in caucus with the other party.
- Access to natural light and fresh air, if possible.
- Access to whiteboards or flip charts on which third party neutrals can record settlement agreements. Computer equipment is also very helpful where third party neutrals assist parties in drafting settlement agreements, or third party neutrals require access to computer equipment for writing arbitration awards.
- A kitchen or canteen where parties and third party neutrals may access water and other refreshments, if possible.

Third Party Neutrals

Having a cadre of well-trained and experienced third party neutrals is the backbone of an ADR Center. To achieve and maintain such an asset, the ADR Center should

ensure that all third party neutrals are properly trained and, where relevant, accredited. A series of policies governing the recruitment and appointment, training, and utilization of third party neutrals employed by the ADR Center or contracted to the ADR Center as independent consultants may be developed to guide the ADR Center in this regard. Where an ADR Center is being established in a jurisdiction in which there are no, or very few, adequately trained and experienced mediators and or arbitrators, a mentorship program is critical to ensuring that the ADR Center is able to build sufficient capacity to meet the demand for its dispute resolution services (box 2.1). Classroom training is not sufficient to qualify someone to mediate. Ongoing professional guidance is required.

Appointment: Recruitment and Retention

The ADR Center must establish clear guidelines or policies on the recruitment and retention of third party neutrals. These should specify the minimum qualification required and the manner in which third party neutrals should be recruited.

Specifying minimum qualifications is not an easy task. There is an active debate around the world as to whether third party neutrals should be required to have

BOX 2.1 A Sample Mentorship Program

South Africa

The Commission for Conciliation, Mediation, and Arbitration (CCMA) in South Africa has adopted a mentorship program that allows for a more experienced commissioner (the mentor) to help a newly recruited commissioner (the mentee) apply his/her theoretical knowledge gained during the commissioner training period to the processes of conciliation and arbitration. The mentorship program is formal. Mentees are assigned to mentors to fulfill specific program goals. The program proceeds in three phases.

Phase One – The mentee observes the mentor (or any suitably qualified commissioner) conduct a range of hearings, including pre-conciliations, interlocutory applications, conciliations, and arbitrations.

Phase Two – The mentor observes the mentee conducting conciliation, any jurisdictional challenges and arbitrations, and assesses the competence of the mentee based on standard criteria.

Phase Three – The mentee practices as a commissioner with ad hoc access to mentors. Mentees who have not yet been found competent to practice participate in an extended mentorship program.

Mentors provide feedback in the form of a report on the observed strengths and weaknesses of the mentees activities and drafting skills.

The aim of the mentorship program is that by the time the mentee is finally appointed as a commissioner, he or she will have a good understanding of the operations of the CCMA, including how claims are made for finance, how awards and rulings are processed, and how matters are allocated to commissioners. Newly appointed commissioners will also strive to help CCMA meet its performance and efficiency goals.

minimum qualifications or whether they should be required to belong to an accreditation agency (box 2.2).

Being a good mediator is as much dependent on personal qualities as on the mediation technique or background. These include:

- Good verbal and listening skills
- The ability to remain calm under pressure
- The ability to be facilitative rather than directive
- The ability to clarify issues, to address difficult issues, and to be a “reality tester”
- Respect for the parties
- Trustworthiness
- Overall “people skills”
- The ability to “think outside the box”
- The ability to remain neutral, impartial, and without judgment.

In addition, a business background for commercial mediators and arbitrators may be useful for understanding the nature of the disputes being mediated.

A successful mediator possesses a combination of appropriate knowledge, skills, and personal qualities. It is only through experience that it is possible to determine the effectiveness of a mediator. Thus it may be more appropriate to set a base level for considering candidates for the role of a third party neutral (such as particular language skills, writing skills, and commitment to ADR), and then focus on ensuring that adequate training is provided (box 2.3). Many ADR Centers have developed their own training programs and require all mediators

BOX 2.2 The Difficulty of Establishing Minimum Standards for Third Party Neutrals

In developed economies, demand is growing for third party neutrals to be able to establish their competence through independent accreditation procedures. In attempting to address this need, the International Mediation Institute (IMI) was established. The Institute offers international accreditation for mediators. However, such accreditation requires a particular level of experience that newly trained mediators may find difficult to satisfy. In emerging markets, where ADR is not widely utilized, this is particularly difficult. For more information, visit www.imimediation.org

BOX 2.3 Sample Qualification Criteria for Mediators and Arbitrators

Albania

The Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR) selects mediators through an interview process. It stipulates that mediators must have a university degree, have no criminal record, and be at least 22 years old. Mediators are independent contractors who are hired on a part-time basis, depending on the case load.

Chile

The qualification requirements for third party neutrals—both mediators and arbitrators—are governed by the Rules of Mediation Procedure (2000) and the Bylaws of the Arbitration and Mediation Center of the Santiago Chamber of Commerce (CAM Santiago). The Rules state that the mediator must be a qualified professional whose degrees have been issued by an accredited university, and must be able to demonstrate at least five years of experience. The qualification and experience does not have to be in a particular field. The mediator must also undergo all the compulsory qualification courses instituted by CAM Santiago or the entity commissioned to perform this training function. Furthermore, he/she is expected to complete an oath declaring his/her willingness to observe strictly all the regulations contained in the act and those stipulated in the Mediator's Ethical Code. The Bylaws of CAM Santiago state that arbitrators must meet experience and competence requirements determined by the Council (the Center's managing body) on a case-by-case basis.

Morocco

The Euro-Mediterranean Mediation and Arbitration Center (CEMA) in Morocco appoints mediators as independent contractors. An independent commission of five members receives applications from mediators to be entered onto the mediator's list. All candidates are required to have a university degree.

and/or arbitrators who wish to be included in their rosters to complete such training (box 2.4).

In selecting people to undergo mediation training, it is also important to select candidates who want to pursue a full-time career in mediation and who have the financial independence to sustain part-time ADR work while the ADR Center is building up its case load.

A further aspect to bear in mind is diversity in terms of areas of expertise. Parties may require the third party neutral to have sector-specific knowledge in dealing with their dispute. If the ADR Center has on its roster a diverse pool of mediators and/or arbitrators who are specialized in specific sectors, the ADR Center will be able to meet the parties' needs. This is optional, and may be possible only where third party neutrals are not required to mediate a broad range of different types of disputes. Alternatively, the ADR Center may wish to host a panel of third

BOX 2.4 Sample Training for Mediators**Albania**

The professional organization of mediation in Albania (AFCR) provides basic training for mediators (three days). The advanced training program (two days) was prepared in cooperation with Dutch experts. All mediators on the AFCR roster must have completed 40 hours in mediation training, be certified by AFCR, and abide by the Code of Conduct, which is based on the European Code of Conduct for mediators.

Bosnia and Herzegovina

With the support of the Canadian International Development Agency and the Canadian Institute for Conflict Resolution, the Association of Mediators (AoM) in BiH started developing its own mediation training program in 2004. Four training programs were designed to educate mediators, judges, lawyers, end users, and trainers. The training program for mediators spans seven days (56 hours). The program is divided into two segments: Mediation 1—Training of Mediators, which spans five days (40 hours); and Mediation 2—Getting Ready to Mediate, which spans two days (16 hours). Each mediator has an obligation to pass at least two days of advanced training organised by the AoM on an annual basis.

Pakistan

The Karachi Center for Dispute Resolution (KCDR) contracted a service provider to conduct foundations, advanced, master trainers, and mediator skills training. Some 72 professionals have been trained since the project began in 2007, and 49 mediators have been accredited by the training service provider. The project has also run a Master Trainer course for 13 mediators. A study tour was arranged for judges to travel to the United Kingdom to experience how institutionalized mediation works in practice. KCDR now utilizes local mater trainers to deliver in-house training programs at regular intervals. Basic training take place over two days, with advanced training taking up to five days. Seminars are arranged from time to time to provide continuous professional development for the mediators.

party neutrals that includes specialists and generalists. A thorough understanding of the demands to be met by the ADR Center will guide the ADR Center toward the appropriate approach in this regard.

Where an ADR Center is establishing itself in a jurisdiction in which there is a limited pool of experienced mediators, one way of setting recruitment criteria is to ask prospective mediators and or arbitrators to provide written statements explaining their motivation for consideration as a third party neutral. Such a written statement will enable the ADR Center to consider the applicant's writing skills, as well.

It is critical for the ADR Center to consider incorporating a policy on gender and demographic equity in the recruitment of its third party neutrals. Such policy needs to take into account the inherent barriers that may exist in promoting ADR, balancing the need for equity and the realities of the traditional landscape within which the ADR Center may be operating.

Training, Accreditation, Certification, Continuous Professional Development, and Choice of Third Party Neutrals

Training. The use of mediation to resolve disputes is expanding rapidly. As a result, the number and types of institutions offering ADR training is expanding more quickly to meet the demand for training. Since there are no internationally agreed standards or regulations, it is extremely important to ensure that external training institutions and their methodologies used for mediation training are of a high quality. The type of training offered and the standards of accreditation differ among training service providers. Each ADR Center must determine what is appropriate for its needs.

Accreditation. It is critical to ensure that the training offered is customized to suit the dispute resolution landscape within which the ADR Center will operate. Training service providers should be requested to address this issue when preparing proposals regarding ADR training. It is also critical to ensure that the training service providers offer a process of coaching and assessment as part of the training. Each trainee should be required to mediate a specific number of disputes as part of the training program, and these mediations should be assessed by the training service provider. If the trainee is assessed as competent, the training service provider should offer such trainee accreditation as a mediator or arbitrator. This aspect is even more important where there is no independent ADR certification body or institute within the jurisdiction in which the ADR Center will operate. At the very least, the ADR Center can ensure that an independent body (the training service provider) is assessing competence and determining accreditation.

Where an individual is training to become a mediator but does not have mediation experience, it is critical for him or her to obtain on-the-job-experience by participating in a mentorship program. Here the mediator must conduct several mediations with assistance from a mentor. The parties would be required to give their consent for the mentor to participate in the mediation since the mediation is a confidential process. Without such consent, the mentor would not be able to participate.

While accreditation by an external training service provider is useful, it is also essential that the ADR Center develops its own internal capacity to deliver training to third party neutrals, whether as mediators or arbitrators. A train-the-trainer's course should be offered to accredited mediators who are able to train on behalf of the ADR Center. However, the drive toward self-sustainability should not compromise the standard of training offered.

In some jurisdictions, mediators are required to obtain a license to practice, and the license must be renewed on an ongoing and regular basis.

Certification. Over the medium to longer term, it is preferable for each jurisdiction to establish a mediation certification body and clear competency and certification standards (box 2.5). Such standards should require registration and licensing, with

BOX 2.5 A Sample Advanced Certification Program**The Netherlands**

The Netherlands has an advanced certification program administered by the Netherlands Mediation Institute (NMI). To enter into the NMI register as a mediator, one has to fulfil two basic requirements: successfully conclude a mediator training course accredited by the NMI; and pass an assessment of relevant knowledge. The assessment instrument has been developed for the NMI by Leiden University. It contains forty multiple choice questions, as well as five open questions. NMI has accredited several mediation training institutes. The training programs vary from a six-day (plus evenings) basic course to schedules of twenty days or more.

recertification at periodic intervals, and include provision for decertification if warranted. Competency standards should also be required for those doing the certification. In jurisdictions where a certification body cannot be established, it may be sufficient for the ADR Center to develop its own standards and combine this with the accredited mediator training as a means of regulating practice.

Continuous professional development. Accredited mediators should be required to undertake an ongoing process of continuous professional development. This may include:

- Attending a certain number of training workshops within a particular period
- Conducting self-assessments for submission to the ADR Center
- Recording successful and unsuccessful ADR processes in a “learning journal.”

Choice of mediators and arbitrators. The ADR Center should develop a clear policy as to the manner in which third party neutrals will be chosen. Some options include:

- Developing a Web-based tool listing mediators and arbitrators, including a brief biography; parties can use the list to choose the neutral
- Developing a roster system, which the ADR Center will use to select a mediator or arbitrator
- If the arbitrators and mediators are not employed by the ADR Center, asking the mediators and arbitrators to indicate available dates when they are able to mediate or arbitrate.

Project Environment/External Stakeholders

Many different organizations and/or institutions may need to be consulted when establishing an ADR Center. Possible stakeholders are listed in table 2.2.

TABLE 2.2 Possible External Stakeholders to Consult when Establishing an ADR Center

Stakeholder	Comment
Ministry of Justice	The involvement of one or more senior officials from the relevant Ministries of Justice is essential, whether a public or private model is utilized. In the public model, support of the Ministry of Justice is obviously critical, and Ministry personnel should be encouraged to serve on the Advisory Board. In the private model, the Ministry's awareness of and support for the activities of the ADR Center will go a long way to ensuring cooperation and support where necessary.
Courts	For an ADR Center established as a private model, the involvement of the courts in general is very important. However, for a public model, the involvement of a particular court is essential before the ADR Center is established; without such involvement, there is no enabling environment within which the ADR Center may function. Although the disputes themselves may not emanate in the courts, they make their way to the courts for resolution. Thus involving the courts in any ADR program, whether it uses a public or private model, is always beneficial.
Mediation Certification Body	<p>In a fully functioning court-referred mediation system, it is necessary for the Ministry of Justice to set up a Mediation Certification Body. Its functions may include:</p> <ul style="list-style-type: none"> • Establishing clear competency and certification standards for mediators • Certifying and periodically recertifying mediators • Registering and issuing licenses to certified mediators • Establishing a training curriculum and mentoring process for mediators • Qualifying training organizations to train mediators • Maintaining quality standards of training and mediation through periodic spot checks on performance • Developing standards for mentor registration and a roster of mentors.
Industry associations	<p>While not central to the day-to-day operations of the ADR Center, industry associations can play a critical role in creating an enabling environment within which the ADR Center can operate. Such a role may include:</p> <ul style="list-style-type: none"> • Creating awareness of the benefits of mediation throughout the business community by sponsoring talks and briefings, issuing press releases, writing success stories of for industry publications, distributing pamphlets on the pilot, and sending out relevant e-mail messages • Assisting in the establishment of the ADR Center • Participating in board structures, if necessary • Operating an information phone line for any business person wanting to know more about what is involved in mediation or arbitration • Holding half-day to one-day workshops on mediation • Ensuring that companies being referred to mediation are aware that the owners or senior managers with proper authority need to be present at a mediation for it to work • Building support at the political level for introduction of the ADR Center • Encouraging companies to insert a mediation and/or arbitration clause in their commercial contracts so the eventual dispute will have to be mediated and/or arbitrated and the courts costs avoided.

(continued next page)

TABLE 2.2 (continued)

Stakeholder	Comment
Association of ADR practitioners	<p>Once there is a minimum number of ADR practitioners (6 to 10), they should be encouraged to form their own association. It is in their own interests as well as the interests of the judicial system and others that are promoting ADR. Some of the benefits of forming such an association include:</p> <ul style="list-style-type: none"> • Promoting mediation as the most effective ADR method to resolve disputes • Promoting the use of mediation as an alternative to the courts for the settlement of disputes • Increasing the role profile of mediators through awareness campaigns • Setting standards for fees and procedures for mediation that is not court-referred • Setting and promoting ethical standards • Representing their association on judicial bodies and industry associations involved in advancing court-referred mediation • Interacting with training organizations to ensure that quality training is provided • Encouraging mediators' further professional development by organizing events to share in-country and international experiences, and sponsoring more advanced course and workshops for their membership.
Judicially related body	<p>Organizations such as associations of judges, prosecutors, or lawyers can play a critical role in creating support for an ADR Center. It is extremely important to involve lawyers and others who are not part of the judicial system as much as possible to get their support and lessen any resistance they may have to the introduction of mediation and arbitration. As appropriate, they may be requested to participate in the Advisory Board, if any.</p>

Gender Dimension

The establishment of an ADR Center can have a positive impact on improving access to justice and the transparency with which disputes are resolved. Where there are gender inequities in accessing justice, the ADR Center must proactively seek to remedy such inequities and not perpetuate them. In a nutshell, the ADR environment must be conducive to women. The following is a list of possible steps that may assist in addressing gender inequities, to be considered in establishing an ADR Center.²

- Ensure gender balance in ADR staff. Mediation services and training generally tend to target former judges and litigators as potential

2. Adapted from World Bank (2010b).

mediators—a group that is usually male-dominated. The pool may need to be widened if a gender balance is to be achieved.

- Provide gender-specific training for ADR providers. This should ensure sensitivity to gender issues, particularly the perceived power imbalances between genders, and also ensure that the ADR provider is knowledgeable about cultural values and norms of both genders in the local context.
- Provide an environment in which women feel free to speak.
- Provide separate bathroom facilities for women.
- Consider whether opening hours are convenient for women.
- Ensure that operational and procedural manuals, codes of conduct, customer charters, and so forth address gender issues and set out the level of service that women should expect.
- Include women's business associations on the ADR program user or oversight committee.

Monitoring, Evaluation, and Data Management

Monitoring and evaluating an organization's performance is critical in ensuring the optimum efficiency and effectiveness of its operation. Securing an increase in the demand for ADR and the sustainability of any ADR Center can be achieved only if the ADR Center's operations are constantly reviewed to determine maximum and relevant output. There are many ways an ADR Center can determine tools to monitor and evaluate its performance on an ongoing basis. Feedback from third party neutrals and clients is one way. Another is for the ADR Center to implement a data management system able to generate reports on certain performance aspects.

Monitoring and Evaluation

Feedback forms from clients and third party neutrals is one way for an ADR Center to gather information about the quality, efficiency, and usefulness of its services. This information should be reviewed and compiled into a reporting system that enables a continual overview of the ADR Center's performance.

Mediation Summary Forms (appendix G.1) record details such as the client's satisfaction with the performance of the third party neutral, the efficiency with which the ADR Center dealt with the dispute, and whether the client would utilize the ADR Center's services again. The ADR Center could consider offering an award for the best-performing mediator in a particular period, such as a year. The ADR Center would need to carefully determine the criteria upon which such an award is granted.

The event could also be utilized to publicize the work of the ADR Center, and encourage high-level performance from third party neutrals.

Third party neutrals may be asked to fill out feedback forms recording details such as the neutral's satisfaction with the administration of the dispute by the ADR Center, the suitability of the ADR process utilized by the parties, and the outcome of the ADR process.

Case Management Database

A Case Management Database provides the ADR Center with the ability to record and report on a range of activities performed by the ADR Center. Typically, a Case Management Database enables a user to record specific details concerning a particular dispute being dealt with by the ADR Center. The Case Management Database also enables the user to generate a series of reports concerning the ADR Center's activities. Such reports enable the ADR Center to monitor and evaluate services rendered.

This ADR Manual is accompanied by a Case Management Database, as well as a Installation Manual and User Manual for the application of such tool (appendix D). Included with this ADR Manual is a disk to be inserted into the desktop. A self-explanatory start-up process will commence and the user can utilize the Case Management Database User Manual for further guidance.

In essence, this Case Management Database enables a user to capture details pertaining to a particular dispute being dealt with by the ADR Center, such as:

- Description of the parties, including name, gender, and location
- Description of the dispute, including the nature of the dispute, value of the claim, and adjudication process (if any)
- Process followed in attempting to resolve the dispute by the ADR Center (case flow).

The Case Management Database also enables a user to generate a series of reports, including:

- A case report for a particular case
- A summary of cases received and/or resolved by the ADR Center
- An overview of cases dealt with per facilitator
- A summary of cases dealt with per case type, claim value, and/or ownership type.

An ADR Center should not begin operations without having some sort of case management system in place. While cases may be managed manually initially,

particularly where there are very few cases involved, and budgetary constraints prevent a computerized version from being implemented, it is imperative that the ADR Center aim to computerize and operate management of its information as efficiently and effectively as possible.

Use of the Case Management Database included with this manual is not prescriptive. A number of products in the market offer a similar service. However, this tool has been developed with a particular focus on the needs of an ADR Center that provides mediation and arbitration services, and by drawing on the experience of establishing a number of pilot project ADR Centers.

It is imperative that ADR Center staff are adequately training on how to utilize the Case Management Database and regarding the collation and analysis of data captured via the system and otherwise.

CHAPTER 3

Building the Sustainability of an ADR Center

Perhaps the most difficult aspect of establishing an ADR Center is to ensure that it becomes or is from the outset self-sustainable, in terms of both human and financial resources. Where the ADR Center receives court-referred disputes, a steady flow of cases from the relevant court with the appropriate budget being made available from the Ministry of Justice may assist in building financial sustainability. Where an ADR Center is established as a private ADR model, the flow of cases from parties themselves is vital. Determining from where the cases will be referred and the pool from which mediators and arbitrators may be drawn will assist in identifying the areas the ADR Center should focus on to establish sustainability. Some of these areas are considered in this section.

Fees for Services

One way for the ADR Center to generate income is to charge a fee for the services it renders. The primary services offered will be ADR processes: more specifically, mediation and/or arbitration. The ADR Center should establish a schedule of fees charged (boxes 3.1 and 3.2). The schedule should be determined with reference to a number of existing factors, such as the fee payable to the ADR practitioner, the cost of a venue, and overhead. Parties must be notified of the fee payable where relevant. Where the court is responsible for covering the costs of the ADR process, the fees payable to the ADR Center should be determined when the ADR Center is established.

In the initial stages of establishing an ADR Center, and while demand for ADR is growing, it may be necessary to subsidize mediation costs. Full payment of mediation may be an obstacle for any party not familiar with its benefits and may slow down the demand for mediation. However, it may be important to require partial, or even “token” payment, to ensure that users of the ADR Center’s services recognize that there is a cost attached to the use of ADR. Importantly, the cost should be

BOX 3.1 Sample Mediation Fees

Bosnia and Herzegovina

The Mediation Survey conducted for the BiH Pilot Project revealed that 87 percent of the respondents indicated a willingness to pay an average of 40 euros for mediation, or a total of 80 euros per case, assuming both parties pay an equal share. In a fully operating system with two mediations a day, and assuming that a full-time mediator received two-thirds of this amount, with the remainder to cover the overhead of conducting the mediation, this figure would not be out of line with what judges are paid in BiH on a monthly or yearly basis.

Mediations conducted as part of a pilot mediation project in BiH were fully funded by donors. Currently, the AoM does not receive any external funding for its services. It charges fees for mediations of approximately 180 euros (which is shared by the parties in dispute) for two hours. The fees are paid upfront by both parties, each party having to pay an equal portion unless they agree otherwise. All disputes that come to the AoM are above 1,500 euros because of the way the fees are structured. If a settlement is reached in mediation of a court-referred case, 50 percent of the court fees that plaintiffs pay when filing for litigation are refundable in the Republic of Srpska and 100 percent in cantons of the Federation of Bosnia and Herzegovina.

Cairo

The Cairo Regional Center for International Commercial Arbitration (CRCICA) charges a set fee for its services. For international cases, the Center charges US\$500 for mediation and conciliation upon registration of the dispute with the Center. For domestic cases, the Center charges US\$250. This is in accordance with Article 18 of the CRCICA ADR Rules, which state that “the mediator’s fees shall be fixed by agreement between the Center, the mediation and the parties shall not exceed the amount calculated according to the Rules of the Cairo Regional Center for International Commercial Arbitration for determining the arbitrator’s fees. The Director of the Center, after consultation with the mediator and the parties, shall determine the bases of the assessment of fees and expenses. In all cases, the Director of the Center may reduce the fees and expenses if the nature of the case so permits. In some cases due to the complexity of the dispute or the length of the hearings, the Director of the Center may undertake consultation with the mediator and the parties to adjust the basis of the assessment of fees and expenses.” The CRCICA ADR Rules include the Rules of Mediation, the Rules of Conciliation, the Rules of Technical Expertise, the Rules of Mini-Trials, and the Rules of the Claim Review Board (CRB). All are available at <http://www.crcica.org.eg/>

Chile

CAM Santiago, like many other ADR Centers, bases its arbitration fees on the amount in dispute (this applies both with respect to the fees of the arbitrators and the administrative fees charged by the Center). CAM Santiago initially charged mediation fees based on the amount in dispute. The Center changed this practice to an hourly charge in an attempt to make services more accessible (quicker settlements are cheaper for the parties). The mediator’s fee is approximately US\$313. The administration fee charged by CAM Santiago is 10 percent of the mediator’s fee, with a minimum of US\$626. Upon requesting mediation, the soliciting party must pay US\$313 to CAM Santiago as 50 percent of the administrative fee. If the other party agrees to mediation, they must pay the remaining 50 percent. These sums are not reimbursed and are allocated toward the final administrative fee. If the other party does not agree to mediation, the amount paid by the soliciting party is not reimbursed. The fee charged for arbitration is based on the amount in dispute.

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BOX 3.1 *(continued)***Morocco**

The Euro-Mediterranean Mediation and Arbitration Center (CEMA) in Morocco charges fees for mediation services based on the amount in dispute, ranging from US\$100 to US\$10,000. The demand for CEMA's services did not decrease when fees were introduced.

Pakistan

KCDR also bases its fees for mediation on the value of the claim. If the dispute is court-referred, the fees can go up to 7,500 rupees. For privately referred disputes, the fees can go up to 50,000 rupees if the claim is valued at more than 6 million rupees. Where the parties cannot pay the fees, KCDR may provide its services pro bono. The court does not cover any charges in court-referred matters. Currently, 50 percent of the fees charged to parties is paid to the mediator and 50 percent is paid to KCDR. Irrespective of the source of case referrals, the minimum case fee for each party is 7,500 rupees, while the maximum fee per party is 50,000 rupees.

BOX 3.2 Sample Arbitration Fees**Colombia**

The Arbitration and Conciliation Center of the Bogota Chamber of Commerce is bound by legislation in terms of the fees it can charge for conciliation and arbitration services. Arbitrator's fees are normally much higher than conciliators' fees, but the process is also much longer. Usually parties pay a processing fee to the Center, as well as the conciliator or arbitrator fees. The following table reflects the fees that may be charged for a conciliation; fees are linked to the amount in dispute.

Claim amount (US\$)	Fee (US\$)
1–2,600	68
2,601–3,900	98
3,901–5,200	120
5,201–10,400	158
10,401–15,600	188
15,601–52,002	1.0%
52,003–156,005	0.9%
156,006–260,008	0.8%
260,009–416,012	0.7%
416,013–520,015	0.6%
520,016+	0.3%
Amount not determined in the claim	105
Maximum ceiling (fee)	6,766

substantially less than the costs of following the normal route of litigation to resolve a dispute. In some jurisdictions, where the cost of arbitration is higher than going to court, parties continue to go to court despite lengthy delays. In setting the fees for ADR, consideration must be given to this factor.

In some instances, a fee schedule is devised that guides the ADR Center on how to determine fees payable when such fees are linked to the value of the claim.

Training

As a means of securing additional revenue, the ADR Center can also offer training courses. Particularly where the ADR Center has invested in developing a pool of trained trainers equipped to train mediation and/or arbitration skills, the ADR Center should capitalize on this resource and consider offering training courses to practitioners, judges, business forums, and the like. In essence, the ADR Center should distinguish between professional training offered to third party neutrals wishing to practice as mediators and/or arbitrators and training that is offered as part of an awareness campaign and/or general skills development for members of the public. The case studies in box 3.3 reflect some of the courses that may be offered; the ADR Center can charge a per participant fee.

Membership Fees

Where an association of third party neutrals administers ADR processes, the association may charge a fee to its members to belong to such an association. Such fees can be utilized to cover the costs of running the association (box 3.4).

BOX 3.3 Offering Fee-Based Training as a Means of Raising Revenue

Morocco

CIMAT offers 10-day mediation and arbitration training courses that consist of different levels of advancement. Participants may choose to attend the entire course or only the desired level(s) of the course. For the entire mediation or arbitration training cycle, CIMAT charges delegates 10,000 dirhams.

Pakistan

KCDR charges between 10,000 and 12,000 rupees per day of training provided. It charges 15,000 to 20,000 rupees for a two-day training course.

BOX 3.4 Sample Membership Fees

Morocco

CIMAT charges an annual fee of approximately \$125 to its members.

Pakistan

KCDR provides a Corporate Membership Program for its members for fee subject to category of membership. Annual members pay 50,000 rupees. Life members pay 300,000 rupees.

Awareness Campaigns

One of the cornerstones of encouraging the demand for ADR is the creation of public awareness. Without an understanding and acceptance of mediation as a viable way to resolve disputes, the public, including targeted sectors such as commercial parties, will not participate. For parties to undertake a new process that is not part of the system or culture, in the highly stressful environment that exists with any conflict and resulting legal procedure, any awareness program must be based on substantive evidence of benefits to be derived by the parties involved. Thus it is important for local results and for results around the world to collect as much evidence as possible. The detailed evaluation methodologies set out in this manual can assist in this task.

Substantial evidence exists from countries in North America and Europe, demonstrating high levels of success and satisfaction from parties using mediation processes to resolve disputes. Finding literature on the successes of ADR within the same or similar jurisdiction as the one in which the ADR Center will operate will be very helpful. Even more compelling will be the results of the ADR Center itself. The public awareness campaign should make use of any positive results and consider this as newsworthy of being reported in press releases, interviews, briefings, and talks. The ADR Center should actively embark upon a public awareness campaign as soon as the decision has been taken to establish an ADR Center (box 3.5). Table 3.1 presents some possible activities and associated materials for the campaign.

BOX 3.5 Sample Awareness Campaigns

Cairo

The Cairo Regional Center for International Commercial Arbitration (CRCICA) embarked upon an intensive program to raise awareness about the use of arbitration. In collaboration with IFC, a conference on “The Role of Egypt as a Regional Platform for Alternative Dispute Resolution in the Arab World” was held in May 2010. The conference was attended by 111 delegates from different business sectors. Awareness raising seminars were also conducted, where delegates were introduced to the broad principles and processes of mediation and its benefits. One seminar was held at CRCICA and the other methods of at the Egyptian Banking Institute. Further interventions have included a mediation training program with the Milan Chamber of Commerce, an international conference on mediation and other methods of alternative dispute resolution at the German Arab Chamber of Industry and Commerce, and a seminar on Negotiation and Mediation in Trade and Investment Contracts with the Center for the Study of the United Nations System and the Global Legal Order (SUNSGLO). In 2008 CRCICA issued the eleventh volume of the *Arab Arbitration Journal*. It is also preparing the second volume of its Arbitral Awards Publication, covering awards issued from 2000 to 2008. To promote the use of mediation, CRCICA includes a suggestion in its letter to parties requesting arbitration that they consider mediation.

Morocco

CEMA has conducted a number of seminars with industry, services, and construction federations. In 2009 CEMA launched its Web site and published its first newsletter. CEMA cooperates with other ADR Centers in Morocco, as well as foreign ADR Centers. Further initiatives undertaken to increase the public’s awareness about mediation have included half-day meetings with the Construction Federation and the development of a film on mediation.

Pakistan

KCDR used a sectoral approach in its initiatives to raise awareness, specifically targeting the banking sector. Involving key industry federations and business associations generated a large number of cases. A seminar on “Banking Mediation in Pakistan” was held at the State Bank of Pakistan, which was attended by representatives from 20 banks in Karachi. In addition, over 2,500 members of the legal profession and the private sector have attended study tours, conferences, seminars, and workshops organized to increase awareness and the understanding of mediation.

Serbia

A “Week of Mediation” project was designed by the Serbia Mediation Center (SMC) in close cooperation with the courts in Serbia. Its purpose was twofold: to reduce the burden on the courts; and to introduce mediation as a method of alternative dispute resolution in several courts in the country.

Mediation Weeks

Mediation weeks are often utilized by ADR Centers to promote awareness regarding ADR and its benefits. Parties are encouraged to utilize the services of the ADR Center free of charge during the course of one week, with the ADR Center recording the number of disputes mediated and the settlement rate. Such statistics can be utilized to further the argument regarding the benefits of mediation in that particular jurisdiction.

TABLE 3.1 Public Awareness Campaigns

Activities	Materials
<ul style="list-style-type: none"> • Presentations for targeted audiences • Training • Conferences • Roundtable sessions with industry associations, to which both business people and the press may be invited • Media briefings and press releases targeting specific events, such as the opening of the ADR Center, and signing memoranda of understanding with role players • Newsletters on ADR • Promotional materials • Sponsoring events and/or Web sites for ADR organizations • “Settlement Week,” when parties are encouraged to have their disputes mediated for free or a reduced fee • Introducing ADR to law schools and business schools, initially through guest lectures and eventually into the curriculum. 	<ul style="list-style-type: none"> • Posters that could be placed in the courts, ministry buildings, mediation center, offices of the judicial association, and other local partnering organizations • Brochures that describe ADR and its benefits, the ADR Center, mediator and arbitrator responsibilities, and other useful information. The brochure may be mailed to disputing parties along with the letter of invitation to mediate. • Leaflets that describe the highlights of mediation and the ADR Center, placed at the court where ADR is being introduced, and at banks, Chambers of Commerce, insurance organizations, and other public places • Press releases and articles describing different aspects of the ADR Center could be provided to the local media.

APPENDIX A

Detailed Case Study: Bosnia and Herzegovina

It may be necessary to establish an ADR Center as a pilot project, allowing stakeholders to ascertain the viability of a Center before investing too many resources in the project.

There are several objectives for carrying out a court-referred mediation pilot project:

- It is a way to introduce court-referred mediation on a limited and manageable basis with the flexibility to make needed adjustments.
- It provides an avenue for judges and government stakeholders to gain exposure to mediation before introducing it on a larger scale.
- It allows for a first-hand assessment of the benefits and limitations of mediation.
- It provides a means for testing public acceptance.
- The tentative nature of a “pilot” is less threatening to the status quo than a decision to implement a full-scale system, thus allowing time for the courts, officials, and the public to adjust.

To increase the chance of success, a pilot must be carefully designed with the realities of the locale in mind. Furthermore, data are needed to evaluate the pilot, identify potential bottlenecks, and determine whether to move forward with a larger-scale program, and if so, how.

This appendix explores the basics of a pilot project, drawing on the experience of the BiH Pilot, an IFC project in Bosnia and Herzegovina that utilized a court-referred model. The appendix also offers some suggestions for other pilots, based on that experience.

Calculation of Number of Cases

For the BiH Pilot:

- Of the 318 cases referred, 195 responses to the letter of invitation to mediate were received. (Many of the non-responses could have resulted because mailing addresses were no longer valid.) Of the 195 respondent cases, 92 accepted the invitation to mediate.
- Of the 92 cases that accepted, 76 went to mediation, and the other 16 dropped out, did not show up for the scheduled meeting, or postponed mediation beyond the timeframe of the pilot.

This experience suggests that for situations similar to those in BiH Pilot, for every four cases referred, one will reach mediation (25 percent). If 100 cases are desired, then 400 cases should be referred to mediation.

Mediator Caseload

On the assumption that none of the Mediators for a pilot have had substantial previous experience, co-mediation with the Mentor might be an alternative until Mediators are certified to mediate on their own. It is proposed that the Mentor work with the Mediator during the first five mediations, and that the Assistant Mentor continue with that Mediator for a further five sessions, on average. For purposes of calculation, it is assumed that each Mediator would have one mediation per day for the first 10 sessions and two per day after that.

Accordingly, the Pilot start-up would build gradually with one Mediator the first week, two the second week, and so on, given the Mentor's time limitations. Table A.1 identifies the *maximum* start-up numbers if it is assumed that each Mediator conducts two mediations per day after the first ten sessions. Based on four mediators, they could carry out a maximum of 140 mediations in a six-week period, with an ongoing maximum of 40 per week.

However, based on the experience of the Pilot, the reality may be somewhat different. There may be last-minute cancellations, and parties may not be available to fill every time slot. A more likely assumption would be that about 100 cases would be mediated in the first 6 weeks and 25 to 30 per week after that.

These calculations and assumptions should assist pilot organizers in determining the number of mediators and/or length of the pilot for a given sample size of cases to be mediated. It is recommended that at least four mediators be used, since it is crucial that as many mediators as possible be given experience for future implementation of a larger system (table A.1).

TABLE A.1 Proposed Mediation Schedule for Four Mediators

Week	Cases			
	Mentored by Mentor 1	Mentored by Mentor 2	Unmentored	Total
1	5 by Mediator 1	--	--	5
2	5 by Mediator 2	5 by Mediator 1	--	10
3	5 by Mediator 3	5 by Mediator 2	10 by Mediator 1	20
4	5 by Mediator 4	5 by Mediator 3	20 by Mediators 1 and 2	30
5		5 by Mediator 4	30 by Mediators 1, 2, and 3	35
6	--	--	40 by Mediators 1, 2, 3, and 4	40
7	--	--	And so on and so forth	
10				
Total ^a	20	20	100	140

a. The total figures assume the maximum over a six-week period.

Pilot Parameters

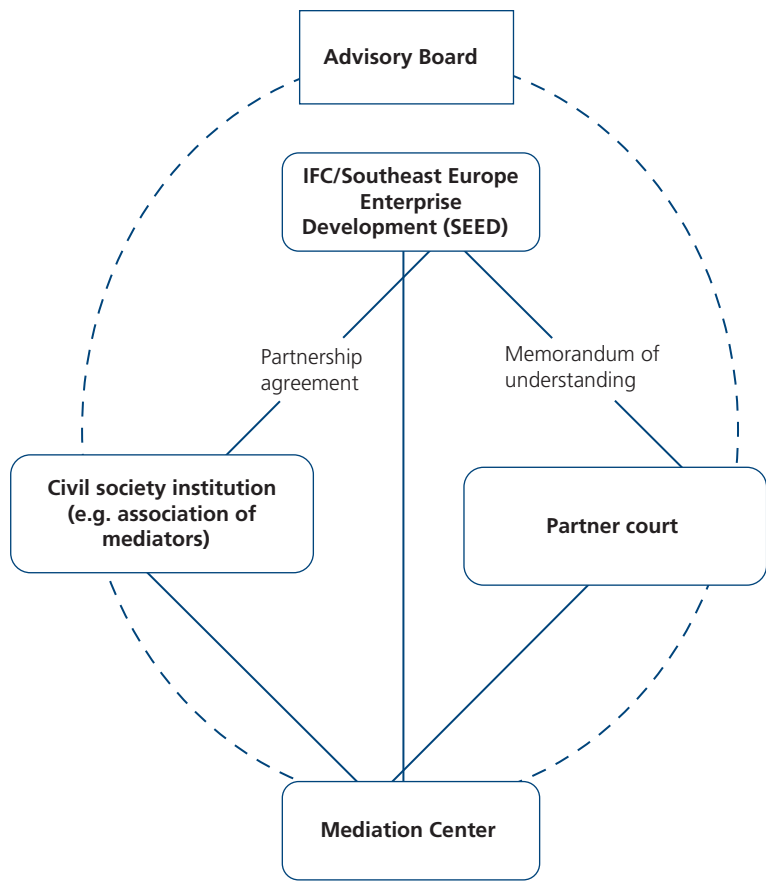
The assumption has been made that approximately 100 cases will be mediated over a six-week period in the pilot. The basis of these assumptions can be scaled up or down for a larger or smaller pilot. The assumption has also been made that no awareness or structures to support mediation exist in the country. If work has already been done to introduce mediation into the courts, the pilot will need to be adapted. Figure A.1 provides an overview and visual context for the relationship among the various bodies that were involved in this particular pilot.

Structure

The structure included the following:

- A Pilot Court
- Advisory Board members
- Four Mediators and four back-up Mediators
- A Mentor and Assistant Mentor
- A Mediation Center Coordinator

FIGURE A.1 Structure for the BiH Pilot Project



- A Mediation Administrator
- A Data Analyst
- A Pilot Project Evaluator.

In tailoring a pilot project to local conditions and realities, the following factors particular to a court-referred model should be noted (in conjunction with the generic principles established in the ADR Manual).

Pilot Court

The selection of the Pilot Court was based on:

- First of all, a strong interest and commitment of the Court President and its judges

- The court size and stature¹
- The size of the case load²
- The availability of a large pool of potential mediators in the vicinity
- The proximity to key people from the judicial system, such as ministry officials
- The number of judges in the court who had already been trained.

Advisory Board Members

The experience of this Pilot and others indicates that taking time to select the right members for the Advisory Board is extremely important. Having the minister or deputy minister of justice, a supreme court judge, or other senior high profile persons on the Board will significantly increase the stature of the pilot, the respect for mediation among the judiciary, and ultimately the success of the pilot. Laying the proper groundwork through briefing sessions, workshops, and training will ultimately pay off in providing a pool of officials from which to select champions.

Mediators and Back-up Mediators

The selection of Mediators was done by the Mentor, based on candidates' ability to mediate, coupled with their interest and availability to become full-time mediators over the longer term.

Based on the experience in Bosnia and Herzegovina, many individuals will likely come forward wanting to become mediators. The Pilot suggests that the initial choice of people for training should include those with industry experience and should *not* be limited to lawyers. A person with strong potential, but without a legal or industry background, may be just as effective a mediator.

In the BiH Pilot, after the best people for mediation training were selected, 80 people were given the basic five-day ADR training (20 per class). The experience of the BiH Pilot suggests that from this group, the 20 most promising candidates should be chosen to take the five-day/40-hour mediation training module. From the group of 20, the best 8 should be chosen to take the three-day "Getting Ready to Mediate" module, of which 4 should be chosen as the pilot mediators, with the other 4 serving as back-up Mediators. This process does not preclude others from the group of 20 or the initial group of 80 from becoming mediators, with further training at a later stage.

1. Choosing an influential court was important to the success of the pilot.

2. A large load, particularly in the commercial department, is preferable.

At the end of the initial pilot period, the best two (or four) Mediators should be provided with more intensive ADR and train-the-trainer training over a period of four to six weeks.³ These more highly trained Mediators, after they gained enough practice and experience, should become the main in-country mediation trainers and advisors to further pilots and/or introduction of an expanded system.

Mentor and Assistant Mentor

The BiH Pilot suggests that the Mediation Mentor needs to be a highly trained and experienced Mediator, who will most likely need to come from another country with a longer history in the use of mediation. In addition to general ADR qualifications, the Mentor needs to have strong credentials in capacity building and project management. Experience in mediation training design and delivery and adult education are important. Fluency in English is a requirement. A legal background would also be an asset.

The Assistant Mentor also needs to be highly qualified. However, the sooner a locally trained mediator has the experience and wherewithal to take over this role, the sooner creating local self-sufficiency can become a reality.

Mediation Center Coordinator

The Coordinator, ideally, should have management experience and be computer literate and fluent in English. Training in mediation is also essential, but could be acquired through the mediator training sessions. Knowledge of institutional development, the justice system, and legal environment would be an asset. While this person may be hired only for the life of the pilot, the Coordinator should be someone who is able to continue on the assumption that the pilot would be extended and that the ADR Center will become self-sustaining once mediation becomes better known and accepted.

Mediation Administrator

The ideal candidate should have a high school education, preferably with administrative or economic specialization, strong people skills, and experience with the courts and be computer literate. Fluency in English would also be an asset.

Data Analyst

The Data Analyst could be a limited, part-time position. The Analyst does not need to be on-location and the functions can be performed just as effectively by e-mail, fax, and phone. The ideal candidate should have experience in working with synthesizing and analyzing data and presenting it in the form of tables and figures.

3. One possibility for such training is the Canadian Institute for Conflict Resolution in Ottawa (www.cicr-icrc.ca).

Pilot Project Evaluator

Given the importance of evaluation in assessing the results of the pilot and recommending corrective measures and next steps, the use of an external Pilot Evaluator is strongly recommended. This person would not be involved in the day-to-day operation of the pilot, but would be able to bring a fresh and more neutral perspective to the evaluation process. The typical responsibilities of the Pilot Project Evaluator would be to provide advice on any modification to the evaluation framework; review and analyze the results of the pilot from all of the data produced; prepare a draft evaluation report at the end of the pilot for review by the Advisory Board and by donors; and prepare a final evaluation report.

Pilot Certification and Registration of Mediators

The BiH Pilot suggests that in countries where only certified and registered mediators are allowed to mediate, the Mentor may have to take official responsibility for the mediation until the Mediator is certified. Once a Mediator-in-Training has completed a sufficient number of mentored sessions (at least five with the Mentor and five with an Assistant Mentor) for the Mentor to feel that the Mediator-in-Training is capable of mediating on his or her own, the Mentor can recommend to the Mediation Accreditation Body that the Mediator-in-Training be certified. The Mentor should assemble copies of all the Mediation Summary Forms (appendix G.1), Mentor Evaluation Forms (appendix G.2), and Mediator-in-Training Self-Evaluation Forms (appendix G.3) completed during the mentored mediations in a file, and write a covering letter to the Mediation Accreditation Body recommending for or against certification.

For situations where, in the opinion of the Mentor, the Mediator-in-Training will not be capable of mediating on his or her own without more than 10 mentored mediations, she/he should send a letter to the Pilot Coordinator recommending that the Mediator-in-Training be replaced by another Mediator-in-Training for the duration of the pilot.

All forms and information pertaining to certification should be marked CONFIDENTIAL and should remain confidential. This will require the Pilot Project Administration and the Mediation Accreditation Body to hold such information in a locked filing cabinet.

The way that certification is “approved” will depend on legal requirements and existence of a Mediation Accreditation Body. In all cases, the certification recommendation process should be the same. Some countries may require the Mediator to be registered and licensed to practice mediation.

Country-specific Factors

The certification process may vary by country. For instance, in Albania, there is no clear certification requirements. For mediators to perform mediation, they must be registered with the Ministry of Justice. In Bosnia and Herzegovina, the Law on Mediation Procedure (2004) contains basic qualification requirements for mediators.

Educational Briefing Sessions

Generally, an educational briefing session is an opportunity to raise awareness of ADR by providing an explanatory workshop/session on the meaning of ADR and its benefits. It is usually presented for relevant stakeholders and role players required for the successful implementation of an ADR program.

The Mediation Administrator should:

- Schedule a series of three to four briefing sessions at the Mediation Center as an optional educational opportunity for parties that have been notified that their case is being considered for mediation. These should be supplemental to what is provided in the pre-trial meeting. They should be scheduled at different times of day and days of week to allow the greatest numbers of people to attend.
- Inform the Court Administrator of the dates and times of the sessions
- Arrange for presenters and other logistical arrangements for the briefings.

Control Group Process

A control group should be assembled to evaluate the effectiveness of the proceedings. The control group should consist of a random sample of parties who were referred to mediation but have declined to participate. The purpose of the control group is to compare what happened at one or more time intervals to those cases that underwent mediation with those that did not, in terms of quality and timeliness of resolution/settlement, and of time required, and costs.

The control group is part of the evaluation process and should not be used until the end of the pilot, and at possible intervals after that. The involvement of individuals in the control group should be limited to participation in a 15-minute telephone survey questionnaire, with a possible follow-up telephone interview at a later time to determine if anything has changed. During the pre-trial meeting, parties who decline mediation (whether at the pre-trial meeting or later) should be asked if they would be willing to be a part of a control group. This information should be recorded on the Court Case Intake Form (appendix E.1).

Of those cases that declined mediation but indicated a willingness to be a part of a control group, a random sample equal to the number of cases being mediated should be chosen by the Mediation Administrator (for example, every second one).

If there is an insufficient number available for the control group, parties who did not want to be a part of the control group could be contacted again to see if they would reconsider. If there is no alternative, the control group can be smaller than the mediation group.

The Mediation Administrator should conduct the phone interviews and fill in the Interview Protocol for the Control Group (appendix H.1) for each respondent and enter the data into the Control Group Survey Summary Form.

The Data Analyst, along with the survey results, will collect and tabulate certain additional information from other sources on all the cases to provide a fuller basis for comparison. Information should include:

- The type of case, as per the pilot categories
- The length of the time taken to deal with the case (pre-court meeting, court hearing, and so on)
- The outcome.

Evaluation, Feedback, and Lessons Learned

To test the Pilot accurately, it is essential to have rigorous and detailed collection and analysis of data on all aspects of the Pilot. The data and its analysis can serve to:

- Measure savings in time and money for the court system
- Measure savings in time, money, and goodwill for the parties
- Identify problems and changes that need to be made to the procedures, institutional frameworks, and/or laws during the course of the pilot and before introducing the full system
- Provide a sound basis for a public awareness campaign.

Accordingly, the pilot should be designed to collect, record, and analyze data and information at every stage of the process, as described below.

At the beginning of the pilot, the Advisory Board should review the objectives and the various elements to be assessed to see if other objectives or data gathering should be included beyond what is described in this manual.

Forms and questionnaires to collect data are described below, as well as elsewhere in this Manual. It is essential that all of these forms be used fully for their

intended purpose. The questionnaires were developed by experienced evaluators, and even though some questions may appear as a close duplication of others, they have been designed that way. In some cases, slightly different data are being sought. In other cases, asking a similar question in a different way provides a means of verifying the results.

An electronic data base program has been developed to facilitate the easy recording and analysis of information from the various forms and from baseline data. An updated Case Management Database (compact disk) with instructions on its use is attached to this Manual and may be made available to the Data Analyst for his/her use.

Ongoing Feedback and Lessons Learned

As data are collected through the various forms and questionnaires, it will be important to periodically tabulate and summarize the results for review. This will be a primary means of identifying potential problems and facilitating quick corrective measures. In the BiH Pilot, the review was conducted by the Management Committee and Advisory Board.⁴

End of Pilot Evaluation

At the end of the pilot, a formal evaluation should be prepared, based on the data collected throughout. The evaluation will be a primary tool for identifying the degree of success of the pilot and recommending what should follow in the form of further pilots and/or implementation of a more comprehensive system. If the pilot is successful, the evaluation will provide a basis for further public awareness initiatives.

A summary of the methodology to be used in the final evaluation follows.

Baseline Data

Data should be collected and recorded on mediation and control group cases, including time and procedures involved by court officials and time spans. The data should be synthesized with the production of tables, figures, and other tools for use in the evaluation.

4. The Management Committee consisted of the IFC/SEED Project Coordinator (Chair), the President of the Pilot Court, the Mediation Mentor and/or Assistant Mediation Mentor, the Mediation Center Coordinator, the Mediation Administrator, and other IFC/SEED staff involved in the Pilot.

Questionnaires

The Mediation Summary Form (appendix G.1) should be used to capture information from both parties and their lawyers, and should be completed after their final mediation session. There are 35 questions, 33 of which are multiple choice, allowing for easy tabulation of the results.

The Trainee Evaluation Form, consisting of 15 questions, is designed to capture information after the three-day pre-mediation training, providing an assessment by the trainers of the potential for the trainee to become an effective mediator. The criteria focus on level of performance during the role plays, commitment, flexibility, and general mediation skills.

The Mentor Evaluation Form (appendix G.2) is designed for the Mentor's ongoing assessment of the Mediator-in-Training after each evaluation. It is also useful in capturing information on the Mediator's skill development. In addition to baseline information and Mentor recommendations, it consists of 10 skill-related questions covering all areas of a Mediator's professional development. It should be filled in after each mediation.

The Mediator-in-Training Self-Evaluation Form (appendix G.3) consists of 11 multiple-choice questions and 1 requiring a written response. While designed for trainees' own learning, the form is useful in providing information for use by the Mentor, on the Mediator's own progress in developing his/her skills. The form is to be completed after each mediation until the Mediator is approved to work on his/her own.

Focus Groups

Ideally, a first focus group should be held mid-pilot, and a second focus group should be held at the end of the pilot. It should involve all Advisory Board members and observers, the participating Mediators, the Data Analyst, and other court and ministry officials. The session should be used to collect impressions of how well the mediation process went, what should be done differently in the next phase or a future pilot, how the mediation process should be integrated into the court system, and implications for a more broadly based system across the country. The focus groups should be facilitated by the Mentor. Detailed notes should be taken, perhaps by the Mediation Administrator.

Individual Interviews

Individual interviews, by phone or in person, should be held at the end of the pilot with the Court President, participating judges, and the senior ministry official involved. Interviews should also be done with anyone invited to but unable to attend

the end-of-project focus group session, and anyone else who can contribute useful observations to the conduct of the pilot. See the Interview Protocol for Key Participants (appendix H.2).

At the end of the pilot, phone interviews should be held with the control group using the Interview Protocol for Control Group (appendix H.1). Aside from information in the case file, this interview will be the primary means of collecting data from members of the control group.

Final Evaluation Report

All of the above data and information should be assembled and synthesized, and tables, figures and other tools should be produced to facilitate analysis. A draft evaluation report should be prepared by the Evaluator, with analysis based on the above information, and should include recommendations for the next pilot phase and future broad-based implementation across the system. The draft should be reviewed by the Advisory Board and a final report should be prepared by the Evaluator.

Post Evaluation Follow Up

To develop a fully effective picture of the longer-term results of mediation, it will be important to assess the extent to which the mediated agreements have been honored and implemented. Accordingly, a post pilot assessment should be done no later than three months after the end of the pilot. (The assessment could be done in conjunction with a second pilot, if the timing is appropriate.) The assessment should consist of phone interviews with a random sampling of at least 30 percent of the cases with mediated agreements, using the Interview Protocol for Fulfilment of Mediation Agreement (appendix H.3). An addendum to the Final Evaluation Reports should be prepared by the Evaluator or Mentor, including a tabulation and assessment of the results.

APPENDIX B

Detailed Case Study: Pakistan

Establishment

In 2005, IFC, the Ministry of Law and Justice of Pakistan, and the High Court of Sindh signed a cooperation agreement launching a pilot project that eventually led to the establishment of the Karachi Center for Dispute Resolution (KCDR) in 2007. The High Court of Sindh and the provincial chief justice played a key role in the establishment of the ADR Center and ensuring the support of the judiciary. Small business and banks supported the project from the beginning; most of the resistance came from the legal community.

KCDR's facilities were set up in close proximity to the courts. When independent parties started approaching KCDR for resolution of their commercial disputes, the High Court rules were amended to provide an adequate enforceability mechanism for settlement agreements of such cases.

KCDR initially relied heavily on court referrals, but now provides mediation for cases that may not be registered with the court. In other words, it accepts both court and private referrals. Initially, KCDR depended on membership fees paid by businesses that benefitted from KCDR's services by obtaining tailored training for their lawyers and accountants, lower prices for mediating cases, and advice on legal aspects of ADR. KCDR is moving toward financial sustainability by developing its revenue streams, which include mediation fees, training fees, and a corporate membership program for the private sector.

In the first six months after launching its membership guild, KCDR brought in 14 new members, which raised the total membership to 20 and generated revenue of up to \$40,900. Currently, KCDR has more than 40 corporate members.

Legal Framework

Pakistan has no “stand-alone” law on mediation. Section 89A of the Civil Procedure Code 1908 contains a clause on case referrals and the enforcement of mediation.

Caseload

Some data on the KCDR's caseload are summarized in table B.1.

Third Party Neutrals

Currently, there are 49 mediators on KCDR's roster. The majority were trained by a service provider from the United Kingdom. All mediators must be accredited by KCDR before they can operate as third party neutrals. KCDR's Director appoints mediators based on their performance, qualifications, and areas of specialization, determined on a case-by-case basis. Some 54 judges have been trained in mediation as part of the project. Judges have used mediation skills in 500 cases within court chambers. Parties may prefer mediation within court because of lower fees. Parties do not have to pay court fees if they settle their dispute through mediation.

Training

During the pilot project, 72 professionals were trained in mediation skills and 49 were accredited by an external training service provider from the United Kingdom. With the help of IFC, KCDR has delivered five training sessions for professionals in the corporate, banking, and legal sectors. KCDR now utilizes local master trainers to

TABLE B.1 KCDR Caseload, February 2007–September 2010

Type of case	Number of cases
<i>Court-referred cases (commercial)</i>	
Referred	1,512
Settled	1,048
Referred but no proceedings commenced	261
Not accepted by KCDR	230
No settlement reached after proceedings	62
Pending	10
<i>Privately referred cases (commercial)</i>	
Referred	136
Settled	106

Source: Karachi Center for Dispute Resolution, www.kcdr.org

deliver in-house training programs at regular intervals. Basic training programs last two days, with advanced training running up to five days.

Awareness Campaigns

The project team used a sectoral approach in awareness raising activities, targeting sectors that have strong potential for mediation. Outreach activities were targeted to the banking sector, where mediation was seen as an attractive method of dispute resolution. Specifically, the project team engaged in dialogue with the State Bank of Pakistan (SPB) and Pakistan Banks Association (PBA).

By involving key industry federations and business associations, the sectoral approach has proven to be successful in attracting larger number of cases. In addition, over 2,500 members of the legal profession and the private sector attended study tours, conferences, seminars, and workshops organized to increase awareness and understanding of mediation.

APPENDIX C

Detailed Case Study: Colombia

Overview

The resolution of commercial disputes through alternative dispute resolution methods is widespread in Colombia.¹ Since 2001, civil and commercial disputes have had to go through a mandatory conciliation process before being filed in court. Conciliation and arbitration account for the two most frequently used ways of resolving disputes outside the court system. The conciliation process in Colombia is very similar to mediation: that is, a neutral third person (the conciliator) facilitates the resolution of the dispute by helping the parties reach a mutually acceptable solution. The main difference is that while the mediator lets the parties drive the process and propose the solutions, the conciliator will actually propose solutions to the parties. However, the conciliator does not have the capacity to impose a settlement.

The Arbitration and Conciliation Center of the Bogota Chamber of Commerce (Bogota Center) was established in 1983 and has been operating continuously for 25 years. The Bogota Chamber of Commerce is a private sector institution and represents a great number of private businesses in Bogota and Colombia.

Legal Framework

The Constitution refers to ADR mechanisms in Article 116. The arbitration process is described in Law 23 (1991) and in the International Arbitration Law 315 (1996). Even before the passage of Law 23, conciliation was a widespread practice—although it was not mandatory. The conciliation process is regulated by Law 640 (2001), although there are conciliation provisions in other legal texts as well, such as the Code of Civil Procedure, Law 23, and Law 446. In addition to these individual laws, Decree 1818 (1998) compiles most of the current rules on conciliation and arbitration.

1. Adapted from a report by Alejandro Alvarez de la Campa (2009), Private Sector Development Specialist, Investment Climate Department, the World Bank Group.

Article 35 of Law 640 establishes that conciliation is mandatory and can occur before a dispute has been lodged in court or afterward. Conciliation Law 640 stipulates that conciliators:

- Must be lawyers
- Should have received training in alternative dispute resolution mechanisms
- Must be registered in an official conciliation center, and
- Must have skills and experience in commercial matters.

The law also regulates who can provide conciliation services in Colombia. An interesting feature of the mandatory conciliation system is that conciliation can be provided free of charge or subject to a fee. Institutions providing conciliation services free of charge are usually public sector institutions, such as municipalities or universities. Conciliation fees at private ADR Centers have been established under Ministerial Decree 4089 of 2007, which sets a ceiling on the fees.

In a system where conciliation may be free, it might be assumed that most parties would choose to utilize a free service at the public sector centers, rather than utilize commercially operated ADR centers. However, the reality is quite different. Although demand for the services of public sector conciliation centers is considerable, the centers tend to conciliate minor commercial cases involving small stakes and individual entrepreneurs or microenterprises and small companies. The more complex commercial cases and disputes between medium and large companies are normally conciliated for a fee in the private sector conciliation centers.

Private sector conciliation centers have been able to attract a great deal of cases by:

- Focusing on providing a more efficient conciliation process
- Providing better quality services to the parties
- Using more skilled conciliators
- Specializing in specific sectors, and
- Keeping fees at acceptable levels.

Case Load

The Bogota Center handled around 300 arbitrations and 7,700 conciliations in 2007. The settlement rate of conciliation cases was 77 percent in 2008. Around 90 percent of the settled cases are enforced by the parties, with the remainder normally ending in a litigation process.

Third Party Neutrals

The Bogota Center maintains lists of arbitrators and conciliators. The list of arbitrators contains 350 arbitrators, divided into senior arbitrators (240) who handle complex cases, and junior arbitrators (110) who handle less complex cases. The conciliators list contains 70 conciliators. The discrepancy in number is due to the fact that more arbitrators are needed because an arbitration is usually handled by an arbitration panel of three or more. An important feature of the lists is their division into sectoral specialties, including telecommunications, finance, construction, and intellectual property rights.

Training

The Bogota Center offers training programs to certify conciliators and arbitrators, as well as specialized training events and seminars. To train conciliators, the Bogota Center offers a 150-hour course, which is more than the required number of hours (120) needed to become a certified mediator.

APPENDIX D

Pro Forma Documents: Model Code of Conduct for Mediators

This Model Code of Ethics is from Conflict Resolution Network Canada. The initiative originally came from three professional groups: the American Arbitration Association, the American Bar Association (Section of Dispute Resolution), and the Society of Professionals in Dispute Resolution.

The standards set out in this Model Code of Ethics for Mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards are intended to apply to all types of mediation. In some cases, their application may be affected by laws or contractual agreements.

Self-Determination

A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

Comments:

The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute.

Parties shall be given the opportunity to consider all proposed options. A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

Impartiality

A Mediator Shall Conduct the Mediation in an Impartial Manner

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and even-handed. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

Comments:

A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.

When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially. A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

Conflicts of Interest

A Mediator Shall Disclose All Actual and Potential Conflicts of Interest Reasonably Known to the Mediator

After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias.

The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances that would raise legitimate questions about the integrity of the mediation process.

Comments:

A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations that maintain rosters of qualified professionals.

Potential conflicts of interest may arise between the administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases.

The mediator's commitment must be to the parties and the process. Pressures from outside of the mediation process should never influence the mediator to coerce parties to settle.

Competence

A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator's gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

Comments:

Mediators should have available for the parties information relevant to their training, education, and experience.

The requirements for appearing on a list of mediators must be made public and available to interested persons.

When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

Confidentiality

A Mediator Shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the

circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

Comments:

The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.

If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.

Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.

Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation, of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.

Quality of the Process

A Mediator Shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

Comments:

A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.

Mediators should accept cases only when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.

The presence or absence of persons at a mediation depends on the agreement of the parties and mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.

The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should therefore refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counselling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other professions.

A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.

A mediator shall withdraw from the mediation or postpone a session if the mediation is being used to further illegal conduct or if a party is unable to participate due to drug or alcohol use, or other physical or mental incapacity.

Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

Advertising and Solicitation

A Mediator Shall Be Truthful in Advertising and Solicitation for Mediation

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

Comments:

It is imperative that communication with the public educate and instill confidence in the process. In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

Fees

A Mediator Shall Fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

Comments:

A mediator who withdraws from a mediation should return any unearned fee to the parties. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.

A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

Obligations to the Mediation Process

Mediators have a Duty to Improve the Practice of Mediation

Comments:

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation, to make mediation accessible to those who would like to use it, to correct abuses, and to improve their professional skills and abilities.

APPENDIX E

Pro Forma Documents: Case Management Forms

Appendix E.1 Court Case Intake Form

JUDGE: _____ (name and surname of the judge)

Number	Name of plaintiff (address, contact, phone)	Name of defendant (address, contact, phone)	Court case number	Type of the case				Dispute value						Date of referral to the court	Outcome		
				Commercial	Labor	Family	Other (list)	<3,000	3,000-15,000	15,000-50,000	50,000-100,000	>100,000	Not applicable		YES (both parties accept)	Plaintiff	Defendant

(continued next page)

Appendix E.1 Court Case Intake Form (continued)

[illegible]

Appendix E.2 Dispute Referral Form

The example that follows is adapted from the template used by a bargaining council in South Africa, the Metal and Engineering Industries Bargaining Council.

1. DETAILS OF PARTY REFERRING THE DISPUTE

First Name(s)

Surname Identity Number

Postal Address:

Postal Code:

Physical Address:

Postal Code:

Tel: Cell:

Fax: e-mail:

Alternate contact details:

Surname: First Names:

Postal Address:

Postal Code

Physical Address:

Postal Code:

Tel: Cell:

Fax: e-mail:

If the referring party is an organization:

Name:

Contact Person (if organization):

Postal Address:

Postal Code:

Physical Address:

Postal Code:

Tel: Cell:

Fax: e-mail:

2. DETAILS OF THE OTHER PARTY (PARTY WITH WHOM YOU'RE IN DISPUTE)

Name:

Contact Person (if organization):

Postal Address:

Postal Code:

Physical Address:

Postal Code:

Tel: Cell:

Fax: e-mail:

3. NATURE OF THE DISPUTE

What is the dispute about?

.....

Summarize the facts of the dispute you are referring:

.....

The dispute arose on:

(give the date, day, month and year)

The dispute arose where:

(give the city/town in which the dispute arose)

4. OUTCOME OF DISPUTE

What outcome do you require?

.....

5. INTERPRETATION SERVICES

Do you require an interpreter for mediation/conciliation/arbitration?

☐ Yes ☐ No

If so, please indicate for what languages:

Language(s)

6. PLACE OF HEARING

All hearings are held in the Center's regional offices. However, would you like this case to be heard in one of the additional two venues listed below, if possible?

City 1 ☐ Yes ☐ No

City 2 ☐ Yes ☐ No

7. CONFIRMATION OF ABOVE DETAILS

Signature of party referring the dispute:

Signed at this day on

Appendix E.3 Notice of Set Down/Confirmation of Mediation Session Form

To be completed by the Mediation Administrator and sent to the parties, their lawyers, and the mediator when the mediation date has been decided.

CONFIRMATION OF MEDIATION SESSION

We wish to confirm that a mediation session in the matter of the dispute between:

Plaintiff: _____ and

Defendant: _____

Will be held at:

(place): _____

(date): _____

(time): _____

It is necessary to bring to the scheduled mediation session all documents relevant to the dispute. The purpose of the mediation is to resolve the dispute. If an agreement is not reached, the case will continue to be pursued through the court.

Please be on time. If for any reason you cannot attend on the above-mentioned date, please contact the Center for Mediation in _____ (city), _____ (telephone no).

Dated at _____ on _____

Mediation Administrator

Appendix E.4 Agreement to Mediate

This is an example of a mediation agreement that the parties complete before mediation.

STANDARD MEDIATION AGREEMENT

BETWEEN

[PARTY A]

AND

[PARTY B]

It is agreed that:

1. The Parties shall endeavour to settle the dispute set out in Schedule 1 (the “Dispute”) by mediation.
2. The Parties shall agree on a mediator within 5 (five) business days.
 - 2.1 If for any reason, the mediator agreed upon by the Parties cannot or does not accept an invitation to mediate, then the Parties may agree on another mediator.
 - 2.2 If the Parties have failed to agree on the mediator within 5 (five) working days, then any Party may ask the Director of Tokiso Dispute Settlement (Pty) Ltd (the “Director”) to submit to each Party an identical list of names of potential mediators. Each of the potential mediators suggested by the Director shall be a Centre for Effective Dispute Resolution (CEDR) accredited mediator (<http://www.cedr.com>)
 - 2.3 Each Party shall have 5 (five) business days from the date upon which that Party receives the list called for in **clause 2.2** to cross off that list any names to which that Party objects, number the remaining names in order of preference, and return the list to the Director. If a Party does not return the list within the time specified, all of the persons named therein shall be deemed acceptable as potential mediators.
 - 2.4 The Director shall then suggest to the Parties in writing the name of the mediator from among the potential mediators who have been approved on both lists, and with regard to the designated order of preference.
 - 2.5 If the Parties fail to agree on the Director’s written suggestion referred to in **clause 2.4**, or if the suggested mediator declines or is unable to act, or if for any reason an appointment cannot be made from the submitted lists, the

Director shall appoint the mediator without the submission of any further lists but with regard to the lists submitted in terms of **clause 2.3**.

3. The mediator shall endeavour to assist the Parties to settle the Dispute by agreement and, unless agreed otherwise, the mediator shall not adjudicate the Dispute, recommend a solution to the Dispute, advise a Party on the merits of the Dispute, or negotiate a settlement of the Dispute on behalf of a Party.
4. The mediator shall have the discretion to conduct the mediation of the Dispute in such manner as the mediator determines.
5. Unless otherwise agreed in writing by the Parties, the mediation shall be administered by the Parties.
6. The Parties shall abide by all decisions of the mediator regarding the administration, process, and conduct of the mediation, which shall be done in a manner that ensures expedition and that is as cost-effective as the nature of the Dispute permits.
7. The mediator may communicate with the Parties orally or in writing, together or individually, and may convene a meeting or meetings at a venue to be determined by the mediator after consulting the Parties.
8. Each Party undertakes to cooperate in good faith with the mediator in the conduct of the mediation of the Dispute.
9. The mediation of the Dispute shall terminate when:
 - 9.1 The mediator receives written notice from a Party stating that such Party withdraws from the mediation, provided that no Party shall withdraw from the mediation without first orally notifying the mediator and giving the mediator a reasonable opportunity to mediate on that Party's continued participation in the mediation;
 - 9.2 The Parties receive written notice from the mediator stating that in the mediator's opinion there is no reasonable prospect of a settlement and therefore the mediator terminates the mediation;
 - 9.3 The Parties conclude a written agreement between themselves in which the Parties set out the terms upon which the Parties settle the Dispute or any part thereof (the "Settlement Agreement"), provided that the Parties and the mediator may agree in writing to continue the mediation in respect of any part of the Dispute that remains unsettled after the conclusion of the Settlement Agreement.
10. In the event that a Settlement Agreement is not reached in the mediation, the Parties' submission of the Dispute to mediation shall not prejudice any of the Parties' rights.

11. In the event the Parties settle the Dispute or any part thereof in a Settlement Agreement, then that Settlement Agreement shall be a final and binding settlement of the Dispute or such part thereof, as applicable.
12. The mediation proceedings shall be conducted on a without prejudice basis.
13. The mediation proceeding shall be confidential, and:
 - 13.1 The mediator may not disclose to any person (other than a Party) any information first obtained during the mediation of the Dispute without the prior written consent of the Parties, unless compelled by law to do so.
 - 13.2 A Party may not disclose to any person (other than the mediator or that Party's professional advisors) any information first obtained from a Party during the mediation of the Dispute without the prior written consent of the Party from whom that information was obtained, unless compelled by law to do so.
 - 13.3 The mediator may not disclose to any person (including a Party) information disclosed by a Party to the mediator, without the prior consent of the Party who disclosed that information to the Mediator.
 - 13.4 The parties will not call the mediator as a witness nor require [him/her] to produce in evidence any record or notes relating to the mediation in any litigation, arbitration, or other formal process arising from or in connection with the dispute and the mediation nor will the mediator act or agree to act as a witness, expert, arbitrator, or consultant in any such process.
14. Nothing in this agreement shall prevent a Party from placing on record after the mediation any information that is substantially similar to information disclosed by that Party during the mediation, provided that Party does not state or imply that such information was stated or disclosed during the mediation.
15. The Parties shall pay the mediator's fee and the agreed administration costs in the following proportions:
 - 15.1 [Party A] [Insert]%; and
 - 15.2 [Party B] [Insert]%.

The place of the mediation shall be Sandton, South Africa.

The law governing the mediation shall be the law of South Africa.

Signatures

Signed at _____ on _____

For _____

Signed at _____ on _____

For _____

SCHEDULE 1

To the Mediation Agreement

DEFINITION OF THE DISPUTE

[Note: This schedule should contain a description of the dispute that is submitted to mediation.]

Appendix E.5 Referral to Court Form

This form should be completed by the Mediation Administrator within three days after the mediation, and submitted to the court.

With regard to the complaint:

Of the Plaintiff _____

Against the Defendant _____

Referred to mediation on _____ (date) _____

You are informed that:

☐ A mediation was held on _____ (date) _____ and the parties reached a mutually acceptable agreement on the relevant issues.

☐ A mediation was held _____ (date) _____ and the parties reached a mutually acceptable agreement on the following issues and with regard to the rest, the case reverts to legal procedure. _____

☐ ☐ A mediation was held on _____ (date) _____ and the parties failed to reach an agreement.

☐ The parties agreed to mediate their dispute, but one or more of the parties failed to appear at the hearing date.

☐ One or more parties refused to participate in a mediation session (reasons).

☐ One or more of the parties could not be contacted.

Place and date _____

Signature of Mediation Administrator _____

APPENDIX F

Pro Forma Documents: Examples of Arbitration Clauses

Sample Arbitration-only Clause

All disputes arising out of or in connection with the current contract shall be finally settled under the Rules of Arbitration of the [specific Center] by one or more arbitrators appointed in accordance with the [specific Center] Rules.

Sample ADR Arbitration Clause (International Chamber of Commerce, ICC)

“In the event of any dispute arising out of or in connection with the present contract, the parties agree to submit the matter to settlement proceedings under the ICC ADR Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.”

Sample Mediation-Arbitration Clause (Chartered Institute of Arbitrators)

“Any dispute arising out of or in connection with this contract shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may

apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a mediator.

Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty eight days thereof, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators, or any amendments thereof, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales.”

APPENDIX G

Pro Forma Documents: Monitoring and Evaluation Forms

Appendix G.1 Mediation Summary Form

Mediator to Complete: _____ Commercial _____ Non-commercial

This form is to be completed by the parties and their lawyers immediately after the last mediation session. Complete form by checking one statement (a) (b) (c) (d) or (e) under each numbered question, and/or fill in the blank.

Section 1 Background

1. When was the complaint first filed?
 - a) Less than a year ago
 - b) 2–3 years ago
 - c) 3–5 years ago
 - d) Over 5 years ago

2. Which of the following best describes your role in the mediation?
 - a) Plaintiff
 - b) Defendant
 - c) Representative for plaintiff
 - d) Representative for defendant
 - e) Other (please specify) _____

3. What is the dispute about?
 - a) Commercial
 - b) Labor
 - c) Family
 - d) Other (please specify) _____

4. Dispute value (US dollars)
 - a) <3,000
 - b) 3,000–15,000
 - c) 15,000–50,000
 - d) 50,000–100,000
 - e) >100,000
 - f) Not applicable
5. Did you attend a briefing session regarding the mediation process, its goals, and benefits?
 - a) Yes
 - b) No

Section 2 Mediation Process

1. In your opinion, was the mediation process an appropriate way to resolve your dispute?
 - a) Very appropriate
 - b) Somewhat appropriate
 - c) Neither appropriate nor inappropriate
 - d) Somewhat inappropriate
 - e) Very inappropriate
2. Based in the information, meetings or material provided by the mediation program, did you feel ready for mediation?
 - a) Yes
 - b) No
3. To what extent did the Agreement to Mediate give you more confidence in the process?
 - a) Very confident
 - b) Quite confident
 - c) Average confidence
 - d) A little confident
 - e) No confidence
4. How satisfied were you with the opportunity you had to present information and your point of view of the dispute?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied

- d) Somewhat dissatisfied
 - e) Very dissatisfied
5. How satisfied were you with how well you understood what was going on during the mediation?
- a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - c) Very dissatisfied
6. How satisfied were you with the mediation process?
- a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied
7. How satisfied were you with the amount of time spent in mediation?
- a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

Section 3 Mediator Assessment

1. During the introductory statement, how effective was the Mediator(s) in explaining the process?
- a) Very effective
 - b) Somewhat effective
 - c) Neither effective nor ineffective
 - d) Somewhat ineffective
 - e) Very ineffective
2. How effective was the Mediator(s) in clarifying the key issues and interests?
- a) Very effective
 - b) Somewhat effective
 - c) Neither effective nor ineffective
 - d) Somewhat ineffective
 - e) Very ineffective

3. In your opinion, how effective was the Mediator(s) in hearing your concerns and/or issues?
 - a) Very effective
 - b) Somewhat effective
 - c) Neither effective nor ineffective
 - d) Somewhat ineffective
 - e) Very ineffective
4. How satisfied were you with the Mediator's performance?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied
5. There was no pressure from the Mediator to settle the dispute during the mediation.
 - a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree
 - d) Somewhat disagree
 - e) Strongly disagree
6. Mediator(s) treated all parties equally.
 - a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree
 - d) Somewhat disagree
 - e) Strongly disagree
7. Mediator(s) helped create realistic options for settling the dispute.
 - a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree
 - d) Somewhat disagree
 - e) Strongly disagree
8. Mediator(s) understood the issues involved.
 - a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree
 - d) Somewhat disagree
 - e) Strongly disagree

Section 4 Mediation Outcome

1. Did the mediation resolve this dispute?
 - a) Yes, completely
 - b) Yes, partially
 - c) No (if no, skip question 4)

2. How would you rate the overall outcome of the mediation?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

3. How satisfied are you with the outcome of the mediation compared with what you expected before the mediation.
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

4. How satisfied are you with the degree of control you had over the outcome of the mediation.
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

5. How did mediation change your opinion of the other party?
 - a) Very positively
 - b) Positively
 - c) Neither positively nor negatively
 - d) Negatively
 - e) Very negatively

6. If an agreement was reached, do you consider it to be:
 - a) Very fair
 - b) Fair
 - c) Neither fair nor unfair
 - d) Unfair
 - e) Very unfair

7. Did you feel you saved time by using mediation instead of litigation?
- a) Yes
 - b) No
8. If yes, please chose one of the following options:
- a) Minimum amount
 - b) Moderate amount
 - c) Substantial amount
9. Did you feel you saved money by using mediation instead of litigation?
- a) Yes
 - b) No
10. If yes, please chose one of the following options:
- a) Minimum amount
 - d) Moderate amount
 - c) Substantial amount
11. Would you use mediation again?
- a) Yes
 - b) No
12. Would you recommend mediation to others?
- a) Yes
 - b) No

Please explain _____

13. Would you be willing to pay for mediation in the future?
- a) Yes
 - b) No

If yes, how much would that be:

In country currency _____

- c) I don't know.

Section 5 Anecdotal Data

1. What could be done to improve the mediation process? Feel free to use the back of this form, if necessary.
2. We would appreciate any additional comments. Feel free to use the back of this form, if necessary.

Appendix G.2 Mentor Evaluation Form

Instructions: A copy of this completed form should be given to and discussed with the Mediator-in-Training shortly after the mediation. The original should be held in the Mediator-in-Training's file, with the file and recommendations concerning certification being forwarded to the Association of Mediators no later than two days from the date of the last mediation session.

Section 1 Background Information *Please type or print.*

Name of Mediator-in-Training: _____

Name of Mentor: _____

Section 2 Mediation Information

Date(s) of mediation: _____

Nature of case: _____

Length of mediation: _____

Which mediation case is this for the Mediator-in-Training?

(Circle) 1 2 3 4 5 6 7 8 other

Section 3 Mediator-in-Training Skills

Please use the following rating scale to determine an overall rating under each category. Below each heading are listed several factors to consider in making the rating. Under the "Comments" section, discuss specifically those areas needing improvement.

5 – excellent

3 – satisfactory

1 – unacceptable

4 – highly competent

2 – needs improvement

NA - not applicable

Overall Rating

A. Introduction

- ~ Provided welcome and opening comments
- ~ Explained mediation process
- ~ Clarified role of participants
- ~ Established ground rules
- ~ Discussed the Agreement to Mediate
- ~ Appeared sensitive to clients' physical and emotional comfort

NA 1 2 3 4 5

Comments: _____

B. Information Sharing

- ~ Engaged participation of clients
- ~ Understood issues and empathized with feelings
- ~ Accurately and briefly summarized information and concerns
- ~ Balanced time and focus between clients

NA 1 2 3 4 5

Comments: _____

C. Issue Clarification

- ~ Asked appropriate questions
- ~ Identified interests, intentions, differences, limitations, and underlying problems
- ~ Identified common ground
- ~ Reframed statements and issues

NA 1 2 3 4 5

Comments: _____

Comments: _____

F. Personal Qualities

- ~ Appropriate dress and appearance
- ~ Developed rapport and trust, and conveyed a positive outlook
- ~ Appeared confident and in control of emotions NA 1 2 3 4 5

Comments: _____

G. Professional Qualities

- ~ Allowed adequate planning and preparation time
- ~ Possessed adequate knowledge of issues
- ~ Maintained neutrality, impartiality, and objectivity
- ~ Avoided giving advice, pressure, and judgment
- ~ Demonstrated respect for different values and lifestyles
- ~ Provided appropriate information and referral NA 1 2 3 4 5

Comments: _____

Overall Rating**H. Communication Skills**

- ~ Posture, gestures, and eye contact
- ~ Use of voice, tone, volume, and clarity
- ~ Verbal content and timing
- ~ Listening styles and other intuitive abilities
- ~ Paraphrasing and reframing skills NA 1 2 3 4 5

Comments: _____

I. Special Techniques and Skills

- ~ Demonstrated appropriate use of caucus
- ~ Overcame impasses, resistance, or difficult behavior
- ~ Dealt with power imbalance or control issues
- ~ Handled intense emotions or difficult agendas
- ~ Displayed flexibility and used creative strategies effectively NA 1 2 3 4 5

Comments: _____

J. Overall Assessment

- ~ Demonstrated mastery of mediation process
- ~ Demonstrated an awareness of ethical issues
- ~ Engaged in ongoing assessment of appropriateness of case for mediation
- ~ Demonstrated appropriate level of skill, competence, and effectiveness
- ~ Demonstrated ability to work with co-mediator and clients NA 1 2 3 4 5

Comments: _____

Section 4 Mentor Recommendations

1. Have you worked with this Mediator-in-Training before? Yes _____ No: _____
2. If yes, what improvements do you note and where do you see room for continued improvement? If no, where do you see room for improvement? _____

3. Based on your co-mediation with the Mediator-in-Training, do you recommend that this trainee be certified after completion of all required training and co-mediations? *(This section is to be filled in only on the last mentored session or once the Mediator-in-Training is ready.)*

4. If you answered “No” to the above-mentioned question, what suggestions do you have for the Mediator-in-Training (e.g. additional training, additional experience mediating certain issues)?

Signature of Mentor

Date

Appendix G.3 Mediator-in-Training Self-Evaluation Form

To be completed by the Mediator-in-Training after each mediation and submitted to the Mentor.

Mediator: _____ Mentor: _____

Case number: _____

Mediation date: _____

Please rate your performance on the following by choosing:

1	2	3	4	5
Unsatisfactory	Adequate	Good	Very good	Excellent
1. Explained the mediation process and procedures clearly:	1	2	3	4 5
2. Was effective in information sharing:	1	2	3	4 5
3. Was a good listener:	1	2	3	4 5
4. Allowed parties to talk about issues important to them:	1	2	3	4 5
5. Was respectful:	1	2	3	4 5
6. Helped clarify issues:	1	2	3	4 5
7. Encouraged parties to come up with their own solutions:	1	2	3	4 5
8. Informed parties that they could consult an attorney:	1	2	3	4 5
9. Acted neutral:	1	2	3	4 5
10. Wrote a clear agreement:	1	2	3	4 5
11. In general, conducted this mediation well:	1	2	3	4 5
12. Please share your comments on the mediation process:				

APPENDIX H

Pro Forma Documents: Pilot Project Forms

Appendix H.1 Interview Protocol for Control Group

Instructions

The purpose of the control group is to compare the status of resolution of disputes of those who chose mediation with those who were invited to mediation but refused, at a specific point in time, generally two weeks before the end of the pilot project.

The size of the control group should ideally be the same size as the number of mediations held. If the control group is too large to interview everyone, a sample of at least 30 percent should be chosen randomly (e.g. every third person). Only one party per case needs to be interviewed. The interviewee must be one of the parties who refused mediation.

The interviews can be held by phone. Hopefully the control group participants have already given their consent to be interviewed at the time of the initial meeting with the judge. Since they have no obligation to participate in the interview, and may even have some hostility toward the idea of mediation, it is extremely important to be courteous and considerate. When placing a call, always ask if the time is convenient for them. If not, schedule a more convenient time to call back. It is also useful to inform them that the call will be no longer than five minutes.

When you call them, you will already have information on the type of dispute, its value, and whether the other party also refused mediation. Even though you may also know why they refused mediation, it is important to ask it again.

Interview Questions

1. Has your case been resolved by the court since you were first invited to consider using mediation? Yes _____ No _____

2. If your case was resolved:
 - a) How long after the invitation to mediate was it resolved?
 - b) How was it resolved? _____ in court? _____ outside court?
 - c) How satisfied were you with the result on scale of 1 (very satisfied) to 5 (unsatisfied)?

3. What are the reasons you did not accept mediation?
 - a) Did not know enough about mediation
 - b) Have no trust in mediation
 - c) Mediation is not legally regulated
 - d) Other reasons

4. If mediation was offered to you now for the same dispute, would you accept it?
 - a) Yes
 - b) No
 - c) Not sure

5. If the answer was “Yes” for the previous question, could you please tell me why you have changed your opinion?
 - a) I have learned about some positive results of other mediations.
 - b) I realize that I would not have lost if I had tried mediation.
 - c) Other reasons.

Appendix H.2 Interview Protocol for Key Participants

Instructions

As part of the final evaluation of the Pilot Project, individual interviews should be held with most or all of the key participants in the Pilot, including the Court President, court judges, ministry officials, industry association officials, and Mediators.

The individual interviews are important whether or not the officials participated in a focus group session. Different types of information will come out during a one-on-one discussion that may not be brought up in a focus group. However, it is particularly important to interview those who did not attend a focus group.

As the interview will likely take 30 to 45 minutes, it is much better if it is a face-to-face interview rather than being done by phone. The interview time and place should be arranged ahead of time.

Notes should be taken on all the key points raised; these should be included in a list of key points to be compiled from all the interviews. Those being interviewed should be told that what they say will be treated as confidential.

Some of the questions below may need to be modified or eliminated depending on the position of person being interviewed and his or her role in the Pilot.

Interview Questions

General

1. How did you first hear about mediation?
2. How and to what extent were you involved in the Pilot Project?
3. To what extent and how would you be willing to participating in an extension of the Pilot Project?
4. How satisfied were you with the overall results of the Pilot Project?
5. To what extent and how do you think that mediation can improve the efficiency of the court system?
6. To what extent and how do you think that businesses can benefit from mediation?
7. What do you feel are the major concerns about the process of mediation?

8. How can these concerns be addressed and how can the structure of the mediation process be improved?
9. What, in your opinion, are the major challenges or barriers to extending mediation to other courts or to a country-wide system?
10. How could such challenges or barriers be addressed?
11. Do you have any suggestions about how the Southeast Europe Enterprise Development (SEED) could improve its services in the future?

Additional Questions for Judges

12. Did you volunteer to participate in this program within your court?
13. To what extent were you satisfied with your personal involvement in the Pilot Project?
14. Apart from your role in selecting cases for mediation, would you like to mediate independently?
15. To what extent were you satisfied with the process of selection of cases?
16. How would you describe your role as a judge in selecting cases?
17. Have you been trained sufficiently to select the most appropriate cases for mediation?
18. If not, would you be willing to undergo additional training?
19. To what extent were you satisfied with administrative support and logistics organized to facilitate the mediation pilot project within the court?
20. To what extent were you satisfied with cooperation of the Mediation Center?

Appendix H.3 Interview Protocol for Fulfillment of Mediation Agreement

Instructions

In order to assess the extent to which agreements signed as a result of successful mediations have been fulfilled, interviews with one of the parties to each mediation should be held. Ideally this would take place approximately three months after the agreements are signed.

Interviews conducted by phone would be most efficient. At the time of signing the Agreement, the Mediator should have obtained the consent of the parties to this interview. When placing a call, always ask if the time is convenient for them. If not, schedule a more convenient time to call back. It is also useful to inform them that the call will be no longer than 10 to 15 minutes.

When you call them, you should already have information on the type of dispute (i.e. whether it is commercial, labor, family, or other).

Interview Questions

1. Confirm the type of dispute that was resolved (i.e. was it commercial, labor, family or other)?
2. Was the Mediation Agreement converted into a court settlement?
3. If it was converted into a court settlement, how soon after signing the Mediation Agreement did this happen?
4. If it was not converted into a court settlement, why was it not?
5. Were the obligations identified in the Mediation Agreement fulfilled?
 - a) Yes?
 - b) No?
 - c) Partially?
6. If the obligations were fulfilled, were they done so:
 - a) Voluntarily?
 - b) In a compulsory manner?
 - c) Within what timeframe after signing the Mediation Agreement?
 - d) With some unanticipated delay?

7. If the obligations were not fulfilled, what were the reasons?
8. Did you request a compulsory fulfillment of the Mediation Agreement?
9. If the Mediation Agreement was only partially fulfilled, why was this the case?
10. While not part of the interview, if neither party could be contacted for the interview or if the parties refused to be interviewed, this information should be recorded.

APPENDIX I

Database Management System User Manual

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Notice of Confidentiality

Some data entered in this database may be confidential. To avoid problems with the use of confidential data, database users should refer to the ADR Center's rules for arbitration and/or mediation/conciliation, as well as the parties' agreement regarding confidentiality issues.

Installation Manual

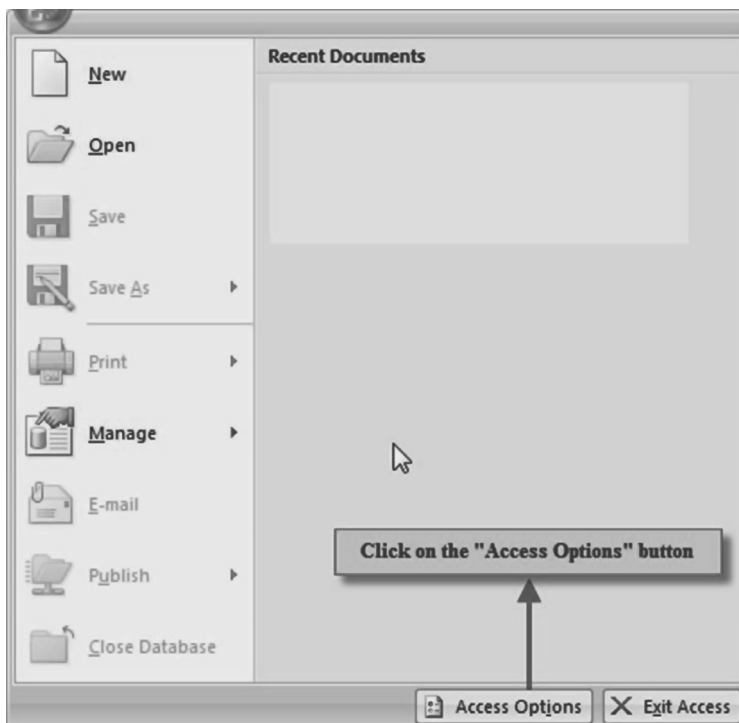
Software Requirements: Microsoft Office Access 2007

1 Microsoft Access Configuration

- Open <<**Microsoft Office Access 2007**>>.
- Click on the <<**Office button**>> (button found in the upper left corner).

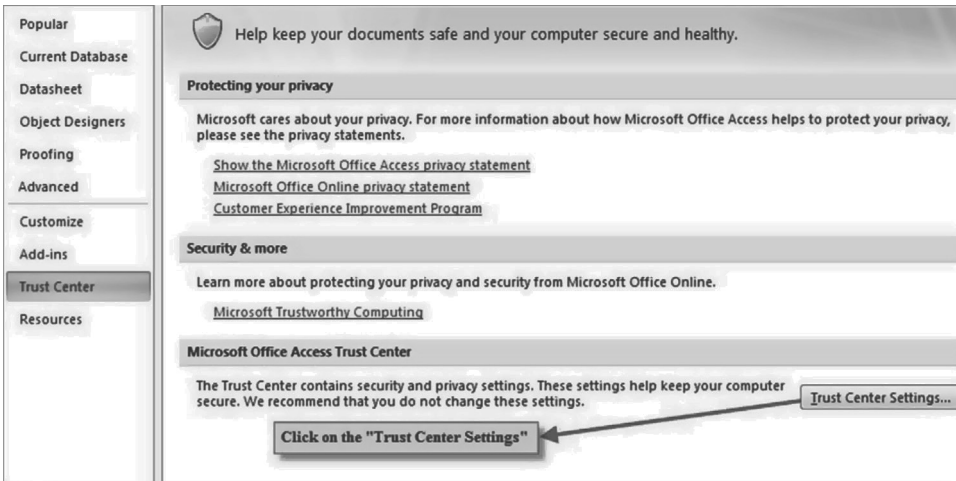


- A menu list will appear. Choose <<**Access Options**>> (found in the bottom right corner of the menu list).

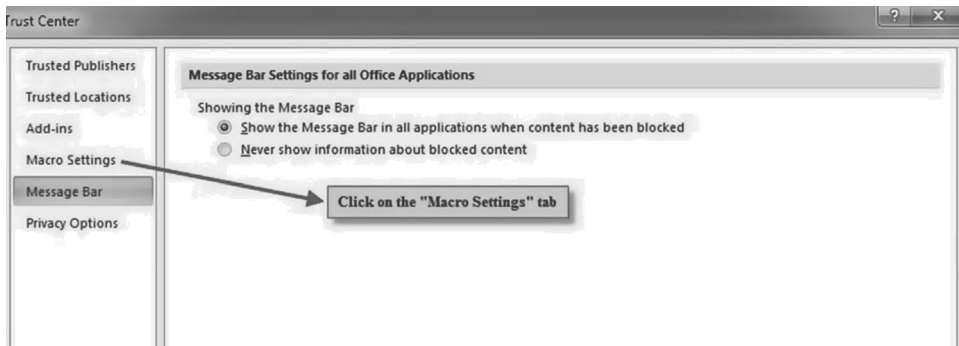


A small window with a list of options on the left side (option tabs) will appear. Click on the <<**Trust Center**>> tab.

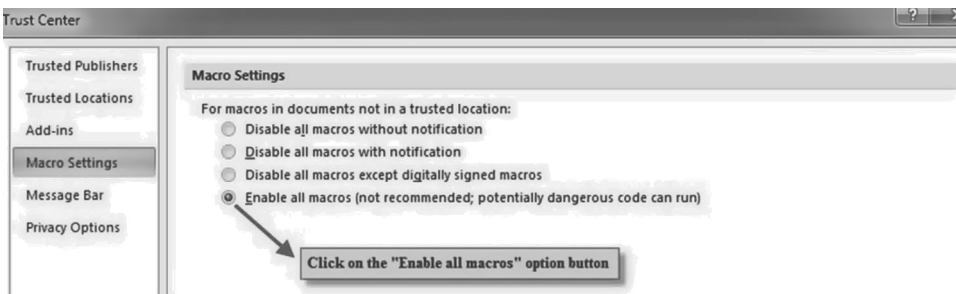
- On the right side, the content will change and a button called <<**Trust Center Settings**>> will appear. Click on this button.



- The Trust center window should be open. On the left side, a <<**Macro Settings**>> (option tab) will be visible. Click on this tab.



- On the right, the content will change and a few macro settings will be visible. Choose the setting <<**Enable all macros**>> and then click <<**OK**>>.



- Click <<**OK**>> on all other windows and close <<**Microsoft Office Access 2007**>>.

2 Installation Steps

- Copy the file <<**Case Management.rar**>> to your local disk (put it on your desktop or on some other location).
- Unzip the copied file using winzip or winrar (move the mouse over the file and right click; the option list should appear; choose <<**Extract here**>>).
- After the extraction is completed, a new folder called <<**Case Management**>> will be visible. Click on this folder and find the folder <<**Clean Installation**>>. Copy the named folder to your desired location (server or your local disk).
- Rename the folder to suit your needs.
- Open the folder and click on the file <<**Case Management.accdb**>>.
- Installation has started at this moment. The first thing that should appear is a message that states <<**application linked successfully to your database**>>. Then a small window with text inputs will be opened.
- Populate the <<**Mediation/Arbitration Center**>> window fields and then click the <<**OK**>> button (all the fields are mandatory and an application malfunction will occur if the fields are not populated).
- The application will close, meaning that the installation has been completed successfully.
- Re-open the application by clicking the <<**Case Management.accdb**>> file.
- Authenticate using **Administrator/password** credentials. Please change the administrator password and configure database clients with the right privileges (details will be provided in the <<New/Update User>> section).
- The **Case Management** database is now available for use.
- **Important note:** Only one user can be connected to server copy of the database at a time. Other users can create local server replica and use that replica for their reporting. Every database change made on the local replica will not be reflected on the server database copy.

3 New/Update User



The screenshot shows a web application window titled "User Accounts" with a close button (X) in the top right corner. The main heading inside the window is "User Accounts - Administration". Below the heading, there are four input fields with labels: "ID:" with the value "6", "Username:" with the value "Administrator", "Password:" with masked characters "*****", and "Authorization level:" with a dropdown menu showing "Database administration". At the bottom of the window, there is a navigation bar containing the text "Navigation", a set of arrows, "1 of 3", a filter icon, "No Filter", and a "Search" button.

Choose the <<**New/Edit User**>> action from the <<**Home**>> tab. The form window pictured above will appear. This is a user management console that provides options for adding new users and updating data for existing database users.

Use arrows in the bottom left corner to navigate through the user list or open a blank user page.

The important thing to notice is the **Authorization Level**. This database supports three Authorization Levels: **Database administration**, **Case management**, and **Report management**.

Authorization level	Access rights	Examples of ADR Center staff with this authorization level ^a
Database administration	<ul style="list-style-type: none">• Replicate database• Link database• Add new users• Delete users• Insert data• Edit data• Delete data	<ul style="list-style-type: none">• Case Registrar• Case Administrator
Case management	<ul style="list-style-type: none">• Insert data• Edit data (but not delete)	<ul style="list-style-type: none">• Center Coordinator/ Director• Data Analyst
Report management	<ul style="list-style-type: none">• Read-only	<ul style="list-style-type: none">• Other ADR Center staff who may need access to data <u>for reporting purposes only</u>

a. Please note that the number and categories of staff using the database will depend on the organizational structure of the ADR Center. One person (usually the Case Administrator) should be assigned primary responsibility for maintaining the accuracy and integrity of the data contained within the database. (See the ADR Center Manual for an overview of the organizational structure of an ADR Center and the roles and responsibilities of positions within each staff category.)

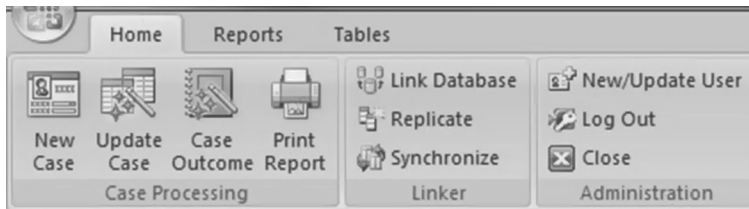
User Manual

1 Supported Functionalities

Important note: ADR Centers can customize drop-down menus by adding additional categories/indicators based on their specific monitoring and evaluation objectives. This can be done using the <<**Tables**>> section.

a. Tab – Home

Under <<**Home**>>, the following functionalities can be found:



Case Processing

- **Case Processing/New Case** – Add a new case to the database.
- **Case Processing/Update Case** – Update an existing case.
- **Case Processing/Case Outcome** – View/Update the case outcome of an existing case.
- **Case Processing/Print Report** – Print a report that is opened in <<**Print Preview**>> mode.

Linker

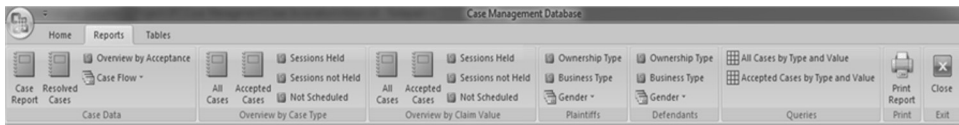
- **Linker/Link Database** – Link the application file to the database file. The application file can be linked to a server or local database replica.¹ Details on creating a local database replica will be explained in the following sections.
- **Linker/Replicate** – Replicate the server database file to your local disk. Any change made on the local database replica will not be reflected on the server database replica.
- **Linker/Synchronize** – Align the local database replica with the server database.

Administration

- **Administration/New User** – Add a new user to your database.
- **Administration/Change User** – Log in with a different user.
- **Administration/Close** – Close the application.

1. A local replica of the database is a copy of the database placed locally on a computer and accessible without a network.

b. Tab – Reports



The case management database application supports three reporting modules: the **Arbitration Module**, the **Mediation Module**, and the **Combined (Arbitration and Mediation) Module**.

Note: The information in the Reports tab covers all the cases received by the Center.

Under the Reports tab, the following functionalities can be found:

Case Data

- **Case Data/Case Report** – Generates a statistical/summary report on a selected case.
- **Case Data/Resolved Cases** – Generates a statistical/summary report on the number of cases resolved by the Center.
- **Case Data/Overview by Case Flow** – Generates a statistical/summary report on case flow.
- **Case Data/Overview by Acceptance** – Generates a statistical/summary report on the number of cases accepted by the Center.
- **Case Data/Overview by Facilitators** – Generates a statistical/summary report on the facilitators and the types of disputes they have been involved in (loan default/insolvency, other commercial, family, labor, other, unknown).

Overview

- **Overview by Case Type/All Cases** – Generates a statistical/summary report on the number of cases received by the Center.
- **Overview by Case Type/Accepted Cases** – Generates a statistical/summary report on the cases accepted by the Center by the type of dispute (loan default/insolvency, other commercial, family, labor, other, unknown).
- **Overview by Case Type/Sessions Held** – Generates a statistical/summary report on the sessions held in different types of disputes (loan default/insolvency, other commercial, family, labor, other, unknown).
- **Overview by Case Type/Sessions not Held** – Generates a statistical/summary report on the sessions not held in different types of disputes (loan default/insolvency, other commercial, family, labor, other, unknown).

- **Overview by Case Type/Not Scheduled** – Generates a statistical/summary on the sessions not scheduled in different types of disputes (loan default/insolvency, other commercial, family, labor, other, unknown).
- **Overview by Claim Value/All Cases** – Generates a statistical/summary report on the value of claims in cases received by the Center.
- **Overview by Claim Value/Accepted Cases** – Generates a statistical/summary report on the value of claims in cases accepted by the Center.
- **Overview by Claim Value/Sessions Held** – Generates a statistical/summary report on the value of claims in cases where sessions were held.
- **Overview by Claim Value/Sessions Not Held** – Generates a statistical/summary report on the value of claims in cases where sessions were not held.
- **Overview by Claim Value/Not Scheduled** – Generates a statistical/summary report on the value of claims in cases where sessions were not scheduled.

Plaintiff(s)

- **Plaintiffs/Ownership Type** – Generates a statistical/summary report on the ownership type or legal form of the Plaintiff(s).
- **Plaintiffs/Sector/Industry** – Generates a statistical/summary report on the sectors/industries to which the Plaintiff(s) business can be attributed.
- **Plaintiffs/Overview by Individual Party Gender** – Generates a statistical/summary report on the individual party gender of the Plaintiff(s).
- **Plaintiffs/Business Type** – Generates a statistical/summary report on the sectors/industries to which the Plaintiff(s) business can be attributed.
- **Plaintiffs/Overview by Ownership Gender** – Generates a statistical/summary report on the gender of the owners of Plaintiff(s) business.
- **Plaintiffs/Overview by Management (CEO) Gender** – Generates a statistical/summary report on the gender of the management/CEO of Plaintiff(s) business.
- **Plaintiffs/Individual Party Gender by Claim Value** – Generates a statistical/summary report on the individual party gender of the Plaintiff(s) by claim value.

Defendant(s)

- **Defendants/Ownership Type** – Generates a statistical/summary report on the ownership type or legal form of the Defendant(s).
- **Defendants/Sector/Industry** – Generates a statistical/summary report on the sectors/industries to which the Defendant(s) business can be attributed.

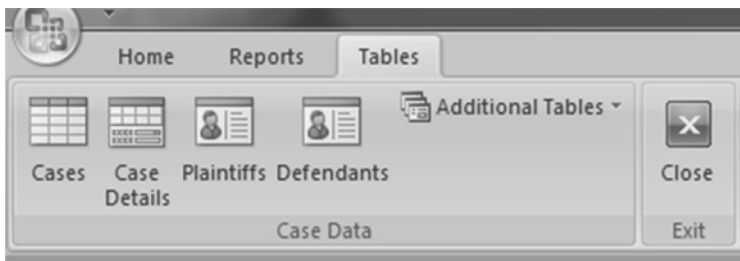
- **Defendants/Overview by Individual Party Gender** – Generates a statistical/summary report on the individual party gender of the Defendant(s).
- **Defendants/Overview by Ownership Gender** – Generates a statistical/summary report on the gender of the owners of Defendant(s) business.
- **Defendants/Overview by Management (CEO) Gender** – Generates a statistical/summary report on the gender of the management/CEO of Defendant(s) business.
- **Defendants/Ownership Gender by Claim Value** – Generates a statistical/summary report on the gender of the owners of Defendant(s) business by claim value.
- **Defendants/Management (CEO) Gender by Claim Value** – Generates a statistical/summary report on the gender of the management/CEO of Defendant(s) business by claim value.

Queries

- **Queries/All Cases by Type and Value** – Generates a statistical/summary report on the value of the claims and the types of disputes (loan default/insolvency, other commercial, family, labor, other, unknown) of cases received by the Center.
- **Queries/Accepted Cases by Type and Value** – Generates a statistical/summary report on the claim value and the types of disputes (loan default/insolvency, other commercial, family, labor, other, unknown) of cases accepted by the Center.

Print and Exit

- **Print/Print Report** – Prints the report opened in the <<**Print Preview**>> mode.
- **Exit/Close** – Closes the database.



c. Tab – Tables

This tab enables users to access sheets with case, plaintiff, and defendant data, which can be sorted and printed. Under the Tables tab, the following functionalities can be found:

- **Case Data/Cases**
- **Case Data/Case Details**
- **Case Data/Plaintiffs**
- **Case Data/Defendants**
- **Case Data/Additional Tables** (*details can be found in the <<Database Overview>> section*)
- **Exit/Close**

2 New Case

Under tab <<**Home**>>, choose <<**new case**>>. Then choose the database mode: either Arbitration or Mediation. The form below will appear.

a. Page – Case Data

Case Management - New Case

Case Management

Case ID: [New]

Case Data | Plaintiff Data | Defendant Data | Case Flow | Resolution | Summary

Case type: UNKNOWN

Comment (Other):

Claim value (US \$):

Comment (Other):

Case acceptance: UNKNOWN

Comment (Other):

Case received date:

Case closed date:

Court case ID:

Potential Litigation Cost (%):

Note: Potential Litigation Cost is calculated comparing Litigation Cost value (US \$) to Claim value. It is a percentage of Claim value.

ADR - Mediation fee:

ADR - Counsel / Attorney fee (US \$):

ADR - Administration fee (US \$):

Resolved - No sessions: UNKNOWN

Session Acceptance | Session Notification | Settlement Agreement | Notification to Court | Case Invoice | Case Summary | Print Case Report

Note: Image covers mediation module.

- **Case ID** – A unique number automatically assigned to each case referred to the Center.
- **Case Type** – The type (or the subject matter) of a dispute (loan default/insolvency, other commercial, family, labor, other, unknown).
- **Claim Value** – The value of the Plaintiff(s)' claim if the claim was/would be filed in a court.
- **Case Acceptance** – Choose one of the options from the drop-down menu to indicate whether Plaintiff(s) and Defendant(s) agree to continue with mediation (if mediation module is used) or arbitration (if arbitration module is used) upon the referral of a case to the Center. It is also possible to insert comments below the named field.
- **Case Received Date** – Date when the Center received a request for mediation (if using mediation module) or arbitration (if using arbitration module).
- **Case Closed Date (populate on case closure)** – Date when the Center closed the case.
- **Court Case ID** – The court file number.
- **Potential Litigation Cost** – Litigation cost expressed as a percentage of total claim value.
- **ADR–Mediator(s)/Arbitrator(s)' Fee** – The fee paid by Plaintiff(s) and/or Defendant(s) to Mediator(s) (if mediation module is used) or Arbitrator(s) (if arbitration module is used) for the provision of Arbitration/Mediation service (total fees should be entered in the preferred currency).
- **ADR–Counsel/Attorney Fee** – The fee paid by Plaintiff(s) to Counsel(s)/Attorney(s) for legal assistance provided in relation to these proceedings (total fees should be entered in the preferred currency).
- **ADR–Administration Fee** – The fee paid by Plaintiff(s) and/or Defendant(s) to the Center for administration of Arbitration/Mediation proceedings (total fees should be entered in the preferred currency).
- **Resolved–No Sessions** – The case was received by the Center, but resolved before the initiation of the first session.
- **Reporting Buttons (*at the bottom*)** – Track and generate various reports and agreements related to the given case.

b. Page – Plaintiff/Defendant Data

The **Plaintiff/Defendant** page must be populated to create a valid record of the case. To navigate to some other Plaintiff/Defendant record or to open a blank record, use the arrows in the bottom left corner.

The screenshot displays the 'Case Data' tab in a software application. The form is organized into two columns. The left column contains fields for 'Name and Surname', 'Street address', 'City' (dropdown menu showing 'UNKNOWN'), 'Phone', 'Ownership type' (dropdown menu showing 'UNKNOWN'), 'Ownership - Gender' (dropdown menu showing 'UNKNOWN'), and 'Individual Party Gender' (dropdown menu showing 'UNKNOWN'). The right column contains fields for 'Representative - Name and Surname', 'Representative - Street address', 'Representative - City' (dropdown menu showing 'UNKNOWN'), 'Representative - Phone', 'Sector/Industry' (dropdown menu showing 'NOT APPLICABLE'), and 'Management CEO - Gender' (dropdown menu showing 'UNKNOWN'). A note at the bottom of the form reads: 'Note: Change current or open a blank record using arrows below.' Below the form is a status bar with the text 'Record: 1 of 1' and a search bar. At the bottom of the application window are seven buttons: 'Session Acceptance', 'Session Notification', 'Settlement Agreement', 'Notification to Court', 'Case Invoice', 'Case Summary', and 'Print Case Report'.

- **Ownership Type** – Reflects the ownership structure or legal form of the Plaintiff(s)' or Defendant(s)' business.
- **Sector/Industry** – Reflects the sector or industry to which the Plaintiff(s)' or Defendant(s)' business can be attributed.
- **Individual Party Gender** – Reflects the gender of an individual party to a dispute that is not a business entity.
- **Ownership–Gender** – Reflects the gender of the owners of the Plaintiff(s)' or Defendant(s)' business. If the Plaintiff(s)' or Defendant(s)' business has one owner (sole proprietorship), use the gender of the owner. If the Plaintiff(s)' or Defendant(s)' business has multiple owners (partnership, LLC, corporation), use the gender of the majority of owners (sometimes this cannot be determined). If the Plaintiff(s)' or Defendant(s)' business is owned equally by both genders, choose <<Both>>.
- **Management CEO– Gender** – Reflects the gender of the CEO (or any other person charged with primary management responsibilities) of the Plaintiff(s)' or Defendant(s)' business.

c. Page – Case Flow

This page is used to create a record of sessions in a case that took place. To navigate through sessions or to open a blank session record, use arrows in the bottom left corner. This page can be populated anytime after the registration of a case.

The screenshot displays the 'Case Management' software interface. At the top, there's a title bar 'Case Management - New Case' and a window icon. Below it, the 'Case Management' logo is on the left, and a 'Case ID:' field with a '[New]' button is on the right. A horizontal tab bar contains 'Case Data', 'Plaintiff Data', 'Defendant Data', 'Case Flow' (selected), 'Resolution', and 'Summary'. The main area is a form with two columns. The left column includes fields for 'Session number:', 'Invitation date:', 'Session date:', 'Session time:', 'Mediator:' (with a dropdown menu showing 'UNKNOWN'), 'Case flow:' (with a dropdown menu showing 'UNKNOWN'), and a 'Comment:' text area. The right column includes 'Session not held - Reasons:' (dropdown menu showing 'UNKNOWN'), 'Session not held - Comment:' (text area), 'Duration of session (in minutes):' (input field with '0'), 'Session held:' (checkbox), 'Plaintiff Invoice number:', and 'Defendant Invoice number:'. A note at the bottom of the right column reads 'Note: Change current or open a blank record using arrows below.' Below the form is a status bar showing 'Record: 1 of 1', navigation arrows, 'No Filter', and a 'Search' button. At the very bottom, there are seven buttons: 'Session Acceptance', 'Session Notification', 'Settlement Agreement', 'Notification to Court', 'Case Invoice', 'Case Summary', and 'Print Case Report'.

Note: Image covers mediation module.

- **Session Number** – Scheduled session number.
- **Invitation Date** – Date on which session invitations were sent to parties.
- **Session Date** – Scheduled session date.
- **Session Time** – Scheduled session time.
- **Mediator** – Person guiding parties through conciliation.
- **Arbitrator** – Person chosen to arbitrate and settle a dispute by issuing an arbitration award.
- **Case Flow** – Case status.
- **Session Not Held–Reasons** – Reasons why the session was not held.
- **Duration of Session** – Duration of scheduled session, measured in minutes.
- **Plaintiff/Defendant Invoice Number** – Invoice number for each of the parties.

d. Page – Resolution

This page is used to track case outcomes.

Case Data | **Plaintiff Data** | **Defendant Data** | **Case Flow** | **Resolution** | **Summary**

Agreed settlement value (in US \$):

Text of the settlement:

Note: This text will be added to final Settlement Agreement.

Notification to Court - Headline:

Notification to Court - Text:

Note: This text will be added to final Court Notification.

Session Acceptance | Session Notification | Settlement Agreement | Notification to Court | Case Invoice | Case Summary | Print Case Report

Note: Image covers mediation module.

e. Page – Summary

This tab is used to enter the information provided to the Center by the Arbitrator(s) (if the Arbitration Module is used) or Mediator(s) (if the Mediation Module is used). All the information contained on this page is regarded as **Confidential**. A case summary report will be generated using these field values.

Case Management - New Case

Case Management

Case ID:

Case Data | **Plaintiff Data** | **Defendant Data** | **Case Flow** | **Resolution** | **Summary**

What were the main issues in this case? Provide a summary of the dispute including a brief outline of the facts and indicate the outcome of the case.

Additional guidelines for staff related to this case?

Note: Case summary should be populated by the Case Administrator after sessions are over.

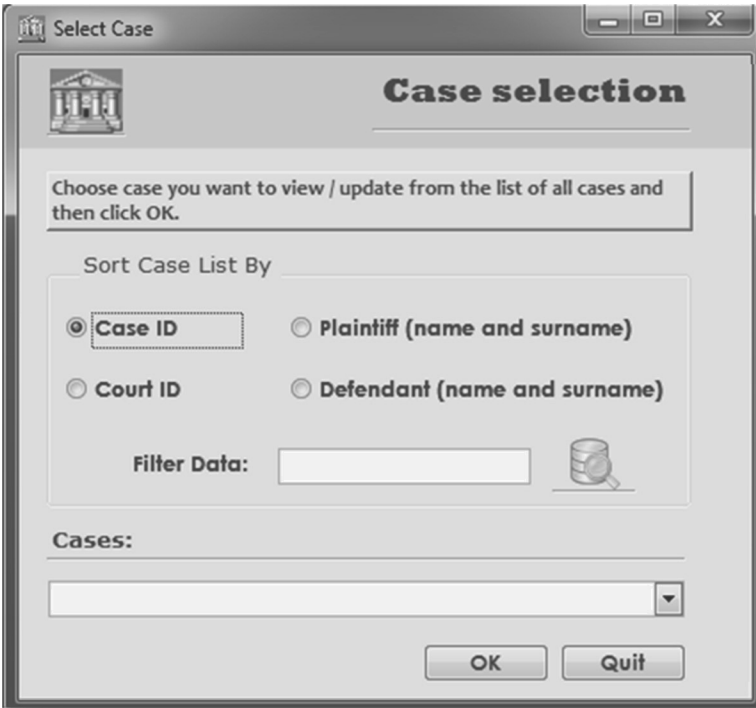
Session Acceptance | Session Notification | Settlement Agreement | Notification to Court | Case Invoice | Case Summary | Print Case Report

3 Update Case

On the <<**Home**>> tab, choose <<**Update Case**>>. The following window will be opened. It is used for case selection and filtering.

a. Case Selection and Filtering

- The received cases can be sorted by one of the given fields.



- Or a keyword can be used that will act as filter, as soon as the **<<filter image button>>** is clicked.

All the cases (filtered or sorted) can be found in the **<<Cases>>** list. After selecting the desired case, click the **<<OK>>** button to open the **<<Case Data>>** form that will process selected data.

The **<<Case Data>>** form will be identical to the **<<New Case>>** form (explained above), with the data from the selected case. All the changes made are entered automatically and reflected in the database.

4 Reporting

The database allows various reports to be created (as discussed in the section on the reporting tab bullet. By choosing action that creates the desired report, users will be able to see that report in the **<<Print Preview>>** mode.

To **Print** the desired report, use the action button (one of the named buttons in the reporting database functionalities part). A report will appear in the **<<Print Preview>>** mode. Click the **<<Print Report>>** action button.

5 Database Overview

Using the <<**Tables**>> tab, sheets with Case/Case Details (session records)/Plaintiff/Defendant data can be accessed, which can be sorted and printed.

Using this module, database data can easily be copied and inserted it into customized Excel reports.

Note: Some tables can also be edited. Under the <<**Additional Tables**>> menu button, the following action buttons can be found:

- **Facilitators** – Allows the user to register Mediators/Arbitrators affiliated with the Center. This table can be customized with the **Database administration** or **Case management** privilege level.
- **Case Acceptance** – Allows the user to view an options list for the <<**Case Acceptance**>> field on the <<**New Case**>> form.
- **City** – Allows the user to register cities in which Plaintiff(s)/Defendant(s) are placed. This table can be customized with the **Database administration** or **Case management** privilege level.
- **Session Not Held – Reasons** – Allows the user to view and edit reasons why the session was not held. This table can be customized with the **Database administration** or **Case management** privilege level.
- **Resolved – No Sessions** – Allows the user to view and edit reasons why the case was resolved before the first session was held. This table can be customized with the **Database administration** or **Case management** privilege level.
- **Case Flow** – Allows user to view <<**Case Flow**>> field options on the <<**New Case**>> form.
- **Ownership Type** – Allows user to view <<**Ownership type**>> field options on the <<**Plaintiff(s)/Defendant(s)**>> form. This table can be customized with the **Database administration** or **Case management** privilege level.
- **Sector/Industry** – Allows the user to view <<**Sector/Industry**>> field options on the <<**Plaintiff(s)/Defendant(s)**>> form. This table can be customized with the **Database administration** or **Case management** privilege level.
- **Claim Value** – Allows the user to view <<**Claim Value**>> field options used for reporting purposes.

- **Case Type** – Allows the user to view <<**Case Type**>> field options on the <<**New Case**>> form. This table can be customized with the **Database administration** or **Case management** privilege level.
- **Mediation/Arbitration Center** – Allows the user to view and edit the Center data populated. This table can be customized with the **Database administration** or **Case management** privilege level.

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