



'Mediate at KCDR' is a Quarterly eNewsletter produced by the Karachi Centre for Dispute Resolution
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Inside This Issue

Page 2

- Promoting ADR as an Opportunity in Pakistan: Isfandyar Ali Khan, IFC ADR Project Officer
- KCDR Becomes APRAG Member

Page 3

- Initiating the Process of Mediation

Page 4

- KCDR Members: Who they are and what they have to say

Page 5

- KCDR and IFCC Concludes 2-Day Training on Conflict Resolution

Page 6

- Workshop for Sindh Judges Organized at National Law University in Karachi

Page 7

- Seminar for Pakistan Business Council
- Featured Mediator Profiles

Page 8

- How Does Mediation Differ From Arbitration?

Page 9

- KCDR to introduce Mediation Curriculum to Law Faculties in Karachi

Page 10

- Contact information and key personnel
- Location map to KCDR

ADR Receives Better Recognition in Pakistan

It takes time for any methodology to evolve and formalize into an existing framework. Despite the fact that mediation isn't a new option, it will still take time before it integrates into the litigation culture of the corporate environment. The Karachi Centre for Dispute Resolution's presence means that the evolution process has reached a kind of maturity. An established centre is significant of the private sector's willingness to opt for a route alternate to a long and lengthy court process.

KCDR has played a critical role in documenting successful cases that opt for Alternate Dispute Resolution in Pakistan. Working with a company who had a case pending in the courts for the duration of one year, KCDR mediators successfully settled the Rs.10 million claim value after 10 hours of mediation. In another instance, KCDR mediators helped to settle a dispute that had been pending for 2 years, in 2 hours. Another case where a KCDR mediator assisted partners to arrive at new partnership terms after 8 hours of mediation. The civil suit would have waited 2 years in the court system making an impact on the company's Rs.30 million annual turnover.

KCDR has also succeeded in resolving a dispute that took place across international geographical boundaries, saving a Dubai-based company who partnered with a Karachi-based private limited company from a long and complicated legal hassle. Both parties in the case sued each other in the High Court of Sindh for US\$13 million in claim and counter claim suits for losses and damages. KCDR helped resolve both cases which had been pending for almost 4 years. A KCDR registered mediator facilitated both parties to reach a settlement after two sessions of mediation lasting 12 hours. The settlement has been filed in the High Court of Sindh and cases have been disposed from the court schedule based on the agreed terms. Such cases typically take between 8 to 10 years of litigation before a final verdict is given by the Courts. KCDR achieved this success after 12 hours.

Mediation works for a lot of companies and a lot of organizations in Pakistan. Do you want to find out how it can work for yours?

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Promoting Mediation/ADR as an Opportunity in Pakistan:

Isfandyar Ali Khan, IFC ADR Project Officer

I am pleased to be working for International Finance Corporation/World Bank Group's Alternate Dispute Resolution (ADR) Project in Pakistan. This ADR Project is unique in a number of respects. With interventions of stakeholders, the first commercial mediation centre in Pakistan, Karachi Centre for Dispute Resolution was set up in 2007. The Project has been promoting the understanding and use of ADR and mediation for resolution of disputes. Mediation provides a useful mechanism for businesses, small and medium enterprises, banks and other entities for resolving their disputes and which saves their time and litigation costs.

KCDR's foreign accredited mediators and master trainers are working in a challenging environment and encouraging resolution of disputes through mediation. It is important that lawyers, litigants and business community accept the arrival of institutionalized ADR in Pakistan. Culture of prolonging litigation must be opposed while one must try innovative means of dispute resolution in the 21st century.

The current backlog in courts can be reduced if litigants and lawyers agree on using mediation as an ADR mechanism. I am hopeful that in near future mediation and ADR will secure its due status.



KCDR Becomes APRAG Member

APRAG or the Asia Pacific Regional Arbitration Group is an exclusive membership of 30 members. A regional federation of arbitration associations, APRAG aims to improve standards and knowledge of



Photo courtesy APRAG website

international arbitration and makes submissions on behalf of the region to national and international organizations.

Originating in Sydney, Australia, APRAG is a unique cooperation which highlights the fast growing importance of international arbitration in Asia and Australasia. With the expanse of trade growing so aggressively, the need to be able to have strong communication channels to keep pace with some of the fastest growing economies, APRAG plays a critical role in resolving disputes within the region.

On June 2nd, 2008, KCDR joined APRAG, helping to coordinate dispute resolution involving Pakistani companies. In a situation to adequately represent the best interests of organizations working from Pakistan, KCDR's inclusion into the Asia Pacific Regional Arbitration Group helps to accelerate the legislative process through Alternate Dispute Resolution.

Initiating the Process of Mediation

There are several stages of mediation, however it is important to understand how you can initiate the process. According to the American Arbitration Association's report on 'A Guide to Mediation and Arbitration for Business People', there are a few areas you must pay attention to.

The Agreement to Mediate

As mediation is a voluntary process, the parties must agree in writing that their dispute will be conducted under the applicable mediation rules of the AAA. This may be accomplished in a number of ways.

Request for Mediation

The parties can provide for the resolution of future disputes by including a mediation clause in their contract. A typical mediation clause reads as follows: If a dispute arises out of or relates to this contract or the breach thereof and if the dispute cannot be settled through

negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

The clause may also provide for the qualifications of the mediator, the method of payment, the locale of meetings, and any other item of concern to the parties. When a party files a Request for Mediation, the requesting party must forward a copy of the mediation clause contained in the contract under which the dispute arose. A Request for Mediation form can be found on the Association's Web site at www.adr.org

To initiate a meeting with a mediator at KCDR, please visit www.kcdr.org and request a meeting.

List of Master Trainers (2008)

- Abdur Rahman
- Anwar Kashif Mumtaz
- Ayesha Sarfraz Ali Khan
- JawadA. Sarwana
- Mustansir Zakir
- Tariq Saeed

Mediators who have joined KCDR's practice in the last Quarter.

Following is a list of accredited mediators who passed the 6-day accreditation course at Sheraton Karachi in March 2008:

Abdul Mobeen Lakho
Amin Qazi
Arshad H. Khan
Asim Mansoor Khan
Danish Zuberi
Iqbal Panjwani
Ishtiaq Memon
Justice Zafar Ahmed
Khan Sherwani
Maya Inayat Ismail
Moin Azhar Siddiqui
Noor Khan
Omair Nisar Khan
Rabiya Javeri Agha
Rafiuddin Junejo
Saadat Yar Khan
Samina Noman
Syed Haider Imam Rizvi
Tahmas R. Razvi

KCDR Offers Training Sessions in the Following Areas:

- Mediator Accreditation Course
- Conflict Resolution Skills
- Mediation as an ADR mechanism
- Family Mediation
- Commercial Mediation
- Mediation for Lawyers
- Tailormade courses on ADR and Mediation for professionals

Please contact us for details! Call 5879209, 5810514, 5820030 Today!

Doing Business Report 2007 is here! To download or access your copy, please visit kcdr.org

Doing Business Report 2008 will be released in September 2008!

KCDR Members: Who they are and what they say

Habib Bank Ltd (HBL):

HBL is a commercial organization. We were excited to hear of the mediation project when it was first launched on the IFC platform. The delay in court cases has always been a source of concern to commercial organizations as this impacts the enforceability of contracts. It is useful to have an option other than that of protracted litigation.

A number of HBL employees are trained as mediators and area affiliated to KCDR and HBL has started to refer cases to the centre.

We believe that this is the way of the future and would urge other commercial organizations to also use the mediation option.

Karachi Electric Supply Company (KESC):

As a public sector service provider, litigation is unavoidable. The only way to tackle the cumbersome process is to adhere to an alternative dispute resolution regimen. Since mediation is one of its recognized facets worldwide, it was our determined choice therefore we chose to become member of KCDR. The patronage of senior members of judiciary and experienced members from the corporate world is a source of our confidence.

The add-on benefit is their

training facility, which is useful for conflict resolution at the inception of a dispute.

Ali & Associates:

The KCDR is an innovative forum that introduces professional mediation services in Pakistan. The legal and corporate sectors have long sought the services of professional mediators for the resolution of contentious matters; the KCDR superbly fulfills this need.

In our experience as a law firm dealing with a diverse clientele engaged in varied commercial disputes, we recognize that our clients value a swift resolution of contested matters with the least amount of fanfare. The KCDR greatly helps in quickly resolving issues faced by our clients while maintaining their much valued privacy.

We would especially like to pay homage to the expert mediators and

professionals associated with the KCDR which include Honourable Justices of the Supreme Court and High Court, renowned lawyers, entrepreneurs and business leaders.

Arbitration and Mediation are importance facets of the field of litigation and it is essential that we raise public awareness regardless Alternate Dispute Resolution (ADR) so that Pakistani businesses may benefit from their use. ADR allows businesses and individuals to resolve matters in weeks and months rather than years.

The establishment of the KCDR is a significant step in the right direction and we hope that with the help of the legal and business fraternity, it will become a vital institution – for our clients and us, it already is.



Vellani & Vellani Associates:

We are a law firm providing legal and consultancy services for corporate and other clients, intellectual property services (which includes trade marks, patents, designs, copyright and domain names) and representation in courts and other tribunals and before arbitrators and experts. The ADR process, while new in Pakistan, is, in our view, an excellent process to resolve a number of contentious matters. The establishment of KCDR in Pakistan has given great impetus to the ADR process and with their highly skilled professional and trained mediators they have in a very short time, demonstrated their effectiveness. We really appreciate all efforts made by the promoters and the Board of Governors and Staff at KCDR and have no hesitation in recommending their services for mediation, regardless of the subject matter in dispute.

GlaxoSmithKline (Pakistan) Ltd.:

Leading pharmaceutical company in Pakistan, GlaxoSmithKline (GSK) Pakistan Limited, is committed to providing quality healthcare to the people. Due to the nature and size of its business, GSK Pakistan has commercial interactions with various parties, entering into arrangements and agreements with many business partners. When concluding an agreement or contract in the past, of particular concern was the lack of adequate dispute settlement bodies and mechanisms in the country coupled with a slow legal process. This exposed us to significant risk and liability. It was great news to learn about Karachi Centre for Dispute Resolution (KCDR) which offered a solution to many problems by allowing a quick, fair and balanced mechanism for dispute resolution. KCDR has emerged as a professional and efficient organization, and its team of trained mediators is developing a reputation for impartiality and fairness. This comes from their being well versed with various aspects of law and international dispute settlement principles and practices.

In order to provide dispute settlement more effectively and to understand various concerns of stakeholders involved in mediation. KCDR's team works to explain the 'rules and expected outcomes' of settlement to parties seeking the same. They help place the bigger picture in context and factor in the perspectives and objectives of the parties seeking a settlement. KCDR's team of mediators have demonstrated an ability to listen and for understanding diverging interests and perspectives, considering different interpretation of the same situation, understanding the goals and objectives of each party and for trying to balance all factors as per appropriate law and procedure towards a reasonable outcome.

We wish the KCDR team every success.

KCDR and IFC Conclude 2-Day Conflict Resolution Training

[June 7, 2008 – Karachi, Pakistan:] Karachi Centre for Dispute Resolution and International Finance Corporation successfully delivered a 2-day course on "Conflict Resolution" at the Sheraton Hotel in Karachi on the 6th and 7th of June.

The course was designed for professionals working in the field of human resources and administration and who deal with disputes on a frequent basis. The course focused on improving mediation skills of human resource professionals and individuals in administrative and managerial positions. Role-playing was also practiced by the course participants so as to practically perform various roles in a conflict situation. The course attracted important delegates including representation from banking, chemical, foods, utility and legal sectors. The Conflict Resolution Course was designed by KCDR's foreign trained Master Trainers, who are leading professionals in their own right.

Mr. Justice (Retd.) Saiduzzaman Siddiqui, former Chief Justice of Supreme Court of Pakistan and Chairman



KCDR, considers training an important tool in developing a better understanding of conflicts and resolution through the process of mediation. Commenting on the course, Justice Siddiqui said, "KCDR's Conflict Resolution Course reflects KCDR's interest in working with professionals and building institutional capacity of organizations to mediate upon work place and other disputes." He also appreciated IFC's support and initiatives in making this course a success.

Navin Merchant, IFC's ADR Program Manager for Middle East and Africa, has also appreciated the efforts of KCDR in engaging clients and stakeholders in its role as a mediation and training facility. Reflecting on the progress of the Project in Pakistan so far, Ms. Merchant said, "We have made some significant strides in institutionalizing ADR and mediation in Karachi. However, more efforts and further interventions are required to bring a change in how people react towards ADR and mediation in resolving their disputes."

KCDR was established one year ago by IFC's Pakistan Alternate Dispute Resolution (ADR)

Project. KCDR's awareness among stakeholders, especially lawyers and litigants are leading towards increase in referral of cases from courts in Karachi, individuals and businesses. Mediation facilities at KCDR favor all businesses, particularly small and medium enterprises, that do not wish to litigate a dispute and are keen to unlock their blocked assets caught up in litigation. KCDR, in limited period of one year, has received about 70 cases and through mediation process and released approximately US\$14.5 million (approximately Rs.942 million), through qualified mediators assisting parties to resolve disputes.

Workshop for Sindh Judges Organized at National Law University in Karachi

[June 28, 2008 - Karachi, Pakistan:] The Karachi Centre for Dispute Resolution (KCDR) and Access to Justice Program (AJP) held a workshop for Judges serving as family or civil judges in the province of Sindh. The workshop is a joint KCDR, IFC and AJP initiative with the purpose of enhancing understanding and application of family mediation as an Alternate Dispute Resolution mechanism. The 3-days workshop ended on 30th June 2008 and received financial support from ADB and Ministry of Law's Access to Justice Program.

The ADR mechanism provides litigants and parties contemplating litigation opportunity to resolve their disputes out of court as mediation saves time and costs of parties concerned. Mediation as an ADR mechanism provides flexibility to the parties wishing to resolve their disputes out of court and is a voluntary process. Courts and parties can



invoke Section 89-A (read with Order 10 Rule 1A) of Civil Procedure Code, 1908 and a dispute could be referred to KCDR. If a dispute is settled through mediation, the same could be converted into a Decree through relevant court procedures.

With mediation as an ADR mechanism, it is expected that backlog of cases in courts will be reduced if parties opt for it.

IFC, which is the private sector arm of the World

Bank Group, has helped setting up of KCDR in early 2007 as part of its Alternate Dispute Resolution (ADR) Project. KCDR is an out-of-court dispute settlement facility approved by High Court of Sindh. KCDR has foreign accredited mediators on its rolls who provide mediation services. The Karachi Centre for Dispute Resolution also has a select number of foreign accredited mediators who have been trained as master trainers.

Seminar for Pakistan Business Council

[April 2008 - Karachi, Pakistan] Karachi Centre for Dispute Resolution (KCDR) and IFC ADR Project team held a seminar on the ADR Project and KCDR for members of Pakistan Business Council (PBC).

During the seminar, participants were given information on the aims and objects of the ADR Project. IFC team highlighted the fact that the project's role is to institutionalize ADR so that litigants and others having disputes can settle their disputes out of court and save expenses and time apart from other



attaining other benefits of alternate dispute resolution through mediation. KCDR's structure and how cases can be referred for mediation was also presented.

Justice (Retd.) Saiduzzaman Siddiqui, Chairman KCDR, Justice Zafar Ahmed Khan Sherwani, Director KCDR and Mr. Salim Raza, Chairman PBC were present on the occasion. It was encouraging to see representation of various business sectors in the seminar and their questions reflected interest of PBC members in acquainting themselves with concept of mediation and benefits of mediation for businesses.

KARACHI CENTRE FOR DISPUTE RESOLUTION MEDIATION CLAUSE

DISPUTE RESOLUTION: Any and every dispute, difference or question which may arise between the parties to this agreement shall be first settled by the parties by an attempt at amicably settling the dispute through mutual negotiations.

In case the disputes, differences or questions cannot be settled amicably or satisfactorily by correspondence or by mutual discussion within thirty days (30) after receipt by one party of the other party's request for amicable settlement, it shall be referred to mediation before a CEDR accredited Mediator at the Karachi Centre for Dispute Resolution. Mediation proceedings shall be held at Karachi and will be governed by the mediation rules of the Centre.

In case the Mediation fails the dispute shall be referred to Arbitration in accordance with the Arbitration Act 1940. Arbitration proceedings shall be held at Karachi and arbitration award shall be final and binding on the parties.

FEATURED KCDR PROFILE: SAMINA NOMAN

Samina Noman is an inhouse mediator and Case Administrator at KCDR. She is responsible for managing the case flow of referred cases to the facility, keeping a close liaison with the parties to the case and mediator. She also manages all reports and communication with IFC and within the entire organization. Having completed her LLM from Karachi in 2007, Samina has worked at various law firms where her duties have ranged from research, maintaining a close liaison with clients to resolve issues and preparing summaries with opinions on international trends of Electronic laws, E-banking, Entertainment laws, Electronic commerce and Telecommunication laws.



FEATURED KCDR PROFILE: NOOR KHAN

Noor Khan is a High Court Advocate and works as a Case Administrator and inhouse Mediator at the Karachi Centre for Dispute Resolution since its inception. Prior to KCDR, Khan has worked at a number of law firms whereby adding to his experience in laws pertaining to Intellectual Property, Custom, Family, Rent and Excise. His forte also resides in Arbitration, Corporate, Labour, Constitutional, Family Rent, Registration Act and Pleading Arbitration and Property.



How Does Mediation Differ From Arbitration?

There are several types of 'negotiations' which can be categorized under Alternate Dispute Resolution, or ADR. In order to better appreciate what ADR can mean for your organization and the continuity of your business, here's how the American Arbitration Association explains the differences between Arbitration and Mediation.

Arbitration is less formal than litigation, and mediation is even less formal than arbitration. Unlike an arbitrator, a mediator does not have the power to render a binding decision. A mediator does not hold evidentiary hearings as would an arbitrator but instead conducts informal joint and separate meetings with the parties to understand the issues, facts, and positions of the parties. The separate meetings are known as caucuses. In contrast, arbitrators hear testimony and receive evidence in a joint hearing, on which they render a final and binding decision known as an award.

In joint sessions or caucuses with each side, a mediator tries to obtain a candid discussion of the issues and priorities of each party. Gaining certain knowledge or facts from these meetings, a mediator can selectively use the information derived from each side to:

- Reduce the hostility between the parties and help them to engage in a meaningful dialogue on the issues at hand;
- Open discussions into areas not previously considered or inadequately developed;
- Communicate positions or proposals in understandable or more palatable terms;
- Probe and uncover additional facts and the real interests of parties;
- Help each party to better understand the other party's view and evaluation of a particular issue, without violating confidences;
- Narrow the issues and each party's positions, and deflate extreme demands;
- Gauge the receptiveness for a proposal or suggestion;
- Explore alternatives and search for solutions;
- Identify what is important and what is expendable;
- Prevent regression or raising of surprise issues; and
- Structure a settlement to resolve current problems and future parties' needs.

Unlike an arbitrator, a mediator does not have the power to render a binding decision. A mediator does not hold evidentiary hearings as would an arbitrator but instead conducts informal joint and separate meetings with the parties to understand the issues, facts, and positions of the parties.

KCDR to introduce Mediation Curriculum to Law Faculties in Karachi

The Karachi Centre for Dispute Resolution (KCDR), the first institutionalized mediation centre in Pakistan established with the approval of the High Court of Sindh and assistance of International Finance Corporation (IFC) today announced its plan to introduce a mediation curriculum to law faculties in Karachi.

The Alternate Dispute Resolution (ADR) project, apart from setting up the Karachi Centre for Mediation and which organizes mediation trainings and creates awareness among stakeholders on benefits of mediation and mediation facilities at KCDR, has been undertaking activities which will introduce mediation principles and theory in Law Faculties in Karachi.

"The Mediation Curriculum will enhance knowledge and skills of law students and provide them with basic understanding of mediation practice which they can use as lawyers or professionals. Introduction of mediation in law faculty teaching will no doubt provide a unique area of study and opportunity for law students who have been looking forward to new topics of study in their



law degrees for a long time,” commented Mr. Justice (r) Muhammad Saiduzzaman Siddiqui, Chairman, Karachi Centre for Dispute Resolution

In Pakistan, graduates with a Bachelor of Arts Degree can seek admission at a Law College (constituent or affiliate of a local university) for a Degree in Bachelor of Laws (LLB). Duration of LLB Degree is three years. The Pakistan Bar Council and the Higher Education Commission sets syllabus for law students enrolled in LLB Degree. In-depth information is available in The Pakistan Bar Council Education Rules, 1978. The Rules have been notified through the powers conferred in the Legal Practitioners and Bar Councils Act, 1973.

To initiate the Mediation Curriculum, the IFC and KCDR has set up a Curriculum Development Committee, including Mr. Justice (r) Muhammad Saiduzzaman Siddiqui, Chairman, Karachi Centre for Dispute Resolution; Mr. Justice (r) Nasir Aslam Zahid, Dean, Hamdard Law School, Karachi; Mr. Justice (r) Saleem Akhter, Director General, Sindh Judicial Academy; Dr. Amjad Bokhari, Project Director National Law University; Mr. Khurshed Hashmi, Principal, S.M. Law College, Karachi; Mr. Mamnoon Hasan, Principal, Islamia Law College, Karachi, Mr. Zain Shiekh, Visiting Faculty, S.M. Law College, Karachi and Ms. Navin Merchant, Program Manager, IFC ADR Project.

This Committee through various sittings has now been able to come to an agreement on a curriculum on mediation which will be taught by law colleges as part of Civil Procedure Code Syllabus of the LLB Degree.

The content of the law faculty curriculum will include Introduction to Dispute Resolution/ADR, covering definition of ADR, historical development of ADR and comparative examination of different dispute resolution processes including the relative advantages and disadvantages of each and the role of the neutral in those processes. Processes covered will include: negotiation, mediation, arbitration, litigation, early neutral evaluation and expert determinations and legal framework for ADR in Pakistan (Section 89-A, Civil Procedure Code 1908).

Under negotiation theory and practice, it will include negotiation strategies/styles, preparing a negotiation plan and cultural contexts of negotiation; and under mediation theory and practice, it will cover theory of mediation; core principles of the process (voluntary, confidentiality, neutrality and impartiality, without prejudice and party control of outcome); role of the mediator; role of lawyers in mediation; role of representative in mediation; stages of mediation process and ethics.

LAW FACULTY CURRICULUM CONTENT

CIVIL PROCEDURE CODE 1908

Section 89-A (Read with Order 10 - Rule 1A)

1. Introduction to Dispute Resolution/ADR

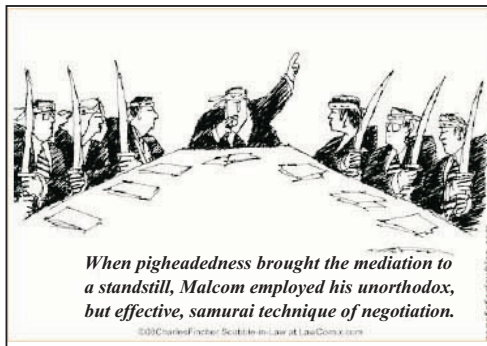
- a) Definition of ADR.
- b) Historical development of ADR.
- c) Comparative examination of different dispute resolution processes including the relative advantages and disadvantages of each and the role of the neutral in those processes. Processes covered would include:
 - Negotiation
 - Mediation
 - Arbitration
 - Litigation
 - Early Neutral Evaluation
 - Expert Determinations
- d) Legal framework for ADR in Pakistan (Section 89-A, Civil Procedure Code 1908)

2. Negotiation Theory and Practice

- a) Negotiation Strategies/Styles
- b) Preparing a Negotiation plan
- c) Cultural contexts of negotiation

3. Mediation Theory and Practice

- a) Theory of mediation
- b) Core principles of the process
 - Voluntary
 - Confidentiality
 - Neutrality and Impartiality
 - Without prejudice
 - Party Control of Outcome
- c) Role of the mediator
- d) Role of Lawyers in mediation
- e) Role of representative in mediation
- f) Stages of mediation process
- g) Ethics



When pigheadedness brought the mediation to a standstill, Malcom employed his unorthodox, but effective, samurai technique of negotiation.



An experienced mediator, Michaelson immediately sensed the mediation was in trouble when he entered the party's caucus room.

Navin Merchant

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