

MEDIATE AT KCDR

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'Mediate at KCDR' is a Quarterly eNewsletter produced by the Karachi Centre for Dispute Resolution
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Board of Governors

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Supreme Court of
Pakistan

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Khilji
Judge Sindh High Court
of Pakistan

nMr. Anwar Mansoor Khan
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Chamber of Commerce
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nMr. Sultan Tiwana
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nMr. Salman Burney
CEO, Glaxo SmithKline
(Pakistan) Ltd.

Introducing Mediation in Pakistan

Message by Justice (Retd.) Saiduzzaman Siddiqui
Chairman, KCDR

I am happy to see the progress KCDR is making in institutionalizing mediation and alternative dispute resolution in Pakistan. The large and almost unmanageable list of cases before courts suggest an urgent need to adopt mediation to resolve disputes in Pakistan.

The Karachi Centre for Dispute Resolution is a unique collective effort of major stakeholders from private and public sectors to promote mediation. Mediation saves time and money and helps in going forward rather than being stuck in time-consuming litigation.

The dedicated and pioneering effort of KCDR's Board of Governors in promoting mediation in Pakistan are an important step in the right direction. Saving time and money, KCDR provides an alternative method of settling disputes. I am very proud of our board members who give their time and devote their energies in this effort without compensation. The main part of our programme is to satisfy our clients and members by achieving mutually acceptable settlement of cases.

I would like more and more members of the society, especially corporate bodies, to become our members to promote

mediation and alleviate the culture of time-consuming litigation.



What is KCDR?

Established in 2007 as a "not-for-profit" registered organization, the Karachi Centre for Dispute Resolution was established with the support of the High Court of Sindh, Pakistan and International Finance Corporation / World Bank Group. KCDR aims to provide professional mediation services for the resolution of commercial cases and disputes. KCDR's operation is run under supervision and guidance of former and current members of Pakistan's superior judiciary and prominent business leaders.

Karachi Centre for Dispute Resolution Alternative dispute resolution (ADR) includes dispute resolution processes and techniques that fall outside of the government judicial process. ADR is generally classified into at least four types: negotiation, mediation, collaborative law, and arbitration.

KCDR becomes the first ADR Centre established by the project. The objectives of the KCDR are to conduct mediations at the Centre, train and certify mediators for the long term sustainability of ADR in the country; review existing legislation on ADR and mediation, raise the awareness about and promote ADR and mediation with stakeholders, and foster coordination with like minded societies and associations both in Pakistan and abroad.

Presently Karachi Centre for Dispute Resolution offers Mediation Services and Professional Training Services.

These services may be conducted on site or at the KCDR facility.

IFC's Achievements
The ADR Project for Pakistan is the winner of the CEDR International Award for Excellence. This award reflects the efforts and initiatives of the IFC in providing advisory services in the ADR for Pakistani businesses.

KCDR received 71 cases (referred from Courts and individual parties over the course of its first year. The cases range from financial disputes pertaining to the banking industry, commercial and family disputes. As a result of the KCDR's efforts, over US\$13 million worth of assets have been unlocked.

Objectives
Keeping in mind the opportunity that ADR brings to the business community in Pakistan, KCDR has several key objectives in place. These objectives include:

- to activate commercial ADR practices in Pakistan;
- to institutionalize ADR and Mediation systems to increase efficiency and reduce heavy case backlogs in courts;
- to professionalize mediation by transferring skills and know-how to judges, lawyers and other groups enabled by ADR practices and
- to promote access to justice, essentially reducing the time and cost of SME litigation.

Challenges
Nothing good comes without its set of challenges. The

attitudes and beliefs of the Pakistani society towards Alternate Dispute Resolution and Mediation is bleak to say the least. Because a formalized, structured ADR is so new in Pakistan, a missing track record doesn't sprout a lot of faith in the success of Mediation. As time progresses and with the growing successes of the KCDR, the team is confident that this misconception will eventually change.

The lawyer's response to ADR has also not been very positive in some cases. This reaction is the result of lack of education in legal, literary issues, judiciary or political issues. Once again, as time progresses, this perception will also transform itself.

The Way Forward
With only one ADR Centre established, the IFC and KCDR still have much to explore and prove in the local market. The ADR project has laid a firm and impressive foundation for the practical introduction of a professional and structured mediation regime in the judicial system of Pakistan. Equally importantly, it has confirmed the role that ADR can play as a key tool in the wider economic development agenda. The IFC demonstrated considerable achievement by getting the buy-in from the government and the senior judges, training and accrediting mediators, and paving the way for the launch of an independent, and ultimately self-supporting mediation Centre, the Karachi Centre for Dispute Resolution.

List of Mediators (2006/7):

Following is the list of Mediators registered with KCDR:

Abdur Rahman
Adnan Mufti
Aga Zafar Ahmed
Anwar Kashif Mumtaz
Arshad Hasan
Ayesha Sarfraz Ali Khan
Azhar Rauf
Aziz Nishtar
Dr. S. Tauqir Shah
Farrukh Junaidy
Jawad A. Sarwana
Khalid Firoz Arfeen
Khalid Mahmood Siddiqui
Munawar Suleman
Mustansir Zakir
Nausheen Ahmed
Navin Merchant
Neelofar Hameed
Saeed Habib
Samir Lakhani
Sarvat K. Nawaz
Sharmeen Usmani
Sohail Khoja
Syed Sammadul Haque
Tariq Saeed
Umaimah Sohail Khan
Yawar A. Faruqi
Yousuf Moulvi
Zahid Jamil
Zain Sheikh
Zia Makhdoom



KCDR - Mediation room



KCDR - Office Premises



The Truth About ADR in Pakistan

Small and Medium Enterprises make up about 90% of businesses in Pakistan, employ 80% of the nation's non-agro workforce and contribute towards 40% of country's GDP. Unlike the large enterprise sector, one of the biggest challenges an SME has to struggle against is the financial constraints and risks involved with being in the sector that they belong to. And where you have constraints that involve contractual agreements and almost unlimited liability, spending 5 to 10 years in litigation is simply not an option.

Believe it or not, 'contract enforcement in Pakistan' involves an average of 47 procedures and up to 10 years in the legal system (Refer to Doing Business Report 2008). Because of the time lag involved the process of Dispute Resolution becomes a costly exercise. With more than 1.5 million cases backlogged in the Courts, formal Dispute Resolution becomes an inefficient mechanism that stunts growth in the local economy and discourages business in general.

As mentioned earlier, Alternative dispute resolution includes dispute resolution processes and techniques that are usually outside of the realm of the government judicial process. There are generally four types of ADR: negotiation, mediation, collaborative law and arbitration.

Alternate Dispute Resolution (ADR) offers companies an opportunity to apply the full force of the law efficiently and effectively. Whereas the system has no choice but to apply justice through the natural course of a clogged court schedule, a mediator is mutually agreed upon by all parties involved, to interact with one another and generate a solution which is recognized by the law under Section 89 A and Order X Rule 1A of the CPC.

A Mediator is an impartial professional trained to help disputed parties find solutions. The Mediator is skilled in unlocking these negotiations, keeping everyone focused on finding a solution. KCDR (Karachi Conflict Dispute Resolution) conducts trainings led by internationally accredited Mediators on a regular basis.

What Kinds of Cases Should Opt for Mediation?

- n Breach of contract, for example, dispute between buyer and seller
- n Rent disputes between landlord and tenant
- n Corporate and commercial disputes of various nature
- n Disputes among importers and exporters
- n Labour and management disputes
- n Disputes involving banks and borrowers or clients using banking services
- n Disputes pertaining to Inheritance, Succession and Maintenance of wife and children
- n Shipping disputes
- n Disputes arising out of Fatal Accident and Medical Negligence
- n International Trade Disputes



- Highlights
- n SMEs make up 90% of Pakistan's businesses, employ 80% of the nation's non-agro workforce and contribute towards 40% of the country's GDP.
 - n Alternate Dispute Resolution (ADR) is recognized under the law, Section 89 A and Order X Rule 1A of the CPC.
 - n KCDR (Karachi Conflict Dispute Resolution) conducts trainings led by internationally accredited Mediators on a regular basis.

How Mediation Works

As defined by mediate.com, 'Mediation is a voluntary and confidential process in which a neutral third-party facilitator helps people discuss difficult issues and negotiate an agreement. Basic steps in the process include gathering information, framing the issues, developing options, negotiating, and formalizing agreements. Parties in mediation create their own solutions and the mediator does not have any decision-making power over the outcome.'

Both parties sit down with the appointed Mediator to share their perspective of the dispute. The Mediator then goes onto discussing issues involved with the parties, both individually and together. Once the Mediator understands and identifies the key issues of the dispute and any areas of agreement, he works with both parties towards identifying possible solutions. In 75% of the cases, a solution is reached. In the majority of the cases where a dispute had been resolved, the ADR took place over the course of two days. Compare the time, legal fees and other commitments involved in seeking justice with ADR as compared to the 10-year or more duration in the Court system.

With a structured ADR in place, there have been a number of successful results that the KCDR has been critical in resolving through mediation. These successes are a testament to the growing success of mediation in Pakistan.

Conflict has been around as long as trade as. Interaction or coordination amongst parties and stakeholders takes turbulent, often unpredictable turns into what results, an unforeseen future. Where there is so much at stake and so many people involved, there are bound to be differences. Not to say that business doesn't take place in an amicable environment anymore. However with so much vested interest and business management models usually working together, the differences between parties involved at times do become irreconcilable.

But disputes aren't a new thing. And the dispute resolution isn't as novel a concept as one would think. Countries in the Subcontinent has always looked to the society's elders to help resolve dispute and conflict where the elders listen to both sides and pass an assessment agreeable to both parties involved. With the progression of time and advancement of societies, this process has become more formalized and structured.

Though nothing in Pakistan's constitution specifically relates to ADR, certain Articles do seem to employ and integrate methodologies of ADR into their text. Article 184 of the Constitution, for example, gives the Supreme Court of Pakistan original jurisdiction in "any dispute between any two or more Governments".

With regards to ADR, a researcher can use these international trade organizations that Pakistan is a member of to find detailed information on ADR in Pakistan. This is because most trade organizations have arbitration and other ADR rules. There are a number of website that list trade agreements which Pakistan has signed. Pakistan signed and ratified the Convention establishing the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID). It has also signed the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards.

If conflict and trade go together, so do the concepts of negotiation and communication. It was with this in mind that the IFC embarked on a substantial project to introduce the concept of ADR into the Pakistan civil justice system. Even back in 2005 when the project was initiated, there was a backlog of more than a million civil cases waiting to be heard by the courts.

Provision of out-of-court dispute resolution, with mutual consent of all parties involved, are found in the following laws:

- nS89 Civil Procedure Code
- nS345 Criminal Procedure Code (CrPC)
- nS23 Industrial Relations Ordinance 2002
- nS134A Income tax Ordinance 2001
- nS47A Sales Tax 1990
- nS7 and 8 Muslim Family Law Ordinance (MFLO)

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PEP-MENA Project in Pakistan Receives International CEDR Award

IFC's Alternative Dispute Resolution project in Pakistan, a project managed by PEP-MENA, has been honored with an Award for Excellence by the Centre for Effective Dispute Resolution in the United Kingdom. The award recognizes IFC's efforts in introducing ADR in Pakistan in an attempt to tackle the massive backlog of 1.1 million civil cases still waiting to be heard. Jesper Kjaer, PEP-MENA's General Manager, and Navin Merchant, the ADR Program Manager, accepted the award on behalf of IFC.

The award ceremony hosted in London, had more than 200 mediation and legal experts in the field of dispute resolution in attendance and the PEP-MENA project was one of 7 CEDR award recipients.



The ADR project promotes the use of mediation as a means to resolve commercial disputes in the private sector, particularly benefiting small and medium enterprises. The enforcement of contracts in Pakistan requires more than 40 procedures (Reference Doing Business 2005), which makes it a challenging environment in which to exert contractual arrangements. In fact, SMEs have identified contract enforcement as a key barrier in their growth because of this reason. The litigation process can take up to 10 years to resolve an issue and can have associated litigation costs as high

as 35 percent of a business's assets.

PEP-MENA launched the ADR project in November 2005 in cooperation with the Government of Pakistan. The project is establishing a pilot mediation centre in Karachi, which will act as a mediation Centre and training institute and also create a database of mediators to help grow the rate of ADR adoption in the country.

The 2006 CEDR Awards mark an eventful two years in alternative dispute resolution. Since the last Awards in 2004, the market for mediation has grown by 35 percent. ADR is also growing internationally; with its adoption in European civil justice and

elsewhere in the world, mediators are increasingly being called into international disputes. New sectors are also adopting the use of mediation and to reflect these developments, the 2006 Awards included two new categories for international achievement, in which PEP-MENA's ADR project is the award recipient. The organizers also noted that the 2006 Awards achieved the largest number of entries and finalists in their 12-year history which also reflect the growing awareness and preference of resorting to alternate dispute resolution.

IFC Mediators Trainings
in March 2008:

- Mediator Skills Training
Conducted by foreign
consultants at Sheraton,
Karachi.
- Master Trainers Training
conducted by foreign
consultants at Sheraton,
Karachi.

Calendar of KCDR Events
in the Next Quarter

June 2008

- Conflict Resolution Course
- Training of Judges on
Mediation as an ADR
Mechanism
- Training of Judges on
Family Mediation

Write to us or call us and
find out how you can
register for our training
sessions

Log onto
www.kcdr.org
for more
details and
updates

ADR is a Viable Option

Navin Merchant, Program Manager-ADR Project, IFC

The world has become extremely accessible, very big, very quickly. With economic progress driving businesses to go global, Alternate Dispute Resolution is critical, legally recognized process that must be in place. Trade agreements simply cannot afford to wait for disputes to be resolved through the formal Court System because of the time and money it takes to make it through the system. Mediation is now a viable alternative for companies in Pakistan.

IFC and the World Bank has taken the initiative of the establishment of the Karachi Centre for Dispute Resolution as the first step in spreading the awareness of the role ADR can play in resolving conflict efficiently and effectively.

30% of all civil cases in the UK are resolved through ADR. An increasing number of companies in Pakistan are already considering mediation as an alternative to long term deliberation in the court system.

The IFC, World Bank and all the stakeholders involved in making the KCDR a success, look forward to working with your organization.

ADR is becoming a routine methodology used and encouraged by many large organizations in the world and Pakistan is no exception. With a large customer base and operations that span across the country, enterprise-level organizations have to be open to volume litigation on a routine basis. Litigation in general ties up the judicial process and resources for long periods of time. The ADR coupled with reduction in litigations and special bench of Supreme Court deciding appeals, will have an impact on the litigation at High court and Tribunal level, providing easier access to justice.

Opting for ADR



Larger organizations become trendsetters for a market. The Federal Bureau of Revenue in Pakistan is an organization that impacts everyone in the country. Because of its exposure, the company

also has a large and very prominent legal department. But when this legal department instills Alternative Dispute Resolution as part of its policy and process, things come into more perspective.

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on a routine basis. Litigation in general ties up the judicial process and resources for long periods of time. The ADR coupled with reduction in litigations and special bench of Supreme Court deciding appeals, will have an impact on the litigation at High court and Tribunal level, providing easier access to justice.

There are a growing number of organizations in Pakistan that encourage the practice of ADR.

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Chief Justice High Court of Sindh Inaugurates KCDR

Sindh High Court Chief Justice Sabihuddin Ahmed performed the soft opening ceremony of Karachi Centre for dispute resolution on February 16, 2007. The event was attended by judges of the High Court of Sindh, district and session court judges of Karachi, members of Governing Board of KCDR as well as IFC officials. The inauguration of the Karachi Centre for Dispute Resolution is the first phase in IFCs plans to introduce and spread the awareness of ADR across Pakistan.



Quick Facts About Mediation

Mediation is meant to be a quick and inexpensive means of resolving disputes. Mediation has a lot of benefits. It is professionally conducted by trained and internationally accredited mediators who received their certification through a registered list of Master Trainers. Mediation is protected and recommended by law (Section 89A and Order X Rule 1A of CPC). There is no doubt that Mediation is quick and has an impressive track record where it has been prescribed. A settlement can be reached within one to two days and has a 75% success rate. The legal rights of either party are not affected and the communication with the mediator and the contents of the proceedings remain private. With quick resolution and a high rate of success, mediation helps to keep relationships between the disputed parties intact.

Tracking KCDR Successes

Yes! And the Karachi Conflict Dispute Resolution team has a track record to help illustrate just how effective and efficient mediation can be in Pakistan's volatile business environment. Without citing specifics, here are some successes businesses have had with mediation.

KCDR resolves a 4-year old case pending in the High Court of Sindh after 12 hours of Mediation

The first party is a Dubai-based firm dealing in trading commodities globally. The other party is a Karachi-based private limited trading company. Five years ago, both parties entered into an agreement to export goods from Pakistan. After a few initial consignments, problems arose with the deadlines and other logistic arrangements for the shipments. Both parties blamed each other for the poor performance of the agreement and loss of revenues, dwindling

profits and a degrading reputation. Both parties sued each other in the High Court of Sindh for US\$13 million in claim and counter claim suits for losses and damages.

Karachi Centre for Dispute Resolution (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.

A KCDR Mediator assists partners to arrive at new agreed terms of partnership in 8 hours of mediation

Two partners running a business that had Rs.30 million annual turn-over became dissatisfied with their partnership arrangement and wanted to file a civil suit. The suit would have resulted in at least a 2-year court case with hundreds of thousands of Rupees in litigation fees. A KCDR Mediator instead assisted both partners to arrive at a revised terms of partnership after 8 hours of mediation.

KCDR helps two parties come to a settlement of a 2 -year dispute through 2 hours of mediation

A travel agency and a legal advisor were fighting a civil case in High Court of Sindh for 2 years, disputing the payment of professional fees. A KCDR Mediator helped the parties agree on a settlement and close the case after 2 hours of mediation.

KCDR assists in reaching a mutual settlement of a case worth, a claim value of Rs. 10 million in 10 hours of mediation. A KCDR Mediator helped two companies pursuing a civil suit / commercial case having a claim value of Rs.10 million in the High Court of Sindh reach a mutual settlement after 10 hours of mediation. The case had been pending in the High Court for a year.

KCDR Offers Training Sessions in the Following Areas:

- nMediator Accreditation Course
- nConflict Resolution Skills
- nMediation as an ADR mechanism
- nFamily Mediation
- nCommercial Mediation
- nMediation for Lawyers
- nTailormade courses on ADR and Mediation for professionals

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

How Can You Refer Cases to KCDR for Mediation?

If your case is scheduled to appear before a court or judicial forum in Karachi, litigants and their lawyers can request the presiding judge to refer the matter to KCDR under Section 89-A of the Civil Procedure Code, 1908.

All parties must give their consent to move the matter from the court towards mediation. Upon agreement of a mediator to head the deliberation process with both parties, a date is mutually decided at the convenience of all stakeholders involved.





"Children, please!!
Let's settle this
like adults."

Visit
kcdr.org
Today
and book
your
meeting
with a
Mediator
at KCDR!

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