

# IFC and Alternative Dispute Resolution

## A Successful Pilot in Southeast Europe

A well-functioning and impartial judicial system is one of the key prerequisites for establishing a strong market economy. Alternative dispute resolution (ADR) in the form of commercial mediation is an effective alternative to regular judicial proceedings, enabling cheaper and faster resolution of commercial disputes, especially for smaller businesses. IFC supports the establishment of a sound commercial mediation system in Southeast Europe, building on a successful pilot project in Bosnia and Herzegovina with new pilots in four other countries in the region.

### Approach

- Establish a legal framework following the United Nations Commission on International Trade Law model and European Union recommendations
- Establish mechanisms to test procedures through pilot projects with commercial and other courts
- Develop a cadre of world-class mediators through customized training and mentoring
- Establish a commercially viable network of mediation centers
- Help establish and build skills of local civil society institutions such as associations of mediators
- Establish partnerships at the policy level, such as ministries of justice, and at the implementation level, such as courts, training centers for judges and prosecutors, bar associations, and civil society institutions
- Educate judges and lawyers about mediation as a complement to the formal legal system
- Launch broad public awareness campaigns to foster understanding and create demand for mediation services



### Track record

- Helping develop commercial mediation in the region since 2003
- Management of ADR program by PEP-SE, IFC's technical assistance vehicle in the region
- Six pilot projects operating in Bosnia and Herzegovina, Serbia, and Macedonia; plans are to include Albania and Montenegro as well
- Memorandums of understanding signed with ministries of justice in Bosnia and Herzegovina, Macedonia, and Serbia, demonstrating their firm commitment and coordinated effort to introduce commercial mediation
- New laws and by-laws on mediation adopted in Bosnia and Herzegovina, Macedonia, and Serbia, to allow full introduction of mediation
- Developed a pilot project management manual for court-referred mediation
- Helped establish five mediation centers in Bosnia and Herzegovina and Serbia, with several more planned in these and other project countries
- Trained over 500 people in mediation techniques; more than 55 mediators active within existing pilot projects
- As of July 2006, around 1,900 mediations held; about 75 percent of disputes resolved with high user satisfaction, releasing \$15.5 million back to the parties, with many of them being small businesses
- Funding for ADR program provided by the government of Canada from January 2003 to March 2006 and by the government of the Netherlands from November 2005 to November 2008

### Development impact

- Mediation allows for cheaper and faster resolution of commercial disputes, unblocking assets previously caught up in litigation, which can be particularly onerous for small businesses.
- In 95 percent of cases, mediating parties report increased trust in the legal system.
- 78 percent of businesses reestablish business relations after mediation.
- A new profession, that of a mediator, created, allowing for additional employment opportunities.

## Making mediation pay—a case for sustainability in Bosnia and Herzegovina

A successful pilot project, launched in January 2003 in cooperation with the Ministry of Justice and Association of Mediators in Bosnia and Herzegovina, introduced out-of-court mediation in that country and brought mechanisms that could help address the massive backlog of about one million cases that also affected businesses. Sustainability of the pilot is being assessed at various levels: the Association of Mediators—the central institution critical for long-term development and promotion of mediators; mediation centers—centrally managed by the association, providing mediation services, training, presentations, seminars, and direct consulting on mediation; and mediators themselves—offering services through mediation centers or independently, centrally registered and licensed. Some results as of August 2006:

- A law on mediation has now been passed, and new by-laws define mediation fees, procedures, registration and certification of mediators, thus ensuring quality control.
- Two centers for court-referred mediation were established in Banja Luka and Sarajevo, which will eventually become financially self-sustainable and managed by the association.
- More than 260 individuals were trained in mediation; 12 fully trained mediators have mediated 290 cases in these two centers.
- About 60 percent of mediations held were successfully resolved, releasing close to \$9 million in assets to parties.
- The Association of Mediators is on its way to financial sustainability and has developed its own set of mediation products and services (training, mediation services and consulting).
- The Ministry of Justice included support to mediation in its long-term strategy.

## Alternative Dispute Resolution Program in Serbia

In order for a company to have a contract enforced through the formal judicial system in Serbia, it needs to go through as many as 40 procedures within 1,028 days. IFC has been actively supporting the development of ADR in Serbia since June 2004 and will open the Serbian Mediation Center on August 25, 2006, in collaboration with the Ministry of Justice, the National Bank of Serbia, the Belgrade Bar Association, and the NGO Child Rights Center. The center's primary function will be to create a self-funding mediation infrastructure. Some results as of August 2006:

- IFC has established an exclusive ADR partnership with the Ministry of Justice.
- A Mediation Law was enacted in February 2005; in addition, by-laws were developed to regulate the registration of and training requirements for mediators.
- Three mediation departments were established within the courts, two in Belgrade and one in Subotica, and more than 100 individuals were trained in mediation.
- More than 1,550 cases were resolved—a success rate of 90 percent—releasing \$6.5 million in assets to parties.

## Testimonials

### **A businessman on how four disputes involving his companies were resolved in just three hours through mediation:**

“The mediation process resulted in nearly \$1.9 million being freed up for my business. So, in my case, this quick turnaround time in resolution of my disputes literally translated into millions of dollars, which I am now able to reinvest.”

**Meri Mladenovska-Gjorgjievska, former Minister of Justice, FYR Macedonia:** “The Law on Mediation, which was prepared with the support of IFC, is part of the overall judicial reform of the country. We expect mediation to contribute toward the achievement of two goals: citizens and business to have one more avenue to justice, and to decrease the backlog of cases in the courts.”

**Dragoslav Ognjanovic, a lawyer from Belgrade, Serbia:** “The court procedure is much more formal. In mediation, parties use a casual manner through a discussion to resolve their dispute by themselves. Both parties obtain, in an optimal and fair way, along with reduction of time and costs, a satisfactory solution.”

**Branka Skoko, a trained mediator and a judge at the 1st Instance Court, Banja Luka, Bosnia and Herzegovina:** “I honestly welcome any form of dispute resolution that would lift some of the burden from the court system. While lessening the load of the court, mediation also achieves faster and cheaper dispute resolution and helps maintain good relations between the parties, which is often not the case with the court procedure.”