ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR) IN THE WESTERN BALKANS:

Giving Mediation a Chance

Telling Our ADR Story

In partnership with

Kingdom of the Netherlands
ADR Stories from:

Albania
Bosnia and Herzegovina
FYR Macedonia
Montenegro
Serbia
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Acknowledgements

IFC’s ADR Program in Western Balkans is now recognized as a success — within and outside World Bank Group circles. In the beginning, however, there were many and serious concerns — within IFC, in the local communities, and among official partners — as to whether an alternative method of dispute resolution, namely mediation, could take hold and prosper in the postwar societies and transitional economies of this region.

Today, I am pleased to say that mediation is the preferred option for many, especially in the business community. I am proud to be a member of the team that made this happen.

Such an achievement truly would not have been possible without the generous support of the Canadian International Development Agency and the government of the Netherlands (our donors) and the Ministries of Justice, local courts, and the organizations of mediators in each of the countries (our stakeholders).

In order to bring our program to life we needed the help of many government and nongovernment organizations, business and academic institutions, professional associations, and individuals. They joined in our efforts and volunteered their knowledge and time, donated office space and equipment, and in some cases funded the establishment of mediation centers.

The extent to which their support gave mediation a real chance in Western Balkans cannot be adequately summarized in this short note of acknowledgement, but it is evident on the pages that follow.

To say that I am grateful to our donors, partners, and especially to IFC staff for their contribution to the success of the ADR program, and also to this report, may be an understatement. The depth of my gratitude cannot be precisely expressed in words, so I will leave it at that.

Igor Matijevic
ADR Regional Program Manager
IFC Advisory Services in Europe and Central Asia
World Bank Group

Foreword

Seven years ago, my World Bank colleague Peter Mousley and I sat down with Judge Goran Salihovic to discuss how IFC could support the vision he and his colleagues shared for introducing mediation in Bosnia and Herzegovina. This vision — and Goran’s passion and commitment — cemented our belief that projects of this sort depend on strong partnerships.

After that meeting, the first partnership agreement was signed to support a project designed to help courts decrease their case backlogs and businesses resolve their legal disputes quickly and inexpensively. These objectives soon translated into a few hundred cases resolved and millions of convertible marks released back into the economy. Although the project was challenging, the outcome showed that a few dozen like-minded people working hard on a practical solution can make an impact.

Since then — against all odds in the postconflict turmoil of a war-torn region—these partnerships have made all the difference in introducing reforms that could be sustained after project closing. When the program grew to include work in the other countries of the Western Balkans — Serbia, Albania, FYR Macedonia and, finally, Montenegro — some operational components changed, but partnerships grew even stronger. Bar associations, central banks, high judicial councils, supreme courts, justice ministries, civil society institutions, donors, nongovernmental organizations, and, last but not least, the companies themselves teamed with IFC in creating value for the private sector.

Today, the Alternative Dispute Resolution Program proudly marks more than five years of repeated successes, numerous lessons learned, and unqualified strong links with local communities. For this achievement, I gratefully acknowledge the support of all partners, who have worked with a committed and dedicated IFC team on the ground over the years. It would have been impossible to achieve so much without their insights and dedication.

What started as a vision for mediation in the Western Balkans has resonated in other parts of the world where businesses need help resolving their disputes in a timely manner, including Bangladesh, Burkina Faso, Cambodia, Morocco, Pakistan, Tonga, and Ukraine. As the program continues to expand and evolve, this publication will hopefully serve as a reminder of what matters most: real people, real businesses, and their stories.

Lada Busevac
Global Product Specialist, ADR
Investment Climate Advisory Services
World Bank Group
The government of the Netherlands started supporting IFC’s Alternative Dispute Resolution Program in the Balkan region in 2005. This decision was based on the Dutch “Regional Approach to the Western Balkans,” a policy encompassing all elements of Dutch engagement with the countries of the Western Balkans. Our regional approach includes a regional development program aimed at strengthening regional cooperation. It focuses, among other things, on rule of law and private sector development.

The Alternative Dispute Resolution Program perfectly embraced these priority areas. Improvements to the general investment climate depend to a great extent on legislation, the quality of the judiciary and measures to combat corruption. Flaws in the legal system still remain one of the major obstacles to private sector development in the Western Balkans. That is why it is so important to look for new mechanisms and tools to improve the efficiency of the judiciary system and to enable the Balkan countries to be in line with the European and international standards. Introducing an alternative dispute resolution as a cheaper, faster, and easily accessible tool contributes to achieving this goal.

Mediation in the Netherlands has a long history. The “modern mediation,” as we know it today, officially became part of the Dutch legal system in the early 1990s. In the 1970s and 1980s, Dutch citizens became increasingly dissatisfied with the existing judicial system; the courts had practically become inaccessible with constantly increasing caseloads, resulting in long delays and high costs. This was an incentive to look for other modes of dispute resolution, giving way to mediation. The overall acceptance of mediation and recognition of its benefits took time. By now, though, mediation has become very popular among the Dutch.

I expect a similar development in the Balkans. As we approach the end of the program, I take great pleasure in seeing that IFC’s Alternative Dispute Resolution Program paved the way for the introduction of mediation in Western Balkans. The program contributed to changing the legal setup. It helped train more than 500 mediators, it created a network of 18 mediation centers throughout the region, and it taught the benefits of mediation to scores of business people, investors, legal professionals, and state representatives.

During the program more than 3,000 disputes across the region were resolved through mediation. As a consequence, more than €76 million tied up in litigation was released. This demonstrates beyond any doubt the significance and power of mediation. These results are a strong indicator for foreign investors that the business-enabling environment in the region is, indeed, improving. Moreover, mediation also is of huge benefit to local small and medium-size enterprises. For these firms, being tied up in an extensive litigation process greatly increases the risk of bankruptcy.

An important element in the program was its regional character. It provided an opportunity to develop and introduce mediation not only at the national level, but also within the regions. Of course, throughout the project the pace and the modalities by which mediation was established in the different countries of the program varied. This, in fact, provided even better opportunities to learn from each other. I am proud that by the end of the program, mediation was embraced everywhere and received support from the governments in all countries involved.

Needless to say, for these reasons I consider the Alternative Dispute Resolution Program a highly successful project. This is first and foremost due to the strong commitment of the people involved in the field. During field visits to the program my colleagues and I encountered enthusiastic mediators, legal experts who had opened a new way of dealing with disputes. They had seized the opportunity to guide parties toward a mutual agreement rather than to have to impose a solution upon them. Furthermore, I was impressed by the high level of expertise delivered by IFC. This ensured the continuous emphasis on impact and sustainability during the entire process.

It will take time and effort for all parties to recognize the advantages of mediation, but I expect the results of this program to further grow and multiply over the years to come. In addition, I hope that the regional connections that were established during the program will remain strong, and that those involved will continue to learn from each other and can facilitate regional cross-border mediation if the need arises.

Many legal professionals in the Netherlands saw the introduction of mediation as a good business opportunity. They now make a good living by providing mediation services in the Netherlands, as well as abroad. This could be the future for the Balkans as well. In this regard, not only is it important to further strengthen the mediation centers in each country, but also to create linkages between them and to create a strong network of mediators that will provide quality mediation services throughout the entire region.

I would like to thank and congratulate the three parties who jointly carried out this program:

1. Those involved in the process itself—the mediators, for their commitment and enthusiasm during the entire process;
2. The representatives of the governments in the countries that participated in the project for their cooperation and support of the program;
3. And last, but not the least, the IFC team for both their quality expertise as well as excellent project management skills.

I hope that the results of this program will long outlive the duration of the project we jointly implemented!

Ron J. P. M. Van Dartel
Ambassador of the Kingdom of the Netherlands in Serbia
What Is Alternative Dispute Resolution and Why Use It?

The term Alternative Dispute Resolution describes a wide variety of dispute resolution mechanisms that can serve as alternatives to the full-scale judicial process. These include facilitated settlement negotiations, arbitration systems, mini-trials, and mediation.

What is Mediation?
Mediation is a non-judicial procedure in which a neutral third party — the mediator — assists parties in an effort to reach a mutually acceptable solution. The mediator does not impose an agreement, but rather uses specialized skills and dispute resolution techniques to help the parties reach an agreement themselves. The four basic principles of mediation are: voluntarism, confidentiality, equality, and neutrality.

Why Use Mediation?
The lengthy and expensive judicial process in overwhelmed courts prevents parties in dispute from accessing their own funds or obtaining financing from banks or investors. It also usually damages the business relationship between the plaintiff and defendant. That's why mediation is a solution: It is less expensive and more efficient. It preserves the business relationship between parties in dispute. The agreement reached by the parties themselves can often be more creative than a judgment imposed by the court.
A few years ago, if a small or medium business enterprise in Western Balkans became entangled in a dispute with another company, the only option was to endure an extremely lengthy and expensive court procedure. The number of commercial disputes awaiting court attention in the region was in the millions. The long wait and high cost of litigation blocked access to funds and thus sealed the fate of many such enterprises. It also deterred potential foreign and domestic investors.

The Alternative Dispute Resolution program was started in 2003 with the goal of providing companies in the region with a much quicker and cheaper option for resolving commercial disputes: mediation.

This report describes the means IFC used to introduce and implement this ADR approach in Albania, Bosnia and Herzegovina, FYR Macedonia, Montenegro, and Serbia.

In the beginning, IFC ran two pilot projects in Bosnia and Herzegovina, followed by two pilot projects in Serbia. ADR was introduced in the other countries based on the success of these pilots and lessons learned.

In the first year of the regional program, IFC focused on assisting the governments and legal institutions in developing and reforming their legal frameworks, a prerequisite for broad introduction of mediation.

IFC then trained a cadre of world-class mediators, which formed the core of the local organizations of mediators, and established a regional network of mediation centers, all the while facilitating a comprehensive public awareness campaign.

The impact of the ADR program in the region has been broad and deep, and the legacy of this work will become more evident in years to come. The program’s tangible results speak for themselves: More than 3,000 disputes have been mediated successfully since the program’s onset. The average number of days to settle a case through mediation is 28. To date, mediation has freed more than $100.1 million in disputed funds.
When IFC first set out to introduce alternative dispute resolution in the Western Balkans, the local legal systems were dysfunctional and the market economies were transitional. Investor uncertainty, including uneasiness about the legal process, posed a significant challenge to foreign investment and economic development. Companies identified contract enforcement as a major obstacle to conducting business, according to the World Bank’s *Doing Business* report.\(^1\) The only legal recourse for commercial contract disputes — such as nonpayment for goods and services provided — was through the courts.

In the region, the courts were many but clearly overwhelmed by the number of cases: more than 1 million in some countries. In Bosnia and Herzegovina, for example, that meant there were 15,625 cases per court. In order to clear the backlog, 64 courts would need to handle 60 cases per day, 7.5 cases per hour, or more than one court case every 10 minutes for a year. Even then, they would fall behind; in Serbia and Montenegro, for example, the case backlog increases 10 percent per year.

In 2004, courts in the region required 501 days on average to process a commercial case, which is an eternity when business funds and financing are tied up during the litigation. In Serbia, 40 procedures and 1,028 days were necessary for a company to enforce a contract through the formal court system. According to the Sarajevo Chamber of Commerce in 2004, a small or midsize company averaged 21 commercial cases pending court decision for more than three years. The cumulative value of these cases was about $250,000 without interest. Attorney fees, court taxes, and penalties amounted to about 40 percent of this sum, while immeasurable expenses — staff dedicating time and energy to case preparation — added to the cost of going to court. So if a company had a $250,000 claim, it had to pay about $100,000 to resolve it.

If commerce was to thrive, something had to change. There had to be a way to more quickly and inexpensively resolve such cases and preserve the business relationship between the plaintiff and defendant. The solution was commercial mediation.

Giving Mediation a Chance

With financing from the Canadian International Development Agency, IFC set out to introduce alternative dispute resolution methods in the region, launching two pilot projects in Bosnia and Herzegovina in 2003, followed by two pilot projects in Serbia in 2004.

Pilot Projects in Bosnia and Herzegovina

In Bosnia and Herzegovina, IFC partnered with the Association of Mediators already involved in post-conflict reconciliation efforts and two courts, Banja Luka’s Basic Court and Sarajevo’s Municipal Court. The operational part of the pilot projects was simple: Our partner courts would select the cases, while the Association would schedule and coordinate mediation proceedings. Less simple was the preliminary work — drafting and lobbying for the necessary legislation, establishing mediation centers, and trying to get clients to pay for mediation service.

Nevertheless, the Law on Mediation and all the necessary bylaws were soon enacted, allowing broad use of mediation before and after the court procedure. Two mediation centers became operational and post-startup analysis showed that nearly 70 percent of the parties that used mediation were willing to pay for it. Two mediations took place in Banja Luka. For three years, two companies had tried to resolve their commercial dispute through the judicial process. The amount in question was substantial; however, it was the procedure’s costs and its absurd duration that threatened to permanently disrupt any prospect of future cooperation between the parties. This case was successfully resolved by mediation in less than a day.

In another case, four disputes involving one business were resolved in three hours. The owner reported: “The mediation process freed up nearly $2 million for my business. So in my case, this quick turnaround time literally translated into millions of dollars that I can now reinvest.”

Branka Stoko, judge and trained mediator, 1st Instance Court in Banja Luka
Bosnia and Herzegovina

Mirela Ibrisimovic, legal counsel, Union Banke, Sarajevo, Bosnia and Herzegovina

In the Beginning: Starting From Scratch in Bosnia and Herzegovina and Serbia

2003...

Mediation is like a lifeline for clients that are already in a bad financial situation. If we take these clients to court, we are creating a dead debtor. We make it impossible not only for us to continue business with this client, but for everyone else, too.

In the first two years of opening the Banja Luka mediation center, 474 mediations took place, with a success rate of 56 percent. The amount of funds released was around €8 million ($9.5 million).
Mediation Development: A Worthwhile Investment
by Ljubica Milutinovic
judge, Supreme Court
Serbia

Through mediation people renew their relations and restore their positive energy. People reconcile and resolve their disputes based on their interests. They take responsibility for their decisions, and rather than leaving it to someone else to fix their problem, they resolve the problem themselves. Everyone leaves the mediation procedure satisfied — including the mediator.

On the basis of my experience so far, I expect mediation to develop further in this region and to help resolve a multitude of problems and disputes between our people. With the involvement and commitment of citizens, lawyers, judges, academia, and media, the results are sure to follow. Great efforts must be invested in the development of mediation. It will certainly pay off.

Pilot Projects in Serbia

Building on experience gained in Bosnia and Herzegovina, IFC initiated two pilot projects in Serbia in 2004 by partnering with the Second Municipal Court in Belgrade and the Belgrade Commercial Court. IFC trained judges to become mediators, helped open mediation centers, and provided technical equipment.

Within the first seven days, 20 disputes were resolved through mediation, 5 of which were commercial disputes worth a total of €105,000. During 2002-04, the 12 mediator judges in the Second Municipal Court alone resolved 1,056 of 1,176 cases referred to mediation, releasing around $4.8 million.

The basic advantage of mediation in comparison with court settlement lies in its comprehensiveness, in the way a dispute is wholly resolved — not just the concrete dispute itself, but the relations between parties as well — after which parties rarely meet again in court.

Zorica Kitanovic, judge and mediator, Appellation Court in Belgrade, Serbia

2004...
Giving Mediation a Chance

The positive impact of the pilot projects in Bosnia and Herzegovina and Serbia was greater than expected, so IFC decided to use the experience gained and lessons learned and take the ADR program regionwide. Our analysis of the pilot projects identified the essential elements for success:

- **Partnerships**: Collaborate at the policy level with the Ministries of Justice and at the implementation level with the courts, training centers, bar associations, and civil society institutions.

- **Mediation Laws**: Develop and harmonize the legal framework in accordance with the United Nations Commission on International Trade Law (UNCITRAL) model and European Union recommendations. Create procedural mechanisms that will allow better access to mediation.

- **Venues**: Establish a commercially viable network of mediation centers with the courts to facilitate the use of mediation.

- **Training**: Develop a cadre of world-class mediators through customized and continuous training and mentoring programs according to internationally accepted standards.

- **Legal Community**: Involve and educate local judges and lawyers in mediation as a complement to the formal legal system.

- **Public Awareness**: Run a strong and ongoing public awareness campaign that will foster demand for mediation.

- **Sustainability**: Help establish and build the skills of local organizations to guide and manage mediation practices and schemes. IFC’s mission will be accomplished only when mediation knowledge and responsibilities have been fully transferred to a reliable and self-sustainable local civil society institution, such as an organization of mediators.

With financing from the government of the Netherlands, IFC incorporated the lessons learned and expanded the program in 2005 to include Albania, FYR Macedonia, and Montenegro. The regional program focused on five core areas:

1. **Making the Legal Framework ADR Friendly**
2. **Training People: Capacity Building**
3. **Mediation Centers**
4. **Organizations of Mediators**
5. **Raising Public Awareness**
In Macedonia, there were ancient initiatives to reconcile parties in argument. Mediation, although known by different names, was practiced among communities and religious groups, as well as businesses, with the most senior or respected member playing the role of the neutral party — the mediator. Over the years, mediation was given a more formal definition and structure. However, there was no critical mass of stakeholders; trained mediators and judges and published rules for the process were not enough to get mediation going.

It was IFC that brought commercial mediation to the region, sharing a vision and experience with Bosnia and Herzegovina and Serbia that could be adjusted and replicated in Macedonia. We signed a memorandum of understanding with IFC in April 2006. The Mediation Law was passed in May, a program for training mediators was launched in June, and by the end of July, the first 60 mediators had been trained and certified to provide this new service.

Many donors wanted to do something about mediation in Macedonia, but at that time few besides IFC had a clear vision of what to do and how to do it. Once we partnered with IFC, other international organizations followed, and with proper donor coordination, we managed to expand cooperation.

We now have legislation in place — not only the mediation law but the accompanying regulations as well — and with the upcoming changes to the Code on Civil Procedure, we will increase judges’ involvement and responsibility to refer cases to mediation. We also have more than 130 trained mediators, organized in the Chamber of Mediators, as well as trained judges, lawyers, and other legal practitioners.

After two minor modifications to the law and two pilot initiatives, more than 100 mediation initiatives — from cases that had been in the courts for years — have released $3.4 million in funds as of November 2009.

2006...
With the necessary legal foundation for mediation in place, IFC and its government partners moved on to the next phase of the program, which was to produce a cadre of world-class mediators for the entire region. This required training courses, seminars, workshops, conferences, and study trips — and writing and publishing all the necessary manuals.

Each country first needed ADR-certified mediators. “Train the Trainer” courses were developed to equip a critical mass of mediation professionals with the necessary skills. At the same time, IFC began educating judges, lawyers, and other stakeholders about the process and advantages of mediation. IFC partnered with nongovernmental organizations as well as internationally recognized training institutions to create a program to teach future mediators special skills and knowledge through a curriculum consisting of:

- Conflict theory and analysis;
- Methods of dispute resolution;
- Negotiation theory, methods and styles;
- General principles of mediation, and stages in the mediation process; and
- The legal framework and mediation model in the mediators’ respective countries.

During this phase of the program, IFC facilitated dozens of training sessions, and soon the profession of mediation was recognized in all five countries. There are now more than 860 trained and licensed mediators in the region: 510 in Serbia, 131 in Bosnia and Herzegovina, 130 in FYR Macedonia, 75 in Montenegro, and 49 in Albania. In order to preserve the excellence of the mediators and satisfy their international professional certificate requirements, the program has also provided two-day continuing education courses each year.

One of the most important lessons from the pilot projects in Serbia and Bosnia and Herzegovina was that if mediation was to become a business reality, the program had to initiate the judges, too. The judges most often decide or recommend which cases go to mediation. They are the catalysts for mediation.

IFC provided courses to teach judges how to recognize parties that are ready to resolve their disputes in a non-judicial fashion. To further support the involvement of the legal community, judges and lawyers were invited to seminars and workshops for mediators, giving them every opportunity to gain a better understanding of the mediation process and its advantages. IFC also assisted the ministries of justice in mobilizing funds from the Dutch Embassy and the World Bank Group for mediators, judges, lawyers, and ministry representatives to take specialized “knowledge-sharing” study trips to the Netherlands and the United Kingdom to learn about mediation practices there.

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.

Dragoslav Ognjanovic, lawyer, Belgrade, Serbia

Preconditions for successful implementation of mediation are the judges’ acceptance of mediation, their knowledge of the procedure and its attributes, and their communication of the benefits of mediation to the parties.

Mihajlo Manevski, Minister of Justice
FYR Macedonia

IFC Training Courses, Seminars and Workshops

- Mediation — Training for Mediators:
  a. Mediation 1 (Basic): Training of Mediators
  b. Mediation 2 (Advanced): Getting Ready to Mediate
  c. Mediation: Train the Trainer

- Mediation — Training for Judges and Lawyers:
  a. Basics of Mediation, Case Recognition and Referral
  b. The Role of Lawyers in Mediation
  c. The Art of Mediation Advocacy: How to Support Your Client in Commercial Mediation
  d. ADR Curricula Development Seminar

- Mediation Seminar for End-Users

- Business Workshop: “Mediation as a Tool in Corporate Governance”

- Advanced Training for Mediators in the Construction Industry
When we collect our claim from our debtor through mediation, they become a buyer again, and we can continue with business as usual.” - Milan Vukoja, legal representative, OMV BH, an oil refining and trading subsidiary of OMV Group, was one of the first companies in Bosnia and Herzegovina to recognize the benefits of IFC’s alternative dispute resolution program. OMV BH legal representative Milan Vukoja completed the mediation training and became a member of the Association of Mediators in Bosnia and Herzegovina.

“We learned about mediation as alternative dispute resolution from the media, and the support provided by IFC has added to the seriousness of the project,” says Vukoja.

OMV BH, an oil refining and trading subsidiary of OMV Group, was one of the first companies in Bosnia and Herzegovina to recognize the benefits of IFC’s alternative dispute resolution program. OMV BH legal representative Milan Vukoja completed the mediation training and became a member of the Association of Mediators in Bosnia and Herzegovina.

The dispute was resolved in 25 minutes,” Vukoja says.

Vukoja.

He has introduced a clause in OMV sales contracts mandating the use of mediation in disputes before going the judicial route. Some 1,000 OMV contracts now contain such a clause. The company also seeks to introduce the mediation clause in agreements where OMV appears as a buyer for specific commodities or services.

One of the cases in which OMV was a plaintiff waited for court resolution for more than three years. At OMV’s suggestion, and the defendant’s consent, the case was referred to the Center for Mediation in Sarajevo.

“The dispute was resolved in 25 minutes,” Vukoja says.

“I can say that both sides were satisfied with the solution and, in this case, mediation was entirely applied. Business relations with this partner continued, which is of crucial importance for us.”

OMV and ADR

Client Story

Training Manuals for Mediators

As mentioned, this phase involved writing and publishing training manuals for mediators, judges, lawyers, and other stakeholders. Initially, we published two manuals, one to provide future trainers with the methodological approach for training mediators, and a second to educate judges about the case-referral process. But our mediation publishing venture did not end there. Since then, the collection of mediation literature and manuals has been expanded to include 7 resources:

1. Mediation Skills;
2. Mediators’ Training Manual;
3. Case Recognition and Referral Manual;
4. A Guide Through Mediation;
5. Manual for Users of Mediation Services;
7. Interpretation of Mediation Law

The usefulness of ADR and mediation training was recognized beyond the smaller companies targeted by the program. Recognizing that mediation was becoming a reality in the region, legal representatives of major corporations (such as oil company OMV) completed mediator training and have since introduced a mediation clause in their contracts (see next page). State-owned companies (such as the Podgorica Agency for Construction and Development in Montenegro) are also using mediation for dispute resolution.

2006...2007...
Creating a pool of well-trained certified mediators was an achievement, but to bring the program to life we also needed to establish mediation centers throughout the region. These centers not only provide the venue for continuous training and certification of mediators, they also facilitate mediation proceedings and serve as repositories of information about alternative dispute resolution programs.

Initially, our goal was to form a network of 10 mediation centers. There are now eighteen mediation centers up and running — nine in Serbia, four in Montenegro, two in Bosnia and Herzegovina, two in Albania, and one in FYR Macedonia.6

Another lesson learned from the early pilot projects was that if parties were to consider mediation as an option for resolving their commercial disputes, the location of the mediation centers had to be prime and convenient, which meant within or near the courts. Any further step from the court to the mediation center was perceived as an extra burden of the procedure, keeping people from recognizing the possible positive outcome of mediation.

Based upon the legal framework and the court administration processes in the respective countries, we initially developed two concepts of mediation centers. In those countries whose laws had adopted a court-referred model of mediation, the centers are allied to but separate from the courts. In countries whose lawmakers had opted for the court-annexed model (known as the court-connected model in Albania), mediation takes place within the court itself. In the beginning, these centers were subsidized and managed by IFC. Businesses lacked trust in and were reluctant to pay for this non-judicial method of dispute resolution. Today all the mediation centers are self-sustainable and managed by their respective organizations for mediators.

5 Fatima Mrdović and Branka Stilko, “Judiciary and Mediation,” Paths of Mediation in Bosnia and Herzegovina, p171 (September 2008).

6 See Appendix I for details.
Giving Mediation a Chance

Telling Our ADR Story

After the adoption of the mediation law, the establishment of the Republic Mediation Center will contribute to a faster and more efficient operation of the courts and faster and cheaper access to justice for citizens.

Zoran Stojkovic, Minister of Justice, Serbia

Public-Private Partnership Model in Serbia and Montenegro

In Serbia, IFC took another approach to setting up the mediation infrastructure. Using the public-private partnership (PPP) model, IFC initiated and led negotiations — between the Ministry of Justice and the Central Bank of Serbia (the public sector) and the Belgrade Bar Association and the Center for Children’s Rights (the private sector) — to establish self-sustainable centers for mediation.

As a result of working with the Ministry of Justice, the key project stakeholder, and with initial financial support from the other aforementioned stakeholders, IFC helped establish nine mediation centers in Serbia, including the Republic Center, a self-sustainable legal entity charged with taking over all activities for continued implementation of mediation in the country.

The PPP model was replicated in Montenegro. With IFC support, the Republic Center for Mediation, based in Podgorica, was co-founded by the Ministry of Justice, the Central Bank of Montenegro, and the Association of Mediators. Three branch centers are located in Bijelo Polje, Kotor, and Cetinje.
Mediation in Montenegro

The Commercial Court and the Mediation Center in Montenegro have been ADR partners since December 2009, encouraging parties in commercial disputes to try mediation before trying their case in court. The Commercial Court president and judges assess which cases are suitable for mediation and refer them to the Mediation Center.

“I was in charge of trying several cases,” says Commercial Court Judge Dijana Raickovic. “I recognized, based on the claims from the complaint and the response to the complaint, those cases that were suitable for mediation. I pointed that out to the parties at the hearing,” and referred them to the Mediation Center, Raickovic said. The cases were completed in a favorable manner, and there was no need for the court to rule on them.

“In the first three months, 14 cases were submitted to us, of which 13 were successfully settled,” according to Miroslav Knezevic, director of the Republic Mediation Center responsible for implementing mediation activities in Montenegro. “All this helped eliminate barriers to business, because funds were released that would have been blocked in court proceedings for a long time.” In the first round, mediation in commercial disputes released around €13 million (US$18.6 million) in Montenegro — and in one case alone, the value of the dispute exceeded €6 million.

The initial results have convinced the center and the court to expand their cooperation. In the next phase of the joint project they will organize a series of Mediation Week sessions. “All cases that come to the Commercial Court during that week will first be referred to mediators,” Knezevic says. “Mediation will continue to play a significant role in resolving commercial disputes in Montenegro in the future,” Raickovic says. “I believe that all Commercial Court judges would agree on this assessment.”

The need for independent, self-sustaining organizations to guide and manage mediation practices was central to our ADR vision in the region. These organizations would continue the legacy of mediation long after the initial work was done.

The organizations of mediators are the principal guarantors — the stewards — of the mediation profession and are crucial for ensuring quality and transparency of the procedure. Working as partners, IFC and these organizations developed and wrote the rules and codes of mediation ethics that set forth the norms of conduct for mediation professionals. They drafted and adopted:

- Rules on the Registry of Mediators (regulates establishment of, prerequisites for entry, and maintenance of Register of Mediators)
- Rules on the List of Mediators (regulates contents and publishing of mediators list in official gazettes, courts, Ministries of Justice)
- Rules on Referring Cases to Mediation
- Rules on the Training Curriculum for Mediators
- Rules on Liability of the Mediator for Damage Inflicted
- Rules on Disciplinary Liability of Mediators
- Rules on Fees and Costs of Mediation
- Rules on the Code of Ethics for Mediators

Once the mediation centers became operational and self-sustaining, IFC formally transferred management of the centers to their respective mediator organizations. The organizations’ day-to-day responsibilities include: maintaining mediation standards; developing training curricula; training and certifying mediators and trainers; providing special courses for judges, lawyers, end-users, and other stakeholders; and increasing public awareness. They continue the program mission in working with international groups and local institutions to further develop the legal framework and standards.

The organizations of mediators are essential to the success of ADR; the evolution and growth of mediation practices in the region is now in their hands.
Snezana Stojanovic, a judge in Belgrade’s Second Municipal Court, gave up a lot of authority in accepting her new job, but she is accomplishing more now than ever. Her story reflects an innovation that is quietly changing the Serbian judicial system.

The change is alternative dispute resolution, a results-oriented, time-tested approach to resolving legal disagreements that relies on a simple process: discuss problems face-to-face, seek solutions rather than assigning blame, and move on. ADR takes a variety of forms, but in Serbia it basically involves removing lawyers and judges from the process so the litigants, aided by trained mediators, can settle their differences. ADR delivers quantifiable results. In Serbia’s first two years of offering ADR, settlements were reached in 1,800 of 2,000 cases where it was used. In a survey of participants, all respondents — 100 percent — said they were fully or at least partially satisfied. Some 93 percent said that mediation increased their trust in the legal system. ADR also is fast. In Serbia, contract disputes that go to litigation typically require 40 separate proceedings and can take years to resolve. But ADR cases are usually settled in a single session. And while protracted litigation can easily wind up costing €150,000, a typical mediated dispute costs just €1,800.

IFC is helping four countries in Western Balkans — Albania, Bosnia and Herzegovina, FYR Macedonia, and Serbia — establish ADR systems, advising their governments on the legal framework for ADR, assisting with pilot projects such as the one in Belgrade’s Second Municipal Court, and supporting efforts to train mediators. Although ADR is not limited to commercial cases (in Serbia, 60 percent of cases that go to ADR involve non-commercial matters), it has clear implications for economic development. First and foremost, judicial reform is a prerequisite for admission to the European Union. Also, the backlog of cases awaiting trial has grown to 500,000 in Serbia and is increasing 10 percent a year. And finally, ADR frees up capital that otherwise could be frozen for years during litigation; the first 1,800 Serbian ADR cases settled led to the release of €33.2 million.

The National Mediation Center in Serbia, which operates out of the Ministry of Justice, has more requests for the five-day mediator training than it can handle. Training is open to anyone with a college degree — doctors, engineers, journalists, and lawyers. But lawyers may have to forget some of their law school training. In ADR, explains the Second Municipal Court’s Judge Stojanovic, the mediator doesn’t try to control the process the way judges do. Rather, the judge is just “one part of the chain,” which helps move participants to amicable resolution of their differences.

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Benefits of mediation

<table>
<thead>
<tr>
<th>Mediated Dispute</th>
<th>Cost</th>
<th>Litigation Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>€1,800</td>
<td></td>
<td>€150,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mediated Dispute</th>
<th>Number of Separate Proceedings</th>
<th>Fully or at Least Partially Satisfied</th>
<th>Mediation Increased Trust in the Legal System</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 session</td>
<td>40</td>
<td>100%</td>
<td>93%</td>
</tr>
</tbody>
</table>

First 2 years

<table>
<thead>
<tr>
<th>Serbia [population 7,300,000]</th>
<th>Number of Disputes Mediated</th>
<th>Success Rate</th>
<th>Amount Released Through Mediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,000</td>
<td>90%</td>
<td>€33.2 million</td>
<td></td>
</tr>
</tbody>
</table>

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Raising Public Awareness

The mediation procedure was not available for companies in dispute in those five countries when IFC’s ADR team arrived on the scene. Although the courts were notoriously corrupt, backlogged, and expensive, companies involved in disputes waited quietly in queues for their day in court while their businesses and finances suffered. IFC had to find ways to inform and educate them, and increase their trust in mediation: To succeed, the program needed a strong and targeted awareness campaign.

The awareness campaign was designed to reach out to government stakeholders, the legal communities, academia, and business executives — and convince them all to give mediation a chance.

IFC worked with the Ministries of Justice and the organizations of mediators, and coordinated a spectrum of events — conferences, roundtables, and workshops — in each country. In partnership with the respective economic chambers, businesses, and professional associations, project teams organized seminars, lectures, and presentations to inform and educate the participants about the mediation process and its advantages. The three-part message to participants was simple:

1. Mediation is cheaper and more efficient than the court procedure.
2. Mediation agreements are reached by the disputing parties themselves — and are enforceable.
3. Mediation preserves the business relationship between the parties in dispute.

This message was repeated many, many times during 285 events, including 67 conferences, workshops, and seminars; 44 roundtables; 15 direct marketing presentations; 14 academic lectures; 48 press conferences; and countless presentations to economic chambers and the members of the business community, including major corporations from the energy, insurance, and construction sectors.

Altogether the events were attended by more than 6,100 participants and mentioned more than 450 times in the national media.

IFC also helped design promotional materials (logos and posters) for all mediation services and wrote and published informational brochures and country-specific newsletters.

A part of the general public has still not been informed about this dispute resolution method, and it is necessary to invest additional efforts and time to convince them to ‘try something new’.

Jagoda Ribica, chairperson, and Aleksandar Zivanovic, executive director, Association of Mediators, Bosnia and Herzegovina8

In a world where time and cost are paramount, people recognize the benefits of mediation. They want to take charge of their problems and find their own solutions, rather than placing controls in the hands of the courts, which are time consuming and costly.

Perparim Kalo, managing and founding partner of law firm Kalo & Associates, Tirana, Albania

8 Ribica and Zivanovic.
9 See Appendix 2 for details.
In Business, a Number Is Worth a Thousand Words: 
Results

<table>
<thead>
<tr>
<th>IFC ADR Program Achievements 2004-09</th>
<th>ALBANIA</th>
<th>BOSNIA AND HERZEGOVINA</th>
<th>FYR MACEDONIA</th>
<th>MONTENEGRO</th>
<th>SERBIA</th>
<th>Region Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEDIATION CENTERS ESTABLISHED</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>9</td>
<td>18</td>
</tr>
<tr>
<td>NUMBER OF ACTIVE MEDIATORS</td>
<td>49</td>
<td>131</td>
<td>130</td>
<td>75</td>
<td>510</td>
<td>895</td>
</tr>
<tr>
<td>CASES RESOLVED THROUGH MEDIATION</td>
<td>344</td>
<td>442</td>
<td>80</td>
<td>300</td>
<td>1,845</td>
<td>3,011</td>
</tr>
<tr>
<td>COMMERCIAL CASES RESOLVED THROUGH MEDIATION</td>
<td>344</td>
<td>187</td>
<td>49</td>
<td>67</td>
<td>376</td>
<td>1,023</td>
</tr>
<tr>
<td>FUNDS/ASSETS RELEASED ($ millions)</td>
<td>4.2</td>
<td>37.5</td>
<td>3.5</td>
<td>9.1</td>
<td>45.8</td>
<td>100.1</td>
</tr>
<tr>
<td>FUNDS/ASSETS RELEASED COMMERCIAL CASES ($ millions)</td>
<td>4.2</td>
<td>13.4</td>
<td>3.3</td>
<td>3.9</td>
<td>41.2</td>
<td>66</td>
</tr>
<tr>
<td>NUMBER OF DAYS TO SETTLE CASE THROUGH MEDIATION</td>
<td>16</td>
<td>50</td>
<td>25</td>
<td>30</td>
<td>20</td>
<td>28</td>
</tr>
</tbody>
</table>

Mediation has radically shortened the procedure and saved us a lot of money. Thanks to open communication — without impeding legal restrictions and formalities — we were able to reach a mutually satisfactory solution in less than two hours.

Director of small business in the Western Balkans

SUCCESS RATE* 75%

[3,011]
Five-Year Action Plans

IFC is now working with stakeholders on a customized Five-Year Action Plan for improving and ensuring the success of the mediation profession in each country. These detailed plans will help the respective organizations of mediators design more effective training courses and promotional campaigns to encourage the use of mediation.

Expanding in Western Balkans — Sector-by-Sector

A new phase of the ADR program was initiated to introduce mediation in the construction industry, starting in Bosnia and Herzegovina and Serbia. To that end, IFC has organized conferences and published promotional materials and an in-depth brochure, and is now working with the Dispute Board Federation of the International Federation of Consulting Engineers (FIDIC) to make the inclusion of a mediation clause in FIDIC contracts standard policy.

IFC has also signed cooperation agreements with the Associations of Consulting Engineers (ACE) in Bosnia and Herzegovina and Serbia to organize training, raise public awareness, and form mediation departments within the associations where members can resolve their disputes without following complicated court procedures.

To establish a pool of mediators specialized in the construction industry in each country, IFC is helping organize basic and advanced training for ACE consulting engineers and has engaged the Center for Effective Dispute Resolution, a U.K. firm experienced in construction industry mediation, to help write a sector-specific training manual. IFC has also published a brochure to be distributed to ACE members and other construction companies. The construction sector was selected for special focus because the industry’s share in gross domestic product in the region is 5-10 percent. The sector is a driver for more than 30 other industries and has a multiplier effect on economic growth. A 1 percent growth rate recorded by the construction industry can result in 1.4-1.6 percent growth of overall GDP, depending on the structure and development level of the entire economy.

In the wake of the global economic slowdown, companies in all industry sectors and all size segments are facing difficulties. As a result, corporate defaults are expected to skyrocket. This is visible in the construction sector, even in areas where initial liquidity issues were appropriately managed in the early stages of the crisis. In these cases, the domino effect has led to additional construction delays and defaults.

Academia: ADR Curricula Development

The legal academic community expressed an interest in becoming more actively engaged in ADR development in the region, and in response we facilitated a regional knowledge-sharing event with participation from Harvard Law School’s Program on Negotiation. In Sarajevo, a region-wide seminar, “ADR Curricula Development,” attracted law professors from all five participating countries. After several presentations and lectures to hundreds of students (180 in Albania alone), IFC teamed with the Law Faculties to develop the ADR module and make ADR an integral part of the curriculum for students at Belgrade Law Faculty, Sarajevo Law University, University of Tirana Faculty of Law, University of New York, and Justitia Law School.

“Arbitration and ADR” is now a required course for fifth-year law students at Belgrade Law Faculty. IFC also printed, purchased, and delivered all 500 copies of the course textbook.
Mediation in the Construction Sector

In support of the promotion of mediation in construction industry disputes, I would like to present data on construction industry disputes now before the court.

More than 720 construction industry disputes are now pending before the 1st Instance Commercial Courts in Serbia — as many as 260 in Belgrade and 166 in Kraljevo — with per-case value ranging from as little as RSD 10,000 to more than RSD 222 million ($135-$3 million).

Due to the nature of construction industry disputes, both economic and construction court experts are required to conduct lengthy and complex assessments of an often very voluminous evidentiary body. Additional and subsequent inquiries make construction disputes among the most time-consuming and long-lasting, resulting in high dismissal and retrial rates.

The consequences are lengthy blockages of funds caught up in dispute, mounting court and legal expenses, high consumption of judicial capacity, and a dramatic slowdown in the speed of exercising parties’ rights.

Thus the Higher Commercial Court is of the opinion that any attempt to resolve disputes in an amicable manner, namely mediation, is both recommended and desired. Considering that the construction industry itself is aware of the lengthy process and significant expense of judicial resolution, those parties involved in it should be encouraged and self-interested in resolution through mediation.

For the reasons stated above, IFC’s activities toward promoting and developing mediation, especially in the construction industry, will not only help the parties exercise their rights swiftly, but will also help the courts reduce the backlog of cases.

Mediation in the Insurance Sector

Triglav BH Insurance, a leading provider of insurance in Bosnia and Herzegovina, was the first in this sector to adopt ADR and make mediation compulsory for signatories of its contracts.

“Mediation has advantages over court resolution of disputes in that it leads to much faster dispute resolution, it involves much lower costs, and — perhaps the most important aspect — the parties in the process get to retain their mutual confidence,” says Triglav BH legal representative Hajrija Hrustemovic.

Given its positive experience, Triglav BH has informed the general public about the company’s orientation toward resolving disputes through mediation and has invited its debtors, as well as its creditors, to use this method.

As a member of the Triglav group, the Triglav BH Insurance belongs to a large family that is involved in insurance business in markets of Slovenia, Czech Republic, Croatia and Montenegro.
Based on the success and methodology developed in the Balkans, IFC is supporting introduction of a more efficient and less expensive out-of-court mechanism for resolving commercial disputes in Pakistan, Cambodia, Ukraine, Egypt, Morocco, Tonga, Vanuatu, Papua New Guinea, Burkina Faso, and Bangladesh.

In addition to the operational aspects of the work, IFC has organized trainings, presentations, and various co-sponsored events and developed a number of management tools and publications based on lessons learned and experiences gained in the Balkans. An ADR Toolkit on “Implementing Commercial Mediation” and a “Pilot Project Manual” have been published and disseminated. We have also established numerous contacts and partnerships with the respective government and judicial institutions, business communities, academia and professional ADR service providers to further advance the use of mediation.
## Mediation Centers - Contact Info

**Appendix**

<table>
<thead>
<tr>
<th>Country</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Albania</strong></td>
<td>District Court of Durres Durres Tel: +355 68 20 96613</td>
</tr>
<tr>
<td></td>
<td>Chamber of Commerce and Industry of Durres L. 11, Rruga &quot;A. Goga, P. Borova&quot;, P.O. Box 210, Durres Tel: +355 52 222199224440 E-mail: <a href="mailto:info@ccirdr.al">info@ccirdr.al</a></td>
</tr>
<tr>
<td><strong>Bosnia and Herzegovina</strong></td>
<td>Sarajevo Municipal Court Sarajevo Senoinja 1, Sarajevo Tel: +387 62 546 019 E-mail: <a href="mailto:medijacija@epn.ba">medijacija@epn.ba</a></td>
</tr>
<tr>
<td></td>
<td>Primary Court Banja Luka Vladike Patona 2, Banja Luka Tel: +387 65 701 061 E-mail: <a href="mailto:medijacija@blc.net">medijacija@blc.net</a></td>
</tr>
<tr>
<td><strong>FYR Macedonia</strong></td>
<td>Mediation Center (at Chamber of Mediators) Zoran Petkovic, President Chamber of Mediators 11 Oktomvri Street, #17, 1000 Skopje Tel: +389 70 685 130</td>
</tr>
<tr>
<td><strong>Montenegro</strong></td>
<td>Republic Center (main office) Mirkolaz Krnavevic, Director Center for Mediation Djoka Miravevica 59, Podgorica Tel: +382 20 265 349 E-mail: <a href="mailto:posredovanje@t-com.me">posredovanje@t-com.me</a></td>
</tr>
<tr>
<td></td>
<td>Three branches located in: Cetinje Bajka Polje Kotor</td>
</tr>
<tr>
<td><strong>Serbia</strong></td>
<td>Republic Center (main office) Ksenija Maksic, Director Republic Center for Mediation Karadjordjeva 48, Belgrade Tel: +381 11 3287 296 E-mail: <a href="mailto:office@medijacija.org">office@medijacija.org</a></td>
</tr>
<tr>
<td></td>
<td>Eight branches located in: Belgrade (5) Subotica Ni Krusevac</td>
</tr>
</tbody>
</table>
## ADR Public Awareness Events

**Appendix**

The ADR Program’s public awareness campaign consisted of more than 285 events region-wide — altogether attended by more than 6,100 participants and mentioned more than 450 times in the national media — including:

<table>
<thead>
<tr>
<th>67</th>
<th>Conferences, workshops, and seminars such as:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Two international conferences on the use and advantages of mediation</td>
</tr>
<tr>
<td></td>
<td>(more than 500 participants)</td>
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<tr>
<td></td>
<td>Business workshops on “Mediation as a Tool in Corporate Governance”</td>
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<tr>
<td></td>
<td>“The Art of Mediation Advocacy: How to Support Your Client in Commercial Mediation”</td>
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<tr>
<td></td>
<td>“The Role of Lawyers in Mediation”</td>
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<tr>
<td></td>
<td>“Case Referral in Mediation”</td>
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<tr>
<td></td>
<td>Seminar on “Mediation in the Construction Industry”</td>
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<table>
<thead>
<tr>
<th>44</th>
<th>Roundtables including:</th>
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<tbody>
<tr>
<td></td>
<td>“Laws on Mediation”</td>
</tr>
<tr>
<td></td>
<td>“Benefits of Mediation”</td>
</tr>
<tr>
<td></td>
<td>“Mediation as an Effective Tool for Solving Commercial Disputes”</td>
</tr>
<tr>
<td></td>
<td>Regional roundtables for sharing experiences of all five countries</td>
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<td>Roundtables to improve mediation laws</td>
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</table>

<table>
<thead>
<tr>
<th>15</th>
<th>Direct marketing presentations to various companies</th>
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<tbody>
<tr>
<td></td>
<td>Belgrade Law University</td>
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<td></td>
<td>Sarajevo Law University</td>
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<td></td>
<td>Tirana University</td>
</tr>
<tr>
<td></td>
<td>University of New York</td>
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<tr>
<td></td>
<td>Justitia Law School</td>
</tr>
<tr>
<td></td>
<td>University of Skopje</td>
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<tr>
<td></td>
<td>State University of Tetovo</td>
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<table>
<thead>
<tr>
<th>14</th>
<th>Academic lectures and presentations at law faculties:</th>
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<tr>
<th>48</th>
<th>Press conferences</th>
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<td>“Mediation: How to Start the Procedure”</td>
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<td>“Court or Mediation”</td>
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<td>“Lawyers and Mediation”</td>
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<td>“Commercial Mediation...” (in each country)</td>
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<td>“Construction Industry and Mediation”</td>
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About the World Bank Group:

IFC, a member of the World Bank Group, creates opportunities for people to escape poverty and improve their lives. We foster sustainable economic growth in developing countries by supporting private sector development, mobilizing capital for private enterprise, and providing advisory and risk mitigation services to businesses and governments. Our new investments in fiscal 2009 totaled $14.5 billion, helping channel capital into developing countries during the global financial crisis.

Alternative Dispute Resolution is part of the World Bank Group mandate and embedded in the day-to-day operations of its institutions: International Commission for Settlement of Investment Disputes, Multilateral Investment Guarantee Agency, and International Bank for Reconstruction and Development. IFC and IBRD credit agreements often contain clauses that refer to the amicable resolution of disputes and additionally promote the use of mediation in all investment-related disputes.

The Investment Climate Advisory Services of the World Bank Group helps governments implement reforms to improve their business environments and encourage and retain investment, thus fostering competitive markets, growth, and job creation. Funding is provided by the World Bank Group (IFC, MIGA, and the World Bank) and over 15 donor partners working through the multidonor FIAS platform.

About Our Donor Partner, the Netherlands Minister for Development Cooperation

The Netherlands aims to promote the local business climate in developing countries because economic growth is crucial in the fight against poverty. Business investment creates more jobs, so that people can earn a living and take care of themselves.

A good business climate cannot be created in the short term, because it is so closely connected to local policy and governance. That is why the Netherlands works to improve local governance, market access, the functioning of the banking system and infrastructure, and basic vocational education. This is achieved through the embassies, within international organizations, and by supporting enterprises and private organizations operating in developing countries.

The Netherlands Minister for Development Cooperation funded IFC’s Alternative Dispute Resolution Program in Western Balkans.

Credits

Telling Our ADR Story - Giving Mediation a Chance

Alternative Dispute Resolution Program 2004-2010
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How to contact us:

IFC has offices in more than 80 countries around the world. For further details or information on the Alternative Dispute Resolution Program in Western Balkans, please visit www.ifc.org/pepse or contact IFC directly at our offices:

Belgrade Office
Bulevar Kralja Aleksandra 86
11000 Belgrade, Serbia
Tel: +381 11 3023 750
Fax: +381 11 3023 740
Contact: Igor Matijevic
E-mail: IMatijevic@ifc.org

Sarajevo Office
Hamdije Kresojevica 19
71000 Sarajevo, Bosnia and Herzegovina
Tel: +387 33 251 555
Fax: +387 33 217 762
Contact: Samira Sauvage
E-mail: SSauvage@ifc.org

Skopje Office
Vasil Adzilarski bb
Soravia Building, Floor 3
1000 Skopje, FYR Macedonia
Tel: +389 2 3223 306
Fax: +389 2 3223 298
Contact: Marina Perunovska
E-mail: MPerunovska@ifc.org

Tirana Office
Rr: Deshmoret e 4 Shkurtit
Sky Tower R1, Tirana, Albania
Tel: +355 4 231 401
Fax: +355 4 231 260
Contact: Fatbardh Cangu
E-mail: FCangu@ifc.org

Regional Communications Officer
Bulevar Kralja Aleksandra 86
11000 Belgrade, Serbia
Tel: +381 11 3023 750
Fax: +381 11 3023 740
Contact: Slobodan Brkic
Email: SBrkic@ifc.org