

Alternative Dispute Resolution Platform

Pilot Project Management Manual for Court-Referred Mediation

**International Finance Corporation/
Southeast Europe Enterprise Development**

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Table of Contents

	<u>Page</u>
1. Introduction	5
2. Legal Considerations in Court -Referred Mediation	7
3. Benefits of Mediation	10
4. Overview of Court-Referred Mediation Process	12
5. Non-Court Referred Mediation	13
6. Creating an Enabling the Environment	13
7. Pilot Parameters	15
7.1 Institutional and Individual Roles and Responsibilities	16
7.1.1 IFC/SEED	
a. Pilot Project Coordinator	
b. Pilot Project Evaluator	
7.1.2 Mediation Center	
a. Mediation Center Coordinator	
b. Mediation Mentor	
c. Assistant Mentor	
d. Mediation Administrator	
e. Mediators	
f. Data Analyst	
7.1.3 Pilot Court	
a. Court President	
b. Court Judges	
c. Court Administrator	
7.1.4 Ministry of Justice	
7.1.5 Mediation Accreditation Body	
7.1.6 Training Organization(s)	
7.1.7 Industry Associations	
7.1.8 Other Judicially Related Bodies	
7.1.9 Pilot Governance and Management	
a. Advisory Board	
b. Management Committee	
7.2 Procedures for the Pilot	27
7.2.1 Engagement of Pilot Actors	
7.2.2 Pilot Court	
7.2.3 Advisory Board Members	
7.2.4 Mediators	
7.2.5 Mentor and Assistant mentor	
7.2.6 Mediation Center Coordinator	

7.2.7 Mediation Administrator	
7.2.8 Data Analyst	
7.3 Case Processing and Management	29
7.3.1 Identification of Cases for Mediation	
7.3.2 Notification to Parties of Invitation to Mediate	
7.3.3 Pre-trial Meeting with Judge	
7.3.4 Establishment of Mediation Logistics	
7.3.5 Conduct of the Mediation Session	
7.3.6 Post Mediation Administration	
7.4 Post- Mediation Party Responsibilities	33
7.5 Pilot Certification of Mediators	
7.6 Educational Briefing Sessions	
7.7 Control Group Process	
7.8 Evaluation of the Pilot	
8. Evaluation, Feedback and Lessons learned	35
8.1 Ongoing Feedback and Lessons Learned	
8.2 End of Pilot Evaluation	
8.2.1 Baseline Data	
8.2.2 Questionnaires	
8.2.3 Focus Group	
8.2.4 Individual Interviews	
8.2.5 Final Evaluation Report	
8.2.6 Post -Evaluation Follow-up	
9. Mediator Training and Certification	39
9.1 Qualifications - Who can become a mediator?	
9.2 Classroom training	
9.3 Apprenticeship Training	
9.4 Mediator Certification	
9.5 Mentor Training and Standards	
9.6 ADR trainers	
9.7 Mediator Associations	
10. Training of the Judicial Sector	43
10.1 Initial Training	
10.2 Further basic ADR Training	
10.3 Advanced Mediation Training	
10.4 Training for Pilot Court Judges	
10.5 Creating Broader Awareness in the Judicial Sector	
11. Public Awareness	45
11.1 Its Importance	
11.2 The Evidence	
11.3 The Campaign	
11.4 Campaign Timeframe	

- 11.5 Materials Available
- 11.6 Potential Activities
- 11.7 Involvement of Industry Associations

12. Financial Consideration	48
12.1 Financial Administration of the Pilot	
12.2 Working Towards Mediation Self-Sufficiency	
12.2.1 Pilot Costs	
12.2.2 Public Awareness	
12.2.3 Training of Judges	
12.2.4 Training of Mediators	
12.2.5 Mediation Center	
12.2.6 Payment of Mediators	

ANNEXES

A. Mediation Caseload	52
B. Forms	54
C. Interview Protocols	88
D. Model Code of Ethics for Mediators	94
E. Getting Ready to Mediate Training Outline	100
F. Case Study of BiH Pilot Project	103
G. Law on Mediation Procedures in Bosnia and Herzegovina	107
H. Sample Publicity Material	
I. Sample Memorandum of Understanding with the Court	
J. Suggested Books, Papers & Web Sites for Mediation Centers	

1. Introduction

IFC, through SEED, has established itself in the region with a sustainable, bottom-up approach to Private Sector Development. One aspect of this approach is a focus on small and medium enterprises (SMEs), who suffer the most from having their time and money tied up in legal disputes, particularly given the limited access to finance these businesses already face.

As part of its support for SME Access to Finance, IFC developed a Court referred pilot project with Basic Court in Banja Luka, Bosnia and Herzegovina, aiming to test effectiveness of mediation while assisting the court in reducing its backlog, thus increasing its efficiency. The IFC Program aims to replicate that success by developing a network of independent and sustainable civil society institutions, which can drive the development of mediation as a complement to the formal judicial system. By developing a critical mass of courts that utilize mediation, primarily in the city centers where most commercial activity takes place, it is hoped that opening mediation centers will spark the establishment of mediation throughout the region. For businesses, this means quicker access to blocked capital, fewer wasted resources, and a quicker return to business as usual.

The need for ADR is recognized in *the* Region from both a business and Rule of Law perspective. Doing business with foreign partners increasingly involves contracts that include a commercial dispute resolution mechanism, which businesses need to be knowledgeable about. A good example of countries efforts to respond to this need, is the Action Plan for the Enhancement of the Business Environment and a Poverty Reduction Strategy Paper which was adopted by the BiH federal government in 2001, with the support of the World Bank. The plan aimed to improve the business environment including strengthening of the judicial and extra-judicial capacity to resolve commercial disputes. (MIGA's Experience in Conflict-Affected Countries - The Case of Bosnia and Herzegovina.)

In order to join the EU, Macedonia, as the first South East Europe country to do so, was required to signed a Stabilization and Association Agreement, obligating it to adjust its national legislation to the World Trade Organization (WTO) rules and regulations including provision for mediation and arbitration. This further emphasizes the need for any enterprises dealing with the EU to be aware of mediation and arbitration processes.

Judicial reform within countries of the region, is creating a "climate of change", that makes the introduction of court related mediation more possible. All countries in the Region are taking steps to introduce ADR as part of their overall public sector and governance reform programs. (See Section 2 - Legal Considerations in Court-Referred Mediation.) A finding in the OSCE report on Judicial Reform in Serbia is that mediation can help reduce the caseload of the courts. In Bosnia and Herzegovina, mediation became a part of judicial reform, according to the Independent Judicial Commission Report, after a local initiative for its introduction had been taken and a Law supporting

its use had been drafted. ABACEELI's Judicial Reform Indexes for the countries in the Region also recognizes the need for judicial continuing education including ADR.

It was in this context that a Banja Luka Pilot Project was initiated in March 2004 in the Basic Court to test out mediation processes and procedures as a basis for introducing mediation more broadly into the court system in Bosnia and Herzegovina. From March until December 2004, over 1500 civil cases, mostly commercial, were referred by the Court for mediation. The success of the BiH Pilot, has given impetus to supporting court-referred mediation in other countries in the region, initially in Albania, Macedonia, and Serbia and Montenegro

The IFC/SEED Alternative Dispute Resolution (ADR) initiative in the Balkans region consists of several elements: drafting legislation on mediation, implementing a series of pilot training sessions for mediators and judges, conducting a pilot project with at least one court per country, developing and building the capacities of an Association of Mediators, and carrying out an extensive public awareness campaign.

This manual is for use by IFC/SEED staff and project managers in charge of setting up and running mediation pilot projects and by justice ministries and courts selected as partners to work jointly with IFC/SEED on implementation of court-referred mediation pilot projects throughout the region. The use of this manual is also recommended for other participant organizations involved in pilots such as the relevant mediation accreditation body, mediation training organizations and industry associations.

The purposes of this Manual are to:

- Identify the place and importance of court-referred mediation in a countries' judicial system;
- Set out general and country specific legal and regulatory parameters pertinent to the introduction of mediation;
- Identify the roles and responsibilities of organizations and individuals involved in a court-referred mediation pilot, coupled with step by step procedures in setting up and implementing the Pilot; and
- Provide a methodology, procedures and forms for gathering data from the Pilot to assess the efficiency and effectiveness of mediation, and identifying lessons learned as a basis for implementing a more broadly based court-referred mediation system.

The specific methodology used in this manual had its origins in a program designed by the Canadian Institute for Conflict Resolution, and funded by CIDA to provide general conflict resolution skills to civil society and government institutions and individuals faced with resolving local level conflicts in post-war BiH. It involved training of some 700 NGOs, social workers, teachers, lawyers, judges and other professionals between 1998 and 2002, and 19 people in a train-the-trainers program. A few of the more enthusiastic practitioners formed the first Association of Mediators of BiH. The training was sufficiently relevant to the court system that over 200 judges had voluntarily taken the training by 2003. This provided a "critical mass", within the judicial system to press for

changes in the law and introduction of a court-referred mediation system. A combination of civil society and judicial “champions” in the Association of Mediators, with support from IFC/SEED, developed the framework for the court-referred mediation pilot.

This particular model is being used and promoted by IFC/SEED, as it can move many commercial and other cases out of the court backlog and into civil society institutions where they can be resolved quickly and effectively, while retaining the legal protection offered by court decisions. It provides a way in which the mediation process can be self-sustaining through independent mediation centers at a lower cost to disputant parties, than going through the courts. It can eventually lead to a norm or culture of resolving disputes without any reference to the courts. It has the added benefit of reducing overall costs and backlog of cases in an overworked court system.

Harmonization of court-referred mediation among countries of the region would greatly facilitate resolution of commercial disputes in cross-boarder trade. This model can easily be applied in all countries in the Region. It has been designed based on different court connected mediation processes and experiences from around the world and, with some variations, is becoming a predominant model. While some adjustments may be necessary to accommodate local political, social or legislative realities, these are likely to be minimal. In some cases interim adjustments may be necessary until laws have been changed to support non-court mediation processes.

2. Legal Considerations in Court-Referred Mediation

The business, legal and political environment in the Balkans region clearly shows the need for Alternative Dispute Resolution (ADR) processes. There is no impeding political opposition in any country, as illustrated by the fact that various initiatives have been taken to introduce ADR, including the passage of new laws for its facilitation. ADR and mediation specifically, is being seen as an important step in judicial reform in most of the countries. This has been an evolving process since, for example, in BiH mediation at first had not been included as a part of judicial reform, but due to a local initiative to introduce ADR to judges and ministry officials, this has changed and mediation has found its place in the reform.

Traditionally, countries in this region are “law driven” and the judicial attitude and legal culture play a significant role in the introduction of ADR and the mediation in particular. There is generally a positive public attitude toward the judicial system. Although the media is full of negative comments for the courts and judges, there is a significant level of trust by the public in the courts and formal legal procedures.

It is for this reason that advocates included the legal framework as one of the first steps in introducing mediation. In most countries of the region, some initiatives have been taken to formalize mediation:

- Albania has a Law on Mediation in Dispute Settlement, passed in June 2003.(Official Gazette, No. 9090, dated 26.06.2003)
- Bosnia and Herzegovina adopted a Law on Mediation Procedures at the state level in July 2004. (Official Gazette of Bosnia and Herzegovina , 37/2004); Brcko District of BiH, having a special status in the country, has its own Rule on Mediation Procedures.
- Macedonia is in the process of drafting a Law on mediation.
- Serbia a new law on civil litigation was passed in February 2005 introducing mediation and the Bill on mediation has been prepared.¹

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

Some level of state control and support for mediation is essential for its success in all of these countries. The seriousness with which mediation is considered, will be derived from its connections with the formal legal system. Accordingly, it is strongly recommended for any Pilot project designed for mediation to have a strong level of cooperation with the court system, while maintaining it outside the court environment.

Western models of mediation that conclude with an informal agreement where there is no avenue for its enforcement, does not work well in a culture that does not assume that an agreement will be fulfilled simply because one has signed it, and where it is easy to change your mind and not to feel obliged by what has been signed. This emphasizes the importance of the “legalization” of mediation and mediated agreements.

At the same time, it is important to change this “cultural norm” so that mediation can eventually become an alternative to the court system without any reference to the courts. It is encouraging to note that the existing laws on mediation in BiH and Albania, as well as the informal first draft in Macedonia and the Bill in Serbia, regulate mediation so it may be used without or before a court claim is filed.

Even though the proposed Pilots are meant for court referred cases, it is useful for mediation centers to start developing a fee-based mediation services for other non-referred cases. Building a culture of mediation as an alternative to the court system (with an enforceable decision making ability) will gradually lessen the cost of giving the courts a dominant and exclusive role.

¹ Serbia adopted the Law on Mediation in February 2005. This Manual has been prepared before the Law was passed and it may happen that some of its references to Serbia country specifics need adjustments. Consulting the Law on Mediation is recommended. (Official Gazette of Republic of Serbia 18/2005)

Za prevoditelja – zakon se zove Zakon o posredovanju- medijaciji, ja ne znam kako bi u engleskom to izgledalo, mislim da je najbolje ostaviti samo o medijaciji ali je vazno an nasem dase u anzivu navede oboje jer se tako zvanicno zove zakon

Reducing, the court case-load by use of mediation is one of the greatest factors in its favor. The case backlog, which is heavy in most countries, is one of the main reasons for encouraging and formalizing the use of mediation, outside of the court structure.

Other factors that may be regulated by laws, and are important and challenging from the perspective of popularization, acceptance and success of mediation Pilot projects include:

1. the choice between voluntary and mandatory mediation;
2. the choice of court referred vs. court mediated;
3. accreditation of mediators; and
4. defining mediated agreement enforcement mechanisms.

Country Specific Factors:

In Albania the MEDART Center was established in Tirana as the part of judicial reform. However, the Center's relationship with the formal legal system has not been the best. Although there is a law on mediation, there is, in general, strong resistance from the courts to ADR and mediation in particular. Judges have claimed that "there is no legal base for them to suggest mediation to the parties". Preference has been given to arbitration because this is what the judges are more familiar with.

As there is no official case backlog and the courts are efficient in resolving disputes (the longest being 180 days) there is not the same incentive to use mediation. Accordingly an alternate strategy for obtaining mediation cases needs to be developed. For example through promotion by industry associations, the successful use of mediation to settle commercial disputes without reference to the courts could create a greater cultural acceptance of mediation, eventually putting pressure on the courts to also make use of it.

The almost total separation between the Center and the court is also a contributing factor to not having referrals. Finding ways to give the court judges some ownership over the mediation processes, such as inviting those that have been trained to provide public briefings on mediation, could go a long way to improving cooperation.

In BiH, in the Banja Luka court, each judge in the civil and commercial case department has 3200- 3500 cases, and is expected, according to the norms, to "close" about 300 cases a year, meaning that the judge would need 10 years to deal only with the existing cases. This situation is typical of courts throughout the country, and was a strong motivating factor in pushing for the introduction of mediation.

There is also a very strong presence of the international community and a culture of "following" the international lead in judicial reform, making it somewhat easier to implement a court-referred mediation system.

While planning the Pilot project in Banja Luka, there was a strong opinion that the Pilot would not be possible because at the time of the Pilot there was no Law on mediation.

However, because the relationship between the Basic Court Banja Luka and the Center for Mediation was clearly defined and highly cooperative, especially when it came to enforcement of mediated agreements, business people and lawyers were comfortable with, and accorded trust in the Pilot. Using professional mediators in a setting outside and independent of the court, while maintaining good cooperation with the court, contributed to a success rate of some 71 percent of mediated cases.

Brcko District is the only one that has mandatory mediation, mediated by judges. The apparent success rate of some 20 percent, suggests that perhaps there is not enough separation between regular court procedures and the use of mediation as a process of having parties find their own solution to the conflict.

In Serbia and Montenegro, there is a traditional resistance to western methods, and a resistance to be “taught” by people from the West.

Mediation was being done by judges in the court, based on the Civil Procedures Law provision that the judge will persist in trying to reconcile the parties. However, the legality of the process is easily challenged. A Project referred to as “ A court Settlement week “ ended because the opponents found it “ not to be legal” and challenged the agreements reached. A new Law on Litigation went into effect in February 2005 with a provision on mediation for cases where the defense has been filed and the “causa” has not been denied but the amount of the claim is in dispute.

The new Law is based on the Serbia pilot model and mediation could easily become one more “court process”, voluntary but with legal professionals being the exclusive mediators. This would do little to reduce court costs given the ongoing involvement of judges. It could also stifle the independent development of non-court mediation, an initiative that would reduce the number of cases going to court.

Given the drawbacks of court mediation, and the fact that the Serbia Pilot Project opted for it, and that the country legislators may adopt the same option, it is extremely important that they be exposed to alternative models. Accordingly, a future pilots should be based on the model set out in this Manual including mediation roles, responsibilities, procedures and other ingredients so it could eventually be used as the basis for the law or by-law to regulate mediation procedures.

In Macedonia there is an expectation that the formal system will be open and receptive to the mediation. An Association of Mediators with a mandate to promote mediation in the country was formed by a group of 50 people trained in mediation in 1998, but nothing has happened since.

A law pertaining to mediation has been drafted but it may be sometime before it is adopted. Macedonia is the first South East Europe Country that signed a Stabilization and Association agreement with the EU, requiring it to adjust its national legislation to the World Trade Organization (WTO) requirements and rules, including provisions for arbitration and mediation.

3. Benefits of Mediation

Mediation may be defined as a voluntary and informal process in which a third-party-neutral assists parties in their efforts to reach a mutually acceptable settlement. Unlike a judge or arbitrator the mediator has no power to impose a solution on the disputants. The core of mediation is in its ability to orient parties to each other so that they can see their relationship from the new perspective. By assisting in communication, developing a cooperative, problem solving attitude, identifying underlining interests, narrowing issues and transmitting messages between parties, mediation explores possible options for agreement and the consequences of non-settlement.

IFC/SEED officers involved in implementing court-referred mediation pilot projects will meet resistance and be challenged to explaining how mediation would improve the court system. Additionally, they will need material to draw from in developing posters, pamphlets, press releases and other awareness creating materials. The following paragraphs provide an overview of how mediation is being used in other countries and of the benefits that can accrue from mediation. Specific reference is made to the success of the Bosnia and Herzegovina pilot experience. A useful reference document is the IFC/SEED sponsored Evaluation Report prepared on that Pilot.

There is an accelerating movement across North America, Europe and other industrialized nations to introduce mediation into their respective judicial systems. In 2002, the Council of Europe issued a set of recommendations pertaining to the use of mediation in civil matters, which encourages the use of extra-judicial dispute resolution procedures and recognizes the important role of the courts in promoting mediation.

Companies in North America are increasingly including ADR clauses in their contracts to deal with disputes. In Canada, this has been particularly championed by the construction industry, where by its very nature, contractors are continuously in conflict over scheduling, costing and quality control issues. In 2000 the USA Air Force placed more than 50% of all its pending litigations with commercial enterprises on an ADR track and at the end of that year it reported that 97% resulted in successful resolution.

In North America and Western Europe, ADR training has become an integral part of training for lawyers and business people. The skill of negotiation, assisted or non-assisted, has become one of the keys to an efficient business operation. Internet mediation between geographically business partners distant, has become a primary method for dispute resolution. This entails the need for organizations, whether in the region or across the globe, to use the same set of principles to survive in the mainstream world economy.

For countries in the Balkans region, it is crucial for the well-being of their commercial sectors to have a much greater grounding in mediation processes as a basis for sound contract negotiation and management, the reduction and prevention of disputes, and the smooth settlement of disputes when they do arise. As trade is increasingly carried out with the European Union and other parts of the world, this will become a must. The

lengthy and costly court procedures are an anathema to companies, who's very success is based on their ability to move quickly in a highly competitive environment.

Countries in this region are increasingly recognizing the importance of ADR and are beginning to take steps to improve enabling legislation, sponsor pilot projects and establish mediator associations.

In Bosnia and Herzegovina the results the 2004 pilot project were particularly significant in demonstrating, in a country relatively unfamiliar with mediation, how disputes could be resolved quickly and successfully to the satisfaction of both parties. Of the first 156 cases mediated, 106 or 65 percent were successfully mediated, in an average time of 1.4 hours. Average time the judge spends in working with the mediation case is 2.5 hours (from briefing parties to court settlement writing). The financial value of the transactions involved represented some 1.6 million EUR. Voluntary fulfillment of the first 70 commercial mediated agreements happened in 87 percent of cases in an average of 7 days. Most of the party-respondents to a questionnaire, even in cases where there was no agreement, indicated that mediation was an appropriate way to resolve a dispute. The percentage of cases resolved successfully is expected to rise significantly as mediators become more experienced and as parties come to the mediation with full "negotiating authority" and better knowledge of what is involved.

Table below illustrates that in the region of the Southeast Europe average time to get a contract enforced through a court is approximately 520 days, which is close to 1.5 years.

Table 1. Number of days and procedures required for a company to enforce a contract through the formal court system

<i>Country</i>	<i>Days</i>	<i>Number of Procedures</i>
Albania	220	37
Bosnia and Herzegovina	330	31
Macedonia, FYR	509	27
Serbia and Montenegro	1028	40

Source: World Bank, Doing Business Survey, 2004

From the perspective of the courts, the Bosnia and Herzegovina experience demonstrated how the workload per case that is mediated can be reduced by 50 percent or more. As parties become more familiar with mediation, they are likely to go directly to it, bypassing the courts altogether, further reducing court caseloads.

4. Overview of Court-Referred Mediation Process

A fully operational court-referred mediation process with an enabling legislative framework is relatively straightforward. It involves the following steps:

1. Judges who are trained to know which cases are amenable to mediation, refer such case to be mediated.

2. The court invites the parties to use mediation, usually by letter of invitation followed by an initial briefing by the judge. If either party refuses mediation, the case proceeds through the court in the normal manner.
3. If both parties accept mediation, the court passes the names of the parties to a designated Mediation Center. The Center then contacts the parties to arrange a mutually convenient date and time for the mediation session.
4. The mediation takes place at the Mediation Center. An experienced mediator guides the process, helping both parties to understand each others perspectives and to find a mutually agreeable resolution. Most mediated cases can be resolved within a 3-hour period, with occasional follow-up sessions being required.
5. If there is a resolution, a mediation agreement is drawn up at the end of the mediation session, and either signed then or at a later date after parties have had time to review the agreement. The court is informed and closes the case.
6. If there is no resolution from the mediation, the court is informed and the case continues through the normal court process.
7. Data is collected throughout the process to monitor its impact.

If there is no enabling legislation in place, to legitimize the process described above, the judge may have to ratify the mediated agreement, likely involving an additional session with the parties.

Since this manual refers to implementing a pilot, in a country that does not have the required supporting infrastructure, other elements of the pilot system that need to be created include:

- enabling legislation;
- a governance and management structure for the pilot;
- a mediation center;
- trained mediators;
- trained judges; and
- awareness of the value of mediation in the judicial sector, business sector and general public.

5. Non-Court Referred Mediation

This manual specifically deals with court-referred mediation as the most effective, legitimate and acceptable way to introduce mediation as a means of resolving disputes, with the added advantage of reducing court case loads. However, there are strong advantages to the parties of a dispute taking the initiative to hire their own mediator and resolving the dispute without any reference to the courts. These include:

- avoidance of registering the case with the court;
- avoidance of one or more meetings with the judge;
- no court fees; and
- being able to settle the dispute immediately with a timetable set by themselves and the mediator.

However, parties undertaking to mediate a dispute on their own need to take the following into account:

- the value of being properly briefed about mediation before entering into a mediation process;
- need to ensure the mediator is qualified, and ideally should be one certified by the courts;
- depending on the laws of the country, implementation of the agreement may not have the same force as that of a court-referred mediation settlement; and
- In some countries (Albania & BiH), the laws on mediation have the same effect as a court settlement if done by a licensed mediator.

As in other western countries, it is expected that informal non-court mediation systems will develop as the use of mediation through the courts becomes more prevalent.

6. Creating an Enabling Environment

Creating a receptive environment is an essential ingredient to the success of undertaking any Pilot. Without an understanding of mediation and its benefits to parties and courts alike, by ministry officials, court presidents, judges, lawyers and the parties themselves, court-referred mediation pilot projects are likely to fail. A failed project in turn, can create a negative view of mediation among judicial officials, industry associations and the public that will be difficult to overcome.

Creating an enabling environment will take time and patience. It is important not to begin detailed planning or scheduling the start of a pilot project until there are strong indications that the essential players understand and are supportive of the idea of court-referred mediation. Nor should premature decisions be taken about court selection of a pilot, since selection will largely depend upon a high level of receptivity by the court president and its judges. Resistance can arise for many reasons, such as disturbing the status-quo, perceptions that the workload of the court will increase, having to learn new skills and procedures, or lawyers feeling they will lose revenue. A court that is simply “ordered” to participate in a pilot will find many ways to sabotage the effort. These issues need to be thoroughly addressed.

To really understand mediation and to become committed to it, it must be experienced. It is not sufficient to simply read about it. Experience and understanding can come easily through a one or two day experiential workshop where role-plays of mediation sessions are held. To develop a fuller understanding of mediation, such as to know what types of cases will be amenable to mediation, will take longer.

It is also difficult to predict ahead of time, who will be willing or have the time to take a workshop and learn about mediation. Similarly, for those that have taken a workshop or training, it is difficult to predict who will be highly enthusiastic about it and become a “champion” willing to promote it. Champions, whether in the justice ministry, the courts

or among lawyers, are essential to initiating a pilot. It is those that are willing to take an initiative, challenge the status quo and go the extra mile, who will be successful. They are the ones that IFC/SEED needs to work with.

Accordingly, the first stage of introducing court-referred mediation into the court system of any country starts with awareness creation and training. A certain level of awareness creation, such as through briefings, brochures, and media articles will likely be a prerequisite to creating an interest on the part of relevant officials in taking workshops and training on mediation. It will then be important to provide introductory experiential 2 to 5 day workshops to a large number of officials (at least 120) in the judicial and commercial sectors to create a critical mass of interest and support and to uncover champions. A critical mass of support will also be needed if laws need to be changed to support the use of mediation.

More in-depth training (one and two week modules) are also needed for a large number of people that have an interest and potential to become mediators, including those outside of the legal profession. Of those that receive training, only 10 to 20 percent may have the potential to become good mediators.

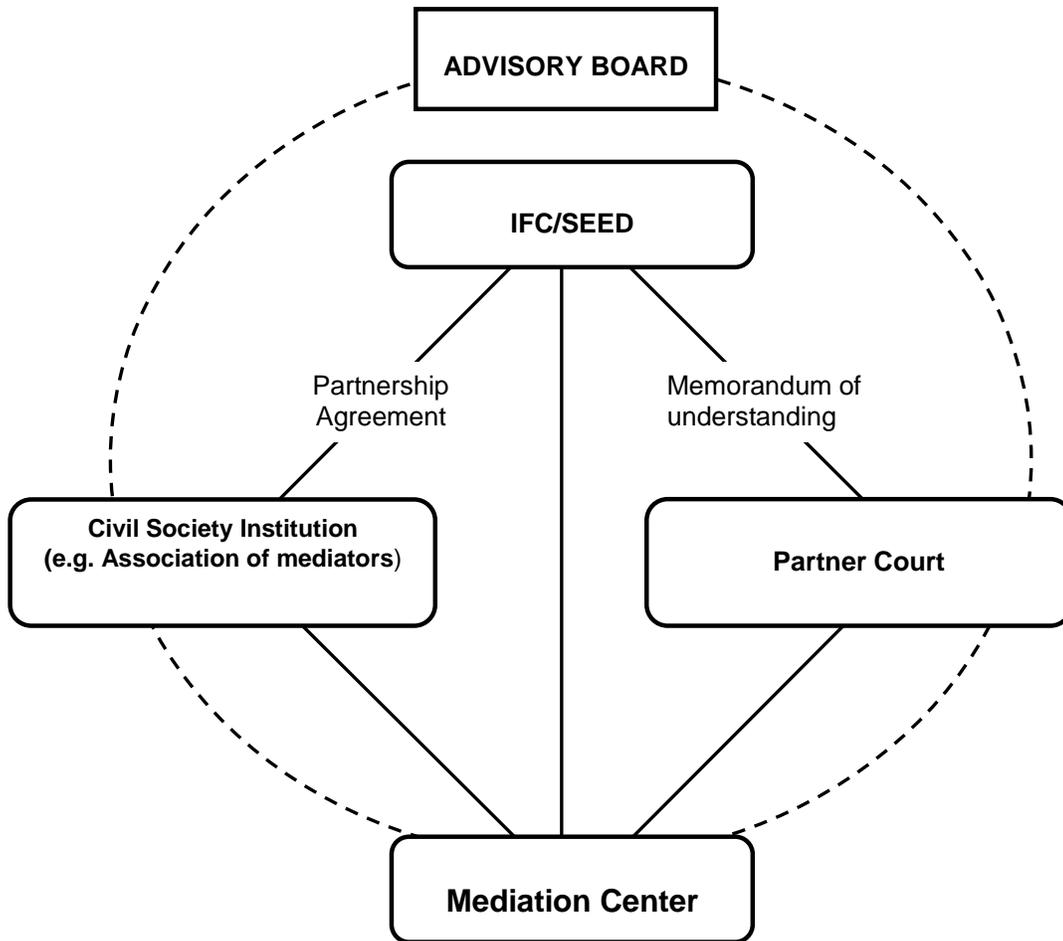
Awareness creation ideas and various workshop and training modules have been developed for end users, judges, lawyers and potential mediators. These are described under Sections 10 and 11 of this manual.

7. Pilot Parameters

The following sections that describe the setting up and operation of the pilot have used some assumptions about the pilot size when identifying numbers of cases to be referred, number of mediators, size of mediation center facility etc. Throughout, the assumption has been made for a pilot of approximately 100 cases being mediated over a 6-week period. The basis of these assumptions, which are described in Annex A, can be scaled up or down for a larger or smaller pilot.

The assumption has also been made that no awareness or structures to support mediation exist in the country. The pilot will necessarily need to be adapted to take account of work already done to introduce mediation into the courts.

The diagram set out below provides an overview and visual context for the relationship between the various bodies involved in a model pilot



7.1 Institutional and Individual Roles and Responsibilities

7.1.1 IFC/SEED

IFC/SEED has overall responsibility and accountability for initiation and implementation of the court-referred pilots programs. This will require the assignment of one or more IFC/SEED program officers to both monitor and be actively engaged with the project throughout, one of whom should be designated as the Pilot Project Coordinator. The work of the IFC/SEED officers will be greatly facilitated by taking the basic and advanced mediation training along with the mediators.

a. Pilot Project Coordinator

Her/his responsibilities will be to:

- provide overall coordination to the Pilot Project;
- carry out an initial awareness creation program;
- initiate the pilot process through contacts and briefings with judges, court president(s) and justice ministry officials;
- identify and invite participation of appropriate individuals onto the Advisory Board;
- select, contract and manage a Mediation Center Coordinator, Mediation Mentor and Assistant Mentor; (The Mentor and Assistant Mentor must be hired in accordance with the selection criteria identified in Section 7.2.5)
- oversee the establishment of a Mediation Center;
- select, negotiate and sign a Memorandum of Understanding with the pilot court, in consultation with the Mediation Mentor, and liaise with the court on broader issues related to the arrangement and conduct of the pilot;
- select and contract pilot mediators in consultation with the Mediation Mentor; (The Center Coordinator will be responsible for logistical/administrative management of mediators and the Mediation Mentor for mediation mentoring, training, and quality assurance.)
- manage all financial arrangements with the Pilot including establishment of a budget, receiving and reviewing financial reports and making payments;
- chair the Management Committee;
- prepare progress reports on the Pilot for the Advisory Board within her/his area of responsibility;
- participate as a member of the Advisory Board;
- initiate and manage the public awareness program; and
- adjust the procedures and forms, to meet specific country requirements, in consultation with the Mentor. (Note: changes should only be those that are absolutely necessary.)

b. Pilot Project Evaluator

Given the importance of evaluation to assessing the results of the pilot and recommending corrective measures and next steps, the use of an external Pilot Evaluator is strongly recommended. This person will not have been involved in the day-to-day operation of the pilot and will be able to bring a fresh and more neutral perspective to the evaluation process. The responsibilities will be to:

- provide advice on any modification to the evaluation framework that the County Coordinator should wish to make;
- review and analyze the results of the pilot from all of the data produced;
- prepare a draft evaluation report at the end of the Pilot for review by the Advisory Board and by IFC/SEED; and
- prepare a final evaluation report.

7.1.2 Mediation Center

The Mediation Center should be set up as the “operations center” for the pilot project. In addition to being a place for mediation sessions, it would have a training room and office space for the pilot staff. It should be located as close as possible to the pilot court and should consist of at least 2 mediation rooms (allowing for 4 half-day mediations), a training/meeting room and offices for the Mediation Center Coordinator, the Mediation Administrator and the Mentor. Another office should be provided for joint use by the mediators and Assistant Mentor.

The training/meeting room should be large enough to accommodate up to 20 people. It would be used for training mediators, judges, court administrators and ministry officials, and for education sessions and briefings with the public and other constituencies. It should also be used for meetings of the Advisory Board, Management Committee and mediators, as well as for individual caucuses with the parties during the process of a mediation.

The Mediation Center should be established as a permanent institutional entity with the necessary organizational registration requirements. The Center will receive funding from IFC/SEED and fees from mediation parties and will be required to have a budget for payment of rent, mediator fees, salaries and other expenses. (While this could be handled directly by IFC/SEED, it is important to establish a separate entity with a view to having it become self-sufficient over the longer term.)

a. Mediation Center Coordinator

The responsibilities are to:

- establish the Mediation Center in consultation with the Pilot Project Coordinator including locating and negotiating arrangements with a suitable facility, buying or renting required furniture, computers, other office equipment and supplies, and arranging telephone and internet services;
- represent the Center to third parties;
- set up and maintain a financial system to record, track and report income, payroll and other expenses of the Center;
- establish working arrangements with the Mediation Accreditation Body (if one exists) and with a designated training organization (if one exists) as required;
- supervise the Mediation Administrator and Data Analyst and provide administrative supervision to the Mentor and Assistant Mentor;
- provide administrative supervision and support to the mediators;
- participate on the Advisory Board and Management Committee;
- organize information and briefing sessions;
- participate in mediation presentations and information sessions;
- ensure that proper facilities, documentation and materials are available for the mediations;
- prepare interim and final reports for the Advisory Board and IFC/SEED as required;
- set up training sessions for potential mediators, judges and others as required by the Mediation Mentor; and

- prepare, in consultation with the Pilot Project Coordinator, progress reports for the Advisory Board.

Country Specific Factors:

- *In Albania* there is an established mediation and arbitration center (MEDART) with clearly defined responsibilities for its director. The duties of the director may need to be augmented to include the requirements of the Pilot.
- *In BiH*, the Mediation Center Coordinator for a new court should establish a relationship with the Association of Mediators for Bosnia and Herzegovina for purposes of identifying appropriate mediators and training requirements.

b. Mediation Mentor

The Mediation Mentor reports to the Mediation Center Coordinator and has overall responsibility for the content, standards, and quality of mediation training, coaching and the mediation sessions. During the mediation sessions, the Mentor plays a critical role in participating with the mediators-in-training until they are certified to work on their own.

S/he models mediation behavior and takes the responsibility to motivate mediators to learn, by exposing them to learning opportunities and supports their development.

The Mentor’s responsibilities are to:

- Be in charge of mediator training, mentoring and quality assurance;
- co-prepare Pilot evaluations with the Evaluation Advisor;
- Lead focus group sessions for the evaluation;
- prepare progress reports on the Pilot for the Advisory Board within her/his area of responsibility;
- participate as a member of the Advisory Board and Management Committee;

Selection:

- interview and select 20 potential mediator candidates from the pool of people trained in basic and advanced mediation, for a three-day, hands –on, experiential “Getting Ready to Mediate “ training.
- Select 8 mediators, 4 as front-line mediators and 4 as backup from the participants in the three-day “Getting Ready to Mediate” training.

Training:

- design, prepare and deliver training to potential mediators
- provide feedback on trainee performance during training and practice sessions;
- answer questions the trainees have regarding any part of the mediation process; and
- complete the Trainee Evaluation Form (ADR 01.05) at the end of the final training session with recommendations as to whether the Trainee is ready to become a mediator-in-training.
- provide trainees with a copy of the Mediation Code of Ethics

Mediation:

- participate with each mediator-in-training for the first 5 mediation sessions (the Assistant Mentor will participate in a further 5 sessions at which time a decision will be made regarding certification of the mediator-in-training);

- spend at least 30 minutes with the mediator-in-training in pre-mediation planning and post-mediation debriefing (in segments, before or after the mediation);
- help the mediator integrate his/her skills and abilities in his/her own conflict resolution journey;
- identify mediation skills the mediator-in-training needs to work on;
- specifically discuss with the mediator-in-training things s/he did well, areas that could use some improvement, and things that could have been done differently;
- answer questions the mediator-in-training has regarding any part of the process;
- move analysis from unique features to generic phenomena or overarching concepts;
- complete the Mentor Evaluation Form (ADR 13.05) after each mediation, providing specific comments, particularly where improvement is needed;
- make a copy of each Mentor Evaluation Form for the mediator-in-training and maintain the originals in a mediator-in-training file, including copies filled out by the Assistant Mentor;
- evaluate and prepare a report on the mediator-in-training's progress from day one to the end of the mentoring process;
- write recommendations regarding the certification of the mediator, to the Mediation Certification Body;

General

- be available to any of the mediators to provide advice or assist with complex mediations; and
- hold weekly experience sharing sessions with the group of mediators.

c. Assistant Mentor

Initially the Assistant Mentor, may need to be from outside the county, but should be taken over as quickly as experience warrants, by a locally trained mediator.

The responsibilities will be to:

- assist the Mentor with training, as required by the Mentor;
- mentor those mediators-in-training requiring full mentored sessions beyond the time available by the Mentor
- make observations and report on mediator-in-training performance to the Mentor
- support the Mentor with all of her/his duties, and perform the Mentor's duties in her/his absence, except recommending certification of mediators.

d. Mediation Administrator

S/he will be responsible for carrying out all administrative work required for the mediation sessions and recording of results. This will include maintaining records on a similar sized control group.

Court related duties are to:

- mail out the Confirmation of Mediation Session Forms (ADR 09.05);
- complete and register the Referral to the Court Forms (ADR 11.05) and Case Progress Record Form (ADR 08.05); and

- maintain a detailed record of time spent on each function, and identify ways of improving his/her work flow.

Mediation and other related duties are to:

- maintain a schedule of appointments for mediators;
- schedule mediation appointments with parties and send them Confirmation of Mediation Session Forms along with the Agreement to Mediate Form (ADR 07.05);
- collect Mediation Summary Forms and Evaluation Survey forms from mediators;
- interview control group members by phone by using the Interview Protocol for the Control Group, Annex C, and conduct follow-up post-evaluation interviews with mediated cases using the Interview Protocol for Fulfillment of Mediation Agreement Annex C).
- ensure that all data is properly entered into the electronic data base, including data entered by others;
- enter data from Mediation Summary Forms, Fulfillment of Mediation Agreement and Control Group telephone interviews with the parties, into their respective data bases;
- organize information and briefing sessions as required; and
- provide administrative support to the Advisory Board and Management Committee (notices of meetings, circulation of documents, minutes of meetings etc.)

Country Specific Factors:

In BiH: for the Banja Luka court, the Mediation Administrator and the Court Administrator duties are carried out by one person.

e. Mediators (and Mediators-In-Training)

Mediators are responsible to:

- sign the Code of Ethics Acceptance Form (ADR 02.05) to respect the Mediation Code of Ethics (See Annex D)
- successfully complete the required mediation training courses;
- actively participate in all the mediator learning sessions during the course of the pilot;
- be available during the pilot implementation period to mediate approximately 25 cases, to be scheduled on a daily basis until completion;
- complete the Mediator-in-training Self Assessment Form (ADR 12.05) at the end of each mediation until s/he is certified;
- follow up with the parties within one week after the mediation in cases where the agreement has not been signed, to obtain their signatures, organize a further mediation session, refer the case back to the Court or take other necessary action to complete the case;
- complete the Mediation Summary Form (ADR 10.05) after signature of the agreement or referral of the case back to the court, and forward it the Mediation Administrator: and

- request the parties and their lawyers to complete the Mediation Survey Form (ADR 14.05) at the end of the mediation, to collect such forms and to fill in the “C” for the commercial and “O” for non - commercial/other cases box and to pass the forms to the Mediation Administrator.

f. Data Analyst

The Data Analyst is responsible to:

- become familiar with the forms, questionnaires, and Electronic Data Base for the Pilot Project;
- ensure that data is properly collected by those responsible for completing and assembling various forms and data;
- assemble and record data in the electronic Data Base, throughout the timeframe of the pilot;
- summarize the data at the end of the pilot, in a format for easy analysis, including charts, graphs etc. in accordance with the evaluation methodology and format; and
- maintain a detailed record of time spent on each function, and identify ways of improving his/her work flow.

7.1.3 Pilot Court

In addition to the Mediation Center, the Pilot Court plays a pivotal role in the success of the pilot, as described in Section 7.2.2. The Court President or his/her designate, judges who will be referring cases and the court administrator will be required to participate in a 2 to 3 day training session, prior to commencing their pilot responsibilities.

a. Court President

The Court President or his/her designate will have responsibility to:

- identify a minimum of 400 cases for potential mediation; (See Annex A for more precision on numbers to be selected based on pilot size and time frame.)
- identify judges who will be a part of Pilot project;
- identify and supervise a staff person in the court, referred to as the “Court Administrator”, to be liaison with the Mediation Administrator;
- *provide office space and access to files for the Mediation Administrator;
- participate on the Advisory Board and Pilot related briefings;
- make analytical input to the evaluation report on court related processes; and
- be the direct contact regarding everyday Court–Mediation Center activities.

Note: * While the Mediation Administrator is located in the Mediation Center s/he will need open access to files of referred cases, and office space to work at the Court, for an average of approximately 20 hours per week.

b. Court Judges

The Court Judges designated to participate in the Pilot are responsible to:

- take the training for judges;
- refer the required number and types of cases;
- provide the necessary instructions regarding the particularities of cases to the court administrator;
- brief referred parties on the mediation process and benefits;
- inform parties of the dates and times of optional educational sessions at the Mediation Center;
- confirm the parties readiness /acceptance of mediation by filling in Court Case Intake Form (ADR 04.05)
- ratify the resulting mediated agreement. (This will be required in countries where there is no legislation permitting mediated agreements to be signed off by certified mediators.)

c. Court Administrator

The Court Administrator is responsible to:

- assemble, by category, potential cases for the Court selection of cases for mediation;
- record information on each party and case in the data base starting with the initial selection of cases;
- record time spent by him/herself, court judges and other officials on both mediated and control group cases;
- assemble files and other data on cases referred to mediation by the judges for use by the Mediation Administrator;
- maintain data on the control group (i.e. cases where the parties declined to mediate);
- provide other court data to the Mediation Administrator as required;
- track and record briefings and hearings by judges of referred cases;
- record evaluation information as required, throughout the pilot process, and collect analytical input from court officials for the final evaluation;
- set up pre-trial meetings for those invited to and are willing to consider mediation;
- follow-up with those parties that were still undecided at the end of the pre-trial meeting for a final decision on whether they will participate in mediation;
- complete and update the Court Case Intake Forms(ADR 04.05), and inform judges and parties of dates and times of educational sessions at the Mediation Center.

Country Specific Factors:

In BiH: for the Banja Luka court, the Mediation Administrator and the Court Administrator duties are carried out by one person.

In Serbia: One person administers mediation cases

7.1.4 Ministry of Justice

The involvement of one or more senior officials from the relevant (state, entity or both) Ministry(ies) of Justice is essential. While they will not have a large role to play in the

day-to-day operation of the Pilot, it is extremely important that they fully understand what is involved with and how a court-referred mediation system works. They need to be in a position to endorse involvement of the pilot court and to take longer-term responsibility for possible implementation of a court-referred mediation system across the country.

a. Pilot Roles and Responsibilities:

Their main role will be as members of the Advisory Board. Ideally, if the Justice Ministry official is both senior enough and sufficiently interested s/he would chair the Advisory Board. This is an important way for the Justice Ministry to take ownership of the court-referred mediation process and its implications for the country. (The alternate Chair would be the President of the Pilot Court.)

b. Post-Pilot Roles and Responsibilities:

While it may not seem important for post-pilot roles and responsibilities to be included in a manual for a pilot, it is important for Justice Ministry officials to understand at the outset, that over the longer term they will need to assume responsibility for any court-referred mediation process that is implemented. This will support them to become more engaged in the pilot and attentive to the results.

Assuming the Pilot is successful and decisions are taken by the Justice Ministry to implement a court-referred mediation system, their longer-term responsibilities will include:

- possible revisions to the legislative framework to facilitate the use of mediation as a first step in civil and criminal cases;
- setting up a mediation accreditation body;
- development of a comprehensive budgeted plan (e.g. over 5 years) for implementation of an expanded system;
- allocation of their own resources and solicitation of donor support for implementation of the plan;
- coordination of a public awareness program through the media and with organizations such as chambers of commerce;
- implementation of a training program with the judicial sector as outlined in Section 10 of this manual;
- allocation of funds to training organizations that would be accredited to train mediators; and
- provision of a certain level of subsidization of mediations for a limited period of time in different part of the country as a means for mediation to become established as a “way of resolving disputes”.

7.1.5 Mediation Accreditation Body

In a fully functioning court-referred mediation system, it will be necessary for the Justice Ministry to set up a Mediation Accreditation Body. Its functions will be to:

- establish clear competency and certification standards for mediators;
- certify and periodically re-certify mediators;

- register and issue licenses to certified mediators;
- establish a training curriculum and mentoring process for mediators;
- qualify training organization(s) to train mediators;
- maintain quality standards of training and mediation through periodic spot checks on performance; and
- Develop standards for mentor registration and a roster of mentors.

A well managed system of mediator certification and a database of mediators could easily be organized and coordinated for the whole country. Once certified and registered with the recognized Mediation Accreditation Body, mediators could offer their services to the parties directly or through nearby Mediation Centers.

If the country's legislative framework is sufficiently permissive, it may be possible for the Pilot Mentor to both train and certify mediators for the Pilot project, or if necessary, for the Justice Ministry to "endorse" the training and certification on recommendation of the Mentor. The Mentor's certification recommendations could eventually be filed with the state recognized Mediation Accreditation Body, once established.

Country Specific Factors:

In Albania, in order for mediators to work they must be registered with the Ministry of Justice.

In BiH: the existing Law on Mediation Procedures omitted to regulate / name the Accreditation Body, and the process of changing that reality may take a while. Individuals trained in basic and advanced mediation by the Canadian Institute for Conflict Resolution or other training organization recognized by the Law and the Association of Mediators should be viewed as potentially certified mediators for purposes of BiH Pilot Projects. Mediation services offered through the Center for Mediation, should be considered as legitimate.

7.1.6 Training Organization(s)

It will be necessary to have existing organizations or newly set up organizations qualified to train mediators, judges, court officials and others to carry out their respective roles. This could be under the umbrella of an industry association, but ideally on a more neutral basis for training of mediators that would also mediate non-commercial cases.

For purposes of the Pilot, training would logically be done by the Mediation Mentor and any trainers trained and certified as trainers by the Mentor. However, this would be an important opportunity for the selected training organization to be involved in the pilot training as a learning experience for them and to eventually take responsibility for training.

Country Specific Factors:

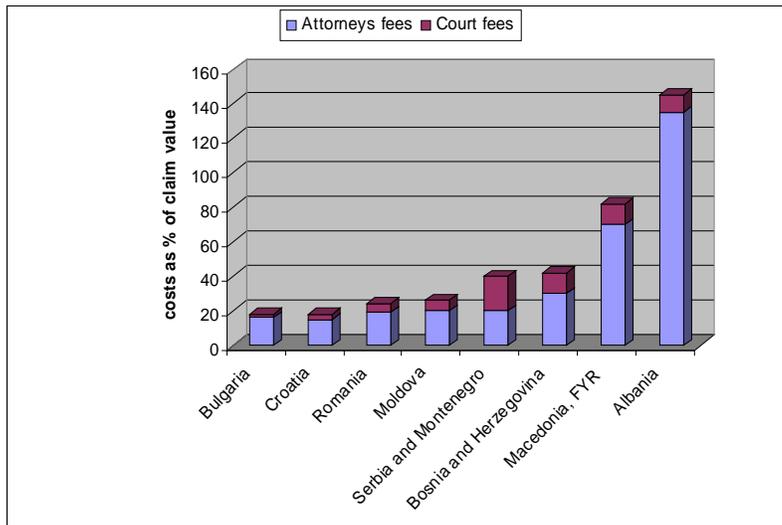
In BiH: the Mediation Accreditation Body and the Training Organization are likely to be the same, through the Association of Mediators of BiH.

7.1.7 Industry Associations

Industry associations have an important role to play in the pilot project. While not central to the day-to-day operations of the pilot, they can play a critical role, particularly in creating an enabling environment, which could involve:

- creating awareness of the benefits of mediation throughout the business community in the region of the pilot, by means such as sponsoring talks and briefings, press releases, writing stories of successes for their industry publications, distributing pamphlets on the pilot, and sending out relevant email messages;
- assisting IFC/SEED in creating the Pilot Project;
- participating on the Advisory Board;
- operating an “information phone line” for any business person wanting to know more about what is involved with mediation;
- holding half to one-day workshops on mediation;
- ensuring that companies being referred to mediation are aware that the owners or senior managers with proper authority need to be present at the mediation in order for it to work;
- building support at the political level for introduction of a country-wide court-referred mediation system; and
- encourage companies to insert a mediation clause in their commercial contracts so the eventual dispute will have to be mediated and the court costs be avoided

Diagram below shows the proportion of attorney and court costs as a percentage of the total claim value comparatively in all countries of the Southeast Europe.



Source: "Building Market Institutions in South Eastern Europe – Comparative prospects for investment and private sector development", The World Bank, EBRD; Lex Mundi surveys

7.1.8 Other Judicially Related Bodies

Organizations in the country such as associations of judges, prosecutors or lawyers can play a critical role in creating support for both the pilot and follow-on enlarged system. It is extremely important to involve lawyers and others that are a part of the judicial system, as much as possible, to both get their support and lessen any resistance they may have to the introduction of mediation. They should be initial targets for briefings and training. As appropriate, they could be invited to participate on the Advisory Board.

7.1.9 Pilot Governance and Management

a. Advisory Board

The pilot would be overseen by an Advisory Board that would provide advice and recommendations to the pilot, within the framework of the legislation and the Pilot Project mandate, as approved by IFC/SEED.

This Advisory Board process could facilitate implementing the full mediation system after the pilot phase, through providing first hand experience of the mediation system to judicial decision makers. Through the lessons learned on the pilot they will be better equipped to shape the eventual larger system.

The Advisory Board should consist of representation from those bodies that can contribute valuable advice to the Pilot as well those that could or would have responsibility for implementation of the Pilot and/or a longer term system. Advisory Board members should be encouraged to participate in available briefings and training sessions, including the intensive sessions offered to potential mediators.

The Advisory Board would include representation as follows:

- Minister of Justice or senior justice ministry representative (Chair or Co-chair);
- President of the court chosen for the pilot (Chair or Co-chair);
- Representative(s) from appropriate judicial association(s);
- Industry Association(s) representative(s);
- IFC/SEED Coordinator;
- Mediator group representative;
- Mediation Mentor (or Assistant Mentor in absence of Mentor);
- Mediation Center Coordinator;
- Other IFC/SEED officers involved with Pilot; and
- Mediation Administrator (to take minutes).

The tasks of the Advisory Board include:

- initial briefing, review and advisory on the overall procedures and forms, roles and responsibilities, evaluation data to be collected, and other relevant aspects of the pilot implementation;
- a mid-pilot review of progress, with recommendations for adjustments as necessary;

- the convening of regular meetings to review progress;
- a lessons learned session at the end of the pilot that would include other active participants in the process (mediators, other court officials etc.);
- a review of the evaluation results and final draft report on the pilot;
- recommendations for further pilots and/or implementation of an enlarged system; and
- other tasks as proposed by the Board.

b. Management Committee

Day-to-day operational decisions will be taken by the Pilot Management Committee. It will meet periodically as needed and on a weekly basis during the mediation phase.

Membership will include:

- The IFC/SEED Project Coordinator (Chair);
- The President of the Pilot Court;
- The Mediation Mentor and/or Assistant Mediation Mentor;
- The Mediation Center Coordinator;
- The Mediation Administrator; and
- Other IFC/SEED staff involved in the Pilot.

7.2 Procedures for the Pilot

While some of the detailed procedures will arise out of the individual descriptions of duties, outlined below are the larger sequential steps involved for the Pilot:

7.2.1 Engagement of Pilot Actors

The initial steps in creating a pilot will be to select, invite, confirm, contract and/or hire the following:

- A Pilot Court;
- Advisory Board members;
- Four mediators and four back-up mediators;
- A Mediation Mentor and Assistant Mentor;
- Mediation Center Coordinator;
- Mediation Administrator;
- A Data Analyst; and
- A Pilot Evaluator

7.2.2 Pilot Court

As described under Section 6 Creating an Enabling Environment, the selection of the Court needs to be based, first of all on a strong interest and commitment of the Court President and its judges. Other factors to take into account are:

- The court size and stature ("If a large and well respected court is using mediation, it must be worthwhile." – "modeling by the force of authority")
- having a large case load, particularly in the commercial department,

- the availability of a large pool of potential mediators in the vicinity,
- proximity to key people from the judicial system (e.g. ministry officials); and
- the number of judges in the court that have already been trained.

7.2.3 Advisory Board Members

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

The Mentor, who should be a highly sophisticated expert in the field, can play a significant supporting role in this selection through her/his ability to describe in detail the importance of mediation and the pilot to the court system and to get broader participation in the project from the relevant officials.

7.2.4 Mediators

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

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

After selecting the best people for mediation training, ideally at least 80 people should be given the basic 5-day ADR training (20 per class). From this group, the 20 most promising candidates would be chosen to take the 5 day/40 hour mediation training module. From the group of 20 the best 8 would be chosen to take the 3 -day "Getting Ready to Mediate" module, of which, 4 will be chosen as the Pilot mediators with the other 4 serving as backup. This process does not preclude others from the group of 20 or the initial group of 80 from becoming mediators, with further training at a later stage.

At the end of the initial Pilot period, and based on the experience of the Pilot, the best 2 (or 4) mediators should be provided with more intensive ADR and train-the-trainer training over a period of 4 to 6 weeks (such as through the Institute for Conflict Resolution in Ottawa). These more highly trained mediators, after they gain enough practice and experience, would then become the main in-country mediation trainers and advisors to further pilots and/or introduction of an expanded system.

7.2.5 Mentor and Assistant Mentor

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

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

7.2.6 Mediation Center Coordinator

The Coordinator must have management experience, computer literacy and fluency in English as a prerequisite. Training in mediation is also essential, but could be acquired through the mediator training sessions. Knowledge of institutional development, the justice system and legal environment would be an asset.

While this person may only be hired for the life of the pilot, it should be someone who is able to continue as coordinator on the assumption that the pilot would be extended and that the Center will become self-sustaining once mediation becomes better known and accepted.

7.2.7 Mediation Administrator

In hiring a Mediation Administrator, the person should have a high school education, preferably with administrative or economic specialization, computer literacy, strong people skills, and experience with the courts. English would also be an asset.

7.2.8 Data Analyst

The Data Analyst will only be a limited part time position. It would be most effective if the same person could work with all of the IFC/SEED pilots. The functions of this position do not require the person to be on-location and can be performed just as effectively by email, fax and phone. The requirements of the position are experience in working with synthesizing and analyzing data and presenting it in graphic and table form.

7.3 Case Processing and Management

7.3.1 Identification of Cases for Mediation (Court)

Under the direction of the President of the Pilot Court, at least *400 cases should be identified for potential mediation. The following criteria would be used in their selection:

- Approximately 50 percent should involve commercial disputes;

- The remaining cases should be divided evenly between the types of disputes deemed by the Advisory Board to be appropriate for mediation;
- The cases should be of only a moderate level of difficulty, and should be of a nature that is amenable to a mediated settlement;
- The parties are likely to be amenable to the mediation process; and
- A mixture of old and new cases with as accurate contact information on the parties as possible.

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

Country Specific Factors:

In Serbia: *in the current pilot, judges get acceptance at the pre-trial meeting and it is clear from that point how many people and cases have accepted mediation. With this system, no letters of invitation to mediate need to be mailed.*

7.3.2 Notification to Parties of Invitation to Mediate (Court)

- A letter (see Annex B, Letter of Invitation to Mediate Form (ADR 03.05) for sample) will be sent from the court to all the parties of the cases referred, with an explanatory brochure on mediation, and inviting them to consider the possibility of using mediation to settle their dispute.
- The steps involved in the process will be explained to them in the letter so they have some level of understanding before the pre-trial meeting with the court judge.
- If either party refuses in writing or by phone, or if they don't respond to the invitation to mediate in 15 days, the court case will proceed and the Court Administrator will fill in Court Case Intake Form (ADR 04.05) indicating their refusal or no-response.

Country Specific Factors:

In Serbia: *in the current Pilot project in the Second Municipality Court in Belgrade, the model of a voluntary court mediation is in place for existing cases. The procedure is: - the judge in charge of the case meets with the parties and suggests mediation. S/he makes note of their response and either schedules the trial or requests the case to be transferred to the mediation department under the new "M"(for mediation) number. With this procedure, the information on who declined and for what reasons is difficult to track. Accordingly, it is suggested that the Judge record the information on : Court Case Intake Summary Form (ADR 04.05)*

7.3.3 Pre-trial Meeting with The Judge (Court)

- Normal pre-trial procedures will be followed in setting up the pre-trial meeting

- At the meeting, further explanations will be given to the parties and their lawyers about what is involve, with the particular point being made of the importance/necessity for the owners or persons with full decision making authority to be present at the mediation.
- The judge will make a further assessment as to the likelihood of the case (and parties) being amenable to resolution by mediation.
- The parties will be asked to indicate their willingness to use mediation. They should be encouraged to decide at the pre-trial meeting. If more time is needed, they should be told to call the Court Administrator within a week to indicate their decision.*
- If parties have not contacted the court within the week, the Court Administrator will follow-up with them for a decision.
- Parties willing to consider mediation will be given further written information on the mediation processes.
- They will be informed about optional mediation educational sessions they could attend (see Section 7.6).
- Those willing to commit to mediation at the meeting will be told that they would be contacted by the Mediation Administrator regarding details on their mediation.
- The Court Administrator will complete Court Case Intake Summary Form (ADR 04.05) indicating that the plaintiff and the defendant have accepted or declined mediation. (A copy of this multiple-case form should be used by each judge, which will be sent weekly to the Mediation Administrator.)
- If parties decline mediation at the pre-trial meeting, they will be immediately asked for their willingness to participate in the control group. If they indicate that they will decide on mediation later, they will be asked at the pretrial meeting whether they would be willing to participate in the control group if their (later) decision is to decline mediation. If the parties accepted to participate in the control group, the Court Administrator will note this on Court Case Intake Summary Form (ADR 04.05) See Section 7.7, Control Group Process.
- The Court Administrator will record the time involved for the meeting.

Country Specific Factors:

In Albania, where there is a strong separation between the court and the Mediation Center, the Center invites parties and briefs them.

****In BiH:*** the Law on mediation procedures allows the court to postpone the trial for 30 days because of mediation. Given this short timeframe, parties are requested to decide at the meeting whether or not they will use mediation.

In Serbia-The judge in charge of the case briefs the parties on mediation and in case they both accept, the case is assigned to the court mediator/judge.

7.3.4 Establishment of Mediation Logistics (Non-court)

- The Mediation Administrator will open a new mediation file for each case to be mediated with a clear reference to the court file number.
- The Mediation Administrator will contact the parties to find a mutually agreeable time for the mediation in keeping with mediator schedule openings. They will

subsequently be sent a completed Confirmation of Mediation Session Form (ADR 09.05) along with the draft Agreement to Mediate Form (ADR 07.05) for their review along with the invoice* as applicable. Parties will also be requested to bring all documents and to prepare other information relevant to their resolution of their dispute.

- They will be informed of the location and time frame for the mediation and the name of their mediator.
- The Mediation Administrator will inform the mediator of the names of the parties and will provide the Mediator with a copy of the Court's information on the case, namely the claim and defense.** (In the post-pilot period, the court would likely provide the parties with a list of mediators and ask them to make their own mediation arrangements.)

Country Specific Factors:

** In BiH: for the second phase of the Pilot there is a fee for commercial mediation, the amount of the fee was based on the Mediation Survey response. The parties pay the amount of 100.00Km (50 EUR) each.*

***In BiH: this model worked well. In Serbia: the court assistant prepares the case summary for the judge/mediator in one or two pages, which would necessarily leave out detail that would be helpful, if not essential, for mediation, primarily leaving in only the more legalistic aspects.*

7.3.5 Conduct of the Mediation Session (Non-court)

- The Mediator will spend 30 to 60 minutes reviewing the material and planning the mediation prior to the mediation time. For those mediators-in-training this would be done with the Mentor.
- At the beginning of the session, the Mediator will ask the parties to sign an Agreement to Mediate Form (ADR 07.05)
- The mediation session will then take place between the parties and their lawyers over a period of normally of up to 3 or 4 hours. An additional session will be scheduled if more time was needed.
- Assuming a resolution is reached, and the agreement is not too complicated, it will be written up by the Mediator and signed by both parties at the session. A more complicated case could be written up after the session and sent to both parties and their lawyers for review and signature. If both lawyers are not present, provision could also be made for the parties to consult their lawyers before signing. In either event, the agreement must be signed within one week of having received the draft agreement or the case will need to go to a further mediation session if useful or be referred back to the court.
- Copies of the signed agreement will be made for the parties, lawyers and the Mediator. The agreement remains confidential to the copy holders. (It is the parties' responsibility to take the next steps towards the agreement ratification with the court, as necessary.)

- At the end of the mediation session, the parties and their lawyers will each be asked to complete Mediation Survey Form (ADR 14.05) before they leave the mediation location. Those completing the Form should be asked to be honest and direct with their feedback. The completed Forms are to remain anonymous.
- The completed Mediation Survey Forms (ADR 14.05) will be given to Mediator for review by the Mediator and Mentor, then forwarded to the Mediation Administrator

Country Specific Factors:

In BiH: *The Law on mediation requires the parties to file an Agreement to Mediate with the court. Also, the mediated agreement is to be signed on the spot together with the mediator.*

In Serbia: *The mediation process is carried out under court jurisdiction in a separate Mediation Department within the court. The court judges serve as mediators. Once an agreement is reached it becomes a “court settlement”, and is ratified as such by the judge. Under this system there is no additional time given to the parties to consult, before the agreement is finalized, and the usual confidentiality accorded to mediated agreements is not possible as a court document.*

7.3.6 Post-Mediation Administration (Non-court)

- The Mediator will complete and sign the Mediation Summary Form (ADR 10.05) immediately after signature of the agreement or referral back to the court.
- The Mediator will forward the Mediation Summary Form (ADR 10.05) and the completed Mediation Survey Forms (ADR 14.05) to the Mediation Administrator.
- If the Mentor is present at the mediation, she/he will complete a Mentor Evaluation Form (ADR 13.05) on the Mediator-in-training. The Mediator-in-training will also fill out a Mediator-in-training Self Evaluation Form (ADR 12.05) on his/her performance. Copies of both documents will be shared and the Mentor will review them with the Mediator-in-training at an agreed time after the mediation.
- Referral to the Court Form (ADR 11.05) will be completed by the Mediation Administrator and sent to the Court no later than 7 days after the Mediation date.
- Court Administrator will file the Referral to the Court Form (ADR 11.05) the relevant court case file.

7.4 Post-Mediation Party Responsibilities

- If the Law requires that the court ratify the agreement, it is the responsibility of the parties to have this done. If the Law does not require ratification of the agreement, neither the court nor the judge has the right to demand to have a copy. Normally, mediation agreements are confidential to the parties and the mediator.
- It is up to the parties themselves to take the necessary action to implement the mediated agreement.

Country Specific Factors

In Albania the mediator shall notify the court on the settlement of the dispute or its failure by sending the respective documents within 45 days.

In BiH the parties are obliged to inform the court of the mediation outcome immediately and no later than before the court hearing is scheduled.

In Serbia there is no mediated agreement, as it is framed as a court settlement.

7.5 Pilot Certification and Registration of Mediators*

- In countries where only certified and registered mediators are allowed to mediate, the Mentor will take official responsibility for the mediation until the mediator is certified.
- Once a Mediator-in-training has completed a sufficient number of mentored sessions (at least 5 with the mentor and 5 with an assistant mentor) for the mentor to feel that the Mediator-in-training is capable of mediating on their own, the Mentor will recommend to the Mediation Accreditation Body that the Mediator-in-training be certified.
- The Mentor will assemble copies of all the Mentor Evaluation Forms (ADR 13.05) and the Mediation Survey Forms (ADR 14.05) completed during the mentored mediations in a file, and write a covering letter to the Mediation Accreditation Body recommending for or against certification.
- For situations where, in the opinion of the Mentor, the Mediator-in-training will not be capable of mediating on his/her own without more than 10 mentored mediations, she/he will send a letter to the Pilot Coordinator recommending that the Mediator-in-training be replaced by another Mediator-in-training for the duration of the pilot.
- All forms and information pertaining to certification are to be marked CONFIDENTIAL and to remain Confidential. This will require the Pilot Project Administration and the Mediation Accreditation Body to hold such information in a locked filing cabinet.

* The way that certification is “approved” will depend on legal requirements and existence of a Mediation Accreditation Body. In all cases, the certification recommendation process should be the same, even if approval is limited to the IFC/SEED Project Coordinator or ministry of justice official. Some countries may require the mediator to be registered and licensed to practice mediation.

Country Specific Factors:

In Albania there is no clear certification. For mediators to perform mediation, they must be registered with the Ministry of Justice.

In BiH, There is currently a Bill on The Law on Mediation Procedures Implementation that regulates mediators’ certification and registration.

7.6 Educational Briefing Sessions

The Mediation Administrator will:

- schedule a series of 3 to 4 briefing sessions at the Mediation Center as an optional educational opportunity for parties that have been notified that their case is being considered for mediation. These will be supplemental to what is provided in the pre-trial meeting. They should be scheduled at different times of day and days of week to allow the greatest numbers of people to attend.
- inform the Court Administrator of the dates and times of the sessions; and
- arrange for presenters and other logistical arrangements for the briefings.

7.7 Control Group Process (Non-court)

The Control Group consists of a random sample of those that were referred to mediation but have declined to participate. The purpose of the Control Group is to compare what happened at one or more time intervals to those cases that underwent mediation with those that did not, in terms of quality and timeliness of resolution/settlement, and involvement of time and costs. The control group is part of the evaluation process and will not be used until the end of the pilot and at possible intervals after that. The involvement of individuals in the control group, will be limited to participation in a 15 minute telephone survey questionnaire, with a possible follow-up telephone interview at a later time to determine if anything has changed.

- During the pre-trial meeting, parties will be asked, if they decline mediation, (whether at the pre-trial meeting or later) to indicate their willingness to be a part of a control group. This information is recorded on Court Case Intake Form
- Of those cases that declined mediation but indicated a willingness to be a part of a control group, a random sample equal to the number of cases being mediated will be chosen by the Mediation Administrator (e.g. every second one).
- If there is an insufficient number available for the control group, parties that did not want to be a part of the control group could be contacted again to see if they would reconsider. If there is no alternative, the control group can be smaller than the mediation group.
- The Mediation Administrator will conduct the phone interviews and fill in the Interview Protocol for Control Group (Annex C) for each respondent and enter the data into the Control Group Survey Summary Form (ADR 15.05).
- The Data Analyst, along with the survey results, will collect and tabulate certain additional information from other sources on all the cases to provide a fuller basis for comparison. This will include:
 - The type of case, as per the pilot categories;
 - The length of the time taken to deal with the case (pre-court meeting, court hearing etc.); and
 - The outcome.

7.8 Evaluation of the Pilot

Evaluation is an integral part of every step of the pilot. Completing the evaluation forms, questionnaires and other data is as important as other parts of the mediation process.

Given its importance, it is set out below, in a separate section from that of Pilot Procedures.

8. Evaluation, Feedback and Lessons Learned

The objectives of carrying out a court-referred mediation pilot project are several fold:

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

In order to achieve the above objectives it is essential to have rigorous and detailed collection and analysis of data on all aspects of the Pilot. The data and its analysis can serve to:

- measure savings in time and money for the court system;
- measure savings in time, money and good will for the parties;
- identify problems and changes that need to be made to the procedures, institutional frameworks and/or laws during the course of the pilot and before introducing the full system; and
- provide a sound basis for a public awareness campaign.

Accordingly the Pilot Project has been designed to collect, record and analyze data and information at every stage of the process as described below.

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

Forms and questionnaires to collect data are located in Annex B and are described below under Evaluation Methodology as well as in the Roles and Responsibilities and Procedures sections of this manual. It is essential that all of these forms be used fully for their intended purpose. The questionnaires were developed by experienced evaluators, and even though some questions may appear as a close duplication of others, they have been designed that way. In some cases slightly different data is being sought. In other cases, asking a similar question in a different way provides a means of verification of the results.

An electronic data base program has been developed to facilitate the easy recording and analysis of information from the various forms and from baseline data. A Data

Base C.D. with instructions on its use, will be made available to the data analyst for his/her use.

8.1 Ongoing Feedback and Lessons Learned

As data is collected through the various forms and questionnaires, it will be important for the results to be periodically tabulated and summarized for review by the Management Committee and Advisory Board. This will be a primary means of identifying potential problems, and facilitating quick corrective measures.

8.2 End-of-Pilot Evaluation

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

Outlined below is a summary of the methodology to be used in the final evaluation.

8.2.1 Baseline Data

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

8.2.2 Questionnaires

The Mediation Survey Form (ADR 14.05) will be used to capture information from both parties and their lawyers, and is to be completed after their final mediation session. There are 35 questions, 33 of which are multiple choice, allowing for easy tabulation of the results.

The Trainee Evaluation Form (ADR 01.05), consisting of 15 questions, is designed to capture information after the 3-day pre-mediation training, providing an assessment by the trainers of the potential for the trainee to become an effective mediator. The criteria focuses on level of performance during the role plays, commitment, flexibility and general mediation skills.

The Mediator-in-training Self-Assessment Form (ADR 12.05), consisting of 11 multiple-choice questions and one requiring a written response. While designed for their own learning, it is useful in providing information for use by the mentor, on the mediator's own progress in developing their skills. It is to be filled-in after each mediation, until the mediator is approved to work on their own.

The Mentor Evaluation Form (ADR 13.05), designed for the mentor's ongoing assessment of the mediator-in-training after each evaluation, it is also useful in capturing information on the mediator's skill development. In addition to baseline information and mentor recommendations, it consists of 10 skill related questions covering all areas of a mediator's professional development. It is to be filled in after each mediation.

8.2.3 Focus Groups

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

8.2.4 Individual Interviews

Individual interviews, by phone or face-to-face, will be held at the end of the Pilot with the court president, participating judges, and the senior ministry official involved. Interviews should also be done with anyone invited to but unable to attend the end of project focus group session, and anyone else that can contribute useful observations to the conduct of the pilot. See the Interview Protocol for Key Participants, (Annex C).

At the end of the pilot, phone interviews would be held with the control group using Interview Protocol for Control Group (Annex C). Aside from information in the case file, this interview will be the primary means of data collection from members of the control group.

8.2.5 Final Evaluation Report

All of the above data and information will be assembled and synthesized, with the production of charts, graphs and other tools for ready analysis. A draft evaluation report will be prepared by the Evaluator, with analysis based on the above information, and include recommendations for the next pilot phase and future broad-based system implementation. The draft will be reviewed by the Advisory Board and a final report prepared by the Evaluator.

8.2.6 Post-Evaluation Follow-up

To develop a fully effective picture of the longer-term results of mediation, it will be important to assess the extent to which the mediated agreements were honored and implemented. Accordingly, a post-pilot assessment should be done no later than 3 months after the end of the Pilot. (The assessment could be done in conjunction with a

second pilot, if the timing was appropriate.) The assessment would consist of phone interviews with a random sampling of at least 30 percent of the cases with mediated agreements, using the Interview Protocol for Fulfillment of Mediation Agreement, (Annex C). An addendum to the Final Evaluation Report will be prepared by the Evaluator or Mentor, with a tabulation and assessment of the results.

9. Mediator Training and Certification

While Section 7.2 above gives the steps involved in selection, training and mentoring of mediators, a much fuller description of mediator attributes, qualifications, training and mentoring is provided here. It is important background for IFC/SEED officers and others, both to respond to those wanting to become mediators and to anticipate the future need for mediators for other pilots and/or for an expanded mediation system. As a result of experience with the mediation process during the pilot, there are likely to be many lawyers and others that will enquire about becoming mediators.

Having a cadre of well-trained and experienced mediators is the backbone of a court-referred mediation system. While laws can be changed to encourage mediation and judges can be trained to refer cases, without mediators in close proximity to every court, a larger system will not work. In addition, classroom training is not sufficient to qualify someone to mediate. It is absolutely necessary that they gain experience through a mentoring program, which means that the number of mediators can grow only as fast as there are qualified mentors to support them to gain experience.

9.1 Qualifications - Who can become a mediator?

There are no specific pre-qualifications for becoming a mediator. Being a good mediator is as much dependant on personality factors as on technique or background. A successful mediator possess a combination of knowledge, skills and personal qualities. It is only through experience that the effectiveness of a mediator can be determined.

In addition to the training, strong knowledge of mediation, and skill in using interest based negotiation principles, a good mediator will have most of the following qualities:

- good verbal and listening skills;
- the ability to remain calm under pressure;
- the ability to be facilitative rather than directive of a process;
- the ability to clarify issues, to address difficult issues and to be a “reality tester”;
- respect for the parties;
- trustworthiness;
- overall “people skills”;
- the ability to “think outside the box”;
- the ability to remain neutral, impartial and without judgment; and
- a business background for commercial mediators may be useful for understanding the nature of the disputes being mediated.

A legal background can be an asset in knowing how to draft a mediation agreement, but a detriment in the mediation session by wanting to move too quickly to a solution.

In selecting people to take mediation training, in addition to any factors related to their potential effectiveness, it will be important to select those that want to have a full time career in mediation, and that have the wherewithal to make it happen i.e. they have other income sources to rely on until some future time when full time paid mediation work may be possible.

9.2 Classroom Training

The use of mediation to resolve disputes is expanding rapidly in the industrialized world. As a result, the number and types of institutions offering ADR training is expanding even more quickly. Since there are no agreed standards or regulations, it is extremely important to ensure that external training institutions and their methodologies used for mediation training are of high quality. No amount of glossy brochures or convincing promotion should be used as determinants. It is only through the experience of taking a training program and comparing it to the experience of having taken others, that quality can be determined. In this field it is the experiential aspect of the training, rather than the theory that is most important e.g. the use of role plays, facilitation exercises, simulation games etc.

The minimum classroom training that is recommended for becoming a mediator is a 104 hour program consisting of:

General ADR Training: A 5-day (40 hour) program covering basic conflict resolution theory and practice. The focus is on developing participants' neutrality while exploring the differences between disputes, underlying conflict and deep-rooted conflict. Principled neutrality will be practiced in different roles such as conciliation, mediation and facilitation.

Developing Mediation Skills: A 5-day (40 hour) training program should include such things as interest based negotiation, communication, mediation, building rapport, identifying interests and issues, analysis of options, implementation of agreements and enhancement of communication skills. Participants should, through role playing, practice effective listening, questioning and reframing. Additional themes would include caucus, intake and assessment, and complex mediation.

Getting Ready to Mediate: A 3-day (24 hour) training, covering mediation, role playing with one-on-one mentoring and coaching and mediation case studies. It also covers the legislative framework pertaining to mediation, the procedures, roles and responsibilities and forms to be used in the pilot, the Mediation Code of Ethics and simulated mediation experiences. One of the objectives of this training is to have

participants commit to the Pilot project and to mediation. (See Annex F for Getting Ready to Mediate Training Outline)

Country Specific Factors:

In the Balkans generally: *there is a lack of communication skills and good feedback giving and receiving techniques. Reframing is a particularly difficult skill for course participants to develop. It is recommended that training be designed with a sufficient amount of time designated to communication skills practice. Culturally, to talk about emotions is not “popular” and is seen as a weakness. Giving and receiving feedback MUST become a part of a mediator’s nature.*

In Albania *a 6-week training was delivered to 4 mediator trainees.*

BiH: *developed its own training program for potential mediators, that currently is 40 hour duration. Members of the Association of Mediators recognize that this is not sufficient and should be at least double this length.*

In Serbia and Montenegro *the initial work on developing train-the-trainer process has started. It is recommended that the program to be developed include more principled neutrality skill development and “thinking outside the box” (the box being legal case frame) for potential judge-mediators.*

Note: In light of the above factors it might be useful for IFC/SEED to support the development of a standardized mediation training curriculum that would be recommended for use in all countries in the region.

9.3 Apprenticeship Training

As identified above, gaining on-the-job experience is essential to becoming a mediator. To be responsible and respectful of parties to a mediation, a potential mediator should never undertake a mediation on their own, without first doing several with an experienced mediator (mentor) to assist them. In the Pilot Project procedures a requirement is set out to undertake the first 10 sessions with the Mentor and Assistant Mentor. After each mediation an extended time period will be taken to discuss what was done well, what needs improving and what could be done differently. It should not be assumed that every mediator-in-training will be accepted to work on their own. Not everyone can become a good mediator.

It is necessary for mediators /Mediators-in-training to follow the prescribed requirements for their own performances and development including regular completion of the Self-Assessment Form. Writing a ‘learning journal’ is also highly recommended. This cannot be emphasized enough as an essential factor in becoming a good mediator.

9.4 Mediator Certification and Registration

Over the medium to longer term it is essential that each country establish a mediation accreditation body and clear competency and certification standards. Such standards should require registration and licensing, with re-certification at periodic intervals and

include provision for de-certification if warranted. Competency standards would also be required for those doing the certification. For the Pilot, if the laws permit, the IFC/SEED Coordinator could provide informal certification for mediators to work on their own.

Some of the elements of Mediator Certification Standards would include:

- successful completion of a 40-hour basic ADR training program, 40 hours of advanced training in interest-based negotiation and mediation, and a 24 hour mediation preparation course;
- full knowledge of the procedures required for court-referred mediation;
- completing a minimum of 10, and as many additional mentored mediation sessions as are needed in the opinion of the mentor, for the mediator to be capable of successfully working on their own;
- acceptance of and agreement to abide by the Mediator Code of Ethics (See Annex D); and
- observation of at least 3 mediations by the Certifier, as the basis for determining certification.

9.5 Mentor Training and Standards

A mentor is a highly experienced mediator who is also a good coach and teacher. There are no specifically defined standards for a mentor, other than to use the best mediators in this capacity. For future development and certification of mediators, it is essential to develop experienced mediators that can take on the mentoring role. Ideally the best mediators from the first pilot in a country would take on the role of assistant mentors for the second pilot, and eventually become Mentors.

According to some research, mediators would like their mentors to possess the following qualities: integrity, generosity, presence, ability to see potential, to be vulnerable and open, intensity and perception, a passion to help others learn and grow, and openness to be affected by the relationship and then let go. They should also be supportive, challenging and possess their own vision.

To facilitate the development of high quality mediators with such qualities, it would be useful for them to take further advanced ADR training at a recognized institution abroad.

9.6 ADR Trainers

As part of a country becoming self-sufficient in the training and certification of mediators, attention needs to be given to the development and certification of ADR trainers, who have the capacity to deliver the required course curriculum. The qualifications for a trainer will be largely the same as those for a mentor, with the added requirement that a trainer-in-training should work with a qualified trainer for a number of training programs before working on their own. While it is not the purpose of this manual to address training, over the medium and longer term, training institutions need to be identified or created and training standards established.

9.7 Mediator Associations

Aside from any requirement for an Association of Mediators to take on a certification role, as is the case in Bosnia and Herzegovina, once there is a minimum number of mediators in a country (6 to 10), they should be encouraged to form their own association. It is in their own interests as well as the interests of the judicial system and others that are promoting the use of court-referred mediation. Benefits from an association include:

- promoting mediation as the most effective ADR method to resolve disputes;
- promoting the use of mediation as an alternative to the courts for the settlement of disputes;
- increasing the profile of mediators through awareness campaigns;
- setting standards for fees and procedures for non court-referred mediation;
- setting and promoting ethical standards (see Annex D for Mediator Code of Ethics);
- representing their Association on judicial bodies and industry associations involved in advancing court-referred mediation;
- interacting with training organizations to ensure quality training is provided; and
- encouraging further professional development of mediators through organizing events to share in-country and international experiences, and sponsoring more advanced courses and workshops for their membership.

Country Specific Factors:

In Albania the law states that mediators are obliged to organize themselves collectively.

In BiH the Association of Mediators of BiH is well established.

In Macedonia there is a new Association of Mediators. The registration procedure is in place but according to the information from the field and the opposition from the Macedonian Bar Association, this may take a few months.

10. Training of the Judicial Sector

This Section refers to officials of the courts and ministry (ies) of justice, lawyers and others of this broadly defined judicial sector. As discussed under Section 6, Creating an Enabling Environment, a first and essential step in introduction of a pilot is to have the broad support of this sector. While the order is not absolutely essential, it is strongly suggested that the following steps be used in developing this support.

10.1 Initial Training

The quickest and almost the only way that strong commitment to mediation on the part of judges, ministry officials and lawyers can be developed, is through having them take experiential training. While it may appear to be a considerable time commitment for those unfamiliar with mediation, it is recommended that introduction of mediation begin with at least one 3 to 5 (ideally 5) day basic ADR training session involving some 20

people. Recruiting the initial 20 may be difficult, but it is important to get the most senior and representative group as possible including judges from several different courts, court presidents, executives of judicial associations, relevant officials from the ministry(ies) of justice and prominent lawyers. Past experience would suggest that most, if not all, will become strong advocates for the use of mediation. This becomes the initial core group for supporting an awareness program and encouraging other judges and officials to take future training sessions. (Note: It would be ideal for the IFC/SEED Country Coordinator and one or two industry association representatives to also take this initial training, as part of the 20 trainees.)

10.2 Further Basic ADR Training

While the first basic ADR training session essential, it is recommended that a further five or more training sessions of 20 people each, be held before selection of a court and initiation of the pilot. Having a critical mass of about 120 officials from this sector, all (or most) talking about the value of ADR/mediation training, will go a long way to getting the support of other key officials in this sector. On the assumption that an eventual country-wide mediation system will be introduced, this training is an essential investment. Judges in particular, need to understand mediation in order to know which cases to refer.

10.3 Advanced Mediation Training

In order to deepen the experience of this initial group, the 20 to 40 of those most interested, enthusiastic, senior, and/or in key positions, should take the advanced 5-day mediation module (i.e. twenty per training session). This should provide a solid base from which to select a court*, select some of the Advisory Board members and initiate the pilot. It can also provide part of the pool, from which potential mediators are selected.

* A court should not be chosen without the President of the Court being fully briefed on what is involved. Ideally s/he should have taken some level of mediation training.

10.4 Training of Pilot Court Judges

For a court-referred mediation system to work, it is essential that judges involved in referring cases have a basic experiential understanding of what is involved in mediation. As not all cases are amenable to mediation, it is a waste of time on the part of judges and parties alike to go through a mediation process that is likely to end up back in court. In addition such cases will unnecessarily reduce the success ratio of those mediated. By way of illustration, in the BiH pilot it was clear during the mediation sessions, which judges had referred cases by the quality of the referrals and the extent to which they parties had been briefed.

Ideally judges referring cases would take the basic ADR and advanced mediation courses discussed above. However, since this is generally not practical given the time and costs involved, a two-day referral course has been developed for judges. The

course involves participants in role plays and exploring the basics of mediation, principled negotiation and the country's mediation legislation framework.

Several, if not all of the judges of the pilot court dealing with commercial and civil cases, should be involved in referring cases. It is ideal for the whole court to be a part of the pilot, to test out a systems approach for future participation of other courts. Understanding the benefits and obstacles to mediation becoming a part of the court culture is important. Having referring judges able to talk to each other about the referrals can be an important support and learning experience.

If less than 20 judges from the pilot court are to take the training, it would be useful to invite judges from other courts to be involved, simply to be cost efficient, and to broaden the awareness and training among more judges.

10.5 Creating Broader Awareness in the Judicial Sector

While a broad awareness program in the judicial sector may not be important for directly carrying out the pilot, one of the objectives of the pilot should be to lay the groundwork for both future pilots and an eventual country-wide system. Accordingly, further awareness creation with this sector should be integrated into the plans for the pilot. Much of this can be based on the broader public awareness program described below.

Some suggestions are to:

- encourage the various judicial and lawyers associations to carry articles about mediation and the pilot in their publications;
- provide briefings sessions and short (2 to 3 hour) workshops for officials from different courts or regions of the country;
- have those who have taken mediation training and are enthusiastic about it, give the briefings and talks; (Judges in particular, will be credible presenters.)

11. Public Awareness

11.1 Its Importance

The creation of public awareness is one of the cornerstones of implementing a court-referred mediation process. Without an understanding and acceptance of mediation as a viable way to resolve disputes, the public, including targeted sectors such as commercial, will not participate. The awareness program must be based on substantive evidence of benefits to be derived by the parties involved, for them to undertake a new process that is not a part of the system or culture, in the highly stressed environment that exists with any conflict and resulting legal procedure. This highlights the importance of collecting as much evidence as possible by following the detailed evaluation methodologies set out in this manual.

11.2 The Evidence

Substantial evidence exists from countries in North America and Europe, demonstrating high levels of success and satisfaction from parties using mediation processes to resolve disputes. Refer to Annex F: Suggested Books, Papers and Web Sites for Mediation Centers and/or the many other references found on the Internet. The strong supportive evidence on the value of mediation, in the Evaluation Report on the Introduction of Mediation in the Basic Court of Banja Luka would perhaps be more convincing since it is from a country in the region, and one that does not have a tradition of using mediation. Even more compelling, will be the results of the Pilot(s) undertaken in public's own country. The public awareness campaign should make use of all positive results from the pilot as they happen. This is news and can be the subject of press releases, interviews, briefings and talks.

One example from the BiH case, was that after presentation of the Pilot evaluation results which were strongly convincing, immediate action was taken to make necessary modifications to the laws governing the use of mediation.

11.3 The Campaign

The Public Awareness Campaign (PAC) efforts should be focused on specific targeted audience: small and medium enterprises (SMEs), judges and lawyers. The purpose of the PAC is to build awareness, have ongoing education and increase understanding of mediation practicalities. The PAC would consist of presentations for SMEs representatives, training for mediators, conferences, issuance of a mediation newsletters, developing promotional materials and possible sponsoring of a web site for an Association of Mediators. All of these activities will contribute to the overall success of the Pilot. Other partnering organizations could be encouraged to organize such activities as presentations for lawyers, training for judges, and study trips for the members of an Association of Mediators.

11.4 Campaign Timeframe

Publicizing the pilot and the use of mediation should begin as soon as decisions have been taken in the country to hold a pilot. Initially this may be limited to describing mediation and its benefits. As the pilot progresses, the campaign can focus increasingly on the benefits coming out of the Pilot. If possible the awareness campaign should continue after the pilot, on the assumption that further pilots will be held or a broader system put in place.

11.5 Materials Available

Some of the materials already developed can readily be used in current or modified form. Others such as press releases or articles can be used as prototypes. Samples found in Annex G include:

- a **poster** that could be placed in the Court, Ministry buildings, Mediation Center, offices of Judicial Associations and other local partnering organizations such as

ABA CEELI, USAID, etc. For the needs of the assumed pilot size, 50 posters may be sufficient.

- a **brochure** describing ADR, mediation and its benefits, the Pilot Project, mediators responsibilities and other useful information. The brochure together with the letter of invitation for mediation would be mailed to disputing parties. For a pilot involving the referral of 300 to 400 cases, 1000 copies would be sufficient to mail copies to each party with some left over for other purposes.
- a **leaflet** describing the highlights of mediation and pilot could be placed at the Court where the pilot is implemented. In addition, leaflets could be placed at banks, Chamber of Commerce's, insurance organizations, and other public places. For the needs of the pilot 2000 leaflets should be sufficient.
- A number of **press releases and articles** describing different aspects of the Pilot could be provided to the local media (signing of the partnership agreement with the Court, the first cases mediated, success stories and monthly updates on the Pilot progress.)

11.6 Potential Activities

Types of public awareness creating activities could include:

- ongoing contact with and encouragement of all forms of media to report on the Pilot;
- organizing roundtable sessions with industry associations, to which both business people and the press would be invited;
- identifying opportunities for press releases or events for the press to attend, such as the signing of a memorandum of understanding between the Pilot court and IFC/SEED, the official launch of the Pilot; or a press conference called on release of the Evaluation Report;
- interviews, draft articles and press releases on the first successful mediations held;
- arranging interviews between the press and senior judges and ministry officials (or the Minister) involved in the project;
- making presentations and giving briefings at relevant local conferences and events, and ensuring the media is invited;
- organizing briefings for specialized audiences such as lawyers, judges, students, ministries, banks, and insurance companies;
- participating in interviews and talks shows on mediation;
- promoting books, articles and other literature about mediation and negotiation; and
- introducing mediation into law and business schools, initially through guest lectures and eventually into the curriculum.

These suggestions are in addition to the letter of invitation sent by the court to referred parties, the follow-on briefing by the judge and the opportunity to attend an educational session at the Center for Mediation.

While IFC/SEED will be in charge of organizing, or coordinating the organization of, the various events, the Mentor, Mediation Center Coordinator or members of the Advisory Board could be asked to be the resource person for the event. It will be extremely important to encourage participating members of the judiciary and ministry to give talks and briefings as a way of getting them to take ownership of the Pilot and the introduction of mediation into the court system. In the longer term they are the ones that need to be committed to mediation, and are the ones who will ultimately be responsible.

11.7 Involvement of Industry Associations

As commercial disputes usually involve money, often in substantial amounts, the immediate release of that money as a result of mediation, can easily catch the interest of other businesses embroiled in dispute. Thus it would be logical for Industry Associations to take on a key role in creating an awareness of the benefits of mediation for the commercial sector. They should be encouraged to support IFC/SEED in as many of the activities described above, as they are willing to be engaged in. In addition there is a range of activities that they can carry out on their own. Some of the general ones are described in the Industry (ies) Section of Roles and Responsibilities.

Industry Associations can also carry out a very special role by using their stature and credibility to get the support of the "Captains of Industry". Respected heads of large companies can become important "champions" both for support of mediation within their sector, and with politicians, senior judges and senior ministry officials.

12. Financial Considerations

12.1 Financial Administration of the Pilot

A budget needs to be established for the pilot. Based on the BiH experience, a suggested format, with indicative amounts is provided below. The amounts will need to be adjusted to take account the circumstances of the country and pilot environment.

The IFC/SEED office will be responsible for all budget items except those covered by the Mediation Center. The Mediation Center Coordinator will be responsible for the Mediation Center Budget including:

- Payment of salaries or fees to her/himself, the Mediation Coordinator and the Mediators.
- The initial purchase of office equipment and furniture
- The payment of rent, telephone and other services
- The ongoing payment of office supplies
- The collection of mediation fees (if/when they are collected)

The financial responsibilities for both IFC/SEED and the Center are to:

- Prepare an initial budget

- Make payments and record them in the financial register (Program included with Manual)
- File receipts by budget item and chronological order
- Prepare financial numerical and narrative reports as required including an explanations of variances from budget

12.2 Working Towards Mediation Self-Sustainability

12.2.1 Pilot Costs

The costs of operating a pilot, are by their very nature, generally much more expensive than a full operating system. Pilots have a costly learning curve, user fees are often waived to get target audience buy-in, extra administration is applied to ensure everything runs smoothly and the evaluation effort is much higher than normal.

However, one of the objectives of carrying out a pilot is to test out as many of the operating parameters as possible, so that adjustments to the system can be made before it is implemented on a larger scale. One of those parameters is the financial framework. In assessing financial viability it is important to differentiate between the extra costs of a pilot, the one-time costs of introducing a full-scale system, and the normal operating costs of the system. Savings created by the new system also enter the equation.

Decision makers will want to know both the initial and longer-term costs of a court-referred mediation system before agreeing to extra pilots or planning a full system. Since in each country the system will work differently, it is difficult to be prescriptive. Accordingly the IFC/SEED office in each country should track and assess the various short and long term costs. Some of the considerations to take into account in this assessment are identified below.

12.2.2 Public Awareness:

Public awareness is a one-time extra cost for the first year or two until mediation becomes an accepted way of solving disputes. While the general public will never be totally aware of mediation, what will be important is that judges and lawyers become sufficiently aware of it to be in a position to recommend it to their parties or clients. Creating awareness in the commercial sector will be relatively fast and easy through industry association publicity with their membership and through business and law schools.

12.2.3 Training of Judges

The training of judges will be a significant cost component for the first couple of years of introduction of a full-scale court-referred mediation system, to ensure that one or more judges in every court are trained. Over the longer term, it is assumed that lawyers that

become judges would have taken training as part of their own professional development.

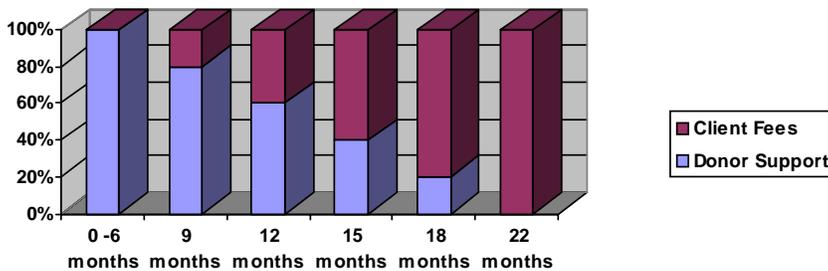
12.2.4 Training of Mediators

The training of mediators will be one of the largest one-time cost elements for the first couple of years until there are at least a few mediators in every region of the country. Once mediation is established as a recognized profession, with proper payment for services provided, mediators should cover own professional development costs, as is the case with any other profession. A mediator apprentice program whereby certified mediators work with mediators-in-training, perhaps for longer timeframes than 10 sessions, would be easy to implement and could be done at minimal or no cost.

12.2.5 Mediation Center

The creation of mediation centers in major regions of the country will be an important element of establishing the larger system. It provides a focus for the development of the system, and a supportive environment for the “nurturing” of mediators. However, this should only be a one-time cost to IFC/SEED for the first couple of years until the system becomes established. Over the longer term, mediators can work on their own or establish their own mediation centers, similar to the way lawyers either work on their own or as part of a firm of lawyers. The costs of running a center that has been set up as part of a pilot can gradually be taken over by the mediators who would pay “rent” or a percentage of the mediation fee to cover the center costs.

It is not realistic to expect for mediation centers to become self sustainable in less than 22 months. Based on SEED/IFC previous experiences and dynamic witnessed in building financial independence, it is unrealistic to expect that centers could become financially sustainable in less than 22 months, which is illustrated in the graph below. This graph sets out the proportion of donor (third party funding) and center’s income generation over a period of 22 months.



Country specific factors:

In Albania, the MEDART Center was established totally independent of the judicial system. Given the lack of referrals from the court, and the consequent implications for

self-sustainability, adjustments will need to be made to their approach, including the establishment of closer links with the courts.

***In Serbia** the Pilot project in the Second Municipality Court has a mediation department within the court rather than a separate independent mediation center. With this concept, the courts will continue to bear the burden of workload, costs and administration of mediation.*

12.2.6 Payment of Mediators

Since the mediation process is outside the court system, there is no obligation by the courts to be involved with it, financially or otherwise. Accordingly, the parties themselves must be willing to eventually pay all the costs associated with mediation.

From the results of the Mediation Survey conducted for the BiH pilot project, 87 percent of the respondents indicated a willingness to pay an average of 40 Euros for mediation, or a total of 80 Euros per case assuming both parties pay equally. In a fully operating system with 2 mediations a day and assuming a full time mediator received two thirds of this amount, with the remainder to cover overhead of a mediation center and other costs, this figure would not be out of line with what judges (in BiH) are paid on a monthly or yearly basis. It is probable that with greater public awareness and acceptance of mediation, particularly in the commercial sector, higher fees than those above would be acceptable.

In the short run, until the public becomes more familiar with the advantages of mediation, it is important that mediation costs be subsidized. Full payment for mediation would likely be an obstacle for any parties not familiar with its benefits and would slow down the introduction of mediation. However, it may be important to have partial, or even just token payment for mediation, in order to have the public and those considering mediation recognize that this is a cost related to the settlement of a dispute.

Country Specific Factors:

***In Bosnia and Herzegovina**, based on mediation users responses on their willingness to pay for mediation, parties in commercial mediation cases are being charged 100 KM (50 EUR) each for mediation. Analysis shows that the money collected from September – December 2004 already covers about 25% of Center's monthly expenses. The expectation is for the parties' readiness to pay for mediation to increase once the Law on Mediation provision on the mediated agreement enforceability by the law starts being implemented. The TIME factor is important to note: the Association of Mediators was organized in March 2002, and with continuous hard work, it is only recently that the conditions have been right for charging a fee.*

Mediation Caseload

Outlined below is a framework for calculating required numbers of cases and scheduling factors for a given size and length of pilot.

1. Ratio of cases referred to cases mediated:

Experience with the BiH Pilot was as follows:

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

This experience would suggest that for situations similar to those in BiH, for every four cases referred, one (25%) will reach mediation. If 100 cases is assumed to be a desired number, then 400 should be referred to mediation.

2. Mediator Caseload:

On the assumption that none of the mediators for a pilot have substantial previous experience, it will be necessary that they co-mediate with the Mentor until they are certified to mediate on their own. It is proposed that the Mentor be with the mediator during the first 5 mediations, and that the Assistant Mentor continue with that mediator for further 5 sessions on average. For calculation purposes, it is assumed that each mediator would have one mediation per day for the first 10 sessions and two per day after that.

Accordingly the Pilot start-up would build gradually with one mediator the first week, 2 the second week, etc., given the mentor time limitations. Attached is a table that identifies the maximum startup numbers if it is assumed that each mediator has 2 mediations per day after the first 10. Based on 4 mediators, at the maximum they could carry out 140 mediations in a 6-week period, with an ongoing maximum of 40 per week.

However, the reality will be somewhat different with late cancellations and the unlikely situation that parties will be available to fill every time slot. A more likely assumption would be that about 100 cases would be mediated in the first 6 weeks and 25 to 30 per week after that.

These calculations and assumptions should assist pilot organizers to determine the number of mediators and/or length of the pilot for a given sample size of cases to be mediated. It is recommended that no less than 4 mediators be used, since it is crucial

that as many mediators as possible be given experience for future implementation of a larger system.

Proposed Mediation Schedule

Week #	Court #1 (4 mediators) Cases referred to mediation by court			Total
	Mentored By Mentor #1	Mentored By Mentor #2	Cases Unmentored	
1	5 by mediator #1			5
2	5 by mediator #2	5 by mediator #1		10
3	5 by mediator #3	5 by mediator #2	10 by mediator #1	20
4	5 by mediator #4	5 by mediator #3	20 by mediators #1&2	30
5		5 by mediator #4	30 by mediators #1,2&3	35
6			40 by mediators #1,2,3&4	40
7			Etc.	
8				
9				
10				
Total	20	20	100	140

Forms

1. Forms and Instructions to Users
2. Trainee Evaluation Form ADR 01.05
3. Code of Mediation Ethics Acceptance Form ADR 02.05
4. Letter of Invitation to Mediate ADR 03.05
5. Court Case Intake Summary ADR 04.05
6. Monthly Case Intake Form ADR 05.05
7. Mediation "M" File Folder ADR 06.05
8. Agreement to Mediate ADR 07.05
9. Case Progress Record Form ADR 08.05
10. Confirmation of Mediation Session ADR 09.05
11. Mediation Summary Form ADR 10.05
12. Referral to the Court Form ADR 11.05
13. Mediator-in-training Self Assessment Form ADR 12.05
14. Mentor Evaluation Form ADR 13.05
15. Mediation Survey Form ADR 14.05
16. Control Group Interview Summary ADR 15.05
17. Fulfillment of Successful Mediation Summary ADR 16.05

Pilot Project -Introduction of Mediation into Court System

FORMS AND INSTRUCTIONS TO USERS

Form Number	Form Name	Person filling out Form	Deadline	Processing	Notes
ADR 01.05	Trainee Evaluation	Trainer-Mentor	5 days after training	Submits to the Mediation Accreditation Body and trainee within 5 days	Confidential
ADR 02.05	Code of Mediation Ethics Acceptance	Mediator-in-Training	Before first mediation	Submits to the Mediation Accreditation Body	
ADR 03.05	Letter-Invitation to Mediate	Judge/Court Administrator	After the case has been selected for mediation	Sent to parties and filed in the court file	
ADR 04.05	Court Case Intake Summary	Judge /Court Administrator	After parties acceptance or not of mediation, or 15 days if there was no answer	Court Administrator/Judge gives the copy to the Mediation Administrator who enters data	
ADR 05.05	Monthly Case Intake	Mediation Administrator	Upon each court case referral	Mediation Administrator enters data	
ADR 06.05	Mediation "M" File folder	Mediation Administrator	After acceptance	Mediation Administrator enters data	
ADR 07.05	Agreement to Mediate	Parties, lawyers, mediator in training & mentor	At the beginning of mediation	Mediator keeps in Mediation file	One copy to be made for the court in BIH
ADR 08.05	Case Progress Record Form	Mediation Administrator	Upon case referral until case closes	Mediation Administrator enters data, schedules mediation and refers to the Court if the mediation did not take place	
ADR 09.05	Confirmation of Mediation	Mediation Administrator	When mediation	Court Administrator sends to the parties,	

	Session		date has been decided	lawyers, mediator-in-training and his/her mentor	
ADR 10.05	Mediation Summary Form	Mediator	After mediation	Mediator submits to the Mediation Administrator	Confidential
ADR 11.05	Referral to the Court	Mediation Administrator	3 days after mediation date	Mediation Administrator submits to the Court and enters data	
ADR 12.05	Mediator-in-training Self Assessment	Mediator-in-training	After mediation	Mediator gives to his/her Mentor	Confidential
ADR 13.05	Mentor Evaluation	Mentor	1 day after mediation	Mentor to discuss with mediator in training. Final one to be discussed with mediator in training & Mediation Accreditation Body as the basis for certification recommendation	Confidential
ADR 14.05	Mediation Survey	Parties, lawyers	After mediation	To give to the mediator, mediator gives it to the Mediation Administrator , who enters data	Confidential
ADR 15.05	<i>Control Group Interview Summary</i>	Mediation Administrator by telephone	Two weeks before Pilot ends	Mediation Administrator collects and enters data	Confidential
ADR 16.05	<i>Fulfillment of Successful Mediations Summary</i>	Mediation Administrator by telephone	Two to 3 months after end of Pilot	Mediation Administrator collects and enters data	Confidential

**Alternative Dispute Resolution Platform
Pilot Project - Introduction of Mediation Process into the Court System**

CONFIDENTIAL

TRAINEE EVALUATION FORM

To be completed by trainer/mentor within 5 days of completion of training.

1. Name of Trainee

2. Name of Trainer/Mentor

3. Name of Training Course

4. Date of Training

5. Length of Training

6. How many times did the trainee serve as a mediator?

Based on your observation, do you believe that the trainee:

7. Has grasped the basic concepts of mediation? Yes _____ No _____

8. Demonstrates an understanding of the role of the mediator and the stages of mediation?
Yes _____ No _____

9. Demonstrates an understanding of the skills necessary for good mediation practice?
Yes _____ No _____

10. Demonstrates an understanding of the ethical standards that apply to certified mediators?
Yes _____ No _____

11. Is the trainee ready to continue with the mentorship process? Yes _____ No _____

12. If you answered "No" to any of the questions above, please explain the following:

a. Why you answered "No"

b. What additional training you would recommend

c. What other suggestions you have

13. Based on your observation, do you believe the trainee demonstrates an understanding of how mediation can be an alternative to litigation in the judicial process and the basic structure of the judicial system? Yes _____ No _____

If you answered "No", please explain why _____

14. Based on your observation, do you believe the trainee demonstrates an understanding of mentor responsibilities?

Yes _____ No _____

If "No", please explain why _____

15. Did the trainee successfully complete this course? Yes _____ No _____

SIGNATURE OF TRAINER/MENTOR _____ **DATE** _____

**Alternative Dispute Resolution Platform
Pilot Project – Introduction of Mediation Process into the Court System**

CODE OF MEDIATION ETHICS ACCEPANCE FORM

To be completed by mediators and mediators-in-training before beginning their pilot project mediations. The completed form is to be given to the Mediation Administrator, for passing on to the Association of Mediators or Mediation Accreditation Body.

I wish to confirm that I, _____ (name) _____ accept to fully abide by the

Code of Mediation Ethics of the Association of Mediators of (country) ..

Dated at _____ on _____

Signature of Mediator or Mediator-in-Training

Letter of Invitation to Mediate

Dear _____

Ref: Case No: xxx

Your case has been identified as a possible candidate for resolution through a process of mediation. As this would be strictly voluntary on your part, you are free to accept or reject this invitation.

Mediation is increasingly being used in the world as an alternative to going to court. It involves a process whereby the mediator helps the parties in negotiation to reach a mutually agreeable solution to their dispute. If no solution is reached the case will revert back to the court. The experience of Bosnia and Herzegovina and the other countries shows that mediation is less expensive and shorter, and is successful in 70 to 80 percent of the cases. .

The Mediation Law in _____ (country) _____ defines the mediation procedure for resolving civil cases, where it is recommended by the court or requested by the parties. The application of the mediation process will start with civil cases being addressed at the Basic Court in _____ (city) _____.

Since your case has been selected:

- The Court will invite you and your lawyers, if you have them, to attend a preliminary hearing with a judge.
- If there is agreement to mediate, you will be assigned a mediator and informed of the date, time and location of the mediation.
- The mediation will involve both parties, their lawyers and the mediator reviewing the case, identifying respective interests and proposing possible solutions. Once a mutually agreeable best solution is reached, an agreement will be drawn up and signed by all participants of the mediation process . If needed, the mediation process may be prolonged and subsequently continued at a mutually agreeable time for the parties.
- In case no agreement is reached, the case will revert back to normal court procedures.
- The parties and their lawyers will be asked to complete a questionnaire at the end of the mediation. (Mediation Survey).

In order to help you decide whether to use mediation for your case, we would recommend you attend one of the briefing sessions on mediation for parties and lawyers. You can obtain detailed information by phone at: _____

Sincerely

Court Administrator,
XXX Court

**PILOT PROJECT – INTRODUCING MEDIATION AT the
1st. INSTANCE COURT IN _____ (city) _____**

M: _____ / _____

Court file number: _____

MEDIATION

File Cover Page

Plaintiff: _____

Defendant: _____

MEDIATOR

AGREEMENT TO MEDIATE

Scheduled for _____

Mediator _____

For the case _____ (Re:, _____)

between _____ and _____

because of _____,

Case value _____

The parties in dispute and their lawyers have expressed their wish resolve the above-mentioned dispute with mediators through the mediation process.

This agreement defines conditions under which the parties, their lawyers and mediator agreed to conduct the mentioned process:

1. The parties shall accept mediation as a means of resolving their dispute, by their free will and in accordance with their interests. By signing this agreement the parties confirm that they shall conscientiously and honestly make their efforts to reach an agreement during the mediation process.
2. The mediator accepts to work conscientiously and to the best of her/his ability to resolve the dispute.
3. Each party shall be obliged to attend the mediation session in person, or as the representative of the legal entity. With approval of both parties, their lawyers may attend the process. The representative of the legal entity must be authorized to take legal actions necessary with regard to the mediation process, including signing the Agreement on Mediation Outcome.
4. The mediator shall act as a neutral facilitator, helping the parties in their efforts to reach the agreement. S/he will not provide legal opinions to the parties, will not protect the rights of either party nor stress issues which are not stressed by the parties.
5. To facilitate resolution of the dispute, it is necessary for the parties to present all relevant facts to the mediator to supplement what the court has provided to the mediator concerning the complaint and response to the complaint. Before the mediation process, the parties shall obtain all materials necessary for a successful mediation procedure.
6. If the mediator determines during the process that it is necessary to hold separate meetings to better understanding the dispute, s/he can have separate meetings with each party and their lawyers. The initiative for separate meetings may also come from the parties and their lawyers.
7. Either party or the mediator may terminate the mediation process at any time.
8. This Agreement shall be binding on all parties and all attendees with regard to confidentiality related to the process and information revealed during the mediation process.
9. The parties shall commit themselves mutually and to the mediator to:
 - a) Restrain from any activity or other work that may seriously jeopardize or cause difficulties during the mediation process;
 - b) Mutually listen to the arguments and seek to resolve the dispute.
10. The mediation processes under this Pilot Project may be attended, in addition to the parties and their lawyers, by the representative of the Pilot Project in the capacity of Mentor.

11. a) The mediation process is free of charge for all parties during the Pilot Project. The provision on fee exemption relates to the mediator's remuneration, and the costs of the space and materials indispensable for the mediation process.

b) The parties shall bear their personal costs and costs of their lawyers.

12. In reaching an agreement on resolution of the dispute, the Agreement on Mediation Outcome is made in writing, in compliance with the legal procedures of the country. The agreement shall be signed by the parties, their lawyers and the mediator. The parties and their lawyers shall inform the court about the concluded agreement.

13. In case the parties fail to reach an agreement, the mediator shall inform the court for the purpose of continuation of the court procedure.

14. The parties shall express their readiness, in case of a new dispute related to non-execution of the agreement reached during the mediation procedure, to resolve this new dispute through the mediation process. In the event that it is impossible, the parties may decide to exercise their rights in some other manner.

15. The parties shall not invite the mediator as a witness in any case.

16. The parties and their lawyers agree, regardless of the outcome, to fill in the Mediation Survey Form (ADR 14.05) upon the completion of the mediation process, which may be anonymous. It shall be used exclusively for analyses of the results achieved during the Pilot Project.

Agreement concluded in _____ Date: _____

Party – Name and Surname

Lawyer – Name and Surname

Signature

Signature

Party Name and Surname

Lawyer - Name and Surname

Signature

Signature

Mediator Name and Surname

Mentor Name and Surname

Signature

Signutare

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Pilot Project - Introduction of Mediation Process into the Court System

CASE PROGRESS RECORD

Completed by Mediation Administrator upon case referral until closure of case.

Case No: _____

Referral date: _____

Nature of Case: _____

Plaintiff(s): _____ Address: _____

Phone: _____

Defendant(s): _____ Address: _____

Phone: _____

Relationship of Parties: _____

Disposition of case:

- Complaint withdrawn
- Unable to contact plaintiff
- Unable to contact defendant
- Mediation refused by plaintiff
- Mediation refused by defendant
- Resolved without mediation

Referred to:

Mediation scheduled for _____ at _____

Location: _____

Mediator assigned: _____

Results of Mediation

Agreement: Full() Partial ()

Continued ()
No Agreement ()
Plaintiff No Shown ()
Defendant No Show()

Check List	Date	Initials
Notice to appear		
Reminder to mediator		
Facilities reserved		
Feedback to the count		
Summary sheet		

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Pilot Project - Introduction of Mediation Process into the Court System

CONFIRMATION OF MEDIATION SESSION

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

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

Plaintiff: _____ and

Defendant: _____

Will be held at: (place): _____

(date): _____

(time): _____

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

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

Dated at _____ on _____

Mediation Administrator

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MEDIATION SUMMARY FORM

To be completed by the Mediator after the mediation and submitted to the Mediation Administrator.

Mediator: _____ Case number: _____

Nature of case: _____ Date: _____

Plaintiff: _____

Defendant: _____

Others present: _____

1. What were the basic issues stated in this dispute? _____

2. Follow up instructions for staff, pertaining to this case _____

3. Any additional comments _____

4. Name and signature of mediator completing this form: _____

Received from the Mediator on: _____ (date)

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Pilot Project - Introduction of Mediation Process into the Court System

REFERRAL TO THE COURT

To be completed by the Mediation Administrator within 3 days after the mediation, and submitted to the court.

With regard to the complaint:

Of the Plaintiff _____

Against the defendant _____

Referred to mediation
on _____ (date) _____

You are informed that:

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

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

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

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

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

One or more of the parties could not be contacted .

Place & date _____

Signature of Mediation Administrator _____

Alternative Dispute Resolution Platform
Pilot Project - Introduction of Mediation Process into the Court System

MEDIATOR-IN-TRAINING SELF-ASSESSMENT FORM

Completed by Mediator-in-Training after each mediation and submitted to Mentor.

Mediator: _____ Mentor: _____

Case number: _____

Mediation date: _____

Please rate your performance on the following by choosing:

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

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MENTOR EVALUATION FORM

Instructions: A copy of this completed form should be given to and discussed with the Mediator-in-Training shortly after the mediation. The original should be held in the Mediator-in-Training's file, with the file and recommendations concerning certification, being forwarded to the Association of Mediators, no later than 2 days from the date of the last mediation session.

SECTION I. BACKGROUND INFORMATION *Please type or print.*

- 1. Name of Mediator-in-Training: _____
- 2. Name of - Mentor: _____

SECTION II. MEDIATION INFORMATION

- 1. Date(s) of Mediation: _____
- 2. Nature of case: _____

- 3. Length of Mediation: _____
- 4. Which mediation case is this for the Mediator-in-Training?
(Circle) 1 2 3 4 5 6 7 8 other

SECTION III. MEDIATOR-IN-TRAINING SKILLS

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

- 5 – excellent
- 4 – highly competent
- 3 – satisfactory
- 2 – needs improvement
- 1 – unacceptable
- NA - not applicable

Overall Rating

A. Introduction

- ~ Provided welcome and opening comments
- ~ Explained mediation process
- ~ Clarified role of participants
- ~ Established ground rules
- ~ Discussed the Agreement to Mediate
- ~ Appeared sensitive to clients' physical and emotional comfort NA 1 2 3 4 5

Comments: _____

B. Information Sharing

- ~ Engaged participation of clients
- ~ Understood issues and empathized with feelings
- ~ Accurately and briefly summarized information and concerns
- ~ Balanced time and focus between clients NA 1 2 3 4 5

Comments: _____

C. Issue Clarification

- ~ Asked appropriate questions
- ~ Identified interests, intentions, differences, limitations, and underlying problems
- ~ Identified common ground
- ~ Reframed statements and issues NA 1 2 3 4 5

Comments: _____

D. Generation of Options

- ~ Organized and prioritized issues amenable to mediation
- ~ Focused on present and future needs rather than positions
- ~ Elicited multiple options & explored settlement possibilities NA 1 2 3 4 5

Comments: _____

Overall Rating

E. Resolution/Closure

- ~ Facilitated negotiation and bargaining
- ~ Assisted parties to be realistic
- ~ Drafted agreement which is sufficiently specific and addressed all issues
Drafted agreement which is well organized, clearly stated, and easily readable
- ~ Assisted in developing an agreement that is balanced, fair, realistic, understood, and not coerced
- ~ Discussed options for noncompliance or resolving future conflict
- ~ Exerted sufficient effort to assist parties in reaching agreement NA 1 2 3 4 5

Comments: _____

F. Personal Qualities

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

Comments: _____

G. Professional Qualities

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

Comments: _____

Overall Rating

H. Communication Skills

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

NA 1 2 3 4 5

Comments: _____

I. Special Techniques and Skills

- ~ Demonstrated appropriate use of caucus
- ~ Overcame impasse, resistance, or difficult behavior
- ~ Dealt with power imbalance or control issues
- ~ Handled intense emotions or difficult agendas
- ~ Displayed flexibility and used creative strategies effectively

NA 1 2 3 4 5

Comments: _____

J. Overall Assessment

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

NA 1 2 3 4 5

Comments: _____

SECTION IV. MENTOR RECOMMENDATIONS

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

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

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

Signature of Mentor

Date

**Alternative Dispute Resolution Platform
Pilot Project - Introduction of Mediation Process into the Court System**

MEDIATION SURVEY

Mediator to Complete: _____ Commercial _____ Non Commercial

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

Section One: Background

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

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

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

4. Dispute value
 - a) < 3,000
 - b) 3,000 – 15,000
 - c) 15,000 – 50,000
 - d) 50,000 – 100,000
 - e) > 100,000
 - f) Not applicable

5. Did you attend a briefing session regarding the mediation process, its goals and benefits?
 - a) Yes
 - b) No

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Section Two: Mediation Process

1. In your opinion, was the mediation process an appropriate way to resolve your dispute?
 - a) Very appropriate
 - b) Somewhat appropriate
 - c) Neither appropriate nor inappropriate
 - d) Somewhat inappropriate
 - e) Very inappropriate

2. Based in the information, meetings or material provided by the mediation program did you feel ready for mediation?
 - a) Yes
 - b) No

3. To what extent did the Agreement to Mediate give you more confidence in the process?
 - a) Very confident
 - b) Quite confident
 - c) Average confidence
 - d) A little confident
 - e) No confidence

4. How satisfied were you with the opportunity you had to present information and your point of view of the dispute?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

5. How satisfied were you with how well you understood what was going on during the mediation?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

6. How satisfied were you with the mediation process?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied

- e) Very dissatisfied
- 7. How satisfied were you with the amount of time spent in mediation?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

Section Three: Mediator Assessment

- 1. During the introductory statement, how effective was the Mediator(s) in explaining the process?
 - a) Very effective
 - b) Somewhat effective
 - c) Neither effective nor ineffective
 - d) Somewhat ineffective
 - e) Very ineffective
- 2. How effective was the Mediator(s) in clarifying the key issues and interests?
 - a) Very effective
 - b) Somewhat effective
 - c) Neither effective nor ineffective
 - d) Somewhat ineffective
 - e) Very ineffective
- 3. In your opinion, how effective was the Mediator(s) in hearing your concerns and/or issues?
 - a) Very effective
 - b) Somewhat effective
 - c) Neither effective nor ineffective
 - d) Somewhat ineffective
 - e) Very ineffective
- 4. How satisfied were you with the Mediator's performance?
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied
- 5. There was no pressure from the Mediator to settle the dispute during the mediation.
 - a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree

- d) Somewhat disagree
 - e) Strongly disagree
6. Mediator(s) treated all parties equally.
- a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree
 - d) Somewhat disagree
 - e) Strongly disagree
7. Mediator(s) helped create realistic options for settling the dispute.
- a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree
 - d) Somewhat disagree
 - e) Strongly disagree
8. Mediator(s) understood the issues involved.
- a) Strongly agree
 - b) Somewhat agree
 - c) Neither agree nor disagree
 - d) Somewhat disagree
 - e) Strongly disagree

Section Four: Mediation Outcome

1. Did the mediation resolve this dispute?
- a) Yes, completely
 - b) Yes, partially
 - c) No (if no, skip question 4)
2. How would you rate the overall outcome of the mediation?
- a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied
3. How satisfied are you with the outcome of the mediation compared with what you expected before the mediation.
- a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied

4. How satisfied are you with the degree of control you had over the outcome of the mediation.
 - a) Very satisfied
 - b) Somewhat satisfied
 - c) Neither satisfied nor dissatisfied
 - d) Somewhat dissatisfied
 - e) Very dissatisfied
5. How did mediation change your opinion of the other party?
 - a) Very positively
 - b) Positively
 - c) Neither positively nor negatively
 - d) Negatively
 - e) Very negatively
6. If an agreement was reached do you consider it to be:
 - a) Very fair
 - b) Fair
 - c) Neither fair nor unfair
 - d) Unfair
 - e) Very unfair
7. Did you feel you saved time by using mediation instead of litigation?
 - a) Yes
 - b) No
8. If yes, please chose on of the following options on how much:
 - a) Minimum amount
 - b) Moderate amount
 - c) Substantial amount
9. Did you feel you saved money by using mediation instead of litigation?
 - a) Yes
 - b) No
10. If yes, please chose one of the following options:
 - a) Minimum amount
 - b) Moderate amount
 - c) Substantial amount
11. Would you use mediation again?
 - a) Yes
 - b) No

12. Would you recommend mediation to others?
a) Yes
b) No

Please explain _____

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

If yes, how much would that be:

- a) In Country Currency _____
b) I don't know

Section Five: Anecdotal Data

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

CONTROL GROUP SURVEY SUMMARY

	Number of respondents
--	------------------------------

	Accept to be Interviewed
--	---------------------------------

	Did not accept to be interviewed
--	---

1	Type of dispute	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>a) commercial</td></tr> <tr><td>b) labor</td></tr> <tr><td>c) family</td></tr> <tr><td>d) other (list)</td></tr> </table>	a) commercial	b) labor	c) family	d) other (list)
a) commercial						
b) labor						
c) family						
d) other (list)						

2	Dispute value	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>a) < 3 000</td></tr> <tr><td>b) 3 000 - 15 000</td></tr> <tr><td>c) 15 000 - 50 000</td></tr> <tr><td>d) 50 000 - 100 000</td></tr> <tr><td>e) > 100 000</td></tr> <tr><td>f) not applicable</td></tr> </table>	a) < 3 000	b) 3 000 - 15 000	c) 15 000 - 50 000	d) 50 000 - 100 000	e) > 100 000	f) not applicable
a) < 3 000								
b) 3 000 - 15 000								
c) 15 000 - 50 000								
d) 50 000 - 100 000								
e) > 100 000								
f) not applicable								

3	Refused Mediation	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>a) refused by plaintiff</td></tr> <tr><td>b) refused by defendant</td></tr> <tr><td>c) refused by both parties</td></tr> </table>	a) refused by plaintiff	b) refused by defendant	c) refused by both parties
a) refused by plaintiff					
b) refused by defendant					
c) refused by both parties					

4	Has your case been resolved by the court since you were first invited to mediate?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>a) Yes</td></tr> <tr><td>b) No</td></tr> </table>	a) Yes	b) No
a) Yes				
b) No				

5	If your case was resolved:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>a) How long after the mediation was it resolved?</td></tr> <tr><td>b1) Resolved in court?</td></tr> <tr><td>b2) Resolved outside court?</td></tr> <tr><td>c) How satisfied were you with the result, on a scale of 1 (very) to 5 (unsatisfactory)</td></tr> </table>	a) How long after the mediation was it resolved?	b1) Resolved in court?	b2) Resolved outside court?	c) How satisfied were you with the result, on a scale of 1 (very) to 5 (unsatisfactory)
a) How long after the mediation was it resolved?						
b1) Resolved in court?						
b2) Resolved outside court?						
c) How satisfied were you with the result, on a scale of 1 (very) to 5 (unsatisfactory)						

6	What are the reasons you did not accept mediation?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>a) did not know enough about the mediation</td></tr> <tr><td>b) have no trust in mediation</td></tr> <tr><td>c) mediation is not legally regulated</td></tr> <tr><td>d) other reasons</td></tr> </table>	a) did not know enough about the mediation	b) have no trust in mediation	c) mediation is not legally regulated	d) other reasons
a) did not know enough about the mediation						
b) have no trust in mediation						
c) mediation is not legally regulated						
d) other reasons						

7	If mediation were offered to you now for the same dispute, would you accept it?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>a) Yes</td></tr> <tr><td>b) No</td></tr> <tr><td>c) Not sure</td></tr> </table>	a) Yes	b) No	c) Not sure
a) Yes					
b) No					
c) Not sure					

8	If your answer was "Yes" for the previous question, why have you changed your opinion?	a) I have learned about some positive results of other mediations
		b) I realize that I would not have lost if I had tried mediation
		c) other reasons

FULLFILLMENT OF SUCCESSFUL MEDIATIONS SUMMARY

	Agreement converted into a court settlement?	If yes, how soon after signing the mediation agreement did this happen?	If it was not converted to a court settlement, why not?	Obligations fulfilled?			If obligations fulfilled:				If not fulfilled, what were the reasons?	Did you ask for compulsory fulfillment?	If partial fulfillment, why?	Refused to be interviewed	
				YES	NO	Partially	Voluntarily	with delay	Compulsory	In what time					
Commercial															
Labor															
Family															
Other															

Note: This form provides a suggested format, which will need to be enlarged to accommodate all the interview information.

Annex C

Interview Protocols

- 1. Interview Protocol For Control Group**
- 2. Interview Protocol For Key Participants**
- 3. Interview Protocol For Fulfillment of Mediation Agreement**

Control Group Interview Protocol

Instructions:

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

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

The interviews can be held by phone. Hopefully the control group participants have already given their consent to be interviewed at the time of the initial meeting with the judge. Since they have no obligation to participate in the interview, and may even have some hostility toward the idea of mediation, it is extremely important to be courteous and considerate. When placing a call, always ask if the time is convenient for them. If not, schedule a more convenient time to call back. It is also useful to inform them that the call will be no longer than 5 minutes.

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

The responses should be recorded in table format (Form ADR 15.05) for ease of summarizing and comparison of the responses.

Interview Questions:

1. Has your case been resolved by the court since you were first invited to consider using mediation? Yes _____ No _____
2. If your case was resolved:
 - a. How long after the invitation to mediate was it resolved?
 - b. How was it resolved? _____ in court? ___ outside court?
 - c. How satisfied were you with the result on scale of 1 (very) to 5 (unsatisfied)?
3. What are the reasons you did not accept mediation?
 - a. Did not know enough about mediation
 - b. Have no trust in mediation
 - c. Mediation is not legally regulated
 - d. Other reasons

4. If mediation was offered to you now for the same dispute, would you accept it?
 - a. Yes
 - b. No
 - c. Not sure
5. If the answer was “yes” for the previous question, could you please tell me why you have changed your opinion?
 - a. I have learned about some positive results of other mediations
 - b. I realize that I would not have lost if I had tried mediation
 - c. Other reasons

Pilot Project Evaluation

Interview Protocol for Key Participants

Instructions:

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

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

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

Notes should be taken of all of the key points raised, which would form part of a list of key points from all the interviews. Those being interviewed should be told that what they say will not be attributed to them.

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

Interview Questions:

General:

1. How did you first hear about mediation?
2. How and to what extent were you involved in the pilot project?
3. To what extent and how would you be willing to participating in an extension of the pilot project?
4. How satisfied were you with the overall results of the pilot project?
5. To what extent and how do you think that mediation can improve the efficiency of the court system?
6. To what extent and how do you think that businesses can benefit from mediation?
7. What do you feel are the major concerns about the process of mediation?
8. How can these concerns be addressed and how can the structure of the mediation process be improved?
9. What, in your opinion, are the major challenges or barriers to extending mediation to other courts or to a country-wide system?

10. How could such challenges or barriers be addressed?
11. Do you have any suggestions about how the Southeast Europe Enterprise Development (SEED) could improve its services in the future?

Additional Questions for Judges:

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

Fulfillment of Mediation Agreement Interview Protocol

Instructions:

In order to assess the extent to which agreements signed as a result of successful mediations, have been fulfilled, interviews with one of the parties to each mediation should be held. Ideally this would take place approximately 3 months after the agreements are signed.

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

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

The responses should be recorded in table format (Form ADR 16.05) for ease of summarizing and displaying the responses.

Interview Questions:

1. Confirm the type of dispute that was resolved. I.e. was it commercial, labor, family or other?
2. Was the Mediation Agreement converted into a court settlement?
3. If it was converted into a court settlement, how soon after signing the Mediation Agreement did this happen?
4. If it was not converted into a court settlement, why was it not?
5. Were the obligations identified in the Mediation Agreement fulfilled?
 - a. Yes?
 - b. No?
 - c. Partially?
6. If the obligations were fulfilled, were they done so:
 - a. Voluntarily?
 - b. Compulsory?
 - c. Within what timeframe after signing the Mediation Agreement?
 - d. With some unanticipated delay?
7. If the obligations were not fulfilled, what were the reasons?
8. Did you request a compulsory fulfillment of the Mediation Agreement?
9. If the Mediation Agreement was only partially fulfilled, why was this the case?
10. While not part of the interview, if neither party could be contacted for the interview or if the parties refused to be interviewed, this information should be recorded.

Model Code of Ethics for Mediators

Introduction

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

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

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

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

Comments:

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

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

II. Impartiality: A Mediator Shall Conduct the Mediation in an Impartial Manner.

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

Comments:

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

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

III. Conflicts of Interest: A Mediator Shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to the Mediator.

After Disclosure, the Mediator Shall Decline to Mediate Unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest Also Governs Conduct that Occurs During and After the Mediation.

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

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

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

Comments:

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

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

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

IV. Competence: A Mediator Shall Mediate only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

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

Comments:

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

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

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

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

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

Comments:

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

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

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

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

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

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

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

Comments:

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

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

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

mediation process.

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

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

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

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

VII. Advertising and Solicitation: A Mediator Shall Be Truthful in Advertising and Solicitation for Mediation.

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

Comments:

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

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

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If

a mediator charges fees, the fees shall be reasonable, considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

Comments:

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

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

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

IX. Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.

Comments

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

**Getting Ready to Mediate
Training Outline**

Learning Objectives

Participants will:

- **Practice mediation skills and analyze mediation cases to the extent that they can perform on their own in court connected mediation cases**
- **Examine the Law on Mediation to the extent that they can apply it to the future mediation cases**
- **Fill in Pilot Project forms with no errors**
- **Commit to conduct court connected mediation cases during the life of the Pilot Project**

Content

- **Neutrality – Role and Principles**
- **Mediation Process**
- **Principled Negotiation**
- **Communication**
- **Mediation - Legal Background in Bosnia and Herzegovina**

Annex F

Case Study of BiH Pilot Project

As part of the overall intervention to assist the development of mediation in Bosnia and Herzegovina the IFC initiated a Court-referred pilot project in cooperation with the **Association of Mediators in Bosnia and Herzegovina** and **Banja Luka's 1st Instance Court** to test out both the utility and public acceptance of mediation in a culture completely unfamiliar with it. The Canadian Institute for Conflict Resolution (CICR) as the main implementing partner for the entire program played a critical role in designing and implementing the project.

In March 2004 the IFC and Banja Luka's 1st Instance Court signed a Memorandum of Understanding defining roles and responsibilities of both parties in project implementation. The selection of this Court was based on:

- it being the largest court in the RS,
- it having the largest case load, particularly in the commercial department (5000 cases),
- the availability of a large pool of potential mediators in Banja Luka,
- key people from the judicial system for the RS involved in the Pilot Project are located in Banja Luka (i.e. the Minister of Justice in the RS and a Supreme Court judge),
- four judges in the court have already trained in basic and advanced mediation were enthusiastic about using mediation, and
- the willingness of the President of the Court to have his court involved.

Role of the Court

Judges participating in the pilot project are tasked to select certain number of cases, out of the existing backlog, eligible for mediation, which are then forwarded to the Mediation Center for processing. All participating judges have completed introductory and advanced mediation trainings with the Canadian Institute for Conflict Resolution. If a case is mediated successfully the assigned judge signs off on the court settlement and closes the case.

Although it was initially planned to have the **Mediation Center** placed within the court, and operated jointly by the court and IFC/Association of Mediators, due to lack of appropriate accommodations within the court premises, Mediation Center was opened at a separate location, but procedurally linked to the partnering court. However, based on this experience it is now planned to have all future mediation centers located outside the court proper. This approach has several advantages. First, it allows the mediation center to serve more than one court in the same area. Second, the fact that the mediation center would not be a burden on the courts' already strained resources proved decisive in securing the court's cooperation. Finally, having a separate mediation center enables mediation to take place in an environment conducive to mediation, away from the frantic court atmosphere.

Court administrator was hired by the center to schedule mediations, maintain files and serve as liaison with the 12 court judges who made the referrals. The Canadian mediation expert served as center director and mentor for new mediators. All 4 mediators practicing in the center are legal professionals, of which 3 are former judges. The expert mentor spent an average of 5 full mediation sessions with each of the trainees, and provided guidance and feedback on their performance.

A Pilot Advisory Board was formed in April to provide overall strategic guidance to the Pilot and ensure broader buy-in. The Committee consisted of:

- Minister of Justice of Republika Srpska – Mr. Saud Filipovic (Chair)
- Association of Mediators (AoM) Vice –President, Mr. Obren Buzanin
- Banja Luka Basic Court representative, Ms. Branka Skoko, judge

- Mediator’s group representative, Ms. Zora- Bulatovic
- IFC Representative – Ms. Lada Busevac
- IFC Representative - Ms. Azra Delalic
- Court Administrator - Ms. Hazima Catic
- Consultant/Mentor - Ms.Vesna Dasovic-Markovic
- Consultant/Assistant Mentor - Mr.Aleksandar Zivanovic

Pilot advisory committee discussed all issues related to the mediations start-up and implementation as well as helped overcome obstacles and solve problems arising from the legal and regulatory structures that affect mediation as a process, such as difficult implementation of the Law on Mediation . Furthermore, the board reviewed lessons learned and challenges to implementing court related mediation on a broader scale. Having all these bodies in place ensured quality of implementation and proper monitoring and evaluation.

For the purpose of this pilot project court judges selected the total of 1385 cases eligible for mediation from their existing backlog, of which 67% were commercial cases. Followed by an intensive awareness campaign targeting end users and the professional community the center started sending invitations directly to the parties. In little over two months of practicing mediation in the center 162 cases were mediated, of which 106 or 65% were successfully resolved. Financing freed up by the successful mediations amounted to EUR 1.6 million . Of cases that did not accept mediation 81% were still waiting to get their hearing scheduled six months later.

The chart below provides some statistics from the first two months (both phases) of the pilot project’s operation.

Number of cases selected for Mediation	1385
Number of cases Mediated	156
Number of successful Mediations	106
Average time in court	730 days
Average time in Mediation	1.5 hours

Table 1. Court-referred pilot project in numbers

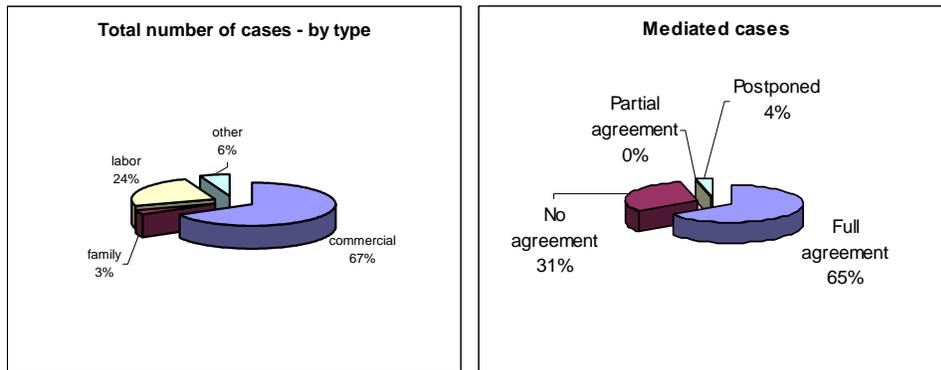


Figure 1. Court-referred pilot project overview

The success of the Pilot so far has to be credited to the enthusiasm and commitment of the judges, mediators and others involved in the whole process. However, fully rolling out mediation as a viable mechanism for resolving disputes, as a complement to the formal court process, will require a lot more effort long-term. In order to reach out to all potential beneficiaries with world class mediation practice and ensure their buy-in continuous support and facilitation of the process needs to be the main priority.

An evaluation of the pilot project was prepared in draft by our Canadian Institute for Conflict Resolution. The evaluation indicated that although the pilot revealed many challenges that need to be dealt with, it also demonstrated that court-referred mediation is an efficient and effective mechanism to resolve disputes and is likely to be broadly accepted by the public and judiciary alike.

Annex H

LAW ON MEDIATION

PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA

261

Pursuant to Article IV.4.a) of the Constitution of Bosnia and Herzegovina, at its 37th Session of the House of Representatives, held on June 9, 2004, and the 25th Session of the House of Peoples, held on June 29, 2004, the Parliamentary Assembly of Bosnia and Herzegovina adopted the following

LAW ON MEDIATION PROCEDURE

I - General Provisions

Article 1: This law governs the mediation procedure on the territory of Bosnia and Herzegovina.

The mediation tasks shall by a separate law be transferred to the association or associations by the procedure set forth in that law.

Article 2: For the purposes of this law, the mediation shall be a procedure in which a third neutral party (mediator) assists parties in an effort to reach a mutually acceptable solution to the dispute.

The mediator may not impose the solution to the dispute on the parties.

Article 3: The mediation procedure shall be conducted by an individual mediator unless the parties agree to have more than one mediator conducting the procedure.

The mediator shall be a third neutral party mediating in resolution of dispute between the parties, pursuant to the mediation principles.

Article 4: The parties in dispute may agree, either before or after institution of the court procedure until conclusion of the main trial, to resolve the dispute in the mediation procedure.

If before institution of the court procedure the parties have not attempted to resolve the dispute in the mediation procedure, the judge conducting the court procedure, if he deems it appropriate, may at the preparatory hearing propose to the parties to attempt to resolve their dispute in the mediation procedure.

Article 5: The parties shall jointly select a mediator from the list of mediators established by the Association.

If the parties can not agree about the choice of mediator, then the mediator shall be appointed by the Association.

The written agreement enactment referred to in paragraph 1, or the enactment of the Association of Mediators referred to in paragraph 2 of this Article shall be submitted and inserted into the case file with the proceeding court, if the mediation procedure has been instituted during or after institution of the court procedure.

II – Principles of the Mediation Procedure

Article 6: The parties in dispute shall institute the mediation process and participate in reaching a mutually acceptable agreement on a voluntary basis.

Article 7: The mediation procedure is of a confidential nature. The testimonies of the parties made in the mediation procedure may not without approval of the parties be used as evidence in any other procedures.

The mediator shall keep secret of the information provided to him during the separate meetings with each of the parties, and shall not discuss them with the other parties, unless agreed upon otherwise.

Article 8: The parties in the mediation procedure shall have equal rights.

Article 9: The mediator shall mediate in a neutral manner, without any prejudice as to the parties and the subject of dispute.

III – Mediation Procedure

Article 10: The mediation procedure shall be instituted by a written agreement on mediation signed by the parties in dispute and the mediator.

Article 11: The agreement on mediation shall contain: information on the parties to the agreement, the legal representatives or plenipotentiaries, the subject of dispute (description of the dispute), the statement of acceptance as to the principles of mediation defined in this law, the place of mediation as well as the provisions on the costs of the procedure, including the mediator's fee.

Article 12: After signing of the agreement on mediation, in arrangement with the parties, the mediator shall schedule the time and the closer location – space for holding of the mediation meeting.

Article 13: If a court procedure is already in due course, the parties who have agreed to resolve their dispute in the mediation procedure shall be obligated to inform to that effect

the judge conducting the court procedure, by submitting to him copies of the mediation agreement.

Article 14: If in the course of the civil action, on their own initiative or upon the proposal of the judge, the parties have agreed to attempt to resolve their dispute in the mediation procedure, the court shall postpone the hearing by no later than 39 days.

Article 15: If the parties in dispute are individuals, their attendance at the procedure shall be mandatory.

The interests of the parties in the procedure may be represented by their legal representatives or plenipotentiaries.

The actions in the mediation procedure, including signing of the settlement agreement, as undertaken by the plenipotentiaries, shall have the same legal effect as though undertaken by the parties themselves.

Article 16: In addition to the mediators, parties or their representatives, the procedure may also be attended by third parties, provided that the parties give their consent to that effect.

Any third parties attending the mediation procedure shall obligate themselves in writing that they shall adhere to the confidentiality principle of the mediation procedure.

Article 17: The parties shall in due time submit to the mediator all the relevant documentation related to the subject of dispute.

Article 18: In the beginning of the mediation procedure, the mediator shall briefly inform the parties of the goal of mediation, of the procedure to be conducted, as well as of the role of the mediator and the parties in the procedure.

Article 19: The mediation procedure may be terminated by either party at any time in the course of the procedure.

The mediator may terminate the mediation procedure if he believes that any further procedure should have no purpose.

The mediator shall terminate the mediation procedure if reasons exist or appear in the course of the procedure preventing him from being neutral and unbiased.

A written or oral statement of a party for termination of the procedure, or a belief on the part of the mediation that any further procedure is non-purposeful, shall be stated by the mediator in the form of a separate enactment, and shall be signed and submitted by him to the proceeding court.

Article 20: The mediator shall be obligated to conduct the mediation procedure without any delay.

Article 21: In the course of the mediation procedure, the mediator may also have separate interviews with either party individually.

Article 22: The mediator shall not give promises or guarantee specific outcomes of the mediation procedure.

Article 23: Upon the request of a party, brought up during a separate interview, the mediator may propose options for resolution of the dispute, but not the solution itself.

Article 24: Once the parties in the mediation procedure identify the solution to the dispute, with the assistance by the mediator, they shall draft a written settlement agreement and sign it off immediately.

Article 25: The settlement agreement referred to in Article 24 of this law shall have the force of a final and enforceable document.

Article 26: If civil action is in due course, the parties shall be obligated to inform the court of the outcome of the mediation procedure immediately, and no later than before the hearing is scheduled pursuant to Article 14 of this law, by submitting the settlement agreement.

Article 27: The mediator shall be subject to liability for any damage he may inflict on a party through his unlawful proceeding, according to the general rules of liability for damage, or disciplinary liability in accordance with the enactments of the Association.

IV – Conflict of Interest

Article 28: The mediator may not proceed in the cases in which he has any personal interest, family or business relations with a party in dispute, or if any appears in the meantime, or if other circumstances exist bringing into suspicion his impartiality.

The mediator shall not proceed in cases in which he has previously proceeded as a judge, or has been a plenipotentiary, legal representative or advisor to either of the parties.

Article 29: The mediator may conduct the mediation procedure even in cases referred to in Article 28, of this law, if the parties, once informed of existence of such circumstances, have agreed to have him conduct the procedure.

V – Payment of Costs for the Mediation Procedure

Article 30: The fee and compensation of mediator's costs, in the amount prescribed in the enactment of the Association, as well as other costs necessary to conduct the mediation

procedure, shall be paid by the parties in equal parts, unless the mediation agreement provides otherwise.

VI – Requirements for Conducting Mediation

Article 31: The mediator may be a person meeting the general requirements for employment.

In addition to the requirements referred to in paragraph 1, of this Article, the mediator shall also meet the following requirements:

- a) a university degree,
- b) completed training according to the program of the Association or according to another training program recognized by the Association,
- c) entry into the registry of mediators held by the Association.

The person who is successful in completing the training for mediators shall be issued an appropriate certificate serving as a basis for entry into the registry of mediators.

Article 32: A foreign national authorized to perform mediation in another state may in specific cases, under the condition of reciprocity, conduct the mediation procedure in Bosnia and Herzegovina, provided that he obtains a prior approval from the Ministry of Justice and the Association of Mediators in Bosnia and Herzegovina.

FINAL PROVISIONS

Article 33: This law shall come into effect on the eighth day from the date of publication in the Official Gazette of BH, and in the official bulletins of the Entities and the Brcko District of BH.

PS BiH No. 76/04
June 29, 2004
Sarajevo

Presiding Representative
of the House of Representatives
Martin Raguz, in person

Presiding Delegate
of the House of Peoples
Goran Milojevic, in person

Suggested Books, Papers and Web Sites for Mediation Centers

1. Books and Papers

- Allport, Gordon W.: *The Nature of Prejudice*, Addison-Wesley Publishing Company Inc, 1992
- Augsburger, David W.: *Conflict Mediation Across Cultures – Pathways and Patterns*. Westminster/John Knox Press. Louisville, KY, 1992
- Baruch-Bush, Robert A., Joseph P. Folger: *The Promise of Mediation, Responding to Conflict Through Empowerment and Recognition*, Jossey-Bass, San Francisco, 1994
- Bellenger Lionel: *Le talent de communiquer*, 1989, Edition Nathan, Paris France
- Canadian Institute for Conflict Resolution: *Developing Mediation Skills, Resource Guide*, Ottawa Canada, 2001
- Canadian Bar Association: *Alternative Dispute Resolution: A Canadian Perspective*. Canadian Bar Foundation, 1969
- Canadian Bar Association: *Court Cost and Delay in Canada*, Canadian Bar Foundation, 1989.
- Chetkow–Yanoov, Benjamin: *Social Work Approaches to Conflict Resolution*, The Hawton Press New York, 1997
- CMG s Advisory Group of ADR and Conflict Management: *ADR Practitioners Guide*, 2002
- Cornelius, Helena; Shoshana Faire: *Everyone Can Win: How to Resolve Conflict*, Simon and Schuster, Australia, 1989.
- De Bono, Edward: *Conflicts: A Better Way to Resolve Them*, Penguin Books, 1991
- Fisher, Rodger, William Ury: *Getting Together: Building Relationships as We Negotiate*. Penguin Books, 1989
- Fisher, Roger and William Ury: *Getting to Yes - Negotiating Agreement Without Giving In* A Penguin Book, 1991
- Oudeh, Gayle Wiebe and Nabil: *Conflict is for Birds*, CCR International Publishing Inc, first edition, 2003
- Goodman Alan H: *Basic Skills for Mediators*, Solomon Publications, Rockville Maryland 2002
- Hoffman Ben: *Conflict, Power, Persuasion - Negotiating Effectively*, Captus Press, 1993
- Kolb, Deborah M. and Associates: *When Talk Works, Profiles of Mediators*, Jossey-Bass Publishers, San Francisco 1997
- Leposava Karamarkovic, Poravnanje i medijacija, Beograd 2004.
- Moore, Cristophere W.: "Mediation Process", *Practical Strategies for Resolving Conflicts*, Jossey-Bass, San Francisco
- Redekop, Vernon Dr. *From Violence to Blessing*, Novalis 2002
- Schellenberg, James A. - *Conflict Resolution- Theory, Research and Practice*, State University of New York Press, 1996.
- Stone, Douglas, Bruce Patton and Sheila Heen, *Difficult Conversation, How to Discuss What Matters Most*, Penguin Books, New York, 1999
- Susskind, Lawrence and Patric Field: *Dealing With an Angry Public -The Mutual Gains Approach to Resolving Disputes*, the MIT Harvard Public Dispute Program

Umijeće komuniciranja, IP Svjetlost, DD, Sarajevo
Ury, William: Getting past No - Negotiating Your Way From Confrontation
to Cooperation, Bantam Books, 1993

2. Web Sites

ADROnline Monthly -- <http://www-legal.sbs.umass.edu/center/adronline.html>
Agree Inc -- <http://agreeinc.com/agree/agree.htm>
American Arbitration Association -- <http://www.adr.org/drj.html>
American Bar Association -- <http://www.abanet.org/dispute/home.html>
Canadian Institute for Conflict Resolution www.cicr-icrc.ca
CDR Associates -- <http://www.mediate.org/start.htm>
Conflict Research Consortium of the University of Colorado --
<http://www.colorado.edu/conflict>
Conflict Resolution Network Canada -- crnetwork@crnetwork.ca
ConflictNet -- <http://www.igc.org/igc/conflictnet/>
CPR Institute for Dispute Resolution -- <http://www.cpradr.org/>
Department of Justice, Canada - Project on Dispute Resolution --
http://canada.justice.gc.ca/Orientations/Methodes/index_en.html
Dispute Resolution Journal -- <http://www.adr.org/drj.html>
Mediate.com www.mediate.com Electronic Dispute Resolution Channel
Mediation Information and Resource Center -- <http://www.mediate.com/>
Ontario Government www.attorneygeneral.jus.gov.on.ca Mandatory mediation
program in Ontario
Recent Developments in Dispute Resolution -- <http://www.willamette.edu/dis-res/>
Society of Professionals in Dispute Resolution -- <http://www.spidr.org/>
The Alternative News Letter <http://www.mediate.com/tan/>
The Rand Institute for Civil Justice -- <http://www.rand.org/centers/icj/>
Udruženje medijatora u BiH – www.umbih.co.ba
United Nations Commission on International Trade Law www.uncitral.org, law
on arbitration and mediation
University of Victoria - Institute for Dispute Resolution -- <http://dispute.resolution.uvic.ca/>