

The Dispute Board Federation

Geneva

Excellence in Dispute Resolution since 2001

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Featured Events

Future combined FIDIC -DBF and International Finance Corporation related programmes and events include:

London

DAB Training
5-6 February 2009

London

DBF Dinner Meeting
for Professional Members
7 February 2009

Luxembourg

DAB Training
24 -25 February 2009

Saigon

DAB Training
25 - 26 March 2009

Sarajevo

ADR Practical Training
Programme
31 March - 1 April 2009

Dubai

DAB Training
15 -16 April 2009

Australia

Mediation Training
28 - 30 April 2009

Singapore

Mediation Training
5 -7 May 2009

Hong Kong

DAB Training
12 - 14 May 2009

Tokyo

DAB Training
19 - 20 May 2009

New Initiatives for 2009

In this issue of our Newsletter the Dispute Board Federation (Geneva) is pleased to announce the implementation of its ADR & Commercial Mediation Programme throughout the Balkan region, Asia, and Australia.

Additional news items include revised membership categories including the creation of a new title - Fellow of the DBF and all new training programmes in Dispute Boards and ADR. I hope that the New Year will be fruitful for all of our members.

*- Herbert Wilson
Executive Director*

Interview with Lada Busevac



This month's interview is with Lada Busevac. Lada is the current Regional Program Manager for the International Finance Corporation's ADR programme and is leading IFC's Global ADR product development initiative. She holds degrees in European Studies (Law) from the University of Bologna and the University of Sarajevo and has completed the Harvard Law School Program on Negotiation in particular its Executive Training programme in mediation. Lada is also a member of the Dispute Board Federation's Advisory Panel.

WHY HAS THE IFC DECIDED TO INVOLVE ITSELF IN ADR?

Many frontier countries in which IFC provides advisory services rank

poorly in the area of contract enforcement and efficiency of the judicial system. This has a negative effect on the business climate and increases the risk for businesses. A number of studies and assessments such as *Doing Business*, *Investment Climate Assessments*, *Enterprise Surveys*, and other analytical studies produced in this area have shown that contract enforcement and efficient access to justice are key elements of the investment climate agenda for emerging market countries.

ADR serves as a viable link between legal reform, which in specific countries should set the broader judicial reform objectives, and efficient dispute resolution mechanisms outside of the court, which complement those systematic judicial reform efforts. IFC's involvement in ADR allows us to engage the judiciary with a very practical, hands-on oriented tool while responding clearly to evident business needs. Businesses need efficient access to blocked capital and cannot afford to wait for long lasting judicial efforts to start yielding results.

Furthermore, ADR is part of the World Bank Group mandate, and embedded in the day to day operations of its group's institutions: ICSID, MIGA, IFC and IBRD. IFC and IBRD credit agreements often contain clauses, which refer to the amicable resolution of disputes and additionally promote use of mediation in all investment related disputes.

There is little doubt about the potential impact that ADR can have in the investment climate of our client countries. However, in order to create a robust product, that is replicable and consistent throughout the different regions, IFC is investing in strengthening the knowledge management and product development component, especially by exploring sectoral ADR interventions, such as use of ADR in the construction industry.

The reason for selecting the construction sector is because of the potential that this sector offers to combine ADR with a better investment climate. The construction industry is a driver of around 30 industries and has a multiplier effect on economic growth. A 1% growth rate recorded by the construction industry results in a 1.4%-1.6% growth of the overall GDP, depending on the structure and development level of the entire economy. Therefore, the construction industry not only stimulates employment and economic growth, but also contributes to general progress, and has a stabilizing effect on the national economy.

Additionally the efforts of both the Dispute Board Federation (DBF) and the International Federation of Consulting Engineers (FIDIC) in partnering with IFC to develop a pilot initiative in the Balkans and to test the implementation of ADR mechanisms in the sector allow us to provide these services to the construction industry at an accelerated pace. Indeed the FIDIC form contracts in use worldwide for infrastructure construction and other development projects already provide an effective form of dispute resolution which will be amplified by our initiative and interventions. These interventions will be designed jointly and led by the IFC AS regional offices, with the expert participation for capacity building and public awareness campaign being provided by a DBF/FIDIC expert team.

The ADR sectoral approach will for the moment be focused in the construction sector, but for future interventions the team might explore other sectors of strategic importance for IFC and with potential for ADR development, such as the financial sector, insurance, corporate governance and infrastructure. The ADR sectoral approach will also help us to determine whether commercial mediation could eventually become a "tool" to be used in trying to improve the business environment and the competitiveness of sectors, rather than a product itself.

WHAT IS YOUR ROLE IN THIS PROCESS?

About two years ago IFC made a decision, at the corporate level, to streamline its advisory services to make them more robust and efficient, which included doing a comprehensive inventory of all our

Sarajevo
DAB Training
9-10 June 2009

For a full listing of programmes and events, brochures and more information and/or to register please go to:

www.dbfederation.org



Balkans ADR Programme Sarajevo March 31 - April 1, 2009

The DBF in conjunction with the IFC present a unique programme on ADR in the Construction Sector. This practical training programme provides each participant with a thorough grounding in both mediation and dispute boards, their differences and operation and their use in various forms of contract particularly the FIDIC Conditions of Contract and is taught from the perspective of the construction professional.

The programme is open to government officials, procurement officers, consulting engineers, contractors, quantity surveyors, architects, legal advisors and all involved with the implementation and management of works contracts.

If you would like more information please email j.varoqui@dbfederation.org.

DISPUTE BOARDS AND BUSINESS IN VIETNAM

The DBF in conjunction with FIDIC, IFC and ACE Insurance

are pleased to present a very special programme in Saigon on 25 & 26 March 2009

projects globally in order to make a decision on which ones to pursue further based on their potential to lead to positive change in developing countries. At the time IFC had only just started with ADR activities in the Balkans region and made some good results in helping businesses resolve their disputes out-of-court.

Based on positive feedback IFC's management decided to further develop ADR as a stand-alone product within its broader Business Enabling Environment business line. Following that I was appointed as a Global Product Development Leader. Basically, my team, which is located in various IFC offices throughout the world, such as Washington DC, Karachi, Durban, Kiev, Belgrade and others, work together to standardize our approach, to learn from existing projects, make available all existing knowledge, provide quality assurance for new project activities and consolidate our methodology.

WHAT COUNTRIES/REGIONS ARE CURRENTLY INVOLVED IN THIS PROGRAMME?

IFC started the implementation of ADR/Commercial mediation projects in the Balkans in response to demand from our client countries. Entrepreneurs in Bosnia-Herzegovina and Serbia are already reaping the rewards of IFC's ADR/Commercial mediation projects, which focus on resolving commercial disputes. In Bosnia, up until today, around 400 disputes have been resolved through commercial mediation mechanisms established with assistance provided by IFC, and close to US\$30 million has been released from commercial disputes, and the time and cost to resolve commercial disputes have been reduced considerably. In Serbia, the time needed to enforce a contract went from 1,028 days in 2003 to 635 days in 2006, allowing Serbia to move up 27 spots in the ranking according to the *Doing Business Report*. Serbia has been especially commended for introducing commercial mediation as it contributed to this significant change.

The success of the pilot projects in the Balkans has led IFC to develop other projects and there is an increasing interest to roll out similar projects to other regions. At the moment IFC is implementing ADR projects in Pakistan, Serbia, Bosnia-Herzegovina, Macedonia, Morocco, Montenegro, Ukraine, Albania, Cambodia and Pacific Islands.

WHAT IS THE FUTURE FOR ADR IN IMMEDIATE POST CONFLICT COUNTRIES AND/OR DEVELOPING COUNTRIES?

We are witnessing tremendous changes in the global economy, leaving no country protected from the influences of the changing ways of doing business. One of the imperatives promoted by leading multilateral agencies involved in supporting reform in post-conflict and developing countries is the rule of law. This means setting up strong, independent institutions, uniform laws, developing human resources to become real catalysts of change. This change is primarily happening in courts and involves judges. There is an evident tendency that formal legal systems in many developing countries are changing for the better in terms of reducing corruption, but have tremendous problems with low efficiency and overwhelming backlogs. Administration of justice is starting to be one of the most expensive state systems.

On the other side, businesses are exposed to dynamic business activity across and intra borders, and more aware of the need to reduce the cost of doing business, no matter where they are located. They naturally tend to look for more efficient means to resolve disputes, but often are prevented from using them for various reasons, which are quite common for most developing countries, less so in immediate post-conflict countries. The reasons for the low uptake of ADR in these countries is usually due to a low level of support from the legal community, conservative judges and poorly educated businesses. Also, the non-existence of any well established, reliable, affordable service provider in the local market often prevents businesses in developing markets from opting for out-of-court dispute resolution.

In addition to the intensive DAB programme, those attending will participate with country leaders of Viet Nam as well as IFC officials for a discussion of current issues dealing with Oil & Gas, Construction, Mediation, and Business development both in the country and in the region.

Additionally there will also be a focus group discussion on the new IFC and DBF Initiatives in developing countries.

For early registration and to save a place at this important conference please go to programmes at:

www.dbfederation.org

New Membership Categories

The Dispute Board Federation is pleased to announce the implementation of new membership categories. Effective this month there will be three categories of membership. The original category of General Member will remain and will be for those entities and individuals who wish to support the work of the DBF in fostering ADR in infrastructure projects worldwide with an emphasis on the use of Dispute Boards as the best alternative.

The category of Professional Member which has been reserved for those individuals who are practising dispute board members will now be expanded to include those individuals who practise in the field of infrastructure construction ADR including mediation and conciliation as well as dispute board members. For those Professional Member who have attained a higher level of experience and training there will be a new category entitled Fellow of the DBF and will allow those individuals to use the title FDBF after their names.

The minimum requirements for Fellowship include having served on 10 or more 3 person Dispute Boards, having at least 15 years experience in ADR either as an arbitrator, mediator, or other dispute resolver. Those existing Professional Members who feel that they are qualified for this new category are invited to email their interest to the Fellows Evaluation

However, ADR is a growing phenomenon and will definitely have its place in evolving dispute resolution systems in developing and post-conflict countries, and not just from a business perspective, but very broadly will have its institutional application in a number of fields that have been traditionally influenced by local cultural, anthropological and ethno-religious elements.

**In our next issue we interview Clive Hassett
of ACE Insurance**

Committee and ask for the
information and application form. .
The email address is
fdbf@dbfederation.org.

The Dispute Board Federation
Geneva