

# ALTERNATIVE DISPUTE RESOLUTION



# LESSONS from Innovation



ARBITRATION AND MEDIATION  
IMPROVING BUSINESS ENVIRONMENT  
IMPARTIAL SOLUTIONS  
EFFICIENT PROCESSING  
MODERNIZING LEGISLATION  
CULTURAL CHANGE

## ABOUT MIF

Created in 1993, the Multilateral Investment Fund (MIF) supports innovative private sector development in Latin America and the Caribbean. In partnership with business organizations, governments and non-governmental organizations (NGOs) MIF provides technical assistance and investments to support micro and small business growth, build worker skills and help markets work better.

These projects are designed to test new development approaches, and help build region-wide networks of partner agencies. Through an active program of evaluating results and sharing lessons learned, MIF seeks to extend the reach of these experiences and promote the identification of effective ways to enhance broadly-based private sector development.

# Lessons from Innovation



**MIF** *seeks to capture, synthesize, and share key lessons learned from its projects for the benefit of those pursuing similar development objectives. The material presented here is drawn from the direct experiences of executing agencies and beneficiaries, as well as from independent evaluations and other reports. All concepts and conclusions were discussed directly with the various implementing agencies to ensure that their experiences and perspectives were accurately presented. To access detailed reports on lessons learned, related information and publications, see: [www.iadb.org/mif](http://www.iadb.org/mif).*

## **INVESTING IN ALTERNATIVE DISPUTE RESOLUTION**

The ability to settle commercial disputes fairly and efficiently is a key element of competitiveness, and one that has become increasingly important in the new global economy as commercial trade and investment expand across national borders.

Alternative Dispute Resolution (ADR) offers firms a practical, time saving way to resolve commercial disagreements, with specially trained mediators and arbitrators assisting firms to reach a negotiated settlement. This is particularly important for smaller companies that are often unable to assume the costs of lengthy and uncertain legal processes.

ADR tools have been used for many decades in developed countries, but their use was not widespread in Latin America and the Caribbean. MIF's 18 projects throughout the region have introduced the use of ADR, creating a new option for settling disputes and contributing to the modernization of the judicial system. These projects have typically been done in partnership with Chambers of Commerce and have generated a regional, ongoing ADR movement, transforming the settlement of commercial disputes.



***"Arbitration is an extremely valuable tool that allows us to resolve conflicts arising from business activities in an efficient, confident, and impartial manner. And it's fast, which is one of its main advantages. It offers us security in confronting new business deals."***

*—Alfonso Estremadoyro Alberti,  
Businessman, Peru*

## KEY TERMS

### **ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS:**

*Refer to the kinds of tools used to resolve disputes that are not the classic procedures of a court of justice.*

### **ARBITRATION:**

*The process in which the interested parties voluntarily submit to the decision of a third party – an arbitrator. The arbitrator listens to both sides and identifies a way to resolve the differences, dictating a decision that the parties are obligated to accept. The conflict can be resolved by one or several arbitrators depending on the desires of the concerned parties or on the complexity of the case.*

### **MEDIATION:**

*This is the process in which a third party – the mediator – assists the participants to manage a conflict, providing ideas and alternatives to help resolve the dispute. However, unlike arbitration where the parties are obligated to accept the arbitrator's decision, mediation strives to resolve the problem with a voluntary and mutually accepted solution, and is structured in such a way to help maintain a relationship between the parties.*

### **CENTERS FOR ARBITRATION AND MEDIATION (CAMs):**

*Refer to specialized units to process arbitration and mediation cases. Often created within Chambers of Commerce, they have their own administrative structure, operating rules and lists of arbitrators and mediators. They enforce ethical regulations and procedural norms, and in exchange for their services, receive payment often on a cost-recovery basis.*

## **ADR BENEFITS**

Mediation and arbitration methods focus on finding a solution to conflict that is acceptable to both parties. Use of this approach avoids the uncertainty, potential for delay, and high costs of court procedures. But more importantly, ADR can help maintain the business relationship by orienting settlements to mutually agreed resolutions, enhancing the competitiveness of products and services by providing an agile and economical alternative to resolve conflicts. For the investor, ADR mechanisms offer a reliable way to resolve commercial disputes, increasing the legal security for transactions and lowering the risk of investment.

### **SPEED**

ADR methods have a great advantage over traditional litigation: speed. Resolving a conflict using arbitration typically requires less than six months, compared to the average of three to five years when using courts and litigation. In the case of mediation, it may take even less time to resolve a conflict.

### **FLEXIBILITY**

Given that ADR methods are private, they are more flexible and can adapt to the specific needs of individuals or businesses. Parties to the conflict can agree on which particular mediators or arbitrators to use, and the time and place to meet can be adjusted to accommodate individual schedules. Procedural steps used to resolve conflict are much simpler than those used in traditional litigation, making the process more open and better able to adjust to the requirements of the concerned parties.

### **IMPARTIALITY AND PROFESSIONALISM**

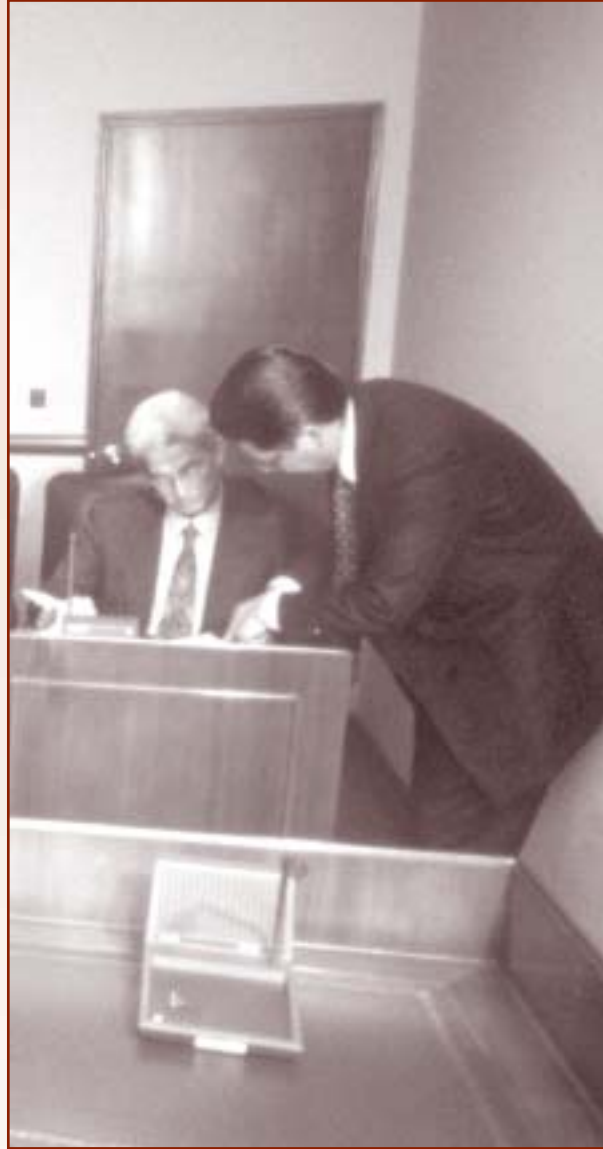
The ability to choose well-respected arbitrators and experienced mediators eliminates problems that sometimes result from inexperienced or conflicted members of the judiciary system. As the selection of arbitrators and mediators is transparent and mutually agreed, their independence of any ties to the respective parties is ensured, promoting impartiality and professionalism on the part of those responsible for resolving the conflict.

### **CONFIDENTIALITY**

ADR enables conflicts to be resolved privately and with absolute confidentiality. By mutual agreement among the parties involved, all aspects of the conflict – including technical factors, amounts, reasons for dispute and the final decision – can be protected from public scrutiny. In this way, businesses maintain privacy about details of their companies that would otherwise be made public if the case were to be tried in the ordinary judicial system.

### **SPECIALIZATION**

Use of ADR methods entails the selection of the arbitrators and mediators who will resolve the conflict. This enables the selection of experts who are best equipped to address the particular characteristics of each situation, and may include lawyers, engineers, accountants, scientists and other experts in very specific technical fields.



COUNTRY	YEAR APPROVED	PROJECT	EXECUTING AGENCY
Peru	1994	Alternative Dispute Settlement System	Asociación Peruana de Negociación de Arbitraje y Conciliación
Colombia	1995	Alternative Methods of Settling Business Disputes	Cámara de Comercio de Bogotá
Uruguay	1995	Mediation and Arbitration Center	Centro de Conciliación y Arbitraje de la Bolsa de Comercio de Montevideo
Costa Rica	1996	Mediation and Arbitration Centers	Cámara de Comercio de Costa Rica
Ecuador	1996	Mediation and Arbitration Center	Cámaras de Comercio de Quito y de Guayaquil
El Salvador	1996	Commercial Law and Dispute Resolution Reform	Unidad Técnica del Ministerio de Justicia y Cámara de Comercio e Industria de El Salvador
Honduras	1996	Mediation and Arbitration Center	Cámara de Comercio e Industria de Cortés y de Tegucigalpa
Panama	1996	Mediation and Arbitration Center	Cámara de Comercio, Industrias y Agricultura de Panamá
Guatemala	1998	Commercial Mediation and Arbitration Center	Cámara de Comercio de Guatemala
Brazil	1999	Alternative Dispute Resolution Centers	Confederação de Associações Comerciais do Brasil
Chile	1999	Commercial Arbitration and Mediation Services	Cámara de Comercio de Santiago
Nicaragua	1999	Support to Property Conflict Resolution	Corte Suprema de Justicia
Paraguay	1999	Conciliation and Arbitration Center	Cámara y Bolsa de Comercio de Asunción
Venezuela	1999	Commercial Arbitration and Mediation Center	Cámara de Comercio de Caracas
Argentina	2000	National Network of Mediation and Arbitration Centers	Cámara Argentina de Comercio
Bolivia	2000	Commercial Conciliation and Arbitration	Cámara de Industria y Comercio de Santa Cruz
Mexico	2000	Alternative Dispute Resolution Project	Instituto Tecnológico Autónomo de México
Trinidad & Tobago	2000	Mediation and Arbitration Center	Chamber of Industry & Commerce of Trinidad & Tobago



## WHAT MIF DID

When MIF launched its first ADR project in 1994, arbitration and mediation as a method to solve commercial disputes was virtually unused in Latin America and the Caribbean. This placed the region at a competitive disadvantage, and posed particular problems to smaller firms that were often unable to bear the expense of taking a dispute to court.

Through a concentrated program of projects throughout the region, MIF introduced the use of ADR, working with Chambers of Commerce and other organizations in each of the countries. Over a six-year period, MIF co-financed 18 projects with total funding of US\$22.5 million.

Strategic alliances with leading members of the business community were a central feature in order to ensure the active involvement of the private sector, and to

build the awareness of the potential of ADR as a new way to resolve commercial disputes. To help promote development of an approach that closely reflected the needs of the region, the successful experience of the Center for Arbitration and Mediation of the Chamber of Commerce of Bogota (Colombia) was used as a model. Successive operations improved on and fine-tuned the original model.

The centers for arbitration and mediation (CAMs) are the foundation for the system of arbitration and mediation introduced by MIF. These centers were created and strengthened in each of the 18 countries, helping them gain access to the tools, resources and human capital necessary to sustain operative management and assure institutional and financial viability.

*"The satisfactory solution of commercial disputes helps the economic integration of the Americas. MIF's support – through the creation of arbitration and mediation centers throughout the region – helped create modern arbitration and mediation structures that offer efficient services to local business sectors and to international trade through the Inter-American Commercial Arbitration Commission (IACAC) comprised of the centers supported by MIF at the regional level."*

*–Adriana Polanía,  
Executive Director of the  
Inter-American Commercial  
Arbitration Commission (IACAC)*



## *Achievements*

The region now has a dynamic, ongoing ADR movement throughout Latin America and the Caribbean, opening an important new option for the timely and effective resolution of commercial disputes. Today, almost all the countries in the region are building modern, reliable and efficient ADR systems, enhancing competitiveness and facilitating investment.

MIF projects modernized legislative frameworks to allow the application of arbitration and mediation techniques. Local capacity was built up through some 2,200 training courses with the participation of more than 250,000 professionals interested in obtaining this specialized expertise. Through direct and indirect support, MIF helped establish and strengthen over 230 CAMs, not only creating local capacity, but developing a vibrant network of specialists

who are continuing to advance the process of ADR development.

Strengthening the CAMs and the process of legislative harmonization at the regional level have generated an additional positive result: the institutions supported by MIF projects have become national chapters in the Inter-American Commercial Arbitration Commission (IACAC). This is an important mechanism for ongoing development of ADR, providing a forum for mutual support and exchange of views. IACAC has coordinated its activities with counterparts in the North American Free Trade Agreement (NAFTA), creating a hemispheric network that provides first-class arbitration and mediation services to business managers and investors in the region and throughout the world.

## COLOMBIA

*The Mediation and Arbitration Center of the Chamber of Commerce of Bogota (CCB) pioneered the use of ADR techniques*



*and has served as a model for other projects throughout the region. MIF's support enabled the Center to consolidate its operations and share its lessons with some 70 other centers in the rest of the country. Currently there are more than 150 functioning centers in Colombia.*

*The Center has been highly successful, increasing tenfold the volume of cases submitted for arbitration and mediation over the past decade, and attaining full financial sustainability.*

*As a successful example of an effective approach to ADR, CCB's operative model has been replicated throughout the region, contributing design models for institutional strengthening and training of arbitrators, mediators and trainers, and strategic dissemination at both the national and international levels. It also has developed monitoring systems and incorporated up-to-date technology in the daily operations of the center's three offices that have offered helpful lessons to others.*

*Building on the successful experience of the CCB has not only allowed others to benefit from the Colombian experience, but has directly contributed to the active network of ADR practitioners that has been established in Latin America and the Caribbean. Directors and officials from the Center have provided technical assistance for the development of arbitration and mediation centers in almost all countries in the region.*

*The CCB has become a leading institution at the national, regional, and international levels with respect to commercial conflict resolution and currently holds the position of General Direction of the Inter-American Commercial Arbitration Commission.*

## **THE PROCESS**

The process of developing systems of arbitration and mediation involves a series of steps to build up the legal and institutional capacity needed to successfully operate an ADR program. Project components must be oriented to work simultaneously with both the supply and demand of services.

An average of three to four years is needed to establish a fully functioning ADR center. While some components show immediate results, attainment of full financial self-sufficiency is typically only achieved within five to seven years. The basic steps are:

*IDENTIFY* dynamic partners with leadership capacity in the private sector.

*DETERMINE* the specific characteristics of the private sector and the legal profession.

*MODERNIZE* the legal framework to allow the functioning of the centers in compliance with the leading international standards.

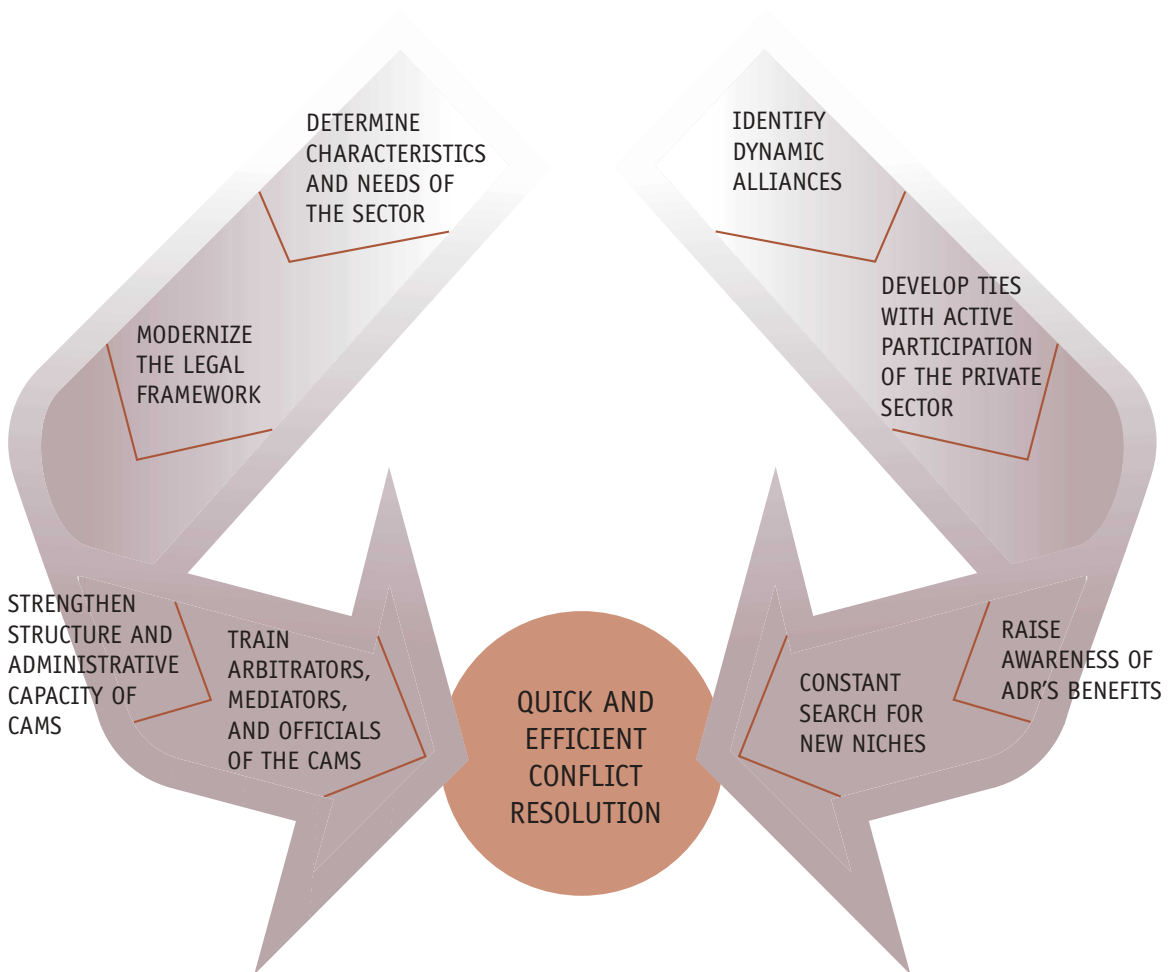
*TRAIN* the human resources necessary for the functioning of the system, including arbitrators, mediators, public officials and business managers.

*DEVELOP* ties between Chambers of Commerce, lawyers' associations, academic institutions and other entities within the private sector.

*RAISE AWARENESS* of the benefits of ADR among potential users with focused market strategies.

*EXTEND* the reach of the system to new lines of activity, such as, micro-enterprise and small and medium sized businesses, consumer protection, and defense of competition, through ongoing assessment of the emerging needs of the private sector.

## *DEVELOPMENT OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM*





## PANAMA

*The Center for Conciliation and Arbitration of the Chamber of Commerce of Panama was founded in 1984. Between 1984 and 1997, a total of six cases were processed. This began to change in 1997 when the Center in partnership with MIF launched a project to promote the use of ADR in Panama.*

*A new law was approved on methods for alternative dispute resolution, training courses and workshops were set up for business managers and lawyers, and a public affairs campaign was carried out. Strategic alliances were forged with key business and academic actors and the First Global Congress of Arbitration was organized, with more than 300 participants from the region and around the world.*

*The results of these efforts can be seen with the dramatic increase in the volume of cases. Between 1999 and 2003 the volume of cases increased to 160, 120 of which were arbitration and 40 were mediation. The center has resolved conflicts involving some US\$200 million, and has not only achieved financial sustainability but generates profits.*

*The center handles a wide variety of cases, ranging from simple contractual differences to highly complicated conflicts. For example, it has handled cases on intellectual property, banking, security, international trade, and commercial and security agreements. Currently the center is expanding in the maritime area, a traditionally strong industry in Panama.*

*The Chamber of Commerce of Panama has achieved its goal. While traditional litigation generally takes between three to five years to resolve a case, the Center resolves conflicts within four to six months. Panamanian business people can now rely on quick dependable service for conflict resolution that is tailored to the specific needs of each case, contributing to an improved business environment.*

## SUCCESS FACTORS

The experience of introducing ADR into countries with such differing characteristics as Brazil, Honduras, Mexico and Peru has allowed for the identification of key success factors in the implementation of systems of arbitration and mediation:

- **Working with leading private-sector institutions is the best strategy:** In most cases MIF began ADR projects with the support of the Chambers of Commerce in each respective country and this has been a decisive factor in the projects' success. The Chambers of Commerce offered their experience, knowledge of the private sector, and ties with business leaders, thus assuring the projects' institutional sustainability.
- **Financial sustainability must be a factor from the beginning:** In common with the introduction of any new service, one of the principal challenges of implementing the ADR approach will always be the financial viability of a center. This aspect must be considered from the beginning, including studies of service fees, marketing and dissemination plans, and a strategy to generate a sustainable demand for the services.
- **To change a business culture takes time and effort:** Transforming business practices and traditions, requires a significant financial and logistical effort. Lasting change is only achieved by fully involving the business people, lawyers, government officials and other interested parties in the process, and approaching change with patience, creativity, and sustained effort.
- **Technology makes ADR more accessible:** New communication technologies such as the Internet, have made arbitration and mediation services increasingly attractive and easy to understand. Information about procedural regulations, administrative costs, estimates, arbitrators' and mediators' honoraria, and ethical regulations can be readily obtained on-line from most ADR centers, eliminating uncertainty for those not familiar with these tools.

- **Working with local partners improves results:** ADR projects need the support and coordination of many different actors and institutions, such as lawyers' associations, Chambers of Commerce, universities, and various legal agencies. The projects with the best results were those that included alliances and worked hand-in-hand with organizations in both the public and private sectors.

- **No two projects are alike:** Even if the methodology applied in each project is the same, it is important to pay attention to local characteristics. Each country has a different private sector and business culture. Identifying these unique characteristics can mean the difference between success or failure.



*"MIF's project gave the initial thrust for ADR in Paraguay. Paraguay now has modern legislation that meets international standards and is competitive in terms of offering arbitration and mediation services. MIF allowed us to learn the professional practice of conflict resolution and to implement a sustainable, replicable, and inclusive work model. Changes in business and legal cultures are becoming a reality."*

*—Silvina Francezón de Pedroza, Director of the Center for Arbitration and Conciliation of the National Chamber of Commerce and Services of Paraguay*



## BRAZIL

*Advancing the use of ADR methods in Brazil called for first building a new awareness of the potential of ADR out-of-court methods of conflict resolution. ADR centers were starting, but faced a general level of skepticism regarding the approach. Support was needed both to build the demand as well as strengthen the supply of arbitration and mediation services.*

*MIF worked with the Confederation of Commercial Associations of Brazil on a three pronged approach to build awareness, establish a national network of arbitration and mediation centers and create incentives for new centers to be established.*

*The project supported strengthening of the administrative and technical capacities of the early ADR centers that had been established, sharing the results of market studies and providing benchmark models of costs and operations. Incentives were established to encourage the formation of additional Centers. Supply of the needed experts was supported through national-level training of a network of arbitrators and mediators. Cultural change was promoted, to raise awareness of the benefits of resolving conflicts through mediation and arbitration as opposed to litigation, in turn generating greater demand for services from the network of centers.*

*While the project in Brazil is still in the execution stage, early results are highly promising. The original goals have already been surpassed, and currently 45 centers are affiliated in the network with 6000 cases (the original goal was for 360 cases). Also, more than 20,000 contracts containing arbitration clauses have been registered. These figures indicate that this is one of the most successful experiences in the region.*



## ***A CATALYST FOR CHANGE***

The ADR experience demonstrates the role of innovative technical assistance in changing a key constraint to business growth. Efficient and reliable services to resolve commercial conflicts are necessary for a competitive private sector and play a central role in attracting investment. ADR offered an important option in reaching this goal, but was unknown in the region.

However, establishing ADR as a viable choice for commercial dispute resolution did not only need creation of new technical capacity and modernized legal frameworks. Effective use of ADR required a cultural change, embedding new business and legal practices in the private sector.

MIF projects were able to do this by working closely with the private sector, with a flexible approach that adjusted to local needs while promoting consistency with international standards. Projects raised awareness, supported modernization of the legal framework and built local capacity in implementing arbitration and mediation methods. As a result, businesses throughout the region now have a practical, efficient and cost effective way to resolve disputes.

But most importantly, the projects have established a valuable legacy – the vibrant network of CAMs that is actively sharing knowledge, expanding the use of ADR and ensuring that expertise in the region continues to grow and develop.

The overall results of the projects have been overwhelmingly positive. The demand for ADR has exceeded all expectations, particularly in such countries as Colombia, Chile, Peru, and Brazil. Their arbitration and mediation centers receive hundreds of cases each year.

ADR is helping with new challenges. In the National Chamber of Commerce of Mexico, the experience of arbitration is being used to help the country integrate better within NAFTA. The centers in Argentina, Chile, Brazil and Paraguay coordinate their strategies to help businesses within MERCOSUR resolve their conflicts. In Peru, Brazil, Costa Rica, and Guatemala, work is being done to offer more and better services to small and medium sized enterprises.

Today, the arbitration and mediation centers form a network that covers most countries of the region. They can compare experiences, share lessons and establish strategic alliances. Many centers are expanding into new areas of opportunity, such as conflicts about intellectual property, consumer rights, e-commerce, and the processes of state acquisitions.

While much remains to be done, businesses in the region today can count on new tools to solve their conflicts. The network of arbitration and mediation centers stretching across the region has dramatically improved the range and availability of services to the private sector. As these centers consolidate their experiences, and businesses continue to realize the advantages such services offer, ADR will increasingly open the way for effective, timely resolution of commercial disputes.

For more information on MIF projects in this area, visit: [www.iadb.org/mif](http://www.iadb.org/mif)





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