

PROJECT PROPOSAL ON INTRODUCTION OF MEDIATION SYSTEM IN THE REPUBLIC OF UZBEKISTAN

I. Urgency of the issue

During the years of independence Uzbekistan had been successfully realizing the policy of intensive private business development. In particular, there have been developed and adopted a number of legal acts aimed at creation of favorable business climate in the country. For example, the government of the Republic of Uzbekistan takes regular measures in order to decrease the tax burden for businessmen. Besides, the Decree of the President of Republic Uzbekistan has simplified the procedure for registration of business entities. Introduction of the order by which financial sanctions can be collected through state courts only has provided additional protection for the rights of businessmen. Moreover, a number of new legal acts are directed on regulation of inspections held by state control agencies. All taken measures have made an essential impact on widening and stimulating the development of business in Uzbekistan.

However, conduction of business is inconceivable without various types of economic disputes. Development of dispute resolution mechanism, creation of conditions for as much as possible short-term and maximum effective dispute resolution system is one of the vital conditions for further development of private business in Uzbekistan. As the above stated research has shown, business entities spend too much time for resolution of disputes, and this circumstance is one of the reasons of inclusion of criterion named «dates of performance of contracts» in annually conducted research of World Bank Group. According to the published research data, the average time period spent on consideration of dispute in Uzbekistan amounted to 190 days in year 2009.

During several last years a growth is observed in the number of cases applied to and considered by state courts (according to the data of the Supreme Economic Court of RUz for year 2009, the average loading of one judge has made over 210 cases in a month), as it is known, is observed. High congestion of judges directly affects the quality of decisions made by them. Thus, if overload of judges remains at the same high level, it would be difficult to give a positive assessment to overall performance of state courts and, consequently, the quality of legal investigation would be under a big doubt.

Therefore, this project proposal is aimed at introduction of mediation into the legislation and practice of dispute resolution in Uzbekistan as one of alternative dispute resolution methods.

Mediation is the softest form of alternative dispute resolution (ADR). During the mediation procedure parties participating in the conflict independently come to a mutually advantageous decision leaning against experience, knowledge and abilities of a mediator (intermediary) while the resolution of dispute completely depends on will of the arguing parties.

The table below shows differences between mediation procedure and court trial.

	State court	Mediation
1	Process can begin contrary to the will of one of the parties	Mediation implies voluntariness
2	Judge is appointed by the court	Mediator is selected by the parties
3	Decision is made in strict conformity with the letter of law	Decision is made subject to the interests of the parties, but within the law
4	Court is conferred the powers of authority	Mediator has no powers of authority and only promotes generation of common decision
5	Long and formalized procedure	Accelerated and informal procedure
6	Publicity of the process	Confidentiality
7	Adversarial nature of the trial	Cooperation of the parties

Therefore, mediation has the following advantages:

- it helps to save time, money and emotional strength of parties to the dispute;
- conditions, organization, regulations and process substance can be defined individually for the given case, even when the procedure has already commenced;
- it is focused on constructive search of decision rather than on the conflict (finding out who is right or guilty) or the price;
- in respect of time expenses mediation can be easily arranged under requirements of participants and considers emotional and personal aspects of the dispute;
- private interests of participants are completely protected since the mediation is a confidential process;
- it allows the parties to look into the future and to use their creativity;
- achieved arrangements are more durable and meet the real situation, that not only promote their further realization but also make such realization a mutually admissible and natural step.

In many centuries mediation in various of its forms was successfully applied in settling of any conflicts including those between families, neighbors, political parties, professional, religious and other public groups, in parliamentary procedure. For example, in Ancient Greece instructions said “*malista dialuson autous*” – “better to reconcile them”. In the present, the importance of mediation is fixed by the United Nations Commission on International Trade Law. In particular, the Commission has passed the Model Law on International Commercial Conciliation, recommended by General Assembly of the United Nations for introduction into national legislation of member states.

Despite the absence of the term “mediation” in the existing legislation of Uzbekistan, the latter contains all preconditions for introduction of mediation system into Uzbek practice. In

particular, national legislation provides possibility of a pre-judicial order of dispute resolution. As an example, paragraph 2 of article 6 of the Economic Procedural Code obliges the parties to address state court only after making an attempt to peaceful settlement of their relations in case the parties had agreed about a pre-judicial order of dispute resolution. Failure to perform this obligation is subject to ceasing the court proceedings on the case.

Besides, both Civil Procedural Code and Economic Procedural Code (article 40 of CPC and article 40 EPC) stipulate institute of peaceful dispute settlement between the parties. According to the data of the Supreme Economic Court of RUz, in 2004 economic courts had been confirmed 1023 agreements of lawsuit in 101553 economic cases. In 2009 economic courts 1116 of 265288 economic disputes were solved by agreements of lawsuit. However, despite the time passed from the moment of adoption of procedural codes, the order and the mechanism of achievement of agreement of lawsuit between parties still requires further elaboration and specifics need to be laid out.

Moreover, some forms of mediation that, in fact, have always been inherent in our people have found their reflection in modern legislation. A striking example to this is the creation of reconciliatory commissions which serve as self-government institutions formed by citizens on the basis of the Decision of the Cabinet of Republic Uzbekistan, which concerns issues of conciliation of parties to household disputes and family disorders, including reconciliation of spouses who are looking for divorce.

One of the major components of mediation development is the activity directed on extensive coverage of knowledge of this legal phenomenon. Here the leading place belongs to organization of learning programs in institutions of higher educational on alternative dispute resolution methods in general and on arbitration proceedings in particular. At the present time, even in the faculties of law students do not obtain necessary information and knowledge about arbitration courts, their legal nature, their role in state legal system, etc. Consequently, lawyers have a negative attitude towards arbitration courts caused by elementary absence of knowledge on this legal institute.

The analysis of mediation procedure and judicial trial with all the evidence attests the essential advantages of mediation owing first of all to the voluntariness of the procedure. Mediation is considered successful only in case when both arguing parties agree with the final decision.

Nowadays legal acts regulating ADR methods are adopted in many countries throughout the world. As an example, there are Act on mediation of Australia (1997), Federal law on mediation in civil cases of Austria, Uniform act on mediation of USA, Law on mediation and addition to some laws of Slovak Republic and others.

Proceeding from the stated above, the main objectives of this project are:

- 1) creation of conditions for introduction of ADR mechanisms into national practice with minimum participation of state courts;
- 2) cooperation with state bodies on perfection of national legislation aimed at providing an effective and money-saving resolution of disputes;

- 3) elaborating legal ground for wide application of mediation in resolution of disputes arising between business entities;
- 4) development of bilateral and multilateral cooperation in ADR area with chambers of commerce of foreign countries, international governmental and non-governmental organizations;
- 5) providing assistance to higher education institutions in formation of curriculums and standards of higher legal education in respect to ADR, as well as in formation of programs on professional development of the state courts' judges;
- 6) promotion of intensive work on popularization of ADR among businessmen;
- 7) improvement of authority of mediators and advancement of level of mediation;
- 8) strengthening the cooperation of state courts and arbitration courts with mediators intended for providing assistance and supporting development of mediation;
- 9) revealing the accurate notion of the position of ADR in the legal doctrine and legislative system of Uzbekistan that, undoubtedly, will facilitate further development of the given field and eliminate errors in law-enforcement practice of arbitration and state courts;
- 10) carrying out the experimental approbation of ADR institutes – mediation and conciliation in pre-judicial order, as well as their subsequent fixation in the procedural legislation as a pre-judicial order of dispute resolution;
- 11) creation of a professional training center of training of mediators and other interested parties, where mediation and conciliation skills can be obtained through professionally designed trainings;
- 12) working out and adopting Code of Professional Conduct of arbitration judges and mediators that will allow to raise professional level of experts in the field of ADR and to level possible malusage in this area.



II. Project realization strategy

The project is directed on perfection of ADR system in solving disputes arising from economic activities of business entities. The main objective of the project is introduction of mediation as an alternative method of dispute resolution within the activities of the Mediation and Conciliation Development Center under the Chamber of Commerce and Industry of Uzbekistan. The Chamber will be the executing agency of the project that assumes cooperation with national associations of businessmen, state bodies and international experts.

The project will be focused on the following objectives:

(1) Creation of the Mediation and Conciliation Development Center under the Chamber of Commerce and Industry of Uzbekistan.

Within this objective the tasks to perform are:

- formation of the Mediation and Conciliation Development Center under the

- Chamber of Commerce and Industry of Uzbekistan;
- creation of regulatory framework of the Center (Charter, Regulations, Provision on certification and qualifying evaluation of mediators, etc.);
- formation of the pool of qualified mediators who will render mediation services and carry out trainings;
- creation of base for the further development mediation and expansions of its application at the permission of separate kinds of civil disputes (for example, divorce cases; corporate and labor disputes, on affairs about reconciliation according to article 66-1 of Criminal code RUz).

(2) Carrying out research and analysis of current legislation in order to examine the possibilities for introducing mediation and to elaborate proposals on legislation improvement.

This objective contains following tasks:

- carrying out research on current conditions for development of mediation in Uzbekistan and studying foreign and international experience in the field;
- introduction of international standards into the institute of mediation in Uzbekistan;
- involvement of state bodies into cooperation aimed at creation and development of legal ground for introduction of effective institute of mediation;
- preparation of proposals on improvements of legislation on mediation (ADR);
- elaboration and introduction of procedures of resolution of various kinds of disputes by means of mediation;
- working out proposals on modification of Civil Procedural Code and Economic Procedural Codes (according to which the judge can oblige the parties to address mediation in order to come to an agreement of lawsuit; in case the latter is achieved, the mediator himself delivers the agreement of lawsuit to the corresponding court);
- elaboration of the standard legal rules regulating the mediation procedure.

(3) Maintenance of multilevel training system in the area of mediation and conciliation.

For achievement of this objective following tasks need to be performed:

- working out curriculums for different categories of interested parties;
- organization of public certification and certification of mediators;
- organization and carrying out trainings and seminars for mediators and intermediaries for the purpose of professional development and acquaintance with modern tendencies in the institute of mediation;
- organization and carrying out trainings and seminars for responsible employees of the Center;

- introduction of a integrated unified system of workflow that would allow to increase efficiency of mediation and other ADR methods;
- organization and carrying out of seminars with businessmen, lawyers and other interested parties for the purpose of increasing their knowledge on mediation issues, conciliation and other alternative ways of disputes resolution;
- introduction of curriculums on mediation and conciliation procedures in organizations rendering educational services in the field of higher professional education, as well as in the field of supplementary (postgraduate) education;
- publication of periodic editions, brochures and books covering issues of application, development and improvement of the institute of mediation, conciliations and other alternative ways of disputes resolution;
- providing consultations on issues in the area of mediation and conciliation to businessmen, lawyers and other interested parties.

The results of performing the above stated tasks of the project will be:

- introduction of institute of mediation as an alternative way of economic disputes resolution in Uzbekistan;
- set the procedure of solving various types of disputes by means of mediation;
- establishment of a firm national legislative base for application of mediation and conciliation methods;
- reduction of number of disputes investigated by state courts, consequent unloading and improvement of quality of state courts' performance; this will also allow to cut expenses of budgets on judicial activity and activity on maintenance of execution of judgments;
- reduction of number of disputes arising from execution of obligations by the parties as a result of preliminary negotiations at the stage of conclusion of economic contracts;
- generation of an effective system of training on alternative dispute resolution that will provide pool of qualified experts in the area of mediation and conciliation;
- creation of a basis for further development of mediation and expansions of its application at resolving various kinds of civil disputes (for example, cases of divorce; reconciliation in accordance with article 66-1 of Criminal Code, etc.)

Participants/partners of the project

This project will be implemented by the Chamber of Commerce and Industry of Republic Uzbekistan. During the course of execution close cooperation will be initiated with the Legislative Chamber of Oliy Majlis, the Supreme Court of Republic of Uzbekistan, the Supreme Economic Court, arbitration courts and other interested organizations. Moreover, in order to establish bilateral and multilateral cooperation in the field of introduction and development of mediation and intermediation in Republic Uzbekistan will be involved as well chambers of commerce of foreign countries, the international

governmental and non-governmental organizations.



III. PRELIMINARY BUDGET OF THE PROJECT

Project component	Terms	Activities	Expenses	Description of expenses	Cost (USD)
<ul style="list-style-type: none"> Establishment of Mediation and Conciliation Development Center and detailed analysis of existing legislation on the subject of possible grounds for introducing mediation 	6 months	<ul style="list-style-type: none"> Technical assistance in formation of the Center Purchase of furniture and equipment for the Center 	<ul style="list-style-type: none"> Furniture and office equipment for the Center 		10 000,00*
			<ul style="list-style-type: none"> Premise rent, repair 		3 000,00*
		<ul style="list-style-type: none"> Analysis of existing mechanisms of disputes resolution Carrying out researches Conduction of meetings (forums and discussions) with participants of the Project 	<ul style="list-style-type: none"> National and international consultants and their transport expenses and fees 	Attraction of consultants for elaboration of proposals on the Mediation and Conciliation Development Center, the Code of Conduct for mediators; working out analytical report concerning further prospects of mediation development in Uzbekistan - 2 nat. consultants (salary) - 2 inter. consultants + transport expenses + pocket expenses	6 000,00
			<ul style="list-style-type: none"> Expenses on carrying out of activities 	Opening ceremony of the Mediation and Conciliation Development Center Round table for discussion of the analytical report	3 000,00
<ul style="list-style-type: none"> Legislative work 	6 months	<ul style="list-style-type: none"> Analysis of the existing legislation 	<ul style="list-style-type: none"> Payment to national experts on 	Setting up a working group along with involvement of	4 000,00

		<ul style="list-style-type: none"> • Conduction of meetings (forums and discussions) with representatives of Legislative Chamber of Oliy Majlis of Republic of Uzbekistan, Supreme Court of Republic of Uzbekistan, etc. • Working out proposals on laws and changes in the existing legislation 	legal issues	deputies of Legislative Chamber of Oliy Majlis for working out draft law on mediation and proposals for changes to be brought in current legislation	
<ul style="list-style-type: none"> • Mediation popularization campaign 	6 months	<ul style="list-style-type: none"> • Carrying out activities aimed at popularization of mediation • Extensive media coverage 	<ul style="list-style-type: none"> • Conferences and seminars 	One conference and five seminars are planned to be held in Tashkent	3 000,00
			<ul style="list-style-type: none"> • Performances on TV and radio 	Working out of the concept of a TV program, shooting Working out of the concept of radio transfer, making a contract with radio station	1 000,00
			<ul style="list-style-type: none"> • Publication of informative brochures 	3 brochures directed on popularization of mediation	4 500,00
			<ul style="list-style-type: none"> • Publication on mediation 	Preparation and release of the book on mediation basics for a wide range of readers	5 000,00
			<ul style="list-style-type: none"> • Educational trip 	The country will be defined later Partial financing by the receiving country is possible	10 000,00
			<ul style="list-style-type: none"> • Other 	Contingencies	5 000,00

			expenses		
<ul style="list-style-type: none"> Training of mediators 	2 months	<ul style="list-style-type: none"> Trainings for mediators (basic skills for mediators and professional training for mediators) 	<ul style="list-style-type: none"> International trainers, their transport expenses and fees 	3 international experts x 5 days x 300 US dollars Transport expenses of 3 international experts x air ticket costs Residing Fees	9 000,00
			<ul style="list-style-type: none"> Logistics and expenses for carrying out of trainings 	Rent of a premise for the period of carrying out of trainings (5 days) Coffee breaks (2 times a day x 5 days) Dinner and supper (5 days) Residing for participants of training	4 000,00
<ul style="list-style-type: none"> Monitoring and Project estimation 	regularly	<ul style="list-style-type: none"> Interrogations at an initial stage of the Project Monitoring by means of interrogations and the analysis of activities pending the Project realization 	<ul style="list-style-type: none"> Creation and support of database 	Invitation of research centers for carrying out following tasks: <ul style="list-style-type: none"> Interrogation at the initial stage of the Project Interim interrogations (2 interrogations) Interrogation at the final stage 	2 000,00
In TOTAL					69 500,00
* the contribution of Chamber of Commerce and Industry of Republic of Uzbekistan					

Note: the calculations have to be updated to the moment of Project realization commencement.



IV. APPENDICES

PRELIMINARY PROGRAM OF THE ROUND TABLE

aimed at working out draft law on mediation

Participants (experts): up to 10 national experts

Place: Uzbekistan, Tashkent

Duration: 4 meetings within 2 months

Nº	Name of the topic	Date	Responsible person
First Meeting	Analysis of current national and international legislations, defining the name and structure of the document		
Second Meeting	Working out a uniform template of the document		
Third Meeting	Discussion of the elaborated draft document with involvement of representatives of state bodies and international experts, receipt of comments and proposals		
Fourth Meeting	Working out of final version of draft law and forwarding it to corresponding state bodies for subsequent adoption		

PRELIMINARY TRAINING PROGRAM FOR MEDIATORS

Place: Tashkent

Duration period: 5 days

Nº	Name of the topic	Trainer	Expected result
Day 1	<i>Definition of mediation as process of the disputes resolution</i> <ul style="list-style-type: none">• Reflection of mediation in the existing legislation• Reasonable and unreasonable refusal in mediation and its consequences• Stages of mediation		

Day 2	<u><i>Achievement of the Agreement by resolutions of dispute by means of mediation</i></u> <ul style="list-style-type: none"> • Advantages of mediation • Cases where mediation is most reasonable • Mediation (conciliation) clause 		
Day 3	<u><i>Preparation for mediation process: role and tasks of the parties</i></u> <ul style="list-style-type: none"> • Receipt of documents from the parties required for defining the dispute • Meeting with the each of the parties and defining their claims (wishes) 		
Day 4	<u><i>Day X</i></u> <ul style="list-style-type: none"> • Organization of a place for carrying out of negotiations of the parties • Recordation • Fixing of the achieved decision 		
Day 5	<u><i>After mediation</i></u> <ul style="list-style-type: none"> • Formulation of agreement of lawsuit • Drawing up a letter to the competent state court about the absence of possibility of the parties to come to a mutual decision 		

PRELIMINARY PROGRAM OF TRAINING FOR TRAINERS.

<i>Time</i>	<i>Action</i>
<u>DAY 1</u>	
09:00 – 10:20	INTRODUCTION and ACQUAINTANCE. The concept of conflict. Conflict escalation. Types of behavior in the conflict.

	Three possible ways of dispute resolution. Positions and interests of the parties in the conflict. Classification of conflicts, kinds of conflicts, ways of resolution.
10:20 – 10:40	Coffee-break
10:40 – 11:50	Negotiations. Role game. TYPES OF NEGOTIATIONS: - Item/basic. - Key rules of basic negotiations. - Application in mediation.
11:50 – 13:00	Continuation of role game. Analysis. Recommendations on conducting negotiations.
13:00 – 14:00	LUNCH
14:00 – 15:20	Mediation and other alternative ways of the conflicts resolution.
15:20 – 15:40	Coffee-break
15:40 – 16:30	Mediation practice: USA, Europe, Russia, Ukraine.
16:30 – 17:00	Discussion of the results of the first day (questions and answers).
DAY 2	
09:00 – 09:10	Review of the previous day's results.
09:10 – 10:45	Review of the process of mediation: mediator, rules of mediation, stages of mediation, model of mediation process. Opening statement of mediator. MEDIATOR: - Roles "Dragon-knight-princess" - mediator is not the knight. - Mediator's competence. - Who can be a mediator. The British model of the process.
10:45 – 11:05	Coffee-break
11:05 – 13:00	Role game. Analysis.
13:00 – 14:00	LUNCH
14:00 – 15:00	Mediation techniques, equalization of forces, final agreement (psychological techniques, communication skills of participants of the mediation).
15:00 – 15:20	Coffee-break
15:20 – 16:30	Preparation of a scene of session. Co-mediation (mediation in pair). Role game (it is necessary to discuss how to make it effective and to make it possible to work on co-mediation skills).
16:30 – 17:00	Discussion of results of the second day (questions and answers).
DAY 3	
09:00 – 09:15	The review of the previous day.

09:15 – 10:20	SKILLS – NONVERBAL/VERBAL: Words. Voice/tone. Body language. FINE TUNING: Explanation. Exercise. Discussions/conclusions. ACTIVE HEARING: Definition. Components of active hearing.
10:20 – 10:45	GAME «The Corporate Program».
10:45 – 11:05	Coffee-break
11:05 – 12:35	Techniques of mediator: Kinds of questions (exercise). Rephrasing. Reframing: definition, the purposes of use (exercise).
12:35 – 12:45	PHASE OPENING: Opening of the general session. The purpose. Structure. Demo-simulation "The Public meeting". Role game.
12:45 – 13:45	LUNCH
13:45 – 14:45	PHASE RESEARCH: Private meeting. Empathy. Work with emotions. Work with flip chart. Role game.
14:45 – 15:05	Coffee-break
15:05 – 17:25	PHASE THE AUCTIONS: Training game. Private and general meetings. The purposes, time. Minimal requirements and alternative.
17:25 – 17:45	Conclusions after game. Results of the second day observed.
<u>DAY 4</u>	
09:00 – 09:15	Review of the previous day.
09:15 – 10:30	Role game. Simulations of the Phase of the auctions. 3 participants. FINISHING PHASE: Generalisation of results of negotiations. Formalisation of results. Documentary registration of results of the mediation.
10:30 – 10:50	Coffee-break
10:50 – 12:45	Simulations (role games) participants with a feedback

12:45 – 13:45	LUNCH
13:45 – 15:15	Simulations (role games) participants with a feedback (Mediator 1)
15:15 – 15:25	Coffee-break
15:25 – 16:55	Simulations (role games) participants with a feedback (Mediator 2)
DAY 5	
09:00 – 09:10	The review of the previous day.
09:10 – 10:30	Simulations (role games) participants with a feedback (Mediator 3).
10:30 – 10:50	Coffee-break
10:50 – 12:10	Specificities.
12:10 – 13:10	LUNCH
13:10 – 14:25	Role game. Analysis.
14:25 – 14:40	Coffee-break
14:40 – 16:00	Specificities.

Preliminary training program for lawyers, directors of entities, HR managers, and other interested persons

Focus Group: Lawyers, directors, HR managers, other specialists.

Trainer: Mediator

Place: Pilot regions (coordinated with Chairman of Chamber of Commerce and Industry of Republic of Uzbekistan)

Duration: 1 day

Time	Action	Trainer
9:00 – 9:30	INTRODUCTION Reflection of mediation in existing legislation.	
9.30 – 10:00	Advantages of mediation. Stages of mediation.	
10:00 – 10:45	Organization of negotiations between the parties. Formulation of the agreement of lawsuit.	
10:45 – 11:00	Coffee-break	
11:00 – 11:30	Drawing up a letter to the competent state court about the absence of possibility of the parties to come to a mutual decision.	
11:30 – 12:30	Case study.	
12:30 – 13:00	Summarization.	