

TOOLKIT 4

User Guide

RESOLVING CORPORATE GOVERNANCE DISPUTES



4



Global
Corporate
Governance
Forum



© 2011. International Finance Corporation
2121 Pennsylvania Avenue, NW | Washington, DC 20433

All rights reserved.

The findings, interpretations, and conclusions expressed in this publication should not be attributed in any manner to the International Finance Corporation, to its affiliated organizations, or to members of its board of Executive Directors or the countries they represent. The International Finance Corporation does not guarantee the data included in this publication and accepts no responsibility for any consequence of their use.

The material in this work is protected by copyright. Copying and/or transmitting portions or all of this work may be a violation of applicable law. The International Finance Corporation encourages dissemination of its work and hereby grants permission to the user of this work to copy portions for their personal, noncommercial use, without any right to resell, redistribute, or create derivative works there from. Any other copying or use of this work requires the express written permission of the International Finance Corporation.

For permission to photocopy or reprint, please send a request with complete information to:

The International Finance Corporation
c/o the World Bank Permissions Desk
Office of the Publisher
1818 H Street NW
Washington, DC 20433

All queries on rights and licenses including subsidiary rights should be addressed to:

The International Finance Corporation
c/o the Office of the Publisher
World Bank
1818 H Street, NW
Washington, DC 20433
Fax: +1 202-522-2422

TOOLKIT 4

Resolving Corporate Governance Disputes

USER GUIDE



USER GUIDE

RESOLVING CORPORATE GOVERNANCE DISPUTES

FOREWORD

Disputes over the governance of a corporation are inevitable. When disputes erupt into debilitating confrontations or end up as highly publicized court cases, they can harm the company's reputation, handicap its operations, paralyze its board from making critical decisions, and lead to a reduction in share price that potentially hastens the corporation's demise.

Case studies show that alternative dispute resolution (ADR) processes and techniques can help prevent or settle corporate governance-related disputes in ways that are more efficient and effective than the more adversarial process of court litigation. The Global Corporate Governance Forum developed this toolkit to broaden the use of ADR by boards to effectively handle internal and external disputes. The toolkit draws on processes and techniques that help better align "interests" rather than engage in more contentious litigation of incompatible "positions."

This toolkit builds on the Forum's earlier work to build capacity in countries and companies for understanding, developing, and applying good corporate governance principles and practices. Providing the tools that can help institutions build capacity and promote reforms that inform board competencies and best practices is the source of our success and impact.

The guidance and observations in this toolkit draw on discussions and materials provided by a wide range of corporate governance and ADR experts, practitioners, and policymakers. Experience with how best to design, implement, and evaluate corporate governance-related dispute resolution is still at an early stage. There is little empirical data about the use of alternatives to litigation in corporate governance disputes and the role that ADR can play in improving or enforcing corporate governance practices.

The Forum recognizes that there are many valid approaches to using ADR mechanisms. This toolkit

provides users with options. Policymakers, private sector institutions, and board directors are left to choose their own approaches to mitigate disputes in ways that foster responsible business conduct and enhance a healthy, productive investment climate.

To be sure, any policy that favors alternatives to traditional litigation must be guided by the rule of law and the relevant jurisdiction's judicial system.

Many people have contributed to this toolkit, and the Forum is grateful for their work and commitment. Marie-Laurence Guy, a senior projects officer with the Forum, led this effort, building upon the expertise she gained in co-writing our FOCUS publication *Mediating Corporate Governance Conflicts and Disputes*. Her work is inspired by her commitment to finding innovative ways of ensuring the productive capacity of the business environment in countries challenged by an ineffective judicial system.

Others in the core team deserve thanks and appreciation: James Spellman who relentlessly edited and researched this toolkit; Christopher Honeyman; Mary Jo Larson; Jon Masters; Karl Mackie; Anne Molyneux; and, Alan Rudnick. Many experts, practitioners, and the Forum's Private Sector Advisory Group members are also to be commended for their extensive contributions. It is through their participation that the toolkit truly reflects global experiences and innovative thinking. Last but not least, the Forum would like to acknowledge the excellent work Mary Beth Ramsey accomplished in designing and laying out this toolkit.



Philip Armstrong
Head, Global Corporate Governance Forum

What is the purpose of this toolkit?

Although much has been achieved in raising awareness and implementing good corporate governance rules and procedures, disputes affecting the governance of corporations. Little has been done to develop alternative approaches for resolving disputes. Left unresolved, these disputes can paralyze the board, harm the company's performance, and deter investors. Implementing effective dispute resolution processes for preventing and resolving corporate governance disputes is thus essential if the company is to succeed over the long term.

Corporate governance disputes do not always lend themselves to court litigation. Yet even when they do, traditional adjudication is typically not the best way to resolve such disputes. Court proceedings are generally slow and costly, and they antagonize the parties. Moreover, in several developing countries and emerging markets, investors distrust the judiciary system and enforcement remains weak.

This toolkit explores how ADR processes and techniques that have been used successfully in dealing with commercial and labor disputes can help resolve and prevent corporate governance disputes.

Key to understanding this toolkit is the distinction between internal and external corporate governance disputes. Internal governance disputes mainly take place within the boardroom while external governance disputes typically involve shareholders but may also include other stakeholders.

Constructive negotiation, mediation, and, in some cases, arbitration constitute established dispute resolution processes that can be applied usefully to external corporate governance disputes. To prevent and resolve internal disputes, directors may find it more effective and more appropriate to borrow the techniques used in ADR processes before turning to more formal approaches that would require involving a third party.

Applying ADR processes and techniques to corporate governance disputes provides for innovative approaches to implement and enforce good corporate governance practices in the best interests of the company, shareholders, and stakeholders.



Who will find this toolkit useful?

Corporate Governance and ADR institutions and experts

This toolkit is targeted at those organizations and institutions that are helping companies implement good corporate governance practices and/or seeking ways to manage and prevent disputes. The following constituencies will especially find this toolkit useful in helping them to better understand corporate governance disputes and offer training, advisory, and mediation services that can help companies avoid the time, costs, and risks associated with litigation:

- Institutes of directors and corporate governance centers
- Corporate law firms and corporate governance consulting firms
- Mediation and arbitration centers
- Universities, law schools, and research centers

Board members, senior executives, corporate secretaries, and company lawyers

Listed and non-listed companies — including family firms, banks, and state-owned enterprises — are the ultimate beneficiaries of this toolkit. Board members, senior executives, corporate secretaries, and company lawyers are encouraged to consult this toolkit to learn about and then implement new approaches to prevent and resolve corporate governance disputes.

Policymakers, regulators, and judges

This toolkit will interest policymakers who are concerned with enforcing good corporate governance practices and building investor confidence. It will also appeal to those who are designing good governance standards and regulations. Through this toolkit, the judiciary can also learn more about corporate governance dispute resolution and understand the benefits of ADR mechanisms — including formal mediation. This is especially important for jurisdictions where court-referred/annexed mediation has been institutionalized.

Development agencies and technical assistance programs

Although this toolkit has been designed as a self-help tool, the support of development agencies may be required to implement best practices and provide guidance. Therefore, this toolkit should also be used as a knowledge management product through multilateral and bilateral funded corporate governance reform and ADR programs in developing and emerging market countries.

What is in this toolkit?

Consensus-based alternatives to adjudication can help prevent, resolve, and reduce the negative impact of corporate governance disputes.

This toolkit provides practical guidance on how consensus-based alternatives to adjudication can help prevent, resolve, and reduce the negative impact of corporate governance disputes and, consequently, contribute to improving corporate governance practices, strengthening investor confidence, and supporting business continuity.

The toolkit breaks down the common types of governance disputes and provides techniques for effective resolution. It also offers practical suggestions and training resources for corporate governance institutions and dispute resolution experts who wish to offer corporate governance dispute resolution services.

This toolkit is divided into three volumes. The first explores the rationale for applying ADR mechanisms to corporate governance disputes. The second focuses on the implementation and use of corporate governance dispute resolution mechanisms and services. The third reviews the skills required for effectively resolving corporate governance disputes and addresses the training needs of both directors and dispute resolution professionals.



QUOTE

“Countries seeking to create a capital market (and companies seeking to attract local or global capital) must develop a framework that assures investors of two things: first, the assets they provide will be protected and, second, the disputes related to the company’s governance can be addressed effectively.”

CHRISTIAN STRENGER

PSAG DEPUTY CHAIRMAN

MEMBER OF THE GERMAN CORPORATE GOVERNANCE COMMISSION

DIRECTOR, DWS INVESTMENT ADVISORY GROUP

Volume 1 : Rationale

Module 1 | What Are Corporate Governance Disputes?

DISPUTES AFFECTING CORPORATE AUTHORITY	1
<i>Defining Corporate Governance Disputes</i>	1
<i>Differentiating Corporate Governance Disputes</i>	2
DISPUTES AFFECTING ALL TYPES OF COMPANIES	5
<i>Small Companies</i>	5
<i>Joint Venture Companies</i>	7
<i>Family Firms</i>	7
<i>State-Owned Companies</i>	9
<i>Listed Companies</i>	9
DISPUTES AFFECTING INTERNAL AND EXTERNAL CONSTITUENCIES	11
<i>Internal Disputes</i>	11
<i>External Disputes</i>	18

Module 2 | Why Care About Corporate Governance Disputes?

DISPUTES PUTTING THE COMPANY AT RISK	25
<i>Impact of Internal Corporate Governance Disputes</i>	30
<i>Impact of External Corporate Governance Disputes</i>	32
DISPUTES CALLING FOR OUT-OF-COURT RESOLUTION	34
<i>Cost of Court Litigation</i>	34
<i>Limits of Court Litigation</i>	39

Module 3 | How can ADR Mechanisms Help?

MORE EFFECTIVE DISPUTE RESOLUTION	41
<i>ADR Benefits</i>	41
<i>Appeal of ADR</i>	43
<i>Use of ADR</i>	44
MORE FLEXIBLE DISPUTE RESOLUTION	48
<i>Negotiation</i>	48
<i>Mediation</i>	52
<i>Arbitration</i>	59

Annexes	63
----------------------	----





Volume 2 : Implementation

Module 1 | What Should be the Role of the Board?

DEVELOPING A CORPORATE GOVERNANCE DISPUTE RESOLUTION STRATEGY	1
<i>Planning Ahead</i>	1
<i>Assessing Internal and External Corporate Governance Disputes</i>	5
<i>Anticipating Potential Internal and External Corporate Governance Disputes</i>	7
<i>Adopting a Corporate Governance Dispute Resolution Strategy</i>	10
<i>Deciding Who Will Manage the Corporate Governance Dispute Resolution Process</i>	12
<i>Identifying the Appropriate Internal or External ‘Peacemaker’</i>	13
<i>Incorporating Dispute Resolution Policies into Corporate Documents</i>	20
<i>Assessing the Effectiveness of the Dispute Resolution Process</i>	26
<i>Being Prepared For Litigation if Alternative Dispute Resolution Processes Fail</i>	26
PREVENTING AND MANAGING BOARDROOM DISPUTES	28
<i>Encouraging Collegiality and Civility</i>	28
<i>Clarifying Management and Board Roles</i>	30
<i>Establishing Orderly Board Processes</i>	31
<i>Ensuring the Proper Flow of Information</i>	33
<i>Allowing for Discussion, Debate, and Deliberation</i>	36
<i>Improving Communications</i>	39
<i>Applying Dispute Resolution Techniques</i>	39
<i>Stepping Out of the Boardroom</i>	41

Module 2 | How to Mainstream Corporate Governance Dispute Resolution?

REVIEWING THE CORPORATE GOVERNANCE DISPUTE RESOLUTION ENVIRONMENT	45
<i>Considering Dispute Resolution Traditions</i>	48
<i>Assessing the Dispute Resolution Legal Environment</i>	49
<i>Looking up International ADR Standards and Agreements</i>	52
STRENGTHENING THE CORPORATE GOVERNANCE DISPUTE RESOLUTION FRAMEWORK ..	53
<i>Introducing Laws and Regulations</i>	53
<i>Introducing Administrative Rulemaking and Listing Requirements</i>	54
<i>Introducing ADR through Codes of Best Practice</i>	57
SUPPORTING THE IMPLEMENTATION OF CORPORATE GOVERNANCE	
DISPUTE RESOLUTION	59
<i>Raising Awareness</i>	60
<i>Fostering Court Annexed Mediation</i>	64

Module 3 | Who Can Provide Corporate Governance Dispute Resolution Services?

SEEKING THIRD-PARTY DISPUTE RESOLUTION EXPERTISE	69
<i>Corporate Law Firms and Consultants</i>	73
<i>Corporate Governance Institutes and Directors Associations</i>	77
<i>Mediation Centers and ADR Firms</i>	77
<i>Universities and Business Schools</i>	85

DEVELOPING CORPORATE GOVERNANCE DISPUTE RESOLUTION SERVICES.....	86
<i>Research and Planning Phase</i>	86
<i>Implementation Phase</i>	90
Annexes	91

Volume 3 : Training

Module 1 | What Skills Are Needed for Corporate Governance Dispute Resolution?

DIRECTOR DISPUTE RESOLUTION SKILLS.....	1
<i>Conflict Management Styles</i>	2
<i>Dispute Resolution Skills and Expertise</i>	6
THIRD-PARTY DISPUTE RESOLUTION SKILLS.....	16
<i>Meditation Processes and Styles</i>	22
<i>Ethics, Credibility, and Trustworthiness</i>	26
<i>Dispute Resolution Skills and Expertise</i>	28
<i>Corporate Governance Knowledge and Exposure</i>	31

Module 2 | Dispute Resolution Training for Directors

COURSE OUTLINE.....	37
TRAINING NOTES.....	38
TABLE OF CONTENTS.....	43
POWERPOINT PRESENTATION.....	44

Module 3 | Corporate Governance Training for Dispute Resolution Experts

COURSE OUTLINE.....	63
TRAINING NOTES.....	64
TABLE OF CONTENTS.....	69
POWERPOINT PRESENTATION.....	70
Annexes	89



CONTENTS

ANNEXES

VOLUME 1 – RATIONALE

1. FURTHER READING	63
2. SAMPLE BOARD STRUCTURES AND POTENTIAL FOR DISPUTES	65
3. EXCERPTS FROM DIRECTORS' RESIGNATION LETTERS	66
4. CATEGORIES OF CORPORATE GOVERNANCE RELATED DISPUTES	71
5. EXAMPLE OF DISSIDENT SHAREHOLDER LETTER TO THE BOARD	72
6. REVIEW OF SELECTED ADR PROCESSES.....	74
7. TABLE COMPARING NEGOTIATION, LITIGATION, MEDIATION	77
8. TYPICAL STEPS IN CONSTRUCTIVE NEGOTIATION.....	78
9. SAMPLE DEFINITIONS OF MEDIATION FROM AROUND THE WORLD	79
10. LINKS TO SAMPLE MEDIATION RULES AND PROCEDURES	83
11. TYPICAL STEPS IN MEDIATION	86
12. TYPICAL STEPS IN ARBITRATION.....	87

VOLUME 2 – IMPLEMENTATION

1. ESSENTIALS OF A SHAREHOLDER AGREEMENT	97
2. SAMPLE MEDIATION AND DISPUTE RESOLUTION CLAUSES FROM AROUND THE WORLD	99
3. IMPLICATIONS OF E-MAIL COMMUNICATIONS FOR NEGOTIATION	104
4. SAMPLE BOARD EVALUATION TOOL	108
5. SAMPLE DIRECTOR SELF-EVALUATION TOOL	111
6. SAMPLE SELF-ASSESSMENT QUESTIONNAIRE FOR BANK DIRECTORS	114

7. SAMPLE MEDIATION LAWS FROM AROUND THE WORLD	122
8. SECP – DISPUTE SETTLEMENT MECHANISM	124
9. AMMAN STOCK EXCHANGE DIRECTIVES FOR DISPUTE RESOLUTION.....	125
10. BSE ARBITRATION COURT.....	129
11. BM&FBOVESPA MARKET ARBITRATION PANEL	133
12. KING REPORT ON GOVERNANCE FOR SOUTH AFRICA – 2009.....	137
13. FACTORS TO GUIDE SELECTING ADR SERVICES.....	140
14. AGREEING ON THE TERMS OF MEDIATION.....	141

VOLUME 3 – TRAINING

1. BASIC ADULT LEARNING GUIDELINES.....	89
2. STANDARD GUIDANCE FOR CORPORATE GOVERNANCE DISPUTE CASE STUDY DISCUSSIONS	94
3. ROLE PLAY TECHNIQUES	95
4. ROLE PLAY – KARDAL FASHIONS LTD	97
5. ROLE PLAY – NEONSPARK CORP.....	113
6. ROLE PLAY – TECHNO LTD.....	127
7. ROLE PLAY – MAX HENRY UNIVERSITY.....	141
8. CASE STUDY EXERCISE – AGROMASH OSJC	155
9. CORPORATE GOVERNANCE READING GUIDE FOR DISPUTE RESOLUTION EXPERTS	160

COUNTRY INDEX

Albania: Vol. 1 P. 79; Vol. 2 P. 122;

Argentina: Vol. 2 P. 62; Vol. 2 P. 122;

Australia: Vol. 1 P. 28-29; Vol. 2 P. 22;
Vol. 2 P. 25; Vol. 2 P. 49; Vol. 2 P. 51;
Vol. 2 P. 122;

Austria: Vol. 2 P. 51; Vol. 2 P. 122;

Belarus: Vol. 2 P. 122;

Belgium: Vol. 1 P. 84; Vol. 2 P. 51;
Vol. 2 P. 99; Vol. 2 A. P. 26;

Bosnia and Herzegovina: Vol. 1
P. 43; Vol. 1 P. 53; Vol. 1 P. 79; Vol. 2
P. 122;

Brazil: Vol. 1 P. 2; Vol. 1 P. 8; Vol. 1
P. 79; Vol. 2 P. 15; Vol. 2 P. 45; Vol. 2
P. 47; Vol. 2 P. 55; Vol. 2 P. 57; Vol. 2
P. 58; Vol. 2 P. 122; Vol. 2 P. 133-136;
Vol. 3 P. 48; Vol. 3 P. 77;

Bulgaria: Vol. 1 P. 9; Vol. 1 P. 20; Vol.
1 P. 42; Vol. 1 P. 61; Vol. 1 P. 85; Vol. 2
P. 99; Vol. 2 P. 122; Vol. 2 P. 129-132;

Canada: Vol. 1 P. 19; Vol. 2 P. 49; Vol.
2 P. 51; Vol. 3 P. 45;

Colombia: Vol. 1 P. 41; Vol. 2 P. 23;
Vol. 2 P. 45; Vol. 2 P. 62; Vol. 2 P. 64;
Vol. 2 P. 80; Vol. 2 P. 122;

Croatia: Vol. 1 P. 79;

Denmark: Vol. 2 P. 51; Vol. 2 P. 100;

Egypt: Vol. 1 P. 79; Vol. 1 P. 84;

Ecuador: Vol. 2 P. 122;

Finland: Vol. 1 P. 21; Vol. 1 P. 33; Vol. 2
P. 15; Vol. 2 P. 66-67; Vol. 2 P. 122;

France: Vol. 2 P. 29; Vol. 2 P. 49;
Vol. 2 P. 85;

Germany: Vol. 1 P. 2; Vol. 1 P. 18;
Vol. 1 P. 72-73; Vol. 2 P. 22; Vol. 2
P. 51; Vol. 2 P. 66; Vol. 2 P. 106;
Vol. 3 P. 45;

Ghana: Vol. 2 P. 48;

Hong Kong, China: Vol. 2 P. 67;

Hungary: Vol. 1 P. 80; Vol. 2 P. 122;

Iceland: Vol. 1 P. 33;

India: Vol. 1 P. 6-7; Vol. 1 P. 35; Vol. 1
P. 37; Vol. 1 P. 80; Vol. 2 P. 48; Vol. 2
P. 56; Vol. 2 P. 67; Vol. 2 P. 74;

Indonesia: Vol. 2 P. 48; Vol. 2 P. 122;

Italy: Vol. 1 P. 80; Vol. 2 P. 54; Vol. 2
P. 79; Vol. 2 P. 123;

Jordan: Vol. 2 P. 54; Vol. 2 P. 125-128;

Kenya: Vol. 1 P. 15; Vol. 1 P. 60;

Macedonia: Vol. 2 P. 123;

Malaysia: Vol. 1 P. 23;

Maldives: Vol. 1 P. 34;

Malta: Vol. 2 A. P. 27;

Mexico: Vol. 1 P. 61; Vol. 2 P. 54;

Montenegro: Vol. 2 P. 123;

Netherlands: Vol. 2 P. 101;

Pakistan: Vol. 1 P. 37; Vol. 1 P. 53;
Vol. 1 P. 81; Vol. 2 P. 55; Vol. 2 P. 56;
Vol. 2 P. 124;

Papua New Guinea: Vol. 1 P. 34;

Peru: Vol. 2 P. 62;

Philippines: Vol. 2 P. 76;

Romania: Vol. 1 P. 81; Vol. 2 P. 123;

Russia: Vol. 1 P. 13; Vol. 1 P. 21;
Vol. 2 P. 45;

Serbia: Vol. 1 P. 81; Vol. 2 P. 123;

Singapore: Vol. 1 P. 84; Vol. 2 P. 51;
Vol. 2 P. 102; Vol. 2 P. 123;

Slovakia: Vol. 1 P. 81; Vol. 2 P. 123;

Slovenia: Vol. 1 P. 2; Vol. 1 P. 34;

South Africa: Vol. 1 P. 60; Vol. 2 P. 58;
Vol. 2 P. 64; Vol. 2 P. 77; Vol. 2 P. 94;
Vol. 2 P. 102-103; Vol. 2 P. 107-139;

Sweden: Vol. 1 P. 83;

Switzerland: Vol. 2 P. 49; Vol. 2 P. 51;

Tanzania: Vol. 1 P. 60;

Thailand: Vol. 2 P. 66;

Tonga: Vol. 2 P. 62;

UAE: Vol. 1 P. 10;

Uganda: Vol. 1 P. 32; Vol. 1 P. 43
Vol. 1 P. 53; Vol. 1 P. 58; Vol. 2 P. 65;
Vol. 2 P. 67;

Ukraine: Vol. 1 P. 38; Vol. 1 P. 39;
Vol. 1 P. 45; Vol. 1 P. 50; Vol. 2 P. 83;

United Kingdom: Vol. 1 P. 30; Vol. 1
P. 810; Vol. 2 P. 2; Vol. 2 P. 49; Vol. 2
P. 59; Vol. 2 P. 101;

United States: Vol. 1 P. 10; Vol. 1
P. 11; Vol. 1 P. 12; Vol. 1 P. 13; Vol. 1
P. 16; Vol. 1 P. 17; Vol. 1 P. 22; Vol. 1
P. 25; Vol. 1 P. 30; Vol. 1 P. 31; Vol. 1
P. 31; Vol. 1 P. 37; Vol. 1 P. 41; Vol. 1
P. 66-70; Vol. 1 P. 81-82; Vol. 2 P. 10;
Vol. 2 P. 20; Vol. 2 P. 49; Vol. 2 P. 73;
Vol. 2 P. 81; Vol. 2 P. 83; Vol. 2 P. 84;
Vol. 2 P. 123; Vol. 3 P. 16; Vol. 3 P. 27;

What tools does this toolkit provide?

This toolkit is user-friendly. It shares worldwide experiences and existing best practices while providing new avenues for better managing corporate governance disputes. The following items will help users navigate the toolkit's contents and tools:



Module Tabs

Each module is introduced by a color tab presenting the rationale and the module's contents.



Examples

The toolkit includes examples and anecdotal evidence worldwide to illustrate the content and impact of corporate governance disputes and possible approaches to resolving such disputes.



Quote Boxes

Users can find quotes from experts and professionals that provide insights into topics.



Focus Boxes

Boxes containing practical and targeted information provide users with a brief overview of studies and state-of-the-art thinking.



Glossary Boxes

Users can consult the section for key terms used throughout the toolkit.



Graphs

Graphics provide users with a snapshot of existing data and visual representations to enhance conceptual understandings of the toolkit's contents.



Further Reading

Volume 1 provides readings that further discuss practical and academic issues.



Cross References

Each module includes cross references to the toolkit's other modules and annexes. Users can easily locate related topics, guidelines, and documentation.



Practice Boxes

The use of ADR processes and techniques to help prevent and resolve corporate governance disputes is still at an early stage. Practice boxes offer users options and actions to consider in dealing better with boardroom and shareholder disputes or any other disputes, involving stakeholders challenging a company's governance.



Role Plays

The toolkit's training volume includes role plays, which can be used by organizations' training directors and/or mediators. Participants are given situational facts and then assume roles of those involved in making a decision about the issue that divides the board. In these exercises, the participants master the content while developing leadership skills, particularly the ability to prevent or defuse potentially damaging conflicts within a corporate board.



Annexes

These are at the end of each volume, providing background documentation and samples that can help users with practical step-by-step approaches to implementing corporate governance dispute resolution services and practices.



PowerPoint

Volume 3 includes two standard Powerpoint Presentations to be used and adapted for training directors and dispute resolution experts.

CONTRIBUTORS

To develop this toolkit and gather the “lessons learned” and best practices from developing, emerging market, and developed countries, the Forum invited representatives from mediation centers, law firms, consultants, institutes of directors, and corporate governance centers worldwide to share their experiences and discuss milestones and challenges in implementing corporate governance ADR.

The Forum would like to thank everyone who actively supported this initiative including the following experts, practitioners, and Private Sector Advisory Group members for providing materials, examples, and extensive comments.

COUNTRY CONTRIBUTORS

BANGLADESH

Lopa Rahman
Project Director (former)
Bangladesh Enterprise
Institute

BULGARIA

Bistra Boeva
Professor
University for National
and World Economic
Studies
Member PSAG

Silvi Chernev
Chairman
Arbitration Court,
Bulgarian Chamber of
Commerce and Industry

Zoya Gerasimova
Chairman
Bulgarian Association
for Alternative Dispute
Resolution (BAADR)

Vassya Prokopieva
Managing Partner
EU&BG Legal
Consultants

Tsvetan Simeonov
Deputy Chairman
Bulgarian Chamber of
Commerce and Industry

Simeon Semov
*Head of the Legal
Department*
Bulgarian Stock
Exchange (BSE)

Oleg Stoilov
Chairman
Chamber of Commerce
and Industry, Stara
Zagora

BELGIUM

Jozef Lievens
Partner
Eubelius — Attorneys
at Law
Member PSAG

BRAZIL

Leonardo Viegas
*Chairman of the
Education Committee*
Brazilian Institute of
Corporate Directors
(IBGC)
Member PSAG

Nora Rachman
Chief Counsel
BM&FBovespa

COLOMBIA

**Raphael Bernal
Gutiérrez**
Director
Center of Arbitration
and Conciliation,
Confecamaras

FINLAND

Olli Virtanen
Secretary General
The Finnish Association
of Professional
Board Members
Member PSAG

GERMANY

Christian Strenger

Deputy Chairman
PSAG
Director
DWS Investment
Member
German Corporate
Governance Commission

GUATEMALA

Michelle Secaira **Melville De Arrivillaga**

Lawyer
Arbitration and
Conciliation Center —
Chamber of Commerce
(CENAC)

ITALY

Giuseppe De Palo

Chairman of the Board
ADR Center S.p.A

PAKISTAN

Samina Noman

Case Administrator and
Advocate
Karachi Centre for
Dispute Resolution

Atiqa Lateef Qazilbash

Associate Partner
Awanraza Law Firm

Rai Muhammad Saleh **Azam**

Managing Partner
Azam & Rai Law Firm

PHILIPPINES

Atty Adelita Vergel **de Dios**

President and CEO
Institute of Corporate
Directors (ICD)

Jesus Estanislao

Chairman
Institute of Corporate
Directors (ICD)
Member PSAG

RUSSIA

Igor Belikov

CEO
Russian Institute of
Directors

SLOVENIA

Alenka Podbevek

CEO
Socius

SOUTH AFRICA

Tony Dixon

Director (retired)
Institute of Directors in
Southern Africa

Mervyn King SC

Non-Executive Chairman
Brait SA — Luxembourg
First Vice President
Institute of Directors in
Southern Africa
Member PSAG

SWITZERLAND

Andre Baladi

Chairman
International Arbitration
and Dispute Resolution
Organization (ARICI)
Member PSAG

UGANDA

Geoffrey Kiryabwire

Judge
High Court
Commercial Division

UNITED KINGDOM

Chris Pierce

CEO
Global Governance
Services Ltd.

James South

Mediator
Training Director
Center for Effective
Dispute Resolution
(CEDR)

Joe Tirado

Partner, Head of
International Arbitration
and ADR
Norton Rose LLP

UNITED STATES

James Groton

Partner (retired)
Sutherland, Asbill &
Brennan LLP

Richard Ruben

Professor of Law
University of Missouri -
Columbia School of Law

WORLD BANK GROUP CONTRIBUTORS

Alejandro Alvarez **de la Campa**

Private Sector
Development Specialist
WB

Khawar Ansari

Operations Officer
IFC

Philip Armstrong

Head
GCGF

Lada Busevac

Sr. Operations Officer
IFC

Mohsin Ali Chaudhry

Legal Specialist
IFC

Hassan El Shabrawishi

Consultant
GCGF

Ralitza Germanova

Project Coordinator
GCGF

Patricia Jungreis-Sulser

Principal Counsel
IFC

Min Li

Consultant
GCGF

Motria Onyschuk- **Morozov**

Principal Operations Officer
IFC

Vladislava Ryabota

Corporate Governance
Officer
IFC

AUTHORS

Marie-Laurence Guy is a Senior Projects Officer at the IFC Global Corporate Governance Forum and this project's team leader. She is in charge of the Forum's corporate governance dispute resolution activities and oversees the Forum's activities in the Middle East, North Africa, and Southeast Europe. Over the years, she has continuously worked on developing global corporate governance reform tools to help implement good corporate governance practices. Ms. Guy has co-authored and coordinated the production of two other toolkits: *Building Director Training Organizations* and *Developing Corporate Governance Codes of Best Practice*. Ms. Guy previously worked with the Corporate Affairs Division of the OECD and the French Ministry of Finance, Economy, and Industry. She recently co-authored a Forum *Focus* publication on *Mediating Corporate Governance Conflicts and Disputes* and is a CEDR accredited Mediator.

Christopher Honeyman is Managing Partner of Convenor Conflict Management, a consulting firm based in Washington, DC and Madison, Wisconsin. Mr. Honeyman is the lead external consultant to the ADR Center (Rome), the largest neutral dispute resolution firm in continental Europe. He has served as mediator, arbitrator, or in other neutral capacities in more than 2,000 disputes since the 1970s, and as a consultant to numerous academic and practical conflict resolution programs in the United States and other countries. He also directed a 15-year series of Hewlett Foundation-funded research and development programs in ADR, of national or international scale. Mr. Honeyman is co-editor of *The Negotiator's Fieldbook* (ABA 2006), which is widely regarded as the most thorough reference work in the field, co-editor of *Rethinking Negotiation Teaching*, (DRI Press 2009), and author or co-author of more than 50 published articles, book chapters, and monographs on dispute resolution ethics, quality control, and infrastructure development. He co-chairs the ABA Dispute Resolution Section's Committee on Negotiation.

Mary Jo Larson is the Principal in FlexAbility International LLC. She provides consulting services to international, multilateral, and private sector organizations. She co-authored the Forum's *Corporate Governance Board Leadership Training Resources Kit*, conducts corporate governance board leadership faculty training, and addresses corporate governance conflicts and disputes. Her areas of expertise include leadership, active adult learning, negotiation, mediation, stakeholder engagement, multi-stakeholder program development, and sustainability. Dr. Larson earned her Doctorate of Philosophy in Conflict Analysis and Resolution from George Mason University. She is a Senior Fellow, University for Peace established by the United Nations in Costa Rica, Adjunct Faculty member at the American University, and author of publications on leadership, adult learning, negotiations, mediation, conservation, gender, peace building, and multilateral diplomacy.

Jon Masters is a Principal in Masters-Rudnick & Associates, LLC and a trusted advisor to CEOs and boards of both business and non-profit organizations. He has been a managing principal of a corporate governance consulting firm, a senior partner in a law firm, a vice chairman of a securities firm, and a director of both business and non-profit corporations. He has also served as the Legal Advisor to the Blue Ribbon Commission established by the National Association of Corporate Directors on Performance Evaluation of Chief Executive Officers, Boards and Directors. His public service includes being an advisor to the U.S. Securities and Exchange Commission, work on the redevelopment of Bedford-Stuyvesant, and service in the U.S. Defense Department, and on the Special Political Research Staff of President Lyndon Johnson. These experiences enable him to bring to his work a uniquely comprehensive view of corporate governance. He is a graduate of Princeton University and Harvard Law School.

Karl Mackie is founding Chief Executive of CEDR (Centre for Effective Dispute Resolution), one of the first ADR organizations in Europe and now the largest outside the United States, delivering ADR services, training, and consultancy in ADR, negotiation, and conflict management. He has been a barrister, psychologist, educator, and business strategy consultant, and has mediated regularly for more than 20 years, in addition to his strategic direction of CEDR. He specializes in general commercial mediation, and has worked with parties from over thirty countries. He has been Special Professor in ADR at the Universities of Birmingham and Westminster, author or co-author of a number of leading texts on ADR, and is a Fellow of the Chartered Institute of Arbitrators. Dr. Mackie is on the Panel of Distinguished Neutrals of the Singapore International Commercial Mediation Centre and the International Institute for Conflict Prevention and Resolution (CPR). Dr. Mackie was a founding member of the European Business Ethics Network.

Anne Molyneux is a Director with CS International. She provides consulting services to international, multilateral, and private sector organizations in financial market regulation, corporate governance, financial reporting, accounting, and audit regulation and practice. Mrs. Molyneux co-authored the Forum's *Corporate Governance Board Leadership Resources* and contributed to the Forum's *Building Director Training Organizations* Toolkit. She is a Member and a Fellow of the Australian Institute of Directors (AICD). She has led program development in corporate governance and director training courses in many countries and she was an author and trainer for the AICD's Company Directors Course. She was a member of the Australian Investment and Securities Commission's (ASIC) Corporate Governance Roundtable. She contributed to the revision of the OECD's Corporate Governance Principles and its Corporate Governance Guidelines for State-Owned Entities.

Alan Rudnick is a Principal in Masters-Rudnick & Associates, LLC, providing a full range of governance assessment and advisory services to corporate boards and executives. He co-founded Masters-Rudnick after his retirement from the CSX Corporation where, after holding various finance and law positions, he was Vice President-General Counsel and Corporate Secretary. Mr. Rudnick served as Counsel to The Conference Board's Commission on Public Trust and Private Enterprise. He is Program Chair for The Conference Board's Directors' Institute and other corporate governance programs. He is an Adjunct Professor at the College of William and Mary Law School. He holds a B.A. from the University of Chicago, and a J.D. from Case Western Reserve University.

Editor: James D. Spellman, a Principal in Strategic Communications LLC, provides communications and corporate governance consulting services to a variety of public and private-sector clients, including the Global Corporate Governance Forum, hedge funds, and securities firms. He co-authored and edited the Forum's *Corporate Governance Board Leadership Training Resources* and participated in training the heads of Institutes of Directors from more than 10 countries. He also writes about the financial services sector for the *Financial Times Financial Adviser* and other publications. Mr. Spellman is an Adjunct Professor at George Washington University's School of Media and Public Affairs, teaching public relations strategy. He holds an M.Phil. in International Relations from Oxford University (UK).

Design: Mary Beth Ramsey | Creative Alchemy

3100 Connecticut Avenue, NW #437 | Washington, DC 20008

Printer: Westland Printers

14880 Switzer Lane | Laurel, MD 20707

This publication was printed on recycled paper.

SECRETARIAT

GLOBAL CORPORATE GOVERNANCE FORUM

2121 Pennsylvania Avenue, NW
Washington, DC 20433 U.S.A.

T +1.202.458.8097
F +1.202.522.7588

cgsecretariat@ifc.org
www.gcgf.org

The Global Corporate Governance Forum is a leading knowledge and capacity-building platform dedicated to corporate governance reform in emerging markets and developing countries. The Forum offers a unique collection of expertise, experiences, and solutions to key corporate governance issues from developed and developing countries.

The Forum's mandate is to promote the private sector as an engine of growth, reduce the vulnerability of developing and emerging markets to financial crisis, and provide incentives for corporations to invest and perform efficiently in a transparent, sustainable, and socially responsible manner. In doing so, the Forum partners with international, regional, and local institutions, drawing on its network of global private-sector leaders.

The Forum is a multi-donor trust fund facility located within the IFC, co-founded in 1999 by the World Bank and the Organization for Economic Cooperation and Development (OECD).

OUR DONOR PARTNERS

