FEDERAL TAX OMBUDSMAN IN ALTERNATIVE DISPUTE RESOLUTION-A REPORT

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FOREWORD

The field of Alternative Dispute Resolution (ADR) has grown tremendously in Pakistan. Different countries are working to strengthen their ADR systems and Pakistan is one of them. The Government of Pakistan established the office of the Federal Tax Ombudsman (FTO) through “FTO Ordinance, 2000” to provide justice to the Taxpayers efficiently and effectively. FTO independently investigates and rectifies injustice done to the Taxpayers within a short time period through adopting ADR models. It expedites the dispute resolution process.

The Truth International (Pvt) (TTI) is honored to collaborate with Federal Tax Ombudsman to prepare this report on the FTO`s playground of ADR dispute resolution mechanism. The report is prepared to spread awareness about ADR and its amenities among the Taxpayers and to create a trust-based relationship between Taxpayers and FTO. Due effort has been made to provide information about FTO`s powers in the dispute resolution process. This report covers some important cases that FTO has graciously resolved through ADR in a minimum time frame and grievances of the parties were redressed to their satisfaction.

It is expected that this report will highlight the impartial working of FTO to provide quick and effective remedies through ADR modes.

MESSAGE OF LEARNED FEDERAL TAX OMBUDSMAN

Institution of Federal Tax Ombudsman has always strived to uphold the interest of Taxpayers against any maladministration and misadventure by the Federal Revenue Division. At FTO, it is my priority to resolve disputes between Taxpayers and Federal Revenue Division through Informal Dispute Resolution models. It saves time, cost and minimize litigation hassle between the disputing parties. Alternative Dispute Resolution modes have, now, become the need of the hour and have attained legality under the concerned prevailing domestic as well as international laws.

Based on the crucial, decisive, extensive and essential nature and evolution of extra-judicial dispute resolution, a Research study was conducted in the office of Federal Tax Ombudsman in collaboration with The Truth International and Interns working at FTO Secretariat.

It is a pleasure to find this effort has been fruitful and conducive in shape of a report which will be handy in future dispute resolution through extra-judicial products.

Dr. Asif Mehmood Jah (Learned FTO)

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Alternative and Informal Dispute Resolutions—Explained

Alternative Dispute Resolution (ADR) refers to methods of resolving a legal dispute extra-judicially. It includes both adjudicative (arbitration, expert determination, and adjudication) and non-adjudicative (mediation, negotiation, and conciliation) procedures. While adjudicative processes are more formal and the parties have less influence over the outcome, non-adjudicative approaches allow for greater party participation, more innovative settlements, and greater privacy and secrecy. Both parties unanimously agree on which method they will adopt to resolve their dispute. Sometimes, it is mentioned in their contract by including Arbitration clause or ADR clause, whichever suits their fiduciary relationship. Some methods are more informal in which parties are not bound to the final outcome as compared to formal methods where the parties are bound to the Award or final decision.

Informal Dispute Resolution (IDR) refers to the non-adjudicative procedure which includes mediation, negotiation and conciliation. Negotiation is the informal argument between the parties to reach a mutual suitable decision that benefits both the parties agreeing to it.

There are numerous methods of resolving conflicts extra-judicially that fall under the umbrella term "Alternative Dispute Resolution." Neutral evaluation and Arbitration are two common forms of ADRs. Unlike regular court hearings, these approaches are generally confidential, less formal, and less stressful. Conciliation is a process where, unlike negotiation, there is a conciliator who controls the dialogue between the parties and helps them reach a decision mutually. Mediation is one of the quickest methods of ADR. It involves both the parties writing their submissions to the mediator who has voluntarily presented himself as an intermediary to resolve the disputes of conflicting organizations, countries or even individuals. The mediator does not propose any solution and has no decision-making power rather acts as a facilitator in bringing the disputing parties to the table. Both the parties discuss their issues and reach a mutually agreeable terms and conditions.

Generally speaking, ADRs increases the cost of contesting the disputes but it expedites the dispute resolution process. The parties to a dispute have a significant say in how the dispute is resolved during mediation proceedings. Often, this leads to more innovative ideas, long-lasting results, higher levels of party satisfaction, and better interpersonal relationships at the end of proceedings.

PROS AND CONS OF ADR AND IDR

Using ADR and IDR may provide a range of advantages, depending on the mode of ADR technique employed and the facts, figures and specifics of the case in hand. Some potential advantages of ADR are;

➢ Save Time

A disagreement can typically be settled or decided significantly more quickly through ADR and IDR methods; frequently in a matter of weeks or even days, whereas, opting for a lawsuit in trial might take months and, in some cases, years. Not only it saves the time of parties, it saves the time of court as well. Sometimes the disputes can easily be resolved extra-judicially and taking them to court would only waste the precious time of court and might delay or hinder justice provision in other legal matters/disputes. ADRs and IDRs are time-saving because these are very casual and informal methods and the matters are resolved within a limited time period.

➢ Enhance Process and Result Management

In Alternative and informal dispute resolution methods, parties often play a larger role in shaping both the process and the final result. In the majority of ADR and IDR processes, parties have a greater opportunity to present their side of the story. Some ADR techniques, such as mediation, enable the parties to devise creative resolutions that would not be possible in a trial. Other ADR systems, such as Arbitration, permit the parties to select a subject matter expert to decide the disagreement.

➢ Maintain Relationships

ADR and IDR can be a less confrontational and aggressive method of resolving a conflict. For instance, a skilled mediator can facilitate the parties' efficient communication of their demands and positions. This can be a significant benefit if the parties have a relationship to maintain.

➢ Enhance Contentment

Typically, there is a winner and a loser in a trial. In some cases, even the decree-holder may not be entirely pleased with the result. ADR and IDR can assist parties in finding win-win solutions and achieving their true objectives together with other potential benefits of ADR. This may raise the parties' overall satisfaction with both the dispute resolution process and its outcome.

➢ Enhance Attorney-Client Relationships

Additionally, attorneys may develop goodwill from ADR upon been perceived as problem-solvers. Rapid and gratifying resolutions are likely to result in satisfied customers, leading to recurring business and referrals by satisfied customers to others.

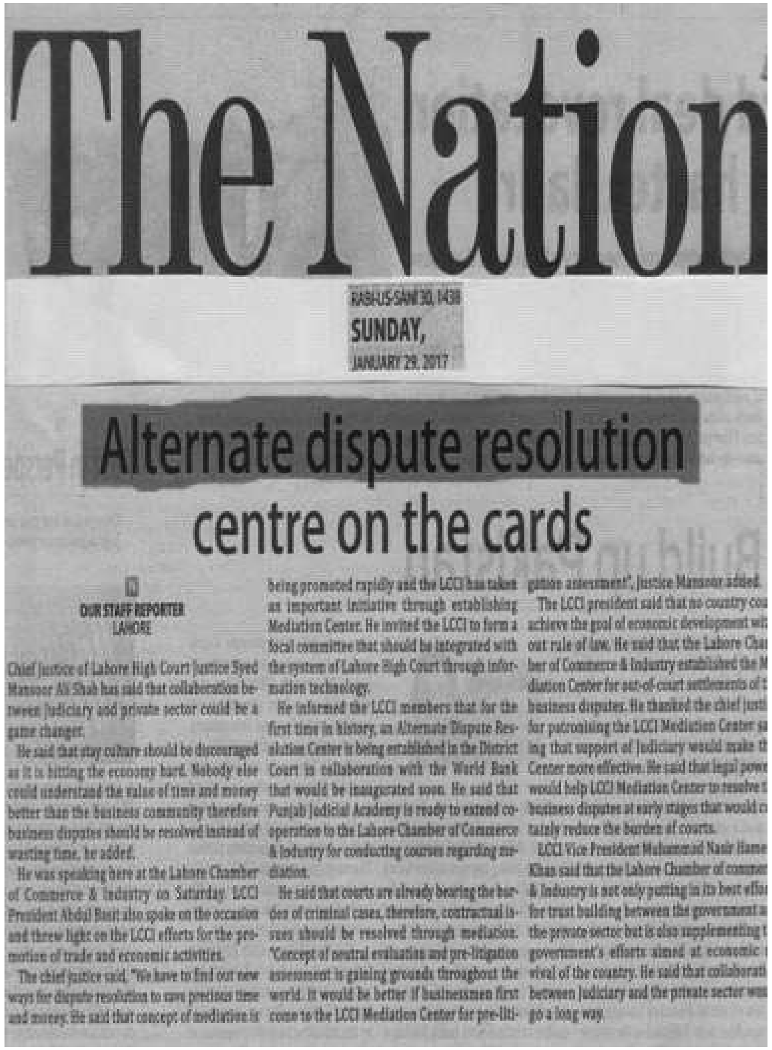
➢ Uneconomical

ADR maybe very beneficial as it saves time, the decision is favorable by both the parties as both the parties decide it mutually but it is very costly as well. Lawyers charge higher fees to represent and arbitrators/mediators can be very expensive too. The costs are usually only one-time but can be thrice as much as court costs or even more, especially in commercial conflicts.

Advantages	Disadvantages
More contentment	Expensive
Saves time	Need specific ADR clauses where the relationship is contractual
Enhances attorney-client relations	Decisions are not binding, sometimes

Domestic Legal Provisions of ADR in Pakistan

The Pakistani domestic laws and constitutional provisions are not devoid of provisions regarding ADR. The Constitution of Pakistan, 1973 (Arts 153-155), S.89-A of Civil Procedure Code (CPC), 1908, states that "notwithstanding any other laws for the time being in force, the court may use Alternative Dispute Resolution (ADR) methods to resolve cases of civil or commercial matters. Provided that for the purpose of this section, ADR refers to mediation, conciliation and negotiation". Apart from this, some other legal provisions regarding ADRs are the "Arbitration Act, 1940". Section 10 and 12 of the "Family Courts Act, 1964" provides that the parties have to conduct pre-trial proceedings to see if there is any scope of reconciliation and even after collecting the evidences statute ordains the court to make more effort for reconciliation of the parties within a period of fifteen days[4]. Section 195C of "Customs Act, 1969", "The Probation of Offenders Ordinance, 1960", Chapter XVII of the "Customs Rules, 2001", Section 134A of the "Income Tax Ordinance, 2001", Section 47A of the "Sales Tax Act, 1990" and Section 38 of the "Federal Excise Act, 2005", all encourage the parties to look for alternate dispute resolutions. Pakistan has a separate statute dedicated to the functioning and use of Alternative Dispute Resolution methods; Section 3 of "ADR Act, 2017" implies the court to suggest all parties coming to court to resolve their disputes using extra-judicial methods like negotiation, mediation, conciliation etc.[5] Formal methods can be very



The Nation

RABI-US-SANI 30, 1438
SUNDAY,
JANUARY 29, 2017

Alternate dispute resolution centre on the cards

OUR STAFF REPORTER
LAHORE

Chief Justice of Lahore High Court Justice Syed Mansoor Ali Shah has said that collaboration between judiciary and private sector could be a game changer.

He said that stay culture should be discouraged as it is hitting the economy hard. Nobody else could understand the value of time and money better than the business community therefore business disputes should be resolved instead of wasting time, he added.

He was speaking here at the Lahore Chamber of Commerce & Industry on Saturday. LCCI President Abdul Basit also spoke on the occasion and threw light on the LCCI efforts for the promotion of trade and economic activities.

The chief justice said, "We have to find out new ways for dispute resolution to save precious time and money. He said that concept of mediation is being promoted rapidly and the LCCI has taken an important initiative through establishing Mediation Center. He invited the LCCI to form a focal committee that should be integrated with the system of Lahore High Court through information technology.

He informed the LCCI members that for the first time in history, an Alternate Dispute Resolution Center is being established in the District Court in collaboration with the World Bank that would be inaugurated soon. He said that Punjab Judicial Academy is ready to extend cooperation to the Lahore Chamber of Commerce & Industry for conducting courses regarding mediation.

He said that courts are already bearing the burden of criminal cases, therefore, contractual issues should be resolved through mediation. "Concept of neutral evaluation and pre-litigation assessment is gaining grounds throughout the world. It would be better if businessmen first come to the LCCI Mediation Center for pre-litigation assessment", Justice Mansoor added.

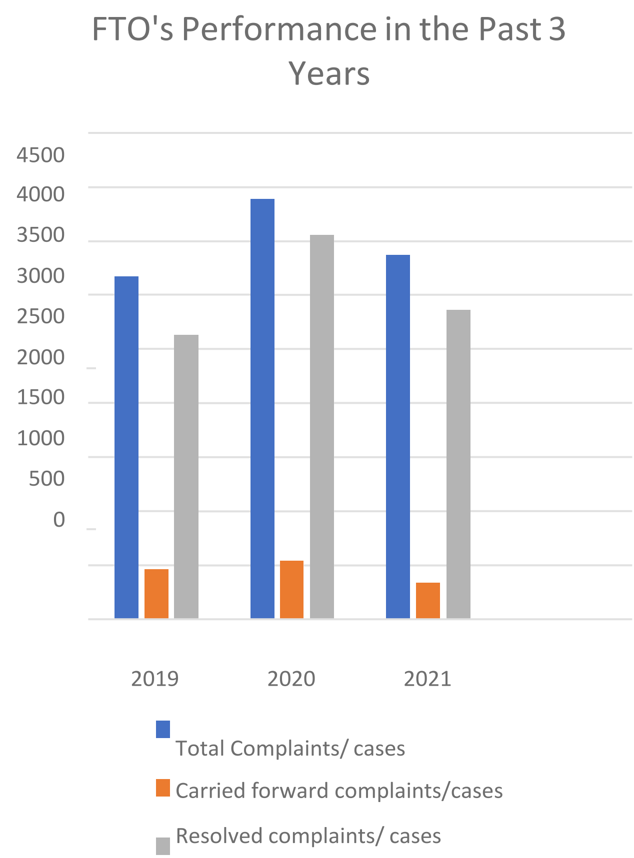
The LCCI president said that no country co[...] achieve the goal of economic development wi[...] out rule of law. He said that the Lahore Cha[...] ber of Commerce & Industry established the M[...] diation Center for out-of-court settlements of [...] business disputes. He thanked the chief justi[...] for patronising the LCCI Mediation Center sa[...] ing that support of judiciary would make th[...] Center more effective. He said that legal pow[...] would help LCCI Mediation Center to resolve t[...] business disputes at early stages that would c[...] tainly reduce the burden of courts.

LCCI Vice President Muhammad Nasir Hame[...] Khan said that the Lahore Chamber of comme[...] & Industry is not only putting in its best effo[...] for trust building between the government a[...] the private sector but is also supplementing t[...] government's efforts aimed at economic [...] vival of the country. He said that collaborati[...] between judiciary and the private sector wo[...] go a long way.

expensive, therefore, the parties must try to informally solve their disputes. Sometimes, however, there is no room left for negotiation or any other settlement between the parties, in such situations, the parties may continue with their court proceedings.

FTO In ADR and IDR—Case Study

Every system has its flaws subject to rectifications from time to time. Pakistan, being a developing country, has many loopholes in her judicial system and she is trying her best to fill the gaps. Pakistani judicial system also has certain shortcomings during the litigation process which need serious attention to gear up the sprint of provision of justice to the parties in any dispute. Another jaw-dropping anomaly is that most of the time Lawyers willfully and knowingly linger the legal proceedings by not appearing before Courts to represent their cases. It takes longer forthe authorities to effectively decide the matters and implementing them. Due to lack of evidences and witnesses, Courts have to delay their decisions which cause delay in justice. It is a well-known idiom of common law that "Justice Delayed Is Justice Denied". Especially, when it comes to tax-related cases, people go through immense adversity while dealing with tax authorities and Courts. In this regard, "Federal Tax Ombudsman" (FTO) offers a befitting and appropriate alternative in the form of "Alternative Dispute Resolution" (ADR) for legal redress to the people aggrieved of Revenue Division or its Employees. Apart from that, there have been multiple times that the "Tax Reform Commission" recommended FBR to bring an ADR system under the garb of "Federal Tax Ombudsman" (FTO) to redress taxpayers' issues with the department on a fast-track basis. One of the major reasons is that FBR`s ADR mechanism lacks neutrality and transparency due to FBR being a party of interest.



“Federal Tax Ombudsman” (FTO) has been working for 22 years to serve timely justice andto promote the rule of law in the revenue division, as there shall be nothing above the law and everyone must have an access to a fair trial. In Pakistan FTO has flawlessly and brilliantly become an institute that can provide easy, speedy and cost-effective justice to the tax payers. Initially, FTO received little interest of Taxpayers and the number of Complaintswas relatively lesser, however, in the recent years FTO has performed exceptionally which have attracted the attention of Taxpayers so much that the number of Complaints has risen to around4000Complaints per year. In the year 2019, a total of 2510 complaints were received, 458 complaints were carried forward from year 2018 and there were 202 Own-Motion cases. From a grand total of 3171 complaints, 2633 complaints were resolved in 2019. In 2020, 3555 of 3888 complaints were resolved. This was one of the best performances of FTO since its inception. The number of complaints reduced in the year 2021 and only 3371 complaints were received of which 2867 were resolved. These numbers are inclusive of the Own-Motion cases which were initiated by the FTO himself. In the case 0017/OM/2022, FTO investigated the import of worn-out clothing into Pakistan which was worth 4.26 times USD (millions) as much as import in India. Upon investigation, it was found out that new unstitched fabric and stock lot was being imported in the name of worn-out clothing i.e., commonly known as second-hand fabric. FTO recommended FBR to take certain steps which included issuance of invoices and packing lists issued by the supplier. It was also suggested to the FBR to introduce proper licensing mechanism for the importers to maintain check and balance. All the steps had to be complied with and compliance had to be reported to FTO within 60 days of his Recommendations.

As discussed supra that a major drawback of ADR is its cost, FTO covers this drawback and has made ADR the safest option for taxpayers because he is providing cost-free Arbitration and other ADR services. Besides formal ADRs, FTO also provides for informal hearings where the parties usually resolve their issues within one hearing and there has also been reported compliance by Revenue Division with the final outcome. Generally, ADR decisions are not usually binding but FTO’s decisions hold a binding status on the parties. There are numerous cases of informal dispute resolutions that FTO has resolved. Federal Tax Ombudsman informally conciliates the disputes under Section 33(1) of “FTO Ordinance, 2000” which states as “Notwithstanding anything contained in this Ordinance, the Federal Tax Ombudsman and authorized Staff Members shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice.”

Case No. 0010/INFORMAL/2022

Relying on Section 33(1) of "FTO Ordinance, 2000", another hearing was held of case no. 0010/INFORMAL/2022, where M/s. Telenor Pakistan's NTN number was blocked due to which their import and export operation was affected. The Collector Customs, Lahore issued notice against the complainant regarding its imports. During the adjudicative proceedings, complainant submitted their evidences but they were mis-read and Assistant Collector Customs, Lahore issued the demand notice without waiting for the 60 days statutory time period available to M/s. Telenor Pakistan for filing of Appeal. The complainant presented its grievance to the FTO. The arguments went along for 03 days in FTO Secretariat Islamabad. After 04 days of the hearing, the complainant informed FTO that its grievance has been resolved. FTO has always been swift in providing remedies cost-free to the Taxpayers.

Case No. 0016/INFORMAL/2022

The complainant booked a Cultus VXR against the payment of Rs 1,795,000/- to Suzuki Racecourse Motors, Peshawar Road, Rawalpindi. Later, when he received the car with the invoice, sales tax amounting to 17% was charged from the customer while rate of sales tax was decreased to 12.5% via Finance Act, 2021.The customer was not able to recover the extra amount paid as sales tax from the motor company. This case was identical to many other previous cases, so along with those cases, this case is also under implementation at Karachi. FTO held that the case is similar in facts and circumstances to other cases; therefore, no investigation is required. Along with that, it was held that complainant is entitled to the relief sought by him as granted by the competent authority in other similar cases.

Case No. 0017/INFORMAL/2022

An individual bought a land and paid his tax amounting to Rs. 10,000 for which he received a computerized payment receipt. The receipt carried an error which was not being corrected by the FBR, deliberately, despite of several intimations depicting the maladministration being exercised by the FBR department. FTO advised the complainant and provided him with a solution and was informed that he can claim the Refund for extra amount paid by him in lieu of Admitted Tax under Section 170 of "Income Tax Ordinance, 2001". FTO's priority has always been to investigate any maladministration he suspects in the Federal Revenue Division or its Employees and provide relief to the Taxpayers.

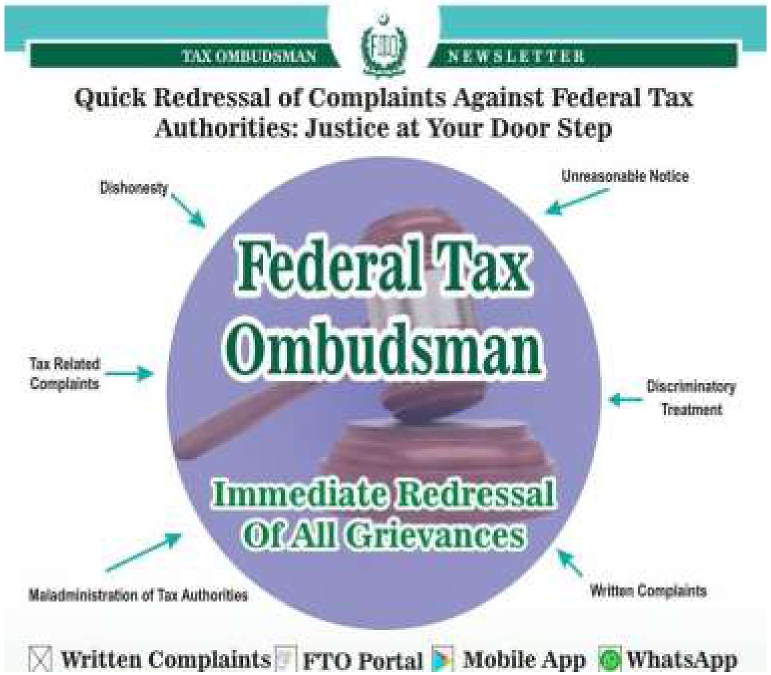
CASE NO. 0003/INFORMAL/2021

M/s. Universal Enterprise had closed down all its business activities in 2014 and the office of Commissioner Inland Revenue didn`t de-register the sales tax registration of the firm. Even after writing a letter in 2019 and submitting an online application in 2021 by the complainant, no action was taken by the FBR department and the matter remained unresolved. FTO intervened in the matter and the firm was de-registered as per the law and the grievances of the complainant were resolved through informal hearing.

There are a number of other complaints that FTO has resolved through informal means and all the grievances of the parties were redressed to the satisfaction. This platform is available to the Taxpayers free of cost and it provides quick and effective remedies.

CLOSING

Utmost emphasis is to be placed on the notion that forum of FTO needs to be adopted as a full-fledged mechanism of ADR in Pakistan for the resolution of Taxpayers' disputes with Revenue Division, as it is providing a speedy and cost-effective justice. The matter is of concern that Taxpayers are not sufficiently aware of the significance and institutional structure of FTO. Hence, the Taxpayers needs to be sensitized about the efficacy of FTO. In addition, the legal community and media should also promote FTO`s role amongst the masses so that the Taxpayers could get timely, speedy and free access to justice. The aforementioned cases are a testimony to the fact that FTO is a vibrant and efficient statutory and legal body when it comes to free and timely dispensation of justice.



It should also be emphasized that generally ADR means are not usually legally enforceable and do not hold any legal value but FTO provides not only ADR mechanism to resolve the disputes with Revenue Division amicably, but his decisions are also legally binding and enforceable as well. FTO’s decisions hold as much importance as of Supreme Court of Pakistan and its decisions cannot be challenged in any court of law. Contempt of FTO`s Recommendations is parallel to the contempt of Supreme Court`s decisions. The judgment-debtor can only plea in Representation against the Recommendations of FTO to the Honorable President of Islamic Republic of Pakistan.

FEDERAL TAX OMBUDSMAN

The Truth International