

**MINISTRY OF COMMERCE  
(TRADE DISPUTE RESOLUTION ORGANIZATION)**

**RECORD NOTES ON  
SEMINAR / BRAINSTORMING SESSION  
REVAMPING THE MECHANISM OF TRADE DISPUTES RESOLUTION IN PAKISTAN  
HELD AT LCC&I ON 16<sup>TH</sup> JUNE, 2015.**

A third of its series, seminar / brainstorming session with regard to Revamping the Mechanism of Trade Disputes Resolution in Pakistan was held at Lahore Chamber of Commerce & Industry, (LCC&I), Lahore on 16th June, 2015. Khawaja Belal Ahmed, ex-Chairman, SMEDA and former EPB (now TDAP) was the Chief Guest in the session. Mr. Ijaz Ahmad Mumtaz, President LCC&I and Ms. Roubina Taufiq Shah, Director General, Trade Dispute Resolution Organization (TDRO) alongwith senior Vice Presidents, Members of LCC&I and Representatives of TDAP, Customs, SBP, IPO, Banks and various other Departments/organizations attended the session. Programme of seminar and Attendance sheets of the participants is placed at Annex-A. The session started with Recitation from Holy Quran.

2. Mr. Ijaz Ahmed Mumtaz, President LCCI welcomed Khawaja Belal Ahmed, Chief Guest and all the participants in the seminar. The President LCCI stated that when trade relations develops there are possibilities that trade disputes may arise. He offered LCC&I's platform to Trade Dispute Resolution Organization to especially target the existing importers and exporters of the area. He was of the view that the business community must be aware of different options available for alternate dispute resolution mechanisms. The LCCI President added that Ministry of Commerce alongwith TDRO plans on strengthening the mechanism of resolution of trade disputes in Pakistan and also taking the initiative to safeguard international / local businessmen by drafting the trade dispute resolution law to control disputes among them. LCCI President pointed out to the participants that the chamber had already established a Mediation Center, 2012 in collaboration with IFC. He informed that more than 40 accredited mediators trained from UK have been registered with LCCI who are helping the local, national and international businessmen for effective dispute resolution and so far have dealt with more than 20 cases of local & international level particularly that of China, America and UK etc. 20 plus cases are dealt which includes local & international (Chinese, American, UK etc). He stated that litigation leads disputes no where. He gave assurance of 'Chamber's all out support to TDRO in achieving the target objectives and stated that the 'Chamber' has ample resources to produce the desired results.

3. **The Chief Guest Kh. Belal Ahmad**, in his keynote address appreciated the efforts of DG, TDRO and LCC&I and praised the august gathering especially Mr. Moeed Aman, Dy. Director, TDRO who persuaded him to be the Chief Guest for such an important event. The ex-Chairman said that Government is very efficient in setting up organizations and TDRO is a step in the right direction which can play an important role for the benefit of genuine importers and exporters of the country, however these institutions need to survive and deliver. He indicated that during 1998 being Chairman, EPB proposed the name of TDAP and also established SMEDA as per the recommendations of Dr. Ihsan-ul-Haque, Head of Department at LUMS. He added that establishment of SMEDA as a semi autonomous body on a Malaysian government model was aimed to generate 78% employment in the country. He was of the view that litigation is not viable for the businessmen. The ex-Chairman referred to his recent visit of Bangladesh and quoted the example of its growing economy. He mentioned that during year 2000 Bangladesh's exports were of about 3.00 billion dollars which has been increasing every year. He further informed that Bangladesh government has a vision of its exports with an increase of 12% per annum and may achieve target of 50 - 55 billion dollars by 2021.

**4. Ms. Roubina Taufiq Shah, Director General, TDRO** thanked LCC&I for providing this forum to TDRO to discuss the most important issue of revamping the Mechanism of Trade Disputes Resolution in Pakistan. In her presentation she introduced TDRO, explained reasons for the establishment of the Organization and its mandate. It was elaborated that the TDRO has been established as an attached department of Ministry of Commerce, under the Strategic Trade Policy Framework STPF 2012-15 for improvement in the image of Pakistan as a reliable trading partner.

5. In her presentation, DG TDRO enlightened the audience about the role of TDRO and the efforts for drafting of trade dispute laws, comparative study of dispute settlement mechanism in various countries & the activities made by TDRO since its establishment. The DG, TDRO mentioned that Pakistani businessmen are facing hurdles in their business and one of the leading factor is the trade disputes arising between them and their counterparts. She stated that commercial disputes that end in courts of law are always costly and usually a bitter experience. She added that the replies / suggestions received on a survey carried out by TDRO from Pakistan's foreign missions and the trade bodies have been acknowledged in the form of two reports published in collaboration of Prime Institute with whom TDRO has signed a MoU. She indicated that TDRO has also signed an MoU with NCDR which is an internationally recognized body in Pakistan engaged in Mediation and Alternative Dispute Resolution (ADR). She informed that Imports and Exports Registration had been discontinued and trade has been made so easy over the years that all kinds of new exporters have entered the field. She emphasized the need to provide a strong role to TDRO so that the interest of genuine businessman can amicably be protected. The DG mentioned that TDRO in collaboration with ITC assistance is drafting ADR/Arbitration laws for which an international and local consultant have been hired. She further informed the stakeholders consultations are in process, and the objectives of this Seminar was to seek comments/views of the trade bodies about the weaknesses in current mechanism of trade dispute and suggestions for the new Act being formulated. The local consultant will study the local laws and thus give input accordingly, while the Foreign Consultant will study foreign laws to harmonize the law of TDRO with the laws of other countries. She highlighted that TDRO has been making efforts for preparing such rules and laws which may be acceptable locally as well as recognized internationally. She appealed to the private sector to come forward and give their honest opinion about the current system, weaknesses and suggestions for improving the same. (She requested all the participants to fill in the TDRO proforma and return the same for analysis).

6. Ms. Roubina Shah stated that TDRO is also providing assistance to Pakistani importers and exporters who are defrauded in international trade and also educating & training exporters and importers to avoid disputes. She urged the LCCI members to avail the services of Trade Dispute Resolution Organization. She concluded that establishment of TDRO is aimed at swift resolution of trade disputes of business community and improve the image of the country world over. She also urged LCCI management to coordinate with TDRO on disputes and assist in locating the companies on whom cases are filed.

**8. Barrister Yasir Siddique Mughal, Legal Consultant, of TDRO** made a presentation on Reinvigorating ADR Laws & Practices in Pakistan. He explained that whenever business activity increases the rise of dispute is inevitable. He introduced the use of Alternative Dispute Resolution (ADR) methods and informed that it is increasing especially in commercial disputes as it helps to find a quick, inexpensive and more effective alternate system to litigation. The efficiency of national court system in cross border dispute has compelled business community to prefer ADR. The Barrister added that ADR needs to be accelerated in the light of international rules to enable international business community to choose the forum to resolve their disputes amicably and rapidly without intervention of courts. Mr. Mughal indicated that most commonly used method of dispute resolution in Pakistan is litigation, whereas courts are over burdened and litigation follows a formal and inflexible procedure. He indicated the types of ADRs as: Negotiation - give and take, Mediation - third party, Arbitration - adjudication of a dispute; given an award

is binding on both the parties. The benefits of using ADR as more control, good relationship maintained and disputes resolve speedily/ amicably and are less costly while confidentiality is maintained. The Legal Consultant mentioned that there is a Constitutional provision regarding ADR and Courts recognize it in Pakistan. He pointed out that Section 89A, Civil Procedure Code 1908, The Arbitration Act, 1940 and Recognition and enforcement (Arbitration Agreement and Foreign Arbitral) Act, 2011 are governing laws in Pakistan. The Barrister also referred to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration prepared and adopted by 42 countries on 21-06-1985. However Pakistan has still to adopt it.

9. **Mr. Rehman Aziz Chan, LCCI's Standing Committee for Mediation**, speaking on the topic "A Talk on Trade Disputes" gave some suggestions. He highlighted that awareness is the key for this sort of area (trade disputes), as the mechanism of litigation may result in low dispensability. He suggested that ADR program should be established under government backing. He was of the view that there is need to revamp our system like other countries and establish Councils for Mediation which is a voluntary system to settle differences. Contract law should be given more importance while we need to repeal the 1940 Act. He opined that Arbitration - Mediation is on the will of both parties; however it should be a time barred exercise, with fixation of time period for the decision to sort out the dispute. He suggested that particular clauses should be made mandatory with reference to ADR. The contracts should be registered with the Government body. Experts of technical knowledge and legal persons shall jointly see into the disputes. Evening time courts may be initiated to manage the burden of cases and special courses may be added to the judicial academy. He suggested that a fortnightly magazine should be published and also that the 'Mediation Centre', should also be initiated at the FPCC&I. Mr. Chan stated that the courts of Pakistan have a lot of potential, system should be done, however the Banking court Judges should be trained. Enforceability should be more effective. We need to have more interaction with foreign missions, there should be ADR centers in other Chambers for settlement of cases. The members should be educated during their renewal of membership. Mr. Chan endorsed the DG,TDRO's offices at KPK, Gilgit and Sialkot etc.

11. **Mr. Sohail Lashari, past LCCI President and** founding member of Mediation Center who is also a Master trainer , briefed about the efforts extended for its establishment and working of Mediation Centre at LCC&I. He informed that six days Mediation training was conducted with IFC at UK. The Mechanism needs confidentiality, out of court settlement and agreements are written taking in confidence both the parties. More than 20 cases have successfully been completed. He informed that the cases are decided then and there within 5 hours and decision written the same day. He opined that *ego* is the big problem. Mediation is moral based mechanism so it is a difficult task to drag the other party on the table with the complainant. He opined that Embassies are our weak links. There is a very nominal fee for members or non-members. Mediation through video conferencing is held with foreign parties. He was of the view that Pakistani businessmen are less into the fraudulent practices as compared to other countries. Government Organizations can make efforts for enforcement of Mediation laws. All Mediators are certified and the Mediation Centre at LCC&I will be a self sustainable body very soon. He suggested Agreement enforcement (recovery)should be made plausible through a legal instrument.

### **Question Answer Session - Open House Discussion:**

12. After the presentations the house was opened for Question & Answer between brain staking session, following is the update:

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13. **Mr. Rehmatullah Javed**, Chairman, FPCC&I (SME) /Co-founder of Mediation Centre at LCC&I deliberated on the efforts made for the establishment of the Mediation Centre at LCC&I. He suggested that the SAARC Dispute Resolution Center which has an ADR may be taken on board. He offered for holding of next meeting at SME platform. **Director General, TDRO** informed that SAARC Dispute Resolution Center has already been associated with TDRO and both the organizations are holding joint awareness programs.

14. **Mr. Imran-uz-Zaman**, Deputy Director, Trade Development Authority of Pakistan (TDAP) requested LCC&I for cooperation with TDRO and TDAP whenever it is sought. He stated that small exporters who have become defaulters should be penalized as they are spoiling the name of the country.

15. An exporter, **Syed Hassan Raza** enquired about the procedure for applying a dispute settlement case in TDRO. **DG, TDRO** informed that a complaint proforma has been developed and is available on website which may be downloaded, filled in and sent to TDRO office along with all necessary documents through the Chamber for processing of the case.

16. **Mr. Azmat Javed** informed that he is an importer and has a complaint pending since past 3 years. He indicated that goods amounting to 3 million were shipped from Saudi Arabia. Goods were later off loaded at Riyadh Port. The Documents arrived but goods did not. He has made a complaint and case already referred to TDRO. He said he has suffered a huge loss and requested TDRO to resolve his case at the earliest.

17. **Mr. Waheed-Ud-Din** appreciated TDRO and said that he was working with an Italian Pharmaceutical Company Fretro for the last 20 years. The company has now appointed another distributor without cancellation of the agreement with him. He said on contact at Rome – Italy, no response is received from the other side. He said that his products (drugs) are registered in Pakistan and he has spent millions of rupees in the market. He informed that foreign companies have one sided exclusive agreements which should be non-exclusive. Mr. Waheed said that he has been in trouble since more than one year and wants that the party should come on the table. He said that at present there is no legislative and enforcement body, as such Legal authority should be appointed to look after such matters. He pointed out that indenting / import of goods not manufactured in the country, may be dealt as it is done in Middle East where once a distributor is appointed he cannot be changed. He said that the foreign company should be stopped to work in Pakistan till such time the dispute is resolved. He suggested that International Chamber of Commerce & Industry shall also be taken on board.

18. Another participant informed that he worked with a foreign company for about 35 years, earned goodwill in the market and loyalty of exporter, yet one fine morning they said “sayonara”, *goodbye*. This kind of one sided decision for cancellation of agreement by the foreign companies should be taken to task.

19. Kh. Belal Ahmad enquired about the specific suggestions for drafting of the TDRO Law? He was of the view that some punitive action needs to be taken. There could a Black listing link on the website. Business activities of the importers should also be monitored. He suggested that the Commercial attaches in Embassies should be made accountable for the number of cases resolved by them. Inputs of Chambers should also be taken before filling PERs of the Commercial Officers. He informed that Foreign companies do not bother about our courts. In Dubai such companies are black listed till the time dispute is settled. DG, TDRO responded that black listing links will be placed on TDRO website. Engagement of departments like NAB and FIA is being considered, since the Pakistani businessmen not agreeing to come on the table to resolve the disputes are spoiling the image of the country. All the Trade Dispute cases are required to be routed through the concerned Chamber of the complainant.

20. Another participant **Mr. Rafique** inquired that Bangladeshi company send particulars for verification to Commercial Counselor. Genuine businesses have no problem. Punishment should be suggested to restrict the company to avail banking facilities.

21. **Mr. Saeed** informed that he is suffering for the last two years as his money is at stake and he is not being heard by the Consumer Protection Department (CPD) of SBP nor by the Banking Ombudsman. He has approached CPD of SBP for resolution of his problem. The other party (Bank) refuses to come on the table. He had been threatened as well. At a time three Joint Directors of SBP dealt his case and the decision was announced in the complainant's favour. After the decision the SBP became unresponsive and his matter is still in hanging position. He indicated that the time limit for implementation of such a decision is 60 days and he has not received any answer so far even after lapse of one year. **Mr. Riaz Hussain** representative of State Bank of Pakistan responded that he is not aware of any such complaint and he has come to know the issue at this forum. He asked that the case be sent to him and assured to look into the matter personally.

22. **Mr. Ijaz Ahmed Khan** said no payments are received from buyers. Banks put on hold the payments and exporters have to bear 15% interest charge. LC should be considered the proper way to transact and a. Time frame shall be there. He suggested that SBP should direct 'Commercial Banks' to do away with the delay.

23. **Mr. Yaseen, Legal Advisor** Pak - German Business Council suggested that trade disputes should be well defined and that the non-payment issues of the importers / exporters may be addressed by giving confirmation letters to them. He gave some important inputs like as the New York Convention covers both Trade, Investment and Commercial Dispute between private parties of two or more countries, Trade Dispute may be defined as a. *Any difference, claim or dispute between two or more persons/entities (natural or artificial) of different countries* b. *It must have value over US\$ 1000*, c. *The transaction must have valid and legally enforceable documentation*, d. *It may include all or any one of trade, investment and commercial transaction*, e. *There must be limitation period of filing complaint*. He also suggested that a trade dispute must be finally resolved in a specified period say 90 days, 120 days or 180 days in line with WTO where it says maximum period 12 months if no appeal and 15 months where appeal is made. The data of all members of Chambers/Associations may be centralised and it may be ensured that only valid members of trade body are entitled to import or export and every year renewal of members is checked and ensured to delist all such companies as members of trade bodies who do not file tax return. The system should provide credibility check of all exporters and members of trade bodies online through TDRO.

24. **Mr. Arif Chaudhry, Legal Consultant of SMEDA** informed that templates should be devised for contracts for which he offered his services. He further stated that oral contracts are allowed under the law; A proforma should be made indicating important clauses for importers enunciating the main points of the commercial contracts; Commercial Counselors should also show seriousness and that risk countries should be identified.

25. **Mr. Ahmed Nadeem Butt representative of Muslim Commercial Bank** informed that exporters face difficulties and delays because of improper documentation. He indicated that LC does not mean that payment has been received; clauses that L/C issuance bank has inserted have to be followed. He stated that most of the business concerns are not aware of the rules and regulations. He emphasized the need that professional people should be hired by the businessmen to deal with the export documents. He indicated that most of the time LC expires and the exporters are not aware of it.

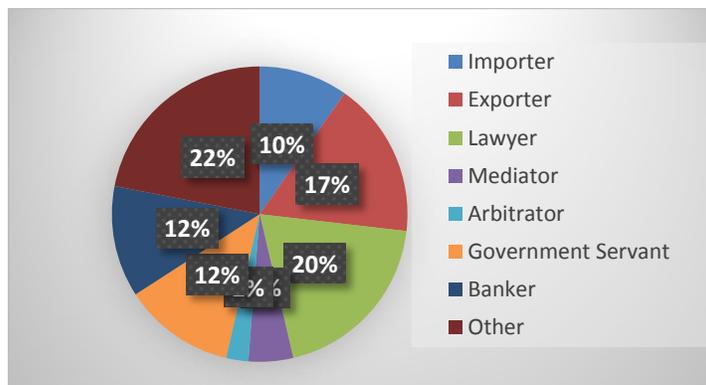
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**26.** At the end distribution of Shields with photo session was held. The seminar ended with closing remarks and thanks to the august audience from Secretary, LCC&I followed by Lunch.

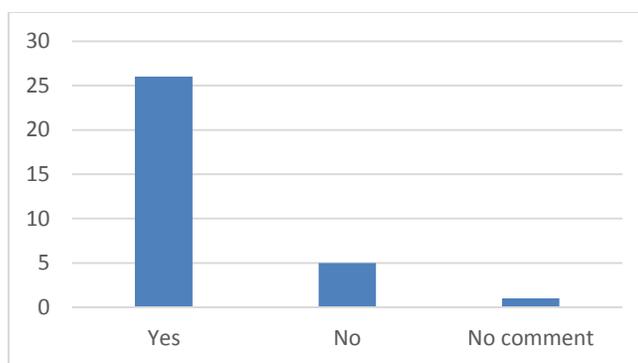
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**Feedback form Survey of LCCI Seminar**

1. **Participant status :** The session was very well attended. The participant mix of the seminar comprised on importers 10%, exporters 17%, even lawyers 20% , bankers 12% etc.



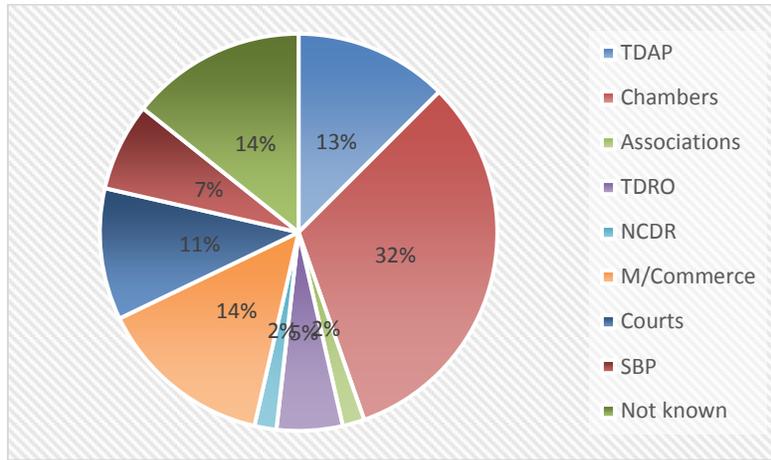
2. **Are you aware of the Trade Dispute Mechanism in the Country ?** it was surprising to note that participants were well aware of the dispute mechanism in the country.



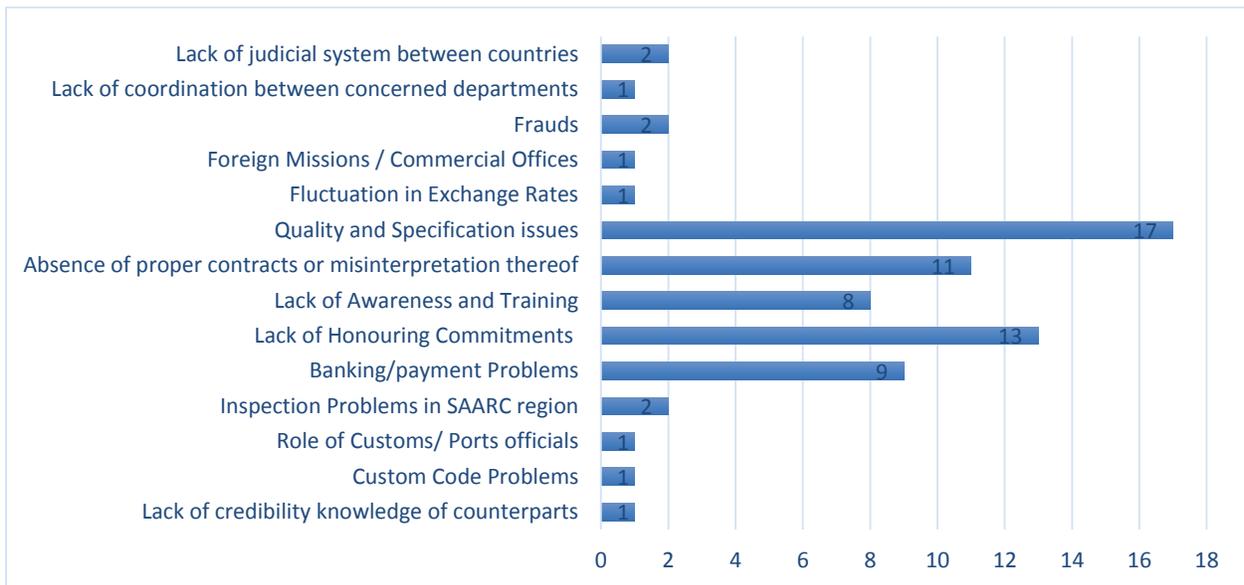
3. **Are you satisfied with the current Trade Dispute Mechanism in Pakistan ?** however the satisfaction level was found very low:



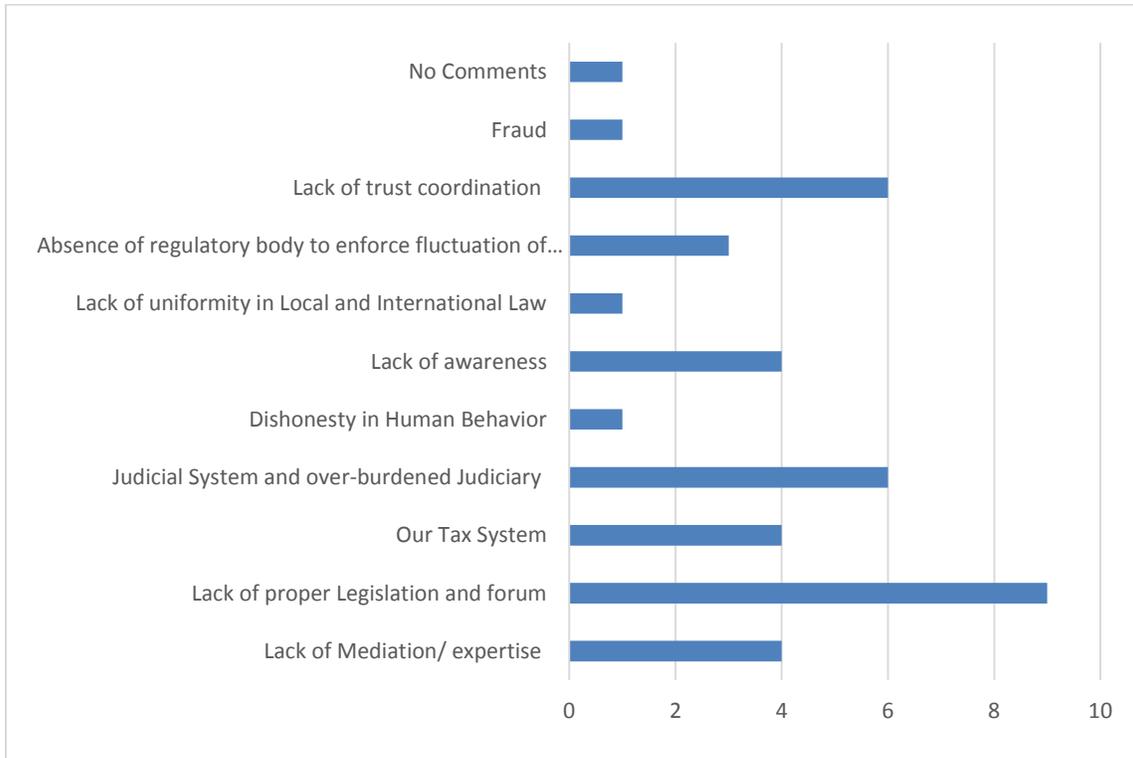
**4. Which organizations look after these disputes in Pakistan ?**



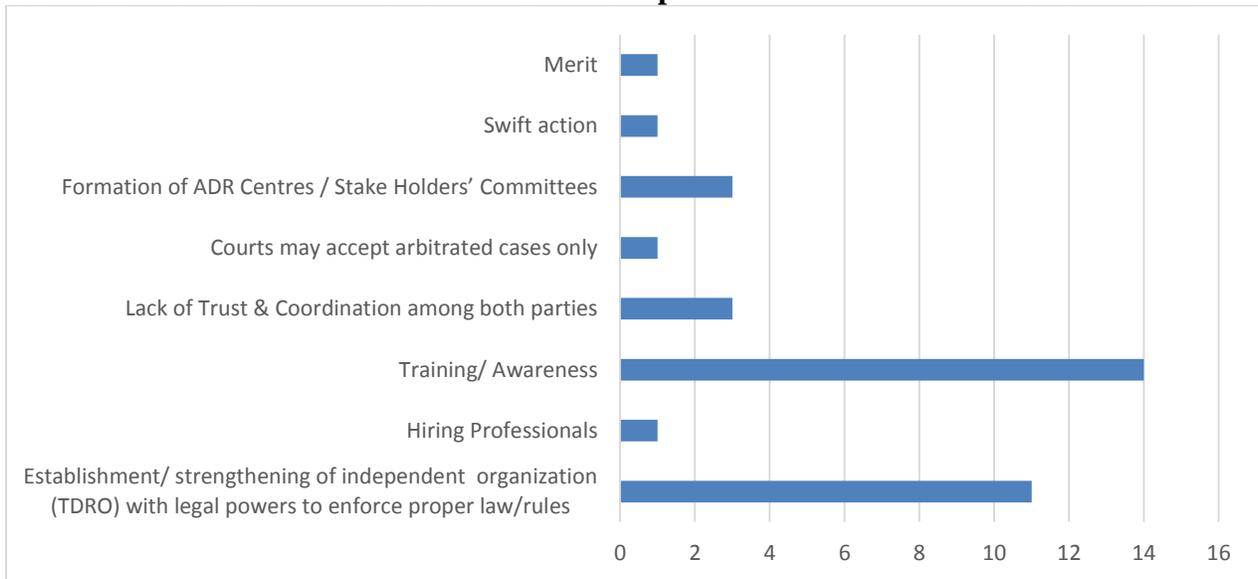
**5. The main reasons for trade disputes between Pakistani businessmen and their foreign counterparts;**



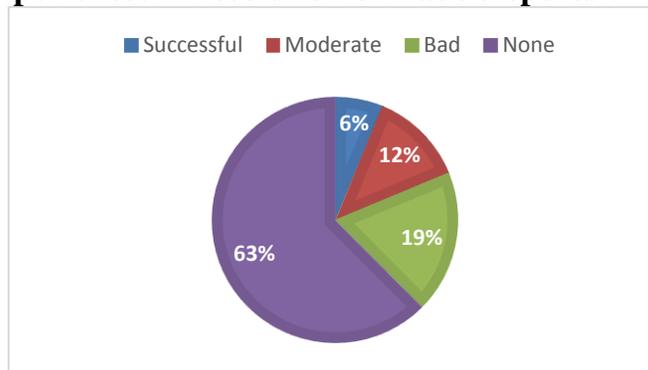
**6. The real problem due to which trade disputes are not being resolved swiftly:**



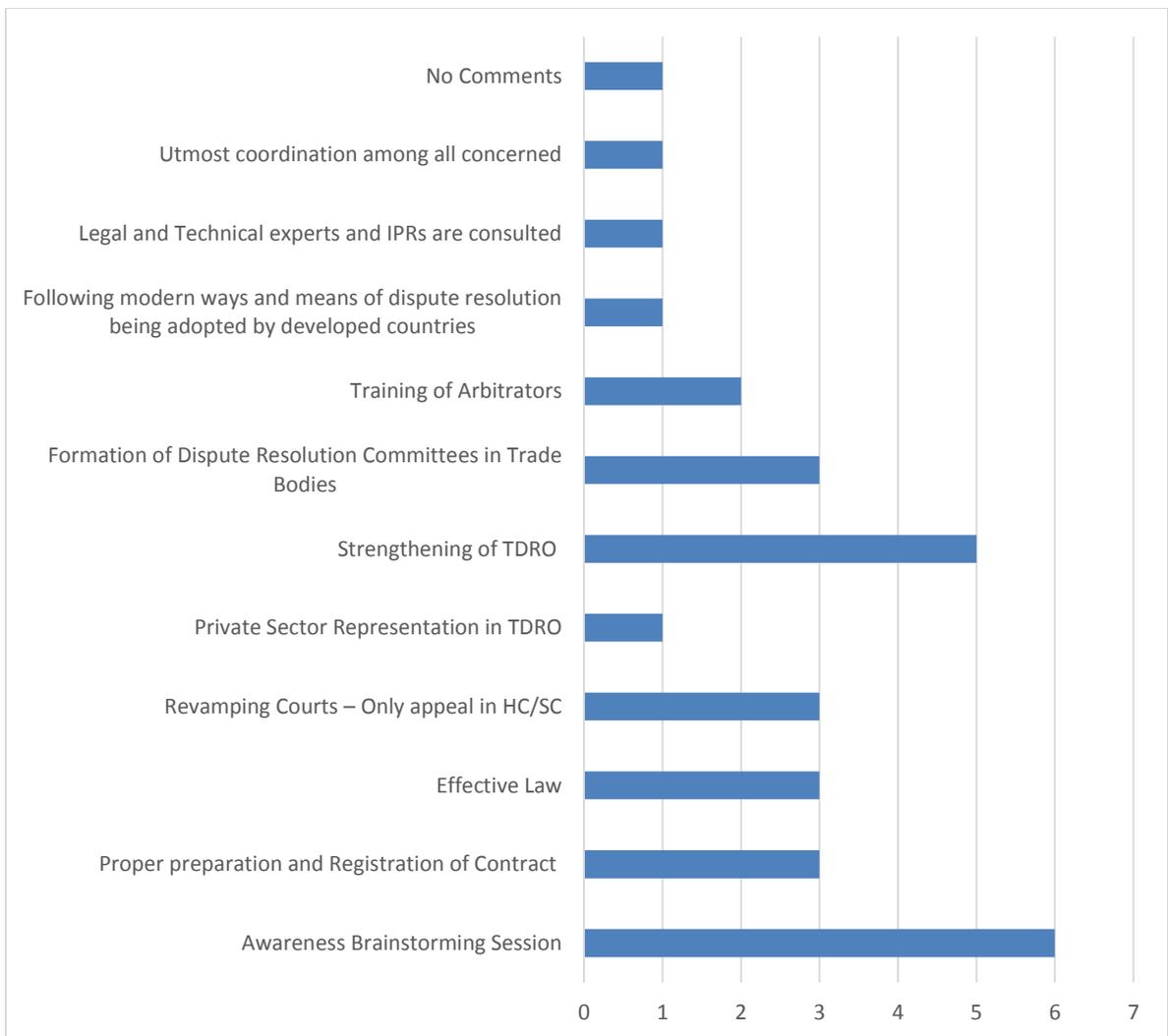
**7. How can the weaknesses of current trade dispute resolution mechanism be removed ?**



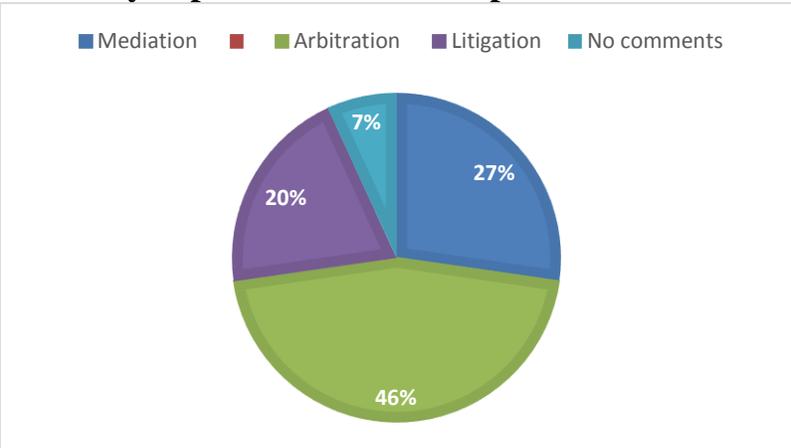
**8. What are your experiences in resolution of trade disputes ?**



**9. Please give your valuable suggestions for the drafting of trade dispute resolution law ?**



**10. What mechanism do you prefer for Trade Dispute Resolution ?**



**11. Has today's Brainstorming Session been useful ?**

