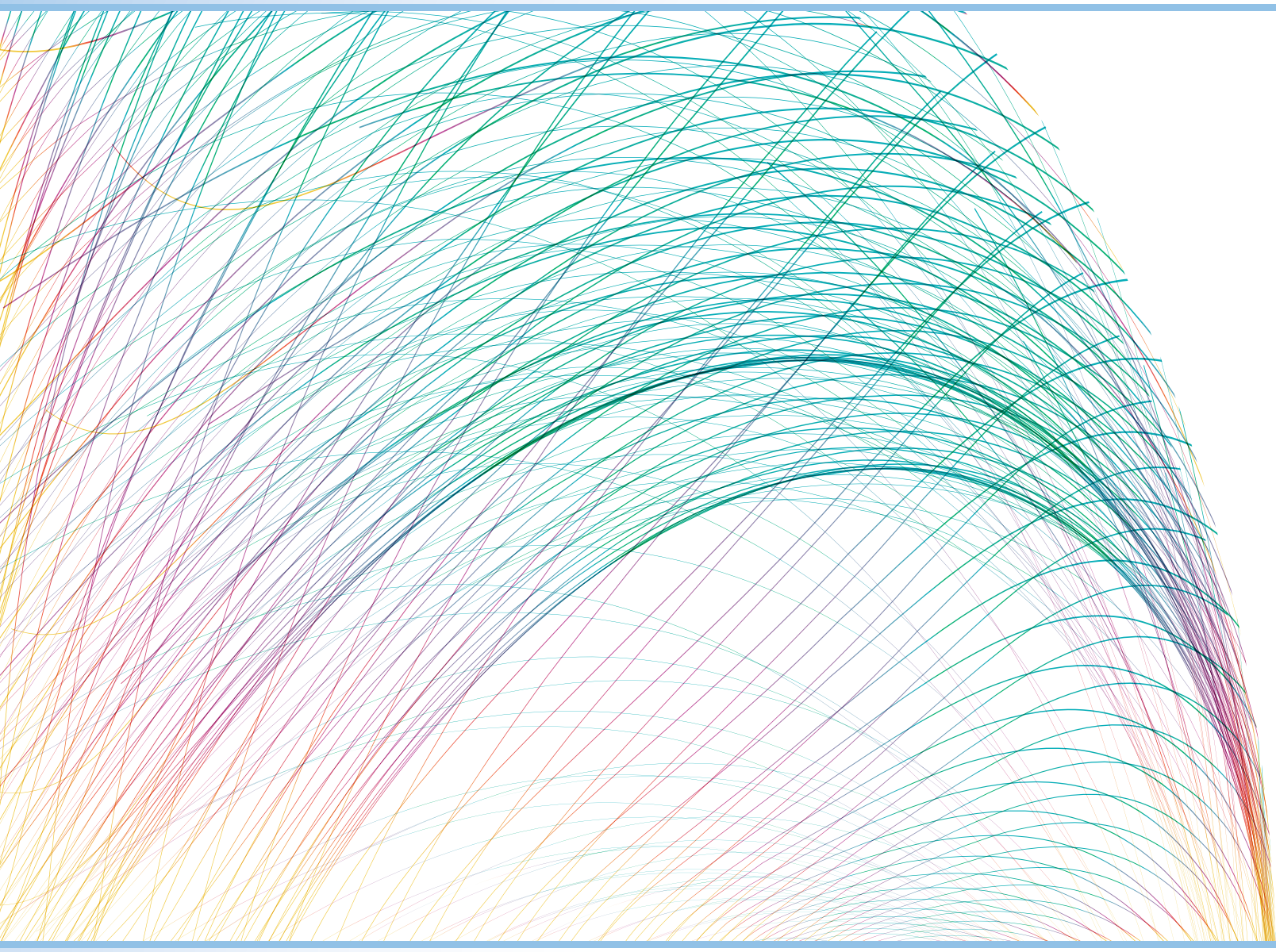
3rd ANNIVERSARY

ADR IN BANGLADESH: **TURNING OF THE TIDE**



BIAC

Bangladesh International Arbitration Centre

The Institution for Alternative Dispute Resolution

Turning of the tide is a common phrase that references the way the tides are low and high, and the lack of control people have over the tides. When a tide turns, it goes in an opposite direction. The phrase has been used for centuries in variations. Noted examples include Shakespeare's *Henry IV,* Part I where Shakespeare uses "turn the tide" as a variant.

Most often, the turning of the tide is used as a metaphor to express a change in direction as relates to human thought or behavior.

In the context of dispute resolution, we use this phrase to illustrate a major departure by adopting two techniques: Arbitration and Mediation

3rd ANNIVERSARY

ADR IN BANGLADESH: **TURNING OF THE TIDE**

BIAC
Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

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“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser- in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.”

–Abraham Lincoln

What's inside

“During a negotiation, it would be wise not to take anything personally. If you leave personalities out of it, you will be able to see opportunities more objectively.”

From the Desk of the Chairman

The rapid economic development of Bangladesh, and our exposure to the globalized world, has required us to adapt our institutions and systems.

As business becomes more and more complex, there will be disputes arising from the implementation of contracts – this is inevitable. Going to our courts to resolve the disputes means delay, in view of the huge number of cases pending before them.

In our interaction with businesses from more developed countries, we noticed that they had institutions that supported settlement of disputes out of courts. We were convinced that such institutions, with appropriate modifications to suit our local conditions, would be required. This was a dream shared by three business chambers – ICC-Bangladesh, DCCI and MCCI.

Turning a dream into reality was more difficult than we could imagine. Despite the support of our well-wishers, and taking out a licence from the Government in 2004 as a not-for-profit organization, we could not begin functioning. We were fortunate that the International Finance Corporation (IFC), a World Bank affiliate, came to our support at a critical phase. Using funds from UKAid and the European Union, the IFC provided operational and technical support for three years initially; this support was extended for another eighteen months. Thus, we began functioning in 2011.

On this 3rd Anniversary, I extend to all our well-wishers and clients, our gratitude for their support. I appeal to all businesses to adopt BIAC dispute settlement provisions in their contracts. Simultaneously, I urge our Governmental authorities to refer to the BIAC Rules in their contracts.

Allah Hafez

Mahbubur Rahman
Chairman, BIAC

“Peace is not the absence of conflict, but the ability to cope with it.”

Government of the
People's Republic of Bangladesh
Dhaka

MESSAGE FROM COMMERCE MINISTER

I congratulate the Bangladesh International Arbitration Centre (BIAC) for having completed three successful years and stepping into the fourth year of its existence.

In the globalized world of today, business requires speedy, effective and confidential procedures to settle commercial disputes. No matter how hard companies may try to avoid them, disputes may arise in the implementation of contracts. Business cannot wait for long for their disputes to be settled; they need to resolve the problem and move on. Our Government has provided alternate dispute settlement options for resolving such disputes. Already, several laws have been changed, to provide for out-of-court settlement.

My Ministry is committed to providing an enabling framework for businesses. In fact, we lay great emphasis on investment, including FDI. I am aware that many investors are concerned about the time required to settle commercial disputes. We now provide the option of ADR and I hope our businesses will select the path most advantageous to them. At the same time, I believe our legal culture will also change gradually to make the environment more business- friendly.

I am delighted that BIAC has taken on the task of providing ADR services, particularly arbitration and mediation. BIAC's role in institutionalizing arbitration and mediation in the country will surely supplement our government's efforts.

I wish the Bangladesh International Arbitration Centre (BIAC) all success.

Tofail Ahmed, MP
Commerce Minister

“Resolving conflict is rarely about who is right. It is about acknowledgment and appreciation of differences.”

Government of the
People's Republic of Bangladesh
Dhaka

MESSAGE FROM FOREIGN MINISTER

I congratulate the Bangladesh International Arbitration Centre (BIAC) for having completed three eventful years of operation.

No matter how hard we try, disputes will arise. Whether in inter-State disputes, or between companies or among individuals, how we try to resolve such disputes reveal a great deal about the society and state we live in. Our courts are now overburdened with cases, and new cases are being instituted every day. From the experience of other countries that have faced similar problems, alternate dispute resolution has been accepted globally.

I have a particular interest in this subject, as I was involved in the passage of the UNCITRAL Model Law in 1985. I am delighted that Bangladesh has not only joined the New York Convention in 1992, but has also enacted the Arbitration Act of 2001, which incorporates elements of the UNCITRAL Model Law. Now, our arbitration awards are enforceable abroad, while foreign awards are also enforceable within the country.

Many possible forms of dispute resolution techniques are available, from among which BIAC has concentrated on arbitration and mediation. Both these methods are not adversarial, and enable parties to continue with their relationship once the dispute is overcome. The presence of BIAC is of comfort to FDI, and publications on "Doing Business in Bangladesh" recommend approaching BIAC for dispute settlement.

I wish BIAC all success.

Abul Hassan Mahmood Ali, MP
Foreign Minister

“The basic building block of good communications is the feeling that every human being is unique and of value.”

MESSAGE FROM KYLE F KELHOFER

For IFC, this is a tremendous opportunity to support the establishment and operationalization of the first ever Alternative Dispute Resolution (ADR) Center, Bangladesh International Arbitration Center (BIAC) in Bangladesh.

A key focus in IFC's operation in Bangladesh is to create an enabling environment for domestic and foreign businesses, thereby promoting economic development, creating jobs and improving people's lives. For business to flourish, a fundamental requirement is the prevalence of effective and efficient commercial dispute resolution institutions.

BIAC is supported by the Bangladesh Investment Climate Fund (BICF) managed by IFC, in partnership with the UK Government (UKaid) and the European Union (EU). BICF aims to support establishment of an efficient commercial ADR system to settle commercial disputes using various methods of ADR through BIAC.

BIAC was launched with a supporting role played by IFC. BIAC started with the vision to help business and investors settle commercial disputes out of court, in a quick, transparent and cost effective-manner, through a structured and institutionalized mechanism. A striking feature is that the initiative is led and driven by the private sector - BIAC has been established in partnership with International Chamber of Commerce – Bangladesh, Metropolitan Chamber of Commerce and Industry and Dhaka Chamber of Commerce and Industry, who have also made a financial contribution in the Center.

Along with assisting BIAC's establishment, IFC is supporting capacity building of lawyers and judges in arbitration, mediation and conciliation to develop an encouraging ecosystem for out of court dispute resolution. IFC also supports awareness among stakeholders to promote this efficient mechanism. It is expected that these initiatives will help create the necessary pool of resources that will reduce the huge backlog of commercial cases and prevent the accumulation of further backlogs, thus reducing the cost of doing business, reducing legal uncertainties and minimizing the delays of the formal justice system.

IFC is delighted to be supporting BIAC as a partner for developing an effective ADR regime in Bangladesh and warmly felicitates BIAC on its 3rd anniversary, and wishes the BIAC team and its excellent leadership all the success in the future.

Kyle F. Kelhofer
Country Manager
Bangladesh, Bhutan, and Nepal
International Finance Corporation (IFC)

“In business, you don’t get what you deserve, you get what you negotiate.”

MESSAGE FROM CHIEF EXECUTIVE

BIAC has completed three years of existence.

When I was invited to head BIAC, I did not realize what was in store. It is relatively easy to set up the physical facilities. My experience in dispute settlement was in the WTO (equivalent to arbitration, except that the disputants are countries and not companies). There, the WTO Secretariat handles all issues, and we, as arbitrators, were spared of all the background work that is involved. Now, I undertook to arrange those background tasks.

A new arbitration centre is a different story. And, in an environment in which the ancillary institutions are yet to develop, it is even more challenging.

BIAC got into the act. We recruited personnel, and set up shop. Contrary to what an arbitration centre would do, we began training in arbitration and in the art of negotiation. And, when the time was ripe, began training in mediation as well. Our Arbitration Rules were launched at our first anniversary and, today, we launch our mediation rules – on both counts the first in the country and the only institution to take up this challenge.

Changing the culture of legal remedy is not easy. Fortunately, the Government is deeply committed to providing alternates to courts, and has supported our venture. The experience from countries that have already travelled this path tells us that it is a question of time and acceptance of modern methods. We are grateful for the sponsorship of the three chambers, and the support from the IFC. Without this winning combination, we would not hope to go far.

BIAC looks forward to your support in the days ahead.

Dr. Toufiq Ali
Chief Executive, BIAC

“Information is a negotiator’s greatest weapon.”

BANGLADESH INTERNATIONAL ARBITRATION CENTRE (BIAC)

THREE EVENTFUL YEARS

With the rapid growth of the Bangladesh economy, and increasing exposure to the globalized world, both external and internal business relationships have become more structured and formalized. Gone are the days when the traditional forms of doing business through oral contracts and understandings can be adequate.

Often, businesses are conducted with firms and individuals with whom the relationships have not been tested over time. Usually, when a deal is negotiated, the terms and conditions of the understanding are put down on paper, often after hard bargaining. Both sides want to honour the contract and carry out their part of the bargain.

Despite best efforts from both sides, there could be differences in the interpretations of the contract or the circumstances prevailing at the time of signing of the contract have changed so dramatically as to make the contract inoperative. If negotiations to resolve the differences have failed, the parties have to resort to the dispute resolution provisions of the contract.

Businesses have a preference for quick and straight-forward approach to settlement of disputes. This is not always possible in the environment of the court. Apart from everything else, there is usually no privacy or assured timelines in court proceedings. Therefore, businesses and legal experts across the world have started changing the dispute resolution scenario and brought about Alternative Dispute Resolution (ADR) methods.

ADR as a method of dispute resolution had already been introduced and practiced in Bangladesh, though on a limited scale. The first legal framework appeared in 1940, with the Arbitration Act. With Bangladesh becoming a party to the New York Convention, and examples provided by the UNCITRAL Model Law, a new law was enacted: The Arbitration Act 2001. This Act brought Bangladesh into modern arbitration.

Bangladesh did not stop with this Act; other laws incorporated provisions of ADR. For instance, the Artha Rin Adalat Ain (Money Loan Court Act) 2003 introduced the option of mediation; in 2010, mediation was even made mandatory prior to the hearing in court. The Civil Procedure Code, a fundamental procedural law for civil cases, introduced mediation and in September 2013, made it mandatory before hearing in court (the rules to make this effective have not been published as yet). There are other laws where arbitration has been introduced: The Bangladesh Energy Regulatory Commission Act 2003, the Real Estate Development & Management Act 2010. ADR has also been introduced for resolving Customs, VAT and Income Tax cases.

Although the legal framework exists, we do not find ADR being practiced in its modern form. Of course, many businesses adopt informal arrangements for settlement of disputes – where they work, that is indeed excellent. The legal provisions of ADR have not proven to be as effective as hoped for due to lack of awareness, absence of trained personnel, and lack of desire to adapt to a changed system.

This is the environment which three business chambers – the International Chamber of Commerce, Bangladesh (ICC-B), Dhaka Chamber of Commerce & Industry (DCCI), and Metropolitan Chamber of Commerce & Industry (MCCI) – wanted to change. Led by Mr. Mahbubur Rahman, Chairman, ICC-B, the three chambers obtained a license from the Government in 2004 and registered a Not-For-Profit Company under the Companies Act. However, this Centre could not begin functioning till the Bangladesh Investment Climate Fund (BICF), managed by the IFC, in partnership with DFID and the European Union, came forward to support BIAC under a three year Co Operation Agreement. This agreement has, since been extended to end-2014.

THE BEGINNING

Through a simple ceremony at the Bangabandhu International Conference Centre, BIAC was launched on 9th April 2011 by Hon'ble Barrister Shafique Ahmed, the then Minister for Law, Justice and Parliamentary Affairs. Former Chief Justices and Justices of Supreme Court of Bangladesh, Members of Parliament, Barristers, Lawyers, high government officials, diplomats, current and former Presidents of business chambers, prominent businessmen, Chairmen and Managing Directors of Banks, civil society members, representatives of IFC were also present on the occasion.

The Secretariat of BIAC is headed by a Chief Executive, who reports to the Council. The Council is a four-member body, with two representatives from the ICC-B, and one each from the DCCI & MCCI reflecting their contributions to the seed money for the organization. The current Chairman is Mr. Mahbubur Rahman, President, ICC-B. Apart from the Council, BIAC has a Technical Advisory Committee (TAC), which includes representation from the donor agency, reviews progress of BIAC and makes strategic recommendations. The Chair of the TAC is Barrister Nihad Kabir. The Secretariat runs the Centre on a day-to-day basis.

BIAC'S CORE ACTIVITIES

BIAC started functioning with the main objective of facilitating ADR- more precisely, arbitration and mediation - for resolution of domestic and international

commercial disputes. From the outset, we realized that BIAC could not be run on the pattern of arbitration centers in other countries – there were major differences to be accounted for. In most countries that have such centers, the arbitration center provides support for institutional arbitration. This is a complex process – support which BIAC is positioned to extend to clients.

In Bangladesh, the ancillary support institutions are not present. For instance, there should be a pool of qualified arbitrators, who would have been trained and certified by an institute, such as a Chartered Institute of Arbitrators. We find such chartered institutes in the UK, in India, in Malaysia, in Sri Lanka to name a few countries. In the absence of such training and certifying institution, BIAC is obliged to arrange for such training. This has imposed additional constraints on the meager resources of BIAC.

BIAC was also required to engage in another activity, which is not very common for such institutions: awareness building. In our culture, the accepted norm of resolving commercial disputes is to go to court if negotiations, which are generally half-hearted in any event, fail. Although, in a limited scale, arbitration has been conducted, it has not generated sufficient interest. Often, if a party has received an adverse award, the party will go to court, and the process becomes similar to a court proceeding.

When lawyers study in the universities, the emphasis on ADR is relatively light, if at all. Not all universities include ADR in their curriculum. Those that do, emphasize dispute settlement in the context of other problems in society, not for commercial disputes. It is expected that when the lawyers enroll in the Bar and begin practicing, they will get practical experience in arbitration and mediation while with the firm they may be attached to. Alas, this may not always be true in the UK, and far less true in Bangladesh.

The task before BIAC was thus complicated by factors that arise from our legacy and the historical and cultural context in which the country finds itself. Apart from the core business of arbitration and mediation, we were obliged to also engage in training and awareness building. BIAC happily undertook these challenging tasks, along with facilitation arbitration and mediation.

An account of our outreach and training programmes will be given in a separate article.

ADR FACILITATION

In order to facilitate arbitration and mediation, BIAC has already developed state-of-the-art facilities required. It has two fully-equipped and furnished arbitration rooms, recording and video conferencing arrangements, besides exclusive rooms for the arbitrators as well as consultation rooms. BIAC is the only institution in the country capable of providing reliable and prompt legal transcription services.

Arbitration: Each Center has its own rules; BIAC commenced the process of framing its own rules early on. The draft prepared in Dhaka was has vetted by a UK law firm, Debevois and Plimpton. Thereafter, IFC experts visited Bangladesh and went into the different provisions of the draft quite thoroughly. Finally, the draft was shared with eminent jurists of Bangladesh, including former Chief Justices, Justices and leading lawyers. Only after they confirmed that the Rules were acceptable and in conformity with our Arbitration Act 2001, were we in a position to launch the Rules – which we did at our 1st Anniversary in 2012.

Our personnel have received training at arbitration centers in Singapore, Hong Kong and Cairo, and are in a position to manage the cases that are expected to be registered at BIAC. Already, the BIAC arbitration clause has been adopted in a large number of commercial contracts; none of these have required arbitration. In the meantime, BIAC is host to a large number of ad-hoc arbitrations, where no specific institution is involved. We are aware that in several of these arbitrations, the BIAC Arbitration Rules are being followed to the extent possible, for procedures. BIAC has already hosted about a hundred such ad-hoc arbitration hearings.

BIAC has already formed its Panel of Arbitrators, in which some senior jurists are included. Some of these distinguished personalities are named below:

1. Mr. Justice Latifur Rahman, Former Chief Justice of Bangladesh
2. Mr. Justice Mahmudul Amin Chowdhury, Former Chief Justice of Bangladesh
3. Mr. Justice K.M. Hasan, Former Chief Justice of Bangladesh
4. Mr. Justice Syed J.R.Mudassir Husain, Former Chief Justice of Bangladesh
5. Mr. Justice Tafazzul Islam, Former Chief Justice of Bangladesh
6. Mr. Justice Mohammad Fazlul Karim, Former Chief Justice of Bangladesh
7. Mr. Justice Md. Awlad Ali, Former Justice of the Supreme Court of Bangladesh
8. Mr. Justice Syed Amirul Islam, Former Justice of the Supreme Court of Bangladesh
9. Mr. Md. Abdus Samad, Barrister-at-Law
10. Mr. A.F. Hassan Ariff, Senior Advocate, and Former Attorney General of Bangladesh
11. Mr. Ajmalul Hossain QC, Barrister-at-Law
12. Mr. Fida M. Kamal, Barrister-at-Law, Former Attorney General of Bangladesh

Mediation: Not all commercial disputes are appropriate for arbitration. Where the amount in dispute is comparatively small, or where some non-legal issues are involved, the most frequently chosen option is Mediation. Small and medium enterprises, for instance, would not normally opt for arbitration. They would not be able to afford the cost involved, or the legal fees. For such disputes, it is common to resolve the problem through mediation. Mediation has a magnificent feature – it allows the disputing parties to resolve their disputes and resume their business relationship if they so choose.

Although mediation is an option in some laws in Bangladesh, modern mediation techniques have not been practiced adequately. The absence of qualified mediators, trained in the modern techniques, has been a major stumbling block to the effective implementation of the laws.

BIAC noted very early on, that appropriate training on mediation is required, and that trained mediators are available when the BIAC Mediation Rules are launched. Another article will describe what BIAC has done to provide for mediation training. Here, we will concentrate on the development of our Rules.

The first step was to prepare our own Mediation Rules. Thereafter, this Draft was sent to IFC Headquarters, Washington DC, for them to examine and ensure that it reflects the best practices from around the globe. Since mediation is relatively new in Bangladesh, it was vital that the detailed procedures be outlined; something that may be taken for granted elsewhere. Thereafter, we consulted with our experts and jurists. The ultimate result is what will be launched at our 3rd Anniversary. We will have the BIAC Mediation Rules 2014 as well as the BIAC Code of Conduct for Mediators.

In the section on training, we will describe how we created the beginning of our pool of trained Mediators. We are proud to have eleven CEDR-Accredited Mediators, along with six others who have completed the training. All seventeen Mediators are now qualified to conduct Mediation. Among them are eminent citizens, such as Mr. A. Muyeed Chowdhury, Former Adviser Caretaker Government & Former Civil Servant, as well as bankers, NGO-representatives, executives, lawyers, etc. Their names and CVs are on our website.

THE FUTURE

The last three years have been exciting times for all of us at BIAC. We are treading into areas where no institution in Bangladesh has gone so far. Yet, this is just the beginning – much more needs to be done. Fortunately, we have already begun to be recognized internationally. For instance, the British Foreign and Commonwealth Office, in their publication "Doing Business in Bangladesh" have recommended the use of BIAC. Foreign investors will find this facility of immense value. At the same time, domestic investors will find it a great comfort that for dispute settlement they need not go to Singapore or London or Paris any longer.

BIAC is proud to be of service to our businesses, and hopes that through this means it will facilitate investment in the country.

BIAC'S OUTREACH AND TRAINING PROGRAMME

The concepts of arbitration and mediation, although not unknown to our business community and lawyers, are the forms of ADR currently in use in Bangladesh. As these ADR methods have not been popularized, there are only a few conversant professionals and retired judges applying them. As a consequence, the techniques and procedures for applying them are not of widespread use. Furthermore, our law schools also do not adequately cover arbitration and mediation. Serving judges, and lawyers who usually practice in the judges' courts, do not usually attach much weight to these ADR methods, as is demonstrated from little success in implementation of ADR provisions in a number of Bangladesh legislation. BIAC has considered this situation from the very inception. Therefore, side by side with developing infrastructure and facilities for arbitration and mediation, BIAC started to create demand for ADR services by designing outreach and training programmes.

BIAC's Outreach Programme

Disadvantages of dispute resolution through court system are well known in the country. Government has enacted a few legislations incorporating ADR provisions to circumvent the problem. But the predicament persists and success in implementation of the ADR provisions is few and far between.

To create awareness about arbitration and mediation, BIAC organizes Dialogues, Seminars and Workshops on regular basis wherein businessmen, company executives, lawyers and academics participate. BIAC organizes exclusive events for senior law students of universities as well.

Ambassadors and High Commissioners resident in Dhaka also visit BIAC to see for themselves the dispute resolution facilities at BIAC, so that they can advise their respective citizens in case of need. In fact, such dispute settlement centers are vital to attract FDI.

The chart below will show the particulars of BIAC's Outreach Programmes:

List of BIAC's Outreach Programme

Sl.	Date	Topic	Name of the Resource Person/Presenter	Number of Participants
1.	14 May 2011	ADR Workshop on Investing Across Borders	Ms. Antonia Menezes, IFC Washington	85
2.	9 Jul 2011	Court Interventions in Arbitrations: Assistance or Hindrance?	Mr. Ajmalul Hossain QC	62
3.	20 Sept 2011	Dialogue on "Arbitration as an out-of-court dispute settlement tool:Global experience and implications for Bangladesh"	Prof. Arif Hyder Ali Ms. Nina Pavlova Mocheva, IFC Washington	53
4.	26 Oct 2011	Speech on " Role of courts in Arbitration"	Justice Syed Amirul Islam	39
5.	10 Dec 2011	Dialogue on "Arbitration in an Emerging Economy"	Prof. Arif Hyder Ali IFC Washington	61
6.	15 Dec 2011	Orientation on BIAC for the students of BRAC University	BIAC Officials	16
7.	26 Jan 2012	The Rise and Rise or the Rise and fall of Investment Arbitration	Dr. Gavan Griffith AO QC Former Solicitor General of Australia	72
8.	07 Mar 2012	"Arbitration as a method of commercial dispute resolution: Tool kit for practitioners"	Barrister Moyeen Firozee	13
9.	21 Apr 2012	BIAC First Anniversary Dialogue on " ADR to promote Trade & Investment"	Professor Fabien Gélinas McGill University, Canada	74

List of BIAC's Outreach Programme

Sl.	Date	Topic	Name of the Resource Person/Presenter	Number of Participants
10.	9 Jun 2012	Meeting with former Chief Justices, Justices and senior lawyers using BIAC	Chairman & Members of BIAC Council	12
11.	17 Jul 2012	Workshop on "Court Intervention in Arbitration"	Former Chief Justice Mr. Tafazzul Islam	35
12.	28 Jul 2012	Career Fair 2012	-	400
13.	10 Nov 2012	Dialogue on "Arbitration at BIAC for settling Commercial Disputes"	Dr. Toufiq Ali Chief Executive, BIAC	104
14.	29 Dec 2012	Dialogue on "Arbitration for settlement of Business Disputes"	Dr. Toufiq Ali Chief Executive, BIAC	62
15.	13 Jan 2013	"Basic Arbitration Seminar"-Inauguration and Introduction to Arbitration	International Law Institute,(ILI), Washington DC	75
16.	24 Jan 2013	BRAC University Law students visits BIAC	BIAC Officials	8
17.	25 Mar 2013	BIAC Presentation on Arbitration	AHM Nurul Islam, Director BIAC	50
18.	30 Mar 2013	BIAC Seminar	Dr. Toufiq Ali, Chief Executive, BIAC	115
19.	27Jun 2013	BIAC Forum	-	25
20.	30 Jun 2013	Meeting with Press Media	BIAC Personnel	8
21.	2 Jul 2013	BIAC Presentation on Arbitration	Dr. Toufiq Ali, Chief Executive, BIAC	60
22.	17 Aug 2013	Meeting with former Chief Justices, Justices & Senior Jurists using BIAC	Chairman & Members of BIAC Council	19
23.	27 Aug 2013	FICCI Meeting	Dr. Toufiq Ali, Chief Executive, BIAC	60
24.	21 Sept 2013	Dialogue on "Saying YES to Arbitration"	4 Recipients of training in arbitration from BIAC	60
25.	3 Dec 2013	Meeting with Electronic Media	AHM Nurul Islam, Director BIAC	9
26.	18 Jan 2014	"Getting the Architecture of Arbitration Right" –Law Chambers	BIAC Personnel	20
27.	23 Jan 2014	Presentation on arbitration to KAFCO Senior Management	Dr. Toufiq Ali, Chief Executive, BIAC	40
28.	28 Jan 2014	Dialogue on "Relative Roles of International Law & Domestic Law in International Commercial Arbitration"	Dr. Gavan Griffith AO QC Former Solicitor General of Australia	64
29.	16 Mar 2014	Meeting with Electronic Media	AHM Nurul Islam , Director BIAC	6
30.	3 April 2014	Presentation on arbitration to G4S Senior Management	Dr. Toufiq Ali, Chief Executive, BIAC	30

Training Programme at BIAC

BIAC arranges training programme on Arbitration (Foundation Course on Arbitration, Advanced Course on Arbitration, and TOT on Arbitration) in collaboration with International Law Institute, Washington DC and training programme on Mediation (Mediation Skills Training and Accreditation Course on Mediation) with Centre for Effective Dispute Resolution, UK. Besides, BIAC has organized exclusive programme on Arbitration Act 2001 for serving District Judges in collaboration with Judicial Administration Training Institute, Negotiation Courses for company executives and lawyers.

The total number of persons trained through BIAC is 423. BIAC is deeply grateful to IFC for organizing the visits of the trainers from the International Law Institute (ILI), Washington DC and from the Centre for Effective Dispute Resolution (CEDR), London.

BIAC has organized the following training courses in last three years:

Sl.	Name of the Programme	No. of the programme	No. of Participants	Resource
1	Art of Negotiation	6	81	BIAC
2	Introduction to Arbitration	1	75	ILI, Washington DC
3	Basic Arbitration	2	109	ILI, Washington DC
4	Advanced arbitration	3	85	ILI, Washington DC
5	ToT in Arbitration	1	25	ILI, Washington DC
6	Mediator's Skill Training	1	24	CEDR, UK
7	Mediator's Accreditation Course	2	24	CEDR, UK

BENEFITS AND COSTS OF ARBITRATION AT BIAC

Litigation can be expensive and time consuming. The number of cases pending in our courts - more than two and half million at the beginning of the year 2014 - implies that disposal will be slow, even with the best efforts of the judiciary. The complicated court procedures twined with the number of options of seeking judicial relief and remedy, only enhances this dilatory process of case disposal.

According to a finding of the Base line Survey, conducted by IFC Advisory Services in South Asia in February 2012, the average time taken for first hearing of cases is 6 months and average time for settlement of commercial case in Court is minimum 3 years; while the average official attorney cost is USD 986.25. Other costs like Court fee, enforcement costs and documentation costs varies from 1-5% of the claim value.

A question may be raised, as to whether the time and costs of settling commercial disputes may be reduced substantially if the cases are resolved through Arbitration under BIAC Arbitration Rules. Although there is no guarantee that the process will be shorter if the dispute is resolved through arbitration, the likelihood is very high. A great deal will depend on the arbitrators and the counsels on both sides. When we consider institutional arbitration, such as under BIAC Rules, the timelines are already laid out and can generally be adhered to. In the event of necessity, and depending on the complexity of the case, the arbitrators and BIAC can extend the time limits.

An indication of the timelines in a BIAC Institutional Arbitration is given below:

Timeline Under BIAC Arbitration Rules

Step	Procedure	Days	Remarks
01	Claimant sends Request for Arbitration (RFA)		To the Respondent & the BIAC
02	Respondent sends Response to Request for Arbitration & Counter Claim	30 days*	To be send to the Claimant & the BIAC within 30 days from the date of delivery of RFA
03	Constitution of Arbitral Tribunal (a) Sole Arbitrator (both the parties will agree) (b) 2nd Arbitrator (in a 3 member Arbitral Tribunal) (c) Presiding Arbitrator (in a 3 member Arbitral Tribunal)	30 days # 30 days # 30 days	From the date of delivery of RFA From the date of delivery of RFA From date of appointment of the arbitrators
04	Preliminary Conference	21 days#	From the date of constitution of Arbitral Tribunal
05	Claimant sends Statement of Claim	30 days*	From the date of constitution of Arbitral Tribunal
06	Respondent sends Statement of Defence & Counterclaim	30 days**	From the date of delivery of Statement of Claim
07	Claimant's Rejoinder	14 days**	From the date of delivery of Statement of Defence & Counterclaim
08	Respondent's Response to Rejoinder	14 days**	From the date of delivery of Claimant's Rejoinder
09	Oral Hearing	30 days	Within 30 days from the date of submission of written pleadings
	Conclude within	180 days	From the date of first hearing
10	Award	60 days	After completion of hearing
	Total	(a) 358 days (b) 388 days	(a) with Sole Arbitrator Tribunal (b) with Three Arbitrator Tribunal

* Time can be extended by the Secretary General BIAC.
**Time can be extended by the Arbitral Tribunal.
These days are to be counted simultaneously with other activities namely, sending Response to RFA or Statement of Claim and therefore not added with the total number of days.

The length of time from Filing of a Case to Pronouncement of Award can vary between 358-388 days in an institutional arbitration under BIAC Arbitration Rules. Disputes can be resolved through arbitration much quicker, if the arbitrator and the counsels on both sides agree to do this more expeditiously. If there is a sole arbitrator, such as for smaller claims, the process can be shortened even further.

Costs and Fees in Arbitration under BIAC Rules

In an institutional arbitration, the costs can be assessed fairly easily. Most arbitration institutions will have their costs schedules clearly laid out. For instance, Rule 26 of BIAC Arbitration Rules refers to costs relating to Registration Fee, Arbitrator's Fees, Administrative Fee, legal fees, expenses of the witnesses and other charges and expenses in connection with Arbitration. The Fees of Arbitrators, Registration Fee and Administrative Fees of BIAC are specified in Schedule–I & Schedule-II of BIAC Arbitration Rules. Schedule II applies to fast-track arbitration under BIAC Rules. This provision for small claims exists because it is accepted that not all claims will be for huge sums; where the dispute involves small sums, the process can be swifter, and the costs considerably lower.

Registration Fee

Along with the Request for Arbitration, the Claimant shall pay BIAC a Registration Fee of Tk.10,000, which is not refundable. BIAC's Administrative Fee and Arbitrator's Fees are calculated on the basis of sum-in-dispute, following the Table given in Schedule–I of BIAC Arbitration Rules.

Where the amount of dispute does not exceed Tk. 50 million, the party may request BIAC to treat the case as Fast Track Arbitration. If BIAC agrees with such a request, the dispute may be arbitrated as Fast Track Arbitration under Rule 28 of BIAC Arbitration Rules. In a Fast Track Arbitration, BIAC's Registration Fee will be Tk. 7,500 and BIAC's Administrative Fee and Arbitrators fees shall be calculated in accordance with the Schedule-II.

Fees of Arbitration

(all amounts are in Bangladesh Taka)

Schedule –I

BIAC's Administrative Fee shall be charged in accordance with the following table:

Administrative Fee Chart

Sum in dispute	Administrative fee
Up to 50,00,000	30,000
from 50,00,001 to 1,00,00,000	30,000 + 0.2% above 50,00,000
from 1,00,00,001 to 5,00,00,000	40,000 + 0.1% above 1,00,00,000
from 5,00,00,001 to 10,00,00,000	80,000 + 0.05% above 5,00,00,000
from 10,00,00,001 to 50,00,00,000	1,05,000 + 0.025% above 10,00,00,000
from 50,00,00,000 to 100,00,00,000	2,05,000 + 0.01% above 50,00,00,000
above 100,00,00,000	2,55,000

The Arbitrator's Fee Chart

Where both parties agree to the application of this Schedule to the determination of the Arbitrators' Fees, such fees shall be charged in accordance with the following table:

Sum in dispute	Arbitrator's Fee (minimum)	Arbitrator's Fee (maximum)
up to 50,00,000	1,00,000	5,00,000
from 50,00,001 to 1,00,00,000	1,00,000 + 2.5% above 50,00,000	5,00,000 + 5.0% above 50,00,000
from 1,00,00,001 to 5,00,00,000	2,25,000 + 1.25% above 1,00,00,000	7,50,000 + 2.5% above 1,00,00,000
from 5,00,00,001 to 10,00,00,000	7,25,000 + 0.5% above 5,00,00,000	17,50,000 + 1.0% above 5,00,00,000
from 10,00,00,001 to 50,00,00,000	9,75,000 + 0.1% above 10,00,00,000	22,50,000 + 0.2% above 10,00,00,000
from 50,00,00,000 to 100,00,00,000	13,75,000+0.05% above 50,00,00,000	24,50,000 + 0.1 above 50,00,00,000
above 100,00,00,000	16,25,000 + 0.01% above 100,00,00,000	29,50,000 + 0.02% above 100,00,00,000

Schedule II (for fast-track arbitration)

Administrative Fee Chart

BIAC's Administrative Fee shall be charged in accordance with the following table:

Sum in dispute	Administrative fee
from 1,00,000 to 10,00,000	10,000
from 10,00,001 to 1,00,00,000	10,000 + 0.2% above 10,00,000
from 1,00,00,001 to 5,00,00,000	28,000 + 0.1% above 1,00,00,000

Arbitrator's Fee Chart

Where both parties agree to the application of this Schedule to the determination of the Arbitrator's Fees, the Arbitrator's Fees shall be charged in accordance with the following table:

Sum in dispute	Arbitrator's Fee (minimum)	Arbitrator's Fee (maximum)
up to 10,00,000	Tk. 50,000	1,00,000
from 10,00,001 to 1,00,00,000	50,000 + 1.5% above 10,00,000	1,00,000 + 3.0% above 10,00,000
from 1,00,00,001 to 5,00,00,000	1,85,000 + 1.0% above 1,00,00,000	3,70,000 + 2.0% above 1,00,00,000

Computation of Fees

Claims and counterclaims are added for the determination of the amount in dispute. The same rule applies to set-off defences, unless the arbitration tribunal, after consulting with the parties, concludes that such set-off claims will not require significant additional work.

The BIAC's Administrative Fees and the Arbitrator's Fees may exceed the amounts set out in the scale above where, in the opinion of the BIAC, there are exceptional circumstances which shall include, and not be limited to, the parties conducting the arbitration in a manner not reasonably contemplated by the arbitration tribunal at the time of appointment.

If the amount in dispute is not quantified, the BIAC's Administrative Fees and the Arbitrators' Fees shall be fixed by the BIAC, taking into account all relevant circumstances.

Outlook

BIAC has entered a domain where institutional arbitration did not exist. The arbitrators and the counsels decided all issues, sometimes with the participation of the parties themselves. Now, BIAC is on the scene and is suggesting a formalized structure, both for timelines and costs.

The arbitrators, and the counsel, lose considerable flexibility if the Rules are followed. If the objective of the parties is to settle the cases as soon as possible, the parties know what to do. BIAC stands ready to assist.

THE MEDIATION STORY

Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated settlement of a dispute or difference. The parties are in ultimate control of the decision to resolve the dispute and the terms of resolution.

A dispute or difference can bring parties to mediation. The difference need not have a legal basis at all – it may be a matter of principle or belief. Even in a dispute that is close to a court hearing date, where the legal issues are well rehearsed between the parties, mediation is able to bring into play personal or commercial issues that cannot be taken up in a court. Mediation is not a bar to litigation or other methods of dispute resolution.

Mediation is a flexible process.

The venue, the date and the timing are all matters of choice for discussion between the parties and the mediator or the service provider. It is for each party to decide, sometimes with the help of the mediator, who should attend in their team, what issues will be discussed and what outcomes will be considered. Even after the mediation has begun, parties are free to make changes to their positions as circumstances require.

The standard commercial model is for both the parties to gather in one place on one day, aiming to finish on that day. During that day the mediator, as the manager of the process, will run the process to suit the parties and the dispute, proposing a range of joint and private meetings and the order in which they occur. However, there are numerous variations available to suit particular situations.

Mediation is conducted confidentially.

The details of any discussions and the results of those are not made public unless both parties desire otherwise; the outcome may be publicized if both parties agree. In addition, mediation usually involves some private meetings between each party and the mediator, in which the mediator commits to preserving the confidentiality of information received from one party in private, unless given express permission to disclose it to another party.

The mediator is a neutral person.

Mediator assists the parties in their negotiations, independently and impartially. The mediator must have no stake in the dispute or its outcome, nor be perceived as having an inappropriate link with any party. Parties sometimes request a mediator who is a specialist in the particular area of dispute, which might give the parties some comfort and facilitate the mediator's work. The Mediator does not take sides or make a decision about the merits of the case or the resolution.

The mediator assists parties towards an agreement.

The mediator works hard with the parties, enabling them to widen their perspective, re-appraise their situation, their risks and opportunities, and to consider a range of possible ways of resolving the dispute. The focus is on the parties' goal of reaching agreement on acceptable terms.

The parties are in ultimate control

The mediator will often have a role in overcoming deadlock, in encouraging forward thinking and even in contributing settlement options or ideas for formulating the agreement. However, it is central to the concept of mediation that the parties are the decision makers. Effective mediators use their skill and experience to influence progress and leave the decision about whether to settle and on what terms firmly with the parties.

Mediation is not binding unless and until an agreement is reached. Until that happens, the parties may walk away from the mediation at any time. Entering the process itself does not bind them to settlement in any way. The fact that the process is without prejudice allows the parties to explore all options freely, hypothetically, and without commitment. Any settlement agreement has to be in writing, and signed, to be legally binding.

Mediation is voluntary.

Mediation is often described as 'voluntary'. Once mediation has started, continued participation is always voluntary - any party can choose to disengage without adverse consequences. Many commercial contracts include an obligation to mediate before proceeding to court or arbitration, and such obligations are likely to be enforced against a party who tries to ignore them. In some laws, in Bangladesh, mediation is mandatory before parties are allowed to proceed to trial. So, engaging in mediation may be less than wholly voluntary, but even then is still usually effective.

Why mediation works

This process:

- gets the right people and the right information to the table
- identifies and focuses on what really matters to the parties
- facilitates communication; helps overcome deadlock and emotional blockages
- helps parties to reassess their risks & widens the options for resolution

- rebuilds or safeguards relationships
- leaves ownership of the problem and the settlement with the parties.

Routes to mediation

Parties may have come to mediation for a range of reasons:

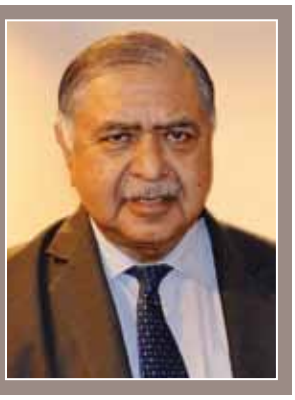
- under the terms of a contract providing for mediation as part of the agreed dispute resolution process
- following a court recommendation or order to the parties
- the parties choose mediation, believing it gives them the best chance of reaching agreement in all circumstances. Mediation is not a sign of weakness.

Mediation is not a waste of time and money, even if it fails

The settlement gap will usually be narrowed at mediation through the negotiations and through parties gaining a greater understanding of the other party's case and privately reviewing their own case. Mediation almost always tempers aspirations with realism, and movement towards settlement takes into account the risks, legal and commercial, of not settling. When settlement is not reached, the preparation for mediation is useful groundwork for trial or hearing, or for further settlement negotiations. Most mediations last one or two days so the additional expenditure to each party is modest compared with the loss of management time and the costs of going through trial.

> "Let us never negotiate out of fear.
> But let us never fear to negotiate."
>
> –John F. Kennedy

INTERNATIONAL COURTS AND TRIBUNALS V. LOCAL JUSTICE INITIATIVES- THE BEST METHOD OF ACHIEVING JUSTICE



By
Dr. Kamal Hossain
Senior Advocate,
Supreme Court of Bangladesh

It is a pleasure to Chair a Session which will explore how best the international tribunals and local justice initiatives can be orchestrated in order to enable the principles of the Commonwealth to realize their political, economic and social objectives. The state of global economy has been described by Professor Jeffry Sachs in his recent work Common Wealth- in a Crowded Planet. In which he urged that the dangers that humanity confronts together. For that, we will have to pause from our relentless competition in order to survey the common challenges we face. The world's current ecological, demographic, and economic trajectory is unsustainable meaning if we continue with "business as usual" we will hit social and ecological crisis with calamitous result". (p. 5).

He urged that in this century the response needed is a global one. It will be based on global agreements and international law, first and foremost as contained in the treaties and agreements that constitute the millennium promises-shared global commitment that can provide a foothold for a sustainable future, the challenge being to turn this fragile and as yet unfulfilled global into real solutions.

The legal framework for change described as a new global scaffolding comprised of three framework conventions which include: The United Nations Framework on Climate Change (UNFCC), The Convention of Biological Diversity (CBD), to address the threat of planet wise species extinction; The United Nations Convention to Combat Desertification (UNCCD) to deal with the threats to dry lands.

To implement the framework conventions - "the new legal scaffolding" there is a need for detailed arrangements to be agreed between of parties or groups of parties just as the conventions on protection from Ozone depletion in 1995 had been followed by the Montreal Protocol in 1987, there is now a need for new global agreements on climate change as the Kyoto Protocol expires in 2012. The experience of the Montreal Protocol commends a four step process for implementation: scientific consensus, public awareness, the development of alternate technologies, and a global framework of cooperation. Implementing schemes of regional cooperation can be done through imaginatively devised legal instruments such as the agreement for sustainable development of the Mekong basin to which ten states are parties.

The implementation of international legal obligations at the national levels called for national legislation to ensure effective enforcement of national legislations requires pro active citizens who would mobilize public opinion, create awareness, by gathering and disseminating information and necessary drawing upon the resources of public spirited lawyers to initiate public interest litigation.

Judgments of Supreme Courts in the South Asian members of the Commonwealth region have exercised powers of judicial review in relation to actions which are injurious to the objectives of sustainable development. Thus, in India judicial interventions have prevented emission of noxious fume by factories and actions of shrimp farming companies which caused environmental damage. The Philippine supreme court intervened to prevent indiscriminate logging to protect the countries' forest resources in the interest of future generations relying on the principle of inter- generation equity, one of the Rio principles which has also since found place in the Johannesburg Declaration of Legal Principle on Sustainable Development.

The Supreme Court of Bangladesh delivered a landmark judgment on a petition by a association of environmental lawyers holding that the association was entitled to raise questions regarding the validity of a flood action plan prepared through a flawed process without any participation of persons whose lives and livelihoods could be adversely affected and which could have adverse environmental and ecological effects. The judgment cited principles number three and number ten of the Rio principles.

Thus, the Rio Principles and Johannesburg Declaration through recogrution in judicial decisions of national courts have contributed to the progressive development of international law, on sustainable development, and the jurisprudence thus developed provides a valuable resource for implementation.

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[DELIVERED AT COMMONWEALTH LAW CONFERENCE HYDERABAD, 6 FEBRUARY, 2011]

Dr. Kamal Hossain
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COST ALLOCATION IN INVESTMENT ARBITRATION: BACK TOWARD DIVERSIFICATION

by
Baiju S. Vasani and Anastasiya Ugale*

In 2006, the *Thunderbird* tribunal, operating under the UNCITRAL Arbitration Rules, called for the harmonization of cost-allocation approaches in commercial and investment arbitration.[1] Subsequent tribunals appear to be heeding *Thunderbird's* call paving a trend in favor of the so-called "costs follow the event" (CFtE) approach and its variations.[2] Generally, this approach prescribes the shifting of arbitral costs and reasonable legal fees to the unsuccessful party (or based on parties' relative success) and has historically been prevalent in commercial arbitration. By contrast, the more traditional approach in investment arbitration has been to share the costs of arbitration equally, save for special circumstances, with each party covering its own legal fees (traditional approach).[3] In the wake of what appears to be an emerging trend in favor of a default CFtE custom, it is time to revisit the idea of whether a single harmonized approach to cost allocation is really appropriate. We suggest that it most likely is not.

The two above-referenced rules of cost allocation serve different purposes, having divergent implications for the parties. From the claimants' perspective, taking into account absolute cost of arbitration, CFtE is largely a deterrent, while the traditional approach encourages arbitration.[4] Simply put, a claimant is less likely to initiate an arbitration when it risks paying not only its own expenses, but also those of its opponent.[5] CFtE makes arbitration less appealing to claimants (and would-be third-party funders), more risky and/or outright economically unviable, if a claim's value is lower than the absolute cost of arbitration. Under the traditional approach, on the other hand, the absolute cost is likely to be significantly lower and, above all, more certain, as each party is responsible for its own portion of the costs.[6] As a result, by encouraging the parties to try for their day in court, the rule leads to a more dynamic development of arbitral jurisprudence and broader access to justice.

These, and potentially other, implications might not necessarily resonate with the goals of a particular arbitral forum. In the context of ICSID, particularly, the CFtE approach is less likely to meet that forum's goals. As a dispute-resolution center, ICSID is unique, as it sets an agenda "attaching particular importance" to the "availability" of the arbitration facility to the parties.[7] No set of commercial arbitration rules explicitly affirms such goals. The negotiating history of the Convention also demonstrates that the parties voiced the concerns the traditional approach seeks to eliminate.[8] On the contrary, the arbitration rules of many commercial arbitral institutions promote an arbitration mechanism impartial to the general availability of the forum to any party.[9]

Therefore, where the traditional approach as a baseline might meet the priorities of the forum, CFtE might fail them entirely, and vice versa. Consequently, the default customs of cost allocation based not on the relative success but on matching the policy goals of a forum and the effects of the customs might be a better lodestar for arbitral discretion. Once ascertained, the tribunals should consistently apply the default custom instilling confidence in the arbitration system. Of course, in certain instances costs should be shifted regardless of the default rule due to such factors as party conduct during the arbitration, the egregiousness of the respondent's actions, or the fraudulent/frivolous nature of the claims. But, a default CFtE custom in the context of ICSID seems inapposite just at a time when it appears to be gaining popularity.

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[1]International *Thunderbird* Gaming Corp. v. Mexico, UNCITRAL, *award* (Jan. 26, 2006), at 213.

[2]See Lemire v. Ukraine, ICSID Case No. ARB/06/18, *award* (March 28, 2011) *("Lemire"),* at 380 (welcoming a "growing" trend reflecting "the principle that the losing party should contribute in a significant, if not necessarily exhaustive, fashion to the fees, costs and expenses of the arbitration of the prevailing party"). See also David Smith, "Shifting sands: Cost-and-fee allocation in investment treaty arbitration," *Virginia Journal of International Law,* vol. 51 (February 2011), p.749, at pp. 758 and 763 (from a 2008–2009 sample of 31 awards, 13 shifted some portion of the costs).

[3]SeeSusan D. Franck, "Rationalizing costs in investment treaty arbitration," *Washington University Law Review,* vol. 88 (2011), p. 769, at p. 777.

[4]While the reality is more nuanced, that does not make these basic policy tenets any less true.

[5]See Franck, op. cit., at pp. 812-813 (under CFtE, an unsuccessful party risks paying US$ 1.2 million in costs above its own legal fees). See also, e.g., Libananco Holdings Co. Limited v. Turkey, ICSID Case No. ARB/06/8, *award* (August 31, 2011) (shifting over US$ 15 million of costs);*Lemire* (shifting US$ 750,000 of costs).

[6]Under the traditional approach, a party is responsible on average for US$ 300,000 of the tribunal's costs above its legal fees. See Franck, op. cit., at p. 812. Cf. note 5.

[7]Seel CSID Convention, Preamble.

[8]Consultative Meeting of Legal Experts, Geneva (June 1, 1964), IBRD Report No. Z-9 at 81 (discussing potentially prohibitive costs of arbitration "discourag[ing] many small and medium-sized enterprises[,] whose investment in foreign countries it was particularly important to encourage[,] from submitting disputes to the Center.").

[9]See, e.g., UNCITRAL Arbitration Rules, Recitals, art. 40(1) (1976).

"Baiju S. Vasani and Anastasiya Ugale, 'Cost allocation in investment arbitration: Back toward diversification,' Columbia FDI Perspectives, No. 100, July 29, 2013. Reprinted with permission from the Vale Columbia Center on Sustainable International Investment, Columbia University, New York"

"Peace is not the absence of conflict, but the ability to cope with it."

GOVERNMENT-HELD EQUITY IN FOREIGN INVESTMENT PROJECTS: GOOD FOR HOST COUNTRIES?

by
Louis T. Wells*

A recent *Perspective* concluded that, in countries given to sudden shifts in policy, "a host country government equity stake in a project may decrease project risk by giving the state a reason *'not'* to demand a renegotiation."[1] An investor may benefit, but does the host country? In my experience, rarely.

Various host governments have long insisted on equity in extractive projects. Liberia obtained 50% "free" equity in the 1953 agreement that led to the LAMCO iron ore mine, waiving income taxes in exchange. Today, many African and Asian governments demand small shares in mining projects – free or, sometimes, paid for – and likely surrender something to compensate.

Governments seek equity mainly because they expect revenue, control through board representation, political benefits or local support from communities' gaining a stake. Yet, expected revenues are rarely forthcoming. Equity owners share dividends, not taxable profits. In addition to the usual transfer-pricing manipulations, majority owners can minimize dividends by providing much of the investment as debt (90% debt in the case of LAMCO) from affiliates, diverting cash flows to pay interest and repay principal to themselves. They can provide subsequent investment out of retained earnings, forcing the government to participate. They may even decide to lend excess cash to affiliates elsewhere instead of declaring dividends. Except for legitimate interest payments, these "costs" should not be deductible for calculating taxable income, but nonetheless capture cash flow.

Tax legislation sometimes provides protection against excess interest deductions for affiliate debt (e.g., by limiting deductions to a percentage of taxable income or limiting debt/equity ratio for tax purposes) and governs transfer-pricing for purchases, management fees and marketing fees. But tax laws rarely protect minority shareholders from such abuses. Unsurprisingly, LAMCO's management fees and shipping and marketing fees to affiliates captured cash flows that were expected by government. As a result, in revenue terms, a 35% equity stake is worth much less than a 35% tax on income—something often misunderstood by governments.

Dilution is another problem. Governments rarely address what happens when new shares are issued. In order to maintain its percentage interest, government may be called on to provide funds, even if the initial equity stake was free. But government resources might be better utilized elsewhere, such as for investments that decrease national dependency on unstable commodity prices. To be sure, some agreements (e.g., ArcelorMittal's mining agreement in Liberia, as renegotiated in 2006/7) allow for dilution of government equity while protecting a minimum interest without additional government investment.

The search for control has been equally disappointing. Although a minority equity stake may carry the right to appoint directors to mining entities, majority shareholders can make important decisions before board meetings. Moreover, governments usually appoint their officials to boards. They rarely receive sufficient information in advance of meetings and lack the time, expertise and staff to evaluate proposals or raise issues. It is also not clear whether they are to represent the company's or government's interests.[2]Finally, investors can capture their loyalty through friendships, travel opportunities or even bribes.

Foreign investors often argue that government directors' votes amount to government approval. This cannot be accepted, especially since directors may not even come from the ministry with the relevant expertise or regulatory authority.

In theory, these potential problems can be managed through a carefully drafted shareholders' agreement. However, I have never seen a government conclude such a comprehensive agreement in a developing country. Even if negotiated, I have doubts that such an agreement could be properly administered.

Fortunately, government equity is not necessary. Taxes and royalties are more reliable sources of revenue. Although I think it would be a bad idea, if the presence of government-appointed directors is important for political reasons, governments can insist on having this right without holding equity. If a stake for local communities is important, this would be better achieved through royalties rather than ownership, which may backfire when communities eventually discover that their stakes yield little or nothing.

Another possibility is for a state-owned enterprise with financial expertise to hold equity as an active partner in the project, as is common for petroleum extraction. The pattern for petroleum has not been widely replicated in the mining sector.

James and Vaaler may be right to say that some government ownership can mean a more stable agreement. However, a stable agreement may not be good for the state when circumstances change (e.g., mineral prices rise) or if the original deal was negotiated with corrupt or incompetent officials. BITs and FTAs should provide more than enough protection for investors.

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[1]Barclay James and Paul Vaaler, "Minority rules: State ownership and foreign direct investment risk mitigation strategy," *Columbia FDI Perspectives,* No. 111, December 23, 2013.

[2]James and Vaaler assume they represent the company. If that is true, they are unlikely to protect state interests.

Louis T. Wells, 'Government-held equity in foreign investment projects: Good for host countries?' Columbia FDI Perspectives, No. 114, February 3, 2014. Reprinted with permission from the Vale Columbia Center on Sustainable International Investment, Columbia University, New York.

"It is impossible to defeat an ignorant man in argument."

AVOID LITIGATION TRAFFIC JAMS: CONSIDER AN ALTERNATIVE DISPUTE RESOLUTION CLAUSE IN YOUR CONTRACT.

By
Ronan McHugh

Last year I spent 5 weeks in Dhaka teaching arbitration under the auspices of a Bangladesh International Arbitration Centre ("BIAC") programme. It was an experience I will never forget for two reasons: First, the students (all lawyers and business professionals) were all interested and engaged. I made many friends. And, second, I got to experience first-hand the joys (the national language festival) and the issues (the Dhaka traffic) of Bangladesh. This latter got me thinking about dispute resolution.

Imagine driving down Minto Road in Dhaka only to hear on the radio of a massive traffic backup. Far worse than usual. What do you do? You have a choice. You have either the opportunity to avoid it, or to simply accept it. Given a choice most rational people would seek to avoid the traffic jam: to take a different route. This different route to avoid a road block is exactly what is available to businesses in Bangladesh via alternative dispute resolution, especially with the emergence of institutions like BIAC. The proper and intelligent use of an ADR clause in a contract can avoid plunging the parties, should a dispute arise, into the delays and unruly procedures of a court trial. Instead, the parties can fashion a dispute process that works for them, and their situation and which seeks to ensure swift and effective resolution of a problem that arises. But the best time to do so, is when you enter into the contract. So, my message to those of you involved in negotiating contracts is simple: do not forget about the disputes clause.

1. In the Atmosphere of Creating a Deal, No One Wants to Discuss Disputes

This is easier said than done. Contracts are entered into when there are good relations between parties, and when neither party wishes to consider the possibility of a dispute. Discussing disputes at the negotiation of the deal stage is often seen as the stereotypical "pre-nup" situation, awkward and unnecessarily foreboding. Given this atmosphere, the contracting parties often overlook the disputes clause. They tend to either not consider it at all, or consider it only marginally. This is short-sighted for a number of reasons. Without a solid disputes clause, both parties may incur significant costs and lose valuable time in trying to resolve matters. Worse, they may find themselves trying to settle the disputes in a forum they neither chose nor find hospitable. Let me give an example from a case we had. A Turkish party entered into a contract under which it was to bid a construction project as a partner with an Afghan entity. The contract provided that if the bid was won (using the Turkish party's bid numbers for its part of the work) the Turkish party would be hired to perform that part of the work. The bid was successful. The Afghan party, in clear violation of the agreement, used someone else. There was no dispute clause (or governing law clause) in the contract. The contact was with a United States prime contractor. So, the option was sue in Afghanistan (unpalatable) or in Turkey or possibly the U.S., though in each it may be a pyrrhic victory leading to an unenforceable foreign default judgment. Ultimately, the client took the business decision that it would simply not pursue its rights. This is the example of not having a dispute clause—an issue especially with international contracts. But even if there is one, the process of a "bad" disputes clause can itself exacerbate problems and add to a breakdown in relations. In the event a dispute does arise, an efficient and expeditious contractual disputes process can frequently assist parties in resolving problems quickly and further improve and strengthen their relationship in the event other issues arise.

2. The Issues to Consider in Drafting a Disputes Clause

Depending on the type of agreement, a disputes clause can be more or less complicated. But regardless of whether the agreement involved is a multi-million dollar international transaction or a small commercial agreement between two parties, there are particular matters that should be considered:

A. Identify the Parties who might need to use the Disputes Clause.

This will generally be the two parties to the contract. However, in some instances, there may be third party beneficiaries or multiple parties to the contract or even multiple intertwined contracts. How exactly should they be accommodated in the event of a dispute? Failure to include them in the disputes clause could potentially

lead to various disputes in different forums, resulting in inconsistent outcomes. Thus, always consider whether the contract creates rights for, or obligations to, other third parties and if such parties need to be accommodated in any disputes process. In this regard, consideration should also be given to having a uniform dispute structure encompassing different parties. This can be important where there are chains of contracts such as those involving owners, contractors and subcontractors. Different dispute processes in each contract can cause undesirable results, and inefficient dispute resolution.

B. Clearly Define the Scope of the Disputes Clause.

The parties need to be clear that the dispute clause is applicable the disputes that they want it to cover. Most disputes clauses will cover all disputes, with disputes being defined broadly as any differences between the parties. Further, the scope will not simply be contractual disputes, but all disputes arising out of or related to the contract and the project it covers. By such language tort claims will also be covered. But there are situations where the scope might be more tailored and narrow. Care needs to be taken in these situations to ensure that proper definition of the scope is established.

C. Define Clearly Dispute Resolution Process

The dispute clause must define clearly and simply the dispute resolution process. Clauses that are pathological i.e., ones that inconsistently call for both litigation and arbitration will be unenforceable.

There are a number of factors to be considered here, some of which are esoteric e.g. benefits between different arbitration institutional rules. Nevertheless, the goal must be to enumerate without contradictory language the methodology for resolving the dispute via any defined intermediary steps up to a final dispute resolution process. This choice is sometimes defined by the applicable law in the context of the transaction. For example, United States recent Court decisions are impacting the application of arbitration clauses in consumer and person financial services contracts. But when dealing with an international contract with a foreign government, do you want to be before that foreign nation's courts for resolving disputes? And, if arbitration is chosen, thought needs to be given to how it is achieved efficiently and effectively, or whether the parties merely desire "privatized litigation". For consideration of these issues and how the dispute clause might work under the BIAC Rules, for example, it may be worth a call to BIAC to discuss their rules and how they operate.

One consideration is whether a tiered dispute clause might be desirable i.e., a clause that provides condition precedents beginning perhaps with senior management negotiations, then if that fails to resolve the point, then mediation until a final resolution process such as BIAC arbitration. Or a clause that divides the dispute process based upon value of the matter in dispute. Tiered clauses are frequently used in long-term outsourcing contracts where the value of the on-going relationship is particularly important. Or is a tiered clause not needed because courts now require mediation (perhaps a bank/customer transaction agreement) before a hearing and the mediation process is good and works? If a tiered approach is taken, however, clear time lines are needed so that the dispute process does not become unduly delayed in the hands of a recalcitrant disputant. An alternative to a tiered clause might be a clause that provides for Dispute Review Board or a Dispute Resolution Board. Knowing the difference between the two is important.

The place for meetings for negotiations, mediation and the place of final determination, the selection of a mediator and, particularly in an international context, the language to be used in dispute resolution, can all be of importance and require careful consideration. But they are easily solved.

A choice for arbitration as the final dispute mechanism also brings with it other elements to consider. These include: how the arbitrator or arbitrators will be appointed; whether the arbitrators need any particular skill set to serve (i.e., do you need engineering experts or some others); is the arbitration to be institutional or ad hoc (and if ad hoc, what support or delay will one encounter from the courts as compared to institutional rules providing for appointment of arbitrators or the resolution of procedural questions); what discovery rights there may be in any arbitration—whether under the guidance of, for example, IBA Rules on the Taking of Evidence in International Arbitration –and how might an audit clause giving one party access to documents interrelate to the disputes discovery process. Similarly, is the privacy of arbitration enough or is confidentiality also needed? And, what is the time frame. Do you want a hard and fast limit for the hearing of the matter and have the hearing in a single block of time? This can be done. But needs consideration carefully. There is also, of course, the issue of cost. But here is my take on that: a penny spent may be a pound saved, or several thousands or more. Yes, while arbitration involves the payment of the arbitrators, it is wise to consider the time, effort and resources spent in court delays.

3. Conclusion

The failure of parties to properly consider a dispute clause that will work effectively and efficiently in the context of their specific transaction can have significant consequences in terms of (a) delay in resolving a dispute (b) added managerial and legal costs to resolve the dispute (c) and having the dispute heard in the wrong forum which could ultimately lead to an undesirable outcome. Parties in Bangladesh now have at their fingertips the resources, via BIAC, to consider and to adopt ADR processes that should streamline and make

more cost-effective and timely the resolution of their problems, outside of the Courts—while covered by the authority of the Bangladesh Arbitration Act.

Consideration of dispute clauses at the outset gives parties the control to craft the process as they want it within the bounds of the applicable law, which can greatly assist and ease the process of resolving disputes. I urge those negotiating contracts in Bangladesh to give consideration to this and to utilize the resources available to them to assist their commercial decision making regarding how their disputes get resolved.

Ronan McHugh
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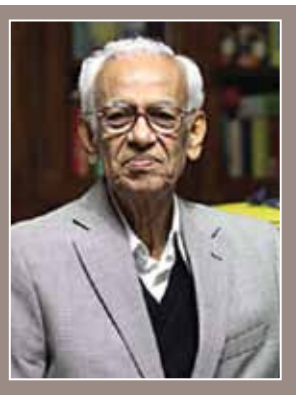
Mr. McHugh is a lawyer with the firm Bailey Law pc in Washington, DC. He has represented clients in domestic and international arbitrations under AAA, ICDR, ICC, LCIA and ad hoc rules. He has counseled parties on international investment treaty rights and advised on dispute provisions in international contracts. He has advised numerous clients in mediations relating to both U.S. domestic and international projects and he has successfully resolved disputes in mediation and through direct negotiations on favorable terms. Mr. McHugh is a qualified UK solicitor, and is admitted for practice in District of Columbia, the State of New York, England and Wales. Prior to working at Bailey Law, he worked in the City of London for Clifford Chance. Mr. McHugh has an LL.B.(Hons), from the London School of Economics and Political Science in 1988.

> “Use soft words and hard arguments.”

BIAC – LEADING THE WAY IN INSTITUTIONAL ARBITRATION



By
Rafique-ul Huq
Barrister-at-Law

Needless to say, Bangladesh International Arbitration Centre (BIAC) is the pioneer international arbitration institution of our country. Bangladesh is moving forward with changes and reforms being brought to the legal system by the introduction of various forms of Alternative Dispute Resolution (ADR) including mandatory mediation and arbitration. Bangladesh now has to take steps to make arbitration a meaningful reality within the country. I believe BIAC has extended its hands at the right time to make this reform more accessible to the parties. BIAC was established with the very purpose to institutionalize arbitration in the country and currently is also stepping forward towards facilitating mediation and conciliation.

In today's globalized world, expedited settlement of dispute is key to progression in trade, investment, commerce and industries. BIAC provides what I would say a mechanism or a bridge for resolution of commercial disputes out of court. BIAC in fact provides a neutral, efficient and reliable dispute resolution service. The very experienced panel of arbitrators of BIAC consisting of former Chief Justices of Bangladesh, former Justices of Supreme Court of Bangladesh, eminent lawyers and other experienced professionals only adds to their tally by which they will be able to instill confidence and faith in people over arbitration process and access to justice.

BIAC has already become renowned for its state-of-the-art arbitration facilities. It is commendable that BIAC organizes seminars, workshops, trainings etc to promote the practice of settlement of disputes through ADR methods. I congratulate BIAC for organizing Professional Courses in Arbitration and Mediation comprising of lectures and practical exercises. It is very impressive that the participants of the Mediation Foundation Course, upon completion of the course, completed a rigorous two weeks' assignment and thereafter the successful participants received the internationally-recognized CEDR Accreditation. These CEDR Accredited Mediators would undoubtedly prove to be useful for future mediations in Bangladesh, particularly when mediation has been made mandatory under the new Code of Civil Procedure, 1908 and Artha Rin Adalat Ain, 2003.

I have personally been part of dialogues organized by BIAC which provides an excellent forum for brainstorming for budding lawyers by being able to sit with experienced, senior advocates, arbitrators who get to share their experience and impart their knowledge to others. The trainings and workshops are like building blocks making the lawyers more aware and well equipped in the field of ADR.

One of the key highlights of BIAC is the BIAC Arbitration Rules, which was enacted in 2011. The BIAC Arbitration Rules provides an opportunity to parties to opt in a set of international arbitration Rules, which has been compiled by local and international arbitration experts with the assistance of many renowned arbitration institutions. The Rules are indispensible when it comes to providing a definitive framework to conduct proceedings while allowing the parties adequate flexibility to accommodate their preferences. The Rules ensured that the basic principles of arbitration are rightly protected including party autonomy and ensuring due process. The Rules are fully compliant with the Bangladesh Arbitration Act, 2001 that also uphold party autonomy. Traditionally we are aware that although arbitration is deemed to be an expedited dispute resolution mechanism, due to involvement of Court at various stages, the arbitration procedures ends up being severely delayed. The BIAC Arbitration Rules in many instances contains specific provisions, such as appointment of arbitration, challenge of arbitrator, interim measures etc, so that the parties are not unnecessarily pulled in Court proceedings.

It is imperative that business houses, organisations, and all commercial entities welcome the BIAC Arbitration Rules just like UNCITRAL Arbitration Rules has been by various countries. The said Rules need to be incorporated in the dispute resolution provision of commercial contracts. Further, by opting in BIAC Arbitration Rules, the parties are benefitted by services of the BIAC Secretariat. I highly recommend business entities, government bodies and other authorities to incorporate the BIAC Arbitration Rules in the dispute resolution clauses of commercial contracts in order to ensure an expedited, definitive, hassle free and effective dispute resolution provision.

Last but not the least, it is extremely commendable that the BIAC Arbitration Rules also contains provisions for Fast Track Arbitration in cases where the amount in dispute, including the claim, counterclaim and defence, does not exceed Taka 50 million (or equivalent). The Fast Track Arbitration has a separate fee schedule which reflects the amount of dispute in question. This mode of arbitration may be extremely beneficial for small to mid level parties as it allow them to avail a world class dispute resolution institution for resolving their disputes.

I wish BIAC every success in their journey and for all their future endeavors. I believe BIAC would play an emphatic role in ensuring access to justice in commercial disputes.

Barrister Rafiqul Haque

Barrister Rafiqul Haque is a senior advocate of the Supreme Court of Bangladesh He is one of the most experienced lawyers of this country and a former Attorney General.

> “The greatest lesson in life is to know that even fools are right sometimes.”

BEWARE THE DISCRETIONARY CHOICES OF ARBITRATORS

by

Gus Van Harten*

Investment treaty arbitration has unfolded rapidly in recent years. Some observations arising from analyses of arbitrator awards are highlighted below.[1] They support broad conclusions that:

- arbitrators reviewed a wide range of legislative, executive and judicial decisions but typically did not exercise judicial restraint in various ways associated with domestic and international courts;
- arbitrators typically adopted expansive approaches to their authority and to investor entitlements to compensation, especially where the claimant had the nationality of a major Western capital-exporting state; and
- decision-making power was highly concentrated among arbitrators, suggesting a need for closer scrutiny of how the most active individual arbitrators have expanded the meaning of investment treaties and corresponding principles of state liability.

First, in virtually all of the 162 cases coded on the issue, arbitrators reviewed an executive measure and, in 37% and 44% of cases respectively, the dispute involved a domestic legislative or judicial decision. In at least half of the cases, arbitrators reviewed measures that appeared general in application – i.e. they affected actors other than the claimant – as opposed to measures that targeted the claimant specifically.

Yet there was little evidence that arbitrators demonstrated restraint in ways commonly adopted by domestic and international courts.[2] For example, there was little or no evidence of restraint due to the relative capacity of an executive agency, the role of a contractually agreed forum, or a treaty-based waiting period or fork-in-the-road.[3] Likewise, tribunals often reviewed domestic laws but there was no evidence of restraint at a general level due to the relative accountability of a legislature. Indeed, arbitrators were found to have invoked concepts associated with judicial restraint, such as balancing and proportionality, more often when expanding than when limiting their authority.

Second, the field has apparently offered arbitrators a fertile environment for creative lawyering alongside expansive approaches to their authority. This was evident in the coding of jurisdictional and substantive issues that involved, for example, the multiplication of corporate nationality as a possible gaming strategy by claimants, the definition of what qualifies as a protected investment, the risk of parallel proceedings, and the meaning of substantive standards, including, most notably, indirect expropriation and fair and equitable treatment.[4] The tendency toward claimant-friendly expansive interpretations increased significantly where the claimant was from the US, UK, France, or Germany.[5]

Third, power was highly concentrated among arbitrators. For example, from a review of arbitrator resolutions of contested legal issues, it emerged that – of 247 individuals appointed as arbitrators – the 24 most active individuals executed about half of the issue resolutions and tended much more heavily toward approaches that expanded their authority. Other researchers have reported findings that 12 arbitrators were present on 60% of 263 ICSID tribunals and that 15 arbitrators were present on 55% of 247 investment treaty tribunals.[6]

These observations are descriptive, approximate, and subject to important limitations outlined elsewhere.[7] They are presented here to give a sense of how investment treaty arbitration appears to have evolved due to the discretionary choices of arbitrators.

In policy terms, the observations indicate a need for closer scrutiny by a range of actors – such as national associations of legislators or judges – of how arbitrators exercise their power and about whether their performance accords with considerations of public accountability, judicial restraint and basic even-handedness. In the meantime, states facing a reasonable prospect of investor claims, or seeking protection for non-Western investors, should systematically assess their anticipated exposure or protection and consider their options to avoid downside risks.

.....

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[1]The observations arise from keyword-based searches and analyses of publicly available awards and other materials in known investment treaty cases. An outline of the methodology is provided in the author's forthcoming book, Sovereign Choices and Sovereign Constraints: Judicial Restraint in Investment Treaty Arbitration (Oxford: OUP, 2013).

[2]The exceptions were a minority of cases, especially under NAFTA, in which the arbitrators signaled general restraint due to the residual role of domestic courts or in the specific interpretation of some substantive standards.

[3]For example, it was found that tribunals allowed investor claims to proceed in 14 of 19 cases where the claimant had not waited the required period before bringing the treaty claim and in 15 of 17 cases where the claim was subject to a fork-in-the-road clause that appeared not to have been satisfied by the claimant.

[4]Gus Van Harten, "Arbitrator behaviour in asymmetrical adjudication: An empirical study of investment treaty arbitration," 50 Osgoode Hall Law Journal 211 (2012).

[5]Ibid.

[6]Jose A.F. Costa, "Comparing WTO panelists and ICSID arbitrators: The creation of international legal fields," 1(4) Oñati Socio-Legal Series 11 (2011); Pia Eberhardt and Cecilia Olivet, Profiting from injustice: How law firms, arbitrators and financiers are fuelling an investment arbitration boom (Brussels/Amsterdam: Corporate Europe Observatory and the Transnational Institute, 2012), p. 38, available

athttp://www.tni.org/sites/www.tni.org/files/download/profitingfrominjustice.pdf.

[7]Supra notes 1 and 4.

"Win/win is an attitude, not an outcome."

Inauguration
of BIAC
9 April 2011

HE William Hanna,
Head of EU
Delegation at BIAC
12 March 2014

Meeting with
distinguished users
of BIAC Services

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Justices, Justices,
Eminent Jurists and
Senior Lawyers at a
BIAC event

David Branson of ILI at a BIAC Training Class

HE Robert W. Gibson CMG High Commissioner of the United Kingdom visits BIAC 18 June 2013

BIAC Seminar at Metropolitan Chamber of Commerce & Industry, Dhaka 10 December 2011

BIAC Seminar at Chittagong Chamber of Commerce & Industry 10 November 2012

Officers of Bangladesh Foreign Ministry attending a course at BIAC 18 December 2013

Dr. Toufiq Ali, Chief Executive, BIAC speaking at a Seminar on Arbitration at Southeast University

Dr. Gavan Griffith AO QC, Former Solicitor General of Australia speaking at a BIAC Seminar 28 January 2014

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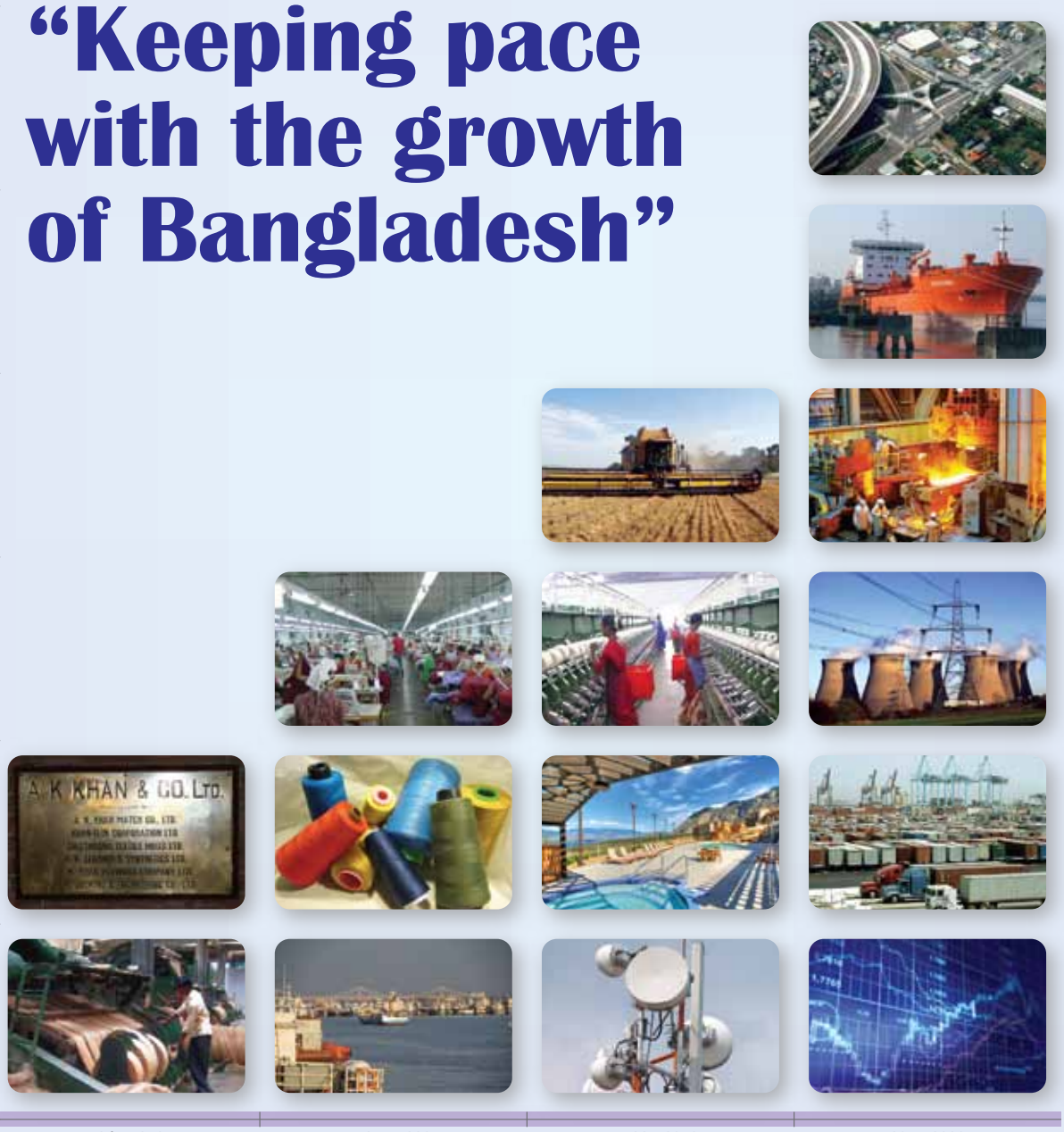

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Relief and rehabilitation work of BGMEA for Rana Plaza victims:

- BGMEA took necessary steps to assist the survivors of Rana Plaza accident. The trade body has ensured payment of salary and allowances of all the workers and employees of five factories housed in the Rana Plaza and one more factory, named New Wave and located in Mirpur, in accordance with the labor law within 15 days of the accident.
- BGMEA provided treatment and medical supports to 850 injured Rana Plaza victims keeping them at Apollo, United and Square Hospitals, NITOR, DMCH, BIRDEM, IPGMR, NICVD, Dhaka CMH, Savar CMH, Savar CRP, Enam Medical College Hospital, Upazila health complexes and a few other clinics of Savar area.
- BGMEA donated Tk 20 million to the Prime Minister's relief fund for the deceased workers.
- BGMEA gave Tk 35,000 to each of the 12 pregnant survivors for their delivery and treatment.
- A total of 26 unfortunate workers have lost their limbs. CRP, HOPE Bangladesh, CDD and BRAC in coordination with BGMEA have provided them with artificial limbs.
- BGMEA, GIZ, CRP and ICRC have signed a MOU for the establishment of an "Orthotics and Prosthetics School" at CRP, which will facilitate the treatment of amputee victims of Rana Plaza and elsewhere.
- BGMEA handed over orphan boys and girls to ORCCA Homes, Chittagong and Anjuman Mofidul Islam Orphanage, Savar.
- BGMEA also agreed to provide jobs to all jobless of the 5 garment factories located in the collapsed Rana Plaza. A total of 70 workers, who lost their jobs due to Rana Plaza tragedy, contacted BGMEA and were provided with jobs at different garment factories.

BGMEA's Safety Initiatives:

- A team of 30 officials monitor the safety standards and social compliance in member factories.
- In addition, BGMEA appointed 10 engineers to strengthen safety inspection and monitor factory structural safety standards.
- In order to provide fire safety training to all member factories BGMEA hired 35 former armed forces personnel who were trained by the fire department. This team will participate in rescue operations in the event of a disaster at a garment factory.
- BGMEA has started a fire safety "crash course" for mid-level factory management and supervisors; this course has already covered more than 1,400 factories.
- In addition to BGMEA's safety initiatives, the Government of Bangladesh has adopted the National Tripartite Action Plan facilitated by the ILO to ensure safe workplaces. BGMEA is an integral part of this initiative and working tirelessly to ensure workplace safety.
- Global brands and retailers have formed two safety platforms namely Accord and Alliance. BGMEA is working closely with both of these initiatives.
- BGMEA supported the International Trade Expo for Building and Fire Safety, the first of its kind in Bangladesh, in February, 2014.

Prioritizing Workers' Rights:

- The minimum wage of garment workers was increased from Tk3,000 to Tk5,300 in December 2013.
- The Labor Law 2006 was amended in July 2013, which is a major step forward towards better workers' rights.
- The Better Work Program of ILO was launched in Bangladesh in October 2013.

MADE IN BANGLADESH WITH PRIDE

BGMEA's financial support to Rana Plaza victims

Treatment expense	Tk 38 million	US$ 0.49 million
Salary & other allowances	Tk 76 million	US$ 0.97 million
Donation to PM's relief fund	Tk 20 million	US$ 0.26 million
Support to pregnant workers	Tk 0.42 million	US$ 5385
Rescue & rehabilitation	Tk 9.66 million	US$ 0.12 million
Total	Tk 144.08 million	US$ 1.85 million

Committed to ensuring dignity, wellbeing and safety of our workers

Our Concerns

BGMEA HEALTHCARE

Hon'ble Prime Minister Sheikh Hasina is seen handing over a cheque to a family member of a Rana Plaza victim while BGMEA President and office bearers were present.

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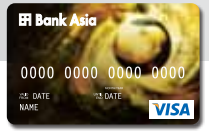

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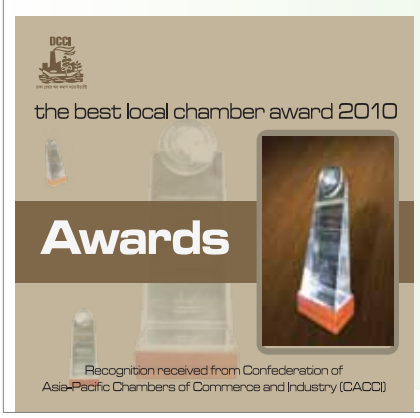

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Security Screening
Event Security & VIP Escort
Background Checking
Central Monitoring Station

CASH SERVICES

Transportation of Cash & Valuables (CIT)
ATM & BPM Management
Teller Services
Vault & Storage Services

FACILITY SERVICES

Express Delivery , SAFEDOX
Office Support Staff
Cleaning Services
Maintenance Services
Health & Hospitality Services
Airport Welcome Services

TECHNICAL SERVICES

Video Surveillance System
Burglar Alarm System
Fire Detection & Prevention
Metal Detection
X-ray Scanning Devices

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Baridhara, Dhaka 1212
Tel: 9887316-8
Email: sales.marketing@bd.g4s.com

G4S Chittagong House
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Tel: 031-2550541
Email: sales.marketing@bd.g4s.com

G4S Sylhet House
95 Uddipon, Mirabazar
Sylhet
Tel: 0821-815758-9
Email: sales.marketing@bd.g4s.com

G4S Khulna House
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Sonadanga, Khulna
Tel: 041-730552-4
Email: sales.marketing@bd.g4s.com

G4S Comilla House
227/252 Shahid Shamsul Haq Road
Jhautala, Comilla
Tel: 081-69467
Email: sales.marketing@bd.g4s.com

G4S Bogra House
Hs 675 New, 3214 Old
College Road, Borgra
Tel: 051-63039
Email: sales.marketing@bd.g4s.com

G4S Barisal House
Hs 1/17, Rd 7, Block B
Rupatali Housing Estate
Barisal
Email: sales.marketing@bd.g4s.com

G4S Cox's Bazar House
Green Valley Business Center
Ground Floor
Main Road, Cox's Bazar
Email: sales.marketing@bd.g4s.com

G4S Global Values

Customer Focus
Expertise
Best People
Integrity
Teamwork & Collaboration
Performance

UKAS QUALITY MANAGEMENT
Registration Number 043

Our recent achievement...

Best Financial Institution of Bangladesh Award

In recognition of its consistent performance, Bangladesh Business Award by DHL - Daily Star, awarded Pubali Bank as the Best Financial Institution 2010.

Country's largest online network with 425 branches

With in-house software - Pubali Integrated Banking System (PIBS) - evaluated by PwC, the bank launched its online Banking - becoming the largest online network of the country with 425 branches

Largest Private Bank with 425 branches

Rather than focusing on only in metro areas, to reach the rural economy, the Bank has established 425 branches all over Bangladesh - largest network in private sector banks

Double A Three Credit Rating

Credit Rating Authority of Bangladesh (CRAB) has rated AA3 signifying "Very Strong Capacity"in long term and STI signifying "Highest Grade" in short term

Highest ever growth achieved by Pubali Bank

In the year 2010, the Bank continued its consistent performance and has marked the highest ever growth

One of the largest private sector recruiters

The bank is ensuring employment of Bangladeshi talents through massive recruitment and proper training - this year 550 officers joined the Pubali family

Diverse list of products

The bank introduced diversified products to cater the financial needs of a larger scale - Innovation and emphasis on agriculture, foreign wage earners scheme, remittance, $ME, trade finance etc

Introduced Islamic Banking

With increasing demand, the Bank has opened its Islamic wing

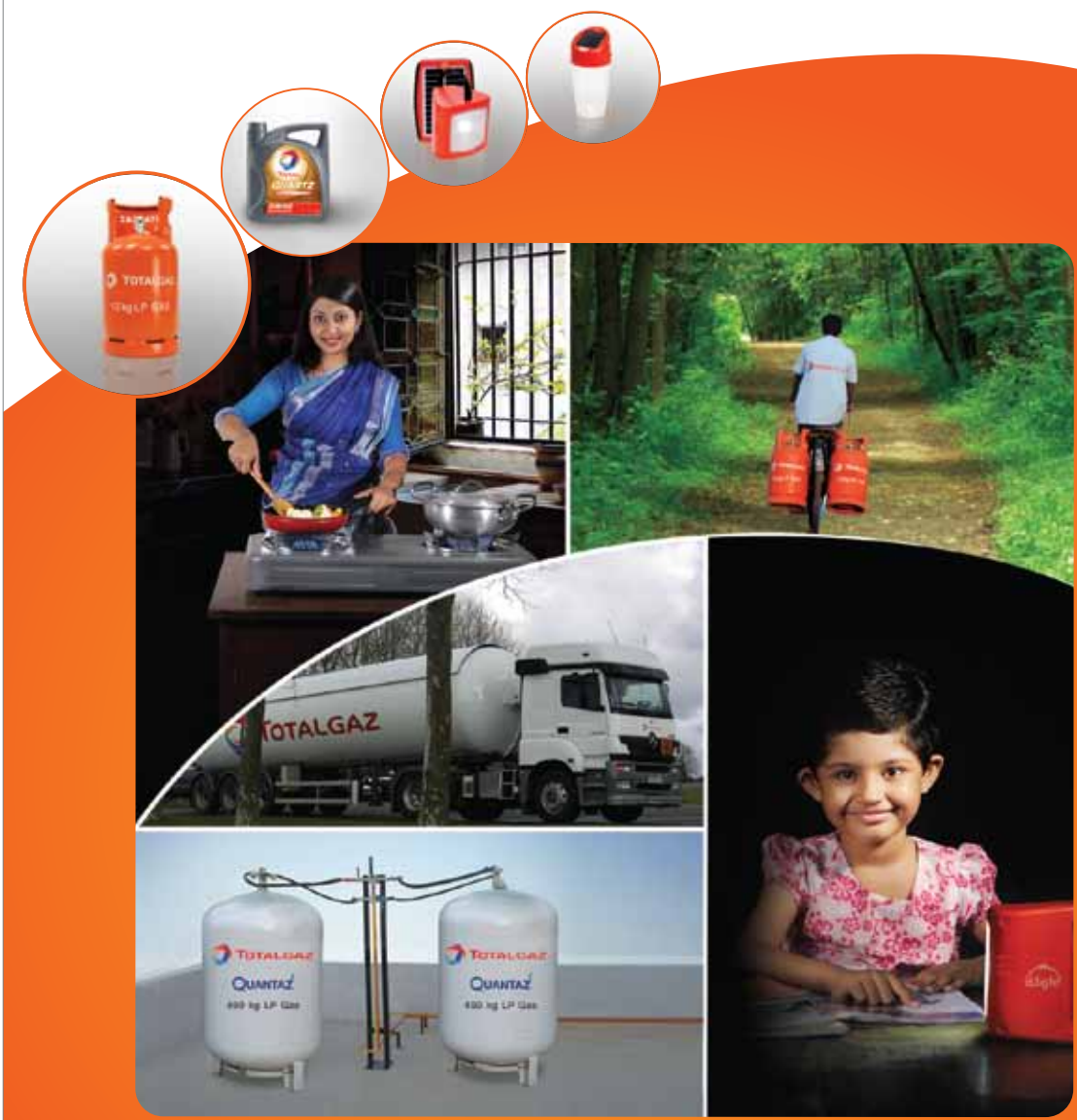
Special recognition for CSR

Huge contribution for disaster management, development of health sector, supporting local sports and diffrent other social contributions brought the Special Recognition for CSR by Banker's Forum and others

...we will continue to **strive for excellence** in coming days

PUBALI BANK LIMITED

www.pubalibangla.com



Total France is the 5th largest International Oil & Gas Company marketing Totalgaz brand LPG, Total Lubricant and Awango by Total solar light in Bangladesh.

Totalgaz Bangladesh
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TOTAL


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