

Quarterly Bulletin

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BIAC

Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

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Encouraged by Bangladesh public policy and growing requirement of businesses to settle disputes outside court system, International Chamber of Commerce Bangladesh (ICC-B), the world business organization and two prominent business chambers of Bangladesh namely, Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka and Dhaka Chamber of Commerce & Industry (DCCI) obtained a license from the Government in 2004 to establish the Bangladesh International Arbitration Centre (BIAC) as a not-for-profit organization.

BIAC formally started its operation on 9th April 2011. It is an ADR service-provider organization, facilitating resolution of domestic and international commercial disputes in an expeditious and amicable manner, through Arbitration and Mediation. BIAC has its own Arbitration and Mediation Rules. BIAC's Panel of Arbitrators consists of 12 eminent jurists among them 5 are former Chief Justices of Bangladesh and Justices of the Supreme Court. 38 experts and trained Mediators are in BIAC's list of Mediators. BIAC has developed all the facilities required for systematic and comfortable Arbitration and Mediation. Till date, BIAC has handled 250 ADR hearings of 60 ADR cases, among which 20 are mediation cases.

BIAC offers excellent facilities for Arbitration hearings and Mediation meetings, including two state-of-the-art meeting rooms with audio-aids and recording facilities, arbitrators' chambers, private consultation rooms, transcription and interpreter services. BIAC provides all necessary business facilities like video conferencing, powerful multimedia projection, computer and internet access, printing, photocopying. Full-fledged secretarial services and catering service are also available on request.

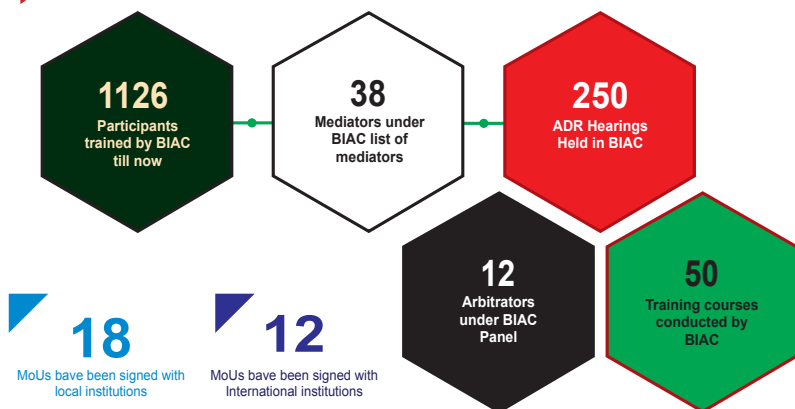
As the only ADR institution in the country, apart from facilitating Arbitration and Mediation, BIAC also provides training courses on ADR, especially Arbitration, Mediation and Negotiation. This year BIAC has taken an initiative of providing specialized ADR training courses for different sectors. For instance, ADR in Artha Rin Adalat Ain, ADR in Procurement Disputes, ADR in Human Resource Management and others. BIAC also organizes training programmes abroad jointly with those ADR centres which BIAC has already signed collaboration agreements with. Till date, BIAC has organised twenty six (26) arbitration training

courses, fifteen (15) mediation training courses and nine (9) negotiation training courses.

From the very beginning, BIAC has been working hard to create awareness about ADR facilities by conducting several outreach programmes, seminars, workshops and dialogues. BIAC has arranged about 100 workshop/seminar/dialogues as of 31st December 2017.

BIAC has received recognition by signing cooperation agreement with 12 International ADR Centres, namely, The Permanent Court of Arbitration (PCA), SAARC Arbitration Council (SARCO), Kuala Lumpur Regional Centre for Arbitration (KLRC), Vietnam International Arbitration Centre (VIAC), Malaysia Arbitration

STATISTICS SINCE INCEPTION



> BIAC is committed to be a credible and a sustainable national institution that aims to offer international commercial best practices on ADR Service to individual and institutions seeking to resolve commercial dispute

> BIAC aims to embed the use of ADR as a commercial best practice to help/assist/facilitate creation of an ecosystem that fosters investment and is conducive to business.

DID YOU KNOW

It takes only 388 days for a case to be solved by ADR while in civil litigation, it is 15.3 years on average!

Tribunal Establishment (MATE), Thailand Arbitration Center (THAC), Singapore International Arbitration Centre (SIAC), Indian Institute of Arbitration and Mediation (IIAM), Hong Kong Mediation Center (HKMC), Mainland-Hong Kong Joint Mediation Center (MHJMC), Hong Kong International Arbitration Centre (HKIAC) and Institute for the Development of Commercial Law and Practice (ICLP) Sri Lanka. Moreover, 18 leading corporate companies, banks, real estate, NGO and financial institutions have signed Memorandum of Understanding (MoU) to seek BIAC's assistance in matters related to ADR and BIAC.



Bangladesh International Arbitration Centre

The Institution for Alternative Dispute Resolution

BIAC BOARD MEMBERS



Mr. Mahbubur Rahman

Chairman, BIAC Board



Mr. Latifur Rahman

Member, BIAC Board



Ms. Nihad Kabir

Member, BIAC Board



Mr. Abul Kasem Khan

Member, BIAC Board

BIAC MANAGEMENT

Muhammad A. (Rume) Ali

Chief Executive Officer

M A Akmal Hossain Azad

Director

Mahbuba Rahman Runa

Senior Counsel

Ashiqur Rahman

Manager (Accounts & Finance)

Rubaiya Ehsan Karishma

Assistant Counsel

Syed Shahidul Alam

Administrative Officer

Shahida Parvin

Office Executive

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EVENTS NEWS

Bangladesh International Arbitration Centre (BIAC) celebrated its 6th Founding Anniversary

7th October, 2017.



Bangladesh International Arbitration Centre (BIAC) - country's first and only Alternative Dispute Resolution (ADR) institution, has stepped into its 7th year of functioning. As part of its 6th anniversary celebration, BIAC held a Seminar on "Doing Business Index: ADR in Effective Enforcement of Contracts" on Saturday, 7th October, 2017 at the Pan Pacific Sonargaon, Dhaka. The Seminar was presided over by Mr. Mahbubur Rahman, Chairman BIAC.

Chief Guest Hon'ble Mr. Anisul Huq, MP, Minister for Law, Justice & Parliamentary Affairs assured of blending the joint efforts of the Government and BIAC to create a congenial atmosphere for speedy dispute resolution, and the Government has taken a decision in principle to incorporate appropriate clauses for arbitration and mediation in all Government contracts. The Ministry will initiate a proposal soon in this regard.

Mr. Fazle Kabir, Governor of Bangladesh Bank and Mr. Kazi M. Aminul Islam Executive Chairman of the Bangladesh Investment Development Authority (BIDA) were present as special guests on this occasion.

Mr. Chou Sean Yu, Chairman Chartered Institute of Arbitrators (CI Arb) Singapore, one of the foreign Speakers shared his experience on the practice and implementation of International Arbitration in Singapore and in the region. Mr. Anil Xavier, President of the India Institute of Arbitration and Mediation (IIAM) another foreign Speaker highlighted the appropriateness of ADR in resolving commercial disputes because of its efficiency. Both Speakers emphasised on the growing need for an ADR institution in Bangladesh to cater to cross-border commercial disputes given the increasing foreign investor interest in Bangladesh and BIAC's role in meeting this need.

Mr. Mohammad Shahidul Haque, Senior Secretary, Legislative & Parliamentary Affairs Division, Barrister Nihad Kabir, President of the Metropolitan Chamber of Commerce & Industries (MCCI), Dhaka, Managing Director and CEO of the City Bank Limited, Mr. Sohail R.K. Hossain, Barrister Ajmalul Hossain QC, Mr. M. Masrur Reaz, Senior Economist, IFC, World Bank Group and Ms. Nina Mocheva, Senior Financial Sector Specialist, Debt Resolution & Insolvency, World Bank Group were present as panelists.

Mr. Muhammad A. (Rume) Ali CEO of BIAC started the session with a welcoming note while Mr. Mahbubur Rahman, Chairman of BIAC moderated the session. Former Chief Justices and Justices, diplomats, senior lawyers, senior Government officials, Managing Directors of banks, distinguished business leaders and prominent businessmen, country representatives of international organisations and media personalities also participated at the Seminar.

Bangladesh International Arbitration Centre (BIAC) signs MoU with Building Technologies and Ideas Ltd. (bti)

09 October, 2017.



Bangladesh International Arbitration Centre (BIAC) has signed a Memorandum of Understanding (MoU) with Building Technologies and Ideas Ltd. (bti) on 09 October 2017 to assist resolution of commercial contractual disputes through Alternative Dispute Resolution (ADR) at BTI Celebration point, Plot # 3 & 5, Road 113/A, Gulshan-2 in Dhaka.

Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC and Engineer F. R. Khan Managing Director of Building Technologies and Ideas Ltd. (bti) signed the Memorandum on behalf of their respective organisations. Senior officials from both the organisations were present during the signing ceremony.

This MOU will provide a framework to facilitate resolution of commercial contractual disputes of Building Technologies and Ideas Ltd. (bti) using ADR methods, such as Arbitration and Mediation through ADR expert services of BIAC.

Australian High Commissioner visits BIAC:

17 October, 2017.

Her Excellency Ms. Julia Niblett, Australian High Commissioner to Bangladesh, visited BIAC on 17 October 2017. An introductory presentation on BIAC was delivered by CEO, BIAC on the occasion of the visit of the High Commissioner.



Training on the Art of Negotiation: Less Formal and More Effective Method of ADR

31 October, 2017.



A day-long training programme on “the Art of Negotiation: Less Formal and More Effective Method of ADR” was held at BIAC on Tuesday, 31 October 2017. Negotiation is a less formal and more effective method of ADR than Arbitration and Mediation in resolving disputes, especially small disputes between the co-workers as well as between the employees and the clients. Negotiations are fundamental to business and personal relationships; they also provide a means for conflict resolution. The basic principle to be followed in negotiations is to strike a deal

which is not only acceptable to both parties, but may also be implementable. While many seems to be instinctively good at negotiations, following certain basic principles enhances one’s natural talents. The one-day programme was designed to assist executives in acquiring or developing the skills required for successful negotiations. Beginning to negotiate more effectively with customers, suppliers, contractors, friends, colleagues and even members of family are significant. This negotiation training is very helpful in Professional Development and Career Advancement of the organization, to prepare proper and effective plan for negotiation at work, in Improving business results, outcomes and profitability, to understand how to reduce unnecessary compromise and needless price discounting and to improve organisational and individual performance. The Resource Person of the training programme was Barrister Khandoker M. S. Kawsar.

High Commissioner of Brunei visits BIAC

9 November, 2017.



Her Excellency Ms. Masurai Masri, High Commissioner of Brunei to Bangladesh visited BIAC on 09 November 2017. An introductory presentation on BIAC was delivered by Director, BIAC on the occasion of the visit of the High Commissioner.

BIAC awarded by Rahman's Chambers Award 2017

02 December 2017

Bangladesh International Arbitration Centre (BIAC) has been awarded Rahman's Chambers Award 2017 in the area of Alternative Dispute Resolution for its "Contribution in Alternative Dispute Resolution in Bangladesh." Mr. M A Akmal Hossain Azad, Director, BIAC received the crest on behalf of BIAC at the 11th Anniversary Annual Dinner of Rahman's Chambers held in Dhaka on 02 December 2018 from Mr. Md. Saiful Islam, President, Leather goods and Footwear Manufacturer and Exporters Association Bangladesh (LFMEAB) and Managing Director, Picard Bangladesh Limited who was the Guest of Honour of the event on a theme "Company Law and Corporate Culture" that the Chambers considered to have an impact on its clients' business activities.

Rahman's Chambers is one of the leading law firms in Bangladesh. The firm excels in delivering practical commercial judgments and deep legal expertise for high-stake matters. Main practice areas of the firm include Admiralty, Maritime and Ship Arrest, Arbitration, Mediation and ADRs as well as Aviation Matters.



Speaking on the occasion Director, BIAC thanked Rahman's Chambers for the recognition of BIAC in the field of ADR and hoped that such accolade will inspire BIAC enormously in further boosting the commitments of BIAC through building up a human resource base by training people from different strata of the society at home and abroad and trying to effectively handle more cases on commercial and business disputes under the BIAC Rules on Arbitration and Mediation. Mr Azad also urged upon Rahman's Chambers to sign a cooperation agreement with BIAC for the mutual interest of both of them. Dr. M. Masrur Reaz, Senior Economist, IFC, World Bank Group also spoke on the occasion as Special Guest.

Training on Introduction to International Arbitration in Singapore

06-09 December, 2017.

A four day-long training programme on "Introduction to International Arbitration" was organized jointly by Bangladesh International Arbitration Centre (BIAC) and Chartered Institute of Arbitrators (CI Arb) from December 06-09, 2017 in Singapore.

The training programme was inaugurated by the

Bangladesh High Commissioner to Singapore Mr. Md Mustafizur Rahman. In his speech, he appreciated the activities of BIAC and stressed the need of arranging such trainings at home and abroad with a view to acclimatizing businesses with the best practices of Alternative Dispute Resolution (ADR). He also hoped that in creating a better business environment in Bangladesh BIAC will

continue its efforts of dispute resolution in collaboration with local organizations and international ADR institutions as well. He thanked CIArb and its organizers for arranging such an important training programme in Singapore. Speaking on the occasion Mr. Muhammad A. (Rumee) Ali, Chief Executive Officer of BIAC emphasised the need of frequent regional training programmes on International Arbitration under the aegis of BIAC and in collaboration with partner institutions. He thanked CIArb Singapore for co-hosting the training course and hoped that participants from different Government agencies, banks, corporate organisations and the legal community including senior officials from the respective top management will be able to share their experience and skill achieved through this programme with their colleagues once they are back home. Mr. Chou Sean Yu, Chairman, The Chartered Institute of Arbitrators (CIArb), Singapore and Ms. Camilla Godman, Director of Asia Pacific for The Chartered Institute of Arbitrators (CIArb) also spoke on the occasion.

This course leads to become Associate membership of CIArb, UK which is recognized worldwide. A total number of 34 participants from different sectors including Government Ministries and Organizations, Central Bank, Commercial Banks and Insurances and members of legal profession participated in the training programme. Mr. Chou Sean Yu and Ms. Camilla Godman, Chairman and Director respectively of CIArb Singapore conducted the training along with Ms. Amanda Lee, Mr. Andrew Yeo, Ms. Sapna Jhangiani, Mr. Timothy Cooke and Ms. Delphine Ho, Registrar of Singapore International Arbitration



Centre (SIAC). Participation certificates were distributed among the trainees after successful completion of the training. Participants will sit for online assessment in January 2018 to be an Associate Member of CIArb.

The Chartered Institute of Arbitrators (CIArb) is the world's leading professional body for promoting the settlement of disputes by arbitration, mediation and other Alternative Dispute Resolution (ADR) methods. Founded in 1915, it promotes the use of ADR internationally through 14,000 professionally qualified members in over 133 countries. CIArb is a UK registered organization which works in the public interest through an international network of 40 branches.

BIAC is the first and only Alternative Dispute Resolution (ADR) institution in Bangladesh and it aims to embed the use of ADR as a commercial best practice to help/assist/facilitate creation of an eco-system that fosters investment and is conducive to business. BIAC has received recognition by signing cooperation agreement with 12 International ADR centres. BIAC has also signed MoUs with 18 local business and financial institutions/NGOs to work together in adhering to ADR practices at home and abroad.

The 28th BIAC Board Meeting was held

26 December 2017.



The 28th Meeting of the BIAC Board was held on Thursday, 26 December, 2017 at 4:30 pm at BIAC Office, Suvastu Tower (6th Floor), 69/1, Pantha Path, Dhaka.

The meeting was presided over by Mr. Mahbubur Rahman, Chairman, BIAC Board. BIAC Board Members Mr. Latifur Rahman, Ms. Nihad Kabir, and Mr. Abul Kasem Khan were present at the meeting.

BIAC Chairman Mr. Mahbubur Rahman welcomed the Members of the BIAC Board. The Chief Executive Officer of BIAC Mr. Muhammad A. (Rumee) Ali highlighted BIAC's current and future activities in the meeting. Board members gave their valuable suggestions and important decisions were arrived at accordingly. The newly appointed Director of BIAC Mr. M A Akmal Hossain Azad was introduced to the Board.

Bangladesh Accord Arbitrations

16 October, 2017



The Permanent Court of Arbitration (PCA) is currently administering two arbitrations arising under the Accord on Fire and Building Safety in Bangladesh signed on 15 May 2013 (Accord). The Accord is an agreement between global brands and trade unions created in the aftermath of the Rana Plaza building collapse, to establish a fire and building safety programme for workers in the textile industry in Bangladesh. IndustriALL



Global Union and UNI Global Union (Claimants) commenced arbitrations under the Accord and the UNCITRAL Rules of Arbitration 2010 against a global fashion brand (Respondent in PCA Case No. 2016-36) on 8 July 2016, and against another global fashion brand (Respondent in PCA Case No. 2016-37) on 11 October 2016.

Further information about these proceedings is available at <https://pca-cpa.org/en/cases/152/>

The Singapore International Arbitration Centre (SIAC) Signs Memorandum of Understanding with the Institute of Modern Arbitration of the Russian Federation

17 October, 2017



The Singapore International Arbitration Centre (SIAC) is pleased to announce that it has entered into a Memorandum of Understanding (MOU) with the Institute of Modern Arbitration (IMA) of the Russian Federation to support and promote the development of Singapore and Russia's arbitration regimes.

Under the MOU, SIAC will conduct training programmes, seminars and workshops for IMA and the arbitrators of the Arbitration Center established at the IMA. In addition, the institutions will also co-organise seminars, conferences and workshops in international arbitration.

The MOU was signed by Ms Delphine Ho, Registrar of SIAC, and Mr Andrey Gorlenko, General Director of IMA, at the 8th Session of the High-Level Russia-Singapore Inter-Governmental Commission (IGC8) in Moscow.

Mr Andrey Gorlenko, General Director of IMA, said, "IMA has established The Arbitration Center at the



INSTITUTE
OF MODERN ARBITRATION

IMA, which is one of the first permanent arbitral institutions authorised by the Russian Government to administer disputes under the new Russian arbitration law. We are delighted to have entered into an MOU with SIAC, and are confident that this collaboration will enable both institutions to forge closer ties with existing and potential users of international arbitration in both Russia and Singapore."

Ms Lim Seok Hui, CEO of SIAC, commented that "SIAC and IMA agree on the importance of staying focused on providing efficient, expert and enforceable dispute resolution services to parties from diverse legal systems and cultures such as Russia and Singapore. Through this MOU, we hope to work jointly with IMA to promote and develop international arbitration as a preferred mode of dispute resolution for cross-border commercial disputes involving Russian companies and businesses."

Further information about these proceedings is available at <http://www.siac.org.sg>

ILI Partners with International Finance Corporation [IFC - World Bank Group]

01 December, 2017



December 1, 2017 — IFC Legal Department has teamed up with the International Law Institute (ILI) to create the “Certificate Program for Legal Skills in Private Sector Financing.” The program seeks to strengthen legal skills of in-house counsel within private and public sector organizations so that they are better equipped to expand private sector financing in emerging markets.

Insufficient institutional and regulatory capacity in emerging markets is a key challenge to IFC's goal of scaling up private sector solutions to address development challenges. The program aims to develop a cadre of lawyers and policy makers who understand the role and importance of private sector financing in promoting development. Its curriculum focuses on international best practices in private sector financing, particularly in private infrastructure projects and concession-related contractual structures.

“Legal professionals and policymakers across emerging markets are our great allies in creating the right conditions to channel private sector funding and ingenuity to essential development needs,” said Ethiopis Tafara, IFC VP for Legal,

Compliance Risk and Sustainability, and General Counsel, at the signing ceremony with ILI.

The program is designed for mid-career and senior-level professionals working in public or private sector organizations who are directly involved in designing and negotiating policies to increase private sector investment and drafting and negotiating government contracts and authorizations required to implement private sector investments and development solutions.

The Program will be a one-week intensive residential course designed to equip participants with skills to understand legal, regulatory and commercial issues relating to private sector financing, so that they will be in a better position to lead private sector finance development initiatives in their respective countries. The Program will be offered to selective groups, on demand, in different locations globally about twice a year, starting with Colombo, Sri Lanka. IFC Legal and ILI will also seek to partner with local organizations to help them establish local training programs to deliver greater impact over the long.

ILI is an independent non-profit organization based in Washington D.C. It is a leading provider of training and technical assistance to public and private organizations in areas including financial and legal aspects of private participation in infrastructure. ILI draws on a very large network of technical consultants, alumni, faculty and advisors to tailor training solutions that balance scholarly training and practical case studies with global best practices.

<http://www.ili.org/about/news/857-ili-partners-with-ifc.htm>

The 2017 Conference of Membership Representatives of China Academy of Arbitration Law and the 10th Arbitration and Judicial Forum were Held in Nanjing

06 – 08 December, 2017



From December 6 to December 8 2017, the 2017 Conference of Membership Representatives of China Academy of Arbitration Law and the 10th Arbitration and Judicial Forum were held in Nanjing. Wang Chengjie, Vice Chairman and Secretary General of CIETAC, attended the conference and forum together with the CIETAC delegation.

Lu Pengqi, vice president of China Council for the Promotion of International Trade and president of China Academy of Arbitration Law, addressed the opening ceremony of the conference and forum and presided over the council meeting. According to relevant adjustments, Wang Chengjie, deputy director and secretary general of CIETAC, was elected as vice president of China Academy of Arbitration Law. The conference also passed the allocation method of membership delegates of China Academy of Arbitration Law, the work and financial reports of the Council, the decision on the establishment of international consultant and observer committee and other matters.

In the arbitration and judiciary forum, guests and delegates participated in the heated discussions on judicial review, ad hoc arbitration in free trade area, real estate arbitration and third-party funding, etc. Among them, Secretary-General Wang Chengjie presided over the fifth session of the forum, that is, Arbitration in China Entering into a New Era: Difficulties and Opportunities. During the discussion, Secretary General Wang Chengjie and participating delegates discussed how to improve the credibility of arbitration in

China after entering a new era, how to promote the internationalization of arbitration in China, and exchanged views on hot issues such as investment arbitration and online arbitration. Secretary-General Wang Chengjie responded to the suggestions of participating experts and representatives and proposed that under the new situation, arbitration institutions in China shall step up cooperation and enhance solidarity so as to make joint efforts to increase the credibility of Chinese arbitration and contribute to the internationalization of Chinese arbitration.

At the closing ceremony of the forum, Secretary-General Wang Chengjie also presented the award as the honored guest for the authors who won the outstanding paper award. The selection of the essays attracted many scholars, arbitrators and lawyers to participate actively. The contents covered the legal hot issues such as economic and trade dispute settlement in Free Trade Zone, 'the Belt and Road' dispute resolution, international investment arbitration and online arbitration, etc.

<http://www.cietac.org/index.php?m=Article&a=-show&id=14635&l=e>

THAC Received Director of the Chartered Institute of Arbitrators (CIArb)

13 December 2017

On 13 December 2017 the THAC received Ms. Camila Godman, Director of the Chartered Institute of Arbitrators (CIArb) for Asia Pacific

along with Jerrold Kippen and Olaf Duensing from (CIArb Thailand) to discuss areas for further cooperation between the respective institutions.

HKIAC Tribunal Secretary Training Programme – Shanghai

14 Dec 2017 to 15 Dec 2017, Shanghai



HKIAC is the first arbitral institution to offer a Tribunal Secretary Training Programme. As an extension of HKIAC's tribunal secretary service, the Programme trains the next generation of tribunal secretaries around the world.

The training typically takes one and a half days, during which part of the participants work will be assessed. A further written exam will follow the

training. Participants who successfully pass the written assessment will be interviewed by a member of the Board or Faculty. Participants who have passed both the written and oral exam will receive a certificate of completion and will be listed on our website subject to his/her consent.

<http://www.hkiac.org/events/hkiac-tribunal-secretary-training-programme-shanghai>

ICCA launches Working Group on Cyber security in Arbitration

29 December, 2017



The International Council for Commercial Arbitration (ICCA) is pleased to announce that we will be joining forces with the New York City Bar Association and the International Institute for Conflict Prevention & Resolution (CPR) to launch a Working Group on Cyber security in International Arbitration.

The ICCA-NYC Bar-CPR Working Group on Cyber security in International Arbitration is a project dedicated to addressing the need for cyber security in arbitral practice and establishing voluntary cyber security protocols for use in international arbitral proceedings. The Working Group will consider the possible impact of cyber security breaches on the system of international arbitration, as well as current practice and existing duties. The Members will then prepare a set of guidelines, which will provide practical guidance for counsel, arbitrators, and institutions, as well as optional protocols that can be adopted by parties to an arbitration.

Asked about the launch of this Working Group, Project Chair Brandon Malone commented: "Cyber-attacks are a clear and growing danger to the integrity of our system in international arbitration. Poor cyber security can result in confidential information being obtained and used inappropriately, in denial of service attacks disrupting the process, in regulatory breaches, and in reputation damage to disputing parties, individual arbitrators, institutions, and to the system of arbitration itself. Despite these risks, awareness of cyber security threats, and the practice of individual participants in the arbitration process varies widely. There is a clear need for guidance to help those involved in arbitration to identify the risks, and take appropriate steps so as to maintain confidence in the system. We have been working with the New York City Bar Association and CPR Institute for some time now, devising an outline plan to address these issues, and we look forward to launching draft guidance and protocols for consultation at ICCA 2018 in Sydney."

The Working Group will present a consultation paper at the 24th ICCA Congress in Sydney, Australia. The Congress will be held from 15-18 April 2018.

<http://www.arbitration-icca.org/projects/Cybersecurity-in-International-Arbitration.html>

BIAC Seminar on: “Doing Business Index: ADR in Effective Enforcement of Contracts”

Saturday, 7 October, 2017 at 6.30 p.m.

Surma Room, Pan Pacific Sonargaon Hotel, Dhaka

In observance of Bangladesh International Arbitration Centre (BIAC)'s 6th founding anniversary BIAC arranged a seminar on “Doing Business Index: ADR in Effective Enforcement of Contracts” on 7 October 2017 at 6.30 pm at Pan Pacific Sonargaon Hotel. The objective of the seminar was also highlighting activities of BIAC in promoting best practices of institutional Alternative Dispute Resolution (ADR) in the country.

The Honorable Minister for Law, Justice and Parliamentary Affairs Mr. Anisul Huq MP was the Chief Guest at the Seminar. Governor of Bangladesh Bank Mr. Fazle Kabir and Executive Chairman of Bangladesh Investment Development Authority (BIDA) Kazi M. Aminul Islam were Special Guests. Distinguished Speakers of the seminar were: Senior Secretary, Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs, Mr. Mohammad Shahidul Haque, Barrister Nihad Kabir President of Metropolitan Chamber of Commerce and Industry (MCCI) Dhaka, Chairman of the Chartered Institute of Arbitrators (CIArb) Singapore Mr. Chou Sean Yu, President of the Indian Institute of Arbitration and Mediation (IIAM) Mr. Anil Xavier, Senior Financial Sector Specialist, IFC/World Bank Group Ms Nina Mocheva, Managing Director and CEO of the City Bank Limited Mr. Sohail Hussain, Senior Advocate of the Supreme Court of Bangladesh Barrister Ajmalul Hossain QC and Senior Economist, IFC/World Bank Group Dr. Masrur Reaz.

Distinguished guests included former Advisor to the Caretaker Government Mr. Abdul Mueyed Chowdhury, former Ambassador Muhammad Zamir; Jurists including former Chief Justice Tafazzul Islam, former Justice Mohammad Fazlul Karim, and others including Chairman of British American Tobacco Bangladesh Mr. Golam Mainuddin, senior Government officials, officials from banks, prominent businessmen including Mr. Latifur Rahman, Chairman of Transcom Group and Mr. Abul Kasem Khan, President of the Dhaka Chamber of Commerce and Industry (DCCI), lawyers and media personalities attended the seminar and participated in deliberations. Mr.

Mahbubur Rahman, Chairman, BIAC Board moderated the seminar. Mr Muhammad A. (Rume) Ali, Chief Executive Officer, BIAC delivered opening address.

The recommendations made by the Speakers are given below in order of speech delivered.

RECOMMENDATIONS by SPEAKERS

The recommendations made by the Speakers are given below in order of speech delivered.



Mr. Muhammad A. (Rume) Ali
CEO, BIAC

- ADR as a global best practice can be increasingly adopted all over the world to help cut down the back log and lower the time taken to resolve disputes and enforce contracts, which may in turn cut down transaction cost and increase efficiency in the economy. This must certainly help our country in attracting Foreign Direct Investment (FDI).
- Intervention by the Ministry of Law, Justice and Parliamentary Affairs sought to initiate a process that will legally allow the use of Arbitration under the Money Loans Court Act, which will certainly help to speed up the process and lessen the backlog in the Money Loans Court. There can also be a cap on the amount of debt that can go for arbitral process. Since an arbitral award legally has the same enforceability as a court judgment, the next step- execution, can be viably taken to the court.
- Emphasized the use of institutional Mediation through BIAC to ensure that they are conducted in a transparent and accountable way. As Section 89 of the Code Civil Procedure 1908 (as amended in 2003) has made Mediation compulsory, urged all commercial and corporate houses to seriously consider immediate implementation of the use of ADR clause in all their contracts. In doing so, they can ensure that they have a choice to overwrite the long and costly and often confrontational court process in the event of a dispute or non performance of contract.



Mr. Chou Sean Yu
Chairman, Chartered Institute
of Arbitrators, Singapore Branch

- With increased acceptance of International Arbitration as preferred model for modern dispute resolution, harmonization of international arbitration laws and practices may have some significance to the evolution of BIAC as an international arbitral institution. As International Arbitration is now more and more guided by soft laws meaning guidelines, arbitral rules and codified best practices, these can take precedence on an organization of a hearing on a dispute resolution.
- As global increase in International Arbitration cases has created changes in the business of arbitration lawyers have to change their traditional litigation mindsets and learn new practicing skills consistent of evolving international best practices. This will definitely give rise to advocacy quests, especially tailored to International Arbitration work.
- Arbitral bodies can consider acting as regulators in the way that National Bar Associations regulate lawyers and sanctions based on an internationally approved base of penalty benchmarks can be imposed by such bodies.
- A robust and successful ADR infrastructure will assist in building up a nation's commercial and business status. A foreign investor can only take great comfort than any unforeseen business disputes, may also be able to be effectively resolve in an efficient and trustworthy environment and enforceable in the country of investment.



Mr. Anil Xavier
President of Indian Institute of
Arbitration and Mediation (IIAM)

- To attract international business or investment, though independent legal system is in place, there are reasons why businesses opt for alternative methods rather than the regular court system. Businesses tend to like to have the matters resolved quickly and taking excessive time can be damaging as a wrong decision.

So ADR methods may give a solution or an optimal mix of flexibility and foreseeable results.

- Apart from the advantages that exist in arbitration extra advantage of getting whistles through innovative outcomes in mediations can also be obtained. Over and above, ADR methods may provide ability for the business disputants to enhance their business relationship after a dispute is grown.
- Mediation and arbitration have not become alternative methods of commercial dispute resolution, rather ADR in its truest sense is not alternative anymore, it may be called appropriate, the most timely and Appropriate Dispute Resolution method.
- Emphasized building future leash with India and Bangladesh in jointly exploring to find out how effective Bangladesh can be as a centre for arbitration and mediation, as IIAM has recently signed MoU with BIAC.



Mr. Mohammad Shahidul Haque
Senior Secretary of Legislative
and Parliamentary Affairs Division

- Urged upon the Government to consider if in a multi-national contract subject matter of which is within Taka 50 million can be raised up to Taka 100 million to deal in arbitration cases within the purview of our Arbitration Act of 2001 where the venue of arbitration should be Dhaka and so that more cases can come in Bangladesh which may make the settlement of commercial disputes more predictable, more particularly less expensive so that in a gradual process BIAC can come up as an arbitral institution.
- The challenges lying with the mindset of judges, lawyers and definitely with the litigant people as well can be overcome by making them aware because dispensation of justice or resolution of disputes is an agency work; all the stakeholders, all the agencies must be aware of the benefits of informal resolution of disputes, more particularly, the commercial disputes is of doing business.
- Hoped that at the end of the tunnel, support will persistently come up from different sectors when BIAC is getting momentum.



Barrister Nihad Kabir
BIAC Board Member
and President of MCCI, Dhaka

- Stressed the need for inserting arbitration clause while drafting business agreements which can in fact inundate BIAC with arbitration cases.
- Emphasized the need to familiarize our courts with the limited nature of the challenge that should be permitted in the case of arbitration. There should never be a re-hearing on the matter of the merits. As this process can go for years and if after all of these, an award is decreed- the next step, the execution of the award can again take several years. So, the justifications that are put forward for arbitration has to be made preferable to litigation, which is a saving in terms of cost and time.



Mr. Sohail Hussain
Managing Director and CEO of
the City Bank Limited

- Opined that difficulties in incorporating ADR processes in the customer-vendor and other contracts can be overcome by increasing awareness and also by strengthening the legal framework for ADR where businesses and people are used to taking disputes to the court directly.
- Urged upon the Government, the legal system, regulators and businesses to work together to strengthen BIAC and the ADR legal underpinnings.
- Expressed confidence that by adapting ADR in its complete form, i.e., conciliation, mediation and arbitration and perhaps making it mandatory for specific factors or cases, the overall ADR scenario might be improved, which would require amendments to the existing Money Loan Court Act 2003 including incorporation of provisions of trial suits to be concluded compulsorily within 2 years.



Barrister Ajmalul Hossain, QC

- Stressed the need for doing away with multiplicity of proceedings to resolve the dispute which stands on the way of having any final verdict by a competent court, as it is seen that to effectively resolve one debt one can end up with 18 to 20 cases.
- Emphasized the need for invoking provisions of the Arbitration Act 2001 which deals with interim preventive measures seeking to restrain civil proceedings arising out of business disputes and to enforce arbitral awards.



Dr. M. Masrur Reaz
Senior Economist
IFC, World Bank Group

- Hoped that BIAC coming of age as a strong ADR institution in Bangladesh, would be able to play the most important role not only to provide ADR services but also to bring in improvement in enforcement of contracts in Bangladesh.
- Appreciated BIAC's growth as an institution within the rules and many other institutional strengthening measures in terms of its outreach and ADR in terms of arbitration and mediation and wished BIAC as a platform, evidently a household name within the legal and business community to help create a fraternity for practitioners through their accredited arbitrators and mediators in cases to be successfully resolved applying ADR methods.
- Stressed the need for consolidating BIAC's extremely important role on behalf of the private sector to bring together the Government and the community of legal practitioners in identifying the common issues, key impediment to embed ADR best practices in Bangladesh.
- Emphasized the need for Government support to strengthen BIAC which can continue to play on one hand the advocacy and conveying role bringing together all stakeholders to address the ADR elements to improve the enforcement of contracts and on the other hand can also lend support to the Government, building on its own experience, as BIAC is in the process of developing case management.



Ms. Nina Mocheva
Senior Financial Sector
Specialist (Debt Resolution and
Insolvency), World Bank Group

- Advised that Bangladesh legal framework be updated from time to time and updated legislation must help resolve new commercial transactions especially in a national commercial transaction mechanism.
- Stressed the need for augmenting BIAC's institutional activities of Med/Arb in commercial dispute resolution as well as handling ad hoc arbitration under the latest legislation on Arbitration in 2001.
- Emphasized BIAC's leadership and efforts to provide out of court resolution for commercial disputes quickly, transparently and in a cost effective way, expectedly leading to growth of businesses and entrepreneurship.
- BIAC's efforts will need to be supported by the Government for improving the legislation of ADR and training of judges to expedite the handling of ADR related issues, such as enforcement of contracts.



Kazi M. Aminul Islam
Executive Chairman
Bangladesh Investment
Development Authority (BIDA)

- Opined that with decreasing FDI we are yet to have a market which can draw in our portfolio investment, so business across border in terms of FDI is very important for the country. We need to have contract and any contract is as good as its enforcement and unfortunately we have long way to go so far as the enforcement of contract is concerned.
- Maintained that as cost in court system is much higher than outside and above all the relationship that is most important in business is also lost in adversarial cases that creates a strong case for developing institutions for ADR like BIAC in Bangladesh.
- Appreciated that BIAC has brought together quite a few best and the brightest organizations not only in business but also in legal and financial profession and they have also made the job of BIDA to create a better investment climate, an environment in which an investor or business people can do their business- a little easier.

- Hoped that the Government, businesses, other agencies and all those who have supported BIAC, will continue to support this organization by deeply engaging themselves with its activities in order to take the nation to the next level of doing better business.



Mr. Fazle Kabir
Governor
Bangladesh Bank

- Opined that as civil courts are facing back logged dockets resulting in delay over years for private parties to have their cases disposed of by a competent judicial forum, new type of proceedings has developed as a response like the ADR and the facilitation from BIAC, which as an institution should be nurtured and patronized by all concerned.
- Appreciated BIAC's beneficial service in saving time and money for everyone involved. This kind of response including arbitration, mediation and some other techniques including conciliation and negotiation are being designed by BIAC in case specific manners, which deserves recognition at national level.
- Emphasized further boosting of BIAC's institutional capacity and overall activities as ADR methods are formally integrated into our judicial system in order to capitalize on their typical advantages over litigations, like flexibility of procedures, lower costs, autonomy of parties to choose neutral third party to settle disputes, expeditious settlements, practical solutions tailored to party's needs and concerns, confidentiality and preservation of relationship and reputation.
- Lauded the role of BIAC for taking initiatives to resolve loan recovery disputes through arbitration and mediation by using its own capacity and limited facility. This can be further augmented if appropriate amendments are brought about in the Money Loan Court Act 2003 in order to recognize Arbitration as a method in recovery of loans.
- Appreciated BIAC's recognition by signing a number of co-operation agreements with several private banks, financial institutions and corporate offices in the recent past.
- Assured to appreciate BIAC if they take initiatives for similar co-operation with state owned commercial

banks and their litigant clients so that they can be settled once and for all at the earliest under the auspices BIAC.



Mr. Anisul Huq
MP, Minister for Law, Justice
and Parliamentary Affairs

- Pointed out that the Arbitration Act 2001 has taken Bangladesh within the threshold of arbitration for businessmen or entrepreneurs who are competing in this world of globalization; it is imperative that they incorporate global best practices and apply these methods and processes. Apart from the Arbitration Act 2001, some other laws have also incorporated provisions of ADR, e.g., mediation has been made mandatory in 2010 in the Money Loan Court Act 2003.
- Appreciated the initiatives of BIAC to promote practice of settlement of disputes through ADR methods. Business leaders and organizations now recognize the significance of BIAC as an institution which not only provides suitable infrastructure for arbitration and mediation but also imparts training on ADR to mediators, arbitrators and legal professionals in Bangladesh. A substantial product offered by BIAC is its institutional Arbitration Rules 2011 and Mediation Rules 2014 which provide opportunity to parties to settle under a set of international rules.
- Thanked BIAC team for their hard work in popularizing ADR, for that matter, arbitration and mediation in Bangladesh.
- Appreciated that BIAC has already been recognized by a number of international ADR institutions including the Permanent Court of Arbitration (PCA), The Hague, SAARC Arbitration Council, Islamabad and Singapore International Arbitration Centre (SIAC).
- Lauded the role of BIAC and its commitment to promote adherence to cost effective ADR which will definitely help dispose pending bulk of civil cases throughout the country.
- Appreciated the contribution of BIAC in providing a mechanism or bridge for resolution of commercial disputes out of court. Also pointed out that BIAC in fact has been able to develop neutral, efficient and dependable dispute resolution service.
- Declared that the Government has taken a decision in principle to incorporate appropriate clauses for Arbitration and Mediation in all Government contracts. The Legislative and Parliamentary Affairs Division will initiate a proposal soon in this regard.

Doing Business Index: Improving Bangladesh's Ranking



If you have a commercial dispute in which your claim is Tk.1 crore and you decided to go for legal action, if successful, you can hope to recover around Tk33.2 lacs in other words the cost of recovery is estimated at 66.8% of the claim. This is what The World Bank's Doing Business Index 2017, says. Indeed it is numbers like this one that reinforces negative perceptions about Bangladesh. Before I go on to explaining what factors affect our ranking, it would be useful to introduce BIAC. At BIAC we have been making an effort in to bring about a major change in the way we settle commercial disputes in this country. BIAC's objective is to embed settlement of commercial disputes through alternate dispute resolution (ADR) as the first default process, instead of taking it to the court. This may sound very simple and logical, but the reality, for a variety of complex reasons is quite different. I know, the first thing that crops up in our minds is that we are as a people, fond of taking our disputes to the court, but the truth is our history and culture says otherwise. Traditionally, our villages and towns had a

heritage of 'shalishi' - an alternative dispute resolution process which had elements of both mediation and arbitration. It is known the 'mohalla sardars' would conduct similar process of dispute resolution in old Dhaka. Although elements of it still exist in different forms in our rural and urban areas, the rise of new socio-cultural ethos and stronger and a more structured legal eco system that was established during the British colonial period of our history has eroded and disempowered the social authority of this quasi legal process. The quantum increase of contractual relationships and transactions and the consequent impact of increasing number of disputes has put enormous strain on our commercial legal system. The legacy of a public sector dominated economy till the mid to late eighties, limited the body commercial legal precedence and practice of commercial jurisprudence in Bangladesh.

In such a situation, the conventional response of increasing capacity of the legal resources of the state to meet the need does not make economic sense and would be an

unsustainable financial burden on the state. Economists consider this as increasing the economic transaction cost and therefore lowering the efficiency of the economy. To clarify the meaning further I will quote from Wikipedia " In 'Transaction Costs, Institutions and Economic Performance' (1992), Douglass C. North argues that institutions, understood as the set of rules in a society, are key in the determination of transaction costs. In this sense, institutions that facilitate low transaction costs, boost economic growth. Douglass North states that there are four factors that comprise transaction costs – "measurement," "enforcement," "ideological attitudes and perceptions," and "the size of the market." Measurement refers to the calculation of the value of all aspects of the good or service involved in the transaction. Enforcement can be defined as the need for an unbiased third party to ensure that neither party involved in the transaction reneges on their part of the deal. It is the legal system that ensures 'enforcement'. However if enforcement takes longer than what is than an acceptable period, on time value of money calculation, the end result is that the discounted value of the 'enforcement' is unviable, nil or negative. To make this point, let me cite some available statistics.

A study conducted by International Finance Corporation (IFC), Bangladesh Investment Climate Fund (BICF) and Centre for Effective Dispute Resolution (CEDR) (UK) (2009) came up with the following findings, which I believe are still relevant:

CIVIL (APPEAL & REVISION) CASES : 15.3 YEARS
 WRIT CASES : 3.68 YEARS
 CIVIL CASES (Original Jurisdiction) : 5.78 YEARS

The situation in case of outstanding litigation under the Money Loans Court Act (2003) is not encouraging either:

BANGLADESH BANK: Number of Cases Pending with Artha Rin Adalat was 49,656 until 2016 (amount Tk 60,142 crore).

Clearly, the above numbers do reinforce the view that "enforcement" is at best weak and at worst barely existent. This also feeds into "ideological attitudes and perceptions" part of the 'transaction cost' equation. Issues like these have much larger knock-on effect than one perceives. Take the case of a global ranking published every year by different agencies on aspects of economics of different countries, the 'Doing Business Index' of the World Bank ranks Bangladesh at 176th among 190 countries trailing Sri Lanka (110), India (130) and Pakistan (144). It may surprise many to find that war torn economies like Iraq (165) and Syria (173) fared better than us. This is the point I was trying to make in the opening few lines on how qualitative rankings can exacerbate negative perceptions about the country. We certainly need to address this to help create a positive image of Bangladesh as a country which welcomes FDI.

This composite index has ten underlying factors e.g. Starting Business, Dealing with Construction Permits, Getting Electricity, Registering Property, Getting Credit, Protecting Minority Investors, Paying Taxes, Trading Across Borders,

Enforcing Contracts and Resolving Insolvency. We are in last 10 of the 190 countries in three factors, in the last 50 in seven (including the three) and we are in the first 100 in only one. To improve this ranking we need to look at the ones that are pulling us down the most. The three that stand out are Getting Electricity ranking 187, Registering Property ranking 185 and Enforcing Contracts 189 all out 190 countries. We are among last five countries in these three. While the first two of these three appear to be 'work-in-progress' for the government, the last one is the most challenging one and one that perhaps requires a quantum change in attitude towards Alternative Dispute Resolution process. We cannot resolve the huge backlog of cases by simply increasing the number of courts or judges. The cost could be astronomical. Most economies have faced this issue of backlog of cases and most have resolved it by making the legal infrastructure ADR friendly and more importantly, forcing litigants into the ADR track. The latest example is Malaysia who brought down the index ranking by lowering the average number of days it takes to enforce a contract to 425 in 2012 from 585 in 2011 by forcing litigants to use ADR rather trying to resolve all outstanding cases through the judicial process. Malaysia moved from 102 out of 183 economies to 23 out of 190 economies in 2011 and 2017, respectively. This upward ranking was to a great extent assisted by their improvement in 'Enforcement of Contract' ranking through adoption of ADR friendly regime. Forcing cases on the ADR track freed the courts to concentrate on the more important and impactful litigation, lowered transaction cost and created a more efficient economy. The present thinking on the role of ADR is succinctly summed up in the following quote from Justice Sandra Day O'Connor of the US Supreme Court; "The courts ... should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried"

Bangladesh International Arbitration Centre was set up by the three leading trade bodies, International Chamber of Commerce, Dhaka Chamber of Commerce & Industry and the Metropolitan Chamber of Commerce & Industry. This not-for-profit institution, like similar ones in Singapore, Hong Kong, Thailand and Malaysia has been for the last five years working in the ADR space in Bangladesh. It is the only ADR institution in country and can play a more effective role if utilized to assist in the process of making enforcement of contract. Effective ADR in the commercial legal infrastructure is now not a 'good to have' it is increasingly becoming a 'must have' for Bangladesh. The positive 'spin-off' from this will be a much desired improvement in our 'Doing Business' ranking with consequent impact on FDI. There have been reports in newspapers that Bangladesh Investment Development Authority (BIDA) has recently undertaken a project to improve this global ranking of Bangladesh. It is indeed one of the most important initiatives this institution has taken which the precursor institution, BOI should have done much earlier.

Muhammad A. (Rume) Ali

CEO, BIAC & Former Deputy Governor, Bangladesh Bank
 Published originally in the Daily Star on August 3, 2017.

BIAC Med-Arb clause

“Any dispute or difference arising out of or in connection with this contract shall first be referred to the Bangladesh International Arbitration Centre (BIAC) for settlement through mediation in accordance with BIAC Mediation Rules. If a settlement cannot be reached within sixty (60) days following the appointment of the Mediator(s), then such dispute or difference shall be referred to BIAC to be finally settled under the rules of arbitration of the Bangladesh International Arbitration Centre, by one or more arbitrators appointed in accordance with the said Rules.”

How can you engage BIAC?

- Register cases under BIAC Arbitration Rules 2011 and Mediation Rules 2014
- Parties can use BIAC facilities to conduct any ADR case which is not under BIAC Rules
- Pursue BIACs sector based training on arbitration, mediation and negotiation
- Signing of Memorandum of Understanding
- Signing of Co-operation Agreement
- Advisory Services on ADR

Benefits of adding BIAC Med-Arb clause in the contract

- Parties know beforehand how to solve their conflicts (if any)
- The panel of Mediators / Arbitrators know BIAC Rules
- The timeline is predetermined
- Number and procedures of choosing Arbitrator/Mediator are fixed
- The costs to resolve the whole dispute are predictable

BIAC Med-Arb clause can be included in:

- Procurement contract
- Sale contract
- Loan Agreement
- Lease Agreement
- Joint-venture agreement
- Employment agreement
- Any other contracts

EVENTS NEWS

BIAC's Upcoming Events

Organization	Events	Date	Venue
Bangladesh International Arbitration Centre (BIAC)	Alternative Dispute Resolution (ADR)	30 th January, 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Round Table on Investment Friendly Access to Justice and ADR as Remedy in Commercial Disputes	17 th February, 2018	Hotel Amari Gulshan, DHAKA
BIAC & Indian Institute of Corporate Affairs (IICA)	International Cross Culture, Civil & Commercial Mediation & Negotiation	24 th to 31 th March 2018	Gurgaon, Delhi India
Bangladesh International Arbitration Centre (BIAC)	Practice and Art of Negotiation	End of April 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Workshop on ADR	Coming Soon May, 2018 in Dhaka	BIAC
Bangladesh International Arbitration Centre (BIAC)	Managing non performance risk & conflict for Bankers	Coming Soon June, 2018 in Dhaka	BIAC
Bangladesh International Arbitration Centre (BIAC)	Workshop on Alternative Dispute Resolution	Coming Soon July, 2018	Colombo, Sri Lanka
Bangladesh International Arbitration Centre (BIAC)	Workshop on legislations providing for ADR for Judges	Coming Soon August, 2018	BIAC



Bangladesh International Arbitration Centre

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