

Quarterly Bulletin

Volume 7

Number 1

January-March 2018



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. 100 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 259 ADR hearings of 60 ADR cases, among which 20 are mediation cases.

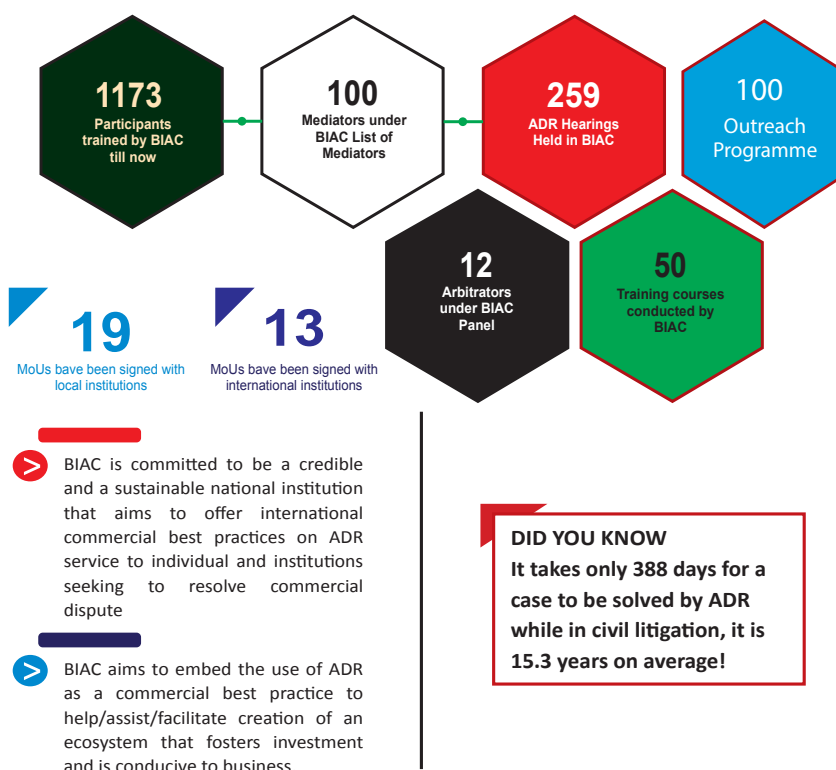
BIAC offers excellent facilities for Arbitration hearings and Mediation meetings, including two state-of-the-art meeting rooms with audio-aids and recording facilities, arbitrators' chambers, private consultation rooms, transcription and interpreter services. BIAC provides all necessary business facilities like video conferencing, powerful multimedia projection, computer and internet access, printing and 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. BIAC has taken 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 26 arbitration training courses, 15 mediation training courses and 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 31 March 2018.

BIAC has received recognition by signing cooperation agreement with 13 International ADR Centres, namely, The Permanent Court of Arbitration (PCA), SAARC Arbitration Council (SARCO), Asian International Arbitration Center (AIAC), formerly known as Kuala Lumpur Regional Centre for Arbitration (KLRC), Vietnam International Arbitration Centre (VIAC), Malaysia Arbitration Tribunal Establishment (MATE), Thailand Arbitration Center (THAC), Singapore

STATISTICS SINCE INCEPTION



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), Institute for the Development of Commercial Law and Practice (ICLP) Sri Lanka and Bombay Chamber of Commerce & Industry (BCCI), India. Moreover, 19 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



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

What's inside

BIAC QUARTERLY BULLETIN

Vol. 7, Number 1, January – March 2018

BIAC MANAGEMENT

Muhammad A. (Rumee) 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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Official handover of cases to BIAC by MTB at BIAC

25th January, 2018 .



Bangladesh International Arbitration Center signed a collaboration agreement with Mutual Trust Bank (MTB) on June 6, 2017 as MTB decided to refer cases to BIAC to be resolved through Alternative Dispute Resolution (ADR) methods. The agreement included seeking the support of its panel of expert Mediators and Arbitrators and facilities.

To commemorate this occasion MTB team was invited at BIAC office on 25th of January 2018 at 11:30 am. After relevant discussion MTB officially handed over a few cases to BIAC.

Day-long training on Alternative Dispute Resolution at BIAC

30th January, 2018 .



A day-long training programme on “Alternative Dispute Resolution” was organized by Bangladesh International Arbitration Centre (BIAC) on 30th January, 2018 at its multi-purpose room at Panthapath, Dhaka. The course highlighted ADR in Bangladesh Laws, BIAC dispute settlement clause – “Mediation” & “Arbitration”, stages of mediation and arbitration, ADR under Civil Procedure Code and Artha Rin Adalat Ain.

To ease congestion of cases at every level of our court system and to get around complex court procedures, Bangladesh Government has undertaken a number of measures to expedite disposal of cases. As part of these efforts, a number of significant enactments have also been passed in recent years incorporating provisions for making ADR as an alternative method of dispute resolution. But to get results of these changes in our laws we require trained ADR professionals in the country. This training programme, organized by BIAC, helped a lot in creating a pool of ADR professionals in the country.

Barrister Khaled Hamid Chowdhury and Barrister Nabil Ahsan were the trainers, while trainees from different organizations, Banks, Law Chambers, Universities and private companies participated in the programme. Certificates were distributed among the trainees after successful completion of the programme.

Bangladesh International Arbitration Centre (BIAC) signs MoU with Prime Bank Limited

31st January 2018.

Bangladesh International Arbitration Centre (BIAC) has signed a Memorandum of Understanding (MoU) with Prime Bank Limited on 31st January 2018, to assist resolution of commercial and money loan disputes through Alternative Dispute Resolution (ADR) at the Head Office extension of the Bank in Gulshan, Dhaka.

Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC and Rahel Ahmed, Managing Director of Prime Bank Limited signed the agreement on behalf of their respective organizations. Senior officials from both the organizations were present during the signing ceremony.



This MOU will provide a framework to facilitate resolution of contractual disputes of the Bank using

ADR methods such as Arbitration and Mediation through expert services of BIAC.

BIAC and IICA organized a five- day long training programme on International, Cross Culture, Civil and Commercial Mediation & Negotiation

IMT Manesar, Gurgaon, Delhi

25th March to 29th March, 2018



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

Bangladesh International Arbitration Centre (BIAC) and Indian Institute of Corporate Affairs (IICA), under Ministry of Corporate Affairs, Government of India jointly organized a five day long training programme on “International, Cross Cultural, Civil & Commercial Mediation & Negotiation from 25th March to 29th March, 2018 at the Board Room of IICA on its Campus at IMT Manesar, Gurgaon, Delhi.

The training programme was inaugurated by Mr. Gyaneshwar Kumar Singh, Director General and Chief Executive Officer of Indian Institute of Corporate Affairs (IICA). Mr. Mahbubur Rahman, Chairman, BIAC in his Keynote Address highlighted the role of BIAC in promotion of mediation in commercial disputes. Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC in his Keynote Address explained the scope of mediation in commercial disputes in Bangladesh. Mr. Sumit Banerjee, Head of Centre for Mediation and Conciliation of the Bombay Chamber of Commerce & Industry (BCCI) along with Mr. Vijay Kumar Singh, Programme Director, Mr. Stefano Cardinale



Indian Institute of Corporate Affairs
Partners in Knowledge. Governance. Transformation.

(Mediator & Trainer European Union), Ms. Kritika Krishnamurthy (Mediator & Trainer), Dr. Garima Dadhich (Faculty, IICA) and Mr. Anuroop Omkar (Mediator & Trainer) were present at the inauguration ceremony of the training programme.

Mr. Gyaneshwar Kumar Singh, Director General and Chief Executive Officer of Indian Institute of Corporate Affairs (IICA), in his inaugural address welcomed the BIAC delegates and drew attention to the legislative infrastructure in India for Alternative Dispute Resolution (ADR) in

Commercial Disputes. Introduction of mediation and conciliation panel in the Companies Act 2013 through Section 442 along with the implementing rules have opened new avenues for mediation in commercial disputes in India, he said. The composite ranking of economies in terms of ease of doing business provided by the Doing Business Index Report of the World Bank affects the level of Foreign Direct Investment (FDI) in the economy. India ranked 130 in the Index in 2017 and has since been more focused in improving the country's rank in the Resolving Insolvency and Enforcing



Row 1 (L-R): Dr. Girma Chachich, Rubaiya Ehsan Karim, Mahabub Rahman Rana, Tania Tahmina, Tanvir Hossain Gazi, Stefano Cardinale, Mahabub Rahman (Chairman, BIAC), Gyansheer Kumar Singh (DG&CEO, ICAI), Muhammad A. (Rumeen) Ali, R. S. Singh, Sumit Banerjee, Tania Razaan REC, Muhammad Badrul Alam Shantan, S M Rafiq Uddin, Anurag Dinkar, Dr. Vijay Kumar Singh.
Row 2 (L-R): Anurag Rana, Pooja Singh, Krishna Krishnamurti, Masud Al Faruque, Md. Mahbulul Haque, Md. Anisur Rahman, Abdul Mannan, Md. Khairul Mahmud Khan, Khondaker Rahmuzzaman, Mohammad Jaleel Emran, Amritur Rahman, Mohammad Jahangeer Alam, Md. Mozammel Haque, Md. Khairul Shafiqul, Mohammad Abu Talat, Dr. Pula Rana, Rana, Shafiqul Hossain.
Row 3 (L-R): Shadyar Anwar, Atul Dixit Sarma, Mohammad Ali Imran, Md. Nurul Azam Mozumder, Mohammad Mohi Uddin, Jahangeer Hossain, Md. Rabul Kazi Chowdhury, Md. Abdul Muhyemen, Asad Khan, Mohammad Mithu Uddin, Md. Nazimul Hossain, Mohammad Abdul Hasan, Kamrul Anam Khan, A S M Mahmudul Hasan, Col. Nitesh Dahiya(Retd), Sachin Sharma, Md. Koderuzzaman.

Contracts indicators; as of 2018 India ranks 100 in the Index, Mr Singh informed.

Mr. Mahbubur Rahman expressed his gratitude to IICA and hoped that BIAC and IICA will continue to maintain mutual liaison and help progress the ADR scenario in both Bangladesh and India. Mr. Muhammad A. (Rumeen) Ali appreciated that, with the commitment of the Government and the Judiciary, India's vision of becoming an International ADR Hub will be materialised in the

years to come. The initiatives taken by the Government of India can become advocacy points for us to mainstream commercial mediation in Bangladesh, he opined.

At the session, BIAC signed a Memorandum of Understanding (MoU) with the Bombay Chamber of Commerce & Industry (BCCI) to establish a basis for cooperation and explore areas of further collaboration to mobilise the use of ADR in India and Bangladesh. Mr. Sumit Banerjee, Head of Centre for Mediation and Conciliation of the BCCI and Mr Muhammad A. (Rumeen) Ali, CEO, BIAC signed the MoU on behalf of their respective organisations.

This course led to receive certificates provided by IICA, which is recognized worldwide. A total number of 31 participants from different sectors including Central Bank, commercial banks, Ministries and Government institutions, corporate offices and lawyers attended the training.

Justice Ravindra Bhat, High Court of Delhi handed distributed certificates among the participants after successful completion of the 5 day long training programme.

BB plans tripartite meeting to strengthen ADR

18th January 2018.



DHAKA, Jan 18, 2018 (BSS) – Bangladesh Bank (BB) is planning to hold a tripartite meeting to find out ways to strengthen the Alternative Dispute Regulation (ADR)

system in order to settle the huge number of cases in the banking sector.

“ADR is gradually becoming a popular process to settle the huge number of cases in the banking sector. The central bank is also providing all sorts of support to expedite the process and making it more effective,” a BB high official told BSS today. He said that BB is going to organise the meeting in the next month with Association of Bankers, Bangladesh (ABB) and Bangladesh International Arbitration Center (BIAC) to make ADR more effective. In a recent meeting with the Managing Directors of the commercial banks, the senior official said, bankers also emphasised strengthening of the ADR process to settle the claims of the Non Performing Loan (NPL) as it is increasingly becoming a matter of concern for the banking sector. “Based on the meeting, BB is taking necessary steps to organise the tripartite meeting to make smooth the process of ADR,” he added.

Under the ADR process, there were 5,832 cases involving Taka 4,180 crore till June 2017. Out of those, 3,586 cases involving Taka 1,078 crore were settled.

The rate of settlement under the process is around 61 percent. The recovery rate under the process is also good as around Taka 466 crore was recovered till June 2017. The BB senior official said that Rajshahi Krishi Unnayan Bank (RAKUB) is the best performer to settle the banking related cases under the ADR process. Out of the total cases, RAKUB got a total of 4,356 cases involving Taka 63.86 crore in June 2017. The bank settled 2,757 cases involving Taka 53.08 crore during the period. The bank also recovered Taka 29.92 crore till June 2017. Talking to BSS, RAKUB Deputy General Manager Nazmul Haque said RAKUB is planning to further expedite the process.

According to Bangladesh Bank's latest data, out of the total outstanding loans of around Taka 7,53,000 crore, the amount of NPL was Taka 80, 307 crore up to September 2017. The percentage share of classified loan to total outstanding was 10.67 percent. Another BB official said that a total of 24 commercial banks are settling their cases under ADR process. He urged the all commercial banks, including Islami Bank Bangladesh Limited (IBBL) and Rupali Bank and Pubali Bank to come forward for settling their cases under the ADR process. He hoped that the amount of NPL will come down at a tolerable level under the ADR process.

<http://www.bssnews.net/newsDetails.php?cat=2&id=717085&date=2018-01-18>

INTERNATIONAL NEWS

China to set up three new courts to underpin its 'belt and road' initiative2nd February, 2018.

The Chinese government has announced plans to set up three new courts to underpin its 'belt and road' initiative.

An opinion advocating dispute settlement mechanisms for disputes arising from belt and road projects was adopted by the Central Committee for Comprehensively Deepening the Reform of the Communist Party last week.

Helena Chen, a Beijing-based infrastructure expert at Pinsent Masons, the law firm behind Out-Law.com, said that the move, backed by Chinese president Xi Jinping, demonstrated the Chinese Government's determination to build dispute resolution mechanisms and institutions that "provide diversified dispute resolution services for disputes arising from 'belt and road' projects".

The 'belt and road' Initiative, which is more properly known as the Silk Road Economic Belt and 21st Century Maritime Silk Road Initiative, is a development strategy that focuses on land and sea based connectivity from China to major markets in Europe, Asia and the Middle East.

The 'belt' refers to land-based routes, with several 'transport corridors' identified to reach key markets in 64 countries, while the 'road' refers to a maritime route through the South China Sea, South Pacific Ocean and Indian Ocean.

China plans to work with countries along each of these transport routes to finance and deliver projects, with a focus on energy and transport infrastructure. The policy was first outlined in 2013 by Chinese president Xi Jinping

during a state visit to Kazakhstan, and work began on the first related projects in 2015.

Three international commercial courts will be established to underpin the initiative. A new court will be established in Xi'an to deal with disputes along the 'belt', while a new court in Shenzhen will handle disputes along the 'road'. A central court will also be set up in Beijing with functions similar to a "headquarter".

According to the opinion, the new dispute resolution framework will also contain options to settle disputes via mediation and arbitration.

The new mechanism will "protect the legitimate rights and interests of Chinese and foreign parties on an equal footing, and create a stable, fair and transparent business environment for the rule of law", it said.

The announcement of three new international commercial courts builds on moves already made by arbitration institutions in China to prepare for resolving 'belt and road' disputes.

This included the announcement of new Investment Arbitration Rules by the China International Economic and Trade Arbitration Commission (CIETAC). Those rules took effect on 1 October 2017. CIETAC also opened a Silk Road Arbitration Centre in Xi'an on 8 September last year.

In its 2016 Arbitration Rules, the Shenzhen Court of International Arbitration (SCIA) indicated that it would accept arbitration cases related to investment disputes between countries and people from other nations.

In October 2016, the Wuhan Arbitration Commission also announced the establishment of a One Belt One Road Arbitration Court.

The Supreme People's Court (SPC) of China also recently published new judicial interpretations concerning arbitration to improve the legal framework of judicial review of arbitration and enforcement of arbitral awards.

Shaping the Future of Arbitration in Malaysia Conference08th February, 2018.

The arbitration scene in Malaysia is rapidly evolving. The landscape today has been totally transformed from that of the earlier days and further changes are on the way. On February 8, National Arbitration Conference 2018 was held with the theme of 'Shaping the Future of Arbitration in Malaysia.' Arbitration heavyweights from

Australia, Hong Kong, Qatar, South Korea, Singapore, United Kingdom and Malaysia joined this conference and reflected on the transformational changes in the arbitration landscape in Malaysia and elsewhere. They also discussed evolving norms and innovations in international arbitration practices, and weighed in on the challenges to be overcome in shaping the future of arbitration in Malaysia.

<https://aiac.world/events/269>

HKIAC Launches Women in Arbitration Initiative

14th February, 2018.



HKIAC is pleased to announce the launch of Women In Arbitration (WIA), an initiative committed to the promotion and success of female practitioners in international arbitration and related practice areas in China. WIA will provide a forum for members to consider and discuss current topics, grow networks and business relationships, and develop the next generation of leading female practitioners.

Dr Ling Yang, HKIAC Deputy Secretary-General and Chief Representative of HKIAC's Shanghai office, is behind the initiative having noticed: "the absence of groups dedicated to the interests of female practitioners in what is otherwise a thriving arbitration community in Mainland China"

The inaugural WIA event will take place on International Women's Day, 8 March 2018, in Shanghai and will bring together female

professionals from diverse backgrounds to share their insights on the professional development of women in the legal industry.

The launch of the WIA initiative is one of several important steps HKIAC has taken to improve the representation of women in arbitration since signing the Equal Representation in Arbitration Pledge (Pledge) in October 2016. HKIAC has also shown a significant improvement in the number of female arbitrators it has appointed since signing the Pledge (i.e., 16.5% of appointments made in 2017 compared to 6.7% in 2016 and 7.1% in 2015), and is enhancing gender diversity on its Panel and List of Arbitrators by increasing the presence of female arbitrators from 9.8% in 2016 to 17% in 2017. HKIAC will continue its efforts to increase the visibility of women in the field of arbitration.

<http://www.hkiac.org/news/hkiac-launches-women-arbitration-initiative>

The PCA is proud to be a supporting organisation for the ASIA ADR Week 2018 Discover the Difference: The Asian Experience- Kuala Lumpur, Malaysia, 5 -7 May 2018.

26th march 2018.



Organized by the Asian International Arbitration Centre (AIAC), formerly known as the KLRC, the conference will be held at the AIAC's Bangunan Sulaiman in Kuala Lumpur, Malaysia from 5 to 7 May 2018.

The three day conference promises participants the "Asian Experience" and will focus on the demands and needs of Asian businesses. With close to 400 ADR presenters and practitioners expected to attend from the region and beyond, the conference will cover key issues including the promotion of business and investment in Asia.

<https://pca-cpa.org/en/news/the-pca-is-proud-to-be-a-supporting-organisation-for-the-asia-adr-week-2018-discover-the-difference-the-asian-experience/>

UNCITRAL framework moves one step closer

02nd March, 2018.

The United Nations Commission on International Trade Law (UNCITRAL) Working Group II on Dispute Settlement (formerly Arbitration and Conciliation), since 2014 has been working on the preparation of a convention on the enforceability of settlement agreements reached through international commercial mediation.

The aim of this project is to formulate and implement an international framework for the enforcement of mediated settlements akin to the New York Convention for the enforcement of arbitral awards. It is hoped that such an enforcement regime will increase confidence in mediation among international litigants and further proliferate the well-established benefits of reducing cost and time spent in dispute.

Working Group II, at its most recent meeting in New York at the beginning of February 2018, ratified a draft convention and a draft amended Model Law on international settlement agreements resulting from mediation.

At the heart of this project is whether mediated outcomes should have a similar status to arbitral awards under the New York Convention to which 153 countries have signed up. Some in the mediation world might query whether such an instrument is necessary given the most mediated settlements are reached and

implemented on a consensual basis thus making mediation very different from imposed arbitral awards. However, on the contrary, all commercial parties want their hard-fought outcomes to be legally binding and would normally be concerned if it was otherwise.

An international instrument recognising the legal status of mediation is yet another foundation stone in the credibility and acceptance of mediation in the international order just as courts or arbitration.

The draft instruments resulting from the 68th Session will be considered for finalisation by the Commission at the upcoming New York session this summer. As illustrated above, there is still much debate to be had on the topic before any position is finalised and the process of ratification and domestic implementation can commence.

James South, CEDR Managing Director comments: "CEDR has been involved in various stages of the discussions of this working group and sees the recommendations made, as an important step forward for the development of mediation internationally. Once ratified and in force, it will provide certainty to parties from different jurisdictions that whatever they agree by way of mediated settlement, will be able to be enforced, through the relevant court."

<https://www.cedr.com/news/?item=Framework-for-enforcement-of-mediated-settlements-moves-one-step-closer>

HKIAC Signs Cooperation Agreement with the Arbitration Center at the Institute of Modern Arbitration of Russia

06th March 2018.



The Hong Kong International Arbitration Centre ("HKIAC") is pleased to announce its entry into a Cooperation Agreement ("Agreement") with the Arbitration Center at the Institute of Modern Arbitration ("IMA"), a Russian arbitral institution approved by the Russian Government to administer arbitrations in Russia. The Agreement was signed by Matthew Gearing QC, Chairperson of HKIAC, and Yuri Pilipenko, President of the Board of IMA, at HKIAC on 6 March 2018.

The signing of the Agreement reflects HKIAC's ongoing efforts to facilitate communications and collaborations between the legal and business communities in Russia and Asia. Mr. Gearing QC welcomes this development and comments that: "the

Agreement provides an express framework under which the two institutions will work together to develop and promote international arbitration and other dispute resolution mechanisms through various forms of collaboration. I look forward to our future cooperation in this area." He said, "The experience and practices of HKIAC are highly regarded in the international arbitration community and the Arbitration Center at the Institute of Modern Arbitration is looking forward to partnering with HKIAC and contributing to promoting arbitration and ADR, as well as providing reliable arbitration services to the users from Russia, Hong Kong and other jurisdictions worldwide."

In recent years, Russia's legal and business sectors have shown increased interest in HKIAC. A survey published by the Russian Arbitration Association in 2016 highlighted HKIAC as a top Asian institution for disputes involving Russian parties.

In response to the Russian market's growing interest in HKIAC arbitration, HKIAC has expanded its panel to

include 30 Russian-speaking arbitrators, translated its 2013 Administered Arbitration Rules into Russian, and organised and participated in numerous events in Russia. HKIAC is in the process of developing a new set of Administered Arbitration Rules, with innovative features that will bring a new level of arbitration experience to users in Russia and other parts of the world.

With the Agreement and the support from various interest groups, HKIAC looks forward to working with IMA and other partners to develop and provide top-quality arbitration services to disputes involving Russian parties.

<http://www.hkiac.org/news/hkiac-signs-cooperation-agreement-arbitration-center-institute-modern-arbitration-russia>

Three-part workshop on 'Arbitration on the SIAC: The Inside Track' Chartered Institute of Arbitrators (CIArb) - Jointly organized by The Chartered Institute of Arbitrators (Singapore), (CIArb) & Singapore International Arbitration Center (SIAC).

07th March 2018.



CIArb (Singapore Branch) is partnering with the Singapore International Arbitration Center (SIAC)

to offer a series of three workshops on arbitration proceedings at the SIAC. The first workshop was held on 24th January. The second workshop was held on 07 March, 2018 on the topic of 'Starting an Arbitration.' It focused on common issues that arise

when arbitration proceedings are commenced such as date of commencement of Arbitration, amount and stages of deposits payable, provisional estimates of costs of arbitration, ambiguous arbitration agreements and Ad hoc appointments. The last session of the series will be held on 23 April 2018.

To know more about the workshops: <http://www.si-ac.org.sg/events/event-calendar/event/244/Arbitration-at-the-SIAC--The-Inside-Track/0>

Courts can't refer parties to arbitration on oral consent given by their counsel: The Supreme Court of India.

12th March 2018



When there was no arbitration agreement between the parties, without a joint memo or a joint application of the parties, the High Court ought not to have referred the parties to arbitration, the court observed.

The Supreme Court of India, in *KSEB v Kurien E Kalathil* has observed that in the absence of arbitration agreement, the court can refer parties to arbitration only with written consent of parties either by way of a joint memo or joint application and not on oral consent given by their counsel.

A bench of Justice Ranjan Gogoi and Justice R Banumathi was considering an appeal preferred by KSEB against High Court order wherein one

of the questions raised was whether the High Court was right in referring the parties to arbitration on the oral consent given by the counsel without written instruction from the party.

In this case, in a writ petition filed by contractor Kurien E Kalathil, the High Court, with the consent of the counsel for the parties, referred the matter to sole arbitrator Justice KA Nayar to resolve dispute relating to items which they could not amicably resolve, even though there was no such arbitration agreement between the parties. The order of the High Court that directed KSEB to pay Rs.12,92,29,378 with simple interest at the rate of 9% per annum in the dispute arising out of a contract between the board and the contractor, was challenged before the apex court. The bench observed that reference of the parties to arbitration based on oral consent given by the counsel without a written memo of instructions does not fulfill the requirement under Section 89 CPC. "Since referring the parties to arbitration has serious consequences of taking them away from the stream of civil courts and subject them to the rigour of arbitration proceedings, in the absence of arbitration agreement, the court can

refer them to arbitration only with written consent of parties either by way of joint memo or joint application; more so, when Government or statutory body like the Appellant Board is involved," the bench observed.

The court referred to its earlier judgment in *Afcons Infrastructure Ltd and Anr v Cherian Varkey Construction Co (P) Ltd*, wherein it was

held that referring the parties to arbitration could be made only when the parties agree for settlement of the dispute through arbitration by a joint application or a joint affidavit before the court.

To read the full judgment:

<http://www.livelaw.in/courts-cant-refer-parties-arbitration-oral-consent-given-counsel-sc-read-judgment/>

New hearing centre in Brazil marks milestone in ICC LatAm expansion

13th March 2018.

The International Chamber of Commerce (ICC) and Brazil's National Confederation of Industry (CNI) have inaugurated a new state-of-art dispute resolution facility in Sao Paulo, a new milestone for advancing dispute resolution in one of ICC's key markets.

Built by CNI, a strategic partner for ICC in Brazil, the ICC/CNI International Arbitration Hearing Center will facilitate the conduct of dispute resolution proceedings involving parties from Brazil and the wider Latin America region.

The Hearing Center was officially inaugurated on the occasion of the 7th ICC Brazilian Arbitration

Day by ICC Court President Alexis Mourre, Chair of ICC Brazil Daniel Feffer and CNI President Robson Andrade.

According to a recently released ICC Arbitration statistics from the International Court of Arbitration, Brazil ranked seventh (of 140 countries) in global listing of new cases filed with the ICC Court in 2017. Nine cases are currently being managed by the ICC Court's newly established case management team in Sao Paulo.

<https://iccwbo.org/media-wall/news-speeches/new-hearing-centre-brazil-marks-milestone-icc-latam-expansion/>

Appointment of Government Employees as Arbitrators: Regress or Reform?

21st March 2018.

Recent developments

Independence and impartiality are the cornerstones of Arbitration. It is true that if you have an arbitrator whose reputation is impeccable and is known for his independence and impartiality, the quality of the Award will be such which, will invariably be upheld by the courts. Further, party autonomy is another important factor which needs to be kept in mind for appointment of an arbitrator. Before the Arbitration and Conciliation (Amendment) Act, 2015 came into operation, the law or rather the strict rule was that the disputes are to be referred to the named arbitrator and a party cannot wriggle out of the situation that the named arbitrator will not be impartial. With regard to the fact that this rule led to a lot of disputes with the party complaining about the fact that the

arbitrator is partial or bias, a need was felt to amend the laws.

The Law Commission of India submitted its 246th Report, recommending sweeping amendments to the Arbitration and Conciliation Act 1996. The reasons mentioned by the Law Commission were aimed, inter alia, at settlement of disputes through arbitration in a cost-effective at the same time and expeditious manner.

The Law Commission in its 246th Report addressed the issue of 'neutrality of arbitrators,' which it considered critical to the functioning of the arbitration process in India. With regard to neutrality of arbitrators, the Commission had proposed certain amendments, inter alia, on the basis of the IBA Guidelines on Conflicts of Interest in International Arbitration.

<http://www.mondaq.com/india/x/684966/trials+appeals+compensation/Appointment+Of+...>

Alternative dispute resolution order of the day: ADR expert Mahbubur Rahman talks to *The Daily Star*

04th March 2018.



Mahbubur Rahman
Chairman, BIAC

Mahbubur Rahman is the President of the International Chamber of Commerce-Bangladesh and Chairman of the business advisory council of the UN-ESCAP.

An eminent business leader, he is also a former president of the Federation of Bangladesh Chambers of Commerce & Industry and the Dhaka Chamber of Commerce & Industry.

He is the founder Chairman of the Bangladesh International Arbitration Centre.

On July 2017, he was appointed as an arbitrator of the China International Economic and Trade Arbitration Commission (CIETAC) -- the first Bangladeshi to have that role.

Rahman spoke about alternative dispute resolution practices in Bangladesh and growing trade with China and its prospects, among other issues.

TDS: We are delighted to learn of your recent appointment as the arbitrator of the CIETAC. Could you please inform us on CIETAC and its activities?

MR: The CIETAC is a well-known organisation in the world and is the biggest arbitration institution in China. Established in April 1956, it resolves commercial and trade disputes by means of arbitration.

In 2010, the CIETAC formulated construction dispute review rules to provide efficient expert services for a quick fix to construction disputes. In 2011, it set up Investment Dispute Resolution

Centre to accept investment dispute cases between private investors and the host state government.

I feel immensely honoured to be the first Bangladeshi to be appointed as an arbitrator of the CIETAC.

The volume of foreign trade in China has increased steadily. With the development of foreign trade, dispute resolution has become an unavoidable issue. Therefore, arbitration was introduced by the CIETAC.

I wish, as a nominated arbitrator of the CIETAC, I can contribute to the prestigious regional forum in mitigating international business disputes.

TDS: Bangladesh-China bilateral trade has had a robust growth, and with that comes the possibilities of commercial disputes. How do you see your appointment in this context?

MR: The Bangladesh-China bilateral trade has been increasing significantly over the years. In fact, China is one of Bangladesh's top trading partners. In fiscal 2015-16, Bangladesh's total merchandised export to China was \$808.14 million, up from only \$319.66 million in fiscal 2010-11, as per statistics from the Export Promotion Bureau.

Bangladesh's exports to China grew at an annual average of 30 percent in the last five years. Nevertheless, the recent export growth has been quite slow, only 6 and 2.2 percent in fiscals 2014-15

and 2015-16, respectively. The share of exports to China was merely 2.4 percent of the total export in the immediate past fiscal year.

On the other hand, imports from China have been the highest for quite some time. Data from the Bangladesh Bank show that import from China was worth about \$9.8 billion in fiscal 2015-16, up from \$5.9 billion in fiscal 2010-11.

Together, Bangladesh's trade with China is now about 26.5 percent of its total trade with the world. If this rate prevails, the total bilateral trade would be \$18 billion in 2021, when the country would celebrate its 50th anniversary.

With the ever-increasing volume of trade with China, there is also a potential for an increase in commercial disputes as numerous commercial and business deals are being made regularly.

The performance of a contract is a substantial factor to achieve business objectives and maintain an overall fraternal relationship between the two countries.

As an arbitrator of the CIETAC, I will definitely try to convince both the Chinese and Bangladeshi parties in disputes to invoke the CIETAC arbitration clause to mitigate disagreements amicably so that business between the two countries can run more smoothly and expand more in the coming years.

More specifically, I would like to suggest that pre-litigation mediation under an institution should be taken into cognisance by the courts. The possibility of arbitration as a dispute resolution tool for money loan disputes under the Artha Rin Adalat Ain (2003) should also be explored.

TDS: You have played a very important role in setting up the BIAC. Do you think your involvement with the CEITAC can help enhance the ADR landscape in Bangladesh?

MR: As you know, alternative dispute resolution is the order of the day. Disputes arising out of business and commercial transactions can be mitigated outside of courts to save time and cost and also to lighten the burden of pending cases with our civil judiciary. The BIAC, being the first and only ADR institution in Bangladesh, is committed to applying best practices in all possible cases.

The BIAC during its journey of nearly seven years has got recognition from 11 international ADR centres including the Netherlands-based Permanent Court of Arbitration, the Singapore International Arbitration Centre, and the Indian Institution of Arbitration and Mediation.

We are already working together with these international institutions and have jointly arranged training programmes and workshops to raise the number of ADR specialists in Bangladesh.

I have a scope to share the message and objectives of the BIAC with the CIETAC and we look forward to signing a cooperation agreement so that the CIETAC can also participate in our activities of invoking ADR practices in business and commercial transactions.

TDS: We understand the BIAC is working in promoting the use of ADR in commercial disputes. However, Bangladesh's record in timely and effective dispute resolution is poor and is considered a hurdle in improving investment climate and attracting foreign direct investment. How do you see BIAC's role in this context?

MR: Bangladesh's GDP, after almost a decade of 6 percent plus growth, grew 7.24 percent in fiscal 2016-2017. But unfortunately, Bangladesh stood 189th out of 189 countries in enforcement of contract sub-index of the Doing Business Index 2018 of the World Bank Group.

The main hurdle the country is facing is inordinate delays in implementation of development projects, unreasonable delays in contract enforcement and inefficient management.

In order to step into higher growth trajectory, Bangladesh urgently needs to overcome the hurdle of project implementation delays and reduce the average number of days required for contract enforcement.

FDI in Bangladesh reached an all-time high of \$2 billion in 2016 after averaging \$1 billion from 2002 to 2016.

The latest FDI flow can be maintained and upheld by effective and expeditious resolution of business disputes for which the BIAC is working relentlessly

in collaboration with 18 local corporate bodies, banks, financial institutions, construction firms and non-governmental organisations.

TDS: Do you have any specific suggestions to improve the effectiveness of ADR in Bangladesh?

MR: Yes, we have urged the government to incorporate arbitration or mediation clauses in all government contracts.

The Hon'ble Minister for Law, Justice and Parliamentary Affairs Mr Anisul Huq MP has already given positive indications. Intervention by the government will be very vital for effective application of ADR norms and practices.

The Arbitration Act 2001, the Code of Civil Procedure (Amendment) Act 2003, the Money Loan Court Act 2003, the Bangladesh Energy Regulatory Commission Act 2003, and the Real Estate Development and Management Act 2010 are among the important legal reforms already in

place for effective ADR practices in business and commercial disputes.

TDS: How can Bangladesh attract FDI from China since many industries are relocating to other countries in the region?

MR: China is a giant in FDI all over the world and Bangladesh always welcomes China for FDI. Bangladesh will have to diversify its export basket and remove structural problems to get more access to a very diversified and competitive Chinese market.

China could invest in Bangladesh's manufacturing sector in which Bangladesh is not its competitors. With the Chinese economy evolving and its market moving towards high-end products, China could move away from labour-intensive areas in the lower-end of manufacturing and relocate the industries to Bangladesh.

“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

BIAC Roundtable Discussion on: “Creating an Investment Friendly Access to Justice: Can ADR be an Effective Remedy in Commercial Disputes?”

17th February, 2018 at Hotel Amari, Gulshan, Dhaka.

Bangladesh International Arbitration Centre (BIAC) and International Financial Corporation (IFC), World Bank Group jointly organised a Roundtable Discussion on “Creating an Investment Friendly Access to Justice: Can ADR be an Effective Remedy in Commercial Disputes?”- on 17 February 2018 in Dhaka. The Financial Express was the Media Partner. The purpose of the Roundtable was to raise awareness and identify how the relevant stakeholders can make a difference by joining forces. Mr. Mahbubur Rahman, Chairman, BIAC moderated the Session. Mr. Muhammad A. (Rume) Ali, CEO, BIAC delivered welcome address. The esteemed group of experts and luminaries present at the Roundtable provided their valuable recommendations conducive to Investment Friendly Access to Justice especially in Commercial Disputes.

Mr. Mohammad Shafiul Alam, Cabinet Secretary, Government of Bangladesh was the Guest of Honor at the Seminar and the Special Guest was Mr. Kazi Aminul Islam, Executive Chairman, Bangladesh Investment Development Authority (BIDA). Discussants included: Barrister Margub Kabir, Keynote Presenter, Ms. Nasreen Begum, Additional Secretary, Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs, Syed Mahbubur Rahman, Chairman of Association of Bankers Bangladesh (ABB), Dr. M. Masrur Reaz, Senior Economist, IFC, Naser Ezaz Bijoy, CEO, Standard Chartered Bank, Bangladesh, Dr. Debapriya Bhattacharya, Distinguished Fellow, Centre for Policy Dialogue, Ms Ummey Kulsum, Joint Secretary Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Dr. SK Golam Mahub, Director, Judicial Administration Training Institute (JATI), Dr. Ahsan H Mansur, Executive Director, Policy Research Institute, Mr. Shaikh Nazmul Alam, Additional Registrar, Appellate Division of the Supreme Court of Bangladesh, Justice Shamim Hasnain and Barrister Forrukh Rahman.

Distinguished guests included Jurists including former Chief Justice Tafazzul Islam, Justice Awlad Ali, Mr. Rahel Ahmed from Prime Bank, Ms. Tanjina Ismail from Bangladesh Women Judges Association, Engineer F.R. Khan from bti and BIAC Board Members Mr. Latifur Rahman and Mr. AK Khan. Barrister Ajmalul Hossain, QC and Barrister Margub Kabir were co-authors of

the keynote paper. Barrister Hossain had to leave the country on some urgent business therefore he could not attend the event and was thanked by Mr. Muhammad A. (Rume) Ali in the opening address. Mr. Mahbubur Rahman, Chairman, BIAC moderated the seminar.

RECOMMENDATIONS by SPEAKERS

[In chronological order]



Muhammad A. (Rume) Ali

CEO

Bangladesh International Arbitration Centre (BIAC)

Alternative Dispute Resolution (ADR) can be a key enabler in creating greater Access to Justice, one of the Sustainable Development Goals (SDGs). Justice Delayed is Justice Denied and Delayed Justice is the reason why we were rated 189th/190 economies in Enforcement of Contracts Index in the World Bank Doing Business 2018 Report. BIAC is working with the business community, legal professionals, concerned citizens and the Government to embed the use of ADR in the justice delivery eco-system to help achieve this SDG by reducing the workload of our overstretched judicial system. Due to the cost of this delay in our judicial system and lack of effective ADR, Bangladesh is paying confirmation fees higher than Pakistan because of risk of non performance of contracts when opening L/Cs. Whenever anybody bids for an international tender in Bangladesh, this risk premium is included in the costing. We wonder why something costs less in India, Pakistan or Sri Lanka, but more in Bangladesh.



Ajmalul Hossain, QC
Margub Kabir (Keynote Presenter)

Summary of the Keynote:

Access to Justice in relation to ADR is related to an investment perspective where, if an access to justice by way of ADR is provided to investors this leads to economic growth of the country. Mediation has been included in the Civil Procedure Code (CPC) in 2003, and later made mandatory in 2012. Mediation has also been included in the Artha Rin Adalat where the vital issue raised is in relation to, at what stage is this mediation included? The law is made for recovery so once a case is filed there is no effective mediation between a borrower and a bank because it does not click on. Some amendments need to be made, so that it can be brought forward to pre-case facility.

Another aspect is, having an institution for dispute resolution. Throughout the world there are institutions for expedited dispute resolution. BIAC has its own Arbitration and Mediation Rules and the structured resolution of disputes from an institutional point of view, is extremely important. I would request the front-runners of investments and all the authorities which are attracting investment, to take BIAC in their portfolio and promote it to investors.

In relation to enforcement of award, when a foreign award comes to Bangladesh, Arbitration Act specifically says that the foreign award can only be enforced in District courts. This creates delay in the process, because from the District court, it goes to the High Court Division, from there to the Appellate Division and frustrates the arbitration procedure. It is essential that once you include a provision for mediation, conciliation or arbitration, you have to enact the rules. Without the rules, you can't implement the effect of that provision. Without the rules, it is difficult for courts, lawyers and parties to implement these provisions. The Arbitration Act was enacted in 2001; we still do not have any rules. The mediation has been included since 2003 and made mandatory in 2012. And we still need mediation rules. The structure should suggest amicable settlement, arbitration and then court



which means you have to settle the dispute at first amicably by ADR otherwise you can't go to the court. Access to justice, rule of law and ADR are compatible and they have the same intention for effective resolution.

The Artha Rin Adalat Ain, is the exclusive jurisdiction for recovery of loan. Nonetheless ADR is still possible at any stage of the dispute because recovery of loan is when you are extracting but dispute can arise at any stage. Even if ADR is included in the sanction advice, that will not conflict with Artha Rin Ain and the award obtained can be taken to Artha Rin Adalat for execution, no need to go through the entire process.



Nasreen Begum

Additional Secretary

Legislative and Parliamentary Affairs Division

Incorporation of ADR has little impact in effective disposal of civil suits; although ADR is independent of the court system, a judge can recommend the parties involved in a litigation to enter into it. ADR has been made compulsory for every civil court, by incorporation of Sections 89 and 86 of CP Code, through amendment of 2012. Apart from the Artha Rin Adalat Ain and the CP Code, ADR provisions have also been incorporated in many laws including Company Act, Labour Law, Customs Act, Income Tax Ordinance, Muslim Family Laws Ordinances, Village Courts Act, Public Private Partnership Act, Legal Aid Act, etc. The court-based ADR especially in commercial disputes can be transformed not only to aid the earlier resolution of litigation but also be used as a tool for the case management.



Syed Mahbubur Rahman

Chairman

Association of Bankers Bangladesh (ABB)

We need more investment both on international and domestic level, but we want to see enforcement of contracts, same as investors. Statistics say that over 55,000 cases worth Taka 75 billion (default loans) are pending with the Artha Rin Adalats as of June 2017. In Chittagong, from 2016 to 2017, there were no judges for the Artha Rin Adalat in two years. We don't have any other option but to go for ADR. There is a provision for the court which provides ADR, immediate to the cases filed in Artha Rin Adalat, there you can go for 60 days mediation. To recognize arbitration, definition of "Adalat" could be amended. Pre-litigation mediation should be tried first, before filing case at the court. And it has to be enforced by amending the 2003 Act. Mediation should be conducted with third and neutral institution, having thorough understanding of the process. BIAC would be one of such institutions.

ADR should be included in the University Curriculum for future lawyers. Bank officials, particularly in Risk Management, need to be well trained in ADR and achieve the best practices out of it. At the same time the rules need to be changed so that we can incorporate it into the sanction advice and implement arbitration clauses. In the process, we can help people to have access to justice. Unless we do that, we can't reach the 16th SDG, that as a developing nation, we want to achieve by 2021.



Dr. M. Masrur Reaz

Senior Economist
IFC World Bank Group

For economic growth or improving enforcement of contracts through inclusion of ADR, absence of efficient court systems or speedy, effective,

efficient judicial decisions has a greater negative impact on different countries, their ability to capture quality investment and the right quantity of investment. ADR is strongly related to the enforcement of contract. SDGs 8,9,10 are directly linked to private sector growth and goal 16, is about institutions, investment ratio needs to go up from current 20.5% to 29%. Bangladesh needs to tap into greater investment, greater private sector growth.

According to the Doing Business Index, the lower court takes 1442 days and 66.2% of the claim value of a commercial dispute goes into litigation. So that is not going to help Bangladesh, either in getting more domestic investment or FDI, this will be, critical for adoption of technology and better business practices as well as export diversification.

CPC amendment in November 2012 where mediation for commercial and all civil cases was made mandatory by personal initiative of the Government, lacks implementation after 5.5 years because the administering rules have not been made. ADR which could have taken a stronger foot in the commercial dispute cases, through mandatory mediation, has not really taken effect. Role of institutions like BIAC is going to be critical. We need the Government to set the enabling environment but we need the private sector or public-private platforms such as BIAC to actually provide a structured platform. We are hugely encouraged by the recent initiative of the Government under the leadership of BIDA, to improve the Doing Business ranking of the country through serious efforts and very strong foundations for all 10 indicators.



Naser Ezaz Bijoy

CEO

Standard Chartered Bank Bangladesh

With growing complexities in trade and commerce, the implementation of justice and strong institutions are becoming increasingly important. Sanctity of contracts and agreements are more important than ever, then the progress along with economic development. As banks we arrange financing for projects and businesses. Based on

the backlog of the cases in the courts of Bangladesh, to the investors' perception of the effectiveness of our judicial system, we are at the bottom of specifically in enforcing the contract and Doing Business ranking.

The legal system in Bangladesh recognizes settlement of disputes through Arbitration Act 2001. There is a much broader potential of ADR to become the first choice in resolving commercial disputes. For making ADR voluntary, judges should take steps for mediation. Inadequate role played by legal professionals, absence of trained lawyers and judges regarding mediation and negative impression among the lawyers regarding ADR are in place. In the laws applicable for ADR under section 89A, CPC, mediation and arbitration are optional. I think that limitation imposed by the Section 23 of Artha Rin Adalat Ain should be revisited and removed to make resolution possible. BIAC, having experience and expertise, can be one of the entities which can support ADR, and its values will be evident once its procedures become established.



Dr. Debapriya Bhattacharya
Distinguished Fellow
Centre for Policy Dialogue (CPD)

In economic literature ADR is coercive harmony. Lack of supply of justice on time at a reasonable cost is a failure. ADR becomes relevant, when there is business and network failure. A person gains more by failing to comply with a contract than by compliance. ADR works well only when there is a power balance between the two parties, it requires a minimum level of trust in the public institutions. It is related to the trust that integrity has a price too.

What is important to understand is how we are going to deal with ADR in the national, trade and investment policies. Whether it is European Union, NAFTA, whatever is left of it or ASEAN, this is a mandatory provision. I think within the investment and trade issues, BIDA and other agencies can really look into it. Even if you can't do it in the country in a full-fledged way, we should not spoil our name by failing to do it in our international regime.



Ummey Kulsum
Joint Secretary
Law and Justice Division

Goal 16 of the SDGs is specifically related with Access to Justice and ADR. The District Legal Aid officers are doing well by settling the disputes related to family matters, claims and counterclaims, which is related with money and some petty offences of criminal essence by pre-case filing system. We can introduce this system for commercial disputes and the Law and Justice Division has already prepared a plan of SDGs being shared with BIDA.



Dr. SK Golam Mahbub
Director
Judicial Administration Training Institute (JATI)

Under the present provisions of Civil Procedure Code, ADR is not mandatory, but referral to ADR is mandatory. Disputes may be handled by organisation who have expertise in ADR like BIAC. If we want to introduce pre-case ADR process in our dispute resolution system then we have to consider other aspects i.e., what would be that organisation, who would be in the management, how they would be accredited. Provision for imposing penalty for unreasonable reluctance in mitigating disputes through ADR, can effectively expand adherence to ADR methods.



Dr. Ahsan H Mansur
Executive Director
Policy Research Institute

ADR related to tax issues like VAT, customs and income tax, is not much of a use by the business

community or by the taxpayers. When I asked people why ADR on the tax issues does not move forward, one of the things that was pointed out was 'if I reduce the tax burden, the DUDAK will be after me.' ADR is an out-of-court settlement process and it should be automatically a part of the legal process. Indiscriminate acceptance of cases without regard to the number of hearings, prolong the number of years the court cases linger on without any limit. We need skilled judges on economic matters. They require special trainings, special focus and experience in dealing with those cases. Our judges need to be neutral, objective and fair to our foreign investors, so that they get justice in Bangladesh. We have to take a very holistic view of the efficiency of the legal system. It can't change overnight; but we have to start somewhere. And secondly if it can't change our legal system, from the current state of affairs, we can never be an upper middle income or middle income country.



Shaikh Nazmul Alam

Additional Registrar

Appellate Division, Supreme Court of Bangladesh

The judge population ratio, in other countries of the world, an average of 50 judges per million population in developed countries, whereas there are 10 judges per million in Bangladesh. Pre-suit ADR in Legal Aid cases has been effective. It may be introduced in other business cases, but there must be special scrutiny. We have to think, if Pre-suit ADR consumes another bulk of time, it may not be fruitful.



Justice Shamim Hasnain

The arbitration mechanism as it stands today has mutated into a wild animal, when efforts have been made by all the stakeholders in the process, the lawyers, the parties and other vested interests to complicate the process. It is no longer Alternative Dispute Resolution but additional dispute resolution. Dispute settlement through arbitration is a public policy issue of the Government. There is nothing in the Constitution that prevents that process. So every time a party wants to prolong the process, it comes to the Writ jurisdiction under the constitutional law, the court can order arbitration proceeding or settlement procedure immediately. Of course, there is a perception that we can't go beyond the law. With the public policy dimension in place and the power of the High Court under the Constitution, the CPC mentality can be dispensed with. And even the High Court can direct courts below to introduce ADR in any proceeding. That is why the litigation can proceed without any further amendment of the laws. But having said that, amendment definitely helps.



Mohammed Forrukh Rahman

Barrister at Law

If you go through the Artha Rin Adalat's court procedure, there are issues of non availability of judges and delay, we get an Award in 3 months but it takes 1.5 years to get the Arbitrator's name. The whole process could have been avoided if BIAC

was made the appointing authority. They could appoint only in 7 days. Artha Rin Adalat does not prohibit going into arbitration, because when it is decided to go to arbitration, by agreement, by sanction letter, you are actually waiving all your statutory rights. Deliberately both parties are agreeing to go into arbitration and there is no question of statutory limits.



Kazi M. Aminul Islam

Executive Chairman

Bangladesh Investment Development Authority (BIDA)

We have to understand that whatever development outcome we see in terms of growth or social inclusion, these are the outcome of all the economic activities taken together that takes place within certain framework. With the kind of infrastructure that we have, it would be very difficult to go forward. In other words, to chase a double digit growth, we have to have renewed focus on development of legal, economic and physical infrastructure.

When there is dispute there should be some mechanism, either at the court or outside the court. The statistics alone of the court cases that we have pending, is enough to scare any investor, not only foreign but also local. In any transaction of business, I have to have a contract, and if I can't enforce contract, does the contract have any value? It's expensive and time-consuming. That doesn't generate the kind of confidence we need, among the investors.

We need active engagement of the court in settling disputes and to develop institutions like BIAC, which we will be able to deliver. ADR

provision should be strengthened so that it could be a means of either ensuring access to justice or improving investment in business climate.



Mohammad Shafiul Alam

Cabinet Secretary

Cabinet Division

The World Bank Doing Business Index gives a composite rank to economies in terms of ease of doing business. In Bangladesh we stand at 189/190 economies which is most alarming in the case of Enforcement of Contracts. SDG16: 'Peace and Justice and Strong Institutions' argues that the way to Sustainable Development is through economic growth and development of a country and investment is essential for it, which is why it is just as essential to protect investors' confidence and provide investors with empowerment conducive to business.



Mabubur Rahman

Chairman, BIAC

We need to call upon the Ministry of Law, Justice and Parliamentary Affairs for implementation of the recommendations made here today. All of our investors, both local and foreign, would consider that it is one of the most important preconditions for any investment decision at home and abroad as to how contracts are enforced.



Sustainable Development Goals, Doing Business and Access to Justice in Bangladesh

M A Akmal Hossain Azad

Director, Bangladesh International Arbitration Centre (BIAC)

One of the major achievements of the Bangladesh economy has been a 7.28 percent economic growth in 2016-17 breaking the six percent cycle that continued for a decade or so. Investment is a major propulsion to Bangladesh's growth. According to the IMF, Bangladesh's economy, after that of India, was the second fastest growing major economy in 2016. In 2017 the banking sector in Bangladesh however exposed weaknesses through major indicators at the top of which was rise of Non Performing Loans.

The Sustainable Development Goals (SDGs) is the framework for global development after the terminal year 2015 of the Millennium Development Goals (MDGs). With 17 goals and 169 targets SDGs represent a bold new agenda to end poverty, fight inequality, tackle the adverse effects of climate change and ensure a sustainable future for all. After attaining marked successes in MDGs Bangladesh has been able to be one of the early starters of the Sustainable Development Goals (SDGs) in the world since January 2016, as the country has incorporated all the proposed 17 goals of the SDGs in different sectors in the 7th Five Year Plan (2016-2020). Being a commendable achiever of the MDGs, Bangladesh is expected to perform well during the Post 2015 Development Agenda which contains 11 goals, 58 targets and 241 measurable indicators.

The Government of Bangladesh has approved the Monitoring and Evaluation (M&E) Framework for Sustainable Development Goals (SDGs) on 23 January 2018 which aims at tracking the implementation progress of SDGs in the country.

This would engage all required resources en route to attaining global goals, the SDGs, it is expected. Attainment of the SDGs would require a strong and effective institutional mechanism involving all stakeholders including public representatives across the country, Government and the bureaucracy, private sector, civil society, knowledge community and development partners.

Ease of Doing Business in Bangladesh

Bangladesh is ranked 177 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. The rank of Bangladesh deteriorated to 177 in 2017 from 176 in 2016. Out of 10 indicators Bangladesh's rank is lowest in the "Enforcement of Contracts" indicator, i.e. 189/190 which is most alarming. The huge backlog of cases in courts not only costs time and money, but also reduces investors' confidence. As a result Foreign Direct Investment (FDI) has been significantly affected which is also interlinked with Non Performing Loans by the banks.

One of the Sustainable Development Goals (SDG 16) has been aimed at promoting peaceful and inclusive societies for sustainable development providing access to justice for all and building effective, accountable and inclusive institutions at all levels. In specific it also aims at promoting the rule of law at the national and international levels and ensuring equal access to justice for all.

Business thrives in peaceful environments with effective institutions where operating costs are predictable and working environments are stable. Failure to implement responsible business practices can result in additional costs and risks,

e.g., financial, legal, reputational, to the business itself and can exacerbate tensions and instability in society and undermine the rule of law. By contrast, a responsible business can, through its core business, strategic social investment, public policy engagement and collective action, make meaningful contributions to lasting peace, development and prosperity while ensuring long term business success. Among other things, businesses can commit to working with Governments and civil society to support strengthening of the rule of law.

One of the key business themes addressed by SDG 16 includes: Comply with laws and seek to meet international standards; require and support business partners to do the same. It also envisages implementation of conflict-sensitive, lawful and transparent operational policies and practices inclusive of human resources, public and corporate procurement and in the value chain more generally.

Access to Justice: The Government's aim is to improve the environment for doing business by increasing the efficiency, effectiveness and accountability of the civil justice system and to increase access to justice. The Ministry of Law, Justice and Parliamentary Affairs is working on strengthening court administration and reducing delay in disposal of cases, improving case management, installing court management information system and automation, providing training and upgrading of training facilities. The Ministry is also trying to improve access to justice by among other things, developing an Alternative Dispute Resolution mechanism, strengthening small cause courts, and improving access to legal aid and promoting legal literacy and public awareness at the grassroots level.

Non Performing Loans of banks: Smooth and efficient flow of saving investment process is a prerequisite for the economic development of a country. Bangladesh mainly depends on the intermediary role of commercial banks for mobilizing internal saving and providing capital to

the investors. Thus, it matters greatly how well the financial sector is functioning. Over the last decade or so our banking sector is heavily burdened with a high percentage of Non Performing Loans. The problem of non repayment could have been minimized if there were sound and effective legal recovery mechanism. But at least, until very recently the enforcement status of lenders' recourse related laws, like Money Loan Court Act, Bankruptcy Act and PDR Act were weak. However, legal recovery got momentum after a major revision in the Money Loan Court Act 2003.

Creating an Investment Friendly Access to Justice: Can ADR be an Effective Remedy in Commercial Disputes?

Alternative Dispute Resolution (ADR) includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation. Despite historic resistance to ADR by many popular parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. The key to success of ADR in Bangladesh lies in the manner of its introduction. It can well be one of the routes for an effective remedy in commercial disputes. To make ADR more effective, extensive and proactive, coordination is needed among different agencies. Bangladesh International Arbitration Centre (BIAC) is the country's only ADR institution committed to promote best practices of resolution of business and commercial disputes both nationally and internationally. BIAC has its own Arbitration and Mediation Rules. The Ministry of Law, Justice and Parliamentary Affairs can play a pivotal role for coordinated efforts by the judges, practicing lawyers and the litigants to help embed norms and practices of ADR on an institutional basis under the existing laws and by making provisions of ADR in other relevant laws. This will definitely boost realization of Non Performing Loans by the banks and also help create a more business friendly environment in the country.

EVENTS NEWS

BIAC's Upcoming Events

Organization	Events	Date	Venue
Bangladesh International Arbitration Centre (BIAC)	Training for Law students	30 April 2018	ULAB
Asian International Arbitration Centre	Asia ADR Week 2018	5-7 May 2018	Kualalumpur Malaysia
Bangladesh International Arbitration Centre (BIAC)	Rendezvous with BIAC Alumni	12 May 2018	DCCI
Thailand Arbitration Center	First International ADR Conference 2018	17-18 May 2018	Bangkok Thailand
Bangladesh International Arbitration Centre (BIAC)	Managing non performance risk & conflict for Bankers	Coming Soon June 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Workshop on Alternative Dispute Resolution	Coming Soon July 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Workshop on legislations providing for ADR for Judges	Coming Soon August 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Discussion on ADR with Universities' Law Faculties	Coming Soon 2nd Week of September 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	BIAC Anniversary Seminar	Coming Soon October 2018	TBA



Bangladesh International Arbitration Centre

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