

# 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. 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.

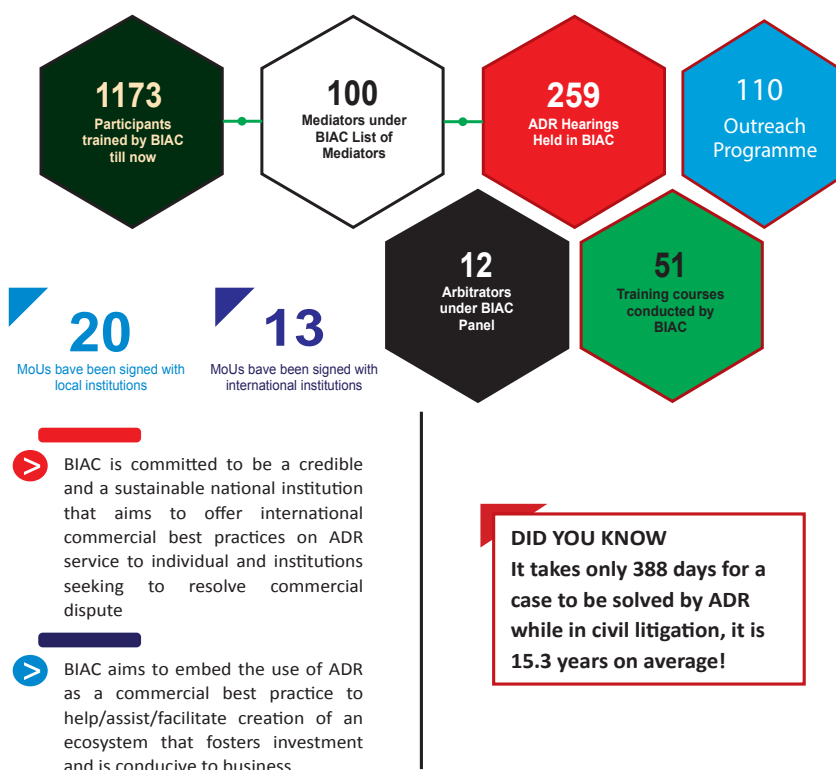
BIAC offers excellent facilities for Arbitration hearings and Mediation meetings, including two state-of-the-art meeting rooms with audio-aids and recording facilities, arbitrators' chambers, private consultation rooms, transcription and interpreter services. BIAC provides all necessary business facilities 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, 16 mediation training courses and 9 negotiation training courses and trained 1173 participants.

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 110 workshop/seminar/dialogues as of 30 June 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, 20 leading corporate companies, banks, real estate, NGO, University 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

### 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



## Opening Session of the “Think Legal Bangladesh Corporate & Commercial Law Conference 2018” on “Doing Business in Bangladesh”- BIAC CEO was a Panelist

5<sup>th</sup> May 2018



Mr. Muhammad A. (Rume) Ali, CEO, BIAC was invited by Think Legal Bangladesh to be a panelist for the session titled “Doing Business in Bangladesh.” The conference was held at The Westin Dhaka on 5<sup>th</sup> May 2018 from 08:30 am to 05:00 pm. Mr. Muhammad A. (Rume) Ali said

“Every business understands the risks of non performance of contracts. Enforcement of such contracts is one of the greatest problems of Bangladesh.”

The Think Legal Bangladesh Corporate & Commercial Law Conference is aimed to serve as an informative and stimulating forum for the exchange and dissemination

of knowledge on key legal issues and industry insights in the corporate and commercial law arena of Bangladesh. Eminent Justices of the Supreme Court of Bangladesh, practitioners from prominent law firms and representatives from leading corporate houses; both local and multinational, were among the speakers and attendees at the Conference.

## Meeting with Additional Secretary of Ministry of Commerce

19<sup>th</sup> April 2018

An inter-ministerial meeting was held at the Ministry of Commerce, Bangladesh Secretariat, Dhaka on 19 April 2018. The meeting was presided over by Mr. Tapan Kanti Ghosh, Additional Secretary (Export), Ministry of Commerce, where BIAC was invited to attend and was represented by Mr. M A Akmal Hossain Azad, Director, BIAC. The meeting was convened in view of a business dispute cropped up recently between a Bangladeshi shrimp exporter and a Belgian importer originating from a complaint and threat of defamatory activities by the Belgian importer against the Bangladeshi exporter following which the Embassy of Bangladesh in Brussels requested the Ministry of Commerce to take up the matter and sought guidance and instructions. Chairman of the meeting at the very outset showed interest to learn about BIAC and its activities. Hence, Director of BIAC briefed the meeting about BIAC. He urged upon the Ministry of Commerce and other Government agencies represented in the meeting, to use BIAC as a platform for settling down business and commercial disputes outside of the court. He also requested Chairman of the meeting to ask all concerned to insert Arbitration/ Mediation Clause in all business and commercial contracts. The meeting agreed to instruct Bangladeshi exporters to seek BIAC's assistance in case any business dispute arises between them and foreign buyers. The Chairman of the meeting appreciated activities of BIAC, as the lone ADR facilitating institution in the country and vowed to work in harmony with BIAC.

## Asian International Arbitration Centre (AIAC) organized the Asia ADR Week 2018

5<sup>th</sup> May to 8<sup>th</sup> May 2018. AIAC, Bangunan Sulaiman, Kuala Lumpur

Asian International Arbitration Centre (AIAC), formerly known as the KLRCA organized the “Asia ADR Week 2018” from 5-8 May 2018 at the auditorium of AIAC, Bangunan Sulaiman, Kuala Lumpur, Malaysia. Bangladesh International Arbitration Center (BIAC) was one of the supporting organizations of the event.

Professor Dr. Kennedy Gastorn, secretary general of Asia-Africa legal Consultative Organisation (AALCO) and Datuk Professor Sundra Rajoo launched the Asia Arbitration Centre and inaugurated the 3 day-long event. Almost 400 ADR presenters and practitioners from within the region and beyond attended the Asia ADR Week 2018. The aim of the Asia ADR Week 2018 was to provide a platform to promote Asia, as a pivotal market given the plethora of multi and transnational trade agreements being formulated as we witness a shift of commercial focus to the East, with Asia being a continent that sits at the heart of all these trade agreements.



The theme of the first day was “The Asian experience” and the second day was “Discover the Difference” and the third day was “CIPAA Conference: Sharing Solution”.

Mahbuba Rahman Runa, Senior Counsel of BIAC joined the event along with 12 participants from Janata Bank, DGDP, Basic bank and UCBL Bank. Beside attending all the plenary and breakout sessions, Senior Counsel of BIAC built networking with speakers, practitioners and representatives from different international ADR centers and informed them about ADR practice and legal framework for ADR in Bangladesh, BIAC’s facilities and current and future activities. Arbitrators and mediators of different countries showed their interest to work with BIAC and to be a panelist of BIAC. Moreover, representatives of few institutions showed their interest to sign MOU with BIAC for future collaboration. Many of them showed interest in joining BIAC’s upcoming programmes as speaker.

## First International ADR Conference organized by Thailand Arbitration Center (THAC)

17<sup>th</sup> May to 18<sup>th</sup> May, 2018  
Bangkok, Thailand



The First International ADR Conference 2018 was held in Bangkok, Thailand, from 17 to 18 May 2018 which was organized by Thailand Arbitration Center (THAC) and the United Nations UNCITRAL Regional Centre for Asia and the Pacific (RCAP) and co-sponsored by BIAC among other international ADR institutions.

The Thai Deputy Prime Minister HE Air Chief Marshal Prajin Juntong inaugurated the 2 day-long Conference at Hotel Dusit Thani in Bangkok. The conference aimed to foster a comprehensive discussion on promoting the use of arbitration and other forms of ADR as well as present the latest trends and developments in these areas. This was the first and unique conference of its kind held in Thailand on alternative dispute resolution.

The theme of the conference was “New opportunities for convergence in alternative dispute resolution”. Covered in 8 plenary sessions in 2 days the key focus of the Conference was on identifying new opportunities for legal convergence to produce a more robust and predictable cross-border regime for arbitration, mediation and online dispute

resolution within the Greater Mekong sub region and beyond. The policy support to develop the energy, telecommunication and transport sectors within the sub region brings into consideration the value of using ADR in the cross-border and intra-regional context.

Mr. M A Akmal Hossain Azad, Director, BIAC joined the Conference along with 13 other participants from banks and Government offices including Bangladesh Bank, Bangladesh Investment development Authority (BIDA), Janata Bank, Standard Chartered Bank, Mercantile Bank and Basic Bank. The BIAC representative, the Director attended all the sessions of the Conference and made networking with eminent participants during

frequent breaks in between the sessions. He briefed them about the objectives and achievements of BIAC. The officials and individuals whom heard the Director, BIAC showed keen interest in the activities and future programs of BIAC and exchanged visiting cards. Many of them showed interest in joining BIAC's programs to be held in Dhaka on mutually convenient schedules.

The Conference was very useful for participants from Bangladesh especially the topics on Investor-State Dispute Resolution, Enforcement of Mediation Settlement Agreements and Dispute Resolution through ODR were eye openers for the Bangladesh participants.

## Meeting with Agrani Bank Officials

21<sup>st</sup> May 2018

A discussion meeting between officials of Agrani Bank Limited and BIAC was held at the Agrani Bank head office, Motijheel, Dhaka on 21 May 2018. The purpose of the meeting was to apprise Agrani Bank officials about BIAC and its activities and also to share the Bank's outstanding issues as regards recovery of loans. At the outset the BIAC team led by Director Mr. M A Akmal Hossain Azad briefed the Agrani Bank team about the need and background of the formation of BIAC, explained its aims and objectives and focused on its activities including handling cases of nonperforming loans through arbitration and mediation at BIAC's behest and

within the purview of BIAC's own Rules on Arbitration and Mediation. The BIAC team requested the Agrani Bank team led by General Manager Mr. Md. Nurul Islam to come into an agreement with BIAC by signing an MoU for mutual benefit. The Agrani Bank team agreed to take up the matter with the higher echelon so that the Bank may be benefitted by signing an MoU with BIAC for mutual benefit. The team also assured that soon they will request the BIAC authority to arrange a more detailed discussion meeting at their MD/ DMD level where more officials from the Bank may attend.

## Bangladesh International Arbitration Center (BIAC) signs MoU with University of Liberal Arts Bangladesh (ULAB)

23<sup>rd</sup> May 2018



Bangladesh International Arbitration Centre (BIAC) has signed Memorandum of Understanding with University of Liberal Arts Bangladesh (ULAB) on May 23, 2018 at ULAB. Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC and Professor Imran Rahman,

Special Advisor to the Board of Trustees of ULAB signed the MoU on behalf of their respective organizations.

By virtue of this MoU, the parties agreed to explore areas of making ADR more effective in the country by introducing the students to ADR methods and skills, jointly organizing awareness programs and events and engage in research activities to promote the use of ADR in the country.

This is the first time BIAC has entered into a co-operation agreement with an educational institution of Bangladesh.



## Meeting with IFC Mission

27<sup>th</sup> May 2018



BIAC team led by its Chairman Mr. Mahbubur Rahman had a meeting with the mission of International Finance Corporation (IFC) at BIAC office on 27 May 2018. IFC officials Ms. Nina Mocheva, Senior Financial Sector Specialist, World

Bank, Washington D.C. and Mr. Ashutosh Tandon, Financial Sector Specialist, World Bank, Mumbai had threadbare discussion with BIAC officials regarding the progress of “Bangladesh Debt Resolution project Phase II”. Ms. Mahbuba Rahman, Senior Counsel, BIAC and Programme Coordinator of the project briefed about the overall progress of the project. The discussions a included the possibility of jointly organizing a three-day long exclusive workshop for bankers on how to manage multiparty negotiations with a common debtor using mediation and a Roundtable on “Addressing practical challenges in ADR” with experts from Washington D.C. Director Mr. M A Akmal Hossain Azad and other officials of BIAC were also present in the meeting.

## Meeting with the Chairman of Law Commission, Bangladesh

11<sup>th</sup> June 2018

Mr. M A Akmal Hossain Azad (Director, BIAC) had a meeting with Mr. Justice A.B.M. Khairul Haque, Chairman, Law Commission, on 11th June 2018 in the forenoon. Mr. Fowzul Azim, Chief Scientific Officer (CRO) was also present. Purpose of the meeting was to apprise Law Commission of the recent activities of BIAC and to seek assistance by the Law Commission in bringing forth some changes in existing laws for, inter alia, making mandatory ADR provisions in these laws. Insertion of sections 89A, 89B and 89C in the Code of Civil Procedure 1908 through its amendment in 2012 was a laudable step towards Mediation procedure; however these provisions are not being duly adhered to. Much has been talked about at various levels as regards best practices of ADR,

but the present exigencies demand that in order to lessen the burden of pending cases on courts and in order to save the ever expanding banking industry from failure to realize the Non Performing Loans, methods of ADR can be introduced more extensively in existing laws, though there exists a few already. The Chairman stressed the need of change in mindset of the Judges with a view to dispensing justice under the Money Loan Court Act. He also agreed that proper adherence to the provisions under Sections 89A, 89B and 89C of the Civil Procedure Code 1908 is important and Judges need to be trained well and gather sufficient experience before presiding over Money Loan Courts.

## Bangladesh Bank, Association of Bankers Bangladesh and BIAC Joint Forum Working on Draft Guidelines on Non Performing Loans (NPL) of Banks

12<sup>th</sup> June 2018

A Tripartite meeting comprising Bangladesh Bank (BB), Association of Bankers Bangladesh (ABB) and Bangladesh International Arbitration Centre (BIAC) was held on 12th April 2018 at the Bangladesh Bank Head Office to find out ways to strengthen the Alternative Dispute Resolution (ADR) mechanism to settle large number of pending cases in the banking sector. The meeting was chaired by Mr. Abu Hena Mohd. Razee Hassan, Deputy Governor of Bangladesh

Bank. He emphasized on strengthening the ADR process to settle the disputes related to Non Performing Loans (NPL) as it is becoming a matter requiring immediate attention for the expanding banking industry of the country. Bangladesh Bank is willing to provide relevant support to expedite the ADR process and making it more effective. The Central bank has already encouraged all scheduled banks to try ADR at BIAC through an advisory letter on 19th April

2016. Deputy Governor of Bangladesh Bank also requested ABB and BIAC to jointly put forward a draft guideline on how disputes related to NPLs can be settled, which would be considered by Bangladesh Bank for circulation.



Following this tripartite meeting, a committee was formed to prepare draft guidelines on resolving commercial and financial disputes effectively using ADR methods including arbitration and mediation. The first meeting of the committee was held under the Chairmanship of CEO, BIAC, Mr. Muhammad A. (Rume) Ali, also Convener of the committee, at BIAC on 16th May 2018. The participants laid down several recommendations for legal reform in the meeting. Some of which are- inclusion of Arbitration in the Artha Rin Adalat Ain (ARAA) in addition to Mediation and to tighten the process with strict time frames, penalty provisions for not complying with Mediation and Arbitration, control over filing of writ petition, inclusion of mandatory pre-litigation Mediation and Arbitration under the supervision of a third party licensed ADR institution and time bound process, e.g.90 days. Apart from these, Bangladesh Bank and ABB decided to prepare a guideline for Risk Management and include

Mediation at early alert stage for banks. According to this guideline the banks will evaluate loans which have recovery prospects and present the cases to BIAC in the presence of a nominated bank official with discretion of making instant decisions. This will be useful especially in the recovery of SME loans. Seminars, workshops and roundtables will be organized in line with the above recommendations to generate more awareness.

The second meeting of the committee was held on 31st May 2018. The committee decided that it should focus on two major areas, which are, addressing the existing backlog of pending cases in the Artha Rin Adalat (ARA) through proposed regulations and legal reforms; and Risk Management Process to manage future loan disputes. For managing risk the committee suggested that all contracts should include a Mediation-Arbitration clause.

## Meeting with the President of Bangladesh Women Judges Association (BWJA)

6<sup>th</sup> June 2018

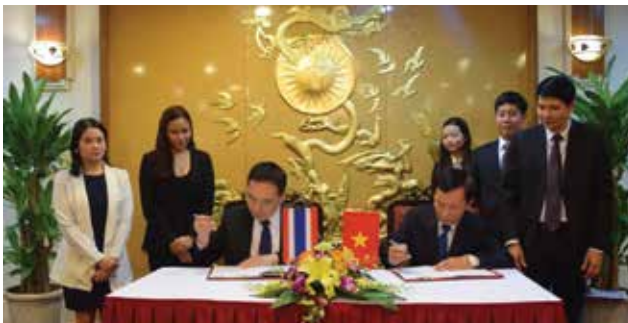


Mr. M A Akmal Azad, Director, Bangladesh International Arbitration Centre had a meeting with Ms. Tanjina Ismail, President of Bangladesh Women Judges Association (BWJA) on 6th June 2018. BIAC is keen to work with BWJA and the discussions included the possibility of jointly organizing an exclusive training session on

Alternative Dispute Resolution (ADR) for the women judges, especially judges who are currently presiding over Money Loan Courts and the Courts of Additional District Judges. The purpose of this collaboration is to lessen the huge backlog of pending cases in civil courts of the country and promote expeditious settlement of commercial and business disputes through ADR processes. The support of the presiding judges is crucial to disseminate the merits of ADR in our country which is why BIAC has approached BWJA for joining the cause. Discussions are ongoing to strengthen this relationship.



## International News

**VIAC and THAC signed the Co-operation Agreement**3<sup>rd</sup> April 2018

The Memorandum of Understanding (MOU) signing ceremony between Thailand arbitration Center (THAC) and Vietnam International Arbitration Center (VIAC) was held on 15 March 2018 at VIAC, Hanoi, Vietnam. Mr. Pasit Asawawattanaporn, THAC Managing Director, and Mr. President TRAN HUU HUYNH of VIAC signed the MoU on behalf of THAC and VIAC.

This MoU signals a strengthening of the ties between both institutions to promote and facilitate international arbitration. Under the MoU, both institutions will be able to request for hearing

facilities, conduct joint seminars and conferences, share resource persons and jointly promote activities in support of ADR. The MoU will strengthen institutional ties and capacity building of persons involved in ADR.

VIAC and THAC are widely known as long-standing arbitration centres, pioneering in providing Alternative Dispute Resolution (ADR) in Vietnam and Thailand. However, to catch up with the international arbitration trend and provide quality services with international standards for local and regional business community, it is necessary to strengthen the cooperation between the two centres as well as with other arbitration institutions worldwide. Through this, arbitration organizations can connect, learn from each other and jointly promote the development of commercial arbitration that laid the foundations a century ago.

For further information please visit:

<http://eng.viac.vn/news/viac-and-thac-signed-the-co-operation-agreement-a506.html>

**Malaysian Parliament Passes Historic Amendments to Arbitration Act**5<sup>th</sup> April 2018

The Asian International Arbitration Centre (Malaysia) (AIAC) announced that the Malaysian Parliament has passed the Arbitration (Amendment) Bill 2018. The bill is to set to receive royal assent and will be effective on a date to be notified by gazette.

The proposed amendments to the Arbitration Act 2005 is substantial and are a reflection of the 2006 amendments to the United Nations Commission on International Trade Law Model on International Commercial Arbitration ("UNCITRAL Model Law"). The modern amendments to the Arbitration Act will provide Malaysia a competitive edge to become a destination for international arbitration. The recent name change of the Asian International Arbitration Centre (Malaysia), revision of Rules along with the commitment of the Government in amending the legislation clearly establishes

Malaysia as a forerunner for Alternative Dispute Resolution in the region.

There are many salient features to the proposed amendments including parties' choice to choose representation by any representative, and the provision of a framework for the recognition of arbitration agreements made in electronic forms. In addition to that, the amendment gives the tribunal the power to provide interim measures, and recognition and interim awards enforcement mechanism. Another key feature is the express addition of confidentiality clauses thereby enhancing Malaysia's status as a safe seat.

The AIAC is confident that the passing of the said legislation will pivot Malaysia as a safe seat and with continued effort and impetus from AIAC; Malaysia is set to become a global hub for Alternative Dispute Resolution.

For further information please visit:

<https://www.aiac.world/news/251>

## PCA Participates in ICCA Sydney Congress 2018

19<sup>th</sup> April 2018

The Permanent Court of Arbitration (PCA) participated in the 24th Congress of the International Council for Commercial Arbitration (ICCA), which took place in Sydney, Australia from 15th- 17th April 2018. Over 930 delegates from arbitral institutions, governments, courts, private practice, academia and civil society around the world gathered in Sydney for high-calibre



discussions on the theme of “Evolution and Adaptation: The Future of International Arbitration”. The PCA’s Secretary-General, Hugo Siblesz, and other members of the International Bureau participated in the Congress. For further information please visit:

<https://pca-cpa.org/en/news/pca-participation-in-icca-sydney-congress-2018/>

## SIAC is the Most Preferred Arbitral Institution in Asia and Third in the World

10<sup>th</sup> May 2018



The Singapore International Arbitration Centre (SIAC) has ranked as the most preferred arbitral institution in Asia, and 3rd out of the top 5 arbitral institutions in the world in the latest Queen Mary University of London International Arbitration Survey (QMUL Survey) released on 9 May 2018.

The QMUL Survey is in its eighth edition and is one of the most prestigious International

Arbitration surveys in the world. QMUL stated that this year’s QMUL Survey is the most “comprehensive empirical study” ever conducted by the university.

According to the survey, Singapore is the 3rd most preferred seat worldwide, after London and Paris, and ahead of Hong Kong, Geneva, New York and Stockholm. Singapore is the most preferred seat in Asia.

For further information please visit

<http://www.siac.org.sg/>

## HKIAC launches Panel of Arbitrators for Financial Services Disputes

10<sup>th</sup> May 2018

The Hong Kong International Arbitration Centre (“HKIAC”) has launched a Panel of Arbitrators for Financial Services Disputes (the “Panel”), comprising some of the world’s leading experts in arbitrating financial services matters.

The Panel currently includes 30 members from 17 jurisdictions. Some of them are not only experienced arbitrators but also senior counsel, former judges or former in-house counsel of major financial institutions. The current members speak a total of 12 languages and collectively offer experience in a wide range of disputes arising from the financial services sector.



香港國際仲裁中心  
Hong Kong International  
Arbitration Centre

The Panel is HKIAC’s second specialist panel of arbitrators following the launch of the Panel of Arbitrators for Intellectual Property Disputes in March 2016. The

establishment of the Panel has received worldwide support from practitioners and arbitrators. The Panel is launched at a time when Hong Kong has been ranked third worldwide and first in Asia by the latest Global Financial Centres Index, released in March 2018. Headquartered in Hong Kong, HKIAC has handled numerous financial services disputes involving major banks and funds till date.

For further information please visit:

<http://www.hkiac.org/news/hkiac-launches-panel-arbitrators-financial-services-disputes>

## Measuring the Costs of Delays in Dispute Resolution

*Arbitration is faster to resolution than court- and the difference can be assessed monetarily*

15<sup>th</sup> May 2018

A groundbreaking study by the economic research firm “Micronomics” quantifies the significant time differences between litigation and American Arbitration Association (AAA) arbitration; from initiation of a case to the final determination and concludes that arbitration accelerates the pace of dispute resolution.

### Trial Time vs. Arbitration Time

Federal courts take much longer to resolve cases by trial and appeal than arbitration by the AAA. These differences are systematic across almost all states and sections of the country and are especially significant in the states with the highest arbitration and federal court caseloads. As budget cuts close courtrooms and reduce judicial and court staff, delays will only increase.

On average, U.S. district court cases took more than 12 months longer to get to trial than cases adjudicated by arbitration (24.2 months vs 11.6 months).

U.S. district and circuit court cases required at least 21 months longer than arbitration to resolve

when the case went through appeal (33.6 months vs 11.6 months).

### Cost to Business with a Delay in Resolution

Parties to a case are constrained from using the funds at issue; therefore, the greater the amount at issue, the greater the loss associated with delay.

Direct losses associated with additional time to trial required for district court cases as compared with AAA arbitration were approximately \$10.9-\$13.6 billion between 2011 and 2015, or more than \$180 million per month.

Direct minimum losses associated with additional time through appeal required for district and circuit court cases as compared with AAA arbitration were approximately \$20.0-\$22.9 billion over the same period, or more than \$330 million per month.

For further information please visit:

<http://go.adr.org/impactsofdelay.html>

## Many FDI firms of Vietnam choose Commercial Arbitration for Resolving Disputes

22<sup>nd</sup> May 2018

Phan Trong Dat, Deputy Secretary General of the Vietnam International Arbitration Centre (VIAC) said at a recent seminar that the rate of disputes in Vietnam has increased in the last three years with over a half of commercial arbitration cases at VIAC being resolved in foreign languages (mainly English). Some 24 percent of disputes, which were resolved at VIAC, involved Foreign Direct Investment (FDI) as one of the parties.

Vietnam has been considered among countries with high and stable economic growth in the region and the world. One of the reasons for the significant momentum for this growth is FDI activities in Vietnam. VIAC has striven to become a trusted address to resolve disputes, thus helping ensure the rights and benefits of investors seeking to invest in Vietnam.

Commercial arbitration in Vietnam has been increasingly developed to become a useful tool for foreign investors in the country. Disputes in investment activities have many mechanisms for resolving conflicts, such as courts, commercial arbitration and foreign affairs. However, the courts

have not been an attractive solution, while resolving disputes through foreign affair mechanisms have been used in certain cases.

Commercial arbitration and investment arbitration have been mostly preferred as it is an effective tool in preserving capital inflows from legal risks in business investments.

The dispute resolving mechanisms of commercial arbitration also faced challenges. The majority of challenges were concerning competitiveness, as the scale of disputes became larger and more complicated, resulting in prolonged time, which reduced its effectiveness.

The issues relating to security and transparency of arbitration procedures have also been a problem. Security is a core feature of international arbitration, but transparency requirements are also increasingly high. In order to address this issue, agencies have approved and joined the transparency framework of the United Nations.

For further information please visit:

<http://eng.viac.vn/news/many-fdi-firms-choose-commercial-arbitration-in-resolving-disputes-a511.html>



## Launching Ceremony of Vietnam Mediation Centre and the Official Release of VMC Mediation Rules 2018

18<sup>th</sup> June 2018



On 29 May 2018, the Vietnam International Arbitration Centre ran the Launching Ceremony of Vietnam Mediation Centre (“VMC”), a division of Vietnam International Arbitration Centre in Hanoi. VMC is the first unit in Vietnam to provide professional service of commercial mediation. In the ceremony, VMC proudly introduced its first 11 Mediators who are also reputable experts in many fields of commercial activities.

One of the most important parts of the ceremony was the official release of the Mediation Rules 2018 of Vietnam Mediation Centre. The VMC Mediation Rules 2018 are available on the Vietnam International Arbitration Centre (VIAC) website from 29th May 2018, and have come into force on 1st July 2018.

The VMC Mediation Rules 2018 were drafted by the VIAC’s Editorial Board working closely with the international mediation experts from the International Finance Corporation (IFC), the World Bank Group, who help to assure that the VMC mediation process meet the principles of an international mediation process. The Rules have also been thoroughly commented by experts on legal proceedings in Vietnam to ensure that VMC’s mediation process comply with the legal framework on Commercial Mediation and shall operate efficiently in practice.

Some of the key highlights of the VMC Rules 2018 include: (i) the party autonomy is always respected; (ii) the standards for the independence, impartiality, objectivity and honesty of a mediator are set at a very high bar and (iii) principle of two-tier confidentiality. Together with the Mediation Rules, the List of Mediators and the Fee Schedule, VMC shall soon issue documents, forms and templates for users’ convenience.

For further information please visit:

<http://eng.viac.vn/news/launching-ceremony-of-vietnam-mediation-centre-and-the-official-release-of-vmc-mediation-rules-2018-a515.html>

## SARCO Workshop on “The Role of Arbitrators in Fostering Efficient Resolution of Disputes”

Kathmandu, 27 June 2018



SAARC Arbitration Council (SARCO), a Specialized Body of South Asian Association for Regional Co-operation (SAARC) and the Nepal Council of Arbitration (NEPCA), co-organized the Workshop on the theme- “The Role of Arbitrators in

Fostering Efficient Resolution of Disputes” in Kathmandu on 26 June 2018.

The one-day Workshop in Kathmandu brought together members of the legal fraternity from the Member States of SAARC to discuss the role of Arbitrators in resolution of trade disputes.

The Rt. Hon'ble Chief Justice of the Supreme Court and the Hon. Minister for Law, Justice and Parliamentary Affairs of Nepal graced the Inaugural Session with their august presence. Addressing the Inaugural Session of the

Workshop, they underscored the importance of arbitration in trade related matters, promotion of economic relations and renewed Nepal’s commitment to the SAARC process.

H. E. Mr. Amjad Hussain B. Sial, Secretary General of the South Asian Association for Regional Cooperation (SAARC), also addressed the Inaugural Session of the Workshop. He said, “In view of fast growing economies of the countries in the region, it is crucially important to put in place an efficient mechanism for resolution of trade disputes. As we all know, efficient legal services for trade arbitration espouse greater trade and investment, both intra-regionally and globally.”

In his Address, the Secretary General further said, “Our region has a vast pool of arbitrators and young budding professionals working towards creating a modern and sustainable trading environment, including a system to

efficiently resolve regional and international commercial disputes within the SAARC region. This Workshop provides a welcome opportunity to discuss measures to harness the region's potential in arbitration and Alternate Dispute Resolution (ADR)."

The Director General of SARCO and Chairman, Nepal Council of Arbitration (NEPCA) also addressed the Inaugural Session of the Workshop.

During the Thirteenth SAARC Summit in Dhaka in November 2005, the SAARC Heads of State or Government signed the Agreement to Establish

the SAARC Arbitration Council (SARCO). Operational in Islamabad since 2010, the Council has been able to establish itself as an efficient regional Alternate Dispute Resolution (ADR) mechanism, enabling the traders to resolve their disputes without having to go through a judicial process, which is both expensive and time-consuming.

For further information please visit:

[http://saarc-sec.org/news/detail\\_front/press-release-workshop-on-the-role-of-arbitrators-in-fostering-efficient-resolution-of-disputes-kathmandu-26-june-2018](http://saarc-sec.org/news/detail_front/press-release-workshop-on-the-role-of-arbitrators-in-fostering-efficient-resolution-of-disputes-kathmandu-26-june-2018)

## 6<sup>th</sup> East Africa International Arbitration Conference 2018

30-31 August 2018, African Union HQ, Addis Ababa, Ethiopia

**Theme:** Re-focusing regional trade, energy and arbitration.

The EAIAC Committee, in partnership with Envantage Law, I-ARB, GBS Africa are delighted to bring to Ethiopia the



6th Edition of the East Africa International Arbitration Conference. EAIAC provides an excellent forum for International Arbitration professionals & Users to network and create valuable synergy required to promote, profile and celebrate Africa's International Arbitration & Arbitrators. The confirmed speakers of EAIAC 2018 are Paul-Jean Le Canu, David Luke, SP Kinobe, Madeline Kimei, Abebe Ababayehu, Lawrence Muiruri, Alice Namuli, Joyce Aluoch, Andrew Maclay, Liku Damtew, Amanda Dakoure, Dr. Fidele Masengo, Evans Monari, Hannington Amol, Mercy Okiro, Kamal Shah, Wairimu Karanja, Elodie Dulac, Duncan Bagshaw, Noella Lubano, Richard Mugisha, Tom Snider, Leyou Tameru, Agnes Gitau and Richard Kiddel.

2018 is the year for African introspection. In trade, 44 members of the African Union (AU) recently signed the Africa Continental Free Trade Agreement (ACFTA). In energy, there is growing

cross-border energy infrastructure and trade, including regional power transmission systems and cross-border oil pipelines. What does this mean for African international commercial

and investment arbitration? Incredible potential!

EAIAC Addis Ababa 2018 will build on the success of the previous conferences held in Addis Ababa (2013), Nairobi (2014), Dar es Salaam (2015), Kampala (2016) and Kigali (2017). EAIAC has attracted hundreds of delegates representing Industry leaders drawn from key sectors of the region's economy, regulators, Governments, Judges, magistrates and arbitration professionals. The conference has attracted expert speakers from Eastern Africa and beyond, Attorney Generals, Government Ministers, regional and international Arbitration professionals. EAIAC has been endorsed by national and regional law societies, private sector alliances, government bodies, regional intergovernmental bodies and arbitration institutions.

For further information please visit

<http://www.eaarbitration.com/>

## Articles



## Improving Access to Justice via Technology

**Fredric I. Lederer**

Chancellor Professor of Law and Director of the Center for Legal and Court Technology, at William & Mary Law School, Williamsburg, Virginia, USA.

“Access to justice” is an interesting phrase. It suggests a right to justice, one that is generally accepted as a fundamental part of American culture and which is recognized in our Constitution’s Bill of Rights. But, in today’s world, access to justice is too often only theoretical.

Consider only some of the factors that constrain access:

- People often do not know where to find legal rules and information about their rights, nor how to understand them if they do.
- Most of our population does not understand how law is made and interpreted.
- Many people do not know how to use the legal system.
- Many potential litigants do not trust aspects of the justice system, whether informal or formal.
- Most cannot afford to retain counsel, and we have too few lawyers able or willing to supply pro bono services.
- Even if counsel is available or unnecessary, related expenses may be too costly for many.
- Native English speakers often cannot understand legal rules, documents or proceedings.
- Lack of English capability hinders many from knowing how to access the legal system, how to work within it, or even to trust it.
- Those with disabilities may not even be able to physically enter and traverse key facilities, let alone properly communicate.

- Resolution of legal issues is often so slow as to result in no solution.

And, of course, none of these take into account various forms of racial, ethnic, gender, sexual orientation, gender identity, and religious bias. “Justice” itself is open to pragmatic definitional problems. “Justice” is more than a court result. It can include a host of informal and formal procedures.

Given that there are no signs that our legislatures will provide sufficient funding to resolve these problems, we must look for ways by which we can at least help alleviate the problem. Technology is one such solution, and the remainder of this essay addresses some of the ways that technology can enhance access to our legal system and courts. In doing so, I make no claim that technology is better than a properly funded legal system with full access to lawyers. Rather, the question is: “Given pragmatic realities, could this form of technology help, even if it is imperfect compared to our ideal?”

### Initial Information and Assistance

Although we need to continue to recognize that there are those without technology access, it does appear that a vast percentage of our population does have access to at least the internet in one form or another. The internet includes a vast amount of free legal information, whether in the form of published statutes, regulations, or cases, as well as myriad explanations of the meanings and implementations of legal rules. Concededly, even if this information is accurate, which it may



not be, non-lawyers frequently do not know how to verify or interpret this data. However problematic it may be, the internet as a resource is usually better than no access at all.

Various courts, nonprofit organizations and commercial firms provide either pro bono or legal assistance on the internet. This can include basic or quasi-intelligent online questionnaires that when completed can result in court papers ready for signature. When artificial intelligence is added, as is the case for some forms of predictive technology, not only might this become more accurate and useful, it could advise the potential litigant of the chances of success.

Court websites advise litigants of basic court information, potentially including docket information. Online audio-video materials may explain court procedure and critical legal rules such as the burden of proof. Some courts have provided access to their proceedings via web streaming, perhaps offsetting the distrust of judicial proceedings that so often are shown on commercial television as biased and corrupt. Those with limited or no vision or hearing can use technology to access information posted on the web.

### **In Court**

Setting aside electronic information displays that supply basic location and procedural advice to litigants and others, likely the most important technological assistance available for self-represented litigants in the courtroom is the smart phone. Increasingly, case evidence exists in the form of emails, texts, and recorded images and audio. Family law and small-claims-type cases likely are especially reliant on this information. The self-represented litigant is likely to want to prove the case by showing the judge smart phone data. Of course, this can be problematic for the court. On the one hand, many courts prohibit non staff and non lawyers from bringing cell phones or computers into the courthouse or courtroom. On the other hand, even if phones are permitted, the court may be faced with the need to copy data from the phone if it is needed by the judge or for a court record.

Interpretation is often a major problem in court, especially self-represented litigants. We have a compelling need for foreign language and sign language interpretation, and we clearly have too

few qualified interpreters, especially certified ones. Courts have used telephone-based remote interpreting for years. Remote interpretation potentially makes available interpreters from elsewhere in the United States or even other countries. This not only increases the effective number of interpreters but also the number of available languages. New technology permits use of videoconferencing technology for remote interpretation, which permits sign language interpretation as well. The Center for Legal and Court Technology conducted experiments in 2016 demonstrating that although there is no known legal requirement that interpreters be physically present in the courtroom, people are more comfortable with remote interpretation when they can see the interpreter on screen.

Video conferencing permits other useful forms of appearances. Obtaining witnesses to testify can be difficult given distance—or competing medical, family, or employment needs. Having a witness appear remotely, whether via commercial-quality equipment or Face Book or Skype, can increase the probability of testimony and decrease cost and delay. Although remote witnesses can be required to appear from other courthouses, complete with a court officer standing by, would we need such protections for a small claims-type proceeding? And, of course, we don't need a courtroom at all. For minor cases, including traffic matters, why not have an entirely virtual proceeding in which parties and judge appear in an electronic environment? In time of urgency, why not use remote appearances for protective orders? This is not science fiction but in some places today's reality.

Technology is not a panacea, and we need to remember that often technological efforts to enhance access to justice ought to be complemented by more fundamental improvements in our legal system. But especially as artificial intelligence linked to proper data and creative algorithms improves, we may well be able to substantially enhance access to justice for those who today have little or no access at all.

*Fredric I. Lederer is Chancellor Professor of Law and Director of the Center for Legal and Court Technology, at William & Mary Law School, Williamsburg, Virginia, USA.*



## About the Necessity to Meet in Person

**Prof. Daniel Erdmann**

Director General - World Mediation Organization

Dean of the School of Mediation and Terrorism Studies

Dear reader, please understand this short article as a critical reflection on our current situation, a situation that few of us may understand in full, and who are prepared to act accurately.

While being on a business trip in Asia, I had the fortunate possibility to meet and to sit down with two colleagues of mine, namely Prof. Roland B. Wilson of George Mason University Korea, and Lecturer Miss Nino Kukhianidze of the University of Georgia. It was one of these moments beyond social media, phone conferences, short and voice messages. We got lost in time and created our own micro cosmos of eye contact and gestures, exchange thoughts and lots of laughter. What was going on? What was different to our widely accepted mode of communication? It was about us, being a group of like-minded persons having common and dissimilar points of view, and enjoying a creative and constructive discussion.

Media intends to make us believe that nowadays communication should be fast, via satellites and glass-fiber cables. More likely, that each information should be shared in order to be social, and should be noted and marked with a 'like' as soon as it appears. Ladies and gentlemen, it is my strong believe that mankind was not made for this type of communication. The increasing number of addicted children to internet consume is as dramatic as more and more bachelor students suffering burnouts and disillusion or even depressions at a very young age.

I ask you to make up your mind, and to take a step back in order to observe from another angle what is happening in our lives. Being end-users of media, huge companies make immense profits with the lifetime and the content that we offer them

for free. Fear of missing information and data is raised in our unconsciousness and we are forced to constantly buy the latest mobile devices because of software updates, new applications, or predetermined breaking points of hardware.

Is this the life that we are looking for? Obviously we are spending more time in enriching others than we invest in our personal or professional development. If we are able to reject this information terrorism that is accepted and supported by our governments, only then we will be able to get control of our lives again and master our destiny. Too sad indeed, that it is government that concentrates more on the financial turnover of their states, than on protecting and investing in the citizens. We are running the risk to impoverish more and more regarding of both – education and social competence.

Time that we invest in media, is life capacity that we do not dedicate on breaking free of physical, mental, and spiritual slavery. And yes, the high-speed communication via video phone calls, and networking makes us connect with people, but are you still trained in initiating small talk, in starting a conversation, or in making a person laugh? I am afraid we do not win with our current way of communicating, but that we miss far more – actually skills that we can't even transfer to our children.

But getting back to the beginning; the group of my colleagues, Miss Kukhianidze came up with the term of structural violence, and all of us agreed that this is what we are actually suffering. Prof. Wilson did not want to miss the opportunity to make us reflect commonly on how we may resolve this dilemma. So, we spend even more hours on

investigation and evaluation of reasonable strategies.

One thing is for sure, each of us is part of a complex social structure where we have responsibilities towards ourselves but also towards our environment. Getting in contact with them by meeting them physically, is the best way to have a supporting impact on their lives. Exchanges on common and dissimilar points may form an endless value and may create true friendships and harmony. You may know that this is the main

reason why we offer the World Mediation Organization Symposium, we want people to re-connect, we hope people build true friendships, and we encourage them to exchange in real life, experiencing the power of attraction.

If you want to be part of us, following such goals and understanding that peace and any change towards a personal development starts within us and accordingly in a group of like-minded individuals, than join as WMO Fellow Mediators and support our Crowdfunding Project on: [www.worldmediation.org](http://www.worldmediation.org)

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*Prof. Dr. Daniel Erdmann*

*Director General - World Mediation Organization - [www.worldmediation.org](http://www.worldmediation.org)*

*Dean of the School of Mediation and Terrorism Studies - [www.terrorism.euclid.int](http://www.terrorism.euclid.int)*

“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



## EVENTS NEWS

## BIAC's Upcoming Events

Organization	Events	Date	Venue
Bangladesh International Arbitration Centre (BIAC)	Certificate giving to Participants of Mediation Training held in India	4 <sup>th</sup> July 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Eid Reunion Lunch	14 <sup>th</sup> July 2018	Hotel Pan Pacific Sonargaon Dhaka
Bangladesh International Arbitration Centre (BIAC) & Dhaka Chamber of Commerce & Industry (DCCI)	Roundtable Discussion on ADR in Managing the Risk of Non Performing Bank Loans	21 <sup>st</sup> July 2018	Dhaka Chamber of Commerce & Industry (DCCI)
Thailand Arbitration Center (THAC) & Bangladesh International Arbitration Centre (BIAC)	Thailand: Annual International Arbitration & Regulatory Summit	8 <sup>th</sup> August 2018	Bangkok Marriott Marquis Queen's Park Bangkok, Thailand
Bangladesh International Arbitration Centre (BIAC)	National Consultation on Arbitration Amendment Act with Lawyers	19 <sup>th</sup> August 2018	Dhaka Chamber of Commerce & Industry (DCCI)
Thailand Arbitration Center (THAC) & Bangladesh International Arbitration Centre (BIAC)	Mediation Training Course	27 <sup>th</sup> – 31 <sup>st</sup> August 2018	Thailand Arbitration Center (THAC)
Bangladesh International Arbitration Centre (BIAC)	BIAC Anniversary Seminar	29 <sup>th</sup> September 2018	Hotel Pan Pacific Sonargaon Dhaka
Bangladesh International Arbitration Centre (BIAC) & Bhuiyan Academy	Training Course on ADR for Law Students	6 <sup>th</sup> October 2018	Bhuiyan Academy
Chartered Institute of Arbitrators (CIArb) & Bangladesh International Arbitration Center (BIAC)	Training Course on Introduction to International Arbitration	21 <sup>st</sup> – 22 <sup>nd</sup> November 2018	Chartered Institute of Arbitrators (CIArb), Singapore
Bangladesh International Arbitration Centre (BIAC)	Appreciation Course on ADR	Coming Soon December 2018	BIAC

## Med-Arb Clause of BIAC

“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



**Bangladesh International Arbitration Centre**

*The Institution for Alternative Dispute Resolution*

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