

# Quarterly Bulletin

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## BIAC

Bangladesh International Arbitration Centre  
*The Institution for Alternative Dispute Resolution*

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

BIAC formally started its operation on 9th April 2011. It is an ADR service-provider organization, facilitating resolution of domestic and international commercial disputes in an expeditious and amicable manner, through Arbitration and Mediation. BIAC has its own Arbitration and Mediation Rules. BIAC's Panel of Arbitrators consists of 12 eminent jurists among them 5 are former Chief Justices of Bangladesh and Justices of the Supreme Court. 38 experts and trained Mediators are in BIAC's list of Mediators. BIAC has developed all the facilities required for systematic and comfortable Arbitration and Mediation. Till date, BIAC has handled 267 ADR hearings of 97 ADR cases.

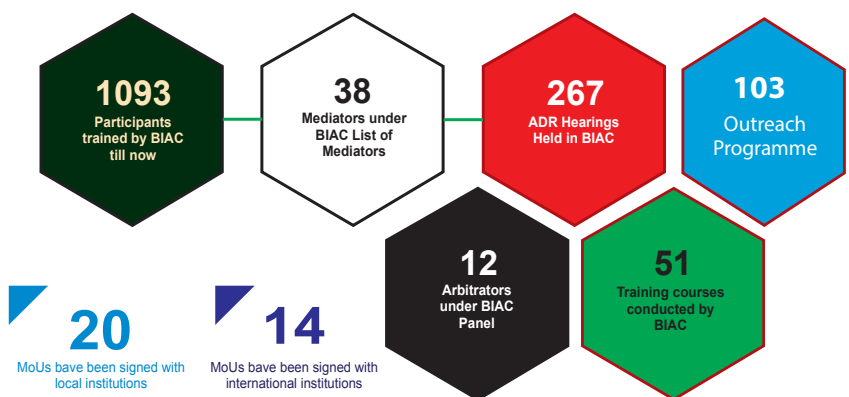
BIAC offers excellent facilities for Arbitration hearings and Mediation meetings, including two state-of-the-art meeting rooms with audio-aids and recording facilities, arbitrators' chambers, private consultation rooms, transcription and interpreter services. BIAC provides all necessary business facilities 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 1093 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 103 workshop/seminar/ dialogues as of 30 September 2018.

BIAC has received recognition by signing cooperation agreement with 14 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),

### STATISTICS SINCE INCEPTION



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

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

#### DID YOU KNOW

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

Singapore International Arbitration Centre (SIAC), Indian Institute of Arbitration and Mediation (IIAM), Hong Kong Mediation Center (HKMC), Mainland-Hong Kong Joint Mediation Center (MHJMC), Hong Kong International Arbitration Centre (HKIAC), Institute for the Development of Commercial Law and Practice (ICLP) Sri Lanka and Bombay Chamber of Commerce & Industry (BCCI), India and Bridge Mediation and Consulting Pvt. Ltd., New Delhi. 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**

Counsel

**Syed Shahidul Alam**

Administrative Officer

**Shahida Parvin**

Office Executive

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## BIAC NEWS

## Participants of training programme on “International, Cross Cultural, Civil & Commercial Mediation and Negotiation” held in India receive certificates from BIAC

04 July 2018, BIAC, Dhaka



Following a recent five day-long training programme on mediation and negotiation held in India, a meet & greet session was organized today with a small certificate giving ceremony at the Bangladesh International Arbitration Centre (BIAC) Secretariat.

A five day-long training programme on “International, Cross Cultural, Civil & Commercial Mediation and Negotiation” was organized jointly by Bangladesh International Arbitration Centre (BIAC) and Indian Institute of Corporate Affairs (IICA) under the Ministry of Corporate Affairs from March 25-29, 2018 in Gurgaon, Delhi, India. The training programme was inaugurated by Mr. Gyaneshwar Kumar Singh, Director General and Chief Executive Officer of IICA. Mr. Mahbubur Rahman, Chairman, BIAC and Mr. Muhammad A. Rume Ali, CEO of BIAC were also present in the inauguration ceremony of the training programme. Thirty one participants from Government organization, Banks, Corporate and legal practitioners of Bangladesh participated in the above mentioned training.

The result was sent to BIAC by IICA on 16 June 2018. All participants successfully completed the

training with good score and qualified to apply to become a Mediators of BIAC. Fifteen out of thirty one participants, including representatives from Bangladesh Securities and Exchange Commission, City Bank, IDCOL and the legal fraternity were present in the meet & greet session and received certificates of successful completion of the training from BIAC. Mr. M A Akmal Hossain Azad, Director, BIAC gave away the certificates. Besides, a discussion on BIAC’s plan to initiate Membership of BIAC was also held during the session.

Indian Institute of Corporate Affairs (IICA) has been established for capacity building and training in various subjects related to corporate regulation and governance. The Institute has also established specialized Centers of Excellence in various areas such as Business Innovation, e-Governance, Corporate Governance and Corporate Law and Regulation.

BIAC is the first Alternative Dispute Resolution (ADR) institution of the country and it aims to embed the use of ADR as a commercial best practice to help creation of an eco-system that fosters investment and is conducive to business.

## Geetu Singh, PwC, India meets Director, BIAC

12 July 2018

Ms. Geetu Singh, Partner, Price waterhouse Coopers (PwC), Gurgaon, India, met Mr. M A Akmal Hossain Azad, Director, BIAC by appointment on 12 July 2018 at the BIAC Secretariat. She briefed about Price waterhouse Coopers (PwC), a multinational professional services network headquartered in London, UK and her involvement as Partner to the organization to support dispute counseling and litigation, expert witness, business, merger and litigation valuations etc. She said that she is a member of the Panel of Arbitrators of Institute of Chartered Accountants of India (ICAI) and also member of London Court of International Arbitration (LCIA). She showed interest to conduct trainings and hold workshops focusing on arbitration with the legal community and legal heads of corporate organizations in Bangladesh under the joint sponsorship of BIAC and PwC, Gurgaon. She also said that PwC, Gurgaon likes to sign an MoU with BIAC for mutual benefit of

the two organizations.

Director, BIAC briefed Ms Geetu Singh about the background, achievement and current activities of BIAC including facilitation of arbitration and mediation under its own Rules in mitigating commercial disputes outside the court, its training programs at home and abroad, outreach activities and endeavors to bring about changes in the legal structure of the country with a view to applying best practices of ADR in business disputes including managing Non Performing Loans in the expanding banking sector which in turn will lessen the burden of litigation on the courts. He assured Ms. Singh that on having specific proposal from her BIAC will consider the fields of common interest where BIAC and PwC, Gurgaon can work together. Director, BIAC was aided by Senior Counsel Ms Mahbuba Rahman Runa and Counsel Rubaiya Ehsan Karishma during the discussion.

## BIAC arrange a meeting with former Chief Justices, Justices, eminent and mid-career Lawyers at Pan pacific Sonargaon Hotel, Dhaka

14 July 2018



On 14 July 2018, BIAC organized a meeting with former Chief Justices, Justices, eminent and mid-career Lawyers who are involved in arbitration practices. The objective of this meeting was to reach out to ADR clients of BIAC and meet their requirements. It has been observed that generally clients rely on advice of their counsels and

arbitrators on selection of procedure, seat and venue of Arbitration. The meeting was followed by lunch which was attended by former Chief Justice Mohammad Fazlul Karim, former Chief Justice KM Hasan, former Justice Awlad Ali, Mr. Mahbubur Rahman- Chairman BIAC, former Attorney General Fida M Kamal, Mr. Md Shahidul Haque, Senior Secretary, Legislative &

Parliamentary Affairs Division, Mr. Muhammad A. (Rume) Ali, CEO of BIAC Mr. Abul Kasem Khan, President of Dhaka Chamber of Commerce and Industry, Mr Latifur Rahmn Vice President of International Chamber of Commerce Bangladesh, Mr. M Masrur Reaz, Program Manager, Bangladesh Investment Climate Fund (BICF) and other distinguished guests.

## Roundtable on ADR in Managing the Risk of Non Performing Bank Loans

4 July 2018

Bangladesh International Arbitration Centre (BIAC) and Dhaka Chamber of Commerce & Industry (DCCI) jointly organized a Roundtable Discussion themed “ADR in Managing the Risk of Non Performing Bank Loans” at DCCI Auditorium, Dhaka on 21 July 2018. The Daily Financial Express was the



media partner of this Round table. The purpose of this discussion 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. The esteemed group of experts and luminaries present at the Roundtable provided their valuable recommendations. Given below is a compilation of these recommendations along with a summary of the discussion in a chronological order.

1. All organizations should incorporate Mediation-Arbitration Clause in the commercial contracts under an institutional framework with rules to administer the process.
2. Artha Rin Adalat Ain 2003 should be amended to include arbitration within the ambit of the definition of “Adalat”.
3. Concentrate on the implementation of the legislation and policy reforms to reduce NPL. Financial Institutions Division should come up with proposals to address this.
4. Bangladesh Bank, Office of the Chief Justice, Supreme Court of Bangladesh, Ministry of Law, Association of Bankers Bangladesh and Ministry of Finance should work collectively.
5. Improve corporate governance of banks, under proper and due diligence process, adopt zero tolerance policy on loan recovery options.
6. Before a loan becomes bad, a structured discussion where underlying reasons for default can be brought out and discussed in a facilitated environment can help to come to an optimum solution. Pre-litigation mediation is suggested.

7. Make Arbitration mandatory in cases of up to 25 crore. Cases with value above 25 crore can go to court. Credit Risk Management should include Mediation-Arbitration clause during early alert.

8. Generate public awareness along with the Central Bank.

9. Chief Executive Officers of Companies or Banks have to understand, believe in the merits and be involved in the implementation of ADR. Their instructions to their legal officers will help educate the customers.

10. There is a clause in the Banking Companies Act 1991 which stipulates that banks cannot settle for less than the principal amount as a result even when the client is agreeable to settle, the parties cannot reach a settlement.

11. Mediation can start at the Special Mention/first stage of classification, restructuring and rescheduling can be considered at this stage while the interest is still being charged. Mediation Settlement Agreement should accompany the rescheduling request to the Central Bank as a part of it.

12. The process for implementation must be streamlined and made simple so that ultimate approval does not lie solely with the Chief Executive Officers/Board of Directors.

13. To proceed with pre-litigation ADR, parties must submit a joint application. Certain branches of certain selected banks can start implementing ADR as pilot.



14. Banks have to be accountable for issuing loans, because the loans must be issued based on merits of the proposal and a bank's capacity. Benefits of ADR need to be brought about to parties and the regulators can make it happen.

15. Banks can make a list of all their cases for referral to BIAC and cases may be treated individually for resolution. Research is needed to identify what volume of defaulters are not willful defaulters and that will make a difference.

16. If ADR fails, the reason or person responsible must be found out and held accountable for non-implementation of ADR.



**Muhammad A. (Rume) Ali**  
Chief Executive Officer,  
Bangladesh International  
Arbitration Centre, BIAC

Non Performing Loans (NPL) is linked with liquidity of banks. There must be a way out before going to the court for realization of the bad loans, so there should be arbitration clause in all contracts. Bangladesh Bank has recently initiated a process to introduce ADR in the management of risk of non performance of contract in dispute resolution of defaulted loans or Non Performing Loans and BIAC and the Association of Bankers Bangladesh are both working with the central bank in preparing a draft guideline. I seek cooperation from the Legislative & Parliamentary Affairs Division for popularizing ADR and hope that ADR would be more and more in practice for mitigating NPLs before going to the courts.



**Abul Kasem Khan**  
President, DCCI

Non Performing Loans, NPL, is one of the indicators to estimate the soundness of the banking industry. Increasing NPL is one of the prime challenges facing the business of banking industry in Bangladesh. The situation is getting

worse as growing NPL wipes out the profit, slows down credit recycling, reduces the size of credit multiplier and pushes the bank capital below mandated level impacting the creditworthiness of the industry. NPL is much higher in Bangladesh compared with international standard. The share of NPL in banking industry was 13.2% in 2006. Compared to 2006, the NPL scenario has improved in Bangladesh in 2018. However, it is much higher compared to the 2% NPL of international standard.

We propose to amend the loopholes of existing laws to expedite the on-going process of loan recovery and resist the increasing trend of NPL. Banks should improve their corporate governance, adopt zero tolerance policy on loan recovery, bring loan defaulters and their collaborators under law and introduce alternative recovery options. The Artha Rin Adalat Ain 2003 needs to be amended and the provision of Arbitration needs to be incorporated within the ambit of the definition of 'Adalat'. To encourage disputed parties to redress their disputes through ADR; structured, time bound framework with feature of affordable cost need to be ensured.



**Mahbubur Rahman**  
Chairman, BIAC

The aggravated situation with Non Performing Loans (NPL) in our country continues to be a matter of great concern. Our financial sector can be further strengthened if we can manage down the volume of Non Performing Loans (NPL) in the financial industry. If the borrowers are legally bound to pay off the bank loans, they will get no fundamental right; rather they will go behind the bar. The appointment of the Chairman and Board Members of the public banks from the party line also sometimes create problems because either they are officials of the government, party members or parliamentarians. Then it becomes difficult for the department concerned to take regular actions.

Financial institutions can be properly managed with the appointment of knowledgeable persons who can contribute and deliver.

The disputes arising out of non performance of contracts and NPL is traditionally approached by the banks through negotiation and litigation. Given the current situation with our judicial system, an alternative route must come in to play that can coexist with the judiciary. ADR can resolve disputes amicably at low cost and less time. The weaknesses of the above traditional approaches make adoption of ADR a priority. BIAC is working closely with the financial sector to address the issues of managing risk of NPL in Banks. With this end in view BIAC along with Bangladesh Bank and Association of Bankers Bangladesh (ABB) has been working out a draft guideline for the banks which will expedite the process of ADR and make it more effective in the country.

#### Keynote Paper authored by:



**Shafayat Ullah**  
*EVP & Head of Legal  
the City Bank Limited*

#### Summary of the Keynote:

In Bangladesh, large defaulters are rarely penalised, instead loans are restructured. To overcome the problem, ADR can be introduced as an alternative route in managing default loans. At present, 11% of the total loans are bad loans in Bangladesh. All organizations should incorporate Mediation-Arbitration Clause in the commercial contracts with the provision of both Mediation and Arbitration under an institutional framework like BIAC with rules to administer these processes. Before filing a suit for recovery, attempts to mediate the dispute through professionally accredited mediators under licensed institutional supervision must be made. Civil claims (of suit value up to Tk. 25 crore) that are not resolved by pre-litigation mediation must be referred to be settled by Arbitration under a licensed institutional supervision by professionally accredited

arbitrators. The Arbitration proceeding must be resolved through fast track within 60 (sixty) days. Suits that value above Tk. 25 crore should be heard and disposed of by Courts within 1 (one) year through fast track. If there is a pre-agreed arbitration clause, even in a case of suit value above Tk. 25 crore, such shall be referred to and settled through Arbitration.

The Artha Rin Adalat Ain 2003 should be amended and include the provision of arbitration within the ambit of the definition of 'Adalat' and incorporation of provisions of arbitration of binding nature is necessary. In terms of execution of the Arbitral Award, inside the jurisdiction, Arbitral award is binding and has got the enforceability of a court decree. It is also executable outside the country through New York convention, where Bangladesh is a signatory with 158 more countries. ADR saves time, cost and it is confidential.



**Nasreen Begum**  
*Additional Secretary Legislative  
and Parliamentary Affairs Division*

The Artha Rin Adalat Ain 2003 needs amendment to include the provision of Arbitration within the ambit of the definition of 'Adalat'. This will mitigate to an extent, the loss arising from non performance of contract. Legislative amendments should incorporate arbitration clauses into the sanction advice in order to help financial institutions implement these clauses and bring down number of pending cases which has been a huge burden on the courts over the ages.



**Salma Nasreen, ndc**  
*Additional secretary, Financial  
Institutions Division*

Sound economy depends on efficient banking system. NPL is a vital challenge for our economy. Licensed institution like BIAC can handle NPL



cases more effectively. Banks must scrutinize the credit proposals before they sanction, which can avert the possibility of loans becoming classified.



**Tanjina Ismail**

*President, Bangladesh Women Judges Association and Member, Labour Appellate Tribunal*

It is time for the banks to rethink and redefine their loan recovery systems. Under an ADR process the bank and the defaulter may be able to amicably renegotiate the terms on the outstanding loan that might have accrued as a result of the default payment and say, as for example, waive the penalty interest, to enable the client to manage the remaining payments. This way, the bank will recover its money without having to write off the NPL as bad debt. It will also maintain and consolidate its relationship with the customers.



**Md. Abdul Wadud**

*Deputy Managing Director, Chief Risk Officer & Chief Anti Money Laundering Compliance Officer the City Bank Limited*

Banks within the existing structure start the loan recovery process without knowing the terms of mediation, but the problem is the absence of common ground and trust that the professional mediators maintain. So, an institutional process can make things much better.



**Mustafizur Rahman Khan**

*Barrister-at-Law, Head of Chamber, Mustafizur Rahman Khan & Associates*

ADR is a globally accepted method of settling disputes outside the court, in our country which needs regulatory support. Though there are relevant laws, adherence to that is also a matter of mindset of parties.



**Shireen Scheik Mainuddin**

*Principal Consultant, ASAAN*

The legal structure in Sri Lanka for both Mediation and Arbitration is comprehensive and is functioning. Mediation is also working in India where the Rules for Mediation are covered by the "Training Manual for Mediation" done by the Supreme Court of India.

One major issue not covered is the clause in the Banking Companies Act which stipulates that Banks cannot settle for less than the Principal Amount. In one mediation, the client agreed to sell the collateral and give entire proceeds to the bank, rather than be faced with a lengthy lawsuit but as there had been a collateral shortfall, i.e. the land value had depreciated, not even the Bank's Board could agree to the Settlement Offer.



**Saqeb Mahbub**

*Barrister-at-Law, Associate Partner, Mahbub & Company*

Mediation only works when you make it profitable for borrowers. Borrowers should be amenable to certain discipline for overall growth of the banking industry and for their own benefit.



**Mohammad Mamdudur Rashid**

*Additional Managing Director United Commercial Bank Ltd.*

Banking industry in the country is facing long-standing standoffs with ever increasing NPLs which can be handled properly by not only strict adherence to existing laws, but also by encouraging ADR outside the court.



**Margub Kabir**  
*Barrister-at-Law*  
*Senior Associate, Huq & Co.*

In order for mediation to be effective in case of recovery of Non-performing loans, effective rules and policies need to be framed for implementation of the mandatory mediation. Section 24(2) of the Artha Rin Adalat Ain, 2003 requires each financial institution to enact Policy and Procedure for implementation of the mandatory mediation. Bangladesh Bank can issue a circular with standard guidelines for mediation and require each financial institution to enact Mediation Policy and Procedure in line with the said guideline and report back.



**Syed Yusuf Saadat**  
*Research Associate*  
*Centre for Policy Dialogue (CPD)*

The NPL in South Asian countries is as high as 8.0 percent while it is less than 4.0 percent in the Southeast Asian economies. So, they are doing something effective which we can follow. More regulatory reforms are required which can be initiated by the Government as well as the Central Bank.



**Nur Hossain Al Kaderi**  
*Country Head - Special Asset*  
*Management Group, Standard*  
*Chartered Bank, Bangladesh*

We have to agree that we are in risk taking business and despite our entire stringent due diligence, borrowers default; and of course all defaulters are not willful defaulters. Where borrowers default for some external reasons and there is no doubt about borrowers' willingness to pay, we really need to look for a balance between securing depositor's money and supporting the borrower in order to achieve a win-win situation. At this point, ADR has really an important role to play.



**Khandoker M. S. Kawsar**  
*Barrister-at-Law, Advocate,*  
*Supreme Court & Managing*  
*Director, Law Abode*

The proposed Arbitration (Amendment) Act 2018 should be a modern piece of legislation where institutional arbitration should be recognized. Artha Rin Adalat Ain 2003 should be revised thoroughly. Money laundering experts in the banks should be increased. Intentional abetment by the managers in sanctioning the loans which are possible to be bad loan, should be punished with harsh laws. Bangladesh Bank should delegate authorities like BIAC the power to collect the amounts from the bad loans and possibly from the write-offs. A specialized Bankruptcy court can be formed. Formation of Debt Recovery Tribunal is urgent. The maximum time limit for arbitration should be strictly six months and if either of the party fails to complete their pleadings/evidence at any stage within the time stipulated, the arbitral tribunal shall proceed ahead without such pleadings/evidence and shall pass award accordingly, which shall be final. Arbitration shall be by a Sole Arbitrator and an appeal shall lie to a panel of three arbitrators, if preferred within 30 days of the receipt of the award.



**Mir Iqbal Hossain**  
*Head of Remedial Asset Management IFIC*  
*Bank Limited*

Amendment in existing laws is a must for realization of bad loans. Banks should be given a scope for pre-litigation arbitration or mediation for a final settlement with the defaulting parties, as a mandatory method.



**Asif Ibrahim**  
*Former President, DCCI*

Pre-litigation mediation is a must for solving NPL issues. Using established ADR institutions like BIAC is important for resolving commercial disputes in a faster way. In India, submission of passport information is made mandatory for people borrowing over INR 500 million. Banks, bad loans and recovery have to be separated from any kind of political impunity



**Ahsan-uz Zaman**  
*Managing Director & CEO  
Midland Bank Limited*

Currently, 127,000 NPL cases worth taka 1.7 trillion are pending before courts in Bangladesh. Practice is more important than regulations for ADR methods to be utilized. In the greater interest of the Banking industry as well as in order to lessen the burden on courts best practices of ADR is a must.



**Professor Imran Rahman**  
*Special Advisor to the Board of  
Trustees, University of Liberal Arts  
Bangladesh (ULAB)*

When laws are there, but do not work properly, we should try something else, e.g. mediation and negotiation. Changes in legal framework are required for having licensed mediators. Detailed data is needed about defaulters so that they can be brought to book. New tools for realizing NPLs must be found.



**Mohammad Shahidul Haque**  
*Senior Secretary, Legislative and  
Parliamentary Affairs Division,  
Ministry of Law, Justice &  
Parliamentary Affairs*

We need to concentrate on the implementation part of our legislation. BIAC's joining the process of settling commercial disputes beyond the court has created a ray of hope. BIAC's activities in the last 7 years including handling NPL cases, arbitration, mediation, training, workshops have substantial contribution in the field of promoting ADR. NPL, virus of state lenders, has spread to the private banks as well. In the developed countries 2% NPL is allowable where in Bangladesh it is over 10% which is not acceptable. If policy reforms are needed to reduce NPL, government is willing to do that. Financial Institutions Division should come up with a few proposals on how to address the NPL issues. Bangladesh Bank, Office of the Chief Justice, Supreme Court of Bangladesh, Ministry of Law, Bankers' Associations and Ministry of Finance should work collectively to address the NPL issues.



## BIAC participate in the CAREER FAIR 2018 organized by London College of Legal Studies (SOUTH), Dhaka.

28 July 2018



By invitation from London College of Legal Studies (South), Dhaka, BIAC participated in the "LCLS (South) CAREER FAIR 2018" held on the college campus on 28 July 2018. This annual event of LCLS (South) was aimed at placement of a significant number of potential candidates having Law degree from LCLS (South) in reputed law chambers, business organizations and legal entities. It also provided participants with an opportunity of mutual networking and apprising one another of their personal and institutional goals and objectives in the legal arena of the country. Mr. M A Akmal Hossain Azad, Director,

BIAC took part in the Fair and introduced BIAC to participants visiting the BIAC stall. The fair provided an excellent opportunity for organizations including BIAC to meet forthcoming graduates, upcoming lawyers and Barristers and both parties secure a mutually rewarding experience. Visitors, mostly students and

young lawyers were enthusiastic about BIAC's ongoing programs, especially its training and academic pursuits including thematic seminars, symposia, workshops and discussion sessions. Director, BIAC briefed visitors about its programs and achievements as the country's only Alternative Dispute Resolution (ADR) institution and urged upon visitors to take part in its upcoming training and outreach programs. Barrister Khaled Hamid Chowdhury, Head of Laws, LCLS (South) also visited the BIAC stall and assured of working together with BIAC in the coming days.

## Director, BIAC meets Dr Taslima Monsoor, Professor, Faculty of Law, University of Dhaka.

31 July 2018



Mr M A Akmal Hossain Azad, Director, BIAC met Dr Taslima Monsoor, Professor and former Dean, Faculty of Law, University of Dhaka at the latter's office on 31 July 2018 in the forenoon. The Director briefed Professor Taslima about the activities and achievements of BIAC including BIAC's facilitation of arbitration and mediation and commitment to embed best practices of Alternative Dispute Resolution (ADR) methods to resolve commercial and business disputes and thereby

help grow a flourishing economy in the country. He said that BIAC, over the last 7 years of its operation as the country's first and only licensed ADR institution has been trying to build up a human resource base by imparting training on arbitration, mediation and negotiation at home and abroad to officials from banks, financial institutions, civil service, corporate houses, NGOs, the legal fraternity, academicians and students of Law. BIAC by signing Cooperation Agreements with 13 international ADR institutions including the Permanent Court of Arbitration (PCA), the Hague, SAARC Arbitration Council (SARCO), Singapore International Arbitration Centre (SIAC), Asian International Arbitration Center (AIAC), Kuala Lumpur and Thailand Arbitration Centre (THAC) and Memorandum of Understandings with 20 local banks, corporate companies, real estate, financial institutions,

NGO and University, have achieved national and international recognition, he said.

Dr Taslima Monsoor showed keen interest in the activities of BIAC. Director, BIAC also told her that, BIAC under its outreach activities have been organizing trainings, workshops and seminars for different strata of the society including university level students of Law. He emphasized on working closely with the Faculty of Law, University of Dhaka and the Department of law, American International University- Bangladesh (AIUB), to which Dr Taslima is the Advisor. The Director said that BIAC is interested to sign an MoU with AIUB so that both AIUB and BIAC are mutually benefitted through BIAC's training and outreach programs with a view to acclimatizing Law students with practice and procedures of ADR. Dr. Taslima Monsoor agreed in principle on behalf of AIUB to sign an MoU with BIAC soon.

## **BIAC supported Thailand Annual International Arbitration & Regulatory Summit hosted by THAC**

8 August, 2018

By virtue of signing cooperation agreement with Thailand Arbitration Center (THAC), BIAC supported Thailand Annual International Arbitration & Regulatory Summit held on 8 August 2018 at Bangkok Marriott Marquis Queen's Park, Bangkok, Thailand

The event was designed to bring together leading professionals, visionaries, forward thinkers, conflict resolution practitioners, academics, enthusiastic apprentices and scholars interested in ADR methods from across the world to exchange relevant knowledge, ideas and best

practices on the same. Besides unending networking opportunities, each participant had an opportunity to enrich their knowledge on ADR mechanisms. Dispute resolution is not only a legal strategic matter, but also a part of an enterprise's corporate culture, risk management process, corporate social responsibility programme or a matter of good governance.

13 participants from Bangladesh Bank, commercial and public bank and private commercial banks and Government officials attended the Summit.

## CEDR Accredited Mediation Training Course held in Bangkok, Thailand

27 to 31 August 2018



Bangladesh International Arbitration Centre (BIAC) is the country's first and only licensed and registered Alternative Dispute Resolution (ADR) institution. A five day-long certificate training course on Mediation was organized by Thailand Arbitration Center (THAC) and Centre for Effective Dispute Resolution (CEDR) in collaboration with BIAC to train comprehensive skills needed for the practice, use and applications of mediation from 27 to 31 August 2018 in Bangkok, Thailand.

Around thirty participants from different countries including Thailand, Bangladesh, Malaysia, Cambodia, USA and Pakistan took part in the training program. Sixteen trainees from

Government organizations, Banks, Corporate and legal practitioners from Bangladesh including Ms. Mahbuba Rahman, Senior Counsel of BIAC participated in the training program.

Mr. Danny McFadden, Arbitrator-Mediator and Managing Director of CEDR Asia Pacific conducted the training as the Master Trainer along with six distinguished coaches. The closing ceremony of the training was moderated by Mr. Pasit Asawawattanaporn, the Managing Director of Thailand Arbitration Center (THAC) and certificates were awarded to the successful participants.

## US Embassy Officials visit BIAC

4 September 2018



Mr. Joel Reifman, Deputy Chief of Mission and Ms. Mary Sloan, Political and Economic Counselor, Embassy of the United States of America in Bangladesh visited BIAC on 4 September 2018. They were received by Mr. Mahbubur Rahman, Chairman and Mr. Muhammad A. (Rumee) Ali, CEO of BIAC. Welcoming the dignitaries, Chairman, BIAC highlighted the activities of BIAC and appreciated the role of the United States as a major trade partner of



Bangladesh. In the briefing session, CEO, BIAC narrated the background of the emergence of BIAC as the country's first Alternative Dispute Resolution (ADR) institution. He noted with satisfaction that the Embassy of the United States in Bangladesh recognizes BIAC as a forum for resolution of US citizens' trade disputes and has enlisted BIAC in their list. Quoting from Justice Sandra Day O'Connor of the US Supreme Court he said, "The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried." He

said that in BIAC we are also working with this end in view. An introductory presentation on BIAC and its activities and commitments was delivered by Mr. M A Akmal Hossain Azad, Director of BIAC on the occasion of the visit of the US Embassy officials. The Deputy Chief of Mission appreciated the role of BIAC and its ongoing activities towards establishing best practices of Alternative Dispute Resolution in Bangladesh. He insisted on harnessing the USA Bangladesh fraternal relations, particularly in the field of trade and business. Ms. Mahbuba Rahman, Senior Counsel of BIAC was also present in the session.

## BIAC Chairman and CEO Attend China Arbitration Summit 2018

16-17 September 2018



The China Arbitration Summit 2018, co-hosted by China International Economic and Trade Arbitration Commission (CIETAC), the Supreme People's Court of the People's Republic of China (SPC), the United Nations Commission on International Trade Law (UNCITRAL) and China Council for the Promotion of International Trade (CCPIT), was held in Beijing, China on 16-17 September 2018.

Mr. Mahbubur Rahman, Chairman of Bangladesh International Arbitration Centre (BIAC) and the sole Arbitrator appointed from Bangladesh by CIETAC attended the Summit along with Mr. Muhammad A. (Rumeen) Ali, CEO of BIAC and Mr.

Ajmalul Hossain, QC, Barrister-at-law and Senior Advocate of the Supreme Court of Bangladesh.

As the most important event of the China Arbitration Week, the China Arbitration Summit 2018 was one of the most influential gatherings in the field of international commercial arbitration. Representatives of major international arbitral institutions, judges, arbitrators, lawyers, in-house counsels and other leading figures in the field of

arbitration were present and discussed the trends and social concerns in domestic and international arbitration development.

To celebrate the 60th Anniversary of the New York Convention, the 2018 Summit presented an ideal opportunity to examine the most significant issues in domestic and international arbitration, to establish key contacts and to foster the spirit of international cooperation for the arbitration community.

Ms. Teresa Cheng, Secretary for Justice, Hong Kong, China was the Keynote Speaker of the Summit and Mr. Jingzhou Tao, Partner of Dechert LLP (Beijing Office), France moderated the event.

## Legislative amendment in the offing to institutionalise ADR, says Law Minister

29 September, 2018



Bangladesh International Arbitration Centre (BIAC) celebrated its 7th founding anniversary on 29th September 2018. On this occasion, a seminar themed “Mainstreaming the Use of ADR Clause in Commercial Agreements: Challenges and Opportunities” was held in Pan Pacific Sonargaon Hotel, Dhaka which was moderated by Mr. Mahbubur Rahman, Chairman of BIAC.

Speaking as Chief Guest at the event, Law Minister Mr. Anisul Huq MP said that BIAC in the last 7 years of its operation has done commendable job and its joining the process of settling commercial disputes beyond the court has created a ray of hope. The present Government is relentlessly working on incorporation of Alternative Dispute Resolution (ADR) in different existing laws in order to make dispute resolution system easier and less time consuming. Some progress has surfaced with the amendment of the Money Loan Court Act 2003 and the Code of Civil Procedure 1908. He hoped that soon there will be some changes in the Arbitration Act 2001 which will help create a more ADR friendly scenario.

Mr. Fazle Kabir, Governor, Bangladesh Bank in his address as Special Guest urged all scheduled banks to take effective initiatives to include ADR in Commercial Loan Contracts. He said that BIAC along with Bangladesh Bank and Association of Bankers Bangladesh (ABB) has been working on a draft guideline on ‘Resolving Commercial Disputes Effectively using ADR’ for the banks, which, once becomes part of a regulatory mandate by the central bank, must expedite the process of ADR

and make it more effective in the country.

Guest speaker of the seminar Mr. Justice Sudhansu Jyoti Mukhopadhyaya, Chairperson of the National Company Law Appellate Tribunal, India in his speech mentioned the Insolvency and Bankruptcy Code introduced two years ago in India, which forces parties to go for Arbitration as pre-requisite to invoke liquidation clause. Bangladesh needs ADR friendly legislation reforms and engage institutions like BIAC so that international commercial arbitration cases from abroad can be held in Bangladesh instead of only being directed to Singapore, he said.

Barrister Ajmalul Hossain, QC pointed out that mere inclusion of ADR clauses in contracts is not enough unless laws are amended to make enforcement easier.

Chairman of the Association of Bankers, Bangladesh Syed Mahbubur Rahman opined that mandatory provision of Arbitration and pre-litigation mediation must be included in our legislation.

The Country CEO of Standard Chartered Bank, Bangladesh Mr. Naser Ezaz Bijoy opined that courts should take punitive measures against parties that refuse to resolve disputes amicably through ADR.

Dr. M. Masrur Reaz of IFC-World Bank Group highlighted the relevance of BIAC for quality FDI to come in for long term financing in Bangladesh.

Barrister Sameer Sattar urged the Government for further amendment of existing laws in order to mainstream ADR in the country.

Mr. Anuroop Omark, Advocate, Mediator and Director of Bridge Mediation and Consulting Pvt. Ltd., New Delhi stressed the need of collaboration, through arbitration-mediation, where both parties are equally benefitted.

Ms. Wendy Werner, the Country Manager for Bangladesh IFC-World Bank Group mentioned that Bangladesh has a weak position in terms of Enforcing Contracts in the World Bank's Doing Business Index and needs to improve for increasing investment in the country.

Mr. Muhammad A. (Rume) Ali, CEO of BIAC, in his address of welcome said that, BIAC, in last 7 years has been trying to attract banks, corporate and educational institutions to adhere to ADR methods. He sought co-operation from the Government for regulatory reforms for best practices of ADR in the country.

Mr. Mahbubur Rahman, Chairman, BIAC in his concluding remarks said that BIAC along with Bangladesh Bank and Association of Bankers Bangladesh is working on a draft guideline for the banking industry to resolve commercial and

financial disputes using ADR and announced that the BIAC office is going to relocate at Paribag which will be closer to the Supreme Court.

Former Chief Justices and Justices of the Supreme Court, diplomats, senior lawyers, Government high officials, Managing Directors of banks, distinguished business leaders, representatives from foreign missions and international organisations were present on this auspicious occasion.

To commemorate this occasion BIAC brought out a publication containing reports on its activities as well as articles on ADR practices by experts from home and abroad. Copies of this publication were distributed to the guests at the Seminar and circulated among BIAC stakeholders such as business chambers, corporate houses, multi-nationals, Government offices, diplomatic missions and international organizations, universities, banks, insurance companies and financial institutions, and other ADR Centres in the region, which has also been published on BIAC's website [www.biac.org.bd](http://www.biac.org.bd).

“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



## Honorable Justice Mr. S.J. Mukhopadhaya visits BIAC

30 September 2018



Honorable Justice Mr. Sudhansu Jyoti Mukhopadhaya paid a visit to the BIAC Secretariat on 30 September 2018 and was received by Mr. Mahbubur Rahman, Chairman and Mr. Muhammad A (Rume) Ali, CEO of BIAC. Justice Mukhopadhaya is the Chairperson of the National Company Law Appellate Tribunal (NCLAT), India. In his capacity as the Chairperson, he has delivered judgments explaining different provisions of the newly enacted Insolvency and Bankruptcy Code 2016 on which there is no precedent. This Act aims to address the problems associated with the previous Acts, namely, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Securitizations and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002, Sick Industrial Companies (Special Industries) Act 1985 etc and provides expeditious recovery, to empower all classes of creditors and redeploy capital into more profitable ventures. He highlighted the objectives of this Act and which includes, empowering all creditors (secured, unsecured, domestic, international financial and operational) to trigger resolution, enable the resolution process to start at the earliest sign of financial distress, provides a single forum overseeing all insolvency and liquidation proceedings, replaces existing management during insolvency proceedings while keeping the enterprise

as a growing concern among other things. He clarified that the aim is to encourage parties to try Alternative Dispute Resolution (ADR) first. In order to trigger bankruptcy, the parties must try arbitration beforehand which is to be completed by 180 days (extendable further by 90 days in certain cases). Banks are the major creditors in this group, often holding a fixed charge on property or other business assets which is also the case in Bangladesh. The process would end under two circumstances, that is, when the creditors decide to evolve a resolution plan or sell the assets of the debtor and when 180 days time period for negotiations has come to an end. In case a plan cannot be negotiated upon during the time limit, the assets of the debtor will be sold to repay his outstanding dues. BIAC therefore, provides a fair chance to the creditors for recovery of their debts in a very simple process, free from any encumbrances and is no less of a boon to the banks which did not have proper remedies when it came to recovery of debts.

Justice Mukhopadhaya was accompanied by Mrs. Mukhopadhaya and Mr. Anuroop Omkar, Advocate and Mediator, New Delhi. The Financial Sector Specialist from IFC - World Bank Group, Mr. Ashutosh Tandon based in Mumbai, was also present on this occasion.

## International News

## BANGLADESH ACCORD ARBITRATIONS: ARBITRATIONS UNDER THE ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH BETWEEN INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION (AS CLAIMANTS) AND TWO GLOBAL FASHION BRANDS (AS RESPONDENTS)

THE HAGUE, 17 JULY 2018

COUR PERMANENTE D'ARBITRAGE



PERMANENT COURT OF ARBITRATION

### The Tribunal Issues Termination Orders Following Settlement by the Parties

The Permanent Court of Arbitration ("PCA") has been administering two arbitration proceedings under the Accord on Fire and Building Safety in Bangladesh ("Accord").

On 17 July 2018, the Tribunal constituted in the two arbitrations issued termination orders following the settlement by the Parties of both sets of claims.

### Background

The Accord is an agreement between global brands and retailers and trade unions created in the aftermath of the Rana Plaza building collapse, to establish a fire and building safety programme for workers in the textile industry in Bangladesh. Article 5 of the Accord provides for arbitration of disputes.

The Claimants in the arbitrations are IndustriALL Global Union and UNI Global Union, two non-governmental labor union federations based in Switzerland that signed the Accord on 15 May 2013. They were represented in these arbitrations by Covington & Burling LLP. The two Respondents are global fashion brands that have signed the Accord. The Claimants commenced arbitration against the first Respondent on 8 July 2016, and the second Respondent on 11 October 2016.

The Parties agreed that the 2010 UNCITRAL Arbitration Rules shall apply to the two arbitrations, that the legal seat of the arbitrations shall be The Hague, that the Secretary-General of the PCA shall serve as appointing authority, and that the PCA shall serve as Registry.

The Tribunal, composed of Professor Hans Petter Graver, Mr Graham Dunning QC, and Mr Donald Francis Donovan (presiding), was formally constituted on 3 February 2017.

The Tribunal and Registry held a preliminary procedural meeting with the Parties in London in March 2017, during which they signed Terms of Appointment and discussed preliminary procedural issues. The Tribunal issued its first Procedural Order on 19 April 2017.

On 4 September 2017, the Tribunal issued Procedural Order No. 2, deciding preliminary issues. First, the Tribunal decided that the pre-conditions to arbitration under Article 5 of the Accord had been met and that the claims were admissible and within the Tribunal's jurisdiction. Second, the Tribunal issued directions on confidentiality and transparency. Taking into account provisions of the UNCITRAL Rules and the Accord itself, and with a view to striking a balance between the public and private interests involved, the Tribunal ordered that certain basic

information about the case may be made public and that the identity of the Respondents be kept confidential. The Tribunal also directed the Parties to develop a Protocol for dealing with confidentiality and transparency issues.

On 19 September 2017, the Tribunal issued Procedural Order No. 3, setting the scope of the “Liability-Plus Phase” of the proceedings, to deal with the liability of the Respondents for alleged breach of the Accord and available heads of remedies.

The Parties to both arbitrations submitted one round of substantive written pleadings in anticipation of a hearing on merits to be held in March 2018 at the Peace Palace in The Hague. The Tribunal issued two procedural orders relating to document production.

Pursuant to a Protocol developed in consultation with the Parties and issued as Procedural Order No. 4 on 9 October 2017, certain documents relating to the Bangladesh Accord Arbitrations are published following a redaction process, including awards, decisions, and orders of the Tribunal.

#### The Settlement of the Claims and Termination of the Arbitrations

On 23 November 2017, the Parties to PCA Case No. 2016-36 informed the Tribunal and the PCA that they had agreed to suspend proceedings “including all deadlines related to document production” for 21 days. The Parties to PCA Case No. 2016-36 clarified that “there is no change in status to the other case Claimants have pending before this Tribunal, PCA Case No. 2016-37.”

On 15 December 2017, the Parties to PCA Case No. 2016-36 informed the Tribunal and the PCA that they had entered into a settlement agreement and had agreed to suspend the arbitration “including all deadlines on the procedural calendar” until 30 April 2018, the date upon which “certain conditions precedent must be met.” The

Parties to PCA Case No. 2016-36 requested that as of 15 December 2017, the proceedings in PCA Case No. 2016-36 be suspended until 15 May 2018, after which date, “the stay may be lifted by notice from any party.” They confirmed that “there is no change in status to the other case Claimants have pending before this Tribunal, PCA Case No. 2016-37.”

The Claimants in PCA Case No. 2016-37 submitted a second round of substantive written pleadings.

The Tribunal issued a further procedural order on document production in PCA Case No. 2016-37.

On 18 January 2018, the Parties to PCA Case No. 2016-37 informed the Tribunal and the PCA that they had entered into a settlement agreement and had agreed to suspend that arbitration “including the March 2018 hearing and all deadlines on the procedural calendar” until 30 April 2018, the date upon which certain conditions precedent must be met.” They requested that the proceedings in PCA Case No. 2016-37 be suspended until 15 May 2018, after which such stay could be “lifted by notice from any party.”

On 26 June 2018, the Parties in each of the cases wrote jointly to the Tribunal to inform them that the Respondent in each case had fulfilled its obligations pursuant to the respective settlement agreements. The Parties in each of the cases jointly requested the Tribunal to issue an order for the termination of these proceedings with immediate effect, pursuant to Article 36(1) of the UNCITRAL Rules.

On 17 July 2018, the Tribunal issued Termination Orders pursuant to Article 36 of the UNCITRAL Rules, formally bringing proceedings to an end. In accordance with the Parties’ agreement, the PCA will refund the remaining funds to the Parties in accordance with their agreement.

Basic information about the proceedings :

<https://pca-cpa.org/en/cases/152/>



## International Law Institute Launches Istanbul Regional Center



The International Law Institute (ILI), together with Istanbul Bilgi University and the Corporate Governance Association of Turkey (TKYD) proudly launched the newest ILI regional center in Istanbul, Turkey.

The launch event took place at Istanbul Bilgi University and attracted law professionals, academicians and national media. Chairman of ILI, Prof. Don Wallace, was one of the speakers at the event and stated: "I am very pleased to participate in this launch of our regional center in Istanbul. ILI has trained approximately 30,000 individuals-lawyers, civil servants, engineers and managers, judges and young academicians-over the years. Our Istanbul institute will have its own board, and is intended to serve not only Turkey but the countries within the region."

Ümit Hergüner, founding partner at Hergüner Bilgen Özeke Attorney Partnership and a driving force in creating the regional center, also shared his views. So too did Javade Chaudhri, Executive Vice President of Sempra Energy, who served as principal instructor at one of the regional center's first courses being given at the time of the launch, on the subject of "Board Development and Independent Board Members."

It is intended that ILI's Istanbul regional center will serve the needs of participants in Turkey, as well

as participants from neighboring countries and in the Balkans, Caucasuses, Central Asia and the Middle East. ILI's programs, generally intended for government officials, practitioners and the private sector, cover a wide variety of issues relevant to good governance and the rule of law. Some of the courses that will be undertaken by the Istanbul center include international procurement,

international trade, project financing and management, arbitration and mediation, court administration, and capital market regulation. TKYD, which participated in the launch, is serving as ILI's partner in organizing the regional center and has helped ILI in planning and conducting its initial programs at the center. ILI is organizing strategic plans which will allow the center to eventually operate independently of TKYD.

ILI offers training to assist government officials, practitioners and the private sector in finding solutions to the legal and economic challenges faced by emerging economies. ILI participants are exposed to best practices in good governance, management, and transparency standards that will give them the tools to improve the performance of government agencies, promote public accountability in government and achieve economic growth.

ILI currently has global affiliates in Uganda, Nigeria and Chile, among other places. Participants from over 185 countries have been trained over the years by ILI and its affiliates. In teaching its courses ILI relies on a network of hundreds of prominent legal practitioners, government officials and academicians who are among the leading experts in their fields.

<http://www.ili.org/about/news/363-international-law-institute-launches-istanbul-regional-center.html>

## Azerbaijan accedes to the United Nations Convention on the Use of Electronic Communications in International Contracts

UNIS/L/266

26 September 2018

VIENNA, 26 September (UN Information Service) - With its accession to the United Nations Convention on the Use of Electronic Communications in International Contracts (the "Electronic Communications Convention" or the "Convention"), Azerbaijan becomes the eleventh State party to the Convention, which will enter into force there on 1 April 2019. Cameroon, Congo, the Dominican Republic, Fiji, Honduras, Montenegro, Paraguay, the Russian Federation, Singapore and Sri Lanka are the other States parties to the Convention.

The Electronic Communications Convention aims to enhance legal certainty and commercial predictability where electronic communications are used in international contracts. For instance, it provides criteria for establishing functional equivalence between electronic communications and paper documents with respect to legal requirements such as "writing", "original" and "signature".

The Convention also aims to foster the modernization and harmonization of e-commerce law. It builds on the legal principles and provisions contained in other UNCITRAL texts on electronic commerce, such as the UNCITRAL Model Law on Electronic Commerce, already adopted in some 150 jurisdictions across more than 70 countries.

Another goal pursued by the Electronic Communications Convention is removing legal obstacles to the use of electronic communications that may arise from the terms of treaties concluded

before the widespread use of electronic media, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "New York Convention") and the United Nations Convention on Contracts for the International Sale of Goods, 1980 ("CISG").

The Electronic Communications Convention is open indefinitely for accession and ratification. Further information on the Convention is available on the UNCITRAL website at [www.uncitral.org](http://www.uncitral.org).

The United Nations Commission on International Trade Law (UNCITRAL) is the core legal body of the United Nations system in the field of international trade law. Its mandate is to remove legal obstacles to international trade by progressively modernizing and harmonizing trade law. It prepares legal texts in a number of key areas such as international commercial dispute settlement, electronic commerce, insolvency, international payments, sale of goods, transport law, procurement, and infrastructure development. UNCITRAL also provides technical assistance to law reform activities, including assisting Member States to review and assess their law reform needs and to draft the legislation required to implement UNCITRAL texts. The UNCITRAL Secretariat is located in Vienna and maintains a website at [www.uncitral.org](http://www.uncitral.org)  
<http://www.unis.unvienna.org/unis/en/press-rels/2018/unis/266.html>

## Arbitration Reform in Latin America: Argentina and Uruguay New International Arbitration Laws

18 September 2018

By Aceris Law LLC

Latin American countries are finally opening up to international arbitration and modernising their legal frameworks. After Venezuela, Paraguay, Chile and Peru, Argentina and Uruguay have also passed new international arbitration laws, based on the 2006 UNCITRAL Model law.

In November 2017, the upper house of the Argentinian Parliament passed a bill adopting a new law based on the UNCITRAL Model law. On 4 July 2018, the bill was also approved by the Argentinian lower house (House of Deputies). The only remaining step for the bill to enter into force is the executive approval in form of ratification from Argentinian President, Mauricio Macri.

The new Argentinian Arbitration Law, available in Spanish [here](#), is a modern, UNCITRAL-based arbitration law. The departures from the text of UNCITRAL Model law are only minor. For example, parties cannot agree for the subject matter of the arbitration agreement to relate to more than one country for a case to qualify as international. Another deviation is that for an arbitration agreement to be valid, it must be “in writing” and “cannot be recorded orally, by conduct or by any other means” as provided for by Articles 14-18 of the Arbitration Law. Furthermore, the time frame for setting aside an award is reduced to only 30 days, which is shorter than the three months in the Model Law.

Uruguay also required the modernisation of its

arbitration laws. The only provisions governing arbitration were codified in the Civil Procedure Code. This is the first time that Uruguay has all the provisions governing international commercial arbitration in a single bill. The Arbitration Law draft, which is available in Spanish, was passed in the lower house in 2004. However, the bill was rejected by the country’s congress. In May this year, however, the Uruguay congress finally passed the bill, a significant step towards opening up Uruguay towards international arbitration.

The arbitration laws, in both in Argentina and Uruguay, only apply to “international” commercial arbitration, whereas domestic arbitration will continue to be governed by the countries’ respective Civil and Commercial Codes.

Both Uruguay and Argentina are parties to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958. Argentina ratified the New York Convention in 1989 and Uruguay in 1983. Both of them are also parties to the International Commercial Arbitration Act of Mercosur. Modern and stable legal framework in Argentina and Uruguay, two leading economies in South America, will hopefully help them grow and become more popular seats of international arbitration, but may also contribute to the increasing popularity of international arbitration in the region and Latin America.

Nina A. Jankovic, [Aceris Law LLC](#).



## Vice Chairman of CCPIT Lu Pengqi visited VIAC

28 September 2018



Vice Chairman of China Council for the Promotion of International Trade (CCPIT) and CIETAC Lu Pengqi visited the Vienna International Arbitration Centre (VIAC) on 28 September 2018 and exchanged views with President Günther HORVATH, the Honorary Chairman Mullis, Vice Chairman Pitkowitz and Secretary-General of VIAC Wolf.

Lu thanked the VIAC's strong support to CIETAC and the Centre. He said that CIETAC and the Centre are willing to work with VIAC to explore various cooperation opportunities and prospects and jointly open a new chapter of cooperation and win-win.

President Horvath expressed his heartfelt congratulations to the establishment of the

Centre. He hoped that through the establishment of a regular exchange mechanism with the Centre, jointly holding seminars and commercial arbitration moot courts, the cooperation between the two sides would reach a new height. He introduced the Mediation Rules that VIAC was working on, and hoped to draw on CIETAC's Mediation Rules and practice, take traditional Chinese idea of valuing peace and introduce mediation mechanism to quickly resolve disputes.

Vice President of the CIETAC Arbitration Court Zhao Jian, CIETAC arbitrators Zhao Hang, Zhang Yulin, Sun Huawei, Director of the International Cases Division of CIETAC and Zhang Ye also joined the meeting.

## Articles



## Champerty V. Third Party Funding: Time for Catch up In Bangladesh

**Gavan Griffith QC**

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London WC2A 3EG

This short note briefly addresses third party funding issues in the context of current regional international commercial and investment arbitration law and practice.

Maintenance is defined as the giving assistance to a party by a person who has neither an interest in the action nor any other motive justifying interference.<sup>1</sup> Champerty is a particular kind of maintenance agreement to share a proceeds if a funded action succeeds. Founded on considerations of public policy, actions constituting maintenance and champerty attracted criminal and tortious liability in England and Wales, that have long since been abrogated.

Until this Millenium, the common law's hostility to the concept of third party funding have prohibited third-party financial assistance to litigation for fear that this would "sully the purity of justice,"<sup>2</sup> continuing as the position in Bangladesh. Within escalating speed, this conventional position has been reversed over the last few years in all but a small pockets of rear-guard resistance to the admission funding (TPF) funding has become an acceptable facility to facilitate access to civil justice for impecunious and risk adverse claimants, to the extent that there is a common consensus that "funding prohibitions make little sense today."<sup>3</sup>

As called out by the recent Queen Mary/ICCA Task Force Report (published 17 April 2018) the rise and rise of TPF has swept the field in both national laws and also structural evolution of international commercial and investment dispute practice of arbitral institutions to the extent that the

traditional bars of champerty and maintenance have become abrogated in all but a few recalcitrant pockets of jurisdictional resistance.

### Regulatory Framework for TPF

Undoubtedly, the involvement of a third party funder has the potential to create material economic relationships and imbalance the arbitral process. However, the balance of public interest argument has come down to favour support of claimants, impecunious or solvent, having access to third party funding in consideration of sharing the fruits of success. But the balance is not all one way, and may, for example adversely affect recoverable costs by successful respondents, and also give rise to conflicts of interest of arbitrators.

The 2015 Arbitration Survey conducted by Queen Mary University of London and White & Case recognized Singapore and Hong Kong as the third and fourth most preferred seats of arbitration, after London and Paris. Singapore and Hong Kong have left no stone unturned in adapting to dynamic global trends, commercial needs, and best business practices.

The acceptance of third party funding, first as an incidental to class actions and leading to funding of single actions and claims, was a development exported from Australia and through the United Kingdom to the common law world. Within the region South and East of Bangladesh the competition between evolving national laws and State's arbitration institutions has led to both an acceptance of the fact of TPF and the need to regulate its implementation as an everyday participant within the tent of alternative dispute resolution.

1. Winie Lo v. HKSAR (2012)15 HKCFAR 16

2. Oliver Gayner & Susanna Khouri, Singapore and Hong Kong: International Arbitration Meets Third Party Funding, 40 FORDHAM INT'L L.J. 1033 (2017).

3. ICCA, REPORT OF THE ICCA-QUEEN MARY TASK FORCE ON THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION (2018).

Indeed, there is an escalating sense of urgency amongst States, and their competing arbitration institutions to recognise that they now stand outside the tent of acceptance and regulation of TPF at their immediate risk of becoming by-passed as an irrelevant player in the active jurisdictions of international ADR.

One way to regulate third party funding in international arbitration is by empowering arbitral tribunals to order security for costs more readily.<sup>4</sup> Another is to involve arbitration institutions in the regulatory process.

Singapore and Hong Kong, have opened their doors by recent laws more or less abrogating the limitations of maintenance and champerty and moving to regulate TPF in the context of international arbitration, in the provisions of the Civil Law (Amendment) ACT 2017 of Singapore<sup>5</sup> and the Hong Kong Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017.<sup>6</sup>

Each law mandates the disclosure of the existence and identity of the third party funder.<sup>7</sup> To bring align its institutional rules, the Singapore International Arbitration Centre (SIAC) recently issues a revised version of its rules, pursuant to which the tribunal is competent to order the disclosure of the existence of the funding arrangement and/or identity of a funder. Moreover, the tribunal has the power to seek further details on the third-party funder's involvement and interest in the outcome of the case. Likewise the Rules and practice of the HKIAC embrace the new legal and regulatory regime.

The AIDC (formerly KLRCA) is anxious it may fall behind the pace as Malaysia dithers in enacting catch up laws to like effect, and it is predictable that laws of like effect will soon be brought forward the new Malaysian administration.

On these issue, reports of progress in the laws of Bangladesh and at the rules and regulation are tabula rasa: The Contract Act, 1872, section 23 provides a negative list of objects and

considerations that are unlawful and render an agreement void. Section 23 provides that the consideration or object of an agreement is lawful, unless (a) it is forbidden by law; (b) is of such nature that if permitted, it would defeat the provisions of any law or is fraudulent; (c) involves or implies injury to the person or property of another; or (d) the Court regards it as immoral or opposed to public policy. Hence it appears that champerty and maintenance fall under the scanner of public policy, and that TPF in Bangladesh appears to fall within the parameters of prohibition for public policy grounds.

Uncertain or not, plainly Bangladesh law and practice, both for domestic laws and within the DIAC's remit for ADR regulation are dated as uncompetitive, both unfit for service and unattractive to claimants. The then apt observations in 2007 by Ribiero J. in *Unruh*<sup>8</sup>, are superceded by international developments and new dispute resolving mechanisms. The possibilities of reform have within the last 3 years moved beyond "if" to urgent consideration of reform and content, in both judicial and also domestic and international ADR regulation.

The Queen Mary/ICCA 2107 Report is proffered as compulsory reading, particularly to the BIAC, as a guide for catch-up for those engaged in the now competitive regional fields of domestic and international dispute resolution.

Champerty is past its "use by" date, and the agenda for BIAC must be urgently to pick up the baton leading Bangladesh is to move pick up speed, and as does AIDC in Kuala Lumpur, to engage in promoting laws usefully to improve its own laws appropriately regulating ADR, but also to become competitive within the region in the fields of international arbitrations.

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4. Nadia Darwazeh and Adrien Leleu, 'Disclosure and Security for Costs or How to Address Imbalances Created by Third-Party Funding', *Journal of International Arbitration*, pp. 134 - 145

5. Civil Law (Amendment) Act 2017, SINGAPORE STATUTES ONLINE, <https://sso.agc.gov.sg/Acts-Supp/2-2017/Published/20170224?DocDate=20170224> (last visited Jul 20, 2018).

6. Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Amendment Ordinance), GOVERNMENT LOGISTICS DEPARTMENT, HONG KONG, <https://www.gld.gov.hk/egazette/pdf/20172125/es1201721256.pdf> (last visited Jul 20, 2018).

7. Please refer: <http://arbitrationblog.kluwerarbitration.com/2017/12/12/third-party-funding-international-arbitration-regulate-not-regulate/>

8. *Unruh v Seeberger* (2007) 10 HKCFAR 31



## BIAC's Upcoming Events

Organization	Events	Date	Venue
Bangladesh International Arbitration Centre (BIAC) & Bhuiyan Academy	Training Course on ADR for Law Students	6 <sup>th</sup> October 2018	Bhuiyan Academy
Bangladesh International Arbitration Centre (BIAC)	National Consultation Session on Proposed Arbitration (Amendment) Act 2018	27 <sup>th</sup> October 2018	Conference Hall MCCI, Dhaka
Bangladesh International Arbitration Centre (BIAC)	Training on Application and Process of Arbitration	30 <sup>th</sup> October 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Certificate distribution Session for Participants of THAC Mediation Training	1 <sup>st</sup> Week of November 2018	BIACs
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, Singapore
Bangladesh International Arbitration Centre (BIAC)	Appreciation Course on ADR	Coming Soon December 2018	BIAC
Bangladesh International Arbitration Centre (BIAC)	Training on workplace Mediation	Coming Soon December 2018	BIAC



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