

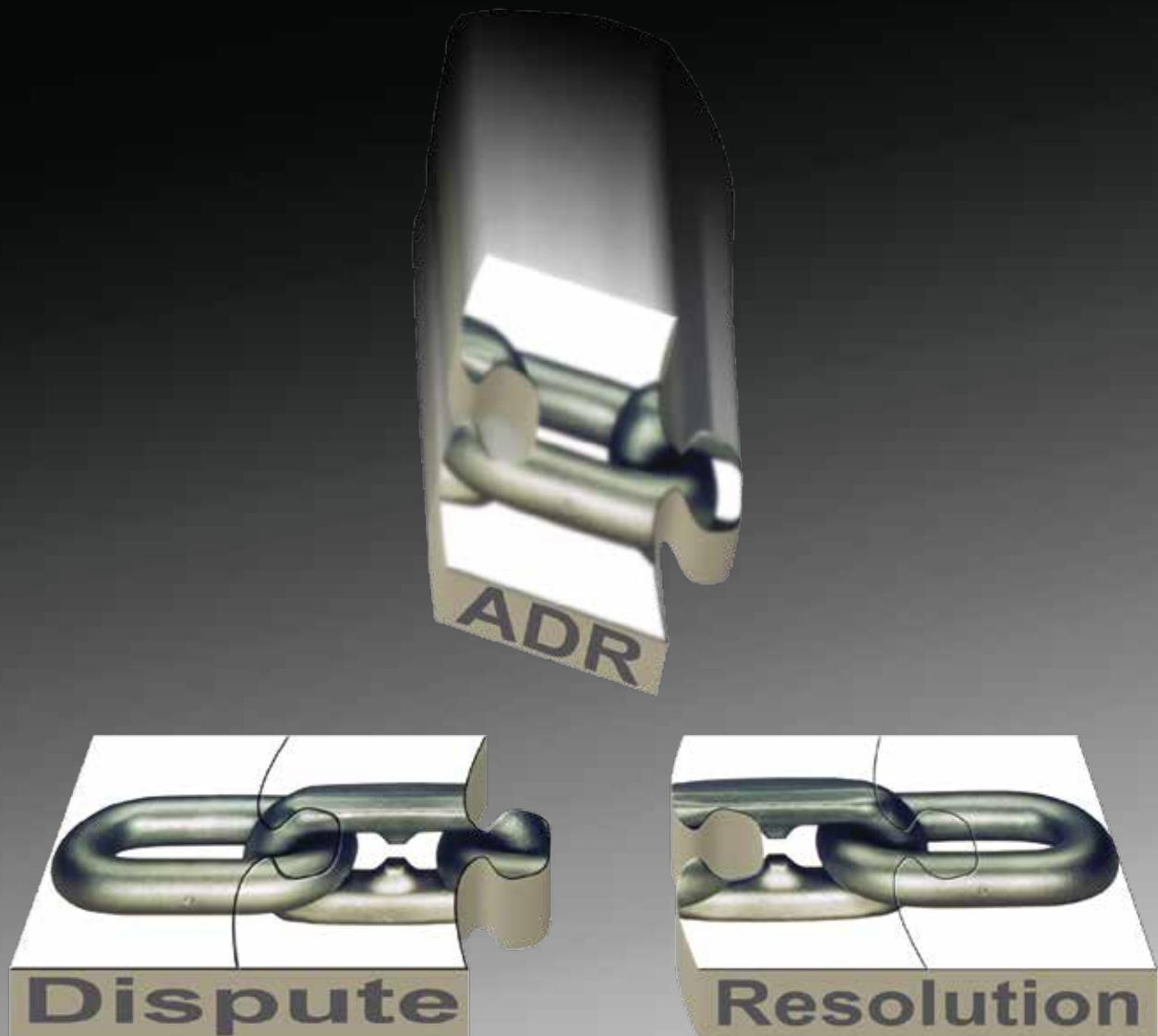
BIAC 

Quarterly Bulletin

Volume 8

Number 1

January-March 2019



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

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. 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 and has handled 269 ADR hearings till date.

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 signed collaboration agreements with. Till date, BIAC has organised 30 arbitration training courses, 17 mediation training courses and 9 negotiation training courses and trained 1308 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 105 workshop/seminar/dialogues as of 31 January 2019. 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), Vietnam International Arbitration Centre (VIAC), Malaysia Arbitration Tribunal Establishment (MATE), Thailand Arbitration Center (THAC), Singapore International Arbitration Centre (SIAC), Indian Institute of Arbitration and Mediation (IIAM), Hong Kong Mediation Center (HKMC), Mainland-Hong Kong Joint

Mediation Center (MHJMC), Hong Kong International Arbitration Centre (HKIAC), Institute for the Development of Commercial Law and Practice (ICLP) Sri Lanka, Bombay Chamber of Commerce & Industry (BCCI), India and Bridge Mediation and Consulting Pvt. Ltd., India.

Moreover, 24 leading corporate companies, banks, real estate, NGO, universities, law firm and financial institutions have signed Memorandum of Understanding (MoU) to seek BIAC's assistance in matters related to ADR, namely, Green Delta Insurance Company Limited, Building Technologies and Ideas Ltd. (bti), Friendship Bangladesh, The City Bank Limited (CBL), First Security Islami Bank Limited (FSIBL), Dhaka

STATISTICS SINCE INCEPTION



MISSION

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

VISION

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

Bank Limited (DBL), Eastern Bank Limited (EBL), Islami Bank Bangladesh Ltd. (IBBL), Mutual Trust Bank Ltd (MTB), IFIC Bank Limited, Mars Financial And Legal Consultancy Limited (MARS), Anwar Group of Industries (AGI), Apex Group of Companies, International Centre for Diarrhoeal Disease Research, Bangladesh (icddr'b), RANGS Group, Skayef Bangladesh Limited (SK+F), Summit Alliance Port Ltd., TRANSCOM LIMITED, University of Liberal Arts Bangladesh (ULAB), Prime Bank Limited, London College of Legal Studies (South), Rahman & Rabbi Legal, London College of Legal Studies (North) and AB Bank Ltd.



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

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From the Editor

It is my pleasure to present to our valued readers including our partners, patrons and well wishers, this issue of the BIAC Quarterly Bulletin which brings out among other things, a humble illustration of the activities and achievements of Bangladesh International Arbitration Centre (BIAC) during the last quarter, i.e., January-March 2019. It also reflects national and international reports and news items on Alternative Dispute Resolution (ADR). Scholarly articles on the practice and procedure of ADR throughout the globe have also been contributed by professionals and experts from home and abroad.

With the release of the current issue, we are stepping in the 8th year of publication of the news bulletin which is the only dedicated knowledge journal on ADR published in Bangladesh. From this issue we are also publishing interviews of leaders, opinion makers and experts from different sectors based on their perception and understanding of ADR. We believe that this will generate more awareness about ADR in the country and importance of introducing it to assist our judicial system in order to reduce the backlog and the time taken to resolve commercial disputes. Most economies have faced the issue of backlog of cases and have resolved it by making the legal infrastructure ADR friendly and by regulation, forwarding litigants to the ADR track.

Positive response and unequivocal support from our readers over the years have driven us to exert our best efforts in establishing an efficient Alternative Dispute Resolution regime in the country for not only the progress of the legal and regulatory sectors, but also for attracting more Foreign Direct Investment in the country. So far the use of ADR clause in commercial contracts is not universally practiced and often the parties in dispute end up in courts and a long delay in the settlement of the dispute becomes inevitable. This is the most challenging factor and perhaps requires a quantum change in attitude towards the ADR process. Let us concentrate our endeavors in overcoming this situation with a view to contributing towards overall development of the country's economy.

BIAC Quarterly Bulletin

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CEO Speaks to the New Age

Out of court, for an amicable solution thru' ADR

2 March 2019



Muhammad A (Rumee) Ali, one of the country's accomplished bankers, joined Bangladesh International Arbitration Centre (BIAC) as Chief Executive in 2015 with the aim of popularising the Alternative Dispute Resolution against the backdrop of many outstanding commercial cases in the court. But unlike his illustrious banking career, he is facing a lot of problems to make BIAC function properly. In an interview with Shakhawat Hossain of New Age, he did not only focus on the problems but also explained why the Alternative Dispute Resolution was crucial for the country's economic progress. Following is the excerpt of the interview taken on February 25 at BIAC office.

New Age: What is ADR all about?

Muhammad A (Rumee) Ali: The purpose of ADR is to find an alternative to court-based justice system. It is not moving away from the justice but a process of seeking another way where you do not have to go to court-based legal system to settle a dispute. In most jurisdictions all over the world nowadays the court-based justice system is considered as the last resort, not the first resort. If you look back to the history of Bangladesh there is a rich history of the ADR in the form of salish.

New Age: Why did the traditional judicial system like salish become weak?

Muhammad A (Rumee) Ali: Salish has been on the decline since the colonial era of the British. The colonial system introduced the court-based legal system which represented the colonial masters. To make the court-based legal system stronger the colonial rulers weakened the salish. Now all rush to court while the salish is almost forgotten.

New Age: Tell me about the centre you are running.

Muhammad A (Rumee) Ali: Bangladesh International Arbitration Centre (BIAC) was set up in 2011 for which credit should go to Mahbubur Rahman, now the Chairman of the organisation. Although the centre got licence much earlier but its operation was delayed for lack of fund as well as interest. A grant from the World Bank's subsidiary IFC and equity from three chambers — International, Metro and Dhaka — BIAC started operation. Since I joined in 2015, we set up a mission to embed the use of ADR in our dispute resolution eco system.

New Age: Are you happy with the progress of BIAC?

Muhammad A (Rumee) Ali: When I signed an agreement with Singapore Arbitration Centre (BIAC), its Chairman told me not to be in a hurry. It took 14 years to reach the level where they are earning money from arbitration. And in Hong Kong it took 18 years. Here we are into eight years. So, I suppose it will take few more years to reach that level. It is seen not only in Bangladesh but also everywhere in the world. But the difference is that most of the countries overcome the problem by resorting to ADR. Best example is Malaysia. Now 60 to 70 per cent cases are resolved through the ADR. The UK and The USA had also the same problems.

New Age: Why is the ADR so much needed for us?

Muhammad A (Rumee) Ali: Bangladesh has the same problems as other countries used to have in settling the commercial disputes. We are the 189th in enforcement of contracts in World Bank's Index. If we want to resolve it, we need to use ADR. Is there another way? I don't think so. Because you will not be able clear the messes. There are so many cases outstanding..... so many cases pending with Artha Rin Adalat. How do you resolve this issue without the help of ADR?

New Age: What are things that prevent the BIAC to be fully functionalised?

Muhammad A (Rumee) Ali: I don't think we are prevented from being functional. It is the Government which is being prevented from being more functional by not using the ADR system. Do you think resolving cases in four years and having placed 189th on the WB doing business index should be called functional

or an example of being functional? I don't think so. We can be functional if the Government wants to be functional in this area. I am not saying that the ADR related cases should be sent to BIAC. Set up 120 more BIACs, but do solve the problems. The country needs the use of ADR to make the economy more efficient.

New Age: How far are you going within and outside the Government to solve the problem the BIAC is facing?

Muhammad A (Rumee) Ali: We have already reached out to very senior level of the Government including Ministers, Bangladesh Bank Governor, Secretaries and the Law Commission. We are also talking to opinion makers in legal areas, senior lawyers and former Chief Justices. But there has to be an openness to listen to us and help us. Because helping us is not only helping us; the whole country and the whole economy will be helped. I earlier emphasised that BIAC is not a profit making organisation.

New Age: Are you satisfied with the response you got from the Government in solving the problems?

Muhammad A (Rumee) Ali: They all have heard us patiently. I don't think that there is any negativity and I won't say that they did not want to help us. Still, I think there are pulls and tensions, and vested interest and other issues that may be you know, make them think more before they take steps. Maybe you will see action... We are trying our best. I am very optimistic about ADR because I feel we have no other options. In fact, Bangladesh has no option.

New Age: Will you explain why there is no option?

Muhammad A (Rumee) Ali: The legal option is not a suitable one. Going to court for settling a commercial problem or a dispute is a zero-sum game. One wins and the other loses meaning that a plus and a minus, equal of which is always zero. But mediation is not a zero-sum game. I do believe that the court is not your best place to solve your commercial cases. Logic tells me that the best place for solving the commercial cases is ADR. The ADR is basically needed to increase Foreign Direct Investment in the country and improve the country's position in the doing business index. Internally we need the practice of ADR to get rid of some 3.6 million cases now pending with the courts. It's a huge backlog. It will take more than a hundred years to resolve the cases by the courts with the present infrastructure. It is not a system. And all these lead the economy to inefficiency. Nobody would invest money in an inefficient economy. The financial disputes will rise further with the growing number of financial transactions as Bangladesh aspires to be a middle income country by 2021. The inefficient dispute settlement process is also affecting the bank borrowers as the banks impose higher interest rate on them to mitigate risk. So in many ways people are paying for it. Let me tell you no foreign investor wants

to go to court. From my experience in working in multinational companies I can say that the foreign investors hate to go to court. Because the moment they go to court the matter becomes public. So when the foreign investors find that they would have no other ways but go to court, they would continue to feel discouraged to make investment here. But mediation and arbitration of the ADR are confidential.

New Age: Can BIAC play any effective role in reducing bad loan?

Muhammad A (Rumee) Ali: We have put some suggestions at a discussion few weeks back with the central bank Governor, Chairman of Law Commission and Managing Directors of the banks. One of them is for court-directed mediation and the other is for court-directed arbitration. If the court says that particular commercial cases should be resolved through ADR we can set mediators or arbitrators to the parties for settling the cases in 90 days under the first track arbitration. This way many cases can be sent out of court and the court can really go for more important arbitration and big bad loan cases. There should be a provision in Artha Rin Adalat Act that the court may direct the parties to go for arbitration. Now there is a provision that the courts ask the parties for mediation by 60 days. But it is ineffective.

New Age: Who will take initiative to bring about the much-needed changes?

Muhammad A (Rumee) Ali: We have already taken the initiative. We have already sent our recommendations to Law Commission. We have also urged Bangladesh Bank. All this is time consuming. But by this time the court can give directive for the use of arbitration.

New Age: Do you want to say the court has a role to play in popularising the ADR?

Muhammad A (Rumee) Ali: Absolutely, the court can contribute immensely to the particular area. Now there is no provision of ADR in the contract on borrowing money or doing business. If the provision is kept in the contracts, the directive of the court would not be necessary. That is why we are saying that the central bank should make it compulsory — any contract or legal document must have the option of arbitration.

New Age: Can ADR mechanism be used to trace out debt loan said to be smuggled out of the country?

Muhammad A (Rumee) Ali: The New York Convention signed by 156 countries including Bangladesh agreed to enforce arbitration award. By this we have crossed jurisdiction effectiveness. If you take award against a bad loan and go to a particular country, the court will accept the award and direct selling his/her asset, if there any, to get back the money. In no other way, you can make the suspects accountable.

BIAC News

Law Minister emphasizes Judges' role in Alternative Dispute Resolution

14 January 2019



Mr. Anisul Huq, MP, the Minister for Law, Justice and Parliamentary Affairs while talking to the journalists after addressing the 38th Foundation Training Course for Assistant Judges at the Judicial Administration Training Institute (JATI) on 13 January 2019, urged the Judges to raise awareness among justice seekers about Alternative Dispute Resolution (ADR) and opined

that they will take it seriously if Judges can make them how the process works. The Law Minister also said that the developed countries always advice people to opt for ADR and that is why 90% of cases are resolved out of the court room, lessening the pressure on the judiciary. The Minister said that the role of the Judges is most important in establishing rule of law in the country. He also maintained that the contribution of quality judiciary for rule of law, financial development, strengthening democracy and poverty eradication is undeniable.

BIAC team meets Director, Agriculture Information Service (AIS)

14 January 2019



Director, BIAC Mr. M A Akmal Hossain Azad met Krishibid Dr. Md. Nurul Islam, Director, Agriculture Information Service (AIS) at the latter's office at Khamarbari, Dhaka, on 14 January 2019 in the afternoon. AIS is a Government organization under the Ministry of Agriculture (MoA), Government of Bangladesh. The main target of this organization is to carry the modern agricultural information and technologies at the farmers' doorstep in grassroots level through mass media. AIS acts as a media focal point of the Ministry of Agriculture for mass media related campaigning of agricultural development. AIS takes the responsibility of producing and disseminating demand driven print and video materials for MoA and its agencies. Its vision is to make available the modern agricultural information services and its mission includes creating awareness by making available agricultural information and technologies using print, electronic and ICT based mass media. AIS essentially collects the agricultural information from research,

academia, extension and other knowledge centers and converts in farmers friendly manner, then disseminates through different mass media.

Director, BIAC briefed Director, AIS about the aims and objectives of BIAC and highlighted its recent activities including facilitation of arbitration and mediation of commercial disputes and training and outreach programs on Alternative Dispute Resolution (ADR) at home and abroad. He said that AIS can be a partner to BIAC's activities by way of using BIAC Rules and facilities in mitigating their contractual disputes and by sharing information and writes-up of each organization for their mutual benefit. In course of discussion Director, AIS said that in their contracts of supply chain and logistics there are arbitration clauses and they have lawyers to consult with in case of disputes arising between AIS and the contracting parties. Director, BIAC invited Director, AIS and his team to visit BIAC Secretariat and see for themselves its facilities and provisions. Director, AIS agreed to visit BIAC soon and showed keen interest in the activities of BIAC. He also said that in future in case of violation of business contracts by the suppliers/vendors, AIS will seek BIAC's institutional assistance for arbitration of fit cases. AIS is also eager to train its officials on arbitration and mediation at BIAC, he added. Ms. Mahbuba Rahman Runa, Senior Counsel accompanied Director, BIAC.

BIAC team visits Judicial Administration Training Institute (JATI)

15 January 2019

A BIAC team comprising Director Mr. M A Akmal Hossain Azad and Senior Counsel Ms. Mahbuba Rahman Runa visited Judicial Administration Training Institute (JATI) on 15 January 2019 in the

forenoon. They met Mr. Md. Golam Kibria, Director, (Training), JATI and briefed him about BIAC's recent achievements in the field of Alternative Dispute Resolution (ADR) in general and its training

programs in particular. Director, BIAC pointed out to a recent news item published in local dailies where the Minister for Law, Justice and Parliamentary Affairs Mr. Anisul Huq MP is reported to have said on 13 January 2019, while talking to the journalists after addressing the 38th Foundation Training Course for Assistant Judges at the JATI premises that the Judges should raise awareness among justice seekers about ADR and opined that they will take it seriously if Judges can make them how the process works.

A threadbare discussion was held between Director (Training), JATI and the BIAC team regarding training of Judges by BIAC. During the discussion it was revealed that JATI organizes training programs for Judges of different levels throughout the year. Director, BIAC emphasized training by BIAC of District Judges and presiding officers of Money Loan Courts who are also Joint District judges. Director (Training), JATI said that JATI may consider offering BIAC a half day slot during the next 5 day long training program of District judges to be held at JATI; if BIAC so agrees details of the program may be

chalked out later. He said that the long Foundation Training Program for 45 newly recruited Assistant Judges is ongoing now at JATI, from 13 January until 5 May 2019, where BIAC can train them ADR on a daylong session. In this regard he invited a specific proposal including the Training Module, Trainers' Profile and other details so that the JATI management can allot a slot for BIAC for training ADR during the current training program for the Assistant Judges. He also said that the Foundation Training over, each Assistant Judge will be entrusted with looking after the Legal Aid matters at the District and Session Judges' Courts with a view to helping poor litigants to settle disputes by mediation outside the court. Director, BIAC welcomed the proposal and said that BIAC has Master Trainers who had been trained by institutions like International Law Institute (ILI), Washington DC and Centre for Effective Dispute Resolution (CEDR), London and undergone TOT courses. He said that BIAC will send a formal proposal to JATI for training the Assistant Judges on ADR during the ongoing Foundation Training Course.

Meet and Greet Program held at BIAC

17 January 2019



A Meet and Greet Program was held at the BIAC Secretariat on 17 January 2019 in the afternoon. Officials and representatives from different Government organizations, banks and corporate houses took part in the program who recently attended ASIA ADR WEEK, Kuala Lumpur, Malaysia, 5-7 May 2018; First ADR International Conference, Bangkok, Thailand, 17-18 May 2018; Thailand Annual International Arbitration and Regulatory Summit, Bangkok, Thailand, 7 - 9 August 2018; CEDR Accredited Mediation Course, Bangkok, Thailand, 26 August - 1 September 2018; and Training on Introduction to International Arbitration, Singapore, 19- 22 November 2018. Mr. Muhammad A. (Rume) Ali, CEO of BIAC welcomed the BIAC alumni

to the Meet and Greet Program and thanked them for participating in a number of training programs and conferences held recently in abroad which BIAC jointly organized along with its counterpart institutions.

He narrated BIAC's recent achievements as a unique knowledge based research institution and its success in facilitating ADR practices in resolving business and commercial disputes in the country. He also said that BIAC through its training and outreach programs at home and abroad over the last seven years or so has gone a long way in building awareness about ADR and its best practices to lessen the burden of courts in handling business disputes, especially non performing bank loans. CEO, BIAC heard views of the participants of foreign programs as to how best they can associate themselves in the activities of BIAC. He said that BIAC is planning to float its Membership soon and hoped that the BIAC alumni will come forward to become Members of BIAC and contribute towards popularizing and practicing ADR methods in dispute resolution by using BIAC as a platform. The Meet and Greet Program was also attended by Director, Senior Counsel and Counsel of BIAC.

Bhutanese team visits BIAC

23 January 2019

A team from the Bhutan Alternative Dispute Resolution Centre (BADRC) visited BIAC on 23 January 2019. They were on a 12 day long visit to Bangladesh. The team comprised Ms. Migmar Lham, Head, Legal Division and Mr. Suba Dhan Rai, Finance Officer. They were welcomed by the Chairman Mr. Mahbubur Rahman and CEO Mr. Muhammad A. (Rumee) Ali and both explained why BIAC was established and how significant is the role of ADR in the business world. The Director Mr. M A Akmal Hossain Azad delivered a presentation on the activities, achievements and ongoing programs of BIAC. The Bhutanese team shared their experience with Alternative Dispute Resolution (ADR) in their country. They are being funded by the Royal Government of Bhutan and they are an autonomous body. Arbitration has been practiced in Bhutan since 2005, even before the legislation was enacted and people are more inclined



towards institutional ADR there. Both members of the Bhutanese team underwent a series of discussions for mutual benefit and development of BADRC and BIAC in the next few days. They also participated at a daylong training course on ADR conducted by BIAC on 29 January 2019 and joined a Dialogue with Academicians on ADR organized by BIAC on 31 January 2019.

Daylong training for students on Alternative Dispute Resolution held at BIAC

29 January 2019



ADR methods are growing forms of dispute resolution means in Bangladesh especially in commercial and business deals. With the growing use of ADR in resolution of disputes, it is essential for the future lawyers and entrepreneurs to know about the methods

and their uses. This is the right time for arranging ADR appreciation courses to provide professionals and students with opportunities to study and practice methods of Alternative Dispute Resolution.

A total of 18 participants including our guests from the Bhutan Alternative Dispute Resolution Centre Ms. Migmar Lham and Mr. Suba Dhan Rai attended the course. The course comprised of morning session on Arbitration and afternoon session on

Mediation conducted by Barrister Nabil Ahsan and Ms. Shireen Scheik Mainuddin respectively. On completion of the course certificates were distributed to all the participants by BIAC CEO Mr. Muhammad A. (Rumee) Ali.

Bhutanese delegation visits DCCI

30th January 2019

Visiting Bhutanese delegation from the Bhutan Alternative Dispute Resolution Centre (BADRC) comprising Head of the Legal Division Ms. Migmar Lham and Finance Officer Mr. Suba Dhan Rai called on Dhaka Chamber of Commerce and Industry (DCCI) President Mr. Osama Taseer at DCCI Secretariat on 30 January 2019. Senior Vice President of DCCI Mr. Waqar Ahmad Choudhury and Director, BIAC Mr. M A Akmal Hossain Azad were present during a briefing session about objectives, programs and achievements of DCCI.



Speakers at a dialogue with academicians stress the need of introducing Alternative Dispute Resolution courses in legal education

31 January 2019



Speakers at a dialogue with Academicians on Alternative Dispute Resolution (ADR) held in the city on 31 January, 2019 stressed the need of introducing Alternative Dispute Resolution courses in legal education. Bangladesh International Arbitration Centre (BIAC) organized the dialogue which was attended by eminent academicians, lawyers and representatives from the corporate houses.

Professor and former Dean of the Faculty of Law of the University of Dhaka Dr. Taslima Monsoor graced the event as Guest of Honor. In her address she stated how the field of dispute resolution appears to have quite different meanings and functions inside and outside law faculties. She also said that if ADR is being used as a vehicle to teach lawyers' skills and process, then some of the serious political and policy issues raised by the wholesale exclusion of certain categories of cases from the court system might not be addressed. Dr. Taslima said that we do not have ADR as a subject being taught in most of our universities and emphasized inclusion of ADR courses at Honors level of Law at all the universities of the country. She thanked BIAC as the only ADR facilitating institution in the country and also making substantial progress in their experience of less than eight years in popularizing the concept of ADR among various stakeholders including the Government, the banks and financial institutions, the corporate houses, lawyers and even students of Law.

Barrister Khaled H Chowdhury, Head of Laws, London College of Legal Studies (South) delivered the Keynote Speech themed "Teaching Alternative Dispute Resolution". He said that the law and the policy makers have realized the need for alternative measures where mediation has started to feature in a subtle but definitive way. He also mentioned that there are around 3.3 million cases pending which is destined to reach a staggering figure of 5 million by 2020. There is only one judge for around 2000 cases and on that note ADR can play an important role. Barrister Khaled opined that teaching and promoting ADR at

undergraduate and university level is very important because it will promote a culture where litigation would not be preferred or promoted and will also change the mind set of people.

Chairman of BIAC Mr. Mahbubur Rahman moderated the session and expressed satisfaction over the interest of eminent scholars and members of Faculties of Law of a number of universities participating at the dialogue. He said that ADR can resolve disputes amicably at low

cost and less time. The present legal education system in Bangladesh does not provide enough priority to this important area, he added. He also mentioned that since 2011 till date BIAC has facilitated 269 ADR hearings of numerous ADR cases and not only that BIAC has also organized 30 arbitration training courses, 17 mediation training courses and 9 negotiation training courses including 7 courses conducted abroad and trained over 1290 participants from the Civil Service, banks, the legal fraternity, financial institutions, corporate houses and students of Law.

Speaking on the occasion, Mr. Muhammad A. (Rume) Ali highlighted the background of the emergence of BIAC and narrated BIAC's recent achievements in applying best practices of ADR in the country by facilitating arbitration and mediation and also by arranging training programs on ADR at home and abroad for representatives from banks and financial institutions, Government, the legal fraternity, corporate institutions and students of Law.

The event was participated among others by Dr. Anowar Zahid, Professor and Dean, Faculty of Law, Eastern University; Barrister Margub Kabir, Associate, Huq and Company; Dr. Jamila Ahmed Chowdhury, Professor, Department of Law, University of Dhaka; Dr. Parvez Ahmed, Chairperson, Department of Law, Green University Bangladesh; Barrister Sameer Sattar, Sattar & Co.; Mr. A F Wazir Ahmad, Director, BBA and Proctor, University of Liberal Arts Bangladesh; Professor Dr. Farhana Helal Mehtab, Associate Dean, Faculty of Humanities and Social Science, Daffodil International University; Ms. Christabel Randolph, Head of Legal, Marico Bangladesh Ltd; Barrister Tamanna Ashfi, Student Counselor and Lecturer, Department of Law, Bhuiyan Academy as Panelist Discussants. Visiting Bhutanese delegation from the Bhutan Alternative Dispute Resolution Centre comprising Head of the Legal Division Ms. Migmar Lham and Finance Officer Mr. Suba Dhan Rai also attended the Dialogue.

Post Editorial published in the Financial Express on ADR potential and realization

5 February 2019

Alternative Dispute Resolution (ADR) has enormous potential to resolve social, economic, professional and commercial conflicts. Compared to its potentiality its usage has been negligible. The ADR's merits are manifold: It is cost-effective, time-saving, prompt and conclusive. Above all, it helps resolve disputes amicably. The country has been familiar with the variants of alternative conflict resolution like salish (an aberration now) or out-of-court settlement but ADR as such is now infinitely more advanced and sophisticated method of settling dispute in commercial and business world. If developed and practised in Bangladesh in parallel to the legal system, it may be hugely complementary to the Judiciary. This can happen in three important ways: Firstly, it can significantly reduce the case loads on the courts; second, through a demonstrative effect, ADR can prevent habitual litigants from forcing each other into legal trammels; third, it can foster calmer and productive social ecology.

The statistics speak volumes about the need for Alternative Dispute Resolution. Around 3.3 million cases are pending with the courts. If the deck is not cleared off the critical mass of backlogs from here on, it is set to reach the staggering figure of 5.0 million by 2020. As if that was not enough, 55,000 cases had been pending with Artho Rin Adalats (money loan courts) as of June 2017! Where there is only one judge for 2000 cases, it certainly impels an ADR role with an appropriate institutional base.

Bangladesh International Arbitration Centre (BIAC) has been at it energetically; not content with merely popularising the concept and keeping it on focus-only last year it held a roundtable titled "Creating

investment-friendly access; Can ADR be a remedy in commercial disputes." On last Thursday through a dialogue attended by experts and stake-holders, the need for introducing ADR courses in legal education was underscored. Teaching and promoting ADR at undergraduate and university levels are considered important as it will help foster a culture where litigation would be looked down upon with preference shown to civilised conduct of business. Aiming mindset change at the receiving end could not bring in the desired transformation towards adoption of ADR. What is central to the mission is the legal education system providing space to Alternative Dispute Resolution in the curricula out of a sense of a noble purpose. The study of law has a higher mission for what clearly is set to render the court system free to act as an antidote to justice delayed being justice denied.

The BIAC can be credited with having facilitated 269 hearings on ADR cases, organised 30 arbitration training courses, 17 mediation training courses and nine negotiation courses of which seven courses were conducted abroad. It took seven years to accomplish the array of tasks. In that time some 1,290 participants from the civil service, banks, legal fraternity, financial institutions, corporate houses and students of law have received training. Stepping up the preparatory phase is necessary. To be sure, the BIAC's pioneering work needs all the help it can get from the Government and private sector. For it has to put in place the right infrastructure for the best practice of ADR methods to thrive in Bangladesh.

<http://www.thefinancialexpress.com.bd/editorial/adr-potential-adn-realisation-1549295857>

Bangladesh Bank to seek opinion from Minister, legal experts on amendment of laws to clamp down on defaulters

6 February 2019

The central bank may hold a meeting with the Law Minister, the Attorney General and judges to take their opinion on how to amend the existing laws with a view to clamping down on habitual bank loan defaulters. At a meeting with the central bank held on 6 February 2019, the Chief Executive Officers of private banks proposed the Bangladesh Bank (BB) to sit with the people in the judiciary. The BB agreed to the proposal, meeting sources said.

Bangladesh Bank Governor Mr. Fazle Kabir presided over the meeting, where Law Commission Bangladesh

Chairman Mr. Justice ABM Khairul Haque and Bangladesh International Arbitration Centre CEO Mr. Muhammad A. (Rumee) Ali spoke on the occasion. Mr. Ali said that the existing overhang of bad debts needs to be addressed through court led arbitration, because arbitration can be done ex-parte and arbitral awards can be enforced in 159 Member States under the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Bangladesh is a signatory to this Convention since May 1992. However, to proceed with the arbitration, the court

will need to formulate Rules for administering the process. BIAC as the only licensed and registered ADR institution in the country has prescribed Rules which the courts can have a look at either for reference or adoption for time-bound disposal.

Although the Artha Rin Adalat Ain provides for Mediation, it has not proven to be effective which is why court led arbitration is the way out. Those who have fled the country and/or have known assets abroad can be brought under the purview of the New York Convention and banks can enforce arbitral awards abroad. Also the existing legislation on Arbitration can only be effective if certain changes are made. The Law Commission has invited BIAC's opinion and recommendations will be sent shortly.

Mediation under the Artha Rin Adalat Ain can be strengthened by introducing Pre-litigation mediation. Parties already take an adversarial position when they move to litigation and no alternative method will be useful at that point. Therefore, it is important for the courts to take in cognizance that the parties have tried mediation and arbitration before filing a suit.

Mr. Justice ABM Khairul Haque had mentioned that foreign investors are reluctant to invest into Bangladesh because they are not confident about the provision in the existing legal infrastructure that could protect them; as a result the Law Commission initiated the Arbitration Amendment Act. Mr. Ali pointed out that foreign investors seek confidentiality to protect themselves from reputation risk, all of which is lost in litigation. Only ADR processes like mediation and arbitration can meet these requirements.

BIAC team meets AB Bank Limited officials

11 February 2019

A BIAC team comprising Mr. M A Akmal Hossain Azad, Director and Ms. Mahbuba Rahman Runa, Senior Counsel, visited Corporate Office of AB Bank Limited on 11 February 2019 and met Mr. Md. Nazrul Islam, Head of Credit Administration and Management Division (CAMD) and other senior officers of ABBL including Head of Credit Risk Management Division (Corporate-1) Mr. Zahir Uddin Mohammed Babar Khan, Head, SME Mr. Iftexhar Enam Awal, Head of Consumer Banking Syed Mizanur Rahman and Mr. Altaf Hossain, the newly joined Head of CAMD. The BIAC team briefed them about BIAC's recent achievements in the field of ADR including its training programmes.

The ABBL team was much enthusiastic about the

He also stressed the need to address the risk of future bad debts by including ADR clause in all bank agreements/contracts. The same is done in many countries around the world and the closest example to home is that of the Indusind Bank, India. The bank contract document contains mediation-arbitration clause which can be invoked by the banks when default occurs. If no settlement is reached through ADR, banks can always resort to Artha Rin Adalat Ain after a year of the default. ADR clause will give banks another tool, since they would know which of Mediation or Arbitration or both will work for which client.

The willful defaulters frequently file writs with the High Court Division to evade falling into the default zone. So, banks will be able to secure help from the people in the judiciary if such meeting is organised, Syed Mahbubur Rahman, Chairman of the Association of Bankers Bangladesh (ABB) told reporters after the meeting.

The central bank has recently started working on amending three Acts -- the Bankruptcy Act 1997, the Artha Rin Adalat Ain 2003 and the Negotiable Instruments Act 1881 – to rein in the rising default loans. Habitual defaulters should be barred from obtaining or renewing passports, purchasing land and getting licence for vehicles by way of amending the laws, Mr. Rahman said. “The existing Bankruptcy Act has already failed to nab defaulters because of loopholes. So, the authorities should amend it immediately. Some of the provisions of the Artha Rin Adalat Ain should be amended soon to recover the default loans”, he added.

activities and achievements of BIAC and showed interest to work together with BIAC by signing a Memorandum of Understanding (MoU) in order to resolve and realise bad loans. During the discussion it was learnt that ABBL organises training programmes for officers at different levels. The ABBL team emphasised the need of training by BIAC of ABBL officials and opined that BIAC may propose a slot on training on Alternative Dispute Resolution, especially on arbitration and mediation in the training schedule of ABBL's regular training programmes at the AB Bank Limited Training Academy (ABBLTA). Both the ABBL and BIAC teams agreed to work on signing of an MoU between them and training of ABBL officials by BIAC at the ABBLTA.

Bangladesh International Arbitration Centre (BIAC) signs MoU with London College of Legal Studies (North)

17 February 2019



A Memorandum of Understanding (MoU) was signed in the city on 17 February 2019 between London College of Legal Studies (North), a registered centre of University of London International Programs and Bangladesh International Arbitration Centre (BIAC) with a view to establishing a basis upon which both LCLS (North) and BIAC may explore areas of further collaboration in respect of the use of facilities and services provided by both the institutions.

London College of Legal Studies (North) provides unparalleled opportunities to study law in an energetic and creative legal environment. It was founded in 2004, since then LCLS (North) has flourished and grown and is now home to a few hundred law graduates. LCLS (North) endeavors to give its members a rewarding,

richly resourced and intellectually inspiring environment in which to pursue their education and research in law.

Under the Memorandum of Understanding (MoU) both the institutions will be able to exchange information and publications of mutual interest in the field of commercial Arbitration and Mediation and organize seminars, symposia, workshops, roundtable discussions, conferences, awareness programs and trainings. The MoU was

signed by Mr. Muhammad A. (Rumee) Ali, Chief Executive Officer, BIAC and Barrister Taufiqur Rahman, Principal, LCLS (North).

The Instrument of the MoU was exchanged by Barrister Taufiqur Rahman and Mr. M A Akmal Hossain Azad, Director, BIAC at a simple ceremony held on 17 February 2019 on the LCLS (North) campus at Banani in the city. Head of Laws Barrister Arunav Das Shuvro, Head of International Relations Barrister Asif Rahmatullah, Lecturer & Student Liaison Officer Barrister Phabliha Nusaiba Khalid and Lecturer & International Relations Officer Barrister Rabbiul Alam Rafi of LCLS (North) along with BIAC Senior Counsel Ms. Mahbuba Rahman Runa were among others who attended the ceremony.

Call to introduce alternative credit rating for MFIs

17 February 2019

Speakers at a program on 16 February 2019 stressed the need for proactive action from the regulator for vibrant, secure and effective financial inclusion. They said that security of data collected for financial inclusion should be as important as protection of data. The speakers said that security of online or mobile financial services always should be the first priority of regulator. The views came at a session of the daylong summit titled the Financial Inclusion Summit held at a city hotel. University of Liberal Arts Bangladesh (ULAB) and bKash jointly organized the summit. Speaking as a Panelist, Chief Executive Officer (CEO) of Bangladesh International Arbitration Centre (BIAC) Mr. Muhammad A (Rumee) Ali said that bKash has done a great deal in developing trust both in customers and the regulator. He also said that people were not comfortable with financial transactions through mobile phone. He added that



bKash made it possible. They also earned trust from the regulator and made the central bank believe, it is possible, he said.

Chief External and Corporate Affairs Officer of bKash Mr. Monir said that when it comes to compliance, Bangladesh Financial Intelligence Unit (BFIU) and the payment services department have to be certain about

the existing practices across the world. He said that data with bKash is secured and every customer's data is authenticated with the national database. He also said that bKash is much careful about money laundering and terror financing. bKash employees are also aware about the transactions, he added.

Country Project Coordinator of SHIFT (SAARC) at UNCDF Mr. Ashraful Alam said that microcredit organizations are doing well, but their performance is not evaluated because of not having credit rating

system for them. He underlined the need for alternative credit rating system for Micro Finance Institutions (MFIs). He also said that the central bank should look into what type of data financial institutions collect and how do they use those data.

Grameenphone Founder Chairperson Khalid Shams also spoke at the session. Director of CES at ULAB Mr. Sajid Amit moderated the program while ULAB Vice Chancellor Dr HM Jahirul Haque gave vote of thanks.

DFID Team visits BIAC

19 February 2019

A team of consultants representing DFID UK (Department For International Development) comprising Ms. Anneke Slob, Ms. Tahmina Shafique and Mr. Md. Rubaiyath Sarwar visited BIAC on 19 February 2019 for a discussion on the Bangladesh Investment Climate Fund (BICF) under which BIAC had received support through International Finance Corporation (IFC), the World Bank Group.

The BIAC team comprising CEO Mr. Muhammad A. Rume Ali, Director Mr. M A Akmal Hossain Azad, Senior Counsel Ms. Mahbuba Rahman and Counsel Ms. Rubaiya Ehsan Karishma discussed about the progress BIAC has made over the



years and explored ideas about how BIAC can play a role in strengthening the investment climate in the country.

ICC Global Chairman Mr. Paul Polman praises Bangladesh's contribution towards achievement of SDGs

25 February 2019



International Chamber of Commerce (ICC) Global Chairman and CEO, Unilever Mr. Paul Polman said that China and Bangladesh are major contributors to the achievement of the Millennium Development Goals (MDG) globally, while addressing the guests during a welcome reception hosted by ICC Bangladesh. He observed that MDGs have achieved notable progress in many global issues and also have given the hope to create a new world within existing means. That's why the 2030 Agenda for SDGs has also offered a set of bold, ambitious and innovative package to

transform the world. "I believe Bangladesh Businesses will be able to understand what the individual SDGs are actually about, how their own activity contributes towards the achievement of each one and the action and investment required", he said.

Mr. Polman also said that Bangladesh is consistently cited as one of the most disaster prone countries in the world. Long term impacts from a rise in sea level and global temperature could displace millions of people. Improving the country's resilience to immediate and future climate risks is essential to the continuing development of Bangladesh, he added. He also mentioned that according to 2017 Report of Development Finance International (DFI) and Oxfam the gap between the rich and the poor are widening instead of reducing. The index is based on a new database of indicators, covering 157 countries, which measures Government action on social spending, tax and labour rights; three areas are found to be critical to reduce the gap. The report recommends that all countries should develop national

inequality action plans to achieve SDG 10 on reducing inequality, he said.

ICC Global Chairman highly praised the various activities of ICC Bangladesh and mentioned that under the dynamic leadership of Mr. Mahbubur Rahman, President, ICC-Bangladesh the Chamber is going forward.

The global economy enjoyed a mini-boom between the end of 2016 and early 2018, when growth picked up in most major economies. However, this phase is now over and the global economy looks poised to slow moderately from 3.8% in 2018 to 3.5% in 2019, led by deceleration in the US and further softening in China, said ICC Bangladesh President and Chairman of BIAC Mr. Mahbubur Rahman in his welcome address.

United States and China are world's two biggest economies. Trade and economic relations between the two countries are of great significance for the world economy and recent trade friction between these two countries has clouded the global economy, Mr. Rahman added. "Standing at the threshold of 100 years of ICC- the world business organization and 25 years of ICC Bangladesh, I am greatly privileged to have the opportunity to welcome each one of you at this ICC event", ICC Bangladesh President said.

Chief Guest Dr. A.K.M Mashiur Rahman, Hon'ble Adviser to the Prime Minister for Economic Affairs in his speech drew attention to various election manifestos of the Awami League regarding unemployment, poverty, challenges of climate change etc. He mentioned that the Government is working on

reducing the Non Performing Loan, improving doing business index, customs modernization and other issues to attract more investments by both local and foreign investors. He also praised ICC-B President Mr. Mahbubur Rahman for his energetic role regarding businesses.

President Foreign Investors' Chamber of Commerce & Industry and Managing Director British American Tobacco Bangladesh Co. Ltd. Mr. Shehzad Munim also spoke on the occasion. He observed that Bangladesh is now ideally poised for attracting Foreign Direct Investment.

The dignitaries who attended the welcome reception were : Ms. Kim Polman, Prof. Rehman Sobhan, Chairman, Centre for Policy Dialogue (CPD), Sir Fazle Hasan Abed, Founder & Chairperson, BRAC, Justice K. M. Hasan, Former Chief Justice of Bangladesh, Justice Tafazzul Islam, Former Chief Justice of Bangladesh; Dr. Mohammed Farashuddin, Former Governor, Bangladesh Bank, Dr. Salehuddin Ahmed, Former Governor, Bangladesh Bank, Mr. Mahfuz Anam, Editor and Publisher, The Daily Star, Mr. Md. Shafiu Islam (Mohiuddin), President, FBCCI, Barrister Nihad Kabir, President, MCCI, Mr. Osama Taseer, President DCCI, ICC Bangladesh Board Members : Mr. A. S. M. Quasem, Mr. Aftab ul Islam, Mr. Md. Fazlul Hoque, Mr. A. K. Azad, Mr. Anwar-Ul-Alam Chowdhury (Parvez), Syed Mahbubur Rahman, Mr. Md. Siddiquir Rahman and Mir Nasir Hossain, CEO of BIAC Mr. Muhammad A. (Rume) Ali and ICC Bangladesh Secretary General Mr. Aatur Rahman, among others.

BIAC conducts training of Judges

27 February 2019

BIAC organized a half day long session on "ADR in Money Loan Court Act, ADR in Procurement Disputes, ADR in Human Resource Management" for Assistant Judges attending the 38th Foundation Training Course. The session was held on 27 February 2019 at the Judicial Administration Training Institute (JATI). A total of 45 participants undertook the training. Director of BIAC Mr. M A Akmal Hossain Azad delivered a presentation about BIAC and its achievements. The presentation was followed by "Origin of ADR for Settlement of Disputes out of Courts and ADR in Procurement Disputes" conducted by Barrister Imtiaz Farooq, Advocate of the Supreme Court of Bangladesh. He emphasized modern concepts of ADR methods, resolution of Procurement Disputes under laws of Bangladesh, understanding organizational roles and responsibilities for the resolution of procurement conflict.



In his presentation, Barrister Farooq discussed in brief provisions of ADR in Bangladesh Laws and salient features of Ad hoc and Institutional Arbitration, their advantages and disadvantages along with BIAC Arbitration Rules.

Later Ms. Shireen Scheik Mainuddin, BIAC-Mediator and Principal Consultant, ASAAN, conducted a session

on “ADR in Money Loan Court Act and ADR in Human Resource Management”. In her presentation, she discussed in all details, the Principles and Process of Mediation, ADR in Money Loan Court Act, ADR in

Human Resource Management and Skills of a Competent Mediator at Workplace. Mr. F.M. Ahsanul Haque, Deputy Director (Training), JATI and Ms. Mahbuba Rahman Runa, Senior Counsel, BIAC were also present.

Consultation with BIAC mentioned in the Parliamentary Proceedings

28 February 2019



Finance Minister Mr. AHM Mustafa Kamal, FCA, MP told Jatiya Sangsad on 28 February 2019 that there had been a total of 266,118 loan defaulters in the country until December 2018. He said this while responding to a starred question placed by Mr. Waresat Hussain Belal, Treasury Bench MP in the House from Netrakona - 5 with Speaker Dr. Shirin

Sharmin Chaudhury in the chair. He said that in order to minimize default loans, besides the Government initiatives Bangladesh Bank has already taken various steps. The Finance Minister also said that a meeting comprising Law Commission, Bangladesh Bank, scheduled banks and Bangladesh International Arbitration Centre was held in order to suggest necessary reforms to bring in dynamism in the process of recovery of default loans under the legal framework.

Director, BIAC meets Governor, Bangladesh Bank

04 March 2019



Director, BIAC Mr. M A Akmal Hossain Azad met Governor of Bangladesh Bank Mr. Fazle Kabir on 04 March 2019 at the latter's office. He briefed the Governor about the recent activities and achievements of BIAC and said that in the backdrop of the existing

dilatory process in the court system of the country for resolving disputes, particularly in the commercial and business arena, the need to mainstream Alternative Dispute Resolution (ADR) process for settling such disputes including those arising out of Non Performing Loans in banks has become a key priority for overall economic development of the country. The Director thanked the Governor for his interest in popularizing ADR and extending all out cooperation to BIAC as the only licensed ADR institution in Bangladesh. He said

that the Governor was pleased to form a tripartite committee last year comprising Bangladesh Bank, Association of Bankers Bangladesh (ABB) and BIAC to formulate a draft guideline to 'Resolve Commercial and Financial Disputes through Alternative Dispute Resolution' which is headed by CEO of BIAC Mr. Muhammad A. (Rume) Ali and members of the committee include Mr. Sohail R K Hussain from the ABB and Mr. AKM Ehsan, DGM, BRPD, Bangladesh Bank.

The committee has been working since May 2018 and it will soon be able to furnish its report to the Governor along with the proposed guideline, Director, BIAC said. Governor, Bangladesh Bank gave a patient hearing to Director, BIAC and reiterated that the central bank will always be beside BIAC in its endeavor to resolve commercial and financial disputes in the country through Alternative Dispute Resolution methods.

BIAC CEO attends meeting on ADR at the Legislative and Parliamentary Affairs Division

6 March 2019



By invitation from the Senior Secretary of the Legislative and Parliamentary Affairs Division, Ministry of Law, Justice & Parliamentary Affairs Mr. Mohammad Shahidul Haque, BIAC CEO Mr. Muhammad A. (Rume) Ali attended a discussion

meeting on Alternative Dispute Resolution (ADR) on 6 March 2019 held at the office of the Senior Secretary who presided over the meeting at the Bangladesh Secretariat. Also present in the meeting were Mr. Humayun Farhad (Joint Secretary, Legislative & Parliamentary Affairs Division), Mr. Miah Rahmat Ali (Senior Private Sector Specialist, International Finance Corporation (IFC) World Bank Group), Mr. Ferdous Rahman (Partner, A.S. & Associates) and Ms. Faria Huq (Associate, A.S. & Associates).

In order to achieve a “middle income country” status in the near future it is essential for Bangladesh to attract Foreign Direct Investment (FDI). World Bank's Doing

Business Index is a key indicator for investors' decision making which is why it is important to improve the Country's rank. An important indicator in this Index is that of Enforcing Contracts in which Bangladesh has been consistently ranking second last among 190 world economies for the past few consecutive years. The rank takes into account existence and practice of ADR framework in the country. An effective ADR framework

will reduce the number of days and cost of Enforcing Contracts in the country, as a result that rank will improve, encouraging investors to come forward. To make this happen the participants at the meeting concluded that the legislation on ADR, that is, on Mediation and Arbitration needs to be revised. A new project is about to be developed wherein the Ministry, IFC and BIAC will be working together, the meeting was told.

Review Meeting on the Draft ADR Guidelines held with Bangladesh Bank and ABB

27 March 2019

The third tripartite review meeting of the Committee convened by Bangladesh Bank comprising Bangladesh Bank, Association of Bankers Bangladesh (ABB) and BIAC on the Draft ADR Guidelines to resolve commercial disputes including Non Performing Loans was held on 27 March 2019 in the afternoon at BIAC. Mr. Muhammad A. (Rume) Ali, CEO of BIAC presided over the meeting. The draft ADR guideline, as it stands, after incorporating recommendations made by the committee members was discussed in details.

It was agreed that incorporating the ADR (Mediation-Arbitration or Med-Arb) clause in all bank contracts will provide banks with a tool to protect themselves from the risk of non-performance of contracts. The clause will be framed in a manner that will give the banks an additional safeguard against the risk of default in loan contracts. Banks will have the discretion to use the ADR clause appropriately in risk

mitigation. The committee was of the opinion that Mediation can be tried by the parties even if a loan has been rescheduled since it leaves a scope for negotiation and this is likely to strengthen the existing rescheduling circular.

To address the existing overhang of bad debts/default court led arbitration is being considered. The committee deems arbitration as a significant option, particularly in cases where the defaulter has assets abroad, because of the cross-border enforceability of an international arbitral award under the New York Convention 1958. The draft is being revised and will be submitted to the Central Bank soon. Participants at this meeting included Mr. AKM Ehsan (Deputy General Manager, BRPD, Bangladesh Bank), Mr. Kaiser A. Chowdhury, Mr. Sohail R.K. Hussain, Mr. Mehmood Husain, Mr. Shafayat Ullah and Ms. Rubaiya Ehsan Karishma.

Did You Know?

- *It takes from 3 months to 388 days for a case to be resolved by Arbitration under BIAC Rules, while in civil litigation it takes 15.3 years on an average!*
- *Mediation can even be done in a day; BIAC has successfully resolved a case through Mediation under BIAC Rules in 14 hours!*

International News

AIAC signs MOU with International Islamic University Malaysia (IIUM)

Kuala Lumpur, 16 January 2019



Kuala Lumpur, 16 Jan 2019 — The Asian International Arbitration Centre (AIAC) and the International Islamic University Malaysia (IIUM) signed a Memorandum of Understanding (MOU) earlier today at IIUM's Gombak Campus.

The agreement signed by Mr. Vinayak Pradhan (Director (Acting) of the AIAC) and Professor Dr. Nor Faridah Binti Abdul Manaf (Deputy Rector, Internationalisation & Global Network of IIUM), states that both institutions will collaborate, promote

and develop teaching and research cooperation on Alternative Dispute Resolution (ADR) areas, which include Arbitration, Mediation and Adjudication.

The mutually beneficial collaboration facilitates, among others, include internship placements for IIUM's Ahmad Ibrahim Kulliyah of Laws students and staff attachment for exposure and knowledge enhancement.

[https://www.aiac.world/news/274/AIAC-signs-MOU-with-International-Islamic-University-Malaysia-\(IIUM\)](https://www.aiac.world/news/274/AIAC-signs-MOU-with-International-Islamic-University-Malaysia-(IIUM))

United States District of Columbia Circuit Court of Appeals refuses to confirm arbitral award issued against the Czech Republic's Ministry of Health, finding award was not binding on parties.

Washington DC, 4 February 2019

The Czech Republic Ministry of Health (the "Czech Republic") and blood plasma business Diag Human, S.E. ("Diag Human"), have been in a dispute spanning nearly three decades. The feud began after the Czech Republic's then-Minister of Health, in the early 1990s, allegedly violated unfair competition laws by sending a letter to Diag Human's major business partner, Danish company Novo Nordisk, accusing Diag Human of ethical violations. Novo Nordisk stopped working with Diag Human after receipt of the letter, which put an end to Diag Human's business in the Czech Republic. Diag Human and the Czech Republic then engaged in arbitration, with the first of a series of arbitral awards being issued in 1997. In what was styled an "Interim Award," the arbitration panel ruled that the Czech Republic had committed a wrongful act and caused damages to Diag Human. A partial damages award followed in 2002, which awarded an undisputed amount of approximately \$10 million in damages to Diag Human. In 2008, another arbitral panel considered the full scope of damages. In what was styled as the "Final Award," that panel awarded Diag Human approximately \$400 million in damages with pre-award interest, plus post-award interest that

would accrue until payment. Diag Human sought to confirm the Final Award before the D.C. district court. After the district court refused to confirm the award, Diag Human appealed to the D.C. Circuit Court of Appeals, which affirmed the district court's decision.

The D.C. Circuit began by noting that Czech arbitration law permits parties to agree to a review process "in which a second arbitral panel can revisit the original award with the power to uphold, nullify, or modify it." As the D.C. Circuit explained, each of the three awards was submitted for review. While the interim and partial awards were each confirmed and explicitly upheld by review panels comprised of different arbitrators, the Final Award, though reviewed by a separate panel of arbitrators, was not confirmed and explicitly upheld. After a "lengthy delay," the review panel instead issued a "Resolution" which "discontinued the proceedings." This "Resolution" lay at the heart of the dispute on appeal before the D.C. Circuit.

The D.C. Circuit observed that recognition and enforcement of an arbitral award under the New York Convention may be refused if the "award has not yet

become binding on the parties.” In the view of the D.C. Circuit, not only the termination of the review—which was the primary basis for the district court’s decision to refuse confirmation—but also the content of the review panel’s Resolution prevented the Final Award from becoming binding. The D.C. Circuit noted that the “language of the Resolution indicates that it invalidated the Final Award.” Specifically, the D.C. Circuit focused on the review panel’s finding of “jurisdictional problems with the entirety of the arbitration after the conclusion of the first damages phase.” In the view of the review panel, the partial award for \$10 million was a “complete decision” because it “did not specify that it dealt only with a separate claim or only with one of several defendants.” For the review panel, that \$10 million ruling had res judicata effect and precluded the Final Award. This led the D.C. Circuit to understand the review panel’s phrase, “proceedings are discontinued,” to mean that the review panel had not confirmed or upheld the \$400 million award.

The D.C. Circuit rejected Diag Human’s argument that the review panel lacked jurisdiction to invalidate the Final Award. Although the review panel noted procedural problems with the review request, the review panel never stated that it lacked jurisdiction, and used its jurisdiction to consider and decide issues relevant to the Final Award. The D.C. Circuit also rejected Diag Human’s argument that the review panel’s res judicata determination was “plainly wrong

under Czech law.” As the D.C. Circuit wrote, “we do not sit in judgment of the reasoning of the arbitral decision. Mistakes of law by the arbitral panel are not ours to correct. It is not enough to show that the arbitrators committed an error—even a serious error for this court to invalidate the Resolution.”

Finally, the D.C. Circuit rejected Diag Human’s assertion that the review panel’s nullification of the Final Award was against public policy and, thus, ineffectual under Article V(1)(e) of the New York Convention. Though acknowledging that there is a “limited public policy gloss” on that Article, the D.C. Circuit emphasized that the “standard is high, and infrequently met.” In the D.C. Circuit’s view, “evidence concerning the rendering of the Resolution was too inconclusive to meet the level of ‘repugnance’ required for this rarely met standard.” Having addressed Diag Human’s arguments and explained the multiple bases for its ruling, the D.C. Circuit held that the Final Award was not “binding” on the Czech Republic and therefore not enforceable. In so ruling, the D.C. Circuit refused to confirm the foreign arbitral award.

A version of this post originally appeared in the January 2019 edition of Baker McKenzie’s International Litigation & Arbitration Newsletter, which is edited by David Zaslow and Grant Hanessian.

<https://globalarbitrationnews.com/u-s-d-c-circuit-court-of-appeals-refuses-to-confirm-arbitral-award-issued-against-the-czech-republics-ministry-of-health-finding-award-was-not-binding-on-parties/>

AAA Construction Conference: Techniques for Managing the Growing Complexities of Construction Disputes

New York, 05 February 2019

The 2019 American Arbitration Association (AAA) Construction Conference to be held on 4 April 2019 will focus on the growing complexities of construction projects, managing technological advances and how to adapt your dispute resolution strategies to bring projects in on time and on budget.

Experts in the field will discuss:
EOT Clauses and Presenting the Complex Delay Claim in Arbitration;

- Techniques for Resolving Disputes on the Job;

- Presenting Evidence on Damages;
- New Technology and what it means to your construction project;
- Understanding the Issues and Challenges of International Projects;
- And more.

Attendees will leave with techniques and best practices to help them adapt their dispute resolution strategies for today’s complex construction projects.

<https://www.adr.org/ProgramsandWebinars>

Professional Executive Master of Appropriate Dispute Resolution (PEM ADR) takes off

Accra, 24 March 2019



The 2019 Professional Executive Master of Appropriate Dispute Resolution (PEM ADR), run by the Gamey and Gamey ADR Institute, Accra, Ghana took off on 23 March 2019 promising to offer more advanced training for ADR practice. As one of the longest running ADR training programmes in Africa, the PEM ADR course has produced some of the best ADR practitioners in Ghana.

After an induction ceremony for the 2019 Cohort was held on 23 February 2019, the participants have undergone preparation to ensure a successful programme. According to the managers of the programme, enrolment is still open for prospective participants, and arrangements were made to accommodate additional participants who have

expressed interest. Mr Austin Gamey, Chief Executive Officer of Gamey and Gamey Group, told ADR Daily that this year's course was unique since significant changes have been made to the training process. "The programme witnessed a significant transformation," he said, adding that because the course is an international programme, the high training standard has been maintained.

He explained that the 26-weeks programme was more interactive and with more role plays that built the mediation and arbitration skill set of the students. Similar to previous years, professionals from diverse backgrounds were participating in this year's programme. The participants were made up of lawyers, human resource managers, bankers, security officers, media practitioners, traditional leaders, religious leaders, union leaders, business executives, court registrars and governance experts. As the highest level of professional ADR training in Africa, the course was run in collaboration with University of Virgin Islands (UVI-PULSE), USA. Since its inception 16 years ago, the ADR Institute has trained over 400 professionals for ADR practice.

By Edmund Mingle: <https://adrdaily.com/>

"Many cases occur, in which it is perfectly clear, that by means of a reference to arbitration, the real interests of the parties will be much better satisfied than they could be by any litigation in a Court of justice."

— Lord Langdate, M.R.

Articles

Expedited Resolution of NPL through Arbitration**Shafayat Ullah***Barrister of Lincoln's Inn
Head of Legal, the City Bank Limited*

The Banking sector of Bangladesh has radically expanded in the recent past, in terms of the number of foreign institutions, financing instruments and bigger volume of assets. Such exponential increase in this sector, coupled with the large number of Banks, certainly entails that there are multitudes of defaulters. The growing number of NPLs has been a serious concern and the past couple of years have witnessed an excessive number of loan scams of large magnitude. This in turn has marred the banking industry of Bangladesh.

Non-Performing Loans or NPL imply the amount of borrowed money upon which the borrower has not made the scheduled payments for a specified period of time. While some bad loans or NPLs, to some extent, may be foreseeable and accommodated, when the overall number of NPLs increases drastically, it becomes not only a concern for the banking industry but also an imminent threat to the overall sustainable growth of the economy.

NPLs are of particular concern due to the fact that mostly the money that has been put into these loans is public money and it is being severely exploited by a particular segment of customers by not allowing the money to be properly utilized. Unfettered and efficient flow of the saving-investment process is a crucial prerequisite for the economic development of a country. Being a developing country, the economy of Bangladesh largely depends upon the intermediary role of commercial banks for mobilizing the internal savings and providing capital to all types of investors. NPLs further weigh down the supply of credit and thus impair investment and development through a number of passages, such as locking the bank's capital into unfeasible projects and unproductive activities, decreasing bank's profitability, and distorting capital allocation. High NPL levels also weaken the mechanism of monetary transmission to the real economy.

The percentage of NPL had reached an all-time high in the middle of 2018 and raised red flags in all the economic and financial sectors of Bangladesh. This has in turn paved the way for the initiation of an enormous array of suits and proceedings mainly under the Artha Rin Adalat Ain and Negotiable Instruments Act.

The courts of Bangladesh are overburdened with cases and proceedings and the civil courts have developed a reputation for having delayed and archaic processes which are unable to meet with the ever growing amount of cases. ADR is one of the most pragmatic solutions for the civil courts, taking its delay, cost and complexity issues into consideration.

ADR has been defined in the Artha Rin Adalat Ain 2003 under Sections 22-25, 58, 44A and 45, for the purpose of commercial disputes. In these sections, only "Mediation" has been suggested as a means for ADR, whereas, in global practice, Arbitration is considered and endorsed as a stronger medium for executing ADR. According to the relevant Sections of the Act, even if the contesting parties concur to opt for mediation, they have been given the right to withdraw from it at their own discretion. Consequently, the reality is that this post litigation mediation mechanism is, more often than not, deployed as a delaying tactic by the parties and thus the overall efficacy is curtailed. Therefore, in line with the provisions of Code of Civil procedure 1908, a system of pre-litigation mediation and post-litigation Arbitration, along with cost slabs which make it mandatory for cases of certain value to be solved through ADR, and incorporating these procedures especially for the Artha Rin cases is more likely to lessen the case load in the Courts. Therefore, pre-litigation Mediation whereby the parties are held accountable in some form if they abandon the ADR process without any concrete and reasonable cause shall be a very viable option for incorporation into the Artha Rin cases and is most likely to be a rather welcome change. However, obligation of the parties and acceptance of the arbitral awards shall be pertinent factors for the proper utilization of such procedures.

Furthermore, in terms of execution of the Arbitral Award, while Arbitral award is binding and has got the enforceability of a court decree within the jurisdiction of Bangladesh, these awards can also be executed outside the country through the New York convention 1958, where Bangladesh is a signatory. Therefore, if a defaulter absconds from the jurisdiction to avoid repayment, the Arbitration award can be enforced against the defaulter and the defaulter's properties can be attached through the local court's order upon the Claimant's application and submission of award. Moreover, if there is an Arbitration clause in any agreement, the parties will be bound by it and courts shall also be able to provide an award ex-parte.

In conclusion, two facts emerge. Firstly, NPL is one of the major hindrances in the economy of Bangladesh at present and poses an immense threat to the banking industry as well. Secondly, a more rigorous application of ADR is the most plausible way to expedite the disposal of cases arising from NPLs and recovering the public money that is being held hostage due to these NPLs. Therefore, a positive and extensive use of ADR in the courts and tweaking areas of law accordingly can be expected to diminish the problems created by NPLs to a large extent.

Interviews

With the stepping in the 8th year of publication of this news bulletin we have decided to publish interviews of leaders and experts from different financial, business, corporate, legal, academic and Government sectors on their perception and understanding of ADR, based on a number of questions put forward by BIAC. We are confident that this will generate more awareness about ADR in the country and importance of introducing it to assist our judicial system in order to reduce the backlog and the time taken to resolve commercial disputes. It is our pleasure to publish interview of Ms. Jenefa Jabbar, Director, Human Rights and Legal Aid Services & Social Compliance, BRAC, in the current issue of the BIAC Quarterly Bulletin (BQB). We will continue to publish such interviews in our subsequent issues.



Jenefa Jabbar

*Barrister-at-Law, Advocate, Supreme Court of Bangladesh
Director, Human Rights and Legal Aid Services & Social Compliance,
BRAC*



BQB: Globally Corporate bodies are moving away from using the traditional court based judicial system for resolving commercial disputes and adopting Alternative Dispute Resolution (ADR). Do you believe that this global best practice has a future in Bangladesh? Why?

JJ: There is a definite scope to adopt Alternative Dispute Resolution (ADR) mechanism to resolve commercial dispute moving away from the formal justice system. ADR has a critical role to play for solving conflict with minimum investment in comparison to the centuries-old tradition of courtroom litigation. Legal Services in Bangladesh are facing challenges in terms of affordable and quick delivery of service. The case backlog at both criminal and civil courts reached 3.3 million in 2018 and the net number of new cases are increasing every year.

BRAC through its 453 legal aid centers across 61 districts assists vulnerable groups to seek and receive a solution to their legal problems through ADR. In 2018, we registered 28,000 complaints mostly related to family dispute, land conflict, inheritance, maintenance and dower. The total complaints that were resolved through ADR were 67%. These efforts ensure both to get speedy and affordable justice to clients and reduce pressure on the formal justice system. Similarly adopting ADR in domestic and international commercial disputes in an expeditious and amicable manner will reduce the burden of court and benefit the parties in dispute. We all know that 'justice delayed is

justice denied' and it is even more substantial in commercial cases, all of which have monetary implications as interest continues to pile up.

BQB: What are the main obstacles in the mainstreaming of ADR in this country?

JJ: Although ADR is growing rapidly, mainstreaming ADR is required. The District Legal Aid Committee (DLAC) is already engaged in providing legal aid services, however the coverage is limited. It is necessary to geographically map the engagement of DLAC so that we can support them and work in a collaborative approach to help serve the community. In addition, sufficient awareness needs to be done to encourage people to resolve disputes through ADR. Moreover, we need to concentrate on removing the obstacles on the service end which includes lack of trained mediators, lack of trainers, limitation on infrastructure, and resistance from basic actors, e.g., lawyers, judges, litigants. The mainstreaming of ADR is possible once both demand and supply sides are equally and properly ready to respond.

BQB: What are your thoughts on 'reputation risk', given that the legal cases are heard in courts of Bangladesh, the proceedings are considered to be in the public domain?

JJ: Conflict resolved through ADR places the parties in a win-win situation. We experienced that people are not willing to lodge complaints in the formal court considering their family reputation and fear of dissolution

of family relationship. Yet they want an amicable solution to their problems. Bangladesh Bureau of Statistics survey report on Violence Against Women 2015 revealed that despite high rates of partner violence, around 72.7 percent of victims are women who do not want to share their experience and only 2.6 percent sought legal support. Concerns for family honor, being afraid of the perpetrator and shame or embarrassment are some of the reasons behind not sharing their experiences. I think considering reputation risk, ADR is the best solution and parties can go for ADR through informal strata like BIAC, BRAC or other institutions. Courts should practice court based ADR, where court can direct certain cases to any of the forms of ADR rather than by way of trial. Moreover, the ADR provisions have been made compulsory for every civil court by incorporation of sections 89A and 89C of the Code of Civil Procedure, 1908 through the Civil Procedure (Amendment) Act, 2012. Apart from these, ADR provisions have also been incorporated into the Labor Act, 2006 and the Artha Rin Adalat Ain (Money Loan Court Act), 2003. The insertion of ADR in this Act is obvious for certain reasons, reputation risk is of course one of them.

BQB: Do you support insertion of ADR clause in all commercial contracts or do you feel the court system can adequately provide risk mitigation coverage without ADR clause in the contract?

JJ: I do agree the insertion of ADR clause in all commercial contacts. Generally in the development sector, when signing an agreement or Memorandum of Understanding (MOU), we prefer to have a clause in the contract to settle dispute through ADR.

BQB: One of the main risks businesses face is non-performance of contract. This is very impactful cost implications. For example, in disruption of supply chain with a long delay in resolution of a dispute in the courts could mean a long delay in the financial settlement. In such a situation, do you believe the court system provides sufficient risk coverage to parties to a commercial contract? Why?

JJ: Litigation and arbitration are not about 'risk coverage' as such. These are processes for deciding the respective rights and obligations of the parties in accordance with law. A court or arbitral tribunal cannot alter, waive or modify the legal rights and obligations of the parties. In adjudicating a commercial dispute, court or arbitral tribunal determines the legal rights and obligations of the parties in accordance with law and they have to pass a decree or award strictly in accordance with law however harsh it may be. Enforcement of strict legal right does not always bring about a just result for the litigating parties.

In ADR, whether it is mediation or conciliation, the mediators or conciliators are not bound by the strict legal rules and they can consider the commercial reality that leads to the non-performance with a view to achieve a solution acceptable to both the parties. For instance, in a dispute arising out of a non-performance of a contract if the party in default can resolve the dispute by paying an amount less than the amount he is legally obliged to pay, generally he would be happy to accept it. In the same situation the person entitled to compensation is also likely to accept a lesser amount as compensation instead of trying his luck in court for years in the court.

Persons having experience in the relevant field with acceptability to the parties may be appointed as mediators and conciliators. Strict rules or evidence and procedures are not required to be followed. In consequence both the parties, ideally, may leave with a feeling of winning. This is why mediation and conciliation is a popular way of dispute resolution in commercial contracts internationally. It is not unusual nowadays to have a clause in international commercial contracts requiring the parties explore the possibility of settling their disputes through ADR before resorting to arbitration or litigation.

"Meditation brings wisdom; lack of meditation leaves ignorance. Know well what leads you forward and what holds you back, and choose the path that leads to wisdom."

— Buddha

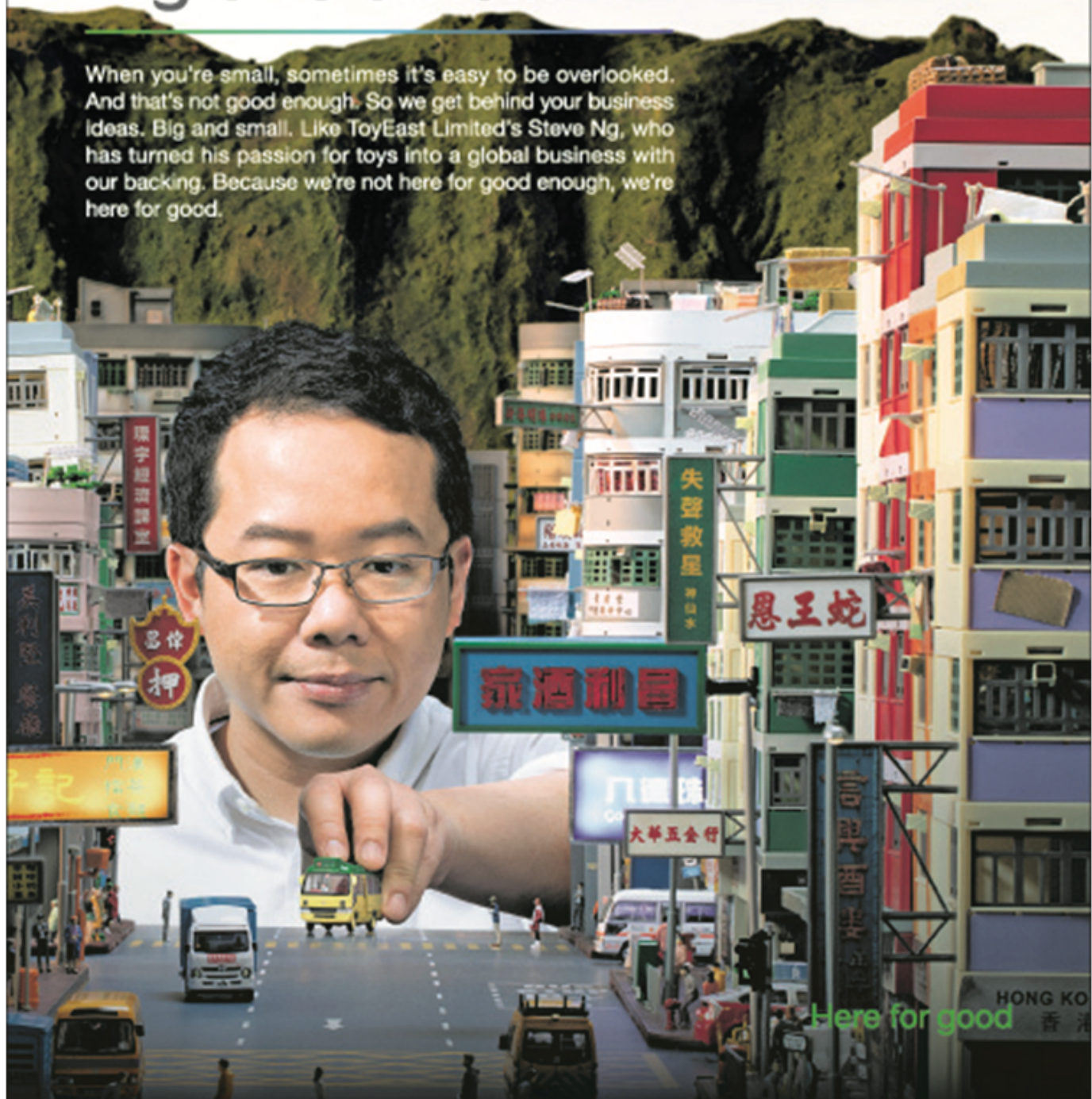
EVENTS NEWS

BIAC's Upcoming Events

Organization	Events	Date	Venue
Kunming International Commercial Arbitration Service Center (KICASC) Bangladesh International Arbitration Centre (BIAC)	Training on International Commercial Arbitration	22 nd – 26 th April 2019	KICASC Kunming, China
International Finance Corporation (IFC) Bangladesh International Arbitration Centre (BIAC)	Workshop on Using Alternative Dispute Resolution to Resolve Financial Debt Resolution Disputes	5 th May 2019	DCCI/MCCI
Thailand Arbitration Center (THAC) Bangladesh International Arbitration Centre (BIAC)	2 nd International ADR Conference and ADR Week 2019	12 th – 15 th May 2019	Bangkok, Thailand
Bangladesh International Arbitration Centre (BIAC)	Day Long Training on ADR	2 nd week of June 2019	BIAC
Bangladesh International Arbitration Centre (BIAC)	Membership Launching	Coming Soon June 2019	Pan Pacific Sonargaon Hotel
Bangladesh International Arbitration Centre (BIAC)	Training on Risk Management	Coming Soon July 2019	Gujarat, India/ CDM, Dhaka
Bangladesh International Arbitration Centre (BIAC)	Dialogue on using ADR with Construction Sector/Business Community	2 nd week of July 2019	REHAB/DCCI

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