

BIAC

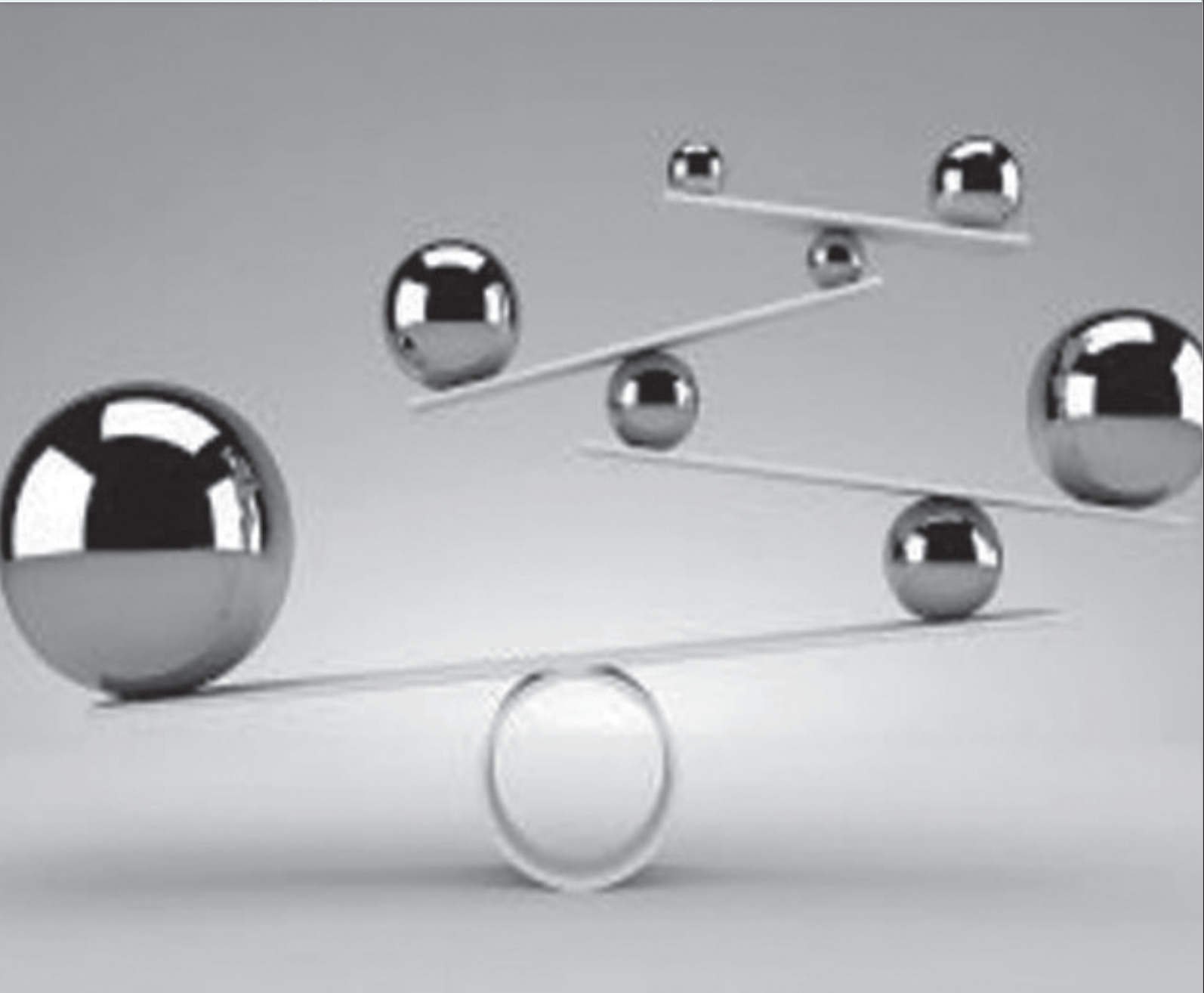


Quarterly Bulletin

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Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

International Chamber of Commerce Bangladesh (ICC-B), the world business organisation and two prominent business chambers of Bangladesh namely, Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka and Dhaka Chamber of Commerce & Industry (DCCI) obtained a licence from the Government in 2004 to establish the Bangladesh International Arbitration Centre (BIAC) as a not-for-profit organisation.

BIAC formally started its operation on 9th April 2011. It is an ADR service-provider organisation, 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 11 eminent jurists among them 4 are former Chief Justices of Bangladesh. 47 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 294 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 Alternative Dispute Resolution (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 specialised ADR training courses for different sectors, for instance, ADR in Money Loan Court Act, ADR in Procurement Disputes, ADR in Human Resource Management and others. BIAC also organises training programmes abroad jointly with those ADR centres which BIAC has signed collaboration agreements with. Till date, BIAC has organised 34 arbitration training courses, 21 mediation training courses and 9 negotiation training courses and trained 1456 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 119 workshop/seminar/dialogues as of December 2019. BIAC has received recognition by signing cooperation agreements with 17 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, Bridge

Mediation and Consulting Pvt. Ltd., India, International Commercial Arbitration Service Center of Kunming (KICASC), China, Badan Arbitrase Nasional Indonesia (BANI) and The Philippine Institute of Arbitrators (PIArb).

Moreover, 25 leading corporate companies, banks, real estate companies, NGOs, Insurance companies, universities, law firms 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 Bank Limited (DBL),

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

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), AB Bank Ltd. and One Bank Ltd.



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

BIAC Board

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Members



Latifur Rahman



Rokia Afzal Rahman



Nihad Kabir



Osama Taseer

BIAC Management

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Chief Executive Officer

M A Akmal Hossain Azad
Director

Mahbuba Rahman Runa
General Manager

Md. Ashiqur Rahman
Manager (Accounts & Finance)

Rubaiya Ehsan Karishma
Counsel

Syed Shahidul Alam
Commercial officer

Shahida Pervin
Administrative Officer

Editor

M A Akmal Hossain Azad

Editorial Associates

Mahbuba Rahman Runa
Rubaiya Ehsan Karishma

From the Editor

It is my great pleasure to launch this last edition of 2019 of the BIAC Quarterly Bulletin, the country's only dedicated knowledge publication on Alternative Dispute Resolution (ADR). At the beginning of Year 2020 and a new decade of the century, with the steady growth rate of GDP at over 8% we envisage overall economic development of the country and achieving the target of upgrading our status to a developed economy by 2041 as committed by the Government.

Bangladesh has made moderate improvement in the World Bank's Ease of Doing Business 2020 ranking, advancing by eight notches. We are now placed at 168th out of 190 countries, up from 176th last year. Though Bangladesh has made no progress in the category of Enforcing Contracts, we carried out a number of business reforms during the past year, the most in a decade and we need to accelerate the reform pace to further improve our regional and global competitiveness.

Bangladesh International Arbitration Centre (BIAC) from its inception has been trying relentlessly to help boost businesses by facilitating methods of ADR including Arbitration and Mediation in resolving commercial disputes given the fact of our judiciary overburdened with case dockets.

We cherish continued support from our readers, patrons, partners and well wishers in our efforts to contribute as much as possible from our individual and group perspectives so that an atmosphere congenial to business and economic activities prevails in furtherance of our commitment to be a credible and a sustainable national institution that aims to offer international commercial best practices on ADR services to individuals and institutions seeking to resolve commercial disputes.

BIAC Quarterly Bulletin

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BIAC News

Creating awareness among students about Alternative Dispute Resolution practices emphasised

2 October 2019



Speakers at a seminar on Arbitration and Mediation as Dispute Resolution Methods held on 2 October 2019 at the Faculty of Law of the Northern University Bangladesh (NUB) in the city emphasised the need of creating awareness among Law students about the Alternative Dispute Resolution (ADR) methods in the backdrop of the existing dilatory process in the court system for resolving commercial disputes. The seminar was jointly organised by Bangladesh International Arbitration Centre (BIAC) and Northern University Bangladesh (NUB) which was participated by Members of the Faculty of Law and Honours and Master's level students of Law of NUB. Speaking on the occasion as Guest of Honour, Vice Chancellor of Northern University Bangladesh Professor Dr. Anwar Hossain said that the concept of Alternative Dispute Resolution once translated into motivation and action by students of Law who will be future legal practitioners, would definitely help dispose the huge bulk of cases pending for long in our civil courts. He also said that NUB would like to develop future meaningful relationship with BIAC to proceed with ADR as the western world does.

In his Keynote presentation Mr. Shahariar Sadat, Programme Head, Human Rights and Legal Aid

Services, BRAC explained the usefulness of studying ADR by Law students. Citing success stories of Arbitration and mediation, he underlined the importance of adhering to the norms and practices of ADR in order to combat backlog in courts. Dean, Faculty of Law, NUB Professor Abu Zayed Mohammad in his concluding remarks opined that ADR can raise the credibility of the legal profession and can save both time and money in disposing of commercial disputes. He lauded BIAC's role in its efforts

to establish an institutional framework of ADR. He said that NUB would build more functional and collaborative relationship with BIAC so that students of NUB can be benefitted by the programmes of BIAC. Mr. M A Akmal Hossain Azad, Director, BIAC also spoke on the occasion and praised policy makers' appreciation for the need of ADR and mentioned about updating concerned laws by the Government. He said that pioneering ADR by teaching and promoting its methods at learners' level at universities would encourage a culture where litigation would not be preferred or promoted, which would rather change the mindset of the legal professionals and academicians from the very outset of their career. Mr. Md. Gaziur Rahman, Head, Department of Law, NUB in his speech narrated the background of ADR in Bangladesh and explained how it can be integrated with the legal system for speedy disposal of business disputes and overall economic development of the country. Ms. Rubaiya Ehsan Karishma, Counsel, BIAC gave a presentation on BIAC's activities over the last 8 years and its recent achievements. She also urged upon students and Members of the Faculty of NUB to become Members of BIAC for acquaintance with ADR and having benefits of BIAC's facilities.

BIAC participated at Danish quarterly Business Get Together

4 October 2019

Director, BIAC Mr. M A Akmal Hossain Azad, by invitation from the Royal Danish Embassy in Bangladesh participated at the Danish quarterly Business Get Together held on 4 October 2019 at the Danish Ambassador's residence at Baridhara, Dhaka. The event was attended by eminent Danish and Bangladeshi business people. Ambassador of

Denmark HE Winnie Estrup Petersen introduced Director, BIAC to the guests. The gathering was attended by around 40 representatives from the local and Danish business community, research organisations and corporate houses. Mr. Carsten Roursgaard, Buying Director, Heca Direct, a Danish investing firm discussed with Director, BIAC about

recent progress of resolution of a dispute between a garments exporting Bangladeshi party and his business concern and said that they will soon propose for a meeting with BIAC in this regard. During the networking session participants took keen interest about the activities of BIAC and vowed to take BIAC's assistance in mitigating their business disputes by

adhering to Alternative Dispute Resolution practices using BIAC as a platform. Director, BIAC requested the Danish Ambassador to recognise BIAC on the Embassy's official homepage by hosting BIAC's link to its website. He also proposed to host one of such future events by the Danish Embassy at BIAC's new premises at 117 Kazi Nazrul Islam Avenue in the city.

BIAC Secretariat relocated to Unique Heights

12 October 2019



The Secretariat of the Bangladesh International Arbitration Centre (BIAC) has been relocated recently from its present address at Pantha Path to Unique Heights (13th Floor), 117 Kazi Nazrul Islam Avenue, Eskaton Garden, Dhaka-1217. On this occasion a Doa Mahfil was arranged at the new Secretariat on 12 October 2019 in the afternoon. It was graced by BIAC Chairman Mr. Mahbubur Rahman and attended by all officers and staff of BIAC including CEO Mr.

Muhammad A. (Rumee) Ali. Speaking on the occasion Chairman, BIAC thanked the BIAC team for their relentless efforts for carrying forward BIAC's activities successfully over the last few years. He hoped that all will continue to work in a reinvigorated spirit so that BIAC can achieve its targets in the days to come. Addressing his colleagues the CEO hoped that with the relocation of the Secretariat the BIAC team will gain more impetus to make all out efforts for successful implementation of BIAC's commitments. He insisted on hard work and steadfastness by the BIAC team so that BIAC can emerge as the ADR address for Bangladesh soon. Director Mr. M A Akmal Hossain Azad, General Manager Ms. Mahbuba Rahman Runa, Manager (Accounts & Finance) Mr. Md. Ashiqur Rahman, Counsel Ms. Rubaiya Ehsan Karishma, Commercial Officer Syed Shahidul Alam and Administrative Officer Ms. Shahida Pervin were present among others.

SARCO official visits BIAC

16 October 2019

Mr. Faazaan Mirza, Deputy Director, SAARC Arbitration Council (SARCO) paid a courtesy call to CEO of BIAC Mr. Muhammad A. (Rumee) Ali on 16 October 2019 in the afternoon at the BIAC Secretariat at Unique Heights, Eskaton Garden, Dhaka. Discussion was held between them regarding jointly holding a seminar on "Saving Time and Cost by Using Institutional Arbitration for Commercial Dispute Resolution" in Dhaka, tentatively on 7 December 2019. During discussion it was resolved that, among other things, BIAC will arrange Chief Guest and Special Guest to grace the event and designate a Keynote Speaker along with 3-4 local speakers from different streams for panel discussion; two international speakers will be on the panel of discussants, who will be nominated by SARCO; BIAC and SARCO will coordinate with Bangladesh Ministry of Foreign Affairs



to make the seminar a success. It was agreed upon that BIAC and SARCO will arrange joint training programmes; BIAC will also share information of its training programmes with SARCO and SARCO will circulate it to ADR centres in all SAARC countries and request them to nominate participants to join BIAC's

training courses. BIAC General Manager Ms. Mahbuba Rahman Runa also took part in the discussion.

Later the SARCO official went round different sections of BIAC's new premises and expressed

satisfaction over its facilities of arbitration, mediation and training. Mr. M A Akmal Hossain Azad, Director and Ms. Rubaiya Ehsan Karishma, Counsel of BIAC were also present.

BIAC CEO appointed Deputy Chairman of Bangladesh Football Federation Ethics and Fair Play Committee

16 October 2019



FIFA

Bangladesh Football Federation (BFF) has recently established a Standing Committee for Ethics and Fair Play under Article 40 and 54 of the Bangladesh Football Federation Statutes. The Committee for Ethics and Fair Play will deal with matters relating to ethics in football and the promotion of fair play. It will consist of a Chairman, a Deputy Chairman and five Members. Mr. Muhammad A. (Rume) Ali, CEO of BIAC has

been appointed Deputy Chairman of this Ethics and Fair Play Standing Committee while Mr. Ajmalul Hossain QC has been appointed Chairman. The Members of the Committee are appointed by the Executive Committee on the proposal of the Members of BFF or the President of BFF. The Chairman, Deputy Chairman and the Members of the Committee are nominated by the Executive Committee and designated for a term of office of a specifically mentioned period. This Committee is vetted by the FIFA (Fédération Internationale de Football Association), an international governing body of association football, futsal, beach soccer and e-football and the highest governing body of football.

Dean, Faculty of Law, Northern University Bangladesh (NUB) visits BIAC

5 November 2019

Professor Abu Zayed Mohammad, Dean, Faculty of Law, Northern University Bangladesh (NUB) visited BIAC Secretariat on 5 November 2019 in the morning. As he went round different sections of the new premises of BIAC, Director of BIAC Mr. M A Akmal Hossain Azad showed him the facilities of arbitration and mediation, among other things and introduced him with the latter's colleagues. Later in a briefing session they exchanged views on mutual interests and reiterated willingness of both NUB and BIAC to work more cohesively in future in the field of trainings/ dialogues and study tours to be organised jointly at home and abroad. Director, BIAC thanked the Dean of NUB for successfully organising a workshop on ADR for Law students of NUB jointly with BIAC on 2 October 2019 on the NUB Campus in the city. He expressed gratitude to Professor Dr. Anwar Hossain, Vice Chancellor of NUB for gracing the event as Guest of Honour. Both the Director and the Dean hoped that such workshops can be held regularly. Director of BIAC also urged upon the NUB management to nominate students for a day long training programme on arbitration and mediation to be exclusively designed for students of NUB by BIAC.



In course of discussion Professor Abu Zayed Mohammad told Director of BIAC that NUB is interested to sign a Memorandum of Understanding (MoU) with BIAC for working together in common fields of interest; they discussed in details about the contents of the MoU and hoped that both institutions will finalise draft of the MoU which can be signed by the authorities of NUB and BIAC as soon as possible. General Manager of BIAC Ms. Mahbuba Rahman Runa who was present during the briefing session, gave the Dean an overview of BIAC's training programmes.

Bangladesh Bar Council Secretary visits Bangladesh International Arbitration Centre

6 November 2019



Secretary of the Bangladesh Bar Council and Senior District & Sessions Judge Mr. Md. Rafiqul Islam visited Bangladesh International Arbitration Centre (BIAC) Secretariat on 6 November 2019 in the forenoon. Chief Executive Officer of BIAC Mr. Muhammad A. (Rumee) Ali welcomed him at the new premises of BIAC at the Unique Heights, 117 Kazi Nazrul Islam Avenue in the city. In a discussion session Mr. Ali briefed the Bar Council Secretary about the activities of BIAC, the country's only Alternative Dispute Resolution (ADR) institution. He said that BIAC is trying hard to facilitate resolution of

commercial disputes through ADR in the country. He also said that through its training and outreach programmes BIAC is trying to raise a human resource base in order to embed best practices of internationally recognised ADR methods with a view to easing business and attracting more Foreign Direct Investment (FDI) in the country for overall development of the economy. He requested the Secretary, Bangladesh Bar Council to incorporate ADR Module in the syllabus of written examination to admit persons as Advocates on its roll. The Secretary took keen interest in the activities

of BIAC and hoped that both BIAC and the Bar Council will work together for pioneering ADR methods for expeditious disposal of civil disputes outside of the courts which are already overburdened with under-trial pending cases. A presentation on the emergence, activities and achievements of BIAC was delivered by Mr. M A Akmal Hossain Azad, Director, BIAC. General Manager of BIAC Ms. Mahbuba Rahman Runa was also present. Later the Bar Council Secretary went round different sections of BIAC and saw its facilities. He was accompanied by Ms. Eid-Ul-Jannat, Assistant Director.

BIAC-CIArb Training on International Arbitration held in Singapore

7 November 2019

Bangladesh International Arbitration Centre (BIAC) and the Chartered Institute of Arbitrators (CIArb), Singapore organised an exclusive training on the Introduction to International Arbitration from 5-6 November 2019 at the Grand Mercure Singapore Roxy. A total of 16 delegates representing Bangladesh Bank, Bangladesh Bureau of Educational Information and Statistics (BANBEIS), Bangladesh Investment Development Authority (BIDA), bKash Limited, AB Bank Limited, Infrastructure Development Company Limited (IDCOL), Islami Bank Bangladesh Limited, Mutual Trust Bank Limited, North-West Generation Company Limited, Sonali Bank Limited, Square Pharmaceuticals Limited, The City Bank Limited and BIAC participated in the programme. The team was accompanied by Ms. Rubaiya Ehsan Karishma, Counsel, BIAC.

The course was headed by Mr. Chou Sean Yu, FCIArb, Partner at Wong Partnership LLP, Director



and Past Chairman of CIArb Singapore. Other trainers included Ms. Camilla Godman, Regional Director for Asia Pacific, CIArb, Ms. Amanda Lees, FCIArb, FSIArb, Partner at Simmons & Simmons JWS and Ms. Sapna Jhangiani, FCIArb, FSIArb, Partner at Clyde & Co. Clasis Singapore. Special Sessions were arranged to share practices of the Singapore International Arbitration Centre (SIAC), World Intellectual Property Organisation (WIPO) Arbitration and Mediation Centre, Singapore and

ICC International Court of Arbitration conducted by Mr. Chahat Chawla, Associate Counsel, SIAC, Ms. Chiara Accornero, Legal Officer, IP Disputes Section, WIPO and Mr. Akhil Chowdary Unnam, Deputy Counsel, ICC International Court of Arbitration respectively.

The course was an intensive one with tutorial sessions and gave the participants an overview of the process of International Arbitration, new concepts such as Emergency Arbitration, Early Dismissal, Arbitration

and Meditation in IP disputes. Arbitration under the SIAC, ICC and BIAC rules were also discussed. The participants are to sit for an online assessment, qualifying which they will be eligible to become Associates of CI Arb and members of BIAC. Plans of organising the next module leading towards Membership of CI Arb are being explored in addition to other courses. BIAC looks forward to welcoming these new members and further collaboration with CI Arb.

Independent University Bangladesh (IUB) students visit BIAC

12 November 2019



A students' delegation from Independent University Bangladesh (IUB) visited BIAC Secretariat at Unique Heights on 12 November 2019 in the morning. The delegation comprised students of LL B Honours studying Alternative Dispute Resolution (ADR) course in IUB. It was led by IUB Associate Professor of Law Dr. Assaduzzaman Khan. The purpose of the event was to interact with BIAC so that students of Law can be engaged in a meaningful deliberation about the future of legal education. Welcoming the delegation BIAC Director Mr. M A Akmal Hossain Azad said that It is now of utmost importance that ADR needs to be promoted among undergraduate and university level students. It would encourage a culture where

litigation would not be preferred or promoted and change the mind set of people. Teaching and promoting ADR at university level would also mean that there would be increased skilled mediators, conciliators and even arbitrators, since the norm is that people get familiarised with ADR at a later point, when they opt for professional qualifications, the Director opined. Barrister M. Imtiaz Farooq, Advocate, Supreme Court of Bangladesh gave the students a brief overview on different forms and practices of ADR. BIAC General Manager Ms. Mahbuba Rahman Runa gave a presentation on the emergence, activities and achievements of BIAC over the years. Dr. Assaduzzaman Khan, Associate Professor of IUB, in his concluding remarks thanked BIAC for arranging such an event which has been very beneficial to the students of Law. He pledged to work in closer cohesion with BIAC in the fields of mutual interest including joint training programmes and exchange of views for practice of ADR as an alternative means of dispute resolution outside the Courts. The delegation later went round different sections of BIAC and saw its facilities.

Bangladesh Fin-tech Summit 2019 held

23 November 2019



To unlock the true potential of finance for people, community and society and help Bangladesh to

achieve its potential, the first-ever Bangladesh Fin-tech Summit powered by Guardian Life was held on 23 November 2019 in the city. The event was organised by Bangladesh Brand Forum and was attended by more than 300 financial professionals across the country.

The Theme for the summit was 'Shaping Future of Finance for People' with the objective to provide collaborative space to fin-tech companies to share learning, success and failure with present and aspiring fin-tech Companies,

for entrepreneurs to initiate policy dialogue for right policy framework for Future fin-tech companies to thrive sustainably and to nurture the fin-tech ecosystem so that Bangladesh receives the full benefit and value of Global Fin-tech drive and movement.

The Summit comprised of 4 Keynote Sessions, 2 Insight Sessions and 5 Panel Discussions with the international and local industry leaders. The summit also facilitated 1 Insight Session, 1 Case Study presentation and two Breakout Sessions. In the opening speech of the summit Mr. Sanjoy Datta, Financial Services Industry Leader, Deloitte South Asia stated, "Fin-techs have changed how financial services are structured, provisioned and consumed, they have laid the foundation for future disruption and set the pace with which incumbent financial institutions need to respond to customer expectations." Mr. Shariful Islam, Founder and Managing Director of Bangladesh Brand Forum delivered the welcome speech at the auspicious event stating that "Fin-tech and financial innovation will play the pivotal role in pursuing inclusive and sustainable progress for Bangladesh."

The 4 keynote speakers of the summit were: Mr. Sanjoy Datta, Financial Services Industry Leader, Deloitte South Asia who spoke on the 'Global Fin-tech Trends', Mr. Jaspreet Bindra, Digital Transformation and BlockChain Expert, Author of the Tech Whisperer stating his keynote on

"Blockchain and Crypto-currency", Mr. Shilin Wu, Global Business Manager of Zoloz Solution Architect, Ant Financial Services Group and Ms. Lauren Liang, Head of Strategic Partnerships – Innovation, LumenLab, MetLife Innovation Centre.

Some of the eminent panel members of the summit were: Mr. Md. Abul Kalam Azad, Principal Coordinator, Sustainable Development Goals (SDG) Affairs, Prime Minister's Office, Government of Bangladesh, Mr. Mohammad A. (Rume) Ali, Chief Executive Officer, Bangladesh International arbitration Centre (BIAC) & Chairman of AB Bank Limited, Syed Mahbubur Rahman, Managing Director & CEO, Dhaka Bank Limited, Mr. Rahel Ahmed, Managing Director and CEO, Prime Bank Limited, Mr. Mashrur Arefin, Managing Director & CEO, City Bank Limited, Mr. Md. Arfan Ali, President & Managing Director, Bank Asia Limited, Mr. Ali Reza Iftikhar, Managing Director & CEO, Eastern Bank Limited, Ms. Farzanah Chowdhury, Chartered Insurer, Managing Director & CEO, Green Delta Insurance Company Limited and Mr. Anir Chowdhury, Policy Advisor, a2i, Government of Bangladesh.

The day-long summit ended with a high note, as any nation's Financial sector plays a vital role in shaping the future and growth potential; 'FINTECH' will play the critical role for Bangladesh in how it shapes the industry and broad financial space based on the elaborative dialogue of Bangladesh Fin-tech Summit 2019.

Exchange of views between Rahman & Rabbi Legal and BIAC

26 November 2019



Mr. M A Akmal Hossain Azad, Director, BIAC visited the new office Chambers of Rahman & Rabbi Legal at Kazi Nazrul Islam Avenue in the city on 26 November 2019. Mr. Md. Monzur Rabbi, Barrister-at-Law, Managing Partner of the Chambers welcomed Director, BIAC and briefed him about his Chambers which focuses on representing clients with cases involving corporate and commercial laws. He said that Rahman & Rabbi Legal delivers timely and cost effective solutions through meticulous planning and punctilious implementation. "We value the trust clients

place in us and work hard to provide effective representation to meet the diverse legal needs of the clients", he added. Director, BIAC and Managing Partner of Rahman & Rabbi Legal reviewed the MoU signed between the two organisations in December 2018. Director, BIAC gave an overview of recent activities and achievements of BIAC and hoped that both BIAC and Rahman & Rabbi Legal will explore some further engagements and collaboration, especially in the field of training and workshop on Alternative Dispute resolution (ADR) and mooted competitions. Barrister Rabbi said that his Chambers is interested to work on Investment Arbitration in collaboration with BIAC. Director, BIAC offered to convene jointly a workshop with the lawyers with the theme of Looking through ADR from a Lawyer's Perspective, sometime in the first quarter of 2020. For such an event, Barrister Rabbi offered to write the Keynote Paper and extend all out cooperation to BIAC on behalf his Chambers.

Legislative and Parliamentary Affairs Division Secretary emphasises broader outlook on Alternative Dispute Resolution (ADR)

28 November 2019



Mr. Naren Das, Secretary, Legislative and Parliamentary Affairs Division has emphasised broader outlook on Alternative Dispute Resolution (ADR) as the best means of resolving commercial disputes. "We are very much supportive of ADR practices", he said during his visit to Bangladesh International Arbitration Centre (BIAC) at Kazi Nazrul Islam Avenue in the city on 27 November 2019. The Secretary said that foreign investors tend to choose a third country as a place for arbitration for the sake of neutrality and capability and they do not like the idea of keeping mandatory arbitration clause in commercial contracts. The Government is trying hard so that international arbitrations can be held in Dhaka, the Secretary maintained and opined that mandatory arbitration clause may be inserted at least

in contracts between two Bangladeshi parties. He also lauded BIAC's pioneering role as the only ADR service providing institution in the country. Welcoming the Secretary to BIAC's new premises, Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC praised Government's recent initiatives towards updating a number of statutes to enable arbitration and mediation as alternative means of dispute resolution. In a briefing session he gave an account of BIAC's

activities in embedding internationally accepted best practices of ADR to help create an ecosystem that fosters investment in the country and is conducive to business. He also briefed the Secretary about the recent achievements of BIAC. He said that a committee formed by the Bangladesh Bank comprising BIAC, Association of Bankers Bangladesh (ABB) and Bangladesh Bank has recently submitted a draft guideline on ADR for Banks which is under active consideration by the Bank. A presentation on emergence and ongoing programmes of BIAC was delivered by BIAC Counsel Ms. Rubaiya Ehsan Karishma. Mr. M A Akmal Hossain Azad, Director, BIAC and officials of BIAC and Legislative and Parliamentary Affairs Division also attended the briefing session.

Adopting technology is key to ensure sustainable development, inclusive financing, experts opine

11 December 2019

Bangladesh Bank Governor Mr. Fazle Kabir spoke at a plenary session of the Asia Pacific Conference on Financing Inclusive and Sustainable Development arranged by the International Chamber of Commerce Bangladesh at Hotel Intercontinental in Dhaka on 11 December 2019. The Governor mentioned that the 11 goals and 30 targets under the SDGs were linked with the banking sector and the central bank since 2010 has been pushing banks to bring unbanked people like street children, school going children and farmers under the financial system.

Sri Lankan Prime Minister's Senior Economic Adviser Mr. Ajith Nivard Cabraal, former Bangladesh Bank Deputy Governor Mr. Muhammad A (Rume) Ali, also the CEO of Bangladesh International Arbitration Centre (BIAC) and Chairman, AB Bank Ltd., Eastern Bank Limited Managing Director & CEO Mr. Ali Reza Iftekhar and Bank Asia President and Managing



Director Mr. Arfan Ali were present among others, on the occasion.

Ensuring sustainable development and inclusive financing ecosystem would not be possible unless technologies are embraced by financial institutions, experts and bankers said during the session. They also urged all the related stakeholders to be prepared to tackle cyber threats that would arise due to the growing use of internet-based financial services. The session

was organised as part of International Chamber of Commerce Bangladesh's three-day conference titled 'The Asia-Pacific Conference on Financing Inclusive and Sustainable Development'.

Taking part in the discussion former Bangladesh Bank Deputy Governor Mr. Muhammad A. (Rume) Ali, also CEO of BIAC and Chairman of AB Bank Ltd. categorically said, "To achieve inclusivity and sustainability of SDGs, we will have to harness the

power of fin-tech." He maintained, "The mobile financial service has made distribution for the financial institutions a very easy task, as the country has 75 million registered users." However, the system has limitations too, he said, adding that the service had just opened the door but was yet to ensure inclusivity. He said that the system should become mobile banks instead of limiting its service to payment. But, there would be many risks and one of the biggest risks would be the cyber security, Mr. Rume Ali opined.

BIAC remembers with gratitude the support of late Justice Mahmudul Amin Choudhury

23 December 2019



We deeply grieve the demise of former Chief Justice Mahmudul Amin Choudhury

Former Chief Justice of Bangladesh Mr. Justice Mahmudul Amin Choudhury passed away in Dhaka on 22 December 2019. He breathed his last due to old age complications. He was 82 and is survived by two daughters, a son and a host of well-wishers to mourn his death. Mr. Justice Mahmudul Amin Choudhury took oath as the Chief Justice of Bangladesh on 1 March 2001 and retired on 17 June 2002. Justice Choudhury served as Judge of the High Court Division since 1987. Prior to serving in the High Court

Division, he was a practicing lawyer from 1963 to 1987.

Justice Choudhury was a distinguished Arbitrator in the BIAC Panel of Arbitrators since 2012 and has been a well wisher of BIAC. His presence and guidance in all BIAC activities and events since inception are invaluable to the BIAC family. BIAC remembers with gratitude, his support and contribution without which BIAC's task would have been much more difficult. Mr. Muhammad A. (Rume) Ali, CEO of BIAC, on behalf of the BIAC team, offered condolence to his family. We pray to the Almighty to grant his near and dear ones the strength to bear this loss and that He in His infinite magnanimity may grant his soul eternal peace.

78th Meeting of the Executive Board of ICC Bangladesh held

31 December 2019



Bangladesh International Arbitration Centre (BIAC) hosted the 78th Meeting of the Executive Board of the International Chamber of Commerce Bangladesh (ICC-B) at its new premises at Unique Heights in the city on 31 December 2019. The Meeting was presided over by Mr. Mahbubur Rahman, President of ICC-B and Chairman of BIAC. Present in the meeting were Mrs. Rokia Afzal Rahman, Vice President, ICC-B and BIAC Board Member, Messrs. A. K. Azad, Managing Director, Ha-Meem Denim Ltd., Aftab-ul Islam, President & CEO, IOE Bangladesh Ltd., Mir Nasir Hossain, Managing Director, Mir Akhtar Hossain Ltd., Sheikh Kabir Hossain, President, Bangladesh Insurance Association, Tapan Chowdhury, Managing Director, Square Textile

Mills Ltd., Ms. Nihad Kabir, President, Metropolitan Chamber of Commerce & Industry, Dhaka and BIAC Board Member, Messrs. Osama Taseer, President, Dhaka Chamber of Commerce & Industry and BIAC Board Member, Shams Mahmud, President Elect, Dhaka Chamber of Commerce & Industry, Hatem (represented Bangladesh Knitwear Manufacturers & Exporters Association), R M Khan, former President of the Dhaka Chamber of Commerce & Industry, Aatur Rahman, Secretary General, ICC-B and Muhammad A. (Rume) Ali, CEO, BIAC and Chairman of the ICC-B Banking Commission. The Board Members were given a tour of the new premises of BIAC and Mr. A. K. Azad's birthday was also celebrated on this occasion.

International News

What's in a name? Using post-contractual conduct to correct errors

3 October 2019



In *BH Australia Constructions Pty Ltd v Kapeller* 2019, NSWSC 1086, the Court was called upon to determine whether “Blissful Constructions Pty Ltd”, later renamed “BH Australia Constructions Pty

Ltd” (BC) or “Blissful Developments Pty Ltd” (BD) was the contracting party for a residential building contract. BD was identified as a contracting party, but was neither licenced nor insured and was in external administration. The NSW Civil and Administrative Tribunal's Appeal Panel, however, found that the contracting party was BC, based on what a reasonable observer would have concluded looking at the dealings between the parties.

The dispute allowed Justice Leeming to illuminate case law relating to the admissibility of post-contract conduct when construing a contract and identifying the contracting parties. When using post-contract conduct as an aid for contractual construction, the traditional distinction lies between construing a contract, where evidence of post-contract conduct is inadmissible and identifying the existence of a contract, where it is

admissible. It was noted that this distinction is “not necessarily as crisp as it might seem”.

While he noted that post-contract conduct might be used, for instance, to prove mutually known facts to identify the meaning of a descriptive term, he doubted that post-contract conduct could give legal meaning to the “label used in the contract to identify the contracting parties”. Instead, this was a matter of chronology: the identity of the parties to a contract which came into existence in January could not be affected by conduct which subsequently occurred in March.

The dispute whether BC or BD was the contracting party was ultimately resolved by Justice Leeming finding that the reference to BD was “an obvious mistake on the face of the contract”. This satisfied the legal test for judicial correction of a contract, this legal remedy differs from the equitable remedy of contractual rectification, which requires a mutual subjective intention. The key factor in this decision was the assumption that the parties objectively intended to enter into a lawful contract, which would not have been the case if the unregistered and uninsured BD was the contracting party.

<https://www.lexology.com/library/detail.aspx?g=72f9d597-9e40-456e-a6b4-632763a140ee>

Mauritius: Launching of the Negotiations on the Deepening of the Interim Economic Partnership Agreement

5 October 2019



The Prime Minister of Mauritius, Honourable Pravind Jugnauth, has officially launched the negotiations on the deepening of the interim Economic Partnership Agreement (iEPA) on 2 October 2019 at the Maritime Resort, Turtle Bay, Balaclava, Mauritius.

The ceremony was attended by the EU Deputy Director General of Trade, Ms. Helene Konig, officials from the European Commission, Ministers and officials from the Eastern and Southern African (ESA) region.

The iEPA, signed in 2009 with the EU, comprises three chapters, namely, Market access, Development and Fisheries components. The EU and ESA iEPA Signatory States, namely, Mauritius, the Comoros,

Madagascar, Seychelles and Zimbabwe agreed in 2017 to initiate a process with the European Commission to expand the coverage of the Agreement. An ESA-EU Scoping paper was completed in May 2019, providing the parameters to deepen the Agreement in key areas including Trade in Services, Investment, Trade Facilitation, Intellectual Property Rights, as well as to review some of the key provisions of the Agreement.

The launching of the negotiations was followed by the first ESA-EU technical meeting on 03-04 October 2019 in which the Mauritius Chamber of Commerce and Industry (MCCI) was involved. The MCCI has been one of the main private sector institutions actively participating in the preparatory discussions on the deepening of the iEPA.

<https://www.mcci.org/en/media-news-events/business-updates/launching-of-the-negotiations-on-the-deepening-of-the-interim-economic-partnership-agreement/>

Permanent Court of Arbitration to set up office in Buenos Aires

21 October 2019



On 16 October 2019, the Ministry of Foreign Affairs and Worship of the Argentine Republic (MFA) and the Permanent Court of Arbitration (PCA) announced that the PCA will set up a staffed office in Buenos Aires,

Argentina. The Buenos Aires office will be the PCA's first office in Latin America and the third outside its headquarters in the Hague, the Netherlands. The new office will provide a base from which the PCA can administer the growing number of PCA cases related to Latin American parties. The new office will allow the PCA to better serve the dispute resolution needs of States and private parties in Latin America and to meet demand in coming years. The PCA Buenos Aires office will be located in the San Martín Palace as of today. The San Martín Palace was built between 1905 and 1909 in the Beaux-Arts style by architect Alejandro Christophersen. This was precisely the same period in which Argentina, represented by the distinguished Argentine jurists Carlos Calvo and Luis María Drago, participated in the 1907 Hague Peace Conference, which led to Argentina becoming a Contracting Party of the PCA. The San Martín Palace has since been designated a National Historical Monument by the Argentine Government and is now the ceremonial headquarters of the MFA.

The PCA and the Argentine Republic signed a Host Country Agreement on 12 May 2009 granting the PCA the same legal capacity, facilities, privileges and immunities in Argentina as the PCA enjoys in the Netherlands where it has its headquarters at the Peace Palace in the Hague. The Argentine Republic ratified the Host Country Agreement in 2013, through Law No. 26.880. The opening of a PCA office in Buenos Aires is a significant enhancement of the PCA-Argentina partnership that began 10 years ago. In

his speech at the opening ceremony, the PCA Secretary-General, Mr Hugo Siblesz, stated that "the new PCA office in Buenos Aires is testament to Argentina's standing as an established player in international affairs" and that "the PCA Buenos Aires office opens a door to new and exciting possibilities for Buenos Aires, Argentina, and Latin America". The Argentine Minister of Foreign Affairs and Worship, Mr. Jorge Marcelo Fauri stated that "Argentina will continue supporting the PCA and its work, in the understanding that it is the cornerstone of a fast and easily accessible dispute resolution mechanism".

The Permanent Court of Arbitration is an intergovernmental organisation established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 122 Contracting Parties. Headquartered at the Peace Palace in the Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organisations, and private parties. The PCA's International Bureau is currently administering four interstate disputes, 104 investor-State arbitrations, 53 cases arising under contracts involving a State or other public entity and two other disputes. The Argentine Republic became a Contracting Party to the 1899 Convention for the Pacific Settlement of International Disputes on 15 June 1907. As a Contracting Party to the founding Convention of the PCA, Argentina forms part of the PCA Administrative Council and is represented on the PCA's panel of independent arbitrators known as Members of the Court. These Members may be called upon to serve as arbitrators in PCA-administered disputes. Argentina's Members of the Court are Ms. Susana Myrta Ruiz Cerutti, Dr. Raúl Emilio Vinuesa, Mr. Mario J. A. Oyarzábal and Prof. Diego P. Fernández Arroyo.

<https://pca-cpa.org/en/news/permanent-court-of-arbitration-establishes-office-in-buenos-aires/>

"Verily, the believers are brothers, so make peace between your two brothers that perhaps you may receive mercy."

— Al Quran

Hong Kong Arbitration Week - record numbers and new developments

29 October 2019



The 8th annual Hong Kong Arbitration Week concluded on Friday, 25 October 2019. It was the largest to date with 23 events over six days attended by more than 680 people from 40 jurisdictions. New jurisdictions were represented at the Week by participant entities from Mainland China, India, Russia, Germany and the United States. The popularity of the Week has grown significantly over the last eight years: the first Hong Kong Arbitration Week, an initiative established and run by Hong Kong International Arbitration Centre (HKIAC) in 2012 included five events over 3.5 days and attracted approximately 250 attendees. It was the first Arbitration Week held globally and is a concept that has since been replicated by numerous cities.

At the flagship event of the Week, HKIAC's ADR in Asia Conference, Hong Kong's Secretary for Justice Ms. Teresa Cheng SC announced the launch of a review by the Law Reform Commission of outcome-related fee arrangements for arbitration in Hong Kong. A sub-committee has been established to review the current legal framework and make recommendations. It is co-chaired by Ms. Kathryn Sanger and Briana Young of Herbert Smith Freehills

and its members include Mr. Matthew Gearing, QC, Allen & Overy, Dr. Benny Lo, Barrister at Des Voeux Chambers, Mr. José-Antonio Maurellet, SC, Barrister at Des Voeux Chambers and Mr. C.M. Chan of Anthony Siu & Co. HKIAC has been involved in previous law reform projects in Hong Kong, including the introduction of emergency arbitration legislation in 2013, third party funding in 2018, and amendments to allow HKIAC to waive fees in cases under its statutory appointing authority role in 2019. HKIAC looks forward to supporting the sub-committee in its work.

The Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region which came into force on 1 October 2019 received significant attention during the Week. HKIAC hosted a seminar organised by the Department of Justice of Hong Kong and the Supreme People's Court of the People's Republic of China (SPC) on 19 October 2019. At the seminar, two SPC judges discussed the Arrangement and related practice adopted by the Mainland Chinese courts on interim measures. 12 template documents prepared by the SPC for the purposes of seeking interim measures under the Arrangement were distributed at the seminar. They include applications for different purposes under the Arrangement as well as certificates to be issued by qualified Hong Kong arbitral institutions to facilitate those applications.

<https://www.hkiac.org/news/hong-kong-arbitration-week-2019>

SIAC Signs Memorandum of Understanding with the New York International Arbitration Center

25 November 2019



The Singapore International Arbitration Centre (SIAC) is pleased to announce that it has entered into a Memorandum of Understanding (MOU) with the New York International Arbitration Center (NYIAC) to promote international arbitration as a preferred method of dispute resolution for resolving international disputes.

The MOU was signed at the 14th Annual Conference on International Arbitration and Mediation held at Fordham Law School in New York on 22 November 2019, by Mr. Kevin Nash, Deputy Registrar & Centre Director of SIAC, and Ms. Edna Sussman, Board Chair of NYIAC.

Under the MOU, SIAC and NYIAC will co-organise conferences, seminars and workshops on international arbitration in New York and Singapore, and will invite key members of the local arbitration community to attend and participate in major events organized by SIAC in New York or by NYIAC in Singapore.

Pursuant to the MOU, NYIAC will, where appropriate and on a best efforts basis, provide hearing space and conference space in New York to SIAC at preferential rates and refer parties to SIAC for requests relating to services for arbitrations seated in Singapore. SIAC will, where appropriate and on a best efforts basis, refer requests for hearing space and conference space in New York to NYIAC and assist to arrange hearing space and conference space in Maxwell Chambers in Singapore for NYIAC at preferential rates.

Ms. Edna Sussman, Board Chair of New York International Arbitration Center, said, "At NYIAC we have long admired the efforts made in Singapore to promote effective dispute resolution mechanisms and we are delighted to establish a relationship with the Singapore International Arbitration Centre. Our common interest in offering cutting-edge educational programming and providing top flight hearing

services will be furthered by this collaboration."

Ms. Lim Seok Hui, CEO of SIAC, commented that "SIAC is delighted to be entering into this collaboration with NYIAC and looks forward to working closely with NYIAC to deepen our ties with key stakeholders in the US arbitration community."

<https://www.siac.org.sg/#>

Supreme Court of India strikes down Section 87 of Arbitration and Conciliation Act inserted by 2019 Amendment

28 November 2019



In a significant judgment, the Supreme Court of India, on 27 November 2019 struck down Section 87 of the Arbitration and Conciliation Act 1996, which was inserted through the 2019 amendment Act passed by the Parliament last monsoon session. The judgment was delivered in the case *Hindustan Construction Company Ltd v Union of India*, which was heard by a bench comprising Justices R F Nariman, Surya Kant and V Ramasubramanian.

The bench held the provision to be "manifestly arbitrary" and violative of Article 14 of the Constitution of India. "The retrospective resurrection of an automatic-stay not only turns the clock backwards contrary to the object of the Arbitration Act, 1996 and the 2015 Amendment Act, but also results in payments already made under the amended Section 36 to award-holders in a situation of no-stay or conditional-stay now being reversed", observed the judgment authored by Justice Nariman.

The Court also observed that after the advent of the Insolvency and Bankruptcy Code, the restoration of

the automatic stay provision might lead to the insolvency of arbitral-award holders, as the payments due to them might get blocked.

"An arbitral award-holder is deprived of the fruits of its award - which is usually obtained after several years of litigating - as a result of the automatic-stay, whereas it would be faced with immediate payment to its operational creditors, which payments may not be forthcoming due to monies not being released on account of automatic-stays of arbitral awards, exposing such award-holders to the rigours of the Insolvency Code", observed the Court.

The Court added that Section 87 militated against the concept of appeals under Arbitration Act, which are in the nature of summary proceedings than "full-blown" appeals. Introduction of Section 87 would result in a delay of disposal of arbitration proceedings, and an increase in the interference of courts in arbitration matters, which defeats the very object of the Arbitration Act, 1996.

<https://www.livewlaw.in/top-stories/sc-strikes-down-section-87-of-arbitration-conciliation-act-inserted-by-2019-amendment-150206>

APRAG Conference 2020: Innovations and Challenges, Facing the Arbitration Industry

15 December 2019



The APRAG Conference 2020 on "Innovations and Challenges, Facing the Arbitration Industry" will be held from 15 to 17 January 2020 at Grand Hyatt Erawan, Bangkok Hotel, Thailand. It will discuss the growing importance of International Arbitration in Asia and Australia and the significant developments in the domain of ADR and future trend in this domain.

The Conference aims to identify new opportunities for legal convergence to produce a more robust and predictable cross order regime for arbitration, demonstrate good will to the member states, improves standards and knowledge of international arbitration in the region, attract international arbitrators and international arbitration counsel, legal practitioners, judges, in-house counsel, policymakers, academics and business persons for a fruitful discussion and promote the use of arbitration and other forms of ADR.

APRAG (Asia Pacific Regional Arbitration Group) is a regional federation of arbitration associations which aims to improve standards and

knowledge of international arbitration and will make submissions on behalf of the region to national and international organisations. This co-operation is unique and is a reflection of the growing importance of international arbitration in Asia and Australasia, the fastest growing economic area in the world. It also

demonstrates the maturity and good will of the member organisations and their determination to further raise standards in, and improve the profile of, international arbitration in the region.

<https://www.baniarbitration.org/assets/pdf/Registration%20Form%20Aprag%202020.pdf>

Conference with the Association: Recognising challenges and supporting orientation

27 December 2019



In the context of international economic integration with many market changes, besides enjoying certain advantages of the digital economy and global integration, businesses also face a lot of challenges, difficulties and challenges in the business process. With the mission to accompany, guide and protect the interests of businesses, the Associations plays an important role in connecting businesses with supporting organisations in order to effectively guide businesses in solving the problems that arise.

Understanding this, the Vietnam Chamber of Commerce and Industry (VCCI) in collaboration with the Vietnam International Arbitration Center (VIAC) held a Seminar for Associations on 27 December 2019 at the Chamber of Commerce and Industry of Vietnam, 171 Vo Thi Sau, Ward 7, District 3, TP. Ho Chi Minh, to create an open forum for the award, exchanging, commenting and making proposals from the Associations. Since then, creating an effective coordination mechanism, contributing to promoting the strong development of the Association, met and facilitated future members' needs.

<http://www.viac.vn/>

ASIA ADR WEEK 2020 – ADR in a Kaleidoscope: Beyond What Meets the Eye

29 December 2019



ASIA ADR WEEK 2020 will be held in Kuala Lumpur, Malaysia, from 18 to 20 June 2020. When Elton John sang “the twisting kaleidoscope moves us all in turn”, there is perhaps little chance he was thinking about commerce and dispute resolution. Yet the metaphor is starkly applicable. The kaleidoscope takes us all back to our past: a toy to transform the mundane mechanical to a splash of infinite and vivid patterns. Taken apart, the coloured pieces are themselves of little value, but when put together, a single twist creates infinite and constantly transforming patterns. It is a tool which translates the occupation of the hand to pleasures of the eye.

The changes in ADR are as fast-paced as the changing visions in a kaleidoscope. Throughout its evolution, the naked eye has so far viewed commercial interests of efficiency and cost as the primary drivers. However, the future will require a perspective that understands how the other coloured pieces oft-overlooked: the social, political and the economical interplay with the commercial to create meaningful and ever-changing patterns. Although the patterns are new, they use the same pieces over and over again. It becomes critical therefore to look at the arrangement of the pieces

themselves, and how they can be placed and rotated to engineer a vision that is acceptable.

At Asia ADR Week 2020, AIAC's emblematic triangle hopes to be the eye piece where we move away from a myopic emphasis on procedure and enforcement, to a kaleidoscopic vision of a diversity and sustainability.

Mark Twain strongly believed that there are no new ideas: we simply put the old ones in a mental kaleidoscope and give them a turn until they make curious combinations. Political events in the West which may push parties to look East, the dismantling of the ISDS Era, or the push for diversity in arbitration can only be understood by appreciating their larger context of similar changes in national priorities and society. By acknowledging these changes, the discussion will map their impact of 21st-century values on private justice and how the community of institutions, arbitrators and practitioners, akin to the hand that twists the kaleidoscope, can act together to create a beautiful vision for the future.

<https://www.mcci.org/en/media-news-events/business-updates/launching-of-the-negotiations-on-the-deepening-of-the-interim-economic-partnership-agreement/>

Articles

The Singapore Convention on Mediation and International Commercial Dispute Resolution

Shireen Scheik Mainuddin

CEDR Accredited Mediator And Trainer



Signed by 46 countries in August 2019 the Singapore Convention on Mediation is the first U.N. Treaty to be named after Singapore. Beginning in 2011, the U.N. General Assembly adopted by consensus its first resolution specifically on Mediation. In 2016 the U.N. General Assembly requested the Secretary General to submit a report on Mediation the following year. In his report the Secretary General Antonio Gutierrez recognises Mediation as an important tool for conflict prevention management and resolution, analyses 5 elements of Mediation support, provides examples of U.N. activities within the framework of each element and sets out the means through which the entities of the U.N. system can coordinate their support for mediation initiatives at different levels. It also emphasises the need for professionalising Mediation. In December 2018, the U.N. General Assembly passed a Resolution to incorporate Mediation as a tool for resolving commercial disputes between Member countries and the Convention in Singapore, was the action taken in support of the Resolution. It is relevant to add that the World Bank, The European Investment Bank and the European Bank for Reconstruction and Development, all incorporated Mediation as a tool for resolving disputes relating to their investments and project implementation.

The Singapore Convention on Mediation aims to promote the use of Mediation in settling cross border

commercial disputes and is also relevant to the needs of the Permanent Court of Arbitration. Once the treaty is ratified, (3 countries must ratify the Treaty by February 2020 for it to come into force) countries will have to ensure that International Commercial Mediation Settlement Agreements are enforced by their courts. The courts of signatories are expected to handle applications either to enforce such an agreement or to inform a party to invoke the Agreement to prove the matter has already been resolved.

Of relevance is the fact that the United States, India, China, Singapore, Malaysia and South Korea are signatories. However, notably absent in the signing process were the E.U., the U.K. and Australia, but in all these three locations the use of Mediation for commercial disputes is practiced extensively.

Bangladesh too has yet to sign the Treaty, although five countries have come on board after August 2019 bringing the total to 51. Three of Bangladesh's major Trading Partners (U.S.A., India and China) are signatories and the country is also providing the U.N. with one of its largest Peacekeeping Forces. Therefore, both for reasons of Trade and Investment and International Peace Keeping, it would be prudent to become a signatory to this Treaty.

“No good is there in much of their private conversation, except for those who enjoin charity or that which is right or conciliation between people. And whoever does that seeking means to the approval of Allah – then we are going to give him a great reward.”

— Al Quran

Doing Business Index 2020: Analysing the Leap from 176 to 168

Rubaiya Ehsan Karishma
*Counsel, BIAC**



As we rejoice this much awaited promotion in the World Bank's Doing Business Index in 2020, we need to ask ourselves "Have we really made it?" While the rank is the result of a cumulative performance, based on 10 indicators, the improvements were mainly achieved in the "Starting a Business", "Getting Electricity" and "Getting Credit" indicators. Minor improvements were achieved in the "Dealing with Construction Permits" and "Registering Property" indicators and our best score is in the "Protecting Minority Investors" indicator.

Four more indicators remain that received little to no attention per se, i.e. "Paying Taxes", "Trading across Borders", "Enforcing Contracts" and "Resolving Insolvency". So, it is safe to say that, we are more focussed on getting more business to start operations in Bangladesh than on making efforts to retain them in the long run. The fact that our performance has further deteriorated in the "Resolving Insolvency" indicator supports the same. If only attracting short term investments, to start a business, is sought after, is it not more damaging to the resources (human and otherwise) once the business is interrupted or shut down? Are we equipped to deal with it?

After relentless efforts we have successfully climbed 8 steps in 12 years by positively reforming three indicators out of the ten indicators. We must strike while the iron is hot and it is time, we start making improvements in the remaining indicators. The much-anticipated double-digit rank may be right around the corner. The primary areas that need immediate attention are the last two indicators, namely, "Enforcing Contracts" and "Resolving Insolvency". We have built a foundation and strengthening it will lead to sustainability in the long run.

Being part of Bangladesh International Arbitration Centre (BIAC), the only Alternative Dispute Resolution institution in the country, established by the eminent businesspersons of Bangladesh, we appreciate the implications of not reforming these two indicators. Our neighbour country, India being the closest to us geographically and culturally, but with almost 8 times our population has moved to 63 this year from 100 in

Doing Business 2018. We should study the reforms they had implemented since Doing Business 2008. One of the most noteworthy reforms has been the Insolvency and Bankruptcy Code 2016, that has revolutionised their "Resolving Insolvency" mechanism.

The Code aims to keep business entities running as a going-concern in order to protect the resources engaged in the venture and the potential of the business to generate revenue that would otherwise be lost if it goes into liquidation. A committee of creditors has the right to apply for insolvency to the National Company Law Tribunal that leads to either liquidation of assets to recover debts or employment of insolvency professional to prepare a resolution plan by restructuring the debts. The process is to be completed in 180 days extendable up to 90 days. The insolvency professional asks for resolution plans through an auction like process, by way of which the creditors choose the best plan offering maximum recovery for the creditors. Since its implementation in 2016, as of 29 November, 2019 a number of 2,542 cases have been received of which 116 were withdrawn and 186 were closed (on review/appeal/settlement); 586 ended in orders for liquidation while 156 ended in approval of resolution plans¹. Another report says that, about INR 75,000 crore have been recovered under this Code as of March 2019 which is around 43% of debt, whereas via liquidation recovery would be only 22%².

Such results were not achieved overnight and it involves a joint effort of all the stakeholders. In the event, that our judiciary, financial institutions, central bank and industry experts unite, can we not replicate a similar model for Bangladesh? Can we not strengthen our Insolvency mechanism? In a way the two indicators "Enforcing Contracts" and "Resolving Insolvency" are interdependent. To replicate a similar model, we are in dire need of judicial reforms. Bangladesh International Arbitration Centre (BIAC) has been advocating for the same since inception in 2011. In recent times, BIAC has successfully raised awareness among stakeholders through outreach programmes in which the Law Minister, the Governor

1. <https://economictimes.indiatimes.com/industry/banking/finance/banking/lenders-to-refer-more-cases-to-nclt/articleshow/72286157.cms>

2. <https://www.livemint.com/companies/news/ibc-recovered-rs-75-000-crore-till-march-2019-1556879330649.html>

of Bangladesh Bank, Heads of Banks and Financial Institutions, members of the judiciary, law practitioners and other stakeholders participated.

Singapore is the leading economy in terms of enforcing contracts demonstrating the best regulatory performance. They have introduced electronic litigation system that streamlines litigation proceedings and consolidated law on voluntary mediation over time among other things. Recently the UN treaty on mediation namely Singapore Convention on Mediation was signed by 51 countries including Timor Leste, the economy that is at the bottom of the Enforcing Contracts rankings. Since Bangladesh is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral awards 1958, it is only prudent that we become a signatory to this Mediation Convention as well. Our Arbitration Act came into being after the Convention was signed in 1972, we can finally think about having a mother law on mediation after signing the said Convention.

Bangladesh has the most alarming rank under the “Enforcing Contracts” indicator, i.e., 189/190 economies since Doing Business 2004³. It has been 16 years and no improvement has been achieved in this area and as previously mentioned no initiatives were taken either. It takes on an average 4 years to recover through our litigation system and the cost of recovery is 66.8%, that is to say, an investment of BDT 100 comes back as 32.2 taka after 4 years which would otherwise have generated an interest of taka 21.55 assuming at 5% per annum if deposited in a bank for the same period. Therefore, instead of earning 21.55%, an investor loses 89.35% of his investment in 4 years’ time. This is just a tip of the iceberg. The lack of resources remains a

concern. It is not possible to create judges overnight, neither it is possible to create legislations for investors to understand and adopt in a short time, which of course, instead of reinventing the wheel, we can adapt and adopt international best practices.

The Indicator takes into account the existence of an Alternative Dispute Resolution (ADR) mechanism, which exists in principle in our country but has proved to be successful only in the family and labour dispute matters. A strong process that addresses commercial matters in a time bound system is long overdue. Developed economies around the world have exclusive institutions for commercial ADR created by the Government and adopted by the people. The stakeholders including the judiciary and financial institutions give way to ADR prior to litigation while the court is reserved for more serious cases such as criminal cases. Commercial cases mainly involve the payment-receipt of dues arising from breach of contract; the courts are sacred and their resources should not be wasted on such cases that can be solved between parties if encouraged by the regulators.

For the sake of development every country has had to take a leap of faith at some point in their journey towards sustainability. We have the advantage of choosing to adopt the effective strategies instead of dwelling in the unknown. Be it the Sustainable Development Goals or the Doing Business Index Report, access to justice is a fundamental right of every individual. World’s leading economies have shown us the way and we have no reason to be afraid. It is high time that we appreciate the value of our resources and use them wisely; otherwise we will see our economy, our country bleed for our own actions.

3. <https://www.doingbusiness.org/en/custom-query>

* This article was earlier published in *The Financial Express*, Dhaka.

“And if two factions of the believers fight, you should make peace between them. But if one of them continues to do wrong to the other, fight the transgressor until they return to Allah's command. If they then do so, then make a just peace between them for verily Allah loves the just ones.”

— Al Quran

Making the case for greater diversity in ADR

Mark Smalls

Chairman, JAMS Diversity Committee and on the JAMS Foundation Board, USA



There is no doubt that we are living in turbulent times. A persistent question is the diversity and inclusiveness of our society. This hotly debated topic is being discussed in all corners of our country. And the legal profession is no exception.

More recently, the legal community has been under the microscope as diversity within firms becomes a priority. As a result, law firms are working to embrace people of all colors, genders and sexual orientation. A great example of this is the Mansfield Rule, an initiative developed by the Diversity Lab, an incubator focused on diversity and inclusion issues in the legal industry, which sets a goal for firms to actively consider diverse candidates for at least 30% of open leadership and governance roles.

Not only is a focus on diversity the “right thing” to do, but it also creates a competitive advantage. More diverse firms are able to capture more large clients, who are increasingly sensitive to the diversity of their outside counsel. Correspondingly, retaining more diverse firms allows those clients to realize their own business goals and leverage diverse perspectives on their legal matters.

A similar advantage can be gained by improving the diversity within the Alternative Dispute Resolution (ADR) field, as this has become an increasingly popular avenue for resolving business disputes. Corporate law departments have an opportunity to consider the diversity of ADR providers in order to further extend the merits and benefits of diversity, which they have already acknowledged through numerous studies. Within the past year, a high profile dispute involving a celebrity put a spotlight on the value, including risk mitigation, of considering diversity in ADR.

The ADR community has responded positively to this increased focus, as more and more providers are working to improve the diversity of their slate of arbitrators and mediators. While progress has been made, much more needs to be done across the industry and throughout the legal profession - as well as in the corporate world.

ADR Can Play a Crucial Role in CSR

Many companies are placing a greater emphasis on Corporate Social Responsibility (CSR) out of a desire to become better corporate citizens and to meet the

demands of increasingly vocal customers. These CSR efforts are reaching out across the supply chain to include vendors, suppliers and all manner of business partners. The diversity of outside counsel is certainly an area where corporations are looking to advance their CSR objectives.

ADR represents an opportunity to take that focus one step further. By utilizing a diverse list of mediators and arbitrators, law firms have an opportunity to demonstrate their commitment to their clients' CSR principles, which in turn strengthens the value they bring to the relationship. Another invaluable tool is an inclusion rider. Last year, JAMS introduced its inclusion rider, which encourages parties to consider diversity when choosing an arbitrator or panel of arbitrators. It contains language that parties can include in their arbitration contract that will request administering institutions to include a fair representation of diverse candidates on the list of potential arbitrator appointees.

Law firms can recommend an inclusion rider to corporate clients to further bolster diversity and inclusion programs as part of a larger CSR strategy. “It’s important to note that the lawyers who are drafting arbitration contracts, as well as the litigators and clients, all play a role in who ultimately gets selected for cases,” explained Kimberly Taylor, Senior Vice President, Chief Legal and Operating Officer for JAMS. “These are the folks who have an opportunity to help ensure diversity in the ADR process. By incorporating an inclusion rider, they can further the important goal of having a diverse slate of arbitrators that fully reflect the client community.”

The Time to Do More is Now

JAMS takes pride in being one of the first ADR providers to take the Equal Representation in Arbitration Pledge. This pledge seeks to increase the number of women appointed as arbitrators, with the ultimate goal of full parity. JAMS sponsors and partners with diverse national bar associations such as the National LGBT Bar Association, National Asian Pacific American Bar Association, National Bar Association, Hispanic National Bar Association and National Association of Women Lawyers, as well as

numerous diverse local bar associations. We have an active, cross-functional Diversity Committee who meets regularly to discuss goals, implement strategies that accelerate progress and increase diversity and inclusion across JAMS and throughout the ADR industry.

Nearly everyone understands the importance of diversity in the legal industry, but it is only through collective actions that real change will occur. It's time for all stakeholders to take bold steps to make diversity and inclusion a priority. We know we can do more and we are continuing to focus on this important area of our business. We encourage the rest of the legal community to do the same. But real change needs to be systemic.

"We've made progress on the road toward inclusivity and diversity in the legal profession, but we still have

quite a ways to go," concluded Chris Poole, president and CEO for JAMS. "Cultural change is never easy, but so long as all stakeholders in the process embrace the importance of diversity in the industry and work together to encourage qualified individuals from the judiciary and law firms to enter into the ADR field where they can then be selected as a neutral, I think we can achieve our objectives."

Clearly, greater diversity in the legal profession is needed. This is not a strictly altruistic call to action. Diversity is also good for business. It helps to advance firms' corporate goals, foster a positive working environment, ensure diverse perspectives.

<https://www.jamsadr.com/blog/2019/making-the-case-for-greater-diversity-in-adr>

"First I want it to be clear, that the good people of Athens elected me to be a fair and neutral arbiter in handling disputes between our citizens. And while the circumstances leading up to this dispute between the parties here today are well known amongst myself and the populace, I want to assure both parties of my complete neutrality. This means, at no time will I join one party to the disadvantage of the other."

— Ancient Greek Mediator



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

Parties and Counsel: Make Commercial Arbitration More Efficient, Less Expensive



The American Arbitration Association® (AAA®) has released the results of its recent survey of arbitrator evaluations of parties and their attorneys. Interestingly, the arbitrators made some of the same observations as parties who respond to the AAA's client surveys on cost and efficiency, including the importance of the choices made by counsel regarding the arbitration process. Moreover, the arbitrators highlighted the important role that counsel plays in achieving or frustrating these goals.

The Arbitrator Survey

The AAA surveys its arbitrators when they issue an award in a commercial arbitration. Questions include such things as the arbitration clause, discovery, motion practice, the amount of time spent in different phases of the case, the number of postponements, the arbitrator's impressions about how important speed and economy were to the parties and their counsel, and what factors contributed to increased time and cost in the arbitration.

The total number of arbitrator surveys returned between February 1, 2015 and January 6, 2018 was 422. For those cases, the median claim amount was \$2,478,540.¹

What Factors Impact Time and Costs in Commercial Arbitration?

It is probably no surprise that arbitrators cited discovery practice (39% of survey responses) and motions (36% of responses) as the main factors that increased the time and cost of the arbitrations.

Arbitrators cited "difficult/uncooperative parties" (27% of responses) as the third factor. However, uncooperative parties combined with "difficult/uncooperative" counsel (15.2% of responses) jumps to the forefront with an overall 42% of survey responses citing lack of cooperation as the main factor that increased the arbitration's time and cost. Many arbitrators commented

about "difficult counsel," "combative parties," and "antagonism between the parties."

The fourth factor increasing the time and costs of arbitrations was postponements (20% of responses).

The most frequent suggestions that arbitrators made to improve the efficiency of arbitrations were that the parties cooperate in discovery, scheduling, and related matters and limit the amount of discovery they take.

Dispositive Motions

Most arbitration clauses in the cases surveyed did not address motion practice, including dispositive motions. Interestingly, in the few situations where the agreements did address motions, the overwhelming majority of agreements permitted motions (97%), with only a fifth (about 20%) placing restrictions on them.

AAA Commercial Rule R-33 permits dispositive motions, but only if the moving party first demonstrates that the motion is likely to succeed and dispose of or narrow the issues in the case. As a practical matter, this Rule requires arbitrators to screen dispositive motions before allowing them to be fully briefed to avoid unproductive expense and delay. This Rule notwithstanding, however, the surveyed arbitrators reported that parties filed dispositive motions in about 50% of the arbitrations. The survey did not ask the arbitrators how they handled these dispositive motions or what percentage they granted in full or in part.

Discovery and Discovery Motions

Arbitrators reported that most of the arbitration agreements did not address discovery and therefore did not impose a time limit on or restrict the type of discovery allowed. Still, about 25% of the arbitration clauses limited discovery to the exchange of documents. In the other direction, a small but significant percentage of the arbitration clauses (just under 10%) provided for the same kind and extent of discovery as was available in court litigation.

1. To avoid duplication, only one survey response was counted for each arbitration. Thus, if there were a panel of three arbitrators, the AAA entered only the Chair's survey response. If the Chair did not respond, then the AAA tabulated the first response submitted by a wing arbitrator.

Arbitrators reported that, even when the arbitration clause limited discovery, in the majority of instances (57%), the parties in the arbitration agreed to expand discovery beyond those limitations.

In nearly all cases, discovery involved the exchange of documents. The survey showed that depositions also were common and took place in nearly two-thirds of the reported arbitrations (66%). Discovery frequently included the deposition of either experts or non-parties (40% of cases). Interrogatories were relatively unpopular, being used in less than 20% of the reported cases. Discovery disputes happened often, however, with arbitrators ruling on discovery disagreements (whether brought by written motion or orally) in about 70% of the cases. Arbitrators commented on discovery's negative impact on speed and cost: "extensive ESI disputes," "management issues," and "voluminous document requests" all added to the arbitration's time and expense. On the positive side, arbitrators included as best practices "streamlining of discovery" and resolving discovery disputes "without the necessity of motions."

Even with few clause limitations on discovery, discovery generally was completed in a timely manner in a majority of the surveyed cases. Arbitrators reported that discovery concluded in less than six months in about 60% of their cases, took between six and 11 months in about 30%, and took more than one year in only about 10%.

Suggestions For A More Efficient, Less Expensive Commercial Arbitration

What can you, as outside counsel or a potential party to a commercial arbitration, do to make it a more efficient and less expensive process? The arbitrator survey results recommend two different sets of actions: (1) focus on the arbitration agreement pre-dispute and (2) focus on the process once the arbitration is filed.

The Arbitration Agreement

Set controls

An advantage of arbitration is that it allows the business client considerable control over the process, including how much discovery there will be, what motions will be entertained, the length of the hearing, and the time frame in which the dispute will be resolved. One way parties can exercise this control is by directly addressing such matters in their arbitration

agreement. Accordingly, counsel should pay attention to the terms in the arbitration agreement during the drafting process.

Specify arbitrator qualifications

One of the main benefits of arbitration is that you can select your arbitrator, and you can require your arbitrator to have certain qualifications. If that is important, you should include those qualifications in your agreement, being careful not to be so specific that you unduly narrow the pool of potential arbitrator candidates.

Provide for arbitral organization and rules

To avoid potential disagreements and to provide a structure for the entire arbitration process, your arbitration agreement also should provide for administration by a recognized arbitration provider and a specific set of arbitration rules. You should review those rules beforehand to ensure they are suitable for your industry and the kind of disputes that are likely to arise under your agreement. For example, the AAA has different sets of rules for commercial cases, large complex commercial cases, construction cases, and employment cases, to name just a few.

Once you select the arbitration rules that will apply, you will be in a better position to decide whether those rules satisfy any concerns you have about making the arbitration efficient. For example, the AAA Commercial Rules provide that, when a case involves claims of less than \$1,000,000, one arbitrator will decide the case unless the parties agree otherwise. Cases above that claim amount are decided by a three-arbitrator panel. In your arbitration agreement, you can change that threshold; for example, you can choose to have three arbitrators only when the case involves claims exceeding \$2,000,000 or \$3,000,000. Having a single arbitrator can save the parties significant arbitrator compensation and result in the arbitrator's deciding motions more quickly (without the need to confer with panel members), and it usually enables the parties to conclude the evidentiary hearing sooner. AAA statistics show that commercial cases with three-arbitrator panels take, on average, at least three to four months longer to resolve than a single-arbitrator case and cost almost four times as much in arbitrator compensation.²

In particular, the parties should consider what the applicable rules say about discovery and motion

2. Of course, parties may choose three-arbitrator panels in more complex cases, and the complexity of the case may explain why those cases take longer and cost more in arbitrator compensation.

practice, the two biggest contributors to an arbitration's time and expense. Under the AAA Commercial Rules, arbitrators have broad discretion to decide how much discovery to permit and whether to entertain a particular dispositive motion. If you want to ensure a leaner process, your arbitration agreement might provide that discovery will be limited to the exchange of documents, or that no more than a certain number of, or hours of, depositions may be taken, or that dispositive motions will not be permitted. Of course, these limitations should not be chosen lightly, but, just as for the number of arbitrators, you can build a threshold into your arbitration agreement so that the amount of discovery increases as monetary claim amount increases. Ideally, your arbitration clause should anticipate the kind of disputes that may arise and what discovery will be needed to properly address them.

A simpler idea is just to include a sentence stating that the parties want an arbitration run as efficiently as is reasonably possible. Although that is not a very specific statement, it is something you can point out to the arbitrator to support a request for limiting discovery or motion practice. Arbitral authority comes from the parties' contract, and such a statement, albeit general, is likely to have an impact on the arbitrator's management of the case.

The arbitrator survey results show that few businesses address arbitration procedures to any significant degree in their arbitration agreements. While this is not necessarily a problem, parties can use the arbitration agreement to more properly reflect and require the process they want.

After An Arbitration Has Begun

In an existing arbitration, it can be harder to reach agreement on issues such as limiting discovery and motion practice because the parties often have very different interests and views about the discovery needs and merits of the case. But agreements are still possible and should be explored, with the parties' picking their battles carefully. Keep in mind that "arbitration is a group enterprise and the arbitrator cannot achieve these ends [speed, economy and a just resolution] without the cooperation of the parties and their counsel." See "Muscular Arbitration and Arbitrators Self-Management Can Make Arbitration Faster and More Economical," Mitchell Marinello and Robert Matlin, *Dispute Resolution Journal*, vol. 67, no. 4, at 70 (June 2013) ("Muscular Arbitration").

As the survey results show, cooperation—between the parties and between counsel—substantially influences

the overall efficiency of the arbitration process. Counsel's maintaining a good professional relationship with the other side is important and likely to make the entire process go more smoothly. Many arbitrators noted that counsel's cooperative attitudes were the type of best practices that make arbitration efficient and cost effective. Arbitrators commented that "attorneys worked together to make things better," "counsel cooperated on discovery and schedules," and "counsel were generally cooperative with each other, working out disputes...without the Panel's assistance." Indeed, there was a positive correlation between the arbitrator's view of a case's efficiency and the arbitrator's perception of the importance the parties and their counsel placed on having an efficient and cost-effective arbitration process.

Prior to the preliminary hearing with the arbitrator, the parties should discuss the discovery needs of the case and try to agree on things such as the exchange of documents, the number of and time allowed for depositions (if any), the identity of witnesses, how long the arbitration hearing is expected to take, when it should be scheduled, and where it should take place. Compromise is important, and the arbitrator will note it. Not agreeing on discovery and the case schedule is usually counter-productive, as it takes the decision-making out of the parties' hands and puts it into the arbitrator's, with the arbitrator probably less informed about the case than counsel. Ask yourself whether you and your client are likely to be better served by a compromise with your adversary or the decision of an arbitrator faced with opposing positions. Moreover, in AAA cases, the parties are invited to participate in the preliminary hearing itself, allowing them to hear directly from the arbitrator, to be engaged in the process, and to oversee outside counsel. After the preliminary hearing, once the scheduling order is in place, the parties and counsel should stick to the schedule with as little modification as possible, particularly with respect to the hearing dates, to keep the case efficient and on track.

Remember: the arbitrator's goal is to decide the case on the merits; do not bog the arbitrator down with disputes on matters of limited significance to that fundamental goal. Indeed, arbitrators commented that some of the best practices they saw included "allowing the parties to agree on most issues."

Finally, parties should retain counsel familiar with the arbitration process, as they may better appreciate the cooperation the arbitrators will expect and how to protect the efficiencies that arbitration brings. One

arbitrator specifically noted, “The lawyers were excellent so that contributed the most” to the efficient process. Remember that arbitration is not litigation, and “importing litigation procedures into arbitration is one of the main causes of the increased cost and time involved in arbitration.” (Muscular Arbitration, at 69-70.) This is reflected in one arbitrator’s comment that “the best practices used were communication and discussions between counsel that limited discovery and other disputes. Both sides were well prepared for the hearings and efficient in their presentations, allowing us to use eight instead of the anticipated 10 or more days.” As noted previously, preparation is key, with arbitrators’ commenting that best practices included each party’s being “well prepared for the arbitration

hearing.” Finally, as one arbitrator put it, “Both sets of counsel were highly professional and had a great deal to do [with] the efficient handling of the case.”

Conclusion

The results of the arbitrator survey show the impact that parties and their counsel can have on the cost and efficiency of commercial arbitrations. Where counsel and their clients are cooperative and knowledgeable about the arbitration process, they can work together and with the arbitrator to make commercial arbitration more cost effective and efficient than litigation.

(<https://go.adr.org/arbitrator-survey-downloads.html?aliId=eyJpIjoiWkFScHNSdnhoSzVhQXhpNCIsInQiOiJneExWeXh4TTFRQmpqUlhNT29YaEdnPT0ifQ%253D%253D>)

“Every conflict we face in life is rich with positive and negative potential. It can be a source of inspiration, enlightenment, learning, transformation, and growth – or rage, fear, shame, entrapment and resistance. The choice is not up to our opponents, but to us and our willingness to face and work through them.”

— Kenneth Cloke

Interviews

We have been publishing interviews of leaders, opinion makers and experts from different sectors including the legal fraternity, financial institutions, corporate houses and the academic arena on their perception and understanding of Alternative Dispute Resolution (ADR) based on a number of questions put forward by BIAC. We believe that this will generate more awareness about ADR in the country and the importance of embedding it to assist our judicial system with a view to reducing the backlog of cases pending in the courts and the time taken to resolve commercial disputes. This has become even more important with Bangladesh trying to achieve the status of a middle income country. It is our pleasure to publish interview of Barrister Md. Monzur Rabbi, Advocate, Supreme Court of Bangladesh and Head of Chambers, Rahman & Rabbi Legal, a partner of BIAC in the current issue of the BIAC Quarterly Bulletin (BQB), the country's only dedicated knowledge publication on ADR.

**Md. Monzur Rabbi**

*Fulbright Fellow, International Arbitration, Miami, USA
Barrister-at-Law (Lincoln's Inn), Advocate, Supreme Court of Bangladesh
Head of Chambers*



Rahman & Rabbi Legal

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?

MMR: If you consider our present legal practice, then you will see lots of cases are pending before the courts. For this reason, it takes plenty of time to dispose a suit through the present judicial system. Unfortunately, parties who are now involved in this eccentric process of judicial system are completely frustrated for delay and lengthy proceedings. On the other hand, ADR process is advantageous and effective process than court system in the sense that it helps to save time of the parties and also reduces the cost and burden of the court proceedings. Moreover, the parties are at win-win position in the process of ADR and relation between the parties does not get worse. Hence, I believe that this global best practice has a future in our country.

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

MMR: I believe that, the primary obstacle we are facing now in our country is the lawyers' attitude towards ADR. Lawyers believe that, in case the dispute between the parties is resolved through ADR, they

shall lose the opportunity to earn more money through congested court proceedings. Specific amount of money which lawyers are usually getting from the ADR process may not meet the demand of them. Consequently, it is also true that, the mediator or arbitrator may not know the applicable and related laws or having lack of adequate knowledge for which the parties sometimes cannot put their faith upon the mediator or arbitrator. Another issue which is common in Bangladesh, most of the parties thinks that, mediator or arbitrator could be biased and could provide the award in unfair manner.

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?

MMR: I believe, one of the motives why parties especially corporates are interested in ADR, is the confidentiality. Generally it is the norm that, individuals who are related with an ADR process always maintain confidentiality of the subject matter of the proceedings. This is the reason why, in the ADR proceedings, parties could deliver any reasonable submission without diffidence to dissolve any disputed matter. However, the court proceedings may not always maintain confidentiality; therefore, corporate parties especially suffer from reputation risk which may

damage their good will in the business world. In the corporate world, reputation adds value in the market and hampering that reputation through a dispute is completely undesirable for corporate parties.

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?

MMR: Generally, I am in favour of insertion of ADR clause in all commercial contracts. However, it should be directory to put an ADR clause in the commercial contracts so that whenever a dispute arises, parties can attempt for an amicable settlement first. Commercial contracts are very sensitive and crucial in nature because of the involvement of financial investments. If any dispute is solved through the judgment of the court, then only one party will win the suit, however, if the problem is settled in ADR then both parties will be at win-win position. Moreover, ADR reduces the chances of hostility between parties and in case the dispute is settled at the first step, then it saves the parties and court from huge consummation of time.

BQB: In Bangladesh it is often said that the law practitioners see ADR as either as an optional additional tool for dispute resolution or as an unnecessary diversion from the task adding another layer to the complexity. As a practitioner, what is your opinion?

MMR: As a legal practitioner, my opinion is that, ADR process is an optional additional tool for dispute resolution. It is not another layer of proceeding or unnecessary diversion because ADR helps to remove undue number of phases of court proceedings in a cost effective manner. However, I think, it has become a fantasy now to determine a dispute through court proceedings in a rapid manner. The proceedings of courts are becoming so lengthy and time consuming for having plenty of suits that till reaching into the conclusion of litigation, the sole purpose of the litigation may be frustrated. This is the primary reason, parties related to the dispute are indifferent to come in purview of the court proceedings. Hence they tend to choose ADR to conduct the dispute resolution process beyond the court proceedings.

“Prepare by knowing your walk away conditions and by building the number of variables you can work with during the negotiation, you need to have a walk away, a combination of price, terms and deliverables that represents the least you will accept. Without one, you have no negotiating road map.”

— Keiser

SUGGESTED DISPUTE RESOLUTION CLAUSES OF BIAC

Med-Arb Clause

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

Arbitration Clause

“All disputes arising out of or in connection with this contract shall be finally settled under the Rules of Arbitration of the Bangladesh International Arbitration Centre by one or more arbitrators appointed in accordance with the said Rules. Unless otherwise agreed by the parties, the laws of Bangladesh shall apply and the seat of Arbitration shall be Dhaka.”

Mediation Clause

“Any dispute or difference arising out of or in connection with this contract shall be referred to the Bangladesh International Arbitration Centre (BIAC) for settlement through Mediation in accordance with BIAC Mediation Rules, before such dispute is submitted to Court or Arbitration.”

YOU CAN AVAIL BIAC'S ASSISTANCE BY:

- Registering cases under BIAC Arbitration Rules 2019 and BIAC Mediation Rules 2019
- Using BIAC facilities to conduct any ADR case which is not under BIAC Rules
- Pursuing BIAC's sector based training on arbitration, mediation and negotiation
- Signing of Memorandum of Understanding/ Co-operation Agreement
- Availing Advisory Services on ADR

How can adding BIAC Clause in your contract protect you :

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

To protect you from future risks you should include BIAC Clause in:

- Procurement contract
- Sale contract
- Loan Agreement
- Lease Agreement
- Joint-Venture Agreement
- Employment Agreement
- Any other contracts.

Become a
Member



Benefits Include

1

- Inclusion and access to **BIAC Members Directory**
- Inclusion in **BIAC Directory of Mediators/Arbitrators**
- An **online profile** in the BIAC Website
- Invitation to exclusive **networking events/talks from experts**
- **Publish articles** in BIAC Quarterly Bulletin and any special publication
- **Priority registration** to BIAC organised events and courses
- **Complimentary Access** to BIAC Library
- **Discounts** on use of BIAC Facilities, Administrative Costs and selected courses
- Complimentary subscription to BIAC Publications

Membership Criteria

Proof of **Experience** in ADR practice; or
Completed an **introductory/ certificate course** on
Arbitration or Mediation or Negotiation; or
Completed a recognized **equivalent course**; or
Registered for **BIAC's training course**, or
Interested to be connected to **BIAC's ADR community**.

2

Application Process

3

- Applicants must submit an application form either **on-line** / by **email** to info@biac.org.bd and biac.org.bd@gmail.com / **hard copy** or / **fax**.
- All applicants must submit a copy of a **valid ID card** e.g. National ID or Passport (for students: valid student ID)
- Applications are reviewed and subject to **approval by the BIAC Management**.
- Memberships are **annual**, and renewal is on the enrollment date.

Subscription Fee

For National Members:

Admission Fee: BDT 5000 (including first year subscription)
Annual Subscription: BDT 2500

For National Students:

Admission Fee: BDT 2000 (including first year subscription)
Annual Subscription: BDT 1000

For International Members:

Admission Fee: USD 200 (including first year subscription)
Annual Subscription: USD 100

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BIAC Membership Application Form

Please complete the application form and return it with the appropriate payment to:
BIAC, Unique Heights (13th Floor), 117, Kazi Nazrul Islam Avenue, Dhaka-1217, Bangladesh.
For further enquiries please contact BIAC: Tell: +8802-55138092-93; Fax: +8802-55138045;
Cell No: 01314-447490; E-mail: info@biac.org.bd, biac.org.bd@gmail.com

Member's Information:

Title: (Mr. / Dr. / Mrs. / Ms.)

*Full Name (Block letter as in Passport):

*Passport no: * Date of issue: * Expiry date:

* DOB: Educational Status:

Profession:

Company: Position:

Phone: Office: Res: Fax:

*Mobile: * E-mail:

☐ Please attach a copy of your National ID card or Passport with this form.

Payment Methods: We kindly ask that you incur all related fees and send confirmation of the transfer to info@biac.org.bd, biac.org.bd@gmail.com

☐ Cash

☐ Cheque

☐ Pay Order

☐ Bkash 01610006989

☐ Bank Transfer

Account details:

Account Name: Bangladesh International Arbitration Centre (Training)

Bank Name: Mutual Trust Bank Ltd.

Branch: Panthapath

Account Number: 0320001786

Bank Code: 003

SWIFT Code: MTB BDDH PPB

Bank Address: 69/1 Panthapath, Suvastu Tower, Dhaka 1205

Personal Data:

1. Information provided in this application form will be used solely for the purpose of applying to be a member of BIAC, & in this connection the data herein will be dealt with by the BIAC staff and or by the BIAC Board.
2. After the application for membership of BIAC has been duly processed, the application papers of the candidate will be retained in a file established by BIAC for each applicant. Such information will be retained by BIAC for as long as it deems necessary or useful.
3. Applicant has the right to access to, and the correction of, his or her personal data as retained by BIAC. Applicants wishing to access or make corrections to their data should submit written requests to the Chief Executive Officer of BIAC.

Declaration:

1. I authorize BIAC, its staff, employees and/or members of the BIAC Board to deal with, utilize and/or assess the data submitted by me as may be required in connection with my application for membership of the BIAC.
2. I understand that my data will become part of BIAC's files and may be used for all purposes deemed necessary or useful by BIAC.
3. I declare that the information given in support of this application is accurate and complete. I understand that any misrepresentation will disqualify my application and may lead to revocation of my application for the BIAC Membership should my application be successful.

Please sign below to confirm your agreement to the disclosure of the information contained in the application and your confirmation of its accuracy.

Signature: _____ Name (in print): _____ Date: _____

EVENTS NEWS

BIAC's Upcoming Events

Organization	Events	Date	Venue
Bangladesh International Arbitration Centre (BIAC)	Meeting with trainees of 2019	3 rd week of January	BIAC
Bangladesh International Arbitration Centre (BIAC)	Meeting with Chief Justice, former Chief Justices, Justices, senior Government officials, bankers, lawyers	4 th week of January	BIAC
Bangladesh International Arbitration Centre (BIAC)	Training for officers of Legislative and Parliamentary Affairs Division	Last week of January	BIAC
Bangladesh International Arbitration Centre (BIAC) and BMCPL, India	Training on Credit Risk Management	7-11 February	Gandhinagar, India
Bangladesh International Arbitration Centre (BIAC)	Two day long training on ADR: Negotiation and Mediation	2 nd week of February	BIAC
Bangladesh International Arbitration Centre (BIAC)	Seminar with legal community	20 February	BIAC
Thailand Arbitration Center (THAC)	Advanced Mediation Training Course	12-13 March	THAC Bangkok, Thailand
Bangladesh International Arbitration Centre (BIAC) and IUB/NSU/BRACU/NUB/EWU/DU/BUET/JU	Roundtable with academicians	Last week of March	BIAC

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!*

Turning these ships into skyscrapers puts thousands of lives at risk.

Not good enough.

Over 90% of a ship can be recycled, making these vessels a valuable source of scrap steel for construction. But dismantling ships is dirty, dangerous work. Most banks would just walk away. But we're not most banks. See how we're making industries better from within at sc.com/hereforgood

**Because we're not here for good enough.
We're Standard Chartered, and we're Here for good.**

Here for good

