

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 12 eminent jurists among them 4 are former Chief Justices of Bangladesh. 48 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 307 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 10 ADR courses, 30 arbitration training courses, 21 mediation training courses, 10 negotiation training courses, 1 Risk Management training Course and trained 1661 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 133 workshop/seminar/webinar/dialogues as of December 2020. BIAC has received recognition by signing cooperation agreements with 18 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), The Philippine Institute of Arbitrators (PIArb) and Lawback, Chinese International Legal Service Platform.

Moreover, 28 leading corporate companies, banks, real estate companies, NGOs, Insurance companies, universities, law firms and financial institutions have signed Memoranda 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), Eastern Bank Limited (EBL), Islami

## STATISTICS SINCE INCEPTION



## MISSION

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

## VISION

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

Bank 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., One Bank Ltd., Accord Chambers, Mahbub & Company and Dhaka Chamber of Commerce & Industry.



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

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**Nihad Kabir**



**Shams Mahmud**

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**Mahbuba Rahman Runa**

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Manager (Accounts & Finance)

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Counsel

**Syed Shahidul Alam**

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**Shahida Pervin**

Administrative Officer

### Editor

M A Akmal Hossain Azad

### Editorial Associates

Mahbuba Rahman Runa

Rubaiya Ehsan Karishma

## From the Editor

Bangladesh International Arbitration Centre (BIAC) has just passed the 9th anniversary celebration event in the last week of December 2020 with renewed emphasis in recent years on the Alternative Dispute Resolution (ADR) programmes institutionalised in the country as a means to avoid formal litigation and to ensure the most fundamental right of Access to Justice for all in an easier way.

BIAC with its own Rules of Arbitration and Mediation has been providing over the years, a neutral, efficient and reliable dispute resolution service in this emerging hub of South Asia's industrial and commercial activity. With the rapid growth of the Bangladesh economy and its increasing exposure to the globalised world, business relationships have become more structured and formalised.

As we have celebrated nine years of operation, we in BIAC, cherish to integrate our activities with all Government initiatives in the legislative and financial arena to attract more Foreign Direct Investment in the country and help boost our economy towards graduating Bangladesh to a developing country by 2024.

This last edition in 2020 of the BIAC Quarterly Bulletin features articles and interviews on perception of ADR and related subjects as well as news on activities of BIAC and developments in other ADR institutions around the globe.

We wish our valued readers, patrons, partners and well wishers good health and safety during this hard time of COVID-19 pandemic, which has already cost over 1.7 million human lives across the world. We are optimistic about steering through this catastrophe successfully with the spirit of the war of our national independence as we celebrate its golden jubilee in 2021.

## BIAC Quarterly Bulletin

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## BIAC News

### BIAC Chairman Mr. Mahbubur Rahman on elite global list of Harvard Business School

26 October 2020

Mr. Mahbubur Rahman, Chairman of BIAC and President of International Chamber of Commerce, Bangladesh (ICC-B), is among the 150 high-impact leaders in business and social enterprise from Africa, Asia, Latin America and the Middle East, who have been interviewed under the "Creating Emerging Market Project (CEMP)" at Harvard Business School (HBS), USA recently.

The interviews address pivotal moments of transition throughout these regions with emphasis on entrepreneurship, innovation, family business and globalisation of firms and brands, says HBS while explaining CEMP, which is viewed as a unique teaching and research resource in business leadership. Some of the interviewees include India-based global firms like Bajaj, Cipla, Tata, Godrej, Oberoi and Tata; regional multinationals such as Dubai-based Aramax and Chalhoub Group, and Saudi-based Jarir; multinational Latin American companies like Bunge and Cencosud; and African firms, including Nando's and the former Celtel (now part of Bharti Airtel).

Mr. Rahman, during the interview, reflected on his family background and childhood in Cumilla, and how, in 1962, he started his first business, Eastern Trading Company (now ETBL Holdings), located in Chattogram. He said that his company primarily focussed on importing consumer goods and representing foreign companies which were selling their products in the then East Pakistan. He dwelt on the early years of his business, which he started in a small cottage built by his father, and worked by himself with no employees until 1966. By the late 1960s, ETBL Holdings had become the sole distributor of coconut oil for Sri Lanka and the then East Pakistan. Mr. Mahbubur Rahman also threw light on the difficulties that businesspeople used to face when Bangladesh was part of Pakistan and

during the post-liberation days. He also explained how he had strongly lobbied for establishing banks, insurance companies and financial institutions in the private sector in the early 1980s.



Mr. Rahman, who is also Chairperson of The Financial Express's Board of Directors, the country's first English financial daily, explained his entry into newspaper publication. He gave details of the newspaper's start-up process, how he was able to raise capital, how the company gained an edge over other newspapers, and how it became the second leading English language daily newspaper and even became profitable.

When asked to comment on the level of corruption in Bangladesh, Mr. Rahman traced the root of the vice in the British colonial rule and a resulting lack of transparency, archaic laws, and political cronyism.

Turning to his engagement with the ICC-B, Mr. Rahman described how ICC-B differs from other chambers of commerce globally. He presented a few examples of banking and financial sector reforms that he has done with the organisation, including encouraging an opening to private sector activity.

He concluded his interview by discussing how Bangladesh reacted to the 2008 financial crisis and issues of succession. Mr. Mahbubur Rahman felt that the biggest priority and opportunity for Bangladesh for the private sector is to engage in poverty alleviation and explore solutions for climate change.

<https://www.thedailystar.net/city/news/iccb-president-mahbubur-rahman-elite-global-list-1984229>

### 32<sup>nd</sup> Meeting of the BIAC Board held

21 December 2020

The 32<sup>nd</sup> Meeting of the BIAC Board was held online via Zoom on 21 December 2020 at 12:00 p.m. The meeting was presided over by Chairman, BIAC Mr. Mahbubur Rahman and was attended by Board Members Ms. Rokia Afzal Rahman, Ms. Nihad Kabir

and Mr. Shams Mahmud. Minutes of the last meeting were adopted unanimously. A number of decisions were taken in the meeting including expansion of BIAC's Panel of Arbitrators. Mr. Justice Mohammad Abdur Rashid, former Judge of the Supreme Court of



Bangladesh and Member, Permanent Court of Arbitration, the Hague, the Netherlands was inducted as an Arbitrator in the Panel. BIAC Board Approved the Annual Audit and Accounts Report for the year 2019. Mr. Muhammad A. Rume Ali, Chief Executive Officer of BIAC conducted the meeting; Ms. Mahbuba Rahman Runa, General Manager, BIAC and Secretary to the Board was also present.

### Prominent lawyer and former Attorney General Barrister Rafique Ul Huq passes away

24 October 2020



Barrister Rafique Ul Huq, former Attorney General of Bangladesh and a prominent lawyer of the country breathed his last at Ad-din Medical College Hospital, Dhaka on 24 October 2020 at the age of 85. He was the Chairman of Ad-din

Foundation. Born in 1935 in Kolkata, Barrister Huq was enrolled as a lawyer in Bangladesh. In 1990, he served as the top law officer of the country. He is known for his philanthropic activities. He donated an ambulance and extended logistic supports to diabetic and other hospitals.

### Dhaka University wins the BIAC Inter University Arbitration Contest 2020

17 October 2020

As a part of first ever "BIAC Inter University Arbitration Contest 2020" the Final of the Contest was held through online platform on 17 October 2020. BIAC hosted this Arbitration Contest to provide students a practical knowledge of ADR and to give them the opportunity to arbitrate a real case acting as Claimant and Respondent in a real-life scenario. Speaking on the occasion Mr. Muhammad A. (Rume) Ali, Chief Executive officer of BIAC said that we are trying to incorporate ADR in the syllabus of legal education, preferably at graduate studies. To this end, he said, the matter has been taken up by BIAC with University Faculties, University Grants Commission and Bangladesh Bar Council. BIAC is offering student membership so that students can be in touch and know what is going on in the world of ADR which will be useful for students in the future. He also encouraged students to join BIAC's trainings, particularly Accredited Training Programmes so that initially they can be on BIAC's Mediators' list and later on the Arbitrators' list. He declared that from now on BIAC will organise Arbitration and Mediation contest every year. In the Final event of the Contest, Ms. Mahbuba Rahman Runa, General Manager of BIAC and



Coordinator of the Contest welcomed all team members and Chairman and Members of the Tribunal.

In the Final Session Barrister Ajmalul Hossain QC, Senior Advocate of the Supreme Court of Bangladesh was the Tribunal Chairman. Along with him there were Barrister Sameer Sattar, Advocate, Supreme Court of Bangladesh and Barrister Margub Kabir, Advocate, Supreme Court of Bangladesh, as Members of the Tribunal. In the Finals of the Contest, the University of Dhaka acted as the Claimant team and the Bhuiyan Academy as the Respondent team. They competed against each other and the University of Dhaka won the Contest.

### Application of ADR mechanism can help resolve disputes in Real Estate and Construction Sectors, experts opine in a webinar organised by BIAC and SIAC

21 October 2020

A webinar held on virtual platform on 21 October 2020 on "Challenges of Application of Institutional ADR in Real Estate and Construction Disputes in

Bangladesh" was organised jointly by Bangladesh International Arbitration Centre (BIAC) and its partner organisation Singapore International

Arbitration Centre (SIAC). SIAC is an international arbitration organisation based in Singapore, which administers arbitration under its own Rules of Arbitration and the UNCITRAL Arbitration Rules.

Participating in the webinar experts stressed on the advantages of Alternative Dispute Resolution (ADR) as a dispute resolution tool in the real estate and construction sectors in Bangladesh. The webinar focussed on how ADR methods can, at this difficult time in the wake of COVID-19 can help resolve commercial disputes in these development sectors in the most pragmatic, expeditious and cost effective manner. Experts viewed the issues of challenges of application of institutional ADR in real estate and construction disputes in Bangladesh with reference to the experiences in Singapore and India.



Addressing the webinar Chief Executive Officer of BIAC Mr. Muhammad A. (Rumee) Ali stressed on the need of facilitating neutral process of dispute resolution and opined that COVID-19 has pointed out the significance of availing institutional ADR. He said that owing to absence of any dispute resolution clause in real estate and construction contracts, parties cannot reach a settlement unless all stakeholders cooperate with one another. He said that costs multiply if disputes cannot be resolved early.

In her welcome address, Ms. Lim Seok Hui, Chief Executive Officer of Singapore International Arbitration Centre (SIAC) said that international arbitration is order of the day to resolve cross border disputes in real estate and construction sectors. In the most neutral, efficient and cost effective manner even during the ongoing crisis of COVID-19, institutional arbitration can take lead over all other tools of dispute resolution, she opined. Ms. Lim gave an account of SIAC's recent achievements in these areas as world's 3rd topmost ADR institution.



Mr. F R Khan, Managing Director, Building technology & ideas ltd spoke on the occasion and emphasised adhering to ADR tools like negotiation, mediation and arbitration before going to court for resolving disputes in real estate entities. He lauded BIAC's excellent facilities for facilitating ADR and working hard to change mindset of stakeholders in this regard. In the power sector, Mr. Khan said that SIAC is a seat of arbitration and we can use BIAC also as a seat for international arbitration.

Business leaders, experts from the legal fraternity, corporate houses, academicians, accredited



Mediators and ADR specialists of high eminence from home and abroad participated in the largely attended webinar through Zoom. The webinar was moderated by Barrister Ali Asif Khan, Advocate, Bangladesh Supreme Court and Partner of Hossain & Khan Associates.



Mr. Tejas Karia, Member, SIAC Court of Arbitration and Partner & Head of Arbitration of Shardul Amarchand Mangaldas & Co. spoke on the occasion and maintained that parties from different jurisdictions do not tend to submit before courts of each other, so ADR is the alternative to resolve development sector disputes.



Taking part in the discussion Mr. Anis A. Khan, Vice President, Metropolitan Chamber of Commerce & Industry, Dhaka who is a former Chairman of the Association of Bankers Bangladesh narrated his experience as a banker to accommodate parties in contracts in real estate and construction sectors. He said that unregistered tripartite agreement leads to disputes. Mediation and arbitration are the most effective means of resolving such disputes for which specialised setup as established by BIAC is highly commendable.



Ms. Shwetha Bidhuri, Head (South Asia) of SIAC viewed the issue from the Indian perspective and gave an insight on institutional ADR in real estate and construction sectors. She opined that multiple parties' interests can be addressed by drafting an appropriate contract, which is possible by an institutional framework and can provide resolution of disputes in a cheaper manner. She emphasised on joint efforts by SIAC and BIAC to identify and help resolve disputes between the adversaries.



Taking part in the deliberations Barrister Narita Navin Khan, Divisional Head, Corporate & Finance Division, Rahman's Chambers, Dhaka explained provisions of ADR in Bangladesh laws and maintained that ignorance of law prompt parties to move to a lengthy court procedure at the first instance. She referred to BIAC's Panel of Arbitrators and requested inclusion of engineers and experts from other development sectors in the Panel for handling of arbitrations at BIAC on a wider range.

Speaking on the occasion Mr. Piyush Prasad, Counsel of SIAC gave an overview of SIAC's Rules of international arbitration with details of SIAC's





priorities and shared his experience of working from Singapore on international arbitration.



Ms. Mahbuba Rahman, General Manager of BIAC said that provision of pre-trial mediation between the parties by the Real Estate & Housing

Association of Bangladesh (REHAB) is not pragmatic and she insisted on Institutional ADR. She also shared her experience of attending programmes by Asian International Arbitration Centre (AIAC), Kuala Lumpur. She mentioned that BIAC has signed an agreement to work together with Kunming International Commercial Arbitration Service Center (KICASC), China for promotion of ADR.

## Trophy distribution of BIAC Inter University Arbitration Contest 2020 held

9 November 2020



BIAC hosted the "BIAC Inter University Arbitration Contest 2020" which was the first ever arbitration contest in the history of Bangladesh and was conducted from digital platform due to Covid-19. This year four leading universities of Bangladesh took part in this Contest, which were: the University of Dhaka, the London College of Legal Studies (LCLS) South, Independent University, Bangladesh (IUB) and Bhuiyan Academy. In the First round, Dhaka University attained its place in the Finals by competing against LCLS (South) and in the second round Bhuiyan Academy won against IUB. In the Finals of the Contest, the University of Dhaka acted as the Claimant team and the Bhuiyan Academy as the Respondent team, they competed against each other and the University of Dhaka won the Contest.

BIAC organised a separate event for Trophy and Certificate Distribution to the Champion and Runner up teams. Mr. Justice Abdus Salam Mamun, a well-known jurist and a former Judge of Supreme Court of Bangladesh was the Chief Guest of the event. Speaking on the occasion he appreciated BIAC's tremendous activities towards fostering ADR in Bangladesh and hoped that its programmes will

continue to support stakeholders' need in using methods of ADR in the country. Speaking on the occasion Mr. Muhammad A. (Rumee) Ali, Chief Executive Officer of BIAC encouraged young learners to be acclimatised to the norms and practices of ADR before stepping in career life in future. He also urged upon the students to become the ambassadors of ADR and help parties to resolve commercial disputes through ADR in a cost effective and time saving manner. He also declared that from now on BIAC will organise Arbitration and Mediation contest every year.

Mr. Ali Mashraf, team leader of Dhaka University shared his experience of this Contest and thanked BIAC for organising such a practical learning programme for students. He added that lots of moot competitions were held for students in the country but yet this is the first contest on Arbitration held in the history of Bangladesh. Dr. Jamila Chowdhury, Barrister Salman Raffi, Dr. Khaled Hamid Chowdhury and Dr. Assaduzzaman Khan spoke on the occasion on behalf of Dhaka University, Bhuiyan Academy, London College of Legal Studies (South) and Independent University Bangladesh respectively.

Mr. Justice Abdus Salam Mamun handed over the Champion and Runner up trophies to the team of Dhaka University and Bhuiyan Academy respectively. Mr. Jalal Uddin Ahmed from Dhaka University received the best participant's trophy. Members of all participating teams received certificates of participation. Mr. M A Akmal Hossain Azad, Director and Ms. Mahbuba Rahman Runa, General Manager of BIAC were present in the event.

## ADR most preferred way to resolve LC related international trade disputes, experts tell virtual webinar hosted by BIAC and DCCI

14 November 2020

A webinar held on virtual platform on 14 November 2020 on "Settlement of Letters of Credit Related International Trade Disputes through ADR" was organised jointly by BIAC and Dhaka Chamber of Commerce & Industry (DCCI), a partner of BIAC and the largest business chamber in Bangladesh.

Participating in the webinar experts stressed specifically on the issues and challenges of resolution of international trade disputes arising out of Letters of Credit (LC) through use of Alternative Dispute Resolution (ADR) methods in Bangladesh, especially in the wake of the spread of COVID-19 pandemic

worldwide, which has created an unprecedented challenge in our economic life. Through the webinar experts explained as to how ADR can help resolve disputes between the parties contracting under LC in international trade deals.



President of DCCI Mr. Shams Mahmud and Managing Director, Shasha Denim Ltd. & Shasha Garments Ltd. in his Welcome Address maintained that to mitigate risk profile of businesses institutional ADR processes including arbitration and mediation can be of immense help especially in LC related international trade disputes. He emphasised the importance of Letters of Credit in businesses in developing national trade competency. He lauded BIAC's role as a trend setter and pioneer in bringing businesses, banks, ADR facilitators and the Government agencies together in order to institutionalise best practices of ADR in Bangladesh.



In his Closing Address Chief Executive Officer of BIAC Mr. Muhammad A. (Rumee) Ali emphasised further cooperation with DCCI to help resolve commercial disputes in both domestic and international trade. He urged upon business leaders, lawyers, mediators and exponents of ADR to come forward and join BIAC's efforts in quick and cost effective dispensation of business disputes for the greater interest of the country. He stressed the need of provision of an ADR clause in commercial contracts and synchronising LC with Pro Forma Invoice so that interests of banks and parties are well protected.



Business leaders, experts from the legal fraternity, corporate houses, academicians, Arbitrators, Mediators and ADR specialists of high eminence from home and abroad participated in the largely attended webinar through Zoom transmission. The webinar was moderated by Barrister Shafayat Ullah, Head of Group Legal Affairs, Mutual Trust Bank Ltd.



Mr. Vincent O'Brien, Director, International Chamber of Commerce-UAE and Member, Executive Board, ICC Banking Commission, Paris joined the webinar as a Panellist. He said that Bangladesh has the highest level of practicing ICC Rules in settling LC related international cross border trade disputes. He opined that to businesses 'time is money' and to save both time and money ADR can be the best practice to resolve such disputes.

Taking part in the discussion Mr. Md. Ahsan-uz Zaman, Managing Director & CEO, Midland Bank



Limited narrated his experience of a banker and emphasised incorporation of ADR clause in both local and international LC. He stressed on the need of creating awareness about ADR and favoured new guidelines for resolution of cross border trade disputes in order to do away with discrepancies in LC.



Barrister Sameer Sattar, Advocate, Supreme Court of Bangladesh and Former Director, DCCI viewed the issue from a lawyer's perspective and shared his experience. He maintained that Letters of Credit are a strict area of interference and discrepancies in LC can be prevented by appropriate draft, not diluting the same with providing an ADR clause therein which can be part of commercial contracts between the parties.



Taking part in the deliberations Mr. Khaled Aziz, Managing Director & Chief Operating Officer, Standard Chartered Bank opined that BIAC can play an important role through its established Rules to help resolve disputes arising out of LC, in addition to the processes followed by various forums in Singapore, Paris and London. He emphasised provision of rational conditions in LC.



Speaking on the occasion Mr. M S Siddiqui, Convenor, DCCI Special Committee on SDG Affairs-2020 gave an insight on existing discrepancies in LC and insisted that there are issues and departures from conditions of commercial contracts which are not suitable to be resolved by the judicial process at the first instance. He advised that ADR can be a way forward to resolve such disputes.



Barrister Shahedul Azam, Advocate, Supreme Court of Bangladesh and Member, DCCI took part in the discussion and underscored the need of adequate and proper drafting of an ADR clause in additional contract outside of the LC which can help prevent trade disputes. He maintained that arbitration is not the only solution to resolve LC related disputes.



Ms. Rubaiya Ehsan Karishma, Counsel, BIAC in her deliberations, shared her experience of handling LC related disputes from inside BIAC and said that contracting parties tend to lodge complaints to BIAC citing discrepancies in their documents and seek BIAC's assistance. She preferred having a smaller platform than the courts to help parties insert ADR clause in their contracts.



## BIAC signs MoU with Mahbub & Company

15 November 2020



Bangladesh International arbitration Centre (BIAC) signed an MoU with Mahbub & Company (M&C) Law Chambers, in a simple ceremony at the BIAC

premises on 15 November 2020 for mutual cooperation in providing Alternative Dispute Resolution (ADR) services. M&C is a leading dispute resolution set and they came forward to be partnering with Bangladesh's premier ADR institution BIAC.

The MoU was signed by the Head of Chambers, M&C Barrister A.M. Mahbub Uddin and Chief Executive Officer of BIAC Mr. Muhammad A. (Rume) Ali on behalf of their respective organisations. Also present on the occasion were Partner Barrister Saqeb Mahbub and Associate Barrister Rifat Rahman from M&C and Director Mr. M A Akmal Hossain Azad, General Manager Ms. Mahbuba Rahman Runa and Counsel Ms. Rubaiya Ehsan Karishma from BIAC.

## Shimanto Bank MD meets CEO of BIAC

15 November 2020

The Managing Director and CEO of Shimanto Bank Limited, Mr. Muklesur Rahman visited BIAC Secretariat on 15 November 2020. CEO of BIAC Mr. Muhammad A. (Rume) Ali, a veteran banker and industry expert, is regarded as a role model by many bankers in the country. He shared his experience at BIAC and pointed out the importance of the Alternative Dispute Resolution (ADR) mechanism in the financial sector especially in terms of risk management and recovery of loans. The ongoing COVID-19 pandemic has brought in much attention to the ADR framework when the country came to a standstill during the unprecedented prolonged public holidays and even when our court operations were totally suspended for quite some time. However, BIAC as a not-for-profit organisation continued activities



online and maintained presence throughout. The teams of Shimanto Bank and BIAC discussed ways of working with cohesion and exchanged words of encouragement given that businesses around the world must work together for sustenance.

## Formal MoU signing between BIAC and Accord Chambers

22 November 2020



Accord Chambers, a dynamic law firm in the country have formally signed a Memorandum of Understanding (MoU) with BIAC. The MoU was signed virtually between the two teams in June 2020 over a video

conference. It was agreed that a formal signing will be held once the situation of COVID-19 improves and accordingly the instruments were signed and exchanged on 22 November 2020 at the BIAC premises.

Mr. Suhan Khan, Managing Partner, Accord Chambers signed on behalf of the Chambers while Mr. Muhammad A. (Rume) Ali, Chief Executive Officer, BIAC signed on behalf of BIAC. Mr. Mamun Chowdhury, Senior Partner of Accord Chambers and Mr. M A Akmal Hossain Azad, Director of BIAC signed as witnesses. A hearty discussion on the significance of using ADR led to the emphasis on reforms needed in the ADR governing legislation and practices, the overall impact on the country's ranking

in Doing Business Global Index of the World Bank under Enforcing Contracts and how the COVID-19 pandemic has highlighted the need of an ADR framework in the country. On behalf of Accord Chambers, Mr. Rafiul Habib, Senior Associate, Ms.

Mushroofa Hossain, Senior Associate and Mr. Farzad Ahmed, Associate; and on behalf of BIAC Ms. Mahbuba Rahman Runa, General Manager, Ms. Rubaiya Ehsan Karishma, Counsel and Syed Shahidul Alam, Commercial Officer, were present.

## The 2<sup>nd</sup> Yunnan Summit on the Rule of Law Forum: Cooperation and Exploration on the Rule of Law held in Kunming, China

24 November 2020



Ms. Mahbuba Rahman Runa, General Manager of BIAC attended as one of the key note speakers of “The 2nd Yunnan Summit on the Rule of Law Forum” sponsored by Yunnan Law Society. The event was organised by Kunming Law Society Administration of Kunming Area (Kunming Economic and Technological Development Zone of China (Yunnan) Pilot Free Trade Zone, Foreign Affairs Office of Kunming Municipal People's Government and Kunming International Commercial Arbitration Service Center and co-organised by Yunnan Lawyers Association and Kunming Lawyers Association which was held in Kunming on 23-24 November 2020. The theme of the Summit was Cooperation and Exploration on the Rule of Law.

The purpose of organising this summit was to improve the legal research and to highlight the role of ADR institutions in the process of promoting the ADR Methods in South Asia and Southeast Asia and their cooperation to work for investors and also continue cooperation within South Asia and Southeast Asia to make friendly business environment. Recently, the Kunming area of China (Yunnan) Pilot Free Trade Zone was set up and merged with the Kunming Economic

Development Zone. They started Investment Trade Service Window of the Kunming Comprehensive Service Center of China (Yunnan) Pilot Free Trade Zone.

Ms. Mahbuba Rahman Runa, General Manager of BIAC could not join the event in person because of COVID 19 Pandemic but she participated at the event by sending recorded video of the Key note speech to the organisers. The recorded video was broadcast on the keynote forum on 24 November, 2020. In her speech, she highlighted the trade relationships between China and Bangladesh and China's recent policy of tariff exemption for Bangladesh. She emphasised the role of BIAC and KICASC in helping investors in speedy disposal of cases through ADR. She informed the audience regarding the ongoing and planned activities of BIAC and KICASC under their cooperation. She also highlighted salient features of agreement signed between BIAC and KICASC on Joint Promotion of the establishment of Sino-Bangladesh International Engineering Dispute Adjudication Expert Board to develop a professional mediation mechanism in the field of engineering in both countries. She added that soon BIAC and KICASC would organise webinar on most relevant and current issues. She hoped that BIAC would play an active role in the legal service window of Kunming Comprehensive Service Centre of Yunnan pilot Free Trade Zone by which Chinese investors will get full institutional support.

5 keynote speakers and 12 experts from home and abroad shared their views including the Consuls of Malaysia, Myanmar, Thailand and Vice Consul of Bangladesh. Mr. Mizanur Rahman, Vice Consul, Consulate General of Bangladesh in Kunming lauded the roles of BIAC and KICASC for their cooperation to resolve disputes between the two countries.

## Institutional ADR on the cards: BIAC signs MoU with DCCI

26 November 2020

BIAC signed a Memorandum of Understanding (MoU) with Dhaka Chamber of Commerce & Industry (DCCI), the largest and most vibrant business chamber in Bangladesh in a simple ceremony at the BIAC Secretariat in Dhaka on 26 November 2020.

Speaking on the occasion Mr. Muhammad A. (Rumee)

Ali, Chief Executive Officer of BIAC explained BIAC's Institutional ADR services under its own Rules of Arbitration and Mediation to help resolve commercial disputes outside courts. He said that ADR is an internationally practiced process of a win-win, compromising gain where disputes are resolved in a





cost effective, confidential and neutral manner. Mr. Ali offered BIAC's facilities to DCCI and its members to resolve disputes arising out between parties from within and outside of the Chamber.

Taking part in the discussion DCCI President Mr. Shams Mahmud said that arbitration and mediation are effective tools of commercial dispute resolution and the members of DCCI will get the benefits of

these tools through institutional support by BIAC, the only registered ADR institution in the country. Mr. Mahmud stressed the need of promoting ADR mechanism among the business community and opined that ADR will help Small and Medium Enterprises to a great extent in quick dispensation of disputes originated from business contracts.

Director, BIAC Mr. M A Akmal Hossain Azad and Acting Secretary General, DCCI Mr. Afsarul Arifeen signed the document in a simple ceremony on behalf of their respective organisations. Senior Vice President of DCCI, Mr. N K A Mobin FCA, FCS also spoke on the occasion and hoped that signing of the MoU between DCCI and BIAC will usher in a new era in the country's business arena in resolving contractual disputes. Joint Secretaries of DCCI Mr. Md. Akramul Haque and Mr. Abul Hasan Fazle Rabbi, PS to President, DCCI Mr. Md. Riaz Uddin Khan; and BIAC General Manager Ms. Mahbuba Rahman Runa and Counsel Ms. Rubaiya Ehsan Karishma were present during the ceremony.

## BIAC Participates at International Commercial and Legal Cooperation Forum

1 December 2020

BIAC was invited to participate at the 2020 International Commercial and Legal Cooperation Forum sponsored by China Council for the Promotion of International Trade (CCPIT) and organised by the Commercial and Legal Service Center of the CCPIT, Changsha Municipal People's Government and Lawback which was held online from 1 to 3 December 2020. The Forum was held with international economy and trade pattern transformation and global value chain restructuring as its focuses.

Participants included delegates from domestic and foreign governments, judiciaries, famous enterprises, legal service agencies and law research agencies to have discussions on "Law and business environment improvement", "Corporate compliance in the new development pattern", "International commercial dispute prevention and resolution" and "Intellectual property protection for enterprises' international operation".

BIAC participated at the sub session on "International commercial dispute prevention and resolution" aired on 1 December 2020 and presented on the topic "Efficient Dispute Resolution for Investors". The session was viewed online by over 24,000 participants



in real time. From Bangladesh only BIAC and Accord Chambers represented by Counsel Ms. Rubaiya Ehsan and Managing Partner Mr. Suhan Khan respectively participated in this Forum. All presentations and video recordings were submitted to the organisers beforehand and were live streamed during 1 to 3 December 2020 from 9 am to 5 pm Beijing Standard Time, entertaining over 300,000 viewers at home and abroad with over 120 guests speaking from more than 50 countries.

<https://forum.lawback.com/en/live?date=2020-12-01&active=1328234179229503490&id=1328234179246280707>

*"O ye who believe! Seek help in steadfastness and prayer. Lo! Allah is with the steadfast."*

— Al Quran, 2:153



## Government officials emphasise creating faster access justice to through Alternative Dispute Resolution methods

5 December 2020

A webinar held on virtual platform on 5 December 2020 on 'ADR Can Create Faster Access to Justice' was jointly organised by Bangladesh International Arbitration Centre (BIAC) and Legislative and Parliamentary Affairs Division (LPAD) of the Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh.

Participating in the webinar experts, mostly from the Government sector stressed the need of lessening the burden of our judiciary from the huge backlog of cases, which is already overloaded with case dockets. Speakers also suggested expansion of the role of Alternative Dispute Resolution (ADR), especially in view of availability of only one judge for around 2,000 pending cases.



Speaking at the webinar as a Panellist Speaker Mr. Md. Sirazul Islam, Executive Chairman of Bangladesh Investment Development Authority (BIDA) stressed on the need of institutional ADR for expeditious disposal of commercial disputes. He pointed out a few limitations of the Arbitration Act 2001 and said that the purpose of the existing law to save time and money in arbitration proceedings is yet to be achieved. He also opined that instead of civil courts there should be a separate authority to execute arbitral awards.



Secretary, Legislative and Parliamentary Affairs Division (LPAD) Mr. Md. Moinul Kabir in his Welcome Address said that the Government's initiatives for inserting provisions of ADR in different legislations of Bangladesh have created a vast opportunity of access to justice for all. Invariably, ADR has a very significant role towards the enhancement of access to justice avoiding all kinds of procedural and other complexities, the Secretary maintained.



In his Closing Address Chairman of the BIAC Board Mr. Mahbubur Rahman said that BIAC, as the only licenced ADR centre of Bangladesh, has arbitration, mediation and other methods of ADR in their agenda. He stressed on 'Ensuring Access to Justice for All' as a target to be achieved nationally under the 'Sustainable Development Goals' set by the United Nations General Assembly. Mr. Rahman opined that justice seekers tussle with some economic, social and institutional barriers in accessing formal judicial system.

An expert Panel of Speakers comprising high Government officials and representatives from the legal fraternity addressed issues and impacts of the challenges of access to justice and ADR's role to accelerate judicial process in the country. Government and corporate officials, lawyers, academicians, ADR experts, bankers and business leaders of high eminence participated in the largely attended webinar through Zoom transmission.



Mr. M A Akmal Hossain Azad, Director, BIAC moderated the webinar. In course of discussion he opined that for improving access to justice, awareness building regarding ADR is imperative. Mr. Azad also insisted on accountability for lawyers and improved case management at courts.



Mr. Fowzul Azim, Chief Research Officer, Law Commission Bangladesh took part in the discussion as a Panellist and underscored the need of court based ADR for faster access to justice. He opined in favour of change in attitude of the stakeholders.



Taking part in the discussion Kazi Arifuzzaman, Joint Secretary, LPAD gave an insight on existing civil court procedures which cause delay and incur much cost in settling disputes. He categorised that in the present context ADR is the only way to overcome such situation.



Barrister Saqeb Mahbub, Partner, Mahbub & Company viewed the issue from a lawyer's perspective and opined that both ADR and access to justice have similar aims. He opined that ADR can bring adversaries closer and make a quicker exit compared to the court proceedings.



Taking part in the deliberations Most. Jannatul Ferdoush, Deputy Secretary, LPAD maintained that rule of law and access to justice are the need of the hour for stability and sustainability in the judicial infrastructure of the country.



Speaking on the occasion Mr. Md. Asaduzzaman Nur, Deputy Secretary, LPAD gave an account of ADR provisions in different financial laws and argued in favour of using ADR norms to resolve business disputes.



Mr. G M Atiqur Rahman Zamaly, Deputy Secretary, LPAD in his deliberations focussed on provisions of international arbitration through institutions like UNCITRAL, ICC and the Permanent Court of Arbitration. He said that BIAC is an outstanding example of successfully dealing with international arbitration in the region.

Speaking at the webinar Mr. Mohammad Abdul Halim, Deputy Secretary, LPAD narrated recent ADR



provisions incorporated in a number of laws and insisted on overcoming procedural limitations for quick dispensation of justice.



CEO of BIAC Muhammad A. (Rume) Ali also attended the webinar. The event was live streamed on BIAC's FACEBOOK page and LinkedIn. The daily Bonik Barta was the media partner of the webinar.

## BIAC ties up with Lawback, Chinese International Legal Service Platform for cooperation on ADR

18 December 2020



BIAC has signed an MoU with Chinese International Legal Service Platform 'Lawback', based in Changsha, Hunan Province, China. The instrument was signed online by Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC and Ms. Jiang Yan, Legal Representative of Lawback on behalf of their respective institutions on 18 December 2020. Lawback is the leading Chinese cross border commercial and legal service platform which has established good long term partnerships with cross border legal service

agencies and law firms in over 90 countries and regions. Lawback is featured with strong support from the Commercial Legal Service Centre of China Council for the Promotion of International Trade (CCPIT). Lawback provides various legal services for enterprises conducting international businesses, which include Legal Consulting, Litigation & Arbitration, International Debt Recovery, Contract Drafting and Reviewing, Cross border Investment Services, Compliance Report, Online Training and Courses, etc.

The MOU is developed in order to strengthen collaboration between Lawback and BIAC to serve the enterprises in both countries in a more streamlined and efficient way. Both organisations will mutually collaborate in the field of Business and Legal Consulting, cooperate in Specific ADR Cases and support each other's Events with a view to nurturing ADR in resolving commercial disputes both in China and Bangladesh.

## Government keen to incorporate ADR in existing laws, says Law Minister at BIAC's 9<sup>th</sup> Anniversary Webinar

26 December 2020

Law, Justice and Parliamentary Affairs Minister Mr. Anisul Huq, MP has said that the present Government under the dynamic leadership of Prime Minister Sheikh Hasina, is relentlessly working on incorporating Alternative Dispute Resolution (ADR) provisions in different existing laws of the country in order to make commercial dispute resolution process easier and less time consuming. In view of the ongoing extraordinary circumstances that has emerged from COVID-19, the Government under the definitive instruction by Prime Minister Sheikh Hasina has enacted 'Use of Information Technology by the Court Act 2020' to carry out trials through digital means. Our judiciary has already started conducting court proceedings via video conferencing. However, we are yet to go a long way regarding the virtual form of ADR. Suggested virtual ADR practices can either be



based on phone conferences or internet supported video conferences, the Law Minister said.





The Minister was speaking as Chief Guest at the Webinar: 'Celebrating the First Nine Years: Impact of BIAC on Institutional ADR in Bangladesh', organised from an online platform by BIAC as part of its 9th Founding Anniversary celebrations on 26 December 2020. He also opined that in view of the backlog of court cases with over 3.6 million cases pending in all courts of Bangladesh ADR is now imperative to take us forward towards our goal of economic development during this time of 'death and destruction' being caused by the pandemic. The Minister vowed to stand by BIAC in all its promotional activities.



Justice Md. Rezaul Hasan (M. R. Hasan), Judge of the High Court Division, Supreme Court of Bangladesh in his address as Special Guest explained provisions of ADR in the Arbitration Act 2001 where institutional role of BIAC has been indicated. He gave a few suggestions for amendment of the existing arbitration law so that enforcement of foreign arbitral award is simplified and quality of arbitrators is ensured.



Mr. Md. Moinul Kabir, Secretary, Legislative and Parliamentary Affairs Division of the Ministry of Law in his Address termed BIAC as an iconic institution in promoting arbitration and mediation and recalled his Division's participation in a recent joint webinar with BIAC and training of the Division's officials by BIAC. As Bangladesh is now graduating to a Developing Country, BIAC, by promoting ADR, will help attract more FDIs in the country, the Secretary hoped.



Mr. Mahbubur Rahman, Chairman of BIAC Board and President, International Chamber of Commerce-Bangladesh in his Address requested the Law Minister to allocate some fund to BIAC for its sustainability. He said that in the wake of the COVID-19 global pandemic BIAC, the not-for-profit institution, has been running short of fund as foreign training has totally discontinued for nearly a year and though BIAC has been trying to hold arbitration and mediation hearings both online and offline during this ongoing crisis, the number of such hearings has reduced substantially. These factors have caused a setback to pursue operating cost of BIAC, he explained. Mr. Rahman sought the Law Minister's support to adhere to ADR methods as much as possible to resolve commercial disputes and use BIAC as a formal institutional platform for this purpose.



Barrister Fida M. Kamal, former Attorney General of Bangladesh spoke on the occasion and maintained that more investment for economic growth means more contracts and potential disputes arising out of commercial contracts can only be resolved through less costly ADR methods.



Mr. Ali Reza Iftakhar, Chairman of the Association of Bankers Bangladesh and Managing Director of Eastern Bank Ltd. in his deliberations said that in course of the last nine years of operation, BIAC has carved out a niche towards becoming credible for businesses, both domestically and internationally and gradually established itself as a sustainable ADR service provider.



Speaking at the Webinar Ms. Nihad Kabir, President, Metropolitan Chamber of Commerce & Industry, Dhaka and Member, BIAC Board appreciated BIAC's hard work for popularising ADR in the country. She urged upon the Law Minister to make mandatory provisions of ADR in all laws before resorting to judicial proceedings in resolving commercial disputes.



Mr. Shams Mahmud, President, Dhaka Chamber of Commerce & Industry and Member, BIAC Board took part in the discussion and said that the COVID-19 has seriously aggravated business disputes. He opined that with increasing disputes BIAC should widen its ADR service outreach and try to protect the interest of SMEs and provide them institutional support to which DCCI will join hands.



Chief Executive Officer of BIAC Mr. Muhammad A. (Rumee) Ali in his Welcome Address said that developed countries have built up firm ADR infrastructure and in view of Bangladesh's ranking 189th among 190 economies in the Enforcing Contracts Index of The world Bank Doing Business Indicators, it is time for us to ensure that business disputes be resolved as much as possible before going to the courts. He urged upon the Government and businesses to take forward ADR combining its norms with court proceedings.

Judges, lawyers, business leaders, Government high officials, bankers, academicians and representatives from diplomatic missions, international organisations and the media participated at the Webinar which was cast live on BIAC's FACEBOOK page and LinkedIn profile. The daily Bonik Barta was the media partner of the event.



## Online Series of Training Programme on Arbitration held

28 December 2020



The online series of training programme on Arbitration organised by BIAC consisted of 3 modules. The first module was on Overview & Drafting of an Arbitration Clause which was held on 8 October 2020. This module provided incisive details about arbitration and the skills necessary to draft a dispute settlement clause, a fundamental requirement in commercial contracts. Ms. Nabeela Raihan, Advocate, District & Session Court and Lawyer NSW Supreme Court, Australia conducted the session as trainer.

The second Module on Arbitration Proceedings was held on 30 November 2020. This Module was designed to give participants a thorough understanding of the procedural rules of arbitration proceeding and procedures following commencement of arbitration



till the termination of arbitral proceeding. Barrister Md. Monzur Rabbi, Advocate, Supreme Court of Bangladesh and Head of Chambers, Rahman & Rabbi Legal was the trainer of this Module.

The last session of the online series of training programme on Arbitration was held on 28 December 2020. At this session “Arbitration Award and Enforcement” training provided the ideas on the principles and practices of enforcement of national and foreign arbitration awards and the grounds, which can be used in order to challenge recognition and enforcement



of a foreign arbitral award. This Module covered the New York Convention 1958 which is the most important international instrument for the enforcement of foreign arbitral awards, which was ratified by the Government of Bangladesh in May 1992. Dr. Khaled Hamid Chowdhury, FCI Arb, Barrister-at-law, Advocate Supreme Court of Bangladesh, Head of Laws, London College of Legal Studies (South) and Senior Partner, Chowdhury and Ullah was the trainer. 44 trainees including Government officials, representatives from different law chambers, banks, and companies participated in the programme.

## BIAC welcomes New DCCI President Mr. Rizwan Rahman as Member to the BIAC Board

30 December 2020



Mr. Rizwan Rahman, an eminent business leader of Bangladesh, Managing Director of ETBL Securities & Exchange Ltd., Director of Eastland Insurance Company Ltd and also the Financial Express, the country's premier business daily has been elected President of the Dhaka Chamber of Commerce & Industry (DCCI). Holding different DCCI posts since 2006 on attaining higher education from the United Kingdom, he heads several segments

of ETBL Holdings, which also has a presence in dredging infrastructure, commodities trade, cold storage and furniture. Mr. Rahman also served as Director of the Bangladesh Chamber of Industries (BCI) and Bangladesh Philippines Chamber of Commerce & Industry and as Vice President of Dutch-Bangla Chamber of Commerce & Industry. Bangladesh International Arbitration Centre (BIAC) welcomes Mr. Rizwan Rahman as Member to the BIAC Board.

## International News

### UAE Federal Supreme Court Judgment on Ambiguity of Arbitration Clauses

27 October, 2020



The UAE Federal Supreme Court has recently issued a judgment that tackles the ambiguity of an arbitration clause and the discrepancies between the English and Arabic translation of it.

In the case in question, the arbitration clause was drafted in English and the issue arose as to whether or not the clause was explicit in commanding the parties to refer to arbitration as the agreed dispute resolution forum.

The arbitration clause stated in case the parties could not reach an amicable settlement in relation to any dispute within 30 days, either party may commence arbitration proceedings to be seated in Abu Dhabi, conducted in English and subject to the rules of the Abu Dhabi Commercial Conciliation & Arbitration Centre.

The Court of First Instance ruled that the original language used in the arbitration clause did not obligate the parties to resort to arbitration. The court interpreted the word “may” as mentioned in the text of the clause to mean that arbitration was chosen as an optional means for dispute resolution. This judgment was confirmed at the Court of Appeal level.

However, a further challenge was filed before the Federal Supreme Court. At that stage, the appellant submitted an Arabic translation of the arbitration clause, which the court had found, includes affirmative language that the parties have agreed on arbitration as the means for settlement of disputes.

The judgment of the Federal Supreme Court provided that if the terms of the contract do not clearly reflect the intention of the parties, the substantive court should investigate the intention of the parties. The Federal

Supreme Court further asserted that the substantive court should have investigated the true intentions of the parties by appointing an expert on the language to ascertain the meaning of the text of the arbitration clause. The court could have also allowed the party advocating for the local courts’ jurisdiction to submit a translation evidencing that the arbitration clause was optional. The judgment of the Federal Supreme Court found that the substantive court had failed to observe the above and on this basis overturned the Court of Appeal judgment.

The Federal Supreme Court has further acknowledged a number of well-established principles pertaining to arbitration agreements in the UAE. More particularly, it confirmed that arbitration is regarded as an exceptional means of dispute resolution as opposed to ordinary court proceedings. As such, it confirmed that an arbitration agreement would be regarded as null and void if it was signed by a person lacking capacity to enter into an arbitration agreement. In this context, the Federal Supreme Court ruled that it is presumed that a signature placed on the arbitration clause is made by an authorised representative if the contract includes the name of that legal representative of the company. In the event that the name of the legal representative is not stipulated in the agreement, the signatory shall be considered to have capacity to sign the arbitration agreement, even if his signature was illegible.

Given the risks associated with the application of arbitration clauses in the UAE, we highly recommend consulting arbitration specialists when drafting and negotiating arbitration clauses to avoid any potential challenges as regards the enforceability at the time a dispute arises.

### Singapore International Arbitration Centre (SIAC) Academy goes Virtual: Barrister Ajmalul Hossain QC attends SIAC South Asia Academy

8 November 2020

Mr. Ajmalul Hossain QC, Barrister-at-law and Senior Advocate of the Supreme Court of Bangladesh is one of the most renowned Arbitrators in Bangladesh and is also recognised as an international Arbitrator around the world. Recently, the Singapore International Arbitration Centre (SIAC) Academy, offering capacity building programmes on arbitration, moved to a virtual platform. Two editions of the SIAC Academy were held virtually this year and Mr. Hossain took part in one of them. The

first edition of the SIAC Academy, titled “Time and Cost Savers at SIAC: Emergency Arbitration, Expedited Procedure and Early Dismissal” was conducted for the SIAC Indochina Academy on 15-16 October 2020. The teaching faculty was chaired by SIAC Court President, Mr Gary Born, and featured SIAC Court member, Ms K. Shanti Mogan, as well as leading arbitration practitioners and Arbitrators from Indonesia, Malaysia, Myanmar, Singapore, Thailand and Vietnam.



The second edition of the SIAC Academy, titled “The Making of an Advocate and an Arbitrator”, was conducted for the SIAC China Academy on 20-21 August 2020, the SIAC North East Asia Academy on 10-11 September 2020 and the SIAC South Asia Academy on 6-7 November 2020. The teaching faculties were chaired by SIAC Court President, Mr Gary Born, and featured SIAC Board and Court members, YSIAC Committee members, as well as

leading arbitration practitioners and Arbitrators from those regions. The SIAC Board and Court members who participated in the SIAC China Academy were Mr Chan Leng Sun, SC, Prof Lawrence Boo, Mr Cao Lijun, and Ms Jessica Fei. The SIAC Board and Court members who participated in the SIAC North East Asia Academy were Mr Chong Yee Leong, Mr John P. Bang, Dr Eun Young Park, Mr Toby Landau QC, Mr Hiroyuki Tezuka, and Mr Alan Thambiayah. The SIAC Court members who participated in the SIAC South Asia Academy were Prof Bernard Hanotiau, Mr Tejas Karia, Mr Darius J. Khambata, SC, and Ms Shaneen Parikh. Honourable Justice A.K. Sikri (Former Judge, Supreme Court of India; International Judge at the Singapore International Commercial Court), Prof Bernard Hanotiau, Mr Darius J. Khambata, SC, Mr Tejas Karia, Ms Shaneen Parikh and Barrister Ajmalul Hossain QC.

### Brazil: Bankruptcy or judicial reorganisation of a party does not suspend arbitration

29 December 2020

On 29<sup>th</sup> December 2020 Brazilian Bankruptcy Law was amended by Law 14.112, to make the process of bankruptcy and judicial recuperation (Brazilian equivalent to US Chapter 11) more efficient, in view of the final distress triggered by the COVID-19 pandemic.

The declaration of bankruptcy or the granting of judicial recuperation automatically stays certain types of lawsuits, such as execution lawsuits, for a period of 180 days, renewable on an exceptional basis for additional 180 days. However, the amendment to the Brazilian Bankruptcy Law made clear that the declaration of bankruptcy or the granting of judicial recuperation does not suspend arbitral proceedings, nor justifies the party bankrupt or under recuperation to deny enforceability of the arbitration clause (art. 6, paragraph 9, of Brazilian Bankruptcy Law).

This provision is in line with the Brazilian case law, which used to deny requests to suspend or avoid arbitral proceedings against parties bankrupt or under

recuperation (eg, please see the decision of the Superior Court of Justice in REsp 1.355.831 – SP, 3rd Chamber, reporting justice Min<sup>a</sup>. Nancy Andrichi, judge on March 19, 2013). Nonetheless, the existence of express legal provision in this sense is welcome, since it grants more legal security, especially considering that the insolvent debtor sometimes claims its impecuniosity trying to bypass arbitral proceedings.

One of the most relevant points of the amendment to the Brazilian Bankruptcy Law is that it acknowledged the possibility to recognise in Brazil the effects of an insolvency proceedings which is taking place abroad. The recognition of such proceeding however will not curb the creditor's right to file an arbitration in Brazil against the debtor to acknowledge or sentence the debtor to pay a certain credit (art. 167-M, § 2nd, of the Brazilian Bankruptcy Law). This is another provision which grants legal security to arbitration, especially in cross-border transactions.

*“Lawsuits generally originate with the obstinate and the ignorant, but they do not end with them; and that lawyer was right who left all his money to the support of an asylum for fools and lunatics, saying that from such he got it, and to such he would bequeath it.” — Jeremy Bentham (1748-1832: was an English philosopher, jurist and social reformer, regarded as the founder of modern utilitarianism)*



## Articles



## Non-performing loans: The burden on an emerging economy

**Shafayat Ullah**

*Barrister-at-law and Advocate, Supreme Court of Bangladesh*

Addressing the lapses of the legal system is of utmost importance as a failure to provide solutions to loan recovery will lead to a decrease in bank revenue, adding to economic sufferings.

The banking sector has a significant role in enabling business activities. Banks furnish loans to businesses and mobilise savings which promotes growth and development. Sustainable development of an economy requires a system that facilitates the business sector. A thriving financial sector increases employment, exports, cash liquidity and overall cash flow. The part played by the financial sector in the economy makes it imperative for the legislature and judiciary to review and strengthen the legal instrument which supports better performance of financial institutions in our country.

The fundamental challenge faced by loan advancing financial entities is lack of good governance. According to the International Monetary Fund (IMF), insufficient internal control and poor risk management in financial institutions allow distribution of loans to unviable borrowers resulting in default. The recovery process of the loan also slows down because of the growing trend of loan rescheduling, restructuring and regulatory forbearance. The aggrieved parties are reluctant to settle through legal redress due to the insufficiency in the legal framework.

A Non-Performing Loan (NPL) is formed when banks cease to receive interest and/or installment payments from loans as scheduled by contract. NPL has been alarmingly high in our country for the past few decades. Henceforth, Artha Rin Adalat Ain 2003 was enacted to govern law on loan recovery and Artha Rin Adalat was established to serve justice to the financially aggrieved in Bangladesh. A highly formalised court was designed to enable quick disposal of cases. Nevertheless, the effectiveness of Artha Rin Adalat has been a subject of contention.

Alternative Dispute Resolution (ADR) was incorporated in the Artha Rin Adalat Ain 2003 as a substitute method of settlement of the dispute between the parties. ADR is an umbrella term for various

methods of settlement out of court, which may include mediation, arbitration, negotiation, consolidation, and so on. Actively practicing ADR successfully mitigates the complexity and delay of litigation, simultaneously ensuring a harmonious relationship among the parties.

The Artha Rin Adalat Ain 2003 specifically enumerated court-annexed mediation as part of litigation but it was unable to bring any significant change in Bangladesh. But it failed to achieve its goal as the total NPL ratio continued to rise. Every fiscal year, an enormous amount of fund is tied up as NPL, the NPL ratio stood 9.3 percent against Tk 1,024,498 crores in June 2020. Expert opinion is that the ADR mechanism could be an important tool to reduce and recover the NPL provided it is incorporated and implemented prudently.

The possible reasons behind the failure of mediation in Artha Rin suits may stem from the erroneous codification of mediation. Mediation involves a neutral party, i.e., a mediator to facilitate the settlement process. The mediator does not possess the authority of decision making, the settlement is assisted by the mediator to help the parties to reach a mutually acceptable decision by themselves, which later becomes binding on all the parties involved. However when the parties fail, they have the autonomy to walk out of the mediation at their will.

In the existing law, the Artha Rin Adalat refers cases for mediation at the post-trial stage. Mediation is an out of court settlement incorporated to speed up the disposal of cases, but ironically it is only referred when the parties are faced with the challenge of procedural complexity and cost of litigation is exhausted. Moreover, post-trial mediation takes place after the publication of auction, which further makes the situation hostile between the parties making it more difficult for the parties to reach a mutually acceptable common ground. Consequently, the borrowers tend to use mediation as a time killing tool which makes the essence of mediation redundant, defeating the purpose of ADR.

To make mediation more fruitful, it may be mandated prior to the initiation of any adversarial stance. As a

pre-action protocol, it should take place before auctioning of the properties. This will allow the parties to find shared interest, where the parties will be more likely to create a win-win situation in a decision. Furthermore, both parties will be benefited by avoiding the cost and complexity of litigation.

Arbitration has not been included in the Artha Rin Adalat Ain by the legislators. The act may be amended to bring Arbitration within the domain of the definition of "Adalat". An arbitral tribunal has the authority to pass a unilateral judgment within three months' time span and an arbitral award has the enforceability of a court decree inside the jurisdiction. It is also enforceable beyond the country border through the New York Convention 1958. Bangladesh is a signatory of the New York Convention along with 165 other countries.

A system may be created through which the aggrieved party can follow and pursue recovery settlement in chronological order, as mediation settles disputes ensuring the persistence of party autonomy. It can be the action of the first instance by an aggrieved party, which will be assisted by professionally accredited mediators under the supervision of licensed institutions. Upon exhausting the pre-trial mediation, parties with claims up to Tk 25 crores can go for Arbitration. The adversarial litigation could be the remedy of last resort and the court could impose an exemplary fine on parties who avoid the ADR before coming to Courts.

To ensure fairness and further speed up the process, Artha Rin Adalat can be empowered to appoint executive authority who may be vested with powers to take charge of the mortgaged property and handle auctioning, sale, distribution of the proceeds of the sale, among the creditors and also cease property unlawfully retained by creditors. Such an entity can be listed or registered as a member in the court record.

Failure to recover payment ignites a whole new protocol in the Bankruptcy Court against the defaulters and the course of action is lengthy and cumbersome for the aggrieved parties. Furthermore, it has been observed that the defaulters tend to file writ petitions in the High Court Division against interim orders of the Artha Rin Adalat which causes delay to the loan recovery process. This may defeat the purpose of establishment of the Artha Rin Adalat itself. Therefore, it is of utmost importance to provide some finality to the aggrieved parties, which may be done by issuing interim orders against Artha Rin Adalat decisions sparingly.

An inadequate legal system that fails to provide solutions regarding loan recovery will lead to a decrease in bank revenue. As a result, loan interests for the business organisations will increase, further lowering the investment demand in the country; as a consequence, the economy will suffer. Hence addressing the lapses of the legal system is of utmost importance.

## Notable Supreme Court Pronouncements of 2020

**Ali Mashraf**

*Bangladesh Junior Legal Analyst of iProbono*



*[This write-up compiles notable pronouncements of the Appellate Division (AD) and the High Court Division (HCD) of the Supreme Court (SC) of Bangladesh from 2020]*

### ***Interpreting the tenure of life sentence***

In Criminal Review Petition 82/2017, the AD harmoniously interpreted sections 45, 53, 55 and 57 of the Penal Code (PC), 1860 and section 35A of the Code of Criminal Procedure, 1898 to decide that life imprisonment amounts to rigorous imprisonment for 30 years, not the whole of the convict's natural life, as laid down in the appeal verdict. It further held that while awarding sentences, if a court or tribunal, or the International Crimes Tribunal constituted under the International

Crimes Tribunal Act, 1973, orders for the accused to be sentenced to imprisonment till their natural death, they will not be entitled to any remission of their sentence.

### ***Extending the limitation period to file cases***

In Md. Fazlul Haque Sarder v Grameen Phone Limited, the Attorney General (AG) informed the AD of the sufferings the COVID-19 pandemic brought to litigants since they were unable to come to courts to file their cases. He submitted the precedent of the Indian SC lifting the limitation periods for all kinds of proceedings, including those particularly stipulated in the special laws till further notice (Suo Moto Writ (Civil) 3/2020) and asked for a similar safeguard

measure. Terming the pandemic as an Act of God, the AD extended the limitation period 'for filing petitions/applications/suits/appeals/revisions/all other proceedings in civil, criminal or administrative matters under the general or special laws which expired on or after [March 26, 2020 till May 31, 2020].'

### ***Ordering compensation for wrongful imprisonment***

Due to having similarity with the father's name of one Shahabuddin, a convict in a narcotics case, one Md. Arman was wrongfully imprisoned by police for four years. Afterward, Law and Life Foundation filed a habeas corpus writ (Writ Petition No. 7297/2019) asking for his release. Upon hearing, the HCD in December asked the jail authorities to release Arman immediately and directed the Inspector General of Police to pay him BDT 20 lacs as compensation within 30 days.

### ***Issuing a contempt of court rule against the Health Secretary and the Director-General (DG) of the Directorate General of Health Services (DGHS).***

In 2016, Bangladesh Legal Aid and Services Trust (BLAST) filed a writ petition asking to ensure emergency medical treatment for road accident victims and legal protection for those offering assistance to such injured victims. The HCD then asked the respondents to circulate guidelines on these issues to the hospitals via gazette notification. As they failed to comply with this order for over two years, the HCD issued a contempt of court rule against the Health Secretary and the DG of DGHS in the Contempt Petition (H) 209/2020 asking why it should not take action against them for their failure.

### ***Directing to protect dolphins in Halda River***

Barrister Md. Abdul Qaium filed the first-ever writ petition in virtual court seeking the HCD's directives after newspapers reported the killing of 24 dolphins in the Halda River. The HCD directed the Deputy Commissioner of Chattogram to form a committee to prevent the killing of dolphins and mother fishes and to protect the biodiversity of the river. Meanwhile, another dolphin was killed, raising the death toll to 25. Hence, during the next hearing, the HCD asked the committee to submit a report on the measures they had taken to stop such killings. It also asked the committee to share details of the dolphin that was killed during the pendency of the writ.

### ***Establishing Hindu woman's right to husband's agricultural lands***

In a Civil Revision Petition, the HCD held that our courts, till now, had been erroneously interpreting the Hindu Women's Rights to Property Act, 1937 in the light of a 1941 Indian Federal Court judgment, even after our independence in 1971. It clarified this interpretative error and ruled that the terms 'any property' in section 3 of the 1937 Act includes both non-agricultural and agricultural lands. Hence, it established the right of Hindu widows over both non-agricultural and agricultural lands of their deceased husbands.

### ***Releasing four children arrested for rape on bail***

On 8 October, Somoy TV reported that after the police arrested four children aged 10–11 years for raping a girl aged 6 years and produced them before the concerned Senior Judicial Magistrate (SJM), the SJM rejected their bail petition and sent them to the Jashore Juvenile Detention Centre. Thereafter, an HCD bench sat on that very night and ordered the Nari O Shishu Nirjatan Daman Tribunal, Barishal, to release the children instantly on bail and hand them over to their parents in the Suo Motu Rule 16/2020. The tribunal complied with the order immediately after receiving it via email.

### ***Establishing jurisprudence for cheque dishonour cases***

In Md. Abul Kaher Shahin v Emran Rashid, the AD held that if the conditions under an agreement for which a drawer issued a cheque are not fulfilled or if there is no consideration for providing a cheque; it creates no liability upon the drawer of the cheque under section 43 of the Negotiable Instruments (NI) Act, 1881. Owing to the amendment to section 138 in 2000, a payee did not have to prove that a drawer owed him money or that a drawer drew the cheque in the payee's favour to pay for any debt or liability. However, after this verdict, a payee has to prove that the consideration under section 43 still exists and has not yet failed, and that he fulfilled the terms and conditions of the agreement under which a drawer has issued the cheque.

<https://www.dhakatribune.com/opinion/op-ed/2020/08/09/op-ed-how-force-majeure-affects-the-rmgindustry?fbclid=IwARljYvth3Dwbw8LAeCXw8Afc2ziKo7IH9TZgLBllkppJo4RikbfIJ3p6fio>

\* This article was originally published in the Daily Star, Dhaka.



## Interviews

*We have been publishing interviews of leaders and experts from different financial, business, corporate, legal and academic sectors on their perception and understanding of ADR based on a number of questions put forward by BIAC. We are confident that this will generate more awareness about ADR in the country and importance of introducing it to assist our judicial system in order to reduce the backlog and the time taken to resolve commercial disputes. It is our pleasure to publish here the interview of Mr. Anis A. Khan, Vice President, Metropolitan Chamber of Commerce and Industry, Dhaka.*



**Anis A. Khan**

*Vice President, Metropolitan  
Chamber of Commerce and Industry, Dhaka*

**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) methods. Do you believe that this global best practice has a future in Bangladesh? Why?

**AAK:** I am in full accord with this. A multitude of suits are at various stages of litigation in our courts. Getting a verdict takes years, sometimes decades. I have a case dating back to 1990 – more than thirty years ago, and the plaintiff has since passed away. The amount in question was BDT 1,50,000/-. Moreover, the bank's client had withdrawn the suit much before his demise and expressed satisfaction with the resolution, and had expressed regret for filing the case and causing hardship to the bank and its officials including me. My lawyer, Barrister Rafiqul Huq has also recently passed away. For some reason, the case, which is basically settled, amicably, is still pending in the Supreme Court causing me much anguish and expense, whilst the Country Head at that time, who was a foreigner, and against whom the case was also filed, has returned to his country, nearly three decades ago, and is enjoying peaceful retirement.

Thus, I believe ADR has a bright future in Bangladesh in settling commercial disputes early, and with minimum possible expense. That way, the doing business index also improves and hardships caused to people also become limited.

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

**AAK:** First of all, the people are unaware of ADR and what it means. Lawyers have an obligation to spread the concept and benefits of ADR to their clients. In fact, lawyers should always advise clients with small claims or non-complicated matters, to go for ADR.

Secondly, there is a country-wide absence of qualified arbitrators, mediators and adjudicators. We need a constantly increasing flow of professionals in this area.

Thirdly, clients seeking ADR must know where to go. Thus, dissemination of information is a sine qua non for making ADR more prevalent and utilised in our country.

**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?

**AAK:** In our country, a person is condemned as soon as a case is filed against him or her. His or her reputation is thrashed and families ridiculed and avoided like pariahs. The very strong media – press, web portals, television networks, fall all over each other to flash news of cases filed against celebrities and famous persons, whether they are eventually found guilty of the allegations brought against them or not.

The creed – that 'No man should be pronounced guilty unless proved in a court of law' should be rigorously imposed to protect people from unnecessary tarnishing and damage caused to their reputations and image.

**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?**

**AAK:** Absolutely agree. I have spoken about this in a recent webinar organised by BIAC.

**BQB:** Money Loan Court Act has not been able to adequately support the financial sector in recovery of bad loans. In many countries work is underway to offer ADR as an additional tool for the financial sector to mitigate the risk and delay in settlement and recovery process. What is your opinion about this initiative?

**AAK:** As a long-standing professional in the country's banking and financial sector for nearly four decades, and continuing, I see the myriad of cases the banks are caught up in trying to settle disputes with their clients. Once a loan goes bad and the case ends up in the courts, it could take at least a decade to settle the issue. And, the verdict is not always in favour of the bank, putting public money at risk. One has to remember that the money that a bank loans out belongs to depositors, and even if the bank is unable to collect it back, they have to repay the client on demand.

*“For there is but one essential justice which cements society and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked.” — Marcus Tullius Cicero (106-43 BC: was a Roman statesman, lawyer, scholar and Academic Skeptic who played an important role in the politics of the late Roman Republic and upheld optimate principles during the crisis that led to the establishment of the Roman Empire)*

## EVENTS NEWS


## BIAC's Upcoming Events

Organisation	Events	Date
Bangladesh International Arbitration Centre (BIAC) and International Investment & Trade Service Window of China Yunnan Pilot Free Trade Zone (IITSW of CYPFTZ), China	10 <sup>th</sup> Webinar on "Alternative Dispute Resolution Clause to Strengthen Open Account Trading for Imports and Exports Between China and Bangladesh"	25 January 2021
Bangladesh International Arbitration Centre (BIAC) and London College of Legal Studies (South)	11 <sup>th</sup> Webinar on "Why Bangladesh should sign Singapore Convention on Mediation? (UN Convention on International Settlement Agreements Resulting from Mediation 2018)"	22 February 2021
Bangladesh International Arbitration Centre (BIAC) and London College of Legal Studies (South)	BIAC- LCLS (South) Mediation Contest 2021	20, 27 March 3, 10 April 2021
Bangladesh International Arbitration Centre (BIAC) and Rahman & Rabbi Legal	12 <sup>th</sup> Webinar on "Required Changes in Alternative Dispute Resolution Laws in Bangladesh"	22 March 2021
Bangladesh International Arbitration Centre (BIAC) and United Nations Commission on International Trade Law (UNCITRAL) Regional Centre for Asia and the Pacific (RCAP), Seoul, Republic of Korea	13 <sup>th</sup> Webinar on "Regional Perspective of UNCITRAL ADR Instruments on Ease of Doing Business in Asia and the Pacific"	8 April 2021

## 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!*





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