

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 318 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 142 workshop/seminar/webinar/dialogues as of June 2021. BIAC has received recognition by signing cooperation agreements with 21 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), Lawback, Chinese International Legal Service Platform, World Mediation Organization (WMO), Bali International Arbitration and Mediation Center and China International Economic and Trade Arbitration Commission (CIETAC).

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

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

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



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

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From the Editor

The lethal COVID-19 pandemic worldwide has already cost over 4 million human lives, which has been an unprecedented challenge to many legal systems and dispute resolution institutions around the globe. In attempting to mitigate the devastating social, economic and political effects of the virus, Governments have closed national borders, educational institutions, cinemas and restaurants, ordered lockdowns, strongly recommended that elderly people in particular stay indoors, banned social gatherings and encouraged social distancing as well as the use of face masks.

During this difficult time Bangladesh International Arbitration Centre (BIAC) has been delivering services to our clients to the best of our ability, both in person and through virtual means. In our humble journey towards establishing an Alternative Dispute Resolution (ADR) regime of international standard, BIAC from the very inception in April 2011 has been trying hard to help boost businesses by facilitating methods of ADR including Arbitration and Mediation in resolving commercial disputes under our own Rules, given the fact of our judiciary overburdened with case dockets.

This first edition in 2021 of the BIAC Quarterly Bulletin features a few articles and an interview on perception of ADR and related subjects as well as news on activities of BIAC and developments in other regional and international ADR institutions and court decisions. We cherish continued support from our readers, patrons, partners and well wishers in our efforts to contribute in mainstreaming ADR as much as possible so that an atmosphere congenial to business and economic activities prevails in furtherance of our commitment to be a credible and sustainable national institution that aims to offer ADR services to individuals and institutions seeking to resolve commercial disputes.

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BIAC News

BIAC Chairman Mahbubur Rahman reappointed as Arbitrator of CIETAC for another five years

1 May 2021



Mr. Mahbubur Rahman, an eminent businessperson of the country and the founding Chairman of Bangladesh International Arbitration Centre (BIAC) has recently been reappointed as an Arbitrator to continue for another 5 years to the prestigious Panel of Arbitrators of the China International Economic

and Trade Arbitration Commission (CIETAC), a well known arbitral institution in the world. He is the first and only Bangladeshi Arbitrator to the CIETAC Panel since July 2017.

BIAC is Bangladesh's first and only registered ADR institution. Apart from facilitating arbitration and mediation, BIAC also provides training courses and awareness programmes on ADR. Since its inception, BIAC has received international recognition by signing Cooperation Agreements with 21 international ADR institutions including one with CIETAC on 16 June 2021 to strengthen the ADR realms of China and Bangladesh.

The China International Economic and Trade Arbitration Commission (CIETAC) is a permanent international commercial arbitration institution which independently and impartially resolves international and cross border economic and trade disputes by arbitration. Established by the Central Government of China in 1956 and based in Beijing, CIETAC is the oldest and largest arbitration institution in China. Recently CIETAC has set up the North America Arbitration Center in Vancouver, Canada and the Europe Arbitration Centre in Vienna, Austria.

Mr. Mahbubur Rahman is the President of International Chamber of Commerce-Bangladesh (ICC-B), the world business organization and also Chairman & CEO of ETBL Holdings Limited. He is the founder Chairman of Eastland Insurance Co. Ltd and International Publications Limited, publishers of the Financial Express, the national English financial daily. He is also the Chairman of Business Advisory Council of UN-ESCAP, Vice Chairman of Bangladesh Foreign Trade Institute (BFTI), Member of the Board of Governors of Institute of Business Administration (IBA) of the University of Dhaka, founder Member of the Independent University Bangladesh (IUB) and a Director in the Board of Karnaphuli Fertiliser Co. Ltd. (KAFCO).

Among his many assignments as an outstanding business leader of the country, Mr. Rahman was the President of the Federation of Bangladesh Chambers of Commerce & Industry (FBCCI), the Dhaka Chamber of Commerce & Industry (DCCI). Mr. Rahman represented the Government of Sri Lanka in Bangladesh before Colombo set up its Diplomatic Mission in Dhaka.

Mr. Mahbubur Rahman hosted several International Business and Economic events in Dhaka which were attended by Heads of Governments and led many Trade & Investment Delegations to a number of overseas destinations including leading a few Business Delegations as entourages of the President and the Prime Minister of Bangladesh.

Among the 150 high-impact leaders in business and social enterprise from Africa, Asia, Latin America and Middle East, Mr. Rahman was interviewed under the 'Creating Emerging Market Project (CEMP)' at Harvard Business School (HBS), USA, in October 2020.

BIAC Director talks as a Panellist at the CIArb Young Members Group World Tour 2021 Webinar on Arbitration and Mediation as a Global Force for Good

19 January 2021

The Chartered Institute of Arbitrators (CIArb), London-Young Members Group (YMG) is presenting an international regional series of webinars which is highlighting the unique importance and efficiency ADR plays in allowing the world's economy to remain operative during times of great economic uncertainty. Drawing from their intellectual wealth and vast networks the next generation of ADR practitioners frame global crises into an opportunity and have produced 12 international regional

conferences under the theme Arbitration and mediation as a Global Force for Good covering Asia, Africa, Australia, North America, the Caribbean and Central America, South America, Russia, Europe, India, China to the Middle East.

Session 1 of the Asia Series Webinar under Emerging Arbitration Trends in Asia was held on 19 January 2021. BIAC was a partner organisation along with CIArb, London, Arbinsol, THAC, SIAC, KCAB International, CIICA, De Almeida Pereira, JCAA,



MADAAN LAW OFFICES, CARDOZO LAW and a few other ADR institutions. Director of BIAC Mr. M A Akmal Hossain Azad took part in the session as one of the Panellists and spoke on the impact of nearly 10 years of BIAC in institutional arbitration realm in Bangladesh. He said that BIAC has so far handled 128 arbitration and mediation cases with 306 Arbitration hearings and Mediation meetings.

Mr. Azad said that BIAC has taken the responsibility to build professionals in the field of ADR and BIAC has already held 71 national and international training courses and trained 1650 persons representing the banking industry, non banking financial institutions, corporate houses, the Civil Service, Judiciary, Government agencies, academicians and students. BIAC has taken the initiative of providing specialised, sector-based customised training programmes on ADR. Under this initiative, for the first time BIAC organised a day long training for 24 officers of Legislative and Parliamentary Affairs Division under the Ministry of

Law, Justice and Parliamentary Affairs who are actively involved in vetting laws from all Ministries and Divisions, Director, BIAC said.

Mr. Azad maintained that to be recognised as a credible institution, BIAC has signed cooperation agreements with foreign institutions. Till date BIAC has signed Cooperation Agreements with 21 International ADR centres including the Permanent Court of Arbitration (PCA), the Hague, the Netherlands, SAARC Arbitration Council (SARCO), Asian International Arbitration Center (AIAC), Kuala Lumpur, Malaysia, Thailand Arbitration Center (THAC), Bangkok, Thailand and Singapore International Arbitration Centre (SIAC), Singapore.

Director, BIAC urged upon Governments of Asia to come forward with legislative reforms to make Arbitration/ Mediation procedures mandatory before opting for court proceedings with a view to lessening stress on the overburdened judiciary with case dockets and also to ensure faster and cost effective justice to stakeholders in their respective jurisdictions, particularly in resolving commercial disputes.

The other Panellists of the webinar were Mr. Rana Sajjad Ahmed, Founder and President, Center for International Investment and Commercial Arbitration (CIICA), Pakistan; Mr. Diogo Pereira, Partner, De Almeida Pereira, Washington DC, USA; Ms. Victoria Khandrimaylo, Counsel, Hong Kong International Arbitration Centre (HKIAC) and Mr. TaeheeAhn, Counsel, Korean Commercial Arbitration Board International (KCAB International). The session was moderated by Mr. Ishaan Madaan, Founder, Arbinsol, USA.

BIAC signs MoU with World Mediation institution (WMO)

20 January 2021



The World Mediation Organization is a Berlin, Germany based international and informative platform that is dedicated to raising public awareness of Mediation, Conflict Complexity, and Violence Avoidance. WMO offers formal training and an extensive blog section that may build the basis of the exchange of knowledge on Mediation. It helps to create a society that will be prepared to face future challenges of conflict and to accordingly prevent escalation.

Recently BIAC signed a Memorandum of Understanding with WMO. The MoU was signed by



the Director of WMO Mr. Daniel Erdmann and Chief Executive Officer of BIAC Mr. Muhammad A. (Rume) Ali on behalf of their respective organisations. In view of the ongoing pandemic the parties have electronically signed the cooperation agreements and exchanged the documents by email. We hope that by signing this cooperation agreement both institutions' activities will help to increase peace, harmony, understanding and respect throughout humanity on a global level.

Chinese and Bangladeshi experts in a webinar favour using ADR clause to strengthen open account trading for imports and exports between China and Bangladesh

25 January 2021

A webinar held on virtual platform on 25 January 2021 on "Using ADR Clause to Strengthen Open Account Trading for Imports and Exports between China and Bangladesh" was jointly organised by Bangladesh International Arbitration Centre (BIAC) and International Investment & Trade Service Window of China Yunnan Pilot Free Trade Zone (IITSW of CYPFTZ), China.



Addressing the Webinar Chairman of the BIAC Board Mr. Mahbubur Rahman emphasised that the keys to selling under an open account are a high level of confidence that the buyer will pay, a good understanding of external forces like a country's economic situation or Government won't cause payment problems, and using proven trade financing techniques that mitigate risks of non-payment. Alternative Dispute Resolution (ADR) procedures can resolve issues including non-payment under open account trading, particularly where contracting parties from Bangladesh and China are involved in import and export between them, he said. Mr. Rahman hoped that today's valuable deliberations by eminent speakers will lead us to a more pragmatic ADR landscape in both China and Bangladesh with a view to making open account trading between the two nations more beneficial to our common interests.



Mr. Muhammad A. (Rumee) Ali, Chief Executive Officer of BIAC in his Address of Welcome expressed satisfaction over the ever increasing volume of Sino Bangladesh trade and said that economic relation between our two fraternal nations has been further consolidated under the Belt and Road Initiative, where we provide each other with goods and services of excellent quality and reasonable price and truly bring a sense of gain to the two peoples. All these transactions are based on contracts and an ADR clause will only strengthen the position of the parties, Mr. Ali maintained.



In her Welcome Address Ms. Zhang Jingmei, Director of International Investment & Trade Service Window of China Yunnan Pilot Free Trade Zone (IITSW of CYPFTZ), China reiterated commitment of her organisation to work together with Bangladeshi entrepreneurs to resolve disputes arising out between parties of the two nations in open account trading through ADR. She along with her organisation, vowed to work as a bridge between Bangladesh and China to boost businesses between the two nations.



Speaking on the occasion Special Guest of the event Mr. Li Hu, Vice Chairman, China Maritime Arbitration Commission stressed upon adhering to Arbitration and Mediation procedures as more appropriate tools of dispute resolution in open account trade between Bangladesh and China import export deals.

An expert Panel of Speakers comprising business leaders, bankers, entrepreneurs, corporate executives and representatives from the legal fraternity addressed issues and impacts of the challenges of open account trading for imports and exports between China and Bangladesh and ADR's role in this regard was highlighted in the largely attended webinar through Zoom transmission.



Mr. Munazzir Shehmat Karim, Executive Director, Country Operations, Standard Chartered Bank Bangladesh moderated the webinar. In course of discussion he opined that until and unless buyers and sellers do not have an ADR clause in their commercial contracts it will be really difficult to resolve any probable dispute arising out thereby.



Mr. Rizwan Rahman, President, Dhaka Chamber of Commerce & Industry (DCCI) took part in the discussion as a Panellist and underscored the need of provision of an Alternative Dispute Resolution (ADR) clause in open account trades between Bangladesh and China. He appreciated 5.2% GDP growth of Bangladesh during the ongoing COVID-19 crisis and hoped that mandatory ADR provisions in commercial contracts will raise confidence of exporters and BIAC and business chambers can work together in this regard.



Taking part in the discussion Professor Ni Peng, Legal Advisor, First Yunnan Provincial Party Committee, Communist Party of China gave an insight on the trade policy of Bangladesh. He also outlined prevalent ADR processes in Bangladesh and categorised that to avoid procedural legal consequences of commercial disputes, ADR would be the best practice.



Mr. Ataur Rahman, Secretary General of International Chamber of Commerce-Bangladesh (ICC-B) viewed the issue from an academic perspective and opined that though the Bangladesh Bank has allowed open account trading in exports

only, in future in the import sector the same facility should be advanced for our economic development. He opined that banks and business chambers should insist upon all parties to keep provisions of mandatory ADR in commercial contracts.



Taking part in the deliberations Mr. Geng Jiajun, Deputy General Manager, Minsheng Bank, Kunming highlighted his Bank's activities to promote international financial service and iterated collaboration to enhance open account trade transaction between Bangladesh and China.



Speaking on the occasion Syed Mahbubur Rahman, Managing Director and CEO of Mutual Trust Bank Ltd., Dhaka maintained that lack of confidence of Chinese buyers must be done away with. Therefore, he said, business chambers should take initiatives to create awareness, in the absence of regulatory guidance so far regarding open

account trading for imports. ADR procedures must be in all commercial contracts, Mr. Rahman argued.



Mr. YazeXiong, Practicing Lawyer at Anli Partners, Kunming in his deliberations focussed on Mediation and Arbitration as steps to resolve contractual violations in open account trading between Bangladesh and China.



Speaking at the webinar Ms. Jahrat Adib Chowdhury, Chief Legal Officer and Company Secretary of Banglalink Digital Communications Ltd., Dhaka preferred ADR to litigation as an effective and efficient tool to dispute resolution in open account trading where parties themselves can decide and have an outcome in a less expensive manner.

The event was live streamed on BIAC's Facebook page and LinkedIn platform. The daily Bonik Barta was the media partner of the webinar.

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

3 February 2021



Mr. Muhammad A. (Rume) Ali, CEO of BIAC has been appointed as the Deputy Chairman of the Committee for Ethics and Fair Play under the Bangladesh Football Federation (BFF) for the term 2021 to

2024. A formal letter of appointment was received on behalf of the BFF President Kazi Md. Salahuddin. Mr. Ajmalul Hossain QC, Barrister-at-Law, Senior Advocate of the Supreme Court of Bangladesh has been appointed as the Chairman of the same Committee.

Officials from the Embassy of the Kingdom of the Netherlands and Office of the UN Resident Coordinator exchange views with the BIAC team

17 February 2021

Ms. Mahjabeen Quader, Senior Advisor, Economic Affairs and CSR of the Embassy of the Kingdom of the Netherlands in Dhaka and Mr. Md. Mazedul Islam, Development Coordination Officer of the office of the UN Resident Coordinator in Bangladesh visited BIAC Secretariat on 17 February 2021 in the afternoon and held discussion with the BIAC team led by the CEO Mr. Muhammad A. (Rume) Ali. Mr. Ali briefed the guests about BIAC's evolution and journey towards sustainability since inception which was unexpectedly impacted due to the spread of COVID 19. The visiting officials assured BIAC of possible assistance on behalf of their respective agencies.



Supreme Court Instruction on Mediation

21 March 2021

The Supreme Court of Bangladesh administration has asked the subordinate civil courts and the Money Loan Courts concerned across the county to dispose

of cases through mediation in line with the provisions of relevant laws in order to reduce the huge backlog.



SC Registrar Mr. Md Ali Akbar issued a notification to this effect today.

Meanwhile, the High Court Division authorities today issued another notification asking the lower courts to give the details, including the numbers of the cases disposed of by them and those pending with those courts till 28 February 2021 to the SC Registrar General's office in 10 days.

<https://www.thedailystar.net/law-our-rights/law-news/news/sc-ask-s-civil-artha-rin-courts-settle-cases-through-mediations-2064461>

Dispute resolution spectrum in Bangladesh needs legislative reforms, suggest experts in a webinar

22 March 2021

Bangladesh International Arbitration Centre (BIAC) organised its 12th webinar on 22 March 2021 on "Dispute Resolution Legislation of Bangladesh: Required Reforms" jointly with its partner organisation Rahman & Rabbi Legal Law Chambers on 22 March 2021. Taking part in the deliberations an eminent Panel of Speakers from home and abroad viewed the issue from their own perspectives and suggested that significant reforms should be made to dispute resolution legislation in Bangladesh for promoting positivity towards non-adversarial dispute settlement, community participation and above all, better access to justice.



In his Closing Remarks Chairman of the BIAC Board Mr. Mahbubur Rahman, who is also President of International Chamber of Commerce-Bangladesh said that our aim is to appreciate the issue of required reforms in the dispute resolution legislation spectrum of Bangladesh to help reducing the congestion of over 3.8 million under trial cases in our courts. It will also attract more Foreign Direct Investment for overall growth of our economy and facilitate ease of doing better business, while we are graduating to a Developing Country by 2026, Mr. Rahman categorised.



In his Welcome Address Chief Executive Officer of BIAC Mr. Muhammad A. (Rume) Ali stressed on the need of enforcing commercial contracts between parties and overcoming credibility issue of Alternative Dispute Resolution (ADR) among the business community and the legal fraternity. He opined that ADR is the way out to resolve business disputes in view of the huge back log of cases in our judicial system and the disproportionate number of trying Judges and under trial cases.

Advising Partner of Rahman & Rabbi Legal Mr. Md Mahbubur Rahman also delivered Welcome Address on behalf of his organisation and favoured further cooperation between Rahman & Rabbi Legal and



BIAC in the field of training and research on ADR. He emphasised concerted efforts by the Judges and the legal community to support ADR as the appropriate dispute resolution mechanism.

Government and corporate officials, lawyers, academicians, accredited mediators, ADR experts, bankers and business leaders of high eminence participated in the largely attended webinar through Zoom transmission.



Barrister Md. Monzur Rabbi, Head of Chambers, Rahman & Rabbi Legal and Advocate, Supreme Court of Bangladesh moderated the webinar. In course of discussion he attracted attention of the framers of law so that an ADR friendly justice dispensation system can grow in order to ensure the right of citizens to access to justice.



Taking part in the discussion Panellist Barrister Fida M. Kamal, Former Attorney General of Bangladesh and Senior Advocate, Supreme Court of Bangladesh highlighted the inadequacies of the existing Arbitration law and insisted on adhering to more consensual dispute resolution methods, like mediation and conciliation.



Mr. Mohammad Shahidul Haque, Former Senior Secretary, Legislative and Parliamentary Affairs Division, Bangladesh Ministry of Law, Justice and Parliamentary Affairs and Head of Chambers, the Relief, spoke on the occasion as a Panellist and said that with GO and NGOs' partnership, we should take united move and steps to create a congenial atmosphere, wherein parties find recourse beyond the purview of formal adjudication, ensuring inexpensive and speedy relief through ADR.

Professor Dr. Farhana HelalMehtab, Associate Dean, Faculty of Humanities & Social Science, Daffodil International University in her deliberations suggested



that a national Directorate for ADR can be formed for the monitoring process with the collaborative effort of all the related stakeholders.



Panellist Professor Dr. Rumana Islam, Department of Law, University of Dhaka also spoke on the occasion and opined that Bangladesh should sign the Singapore Mediation Convention 2018, which will add newer positive dimension towards resolving commercial disputes through mediation.

Ms. Elena Fontanelli, Deputy Counsel, ICC International Court of Arbitration, Paris, France in her deliberations categorised that the role of arbitral institutions is to guide disputant parties, counsels and



arbitration tribunals through electronic device and video conferencing in order to raise efficiency of arbitration procedures, especially at the ongoing crisis period of COVID-19.



Director of BIAC Mr. M A Akmal Hossain Azad also spoke at the webinar and opined that to keep up with the international best practices around the world Bangladesh needs to develop a strong ADR framework so that it can coexist with the judicial system.

The discussions were followed by a Question and Answer Session. The webinar was live streamed on facebook pages and LinkedIn profiles of BIAC and Rahman & Rabbi Legal. The daily BonikBarta was the media partner of the event.

First virtual hearing conducted under BIAC Rules

4 April, 2021



Due to the Government restrictions issued initially on 4 April 2021, BIAC has been operating virtually. Recently we conducted the first ever virtual arbitration hearing under BIAC Rules successfully. All Parties joined from different parts of the world through BIAC's online platform and the session lasted for 4 hours which included cross examination of witnesses.

Prior to this, BIAC has arranged hybrid hearings but as we go into stricter lockdown, the safety of our patrons, staff and supporters remain a priority. As a result we are adopting necessary measures to accommodate your requests.

ADR instruments of UNCITRAL imperative for doing business and enhancing access to justice in Asia and the Pacific region, experts tell webinar.

8 April 2021

BIAC organised its 13th webinar on 08 April 2021 on "Regional Perspective of UNCITRAL ADR Instruments on Ease of Doing Business in Asia and the Pacific", jointly with the Regional Centre for Asia and the Pacific (RCAP), based in Incheon, Republic of Korea (ROK) of the United Nations Commission on International Trade Law (UNCITRAL). Established by the UN General Assembly in 1966, UNCITRAL plays an important role in developing the framework to progressive harmonisation of the law of international trade.

Taking part in the deliberations an eminent Panel of Speakers from Bangladesh and ROK including Government officials, bankers, academicians and UNCITRAL RCAP legal experts suggested that the UNCITRAL ADR instruments are now imperative for doing business and enhancing access to justice as a means for Bangladesh and Asia and the Pacific region

to promote and strengthen a legally enabling environment for facilitating cross border trade.



Chairman of the BIAC Board Mr. Mahbubur Rahman, who is also President of International Chamber of Commerce-Bangladesh, in his Closing Remarks said that the UNCITRAL Model Law on International Commercial Arbitration is a unique law prepared by the UNCITRAL and adopted by the United Nations which is designed to assist States to take into account the particular features and needs of international commercial arbitration. He said that both the World Bank's Global Doing Business Index and the Asia Pacific Economic Cooperation (APEC) Ease of Doing Business initiatives are dedicated within the Asia Pacific region to assess and improve regulatory environments of the countries to make doing business

cheaper, faster and easier. Enforcing contracts including the adoption and implementation of UNCITRAL texts of ADR are essential components in this regard, Mr. Rahman categorised.



In his Welcome Address Chief Executive Officer of BIAC Mr. Muhammad A. (Rume) Ali said that hosting a webinar jointly with the UNCITRAL RCAP is very important in the context of international trade, ADR instruments of UNCITRAL including the New York Convention 1958 on Arbitration and the Singapore Convention on Mediation 2018 and the accompanying UNCITRAL model laws and rules which offer legislative and contractual guidance to facilitate the resolution of commercial disputes across borders. He insisted on institutional, not ad hoc ADR to be practiced in this region and offered BIAC's Rules for institutionalised Arbitration and Mediation to resolve commercial disputes.



Head of UNCITRAL RCAP Ms. Athita Komindr also delivered Welcome Address on behalf of her organisation and favoured using UNCITRAL texts in providing basic legal framework for doing business including enforcing contracts. She opined that Bangladesh should sign the Singapore Convention on Mediation for easier access to justice. She urged upon availability of pragmatic ADR mechanism for reducing judicial backlog.



Barrister Rashna Imam, Advocate, Supreme Court of Bangladesh and Managing Partner, Akhtar Imam & Associates, Dhaka moderated the webinar. In course of discussion she attracted attention of revising Arbitration Act 2001 to help ADR flourish which is imperative for Bangladesh, particularly in view of backlog of cases in courts.



Taking part in the discussion Panellist Kazi Arifuzzaman, Joint Secretary, Legislative & Parliamentary Affairs Division, Ministry of Law, Justice & Parliamentary Affairs, Government of Bangladesh laid emphasis on a good legal and regulatory framework to facilitate indicators like starting business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading cross borders and enforcing contracts. He maintained that all these will promote a sustainable and inclusive business environment in Bangladesh.



Mr. Changwan Han, Director, International Dispute Settlement Division, Ministry of Justice, Republic of Korea spoke on the occasion as a Panellist and said that the office of Foreign Investment Ombudsmen in ROK has been working for legislative improvement and ROK is now on way to implementation of the Singapore Mediation Convention. He insisted on concerted efforts on conciliation and mediation to settle cross border disputes.



Ms. Humaira Azam, Managing Director & CEO (In-Charge), Trust Bank Limited, Dhaka in her deliberations suggested that in all business contracts there should be an institutional ADR clause, as trade pattern has changed word wide and we need enforcing contracts clause in all bilateral and multilateral business transactions. She favoured adoption of Singapore Convention on Mediation by the Government of Bangladesh.



Ms. Eun Young Nam, Legal Expert of UNCITRAL RCAP, ROK stressed the need of contract based and treaty based arbitration while giving an overview of UNCITRAL arbitration texts. She said that countries of the region may be benefitted by using citation of 725 cases from 37 countries codified in the UNCITRAL Digest on Model Law.



Panellist Dr. Jamila A. Chowdhury, Professor, Department of Law, University of Dhaka in her deliberations said that the UNCITRAL promoted its Model Law on International Commercial Arbitration with a post modern view that allowed national Governments to introduce variations in their respective national laws. She maintained that it also widened the scope of judicial activism by competent national courts to interpret laws and opined that setting more uniform international legal norms is the order of the day.



Ms. Jenny Hui, Legal Expert of UNCITRAL RCAP, ROK in her deliberations opined that Bangladesh's joining the Singapore Convention on Mediation will help her achieve benefits of an efficient and harmonised legal framework for resolution of cross border trade disputes.

The programme was streamed live on facebook page and LinkedIn profile of BIAC. The daily BonikBarta was the media partner of the event.

BIAC Celebrates its 10 years of operation

9 April 2021



Bangladesh International Arbitration Centre (BIAC), the country's first and only registered Alternative

Dispute Resolution (ADR) facilitating institution, has just completed 10 eventful years of operation. BIAC is committed to establish internationally recognised best practices of institutional ADR in the country. With its own Rules of Arbitration and Mediation, BIAC has been, ever since it started functioning on 9 April 2011, providing over the years, a neutral, efficient and reliable dispute resolution service to adversaries in order to save time and minimise cost of commercial and business dispute resolution in this emerging hub of South Asia's industrial and commercial activities.

BIAC signs MoU with BALI International Arbitration and Mediation Centre (BIAMC)

15 May 2021



Bangladesh International Arbitration Centre (BIAC) recently signed a Memorandum of Understanding (MoU) with BALI International Arbitration and Mediation Centre (BIAMC), Bali, Indonesia to work jointly to promote a more effective resolution of international disputes through arbitration and other means of dispute settlement.

The MoU was signed by Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC and Ms. Naz Juman Gulnazaer, Founding Chair and CEO BIAMC at their institutions' respective offices and exchanged the documents through email.

Under the terms of the agreement, BIAC and BIAMC will use each other's venue with facilities support and

assistance for administering cases. BIAC and BIAMC will jointly organise training programme, seminars, conferences and programs aimed at raising awareness about arbitration and other alternative dispute resolution methods. In addition, the two institutions will share the knowledge and information as well as expertise for mutual interest. The two institutions will also cooperate on research, development programmes where appropriate and feasible.

BIAMC is a non-profit service centre located both in Denpasar, Bali and in Jakarta, Indonesia devoted to international dispute settlement through arbitration, mediation, or other forms of ADR. BIAMC emerged as an affirmation of three distinct yet interwoven Asia Pacific phenomena: The Association of Southeast Asian Nations (ASEAN), China's One Belt One Road (OBOR), and The Asia Pacific Economic Cooperation (APEC).

BIAC signs Cooperation Agreement with China International Economic and Trade Arbitration Commission (CIETAC)

16 June 2021



Chief Executive Officer of Bangladesh International Arbitration Centre (BIAC) Mr. Muhammad A. (Rume) Ali and Mr. Chengjie WANG, Secretary General of CIETAC, recently signed a Cooperation Agreement on behalf of their respective organisations on 16 June 2021 via Zoom. Mr. Mahbubur Rahman, Chairman BIAC Board and the only Arbitrator from Bangladesh on the CIETAC Panel of Arbitrators was also present in the signing ceremony.

Addressing the event, Chairman of BIAC Mr. Mahbubur Rahman said that signing of the Cooperation Agreement will take us a long way to achieve our cherished goal of imparting training on Arbitration and other methods of Alternative Dispute

Resolution (ADR) to stakeholders in Bangladesh from different agencies. It will definitely help us develop a broader human resource base to popularise and practice best internationally acclaimed ADR norms to resolve commercial disputes, he hoped. He stressed the need of further collaboration between CIETAC and BIAC to help ease of doing business and attract more Foreign Direct Investment to the country's growing economy when we are set to graduate to a Developing Country by 2026. Our objective is to integrate ADR with the existing judicial system and contribute to faster access to justice in the field of national and international commercial disputes, he said.

CEO of BIAC Mr. Muhammad A. (Rume) Ali, in his welcome address gave a background of mutual cooperation between CIETAC and BIAC and emphasised formalising the relation in order to further boost our economy. ADR, he said, is the most pragmatic way to resolve commercial disputes, with which end in view the two organisations will work together.

In his address Mr. Chengjie Wang, Secretary General of CIETAC expressed satisfaction over BIAC's commitment and activities to build a firm base of ADR practices in Bangladesh and the region. He

hoped that Bangladesh as an important trade partner of China, will contribute more towards implementing the Chinese Belt and Road initiative in the days to come. Mutual cooperation between BIAC and CIETAC will definitely yield to positive result in resulting cross border trade, he categorised.

The China International Economic and Trade Arbitration Commission (CIETAC) is a permanent international commercial arbitration institution which independently and impartially resolves international economic and trade disputes by arbitration. Established by the Central Government of China in 1956 CIETAC is the oldest and largest arbitration institution in China. CIETAC's headquarter is based in Beijing and has a number of sub-commissions throughout China. Recently, CIETAC set up a North America Arbitration Center in Vancouver and a Europe Arbitration Center in Vienna.

From BIAC Mr. M A Akmal Hossain Azad, Director, Ms. Mahbuba Rahman Runa, General Manager and Ms. Rubaiya Ehsan Karishma, Counsel and from CIETAC Ms. Fei LU, Deputy Director of the Business Development Division, Ms. Yahan LU, Case Manager at the ADR Division, Ms. Ling ZHAN, Executive of International Affairs and Ms. Qingyu MAO, Assistant Executive of Brand Operation also attended the event.

Experts highlight role of Alternative Dispute Resolution in achieving Sustainable Development Goal 16 of the United Nations

22 June 2021

BIAC organised its 14th webinar from a virtual platform on 22 June 2021 on "How ADR Can Achieve SDG-16: Peace, Justice and Strong Institutions", jointly with its partner organisation, the Accord Chambers, one of Bangladesh's notable law firms to promote the use of institutional ADR.

Taking part in the deliberations an eminent Panel of Speakers from home and abroad representing academicians, business leaders, the legal fraternity and Non Government Organisations suggested that in the pursuit to achieve United Nations' Sustainable Development Goal (SDG)-16,

ensuring access to justice is a crucial component for peace, justice and strong institutions. Experts suggested that Alternative Dispute Resolution (ADR) mechanisms are now vital and inseparable justice options. ADR is such an alternative that encompasses various dispute resolution techniques and mechanisms that are alternative to full-scale court processes, they opined.

Chairman of the BIAC Board Mr. Mahbubur Rahman, who is also President of International Chamber of Commerce-Bangladesh, in his Closing Remarks said



that in our country justice-seekers tussle with some economic, social and institutional barriers in accessing formal judicial system. Widening access to justice depends upon extending some facilities to the litigants and empowering them to overcome those barriers, he continued. In the present day context of Bangladesh ADR can help achieve SDG 16 with a view to promoting Peace, Justice and Strong Institutions worldwide, integrating its methods, e.g., arbitration, mediation, negotiation, conciliation, etc. with the existing judicial system, Mr. Mahbubur Rahman categorised. He also stressed on the need of an institution like BIAC to promote local businesses as well as to invite more Foreign Direct Investment for overall development of the country's economy while we are graduating to a Developing Country by the year 2026.



In his Welcome Address Chief Executive Officer of BIAC Mr. Muhammad A. (Rume) Ali insisted on effective and executable justice delivery system and said that access to justice is denied owing

to high cost and inordinate delay in litigation. He maintained that ADR can be a regulatory parallel to the judicial system. Mr. Ali categorised that ADR mechanisms are now vital and inseparable justice options which provide critical pathways to justice, though they often receive insufficient attention from policymakers, justice sector professionals and legal practitioners. He also favoured ADR as a dispute resolution mechanism for a cost-effective and timely justice delivery service.



Mr. Mamun Chowdhury, Senior Partner of Accord Chambers and Advocate, Supreme Court of Bangladesh also delivered Welcome Address on behalf of his organisation and emphasised that securing rule of law, fundamental human rights and freedom, equality and justice for all citizens is enshrined in the very Preamble of our Constitution. It is now also echoed in UN's SDG-16. ADR can play a key role in achieving it by creating new avenues towards access to justice in a less time-consuming manner, Mr. Chowdhury affirmed.



Taking part in the discussion Panellist Dr. M. Mahfuzul Haque, Assistant Professor, South Asian Institute of Policy and Governance (SIPG), North South University, Dhaka said that the Sustainable Development Dashboard 2021 indicates that for Bangladesh to achieve SDG16, major challenges remain and the progresses are stagnating. Therefore, more awareness building among citizens and streamlining the governing instruments for arbitration may well advance progress on SDG 16, Dr. Haque opined.



Mr. Tareq Rafi Bhuiyan (Jun), Secretary General & Director, Japan Bangladesh Chamber of Commerce and Managing Director, New Vision Solutions Ltd., Dhaka spoke on the occasion as a Panellist and stressed on the importance of good governance and ensuring access to justice to attract foreign investors. Strong ADR infrastructure will give comfort to investors worldwide and create a business-friendly environment so that foreign investors feel confident about entering the Bangladesh market, Mr. Jun said emphatically.



Barrister SK Jenefa K Jabbar, Director, Human Rights and Legal Aid Services, Social Compliance and Safeguarding, Bangladesh Rural Advancement Committee (BRAC), Dhaka in her deliberations gave an account of BRAC's programmes of providing free ADR support to people coming from marginalised and vulnerable conditions through its legal aid clinics across 61 districts of Bangladesh. She said that about two thirds of the complaints received at BRAC HRLS programme were resolved through ADR including Online Dispute Resolution methods.



Ms. Gowree Gokhale, Partner, Nishith Desai Associates, Mumbai, India, speaking as a Panellist, shared insights about how India is promoting ADR as part of its drive to secure rule of law at the national and international levels and ensure equal access to justice. She also referred to some of the notable progress the country has made in strengthening its arbitration institutions.



Barrister Suhan Khan FCI Arb, Advocate, Supreme Court of Bangladesh and Managing Partner, Accord Chambers, Dhaka took part in the discussion and opined that limited access to justice remains a great threat to Sustainable Development. Developed countries are gradually moving away from traditional litigation due to the costs, delay and complexities involved. Arbitration and mediation must be embraced by Bangladesh to compete in the race of development, Khan insisted. He further emphasised on the significance of introducing institutional arbitration in Government contracts and public sector agreements.



Mr. M A Akmal Hossain Azad, Director of BIAC moderated the webinar. Summing up the discussions he said that the webinar has facilitated to identify ongoing risks, challenges and necessary safeguards to develop appropriate legal, policy and implementation frameworks, taking into account international and regional standards on the rule of law.

The programme was streamed live on Facebook page and LinkedIn profile of BIAC. The daily Bonik Barta was the media partner of the event.

"The revolution and women's liberation go together. We do not talk of women's emancipation as an act of charity or because of a surge of human compassion. It is a basic necessity for the triumph of the revolution."

— Thomas Sankara

International News

High Court of Gujarat finds that two Indian parties can choose a Foreign Seat of arbitration but cannot obtain Interim Relief in Indian Courts

21 January 2021



The Gujarat High Court (the “Court”) recently handed down a significant decision in *GE Power Conversion India Private Limited v. PASL Wind Solutions Private Limited*, Arbitration Petition No. 131 and 134 of 2019, confirming that two Indian parties are permitted to choose a foreign seat of arbitration, and that the award from such an arbitration may then be enforced in India as a foreign award. However, the Court held that Indian parties who had chosen a non-Indian seat would not be entitled to interim relief from the Indian courts in support of the arbitration under s9 of the Arbitration and Conciliation Act 1996 (the “Act”).

Background

PASL Wind Solutions Private Limited (“PASL”) and GE Power Conversion India Private Limited (“GE”), both Indian companies, entered into an agreement for the sale of converters. A dispute arose as to breach of warranties relating to the converters and the parties entered into a settlement agreement. The agreement included a dispute resolution clause providing for arbitration in Zurich under ICC Rules, but subject to Indian substantive law. A dispute arose under the settlement agreement and the Tribunal issued an award in GE’s favour (the “Award”).

GE applied to enforce the Award under s47 of the Act, and also for interim relief under s9 of the Act. GE requested the Court to issue interim orders requiring PASL to deposit the Award amount with the Court and restrain it from transferring its property.

Key issues

Seat of the arbitration

PASL argued that the seat of arbitration was India. Its counsel argued that of the three types of arbitration regimes governed by the Act (i.e. domestic arbitration seated in India, international commercial arbitration, and foreign awards made outside India), the present proceeding was a domestic arbitration. S 2(1)(f) of the Act defines ‘international commercial arbitration’ based on the parties’ nationality. An arbitration qualifies as such when it relates to a dispute arising out of a legal commercial relationship, and at least one of the parties is non-Indian. Since both parties to the disputes were body corporates incorporated in India, this definition did not apply.

The Court held that the nationality of the parties and other domestic elements in the arbitration were “irrelevant” in determining whether an award was a foreign award. This would be determined solely by the seat of the arbitration. The Court held that the seat was indeed Zurich, based on a plain reading of the dispute resolution clause in the settlement agreement, and transcripts from the hearing which emphasised that the seat of the arbitration was Zurich and Swiss law would apply to the proceedings.

Indian parties’ choice of a foreign seat

PASL submitted that the intention of the Act was not to allow two Indian parties to contract out of the full extent of judicial scrutiny imposed on the enforcement of domestic awards (such as wider grounds to challenge the award) by designating a seat outside India in an arbitration that otherwise had no foreign element. PASL referred to s28 of the Indian Contract Act 1872 (“ICA”), which states that agreements restraining parties to a contract from enforcing their rights by legal proceedings are void. PASL argued that the object of a contract by which two Indian parties agree to seat the arbitration outside India would be unlawful under s23 of the ICA since it would defeat the provisions of the Act, and this would contravene Indian public policy.

In the alternative, PASL requested non-enforcement of the award on the ground that the Tribunal’s reasoning in the Award obliterated the basis of the settlement agreement, and was contrary to the fundamental policy of Indian law and basic notions of justice.

The Court was not prepared to delve into the merits of the Tribunal’s decision at the enforcement stage, following precedent established in other cases (discussed in our prior blog post).

Turning to PASL’s public policy argument under s 48(2)(b) of the Act, the Court highlighted the exception to s 28 of the ICA (under which contracts referring disputes to arbitration are not unlawful), and emphasised the high threshold required to establish contravention of Indian public policy. It pointed out that neither the ICA nor the Act prohibited two Indian parties from designating a foreign seat of arbitration, and rejected PASL’s argument that such a choice would violate public policy. The Court also stated that the case of *TDM Infrastructure v. UE Development India* (2008) 14 SCC 271, which prohibits Indian parties from contracting out of Indian law, was inapplicable to the facts of the case.

Interim relief under s9

S 2(2) of the Act provides that s9 applies to “international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made...is enforceable and recognised under the provisions of Part II of this Act”. As noted above, the definition of ‘international commercial arbitration’ under s 2(1)(f) requires at least one party to be non-Indian.

GE argued that the Court should construe the term ‘international commercial arbitration’ in s 2(2) as referring to all arbitrations seated outside India, so as not to leave foreign award holders seeking enforcement without a remedy.

PASL on the other hand argued that the proceeding between the parties was not an international commercial arbitration since both parties were Indian, and the fact that GE made an application under s9 showed that it considered the arbitration to be domestic.

The Court ruled that in accordance with s 2(1) (f) and s 2(2), interim measures under s9 are available for ‘international commercial arbitrations’ regardless of whether such arbitrations were seated in India or abroad. However, since both parties in this case were Indian, the arbitration was not an ‘international commercial arbitration’ under s 2(1)(f), so they would not be entitled to seek such relief. Based on the principles of statutory interpretation, the Court

refused to interpret the “plain and unambiguous” language of the proviso to s 2(2) as referring to all arbitrations seated outside India.

Comment

This judgment is a welcome clarification of the position that two Indian parties are entitled to choose a foreign seat of arbitration. Various courts have ruled differently on this proposition – for example, the Delhi High Court ruled in favour in *GMR Energy v. Doosan Power Systems*, CS (Comm.) 447/2017 (see our coverage of this decision here), while the Bombay High Court took a contrary position in *Addhar Mercantile v. Shree Jagdamba Agrico Exports*, AA No. 197 of 2014 and 910 of 2013.

On the other hand, Indian parties providing for foreign seats where there may be no non-Indian party to the dispute should be mindful that interim relief from an Indian court under s9 of the Act (e.g. relating to restrictions on transfer of property etc.) may not be available.

A final determination on these issues by the Supreme Court would be welcome should this judgment be appealed.

<https://hsfnotes.com/arbitration/2021/01/21/high-court-of-gujarat-finds-that-two-indian-parties-can-choose-a-foreign-seat-of-arbitration-but-cannot-obtain-interim-relief-in-indian-courts/>

Mr. Md. Helal Chowdhury joins as Director General of SARCO

10 February 2021



SAARC Arbitration Council (SARCO) welcomes its new Director General, Mr. Md. Helal Chowdhury from the People's Republic of Bangladesh. SARCO will benefit from the able superintendence, experience and vision of its leader in pursuit of the mandate enshrined by the SAARC Member States.

The Importance of Pre-Arbitral Steps: The Latest English High Court Approach

23 February 2021



International arbitration is facing continued (if not increased) problems stemming from multitier arbitration clauses. What should happen when one party has not complied with a pre-arbitral step but nonetheless commenced arbitral proceedings? Typically, the parties have a satellite dispute: on one side, whether the commencement of the arbitration is void thus depriving the arbitral tribunal of all jurisdiction due to the non-compliance and on the other side, whether such non-compliance is an issue of admissibility that falls within the arbitral tribunal's remit to address by way of procedural modification (for example, by

ordering a stay of proceedings pending completion of a negotiation period).

Legal jurisprudence is split on whether a failure to comply with a multitier resolution provision is an issue of jurisdiction (depriving the tribunal of the ability to hear the claim entirely) or admissibility (relating to a lack of ripeness of the dispute due to a failure to follow a pre-agreed procedure). The weight of authority in the arbitral community leans in favor of a failure to follow a multitier clause as being characterized as an issue of admissibility that should be dealt with by the arbitral tribunal. Recently, the authors have advocated that, due to the divergent views taken under national

laws, the arbitral tribunal's jurisdiction to decide on issues of compliance with multitier dispute resolution clauses should be expressly stated in the arbitral rules. This would elevate the issue to one of party-agreement and alleviate need for national court intervention. There are three key points:

- Multitier dispute resolution clauses are complex both in their operation and in legal effectiveness. This is especially so in International Construction Arbitration where typically there are many discrete disputes travelling through different pre-arbitral steps (including DABs).
- The prevailing judicial view is that a failure to follow a pre-arbitral step is not fatal to the claim in Arbitration. Courts and commentators prefer the notion that the arbitral tribunal has threshold jurisdiction and can thus work out what needs to be done. This normative proposition is not always feasible in practice where discrete claims are comingled and at differing steps in the pre-arbitral process.
- Clarity creates certainty. A failure to follow a multitier clause is an issue of admissibility that should be dealt with by an arbitral tribunal. Institutional arbitral rules should be amended to make this express. Parties should also consider making this clear in arbitration agreements.

Republic of Sierra Leone v. SL Mining Limited

The recent English High Court case of *Republic of Sierra Leone v. SL Mining Limited* (2021) EWHC 286 (Comm) discussed as a matter of first impression whether noncompliance with a multitier dispute resolution provision gives rise to a right to challenge an arbitral award under Section 67 of the English Arbitration Act. The English High Court found that failure to adhere to multitier dispute resolution provisions is an issue of admissibility, not jurisdiction (and therefore not open to challenge under Section 67). Further, the Court found that on the facts of the case, the claimant had waived any challenge it may have possessed to the jurisdiction of the arbitral tribunal.

The arbitration clause at issue provided:

"b) The parties shall in good faith endeavour to reach an amicable settlement of all differences of opinion or disputes which may arise between them in respect to the execution performance and interpretation or termination of this Agreement, and in respect of the rights and obligations of the parties deriving therefrom.

c) In the event that the parties shall be unable to reach an amicable settlement within a period of 3 (three) months from a written notice by one party to the other specifying the nature of the dispute and seeking an amicable settlement, either party may submit the

matter to the exclusive jurisdiction of a Board of 3 (three) Arbitrators who shall be appointed to carry out their mission in accordance with the International Rules of Conciliation and Arbitration of the ICC."

SL Mining filed a notice of dispute triggering the period for settlement negotiations on July 14, 2019. Shortly thereafter, SL Mining sought Emergency Relief under the International Chamber of Commerce (ICC) Rules on August 20, 2019, by filing an Application for Emergency Measures. SL Mining filed its Request for Arbitration on August 30, 2019, in accordance with the ICC Rules only six weeks after starting the period for negotiations. However, during the course of the Emergency Arbitration procedure, counsel for SL Mining had sought relief from the provision of the ICC Emergency Arbitration Rules requiring a Request for Arbitration be filed within 10 days of the Application for Emergency Arbitration. Instead, counsel for SL Mining suggested that the parties agree to filing the Request for Arbitration on October 14, 2019, at the end of the negotiation period. Counsel for Sierra Leone rejected the offer to file the Request in October, insisting that it be filed in compliance with the ICC Rules not more than 10 days from the application for Emergency Arbitration.

Sierra Leone subsequently challenged the jurisdiction of the tribunal for failure to follow the multitier dispute resolution clause. The arbitral tribunal rendered a Partial Final Award rejecting the jurisdictional challenge by Sierra Leone. The arbitral tribunal considered that the failure to comply with the multitier dispute resolution step was ultimately a question of admissibility and not of threshold jurisdiction. It was theretofore open to the tribunal to address the consequences of any noncompliance. This finding was in keeping with the majority of academic texts on the issue.

Sierra Leone appealed the Partial Final Award on the basis of Section 67 of the English Arbitration Act, which allows challenges to "substantive jurisdiction." The High Court's analysis was framed by the understanding that Section 67 allows challenges to an arbitral tribunal's "substantive jurisdiction," which is defined in Section 82 (which itself refers back to Section 30 of the Act). Section 30 provides in relevant part:

Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to –

- (a) whether there is a valid arbitration agreement,
- (b) whether the tribunal is properly constituted, and
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

Sierra Leone framed its challenge under Section 67 by arguing that the terms of Section 30(c) were open to an interpretation that any case not submitted in compliance with the multitier dispute resolution clause was not “submitted to arbitration in accordance with the arbitration agreement” and therefore disturbed the arbitral tribunal’s jurisdiction.

The High Court rejected Sierra Leone’s argument. It began by reviewing past cases that had sparsely discussed differences between jurisdiction and admissibility. The Court then took a survey of academic commentary which confirmed that noncompliance with multitier dispute resolution provisions does not amount to questions of the tribunal’s threshold or substantive jurisdiction, but only to the admissibility of the claims. The Court also took note of other cases in the United States and Singapore, which confirmed the position.

The Court ultimately found:

The issue for [Section 30] (c) is, in my judgment, whether an issue is arbitrable. The issue here is not whether the claim is arbitrable, or whether there is another forum rather than arbitration in which it should be decided, but whether it has been presented too early. That is best decided by the Arbitrators.

Finally, the court found that based on the precise facts, in any event, Sierra Leone consented to the Request for Arbitration being served earlier than required under the dispute resolution clause by its insistence on its filing on August 30, 2019, in accordance with the ICC Rules on Emergency Arbitration. It also found, even in the absence of waiver, that the three-month period was objectively unable to be met such that there was no failure to comply with clause 6.9(c) of the contract.

Renewed Call for Reform

While the position under English Law, Singaporean Law and in the United States is relatively clear that issues of noncompliance with multitier dispute resolution clauses should be decided by the arbitral tribunal, other jurisdictions take different views. As the authors have previously advocated, the most legally pure way to move the issue from the competence of the courts to arbitral tribunals is to have the parties so agree by incorporating arbitral rules that make the point explicit. Until such reform is enacted, parties to international arbitrations face uncertain resolution to the issue of noncompliance with multitier arbitration clauses. Much may depend on the jurisdiction applicable to the supervising court.

<https://www.jdsupra.com/legalnews/the-importance-of-pre-arbitral-steps-2800347/>

PCA Publishes Contribution to 2021 Report of United Nations Secretary General on Oceans and the Law of the Sea

25 June 2021



The Permanent Court of Arbitration is pleased to publish online its Contribution dated 18 June 2021 to the Report of the United Nations Secretary-General

on Oceans and the Law of the Sea.

The PCA’s annual Contribution provides information on the main recent developments at the PCA in the field of ocean affairs and the law of the sea. The PCA has unparalleled experience in the administration of inter-State dispute resolution proceedings that concern oceans and the law of the sea.

To date, it has acted as registry in 14 of the 15 arbitrations conducted pursuant to Annex VII of the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”). It has administered the first (and to date, only) compulsory conciliation pursuant to Annex V of UNCLOS, as well as a number of dispute resolution proceedings involving the law of the sea brought under other legal instruments. The PCA also engages in outreach, education and cooperation activities relevant to the law of the sea. The Contribution provides an overview of developments in respect of these activities in the last year.

<https://pca-cpa.org/en/news/pca-publishes-contribution-to-2021-report-of-united-nations-secretary-general-on-oceans-and-the-law-of-the-sea/>

“Dissents speak to a future age. It’s not simply to say, ‘My colleagues are wrong and I would do it this way.’ But the greatest dissents do become court opinions and gradually over time their views become the dominant view. So that’s the dissenter’s hope: that they are writing not for today, but for tomorrow.”

— Joan Ruth Bader Ginsburg

Articles



Resolving International Commercial Disputes through Mediation

Ho Meng Hee

Legal Counsel and Director, ADR

Financial Industry Disputes Resolution Centre (FIDREC), Singapore

Last year 2020 has not been a good year for many people, businesses and organisations around the world. COVID-19 has been devastating, in causing not only sickness, but also psychological and social problems, as well as financial woes. Our hearts and prayers go out to the few million workers in the Ready Made Garments industry in Bangladesh. I agree with the Bangladesh International Arbitration Centre or BIAC that it is best to use Alternative Dispute Resolution (ADR) to resolve trade disputes, including those arising from COVID-19, whether in the RMG sector or others and whether for domestic or international disputes.

So, how to promote ADR?

First, ADR normally arise out of the contracting parties' voluntary participation. So, the contract between the buyer and the exporter should clearly express that the parties wish to submit their dispute to ADR.

Secondly, An ADR clause must also address the disputes to be covered, it must describe the procedure, give a time frame for the arbitration or mediation, and states that there is an obligation to refrain from going to litigation in the courts. Use words such as the parties "shall", or "must", in the clause, instead of "may". For the clause to be binding, it has to be expressed in mandatory and unqualified terms. In short, draft ADR clauses with much care. Otherwise, problems can arise if parties subsequently dispute the validity and effect of their ADR clause.

Thirdly, so far, for cross-border commercial disputes, the Arb-Med-Arb is often used. This is where a dispute is first referred to arbitration before mediation is attempted. If parties are able to settle their dispute through mediation, their mediated settlement may be recorded as a consent award. The consent award is generally accepted as an arbitral award, and, subject to any local legislation and/or requirements, is generally enforceable in approximately 150 countries under the New York Convention. If parties are unable to settle their dispute through mediation, they may continue with the arbitration proceedings. Parties wishing to

have Arb-Med-Arb should have a suitable clause to provide for this in their contracts.

What about international commercial disputes that are resolved entirely through mediation efforts?

Now, although it is commercially attractive, some businesses could be skeptical about the effectiveness of mediation in international dispute resolution, since ensuring compliance with a settlement agreement is often a challenging task. For arbitration and Arb-Med-Arb, the problem has already been solved by the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. But what about settlements reached purely through mediation efforts? Such settlement agreements may be contractually-binding, but they may not be directly enforceable by an innocent party against a defaulting party in the courts of law.

That was the problem in many cases in many countries before August 2019. Then, on 7 August 2019, a treaty governing the cross-border enforceability of settlement agreements resulting from international commercial mediation was opened for signature in Singapore. This is the United Nations Convention on International Settlement Agreements Resulting from Mediation which was adopted on 20 December 2018 and opened for signature on 7 August 2019. This is an international agreement which gives legal recognition to international mediated settlements. 46 States signed it then. Since then, more States have also come on board. Known as the Singapore Convention on Mediation in short, the Convention came into force on 12 September 2020, following its ratification by Singapore, Fiji, Qatar, Saudi Arabia, Belarus and Ecuador.

There are several aspects of this Convention. But due to space constraint, and since the intention now is for me to give only a brief and quick introduction to the Convention, I will just highlight Article 3 of the Convention, which is the centrepiece of it. I set out here this Article in full:-

Article-3- General Principles:

1. *Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.*
2. *If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.*

Thus, this Article provides that signatories may, in accordance with their respective domestic procedures, enforce an international settlement agreement achieved through mediation; or where a dispute arises in respect of a matter claimed to have been resolved by an international settlement agreement, invoke such agreement as a valid defence.

In February 2020, the Singapore Convention on Mediation was given effect in Singapore through the passage of local legislation by the Singapore Parliament. This allows for the cross-border enforcement of mediated settlements by the Singapore courts. It provides that a party may apply to record the same as a court order, subject to the requirements being met and there being no ground for refusal. It also allows for such agreements to be used as a defence, if one party tries to bring a claim in breach of a mediated settlement. A mediated settlement would be considered “international” if at least two different parties to the settlement agreement have their places of businesses in different States.

Thus, a central framework for the enforcement of international settlement agreements with certainty was established in Singapore, as well as in the other signatory countries. This gets round the difficulties in enforcement which was previously encountered. It allows businesses to avoid the more expensive and time-consuming options of litigation in court and also arbitration.

Many have described this Convention as the “missing third piece” in the international dispute resolution framework that currently includes the Hague Convention on Choice of Court Agreements and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Thus, this Convention now places mediation in the same league as litigation and arbitration in the international dispute resolution arena. Considering its cost-effective and relationship-preserving elements, mediation may in fact become the dispute resolution mechanism of choice for international business disputes from now, thanks to this Convention. For this Convention gives businesses greater assurance that mediation can be used to settle cross-border commercial disputes. This will in turn facilitate the growth of international commerce.

So far, 53 States from around the world have signed this Convention (as of (mid-December 2020)). These include major trading countries such as the USA, China, India and South Korea. Asian countries that have signed this Convention include Saudi Arabia, Sri Lanka, Turkey, and Qatar. In Southeast Asia, Brunei, Laos, Malaysia, the Philippines and Singapore have also signed it. Perhaps, Bangladesh can look into the possibility of it becoming a signatory to this Convention too? I was therefore very heartened and happy when I recently heard all the eminent speakers at a recent webinar organised by BIAC, speaking in favour of Bangladesh signing this Convention too! These experts gave cogent reasons, such as saving time and costs (especially when there’s already a huge backlog of cases before the Bangladeshi courts), the parties have a say in the final outcome, the preservation of business relationships, boosting investors’ confidence, achieving higher economic growth, etc.

On that optimistic and happy note, I would like to wish Bangladesh and BIAC a very much better 2021! May COVID-19 be overcome this year, and with that, may economic growth and rising prosperity return to this great land that is Bangladesh and to all her industrious citizens.

“The self (Soul) is the constant-witness consciousness. Through all months, seasons and years, through all divisions of time, the past, present and future the consciousness remains one and self luminous. It neither rises nor sets. The ultimate self is free from sin, free from old age, free from death and grief, free from hunger and thirst, which desires nothing and imagines nothing.”

— Dr. Sarvepalli Radhakrishnan



The Singapore Convention: An ADR tool in International Trade

Shireen Scheik Mainuddin

BIAC and CEDR Accredited Mediator and Trainer

It is called the Singapore convention because it opened for signatures in Singapore but it is a United Nations Treaty namely “the United Nations convention on International Settlement Agreements resulting from Mediation” and it came into force on September 12 2020. As per the terms of the Treaty this was six months after ratification by Qatar, the third signatory state to do so and which followed Singapore and Fiji. Till date 53 countries have signed the document including the USA, India, China and South Korea (not Bangladesh) and the Treaty remains open for signatures by all U.N. Member states. In total, six states have ratified the Treaty i.e. Saudi Arabia, Belarus and Ecuador in addition to the three countries mentioned above. The European Union has yet to sign, however Mediation is an accepted form of dispute Resolution within the E.U and it remains to be seen if the EU will sign as a bloc or as individual states.

The Singapore Convention recognises the value of mediation as a method of amicably settling disputes arising in the context of International commercial relations. It also considers that the use of Mediation results in significant benefits such as reducing the instances where a dispute leads to the termination of a commercial relation, facilitates the administration of International Transactions by commercial Parties and produces savings in the administration of justice by the State.

The Singapore Convention is based on the New York Convention for the enforcement of Arbitration Awards which allows awards granted by an International Arbitral tribunal to be enforced worldwide in over 150 countries. It is therefore a significant addition to the International dispute enforcement framework as it effectively allows mediated Settlements to be enforceable in their own right once countries complete all required formalities.

Reluctance by countries to ratify the Singapore Agreement appears to be unfounded. The Singapore convention is narrow in its scope and restricted to International Trade disputes. It specifically rules out disputes that are personal or relate to family and inheritance. The parties involved in the mediation must have their offices in two different countries and must be involved in cross border trade.

According to the Singapore Convention, Mediation is defined as a process whereby parties attempt to reach an amicable Settlement of their dispute with the assistance of a third person or persons (“the Mediator” who lacks the authority to impose a solution upon the

parties to the dispute. The impartiality of the Mediator, his/her code of conduct and ability to maintain secrecy throughout the process is of utmost importance.

Most Mediators are trained lawyers but many are from other professions such as engineering, architecture, business, consultants, bankers etc. Most countries use public or private bodies to promote, manage and serve the Mediation Industry. Organizations such as the Centre for Effective Dispute Resolution U.K (CEDR) or the International Institution for Conflict Prevention and Resolution (CPR) have worked towards providing training and setting standards for Mediators. The International Mediation Institute (IMI) which a not for Profit global public service institution also works towards setting a code of conduct, transparency and standards for Mediators and for trainers in Mediation. In Bangladesh, BIAC has taken on this responsibility.

In so far as International Commercial mediation is concerned, mediator selection does not appear to be an issue because the dispute does not involve the same level of emotion as a family, or an in-country dispute where a power imbalance between the parties plays a crucial role in the process.

The time required for closure of the mediation process in an international trade dispute is expected to be short but can run into two/ three or more sessions. The mediator may charge per session or charge irrespective of the number of sessions until a Settlement is reached.

Most commercial mediation cases are referrals from lawyers, in International Commercial mediation; banks are expected to play a major role in referral since goods being traded are under credits lines sanctioned by the Bank.

The major benefit of a commercial mediation is that it reduces time and costs and that it is flexible in procedure. The number of people who attend the mediation and those who are allowed to speak can all be agreed upon and there is no time lost in getting a hearing date. Very importantly, it provides the financing institution with the assurance that a change in price or supply time in the sales/purchase contract can be changed through Mediation and that the Settlement Agreement is enforceable. With less reliance on letters of credit and more shipments on orders/ sales contracts, the Convention provides banks with the required legal framework.

Bangladesh unfortunately has yet to sign the Singapore Agreement although it will be a vital support to the RMG industry and to almost every area of export and import in the country.

Interviews

It is our firm conviction that publishing interviews of leaders and experts from different business, financial, corporate, legal and academic sectors from home and abroad, on their perception and understanding of Alternative Dispute Resolution (ADR) based on a number of questions put forward by BIAC will generate cherished 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. Anil Changaroth, FCIArb, FSIArb, FPIArb, FAiADR, Mediator, Arbitrator, Adjudicator, Conflict Avoidance and Dispute Resolution Practitioner, Advocate and Solicitor of Singapore and Solicitor of England and Wales, Managing Director and General Counsel of ChangAroth Chamber LLC & ChangAroth International Consultancy, Singapore



Anil Changaroth
FCIArb, FSIArb, FPIArb, FAiADR



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). Why?

AC: Through the advancement of technology, people the world over are far more informed/educated of their options to avoiding conflicts and resolving disputes, resulting in it is no longer simply 'alternative' but more importantly 'Appropriate' Dispute Resolution mechanism that many turn to. In fact, many are starting to understand and accept that beyond just Arbitration - Mediation, Neutral Evaluation, Dispute Board, Expert Determination and Adjudication may well be far more effective.

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

AC: In Singapore, we are fortunate that there are no such obstacles. The motivation and drive towards excellence has resulted in constant advances not only by the Judiciary, but also the many in public and private sectors supported by the Government. Examples of these include the excellent Court Systems (including the Singapore International Commercial Courts and pro Arbitration approach), Adjudication for the Construction Industry and the Singapore Convention on Mediation. There is also incredible infrastructure

support in the form of the Singapore International Arbitration Centre, Singapore International Mediation Centre, Singapore International Mediation Institute, Singapore Mediation Centre and the Singapore International Dispute Resolution Academy.

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

AC: There are really no issues of risk when one considers the Singapore Judicial system and Court processes. Fundamentally, Singapore has always practiced and maintained a very clear understanding of the Rule of Law; Natural Justice; Separation of Power between the Executive, Legislature and Judiciary – such that each would under no circumstances influence or be influenced by the other. In March 2020, Singapore ranked 12 out of 128 Countries on its Rule of Law.

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?

AC: Yes, most definitely. As an accredited Mediator, fellow Arbitrator and trained Adjudicator (including my position as the Dispute Resolution Board

Foundation's Country Representative - Singapore), Appropriate Dispute Resolution is core/second in nature for me. I constantly consider how best ADR can be incorporated into any and every stage of my legal practice and consultancy. Even if there are no such clauses in the contract, and as I have stated above, the Courts constantly advocate, encourage and in fact implement ADR in their proceedings – both in the Supreme Court and the State Court.

BQB: In Bangladesh it is often said that the law practitioners see ADR as either 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 from the Singapore perspective?

AC: Along with the points I have shared above (far more personal than merely a Singapore perspective), it is really about a fundamental appreciation that the noble practice of law must surely be to avoid conflict and/or resolve disputes. Once you have this as a core value of your practice (e.g., the motto of my legal practice is "Counselling the Business and the Business of Consulting through Appropriate Dispute Resolution & Legal Technology"), it is then really about what Abraham Lincoln (the 16th President of the United States of America 1861-65) said: "Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."

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!*

EVENTS NEWS

BIAC's Upcoming Events

Organisation	Events	Date
Bangladesh International Arbitration Centre (BIAC) and China Maritime Arbitration Commission (CMAC)	China High-Level Dialogue On Maritime And Commercial Arbitration (CHDOMACA) Symposium- 8	16 July 2021
Thailand Arbitration Center (THAC) and Bangladesh International Arbitration Centre (BIAC)	Thailand ADR Week Webinar Series 2021	29 July-12 October 2021
Bangladesh International Arbitration Centre (BIAC) and Bali International Arbitration and Mediation Centre (BIAMC)	Signing Memorandum of Understanding	19 August 2021
Bangladesh International Arbitration Centre (BIAC) and Guangzhou Arbitration Commission	Signing Memorandum of Understanding	26 August 2021
Bangladesh International Arbitration Centre (BIAC) and Indian Institute of Arbitration and Mediation (IIAM)	Webinar on "ADR Landscape in the South Asia Region: Suggested Reforms"	5 September 2021
Thailand Arbitration Center (THAC) and Bangladesh International Arbitration Centre (BIAC)	Webinar on "Confidentiality: Does Arbitration Need a Protocol to Regulate the "New Normal?"	14 September 2021
Bangladesh International Arbitration Centre (BIAC) and Beijing Zhizhong Technology Co. Ltd.	Signing Memorandum of Understanding	21 September 2021
Bangladesh International Arbitration Centre (BIAC) and Asian Institute of Alternative Dispute Resolution (AIADR)	Signing Memorandum of Understanding	4 October 2021
Bangladesh International Arbitration Centre (BIAC)	BIAC Inter University Arbitration Contest 2021	October- December 2021



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