



DISPUTE RESOLUTION IN THE VIRTUAL WORLD: THE IMPACT OF COVID-19



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

কৃষককে অধিক ফলনের সহায়তা দিয়ে,
দেশের খাদ্য নিরাপত্তা নিশ্চিত করতে আমরা বদ্ধ পরিকর

কৃষি সমস্যার আধুনিক যুগোপযোগী সমাধান
পেট্রোকেম এর অবদান

যে কোন কৃষি সমস্যার সমাধান পেতে মিসড কল
দিন ০৯৬০৬৬৮১০৮০ নম্বরে



পেট্রোকেম (বাংলাদেশ) লিমিটেড

এবিসি হেভিটেক্স (চতুর্থ তলা), প্লট নং-২ ও ৪, জঙ্গীম উদ্দিন এভিনিউ, সেক্টর-৩, উত্তরা বা/এ, ঢাকা-১২৩০



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ফোন: +৮৮০১৪০৬৩৯৫৮৫০, +৮৮০১৪০৬৩৯৫৮৫১

ই-মেইল: bahonexpress@gmail.com

ফেসবুক: www.facebook.com/Bahonexpress

ওয়েবসাইট: <https://www.bahonexpress.com/>

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- ✦ সেইম-ডে এবং নেক্সট ডে ডেলিভারী
- ✦ দ্রুত পেমেন্ট সিস্টেম



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ফোন: +৮৮০১৪০৬৩৯৫৮৬১

মিরপুর হাব

ঠিকানা: প্লট ১/এ, বাড়ি ৪, রোড ২/এ, বর্ষিত পল্লবি,

মিরপুর ১১.৫, ঢাকা - ১২১৬

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নির্মাণসহ শহর-গ্রাম সারা দেশে ঋণ সুবিধা ■ যখন-তখন ইন্টারেস্ট
রেট পরিবর্তনের আশংকা নেই ■ Early Settlement-এ কোনো ফি ও
বিশি-নিষেধ নেই ■ দেশের সর্বাধিক বিতরণকৃত হোম লোন



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আমার বাড়ি
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DISPUTE RESOLUTION IN THE VIRTUAL WORLD: THE IMPACT OF COVID-19

The grave disruption caused by the COVID-19 pandemic for nearly two years now has impacted badly on resolution of commercial disputes all over the world and its adverse effect on such resolution in each country has been influenced by how high the rate of contamination prevailed, its period and severity. In the second year of the pandemic, the courts of most countries adapted to enable them to continue operating with inflated backlog of cases. The primary trends that have emerged from many countries include development and large scale use of online platforms for conduct of proceedings and document management; development of protocols and guidelines for the New Normal; and increasing adoption of innovative technology.

COVID-19 accelerated the provision of electronic filing, document exchange and storage and communication methods in arbitration and mediation cases. Hearing online or virtual and hybrid or a mixture of online and physical or in person, have become increasingly common. In the context of arbitration, the pandemic has multiplied the pace of changes, pushing arbitral institutions to be adaptive and more aligned to international best practices. Detailed protocols for conducting online hearings have been developed by both courts and arbitral institutions focusing on fairness, efficiency, use of innovative technology, confidentiality and cyber security. Most of the countries of the world have enacted amendments to their laws in response to the pandemic. As its impact continued, many stakeholders have increasingly used innovative digital technology, flexible cost structure and scheduling including auto transcription, document management, automated docketing and visual perception tools.

Many parties have turned to Bangladesh International Arbitration Centre (BIAC) for information and guidance in the face of the COVID-19 outbreak and we are very conscious that these are challenging times for everyone. Under the awareness programme during the ongoing global crisis of COVID-19 pandemic and the future new norms for the handling of dispute resolution we have been trying our best to reach out to our stakeholders for persistent progress of Alternative Dispute Resolution (ADR) norms in the country in general and using virtual methods along with existing physical facilities in particular.



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

Unique Heights (13th floor), 117 Kazi Nazrul Islam Avenue, Dhaka-1217, Bangladesh
Tel: +8802-55138092-93; Email: info@biac.org.bd; Website: www.biac.org.bd

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Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

From the Desk of the Chairman

Bangladesh International Arbitration Centre (BIAC) has just completed its first decade of functioning, but we have little to rejoice at this hour with loss of over 5 million human lives caused by the ongoing pandemic throughout the world. The pandemic disrupted an already overstretched court system in Bangladesh. Its impact on Alternative Dispute Resolution (ADR) in the country has been all the more disappointing and BIAC has experienced substantial decline in the volume of physical hearings. Our training and outreach programmes also suffered as there was no physical event within the country or abroad. All these resulted in drastic fall in our revenue earning. Now that the world has been getting used to the New Normal, BIAC is trying hard to facilitate ADR methods including arbitration through online hearing alongside physical hearing at our premises.

Although COVID-19 has frustrated many of its important activities, BIAC hosted a number of webinars jointly with its local and regional partners including International Investment & Trade Service Window of China Yunnan Pilot Free Trade Zone; London College of Legal Studies (South), the Affiliate Centre of University of London International Programmes; Rahman & Rabbi Legal law Chambers; United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific, Republic of Korea; Accord Chambers law firm; Indian Institute of Arbitration & Mediation and Thailand Arbitration Center on outstanding issues like 'Using ADR Clause to Strengthen Open Account Trading for Imports and Exports between China and Bangladesh'; 'Why Bangladesh Should Sign the Singapore Convention on Mediation?'; 'Dispute Resolution Legislation of Bangladesh: Required Reforms'; 'Regional Perspective of UNCITRAL ADR Instruments on Ease of Doing Business in Asia and the Pacific'; 'How ADR Can Achieve SDG-16: Peace, Justice and Strong Institutions?'; 'ADR Landscape in the South Asia Region: Suggested Reforms'; and 'Confidentiality: Does Arbitration Need a Protocol to Regulate the New Normal?'. These events gave us international exposure and we had the opportunity to highlight our endeavours towards making Bangladesh a regional hub of ADR practices.

I am confident that today's Seminar themed: 'Dispute Resolution in the Virtual World: The Impact of COVID-19' and bringing out this publication on the occasion of 10th Founding Anniversary of BIAC will contribute towards unifying world economies and our thrust of integrating best practices of ADR including virtual norms at this crucial time of death and destruction by COVID-19.

On this auspicious occasion I extend my sincere gratitude to all our well wishers, partners, patrons and clients for their continuous support to BIAC which I hope, will continue and further accelerate in days ahead.

Allah Hafez.

Mahbubur Rahman

Chairman, BIAC



Anisul Huq

Minister

*Ministry of Law, Justice & Parliamentary Affairs
Government of the People's Republic of Bangladesh*

Message from the Minister for Law, Justice & Parliamentary Affairs

It is my pleasure to congratulate Bangladesh International Arbitration Centre (BIAC) on completion of its first decade of functioning as the only registered Alternative Dispute Resolution (ADR) institution in the country which is dedicated to institutionalise arbitration and mediation to resolve commercial disputes.

BIAC has come a long way in such a short period of time and made a notable contribution to the development of resolution of legal disputes through arbitration in Bangladesh. It is playing a proactive role in fostering international cooperation in this field between Bangladesh and the rest of the world.

It is encouraging to learn that BIAC, in response to the current global crisis created by COVID-19 pandemic, has quickly switched to allowing cases to be arbitrated and mediated by using video technology. This important step will facilitate disposal and resolution of disputes in a cost effective, speedy and efficient manner.

I congratulate BIAC for adopting the theme 'Dispute Resolution in the Virtual World: The Impact of COVID-19' for its 10th Anniversary Seminar. In today's perspective this theme is most relevant and very timely. I am confident that the outcome of the Seminar, which BIAC will definitely take forward, will help create the right atmosphere and charter a new pathway for more ADR friendly legal infrastructure in the New Normal Bangladesh and carry progress onward.

I wish BIAC all the best on its 10th founding anniversary.

Anisul Huq, MP

Minister for Law, Justice & Parliamentary Affairs



Judicial Administration
Training Institute

Message from the Director General of Judicial Administration Training Institute

On behalf of the Judicial Administration Training Institute (JATI), I extend our heartiest congratulations to Bangladesh International Arbitration Centre (BIAC) for celebrating its 10th Founding Anniversary.

As a statutory organisation JATI imparts legal and judicial knowledge, skill and attitude to the members of the subordinate judiciary and other stakeholders of the justice sector for bringing positive change in the justice delivery system of Bangladesh. JATI has been trying to meet this goal through undertaking various types of training programmes for its target groups and also publishing a yearly research journal on the contemporary judicial issues, complexities of laws and their application.

JATI looks forward to cooperating with BIAC in its training and outreach programmes aiming at increasing the general knowledge of arbitration, mediation and other ADR methods which would be helpful to presiding judges of our civil judiciary.

Justice Nazmun Ara Sultana
Director General



BANGLADESH BANK
(Central Bank of Bangladesh)

Message from the Governor of Bangladesh Bank

I am delighted to learn that Bangladesh International Arbitration Centre (BIAC) is going to publish its 10th Anniversary Special Publication. Since its inception, BIAC has been dedicated to helping investors and entrepreneurs resolve their commercial disputes efficiently out of court. Over the years BIAC has shown sincere commitment towards out-of-court resolution of commercial disputes in a transparent and cost-effective manner.

I am happy to know that BIAC is trying to bring their benefits to the banking industry by handling loan recovery disputes through Alternative Dispute Resolution (ADR) process under its own Arbitration and Mediation Rules and with its own limited capacity and facilities. It is appreciable that even during the ongoing COVID-19 pandemic BIAC has been working relentlessly to cater to the needs of its stakeholders by providing with online facilities of ADR hearings.

Bangladesh Bank as regulator of the financial sector encourages innovative ways of countering issue that hinder quality growth and stability of the sector. Bangladesh Bank also appreciates the step taken by scheduled banks to incorporate ADR clause in their loan and commercial contracts.

I hope this publication 'Dispute Resolution in The Virtual World: The Impact of COVID-19' will unfold BIAC's role in the country's rank in the Doing Business Global Index of the World Bank.

I wish BIAC greater success in the coming years.

Fazle Kabir
Governor, Bangladesh Bank
(Central Bank of Bangladesh)



Message from the Executive Chairman of Bangladesh Investment Development Authority

It is indeed commendable that Bangladesh International Arbitration Centre (BIAC) has passed a decade as the first institution for Alternative Dispute Resolution for businesses in Bangladesh.

Bangladesh Investment Development Authority (BIDA), as the apex national organisation facilitates and promotes investment in order to accelerate economic development of the country. We have undertaken various initiatives in a number of areas in order to improve country's investment ecosystem to help boost inflow of Foreign Direct Investment into Bangladesh.

Investors seek to have their interests protected and rely on the judicial system for enforcement of contractual obligations among the contracting parties. Given the situation with the existing high volume of cases pending for disposal in the courts and other limited judicial resources, an alternative route that can provide a speedy and cost effective solution, is desired. Alternative Dispute Resolution (ADR) can be a much desired way out and an ADR institution can offer necessary services with transparency and reliability.

Being the only ADR institution in Bangladesh, BIAC can play this role effectively. BIDA will be glad to join hands with BIAC and work towards improvement of the country's business/investment climate in the Enforcement of Contract as well as resolution of business disputes.

I am confident that BIAC will continue to serve as a beacon of ADR development in Bangladesh. I wish BIAC every success.

Md. Sirazul Islam
Executive Chairman
Bangladesh Investment Development Authority



University Grants
Commission of Bangladesh

Message from the Chairman of University Grants Commission of Bangladesh

I would like to extend my heartiest congratulations to Bangladesh International Arbitration Centre (BIAC) for completing ten glorious years of operation as the country's first and only licensed institution for Alternative Dispute Resolution (ADR).

ADR seems to have picked up momentum as a default dispute resolution mechanism especially during this pandemic and it is commendable that BIAC has quickly adapted to the New Normal by offering online ADR courses, organising online arbitration contest and sharing knowledge through webinars. Such praiseworthy efforts keep the students of Law engaged and motivate them to develop new skills even when educational institutions remain closed. We look forward to working with BIAC and encouraging the incorporation of ADR in the curricula of Law courses in all universities.

It has been a joint effort to ensure the health and safety of our students so that they can return to their institutions as soon as possible. UGC has started a web link for the quick and easy registration of students for COVID-19 vaccination. We hope to overcome these troubled times soon.

Once again on behalf of the UGC Bangladesh I offer my best wishes to BIAC and wish it continues to flourish in the coming years.

Professor Kazi Shahidullah

Chairman

University Grants Commission of Bangladesh



Message from the Ambassador of the European Union to Bangladesh

We are very pleased that BIAC has completed the 10 years milestone since its establishment. We are especially happy to see that an institution, which the EU supported in its initial stages, has now been a trailblazer in advancing the use of alternative forms of dispute resolution in Bangladesh.

The importance of ADR in Bangladesh is ever increasing. Bangladesh a decade ago is not the same country as the one we see today. With great strides in socio-economic development, its domestic market has grown manifold and the size of local and foreign investment has expanded quite considerably. Sustaining this progress and multiplying it requires a conducive business environment and proper enforcement of commercial contracts, for both local and foreign economic operators.

EU companies in Bangladesh are facing some difficulties that emerge from the lack of implementation of rules and regulation or their discretionary application. Commercial cases remain pending in the court for a long time, hampering not only the companies' day-to-day operation, but also holding back their future investment decisions. ADR can be a simple, efficient, fast and low-cost alternative to mitigating this challenge. However, for this form of dispute resolution to be effective, its use needs to be promoted, in particular by the courts, where the backlog of commercial cases remains often serious.

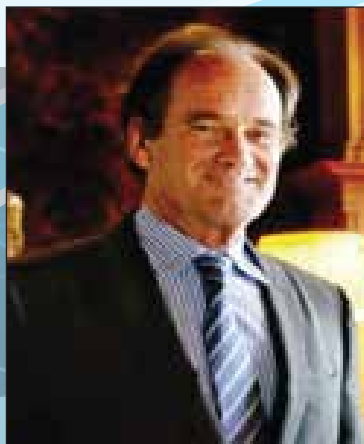
I believe that by giving thanks to BIAC's continual efforts and contribution, those goals can be achieved and the use of ADR will further increase.

I wish BIAC all the best in its future endeavours.

A handwritten signature in black ink, reading "C. Whiteley".

Charles Whiteley

Ambassador of the European Union to Bangladesh



The Permanent Court of Arbitration

Message from the Secretary-General of the Permanent Court of Arbitration

The Permanent Court of Arbitration (PCA) and the Bangladesh International Arbitration Centre (BIAC) entered into a cooperation agreement five years ago, on 21 October 2016. The cooperation agreement establishes a framework for the two organizations to join forces in the promotion of arbitration as a means for the peaceful settlement of international disputes and in raising awareness about developments in the field. In addition, it formally recognizes the benefits of cooperation among international arbitral institutions. On behalf of the PCA, I would like to congratulate BIAC on its 10th Anniversary. We look forward to continuing our fruitful collaboration.

A handwritten signature in black ink, appearing to read "H. Siblesz". The signature is fluid and cursive, with a horizontal line underneath.

Hugo H. Siblesz

Secretary-General

The Permanent Court of Arbitration



Message from the Head of UNCITRAL Regional Centre for Asia and the Pacific

On behalf of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific (UNCITRAL RCAP), congratulations to the Bangladesh International Arbitration Centre on its 10th Anniversary.

UNCITRAL is an inter-governmental body established by the General Assembly in 1966 as the core legal body of the United Nations system in the field of international trade law. Recognizing that disparities in national laws impeded the flow of trade, UNCITRAL was mandated to promote the progressive harmonization and modernization of international trade law by preparing legislative standards in various areas, including commercial arbitration and mediation. The Regional Centre was launched in Incheon, Republic of Korea in 2012 to further the UNCITRAL mandate in approximately 60 jurisdictions in the Asia-Pacific, including Bangladesh.

We are delighted, Bangladesh has adopted a number of UNCITRAL texts including the New York Convention, the Model Law on International Commercial Arbitration and the Model Law on Electronic Commerce. We would encourage Bangladesh to further consider adopting texts recently prepared taking into account developments in the field and evolving user needs, such as the Singapore Convention on Mediation.

Enthusiasm for the work of UNCITRAL among stakeholders in Bangladesh continues to grow, evidenced by the well-attended first joint UNCITRAL RCAP-BIAC webinar in April 2021 illustrating how UNCITRAL dispute settlement instruments strengthen a legally enabling environment in Bangladesh and the region for business and cross-border trade.

We look forward to enhancing our collaboration with BIAC and Bangladesh and thus encourage stakeholders in Bangladesh to contact us at uncitral.rcap@un.org with initiatives.

Congratulations once again on BIAC's 10th Anniversary and thank you for giving the Regional Centre the honour of delivering this message.

Athita Komindr

Athita Komindr

Head

UNCITRAL Regional Centre for Asia and the Pacific



Message from the Acting Country Manager for Bangladesh, Bhutan and Nepal, International Finance Corporation, World Bank Group

The International Finance Corporation (IFC) team would like to congratulate BIAC on its 10th Anniversary. BIAC is now a well-recognized Alternative Dispute Resolution (ADR) center and has been pro-active in training professionals in ADR techniques and raising awareness on benefits of ADR in commercial dispute resolution in Bangladesh.

IFC strongly believes that the availability of efficient contract enforcement mechanisms, both through formal court procedures and out of court mechanisms are fundamental for the proper functioning of market economies. In the past 10 years, we have observed that alternative dispute resolution through arbitration, mediation, or other means (ADR) has become a preferred mechanism to resolve commercial disputes in many countries around the world.

We commend BIAC's efforts to create an enabling environment for the banking and private sector in Bangladesh to resolve their disputes out of court. Over the last 10 years, BIAC has completed several key milestones to become credible for businesses, both domestically and internationally, and work towards becoming a sustainable ADR service provider.

BIAC has grown tremendously under the able guidance of Mr. Mahbubur Rahman, Mr. Muhammad A. (Rumee) Ali & other Board Members; and IFC is pleased to see the growth of BIAC and to have been a partner of BIAC in this journey. With its expansion of ADR services, we expect to observe even greater achievements in the next few years, through continuous collaboration with key Bangladesh industries and the financial sector.

Having a transparent and trusted dispute resolution regime encourages new investments in Bangladesh, helps to extricate existing investors from business hindering litigation and also has a significant impact on improving loan recovery rates.

The IFC team wishes BIAC all the best as it continues to grow and support the economic growth of Bangladesh.

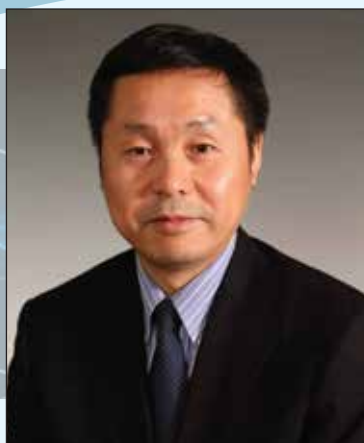
Sincerely,

Nuzhat Anwar

Acting Country Manager

Bangladesh, Bhutan and Nepal

International Finance Corporation, World Bank Group



Message from the Vice President and Secretary General of China International Economic and Trade Arbitration Commission

I would like to extend my sincere congratulations on the 10th Anniversary of the founding of the Bangladesh International Arbitration Centre (BIAC) on behalf of the China International Economic and Trade Arbitration Commission (CIETAC).

We understand that the BIAC is the first international arbitration institution of the country and provides neutral, efficient and reliable dispute resolution service. Apart from facilitating arbitration and mediation, the BIAC also offers training courses and programs on ADR. The 10th anniversary marks your commitment to advancing arbitration as a means of settling disputes in the international commercial relations.

Over the past few years, CIETAC has formed a friendly relationship with the BIAC, and the relationship was further strengthened by the Cooperation Agreement signed by the two institutions, which aimed at conducting in-depth cooperation in providing services, information sharing and exchange of visits. We value our links with the BIAC and we hope that our relations continue to prosper in the future through the Cooperation Mechanism of the Beijing Joint Declaration of the Belt and Road Arbitration Institutions, which the BIAC has joined as a Founding Member.

CIETAC looks forward to continuously being engaged in a friendly relationship with the BIAC aiming at increasing the general knowledge of arbitration in international commercial transactions and in particular, those involved Bangladeshi and Chinese parties.

I would like to once again express my heartfelt congratulations on the 10th Anniversary of the BIAC. We look forward to a long and fruitful relationship between our respective institutions.

A handwritten signature in black ink, appearing to read "Wang Chengjie".

WANG Chengjie

Vice President and Secretary General

China International Economic and Trade Arbitration Commission (CIETAC)



Message from the Chairman of Chartered Institute of Arbitrators, Singapore

On behalf of the Singapore Branch of the Chartered Institute of Arbitrators, I extend my best wishes and congratulations to the Bangladesh International Arbitration Centre as the BIAC celebrates its 10th Founding Anniversary. Since its founding in 2011, the BIAC has grown from strength to strength. One of its key focus areas has been training, and to that end, the BIAC has conducted several training courses on arbitration and mediation for its members. We are delighted that the BIAC has on several occasions chosen to partner with the CI Arb Singapore Branch to jointly conduct courses on arbitration. I recall fondly the inaugural course the Singapore Branch and BIAC held in Singapore in January 2017, when we hosted close to 50 delegates from Bangladesh who attended the Introduction to International Arbitration course. Since that inaugural course, we have jointly conducted arbitration courses in December 2017, November 2018, and November 2019, with a total of 70 delegates attending these courses. The COVID-19 pandemic and resultant border closures have naturally prevented us from conducting courses with the BIAC over the past two years. However, we look forward to collaborating further with the BIAC when travel is permitted to resume. In the meantime, I take this opportunity to wish the BIAC further success in the next decade as it strives to be one of the top arbitration centres in the region.

A handwritten signature in black ink, appearing to read 'Paul Sandosham'.

Paul Sandosham, C.Arb, FCI Arb

Chairman

Chartered Institute of Arbitrators, Singapore



Message from the Managing Director of Thailand Arbitration Center (THAC)

Greetings from Thailand! It is with immense pleasure that The Thailand Arbitration Center (THAC) joins the celebration for the 10th Foundation Anniversary of the Bangladesh International Arbitration Centre (BIAC), the leading arbitral institution in Bangladesh.

Since 2016, when we signed a Memorandum of Understanding (MoU), our centres have been working closely to promote the use of Alternative Dispute Resolution (ADR) as the preferred method for settling disputes and Asia as a world-leading place for dispute resolution. We have been supporting and organizing successful events on arbitration and mediation for the past five years and we will keep working and supporting each other in the years to come. It is an honour and a pleasure to have such an important organization as a companion on our journey for the success of ADR.

Due to the pandemic, it would be impossible for us to join the in-person celebration for the BIAC anniversary, but we wish to visit you in Bangladesh as soon as it will be possible. On behalf of the Thailand Arbitration Center (THAC), I wish all the best and the brightest future to the BIAC. You can always rely on the support of our centre.

A handwritten signature in black ink, appearing to read 'P. Asawawattanaporn'.

Dr. Pasit Asawawattanaporn
Managing Director of THAC
and President of APRAG



**Bali International
Arbitration and Mediation Center**

Message from the Chief Executive Officer of the Bali International Arbitration and Mediation Center (BIAMC)

On behalf of the Bali International Arbitration and Mediation Center (BIAMC), it is my honor and privilege to congratulate the Bangladesh International Arbitration Center (BIAC) on its 10th anniversary.

BIAMC and BIAC are alike. Both organizations facilitate arbitration and other forms of ADR and organize training courses on ADR, especially arbitration and mediation. The established collaboration between BIAMC and BIAC has strengthened and leveraged each organization's comparative advantage and each country's development.

Back in March 2020, as we entered COVID-19, a whole spectrum in business changed drastically. COVID-19 also shut down in-person proceedings. However, this must not stop us, the ADR centers, to help businesses overcome this situation. With COVID-19, we have to adapt to new norms, and this brings new norms on how to do business. As I quote to a statement from CEO of BIAC Mr. Muhammad A. (Rumee) Ali, "It is the duty of ADR centers to help the businesspeople to overcome this situation by framing rules and making it easier for the business community all over the world to resolve their dispute efficiently." To this end, there has been an explosion in the virtual proceeding. More feedback in both virtual mediation and arbitration has been positive. I believe, there will be room for both in-person and virtual proceedings in the future or a combination between both proceedings.

May this journey of BIAC's success continue in the coming years. Congratulations on this special day. Happy anniversary!

A handwritten signature in black ink, appearing to read "Naz Schinder".

Naz Schinder (Juman Gulnazaer)

Chair & Chief Executive Officer
BIAMC



Message from the Secretary General Institute for the Development of Commercial Law and Practice (ICLP) Arbitration Centre, Sri Lanka

It is my great pleasure to congratulate the Bangladesh International Arbitration Centre for celebrating 10 years of spearheading ADR services in Bangladesh and the region.

The Institute for the Development of Commercial Law and Practice of Sri Lanka (ICLP) and the ICLP Arbitration Centre have had a long and fruitful relationship with BIAC since its inception and the recently established ADR Center, Sri Lanka being a joint venture between the ICLP and the Ceylon Chamber of Commerce is happy to collaborate with BIAC, in developing ADR in the region.

The world of international dispute resolution is constantly adapting and evolving to streamline procedures and enhance efficiency in these very turbulent times and it is in these times that our international relationships give us the ability to cope and adopt to provide services to international standards which will enhance ADR mechanisms that will make South Asia a hub for ADR.

I wish the Board of Directors and staff of BIAC all the very best in its future endeavours and look forward to further collaboration in education, training and providing ADR services together.

Shehara Varia, FCI Arb
Secretary General
ICLP Arbitration Centre, Sri Lanka



Message from the Chairman of Association of Bankers Bangladesh Limited (ABB)

I feel privileged to congratulate Bangladesh International Arbitration Centre (BIAC), country's first and only ADR institution, on completion of its 10th anniversary with excellent professionalism and great commitment.

BIAC has been actively contributing over the years to the needs and demands of the business community and the country by facilitating ADR in Bangladesh as well as to increase investors' confidence.

The primary goal of BIAC is to help investors and entrepreneurs resolve their commercial disputes efficiently out of court. BIAC has been providing out of court resolution to commercial disputes quickly, transparently and in a cost-effective way for the benefit of business growth of the country.

In the course of ten years, BIAC has established itself as a credible institution to resolve commercial disputes through ADR. On behalf of Eastern Bank Limited (EBL) and Association of Bankers, Bangladesh (ABB), I wish BIAC all the very best in their quest to providing and developing international standard ADR facilities.

A handwritten signature in black ink, appearing to read 'Ali Reza Iftekhar'.

Ali Reza Iftekhar
Managing Director & CEO
Eastern Bank Ltd. and Chairman of ABB



Bangladesh Garment
Manufacturers & Exporters
Association

Message from the President of Bangladesh Garment Manufacturers & Exporters Association (BGMEA)

Congratulations to BIAC for successfully completing 10 years of excellence as Bangladesh's first and only Alternative Dispute Resolution (ADR) institution. BIAC's independence, confidentiality and neutrality have made it an attractive venue for arbitration. We are optimistic about the capability of BIAC that it will be able to play a vital role in ensuring business sustainability for this industry and greater economy in the upcoming days.

COVID-19 has introduced an unprecedented situation before us in terms of disruption in the overall supply chain. It has also exposed the power imbalance between foreign buyers and our manufacturers. The misinterpretation, un-implementable nature and violation of the contract made the situation direr for both parties. If we can promote the concept and practice of ADR facilities among our manufacturers, then it will help maintain the economic sustainability of this industry and associated stakeholders. It will also help us to learn and deal with COVID like situations differently in the future.

We believe BIAC will come forward with its international standard ADR facilities, trained judges, and professionals to fulfill the cause. We are very much happy with our working relationship with BIAC and wish to further enhance this collaboration in the future.

A handwritten signature in black ink, appearing to read 'Faruque Hassan'.

Faruque Hassan

President
BGMEA



Message from the President of Dhaka Chamber of Commerce and Industry

On behalf of Dhaka Chamber of Commerce & Industry (DCCI), I would like to congratulate Bangladesh International Arbitration Centre (BIAC) on its 10th founding anniversary. I would also like to take this opportunity to felicitate the Chairman, the CEO and members of the BIAC team for their relentless efforts to strengthen the foundation of BIAC and for taking Alternative Dispute Resolution (ADR) to a new stature of international standard in Bangladesh.

Last year DCCI and BIAC established a landmark collaborative relationship by signing a Memorandum of Understanding between the institutions to facilitate the demand of ADR in the region relating to commercial disputes, both domestic and international. This has been a way forward to strengthen the investment climate and our joint efforts will be aiming for augmenting commercial dispute resolution mechanism easier, faster and more cost effective.

I hope BIAC will be able to facilitate the private sector to take the advantages of ADR mechanism for the greater interest of individual company and overall economy through an effective implementation of ADR procedures to mitigate business disputes out of the courts. Moreover, we all should come forward to make the ADR processes familiar to the private sector.

DCCI wishes BIAC more success and prosperity in the days ahead and looks forward to collaborating with its upcoming endeavours.

Rizwan Rahman

President, DCCI

INTRODUCING BIAC



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

BIAC BOARD



Mahbubur Rahman
Chairman



Rokia Afzal Rahman
Member



Nihad Kabir
Member



Rizwan Rahman
Member



AK Azad
Member



Kutubuddin Ahmed
Member



Anis A. Khan
Member



Osama Taseer
Member

BIAC MANAGEMENT



Muhammad A. (Rume) Ali
Chief Executive Officer



M A Akmal Hossain Azad
Director



Mahbuba Rahman Runa
General Manager



Md. Ashiqur Rahman
Manager (Finance & Accounts)



Rubaiya Ehsan Karishma
Counsel



Asif Sultan Bhuiyan
Assistant Counsel



Syed Shahidul Alam
Commercial Officer



Shahida Pervin
Administrative Officer



Annual Report **Bangladesh International Arbitration Centre (BIAC)** *The Institution for Alternative Dispute Resolution*

Muhammad A. (Rumee) Ali
Chief Executive Officer

Countries across the world need to equip their legal infrastructures with a range of options including Alternative Dispute Resolution (ADR) avenues. The courts may not be the best answer. ADR should stand for appropriate dispute resolution which calls for the need to increased communication between stakeholders so that nations learn from one another and adopt the best features of other systems. In spite of cultural diversities and different approaches to ethics, the way forward involves drawing on a global talent pool and allowing practitioners to work outside their home jurisdictions. The globalisation of market place is allowing businesses to grow all over the world at a phenomenal proportion. As we have to ensure that the global market is placed in broadly shared values and practices that reflect global social needs and that all citizens of the world share the benefits of globalisation, we should appreciate its consequence, leading to business disputes on the rise. With the increase in cross border trade, investment and financial transactions many legal complications are also surfacing, most prominent of which is dispute resolution through commercial arbitration and mediation worldwide.

Courts in Bangladesh have been over burdened with case dockets over decades and it takes years to arrive at finality. As of now the number of cases pending in all courts in Bangladesh stands as high as over 3.9 millions. Businesses and investment decisions cannot wait indefinitely to see resolution of a dispute or enforcement of a

contract. An essential prerequisite of rapid economic growth is availability of facilities for expeditious and effective enforcement of contract and settlement of disputes. Laws in Bangladesh recognise and provide for arbitration, mediation, conciliation, etc. among the different types of ADR methods in practice around the world. The Government of Bangladesh is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, known as the New York Convention. The Arbitration Act of 2001 was enacted by Bangladesh Parliament following the United Nations Commission on International Trade Law (UNCITRAL) as a model. Bangladesh Energy Regulatory Commission Act, 2003 and The Real Estate Development and Management Act 2010 provide for arbitration as dispute resolution method under these laws. Money Loan Court Act 2003 and The Code of Civil Procedure 1908 have been amended incorporating provisions of mandatory first step of dispute resolution through mediation. Provisions for ADR are also incorporated in the Customs Act 1969, Value Added Tax Act 1991, Income Tax Ordinance 1984 and Labour Act 2006.

Increasingly almost all countries realise the limitation of court resources as well as the importance of having an alternative framework for addressing commercial disputes arising out of contracts. In the wake of the spread of COVID-19 worldwide a massive rethinking in respect of ADR mechanism has come up. Considering the extraordinary circumstances that have emerged from the pandemic, Bangladesh

judiciary has started to conduct court proceedings via video conferencing. BIAC has also been conducting virtual arbitration hearings alongside its existing facilities of onsite physical hearings. We advocate for wide ranged introduction of virtual ADR practices covering both judicial and institutionalised ADR. It is high time that we join the community and adhere to the internationally accepted best practices of ADR.

Emergence of BIAC

Mr. Mahbubur Rahman, President of the International Chamber of Commerce – Bangladesh (ICC-B), the world business organisation, with his years of experience as a businessman realised the need for an ADR Framework in Bangladesh and urged the Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka and the Dhaka Chamber of Commerce & Industry (DCCI) to join forces and established BIAC. On 4 September 2004, ICC-B, MCCI and DCCI obtained a licence from the Ministry of Commerce to establish BIAC as a not-for-profit organisation and registered BIAC under the Registrar of Joint Stock Companies and Firms of the Government of Bangladesh under section 28 of the Companies Act 1994. International Finance Corporation (IFC) of The World Bank Group initially funded major operating expenses of BIAC under the Bangladesh Investment Climate Fund (BICF) project. UK Aid and European Union also contributed to the same.

BIAC formally started its operation on 9 April 2011. Currently it is governed by a Board comprising distinguished personalities including Presidents of the three prominent business Chambers of the country, thereby enriching the organisation with their vast experience and knowledge. An experienced, full-fledged secretariat runs the Centre on a day-to-day basis. From the very beginning BIAC has been offering excellent facilities for arbitration and mediation hearings including two state-of-the-art meeting rooms, audio-aides

and recording facilities, private consultation rooms, transcription and interpreter service. BIAC provides all necessary business facilities like video conferencing, powerful multimedia projection, computer and internet access, printing, photocopying. Full-fledged secretarial services and catering are also available on request. BIAC also offers specific services for non institutional arbitration. Parties are free to choose individual elements of its services.

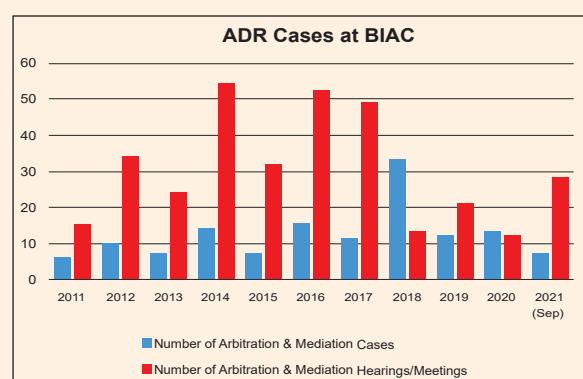
BIAC launched its own institutional rules for arbitration and mediation, namely, BIAC Arbitration Rules 2011 and BIAC Mediation Rules 2014 both being critically analysed and reviewed by a number of eminent jurists and legal experts. These Rules have been superseded by launching BIAC Arbitration Rules 2019 and BIAC Mediation Rules 2019 which have been made more user-friendly and expanded the scope of the Rules in conformity with the growing need of time. BIAC has its own Panel of Arbitrators consisting of 12 eminent jurists and judges of whom 4 are former Chief Justices of Bangladesh and a few former Justices of the Supreme Court. 131 experts and trained Mediators are in the BIAC's List of Mediators. BIAC has developed all the facilities required for systematic and comfortable Arbitration and Mediation proceedings including virtual hearing considering the safety of all staff and patrons during the pandemic. Till date, BIAC has handled 334 Arbitration hearings and Mediation meetings of 133 Arbitration and Mediation cases.

BIAC offers Membership to practitioners, stakeholders, students and interested individuals from home and abroad to create a knowledge & resource sharing platform. It will enable all interested parties to enhance individual knowledge and contribute towards enriching the ADR landscape of the country. It will also reach out internationally to individuals and institutions. All interested professionals including ADR facilitators such as arbitrators, mediators, practicing lawyers, academics, bankers, representatives of commercial & business organisations and students can apply. BIAC Membership is intended to reflect

professionalism and recognition in the region and throughout the globe.

A graphical presentation of Arbitration Hearings and Mediation Meetings held at BIAC over the years is given below:

Year	Number of Arbitration & Mediation Cases	Number of Arbitration & Mediation Hearings/Meetings
2011	6	15
2012	10	34
2013	7	24
2014	14	54
2015	7	32
2016	15	52
2017	11	49
2018	33	13
2019	12	21
2020	11	12
2021(Sep.)	7	28
Total	133	334



Training Programmes

BIAC's core activity is to provide facilities for ADR, however, in the absence of Chartered or professional training centre, BIAC had to take responsibilities to build professionals in this field. BIAC organises training programmes on ADR for lawyers, academicians, Government officials, corporate entities, banks, financial institutions' officials and also students. We feel that lawyers, bankers, corporate professionals as well as the entrepreneurs and decision-makers should be aware of these ADR methods to run their business smoothly.

BIAC's training programmes provide participants with incisive details on the principle and process of ADR, provisions of ADR in several laws as well as the skills required to conduct successful arbitration and mediation. These are suitable for anyone who is interested in arbitration,

mediation and other forms of ADR. The participants need not have prior knowledge of arbitration, however, a general knowledge on how law works is beneficial. BIAC organises trainings on ADR mainly on Arbitration, Mediation and Negotiation. BIAC offers these trainings especially to the officials who involve in such departments/works like procurement, human resource, loan agreement, joint-venture agreement and employment agreement.

BIAC has taken the initiative of providing specialised, sector-based customised training programmes on ADR depending on the organisations' need. In customised training courses, BIAC designs outline and module as per organisations' requirement having relevance to the concept of ADR. Under this a initiative, for the first time, BIAC organised a day long training for 24 Senior Assistant Secretaries and Assistant Secretaries 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. Soon BIAC will arrange training for their Deputy Secretaries.

From 2017 BIAC regularly arranges certificate training programmes abroad, jointly with those ADR centres which BIAC signed collaboration agreements with. BIAC organised Introduction to International Arbitration course in collaboration with Chartered Institute of Arbitrators (CIArb), Singapore in Singapore and Accreditation Course on Mediation in collaboration with Thailand Arbitration Center (THAC) in Bangkok, Thailand. In 2018, BIAC introduced a new certificate training course on International Cross Culture, Civil and Commercial Mediation & Negotiation jointly with the Indian Institute of Corporate Affairs (IICA) under the aegis of the Ministry of Corporate Affairs, Government of India and Bridge Mediation Consultant Pvt. Ltd. in India. In 2020, BIAC organised a new training course on Credit Risk Management jointly with Bridge Mediation Consultant Pvt. Ltd., India on the campus of Gujarat National Law University at Gandhinagar, India.

In 2019, BIAC organised a certificate course on International Commercial Arbitration jointly with Kunming International Commercial Arbitration Service Centre (KICASC) jointly in China. In this course, participants and trainers were from Bangladesh and China.

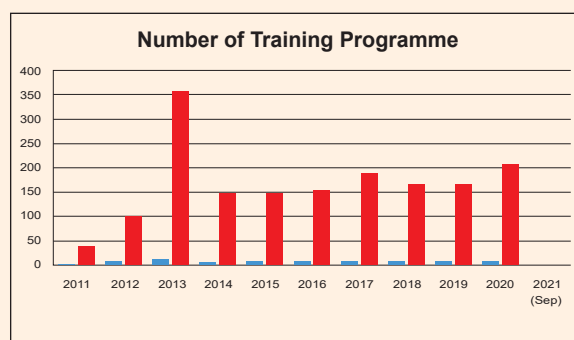
Due to the COVID-19 catastrophe invading all over the globe, when the whole world was on full or partial lockdown, the Governments around the world encouraged the people, especially students to stay home. Students were home quarantined, with relatively less pressure of studies, which was a great time to enrich students' knowledge, and to add a certificate to their resume as to prepare him/her for professional advancement. BIAC tried to ensure equitable learning opportunities for all students while prioritising their health and well-being through online learning. Online learning is simple and convenient for students to keep building vital skills for their future. To make this home quarantine productive, BIAC organised first online learning session on 25 June 2020 through Zoom platform for students. This course was available for the students of Law and Business. Online course has now become a part of BIAC's regular training programmes. BIAC has since taken initiatives to conduct a series of online training programmes on Arbitration which will be beneficial for professionals, the legal fraternity, Government officials, NGO representatives, corporate personnel, bankers and students. First module of this Training series was held on 28 October 2020, Second Module was held on 30 November 2020 and 3rd Module was held on 28 December 2020 through online platform Zoom.

BIAC organised the first ever BIAC Inter University Arbitration Contest 2020 which was held online in September and October 2020 to provide students of Law practical knowledge of ADR and give them the opportunity to participate in a mock arbitration trial. Four universities, namely, the University of Dhaka, London College of Legal Studies (LCLS) South, Independent University Bangladesh (IUB) and Bhuiyan Academy took part in the Contest. The University of Dhaka won the Contest and Bhuiyan Academy came out as Runner Up.

Unfortunately in 2021, Bangladesh lived through a surge of COVID-19 contamination which gravely impacted the economy and the citizens at large. While vaccination campaigns were ongoing new variant created an alarming situation and the country went into lockdown once again.

Till date, BIAC has organised 10 Alternative Dispute Resolution (ADR) courses, 30 arbitration training courses, 21 mediation training courses, 10 negotiation training courses and 1 Risk Management Training Course, including 10 international certificate courses.

Year	No. of Training	Participants
2011	2	38
2012	7	99
2013	11	355
2014	5	147
2015	8	146
2016	9	153
2017	8	188
2018	7	164
2019	7	166
2020	8	205
2021 (Sep.)	0	0
Total	72	1661



Outreach Programmes

From the very beginning BIAC has been working hard to create awareness about the benefits of ADR and familiarise best practices in ADR by conducting several outreach programmes, such as seminars, webinars, workshops and dialogues for business community, lawyers and legal professionals, students of Law and Business and the media. BIAC usually invites foreign experts as keynote speakers in these events.

Since 2017, BIAC has taken the initiative to accompany participants from different sectors for attending seminars/conferences on

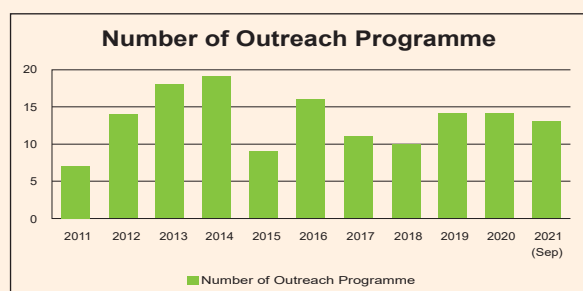
international best practices of ADR organised by centres that BIAC has partnered with.

BIAC has reacted to the current crisis of COVID-19 and the future new norms for the handling of dispute resolution, by quickly converting cases, originally slated to be in person, to their virtual, cost effective/efficient system that allows cases to be arbitrated and mediated through the use of video technology. Virtual ADR allows cases to be seamlessly resolved without the need for travel by any party, lawyer or representative. All participants can hear and see each other. Information Technology provides the support necessary with someone present at the start of the proceedings to ensure a smooth experience. BIAC invites top line up of expert speakers from the country and abroad who address the key issues on ADR of different sectors.

BIAC has arranged 145 seminars, webinars, workshops, and dialogues till date since its formal launching in April 2011. Moreover, interest in BIAC is developing fast which has led dignitaries from different Ministries, Government offices, foreign diplomatic missions and international organisations to visit BIAC from time to time to be acclimatised with the operational activities of the institution. BIAC has also received recognition from both national and international ADR institutions.

In the diagram below, a picture of such outreach activities of BIAC are highlighted:

Year	Number of Seminar, Webinar, Workshop, Dialogue
2011	7
2012	14
2013	18
2014	19
2015	9
2016	16
2017	11
2018	10
2019	14
2020	14
2021 (Sep.)	13
Total	145



National Recognition

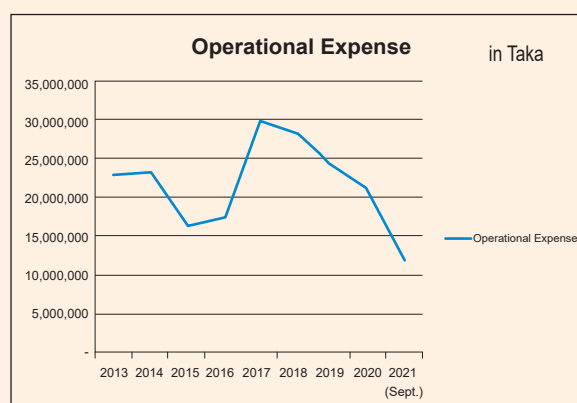
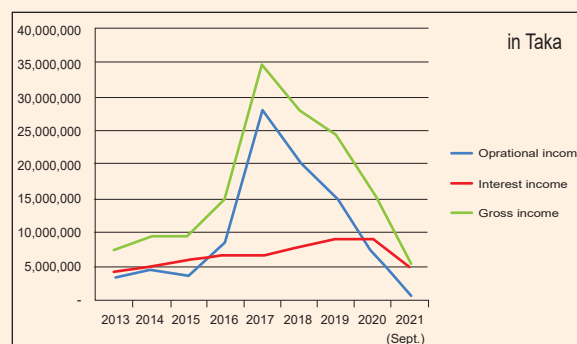
With the growing popularity of ADR throughout the country and the expertise in terms of service provided by BIAC, the leading corporate companies and financial institutions have signed cooperation agreements to seek BIAC's assistance in matters relating to ADR. So far BIAC has signed agreements with 28 national entities, namely, International Centre for Diarrheal Disease Research, Bangladesh (icddr,b), Transcom Limited, Apex Group of Companies, RANGS Group, SK+F, Summit Alliance Port Ltd., Anwar Group of Industries, Eastern Bank Limited (EBL), First Security Islami Bank Limited (FSIBL), The City Bank Limited, IFIC Bank Limited, Dhaka Bank Limited, Green Delta Insurance Company Limited, Mutual Trust Bank Limited, MARS Financial and Legal Consultancy Limited, Friendship Bangladesh, Islami Bank Bangladesh Limited, Building Technologies and Ideas Ltd. (BTI), Prime Bank Limited., University of Liberal Arts Bangladesh (ULAB), London College of Legal Studies (South), Rahman & Rabbi Legal, London College of Legal Studies (North), AB Bank Limited, One Bank Limited, Accord Chambers, Mahbub & Company and Dhaka Chamber of Commerce and Industry (DCCI).

International Recognition

To be recognised as a credible institution, BIAC has signed cooperation agreements with foreign institutions and international organisations. Till date BIAC has already signed Cooperation Agreements with 21 International ADR centres, namely, The Permanent Court of Arbitration (PCA), The Hague, The Netherlands, SAARC Arbitration Council (SARCO), Asian International Arbitration Center (AIAC), Kuala Lumpur, Malaysia, Vietnam International Arbitration Centre (VIAC), Hanoi, Vietnam, Malaysia Arbitration Tribunal Establishment (MATE), Kuala Lumpur, Malaysia, Thailand Arbitration Center (THAC), Bangkok, Thailand, Singapore International Arbitration Centre (SIAC), Singapore, Indian Institute of Arbitration and

Mediation (IIAM), Kochi, India, Hong Kong Mediation Center (HKMC), Hong Kong, China, Mainland-Hong Kong Joint Mediation Center (MHJMC), Hong Kong, China, Hong Kong International Arbitration Centre (HKIAC), Hong Kong, China, Institute for the Development of Commercial Law and Practice (ICLP), Sri Lanka, Bombay Chamber of Commerce & Industry, India, Bridge Mediation and Consulting Private Ltd. (BMCPL), India, The Philippine Institute of Arbitrators (PIArb), Badan Arbitrase Nasional Indonesia (BANI Arbitration Center), The International Commercial Arbitration Service Center (KICASC) of Kunming National Economic and Technological Development Zone, Kunming, China, Lawback Chinese International Legal Service Platform, China, World Mediation organisation (WMO), Berlin, Germany, Bali International Arbitration and Mediation Centre (BIAMC), Indonesia and the China International Economic and Trade Arbitration Commission (CIETAC), Beijing, China.

Operational Performance of BIAC at a glance in 2013-2021



The BIAC Team



Mr. Mahbubur Rahman, Chairman, BIAC Board (4th from right), along with the BIAC team: Mr. Muhammad A. (Rumee) Ali, CEO (5th from right), Mr. M A Akmal Hossain Azad, Director (2nd from right), Ms. Mahbuba Rahman Runa, General Manager (3rd from right), Mr. Md. Ashiqur Rahman, Manager, Finance & Accounts (4th from left), Ms. Rubaiya Ehsan Karishma, Counsel (5th from left), Syed Shahidul Alam, Commercial Officer (3rd from left), Ms. Shahida Pervin, Administrative Officer (2nd from left), Mr. Md. Jakir Hossain, Office Assistant (extreme left) and Mr. Lokman Hossain Sikder, Office Attendant (extreme right).



ADR Landscape in Bangladesh: Challenges & Reforms

Justice AFM Abdur Rahman

Resolution of dispute other than through judicial determination is known as ADR (Alternative Dispute Resolution). The huge and unprecedented backlog of cases in the courts compelled the incumbent government to bring about appropriate amendment in the relevant statute for using this mechanism in order to relive the litigating public from waiting years together to see the fate of their cause.

ADR in Bangladesh, as prevailing elsewhere, is practiced in four methods & techniques, namely (1) Mediation, (2) Conciliation, (3) Negotiations and (4) Arbitration. A fifth head of ADR, known as Early Neutral Evaluation (ENE), not being in use in Bangladesh, nevertheless prevailing in European countries.

The use of arbitration as ADR has, to some extent, relieved the Civil Courts and the High Court Division of the Bangladesh Supreme Court from deep freezing the business causes for years together in the name of adjudication, while the business parties require quick and efficient disposal of their dispute. The use of this fourth method of ADR in Bangladesh now, by the commercial parties, gained ground which further paved the way to attract Foreign Direct Investment (FDI).

The FDI party as well as other commercial concerns may avail the facilities of Arbitration offered by the local Arbitration institutions, like BIAC (Bangladesh International Arbitration Centre) or the facilities offered by FBCCI, DCCI and similar trade bodies or even ICC, LCIA, SIAC, HKIAC and other international arbitration channels.

Further the FDI party in dispute with the governmental agency, in a significant grave case, may adopt the option of institutional Arbitration through the International Center for Settlement of Investment Dispute (ICSID) of the World Bank, avoiding the court litigation in the Bangladeshi court.

The government was aware of situation amended the century old arbitration statute of 1940 and was replaced by a new statute Arbitration Act 2001, which has been enacted in the line of UNCITRAL model law formulated by the International Chamber of Commerce (ICC) along with adoption of New York convention regarding enforcement of foreign awards in Bangladesh.

The Code of Civil Procedure 1908 was amended in 2003 to insert Sections 89A and 89B to facilitate the litigating parties to attempt resolution of their dispute through ADR, pending the court case, by way of mediation either at the first instance or at the Appeal stage.

The income Tax Ordinance 1984 was amended in 2011 to insert a separate chapter titled Alternative Dispute Resolution containing section 152F-152S, which allowed option to the litigating assessee to go for ADR, pending the litigation, either at the original stage or at the appellate stage or even at the Reference stage in the High Court Division.

The provisions of sections 22-25 of the Artha Rin Adalat Ain 2003 made available to the Loanee-defendant for making an attempt at two stage of the pending suit for ADR, in the

suit filed by the Bank or the financial institutions for recovery of loan defaulted money.

The provision of 192A-192C of the Customs Act 1969 has also dispute resolution method to be availed by the importers.

The Value Added Tax Act 2012 allowed the business houses to adopt ADR instead of going to court against the grievance it may have against assessment of VAT or other causes.

The EPZ Trade union & Industrial Relations Act 2019 has a soft ADR system for the workers of the Export Processing Zone (EPZ) to mitigate their disputes with the employer, prior to call a strike by the trade union of an industrial unit.

The Family Court Act 1985 made the ADR process of mediation a mandatory option to the litigating parties, before the judge could proceed to adjudication of any family suit.

The Muslim Family Law Ordinance 1961 made it compulsory to validate a Divorce (Talaq) to a Muslim wife through conciliation with the interference, *mutatis mutandis*, by either a Union Parishad Chairman or Municipal or City Corporation Councillor.

The Real Estate Development & Control Act 2010 allowed the disputing party to initiate a mandatory arbitration against developer, before it could go to court litigation.

The Village Court Act 2006 allowed the Chairman of the Union Parishad to constitute a so called Court on the application of an aggrieved person to resolve dispute of civil and criminal nature, valued less than taka Seventy Five thousands. Village Courts have been given the powers of a civil court under the Code of Civil Procedure 1908. Although the terminology Court has been used in the statute, but practically it's a ADR process available to the village people to resolve their small causes either civil or criminal. It is a forum like arbitration tribunal, where voluntary effort at bringing about a settlement of disputes between the parties is made through conciliation and persuasive

manner using all the mechanism of negotiation, mediation and conciliation as tools to settle disputes between the parties.

All these amendments although paved the prospective development of ADR landscape in the dispute management system, nevertheless, despite these amendments and the sincere efforts of the incumbent government, the ADR landscape has not been developed in Bangladesh up to the mark.

The Code of Civil Procedure 1908 in its recent insertion of section 89A formulated the procedure of mediation in a civil litigation, but except the retired Judge as mediator, other persons mentioned in the provision has no expertise to act as mediator. Moreover the newly inserted provision made liable the District Judge to maintain a panel of mediator, but in some area the District Judge is either unaware of such responsibility or he is unwilling to inspire his subordinate judges to invoke the provisions of sections 89A and 89B in an appropriate situation.

This situation is more or less prevailing in all other cases where the government amended the statute to facilitate ADR among the litigating public.

The legislature has not yet enacted any law for ADR towards day-to-day consumer disputes and so far these disputes are concerned, the landscaping of the ADR seems to be worse. Because of the fact (1) that the prevailing ADR methods are not suitable to the parties in dispute or (2) that the consumers are unaware about the availability of any instant dispute resolution mechanism and if any, (3) the confusion regarding its procedural part unsuitable for the consumer to adopt it.

The current ADR landscape in Bangladesh is not based upon the needs of consumers. The ADR method of mediation, conciliation or negotiations and even arbitration cannot easily be fitted into the dispute resolution mechanism to redress consumer disputes. A consumer buying a Sewing Machine from Singer in installment may face problems with its quality and may stop payment of installment on the plea of non-quality goods

or for return of the goods. The current ADR landscape does not provide any effective authority through which the people can avail the method.

Consequently one may see the worst situation that people has taken the law in hand in order to redress his grievance against the trader. This situation is not at all desirable.

Before entering into the challenge of implementation of ADR mechanism in consumer dispute resolution and to other extent, let us examine the exact definition and working of ADR mechanism currently prevailing.

"Mediation" involves the amicable settlement of disputes between the parties with the help of an impartial person called mediator. A mediator may be an accredited mediator or an independent Advocate certified by particular authority. The task of the mediator is not to impose any settlement upon the parties, but to bring the parties together to the process of amicable settlement of their disputes. A mediator would show the parties the most appropriate path to compact their respective claim with a view to reaching a mutually acceptable solution. The mediator acts as a facilitator in between the parties for attaining settlement against the dispute. It is the parties' own responsibilities for making decisions and not the mediator to impose anything on the fate of the parties to the dispute.

"Conciliation" is a private, informal process, where the conciliator would independently investigate the dispute and draft his report indicating the method of settlement of disputes.

In this method a neutral third person, called Conciliator, helps disputing parties to reach an agreement on the basis of his assessment of the gravity of the dispute. It is a process whereby the parties, together with the assistance of the neutral third person or persons, sort out the dispute, isolate the issues involved in the disputes systematically, develop options, consider alternatives and help the parties to reach a consensual settlement that will accommodate their claim either in full or in part.

"Negotiation", which is further known as "Settlement Conference", closely resembles mediation. However, it is more often referred to as a method wherein the parties to the dispute themselves would settle their disputes through discussion and negotiations. The negotiation process provides the parties an opportunity to exchange ideas, identify the irritant points of differences, find a solution, and get a commitment from each other to reach an agreement and to abide by the same.

"Arbitration" is a process for settlement of disputes through impartial arbiter or arbitral Tribunal, fairly and equitably, constituted by a person or persons or an institutional body, pursuant to an agreement known as Arbitration agreement or Arbitration clause in a commercial agreement.

It may be ad-hoc arbitration, contractual arbitration, institutional arbitration, or statutory arbitration. If the arbitral tribunal is of sole person, a neutral third person chosen by the parties to the dispute settles the disputes between the parties and if the parties chose their independent arbiter than a panel of three persons constitutes the tribunal with a chairman which resolves the dispute in informal manner. The tribunal issues its award by way of judgment which is binding upon the parties and enforceable as decree of a civil court. Though it resembles the court room based adjudication, yet it is a settlement of disputes and not adjudication. It involves less procedure and less cumbersome process. It is quite useful in resolving different kinds of disputes including international commercial disputes. In Bangladesh, International commercial arbitration is the only legally binding and enforceable alternative to ordinary court proceedings under the provisions of Arbitration Act 2001.

Although there is no practice of "Early Neutral Evaluation (ENE)" in Bangladesh, nevertheless it is an alternative approach, now prevailing in EU countries, that is particularly well suited to European multiparty family provision claims. In a dispute, where there is little or no contradictory facts, this method of ADR is

feasible. In this method of ADR an independent and impartial evaluator, commonly a retired judge or senior Barrister or an expert on particular subject, is appointed to give the parties an assessment of the merits of their respective claim. The evaluator will be chosen by the parties and will be a specialist in the area concerned thereby giving confidence to the parties.

Challenges of ADR in Bangladesh

The primary challenge a Bangladeshi consumer faces immediately after a dispute has cropped up with a trader is to find out an ADR authority to complain to. This gives benefit to the errant trader to play over the consumer. Unless there is statutory compulsion, a errant trader will not cooperate in management of consumer disputes through mediation, conciliation or negotiation method.

The lack of knowledge of availability of appropriate method of ADR is the biggest challenge in spreading off the ADR mechanism. Non-display of any signpost

attracting consumers' attention to a particular method of dispute resolution is another lacuna against availability of information. There is no awareness programme regarding the ADR system as prevailing within the country.

The prospective reforms

The incumbent Government, under its Ministry of Law, Justice and Parliamentary Affairs, is required to adopt the principle that participation in ADR should be mandatory across all the sectors including consumer sector. An office of Ombudsman may be created for every commercial sector. The workforce engaged in ADR sector are required to be trained. The judges should be given more authority to exercise and act as mediator, conciliator, negotiator and arbiter by himself, over and above his judgeship, for the purpose of ADR.

Former Judge, High Court Division
Supreme Court of Bangladesh

“The believers are but a single brotherhood, so make peace and reconciliation (sulh) between two (contending) brothers; and fear Allah, that ye may receive mercy. If two parties among the believers fall into a quarrel, make ye peace between them...with justice, and be fair; for Allah loves those who are fair and just.”

— *Al Qur'an*



Discussion Amongst Members of Arbitral Tribunal

Ajmalul Hossain QC¹

This article addresses a problem that is faced where there is more than one arbitrator in a reference. The problem occurs quite often but due to the confidential nature of arbitrations and of the deliberations of the arbitrators, it does not always surface in the public domain. The problem manifests itself in the following scenario: If one party's nominated arbitrator can persuade the presiding arbitrator on a particular issue or on the result of the dispute, the question arises whether they can proceed to render a majority award on that issue or in the reference without any or any material discussion amongst all the arbitrators, in effect 'ganging up' on the third arbitrator. Putting the question in another way: how much discussion or deliberation is required before the tribunal members can render a valid and enforceable majority award? The problem is not a new one and has arisen in the courts of England² nearly 300 years ago

and in the courts of the sub-continent from the mid- nineteenth century³. The issue was also considered by the apex court of Bangladesh recently⁴.

The legal framework on this issue is contained in several sections of the Arbitration Act 2001 (as amended) ("The Act"). The general responsibilities of the Tribunal are set out in S. 23⁵ and the decision making by a panel of arbitrators is contained in S. 37⁶. The critical point that is repeatedly stated in S.23 is that the tribunal shall act "fairly and impartially". These two concepts derive from the arbitrators' role as judges and justice requires strict adherence to fairness and impartiality. Where the parties have not otherwise agreed, for instance, where only a unanimous view will be acceptable, S. 37 permits the tribunal to pass a majority award⁷. However, it is significant to note that this section does not

1. *The author is a Senior Advocate of the Supreme Court of Bangladesh as well as a Queen's Counsel in England and Wales. He is also a Fellow of the Chartered Institute of Arbitrators (England & Wales) and acts as leading counsel and sits as an arbitrator in commercial, financial and maritime disputes.*

2. *Dalling v Matchett (1740) 125 ER 1138*

3. *Khelat Chandra Ghose v Tara Chand Kundu 6 WR (1866) at 272*

4. *Saudi Arabian Airlines Corporation v Saudi Bangladesh Services Company Ltd CA 173 of 2011 (unreported)*

5. S. 23(1) *The arbitral tribunal shall deal with any of the disputes submitted to it fairly and impartially and for this purpose – (a) Each party shall be given reasonable opportunity to present its case orally or in writing , or both ...*

S. 23(3) *The arbitral tribunal in conducting proceedings shall act fairly and impartially in deciding procedure and evidence and in exercising other powers conferred on it.*

6. S. 37(1). *Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.*

7. *Similar provision was also contained in the Arbitration Act 1940, S. 10(2) and its predecessor statutes.*

state the nature or scope of the discussion or deliberation of the arbitrators before making the majority award. It does, however, give emphasis on the acceptability of a majority award if the arbitration agreement does not contain any other provision.

It is universally recognised, and the Act is no exception, that the foundation of an arbitration is the arbitration agreement⁸. The arbitration agreement, whether it provides for ad hoc or institutional arbitration, not only binds the parties to resolve their dispute by arbitration but also binds the arbitrators to deliver a valid and binding award. Taken together with the law governing arbitrations, the contract with the arbitrators requires them to follow the procedure agreed for the arbitration, be it contained in an institution's rules or agreed by the parties in procedural orders, to allow proper presentation of each party's case and to consider their evidence and submissions. The arbitrators are also obliged to discuss between themselves all the issues raised in the arbitration and the award that is to be rendered by the tribunal. Without the unanimous participation by all arbitrators in consulting and deliberating upon the award to be made, the fairness of the proceedings will be adversely affected and the impartiality of the arbitrators will become questionable.

In Abu Hamid Zahira Ala v Golam Sarwar⁹ the relevant principle was thus stated: *"We adopt the principle that in as much as the parties to the submission have the right to the presence and effect of the arguments, experience and judgment of each arbitrator at every stage of the proceedings, so that by conference they may mutually assist each other in arriving at a just conclusion, it is essential that there should be a unanimous*

participation by the arbitrators in consulting and deliberating upon the award to be made; the operation of this rule is in no way affected by the fact that authority is conferred upon the arbitrators to make a majority award; even where less than the whole number of arbitrators may make a valid award, they cannot do so without consulting the other arbitrators. The inference follows that in the present case there is no valid award." (Emphasis added)

Reference was made to the case of In re Beck and Jackson¹⁰: *"As the arbitrators must all act, so must they all act together. They must each be present at every meeting, and the witness and the parties must be examined in the presence of them all; for the parties are entitled to have recourse to the argument, experience, and judgment of each arbitrator at every stage of the proceedings brought to bear on the minds of his fellow-judges so that by conference they shall mutually assist each other in arriving at a just decision."* (Emphasis added)

Further, reliance was placed on Dalling v Matchett¹¹ *"it has been often said that if one had been present, he could not by his vote have turned the majority the other way, when all the rest were unanimous, it has always received this answer that everyone has a right to argue and debate as well as to give his vote, and it is possible at least that the person absent may, if he had been present at the meeting, have made use of such arguments as may have brought over a majority of the rest to be of his opinion."* (Emphasis added)

Lord Denman's observation in the matter of Pering and Paymer¹² was also considered: *"Any two, under such, submission as this, that*

8. *Salamat Khan v QG Ahad* 30 DLR (SC) 271; *Jugal Kishore v Goolbari* AIR 1955 (SC) 812; *Union of India v Rallia Ram* AIR 1963 (SC) 1685

9. AIR 1918 Cal. 865

10. 1 CB NS (1857) 695

11. *supra*

12. (1835) 3 AD & E 245

is, a submission which provides for a valid award by the majority, may make a good award. But then it must be after discussion with the other arbitrator. If after discussion, it appears that there is no chance of agreement with one of the arbitrators, the others may indeed proceed without him.”

Coleridge J stated this view: *“The parties have not got what they stipulated for. They stipulated that two at least should make the award; but no two could make it till each arbitrator had been consulted.”* (Emphasis added)

A trawl through the relevant cases¹³ shows that notwithstanding the ability of a tribunal to give a majority award, it is incumbent upon all the arbitrators to discuss and deliberate upon the issues in the case and on the award up to the point where it becomes clear that there is no chance of agreement and further debate would be futile. Failure to so discuss the case and the award would render the award unenforceable and that would not only be a breach of the arbitrators’ collegiate duty but also to the notions of fairness and impartiality that the tribunals are bound to uphold.

13. See also: *Sheikh Abdullah v MVRs Firm & Sons* AIR 1924 Rangoon 153; *European Grain & Shipping Ltd v R Johnson* [1982] 2 Ll. Rep. 551

“Let the people live their lives as per their wish and will until or unless they violate the rights of others. Whenever there will be a conflict between private interest and public interest, public or social interest shall always prevail over the private interest. But, untouchability, violence, crimes, etc. can’t be controlled by making the laws only.”

— Mohandas Karamchand Gandhi



ADR Going Digital: How far can it go?

Anil Xavier

In 2019 even the most enthusiastic “digital native”¹ would not have imagined that the world will become so much ‘digital’. Similarly nothing could have forced the “luddite”² to transform the way they are now, which they would have never imagined in their wildest dreams. The pandemic of COVID-19 has accelerated the need for digital communication and aggrandised the digital world in all fields. The digital world is moving so fast and invading unfamiliar territory creating a need for you to adapt quickly. Today you need to be prepared to learn daily, to challenge how things were done yesterday and get ready to apply new approaches today, otherwise you may find yourself totally unfit to survive in the new world.

ADR field, both mediation and arbitration has experienced an unprecedented degree of digitalisation. The earlier meetings in ADR have now been replaced by virtual meetings in Zoom and other capable rich media platforms. Now virtual or online meeting seems to be the normal and our earlier meeting is now known as “face-to-face” or “physical” meeting.

The disputants have recognised that online ADR has certain advantages over physical meetings in terms of ease of access, convenience, scheduling and affordability. It can be more easily accomplished without parties needing to take off work, waste time

and money driving through traffic, or our needing to hire expensive meeting halls.

However, mediators and arbitrators found many pitfalls for digital ADR. In arbitration, these virtual communication platforms are limited to replicate offline meetings in an online setting. And mediators found it challenging to develop rapport online and manage the relative balance between joint and individual caucus meetings. Analysing the body language was another hurdle. In addition, understandings of confidentiality, transparency, issues of privacy and security were also barriers.

Now, even when the world is gradually crawling back to normalcy, things are certainly not what it used to be. The seismic shifts that have taken place is here to stay. We need to anticipate future trends and adapt to the flexible and changing scenario. Therefore, to establish the digital transformation of ADR, we need to have digital platforms which will help the mediators and arbitrators to do “all of the right things online”.

Today we need technology that work with us; that support us to make minimal errors and improve the outcome, so as to make the lives of human better. AI (artificial-intelligence) and automation promise to be the biggest technological shift in our lifetime. AI is

1. A person born or brought up during the age of digital technology and so familiar with computers and the internet from an early age.

2. A blanket term used to describe people who dislike new technology.

augmenting our capabilities, allowing us to do more, with better accuracy, in less time.

We need customised platforms and applications, which could bring in automation and AI, allowing dispute resolution process by negotiation, mediation and arbitration available to people in their smart phones and helping mediators and arbitrators to do mediation and arbitration with automated AI-assistance to make minimal errors and with high efficiency. One such application developed by the Indian Institute of Arbitration and Mediation (IIAM) is the “Peace gate App”. The App has the options for Online Negotiation, Online Mediation, Mediation through Centre, Online Arbitration and Arbitration through Centre. The App is available on Play Store for android devices and on App Store for apple devices. The web version is available in www.peacegate.in.

The App allows the parties to file pleadings, schedule meetings, make online payments, and also guides the Mediator or Arbitrator to conduct the process as per the approved process or legal requirements. The App would also function as a Record book to indicate the progress and stage of the mediation or arbitration process maintaining transparency of the process. The virtual meeting room is also customised so that specific space is allocated for the Arbitrator, claimant and his lawyer, respondent and his lawyer, administrative secretary etc. Similarly, in mediation, the mediator can take the parties conveniently to general room or caucus room. It also helps the Mediator or Arbitrator to make Settlement Agreements or Arbitral Awards online and get it signed online with all security features. The AI feature also makes sure that all mandatory legal requirements for making domestic or international arbitral awards or settlement agreements are satisfied, so that the human error is eliminated.

This is just a beginning. The future of digital revolution is notoriously difficult to predict. Many technological dreams that were once in science fiction are now a reality. It is said

that with the development of AI, computer systems can complete or augment tasks that would require human intelligence – at a much larger scale than we could on our own – in fields that include speech recognition, visual perception and decision-making. Research is going on with “Hybrid Thinking,” an interplay between human and cyber intelligence. Augmented reality, Projection mapping etc. could ultimately make online communication as real as reality, allowing for collocated collaboration between users. The future of digital communication sounds a lot like a weird dream, but don't be surprised if within our lifetime, we find ourselves travelling in holographic projections enabling face-to-face life-sized versions of us sitting and communicating in augmented reality spaces. In fact research on brain-computer interfaces also aim at possibilities where you don't need a physical equipment, where the brain makes use of electrical signals – an electrical code – to transmit and process information.

Anyhow one thing is certain, ADR has already gone digital and will grow rapidly in the digital world. The International Telecommunication Union (ITU) estimated in 2015 that 30% of the world's youth are digital natives and over the next 5 years the number of digital natives will be more than double. They will need dispute resolution process in the digital world. One of the iconic examples of what happens if we don't recognise and accept digital technology, is the annihilation of one of the most powerful companies in the world, Kodak, which was so blinded by its success that it completely missed the rise of digital technology. So, let us adapt to the technological revolution and shift our focus to online dispute resolution methods.

Chairman, Asia Pacific Centre for Arbitration
& Mediation

President, Indian Institute of Arbitration &
Mediation

Vice President, India International ADR
Association



Alternative Dispute Resolution (ADR) in Pakistan

Rana Sajjad Ahmad

Does the “A” in ADR stand for “Alternative” or “Appropriate”? If it stands for “Appropriate”, then, rather paradoxically, ADR in Pakistan would most likely refer to litigation as it is considered the most preferred and, by extension, the most appropriate dispute resolution method.

To me and all the other ADR enthusiasts in Pakistan, the “A” in ADR undeniably stands for both “Appropriate” and “Alternative” because the huge backlog of cases is a testament to the fact that litigation is not the most appropriate method for dispute resolution.

Unfortunately, arbitration and mediation, the two primary ADR mechanisms, have not been widely adopted in Pakistan. Although arbitration has gained more traction over the years, its wider adoption could be attributed to its binding nature and Pakistan having a dedicated law, although fairly antiquated, on arbitration.

The past few years, mediation has also been gaining momentum especially in view of new legislation on ADR, which in this particular context relates to mediation. The ADR Act 2017 and the Punjab ADR Act 2019 have reinvigorated efforts for the long-overdue adoption of mediation. One of the objectives of these laws is to lay the foundation for court-annexed mediation and to this end, ADR centers have been established across Punjab, Pakistan’s most populous province with the unenviable challenge of the largest backlog of cases in Pakistan.

The advantages of mediation have been widely touted by lawyers, Judges and even

members of the business community. However, it appears that the mediation process and its cost and time efficiency is still not sufficiently understood to convince potential users to adopt it. The two primary reasons for this lack of traction are mediation’s non-binding nature and the absence of a dedicated law on mediation. The new ADR laws do not provide an adequate framework for mediation especially in the context of commercial disputes. However, before drawing any definitive conclusions on whether the lack of use of mediation is because of its non-binding nature or lack of a dedicated law, it is pertinent to mention that even arbitration is not a widely adopted mechanism for dispute resolution. One reason is a misperception of the advantages of arbitration over litigation. This primarily stems from undue court intervention to stay arbitral proceedings or unsatisfactory court decisions that refuse enforcement of arbitral awards in certain cases. This results in parties’ dissatisfaction with arbitration and engenders a reluctance to arbitrate disputes.

The dim view of arbitration in particular and ADR in general was expected to change when the Covid-19 pandemic hit the world. While the world was reeling from the pandemic, ADR enthusiasts, wearing rose-tinted glasses, thought this was the silver bullet they had been searching for. I was among these ADR enthusiasts who started believing that in light of the constraints within which courts had to operate amidst the pandemic, both mediation and arbitration would finally be

viewed as viable alternatives to litigation. The hope was that in a world of social distancing and minimal contact, parties would seriously consider adopting ADR especially online ADR. This view was also held because courts in Pakistan were not offering virtual/online filing services and there were limited options for virtual hearings. Furthermore, in view of the rapid digitalisation of dispute resolution services around the world, online arbitration and mediation were being perceived as more viable both from a costs and safety standpoint. Anticipating the need for online dispute resolution in Pakistan, CIICA, Pakistan's first international arbitration center that I had the privilege of setting up, became the first dispute resolution institution in Pakistan to offer online filing and virtual hearing services. However, there was no significant change in ADR adoption. One of the reasons for the unabated litigation even amidst the pandemic was parties' lack of sufficient understanding of the advantages of ADR. The other reason was that while parties understood ADR, they were not convinced that it offered the option of a binding and definitive resolution of their disputes. Both these reasons reaffirmed the perennial lack of awareness of ADR and parties' misperception of the efficacy of ADR and its advantages over litigation.

The question then is what it would take for ADR to finally get off the ground in Pakistan. At the risk of sounding a bit abstract, it would require a change in the mindset of the stakeholders and development of a culture of arbitration and mediation. This would entail capacity building of members of the business community, relevant government officials and lawyers. The goal should be to develop a culture whereby going to court for resolution of commercial disputes is not

reflexive but a last resort. In view of parties' disillusionment with the court's approach to arbitration, capacity building of the Judges is also critical.

These ambitious goals signal that ADR enthusiasts are in this for the long haul but it usually takes a long time to bring about durable and sustainable change. A deeper understanding of ADR and its wider adoption are certainly worthy goals that all ADR enthusiasts in Pakistan find worth pursuing and fulfilling both at a personal and professional level.

Although the prospects for ADR may currently seem grim, some bright spots are emerging in Pakistan's ADR landscape especially in the international context. For instance, a recent Supreme Court judgment has emphasised the need for enacting the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration in Pakistan. This is a giant leap forward for Pakistan as it is a recognition by Pakistan's apex court of the need for having a modern legal framework for international arbitration in Pakistan. Let us hope that this progressive approach is taken in strengthening Pakistan's legal framework for domestic arbitration and mediation also that ultimately helps create a vibrant ecosystem for ADR in Pakistan.

Practising lawyer in Pakistan and the USA
FCI Arb
Founder & President, Center for
International Investment and Commercial
Arbitration (CIICA), Pakistan
Partner of Rana Ijaz & Partners
Accredited Mediator of SIMI

“Fight for the things that you care about. But do it in a way that
will lead others to join you.”

— Justice Ruth Bader Ginsburg



Subconscious bias and mistakes in remote hearings: what we can do to better manage them

Harald Sippel

The COVID-19 pandemic is having a fundamental impact on our lives. In arbitration, this includes the shift from in-person hearings to remote hearings, which will very likely still happen regularly in 2022.

Remote hearings were (and are) undeniably international arbitration's savior. If it were not for remote hearings, the vast majority of arbitration proceedings would have come to a halt in 2020 and 2021.

Remote hearings can also offer great advantages (albeit limited to time and costs). However, remote hearings lack in quality what in-person hearings offer. Indeed, it is generally accepted that oral advocacy cannot be as effectively employed in remote hearings as during in-person hearings.

What is hardly known to the international arbitration community is that humans are prone to suffering from significant unconscious biases and making mistakes in a remote setting. As this happens at the unconscious level only, we generally do not even detect our biases and mistakes. The most common biases and mistakes are as follows:

Misattribution of technical issues – someone's technical problem becomes "a bad argument"

Technical difficulties are bound to happen during any remote hearing. They can usually be resolved without much difficulty and therefore do not seem to pose a big challenge to remote hearings.

In reality, that is more to technical issues because we tend to subconsciously

misattribute technical difficulties to our conversation partner, i.e., the person having those difficulties.

In arbitration, a counsel's technical difficulties would thus be perceived as that counsel not making good arguments. In plain terms: when a counsel's connection is bad, there is a risk that the arbitral tribunal will regard that counsel's arguments to be unconvincing.

This is very disadvantageous to parties and party representatives with a less stable internet connection – typically those from developing and less developed countries. In contrast, those from affluent countries on the other hand, where the internet connection is generally more stable, are allowed a head start.

We cannot focus on what we are supposed to – we therefore make mistakes

The way we speak to others in a video setting is very unnatural: there is an increased level of eye contact and the size of faces on screens is much larger. Yet, we only see the faces, possibly with a part of the upper body. Body language is vastly limited. Therefore, our brains automatically focus on observing the other participants' faces.

Our brains search for cues on a constant basis. This happens at the unconscious level, yet makes us spend a lot of – some psychologists argue: most of – our energy. As a result, arbitrators cannot spend the same energy on considering aspects of evidence, they cannot as aptly follow the arguments presented by counsel.

It could be shown decades ago that such misplaced focus leads to mistakes. We must therefore expect that arbitrators in a remote setting make more mistakes than their counterparts in an in-person hearing.

Zoom fatigue – Respondents get much less attention from the arbitral tribunal

Remote hearings are much more tiring. Among others,

- it is very stressful to constantly see ourselves on the screen;
- we have to send a lot more signals because only a small part of our body is visible; and
- we speak much more loudly.

Our tiredness exacerbates the problems arising from the lack of focus and yet, this regularly happens without us noticing it. The longer a hearing day lasts, the more difficult staying focused becomes for the arbitrators. This puts respondents at a considerable disadvantage. They present their case after claimants – by when many arbitrators will have already tired.

Steps arbitrators should take to counter the difficulties

The unconscious biases and mistakes shown above at least have the potential to severely impact the outcome of an arbitration. When the arbitral tribunal unconsciously treats the parties to the arbitration differently because of technical difficulties, the arbitral tribunal may violate a cornerstone of arbitration, the equal treatment of the parties. We must strive hard to prevent this from happening.

In arbitrations with a remote hearing, an arbitral tribunal should pay particular attention when conducting its analysis before the drafting of the award. Ideally, this is even at a greater level than usually. An arbitral tribunal should also consider adapting among others the following steps to ensure that they avoid the pitfalls of remote hearings:

- there must be more frequent and longer breaks. This ensures that everyone will

be able to maintain a higher level of concentration, which will result in fewer mistakes;

- when technical issues occur, it is advisable to take a break to allow fixing the issue. The arbitral tribunal should make notes each time technical issues occur and deliberately remind itself after the hearing that these issues occurred;
- all participants should consider using the “hide self-view” function. This way, no one has to constantly see himself/herself and will avoid this unnecessary stress;
- only those participants whose face need to be shown should turn on their camera;
- when possible, the arbitral tribunal should consider working on audio only (e.g., when discussing housekeeping matters at the outset of the hearing); and
- by using an external keyboard/mouse, participants can create a distance between themselves and their laptop. This helps in maintaining a better focus.

Conclusion

Remote hearings were absolutely necessary for arbitrations to continue in 2020 and 2021. However, no one was prepared for them. While most of us have learned to work with remote hearings, we are far from taking into account important matters such as misattribution, misplaced focus and Zoom.

It is necessary to accept that most of what we haven't mastered happens at the unconscious level. We therefore, must not assume that just because we haven't noticed anything strange in remote hearings, everything is in order. There is a real risk of bias and mistakes, which may alter the outcome of an arbitration, so we must make all efforts to safeguard against them.

Former Academic Director, Bali International
Arbitration and Mediation Center
MBA, FCI Arb, Co-Founder, Putilin Sippel,
Hong Kong



Preference of Mediation, Conciliation & Arbitration over Adjudication under Sharia Law

Barrister Mohammed Forrukh Rahman

The obligation to resolve disputes within the parameters of the Sharia law comes from the Quran: “We have revealed unto you the Book with the Truth, confirming whatever Scripture was before it. ... so, judge between them by what God had revealed, do not follow their desires away from the Truth.”ⁱ

Islamic jurists introduced three classifications of dispute resolution process under the Sharia law, such as, sulh, an informal compromise between the parties, usually with the help of an intermediary; tahkim, arbitration by a third party knowledgeable in Islamic law; and qada, adjudication by qadi based on sharia.ⁱⁱ Unlike sulh, an arbitrator and a qadi have the power to impose their decision upon the disputants. On the other hand, sulh can be incorporated within the framework of adjudication.

In comparison with common law system, Islamic adjudication procedural law is least formalised in approach, and more flexible.ⁱⁱⁱ This lack of formal procedures comes from the role of the qadi [A qadi is a judge under the qada adjudication system], formal involvement of the parties, and the entire court proceedings. The primary goal of the qadi is to enable the aggrieved parties to negotiate their own arrangements. The qadi allows the individuals to express their grievance and expectation from the process. The law forms an organising framework, not a governing force, and harmony lies in allowing such lines of individual-centered affiliation to work themselves out by the free arrangement of units according to local circumstance.^{iv}

A qadi is a guide in the parties’ efforts in finding common ground.^v According to the

Islamic faith, formal adjudication may “breed hatred between parties while reconciliation brings them together.”^{vi} The main emphasis is placed on oral evidence,^{vii} [although other forms of evidence can be produced], face-to-face interaction between the qadi and the parties is the substratum of Islamic dispute resolution.

Common law finds regularity and consistency with application of law, the mode of analysis etc. by applying the doctrine of precedent. The mode of analysis refers in this context to certain procedures deployed during a trial, such as reliance on trustworthy witnesses as well as moral and communal interest.^{viii} Careful yet flexible stepwise progression shows the trial constitutes, according to Islamic law, the only way to ensure just rulings. As a result, two qadis may reach different conclusions in similar cases because they may be dealing with quite different disputants.^{ix}

While a common law court is bound by the confines of procedural law, mediation, conciliation, and to a large extent, arbitration are quite flexible in terms of procedural laws. Particularly, in mediation and conciliation, a workable and equitable solution is sought.^x Mediation and conciliation rest on the assumption that each case is unique and may require different terms of resolution, a premise of Qadi justice.^{xi} On the other hand, the doctrine of precedent is not applicable for arbitral tribunals.

As per the holy Quran “There is no blame on them if they arrange an amicable settlement between themselves, such settlement is

best”^{xii} Sulh was the Prophet Muhammad's (PBUH) favored method of dispute resolution.

As in Bangladesh, in several Muslim majority countries, mediation between disputants is encouraged officially by the courts or constitutes a prerequisite for judicial proceedings.^{xiii} Similarly, at international law level, where the disputants are states, mediation, conciliation and often arbitration match with the Islamic norms of dispute resolution. The resemblance manifests itself in logic, procedure, and goals of settlement. In a fundamental way, mediation and conciliation entail ongoing dialogue between the disputants and the intermediary. The parties themselves have a substantial freedom of action within the general framework of these mechanisms. The settlement proposal offered by a mediator or a conciliator does not take the disputants by surprise, since it flows naturally from the entire resolution process.^{xiv} On the contrary, an international court is bound by the confines of law.

In practice, few states influenced by Sharia law use the international non-binding third-party methods quite often. Mediation and conciliation frequently seem to be the forums of choice not only in the context of disputes within the Islamic states, but also with other countries^{xv}.

Arbitral tribunals, depending on the applicable institutional or ad-hoc rules, may have the flexibilities, compared to court, to accommodate an inclusive process. Nothing prohibits parties to appoint an arbitrator, mediator, who has the expertise in Sharia law and who will apply the principles of Islamic law and procedure in settlement of disputes if the rule provides such flexibilities. Islam uses a different metric to determine who is

an appropriate intermediary and what kind of process is considered legitimate. The legitimacy of conflict resolution processes and third-party intervention stems from a mediator's religious, social, and cultural rank. Background and personal credibility are often more important than legal training or other formal education credentials.^{xvi} With time however, this has evolved to become more official.

Similarly, in the countries where the courts are bound by the common law doctrine of precedent and judicial process, put less emphasis on the voices of the disputants; mediation, conciliation and arbitration would be the better choice, to remain compliant with Sharia procedural laws. Most institutional rules and applicable ad-hoc rules are flexible enough to accommodate the requirements of Sharia law.

Harvard Law Professor Noah Feldman wrote in a New York Times Magazine article, “for most of its history, Islamic law offered the most liberal and humane legal principles available anywhere in the world”. As in the case of Islamic finance, Sharia dispute resolution process offers a unique & parallel method with immense potential.

Barrister-at-Law, Advocate
Supreme Court of Bangladesh
LLM (London) (International Dispute
Resolution), FHKIArb
Head of Chambers of Rahman's Chambers
Accredited Mediator of CEDR
Panel Mediator of BIAC
Panel Arbitrator of SAARCO

i Quran, Sura 5, verse 48, ii Othman 2007,68, iii Mitchell and Powell 2011; Glenn 2014, iv Rosen 2000,33, v Hallaq 2005,59, vi Iqbal 2001,1040, vii Othman (2007), viii Rosen 2000,36, ix Emilia Justyna Powell “Islamic Law and International Law,” 141, x Emilia Justyna Powell “Islamic Law and International Law,” 149, xi Emilia Justyna Powell “Islamic Law and International Law,” 149, n xii Quran, Sura 42, verse 40, xiii Emilia Justyna Powell “Islamic Law and International Law,” xiv Merrills 2017,86, xv Emilia Justyna Powell “Islamic Law and International Law,” xvi Abu-Nimer 2010,74-75



Force Majeure Defence in Investment Treaty Arbitration in Context of COVID-19

Dr. Rumana Islam

The COVID-19 pandemic has exposed some exceptional concerns for Investor State Dispute Settlement (ISDS) under different bilateral investment treaties (BITs) and investment contracts (like joint venture agreements having ISDS clause). In order to implement the different measures taken by different States in response to the threats and risk exposed by the pandemic over public health concerns and to prevent the spread of the virus, prompted the governments to take measures like that of state of emergency having direct and indirect impact on all sorts of economic activity. Such regulatory measures clearly have raised concerns for a woeful outlook for the flow of Foreign Direct Investment (FDI). As a consequence, with the freefall in FDI states are at the risk of facing ISDS. In the past different investment tribunals have dealt with severe situations like Argentine financial crisis, Arab Spring crisis or the Spanish renewable energy sector debt crisis, but certainly these are not comparable to the crisis that the pandemic has exposed, which is global and unprecedented. The concerns in context of COVID-19 are further elongated due to the inherent precarity of international investment law and the defences available to the host States in such scenarios. Such concerns are due to the fact that, the past ISDS Awards do not lead us to any clear conclusion on the issue that, when a state invokes measures to address emergency situations like the current pandemic, are the host States still liable under the BITs and investment contracts?

When a host State invokes such regulatory measures, these can potentially violate the rights of the foreign investors as accorded under the different investor protection standards under the treaties such as restrictions on export and import, nationalisation or screening of FDI to protect certain sectors. Faced with such allegation of breach of investor's rights, the State then seeks its defence within the framework of the investment treaty such as non-precluded measures (NPM), General Exceptions on grounds such as essential security interest, public health, public interest, public policy or protection of environment, etc. or so called the "war clauses" in BITs (referring to amongst others the "state of national emergency", e.g., Article 3(3) US-Ukraine BIT 1994). In absence of such defences within the treaties, the host State also has the option to seek defences available under international law on State responsibility to protect its sovereignty such as doctrine of necessity, police power doctrine, force majeure or the margin of appreciation. This short article will focus on the different aspects of invoking the force majeure defence in investment treaty arbitration in context of COVID-19.

The scope of force majeure defence for the host States is codified in International Law Commission's (ILC) Draft Articles on State Responsibility (DARS). Article 23 of the DARS states that,

"1. The wrongfulness of an act of a State not in conformity with an international

obligation of that State is precluded if the act is due to force majeure, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

- (a) the situation of force majeure is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
- (b) the State has assumed the risk of that situation occurring.”

If we have a close look at Article 23, in order for a host State to claim a successful defence of force majeure in an ISDS context, it must satisfy five conditions,¹ these are:

- (a) The triggering event for the regulatory measure: that there must be an unforeseen event or an irresistible force that promoted the State to invoke such regulatory measure.
- (b) Material impossibility: that the aforesaid unforeseen event or the irresistible force had made it materially impossible for the host State to perform its treaty obligations towards the foreign investor.
- (c) No contribution rule: that the host State must not have anyhow contributed to the aforesaid triggering event or the force.
- (d) Beyond control: that the aforesaid triggering event must be beyond the control of the host State.

- (e) No assumption of risk: that the host State must not have assumed the risk of the aforesaid triggering event.

The invocation of force majeure defence as devised in Article 23 of DARS in ISDS has been rare largely due to soft nature of its binding effect. Host States rather preferred to confine themselves within the protection offered to them mentioned above in the investment treaty/contract framework. However, there are few examples where investment tribunals did examine the scope of force majeure defence as articulated in Article 23.

In *Autopista vs. Venezuela*, Venezuela raised a force majeure defence on the ground of unforeseen widespread protest which made it impossible for the host State to perform the contractual obligation. The tribunal rejected the plea on the ground that Venezuela ought to have reasonably predicted the magnitude of the protests as it had experienced similar kind of agitation on gasoline prices were increased. Therefore, here the host State failed to meet the fifth criteria of ‘no assumption of risk’.² It is interesting to note that, the tribunal in *RSM vs. Central African Republic (CAR)* accepted the force majeure defence under similar circumstance like *Autopista* when the defence was raised by the foreign investor. In this case RSM approached the tribunal for extension of the oil extraction contract due to the force majeure situation. In tribunal’s finding the degree of foreseeability of the political turmoil and civil strife in CAR, by RSM could not have been predicted due to the rapid worsening of the situation.³

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1. *Federica Paddeu and Freya Jephcott, “COVID-19 and Defences in the Law of State Responsibility: Part I”* <<https://www.ejiltalk.org/COVID-19-and-defences-in-the-law-of-state-responsibility-part-i/>> (accessed on 19 September, 2021)
 2. *Autopista Concesionada v. Republic of Venezuela*, ICSID Case No. ARB/00/5, Award, (Sept. 23, 2003) at Para 118.
 3. *RSM Production Corp v. Central African Republic*, ICSID Case No. ARB/07/02, Award, (Dec. 7, 2010), at Paras, 180 and 185.

The approach adopted by RSM vs. Central African Republic tribunal again establishes the pro-investor-oriented biasness of investment tribunals which is evidenced by significant number of arbitral awards rendered particularly against host developing countries. However, the risks exposed by COVID-19 is significantly different from any of the risks that the host States had faced during the Argentine financial crisis, Spanish energy sector debt crisis or political turmoil like Arab spring crisis or in situations similar to Autopista where the host States made unsuccessful attempt to rely on the force majeure defence. The pleas of force majeure having a very high threshold in international law make it difficult for the states to invoke it. Therefore, in the wake of COVID-19, even if the host States can satisfy the first four conditions of Article 23, the threshold upon the host States to prove the fifth one that there

was 'no assumption of risk' will be hugely high as different States had faced different degrees of havoc of the pandemic and as a consequences their responses also have been to different variations; and many States had in fact sufficient time due to their geographic location actually to take measures to prevent the spread of the virus. Thus, there will be different degrees of expectations from different host States and as a consequences different degree of responsibilities. This is significantly likely to affect the feasibility of force majeure defence by the host States as devised in Article 23 in investment treaty arbitration in context of COVID-19.

 Professor of Law, University of Dhaka and
 Panel Arbitrator designated by Government
 of Bangladesh at World Bank's ICSID

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

— *Kenneth Cloke and Joan Goldsmith*

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. Yaze Xiong, 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.

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. Mahbub 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. (Rumeen)

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.

Speakers at a webinar organised by BIAC and IIAM suggest reforms in Alternative Dispute Resolution landscape in South Asia

5 September 2021



Bangladesh International Arbitration Centre (BIAC), the first and only registered Alternative Dispute Resolution (ADR) institution of the country organised its 15th webinar from a virtual platform on 5 September 2021 on “ADR Landscape in the South Asia Region: Suggested Reforms”, jointly with its partner organisation Indian Institute of Arbitration & Mediation (IIAM), one of the pioneer institutions in India, providing institutional ADR.

Internationally reputed legal minds joined the webinar and spoke on the current scenarios in respect of ADR landscape in South Asia and suggested required reforms in the field. An eminent Panel of Speakers from seven South Asian nations, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka representing judges of apex courts, heads of ADR institutions and lawyers spoke at the event and stressed on the need for legislative reforms in the ADR spectrum of the region

for overall economic development of the concerned countries.

Chairman of the BIAC Board Mr. Mahbubur Rahman and President of International Chamber of Commerce-Bangladesh, in his Closing Remarks said that there is huge pile up of cases before the courts, especially across Bangladesh, India, Pakistan and the reason for the same is manifold. Governments in the South Asian countries need to appreciate the situation and come up with reforms in their judicial systems, to help flourish their economies by attracting more FDIs to their States, Mr. Mahbubur Rahman categorised. He also said that this is high time when the Governments of the South Asian countries should recognise the need for reform in the laws relating to arbitration, mediation and other methods of ADR. The object should be to provide a unified legal framework for the fair and efficient settlement of disputes arising in the regional commercial relations which will

definitely result in the more prosperous economic growth in the region and would be beneficial to the regional countries and the global economy as well, Mr. Rahman hoped.

In his Welcome Address Chief Executive Officer of BIAC Mr. Muhammad A. (Rumee) Ali insisted on using new technology in the New Normal world of ADR in view of the ongoing pandemic. He urged upon the South Asian nations to come up with legal reforms in order to achieve SDG-16: Access to Justice. Mr. Rumee Ali advocated in favour of institutionalised ADR to achieve this goal. He also argued that non performance of business contracts can be resolved expeditiously and in a cost effective manner through the use of ADR.

President of Indian Institute of Arbitration & Mediation (IIAM) Mr. Anil Xavier also delivered Welcome Address on behalf of his organisation and said that it has been of great interest and a learning experience to understand the current situation of ADR in South Asian countries. He stressed on considering the way forward how countries of the region see their future options and how they could contribute in collaborating with other neighbouring countries in developing the entire Asia Pacific as a hub for international ADR and making a model for the world.

Taking part in the discussion Panellist Mr. Justice AFM Abdur Rahman, former Judge of High Court Division, Bangladesh Supreme Court emphasised more Government initiative for invocation of mandatory ADR in settling disputes. He also favoured introduction of ADR system in the consumer sector for economic development of the country.

Mr. Justice Madan Bhimarao Lokur, Judge of Supreme Court of Fiji and former Judge of Supreme Court of India spoke on the occasion as a Panellist and sought support from Governments for encouraging mediation as a dispute resolution tool at all levels. Building awareness among the adversaries and training ADR practitioners will help grow economies in the region, Justice Lokur categorised.

Mr. Rana Sajjad, President, Center for International Investment & Commercial Arbitration, Pakistan in his deliberations said that reforms of the legal regime governing ADR in Pakistan are underway in light of the enactment of the ADR Act 2017 and the Punjab ADR Act 2019.

Mr. Matrika Niraula, Managing Director of Nepal International ADR Center took part in the discussion and stated that Nepal has a complete set of ADR legislation. He hoped that with the ADR supportive policies and institutional setup, Nepal will grow as the preferred venue for all parties looking to resolve their disputes in a naturally peaceful and supportive environment.

Panellist Ms. Shehara Varia, Director, CCC-ICLP Alternate Dispute Resolution Center, Sri Lanka said that the pandemic has taught us that we are now in an era where there are no boundaries in co-operation and communication and we should therefore use all opportunities to make the South Asian region the most sought after for ADR.

Ms. Tashi Dema, Senior Legal Officer, Bhutan Alternative Dispute Resolution Centre gave an account of the activities and challenges of her institution. She also narrated a few reformative steps that Bhutan has recently initiated in view of the ADR landscape in the South Asia region.

Ms. Juna Ahmed, Attorney at Law, from SHC Lawyers LLP, the Maldives, speaking as a Panellist, shared insights about the Maldivian ADR landscape which is fairly new and still in development stage. Relevant stakeholders, including the Government and the judiciary are taking steps in strengthening the Maldivian legal framework and introducing new laws and systems on ADR, Ms. Juna said.

Ms. Iram Majid, Director, IIAM moderated working session of the webinar. In course of discussion she said that the South Asian countries can formulate a road map for the ADR structure in the region. Mr. M A Akmal Hossain Azad, Director of BIAC moderated the inaugural session of the event.

Pictorial History of BIAC's 10 years



Inauguration of
Bangladesh International
Arbitration Centre (BIAC)
9 April 2011

BIAC Secretariat relocated to
Unique Heights
117 Kazi Nazrul Islam Avenue
Dhaka
12 October 2019



27th BIAC Board Meeting
8 June 2017

Mr. Naren Das, Secretary,
Legislative and Parliamentary
Affairs Division is giving
Certificate to a Senior
Assistant Secretary under a
day-long training programme
for LPA Division officials
on Arbitration and Mediation
organised by BIAC
25 January 2020





31st BIAC Board Meeting
4 March 2020

BIAC's 1st Arbitration
29 May 2012



BIAC's 1st Institutional
Mediation
27-28 January 2016

Meeting with distinguished
Arbitrators
and users of BIAC Services
30 May 2015





Meeting with Director General
Defence Purchase (DGDP)
11 August 2014

H.E. Ms. Marcia Stephens Bloom Bernicat
Ambassador of the United States
of America visited BIAC
23 November 2015



Mr. Mahbubur Rahman,
Chairman and Mr. Muhammad
A. (Rume) Ali, CEO of BIAC
along with Deputy Chief Judge
Ms. Gao Xiaoli, Supreme
People's Court, China at China
Arbitration Summit 2018,
Beijing, China
16-17 September 2018

Mr. Justice Sudhansu Jyoti Mukhopadhaya
Chairperson
National Company Law
Appellate Tribunal (NCLAT), India
visited BIAC
30 September 2018





Ambassadors and Diplomats
from ASEAN Countries visited
BIAC
14 October 2018

BIAC's 8th Anniversary
at Pan Pacific Sonargaon
Hotel, Dhaka
31 August 2019



MoU Signing ceremony with
SARCO attended by
Honourable Law Minister
Mr. Anisul Huq MP and
BIAC Chairman
Mr. Mahbubur Rahman
28 February 2016

MoU Signing ceremony with
Permanent Court of Arbitration
(PCA) The Hague,
The Netherlands
23 November 2016





MoU Signing ceremony
with Mutual Trust Bank Ltd.
6 June 2017

Accreditation Training on
Introduction to International
Arbitration jointly organised by
BIAC and CI Arb in Singapore
19-20 January 2017



Five day long Training on
Internatinal Cross Culture, Civil
and Commercial Mediation
and Negotiation held at
Gurgaon, Delhi, India
25 to 29 March 2018

Training Programme on
China-Bangladesh
International Arbitration in
Kunming, China
organised BIAC and Kunming
International Commercial
Arbitration Service Centre
22-26 April 2019



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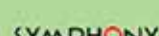
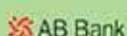
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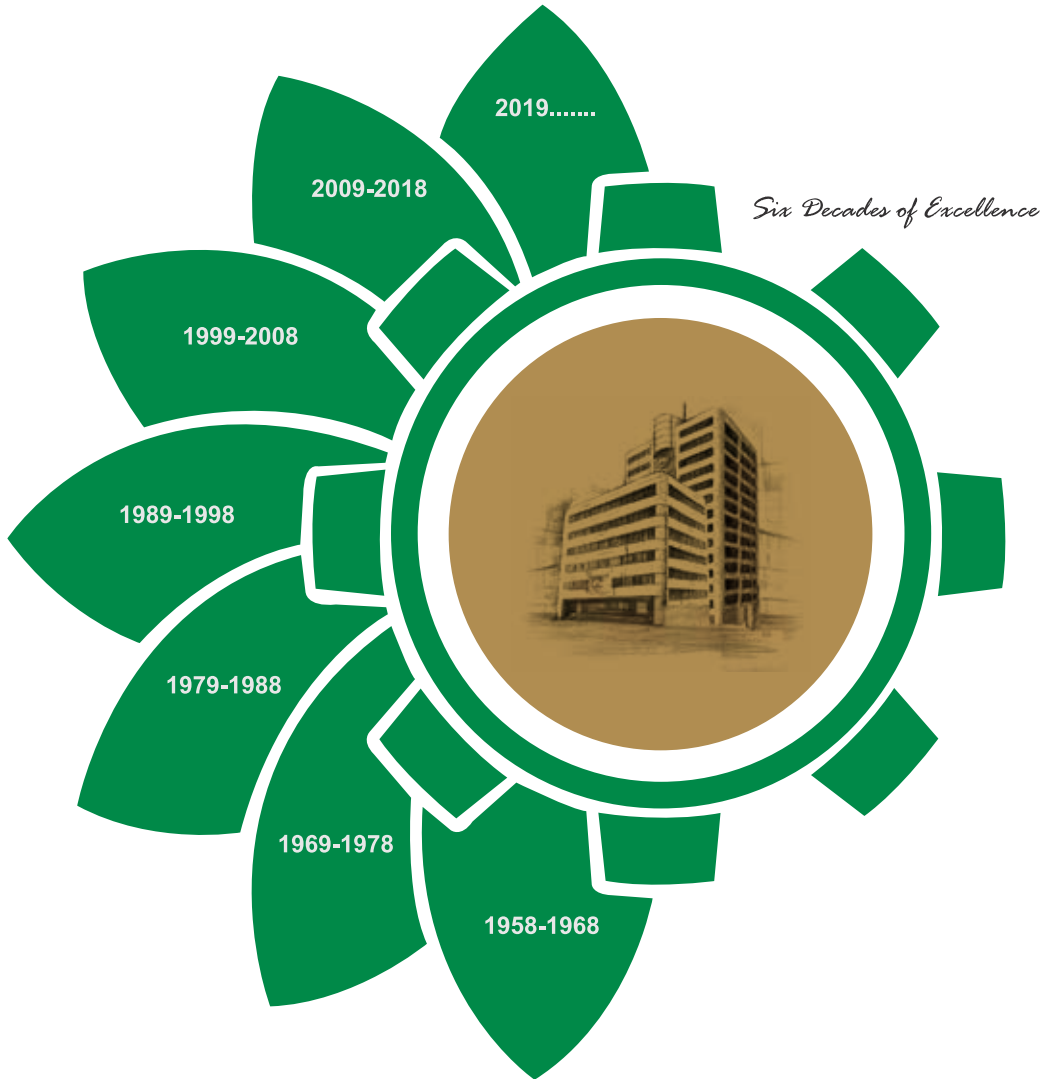
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