

BIAC 

Quarterly Bulletin

Volume 10

Number 3-4

July-December 2021



Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

Bangladesh International Arbitration Centre (BIAC) is the first arbitration institution of the country. It is registered as a not-for-profit organisation and commenced operations in April 2011 under a licence from the Government of Bangladesh. The International Chamber of Commerce-Bangladesh (ICC-B), the world business organisation, Dhaka Chamber of Commerce & Industry (DCCI) and Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka are sponsors of BIAC. The International Finance Corporation (IFC), the private sector arm of the World Bank, with funds from UK Aid and European Union, had supported BIAC in the initial stages under a co-operation agreement. BIAC provides a neutral, efficient and reliable dispute resolution service in this emerging hub of South Asia's industrial and commercial activity. BIAC 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 and photocopying. Full-fledged secretarial services and catering are also available on request. BIAC 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 national and international 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 These Rules have been superseded by launching BIAC Arbitration Rules 2019 and BIAC Mediation Rules 2019 which have been made more user-friendly and expanded the scope of the Rules in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 distinguished jurists and Judges including former Chief Justices of Bangladesh and a few former Justices of the Supreme Court. Eminent experts and trained Mediators are on 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 clients, staff and patrons during the pandemic.

As the only Alternative Dispute Resolution (ADR) institution in the country, apart from facilitating Arbitration and Mediation, BIAC also provides training courses on ADR, especially Arbitration, Mediation and Negotiation. BIAC has taken initiatives of providing specialised ADR training courses for different sectors, for instance, ADR in Money Loan Court Act, ADR in Procurement Disputes, ADR in Human Resource Management and others. BIAC regularly arranges certificate training courses abroad, jointly with those ADR centres which BIAC has signed collaboration agreements with. BIAC has also taken initiatives of providing specialised, sector-based customised training programmes on ADR depending on the organisations' need. Under this initiative, for the first time, BIAC organised a day long training programme for 24 Senior Assistant Secretaries and Assistant Secretaries of the 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 of the Government. Soon BIAC will arrange training for their Deputy Secretaries.

During the ongoing COVID-19 Pandemic, BIAC organised the first online learning session through Zoom platform for the students of Law and Business. BIAC has since taken initiatives to conduct a series of online training programmes on Arbitration for professionals, the legal fraternity, Government officials, NGO representatives, corporate personnel, bankers and individuals.

From the very beginning, BIAC has been working hard to create awareness about ADR facilities by conducting several outreach programmes, seminars, webinars, workshops and dialogues. Although COVID-19 has frustrated many of its important activities, BIAC hosted a number of

webinars jointly with its local and regional partners. These events gave us international exposure and we had the opportunity to highlight our endeavours towards making Bangladesh a regional hub of ADR practices.

BIAC is recognised by national and international institutions including the Permanent Court of Arbitration, the Hague, the Netherlands, many other International ADR centres and corporate companies, banks, real estate companies, NGOs, universities, law and business Chambers, and financial institutions in Bangladesh.

BIAC offers Membership to practitioners, stakeholders, students and interested individuals from home and abroad to create a knowledge and 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

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

Arbitrators, Mediators, practicing lawyers, academics, bankers, representatives of commercial and business organisations and students can apply. BIAC Membership is intended to reflect professionalism and recognition in the region and throughout the globe.

For the first time in 2020 BIAC launched an Inter University Arbitration Contest for students of Law of Bangladeshi universities, which took place online in the wake of COVID-19. BIAC has plans to organise Inter University Arbitration Contest every year. In 2021 BIAC arranged a more broad-based International Contest with online participation of seven national and international universities. The City Bank BIAC International Inter University Arbitration Contest 2021 was held with great enthusiasm. The City Bank Ltd was the sponsor of this event.

BIAC Board

Chairman



Mahbubur Rahman

Members



Rokia Afzal Rahman



Nihad Kabir



Rizwan Rahman



A. K. Azad



Kutubuddin Ahmed



Anis A. Khan



Osama Taseer

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M A Akmall Hossain Azad
Director

Mahbuba Rahman Runa
General Manager

Md. Ashiqur Rahman
Manager (Accounts & Finance)

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Syed Shahidul Alam
Commercial officer

Shahida Pervin
Administrative Officer

Editor

M A Akmall Hossain Azad

Editorial Associates

Mahbuba Rahman Runa
Rubaiya Ehsan Karishma

From the Editor

We are pleased to present the last edition of the BIAC Quarterly Bulletin for the year 2021. With the release of this issue we have completed 10 years of publication of the news bulletin which is the only dedicated knowledge journal on ADR published in Bangladesh. This issue brings out an illustration of the recent activities of BIAC. It reflects international news items on ADR. Scholarly articles on practice and procedure of ADR and an interview on the perception of ADR have also been contributed by professionals and experts.

The catastrophe caused by the COVID-19 global pandemic for two years now has influenced resolution of commercial disputes terribly all over the world. Its impact on ADR in Bangladesh has been very disappointing and BIAC has experienced substantial decline in the volume of physical ADR hearings. We are, however, trying to facilitate ADR methods through online as well as physical hearing at our premises.

Recently BIAC launched the City Bank BIAC International Inter University Arbitration Contest 2021 for Law students from home and abroad which was an event held for the first time in Bangladesh. Its aim was to raise future professional arbitrators in their respective jurisdictions with a view to resolving commercial disputes through arbitration in an amicable and expeditious manner out of the court.

Given the backlog of 3.9 million under trial cases in all the courts of Bangladesh, our thrust is to generate more awareness about ADR and importance of introducing it to assist our judicial system. Let us concentrate our endeavours to establish international best practices of ADR with a view to contributing towards overall development of the country's growing economy, while we are graduating to a Developing Country by 2026.

Bonne lecture!

BIAC Quarterly Bulletin

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BIAC News

33rd Meeting of the BIAC Board held

12 July 2021



The 33rd Meeting of Bangladesh International Arbitration Centre (BIAC) Board was held online via Zoom on 12 July 2021 in the afternoon. The meeting was presided over by Chairman, BIAC Mr. Mahbubur Rahman. Minutes of the 32nd Meeting of the Board held on 21 December 2020 were adopted unanimously. A number of decisions were taken in the meeting. It was attended by the following Board Members:

Left to right: - 1st row- Mr. Mahbubur Rahman, Chairman BIAC Board and President, International Chamber of Commerce-Bangladesh, Ms. Rokia Afzal Rahman, Member, BIAC Board and Vice President, International Chamber of Commerce-Bangladesh, Ms. Nihad Kabir, Member, BIAC Board and President, Metropolitan Chamber of Commerce & Industry, Dhaka.

2nd row: Mr. Rizwan Rahman, Member, BIAC Board and President, Dhaka Chamber of Commerce & Industry, Mr. A. K. Azad, Member, BIAC Board and Vice President, International Chamber of Commerce-Bangladesh, Mr. Kutubuddin Ahmed, Member, BIAC Board and Executive Board Member, International Chamber of Commerce-Bangladesh.

3rd row: Mr. Osama Taseer, Member, BIAC Board and Director and Past President, Dhaka Chamber of Commerce & Industry, Mr. Anis A. Khan, Member, BIAC Board and Vice President, Metropolitan Chamber of Commerce and Industry, Dhaka, Mr. Muhammad A. (Rumee) Ali, Chief Executive Officer, BIAC and Ms. Mahbuba Rahman Runa, General Manager, BIAC and Secretary to the Board (not in the photo) was also present.

BIAC welcomes President, DCCI to the Board and announces new Board Members

12 July 2021

Bangladesh International Arbitration Centre (BIAC), welcomed Mr. Rizwan Rahman, as the ex officio Member of the Board who has been elected President of DCCI, one of the sponsor organisations of BIAC. BIAC announced the appointment of four new members to the BIAC Board recently enhancing number of the Members of the Board to eight. They are Mr. A. K. Azad, Mr. Kutubuddin Ahmed, Mr. Anis A. Khan and Mr. Osama Taseer. They have been nominated by BIAC's sponsors, the International Chamber of Commerce-Bangladesh (ICC-B), Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka and Dhaka Chamber of Commerce & Industry (DCCI).



Mr. Rizwan Rahman is an eminent business leader of Bangladesh, Managing Director of ETBL Securities & Exchange Ltd., Director of Eastland Insurance Company Ltd and also the

Financial Express, the country's premier business daily. Mr. Rahman also served as Director of the Bangladesh Chamber of Industries (BCI) and Bangladesh Philippines Chamber of Commerce & Industry and as Vice President of Dutch-Bangla Chamber of Commerce & Industry. Bangladesh

International Arbitration Centre (BIAC) welcomes Mr. Rizwan Rahman as Member to the BIAC Board.



Mr. A. K. Azad is the Vice President of International Chamber of Commerce-Bangladesh (ICC-B) and also the founder Chairman and Managing Director of Ha-Meem Group of Companies. Mr. Azad is the Director of Shahjalal Islami Bank Ltd. and President of Dhaka University Alumni Association. He was President of the Federation of Bangladesh Chamber of Commerce & Industry (FBCCI) and Bangladesh Chamber of Industries (BCI). He is also the founder of the daily newspaper and electronic media in the country – The Daily Samakal and Channel 24 respectively. Mr. A. K. Azad has been honoured with numerous socio-economic awards for his achievements over the years. Recently he has been nominated by ICC-B as one of the Members of the BIAC Board.



Mr. Kutubuddin Ahmed, Member of the Executive Committee of International Chamber of Commerce- Bangladesh (ICC-B), is the Chairman and founder of Envoy Group. Mr. Ahmed is the Director

of Chattogram Stock Exchange Limited, Vice President of International Military Sports Council and Member of Sports Environment Committee of the Olympic Council of Asia. He was also the President of Metropolitan Chamber of Commerce and Industry (MCCI), Dhaka, Bangladesh Garment Manufacturers and Exporters Association (BGMEA), Bangladesh Badminton Federation and Secretary General of Bangladesh Olympic Association. Recently he has been nominated by ICC-B as one of the Members of the BIAC Board.



Mr. Anis A. Khan, Senior Vice President of Metropolitan Chamber of Commerce and Industry (MCCI), Dhaka is the Director of real estate developer W&W Grains Corporation and Independent Director of Summit Alliance Port Limited. He is an Adjunct Professor at the School of Business of the Independent University Bangladesh (IUB). He was the Managing Director and CEO of Mutual Trust bank Ltd. and is former Chairman of the Association of Bankers, Bangladesh (ABB) Ltd. He is the recipient of numerous accolades including the 'Business & Entrepreneur

Excellence Award 2016', where he was recognised as the 'Inspirational Business Leader of the Year' in London, UK. Recently he has been nominated by MCCI, Dhaka as one of the Members of the BIAC Board.



Mr. Osama Taseer, an eminent garment sector leader is the Chairman of Four Wings Limited, an RMG manufacturing company. He is the former President of Dhaka Chamber of Commerce and Industry (DCCI). He is also the Managing Director of Tiffany wear Ltd. He is a former Director of Bangladesh Garment Manufacturers and Exporters Association (BGMEA), Secretary General of Dutch Bangladesh Chamber of Commerce and Industry and a lifetime Member of the Institution of Engineers, Bangladesh. Recently he has been nominated by DCCI, as one of the Members of the BIAC Board.

Mr. Mahbubur Rahman, Chairman, BIAC Board along with other members welcomed Messrs Rizwan Rahman, A. K. Azad, Kutubuddin Ahmed, Anis A. Khan and Osama Taseer to the Board in the recently held 33rd BIAC Board Meeting.

BIAC supports '2021 China High-Level Dialogue on Maritime and Commercial Arbitration' symposium

16 July 2021



BIAC was one of the supporting organisations for the '2021 China High-Level Dialogue on Maritime and Commercial Arbitration (CHDOMACA)' symposium which was held in Beijing on 16 July 2021 in Beijing. The event was organised by China Maritime Arbitration Commission (CMAC) together with the Vancouver Maritime Arbitrators Association (VMAA) and the Inter-Pacific Bar Association

(IPBA) with the support of the Supreme People's Court, People's Republic of China.

The event was also supported among others by the China International Economic and Trade Arbitration Commission (CIETAC); Asian Institute of Alternative Dispute Resolution (AIADR); Kuala Lumpur, International Commercial Dispute Prevention and Settlement Organisation (ICDPASO), UK; ICC, China and Thailand Arbitration Center (THAC).

General Manager of BIAC in the Panel of Mediators of SHIAC

1 August 2021



Ms. Mahbuba Rahman Runa, General Manager of BIAC has been appointed as a Mediator of Shanghai International Arbitration Center (SHIAC), for a period from 1 August 2021 to 30 April 2026.

SHIAC was established by Shanghai Municipal People's Government in 1988 and has been acting as an independent arbitration institute. SHIAC is located in Shanghai, a crucial city in Chinese economic market. SHIAC has successfully carried out independent, impartial, effective and professional arbitration and mediation services for dispute resolution.

Ms. Rahman is already in the Panel of Mediators of Thailand Arbitration Centre (THAC). She is also a Consultant of Kunming International Commercial Arbitration Service Centre (KICASC), China. She completed the Basic Training Course on Arbitration conducted jointly by the International Law Institute (ILI), Washington DC, USA in collaboration with BIAC. She participated in a course on 'Introduction to International Arbitration' of Chartered Institute of Arbitrators (CIArb) held in Singapore and qualified to be an Associate Member of the CIArb, UK.

BIAC signs Cooperation Agreement with BIAMC, Indonesia

31 August 2021



Bangladesh International Arbitration Centre (BIAC) signed a Cooperation Agreement with Bali International Arbitration and Mediation Center (BIAMC), Indonesia.

Chief Executive Officer of BIAC Mr. Muhammad A. Rume Ali and Ms. Naz Schinder (Juman Gulinazaer), Founding Chair and Chief Executive Officer of BIAMC, signed the Cooperation Agreement online on behalf of their respective organisations on 31st August 2021.

CEO of BIAC Mr. Muhammad A. (Rume) Ali in his welcome address mentioned that this co operation between BIAMC and BIAC is very important for BIAC as BIAMC is an important ADR institution in the region. Moreover, it has come out from the three distinct interwoven Asia Pacific phenomena: The Association of Southeast Asian Nations (ASEAN), China's One Belt One Road (OBOR), and The Asia Pacific Economic

Cooperation (APEC). The Association of Southeast Asian Nations (ASEAN), which has a very significant role in economic development of this region. China's OBOR policy is one of the most important and transformative initiatives that has been taken by a country which has been potential to change the economic life around the world. He also added that The Asia Pacific Economic Cooperation (APEC) is also emerging as a very important institution and BIAMC is the part of this cooperation, so they have important role to play in this region and being associated with them is vital for us to sign the Cooperation Agreement with BIAMC, Mr. Ali emphasised.

BIAMC is a non-profit service centre located both in Bali and Jakarta, Indonesia, devoted to international dispute settlement through arbitration, mediation and other forms of ADR. In her welcome address, Ms. Naz Schinder (Juman Gulinazaer), Founding Chair and Chief Executive Officer of BIAMC, stressed the need of mutual cooperation between BIAC and BIAMC, as BIAC is an emerging hub of ADR in the region. She lauded BIAC's activities towards achieving a better ADR landscape in Bangladesh and beyond and hoped that the two institutions can contribute more in the development of ADR in the region through mutual cooperation.

The ceremony was also attended among others by Professor Dr. Ida Bagus Rahmadi Supancana, Co-Founder and Chair of Advisory Board, Professor Abu Bakar Bin Munir, Co-Founder and Advisor and Ms. Rosa Cahyaningsih, Public Relations Manager from BIAMC. Mr. M A Akmal Azad, Director and Ms. Mahbuba Rahman Runa, General Manager from BIAC were present.

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

General Manager of BIAC joins 2021 China Arbitration Week Yunnan Division

10 September 2021



Ms. Mahbuba Rahman Runa, General Manager of BIAC participated online at the 2021 China Arbitration Week Yunnan Division held on 10 September 2021. She highlighted the current situation of Bangladesh China trade and investment relationship, mainly focussing on the two most important challenges that Chinese investors face in Bangladesh which are dispute resolution and intellectual property. She discussed about the

challenges that Chinese investors are facing in Bangladesh. In this context she pointed out that in a recent World Bank survey under the Enforcing Contract indicator, Bangladesh was placed in the 189th position out of 190 countries on the 'Ease of doing Business' indicator.

The main barrier to this appears to be the number of outstanding cases and new cases that are filed every year. There are 3.6 million cases pending in all courts of Bangladesh as in December 2020, of which 1.3 million are civil including commercial dispute cases. It takes almost 15 years to resolve a civil case. The case and Judge ratio being 1:2200 is also frustrating, she said. Ms. Runa categorised that BIAC started operation in April 2011 as the country's first and only licensed and registered ADR institution in order to integrate ADR mechanism with our judicial system so that business disputes are resolved amicably outside the court in an expeditious manner.

Experts at a webinar organised by BIAC and THAC insist on confidentiality protocol in arbitration proceedings to regulate the New Normal

14 September 2021

Bangladesh International Arbitration Centre (BIAC), the first and only registered Alternative Dispute Resolution (ADR) institution of the country organised its 16th webinar from a virtual platform on 14 September 2021 on "Confidentiality: Does Arbitration Need a Protocol to Regulate the New Normal?", jointly with its partner organisation Thailand Arbitration Center (THAC), an institution that provides ADR services, comprising of arbitration and mediation for cross-border disputes. As part of its International ADR Webinar Series 2021 themed "Managing Disputes in an Uncertain World", THAC arranged the session in collaboration with BIAC.

In the second year of the COVID-19 pandemic, various irreversible modifications have been made in our lives. The field of ADR has also been affected by the pandemic and changes have occurred. ADR proceedings are moving online and protocols for virtual hearings have been proposed and new virtual platforms have been launched. Moreover, all social events, due to social distancing, have been converted to webinars. These changes can be summarised as New Normal in the ADR field. This webinar aimed to discuss the changes that occurred since the pandemic started, new developments introduced, the rise of consequences of the New Normal and the future opportunities in the field of ADR.



Barrister Ajmalul Hossain, QC, Fellow of Chartered Institute of Arbitrators (FCIArb), renowned Arbitrator of the region and Senior Advocate, Supreme Court of Bangladesh, who also practices from Selborne Chambers, London, moderated the webinar.

Panellists who took part in the discussion on behalf of BIAC were Mr. Mohammad Shahidul Haque, former Senior Secretary, Legislative and Parliamentary Affairs Division, Government of Bangladesh and Dr. Rumana Islam, Professor of Law, University of Dhaka. Panellists nominated by THAC were Dr. Thanes Sucharikul, Director, Master of Laws Programme of the School of Law, Rangsit University, Thailand and Barrister Colin Wrights, Fellow of

Chartered Institute of Arbitrators (FCI Arb) and an eminent lawyer and Arbitrator of the region.

In his deliberations Mr. Mohammad Shahidul Haque, Panellist from BIAC and a former Senior Secretary of Bangladesh found agreeable substances and insights in favour of more use of virtual platforms in dealing with Arbitration cases both in Bangladesh and outside. Since the New Normal is broadly a development during the pandemic, a Standard Operating Procedure keeping consistency with standards already developed and practiced by different Arbitration centres may be adopted, which may be an way forward action for BIAC and Bangladesh and also for similar other centres, Mr. Haque opined.

Panellist from BIAC Dr. Rumana Islam, Professor of Law, University of Dhaka in course of her deliberations observed that with all the virtual arbitration and the flurry of initiatives to facilitate this and adapted new proceedings to address the challenges imposed by the pandemic, the New Normal is rapidly becoming just Normal and we have to continue this New Normal as normal for next few years. Therefore we need to be better equipped with it, Dr. Islam maintained.

THAC nominated Panellist Dr. Thanes Sucharikul took part in the discussion and said that the problems of confidentiality in online arbitration are practical and technical. The actual protection of online arbitration confidentiality is a matter of software and IT technicality, rather than arbitration legality, he insisted. Dr. Sucharikul advocated for choosing appropriate means for online arbitration, such as, Microsoft teams, WebEx, Zoom etc. Barrister Colin Wrights, Panellist from THAC in his observations emphasised coordinated steps by arbitration institutions to frame new rules upholding confidentiality of the proceedings in the New Normal, for that matter, virtual arbitration sessions. He advised that all clouds on video conferences should be password protected and locations of all participating parties should be mutually agreed upon and circulated to the parties and the arbitration tribunal.

Mr. Muhammad A. (Rume) Ali, Chief Executive Officer of BIAC, Mr. M A Akmal Hossain Azad, Director, BIAC and Ms. Thunpicha Rungcheewin, Marketing Executive, THAC also attended the webinar.

CEO of BIAC sends goodwill message to the '2021 China Arbitration Summit' and 2nd 'Belt and Road Arbitration Institutions Forum'

14 September 2021



The China Arbitration Summit 2021 and the 2nd Belt and Road Arbitration Institutions Forum (Summit) was held on 14 September 2021 in Beijing. As the prime event of China Arbitration Week, this Summit was jointly hosted by China International Economic and Trade Arbitration Commission (CIETAC), All China Lawyers Association (ACLA), collaborating with International Bar Association Arbitration Committee (IBA Arbitration Committee), co-organised by Renmin University of China, Beijing Lawyers Association, China Banking Association, China Real Estate Association, Insurance Association of China and Legal Daily, and supported by international organisations from nearly twenty countries and regions.

Mr. Muhammad A. (Rume) Ali, CEO of BIAC sent a goodwill video message to these events. In his message Mr. Ali said that the Belt and Road Initiative



must be one of the most transformational ventures that will bring connectivity and prosperity to millions around the world. On the occasion of the second Belt and Road Arbitrators' Forum and the 2021 China Arbitration Summit, he congratulated CIETAC and wished the events great success.

'ADR may address the scourge of high NPLs of the Banking Industry', says Managing Director of Meghna Bank Limited in an interview with the daily The Financial Express

10 October 2021

Mr. Sohail R K Hussain, Managing Director and CEO of the Meghna Bank Limited gave an interview to the daily Financial Express on 10 October 2021. He said that ADR is one of the ways that may address the scourge of high NPLs of the Banking Industry. He

also mentioned that the report of the Committee formed by the Central Bank with recommendations for use of ADR by banks was submitted to Bangladesh Bank jointly by ABB and BIAC in 2019 which is yet to be acted upon. Mr. Hussain, also a former Vice



Chairman of the Association of Bankers, Bangladesh (ABB) sought reform in our judicial system to speed up the recovery process of classified loans, saying that it would also help improve financial health of the banks.

"The quality of audit along with stronger due diligence, post disbursement monitoring as well as expanded use of arbitration as a way of resolving disputes with customers will have to be improved to curb the rising trend of default loans in the banking sector of Bangladesh," the senior banker said while explaining how to face the challenges of NPLs.

Law Minister lauds BIAC's virtual hearings at its 10th Anniversary Seminar

30 October 2021



Bangladesh International Arbitration Centre (BIAC) as the country's first and only Alternative Dispute Resolution (ADR) institution has been, over the first decade of its operation, playing a vital role to resolve commercial disputes amicably. BIAC celebrated its 10th founding anniversary on 30 October 2021 at Pan Pacific Sonargaon Hotel, Dhaka and a seminar themed "Dispute Resolution in the Virtual World: the Impact of COVID-19" was held on this occasion. Minister for Law, Justice & Parliamentary Affairs Mr. Anisul Huq, MP was the Chief Guest at the seminar. Mr. Mahbubur Rahman, Chairman of BIAC moderated the seminar.

Speaking on the occasion the Law Minister Mr. Anisul Huq, MP mentioned that appreciating the recent initiatives and efforts by BIAC towards resolution of commercial disputes outside the court, the Government of Prime Minister Sheikh Hasina is considering to incorporate appropriate clauses for arbitration and mediation in all Government contracts. He highlighted that in the wake of the outbreak of COVID-19, the Government has enacted the 'Use of Information Technology by the Court Act 2020' to carry out trials through digital means and our judiciary has already started conducting court proceedings via video conferencing. He said that even after the pandemic, this process will continue and its jurisdiction will be expanded. He said that the Government has taken up a project on e-judiciary. He lauded BIAC's pioneering role in virtual hearings of arbitration and mediation during the ongoing crisis period of COVID-19.

The Law Minister stated that the present Government under the competent leadership of Prime Minister Sheikh Hasina, appreciates very much the growing need and significance of ADR. Apart from the Arbitration Act 2001, in the last few years some other laws have also incorporated provisions of ADR. Moreover the Government of Prime Minister Sheikh Hasina has taken steps to ensure that both foreign and local arbitration awards can be enforced in Bangladesh and is encouraging all Government entities to choose Bangladesh at the first instance as the place of arbitration for contracts, he added. The Law Minister also said that the Government is modernising the Evidence Act 1872.

The Law Minister announced that he is working on allocating BIAC a grant of Taka 10 crore for its sustainability, which is now under process in the Finance Division.

Mr. Mahbubur Rahman, Chairman, BIAC Board in his Concluding Remarks expressed his gratitude to the Government of Bangladesh and the Ministry of Law, Justice and Parliamentary Affairs in particular for coming forward and making substantial changes towards promoting ADR in many of our laws. Over the span of a decade BIAC has been facing a rise in the demand for its services and the practice of ADR by numerous commercial organisations and business concerns as well as financial institutions in the country, he said and hoped that this demand continues in future. He urged upon the Law Minister to continue to support and encourage adherence to ADR methods in resolving

commercial disputes, recovery of loan by banks and specific performance of contracts between the parties.

In his Welcome Address BIAC's Chief Executive Officer Mr. Muhammad A. (Rume) Ali gave a brief account of the institution's activities and achievements during the last six years of his tenure with BIAC including introduction of Online Training Courses, Online Outreach Programmes through webinars and Virtual hearings for Arbitration and Mediation since outbreak of the pandemic. He said that being a banker by profession, ADR was a completely different field to him and the struggle to promote ADR despite having the infrastructure and capacity was quite challenging. On top of that, the pandemic has been especially difficult as it affected the earning streams of BIAC and Mr. Rume Ali appealed to the Law Minister to save this national institution.

Mr. A. F. Hassan Ariff, former Advisor to the Caretaker Government and former Attorney General of Bangladesh in his speech said that the COVID-19 pandemic and its impact on all sectors including the dispute resolutions compelled to reconsider the way ahead to minimise the disruption in dispute resolutions by ensuring that disputes would continue to be resolved on a fair, expeditious and cost effective basis through virtual means facilitating business and commerce move forward.

Justice AFM Abdur Rahman, former Judge of the Supreme Court of Bangladesh, in his speech strongly argued that irrespective of positive steps by the incumbent Government, the non-change of mindset of some of the stakeholders is a great hurdle to advance ADR through physical or virtual mechanism. He opined that the initial stage of virtual mechanism may have some flaws on smooth proceedings of ADR, but it will be washed out through continuous use of the mechanism. An aggrieved party from Singapore may take the benefit of a celebrated Arbitrator staying in UK to resolve his dispute with a party from China, that is the charisma of virtual ADR, he added.

Mr. Tarique Afzal, President and MD of AB Bank Ltd, in his speech said that BIAC has been stirring to improve

the dispute resolution environment in Bangladesh. The backlog of cases pending in the courts has long been a matter of concern for the Law makers. BIAC has a substantial role to play in this important field beyond the usual adjudication process, Mr. Afzal opined.

In her speech Ms. Humaira Azam, MD and CEO of Trust Bank Ltd. said that in this new virtual world of business, ADR has become an essential part of the DNA of dispute resolution during COVID-19. She said that BIAC has created a new horizon in this regard and we should encourage every institution to try out ADR for its own benefit.

Professor Dr. Farhana Helal Mehtab, Associate Dean, Faculty of Humanities and Social Science, Daffodil International University in her speech opined that in the virtual dispute resolution process, there is always a concern about the confidentiality and privacy of the parties' data, hence we need to adopt a strict privacy policy under the existing legal framework. While we appreciate the robust efforts of our Supreme Court in formulating guidelines on mediation to resolve disputes, we look forward to similar frameworks on virtual settlement of disputes via ADR, Dr. Farhana categorised.

Barrister Rashna Imam, Advocate, Supreme Court of Bangladesh, in her speech insisted on adopting virtual proceedings of arbitration with a view to expediting arbitral process.

The seminar was attended among others by former Judges of the Supreme Court, Secretaries, business leaders, prominent lawyers, representatives of corporate houses, Government officials, senior executives of banks and insurance companies, academicians, and the Media. Board Members of BIAC, Mr. Rizwan Rahman, Mr. Kutubuddin Ahmed and Mr. Osama Taseer also attended the Seminar.

The event went on air live on BIAC's FACEBOOK page and LinkedIn profile. The daily Financial Express and the daily Bonik Barta were the Media Partners of the event.

BIAC Remembers Mr. JLN Murthy

5 November 2021



We are deeply saddened at the sudden demise of Mr. JLN Murthy, Regional Centre in Charge and Secretary of the International Centre for Alternative Dispute Resolution (ICADR), Hyderabad, India. Mr. Murthy supported BIAC tremendously and had confirmed to be an Arbitrator for our first Inter University International Arbitration Contest 2021 on our invitation, which was scheduled to be held on 5 November 2021.

We recall Mr. Murthy's contribution to the development of Alternative Dispute Resolution (ADR) through advocacy, capacity building programmes and actual facilitation of dispute resolution by means of arbitration and mediation. We, at, BIAC remember with gratitude his support. It was an honour and a privilege to have worked with him.

Mr. Murthy's passing is a great loss to the ADR community of the region including BIAC, particularly for those who are aware of his contributions to the community and the ICADR.

BIAC launches first international Arbitration Contest in Bangladesh

6 & 8 November 2021

Bangladesh International Arbitration Centre (BIAC) recently hosted first International Arbitration Contest “The City Bank - BIAC Inter University International Arbitration Contest 2021” in Bangladesh. Last year, BIAC organised the first ever arbitration contest in the history of Bangladesh only for Bangladeshi Universities, which was completely conducted under digital platform due to Covid-19 with an aim of organising this contest in the upcoming years. In continuation of that, this year, BIAC is arranging a more broad-based international contest where universities from SAARC region are participating along with leading public and private universities from Bangladesh. Moreover the Chairpersons of all the sessions are also from SAARC countries outside Bangladesh. This year 7 leading universities from Bangladesh and SAARC countries are taking part in this Contest which are last year’s Champion University of Dhaka, Damodaram Sanjivayya National Law University, India, the London College of Legal Studies (LCLS) South, Bhuiyan Academy, Lahore University of Management Sciences, Pakistan, Chittagong University, Bangladesh and Independent University Bangladesh. Bangladesh International Arbitration Centre (BIAC) is hosting this Arbitration Contest to provide students a practical knowledge of Alternative Dispute Resolution (ADR) and to give them the opportunity to arbitrate a real case acting as Claimant and Respondent in a real-life scenario. Moreover, one of the main objectives of the Contest was to involve Law students with BIAC’s endeavours in the dispute resolution realm in the country and beyond towards easing doing business and accelerate overall economic development of Bangladesh.

Three Preliminary Sessions of the Contest were held through online platform on 6 and 8 November 2021. In the first Session of preliminary round, international arbitrator from Sri Lanka Ms. Shehara Varia, an Attorney at Law of the Supreme Court of Sri Lanka and Director of the CCC - ICLP Alternate Dispute Resolution Center was the Sole Arbitrator of the Session where London College of Legal Studies (South) won the Session against Damodaram Sanjivayya National Law University, Vishakhapatnam, India. Dr. Deepak Jindal, Advocate of the Punjab and Haryana High Court, India and Member of the Governing Council of the International Centre for Alternative Dispute Resolution was sole Arbitrator of the Second session where Bhuiyan Academy, Bangladesh won against



Lahore University of Management Sciences, Lahore, Pakistan. In the third Session Mr. Rana Sajjad Ahmad, President of the Center for international Investment and Commercial Arbitration, Pakistan was the Sole Arbitrator where University of Chittagong won against the team of Independent University Bangladesh.

Winning teams will compete in the Semi Finals which will be held online on 26 November 2021.

Mr. M A Akmal Hossain Azad, Director of BIAC spoke on all three Sessions of the Preliminary Round and said that integrating ADR mechanism with our judicial system will help raise the country’s rank in the World Bank’s Doing Business Global Index and affirmed that BIAC, now widely considered as the ADR hub of the country, will continue its best efforts to help develop practice of ADR among stakeholders in a more concerted way.

Ms. Mahbuba Rahman Runa, General Manager BIAC, the Coordinator and host for the Sessions of the Preliminary Round welcomed all team members and the Tribunals’ Chairpersons. She highlighted about BIAC’s activities including recent endeavours for University level students for popularising ADR in order to acclimatise them with the norms, practices and benefits of ADR in resolving commercial disputes and getting benefits in their future career life.

The event was sponsored by the City Bank Ltd. and streamed live on BIAC’s FACEBOOK page and LinkedIn. The Bonik Barta is the media partner of this Contest.

University of Dhaka and University of Chittagong qualify for the Final of City Bank BIAC Inter University International Arbitration Contest

26 November 2021



As a part of City Bank BIAC Inter University International Arbitration Contest 2021 the Semifinals of the Contest were held online on 26 November 2021. Finals of the Contest will be held on 18 December 2021. Bangladesh International Arbitration Centre (BIAC) conducted the Contest via Zoom virtual platform. In the First Semifinal, Mr. Rana Sajjad Ahmad, President of the Center for International Investment and Commercial Arbitration (CIICA), Pakistan was as the Tribunal Chairman while Dr. Deepak Jindal, Advocate and Member, Governing Council, International Centre for Alternative Dispute Resolution (ICADR), India was the Tribunal Chairman of the second Semifinal. Mr. Muhammed Forrukh Rahman, Advocate and Head of Chambers, Rahman's Chambers and Mr. Ahmad Naquib Karim, Advocate, Supreme Court of Bangladesh and Partner, Karim & Karim were the Tribunal Members of the

First Semifinal. Mr. Margub Kabir, Advocate, Supreme Court of Bangladesh and Head of Chambers, Margub Kabir & Associates and Mr. Monzur Rabbi, Advocate, Supreme Court of Bangladesh and Head of Chambers, Rahman and Rabbi Legal were the Tribunal members of the Second Semifinal.

In the First Semifinal University of Dhaka, the Champion of the last year's contest acted as the Claimant team and the Bhuiyan Academy acted as the Respondent team. University of Dhaka secured its place for the Finals. In the Second Semifinal, London College of Legal Studies (South) acted as Claimant and University of Chittagong acted as Respondent and University of Chittagong secured its place for the Finals.

Bangladesh International Arbitration Centre (BIAC) is hosting this International Arbitration Contest to provide students a practical knowledge of Alternative Dispute Resolution (ADR) and to give them the opportunity to arbitrate a case acting as Claimant and Respondent in a real-life scenario. Moreover, one of the main objectives of the Contest is to involve Law students with BIAC's endeavours in the dispute resolution realm in the country and beyond towards easing doing business and accelerating overall economic development of Bangladesh.

Mr. M A Akmal Hossain Azad, Director of BIAC delivered Welcome Address in both the sessions of the Semifinals and hoped that this Contest will carry forward young learners' interest and expertise towards building a more ADR friendly business dispute resolution spectrum in the region.

Ms. Mahbuba Rahman Runa, General Manager BIAC was the Coordinator for the Semifinals of the Contest. The Daily Bonik Barta was the media partner of the event. It was telecast live on BIAC's Face book page.

BIAC representative attends BIBM seminar and emphasises need of making ADR more effective through legal and regulatory measures

29 November 2021

Ms. Rubaiya Ehsan Karishma, Counsel of BIAC participated at the online seminar organised by Bangladesh Institute of Bank Management (BIBM) on "Effectiveness of NPL Recovery Measures of Banks in Bangladesh" as part of the Research Team and Co-Author of the Keynote Paper. The seminar was held online on 29 November 2021 and streamed live from the official FACEBOOK page of BIBM. Recognising the role of Alternative Dispute Resolution (ADR) under an institutional framework, BIBM invited BIAC to participate in this research. The Research team was led by Dr. Prashanta

Banerjee of BIBM who presented the Keynote Paper at the webinar.

BIAC has been working with the banking sector of Bangladesh in order to strengthen the use of ADR in the recovery of Non-Performing Loans (NPLs). In 2018, Bangladesh Bank (BB) had invited BIAC and Association of Bankers, Bangladesh (ABB) for a tripartite meeting, following which a committee was convened by BB with representatives of BIAC, ABB and Banking Regulations and Policy Department (BRPD) of BB. This committee was led by Mr.



Muhammad A. Rume Ali CEO of BIAC and was tasked with the preparation of a Draft ADR Guidelines for Banks in Bangladesh. This draft was formally submitted to BB in July 2019 and is currently under consideration by the BB authority.

Inaugural Speech was delivered by Mr. Ahmed Jamal, Chairman, BIBM Executive Committee and Deputy Governor, Bangladesh Bank. Welcome Address was given by Mr. Ashraf Al Mamun, Ph D, Associate Professor and Director (Research, Development & Consultancy), BIBM, and Mr. Md. Akhteruzzaman, Ph D, Director General, BIBM made Concluding Remarks.

Discussants included Professor Barkat-e-Khuda, Ph D (Dr. Muzaffer Ahmad Chair Professor, BIBM), Mr. Joarder Israil Hossain (Executive Director, Bangladesh Bank), Mr. Md. Ataur Rahman Prodhon

(CEO & Managing Director, Sonali Bank Limited) and Syed Mahbubur Rahman (Managing Director & CEO, Mutual Trust Bank Limited).

Members of the research team included Mr. Md. Mohiuddin Siddique, Professor, BIBM, Mr. Md. Ruhul Amin, Assistant Professor, BIBM, Ms. Tahmina Rahman, Assistant Professor, BIBM, Mr. M. Khurshed Alam, Deputy Managing Director, Eastern Bank Limited and Ms. Rubaiya Ehsan Karishma, Counsel, BIAC.

Recommendations made at the webinar include preventing NPLs through proper pre-lending appraisal, allowing rescheduling facility based on bank's internal policy and standards considering the banker-customer relationship, write-off in getting Desired Results, strengthening legal measures in recovery of NPLs, formation of Asset Management Company (AMC), making Alternative Dispute Resolution (ADR) more effective through legal and regulatory measures, capacity building and generating awareness among the bankers and borrowers, creating social shaming programme for wilful defaulters, managing asset quality in post COVID situation, Management Information System (MIS) and sharing information among banks through a central data warehouse with segmented information of borrowers, business and collateral, the central bank and schedule banks should assume more responsibility, among others. It becomes difficult for banks to control the NPL situation when the matter goes to court; therefore, it is ideal to resolve the matter while banks still retain control of the situation.

Mediation is an effective tool for commercial dispute resolution, experts from Nepal and Bangladesh opine in a webinar

4 December 2021

Bangladesh International Arbitration Centre (BIAC), the first and only registered Alternative Dispute Resolution (ADR) institution of the country, dedicated to facilitate institutional ADR organised its 17th webinar from a virtual platform on 4 December 2021 on "Commercial Dispute Resolution through Mediation", jointly with the Nepal International ADR Center (NIAC), an institution committed for accessible and credible dispute resolution service through Arbitration and Mediation based in Kathmandu, Nepal.

Participating in the webinar experts stressed on the advantages and significance of mediation over judicial proceedings as a dispute resolution method, especially in the wake of the spread of COVID-19 pandemic worldwide, which has created an unprecedented challenge in our economic life. The webinar focussed



on how mediation can help resolve commercial disputes effectively.

In his Welcome Address Chief Executive Officer of BIAC Mr. Muhammad A. (Rume) Ali welcomed the recent UN General Assembly decision for graduating Nepal and Bangladesh to Developing Countries. He said that both Nepal and Bangladesh have robust

growth rate and with the increasing volume of trade in both the countries commercial disputes are likely to increase. Therefore, Mr. Ali favoured institutional framework, laws and guidelines to enhance scope of resolving commercial disputes. He said that BIAC is working for dispute resolution service, academic and collaborative works with different institutions across the world. NIAC will help BIAC towards achieving its objective of providing best dispute resolution tools to adversaries, Ali hoped.

Chairperson of Nepal International ADR Center (NIAC) Dr. Mukti Rijal in his Closing Remarks said that Bangladesh and Nepal have many similarities including several aspects of our legal system and practices in ADR. He hoped that the collaboration between NIAC and BIAC will foster bilateral relations including sharing experience in dispute resolution.

Chairman of the BIAC Board Mr. Mahbubur Rahman, at the end of the session, thanked all the Panellists from Nepal and Bangladesh for this joint session by BIAC and NIAC. Mr. Rahman hoped that the friendly relationship between Nepal and Bangladesh over the decades will strengthen further in the days ahead particularly in the field of trade and commerce which will eventually help boost our economies.

Taking part in the discussion Panellist Justice Shreekantha Paudel, Hon'ble Judge of the High Court of Nepal said that commercial mediation has been inserted in various legislation of Nepal. There are many challenges in banking and commercial disputes, which stakeholders have to join hands for overcoming such issues, he opined.

Barrister Farzana Ahmed, Advocate, Supreme Court of Bangladesh and Senior Vice President & Head of Legal Affairs Division, Dhaka Bank Ltd. viewed the issue from a banker's perspective and maintained that mediation at this difficult time can help resolve commercial disputes in the most pragmatic, expeditious and cost effective manner and so it should be preferred as a dispute resolution tool before

resorting to a lengthy judicial process. Dr. Kumar Sharma Acharya, Senior Advocate and Mediation Expert, Nepal in his deliberations said that emerging economies like Nepal have to embrace the growing global business sentiment which prefers amicable and convenient mediation method and is made binding through the ratification of the Singapore Convention on Mediation.

Barrister Khandoker MS Kawsar, Advocate, Supreme Court of Bangladesh and Regional Representative of South Asian Chapter, ICC Young Arbitrators Forum took part in the discussion and explained the ambit of commercial disputes, strengths and weaknesses in Bangladeshi legal and regulatory principles to resolve these disputes. He also highlighted the scope of mediation in resolving them. Panellist Ms. Prakritee Yonzon, Lawyer and ADR Practitioner, Nepal said that in order to attract, retain and multiply investments, it is imperative that Nepal has a well-functioning, effective and speedy mechanism of mediation for resolving commercial disputes.

Mr. Shahariar Sadat, Director, Academic & Legal Empowerment, Centre for Peace & Justice, BRAC University, Dhaka, taking part in the discussion, categorised that mediation had always been a part of Bangladesh society, the difference now is, it is getting a more formal and institutional shape. Mediation is important for the promotion of business competitiveness, Mr. Sadat said. Mr. Matrika Prasad Niraula, Managing Director of Nepal International ADR Center (NIAC) moderated the webinar. In course of discussion he said that the webinar has facilitated to identify issues and means of their solution in resolving commercial disputes. Albeit, mediation is the best tool to mitigate such disputes, Niraula maintained.

Mr. M A Akmal Hossain Azad, Director of BIAC also took part in the webinar. The programme was streamed live on FACEBOOK page and LinkedIn profile of BIAC. The daily Bonik Barta was the media partner of the event.

Mr. Md. Saiful Islam elected President of MCCCI, Dhaka

15 December 2021



Mr. Md Saiful Islam has been elected as the President of the Metropolitan Chamber of Commerce and Industry, Dhaka (MCCCI) for 2022.

A leading entrepreneur, Mr. Islam is the Managing Director of Picard Bangladesh Ltd. He is also the President of Leather goods and Footwear Manufacturers and Exporters Association of

Bangladesh (LFMEAB) and Director of the Federation of Bangladesh Chambers of Commerce and Industry (FBCCI). He served the Bangladesh German Chamber of Commerce and Industry (BGCCI) as President. Besides, he holds the position of the Chairman of Western Marine Shipyard Ltd., Narayanganj Engineering and Shipbuilding Ltd. and Banga Dredgers Ltd.

Dhaka University wins the City Bank BIAC International Arbitration Contest 2021

18 December 2021



As a part of the first ever international arbitration contest for students held in Bangladesh, Finals of the "City Bank BIAC International Inter University Arbitration Contest 2021" was held online on 18 December 2021. The University of Dhaka, the last year's Champion of the national level Contest acted as the Claimant team and the University of Chittagong acted as the Respondent team. The two teams competed against each other and the University of Dhaka won the Contest.

Speaking on the occasion BIAC Chairman Mr. Mahbubur Rahman said that the upcoming legal professionals should be aware of the skills and learning that is required to resolve commercial disputes outside the court. So BIAC has taken a stance for students of Law from home and abroad to learn the characteristics of the arbitration process, as to how the parties opt for private dispute resolution in the real world and to provide an equal opportunity for the students to witness the entire legal process and technical spectrum of the arbitration proceedings that is much needed for them, Mr. Rahman emphasised.

BIAC hosted this Arbitration Contest to provide national and international students of Law a practical knowledge of ADR and to give them the opportunity to arbitrate a real case acting as Claimant and Respondent in a real-life scenario. Seven Universities from India, Pakistan and Bangladesh participated in the Contest, which was sponsored by the City Bank Limited. In the Finals Dr. Deepak Jindal, Advocate, Punjab and Haryana High Court, Chandigarh and Member, Governing Council, International Centre for Alternative Dispute Resolution, India was the Tribunal Chairman. Along with him there were two Members of the Tribunal, namely, Mr. Anil Changaroth, Managing Director, ChangAroth Chamber LLC, Singapore and ChangAroth InterNational

Consultancy, ODRasia & ODRanz, Asia Pacific; and Mr. Ho Meng Hee, Director, Alternative Dispute Resolution, Financial Industry Disputes Resolution Centre (FIDReC), Singapore.

Guest of Honour to the event Mr. Mashrur Arefin, Managing Director & CEO of the City Bank Limited, in his address said that initiating such Inter-University International Arbitration Contest will bolster the process of bringing change in the mindset of people. He hoped that this will encourage our legal minds to experience the

pros and cons of the most popular form of ADR, i.e. Arbitration, which will eventually assist us all to realise the benefits of doing away with conventional litigation system by taking the faster ADR route. Mr. Arefin also announced that the City Bank Limited will continue to be the title sponsor of this annual Contest for the year 2022 and 2023.

Mr. Muhammad A. (Rume) Ali, Chief Executive officer of BIAC in his address said that after the success of the national contest held in 2020, we felt that our future law professionals would gain from an exposure to an international contest. With a view to create awareness and enlighten the students of Law in the study and practice of ADR beyond our borders, the current international contest has been launched. Mr. Rume Ali hoped that the event will allow participants and the audience to experience how real life dispute resolution techniques are used in arbitration.

In his Welcome Address Director of BIAC Mr. M A Akmal Hossain Azad said that by hosting this Contest BIAC is trying to draw attention of the business community, the legal professionals and the financial sector to the issues and problems of mitigating commercial disputes out of courts given the backlog of 3.9 million under trial cases in all the courts of Bangladesh only. He also gave an account of BIAC's recent activities including working experience with a number of Ministries towards building a stronger ADR structure in the country.

Ms. Mahbuba Rahman Runa, General Manager of BIAC and Coordinator of the Contest highlighted BIAC's recent initiatives especially for University level students. The daily Bonik Barta was the media partner of the event which was cast live on BIAC's FACEBOOK page and LinkedIn profile.

Mr. Rizwan Rahman re-elected as DCCI President

22 December 2021



Mr. Rizwan Rahman, Managing Director of ETBL Securities and Exchange Ltd. has been re-elected as the President of Dhaka Chamber of Commerce and Industry (DCCI) for the year 2022. He is a Member of the BIAC Board.

The re-elected President of DCCI Mr Rizwan Rahman, in his wide-ranging business career, heads several segments of ETBL Holdings Ltd., a renowned local conglomerate diversifying from financial

services, dredging infrastructure, commodities trade, cold storage, furniture and print media.

He is a Director of Eastland Insurance Company Ltd. and the daily The Financial Express. Mr. Rahman also served as the Director of Bangladesh Chamber of Industries (BCI), Bangladesh Philippines Chamber of Commerce & Industry (BPCCI) and Vice President of Dutch-Bangla Chamber of Commerce & Industry (DBCCI) for the improvement of multilateral trade and investment relations.

34th Meeting of the BIAC Board held

23 December 2021

The 34th Meeting of the BIAC Board was held online via Zoom on 23 December 2021 in the afternoon. The meeting was presided over by Chairman, BIAC Board Mr. Mahbubur Rahman. Minutes of the 33rd Meeting of the Board held on 12 July 2021 were adopted unanimously. A number of decisions were taken in the meeting. It was attended by the following Board Members:

Left to right: - 1st row- Mr. Mahbubur Rahman, Chairman BIAC Board and President, International Chamber of Commerce-Bangladesh, Ms. Rokia Afzal Rahman, Member, BIAC Board and Vice President, International Chamber of Commerce-Bangladesh, Ms. Nihad Kabir, Member, BIAC Board and President, Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka, Mr. A. K. Azad, Member,



BIAC Board and Vice President, International Chamber of Commerce-Bangladesh

2nd Row- Mr. Kutubuddin Ahmed, Member, BIAC Board and Executive Board Member, International Chamber of Commerce-Bangladesh, Mr. Anis A Khan, Member, BIAC Board and Vice President, Metropolitan Chamber of Commerce & Industry (MCCI), Dhaka, Mr. Muhammad A (Rumee) Ali, CEO, BIAC.

“And what reason have you not to fight in the way of Allah and for the oppressed among men and women and children who say: Our Lord, take us forth from the town whereof the people are oppressors and grant us from Thee a friend and grant us from Thee a helper.”

— Sahih Muslim

International News

Swiss Supreme Court confirms that an arbitral tribunal may under certain circumstances refuse to reschedule a hearing without violating one party's right to be heard

31 August 2021

In a decision published on 15 June 2021, the Swiss Federal Supreme Court ("SFSC") dismissed a challenge to set aside an arbitral award because in its view, the request to reschedule the hearing was merely intended to delay the arbitral proceedings, an intention which is not protected by the right to be heard (case no. 4A_530/2020, in French).

In the case at stake, a dispute had arisen between the main shareholders of an Indian corporate group, governed by a Subscription and Shareholders' Agreement ("Agreement"). The Agreement, which also contained an arbitration clause, was binding on the group's holding company, as well as its main shareholders, companies A, B and Z. It set out a list of actions that fall within the reserved area. This contained, inter alia, that A and B must ensure that there is no action without the written consent of Z.

Due to poor financial records in 2016, A decided to suspend the group CEO and took over this function ad interim; however, without having obtained the consent of Z. Consequently, the group's holding company, represented by the directors of Z, obtained an order from the High Court of Justice of England and Wales to stop A's actions. To further clarify the issue, Z (the claimant and subsequently defendant before the SFSC proceedings) filed a request for arbitration with the London Court of International Arbitration ("LCIA") under the LCIA Rules 2014 against A and B (both, the respondents and appellants before the SFSC proceedings).

With the emergence of the COVID-19 crisis in 2020, the arbitral tribunal proposed a more adapted procedural timetable with the proposal to conduct the hearing remotely via video conference. The respondents replied in the affirmative, but showed no further reaction to the procedural timetable. Subsequently, the respondents failed to attend the scheduled test of the video-conferencing facility and also failed to provide answers or witness statements within the given time limit. Moreover, the respondents repeatedly changed their legal representatives, with the consequence that the proceedings became lengthy and slow.

Eventually, the respondents submitted a last minute request to postpone the scheduled hearing, without however submitting any substantiated reasons. The arbitral tribunal rejected the respondents' request and decided to hold the hearing by video conference as planned. In its award issued thereafter, the arbitral tribunal in essence confirmed respondents' breach of

the Agreement and thus annulled all the previous actions taken without the claimant's consent.

The respondents then filed an appeal against this decision with the SFSC, arguing that the arbitral tribunal had violated its right to be heard by not rescheduling the hearing accordingly.

The right to be heard in international arbitration as formal constitutional guarantee

According to article 190 (2) (d) of the Swiss Private International Law Act ("PILA"), an award may only be set aside 'where the principle of equal treatment of the parties or their right to be heard in an adversary procedure has not been observed' (unofficial translation). According to the reasoning of the SFSC, the violation of the right to be heard in principle entails the annulment of the challenged decision. It is undisputed that procedural denial may lead to violation of the right to be heard if the arbitral tribunal does not consider the allegations, arguments, evidence and offer of evidence presented by one of the parties and which are substantial for the award to be rendered. However, this right is not limitless.

Delaying tactics are not protected by the right to be heard

The intentional attempt to delay an arbitration from proceeding – so called delaying tactics – is not protected by the right to be heard. Indeed, delaying tactics are considered contrary to an expeditious resolution of the dispute, one of the main goals of arbitration (cf. art. 14.4 LCIA Rules 2014).

According to the reasoning of the SFSC, regardless of the chances of success of the appeal, the appellants are expected to explain what influence the alleged procedural defect may have had, if such defect is not immediately apparent. In the case at hand, the appellants' silence on this point only strengthened the opinion that the alleged difficulties in finding a lawyer and gathering evidence during the COVID-19 pandemic were merely a pretext (cf. consideration 5.5 in fine). The appellants' repeated change of lawyers had just caused delays and were a tactic to stall the normal course of the arbitration. Further to their un-cooperative behavior, they could have indicated whether they had any difficulties with the procedural timetable, which they had not done. Based thereon, the SFSC came to the conclusion that the arbitrators could refuse the postponement of the hearing without violating the appellants' right to be heard, which is also why it dismissed the appellants' appeal to set aside the arbitral award.

Dr. Valentina Hirsiger-Meier and Lukas Frommelt

ICSID and UNCITRAL Release Version Three of the Draft Code of Conduct for Adjudicators in International Investment Disputes

22 September 2021



The Secretariats of the International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL) released an update on 22 September 2021 to the draft Code of Conduct for Adjudicators in International Investment Disputes. Version three of the draft Code of Conduct reflects extensive discussion and feedback on the original draft Code, which was published in May 2020, and version two, published in April 2021.

Version three further streamlines the text and provides drafting options with regard to certain provisions. The draft includes explanations of the proposed changes and addresses comments received. UNCITRAL and ICSID are also preparing a draft Commentary to accompany the Code, which will contain guidance on the interpretation of the provisions.

Background on the Draft Code of Conduct

The Code of Conduct is being developed jointly by the ICSID and UNCITRAL Secretariats in the context of UNCITRAL Working Group III (ISDS reform) and ICSID's amendment of its procedural rules. It provides applicable principles and detailed provisions addressing matters such as independence and impartiality, and the duty to conduct proceedings with integrity, fairness, efficiency and civility. It draws from a comparative review of standards found in codes of conduct in investment treaties, arbitration rules applicable to investor-State dispute settlement, and of international courts.

<https://uncitral.un.org/en/codeofconduct><https://icsid.worldbank.org/resources/code-of-conduct>

The 9th Central China Forum of CIETAC on “Several Issues on Civil and Commercial Judgment” held in Wuhan

8 October 2021



The 9th Central China Forum of China International Economic and Trade Arbitration Commission (CIETAC) on “Several Issues on Civil and Commercial Judgment” were successfully held on 8 October 2021 in Wuhan, China in live and webcast. Nearly two hundred corporate counsels, judges, scholars and lawyers from Hubei Province and surrounding provinces participated in the Forum and 11,000 participants attended online. Professor Liang Huixing, a well-known civil law jurist in China, member of the Academic Division of Chinese Academy of Social Sciences, and a researcher of the Institute of Law, gave the keynote speech.

Yao Junyi, Secretary General of Hubei Sub-Commission of China International Economic and Trade Arbitration Commission Hubei (“CIETAC Hubei Sub-Commission”) gave the opening speech for the Forum. He expressed his warm welcome and sincere gratitude to Professor Liang Huixing and legal

practitioners in Hubei for their enthusiastic participation, and hoped that everyone would benefit from this forum.

Professor Liang Huixing focused on the important issues in civil and commercial judgment and elaborated civil law theories and summarized different countries' judicial practice by analysing the evasive behaviour in civil law and reviewing the content of the contracts. At the same time, he analysed the logical reasoning relationship in the issues combined with the spirit of the relevant trial minutes and the Supreme People's Court's precedents on topics such as, transferring guarantee, financing trade, valuation adjustment mechanism, and good faith in contract. At last, Professor Liang Huixing provided suggestions on how the arbitral tribunal review related invalid contracts and provided authoritative guidance on civil law interpretation methods and multi-dimensional perspectives for civil and commercial judgment learners and legal practitioners, which won a big round of applause from the audience.

<http://www.cietac.org/index.php?m=Article&a=show&id=17990&l=en>

Articles



Alternative Dispute Resolution (ADR) Mechanism: Bangladesh Perspective

Kazi Arifuzzman

Joint Secretary

Legislative & Parliamentary Affairs Division

Ministry of Law, Justice & Parliamentary Affairs

The prevailing civil court system in Bangladesh may be looked into to realise the necessity of ADR. Section 9 of the CPC provides that court will try suits of civil nature involving the civil disputes or right to on office. The suit is to be instituted by presentation of a plaint and the plaint must contain particulars to be included therein, and if a plaint does not include all those particulars as required, it is to be return or rejected as is appropriate. The plaint is to be examined by the court and maintainability hearing may take place. Soon after determining the maintainability of the suit, the question of summoning the defendant may arise, and after service of summons a date may be fixed for filing the written statement by the defendant. When the defendant has filed a written statement, the next step is to frame the issues. But by introduction of section, 89A in 2003 in CPC and subsequent amendment thereof, there is a legal obligation to exhaust the ADR process in the form of mediation, which is flexible, informal, non-binding, confidential, non-adversarial and consensual in nature. In case of failure of ADR, normal course of civil procedure will be followed involving appearance of parties to the suit or consequences of their non-appearance; recording of evidences, examination of witnesses, cross-examination, argument and counter argument etc. And by this time, there may be question of adjournment, which may extend up to prescribed times and compensatory cost may be awarded against the party exercising dilatory tactics to prolong a suit.

Traditional civil litigation process is being dealt with in the CPC or the Civil rules and orders, our experience says that by introduction of alternative dispute resolution mechanism, we can faster access to justice. For example, the Family Court Ordinance, 1985 is the most successful one in our legal system. Family Court Ordinance, 1985 in section 10, 11 and 13, giving the parties opportunity to meditate and it is successful in the sense that there were no less than 16 pilot projects in sixteen districts in between the period of 2000 and 2001. And it is found that no less than 35% of the total pending cases are disposed of by ADR. This statistics shows that if we could promote the ADR process,

habituating the judge's, litigants and the lawyers as well as, the speedy disposal is a must. Now Section 89A of the CPC has been made compulsory by an amendment in 2012 which of course, requires to be practiced whole heartedly, by all concerned.

Artha-Rin Adalat Ain, 2003 provides for meditation in section 22 and the parties to the dispute may refer to settle the dispute arising out of such legislation through mediation. But this is to some extent cumbersome, because that the person or the officer appointed by the Board of Directors of the concerned banks, may not be empowered properly to settle those disputes through ADR.

Muslim Family laws Ordinance, 1961 provides for the ADR process relating to dower, divorce and maintenance issues. The Village Court Act, 2006 also provides for the same provision of alternative dispute settlement in some petty matters. They cannot exceed or pronounce judgment in matters exceeding certain pecuniary limits and also cannot impose imprisonment. The Conciliation of Dispute Municipal Board Act, 2004 provides for alternative disputes settlement mechanism. The Labour Act, 2006 provides for alternative disputes settlement mechanism in the form of negotiation, arbitration and conciliation etc.

We can also refer to the Legal Aid Services Act, 2000, section 21A of which provides for the appointment of legal aid officer for mediation. Income Tax Ordinance, 1984, the Customs Act, 1969 provides for the alternative dispute resolution mechanism and the VAT Act, 2012 and the rules framed there under in 2016 also provides for the same.

Traditional court system is time consuming and cumbersome to settle dispute. So, there is consistent sound legal and regulatory framework in place in Bangladesh relating to ADR. Well established case management system, court automation, computerization are needed for an efficient and effective legal and judicial system. Bangladesh is gradually moving towards that system. Govt. has under taken various projects to that end.

There are special commercial courts, small claims courts. Settlement conference/pre-trial conference to narrow down contentious legal issues is available in existing legal system.

The present traditional court based dispute resolution mechanism may not be considered that much congenial in terms of settling commercial dispute, rather focus has been given to ADR system, particularly, in the form of arbitration, negotiation, mediation and conciliation. Our Arbitration Act, 2001 is a modern one based on the UNCITRAL model law on arbitration.

ADR mechanism may bring efficiency in deciding disputes decreasing backlog of cases, reducing high cost and delay. That's why popularity of ADR is increasing day by day particularly, settling commercial dispute which is confidential in business relations. Lawyer's community should come forward to encourage litigants to settle the dispute through ADR, because it saves business time and money. In complex business dealings, special ADR programme may be introduced engaging the technical experts in the related fields.

Bangladesh Investment Development Authority (BIDA) has undertaken numerous reforms to ensure one stop service to the investors, facilitating business environment to the entrepreneurs in the field of ease of doing business shown by the World Bank, World Economic Forum etc. to achieve Sustainable

Development Goals. Institution based ADR requires to be promoted.

Bangladesh is a party to the New York Convention on the recognition and enforcement of foreign Arbitral award. Arbitration Act, 2001 based on UNCITRAL model law is prevailing in Bangladesh. Section 45 of the Arbitration Act, 2001 provides for recognition and enforcement of foreign arbitral award in a prescribed manner. It is the high time for Bangladesh to think about how to become a party to Singapore convention, 2018 on mediation; executive and legislative framework to that end may be prepared. Further noted that the Arbitration Act, 2001 may be revisited in consultation with the stake holders, as to whether there is any insufficiency for its smooth functioning.

It may be concluded by saying that there are so many legal/legislative frameworks available in Bangladesh. Experience says that ADR mechanism has become effective in Bangladesh in the family and labour matters. We must have to make it effective in other areas by actual practice. The litigants and the lawyer's community must not be reluctant to invoke ADR mechanism, rather, it must be brought into the main track of dispute resolution process and thereby, our justice delivery system may be made effective towards fulfillment of our constitutional mandate. A quotation of Joseph Grynbaum is pertinent in Bangladesh context of ADR that "An ounce of mediation is worth a pound of arbitration and a ton of litigation".

Reviewing the impact of COVID-19 on judicial settlement of disputes in Bangladesh

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In the World Justice Project's Rule of Law Index 2021, Bangladesh ranks 124th (out of 139 countries) globally and 4th (out of 6 countries) regionally (in South Asia). Specifically, Bangladesh ranks 5th in South Asia in both civil justice and criminal justice dispensation.

While the overall ranking improved by 1 step from 2020 (125th), the figures are of grave concern. They depict how the justice dispensation system worsened during the pandemic. During the pandemic, the Government took an unprecedented step by enacting the আদালত কর্তৃক তথ্য-প্রযুক্তি ব্যবহার আইন, ২০২০ (the 2020 Act) to inaugurate virtual court proceedings for the first time in our history. The Supreme Court (SC)



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issued practice directions for both divisions and all subordinate courts of Bangladesh from time to time to accelerate the dispensation of justice. Initially, courts only heard urgent applications and bail matters online. Later, SC circular no. 23/2021 ordered all subordinate civil/criminal courts and tribunals to hear and dispose of all types of civil and criminal appeals/revisions and hear arguments and deliver verdicts in civil suits virtually.

But practical implementation of this direction was daunting for the courts due to the lack of specific procedures to regulate online hearing, especially regarding using technology and taking evidence in virtual proceedings. Regrettably, our Parliament did

not enact the Law Commission's draft সাক্ষ্য ও বিচার কার্যক্রমে তথ্য-প্রযুক্তির ব্যবহার, ২০০১৯ (the 2019 draft Act), which could have solved this problem. Meanwhile, the Indian Supreme Court has already framed 'Rules on Live-Streaming and Recording of Court Proceedings' to accelerate virtual courts and online judicial dispute resolution in India. Nonetheless, the Government has embarked upon overhauling and modernizing the Evidence Act (EA), 1872. Hence, they will incorporate the provisions dealing with the admissibility of and procedure to present digital evidence existing in the 2019 draft Act in the EA soon. Thus, there will be no need to enact the 2019 draft Act anymore.

Looking on the brighter side, our virtual court system has seen success despite functioning in a limited capacity. Statistics till May 2021 show that during the operation of virtual courts (2020-21), the Bangladesh Judiciary disposed of over 2,15,000 bail petitions. 1,06,079 detainees have been released from prisons after virtual courts heard their bail petitions. The Appellate Division (AD) disposed of 10,003 cases during this period. Meanwhile, several High Court Division (HCD) benches disposed of around 500 cases every working day through virtual hearings.

While the above figures are praiseworthy, our courts have not shown significant progress in completing the entire trial process of civil suits and criminal cases, from filing to delivering verdicts, online. This limited operation of virtual courts during the pandemic may worsen the state of the existing backlog of cases. Presently, over 38 lac cases are pending in both tiers of our Judiciary. Experts fear that the case backlog may rise from 38 lac and even cross 50 lac if the situation doesn't improve soon.

To tackle this problem, only judicial resolution of disputes will not be sufficient. This is where we need to focus more on alternative dispute resolution (ADR) mechanisms. The SC has recently provided two remarkable circulars on increasing mediation initiatives to resolve disputes. On 21 March 2021, SC circular no. 03 J directed all subordinate courts to

mandatorily use mediation to resolve disputes under the specific provisions of the Code of Civil Procedure, 1898, the Arbitration Act, 2001, the Money Loan Court Act, 2003, the Labour Act, 2006 and other relevant laws. On 05 August 2021, SC circular no. 04 J provided detailed guidelines on the procedure to undertake mediation mandated under the abovementioned laws. These guidelines aim to help subordinate courts to conduct effective mediation to resolve disputes. It is a forward-looking and proactive approach by our SC. The SC is already at crossroads to tackle the impending backlog of cases, which is a cause of headache for our Judiciary. The COVID-19 pandemic has exacerbated the problem.

However, similar to virtual courts, we need to focus on online dispute resolution (ODR) in the field of ADR during the new normal. While we have a specific law relating to virtual courts, it is high time now to enact similar legislation on conducting ADR initiatives (e.g. negotiation, conciliation, mediation, arbitration) virtually/online (i.e. ODR). It will not be out of place to mention that factors such as access to the internet, digital literacy, due process, and cyber security and privacy should be given utmost importance while devising the law/procedure for ODR. The HCD also flagged these as significant challenges to overcome to make our virtual court system a success while rejecting a writ petition which challenged the constitutionality of the 2020 Act.

BIAC has been a pioneer in institutional arbitration in Bangladesh. During the pandemic, they have continued to resolve disputes by resorting to online tools in arbitration procedures. A praiseworthy initiative of BIAC was organizing the 1st ever Inter-University Arbitration Competition among the top law schools in Bangladesh in 2020. The event's success proved that ODR could ease the existing burden of case backlogs if appropriately implemented in Bangladesh. Hence, taking stock of the best practices from home and abroad in this field, our Government should enact the necessary laws regarding out-of-court virtual settlement of disputes and enforce the necessary measures immediately.

"Peace is not the absence of conflict but the presence of creative alternatives for responding to conflict - alternatives to passive or aggressive responses, alternatives to violence."

— Dorothy Thompson

Interviews

We have been publishing interviews of leaders and experts from different financial, business, corporate, legal, academia and Government sectors on their perception and understanding of ADR, based on a number of questions put forward by BIAC. We are confident that this will generate more awareness about ADR in the country and importance of introducing it to assist our judicial system in order to reduce the backlog and the time taken to resolve commercial disputes. It is our pleasure to publish interview of Ms. Humaira Azam, Managing Director and CEO of the Trust Bank Ltd, in the current issue of the BIAC Quarterly Bulletin (BQB). She is the first ever female banker in Bangladesh to head a commercial bank. She is also the first ever Bangladeshi woman to be recognised as one of 300 influential women in Islamic business and finance in the world by UK-based financial intelligence house Cambridge IFA in their WOMANi Report 2020.



Humaira Azam
Managing Director
Trust Bank Limited



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

HA: Any 'Trade or Business' is key to creation of employment and ending poverty, be it local or with foreign entities. Countries that ensure favourable environment to trade tend to grow faster, innovate and improve productivity. For developing countries like Bangladesh, international trade is like blood line that leads to globalization which is important for business due to reduced dependence on known market, market expansion and more employment.

Therefore, it is of utmost importance that the normal flow of international, local or any trade or business is well maintained by meeting up mutual obligation be it in the form of payment, commitment or cooperation among counterparties. Because any case of disruption in local or international trade will not only harm individual businesses, its spillover effect tends to have negative impact on entities and other economies across the world.

Bangladesh has experienced a steady economic growth of 5 to 7 percent since the 1980s, achieving lower middle-income status in recent years. Poverty has been

halved since 2000, while private sector credit more than doubled over the past two decades. As the economy and the financial system continue to grow significantly, the country needs an efficient contract enforcement system to facilitate private sector operations, particularly in dispute resolution and debt recovery. At present, enforcing a contract in Bangladesh takes 1,442 days and costs nearly 67 percent of the claimed value, according to World Bank Group's Doing Business index. The country also has one of the slowest court litigation processes: there are more than 3.7 million cases pending trial, and almost 15 percent of those are commercial in nature. The backlog of pending cases was not only hampering the activities of the judicial system but also delaying justice to be served on time. In this context, Alternative Dispute Resolution (ADR) mechanisms can be particularly helpful for the financial sector to settle disputes out of court.

Furthermore, the COVID-19 pandemic has impacted economic performance and liquidity of companies, which is expected to exacerbate high debt risk in the corporate and small business sectors. This may add more commercial disputes to the existing backlog and contribute to increasing the time and cost requirement for contract enforcement. As COVID ruptured the business relationship between parties across the global supply chain, even for whom who has been successfully

doing business for many years now, this has exposed the fault lines in the trading system in the area of weaknesses in contractual arrangement, absence of global legal framework and enforcement, and lack of preparedness of the third world countries to such an event. Given the backdrop of COVID-19, the importance of international arbitration and resolution of trade dispute has grown manifold. ADR would help small and medium enterprises in quick dispensation of disputes originated from business contracts.

In this virtual world of business, ADR is a very critical and parallel way of settling disputes. ADR has come a long way since it came into being in New York and Singapore Convention on Mediation has not only become well operative rather an essential part of the DNA of dispute resolution in this new world of COVID-19. As Bangladesh International Arbitration Centre (BIAC) is doing, we will encourage every institution to try out mediation, so they can benefit from this process.

If we look at the global practice of trade dispute settlement, then the first instance is state to state disputes that are settled/ handled by WTO. However, in case of bilateral trade disputes, litigation or arbitration is the most common events where a judge, jury or arbitrator determines the outcome. Besides, resort to regional agencies or arrangements like ICC (International Chamber of Commerce) Doc. Desk is also another way to settle dispute.

However, in recent times, 'Consensual Process' in which parties attempt to reach agreement through mediation, conciliation and negotiation which is known as Alternative Dispute Resolution (ADR) is also gaining much popularity.

I believe that this global best practice has a future in our country for the following reasons:

- Reduce the Himalayan Pendency in various courts of our country
- Amicable solution & both parties are in Win-Win position to bring harmonious relationship
- Alternative route for reaching a speedier & less expensive mode of settlement of disputes
- Reduce the burden of appellate court as it doesn't lead to appeal or revision
- Render justice on time, enhance quality of social justice & contribute to promotion of peace and harmony in society
- ADR practitioner acts like a healer of conflicts rather than a combatant

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

HA: Civil justice reforms in western countries have consistently advocated the need for a litigation 'Culture Shift' away from the traditional trial process in resolving disputes to settlement through ADR. In recent years in Bangladesh, there has been renewed emphasis on ADR scheme as a means to avoid the issue of contested hearing to ensure fundamental right of justice. However, lack of confidence among the parties, lack of awareness regarding advantages of ADR, lack of accountability, shortage of dutiful mediator (Incase ADR takes place outside the court) and absence of cooperation among the lawyers appointed by the parties are few fundamental impediments to effectiveness of this modality in Bangladesh.

- The primary obstacle we are facing now in our country is the lawyers' attitude towards ADR. In countries where ADR is used more extensively, there is no evidence that the lawyers have gone out of work or their earning has diminished. However, it will be simplistic to assume that it is only the use of ADR that has created more work or better earning for lawyers. It may be that people in those countries have already been litigious and the use of ADR is the outcome of that. The relatively more frequent reliance on ADR does not seem to have played any direct negative impact on the professional income of lawyers. Lawyers are among the most significant stakeholders of ADR, and if they do not have confidence in this mechanism, it is difficult to get the system functioning well. Thus, if the government wants to promote ADR in the country, they have to engage with lawyers and have in a meaningful way.
- It is high time to make a uniform ADR law in the perspective of Bangladesh's legal mechanisms to improve the overall social justice system. There could be reforms like making a separate Arbitration Council to deal with complaints relating to neutrality of the arbitrators and setting a time frame for arbitrations that could make them cost-effective and save time. The economic analysis of ADR is necessary to determine if ADR actually is an efficient and cost reducing system.
- If the mediation process is not successful, the suit shall start from the stage it stood before referring to mediation. In practical, the party who is in default does not agree to negotiation and withdraws from mediation without any reasonable cause and the mediator has no other options to report to the court. This process causes unnecessary delay of the suit but there is no provision to impose any fine

or penalty to the party who intentionally withdraws from mediation.

- In the existing law, the Artha Rin Adalat refers cases for mediation at the post-trial stage. Mediation is an out of court settlement incorporated to speed up the disposal of cases, but ironically it is only referred when the parties are faced with the challenge of procedural complexity and cost of litigation is exhausted. Moreover, post-trial mediation takes place after the publication of auction, which further makes the situation hostile between the parties making it more difficult for the parties to reach a mutually acceptable common ground. Consequently, the borrowers tend to use mediation as a time killing tool which makes the essence of mediation redundant, defeating the purpose of ADR.
- There are few articles in Artha Rin Adalat Ain, 2003 in regards to setting time limit for final disposal of Artha Rin Suit and Execution Suit by the court which have been declared as 'instructive' rather not 'mandatory' by Honourable High Court.
- Moreover, there are numerous instances of delinquent clients securing stay order from the apex court halting legal procedure on many instances. As a result, parties may often feel encouraged to carry on litigation process instead of coming to terms and/or understanding the advantages of mediation/negotiation which could have saved money and time.
- We are repeating that over the period of time disputes related to Banks and Financial Institutions with their clients (and vice versa) have increased significantly especially after this pandemic for which Money Loan Court has appeared to be ineffective or rather unable to handle the volume.

Therefore, I would like to see the modality of ADR is highly encouraged among the parties engaged in litigation so that the growing amount of NPL in this time of pandemic is efficiently managed.

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

HA: Reason for corporate parties to choose ADR over court is the confidentiality. Generally, it is the standard that, individuals who are related with an ADR process maintain confidentiality of the subject matter of the proceedings. This is the reason why, in the ADR

proceedings, parties could deliver any reasonable submission without hesitancy to dissolve any disputed matter. ADR all parties should feel more comfortable to express their voice & participate actively in dispute resolution considering reputation risk. However, the court proceedings may not always maintain confidentiality; therefore, corporate parties suffer from reputation risk which may damage their good will in the business world. In the corporate world, reputation adds value in the market and hampering that reputation through a dispute is completely undesirable for them.

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

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

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

HA: Alternative Dispute Resolution (ADR) was incorporated in the Artha Rin Adalat Ain 2003 as a substitute method of settlement of the dispute between the parties. ADR is an umbrella term for various methods of settlement out of court, which may include mediation, arbitration, negotiation, consolidation, and so on. Actively practicing ADR successfully mitigates the complexity and delay of litigation, simultaneously ensuring a harmonious relationship among the parties. Though ADR process can be an optional additional tool for dispute resolution but is not another layer of proceeding or unnecessary diversion because ADR helps to remove undue number of phases of court proceedings in a cost effective manner.

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Member



Benefits Include

1

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

Membership Criteria

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

2

Application Process

3

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

Subscription Fee

For National Members:

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

For National Students:

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

For International Members:

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

4

EVENTS NEWS

BIAC's Upcoming Events

Organisation	Events	Date
Bangladesh International Arbitration Centre (BIAC)	Prize Distribution Ceremony of the City Bank BIAC International Inter University Arbitration Contest 2021	8 January 2022
Bangladesh International Arbitration Centre (BIAC) and Rahman's Chambers	Webinar on "Promotion of the Use of ADR Options for Intellectual Property Disputes in Bangladesh."	29 January 2022
Bangladesh International Arbitration Centre (BIAC) And Legislative and Parliamentary Affairs Division	Day long training on Arbitration and Mediation for Deputy Secretaries of Legislative and Parliamentary Affairs Division	19 February 2022
Bangladesh International Arbitration Centre (BIAC) and Accord Chambers	Day long training on Arbitration and Mediation for legal practitioners and students	12 March 2022

Did You Know?

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



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