BIAC

News Bulletin

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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 the 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 activities. BIAC is governed by a Board comprising country's 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 facilities for arbitration and mediation hearings through its internal infrastructure, which includes meeting rooms, audio-aids and recording facilities, private consultation rooms, transcription and interpreter service. BIAC also provides all necessary business facilities, like video conferencing, multimedia projection, computer, internet access etc. 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 These Rules have been superseded by launching BIAC Arbitration Rules 2019 and BIAC Mediation Rules 2019 which have been made more user-friendly and expanded the scope of the Rules in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 the 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 the 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 to provide 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 with whom BIAC has signed collaboration agreements. BIAC has also taken initiatives to provide 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. BIAC will arrange training for concerned Deputy Secretaries in due course.

From the very beginning, BIAC has been working relentlessly to create awareness about ADR facilities by arranging outreach programmes, seminars, webinars, workshops and dialogue sessions.

BIAC is recognised by national and international institutions including the Permanent Court of Arbitration situated in the Hague, the Netherlands; various 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 at home and abroad to create a knowledge and resource sharing platform. The platform has been designed to enable all interested parties to enhance individual knowledge and contribute towards enriching the ADR landscape of the country. It also reaches out internationally to individuals and institutions. All interested professionals including ADR facilitators, such as 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.

BIAC is hosting the City Bank-BIAC International Inter University Arbitration Contest 2022 for the third consecutive time for university level students. This year, eight (8) leading universities from Bangladesh and abroad are taking part in the Contest. The event is sponsored by The City Bank Ltd.

STATISTICS SINCE INCEPTION

MISSION

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

VISION

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

BIAC
Bangladesh International Arbitration Centre
The Institution for Alternative Dispute Resolution

From the Editor

It is our great pleasure to present the last edition of the BIAC News Bulletin for the year 2022, the country's only knowledge publication on Alternative Dispute Resolution (ADR). The edition brings about an illustration of the recent activities of BIAC and developments in other ADR institutions around the globe. BIAC Bulletin features articles and interviews on perception of ADR and related subjects.

Bangladesh International Arbitration Centre (BIAC) from its inception has put in its efforts to help boost businesses by facilitating methods of ADR including Arbitration and Mediation in resolving commercial disputes given the fact that our judiciary is already overburdened with case dockets. As an independent and neutral arbitral institution, BIAC has been promoting effective dispute resolution mechanism services for the past 11 years.

Since early 2020, BIAC has severely been affected by the pandemic resulting in huge negative results. In the beginning of 2022, we had hopes that we would be able to resume our regular activities; however, due to the Government's restrictions on foreign trainings, we were unable to resume our much sought after international training initiatives. We sincerely hope that the year 2023 would bring for us better fortunes and help us move forward with our cause.

We appreciate the continued support of our readers, patrons, partners and well-wishers in our efforts to contribute as much as possible to the mainstreaming of ADR so that an environment conducive to business and economic activity prevails, in furtherance of our commitment to be a credible and sustainable national institution that aims to offer ADR services to individuals and institutions seeking to resolve commercial disputes.

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BIAC News

Law Minister appreciative of the need for reform of the Arbitration Act 2001, and acknowledges the necessity to bring appropriate amendments at BIAC's 11th Anniversary Seminar

23 July 2022, Dhaka

Bangladesh International Arbitration Centre (BIAC) celebrated its 11th Founding Anniversary on Saturday, 23 July 2022 at Pan Pacific Sonargaon Hotel, Dhaka and a Seminar with the Theme Arbitration Act 2001: Dire need for immediate Reform was held on this occasion. Mr. Anisul Huq, MP, Hon'ble Minister for Law, Justice & Parliamentary Affairs was the Chief Guest at the Seminar. Mahbubur Rahman, Chairman of BIAC moderated the Seminar.

Speaking on the occasion as the Chief Guest, the Law, Justice and Parliamentary Affairs Minister affirmed that the Government welcomes the fundamental recommendations suggested for the necessary amendments of the relative Sections of the Arbitration Act 2001 in order to create a more ADR-friendly business environment.

Mahbubur Rahman, Chairman, BIAC in his concluding remarks said that adopting the ADR system would significantly help resolve financial disputes and enforce contracts through expeditious and cost effective manner.

BIAC's Chief Executive Officer, Kaiser A. Chowdhury gave a brief account of BIAC's activities and achievements and emphasised to remove the existing impediments in the Arbitration Act 2001 in order to make ADR a supportive and an effective partner of the judicial system.

Barrister Reshad Imam, who was the key-note speaker at the Seminar, highlighted in his presentation the need for amendments in the Arbitration Act 2001, since Alternative Dispute Resolution (ADR), Arbitration in particular, provides a forum to the Parties to resolve their disputes in a speedy and cost-effective manner; the amendments would also pave way to ease the burden of the Courts.

Amongst the distinguished panel of discussants at the Seminar were former Justice Abdus Salam Mamun, Supreme Court of Bangladesh, Ajmalul Hossain KC, Supreme Court of Bangladesh, Md. Saiful Islam, President of MCCI, Selim R.F. Hussain, Chairman of Association of Bankers, Bangladesh Limited and Dr. M. Masrur Reaz, Chairman of Policy Exchange of Bangladesh. In course of deliberations, they identified the shortcomings of the existing Arbitration Act 2001 and made valuable recommendations for suitable amendments within the Act in order to popularise ADR in Bangladesh.

Muhammad A. (Rumee) Ali, Vice Chairman of BIAC Board along with Kutubuddin Ahmed and Osama Taseer Members of the BIAC Board attended the Seminar. Amongst the other attendees were distinguished former Chief Justice, Justices of the High Court, business leaders, prominent lawyers, representatives of corporate houses, Government officials, senior executives of banks and insurance companies, academicians and the Media.

The event went on air LIVE on BIAC's Facebook page and LinkedIn profile.

BIAC and NIAC Sign Cooperation Agreement

7 August 2022, Dhaka

A Cooperation Agreement was concluded on 7 August 2022 between Bangladesh International Arbitration Centre (BIAC) and the Nepal International ADR Center (NIAC).

In terms of the Agreement, the Parties agreed to establish a framework for the two organisations to work together towards the promotion of Arbitration and Mediation as a means for peaceful settlement of international commercial disputes.

Pursuant to the Cooperation Agreement, the Parties will be able to exchange information and publications of mutual interest in the field of ADR and organise Seminars, Webinars, Symposia, Workshops, Conferences, Awareness and Training Programmes relating to ADR and provide facilities and support towards resolution of Arbitration and Mediation cases.

During the Online Signing Ceremony, the Cooperation Agreement was signed by the Chief Executive Officer of BIAC, Mr. Kaiser A. Chowdhury and the Managing Director of NIAC, Mr. Matrika Prasad Niraula on behalf of their respective organisations. Dr. Mukti Rijal, Chairperson, NIAC delivered his closing remarks in the signing ceremony. Ms. Mahbuba Rahman, General Manager, Ms Priyanka Roy, Assistant Counsel and Ms. Khushnuma Khan, Intern from BIAC and Hon'ble former Chief Judge of the High Court of Nepal, Mr. Keshari Raj Pandit, Director, Hon'ble former Judge of the High Court of Nepal, Mr. Binod Prasad Sharma, Director, Ms. Shreya Nepal, Executive Officer, Ms. Rabina Jangam, Intern from NIAC were present in the event.

BIAC signs MoU with BCCCI

10 August 2022, Dhaka

A Memorandum of Understanding (MoU) was concluded on Wednesday, 10 August 2022 at a simple ceremony between Bangladesh International Arbitration Centre (BIAC) and Bangladesh China Chamber of Commerce and Industry (BCCCI) at BIAC Secretariat in Dhaka.The MoU was signed by the Chief Executive Officer of BIAC, Kaiser A. Chowdhury and the Acting Secretary General of BCCCI, Al Mamun Mridha on behalf of their respective organisations.

Under the terms of the MoU, BCCCI will recommend BIAC as a forum for Arbitration and Mediation to its members for resolving any dispute arising out of trade, commerce and investments made in Bangladesh and/or in China as well as contractual and other related matters. BIAC, under its own Rules of Arbitration and Mediation, will assist in the resolution of commercial disputes outside the courts. Moreover, Members of BCCCI would be in a position to avail the benefit of International Standard ADR mechanisms through BIAC. Further, the MoU will enable the Parties to exchange information and publications of mutual interest in the field of ADR and organise Seminars, Webinars, Conferences, Awareness and Training Programmes on Mediation, Arbitration and other methods of ADR.

Senior Vice President, ATM Azizul Akil David, Director, Meherun Nessa Islam, Office Secretary, Md. Abu Taher from BCCCI and Mahbuba Rahman, General Manager, Priyanka Roy, Assistant Counsel and Khushnuma Khan, Intern from BIAC were also present in the signing ceremony.

36th BIAC Board Meeting and 19th AGM held

30 August 2022, Dhaka

The 36th Meeting of Bangladesh International Arbitration Centre (BIAC) Board and 19th Annual General Meeting were held at BIAC office on 30 August 2022 in the afternoon. The meetings were presided over the Chairman, BIAC, Mr. Mahbubur Rahman. The Annual General Meeting approved the financial statements of BIAC for the year 2021. It was attended by the following BIAC Board Members:

Mr. Mahbubur Rahman, Chairman (President, International Chamber of Commerce-Bangladesh) Mr. Muhammad A. (Rumee) Ali, Vice Chairman, BIAC Board, Mr. Rizwan Rahman, Member, (President, Dhaka Chamber of Commerce & Industry), Mr. A. K. Azad, Member, (Vice President, International Chamber of Commerce-Bangladesh), Mr. Anis A. Khan, Member, (Vice President, Metropolitan Chamber of Commerce and Industry, Dhaka), Mr. Osama Taseer, Member, (Director and Past President, Dhaka Chamber of Commerce & Industry).

Mr. Kaiser A. Chowdhury, Chief Executive Officer, BIAC and Ms. Mahbuba Rahman Runa, General Manager, BIAC and Secretary to the Board were also present.

BIAC and EDAC sign Memorandum of Understanding

7 September 2022, Online

A Memorandum of Understanding (MoU) was concluded on 7 September 2022 between Bangladesh International Arbitration Centre (BIAC) and Energy Disputes Arbitration Center (EDAC) of Turkey.

In terms of the MoU, the Parties have agreed to establish a framework for the two organisations to work together towards the promotion of Arbitration as a means for the peaceful settlement of international disputes.

Pursuant to the MoU, the Parties will be able to exchange information and publications of mutual interest in the field of ADR and organise Seminars, Webinars, Symposia, Workshops, Conferences, Awareness and Training programmes relating to ADR and provide facilities and support towards resolution of Arbitration cases.

During the Online Signing Ceremony, the MoU was signed by the Chief Executive Officer of BIAC, Kaiser A. Chowdhury and the Chairman of EDAC, Süleyman BOŞÇA on behalf of their respective organisations. Kaiser A. Chowdhury, Chief Executive Officer of BIAC delivered his welcome address and Süleyman BOŞÇA, Chairman, EDAC delivered his closing remarks in the signing ceremony.

Mahbuba Rahman, General Manager, Rubaiya Ehsan Karishma, Counsel, Priyanka Roy, Assistant Counsel and Khushnuma Khan, Assistant Counsel from BIAC and Ece DAYIOĞLU, Vice Secretary General, Alper Ener, Vice Secretary General, Salih CAYIR, Coordinator from EDAC were present in the event.

Meeting Between BIAC and Dhaka Bank

26 September 2022, Dhaka

On 26 September 2022, a meeting was held at the BIAC premises between Dhaka Bank Limited and BIAC to review the progress of the Memorandum of Understanding (MoU) signed between the two institutions, and explore the possibilities to resolve the Loan-Asset related disputes through the adoption of the ADR methods. The Dhaka Bank representatives, Ms. Farzana Ahmed, Senior VP and Mr. Azfar Ahmed, identified a number of issues regarding the obstacle towards implementation of the ADR methods. They observed that since 2003, cases relating to loan defaults are being resolved under the Artha Rin Adalat Ain (Money Loan Court Act) 2003; however, the time taken for obtaining a judgment is beyond acceptable norms. One of the reasons suggested by Dhaka Bank, for such inordinate delay, was the lack of enforcement of Arbitration Awards and opportunity available to challenge the Award on vague grounds which eventually leads the parties to go for the lengthy court-based system. Dhaka Bank was also of the opinion that Mediation is an effective solution for out of Court dispute resolution but the settlement reached through this ADR method is non-binding. Dhaka bank was appreciative of the theme of BIAC's 11th Anniversary Seminar and expressed their support towards the amendment of our existing Arbitration Act and advocated for the synchronisation between Section 46 of Artha Rin Adalat Ain (Money Loan Court Act) 2003 and the mediation enforceability. Dhaka Bank will consider including a Med-Arb Clause in their Sanction Letter and refer more loan-default cases to BIAC.

Day –Long Training on Negotiation and Mediation held at BIAC

12 & 13 October 2022, Dhaka

12 October 2022

13 October 2022

As a part of its regular activities, Bangladesh International Arbitration Centre (BIAC) organised two separate day-long Training Courses on Negotiation and Mediation at the BIAC office in Dhaka on 12 and 13 October 2022. The Training Sessions were attended by a total of 55 participants (First day-30, Second day-25) representing Law firms, Banks, Financial Institutions, Government organisations and Corporate houses. The sessions covered Negotiation and Mediation processes and stages, role of Mediator and Negotiator and the skills required to be a Negotiator and a Mediator. The referred Courses were designed to instill the knowledge of Negotiation and Mediation- the two main categories of Alternative Dispute Resolution (ADR).

Dr. Khaled Hamid Chowdhury, Barrister-at-Law and Advocate, Supreme Court of Bangladesh, Arbitrator, Adjudicator & Mediator (CEDR) (AIAC) (SIMI) (ADR-ODR Int. UK) (BIAC), FCIArb (UK) facilitated the session on Negotiation while Ms. Shireen Scheik Mainuddin, CEDR Accredited Mediator and CEDR Trainer, Principal Consultant & Proprietor ASAAN and Mr. Khandoker M.S. Kawsar,

Barrister-at-Law and Advocate, Supreme Court of Bangladesh facilitated the Mediation sessions.

Mr. Kaiser A. Chowdhury, Chief Executive Officer of BIAC distributed Certificates to the Participants. Ms. Mahbuba Rahman, General Manager, Ms. Priyanka Roy, Assistant Counsel and Ms. Khushnuma Khan, Assistant Counsel of BIAC were also present in the closing ceremony.

BIAC representatives attended the South and Central Asia Alternative Dispute Resolution events in Sri Lanka

19-22 October 2022, Colombo, Srilanka

CCC-ICLP International ADR Center, Sri Lanka together with the Commercial Law Development Program, United State Department of Commerce and in coordination with Department of State, United States Embassy in Sri Lanka organised a series of events from 19 to 21 October 2022 on the Alternative Dispute Resolution in South and Central Asia at Colombo, Sri Lanka. Exchange Session between South & Central Asia Alternative Dispute Resolution Centers, Training Session on International Arbitration Practitioner Training and a Symposium on South and Central Asia Alternative Dispute Resolution marked the three-day event.

Bangladesh International Arbitration Centre (BIAC) was the supporting organisation of the event along with Center for International Investment and Commercial Arbitration (CIICA), Mumbai Centre for International Arbitration, Maldives International Arbitration Centre, Singapore International Mediation Centre (SIMC), HKIAC and Tashkent International Arbitration Centre, White & Case LLP's International Arbitration and Litigation Practice Group, Washington DC and FJ&G de Saram, Sri Lanka.

BIAC was represented at the conference by its General Manager Mahbuba Rahman Runa, and Assistant Counsel Priyanka Roy, who took part in fruitful and insightful discussions on the role of ADR centers in South and Central Asia in creating vibrant ADR ecosystems and resilient economies, promoting regional collaboration, developing domestic and international Arbitration and Mediation, as well as the Singapore Convention and shared ADR perspectives of Bangladesh. On 19 October, The South & Central Asia ADR Collective was launched. The objectives of the formation of such a Collective to provide a forum to foster networking and mutual co-operation to a) improve and enhance skills and practices, b) ensure the maintenance of standards that are relevant in the ADR landscape, including Arbitration and Mediation and c) promote better dispute resolution and local doing- business environment.

In the Symposium, which took place on 21 October 2022, Luis G Salas, Deputy Economic Unit Chief, US Embassy delivered his welcome address. Dr K Kanag-Isvaran, PC, Chairman, International ADR Centre, Srilanka presented the Key Note on ADR as a Building Block for Resilient Economies. Renuka M. Weerakone, Director General, Board of Investment of Sri Lanka presented the closing remarks.

The multi-stakeholder conference was participated by the representatives of such ADR centres as Bangladesh International Arbitration Centre (BIAC), Center for International Investment and Commercial Arbitration (CIICA), Mumbai Centre for International Arbitration, Maldives International Arbitration Centre, Singapore International Mediation Centre (SIMC), Hong Kong International Arbitration Centre (HKIAC) and Tashkent

International Arbitration Centre who gave presentations on the ADR landscape in their respective regions. White & Case LLP's International Arbitration and Litigation Practice Group, Washington DC also participated as Speakers. The Symposium followed a dynamic format including interactive panel discussions, presentations and networking opportunities.

The event was attended by lawyers, representatives of ADR/arbitration centers, Business personalities, Chairman and officials of Sri Lanka BOI. Participants who were interested in learning more about ADR attended the event in huge numbers, which kept the sessions lively.

BIAC was privileged to be one of the supporting organisations for the event of Istanbul Arbitration Week

10-14 October 2022

Bangladesh International Arbitration Centre (BIAC) was privileged to be one of the supporting organisations for the upcoming event "Istanbul Arbitration Week" hosted by the Energy Disputes Arbitration Center and consists of a series of events related to international investment, trade, and arbitration law. ISTAW2022 was held on 10-14 October 2022.

ISTAW aimed to bring arbitrators, lawyers, academics, and arbitration experts from all over the world together. ISTAW 2022's panels followed a dynamic format and fostered an open discussion forum regarding the future of international arbitration. They shed light on new arbitration techniques, focused on developments and evolving interpretations and views, and discussed the best practices for international arbitration in the new virtual reality. The 2022 event was a hybrid format offered an in-person option and a remote option for those who would like to participate virtually.

City Bank-BIAC International Inter-University Arbitration Contest 2022

12 November – 5 December 2022, Dhaka

BIAC is hosting the City Bank-BIAC International Inter-University Arbitration Contest for the third consecutive time for university level students with an aim to acclimatise the participants with the theoretical and practical knowledge of the arbitration process to groom and shape them into better equipped legal professionals. In course of this Contest, students gets the opportunity to acquire practical knowledge of Alternative Dispute Resolution (ADR), and develop necessary rhetorical skills and furthermore stand to benefit through the receipt of advisory notes from top regional and global professionals in the field of ADR.

This year, 8 leading universities from Bangladesh and abroad are taking part in this Contest. The Universities include last year's Champion, University of Dhaka, Kathmandu University School of Law, Nepal, Bahria University, Islamabad along with London College of Legal Studies (LCLS) South, Bhuiyan Academy, North South University, University of Barishal, New Castle Law Academy (West) from Bangladesh.

All Preliminary Sessions of the Contest were held through online platform between November 12, 2012, and December 5, 2012. In the first Session of preliminary round, international arbitrator from India Colonel Dinesh Kumar Bishnoi who is an Advocate of Bombay High Court, Mumbai, and Arbitrator, Adjudicator, Accredited Mediator and Conciliator

- ICLP Alternate Dispute Resolution Center was the Sole Arbitrator, where Bahria University, Islamabad won against New Castle Law Academy (West).

Mr. Kaiser A Chowdhury of BIAC delivered his opening remarks in all Sessions of the Preliminary Round and welcomed all team members and the Arbitrators. He highlighted about BIAC's activities including recent endeavours for University level students for popularising ADR in order to familiarise themselves with the norms, practices and benefits of ADR in resolving commercial disputes and getting benefits in their future career life.

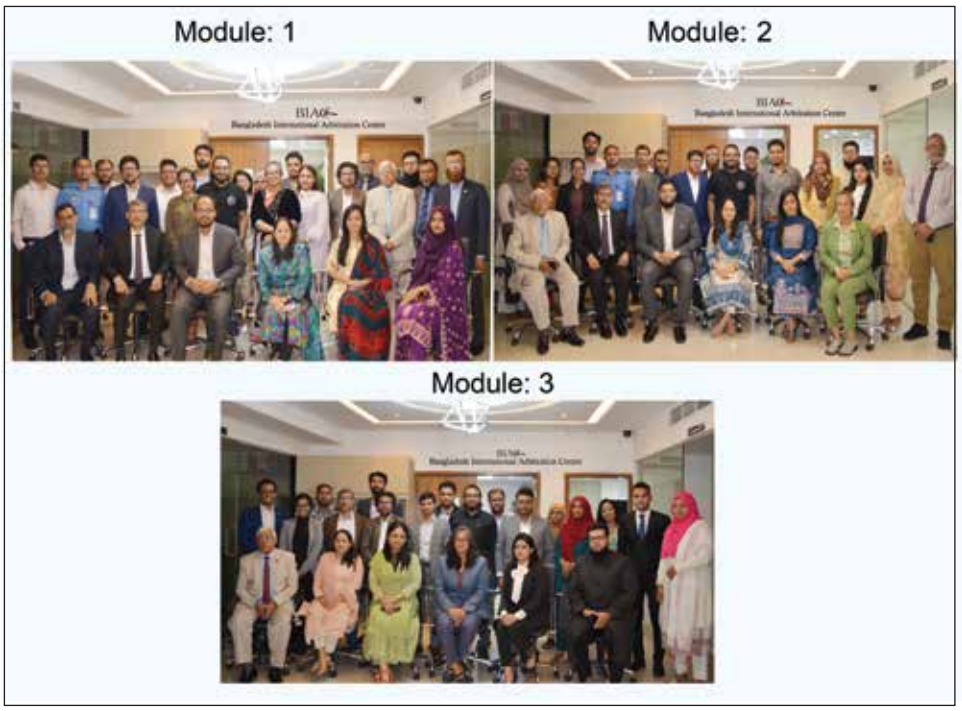
The event is being sponsored by local The City Bank Ltd.

was the Sole Arbitrator of the Session where Kathmandu University School of Law, Nepal won the Session against London College of Legal Studies (South).

Mr. Rana Sajjad Ahmad, President of the Center for International Investment and Commercial Arbitration, Pakistan was sole Arbitrator of the Second Session where Bhuiyan Academy, Bangladesh won against North South University. In the Third Session, Colonel Dinesh Kumar Bishnoi was the Sole Arbitrator where University of Barishal won against the team of University of Dhaka. In the last Preliminary Session Ms. Shehara Varia, an Attorney at Law of the Supreme Court of Sri Lanka and Director of the CCC

BIAC Holds Three-day Long Arbitration Training

13-15 December 2022, Dhaka



To promote and enhance the practice of Alternative Dispute Resolution in Bangladesh, Bangladesh International Arbitration Centre (BIAC) holds various training programmes throughout the year. In line with its practices BIAC held a three-day long arbitration training at BIAC premises on 13-15 December 2022. The training was divided into three modules.

The First Module, titled "Overview and Drafting of an Arbitral Clause" was held on 13 December. The First Module provided incisive details about

Arbitration and the skills necessary to draft a Dispute Settlement Clause, a fundamental requirement in commercial contracts. Barrister Khandoker M.S. Kawsar, a prominent Advocate of the Supreme Court of Bangladesh was the instructor of the first module.

The Second Module titled "Arbitral Proceedings" was held on 14 December where Barrister Suhan Khan, Advocate of the Supreme Court of Bangladesh and fellow of the prestigious Chartered Institute of Arbitrators (CIArb), UK conducted the session. The Second Module provided an understanding of rules of arbitration proceedings, covering the procedures from commencement of arbitration till the termination of proceedings.

On 15 December, Barrister Rashna Imam, an advocate of the Supreme Court of Bangladesh conducted the session on the Third Module titled "Arbitration Award and Enforcement". The Third Module covered the ideas on the principles and practices of enforcement of national and foreign arbitration awards.

Each day, around 22 participants from different sectors including renowned banks, law chambers, national organisations, Bangladesh Security Exchange Commission and national and foreign universities attended the training sessions.

On the concluding day, Ms. Mahbuba Rahman Runa, General Manager of BIAC conducted the certificate giving ceremony. BIAC's Assistant Counsels Ms. Khushnuma Khan and Ms. Sal Sabil Chowdhury were also present in the closing ceremony.

Bhuiyan Academy, Bangladesh and Bahria University, Islamabad qualified for the Final Round of City Bank BIAC Inter University International Arbitration Contest 2022

18 December, 2022, Dhaka

As a part of City Bank-BIAC International Inter University International Arbitration Contest 2022, the Semi-final rounds of the Contest were held online on 18 December 2022. Bangladesh International Arbitration Centre (BIAC) conducted the Contest via Zoom virtual platform. In the First Session of the Semi-final round, Ms. Shehara Varia, Attorney at Law of the Supreme Court of Sri Lanka and a Fellow of the Chartered Institute of Arbitrators (CIArb), UK, Director of the CCC - ICLP Alternate Dispute Resolution Centre was the Tribunal Chairperson, Mr. Margub Kabir, Advocate, Supreme Court of Bangladesh and Head of Chambers, Margub Kabir & Associates and Mr. Ahmad Naquib Karim, Advocate, Supreme Court of Bangladesh and Partner, Karim & Karim were the Tribunal Members. In the Second Session of the Semi-final round, Mr. Muhammad Forrukh Rahman, Barrister at Law, Advocate, Supreme Court of Bangladesh and Head of Chambers, Rahman's Chambers was the Tribunal Chairman, Mr. Nicky Balani, consultant at SCL Nishimura & Asahi and Mr. Monzur Rabbi, Advocate, Supreme Court of Bangladesh and Head of Chambers, Rahman and Rabbi Legal were the Tribunal Members.

In the First Session of the Semi-final round, Bahria University, Islamabad qualified for the Final Round winning against Kathmandu University School of Law, Nepal. In the Second Session of the Semi-final Round, Bhuiyan Academy, Bangladesh qualified for the Final Round winning against University of Barishal.

Bangladesh International Arbitration Centre (BIAC) is hosting this International Arbitration Contest to provide students a practical knowledge of Alternative Dispute Resolution (ADR) and give them the opportunity to practice Arbitration in a case acting as Claimant and Respondent in a real-life scenario. Moreover, one of the 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.

Ms. Mahbuba Rahman, General Manager of BIAC delivered the Welcome Address in both the sessions of the Semi-final rounds 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. Khushnuma Khan and Ms. Sal Sabil Chowdhury, Assistant Counsels of BIAC were the hosts for the Semifinal Rounds. The date for the Final Round has been set for 25 February 2023.

The event is being sponsored by local The City Bank Ltd.

Mr. Mohammed Forrukh Rahman, Advocate, Supreme Court of Bangladesh and Head of Chambers, Rahman's Chambers has been appointed as a member of the ICC Commission on Arbitration and ADR, Paris, France.

BIAC is pleased to inform that Mr. Mohammed Forrukh Rahman, Barrister-at-Law, Advocate, Supreme Court of Bangladesh, Head of Chambers, Rahman's Chambers has been appointed as a member of the ICC Commission on Arbitration and ADR, Paris, France for a period of three years by the ICC National Committee of Bangladesh.

The Commission on Arbitration and ADR is ICC's unique think tank and rule making body in the field of international dispute resolution based in Paris. In its research capacity, the commission proposes new policies in the interest of efficient and cost-effective dispute resolution and provides useful tools for the conduct of dispute resolution. It is made up of approximately 1,000 members from more than 92 countries comprising lawyers, in-house counsel, arbitrators, mediators, law professors and experts in various dispute resolution fields.

Members are appointed to the commission by an ICC regional office (known as national committees) in their respective countries. Mr. Rahman is a panel mediator and trainer of BIAC.

"The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried."

— Sandra Day O'Connor

From the Media

The Business Standard
Rezaul Karim
07 December, 2022, 04:31 pm

Low-cost arbitration sees more trade disputes settled out of court

Parties embroiled in domestic and cross-border trade disputes are increasingly opting for arbitration for quicker resolution.

Bangladeshi firm Khan IT and Services had been sourcing computer accessories and software from Singapore-based Limcon Technology Solutions. From 2017 to 2019, the cross-border trades accumulated around Tk 378 crore in dues as Khan IT failed to clear the payments on time. To solve the dispute, Limcon had two choices: lodge a lawsuit against Khan IT with the lower court or settle it through hearings behind closed doors. The foreign company chose the second option as it filed an arbitration with the High court in 2020.

The High Court subsequently formed a panel comprising two representatives of the parties and a business leader. The panel was asked to settle down the dispute and submit the report to the court within 15 days. Then the High Court announced the binding decisions of the report, prompting Khan IT to clear the dues in six instalments. "Both sides were very happy with the arbitration award. Because such a big dispute was settled in just two months. Besides, they did not have to spend much for the resolution. The clearing of the dues was also prompt," Taherul Islam, Bangladesh representative of the Singaporean IT firm, told The Business Standard.

But what if Limcon chose the first option and sued Khan IT?

"In Bangladesh, it would take three to ten years just to reach the verdict. Then there would be an appeal with the superior court," Barrister Ajmalul Hossain QC, a company law expert who practises arbitration in at least 30 countries, told The Business Standard. And the cost of running such cases is very high, he noted, adding sometimes a quarter or half of the disputed money claim is spent for the legal battle. The lawyer said arbitration is attractive because cases are heard behind closed doors, rather than in the glare of publicity. Arbitration is also seen as more likely to be free of political influence, can be cheaper, and parties can choose their own arbitrators to hear the case. Bangladesh introduced the Arbitration Act in 2001, stipulating its adaptation in the Code of Civil Procedure. Besides, resolution of trade disputes are possible under the Company Act.

Works like magic

For trade disputes, Barrister Ajmalul Hossain QC said arbitration works absolutely like magic as the internationally recognised method saves money, time and effort. Explaining how arbitration works, he said one of the disputing parties needs to file the arbitration with a civil court or with the High Court in case of cross-border disputes. The court then appoints a panel including representatives from both the parties. Before proceeding further, both the parties agree that they will accept the decisions of the panel. During the hearing, the parties can attend virtually and submit documents in favour of their claims.

Rise and rise of arbitration cases

From 2017 to June this year, around 14,000 arbitrations filed with the High Court, involving around Tk 1.13 lakh crore disputed claims, were disposed of, according to the Supreme Court and the law ministry. The official record shows 32,514 arbitration cases filed with the civil courts across the country were settled during the period. The cases involved a whopping Tk 2.56 lakh crore in disputed claims.

Barrister Ajmalul Hossain said resolution of trade disputes through arbitration is rising in Bangladesh, especially for cross-border disputes. Besides, more and more local ventures and corporate businesses are opting for the out-of-court dispute settlement. Data

from the Supreme Court and law ministry's Solicitor Wing backed his statement.

The High Court settled 1,354 arbitration cases in 2017, 2,100 in 2018, 2,408 in 2019, 2,614 in 2020, 2,954 in 2021 and 1,907 cases till June this year. Civil courts across the country disposed of 4,086 arbitration cases in 2017, 5,309 in 2018, 5,408 in 2019, 6,600 in 2020, 6,811 in 2021 and 4,300 cases till June this year. According to Supreme Court sources, more than half of the arbitration awards finalised by the High Court and lower courts last year were from various foreign companies, individuals and organisations. Records in previous years also followed the same pattern.Around 70% of the cases were trade transaction disputes. Besides, there were disputes over share transfers, ownerships, business frauds, agreement violations, investments and substandard product delivery.

A vital ecosystem for ease-of-doing-business

In most of the countries who have better ease-of-doing-business positions, 90% of business disputes are settled through arbitration, said company law expert Barrister Tanzib-Ul-Alam. He attributed the better business environment to a better functionality of dispute settlement outside the court. Barrister Tanzib-Ul-Alam called for coordinated measures by stakeholders to further progress on the already rising arbitration trend. "Many multinational companies still assume that cases in Bangladesh never reach a final verdict. This has been deterring them from investing in Bangladesh. "The government needs to adjust its policies to prioritise trade arbitration," he told The Business Standard.

Even private firms joining the arbitration fleet

Apart from the courts, there are seven firms in Bangladesh who do arbitration. The major firms include the Bangladesh International Arbitration Centre (BIAC), Bangladesh Institute of Arbitration, Bimac-Bangladesh International Mediation & Arbitration Center.

Muhammad A (Rumee) Ali, Vice Chairman of the Bangladesh International Arbitration Centre (BIAC) and former president of AB Bank, said arbitration cases are rising on the back of both local and cross-border business disputes. Nearly 2.11 lakh business cases, involving Tk 2.50 lakh crore, are now pending with the court in Bangladesh.

Against the backdrop, Md Jashim Uddin, president of the Federation of Bangladesh Chambers of Commerce and Industry, told TBS that arbitration could be a better alternative.

Law Minister Anisul Huq told TBS that the government is considering making arbitration mandatory for settling trade and business disputes.

SUNDAY OBSERVER, Sri Lanka

23 July, 2022

What prospective Amendments to Arbitration Act hold for the future?

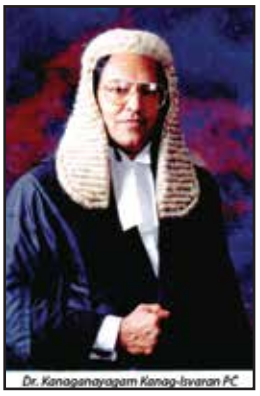
The Legal Profession, being among the oldest in the world, is one that requires its practitioners to persevere and to strive for continuous improvement. This applies to established practitioners and Law students alike. Continuous improvement stems not only through execution but also in the acquisition of knowledge. Amid the organising of a prestigious annual venture honouring a great legal legacy, a group of Law students attempt to achieve this.

The H. V. Perera QC Memorial Moot Competition, also known as The Victor's Moot, is Sri Lanka's first International Commercial Arbitration Moot Court Competition, organised by the Moot Society of Sri Lanka Law College. Since 2018, the Victor's Moot has been held as an annual event honouring the name of Dr Herbert Victor Perera QC, a distinguished personality in the practice of law in Sri Lanka.

This competition strives to provide a platform for all legal students to engage with their national and international counterparts in head-to-head competition. Preparations are now underway by the

Moot Society of Sri Lanka Law College to host the fifth edition of the H.V. Perera QC Memorial Moot Competition. This year, the competition will take place on a virtual platform on August 6 and 7.

In the buildup to this year's competition, the Moot Society of Sri Lanka Law College engaged in discussion with an eminent legal personality in Sri Lanka, namely, Dr Kanaganayagam Kanag-Isvaran, President's Counsel, on the subject of Commercial Arbitration in the Sri Lankan context.


Dr. Kanaganayagam Kanag-Isvaran PC

Dr. Kanaganayagam Kanag-Isvaran PC is a distinguished President's Counsel with 56 years of active practice at the Sri Lankan Bar. Today, he provides counsel to several Sri Lankan blue-chip enterprises and foreign corporations in the Original and Appellate courts. Dr. Kanag-Isvaran PC specialises in Corporate law, Intellectual Property law, Banking and Finance, Shipping and Admiralty, Telecommunications and Information Technology and International Commercial Arbitration.

The following is a transcript of Dr Kanag-Isvaran's interview, where he shared his thoughts with the students of Sri Lanka Law College on the "Prospective Amendments to the Sri Lankan Arbitration Act: What it holds for the Future".

Q: What do you see as one major reform to be made to the Sri Lankan Arbitration Act to make it more effective?

A: Remember that Amendments give more power for State functionaries to be involved in party autonomous consensual Arbitration proceedings which may or may not be desirable given the context. It needs to be fashioned to allow their involvement to make the arbitral environment more conducive to the aspirations of the parties. Legislative amendments need to play a supportive role in the arbitration process. What requires help in the Arbitral process are methods to make consensual arbitral process more effective. That is to say, there needs to be less interference and unnecessary intervention by courts in arbitral proceedings because it's a consensual autonomous process. Generally, it's implied that parties agree to cooperate in arbitral proceedings. Parties even have the liberty to select the applicable law. There is an enormity of autonomy given to the parties.

Any amendment to be made to the Arbitration Act must, therefore, be to assist the arbitral process. For example, they need to identify what's lacking in the process, what steps cannot be done except by compulsion or assistance of a third-party judicial process.

When we look at the current Act we need to identify its deficiencies, to spruce up the present Act, to play a supportive role. Outside of the legislation we find that a great deficiency lies in the litigious cultural ethos of our society – which the lawyers carry into the arbitral process where party autonomy should reign supreme but does not. Moreover, there are several instances where the Courts get involved in the arbitral proceedings, when they should not be doing so. The ideal situation is that Courts will intervene only when they are required to play a supportive role or questions of public policy arise which the legislature requires the courts to adjudicate the question. Therefore, any major reform should be directed at involving the Courts in a supportive role in the arbitral process and courts should not intervene except as provided in the law. Additionally, including provisions on Interim measures of protection is an area for consideration.

Arbitration is highly dependent on the autonomy of the parties and parties should be free to agree how their disputes are resolved subject only to safeguards as are necessary in the public interest. The involvement of the arbitrators is activated only after their appointment. During the period between the initiation of the dispute and appointment of arbitrators, if any issue arises there might arise a need to issue Interim measures of protection relating to the subject matter of the dispute. Accordingly, in such a situation, the party can go to Court and seek an Interim Measure of protection. Section 5 of the Arbitration Act which ousts the jurisdiction of the courts in relation to a matter that must be submitted to arbitration as per the agreement of the parties, however, does not prohibit the request for the issue of Interim measures of protection as it is not in violation of Section 5 of the Act as the Court is not asked to resolve the parties' dispute but rather to assist by issuing Interim measures to protect the subject matter of the dispute pending the constitution of the arbitral tribunal.

The Sri Lankan Arbitration Act lacks any provision dealing with Interim measures of protection prior to the constitution of the arbitral tribunal. Thus, it's an area we can say that needs to be legislated for.

Q: Given the onset of the Covid-19 Pandemic and the transition to virtual hearings, how can the current Arbitration Act be amended to facilitate such virtual hearings?

A: The entire arbitral process is a private and confidential affair. Subject to the provisions of the Act, specifically Section 17, parties are free to agree on the procedure to be followed, owing to the concept of Party Autonomy. There are many virtual hearing guidelines made by international bodies which can be adopted into the parties' agreed procedure.

Therefore, it will be counterproductive to have separate acts or amendments made to the current Arbitration Act in that regard because it defeats party autonomy if made compulsory and moreover once it's incorporated into the legislature, such legislations and procedures cannot be easily amended or changed

later, even if it is to be used only as guidelines. Therefore, to facilitate efficient virtual hearings, the rules made by institutions like IBA, ICLP, LCIA, SIAC can be followed as guidelines and these can be incorporated into the party's own arbitration agreement. public bodies such as the Bar Association of Sri Lanka or other Arbitration Institutions could have virtual hearing guidelines made as rules to suit local conditionsand make it available for people to voluntarily adopt them. No amendments to the Arbitration Act should be made in this regard.

Q: Does the Arbitration Act permit joinders and consolidations and what is your opinion on their role in arbitration in Sri Lanka?

A: It depends. It is again up to the parties' discretion to decide whether a multi-party Arbitral Proceeding should take place or not. This is because it becomes difficult to determine whether it's the same tribunal that should hear the dispute or a different tribunal. At the same time, there are rules which permit multi-party proceedings and this is up to the parties to decide. The law or the Arbitration Act doesn't have to provide for it. However, there are rules published by certain institutions related to how these proceedings are done and how such proceedings need to be managed. Hence, the Arbitration Act could permit such consolidations and joinders, but it is for the parties to decide whether they wish to do so or not. It cannot be made compulsory by an Act. There are certain rules that can be adopted in this regard and such can be followed for the purpose of consolidation, depending on the nature of thecase. Therefore, it is up to the parties to decide and the Act should neither permit this nor prohibit it. This solely depends on the consent of the parties.

Q: An Arbitration Proceeding in Sri Lanka was once controversially prolonged for over 15 years. Should expedited procedures be introduced into the Arbitration Act to prevent such delays? If not, what are your suggestions for preventing such delays?

A: The Procedure doesn't work by itself. It's worked by human beings. So, the delay in doing things is not the fault of the procedure but rather the fault of the people working the procedure. This is where the cultural ethos and discipline matter. Delays cannot be corrected unless sanctions are imposed. Therefore, having a swift arbitration is in the hands of the parties involved. Some institutionalised arbitral bodies have time bars for the arbitrators to give the award for the Arbitration. This can be seenin the ICLP Expedited Arbitration Rules. If any party wants an extension of time, they must request for it, and depending on the nature of the Arbitration and according to the Rules, the institution has the discretion as to whether or not to grant an extension time. It's always in the interest of the parties to expedite the proceedings because International Arbitration is costly. People come from all over the world for Arbitration to Sri Lanka.Although they may not physically travel to Sri Lanka, they can take part in the proceedings from their respective countries. On one occasion, we did an arbitration which involved an American, an Italian and an Englishman. They came here only for a period of two weeks for hearing oral testimony.Prior to the completion of the pleadings, the exchange of pleading, and all directions and orders were all done from abroad. It was agreed that orders can be made in consultation with the other Arbitrators by the Chairman of the Tribunal alone. Since the chairman was empowered, all three Arbitrators needed not sign. So, thereare little details that an experienced arbitrator will suggest to the Parties to expedite the process of Arbitration.Even in the case of Ad-hoc Arbitrations where the procedure has to be agreed upon by both parties, they themselves can agree on processes that are swift and efficient. The progress and swiftness of arbitral proceedings rests entirely in the hands of the parties involved. England permits more applications to the courts in arbitration related matters because the English courts are swift.Since the same cannot be said about our local courts, if this is permitted, a lot of time may be wasted – sometimes years. An arbitration that we started in the early 1990's before the Arbitration Act of 1995 is awaiting disposal in the Supreme Court! Unfortunately, delays cannot be stopped because it is not possible to impose punctuality on anyone.

Q: The Arbitration Act sets out that the Evidence Ordinance does not apply in the taking of evidence during arbitral proceedings. Which guidelines or rules govern such taking of evidence (eg. Cross-examination of expert witnesses)?

A: The International Bar Association [IBA] is another body that is integral in supporting the efficient practice of Arbitration around the globe. They publish various rules and soft laws including "Rules for Taking Evidence in Arbitration". These rules also govern expert evidence and witnesses.

The importance of these rules is that they are very carefully crafted to apply across different jurisdictions. It has been used here very often in construction contracts, where expert opinion often is required.

When experts are required, they are given the mandate to present their expert opinion on a matter. Both parties to the arbitration are entitled to this opportunity. It is common practice in international arbitral proceedings, that the experts will exchange their professional opinions, agree on common points

and itemise matters on which they have not agreed before the actual hearing. Thereby, they minimise the differences and it is on these differences that the cross-examination will take place, making the process less time consuming and cost efficient. In the case of an International Commercial Arbitration held in Colombo concerning a particular stretch of the Southern Expressway, there were three experts from Hong Kong who were the experts of the foreign contractor and who made their reports available to the experts appointed by the Local Employer. The local experts disagreed with the reports of the foreign experts. Later, oral evidence was led followed by the Arbitral Tribunal questioning them. Subsequently, they agreed to some of the points presented. The Tribunal then requested the Local experts to meet the foreign experts and agree on common points to save time. Unfortunately, the Local experts refused to do so.The party who refuses to proffer evidence will suffer and will be condemned in costs. The result was that the foreign employer got an award of an enormous amount in its favour. The arbitral process in international commercial arbitrations is very different from the traditional approach in the local court of law. It is better managed, more disciplined. No amount of legislative amendments to the Arbitration Act can assist one in this. One need not be told which evidence rules need to be followed. One must be free to do as they seem fit. This freedom can be used to cut off a lot of old baggage. Our Ordinance governing the submission of evidence is the 1886 Evidence Ordinance. We haven't changed it much. A lot of baggage that can be cut off in that regard is for example, the Hearsay rule. It is abandoned in other jurisdictions. It's a question of assessment of whether you are believable or not. Arbitral Institutions such as the ICLP, SIAC and HKIAC have rules and guidelines on expert evidence. They are basically the same. Expert evidence simply means that if someone is proficient in a certain subject, which I may not be aware of, I am guided by such a person.

Q: Which industries in Sri Lanka would reap the most benefits from Arbitration being made an effective method of Alternate Dispute Resolution?

A: Any dispute in any industry would benefit from Arbitration, provided that such dispute is arbitrable.

Essentially, Arbitration is available for all disputes except for that cannot be the subject of arbitration – not arbitrable – as a matter of public policy. This issue the Tribunal can now decide itself on the jurisdictional basis of kompetenz-kompetenz.

Q: What steps could be taken to make Sri Lanka a viable seat of Arbitration for International Disputes?

A: Sri Lanka's popularity as a viable seat of arbitration will rely on how alluring the overall package is. It depends on predominant matters such as the arbitral process being driven by Party Autonomy, having the least amount of judicial interference in the Arbitral process and reasonable logistics-related expenses. For example, the parties must be provided access to the relevant facilities that are required for the smooth conduct of arbitral proceedings not excludingaccommodation, entertainment and other ancillary factors.

Q: Given that Arbitration is an important field of Alternate Dispute Resolution and legal practice, do you believe Arbitration should be integrated into the law school curriculum and made more aware of within the law student community?

A: Yes, Arbitration and other modes of alternative dispute resolution are becoming more preferred than traditional litigation. It would be an added benefit for a law student to receive a comprehensive knowledge on the subject via the curriculum in their legal studies. Knowledge on Arbitration also has a wide application not limited to the domestic jurisdiction of Sri Lanka.

Therefore, learning Arbitration as a part of a student's legal studies would open a number of diverse avenues for them in the field of law.

Q: Would you endorse competitions like The Victor's Moot to enhance the awareness and skill required to establish Arbitration as a viable mode of dispute resolution in Sri Lanka as opposed to traditional litigation?

A: Yes, the theoretical knowledge on arbitration may be received via a student's curriculum, however, opportunities to enhance the required level of practical knowledge is minimal. An Arbitration proceeding consists of written and oral elements so developing oral advocacy is an important aspect. Mooting competitions such as The Victor's Moot will allow students to develop their oral advocacy in a simulated environment much similar to the actual scenarios. Furthermore, the awareness on Alternative Dispute Resolution created by The Victor's Moot will be beneficial to the legal student community as a whole.

https://www.sundayobserver.lk/2022/07/23/impact/what-prospective-amendments-arbitration-act-hold-future

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The Sunday Observer is the oldest and most circulated weekly English-language newspaper in Sri Lanka since 1928.

International News

Secretary General Wang Chengjie Attended the "Governance System and Financial Stability" Parallel Forum on the Rule of Law of the Annual Conference of Financial Street Forum 2022

22 November 2022

From 21st to 23rd Nov., as the first international professional forum at the national level hosted in Beijing after the 20th National Congress of the Communist Party of China, the Annual Conference of Financial Street Forum 2022 was held in Beijing. On 22 Nov., the "Governance System and Financial Stability" Parallel Forum on the Rule of Law organised by the Beijing Financial Court was successfully held in Beijing. Under the theme of "Coordinated Development of the Financial Sector and Law-based Governance amid Changes" and "Financial Reform and Innovation in Law-based Governance", the Parallel Forum closely focuses on three major tasks of serving the real economy, preventing and controlling financial risks, and deepening financial reforms. The forum highlights the safeguarding role of the rule of law to solidify the fundamentals, stabilise expectations, and benefit long term, and aims to build synergy and convey voice of the financial rule of law. Guest speakers are from the Supreme People's Court, the Supreme People's Procuratorate, the People's Bank of China, the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission, the State Administration of Foreign Exchange, the Beijing Municipal Committee of the Chinese People's Political Consultative Conference, the High People's Court of Beijing Municipality, the Beijing Financial Court, etc.. China International Economic and Trade Arbitration Commission ("CIETAC") was invited as the only representative of arbitration institutions.

Wang Chengjie, Vice Chairman and Secretary General of CIETAC, was invited to attend the Parallel Forum on the Rule of Law, and delivered a keynote speech on the topic of "Embrace Financial Reform and Innovation, and Facilitate the International Development of the Financial Rule of Law".

Wang said that the huge size and lifeline of China's financial market determines that the rule of law should go in advance. It is a historical mission given by the new era to comprehensively promote the internationalisation and innovative development of the rule of law in finance. Against the background of economic globalisation and the leapfrog evolution of technological change, digital intelligence and environmental protection, the international nature of the financial market has become prominent and innovation empowerment has continued to advance. The financial rule of law must actively embrace and meet new opportunities and challenges, and coordinate the goals of "promoting innovation" and "maintaining stability".

He pointed out that arbitration has played an important supporting role in the internationalisation of the financial rule of law. Based on its fundamental attributes of professionalism, efficiency, flexibility, respecting party autonomy and following market logic, arbitration naturally has unique advantages in resolving diversified and complex disputes and promoting the rule of law in the financial market. During the five years from 2017 to 2021, CIETAC accepted a total of 16,279 cases with a disputed amount of RMB 530.9 billion including 4,167 financial cases with a disputed amount of RMB 283 billion, which means that financial cases accounted for 26% of the whole caseload and the amount in dispute reached 53% of the total. Among the financial cases, there were 468 foreign-related cases of significant international characteristics, with a disputed amount of RMB 90 billion and an average disputed amount of nearly RMB 200 million. In other types of CIETAC cases, such as trade and investment, service contracts, construction projects, technology and aviation, etc., financial and capital elements are also widely involved.

Wang said that financial disputes have the typical characteristics of high professionalism, wide coverage, large amount of dispute, strong guidance, and prominent international factors. There is an urgent need for high-quality international arbitration services to promote the internationalisation of the rule of law in the financial market. Also, it is imperative to establish a new height of high-level financial market arbitration services. CIETAC has been committed to providing high-quality international arbitration services for the financial market and promoting to establish a high-level financial legal system by

formulating and implementing internationally advanced rules including the Arbitration Rules, Financial Disputes Arbitration Rules, and Guidelines on Third-Party Funding; innovatively developing mediation, investment arbitration and other diversified services; building up a professional, international, diversified and high-quality arbitrator team; conducting extensive cooperation; and improving the professionalism of financial market arbitration services. In the future, CIETAC will strengthen exchanges and cooperation with all walks of life to jointly improve the internationalisation of dispute resolution in China's financial market, and escort the steady and long-term development of the rule of law in the financial market.

At this meeting, more than a dozen financial and legal experts, scholars and practitioners at home and abroad expounded from multiple perspectives the role of the rule of law in guiding and regulating the financial market, preventing financial risk, and facilitating financial innovation. The forum demonstrates the wisdom condensed in the coordinated governance of the financial rule of law.

Permanent Court of Arbitration formally opens office in Viet Nam

1 December 2022

On 24 November 2022, Minister of Foreign Affairs of Viet Nam H.E. Mr. BOII Thanh Son and H.E. Mr. Marcin Czepelak, Secretary-General of the Permanent Court of Arbitration (PCA), formally opened the Ha Noi Office of the PCA at the House of Peace located at 48A Tran Phu Street, Ba Dinh District. The Ha Noi Office is the PCA's second office in Asia and the fifth outside of its headquarters in The Hague, the Netherlands.

At the inaugural ceremony, H.E. Mr. Czepelak noted, "in just over ten years since its accession to the PCA, Viet Nam has already established itself as a strong pillar and ally for the PCA and its activities". In 2014, Viet Nam signed a Host Country Agreement, followed by the conclusion of a Protocol in 2021 concerning the establishment of the PCA's representative office in Ha Noi.

3. H.E. Mr. Bùi remarked, "The establishment of the PCA Representative Office in Viet Nam [...] is a step forward by the PCA to promoting its services in different regions of the world. It is also a concrete demonstration of Viet Nam's strong commitment to upholding multilateralism and international law."

The Parties envisage the Ha Noi Office as another venue for PCA hearings and meetings as the PCA's caseload involving Asian entities continues to grow. The Parties also look forward to further capacity-building and training opportunities in international law for Viet Nam and the region through the Ha Noi Office.

The PCA is an intergovernmental organisation which provides dispute resolution services for disputes involving states, state entities, international organisations, and private parties. It administers arbitration, mediation, conciliation, and fact-finding commissions of inquiry. There are presently 122 Contracting Parties.

Viet Nam became a Contracting Party to the 1907 Convention for the Pacific Settlement of International Disputes on 27 February 2012. As a Contracting Party to this founding Convention of the PCA, Viet Nam is represented on the PCA's panel of arbitrators known as Members of the Court. These Members may be called upon to serve as arbitrators in PCA-administered disputes. Viet Nam's current Members of the Court are Mr. Nguyen Khanh Ngoc, Dr. Nguyen Dang Thang, Dr. Nguyen Thi Hoang Anh, and Dr. Dang Xuan Hop.

https://docs.pca-cpa.org/2022/12/bfe27d4a-joint-press-release-dated-1-december-2022-english.pdf

UN Commission on International Trade Law concludes 55th Session in New York

UNIS/L/333, 20 July 2022

VIENNA, 20 July (UN Information Service) – The United Nations Commission on International Trade Law (UNCITRAL) has adopted legislative texts on the judicial sale of ships and on the use and cross-border recognition of identity management and trust services, as well as a set of recommendations on the use of the UNCITRAL Mediation Rules at its 55th session in New York. A round table on technical assistance to law reform in the area of insolvency; and side events on international negotiations on digital

trade and "double hatting" in investor-State dispute settlement were also held.

Finalisation and adoption of texts

Convention on the Judicial Sales of Ships

The Commission approved the final draft of the Convention on the Judicial Sales of Ships and recommended its adoption by the General Assembly it at its forthcoming 77th session. The Commission also recommended that the General Assembly authorise a signing ceremony to be held as soon as practicable in 2023 in Beijing, and that the Convention be known as the "Beijing Convention on the Judicial Sale of Ships" The Convention is expected to provide legal protection for purchasers of ships sold by judicial sale, while safeguarding the interests of shipowners and creditors. The draft of the Convention was developed by UNCITRAL Working Group VI, which held six sessions between 2019 and 2022, most of them in hybrid format under special COVID-19 arrangements.

Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services

The Commission adopted the Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services. Identity management services provide assurance as to the proper online identification of physical and legal persons, while trust services certify the quality of data, such as its origin and integrity. In those areas, the Model Law sets a uniform standard for the exchange of electronic transactions and documents, and, more generally, the underlying data. It is the first legislative text to do so at the global level and, as such, offers a legal building block to digital trade worldwide, complementing the existing suite of UNCITRAL legislative texts on electronic commerce.

Recommendations to assist mediation centres and other interested bodies with regard to mediation under the UNCITRAL Mediation Rules

The Commission also adopted the Recommendations on the use of UNCITRAL Mediation Rules which have been developed to inform and assist mediation centres and other interested bodies who plan on using the UNCITRAL Mediation Rules in the institutional context and to ensure the harmonious use of those rules.

Future Work

The Commission discussed several topics for allocation to its working groups. In the area of dispute resolution in the digital economy (DRDE), the secretariat will carry out a stocktaking of related legal issues with the support of the Government of Japan. The Commission requested Working Group II to develop a guidance text on early dismissal and preliminary determination in international commercial arbitration and to develop texts on fast-track dispute resolution for technology-related disputes and adjudication. In the area of digital trade, Working Group IV will start work on two projects in tandem – the use of automation (including artificial intelligence) in contracting and data transactions, with an emphasis on the rights and obligations of parties to data provision contracts. The secretariat will also develop guidance on legal issues in blockchain contracting. In the area of transport, Working Group VI will take up work on the development of a new instrument on negotiable multimodal transport documents.

Exploratory work will continue on an "emergency kit" for States to avoid disruptions to international trade caused by pandemic or economic emergency, as will exploratory work on private law issues relating to clean investments (including carbon credit transactions) and other ways of translating climate change mitigation, adaptation and resilience into international trade law.

Technical Assistance Round Table

A technical assistance panel was held on the topic of insolvency. Speakers from the World Bank Group, the G8 Research Group, the UNCITRAL Regional Centre for Asia and the Pacific, and the African Export-Import Bank discussed the relevance of the UNCITRAL insolvency texts to their current and ongoing work. The recording of the event will be available for viewing on the UNCITRAL YouTube channel in the near future.

Side Events

Two side events were held during the Commission session.

The first event, entitled "UNCITRAL and the Law of Digital Trade", provided a range of perspectives on trends in bilateral, regional and plurilateral digital trade agreements, such as the World Trade Organization (WTO) negotiations on e-commerce and the development of digital economy partnership agreements, and how UNCITRAL texts (past and future) can provide the legal infrastructure for implementing those agreements. A recording of the event, which was co-organised with the Ministry of Justice of the Republic of Korea and the Permanent Mission of the Republic of Korea to the United Nations, is available for viewing at: https://youtu.be/76wBQfJVQQM.

The second event was held with the New York Arbitration Center (NYIAC) and focused on the challenges of "double hatting" in international arbitration, particularly in the context of investor-State dispute settlement (whereby adjudicators undertake multiple roles). The session

provided an overview of the draft Code of Conduct for Adjudicators, which is currently under development by Working Group III and the International Centre for Settlement of Investment Disputes (ICSID), and discussed issues related to double hatting and the portions of the draft text that would limit the practice.

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The United Nations Commission on International Trade Law (UNCITRAL) is the core legal body of the United Nations system in the field of international trade law. Its mandate is to remove legal obstacles to international trade by progressively modernizing and harmonizing trade law. It prepares legal texts in a number of key areas such as international commercial dispute settlement, electronic commerce, insolvency, international payments, sale of goods, transport law, procurement and infrastructure development. UNCITRAL also provides technical assistance to law reform activities, including assisting Member States to review and assess their law reform needs and to draft the legislation required to implement UNCITRAL texts. The UNCITRAL Secretariat is located in Vienna, Austria, and maintains a website at uncitral.un.org.

Sanctions against Russia – How to Ensure Due Process of Sanctioned Parties in Court or Arbitral Proceedings While at the Same Time Enforce the Sanctions Regime

By Dr. Juergen Mark and Olena Oliinyk

14 December, 2022

As reported on this blog[1], in 2020 the Russian State Duma adopted the Law No. 171-FZ "to protect the right to access to justice of sanctioned parties." The law presumes that sanctions adversely affect the position of sanctioned Russian individuals and legal entities in foreign court or arbitral proceedings and create the risk that sanctioned parties will not receive the same level of protection as their opponents. Consequently, Law 171-FZ entitles a sanctioned party to disregard a jurisdiction or arbitration agreement and to ask a Russian state

commercial court to decide the dispute. The Russian state commercial courts have exclusive jurisdiction over such a dispute. It is not necessary that the applicant is in fact treated unfairly in the foreign proceedings. For the Supreme Court of the Russian Federation, the imposition of sanctions suffices to render a jurisdiction or arbitration agreement unenforceable.

At first glance, Law 171-FZ may seem to be aimed at ensuring procedural fairness for sanctioned parties. Upon a closer look, however, Law 171-FZ (as applied by the Supreme Court of the Russian Federation) aims at preventing the application of the substantive provisions of the sanctions regime.

From the perspective of the countries which have imposed sanctions upon Russia, the sanctions provisions are justified under international law and constitute overriding mandatory rules which must be applied regardless of the law governing a dispute. At the same time, due process is a fundamental principle of European law.

The question of how to resolve the potential conflict between ensuring sanctioned parties' procedural rights in court or arbitral proceedings and the need to apply the sanctions regime was intensively discussed in the European Union ("EU") and in the United Kingdom ("UK"). The conclusion was: access to justice for sanctioned parties must be guaranteed when observing and enforcing sanctions.

1. European Union's attempt to reconcile the right to access to justice with the sanctions regime

In May 2022, six arbitral institutions, namely

- the Arbitration Institute of the Stockholm Chamber of Commerce,
- the Vienna International Arbitration Centre,
- the Arbitration Institute of the Finland Chamber of Commerce,
- the Swiss Arbitration Centre,
- the German Arbitration Institute and
- the Milan Chamber of Arbitration

asked the European Commission for clarifications on arbitral proceedings involving sanctioned entities. The institutions feared it would be difficult (if not impossible) for lawyers, arbitrators and arbitral institutions in the EU to participate in arbitral proceedings involving sanctioned individuals or entities.

To understand this request for clarification, it is helpful to look at the evolution of the sanctions regime.

Initially, following the occupation of Crimea in 2014, Regulation No 833/2014 [2] ("the Regulation") put a set of restrictive measures upon natural or legal persons, entities, or bodies in Russia. After the full-scale invasion of Ukraine in February 2022, the EU imposed further sanctions packages upon Russia. The fourth sanctions package, established by Regulation 2022/428[3], inserted Art. 5aa (1) into Regulation No 833/2014. It prohibited to engage directly or indirectly in any transaction with a legal person, entity, or body in or outside of Russia owned or controlled by the Russian Government or the Russian Central Bank.

This broad wording raised concern that the administration of arbitral proceedings could be considered a "transaction" in the meaning of Art. 5aa (1) of the Regulation.

Convinced that arbitration does not per se entail economic activities but constitutes the administration of justice, the arbitral institutions asked the European Commission to answer the following questions[4]:

- Do arbitration agreements, arbitration proceedings and related legal services fall within or outside the scope of "any transaction" as provided for in the Regulation?
- Does the Regulation prohibit arbitral institutions from administering pending and/or future arbitration proceedings, involving parties subject to sanctions under the Regulation?
- Does the Regulation prohibit arbitrators from acting in pending and/or future arbitration proceedings, involving parties subject to sanctions under the Regulation?
- Does the Regulation prohibit legal counsel from representing parties subject to sanctions under the Regulation?

In response, the EU issued the seventh package of sanctions against Russia on July 21, 2022. Besides several new significant prohibitions concerning exports from Russia, this package clarified the scope of the prohibition in Art. 5aa (1) to engage in transactions with sanctioned entities in the context of arbitral proceedings. The new Art. 5aa (3)(g), inserted into the Regulation by the seventh sanction package, provides that

- transactions strictly necessary to ensure access to judicial, administrative, or arbitral proceedings in a Member State, as well as
- transactions for the recognition or enforcement of a judgment or an arbitral award rendered in a Member State

are exempt from the sanctions regime and do not constitute a direct or indirect engagement in a prohibited transaction if such transactions are consistent with the objectives of Regulations No. 833/2014 and No. 269/2014.

Consequently, lawyers may represent sanctioned Russian persons or entities in litigation or arbitration, arbitrators may participate in arbitral proceedings involving sanctioned parties and arbitral institutions may administer such arbitrations within the EU if they observe the substantive provisions of the various packages of sanctions. The clarification reconciles access to justice and due process for sanctioned parties with the respect for the sanctions regime in the EU.

In a Joint Statement, the six arbitral institutions welcomed the clarification as a safeguard for the procedural rule of law which ensures access to justice for all parties to an arbitration agreement.

2. OFSI General Licence – Legal Fees INT/2022/2252300 and OFSI General License – London Court of International Arbitration (LCIA) Arbitration Costs INT/2022/1552576

Like the EU, the UK has introduced large and severe sanctions against Russia. Since February 2022, more than 1200 natural or legal persons were added to the list of designated persons to which the UK sanctions regime applies.

Normally, a designated person subject to a UK asset freeze requires a licence from the Office of Financial Sanctions Implementation ("OFSI") to use or benefit from any of the funds or economic resources it owns or controls. This includes funds needed for the payment of fees for legal representation.

OFSI traditionally does not prohibit the provision of legal advice to a designated person under an asset freeze. Thereby, the OFSI acknowledges the importance of a person's ability to receive legal advice and representation. The payment for such legal services, however, requires an OFSI licence.

In view of the large number of new designations under the sanctions regime, and the correlating increase in the number of those seeking a licence from OFSI for the payment of legal fees, OFSI issued General Licence INT/2022/2252300 to permit the payment of legal fees owed by sanctioned individuals and entities.[5] A UK legal firm or UK Counsel who has provided legal advice to a sanctioned person will therefore not have to wait for an OFSI specific licence before they can receive payment from that designated person, provided that the terms of the general licence are met.

In addition, OFSI issued General Licence INT/2022/1552576, which allows sanctioned persons and companies owned and controlled by sanctioned persons to make payments to the London Court of

International Arbitration ("LCIA") to cover their arbitration costs. General Licence INT/2022/1552576 also permits the LCIA to direct and receive such payments to use them to pay for arbitration costs.[6]

General Licence INT/2022/1552576 does not authorise any act which will result in funds or economic resources being dealt with or made available in breach of the sanctions regime.

The above shows that the allegation of the Russian Federation that sanctioned persons or entities do not have access to justice and are not treated fairly and equitable in the EU or the UK is not correct. It is, however, true that courts or arbitral tribunals in the EU and the UK will have to apply the sanctions regime as its provisions constitute overriding mandatory rules.

The practical consequences for disputes between a sanctioned person or entity and a person or entity from the EU or the UK will depend on (i) the applicable jurisdiction or arbitration agreement and (ii) the circumstances of the individual case:

- If the contract provides for litigation or arbitration outside Russia, a Russian claimant will consider whether the respondent has assets in Russia against which a favourable judgment of a Russian commercial court could be enforced. If the foreign respondent only has assets outside Russia, the Russian claimant will probably trigger Law No. 171-FZ only if a Russian judgment is enforceable in the country in which the respondent's assets are located. Most countries, namely those which have imposed sanctions on Russia, will not recognise judgments of a Russian commercial court based on Law 171-FZ. Similarly, only a Russian respondent without assets outside of Russia will probably attack a contractual jurisdiction or arbitration clause under Law No. 171-FZ. With assets outside Russia, it will be in the best interest of the Russian respondent to defend against the claim in the foreign forum agreed upon with the claimant.
- If the contract provides for litigation or arbitration in Russia, there is no reason for the Russian party to be concerned about access to justice or unfair treatment. Law 171-FZ is therefore irrelevant. The concerns are reversed: a European party may fear that it will not be treated fairly in Russian proceedings. It can therefore be expected that parties from the EU or the UK will try to avoid litigation or arbitration in Russia.

Laws like Law No. 171-FZ do not exist in the EU or the UK. Nevertheless, general principles of law may provide a way out of the Russian forum. A German court decision rendered in 1992 could serve as a blueprint. The court held that an arbitration clause providing for arbitration in Belgrade could be terminated for cause by a party resident in Slovenia because of the state of war prevailing between Slovenia and Serbia at the time.[7]

Although the EU and the UK are no parties to the war in Ukraine, relations between Russia and the west are very tense and hostile since the beginning of the war. It is reasonable to expect that, due to the strained relations, a party from the EU or the UK may argue that it cannot reasonably be expected to adhere to a jurisdiction or arbitration agreement which provides for litigation or arbitration in Russia where the sanctions regime will not be applied. It may therefore try to terminate such agreement for cause or take the position that such agreement is inoperative under the given circumstances.

This action may not avoid that litigation or arbitration proceedings will take place in Russia but the recognition and enforcement of a Russian judgment or award in the EU or the UK may fail.

[1] Global Arbitration News, July 27, 2022.

[2] Council Regulation (EU) No 833/2014 of July 31, 2014.

[3] Council Regulation (EU) No 2022/428 of March 15, 2022 amending Regulation No 833/2014.

[4] Request of SCC to EC of May 3, 2022.

[5] Publication Notice General licence – INT/2022/2252300

[6] Publication Notice General licence – INT/2022/1552576.

[7] District Court Kassel, NJW 1992, 3107.

https://www.globalarbitrationnews.com/2022/12/14/sanctions-against-russia-how-to-ensure-due-process-of-sanctioned-parties-in-court-or-arbitral-proceedings-while-at-the-same-time-enforce-the-sanctions-regime/

"In the middle of every difficulty lies opportunity."
— Albert Einstein

Access to arbitration and the recognition / enforcement of Awards exempted from EU sanctions

By Ben Ko and Fouad Ajawi

August 29, 2022

On 21 July 2022, the Council of the EU (the "Council") adopted a seventh package of sanctions against Russia.

In a previous package of EU sanctions from March 2022, transactions with certain "publicly controlled or owned" Russian entities were prohibited. Various voices within the International Arbitration community expressed concerns around the impact of this prohibition on the administration of arbitrations involving sanctioned entities. As part of the latest package of EU sanctions against Russia, the Council expressly carved out from that prohibition transactions with sanctioned entities if they are "…strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State…". The exemption further states that transactions under this carve-out must be consistent with the objectives of the sanctions regime.

It is important to note that this carve-out is yet to be tested and that there are a number of related questions that arise. For example, what is the threshold of strict necessity for transactions to fall within the carve-out? Further, will the carve-out extend to transactions relating to potential disputes as well as active proceedings? The clarification provided by the Council has however been welcomed by a number of arbitral institutions administering Russia-related disputes.

https://www.globalarbitrationnews.com/2022/08/29/access-to-arbitration-and-the-recognition-enforcement-of-awards-exempted-from-eu-sanctions/

U.S. District court denies Pakistan request to stay proceedings, and recognises and enforces ICSID arbitral award based on the arbitration exception to the Foreign Sovereign Immunities Act

By David Zaslowsky

July 5, 2022

Tethyan Copper Co. Pty Ltd. v. Islamic Republic of Pakistan, No. 1:19-cv-02424 (D.D.C. Mar. 10, 2022)[1]

In 2006, Tethyan Copper Co. Pty Ltd. ("Tethyan"), an Australian company, entered into a joint venture with a Pakistani province, Balochistan, which provided that Tethyan could "explore potential copper and gold mining" in the province. In 2011, Tethyan applied to Balochistan for a lease to mine the Reko Diq deposit, one of the world's largest copper-gold deposits, located in the northwest of the province.

Despite the joint venture agreement, Balochistan denied the application. As a result, Tethyan submitted the dispute to the International Centre for Settlement of Investment Disputes ("ICSID") under the Australia-Pakistan 1998 bilateral investment treaty.[2] In 2019, following years of arbitration, an ICSID tribunal issued a $6 billion award to Tethyan against Pakistan, holding that Tethyan had a legitimate expectation that Balochistan would approve the mining application and that Tethyan had relied on that expectation. Tethyan then petitioned the U.S. district court to recognise and enforce the award.

Pakistan immediately sought two remedies before ICSID, either an annulment or a revision of the award. Those proceedings triggered a series of provisional stays of enforcement by ICSID, and the district court stayed its own recognition and enforcement proceedings in response. However, when the ICSID stays expired, Pakistan asked the district court to continue to stay enforcement of the award until the ICSID proceedings concluded or to dismiss Tethyan's recognition and enforcement petition entirely. The district court ruled against Pakistan on both issues.

First, the court ruled against a stay of the proceedings based on a balancing of the competing interests. Judicial economy, the court reasoned, could not benefit from a stay, as the parties had already briefed all of the issues, and ICSID was unlikely to modify the award. Denying a stay also would not irreparably harm Pakistan. Pakistan could make its arguments about the impact of a judgment on its economic stability and its ability to fight COVID-19 at the attachment and execution phase. Conversely, granting a stay would prejudice Tethyan. Tethyan had already waited over a decade for compensation, and Pakistan had provided no guarantee that it would not use the stay to deplete its U.S. assets. Pakistan, therefore, was not entitled to a stay of the proceedings.

Second, the court refused to dismiss Tethyan's petition to recognise and enforce the award, rejecting Pakistan's arguments that: (1) the court lacked jurisdiction to enforce the arbitral award, and (2) the ICSID award was not entitled to full faith and credit.

With respect to jurisdiction, Pakistan argued that the doctrine of sovereign immunity, as codified in the Foreign Sovereign Immunities Act (the "FISA"),[3] protected it from the jurisdiction of the United States courts. But the court disagreed, ruling that Pakistan was not immune from suit because the arbitration exception to the FSIA applied.[4] In so holding, the court rejected Pakistan's argument that it had not agreed to arbitrate the dispute, finding that Tethyan had made a prima facie showing of arbitrability by presenting the arbitral award, the bilateral investment treaty between Australia and Pakistan, and Tethyan's notice of arbitration. And, because the ICSID Convention[5] grants a tribunal the authority to be "the judge of its own competence," the court refused to disturb the ICSID tribunal's finding that the matter was arbitrable.

With respect to Pakistan's full faith and credit argument, the court noted that the ICSID implementing statute requires courts to give arbitral awards "the same full faith and credit as if the award were a final judgment of [a state court]."[6] Pakistan first argued that the ICSID tribunal lacked jurisdiction over it, precluding full faith and credit. The court found that Pakistan had already made, and lost, this argument before the ICSID tribunal, and accordingly rejected it. Pakistan also argued that the size of the award made it an award of "punitive damages" not entitled to full faith and credit. The court disagreed, holding that the ICSID tribunal had instead fashioned an award of compensatory damages to redress the concrete loss Tethyan had suffered.

In sum, the court found that the ICSID award was entitled to full faith and credit as required by 22 U.S.C. § 1650a(a) and that Pakistan was obliged to abide by and comply with it as stated in Article 53(1) of the ICSID Convention.

This article was originally published in the North America Newsletter.

[1] Click for opinion.

[2] Australia-Pakistan 1998 bilateral investment treaty.

[3] FSIA.

[4] 28 U.S.C. § 1605(a)(6).

[5] ICSID Convention.

[6] 22 U.S.C. § 1650a(a).

https://www.globalarbitrationnews.com/2022/07/05/u-s-district-court-denies-pakistan-request-to-stay-proceedings-and-recognizes-and-enforces-icsid-arbitral-award-based-on-the-arbitration-exception-to-the-foreign-sovereign-immunities-act/

"I feel very strongly that you can't just beat people up anymore; you have to work hand in hand and find ways to compromise, and get big business involved, because it won't happen otherwise."

— Ted Danson

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 believe that this will generate more awareness about ADR in the country; this is also a step towards assisting our judicial system to reduce the case-backlogs and also the time taken to resolve commercial disputes. It is our pleasure to publish the interview of Mr. Syed Mahbubur Rahman, Managing Director & CEO ,Mutual Trust Bank Ltd in the current issue of the BIAC NEWS BULLETIN (BNB). Mr. Syed Mahbubur Rahman has recently been appointed as Managing Director & CEO of Mutual Trust Bank Limited (MTB). Prior to joining MTB, he was the Managing Director & CEO of Dhaka Bank Limited. Earlier he served BRAC Bank Limited as Managing Director & CEO and Deputy Managing Director (DMD). He also served Prime Bank Limited as Deputy Managing Director. He is also officially the Chairman of Association of Bankers, Bangladesh (ABB). He was accorded with 'The Asian Banker Leadership Achievement Award' for Bangladesh for his achievements during the period 2011 - 2013. He also served ANZ Grindlays Bank, Bangladesh as Manager, Corporate Banking from 1996 to 1998 and Standard Chartered Bank as Relationship Manager, Corporate Banking from 1998 to 2000. In 2002, he joined Citibank N.A. as Resident Vice President and left the bank in 2008 when he was a Director of the bank and was serving as the Head of Financial Institutions Group.

Mr. Syed Mahbubur Rahman
Managing Director & CEO
Mutual Trust Bank Ltd.

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BHB: 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?

SMR: Corporate bodies are moving away from using the traditional court based judicial system and adopting Alternative Dispute Resolution (ADR) essentially due to the backlog of cases combined with growing number of International relationships. Opting for ADR instead of traditional approach has the potential to resolve disputes quickly and efficiently. Civil courts of the country lacks enough infrastructure proportionate to its population. Moreover, Bangladesh's economic growth is heavily driven by exports from the ready-made garments (RMG) industry and foreign relationships. Besides that, being a developing country, Bangladesh is entering into a phase of extensive cross border transactions and agreements with foreign concerns. Here, International Commercial Arbitration can undoubtedly help parties from the uncertainty of litigation in domestic courts in case of disputes and prevent piling on the existing backlog of cases. 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.

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

SMR: The primary obstacle in the mainstreaming of ADR in Bangladesh is the lack of awareness about it. Majority of the people still opt for traditional way because that is all they know regarding dispute resolution. Awareness and benefits of ADR Lacks publicity in mainstream media and also lacks guidelines from the Chambers and Trade Bodies. This is coupled with majority of the lawyers' attitude towards ADR. Court proceeding that stretches for years can prove to be more financially beneficial for the lawyers in long run whereas, specific sum of money from the ADR process may not be as beneficial. Consequently, it is also true that, the mediator or arbitrator may not know the applicable procedure and related laws or lack adequate knowledge about the process. This results in the parties failing to put their faith upon the mediator or arbitrator. Furthermore,specifically in Bangladesh, majority of the parties are under the impression that mediator or

arbitrator could be biased and could provide the award in an unfair manner. It's a fact that ADR exists in Civil Justice System in Bangladesh. For instance the provisions of ADR was incorporated into the Family Court Ordinance 1985, but the provisions were not totally functional. It was also inserted in Civil Procedure 1908 which was initially optional until 2012. Apart from that, the provisions exist in the Muslim Family Law Ordinance 1961, Customs Act 1969, Income Tax Ordinance 1984 etc. So it can be seen that the obstacle surrounding ADR is not lack of laws relating to it but rather lack of enlightenment & enforcement of those laws.

BHB: 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?

SMR: A primary motivation for ADR should be the scope of confidentiality. Generally it is the norm that, individuals who are related with an ADR process always maintain confidentiality of the subject matter of the proceedings. This is the reason why, in the ADR proceedings, parties could deliver any reasonable submission without diffidence to dissolve any disputed matter. So inevitably "reputation risk" are comparatively much higher in the traditional approach as court proceedings may not always maintain confidentiality. In the corporate world, reputation adds value in the market and hampering that reputation through a dispute is completely undesirable for corporate parties. This in turn (as stated before) reduce the chances of hostility between parties as well. Additionally, in rural areas, the court is taboo for women, ADR process ensure privacy as it is a confidential process and reduces the harassment of victim.

BHB: 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?

SMR: I strongly support insertion of ADR Clauses in all Commercial Contracts to expedite resolution of civil disputes out of court. Currently, there are more than 35.82 lakh cases (13.28 lakh civil cases and 17.25 lakh criminal cases) in backlog in Bangladesh courts and it is estimated that there is only 1 judge for every 2000 cases. This is inevitable because with over 161 million people, Bangladesh is currently ranked the eighth most populous nation in the world. The only way to resolve these issues and reduce the bottleneck is by deviating from the traditional approach towards conflict and its resolution. It should always be advised to the parties entering into agreements to include arbitration clauses in their contracts in order to ensure that any future disputes can be resolved without recourse to expensive and time-consuming litigation. Another aspect is that commercial contracts are very sensitive and crucial in nature because of the involvement of financial investments. If any dispute is solved through the judgment of the court, then only one party will win the suit, however, if the problem is settled in ADR then both parties will can be at a win-win position.

BHB: 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?

SMR: This is a great initiative. Nevertheless this platform usually works for genuine borrowers who are suffering some kind of hardship because of extraneous factors and usually they are more open to negotiation and reconciliation with banks. But for Willful Defaulters the scenario is different. As they have already taken public money and are not willing to repay, it becomes extremely difficult and close to impossible to make them agree to ADR, unless there is some statutory obligation imposed on them.

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!*

New BIAC Members in 2022

Mr. Md. Jakaria Habib
ACIArb
Barrister-at-Law & Advocate,
Supreme Court of Bangladesh

Mr. Muntasir Mahmud Rahman
Advocate,
Supreme Court of Bangladesh &
Head of Chamber of Muntasir Associates

Mr. Shadman Sakib Mostafa
MCIArb,
Chief Legal Officer of Action
Shoes Bangladesh

Mr. Md. Shohagh Rana
Principal Officer
Pubali Bank Limited

Ms. Sabina Yesmin
Head of Legal Affairs Department,
Dhaka Stock Exchange Ltd.
Advocate
Supreme Court of Bangladesh
Accredited Mediator, ADR-ODR
International

Mr. Abu Zafor Md. Obidullah Chowdhory
Head of Legal (Manager)
Corporate & Regulatory Affairs,
Summit Alliance Port Limited

Mr. Abdullah Al Noman
Advocate,
Supreme Court of Bangladesh,
Team Lead, Legal Research Unit, A F Hassan
Ariff & Associates

Mr. Mahin M Rahman
Barrister-at-Law & Head of Chamber,
Guardian Chambers-Legal Solutions.

Dr. Md. Anowar Zahid
ACIArb
Professor & Dean,
Faculy of Law, Eastern University

Ms. Rownak Jahan
Barrister-at-Law & Advocate,
District and Session Judge Court,
Accredited Mediator, SIMI

Mr. Md. Shameem Alam Qurashi
ACIArb
Former General Manager
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Benefits Include

1

- Inclusion and access to **BIAC Members Directory**
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- Invitation to exclusive **networking events/talks from experts**
- **Publish articles** in BIAC Quarterly Bulletin and any special publication
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- **Discounts** on use of BIAC Facilities, Administrative Costs and selected courses
- Complimentary subscription to BIAC Publications

Membership Criteria

2

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**.

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

4

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

BIAC MEMBERSHIP APPLICATION FORM

BIAC Membership Application Form

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

Member's Information:

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

*Full Name (Block letter as in Passport): ……

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

* DOB: ……..…… Educational Status: ….……..……..……

Profession: ……..……..

Company: ……..…… Position: …..……..……..

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

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Account details:
Account Name: Bangladesh International Arbitration Centre (Training)
Bank Name: Mutual Trust Bank Ltd.
Branch: Panthapath
Account Number: 0320001786
Bank Code: 003
SWIFT Code: MTB BDDH PPB
Bank Address: 69/1 Panthapath, Suvastu Tower, Dhaka 1205

Personal Data:

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

Declaration:

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

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

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

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সেরা সাসটেইনেবল ব্যাংক ২০২১

আরগাস কর্তৃক রেটিংপ্রাপ্ত

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