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**ARBITRATION AND MEDIATION AS A MECHANISM TO SETTLE  
CORPORATE DISPUTE IN BANGLADESH**

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**Thesis Submitted to the Ghazali Shafie Graduate School of Government,  
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requirement for the Degree of Master of Laws  
Universiti Utara Malaysia**

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## ABSTRAK

Kajian ini mengkaji mekanisme timbang tara dan proses mediasi dalam menyelesaikan pertikaian korporat di Bangladesh. Kajian ini bertujuan memberikan pendedahan kepada syarikat di Bangladesh tentang kepentingan penimbangtaraan dan mediasi dalam menyelesaikan pertikaian korporat. Pada masa ini terdapat lebih kurang 2.3 juta kes tertunggak yang masih belum diselesaikan di mahkamah-mahkamah Bangladesh. Walaupun sangat penting untuk semua kes tertunggak ini diselesaikan, mahkamah masih belum dapat menyediakan penyelesaian kes yang memuaskan yang mengakibatkan kesusahan berterusan kepada litigan. Objektif kajian ini adalah untuk mengkaji peranan penimbangtaraan dan mediasi dalam menyediakan mekanisme alternatif bagi menyelesaikan pertikaian korporat di Bangladesh. Kajian ini menganalisis peruntukan undang-undang terutama Akta Timbang Tara 2005 dan Kanun Acara Sivil 1908 mengenai proses penimbangtaraan dan mediasi di Bangladesh. Data dianalisis menggunakan pendekatan historikal, analitikal, falsafah dan perbandingan. Hasil kajian menunjukkan bahawa mekanisme penimbangtaraan dan mediasi mempunyai ciri-ciri berikut: lebih cepat, mudah, sulit, kurang prosedur, kos yang efektif dan boleh dikuatkuasakan oleh mahkamah; sebaliknya, kelewatan yang berterusan, kos yang besar, gangguan pelbagai pihak serta bilangan kes tertunggak yang banyak menyebabkan pihak korporat atau komersial tidak memilih untuk pergi ke mahkamah. Kesimpulan kajian menunjukkan penimbangtaraan dan mediasi adalah pilihan terbaik bagi menyelesaikan pertikaian korporat atau komersial di Bangladesh. Walau bagaimanapun, pelaksanaan mekanisme penimbangtaraan dan mediasi bagi menyelesaikan pertikaian korporat ini hanya boleh berjaya dengan sokongan yang mencukupi daripada kerajaan dan undang-undang, etika professional, latihan dan kemudahan yang bersesuaian.

**Kata kunci:** Timbang tara, pertikaian korporat, litigasi, mediasi

## ABSTRACT

This study examines the mechanism of arbitration and mediation to settle corporate disputes in Bangladesh. This study intends to create awareness among the Bangladeshi corporations of the importance of addressing arbitration and mediation to settle corporate disputes. Currently there are around 2.3 million backlog of cases pending in the courts of Bangladesh. It is extremely crucial to clear off these backlog of cases, but so far the courts are unable to provide a satisfactory settlement of the cases, causing endless suffering to the litigants. The objective of this study is to examine the role of arbitration and mediation in providing alternative mechanisms to settle corporate disputes in Bangladesh. This study analyses the provisions of laws specially the Arbitration Act 2001, and the Code of Civil Procedure 1908 regarding arbitration and mediation in Bangladesh. The data of this study was analyzed through the historical, analytical, philosophical and comparative approaches. The findings show that the arbitration and mediation mechanisms provide the following positive characteristics: quicker, convenient, confidential, less procedural, cost effective and enforceable by the court; on the other hand, extensive delay, huge costs, harassment of the parties and the huge backlog of cases that could lead corporate or commercial parties not to go to the courts were negative. The study concludes that the use of the arbitration and mediation mechanisms is the preferred way to settle corporate or commercial disputes in Bangladesh. However, implementation of the arbitration and mediation mechanisms to settle corporate disputes in Bangladesh can only be successful if there is sufficient government support and regulation, professional ethics, relevant training and facilities.

**Keywords:** Arbitration, corporate dispute, litigation, mediation

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## LIST OF ABBREVIATIONS

CalPERS	California Public Employees' Retirement System
ADR	Alternative Dispute Resolution
UNCITRAL	United Nations Commission on International Trade Law
CPC	Code of Civil Procedure
CrPC	Code of Criminal Procedure
BIAC	Bangladesh International Arbitration Center
CPR	Conflict Prevention and Resolution
CERD	Centre for Effective Dispute Resolution
ACAS	Advisory Conciliation and Arbitration Service
NJC	Neighborhood Justice Center
IACA	Indian Arbitration and Conciliation Act
BIT	Bilateral Investment Treaty
ICSID	International Center for Settlement of Investment Disputes
ICC	International Chamber of Commerce
DCCI	Dhaka Chamber of Commerce and Industry
MCCI	Metropolitan Chamber of Commerce and Industry
BICF	Bangladesh Investment Climate Fund
IFC	International Finance Corporation
EU	European Union
CMC	Civil Mediation Center
MLAA	Madaripur Legal Aid Association
BLD	Bangladesh Legal Decisions

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background of the Study

Corporate disputes and conflicts are normal occurrence in business setting. Some of them are unavoidable but the system they are managed may have tremendous brunt on the effectiveness and possibility of business.<sup>1</sup> Badly dealt with conflict can be costly, create uncertainty in business and humiliate decision quality by managers.

The practice by which corporations are bound for and managed can be matter of standards and rules fixed in the legal system, corporate governance frameworks and companies' memorandum and articles of association. These processes are intended to help companies obtain optimum benefit in business, avoid trouble and diminish the overheads of assets by guaranteeing shareholders and creditor's rights that they might be able to get a flaxen return on their venture.<sup>2</sup> Furthermore, the companies have to follow some standard rules and mechanisms to settle the disputes with no troubles so that investors can place reliance on the loyalty of companies' rules and their officers.

When a dispute occurs in a company, it can be the top benefit of the company to resolve the disputes successfully, professionally and competently. Corporate disputes can range from disagreement between any shareholder and the Board of

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<sup>1</sup> Nadja Marie Alexander , Global trends in mediation. (Vol. 1. Kluwer Law International, 2006),2-17

<sup>2</sup> Institute of Directors in Southern Africa, *Bulletin*, 1st Quarter 2007. <http://www.iodsa.co.za/>, accessed February 10, 2014

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