**ADR in the Arbitration Act: 2001**

* **Arbitration Agreement :**Arbitration agreement means an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship whether contractual or not.

**“**International Commercial Arbitration means an Arbitration relating to disputes arising out of legal relationships whether contractual or not considered as commercial under the law in force in Bangladesh and where at least one of the parties is-

1. An individual who is a national of or habitually resident in any country other than Bangladesh, or
2. A body corporate which is incorporated in any country other than Bangladesh or
3. A company or an association or a body of individuals whose central management and control is exercised in any country other than Bangladesh, or
4. The government of a foreign country.
* **Jurisdiction of court in matters covered by arbitration agreement**

Where any of the parties to the arbitration agreement files a legal proceedings in a court against the other party no judicial authority shall hear any legal proceedings except in so far as provided by this Act.

* **Powers of court and High Court Division to make interim orders**

If the parties do not agree in the case of international commercial arbitration the High Court Division and in the case of other arbitrations the court may pass interim order in the following matters:

1. To appoint guardian for minor or insane to conduct on his/her behalf arbitral proceedings.
2. To take into interim custody of or sale of or other protective measures in respect of goods or property included in the arbitration agreement.
3. To restrain any party to transfer certain property or pass injunction on transfer of such property which is intended to create impediment on the way of enforcement of award.
4. To empower any person to seize preserve, inspect, to take photograph collect specimen, examine, to take evidence of any goods or property included in arbitration agreement and for that purpose to enter into the land or building in possession of any party.
5. To issue ad interim injunction
6. To appoint receiver and
7. To take any other interim protective measures which may appear reasonable or appropriate to the court or the high court division.
* **Serving of notice**

Before passing order upon application received, the court or the High Court Division shall serve notice upon the other party. But if the court or the High Court Division is satisfied that in the event the order is not passed instantaneously and the purpose of making interim measures shall be frustrated, there shall be no necessity of serving such notice.

* **Form of arbitration agreement**

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement shall be in writing and an arbitration agreement shall be deemed to be in writing it is contained in-

1. A document signed by the parties
2. An exchange of letters, telex, telegrams, fax, email or other means of telecommunication which provide a record of the agreement or
3. An exchange of statement of claim and defense in which the existence of the agreement is alleged by one party and not defined by the other.
* **Arbitrability of the dispute**

Where any party to an arbitration agreement or agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time before filing a written statement apply to the court before which the proceedings are pending to refer the matter to arbitration.

The court shall if it is satisfied that an arbitration agreement exists, refer the parties to arbitration and stay the proceedings unless the court finds that the arbitration agreement is void, inoperative or is incapable of determination by arbitration.

* **Composition of Arbitral Tribunal**

**Number of arbitrators**

The parties are free to determine the number of arbitrators. Falling the determination of a number the tribunal shall consist of three arbitrators. Where they appoint an even number of arbitrators, the appointed arbitrators shall jointly appoint an additional arbitrator who shall act as a chairman of the tribunal.

**Procedures for appointment of arbitrators**

The parties are free to agree on a procedure for appointing the arbitrator or arbitrators. A person of any nationality may be an arbitrator unless otherwise agreed by the parties.

Procedure in failing any agreement in an arbitration with appointment of arbitrator, if the parties fail to agree on the arbitration within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made upon request of a party-

1. The district judge shall appoint the arbitrator in case of arbitration other than international commercial arbitration, and
2. In case of international commercial arbitration the chief justice or any justice appointed by him shall appoint the arbitrator.
* **Termination of arbitrators mandate**

The mandate of an arbitration shall terminate if

1. He withdraws himself
2. He dies
3. All the parties agree on the termination of his mandate or
4. He is unable to perform his office

But if any arbitrator has failed to withdraw himself from his office and all the parties agree on his termination then on the application of any party within the prescribed period by rules-

1. The district judge, in case of other arbitrators excepting international commercial arbitration
2. The chief justice or a judge of the Supreme Court designed by the chief justice in case of international commercial arbitration may terminate the said arbitrator.

**Competence of arbitration tribunal to rule on its own jurisdiction**

The arbitral tribunal may rule on its own jurisdiction on any question including the following issues, namely –

1. Whether there is existence of a valid arbitration agreement
2. Whether the arbitral tribunal is properly constituted
3. Whether the arbitration agreement is against the public policy
4. Whether the arbitration agreement is incapable of being performed and
5. Whether the matters have been submitted to arbitration in accordance with the arbitration agreement
* **General responsibilities of the arbitral tribunal**

The arbitral tribunal shall deal with any of the dispute submitted to it fairly and impartially and for this purpose –

1. Each party shall be given reasonable opportunity to present his case orally or in writing or both and
2. Each party shall be given reasonable opportunity to examine all the documents and other relevant materials filed by other party or any other person concerned before the tribunal
3. The arbitral tribunal shall deal with a dispute submitted to it as quickly as possible
4. The arbitral tribunal in conducting proceedings shall act fairly and impartially in deciding procedure and evidence and in exercising other powers conferred on it.
* **Place of arbitration**

The parties shall be free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case including the convenience of the parties. The arbitral tribunal may unless otherwise agreed by the parties meet at anyplace it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

* **Commencement of arbitral proceedings**

The proceedings shall be deemed to have commenced if

1. Any dispute arises where the concerned arbitration agreement applies and
2. Any party to the agreement has received from another party to the agreement a notice requiring that party to refer, or to concur in the reference of the dispute to arbitration, or has received from another party to the agreement a notice requiring that party to appoint an arbitral tribunal or to join or concur in, or approve the appointment of an arbitral tribunal in relation to the dispute.
* **Consolidation of proceedings and concurrent hearings**

The parties shall be free to agree upon this respect that-

* 1. Any arbitration proceedings shall be consolidate with other arbitral proceedings
	2. Concurrent hearings shall be held on such terms as may be agreed

The arbitral tribunal shall have no power to pass any order to consolidate the proceedings or for concurrent hearing, unless the same is given by the parties on agreed terms to the tribunal.

* **Statements of Claim and Defense**

Within the period of time determined by the tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defense in respect of these particulars.

The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit in future.

Either party may amend or supplement his claim or defense during the course of the proceedings unless the tribunal considers it inappropriate to allow the amendment or supplement for the sake of fairness or having regard to the delay in making it.

* **Hearings and the proceedings**

The tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceedings shall be conducted on the basis of documents and other materials. But the tribunal shall hold oral hearings at an appropriate stage of the proceedings that is either on a request by a party or its own motion unless the parties have agreed that no oral hearing shall be held.

The parties shall be given sufficient prior notice of any hearing and of any meeting of the tribunal for the purposes of inspection of documents, goods or other property.

All statements, documents or other information supplied or applications made to the tribunal by one party shall be communicated to the other party, and any expert report on evidentiary document on which the tribunal may rely in making its decision shall be communicated to the parties.

**Power to appoint experts, legal advisers or assessors**

The tribunal may-

1. Appoint expert or legal adviser to report to it on specific issues to be determined by the tribunal,
2. Appoint assessor to assist it on technical matters, and
3. Require a party to give the expert, legal adviser or the assessor, as the case may be, any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
* **Summons to witnesses**

The arbitral tribunal or a party to the proceedings with the approval of the tribunal may apply to the court for issuing summons upon any person necessary for examining, or submitting materials or appearing, or producing before the tribunal for both the purposes.

* **Evidence before the arbitral tribunal**

Evidence may be given before the arbitral tribunal orally or in writing or by affidavit. The arbitral tribunal may administer an oath or affirmation to a witness subject to his consent.

* **Powers of the arbitral tribunal in case of default of the parties**

If the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay-

1. Gives rise or is likely to give rise, to a substantial risk that is not possible to have a fair resolution of the issues in that claim or
2. Has caused or is likely to cause, serious prejudice to the respondent

the tribunal may make an award dismissing the claim.

* **Decision making by panel of arbitrators**

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. Questions of procedure may be decided by the chairman of the arbitral tribunal.

* **Form and contents of arbitral award**

An arbitral award shall be in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient.

No reasons shall have to be stated by the arbitral tribunal where the parties have agreed that no reasons are to be given. The arbitral award shall state it’s date and the place of arbitration as determined in accordance. After the arbitral award is made a copy signed by the arbitrator or arbitrators shall be delivered to each party.

* **Award to be final and binding**

An arbitral award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding on both the parties and on any persons claiming through or under them. The right of a person to challenge the arbitral award in accordance with the provisions of this Act shall not be affected.

* **Termination of proceedings**

The proceeding of the tribunal proceeding shall be terminated in the following ways-

1) The arbitral proceedings shall be terminated by the final arbitral award

2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

a) The claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute.

b) The parties agree on the termination of the proceedings or

c) The arbitral tribunal finds that the continuation of the proceedings unnecessary or impossible.

* **Application for setting aside arbitral award**

The court may set aside any arbitral award under this Act other than an award made in an international commercial arbitration on the application of a party within sixty days from the receipt of the award.

The high court division may set aside any arbitral award made in an international commercial arbitration held in Bangladesh on the application of a party within sixty days from the receipt of the award.

* **Grounds for setting aside arbitral award**

An arbitral award may be set aside if the party making the application furnishes proof that-

* 1. A party to the arbitration agreement was under some incapacity.
	2. The arbitration agreement is not valid under the law
	3. The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable due to some reasonable causes to present his case
	4. The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration
	5. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties

The court or the high court division, as the case may be, is satisfied that-

* 1. The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force in Bangladesh.
	2. The arbitral award is prima facie opposed to the law for the time being in force in Bangladesh
	3. The arbitral award is in conflict with the public policy of Bangladesh or
	4. The arbitral award is induced or affected by fraud or corruption may set aside the award.
* **Enforcement of arbitral award**

Where the time for making an application to set aside the arbitral award under section 42 has expired, or such application having been made, has been refused, the award shall be enforced under the code of civil procedure in the same manner as if it were a decree of the court.

* **Recognition and enforcement of foreign arbitral awards**

Any foreign award which would be enforceable shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied or by any of those persons by way of defense, set off or otherwise in any legal proceedings in Bangladesh.

A foreign arbitral award shall on the application being made to it by any party be enforced by execution by the court under the code of civil procedure in the same manner as if it were a decree of the court.

An application for the execution of a foreign arbitral award shall be accompanied by-

1. The original arbitral award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made.
2. The original agreement for arbitration or a duly certified copy thereof and
3. Such evidence as may be necessary to prove that the award is foreign award.
* **Appeal provision and procedure**

An appeal shall lie from the following orders of the court to the high court division, namely-

1. Setting aside or refusing to set aside an arbitral award under sub-section (1) of section 42.
2. Refusing to enforce the arbitral award under section 44.
3. Refusing to recognize or enforce any foreign arbitral under section 45.