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Strategic Extension of Time Claims Amidst Bangladesh's Foreign Exchange Crisis

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Executive Summary

Bangladesh's persistent foreign exchange constraints and stringent letter of credit regulations are severely disrupting infrastructure timelines. For multinational corporations and engineering contractors, securing an Extension of Time is a critical commercial defense. This briefing outlines legal strategies to navigate these macroeconomic headwinds, mitigate exposure to liquidated damages, and prevent the unjustified encashment of performance bank guarantees.

The Legal Landscape in Bangladesh

Navigating project delays requires precise application of local statutes, standard-form contracts, and Supreme Court precedents. The contractual architecture relies heavily on the Contract Act of 1872. Section 55 dictates that failure to deliver on time renders a contract voidable at the employer's option, while Section 73 exposes contractors to severe liquidated damages for unjustified delays. Confronted with material shortages, contractors often mistakenly invoke Section 56, treating it as frustration of contract to excuse performance entirely.

However, the Appellate Division maintains a highly restrictive interpretation. Following jurisprudence in *Md. Mokbul Hossain Khondker v. Mosammat Jaheda Khatoon* (47 DLR 430), the legal threshold requires absolute impossibility, not mere commercial difficulty. Currency shortages do not legally excuse contractual duties. Furthermore, courts view banking delays as foreseeable commercial risks. As established in *Gooryonly (BD) Textile Ltd. v. Chartkar Information Holding Ltd.* (54 DLR (AD) 70) and echoed in *M/S Centex Fashions Ltd. vs. Mim* (2018 (1) LNJ 13), a letter of credit is strictly autonomous from the underlying contract. Courts consistently refuse to block encashments based on currency deficits, treating central bank regulatory shifts as standard commercial risks.

Relief must therefore be grounded strictly within the contract. For state-backed projects, Rule 39 of the Public Procurement Rules of 2008 entitles a contractor to an extension for conditions beyond their reasonable control. Under the widely adopted FIDIC suites, Sub-Clause 8.4 of the 1999 editions and Sub-Clause 8.5 of the 2017 editions allow extensions for unforeseeable shortages of goods triggered by governmental actions.

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The Commercial Challenge

To stabilize depleting foreign exchange reserves, the Bangladesh Bank has issued circulars imposing high cash margins on letters of credit for imports. This has triggered acute supply chain paralysis. Critical materials remain stranded because local authorized dealer banks frequently delay or refuse to open letters of credit due to dollar liquidity constraints, even when the contractor possesses sufficient local currency.

As completion dates expire, procuring entities leverage strict precedents to reject extension claims. Employers argue that currency availability is an inherent financial risk borne entirely by the contractor, leading them to levy crushing liquidated damages. This creates an existential threat through the abusive encashment of unconditional performance bank guarantees by employers who ignore the sovereign-induced liquidity crisis driving the delay.

Strategic Contract Administration

Passive reliance on the economic climate is legally insufficient. Rather than framing the foreign exchange shortage as frustration, contractors should categorize the Bangladesh Bank's circulars as unforeseeable governmental actions or changes in law. This directly satisfies extension criteria under standard FIDIC clauses, bypassing liquidated damages.

Generic assertions of a dollar crisis will inevitably fail. Clients must secure formal written notices from their banks explicitly stating that specific letters of credit cannot be processed strictly due to central bank constraints. This documentary evidence must then be mapped directly to the critical path of the approved project baseline schedule. Procedural compliance regarding notice time-bars is absolute.

Under FIDIC frameworks, a formal notice of claim must be submitted within twenty-eight days of becoming aware of the event, treating every rejected letter of credit as a distinct trigger. Tribunals strictly examine active mitigation, making it essential to maintain detailed written records of exploring alternative sourcing or payment methods.

If an employer threatens guarantee encashment, swift legal action is required. For state-owned entities, a writ petition under Article 102 of the Constitution may be maintainable. For private employers, preemptive injunctions must be sought under Section 7A of the Arbitration Act of 2001 from the court, or under Section 21 from the arbitral tribunal. Courts only grant injunctions on unconditional guarantees upon proof of egregious fraud or irretrievable injustice, meaning contractors must demonstrate the delay was undeniably caused by sovereign monetary policy.

Future Outlook

As delayed infrastructure projects trigger commercial arbitrations, a paradigm shift in contract drafting is essential. Future agreements must include explicit clauses regarding sovereign dollar shortages and letter of credit issuance delays, paired with dynamic price indexation. Robust contract administration remains the ultimate differentiator between commercial success and protracted litigation.

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Navigating War-Risk Insurance Hikes and Cargo Deviation Claims in 2026

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Executive Summary

The escalating Strait of Hormuz blockade and the Red Sea crisis have ignited a devastating dual crisis of deviation and deadlock. Global carriers are continuously stripping Bangladeshi importers of their operational margins through extended transit times and excessive surcharges. Surviving this unprecedented logistical reality requires the aggressive recalibration of maritime contracts to hedge against an ocean transit system in total chaos.

The Dual Crisis of Deviation and Deadlock

The March 2026 Red Sea crisis initially forced global carriers to route vessels around Africa, stripping Bangladeshi importers of their margins through extended transit times and excessive surcharges. By April, the escalating Strait of Hormuz blockade transformed this logistical hurdle into a complete deadlock, trapping vessels and severing vital economic arteries. Early in the year, carriers invoked liberty clauses to bypass newly expanded Joint War Committee high-risk zones, adding thousands of miles to voyages without consulting consignees. These unilateral detours resulted in downstream order cancellations and heavy war-risk premium surcharges billed directly to importers. Now, with the Middle Eastern Gulf under a de facto military blockade, cargos of essential petrochemicals and liquefied natural gas have simply stopped. For multinational corporations and foreign investors in Bangladesh, this is no longer merely an operational headache; it represents a profound legal failure. Contracts drafted for a predictable peacetime environment leave Bangladeshi importers absorbing the financial shock of geopolitical violence they cannot control. Surviving this reality requires a mastery of archaic maritime laws and an aggressive recalibration of standard charterparties to secure the contractual flexibility needed to hedge against an ocean transit system in total chaos.

The Statutory Landscape and Commercial Toll

The legal architecture governing this crisis in Bangladesh relies on two aging statutes colliding with modern warfare. Under Section 18 of the Marine Insurance Act 1906, the duty of utmost good faith dictates that an assured must disclose every material circumstance to the insurer.

Consequently, if an importer fails to declare that their cargo will transit designated high-risk zones, underwriters can legally void the policy without proving the non-disclosure caused a loss. Simultaneously, the Carriage of Goods by Sea Act 1925, which incorporates the Hague Rules into local law, permits a ship to make any reasonable deviation to save life or property. Carriers successfully argue that bypassing the Red Sea to avoid anti-ship missiles or refusing to breach the Hormuz blockade fits the exact definition of a reasonable deviation. While courts will undoubtedly acknowledge the physical reality of drone strikes and missile corridors, validating the carrier's fundamental right to protect human life, the 1925 Act fails to clarify who ultimately bears the financial burden of these extensive detours.

Until the Appellate Division of the Supreme Court of Bangladesh issues a binding ruling on these specific geographic reroutings, standard bills of lading heavily favor shipowners. This legal ambiguity compounds the regulatory burden at the port. Updated customs rules demand precise advance digital manifest filing for transshipments. When a vessel deviates or dumps cargo at an alternate port, the routing paperwork mismatches the actual transit history, causing severe clearance delays. During these customs holds, vessels bleeding operating costs at Chattogram's outer anchorage pass staggering demurrage and detention charges down the supply chain. Importers are forced to pay immediately to secure raw materials, fighting the legal battle later from an inherently weaker position.



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Strategic Legal Countermeasures and Future Outlook

Standard logistics contracts fail in this hostile environment because they treat war risks as an afterthought. To stop the financial bleeding, corporate counsel must proactively shift liability before the vessel ever leaves the loading port. Relying on a standard liberty to deviate clause grants carriers a blank check to alter routes and pass down the costs. Logistics agreements must explicitly incorporate modern frameworks like BIMCO's CONWARTIME 2025 or VOYWAR 2025 clauses. These provisions compel shipowners to consult charterers before refusing to enter high-risk zones while firmly establishing who pays the additional war-risk premiums and crew bonuses.

Furthermore, while marine cargo policies contain a "held covered" provision to maintain insurance during unexpected deviations, this protection is never automatic. The coverage holds only if the assured notifies the underwriter immediately upon learning of the route change and agrees to pay an arranged premium. Legal teams must map vessel tracking data against insurance declarations daily, notifying brokers the exact moment a ship alters its course. Finally, resolving these disputes through traditional litigation takes years, tying up vital working capital. Incorporating strict arbitration mandates into all clearing, forwarding, and domestic logistics agreements is essential, as arbitrators can settle deviation claims in months rather than years.

While the eventual operationalization of the Matarbari Deep Sea Port will absorb some congestion and reduce downstream demurrage risks, that physical relief remains years away. Legal relief must be engineered immediately. Over the next twelve months, Protection and Indemnity Clubs will enforce stricter guidelines on what constitutes a safe port, effectively hard-coding the Cape of Good Hope route into standard Asian-European trade.

Given the severe physical danger to crews, the Supreme Court of Bangladesh will likely lean toward protecting a carrier's right to deviate when test cases inevitably arise. The Suez Canal is practically closed to Western-aligned tonnage, making the Cape route the new baseline. Continuing to rely on boilerplate contracts written during peacetime guarantees severe commercial losses in 2026. Proactive, customized contracting is the only viable path forward.

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Navigating the Invisible Assets: Securing Trademarks and IP during Corporate Restructuring in Bangladesh

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As macroeconomic pressures and pre-election uncertainties drive a wave of corporate restructuring and mergers in Bangladesh, safeguarding intellectual property is no longer an administrative afterthought. For multinational corporations and foreign investors, proactively securing trademarks, patents, and copyrights is a critical commercial imperative. At Rahman's Chambers, we observe that failing to protect these invisible assets during structural transitions leads to severe asset leakage, loss of competitive advantage, and drastically diminished deal valuation.

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To manage intellectual property effectively during these shifts, businesses must navigate Bangladesh's modernizing legal framework. The Trademarks Act of 2009 governs the assignment of brand assets. While Section 33 allows registered trademarks to be assigned with or without business goodwill, Section 35 dictates a critical caveat: unregistered trademarks can only be legally assigned alongside the goodwill of the business. The Bangladesh Patents Act of 2022 mandates that patent assignments be executed via a formally drafted and notarized Deed of Assignment. Additionally, the Copyright Act of 2023 provides vital protections for digital works and software, reflecting modern technology-driven acquisitions. For restructurings executed via formal schemes of arrangement, Sections 228 and 229 of the Companies Act of 1994 dictate the transfer of assets and liabilities. Such schemes require formal sanction by the High Court Division of the Supreme Court of Bangladesh, with intellectual property explicitly vested in the successor entity. These transitions are officially recorded by the Department of Patents, Designs and Trademarks. Encouragingly, recent trends in the High Court Division demonstrate a strict stance on protecting well-known international trademarks. Courts readily grant ad-interim injunctions against unauthorized use, provided the plaintiff proves an unbroken, documented chain of title.

Currently, Bangladesh faces a low-momentum equilibrium marked by tight liquidity, historic lows in private sector credit growth, elevated non-performing loans, and persistent pre-election caution. These economic pressures force domestic conglomerates and multinational subsidiaries into defensive postures, triggering downsizings, spin-offs, and consolidations. In the rush to restructure, the primary focus of executives understandably gravitates toward tangible assets and debt liabilities, making intellectual property an invisible friction point. The risks of neglecting these assets are severe. A common pitfall is the blanket transfer of brand portfolios.

Attempting to transfer an unregistered trademark without explicitly transferring the associated goodwill renders the assignment legally void under the Trademarks Act. Furthermore, if ownership changes are not meticulously recorded, the acquiring entity cannot effectively enforce its legal rights. Without a formally recorded confirmation certificate, enforcing injunctions against counterfeiters is procedurally crippled. Downsizing also inevitably leads to extensive employee churn. Since Bangladesh lacks a standalone statutory framework for trade secrets, relying instead on fundamental contract principles, the exit of key personnel drastically increases the risk of proprietary data bleeding to direct competitors.

At Rahman's Chambers, we advise clients that intellectual property risk mitigation requires aggressive, upfront structuring. Companies must conduct pre-deal intellectual property audits rather than relying solely on a target company's financial balance sheet. Specialized legal counsel should verify the live status, encumbrances, and renewal deadlines of all registered and pending assets, as knowing what is officially registered dictates the structural mechanics of the transfer. Transacting parties must draft hyper-specific deeds of assignment, actively avoiding vague catch-all clauses in merger agreements. Assignments must explicitly list trademark registration numbers, relevant classes of goods, and state whether the transfer encompasses goodwill. Following execution, mandatory records must be initiated immediately. A transaction is only secure when the regulatory body officially registers the assignment; delayed recordal unnecessarily exposes the brand to third-party infringement. Finally, to combat trade secret leakage, companies must fortify restrictive covenants. Before initiating a downsizing program, employers must reinforce employee non-disclosure agreements and confidentiality clauses. Ensuring severance packages are strictly contingent upon the verified return of all proprietary assets creates a binding contractual shield against data leakage.



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Looking ahead, corporate restructuring and intellectual property management in Bangladesh are poised to significantly evolve. As post-election macroeconomic stability firmly takes hold, foreign direct investment and cross-border mergers are expected to surge, particularly within the technology, pharmaceutical, and consumer goods sectors. Furthermore, as Bangladesh accelerates toward formal Least Developed Country graduation, grace periods for international trade flexibilities will systematically phase out. This transition mandates a stricter, globally compliant intellectual property regime. Consequently, intellectual property will shift from being viewed as a regulatory compliance checkbox to acting as the primary driver of commercial deal valuation. Companies that proactively audit, secure, and build legally sound portfolios today will command premium valuations in the restructuring markets of tomorrow.

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