

Legal Insight!

CHAMBERS INITIATIVES

1

THIS IS OUR HALF YEARLY LEGAL WRITINGS KNOWN AS "LEGAL INSIGHT", A PART OF OUR LEGAL INITIATIVE. WE HAVE ANALYSED THE MAJOR EVENTS AND CHANGES IN LAWS TAKEN PLACE IN THE LAST SIX MONTHS (JULY- DECEMBER) IN BANGLADESH AND GLOBALLY HAVING AN IMPACT ON BANGLADESH. WE HAVE ORGANIZED IT UNDER NINE HEADINGS AS PER OUR NINE PRACTICE DEPARTMENTS COVERING THIRTY TWO [PRACTICE AREAS](#).

Commercial

The commercial landscape in Bangladesh is a dynamic arena, shaped by evolving regulations and fluctuating market forces. Export Policy 2024-2027 reflects a strategic drive for economic diversification. The Civil Aviation Authority's stringent regulations for flight simulators and heliports, along with detailed accident investigation rules, underscore a commitment to safety, but also create a web of technical requirements that businesses must navigate meticulously. The rebound in imports and remittances, set against the challenges faced by crisis-hit banks and the RMG sector, highlights the volatility of the economy, where political instability and labor unrest pose significant legal and financial risks. The shifting dynamics of international trade, as seen in the reduction of India's onion export duty and China's duty-free access, necessitate agile business strategies and a deep understanding of trade agreements. The pharmaceutical industry's labor turmoil and the leather sector's export decline underscore the importance of social compliance and adherence to international standards, where breaches can lead to severe market repercussions. The increasing use of air freight by Inditex, driven by shipping disruptions, raises concerns about environmental sustainability and the need for businesses to balance commercial needs with regulatory expectations. The interplay between rising dollar inflows and fluctuating LC openings signals a complex financial environment, where businesses must remain vigilant about currency risks and regulatory changes. In essence, the mosaic of legal and economic events in Bangladesh demands a proactive approach to risk management, where compliance, adaptability, and strategic foresight are crucial for navigating the currents of commercial success.ⁱ

Construction

Bangladesh's construction and infrastructure sector is experiencing a period of dynamic growth and transformation. Several recent developments highlight key areas of focus and potential legal considerations:

Infrastructure Development:

- **Moheshkhali-Matarbari Initiative:** A dedicated committee is overseeing infrastructure development in the Maheshkhali upazila, with a focus on coordinating various projects and land allocation. Land acquisition and project coordination require careful legal handling to avoid disputes and delays. The committee must ensure transparency and compliance with land acquisition laws to mitigate these risks.
- **Comilla Economic Zone:** A designated land area for the Comilla Economic Zone aims to boost industrial growth and attract investment. Establishing economic zones requires careful planning and compliance with environmental regulations and land use policies. Any inconsistencies or non-compliance could lead to legal challenges and delays in project implementation.

Energy and Power Infrastructure:

- **Merchant Power Plant Policy (MPPP):** The introduction of the MPPP, allowing for business-to-business electricity trade, marks a shift in the power sector. Clear contractual agreements and regulatory frameworks are needed to govern power purchase and transmission arrangements. Disputes could arise regarding pricing, grid access, and compliance with regulatory requirements.
- **JICA Loan Agreements:** JICA funding supports crucial infrastructure projects, including the Jamuna Railway Bridge Construction and the Chittagong Sewerage System Development Project. Ensuring transparency and accountability in project implementation is key to avoid legal challenges and ensure the successful completion of these large-scale projects.ⁱⁱ
- **Jera's Meghnaghat Power Plant and Future Investments:** Jera's continued commitment to Bangladesh's energy sector, including potential investments in LNG terminals and renewable energy projects, is positive. Addressing challenges like gas supply and regulatory approvals is crucial for project success and avoiding potential legal disputes.
- **Payra Port Development:** Increased traffic at Payra Port necessitates infrastructure development to support its growth and efficiency. Delays in infrastructure development can hinder the port's growth and lead to legal challenges for businesses operating there.

- **Kalapara Power Plant:** The completion of the Kalapara coal-fired power plant will boost electricity generation, but environmental concerns need to be carefully managed. Compliance with environmental regulations and mitigating pollution risks are crucial to avoid legal challenges and ensure the plant's sustainable operation.
- **Asian Infrastructure Investment Bank (AIIB) Loan Agreement for Power Transmission:** The AIIB loan for power transmission network enhancement supports crucial infrastructure development. Effective project implementation and cost management are essential to avoid legal disputes and ensure the project's successful completion.ⁱⁱⁱ
- **Quick Enhancement of Electricity and Energy Supply (Special Provision) Act, 2010:** The interim government in Bangladesh is moving away from the 'Quick Enhancement of Electricity and Energy Supply (Special Provision) Act, 2010,' which facilitated rapid, often non-competitive, energy project approvals. This shift reflects a commitment to greater transparency and accountability, prioritizing competitive tendering and adherence to standard public procurement laws to mitigate corruption risks and ensure fairer project implementation.

Other Key Considerations:

- **LPG Safety Guidelines:** The BERC issued new LPG Safety Guidelines, emphasizing the safe handling and storage of LPG cylinders. Businesses involved in the LPG sector must comply with these guidelines to avoid potential legal liabilities and ensure public safety.
- **Amendments to the BERC Act:** The amendment to the BERC Act regarding power tariffs could impact existing agreements and create uncertainty in the energy sector. Businesses involved in power generation and distribution should carefully review the implications of this amendment and any potential impact on their existing contracts.
- **Slow ADP Implementation:** The low implementation rate of the Annual Development Programme raises concerns about project delays and their impact on the construction and infrastructure sector. Delays in project implementation can lead to contractual disputes, cost escalations, and missed opportunities.

The move toward competitive tendering for power sector projects will heavily influence the legal landscape of future projects. The construction and infrastructure sector in Bangladesh is dynamic and presents both opportunities and legal risks. Staying informed about regulatory changes, conducting thorough due diligence, are crucial for navigating this evolving landscape and ensuring the successful implementation of projects.

Corporate

The recent legal and regulatory developments in Bangladesh, as evidenced by the gazette notifications and court decisions, reveal a dynamic landscape with both opportunities and significant legal risks.

The amendments to the Universal Pension Scheme, particularly the removal of mandatory subscription for government employees, reflect a shift in policy that could impact the scheme's long-term sustainability and raise questions regarding contractual expectations. Similarly, the revisions to the Pension Rules and Retirement Benefits, while clarifying family definitions for gratuity, may lead to disputes over beneficiary entitlements, especially in the absence of clear nominations.

The new minimum wage regulations for the tannery and cement factory sectors, while addressing worker welfare, may expose businesses to legal challenges related to compliance and potential labor unrest if implementation is not carefully managed. The M.M. Ispahani Ltd. demerger case highlights the judiciary's scrutiny of corporate restructuring, emphasizing the need for meticulous adherence to procedural requirements and protection of stakeholder interests. The court's focus on bona fides, fairness, and compliance with all applicable laws underscores the potential for legal challenges if these principles are not upheld. The amendments to the Overseas Employment and Emigration Act, 2013, introducing a catch-all punishment clause, broaden the scope of potential legal liabilities for those involved in overseas employment, increasing the risk of arbitrary enforcement.

The formation of the Labor Reform Commission signals a potential overhaul of labor laws, which could significantly impact business operations and necessitate proactive compliance measures. The ongoing labor unrest in the apparel sector, coupled with the government's intervention in the Beximco Group's restructuring, reveals the heightened sensitivity to labor rights and the potential for regulatory overreach. Finally, the acquisition of Novartis Bangladesh Limited by Radiant Pharmaceuticals Limited underscores the importance of navigating complex regulatory approvals and ensuring seamless integration to mitigate legal risks. The introduction of a formal wage framework for 15 sectors, while beneficial for workers, will require careful implementation to avoid disputes and ensure compliance. In summary, businesses operating in Bangladesh must be vigilant in navigating these evolving legal and regulatory landscapes to mitigate potential risks and ensure sustainable growth.

Dispute resolution

The past six months in Bangladesh's legal sphere have been characterized by a noticeable emphasis on constitutional reform, judicial reform & refining procedural norms and rigorously enforcing existing laws. This period has seen the judiciary actively addressing issues ranging from property disputes and arbitration to government procurement and fundamental rights, revealing a clear trend towards greater accountability and efficiency.

Procedural Rigor and Timely Adjudication:

One of the most prominent trends has been the judiciary's insistence on strict adherence to procedural rules. Cases like *Syeda Sarwat Hossan vs. Ataur Rahman* exemplify this, where the proper service of summons was deemed critical, highlighting that even seemingly minor procedural lapses can have significant legal consequences. The courts have also shown a commitment to timely adjudication, particularly in urgent matters. The repeated directives for trial courts to dispose of interim injunction applications within strict timelines underscore this focus on efficiency. The *Rehearing of Miscellaneous Case for Procedural Compliance* case also highlights the court's insistence on thorough examination of evidence and arguments, ensuring justice is not compromised by procedural oversights.

Arbitration and Alternative Dispute Resolution (ADR):

Arbitration has remained a crucial area of focus. The courts have emphasized the importance of adhering to contractual arbitration clauses and respecting the jurisdictional limits of arbitral tribunals. Cases like *Md. Kamal Sikder and Ors. vs. Nagar Homes Ltd. and Ors.* and *Government of Bangladesh and Ors. vs. Asad Enterprise* demonstrate this, where arbitral awards were set aside due to procedural irregularities and jurisdictional overreach. The *Consideration of Limitation Issue in Arbitration Case* highlighted the importance of limitation periods in arbitration, even when pre-court settlement processes are involved. Furthermore, the *Upholds District Judge's Decision on Interim Relief in Arbitration Dispute* case clarified the interplay between court orders and arbitral tribunal orders.

Government Procurement and Tender Processes:

The integrity of government procurement processes has been a key concern. The *Consortium of Bashundhara Multi-Trading Company Ltd. vs. Government of Bangladesh* case highlighted the challenges of ensuring fairness and transparency in tender processes, particularly when urgent public needs are involved. The court's willingness to scrutinize potential irregularities in tender amendments demonstrates a commitment to upholding fair competition. The *Muhammad Aminul Haque (Pvt.) Ltd. vs. Government of Bangladesh and Ors.* case shows the courts ability to reduce debarment periods, showcasing a balance between enforcement and fairness.

Property Disputes and Land Law:

Property disputes continue to be a significant area of litigation. The High Court's directives on interim injunctions and status quo in property disputes emphasize the need for timely resolution and the protection of possession rights. The *Rights of Subsequent Purchasers* case clarified the rights of those who acquire property before auction sales, ensuring fairness in execution proceedings. The amendments to the Rajdhani Unnayan Kartripakkha Allotment Rules, 2024, indicate an ongoing effort to refine land allotment procedures and address the needs of affected individuals.

Fundamental Rights and Administrative Law:

The protection of fundamental rights has been a recurring theme. The *Unlawful Detention and Protection of Fundamental Rights* case reaffirmed the judiciary's commitment to safeguarding personal liberty, emphasizing that detention without proper legal grounds is unacceptable. The *Md. Azizul Alam vs. Government of People's Republic of Bangladesh and Ors.* case reinforced the fundamental right to freedom of movement, highlighting the courts' willingness to strike down administrative orders that infringe upon constitutional rights.

Under the interim government led by Nobel Laureate Professor Yunus, a comprehensive program of legal and constitutional reform has been initiated. A newly appointed committee is actively working on amendments to the Constitution, aiming to address perceived shortcomings and modernize the fundamental legal framework. Simultaneously, a parallel effort is underway to reform the judiciary, encompassing not only the independence of judiciary appointment of new judges at various levels, including the Appellate Division, but also the creation of new courts e.g. commercial court, to reduce caseloads and improve access to justice. This dual focus on constitutional and judicial reform signals a significant shift in the legal landscape, with the government emphasizing transparency, accountability, and the strengthening of democratic institutions. The reforms also reflect a desire to address public concerns regarding the efficiency and impartiality of the judicial system.

These significant changes necessitate that all stakeholders, including businesses, legal professionals, and citizens, remain vigilant and informed about the evolving legal framework, as the implications of these reforms will reshape the legal and political landscape of Bangladesh for years to come.

Shipping

The Bangladeshi maritime sector faces a complex and evolving landscape of legal risks, demanding careful navigation to ensure continued economic growth and stability. Geopolitical instability, particularly the escalating conflicts in the Red Sea and the broader potential for regional escalation, poses a significant threat to vital shipping routes. This situation necessitates a proactive approach to insurance, risk management, and contingency planning to mitigate potential losses from delays and disruptions. Furthermore, the suspected sabotage of underwater data cables in the Baltic Sea serves as a stark reminder of the vulnerability of critical maritime infrastructure, raising concerns about similar threats to Bangladesh's own subsea cables and necessitating enhanced security measures.

The global trend towards stricter trade regulations and increased scrutiny of international commerce adds another layer of complexity. Compliance with evolving sanctions, export controls, and due diligence requirements is paramount to avoid penalties and maintain access to international markets. The US crackdown on trade crimes by Chinese companies and the EU's proposed "insurance checks" on Russian oil tankers highlight the need for robust compliance programs and a thorough understanding of international trade law.

Domestically, port congestion and liability issues present ongoing challenges. Recent disruptions, including internet blackouts and curfews, have underscored the vulnerability of Bangladeshi ports to delays and demurrage disputes. Clear and consistent regulations regarding demurrage waivers and liability are essential to protect the interests of businesses and maintain efficient port operations. The anticipated increase in container traffic at Chattogram Port further emphasizes the need for streamlined port management and effective dispute resolution mechanisms.

Financial risks, including rising global interest rates and increased foreign debt servicing, require careful financial planning and risk mitigation strategies. The potential for higher insurance premiums due to geopolitical instability adds to the financial burden on shipping companies.

The recent expansion of the Bangladesh Inland Water Transport Authority's (BIWTA) responsibilities through the appointment of conservatorships over new river ports introduces new legal and administrative challenges. The effective implementation of these appointments and the harmonization of national maritime law with international conventions are crucial for ensuring the competitiveness and sustainability of Bangladesh's shipping industry. Finally, the continued prevalence of flags of convenience, coupled with the rising power of seafarers, demands a reassessment of vessel registration practices and a commitment to upholding labor rights and safety standards.

Taxation and Finance

Taxation

Tax

- **Digital Tax Filing Takes Center Stage:** Mandatory electronic filing of income tax returns has been implemented for specific individual taxpayers, including government employees in major city corporations, bank employees, telecom workers, and employees of large corporations. This signifies a strong push towards digitalization of tax processes, requiring affected taxpayers to adapt to online filing systems. Failure to comply could result in penalties.
- **International Tax Cooperation Intensifies:** The NBR is actively utilizing Double Taxation Avoidance Agreements (DTAAs) to investigate potential illicit asset transfers to offshore havens. This increased focus on international collaboration signals a heightened risk for individuals and businesses with undisclosed offshore holdings.
- **E-Tax Portal Gets an Upgrade:** The NBR has launched a new and improved online portal for tax filing, promising enhanced server capacity. While this aims to streamline the filing process, businesses should be prepared for potential initial glitches or learning curves associated with any new system.
- **Streamlining the Tax Code:** The NBR has repealed several outdated income tax notifications and amended the First Schedule of the Income-tax Act, removing certain tables and references. These changes are intended to modernize the tax framework, but businesses must ensure they understand the implications of these removals and amendments for their tax calculations and compliance.

7

Vat

- **VAT in the Digital Age:** New VAT guidelines specifically address IT-enabled services and e-book sales, clarifying the application of VAT to these rapidly growing sectors. Businesses in these areas need to ensure their invoicing, record-keeping, and reporting systems are aligned with the new guidelines.
- **Foreign Entities under the Microscope:** Foreign entities operating in Bangladesh face updated tax and VAT compliance requirements, including clear obligations under the Contract Act, 1872, and mandatory BIN registration. International businesses must carefully review these new requirements to avoid compliance issues.
- **Shipbuilding Sector Navigates New VAT Rules:** The shipbuilding industry also faces specific VAT and tax compliance guidelines, emphasizing proper financial record-keeping, invoicing, and adherence to tax deduction requirements. These sector-specific rules require careful attention from shipbuilding businesses.
- **Soybean Oil VAT Adjustment:** A temporary reduction in VAT on soybean oil imports aims to stabilize prices. While this may offer short-term relief, businesses should be aware that such measures can be subject to change, potentially leading to future price fluctuations.

Customs

- **Refining Export Data Accuracy:** The introduction of new custom procedure codes for different export types and mandatory export numbers in the ASYCUDA system are designed to improve the accuracy



of export data. Exporters need to adapt their processes to incorporate these new codes and ensure data consistency.

- **Stricter Oversight for Ship Recycling and Machinery Imports:** Updated regulations for ship recycling and capital machinery imports emphasize compliance with international standards and environmental clearances. Businesses involved in these sectors must ensure their operations meet these stricter requirements.
- **Raising the Bar for Authorized Economic Operators (AEOs):** The NBR has increased capital requirements and operational standards for businesses seeking AEO status. While AEO status offers benefits like faster customs clearance, businesses must now meet higher hurdles to qualify.
- **A Flurry of Customs and VAT Amendments:** Numerous SROs have been issued, amending various aspects of customs and VAT regulations, including HS code classifications, duty exemptions, and warehouse rules. Businesses must stay vigilant and track these changes to ensure compliance and avoid potential disruptions to their operations.
- **Power Sector Gets a Boost:** An import duty exemption for power generation equipment aims to support the power sector. Businesses in this industry should examine the specifics of the exemption to determine its applicability to their imports.

Finance

The Bangladesh financial sector is in a state of rapid transformation. Significant shifts are occurring across the board, impacting banks, borrowers, and investors. Businesses must be prepared for the evolving landscape. Here's a glimpse of the key changes and the associated legal risks:

Banking under the Microscope: Financial institutions are facing intense scrutiny. Forensic audits are targeting struggling banks, raising the stakes for transparency and accountability. Mergers and acquisitions, once a prevalent strategy, are now facing roadblocks, creating uncertainty in the market. A powerful taskforce is spearheading banking sector reforms, signalling potential upheaval in established practices. These developments expose banks to potential legal action related to audit findings, contractual disputes, and compliance with new regulations.

The Loan Landscape is shifting: Borrowing and lending practices are changing significantly. Stricter loan classification rules are on the horizon, potentially revealing a surge in non-performing loans. International financial institutions are playing a key role, with substantial loans tied to significant reforms. Banks face challenges in managing increased NPLs and adapting to new lending requirements. Borrowers may also face legal challenges related to loan classifications and repayment terms.

Navigating the Foreign Exchange Maze: Foreign exchange reserves are fluctuating, creating volatility for businesses engaged in international trade. International support is arriving in the form of substantial loans, but these come with conditions. Currency fluctuations can lead to contractual disputes, and businesses must carefully navigate the conditions attached to international loans.

Regulatory Tsunami: A wave of new regulations and circulars is sweeping through the financial sector. From foreign exchange transactions to loan provisioning, payment systems to capital requirements, the rules are changing rapidly. The sheer volume and complexity of these changes create a high risk of non-compliance,

exposing businesses to penalties, investigations, and legal action. Specific areas of heightened risk include: accurate financial reporting, adherence to new payment system regulations, meeting stricter capital requirements, and complying with evolving credit risk assessment standards.

Digital Finance Revolution: Digital payments and e-wallets are booming, and new legislation is setting the stage for a more structured digital financial ecosystem. Businesses operating in this space must ensure compliance with licensing, security, and data protection requirements to avoid legal pitfalls.

Beyond the Headlines: Other critical changes are impacting the financial landscape. Regulations on financing specific sectors, like jute products, are being updated. Offshore banking is facing increased scrutiny. And even seemingly minor adjustments, like changes to interest rates on certain bonds, can have significant legal implications. Businesses must stay informed about these sector-specific and seemingly minor changes to avoid non-compliance and potential legal challenges.

The Bangladesh financial sector is dynamic and complex. The legal risks are substantial, and businesses must be proactive in managing them. Staying informed, strengthening compliance programs, and seeking expert legal advice are crucial for navigating this evolving landscape.

International

Bangladesh's increasing integration into the global economy, as evidenced by its pursuit of FTAs with Singapore and EPA negotiations with Japan, presents a complex legal landscape. The nation's efforts to recover stolen assets, as highlighted by the BFIU's calls for Mutual Legal Assistance agreements, underscore the necessity for robust international legal frameworks. These initiatives, while promising economic growth, also expose Bangladesh to legal risks associated with international trade and financial regulations. For instance, the ongoing disputes at the WTO, such as those concerning China's trade practices, serve as a reminder of the potential for trade wars and the importance of adhering to international trade law. Moreover, the increasing focus on forced labor in global supply chains, as seen in the U.S. expanding its blacklist of Chinese companies, necessitates stringent due diligence by Bangladeshi businesses operating in international markets. Failure to comply with international labor standards could result in significant trade disruptions and reputational damage.

The NBR's directives to comply with WTO Trade Facilitation Agreement Article 8, and the implementation of avoidance of double taxation treaties with Mauritius, Qatar, and the Netherlands, demonstrates Bangladesh's commitment to aligning its legal framework with international norms. However, the complexities of international law, coupled with evolving global political dynamics, require continuous legal scrutiny and adaptation.

The cases brought before the ICJ, such as those concerning genocide in Myanmar and Ukraine, illustrate the importance of international legal mechanisms in addressing human rights violations and armed conflicts, and the potential for these cases to impact international relations and trade. The Council of Europe's global AI treaty on human rights also indicates the growing need for legal frameworks to regulate emerging technologies, a factor that Bangladesh will also have to contend with. The Climate Change Trust Fund's new guidelines, while aimed at optimizing resource allocation, introduce potential challenges in project implementation and compliance. The stringent requirements for proposals, including detailed baseline data

and adherence to specific thematic areas, could lead to disputes over project selection and prioritization. Furthermore, the emphasis on pilot projects within a specific financial ceiling creates a risk of excluding larger, potentially more impactful initiatives.^{iv}

IT & IP

10

Intellectual Property

The IP landscape in Bangladesh is evolving, with significant implications for businesses seeking to protect their innovations and brands. Recent developments highlight key areas of concern:

Intellectual Property Rights Enforcement: Enforcement of IP rights is becoming increasingly important in Bangladesh as businesses seek to protect their competitive advantage. Recent cases, like the *Sheraton* trademark case, demonstrate the courts' increasing focus on protecting well-known marks. Businesses in Bangladesh face the risk of infringing on the IP rights of others, leading to costly litigation and potential financial penalties. Failure to adequately protect IP can result in the loss of valuable assets and competitive advantage.

Trademark Protection: Protecting trademarks is crucial for building brand recognition and preventing consumer confusion in the Bangladesh market. The *Sheraton* case highlights the importance of protecting well-known marks, even across different product categories. Businesses in Bangladesh face the risk of trademark infringement lawsuits if they use marks that are similar to existing trademarks, especially well-known brands. Failure to conduct thorough trademark searches and obtain appropriate trademark protection can lead to legal challenges and damage to brand reputation. The *Sheraton* case serves as a strong reminder for businesses to prioritize defensive registration of their well-known marks.

Patent Protection: Obtaining patent protection is essential for protecting inventions and securing a competitive edge in the Bangladesh market. The WIPO training program in Bangladesh for patent examiners suggests a potential strengthening of patent examination practices in Bangladesh. Businesses in Bangladesh face the risk of patent infringement lawsuits if they use patented technology without permission. Failure to properly document inventions and pursue patent protection can result in the loss of valuable intellectual property. Increased scrutiny of patent applications, potentially due to enhanced examiner training, may require businesses to be even more diligent in their patent filings.

Protecting intellectual property is crucial for business success in Bangladesh. Businesses must be proactive in securing and enforcing their IP rights. Staying informed about legal developments specific to Bangladesh, such as precedents set by cases like *Sheraton*, essential for navigating the evolving IP landscape.

Information Technology

The IT landscape, including in Bangladesh, is in constant flux, presenting both opportunities and legal risks. Recent developments highlight key areas of concern for businesses operating in or interacting with the Bangladesh IT sector:

Cybersecurity and Data Protection: Cyberattacks are on the rise globally, and Bangladesh is not immune. Data breaches are a significant concern, with regulations like the Digital Security Act 2018 playing a crucial role. The increasing adoption of AI in Bangladesh brings new cybersecurity challenges that businesses must address. Organizations operating in Bangladesh face increasing legal and regulatory scrutiny regarding data protection and cybersecurity. Non-compliance with the Digital Security Act and other relevant laws can lead to hefty fines and legal action. Data breaches can result in lawsuits, reputational damage, and financial losses. The use of AI introduces new legal risks related to data security, algorithmic bias, and potential misuse of AI systems, requiring businesses to stay ahead of evolving regulations and best practices.

E-commerce and Digital Trade: E-commerce is booming in Bangladesh, with cross-border transactions becoming more frequent. The government is actively promoting digital trade, but businesses must navigate evolving regulations. The Cross-Border Digital Commerce Policy (draft) signals potential changes in how cross-border e-commerce is regulated. Businesses engaging in e-commerce in Bangladesh must comply with a complex web of regulations related to data privacy, consumer protection, and cross-border transactions. The draft Cross-Border Digital Commerce Policy, once finalized, will introduce new compliance requirements that businesses must be prepared to meet. Failure to adapt to these changes can lead to fines, legal action, and damage to brand reputation. The facilitation of small-scale e-commerce exports without EXP forms while positive, creates a need to ensure customs and export regulations are still adhered to, minimizing potential legal challenges.

Technology and Innovation: Rapid technological advancements, including AI, cloud computing, and mobile technologies, are transforming industries in Bangladesh. Businesses are increasingly reliant on technology to drive innovation and growth. The rapid pace of technological change creates legal challenges related to intellectual property, data ownership, and liability for AI-driven systems. Businesses in Bangladesh must carefully navigate these legal complexities to protect their innovations and avoid legal disputes. The BTRC and RJSC MoU for data integration, while beneficial for governance, raises potential legal concerns regarding data privacy and security that need to be addressed. The easing of regulations for bandwidth imports, while promoting digital growth in Bangladesh, requires businesses to continue adhering to import and documentation regulations to avoid legal issues.

The IT landscape in Bangladesh is dynamic and presents significant legal risks. Businesses must prioritize cybersecurity, data protection, and compliance with relevant regulations, including the Digital Security Act and emerging e-commerce policies. Staying informed about legal developments specific to Bangladesh and seeking expert legal advice are crucial for mitigating these risks.^v

Investment

The Bangladesh investment landscape is dynamic and complex, with recent developments signalling both opportunities and potential legal challenges. Here's a breakdown of key changes and associated legal risks:

Capital Markets and Regulatory Reforms:

- **BSEC Taskforce for Market Development:** The formation of a BSEC taskforce to enhance the stock market and ensure good governance is a positive step, but its success hinges on effective

implementation of its recommendations. The taskforce's focus on areas like market manipulation and corporate governance could lead to stricter regulations and enforcement actions, increasing legal risks for non-compliant companies. Businesses must stay informed about the taskforce's findings and adapt to any new regulations.

- **BSEC 2024 Rules on Real Estate Investment Trust Fund:** The new REIT Fund Rules aim to attract investment in the real estate sector, but the complex regulations and high minimum investment thresholds could pose challenges. REIT fund managers and investors must carefully navigate the complex rules regarding fund establishment, investment restrictions, and compliance requirements to avoid legal pitfalls.

12

International Investment Landscape:

- **US-China Investment Restrictions:** The US restrictions on investment in China and the ongoing trade tensions create uncertainty for businesses with cross-border operations. Companies with investments in China must carefully assess the impact of these restrictions and ensure compliance with US regulations to avoid penalties and legal challenges. This also highlights the need for diversification and exploring alternative investment destinations.
- **Increased Scrutiny of Chinese Imports:** Scrutiny of Chinese imports, particularly regarding forced labor allegations, poses challenges for businesses relying on Chinese supply chains. Companies importing from China must ensure their supply chains are free from forced labor practices to avoid legal and reputational risks. This could lead to increased due diligence requirements and potential disruptions in supply chains.
- **Global Investment Trends:** Global trends like the rise of EVs, semiconductor manufacturing, and government support for strategic industries create both opportunities and challenges for Bangladesh. Bangladesh must navigate the complexities of international trade and investment regulations to attract foreign investment and ensure its industries remain competitive. This requires careful consideration of trade agreements, investment incentives, and potential legal challenges related to intellectual property and technology transfer.

Investment Opportunities and Challenges in Bangladesh:

- **Investment in BEPZA:** Recent investments in BEPZA highlight the potential for growth in export-oriented industries, but challenges remain in attracting and retaining foreign investment. Businesses investing in BEPZA must navigate complex regulations and ensure compliance with labor laws and environmental standards to avoid legal challenges.
- **Pharmaceutical Exports:** Renata's success in exporting medicines to the US and Australia demonstrates the potential of the pharmaceutical sector, but regulatory compliance and quality

control are crucial. Pharmaceutical companies must comply with stringent regulatory requirements in export markets to avoid product recalls, legal action, and reputational damage.

- **Inward Remittance:** Increased inward remittances are a positive sign for the economy, but reliance on remittances also carries risks. The government must continue to strengthen anti-money laundering (AML) and counter-terrorism financing (CTF) regulations to mitigate the risks associated with cross-border fund transfers.
- **Automotive Industry:** Efforts to diversify the automotive industry with local assembly of KIA vehicles present opportunities, but competition and market demand remain key factors. Automotive companies must comply with safety and environmental regulations and ensure consumer protection to avoid legal challenges.
- **Textile Industry:** The textile industry faces challenges from rising production costs and worker unrest, requiring careful management and potential policy interventions. Textile companies must comply with labor laws and ensure worker safety to avoid legal disputes and reputational damage.
- **Development Projects and Infrastructure:** Efforts to accelerate development project execution are crucial for economic growth, but delays and bureaucratic hurdles remain challenges. Infrastructure projects require careful planning and compliance with environmental and land acquisition regulations to avoid legal challenges and delays.
- **New BIDA OSS Service:** Expanding the BIDA online one-stop service platform is a positive step towards improving the investment climate, but further streamlining and integration are needed. Ensuring data security and privacy in online platforms is crucial to avoid legal challenges and maintain investor confidence.
- **Economic Challenges:** Slow credit growth, reduced private investment, and cuts in foreign aid highlight economic challenges that need to be addressed to attract and sustain investment. Economic instability can lead to legal disputes and challenges for businesses operating in Bangladesh.
- **Addressing Market Manipulation:** While BSEC imposes fines for stock manipulation, the effectiveness of these penalties is questionable, and stronger enforcement measures may be needed. The lack of a clear framework for determining fines for market manipulation creates legal uncertainty and may not be sufficient to deter future offenses.
- **Tax Incentives for IPOs:** Tax holidays for IPOs could encourage companies to go public, but streamlining the IPO process is crucial for success. Companies considering IPOs must carefully navigate the regulatory requirements and ensure transparency and compliance to avoid legal challenges.
- **Reviving State-Run Industries:** Efforts to restart sugar production and revitalize state-run textile mills through PPPs present opportunities, but careful management and oversight are needed. PPPs require robust legal agreements and transparent processes to avoid disputes and ensure the long-term viability of these ventures.



CHAMBERS INITIATIVES | LEGAL INSIGHT | HALF YEARLY | SECOND HALF 2024

The Bangladesh investment landscape is dynamic and complex. While there are opportunities for growth and development, businesses must be aware of the legal risks and challenges. Staying informed about regulatory changes, conducting thorough due diligence, are crucial for navigating this evolving landscape and making informed investment decisions.

© All rights reserved.

ⁱ The Daily Star, Reuters.com

ⁱⁱ Dhaka Tribune

ⁱⁱⁱ The Business Standard

^{iv} Deloitte Services LP, Daily Observer, The Wall Street Journal

^v The Wall Street Journal, The Financial Express

