

---

CHAMBERS GLOBAL PRACTICE GUIDES

---


# Investor-State Arbitration 2025

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

## **Bangladesh: Law and Practice & Trends and Developments**

Mohammed Forrukh Rahman,  
Kamrunnaher Shimu and Salauddin Kader  
Rahman's Chambers



# BANGLADESH



## Law and Practice

### Contributed by:

Mohammed Forrukh Rahman, Kamrunnaher Shimu and Salauddin Kader  
**Rahman's Chambers**

## Contents

### 1. Overview p.5

- 1.1 National Position p.5
- 1.2 Arbitration Conventions p.5
- 1.3 Prevalence of Investor–State Arbitration p.5
- 1.4 Key Industries p.5
- 1.5 Major Arbitrations p.5
- 1.6 Reaction to Awards Made Against the State p.5

### 2. Investment Treaties, Free Trade Agreements and Investment Laws p.6

- 2.1 Bilateral and Multilateral Investment Treaties p.6
- 2.2 Model Bilateral Investment Treaty p.6
- 2.3 Free Trade Agreements p.6
- 2.4 Interpretive Aids p.6
- 2.5 Investment Laws p.6
- 2.6 Arbitration Clauses in Investor–State Contracts p.6

### 3. Substantive Protections and Breaches p.7

- 3.1 Common Complaints p.7

### 4. The Arbitral Tribunal p.7

- 4.1 Limits on Selection p.7
- 4.2 Default Procedures p.7
- 4.3 Court Intervention p.7
- 4.4 Challenge and Removal of Arbitrators p.7
- 4.5 Arbitrator Requirements p.7

### 5. Preliminary and Interim Relief p.7

- 5.1 Types of Relief p.7
- 5.2 Role of Domestic Courts p.7
- 5.3 Security for Costs p.7

### 6. Third-Party Funding p.8

- 6.1 Prevalence of Third-Party Funding p.8
- 6.2 Third-Party Funding Case Law p.8
- 6.3 Disclosure and Security for Costs p.8

### 7. Other Procedural and Evidentiary Issues p.8

- 7.1 Notice of Dispute and Consultation Period p.8
- 7.2 Confidentiality and Transparency p.8

### 8. Damages and Valuation p.8

- 8.1 Remedies p.8
- 8.2 Methodologies for Quantum Assessment p.8
- 8.3 Recovering Interest and Legal Costs p.8
- 8.4 Mitigation of Damages p.8

### 9. Enforcement of Awards p.8

- 9.1 Enforcement Procedure p.8
- 9.2 Approach of the Courts p.9
- 9.3 Asset Tracing and Recovery p.9

**Rahman's Chambers** is a leading international arbitration law firm boasting a global reach. With a strong focus on shipping, infrastructure, construction, energy, aviation, and international trade, the firm provides comprehensive legal counsel and representation to clients in Bangladesh and worldwide. The team's expertise extends beyond traditional cross-border disputes, encompassing both institutional and arbitration matters in jurisdictions outside Bangladesh. The team comprises seasoned international arbitration practitioners and distinguished arbitrators, providing deep expertise in complex legal frameworks and

procedures. The firm boasts extensive experience in shipping, international trade, energy, infrastructure and investment disputes, handling complex matters under various arbitration rules including those of the ICC, the Singapore International Arbitration Centre (SIAC), the LMAA, and the Bangladesh International Arbitration Centre (BIAC). Beyond representing clients in international forums, Rahman's Chambers provides comprehensive support in Bangladesh, including enforcing foreign awards and securing interim relief.

## Authors



**Mohammed Forrukh Rahman** is a leading dispute resolution expert at Rahman's Chambers, with a distinguished career comprising more than 22 years of practice. Admitted to Lincoln's Inn and the Bangladesh

Supreme Court's Appellate Division, and renowned as an arbitrator and international arbitration practitioner, Mohammed's practice covers arbitration, litigation, and mediation. Specialising in shipping, aviation, infrastructure investment and commercial disputes, he handles complex cross-border matters involving international law. Mohammed's deep legal expertise encompasses construction, energy, trade, customs, and company law disputes. Memberships of esteemed arbitration institutes such as the ICC Commission and the LMAA (supporting), as well as his role at the SAARC Arbitration Council, cement Mohammed's leadership in the field.



**Kamrunnaher Shimu** is a seasoned arbitration specialist at Rahman's Chambers, whose extensive experience at Nishimura & Asahi, Japan, equips her with a global perspective on complex commercial

and investment disputes. As an advocate of the Supreme Court of Bangladesh, Kamrunnaher excels in providing strategic support for international arbitration cases. Her expertise lies in conducting in-depth legal research, crafting compelling arguments, and effectively managing case logistics. Kamrunnaher's ability to navigate intricate legal challenges makes her a valuable asset to the arbitration team.



**Salauddin Kader** is a dedicated legal professional with a focus on international trade, investment, and taxation law. As a member of the international and taxes and finance department at Rahman's Chambers,

Salauddin contributes to the firm's practice by supporting due diligence processes and handling customs-, VAT- and tax-related matters. His knowledge of international trade agreements, including the EU's Generalised Scheme of Preferences (GSP) and preferential trade agreements, provides valuable insights for the team. Salauddin's enthusiasm and commitment to understanding complex legal frameworks make him a promising asset to the firm's international arbitration practice.

---

## Rahman's Chambers

Suite 5B (4th Floor)  
Ataturk Tower 22  
Kemal Ataturk Avenue  
Banani  
Commercial Area  
Dhaka-1213  
Bangladesh

Tel: +88 096 786 62666  
Email: [info@rahmansc.com](mailto:info@rahmansc.com)  
Web: [www.rahmansc.com](http://www.rahmansc.com)



## 1. Overview

### 1.1 National Position

Bangladesh maintains a policy favourable to foreign direct investment (FDI) and recognises investor-state arbitration as a crucial mechanism for protecting investments. The government actively seeks FDI through bilateral investment treaties (BITs) and national legislation. Bangladesh remains focused on fostering an investment climate conducive to economic growth, particularly as the country prepares for graduation from Least Developed Country (LDC) status (expected in 2026).

### 1.2 Arbitration Conventions

Bangladesh is a signatory to the major international arbitration conventions. It ratified the ICSID Convention in 1980 and acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”) in 1992. The Arbitration Act 2001 (based on the UNCITRAL Model Law on International Commercial Arbitration (1985) (the “UNCITRAL Model Law”) serves as the implementing legislation.

### 1.3 Prevalence of Investor–State Arbitration

Investor–state arbitration is an established method for resolving disputes. Foreign investors strongly prefer arbitration over domestic litigation, which is often perceived as time-consuming.

### 1.4 Key Industries

Arbitration activity involving the state and state-owned entities (SOEs) is concentrated in two main sectors, as follows.

- Energy and power – historically the most active area, involving oil and gas exploration (contracts with Petrobangla) and power generation (power purchase agreements (PPAs) with the Bangladesh Power Development Board (BPDB)). Disputes frequently concern tariffs, capacity payments, and contract termination.
- Infrastructure – increasingly prominent owing to large-scale PPPs for expressways (eg, Dhaka Elevated Expressway and Hatirjheel-Demra Highway), bridges, and port developments. Disputes

often arise concerning project delays, cost overruns, variations, and land acquisition.

### 1.5 Major Arbitrations

Several arbitrations have defined the scope of investment protection and the consequences of state actions, as follows.

- *Saipem SpA v People’s Republic of Bangladesh* (ICSID Case No ARB/05/7) (“*Saipem*”) – this seminal case established the doctrine of “judicial expropriation”. The ICSID tribunal held that the actions of Bangladeshi courts (which revoked the authority of an ICC tribunal seated in Dhaka and nullified its award) constituted an unlawful indirect expropriation of the investor’s contractual rights.
- *Smith Cogeneration (Bangladesh) Private Limited v BPDB* (ICC arbitration and enforcement) – this case highlighted the risks of SOE non-participation in arbitration. Crucially, the subsequent enforcement action led the Supreme Court of Bangladesh (Appellate Division, 2015) to rule decisively that SOEs cannot use procedural mechanisms outside the Arbitration Act 2001 (specifically Order XXI Rule 29 of the Code of Civil Procedure (CPC)) to stay the enforcement of foreign arbitral awards.
- *Niko Resources (Bangladesh) Ltd v BAPEX and Petrobangla* (ICSID Case Nos ARB/10/11 and ARB/10/18) (“*Niko Resources*”) – these were consolidated, contract-based ICSID cases involving claims related to gas field blowouts and unpaid invoices, featuring complex jurisdictional debates.
- *Chevron v People’s Republic of Bangladesh* (ICSID Case No ARB/06/10) although Bangladesh prevailed on the merits, the tribunal notably awarded costs against Bangladesh owing to Bangladesh’s dilatory conduct during the proceedings.

### 1.6 Reaction to Awards Made Against the State

Bangladesh and its SOEs typically utilise available legal recourse, including jurisdictional challenges and annulment proceedings. While the state vigorously contests claims, the ultimate rejection of the annulment application in *Niko Resources* (2023) demonstrates that the review mechanisms within the ICSID framework are utilized, respecting the finality of the process.

## 2. Investment Treaties, Free Trade Agreements and Investment Laws

### 2.1 Bilateral and Multilateral Investment Treaties

According to UNCTAD (United Nations Conference on Trade and Development) data, Bangladesh has signed 33 BITs – of which, 25 are currently in force. Key treaty partners include the USA, the UK, China, Germany, Japan, and India. Bangladesh is also a party to several treaties with investment provisions (TIPs).

### 2.2 Model Bilateral Investment Treaty

Bangladesh does not utilise a single “model BIT”. Its treaties reflect the prevailing standards at the time of negotiation. Older BITs typically include broad protections. A notable development is the Joint Interpretative Notes (JIN) adopted in 2017 for the India–Bangladesh BIT (2009), which refined the scope of protections, pegging the Fair and Equitable Treatment (FET) standard to the customary international law minimum.

### 2.3 Free Trade Agreements

Bangladesh is a signatory to regional trade agreements – for example, SAFTA (South Asian Free Trade Area) and BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation). However, these currently lack the detailed investor protections and robust investor–state dispute settlement (ISDS) mechanisms found in BITs.

### 2.4 Interpretive Aids

Bangladesh generally does not publish extensive commentaries. Interpretation typically relies on the Vienna Convention on the Law of Treaties (VCLT). The primary exception is the 2017 JIN concerning the India–Bangladesh BIT (2009).

### 2.5 Investment Laws

The primary national legislation is the Foreign Private Investment (Promotion and Protection) Act 1980 (the “FPIP Act”). It guarantees FET, full protection and security, national treatment, protection against expropriation (requiring adequate compensation), and the repatriation of capital and returns. The FPIP Act provides a baseline level of protection but does not contain provisions referring investors directly to international arbitration.

### 2.6 Arbitration Clauses in Investor–State Contracts

Direct arbitration clauses in contracts between investors and SOEs or state authorities are standard practice – although their robustness varies.

- Infrastructure PPPs – agreements for major projects typically include multi-tiered dispute resolution clauses culminating in international arbitration, often specifying recognised institutional rules (SIAC or ICC).
- PPAs – PPAs exhibit diverse approaches, as follows.
  - (a) International standard – many PPAs, particularly for large-scale fossil fuel projects (eg, Bibiyana II PPA), adopt international best practices, specifying a foreign seat (eg, Geneva and Singapore) and recognised institutional rules (ICC and UNCITRAL). Some explicitly provide pathways to ICSID.
  - (b) Domestic risk – conversely, some PPAs (including certain renewable energy agreements) stipulate arbitration under the Bangladesh Arbitration Act 2001 with a seat in Dhaka. This poses significant risks of judicial interference, as evidenced in *Saipem*.
- The BERC conflict and the hierarchy of dispute resolution – the Bangladesh Energy Regulatory Commission (BERC) Act 2003 grants the BERC statutory authority to arbitrate disputes between licensees in the energy sector. However, this statutory mandate operates within a clear legal hierarchy, as follows.
  - (a) Treaty arbitration (ISDS) – international treaty obligations supersede domestic law. If a foreign investor invokes a BIT, they can access international arbitration (eg, ICSID), bypassing BERC entirely.
  - (b) Contractual arbitration – the Supreme Court of Bangladesh has affirmed that specific, mutually agreed arbitration clauses within a PPA (eg, specifying ICC/SIAC rules) supersede the BERC’s general statutory arbitration mandate.
- Regional mechanisms – certain regional agreements mandate the South Asian Association for Regional Cooperation (SAARC) Arbitration Council (“SARCO”) as the dispute resolution forum (eg,

SAARC Framework Agreement for Energy Cooperation).

## 3. Substantive Protections and Breaches

### 3.1 Common Complaints

The most frequently cited complaints by investors against Bangladesh centre on breaches of contract by SOEs and allegations of expropriation.

- Breach of contract – disputes frequently arise from alleged breaches of production sharing contracts (PSCs), PPAs, and PPP agreements, including issues related to cost recovery, tariffs, failure to make payments, and premature termination.
- Expropriation – claims of indirect expropriation are significant. The *Saipem* case established that judicial interference with an arbitration and the nullification of an award by domestic courts can constitute an unlawful expropriation of contractual rights.

## 4. The Arbitral Tribunal

### 4.1 Limits on Selection

Parties generally enjoy broad autonomy in selecting arbitrators, subject to the applicable BIT or contract and the chosen arbitration rules. The Arbitration Act 2001 reflects this autonomy; Section 12 (2) explicitly states that a person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

### 4.2 Default Procedures

If the parties' chosen method for selecting arbitrators fails, the default procedure is governed by the applicable arbitration rules. If the Arbitration Act 2001 applies, Section 12 provides a default mechanism, involving judicial assistance from the Chief Justice of Bangladesh or a designated Supreme Court judge for international commercial arbitration (Section 12 (5)).

### 4.3 Court Intervention

Courts in Bangladesh intervene in the selection of arbitrators primarily as a default appointing author-

ity when the agreed mechanism fails, as prescribed under Section 12 of the Arbitration Act 2001.

### 4.4 Challenge and Removal of Arbitrators

The Arbitration Act 2001 governs challenges to the arbitrators. Section 13 outlines the grounds, which are that:

- there are justifiable doubts as to the arbitrator's independence or impartiality; or
- the arbitrator lacks agreed qualifications.

The tribunal decides on the challenge. If unsuccessful, the party may appeal the decision to the High Court Division (Section 14 (4)).

### 4.5 Arbitrator Requirements

Independence and impartiality are fundamental requirements. Section 13 of the Arbitration Act 2001 mandates that a prospective arbitrator must disclose any circumstances likely to give rise to justifiable doubts regarding their independence or impartiality. This duty is ongoing.

## 5. Preliminary and Interim Relief

### 5.1 Types of Relief

An arbitral tribunal seated in Bangladesh is permitted to award binding preliminary or interim relief. Under Section 21 of the Arbitration Act 2001, the tribunal may order any interim measure of protection it considers necessary in respect of the subject matter of the dispute.

### 5.2 Role of Domestic Courts

Domestic courts play a supportive role. A landmark decision by the Appellate Division (*Italian Thai Development v Export-Import Bank of China*) confirmed that Bangladeshi courts have the authority to grant interim measures in support of arbitration, even if the seat is outside Bangladesh (Section 7A). Courts can grant relief before, during or until the enforcement of the award.

### 5.3 Security for Costs

The national law allows both the courts and the arbitral tribunal to order security for costs. Section 21 (2)

of the Arbitration Act 2001 empowers the tribunal to require the party requesting an interim measure to provide appropriate security.

## 6. Third-Party Funding

### 6.1 Prevalence of Third-Party Funding

The Arbitration Act 2001 is silent on third-party funding. Although the status of common law doctrines of maintenance and champerty remains somewhat ambiguous, it is generally considered that funding agreements are likely permissible unless contrary to public policy. Third-party funding is not prevalent in Bangladesh.

### 6.2 Third-Party Funding Case Law

There is no significant recent case law in Bangladesh specifically addressing third-party funding in the context of arbitration.

### 6.3 Disclosure and Security for Costs

There are currently no statutory rules requiring the mandatory disclosure of a third-party funding arrangement.

## 7. Other Procedural and Evidentiary Issues

### 7.1 Notice of Dispute and Consultation Period

Pre-arbitration procedural requirements are dictated by the specific BIT or contract. Commonly, these instruments require a mandatory negotiation or consultation period (cooling-off period), typically lasting three to six months, following a formal Notice of Dispute.

### 7.2 Confidentiality and Transparency

The Arbitration Act 2001 does not mandate confidentiality. In investor–state disputes, there is inherent tension between the private nature of arbitration and the public interest. Increasing demands for transparency are influencing modern institutional rules. However, most of Bangladesh’s existing BITs predate this trend and do not typically include extensive transparency provisions.

## 8. Damages and Valuation

### 8.1 Remedies

Arbitral tribunals generally have broad authority to award remedies, primarily focused on monetary compensation. Consistent with the international law principle of full reparation, the goal is compensatory; punitive damages are generally not awarded in ISDS.

### 8.2 Methodologies for Quantum Assessment

The following standard international valuation methodologies are employed to quantify damages, typically aiming to establish the fair market value (FMV) of the investment:

- discounted cash flow (DCF) – commonly used for going concerns or long-term project;
- market value – used where reliable data exists, based on comparable transactions; and
- cost-based approaches (sunk costs) – used when future profitability is deemed too speculative.

### 8.3 Recovering Interest and Legal Costs

Parties are generally entitled to recover interest (pre-award and post-award), often calculated at commercially reasonable rates (frequently compound interest). International practice increasingly follows the “costs follow the event” approach. Tribunals retain discretion based on conduct. As seen in *Chevron v Bangladesh*, dilatory conduct can lead to adverse cost awards even for the prevailing party.

### 8.4 Mitigation of Damages

Under established principles of international law, the investor has a duty to mitigate its losses. Failure to take reasonable steps may lead to a reduction in the compensation awarded.

## 9. Enforcement of Awards

### 9.1 Enforcement Procedure

The procedures and standards for enforcing an award in Bangladesh are as follows.

- ICSID awards – these are recognised as binding and enforced as a final decree of a domestic court (Article 54 of the ICSID Convention).

- Non-ICSID (foreign) awards – enforced under Section 45 of the Arbitration Act 2001 (New York Convention) via the District and Sessions Judge Court in Dhaka. The Supreme Court's ruling in *Smith Cogeneration v BPDB* is crucial, preventing the use of generalised procedural tools under the CPC to stay the enforcement of a foreign award by citing pending challenges in other domestic courts.

### Consequences of Non-Compliance with ICSID Awards

Failure by Bangladesh to comply with a final ICSID award constitutes a breach of Bangladesh's international treaty obligations under the ICSID Convention. Although Article 27 of the ICSID Convention prohibits the investor's home state from exercising diplomatic protection during the arbitration, this prohibition ceases if the host state fails to honour the resulting award. In such instances, the investor's home state may exercise diplomatic protection, which can include formal protests, negotiations, or even the initiation of state-to-state dispute settlement proceedings to compel compliance.

### 9.2 Approach of the Courts

Since the Arbitration Act 2001, the higher judiciary has generally adopted a supportive approach towards the recognition of international awards.

### Sovereign Immunity

Bangladesh adheres to the restrictive theory of sovereign immunity, protecting assets used for sovereign purposes (*jure imperii*) but generally not those used for commercial activities (*acta jure gestionis*).

Consent to arbitration waives immunity from jurisdiction. Furthermore, PPAs and implementation agreements in Bangladesh typically contain explicit, broad waivers of sovereign immunity, covering jurisdiction, attachment of assets, and execution of awards – confirming the commercial nature of the activities.

However, the scope of these waivers varies. Some older PPAs include carve-outs that protect assets necessary for maintaining the electrical grid ("protected assets") from execution, thus limiting recovery options.

### 9.3 Asset Tracing and Recovery

Enforcement is typically pursued against the commercial assets of the state or SOEs. Sophisticated enforcement strategies may involve targeting international financial flows, such as funds held in Nostro accounts (correspondent accounts held by Bangladeshi banks abroad). Identifying the commercial purpose of such accounts, supported by contractual waivers of immunity, is crucial for successful execution in the jurisdiction where the account is located.

## Trends and Developments

### Contributed by:

Mohammed Forrukh Rahman, Kamrunnaher Shimu and Salauddin Kader  
Rahman's Chambers

**Rahman's Chambers** is a leading international arbitration law firm boasting a global reach. With a strong focus on shipping, infrastructure, construction, energy, aviation, and international trade, the firm provides comprehensive legal counsel and representation to clients in Bangladesh and worldwide. The team's expertise extends beyond traditional cross-border disputes, encompassing both institutional and arbitration matters in jurisdictions outside Bangladesh. The team comprises seasoned international arbitration practitioners and distinguished arbitrators, providing deep expertise in complex legal frameworks and

procedures. The firm boasts extensive experience in shipping, international trade, energy, infrastructure and investment disputes, handling complex matters under various arbitration rules including those of the ICC, the Singapore International Arbitration Centre (SIAC), the LMAA, and the Bangladesh International Arbitration Centre (BIAC). Beyond representing clients in international forums, Rahman's Chambers provides comprehensive support in Bangladesh, including enforcing foreign awards and securing interim relief.

## Authors



**Mohammed Forrukh Rahman** is a leading dispute resolution expert at Rahman's Chambers, with a distinguished career comprising more than 22 years of practice. Admitted to Lincoln's Inn and the Bangladesh

Supreme Court's Appellate Division, and renowned as an arbitrator and international arbitration practitioner, Mohammed's practice covers arbitration, litigation, and mediation. Specialising in shipping, aviation, infrastructure investment and commercial disputes, he handles complex cross-border matters involving international law. Mohammed's deep legal expertise encompasses construction, energy, trade, customs, and company law disputes. Memberships of esteemed arbitration institutes such as the ICC Commission and the LMAA (supporting), as well as his role at the SAARC Arbitration Council, cement Mohammed's leadership in the field.



**Kamrunnaher Shimu** is a seasoned arbitration specialist at Rahman's Chambers, whose extensive experience at Nishimura & Asahi, Japan, equips her with a global perspective on complex commercial

and investment disputes. As an advocate of the Supreme Court of Bangladesh, Kamrunnaher excels in providing strategic support for international arbitration cases. Her expertise lies in conducting in-depth legal research, crafting compelling arguments, and effectively managing case logistics. Kamrunnaher's ability to navigate intricate legal challenges makes her a valuable asset to the arbitration team.



**Salauddin Kader** is a dedicated legal professional with a focus on international trade, investment, and taxation law. As a member of the international and taxes and finance department at Rahman's Chambers,

Salauddin contributes to the firm's practice by supporting due diligence processes and handling customs-, VAT- and tax-related matters. His knowledge of international trade agreements, including the EU's Generalised Scheme of Preferences (GSP) and preferential trade agreements, provides valuable insights for the team. Salauddin's enthusiasm and commitment to understanding complex legal frameworks make him a promising asset to the firm's international arbitration practice.

---

## Rahman's Chambers

Suite 5B (4th Floor)  
Ataturk Tower  
22 Kemal Ataturk Avenue  
Banani  
Commercial Area  
Dhaka-1213  
Bangladesh

Tel: +88 096 786 62666  
Email: [info@rahmansc.com](mailto:info@rahmansc.com)  
Web: [www.rahmansc.com](http://www.rahmansc.com)



## **Beyond the Framework: Due Diligence, Dispute Risks, and Evolving Strategies for Investment in Bangladesh**

Bangladesh presents a compelling narrative of growth, driven by significant ambitions in infrastructure and energy development. This ambition attracts substantial foreign direct investment (FDI) and international contracting expertise. However, the landscape is complicated by significant macroeconomic pressures, intricate regulatory environments, and the practical challenges of project execution.

Although the legal framework for investor protection is modern, the practical realities on the ground often dictate the success of investments and the trajectory of disputes. This article analyses the critical importance of rigorous due diligence, the shift in procurement strategies, the evolving definition of “investor”, and the key dispute risks shaping the investment climate in Bangladesh.

### *The shift to competitive bidding and the need for rigorous legal oversight*

A significant transformation is underway in Bangladesh's procurement strategy for major projects. The government is decisively transitioning away from reliance on unsolicited proposals and fast-tracked approvals (such as those facilitated by the Quick Enhancement of Electricity and Energy Supply Act 2010) towards standardised, competitive bidding processes governed by the Public Procurement Act and associated regulations.

This shift aims to enhance transparency and secure better value for money. However, it also introduces new challenges for investors and contractors. Competitive tender processes are characterised by complex procedures, strict timelines, and rigorous evaluation criteria. The scope for amending bid documents or negotiating terms post-submission is extremely limited.

In this environment, the timing of decisions and the meticulous preparation of bid documents are critical. Errors or omissions during the bidding stage can lead to disqualification or the acceptance of unfavourable contractual terms that cannot be easily renegotiated later. Consequently, specialised legal assistance is

now indispensable throughout the entire tender process – from the initial review of the request for proposal (RFP) and the drafting of clarifications, to ensuring compliance with all mandatory requirements and finalising the bid submission. Rigorous legal oversight is necessary to navigate these complex procedures and ensure that decisions taken at different stages are properly documented and strategically sound.

### *The imperative of rigorous due diligence*

A recurring theme in disputes involving major projects in Bangladesh is the gap between contractual assumptions and operational realities. Although the government and state-owned enterprises (SOEs) typically provide feasibility studies and foundational data, tender documents for major infrastructure and energy projects invariably place the burden of verification on the bidder. These documents often contain explicit disclaimers regarding the accuracy or completeness of the provided information and require bidders to conduct their own independent investigations. Consequently, the responsibility for due diligence is effectively mutualised; the state provides the data, but the investor assumes the risk of its reliability.

Comprehensive, independent due diligence is essential. It should be focused on three critical areas, as follows.

### *Land acquisition and site verification*

Land acquisition remains the single most significant cause of delays and disputes in infrastructure and energy projects. Bangladesh's high population density and complex land tenure systems create inherent challenges. Delays in the handover of unencumbered land by the government authority to the project company frequently precipitate claims for extensions of time (EoT) and additional costs.

Due diligence must go beyond reviewing title documents. Physical verification of the site is crucial to assess encumbrances, potential resettlement issues, and the actual ground conditions. A thorough understanding of the Acquisition and Requisition of Immovable Property Act 2017 and the social dynamics surrounding the project site is vital for realistic project scheduling and risk pricing.

## *Regulatory approvals and environmental clearances*

The regulatory landscape is complex, involving a multiplicity of agencies. Disputes frequently arise when necessary permits are delayed or issued with unexpected conditions. A notable trend involves SOEs proceeding with tenders before securing all critical clearances, transferring the risk to the contractor or investor.

By way of example, in the power sector, environmental impact assessments (EIAs) and specific technical clearances (such as height clearances from the Civil Aviation Authority for power plant stacks) are critical. If these are not finalised before contract execution, subsequent regulatory conditions can render the original technical specifications unworkable. Due diligence must involve a critical review of the status of all required permits and an independent assessment of the feasibility of obtaining pending approvals.

## *Project conditions and technical feasibility*

Investors should independently verify the technical assumptions and feasibility studies provided by the government. Unforeseen site conditions, inadequate supporting infrastructure (eg, grid connectivity for power projects), or erroneous assumptions in feasibility reports can lead to significant variations and cost overruns. Independent technical due diligence is necessary to validate the project's viability under the proposed contractual terms.

## *Broadening the definition of "investor"*

The scope of protection available under international investment law and domestic legislation is broad, extending beyond traditional FDI providers.

## *International contractors as investors*

International engineering, procurement, and construction (EPC) contractors play a crucial role in Bangladesh's development. Under most bilateral investment treaties (BITs) and the domestic Foreign Private Investment (Promotion and Protection) Act 1980, the definition of "investment" typically includes contractual rights, mobilisation of capital, and assumption of risk. Consequently, EPC contractors committing significant resources to long-term projects often qualify as "investors" entitled to protection against arbitrary state action or expropriation.

## *Strategic structuring: the role of branch offices*

A common strategy employed by international contractors is the establishment of a branch office in Bangladesh. This structure serves several strategic purposes, as follows.

- Tax efficiency – operating through a registered branch allows companies to utilise double taxation avoidance agreements (DTAAs) between Bangladesh and their home jurisdiction, thereby optimising tax liabilities on profits generated from the project.
- Regulatory compliance – a local presence facilitates compliance with domestic registration and reporting requirements.
- Strengthening investor status – establishing a formal presence in the territory consolidates the contractor's status as an investor, enhancing their ability to claim protections under applicable BITs or domestic investment laws should a dispute escalate beyond a purely contractual claim.

## *Key dispute areas in major projects*

The complexity of large-scale projects in Bangladesh invariably gives rise to disputes. Understanding the common flashpoints is crucial for effective contract management and dispute resolution strategies.

## *Delays and EoT*

Disputes over EoT are ubiquitous. Although land acquisition delays are a primary cause, other factors include regulatory hurdles, force majeure events, and the actions of the employer (SOE). The COVID-19 pandemic introduced new complexities, with debates centering on whether government-ordered lockdowns constitute a force majeure event or a "change in law" entitling the contractor to both time and cost relief under standard contract clauses (eg, FIDIC (*Fédération Internationale des Ingénieurs-Conseils*/International Federation of Consulting Engineers) clauses).

## *Variations, additional costs, and changes in law*

Unforeseen site conditions often necessitate contract variations. Disputes commonly arise over the valuation of these variations and the entitlement to associated costs. Furthermore, changes in the fiscal regime can significantly impact project economics. For instance, the imposition of VAT on payments under PPP agree-

ments (such as “availability payments” for expressways) often leads to disputes regarding whether the contract allows for the pass-through of these new costs to the government authority.

### *Payment defaults and foreign exchange risks*

The current macroeconomic climate, characterised by pressure on foreign exchange reserves, heightens the risk of payment defaults by SOEs – particularly in the energy sector with regard to capacity payments. Additionally, investors face risks related to the repatriation of profits. Although investment agreements guarantee the free transfer of funds, restrictions or delays imposed by the central bank due to foreign exchange shortages can impede repatriation, potentially forming the basis of a dispute.

### *Conclusion: the necessity of sophisticated risk management*

The investment landscape in Bangladesh offers significant opportunities but demands a sophisticated approach to risk management. Success hinges not merely on the legal framework, but on a granular understanding of the operational and regulatory realities. Rigorous, independent due diligence – particularly concerning land, permits, and technical feasibility – is imperative, especially as tender documents increasingly place the burden of verification on the investor.

Furthermore, the shift to competitive bidding necessitates expert legal guidance from the outset of the procurement process. By strategically structuring their presence and meticulously managing contractual risks, investors and international contractors can navigate the complexities of this dynamic market.

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Rob.Thomson@chambers.com](mailto:Rob.Thomson@chambers.com)