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CONTRIBUTORS

Editor
Fouzia Fariha

Research Intern
Provat Bala

Research Associate
Nabila Akter

Research Intern
Achia Akter

Research Intern & Graphics Designer
Abdullah Al Motrood Yeasir

Backlog of Company Bench Cases & Need for Dedicated Courts

Introduction:

The slow resolution of company disputes has long posed a serious obstacle to business certainty and economic growth in Bangladesh. The Company Bench of the High Court Division, which handles business and corporate disputes, has a backlog of approximately 15,000 cases[1]. Judge shortages, complicated procedures, and poor case management are some of the causes of this accumulation. For a nation aspiring to attract foreign direct investment (FDI) and declassified as a Least Developed Country (LDC), these bottlenecks in resolving corporate feuds are particularly detrimental.

Key Discussion:

Currently, in Bangladesh, there are over 280,000 registered businesses, but there are not enough specialized courts to handle business disputes, such as disagreements over annual general meetings, share distributions, and minority shareholder rights[2]. Judges are overburdened by the two benches designated to handle these cases, which causes the proceedings to drag on for a long time[3].

The backlog of cases enfeebles the desired trade-led economic growth in Bangladesh. Globally, studies show that timely justice correlates with stronger economic growth, 33% more impactful in civil law systems[4]. The nation has one of the lowest rates of contract enforcement in the world, ranking 168th out of 190 countries in the World Bank's Doing Business Report 2020[5]. An estimated USD 3.5 billion in trade disputes is still pending due to the lack of an efficient dispute resolution process[6]. Delays in resolving disputes can stall business operations, deter investments, and erode trust in the legal system.

To address these challenges, experts recommend establishing dedicated commercial courts to expedite the resolution of business-related disputes[7]. A key reform would be enacting a Commercial Courts Act. For instance, India introduced the Commercial Courts Act, 2015, which provides courts with specific jurisdiction over business contract disputes, trade disagreements, intellectual property issues, and other commerce-related matters between businesses or individuals engaged in commercial transactions[8].

Such legislation would include alternative dispute resolution (ADR) procedures, establish stringent deadlines for resolution, and define commercial disputes precisely. In India, according to Section 12A of the Commercial Courts Act in 2015, pre-institution mediation and settlement (PIMS) is mandatory for commercial suits that do not seek urgent interim relief. This process allows parties to resolve disputes before formally filing a case, which helps businesses to maintain confidentiality, preserve reputations, and sustain healthy commercial relationships. Capacity building is also essential for the effectiveness of such courts. The Supreme Court of India emphasizes the need for mandatory training of judges on current commercial practices, transactions, and trends[9].

Concluding Remarks:

Beyond merely being a legal issue, the backlog of cases before Bangladesh's Company Bench is impeding the country's economic development. The foundation of investor trust and company stability is effective and predictable dispute resolution. Without systemic reforms, including the establishment of dedicated corporate courts, Bangladesh risks undermining its aspirations for a modern, investment-friendly economy. In addition to reducing backlogs, a specialized court structure backed by qualified judges, digital infrastructure, and transparent procedural frameworks would enhance the credibility and competitiveness of Bangladesh's judicial system in the global arena.

Source: Deutsche Welle (DW)

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Securing Credit through Documentation:
Addressing Scams in Letters of Guarantee and Mortgage Deed

H. M. Hasan Mahmud
PO & Associate Manager
Legal Affairs Division, EBL

Introduction:

In the modern banking system, proper documentation plays a vital role in securing credit exposure and protecting the bank's interest against defaulter borrower(s). Despite rigorous compliance standards, instances of fraudulent or defective documentation often referred to as "documentation scams" remain a contemporary risk for the Banks as well as Financial Institution.

These malpractices not only weaken contractual enforceability but also expose banks to litigation and reputational risk. Among the most vulnerable documents are Letters of Guarantee and Deeds of Mortgage, which, if improperly executed, can seriously hamper recovery proceedings through court. This write-up highlights key challenges faced in these areas, related regulatory guidance/directives, and effective solutions aligned with contemporary risk management standards[1].

Key Discussion:

<u>Letter of Guarantee</u>

A Letter of Guarantee serves as a vital instrument of secondary security, binding the guarantor to fulfil the borrower's financial obligations in the event of default. It enhances the lender's confidence by ensuring an additional layer of repayment assurance. Proper execution, including verified signatures, witness attestation, and compliance with regulatory directives, is essential to maintain its legal enforceability and safeguard the bank's interests against potential disputes or fraudulent claims.

Challenges:

Letters of Guarantee serve as crucial secondary security documents for loans, binding guarantor(s) to fulfill their obligations if the borrower(s) defaults or unable to pay the borrowing money to the Bank. However, practical challenges persist:

- Guarantor(s) sometimes deny their signature or thumb impression, creating enforceability disputes.
- In many cases, signatures or thumb impressions are not taken in front of bank representatives or officials, sometimes raising authenticity questions.
- Letters of Guarantee are often unsupported by witness signatures, weakening its legal evidentiary value in the court proceeding.

Solutions:

To mitigate the above risks, the bank must ensure that guarantor(s) sign and affix thumb impressions in the presence of the bank authorized officials or representatives, in line with BRPD Letter dated 19.08.2025 and also BRPD Circular No. 15 dated 02.08.2023. Additionally, every Letter of Guarantee should be witnessed, and guarantor's credentials should be verified against their National ID. These protections strengthen enforceability and reduce disputes[2].

<u>Deed of Mortgage</u>

A Deed of Mortgage is a fundamental security document that creates a legal charge over the borrower's immovable property in favour of the bank. It ensures the lender's right to recover dues through the mortgaged asset in case of default. Proper verification of ownership, accurate documentation, and strict compliance with legal formalities are crucial to uphold its validity and protect the bank from defective or unenforceable securities.

Challenges:

Deed of Mortgage is the key documents of secured lending system since the very beginning. A common challenge is the defective ownership or title of the mortgagor(s). Inadequate chain of ownership, missing documents or inconsistency with the sanction letter often renders the mortgage legally questionable.

Solutions:

The Banks should meticulously verify the chain of ownership and retain the original Title Deed(s) or Sub-Registry Office (SRO) tokens in its custody. And Deed of Power of Attorney (POA) should be supported by the Deed of Mortgage, particularly in cases where Deed of Title and Deed of Mortgage are executed on the same date but the borrower avoids executing an Irrevocable General Power of Attorney (IGPA) after completing mutation formalities. Further, the Bank should ensure schedule of Title Deed(s), Mortgage Deed(s), and Deed of Power of Attorney must align exactly with the sanction letter issued by the Bank in favour of borrower, avoiding inconsistencies that can be exploited in disputes[3].

Relevant Provision:

The Guidelines on Credit Risk Management (CRM) for Banks, issued by Bangladesh Bank on 08.03.2016, provide the overarching framework for ensuring healthy security documentation. These guidelines emphasize:

- Proper due diligence before accepting collateral security.
- Retention of authentic and original documents.
- Verification of guarantor's and mortgagor's identities strongly.
- Ensuring legal enforceability of all collateral securities.

BRPD directives (2023 & 2025) on guarantor verification complement CRM Guidelines by reinforcing procedural interest. Collectively, these regulations form the compliance backbone to protect banks from documentation scam.

Concluding Remarks:

Documentation scam is a contemporary challenge that directly threatens the legal security of banks. Weaknesses in Letters of Guarantee and Deeds of Mortgage can result in unenforceable securities, delayed recoveries, and destruction of institutional faith. By adopting regulatory directives, ensuring face-to-face verification, securing proper witnessing, and maintaining strict custody of title documents, banks can significantly mitigate these risks.

1. Bangladesh Bank, Guidelines on Credit Risk Management (CRM) for Banks (Dhaka: Bangladesh Bank, 2016), 4–5.
2. Bangladesh Bank, BRPD Circular No. 15, dated 02 August 2023.
3. Bangladesh Bank, BRPD Letter, dated 19 August 2025.

Outsourcing Service Procurement Policy 2025

April 15, 2025

Introduction:

Outsourcing has become a vital strategy for achieving cost-effective growth, accessing talent, and enhancing operational efficiency. The Ministry of Finance of Bangladesh issued the Outsourcing Service Procurement Policy 2025 (hereinafter "the Policy") on April 15, 2025, which provides a framework for controlling the use of outsourcing services in the public sector. The policy replaces the Outsourcing Service Procurement Policy 2018. The goal of the Policy is to improve worker welfare, efficiency, and transparency in government procurement processes. It focuses on hiring personnel through outside organizations for non-core tasks, such as administrative support, IT services, and security, and applies to all government organizations, including ministries, departments, and autonomous bodies.

Key Discussion:

The Policy outlines several key provisions. It increases monthly service fees across five general categories and three special service areas under Schedule B of the Policy. Salaries are structured across three location-based tiers.

For Category One workers in the Dhaka Metropolitan Area (hereinafter 1st area), including heavy drivers, electricians, lift mechanics, and technicians, the monthly salary will be Tk 20,212. In Chattogram, Khulna, Rajshahi, Sylhet, Barishal, Rangpur, Narayanganj, Gazipur, and Savar, (hereinafter 2nd area) they will receive Tk 19,08. In other areas, their salary would be Tk 18,514.

For Category Two workers in Dhaka city, including light drivers, plumbers, masons, carpenters, pump and generator operators, and meter readers, monthly salaries will be Tk 19,636. In the 2nd zone, the new salaries are Tk 18,540. In other areas, outsourced workers will receive Tk 17,992.

For Category Three workers, including assistant engine mechanics, tailors, and divers, monthly salaries in Dhaka are Tk 19,236. In the 2nd area, the salary is Tk 18,165. In other areas, it is 17,630.

For Category Four workers, including laundry operators, assistant electricians, cooks, gardeners, and experienced labourers, monthly salaries are Tk 18,660 in Dhaka. In the 2nd area, the salary is Tk 17,625. In other areas, it is now Tk 17,108.

For Category Five workers in Dhaka, including security guards, cleaners, electric and carpenter helpers, sanitary helpers, pump helpers, and liftmen, salaries are Tk 18,180. In the 2nd area, they will receive Tk 17,175, while in other areas the salary will be Tk 16,673.

It also introduces festival bonuses equivalent to 50% of monthly salary, a new year allowance of 20% of monthly salary, 15 days of leave per calendar year, 45 days of maternity leave for women, and mandatory inclusion in the universal pension scheme, access to training related to their duties, and two uniforms per year, as per section 5(e) of the policy. Wages are to be paid directly to workers' bank accounts or via mobile financial services within the first week of each month as per section 9 (2) of the Policy. The Policy fix the age limit for the interested service worker to 18-60 in section 5(b). According to section 5(f) of the Policy, to monitor and supervise outsourcing activities, an 'Outsourcing Service Monitoring Committee' based on the Ministry/Division/Statutory Institution shall be formed, and the composition and scope of the committee are attached to Schedule 'A' of this policy.

According to section 10 of the Policy, if the service provider violates the terms of the contract, the relevant authority (service purchasing organization) may take action against it under the Public Procurement Act, 2006 and the Public Procurement Rules, 2008.

Pros & Cons:

The Policy provides better financial security and long-term welfare for workers through higher fees, bonuses, pensions, and timely payments. It also improves employee dignity and morale by formalizing training, uniforms, leave, and working conditions. Additionally, the policy promotes inclusivity, especially for female employees.

Despite these benefits, the policy has drawn criticism. Contractors may exploit loopholes, delay payments, or impose unofficial fees, and large-scale oversight across many institutions could be challenging. The Policy appears to contradict several provisions of the Bangladesh Labour Act (BLA) and Bangladesh Labour Rules (BLR), 2015. The provision of 45 days of maternity leave is a clear violation of section 46 of the BLA.

Conclusion

The Outsourcing Service Procurement Policy 2025 marks a significant evolution in Bangladesh's public sector hiring practices, which streamlines procurement while giving worker protections top priority. It puts the government in a position to achieve inclusive growth and operational efficiency by integrating digital tools and addressing welfare gaps. However, the persistence of long-standing challenges, including contractor malpractice and administrative limitations, will need to be carefully managed to ensure the policy objectives are fully realized.

Dird Felt (Pvt.) Ltd. v. Hossain and Sons and Others (Civil Revision No. 1131 of 2021)

Summary:
This case concerns the High Court Division's revisional jurisdiction, where Dird Felt (Pvt.) Ltd. challenged an order of the Joint District Judge, First Court, Dhaka, rejecting its application for attachment before judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure (CPC), 1908. The dispute arose from unpaid dues for the supply of geo-textile bags by the plaintiff to the defendants, who had procured them for a government project under the Bangladesh Navy. The trial court had denied pre-judgment attachment of the defendants' receivable bills, considering the plaintiff's claim "vague and unspecific." However, the High Court Division reversed that decision, holding that the trial court failed to consider the specific pleadings, documentary evidence, and risk of asset dissipation by the defendants.

Fact of the Case:
The plaintiff, Dird Felt (Pvt.) Ltd., manufactured and supplied Geo Textile Bags used in river protection projects. Defendants nos. 1–3 (Hossain and Sons, owned by defendant no. 2 and managed by defendant no. 3) purchased Geo Bags worth Tk. 21,52,80,000 between 18 October 2016 and 8 April 2018 to supply defendant no. 4, Dockyard and Engineering Works Ltd. (under the Bangladesh Navy), for constructing a dam in Dohar Upazila. After paying Tk. 7,47,00,000, the defendants left Tk. 14,05,80,000 unpaid. Despite defendant no. 4's written instruction (dated 5 April 2017) to clear the dues, payment remained pending. Two cheques—Tk. 11 crore (06.05.2017, Jamuna Bank) and Tk. 50 lakh (08.03.2018, NCC Bank)—were dishonoured, leading to criminal cases under Section 138 of the Negotiable Instruments Act. The plaintiff then filed Money Suit No. 07 of 2020 and sought attachment under Order XXXVIII Rule 5 CPC, which the trial court rejected on 23 May 2021, prompting this revision.

Issues
- Whether the trial court erred in law by rejecting the plaintiff's application for attachment before judgment under Order XXXVIII Rule 5 of CPC.
- Whether the defendants' conduct and financial condition justified pre-judgment attachment to prevent possible frustration of the decree.

Relevant Provisions
- Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908
- Section 151 of the CPC
- Section 138 of the Negotiable Instruments Act, 1881:

Judgment
The High Court Division found merit in the revision and made the Rule absolute, setting aside the trial court's order of 23 May 2021. The Court observed that the plaintiff had clearly specified the amount owed (Tk. 14,05,80,000), the total contract value, and the amount receivable by the defendants from defendant no. 4 (Tk. 18,95,09,511.50), as evidenced by Memo No. 1967 dated 19.11.2018 issued by Dockyard and Engineering Works Ltd. It was held that the trial court had misconstrued the pleadings and failed to appreciate that the plaintiff had sufficiently described the bill to be attached. The defendants' previous issuance of two dishonoured cheques, coupled with their lack of substantial assets within the jurisdiction, justified the plaintiff's apprehension that execution of any future decree would be frustrated. The Court also noted that defendant no. 4 had already instructed the other defendants to pay the plaintiff directly or risk deduction of the payable amount, which supported the plaintiff's claim. Accordingly, the High Court directed the Joint District Judge, First Court, Dhaka, to attach the bill payable to defendants nos. 1–3 by defendant no. 4 in accordance with the law. The earlier order of status quo was recalled and vacated, and the lower court was ordered to take immediate steps for attachment.

Significance of the Judgment
- **Clarification on Attachment Before Judgment:**

The decision reaffirmed that when a plaintiff seeks attachment before judgment, it is sufficient if the claim is specific, quantifiable, and identifiable from the record.
- **Protection Against Fraudulent Disposal:**

The judgment protects creditors from dishonest debtors who may dispose of or conceal assets to defeat the execution of decrees underscoring the preventive purpose of Order XXXVIII, which balances the rights of plaintiffs without unduly restricting defendants.
- **Integration of Civil and Criminal Remedies:**

The Court acknowledged the relevance of dishonoured cheques and criminal proceedings under the Negotiable Instruments Act, treating them as corroborative evidence of the defendants' default and mala fide conduct.

Concluding Remarks:
The High Court Division's judgment reaffirmed the protective intent of Order XXXVIII Rule 5 CPC, holding that attachment before judgment is an equitable safeguard, not a punitive tool. By overturning the lower court's order, the Court underscored the need to prevent injustice in commercial dealings where cheque dishonour and non-payment jeopardize lawful claims. This decision sets a vital precedent, ensuring that pre-judgment attachments secure the effective enforcement of decrees and uphold the integrity of judicial remedies.

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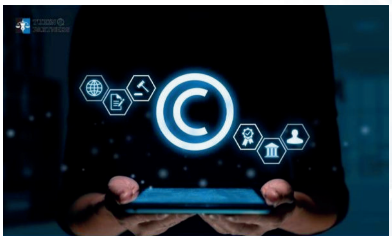

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Consultancy Firm for Corporate Legal, Tax & Compliance

A Member Firm of International Trade Council

Corporate Office
Flat G2 (6th Floor), House # 94, Road # 10,
Block # D, Niketan, Gulshan-1, Dhaka-1212

Registered Office
Office No. 305 (2nd floor),
3/B, Purana Paltan, Dhaka-1000

Email address:
tuhin@tnp.legal

Website:
www.tnp.legal

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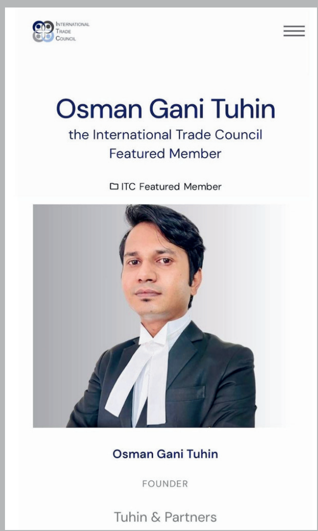
7th SANEM Annual Economists' Conference (SAEC) 2024, held in BRAC Centre Inn, Mohakhali, Dhaka, from 23rd to 25th February 2024.

Commercial Contract Drafting and Review workshop on 17th October, 2024



The International Trade Council Featured Member on August 2024

Tuhin & Partners' e-Newsletter unveiling ceremony at Tuhin & Partners on 19th April 2025

Tuhin & Partners joined a high-level meeting at the Ministry of Textiles & Jute regarding the corporate restructuring of a key government project on 26th May 2025