TUHIN & PARTNERS
NEXUS OF LAW & BUSINESS

E-NEWSLETTER

Volume: 2, Issue: 3 | March 2026

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NEXUS OF LAW & BUSINESS

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The Role of Independent Directors in Preventing Corporate Misconduct

Introduction:

In the context of corporate governance, independent directors act as key guardians who ensure that organizations operate with integrity and accountability. They are entrusted with the responsibility of providing unprejudiced oversight. In developing markets like Bangladesh, where concentrated ownership and political influences often dominate, the role of independent directors becomes even more critical. However, despite the regulatory environment that seeks to empower independent directors, difficulties have been encountered in implementing the same.

Key Discussion:

In Bangladesh, the Bangladesh Securities and Exchange Commission (BSEC) oversees corporate governance through its Corporate Governance Code of 2018, which defines independent directors as non-executive individuals who maintain objectivity by having no material ties to the company. Specifically, an independent director must not hold more than 1% of the company's paid-up shares, have no family connections to sponsors or major shareholders, and avoid any pecuniary relationships that could compromise impartiality[1]. They are required to possess at least 10 years of professional experience, often in fields like business, law, or economics, and must demonstrate integrity to contribute meaningfully to board decisions[2].

Board composition mandates stipulate that listed companies must have between 5 and 20 directors[3], with at least one-fifth being independent[4]. This fraction is rounded up, ensuring a minimum presence to foster balanced oversight. Appointments require BSEC approval and shareholder ratification at annual general meetings.

Independent directors have particular duties in corporate governance focused on maintaining openness and safeguarding the interests of shareholders. Risk management is one of their main responsibilities, where they evaluate and reduce operational, financial, and reputational risks[5]. Independent directors play a crucial role in assessing possible risks related to strategic choices and keeping an eye on the company's performance. In order to ensure that shareholders are properly informed, it is also crucial to promote open communication and complete disclosure of financial information. Additionally, independent directors are dedicated to safeguarding the interests of shareholders by supporting policies that generate sustainable growth while promoting ethical practices[6].

Despite regulatory intent, several challenges erode the independence of directors in Bangladesh. Family-controlled boards predominate, with over 60% of non-financial firms' directors being family representatives, which limits independent voices[7]. Appointments are frequently influenced by personal networks or political affiliations, rendering "independent" directors nominally so, as they may align with controlling shareholders to retain positions. One significant obstacle for independent directors is their limited access to internal information. Although they are tasked with oversight, independent directors may lack the legal power to enforce changes or take disciplinary action against executives. Regulatory bodies like BSEC and Bangladesh Bank face resource constraints, corruption, and political meddling, leading to lax oversight.

The Hallmark Group scam at Sonali Bank involved Tk 36 billion in fraudulent loans, facilitated by weak board oversight and political influence, despite the presence of independent directors who failed to dissent[8]. Similarly, BASIC Bank's collapse stemmed from governance deficiencies, including misreporting and unauthorized access to funds, with independent directors unable to curb abuse[9].

Concluding Remarks:

To strengthen independent directors' role in Bangladesh and similar emerging markets, reforms must prioritize genuine independence. Increasing the minimum independent director ratio to one-third, as in India and China, could dilute family control. Mandating diverse boards, including at least one female independent director (as introduced in 2024), and requiring specialized training would enhance expertise. Strengthening enforcement through independent regulatory bodies, whistleblower protections, and stricter penalties for non-compliance is essential.

Source: Director's Institute

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2. BSEC Notification (n 1) condition (1)(3)(c).
3. BSEC Notification (n 1) condition (1)(1).
4. BSEC Notification (n 1) condition (1)(2)(a).
5. Directors' Institute, 'The Role of Independent Directors in Navigating Corporate Ethical Failures' (Directors' Institute, 23 March 2025) <https://www.directors-institute.com/post/the-role-of-independent-directors-in-navigating-corporate-ethical-failures> (accessed 9 March 2026).
6. ibid
7. International Finance Corporation, Portrait of Bangladesh's Independent Directors (2020) <https://documents1.worldbank.org/curated/en/723351596464286588/pdf/Portrait-of-Bangladeshs-Independent-Directors.pdf> (accessed 10 March 2026).
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9. Ibid 9

Mandatory ESG Disclosure and Its Impact on Corporate Accountability in Emerging Economies

Introduction:

In recent years, the global business landscape has experienced a significant transformation in the manner in which companies report on their environmental, social, and governance (ESG) practices. International investors, lenders, and buyers increasingly demand robust ESG disclosures to ensure that business operations are sustainable, ethical, and socially responsible. Bangladesh, as a developing country with an emerging economy driven by industries such as ready-made garments (RMG) and agriculture, is still in the early stages of adopting ESG disclosure frameworks, although momentum toward greater reporting is increasing.

Key Discussion:

Environmental, Social, and Governance (ESG) refers to a set of criteria that assess how an organisation manages the risks and opportunities arising from investors and stakeholders to assess the sustainability and ethical impact of a company's operations and practices. The ESG lens helps determine how an organization manages the risks and opportunities created by changing conditions, such as shifts in environmental, economic, and social systems[1].

Histotocally, companies disclosed ESG information voluntarily, often as part of corporate social responsibility (CSR) reports, primarily to appeal to ethical investors or meet minimal stakeholder expectations. Key milestones include the European Union's Corporate Sustainability Reporting Directive (CSRD), which mandates detailed ESG disclosures for large companies starting in 2024, and the International Sustainability Standards Board's (ISSB) global baseline standards to harmonize reporting[2]. indicating a broader regulatory trend[3].

The Bangladesh Securities and Exchange Commission (BSEC) has made ESG reporting mandatory in annual reports for listed companies[4]. As of 2020, only 49 companies in Bangladesh submitted sustainability reports, with just 11 meeting Global Reporting Initiative (GRI) guidelines, reflecting relatively low disclosure rates in South Asia[5]. In Bangladesh, the ready-made garment (RMG)[6] In the energy sector, greater transparency and sustainable practices are increasingly recognized as necessary[7].

Mandatory ESG reporting could provide several benefits to Bangladesh's corporate sector. Firstly, it would secure market access for export-oriented sectors like RMG[8]. Secondly, ESG transparency can attract responsible investment[9]. Thirdly, standardized ESG reporting strengthens risk management.

ESG compliance in Bangladesh faces challenges including weak data verification, limited technical expertise, misaligned financial incentives, a shortage of bankable green projects, and shallow capital markets that constrain sustainable investment[10]. Additionally, regulatory capacity presents a significant obstacle; organizations such as the Bangladesh Securities and Exchange Commission (BSEC) and Bangladesh Bank require increased resources for effective oversight and training.

To successfully implement mandatory ESG reporting, Bangladesh would need to establish, amend or reinforce several legal instruments. A single, national, and codified law governing ESG would be beneficial, as many countries, including India, do not yet have a ESG law, which indicates the need for a comprehensive framework in countries like Bangladesh. Legal instruments could integrate ESG principles with existing corporate laws and international standards. For example, aligning with the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) could be considered.

Concluding Remarks:

In the evolving global marketplace, ESG compliance is not merely a corporate responsibility; it is a competitive advantage. Mandatory ESG reporting can help Bangladesh to maintain its place in high-value export markets, attract sustainable investment, and protect the environment and society. However, the legal framework needs to be transparent, fair, and supported by strong enforcement mechanisms for such regulations to be successful.

Source: futuretravelexperience.com

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Negotiable Instruments (Amendment) Ordinance, 2026

Enforced on 16 February 2026

Introduction:

The Negotiable Instruments Act, 1881, is one of the key financial laws governing negotiable instruments such as cheques, promissory notes, and bills of exchange in Bangladesh. Among its provisions, section 138 plays an important role, as it criminalises the dishonour of cheques for insufficient funds or other related reasons. Over time, cheque transactions have increased significantly, leading to a large number of cheque dishonour cases in the courts. This situation has created heavy pressure on magistrates' courts and often caused delays in the disposal of such cases.

To address these issues, the government introduced the Negotiable Instruments (Amendment) Ordinance, 2026, which was published in the Bangladesh Gazette on 16 February 2026. The amendment primarily modifies section 141(c) of the Negotiable Instruments Act, 1881, introducing a value-based jurisdiction system for trying offences related to cheque dishonour.

Key Discussion:

The amendment specifically revises section 141(c) of the Negotiable Instruments Act, 1881, by introducing a clear monetary threshold for determining the jurisdiction of courts. This change reflects an attempt to improve the efficiency of the judicial system when dealing with cheque dishonour cases.

First, the amendment recognizes that higher-value financial disputes may require greater judicial oversight. By assigning cases involving cheques exceeding Tk. 5 lakh to the courts of Joint Sessions Judges, the law ensures that such matters are handled by judges with greater authority and experience.

Second, the amendment helps to reduce the burden on Joint Sessions Judges' Courts, which have traditionally handled a large number of cheque dishonour cases. Since Joint Sessions Judges' Courts deal with many different types of higher volume of criminal matters, transferring a lot of cases to sessions courts previously disrupted their daily tasks.

Third, the provision maintains accessibility for smaller claims in the Magistrate's Court. By allowing magistrate courts to trial cases involving cheques worth Tk. 5 lakh or less, the law prevents unnecessary procedural complications for relatively minor financial disputes.

However, the amendment focuses mainly on pecuniary jurisdiction and does not change the substantive elements of the offence under section 138. Therefore, the legal requirements for proving cheque dishonour remain unchanged.

Pros and Cons

Pros

1. Clear jurisdictional guideline – The amendment clarifies which courts have the authority to try cheque dishonour cases based on the cheque value.
2. Better case management – By dividing cases between Magistrates' Courts and sessions courts, the amendment may reduce congestion in Session Judges' Courts.
3. Strengthening financial discipline – The reform supports the credibility of cheque transactions and commercial dealings.

Cons

1. Increased burden on Magistrates' Courts – Transferring low-value cases to Magistrates' Courts may create additional pressure on those courts.
2. Limited scope of reform – The amendment only changes court jurisdiction and does not address broader issues such as delays in cheque dishonour litigation.
3. Monetary threshold concerns – The Tk. 5 lakh limit may become outdated over time due to inflation and changing economic conditions.
4. Ordinance-based legislation – Since the amendment was introduced through an ordinance rather than full parliamentary debate, some critics may question the adequacy of legislative scrutiny.

Concluding Remarks:

The Negotiable Instruments (Amendment) Ordinance, 2026, represents a targeted procedural reform aimed at improving the handling of cheque dishonour cases in Bangladesh. By amending section 141(c) of the Negotiable Instruments Act, the ordinance establishes a clear jurisdictional framework based on the value of the negotiable instrument involved. This approach may contribute to better distribution of judicial workload and more effective adjudication of low-value financial disputes. However, for long-term effectiveness, further reforms may be necessary to address systemic challenges in cheque dishonour litigation and to ensure efficient enforcement of financial laws.

Md. Obaidul Islam & ors Vs. Md. Abdul Mazid Mondal & ors

Civil Appeal No. 305 of 2017

Overview of the Case:

The case of Md. Obaidul Islam & ors Vs. Md. Abdul Mazid Mondal & ors was decided by the Appellate Division in Civil Appeal No. 305 of 2017. The dispute centered on the legality of a government decision shifting the site of the Pashapol Union Parishad Complex from Mouza Bariali to Mouza Pashapol in Jashore district.

The plaintiffs challenged the administrative approval granted by the Ministry of Local Government, Rural Development and Co-operative, claiming that the decision was illegal and contrary to established guidelines. The Appellate Division ultimately addressed the core issue of locus standi and the extent to which courts may interfere in governmental policy decisions.

Facts of the Case:

In this case, the dispute arose over the selection of the site for construction of the Pashapol Union Parishad Complex under Chowgacha Police Station, Jashore. The plaintiffs, who were inhabitants of several villages within the Union, instituted Title Suit No. 23 of 2005 seeking a declaration that the letter dated 21.03.2005 issued by the Senior Assistant Secretary, Ministry of Local Government, Rural Development and Co-operative, approving the site at Mouza Pashapol, was illegal, collusive, void and without lawful authority. They contended that the Union Parishad office had long been functioning at Mouza Bariali on land donated in 1977 through a registered deed of gift and that the earlier site satisfied all requirements for construction of the complex.

The plaintiffs further alleged that the government ignored the established site at Bariali without valid reason and selected a new site at Pashapol which allegedly lacked proper title, sufficient area, contiguity, and adequate communication facilities. They claimed that specific government guidelines regarding site selection, including the requirement of a resolution by the Union Parishad council, were not properly followed. According to them, the decision-making process was irregular and contrary to the prescribed administrative procedure, and thus liable to be declared illegal by the civil court.

The defendants, including government authorities, denied the allegations and asserted that the selection of Pashapol Mouza was made after due consideration and in compliance with administrative formalities. They maintained that Pashapol was centrally located within the Union and had better communication facilities and surrounding infrastructure, including market, school, mosque, and health complex. The Trial Court dismissed the suit, holding that the matter related to governmental policy. However, the Appellate Court reversed the decision and decreed the suit in favor of the plaintiffs, and the High Court Division affirmed that decision. Subsequently, the defendants obtained leave to appeal before the Appellate Division.

Issue

- Whether private individuals, in a representative character suit, have locus standi to challenge the government's administrative decision regarding the selection and shifting of the site of a Union Parishad Complex, which is claimed to be a policy matter.
- Whether such a declaratory suit was maintainable under section 42 of the Specific Relief Act, 1877 when no legal character or proprietary right of the plaintiffs was directly affected.

Relevant Provisions

1. Section 42 of the Specific Relief Act, 1877 – which governs suits for declaration of legal character or right to property.
2. Principles relating to locus standi in civil litigation.
3. Judicial precedent recognizing that certain matters, especially policy decisions and administrative discretion of the government, are not ordinarily subject to challenge by private individuals unless a legal right is infringed.

The Court also considered earlier decisions holding that site selection of Union Parishad offices falls within the domain of governmental policy and administrative discretion.

Judgment

In this case, the Appellate Division allowed the appeal, set aside the judgments of the High Court Division and the Appellate Court, and restored the Trial Court's decision dismissing the suit. The Court held that the selection or shifting of the site of a Union Parishad Complex is essentially a policy matter and an administrative decision of the government, and therefore falls within the executive's discretion. It found that the plaintiffs failed to establish any legal character or proprietary right affected by the impugned decision and consequently lacked locus standi to challenge it. The Court further observed that the High Court Division and the Appellate Court erred in interfering with a governmental policy decision, and concluded that private individuals cannot challenge such administrative policy matters unless a specific legal right is infringed.

Conclusion:

This case reaffirmed that courts will not interfere with governmental policy decisions unless a clear legal right is violated. By restoring the Trial Court's judgment, it emphasized the necessity of locus standi under section 42 of the Specific Relief Act and clarified that mere dissatisfaction with an administrative decision, without infringement of legal or property rights, cannot sustain a civil suit. The ruling strengthens the boundary between judicial review and executive policy discretion in local governance.

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