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Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Introduction:

Cross-border commercial disputes are an inevitable feature of globalised trade. For foreign investors, the ability to bring a legal effect to a judgment or an arbitral award in a foreign jurisdiction is as critical as the right to obtain one. With Bangladesh emerging as a strong attraction for foreign direct investment, its legal framework for the recognition and enforcement of foreign judgments and arbitral awards are rooted in both domestic legislation and international instruments.

Key Discussion:

The enforcement of foreign court judgments in Bangladesh is primarily governed by the Code of Civil Procedure 1908 ('CPC').[1] Under section 13, a foreign judgment is treated as conclusive between the parties on matters directly adjudicated, subject to defined exceptions, including judgments from courts of non-competent jurisdiction, those obtained by fraud, or those in breach of natural justice. A critical structural limitation is the need for reciprocity, which means only judgments from designated "reciprocating territories" (right now limited to India and the United Kingdom) may get executed in Bangladesh as if they were domestic decrees under section 44A of the CPC.[2]

For judgments coming from non-reciprocating states, the judgment creditor must basically file a fresh suit in Bangladesh, and the foreign judgment is used only as evidence of debt.[3] This bifurcated setup creates a meaningful procedural burden on investors from the United States, much of continental Europe, and also for other non-reciprocating jurisdictions. Foreign arbitral awards enjoy a comparatively more accessible enforcement pathway under sections 45-47 of the Arbitration Act 2001.[4] Bangladesh acceded to the New York Convention on 6 May 1992[5] with the 2001 Act enacted following the UNCITRAL Model Law on International Commercial Arbitration and its enforcement principles.[6]

An applicant must submit the original or authenticated award, the arbitration agreement, and evidence that the award is foreign. Where satisfied, the court must enforce the award as if it were a decree of the District Court of Dhaka. Grounds for refusal under section 46(1) mirror Article V of the New York Convention, including party incapacity, invalidity of the arbitration agreement, inadequate notice, excess of jurisdiction, and conflict with Bangladeshi public policy.[7] Enforcement applications must be brought before the District Court of Dhaka, imposing geographical and administrative constraints.[8] The public policy exception, nominally narrow, has been applied inconsistently by domestic courts, generating uncertainty for award creditors. Domestic arbitral awards, enforceable under section 44 of the 2001 Act, are similarly vulnerable to challenge, and the interplay between challenge and enforcement proceedings can compound delay further.

Concluding Remarks:

Chronic judicial delay, a systemic feature of Bangladesh's civil justice system, undermines the efficiency rationale for opting for arbitration.[9] Bangladesh's legal framework presents a clear asymmetry: foreign arbitral awards benefit from a treaty-backed, codified enforcement regime that is markedly more accessible than the enforcement of foreign court judgments, which remains constrained by the narrow reciprocity requirement under the CPC. For foreign investors, this asymmetry strongly favours the inclusion of international arbitration clauses in cross-border contracts. Nevertheless, structural reforms including expanding the list of reciprocating territories, consolidating enforcement jurisdiction, and introducing time-bound adjudication of enforcement applications, are indispensable if Bangladesh is to present itself as a genuinely investor-friendly forum.

Source: Manuela António - Lawyers and Notaries

1. Code of Civil Procedure 1908 (Act No V of 1908), s 13.
2. Ibid s 44A
3. Shyikh Mahdi, 'Recognition and Enforceability of Foreign Judgments in Bangladesh' (skmahdi.com, 20 September 2025) https://skmahdi.com/2024/06/recognition-and-enforceability-of-foreign-judgments-in-bangladesh/ accessed 8 June 2026.
4. Arbitration Act 2001 (Bangladesh), ss 45–47.
5. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 ('New York Convention').
6. Sharif Bhuiyan, 'Chambers and Partners, 'International Arbitration 2025 — Bangladesh' (Chambers and Partners, 21 August 2025) https://practiceguides.chambers.com/practice-guides/international-arbitration-2025/bangladesh accessed 8 June 2026.
7. Arbitration Act 2001 (Bangladesh), s 46(1).
8. Tahmidur Rahman Remura Wahid, 'Enforcement of Arbitration Awards Bangladesh' (TRW Law Firm, 2026) https://tahmidurrahman.com/enforcement-of-arbitration-awards-bangladesh/ accessed 8 June 2026.
9. Anika Mardiah Chowdhury, 'Enforcement of Foreign Arbitral Awards in Bangladesh' (Jural Acuity, 5 September 2024) https://juralacuity.com/enforcement-of-arbitration-award/ accessed 8 June 2026.

The Growing Use of Interim Orders and Their Commercial Impact

Introduction:

Interim orders including stay orders, injunctions, and status quo orders have become integral to commercial litigation. These are granted before a full hearing on the merits, specifically designed to preserve positions, prevent irreparable harm, and maintain the integrity of the judicial process. Yet, as their frequency grows, so does their capacity to generate legal uncertainty for businesses. Understanding how courts approach these applications, and what they mean in practice, is essential for any entity navigating a significant dispute.

Key Discussion:

The foundational framework governing interim injunctions in English law remains the American Cyanamid test, established in the case of American Cyanamid Co v Ethicon Ltd.[1] This principle established that before granting an interim order, courts must be satisfied that there is a serious arguable case, that damages would not be an adequate remedy, and that the balance of convenience favours granting the order.[2] Where the balance of convenience is even, the court resorts to maintaining the status quo. Thus, preserving the parties' existing position until trial.[3]

The commercial implications of interim orders are significant. For example, a stay order or injunction can halt product launches, freeze contractual performance, or result in a deadlock in business operations for months before a substantive court's ruling is delivered. Interim or emergency relief often comes up when events move fast, and courts are sometimes not able to consider the merits in full, before the specific commercial moment or deadline passes, meaning the interim decision effectively becomes the final one.[4] Similarly, in Safe Transport Ltd v Pallet Network Ltd [2025] EWHC 396, the court reaffirmed that the outcome of interim injunction applications turns on whether there is a serious issue to be tried, whether damages would be adequate, and where the balance of the risk of injustice lies.[5]

A further mechanism that shapes commercial exposure is the cross-undertaking in damages. As a condition of most interim orders, the applicant must undertake to compensate the respondent for loss suffered if the injunction is ultimately found to have been wrongly granted. On the procedural side, recent institutional developments, including the Singapore International Arbitration Centre's 2025 Rules which comes with the introduction of ex parte protective preliminary orders[6] and the Council of the Hong Kong International Arbitration Centre (HKIAC) 2024 Rules' confirmation of interim-interim relief, signal growing recognition of the urgent commercial realities parties face[7] reflecting a global shift toward greater procedural responsiveness in granting interim measures.

Concluding Remarks:

The growing tendency for seeking interim orders reflects both the complexity of modern commercial disputes and the increasing speed at which they escalate. Courts continue to balance the legitimate need for urgent relief against the risk of inflicting irreversible commercial harm on a respondent who may ultimately succeed at the end of the trial. For businesses, the lesson is that interim applications are not procedural preliminaries, for they are frequently outcome-determinative. Early legal advice, robust evidence, and a clear-eyed assessment of the adequacy of damages remain essential at every stage.

Source: barllaw.com

1. American Cyanamid Co v Ethicon Ltd [1975] AC 396 (HL). sed 8 May 2026.
2. Alex Solo, 'Understanding the American Cyanamid Test: Key Considerations for Injunctions in Commercial Law' (sprintlaw, 10 August 2025) https://sprintlaw.co.uk/articles/understanding-the-american-cyanamid-test-key-considerations-for-injunctions-in-commercial-law/ accessed 10 June 2026.
3. University of Law and Legal Briefings (UOLLB), 'American Cyanamid Principles' (UOLLB, 14 July 2024) https://uollb.com/blogs/uol/american-cyanamid-v-ethicon-1975 accessed 11 June 2026.
4. Joanna R Lampe, 'The "Interim Docket" or "Shadow Docket": Non-Merits Matters at the Supreme Court' (Congressional Research Service Legal Sidebar LSB11391, 2 February 2026) https://www.congress.gov/crs-product/LSB11391 accessed 11 June 2026.
5. Safe Transport Ltd v Pallet Network Ltd [2025] EWHC 396 (Ch) [23].
6. Ernest Yang, Joshua Wan and Barry Allott-Fletcher, 'Understanding the SIAC Arbitration Rules 2025' (DLA Piper, 16 January 2025) https://www.dlapiper.com/en/insights/publications/arbitration-matters/2025/understanding-the-siac-arbitration-rules-2025 accessed 11 June 2026.
7. Heidi Chui, Elizabeth Chan and Justin Kim, 'Enforcement of Interim Measures' in J William Rowley KC and Benjamin Siino (eds), The Guide to Challenging and Enforcing Arbitration Awards (4th edn, Global Arbitration Review 2025) https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/enforcement-of-interim-measures accessed 11 June 2026.

The Public Procurement (Amendment) Act, 2026

Enforcement Date: September 28, 2025

Introduction:

The Public Procurement (Amendment) Act, 2026 marks an important reform in Bangladesh's procurement regime by updating the Public Procurement Act, 2006. Since procurement involves public money, development projects and public trust, the amendment responds to concerns over overpricing, tender manipulation, political influence and weak accountability through transparency, digitalisation, sustainability and value-for-money principles in government purchasing.

Key Discussion:

The Act amends several important provisions of the previous Act. Section 1 deals with the short title and commencement of the Act. It gives retrospective effect from 28 September 2025, which means the amendment is treated as legally effective from that date.

The new amendment amends the long title and preamble of the original Act by adding wider objectives such as best value for money, integrity, quality and sustainable public procurement. This is important because public procurement is no longer treated only as a purchasing process; it is now connected with good governance and responsible use of public funds.

Section 2 adds or revises several key terms, including procurement strategy, sustainable public procurement, disposal, physical services, BPPA, non-government organisation and service provider. This is one of the most significant changes because definitions control how the whole Act will be applied.

Sections 3, 11, and 12 strengthen procurement planning and institutional control. They refer to special procurement procedures, procurement strategy, procurement plans and the use of standard tender documents. These changes are useful because weak planning often causes delay, cost escalation and poor implementation in public projects.

Sections 14, 15, and 16 expand the scope of procurement to goods, works, physical services and professional services. Section 16 is especially important because it recognises sustainable public procurement. This allows environmental, social, labour and ethical concerns to be considered in procurement decisions.

Sections 19, 21, 26, and 30 mainly make technical and procedural changes, but section 21 is particularly important because it introduces disclosure of contract information and beneficial ownership. This can help reveal the real persons behind successful tenderers and reduce hidden influence or conflict of interest.

Sections 31, 32, 33, and 34 deal with procurement methods, evaluation and price-related matters. They address open tendering, limited tendering, direct procurement, official cost estimates, significantly low prices and reverse auction. These provisions may improve competition, but they must be applied carefully so that low bidding does not reduce quality.

Sections 36 and 39 introduce framework agreement procurement and joint venture participation in certain IT-related procurement. These provisions recognise modern procurement needs and technical collaboration.

Subsequent amendments from sections 40 to 66 update publication, contract, disciplinary and e-GP-related provisions. The amendment strengthens the role of the e-GP portal and improves procedural transparency. The amendment repeals section 67, and the earlier 2025 Ordinance while saving actions already taken under it.

Pros

The amendment takes a positive step because it makes public procurement more modern and accountable. The inclusion of procurement strategy and sustainable public procurement shows that procurement should not only focus on the lowest price, but also on planning, quality, environmental concern and long-term public value. The stronger use of the e-GP portal also improves transparency by reducing manual interference and creating a better digital record. Another important merit is beneficial ownership disclosure, which may help identify hidden owners, conflict of interest and politically connected bidders.

Cons

The core weakness is implementation. Bangladesh often has good laws, but weak enforcement. If officials are not trained or monitored properly, these reforms may remain formal only. The e-GP system may also create difficulty for small contractors who lack technical capacity. Again, reverse auction may reduce price, but it can also encourage unrealistically low bids, leading to poor-quality work or later cost escalation. Beneficial ownership disclosure is useful, but only if the information is properly verified. Otherwise, the real controllers may still remain hidden behind paperwork.

Concluding Remarks:

Overall, the Public Procurement Amendment Act 2026 marks a timely reform recognising procurement as governance rather than routine purchasing. It advances transparency, digital accountability, sustainability and ownership disclosure, but its impact depends on trained officials, honest evaluation, effective verification, strong audit and strict sanctions. The amendment is promising, yet its value will depend on implementation.

M.N. Alam Associated Ltd. Vs. The Chairman, Rajdhani Unnayan Kartripakkhaya

Case Citation: LEX/BDAD/0209/2012
Court: Appellate Division, Supreme Court of Bangladesh
Case Type & Number: Civil Appeal No. 223 of 2005
Date of Decision: 24 January 2012

Overview of the Case:

This case is basically about the legality of an arbitral award passed by a sole arbitrator who was appointed unilaterally by one party without following the statutory procedure. The tribunal awarded approximately Tk. 3.92 crore in favour of the appellant. Later, the High Court Division held that since the arbitration agreement did not specify the mode of appointment, the unilateral appointment of the arbitrator without a court order was illegal and set aside the award. The Appellate Division ruled that the High Court Division does not have the power to validate an improperly constituted tribunal. When an arbitration agreement is silent on the mechanism of appointment, parties must apply to the Court under Section 8 of the Arbitration Act, 1940. Consequently, the Appellate Division exercised its authority to uphold the High Court's verdict, declaring the award a nullity for lack of jurisdiction, but clarified that fresh arbitration may proceed through proper legal channels.

Facts of the Case:

RAJUK engaged M.N. Alam Associated Ltd. in 1987 for survey and planning work of the Uttara East Project, with fees based on Royal Town Planning Institute (RTPI), UK rates. After completion, a dispute arose, the appellant claimed RTPI rates, while RAJUK fixed a lower amount and refused to pay. An arbitration agreement was subsequently executed. When negotiations failed, the appellant requested RAJUK to appoint an arbitrator, but RAJUK did not respond.

The appellant then unilaterally appointed Professor Dr. Golam Rahman as sole arbitrator without a court order. The arbitrator proceeded ex-parte, awarding Tk. 3.92 crore to the appellant. The trial court made this award a Rule of the Court. On appeal, the High Court Division reviewed the legality of the appointment and set aside the award. The appellant then preferred an appeal before the Appellate Division, challenging the legality of this conversion.

Issue

- Whether a party can unilaterally appoint a sole arbitrator when the agreement does not mean the mode of appointment?
- Whether the arbitral award passed by such an arbitrator is valid in law?
- Whether it is lawful to set aside an award despite technical objections relating to limitation and security deposit under Section 33 of the Arbitration Act?
- How and under what circumstances are fresh arbitration proceedings can continue after an award is set aside?

Relevant Provisions

- Sections 8, 17, 19, 30, 33, and 41 of the Arbitration Act, 1940
- Section 2(9) and Order XX Rule 4(2) of the Code of Civil Procedure, 1908

Judgment

The Appellate Division, after analyzing the contract, confirmed that the arbitration clause did not specify the number of arbitrators or their appointment procedure. The court observed that when parties fail to agree on an appointment, Section 8 mandatory requires an application to the Court.

The court found that the appellant did not follow this legal procedure. In its legal interpretation, the court clarified that the unilateral appointment was made without jurisdiction and the constitution of the tribunal was coram non judice (without lawful authority). Therefore, the award was a nullity. The Court further held that when an award is void on its face, the Court can set it aside under Sections 17 and 30 even without considering technical objections relating to limitation or security deposits. However, considering the contract remained effective, the Appellate Division did not order the dispute dismissed permanently. To avoid delay in getting justice, the court upheld the High Court's verdict but left both parties free to apply to the Court for the appointment of a lawful arbitrator and proceed with fresh arbitration.

Final Decision (Appeal Dismissed)

The judgment of the High Court Division setting aside the arbitral award was affirmed. The parties were granted liberty to seek the appointment of a lawful arbitrator through the Court and pursue fresh arbitration proceedings in accordance with the Arbitration Act, 1940.

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