

বাংলাদেশ

Bangladesh

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Key points

In mid-2004, the Bangladesh Council of Arbitration (BCA) was established as an arbitral body. The BCA rules have not yet been finalised.

Arbitration in Bangladesh is governed by the Arbitration Act 2001. This is based on the UNCITRAL model law.

Bangladesh is a party to the New York Convention. In practice, however, there are difficulties in enforcing arbitration awards in Bangladesh. The difficulty is greater if it is a foreign party seeking to enforce an award against a local party.

Where the arbitration is convened abroad, there have been instances where the Bangladeshi courts have allowed legal proceedings which interfered with the issues raised in the foreign arbitration.

Confidentiality

The Arbitration Act does not make provision for confidentiality in arbitration proceedings. If this is important to the parties then this should be dealt with in the arbitration clause.

For a model confidentiality clause, see the Arbitration section on drafting arbitration clauses.

Model arbitration clause

Bangladesh does not have its own model clause.

See the Arbitration section for best practice in drafting arbitration clauses.

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Federation of Bangladesh Chambers of Commerce and Industry (FBCCI)

1 What arbitration bodies are there within the jurisdiction?

The Bangladesh Council of Arbitration was established by the Federation of Bangladesh Chambers of Commerce (BCA) as an arbitral body in 2004. The BCA has not been particularly active and has not yet published a set of arbitral rules.

2 Is there an Arbitration Act governing arbitration proceedings, and is it based on the UNCITRAL model law?

Arbitration in Bangladesh is governed by the Arbitration Act 2001 (the Act), the provisions of which apply to all disputes except those which may not be submitted to arbitration by virtue of another law. The Act is based on the UNCITRAL model law.

3 What are the available rules?

There are no available institutional rules specific to Bangladesh. Parties are free to agree on the rules to govern the arbitration. In the absence of an agreement, and where the rules selected by the parties do not cover a particular circumstance, the Act sets certain default rules.

4 What supervision is there of arbitrators and their awards?

International commercial arbitrations are supervised by the Chief Justice and the Supreme Court. The court has limited power, however, to intervene in arbitrations; the Act states that a court may only intervene in circumstances allowed under the Act.

Under the Act, no judicial authority (including the courts) is allowed to hear any legal proceedings commenced by any of the parties to an arbitration agreement. However, section 7A of the Act contains an

exception to this general rule. Under section 7A, the High Court Division, before or during an arbitration may, inter alia, take interim protective measures in respect of goods or property included in arbitration agreement.

5 How quickly can a tribunal be set up?

The speed at which a tribunal may be set up depends on the rules chosen by the parties.

If the parties have not agreed a set of rules, the default rules under the Act will apply. Under those rules, and where an international commercial arbitration is concerned, there are two possible courses of action.

If the arbitration is before a sole arbitrator and the parties cannot agree on the arbitrator within 30 days of the notice of arbitration, then, upon request by one of the parties, the appointment will be made by the Chief Justice (or any other judge or the Supreme Court designated by the Chief Justice).

If the arbitration is before three arbitrators, each party selects one arbitrator and the two arbitrators select the third. If the two arbitrators cannot agree on the third arbitrator within 30 days of their appointment, then, upon request by one of the parties, the appointment will be made by the Chief Justice (or any other judge or the Supreme Court designated by the Chief Justice).

6 What happens if one party refuses to participate in the process?

If one party fails to nominate an arbitrator, the Chief Justice (or any other judge or the Supreme Court designated by the Chief Justice) shall nominate the arbitrator in place of that party. The Chief Justice should do this within 60 days of the request to the Chief Justice.

Once a tribunal is constituted, the tribunal may proceed to an award even if one of the parties refuses to participate in the arbitration.

Under the Act, where any party to an arbitration agreement starts court proceedings against the other party concerning any matter agreed to be referred to arbitration, the court must refer the parties to arbitration and stay the proceedings (section 10). However, the courts in Bangladesh have in the past interpreted this provision as applicable only when the venue is in Bangladesh (section 3). Therefore, where the arbitration is convened abroad, there have been instances where the Bangladeshi courts have allowed the court proceedings to continue.

7 What interim measures are available?

Under section 7A of the Act, the High Court Division of the Supreme Court may, inter alia, take interim protective measures in respect of goods or property that are the subject of the arbitration agreement. This power may be exercised before or during the arbitration.

The following measures are available:

- injunctive relief
- security for costs
- pre-arbitration disclosure of documents
- preservation of evidence.

In addition, the Act empowers the arbitration tribunal to require a party to provide appropriate security. The arbitration tribunal may also issue a summons to compel the attendance of a witness. Evidence may be given before the arbitration tribunal orally or in writing or by affidavit. The parties may restrict the powers of the tribunal by agreement. In the absence of a contractual restriction, the Act confers powers on the tribunal to give interim relief.

8 What right is there to challenge the appointment of an arbitrator?

Under the Act, the only grounds for challenge are if:

- circumstances exist that give rise to justifiable doubts as to their independence and impartiality
- the arbitrator does not possess the qualifications agreed by the parties.

Where international commercial arbitration is concerned, a challenge against an arbitrator must first be made to the arbitral tribunal. An appeal against the decision of the tribunal goes to the High Court Division of the Supreme Court. The procedure for challenge may be modified by agreement.

9 Can a party appeal the arbitrator's decision and, if so, are there any time limits to be aware of or unusual provisions?

There can be no appeal against interim orders made by the tribunal.

A party unhappy with the final award may apply to the High Court Division of the Supreme Court to set aside the award. Such an application must be made within 60 days of the giving of the award. The Act provides nine grounds for setting aside an award. A party may also appeal against the court's order for setting aside or refusing to set aside an arbitral award. Appeal under the Act is a statutory right which cannot be dispensed with by agreement.

10 Is Bangladesh a party to the New York Convention?

Yes, without reservation.

11 Will an arbitration award be enforceable in Bangladesh and, if so, what is the procedure?

There are difficulties enforcing arbitration awards and more particularly arbitration agreements in Bangladesh. The difficulty is greater if it is a foreign party seeking to enforce against a local party. The problems exist regardless of whether the award is a domestic or foreign arbitral award.

The Act provides that an international arbitral award can be enforced as if it were a decree of the domestic court. However, in practice the enforcement of a foreign arbitral award is problematic. The Act provides scope for challenging the enforceability of an international arbitral award in the Bangladeshi courts. Appeal is also permitted against the decision of the court in respect of any order challenging an international award. In practice, the enforcement of an international award is time-consuming, although the Act has sought to make such enforcement easier.

A party must apply to the district court in Dhaka to enforce the award. The Act provides a list of circumstances under which the court will not enforce an award. Most of these involve procedural defects. However, the Act also provides that the award will not be enforced if the matter was not capable of arbitration, or if it is contrary to the public policy of Bangladesh to enforce the award.

12 What are the likely costs of the arbitration?

Costs vary. In part, they will depend on the rules selected by the parties.

Generally, costs are not awarded to the winning party, although there is no law preventing the tribunal from doing so.

13 Are split clauses valid and enforceable?

There is no prohibition under the Act against split clauses, which allow one or more parties to elect arbitration or litigation after the dispute arises. The fact that an international arbitration award was obtained pursuant to a split clause does not constitute a ground for refusal of enforcement of such an award in Bangladesh under the Act. ■

