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# INSIGHTS

LEGAL & REGULATORY UPDATES, ANALYSIS AND COMMENTARY

## Damages in Construction Disputes under Bangladeshi Law

### NAVIGATING THE NEXUS OF TERMINOLOGICAL RIGIDITY AND STATUTORY RIGOR

The landscape of large-scale infrastructure and construction in Bangladesh has entered a period of heightened legal and strategic scrutiny. As projects grow in complexity, the resolution of disputes—specifically those involving prolongation costs, variation claims, and price adjustments—requires a sophisticated understanding of the interplay between international industry standards and the rigid statutory framework of the Contract Act 1872.

#### **The Statutory Threshold: Beyond Contractual Text**

Under Bangladeshi jurisprudence, the recovery of damages is not merely a matter of contractual entitlement but is anchored in the principles of **Section 73** of the Contract Act. This section establishes that a party suffering from a breach is entitled to compensation for losses that "naturally arose in the usual course of things" or which the parties knew, at the time of contracting, to be a likely result of a breach.

However, this entitlement is governed by the doctrine of **restitutio in integrum**, whereby courts endeavour to place the injured party in the position they would have occupied had the contract been performed. A critical limitation exists: compensation is expressly barred for any **remote or indirect loss**. In the "factual matrix" of a construction dispute, this means that the mere existence of a delay does not automatically trigger a right to recovery; the loss must be proximate, foreseeable, and actually suffered.

#### **The Evolution of Prolongation and Variation Claims**

The Bangladeshi judiciary, alongside arbitral tribunals, has demonstrated a pragmatic willingness to award damages for **actual costs incurred** during periods of suspension or extension, even in the absence of explicit generic prolongation clauses. This includes:

- **Prolongation Costs:** Recovery for maintaining facilities and operating machinery during employer-induced delays.

- **Loss of Business/Profit:** Recognised as a natural consequence of breach, provided the evidentiary threshold is met.
- **Adjustments for Breach:** The courts have affirmed that the absence of a specific prohibition clause allows for the application of substantive law to mitigate losses suffered by an "innocent party".

The recoverability of costs related to contract prolongation, variations, and price adjustments is robust, even when such terms are not explicitly defined in the contract or used in the same manner as international standard forms (e.g., FIDIC).

- **Contractual Silence:** Compensation is not contingent upon a specific "prolongation clause"; in the absence of a prohibition, courts apply the doctrine of **restitution in integrum** to mitigate the contractor's loss.
- **Variation and Extended Work:** Costs for work extending beyond the original schedule or resulting from breaches are recoverable.
- **Automatic Entitlement:** Once a breach (such as a delay in site handover) is established, the liability to make good the loss stands, regardless of whether the contract outlines a broad "indirect cost" provision.

### **The Formulaic Challenge: Evidence vs. Estimation**

A critical point of divergence for global contractors is the application of established methodologies such as the **Hudson, Emden, or Eichleay** formulas. While these tools provide a structured approach to quantifying financial friction, the Bangladeshi legal landscape remains "fluid" regarding its standalone sufficiency.

Recent high-level precedents suggest that formulas do not apply in a vacuum. The mere presentation of a mathematical model is rarely sufficient to discharge the claimant's burden of proof. Instead, a successful recovery strategy must synthesise these formulas with **compelling evidentiary narratives** that demonstrate actual harm and the foreclosure of supplementary profit opportunities.

### **Strategic Takeaways for Institutional Contractors**

To protect institutional interests, contractors must ensure that any formulaic claim is supported by a robust evidentiary trail that mirrors the derived figures. The failure to produce the "best evidence" to show the details of damages is often reckoned against the claimant. Navigating these disputes requires more than just mathematical precision; it requires a bespoke legal narrative that aligns international technical costs with the specific rigours of Bangladeshi statutory mandates.

The Bangladeshi legal landscape offers a viable path for the recovery of complex construction costs, provided the claim is framed through the lens of **actual loss** rather than purely international terminology. Success in these disputes requires a bespoke alignment of project data with the statutory mandates of Section 73, ensuring that every "price adjustment" or "prolongation" claim is rooted in a documented evidentiary narrative.

For any query, feel free to contact us: [assistance@accordchambers.com](mailto:assistance@accordchambers.com).

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