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Can Investments Under Corruption Investigation Claim Treaty Protection? The S. Alam Case and the Bangladesh–Singapore BIT

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In the aftermath of Bangladesh's July 2024 Uprising, amid ongoing criminal investigations into alleged large-scale financial misconduct, Mohammad Saiful Alam, a former Bangladeshi national who later acquired Singaporean citizenship and the founder of the S. Alam Group, initiated arbitration proceedings against Bangladesh before the International Centre for Settlement of Investment Disputes (ICSID) alleging breaches of the 2004 Bangladesh-Singapore Bilateral Investment Treaty (BIT).

In 2017, the S. Alam Group executed a sudden and controversial takeover of Islami Bank, Bangladesh's largest private lender, by orchestrating an abrupt, forced reconstitution of its board. The group and its related companies secured nearly Tk 749 billion in loans from the bank in the following years, amounting to almost half of the bank's outstanding credit portfolio. The group had also allegedly misappropriated at least Tk 94.286 billion from Janata Bank.

This dispute presents a core question of investment treaty interpretation: how should the Bangladesh-Singapore BIT be construed when serious allegations of financial misconduct intersect with claims of treaty protection? While BITs are designed to protect foreign investment against arbitrary state interference, they are never intended to shield concerned persons from legal action related to corruption. This piece argues that properly interpreted in light of ICSID jurisprudence and general principles of international law, the Bangladesh-Singapore BIT does not extend protection to investments tainted by serious illegality, and good-faith anti-corruption measures do not amount to expropriation or breaches of the right to fair and equitable treatment (FET).

This blog proceeds in four parts. It first examines the legality requirement under the Bangladesh-Singapore BIT and the treatment of illegal investments in ICSID jurisprudence. It then considers whether Bangladesh's anti-

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corruption enforcement measures could amount to expropriation. The third section evaluates the scope of the fair and equitable treatment standard in the context of criminal investigations. The final section situates the dispute within the broader framework of international public policy and anti-corruption obligations before concluding by reflecting on the treaty's structural limits.

The Legality Requirement: A Threshold Question

Article 1 of the treaty defines a protected investment as one made "in accordance with the laws and regulations" of the host State. Clauses of this nature have played a central role in investment arbitration and have generated divergent approaches in ICSID jurisprudence. In some instances, the tribunal adopted a strict jurisdictional position, holding that serious illegality in the making of the investment deprives the tribunal of jurisdiction altogether, as seen in *Inceysa v El Salvador* (para. 242). In other instances, the materiality threshold was applied, under which only violations of fundamental principles of host State law, rather than minor or technical irregularities, defeat treaty protection, as reflected in *Desert Line Projects LLC v Yemen* (para. 104). A more nuanced approach was taken in *Kim v Republic of Uzbekistan* (para. 377), whichtreated illegality as affecting admissibility and merits rather than jurisdiction, particularly where the unlawful conduct occurred after the acquisition of the investment. While differing in juridical characterisation, they converge on a core principle that treaty protection does not extend to investments fundamentally tainted by serious illegality.

A related distinction in the jurisprudence concerns the timing of the illegality. Tribunals have drawn a distinction between illegality occurring at the time of the investment's establishment and misconduct arising during its subsequent operation. Where corruption or fraud taints the acquisition of the investment itself, tribunals have often treated the legality requirement as a jurisdictional threshold, denying treaty protection altogether, as illustrated in *Inceysa* and *Metal-Tech v Uzbekistan*. By contrast, where unlawful conduct arises during the performance of an otherwise lawful investment, tribunals have been more inclined to address the issue at the stage of admissibility or merits rather than jurisdiction, as reflected in *Kim*. In practice, therefore, the legality requirement may operate both as a gatekeeping rule at the point of entry and as a constraint on treaty protection where serious illegality later affects the operation of the investment. In the present context, the allegations surrounding the S. Alam Group appear to implicate both dimensions. The controversial reconstitution of Islami Bank's board raises questions regarding the legality of the acquisition itself, while the subsequent lending practices and alleged misappropriation of banking resources concern the conduct of the investment during its operation. Whether viewed through the lens of establishment illegality or post-

establishment misconduct, the allegations therefore engage the legality requirement of the treaty.

Within this broader framework, corruption occupies a particularly severe position. While tribunals have differed in their characterisation of illegality, they have been notably consistent in treating corruption as incompatible with treaty protection. In *World Duty Free v Kenya*, the tribunal held that corruption violates transnational public policy and renders the investment legally unenforceable (para. 179). Similarly, in *Metal-Tech*, the tribunal declined jurisdiction where the investment was tainted by corrupt payments (para. 372). In other cases, such as *Plama v Bulgaria* (para. 139) and *Fraport v Philippines* (para. 401), the tribunal declined to protect investments made in violation of the law. Therefore, a clear boundary is drawn: investments procured through any illegal acts, i.e., corruption, do not enjoy treaty protection.

The jurisprudence also distinguishes between minor regulatory irregularities and illegality that undermines the integrity of the investment itself. Where allegations concern systemic financial misconduct, i.e., money laundering, misappropriation of public banking resources, the issue goes beyond minor non-compliance. These actions corrode public interest by undermining both macroeconomic stability and the fundamental integrity of the nation's financial institutions. As the tribunal in *Kim v Uzbekistan* (para. 398) explained, the legality requirement is engaged where non-compliance compromises a "correspondingly significant interest of the Host State," and where the seriousness of the effect of the violation, assessed in light of the importance of the law breached, justifies the denial of treaty protection. In the present context, reports indicate that S. Alam Group, with the help of the former government, allegedly siphoned loans approaching 2 trillion BDT, nearly 4% of Bangladesh's GDP, through lending practices now under criminal and regulatory scrutiny. Allegations of this scale affect systemic banking stability and public finance, thereby engaging the type of "significant interest of the Host State" contemplated in *Kim* as sufficient to satisfy the materiality threshold.

Proportional Anti-Corruption Enforcement

Article 5 of the BIT prohibits expropriation without compensation. However, a clear distinction lies between compensable takings and legitimate exercises of state police powers. Proportional and non-discriminatory measures adopted in good faith to protect public welfare generally do not constitute expropriation even if they adversely affect an investment. Temporary asset freezes, or seizure orders issued pending judicial determination, do not amount to direct expropriation, which requires a permanent deprivation or transfer of title. Nor do such measures necessarily constitute indirect expropriation, which requires a deprivation equivalent in effect to a taking.

Measures aimed at preventing dissipation of potentially illicit assets and safeguarding the financial system pursue a recognised public purpose. Even where proceedings ultimately result in confiscation, forfeiture of illicit gains is not equivalent to expropriation; it is a lawful consequence of criminal adjudication. Thus, good-faith anti-corruption enforcement falls squarely within the State's regulatory authority. The temporary asset freezes, board reconstitutions, and criminal investigations in the aftermath of the July 2024 Uprising were undertaken pursuant to domestic law and subject to judicial oversight. As such, these measures fall within the State's police powers rather than constituting compensable expropriation under Article 5 of the BIT.

Fair and Equitable Treatment and the Limits of Investor Protection

The FET standard protects investors against arbitrary, discriminatory, or abusive state conduct. It encompasses due process, transparency, and protection of legitimate expectations. However, legitimate expectations cannot extend to immunity from criminal law.

Tribunals have repeatedly rejected attempts to use FET as a shield against regulatory enforcement. In *Hesham Talaat M Al-Warraq v Indonesia*, extensive regulatory and criminal actions against a politically connected investor were upheld. Similarly, in *Mamidoil v Albania*, regulatory intervention linked to alleged illegality was not equated with arbitrariness.

The decisive question, therefore, is whether Bangladesh's investigative and prosecutorial actions adhere to due process and equal treatment standards. The initiation of criminal proceedings, by itself, does not amount to a breach of FET. If proceedings are conducted pursuant to domestic law, subject to judicial oversight, and applied in a non-discriminatory manner, they fall within the State's regulatory authority. By contrast, a prosecution shown to be politically motivated or conducted in manifest disregard of due process could, engage the FET standard if it results in denial of justice, such as manifestly unfair and inequitable procedures, discrimination, or abuse of authority.

Corruption and International Public Policy

The exclusion of corrupt investments is not based solely on treaty text. It is grounded in international public policy. Bangladesh is a party to the UN Convention against Corruption (UNCAC), which obliges States to prevent corruption and recover illicit assets. Under Article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT), treaties must be interpreted in light of any relevant rules of international law applicable between the parties. UNCAC, thus forms part of the broader interpretive environment within which the BIT operates.

Interpreting the Bangladesh–Singapore BIT to protect assets under credible corruption investigation would create normative tension between investment obligations and anti-corruption commitments. Tribunals have repeatedly recognised that corruption offends transnational public policy. Investment treaties cannot be read in isolation from this broader legal framework.

Conclusion

The S. Alam arbitration places before an ICSID tribunal a question that goes to the limits of treaty consent. If the allegations of the large-scale financial misconduct are substantiated, they would not just constitute peripheral regulatory breaches but violations implicating core banking and criminal norms. Under the materiality framework reflected in *Kim v Uzbekistan*, such violations may engage the legality requirement itself. At the same time, asset freezes, board reconstitutions, and criminal proceedings undertaken pursuant to domestic law and judicial oversight are, in principle, the type of regulatory measures recognised under the police powers doctrine and are not automatically expropriatory under Article 5. Nor does the FET standard extend to insulating investors from prosecution for serious financial crime.

The dispute also exposes structural limits of the 2004 Bangladesh-Singapore BIT. As a first-generation treaty, it contains no express corruption exception, no clarification regarding asset recovery, and no counterclaim mechanism. Future treaty practice could address these gaps by incorporating clearer legality clauses and corruption carve-outs, thereby reducing reliance on tribunal-driven doctrinal interpretation.

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