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S Alam Group v Bangladesh: Nationality, Treaty-Shopping, and Jurisdiction in ICSID Arbitration

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Recent developments in the S Alam arbitration against Bangladesh have transformed what initially appeared to be a conventional investor–State dispute into a jurisdictional test case. The High Court Division's decision to stay the government decision accepting Mohammed Saiful Alam's renunciation of Bangladeshi citizenship has brought domestic nationality law to the centre of an ICSID arbitration initiated under the Bangladesh–Singapore BIT (2004). More importantly, the dispute illustrates how older-generation bilateral investment treaties can leave fundamental jurisdictional questions, including nationality, treaty-shopping and abuse of process, to be resolved largely by arbitral interpretation rather than by clear treaty text. This makes the case significant not only for the parties, but also because it demonstrates why the design of jurisdictional provisions deserves as much attention as substantive investment protections when states negotiate or revisit investment treaties.

Article 25 of the ICSID Convention extends the Centre's jurisdiction only to legal disputes arising directly out of an investment between a Contracting State and a national of another Contracting State, where the parties have consented in writing. For natural persons, Article 25(2)(a) requires the claimant to be a national of another Contracting State on both the date of consent and the date on which the request is registered, and not also a national of the respondent State on either date. This two-date requirement is especially relevant here. Reports indicate that the request for arbitration was filed on 27 October 2025, before the High Court's stay order of 16 November 2025, but registered on 25 November 2025, after the stay was issued. Although the stay is interim and the substantive hearing remains pending, Bangladesh may argue that the foreign-nationality requirement was not satisfied if Bangladeshi nationality remained legally operative at the time of registration.

ICSID tribunals assess nationality autonomously, but domestic nationality law and domestic court determinations can operate as important evidence, especially where nationality remains under active judicial

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contestation (Soufraki v UAE). The High Court's intervention therefore does not bind the tribunal as a matter of international law, but it materially informs the factual and legal matrix within which nationality must be evaluated. The Khudyan annulment proceedings are useful here because they underscore that dual nationality and the critical dates under Article 25(2)(a) can be jurisdictionally determinative for natural-person claimants.

Treaty-shopping also emerges as a salient issue. Although the term is often used critically, it simply refers to reorganising nationality or corporate structure to access investment treaty protection. While the Bangladesh–Singapore BIT defines "investor" broadly by reference to citizenship and incorporation, tribunals have scrutinised whether nationality planning reflects genuine economic attachment or constitutes an abuse of process (Phoenix Action v Czech Republic). Where corporate nationality is invoked, tribunals may give decisive weight to formal incorporation if the treaty text so provides, but they may also scrutinise restructuring where it appears designed to internationalise a pre-existing domestic dispute. In this context, evidence of substantive commercial presence in Singapore may strengthen the claimant's case, whereas indicia of effective control remaining in Bangladesh could support jurisdictional objections. Thus, treaty-shopping matters, but it does not determine the outcome by itself; much depends on the documentary and factual record.

The nationality dispute also exposes a broader feature of the Bangladesh–Singapore BIT. Although signed in 2004, the treaty resembles many older-generation investment treaties: it adopts a relatively expansive definition of investor while containing few express safeguards against nationality planning or abusive restructuring. Unlike many modern investment treaties and model BITs, it does not expressly address dual nationality, beneficial ownership, denial of benefits, abuse of process, or the restructuring of investments for the purpose of obtaining treaty protection. Consequently, questions that newer treaties often answer through drafting are left to arbitral interpretation. This transfers significant discretion to the tribunal and increases uncertainty for both investors and host states. The present dispute demonstrates how the absence of carefully drafted jurisdictional filters can transform nationality into much more than a threshold issue.

From Bangladesh's perspective, the High Court stay reinforces an already viable defence regarding timing and the two-date nationality requirement. The State may further claim that investments predating any nationality change fall outside treaty protection or were not made "in accordance with law", as required by the BIT. For the claimant, the strongest counter-argument may lie in corporate nationality and formal criteria of incorporation, which tribunals have sometimes accepted even in the face of concerns about local control (Tokios Tokelés v Ukraine). The claimant may also argue that a domestic stay is an interlocutory matter that should not be given

dispositive effect by an international tribunal, particularly where Singapore law recognises the claimant's nationality. Bangladesh, on the other hand, may argue that the investment was structured in a way that does not meet treaty standards, especially if beneficial ownership, control or management point back to Bangladesh. Precedents such as Phoenix Action support scrutiny of abusive restructuring, while World Duty Free is more relevant to illegality and public-policy arguments than to nationality as such.

Procedurally, the case may proceed on the basis of a bifurcated jurisdiction phase. Bangladesh may raise jurisdictional objections at an early stage or seek suspension pending the resolution of nationality issues in local courts. Alternatively, the tribunal could proceed independently, assessing local court orders as factual evidence rather than as determinative findings. In either scenario, the dispute addresses the impact of local courts on investor–State arbitration, even if that impact does not amount to arbitral interference.

The case also highlights an often-overlooked aspect of investor–State arbitration: the State's litigation strategy. Jurisdictional objections do not succeed automatically. Bangladesh will need to assemble a specialised legal team capable of addressing questions of nationality, treaty interpretation, corporate control and admissibility before an international tribunal. In many investment disputes, jurisdictional outcomes depend not only on treaty text but also on how effectively states present factual evidence and legal arguments. The dispute therefore serves as a reminder that treaty management and dispute preparedness are increasingly important components of investment governance.

In this context, the S Alam arbitration reveals the risks associated with earlier-generation BITs that use broad investor definitions without clear provisions on dual nationality, beneficial ownership, denial of benefits, abuse of process or nationality planning. Regardless of the outcome of Bangladesh's jurisdictional objections, the case shows that treaty-drafting ambiguities can create the basis for expensive legal disputes. Its significance therefore extends beyond the two parties. Many states, including India, South Africa and Brazil, have recalibrated their approaches to investment treaty design in response to similar concerns. Whatever the tribunal ultimately decides, the S Alam arbitration already illustrates why jurisdictional architecture matters as much as substantive protection in contemporary investment treaty law.