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BRIEFING

Enhanced investment protection for Japanese investors in Bangladesh

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On 6 February 2026, Japan and Bangladesh signed an Economic Partnership Agreement (the Japan-Bangladesh EPA or EPA), with Chapter 9 specifically addressing investments and investment protections. The EPA is expected to enter into force later in 2027.

Upon its entry into force, the EPA will automatically replace the Agreement between Japan and the People's Republic of Bangladesh (Bangladesh) Concerning the Promotion and Protection of Investment, which was signed on 10 November 1998 and entered into force on 25 August 1999 (the Japan-Bangladesh BIT or BIT). The EPA constitutes a modernised successor to the BIT, providing enhanced protections for investors and investments, as well as broader and more comprehensive definitions.

The conclusion of the EPA is expected to further strengthen economic relations between the two countries, notably through the expansion of bilateral trade and investment. Under the EPA, Japan will grant duty-free access to 7,379 Bangladeshi products, covering approximately 97 per cent of Bangladesh's export market. In return, Bangladesh will provide duty-free access to 1,039 Japanese products. Japanese investment in Bangladesh currently amounts to approximately USD 500 million.

Further, on 9 September 2026, Hong Kong SAR also signed an Investment Promotion and Protection Agreement (IPPA) with Bangladesh during the Belt and Road Summit 2026 held in Hong Kong. The IPPA will come into force 30 days after both parties have ratified the IPPA under their respective laws. The IPPA has an initial duration of 10 years but will remain in force indefinitely thereafter unless terminated, with the parties permitted to review the terms after 3 years.

This briefing considers the provisions of the Japan-Bangladesh EPA and how they may provide further protection for Japanese investors as well as Bangladesh's wider treaty programme in Asia, including the IPPA with Hong Kong.

Key Issues: Japan-Bangladesh EPA

1. Signed on 6 February 2026, the EPA represents a modern revision of the BIT, incorporating protection measures consistent with those found in other international agreements of this nature.
2. The treaty contains robust protections for Japanese investors in Bangladesh and Bangladeshi investors in Japan. Investments protected under the BIT will remain protected for 15 years after the entry into force of the EPA.
3. The protections are subject to various limitations and exclusions.
4. Investment protection is given "teeth" by providing for investor-state dispute settlement (ISDS) in the form of a detailed arbitration clause.
5. The ISDS mechanism under the treaty can be invoked if Bangladesh breaches the treaty.
6. The EPA is consistent with Japan's broader efforts to diversify its supply chains and continued investment by Japanese companies in Bangladesh.

A wide range of business interests are protected

Who and what is covered?

The new Japan-Bangladesh EPA affords protections to an "*investor of a Party*", a term that covers both natural persons and "*a juridical person*" in Japan or Bangladesh. This definition would include companies validly incorporated in Japan and Bangladesh.

The definition of "*investment*" is extremely broad as it incorporates "*every kind of asset that an investor owns or controls, directly or indirectly*". The EPA specifically mentions that this would include rights under turnkey construction contracts and commercial contracts, shares, loans, intellectual property rights and rights conferred by law such as concessions, licences and permits for the exploration and exploitation of natural resources. In practice, this means Japanese banks, trading houses, construction companies, utilities, energy companies and tech companies doing business in Bangladesh are all likely to have their activities covered by the EPA.

As is commonly the case in investment treaties of this kind, there is a 'Denial of Benefits' clause (Article 9.17), which excludes Japanese or Bangladeshi enterprises from taking advantage of rights conferred by the treaty if such enterprises are subject to the majority ownership or control of a foreign third party that does not have "*substantial business activities*" in Japan or Bangladesh (as applicable). The Denial of Benefits clause was not previously included in the Japan-Bangladesh BIT. Investors should therefore take care to assess whether or not they have "*substantial business activities*". Factors that may be taken into consideration in determining whether the requirement has been satisfied under international law include whether the relevant entity has a physical office or pays tax in its home state.

In terms of temporal scope, the investment protections created by the Japan-Bangladesh EPA apply to investments made both before and after the entry into force of the EPA.

What protections are available?

Amongst other rights, the Japan-Bangladesh EPA includes the following key protections for covered Japanese foreign investors and investments:

1. National treatment (Article 9.4)

   Bangladesh is obliged to treat Japanese investors "*in like circumstances to its own investors*" no less favourably. A clarification is provided on the definition of "*in like circumstances*", which is contingent upon whether the treatment is based on legitimate public welfare objectives.

2. Protection from expropriation and nationalisation (Article 9.10)

   Bangladesh may not unlawfully expropriate or nationalise covered investments except for a public purpose, in accordance with due process on a non-discriminatory basis and accompanied by payment to the investor by the state of "*prompt, adequate and effective*" compensation. The Japan-Bangladesh EPA expressly protects against both direct and indirect expropriation, i.e. it would extend to measures destroying the value of the investment even if the investor maintains legal title to it. Article 9.10(2) provides a non-exhaustive list of factors to be considered in a "*case-by-case, fact-based inquiry*" to determine whether an indirect expropriation has occurred.

3. Fair and equitable treatment (FET) (Article 9.6)

   Japanese investments must be treated in a fair and equitable manner by Bangladesh. This protects against discriminatory or arbitrary treatment and governmental measures that violate the investor's legitimate expectations. FET must be "*in accordance with customary international law*", so a different standard of protection applies compared to unqualified FET clauses found in some other investment protection treaties. Although qualified, the FET protection in the EPA provides a higher level of protection than the BIT, which did not provide for any standard of FET at all.

4. Full protection and security (FPS) (Article 9.6)

   Bangladesh must provide, for example, physical police protection to Japanese investments, which must be at least the same as the protection provided to Bangladeshi nationals. This protection is also expressed to apply to the standards of "*customary international law*". It is also bolstered by provisions concerning 'Protection from Strife' (Article 9.11), which seek to ensure equality for covered investors in entitlement to compensation made as a result of losses caused by civil war, revolution or other kinds of violent disruption.

5. Free transfer (Article 9.13)

   Subject to certain limitations, covered Japanese investors are entitled to free transfer of capital, profits, interest, royalties, fees, dividends, or other cash flows related to their investments into and out of Bangladesh. This is arguably a higher standard than the Japan-Bangladesh BIT, which only afforded free transfer rights for compensation and damages for investments.

6. Most-favoured-nation treatment (Article 9.5)

   Japanese investors covered by the EPA are entitled to be treated no less favourably than other third-party foreign investors in Bangladesh who may benefit from protections under other international agreements and treaties. This protection is limited to investors "*in like circumstances*" when compared to third-party investors granted rights under other treaties. The treaty provides additional prescription as to the meaning of "*in like circumstances*", stipulating that it "*depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives*".

   Potential investors should note that the MFN clause expressly excludes procedural rights such as international dispute settlement procedures or mechanisms under any international agreement, as is customary for many modern MFN clauses.

Enforceable rights and obligations

The Japan-Bangladesh EPA contains an ISDS mechanism (Article 9.18), which allows investors to enforce rights granted under the treaty through international arbitration. Specifically, Japan and Bangladesh consent to the submission of an investment dispute for arbitration either under the rules of the International Centre for Settlement of Investment Disputes (ICSID) or the Rules of the United Nations Commission on International Trade Law (UNCITRAL Rules). Both Japan and Bangladesh are members of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). This means an arbitral award obtained under the EPA by a Japanese investor against Bangladesh can be enforced in the territory of any member of the relevant convention. In practice, this makes enforcement of such an award possible in over 165 jurisdictions worldwide.

Investors should be aware that the dispute resolution clause requires the parties to a dispute to try and resolve any such dispute commercially prior to commencing arbitration. Additionally, the treaty seeks to impose certain time limits and notice requirements on investors who may commence arbitration proceedings under the treaty.

The BIT sunset clause

Under Article 9.21 of the EPA and Article 14 of the BIT, the EPA will automatically replace the Japan-Bangladesh BIT on entry into force; the BIT does not survive as a parallel treaty, save to the extent preserved by its own sunset clause. The sunset clause (Article 14(3) of the BIT) provides that relevant protections continue for fifteen years from the date of termination (i.e. from the EPA's entry into force under Article 9.21). Investments established under the BIT before that date therefore retain BIT-level protection for that fifteen-year transitional period, while investments made after that date fall exclusively within the EPA regime.

As of November 2026, the EPA has been signed but has not entered into force: Bangladesh's notification is still pending, and Japan's Diet has not yet given its approval. The BIT accordingly remains fully operative, and the fifteen-year sunset period has not begun to run, so any relevant breach

now falls to be addressed under the BIT, including its existing arbitration mechanism.

Bangladesh's wider treaty programme

Bangladesh is a signatory to more than 30 treaties containing enforceable investment protection provisions including treaties with the UK, France, Italy, Canada, the Netherlands, China, Japan, Malaysia, the UAE, India and Switzerland.

On 9 September 2026, Hong Kong SAR also signed an Investment Promotion and Protection Agreement (IPPA) with Bangladesh during the Belt and Road Summit 2026 held in Hong Kong although this is not yet in force.

The IPPA contains standard investment protections such as fair and equitable treatment (FET) and full protection and security of investments in line with customary international law minimum standards (Article 3), most-favoured-nation treatment (Article 4), free transfer (Article 7), and protection against expropriation (Article 6).

As with the Japan-Bangladesh EPA, the IPPA contains an ISDS mechanism (Article 8). In this case, the IPPA provides for amicable resolution, escalating to a range of formal dispute resolution fora at the investor's option. These include conciliation or arbitration under the ICSID Convention, arbitration under the UNCITRAL Arbitration Rules (or other rules agreed), and/or mediation under the ICSID Mediation Rules (or other rules agreed). However, the timeframe for making claims is subject to limitations and time limits which should be carefully considered if a dispute arises.

Hong Kong is the seventh largest source of foreign investment into Bangladesh. UNCTAD[1] noted in its report released in April 2026 that "*Foreign direct investment (FDI) into Bangladesh rose to $1.77 billion in 2025 after several difficult years marked by foreign-exchange pressures, global shocks and domestic uncertainty*." Bangladesh's entry into the investment treaties with Japan and Hong Kong SAR can therefore be seen as part of a push to promote foreign investment across industries ranging from textiles to infrastructure.

Bangladesh continues to be perceived as a jurisdiction with a relatively high degree of political risk and Bangladesh has been involved in at least 12 investor-state arbitrations. Investment treaties can, at least to some extent, mitigate such political risk.

Further information

Expert guidance on investment treaty structuring at the dealmaking stage and resolving disputes with foreign governments that breach such treaties is available from Clifford Chance. This note is an overview only and is not legal advice. For further explanation on the protections available under the investment treaties, please contact one of the individuals listed below.

[1] https://unctad.org/news/bangladesh-investment-reforms-offer-lessons-developing-economies-facing-tougher-fdi-climate



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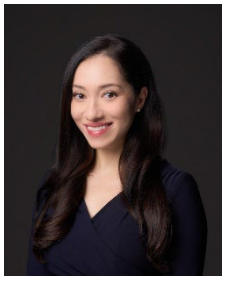
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