

## I. The Legal Framework for Contract Validity in Bangladesh

In Bangladesh, a contract's legal standing hinges on its enforceability under the law. For an agreement to be legally valid, it must comply with the core tenets of the **Contract Act, 1872**, and other relevant statutes.

### A. The Foundation: An Agreement Enforceable by Law

The fundamental principle, as defined in Section 2(h) of the Contract Act, is that a contract is "an agreement enforceable by law." This necessitates a valid agreement that reflects a genuine "meeting of the minds" and possesses the characteristics required for enforcement by the nation's courts.

### B. Essential Elements of a Valid Agreement

1. **Offer and Acceptance:** An agreement is formed when one party communicates a clear offer with the intent to create a legal relationship, and the other party signifies their unequivocal assent, thereby turning the proposal into a binding promise.
2. **Free Consent:** Under Section 10 of the Contract Act, the consent of all parties must be freely given. Consent is not considered free if it is induced by factors such as "misrepresentation" or "fraud." In such cases, the contract becomes voidable at the option of the aggrieved party (Section 19), who may choose to rescind it.
3. **Competency of Parties:** The parties must be legally competent to enter into a contract. This means they must be of the age of majority, of sound mind, and not legally disqualified. Contracts made by minors, individuals of unsound mind, or intoxicated persons are not valid.
4. **Lawful Consideration and Object:** The agreement must be supported by lawful "consideration" (something of value given in return for a promise) and have a lawful objective. Any consideration or object that is illegal, immoral, or against public policy renders the agreement void.

### C. Agreements Expressly Declared Void

The Contract Act explicitly declares certain types of agreements to be void from the outset. These include:

- Agreements based on a mutual mistake of fact regarding the subject matter (Section 20).
- Agreements with an object or consideration that is against public policy (Section 23).
- Agreements where any part of a single consideration or object is unlawful (Section 24).
- Agreements in restraint of trade or a lawful profession (Section 27).
- Agreements in restraint of legal proceedings (Section 28), although clauses granting exclusive jurisdiction to a specific court are generally permissible.
- Agreements with uncertain meaning (Section 29), which highlights the importance of a well-drafted definitions section.

### D. Mandatory Formalities

1. **Registration:** The **Registration Act, 1908**, mandates the registration of certain documents, particularly those involving immovable property like deeds of sale (*Bainama*), lease deeds, and mortgage deeds. An unregistered document that requires registration cannot legally affect the property it concerns or be admitted as evidence of the transaction.
2. **Stamping:** Documents must be prepared on stamp paper of the appropriate value. Stamp duty is a tax on the instrument itself. An unstamped or insufficiently stamped document is not void but is inadmissible as evidence in court until the correct stamp duty is paid.

## II. Anatomy of a Professional Contract in Bangladesh

A well-drafted contract serves to memorialize the business deal, define rights and obligations, allocate risk, and prevent disputes. Its structure is designed for clarity and enforceability, translating the commercial arrangement into precise legal concepts.

### A. Introductory Provisions

These sections set the context for the agreement.

- **Preamble:** The opening paragraph identifies the agreement with a clear title (e.g., "Share Purchase Agreement"), the parties involved, and the date of execution. It is advisable to specify a "start date" for performance separately rather than relying on ambiguous phrasing like "dated as of."
- **Recitals (or 'WHEREAS' Clauses):** These paragraphs provide the background and commercial purpose of the agreement. While not typically operative clauses, they are crucial for interpreting the parties' intent if disputes arise. Covenants, representations, and conditions should not be placed in the recitals.
- **Words of Agreement (Lead-in):** A transitional phrase like "The parties agree as follows:" marks the beginning of the binding terms, replacing archaic legalisms.

### B. Core Substantive Clauses

These sections form the heart of the agreement.

- **Definitions:** A dedicated "private dictionary" for the contract that ensures key terms are understood precisely and consistently, preventing ambiguity.
- **Representations and Warranties:** Statements of past or present fact made by one party to another. It is prudent to use the combined phrase "represents and warrants" to secure remedies under both the Contract Act (for misrepresentation) and The Sale of Goods Act, 1930 (for breach of warranty).
- **Covenants (Obligations):** These are the promises that govern the future conduct of the parties, grounded in the duty of performance under Section 37 of the Contract Act. The word "**shall**" must be used to create a binding obligation.
- **Conditions (Contingent Contracts):** Events that must occur before a party's duty to perform is triggered, based on Chapter III of the Contract Act. These are typically drafted in an "if/then" format.

- **Discretionary Authority:** Clauses granting a party permission to act (using "**may**"). Even with "sole and absolute discretion," courts generally imply a duty of good faith.
- **Declarations:** Mutually agreed-upon statements of fact or policy (e.g., governing law) that are effective throughout the contract's term, reinforced by the Specific Relief Act, 1877.

### C. Endgame and Dispute Resolution

These provisions address the conclusion of the contract and potential conflicts.

- **Grounds for Termination:** Clearly specifies events that allow a party to end the agreement, such as material breach (often with a "cure period"), termination for convenience, or insolvency.
- **Remedies:** Details the consequences of a breach, such as monetary damages, specific performance (enforced by the **Specific Relief Act, 1877** for unique assets), injunctions, or liquidated damages.
- **Force Majeure:** Excuses performance for events beyond a party's reasonable control, which is crucial as the default "frustration" doctrine (Section 56, Contract Act) has a very high threshold.
- **Indemnity:** A promise by one party to compensate the other for specific losses, based on Sections 124 and 125 of the Contract Act.
- **Governing Law and Jurisdiction:** Specifies which country's laws govern the contract and which courts will hear disputes.
- **Dispute Resolution:** Often includes an arbitration clause for out-of-court resolution, which must comply with **The Arbitration Act, 2001**.

### D. Concluding Formalities

- **Signatures and Attestation:** The execution block must clearly state the party's name and the name, title, and signature of the authorized signatory.
- **Registration:** As required for specific documents, particularly those concerning immovable property, to ensure legal effect.