

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Chevron Bangladesh Block Twelve, Ltd. and Chevron Bangladesh Blocks Thirteen
and Fourteen, Ltd.**

v.

People's Republic of Bangladesh and Bangladesh Oil Gas and Mineral Corporation

(ICSID Case No. ARB/24/39)

PROCEDURAL ORDER NO. 3
Document Production

Members of the Tribunal

Roger Stewart KC, President of the Tribunal
Stephen L. Drymer, Arbitrator
Jorge E. Viñuales, Arbitrator

Secretary of the Tribunal

Geraldine R. Fischer

12 June 2026

I. INTRODUCTION

1. This Procedural Order relates to an application by the Respondents for substantial additional document production primarily on the basis that the Claimants have inappropriately claimed privilege over large numbers of documents.

II. PROCEDURAL BACKGROUND

2. Paragraph 15.11 of Procedural Order 1 provided that disputes concerning compliance with Requests for documents would be decided by the Tribunal after hearing from the parties.
3. On 8 January 2026, the Tribunal issued its Decisions on the Parties' Disputed Requests for Documents and ordered the Parties to produce certain documents or categories of documents by 2 February 2026.
4. On 12 January 2026, the Claimants voluntarily produced documents accompanied by a privilege log showing that 228 documents out of 356 were being withheld.
5. On 9 March 2026, the Claimants produced further documents pursuant to the Tribunal's order together with a second privilege log identifying 478 further withheld documents.
6. Following correspondence between the parties, on 10 April 2026, the Respondents filed an application for document production, arguing the Claimants improperly claimed privilege and other reasons to withhold the substantial majority of documents ordered to be produced ("**Application**").¹ The Respondents requested that the Tribunal order the Claimants "*to produce all documents listed in their First Log and Second Log, with the exception of item 36 in the First Log and items 278-280 in the Second Log, as no valid basis has been advanced to withhold them.*"² Alternatively, the Respondents requested that the Tribunal order Claimants to not withhold certain documents on several distinct bases, or, as a further alternative, order the Parties "*to seek in good faith to agree confidentiality undertakings pursuant to which documents withheld for commercial sensitivity, and under Clause 19 of the Trust Deed, could be disclosed within the confines of these proceedings only.*"³
7. Further to the Tribunal's invitation, on 24 April 2026, the Claimants submitted their response to the Application ("**Claimants' Response**"). The Claimants requested that the Tribunal: (i) deny the Respondents' Application; (ii) order the Respondents' to pay all costs and expenses incurred in connection with the Application, including the preceding *inter partes* correspondence; and (iii) grant any other relief the Tribunal deems appropriate.⁴ Moreover, without prejudice to their arguments, the Claimants undertook to provide updated versions of their privilege logs by 6 May 2026, "*identifying: (i) for each attachment containing privileged content, the basis for the privilege asserted (as Claimants have done for privileged 'parent' documents); (ii) attachments whose disclosure would compromise the privileged substance of the 'parent' document.*"⁵
8. Pursuant to the Tribunal's instructions, on 5 May 2026 the Respondents submitted their reply to the Claimants' Response, reiterating their request for relief from the Application (with the exception of Application alternative (d)).

¹ Respondents' Application on Document Production, p. 1.

² Respondents' Application on Document Production, p. 13.

³ Respondents' Application on Document Production, pp. 13-14.

⁴ Claimants' Response, para. 57.

⁵ Claimants' Response, para. 39.

9. By letter of 7 May 2026, the Respondents informed the Tribunal that they had received the Claimants' updated privilege logs and supplemented their request for relief to include the following: "[i]n the further alternative, should the disclosure of such documents not have been ordered on other grounds, order Claimants to produce all attachments in the First and Second Log in respect of which the statement 'concerning legal advice' is not made."⁶
10. On 14 May 2026, further to the Tribunal's instructions to respond to the Respondents' 7 May 2026 letter, the Claimants "request[ed] that Respondents' supplemental request for relief be denied."⁷

III. THE SUBMISSIONS

11. The Respondents submit:
 - a. In relation to the general claims for privilege:
 - i. The applicable law in relation to claims for privilege is that of Bangladesh on the basis that this has the closest connection with the privilege claimed;
 - ii. Under Bangladesh law, privilege is governed by the Evidence Act 1872 and the Bangladesh Bar Council Canons of Profession Conduct and Etiquette following the Bangladesh Legal Practitioners and Bar Councils Order 1972;
 - iii. Only professional communications between lawyers of the Courts of Bangladesh for the purpose of obtaining or providing legal advice are privileged;
 - iv. In house counsel are excluded from protection;
 - v. There is no concept akin to litigation privilege; and
 - vi. Only Item 36 in the first log is potentially privileged (communication with chambers).
 - b. In any event privilege is claimed for families of emails and for "children" of parent emails without a proper basis as it cannot be assumed that "children" are automatically protected and no proper description has been given as to the basis for the claims;
 - c. That the factual basis for many of the Claimants' privilege claims is mistaken on the basis that no dispute was reasonably in contemplation prior to December 2022;
 - d. That insufficient information has been provided in the privilege logs to establish privilege;
 - e. That there is no proper basis for a claim to protect commercially sensitive information and inadequate information has been provided to substantiate such a claim;
 - f. There has been cherry-picking in relation to the production of documents; and
 - g. That the Claimants have wrongly withheld documents relating to the Trust Deed executed in the context of a settlement with current and former employees.
12. The Claimants submit:
 - a. The arbitration is governed by the IBA Rules and particularly Articles 3 and 9 in accordance with PO1;
 - b. The Bangladesh Evidence Act applies only to litigation before the Bangladesh courts and not to proceedings before an arbitrator;
 - c. The Claimants, as Bermudan companies with an international management team had a legitimate expectation that their internal assessment of core disputed issues in the ICSID arbitration would remain confidential given:
 - i. Their domicile;

⁶ Respondents' letter of 7 May 2026, p. 2.

⁷ Claimants' letter of 14 May 2026, para. 4.

- ii. The fact management were based in the US; and
- iii. That legal advice was sought from counsel where in-house legal advice privilege and litigation privilege is recognised.
- d. There would be asymmetry given that there is no reciprocal access to the Respondents' internal legal positions;
- e. That there has been no automatic claim for privilege for child documents but rather that there has been a claim either where there is privileged content or disclosure would compromise the legal advice;
- f. That pre August 2022 documents withheld by the Claimants attract litigation privilege;
- g. That there has been a proper claim for privilege in respect of the withheld documents;
- h. That there has been a proper claim for commercially sensitive documents; and
- i. The Trust deed documents are properly withheld.

IV. THE ISSUES

13. It is convenient to discuss the issues between the parties as follows:

- a. The proper law applicable to the claims for privilege;
- b. Whether there is a proper basis to withhold pre-August 2022 documents;
- c. Whether there has been a proper claim for privilege in respect of "child" documents;
- d. Whether the Claimants have "cherry-picked" documents so as to forfeit the right to claim privilege and/or confidentiality; and
- e. Whether there is a proper basis for withholding production of documents referred to in the Trust Deed regarding settlement with Employees and/or other Confidential Documents.

V. THE PROPER LAW APPLICABLE TO THE CLAIMS FOR PRIVILEGE

14. The parties agree that pursuant to paragraph 15.1 of P.O. 1, document production in this arbitration is governed by the IBA Rules on the Taking of Evidence in International Arbitration ("the IBA Rules") which were adopted by a resolution of the IBA Council dated 17 December 2020.⁸
15. The Tribunal also agrees. Section 15.1 of P.O. 1 provides that "[t]he Tribunal and the Parties **shall comply** with Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration (2020) (*"the IBA Rules"*) in relation to the production of documents in this case" (emphasis added).
16. The most relevant provisions of the IBA Rules are:

- a. Article 9.2(b) which provides:

"The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons ... (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);" ... and

- b. Article 9.4 which provides:

⁸ See opening paragraph of page 3 of the Application and paragraph 10 of the Claimants' Response.

“In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:

- (a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;*
- (b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;*
- (c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;*
- (d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and*
- (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.”*

17. It should be noted that the IBA Rules require the Tribunal to determine the legal or ethical rules that it considers to be applicable to questions of privilege (Art. 9.2(b), Art. 9.4) but do not otherwise require the Tribunal to adopt any particular applicable law or rule. In support of its submission that the Tribunal should apply the law of Bangladesh, the Respondent relies:

- a. On a commentary to the effect that the prevailing arbitral practice is to determine the “closest connection” or “centre of gravity” test whereby the law of the place where the attorney-client relationship has its predominant effect is applied⁹; and
- b. On the assertion that “*ICSID tribunals are known to apply the law of the host State in evaluating privilege claims*”¹⁰ relying on part of a decision in a procedural order in *Carlos Rios and Francisco Rios v Republic of Chile*.

18. The Tribunal does not consider it correct either that the prevailing arbitral practice is to apply a particular test in seeking to decide what law or set of rules to apply in deciding questions of privilege or that ICSID tribunals are required to apply the law of the host State as asserted for the determination of legal privilege claimed in connection with document production.

19. Document production is one part, albeit an important part, of the procedure by which the parties gather and then present evidence to the Tribunal with the objective that the Tribunal then assesses that evidence and comes to a fair conclusion in accordance with the agreement between the parties. As the Foreword to the present edition of the IBA Rules states:

“The Rules are designed to be used in conjunction with, and adopted together with, institutional, ad hoc or other rules or procedures governing international arbitrations. The IBA Rules of Evidence reflect procedures in use in many different legal systems, and they may be particularly useful when the parties come from different legal cultures.”

⁹ See T. Zuberbühler et al – Commentary on the IBA Rules.

¹⁰ Respondents’ Application on Document Production, p. 4.

20. The contention that, in relation to one particular aspect of procedure, a Tribunal is obliged to search for a particularly identified law runs counter to the overall intent and purpose of the IBA Rules which seeks to identify and refine practice by reference to procedures in use in many different jurisdictions rather than one particular jurisdiction.
21. Many States often have more than one potentially applicable procedural law operating within its borders as a result of State or regional divisions. Each of these procedural laws will, or at least may, have idiosyncratic provisions reflecting history, tradition or particular local objectives. Legal advice is often sought and provided across borders, with implications for the law governing legal privileged. Arbitration procedures for which the IBA Rules are relevant may be conducted in accordance with different rules of procedure. Parties are, of course, free to decide that in relation to a particular dispute they will adopt a particular procedural law with whatever provisions that law has. However that is not the approach adopted by the IBA Rules. Nor have the Parties here concluded any such express agreement.
22. The Tribunal agrees with the commentary of Dr Reto Marghitola when he states that Tribunals have not adopted a particular conflict of law rule but have instead referred to the “*expectations of the parties and their advisors*”¹¹. The wide discretion available to tribunals is referred to in *Redfern and Hunter* at paragraph 3.252.
23. As set out above, the IBA Rules specifically provide that the Tribunal may take into account “the expectations of the Parties and their advisers” at the time that the privilege is said to have arisen (Article 9(4)(c)). Such expectations, in the circumstances of an international dispute such as the present, are unlikely to be governed or controlled only by a particular Bangladesh statute or particular provisions of the Bangladesh Bar Council Canons of Professional Conduct and Etiquette and an Order in Council.
24. The Respondents seeks to criticise the Claimants for not identifying a particular law which is said to govern the applicable question. The Tribunal considers such criticism to be misplaced. As the Claimants point out, they are incorporated under the law of Bermuda and are entities within U.S.-based structures. Given that Bermuda generally follows the law of England and Wales, the likelihood is that the parties and their advisers, at any rate in respect of the Claimants, would have expected questions of privilege to be governed by principles common to the law of England and Wales or of states within the United States.
25. They would not have expected such questions to require submission to members of the Bangladesh Bar in order to attract privilege which the Tribunal understands is the effect of the Respondents’ submission.
26. The question is not, of course, to be determined only by reference to the expectations of the Claimants and their advisers. However, the Tribunal does not consider that, even viewed by reference to the expectations of the Respondents or their advisers, they would have considered that matters of legal privilege in a dispute such as this would be dealt with only in accordance with the Bangladesh provisions applicable to actions in Court.
27. First the parties expressly agreed that any disputes would be dealt with by a Tribunal established under the auspices of ICSID – not by the courts in Bangladesh.
28. Secondly the applicable provisions of the 1872 Evidence Act and the 1972 Canons and Order in Council are expressly applicable only to proceedings before the courts of Bangladesh.

¹¹ See Document Production in International Arbitration, International Arbitration Law Library, Vol. 33 (2015), Chapter 5, p.76.

29. Thirdly the Respondents would have been unlikely to consider that the Claimants and their advisers would consider questions of privilege by reference to particular Bangladesh local provisions given that they would have known and understood that advice was likely to be given by international lawyers who were unlikely to be Bangladeshi. The provision of advice by those advisors is, moreover, subject to the rules governing legal privilege in their own jurisdictions.
30. The Tribunal further considers that the core principles relied on in support of privilege claimed in this case would have been likely to be familiar to those advising the Respondents (as well as the Claimants). In particular both parties would have been likely to assume:
 - a. That documents prepared for the purpose of obtaining legal advice together with documents recording such advice would be privileged from production;
 - b. That documents prepared for contemplated litigation would be likely to be similarly protected; and
 - c. That documents would be protected provided that advice was being sought or obtained from lawyers whether such lawyers were in-house or external.
31. It follows that documents falling within the above categories are, in the view of the Tribunal, properly protected from production in these proceedings providing that there has not been waiver or some other mechanism by which the protection is lost.
32. The Tribunal notes that the approach taken by the Tribunal in this case appears similar to that take by the tribunal in the *Carlos Rios v Chile* case. In that case the tribunal applied the law of Chile in relation to communications between the investor and its Chilean attorneys. As pointed out by the Claimants, the tribunal observed that attorney-client privilege has been widely accepted in international and comparative law and has been applied by international tribunals “without reference to rules of domestic law”.
33. The above conclusions make it unnecessary for the Tribunal to consider the detailed submissions made as to whether, in fact, Bangladesh law has the restrictive effect contended for by the Respondents. The Respondents do not contend that the application of such law is mandatory, and the Tribunal can, and does, accordingly decide the question on the basis that the Respondents are correct in their analysis of the alleged effect of such law were it to apply. Moreover, the Tribunal’s conclusions are limited to the specific issue of the laws to be taken into account for the determination of legal privilege under the IBA Rules, which are governing in this case as per Section 15.1 of P.O. 1.

VI. IS THERE A PROPER BASIS TO WITHHOLD PRE AUGUST 2022 DOCUMENTS?

34. The Respondents maintains that there was no dispute in contemplation prior to August 2022 as it was at that time that the Claimants issued their cost recovery invoices. Prior to that date it is asserted that the matter was internally settled so far as the Claimants were concerned.
35. The Claimants respond that the dispute was plainly in contemplation prior to this date as reflected in the Claimant’s Memorial and the evidence of Mr Walker. The dispute is said to have been aired at the December 2021 joint management meeting as is accepted by the Respondents.
36. In the circumstances the Tribunal considers that there is a proper basis for the Claimants to claim privilege in respect of pre-August 2022 documents as a dispute was in contemplation.

VII. IS THERE A PROPER BASIS TO CLAIM PRIVILEGE FOR “CHILD” DOCUMENTS?

37. The parties agree that attachments are not automatically privileged merely because they were attached to privileged communications. It is also common ground that, as explained in the *Clayton v. Canada* authority cited by the Respondents, attachments can attract privilege either because they contain privileged content in their own right or because disclosure would compromise the protected content of the underlying source communication by inference.
38. Following exchanges between the Parties, the Respondents complain that the latest privilege logs provided by the Claimants do not explain adequately how the pre-existing documents could compromise the privileged substance of the parent document. The Claimants lawyers rely on the assertion, as set out in Allen Overy Shearman Sterling’s letter of 14 May 2026 that the attachments have been examined by the Claimants and satisfied themselves that the withheld documents would permit inferences to be drawn as to the content of the privileged documents. The Claimants further rely on the statement by the Tribunal in the *Clayton* case “*it is in the nature of legal privilege that the description of documents for which privilege is asserted must remain broad as a high degree of detail would risk defeating the purpose of the privilege, namely to protect the content of the communication.*”¹²
39. Subject to one point, the Tribunal is satisfied that an adequate claim for privilege has been made out in respect of the disputed documents. The one point is that the Tribunal considers that the attachments for which privilege is claimed must be examined by the Claimants’ external lawyers and not by the Claimants themselves in order for the claim of privilege to be justified. If this has not been done already, it must be done with any documents not permitting such inferences being disclosed.

VIII. HAS THERE BEEN A LOSS OF THE RIGHT TO CLAIM PRIVILEGE BY REASON OF “CHERRY PICKING” OF DOCUMENTS?

40. The Respondents maintain that the Claimants have disclosed accounting documents showing how the 2006-2013 documents were treated in the accounting records of the Claimants without disclosing all documents identifying how and why this treatment was undertaken.
41. The Claimants maintain that there was and is a clear difference between what, factually, occurred and what advice was taken and received in relation to such matters.
42. The Tribunal considers that this distinction is, in principle, sound and does not justify the assertion that there has been cherry picking. The Claimants would not, of course, be entitled to produce some documents on a subject identifying legal advice but not others but that is not what appears to have happened.

IX. IS THERE A PROPER BASIS TO WITHHOLD DOCUMENTS ON GROUNDS OF CONFIDENTIALITY AND SPECIFICALLY IN RESPECT OF DOCUMENTS REFERRED TO IN THE TRUST DEED?

43. This issue concerns two matters. First the extent to which the Claimants are entitled to claim to withhold production on the basis of confidentiality and second the extent to which documents are properly confidential given the provisions of the Trust Deed to which settlements were effected by the Claimants with their employees.
44. The first objection centres on questions of timing and adequate description. The Tribunal considers that there is nothing in the timing objection. The relevant logs have been produced

¹² Claimants’ letter of 14 May 2026, para. 3.

and expanded in the ordinary course of the proceedings. If the objections are good ones, the Claimants have not lost the right to make them.

45. The Tribunal has considered the descriptions now given for the documents which are sought to be withheld on the grounds of commercial sensitivity. The Tribunal is satisfied that sufficient description is given for the Respondents to know the general nature of the sensitivity so that a general order would be inappropriate.
46. The Respondents are in a position where they could, if they wished, seek the production of particular documents or narrow categories of documents on the basis that notwithstanding their sensitive nature, production should be ordered. This is not to be understood as an encouragement by the Tribunal for the Respondents to make such an application, but the fact that it could be made shows that an adequate description has been given.
47. So far as the Trust Deed is concerned:
 - a. The Trust Deed was entered into in the context of the Claimants' settlement with their employees and former employees;
 - b. The Trust Deed was specifically entered into in order to effect a settlement relating to claims under section 234 of the Labour Act 2006 and the establishment of the consolidated Workers' Participation and Welfare funds;
 - c. The claims relating to these matters are of importance in this arbitration;
 - d. Clause 19 requires the Claimants to maintain confidence in the documents but provides for an exception where "*disclosure is required for use in legal proceedings regarding this Deed of Trust*";
 - e. The Claimants maintain that this exception is inapplicable as the dispute does not concern the Deed of Trust in that it does not concern the interpretation or operation of the Deed;
 - f. The Respondents say that this interpretation is too narrow.
48. On this issue, the Tribunal agrees with the Respondents. The word "regarding" in the context in which it is used, is not limited to the interpretation or operation or effect of the Deed itself. An issue in the proceedings is whether the sums paid by the Claimants to the Trust can be recovered from the Respondents. The Tribunal is satisfied that the documents may well throw light on this issue. In that context the documents can properly be said to be required for use in these legal proceedings regarding the Deed of Trust.
49. It follows that the documents in respect of which production is sought to be withheld on this basis should be produced. The Claimants are entitled to appropriate protection which they are invited to seek to agree with the Respondents. In the absence of agreement, the Tribunal will rule on the issue.

X. DISPOSITION

50. The Tribunal accordingly orders
 - a. That the Claimants confirm, by their external lawyers, no later than 26 June 2026 that all documents which have been withheld on the grounds that they are attachments to privileged documents have been individually examined by the external lawyers and not produced on the grounds that inferences may be drawn as to the nature of legal advice;
 - b. That documents withheld pursuant to clause 19 of the Trust Deed are to be produced subject to appropriate confidentiality protection; and
 - c. That the application is otherwise dismissed.

On behalf of the Tribunal,

[Signed]

Roger Stewart KC
President of the Tribunal
Date: 12 June 2026