

# LEGAL UPDATES 2021

## **1. *The Customs Act, 1969:***

The NBR, by the powers conferred in section 219B of the Customs Act 1969, imposed certain conditions and limitations for determining the annual report availability and collection of arrears of the home consumption bond license for indigenous consumption. Raw materials must be imported on the basis of the annual or temporary import availability approved for the licensed company. After taking certain factors into account, the concerned commissioner shall determine the amount of annual import availability. However, it shall not exceed 80% of the company's annual production capacity. If additional availability is required, approval of the National Board of Revenue has to be obtained.

Under The Customs Act 1969, illegal removal of raw materials in inspection of warehouses, or import of goods outside the availability of imports; or if the claim due to any other reason remains pending, it shall not be granted until its final settlement.

There are a number of other criteria that must be satisfied. Notwithstanding anything contained in this Order, the Board may, in exceptional circumstances, grant temporary or annual import availability by imposing different conditions and limits.

## **2. *Directives to Create Scope for Foreign Investment in the Securities Market:***

The Bangladesh Securities and Exchange Commission instructs the foreign company or investor to adhere to the requirements given underneath for the purpose of becoming a sponsor of any mutual fund. The Commission says that any foreign company, irrespective of whether it is public or private, is entitled to be a sponsor of any mutual fund either single or jointly with any local eligible sponsor.

Any foreign company as a sponsor of mutual fund must satisfy the criteria essential to form a trust according to the Trust Act 1882. However, if it is a joint sponsor, they may appoint a local sponsor to prepare the trust as well as other significant activities.

Being a sponsor of mutual fund, no foreign company may subscribe any more than 25% of the fund size.

## **3. *Customs Transit and Transshipment Rules, 2021:***

These rules shall apply to the transit or transshipment goods using the interior of Bangladesh in cases where Bangladesh is a party to the international transit or

transshipment. Transit or transshipment goods shall be transported by road, rail, waterway and air as mentioned in the relevant agreement, protocol or standard operating procedure.

If any of the provisions set out in these Rules is violated, it shall be deemed to be an offence in violation of the relevant section of the Act and the authorized person or agent engaged in the management of the transit or transshipment consignment shall be solely or jointly liable for the offence and shall be punished in accordance with the relevant provisions of the law.

#### ***4. Trustees of any Debt Securities or ISBS to conform to certain requirements provided below:***

The trustee ought to have ample manpower as well as a legal adviser. If it is a trustee of any ISBS, they shall have a shari'ah adviser. The legal adviser must have a minimum experience of 5 years and have knowledge in corporate and securities law.

The shari'ah adviser must be polished in Islamic fiqh with a minimal experience of 5 years in Fiqh-e-Muamalah or Islamic finance.

Officials of a trustee may not act as a compliance officer for more than 10 debt securities or ISBS.

The compliance officers ought to have a minimum of 5 years' experience in credit or investment management and legal documentation of long term credit or financing or investment or trustee operation.

A compliance officer must be within the top five ranked or grade employee of the trustee.

#### ***5. Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015***

The Bangladesh Securities and Exchange Commission (the Commission) has exempted 26 insurance companies from the proviso of clause (c) of sub-rule 3 of rule 3 of the Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015. However, despite making such a decision, the Commission reckons that the companies are indeed obligated to certain stipulations in order to uphold the interests of the investors as well as the capital market. They may do so by implementing the power vested in them by section 2CC of the Securities and Exchange Ordinance, 1969. The conditions provide that every company shall apply for insurance of its ordinary share capital at least of Tk 15 crore through initial public offer under fixed price method and at least 20% of equity of each company shall be invested in the securities listed in any stock exchange of Bangladesh.

#### ***6. Bangladesh Government Treasury Bonds Rules, 2021:***

In accordance with the powers conferred in Section 28 of the Public Debt Act, 1944, the government proposed the enactment of the Bangladesh Government Treasury Bonds Rules, 2021 and hereby pre-published it. If anyone has any objection or suggestion regarding the above proposal, it is requested to send this notification to the lower signatory within 30 days from the date of publication of the Official Gazette.

Any Bangladeshi resident person or institution, banks, insurance companies, corporate institutions, provident funds etc., including non-resident Bangladeshis, can purchase Bangladesh Government Treasury Bonds. Coupons or profit and sale proceeds received by the non-resident bidder or the amount received on the maturity of the Bangladesh Government Treasury Bonds shall be deemed to be repatriable in foreign currency: provided that such transaction shall be performed from the non-resident foreign exchange account (NFCA) or non-resident money account (NITA) conducted in the name of the buyer in a scheduled bank.

#### ***7. Trading Corporation of Bangladesh Order, 1972:***

This Order will apply to the business of corporations all over Bangladesh as well as outside Bangladesh. The authorized capital of the Corporation shall be Tk. 1,000 crore, which shall be paid by the Government, from time to time, as per the requirement of the Corporation. Subject to the rules and regulations made under this Order, the General Instructions and Supervision of all the activities and business of the Corporation shall be vested in the Board. Furthermore, the Board may also attain the powers that the Corporation may exercise and perform. The Board shall perform its functions on commercial considerations while upholding the interests of the nation and the people and shall, from time to time, be governed by the general or special instructions given.

#### ***8. Bangladesh Securities and Exchange Commission:***

In exercise of the power conferred by section 2CC of the Securities and Exchange Ordinance 1969, the Commission thus ordains additional criteria, namely- the shareholders of a listed company must be reported to, by the Board of Directors regarding appointment or reappointment of any member of the Board of Directors concerning the primary employment or other issues and; the Board of Directors ought to communicate any successive change or advancement in involvement or directorship in other companies. This must be communicated through the official website of the company that is associated with the website of the stock exchanges and it must later be in the report to the shareholders as well.

### **9. Carriage by Air (Montreal Convention) Act, 2020:**

This Act has been enacted to ensure the safety and rights of passengers, baggage, cargo consignor, consignee and other individuals by aircraft. In case of death or injury or damage to baggage, this new enactment guarantees that the airline provides the aggrieved party with compensation. The Special Drawing Rights (SDR) will decide on the amount of compensation in conformity with the Montreal Convention. If a situation results in the death of a passenger, the family members of the passenger may submit an application to the carrier so as to receive compensation.

### **10. Bangladesh EPZ Labour Act, 2019:**

This Act is pertinent to the workers of all industries in EPZ. Employment of workers ought to be administered as per the provisions of the mentioned Act, however, if an enterprise has constructed its own service rules concerning the employment, the employer must present it towards the Additional Inspector General for ratification of it. Whether it will be approved or declined is up to the Inspector General to decide. Nonetheless, if it is rejected, he will give reasons for it. The response will be given within 6 months.

If an individual is displeased with the decision, he/she may appeal to the Executive Chairman within 30 days. The Executive Chairman will then announce his decision within the next 45 days and this decision will be reckoned as the ultimate conclusion.

### **11. Margin Loan Directive**

Taking into account the interest of the investors, the TREC holders of the stock exchanges may expand credit facilities on a basis of 1:0.80, i.e., 80% of the clients margin/deposit, to their sanctioned clients for any individual stock having price- earnings ratio (P/E) up to 40 under the Margin Rules, 1999.

### **12. Bangladesh Bank**

Bangladesh Infrastructure Finance Fund Limited has been exempted from taking loans and grants in foreign currency from G2G, IPFF projects and various government-approved donor agencies for the purpose of investment in state infrastructure development activities and for the purpose of taking loans and grants in foreign currency in accordance with the rules relating to foreign exchange transactions and for the purpose of making investments/distributions in accordance with the provisions of section 14(1)(b) of the Financial Institutions Act, 1993.

**13. Value Added Tax and Supplementary Duties Rules, 2016:**

The National Board of Revenue (NBR) brought about some amendments to the above-mentioned rules such as- there shall be a system of printing of sales invoices like EFD and no invoice other than similar invoices, such as the alleged settlement or draft invoice, shall be issued and; details of goods or services supplied, quantity, single price (including VAT and supplementary duties in case of VAT or applicable), total value (including VAT and supplementary duties in case of VAT or applicable), rate and amount of VAT and supplementary duties in case of VAT or applicable, in which case all values shall be displayed in Bangladeshi taka.

**14. Amendments brought by the NBR in Value Added Tax and Supplementary Duties Rules, 2016:**

In case of availing VAT exemption applicable to ports, freight forwarders, clearing and forwarding companies, insurance companies and shipping agent services, the import or export duty station shall provide VAT exemption facility by ascertaining the nature of the organization by examining VAT registration letters and other documents of the concerned authority or organization, exporter.

**15. Preparation of a list of organizations covered by VAT- the large taxpayer unit:**

Under the Value Added Tax and Supplementary Rules 2016, the National Board of Revenue as per Order No. 04/VAT/2019, the tax payer's selection policy for the large taxpayer unit - VAT – has been formulated. As per sub-paragraph (3) of paragraph 4 of the order, the National Board of Revenue prepared the list of institutions under the purview of large tax payer units- VAT in accordance with "Annexure-A" to publish the final list of institutions under VAT in the Official Gazette.

The National Board of Revenue may, at any time, reduce or increase the number of institutions under the Large Taxpayer Unit - VAT.

**16. The territorial Waters and Maritime Zones Act, 1974:**

This Amended Act of 2021 Proposed law will establish Bangladesh's sovereignty over its maritime boundary. Foreign Minister AK Abdul Momen moved the bill and it was passed by voice vote. Bill proposed maximum three-year imprisonment, or a monetary fine of minimum taka 2 core and maximum taka 5 core. The punishment was one-year imprisonment and 5,000

fine in the old law enacted in 1974. The new draft also includes a provision for the punishment for offences in any exclusive economic zone, continental shelf and contiguous zone. Thirty-five new sections have been incorporated in the proposed law. The provisions of video, photo and electronic records are also included as evidence in proving the offences and incidents in the sea. including the provision of criminal jurisdiction in entry of foreign vessels and submarines into Bangladesh maritime boundary. The House of Commons has passed a bill to extend the contagious zone, which is a band of water extending farther from the outer edge of territorial sea up to 24 nautical miles from the baseline to 24 miles from its current 18-nautical-mile limit.

### **International Department**

UNCITRAL published draft Draft UNCITRAL Expedited Arbitration Rules. The draft states "The work aimed at improving the efficiency of the arbitral proceedings and expedited arbitration was described as a streamlined and simplified procedure with a shortened time frame, which made it possible to reach a final resolution of the dispute in a cost- and time-effective manner. The work also aimed to balance on the one hand, the efficiency of the arbitral proceedings and on the other, the rights of the parties to due process and to fair treatment". The rule should provide speedy and cost effectively ad-hoc arbitration mechanish where the Arbitrator is appointed by PCA in case of disagreement.