



Year 2011 Volume 2

In This Issue	Page
Case report	1
Legal aspects of social business...	1-2
House bill of lading: legal status	2
Exhaustive execution of syndicated	3
Loan	
Copyright law in Bangladesh	3

LAW IN FOCUS

A Newsletter of
Rahman's Chambers

© All Rights Reserved.



Mohakhali:
Tomizuddin Mansion
3rd floor, F-100, School Road
Mohakhali C/A
Dhaka-1212.

Ph.: (+8802) 8815415
Fax: (+8802) 8835936

Motijheel:
Alam Tower, 4th Floor
12, DIT Avenue (East)
Motijheel Commercial Area
Dhaka-1000.

Ph.: (+8802) 7171251
Fax: (+8802) 7170815
Cell: (+88) 01196010429
Email: info@rahmansc.com
Web: www.rahmansc.com

This document is for general
information only and is not
legal advice for any purpose.

CASE REPORT: JUDGEMENT AVAILABLE

The judgment of writ petition No. 6016-08 between Anwar Cement Ltd. vs. Bangladesh Bank and others conducted by this Chambers has now been published in the online law journal namely Chancery Law Chronicles (www.clcbd.org) having its reference No. 201, 40 CLC(HCD). In the said writ petition, it was held that the name of the guarantor may appear in the CIB report of Bangladesh Bank as guarantor only and not as defaulting borrower. The prohibition against defaulting borrower on granting new loan shall not automatically apply to guarantor by simply saying that its name is reported in CIB report.

ARTICLE

Legal Aspects of Social Business

Forrukh Rahman*

The concept of social business, as developed by the Nobel Laureate Prof. Dr. Mohammad Yunus has become quite popular lately. In simple terms social business means that a person may form a company for social business and/or buy shares in a existing company, is allowed to only take back his investment and so much of the dividend only to adjust any loss of investment. He is not allowed to take any profit as dividend. Any profit shall be kept as the reserve fund in the company and shall be invested for the growth of the business.

Prof. Dr. Yunus believes that social business must be carried out whole heartedly. It cannot be partly social business and partly commercial venture. It seems that any company of any nature may also invest in an existing social business/ form a new venture for social business

The object clause of the investor company should permit that part of its earning may be utilized for social business, CSR, charity etc. so that it is known to the investor, creditors etc. of the company that any investment made in a social business would not generate any profit in financial terms. The fund would be utilized for long term philanthropy e.g. reducing malnutrition, creating employment etc.

The social business company may issue ordinary shares, preference shares to the investors. The preference shareholders would have the right of redemption out of reserve fund after a certain period of time. Such shares cannot be issued with premium/interest. The advantage of investors in buying preference share as opposed to ordinary share would be that they would be able to enforce the social business company to buy back the shares and return the original investment out of reserve fund.

Whereas in case of ordinary shares the company legally cannot and also by agreement does not undertake any responsibility to buy back ordinary shares and investors are required to find third party investors for selling the shares. However, a social business company cannot restrict the investors from transferring the shares to another investor.

It is to be remembered that it is the investors who are doing the social business. Neither its employees and nor its creditors are required to do philanthropy. Hence, a social business company may issue bond and/or take loan in commercial terms. The banks and financial institutions are allowed to provide loan/make investment with interest/profit as a part of their normal business.

It logically follows that any individual may invest in the social business out of his/her Zakat fund and as a shareholder may monitor the utilization of the fund.

The greatest features of social business are that it allows reputed corporate houses, multinational companies, and successful businessmen to share their expertise, skills and knowledge in any business where the profit is measured in non-financial parameters. The social business is expected to flourish for three reasons: (a) the expertise of the investors and their good motive, (b) highly competitive/moderate pricing, and (c) reinvestment of profit.

The investors in social business ventures would do the business to derive intellectual and moral pleasures which is described as superior to more superficial forms of pleasure by Sir John Stuart Mill, (20 May 1806 – 8 May 1873, a great philosopher and economist); and/or they may do it by simply considering it as a social duty; and/or they may think that it would help them in increasing the brand value of their main business; and/or they may want to administer their Zakat fund.

The motive may be different but the principles on which it would operate would be the same. The principles of social business are the key to economic freedom, a master blend of socialism, capitalism and Islamic ideas.

* LLB(London); ASIArb; Barrister-at-Law of Lincoln's Inn; Advocate, Supreme Court of Bangladesh (Head of Chambers).

ARTICLE

House Bill of Lading: Legal Status in Bangladesh

Mostafizur Rahman*

Normally when Master Bill of Lading (MBL) issued by the carrier to the order of Authorised Dealer (AD) i.e. local banks, which is a negotiable document title to goods, it (issuing bank) excludes House Bill of Lading (HBL). Although in practice HBL which is issued by the freight forwarder (FF) may or may not be a title to the goods issued to the order of AD. Article 20 of UCP-600 recognizes HBL as a title to the goods unless the Letter of credit (LC) specifically prohibits. Besides, Paragraph 95 of International Standard Banking Practices (ISBP) states "if a credit states, 'FF's Bill of Lading is acceptable'. The HBL is generally issued by the FF to the exporters for their own record purposes. Although if FF desires, they may be the consignee and take entire charge of consignment. In that case HBL may be the title to the goods.

In Bangladesh, as per the Guidelines for Foreign Exchange Transaction of Bangladesh Bank under Chapter 22 of the Section 8 (i) "**all bills of lading**" have to be endorsed by the AD except where 100% advance payment received from the buyer. This is a mandatory requirement imposed by a central bank. The justification is that it helps to combat fraud, money laundering, and to monitor remittance of proceeds of export. It also seeks to ensure that the trade is covered by an LC, and that the documents flow through the banking channels.

However, endorsing both HBL and MBL issued to the order of Bank creating confusion as to title of goods and also causing delay in delivery at the importers end. In such circumstances, to expedite export legal amendments are required with a view to giving more flexibility as to the terms and conditions, for issuance of Bill of Lading. If the FF is willing to take entire charge of the consignment by issuance of HBL as the sole title to the goods as opposed to MBL, laws should allow this and search other mechanism to combat fraud and tracking remittance. In such cases the MBL may be issued to the order of FF only, where Bank's endorsement would not be required as this would no longer be the title to the goods.

*LLB, LLM(Southeast), Advocate, Dhaka Judge Court(Senior Consultant)

ARTICLE

Exhaustive Execution of Syndicated Loan

Mohammad Sadequul Islam*

The syndicated loan market is the dominant way for corporations in the U.S. and Europe to tap banks and other institutional financial capital providers for loans. The U.S. market originated with the large leveraged buyout loans of the mid-1980s and Europe's market blossomed with the launch of the euro in 1999.

Syndicated or club financing loan has already been in practice in Bangladesh and it is a growing concept in Banking Arena of Bangladesh. But still it is not executed broadly as like US and European States. Syndicated loan can play a vital role to save the economy of Bangladesh and also to save the banks and borrowers from major collapse as it was happened in to the Northern Rock Bank of America.

The benefits of syndicated finance are that it diversifies the risk of one bank on a single borrower exposure and increases the quality of loan, legal documentation through consensus or cumulative judgment and monitoring of different banks/ financial institutions. The same syndicated loan and security documents are vetted by the several bankers and lawyers for months.

In international arena, syndicated loan market allows a more efficient geographical and institutional sharing of risk. Large US and European banks originate loans for emerging market borrowers and allocate them to local banks. Euro area banks have expanded pan European lending and have found funding outside the euro area. Due to Foreign exchange regulations, syndication beyond national boundary to share the financial risks into the national and international level is not yet introduced in Bangladesh. However, as country's economy is growing larger flexibility may be granted for club lending and exchange regulation may be withdrawn of borrowing from abroad. This would also help in increasing foreign investment as investors often prefer to invest in the form of loan.

*LLM,(West London), (Junior Consultant).

ARTICLE

Copyright law in Bangladesh: Need to ensure better implementation

Md. Arafat Kausar*

After 'The Copyright Act of 1911' and 'The Copyright Ordinance of 1962', a new statute on copyright protection is enacted in Bangladesh in 2000 named 'The Copyright Act, 2000 (No 28 of 2000)' and it is amended up to 2005 and followed by enactment of Copyright Rules in 2006 which contains several new provisions in accordance with international standard of copyright law .

The basic objects of copyright law is to ensure the protection of all creative works of individuals (literary, dramatic, musical or artistic works) however implementation of such object still remains questionable in our country. Bangladesh has a bad track record in software piracy in the Asian Pacific region.

Two types of remedies has been provided in the act to protect the violation of copyright; Judicial remedies (Civil remedies, Criminal remedies), Administrative remedies' which is a standard protection for combating infringement of copyright violations.

To ensure the better implementation, administrative authority (police and Copyright Office, Bangladesh) may work together with various departments of the Government, taskforce, various private enforcement agencies like Malaysia, Japan and New Zealand. Raising awareness of the copyright holders, users, stakeholders and common citizens and imparting training to the law enforcement agencies can be an effective way.

Judiciary must show analytical mind and pro-active attitude in observing issues relating to copyright. Adequate Knowledge on latest developments of laws and principles on copyright is very essential to ensure better enforcement that's why related judicial department and concerned legal professionals must be well conversant with updated judgments and legal opinions of the courts of different countries and international organizations to provide direction and advice to the concern authority.

LL.B.(Hon's), LL.M.(Dhaka), (Junior Consultant)

The comment/remark/opinion expressed in the articles is of the authors own. For past volumes, please visit:
www.rahmansc.com